

ORDINANCE 165

AN ORDINANCE OF CHADDS FORD TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA AMENDING THE CHADDS FORD TOWNSHIP ZONING CODE, CHAPTER 135, ARTICLE XXI, ADDITIONAL REGULATIONS

§ 135-163 Applications and permits.

- A. It shall be unlawful for any person to commence work for the erection or alteration of any building, structure or the erection of any sign in the Township until a permit so to do has been duly issued therefor by the said Zoning Officer.
- B. The Zoning Officer may issue a permit upon application therefor with an accompanying plan containing all of the information necessary to enable him to ascertain whether the proposed building, structure or sign complies with the provisions of this chapter and upon payment of such fee as the Supervisors may provide.
- C. If the Zoning Officer decides that the said application does not comply with the provisions of this chapter, the permit shall be forthwith refused.
- D. A permit of occupancy must be obtained from the Zoning Officer before any building or property for which a building permit has been issued may be used.

§ 135-164 Conditional use standards, criteria and procedures.

- A. In evaluating an application to the Board of Supervisors for a conditional use, the Board shall require the applicant to provide reports, maps, plans and other papers to insure that the proposal:
 - (1) Will be consistent with the community development objectives articulated in this chapter (pursuant to Section 606 of the MPC).
 - (2) Will be consistent with the statement of purpose articulated for the district in which the use is proposed.
 - (3) Will be consistent with the Chadds Ford Township Comprehensive Plan, in particular, the plans for land use, community facilities and utilities.
 - (4) Will conform to all requirements of Chapter 110, Subdivision and Land Development, and all other regulations and ordinances.
 - (5) Will not adversely affect the health, safety, and general welfare of the surrounding area and the Township.
 - (6) Will promote the harmonious and orderly development of the zoning district involved.
 - (7) Will be compatible with the character and type of development existing in the area which surrounds the site in terms of the size, scale, height and bulk of the proposed uses and the size, shape and

placement of buildings and other structures.

- (8) Will not detract from or cause harm to neighboring properties by creating a negative impact on the aesthetic character of the community.
- (9) Will be compatible with the uses permitted in the surrounding area in terms of the density and/or intensity of land use.
- (10) Will reflect effective site planning and design in terms of energy efficiency, environmental protection, and aesthetic composition.
- (11) Will be reflective of sound engineering and land development design and construction principles, practices and techniques.
- (12) Will be consistent with the logical, efficient and cost-effective extension of public services and utilities and will not adversely affect the public services and utilities of surrounding properties of the Township as a whole in terms of public water, sewers, police and fire protection, and schools.
- (13) Will include proposals for the effective disposal of solid waste.
- (14) Will provide safe and efficient access to roads and will not create traffic congestion, hazardous traffic conditions, or excessive traffic volumes.
- (15) Will be developed so as to limit the number of access points along a major public street, and to develop frontage of buildings on access roads which are parallel or perpendicular to a major public street.
- (16) Will provide any improvements needed to guarantee compatibility with adjoining roads.
- (17) Will provide continuity of existing circulation systems, including roads, sidewalks, trails and other walkways.
- (18) Will provide adequate off-street parking and loading which will be minimally visible from adjoining public streets.
- (19) Will utilize effective stormwater management techniques and soil erosion and sedimentation control techniques which are in character with and complementary to the proposed site grading and landscaping.
- (20) Will provide for adequate environmental controls and performance standards to minimize noise, vibration, glare, heat, odor, smoke, dust, fumes, vapors, gases, air emissions, water emissions, and outdoor storage.
- (21) Will preserve woodlands and other trees existing at the site to the maximum extent possible.
- (22) Will not be disruptive to existing topography, surface water resources and groundwater resources.
- (23) Will include proposals for effective mitigation of potential adverse environmental impacts through a satisfactory environmental impact assessment report.

- (24) Will provide landscaping to buffer and screen the use from surrounding properties, to complement buildings and other structures on the site, and to enhance the overall character of the development.
- (25) Will include proposed landscaping, in addition to that required as stated above, in areas such as the entrance, along property boundaries, in areas which are highly visible, such as along roads, walks or trails, and in other places where the use of trees, shrubs and ground cover would be functional and appropriate.
- (26) Will provide fencing, walls, berming, terraces, walkways, and other site improvement features to complement the proposed landscaping.
- (27) Will provide effective, subdued lighting using light posts and fixtures complementary to the proposed architecture and the character of the surrounding neighborhood.
- (28) Will provide adequate signage which shall be crafted to be attractive and of the highest graphic quality in keeping with the character of surrounding properties.

B. The Board of Supervisors may attach such conditions and safeguards, in addition to those already required by this chapter, as it may deem necessary to implement the purposes of the Municipalities Planning Code and this chapter, and to protect the public welfare, which conditions and safeguards may relate to, but are not limited to, the design of buildings, roads and parking areas, landscaping and its maintenance as a sight or sound screen, lighting, noise, safety, and the prevention of noxious, offensive or hazardous conditions.

C. General procedures.

- (1) In the case of an application for conditional use once the Township Staff deems the application administratively complete, the Planning Commission shall, pursuant to the Municipalities Planning Code perform a review and provide counsel to the Board of Supervisors concerning the grant of approval or disapproval of the proposed use. The Planning Commission shall discuss the application at at least one of its regularly scheduled public meetings during the review period.
- (2) The Board of Supervisors shall, in the case of an application for conditional use, schedule a hearing for public review and comment. Such hearing shall commence within sixty (60) days of the date that the Township staff deems the application administratively complete. The Board of Supervisors shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before it. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions base thereon, together with any reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
- (3) The Planning Commission and Board of Supervisors shall be responsible for providing notification to the applicant, no less than twenty (20) days prior to the occurrence of any hearing at which testimony will be heard and/or action taken upon approval or disapproval, in order that he/she may present his/her case at such hearing. The Township shall notify, no less than twenty (20) days prior to such hearing, all abutting property owners and owners of property within 250 feet of the property in question.
- (4) Proof of proper notification shall be required as a precondition before any formal action is taken on the application.

- (5) Notification of the action taken by the Board of Supervisors shall be made in writing to the Applicant within twenty-four (24) hours of the decision. In the event of disapproval, it shall be accompanied by a statement of the reasons therefore. In the event of disapproval, the applicant may file a new application for conditional use or subdivision and/or land development for another use of the subject property, or file an appeal of the decision to a court of competent jurisdiction.
- (6) In the event of approval, should the applicant fail to obtain the necessary Township approvals and permits within twelve (12) months of notification, or, having obtained the necessary approvals and permits, fails to commence work thereunder within six (6) additional months, it shall be conclusively presumed that the applicant has waived, withdrawn, or abandoned his or her application, and all provisions, conditional use(s) and permits granted to him/her shall be deemed automatically rescinded by the Board of Supervisors.
- (7) The grant of approval by the Board of Supervisors for a conditional use shall in no way release the applicant from his/her obligation to comply with the applicable provisions of this chapter; Chapter 110, Subdivision and Land Development; and any other applicable Township, state and federal regulations.

§ 135-165 General structural and lot requirements.

- A. No more than one (1) permitted Principal Use shall be allowed on a lot, except in B, B-1, POC, PBC; PBC-1; PRD and LI zoning districts, which are intended to promote mixed uses.
- B. Any structure in Chadds Ford Township used for residential purposes must contain a habitable floor space of no less than seven hundred and fifty (750) square feet.
- C. On any corner lot, no wall, fence or other structure shall be erected or altered, and no hedge, tree, shrub, or other growth shall be maintained, which may cause danger to traffic on a street by obscuring the view.
- D. No lot area shall be so reduced that the dimensions of any of the open spaces shall be smaller than herein prescribed or required by SALDO approval.
- E. Permanent, unoccupied, open Sheds, storage Sheds, wagon Sheds, with no utility connections, may only be located within the following Zoning Districts, and located no closer than 10' from the side or rear yard property line upon the issuance of a Zoning Permit subject to the following size provisions. Furthermore, a Shed may not be located closer to the front property line than the principal structure.
 - (1) In the R-1 District, the Shed shall not exceed 180 square feet in floor area and 10 feet in height;
 - (2) In the R-2 District, the Shed shall not exceed 150 square feet in floor area and 10 feet in height;
 - (3) In the PRD District, the Shed shall not exceed 100 square feet in floor area and 8 feet in height.
- F. No building may be erected, altered or used, and no lot or premises may be used, for any business that is noxious or offensive by reason of odor, dust, smoke, gas, vibrations or noise. No internal combustion engine shall be used unless objectionable noise and vibration be eliminated and it is equipped and supplied with an effective muffler or silencer.

§ 135-166 Nonconformities.

- A. Continuation. All structures, uses of structures and uses of land that were lawful at the time established but do not conform to the zoning regulations of the zoning district in which they are located after the adoption of the zoning regulations for the underlying zoning district shall be regarded as lawfully nonconforming and may continue, subject to the following regulations.

B. Alternation, Enlargement or Reconstruction.

1. Lawful Nonconforming Structures. Lawful nonconforming structures may be altered, reconstructed or enlarged, provided that:

a. Special Exception. Except for the reconstruction of a nonconforming structure which is done to the exact dimensions of the original nonconforming structure as set forth in this Section, all alteration, reconstruction, expansion or enlargement of nonconforming structures shall be by Special Exception in accordance with the provisions of §135-175.C.

b. Limitation on Expansion. Such alteration, reconstruction, expansion, or enlargement does not increase the size of the overall nonconforming structure more than an aggregate total of fifty percent (50%) of the interior ground floor area of the nonconforming structure, for the life of the nonconforming structure. By way of example and not limitation, if the interior ground floor area of the nonconforming structure is 1000 square feet, the alteration, reconstruction or enlargement of the nonconforming structure is limited to an additional 500 square feet over the life of the nonconforming structure. The same limitations shall apply with respect to any increase in interior volume of nonconforming structures.

c. Exacerbation of Nonconformity. Except as permitted in this Section, the condition(s) which make the structure nonconforming shall not be expanded or enlarged so as to exacerbate the area or volume of the nonconforming condition or result in a new nonconforming condition.

d. Code Compliance. Alternation, enlargement and reconstruction of nonconforming structures shall in all other respects comply with the applicable zoning district regulations and the Chadds Ford Township Building Code.

2. Lawful Nonconforming Lots. A structure may be constructed on any lot which was lawful when created prior to the adoption of the zoning regulations for the underlying zoning district, was held in single and separate ownership, duly recorded by plan or deed, and provided that the other requirements of the Zoning Ordinance are observed.

3. Lawful Nonconforming Uses. Lawful nonconforming uses shall not be altered, extended or enlarged, except in accordance with the following:

a. Special Exception. Such alteration, extension or enlargement, shall be permitted only be Special Exception under the provisions of §135-175.C.

b. Single Lot. Such alteration, extension or enlargement shall be on the same lot as in existence at the date the use became nonconforming.

c. Increase in Nonconforming Use. Any increase in the area of a nonconforming use shall not exceed in the aggregate, more than fifty percent (50%) of the area or volume dedicated to the nonconforming use, during the life of the nonconforming use.

C. Reconstruction. A nonconforming structure or any structure containing a nonconforming use wholly or partially destroyed by fire, explosion, flood or other phenomenon, or legally condemned, may be reconstructed on or within the same footprint of the prior nonconforming structure and used for the same nonconforming use, provided:

1. The applicant demonstrates that the location of the structure cannot be made conforming.

2. That reconstruction of the structure shall be commenced within one (1) year from the date the structure was destroyed or condemned and shall be carried on without interruption or else the nonconforming structure or use shall be deemed to be abandoned.

D. Ownership. Whenever a lot is sold to a new owner, a previously lawful nonconforming use or condition may be continued by the new owner.

E. Abandonment. If a nonconforming use of a structure or land is discontinued for a period of twelve (12) consecutive months, the nonconforming use shall be presumed to have been abandoned and the subsequent use of such structure or land shall conform with all of the regulations of the zoning district in

which it is located, and all of the parking regulations.

F. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a similar use only if permitted as a Special Exception and subject to the following conditions:

1. Conversion. The Applicant shall show that a nonconforming use cannot reasonably be changed to a conforming use.

2. Compatibility. The Applicant shall show that the proposed change will be no more objectionable in external effects than the existing nonconforming use, or will be more appropriate than the existing nonconforming use with regard to:

- a. Traffic. Traffic generation, congestion, and parking.
- b. Peace and Good Order. Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration.
- c. Outdoor storage.
- d. Sanitary sewage disposal.

G. Expiration of Approval. Whenever an Applicant receives Special Exception approval under the terms of this Section, such approval shall be implemented, or affirmative action taken in furtherance thereof, within twelve (12) months of the date of the approval or the approval shall be rendered abandoned by the Applicant and shall become void and of no further force or effect.

§ 135-167 Height regulations for buildings and structures.

- A. Notwithstanding any other provision of this chapter, no part of a roof shall protrude more than 40 feet above the average elevation of finished grade along the exterior walls of the structure.
- B. Any person aggrieved by such restriction may apply to the Board of Supervisors for an exemption similar, but not limited, to the exemption provided in § 135-168. In considering any exemption from Subsection A, the Board of Supervisors shall consider the criteria set forth in § 135-164.

§ 135-168 Exceptions to height regulations for buildings and structures.

The Board of Supervisors shall determine if the height regulations prescribed within this chapter may be exempted for spires, steeples, belfries, cupolas or domes not used for human occupancy, or for chimneys, ventilating fans, air-conditioning equipment, roof structures for the housing of elevators and/or stairways, fire or parapet walls, skylights, flagpoles, watermills, silos, smokestacks, and ornamental or other necessary mechanical appurtenances.

§ 135-169 Swimming pool regulations.

Swimming pools, hot tubs and like structures (hereinafter collectively referred to as swimming pool or pools) are permitted as accessory use structures to principal permitted residential uses, or to principal nonresidential uses in districts which permit swimming pools as accessory uses at facilities such as hotels, motels, and swimming pool companies. The following conditions and requirements shall apply:

- A. Swimming pools designated to contain six or more inches of water shall be erected in conformity with these regulations.
- B. The swimming pool shall be solely for the use of the occupants of the property on which it is located, and their guests, and may not be operated commercially nor any fee charged for the use of the pool.

- C. A permit shall be required to locate, construct or maintain a swimming pool as an accessory use structure.
- (1) Prior to approval of a permit, the lot shall be marked by permanent markers.
 - (2) The location of the pool and its distance from the permanent markers shall be clearly shown on the application.
 - (3) An as-built drawing showing the location of permanent markers and position of the pool shall be provided to the Township prior to any use of a pool.
- D. No permit shall be granted for the installation or construction of any in-ground pool, permanent pool or portable pool having a capacity of 20,000 gallons or more, unless the Township Engineer has certified that the drainage of such pool is adequate and will not interfere with the water supply system, with existing sanitary facilities or with public streets, or neighbors' property.
- (1) Construction drawings and drainage calculations shall be submitted to the Township Engineer together with the application for a permit.
 - (2) No Township Engineer approval is required for pools with less than a twenty-thousand-gallon capacity.
 - (3) In all cases where the land is inadequate, the permit shall require the pool to be emptied by suction instead of drainage across property.
- E. If the water for the swimming pool is supplied from a private well, there shall be no cross-connection with a public water supply system.
- F. If the water for the swimming pool is supplied from a public water supply system, the inlet shall be above the overflow level of the pool by no less than six inches.
- G. Swimming pools and structures related to the pool may be located in the rear or side yard, but shall not be closer to any rear or side lot line than the distance of the required building setbacks, but in no case less than 50 feet from any property line. In the R-2 District only, pools may be located no closer than forty feet (40') from the side yard setback. Any walks, paved areas or open decks related to the pool not forming part of the residence shall be no closer than 1/2 of the setback distance.
- H. Swimming pools shall not be located under any electrical lines, or over any utility lines including electric, sewer and water lines, nor closer than 10 feet to any part of a septic system.
- I. No water from any swimming pool shall be discharged onto adjoining properties or streets.
- J. Every swimming pool hereafter constructed shall be completely enclosed by a fence having a height of not less than four feet and shall have a self-closing, self-latching gate equipped to accommodate a locking device to control access by unauthorized persons, and to protect children and stray animals. Access gates shall open outward away from the pool.
- K. Fencing shall be placed either near or adjacent to the pool or at such other place on the premises as to constitute an adequate barrier against entrance onto the land or into the pool. Permanent structures, such as a side of a building, may be considered as part of the fence when approved by the Zoning

Officer. When the dwelling or other building is part of the pool barrier, Operable windows having a sill height of less than forty-eight inches (48") above finished floor and doors having access to the pool area shall be equipped with alarms; listed and labelled as a water hazard entrance, and alarmed in accordance with the UL 2017.

- (1) Such fence shall be constructed of wire, wood, decorative masonry or other material approved by the Code Enforcement Officer.
 - (2) A temporary fence, adequate as aforesaid, shall be placed the day construction begins and maintained throughout completion of construction.
- L. The maximum aperture of any fence shall be two inches.
- M. Fences shall be constructed and shall be maintained in a good workmanlike manner and in a safe condition.
- N. The fencing requirement of these regulations shall not apply to a swimming pool four feet or more above grade when equipped with removable steps or ladders, provided that said steps or ladders shall be removed when the pool is not in use.
- O. The fencing requirement of these regulations shall not apply to a natural pond or a man-made pond not intended for swimming, unless deemed necessary by the Board of Supervisors.
- P. These regulations shall be effective immediately after adoption as an amendment to this chapter.
- Q. Owners of swimming pools which were in existence prior to the effective date of this section shall not be required to comply with the fencing requirements set forth above; however, upon a transfer or sale of the property upon which the pool is located, the new owner will be required to comply with these regulations within 30 days.
- R. No pool shall be operated or maintained in a noisy manner. Outdoor speakers are not permitted and any pool permitted by this chapter shall be subject to any noise control ordinance either now in effect or subsequently adopted.
- S. If the Supervisors deem it necessary, they may adopt regulations for hours of operation of pools by resolution from time to time.
- T. All pools shall be buffered as set forth in this chapter.
- U. Lighting shall be placed so no light reflects beyond the lot boundaries.
- V. Registration of pools. All owners of pools existing at the time of the adoption of this section shall register them with the Township within 30 days of the effective date of this section.
- W. The Township shall have the right, but not the duty, of periodically inspecting any pool in the Township.
- X. Time of completion. All pools shall be completed within 90 days of the grant of the permit unless the time is extended by the Code Enforcement Officer for good cause.

**§ 135-170 Wireless communications facilities outside public rights-of-way.
[Added 8-2-2017 by Ord. No. 152]**

In recognition of federal and state laws, the following special regulations shall apply to wireless communications facilities outside the public rights-of-way:

- A. Purpose. The purpose of this section and the standards established hereunder is to govern the use, construction and siting of wireless communications facilities outside the public rights-of-way, so as:
 - (1) To accommodate the need for wireless communications facilities, communications towers, communications antennas, and related equipment, while regulating their location and number in the Township.
 - (2) To minimize adverse visual effects of wireless communications facilities through careful design, siting and vegetative screening.
 - (3) To avoid potential damage to adjacent properties from structural failure and falling ice and debris through engineering and careful siting of communications towers and communications antennas.
 - (4) To maximize the use of any new or existing communications towers, wireless support structures or other tall structures so as to reduce the number of communications towers needed in the future.
- B. Noncommercial usage exemption. Township residents utilizing satellite dishes and antennas for the purpose of maintaining television, phone, radio and/or Internet connections at their respective residences shall be exempt from the regulations enumerated herein. Amateur radio operators are also exempt from the regulations enumerated in this section.
- C. Statutory exemptions. The provisions enumerated herein shall apply to all proposed wireless communications facilities, except those that fall under the Pennsylvania Wireless Broadband Collocation Act or applications deemed to be eligible facilities requests pursuant to the FCC's October 2014 Report and Order.
- D. Standard of care and safety standards.
 - (1) Wireless communications facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the Pennsylvania Uniform Construction Code, American National Standards Institute (ANSI) Code, and Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. At all times, wireless communications facilities shall be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
 - (2) Wireless communications facilities shall be designed to withstand the effects of wind gusts of at least 100 miles per hour in addition to the standard designed by the American National Standards Institute, as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended).
 - (3) Wireless communications facilities shall comply with all federal and state laws and regulations concerning aviation safety.

- (4) A wireless communications facility shall not, by itself or in conjunction with another wireless communications facility, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (5) Wireless communications facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

E. Location.

- (1) Communications towers may be permitted by conditional use subject to the conditional use standards and criteria of this chapter in an overlay zoning district consisting of the SEPTA right-of-way and the PECO Energy right-of-way, both of which are located to the south of, and running parallel to, Baltimore Pike (U.S. Route 1) from the intersection of said rights-of-way with Wilmington-West Chester Pike to the intersection of said rights-of-way with the Brandywine Creek, provided that the application shall otherwise comply with this section and the other relevant provisions of this chapter.
- (2) Communications antennas shall not be located on single-family residences, duplexes, or townhomes.
- (3) Historic areas. To the extent permitted by state and federal law, no communications antenna or communications tower may be located upon any property, building, structure, or lot that is listed on either the National or Pennsylvania Register of Historic Places, overseen by the Township HARB, or that is deemed by the Township to be of specific historical significance. This restriction shall not apply to potential facilities placements on buildings or land owned by the Township.

F. Time frames for municipal response.

- (1) Applications for eligible facilities requests. Within 30 calendar days of the date that an application for an eligible facilities request is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. Within 60 calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision.
- (2) Timing of applications for the construction of new communications towers. All parties shall comply with MPC time frames to the extent that they are not preempted by federal regulations. Notwithstanding MPC regulations, within 30 calendar days of the date that an application for a communications tower is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. All applications for communications towers shall be acted upon within 150 days of the receipt of a fully completed application for the approval of such communications towers, and the Township shall advise the applicant in writing of its decision.

G. Use, area and height regulations.

- (1) The total height of a communications tower shall not exceed 100 feet from the base of structure to the top, including any communications antennas or other appurtenances. Height extensions or additional antennas added to an existing wireless support structure shall not substantially change the height of the communications tower without prior approval of the Township, unless such extensions or additions are eligible facilities requests.

- (2) The total height of a communications tower or communications antenna shall not exceed 20 feet beyond the maximum height permitted in the respective zoning district.
 - (3) All other uses ancillary to a communications tower (including but not limited to a maintenance depot, etc.) are prohibited unless otherwise permitted in the zoning district in which the proposed communication tower will be located. Such other ancillary uses shall not be considered accessory uses.
 - (4) Setbacks from the base of any new communications tower to be constructed (as opposed to mounting the communications antenna on an existing structure) shall be the minimum distance between the base of the communications tower or any guy wire anchors and any property line or right-of-way line, and shall be the largest of the following:
 - (a) The minimum front yard setback in the underlying zoning district;
 - (b) Thirty percent of the communications tower height; or
 - (c) Fifty feet.
 - (5) No signs of any type are permitted on communications antennas, antenna support structures, or communications towers.
- H. Standards of approval. The following standards of approval shall apply to all wireless communications facilities, except those applications deemed to be eligible facilities requests or falling under the Pennsylvania Wireless Broadband Collocation Act:
- (1) The applicant shall demonstrate, using accepted technological evidence, that the communications antenna or communications tower must be located where proposed in order to infill a gap in coverage or capacity and no other viable alternatives exist. The existence or nonexistence of a gap in wireless coverage or capacity shall be a factor in the Township Board of Supervisors' decision on an application for approval of the proposed facility.
 - (2) If the applicant proposes to construct a new communications tower or a new communications antenna, the applicant shall provide written evidence that it first considered land, buildings, and traffic lights owned by the Township to place the proposed facility and that such placement would not infill the applicant's gap in coverage or capacity. The applicant shall further provide evidence that it contacted the owners of tall structures within a one-mile radius of the proposed communications tower, or a one-quarter-mile radius from a proposed antenna, requested permission to install the antenna on those structures, and was denied for reasons other than economic ones. Tall structures shall include, but not be limited to, smokestacks, water towers, buildings in excess of four stories, wireless support structures of other communications antennas, cellular communications and personal communications service providers, other communications towers (fire, police, etc.), and other similar tall structures.
 - (3) The applicant shall demonstrate that the height of the proposed communications tower or communications antenna is the minimum required to function satisfactorily. No taller height than this minimum height shall be approved, unless the applicant provides proof that another provider of wireless services has already agreed to collocate on the applicant's wireless support structure or communications tower at a greater height than is required by the applicant.
 - (4) The applicant shall demonstrate that the proposed communications antenna or communications tower

is safe and the surrounding properties will not be negatively affected by structural failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All communications towers shall be fitted with anticlimbing devices, as approved by the manufacturers.

- (5) In order to reduce the number of communications towers needed in the Township in the future, the proposed communications tower shall be required to accommodate, where possible, other users, including other wireless communication, cellular communication, personal communication and electronic networking service provider companies, and local police, fire, and ambulance companies.
 - (6) The applicant must demonstrate that it is licensed by the Federal Communications Commission to provide wireless communications, cellular communications, personal communications and/or electronic networking services.
 - (7) Engineer certification. In the case of a proposed communications tower, a structural engineer registered in Pennsylvania shall issue to the Township a written certification of the such tower's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided during the conditional use proceedings before the Township Board of Supervisors or, at a minimum, be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits. All other plans and drawings of a proposed wireless communications facility shall contain a seal and signature of a professional structural engineer licensed in the Commonwealth of Pennsylvania.
- I. Landscaping.
- (1) Existing vegetation shall be preserved to the maximum extent possible.
 - (2) Landscaping shall be required to screen and buffer as much of the communications tower and/or related equipment as possible.
 - (3) Where the proposed communications tower abuts residentially developed land, residential zoning districts, public land, or streets, the perimeter shall be landscaped with at least one row of deciduous trees, not less than 3 1/2 inches in caliper, spaced not more than 30 feet apart, on center, and within 25 feet of the cell 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 cell site boundary. Alternatives such as walls or solid fences constructed of wood or stone, of at least eight feet in height, may be permitted by the Board of Supervisors based on security or other reasons.
 - (4) Appearance.
 - (a) Wireless communications facilities shall employ stealth technology in order to be aesthetically and architecturally compatible with the surrounding environment. Proposed wireless communications facilities shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. The application of the stealth technology chosen by the applicant shall be subject to the approval of the Township Board of Supervisors. Additionally, the Board of Supervisors shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and construction principles, practices and techniques.

- (b) Alternatively, when proven by the applicant that stealth technology is not appropriate, the Township may require that a communications antenna or communications tower be painted gray or have a galvanized finish retained.
- (5) Lighting. No wireless communications facility may be lighted except when required by the FAA.
- J. Fencing. A security fence shall be required around the proposed communications tower and related equipment. Such security fence shall be a minimum of eight feet in height and shall otherwise comply with the height regulations of all applicable Township ordinances.
- K. Noise. Communications towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Township Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- L. Site plan. A one-inch-equals-fifty-foot site plan shall be required for all proposed communications towers, showing the proposed tower, building, fencing, buffering, and ingress and egress. The site plan shall comply with the provisions of Chapter **110**, Subdivision and Land Development, as amended; however, no communications tower applicant shall proceed through the land development process.
- M. Maintenance requirements. The cell site shall be maintained and kept in good repair as required by FCC regulations, the federal Telecommunications Act of 1996, state law, and all Township ordinances not inconsistent therewith.
- N. Inspection. The Township reserves the right to inspect any wireless communications facility to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Township Code or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a wireless communications facility is located at any time, upon reasonable notice to the operator, to ensure such compliance.
- O. Abandonment. It being the legislative finding of the Board of Supervisors of Chadds Ford Township that a communications antenna, communications tower, and/or related equipment have been abandoned, and present a danger to the health, safety and welfare of the general public, then all abandoned structures shall be removed not more than one year after abandonment. The owner of the wireless communications facility shall be responsible for all related demolition costs.
- P. Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a wireless communications facility, as well as related inspection, monitoring, and related costs.
- Q. Retention of experts. The Township may hire any consultant and/or expert necessary to assist the Township in reviewing and evaluating the application for approval of a wireless communications facility and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these provisions. The applicant and/or owner of the proposed wireless communications facility shall reimburse the Township for all costs of the Township's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- R. Financial security for communications tower. Prior to receipt of a zoning permit for the construction or placement of a communications tower, the applicant shall provide to the Township financial security sufficient to guarantee the construction of the communications tower. Said financial security shall remain in place until the communications tower is fully constructed.

**§ 135-170.1 Wireless communications facilities within public rights-of-way.
[Added 8-2-2017 by Ord. No. 152]**

In recognition of federal and state laws, the following special regulations shall apply to wireless communications facilities within the public rights-of-way:

- A. Purpose. The purpose of this section and the standards established hereunder is to govern the use, construction and siting of wireless communications facilities within the public rights-of-way, so as:
- (1) To accommodate the need for wireless communications facilities and related equipment, while regulating their location and number in the Township.
 - (2) To minimize adverse visual effects of wireless communications facilities through careful design and siting.
 - (3) To avoid potential damage to adjacent properties from structural failure and falling ice and debris through engineering and careful siting of communications towers and communications antennas.
 - (4) To maximize the use of any new or existing communications towers, wireless support structures or other tall structures so as to reduce the number of communications towers needed in the future.
 - (5) To protect the health, safety, and welfare of structures abutting, and citizens traversing, the public rights-of-way.
- B. Conditional use approval required. To the extent permitted by federal and state law, all applicants proposing the siting of new wireless communications facilities in the public rights-of-way shall obtain conditional use authorization from the Township Board of Supervisors prior to beginning construction of such wireless communications facilities.
- C. Timing of approval for applications. The Township shall comply with all federal timing requirements for the consideration of applications for new towers and collocated antennas that fall under Section 6409(a) of the Spectrum Act, and/or any orders promulgated by the FCC or any other governing entity. When federal time frames conflict with those in the MPC, federal time frames shall prevail.
- D. Statutory exemptions. The provisions enumerated herein shall apply to all proposed wireless communications facilities, except those that fall under the Pennsylvania Wireless Broadband Collocation Act or applications deemed to be eligible facilities requests pursuant to the FCC's October 2014 Report and Order.
- E. New wireless communications facilities applications shall be accompanied by a professional engineer's report containing the following:
- (1) Certification that any proposed communications tower will fill a significant gap in wireless coverage or capacity that exists in the applicable area and that the type of wireless facility being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or nonexistence of a gap in wireless coverage or capacity shall be a factor in the Township's decision on an application for approval of tower.
 - (2) Evidence that the proposed communications tower must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists; evidence that the

applicant cannot adequately extend or infill its communications system by the use of equipment such as redoes, repeaters, antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures.

- (3) A technical evaluation of the feasibility of constructing the proposed wireless communications facility on land owned and maintained by Chadds Ford Township. If the applicant proposes to construct a new communications tower or communications antenna, the applicant shall provide written evidence that it first considered land, buildings, and traffic lights owned by the Township to place the proposed facility and that such placement would not infill the applicant's gap in coverage or capacity. The Township Board of Supervisors may deny a conditional use application to construct a new communications tower if the applicant has not made a good faith effort to mount an antenna on property owned by the Township.
- (4) If the proposed wireless communications facility cannot be sited on land, traffic signals, or buildings owned by the Township, the applicant shall demonstrate that it contacted the owners of tall structures, buildings, approved wireless support structures, and existing communications towers within a one-quarter-mile radius of the site proposed for the communications tower or antenna, sought permission to install an antenna on those structures, buildings, and/or towers and was denied for one of the following reasons:
 - (a) The proposed communications antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - (b) The proposed communications antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - (c) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (d) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- (5) A signal coverage/propagation map of the area to be served by the proposed communications tower. The propagation shall show signal intensity in dBm, as well as major roads, residential developments, and commercial areas. The Township reserves the right to request propagation maps for other sites or height alternatives.
- (6) Certifications that the proposed tower shall comply with all applicable state and federal regulations, as well as all pertinent provisions enumerated herein.

F. Location and development standards.

- (1) Available infrastructure. As part of its application for approval, the applicant must demonstrate that it cannot infill the capacity or coverage gap in its system by utilizing existing infrastructure (i.e., utility or light poles) in the public rights-of-way as a support structure for a communications antenna, rather than constructing a new communications tower. To the extent permissible under state and federal law, communications antennas attached to existing infrastructure shall not exceed six feet in height and shall employ stealth technology, if possible, in their design.

- (2) Communications towers in the right-of-way shall not exceed a height comparable to the average height of utility poles or electrical poles within a two-block radius of the proposed facility, unless the applicant can prove to the satisfaction of the Township Board of Supervisors that a taller tower is the only method by which the applicant can infill its gap in coverage or capacity.
- (3) Communications towers are prohibited within seventy-five (75) linear feet of areas in which all utilities are located underground.
- (4) Communications towers shall not be located in the front facade area of any structure.
- (5) Communications towers are prohibited in the F-P Flood Plain Overlay District.

G. Design regulations.

- (1) The communications tower or communications antenna shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the stealth technology chosen by the applicant shall be subject to the approval of the Township Board of Supervisors.
- (2) To the extent permissible under state and federal law, any height extensions to an existing communications tower wireless support structure shall require prior approval of the Township, and shall not violate the provisions described herein.
- (3) Communications towers shall be designed structurally, electrically, and in all respects to accommodate both the applicant's communications antennas and comparable communications antennas for the maximum amount of future users based on the size of the proposed communications tower.

H. Equipment location. Towers and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way as determined by the Township. In addition:

- (1) To the extent technologically feasible, ground-mounted related equipment shall be located within two feet of the public right-of-way. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb nor obstruct the sidewalk in areas where sidewalks abut the public rights-of-way.
- (2) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township Board of Supervisors.
- (3) Any graffiti on the tower or on any related equipment shall be removed at the sole expense of the owner within fourteen (14) days of notification.
- (4) Any underground vaults related to communications towers shall be reviewed and approved by Township Board of Supervisors.

I. Time, place and manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all towers in the right-of-way based on public safety, traffic management, physical burden on the right-of-way, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and

the requirements of the Pennsylvania Public Utility Code.

- J. Engineer certification. A structural engineer registered in Pennsylvania shall issue to the Township a written certification of the proposed tower's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure.
- K. Stealth technology. Towers and antennas shall employ stealth technology and shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. The Township Board of Supervisors shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and construction principles, practices and techniques.
- L. Permit required for modifications. To the extent permissible under applicable state and federal law, the proposed modification of an existing communications tower, which substantially changes the wireless support structure or is not an eligible facilities request, shall first obtain a building permit from the Township. Nonroutine modifications shall be prohibited without such permit.
- M. Public safety communications. No communications tower shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- N. Maintenance. Towers shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair. Such maintenance shall be performed to ensure the upkeep of the tower in order to promote the safety and security of the Township's residents, and utilize the best available technology for preventing failures and accidents.
- O. Historic properties. To the extent permissible under state and federal law, no tower or antenna may be located upon any property, or on a building, structure that is listed on either the National or Pennsylvania Register of Historic Places, overseen by the Township HARB, or that is deemed by the Township to be of local historic significance. No tower in the public rights-of-way shall be located along a highway or other road that is considered by the Township to be a scenic route, including the Brandywine Valley Designated Scenic Byway and Creek Road.
- P. Signs. All towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the tower shall be that required by the FCC, or any other federal or state agency.
- Q. Lighting. Towers shall not be artificially lighted, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Township Manager. This requirement shall not apply to towers employing stealth technology in the right-of-way that are designed to resemble streetlights.
- R. Noise. Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Township Code, except in emergency situations requiring the

use of a backup generator, where such noise standards may be exceeded on a temporary basis only.

- S. Relocation or removal of facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, the owner of a tower in the right-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any tower when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (1) The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way;
 - (2) The operations of the Township or other governmental entity in the right-of-way;
 - (3) Vacation of a street or road or the release of a utility easement; or
 - (4) An emergency as determined by the Township.
- T. Permit fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a new tower, as well as related inspection, monitoring, and related costs.

§ 135-170.2 Outdoor dining.

[Added 11-2-2016 by Ord. No. 147]

- A. To assure quality standards and safety, the following provisions shall apply:
- (1) The outdoor dining area shall be directly abutting and on the same lot as the principal building in which the associated restaurant is located.
 - (2) All outdoor dining areas shall be subject to compliance with all applicable health, building, zoning, accessibility, fire, and plumbing codes, and requirements of any other regulatory agencies having jurisdiction, as applicable.
 - (3) Areas of outdoor dining shall not interfere with any means of ingress or egress to a building, or with any emergency or safety exits. Access to the outside service area, except for an emergency entrance and exit, shall be limited to entrances and exits through the building with which the outside premises area is adjacent.
 - (4) Pedestrian barriers. Outdoor dining areas shall be enclosed and separated from the pedestrian or travel way to allow for the privacy of the dining patron and to permit the unimpeded flow of traffic. Dining area enclosures shall consist of a wall, bollard, or fence, approved by the Township. The following minimum standards shall apply:
 - (a) Pedestrian barriers shall have sufficient weight to prevent them from being tipped or knocked over.
 - (b) If the pedestrian barrier is to be permanent, the method of attachment shall be subject to approval by the Township. No barrier shall be permanently attached to a public sidewalk or an area located within the right-of-way.


- (c) Pedestrian barriers shall be at least 36 inches high to prevent a tripping hazard, unless more restrictive requirements are required by other municipal codes.
- (5) Parking. In accordance with §135-153 B.
- (6) Outdoor dining shall be permitted between the hours of 7:00 a.m. to 10:00 p.m. All seating of patrons shall provide for the outdoor dining area are to close at the required hour.
- (7) No outdoor dining area shall be established within 100 feet of the property line of a single-family or two-family detached or semidetached dwelling unit located completely or partially within a residential zoning district.
- (8) Outdoor dining areas shall be located on a permanent surface. Temporary flooring shall not be used.
- (9) The use of outdoor heaters shall be in compliance with the International Fire Code, as amended.
- (10) The sale of alcoholic beverages shall be incidental to the sale or consumption of food. Outside bar service and/or walk-up bar service for the sole purpose of the consumption of alcohol without the consumption of food is prohibited.
- (11) Storage of materials. At the conclusion of the outdoor dining season, all portable equipment (i.e., barriers, furniture, roof coverings, etc.) shall be stored within the facility in a location that does not interfere with the operation of the food establishment, or shall be stored off site.
- (12) All outdoor dining locations shall be subject to periodic inspection for compliance with the standards of this section. Two or more violations of this section may result in a revocation of all zoning or building permits applicable to the outdoor dining use, until such violations are remedied.
- (13) Noise. Outdoor dining shall be subject to Chapter 89, Noise. All activities, including the playing of music or other forms of entertainment, shall comply with the noise limitations of the Township Code and any other regulatory agencies having jurisdiction, as applicable.

REPEALER.

All ordinances, resolutions or parts of ordinances and resolutions directly inconsistent with any provision of this Ordinance are hereby repealed to the extent of such inconsistencies only.

ENACTED and ORDAINED this 7th day of October, 2020.

**CHADDS FORD TOWNSHIP
BOARD OF SUPERVISORS**



FRANK G. MURPHY, Chairman


SAMANTHA REINER, Vice Chair


NOELLE M. BARBONE, Supervisor

Attest:


Maryann D. Furlong,
Township Secretary