

ORDINANCE 17-02

AN ORDINANCE TO AMEND the Millville Town Code at Chapter 155, Article VII, § 155-16, to add regulations regarding Wireless Communications Facilities.

WHEREAS, the Town Council of Millville has the power to adopt ordinances for the protection and preservation of Town property, rights and privileges; for the preservation of peace and good order; for securing protection and promotion of health, safety, comfort, convenience, welfare and happiness of the residents of the Town;

WHEREAS, the Town Council of Millville has the power to enact zoning regulations pursuant to Title 22, Chapter 3 of the Delaware Code;

WHEREAS, the Town of Millville has adopted a Zoning Ordinance for the municipality, which has been codified in Chapter 155 of the Town Code; and

WHEREAS, Chapter 155, Article XIII provides that the Town Council may from time to time amend, supplement, or change the regulations and restrictions established by this Ordinance;

BE IT THEREFORE ORDAINED, by the Town Council for the Town of Millville, Sussex County, Delaware, a majority thereof concurring Council duly met, following a duly noticed public hearing on June 14, 2016, that the following language hereby be adopted and incorporated into the Town of Millville Code, with deletions shown by strike through and additions shown by underline and bold as follows:

Article VII. Supplementary District Regulations

§ 155-16. Wireless communications facilities; other exceptions ~~Exceptions to height regulations.~~

A. The maximum height of all structures is regulated per zoning district and set forth in Article VI, District Regulations. However, said limitations shall not apply to the height of a church spire, church belfry, clock or wireless tower, water tank, chimney or similar structure, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

B. Purpose. The purposes of this section's standards established herein to govern the use, construction and location of wireless communications facilities are:

- (1) To accommodate the need for wireless communications facilities while regulating their location and number in the Town and to ensure compliance with all applicable governmental regulations.
- (2) To minimize any adverse and visual effects of any wireless communications facilities antenna and antenna support structures through proper design, siting and screening.
- (3) To ensure the structural integrity of the antenna support structure through compliance with applicable industry standards and regulations.

(4) To encourage the joint use of any new antenna support structures to reduce the number of such structures needed in the future.

(5) To promote the health, safety and welfare of the residents of the Town.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

(1) ANTENNA - A device used to collect and/or transmit wireless communications or radio signals, including panels, microwave dishes and signal poles known as “whips.” As used herein, the word “antenna” includes “antennas.”

(2) ANTENNA SUPPORT STRUCTURE - Any pole, telescope mast, tower, tripod, lattice construction steel structure or any other structure which supports an antenna or has an antenna attached to it.

(3) ANTENNA SUPPORT STRUCTURE HEIGHT - The vertical distance measured from the base of an antenna support structure at grade to the highest point of the structure, including any antenna affixed thereto. If the antenna support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna support structure height.

(4) LAND SITE - A tract or parcel of land that contains a wireless communications facility and associated parking and may include other uses associated with and ancillary to wireless communication transmission.

(5) WIRELESS COMMUNICATIONS EQUIPMENT BUILDING - A building or cabinet in which electronic receiving, relay or transmitting equipment for a wireless communication facility is housed.

(6) WIRELESS COMMUNICATION FACILITY - The antenna, antenna support structure, wireless communications equipment building, parking and/or other structures, building, cabinets and equipment involved in receiving or transmitting wireless communications or radio signals for commercial purposes and not for non-commercial, residential purposes.

D. Use regulations.

(1) Attachment of facilities to existing antenna support structures:

(a) On any local sites owned by or in the possession and control of the Town, if approved by the Town Council as a conditional use.

(b) On any state, county and/or municipal site for its own internal communication needs only, if approved as a conditional use by the Town Council.

(c) On any private property, if approved by the Town Council as a conditional use.

(2) Erection of new antenna support structures and wireless communications facilities:

- (a) On any local sites owned by or in the possession and control of the Town, if approved by the Town Council as a conditional use.
- (b) On any state, county and/or municipal site for its own internal communication needs only, if approved as a conditional use by the Town Council.
- (c) On any private property, if approved by the Town Council as a conditional use.

E. Application requirements. All applicants seeking conditional use to construct, erect, relocate or alter a wireless communications facility shall demonstrate compliance with this section in an application provided by the Town, accompanied by the fee, escrow funds and the following documents:

(1) Copy of the typical specifications for proposed structures and antennas; including description of design characteristics and material.

(2) A site plan to scale showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property.

(3) A current map or updated map for an existing map on file, showing locations of applicant's antennas, facilities, existing towers, and proposed towers, which are reflected in public records, serving any property within the Town.

(4) A report from a structural engineer showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with all the applicable national building standards for such facilities and structures.

(5) Identification of the owners of antennas and equipment to be located on the site.

(6) Written authorization from the site owner for the application.

(7) Evidence that a valid FCC license for the proposed activity has been issued.

(8) A line-of-sight analysis showing the potential visual and aesthetic impacts as well as any attract/detract lighting impacts of the adjacent districts.

(9) A written agreement to remove the tower and/or antenna within 180 days after cessation of use.

(10) Proof of liability insurance to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life, at no cost to the Town of Millville, in a form approved by the Town Solicitor.

(11) Evidence that applicable conditions in subsection F of this section are met.

(12) Additional information required by the Town for determination that all applicable zoning regulations are met.

F. Standards. All applicants must show that all applicable standards are met.

(1) Location.

(a) The proposed communication tower, antenna or accessory structure will be placed in a reasonable available location which will minimize the visual impact on the surrounding area and allow the facility to function in accordance with minimum standards imposed by the applicable communications regulations and applicant's technical design requirements.

(b) Applicant must show the proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and applicant's technical design requirements without unreasonable modifications on any existing structure or tower under the control of applicant.

(2) Height.

(a) The applicant shall demonstrate that the antenna and the antenna support structure must be at the height proposed in order to satisfy their function in the applicant's regional plan or grid system. The applicant shall also demonstrate that the antenna height requested is not in excess of the minimum required function satisfactory.

(b) An antenna that is attached to a support structure such as telephone, electric, or utility pole, existing wireless communications, cellular communications or personal communications services tower, water tower or other similar tall structure, together with any antenna support structure, shall not exceed the height of the existing structure by more than 10 feet.

(c) An antenna that is not mounted on an existing antenna support structure shall not have an antenna height or tower in excess of the height restrictions in the zoning district in which it is located.

(3) Setbacks. In addition to, and not in lieu of, any other applicable setbacks, the following shall apply under this section:

(a) The minimum distance between the base of any antenna support structure and any property line or right-of-way line shall be the largest of the following: the minimum yard setback in the underlying zoning district or 100% of the proposed antenna support structure height.

(b) The minimum distance between the base of any guy wire anchors and any property line or right-of-way shall equal 40% of the proposed antenna support structure.

(4) Fencing. A security fence shall be required around the antenna support structure and other equipment, unless each antenna is mounted on an existing

structure. The security fence shall be a maximum of 6 feet in height and maintained in proper condition. No barbed wire or razor fencing will be permitted.

(5) Fully automated/required parking. The wireless communications facility shall be fully automated and not require any maintenance workers to be present on a full-time basis. Adequate parking shall be required for all maintenance workers, with a minimum of 2 spaces provided. All parking spaces shall be constructed to conform to applicable stormwater management regulations.

(6) Signs. Notwithstanding any provision of this chapter permitting signage, no signs or other structure shall be mounted on the wireless communications facility, except as is required by the Federal Communications Commission (FCC), Federal Aviation Administration (FAA), or other governmental agencies.

(7) Lighting. Antenna support structures shall meet all FAA regulations. No antenna support structure may be artificially lighted except when required by the FAA or other governmental authority. When lighting is required by the FAA or other governmental authority, it shall be oriented inward so as not to project onto surrounding properties. The applicant shall promptly report any outage or malfunctions of FAA-mandated lighting to the appropriate governmental authorities.

(8) Visual appearance. Antenna support structures shall be painted silver or have a galvanized finish or may be painted green up to the height of nearby trees to disguise their appearance. All wireless communications and other accessory facilities shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of like-facades to blend with the existing surroundings and neighboring buildings to the greatest extent possible.

(9) Landscaping. The following landscaping shall be required to screen as much of the newly constructed antenna support structure, the fence surrounding the newly constructed antenna support structure, and any other new-constructed ground-level features (such as a building) as possible and, in general, soften the appearance of the wireless communications facility. Listed below are the landscaping requirements:

(a) The disturbance of the existing topography shall be minimized unless such disturbance would result in less visual impact of the facility on the surrounding area.

(b) Existing vegetation on and around the land site shall be preserved to the greatest extent possible. Any tree or vegetative element which dies must be replaced within one month, ground permitting.

(c) An evergreen screen shall be required to surround the antenna support structure. The screen can either be a hedge (planted three feet on center maximum) or a row of evergreen trees (planted 10 feet on center maximum). The evergreen screen shall be a minimum of 6 feet at planting, and shall grow to a minimum of 15 feet at maturity.

(d) Where the wireless communications facility abuts residentially developed land, a residential zoning district, public land, or streets, the land site perimeter shall be landscaped with at least one row of deciduous trees, not less than three inches in caliper, spaced not more than 30 feet apart, on center, and within 25 feet of the land site boundary, as well as at least one row of evergreen trees or shrubs, at least 14 feet high when planted and spaced not more than 15 feet apart and within 40 feet of the land site boundary.

(10) Designed for collocation; notice to other users. In order to reduce the number of antenna support structures needed in the Town in the future, the proposed antenna support structure shall also be required to accommodate, where possible, other users, including other wireless communication, cellular communication and personal communication service provider companies, and local police, fire, and ambulance companies. Applicants shall provide documentary evidence that all other authorized users have been contacted by the applicant with an offer of collocation on the applicant's proposed antenna support structure.

(11) Review of site alternatives for new structures. If the applicant proposes to build an antenna support structure (as opposed to mounting the antenna on an existing structure), the applicant shall demonstrate with documentary evidence that it has contacted the owners of structures of suitable location and height (such as smoke stacks, water towers and buildings housing existing antenna support structures) within a one-mile radius of the site proposed, requested permission to install each antenna on those structures, and has been denied. An application to construct a new antenna support structure will be denied if the applicant has not made a good faith effort to mount all antennas on an existing structure as set forth in this subsection.

(12) Abandoned or unused portions of towers. Upon application for a tower or tower facility, the owner or agent of the tower must supply the Town of Millville with a letter stating that if the tower is vacated for any reason, the owner or agent will remove the tower, all apparatus associated with it, the top three feet of the footing and restore the site to its original condition within 60 days of vacation of the tower.

(13) Safety and maintenance. The applicant shall demonstrate that the proposed antenna and antenna structure and entire wireless communications facility are safe and are in accordance with the applicable regulations, and the surrounding properties will not be negatively affected by the antenna support structure failure, falling ice or debris.

(a) All antenna support structures shall be fitted with anti-climbing devices.

(b) The owner of the facility shall conduct radiation tests upon inauguration of service on an annual basis thereafter for a period of five years to assure compliance with ANSI C 95.1-1982, entitled "American National Safety Levels with respect to Human Exposure to Radio Frequency and Electromagnetic."

(c) If 75% of the properties within a five-mile radius have an owner who complains of radio and/or television interference, the approval may be revoked.

(d) Any antenna structure, antenna support, and accessory structures not properly maintained shall be required to be removed at the expense of the persons having control or receiving benefits within 60 days after receiving notice of nonmaintenance from the Town.

(e) Vandalism and graffiti will be reported by Code and Building Administrator. Violation notices shall be issued only after vandalism or graffiti has remained for more than 72 hours after being first noted by the Code and Building Administrator. If 3 violation notices are issued within a one-year period or less, this shall be interpreted as having received notice of non-maintenance or declared as having abandoned the facility.

G. Application review and approval process.

(1) Upon receiving the prescribed fee, escrow monies and application form as well as the supportive application requirements as stated in subsection D of this section, the applicant will provide 8 copies of the application and supportive requirements to the Town of Millville for processing.

(2) The Code and Building Administrator will ensure that the application requirements have been met as stated in subsection D of this section. If information is missing, the applicant will receive notification of the missing data item, and the application will not proceed until such requirements have been met. If all requirements have been met, the application will continue in the process. The application will be forwarded to the Town Solicitor and Town Engineer for the review of compliance with this chapter and other applicable regulations, to include other agencies with jurisdiction over such facilities.

(3) The process reviewed and approval for this application shall be as a conditional use as set forth in Chapter 155, Zoning, Article X, Conditional uses enumerated, § 155-50, Procedures; preliminary site plan required.

(4) In addition, all applicants seeking to construct, erect, relocate or alter a wireless communications facility shall demonstrate that all property owners are notified within an area extending not less than 200 feet from the site of the proposed conditional use; provided, however, that in the event of the application the antenna support structure exceeds 200 feet, then the area of notification shall be extended to a distance equal to the height of the proposed antenna support structure. The written notification shall include the applicant's intent to construct, erect, relocate or alter a wireless communications facility. Such notice shall also contain the date and time of the hearing before the Town Council of the Town of Millville where the applicant will appear and demonstrate compliance with the provisions of this chapter. Said applicant will provide a list of the names and addresses of all property owners within the required area as well as a sample letter that was sent.

(5) The Town of Millville Planning and Zoning Committee will review the application and forward a recommendation to the Town Council of Millville for consideration during a public hearing.

(6) The Town Council of Millville will hear the application during the advertised public hearing. The Town Council will hear all of the public comments in regard to the application prior to rendering a decision.

(7) The Town administration will notify the applicant of the Town Council's decision in writing no later than 30 days after said hearing and shall ensure that copy is placed in the appropriate file for record-keeping purposes.

H. Criteria for approval of conditional use.

(1) In conducting its review and/or making its determination to allow a telecommunications antenna facility as a conditional use, the Town Council, after recommendation from the Planning and Zoning Committee, shall, in addition to any other matters it may choose to consider, consider the following:

(a) Whether the proposed structure complies with all the required standards and criteria listed in the chapter.

(b) Compatibility of the proposed structure with the height and mass of the existing buildings in the area.

(c) The location of the antenna in relation to existing vegetation, topography, and buildings to obtain the best visual screening.

(d) Visual and economic impact upon adjacent properties.

(e) Compliance with Federal Communications Commission (FCC) emission standards.

(f) Whether placement of the structure in the proposed location will result in a significant impact to other uses or the reception or transmission of existing facilities.

(g) Each tower location shall evaluate whether the co-location on other existing structures in the same vicinity such as other towers, buildings, water towers, utility poles, athletic field lights, parking lot lights, etc. is possible without significantly impacting antenna transmissions or reception. However, for location on such existing structures and poles, telecommunications facilities must meet the following additional requirements:

[1] No lighting shall be placed on the site that further illuminates, advertises, or draws attention to any part of the facility; and

[2] The mounting of such facility complies in all respects with all other provisions of this chapter.

(h) That the proposed facilities will not be injurious to the health, safety and welfare of the community.

(2) The Town Council may approve the conditional use application with additional conditions.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF MILLVILLE, SUSSEX COUNTY, DELAWARE, ON THIS 14TH DAY OF JUNE, 2016.

SEAL:



ATTESTED:

Matthew Thomas Amerling

Robert W Gordon

ROBERT GORDON, MAYOR

Valerie Faden

VALERIE FADEN, SECRETARY



