

## Ann Clark

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**From:** Wesley Barker <wesley.barker@ashecountygov.com>  
**Sent:** Monday, October 12, 2020 11:47 AM  
**To:** Ann Clark  
**Subject:** Ch 158 Communications Towers Ordinance proposed revisions

Ann,

I would like to request an agenda item for the next Commissioner's meeting. This item will be the consideration of text amendments to Chapter 158: Communications Towers Ordinance. The Planning Board met on October 1<sup>st</sup>, 2020 during a regular meeting and voted unanimously to recommend the proposed revisions to the communications towers ordinance to the Commissioners. This ordinance revision does not change any local legislation already in place, but these revisions will add to the existing ordinance. The revisions include the following: clarification of certain sections of the ordinance including the permit application, review process & variance process, organizes sections in a better format, adds additional definitions and adds a board appeals section.

It should be noted that all of these proposed revisions were compared with neighboring counties communications tower ordinances and all of them had the additional definitions & a detailed appeals/variance section contained within them.

If the Commissioners are ok with the proposed revisions, they can vote to approve the revisions as presented and the ordinance will go into effect upon this approval. Further, if Commissioners see any changes that should be made, they can send this item back to the Planning Board for further review.

There are currently, as of October 12<sup>th</sup>, 2020, no pending applications for new communications towers in the county. There are currently 24 active cell towers in the county, with 1 new tower about to begin construction.

Let me know if you need any additional information. Thanks!

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## **CHAPTER 158: COMMUNICATIONS TOWERS**

### Section

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### **§ 158.01 TITLE.**

This chapter shall be known as the Communication Towers Chapter of Ashe County, North Carolina. (Ord. passed 6-2-97; Am. Ord. passed 4-20-15)

### **§ 158.02 PURPOSE.**

The purpose of this chapter is to establish rules and standards for the location and construction of towers and antennas for wireless telecommunications in order to:

- 1) Protect the health, safety, and welfare of the citizens of Ashe County;
- 2) Avoid potential damage to adjacent properties;

- 3) Minimize potential hazards to aircraft;
- 4) Maximize the use of existing towers and structures to reduce the number of towers; and
- 5) Restrict the location of towers that detract from the natural beauty of the county without providing outweighing economic advantages for Ashe County citizens and the tourism industry.

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15)

### **§ 158.03 AUTHORITY.**

This chapter is adopted under the authority and provision of the G.S. Chapter 153A-121, Article 6. (Ord. passed 6-2-97; Am. Ord. passed 4-20-15)

### **§ 158.04 JURISDICTION; EXCLUSIONS; EXEMPTIONS.**

- 1) Jurisdiction. This chapter shall apply to all areas of unincorporated Ashe County which are not included in the extraterritorial jurisdiction of any municipalities.
- 2) Exclusions. This chapter shall not apply to non-commercial towers which are for personal use and for which the owner makes no charge for use by others; to a tower owned by a government agency and utilized only for noncommercial emergency communications; to a tower under 40 feet in height owned and operated by a federally-licensed amateur radio station operator; or to a tower used exclusively for a receive-only antenna.

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15)

- 3) **Exemptions.** The following are exempt of the requirements of this chapter:
  - a) Wireless facilities placed on utility poles.
  - b) Removal or replacement of transmission equipment on an existing wireless tower or wireless facility that does not increase the tower's height or width by 10%.
  - c) Ordinary maintenance of existing wireless facilities, as defined in this Ordinance.
  - d) Carrier on Wheels (COWs) placed for a period of not more than one hundred twenty (120) days at any location within the County, or after a declaration of an emergency or disaster by the Governor.
  - e) Antenna or antenna support structures of amateur radio operators 90 feet or less in height.

- f) New and existing wireless support structures and facilities owned by governmental agencies and designed for non-commercial emergency communications.

(Ord. passed \_\_\_\_)

## § 158.05 DEFINITIONS.

When used in this chapter, the following words, terms and phrases shall be interpreted to have the meaning described in this section. All other words, terms and phrases shall be interpreted as they are commonly used in everyday language.

**CARRIER ON WHEELS (COW).** A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A "COW" is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

**CO-LOCATION.** The placement or installation of multiple wireless equipment/carriers on existing structures, including cell towers, electrical transmission towers, water towers, building or other structures capable of structurally supporting the attachment of additional wireless equipment or antenna's in compliance with applicable codes.

**CERTIFIED FALL ZONE.** A measured distance outward from the base of the tower established by a document submitted by a professional engineer registered with the State of North Carolina, in which a distance less than the standard Fall Zone is represented as sufficient to protect adjacent property from collapse of the tower resulting from structural failure or acts of nature.

**CONCEALMENT TECHNOLOGY.** Use of artificial trees, clock towers, bell steeples, light poles and similar mounting structures that camouflage or conceal the presence of antennas or towers.

**FALL ZONE.** A circular area of land with its radius measured from the outer edge of a communication tower structural component. The standard for radius measurement is the height of the tower. The area shall be sufficiently large to contain any ice or debris that may fall from the tower or one of its structural components.

**MAJOR MOUNTAIN RIDGE OR PEAK.** A major mountain ridge or peak is any, according to the USGS 1:24,000 Topographic Map, with an elevation that is greater than three thousand (3,000) feet ~~or greater in elevation~~ above mean sea level, or an elevation that is greater than five hundred (500) feet ~~or greater~~ above the adjacent valley floor, including all land within 100 feet below the elevation of any portion of such line or surface along the crest.

**MONOPOLE.** A single, freestanding pole-type structure supporting one or more antennas. For the purposes of this Ordinance, a monopole is used to support wireless telecommunication antennas and is not a utility pole.

**TOWER.** A structure erected solely for the purpose of supporting one or more antennas designed to wirelessly transmit or receive any form of electronic communication; 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 the like.

**TOWER HEIGHT.** The vertical distance measured from the ground at the base to the upper most point of the tower, including any attached antenna, beacon, light or other structure(s) attached to the communication tower. Telecommunication towers, combined with any attached antenna, beacon, light or other structure(s) shall not be constructed over a maximum height of two hundred (200') feet.

**TOWER SITE.** The real property that an applicant(s) is required to have ownership of, leasehold of interest in, or easement over, pursuant to § 158.07(A).

**VIEWSHED.** Those lands seen from a known location forming a visual composition, with foreground, middle ground and background areas. Foreground is the area within one mile of the known location close enough to a viewer so that individual can determine plant types, smells, colors, and forms are extremely vivid.

**WIRELESS FACILITY.** The set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide wireless communication services.

(Ord. passed 6-2-97; Am. Ord. passed 2-7-05; Am. Ord. passed 4-20-15; Am. Ord. passed \_\_\_\_)

#### **§ 158.06 SPECIAL USE PERMIT REQUIRED TO ERECT TOWER.**

It shall be unlawful for any person, corporation, partnership or other entity to erect a tower, co-locate, or to replace an existing tower without first obtaining a special use tower permit application (referred to as tower application) from the Ashe County Planning Department, and being duly approved by the Ashe County Planning Board. Upon approval of the special use permit by the Planning Board, the applicant must also obtain necessary permits from the Ashe County Building and Inspections Department before construction begins.

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15; Am. Ord. passed \_\_\_\_)

## **§ 158.07 TOWER APPLICATION CRITERIA, SUBMISSION AND REVIEW PROCESS.**

### **(A) The tower application must include a site plan containing the following information:**

- 1) Property. The name and contact information for the property owner of the proposed site location, the parcel ID number of the location, and a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site.
- 2) Copy of Lease Agreement. Non-owner applicants must provide a copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms.
- 3) Nearby Subdivisions. A description of the nearest recorded residential subdivisions, along with distances from those within one-half (1/2) mile of the proposed tower site. A tower shall not be located in a recorded residential subdivision without a petition from the property owners requesting a tower by specific description of its height and any use of concealment technology.
- 4) Fall Zone Statement. A statement and description of sufficient land area surrounding the tower to contain any ice debris or debris that happens to fall from the tower, antenna, or guy wires.
- 5) Co-location of Towers. Co-location is a highly desirable feature of a tower, potentially reducing the number of towers needed in the county. Co-location on an existing tower shall not increase the height, width, or exceed the structural capacity of the existing tower.
  - a. If unable to co-locate on existing tower, provide a statement of reasons the applicant cannot utilize existing towers (by co-location) to achieve the results desired.
  - b. A statement of reasons the applicant has rejected lease of county-owned property upon which the county could co-locate antennas for emergency communications.
  - c. Any statements concerning the structural integrity of the existing tower being unable to co-locate an additional antenna, shall be from a Professional Engineer licensed by the State of North Carolina.
- 6) Blue Ridge Parkway Viewshed. A description of the distance of the proposed site from the Blue Ridge Parkway, and if within its viewshed, a copy of all communication with the Community Planner for the Blue Ridge Parkway regarding the proposed tower site.
- 7) Right-of-Way Access. Proof of authority to use the tower site and any necessary right-of-way approval to the tower site, describing how the tower site and right-of-way will be accessed and maintained.

- 8) Tower Company Identification. Name and contact information of the company owning the tower and the company responsible for maintaining the tower. Names and contact information for the professional who prepared the site design. Location of a four feet by four feet sign, clearly visible, identifying the owner and operator of the tower site and a local emergency phone number for each.
- 9) Proof of Insurance. The tower owner shall provide proof of general liability insurance in at least the amount of \$500,000. This requirement for proof of insurance shall be required as part of the permit application process, upon any policy changes or renewals or upon request by the Ashe County Planning Department. ~~and again at the time of each biennial inspection.~~

**(B) The tower application must include a design plan containing the following information:**

- 1) Engineer Certification. Tower design plans must be signed and certified by a ~~qualified~~, Professional Engineer licensed by the State of North Carolina.
- 2) Location of the base of the tower and the foundations for all guy-line anchors and support structures, all proposed wireless facility buildings and any other proposed improvements, including the utilities connections within and to the proposed site.
- 3) A description of engineering or construction methods that will allow for additional antennas to be located on the proposed tower for future co-location or additional expansion of services.
- 4) Certification that the tower is designed to meet the standards of Table 1606.1 of the North Carolina State Building Code for wind velocities.
- 5) Certification that the tower meets the ANSI/EIA/TIA-222 standards of a minimum 100 year return wind speed and a minimum one-half inch of solid radial ice.
- 6) A tower shall not be located on a Major Mountain Ridge without consideration of concealment technology, and shall be designed to utilize the minimum height for its intended purpose, but shall not be greater in height than two-hundred feet (200'), which includes any attached antenna, beacon, light or other structure(s).
- 7) A tower shall be constructed according to the North Carolina Utilities Commission construction standards.
- 8) A chain link fence with a minimum height of 8 feet, topped with 1 or 2 feet of razor wire, and with a minimum of a 15 feet radius from the tower center, shall be constructed to improve safety and discourage vandalism.
- 9) Tower Lighting. Any necessary communications tower lighting shall meet, but not exceed, the minimum standards of the Federal Aviation Administration (FAA) for a lighting system.

- 10) All existing facilities and infrastructure, to include all overhead and underground power lines; federal, state, and local roads; any water courses, to include perennial streams; and any existing communications equipment on the property.

**(C) Submittal and Review Process.** A special use tower permit application submitted to the Ashe County Planning Department will be reviewed by the County Planner for conformity with this Ordinance. When deemed complete, the tower permit application will be presented to the Ashe County Planning Board at its next regularly scheduled meeting for consideration of approval. The Planning Board shall review the tower permit application and consider the necessity of the proposed tower to accomplish the objectives of this chapter, the effect of the proposed tower on neighboring properties, the effect on views of any Major Mountain Ridge, and the effect of the proposed tower on financial concerns for the county such as tourism and development.

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15; Am. Ord. passed \_\_\_\_)

#### **§ 158.08 FEES & INSPECTIONS.**

(1) All tower permit fees shall be set by the Ashe County Board of Commissioners and will be on file with the Planning Department. Fees shall be paid to the Ashe County Planning Department at the time of application submittal.

(2) All required building permit fees shall be paid to the Ashe County Building Inspections Department before any building permits can be issued.

~~—(B) A biennial (every two years) inspection renewal fee, set by the Ashe County Board of Commissioners, shall be required to maintain the tower permit. The Ashe County Planning Department shall notify the permit holder at renewal time and schedule an inspection of the communication site and tower.~~

~~—(C) In the case of co-location, only the permit holder shall be required to renew the permit and pay the renewal permit fee.~~

(3) The Ashe County Building Inspections will have authority to inspect the tower site(s) from time to time and will notify the tower company of any issues that may be found for immediate correction which may be due to weather events, vandalism, or the like.

(4) Tower owners shall be responsible in submitting additional tower inspections and/or engineering report(s) for said tower, as required by state and/or federal organizations for the operation of communication towers, to the Ashe County Planning Department. The Department will keep the most current inspection report(s) on file for these existing tower(s).

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15; Am. Ord. passed \_\_\_\_)

### **§ 158.09 EXPIRATION OF PERMIT.**

A communications tower permit issued by the Ashe County Planning Board, pursuant to this chapter, expires six months after the date of issuance if the work authorized has not commenced or any building permits have not been issued. If after commencement the work is discontinued for a period of 12 months, the permit immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit application has been submitted, current communication tower permit fees are paid and approval is granted by the Ashe County Planning Board.

(Ord. passed 6-2-97; Am. Ord. passed 6-6-05; Am. Ord. passed 4-20-15; Ord. passed \_\_\_\_)

### **§ 158.10 VARIANCE PROCESS.**

- 1) Where because of strict adherence to the provisions of this chapter, would cause an unnecessary hardship, the Ashe County Planning Board may authorize a variance. Any authorizing of a variance shall not destroy the intent of this chapter. Any authorized variance shall be recorded both on the permit and in the minutes of the Ashe County Planning Board meeting. The reasoning(s) for the granting of the variance shall be duly noted.
- 2) A request for a variance shall be submitted by the applicant in writing to the Ashe County Planning Board. The request shall be accompanied by:
  - a. Identification of the ordinance provision(s) responsible for the alleged hardship.
  - b. The reason for seeking the variance.
  - c. Any conditions that are proposed by the applicant to mitigate possible adverse effects of the proposed variance.
- 3) All requests from an applicant for a variance shall be made in writing and submitted to the Ashe County Planning Department at least ~~ten~~ fifteen (15) days before the next regularly scheduled meeting of the Ashe County Planning Board. This allows for appropriate public notice of the proposed variance.
- 4) The Ashe County Planning Board may grant a variance upon finding that all of the following conditions exist:
  - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances,

as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- c. The hardship did not result from actions taken by the applicant of the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15; Am. Ord. passed \_\_)

#### **§ 158.11 DECISION OF BOARD; APPEALS.**

- (A) The Planning Board shall make written findings to support its decision either granting or denying the variance, and a copy shall be provided to the applicant. The Board may attach to any variance conditions as it deems necessary and appropriate. A request for a variance under this section shall not constitute an admission by the applicant of any findings of fact made by the Planning Director or a waiver of appeal rights provided by this division. Should the Planning Board grant the requested variance, the Planning Director shall issue a tower permit. The permit applicant shall acknowledge and agree to permit conditions approved by the Planning Board.
- (B) An applicant requesting approval of a wireless communication facility who are aggrieved by any decision made by the Planning Director may appeal said decision to the Planning Board. The appeal shall be submitted in writing to the Planning Board within ten calendar days of receipt of notice of decision.
- (C) An applicant requesting approval of a wireless communication facility who are aggrieved by any order, requirement, decision or determination made by the Planning Board may appeal said decision to the County Board of Commissioners. The appeal shall be submitted in writing to the Board of Commissioners within ten calendar 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 this chapter. The effect of this decision shall not be to vary the terms of this chapter, but rather to interpret it. Applicants who are aggrieved by the any decision of the Board of Commissioners may appeal said decision to North Carolina State Superior Court.

#### **§ 158.12 ABANDONMENT.**

If the permitted use of any communications tower ceases for a consistent period of 12 months, the owner shall have 90 days from notice of violation of this chapter provision in which to dismantle and remove the entire communications tower from the existing site. (See § 158.14 of the chapter.)

(Ord. passed 6-2-97; Am. Ord. passed 4-20-15)

### **§ 158.13 SEVERABILITY CLAUSE.**

Should any section or provision of this chapter be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or a part thereof other than the part so declared to be unconstitutional or invalid. (Ord. passed 2-7-05; Am. Ord. passed 4-20-15)

### **§ 158.14 CONFLICT WITH OTHER LAWS.**

Whenever the regulations of this chapter conflict with the requirements of another federal or state statute, or county ordinance, the more restrictive standard shall govern. (Ord. passed 6-2-97; Am. Ord. passed 2-7-05; Am. Ord. passed 4-20-15)

### **§ 158.15 REPEAL; EFFECTIVE DATE.**

This ordinance replaces, in its entirety, the existing ordinance entitled Communications Towers, adopted June 2, 1997 and amended February 7, 2005 and April 20, 2015. The previous ordinance shall be repealed as of the effective date of this ordinance being duly adopted by the Ashe County Board of Commissioners.

### **§ 158.99 PENALTY.**

- 1) Misdemeanor. Any person who violates a provision of this chapter shall be guilty of a misdemeanor and shall be subject to punishment as provided for by G.S. § 14-4. Each day of a violation of this chapter shall be a separate offense.
- 2) Financial penalties. In addition to criminal penalties for a violation of this chapter, the Board of County Commissioners may impose civil penalties for each day's continuation of the offense. The amount shall be limited to \$500 per day. A penalty unpaid 30 days after the offender has been cited for violation of this chapter may be recovered in a civil action in the General Court of Justice.
- 3) Other remedies. All appropriate remedies for relief authorized by G.S. § 153A-123, including orders for mandatory and prohibitory injunctions and for abatements, may be used to enforce this chapter.

(Ord. passed 6-2-97; Am. Ord. passed 2-7-05; Am. Ord. passed 3-5-12; Am. Ord. passed 4-20-15)

**ADOPTED** this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Todd McNeill, Chairman  
Ashe County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Ann J. Clark, Clerk to the Board