

Town of Milton

115 Federal St

Milton, DE 19968



www.milton.delaware.gov

Phone: 302-684-4110

Fax: 302-684-8999

To: Mayor & Town Council

From: Robin Davis
Project Coordinator

Date: 04/28/14

Ref: Ordinance Amendment – Antennas, Towers and Satellite Dishes

As requested by Town Council, this item was referred back to the Planning & Zoning Commission for reconsideration. Ordinances from other jurisdictions (City of Milford, Town of Georgetown, Town of Elsmere, Town of Dagsboro and Kent County Delaware) were prepared as part of the review packet. The Commission discussed the item on April 15, 2014 and voted not to make any changes to the previously submitted advisory report and proposed ordinance amendments.

Please feel free to contact me if there are any questions. Thank you.

ORDINANCE NO. 2013- _____

AN ORDINANCE TO AMEND THE MILTON TOWN CODE, CHAPTER 220, ENTITLED "ZONING," REGARDING ANTENNAS, TOWERS AND DISHES.

WHEREAS, Section 29(a)(7) of the Town Charter of the Town of Milton vests power in the Town Council to define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health, welfare; or the health and capacity of ecosystems that support the natural areas of the town; and

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, Council referred the matter to the Planning and Zoning Commission; and

WHEREAS, the Planning and Zoning Commission held a duly noticed hearing on February 26, 2014 and voted 5 to 0 in favor of the ordinance in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on January 16, 2014, as scheduled by prior resolution, with proper notice by publication as required by Town Code Section 220-101;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton:

Section 1. Amend § 220-21G of the Milton Town Code with additions shown by underlining as follows:

- (7) Antennas, Towers, Microwave Dishes and Satellite Dishes. Any antenna, tower, microwave dish or satellite dish for residences within this district, or is included on or is eligible for inclusion on the National Register of Historic Places, shall only be located in rear yards or, if not visible from the street level along the entirety of the front lot line, in side yards. All reasonable efforts shall be made to limit or eliminate

the visual impact on the adjoining properties, such as screening by landscaping. Notwithstanding Article IX of this Chapter, all properties subject to this paragraph shall come into compliance within eighteen (18) months of [the date of this Ordinance's passage].

- (8) Designation of historic sites. Owners of properties outside of the boundaries of the Historic District may request that his/her/their property be designated as a Town of Milton historic site. Such a designation is separate from any similar designation granted by the National Register of Historic Places or any other similar entity. In order to receive such a designation, the owner of any property who wishes for his/her/their property to be designated an historic site shall appear before the Mayor and Council, as an agenda item, and present such information as may be necessary to grant approval. Owners of properties that are granted a designation as a Town of Milton historic site are encouraged to pursue placement of that site on the National Register of Historic Places. Designation of a property as an historic site is an irrevocable action, and such designation shall remain with the property in perpetuity. Any structure(s) designated by the Town of Milton as an historic site are within the purview of this article.

Section 2. Amend § 220-21K of the Milton Town Code with additions shown by underlining and deletions shown by strikethrough as follows:

K. Penalty.

- (1) Where a property owner has not obtained a building permit prior to commencing construction on a property:
- (a) The property owner shall immediately make such application and pay any fees required with that application. In making the application, the property owner shall provide the required information as specified in § 220-21G.
 - (b) ~~The property owner of record shall pay a fine designated on the Town of Milton Fee Schedule.~~
 - (e) The property owner shall appear before the Historic Preservation Commission at its next scheduled meeting for the application to be addressed.
- (2) Where a property owner has obtained a building permit and the construction being done does not comply with what was previously approved by the Historic Preservation Commission:
- (a) The property owner may choose to alter the construction so as to be in compliance with what was previously approved by the Historic Preservation Commission and with the issuance of the building permit;
 - (b) If the property owner does not alter the construction so as to be in compliance with what was previously approved by the Historic Preservation Commission, the property owner shall immediately make application for a building permit listing such changes in construction;
 - (c) The property owner shall appear before the Historic Preservation Commission at its next scheduled meeting to seek approval for these changes to the previously approved construction; and
 - (d) ~~The property owner shall pay a fine as designated on the Town of Milton Fee Schedule.~~

- (3) Where a property owner demolishes a structure without first obtaining a permit for such a demolition:
- (a) The property owner shall appear before the Historic Preservation Commission at its next scheduled meeting for that matter to be addressed;
 - (b) ~~The property owner shall pay a minimum fine of \$100,000, or more, based upon the Fee Schedule established by the Town Council;~~
 - (c) No building permit shall be issued for this property for a period from one year from the date of the demolition; and
 - (d) (c) The property owner shall cause the site to be cleaned up and secured to the satisfaction of the Town.

Section 3. Amend § 220-52 of the Milton Town Code with additions shown by underlining as follows:

§ 220-52. Antennas, towers, and satellite dishes.

- A. No antenna, tower, microwave dish or satellite dish used for any other purpose than that of personal use of the structure will be permitted in any district. Any such antenna, tower, microwave dish or satellite dish shall only be located in rear yards or, if not visible from the street level along the entirety of the front lot line, in side yards. However, this restriction shall not apply to any property for which the owner, tenant or user provides evidence to the Town Code Enforcement Officer that the restriction unreasonably delays or prevents the use, unreasonably increases the cost of installation, maintenance or use, or precludes receiving or transmitting an acceptable quality signal. Each property owner, tenant, and user shall make all reasonable efforts to limit or eliminate the visual impact on the adjoining properties, such as screening by landscaping.
- B. Any apparatus used for the receipt or transmittal of UHF, VHF, HF or any other radio, video or microwave signal for commercial purposes will be reviewed on a case-by-case basis and approved by the Planning and Zoning Commission on an as-needed basis where it would be a benefit to the community of the Town of Milton residents.
- C. If there is any question as to the use, type, frequency or any other signal, a site plan review will be required by the Planning and Zoning Commission.
- D. Any historic site or any property in the HP-OD shall comply with § 220-21G(7).

Section 4. This Ordinance shall become effective on the date of its passage by Town Council.

I, **MARION JONES**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the ____ day of _____, 2014, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This Ordinance amends the Town Code's zoning chapter. The purpose of the Ordinance's Section 1 is to mandate the location and placement of antennas and satellite dishes for residences in the Historic (HP-OD) District in the interest of protecting residential neighborhood and air space appearances in the district and to prevent the negative aesthetic impact on such structures. The ordinance employs Chapter 220's existing definitions under Section 220-6, and existing administration provisions in Article XIII for enforcement. This Ordinance expressly overrides the preexisting nonconforming structure provisions in Article IX of the Zoning Chapter in the Town Code, such that all properties in the HP-OD need to comply within 18 months.

Section 2 removes references to the Town Fee Schedule for fines for violations of the HP-OD District zoning requirements. Thus, enforcement would fall within the protocol of Article XIII.

Section 3 adds a similar restriction for antennas, towers, and satellite dishes in other districts within Town, the difference being the ability of the owner, occupant or property user to show that the property falls within an exception for front yard placement, as required by the FCC. Section 3 also adds a cross-reference to the HP-OD requirements in the Zoning Code Section generally governing antennas, towers, and satellite dishes.

THE TOWN OF MILTON PLANNING AND ZONING COMMISSION

IN RE:

**AN ORDINANCE TO AMEND THE
MILTON TOWN CODE, CHAPTER 220,
ENTITLED "ZONING," REGARDING
ANTENNAS, TOWERS AND DISHES.**

)
)
)
)
)
)
)
)

ADVISORY REPORT

To: Mayor and Town Council
115 Federal St.
Milton, Delaware 19968
cc: Code Enforcement Officer

Pursuant to Milton Town Code Section 220-99, the Planning and Zoning Commission shall report in writing its recommendations on any proposed amendments of the regulations or districts under the Town Zoning Ordinance (codified as Town Code Chapter 220) to the Town Council and the Code Enforcement Officer.

I. ISSUES CONSIDERED

- 1) "Grandfathering" preexisting nonconforming
- 2) Complying with FCC requirements
- 3) Dividing treatment in the Historic Preservation District from the rest of the Town
- 4) Removing references to fines from the fee schedule

II. RECOMMENDATION

For the reasons stated herein and on the record at a duly noticed meeting on February 26, 2014 the Commission voted 5-0 to recommend **APPROVAL** of the above-captioned proposed ordinance.

III. REASON(S) FOR RECOMMENDATION

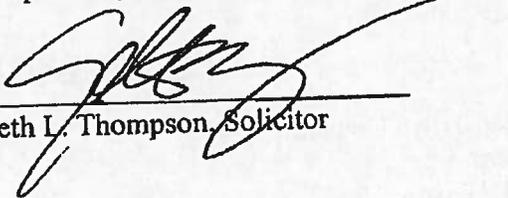
The Commission believes the ordinance is legally defensible in using the FCC's distinction for historic preservation, as well as in allowing 18 months for compliance in the Historic Preservation District.

The ordinance is generally consistent with other neighboring municipalities.

The ordinance preserves the aesthetics in the Town, especially the Historic Preservation District, and has a stabilizing effect on character of Town.

The ordinance helps to preserve the economic value of the Historic Preservation District to the Town.

Respectfully Submitted,



Seth L. Thompson, Solicitor