RESOLUTION OF FINDINGS AND CONCLUSIONS

**BOARD OF ADJUSTMENT**

# TOWNSHIP OF MORRIS

(Application No. BA– 09-12)

Applicant: Ira J. Saber

Premises: 10 Winding Way, Block 8501, Lot 9

**WHEREAS,** Ira J. Saber has applied to the Board of Adjustment of the Township of Morris to enforce the issuance of a building permit, pursuant to N.J.S.A. 40:55D-18 and as an appeal for the issuance of a building permit pursuant to N.J.S.A. 40:55D-72 and Municipal Land Development Ordinance section 57-20 and section 57-23(A)(1); and

**WHEREAS**, at the time of the hearing the Applicant was represented by Fred Hopengarten, Esq.; and

**WHEREAS**, the Board of Adjustment, after carefully considering the evidence presented by the Applicant, has made the following findings and conclusions:

1. The Applicant is the owner of property located at 10 Winding Way and known as Block 8501, Lot 9 on the Tax Map of the Township of Morris, which premises are located in the RA-15 Single Family Zone District.
2. The Applicant previously submitted a proposal to the municipality to erect and maintain an amateur radio antenna system to be situated approximately 3’ from, and attached to, the existing dwelling via an ice bridge.
3. The Applicant maintains a current amateur radio license issued by the Federal Communications Commission (“FCC”).
4. On May 22, 2012, the Township’s Code Enforcement Officer informed the Applicant that the proposed 96’ high private radio antenna system may violate the height requirement in the zone and that there was a potential conflict between the Land Development Ordinance building height definition and the Zoning Ordinance height regulations and, accordingly, the Applicant should proceed before the Board of Adjustment for clarification.
5. As part of his appeal, the Applicant submitted the following documents:
6. “Supplemental Information for an Amateur Radio Facility Accompanying Application for a Zoning Permit and a Building Permit,” prepared by Fred Hopengarten, Esq., dated April 17, 2012.
7. “Showing of Need for Height of an Amateur Radio Antenna Support Structure,” prepared by Dennis G. Egan, B.S., dated April 11, 2012.
8. Antenna Height and Communications Effectiveness, 2nd Edition, by R. Dean Straw and Gerald L. Hall, 1999.
9. The Board recognizes that the FCC, in a 1985 Opinion and Order known as PRB-1, promulgated as 47 CFR § 97.15(b), and subsequently clarified by further FCC Orders, declared a limited preemption of state and local regulations governing amateur radio station facilities, including antennas and support structures. The FCC determined that there was a strong federal interest in promoting amateur service communications and that state and local regulations which preclude amateur service communications are in direct conflict with federal objectives and must be preempted. The Board of Adjustment further recognizes that the FCC specifically held that “local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations, must be crafted to accommodate reasonably amateur communications and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose.” Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities (Opinion and Order FCC 85-506, “PRB-1”), 101 FCC 2nd 960 (1985) at ¶ 25.
10. The Applicant’s proposed antenna system will be located entirely within all applicable setback requirements. Additionally, the Board is satisfied that if the antenna structure were to collapse, it would do so in place or “fold” and would not fall and damage any neighboring property or structures (see: *Fundamentals of Physics*, 2nd Edition, by Halliday and Resnick at page 174).

**WHEREAS**, the Board of Adjustment has determined that the building and zoning permit requested by the Applicant should be issued without further delay for the following reasons:

1. There is a complete preemption of local regulation that precludes amateur service communications;
2. The requested antenna structure is located within all setback lines. If it were to collapse, it would not damage any neighboring structures. It will also be constructed with an anti-climbing device. Therefore, it does not represent any safety concerns.
3. Municipal Ordinance section 95-30(B)(1) specifically excludes private radio antennas from the Ordinance’s height limitations.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Morris on this 10th day of December, 2012, that the building permit as requested by the Applicant be issued, subject, however, to the following conditions:

1. The Applicant shall be subject to and shall follow all applicable building codes in the construction of the antenna facility.
2. In the event the Applicant should sell the subject property and the new owner is not an FCC licensed amateur radio operator, then the antenna facility shall be removed.
3. Should the Applicant fail to continue to maintain his FCC license as an amateur radio operator, then the antenna facility shall be removed.

**I certify that the above Resolution was adopted by the Board of Adjustment of the Township of Morris, Morris County, New Jersey on the 10th day of December, 2012, memorializing the action of the Board of Adjustment on the 26th day of November, 2012.**

 \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

##  Sonia Santiago, Secretary

 Morris Township Board of Adjustment