

**ORDINANCE NO. 9-2002**

**ORDINANCE OF THE MADISON BOROUGH COUNCIL AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" REGARDING "WIRELESS COMMUNICATION ANTENNAS"**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MADISON**, in the County of Morris and the State of New Jersey, that Chapter 195, "The Land Development Ordinance of the Borough of Madison", of the Revised General Code of the Borough of Madison, is hereby amended and supplemented as follows:

**SECTION 1.** Delete section 195-31 E "Wireless telecommunications facilities".

**SECTION 2.** Add a new Subsection 195-33 B. (10) to Chapter 195, "The Land Development Ordinance of the Borough of Madison", to read as follows regarding the specific conditions and standards for the approval and construction of "Wireless Communication Antennas" within the Borough of Madison:

**"(10) WIRELESS COMMUNICATION ANTENNAS.**

*(a) Purposes.*

It is the overall purpose of these ordinance provisions to provide specific zoning conditions and standards for the location and operation of wireless communication antennas within the Borough of Madison, to recognize the need to safeguard the public good and preserve the intent and the purposes of the Madison Borough "Master Plan" and "Zone Plan".

*(b) Overall Objective.*

The overall objective of these ordinance provisions is to enable the location within the Borough of Madison 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.

*(c) Specific Goals.*

[1] To minimize the total number of wireless communications towers within the Borough of Madison;

[2] To limit the impact of wireless communications antennas, towers and related facilities upon the residences and the streetscapes throughout the Borough of Madison;

[3] To safeguard the prevailing and historic character of development throughout the Borough of Madison;

[4] 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, especially those existing structures situated on public property;

[5] To encourage as many antennas as possible, of as many of the wireless communication carriers as possible, to be co-located on the fewest number of existing structures within the Borough of Madison;

[6] To discourage the construction of new towers which do not have the likelihood of being used by a number of wireless communication carriers;

[7] 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;

[8] To formulate and maintain, for land use planning purposes, a complete inventory of all wireless communications antennas, towers and related facilities within the Borough of Madison, and others in the vicinity of the Borough, which are capable of providing service within the Borough;

[9] To enhance the ability of the carriers of wireless communications services who adhere to the letter and intent of these ordinance provisions to provide such services quickly, effectively and efficiently; and

[10] To comply with the mandate of the Federal Telecommunications Act of 1996, 47 U.S.C. Section 332 (c)(7), which preserves local government authority to enforce zoning requirements which protect public safety, public and private property and community aesthetics.

*(d) Exemptions Of Applicability.*

These "Wireless Communications Antennas" ordinance provisions shall not apply to the following:

[1] These ordinance provisions shall not govern any tower, or the installation of any antenna, that is under seventy feet (70') in height and is owned and operated *only* by a federally licensed amateur radio station operator or is used exclusively to receive transmissions; and

[2] These ordinance provisions shall not govern any parabolic satellite antennas.

*(e) Overall Comprehensive Plan.*

In order to effectuate the purposes, objective and goals of these ordinance provisions as noted hereinabove, any applicant to the Borough of Madison for approval to erect a wireless

communication antenna, in addition to all other information required by this ordinance, shall provide threshold evidence that the proposed location of the proposed antenna(s), and any proposed supporting tower and/or ancillary cabinets enclosing related electronic equipment, has been planned to result in the fewest number of tower locations within the Borough of Madison at the time full service is provided by the applicant throughout the Borough.

Therefore, the applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the Borough of Madison 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 Borough.

More specifically, the overall comprehensive plan shall indicate the following:

[1] The mapped location and written description of all existing antennas and existing and approved supporting structures within the Borough;

[2] The mapped or GIS database location and written description of all existing or approved water towers or water standpipes and existing telephone or electric poles or towers within the Borough;

[3] How the proposed location of the proposed antenna(s) specifically relates to the suitability or unsuitability of such existing structures to be utilized to provide the intended wireless communication;

[4] How the proposed location of the proposed antenna(s) specifically relates to the anticipated need for additional antennas and supporting structures within and near the Borough of Madison by the applicant and by other providers of wireless communication services within the Borough;

[5] How the proposed location of the proposed antenna(s) specifically relates to the objective of collocating the antennas of many different providers of wireless communication services on a single supporting structure; and

[6] How the proposed location of the proposed antenna(s) specifically relates to the overall objective of providing full wireless communication services within the Borough of Madison 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.

(f) *Location Priorities.*

Based upon the "Overall Comprehensive Plan" submitted by the applicant in accordance with Subsection 195-33 B. (10)(d) hereinabove, if the Borough of Madison determines the proposed antenna(s) to be needed for the provision of full wireless communication services within the Borough, utilizing the fewest number of towers as reasonably possible, "Wireless Communication Antennas" for telephone, radio, paging and/or television communication shall be permitted within the Borough at the following prioritized locations:

[1] The first priority location shall be on lands owned by the Borough of Madison utilizing an existing or approved wireless communication tower, an existing building, an existing or approved water tower or water standpipe, or an existing telephone or electric pole or tower. Any application for use of such lands and structures must be approved by the Borough Council of Madison and shall be subject to a written lease with the Borough.

[2] The second priority location shall be any other existing or approved wireless communication tower, any other existing or approved water tower or water standpipe, or any other existing telephone or electric pole or tower owned by and within the Borough of Madison. Any application for use of such lands and structures owned by the Borough of Madison must be approved by the Borough Council and shall be subject to a written lease with the Borough.

[3] The third priority location shall be on any other lands owned by the Borough of Madison. Any application for use of such lands must be approved by the Borough Council of Madison to the plan and shall be subject to a written lease with the Borough.

[4] The fourth priority location shall be on lands situated within the Borough of Madison zoned within the "CBD-1", "CBD-2", "CC", "PCD-O", "U" or "OR" zoning districts; and

[5] The fifth priority shall be on lands situated within the Borough of Madison on lands in zoning districts other than those listed in paragraph [4] hereinabove.

Notwithstanding any provision of this "Land Development Ordinance" to the contrary, the location of antenna(s) on an existing or approved structure shall not require a "use" variance in accordance with N.J.S.A. 40:55D-70d.(1) of the Municipal Land Use Law.

*(g) Area And Setback Requirements.*

[1] If the proposed antenna(s) will be attached to an existing or approved tower, an existing building, an existing or approved water tower or water standpipe, or an existing telephone or electric pole or tower, no land area shall be required in addition to the land area upon which the existing structure is situated; or

[2] If the proposed antenna(s) will be supported by a new tower and will be situated on lands owned by the Borough of Madison, the land area required shall be as approved by the Borough Council in consideration of existing site conditions and surrounding land uses, and shall be subject to a written lease agreement between the applicant and the Borough of Madison; or

[3] If the proposed antenna(s) will be supported by a new tower and will be situated on lands within the Borough of Madison not owned by the municipality, the following minimum area and setback requirements shall be met:

[a] The proposed antenna(s) and proposed supporting tower and ancillary related electronic equipment shall be located on a land area equal to in size or larger than the "Minimum Lot Area" specified in "Schedule I" of this ordinance for the applicable zoning district;

[b] The minimum required land area pursuant paragraph [a] hereinabove shall either be a separate undeveloped lot or a leased portion of an already developed lot;

[c] The proposed antenna(s) and proposed supporting tower 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; and

[d] Excepting for any access driveway into the property, any required landscaping and any underground utility lines reviewed and approved by the Planning Board as part of the site plan submission, no building, structure and/or disturbance of land shall be permitted within a one hundred foot (100') setback distance from any street line, from any other existing or proposed property line, and provided that if a tower will exceed one hundred feet (100') in height, the tower shall be set back from any street line and from any other existing or proposed property line a distance equal to or greater than the height of the tower.

(h) *Maximum Height.*

Notwithstanding any provisions of this ordinance to the contrary, the following height restrictions shall apply for any wireless antenna and/or any new supporting tower:

[1] The height of any proposed antenna extending above any existing tower, any existing building or above any existing or proposed water tower or water standpipe shall be demonstrated by the applicant, to the satisfaction of the Planning Board or the Borough Council, as the case may be, to be the *minimum* height necessary for the proposed installation to satisfactorily operate; and

[2] The height of any proposed new supporting tower shall not exceed one hundred twenty feet (120') above ground level unless it can be demonstrated by the applicant, to the satisfaction of the Planning Board or the Borough Council, as the case may be, that a greater height is necessary for the proposed installation of the antenna(s) to satisfactorily operate *and* for the collocation of at least three (3) other carriers on the tower.

(i) *Design Details.*

[1] Any proposed new tower shall be a "mono-pole", unless the applicant can demonstrate, and the Planning Board agrees, that a different type pole is necessary for the collocation of additional antennas on the tower.

[2] To the greatest extent possible, no antenna and/or its supportive tower shall be located to be visible from any historic district or site as duly designated by Madison Borough, the State of New Jersey or by the federal government.

[3] To the greatest extent possible, no new tower shall be located to be visible from any public street.

[4] To the greatest extent possible, all cables shall be installed within underground conduits.

[5] 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.

[6] The color and any camouflaging of a proposed tower shall be proposed by the applicant in the context of the visibility of the tower from different vantage points throughout the Borough, and the existing land uses and vegetation in the vicinity of the subject site.

[7] No antenna shall be located on any tower in order to provide to service provider personnel the equivalent of wireline telephone service; such service shall be provided via existing telephone lines if available to the site, or by the underground extension of telephone lines to the site if necessary.

[8] 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. The applicant shall provide to the Planning Board all applicable FAA standards regarding lighting that may apply to a proposed tower.

[9] Individual cabinets for the required electronic equipment related to the wireless communications antenna(s) shall be permitted in accordance with the following design criteria:

[a] Any proposed cabinet or combination of cabinets enclosing required electronic equipment shall not be more than twelve feet (12') in height nor more than two hundred fifty (250) square feet in area, and only one (1) such area for the cabinet(s) shall be permitted for each provider of wireless communication services located on the site;

[b] No electronic equipment shall interfere with any public safety communications;

[c] All of the electronic equipment shall be monitored and configured so that, to the greatest extent possible, the need for onsite maintenance and the commensurate need for vehicular trips to and from the site will be minimized;

[d] All the required electronic equipment for all anticipated communication carriers to be located on the subject site shall be housed within a one and one-half (1 1/2) story building, which building shall not exceed two hundred fifty (250) square feet per service provider in area and shall not exceed one-thousand-two-hundred-fifty (1,250) square feet in gross area for the entire building and twenty feet (20') in height, and which shall be designed with a single-ridge, pitched roof with a residential or office character of appearance; and

[e] The building may have one (1) light per service provider 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. The building may have a separate entrance for each service provider.

[10] No signage is permitted, unless "warning" and/or equipment information signs are deemed necessary for safety purposes and are specifically approved by the Planning Board.

[11] Minimal off-street parking shall be permitted as needed and as specifically approved by the Planning Board.

[12] 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:

[a] 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, to the maximum extent reasonably possible, and to enhance the appearance of the building from the surrounding residential properties and any public street;

[b] The landscaping plan shall be prepared by a licensed Landscape Architect who shall present testimony to the Planning Board regarding the adequacy of the plan to completely screen the tower from view and to enhance the appearance of the building; and

[c] Any newly planted evergreen trees shall be at least eight feet (8') high at time of planting, and any newly planted deciduous trees shall be a minimum caliper of two inches (2") at time of planting.

(j) *Site Plan Submission And Approval Requirements.*

[1] The applicant shall provide to the Planning Board or the Borough Council, as the case may be, a specific written addressment of each of the "Design Details" enumerated in Subsection 195-33 B.(10)(i) of this ordinance hereinabove.

[2] "Wireless Communication Antennas", and any proposed supporting tower and related electronic equipment, shall require "Preliminary Major Site Plan" approval in accordance with the requirements specified in Section 195-22 of this ordinance and "Final Major Site Plan" in accordance with the requirements specified in Subsection 195-22.1 of this ordinance.

[3] In addition to the applicable documentation and items of information required for preliminary and final major site plans specified in this ordinance, the following additional documentation and items of information specific to "Wireless Communication Antennas", are required to be submitted to the Planning Board for review and approval as part of the submission of the "Preliminary Site Plan" application:

[a] Documentation by a qualified expert that any existing structure proposed for the location of the antenna will have sufficient structural integrity to support the proposed antennas, and that the safety hazards resulting from ice falling from the structure and the antennas have been adequately mitigated;

[b] 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;

[c] A letter of intent by the applicant, in a form which is reviewed and approved by the Borough Attorney, indicating that the applicant will share the use of any tower with other approved wireless communication service providers at reasonable rates which shall be economically viable; and

[d] A visual sight distance analysis, including photographic reproductions of a crane or balloon test, graphically simulating the appearance of any proposed tower, with at least three (2) antenna arrays attached thereto, from at least fifteen (15) locations around and within one (1) mile of any proposed tower where the tower will be *most visible*. The applicant shall schedule the time of the crane or balloon test with the Borough Engineer in order to provide the members of the Planning Board and the general public the opportunity to view the crane or balloon.

[e] Evidence from an independent expert that all equipment will comply with the then current Federal Communications Commission (FCC) rules and regulations, including that Radio Frequency (RF) emissions will be within the FCC guidelines.

Any approval shall contain a condition that the applicant shall provide a further report to the Borough Engineer from an independent expert that the RF emissions are within the FCC guidelines within 90 days after installation is complete and that upon any change in FCC guidelines or regulations governing same the applicant shall within 120 days of such change provide a report to the Borough Engineer from an independent expert that the RF emissions are within the revised FCC guidelines or regulations.

[4] 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 Planning Board shall 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 Planning Board may hire other experts with specialized areas of expertise if deemed necessary.

(k) *Restoration Provisions.*

Except for proposals to locate antennas on lands owned by Madison Borough, the applicant (and the landowner in the instance of a leased property) shall provide a performance bond and/or other assurances satisfactory to the Planning Board and in a form approved by the Borough Attorney that will cause the antennas, any supporting tower, the electric equipment cabinets, any building enclosing the electronic equipment cabinets, and all other related improvements to the

land to be removed, at no cost to the Borough, 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 (6) months shall be considered "no longer operative" and shall be removed by the responsible party within sixty (60) days thereof.

(l) *Other Requirements.*

All other applicable requirements of this "Land Development Ordinance" not contrary to the specific conditions and standards specified herein shall be met, but waivers and/or variances of such other applicable requirements of this ordinance may be granted by the Planning Board. Additionally, based upon the site specific information presented by the applicant during site plan review, the Planning Board may grant deviations from the literal requirements for "Wireless Communication Antennas" specified in Subsections 195-33 B.(10) (g), (h) and (i) of this ordinance hereinabove, provided that the "Purposes", "Overall Objective" and "Specific Goals", respectively specified in Subsections 195-33 B.(1) (a), (b) and (c) of this ordinance, are advanced by the deviations."

**SECTION 3.** All ordinances or parts thereof which are inconsistent or conflict with the provisions of this ordinance or any part thereof are hereby repealed to the extent of said inconsistency or conflict.

**SECTION 4.** If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be judged to be invalid by a Court of competent jurisdiction, such Order or Judgement shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause if this ordinance, or any other ordinance which is referred to herein, and to this end, the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance are hereby declared to be severable. Should any clause, sentence or other part of this ordinance be judged invalid by a Court of competent jurisdiction, such judgement shall not affect, impair or invalidate the remainder of this ordinance.

**SECTION 5.** This ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

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JOHN J. DUNNE, Mayor

Attest:

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MARILYN SCHAEFER, Borough Clerk