

**CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2385-19

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS
OF CHELTENHAM TOWNSHIP, MONTGOMERY
COUNTY, PENNSYLVANIA AMENDING THE ZONING
CODE TO MODIFY THE REQUIREMENTS FOR THE
INSTALLATION OF NEW WIRELESS
COMMUNICATIONS FACILITIES AND WIRELESS
SUPPORTS WITHIN THE HISTORIC DISTRICTS OF THE
TOWNSHIP AND TO CLARIFY AND CONFORM TO
FEDERAL LAW AS TO WHOM A
TELECOMMUNICATIONS COVERAGE AND CAPACITY
GAP MUST EXIST AS PART OF THE BURDEN OF PROOF
FOR A SPECIAL EXCEPTION AND FOR A CERTIFICATE
OF APPROPRIATENESS**

WHEREAS, the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania enacted and ordained a comprehensive zoning code and zoning map amendment in November 2017, the zoning code enactment by Ordinance No. 2358-17; and

WHEREAS, the Board of Commissioners seeks to amend Article XVIII entitled “Historical Architectural Review Overlay District” to clarify that the ordinance restrictions set forth in the Article apply to new wireless telecommunications facilities and wireless supports; and

WHEREAS, the Board of Commissioners of the Township of Cheltenham seeks to further amend Article XVIII to clarify Sections 295-1818 that only the applicant for a special exception and/or a certificate of appropriateness need to offer proof of telecommunications coverage and capacity gap.

NOW THEREFORE, the Board of Commissioners of Cheltenham Township, hereby ordains and enacts as follows:

SECTION I: Amendment to the Code.

Chapter 295 of the Cheltenham Township Code entitled “Cheltenham Township Zoning Code Ordinance of 2017,” amended, is hereby further amended as follows (text to be omitted indicated by strike-out type, new text indicated by underlining):

Article XVII: Historical Architectural Review Overlay District

..

Section 295-1801 Definitions.

A. For the purposes of this Article, the following items shall have the meanings indicated:

...

STRUCTURE – For the purposes of this Article, “Structure” shall mean: a construction for the purposes of occupancy, use or ornamentation, having a fixed location, above or below the surface of land. Structures include, but are not limited to, buildings, flagpoles, fences, gazebos, pergolas, canopies, free-standing signs, permanent signs, walls, paved parking areas, driveways, ~~and~~ Wireless Communications Facilities and Wireless Supports.

...

Section 291-1818 Wireless Communications Facilities in Historic Districts

Notwithstanding any provision or term set forth in this Article to the contrary, and to the fullest extent permitted by the Wireless Broadband Collocation Act of 2012, 53 P.S. §11702.1, as amended, and any other legislative enactment subsequent to this Ordinance, new Wireless Communications Facilities and Wireless Supports are prohibited within the Historic Districts of Cheltenham Township, as established under this Chapter, except: (1) by special exception granted by the Zoning Hearing Board and (2) by requirements for a Certificate of Appropriateness established under this Chapter. The criteria for granting a special exception are those set forth in Code Section 295-3209 which are incorporated herein by reference as though set forth at length herein and the additional standards and criteria set forth in Code Sections 295-3210 through 295-3215 for Tower-Based Wireless Supports, for Tower-Based Wireless Supports Located Outside of the Right-of-Way, for Tower-Based Wireless Supports in the Right-of-Way, for Non-Tower Wireless Supports, for Non-Tower Wireless Supports Located Outside of Rights-of-Way and for Non-Tower Based Wireless Supports in the Right-of-Way, as applicable, in Article XXXII: Wireless Supports and Communications Facility of this Chapter as well as the following additional standards and criteria:

A. The Zoning Hearing Board shall only grant a special exception upon proof by the applicant, by a preponderance of the evidence, that a substantial gap in ~~telecommunications~~ telecommunications coverage and capacity for ~~all~~ the ~~telecommunications providers~~ applicant would exist but for the granting of the special exception as well as proof, by a preponderance of the evidence, that lesser, visually intrusive facilities, for example, by col-location, stealth technology or other alternatives, are not feasible.

SECTION II: Severability.

The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent

jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III: Failure to Enforce Not a Waiver.

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV: Repealer.

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

SECTION V: Effective Date.

This Ordinance shall take effect and be in force from and after its approval as required by the law.

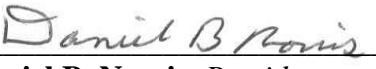
ORDAINED and **ENACTED** by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, in lawful session duly assembled this **19th** day of **June, 2019**.

ATTEST:



Bryan T. Havir
Township Manager and Secretary

**TOWNSHIP OF CHELTENHAM
BOARD OF COMMISSIONERS**

By: 
Daniel B. Norris, President