

For: Introduction and Referral to Planning Commission: 7/12/21  
Planning Commission Review and Recommendation: 8/30/21  
Reintroduction: 9/13/21, 12/6/21 (with changes)  
Public Hearing: 10/4/21  
Adoption: 1/10/22  
Effective Date: 1/31/22

**THE TOWN OF MOUNT AIRY, MARYLAND**  
**ORDINANCE NO. 2021-18**

**AN ORDINANCE TO AMEND THE CODE OF  
THE TOWN OF MOUNT AIRY,  
PART II ENTITLED “GENERAL LEGISLATION”,  
CHAPTER 112 ENTITLED “ZONING”,  
ARTICLE II ENTITLED “GENERAL REGULATIONS”,  
TO CREATE NEW SECTION 112-19.1 ENTITLED  
“WIRELESS FACILITIES”, AMENDING ARTICLE IV ENTITLED “PROVISIONS  
GOVERNING RESIDENTIAL DISTRICTS”, SECTION 112-34 ENTITLED  
“ACCESSORY STRUCTURES”, ARTICLE V ENTITLED “PROVISIONS  
GOVERNING COMMERCIAL DISTRICTS”, SECTION 112-37 ENTITLED “LC  
LIMITED COMMERCIAL DISTRICT”, SECTION 112-37.1 ENTITLED “DOWNTOWN  
ZONE (DTZ)”, SECTION 112-37.2 ENTITLED “MIXED USE DISTRICT (MXD)”,  
SECTION 112-38 ENTITLED “NP NEIGHBORHOOD PROFESSIONAL”, SECTION  
112-39 ENTITLED “CC COMMUNITY COMMERCIAL DISTRICT”, SECTION 112-  
39.1 ENTITLED “MIXED-USE DEVELOPMENT IN CC DISTRICT (MXU-CC)  
SPECIAL EXCEPTION”; ARTICLE VI ENTITLED “PROVISIONS GOVERNING  
INDUSTRIAL DISTRICTS”, SECTION 112-45 ENTITLED “I INDUSTRIAL  
DISTRICT”, AND SECTION 112-50.1 ENTITLED “OFFICE PARK EMPLOYMENT  
DISTRICT (OPE)”, FOR THE PURPOSE OF REGULATING FOR THE  
PLACEMENT, CONSTRUCTION, INSTALLATION, CO-LOCATION,  
MODIFICATION, RELOCATION, OPERATION  
AND REMOVAL OF WIRELESS FACILITIES**

**WHEREAS**, the Town’s Zoning Chapter does not explicitly provide for procedures or regulations for the placement, construction, installation, co-location, modification, relocation, operation, and removal of wireless facilities; and

**WHEREAS**, the Town’s regulation of wireless facilities has in the past been through policy and process, rather than by ordinance; and

**WHEREAS**, the Town Council has determined it to be in the best interests of the Town and its residents to codify regulation related to the placement, construction, installation, co-location, modification, relocation, operation, and removal of wireless facilities in the Town; and

**WHEREAS**, the Town desires to establish regulation of wireless facilities in the Town in order to allow the location of such in certain locations within the Town, while at the same time preserving the integrity, safe usage, and aesthetic qualities of the Town; and

**WHEREAS**, in accordance with Section 112-67 of the Town Code, this ordinance was referred to the Town Planning Commission for review and recommendation, and on August 30, 2021, the Planning Commission recommended that the Town Council enact this ordinance; and

**WHEREAS**, in accordance with Section 112-66A of the Town Code, and the Land Use Article of the Maryland Code, Section 4-203(b), after due and legally required notice, a public hearing on this ordinance was held by the Town Council on October 4, 2021; and

**WHEREAS**, on December 6, 2021, this Ordinance was introduced with changes; and

**WHEREAS**, the Mayor and Town Council have considered the recommendations of the Planning Commission, public comments and recommendations, and input from other applicable governmental agencies, and have determined it to be in the best interest of the citizens of the Town to enact this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:**

Section 1. That Part II, Chapter 112, Article II be and is hereby amended to enact new Section 112-19.1 as follows:

**§ 112-19.1. Wireless facilities.**

A. Purpose. The purpose of this ordinance is to establish general procedures, standards, and regulations, consistent with all applicable federal and state laws, for the placement, construction, installation, co-location, modification, relocation, operation and removal of small cell wireless facilities and associated equipment in the Town. The goals of this section are to:

- (1) Provide standards, technical criteria and details for wireless facilities, wireless support structures and other related equipment in the Town to be uniformly applied to all applicants, owners and operators of such facilities;
- (2) Enhance the ability of wireless communications carriers to deploy wireless technology in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from robust wireless service availability;
- (3) Preserve the character of the Town and its corridors;

(4) Ensure that wireless facilities, wireless support structures and other related equipment conform to all applicable health and safety regulations and blend into the surrounding environment to the greatest extent possible.

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

**ANTENNA**

Communications equipment that transmits and/or receives electromagnetic radio-frequency signals used in the provision of wireless services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

**CO-LOCATE**

To install or mount a small wireless facility in the public right-of-way on an existing support structure, an existing tower, or on an existing pole to which a small cell wireless facility is attached at the time of the application. "Co-location" has a corresponding meaning.

**COMMUNICATIONS SERVICE**

Collectively, the equipment at a fixed location or locations that enables communications services, including i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and ii) all other equipment associated with any of the foregoing. A communications facility does not include the pole, tower or support structure to which the equipment is attached.

**FACILITY**

Wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

**MICRO-WIRELESS FACILITY**

A wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna no longer than 11 inches, if any.

## **OMNI-DOME ANTENNA**

A wireless transmitting or receiving antenna that radiates or intercepts radio-frequency (RF) electromagnetic fields equally well in all horizontal directions in a flat, two-dimensional (2D) geometric plane; it receives signals from all directions and so needs to be installed in a vertical position in the area of the strongest signal.

## **PANEL ANTENNA**

A type of directional antenna, sending and receiving signals from only one direction, consisting of a dipole placed ahead of a flat-panel reflector.

## **PROVIDER**

A communications service provider or a wireless services provider and includes any person that owns and/or operates any communications facilities, wireless facilities, or poles built for the sole or primary purpose of supporting communications facilities within the Town.

## **PUBLIC RIGHT-OF-WAY**

The area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this chapter shall include public utility easements.

## **SMALL WIRELESS FACILITY**

A wireless facility that meets the following criteria:

- (1) The structure on which antenna facilities are mounted:
  - (a) Is 30 feet or less in height, including existing antennas; or
  - (b) Is not extended to a height of more than 30 feet or by more than 10% above its preexisting height, or whichever is less;
- (2) Each antenna associated with the deployment, excluding the associated equipment, is not more than three cubic feet in volume;
- (3) All other wireless equipment associated with the antenna, including the provider's preexisting equipment, is cumulatively no more than 28 cubic feet in volume;

- (4) The facility does not require antenna structure registration under federal law; and
- (5) The facility does not result in human exposure to radio-frequency radiation in excess of applicable safety standards under federal law.

### **SUPPORT STRUCTURE**

A structure other than a pole or a tower to which a wireless facility is attached at the time of the application.

### **UTILITY POLE**

A tall pole, usually constructed of wood, used to carry telephone wires, electrical wires and other utility lines above the ground.

### **WIRELESS FACILITY**

The equipment at a fixed location or locations in the Town that enables wireless services. The term does not include coaxial, fiber-optic or other cabling that is between communications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. A small wireless facility is one type of a wireless facility.

C. Location of wireless facilities. The following areas are permitted for placement of wireless facilities:

- (1) Public parks owned by the Town and approved by the Town with approval by the Recreation and Parks Board with input from the Planning Commission, subject to the following:
  - (a) Screening and equipment enclosures shall blend with or enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the reasonable discretion of the Town Recreation and Parks Board with input from the Planning and Commission.
  - (b) No small wireless facility, support structure and/or related equipment shall be attached or supported by any park equipment, facilities, or structures.

(c) Any proposed location for a wireless facility, support structure and/or related equipment within a public park must be approved and is subject to relocation within the park by the Town Recreation and Parks Board with input from the Planning Commission:

- [i] In consideration of neighboring park facilities or equipment, including other small cell facilities/wireless facilities and/or support structures within the same park.
- [ii] In consideration of the location of residences, buildings and structures, including other small cell facilities/wireless facilities and/or support structures, on adjoining property.
- [iii] In consideration of noise that the new proposed wireless facilities, support structures and/or related equipment make individually and collectively with other surrounding similar facilities.
- [iv] If the relocation of such would not impose burdensome technical limits or other unreasonable burdens or expense on the operator.

(d) The Recreation and Parks Board with input from the Planning Commission may, in its discretion, limit the number of wireless facilities, support structures and/or related equipment within a particular public park, in consideration of:

- [i] Aesthetics;
- [ii] Interference with the other similar communications facilities and structures;
- [iii] Noise that existing and new proposed small cell facilities/wireless facilities and/or support structures make individually and collectively;
- [iv] Residences, buildings and structures, including other wireless facilities, support structures and/or related equipment, on adjoining property;
- [v] Whether denial of additional location of such facilities within the park would materially inhibit the provision of wireless services by the operator;

(2) In the discretion of the Town Council with input from the Planning Commission, a new wireless facility, support structure and/or related equipment may be located within other areas of the Town, including within public rights of ways and/or

private property as an accessory use, but subject to the conditions and limitations set forth below:

- (a) If the operator demonstrates that the denial of any proposed location outside a public park would materially inhibit provision of wireless services by the operator.
- (b) In consideration of whether the proposed new wireless facilities, support structures and/or related equipment can be screened, enclosed or otherwise blended with or could enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. If trees, bushes, rocks, and other forms of landscaping are to be used for screening, such landscaping must match the predominant landscaping form and species within one block of the facilities. All required screening shall be at the reasonable discretion of the Town Planning Commission.
- (c) In consideration of whether the proposed new wireless facility, support structure and/or related equipment proposes a co-location, as opposed to an entirely new location, support structure, or utility poles.
- (d) In consideration of noise that the new proposed wireless facilities, support structures and/or related equipment make individually and collectively with other surrounding similar facilities.
- (e) As applicable and/or unless waived or modified by the Planning Commission for good cause, so long as the proposed new wireless facility, support structure and/or related equipment:
  - [i] If proposed for location on property or a right-of-way not owned by the Town, is authorized, in writing, by the owner of said property or right-of-way in a lease or other similar agreement as set forth below, or is otherwise proposed to be located on property or within a public right-of-way owned by the Town;
  - [ii] Does not significantly create a new obstruction to property sight lines;
  - [iii] Is in alignment with existing trees, utility poles, and streetlights;
  - [iv] Is equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree;

- [v] Will maintain appropriate clearance from existing utilities;
  - [vi] Is located at least 10 feet away from the triangle extension of a driveway flare;
  - [vii] Is no closer than 250 feet, radially, to another freestanding small cell;
  - [viii] Proposes that all lines, including power and transport facilities, connecting to a new support structure shall be placed in duct or conduit that is buried below ground;
  - [ix] Proposes that new overhead wiring to accommodate the antennas will not be permitted;
  - [x] All new wireless facilities within the Main Street area must be located no closer than 500 feet of Main Street;
    - 1. The Main Street Corridor for the purpose of this ordinance and any document approved by the Town related to cellular facilities shall run from Culwell Ave to the intersection of North Main Street and State Route 27.
  - [xi] No small wireless facility shall be located closer than 500 feet of any public or private school, including daycares except a daycare run as a “Home Occupation”, a term defined in 112-71 and is a special exception in some residential zones.
  - [xii] Proposed elements of pole(s) shall be aesthetically matching and consistent with the character and height of adjacent poles and streetlights and approved and agreed to by the Town;
  - [xiii] The requirements and findings are met with respect to the location of the proposed wireless facility, support structure and/or related equipment to be located on Town streets, sidewalks, or other public right-of-way as set forth below.
- (f) The Planning Commission may in its discretion propose to the Town Council for its approval, an alternate suitable location for a wireless facility.

D. Application for a permit.

- (1) Any wireless facility located, improved, co-located, modified, etc. on Town property or facilities, on private property or anywhere in the Town where it has authority, shall require a permit.
- (2) The installation of wireless facilities, support structures and related equipment in a public right-of-way or property owned by the Town shall require a permit under this ordinance. No permit shall be issued with respect to the installation of wireless facilities, support structures or related equipment in, on, or over any Town park or property, street, sidewalk, or right-of-way unless and until the permit applicant and the Town have negotiated and executed a franchise or right-of-way use agreement setting forth the terms and conditions, including fair compensation to the Town, and, where applicable, lease payments for the use of any Town-owned poles or facilities and/or property.
- (3) In addition to the other information required herein, an application for such a permit shall include the following information pertaining to particular sites or a proposed deployment:
  - (a) A study, paid for by the applicant, showing that any new wireless facility will not cause an exceedance in RF exposure limits set by the Federal or Maryland Government.
  - (b) A technical description of the proposed facilities, along with detailed diagrams accurately depicting all proposed facilities and support structures, and the proposed locations thereof;
  - (c) A detailed deployment plan describing construction planned for the twelve-month period following the issuance of the permit and a description of the completed deployment;
  - (d) An engineering certification relating to the proposed construction submitted by an engineer licensed in the State of Maryland;
  - (e) A statement describing the applicant's intentions with respect to co-location;
  - (f) A statement demonstrating the permittee's duty to comply with applicable safety standards for the proposed activities;
  - (g) If applicable, an executed agreement with the Town;

- (h) In the case of a proposed location on property or rights-of-way not owned by the Town, an executed agreement between the provider and the owner of the property or right-of-way;
  - (i) A certification from an ~~engineer~~ telecommunications engineer or a professional engineer with expertise in telecommunications that the proposed new wireless facility, support structure and/or related equipment will not interfere with the use, operation, maintenance and repair of existing similar facilities, and will not otherwise interfere with the use, operation, maintenance or repair of Town-owned equipment, facilities, or structures to which the proposed new wireless facility, support structure and/or related facility is to be attached or is to be installed in proximity;
  - (j) A certification from an ~~engineer~~ telecommunications engineer or a professional engineer with expertise in telecommunications as to the noise that the proposed new small wireless facility, support structure and/or related equipment will make individually and collectively with other similar facilities that surround it; and
  - (k) Such other information as the Town may require.
- (2) Within 30 days of the date of submission of an application, the applicant shall be notified, in writing, of any deficiencies related to the completeness of the application. No additional review or consideration of the application shall occur until such deficiencies are corrected. Remediation of deficiencies in an application shall be deemed an amendment of the application that was received and will again be reviewed for completeness as provided in this subsection. The town reserves the right to hire an outside consultant to review an application which it will shall be reimbursed for by the applicant prior to the permit being approved or denied.
- (3) The Town Planning Director may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the application complete has been afforded. Applications will be deemed abandoned if left incomplete for more than 90 days after the date of notice of incompleteness.

E. Wireless requirements and findings.

- (1) In addition to the findings required for the location of wireless facilities, support structures and/or related equipment set forth above, the following requirements and findings apply to proposed wireless facilities, support structures and/or related equipment to be located on Town streets, sidewalks, or other public right-of-way:

(a) Absent a special finding by the Town, wireless facilities may only be installed on existing utility poles, and only entities certificated by the Maryland Public Service Commission pursuant to Maryland Code Annotated, Public Services and Utilities Article, Division I, Title 7 or Title 8, may erect new poles in the public right-of-way.

(b) Any new pole installed in public right-of-way to support wireless facilities shall:

[i] Comply with all structural and safety standards specified by the Town and this ordinance;

[ii] Not obstruct pedestrian or vehicular traffic flow or sight lines;

[iii] Not exceed the average height of the existing streetlight poles or utility poles within the area extending 1,000 feet in any direction of the proposed structure;

[iv] Be designed to accommodate the co-location of at least three different wireless providers' antennas and related equipment;

[v] If metal, be treated or painted with nonreflective paint, and in a way to conform to or blend into the surroundings; and

[vi] Comply with such other requirements and conditions as the Town may conclude are appropriate to impose.

(2) Any wireless facilities installed on a pole or any other structure in the public right-of-way or in a town park shall:

(a) Have equipment box or boxes no greater in collective size than 24 cubic feet in volume, provided that neither the width nor the depth of any box may exceed two linear feet;

(b) Have panel antennas no greater than two feet in height, and omni-dome antennas no more than four feet in height, and no wider than the sixteen-inch diameter;

(c) Have no more than three single panel antennas per pole and no more than one omni-dome antenna per pole;

(d) Have microwave dishes no greater than two feet in diameter, with no more than three microwave dishes per pole;

- (e) Be treated or painted with nonreflective paint, and in a way to conform to or blend into the pole or the surroundings; and
- (f) Comply with such other requirements and conditions as the Town may conclude are appropriate to impose.

(3) Concealment.

- (a) All equipment for a wireless facility shall be located in an adjoining underground vault next to the pole housing the antennae. A waiver to this requirement may be issued by the Town Community Planning Administrator if a case is made by the applicant that doing so would create unnecessary hardship. A waiver issued for shall be needed for each pole an applicant would like for a waiver to be issued, no blanket waivers shall be allowed
- (b) If a waiver is issued for the concealment of a wireless facility, the following must be followed:
  - [i] Wireless facilities shall be concealed in an equipment box or cabinet. Unless approved by the Town, there shall be no external wires hanging from the pole and all wires shall be enclosed in a conduit.
  - [ii] Equipment enclosures, including electric meters, shall be as small as possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design, such as landscaping, barriers, strategic placement in a less visible location and placement within existing street furniture.
  - [iii] Landscape screening may be required around ground-mounted equipment enclosures. The planting quantity and size must insure that 100% screening is achieved within three years of installation. All maintenance of landscaping is the responsibility of the operator. Any proposed pruning or removal of existing trees, shrubs or other landscaping in the public right-of-way for installation must be noted in the permit application to be reviewed by the Town.
  - [iv] All colors must match the background of any wireless support structure to which facilities are attached. In the case of existing wood poles, finishes of conduit shall be aluminum or stainless steel. Equipment attached to metal poles must match the pole finish and color. Equipment cabinets and other encasements shall be finished using a Town-approved method and color.

(4) Signage/lights/logs/decals.

- (a) The operator shall post the name, location, identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility visible to the public. Signage required under this section shall be four inches by six inches, unless otherwise required by law. If no cabinet exists, the signage shall be placed at the base of the pole. Any signage shall blend with the posted location, and shall not be overly noticeable from a distance of greater than 6 feet from the posted location.
- (b) Wireless facilities, support structures and/or related equipment shall not be illuminated, except to meet state, federal or local requirements or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
- (c) The operator shall remove or paint over unnecessary equipment manufacturer decals. Wireless facilities, support structures and/or related equipment shall not include advertisements and may only display information required by federal, state or local code.

(5) Wireless facilities, support structures and related equipment proposed to be located on Town streets or property, private property, sidewalks, or other public right-of-way may be permitted upon a finding by the Town that:

- (a) The application complies with all standards and requirements set forth in this ordinance;
- (b) The location selected in the application is not in an area where there is an over-concentration of poles or other facilities in, on, or over the streets, sidewalks or other public right-of-way;
- (c) The location selected, and scale and appearance of the wireless facilities, support structures and related equipment to be installed, are consistent with the general character of the neighborhood;
- (d) The applicant has agreed to and provided adequate insurance, bonding and indemnification to protect the Town and its residents from injury or liability relating to or arising from the proposed facilities and structures;
- (e) The applicant has entered into the franchise or right-of-way use agreement with the Town; and

(f) The wireless facilities, if located in or adjacent to a residential district, does not generate any noise. In the event a fan is needed, a low noise profile fan or a passive cooling system will be required.

F. Exceptions.

(1) No Town permit shall be required under this article to excavate any portion of a street that is a part of the state highway system and for which a state permit is required under the provisions of Maryland Code Annotated, Transportation Article.

(2) No permit shall be issued with respect to any Town street, sidewalk, property or public right-of-way where, in the judgment of the Town, sufficient capacity no longer exists for additional facilities to be placed in the proposed location without jeopardizing the physical integrity of utilities or other facilities already present in the proposed location, or the safe and efficient vehicular or pedestrian use of the street, sidewalk or public right-of-way.

G. Fees, Charges and Bonds.

(1) Every applicant shall pay a permit application fee as set forth in the Town's fee schedule, to be paid upon submission of the application.

(2) If the proposed facility is to be located on Town property or in a Town public right-of-way, the provider shall pay the Town a use fee as set forth in the Town's fee schedule. The use fee shall be due and payable within 30 days of execution of the use agreement or the issuance of the applicable permit(s), whichever is sooner.

(3) The applicant or provider shall be subject to any other generally applicable fees of the Town.

(4) Except as otherwise provided in a use agreement with the Town, the provider may remove its communications facilities or poles at any time, upon not less than 30 days' notice to the Town, and may cease paying the Town any applicable recurring fees for such use, as of the date of the actual removal of the facilities and the complete restoration of the public right-of-way or Town property. In no event shall a provider be entitled to a refund of any fees paid prior to the removal of its facilities or poles.

(5) Unless otherwise provided in a use agreement with the Town, a performance bond or other form of surety acceptable to the Town in an amount equal to 125% of the estimated cost of restoration of any work within the public right-of-way shall be provided to the Town before any work commences or installation, modification or removal of any communication facility or pole.

H. Removal/abandonment of facilities.

- (1) The provider shall remove wireless facilities, support structures and/or related equipment when such facilities are abandoned regardless of whether or not it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the wireless facility, support structure and/or related equipment being abandoned, or within 60 days of receipt of written notice from the Town. When the provider abandons permanent structures on Town property or in the Town's public right-of-way, the provider shall notify the Town, in writing, of each abandonment and shall file with the Town the location and description of each wireless facility, support structure and/or related equipment abandoned. Prior to removal, the provider must make application to the Town and receive approval for such removal. The provider must obtain a work permit for the removal. The Town may require the provider to complete additional remedial measures necessary for public safety and the integrity of the Town's property or Town right-of-way.
- (2) The Town may, at its option, allow a support structure to remain on Town property or in the right-of-way and coordinate with the owner to transfer ownership of such support structure to the Town, instead of requiring the owner and/or provider to remove such support structure.

I. Penalty.

- (1) Failure to comply with any provision of this ordinance is a municipal infraction, as set forth in Section 112-22.
- (2) In addition to the remedy in Subsection I(1) above, the Town may also pursue the remedies of revocation of the wireless facilities permit or specific performance of the violated provision.
- (3) The Town may excuse violations of this section for reasons of *force majeure*. For purposes of this section, "*force majeure*" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Maryland or any of their departments, agencies or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the provider.

Section 2. That Part II, Chapter 112, Article IV, Section 112-34 be and is hereby repealed and reenacted with the following amendments:

**§ 112-34. Accessory structures.**

- A. Permit required. Accessory structures over 100 square feet require a building permit. Wireless facilities, support structures and related equipment require a permit from the Planning Commission as set forth in Section 112-19.1 above.
- B. Location. Accessory structures are not permitted in front yard areas. Accessory structures 100 square feet or less shall be set back three feet from side and rear lot lines. Accessory structures over 100 square feet shall be set back a minimum of six feet from side and rear lot lines. Notwithstanding the foregoing, wireless facilities, support structures and related equipment shall be governed by Section 112-19.1 above.
- C. Maximum lot coverage. The total coverage of any structure on one lot shall not exceed 30% of the total rear yard area.
- D. Height general rule. Accessory structures shall not exceed one story or 10 feet in height. For structures covered by a roof, the highest point of the roof shall not exceed 15 feet in height.
- (1) Garages may have up to two stories but shall not exceed the elevation of the principal structure. Garages exceeding one story must meet all setbacks and other requirements of this chapter that apply to the principal structure.
- (2) Any use of a garage or accessory structure as a residence shall be considered an accessory apartment and as such subject to the special exception process and standards provided under § 112-62F(22) of this chapter, as well as any other applicable rules, requirements and regulations for accessory apartments.
- (3) It is the homeowner's responsibility to have any accessory structure approved by his or her homeowners' association where applicable. A permit from the Town does not negate a homeowners' association covenants and/or restrictions.
- (4) Wireless facilities, support structures and related equipment shall be governed by Section 112-19.1.
- E. Permitted accessory uses and structures:
- (1) Detached garage (attached garages are considered part of the principal use and structure.)
- (2) Swimming pool.

- (3) Garden or tool shed.
- (4) Freestanding gazebo.
- (5) Satellite dish.
- (6) Hot tub or sauna.
- (7) Wireless facilities, support structures and related equipment subject to Section 112-19.1.

F. Homeowners’ association. It is the homeowner's responsibility to have the accessory structure approved by his or her homeowners' association where applicable. A permit from the Town does not negate a homeowners' association's covenants and/or restrictions.

Section 3. That Part II, Chapter 112, Article V, Sections 112-37, 112-37.1, 112-37.2, 112-38, 112-39, and 112-39.1 be and are hereby repealed and reenacted with the following amendments:

**§ 112-37. LC Limited Commercial District.**

\* \* \*

C. Uses permitted in the LC District. No building or structure may be erected, used or occupied except in substantial conformity with the below examples:

\* \* \*

(18) As an accessory use only, wireless facilities, support structures and related equipment subject to Section 112-19.1 above.

\* \* \*

**§ 112-37.1. Downtown Zone (DTZ).**

\* \* \*

B. Principally permitted uses. No building or structure may be erected, used or occupied except in accordance with the following principally permitted uses:

\* \* \*

(7) As an accessory use only, wireless facilities, support structures and related equipment subject to Section 112-19.1 above.

\* \* \*

**§ 112-37.2. Mixed Use District (MXD).**

\* \* \*

C. Permitted uses. No building, structure, or land to which this zone applies shall be used and no building or structure shall hereafter be erected, structurally altered, enlarged or maintained on land to which this zone applies, except for one or more of the uses listed in Subsection C(1) below combined with one or more of the uses listed in Subsection C(2) below, up to a maximum of 25,000 square feet of floor space per single user, subject to site plan review and approval.

\* \* \*

(3) Accessory uses. The accessory uses allowed in mixed-use developments shall be those uses and structures customarily accessory and incidental to any permitted principal use or authorized conditional use. Accessory uses shall be screened from public view by walls, fencing, landscaping, or a combination of the three. Wireless facilities, support structures and related equipment as accessory uses shall be subject to Section 112-19.1 above.

\* \* \*

**§ 112-38. NP Neighborhood Professional District.**

\* \* \*

C. Uses permitted in the NP District. No existing buildings or structures may be used or occupied except in substantial conformity with the below examples:

\* \* \*

(7) As an accessory use only, wireless facilities, support structures and related equipment subject to Section 112-19.1 above.

\* \* \*

**§ 112-39. CC Community Commercial District.**

\* \* \*

- B. Uses permitted in the CC District. No building or structure may be erected or used and no land may be used or occupied except for one or more of the following principal uses:

\* \* \*

- (26) Accessory uses and buildings, including coin-operated game machines not to exceed a maximum of three, except when located within a commercial recreation use, i.e., bowling alley, then the number of machines may exceed three, provided that no more than 50% of the area and usage of the establishment is devoted to such machines. Wireless facilities, support structures and related equipment as accessory uses shall be subject to Section 112-19.1 above.

\* \* \*

**§ 112-39.1. Mixed-use development in CC District (MXU-CC) Special Exception.**

\* \* \*

- C. Permitted uses. An MXU-CC special exception shall combine one or more of the uses listed in Subsection C(1) below with one or more of the uses listed in Subsection C(2) below, up to a maximum of 25,000 square feet of floor space per single user, or up to a maximum of 65,000 square feet as permitted by, and under the conditions set forth in, Subsection C(4) below, subject to site plan review and approval.

\* \* \*

- (3) Accessory uses. The accessory uses allowed in mixed-use developments shall be those uses and structures customarily accessory and incidental to any permitted principal use or authorized conditional use. Accessory uses shall be screened from public view by walls, fencing, landscaping, or a combination of the three. Wireless facilities, support structures and related equipment as accessory uses shall be subject to Section 112-19.1 above.

\* \* \*

Section 4. That Part II, Chapter 112, Article VI, Sections 112-45 and 112-50.1 be and are hereby repealed and reenacted with the following amendments:

**§ 112-45. I Industrial District.**

\* \* \*

- B. Uses permitted in the I District. No building or structure may be erected and no land may be used or occupied except for one or more of the following principal uses:

\* \* \*

(16) As an accessory use only, wireless facilities, support structures and related equipment subject to Section 112-19.1 above.

\* \* \*

**§ 112-50.1. Office Park Employment District (OPE).**

\* \* \*

- B. Principal permitted uses shall be as follows:

\* \* \*

(16) As an accessory use only, wireless facilities, support structures and related equipment subject to Section 112-19.1 above.

\* \* \*

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the 31<sup>st</sup> day of January, 2022.

Introduced this 12<sup>th</sup> day of July, 2021.

Re-introduced this 13<sup>th</sup> day of September, 2021.

Re-introduced this 6<sup>th</sup> day of December, 2021.

Enacted this 10<sup>th</sup> day of January, 2022 by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

ATTEST:

\_\_\_\_\_  
Pamela Reed, Secretary

\_\_\_\_\_  
Jason Poirier, President of the Town Council

Approved this 10<sup>th</sup> day of January, 2022.

ATTEST:

\_\_\_\_\_  
Pamela Reed, Secretary

\_\_\_\_\_  
Larry G. Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This 10<sup>th</sup> day of January, 2022.

\_\_\_\_\_  
Thomas V. McCarron, Town Attorney