

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

ORDINANCE # 716

AN AMENDMENT TO THE ORDINANCES DESIGNED TO AID IN THE SITING OF TELE-COMMUNICATION TOWERS AND ANTENNAE IN MARLBORO COUNTY AND TO REPEAL ORDINANCE NUMBERS 580 AND 580A.

WHEREAS, the general welfare and public safety needs of Marlboro County residents is of paramount concern, and

WHEREAS, it is the intent of this ordinance to create regulations that allow for the harmonious co-existence of telecommunication towers and other land uses, and

WHEREAS, the intent of this ordinance is to reduce the overall negative impact of telecommunication towers in our county through guidelines for review, placement, and other regulation, and

WHEREAS, Marlboro County is also mindful of the fast pace of changes in technology, and that the ordinance must also provide a mechanism whereby the requirements of this ordinance might be reviewed to insure that the needs of the public can be met by the technology available at any given time.

NOW, THEREFORE BE IT ORDAINED, by the Marlboro County Council, the following regulations hereby are to be applied by the Planning Department staff in regards to telecommunication towers and antennae in Marlboro County:

SECTION 1. Tower and Antenna Location Guidelines

Height Requirements:

- (a) Residential Areas: A free-standing or guyed tower or antenna shall not exceed 195 feet.
- (b) All Other Areas: A free-standing or guyed tower or antenna shall not exceed 500 feet.

Proximity to Structures:

The base of the communications tower or antenna shall be located no closer to a residential or commercial structure than a distance equal to one and one-half feet for each one foot in height of the proposed tower or antenna.

Proximity to Property Lines and Public right-of-ways:

The proposed communications tower or antenna shall be located at an adequate setback distance (fall zone), as defined and certified by a licensed structural engineer in the State of South Carolina, to prevent the tower or antenna's fall from encroaching onto public rights-of-way or adjoining properties. (Engineer's certification to be in the form of a letter which includes the engineer's signature and seal.)

Setbacks and aesthetics:

The proposed communications tower or antenna and associated improvements shall meet all applicable zoning district setbacks, landscaping, and aesthetic requirements.

Visual Impact:

The proposed communications tower, antenna or accessory structure will be placed in a reasonably 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 applicable communications regulations and applicant's technical design requirements.

Point and Illumination:

A communications tower or antenna shall not be painted or illuminated unless otherwise required by state or federal regulations. Night time strobe lighting shall not be incorporated unless required by FAA, or other regulatory agencies.

Fencing:

The proposed communications tower and associated structures shall be appropriately secured by means of a six-foot non-climbable fence. Guy wires may be fenced separately.

Distance from Existing Tower:

A permit for a proposed tower or antenna site within 1,000 feet of an existing tower shall not be issued unless the applicant certifies that the existing tower does not meet the applicant's structural specifications and design requirements, or that a co-location agreement could not be obtained.

Signage/Identification:

No signage of any nature shall be placed on any portion of the tower, except as required by applicable state and federal laws, rule, or regulation. Signs for the purpose of identification, warning, emergency function, or contact may be placed as required by standard industry practice.

National Registry of Historic Places/Scenic Corridors:

The proposed communications tower shall not substantially detract from properties listed in the National Register of Historic Places, or from a road or river which has been officially designated as a scenic corridor.

Maintenance:

The communications tower antenna shall be maintained by common corrosion control procedures so it continuously maintains a minimum visual impact on surrounding properties.

SECTION 2. APPLICATION REQUIREMENTS:

The applicant for a permit for construction of a communications tower or installation of antenna shall provide to the planning department the following:

Application Fee:

- (a) Construction of Communications Tower: \$5000.
- (b) Installation of Antenna: \$3000.

Co-Location/Alternate Site Statement:

Applicant shall provide disclosure of all co-location and alternate sites that were considered, including written justification for rejection of the other sites. Planning staff may require additional information to determine that co-location was unfeasible.

Co-Location Effort & Allowance of Co-Location:

The applicant shall make reasonable attempts to co-locate on existing communications towers, buildings, or other structures and the applicant shall be willing to allow other users to co-locate on the proposed communications tower in the future, subject to engineering capabilities of the structure, frequency considerations, and proper compensation from the additional user.

Co-Location Application:

Proposed communications equipment co-locating on existing towers and structures without exceeding the height of the structure by 30 feet would require only a building permit and would not be subject to the requirements detailed below unless the proposed location is within an airport district.

Three copies of the following will need to be submitted to the planning commission department prior to the issuance of a building permit by building codes:

- 1) Site Plan and Specifications
- 2) Site Location Map
- 3) Site Location E-911 Address
- 4) Tax Map Number of Tower Location Parcel
- 5) Written Authorization by the Tower Owner allowing Co-Location.

Airport Area:

Any proposed towers in the airport district must comply with the requirements of the county's airport height ordinance.

Specifications:

Three copies of typical specifications for the proposed structure and/or antenna, including description and elevation drawings showing typical design characteristics, materials to be used, height, color, and lighting and include documentation showing the structural capability of the communications tower to accommodate co-location.

All new towers shall be designed to accommodate additional antennas equal in number to the applicant's present and future requirements.

Site Plan:

A plan drawn to scale (1" = 100) showing property boundaries, proposed tower location, location of communication tower, guy wires and anchors (if applicable), existing structures, proposed structures, parking, driveways (access), fencing, protected landmark trees affected by the proposed improvements, existing adjacent land uses and property owners.

Tower Location Map:

No tower or antenna shall be located within 1,000 feet of an existing tower or antenna, except where the applicant certifies that the existing tower does not meet the applicant's structural specifications and applicant's technical design requirements, or that a co-location agreement could not be obtained. A current map, or updated existing map showing the location of the applicants tower or antenna, facilities, existing towers, and proposed towers which are reflected in the public records serving any property within the County of Marlboro, South Carolina.

RF Coverage Prediction Maps: A current RF coverage prediction map showing the area to be served before the addition of the new cell and an RF coverage prediction map that shows coverage after the new site is operational. Technical detail should be sufficient for an engineer to determine signal levels from the maps.

Antenna Capacity Wind Load:

A report from a structural engineer registered in South Carolina showing the tower antenna capacity by type and number and a certification that the tower is designed to withstand wind in accordance with ANSI/EIATIA222 (latest revision) standards.

Antenna Owners:

Identification of the owners of all antennae and equipment to be located on the site.

Co-Location Effort & Allowance of Co-Location:

The applicant shall make reasonable attempts to co-locate on existing communications towers, buildings, or other structures and the applicant shall be willing to allow other users to co-locate on the proposed communications tower in the future, subject to engineering capabilities of the structure, frequency considerations, and proper compensation from the additional user.

Design for Multiple Users:

The applicant must show documentation that proposed communications tower or antenna is designed to accommodate additional antennae equal in number to the applicant's present and future requirements and applicant must be willing for co-location to take place.

Inability to Locate on Existing Structures:

The applicant must show documentation that a proposed antenna and equipment can not be accommodated and function as required by applicable regulations and the applicant's technical design requirement without unreasonable modifications on any existing structure or tower under control of applicant, or to locate on an available and suitable tower at reasonable costs (i.e. at or below local area rent average.)

Necessity for Location in Residential Area:

The applicant must show that the portion of the county intended to receive coverage cannot be adequately served by a communications tower or antenna placed in a non-residential area for valid technical reasons.

Safety Codes Met:

Applicant must show all applicable health, nuisance, fire, building, and life safety code requirements are met.

Owner Authorization:

Written authorization from the site owner for the application.

FCC License:

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

Aesthetics:

Provide documentation that screening exists or will be installed either by vegetation or opaque screening.

Visual Impact Analysis:

A line of site analysis showing visual and aesthetic impacts on adjacent residential areas.

Indemnity and Claims Resolution:

The applicant must show by certification from a registered professional engineer that the proposed facility will contain only equipment meeting FCC rules, and must file with the planning department a written indemnification of the County of Marlboro and proof of liability insurance or financial ability to respond to claims up to \$1,000,000

dollars per occurrence which may arise from operation of the facility during its life, at no cost to the county, in a form approved by the county attorney.

Tower Abandonment/Removal:

A surety bond in the amount of \$25,000 for tower removal and a written agreement to remove communication tower and/or antenna within 180 days after cessation of use must be submitted to the planning department. Tower owner to notify, in writing, the planning department within 120 days of cessation of use (with no new application on file for any communication user.)

A communication tower not used for communication purposes for more than 120 days (with no new application on file for any communication user) shall be presumed to be out of service. The owner of such tower shall notify the planning department staff and remove the tower within 60 days after the initial 120 days has elapsed. To assure the removal of communication towers which do not meet requirements for continued use or proper maintenance, a statement of financial responsibility and a \$25,000 surety bond shall be submitted for each tower. Further, if the communication tower owner is not the same as the property owner, the communication tower owner must affirm that its lease with the property owner places responsibility for the cost of removal of such communication tower on the tower owner.

Surrounding Property Owner List:

A list of all current property owners within a 1,500 foot radius of the base of the tower, two sets of mailing labels with property owners' addresses as shown on the Marlboro County Tax books accompanied by a site map identifying the same area within a ten (10) mile radius of the county.

Additional Information:

Documentation providing additional information as may be required by the planning department to allow adequate review of the submitted materials (i.e. aerial photographs or balloon height test)

Public Notification:

Within 15 working days of receipt of a completed application for a communication tower permit, the Marlboro County Planning staff shall send by first class mail a notice of the application of all property owners within a

1,500 foot radius from the base of the tower. The notification shall include projected date of the public hearing (regularly scheduled planning commission meeting) to be held by the planning commission, the projected issue date of the communication tower permit and the county's appeal procedure.

A Public Hearing will be held within 45 working days of receipt of the completed application.

DEFINITIONS:

Communications Tower: means a tower, pole, or similar structure of any size which supports communication equipment, transmission or reception, and is utilized by government, commercial, or other public or quasi-public purposes above ground in a fixed location, freestanding or on a building. This does not include television reception antennas and satellite dishes or "communications towers" for amateur radio operations licenses by the Federal Communication Commission which are exempt from municipal zoning restrictions or "communication towers" under 100 feet in height used solely for educational communication purposes.

Telecommunication- as defined in the Federal Telecommunications Act of 1996, means the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as set or received.

Antenna: a devise, dish, or array used to transmit or receive "telecommunication" signals

Height: of a "communication tower" is defined as the distance from the base of the tower to the top of the structure.

Residential Area: an area comprised of primarily single-family or multi-family dwellings at a minimum density of 16 developed lots per mile of road (both sides) or with developed lots on at least one-third of the available road frontage or a subdivision consisting of more than five lots of developed or undeveloped property, with publicly maintained roads and areas averaging more than four

residences per acre. For the purpose of this article, the proposed tower site will be designated a "residential area" if any of the conditions defined above exist within 500 feet of the base of the proposed tower or antenna.

SECTION 3. VARIANCE REQUIREMENTS:

- (a) Purpose. The variance process administered by the board of zoning appeals is intended to provide limited relief from the requirements of this chapter. The board of zoning appeals may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in the above tower or antennae guidelines, to extend physically a non-conforming use of a tower or antennae, with regard to proximity to structures, Property Lines and Public right-of-ways, to permit a decrease in the minimum lot size, to decrease the minimum lot width, or in any other manner create a nonconforming lot, or to grant a variance to permit an increase in higher density of towers or antennae in any given area than is otherwise provided in this ordinance. The fact that property could be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
- (b) Pre-application procedure. Before filing an application for a variance, an applicant must meet with the planning department to discuss the proposed variance and to become more familiar with the applicable requirements and approval procedures of the county.
- (c) Plan submittal.
- (1) Application. An application for a variance shall be filed by the owner of the property or an authorized agent on a form provided by the planning department. Such application shall contain the information required on the application form, and shall be accompanied by plans of the development drawn to scale. Other information necessary to show that the use or structure complies with the standards set forth in this chapter shall also be provided.

(2) *Fees.* An application fee, as established by the Marlboro County Council, shall be submitted with the application.

(3) *Schedule.* Once an application is accepted as complete by the planning department, the application will be scheduled for consideration at a public hearing by the board of zoning appeals. The schedule for meetings of the board of zoning appeals shall be maintained in the planning department.

(d) *Staff review.* The planning department shall review the application and determine if it is complete within fifteen (15) days of its submittal. If the application is complete, the planning department shall prepare a staff evaluation and recommendation regarding the submitted variance request.

(e) *Public notification.* Notice of the public hearing on a variance shall be posted on the property for which a variance is sought. Notice shall also be published in a newspaper of general circulation within the county no less than fifteen (15) days prior to the public hearing.

(f) *Formal review.*

(1) *Action by the board of zoning appeals.* Upon receipt of the application for a variance request from the planning department, the board of zoning appeals shall hold a public meeting on the proposed variance request. Any party may appear in person or be represented by an authorized agent. In considering the application, the board of zoning appeals shall review the application materials, the staff comments and recommendations, the general purpose and standards set forth in this chapter, and all testimony and evidence received at the public hearing. After conducting the public hearing, the board of zoning appeals may:

a. Approve the request;

b. Continue the matter for additional consideration; or

c. Deny the request.

Any approval or denial of the request must be by a concurring vote of a majority of those members of the board of zoning appeals both present and voting. The decision of the board of zoning appeals shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in subparagraph (2) below. The decision and the written findings shall be permanently filed in the planning department as a public record. The written decision of the board of zoning appeals must be delivered to the applicant.

(2) *Standard of review.* The board of zoning appeals shall not grant a variance unless and until it makes the following findings:

a. That there are extraordinary and exceptional conditions pertaining to the particular piece of property; and

b. That these conditions do not generally apply to other property in the vicinity; and

c. That because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d. That the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

(3) *Conditions.* In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or

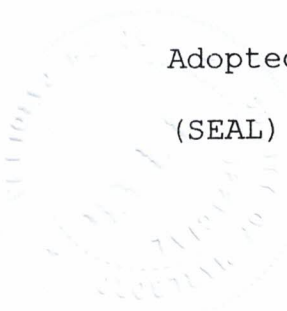
general welfare. The board of zoning appeals may also prescribe a time limit within which the action for which the variance was sought shall be begun or completed, or both.

- (g) *Appeals.* A person who may have a substantial interest in any decision by the board of zoning appeals regarding a variance may appeal from such decision to the circuit court, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the decision of the board of zoning appeals is mailed. In the alternative, a property owner whose land is the subject of a decision of the board of zoning appeals may file a notice of appeal, also within thirty (30) days, with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1150 and Section 6-29-1155 of the South Carolina Code of Laws.

All appeals must be taken in accordance with all applicable laws of the State of South Carolina.

Adopted this 6th day of May, 2013.

(SEAL)


Dr. Carolyn A. Prince
Dr. Carolyn A. Prince, Chair
Marlboro County Council

ATTEST:

Patricia M. Bundy
Patricia M. Bundy
Clerk to Council

First Reading: March 12, 2013 (Title Only)
Second Reading: April 9, 2013
Public Hearing: April 9, 2013
Third Reading: May 6, 2013