

**MONTGOMERY COUNTY
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, MD, MPH, CHAIR
KENNETH E. LAWRENCE, JR., VICE CHAIR
JOSEPH C. GALE, COMMISSIONER



**MONTGOMERY COUNTY
PLANNING COMMISSION**

MONTGOMERY COUNTY COURTHOUSE • PO Box 311
NORRISTOWN, PA 19404-0311
610-278-3722
FAX: 610-278-3941 • TDD: 610-631-1211
WWW.MONTCOPA.ORG

SCOTT FRANCE, AICF
EXECUTIVE DIRECTOR

August 23, 2021

Glenn Kucher, Zoning Officer & Planning Coordinator
Ambler Borough
131 Rosemary Avenue
Ambler, Pennsylvania 19002

Re: MCPC # 19-0254-002
Plan Name: Telecommunications Ordinance
Borough of Ambler

Dear Mr. Kucher:

We have reviewed the above-referenced zoning text amendment in accordance with Section 609 of Act 247, "The Pennsylvania Municipalities Planning Code," as you requested on October 16, 2019. We forward this letter as a report of our review.

BACKGROUND

The Borough of Ambler has submitted a zoning text amendment to Ordinance 1083 which provides standards for Wireless Communications Facilities. The amendment includes aesthetic design guidelines for Small Wireless Communications Facilities, which are included in the form of a referenced appendix. The purpose is to establish uniform design standards for Wireless Communications Facilities specifically defined as Small Wireless Facilities (SWF) under (2018) Declaratory Ruling and Order by the Federal Communications Commission (FCC). The amendment requires small wireless communication facilities to be aesthetically consistent with the design, schematics, and hardware components referenced in an appendix.

RECOMMENDATION

The Montgomery County Planning Commission (MCPC) generally supports the applicant's proposal, however, in the course of our review we have identified the following issues that Ambler may wish to consider prior to adoption of the amendment. Our comments are as follows:



REVIEW COMMENTS

DEFINITIONS

- A. Definition of Small Wireless Facility. A specific definition for Small Wireless Facility (SWF) is not included in the proposed amendment. In terms of the recently issued Declaratory Ruling and Third Report and Order ("Order") from the Federal Trade Commission (FCC), we recommend a definition for Small Wireless Facility be included in **§27-2702** Definitions section of the existing ORDINANCE NO. 1083. This would serve to address the requirements that are uniquely applicable to such facilities under the Order. The new FCC Order defines SWF specifically in terms of the height (less than 50 feet or 10% taller than adjacent structures) and the cubic volume (less than 3 ft³) of an antenna and associated equipment. Under this new unique definition for SWF, the Order sets fee ceilings for permitting, application approval timeframes or "shot clocks", and designates a legal framework under which municipalities may codify aesthetic requirements. A definition would provide clarity in the code regarding these new guidelines as they apply to a specific subset of permit applications.
- B. Procedures and Fees. In addition to bringing specificity to the guidelines the borough wishes to apply to aesthetic criteria, a definition would clearly delineate the fees and time frames required for the approval of applications as specific to exclusively SWF. Additionally, if any new federal or state legislation is adopted, any revisions, amendments, or portions to be severed in the future would then specifically refer to SWF in borough code as well.

DEADLINES AND FEES

- A. Deadlines. In terms of **§27-2703(D)(1)b)ii**, Ordinance 1083 allows the borough (30) days to notify an applicant when an application is incomplete. The FCC Order requires a time limit of (10) days for notification of an incomplete application specific to SWF. Although the existing Ordinance 1083 is sufficient for deadlines regarding all wireless facilities' approval under the Pennsylvania Wireless Broadband Collocation Act (WBCA), it does not address the new FCC Order of a (10) day limit specific to SWF for incomplete application notification or batch applications. Time frames could present a procedural problem or workload issue if applications are filed in batches. The Order requires that the deadline applying to a batch of SWF applications is the same one that would apply had the applicant submitted an individual application. We recommend the borough review its existing internal procedures to ensure that the review process and approvals for SWF can be accommodated reasonably by staff within the timeframes. Under the FCC Ruling, any failure to comply with deadlines is considered a presumptive violation and allows the applicant to seek expedited relief.
- B. Fee Scheduling. The municipality should remain attentive when receiving applications involving SWFs as to the specific fee limitations the FCC Order places on initial applications and recurring fees. The Order includes a threshold for what is defined as "presumptively reasonable" in terms of fees. In order

to exceed the fee ceilings, the municipality must satisfy a 3-part test and provide well documented cost studies or similar defensible methodology.

DESIGN REGULATIONS AND AESTHETIC CRITERIA

The applicant's amendment adequately addresses the component of the Order's requirement of establishing specific and objective aesthetic criteria and that such criteria are published in advance. The applicant's appendix items function as a guidebook for design aesthetics that meets the Order's requirements for antenna and support structures that is objective, reasonable, and allows applicants to predict a SWF permit's aesthetic requirements in advance. The appendix items also meet the requirement that any design guidelines do not prohibit technology or discriminate among service providers as outlined in Pennsylvania state law.

CONCLUSION

We wish to reiterate that MCPC generally supports the applicant's proposal, but we believe that our suggested revisions and policy reviews will better achieve Ambler's planning objectives for wireless facilities. We also note our general deference to the borough solicitor in terms of both this proposed text amendment as well as any Pennsylvania legislation regarding the deployment and regulatory measures applicable to Small Wireless Facilities. Furthermore, we recommend that the ordinance is updated as necessary in the future to remain consistent with any new legislation.

Please note that the review comments and recommendations contained in this report are advisory to the municipality and final disposition for the approval of any proposal will be made by the municipality.

Should the governing body adopt this proposed zoning ordinance amendment, Section 609 of the Municipalities Planning Code requires that we be sent an official copy within 30 days.

Sincerely,



Michael Lowrey, Community Planner II
m_lowrey@montcopa.org – 610 -278-3887

c: Robert LaGreca, Chair, Ambler Planning Commission
Joseph E. Bresnan Esq., Ambler Borough Solicitor