

Ordinance No. 511

An Ordinance to revise Chapter 230, Article IV, to amend Code Section 230.25.1 in the Zoning Code of the City of New Castle to permit certain telecommunication facilities by special exception from the Board of Adjustment in any zoning district in the City of New Castle other than the Historic Residence District and the Historic Commerce District.

WHEREAS, the Council of the City of New Castle (“Council”) acknowledges that the federal Telecommunications Act of 1996 preempts local ordinances and regulations relating to the regulation of telecommunications infrastructure in the United States; and

WHEREAS, the Council further acknowledges that federal law prohibits local governments from unreasonably discriminating among providers of telecommunications services or prohibiting the provision of wireless telecommunications services; and

WHEREAS currently, the Zoning Code permits telecommunications facilities only in the Telecommunications District (TD) zone and few parcels in the City are zoned TD; and

WHEREAS, cellular phone service in certain portions of the City is unreliable; and

WHEREAS, the residents of the City generally desire reliable cellular service coverage in all areas of the City; and

WHEREAS, Council has determined to expand areas within the City where certain types of telecommunications facilities may be constructed and maintained by means of a special exception granted by the Board of Adjustment.

NOW, THEREFORE, be it ordained by the Council of the City of New Castle, as follows:

SECTION 1: Chapter 230 of the City Code is hereby amended to amend Section 230-25.1 to add a new subsection “D” which shall state as follows:

§230-25.1. Telecommunications District TD

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D. Notwithstanding anything else contained in this Chapter, the Board of Adjustment shall have jurisdiction and authority to grant a special exception to permit “telecommunications facilities” (as defined in section 230-1 of the Code), excluding free standing telecommunications towers or monopoles, in any zoning district other than the Historic Residence District and the Historic Commerce District subject to the following limitations, requirements and conditions:

1. The applicant must demonstrate a significant need for the facility by proving a significant gap in cellular phone coverage.
2. The applicant must demonstrate that there are no co-location options available to support the proposed telecommunications facilities.
3. No telecommunications “tower” (as defined in section 230-1 of the Code) or monopole facility shall be permitted by virtue of special exception under this section.

4. The applicant must provide screening or other stealthing of the telecommunications facilities acceptable to the Board of Adjustment.
5. All special exception applications for telecommunications facilities shall require prior review and recommendation by the Planning Commission.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

SECTION 3. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon passage.

First Reading **July 11, 2017**

Second Reading **September 5, 2017**

Signed this _____ day of _____, 2017

Linda Ratchford, President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Brian G. Whitaker, City Clerk

Approved this _____ day of _____, 2017

Jimmy Gambacorta, Mayor