

ARTICLE XVII - TELECOMMUNICATIONS (Adopted by Amendment March, 2001)

17.1 PURPOSE AND GOALS

This article establishes general standards for the siting, construction and development of telecommunications facilities through the enhancement and fulfillment of the following specific purpose and goals which are in addition to those stated in Article I of this ordinance:

- a. Further the goals, objectives and recommendations of the Ossipee Master Plan, and preserve the authority of the Town of Ossipee to regulate land uses including telecommunication facilities;
- b. Provide reasonable opportunities for the siting of telecommunication facilities;
- c. Reduce adverse impacts such facilities may create, including, but not limited to impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values;
- d. Require cooperation and co-location to the highest extent possible between competitors where practical and consistent with goals of this Ordinance in order to reduce the cumulative negative impacts upon the Town of Ossipee;
- e. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;
- f. Provide constant maintenance and safety inspections for all facilities;
- g. Provide for the removal of abandoned or discontinued facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for the Town of Ossipee to remove such facilities to protect the public from imminent harm and danger; and
- h. Provide for the removal or upgrade of facilities that are technologically outdated.

17.2 APPLICABILITY

This Article applies to all construction and expansion of Telecommunication Facilities, except as provided below.

- a. The following are exempt from the provisions of this Article.

(1) Emergency Telecommunication Facility. Temporary Telecommunication Facilities for emergency communications by public officials.

(2) Amateur (ham) radio services. Amateur (ham) radio services licensed by the Federal Communications Commission (see RSA 674:16).

(3) Parabolic (dish) antenna. Parabolic antenna that is accessory to a residential use of property.

(4) Maintenance, repair or reconstruction. Maintenance and repair of a Telecommunication Facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

b. Essential Services and Public Utilities. Telecommunication facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

c. Telecommunication Facilities shall be considered either a principal or a secondary non-residential use. Such facilities shall not be deemed an accessory use. A different use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

17.3 SITING STANDARDS

a. Location of facilities and use—generally. Applicants seeking approval for Telecommunication Facilities shall comply with the following general criteria:

- (1) If feasible, Telecommunication Facilities shall be located in or on existing structures, including but not limited to buildings, water towers, existing telecommunication facilities, utility poles and towers and related facilities, provided that such installation preserves the character and integrity of those structures. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate. Licensed carriers shall share Telecommunication Facilities and sites where feasible and appropriate, thereby reducing the number of stand-alone Telecommunication

Facilities within the Town of Ossipee. All applications for Special Exception shall demonstrate a good faith effort to co-locate with other carriers. If an applicant does intend to co-locate or to permit co-location, the applicant shall provide drawings and studies to both the Planning Board and Zoning Board of Adjustment which show the ultimate appearance and extent of operations. If the Zoning Board of Adjustment approves co-location for a Telecommunication Facility, the decision shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the decision shall not require further approval from the Zoning Board of Adjustment. However, the addition of any facilities not specified in the Special Exception approval shall require a new approval.

(2) If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of:

(a) Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.

(b) Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.

(c) Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(d) Substantial Evidence that 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) Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(f) Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Ossipee, and grounds for a denial.

b. Historic buildings. Any Telecommunications Facility located on or within an historic structure shall not alter the character defining features, distinctive construction methods, or original materials of the building.

c. Sensitive natural resources. Specific natural resource characteristics as may be present throughout the Town of Ossipee that are fundamentally incompatible with new tower construction: (a) slopes of 25% or greater, (2) wetlands, (3) deer wintering habitat areas as inventories by the New Hampshire Department of Fish and Game, (4) threatened, rare or endangered flora as determined by the New Hampshire Natural Heritage Inventory. Telecommunication Facilities shall be located and designed so as to avoid or mitigate impacts to the above-referenced natural resources.

17.4 DIMENSIONAL REQUIREMENTS

a. Classification of facilities. For purposes of distinguishing between different Telecommunication Facilities, the following classification shall apply:

Class 1. Antenna location or co-location on an existing structure; including but not limited to a church steeple, building roof or water tower.

Class 2. Antenna location or co-location on an existing tower.

Class 3. New tower construction or tower expansion - applicable to tower facilities used primarily for purposes of establishing or improving a capacity service facility, a residential service facility or as an alternative coverage facility.

Class 4. New Tower construction or tower expansion - applicable to tower facilities used primarily for purposes of establishing a coverage service facility.

b. Height. The requirements set forth in this section shall apply only to Telecommunication Facilities and shall preempt all other height limitations required by the Town of Ossipee Zoning Ordinance.

(1) Class 1 Facilities – An antenna may be located or co-located on an existing structure (such as a building, church or water tower) which shall not project more than 10' above the height of the building or structure.

(2) Class 2 Facilities – Antenna may be located or co-located on an existing tower which does not increase the height of the tower nor violate the terms or conditions of any previous local approval.

(3) Class 3 Facilities – The maximum tower height shall be 100 feet above ground level. Actual, permissible tower heights shall be determined on a case-by-case basis by the Zoning Board of Adjustment pursuant to the Special Exception review process.

(4) Class 4 Facilities – The maximum tower height shall be 140 feet above ground level. Actual permissible tower heights shall be determined on a case-by-case basis by the Zoning Board of Adjustment pursuant to the Special Exception review process.

Phased Vertical Expansion – An applicant may request and/or the Zoning Board of Adjustment may require, that towers be engineered so as to be capable of vertical expansion in phases. The general purpose of such a request or requirement shall be to provide a tower/antenna height that is initially proportionate to the tree line at the time of construction, while providing an option for future vertical expansion in a manner that is incrementally consistent with the vertical growth of the surrounding vegetation. All subsequent phases of vertical tower expansion shall be subject to the Special Exception application review process. The review of such a subsequent application shall be limited in scope to the proposed vertical expansion as it relates to the terms and provisions of this Ordinance.

c. Setbacks. All Telecommunication Facilities and their equipment shelters shall comply with the building setback provisions of the underlying zoning district in which the facility is located.

In addition, the following setbacks shall be observed:

(1) In order to ensure public safety, the minimum distance from the base of any tower to any property line, road, dwelling, business, institution or public recreational area shall be equal to two-thirds of the height of the tower. This setback shall be known as the fall zone.

(2) In the event that an existing structure is proposed as a mount for a Telecommunication Facility, a fall zone shall not be required.

(3) In reviewing an application for Special Exception, the Zoning Board may reduce the required fall zone and/or setback distance of the zoning district up to 50% of the required distance, if it finds that a substantially better design will result from such reduction. In making such a finding, the Zoning Board of Adjustment shall consider both the visual and safety aspects of the proposed use.

(4) Tower Separation. No tower facility (Class 3 or Class 4) shall be located within two thousand feet (2000 ft.) of another tower facility (Class 3 or Class 4). Distance separating two facilities shall be measured as a straight, horizontal line between two points.

17.5 PERFORMANCE STANDARDS

All telecommunications facilities shall be subject to the provisions of this Ordinance and the standards contained within and as applied under the Site Plan Review Regulations and other applicable ordinances and regulations.

a. Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the 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 ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling 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, as abandoned, at the owner's expense through the execution of the posted security.

b. Building Codes and other safety considerations. To ensure the structural integrity of towers and antennas, the owner of the facility shall ensure that it is constructed, attached and maintained in compliance with standards contained in the local building code applicable to non-residential structures and facilities. Prior to the issuance of a Certificate of Use and Occupancy, the applicant shall submit to the Code Enforcement Officer written certification that any antenna installation or tower construction meets or exceeds the applicable codes.

c. The installation and/or construction of all Telecommunication Facilities subject to this Ordinance

shall require a building permit and a Certificate of Use and Occupancy. No Telecommunication Facility shall operate prior to the issuance of a Certificate of Use and Occupancy.

17.6 SPECIAL EXCEPTION REVIEW PROCEDURES

a. Application Requirements – Applications for Special Exception shall include, at a minimum, the following additional information:

- (1) Written evidence that the proposed use/facility will comply with the FCC regulations regarding radio frequency exposure.
- (2) Written evidence that the proposed use/facility will meet the requirements of the National Environmental Policy Act.
- (3) Copies of any Environmental Assessment or Environmental Impact Statement produced in accordance with FCC or NEPA requirements.
- (4) An inventory of existing towers that are within the jurisdiction of the Town and those within two miles of the Town borders, including specific information about the location, height, design as well as economic and technical feasibility for co-location. Written evidence shall be presented that no existing structure can accommodate the applicant's proposed antenna in a manner that will achieve the required technical result.
- (5) Engineering information detailing the proposed size and coverage range together with the technical reasons for the facility design.
- (6) A description of the tree cover on the subject property and adjacent properties by dominant species and average height, as measured by or available from a verifiable source.
- (7) Representations, dimensioned to scale, of the proposed tower, antennas, equipment shelters including elevation drawings of all structures and the vegetative buffer.
- (8) A visual impact assessment including before-condition photographs and after-condition photographic simulations of the proposed facility showing what can be seen from any public viewpoint.

b. Criteria for Special Exception. It shall be the burden of the applicant to provide sufficient evidence to persuade the Zoning Board of Adjustment that all applicable criteria of this ordinance have been met and that the proposal does not represent unreasonable adverse impacts. An applicant's failure to satisfy the burden of proof shall result in the denial of an application.

Additional factors considered in granting decisions:

- (1) Height of proposed tower or other structure.
- (2) Proximity of tower to residential development or zones.
- (3) Nature of uses on adjacent and nearby properties.
- (4) Surrounding topography.
- (5) Surrounding tree coverage and foliage.
- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Proposed ingress and egress to the site.
- (8) Availability of suitable existing towers and other structures as discussed in this ordinance.
- (9) Visual impacts on viewsheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- (10) Availability of alternative tower structures and alternative siting locations.

c. Outside Technical Review. The Zoning Board of Adjustment may retain a technical expert in the field of radio frequency engineering to review and verify technical claims made by the applicant including but not limited to the co-location findings, alternative locations and innovative design opportunities. The cost of such technical review shall be borne by the applicant.

d. Conditions. In approving an application for Special Exception, the Zoning Board of Adjustment may impose such conditions as it deems appropriate to substantially secure the objectives, standards or requirements of this ordinance.

e. Site Plan Review by the Ossipee Planning Board is required for any proposal which includes the construction of a new tower or the construction or expansion of an equipment shelter.

f. Joint meetings and public hearings between the Planning Board and Zoning Board of Adjustment may be held in accordance with the provisions of RSA 676:2.

17.7 BONDING, SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board, under Site Plan review, shall set the form and amount of security that

represents the estimated cost for removal and disposal of abandoned towers in the event the tower is abandoned and the tower owner is incapable or unwilling to remove the tower. All security shall be maintained for the life of the tower. The Town as an administrative matter, may periodically require the amount of the security to be adjusted to cover the then current cost of removal and disposal. Proof of adequate insurance coverage for accident or damage shall be provided for all tower facilities prior to the issuance of a Building Permit. Said proof shall be submitted to the Town on an annual basis thereafter and be placed on file for public inspection with the Selectmen's Office. Failure to maintain adequate security for removal of an abandoned tower and/or adequate insurance coverage shall invalidate the Certificate of Use and Occupancy.

17.8 ABANDONMENT

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of current, satisfactory inspection by a qualified person to conduct such inspection. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such determination. A declaration of abandonment shall only be issued following a public hearing with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town shall have all necessary authority to execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

17.9 DEFINITIONS

a. Antenna - any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

b. Co-Location - the use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

c. Designated Historic Buildings and other Resources - historic resources listed in the National Register of Historic Places or determined to be eligible for listing in the National Register, individually or as a district.

d. Equipment Shelter - an enclosed structure, cabinet, shed or box at or near the base of the mount within which are housed electrical equipment.

e. FAA - an acronym that shall mean the Federal Aviation Administration.

f. FCC - an acronym that shall mean the Federal Communications Commission.

g. Fall Zone - the area on the ground within a prescribed radius from the base of a facility within which there is a potential hazard from falling debris (such as ice) or collapsing material.

h. Height - for the purposes of this article shall mean the vertical measurement from a point on the ground at the mean finished grade adjoining the foundation to the highest point of the building or structure. Measurement of tower height shall include antenna, base pad, footings and other appurtenances.

i. Mount - the structure or surface upon which antennas are mounted, including the following types of mounts: roof mounted (roof of building), side mounted (side of building), ground mounted and structure mounted (other than a building).

j. Planning Board - the Town of Ossipee Planning Board.

k. Pre-existing towers and antennas - any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance.

l. Telecommunication Facilities - any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile services, unlicensed services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCS), and common carrier exchange access services.

m. Tower - any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

n. Unreasonable Adverse Impact - the proposed facility would produce an end result which is excessively out of character with the designated resources effected.