

ARTICLE 7 SPECIAL EXCEPTIONS

Section 1. Special Exceptions

The Planning Board shall have the power and duty to approve, deny or approve with conditions special exceptions where such approval is specifically required. Any special exception use which is required to receive Site Plan Approval under this Ordinance is exempt from this Article.

A. Approval Standards

The applicant shall have the burden of proving that the application is in compliance with the requirements of this Ordinance. After the submission of a complete application, the Planning Board shall approve a special exception application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use, with any conditions attached, meets the following standards:

- (1) The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;
- (2) The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;
- (3) The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
- (4) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties;
- (5) The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;
- (6) The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties; and
- (7) If located in the Shoreland Overlay District, the proposed use
 - (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
 - (ii) will conserve shoreland vegetation;
 - (iii) will conserve visual points of access to waters as viewed from public facilities;
 - (iv) will conserve actual points of access to waters;

- (v) will conserve the town's Open Space Plan priority areas,
 - (vi) will avoid problems associated with flood plain development and use,
 - (vii) will protect archaeological and historic resources as designated in the comprehensive plan and State Historic Pres. Office ; and
 - (viii) will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
- (8) If located in the Resource Protection District, the following additional standards are met for any residential use proposed:
- (a) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
 - (b) The lot on which the structure is proposed is a lot of record, having been established and recorded in the York County Registry of Deeds prior to the effective date of this amendment, (6/15/94),
 - (c) There shall be only one dwelling located on such lot of record.
 - (d) All proposed buildings, sewage disposal systems and other improvements are:
 - (i) Located on natural ground slopes of less than twenty (20) percent; and
 - (ii) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodways Maps and Flood Insurance Rate Maps; all buildings, including basements are in conformance with the Town's Flood Plain Ordinance, (see Section 4-5 of Kennebunk Town Ordinances).

If the floodway is not shown on the Federal Emergency Management Agency maps, it is deemed to be ½ the width of the 100-year floodplain. For purposes of this subparagraph, "floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot in height and "velocity zone" means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.
 - (e) The total ground floor area including cantilevered or similar overhanging

extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

- (f) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a waterbody, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet in horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to moderate value and high value wetlands.

Section 2. Special Exception Application Procedures

- A. Before taking action on any request for special exceptions, the Planning Board shall hold a public hearing. The applicant shall list in his or her application the names and addresses of record, in the most recent tax listing in the Town, of all property owners whose property physically abuts the property that is the subject of the application. In addition:
 - (1) The applicant shall, at the time of the filing of the application, deposit with the Town Clerk for the Planning Board a sum not less than fifteen dollars (\$15) toward the cost of advertising such application and shall subsequently pay the cost of such advertising and any other expense in the determination of the application over and above said fifteen dollars.
 - (2) The Town Clerk shall record the date of receipt on the copies of any such application and shall forthwith transmit one copy of the notice of application to the Planning Board and keep the other copy available in the Town Clerk's office for public inspection.
 - (3) The Planning Board, within twenty (20) days from filing of an application, shall determine a hearing date and cause to be advertised in a newspaper of general circulation in the Town a notice of the application identifying the property involved, the nature of the application, and the time and place of public hearing on the application. The public hearing shall not be held earlier than ten (10) days after the date of such publication of such notice.
 - (4) Within three (3) business days after the date of publication of the public hearing notice, the Planning Board shall mail by certified mail, return receipt requested, a copy of the notice of application, as published, to each of the property owners listed in the application, at the addresses as shown in the most recent tax listing of the Town. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Planning Board.
 - (5) The Planning Board shall keep a record of each application entertained, noting the date when received from the Town Clerk, the date of hearing, and the person by whom such application was formally presented at the hearing. The Planning Board shall record in writing the reasons for its actions and the final disposition of each and every application.
 - (6) All of the foregoing shall be a matter of public record. Any plan, drawing or other data on which the Board has based its decision, shall be made a part of and a condition of plan approval.

- B. The applicant's submission shall include:
- (1) The location of the proposed use, including Assessor's tax map and lot number and a location map.
 - (2) A scale drawing, including existing and proposed buildings, important natural features, driveways, parking areas, pedestrian ways, streets and other rights-of-way, and location of signs and outdoor lighting.
 - (3) A description of the exact nature of the proposed use, including but not limited to the type of use, square footage involved, hours of operation, types and amount of any pollutants to be generated, and types and amount of traffic expected to be generated.
 - (4) Such other materials as will enable the Planning Board to determine that the standards for approval of a special exception have been met. The burden for providing the information upon which the Planning Board bases its findings and decision shall be the applicant's.
- C. The request shall be in order for hearing at the next meeting of the Planning Board following by at least ten (10) days the mailing of notices.
- D. At any hearing a party may appear in person or by agent or attorney. Hearings shall not be continued to other times except for good cause.
- E. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman. The Planning Board shall act by majority vote of those present and voting. A quorum shall be three (3) members.
- F. The Planning Board shall act to approve, approve with conditions, or deny the application within ninety (90) days of receipt of a complete application, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant. A permit granted by the Planning Board under the provisions of this article shall expire if the work or change involved is not commenced within one (1) year of the date on which the permit is granted, and if the exterior work or change is not substantially completed within eighteen (18) months of the date on which such permit is granted. The permit so granted shall state this restriction on its face. If the Planning Board denies an application, a second application of a similar nature shall not be brought before the Planning Board within one (1) year from the date of the denial by the Planning Board of the first application, unless, in the opinion of a majority of the Planning Board substantial new evidence has been brought forward, or unless the Planning Board finds that an error or mistake of law or misunderstanding of facts had been made.

The Planning Board may grant one or more extensions up to a maximum of three years to the expiration deadline provided:

- a) The request is submitted prior to the expirations of the special exception permit,
- b) The granted approved special exception conforms to zoning in effect at the time the extension is granted, and
- c) That any and all Federal and State approvals and permits are current.

- G. Any person aggrieved by a decision of the Planning Board on a special exception application may appeal the same within thirty (30) days from the date the decision is rendered to the Board of Appeals, and the procedure shall be governed by Section 3 of Article 6 of this Ordinance.

Section 3. Special Exception Application Procedures in the Branch Brook Aquifer Protection District

In addition to all other requirements of this Ordinance, all special exception uses in the Branch Brook Aquifer Protection District shall be subject to the following if necessary to demonstrate compliance with the applicable special exception standards:

- A. The Planning Board may require the applicant to submit a hydrogeological study on the potential impact of the proposed use on water quality. The Planning Board may hire an expert to review all information submitted by the applicant and may charge the applicant the reasonable cost of the consultant.
- B. The Planning Board shall notify the KKW Water District of any permit applications for uses in the Branch Brook Aquifer Protection District and shall consider the Water District's comments on the proposed use when it reviews the application.
- C. The Planning Board shall approve, deny, or approve with conditions all such applications if it makes a positive finding, based on the information presented, that:
- (1) The proposed use meets the specific requirements set forth in this Ordinance and will be in compliance with all applicable state and federal laws;
 - (2) The proposed use will meet all applicable performance standards;
 - (3) The proposed use will not create the risk of bacterial or viral contamination of groundwater in Zone A.
 - (4) The proposed use does not involve uses or activities which could cause a violation of the performance standard for pollution levels;
 - (5) Any control measures proposed to prevent adverse impacts on water quality are adequate and reliable, considering the threat to water quality which would result if control measures failed;
 - (6) The use will not involve disposal of solid waste, hazardous materials or leachable materials (other than specifically allowed by Ordinance); and
 - (7) Oil, fuel, and other petroleum products stored on-site will be properly contained so as to prevent contamination of the groundwater from leaks or spills.

Section 4. Telecommunications Facilities

A. Purpose

This section is designed and intended to balance the interests of the residents of the Town of Kennebunk, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town. The following standards are also intended:

- (1) To minimize the adverse impacts of such facilities, including visual impacts, environmental impacts, impacts to historically significant areas, health and safety impacts and property value impacts;
- (2) To encourage co-location of carriers and minimize the total number of towers located within the Town;
- (3) To permit the construction of new towers only where all other reasonable opportunities have been exhausted;
- (4) To encourage the users of towers and antennas to configure them in a way that minimizes the need for additional towers in the Town of Kennebunk;
- (5) To support the goals and policies of the Comprehensive Plan, especially the orderly development of the Town with minimal impacts on existing residential uses; and
- (6) To provide for the removal of structures which are no longer being used for telecommunications purposes.

B. Definitions

For the purposes of this Section and the performance standards set forth in Article 10, Section 22, the following terms are hereby defined.

- (1) Accessory Use - shall mean a use clearly incidental and subordinate to a principal building or use allowed in the zoning district in which it is located, and located on the same lot with such principal building or use. Telecommunications facilities shall generally be considered a principal use; provided, however that telecommunications facilities used solely for the private communications of the owner of, or entity located on, the lot may be approved as an accessory use.
- (2) Alternative Tower Structure - shall mean any building or structure such as clock towers, bell steeples, light poles and water towers, and similar alternative-design mounting structures that can be used for the location of telecommunications facilities but serve another primary purpose.
- (3) Antenna - shall mean any exterior apparatus designed for telephonic, radio, television, or similar communications through the sending and/or receiving of electromagnetic waves.
- (4) Co-Location - shall mean the use of a tower or alternative tower structure by more than one telecommunications provider.

- (5) Expansion - shall mean any expansion or enlargement of a telecommunications facility (including any secondary structures and/or equipment) that (i) increases its previously-approved footprint, height, land area or cubic volume occupied; or (ii) changes its location.
- (6) FAA - shall mean the Federal Aviation Administration.
- (7) FCC - shall mean the Federal Communications Commission.
- (8) Height - shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- (9) Telecommunications Facility - shall mean any structure, antenna, tower, or other device that provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.
- (10) Tower - shall mean any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and similar structures.

C. Applicability

This Ordinance applies to all construction and expansion of telecommunications facilities; provided, however that the following are exempt from the provisions of this Ordinance:

- (1) Amateur (ham) radio stations, with towers of fifty-five (55) feet or less that are federally licensed, and that are not additionally licensed or used for any commercial purpose, other than by the licensed amateur radio operator;
- (2) Temporary telecommunications facilities for emergency communications by public officials;
- (3) Parabolic (satellite dish) antennas less than seven (7) feet in diameter that are an accessory use of the property;
- (4) Normal maintenance, repair or reconstruction of a telecommunications facility and related equipment provided that there is no change in the height or any other dimension of the facility; and
- (5) Telecommunications facilities lawfully in existence on the date of passage of this ordinance; provided, however that any expansion (as that term is defined in Section 4(B), above) of an existing telecommunications facility (including any secondary structures and/or equipment) shall require Planning Board special exception review as set forth herein.

D. Review and Approval Authority

- (1) No person shall construct or expand a telecommunications facility without a permit from the Code Enforcement Office or a special exception permit from the Planning Board, as applicable.

- a) Code Enforcement Officer Review.

Except as otherwise provided in Section 4(C) above, approval from the Code Enforcement Officer is required and sufficient for the following:

1. Co-location on an existing telecommunications facility that was previously approved by the Planning Board for co-location, if such co-location does not involve any expansion (as that term is defined in Section 4(B), above) of the existing telecommunications facility (including any secondary structures/equipment).
2. Any accessory use tower or antenna fifty-five (55) feet or under that is used for the private communications of the owner of, or entity located on, the lot.

- b) Planning Board Special Exception Review.

Special exception approval from the Planning Board is required for construction of a new telecommunications facility and any expansion (as that term is defined in Section 4(B), above) of an existing telecommunications facility (including any secondary structures and/or equipment).

- (2) This Section shall be applied in conjunction with other applicable sections of the Town's Zoning Ordinance, including but not limited to, the Performance Standards in Article 10.

E. Approval Process

- (1) Pre-Application Conference. All persons seeking approval of the Planning Board or Code Enforcement Officer under this Ordinance shall meet with the Town's Planning Department before filing an application. At this meeting, the Planning Department shall explain to the applicant the Ordinance provisions and the application forms and the submissions that are required.
- (2) Application. All persons seeking approval of the Planning Board or Code Enforcement Officer under this Ordinance must submit a completed application that complies with the requirements of this Ordinance and submit other pertinent information as determined by the Town.
 - a) Application for Code Enforcement Officer Approval. Applications for permit approval must include the following minimum material and information:
 1. Location of the proposed telecommunications facility, including map/lot number and street address;

2. Proof of right, title and interest to the property on which the telecommunications facility is proposed, including the name and address of the property owner and the applicant;
 3. A copy of the FCC license for the telecommunications facility or a signed statement from the owner or operator of the telecommunications facility attesting that the telecommunications facility complies or will comply with FCC regulations;
 4. Date the telecommunication facility was initially constructed or is proposed to be constructed;
 5. A description and construction detail of the telecommunication facility, including: location map and elevation drawings of the proposed facility and any other proposed structures; a plot plan identifying the location of the telecommunications facility on the property; dimensions of the telecommunications facility; structural supports, if any; lighting; color; and equipment located on the tower or alternative tower structure, if any; antenna capacity; means of access; setbacks from property lines; and evidence that the proposed structure has sufficient structural strength to support the applicant's proposed antenna and related equipment. This description shall also identify any related secondary structures that are essential to operation of the telecommunication facility;
 6. Evidence that the existing telecommunications facility/structure proposed to be used for co-location has sufficient structural strength to support the applicant's proposed antenna and related equipment;
 7. Name of company(ies) responsible for constructing and/or maintaining the telecommunication facility;
 8. Evidence that a notice of the application has been published in a newspaper of general circulation in the community; and
 9. Payment of the permit application fees.
- b) Application for Planning Board special exception approval. An application for approval by the Planning Board must be submitted to the Planning Department and include the following information:
1. Location of the proposed telecommunications facility, including map/lot number and street address;
 2. Proof of right, title and interest to the property on which the telecommunications facility is proposed, including the name and address of the property owner and the applicant;
 3. Date the telecommunication facility was initially constructed or is proposed to be constructed;

4. A copy of the FCC license for the telecommunications facility or a signed statement from the owner or operator of the telecommunications facility attesting that the telecommunications facility complies or will comply with FCC regulations;
5. A description and construction detail of the telecommunication facility, including: plot plan identifying location of the telecommunications facility on the property; dimensions of the telecommunications facility; structural supports, if any; lighting; color; and equipment located on the tower or alternative tower structure, if any; antenna capacity; means of access; setbacks from property lines; and evidence that the proposed structure has sufficient structural strength to support the applicant's proposed antenna and related equipment. This description shall also identify any related secondary structures that are essential to operation of the telecommunication facility;
6. A topographic map, drawn at a scale of one (1) inch = fifty (50) feet (or other appropriate scale as determined by the Planning Board) showing the proposed location of the telecommunications facility, including a radius of one-thousand (1000) feet. The topographic map shall identify: accurate dimensions of the property; contours at not less than ten (10) foot intervals (or other appropriate scale as determined by the Planning Board); existing vegetation, particularly noting height, diameter, density, quality, and type (deciduous or evergreen) of existing trees; wetlands, floodplains, streams and open bodies of water; ledge outcrops; soils data, medium intensity; all existing structures on the property; and any rights-of-way, easements, or similar encumbrances on the property; and other significant features;
7. A locus map drawn at a scale of not less than one (1) inch = one-hundred (100) feet (or other appropriate scale as determined by the Planning Board) that identifies all properties, all residences, all non-residential structures, and all roads in the area located within a radius of one-thousand (1000) feet of the proposed telecommunications facility location;
8. A landscape plan prepared at a scale of one (1) inch = fifty (50) feet (or other appropriate scale as determined by the Planning Board) that identifies how the applicant shall satisfy landscape, screening and buffering requirements;
9. A visual impact analysis prepared by a landscape architect or other qualified professional that quantifies the amount of visual impact on properties located within five-hundred (500) feet, within two-thousand-five-hundred (2,500) feet and within two (2) miles of the proposed telecommunication structure. This analysis will include recommendations to mitigate adverse visual impacts on such properties. Consideration shall be given to views from roads, public areas, private residences, historic resources, including historic districts and structures listed in the National Register of Historic Places, and archeological resources. The analysis of the impact on historical and archaeological resources shall meet the requirements of the Maine State Historic Preservation Commission and applicable federal laws and regulations;

10. Photos showing site vegetation, existing and adjacent structures, views of and from the proposed site, topography, and land uses on the proposed parcel and abutting properties;
11. An analysis prepared by a qualified professional that describes why this site and structure are critical to the operation for which the telecommunications facility is proposed. The analysis shall address, at a minimum: existing and proposed service area maps; how this structure is integrated with other company operations, particularly other structures in the Town and surrounding communities; future expansion needs in the area; the affect on company operations if this structure is not constructed in this location; and an analysis of the projected life cycle of this structure and location;
12. Applicants proposing new towers shall identify all existing and proposed towers located in the Town (on file in Town Hall) and within one (1) mile of the Town boundaries and identify alternative tower structures and sites that have been investigated as an alternative to constructing a new tower. Such applicants shall also address the pros and cons of utilizing co-location and alternative tower structures in their applications and shall submit evidence demonstrating that the proposed telecommunications facility cannot be co-located on an existing structure because it is technically and/or financially infeasible to do so and the existing structures cannot be changed to accommodate the proposed telecommunications facility;
13. Evidence that written notice was sent, by pre-paid first class mail, to all other existing tower and alternative tower structure owners that could furnish service to the Town utilizing such existing towers and alternative tower structures. The notice shall state the applicant's siting needs and include a request for information of the co-location capabilities of the existing facilities. Evidence that this notice requirement has been fulfilled shall include a name and address list, copy of the notice that was sent, and evidence that the notices were sent as required;
14. Certification by a structural engineer that construction of the telecommunications facility will satisfy all Federal, State and Local building code requirements and allow for future co-location at the site;
15. If a new tower is proposed, a report from a professional engineer that describes the tower, the technical reasons for the tower design and the capacity of the tower, including the number, type and volume of the antennae it can accommodate and the basis for the calculation capacity;
 - (a) Applications proposing a setback less than 125% of the tower height, will require an engineering peer review of all elements of the tower design. The submittal shall include all design criteria, design assumptions, calculations and reference governing codes. The Town will provide all of this information to its technical peer reviewer.
16. A signed statement, which shall become a condition of approval, acknowledging that the owner of the telecommunications facility and his or her successors and assigns agree to do the following:
 - (a) Respond in a timely, comprehensive manner to a request for information from a potential co-location 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 of the telecommunications facility by third parties;
 - (c) Allow shared use of the telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location, unless satisfactory evidence is presented, and the Planning Board concurs, that technical constraints prohibit co-location; and
 - (d) Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project, administration, land costs, site design, construction and maintenance, financing, return or equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility;
17. Payment of all required performance guarantees as a condition of plan approval - with a note on the plans so stating; and
18. Payment of the permit application fees and required notice fees.
- (3) Submission Waiver. See Article 7, Section 6 for applicable standards.
- (4) Fees.
- a) Application Fee for Approval by the Code Enforcement Officer or Planning Board. A non-refundable application fee in an amount and for such purposes as the Board of Selectmen may from time to time establish by order shall be paid by the applicant to the Town at the time of filing of the telecommunications facilities application. The application shall not be considered complete and shall not be processed until this fee is paid.
 - b) Independent Consulting and Peer Review Fees. The Planning Board and Code Enforcement Officer may use any technical and professional services necessary to assist in the review of a telecommunications facility application. Services may include but are not limited to: an analysis of shared use, an analysis of visual impact, an analysis of compliance with federal and state requirements, an analysis of alternative sites, an analysis of structural and engineering integrity and other issues related to satisfying requirements of this section. The applicant shall be required to pay all costs involved with these professional services. Such fees shall be paid in full prior to the issuance of any building permit.
- (5) Public Hearing and Notice. Once the Planning Department has determined that an application for Planning Board special exception approval is complete, the Planning Board shall review the application at the next available Planning Board meeting, during which time it may request additional information if it finds the application is not complete. Once the Planning Board determines the application to be complete, a public hearing shall be held within thirty (30) days after that determination.

- a) Mailed Notice. If the application is determined to be complete and requires Planning Board review, the applicant shall notify all owners of property that directly abuts or is located within one-thousand (1,000) feet of any property line of the property for which the special exception permit is requested. Notice shall also be given to any town located within 1,000 feet of the proposed telecommunications facility. Notice shall be sent by certified mail to property owners within five-hundred (500) feet and by first class mail to all others. Notice shall be given a minimum of ten (10) days before the public hearing. The mailed notice shall include: the name of the applicant, location of the property, a brief description of the project, a plot plan identifying the proposed site layout in relation to nearby streets and properties, the location of a copy of the application available for inspection, and provide the date, time, and place of the public hearing at which the application will be considered. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Planning Board. Applicant shall be responsible for all costs of noticing and shall present proof of such notification to the Town Planner.
 - b) Posted Notice. The Town shall post notice of the public hearing in the Town Hall a minimum of ten (10) days in advance of the hearing.
 - c) Published Notice. The Town shall advertise the public hearing in a newspaper of general circulation a minimum of ten (10) days in advance of the hearing.
- (6) Approval.
- a) Code Enforcement Officer Approval. Within forty-five (45) days of receiving a complete application for approval under this Section, the Code Enforcement Officer shall approve, approve with conditions or deny the application in writing, together with the findings on which the decision is based. The time period may be extended upon agreement between the applicant and the Code Enforcement Officer. The Code Enforcement Officer shall approve the application if the Code Enforcement Officer finds that the application complies with the submission requirements and meets the standards set forth in this Section. The Code Enforcement Officer or designee shall notify all abutters of the decision to issue a permit under this Section.
 - b) Planning Board Approval. Within ninety (90) days of receiving a complete application under this Section, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. This time period may be extended upon agreement between the applicant and the Planning Board.
 - c) Plan Amendments. Any changes to the approved plans must be resubmitted to and approved by either the Code Enforcement Officer or the Planning Board, depending on which authority approved the original plans and issued the permit.
 - d) Alternative Tower Structures. A telecommunications facility may be permitted on any alternative tower structure regardless of the zoning restrictions applicable to the zoning district where the structure is located. The owner of such structure shall, by written certification to the Planning Board, at the time plans are submitted for special exception review, establish the following: That the resulting alternative tower structure shall not

exceed the maximum height permitted for telecommunications facilities in that zoning district and that the proposed telecommunications facility shall not extend more than twenty-five (25) feet higher than the present highest point of the building or structure.

F. Standards of Review

To obtain permit approval from the Code Enforcement Officer or the Planning Board, an application must comply with the standards in this section.

- (1) Code Enforcement Officer Approval Standards. An application for approval by the Code Enforcement Officer must meet the following standards:
 - a) The proposed telecommunication facility is (i) a co-location on an existing telecommunications facility that was previously approved by the Planning Board for co-location; or (ii) an accessory use tower or antenna fifty-five (55) feet or under that is used for the private communications of the owner of, or entity located on, the lot;
 - b) The proposed telecommunications facility does not constitute an expansion as that term is defined in Section 4(B), above;
 - c) If the proposed telecommunications facility does not meet the descriptions set forth in Section 4(F)(1)(a) or 4(F)(1)(b) above, the application shall be reviewed by the Planning Board as a special exception;
 - d) The applicant has sufficient right, title or interest to locate the telecommunications facility as proposed, including but not limited to, being in possession of all required federal and state approvals and permits;
 - e) The proposed telecommunications facility shall be constructed with materials and colors that match or blend with the surrounding natural or built environment, and reduce the facility's visibility to the extent practicable;
 - f) The proposed telecommunications facility shall be structurally sound; and
 - g) The proposed telecommunications facility shall meet all of the applicable requirements set forth in the performance standards in Article 10, Section 22.
- (2) Planning Board Approval Standards. An application for special exception permit approval by the Planning Board must meet the following standards.
 - a) Priority of Locations. New telecommunications facilities that are not accessory uses must be located according to the priorities below, with 1 as the highest priority, 2 the next highest priority, etc. The applicant must first demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility before approval of a new facility will be permitted.
 1. Co-location on an existing telecommunications facility or existing alternative tower structure in the Business Park or Industrial zoning districts.

2. Co-location on an existing telecommunications facility or existing alternative tower structure in any other zoning district.
 3. New telecommunications facility on public or private property in the Business Park or Industrial zoning districts.
 4. New telecommunications facility established through a contract zone in any other location allowed by this Ordinance.
- b) Co-Location. To foster co-location, the Planning Board may 1) require co-location on a tower so as to prevent the need for new carriers to build new towers; 2) deny an application for a telecommunications facility because of inadequate provisions and/or arrangements for co-location; or 3) require an existing tower to be extended in height (provided that a structural analysis indicates that such extension is structurally feasible and safe) in order to provide for co-location; provided, however, that the Planning Board may do so only if the co-location fee or payment required of the applicant by the owner of the existing tower is no more than ten percent (10 %) above the industry average for similar co-location arrangements. Applicants may be obligated to provide co-location space at no charge to public agencies (namely police, fire, ambulance, communications and highway), if requested at the time of application review by the Planning Board.
- c) Factors Considered in Making Decisions. In addition to the standards identified in Article 7 Section 1(A), the Planning Board shall be guided in making its decision whether to approve a special exception permit for a telecommunications facility by the following factors:
1. Height of the proposed telecommunications facility shall not exceed that which is essential for its intended use and public safety;
 2. Proximity of any tower to residential development or zones shall be minimized;
 3. Nature of uses on adjacent and nearby properties shall be reviewed and the impact of the telecommunications facility minimized;
 4. The telecommunications facility shall take into consideration the surrounding topography and minimize changes to the existing natural topography to the maximum extent feasible;
 5. The telecommunications facility shall utilize the surrounding tree coverage and foliage as a buffer to the maximum extent possible. Removal of mature trees shall be strongly discouraged;
 6. Design of the tower, antenna, and any secondary structures and facilities shall contain design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 7. Provisions that have been made for future co-location;

8. The telecommunications facility shall minimize visual impacts on view sheds, ridge lines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures;
9. The telecommunications facility shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or major view corridor;
10. That the telecommunications facility shall not be constructed in such a manner as to result in needless height, mass, and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility;
11. Mitigation measures shall be utilized to screen antenna and towers from view from public right-of-ways or scenic vistas, either via landscaping, fencing or other architectural features;
12. Applicant shall employ creative design measures to camouflage telecommunications facilities by integrating them with existing building and other alternative tower structures; and
13. The telecommunications facility shall conform to all of the applicable Performance Standards set forth in Article 10, Section 22.

G. Nonconforming Telecommunications Facility. A nonconforming telecommunications facility, structure or related use may not be expanded, enlarged, increased in size or have any additional telecommunications facilities added to it. This ordinance shall not be interpreted to legalize any existing structure, facility or use that violates any other ordinance. Notwithstanding the above, the Planning Board may grant approval for the co-location of additional antennae on a nonconforming structure under the review standards for expansion of an existing telecommunications facility set forth herein.

H. Performance Guarantees and Removal of Abandoned/Unused Facilities

- (1) General Guarantee. No site disturbance, development or issuance of a building permit shall occur until the applicant has filed a performance guarantee, if applicable, with the Town Manager equal to 100% of the cost of completing the following improvements:
 - a) the construction of any drainage systems involving piping, culverts, or retention or detention facilities;
 - b) the construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section; and
 - c) other site improvements required by the Planning Board to meet the standards of this section, including but not limited to, improvements required to stabilize the site if the project is not completed.
- (2) Removal and Storage of Materials. All used structural and electronic components shall be removed within six months and properly disposed of once they have exceeded their useful life

and are no longer in use. This standard includes, but is not limited to, removing used guy wires, used fence parts, and structural components for towers. Outside storage or materials shall not be permitted except as specifically approved by the Planning Board.

- (3) Abandonment. A telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of an abandoned telecommunications facility shall be notified in writing by the CEO to remove the facility within ninety (90) days of receipt of a written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to show that the facility has not been abandoned and has been in active use or under active repair during the period. If the owner fails to show that the facility has been in active operation or under active repair, he or she shall have sixty (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.
- (3) Guarantee for Removal of Abandoned Telecommunication Facilities. Any applicant for a new tower shall post a performance guarantee in the form of a continuous corporate surety bond or an escrow account for the benefit of the Town equal to one hundred twenty-five (125%) percent of the estimated demolition and removal cost of the tower and associated facilities if abandoned at any time by the applicant. The amount, type and form of the guarantee shall be approved by the Town Manager. Estimates of demolition and removal costs shall be provided by a third party and shall not be based on services being provided by Town employees and Town equipment.

The amount of the guarantee shall be sufficient to return the land to the condition as near to the original pre-construction condition as possible as determined by the Planning Board. Estimated removal costs shall include all above ground structures, equipment, foundations, guy anchors, utilities, access roads or driveways specifically constructed to service the telecommunications facility.

The performance guarantee covering such removal shall be on a continuous basis, with any provision for cancellation to include that a minimum thirty (30) day prior notice of cancellation, or renewal, be sent by certified mail to the Town. The performance guarantee covering such removal shall be for a minimum term of five (5) years. It must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate. A replacement performance guarantee shall be provided to the Town before the expiration of the original or any replacement guarantee.

I. Appeal Procedure

Any person aggrieved by a decision of the Code Enforcement Officer or Planning Board on a telecommunications facility application may appeal the same to the Board of Appeals within thirty (30) days from the date the decision is rendered, by following the appeals procedure established in Article 6, Sections 2 and 3 of this Ordinance.

J. Timeline for Completion and Inspection Costs

- (1) **Timeline for Completion.** A permit granted by the Planning Board under this section shall expire if the work or change involved is not commenced within six (6) months of the date on which the permit is granted, and if the work is not substantially completed within one (1) year of the approval date.
- (2) **Inspection Costs.** The Code Enforcement Officer may use professional and technical services to inspect construction of an approved project. The applicant shall pay all costs incurred for these inspection services.

Section 5. Expansion or Enlargement of a Special Exception Use

It shall be unlawful for any building or use of premises previously authorized by special exception permit, or whose establishment would now require special exception approval, to be enlarged or expanded without securing, prior to such enlargement or expansion, a new permit therefore pursuant to the provisions of this Article.

Section 6. Waiver Provision

The Planning Board, in its sole discretion, may modify or waive any of the submission requirements or application procedures when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary to determine compliance with the approval standards and that such modification or waiver would not adversely affect properties in the vicinity or the general health, safety, and welfare of the Town.