

## ORDINANCE NO. 3845

### AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY CHAPTER 112, DEVELOPMENT, ARTICLE VI, WIRELESS COMMUNICATIONS ANTENNAS.

#### SUMMARY

This ordinance amends Article VI, Wireless Communications Antennas, of Chapter 112, Land Development, so as to: (1) reorganize the Article, to provide clarity with respect to the procedural requirements and to eliminate redundancies and inconsistencies in the ordinance; (2) to provide administrative approval of certain applications by the full Technical Review Committee rather than just the Township Engineer and Director of Planning as currently permitted; and (3) slightly expand the types of applications that require administrative approval by the Technical Review Committee.

**BE IT ORDAINED** by the Township Council of the Township of Franklin, County of Somerset, State of New Jersey that the Code of the Township of Franklin is hereby amended as follows:

#### SECTION I

Chapter 112, Land Development, Article VI, Wireless Communications Antennas, is hereby deleted in its entirety and replaced with the following:

#### **ARTICLE VI**

##### **Wireless Communications Antennas**

#### **§ 112-54. Purposes.**

It is the overall purpose of the provisions of this article to provide specific zoning conditions, standards and limitations for the location, approval and operation of antennas which are used for the transmission and reception of wave frequencies for the purposes of any wireless communication (e.g., telephone, radio, internet, paging and/or television communication) within the Township of Franklin, which recognize the need to safeguard the public good and preserve the intent and the purposes of the Franklin Township Master Plan and Zone Plan.

#### **§ 112-55. Overall objective.**

The overall objective of the provisions of this article is to enable the location within the Township of Franklin of those antennas which are necessary to provide adequate wireless communication services while, at the same time, limiting the number of supporting towers to the fewest possible.

**§ 112-56. Specific goals.**

The specific goals shall be as follows:

- A. To minimize the total number of wireless communication towers within the Township of Franklin;
- B. To limit the impact of wireless communications antennas, towers and related facilities upon the residences and the streetscapes throughout the Township of Franklin;
- C. To safeguard the prevailing and historic character of development throughout the Township of Franklin, with particular emphasis to maintaining the prevailing character of the historic districts and sites throughout the Township;
- D. To encourage the location of antennas upon, or within, existing structures, including existing wireless communication towers, existing buildings, existing water towers or standpipes, and existing telephone and electric poles and towers;
- E. To encourage as many antennas as possible, of as many of the wireless communication carriers as possible, to be collocated on the fewest number of existing structures within the Township of Franklin;
- F. To discourage the construction of new towers which do not have the likelihood of being used by a number of wireless communication carriers;
- G. To encourage the communication carriers to configure their facilities in a manner that minimizes and mitigates any adverse impacts upon affected properties, streetscapes and vistas through careful design, siting, landscape screening and innovative camouflaging techniques;
- H. To formulate and maintain, for land use planning purposes, a complete inventory of all wireless communications antennas, towers and related facilities within the Township of Franklin, and others in the vicinity of the Township, which are capable of providing service within the Township;
- I. To enhance the ability of the carriers of wireless communications services who adhere to the letter and intent of these provisions to provide such services quickly, effectively and efficiently; and
- J. To comply with the mandate of the Federal Telecommunications Act of 1996, 47 U.S.C. § 332 (c)(7), which preserves local government authority to enforce zoning requirements which protect public safety, public and private property and community aesthetics.

**§ 112-57. Exemptions of applicability.**

- A. These ordinance provisions shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated only by a federally licensed amateur radio station operator or is used exclusively to receive transmissions;
- B. These provisions shall not govern any parabolic satellite antennas

**§ 112-58. Review procedures.**

A. Applications Requiring TRC Review and Approval. Notwithstanding any provision of this Chapter 112 to the contrary, in the following instances the placement of wireless communication antennas shall only require review and approval by the Technical Review Committee (TRC) and shall be considered a permitted use in the subject zoning district and therefore shall not require conditional use approval, nor shall any variance be required in accordance with N.J.S.A. 40:55D-70c or N.J.S.A. 40:55D-70d of the Municipal Land Use Law: (1) co-location of wireless communication antennas on any wireless communication structure approved by the Planning Board or Zoning Board of Adjustment; and (2) placement of antennas on or within any of the structures listed below:

- 430 Old Georgetown Road, Lattice Tower
- 281 Cedar Grove Lane, Monopole Tower
- 275 Davidson Avenue, "The Tower" Building
- Route 27 (near Finnegans), Monopole Tower
- 78 Veronica Avenue, Lattice Tower
- Hamilton & Veronica, Monopole Tower
- 575 Easton Avenue, "Harrison Towers" Building
- 8 Davidson Avenue, "Marriott" Building
- Off Randolph Road, Elizabethtown Water Tank
- Bennetts Lane (near Middlebush), Power Line Towers
- Grouser & Van Cleef, Power Line Towers
- Route 27 (near Cortelyous), Power Line Towers
- E. Millstone (Grouser), Power Line Towers

- (1) No construction permit shall be issued by the Township Construction Official for such applications until he or she is in receipt of plans approved by the TRC; and
- (2) No proposed telecommunications antenna shall extend above an existing tower, existing building, existing water tower or existing high-tension power line tower unless it is demonstrated by the applicant to be the minimum height necessary for the proposed installation to satisfactorily operate. In no case shall such an application involve an increase in the height of an existing telecommunication tower.
- (3) The TRC may require modifications to any such application as necessary, in its judgment, to ensure consistency with the goals and requirements of this Article. Such modifications may include but are not necessarily limited to: alternative placement of antennas and ancillary equipment; screening, camouflaging and/or landscaping of antennas and ancillary equipment; and site plan related matters regarding the installation of the proposed antennas and ancillary equipment.

- B. Applications Requiring Township Council Review and Approval. Notwithstanding any provision of this Chapter 112 to the contrary, the placement of wireless communication support towers or antennas on lands owned by the Township of Franklin shall require review and approval of the Township Council and shall be considered a permitted use in the subject zoning district and therefore shall not require conditional use approval, nor shall any variance be required in accordance with N.J.S.A. 40:55D-70c or 40:55D-70d of the Municipal Land Use Law.
- (1) The subject land owned by the Township of Franklin shall be approved by the Franklin Township Council for the location of a tower or antennas in consideration of existing site conditions and surrounding land uses;
  - (2) If approved by the Franklin Township Council, the decided upon area shall be subject to a lease agreement between the applicant and the Township of Franklin;
  - (3) The lease agreement shall have a detailed plan of the proposed tower or antennas attached to the agreement, which detailed plan shall be reviewed for the Township Council by the TRC.
  - (4) The detailed plan attached to the lease agreement shall have been approved by the Township Council and shall include the information required by §112-59.
  - (5) The height of any proposed new supporting tower or antennas shall not exceed 150 feet unless it can be demonstrated by the applicant, to the satisfaction of the Township Council, that a higher height is necessary for the proposed installation of the antenna(s) to satisfactorily operate.
  - (6) The Township Council does not recommend Township-owned sites:
    - [1] In residential zones or areas;
    - [2] In historic districts;
    - [3] Along D&R Canal;
    - [4] On conservation or open space tracts.
- C. Applications Requiring Planning Board Review and Approval. All other applications for wireless communication towers or antennas, in the zones where permitted as conditional uses, shall be subject to the review and approval of the Planning Board. Such towers and antennas shall be subject to the following conditional use standards:
- (1) Area and setback standards.
    - (a) The proposed supporting tower, antennas and ancillary related electronic equipment shall be located on a land area no less than 1/2 acre in size.
    - (b) The minimum required 1/2 acre land area shall either be a separate undeveloped lot or a leased portion of an existing undeveloped or developed lot.
    - (c) The proposed supporting tower, antennas and ancillary related electronic equipment, and any approved building housing the electronic equipment and any approved camouflaging of the tower, shall be the only land uses located on the subject land area, whether a separate lot or a leased portion of a lot.

- (d) Excepting for any access driveway into the property, any required landscaping and any underground utility lines reviewed and approved by the Board as part of the site plan submission, no building, structure and/or disturbance of land shall be permitted within a one-hundred-foot setback distance from any street line and within a three-hundred-foot setback distance from any lot line of any adjacent property, provided that, in any case, no building, structure and/or land disturbance shall be located within 500 feet of any Historic District or site as duly designated by Franklin Township, the State of New Jersey and/or by the federal government.
- (2) Design standards.
- (a) Any proposed tower shall be a monopole.
  - (b) No tower shall be located to be visible from any historic district or site as duly designated by Franklin Township, the State of New Jersey and/or by the federal government.
  - (c) To the extent possible, any new tower shall be located behind existing buildings and/or natural topographic elevations in order to screen the tower's base from being visible from adjacent properties and from any street right-of-way.
  - (d) All new towers shall be camouflaged (e.g., housed in a silo, church steeple, bell tower, etc., or made to look like a tree or an oversized flagpole) as may be appropriate in the context of the visibility of the tower from different vantage points throughout the Township and the existing land uses and vegetation in the vicinity of the subject site.
  - (e) The height of any proposed new supporting tower shall be the minimum necessary to provide adequate service, but in no case shall exceed 150 feet.
  - (f) All cables shall be installed within underground conduits.
  - (g) No signage is permitted except the minimum necessary warning and/or equipment information signs deemed necessary for safety purposes and are specifically approved by the Planning Board.
  - (h) No lighting is permitted on a tower except lighting that specifically is required by the Federal Aviation Administration (FAA), and any such required lighting shall be focused and shielded to the greatest extent possible so as not to project towards adjacent and nearby properties. To the degree permissible by applicable FAA standards, all lights shall be intermittent. The applicant shall provide to the Board of jurisdiction all applicable FAA standards regarding lighting that may apply to a proposed tower.
  - (i) Individual cabinets for the required electronic equipment related to the wireless communications antenna(s) shall be permitted in accordance with the following design criteria:
    - [1] All the required electronic equipment for all anticipated communication carriers shall be housed within a building not more than 20 feet in height and which shall be designed with a single-ridge,

pitched roof with a residential or barn-like character of appearance. Such building shall be no more than 300 square feet in area per provider.

- [2] No electronic equipment shall interfere with any public safety communications.
  - [3] All of the electronic equipment shall be automated so that, to the greatest extent possible, the need for on-site maintenance and the commensurate need for vehicular trips to and from the site will be minimized.
  - [4] The building may have one light at the entrance to the building, provided that the light is attached to the building, is focused downward and is switched so that the light is turned on only when workers are at the building.
- (j) Between the location of the tower and the building enclosing related electronic equipment and any public street or residential dwelling unit or residential zoning district within view of the tower and the building, landscaping shall be provided in accordance with the following:
- [1] The landscaping shall consist of a combination of existing and/or newly planted evergreen and deciduous trees and shrubs of sufficient density to screen the view of the tower, particularly at its base and to enhance the appearance of the building from the surrounding residential properties and any public street;
  - [2] The landscaping plan shall be prepared by a licensed landscape architect who shall present testimony to the Board of jurisdiction regarding the adequacy of the plan to screen the tower from view and to enhance the appearance of the building; and
  - [3] Any newly planted evergreen trees shall be at least eight feet high at time of planting, and any newly planted deciduous trees shall be a minimum caliper of two inches at time of planting. Such planting shall be spaced in a manner that provides solid screening at the time of planting.

#### **§ 112-59. Submission requirements.**

Applications requiring Township Council review and approval, applications requiring Planning Board review and approval and applications submitted to the Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70d shall submit all of the information identified below in order to be deemed complete. Applications requiring TRC review and approval shall submit the information specified in Section 112-59.A., E., F., G. and shall provide photo-simulations from 4 vantage points.

- A. Site Plan. In order to be declared complete, the application shall include all of the applicable documentation and items of information required for preliminary and final major site plans specified in this chapter.
- B. Comprehensive Plan. In order to be declared complete, the application shall include an overall comprehensive plan in accordance with the following:

- (1) In order to effectuate the purposes, objective and goals of this article as noted hereinabove, any applicant to the Township of Franklin for approval to erect a new supporting tower for wireless communication antennas shall provide threshold evidence that the proposed location of the proposed tower and antennas has been planned to result in the fewest number of tower locations within the Township of Franklin at the time full service is provided by the applicant throughout the Township.
  - (2) Therefore, the applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the Township of Franklin and, to the greatest extent reasonably possible, shall indicate how its plan specifically relates to and is coordinated with the needs of all other providers of wireless communication services within and around the Township. More specifically, the overall comprehensive plan shall indicate the following, and this information shall be provided at the time of the initial submission of the application in order for the application to be deemed complete and be scheduled for a public hearing:
    - (a) The mapped location and written description of all existing and approved supporting towers within one mile of the subject site, both within and outside of Franklin Township;
    - (b) The mapped location and written description of all existing or approved water towers and existing high-tension power line towers within one mile of the subject site, both within and outside of Franklin Township;
    - (c) Why the proposed antennas could not be located on any of the existing structures within one mile of the subject site;
    - (d) How the proposed location of the proposed antennas specifically relates to the anticipated need for additional antennas and supporting structures within and near the Township of Franklin by the applicant and by other providers of wireless communication services within the Township;
    - (e) How the proposed location of the proposed antennas specifically relates to the objective of collocating the antennas of many different providers of wireless communication services on a single supporting structure; and
    - (f) How the proposed location of the proposed antennas specifically relates to the overall objective of providing full wireless communication services within the Township of Franklin while, at the same time, limiting the number of towers to the fewest possible, including alternate technologies which do not require the use of towers or require towers of a lesser height.
- C. Conditional Use Standards Conformance. In order to be declared complete, the initially submitted site plan shall indicate conformance with each of the conditional use standards enumerated in § 112-58(C) hereinabove, and any deviation from any of the standards shall be addressed in writing by the applicant at the time the application is first submitted.
- D. Visual Impact Assessment. During the public hearing process, the applicant shall schedule the time for a crane or balloon test with the Township Director of Planning in order to provide the members of the Board of jurisdiction and the general public the opportunity to view a crane or balloon at the location and height of the proposed

tower. Thereafter, a visual sight distance analysis shall be prepared by the applicant and presented to the Board of jurisdiction including photographic reproductions of the crane or balloon test, graphically simulating the appearance of the proposed tower, with at least three antenna arrays attached thereto and from at least 15 locations around and within one mile of any proposed tower where the tower will be most visible.

- E. Structural Integrity. Documentation by a qualified expert that any proposed tower will have sufficient structural integrity to support the proposed antennas and the anticipated future collocated antennas and that the structural standards developed for antennas by the Electronic Industries Association (EIA) and/or the Telecommunication Industry Association (TIA) have been met;
- F. Co-location. A letter of intent by the applicant, in a form which is reviewed and approved by the Board Attorney, indicating that the applicant will share the use of any tower with other approved wireless communication services at reasonable rates which shall be economically viable; and
- G. Removal Guarantee. The applicant (and the landowner in the instance of a leased property) shall provide a performance bond and/or other assurances satisfactory to the Board of jurisdiction, in a form approved by the Township Attorney, that will provide for the removal of the antennas, any supporting tower, the electric equipment cabinets, any building enclosing the electronic equipment cabinets, and all other related improvements, at no cost to the Township, when the antennas are no longer operative. Any wireless communication antenna facility not used for its intended and approved purpose for a period of six months shall be considered no longer operative and shall be removed by the responsible party within 60 days thereof.
- H. Additional Expert Review. In addition to its normal professional staff, given the technical and specialized nature of the testimony by the applicant's radio frequency expert(s), the Board of jurisdiction may hire its own radio frequency expert to review and comment upon the testimony presented by the applicant. Additionally, based upon other testimony presented by the applicant, the Board of jurisdiction may hire other experts with specialized areas of expertise if deemed necessary.

## **SECTION II**

Section 112-213.B, Professional Fees, of Chapter 112, Land Development, is hereby amended as follows to add the following nonrefundable review fee for those applications requiring review and approval by the Township Council or the TRC:

Wireless communication tower or antennas requiring review and approval by the Township Council or the TRC	\$5,000
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### **SECTION III**

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

### **SECTION IV**

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as the extent of such inconsistency.

### **SECTION V**

This ordinance shall take effect immediately upon adoption and publication according to law.

This is a true copy of an ordinance adopted by the Township Council, Township of Franklin, Somerset County, New Jersey.

### **ORDINANCE NO. 3845**

Introduced: August 11, 2009  
Public Hearing: September 22, 2009  
Adoption:  
Published:  
Effective:

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Ann Marie McCarthy, Township Clerk