

**Borough of Freehold  
Planning Board  
Agenda No. 21-05  
March 10, 2021**

The Freehold Borough Planning Board will hold a Video Conferencing Online Meeting on Wednesday, March 10, 2021 at 7:00 PM in accordance with the New Jersey State Emergency Declaration.

1. Call to order and statement of compliance. Adequate notice of this meeting has been provided by posting a copy of public meeting dates on the municipal bulletin board and by sending a copy to the Asbury Park Press and the News Transcript and filing a copy with the Municipal Clerk.
2. Roll call of members and consultants.

**Mr. Kevin A. Kane, Mayor  
Mr. William Barricelli, Class IV Member  
Mr. Paul Ceppi, Class IV Member  
Mr. Michael McCabe, Class IV Member  
Mr. Michael Wildermuth, IV Member  
Ms. Shealyn M.S. Crombie, IV Member  
Ms. Caridad Argote-Freyre, IV Member  
Mr. Garry Jackson, Class II Member  
Mrs. Margaret Rogers, Class III Member  
Ms. Brianne Kozlowski, Alternate Member I  
Mr. Ronald D. Cucchiaro, Esq., Board Attorney  
Mr. William Wentzien, PE, Board Engineer**

3. Approval of Minutes from the Meeting of February 24, 2021. (See Attachment I)
4. Application Number: PB-SD-2021-001  
Applicant Simon Reichman  
Location: 169 South Street-Block 110, Lots 7.02 & 7.03  
Zone: R-5  
Request: Minor Subdivision  
(See Attachment II)
5. Review Ordinance#2021/4 of the Borough of Freehold, County of Monmouth, State of New Jersey Amending and Supplementing Chapter 18 (Zoning), Section 18.80 (Wireless Telecommunications Towers and Antennas) by Adding Section 18.81 (Telecommunications Facilities in the Public Right-of-Way) (See Attachment III)  
**(Documents were sent on February 26, 2021 for review)**

Borough of Freehold  
Planning Board  
Agenda No. 21-05  
March 10, 2021  
Page 2 of 2

6. Adjourn.

\*All backup material in regards to the agenda can be viewed in the Land Use office and on our website [http://www.freeholdboroughnj.gov/PB/PB\\_agendas.html](http://www.freeholdboroughnj.gov/PB/PB_agendas.html)

*Dominica R. Napolitano*

Dominica R. Napolitano

March 5, 2021

# **ATTACHMENT I**

## FREEHOLD BOROUGH PLANNING BOARD

### MINUTES OF FEBRUARY 24, 2021

#### MONTHLY MEETING

The monthly meeting of the Freehold Borough Planning Board was held on Wednesday, February 24, 2021 at 7:00 p.m. via remote session.

Chairman Barricelli stated that this meeting was provided in accordance with the Open Public Meeting Act, by providing a copy of the agenda to the official newspaper and posting same on the official bulletin board of the Municipal Building.

Chairman Barricelli opened the meeting which was a continuation from the reorganization meeting - no Salute to the Flag.

#### ROLL CALL

PRESENT	Mr. William Barricelli
PRESENT	Mr. Paul Ceppi
ABSENT	Mr. Michael McCabe
PRESENT	Mr. Michael Wildermuth
ABSENT	Ms. Shealyn M.S. Crombie
PRESENT	Ms. Caridad Argote-Freyre
PRESENT	Mr. Garry Jackson
PRESENT	Councilwoman Margaret Rogers
PRESENT	Brianne Kozlowski

**Mr. Barricelli read Item No. 3 on the Agenda as follows:**

Approval of Minutes from Planning Board Meeting January 27, 2021.

Mr. Wildermuth made a motion to approve the minutes, Mr. Ceppi seconded.

Yes	7	Barricelli, Ceppi, Wildermuth, Argot-Freyre, Jackson, Councilwoman Rogers and Kozlowski
No	0	
Abstain	0	
Absent	2	McCabe and Crombie

**Mr. Barricelli read Item No. 4 on the Agenda as follows:**

Application Number: PB-ZI-2021-004  
Applicant: 36 West Main Street Freehold LLC  
Location: 36 West Main Street - Block 71 Lot 3.03 - Zone: B-2  
Request: Interpretation of Special Question

Dante Alfieri, Esq. on behalf of the applicant; we are here to request Boards interpretation specifically related to a Resolution from 1985.

There are 2 individuals that will testify if needed; owner and applicant and the owner is the applicant from 1985;

Requesting today, the Board to determine that the credit of 65 parking spaces applies to the site as it currently stands for any permitted uses;



Mr. Cucchiaro – to make clear, the letter provided to the Board mentioned another offsite parking area that had 40 plus parking spaces and I think you and I can agree, that was by way of overall view, this application or request has nothing to do with that site or with those parking spaces – is that correct;

Mr. Alfieri –correct;

Mr. Cucchiaro – secondly, what happen in 1985 I don't think there was a credit given; there was no waiver permitted no parking or absence of any parking spaces on the subject property; rather there would be parking used in the triangle lot, there appeared to be discussion about either financial contribution or actual work the applicant would do in the triangle; it wasn't a credit but relief from the onsite parking requirement;

Mr. Alfieri – correct;

Mr. Cucchiaro – so the Board is clear – what your seeking tonight is determination of 65 spaces, that was the relief granted, Resolution from 1985 is a bit brief in nature, it talks about 65 space waiver and about an office building although it doesn't refer to the size of building or particular uses; it may be helpful for the appropriate witness to explain what is on the site, what was the tenancy at time of approval, what is tenancy now, what is square footage of building, relevant information; in the report prepared by Mr. Wentzien, there is a change in ordinance since time of approval, waivers and variances; and now an overlay Redevelopment zone in addition to B-2 zone;

Mr. Alfieri – start with approval and go to now; Mr. Eli Kramer was the owner and applicant in 1985

Mr. Cucchiaro – swear in Mr. Eli Kramer,

Mr. Alfieri – 1985 at the time were you the property owner;

Mr. Kramer – I was Managing Partner of owner, Cambridge Square Realty, New Jersey Partnership at the time;

Mr. Alfieri – did Cambridge Square own the property at the time of the Resolution of 1985 referred to here;

Mr. Kramer – we may have closed just after the approval;

Mr. Alfieri – what was the square footage of the building at the time of approval;

Mr. Kramer – lot 66 x 122, building was 100% coverage, 8,000 foot on the floor and 24,000 foot on three floors, gross space;

Mr. Alfieri – time of application, the resolution shows what Board wanted and what you were willing to do, conclusion, a waiver for 65 parking spaces, you agreed to construct on an adjacent site is that correct;

Mr. Kramer – yes, directly adjacent to the site, the Borough wanted to develop the McCracken lot and we agreed to do all of the paving, drainage work to create that lot;

Mr. Alfieri – you did that work and after construction of the site what were proposed uses at the time;

Mr. Kramer – at the time, we had no leases but proposed office on first 2 floors and retail on ground floor but also presented to planning board we had a letter of intent for first floor Charlie Brown restaurant to do 180 seat restaurant and a discussion was our garbage would be self-contained in the building, which is still there; special compactor that could hold liquored waist from restaurants for 1 week; the board considered this as if a restaurant initially;

Mr. Alfieri – how long did you own the property;

Mr. Kramer – sold to current owner approximately 2015 or 2016;

Mr. Alfieri – from time of resolution 1985 until you sold the property, where there are multiple tenants, did uses change over time;

Mr. Kramer – upper initially, Brookdale College rented entire floor, and other upper floors occupied by lawyers, accountants, recruitment firms and other professionals and the ground floor was a law firm for about a decade then retail a dollar store, various tenants on all levels;

Mr. Cucchiaro – Mr. Kramer, when you went before the board in 1985, you discussed office, restaurant and retail on the first floor;

Mr. Kramer – correct;

Mr. Cucchiaro – the second floor offices;

Mr. Kramer – second and third floor were offices;

Mr. Alfieri – you built the site to full capacity and how it sits now is how it was intended to be built and how it was approved in 1985;

Mr. Kramer – correct, yes it is;

Mr. Alfieri – other than routine maintenance nothing was done or added to the site;

Mr. Kramer – no additions to the site;

Mr. Cucchiaro – the discussion in the resolution, the applicant's contribution to the triangle parking lot, there were no reserve spaces for this use in the triangle lot correct;

Mr. Kramer – correct;

Mr. Alfieri – nothing further from Mr. Kramer, unless the Board has questions;

Mr. Barricelli – members of the Board any questions;

Mr. Wentzien – clarification – reading the resolution, it makes reference to a proposed office building, so when I did my letter, calculating where the 65 spaces come from, under the current requirements, in place a long time, maybe not since 1985 but at 1 per 400 if 24,000 that would be a requirement of 60 spaces close to 65; but talk tonight that the first floor had retail, not mentioned in any documents, but if you back into today's requirements, first floor 8,000 sq. ft., 1 per 200 – 40 spaces, 2 upper floors at 16,000 sq. ft., 1 per 400 that is 40 spaces, that equates to building requirement of 80 parking spaces not 65;

Mr. Cucchiaro – they also spoke about restaurant usage which is not in the resolution;

Mr. Wentzien – the parking of 65 spaces seems to back in with office space on all three floors;

Mr. Kramer – the building has a lot of common space; actual usable space is about 18,000 sq. ft.; about 6,000 sq. ft. common space in building;

Mr. Wentzien – it is gross square footage of the building;

Mr. Cucchiaro – swear in Boris Volshteyn –

Mr. Volshteyn – purchased the property April 2016, 70% occupied; first floor was Dollar Store, second floor, computer firm, mortgage company both still tenants; third floor computer company, recruitment firm and



accountant firm both since the 80s; currently, first floor vacant, second and third floors - mortgage company and insurance company and home care agency, computer company and recruitment company – one vacant office space on each floor; letter of intent from regular office uses to occupy those vacant space on second and third floors;

Mr. Cucchiaro – Mr. Alfieri, the building is operating for a period of time, is there some incident, complaint of act that has brought you to us;

Mr. Alfieri – the applicant is in contact to sell the property and question brought up to the zoning officer, zoning officer felt the planning board should determine in relation to the parking, 65 spaces as a waiver;

Mr. Cucchiaro – the Zoning Officer didn't offer an opinion;

Mr. Volshteyn – originally he was not aware of the resolution, when presented with there was a question of interpretation of the resolution; he suggested to contact the Board, that is why we are here;

Mr. Barricelli – Board any questions for Mr. Volshteyn;

Councilwoman Rogers – are they here tonight to see what to do about parking, it is unclear to me;

Mr. Cucchiaro – they want to understand what their rights are, in the process of selling the property, want to understand what they can do as a right under the prior approval or if there needs to be subsequent approval for future use; they are seeking to understand tonight, is what is permitted on this site with regard to the 1985 approval; not approving site plan or parking plan, we are telling them what we believe they are entitled to do under the 1985 resolution;

Councilwoman Rogers – my question stems from we received all this information for parking and the questions is what can they do;

Mr. Cucchiaro – we tried to get out at the beginning, there is much information presented; there was effort to help the Board understand globally what is happening; but not relevant to decision;

Mr. Barricelli – what relevance does 10 Throckmorton have to this regarding parking;

Mr. Cucchiaro – none

Mr. Alfieri – not relevant;

Ms. Kozlowski – where do people for the building park now;

Mr. Cucchiaro – that is not relevant, if they came in with a site plan then we would discuss;

Mr. Cucchiaro – the only thing we are task for tonight is what they were approved for in 1985, again the resolution is sparse; I can give you an example;

You could determine, from testimony from who was there and the resolution in plain language, you could determine it allowed an office building and permitted without any parking on site and the 65 parking spaces without any onsite parking but would help build the triangle lot; that is one conclusion; and anything that is in the four corners or plain language the applicant would need to make decision to come back for some sort of approval;

You could come conclude, and they one I think is being ask for by the applicant, is there was discussion of the restaurant, office and retain on the first floor; offices on second and third floor and that is the set up the 65 parking spaces waiver that was granted; you could say that is what was approved and anything that doesn't match up on three floors you need to come back; you could take into account, I council you to take into account, report prepared by William Wentzien; the resolution does not tell you how it got to the 65 spaces; there is ambiguity in

the record, how 65 but there is no dispute there is a different ordinance in affect, there wouldn't even be a waiver it would be a variance;

Mr. Wentzien – correct, if new application this would parking variance;

Mr. Cucchiaro – you could come to different conclusions but what is asked, is approval limited to resolution, all office and no parking on site, is it something beyond resolution that Mr. Kramer testified to with mix of uses and no parking on site or something different than that, how it has evolved over the years; your determination what you believe a 1985 resolution permits;

Mr. Ceppi – how do you speculate on something done 35 years ago; letter of resolution says what is says, if it says office and allowed for no parking on site, not sure how we look beyond that;

Mr. Cucchiaro – Mr. Ceppi that is an excellent observation; as an attorney I look to plain language and look to four corners, not necessarily disputing anything Mr. Kramer said but it is not in the resolution; people may have different views of 35 years ago; your analogy is probably what I would council the board to undertake, not to the detriment of the applicant; I spoke with Salvatore Alfieri about making an application tonight to ask for the relief; my understanding is the applicant wanted to see how this went; may make second application; but the way you are looking at it Mr. Ceppi is probably what the law requires.

Mr. Barricelli – anyone else;

Mr. Alfieri – summarize, Ron did a great job; ultimately we are here seeking the Boards interpretation of a prior approval and requesting the Board interpret the resolution to provide 65 spaces for permitted uses in the zone; I do want to point out there were retail tenants in the past, ambiguity of specificity of the resolution; also Bill referenced how the Board got the calculations of 65 spaces; potentially a horse training scenario, applicant willing to do work of offsite for the Borough in exchange for 65 spaces or waiver for 65 spaces;

Mr. Cucchiaro – that may be true but my comment that deal would not be legal today under the MLUL, it would be unlawful;

Mr. Wildermuth – questions – when retail was first implemented on the first floor of this building was there any kind of hearing with any government entity here that reevaluated this parking issue; we do know there was retail on this first floor and not covered in this resolution; was it ever flagged in the past;

Mr. Alfieri – Mr. Kramer can answer if Certificate of Occupancy (CO) was ever issued for tenants;

Mr. Kramer – when we brought in the retail tenant, it was a permitted use and had to get CO for every new tenant throughout the building; did not go before any boards; with respect to 65 spaces, it was not the calculated need at the time, the Borough had designed the triangle parking lot and contained 65 spaces; the reference was to the fact that we would do the improvements for the Borough of 65 spaces;

Mr. Cucchiaro – that brings a different level of ambiguity to the resolution; I think Mr. Kramer is providing valuable information but that certainly not the way the resolution reads; if that is what was meant, this resolution is not accurate in any sense;

Mr. Alfieri – we are going to continue with what is provided testimony thus far to requested interpretation that 65 space waiver applies to permitted uses in the zone;

Mr. Volshteyn – thank you for listening, it is not easy to interpret, I have read multiple times; I appreciate Ron reviewing; Mr. Kramer built a building on this lot, exactly the size of the single floor; no room for onsite parking; he did not own any other properties around to compensate for required parking; at that time, he built the triangle parking lot so he was able to operate the building; later on he purchased additional properties in the area a few years later to allow for additional parking; so when I purchased the building I purchased the building with one of the parking lots, separately deeded; as Ron mentioned it is not part of the discussion; reality is the lot of the



building has no capacity for any parking what so ever; at this point to move any other tenants in we need to have an idea what type of tenant can come in and parking requirement it would have; my understanding of the resolution, the building by efforts of Mr. Kramer, it has permission to have enough tenants for requirements for 65 spaces; any above will require additional parking; asking that when Matt Young considers any additional tenant, consider the tenant has approved use and calculation counts and credit toward 65 spaces and anything over would need approval from the Board.

Mr. Cucchiaro – Mr. Alfieri described different – you described if any permitted use in the zone wants to tenant the building they are permitted to tenant the building under that approval

Mr. Alfieri –subject to the 65 spaces; if permitted use is less than 65 then they would not go before the Board but if needs more than 65 spaces then they would go before the Board;

Mr. Cucchiaro – then how do you explain Mr. Kramer’s testimony, the relief was not granted based upon square footage, but based upon total number of parking spaces on a separate lot that had nothing to do with the application; that is what I am trying to figure out, Mr. Kramer I appreciate your perspective on that;

Mr. Chairman we look at 2 things; applicant is asking we interpret the 1985 resolution to not only permit office but any permitted uses in the zone at that time and we don’t know what uses were permitted then or even now but not then; and that they be permitted as of right by the resolution to continue to tenant the property with any currently permitted use, as long as total parking does not exceed 65 spaces; other alternative interpretation, Mr. Ceppi hit this, we have a resolution, it grants 65 space parking waiver for an office building and if not what it is being used for you need to come back for approval; those are basically the two choices; this is an unusual application, if the Board has questions; again I was able to predict this and tried to get the applicant to file, if the interpretation didn’t come out the way they wanted, they ask for what approval they wanted; they made a decision not to do that;

Mr. Volshteyn – we are asking the Board to consider because the building is currently in contract to sell and obviously we are trying to occupy to present appropriate cohesive look for the town, considering we are on the main street; we are not asking for allowing us to have uses that were in 1985, we will comply with uses with permitted uses but asking for consideration of 65 spaces going toward the uses;

Mr. Cucchiaro – Mr. Chair, certainly understand what the applicant wants, but we are dealing with a document before us; that approval didn’t contemplate future uses approved; this is exactly why I spoke to the applicants counsel about amending their application to ask for approval of what they wanted in case interpretation did not come out their way; the answer was no, they would deal with later; I want that clear for everyone on the record, every effort was made for a more expansive application to be made tonight;

You have heard from Mr. Volshteyn testimony, legal argument from Mr. Alfieri and previous owner Mr. Kramer; Mr. Ceppi provided insightful analysis, my counsel; up to the Board how you want to go, the four corners of the resolution and they can come get an approval for whatever they need or is it beyond the four corners, taking into account Mr. Kramer’s testimony, any use as long as 65 spaces is not to exceed with other tenants as of right;

Mr. Barricelli – any other Board members;

Mr. Wildermuth – Ron, I see plain language, office building it is in the document twice, no other use in this document; but we know for a fact retail has been on that first floor and CO granted without variance; question to you as our attorney, is the granting of a past CO in any way binding;

Mr. Cucchiaro – no; I would also consider our current zoning officer was unaware of the prior resolution and when it came to his attention, was not comfortable issuing a CO; that is what you would look at, I wouldn’t say the prior actions, we have no other documents in the record;

Councilwoman Rogers – I don’t think we have enough information to make a resolution regarding this, it needs to come to us as an application; based on information regarding parking, I wouldn’t be able to make a decision tonight;

Mr. Cucchiaro – Councilwoman you would go with what the plain language is and anything beyond that should be the subject of an application, is that what you are saying;

Councilwoman Rogers – correct

Mr. Cucchiaro – for the record, Mr. Alfieri and Boris have not done anything wrong, they Board, however it votes is sympathetic to everyone's situation; all hindered by the paper trail on the property;

Mr. Ceppi – I move forward with the recommendation to go to the letter of the law with what the resolution states without prejudice; to Ron's point, it is not with regard to doing something different at the property but what we have in front of us at this time, in my opinion we need to stick with;

Mr. Cucchiaro – a motion to find the 1985 Resolution permitted exclusively office with a 65 space waiver and anything beyond that would require additional approval from this Board;

Mr. Wildermuth – seconded the motion

Yes	7	Barricelli, Ceppi, Wildermuth, Argot-Freyre, Jackson, Councilwoman Rogers and Kozlowski
No	0	
Abstain	0	
Absent	2	McCabe and Crombie

Mr. Cucchiaro – we intend to memorialize this resolution but there is nothing to stop you from filing an application immediately to seek what you are looking for;

Mr. Alfieri – I appreciate your time tonight;

**Mr. Barricelli read Item No. 5 on the Agenda as follows:**

Review Ordinance of the Borough of Freehold County of Monmouth, State of New Jersey Amending and Supplementing Chapter 8 (Health and Safety) by Amending Chapter 8.57 Stormwater Best Management Practices. Referred by Borough of Freehold Governing Body

Mr. Barricelli – about 5 weeks ago, the BA, Dominica and myself went to a zoom meeting with the state and Stormwater is the state's top priority; I am amazed we could turnaround so fast an ordinance that puts into place best practices;

Mr. Cucchiaro – this is an exercise that every municipality is going through right now, DEP amended their stormwater management regulations; part of requirements, every municipality by March incorporate the requirements into local ordinance; the ordinance before you based upon model ordinance the DEP put out; it is not anything Freehold Borough specific, or tremendous amount of creativity regarding piping; the DEP said this is what you should adopt; I want to be clear, it applies to non-residential; residential requirements are still go through residential site improvement standards, State regulated, basically comes up same way, incorporates DEP regulations.; this ordinance is required by new DEP regulations by every town, this ordinance is based upon model and the Boards task is to find if it is substantially consistent with Borough Master Plan; I can tell you our Master Plan seeks to be consistent with all state requirements; so I think it is substantially consistent;

Mr. Wentzien – Ron was pretty clear, every town is going through this in New Jersey; it was easier going through the model ordinance, the changes were sprinkled so many places; to offer to council on their first reading, put in fresh new model ordinance that follows current DEP requirements; in majority the main issue changed the most was introduction of concerns for projects that rise to the threshold, need to meet state requirements for stormwater design; elements that deal with what they call, "Green Infrastructure" involves accelerated infiltration needs,



vegetative swells and add in natural buffer and filtration system and issues of recharge of rainwater back into the ground;

Technical issues of thresholds that require us to review a more diligent review, state requirement are exactly the same thresholds; additional elements they wanted incorporated and what you have before you, it was easier to give the straight forward model ordinance;

Mr. Cucchiaro – any questions, if not if there is a motion to find the ordinance is substantially consistent with the municipal Master Plan;

Mr. Wildermuth – is it our job to look at the Master Plan, and if the ordinance in line with State guidelines;

Mr. Cucchiaro – section 26 of MLUL requires that we take the ordinance and apply to Master Plan as it exists, that is the statutory requirement; as a policy you can certainly do what you stated; actually there is a new amendment to the MLUL that talks about adding climate control to the Master Plan; but the statutory requirement to add to the Master Plan as is, the Board can certainly consider to revisit the Master Plan in any way to update or better reflect the ordinance;

Mr. Wildermuth – a homework assignment for us, also a budgetary issue;

Ms. Argote-Freyre – anything other projects that come before the Board, we need to look at that issue and they should provide information how they are compliant with the ordinance, correct;

Mr. Cucchiaro – yes, absolutely;

Councilwoman Rogers made a motion that this ordinance is consistent with the Master Plan and should be adopted, Mr. Ceppi seconded;

Yes	7	Barricelli, Ceppi, Wildermuth, Argot-Freyre, Jackson, Councilwoman Rogers and Kozlowski
No	0	
Abstain	0	
Absent	2	McCabe and Crombie

Mr. Barricelli – any Board members have any comments or questions, Ms. Kozlowski, HPC or Councilwoman Rogers anything from Council;

Councilwoman Rogers – nothing;

Ms. Kozlowski – sign review; I did send an email to Councilwoman Rogers and Dominica, we are looking at looking at Center Core Rehab standards we are not ready yet but in the future;

Mr. Barricelli – thank you; anyone else; hearing nothing; anyone to adjourn;

Mr. Ceppi made a motion to adjourn, Ms. Argot-Freyre;

All in favor, aye, - All members

Meeting adjourned at 8:00 PM.

Respectfully submitted,

Dominica R. Napolitano

## ATTACHMENT II

**BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD, NEW JERSEY 07728**

**LAND USE DEPARTMENT APPLICATION CHECKLIST**

Applicant's Name: Simon Reichman

Trade Name: \_\_\_\_\_

Applicant's Address: 169 South St. Freehold, NJ 07728

Block: 110 Lot(s): 7.02, 7.03 Zone: R-5

Name of Project: Reichman

The following must be submitted in order for your application to be deemed complete.

ITEMS TO BE SUBMITTED	PLANS		WAIVER	
	COMPLY	N/A	REQUESTED	REQUESTED
1. Application for Zoning Certificate or Building Permit Denial from Zoning Officer	✓			PERMITTED PRINCIPAL USE
2. Application for Planning Board	✓			✓
3. Site Plan Application		✓		✓
4. Site Plan (only folded plans will be accepted). *	✓			✓ SUBDIVISION MHP SUBMITTED
5. Site Plan Detail Checklist - Completed	✓			✓
6. Fee Schedule with W-9 (Escrow & application fees must be in separate checks).	✓			✓
7. Tax Certification	✓			✓
8. Photograph of Existing Conditions	✓			✓
9. Affidavit of Service				RT NEARING
10. Exhibit List				✓
11. List of Professionals To Testify	✓			✓
12. Signed Checklist	✓			✓

Eighteen (18) complete packages of the above information must be delivered to the Land Use Office to be considered complete. Please provide six (6) copies 24 x 36", and twelve (12) copies 11 x 17".

Date: 1/12/2021

Applicant or Agent: [Signature]

To Be Completed by Borough:

Date: 2-9-2021

Checked By: William T. Winters

**BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD, NEW JERSEY 07728**

**LAND USE DEPARTMENT APPLICATION CHECKLIST**

Applicant's Name: Simon Reichman

Trade Name: \_\_\_\_\_

Applicant's Address: 169 South St. Freehold, NJ 07728

Block: 110 Lot(s): 7.02, 7.03 Zone: R-5

Name of Project: Reichman

The following must be submitted in order for your application to be deemed complete.

ITEMS TO BE SUBMITTED	PLANS		WAIVER		PLANS		WAIVER	
	COMPLY	N/A	REQUESTED		COMPLY	N/A	REQUESTED	
1. Application for Zoning Certificate or Building Permit Denial from Zoning Officer	✓							
2. Application for Planning Board	✓							
3. Site Plan Application		✓						
4. Site Plan (only folded plans will be accepted). *	✓							
5. Site Plan Detail Checklist - Completed	✓							
6. Fee Schedule with W-9(Escrow & application fees must be in separate checks).	✓							
7. Tax Certification	✓							
8. Photograph of Existing Conditions	✓							
9. Affidavit of Service								
10. Exhibit List			Pending Hearing Date					
11. List of Professionals To Testify	✓		Pending Hearing Date					
12. Signed Checklist	✓							

Eighteen (18) complete packages of the above information ~~must be delivered~~ to the Land Use Office to be considered complete. Please provide ~~six (6)~~ six (6) copies 24 x 36", and twelve (12) copies 11 x 17".

Date: 1/12/2021

[Signature]  
Applicant or Agent

To Be Completed by Borough:

Date: \_\_\_\_\_

Checked By: \_\_\_\_\_



BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD, NEW JERSEY 07728

LAND USE DEPARTMENT  
PLANNING BOARD APPLICATION FORM

Please note: This application, with supporting documentation, must be filed with the Administrative Officer of the Land Use Department for review at least forty-five (45) days prior to the meeting at which the application is to be considered.

To Be Completed By Borough Staff Only.

Date Filed: 1/15/2021 Application No. PB-SD-2021-001  
Planning Board: \_\_\_\_\_ Application Fee: \$650.00  
Scheduled for Completeness: \_\_\_\_\_  
Scheduled for Hearing: \_\_\_\_\_

1. SUBJECT PROPERTY (ATTACH PHOTO):

Location: 167 + 169 South Street  
Tax Map: Page 59 Block 110 Lot(s) 7.02  
Page 59 Block 110 Lot(s) 7.03  
Dimensions: Frontage 110' Depth 225.25' Total Area 0.59 Ac.

2. APPLICANT:

Name: Simon Reichman  
Corporate Name(s): \_\_\_\_\_  
Address: 169 South St. Freehold, NJ 07728  
Telephone: 908-461-5317

Applicant is a Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Individual ✓

Note: If the applicant is a corporation or limited liability company, the applicant must be represented by an attorney.

**3. DISCLOSURE STATEMENT:**

Pursuant to N.J.S. 40:55D-48.1, the names and addresses of all persons owning 10% of the stock in a corporate applicant or 10% interest in any partnership applicant must be disclosed. In accordance with N.J.S.40A:55D-48.2, that disclosure requirement applies to any corporation or partnership which owns more than 10% interest in the applicant followed up the chain of ownership until the names and addresses of the non-corporate stockholders and partners exceeding 10% ownership criterion have been disclosed.

NAME	ADDRESS	INTEREST

**4. If the Owner(s) is other than the applicant, provide the following information on the Owner(s):**

Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

If the owner of any portion of the subject premises is other than the applicant, you must have the owner consent to the application by signing Paragraph 27 below.

**5. PROPERTY INFORMATION:**

Restrictions, covenants, easements, Association by-laws, existing or proposed on the property:

Yes ☒ (Attach copies)      No ☐      Proposed ☐

Note: All deed restrictions, covenants, easements, Association by-laws, existing and proposed must be submitted for review and must be written in easily understandable English in order to be approved.

Present use of property:

*Single family dwellings*



6. Applicant's Attorney: TBD  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

7. Applicant's Engineer: Greller Sipe & Co.  
Address: PO Box 249, Adelphi, NJ 07710  
Telephone No. 732-625-7919 Fax No.: \_\_\_\_\_  
Email: gchiang@grellersipe.com

8. Applicant's Planner: TBD  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

9. Applicant's Traffic Engineer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_  
Email: \_\_\_\_\_

10. List all other expert(s) submitting reports or testifying for the Applicant. Attach additional sheets as necessary:  
Name: \_\_\_\_\_  
Field of Expertise: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

11. Applicant represents a request for the following:

**SUBDIVISION:**

✓

Minor Subdivision Approval: Do you have knowledge of any previous subdivision applications affecting any portion of the subject premises?

Yes \_\_\_\_\_ No ✓

Total area of Tract: 0.44Ac + 0.15Ac = 0.59Ac.

Area of each proposed lot: 0.31Ac. and 0.28Ac.

\_\_\_\_\_ Subdivision Approval (Preliminary):

Total area of tract: \_\_\_\_\_

Total Area of Tract which is being subdivided: \_\_\_\_\_

Are there any current or contemplated easements or restrictions that affect or will affect any portion of the premises? If so, describe and attach copies of same.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Subdivision Approval (Final):

Date of Preliminary Approval: \_\_\_\_\_

Number of Lots Proposed for Final Approval: \_\_\_\_\_

Does the final plat conform exactly to the preliminary plat in all details and areas covered? Yes: \_\_\_\_\_ No: \_\_\_\_\_ If not, indicate material changes or incongruities. If necessary, attach additional pages.

\_\_\_\_\_

\_\_\_\_\_

List all maps and other materials accompanying this application:

\_\_\_\_\_

**SITE PLAN:**

\_\_\_\_\_ Preliminary Site Plan Approval (Phases, if applicable \_\_\_\_\_)

\_\_\_\_\_ Final Site Plan Approval (Phases, if applicable \_\_\_\_\_).

\_\_\_\_\_ Amendment or Revision to an Approved Site Plan:

Area to be disturbed: \_\_\_\_\_

Total number of dwelling units: \_\_\_\_\_

Request for waiver from Site Plan Review and Approval. Reason for request:

Informal Review (Planning Board only).  
Appeal Decision of an Administrative officer,  
(N.J.S.40:55D-70a.)  
Map or Ordinance Interpretation of Special Question,  
(N.J.S.40:55D-70b).  
Variance Relief - Hardship (N.J.S.40:55D-70c(1)).  
Variance Relief - Substantial Benefit (N.J.S.40:55D-70c(2)).  
Variance Relief - Use (N.J.S.40:55D-70D).  
Conditional Use Approval (N.J.S.40:55D-67).  
Direct issuance of a permit for a structure in bed  
of a mapped area, public drainage way or flood  
control basin (N.J.S.40:55D-34).

NOTE: Appeals of decisions of Administrative Officers, use variances, and the direct issuance of permits are all matters to be heard by the Zoning Board of Adjustments only.

12. Section(s) of Ordinance from which a variance is requested:

18.16.050 - Lot coverage

13. Waivers Requested of Development Standards and/or Submission Requirements (attach additional pages as needed):

14. Attach a copy of the Notice to appear in the Asbury Park Press, the Borough's official newspaper, and to be mailed to the owners of all real property, as shown on the current tax duplicate, located within the State and within 200 ft. in all directions of the property which is the subject of this application. The Notice must specify the sections of the Ordinance from which relief is sought, if applicable. The publication and service on the affected owners must be accomplished at least ten (10) days prior to the date scheduled by the Administrative Officer for the hearing. An affidavit of service on all property owners and an affidavit of publication must be filed before the application will be complete and the hearing can proceed.

15. Explain in detail the exact nature of the application and the changes to be made at the premises, including the proposed use of the premises. (Attach pages as needed):

lot line adjustment

16. Is a public water line available? ☒ Yes ☐ No

17. Is a public sanitary sewer available? ☒ Yes ☐ No

18. Does the application propose a well? ☐ Yes ☒ No

Does the application propose a septic system? ☐ Yes ☒ No

19. Have any proposed new lots been reviewed with the Tax Assessor to determine appropriate lot and block numbers? ☐ Yes ☒ No

20. Are any off-tract improvements required or proposed? ☐ Yes ☒ No

21. Is the subdivision to be filed by deed or plat? ☒ Yes ☐ No

22. What form of security does the applicant propose to provide as performance and maintenance guarantees?

23. Other approvals which may be required & date plans submitted:

AGENCY	YES	NO	DATE PLANS SUBMITTED
Manasquan Regional Sewer Authority		<u>No</u>	
Monmouth County Health Dept.		<u>No</u>	
Monmouth County Planning Bd.	<u>Yes</u>		<u>1/14/21</u>
Freehold Soil Conservation District		<u>No</u>	
NJ Dept. of Environmental Protection		<u>No</u>	
Sewer Extension Permit		<u>No</u>	
Sanitary Sewer Connection Permit		<u>No</u>	
Stream Encroachment Permit		<u>No</u>	
Wetlands Permit		<u>No</u>	
Potable Water Construction Permit		<u>No</u>	
Other (Please note.)		<u>No</u>	
NJ Department of Transportation	<u>Yes</u>		<u>1/14/21</u>
NJ Natural Gas Co.		<u>No</u>	
JCP&L		<u>No</u>	
Other (Please note.)		<u>No</u>	



24. Certification from the Tax Collector that all taxes on the subject property are paid and current (see page 14 - complete only top portion of page).

25. List all Maps, Reports, and other materials accompanying the application. (Attach additional pages as required for complete listing).

QUANTITY

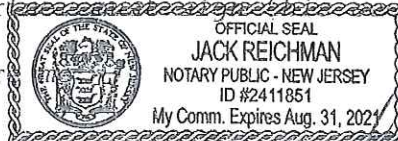
DESCRIPTION OF ITEM


6	24"x36" Minor Subdivision Map.
12	11x17" Minor Subdivision Map.

26. I certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant, or I am an officer of the corporate applicant, and that I am authorized to sign the application for the corporation, or that I am a general partner of the partnership applicant.

Please note: If the applicant is a corporation, an authorized corporate officer must sign this section. If applicant is a partnership, a general partner must sign this section.

Sworn and subscribed before  
this            day of



  
NOTARY PUBLIC

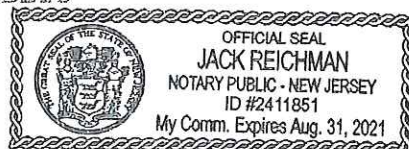
  
SIGNATURE OF APPLICANT

27. I certify that I am the owner of the property which is the subject of this application; that I have authorized the applicant to make this application; and that I agree to be bound by the application, the representations made, and the decision in the same matter as if I were the applicant.

Please note: If the applicant is a corporation, an authorized corporate officer must sign this section. If applicant is a partnership, a general partner must sign this section.

Sworn and subscribed before me  
this            day of

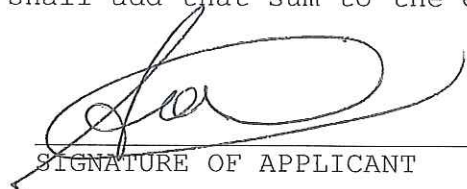
  
NOTARY PUBLIC



  
SIGNATURE OF OWNER

28. I understand that the sum of \$ 1,500 has been deposited in an escrow account (Builder's Trust Account). In accordance with the Ordinances of the Borough of Freehold, I further understand that the escrow account is established to cover the cost of professional services, including engineering, planning, legal and other expenses associated with the review of submitted materials and the publication of the decision by the Board. Sums not utilized in the review process shall be returned. If additional sums are deemed necessary, I understand that I will be notified of the required additional amount and shall add that sum to the escrow account within ten (10) days.

1/12/2021  
DATE

  
SIGNATURE OF APPLICANT



BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD, N.J. 07728

LAND USE DEPARTMENT TAX CERTIFICATION

Applicant's Name: Simon Reichman

Trade Name: \_\_\_\_\_

Applicant's Address: Same as Owner.

Owner's Name: Simon Reichman

Address: 167 South st Freehold N.J. 07728

Block: 110 Lot(s): 7.02 7.03

Physical Address: 167 + 169 South st Freehold NJ

The taxes & assessments due including interest for the above block and lot are - TO BE COMPLETED BY TAX COLLECTOR:

QUARTER	110 7.03	FOR YEAR	2020	110.7.02	FOR YEAR	2020
1.						
2.						
3.						
4.						

Other Municipal charges as follows: \$ \_\_\_\_\_

The Water & Sewer charges including interest for the above block and lot are - TO BE COMPLETED BY TAX COLLECTOR:

QUARTER	FOR YEAR	FOR YEAR
1.		
2.		
3.		
4.		

The total amounts due as of this date for the above referenced property are as follows - TO BE COMPLETED BY TAX COLLECTOR:

TAXES:	\$	_____
OTHER ASSESSMENTS:	\$	_____
WATER & SEWER:	\$	_____
TOTAL:	\$	_____

Date: \_\_\_\_\_ Tax Collector: \_\_\_\_\_

## SITE PLAN CHECKLIST - PRELIMINARY APPROVAL

NAME OF APPLICANT: Simon Reichman

BLOCK: 110 LOT: 7.02, 7.03

TRADING AS: \_\_\_\_\_

SITE ADDRESS: 167 and 169 South St.

INSTRUCTIONS: The applicant is to check off each item with which he has complied. If he believes the item is not applicable, then he should enter "N.A." For those items not complied with, there must be a letter seeking a waiver and the reasons for granting the waiver.

	Information Provided	Staff Review
1. Name, address, and title of person preparing site plan.	<u>✓</u>	_____
2. Name and address of applicant.	<u>✓</u>	_____
2. Name and address of owner of the land.	<u>✓</u>	_____
4. The municipal tax map lot and block numbers of the lot(s) shown on the site plan and the tax sheet number or numbers.	<u>✓</u>	_____
5. Key Map.	<u>✓</u>	_____
6. A date, scale and north arrow on each sheet of the site plan.	<u>✓</u>	_____
7. The zoning district or districts in which the lot or lots are located.	<u>✓</u>	_____
8. If the site plan includes more than one sheet, each sheet shall be numbered and titled.	<u>✓</u>	_____
9. The location of all existing watercourses, wood areas, easements, right-of-ways, streets, roads, highways, freeways, railroads, canals, rivers, buildings, structures, or any other feature if such feature has an effect upon the said property.	<u>✓</u>	_____
10. The location of all existing and proposed landscaped areas and all existing trees over six inch caliper.	<u>N/A</u>	_____
11. The location, use, finished grade level and ground area of each existing and proposed building, structure, or any other land use, including all setback dimensions.	<u>✓</u>	_____
12. The location, names and widths of all existing and proposed streets (including cross sections and profiles) abutting the lot or lots in question and within 200 ft. of said lot.	<u>✓</u>	_____

	<u>Information Provided</u>	<u>Staff Review</u>
13. The location, type and size of all existing and proposed curbs, sidewalks, driveways, fences, retaining walls, parking space areas and the layout thereof and all off-street loading areas, together with the dimensions of all the foregoing.	<u>✓</u>	<u>      </u>
14. The capacity of proposed off-street parking areas and location of all off-street parking spaces (including handicapped spaces).	<u>N/A</u>	<u>      </u>
15. The location and size of proposed loading berths.	<u>N/A</u>	<u>      </u>
16. The location and treatment of existing and proposed entrances and exits to public rights-of ways, including the possible utilization of traffic signals, channelization, acceleration/ deceleration lanes, additional width and any other device necessary to traffic safety and/or convenience.	<u>✓</u>	<u>      </u>
17. The location, size and nature of all existing and proposed rights-of-ways, easement and other encumbrances which may affect the lot or lots in question, and the location, size, and description of any lands to be dedicated to the municipality or the County of Monmouth.	<u>✓</u>	<u>      </u>
18. Description of interior traffic circulation.	<u>N/A</u>	<u>      </u>
19. The location, type, and size of all exterior lighting of parking, loading and driveway areas.	<u>N/A</u>	<u>      </u>
20. The location and identification of proposed open spaces, parks, or other recreation areas.	<u>N/A</u>	<u>      </u>
21. The location and design of buffer areas and screening devices to be maintained.	<u>N/A</u>	<u>      </u>
22. Existing topography based upon New Jersey Geodetic Control Survey datum and proposed grading both with a maximum of two foot contour levels.	<u>✓</u>	<u>      </u>
23. The location type and size of all existing and proposed catch basins, storm drainage facilities and utilities, plus all required design data supporting the adequacy of the existing or proposed facility to handle future storm flows (design calculations for a 25 year storm).	<u>N/A</u>	<u>      </u>
24. The location of all existing and proposed signs (If sign is non-conforming, please note herein if request is being made for a Design Waiver as part of this application); standards, utility poles and their size, type of construction, and location of water supply and sewage disposal systems.	<u>N/A</u>	<u>      </u>



	Information Provided	Staff Review
25. The location of all existing property lines adjoining the tract and all lines within 200 ft. of the boundary lines of the major tract and the name of the owner of each property.	<u>✓</u>	<u>      </u>
26. The location, size and nature of the entire lot in question, and any contiguous lots owned by the applicant, or in which the applicant has a direct or indirect interest, even though only a portion of the entire property is involved in the site plan for which approval is sought.	<u>N/A</u>	<u>      </u>
27. Complete construction specifications to include description, materials and method of construction for all required improvements shall be submitted with all site plan applications. A schedule of events and time sequence shall also be submitted for all required improvements. A preconstruction conference shall be required prior to the construction of any required improvements between the owner, contractor and engineer, and shall be a condition of any approval.	<u>✓</u>	<u>      </u>
28. Preliminary architectural plans for any proposed buildings or structures indicating typical floor plans, elevations, height and general design or architectural styling. Such plans shall include the name, address, and title of the person preparing the plans.	<u>N/A</u>	<u>      </u>
29. Any other information required by the Planning Board or the Monmouth County Planning Board which is reasonably necessary to ascertain compliance with the provisions of this chapter or other Federal, State, County or Municipal laws, rules or regulations.	<u>✓</u>	<u>      </u>
30. Site Plan Scale not smaller than 1" = 50', and not larger than 1" = 10'	<u>✓</u>	<u>      </u>
31. Submission has been made to the County Planning Board, and their comments/approval are attached to the site plan.	<u>✓ pending</u>	<u>      </u>
32. The location of and disposal process for all refuse and recyclable materials.	<u>N/A</u>	<u>      </u>
33. Compliance with Handicap Regulations.	<u>N/A</u>	<u>      </u>
34. Signature block for Chairperson, Secretary, and Borough Engineer and signature block for County Planning Board if applicable.	<u>✓</u>	<u>      </u>
PLEASE NOTE: Underneath the title of engineer, there should be listed "William T. Wentzien, P.E., New Jersey License No. 27799".	<u>✓</u>	<u>      </u>
35. If determined to be a "major" site plan, the names of owners of record of adjacent property within 200 ft.	<u>N/A</u>	<u>      </u>

PREPARED BY: Geller Sinc & Co. Gary Chiang DATE: 1/12/2021  
OWNER/AGENTS APPROVED: [Signature] DATE: 1/12/2021  
REVIEWED BY: Gary Chiang DATE: 1/12/2021  
NAME OF APPLICANT: Simon Reidman  
BLOCK 110 LOT 7.02, 7.03  
ADDRESS: 167 and 169 South St. Freehold, NJ

INSTRUCTIONS: The applicant is to estimate his required fees by filling in the first column. Two (2) checks are required with the application: one for application fees (Schedule A), and a second for escrow fees (Schedule B) both checks payable to the Borough of Freehold. Schedule A fees are non-refundable. Schedule B fees are used to offset the costs of professional reviews and inspections as permitted by law, and any remaining balance will be refunded to the Applicant upon completion of the project, or the withdrawal/denial of the project.

For major subdivisions and site plans, the final application and approval fee can be paid after preliminary approval, if desired. Inspection fees must be paid prior to the start of construction.

SCHEDULE A: NON-REFUNDABLE FEES

	<u>Fee</u>	<u>Applicant Estimate</u>	<u>Staff Review</u>
A. Publication of Notice of Any Decision	\$ 50.00	<u>50.00</u>	_____
B. List of Property Owners Within 200 ft.	\$ 0.25 per name, or \$10.00, whichever is greater.		
C. Minor Subdivision Approval:			
1. Each Informal Review	\$ 100.00	XX	XX
2. Application Fee	\$ 100.00	<u>100.00</u>	_____
3. Plat Review Fee	\$ 200.00	<u>200.00</u>	_____
D. Major Subdivision Approval:			
1. Each informal Review	\$ 100.00	XX	XX
2. Preliminary Application Fee	\$ 100.00 + \$200.00 per lot	_____	_____
3. Final Plat Application Fee	\$ 100.00 + \$100.00 per lot	_____	_____
E. Minor Site Plan Approval: (Less than 2,000 sq. ft. of building area, and five or fewer parking spaces):			
1. Each Informal Review	No Fee	_____	_____
2. Application Fee	\$ 100.00	_____	_____
3. Preliminary Review Fee	\$ 200.00	_____	_____
4. Final Review Fee	\$ 200.00	_____	_____
F. Waiver of Site Plan Detail Request	\$ 250.00	_____	_____
G. Major Site Plan Approval: (2,000 or more sq. ft. of building area and/or more than five parking spaces):			
1. Each Informal Review	\$ 100.00	_____	_____
2. Preliminary Application Fee	\$ 100.00	_____	_____
3. Preliminary Approval Review Fees:			
a. Residential - The sum of:			



I. For each new dwelling unit	\$ 50.00	_____	_____
II. For each remodeled, reconstructed, refurbished or rehab dwelling unit	\$ 30.00	_____	_____
III. For each new or additional parking space:			
a. First 100 spaces	\$ 25.00 ea.	_____	_____
b. Over 100 spaces	\$ 20.00 ea.	_____	_____
b. Other Uses	\$ 200.00 +	_____	_____
(The sum of each of the following fees if applicable):			
I. For each full 1,000 sq. ft. of affected lot area (See (O) below):			
a. First 50,000 sq. ft.	\$ 10/1,000 sf.	_____	_____
b. Over 50,000 sq. ft.	\$ 5/1,000 sf.	_____	_____
II. For each full 1,000 sq. ft. proposed new gross floor area:			
a. First 50,000 sq. ft.	\$ 50/1,000 sf.	_____	_____
b. Over 50,000 sq. ft.	\$ 20/1,000 sf.	_____	_____
III. For each proposed new or additional parking spaces:			
a. First 100 spaces	\$ 20/sp	_____	_____
b. Over 100 spaces	\$ 10/sp	_____	_____
IV. For each 1,000 sq. ft. of remodeled existing gross floor area	\$ 10/1,000 sf.	_____	_____
V. For each reconstructed, resurfaced or improved existing paved parking space	\$ 10/1,000 sf.	_____	_____
4. Final Application Fee	\$ 200.00	_____	_____
5. Final Approval Review Fees - fifty percent (50%) of fees for preliminary approval set forth above.		_____	_____
H. Variances:			
1. Appeals (N.J.S.A.40:550-70a):			
a. Single family residential uses	\$ 100.00	_____	_____
b. Other	\$ 200.00	_____	_____
2. Interpretation of the Land Use Ordinance or Map (N.J.S.A.40:55D-70b)	\$ 250.00	_____	_____
3. Hardship or Bulk Variance, (N.J.S.A.40:55D-70c):			
a. Single-family residential uses	\$ 200.00	<u>200.00</u>	_____
b. Other	\$ 300.00	_____	_____
4. Use Variance (N.J.S.A.40:55D-70d)			
a. Proposed single-family residential use	\$ 250.00	_____	_____
b. Other Uses	\$ 500.00	_____	_____
I. Conditional Uses:	\$ 500.00	_____	_____
J. Public Hearing fee for those development applications requiring Notice of Public Hearing			
	\$ 100.00	<u>100.00</u>	_____
K. Change of Master Plan or Zone District Request			
	\$ 200.00	_____	_____

	<u>Fee</u>	<u>Applicant Estimate</u>	<u>Staff Review</u>
L. <b>Environmental Impact Statement (EIS):</b>			
1. Required E.I.S.	\$ 500.00	_____	_____
2. For request of waiver of E.I.S.	\$ 200.00	_____	_____
M. <b>Revised Plats:</b> Any proposed revisions to a plat, including all supporting maps and documents previously approved by the Reviewing Board which approval is still in effect, shall require submission of revised plat and payment of fees in accordance with the following and with sufficient copies of the revised plans:			
1. Additional information or changes requested by the Reviewing Board or Borough Engineer	NO FEE	XX	XX
2. Minor changes which do not involve any additional building or parking or significant change in the design of the site or subdivision	\$ 50.00	_____	_____
2. Changes which involve additional buildings or parking or a significant change in the design of the site or subdivision, an application and application fee equal to one-half the fee required for the initial submission.		_____	_____
4. A change in use and/or major alteration of the design concepts of the plat shall be considered a new application.			
N. <b>Request for Re-approval or Extensions of Time Where No Change is Required:</b>			
1. Minor Subdivision - Re-approval Only	\$ 200.00	_____	_____
2. Major Subdivision and site plans	\$ 400.00	_____	_____
3. Other applications for development (Soil removal, etc.)	\$ 100.00	_____	_____
O. <b>Site Plan Charges Computation:</b>			
In cases where only a portion of a parcel or site are to be involved in the proposed site plan, the charge shall be based upon an area extending twenty feet (20 ft.) outside the limits of all construction, including grading and landscaping, as well as other areas on the site the Borough Engineer believes are reasonably affected by the development application. The twenty feet (20 ft.) around the disturbed area shall not extend beyond the property lines. The Borough may still require reasonable improvements and upgrading to portions of the site not within the disturbed or affected area.			

BLOCK 110LOT 7.02, 7.03

	<u>Fee</u>	<u>Applicant Estimate</u>	<u>Staff Review</u>
P. Zoning Permits:	\$ 50.00	_____	_____
Q. Sign Appeals	\$ 100.00	_____	_____
R. Review of Sales Map	\$ 450.00	_____	_____
S. Street Signs	Actual Cost	_____	_____
T. Review by Technical Review Committee prior to Formal Application	\$ 100.00/session	_____	_____
 TOTAL APPLICATION FEES:		\$ <u>650</u>	_____



BLOCK 110 LOT 7.02, 7.05

SCHEDULE B: ESCROW FEES

	<u>Fee</u>	<u>Escrow To Be Posted</u>	<u>Staff Review</u>
<b>RESIDENTIAL DEVELOPMENT:</b>			
Minor Subdivisions	\$ 1,500.00	<u>1,500</u>	_____
Major Subdivisions:			
0 - 5 Units or Lots	2,500.00	_____	_____
6 - 25 Units or Lots	3,000.00	_____	_____
26 or More Units or Lots	7,000.00	_____	_____
<b>SITE PLAN APPLICATION NOT INVOLVING STRUCTURES, ACRES</b>			
0 - 3	5,000.00	_____	_____
3 +	8,000.00	_____	_____
<b>Site Plan Application Not Involving Structures - Total Floor Plan:</b>			
1,250 - 1,999 sq. ft.	2,000.00	_____	_____
2,000 - 20,000 sq. ft.	4,000.00	_____	_____
20,000+ sq. ft.	8,500.00	_____	_____
<b>VARIANCE - USE/BULK</b>	2,500.00	_____	_____
Minimum Escrow for those Applications not governed by other Escrow accounts	1,500.00	_____	_____
Interpretations/Sign Applications	1,500.00	_____	_____
<b>Any action requiring a Written Resolution by the Reviewing Board:</b>			
Conditional Use	1,500.00	_____	_____
<b>TOTAL ESCROW FEES:</b>		\$ <u>1,500</u>	_____

**NOTE: SEPARATE CHECKS REQUIRED FOR THE APPLICATION FEE AND ESCROW FEE.**

BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD NEW JERSEY 07728

LAND USE DEPARTMENT APPLICATION WITNESS LIST

PROJECT NAME: Simon Reichman

APPLICATION NUMBER: TBD

DATE OF HEARING: TBD

1. Name: Robert Sine

Field of Expertise: Professional Engineer

Address: PO Box 249, Adelphi, NJ 07710

Telephone No.: 732-625-7919 Fax No.: \_\_\_\_\_

2. Name: \_\_\_\_\_

Field of Expertise: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

3. Name: \_\_\_\_\_

Field of Expertise: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

4. Name: \_\_\_\_\_

Field of Expertise: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD N.J. 07728

LAND USE DEPARTMENT EXHIBIT LISTING

PROJECT NAME: Simon Reichman  
APPLICATION NUMBER: TBD  
DATE OF HEARING: TBD

APPLICANT'S EXHIBITS

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
A-1	Minor Subdivision Plan
A-2	Boundary Survey
A-3	Photographs
A-4	
A-5	
A-6	
A-7	
A-8	
A-9	
A-10	
A-11	
A-12	
A-13	
A-14	

BOARD EXHIBITS

(To be completed by the Borough)

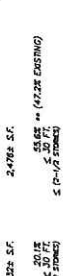
EXHIBIT NO.	DESCRIPTION OF EXHIBIT
B-1	
B-2	
B-3	
B-4	
B-5	
B-6	
B-7	
B-8	











\*\* VARIANCE REQUIRED



BOROUGH OF FREEHOLD  
51 WEST MAIN STREET  
FREEHOLD, N.J. 07728

LAND USE DEPARTMENT TAX CERTIFICATION

Applicant's Name: Simon Reichman

Trade Name: \_\_\_\_\_

Applicant's Address: Same as Owner

Owner's Name: Simon Reichman

Address: 167 South st Freehold N.J. 07728

Block: 110 Lot(s): 7.02 7.03

Physical Address: 167 + 169 South st Freehold NJ

The taxes & assessments due including interest for the above block and lot are - TO BE COMPLETED BY TAX COLLECTOR:

QUARTER	110 7.03	FOR YEAR 2020	110.7.02 FOR YEAR 2020
1.		<u>0</u>	<u>0</u>
2.		<u>0</u>	<u>0</u>
3.		<u>0</u>	<u>0</u>
4.		<u>0</u>	<u>0</u>

Other Municipal charges as follows: \$ \_\_\_\_\_

The Water & Sewer charges including interest for the above block and lot are - TO BE COMPLETED BY TAX COLLECTOR:

QUARTER	FOR YEAR 2020	FOR YEAR 2020
1.	<u>0</u>	<u>0</u>
2.	<u>0</u>	<u>0</u>
3.	<u>0</u>	<u>0</u>
4.	<u>0</u>	<u>0</u>

The total amounts due as of this date for the above referenced property are as follows - TO BE COMPLETED BY TAX COLLECTOR:

TAXES:	\$ <u>0</u>
OTHER ASSESSMENTS:	\$ <u>0</u>
WATER & SEWER:	\$ <u>0</u>
TOTAL:	\$ <u>0</u>

Date: 1/19/21

Tax Collector: Patricia Berg



1315.002.085  
February 9, 2021

Dominica Napolitano, Secretary  
Borough of Freehold Planning Board  
51 West Main Street  
Freehold, NJ 07728

**RE: COMPLETENESS REVIEW  
SIMON REICHMAN-167/169 SOUTH STREET  
MINOR SUBDIVISION  
BLOCK 110, LOTS 7.02 & 7.03  
BOROUGH OF FREEHOLD, MONMOUTH COUNTY, NEW JERSEY**

Dear Ms. Napolitano:

Please be advised that I am in receipt of an application and supporting materials information for the above entitled matter, including the following:

1. Land Use Application Checklist, dated January 12, 2021.
2. Planning Board Application Form, dated January 15, 2021.
3. Site Plan Checklist, dated January 12, 2021.
4. Tax Certification, dated January 19, 2021.
5. 2 Photographs-existing street view, no date
6. Exhibit List Form
7. Witness List Form
8. Plan of "Boundary Survey of 167-169 South Street – Lots 7.02 & 7.03, Borough of Freehold, County of Monmouth, N.J.", prepared by Martin A. Grant Surveying, Inc., consisting of one sheet, dated September 21, 2020.
9. Plan entitled 'Minor Subdivision Map, Tax Lots 7.02 & 7.03, Block 110, Tax Map Sheet No. 59, Borough of Freehold, Monmouth County, New Jersey', prepared by Geller Sive & Company, Martin A. Grant Surveying, Inc., consisting of one (1) sheet, dated November 23, 2020.

The subject of this application is certain lands known as Block 110, Lots 7.02 & 7.03, located at 167/169 South Street. The site is located in the **R-5 Residential Zone** of the Borough. The total area of the subject lots is 25,903.75 square feet (.5947 acres).

### Existing

#### Lot 7.02

- Lot 7.02, also known as 169 South Street, contains 19,298.25 s.f.
- The lot contains an existing 2 ½ story dwelling, fronting along South Street.
- The lot does not contain a driveway.
- In the rear yard is an in-ground pool, with chain link fencing.
- Also to the rear is a stone parking area, being also located to the rear of adjacent Lot 9.03.
- Access to the rear stone parking area is by way of a 12 foot wide driveway easement, which is located on adjacent Lot 7.03.

#### Lot 7.03

- Lot 7.03, also known as 167 South Street, contains 6,605.5 s.f.
- The lot contains an existing 2 story dwelling, fronting along South Street
- Along the southerly side there is a paved driveway, approximately 10 feet wide, which driveway provides access to the rear stone parking area, the parking being located on adjacent Lot 7.02.
- The driveway on Lot 7.03 is contained within a 12 foot wide driveway easement

### Proposed

- Remove the existing rear lot line of Lot 7.03, and provide a new lot line, being an extension of the existing southerly lot line of Lot 7.03, extending to the point of the existing rear lot line of Lot 7.02.
- Create New Lot 7.05 (prior Lot 7.03), containing 12,388.75 s.f.,
- Create New Lot 7.04 (prior Lot 7.02), containing 13,515.0 s.f.
- No physical improvements are indicated
- New Lot 7.04
- (prior Lot 7.02) will not have a driveway, nor off-street parking
- New Lot 7.05
- (prior Lot 7.03) will contain the existing paved driveway and the rear stone parking area, which parking area was located on prior Lot 7.02.
- The existing 12 foot wide driveway easement on New Lot 7.05 is indicated to be removed.
- No physical improvements are indicated

The applicant has requested **Minor Subdivision Approval**.



The documents submitted have been reviewed for the purposes of determining the Administrative Completeness of the application pursuant to N.J.S.A. 40:55-D-10.3, *The Municipal Land Use Law*, and in accordance with Title 16 of the *Code of the Borough of Freehold*.

#### Application Fees

The following fees have been posted with the Borough in accordance with Title 16 with respect to this matter:

- a. Application Filing Fees               \$650.00
- b. Escrow Deposit                         \$1,500.00

#### Administrative Completeness Determination

As regards the Land Use Application the following is noted:

Application Checklist Item #1: Zoning Certificate. A zoning certificate was not provided. We do note the residential use associated with the subject application is a permitted principal use in the R-5 Residential Zone.

Application Checklist Item #9: The affidavit of service will need to be addressed at the Planning Board hearing.

Based upon the above it is recommended that the application be deemed **Complete**.

A copy of the Application Checklist is included herewith for the Planning Board file.

Should you have any questions or require additional information, please do not hesitate to contact our office.

Very truly yours,

ABBINGTON ENGINEERING, LLC



William T. Wentzien, P.E., P.P., C.M.E.  
Freehold Borough Planning Board Engineer

- c. Ronald Cucchiaro, Esq. Planning Board Attorney



1315.002.085  
February 16, 2021

Dominica Napolitano, Secretary  
Freehold Borough Planning Board  
Borough of Freehold  
51 West Main Street  
Freehold, NJ 07728

**RE: SIMON REICHMAN-167/169 SOUTH STREET  
ENGINEERING REVIEW  
MINOR SUBDIVISION  
BLOCK 110, LOTS 7.02 & 7.03  
BOROUGH OF FREEHOLD, MONMOUTH COUNTY, NEW JERSEY**

Dear Ms. Napolitano:

Please be advised that I have reviewed the referenced application consisting of the following:

1. Land Use Application Checklist, dated January 12, 2021.
2. Planning Board Application Form, dated January 15, 2021.
3. Site Plan Checklist, dated January 12, 2021.
4. 2 Photographs-existing street view, no date
5. Monmouth County Planning Board, Exempt from Approval, dated February 8, 2021.
6. Plan of "Boundary Survey of 167-169 South Street – Lots 7.02 & 7.03, Borough of Freehold, County of Monmouth, N.J.", prepared by Martin A. Grant Surveying, Inc., consisting of one sheet, dated September 21, 2020..
7. Plan entitled 'Minor Subdivision Map, Tax Lots 7.02 & 7.03, Block 110, Tax Map Sheet No. 59, Borough of Freehold, Monmouth County, New Jersey', prepared by Martin A. Grant Surveying, Inc., consisting of one (1) sheet, dated November 23, 2020.

The subject of this application is certain lands known as Block 110, Lots 7.02 & 7.03, located at 167/169 South Street. The site is located in the **R-5 Residential Zone** of the Borough. The total area of the subject lots is 25,903.75 square feet (.5947 acres).

Existing

Lot 7.02

- Lot 7.02, also known as 169 South Street, contains 19,298.25 s.f.
- The lot contains an existing 2 ½ story dwelling, fronting along South Street.
- The lot does not contain a driveway.
- In the rear yard is an in-ground pool, with chain link fencing.
- Also to the rear is a stone parking area, being also located to the rear of adjacent Lot 7.03.
- Access to the rear stone parking area is by way of a 12 foot wide driveway easement, which is located on adjacent Lot 7.03.
- At the rear of the stone parking area is an existing shed.

Lot 7.03

- Lot 7.03, also known as 167 South Street, contains 6,605.5 s.f.
- The lot contains an existing 2 story dwelling, fronting along South Street
- Along the southerly side there is a paved driveway, approximately 10 feet wide, which driveway provides access to the rear stone parking area, the parking being located on adjacent Lot 7.02.
- The driveway on Lot 7.03 is contained within a 12 foot wide driveway easement

Proposed

- Remove the existing rear lot line of Lot 7.03, and provide a new lot line, being an extension of the existing southerly lot line of Lot 7.03, extending to the point of the existing rear lot line of Lot 7.02.
- Create New Lot 7.05 (prior Lot 7.03), containing 12,388.75 s.f.,
- Create New Lot 7.04 (prior Lot 7.02), containing 13,515.0 s.f.
- No physical improvements are indicated
- New Lot 7.04
- (prior Lot 7.02) will not have a driveway, nor off-street parking
- New Lot 7.05
- (prior Lot 7.03) will contain the existing paved driveway and the rear stone parking area, which parking area was located on prior Lot 7.02.
- The existing 12 foot wide driveway easement on New Lot 7.05 is indicated to be vacated.
- No physical improvements are indicated

The applicant has requested **Minor Subdivision Approval**.

The application materials have been reviewed for compliance with relevant ordinances and design standards found in *The Borough of Freehold Code*. Based upon my review, the following information is furnished to assist board members in their deliberation of this matter.



## **ZONING**

1. Per §18.16.020 single family dwelling units are a permitted principal use in the R-5 Residential Zone.
2. The applicant should provide an overall review of what is being proposed for the 2 lots.
3. The applicant should describe the neighborhood surrounding the lot in question.
4. The following is a summary of the Zoning Requirements of the R-5 Residential Zone as related to this application.

Item	Required	Existing – Lot 7.02	Proposed – Lot 7.04
Lot Area	6,000 S.F.	19,298.25 S.F.	13,515.0 S.F.
Lot Width	50 FT	60 FT	60 FT
Building Setback			
Front	25 FT	<b>24.0 FT*</b>	<b>24.0 FT*</b>
Side	5 FT	6.0 FT	6.0 FT
Rear	25 FT	153.3 FT	153.3 FT
Side-Accessory	3 FT	4.3 FT	N/A
Rear-Accessory	3 FT	14.6 FT	N/A
Lot Coverage (Impervious)	40%	34.1 %	20.1%
Max Building Height	30 FT	Less than 30 FT	Less than 30 FT
	2 ½ Stories	2 ½ Stories	2 ½ Stories

Item	Required	Existing – Lot 7.03	Proposed – Lot 7.05
Lot Area	6,000 S.F.	6,605.50 S.F.	6,605.50 S.F.
Lot Width	50 FT	55 FT	60 FT
Building Setback			
Front	25 FT	30.0 FT	30.0 FT
Side	5 FT	5.0 FT	5.0 FT
Rear	25 FT	57.5 FT	162.7 FT
Side-Accessory	3 FT	N/A	4.3 FT
Rear-Accessory	3 FT	N/A	14.6 FT
Lot Coverage (Impervious)	40%	<b>47.2%*</b>	<b>55.6%**</b>
Max Building Height	30 FT	Less than 30 FT	Less than 30 FT
	2 ½ Stories	2 ½ Stories	2 ½ Stories

Existing Variance \*

Proposed Variance: \*\*

### **PARKING SPACES**

1. Per §18.73.010.A.2, for single family dwellings, parking is to be provided at the rate of 2 parking spaces per unit.
2. General Note #9, references 3 bedrooms for the existing dwellings. Per New Jersey Residential Site Improvement Standards (RSIS), for 3 bedroom dwellings, parking to be provided at the rate of 2 parking spaces per unit.
3. Proposed Lot 7.04. With the transferring of the gravel parking area from existing Lot 7.02, to be located on proposed Lot 7.05, and the removal of the driveway easement, proposed Lot 7.04 will result in no off-street parking. This will result in a parking shortage of 2 spaces.
4. Proposed Lot 7.05. Proposed Lot 7.05 will contain a driveway approximately 140 feet long, along with the rear stone parking area.
5. Per §18.73.020, for parking variances, as a condition of any approval, a contribution shall be made to the municipal parking capital improvement fund in the amount of one hundred dollars (\$100.00) for each parking space the project is deficient, for a maximum contribution of five thousand dollars (\$5,000.00). At a shortage of 2 spaces, this would result in a contribution in the amount of \$200.00.
6. This portion of South Street is signed "No Parking when Road is Snow Covered".

### **FENCING**

1. The subdivision plan indicates an existing chain link fence in the rear of proposed Lot 7.04, in conjunction with the existing pool.
2. On Proposed Lot 7.05, existing chain Link fencing is indicated between the rear of the dwelling and the on-site gravel parking area.
3. No other fencing is indicated. The applicant should indicate if any changes are proposed to the fencing. Fencing would need to comply with Borough Code §18.76.

## VARIANCES

The following determination of required variances is not deemed to be exhaustive and that additional variances and/or waiver relief may be required. Based upon my review of this matter, the following **Variances** from the Code of the Borough of Freehold appear to exist and should be considered as part of this matter:

- a. **§18.16.050 Front Yard Setback:** In the R-5 Residential Zone, the minimum front setback is 25 feet. The front yard setback on proposed Lot 70.04 is 24 feet, and is in variance. We note this to be an existing condition.
- b. **§18.16.050 Lot Coverage:** The maximum permitted Lot Coverage in the R-5 Residential Zone is 40%. Existing Lot 7.03 has a lot coverage of 47.2% and is in variance under existing conditions. Proposed Lot 7.05, incorporating the driveway and stone parking area, will result in an increased lot coverage, to be 55.6% under proposed conditions. Variance required.
- c. **§18.73.010.A.9 Parking:** 2 parking spaces are required for each of the single family dwellings. Proposed Lot 7.04 will result in no parking spaces on-site. Variance required.

The applicant will need to provide sufficient testimony to the Board to address the variances noted above.

## SUBDIVISION

1. No physical improvements are indicated, only lot line adjustments. This should be confirmed by the applicant.
2. Per §17.12.010.C. Minor Subdivision Plan to indicate buildings or structures within 50 feet of the property. There would appear to be a building that may be within 50 feet to the north of Lot 7.03 (adjacent Lot 6). The plan should be revised to indicate structures within 50 feet.
3. The applicant should indicate how off-street parking will be accommodated for proposed Lot 7.04, as the stone parking area will now be located on proposed Lot 7.05, and with the removal of the driveway easement.
4. The applicant should address the existing walkway connection, between the rear of the dwelling on proposed Lot 7.04 and the driveway on proposed Lot 7.05.
5. The plans would indicate the existing shed, to the rear of proposed Lot 7.05 will remain. This should be confirmed by the applicant.
6. The proposed lot numbers should be reviewed by the Tax Assessor for approval.



7. Provide for 2 additional pins with caps, one each to be set along the front and rear lines, where the lot lines abut each other.
8. Upon filing of the plat, new deeds, for the 2 new lots, to be filed at the same time.
9. Deed descriptions for the 2 new lots to be provided to our office for review and approval, prior to filing.
10. The lots front along State Route 79. It is the applicant's responsibility to obtain any approvals as may be required from the New Jersey Department of Transportation.

### **APPROVALS**

It is the applicant's responsibility to obtain all required approvals/permits from outside agencies. These may include, but not be limited to the following:

1. NJDOT

### **BONDING/FEEES**

1. If approved, it is recommended the applicant post bonding for the setting of monuments.

### **RECOMMENDATIONS**

1. As regard the Variances, the applicant will need to provide all necessary testimony so that the Board may render the decision deemed appropriate.
2. Recommend approval of the proposed lot numbers by the Tax Assessor.
3. If any improvements are required as a result of discussions before the Board, plans provided for same should be provided for review and approval.
4. It is recommended that any action that may be taken by the Board is subject to the applicant adequately addressing all items noted within this report.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

**ABBINGTON ENGINEERING, LLC**

A handwritten signature in blue ink that reads "William T. Wentzien". The signature is written in a cursive style with a large, stylized 'W'.

William T. Wentzien, P.E., P.P., C.M.E.  
Freehold Borough Planning Board Engineer

cc: Ronald Cucchiaro, Esq., Planning Board Attorney  
Matthew Young, Borough Zoning Officer  
Robert Sive, P.E., Applicant's Engineer



## ATTACHMENT III

**HARD COPY OF Telecommunications Towers and Antennas -  
Borough Ordinance was sent out on Friday, February 26, 2021**

Proposed Ordinance #2021/4 of the Borough of Freehold, County of Monmouth State of New Jersey Amending and Supplementing Chapter 18.80 (Wireless Telecommunications Towers and Antennas) by Adding Section 18.81 (Telecommunications Facilities in the Public Right-of-Way). The First Reading and Introduction of the Ordinance by Mayor and Council was on their agenda Friday, February 19, 2021. The Second Reading and Public Hearing is scheduled to be on the Council agenda for on Monday, March 15, 2021. I have also enclosed the current Ordinance Chapter 18.80 Wireless Telecommunications Towers and Antennas for the Borough of Freehold.

.



## MEMORANDUM

TO: Planning Board Members

FROM: Dominica R. Napolitano, Planning Board Secretary D.R.N.

DATE: February 26, 2021

RE: Telecommunications Towers and Antennas – Borough Ordinance

Enclosed please find for your review is a memo from the Borough Clerk and proposed Ordinance #2021/4 of the Borough of Freehold, County of Monmouth State of New Jersey Amending and Supplementing Chapter 18.80 (Wireless Telecommunications Towers and Antennas) by Adding Section 18.81 (Telecommunications Facilities in the Public Right-of-Way). The First Reading and Introduction of the Ordinance by Mayor and Council was on their agenda Friday, February 19, 2021. The Second Reading and Public Hearing is scheduled to be on the Council agenda for on Monday, March 15, 2021. I have also enclosed the current Ordinance Chapter 18.80 Wireless Telecommunications Towers and Antennas for the Borough of Freehold.

This matter will be on our agenda, Wednesday, March 10, 2021. If you have any questions, please feel free to contact me at your convenience. Thank you for your attention to this matter.


cc: Stephen J. Gallo, Business Administrator  
Ronald D. Cucchiaro, Esq. Planning Board Attorney  
William T. Wentzien, P.E, P.P., C.M.E., Planning Board Engineer

---

**MEMORANDUM**  
**FREEHOLD BOROUGH CLERK'S OFFICE**  
**51 WEST MAIN STREET FREEHOLD, NJ 07728**  
**PHONE: 732-462-1259 FAX: 732-409-1453**  
**E-MAIL: [tdibenedetto@freeholdboro.org](mailto:tdibenedetto@freeholdboro.org)**

---

---

**TO:** Dominica Napolitano, Planning Board Secretary  
**FROM:** Traci L. DiBenedetto, Borough Clerk   
**SUBJECT:** Ordinance #2021/4 Amending and Supplementing Chapter 18 (Zoning),  
Section 18.80 (Wireless Telecommunications Towers and Antennas) by  
Adding Section 18.81 (Telecommunications Facilities in the Public Right-of-  
Way)  
**DATE:** 2/22/2021  
**CC:** Stephen J. Gallo, Business Administrator

---

Attached for the review of the Freehold Borough Planning Board is the above referenced ordinance, introduced at a regular meeting of the Mayor and Council on February 19, 2021. Please place this on your next available agenda.

The Ordinance will be further considered for adoption after public hearing scheduled to be heard on March 15, 2021.

If you have any questions or concerns, please give me a call. Thank you.

# **BOROUGH OF FREEHOLD**

**#2021/4**

## **AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 18 (ZONING) , SECTION 18.80 (WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS) BY ADDING SECTION 18.81 (TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY)**

STATEMENT OF PURPOSE: The purpose of this Ordinance is to provide for reasonable regulations concerning the placement of small cell wireless facilities within the Borough of Freehold ("Borough"), consistent with state and federal law through the implementation of a right-of-way approval and permitting procedure.

**WHEREAS**, the Borough is aware that the telecommunications industry is rapidly developing and there is a strong desire among telecommunications companies to look for areas within municipalities for the placement of small cell wireless facilities, herein known as "small cells," "5G towers" and "personal wireless service facilities" by accessing rights-of-way within municipalities; and

**WHEREAS**, the rights-of-way are municipal properties and provide a valuable resource to its citizens by permitting the public to travel freely over and across these designated properties without unreasonable encroachments or interference; and

**WHEREAS**, the Borough recognizes that the use of these properties must be managed carefully with the utmost consideration given to general welfare and best interest of its citizens; and

**WHEREAS**, the Federal Telecommunications Act (TCA) preserves a local government's ability to "manage the public rights-of-way...on a competitively neutral and non-discriminatory basis" (47 U.S.C. §253 (c)); and

**WHEREAS**, the TCA further preserves a local government's authority over the "placement construction and modification of personal wireless service facilities" (47 U.S.C. §332(c)(7)(A)); and

**WHEREAS**, the TCA makes it unlawful for a local government to prohibit or have the effect of prohibiting the provisions of personal wireless service (47 U.S.C. 332(c)(7)(B)(i)(II)); and

**WHEREAS**, the TCA provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services" (47 U.S.C. §332(c)(7)(B)(i)(I)); and

**WHEREAS**, recent developments in wireless technology, specifically the development of 5G technology, involve the placement of small cells, cabinets and equipment in municipal rights of-way; and



**WHEREAS**, pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 48:17-10 New Jersey municipalities must give consent before a small cell including a small antenna can be placed on existing poles or new poles erected within public rights-of-way; and

**WHEREAS**, the erection of new poles and ground level cabinets in the public right-of-way raises aesthetic and safety concerns including, but not limited to, concerns related to sight triangles and other safety related issues; aesthetic concerns and safety concerns associated with the use of roadways by the public such as the public's ability to pass and repass over same, and; the impact on the streetscape and character of residential neighborhoods; and

**WHEREAS**, pursuant to regulations adopted by the Federal Communications Commission ("FCC"), in order to ensure the safety of its citizens and preserve the aesthetic quality of the Borough, the Borough may impose regulations on related infrastructure including, but not limited to, small cells, all poles, antennas and cabinets located on municipal rights-of-way provided such aesthetic requirements and/or restrictions are: 1) reasonable; 2) no more burdensome than those applied to other types of infrastructure deployment; and 3) published in advanced; and

**WHEREAS**, the TCA further provides that municipalities may "require fair and reasonable compensation" from telecommunications providers for the use of the public right-of-way, provided said compensation is applied on a "competitively neutral and nondiscriminatory basis" among providers, and if said compensation is "publicly disclosed", per 47 U.S.C. 253(c); and

**WHEREAS**, the FCC adopted an Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," (FCC-18-133A or "Carr's Order"), which was upheld for the most part by the Ninth Circuit Court of Appeals on August 12, 2020 concerning City of Portland et al. vs. the FCC; and

**WHEREAS**, in pertinent part, Carr's Order 1) establishes safe harbors for fees that municipalities can charge for one-time event application processing as well as recurring fees for right-of-way access, which are presumed acceptable under TCA; 2) provides that one-time fees and recurring fees, or rates, above the safe harbor levels may be imposed, and are not considered an effective prohibition of service within the meaning of the TCA (47 U.S.C. 253(c)) provided such fees are a reasonable approximation of actual costs, and the costs themselves are objectively reasonable, and non-discriminatory; and 3) places 60 and 90 day shot clock time limits on the municipal decision making process for applications for the placement of small wireless facilities, the replacement of existing poles and the placement of new poles in the public right-of-way; and

**WHEREAS**, the Borough has determined the most efficient way to effectuate this process is to set forth clear standards in relation to the positioning of poles, cabinets and antennas for the benefit of its citizens and any utilities that use or seek to make use of Freehold's rights-of-way safely, and to require all technology companies seeking to use municipal rights-of way for the purpose of erecting telecommunication equipment apply for and be granted permits and, furthermore, pay the permitted fees, which may change from time to time, in accordance with legal thresholds established by the FCC, state and federal laws and court orders; and,

**WHEREAS**, the Borough has recommended that such additional provisions be mandatorily imposed within the Zoning Ordinance as part of the anticipated telecommunication development of municipal rights-of-way; and

**WHEREAS**, the current antenna code, Chapter 18.80 Wireless Telecommunications Towers and Antennas is intended to govern macro cell sites on rooftops and freestanding towers and, thus, is insufficient to govern the unique circumstances and requirements of small cell facilities in the rights-of-way; and

**WHEREAS**, this Ordinance is limited to the installation of facilities in the public rights-of-way and shall have no effect on the installation of wireless telecommunications facilities and antennas on private lands pursuant to Chapter 18.80 Wireless Telecommunications Towers and Antennas; and

**WHEREAS**, the FCC Broadband Deployment Advisory Committee (BDAC) formed a Model Code for Municipalities Working Group and, in July 2018, published a Model Code for Municipalities for Small Wireless Facilities deployments. This model code is generally compliant with the Telecommunications Act, and FCC declaratory rulings and orders issued in 2009, 2014 and shortly thereafter in 2018. Thus, a municipality that adopts this code substantially in its original form will be in compliance with Federal laws and FCC guidelines for cell site deployments; and

**WHEREAS**, this Ordinance utilizes the FCC Model Code for Municipalities template to ensure compliance with Federal law and FCC regulations; and

**WHEREAS**, the Borough acknowledges that there may already exist a number of small cell facilities in the public rights-of-way that were approved under terms and conditions that would not be in compliance with this proposed ordinance; and

**WHEREAS**, in the event of any inconsistencies between this Ordinance and any agreements, licenses or franchises in existence, which govern said existing small cell facilities, the provisions of this Ordinance shall control, and shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Borough and parties in said licenses and agreements;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Freehold that the Revised General Ordinances be amended and supplemented as follows:

## **SECTION 1**

**Chapter 18 Zoning** is hereby amended, supplemented and revised as follows:

### **Chapter 18.81– TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

#### **18.81.010 Short Title.**



This Chapter is titled the “Telecommunications Facilities in the Public Right-of-Way”, and amends all applicable provisions of the Revised General Ordinances of the Borough of Freehold, and any existing local laws, rules, orders, resolutions and ordinances relating to the subject matter of this Chapter.

#### **18.81.020 Purpose.**

It is the intent of this Chapter to regulate the placement of telecommunications equipment, including poles, towers, antennas and other infrastructure located on Municipal Rights-of-Way. The placement of telecommunications equipment outside of the Municipal Right-of-Way shall be governed by Chapter 18.80 Wireless Telecommunications Towers and Antennas

It is furthermore intended that this Chapter shall control in the event of any inconsistency between the provisions of this Chapter and any existing agreements, licenses or franchises in existence and which govern existing Small Wireless Facilities in the Municipal Right-of-Way, and that the prevailing terms of this Chapter shall supersede and replace any conflicting terms in said agreements or licenses, and shall govern all future relationships between the Borough and the applicable parties in said licenses and agreements.

#### **18.81.030 Definitions.**

- a. “Administrative Review” means ministerial review of an Application by the Borough relating to the review and issuance of a Permit, including review by the Designee, a wireless consultant with knowledge beyond the expertise of Borough personnel, as well as the Construction Official, Zoning Officer, Director of Public Works, engineer, or other Borough staff or designees to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter. Administrative permit issuance is non-discretionary and based on whether an application is in conformity with the provisions of this Chapter, as well as any other applicable local, state and federal laws and regulations governing small cell deployment. This process does not involve the exercise of discretion.
- b. “Antenna” means communications equipment that transmits and/or receives over-the-air electromagnetic 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.
- c. “Applicable Codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Borough or otherwise are applicable in the jurisdiction.
- d. “Applicant” means a Person or entity who submits an Application under this Chapter.
- e. “Application” means a written request submitted by an Applicant to the Borough for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Support Structure, Pole, or Tower, or (ii) to construct, modify or Replace a new Support Structure, Pole or Tower or any other structure on which a Communications Facility will be Collocated.



- f. "Collocate" means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. "Collocation" has a corresponding meaning. The term does not include the installation of a new Pole, Tower or Support Structure in the Public Right-of-Way.
- g. "Communications Facility" means, collectively, the equipment at a fixed location or locations that enables communication between user equipment and a communications network, 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. A Wireless Facility is an example of a Communications Facility.
- h. "Communications Service Provider" means a cable operator, as defined in 47 U.S.C. §522(5), a provider of information service, as defined in 47 U.S.C. §153(24); or a provider of telecommunications service, as defined in 47 U.S.C. §153(53); or provider of fixed wireless or other wireless services as defined in 47 U.S.C. §332(c)(7)(C)(i). A Wireless Service Provider is an example of a Communications Service Provider.
- i. "Contract for Professional Services" means a contract through which the Borough has entered into an arrangement with an individual, attorney consultant or firm for same to provide professional consulting services pursuant to this Chapter, said contract being in conformance with New Jersey Public Contracts Law, Pay-to-Play Laws and other applicable laws governing such contracts and agreements. The Contract between the Designee and the Borough is an example of a Contract for Professional Services.
- j. "Decorative Pole" means a Borough Pole that is specially designed and placed for aesthetic purposes.
- k. "Deployable" means a portable, self-contained Wireless Facility that can be moved to a specified location or area and provide Wireless Services on a temporary or emergency basis such as a "cell on wheels" or "COW," "cell on light truck" or "COLT," tethered balloon, tethered drone or other unmanned device.
- l. "Designee" means the person appointed by the Borough and contracted for professional services to serve as the point-of-contact and primary consultant and specialist for the Borough for all matters concerning this Chapter.
- m. "Discretionary Review" means review of an Application by the Borough relating to the review and issuance of a Permit, that is other than an Administrative Review. Discretionary Review involves discretion on the part of the Borough (subject to any applicable limits on such discretion) in determining whether to issue a Permit and may be subject to one or more public hearings or meetings, including appearances before the planning board, zoning board of adjustment and referral to the Historic Preservation Commission for commentary and recommendations. Discretionary review may be subject

- to provisions of Title 16 Land Use Regulations and Title 18 Zoning, as well as other applicable provisions as determined by the applicable governing authority.
- n. "Eligible Facilities Request" means an eligible facilities request as set forth in 47 C.F.R. Section 1.6100(b)(3), as may be amended from time to time.
  - o. "FCC" means the Federal Communications Commission of the United States.
  - p. "Fee" means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.
  - q. "Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C) or established pursuant to state historic preservation law.
  - r. "Laws" means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
  - s. "Occupant" means any occupant of the Public Right-of-Way, including any Wireless Provider, Wireless Infrastructure Provider, utility company, or public or private entity with a physical presence or right to maintain a physical presence on, under or across the Public Right-of-Way.
  - t. "Ordinary Maintenance, Repair and Replacement" means (i) with respect to a Communications Facility and/or the associated Support Structure, Pole or Tower, inspections, testing, repair and modifications that maintain functional capacity, aesthetic and structural integrity, and (ii) with respect to a Communications Facility only, the replacement of Antennas and/or other components of the Communications Facility (specifically, such as a swap out of small cell Antennas and radio equipment as required by the Applicant), with Antennas and/or other components substantially similar, in color, aggregate size and other aesthetics to that previously permitted by the Borough (and/or consistent with the same height and volume limits for Wireless facilities under this Chapter), so long as the Support Structure, Pole, or Tower will structurally support, or prior to installation will be modified to support, the structural load. Modifications are limited to by the structural load analysis supplied by the Applicant to the Borough, and by the volume limits in Section 18.81.110 Design Standards.
  - u. "Permit" or "Small Cell Permit" means a written authorization (in electronic or hard copy format) required by the Borough to initiate, continue, or complete the installation, upgrade or modification of a Communications Facility, or an associated Support Structure, Pole, or Tower.
  - v. "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Borough.
  - w. "Pole" means a pole, such as a utility, lighting, traffic, or similar pole, made of wood, concrete, metal or other material, located or to be located within the Public Right of Way



or Utility Easement. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached unless the Borough grants a waiver for such pole. The term does not include electric transmission poles or structures. A Pole does not include a Tower or Support Structure.

- x. "Provider" means a Communications Service Provider or a Wireless Provider.
- y. "Public Right of Way", "Public ROW" or "Municipal ROW" means 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, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the municipality.
- z. "Rate" means a recurring charge.
- aa. "Replace" or "Replacement" means, in connection with an existing Pole, Support Structure or Tower, or Communications Facility, as the case may be, to replace (or the replacement of) same with a new structure, similar in design, size and scale to the existing structure and in conformance with current Borough building code, zoning provisions and other applicable regulations, in order to address limitations of, or change requirements applicable to, the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.6100 (b)(7).
- bb. "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider's Antenna (including, without limitation, any strand-mounted Antenna) could fit within an enclosure of no more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services. The following additional parameters apply to Small Wireless Facilities: (i) Total height of Small Wireless Facility and supporting structure is less than 50 feet, or the Small Wireless Facility is mounted on structures no more than 10% taller than adjacent structures, or the Small Wireless Facility does not extend the existing structure to a height of greater than 50 feet or by more than 10% of the original height, whichever is greater.
- cc. "State" means the State of New Jersey.
- dd. "Support Structure" means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower.



- ee. "Tower" means any structure built for the sole or primary purpose of supporting a Wireless Facility, such as a self-supporting Tower, a monopole, a lattice Tower or a guyed Tower. Tower also includes a structure designed to conceal from the general public the Wireless Facility. A Tower does not include a Pole or a Support Structure.
- ff. "Borough" means the Borough of Freehold, or any agency, department, district, subdivision or any instrumentality thereof, including, but not limited to public utility districts, or municipal electric utilities. The term shall not include courts of the State having jurisdiction over the Borough or any entities that do not have zoning or permitting authority or jurisdiction. The Borough may hereinafter be referred to as the "Borough", "the Borough of Freehold", or "Freehold".
- gg. "Borough Pole" means a Pole owned, managed or operated by or on behalf of the Borough.
- hh. "Utility Easement" means the area on, below, or above privately-owned property that has been designated for use as or is used for a specific utility purpose (such as for electric, cable or other utility purpose), and is evidenced by a recorded instrument in the public land records pursuant to a recorded plat, easement or right of way or is otherwise a legally enforceable easement, and does not include any portion of a Public Right of Way.
- ii. "Wireless Facility" means a Communications Facility installed and/or operated by a Wireless Provider. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) 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 example of a Wireless Facility.
- jj. "Wireless Infrastructure Provider" means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider.
- kk. "Wireless Provider" means a Wireless Infrastructure Provider or a Wireless Services Provider.
- ll. "Wireless Services" means any wireless services including, without limitation, personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i).
- mm. "Wireless Services Provider" means a Person who provides Wireless Services.

#### **18.81.040 General Provisions of Agreement for Access to the Public ROW**

- a. Applicability. Except as otherwise provided herein, the placement, installation, modification, replacement, repair and upgrade of any Communications Facilities, including Small Wireless Facilities, as well as the associated Poles, Towers or Support Structures, in the Public Right-of-Way shall be governed by this Chapter.

- b. Notice Prior to Any Non-Emergency Work.
- i. Designee. The Designee will serve as the initial point of contact for the Borough for all matters pertaining to this Chapter.
  - ii. Notice Required. No action, application, installation, alteration, upgrade, replacement or modifications by Applicant contemplated by this Chapter shall be commenced without first giving notice to the Borough Designee.
  - iii. This notice requirement does not pertain to ordinary maintenance, repairs, and like-for-like equipment swap outs that do not increase the dimensions or electromagnetic profile of the Small Wireless Facility. This work may be performed without giving notice to the Designee.
  - iv. Emergency Work. Work that is of an urgent and immediate nature, such as a network outage or an imminent safety hazard, shall not be required to meet the notice provisions of this subsection, subject only to providing notice to the Designee as soon as is practicable for the emergency work either about to be performed, currently underway or having been performed, and then providing a brief summary of the work completed, including the replacement or removal of any components of the applicable Small Wireless Facility or Facilities. Any such emergency work shall be subject to Administrative Review, after the fact, only if the nature and scope of said work exceeds that which may be reasonably construed as maintenance and repair work. The below terms and conditions utilized for Notice for Ordinary Maintenance shall govern after-the-fact review for emergency work in these instances.
  - v. Notice for Ordinary Maintenance. As noted in section (iii) above, notice to the Designee is not required for ordinary maintenance and repairs. However, Designee reserves the right to inspect Applicant's Small Wireless Facilities at any time in order to determine if the existing configuration matches the configuration contained in the most recently issued Small Cell Permit, and any applicable Right-of-Way Agreement and the attached schedules. Applicant shall bear no costs for said inspections. However, if it is determined that an existing Small Wireless Facility is found to be larger than the dimensions specified in the most recently issued applicable Small Cell Permit, then Applicant shall be in violation of this Ordinance pursuant to section 18.81.150. Applicant shall receive notice from the Borough and, upon receipt of such notice, be required to restore the site within ten (10) days to the configuration of the most recently approved Small Cell Permit or Removed or retroactively apply for Administrative Approval for the unapproved modifications. In such instances, Applicant will be responsible for costs and fees incurred by the Borough Designee to perform inspections and review.
- c. Municipal Agreement. Prior to receiving a Permit to install one or more Communications Facilities in the Public ROW, each Applicant shall be required to enter into a Municipal Agreement (e.g., Right of Way Access Agreement, Pole Attachment Agreement, License

Agreement) between the Borough and the Applicant, on terms and conditions substantially the same for all Applicants and existing Occupants of the Public ROW. The terms and conditions of such Municipal Agreement will include the following:

- i. Fees and Rates. As consideration to the Borough for entering into the Municipal Agreement and also as a condition precedent for the issuance of any required permits and approvals to install the applicable Communications Facilities in the public right-of-way, the Applicant shall pay the required fees and rates as set forth in Schedule A of this Chapter, and which may be amended or modified from time to time per revision and modification to local, state and federal laws and regulations. Said fees shall include Application or One-Time fees and Recurring Right-of-Way Occupancy Rates.
- ii. The Small Cell Permit Application Escrow, as described in Schedule A, shall be paid upon submission of an Application and shall be held in escrow and billed against actual incurred One-Time Fees and costs to process an Application, also as described below and in Schedule A of this Chapter. If said Small Cell Permit Application Escrow is insufficient to cover incurred One-Time Fees as described below and in Schedule A, then any amount in excess of the escrow shall be invoiced to Applicant directly upon completion.

(a) Reasonable Approximation: All one-time event fees will be a reasonable approximation of objectively reasonable costs.

(b) One Time Fees Apply to All Work: One-time fees and event fees apply to the initial installation of facilities as well as to any subsequent upgrade, replacement, modification or alteration of same, with each instance of an upgrade or repair being a separate project subject to One-Time Fees. Ordinary maintenance and repairs does not trigger any One-Time Fees. .

A. Annual ROW Occupancy Rate shall be as specified in Schedule A of this Chapter and shall be paid within thirty (30) days of the issuance of the applicable Permit and annually thereafter, with payment being due on the anniversary of the first payment date for the balance of the Term. However, under no circumstances shall the Rate be remitted later than ninety (90) days after the full execution of the applicable Municipal Agreement between Borough and Applicant.

B. Annual Attachment Rate, equal to an amount that represents a reasonable approximation of the objectively reasonable costs incurred by the Borough for the attachment of each Small Wireless Facility to Borough-owned structures in the Public Right-of-Way. This amount shall be paid within thirty (30) days of issuance of the applicable Permit(s) and annually thereafter. The annual rates combined shall not exceed \$270 annually per Small Wireless Facility location.



- C. All Fees and Rates will be applied in a non-discriminatory manner to all Communications Service Providers.
- D. Make-Ready Fee, shall be determined on a site-specific, engineering basis, for work reasonably necessary to make a particular Borough Pole suitable for attachment of the applicable Communications Facility shall be paid upon submission of the Application as more particularly described in Subsection 18.81.060(e) below.

d. Other Terms.

- i. Term. Unless otherwise agreed to in writing by the Borough and Applicant, the Agreement term shall be ten (10) years.
- ii. Safety and Accessibility. The Applicant will demonstrate compliance with applicable safety and accessibility requirements, including those under Americans with Disabilities Act ("ADA"), OSHA and similar laws.
- iii. The Municipal Agreement shall include, as an appendix thereof, a schedule containing the location of all proposed Small Wireless Facilities in the Public Right-of-Way, which the Borough and Applicant may update as necessary without the need for additional review. Said locations shall be as specific as possible and shall include, but not be limited to, latitude, longitude, the nearest proximate address, cross streets as well as lot and block numbers, if available. Applicants shall also provide for inclusion in the Municipal Agreement information indicating the horizontal and approximate vertical location, relative to the boundaries of the Public ROW, of all equipment which it owns or over which it has control and which is located in any Public Right-of-Way.
- iv. RF Safety Reports. Applicant shall provide, as part of the initial request to install Small Wireless Facilities via Municipal ROW Agreement and any associated Application, a copy of a health and safety report evidencing compliance with FCC requirements concerning electromagnetic radiation emissions. Along with any Application to modify, enhance or add equipment to a Small Wireless Facility that alters that facility's electromagnetic emissions profile, Applicant will provide an updated health and safety report which reflect the most recent electromagnetic emissions levels.
- v. Indemnification and Insurance Requirements.

Insurance. The Applicant shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The Applicant may use any combination of

primary and excess insurance to meet the total limits required. Such coverage shall be primary, non- contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by the Applicant. Prior to the commencement of any work pursuant to this Ordinance the Applicant shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Applicant within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any of Applicant or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance. Applicant shall notify the Borough Clerk within fifteen (15) days of receipt of any claim or demand of Applicant or its subcontractors, agents, employees, officer, servants, designees, guests or invitees by any aggrieved party for any work or action made pursuant to this Ordinance

Indemnification. Applicant, its successors, assigns, contractors, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Applicant's actions under this Ordinance and costs in connection therewith except to the extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the Borough, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Applicant's activities pursuant to the rights granted in this Ordinance . This indemnification shall also specifically include that the Borough retains the right to choose its own defense counsel in regard to any action at law or equity pursuant to this Chapter.

- vi. Reliable 24/7 Emergency Notification Contact Information will be provided by the Applicant to the Borough and incorporated into the Agreement.
- vii. Additional Agreement Terms: Additional terms, such as for termination, assignment and sublicensing rights, shall be as negotiated between the Applicant and Borough.



- viii. Nondiscriminatory. Applications will be processed on a nondiscriminatory basis.

**18.81.050 Permitted Communications Facility Uses/Administrative Review; Application**

- a. Permitted Use. The following uses within the Public ROW shall be a permitted use, subject to the entering into of a Municipal Agreement between Applicant and Borough as set forth in Section 18.81.040(c) above, and Administrative Review and the issuance of a Small Cell Permit as set forth in this Chapter 18.81.050. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 18.81.110 below.
- (i) Collocation of a Small Wireless Facility.
  - (ii) Collocation that qualifies as an Eligible Facilities Request.
  - (iii) Modification of a Pole, Tower or Support Structure or Replacement of a Pole, for Collocation of a Communications Facility that qualifies as an Eligible Facilities Request or involves a Small Wireless Facility that does not exceed the maximum limitations set forth in Section 18.81.110 Design Standards below.
  - (iv) Construction of a new Pole or a monopole Tower (but no other type of Tower) to be used for Collocation of a Small Wireless Facility that does not exceed the maximum height and other applicable design standards set forth in this Chapter.
  - (v) Construction of a Communications Facility, other than those set forth in subparagraphs (i), (ii) or (iii) in this Subsection 18.81.050(a), involving the installation of coaxial, fiber-optic or other cabling, that is installed underground (direct buried or in conduit) or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
  - (vi) Any upgrade, replacement, modification or alteration of a Communications Facility, with each instance of alteration, modification or upgrade being a separate instance subject to Administrative Review.
  - (vii) The Borough reserves and retains the general right to subject any installation or modification contemplated in this Chapter to Discretionary Review subject to the 60 and 90 day Shot Clock guidelines specified in FCC-18-133A. This may include public hearings and zoning board of adjustment approval. The Shot Clock guidelines will be adhered to for any Discretionary Review process unless compelling and extraordinary circumstances suggest otherwise.
  - (viii) All other installations, modifications and replacements not subject to Administrative Review and that do not qualify as a Permitted Use are subject to Discretionary Review under Title 18 Zoning and 16 Land Use Regulations.
- b. Permit Required. No Person shall place any facility described in section 18.81.050(a) above in the Public ROW without first filing an Application for Administrative Review for same and obtaining a Permit thereof, except as otherwise expressly provided in this



Chapter. The Permit application may be in substantially the same form as attached to this Chapter 18.81 as Schedule B.

- c. Proprietary or Confidential Information in Application. The Borough shall make accepted Applications publicly available by reasonably available means such as a request pursuant to the Open Public Records Act ("OPRA"). Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the Borough shall treat the information as proprietary and confidential, subject to applicable State and local "freedom of information" or "sunshine" Laws and the Borough's determination that the Applicant's request for confidential or proprietary treatment of an Application material is reasonable. Confidential and proprietary information shall not include any information which is by law, regulation, ordinance, OPRA procedure and regulations or this Chapter, open and available for public inspection, including proposed Communications Facilities' site locations.
- d. Administrative Review Application Requirements. The Application shall be made by the applicable Wireless Service Provider or its duly authorized representative and shall contain the following:
  - (i) The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
  - (ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
  - (iii) A general description of the proposed work and the purposes and intent of the proposed facility or facilities. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
  - (iv) Detailed construction drawings regarding the proposed facility, as required by the Uniform Construction Code of the State of New Jersey, or as otherwise stated and required under applicable Borough ordinances.
  - (v) Demonstration of compliance with RF health and safety measures, as established by the TCA and FCC, via an RF Health and Safety Report. Applicant may utilize the RF Safety Reports provided in connection with the Municipal Agreement per section 18.81.040(c) for the section for Administrative Review and Permit issuance
  - (vi) Applicant shall demonstrate compliance with section 18.81.110 Design Standards as they pertain to appearance, siting and height of

the proposed Communications Facilities and their support poles, towers or other structures.

(vii) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a qualified engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

e. Applicant shall demonstrate compliance with applicable environmental, historical and landmark laws, rules and regulations, including SHPO and NEPA approval, as needed or applicable, including obtaining any necessary permits and approvals from the appropriate local, state or federal department agency or other governing body.

f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the Borough within thirty (30) days after the condition necessitating the change.

g. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the escrow amounts required under section 18.81.040(c)(ii) above and Schedule A which shall be used to cover One-Time Fees associated with application review and processing, and for which amounts in excess of the escrow shall be billed directly to the Applicant.

#### **18.81.060 Action on Administrative Review Applications**

a. Review of Applications for Administrative Review.

(i) The Borough shall review the Application in light of its conformity with applicable provisions of this Chapter, and shall issue a Small Cell Permit on nondiscriminatory terms and conditions, subject to the following requirements:

(A) The Borough must act consistent with the following Shot Clock Dates:

(i) Review of an Application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an Application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an Application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an Application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(B) Tolling period: Unless a written agreement between the Applicant and the Borough provides otherwise, the tolling period for an Application (if any) is as set forth in paragraphs (1) through (3) of this section:

(1) For an initial application to deploy Small Wireless Facilities, if the Borough notifies the Applicant on or before the 10th day after submission that the Application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the Applicant submits all the documents and information identified by the Borough to render the Application complete.

(2) For all other initial Applications, the tolling period shall be the number of days from--

(i) The day after the date when the Borough notifies the Applicant in writing that the Application is materially incomplete and clearly and specifically identifies the missing documents or information that the Applicant must submit to render the Application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the Applicant submits all the documents and information identified by the siting authority to render the Application complete;

(iii) But only if the notice pursuant to paragraph (B)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted Applications following a notice of deficiency, the tolling period shall be the number of days from--

(i) The day after the date when the Borough notifies the Applicant in writing that the Applicant's supplemental submission was not sufficient to render the Application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Borough's original request under paragraph (B)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the Borough to render the Application complete;

(iii) But only if the notice pursuant to paragraph (B)(3)(i) of this section is effectuated on or before the 10th day after the date when the Applicant makes a supplemental submission in response to the Borough's request under paragraph (B)(1) or (2) of this section.

(iv). Final Decision by Borough. The Borough must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including referencing specific code provisions and/or regulations upon which the denial was based, including any federal law, or local or state laws and regulations, provided said local and state laws and regulations do not conflict with federal law. Denial may include lack of conformity with the Borough codes, ordinances and regulations, as well as local, state and federal environmental, landmark and historical regulations. A decision to deny an application shall be in writing and supported by clear evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by the Borough. The review period or "shot clock" shall run until the written decision, supported by substantial evidence, is released and sent to the Applicant contemporaneously. The subsequent review by the Borough shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies.



- b. **Undergrounding Provisions.** The Borough shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the Borough and all Public ROW Occupants to minimize disruption or discontinuance of service of all kinds to consumers, through mutual obligation to coordinate and timely complete such projects. An Occupant, including the Applicant, as the case may be, shall comply with nondiscriminatory Borough undergrounding requirements that 1) are in place and published prior to the date of initial filing of the Application, and 2) prohibit electric, telecommunications and cable providers from installing above-ground horizontal cables, Poles, or equivalent vertical structures in the Public ROW; and the Borough may require the removal of overhead cable and subsequently unused Poles. In areas where existing aerial utilities are being moved underground, Wireless Providers shall retain the right to remain in place, under their existing authorization, by buying out the ownership of the Pole(s), subject to the concurrence of the Pole owner and consent of the Borough (which consent may not be unreasonably withheld, conditioned or delayed) or, alternatively, the Wireless Service Provider may reasonably replace the existing Pole(s) or vertical structure locations for Antennas and accessory equipment, as a permitted use, within 50 feet of the prior location, unless a minimally greater distance is necessary for compelling public welfare. In neighborhoods or areas with existing underground utilities that do not have Small Wireless Facilities deployed as a permitted use, a new entrant Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures in the neighboring underground utility area. In neighborhoods or areas with existing underground utilities that do have Small Wireless Facilities deployed as a permitted use, a new entrant Wireless Provider applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures of Wireless Providers in the neighboring underground utility area. In neighborhoods with underground utilities, whether being converted from overhead utilities or initially underground, microwireless devices, typically strand-mounted, shall be treated like other Small Wireless Facilities in the Public ROW, requiring Administrative Review permitted use status, and subject to non-recurring and recurring Fees and Rates.
- c. **Effect of Permit.**
- (i) **Authority Granted; No Property Right or Other Interest Created.** A Small Cell Permit from the Borough authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant to the Applicant to impinge upon the rights of others who may already have an interest in the Public ROW.

- (ii) Duration. Any Permit for construction issued under this Chapter shall be valid for a period of six (6) months after issuance, provided that the six (6) month period shall be extended for up to an additional six (6) months upon written request of the Applicant, made prior to the end of the initial six (6) month period if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant.
- d. Removal, Relocation or Modification of a Communications Facility in the ROW.
  - (i) Notice. Within ninety (90) days following written notice from the Borough, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility within the Public ROW whenever the Borough has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Borough improvement in or upon, or the operations of the Borough in or upon, the Public ROW, or pursuant to any redevelopment plan made pursuant to the Municipal Land Use Law contained in N.J.S.A. 40:55D, or any council resolution that approves any redevelopment plan for work that is performed by a private company other than the Borough. The Borough shall apply the same standards to all utilities in the Public ROW.
  - (ii) Emergency Removal or Relocation of Facilities. The Borough retains the right and privilege to cut power to or move any Communications Facility located within the Public ROW of the Borough, as the Borough may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the Borough shall notify the Provider and provide the Provider an opportunity to move its own facilities prior to cutting power to or removing the Communications Facility and in all cases shall notify the Provider after cutting power to or removing the Communications Facility as promptly as reasonably possible.
  - (iii) Structural reconditioning, repair and replacement. From time to time, the Borough may paint, recondition, or otherwise improve or repair the Borough Poles in a substantial way ("Reconditioning Work"). The Provider shall reasonably cooperate with the Borough to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider's approved use of the facility.
    - A. Prior to commencing Reconditioning Work, the Borough will use reasonable efforts to provide the Provider with at least sixty (60) days prior written notice. Upon receiving that notice, it shall be the Provider's sole responsibility to provide adequate measures to cover, remove, or otherwise protect the Provider's Communications Facilities from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. The Borough reserves the right to require the Provider to remove all of the Provider's Communications Facility from the Borough Pole and surrounding premises during Reconditioning Work,



provided the requirement to remove same is contained in the written notice required by this Subsection. All cost associated with the protection measures, including temporary removal, shall be the sole responsibility of the Provider. The Borough will provide the Provider with a date by which its equipment must be protected or removed. The Provider may request a modification of the Borough procedures for carrying out Reconditioning Work in order to reduce the interference with Provider's operation of its Communications Facility. If the Borough agrees to the modification, the Provider shall be responsible for all reasonable incremental cost related to the modification.

B. If the Borough Poles need to be replaced ("Replacement Work"), the Borough shall provide Provider with at least sixty (60) days written notice to remove its Communications Facilities. The Borough shall also promptly notify Provider when the Borough Poles have been replaced and Provider may re-install its equipment. During the Replacement Work, the Provider may maintain a temporary Communications Facility on or nearby in the Public Right-of-Way, with the specific temporary location to be approved by the Borough, or on nearby private property, or on any land owned or controlled by Borough, in the vicinity of the property. If alternative locations in the Public Right-of-Way or on nearby public or private property will not accommodate the Provider's temporary Communications Facility or if the parties cannot agree on a temporary location, the Provider, at its sole option, shall have the right to suspend the applicable Permit, until the replacement Pole is installed, upon thirty (30) days written notice to the Borough.

C. If the Borough Poles need to be repaired due to storm or other damage ("Repair Work"), the Borough shall notify the Provider to remove its Communications Facilities as soon as possible. In the event of an emergency, the Borough shall contact the Provider by telephone at its emergency contact of record upon or prior to removing the Provider's equipment. Once the Borough Poles have been replaced or repaired, the Borough will promptly notify the Provider that it can reinstall its equipment. During Borough Repair Work, the Provider may maintain a temporary Communications Facility on the Public Right-of-Way or nearby property, subject to approval of the applicable property owner, or after approval by Provider, on any land owned or controlled by the Borough in the vicinity of the property. All cost associated with any removal or protection of Communications Facilities shall be the sole responsibility of the Provider, except to the extent caused by third-parties or the Borough.

e. Attachment to Borough Poles in the Public ROW.

(i) Make-Ready Requirements. For any attachment to Borough Poles in the Public ROW, the Borough shall provide a good faith estimate for any make-ready work necessary to enable the Borough Pole to support the proposed facility, including



Replacement of the Pole if necessary, within sixty (60) days after receipt of a completed Application requesting attachment to the Borough owned Pole, unless a longer period is required in order to comply with New Jersey law, including, but not limited to, Local Public Contracts Law ("LPCL") and the New Jersey Local Unit Pay to Play. Make-ready work including any Pole Replacement shall be completed within one hundred and twenty (120) days of written acceptance of the good faith estimate by the Provider. Borough will make all reasonable estimates to complete the work within the stated timeframes. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the Borough. If Borough does not indicate it is willing to perform the make-ready work within the sixty (60) days after receipt of a completed Application requesting attachment to the Borough Pole, Applicant may perform the work itself consistent with Borough approval under this Chapter.

**18.81.070 Applications Requiring Discretionary Review and Approval.**

- a. Discretionary Review Required. All other uses not expressly set forth or referenced in section 18.81.050 above shall require compliance with applicable Borough ordinance, including, but not limited to, Chapter 18.80 Wireless Telecommunications Towers and Antennas and the district zoning regulations and any other applicable laws and ordinances of the Borough.

**18.81.080 Other Public ROW Installation Requirements.**

- a. General Principles.

- (i) Reasonable Placement Limitations. The Borough shall have the power to establish reasonable and non-discriminatory limitations on the placement of new or additional facilities within specific congested segments of the Public ROW if there is insufficient space to accommodate all of the requests of Applicants or other Persons to occupy and use the Public ROW. In making such decisions, the Borough shall to the extent possible accommodate all existing users and potential users (i.e. those who have submitted an Application to deploy facilities within the Public ROW) of the Public ROW, and shall be guided primarily by considerations of the public interest, the width and physical condition of the Public ROW, the time of year with respect to essential utilities, the protection of existing facilities in the Public ROW and established plans for public improvements and development projects which have been determined to be in the public's interest.

- (ii) Fewest Possible New Poles / Use of Existing Poles. In compliance with the Design Standards contained herein, Applicant shall use existing poles when possible for the placement of its Small Wireless Facilities and shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet the coverage and capacity requirements.

- (iii) Leasing of excess space in ducts, conduits and on Poles is a matter between interested parties (subject to any applicable Pole Attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees or licensees of such physical facilities must still comply with the terms of this Chapter, unless otherwise expressly exempted by the Borough.
- (iv) Due Care and Safe Work Practices. An Occupant of the Public ROW shall employ due care during the installation and maintenance process and comply with all safety and Public ROW-protection requirements of applicable Federal, State and local Laws (and any generally applicable Borough guidelines, standards and practices), and any additional commonly accepted safety and Public ROW- protection standards, methods and devices (to the extent not inconsistent with applicable Laws). All facilities on and under the streets of the Borough shall be kept and maintained in a safe and well-ordered condition, and in good order and repair. Due care during construction, maintenance and modifications shall include the following:
  - (A) Any Applicant occupying any portion of the Public ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs and lights appropriate to the level of complexity of the activity in order to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic- control plan in accordance with the Manual on Uniform Traffic Control Devices, and existing procedures, including the Borough work site evaluation process by which the construction office may refer proposed work to the police department in order to develop safety measures to safeguard pedestrian and vehicular traffic as well as property. In the event of any conflict between the provisions of this subsection and the work site evaluation process, the work site evaluation procedures shall control.
  - (B) Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the Borough notifies the Occupant in writing that the Borough or the Borough's designated contractor is assuming responsibility for traffic control.
  - (C) Each Occupant shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the Occupant's field employees and contractors for all job sites within the Public ROW.
- (v) Interference With Existing Facilities. An Occupant of the Public ROW shall not place any fixtures or equipment where the same will interfere with any existing facility, and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual traffic

patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.

(vi) Sharing of Trench Space. In the event that the Borough notifies the Occupant in advance that it is expressly interested in sharing the trenches or bores at a specific location area where construction is occurring, then the Occupant shall allow the Borough to place its infrastructure in the Occupant's trenches and bores as requested by the Borough. In these instances, the Borough will bear an incremental share of the costs of trenching, boring and the placement of conduit and infrastructure.

(vii) Call Before You Dig Provision. Before beginning excavation in any Public ROW, an Occupant shall contact the regional notification center for subsurface installations (One-Number Locator Service) to determine possible conflicts.

(viii) Abandonment of Facilities.

(A) Any Occupant of the Public ROW, including any Applicant, Wireless Provider or Wireless Infrastructure Provider, that intends to permanently discontinue use of any of its Communications Facilities, Poles or Support Structures within the Public ROW shall notify the Borough in writing within thirty (30) days prior to abandonment. Such notice shall describe the facilities for which the use is to be discontinued, and the date of discontinuance of use. Upon notification, at its discretion, the Borough will choose from the following options within 14 days or any other agreed upon option, and so notify the Occupant of its decision:

1. Abandon the facilities in place and the Occupant shall further convey full title and ownership of such abandoned facilities to the Borough. The Occupant will remain responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the Borough is completed; or
2. The facilities shall be removed and the Occupant shall be liable for removing the facilities at its own cost. If an Occupant fails to remove facilities that the Borough requires it to remove, after ninety (90) days notice to the Occupant, the Borough may perform the work and shall be entitled to collect the cost from the Occupant its successors and/or assigns.

b. Additional Requirements.

(i) General. All deployments of Communications Facilities in the Public ROW shall comply with the following:

(A) Compliance with ADA and other applicable Federal, State and local Laws and standards.



- (B) Pedestrian and vehicular traffic and safety requirements established by the Borough.
- (C) Existing Public ROW occupancy or management ordinances, not otherwise inconsistent with this Chapter.
- (ii) Additional Permits. In addition to obtaining a Small Cell Permit for installation of a Communications Facility in the Public ROW, an Applicant must obtain the following additional permits and approvals, as well as provide notice where indicated:
  1. Notification to Borough Designee for all work contemplated in this Chapter, pursuant to Section 18.81.040(b).
  2. Construction Permit (including building and electrical subcodes), per statutory fees established by uniform construction code regulations contained in N.J.A.C. 5:23.
  3. Zoning Permit, if applicable, per this Chapter and the applicable provisions of the Borough land use regulations, including Title 18 Zoning and 16 Land Use Regulations.
  4. Street Opening Permit, if applicable, per Borough code Title 12 Streets, Sidewalks and Public Places.
  5. Telecommunications Consultation and Review performed by the Designee or other such official of the Borough or professional contracted by the Borough, to include permit review, construction oversight for code and zoning compliance and post-installation inspection to ensure compliance with the technical specifications.
  6. Engineering Review by the Borough engineer or outside consultant, as needed or applicable.
  7. Discretionary Review: For Small Wireless Facility and Pole applications not subject to Administrative Review pursuant to this Chapter.
- c. Existing Utility Easements in the Public Right of Way.
  - (i) Applicants will work with the Borough engineer to coordinate and protect existing utilities in the Public ROW.
  - (ii) Applicants will coordinate with the Designee and Borough engineer, as applicable, to detail all public safety considerations prior to and during installation in the Public ROW to ensure public safety response in the case of gas line, water line or electric Borough disturbance.

#### **18.81.090 Attachment to and Replacement of Decorative Poles.**

Notwithstanding anything to the contrary in this Chapter, the Borough may request that Applicant install a Small Wireless Facility on a new Decorative Pole, or Replace an existing Pole with a Decorative Pole, or replace an existing Decorative Pole with a new Decorative Pole that is in keeping with the aesthetics of the existing Decorative Pole or the surrounding streetscape only upon satisfaction of the following additional requirements:

- (i) Issuance of a Permit under section 18.81.050 above.
- (ii) The new Decorative Pole, Small Wireless Facilities attachment and/or the Replacement Decorative Pole is in keeping with the aesthetics of the Decorative Pole and surrounding streetscape in the judgement of the Borough.

#### **18.81.100 Batch Applications.**

An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the Borough's approval, batch Application requirements and file a consolidated Application and receive multiple permits or a single Small Cell Permit for multiple Communications Facilities. The Borough's denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The Borough shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Chapter.

#### **18.81.110 Design Standards.**

All above-ground Communications Facilities in the Public ROW requiring Administrative Review shall conform to the following non-discriminatory design guidelines:

##### **(A) Siting and Design Requirements:**

- a. Pole Siting Standards. New Poles for use as support structures for Small Wireless Facilities shall conform to the following siting standards:
  - i. Height. No Proposed Pole shall be taller than fifty (50) feet or 110% of the height of Poles in the surrounding streetscape, whichever is higher. This maximum height includes the Pole and any associated Small Wireless Facility or Antenna.
  - ii. Location, Safety and Aesthetics. No Proposed Pole shall be erected in the Right-of-Way unless it:
    - 1. Is approved pursuant to the provisions of this Chapter;
    - 2. Replaces an Existing Pole; or
    - 3. Does not inhibit any existing sight triangles or sight distances; and
    - 4. Allows adequate room for the public to pass and re-pass across, along and through the Right-of-Way; and
    - 5. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties.
    - 6. Is compliant with Chapter 12 Streets, Sidewalks and Public Places of the Revised General Ordinances as well as any applicable local and state laws and regulations pertaining to the installation of utility pole structures in the right-of-way, including promulgated by the Board of Public Utilities requiring approval of proposed locations prior to installation.

- iii. Fewest Poles Possible. Applicant shall minimize the number of new proposed Poles in the right-of-way to the fewest possible to meet its coverage and capacity requirements of its client. In addition, to the maximum extent possible while remaining compliant with engineering and structural requirements, Applicant shall make any proposed Pole available to the maximum number of additional Wireless Providers.
- b. Ground Level Cabinet Siting Standards. Ground level cabinets shall conform to the following siting standards:
  - i. Ground level cabinets are prohibited in the Public Right-of-Way in residential zones and any future residential zones.
  - ii. Ground level cabinets are permitted in non-residential zones provided that such Ground Level Cabinet:
    - 1. Is less than twenty-eight (28) cubic feet in volume; and
    - 2. Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - 3. Does not inhibit any existing sight triangles or sight distance; and
    - 4. Allows adequate room for the public to pass and repass across, along and through the Municipal Right-of-Way.
    - 5. Is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility, excluding the Small Wireless Facility for which the Ground Level Cabinet will provide telecommunications functionality.
  - ii. Fewest Ground Level Cabinets Possible: Applicant shall minimize the number of ground mounted cabinets and shall affirmatively demonstrate that any applicable Pole or Support Structure is incapable of supporting the proposed equipment cabinet.
- c. Pole Mounted Antenna and Pole Mounted Cabinet Siting Standards.
  - i. Pole mounted Antennas are permitted on Existing Poles, provided that each pole mounted antenna:
    - 1. Does not exceed three (3) cubic feet in volume; and
    - 2. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
    - 3. Does not increase the height of the proposed or existing Pole by 10% or 5 feet, whichever is greater, to a maximum permitted height of 50 feet or 110% of the height of existing Poles in the surrounding streetscape, whichever is greater; and
    - 4. Is a minimum of one hundred fifty (150) linear feet from any other existing or proposed Small Wireless Facility; and
    - 5. Does not inhibit any sight triangles or sight distance; and



6. Allows adequate room for the public to pass and repass across, along and through the Public Right-of-Way.
7. Pole mounted cabinets are permitted on Existing Poles in all residential zones and non-residential zones provided that each pole mounted cabinet:
  - a. Does not exceed sixteen (16) cubic feet; and
  - b. Is finished and/or painted and/or otherwise camouflaged, in conformance with best available stealth technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and
  - c. Does not inhibit any sight triangles or sight distance; and
  - d. Allows adequate room for the public to pass and repass across the Public Right-of-Way.
- ii. Fewest Small Wireless Facilities Possible. Applicant shall minimize the number of new proposed Small Wireless Facilities in the right-of-way to the fewest possible to meet its coverage and capacity requirements of its client.
- d. Additional Provisions for Small Wireless Facilities on Existing Utility Distribution Poles.
  - i. Small Wireless Facilities, subject to Administrative Review, may be placed in the Public Right of Way on top of existing utility Poles in excess of the height requirements specified in the above Design Standards subject to the following requirements:
    1. Each Small Wireless Facility and its associated supporting utility Pole shall not exceed five (5) above the tallest existing Pole or utility Pole within 500 feet in place as of the Application date, or shall not exceed ten (10) feet above same, only if required pursuant to electrical utility pole separation requirements.
    2. In no event shall the combined height of the Small Wireless Facility and its associated utility distribution Pole exceed fifty-five (55) feet in height.
    3. Any proposed height above fifty (50) feet shall be subject to administrative review by the Zoning Board of Adjustment and Planning Board.
    4. Discretionary approval is required for any proposed Small Wireless Facility that does not meet the above standards.

#### **18.81.120 Preexisting Sites and Municipal Agreements.**

Any Communications Facilities in the Public Rights-of-Way existing at the time of the adoption of the provisions of this Chapter, whether or not a Municipal Agreement exists or is in force and effect with regard to same, shall be required to comply with the provisions of this Chapter.

Any Municipal Agreements entered into between the Borough and any Provider regarding Communications Facilities in the Public Rights-of-Way shall be required to conform to the provisions and standards of this Chapter. To the extent the provisions of any existing Municipal Agreement conflict with this Chapter, said provisions shall be replaced and superseded by the applicable terms of this Chapter.

#### **18.81.130 New Jersey One Call**

In addition to compliance with the applicable provisions of this Chapter, prior to the start of any installation of Poles, Support Structures, Small Wireless Facilities or other Communications Facilities that requires excavation, Applicant shall contact New Jersey One Call at 811 at least three (3) full business days prior to the commencement of work.

#### **18.81.140 "Dig Once" Requirements**

For all installations of Communications Facilities and Small Wireless Facilities that require the installation of above ground and underground communications and power cabling and conduit, along the Public ROW as well as utility easements and private property, the Borough's Department of Public Works or Construction Office may request that the project developer publicly offer to coordinate with Providers who operate, or have applied for facilities in the Borough through the Department of Public Works or other applicable department or agency to ensure the Public ROW and any planned utility easements are adequate to accommodate the deployment of both aboveground and underground Communications Facilities. Specifically, planned utility easements should allow for an adequate number of huts, utility Poles and other structures, as well as belowground conduit, to adequately serve current and anticipated Communications Facilities. Access to easements should be provided to Providers on a non-discriminatory basis and at a reasonable cost, or pursuant to applicable Laws.

#### **18.81.150 Violation of this Chapter:**

Violation of any of the provisions of this Chapter shall be a simple citation punishable with a civil penalty of \$500 for each violation which continues more than ten (10) days after written notice of such violation is provided to the Applicant. Each day, after such notice, that a violation occurs or is permitted to exist by the Applicant constitutes a separate offense.

#### **18.81.160 Governance of Deployments Outside of the Public Right-of-Way.**

This Chapter is intended to govern the installation, placement, maintenance, modification, upgrade and repair of Communications Facilities, including Small Wireless Facilities, in the Public Right-of-Way. The placement of telecommunications equipment outside of the Public Right-of-Way shall be governed by Chapter 18.80 Wireless Telecommunications Towers and Antennas, as well as by other applicable codes and ordinances of the Borough.

#### **18.81.170 Waiver.**

The Borough Council, or other Borough person, agency or department with the authority to do so, may waive any provision or standard set forth in this Chapter where it is demonstrated that the strict enforcement of said standard:

- (i) Will prohibit or have the effect of prohibiting any telecommunications service pursuant to 47 U.S.C. 253(a); or
- (ii) Will prohibit or have the effect of prohibiting personal wireless service pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II); or
- (iii) Will violate any requirement set forth in the FCC Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," WT Docket No. 17-79; "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," WC Docket No. 17-84; or
- (iv) Will prohibit, or have the effect of prohibiting, the ability of an entity to provide wireless service to any prospective customer within the Borough.

#### **18.81.180 Wireless Consultant Contact Information**

As specified in section 18.81.040(b) herein, the Designee shall be the initial point of contact for the Borough for all matters concerning this Chapter.

### **SECTION 2**

If any part of this Ordinance shall be deemed invalid such part shall be deemed severable and the invalidity thereof shall not effect the remaining part of this Ordinance.

### **SECTION 3**

Any Ordinance or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed and superseded.

### **SECTION 4**

This Ordinance shall take effect upon final passage and publication in accordance with Law.

Schedule A

## **Schedule A**

<b>One Time Fees*</b>	<b>Rate*</b>	<b>Frequency</b>	<b>Note</b>
Small Cell Permit Application Escrow	\$1000, per new installation or \$500 per alteration, expansion,	Per install, alteration, expansion, modification or upgrade	Escrow to be used against incurred expenses. Any expense amounts



	modification or upgrade. To be held in escrow and billed against actual incurred costs per the below schedule of fees:		above the escrow shall be invoiced to Applicant directly upon completion of work.
Construction Permit	Per Title 15	Per install, alteration, modification or upgrade	Building/electrical
Zoning Permit, if applicable	Per Title 18	Per install, alteration, modification or upgrade	
Street Opening Permit	Per Chapter 12.16	Per street opening	To be performed in compliance with Title 15
Telecommunications Consultation and Review by Borough Designee	\$350/hour per agreement	Per install, modification or upgrade	Up to 3 hours/site
Engineering Review	Per agreement schedule between the Borough and the Borough engineer or contracted engineering firm performing engineering services on behalf of the Borough	As applicable	
<b>Recurring Fees*</b>			
ROW Access Fee (including attachment fee to Borough Pole, if applicable)	\$270	Annual Access Rate	Per small cell site

\*The fees described in this Schedule A are the fees in effect at the time of the adoption of this ordinance. All fees are subject to change as existing ordinances are amended and future ordinances adopted and future contracts and agreements entered into and effectuated by resolution. Any amendment, revision or addition to a Borough ordinance supersedes any prior inconsistent ordinances.

## Schedule B



### ADMINISTRATIVE REVIEW (SEC 18.81.050) APPLICATION FOR SMALL CELL AND SUPPORTING STRUCTURE

#### 1. Applicant Information

Name:	
Address:	
Telephone:	
Email:	
Emergency Contact Info:	

#### 2. Subcontractor and Consultant Information for Applicant (Please use separate attachments as needed):

Name:	
Address:	
Telephone:	
Email:	
Emergency Contact Info:	

#### 3. General Description of the Proposed Work. Include purpose and intent of proposed facilities. Include scope and details appropriate for the nature and character of the proposed work and facilities:

--

3A. Specifications and dimensions of proposed equipment. Attach spec sheets and cut sheets as needed:

# of Antennas	
Antenna dimensions	
Antenna weight	
Pole dimensions	
Cabling information	
Output in Watts	

3B. Location of proposed facilities. Attach coordinates map or tracker as needed:

Address	Latitude	Longitude	

4. Demonstration of compliance with RF health and safety measures established by the TCA, FCC. RF Health and Safety Reports may be attached to this application:

--

5. Demonstration of compliance with design standards pertaining to the appearance, siting and height of the proposed facilities. Includes antennas, support or utility poles, cabinets and accessory equipment and cabling. Plans, photos and diagrams to be attached as needed:

--

6. Demonstration of compliance with applicable environmental, historical and landmark laws, rules and regulations. Includes SHPO, NEPA, tidelands, wetlands, and floodplain and waterway management, as needed. Attach copies of any applicable permits:



Applications shall include the following:

1. Construction drawings (3 copies per location, 11x17" minimum)
2. Structural analysis
3. Construction Permit Application
4. Street Opening Permit Application (for new poles)
5. RF health and safety report
6. Evidence of insurance
7. FCC or BPU license /authorization
8. Escrow amount of \$1000 per new installation and \$500 per alteration, modification, expansion or upgrade, per Schedule A of Section 650-103.

Please submit completed applications to Borough Engineer with a copy to Hoplite Communications, LLC, (197 Route 18, Suite 3000, East Brunswick, NJ, 08816 / [peter.lupo.hoplite@gmail.com](mailto:peter.lupo.hoplite@gmail.com)) or other means of delivery as specified by the municipality.

\_\_\_\_\_  
Signature of Applicant

Approved \_\_\_\_\_ Date \_\_\_\_\_  
Denied \_\_\_\_\_ Date \_\_\_\_\_

Approved as Compliant with Chapter 18.81 Telecommunications Facilities in the Public Right of Way of the Zoning Ordinance of the Borough of Freehold

Reason for Denial

Compliance Requirements

Additional Comments

## Chapter 18.80

**WIRELESS  
TELECOMMUNICATIONS TOWERS  
AND ANTENNAS**

## Sections:

- 18.80.010 Purpose.**
- 18.80.020 Nonapplicability to amateur radio stations and to receive-only antennas.**
- 18.80.030 Antennas and towers permitted on borough property.**
- 18.80.040 Wireless telecommunications towers, antennas, and transmission facilities on non-municipal property.**
- 18.80.050 Inventory of existing site.**
- 18.80.060 Aesthetics.**
- 18.80.070 Lighting.**
- 18.80.080 State or federal requirements.**
- 18.80.090 Building codes—Safety standards.**
- 18.80.100 Measurement.**
- 18.80.110 Franchises.**
- 18.80.120 Signs.**
- 18.80.130 Buildings and support equipment.**
- 18.80.140 Maximum height.**
- 18.80.150 Information required.**
- 18.80.160 Factors considered in granting approval for towers.**
- 18.80.170 Availability of suitable existing towers, other structures or alternative technology.**
- 18.80.180 Minimum required setback.**

- 18.80.190 Minimum separation requirement between uses.**
- 18.80.200 Security fencing.**
- 18.80.210 Landscaping.**
- 18.80.220 Conditions and alternative tower structure.**
- 18.80.230 Buildings or other equipment storage—Antennas mounted on structures or rooftops.**
- 18.80.240 Buildings or other equipment storage—Antennas located on towers, utility poles, or light poles.**
- 18.80.250 Removal of abandoned antennas and towers.**
- 18.80.260 Pre-existing towers.**

**18.80.010 Purpose.**

The purpose of these regulations for the siting of wireless telecommunications towers and antennas is to:

1. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
2. Encourage the location of towers in appropriate locations;
3. Minimize the total number of towers throughout the borough;
4. Strongly encourage the joint use of approved tower facilities as a primary option rather than construction of new or 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 community is minimal;
6. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas 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, effectively, and efficiently;

8. Consider the public health and safety of communication towers; and

9. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

In furtherance of these goals, Freehold Borough shall give due consideration to the borough master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas. (Ord. 2001/23 § 1 (part))

**18.80.020 Nonapplicability to amateur radio stations and to receive-only antennas.**

The provisions of this chapter shall not govern any antenna that is owned and operated by a federally licensed amateur radio station operator or is used exclusively as a receive-only antenna in accordance with Federal Communications Commission (FCC) regulations. (Ord. 2001/23 § 1 (part))

**18.80.030 Antennas and towers permitted on borough property.**

Wireless communications towers and antennas which are located on property owned, leased, or otherwise controlled by the borough and which are approved by the borough council, shall be deemed to be permitted as a municipal facility in any zone district. (Ord. 2001/23 § 1 (part))

**18.80.040 Wireless telecommunications towers, antennas, and transmission facilities on non-municipal property.**

A. Wireless telecommunications antennas and towers may be allowed as a conditional use on property which is not owned, leased, or otherwise controlled by the borough, in accordance with the minimum standards of the zone district and the standards, regulations and requirements set forth in this chapter, in those zones where public utilities are permitted as a principal or conditional use. Site plan approval shall be required prior to the installation of wireless telecommunications towers, antennas, and transmission facilities on non-borough-owned property.

B. General, wireless telecommunications towers, antennas, and transmission facilities shall only be permitted on non-borough property where the municipal approving authority has determined the following:

1. There is substantial evidence that there is a significant gap in telecommunications within the borough which the proposed facility will correct;

2. There is no borough-owned property available or no borough wireless telecommunications towers, antennas, or transmission facilities available where the proposed facility could locate or co-locate that would correct the telecommunications gap;

3. There are no non-borough wireless telecommunications towers, antennas, or transmission facilities available on which the proposed facility could locate or co-locate that would correct the telecommunications gap;

4. There is no residential use, school use, or health-care use on the lot on which the proposed facility is located and that the different use of an existing structure on the same lot does

not preclude the installation of an antenna or tower;

5. The application for the proposed facility is the joint application of two or more wireless communications carriers licensed to provide service within the area and the application provides for the co-location of two or more carriers at the site;

6. The dimensions of the entire lot on which the facility is located are used for the purpose of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements. The dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot;

7. A plan is submitted for the periodic testing of the facility to ensure ongoing compliance with applicable federal and/or state standards, the plan is subject to the review and approval of the municipal agency. (Ord. 2001/23 § 1 (part))

#### **18.80.050 Inventory of existing site.**

Each applicant for an antenna and/or tower shall provide to the borough as part of the application an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the borough or within two miles of the border thereof, including specific information about the location, height, and design of each tower. The borough may share such information with other applicants applying for approvals under this chapter or other organizations seeking to locate antennas within the jurisdiction of the borough, provided, however that the borough is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. (Ord. 2001/23 § 1 (part))

#### **18.80.060 Aesthetics.**

Towers and antennas shall meet the following requirements:

A. Towers shall either maintain a finish or be painted a color approved by the municipal agency, so as to reduce visual obtrusiveness, subject to any applicable standards of the FAA.

B. At a tower site, the design of the buildings and related structures shall to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

C. 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 possible. (Ord. 2001/23 § 1 (part))

#### **18.80.070 Lighting.**

Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. (Ord. 2001/23 § 1 (part))

#### **18.80.080 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 chapter 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. (Ord. 2001/23 § 1 (part))

**18.80.090 Building codes—Safety standards.**

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 borough 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 have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within the thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense. (Ord. 2001/23 § 1 (part))

**18.80.100 Measurement.**

For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the borough irrespective of municipal and county jurisdictional boundaries. (Ord. 2001/23 § 1 (part))

**18.80.110 Franchises.**

Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Borough have been obtained and shall file a copy of all

required franchises with the borough. (Ord. 2001/23 § 1 (part))

**18.80.120 Signs.**

No signs shall be allowed on an antenna or tower. (Ord. 2001/23 § 1 (part))

**18.80.130 Buildings and support equipment.**

Buildings and support equipment associated with antennas or towers shall comply with the requirements as set forth herein. (Ord. 2001/23 § 1 (part))

**18.80.140 Maximum height.**

The tower shall meet the following height and usage criteria:

A. One hundred twenty-five (125) feet in height.

B. A licensed New Jersey Professional Engineer must certify that the tower can structurally accommodate the number of shared users proposed by the applicant. (Ord. 2001/23 § 1 (part))

**18.80.150 Information required.**

In addition to any information required for applications for site plan review pursuant to this chapter, applicants for approval for a tower shall submit the following information:

A. A location plan drawn to scale and clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), master plan classification of the site and all properties within the applicable separation distances, set forth herein, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, and parking;



B. Legal description of the parent tract and leased parcel (if applicable);

C. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

D. The separation distance from other towers described in the inventory of existing sites submitted shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known;

E. A landscape plan showing specific landscape materials;

F. Method of fencing and finished color and, if applicable, the method of camouflage and illumination;

G. A description of compliance with all of the sections herein and all applicable federal, state or local laws;

H. A statement by the applicant as to the number of users construction of the tower will accommodate for co-location;

I. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular or personal communication service sites owned or operated by the applicant in the municipality;

J. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed tower;

K. A description of the feasible location(s) of future towers or antennas within the borough based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected. (Ord. 2001/23 § 1 (part))

#### **18.80.160 Factors considered in granting approval for towers.**

In addition to any standards for consideration of site plans pursuant to this chapter, the municipal agency shall consider the following factors in determining whether to issue an approval:

A. Availability of suitable existing towers other structures or alternative technologies not requiring the use of towers or structures, as discussed hereinabove;

B. Height of the proposed tower;

C. Proximity of the tower to residential structures and residential district boundaries;

D. Nature of uses on adjacent and nearby properties;

E. Surrounding topography;

F. Surrounding tree coverage and foliage;

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

H. Proposed ingress and egress. (Ord. 2001/23 § 1 (part))

#### **18.80.170 Availability of suitable existing towers, other structures or alternative technology.**

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the municipal agency that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the municipal agency 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 of the following:

A. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

B. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

C. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

D. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

E. 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 not exceeding new tower development are presumed to be reasonable.

F. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

G. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable micro-cell 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. (Ord. 2001/23 § 1 (part))

#### **18.80.180 Minimum required setback.**

The following minimum setback requirements shall apply to all towers for which site plan approval is required:

A. Towers must be set back a distance equal to at least one hundred percent of the height of the tower from any adjoining lot line, but in no event shall the tower be located in the minimum required yard area or buffer area of the zone district.

B. Guys and accessory buildings and structures must satisfy the minimum zoning district setback and buffer requirements. (Ord. 2001/23 § 1 (part))

#### **18.80.190 Minimum separation requirement between uses.**

The following separation requirements shall apply to all towers and antennas for which approval is required under this chapter.

A. Separation From Off-Site Uses/Designated Areas.

1. Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in subsection (A)(2) of this section, except as otherwise provided.

2. Towers shall maintain a separation distance of two hundred (200) feet or three hundred percent (300%) of the tower height, whichever is greater, from residential dwelling units.

B. Separation Distances Between Towers, Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers or other proposed towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown below in the table of required separation distances between towers:



			Monopole 75 Ft In Height or Greater	Monopole Less Than 75 Ft. in Height
	<b>Lattice</b>	<b>Guyed</b>		
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole 75 ft in height or greater	1,500	1,500	1,500	750
Monopole less than 75 ft in height	750	750	750	750

(Ord. 2001/23 § 1 (part))

#### **18.80.200 Security fencing.**

Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device, provided however, that the municipal agency may waive such requirements, as it deems appropriate. (Ord. 2001/23 § 1 (part))

#### **18.80.210 Landscaping.**

The following requirements shall govern the landscaping surrounding towers for which site plan approval is required; provided, however, that the municipal agency 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 property used for residences.

B. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced.

C. Existing mature tree growth and natural land forms 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. (Ord. 2001/23 § 1 (part))

#### **18.80.220 Conditions and alternative tower structure.**

In approving the tower the municipal agency may impose conditions, including the use of an alternative tower structure, to the extent the municipal agency concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties or the neighborhood in which it is located. (Ord. 2001/23 § 1 (part))

#### **18.80.230 Buildings or other equipment storage—Antennas mounted on structures or rooftops.**

Antennas mounted on buildings or existing elevated structures shall not extend more than thirty (30) feet above the highest point of the building's roof or above the highest point of the structure. The equipment cabinet or structure used in association with antennas shall comply with the following:

A. The cabinet or structure shall not contain more than two hundred (200) square feet of gross floor area or be more than ten (10) feet in height. In addition, for buildings and structures which are, less than sixty-five (65) feet in height, the related unmanned equipment structure, if over two hundred (200) square feet of gross floor area or ten (10) feet in height shall



be located on the ground and shall not be located on the roof of the structure.

B. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than ten (10) percent of the roof area.

C. Equipment storage buildings or cabinets shall comply with all applicable building codes. (Ord. 2001/23 § 1 (part))

**18.80.240 Buildings or other equipment storage—Antennas located on towers, utility poles, or light poles.**

Antennas shall not be located on tower utility poles, or light poles within a borough street or right-of-way unless such facilities are approved by the borough council. Antennas proposed on towers, utility poles, or light poles within a street or right-of-way not owned by the borough shall require approval as a conditional use. The related unmanned equipment structure shall not contain more than two hundred (200) square feet of gross floor area or be more than ten (10) feet in height, and shall be located in accordance with the minimum yard and buffer requirements of the zoning district in which located and shall be screened from view of all residential properties. (Ord. 2001/23 § 1 (part))

**18.80.250 Removal of abandoned antennas and towers.**

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the borough notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at

the owner's expense. If there are two or more users of a single towers, then this provision shall not become effective until all users cease using the tower. (Ord. 2001/23 § 1 (part))

**18.80.260 Pre-existing towers.**

Pre-existing towers which are operating at the time of the adoption of the ordinance codified in this chapter shall be allowed to continue this usage as they presently exist. Routine maintenance is permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this chapter. If the use of the tower has terminated and the use is determined to be abandoned, the requirements for removal set forth above shall apply. (Ord. 2001/23 § 1 (part))

