



**Meeting of the
Zoning and Planning Board
Minutes**

Regular meeting, Tuesday, June 19, 2018

Council Chambers

Present: Thomas M. McKay, Chair
Bruce Barrett
Charlie Ellis
Jonathan Hinkle
Norman McGlohon

Absent: Commissioner Moore, Town Council Liaison

Also Present: Shannon Baldwin, Community Development Director
Brad Burton, Code Enforcement Coordinator
Esther and David Lusk, audience

The meeting started at 9:34 am. Chairman McKay led the pledge of allegiance.

Bruce Barrett gave the opening prayer imploring the Almighty to grant wisdom to the Board throughout the deliberations and overall proceeding.

Community Development Director Shannon Baldwin was then recognized by Chairman McKay. Baldwin addressed the Board and told them of his interim appointment as Town Manager. He re-introduced Brad Burton to the Board, described briefly his background, and advised the Board that Brad would be working with the Board, in least for a while, while Baldwin was in transition as manager.

ROLL CALL

Chairman McKay called roll. All present.

APPROVAL OF THE AGENDA

Burton stated that second item, “Lighting” as listed on the agenda would not be presented in today’s meeting. **Jonathan Hinkle moved the agenda be approved. Norman McGlohon gave the second. All voted in favor.**

APPROVAL OF THE MINUTES

Regarding approval of minutes from the May 15, 2018 Regular Meeting, **Charlie Ellis moved the minutes be approved. Norman McGlohon gave the second. All voted in favor.**

OLD BUSINESS

There was no old business before the Board. Chairman McKay did ask if the changes to the CG District, as discussed in the last meeting were adopted by Council. Burton stated that they were.

NEW BUSINESS

Proposed Changes to Standards for Telecommunications Facilities

Burton read his memo and explained the purpose for the materials he provided. Major points of the memo were:

- The current regulations were last amended in 2003 and is not contemporary with the new federal and state statutes.
- Wireless tower facilities today have become somewhat of a tolerable “necessary nuisance;” where confidence in “full bars” of wireless service 24/7/365 is essentially demanded.
- A history of Federal regulations, beginning with the 47 U.S.C. § 1455(a).
- State statutes have been adopted supporting federal guidelines such as NCGS § 160A-400.50, § 160A-400.52, § 160A-400.54.
- The clear and intentional intent of Federal and State regulations to limit the local authority in certain aspects of review and permitting for wireless support structures.

Discussion ensued as Burton walked the Board through the draft ordinance. The definition of a “major mountain ridge” was a point of contention as being not defined in the draft ordinance. Charlie Ellis suggested falling back on definitions as already in place in the Town’s Mountain and Hillside Development Ordinance or high-elevation zoning districts and their respective restrictions.

Additional discussion was undertaken about new wireless 5G technology and its deployment on telephone poles and streetlight poles. Charlie Ellis brought up an older map whereby streetlights for the Town of Lake Lure had been located and asked if this map might be helpful in the placement of 5G technology. Burton responded yes, such a map might be a good start, but that particular map was designed to identify streetlights by assigned number for the purposes of maintenance.

Charlie Ellis and Burton had a dialogue as to the zoning districts that allow or do not allow telecommunications facilities (see table below for an accurate representation).

Current Districts that allow Telecommunications Facilities with a Conditional Use

R-1	R-1A R-1B R-1C	R-1D	R-2	R-3	R-4	C-1	CN	CTC (Arcade area)	CG	CSC (Ingles)	L-1	M-1	S-1	GU
YES	YES	NO	YES	YES	NO	YES	NO	NO	YES	NO	N/A	YES	YES	Council OK

Charlie Ellis offered the concept of a “hard reset” to the regulations as to allowable locations—“strip it all out” and then reconsider where locations are/would be appropriate. Discussed the dead areas (for service) within corporate limits, and questions were asked as to why R-1D and Town Center and Commercial Corridor are disallowed as possible locations locate wireless support structures.

Discussion ensued as to administrative review of these applications versus the Board of Adjustment Conditional Use process and what, if any, options would be available to a neighbor in opposition of the tower construction.

Reduced setbacks, tower height, and engineered “fall zones” occupied a good amount of discussion and then neighbors and their rights came back up and the appeal process was discussed at length. Jonathan Hinkle expressed his concern over staff “coming under fire” if/when an administrative decision to allow a tower is given and the resultant location is a source of contention to a neighbor or a community at large.

Charlie Ellis requested that the Town attorney be queried as to the viability of restrictive covenants and/or deed restrictions forbidding “cell towers” or “towers” analogous to events occurring around 1997 the FCC decided satellite was a clear competitor to cable and [via 47 CFR § 1.4000] the Feds basically overturned such [restrictions]. Burton acknowledged he would seek the attorney’s opinion.

Chairman McKay called for adjournment at the appropriate time. Bruce Barrett move the meeting adjourn. Charlie Ellis made the second. All voted in favor. The meeting adjourned at 10:45 am.

ATTEST

Thomas M McKay, Chair


Brad L. Burton, Recording Secretary



TOWN OF LAKE LURE *Community Development Department*

MEMORANDUM

TO: Zoning and Planning Board

FROM: Brad L. Burton, Code Enforcement Coordinator 

DATE: July 13, 2017

RE: Contemporizing the Town's Telecommunications Regulations

Greetings Zoning and Planning Board members.

Our meeting last month I thought was excellent and really stimulated me to do some additional research into contemporizing our telecommunications facility regulations. In the course of that research, I also found myself reversing my position on a number of areas and fortifying on others.

Through this memo, I intend to address comments and points made as well as those unanswered during our last meeting as they came up in discussion (to the greatest extent possible).

1) Locating a wireless telecommunication facility on a "Major Mountain Ridge"

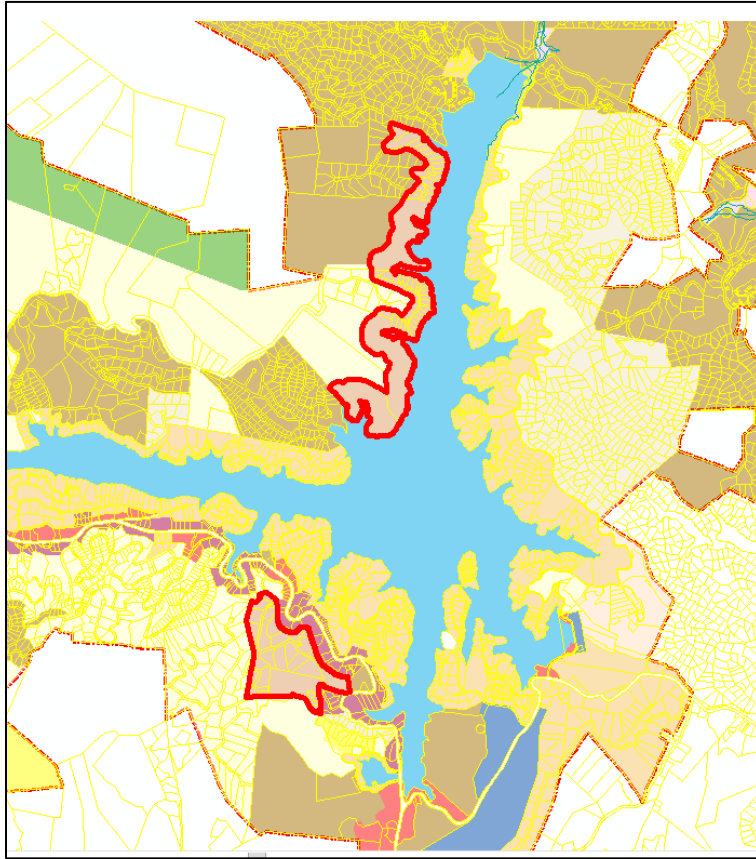
This is a great segue into what I do believe might be one of the main issues with our current

R-1	R-1A R-1B R-1C	R-1D	R-2	R-3	R-4	C-1	CN	CTC (Arcade area)	CG	CSC (Ingles)	L-1	M- 1	S-1	GU
YES	YES	NO	YES	YES	NO	YES	NO	NO	YES	NO	N/A	YES	YES	Council OK

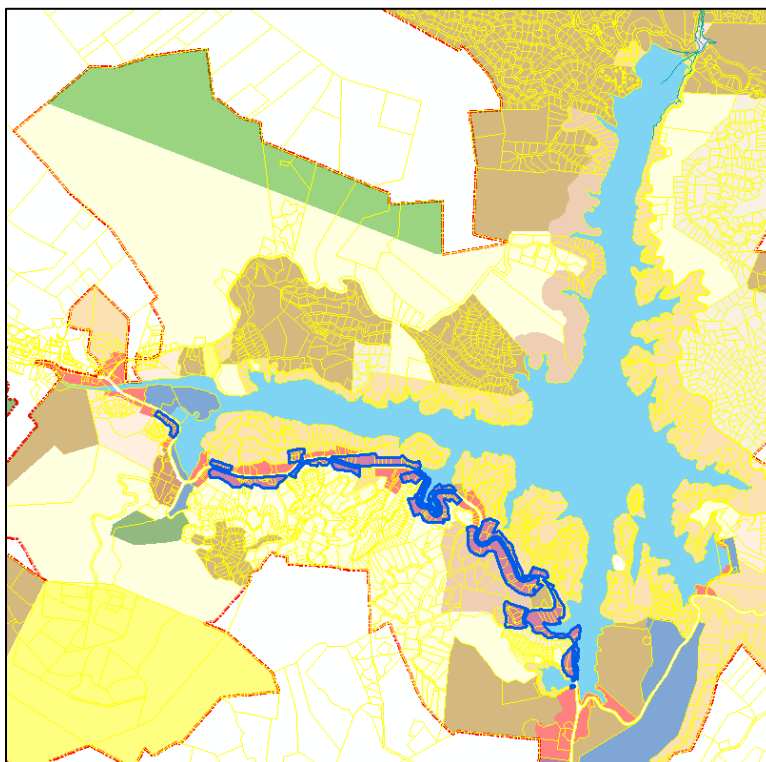
ordinance. Here is a matrix of where we current currently allow (and do not allow) telecommunication facilities as a Conditional Use:

In our last meeting discussion ensued as to locating on mountain ridges. Yours truly had not done all of his homework and some of my statements were incorrect. Note wireless telecommunication facilities (hereinafter "WTF's") *are allowed* in M-1 (Reserved Mountainous District) and S-1 (Scenic Natural Attraction District). WTF's are allowed in all but 3 practicable zoning districts: R-1D, R-4, CTC, and CSC. CN encompasses only four parcels north of the Buffalo Creek/Buffalo Shoal intersection.

It is interesting that these districts, specifically the R1-D district, are excluded from this list. They appear to be excellent locations that could provide great coverage.



The R1-D zoning districts are outlined in red, above. Was this a willful omission in 2003? How does the Board feel about adding R-1D as a district where WTF's are allowed?



The R-4 District borders Memorial Highway, outlined in blue, above. How does the Board feel about adding R-1D as a district where WTF's are allowed?

The CTC District is where the Arcade is located. The aesthetic concerns with a traditional WTF in this area are understood, but what about a stealth facility such as the "flagpole" WTF in Chimney Rock Village? It is quite innocuous. How would the Board feel about allowing "stealth only" WTF's, such as this example in this district?

There is only one CSC district at present and that site might do well with a smaller stealth application, but it is encumbered by surrounding land elevations. A stealth application as a standalone endeavor or attached to a building in this district might be beneficial for any further CSC districts that are established. How does the Board feel about stealth WTF applications in a CSC district?

2) Administrative review of WTF applications versus the Conditional Use process

After speaking with the Town attorney, William Morgan, I discovered that he works in another jurisdiction (that has a Unified Development Ordinance) and incorporates language in that Ordinance that allows the Administrator, upon making a "finding" that the use as proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

As I am proposing to move all WTF requirements to §92.042 "Special Requirements for Certain Uses" as paragraph (D) of that section, I have added the following, pursuant to Mr. Morgan's direction (as underlined):

§92.042 Special Requirements for Certain Uses.

The special requirements contained in this section apply to the named uses whenever they are identified as conditional uses or as permitted uses subject to special requirements.

Notwithstanding any other provisions of this article, when a proposed use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a zoning permit, a conditional use permit shall nevertheless be required if the administrator finds that the proposed use would potentially have an extraordinary impact on neighboring properties or the general public. In making this determination, the administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

And in the draft Ordinance, the following:

A completed zoning permit application with all the supporting documentation shall be submitted to the Administrator. If the Administrator finds that the structural design of the wireless facility as proposed is likely to have a substantial aesthetic impact on the land uses of the neighborhood, district, or surrounding districts, the Administrator shall require that the applicant apply for and attain a conditional use

permit prior to any development activity.

The Administrator or Board of Adjustment, if found to be appropriate, shall approve or disapprove the zoning permit based upon the receipt of a completed site plan as required above and the following provisions:

I have asked Mr. Morgan to see if this passes legal muster, and as I type this (it is getting really close to press time) I have not heard from him. I am sure I will, once I have assembled all of the packets and sent them out. If he has better suggestions or wants to throw the whole thing out, I will advise at our meeting on the 17th.

I think something like this is a good idea, and I appreciate the Board's concern for the exposure of Staff in making such a decision. Such an ability to "punt up" a WTF application would also allow parties of standing to provide evidence as to how they feel a WTF installation would be detrimental to them.

3) Restrictive Covenants and Deed Restrictions concerning the WTF's

The following is a cut and paste of my correspondence with the Town attorney as to this matter:

From: William Morgan [mailto:wcmorganlaw@gmail.com]
Sent: Wednesday, July 4, 2018 2:53 PM
To: Brad L. Burton <CEC@townoflakelure.com>
Cc: Shannon Baldwin <csbaldwin89@gmail.com>; William Morgan <wcmorganjr@yahoo.com>
Subject: Re: The Zoning and Planning Board has a question

Brad

I'm not familiar with case law of the type that you are referring to but I will look into it. I know that Congress was considering a Bill last year that would exempt ham radio antennas/ towers from HOA rules but I don't think it has become law yet. It seems there was speculation that it would lead to similar rules for cell. Siler City recently adopted amended cellular ordinances so I'll check on theirs and share it with you. I'm returning to the office Monday and will touch base. Hope you're enjoying the 4th!
William

On Mon, Jul 2, 2018 at 9:22 PM Brad L. Burton <CEC@townoflakelure.com> wrote:

Hello William,

I hope this finds you well.

I am currently working on amendments in our regulations to the standards for telecommunication facilities; trying to contemporize them to comply with elements and requirements of 47 U.S.C. § 1455(a) and the subsequently adopted North Carolina General Statutes NCGS § 160A-400.50, et al.

So, this question came up in during discussion in the last Zoning and Planning Board meeting—in the context of deed restrictions/covenants...

Remember years ago when HOA's/POA's and the like tried to prohibit satellite dishes (back when they were huge) through deed restrictions and covenants? Then around 1997 the FCC decided satellite was a clear competitor to cable and via 47 CFR § 1.4000 the Feds basically overturned such?

So The Board's question is this: In the light of the desire to facilitate the installation of telecommunication facilities (public safety-driven as per the post-9/11 47 U.S.C. § 1455(a)), has anything changed (in the same context as the satellite example above) whereby a willing property owner could enter into a contract to construct a cell tower, even though the subdivision the property owner was located in had deed restrictions or covenants prohibiting such an endeavor.

In short, do you know of any case law out there or looming that would allow telecommunication support facilities to be constructed in light of deed restrictions or covenants prohibiting same? Again, in the context of public safety in all of the post 9/11 legislation, both Fed and State...

Thanks William!

Respectfully,

Brad L. Burton CFM, CZO
Code Enforcement Coordinator

4) Ships sink, planes crash, WTF's burn and ultimately collapse not like they are supposed to...think Party Rock fire

I have completely reversed myself on the concept of "the engineer-certified" fall zone. Why?

- Engineers make mistakes, some even have been known to "sell their seal."
- Fabricators have been known to substitute materials or modify weld widths even when a project is specific as to requirements.
- Assemblers cut corners. If a two boxes of bolts of the same width are already on the truck from the last job ("just like this one") but they are 3/8 of an inch shorter than what is specified on the material sheet, is it really going to matter? It just might.

One of the most eye-opening things I discovered in my research is that WTF's catch fire and burn, and do so not with an alarming frequency; but it does happen enough to where there is a great collection of YouTube® videos ready to be Googled® on that topic. They also tend to fall (and not like an accordion) as/while/after they burn.

In an urban situation, fire response is quick and personnel abound. But such a fire and collapse proximate to a residence, without a sufficient setback in our forested region might indeed start a fire, but would allow the residents time to get away without having to worry about the conflagration also falling through their roof.

I look forward to discussing these points and the changes as incorporated into the Ordinance.

(D) Telecommunication Facilities and Antennae

The Town of Lake Lure desires to encourage the orderly development of wireless communication technologies for the benefit of the Town and its citizens. The Town also recognizes the need to protect the character and appearance of its community. As a matter of public policy, the Town desires to encourage the delivery of new wireless technologies throughout the Town & its ETJ while controlling the proliferation of communication towers. Such development activities will promote and protect the health, safety, prosperity and general welfare of persons living in Lake Lure. Unless superseded by Session Law 2013-185, the Cell Tower Deployment Act, or Session Law 2017-159, Wireless Communication Infrastructure Siting, both of which shall control, the following provisions shall apply to the erection or replacement or modification of a wireless facility. **(Adopted XX-XX-XX)**

- (1) It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless facility without first obtaining a zoning permit from the Administrator. A permit shall also be required for the erection of a replacement wireless support structure or the modification of an existing wireless support structure.
 - i. Existing wireless support structures owned by government agencies and designed for non-commercial emergency communications may be replaced with a wireless support structure equal in height to the existing wireless support structure, however all other ordinance provisions are applicable.
 - ii. The placement or collocation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities must obtain a zoning permit in compliance with requirements of this ordinance.
- (2) A completed zoning permit application with all the supporting documentation shall be submitted to the Administrator. If the Administrator finds that the structural design of the wireless facility as proposed is likely to have a substantial aesthetic impact on the land uses of the neighborhood, district, or surrounding districts, the Administrator shall require that the applicant apply for and attain a conditional use permit prior to any development activity.
- (3) The Administrator or Board of Adjustment, if found to be appropriate, shall approve or disapprove the zoning permit based upon the receipt of a completed site plan as required above and the following provisions:
 - (a) The wireless facility design plan was prepared by a professional engineer registered in the state of North Carolina, including engineer's signature, seal and address.
 - (b) The foundation and base of the wireless support structure, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements including access roads and utility connections within and to the proposed site.

- (c) In addition to any other materials required for a standard permit under this section or any other ordinance of the Town of Lake Lure, all applicants for permits to construct a telecommunications tower or antenna shall submit visual impact demonstrations using photo or similar graphic simulations of the proposed facility as it would be seen from residential areas, public rights of way, and public parks and other sites.
 - (d) Location requirements:
 - i. The applicant shall identify all possible alternatives considered within the service area for the proposed wireless facility location and explain why the proposed wireless facility is necessary and why existing wireless facility or other structures cannot accommodate the proposed antenna(s).
 - ~~ii. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.~~
- (4) Wireless support structure height limitations (traditional facilities).
 - (a) A wireless support structure shall not exceed an overall height (OAH) of 120 feet including the height of all antennae and lightning rods.
 - (b) A wireless support structure located on any major mountain ridge shall be monopole and no taller than 30 feet higher than the vegetative canopies immediately surrounding the base of the tower.
 - (c) The proposed wireless support structure shall be designed and constructed for collocation of at least three other telecommunication antenna systems if location is not on a major mountain ridge. The wireless facility area shall be of sufficient size to accommodate the accessory equipment for at least three telecommunication providers.
- (5) The applicant shall be required to provide written documentation certifying compliance or when appropriate, exemption to all applicable federal and state regulations.
- (6) The applicant shall present to the Administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the wireless facility site.
- (7) Signage shall be limited to a sign identifying the owner(s) and operator(s) of the tower, an emergency telephone number and any other signage as required by any government agency shall be placed in a clearly visible location on the premises of the tower.

(8) Setback requirements (traditional facilities).

- (a) A tower shall be separated from other on-site and off-site towers and supporting structures such that one tower will not strike another tower or its support structure if it falls. In districts in which telecommunications towers are permitted uses, they shall be set back from property lines in accordance with the twice the setback requirements for the district or 110 percent of the tower height, whichever is greater. Additionally, telecommunications towers must set back from any residential districts or uses a distance equivalent to the fall radius of the tower being erected times ten percent.
- (b) Wireless facilities located within transmission line easements are not required to meet (a) above.
- (c) There shall be no setback requirement from structures located on the same parcel as the proposed wireless facility as long as a professional engineer, registered in the State of North Carolina, certifies that the fall zone of the wireless support structure is designed to avoid said structures and owner of the structures in question records a legally valid Hold Harmless agreement, indemnifying the Town of Lake Lure from and all liability and claim for damages arising from the performance of the telecommunications facility designer, contractor and installer; including any subcontractors or consultants associated with the project.
- ~~(d) In addition, wireless support structures must be set back a minimum of 50 feet from any residentially zoned property.~~

(9) The wireless support facility shall be constructed to the Electronics Industries Association/Telecommunications Industries Association 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Support Structures," as the same may be amended from time to time. Any tower shall also comply with the requirements of the North Carolina Building Code, National Electrical Code, Uniform Plumbing Code, and Uniform Mechanical Code. The wireless support structure shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum) one-half inch of solid radial ice.

(10) The wireless facility and any guy wires shall be surrounded by a commercial grade chain link secure fence at least eight feet in height, which may include no more than two feet of barbed or razor wire.

(11) Lighting on wireless support structures shall not be permitted except as required by federal and state regulations.

- (12) Wireless support structures shall be light gray except when specific colors and color patterns are required by federal or state regulations.
- (13) All wireless facilities shall be landscaped by semi-opaque vegetative screening on all sides. All plants and trees shall be indigenous to western North Carolina and shall be drought resistant.
- (14) Stealth wireless facility.
- a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - b) The structure utilized to support the antennas must be allowed within the underlying zoning district. Structures may include, but are not limited to flagpoles, bell towers, clock towers, crosses, monuments, parapets, and steeples.
- (15) Wireless facilities shall comply with all other applicable regulations of this ordinance.
- (16) The applicant shall provide the Administrator with a certificate of general liability insurance in the minimum amount of \$1,000,000. The certificate shall contain a requirement that the insurance company notify the Town 30 days prior to cancellation, modification or failure to renew the insurance coverage required.
- (17) The co-location of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.
- (18) Any tower constructed under a permit pursuant to this ordinance shall be removed within 180 days of the date which it ceases to be in active use, or upon notice from the ordinance Administrator, whichever is more favorable to the applicant.
- (19) Collocation of Small Wireless Facilities
- a) Pursuant to guidance as provided by North Carolina General Statute 160A-400.54, the town shall allow collocation of small wireless facilities on eligible facilities pursuant to the following guidelines:
 - i. A zoning compliance permit is required
 - ii. All ground support equipment shall require semi-opaque vegetative landscape screening on any sides visible to the motoring public such as can be accomplished without compromising underground utilities, and while maintaining a 12' x 25' sight triangle from intersections, and 15' of clear area along perpendicular streets culminating at a corner lot.

- iii. Each new facility in the right-of-way shall not extend more than 10 feet above the utility pole, city utility pole, or wireless support structure on which it is collocated. Extensions proposed higher than 10 feet shall require a variance granted by the Board of Adjustment.
- iv. Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level. In residentially zoned areas, the height limit for new pole installation shall be forty feet unless granted a variance by the Board of Adjustment.
- v. Wireless providers are responsible for damages due to their activities to Town rights-of-way while occupying, installing, repairing or maintaining wireless facilities, wireless support structures, city-owned or other utility poles
- vi. Collocations on private support structures shall require a letter of consent from the owner of the structure (**Adopted XX-XX-XX**)