

Town of Canaan

Wireless

Telecommunication

Facility Siting

Ordinance

Planning Board Public Hearing February 14, 2001.

Adopted March 17, 2001 Town Meeting.

Section 1 General

A Title:

This Ordinance shall be known as the Town of Canaan Wireless Telecommunications Facility Siting Ordinance and will be referred to as "this Ordinance".

B Authority:

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A MRSA Section 3001, and the provisions of the Planning and Land Use Regulation Act, Title 30-A MRSA Section 4312 et seq.

C Purpose:

The purposes of this Ordinance are:

- Implement a municipal policy concerning the provision of wireless telecommunication services, and the siting of their facilities.
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunication facilities.
- Ensure that all telecommunication carriers providing facilities or services within the Town comply with this Ordinance.
- Ensure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.
- Encourage the colocation of wireless telecommunication facilities, thus helping to minimize adverse visual impacts on the community.
- Further the goals and policies of the comprehensive plan.
- Protect the scenic and visual character of the community.

D Applicability:

The provisions of this Ordinance apply to all construction and expansion of wireless telecommunication facilities. The following are exempt from the provisions of this Ordinance:

- Temporary wireless telecommunication facilities for emergency communications by public officials.
- Amateur ham radio stations licensed by the Federal Communications Commission.
- Parabolic antennas less than 7 feet in diameter, that are an accessory use of the property.
- Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- Temporary wireless telecommunication facility, in operation for a maximum period of 180 days.
- An antenna that is an accessory use to a residential dwelling unit.

E Effective Date:

The effective date of this Ordinance shall be the date of the adoption by the Town of Canaan on : March 28, 2001.

- F **Validity and Severability:**
Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
- G **Availability:**
A certified copy of this Ordinance shall be filed with the Town Clerk and shall be assessable to any member of the public. Copies shall be made available to the public at reasonable cost to be charged to the person making the request. Notice of availability of this Ordinance shall be posted in the Town Office.
- H **Conflicts with other Ordinances:**
Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall apply.
- I **Application Fee:**
All applications shall be accompanied by the following non-refundable fee made payable to the Town of Canaan .
- Code Enforcement Officer Application Fee is \$100.00
- Planning Board Application Fee is \$500.00
- J **Amendments:**
Amendment to this Ordinance may be initiated by a majority vote by the Board of Selectmen, Planning Board, or by written petition by a number of voters equal to at least 10% of the number of votes cast in the municipality in the last gubernatorial election.
This Ordinance may be amended by a majority vote of the legally constituted municipal governing body at a regular or special Town Meeting or by referendum ballot.
- K **Appeals:**
An aggrieved party may appeal the final decision of the Code Enforcement Officer or the Planning Board under this Ordinance to Superior Court, within 30 days of the date the Code Enforcement Officer or the Planning Board issues a written order of its decision.
- L **Administration and Enforcement:**
The Code Enforcement Officer shall enforce this Ordinance. If the Code Enforcement Officer finds that any provision of this Ordinance has been violated, the Code Enforcement Officer shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Code Enforcement Officer shall order correction of the violation and may take any other legal action to ensure compliance with the Ordinance. The Selectmen may permit the Code Enforcement Officer to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall be approved by the Selectmen and shall not allow a violation to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

- M Penalties:
Any person who owns or controls any building or property that violates this Ordinance shall be fined in accordance with Title 30-A MRSA Section 4452. Each day such violation continues after notification by the Code Enforcement Officer shall constitute a separate offense.

Section 2 Review and Approval Authority

- A No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer or the Planning Board as follows:
- 1 Approval by the Code Enforcement Officer is required for any expansion of an existing wireless telecommunication facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunication facility; or colocation on an existing wireless telecommunication facility.
 - 2 Approval of the Planning Board is required for construction of a new wireless telecommunication facility; and any expansion of an existing wireless telecommunication facility that increases the height of the facility by more than 20 feet.
- B The Code Enforcement Officer or the Planning Board shall review the application for wireless telecommunication s facilities, and make written findings on whether the proposed facility complies with this Ordinance.

Section 3 Approval Process

- A Pre-Application Meeting:
All persons seeking approval of the Planning Board under this Ordinance shall meet with the Planning Board prior to submitting a formal application. At this meeting, the Planning Board, shall explain to the applicant the ordinance provisions, as well as submissions that will be required under this Ordinance.
- B Applications:
All persons seeking a Code Enforcement or Planning Board Approval shall submit an application on the forms provided by the Town of Canaan. The applicant shall have the burden of proof to show that the application meets all the provisions of this Ordinance.

C Code Enforcement Officer Approval Application:

Application for permit approval by the Code Enforcement Officer must include the following material and information:

- 1 A receipt from the Town Clerk showing that the application fee has been paid.
- 2 Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including the name and address of the property owner and applicant.
- 3 A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- 4 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing in the National Register of Historic Places.
- 5 Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.
- 6 For the proposed expansion of a facility, signed statement that commits the owner of the facility, and successors in interest to:
 - a Respond in timely manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
 - b Negotiate in good faith for shared use by the third parties
 - c Allow shared use if an applicant agrees in writing to pay reasonable charges for colocation.
 - d Require no more than a reasonable charge for shared use based on community rates and generally accepted accounting principles. This may include but is not limited to a pro rata share of the cost of developing and maintaining the facility.

D Planning Board Approval Application

An application for approval by the Planning Board shall be submitted to the Planning Board or Town Clerk and contain the following information.

- 1 A total of 9 copies of the application shall be submitted.
- 2 All of the information required for a Code Enforcement Officer application approval.
- 3 A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunication facilities above 150 feet in height above ground level, except antennas located on roof tops, within a 5 mile radius of the proposed facility, unless this information has been previously made available to the municipality. This information may be met by submitting current information (within 30 days of the date of the application id filed) from the FCC Tower Registration Database.
- 4 A site plan that includes the following:
 - a Prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines and all applicable American National Standards Institute (ANSI) technical and structural codes.

- b Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
 - c A boundary survey for the proposed project performed by a land surveyor licensed by the State of Maine.
- 5 A scenic assessment, consisting of the following:
- a Elevation drawings of the proposed facility, and any other proposed structures, showing the height above grade.
 - b A landscaping plan indicating the proposed placement of the facility on the site: location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
 - c Photo simulations of the proposed facility taken from perspectives determined by the Planning Board during the pre-application meeting. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. the photos must show the color of the facility and the method of screening.
- 6 A narrative discussing the extent to which the proposed facility would be visible from or within a Town designated scenic resource.; the tree line elevation of vegetation within 1000 feet of the facility; and the distance to the proposed facility from Town designated scenic viewpoints.
- 7 A written description of how the proposed facility fits into the applicant's telecommunications network. The submission requirement does not require disclosure of confidential business information.
- 8 Evidence demonstrating that no existing building, site or structure can accommodate the applicant's proposed facility, the evidence for which may consist of the following:
- evidence that no existing facility is located within the targeted market coverage area as required to meet the applicant's engineering requirements;
 - evidence that existing facilities do not have sufficient height or cannot increase in height to meet the applicant's engineering requirements;
 - Evidence that existing facilities do not have the sufficient structural strength to support the applicant's proposed antenna and related equipment.
 - Evidence that fees costs or contractual agreements required by the owner in order to share or adapt an existing facility are unreasonable.
 - Evidence that the applicant has made diligent good faith effort to negotiate colocation on an existing facility, building, or structure and has been denied access.
- 9 A form of surety that has been deemed acceptable by the Selectmen of the Town of Canaan. The surety is to pay for the cost of removing the facility if it is abandoned.(The applicant may finalize the surety agreement with the Town of Canaan after receiving Planning Board conditional approval pending the final surety agreement from the Board of Selectmen)
- 10 Evidence that the applicant has met all public hearing requirements.

E Submission Waiver:
The Code Enforcement Officer or the Planning Board as appropriate may waive any of the submission requirements based upon a written request from the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Code Enforcement Officer or the a Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

F Public Hearing Requirements:
The Planning Board shall hold a public hearing on all applications requiring Planning Board approval. The Planning Board shall set the date, time and place of the public hearing after it has determined that a complete application has been submitted. The applicant shall be responsible for making the following public hearing notifications:

- 1 All property owners located within 1000 feet. and property abutters of the proposed facility shall be mailed a notice by certified return receipt indicating the date, time, place, and purpose of the hearing. The notice shall be mailed no later than 10 days prior to the scheduled hearing.
- 2 A notice shall be placed in a newspaper of general circulation in the area indicating the date, time, place and purpose of the hearing. A total of two notices published on separate dates shall be placed at least 7 days prior to the hearing.
- 3 The applicant shall submit to the Planning Board at the public hearing copies of the published newspaper notices and return receipt slips from the abutter notices.

Failure of any person to receive a notice shall not invalidate the public hearing nor require the holding of another public hearing.

G Code Enforcement Officer Application Procedure:
The following application procedure shall be followed for all applications submitted to the Code Enforcement Officer for approval.

- 1 The applicant shall submit to the Code Enforcement Officer or Town Clerk a complete application.
- 2 A dated receipt shall be issued to the applicant indicating that the application has been filed with the Town.
- 3 The Code Enforcement Officer shall within 10 days determine whether the application is complete and if it is not complete shall notify the applicant in writing of the materials necessary to make it complete.
- 4 After receipt of the complete application the Code Enforcement Officer shall within 10 days make a final decision on the application and shall approve the application, approve the application with conditions or deny the application. The decision shall be in writing and given to the applicant.

H Planning Board Application Procedure:
The following application procedure shall be followed for all applications submitted to the Planning Board for approval.

- 1 Prior to submitting an application the applicant shall asked to be placed on the Planning Board's agenda for a pre application meeting.

- 2 The applicant shall submit a complete application to the Planning Board or the Town Clerk.
- 3 A dated receipt shall be issued to the applicant indicating that the application has been filed with the Town.
- 4 Within 35 days of receipt of an application the Planning Board shall determine whether or not the application is complete. The Planning Board shall notify the applicant in writing whether the application is complete and it is not complete of the materials necessary in order to make it complete.
- 5 A public hearing shall be scheduled at least 35 days after the Planning Board determines that a complete application has been submitted.
- 6 The Planning Board shall hold a public hearing on the application and shall within 60 days of the public hearing make a final decision on whether to approve the application, approve the application with conditions or deny the application. The date of approval may be extended upon mutual consent of both the Planning Board and the applicant.
- 7 The Planning Board may conditional approve the application pending the final agreement between the applicant and the Board of Selectmen concerning the surety agreement.
- 8 The decision shall be in writing and provided to the applicant.

Section 4 Review Standards

A Code Enforcement Officer Approval Standards

- 1 An Application for approval by the Code Enforcement officer shall meet all of the following standards:
 - a The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
 - b The applicant has sufficient right, title or interest to locate the proposed facility on the existing structure.
 - c The proposed facility increases the height of the existing structure by no more than 20 feet.
 - d The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment to the maximum extent possible
 - e The proposed facility to the greatest degree practicable shall have no unreasonable adverse impact upon districts, sits, buildings, structures, or objects, significant in American history, architecture, archeology, engineering or culture that are listed , or eligible for listing in the National Register of Historic Places.
- 2 The Code Enforcement Officer may establish conditions for approval as necessary in order to ensure that the application conforms to the above listed review standards.

B Planning Board Approval Standards

- 1 An application for approval by the Planning Board shall meet all of the following standards.
 - a The wireless telecommunication facility shall not be located within the following shoreland districts: Resource Protection, Limited Residential, Limited Commercial, General Development and Stream Protection as designated in the Town of Canaan Shoreland Zoning Ordinance.
 - b A wireless telecommunication facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunication facilities or providers subject to the height limitation posed by the tower design.
 - c A new or expanded wireless telecommunication facility must be setback 105% of its height from all property lines. The setback may be satisfied by including the areas outside of the property boundary if secured by an easement.
 - d A new wireless telecommunication facility and related equipment must be screened with plants from view by abutting properties to the maximum practicable extent.
 - e A new wireless telecommunication facility must be fenced to discourage trespass.
 - f A new wireless telecommunication facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Security lighting may be installed as long as it is shielded to retain light within the boundaries of the site to the maximum extent possible.
 - g A new wireless telecommunication facility must be constructed with material that blend with the surrounding natural or built environment to the maximum extent possible.
 - h A new wireless telecommunication facility must comply with the current Electronic Industries Association Telecommunication Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures".
 - i The proposed facility to the greatest degree practicable will have no unreasonable adverse impact upon a historic, district, site or structure which is currently listed on or eligible for listing on the National Register of Historic places.
 - j A new or expanded tower shall not be constructed to a height that would require lighting and marking as per FCC and FAA Regulations.
- 2 The Planning Board may establish conditions for approval as necessary in order to ensure that the application conforms to the above listed review standards.

C Amendment to an Approved Application

Any changes to an approved application must be approved by the Code Enforcement Officer or the Planning Board in accordance with the application procedure established in this Ordinance.

D Abandonment

A wireless telecommunication facility that is not operated for a continuous period of 12 months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of the written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned.

If the owner fails to show that the facility is in active operation, the owner shall have 60 days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If surety has been given to the municipality for removal of the facility, the owner of the facility may apply to Board of Selectmen for release of the surety when the facility and related equipment are removed to the satisfaction of the Board of Selectmen.

Section 5 Definitions

The terms used in this ordinance shall have the following meanings:

Antenna means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

Antenna Height means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. measurement of the tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on sloped grade, then the average between the highest and the lowest grades shall be used in calculating the antenna height.

Colocation means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Expansion means the addition of antennas, towers, or other devices to an existing structure.

FAA means the Federal Aviation Administration, or its lawful successor.

FCC means the Federal Communications Commission, or its lawful successor.

Height means the vertical measurement for a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

Historic or Archeological Resources means resources that are:

- Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
- Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
- Areas identified by a governmental agency such as the Maine Historic preservation Commission as having significant value as an historic or archeological resource, and any areas identified in the Town's comprehensive plan which have been listed or are eligible to be listed on the National Register of Historic Places.

Historic District means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the Town's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

Historic Landmark means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the Town's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Line of Sight means the direct view of the object from the designated scenic resource.

Parabolic Antenna means an antenna which is bowl shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern. (also known as a satellite dish).

Principal Use means the use other than which is wholly incidental or accessory to another use on the same premises.

Public Recreational Facility means a regionally or locally significant facility, as defined and identified either by State statute or in the Town's comprehensive plan, designed to serve the recreational needs of municipal property owners.

Designated Scenic Resource means that specific location, view, or corridor, as identified as a scenic resource in the Town's comprehensive plan or by a State or Federal agency, that consist of:

- A three dimensional area extending out from a particular viewpoint on public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
- Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

Targeted Market Coverage Area means the area which is targeted to be served by this proposed telecommunication facility.

Unreasonable Adverse Impact means that the proposed project would produce an end result which is:

- Excessively out of character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource, and
- Would significantly diminish the scenic value of the designated scenic resource.

Viewpoint means that location which is identified either in the Town's comprehensive plan or by a state or federal agency and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless Telecommunication Facility means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS), or pager services.