

FILED
 ALLEGHANY COUNTY NC
 LIZABETH REEVES ROUPE
 REGISTER OF DEEDS
 FILED Apr 20, 2015
 TIME 02:03:25 pm
 BOOK 00371
 START PAGE 1178
 END PAGE 1184
 INSTRUMENT # 00635
 EXCISE TAX (None)

Filed Alleghany County NC
 Lizabeth R Roupe, Register of Deeds
 April 20, 2015 02:03:25pm
 Ordinance Book 1 Pages 502-508

Article 1. TITLE

WIRELESS COMMUNICATION TOWER ORDINANCE
 ALLEGHANY COUNTY, NORTH CAROLINA

Article 2. AUTHORITY

This ordinance is adopted under the authority and provisions of the General Statutes of the State of North Carolina (NCGS) Article 6, Chapter 153A-121, 122, 123, 340 and the authority granted by Section 704 of the Federal Telecommunication Act of 1966.

Article 3. JURISDICTION

This ordinance shall apply to all areas of unincorporated Alleghany County, which are not included in the extraterritorial jurisdiction of the Town of Sparta, North Carolina. The governing board of the Town of Sparta, North Carolina may adopt this ordinance by resolution pursuant to NCGS 153A-122.

Article 4. PURPOSE

Alleghany County wishes to accommodate the orderly development of the wireless communication industry, while at the same time preserving the area's natural beauty and distinctive character. Furthermore, the ordinance is intended to promote and protect the public health, welfare and safety by regulating existing and proposed wireless communication towers by:

1. Restricting tower height so as to not detract from the ridgelines and beautiful vistas of Alleghany County. And to provide for the safety of low-flying private, government, and medical aircraft.
2. To provide for adequate fall-zones to protect from falling ice and debris, and potential tower failure.
3. To encourage antenna collocation so as to reduce the number of new towers constructed in Alleghany County, and
4. To require the use of camouflage or stealth technology for towers constructed within the viewshed of the Blue Ridge Parkway, Stone Mountain State Park, The New River or The New River State Park.

Article 5. DEFINITIONS

Antenna: A Conductor, usually located at the top of a wireless communication tower, by which electromagnetic waves are transmitted and/or received.

Board of Commissioners: Alleghany County Board of Commissioners.

Existing Communication Tower: Any communication tower existing or permitted in Alleghany County, that was placed, built, erected or permitted before March 5, 2001; the date of the Alleghany County moratorium on communication tower construction.

Existing Vegetative Canopy: The existing vegetative plants, trees, or shrubs at the site-specific location which is within a one hundred (100) foot radius from the proposed communication tower's base, that will provide natural camouflage, concealment, or otherwise "hide" the communication tower after its construction. This vegetative canopy shall also be used to determine the allowable combined height of the proposed communication tower.

Fall Zone: An area around the base of a telecommunication tower required to be kept clear of buildings, other than equipment enclosures associated with the wireless

telecommunication facility, to contain debris in the event of a tower structure failure.

Major Mountain Ridge: A major mountain ridge is any ridge that is three thousand (3000) feet or greater in elevation, or an elevation five hundred (500) feet or greater above the adjacent valley floor.

Ordinance Administrator: Alleghany County Planner or other person designated by the Board of Commissioners to oversee and administrator the Wireless Communication Tower Ordinance.

Ridge: The elongated crest or series of crest at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within one hundred (100) feet below the elevation of any portion of such line or surface along the crest.

Setback: The required distance between the wireless communication tower and the property line or right-of-way line to allow for a fall zone.

Stealth Technology: Man made trees, steeples, silos, light poles and other similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers of wireless communication facilities.

Tower Height: The vertical distance measured from the natural lay of the land or ground to the upper most point of a freestanding or guyed telecommunication tower to include any antenna, beacon, light or other structure(s) attached to the communication tower.

Tower Site: The real property which an applicant(s) is required to have ownership of, leasehold of, interest in, easement over, or any combination of the aforementioned to locate a communication tower and any approved auxiliary buildings.

Viewshed: An unobstructed sight of, or the range of one's sight while traveling, visiting, driving, boating or otherwise using the natural or man-made resources of the Blue Ridge Parkway, Stone Mountain State Park, The New River or The New River State Park. For the purposes of this ordinance, the maximum viewshed distance is one mile from the outer most boundaries.

Wireless Communication Facility: Any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve the necessary elevation.

Wireless Communication Tower: Any tower or structure, natural or man-made, existing or erected, for the purpose of supporting; including, but not limited to, one or more antennas designed to transmit and/or receive television, AM/FM radio, digital, microwave, cellular, analog telephone, mobile radio, paging or any similar forms of electric communication.

**Article 6. DEVELOPMENT APPLICATION
and SITE PLAN REVIEW**

A. Special-Use Permit Required. It shall be unlawful for any person to place, construct or modify any wireless telecommunication facility within the jurisdiction of this ordinance without first obtaining a Wireless Telecommunication Facility Special-Use Permit. Facilities requiring permit include any residential tower greater than forty (40) feet in height or any commercial tower greater than forty (40) feet in height. Should any tower or antenna be on or fixed to, or otherwise off the ground, such as attached to a pole, building or tree, the structure's height shall be added to the tower's height and if the combined height exceeds forty (40) feet, a permit is required. Any commercial tower less than forty (40) feet in height shall be registered with the Alleghany County Planning Office. All appropriate Building Permits pertain, despite tower height. At a minimum, the following information shall accompany a request for a Wireless Telecommunication Facility Special-Use Permit:

1. The name, form of entity (individual, corporation, etc.), address, telephone and facsimile machine number for the applicant.
2. Identification of all possible alternatives considered within the service area for the proposed tower and an explanation why existing towers or structures cannot accommodate the proposed antennas.
3. If different, the name, address, telephone and facsimile machine number of the owner of the property on which the wireless communication facility is to be located,

constructed, installed or modified.

4. Copy of deed showing ownership of property. Book and page number that the deed is recorded with the Alleghany County Register of Deeds.
5. Copy of any written instrument (lease, sublease, memorandum, etc.) by which the applicant has secured the property owners permission to use the property for a wireless communication facility.
6. Full sheet(s) of the Alleghany County Tax Map showing the development property and its boundaries.
7. Copy of any recorded easements necessary to reach the tower site. Any easement shall not be less than twenty (20) feet in width, with a road base not less than ten (10) feet in width.
8. The names and addresses of adjoining property owners.
9. The location of existing streets, buildings, transmission lines, sewer, bridges, culverts, drainpipes and easements, to the extent that these may be ascertained from a field inspection of the property.
10. Name of the fire district serving the property.
11. The general geographic information about the site including topography, proximity to surface waters, susceptibility to flooding, soil characteristics and other characteristics which might impose restrictions on the development of the site.
12. Boundary Survey. The applicant shall have prepared, by a registered land surveyor, a boundary survey, which shall meet all requirements for recordation in the office of the Register of Deeds.
13. Detailed Development Plans. A detailed development plan not less than 18"x24" drawn at a scale of sufficient size to accurately and clearly show all required information with a certifying signature, seal and date of a North Carolina Registered Professional Engineer.
14. If applicable, a sedimentation control plan approved by the North Carolina Department of Environmental and Natural Resources.
15. Certification from the designing North Carolina Registered Professional Engineer regarding the proposed towers' ability to accommodate antennas from other wireless communication providers, and
16. Documentation of contact from the Blue Ridge Parkway (BRP) Community Planner. If the tower site is within the viewshed of the BRP, written documentation referencing the consultation from the BRP Community Planner about the location, size and type of the proposed tower shall be included with the review package. The BRP Community Planner has sixty (60) days to respond to the applicant's request for consultation.

B. Applicant's Burden: The applicant for a wireless communication tower shall bear the burden of demonstrating by substantial evidence in a written record that a bona fide need exist for the proposed tower and that no reasonable combination of locations, techniques or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed telecommunications tower.

C. Permit Expiration: A Wireless Telecommunication Facility Special-Use Permit issued pursuant to this ordinance expires six (6) months after the date of issuance if the work authorized has not commenced. If after commencement, the work is discontinued for a period of twelve (12) months, the permit there for immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit has been secured.

D. Application Fee: A non-refundable application fee payment of two thousand dollars (\$2,000.00) shall accompany each Wireless Communication Tower Special-Use Permit request. (Amended 4/6/15).

Article 7. SPECIAL-USE PERMIT REVIEW PROCESS

A. Upon receipt of a completed application for a Wireless Communication Tower Special-Use Permit, the County Planner will have sixty (60) days to review the content of the application and prepare a written recommendation regarding the application to the Alleghany County Board of Commissioners. A copy of the recommendation will be mailed to the applicant prior to Board of Commissioners review. The permit application will be placed on the Board of Commissioners agenda within twenty-one (21) days after completion of the County Planner's written recommendation. At the discretion of the County Planner, experts may be contracted to assist with the review at an expense passed on to the applicant not to exceed fivethousand (\$5,000) dollars. The

applicant will be notified in writing within seven (7) days after the Board of Commissioners decision regarding their application.

B. Balloon Testing. The applicant may be required to provide balloon testing with photographic evidence during the application process. The County Planner or representative must be present during the balloon test.

C. Collocation: Additional users' equipment, which does not add to the tower height, may be added without approval from the respective review board(s). No application or fee is required. All appropriate Building Permits pertain.

Article 8. DEVELOPMENT STANDARDS

A. Facility Height. No wireless communication facility; antenna or tower shall exceed the following maximum tower height.

1. Wireless communication towers shall not exceed one hundred ninety-five (195) feet above the ground level at the point of their foundation. *(Amended 4/6/15).*
2. Attached wireless communication facilities shall not add more than twenty-five (25) feet to the existing building or structure to which they are attached. Antennas attached to existing communication towers shall not increase the height of tower above the maximum allowed.
3. Towers sited on Major Mountain Ridges shall not exceed the adjacent existing vegetative canopy by more than twenty-five (25) feet.
4. Towers sited within the viewshed of the Blue Ridge Parkway, Stone Mountain State Park, The New River or The New River State Park shall not exceed the adjacent existing vegetative canopy by more than twenty-five (25) feet, and
5. Towers that are designed to accommodate more than one provider's antennas may increase their tower height by fifteen (15) feet above the maximum allowable height for their site, but not greater than one hundred ninety-five (195) feet. *(Amended 4/20/15).*

B. Set Back. In order to allow for a fall zone, the wireless communication facility's support tower shall be set back from the site boundary 100% of the tower's height or 100% of the tower's engineered breakaway section height as certified by a North Carolina Registered Professional Engineer. The Board of Commissioners may waive this requirement upon submission of a written instrument signed by all adjoining property owners and duly notarized agreeing to such modification or waiver. Set back requirements are waived if the tower is mounted on an existing structure.

C. Security Fence. A minimum of an eight (8) foot chain link fence with three strands of barbed wire at its' top must surround the wireless communication facility. The security fence must be locked when the facility is unattended.

D. Landscaping. Landscaping shall be provided and maintained by the wireless communication facility operator. A minimum of ten (10) feet of camouflaging landscaping must be provided outside of the wireless communication facility's security fence. Minimum landscaping includes a row of evergreens with a minimum height equal to the height of the security fence and a maximum separation of twenty (20) feet. Additionally, evergreen shrubs capable of creating a continuous hedge and obtaining a height of at least five (5) feet with a maximum spacing of five (5) feet and at least twenty-four (24) inches in height at the time of planting shall be part of the landscaping.

E. Major Mountain Ridge. Locating a tower on a major mountain ridge should be a last resort. Justifying documentation shall be provided.

F. Collocation. The applicant should first consider collocation on existing structures (i.e. water towers, power poles, other communication towers, etc.). Not sitting on existing structures require justifying documentation. Proposed towers should be designed for collocation for at least one other provider's communication antennas. *(Amended 4/6/15).*

G. Signage. New and existing wireless communication towers shall be marked with a sign that does not exceed fifteen (15) square feet in size. The sign shall include the name of the facility's owner as well as the user's name and emergency contact telephone number. The sign shall be placed in a clearly visible location.

H. Ice and Wind. A North Carolina Registered Professional Engineer shall provide certification that the proposed tower, at a minimum, will withstand the one hundred (100) year return wind speed for the site and one-half (1/2) inch of solid radial ice.

I. Camouflage. Stealth or camouflage technology must be used when the proposed tower is within the viewshed of the Blue Ridge Parkway, Stone Mountain State Park, The New River or The New River State Park. Wooden poles may be considered camouflage technology.

J. Land Form Preservation. Existing mature tree growth and natural land on the site shall be preserved to the extent feasible; provided that vegetation, which causes interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.

K. Facility Color. The tower, equipment facility and fence shall be earth tone or natural colors that blend with the surrounding area, except when specific colors or color patterns are required by State or Federal regulations.

L. Lighting. Wireless communication facilities shall not be artificially illuminated, directly or indirectly, except as follows:

1. Security and safety lighting of equipment facilities is permitted if such lighting is appropriately down shielded to keep light within the boundaries of the site, and
2. Lighting that is required by State or Federal regulations.

M. Local Government Access. Owners of towers shall provide Alleghany County and/or its political subdivision or agent, with space on the tower, at no cost to the county, at an elevation of at least 130 feet (or at another height to be determined jointly by the owner of the tower and the county), to accommodate the county's needs.
(Amended 4/6/15).

N. Temporary Wireless Communication Facility. A Wireless Communication Facility to be placed in use for the duration of the permit. Temporary towers may be installed upon receipt of an application for a new or a tower rebuild. Temporary towers must meet all FCC rules and all specifications set in this ordinance and must be approved by the Wireless Tower Ordinance Administrator. (Amended 4/6/15).

Article 9. APPEALS and VARIANCES

A. Appeals of the Ordinance Administrator's Decision. The applicant may make an appeal for review of any order, requirement, decision or determination made by the Ordinance Administrator to the Board of Commissioners. Such appeal shall be submitted in writing to the Board of Commissioners within ten (10) days of receipt of notice of order, requirement, decision or determination. The Board of Commissioners shall decide the appeal based upon its findings of fact and the intent of the ordinance within sixty (60) days. The effect of this decision shall not be to vary the terms of the ordinance, but rather to interpret it.

B. Variance Request. A request for a variance may be submitted in writing to the Ordinance Administrator along with an application for a Wireless Communication Tower Special-Use Permit. Or, a request for a variance may be submitted by the applicant in writing to the Ordinance Administrator and Board of Commissioners within ten (10) days of receipt of notice of an adverse decision by the Ordinance Administrator or Board of Commissioners. The request shall identify any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse effects of the proposed ordinance. The Board of Commissioners shall decide on the variance request within sixty (60) days.

C. Variance Conditions. The Board of Commissioners may grant a variance upon finding that the following conditions exist:

1. Extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape, topography, or requirement for towers that are not applicable to other tower sites governed by this ordinance.
2. The variance will not confer upon the applicant any special privileges that are, or would be, denied to other operators of towers governed by this ordinance.
3. This ordinance would deprive the applicant of rights commonly enjoyed by other operators of towers governed by this ordinance.
4. The variance will not seriously deter from the purpose and intent of this Ordinance

- and will not be injurious to the neighborhood or to the general welfare.
5. The special circumstances causing the need for variance(s) are not the fault of the applicant, and
 6. The variance is necessary for the applicant to achieve operational objectives.

D. **Mitigating Factor(s).** Collocation of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may justify the request.

Article 10. TOWER REMOVAL

Removal Required at Termination of Use. The wireless communication provider shall notify the Allegheny County Planning Office after thirty (30) consecutive days of non-use. Any wireless communication tower in the jurisdiction of this ordinance shall be removed within one hundred eighty (180) days upon which it ceases to be in active use, or upon notice from the ordinance administrator, whichever is more favorable to the tower owner. Should the tower owner not be found, the landowner will be responsible for removal of the unused tower.

Article 11. EXISTING COMMUNICATION TOWERS

Communication towers that are in existence at the adoption of this ordinance are "grandfathered" with the following exceptions:

1. All commercial wireless communication towers and private wireless communication towers greater than forty (40) feet must be registered with the Allegheny County Planning Office within ninety (90) days of the adoption of this ordinance.
2. Should the existing tower be unused for thirty (30) consecutive days, the removal requirement applies, (Art.10),
3. Any addition, alteration or modification of greater than fifty percent (50%) of an existing tower, or increase in height to an existing tower will void its "grandfather" status, and all elements of this ordinance will apply, except that a tower may be exempted from all height regulations of this ordinance to be rebuilt back to existing height, (*Amended 4/6/15*).
4. All existing commercial wireless communication towers shall be brought into compliance with the Signage (Art.8, Sec.G) and Security Fence (Art.8, Sec.C) requirements of this ordinance within ninety (90) days of adoption.

Article 12. PENALTIES for VIOLATIONS

Any person violating the provisions of this chapter shall be guilty of a misdemeanor and shall be subject to punishment as provided by NCGS 14.4. This ordinance may be enforced by equitable remedies provided by NCGS 153A-123, including, but not limited to injunction and abatement. Every day there is a violation of this ordinance; it shall be considered a unique and separate offense.

In lieu of, or in addition to the criminal penalties, the Allegheny County Board of Commissioners may impose civil penalties of up to five hundred dollars (\$500) a day for each and every day there is a violation of this ordinance. The Allegheny County Planning Office shall assess no penalty prior to notification. If the violator does not pay such penalty within thirty (30) days, Allegheny County may recover it in a civil action in the nature of a debt. The violator may contest said penalty in the court of appropriate jurisdiction.

Article 13. SEVERABILITY

Should any section or provision of the Wireless Communication Tower Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or a part thereof other than the part so declared to be unconstitutional or invalid.

Article 14. CONFLICT WITH OTHER LAWS

Whenever the regulations of the Wireless Communication Tower Ordinance are in conflict with the requirements of a Federal or State statute, or another County ordinance, the more restrictive standard shall govern.

Article 15. EFFECTIVE DATE

This ordinance shall take effect and be in force as adopted on August 20, 2001.
Amendments made to this ordinance shall take effect and be in force as adopted on April 6, 2015, and on April 20, 2015.

Approved this the 20th day of April, 2015.