

ARTICLE 17 TOWERS AND WIRELESS TELECOMMUNICATION FACILITIES

Section 17.1. Purpose and Intent.

The purpose of this Article is to establish guidelines for the siting of all wireless telecommunication equipment and facilities, microwave towers, common carrier towers, cellular, television and radio telecommunications towers and antennae. The regulations and requirements of this Article are adopted for the following purposes:

- (a) To provide for the location of communication towers and communication antennas; and to protect residential areas and land uses from potential adverse impacts of communication towers, poles, and antennas by restricting them in accordance with the restrictions of this Article.
- (b) To minimize adverse visual impacts of communication towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques.
- (c) To accommodate the growing need for communication towers and antennas while minimizing the total number of towers within the community necessary to provide adequate personal wireless services to residents.
- (d) To promote and encourage shared use/co-location of existing and new communication towers (i.e., the use of multiple antennae operated by different providers on a single tower) as a primary option rather than construction of additional single-use towers or poles.
- (e) To promote and encourage placement of antennae on existing towers, where such siting options exist, and on buildings, where such siting options exist.
- (f) To consider public health, safety, and welfare in the siting of new towers, and to avoid potential damage to adjacent properties from tower or pole failure through engineering and careful siting of tower structures.
- (g) To limit the siting of telecommunications facilities and towers where they will have the least adverse impact on the community and still comply with the requirements of the Telecommunications Act of 1996 (Public Law No. 104-104, 47 U.S. C. Section 332(c)(7)). These intentions are accomplished with restriction of locations and by enacting controls on height, setbacks, screening, color, and materials in order to minimize visibility and promote public safety and welfare. The regulations in this Article are reasonably related to the valid public purposes described in this Section.
- (h) It is not the intent of the Governing Body to discriminate among providers of functionally equivalent services or to prohibit or have the effect of prohibiting the provision of wireless services in the City. It is also the intent of the city that applications to place, construct, or modify personal wireless service facilities will be acted upon within a reasonable period of time.

Sec. 17.2. Applicability.

All new communication towers, poles, and communication antennas shall be subject to this Article, except that this Article shall not govern the following:

(a) Any tower, or the installation of any antenna, that is seventy (70) feet or less in height and is owned and operated by a federally-licensed amateur radio station operator or ham radio operator from the operator's residence.

(b) Antennae or towers located on property owned, leased, or otherwise controlled by the City of Forsyth, Monroe County, or Monroe County School Board, provided that a license or lease authorizing such antenna or tower has been approved by the government or agency with jurisdiction.

(c) Monopole towers 100 feet or less in height located within electrical substations and antennae attached to existing transmission towers.

Sec. 17.3. Performance and Construction Standards.

(a) Structural Design. New communication towers or poles and antennae, and modifications to existing structures including, without limitation, the addition of height, antennae or providers, shall be constructed in accordance with applicable federal, state and local regulations.

(b) Placement Restrictions. Towers occupying a lot as a principal use shall at minimum meet the minimum lot size and setback requirements for the zoning district in which the lot is located. Towers shall be a minimum of three-hundred (300) feet from any residential zoning district. The tower shall also be set back from side or rear property lines a distance equal to or greater than the tower height. All towers shall be located at least one-half (1/2) of their height in feet from any public right-of-way. When the tower is on property leased, the setbacks shall apply to the lot of record, not the lease boundaries.

(c) Screening. The visual impacts of a communication tower at the ground level shall be mitigated by landscaping. All towers and accessory structures shall be surrounded on the ground by a minimum ten (10) foot wide landscape strip or buffer that forms a hardy screen dense enough to interrupt vision and shield the base and accessory structures from public view and view from the surrounding properties. The buffer shall consist of evergreens that will reach a minimum height of at least eight (8) feet within three (3) years.

(d) Fencing. A black vinyl-coated chain link fence or wall not less than six (6) feet in height from finished grade shall be provided around each communication tower or pole. Access to the tower or pole shall be through a locked gate. The tower or pole shall be equipped with an appropriate anti-climbing device, unless the Zoning Administrator waives this requirement for alternative tower structures.

(e) Height. Through approval of a conditional use application, when one is required, the height of the tower may exceed the maximum height limit of the zoning district in which it is located, up to a height of two hundred (200) feet, subject to the limitations of this paragraph. Towers shall be the minimum height necessary to provide parity with existing similar tower-supported antenna. No tower, pole, or antenna, whether freestanding or attached to a building or structure, shall exceed two-hundred (200) feet in height from ground level unless approval is obtained via conditional use permit. To prevail in any conditional use application to exceed established maximum height limitations of this paragraph, the applicant must successfully demonstrate why the prescribed maximum height is insufficient to provide adequate service, or that a taller tower will be in the community's interest by avoiding the construction of one or more additional towers at a new location.

(f) Illumination. Communication towers, poles, or antennae shall not be lighted except to assure human safety or as required by the Federal Aviation Administration, Federal Communications Commission, or other federal agency with jurisdiction. Lighting shall be restricted to dual lighting, medium intensity white strobe lights (daylight mode), and red obstruction lights (nighttime mode), unless the FAA or state aeronautics division requires another type of lighting.

(g) Color and Material. Towers clustered at the same site shall be of similar height and design. Communication towers not required to be painted or marked by the Federal Aviation Administration shall have either galvanized steel finish or be painted a non-contrasting color approved by the Governing Body to minimize the equipment's visibility. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(h) Signs and advertising. No advertising is permitted on a tower or antenna. However, towers shall have mounted in a conspicuous place a sign of not more than one (1) square foot in area, identifying the facility's owner and providing a means of contact in the event of an emergency.

(i) Co-location. Proposed communication antennas may and are encouraged to colocate onto existing communication towers. New or additional conditional use approval is not required for the addition of an antenna to an existing approved tower or pole. All towers over one-hundred (100) feet in height shall have structural capacity and ground or interior space to accommodate multiple users. Towers up to one-hundred sixty (160) feet shall accommodate at least three users, and towers over one-hundred sixty (160) feet shall accommodate at least five users.

(j) Noninterference. No communication tower or antenna shall interfere with public safety communication. Frequency coordination is required to ensure noninterference with public safety system and/or public safety entities.

Sec. 17.4. Application Requirements.

Each application shall include the following, which are in addition to the information required for conditional use applications generally, if required:

(a) A recorded plat or boundary survey.

(b) A site plan with topographical information.

(c) An elevation view, perspective drawing, or simulated photograph of how the proposed telecommunication tower will look from public rights-of-way and surrounding residential streets from which it will be visible once constructed.

(d) Supporting engineering calculations and information which provide evidence of need and document radio frequency range, coverage area, and tower height requirements. The application must specifically address whether there is a technically suitable space available on an existing tower or other location within the search area (i.e., the grid for the placement of the antenna), and such information shall specifically include the location of all existing towers within a one-mile radius of the site proposed.

Sec. 17.5. Application Processing.

Decisions on applications for wireless service facilities shall be made within a reasonable period of time, which shall mean generally that such decisions shall be processed in roughly the same amount of time required for other special use applications; provided, however, that the Governing Body shall table an application for conditional use for a wireless service facility no more than once before making a decision, unless the applicant does not object to additional continuances.

Sec. 17.6. Criteria to Consider in Acting Upon Applications.

In addition to the criteria for determining whether to approve or deny conditional uses, as specified in this Zoning Ordinance, when an application for wireless telecommunication facilities or equipment is considered, the Governing Body in the case of a conditional use permit shall consider the following without limitation:

- (a) Impacts on surrounding properties with regard to aesthetics and fit with the context of its surroundings, considering the location, height, type of facility, color and materials proposed.
- (b) Whether impacts on surrounding properties on aesthetics can be mitigated by a monopole tower, or by a camouflaged tower (e.g., disguised as a pine tree), or by using stealth technology (i.e., making the tower resemble common features such as church steeples, bell towers, clock towers, grain silos, gateway elements, and monuments), or by requiring greater setback from impacted properties.
- (c) Whether the tower or wireless facility would pose an unreasonable risk to adjoining properties, including consideration of a fall area where ice or other debris may fall off the tower without harm.
- (d) The appropriateness of the location of existing towers, poles, and buildings, including electric transmission towers, that might serve as alternative locations to construction of a new tower or pole or placement on a building in a new location. It is the intent that new antennae where possible shall be co-located on existing towers and poles, placed on existing buildings, or be within a concealed support structure (e.g., camouflaged as an artificial pine tree, church steeple, clock tower, grain silo, flagpole, etc.), prior to authorizing the installation of a new non-camouflaged pole or tower. The failure to consider or unwillingness to accept viable options as described in this paragraph may be grounds for denial of a conditional use application for a new tower or pole.
- (e) Whether the application demonstrates compliance with the regulations established in this Article.
- (f) Whether the tower would be engineered and constructed to accommodate additional communication service providers (i.e., whether the application provides for colocation as required by this Article).
- (g) Whether a denial of the application would have the effect of prohibiting wireless services in the jurisdiction or area or would unduly restrict competition among wireless providers.

In addition, the Governing Body shall make a decision on the application based on substantial evidence to allow a reviewing court to understand the reasoning behind the decision and whether that reason comports with the evidence presented. To this end, for each application for wireless service facilities, the Governing Body shall rely on findings of fact in making a decision on said application. Such findings may be part of the recommendation and report of the Zoning Administrator, the application and

supporting materials submitted by the applicant, testimony from interested individuals, professionals, and the applicant, and any additional findings of fact the Governing Body may itself determine. Generalized community concerns, unaccompanied by supporting documentation, do not constitute substantial evidence under Section 704 of the Telecommunication Act of 1996 or this Article.