



**Amherst County Board of Supervisors  
County Ordinance No. 2016-0007**

**AN ORDINANCE, NO. 2016-0007**

Amending § 919.08 of Appendix A to the Amherst County Code to modify the permitting process governing personal wireless service facilities.

Approved as to form and legality by the County Attorney

**PUBLIC HEARING: Planning Commission, May 19, 2016  
FIRST READING: Board of Supervisors, June 7, 2016  
PUBLIC HEARING: Board of Supervisors, June 21, 2016**

**THE COUNTY OF AMHERST HEREBY ORDAINS:**

**§ 1. That Section 919.08 of Appendix A to the Code of the County of Amherst be and hereby is amended, as follows:**

**919.08. Review process**

- A. The zoning permitting process for sites not located in avoidance areas shall be as outlined in the following Facility Siting Table. The symbol “P” denotes a permitted by right use; the symbol “SE” denotes a special exception use.

<b>FACILITY TYPE</b>	<b>TIER ONE AREAS (P-1, A-1, B- 2, M-1 Districts)</b>	<b>TIER TWO AREAS (R-1, R-2, R-3, and Village Center Districts)</b>
New construction – concealed; up to 150 feet	<u>P SE</u>	Not permitted
New construction - concealed; more than 150 feet	SE	Not permitted

New construction - not concealed; up to 120 feet	P <u>SE</u>	Not permitted
New construction - not concealed; 121 to 199 feet	SE	Not permitted
Attached Antenna; no increase in height	P	<p>P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet.</p> <p>SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet.</p> <p>SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet</p>
Attached Antenna; increase in height up to 120'; no increase in width of dish or parabolic antenna ("width") beyond 4'	P <u>SE</u>	P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet.
Attached Antenna; increase in height above 120' and/or width greater than 4'	SE	<p>SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet</p> <p>SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet</p>
Colocation on existing facility with no increase in height or width	P	<p>P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet.</p> <p>SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet</p> <p>SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet</p>

Colocation on existing facility requiring a 20' increase in height, up to 120' total height; no increase in width beyond 4'	P	P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet.
Colocation on existing facility requiring a 20' increase or more in height, up to 121' to 199' in total height, and/or increase in width beyond 4'	SE	SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet
Combined antennas; no increase in height or width	P	P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet. SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet
Combined antennas with increase of 20' in height up to a total of 120', no increase in width	P	P: Placed on existing electrical utility or radio tower resulting in a height no greater than 120 feet.
Combined antennas with increase of 20' or more in height above 120' and/or an increase in width greater than 4'	SE	SE: Placed on existing electrical utility or radio tower resulting in a height between 121 and 199 feet SE: Placed on existing freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet
Replacement of antenna element w/out other changes	No zoning permit required.	No zoning permit required.

Replacement of antenna facility or other component of existing facility with no increase in height or width	P	<p>P: Replacement of attached antenna on existing electrical utility or radio tower resulting in a height no greater than 120 feet.</p> <p>P: Replacement of attached antenna on existing electrical utility or radio tower resulting in a height between 121 and 199 feet</p> <p>P: Replacement of attached antenna on existing, freestanding nonresidential structure or tower other than electrical utility or radio tower resulting in a height of up to 199 feet</p>
Replacement of antenna facility or other component of existing facility with increase in height up to 120' and no increase in width	P	Not permitted
Replacement of antenna facility or other component of existing facility with increase in height above 120' or in width greater than 4'	SE	Not permitted
Mitigation with no increase in height or width	P	P
Mitigation with increase in height up to 120 percent of the tallest tower or support structure in the facility	SE	SE

B. Permitted use permit applications. Permitted use permit applications are those seeking a zoning permit for a personal wireless service facility that:

- (1) Proposes development on a site not located in an avoidance area; and
- (2) Proposes for development in a Tier One area a facility that involves:
  - (i) ~~concealed new construction one hundred fifty (150) feet or fewer in height;~~
  - (ii) ~~new construction not concealed one hundred twenty (120) feet or fewer in height;~~
  - (iii) ~~attached antenna with no increase in height or width, or with increase in height up to one hundred twenty (120) feet and no increase in width;~~
  - (iii) collocation or combined antennas, with no increase in height or width, or with increase in height up to one hundred twenty (120) feet and no increase in width;

- (iv) ~~(ii)~~ replacement of antenna or other components of personal wireless service facility where no increase in the original dimensions of any part of the facility is proposed, or replacement with increase in height up to one hundred twenty (120) feet and no increase in width; or
- (v) ~~(iii)~~ mitigation of an existing personal wireless service facility where no increase in the original dimensions of any part of the facility is proposed; or
- (3) Proposes for development in a Tier Two area a facility in which an attached antenna array and support equipment are placed on an existing electrical utility or radio tower resulting in a total height of one hundred twenty (120) ~~feet~~ or fewer feet.

Such applications shall be considered in accordance with the following procedures:

1. The zoning administrator or designee shall review the application, and submitted documents for compliance with all requirements of Section 919. The county may, in its discretion, obtain additional technical assistance to review and assess the technical merits of the documents.
  2. If the zoning administrator or designee determines the application and documentation meets all of the requirements of Section 919, he shall approve the application package and the applicant may apply for a building permit.
  3. If the zoning administrator or designee determines the application or documentation fails to meet all the requirements of Section 919, then he shall provide written notification to the applicant as to the materials which need to be amended or supplied for review. The applicant shall provide the zoning administrator or his designee any requested materials for review. This process shall continue until the zoning administrator or his designee has approved the application package, at which time the applicant may apply for a building permit.
  4. If the zoning administrator or designee determines that the application and documentation fail to meet the intent of Section 919, he may deny the application in writing.
  5. Appeals from a decision made by the zoning administrator shall be to the board of zoning appeals in accordance with Section 1006.
- C. Special exception permit applications. Special exception permit applications are those seeking a permit for a wireless facility that:
- (1) Proposes development on a site located in an avoidance area; or
  - (2) Proposes for development in a Tier One area a facility that involves a development other than those identified under subdivision (B)(2) of this subsection; or
  - (3) Proposes for development in a Tier Two area a facility that involves an antenna array and support equipment placed on (i) an existing electrical utility or radio tower than is between one hundred twenty (120) feet and one hundred ninety-nine (199) feet in height; or on (ii) an existing freestanding nonresidential structure that is up to one hundred ninety-nine (199) feet in height.

Such applications shall be processed as special exception permit applications in accordance with subsection 1003.03 of Appendix A to the County Code except that the applicable timeframes shall be

those identified in this subsection.

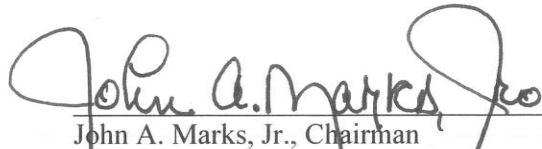
- D. Expert technical assistance. The county may require the applicant to pay for a technical review of any by right or special exception application by a third party expert selected by the county. Any such technical review may address matters including but not limited to (i) the extent to which a facility meets the definition of "concealed" in subsection 919.03; (ii) the question of whether a service area is underserved as per subsection 919.07(A)(2); (iii) the question of whether a facility must be located in an avoidance area as per subsection 919.07(D); (iv) the question of the necessary width of an antenna array as per subsection 919.04(D)(7); (v) the question of the necessity for new construction as per subsection 919.07(A)(2); and (vi) review of documentation submitted as part of any application for a personal wireless service facility. The fees for any such expert paid by the applicant shall be in addition to other applicable fees. The applicant shall make any additional information regarding the application available at the county's request.
- E. Applicable timeframes; decisions.
1. The county shall act on applications involving collocation within ninety (90) days of receipt of the application. Solely for purposes of calculating this timeframe under this subsection, "collocation" means the addition of an antenna to an existing tower or other structure that does not involve:
    - i. An increase in the existing height of the tower by the greater of (a) more than ten (10) percent, or (b) by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, except that neither limitation shall apply, and collocation may occur where the applicant demonstrates that a greater increase is necessary to avoid interference with existing antennas; or
    - ii. The installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4), or more than one (1) new equipment shelter; or
    - iii. The addition of an appurtenance to the body of the tower that would protrude from the edge of the tower the greater of (a) more than twenty (20) feet, or (b) more than the width of the tower structure at the level of the appurtenance, except that neither limitation shall apply, and collocation may occur where the applicant demonstrates that a greater increase in width is necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
    - iv. Excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.
  2. The county shall act on all other applications within one hundred fifty (150) days of receipt of the application.
  3. If the county notifies the applicant that the application is incomplete within thirty (30) days of receipt of the application, the time required to submit additional documentation necessary for a complete application shall not be included in the calculation of applicable timeframes.
  4. These timeframes may be extended by mutual consent of the applicant and the county.
  5. Any decision denying an application for a permit under Section 919 shall be in writing and

shall be supported by substantial evidence contained in the written record.

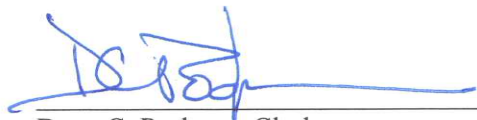
6. Decisions on all applications shall be consistent with the requirements of the Federal Tax Relief Act of 2012, enacted in February 2012.

**§ 2. That this ordinance shall be in force and effect upon adoption.**

Adopted this 21<sup>st</sup> day of June, 2016.

  
John A. Marks, Jr., Chairman  
Amherst County Board of Supervisors

**ATTEST:**

  
Dean C. Rodgers, Clerk  
Amherst County Board of Supervisors

Ayes 3

Nays 2

Abstentions Ø