

ARTICLE XIII

COMMUNICATION TOWERS

It is the desire of the Town of Mars Hill to encourage communication facilities in order to insure an adequate level of service to the Town, while at the same time, protecting the health, safety, welfare and scenic beauty of the Town.

600A.1 Communication Facility.

A communication facility is a tower or other transmission or receiving device operating for the purpose of broadcasting or receiving verbal or visual communication signals.

600A.2 Permit required.

It shall be unlawful for any person, corporation or entity to erect any communication facility without first obtaining a permit from the Zoning Officer. A permit, however, shall not be required for the erection of any communication having a height from its location on the ground of less than seventy-five (75) feet.

600A.3 Application required for permits.

1. Any individual, corporation or entity desiring to construct a communication facility shall submit an application for a permit to the Zoning Office and shall pay an application fee in the amount of \$500.
2. The application shall be on a form approved by the Zoning Officer and shall include or have attached thereto at least the following information:
 - a. A site development plan which contains the following information:
 1. The name of the telecommunications tower owner and/or property owner and tax identification number of the parcel.
 2. All identifiable structures located on the parcel; to wit, all private and public roads, highways and underground and overhead utilities.
 3. Surveyed boundary lines of the parcel containing the proposed communication facility, construction area and its fall area.
 4. The names, addresses and tax parcel numbers of all the adjoining property owners.
 5. The elevation of the proposed tower's base.

6. A preliminary tower design plan, prepared by a registered professional engineer showing all guideline anchors and support structures, proposed building and other proposed improvements, including access roads and utility connections.
 7. Showing the proposed height of the tower, lighting and antennas and the tower's design of load.
- b. The applicant shall identify all possible alternative existing structures within the proposed broadcast area and explain why given those facilities, the proposed tower is necessary.

600A-4 Conditional Use Permit.

All communication towers shall be subject to a conditional use permit granted by the Mars Hill Planning Board. A communication facility may be sited in all zoning districts of the Town.

600A-5 Written Statements.

Written statements shall be provided from the Federal Aviation Administration and the Federal Communications Commission establishing that the proposed communication facility complies with all regulations administered by the FAA and the FCC, or establishing that the proposed facility is exempt from administration by the FFA and the FCC.

600A-6 Conditions to be met.

1. Prior to granting a permit for construction of a communication facility, the Planning Board shall conduct a public hearing as required by this Ordinance, and shall establish that the facility meets at least the following minimal standards:
 - a. The facility shall be situated in such a manner so it will not fall across a public street or adjoining property lines in the event of structure failure. Same may be established by either sitting the tower a distance from the adjoining property line greater than the height of the tower, or by using a self-collapsing structure that will collapse upon itself. Any self-collapsing structure must be documented by a professional engineer.
 - b. The setbacks for the communication facility and any accessory structures shall not be less than that required in the underlying zoning district in which the facility is located.
 - c. The tower must be set back a distance greater than the height of it from any residence or structure on adjoining properties.

2. The communication facility must be of a type or height such that the Federal Aviation Administration would not require the tower to be lighted or painted.
3. All communication facilities for broadcast must be designed and constructed to provide for the co-location of a minimum of four services. Certification must be provided by a professional engineer establishing that the tower will accommodate at least four users, prior to a conditional use permit issuing.
4. The applicant must certify that future co-locations on the tower will be allowed and made available at a fair market value, and the application must outline the method to be used by the applicant in determining what would constitute a fair value.
5. As a condition for the issuance of any permit for construction of a communications facility, the owner must record in the office of the Madison County Register of Deeds a letter of intent to allow such co-locations which shall bind all subsequent owners for the facility.
6. No new broadcast communication facilities shall be approved unless the Planning Board finds that the equipment for the proposed tower cannot be accommodated on existing towers located within a two mile search radius of the proposed site.
7. The only acceptable reason why a communication facility could not be located on the existing tower would be that the equipment exceeds the structural capacity of the existing tower, or that the planning equipment would cause interference with equipment already located on the tower which could not be prevented at a reasonable cost.
8. Showing must be made that the applicant for the communication facility is licensed by the Federal Communications Commission to provide communication services, or if the applicant is not such a licensee, it must demonstrate it has binding commitments from one or more FCC licensees to utilize the proposed facility.
9. The owner of a communication facility shall provide a certificate of insurance evidencing it has liability coverage in the amount of at least \$1,000,000 and the certificate shall contain certification that the insurance company will notify the Town of Mars Hill thirty (30) days prior to the cancellation or modification of said policy.

600A-7 Additional mandatory conditions.

The Planning Board shall not issue a conditional use permit for the purposes of this Article, unless the following conditions are also made a part of the permit:

- a. All communication facilities and their accessory structures and equipment shall be enclosed within a secure fence.
- b. No advertising of any kind will be permitted on or about the communication facility.
- c. If a communication facility ceases to function for its intended purpose for a continuing period of ninety (90) days, the owner of the tower and/or the owner of the property upon which the property is located shall be required to dismantle and remove the entire structure within ninety (90) days of notification of the expiration of the aforesaid ninety (90) day period.
- d. The owner of the tower shall be required to provide the Zoning Officer a copy of any notice of cessation of operation which is filed with the FCC, within seven days of said filing, and likewise, shall be required to provide the Zoning Officer within seven days any notices issued by the FCC directing the cessation of operation of the facility.
- e. All towers shall be unpainted, light grey or environmental green.
- f. The owner of the tower must allow the location of telecommunication facilities operated by the Town of Mars Hill, if it is determined that the proposed tower is situated in a location that will benefit the telecommunications system of the Town of Mars Hill, provided that the Town of Mars Hill makes said request within sixty (60) days of the filing of the permit application.
- g. Each telecommunication facility must be designed to survive a natural disaster without interruption in operation. Said design shall include the following: Non-flammable exterior wall and roof covering; openings and all equipment enclosures shall be protected against penetration by fire and in-blown embers; the tower, when fully loaded, must be designed to withstand "maximum credible earthquake" and all equipment shall be mounted in such a manner that a quake will not tip them over, throw equipment off shelves or otherwise apt to damage equipment; back up generators must be available for use at all communication facilities.

600A-8 Additional Requirements.

The Planning Board may impose additional requirements before the issuance of the permit to address the following:

- a. To prevent the facility from causing significant adverse visual impact on nearby residences.

- b. To provide for the public safety.
- c. To ensure that the communication needs of the Town of Mars Hill are met.

600A-9 Technical Assistance.

If, in the course of its consideration of an application, the Planning Board deems it necessary, it may employ an engineer or other expert of its choosing to review the application submitted, and shall in such cases, assess the reasonable costs for same to the applicant in an amount not to exceed \$2,500.

600A-10 Renewal of Conditional Use Permit.

An annual telecommunication permit shall be required for each communication facility constructed pursuant to this Article. The holder of any such permit must file an annual report, on a form provided by the Zoning Officer, which should demonstrate the continued compliance with the requirements of this Article. A \$250 annual permit fee shall be required, and said fee shall not be prorated.

The Zoning Officer shall make an annual inspection of each site as a part of the permit renewal to certify that all conditions set forth by the Planning Board are being met, that fences are in good repair, that no unauthorized communication facilities are present and to determine whether there are any hazards associated with the facility. Failure to obtain the annual permit within thirty (30) days after the commencement of the annual period shall result in the facility being deemed abandoned and subject to removal as required by Section 1506(c).

Passed and approved this 6th day of May, 2002.