

**ORDINANCE NO. 2008-19**

AN ORDINANCE AMENDING CITY OF OZARK NO. 2001-14 AND 2004-6, AS AMENDED BY 2002-4, 2007-19 AND 2008-7; ESTABLISHING AN A-1 AGRICULTURAL DISTRICT, THE CLASSIFICATION OF ANNEXED LANDS, GUIDELINES FOR INTERSECTION VISIBILITY, AND WIRELESS COMMUNICATION FACILITIES, DECLARING AN EMERGENCY THEREFOR; AND FOR OTHER PURPOSES.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OZARK, ARKANSAS THAT:

SECTION 1. Article IV, Zoning District, Permitted Uses and Provisions shall be amended to include the following:

Under Section A, Zoning Districts there shall be added A1 Agricultural District.

Under Section B, Provisions and Permitted Uses of Districts, there shall be added:

8. A-1, Agricultural District: A-1 Agricultural District shall adhere to the following regulations:

General Description: This district is designed to provide for the compatible existence of agricultural activities within the City's corporate boundaries so that agricultural uses are protected as a valuable natural resource and do not unduly disturb the desirable functioning of residential, commercial and industrial uses.

Uses Permitted: Property and buildings in the A-1 Agricultural District shall be used only for the following purposes:

- (1) Agriculture, except hog farms
- (2) Animal husbandry – the care and breeding of animals, excluding hogs, for sale
- (3) Single-family dwellings
- (4) Public facilities

In addition to the above uses which are permitted by right in the A-1 Agriculture District, the following uses may be permitted on review as special permits in accordance with the provisions contained here in Article VI, Section 4C.

- (1) Large-site commercial recreation use of 2 acres or more
- (2) Golf courses and fairgrounds

Area Regulations: The following area regulations will apply:

STATE OF ARKANSAS, COUNTY OF FRANKLIN  
OZARK DISTRICT  
FILED FOR RECORD THE 18<sup>th</sup> DAY OF November  
20 08 AT 1:35 O'CLOCK P M. AND RECORDED  
IN BOOK 97 PAGE 248  
WILMA GRAGG - BRUSHWOOD  
CIRCUIT CLERK AND RECORDER  
BY Dana Coleman D.C.

- (1) The minimum site size for any agriculture or animal husbandry shall be one acre. Residential uses shall meet the minimum requirements as per the most restrictive residential zone otherwise permitted within the City.
- (2) The minimum setback of agricultural and animal husbandry structure from any residential zoning district is 100 feet. Otherwise, all such structures shall be set back a minimum of 50 feet from all front, rear and side yards.

Approval of Expansion: The Agricultural Zone is intended to protect and preserve existing agricultural uses. The expansion of any existing use, including proposed new improvements, must be approved as a Special Permit Use.

Signs in the Agricultural District: Signs in the Agricultural District shall be limited to one sign not to exceed thirty-two (32) square feet announcing the name of the farm.

SECTION 2: Article V, Special Provisions, Section A shall be amended as follows:

Article V, Special Provisions, Section A, Classification of Annexed Lands: All new additions and annexations of land to the City shall be in an R-1 Residential, Single-Family District, unless otherwise classified by the City Council, for a period of time not to exceed one year from the effective date of the code annexing said addition or land area.

Within this one-year period of time, the City Council shall instruct the City Planning Commission to study and make recommendations concerning the use of land within said annexation to promote the general welfare and in accordance with the City's comprehensive development plan, and upon receipt of such recommendations, the City Council shall, after the public hearing as required by law, establish the district classification of said annexation; provided, however, that this shall not be construed as preventing the City Council from holding public hearings prior to annexation and establishing the district classification at the time of said annexation.

SECTION 3: Article V, Special Provisions shall be amended by adding the following sections to the Zoning Ordinance:

Section E, Intersection Visibility: On a corner lot in any residential, commercial and/or industrial district, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of 2 ½ feet and 10 feet above the center line of the intersecting street in the area bounded by the street right-of-way lines (not curb lines, but the right-of-way which are also the property lines) of such corner lot and a line joining points along said streets rights-of-way lines 25 feet from the point of intersection.

Intersection visibility for commercial and residential districts shall follow the graphic illustration on Addendum "A" hereto.

Section F, Wireless Communication Facilities shall be added to the Zoning Ordinance as follows:

Purpose: This article is for the purpose of prescribing regulations governing conditions for the construction, placement, and operation of Wireless Communication Facilities within the City of Ozark, Arkansas.

General: The following regulations apply to all Wireless Communication Facilities (WCF).

Special Use Permit Required: A special use permit is required for Wireless Communication applied so as to effectively prevent or eliminate Wireless Communication Facility construction, placement, and operation within the city limits of Ozark. The City Council may refuse to grant any permit if it is not in the best interest of the City of Ozark as determined by the City Council.

Definitions: The following definitions apply to Wireless Communication Facilities:

- (1) *Antenna Array.* One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include an omnidirectional antenna (rod), a directional antenna (panel) and a parabolic antenna (disc). The Antenna Array does not include the Support Structure defined below.
- (2) *Equipment Facility.* Any structure used to contain ancillary equipment for a WCF.
- (3) *Support Structure.* A structure designed and constructed specifically to support an Antenna Array, and may include a monopole, guy-wire support tower, or derrick tower. Any device used to fasten an Attached WCF to an existing building or structure shall be excluded from the definition of and regulations applicable to Support Structures.
- (4) *Wireless Communication Facility.* A wireless communication facility is defined as any unstaffed facility covered by the Federal Telecommunications Act of 1996 for the transmission and/or reception of wireless telecommunication services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure, also known as an antenna or tower, to achieve the necessary elevation.

Application: Applications for Wireless Communication Facilities shall be obtained according to the following regulations.

Special Use Permit Application: The application for a special use permit shall be made to the office of the Mayor by the owner or agent of the proposed Wireless Communication Facility. The application shall include four (4) copies of the required site plan. The fee for processing a special use application is Five Hundred Dollars (\$500.00).

The required survey and site plan shall be submitted on paper no larger than twenty-four (24) inches by thirty-six (36) inches and no smaller than twelve (12) inches by twenty-four (24) inches. The site plan shall be drawn to scale of no less than one (1) inch equals twenty (20) feet

unless the City Council approves a different scale. The survey and site plan shall, at a minimum contain the following information.

- (1) The land to be included in the proposed land use along with a written legal description of the land.
- (2) The location and dimensions of all public right-of-way on or abutting the planned area.
- (3) Location of all points of vehicular entrance and exit to the site and the Location and dimensions of all existing casements and public improvements within the site.
- (4) The location of permanent or temporary structures or proposed structures to be located on the site.
- (5) Location of all security fencing around the site.

Required Information: The complete application, including all supportive information, must be received by the Mayor at least thirty (30) working days before the date that work is to commence. The special use application shall contain the following information:

- (1) The survey and site plan of the property prepared by a certified land surveyor registered civil engineer.
- (2) The street addresses or addresses of the entire property.
- (3) The present zoning classification of the property, using such words as "residential", "industrial", and "commercial" along with the numeral and letters in lieu of letters such as: R-1, I-1.
- (4) Description of the proposed special use, including the description of any construction of temporary structures to be erected on the property. This description shall include a scaled site plan containing a scaled elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the wireless communication facility and all improvements associated therewith, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping and screening, topography, adjacent uses and existing vegetation. Applicants proposing to collocate on an existing wireless communication facility shall include a Radio Frequency Intermodulation Study with their application.
- (5) A copy of the appropriate FCC license or license application.
- (6) The projected route of truck traffic to and from the operation site including the projected number of trips. The number of trips and route may be regulated by the City Council.

- (7) The name of the subcontractor responsible for site preparation (a separate special use permit is required).
- (8) A drawing or other rendering depicting the Wireless Communication Facility. Said drawing should indicate any artificial illumination or signage, logo, decal, symbol or any other message of a commercial or noncommercial nature.
- (9) A drawing and description of the height of the Wireless Communication Facility as well as its width at the base and a detailed description of the length and type of guide wires or other item used to stabilize the Wireless Communication Facility.
- (10) A description and drawing of opaque security fence not less than six (6) feet in height.
- (11) The pertinent and relevant Federal Aviation Regulations and proof that the Wireless Communication Facility complies.
- (12) A statement agreeing to allow collocation of other Wireless Communications Facility users. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The Co-location Agreement shall be considered a condition of issuance of a Special Use Permit.
- (13) In addition to the above information, the applicant shall submit supportive information that shall be deemed necessary to the City Council. If additional information is requested, an additional seven (7) working days shall be required for the processing of the application in compliance with the FAA Regulations and must also meet the following conditions:

Limitations: The City Council may impose reasonable conditions and restrictions upon the application under consideration with the intent of minimizing the impact of the special use permit operations upon nearby property or public property. The limitations placed upon a special use permit may include, but are not limited to:

- (1) limitations on height
- (2) limitations on width at base
- (3) landscaping and screening
- (4) collocation with other wireless communication providers
- (5) use of pre-existing structures
- (6) method of controlling traffic (flagman or traffic control device may be required at contractor's expense)

- (7) weight limits to be determined by the Mayor or his/her designated agent
- (8) the number of hours that site preparation work can be conducted on the premises may be regulated by the City Council to minimize harmful effects on nearby property owners.

Regulations: The applicant must be in compliance with the FAA Regulations and must also meet the following conditions:

Collocation: All Wireless Communication Facilities shall be engineered, designed and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other Wireless Communication Facilities. Applicants proposing a new Wireless Communication Facility shall demonstrate that it has made a reasonable good faith attempt to find a collocation site. Competitive conflict and financial burden are not deemed to be adequate reasons against collocation.

Antenna Array: All Wireless Communication Facilities with support structure up to a height of 150 feet shall be engineered and constructed to accommodate at least the three (3) antenna array. All Wireless Communication Facilities with support structure that exceed 150 feet in height shall be engineered and constructed to accommodate at least four- (4) antenna array.

Additional Requirements: All reasonable conditions required for a special use must be met before any operations may begin. The owner or applicant filing for a special use permit shall sign a binding agreement with the City of Ozark that all damages to public property related to this operation, for which the owner or applicant is legally responsible, shall be repaired at the expense of the applicant. The Mayor shall determine the condition of public facilities (including photos and documentation) prior to the initiation of the operation. A bond, for a reasonable amount, shall be required for the amount determined by the City Council. Immediately after completion of the Wireless Communication Facility, repairs will commence on the damage that has been done to the public property. Failure of the applicant to correctly repair all damaged public facilities, for which it has been determined responsible, may result in the revocation of all existing or future permits for said company and the City Attorney is authorized to take what means are necessary to insure that the public facilities are repaired.

Removal of Abandoned Wireless Communication Facilities: Any Wireless Communication Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the wireless communication facility owner shall remove the wireless communication facility within ninety (90) days after notice from the City to remove the wireless communication facility. If the abandoned wireless communication facility is not removed within 90 days, the City may remove it and recover its costs from the wireless communication facility owner. If there are two or more users of a single wireless communication facility, this provision shall not become effective until all providers cease to use the wireless communication facility. If the owner of an abandoned wireless communication facility cannot be located or is no longer in business, the Requirements of this section shall be the responsibility of the landowner on whose property the wireless communication facility is located.

Nonconforming Wireless Communication Facilities: Wireless Communication Facilities constructed and in existence on the date of the adoption of this Article which do not comply with the requirements of this Article (nonconforming wireless communications facility) are subject to the following conditions:

Expansion: Nonconforming wireless communication facilities may continue in use for the purpose now used, but may not be expanded without complying with this Article except as further provided in this section.

Additions: Nonconforming wireless communication facilities may add additional antennas (belonging to the same provider or other providers) subject to a separate special permit application.

Repairs or Reconstruction: Nonconforming wireless communications facilities, which become damaged due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions subject to the provisions of this Article. Provided, however, that if the damage of the wireless communication facility exceeds 50% of the replacement cost, said wireless communication facility may only be reconstructed or repaired in compliance with this Code.

Unused Facility: Any wireless communications facility not in use for six months shall be deemed abandoned. All rights as a nonconforming use shall cease at this point.

Revocation of Special Use Permit: Any Special Permit issued pursuant to this Article may be revoked after a hearing as provided hereinafter. If the Mayor and the City Council find that any permit holder has violated any provision of this Article, or has failed to make good faith reasonable efforts to provide or seek collocation, the Mayor and City Council may revoke the Special Use Permit upon such terms and conditions, if any, that the Mayor and the City Council may determine. Prior to initiation of revocation proceedings, the City shall notify the permit holder, in writing, of the specific areas of non-compliance and specify the date by which such deficiencies must be corrected. The time for correction of deficiencies shall not exceed 60 days. The permit holder shall provide the City with evidence that the required corrective action has been taken. Should the permit holder fail to correct any deficiencies in the time required, the Mayor and the City Council shall convene a public hearing to consider revocation of the Special Use Permit. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the City not less than 10 days prior to the hearing and by written notice to the special permit holder. Other interested person may comment. The Mayor and City Council may impose reasonable restrictions with respect to time and procedure.

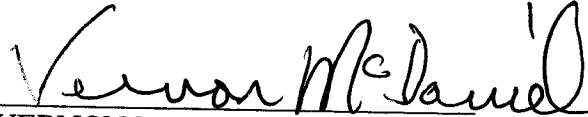
Penalty: The fine or penalty for violating any provisions of this Article shall, upon conviction in the municipal court, not exceed one thousand dollars (\$1,000.00) for any one specified offense or violation; further, that if a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof in violation of this Article shall not exceed one thousand dollars (\$1,000.00) for each day that it may be unlawfully continued.

Starting Time: The Wireless Communication Tower construction must begin within six (6) months of the authorization unless a special time limit (less than six (6) months has been imposed by the Mayor or his/her designated agent.


SECTION 4: Repealing Section. All prior sections of the zoning plan not in conformity with these amendments are hereby repealed.

SECTION 5: Emergency Clause. In light of the immediate need to revise the City of Ozark Zoning Plan and maps, and due to substantial changes in the City of Ozark, these amendments are necessary for the preservation of the public health, safety and welfare, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect immediately upon its passage.

IT IS SO ORDAINED this 10th day of November, 2008.

  
VERNON McDANIEL, Mayor

ATTESTED:

  
CAROL SNEATH, City Clerk



ADDENDUM "A"  
TO  
ARTICLE V, SECTION E

