

SECTION 453 Telecommunications Facilities Regulations

Authority –

This Ordinance is adopted in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 21.

Purpose and Intent –

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

1. To preserve the authority of the Town of Westmoreland to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.
2. To enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.
3. To reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.
4. To preserve Westmoreland's unique viewsheds and scenic values, in particular those associated with historic areas as defined by the Westmoreland Master Plan.

Definitions –

1. **Antenna:** Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.
2. **Average Tree Canopy Height:** Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.
3. **Tower:** Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.
4. **Telecommunications Facilities:** Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum-based transmission/receptions.

SECTION 453.1 Location

Telecommunications facilities are permitted in the Forestry Residential (FR) District by Special Exception.

SECTION 453.2 Permitted Uses

1. **Principal or Accessory Use**
Telecommunications facilities may be considered either principal or accessory uses. Having an existing-permitted use on site shall not preclude the addition of a facility as an Accessory Use as long as all other provisions of the Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
2. Any alteration of the original permitted use and device configuration of the facility will require a new approval.
3. **Amateur Radio; Receive-Only Antennas.**
This Ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16,IV.

SECTION 453.3 Construction Performance Requirements

1. **Federal Requirements**
All facilities 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 such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6)

months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal, in accordance with Section 453.9, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

2. Building Codes/Safety Standards

To ensure the structural integrity of towers and antennas, all facilities must be maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall constitute abandonment and grounds for the removal, in accordance with Section 453.9, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

3. Additional Requirements for Telecommunications Facilities

These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

1. Height – In no case may any new structure be higher than 100 feet, or 20 feet above the average tree canopy in the proposed location.

2. Setbacks and Separation – In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from any non-related on-site structure, or off-site structure within 200%.

3. Security Fencing – Towers shall be enclosed by security fencing and locking gates not less than eight (8) feet in height.

4. Landscaping –

a. In accordance with Westmoreland Zoning Ordinance, Section 433, a buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 25 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

b. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.

c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

5. Camouflaging –

a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the surrounding environment.

b. 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 to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

6. Balloon Test – The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible at the applicants expense. At least 10 days prior to test Notice will be sent to abutters and posted to the public at the Town Hall and Post Office and publication in the Keene Sentinel.

7. Inspection Report – To ensure that the tower and surrounding site retain its integrity, periodic inspections will take place every five (5) years, at the expense of the applicant, to show the use and condition of the tower and surrounding site. Report(s) will be sent to the Planning Board.

SECTION 453.4 Procedure of Application

1. Prior to the scheduling of a public hearing, the applicant must provide Permit(s) and a Site Plan Application in accordance with the procedural requirements of the Westmoreland Ordinances and RSA 676:4.
2. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant.

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3. Decisions. All decisions shall be rendered in writing, in accordance with RSA 676:3 and the National Wireless Telecommunications Siting Policy – Section 332c(47U.S.C.332c), which mandates that a denial be based upon substantial evidence contained in the written record.

SECTION 453.5 Plan Requirements

A scaled plan must be submitted following requirements as set forth in the Town of Westmoreland Site Plan Regulations, SECTION VI. The Planning Board, if applicable, may grant waivers of any items.

Additional requirements are as follows:

1. Propagation map showing proposed radio frequency coverage.
2. Photographic documentation of the balloon tests.

SECTION 453.6 Other Information Required

In order to assess compliance with this Ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
2. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.
3. 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. The evidence may consist of:
 - a. substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's requirement;
 - b. substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
 - c. substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna(s) on the existing towers, or that existing towers or structures would cause electromagnetic interference with the applicant's proposed antenna;
 - d. information on the number of sites for wireless telecommunication facilities each provider will require;
 - e. information on sites outside of the Town for the particular coverage areas that are being considered;
 - f. information on how the siting of a wireless telecommunication facility will affect the ability to allow a competitor's antennas on the same property;
 - g. information on whether any of the wireless telecommunications carriers providing service to southwestern New Hampshire use the system known as cable micro-cell integrator/headend interface converter ("CMI/HIC") which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones; and
 - h. information on whether there are any such carriers using CMI/HIC in surrounding cities and towns.
4. The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.
5. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
6. The applicant will provide the Board with any copies of the federal licenses from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.

7. Upon request, the applicant will provide:
 - a. detailed maps showing all the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and
 - b. site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.
8. Upon request, a description of why less visibly intrusive alternatives for this facility was not proposed.
9. The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

SECTION 453.7 Co-Locating Antennas

1. Any company wanting to co-locate an antenna on an existing, approved tower can do so by obtaining a building permit. The co-location must be in accordance with the approved site plan.

SECTION 453.8 Bonding and Security Insurance

1. The applicant shall provide a bond with an inflation index to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.
2. The term of the bond shall be negotiated with the Planning Board. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

SECTION 453.9 Removal of Abandoned Antennas and Towers

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned tower and related structure(s) within 90 days of receipt of a declaration of abandonment from the Town. All structural materials shall be removed from the site, and the excavation thus remaining shall be covered over or filled to the normal grade. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may 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.