

Proposed Amendment No. 2 regarding Telecommunications Facilities for Public Hearing February 13, 2023 at 6:15PM

PART 1

In Table 302.1, Special Exception Uses

Add the following new use:

- 6. Telecommunications Facility (Also requires a Special Use Permit from the Planning Board in accordance with Article 9. Telecommunications Facilities)

PART 2

306.4 Height Restrictions

Add the following:

- E. A telecommunications facility granted a Special Use Permit by the Planning Board may extend above the height limit.

PART 3

Add new Article 9 as follows and renumber subsequent articles accordingly.

Article 9. Telecommunications Facilities

Section 901. Purpose

The purpose of the Telecommunications Facilities regulations is to avoid and mitigate adverse impacts such facilities may create, including, but not limited to, the following impacts: visual, environmental, health, safety and prosperity.

Section 902. Special Use Permit Required

- A. Telecommunications facilities shall not be considered infrastructure, essential services or public utilities and the siting of such facilities shall constitute a use of the land to be regulated by this Ordinance.
- B. In accordance with RSA 674:16(II) and 674:21, authorizing the adoption of innovative land use controls, the location, siting, establishment, erection, installation or operation of a telecommunications facility within Mountain Lakes District is hereby declared to be a use, either a primary or accessory use, which is allowed only when authorized by a Special Use Permit.
- C. Responsibility for issuance of Special Use Permits shall be vested in the Planning Board and made part of this Zoning Ordinance.

- D. Prior to issuing a Special Use Permit, the Planning Board shall follow the public hearing and public notice procedures contained in RSA 676:4 Board's Procedure on Plats and RSA 12-K:7 Regional Notification.

Section 903. Definitions

Definitions for terminology utilized in Article 9 will be the same as contained in RSA 12-K and the Telecommunications Act of 1996, as amended.

Section 904. Regulations

- A. Towers, antennas or other telecommunications facility components shall be located and designed so as to preserve the ability of the public to enjoy the scenery within and surrounding Mountain Lakes District.
- B. The use of alternative technologies and of collocation shall be thoroughly studied and determined to be infeasible before the construction of any new tower is approved. Stealth technology shall be utilized whenever practicable. Examples include monopines, internal antenna pole towers and/or other camouflaging.
- C. No telecommunications tower shall extend more than 80' above surrounding tree cover.
- D. Telecommunications towers, antennas and other electrical and mechanical equipment shall be made with a neutral finish or color or otherwise be treated so as to reduce visual impact.
- E. Towers shall only be artificially lighted if required by some applicable authority and such lighting shall be designed so as to cause the least impact upon the surrounding properties of the District or other areas of Haverhill or abutting communities.
- F. Towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind, except as may be allowed or required by the Planning Board in the interests of public safety.
- G. Towers shall be set back a distance of 125% of the height of the tower from the nearest lot line and from any off-site structures.
- H. Towers, guys, accessory structures and other telecommunications facilities and equipment shall comply with setback requirements.
- I. Towers shall be enclosed by security chain-link, vinyl-clad fencing at least 6 feet in height and shall be equipped with appropriate anti-climbing devices.
- J. Access for motorized vehicles to sites where telecommunications towers are located shall conform to District requirements relating to driveways whenever possible, but if the Planning Board determines that such conformity is not feasible, it may permit such access subject to any conditions it deems reasonably necessary to minimize the impact of the access route upon the surrounding environment.

- K. For purposes of determining whether the installation of a tower or antenna complies with the District regulations, including, but not limited to, setbacks and other requirements, the boundaries and dimensions of the entire lot shall control, even though the tower or antenna may be located on a leased parcel within the lot.
- L. The installation or operation of telecommunications equipment or facilities shall not be considered, or permitted, as an extension of a nonconforming use.
- M. The applicant proposing to build a new ground-mounted tower or antenna shall submit an agreement with Mountain Lakes District that allows for the maximum allowance of collocation 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 collocation 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 District and grounds for a denial.

Section 905. Performance Standards and Abandonment

- A. All towers, antennas and other telecommunications facilities and equipment shall meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal or state government having controlling regulatory authority. If such standards or regulations are changed and apply to existing facilities, the owners or operators of such facilities or equipment shall ensure that it complies with the revised standards or regulations within six (6) months of the effective dates of any revisions, unless the controlling authority mandates a more stringent compliance schedule. Failure to comply in accordance with the applicable schedule shall constitute abandonment and shall be grounds for the removal of such facilities or equipment at the owner's expense through execution of the posted security.
- B. The owner of a tower, antenna or other telecommunications facilities and equipment shall be responsible for ensuring that such facilities and equipment at all times conform to District and Town regulations and meet the applicable industry standards, as such standards may be amended from time to time. If, upon inspection, the Planning Board or its designee determines that such regulations or standards are not being met, or that the facilities or equipment pose a danger to persons, property or the community, it shall notify the owner of the defects in writing, and the owner shall within thirty (30) days remedy such defects. Failure to do so shall constitute abandonment and shall be grounds for the removal of the facilities and equipment at the owner's expense through the execution of the posted security.

- C. 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 provides proof of quarterly inspections, and such antenna or tower shall be removed in accordance with the following procedure:
 - 1. The Planning Board shall hold a public hearing after due notice to abutters and to the last known owner/operator of the antenna or tower.
 - 2. If at such hearing, the Planning Board determines that the antenna or tower is, in fact, abandoned, it shall issue a declaration of abandonment to the owner/operator.
 - 3. Within ninety (90) days after issuance of such declaration, the owner shall remove the abandoned structure and, if they shall not, the District may execute the security and have the structure removed at the owner's expense.
 - 4. If there are two (2) or more users of a single tower, the provisions of this subsection shall not become effective until all users cease using such tower.

Section 906. Waivers

In accordance with federal regulations and with RSA 674:21(V)(g), if any entity believes that the procedures or standards contained in this Ordinance has created a barrier to its ability to provide interstate or intrastate telecommunication services, it may apply to the Planning Board for administrative relief and the Planning Board may grant such waivers if it determines that:

- A. Strict adherence to regulations is not required to effectuate the purposes of this Ordinance; and strict compliance would create practical difficulty and unnecessary inconvenience; or
- B. Strict compliance would cause a conflict with the Telecommunications Act of 1996.

Section 907. Security Bonds

Before, and as a condition of the approval of a Special Use Permit filed in connection with the installation of any telecommunications facility, the Planning Board shall require the developer or installer to file with the District a bond in an amount adequate to cover the costs of removing the facility together with any structures or equipment appurtenant thereto and of returning the site to its condition prior to such installation. The performance bond shall remain on file with the District and shall not be released unless the installation has been decommissioned, dismantled and removed.

The Planning Board shall require the owner/operator of any antenna or tower to provide, annually, proof that it is maintaining adequate liability insurance covering accident or damage.

PART 4

Definitions Section 902 - Add new terms and renumber subsequent terms accordingly:

Collocation: Shall mean the placement or installation of new personal wireless service facilities on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of personal wireless service facilities in compliance with applicable codes.

Telecommunications Facility: Shall mean a personal wireless service facility, as defined in the federal Telecommunications Act of 1996, as amended. Such facilities generally include, but are not limited to, a tower, mount, antenna, equipment shelter, fencing and other related equipment. A telecommunication facility is not a commercial broadcast radio or television station antenna or tower.