

Small wireless facilities.

[Added 7-16-2019 by L.L. No. 10-2019]

- (1) Purpose.** The purpose of this subsection is to establish uniform policies and procedures for the deployment and installation of small wireless facilities in the Town of New Castle. While the Town recognizes the importance of wireless telecommunications facilities in providing high-quality communications services to its residents and businesses, the Town also recognizes that it has an obligation to protect public safety and to minimize adverse effects of such facilities.
- (2) Eligible facilities request.** Notwithstanding anything to the contrary in this section, any application for a wireless telecommunications facility that does not substantially change the dimensions of an existing tower or base station shall not require a small wireless facility permit. In the event that a modification to, or replacement of, an existing tower or base station does not substantially change said existing tower or base station, all that shall be required is a building permit from the Town Building Inspector.
- (3) Small wireless facility permit required.**
 - (a)** A small wireless facility shall require a small wireless facility permit to be issued by the Planning Board, except as set forth in § **60-410O(2)** for any eligible facilities request.
 - (b)** All applications for a small wireless facility permit shall comply with the Small Wireless Facility Design and Review Guideline Policy^[13], to the maximum extent feasible, and the applicable provisions of this subsection. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in the Small Wireless Facility Design and Review Guideline Policy and this subsection relating to an application for, or approval of, a small wireless facility permit.

[13] *The Small Wireless Facility Design and Review Guideline Policy may be found at the end of this chapter and is on file in the Town offices and available on the Town website.*
 - (c)** Unless otherwise set forth in this chapter, a DAS facility, microcell facility or other type of wireless telecommunications facility not meeting the definition of small wireless facility as set forth in § **60-210**, shall require a special use permit from the Planning Board pursuant to § **60-430O(14)**.
- (4) Application for small wireless facilities.**
 - (a)** Upon receipt of an application for a small wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in the Small Wireless Facility Design and Review Guideline Policy and this subsection.
 - (b)** An application for approval of a small wireless facility shall be submitted on the pertinent forms provided for that purpose by the Town and shall be jointly filed by the operator of the small wireless telecommunications services facility and the owner of the property on which such facility is proposed to be located. The application and documents accompanying the application shall also be submitted in an electronic file format.
 - (c)** The Planning Board may attach such conditions and safeguards to any small wireless facility permit and site development plan as are, in its opinion necessary to ensure initial and continued conformance to all applicable standards and requirements.
 - (d)** Granting a small wireless facility permit shall not waive the requirement for final site development plan approval, including fees, in accordance with § **60-440**.
 - (e)** The applicant shall submit a site development plan describing any new proposed structure and antenna and all related fixtures, accessory equipment, appurtenances and apparatus, including, but not limited to height above preexisting grade, materials, color and lighting.
 - (f)** An application for a small wireless facility permit shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to

the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false statement in the application may subject the applicant to denial of the application.

- (g) The applicant must provide documentation to verify it has a legal interest in the site, if not within the public right-of-way. Said documentation may be in the form of a deed, contract for sale or lease for the property.
- (h) If proposing a new structure for the purpose of supporting a small wireless facility, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map shall locate all existing wireless telecommunications facility sites, including small wireless facilities and non-small wireless facilities, within 1/2 mile of the proposed small wireless facility.
- (i) In addition to the small wireless facility permit application requirements set forth herein, all applications for the construction or installation of a new small wireless facility or modification of an existing small wireless facility shall contain the following information:
- [1] A descriptive statement of the objective(s) for the new facility or modification, including and expanding on a need such as coverage and/or capacity requirements, densifying a wireless network, introducing new services or improving service capabilities;
 - [2] The postal address and Tax Map parcel number of the property;
 - [3] The location, size, and height of all existing and proposed structures on the property which is the subject of the application;
 - [4] Documentation justifying the total height of any proposed antenna and structure and the basis therefor;
 - [5] The applicant's name, address, telephone number and email address;
 - [6] The name, address, phone number and email of the property owner;
 - [7] The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - [8] The size of the property, stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines, if the proposed small wireless facility is located outside the public right-of-way;
 - [9] The location of the nearest residential structure;
 - [10] The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed small wireless facility is located outside the public right-of-way.
 - [11] The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
 - [12] Identify and disclose the number and locations of any small wireless facility that the applicant has installed in the Town, or locations the applicant has considered in the past year for small wireless facilities located in the Town and those sites submitted or anticipated to be submitted within a one-year period;
 - [13] A description of the anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the potential traffic safety and noise impact of such maintenance;
 - [14] A copy of the FCC license applicable for the intended use of the small wireless facility; and
 - [15] Information relating to the expected useful life of the proposed small wireless facility.
- (j) The applicant shall furnish written certification that the small wireless facility and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads,

including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished to the Town prior to issuance of any certificate of occupancy.

- (k) The proposed small wireless facility shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies as directed by the Planning Board, where appropriate, and will thereby have the least-adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the wireless telecommunications facility. The application shall include photo simulations from at least three reasonable line-of-sight locations near the proposed site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic. Angle of photo simulation separation must be at least 90° or greater and provide a full profile depiction.
- (5) Small Wireless facility fees.

 - (a) Application fee. At the time an applicant submits an application for a small wireless facility, such applicant shall pay a nonrefundable application fee in an amount as determined by the Town Board and set forth in the Town Fee Schedule, in addition to any other fees required by law.
 - (b) Reimbursement for use of the public right-of-way. In addition to permit application fees, every small wireless facility located in the public right-of-way is subject to the Town's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way shall be set forth in the Town Fee Schedule.
- (6) Escrow review costs. In accordance with § 60-560B, and to the extent permissible under federal law, for small wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.
- (7) The Town may reject a small wireless facility application for one or more of the following reasons, which must be specified with reasonable detail in the rejection:

 - (a) Concerns about structural capacity, safety, reliability, or generally applicable engineering practices;
 - (b) The small wireless permit application is incomplete;
 - (c) The proposed small wireless facility and accessory equipment exceeds the height, dimension or other parameters for small wireless facilities under applicable state or federal laws, rules or regulations;
 - (d) The design documents attached to the small wireless facilities permit application do not comply with the provisions of this section or the Town's published Small Wireless Facility Design and Review Guideline Policy, show interference with the Town's public safety radio system, traffic signal light system, or other communications components, or interfere with other existing public or private utilities already in place in the right-of-way, or interfere with then known future Town plans for the right-of-way.
- (8) Approval procedures.

 - (a) For small wireless facility applications, the Planning Board may, at its discretion, require a public hearing.
 - (b) All decisions of the Planning Board involving applications for a small wireless facility permit shall be in writing and supported by substantial evidence contained in a written record.
 - (c) No application shall be accepted and no permit shall be issued for a small wireless facility on a property where the Building Inspector has found, or there exists a violation of the Town Code and where such violation has not been corrected.
 - (d) Time frames for approval.

- [1]** Within 60 calendar days of receipt of a complete application for the collocation of a small wireless facility on a preexisting utility pole, monopole or other existing support structure, the Planning Board shall make a final decision on whether to approval the application and shall notify the application in writing of such decision.
- [2]** Within 90 calendar days of receipt of a complete application for a small wireless facility on a new utility pole, monopole or other new support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
- [3]** Within 10 calendar days of receipt of an incomplete application for a small wireless facility, the Town shall notify the applicant in writing of any supplemental information required to complete the application. Upon receipt of an applicant's supplemental information in response to the initial notification of incompleteness by the Town, the applicable shot clock will reset to zero, and the Town shall have the full 60 calendar days or 90 calendar days permitted by law to act on the completed application.
- [4]** For any subsequent determinations of incompleteness beyond the initial, the Town shall notify the applicant of any required supplemental information within 10 days of receipt of the supplemental submission, and such notice shall toll the applicable shot clock until the applicant submits the required supplemental information.

(9) Location and access.

- (a)** Subject to the Planning Board's review and evaluation of technological, structural, safety and financial considerations associated with alternative locations for the siting of small wireless facilities, the locational priorities set forth below are consistent with the Town's obligation to create the least amount of adverse aesthetic impacts.
- (b)** Applicants shall locate, site and erect a small wireless facility in accordance with the following priorities, Subsection O(9)(b)[1][a] being the highest priority and Subsection O(9)(b)[3][e] being the lowest priority.

[1] Industrial districts.

- [a]** Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;
- [b]** Collocation on a privately owned existing utility pole, monopole or other support structure;
- [c]** Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;
- [d]** Location on lands owned or controlled by other governmental corporations within the Town; where there is no existing utility pole, monopole or other support structure;
- [e]** Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.

[2] Business districts.

- [a]** Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;
- [b]** Collocation on a privately owned existing utility pole, monopole or other support structure;
- [c]** Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;
- [d]** Location on lands owned or controlled by other governmental corporations within the Town, where there is no existing utility pole, monopole or other support structure;

[e] Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.

[3] Residence districts.

[a] Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;

[b] Collocation on a privately owned existing utility pole, monopole or other support structure;

[c] Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;

[d] Location on lands owned or controlled by other governmental corporations within the Town; where there is no existing utility pole, monopole or other support structure;

[e] Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.

(c) No small wireless facility shall be permitted on any designated historic property or historic district, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to provide adequate service and no feasible alternative site exists.

(d) If the proposed site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exemption must satisfactorily demonstrate the reason or reasons why a small wireless permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(e) An applicant may not bypass a site of higher priority by stating the site presented is the only site leased or selected.

(f) An application shall address collocation as an option and, if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable.

(g) Notwithstanding the above, the Planning Board may approve any site located within the Town, provided that the Planning Board finds that the proposed site meets the requirements set forth in this subsection, is in the best interest of the safety, public welfare, character and environment of the Town and will not have a deleterious effect on the nature and character of the community and surrounding properties.

(10) General and specific requirements for small wireless facilities.

(a) The small wireless facility shall be designed, constructed, operated, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code.

(b) A small wireless facility structure shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).

(c) A small wireless facility shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Town.

(d) A small wireless facility shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.

- (e) A small wireless facility shall not, by itself or in conjunction with other wireless telecommunications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC. When a small wireless facility is complete, as-built readings shall be taken and submitted to the Town.
 - (f) The Town reserves the right to inspect any small wireless facility to ensure compliance with the provisions of this subsection and any other provisions found within the Federal Communications Commission regulations, the Town Code, state and federal law. The Town and/or its agents shall have the authority to enter the property upon which a small wireless facility is located at any time, upon reasonable notice to the operator and property owner, to ensure such compliance.
 - (g) All antennas and other supporting structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
- (11) Setback.** A wireless telecommunications support structure used in connection with a small wireless facility located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including the support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristic of the proposed support structure. However, in no case shall the Planning Board reduce the setback required to less than the applicable setback requirements for principal structures in the district which the property is located.
- (12) Height.** A small wireless facility shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zoning district, shall address any additional height necessary to accommodate collocation by additional antenna arrays, but under no circumstances is the height to be in excess of 50 feet; 10% taller than other adjacent structures; or extended to a height of more than 10% above its preexisting height as a result of the collocation of new antenna facilities.
- (13) Visual mitigation.**
- (a) A small wireless facility shall be sited so as to have the least-adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the wireless telecommunications facility.
 - (b) Both the small wireless facility and any and all accessory equipment shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.
 - (c) A small wireless facility shall not be artificially lighted or marked, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting as unobtrusive and inoffensive an effect as is permissible under federal, state and local laws, statutes, codes, rules or regulations.
 - (d) Electrical and land-based telephone lines extended to serve the wireless telecommunications services facility sites shall be installed underground.
 - (e) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
 - (f) Landscaping shall be provided, if appropriate.
 - (g) A small wireless facility and any accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists.
- (14) Regulations applicable to small wireless facility permits in the public right-of-way.** In addition to the applicable small wireless facility permit requirements set forth in this subsection, all small wireless facilities located in the

public right-of-way shall be required to comply with the following regulations:

- (a) In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, or within an easement extending onto a privately-owned lot.
- (b) Restoration of pavement and sidewalks shall be completed in accordance with all Town of New Castle standards and shall be approved and accepted by the Commissioner of the Department of Public Works.
- (c) The Town Engineer and/or the Commissioner of the Department of Public Works shall be advised in advance by written notice of the performance of any work, protection of pipes and facilities and other safety measures, shall be subject to the supervision of the Town Engineer and/or the Commissioner of the Department of Public Works, or their designees, if applicable.
- (d) To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground, is permitted when placed in conjunction with a new stealth pole and concealed in a ground-mounted cabinet. The maximum acceptable dimensions of ground-mounted cabinet is 30 inches wide by 30 inches deep by four feet high and must be square in shape. Ground-mounted equipment on sidewalks must not interfere with the flow of pedestrian traffic and must conform to the American's with Disabilities Act (ADA) in regards to appropriate sidewalk spacing. Ground-mounted equipment must otherwise be screened from surrounding views, to the fullest extent possible through the use of landscaping or other decorative features to the satisfaction of the Town. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Town.
- (e) The applicant shall incorporate concealment elements into the proposed design. Concealment shall include approved camouflage or shrouding techniques. All small wireless accessory equipment shall be shrouded. Only two shrouds, including the disconnect and antenna, shall be installed at each location. No small wireless facility shall be installed without confirming that the intended installation has no impact on the streetlight's operational performance, if applicable.
- (f) Any graffiti on any small wireless facility support structure or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.
- (g) Any new pole and/or equipment and other improvements associated with a new pole or an existing pole must not obstruct:
 - [1] Access to any aboveground or below ground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal;
 - [2] Access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;
 - [3] Access to aboveground or underground infrastructure owned or operated by any public or private utility agency;
 - [4] Fire hydrant access;
 - [5] Access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right-of-way; and/or
 - [6] Access to any fire escapes.
- (h) Any new pole installed shall be located in alignment with existing trees, utility poles, and streetlights. The poles shall be set equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.

- (i) No small wireless equipment shall be allowed to collocate on decorative streetlight poles, as determined by the Town of New Castle, or poles that have decorative luminaires that are owned by the Town of New Castle.
 - (j) Accessory equipment attached to a small wireless facility support structure shall have such vertical clearance as the Planning Board may determine is reasonable.
 - (k) No small wireless facility permit shall be issued if the application involves the installation of a utility pole directly next to or in close proximity to any old utility pole on a Town highway, street, road, or right-of-way. The double pole condition must be removed before any small wireless facility permit is issued.
- (15)** Annual NIER certification. The holder of any small wireless facility permit shall, annually certify to the Planning Board, or its authorized designee, that NIER levels at the site where a small wireless facility is located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense shall be permitted to conduct its own certification test of the NIER levels at the site where any small wireless facility is located, upon notice to the wireless telecommunications provider.
- (16)** Proof of insurance. The applicant and the owner of the property where the small wireless facility is to be located, if different, shall provide the Planning Board with proof of insurance in a sufficient dollar amount in the reasonable judgment of the Planning Board to cover potential personal and property damage associated with construction and operation of such facility.
- (17)** Revocation of small wireless facility permit.
- (a) If a small wireless facility is constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this subsection or of the small wireless facility permit conditions and requirements, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then the Planning Board or the Building Inspector, or their designee, shall notify the holder of the small wireless facility permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other provision of this subsection, if the violation or noncompliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board or Building Inspector may, at their sole discretion, order the violation remedied within 24 hours.
 - (b) If the small wireless facility is not brought into compliance with the provisions of this subsection, or of the permit, or substantial steps are not taken in order to bring the affected small wireless facility into compliance, then the Planning Board or the Building Inspector may revoke such small wireless facility permit and require removal of such small wireless facility.
- (18)** Removal.
- (a) Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of small wireless facilities, under the following circumstances:
 - [1]** The small wireless facility has been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days;
 - [2]** A permitted small wireless facility falls into such a state of disrepair that it creates a safety hazard;
 - [3]** The small wireless facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required small wireless facility permit, or any other necessary authorization; or

- [4]** Any small wireless facility is determined to be in violation of this subsection and fails to cure such violation within the time set forth herein.
- (b)** If the Planning Board makes a determination pursuant to § **60-4100(18)(a)**, then it shall notify the holder of the small facility permit and the owner of the property in writing that said small wireless facility is to be removed.
- (c)** The holder of the small wireless facility permit or the owner of the property shall be required to dismantle and remove such small wireless facilities, and all accessory equipment and associated structures, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town to remove such small wireless facilities. However, if the owner of the property upon which the small wireless facility is located wishes to retain any access roadway to the small wireless facilities, the owner may do so with the approval of the Town.
- (d)** If the small wireless facility is not removed or substantial progress has not been made to remove the small wireless facility within 90 days after the small facility permit holder has received such written notice of removal, then the Planning Board may order officials or representatives of the Town to remove the small wireless facility at the sole expense of the property owner and/small wireless facility permit holder.
- (e)** If the Town removes or causes to be removed the small wireless facilities, and the owner of the wireless telecommunications facility does not claim and remove them to a lawful location within 10 days, then the Town may take steps to declare the small wireless facility abandoned and dispose of or sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the small wireless facilities to be assessed on the property in the same manner as a tax or assessment.
- (19)** Performance security. The applicant and the owner of record of any proposed wireless telecommunication services facility, at their cost and expense, shall be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount to be determined by the Town Engineer, based on actual estimates supplied by the applicant, ensuring removal of the facility upon expiration or termination of the small wireless facility permit or cessation of facility; and with such sureties as are deemed sufficient by the Planning Board to assure the faithful performance of the terms and conditions of this subsection and conditions of any small wireless facility permit issued pursuant to this section. The full amount of the bond or security shall remain in full force and effect throughout the term of the small wireless facility permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the small wireless facility permit. Upon written application by the applicant, the Town may, at its sole option, permit the amount of the bond to be reduced or waive the bond requirement.