

ARTICLE XIX. WIRELESS COMMUNICATION TOWERS

The following development standards shall; 1) apply to the installation, construction, attachment and alteration of facilities to accommodate wireless communication facilities; 2) provide the criteria for evaluating such proposed activities; 3) provide a procedure to ensure suitability, certification and related purposes.

It is the intent of this Article that placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. Section 332 as amended; in accordance with the rules promulgated by the Federal Communications Commission; and consistent with the NC General Statutes 153A-349.50 through 153A-349.53. Where these regulations are found to be in conflict with state or federal law in effect as of the adoption of this ordinance or as subsequently amended, the applicable state and/or federal laws shall take precedence.

Section 1. Purpose

As a matter of public policy the Town of East Bend aims to encourage the delivery of new wireless technologies throughout the County while discouraging unnecessary proliferation of communication towers. Such development activities will promote and protect the health, safety, prosperity and general welfare of persons living in The Town of East Bend. The Town shall also, through these standards, encourage collocation of wireless communications facilities on existing support structures; and shall streamline and expedite permitting procedures in accordance with the Federal Telecommunications Act of 1996, and Article 18, Part 38 of Chapter 153A of the NC General Statutes.

Section 2. Interpretation

To the extent these development standards conflict with other Town Ordinances, these Standards shall have precedence in matters specific or relating to wireless communications.

Section 3. Applicability and Preferred Locations

Wireless Communication Facilities may be allowed within The Town of East Bend as follows;

1. Antenna Attachments. Antenna attachments onto an existing Support Structure or onto an Attached Wireless Communication Facility shall be permitted by administrative approval subject to the development criteria of Section 5.
2. Accessory Uses and Location on Town-Owned Land. Location of Wireless Communication Facilities and Support Structures on land owned by The Town of East Bend, or as accessory uses on land owned and occupied by communications service providers, may also be permitted by administrative approval, subject to the standards of Section 5.
3. New Support Structures. Wireless Communication Facilities with new support structures shall be permitted by means of legislative adoption of a Conditional Rezoning (Article 6), or approval of a Conditional Use Permit (Article 6). Prior to applying for a Conditional Rezoning or Conditional Use Permit, the applicant shall provide the Zoning Administrator with adequate information to establish that collocation on an existing Support Structure is not reasonably feasible, as defined in NC G. S. 153A-349.52(c)(3).
4. Preferred Locations. In setting location priorities the Town may consider public safety and land use issues and other adopted plans and regulations, including aesthetics and preservation of viewsheds.

Section 4. Additional Conditions and Requirements

The following conditions and requirements shall apply to Wireless Communication Facilities in The Town of East Bend:

1. Preexisting Wireless Communication Facilities. Wireless Communications Facilities for which a permit has been issued prior to the original effective date of this Ordinance shall be considered as nonconforming and subject to the provisions of Article 11.
2. Speculative Construction of Support Structures. As provided in G.S. 153A-349.52(g), a zoning permit shall be issued for a new wireless support structure meeting all other requirements of this ordinance with or without documentation of intent, by the owner or by at least one other party, to locate a wireless

facility on the structure. However, the zoning permit shall be conditioned on provision of such documentation before issuance of any building permit or authorization to construct. If intent of a wireless communications service provider to locate a facility on the proposed structure is not established within 24 months after issuance of the zoning permit, such zoning permit shall be null and void.

3. Amateur Radio Exclusion. This Article shall not govern the installation of any amateur radio facility owned and operated by a federally licensed amateur radio station operator.
4. Relationship to Other Ordinances. Except for Historic Districts, this Article shall supersede all conflicting requirements of other ordinances regarding the locating and permitting of Wireless Communication Facilities.
5. Airport Zoning. Any Wireless Communication Facility located or proposed to be located in airport areas governed by the Federal Aviation Administration shall also comply with the provisions of all applicable local, state and federal airport regulations.
6. Building Codes. Construction of all Wireless Communication Facilities shall comply with the requirements of the Town of East Bend Building Codes and permitting process in addition to the requirements of this Section.
7. Business Decisions. In evaluating applications or locations for Wireless Communications Facilities, information regarding an applicant's business decisions about designed service, including customer demand for its service or quality of its service to or from a particular area or site, shall not be considered or required by the Town [NC G.S. 153A-349.52(c), effective 12/1/2007].
8. Radio Frequency Emissions. In evaluating applications or locations for Wireless Communications Facilities, information regarding radio frequency emissions shall not be deemed a public safety consideration or required by the Town [NC G.S. 153A-349.52(a), effective 12/1/2007].

Section 5. Development Standards

A. Height standards. The following shall apply to all Wireless Communications Facility installations:

1. Attached Wireless Communications Facilities. Attached Wireless Communication Facilities shall not add more than twenty (20) feet to the height of the existing building or structure to which it is attached (Attachment Structure). Also, antenna attachments to existing communication towers shall not increase the height of the tower above the maximum permitted height of that tower.
2. Height for new Wireless Communication Facilities shall be reviewed on a case by case basis as part of the Conditional Rezoning process (Article 6) or the Conditional Use Permit process (Article 6). The height of the proposed Wireless Communication Facility should be consistent with the height of existing facilities on similar properties in similar locations; and considering ground elevations, topographical conditions and other site development criteria within this Article.

B. Setback Standards. The following setback standards shall apply to all Wireless Communication Facility installations.

1. Attached Wireless Communication Facilities shall meet the setback provisions of the underlying zoning district in which they are located. However, an Attached Wireless Communication Facility Antenna Array may extend up to 30 inches horizontally beyond the edge of the Attachment Structure so long as the Antenna Array does not encroach upon an adjoining parcel.
2. Wireless Communications Facilities with new Support Structures shall have minimum property setback requirements from all directions equal to the height of the structure plus 25 feet, unless the applicant provides a structural engineer's certification that the proposed structure is of a collapsible design with a more compact projected fall zone. Provided such certification, the minimum property setback requirements from all directions shall be equal to the projected fall zone as certified, plus 25 feet.

C. Landscaping. The following landscaping requirements shall be maintained by the applicant and shall apply to all Wireless Communications Facility installations.

1. **New Construction.** New Wireless Communications Facilities with Support Structures and Attached Wireless Communication Facilities with new building construction shall be landscaped with a minimum landscaped area of ten (10) feet around the perimeter of the security fence meeting the following standards:
 - i. One row of evergreen trees with a minimum caliper of 1.75 inches shall be installed with a maximum spacing of 25 feet.
 - ii. Evergreen shrubs capable of creating a continuous hedge and obtaining a height of at least five (5) feet shall be planted with a maximum spacing of five (5) feet. Plants shall be at least three (3) gallon container plants or 24 inches tall at the time of planting.
 - iii. Plantings shall be indigenous or compatible to the area and drought-resistant.
2. **Land Form Preservation.** Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided, however, that vegetation interfering with antenna function or with access to the equipment facility may be cut or removed.
3. **Existing Vegetation.** Existing vegetation on a Wireless Communication Facility site may be used in lieu of required landscaping if allowed on the approved site plan.
4. **Minimum Site Disturbance.** Grading for the new Wireless Communication Facility shall be minimized and limited only to the area necessary for the new facility.

D. Aesthetics, Materials and Colors. Wireless Communications Facilities shall be designed for compatibility with existing structures and surroundings to the extent feasible, including placement in a location consistent with proper functioning of the Wireless Communications Facility, and the use of compatible or neutral colors.

E. Lighting. The following lighting requirements shall apply to all Wireless Communications Facility installations. Wireless Communications Facilities shall not be artificially illuminated, directly or indirectly, except for:

1. Security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site; and
2. Such illumination of the Wireless Communications Facility as may be required by the FAA or other applicable authority, installed to minimize impact on nearby property.
3. Unless otherwise required by the FAA or other applicable authority, the required light shall be red with a lens designed to reduce ground lighting when the site is within 100' of a dwelling.

F. Signage. Wireless Communications Facilities shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such information as may be required by applicable local, state or federal regulations.

G. Fencing. Wireless Communications Facilities with Support Structures shall be enclosed by an opaque fence not less than 6 feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of state and federal agencies.

- H. Sound. No unusual or excessively loud alarms or other sound emissions are permitted.
- I. Structural Integrity. Wireless Communications Facilities with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard titled "Structural Standards for Steel Antennas Towers and Antenna Support Structures" (or equivalent), as it may be updated and amended. Each new Support Structure shall be capable of supporting multiple antenna arrays.
- J. Collocation Support Structure Design. All Wireless Communication Facilities with a support structure up to a height of 150 feet shall be engineered and constructed to accommodate at least 2 antenna arrays. All facilities with support structures up to a height of 150 feet or greater shall be engineered and constructed to accommodate at least 3 antenna arrays.
- K. Collocation Agreement. All applicants for new Wireless Communications Facilities are required to submit a statement with the application agreeing to allow collocation by other providers if reasonably feasible under G.S. 153A-349.52(c)(3).

Section 6. Temporary Facilities

Temporary Wireless Communications Facilities may be permitted by Administrative Approval for a term not to exceed 90 days. Once granted, a temporary Wireless Communications Facility permit may be extended for an additional 90 days upon evidence of need by the applicant. In case of emergency (e.g., storm damage to an existing tower or other circumstances resulting in the interruption of existing service) the Administrative Review shall be expedited to the extent feasible.

Section 7. Approval Process

- A. Application Submission. All applications regardless of Wireless Communication Facility type shall meet all of the requirements contained in this section.
- B. Application Contents. Each applicant shall submit a sealed complete set of drawings prepared by a licensed architect or engineer that will include a site plan, elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping, parking, access, fencing and, if relevant as determined by staff, topography, adjacent land uses and existing vegetation.
- C. Submission requirements. Application shall be submitted to the Town on forms prescribed by the Town. The application shall be accompanied by a site plan containing the information described above and a copy of the appropriate FCC license.
- D. Board Review. If Board of Adjustment review is required, the application and site plan shall be placed on the next available Board of Adjustment agenda in accordance with the agenda deadlines established in Article 6 of this Ordinance. In addition, if Board of Adjustment review is required, site plans shall be submitted in accordance with Part B above and Article 6 of this Ordinance.
- E. Application Fees. A fee shall accompany each application. Fee amounts shall be set by the Board of Commissioners to cover the costs of review, processing and staff research.
- F. Additional Technical Assistance. Reasonable additional costs may be charged to the applicant for consulting expenses, at the time of application or amendment thereof.

Section 8. Administrative Review.

Collocations and expansions of facilities on existing tower sites, not requiring enlargement of the enclosed site area, are eligible for administrative review.

- A. Review Criteria. Development criteria specified in Section 5 shall remain in effect.
- B. Timing of Decision. Under this Section the Zoning Administrator or designee shall render a decision on the wireless communication facility application by written response to the applicant within thirty (30) days after receipt of the complete application, except that an extension may be agreed upon by the applicant. In no case may a decision subject to administrative review be extended beyond forty-five (45) days.

- C. Application Denial. If administrative approval is not obtained or is denied due to noncompliance with the development criteria, the applicant may appeal the denial to the Board of Adjustment as provided in Article 5.
- D. Application Approval. With all required materials submitted in compliance with the development criteria and other requirements of this Section, the Zoning Administrator or designee may approve the application and authorize the proposed use.

Section 9. Shared Facilities and Collocation Policy.

All new Wireless Communication Facilities shall be engineered, designed and constructed to be capable of sharing the facility with other applicants, to collocate with other existing wireless facilities, and to accommodate the future collocation of other facilities, if reasonably feasible under G.S. 153A-349.52(c)(3).

Section 10. Removal of Abandoned Support Structures.

Any support structure that is not operated for a continuous period of three hundred sixty five (365) days shall be considered abandoned, and the Town, at its election, may require the support structure owner to remove the support structure within 90 days after notice from the Town to remove the support structure. If the abandoned support structure is not removed within 90 days, the Town may remove it and recover its costs from the support structure owner. If there are two or more users of a single support structure, this provision shall not become effective until all providers cease to use the support structure. If the owner of an abandoned support structure 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 support structure is located.

Section 11. Adding New Facilities at Nonconforming Sites.

New wireless communication facilities at nonconforming sites, not requiring expansion of the enclosure, may be permitted by administrative review with an engineer's certification that the facilities will be safely supported. Other expansions of nonconforming uses are subject to the requirements of Article 11, Section 1106.

This Ordinance, being adopted on June 12, 2017 after due notice in regular session, by a vote of 4 in favor and 0 opposed, shall be in full force and effect from and after the date of its adoption.

Archibald Fiske Jr.

Mayor

Sister J. Matthews

Town Clerk