

## Cohocton Planning Board Report to the Cohocton Town Board – Oct 2023

Section 830 of Local Law #1 for 2002 **“Zoning Law of the Town of Cohocton”** seeks a periodic review of the Zoning Law. This report summarizes the review and recommendation of the Planning Board with input from the ZBA and Code Enforcement. A number of changes are being recommended, which would also require review by Steuben County under Section 239 of the General Municipal Law.

The following changes are recommended:

- 1) A global change of “mobile home” to “manufactured home” throughout the document (numerous instances).
- 2) A global change of “public garage” to “service station”
- 3) Section 200 replace “I Industrial” with “AE Adult Entertainment and Retail Cannabis”
- 4) Section 310 1. under Accessory Uses add Tier 1 Solar and Tier 2 solar
- 5) Section 310 1. under Special Permit Uses add Tier 3 Solar, Cannabis Indoor Cultivation/ Nursery, and Cannabis Outdoor Cultivation / Nursery
- 6) Section 310.1 Change “Travel Trailer” to “Campground”
- 7) Section 310 2. Add a new paragraph titled “Dual Zoned Properties” with the following description: For any properties containing dual zoning, the LDR portion shall be construed as that portion from the center of the road back until minimum lot size is attained (see Section 320 for minimum lot sizes).
- 8) Section 310.4 add the following description of the IC district:

The IC district comprises two different areas as shown in Map #1 and in more detail in Map #2 and Map #3. The northern most area is triangular in shape and bounded on the North by the town line, bounded by Co Rt 21 on the southeastern side and Eelpot Rd on the southwestern side. The southern most area comprises the first parcel abutting either side of County Rt 121. immediately west of Route 390.

- 9) Replace Section 310 5. in its entirety with the following text:

5 Adult Entertainment and Retail Cannabis (AE)

The intent of the AE district is to create an overlay district falling entirely within the existing AG-R district to establish a district for adult oriented business activities as outlined in the Adult Entertainment and Cannabis laws.

### AE District Boundary Description

The Adult Entertainment and Retail Cannabis Overlay District is to include the area: from the Village Boundary line south to Jones Road including abutting properties on both sides of Jones Road, from the Genesee Expressway (390) on the West to the Railroad Tracks on the East. See Map #3.

### Permitted Principle Uses

Adult Entertainment businesses

### Permitted Accessory Uses

Special Permit Uses  
Cannabis Retail Medical  
Cannabis Retail Recreational

10) Section 420 6. Exclude the AE district from the list of districts regarding signage.

11) Section 422 should be revised to:

422: CAMPGROUNDS

In any district where campgrounds are permitted the following minimum regulations shall apply:

1. Location-Access: Locations shall be as provided in these regulations. Each such use shall have sufficient highway frontage to permit proper access design and shall have a minimum lot size of (5) acres.
2. Setback: No structure or recreational vehicle containing sleeping quarters shall be located within (50) feet of the right of way of any public street or highway or property line.
3. Off street parking/loading: No parking, loading, or maneuvering incidental to parking or loading shall be permitted on any public street, sidewalk or thoroughfare.
4. Spacing: Spaces shall be and arranged so that no portion of any unit shall be within (15) feet of any other unit, building or accessory structure.
5. Utilities: Utilities shall be provided in accordance with applicable building codes and standards.
6. Internal streets:
  - a. Internal streets of privately owned campgrounds shall be privately owned and maintained and shall be designed for safe and convenient access to all space and facilities.
  - b. All traffic into and out of the campground shall be through marked exits and entrances. No material impediment to visibility shall be created which obstructs the view of drivers on public streets or highways.
7. State Sanitary Code Requirements: In addition to the requirements herein, every campground shall be established and operated under permit as required by New York State Sanitary Code and shall be in full compliance with all applicable provisions of said code.

12) Section 424 add this text at the end of the section:

Exceptions:

The foregoing section does not take into account installations of newer wireless technologies like small cell 4G and 5G antennae installations. Exceptions are permissible provided the applicant has proven, based upon the evidence presented to the Board that an identified wireless carrier suffers from a "significant gap" in its personal wireless service coverage by demonstration of the following:

- a. reliable drive test data to demonstrate the significant gap in coverage or actual dropped call records to demonstrate a capacity deficiency, including the location and geographic boundaries of such, that the Wireless Telecommunications Facility proposes to remedy;
- b. that the proposed installation will remedy that significant gap or gaps in an identified wireless carrier's personal wireless coverage;
- c. the installation will not create an unnecessary redundancy in wireless infrastructure within the town;
- d. the proposed height proposed for the Wireless Telecommunications Facility is the minimum height necessary to remedy any significant gap in personal wireless coverage for any identified wireless carrier.

Locational Considerations and Preferences.

- A. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Facilities in order of the following priority list:

On existing Towers or other structures on Municipal Properties, Municipal Facilities, and Public Rights of Way adjacent to commercially and industrially zoned areas.

On Existing Towers or other structures on commercial or industrially zoned property in the Town

On existing Towers or other structures on residentially zoned property in the Town.

On Town right -of-ways adjacent to residentially zoned areas.

On new Towers on properties zoned for commercial or industrial use.

On new Towers on properties zoned for residential use.

Notwithstanding that a potential site may be situated in a location of highest available priority, the Town may disapprove an Application for any of the following reasons:

Aesthetic impact on a historic landmark or historic district; and

The availability and suitability of a superior location in the opinion of the Town, where such alternate location is determined to not adversely impair the Applicant's ability to provide Wireless Telecommunications services.

Criteria for Review. The following factors shall be considered for all Applications to locate Wireless Telecommunications Facilities.

A. Due consideration shall be given to the Town's Comprehensive Plan, existing land uses and development, environmentally sensitive areas, and other appropriate factors in approving the issuance of a special use permit or other Town approval for the siting of Wireless Telecommunications Facilities.

B. The reviewing Board shall give due consideration to the following factors where applicable.

Height, size, condition, stability, and appearance of the proposed or existing Facility, structure, pole, or device, with due consideration given to the applicable zoning district.

Proximity of the proposed use to residential structures and residential district boundaries.

Nature of existing and/or proposed uses on adjacent and nearby properties.

The topography of the site and surrounding areas.

Surrounding tree coverage and foliage.

Design and aesthetic appearance of the structure, Facility, or device, with particular reference to design elements that have the effect of reducing or eliminating visual obtrusiveness.

The proposed ingress and egress for construction and maintenance.

Availability of suitable existing uses or structures or poles.

Whether the proposed Wireless Telecommunications Facility, or its location, will impede or obstruct vehicular or pedestrian travel, obstruct or interfere with traffic control signs and signals, creates a nuisance or hazard, and/or substantially detracts from a historic landmark, site or district, scenic or visual space or corridor, or a culturally significant resource.

Any other relevant factor, including those found by the Board to be relevant considerations under statutory and decisional law, and regulatory agency rulings.

In the event there is no existing utility pole or alternative structure in the area in which the Applicant proposes to construct and install the Facility, the Applicant shall construct and install the Facility utilizing Stealth Technology if directed by the Planning Board. Stealth poles shall consist of an opaque "clamshell" or similar type base approved by the Planning Board, in which all related equipment, including any associated electrical meter, is fully contained inside the pole. Such Stealth Technology Wireless Transmission Facilities shall be painted a solid, flat color to minimize the

visual impact of the Facility on the surrounding area.

New Towers shall be structurally designed to accommodate at least three (3) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's equipment as possible without causing interference. The requirement may be waived, provided that the Applicant, in writing demonstrates that the provisions of future, shared use of the Tower is not technologically feasible; is commercially impracticable, or creates an unnecessary and unreasonable burden, based upon:

The ability to comply with ANSVTIA 222-H or successor construction standards;

The kind of Wireless Telecommunications Facility site and structure proposed;

The number of existing and potential FCC licenses without Wireless Telecommunications Facilities spaces/sites;

Available space on existing and approved Towers.

The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

Respond within a reasonable amount of time to a request for information from a potential shared use Applicant;

Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;

Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

13. Article VI replace existing Section 600 and 610 text with:

**600: NON-CONFORMING USES, LOTS, STRUCTURES**

Lots, structures, uses of land and structures, and characteristics of use which lawfully existed at the time of the enactment of these Regulations and which would be prohibited or restricted under the terms of these Regulations may be continued subject to the following provisions:

- A. Enlargement - No non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption of these Regulations.
- B. Changes - Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.

- C. Displacement - No non-conforming use shall be extended to displace a conforming use.
- D. Moving - Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.
- E. Discontinuance - Whenever a non-conforming use has been discontinued for a period of one year, use shall not thereafter be reestablished and any future use shall be in conformity with the provisions of these regulations.

**610: EXISTING UNDERSIZED LOTS OF RECORD**

- A. Any recorded lot held in single and separate ownership prior to the adoption of these Regulations and whose area and/or width and/or depth are less than minimum requirements specified herein for the district, may be considered as complying with these Regulations and no variance therefore shall be required, provided that:
  - 1) The minimum yard requirements set by these Regulations are met.
  - 2) If minimum yard requirements cannot be met in an existing under-sized lot, new construction may be permitted providing new building footprint does not exceed size of prior existing building.
- B. In any district where residences are permitted, such undersized non-conforming lots may be used for not more than one single-family dwelling.

A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property.

**14. Article X**

- insert this definition:

**SIGNIFICANT GAP IN COVERAGE or SIGNIFICANT COVERAGE GAP** A significant coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. A significant coverage gap exists when customers cannot receive and send signals, and when customers pass through a coverage gap their calls are disconnected. An applicant's claim that it needs the proposed tower for "future capacity" or to "improve coverage" is not sufficient.

- Delete definition for "travel trailer"
- Delete definition for "public garage"

- Change definition of “Service Station” to “An establishment for the retail sale of gasoline, oil, automotive accessories, and convenience items, and for minor automotive repairs and servicing. Accessory servicing and repair shall be permitted if sufficiently sound-insulated and confined to premises to protect the neighborhood. Auto parts shall be left inside or behind fencing to obscure view.

15. The zoning law Section 210 and 220 have specific requirements for maps to be published and included with the law. There are also requirements for clerk certification and dating and for scale to be provided in the absence of a written description sufficient to identify and interpret zones. These need to be considered and addressed as needed.

16. There have been numerous updates to the 2002 law since it was published over 20 years ago. The town board should discuss the merits of revisiting a number of older local laws for possible inclusion within the zoning code update with the opportunity to retire some of the existing local law(s). The local laws which impact the zoning code and or zoning code definitions are:

- Windmill local law #1 2006
- Windmill local law #2 2006
- Recovery of professional fees local law #3 2006
- Bulk Storage tank local law #1 2010
- Windmill local law #1 2011
- Windmill local law #4 2019
- Cannabis local law #1? 2023

17. In addition, the changes to the zoning law proposed above require the 2008 local law #1 Regulation of Adult Entertainment to be amended. All of Section 3, Section 4, and Section 5 parts c., d., and e. of that law should be deleted.

18. The zoning description in the town’s Comprehensive Plan should be updated to reflect the new AE District.  
End of report