

§ 140-16.1. Telecommunications towers.

[Added 12-20-1996 by L.L. No. 5-1996]

A. Enabling authority. The Zoning Board of Appeals is hereby authorized to review and approve, approve with modifications or disapprove special use permits for telecommunications towers consistent with Town Law, §§ 274-a and 274-b.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ACCESSORY FACILITY

An accessory facility serves the principle use, is subordinate in area, extent and purpose to the principle use and is located on the same lot as the principle use. Examples of such facilities include transmission equipment and storage sheds.

ANTENNA

A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radionavigation, radio, television and microwave communications. The frequency of these waves generally range from 10 hertz to 300,000 megahertz.

SPECIAL USE (A.K.A. CONDITIONAL USE)

A use which is deemed allowable within a given zoning district, but which is potentially incompatible with other uses and, therefore, is subject to special standards and conditions set forth for such use subject to approval by the Zoning Board of Appeals.

TELECOMMUNICATION TOWER

A structure on which transmitting and/or receiving antenna(e) are located.

C. Purpose. The purpose of this section is to promote the health, safety and general welfare of the residents of the Town, to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations and to protect the natural features and esthetic character of the Town with special attention to the Historical Overlay District and residentially zoned districts.

D. Application of special use regulations.

- (1) No transmission tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.
- (2) These regulations shall apply to all property in the Town of Clarkson with each zoning classification in the Town of Clarkson being subject to the rules and

regulations set forth herein and in the table which is attached hereto and made a part of this chapter. Editor's note: The location requirements are located at the end of this chapter. *140a Location Requirements attached.*

- (3) Exceptions to these regulations are limited to new uses which are accessory to residential uses and lawful or approved uses existing prior to the effective date of these regulations.
- (4) Where these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.

E. Special use standards.

(1) Site plan.

- (a) An applicant shall be required to submit a site plan to the Planning Board as described in § **140-43** of the Clarkson Code and the Clarkson design standards and specifications.
- (b) In addition to other site plan requirements, an application for a communications tower shall include the following additional information:
 - [1] The location of all structures, trees exceeding four inches in diameter (measured at a height of four feet off the ground) and other significant and/or unusual features on the site and on any other adjacent property within 20 feet of the property line.
 - [2] All information prepared by the manufacturer of the antenna or tower, or the applicant for which a special permit is being sought, including but not limited to the following:
 - [a] Make and model of tower to be erected.
 - [b] Manufacturer's design data for installation instructions and construction plans.
 - [c] Applicant's proposed tower maintenance and inspection procedures and records system.
 - [d] Anticlimb devices for the tower and any guy wires.
- (c) The application for special use permit shall include a copy of the site plan and any relevant documents which have been submitted to the Planning Board. The application for special use permit shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennae and justification for any land or vegetations clearing required.
- (d) Additionally, the application shall include a completed visual environmental

assessment form (visual EAF) and a landscaping plan addressing other standards listed within this section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual EAF. The Zoning Board of Appeals may require submittal of a more detailed visual analysis based on the results of the visual EAF.

(2) Shared use.

(a) At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on preexisting structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other preexisting structures as an alternative to a new construction.

(b) In the case of new towers, the applicant shall be required to submit a report demonstrating good-faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.

(3) Setbacks. Towers and antennae shall be set back a minimum of the height of the tower and any antennae or other fixture on top of the tower plus 25 feet. All other structures, including guy wire anchors and accessory facilities shall observe required setbacks within the affected zone. Additional setbacks may be required by the Zoning Board of Appeals to contain on-site substantially all icefall or debris from tower failure and/or to preserve privacy of adjoining residential and public property.

(4) General requirements.

(a) Visibility. All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment. The area to be served by the tower and the technology utilized by the applicant shall be relevant considerations in this determination.

(b) Height. As part of the application, the Zoning Board of Appeals shall be empowered to vary the restrictions of this chapter as to height using the standards for area variances set forth in this chapter and the New York State Town Law.

(c) Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green or black below the surrounding treeline unless other standards are required by the FAA. In all cases, guyed towers shall be preferable to freestanding structures. All towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

(d) Accessory facilities shall maximize use of building materials, colors and textures

designed to blend with the natural surroundings.

- (5) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the special permit use. Clearcutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- (6) Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- (7) Access and parking. A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived in meeting the objectives of this subsection.
- (8) Removal and bond for removal.
 - (a) In the event that a communication tower is no longer used for the purpose specified 3-n the application or the communication facility ceases operations for a period of 90 days, such tower, structures and facilities shall be dismantled and removed from the site within 30 days of receipt of a written notice from the Building Inspector and/or Code Enforcement Officer.
 - (b) Prior to the issuance of a building permit, the owner and operator of a communications tower shall provide the Town with a surety bond or other financial security acceptable to the Town Attorney to assure that the funds are available to dismantle such tower, remove any debris and to restore the site to a state acceptable to the Zoning Board of Appeals. The estimate shall be prepared by the applicant's licensed engineer, verified by the Town Engineer (or the engineer hired by the Town to evaluate the application, if different from the Town Engineer) and approved, as to form, by the Town Attorney. The amount of such bond shall be approved by the Zoning Board of Appeals.
- (9) Town review fees. In addition to the application fee, the applicant shall be responsible for any and all expert fees which are incurred by the Town in the review of the application, including review by engineers and consultants employed

by the Town. As security for this, an applicant shall deposit the sum of \$1,000 with the Town at the time of application. Any part of said deposit which is not used by the Town will be refunded to the applicant at the time a certificate of occupancy is issued. No certificate of occupancy or certification of completion or compliance shall be issued until all unpaid fees have been paid.

- F. Radio emissions. Radio emissions from any towers and/or antennas attached to it shall conform to applicable Federal Communications Commission regulations on emissions. The Zoning Board of Appeals shall request proof of compliance with these standards. No certificate of occupancy or certificate of compliance shall be issued by the Building Inspector or Code Enforcement Officer without satisfactory proof of compliance with this requirement.
- G. Authority to impose conditions. The Zoning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower special use permit.

ZONING

140 Attachment 1

Town of Clarkson

Location Requirements for Communications Towers

All requirements are as set forth in Chapter 140 of the Town of Clarkson Code, unless modified herein.

Requirement	Zoning Districts		
	Residential	Commercial	Industrial
Permitted Use	Yes, but must meet public necessity requirements for Rosenberg¹	Yes²	Yes²
Accessory buildings			
Maximum square footage	400	none	none
Siding/appearance	Brick/residential	Per state code	Per state code
Setback from property line	See § 140-16.1	See § 140-16.1	See § 140-16.1
Minimum setbacks for supports	Per Town Code	Per Town Code	Per Town Code
Visual EAF	Required	Required	Required
Approvals required			
ZBA special permit	Yes	Yes	Yes
PB site plan	Yes	Yes	Yes
PB subdivision	If subdividing	If subdividing	If subdividing
Technical documentation showing only feasible site	Yes	Discretionary	No
FCC certification	Yes	Yes	Yes
Application fees	\$750	\$750	\$750
Engineering fees	Yes	Yes	Yes
Bond required	Yes	Yes	Yes

NOTES:

¹ Cellular Telephone Company, d/b/a Cellular One, vs. Rosenberg 82 NY2d 365, 624 NED 990, 604 NYS2d 895

² In the Historical Overlay District the regulations for residential apply regardless of zone.