

TOWN OF BERNARDSTON
Office of the Town Clerk
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Regular Office Hours:
Tuesday, Wednesday, Thursday
8:30am to 11:30am
Wednesday – 6:00pm to 8:00pm
Other times by appointment
townclerk@townofbernardston.org

**Public Notice as per MGL Chapter 40, Section 32
of Amendments and Additions to Bernardston Zoning By-Laws approved
at The Special Town Meeting of October 25, 2017, Articles 8 and 9**

Any claims of invalidity by reason of any defect in the procedure of adoption or amendment regarding these Zoning By-Law amendments and additions may only be made within ninety (90) days of this posting.

**THE ARTICLES LISTED BELOW WERE APPROVED BY THE ATTORNEY GENERAL'S OFFICE ON
FEBRUARY 23, 2018 AND CERTIFIED COPIES OF THIS ANNOUNCEMENT POSTED BY THE TOWN
CLERK ON FEBRUARY 27, 2018**

**Complete copies of all these amendments and additions as well as the current Zoning
By-laws may be examined at the Office of the Bernardston Town Clerk.**

ARTICLE 8:

Add to Article VI. Definitions

“Recreational Marijuana Establishment,” shall mean a non-medical “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

Amend Section 4900 of the Bernardston Zoning bylaws to read as

“Temporary Moratorium on Recreational Marijuana Establishments.”

Add Sections 4910 and 4920:

Section 4910. Purpose.

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (G.L. c. 94G, “Regulation of the Use and Distribution of Marijuana Not Medically

Prescribed”). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires the Cannabis Control Commission to issue regulations regarding the licensing of commercial marijuana activities on or before March 15, 2018, and subsequently, to accept license applications for commercial operations beginning on April 1, 2018. Non-medical Marijuana Establishments as defined by G.L. c. 94 are not otherwise contemplated or addressed under the present Zoning Bylaw. The regulations to be promulgated by the Cannabis Control Commission may provide important guidance on aspects of local regulation of Recreational Marijuana Establishments, as well as details on how the Town may further

restrict commercial sales of recreational marijuana by local ballot questions. Moreover, the regulation of recreational marijuana raises novel legal, planning and public safety issues, potentially necessitating time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the aforementioned State regulations on local zoning; and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

Section 4920. Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments. The moratorium shall be in effect through December 31, 2018, or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and related uses, and shall consider adopting new Zoning Bylaws in response to these new issues.

ARTICLE 9:

Add to Section 2234 Business/Industrial Uses Wireless Telecommunications Facilities is a use allowed in all zones with a Special Permit from the Planning Board designated as "SPP."

Add the following definitions to Article VI. Definitions:

Telecommunications Facilities.

Towers, antennas and accessory structures, including personal wireless facilities, used in connection with the provision of cellular telephone service, personal communications services, paging services, radio and television broadcast services, and similar broadcast services. Telecommunications facilities do not include the following facilities which are accessory uses or structures: antenna used solely for residential household television and radio reception; satellite antenna which are not visible from a neighboring property or public way and satellite antenna measuring two meters or less in diameter; nor amateur radio facilities under 65 feet above ground actively used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission, provided that the tower is not used or licensed for any commercial use.

Telecommunications Towers

Structures designed to support antennas, including freestanding towers, guyed towers, monopoles, towers on buildings, and similar structures.

Telecommunications Antenna

A system of electrical conductors that transmit or receive radio frequency signals, but not including any support system designed to increase the height of the antenna above the tower or building. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication

services (PCS) and microwave communications.

Add Section 3700 Wireless Telecommunications Facilities

Section 3710. Purpose

The Town of Bernardston seeks to encourage telecommunications and wireless services while minimizing adverse visual effects of these telecommunication facilities through careful design, siting, and vegetative screening and maximizing use of any new or existing towers, buildings and structures to reduce the number of towers needed.

Section 3720. Applicability

Telecommunication facilities are allowed as shown in 2230, Use Regulation Schedule, and 4400, Site Plan Review. A special permit is required for any new tower. Site plan approval, in accordance with this section and 4400, Site Plan Review, is required for a telecommunications facility. The site plan shall be prepared by a registered land surveyor and/or registered professional engineer. In addition to the requirements of 4400, the plan shall show the following requirements:

Section 3730. Requirements

For any new towers, the details of the tower (monopole, guyed, freestanding, or other), guy wires and anchors, tower lighting, and all structures located within 300 feet of any tower. Tower details must be prepared by a registered professional engineer qualified in structural design.

For any new towers or antennas, additional visual and aesthetic information including, among other things, enhanced landscaping plans, line-of-sight drawings, and/or visual simulations adequate to determine the visual impact of the tower. The Planning Board may require more visual analysis before acting on a site plan application.

Demonstrate that all approval criteria have been addressed.

Section 3740. Approval Criteria

In addition to the 5300 special permit criteria and 4400 site plan review criteria, the following criteria will be considered prior to the approval or denial of a request for site plan and special permit. The criteria listed may be used as a basis to impose reasonable conditions on the applicant.

Siting. Before any new tower is approved, the applicant must prove that it is not feasible to locate their antenna(s) and facilities on an existing tower or building. Before a new tower is proposed in a residential district, the applicant must also prove that it is not feasible to locate the antenna and facilities in other districts or on municipal facilities. Such demonstration studies shall include a summary of propagation studies and a plan for any network of facilities.

Collocation. Any new tower must be designed, to the maximum extent which is practical and technologically feasible, for collocation of telecommunications antennas, including designing to accommodate at least three telecommunication providers, offering space to all other telecommunication providers at market rates, and providing for towers that can be expanded upward. Tower owners must maintain a record of the site location and coordinates, elevation, available space at each height, existing frequencies in use, and the name and number that an interested user can contact and make such a file available to the Planning Board upon request within 30 days.

Aesthetics. Telecommunications facilities shall be designed, located and buffered, to the maximum extent which is practical and technologically feasible, to ensure compatibility with surrounding land uses. This shall include, but not be limited to, the following items:

Selecting the type of tower (e.g., monopole, guyed or freestanding lattice) with the least visual impact.

Providing additional landscaping to screen facilities and preserving, to the extent possible, existing on-site trees and vegetation. Use of towers other than monopoles may require additional landscaping.

Designing and siting towers to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA).

Using materials and colors to be compatible with the surrounding environment and land uses to blend in with the site to the extent practical.

Towers shall not contain any signs or advertising devices.

Fencing must be designed to be as unobtrusive as possible.

Section 3750. Radio Frequency Effect

All telecommunication facilities shall be operated only at Federal Communications Commission (FCC) designated frequencies, power levels and standards, and that the applicant shall provide certification to support that the maximum allowable frequencies, power levels and standards will not be exceeded. Certification shall include technical specifications, an explanation of those specifications, and, if necessary, field verification.

Section 3760. Dimensional and Density Regulations

Telecommunications facilities shall adhere to 2300, Dimensional Requirements, except as follows:

Towers designed for one telecommunication provider shall be limited to 130 feet. Towers designed for collocated facilities shall be allowed an additional 20 feet for each additional provider up to a maximum of 220 feet. These height limits shall not apply to towers for or partially for government or emergency telecommunications, to the extent such height is needed to serve government or emergency telecommunication use.

In residential districts, a tower must be setback from all property lines at least twice the distance equal to its height. In other districts, a tower must be setback from all property lines at least the distance equal to its height. The Planning Board, however, may allow a shorter setback if the shorter setback provides adequate safety and aesthetics and the manufacturer or qualified licensed designer certifies that the tower is designed to collapse on itself or otherwise collapse safely and within the property controlled by the applicant in the event of failure. The Planning Board may allow lesser setbacks necessary to allow the use of an existing structure.

Section 3770. Maintenance of Telecommunications Facilities

The applicant shall remove any telecommunications facility that ceases to be used for its intended purpose for 12 consecutive months. The Planning Board may require a performance guarantee to insure

that unused facilities are removed.

Section 3780. Abandonment or Decommissioning

All telecommunications facilities shall be maintained in good order and repair. Any paint and finish must be maintained and repaired when the blemishes are visible from the property line. The applicant must provide an inspection schedule and file copies of inspections with the Planning Board.

Section 3781. Removal Requirements

The owner shall notify the Planning Board by Certified Mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a) Removal of all towers, antenna, structures, equipment, security barriers and transmission lines from the site.
- b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulation.
- c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

Section 3782. Financial Security

Applicants of telecommunication installations shall provide a form of surety, either through escrow account, bond, or otherwise, to cover the cost of removal in the event the town must remove the facility and remediate the landscape. A plan shall be submitted, as part of the application for a wireless telecommunication facility to return the site to a pre-existing condition, as determined reasonable by Site Plan Review Authority, with the form of surety to be held by the Town in the amount of 125% of the applicant provided estimate (RS Means or equivalent) for such work. The amount shall include a mechanism for calculating increased removal costs due to inflation. The surety shall be submitted to the Planning Board prior to the issuance of the Building Permit, as well as prior to any disturbance, including tree cutting, at the site.

Section 3790. Severability Provision

If any part of this bylaw is found not to be legal the rest will remain in effect.

ALL THE AMENDMENTS AND ADDITIONS LISTED ABOVE TAKE EFFECT AS OF OCTOBER 25, 2017 IMMEDIATELY UPON THE POSTING OF THIS PUBLIC NOTICE.

Posted as per MGL Chapter 40, Section 32 in 5 (five) public places:

Bernardston Town Hall, 38 Church Street;
Bernardston Post Office, 9 Center Street;
Country Corner Store, 44 Church Street;
Bernardston Senior Center, 20 Church Street;

www.townofbernardston.org

A True Copy. Attest: Town Clerk



Paul W. Luther