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Title: Village of Port Jefferson Wireless Communications Towers and Antennas Ordinance
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Abstract

This law places regulations and restrictions on the construction of wireless communications towers and antennas within the Village of Port Jefferson.

Resource

Village of Port Jefferson NY Communications Towers

Code of the Village of Port Jefferson, NY

Chapter 249: Wireless Communications Towers and Antennas

[HISTORY: Adopted by the Board of Trustees of the Village of Port Jefferson 10-16-2000 by L.L. No. 19-2000. Amendments noted where applicable.]

§ 249-1. Purpose.

- A. In recognition of advancing technology and the increasing demand for wireless communications tower(s) and/or facilities within the village, the Mayor and Board of Trustees hereby determine that it is in the public interest to specifically regulate the siting and installation of such facilities within the village in order to protect public health, safety and welfare.
- B. The purpose of this chapter is to establish standards for the siting of wireless communications towers and antennas in order to:
 - (1) Protect residential areas and land uses from potential adverse impacts of wireless communications facilities.

- (2) Encourage the location of towers in nonresidential areas.
 - (3) Minimize the total number of towers throughout the village.
 - (4) Encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers.
 - (5) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the surrounding community is minimal.
 - (6) Encourage users of towers and antennas to consider aesthetics through careful design, siting, landscape screening and innovative camouflaging techniques.
 - (7) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly and efficiently.
 - (8) Consider the impacts upon public health and safety of communications towers.
 - (9) Avoid potential damage to adjacent and/or nearby properties in the event of tower failure through appropriate engineering and careful siting of tower structures and/or facilities.
- C. In furtherance of the aforementioned objectives, all village boards shall give due consideration to the village's Comprehensive Plan, existing land uses and development, environmentally sensitive areas and other appropriate factors in approving sites for the location of towers and antennas and/or facilities. These standards are not intended to prohibit or have the effect of prohibiting personal wireless services nor shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

§ 249-2. Definitions.

As used in this chapter, the following terms shall have the meanings set forth below:

ACCESSORY FACILITY — A building or structure that serves the principal use, which is subordinate in area, extent and purpose to the principal use and is located on the same lot as the principal use. Examples of such facilities include transmission equipment and storage sheds.

ALTERNATIVE TOWER STRUCTURE — Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA — Any exterior transmitting or receiving device mounted on a tower, building, public utility pole or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals or as otherwise stated, receives or transmits electromagnetic signals in the "radio frequency" range.

FAA — The Federal Aviation Administration.

FCC — The Federal Communications Commission.

HEIGHT — When referring to a tower or other structure, the distance measured from the existing mean grade of the parcel to the highest point on the tower or structure.

PREEXISTING TOWERS AND PREEXISTING ANTENNAS — Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this chapter.

TELECOMMUNICATIONS TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone radio and similar communication purposes, including self-supporting lattice towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and similar structures. The term includes the structure and any support thereto.

§ 249-3. Applicability.

- A. No telecommunications tower shall hereafter be used, erected, moved, reconstructed, changed, altered or modified to serve as a telecommunications tower without the issuance of a permit by the Village Board of Trustees in conformity with the requirements of this chapter and §§ 250-55 through 250-58 (Grant of special use permits) and site development plan approval by the Planning Board pursuant to § 250-52 of the Code of the Incorporated Village of Port Jefferson.
- B. Towers shall only be specially permitted within the following zoning classification districts: I-2; WP; PO; or properties owned by the Incorporated Village of Port Jefferson.

- C. New towers and antennas. All new towers and antennas in the village shall be subject to these regulations, except as otherwise provided hereinbelow.
- D. Exceptions. The requirements set forth in this chapter shall not be applicable to amateur radio station antennas or towers under 50 feet in height, measured from the existing mean grade of the parcel, which are owned and operated by a federally licensed amateur radio station operator.

§ 249-4. General provisions.

- A. Principal and accessory use. Antennas and towers may be considered either a principal or an accessory use. A different existing use and/or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- B. Lot size. For purposes of determining whether the installation of a tower or antenna complies with zoning district regulations, the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots.
- C. Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the Board of Trustees or the Planning Board an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the village or within one mile of the border thereof, including specific information about the location, height and design of each tower/antenna. The Board may share such information with other applicants applying for administrative approvals or special use permits under this section or other organizations seeking to locate antennas within the jurisdiction of the village. The Board, by sharing such information, shall not be deemed to be in any way representing or warranting that such sites are available or suitable.
- D. Aesthetic requirements. All towers and antennas shall comply with the following requirements:
 - (1) Towers shall be a neutral color so as to reduce visual obtrusiveness unless otherwise required by the Federal Aviation Administration (FAA) or other applicable authority.
 - (2) At a tower site, the design of the buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.
 - (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is

identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as practicable.

(4) Towers and antennas shall not be artificially lighted, unless required by the FAA or other applicable authority. If required, the lighting shall be designed to minimize, to the maximum extent practicable, the resultant disturbance to surrounding views and properties.

(5) Nothing herein shall prohibit the Board of Trustees or the Planning Board from referring the application for the wireless communication facility to the Architectural Review Committee.

E. Signs. No signs shall be permitted on an antenna or tower.

F. State or federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

G. Building codes; safety standards.

(1) To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Building Inspector concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall bring such tower into compliance with such standards within 30 days, or such other period of time as may be specified by the Building Inspector. Failure to bring such tower into compliance within said period of time shall constitute a violation of this Code and shall also constitute grounds for the removal of the tower or antenna at the owner's expense.

(2) Nothing herein shall prohibit the Board of Trustees or the Planning Board from referring the application for the wireless communications facility to the Public Safety Advisory Board.

H. Other antennas, parabolic dishes, etc. Except as otherwise provided herein, in a residential or commercial (C-1 and C-2) or MW Zone, parabolic, hemispheric or other antennas or other outdoor equipment (other than towers) for receiving audio, visual or data signals from the air or space are permitted only as an accessory use, and only upon compliance with the following conditions:

(1) No more than one such antenna shall be located at a single dwelling unit.

(2) Such antenna shall be located on the principal building on the lot or premises or, if located elsewhere on the lot or premises, shall comply with the applicable setback requirements and may not be located in a front yard.

(3) The height of such antenna shall not exceed six feet above or beyond the roof of the principal building unless otherwise permitted by the Planning Board.

(4) In the case of a parabolic or hemispheric antenna, the diameter shall not exceed three feet.

(5) The owner of the property where the antenna is to be located has first obtained a permit for such antenna, upon payment of the required permit fee; provided, however, that no permit or permit fee shall be required for such an antenna which has a diameter not exceeding 20 inches.

§ 249-5. Conditional uses.

A. The following uses are deemed to be conditional uses pursuant to § 250-51 of the Village Code, and shall be subject to site plan approval pursuant to § 250-52, but shall not be subject to a special use permit:

(1) Antennas to be located on existing towers or buildings on property owned by the Village of Port Jefferson, provided that said property is subject to a license or lease authorizing such antenna, which shall be approved by the Village Board of Trustees, and provided that such towers or antennas comply with the written regulations promulgated by the village.

- (2) Lawful or approved towers and antennas, which existed prior to the effective date of this chapter, except that any and all additions or expansions to existing towers and/or antennas shall be subject to the requirements of this section/chapter.
- (3) The location of additional new antennas on existent towers and buildings, so long as same are in compliance with the following:
 - (a) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the Planning Board in its discretion shall permit reconstruction as an alternate type.
 - (b) An existing tower may be modified or rebuilt without adding height over the tower's existing height in order to accommodate the collocation of a single additional antenna.
 - (c) Additional new antennas shall be in compliance with § 249-4D of this chapter.

B. Application.

- (1) Information required for applications for approval by the Planning Board.
 - (a) All information under §§ 250-51 and 250-52 of the Village Code.
 - (b) Application form as provided by the Building Department.
- (2) The Planning Board shall make a final determination to approve with modifications, and/or conditions, and/or covenants, or to deny the application submitted pursuant to this section.
- (3) The Planning Board may, in making said determination:
 - (a) Encourage the use of monopoles, permit the reconstruction of any existing lattice tower to monopole construction.
 - (b) Request an inventory of existing sites as per § 249-4C of this chapter.

§ 249-6. Uses subject to special use permits.

A. Unless otherwise permitted by this chapter, the construction of new telecommunications towers may be permitted upon the issuance of a special use permit by the Village Board of Trustees, subject to the following:

- (1) Applications for special use permits under this section shall be subject to procedural and other provisions as set forth in §§ 250-55 through 250-58 of the Code of the Village of Port Jefferson, except as otherwise modified in this chapter.
- (2) A certification, by an engineer licensed by the State of New York, that the towers comply with current standard regulations of the FAA, the FCC and any other state or federal agency having authority to regulate towers.
- (3) Any other information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a New-York-State-licensed professional engineer.

B. Special use permit requirements for towers:

- (1) Applications for a special use permit for a tower shall include the following:
 - (a) A scaled site plan, which meets all the requirements of § 250-52 of this Code.
 - (b) Setback distance(s) between the proposed tower and the nearest existing residential dwelling(s) and residentially zoned properties.
 - (c) Separation distance(s) from other towers described in the inventory of existing sites submitted with the application shall be drawn on an updated site plan or map, including identification of the type of construction of the existing tower(s) and the owner/operator of such existing tower(s), if known.
 - (d) A written description, sealed by a licensed professional, of the application's compliance with all applicable requirements of this chapter and with all applicable federal, state and local laws.
 - (e) A statement by the applicant, sealed by a licensed engineer, as to whether construction of the tower will accommodate collocation of additional antennas for future users.

- (f) A description of the suitability of existing towers and/or other structures and/or alternative technology, and the services contemplated for the use of the proposed tower.
- (g) All information required for special use permits in §§ 250-55 through 250-58 of this Code.
- (h) A nonrefundable fee of \$500.

(2) Board considerations.

- (a) The Board of Trustees shall consider the following factors in determining whether to issue a special use permit, in addition to the standards for consideration of special issue permit applications set forth in §§ 250-55 through 250-58 of the Village Code.

[1] Need for the proposed tower.

[2] Height of proposed tower.

[3] Proximity of the tower to residential structures and residential district boundaries.

[4] Nature of existing and/or proposed uses on adjacent and nearby properties.

[5] Site and surrounding topography.

[6] Surrounding tree coverage and foliage.

[7] Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

[8] Proposed ingress and egress.

[9] Availability of suitable existing towers, other structures or alternative technologies not requiring the use of new towers and/or structures.

- (b) The Board may waive or reduce the burden on the applicant of one or more of these criteria if it concludes that the goals of this chapter are better served thereby.
- (3) No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Village Board that no existing tower, structure or alternative technology not requiring the construction/alteration of new towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit any information requested by the Village Board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any or all of the following:
- (a) That no suitable (as to height and structural strength) towers or structures are located within the geographic area which meet applicant's engineering requirements; or that the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing tower or structure; or that the antenna on the existing tower or structure would cause interference with the applicant's proposed antenna; and/or that there are other limiting factors that render existing towers and structures unsuitable.
 - (b) That the fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development shall be presumed to be unreasonable.
 - (c) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- (4) Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required:
- (a) Towers shall be set back a distance equal to at least 110% of the height of the tower from any adjoining lot line.

- (b) Accessory buildings shall satisfy the minimum zoning district setback requirements in the zoning district where the tower is proposed.
- (5) Security fencing. Towers shall be enclosed by security fencing not less than eight feet in height and shall be equipped with appropriate barbed wire; provided, however, that the village Board may waive such requirements, as it deems appropriate.
- (6) Landscaping, screening, shelter alternate tower structure. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Board of Trustees may waive such requirements if the goals of this chapter would be better served thereby.
 - (a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from residential property. Nondeciduous tree planting may be required. The standard buffer shall consist of at least one row of native mixed evergreen shrubs or trees capable of forming a contiguous hedge at least eight feet in height to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
 - (b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the Board of Trustees.
 - (c) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

§ 249-7. Presubmission conference.

An applicant shall attend a presubmission conference with the Planning Board pursuant to the requirements of § 250-52C(1) of the Code. Such attendance shall be prior to any application for antenna or towers, including those that require a special use permit from the Village Board of Trustees.

§ 249-8. Removal of abandoned antennas and towers.

Any antenna or tower that is not operated for a continuous period of 12 months or more shall be deemed abandoned. The owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the village notifying the owner of such abandonment.

Failure to remove an abandoned antenna or tower within said 90 days shall be grounds to remove the tower or antenna at the owner's expense. In the event that two or more entities are using a single tower, then this provision shall not apply unless all uses cease with respect to such tower.

§ 249-9. Nonconforming uses.

Preexisting towers and antennas shall be permitted as they presently exist so long as said tower/antenna complies with § 249-4F and G of this Code. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers and antennas. New construction other than routine maintenance of a preexisting tower and/or antenna shall comply with the requirements of this chapter.

§ 249-10. Severability.

The various parts, sections and clauses of this chapter are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby.

§ 249-11. Repealer.

Any ordinances or parts thereof in conflict with the provisions of this chapter are hereby repealed to the extent of such conflict.