



## TOWN OF ALDEN

Agenda Item 4

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**Building Department**  
ALDEN TOWN HALL  
3311 Wende Road  
Alden, New York 14004

### MEMORANDUM

TO: Town of Alden Planning Board (Listed Below)

FROM: Chris Snyder *CNS*  
Building Inspector/Code Enforcement Officer

DATE: August 2, 2022

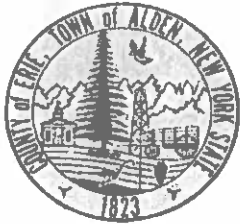
SUBJECT: Northem Subdivision  
13904 Broadway Street -- Divide One Parcel In to Two Parcels

Enclosed is the application and supporting documents for the subdivision request listed above.

This will be on the agenda for the August 9, 2022 meeting.

Gina Waiss, Councilwoman  
Michael DeWitt, Chairman  
Colleen Rogers  
Matthew Malecki  
F. Duane Conners  
Bob Meyer

cc: Jennifer Strong, Town Attorney



\$ <u>125</u> Fee Paid
<u>8-1-22</u> Date
<u>165197</u> Receipt Number

716 937-6969 Ext.4  
Fax: 716-937-9817  
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**CODE ENFORCEMENT OFFICE**  
ALDEN TOWN HALL  
3311 Wende Road  
Alden, New York 14004

### APPLICATION FOR REVIEW AND APPROVAL OF SUBDIVISION OF PROPERTY

APPLICANT NEEDS TO COMPLETELY FILL OUT THE FOLLOWING APPLICATION INCLUDING THE SHORT ENVIRONMENTAL REVIEW FORM. MISSING INFORMATION WILL CAUSE A DELAY IN THE REVIEW PROCESS UNTIL IT IS RECEIVED BY THE PLANNING BOARD.

- Name of proposed development: NORTHEM SUB-DIVISION
- Detailed description of proposed development: DEVIDE PARCEL INTO TWO LOTS
- Developer: (if owner, so state; if agent or other type of relationship, state details on a separate sheet)  
Name: KIMBERLY NORTHEM  
Address: 2200 COUNTYLINE RD  
Telephone: 472-0655
- Licensed land surveyor or engineer:  
Name: WM SCHUTT ASSOCIATES  
Address: 37 CENTRAL AVE LANCASTER  
Telephone: 683-5961
- Location & Tax Map Number of proposed development: 13904 BROADWAY  
109.00-2-10
- Present zoning: R-A
- Land use category indicated on the Town Master Plan: RURAL
- Names of abutting owners & owners directly across adjoining streets including those in other municipalities:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Easements or other restrictions on property: \_\_\_\_\_
- Drainage and soil permeability classification as per Map 3, Alden "Soil Interpretations" study: \_\_\_\_\_
- Surface drainage: Drainage area: \_\_\_\_\_ acres  
Runoff destination: \_\_\_\_\_

The undersigned hereby requests Town Board Approval of the above proposed development:

Kim A. [Signature] owner 8-1-22  
Signature Title Date

**§ 229-67 Traditional Neighborhood Design Standards in Commercial Zones.**

**A. General.**

- (1) All development and redevelopment requiring site plan approval must meet the requirements of any zoning overlay that exists in the area of development, should the Town adopt zoning overlays in the future.
- (2) The scale, proportions, massing and detailing of any proposed buildings or major renovation shall be in proportion to the scale, proportion, massing and detailing in the area.
- (3) Connections shall be provided from the site to the existing sidewalk system. Pedestrian and bicycles shall be accommodated in the site design.

**B. Parking lots.**

- (1) To the extent possible, parking shall be located at the side or rear of the building.
- (2) If the parking is located in the side yard, it must be partially screened from the road by low walls, fences or hedges as approved by the Town's Landscape Committee.
- (3) Parking lots shall not abut street intersections.
- (4) Adjacent parking lots shall have internal vehicular connections.

**C. Architecture.**

- (1) The architectural style of all new structures must be reviewed and approved by the Town Board and may be referred to the Planning Board for its review and recommendation.
- (2) All proposed structures must conform to any overlay zoning requirements, should the Town adopt zoning overlays in the future.
- (3) For any project in a commercial zone, architectural compatibility is necessary in order to visually connect development and allow for proximity of varied uses.
- (4) Materials. Walls shall be clad in stone, brick, marble, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. Metal paneling is prohibited, except in Industrial zones.
- (5) Configurations. Two wall materials may be combined (horizontally) on one facade. The heavier material must be below. If possible considering HVAC installations and other roof uses, rooflines shall not be flat.
- (6) Techniques. All rooftop equipment shall be enclosed in the building material that matches the structure or is visually compatible with the structure.

**§ 229-68 Lot coverage.**

- A. All buildings and impervious surfaces, including but not limited to parking areas and public or private drives must suit or fit the site properly. The plan should provide adequate green space to maintain an**

attractive appearance

**§ 229-81 M1 and M2 Zone Restricted Architectural standards.**

- A. Due to the visibility of the district, architectural compatibility is necessary in order to maintain community character, visually connect development, and allow for proximity of varied uses.
- B. Materials. Walls shall be clad in a mix of the following: stone, brick, marble, metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building.
- C. Roof and top treatments. The use of sloped roofs, including gabled and hip roofs, is strongly encouraged in an effort to maintain a village-scale building style.
  - (1) If possible considering HVAC installations and other roof uses, rooflines shall not be flat. A sloped roof must achieve a minimum four-inch rise for twelve-inch run for structures up to 10,000 square feet in size.
  - (2) Larger structures shall employ design standards to ensure that roof configuration matches the architectural appearance of the district. Buildings of this nature shall utilize a combination of roof elements and top treatments.
  - (3) Rooftop mechanical units, dishes, and other miscellaneous equipment should be screened or be properly integrated as part of the building design. Screen material should be of the same or compatible material, texture, and color to the building architecture.
  - (4) Roofing systems shall be comprised of materials appropriate to the architectural style and color palette of the building.
  - (6) Buildings greater than 10,000 gross square feet with a flat roof should have a recognizable "top" consisting of the following:
    - (a) Stepped parapets concealing flat roofs and rooftop equipment such as HVAC units from public view.
    - (b) Overhanging eaves on portions of the building.
- D. Exterior wall design.
  - (1) Window and door treatments shall be compatible in style and design and should fit the overall appearance of the building.
  - (2) The use of reflective glazing, with over sixty-percent reflectivity, is prohibited.
- E. Supplementary standards.
  - (1) Standard franchise design is not encouraged. Designs should be oriented toward matching the character of the community.

## § 229-82 Commercial Zones – Architectural Standards

All buildings and impervious surfaces, including but not limited to parking areas and public or private drives must suit or fit the site properly. The plan should provide adequate green space to maintain an attractive appearance

### § 229-90.1 Site lighting.

It is the intent of these standards and provisions to prevent, reduce or eliminate the problems created by improperly designed and installed outdoor lighting. Specifically, glare, light trespass, excessive energy usage and financial burden are all negative effects of poor site lighting design standards. The purpose of careful site lighting approaches is to ensure that outdoor lighting does not interfere with the reasonable use and enjoyment of property. These regulations are also designed to increase safety for both pedestrian and vehicular traffic.

A. Lighting design shall not create a nuisance to adjacent residences.

- (1) All external lighting sources shall be designed and shielded to avoid hazardous interference and direct glare onto adjacent streets and properties.
- (2) The lenses in pole and wall-mounted lighting shall be recessed to control the adverse impacts of light spillout and glare.
- (3) Parking area lighting fixtures shall not be illuminated after 11:00 p.m.
- (4) Security lighting and other building lighting will be allowed to operate as long as it does not create a nuisance to adjacent residences.

B. Outdoor site lighting shall accent existing community character and styling.

- (1) Pole-mounted lighting shall not exceed a total height of 15 feet from finished grade to the top of the fixture.
- (2) A mixture of lamp types on the same site shall be avoided.
- (3) To provide optimum color rendition, lamps are preferred in the following order: LED, high-pressure sodium, metal halide, low-pressure sodium.

C. Convenience stores and gas stations. Lighting fixtures or sources of light that are a part of the underside of the canopy should be recessed into the underside of the canopy so as not to protrude below the canopy ceiling surface. Lighting fixtures which feature a central light spill, limiting unwanted lighting outside of the commercial property, shall be used. The materials and color used on the underside of the canopy should not be highly reflective, with the intent of minimizing the amount and intensity of light that reaches beyond the site boundaries.

D. Lighting plans shall be submitted and must include illumination footprints. The appearance and placement of lighting will be recommended on by the Planning Board as part of the site plan approval process.

**§ 229-97 Commercial Architectural Standards**

- A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection **D**, Materials, below).
- B. Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.
- C. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall be painted to match the overall color scheme of the rest of the building.
- D. Materials.
  - (1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.
  - (2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or diamond tab asphalt shingles.
- E. Configurations.
  - (1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.
- F. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

**§ 229-104 Industrial Architectural Standards.**

- A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection **C**, Materials, below). Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.
- B. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall match the overall color scheme of the rest of the building.
- C. Materials.
  - (1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.
  - (2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or asphalt shingles.
- D. Configurations.
  - (1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.
- E. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

## Chapter 172A

# Small Wireless Technology in the Public Right-Of-Way

**[HISTORY: Adopted by the Town Board of the Town of Alden (date) by L.L. No. TBD. Amendments noted where applicable.]**

### § 172A-1 Purpose and intent.

- A. The Town has an interest in minimizing the number and height of small wireless facilities, wireless support structures, technology, and all of their related parts that are located within its borders given the fact that the Town is predominately a low-rise developed municipality with a largely rural character.
- B. Aesthetics are an important consideration in the quality of life in the Town, and the small wireless facilities, wireless support structures, technology, and all of their related parts are determined to be aesthetically detrimental to the Town and have a negative impact upon surrounding properties, especially residential properties and rural areas with significant open space. It is the Town's objective to minimize wireless support structures in and adjacent to residential districts and commercial districts.
- C. In many cases, small wireless facilities can be mounted on existing structures and can provide the same level of commercial mobile service with minimal or no aesthetic impacts upon neighboring uses.
- D. Where the construction of new wireless support structures is necessary in order to provide small wireless technology, often it is possible to house more than one such provider on a given structure, thus reducing the proliferation of new wireless support structure construction. Additionally, construction of wireless support structures in commercial or business districts is generally favored over construction in residential and rural districts, if appropriate coverage can be obtained. Therefore, the construction of more than one wireless support structure on a commercial or business site may be preferred over construction on a residential site, where feasible and within the criteria of this chapter.

### § 172A-2 Definitions.

- A. General use of terms.
  - (1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
  - (2) Words not defined shall be given their common and ordinary meaning.
- B. Defined terms.

### **ABANDONED**

Any small wireless facilities or wireless support structures that are unused for a period of 365 days

without the operator otherwise notifying the Town and receiving the Town's approval.

#### **ANTENNA**

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information services.

#### **APPLICANT**

Any person applying for a small wireless permit hereunder.

#### **CO-LOCATION or CO-LOCATE**

To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

#### **DECORATIVE POLE**

A pole, arch, or structure other than a streetlight pole placed in the right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: a) electric lighting; b) specially designed informational or directional signage; or c) temporary holiday or special event attachments.

#### **FACILITY or PERSONAL WIRELESS SERVICE FACILITY**

An antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

#### **OPERATOR**

A wireless service provider, cable operator, or a video service provider that operates a small wireless facility and/or provides wireless service. "Operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the Telecommunications Act of 1996, 110 Stat. 59, 47 U.S.C. § 153(2), and services that are fixed in nature or use unlicensed spectrum.

#### **ORNAMENTAL POLE**

A pole or structure placed in the right-of-way to support traffic signals and/or streetlights which has been specifically designed and placed for aesthetic purposes. Ornamental poles often include appurtenances or attachments for flags, planters and/or other aesthetic features.

#### **PERSON**

Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit.

#### **RIGHT-OF-WAY**

The surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the Town of Alden.



## **SMALL WIRELESS FACILITY (SWF), ALSO KNOWN AS SMALL CELL FACILITY**

Encompasses facilities that meet each of the following conditions:

- (1) The facilities:
  - (a) Are mounted on structures 50 feet or less in height, including their antennas; or
  - (b) Are mounted on structures no more than 10% taller than other adjacent structures; or
  - (c) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater. Such measurement to include the antennas of the installation.
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- (4) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards.

## **SMALL WIRELESS PERMIT**

The nonexclusive grant of authority issued by the Town of Alden to install a small wireless facility and/or a wireless support structure in a portion of the right-of-way in accordance with this chapter and other applicable law.

## **STRUCTURE**

A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

## **UTILITY POLE**

A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.

## **WIRELESS SUPPORT STRUCTURE**

A pole, such as a monopole, streetlight pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small wireless facilities.

### **§ 172A-3 General requirements.**

- A. No person shall occupy or use the right-of-way except in accordance with law.
- B. The permitting procedures and authorizations set forth in this chapter shall apply only to small wireless facilities and wireless support structures in the right-of-way.
- C. Nothing in this chapter precludes the Town from applying its generally applicable health, safety, and welfare regulations when granting consent for a small wireless facility or wireless support structure in

the Town's right-of-way or the right-of-way of any Erie County or NYS highway subject to the regulations of those entities.

- D. All small wireless facilities and wireless support structures shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions. (See § TBD. Safety and liability requirements.)
- E. Notwithstanding anything to the contrary within this Code, this chapter TBD controls all activities that relate to small wireless facilities within the public right-of-way.
- F. The Town may deviate from any requirement within this chapter where strict application of this chapter would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the small wireless application.

**§ 172A-4 Application and approval process.**

- A. Small wireless permit required. Prior to installation, modification, or relocation of a small wireless facility, or wireless support structure, installation of a new wireless support structure, or co-location on an existing wireless support structure in the right-of-way, the operator/applicant shall apply to the Town Building Department and receive approval from the Town Board as evidenced by the grant of a small wireless permit issued after Town Board approval.
- B. Right-of-way work permit required. Prior to commencing any work in the right-of-way and before a small wireless permit shall be issued, the operator/applicant must also obtain a right-of-way work permit from the Highway Superintendent in accordance with § TBD of the Code. Removal of a small wireless facility or wireless support structure shall not require a small wireless permit, but will require a right-of-way work permit and written notice to the Building Department of the small wireless facility(ies) or wireless support structure(s) that are being removed.
- C. Application materials and supporting documents. The following information shall be submitted in support of an application for a small wireless permit. This information is required in addition to any other information or documents required under Chapter TBD, Zoning.
  - (1) Full application on a form supplied by the Town and the truthfulness attested to by a professional engineer:
    - (a) Environmental assessment form (EAF).
    - (b) The name, address and contact information of the applicant, operator, owner, and/or lessee(s) to the application.
    - (c) New erection of SWF or co-location on existing poles and type of installation (e.g., 4G or 5G) and fiber network plans.
    - (d) Site plan (showing location of all proposed SWF and wireless support structures), including photo(s) of existing pole(s) or location(s) and closest address(es) to the SWF, and if installing on existing pole(s), existing attachments on poles(s)/structure(s).

- (e) Detailed description of the project and of the facility and equipment, including elevations/renderings of the proposed infrastructure.
  - (f) The applicant's/owner's maintenance and inspection schedule.
  - (g) A safety analysis and certification by a licensed professional engineer that the proposed facility will be in compliance with all applicable FAA and FCC laws and regulations, including RF emissions (RFE) letters for each small wireless facility proving that the SWF is in compliance with all RFE regulations.
  - (h) Pole numbers and proof of the site or pole owner's consent, if the applicant is not the owner of the site or pole on which the applicant seeks to locate a small wireless facility.
  - (i) Passing structural analysis of any wireless support structure by a licensed NY State professional engineer.
  - (j) For initial applications, inventory of existing towers, antennas and small wireless facilities sites within the Town and within 750 feet of the border of the Town, including specific information regarding the tower and/or antenna height and the location, street address, tax parcel, latitude and longitude and mean sea level height of the tower base.
  - (k) Proposed construction schedule.
  - (l) Removal bond for cost of removal. (See § 172A-7.)
  - (m) Details showing compliance with these regulations.
  - (n) As-built drawings, within 60 days after completion of the construction, if already submitted as part of application and no changes made, certification that the submitted plans are to be considered as-built drawings.
  - (o) A copy of the right-of-way permit granted by the Highway Superintendent to ensure compliance with the indemnity requirements set forth within this chapter.
  - (p) Applicable fees. (As defined in the Town Fee Schedule.)
- (2) The operator/applicant must submit all required materials, fees and documentation to the Building Department. Upon receipt, the Building Department will review the submitted application for compliance with the requirements set forth in this chapter. If an application is deemed incomplete, the Building Department will notify the applicant of the absence of the required information necessary to render a final determination within 10 days of submission and will allow the applicant to cure the defects of an incomplete submission. Once the application is deemed complete, the Building Department will proceed with the necessary level of review for the requested action and will either issue or deny a small wireless permit to the operator/applicant.
- D. Administrative review. Co-location on existing or replacement of wireless support structures in all districts shall be subject to an administrative review process to be performed by the CEO. Upon conclusion of review, the CEO may grant or deny an application based on compliance or noncompliance

with the objective criteria required by this chapter for a complete and satisfactory application. In the event that the application requires a deviation in any way from the specific guidelines and co-location requirements of this chapter, the application for co-location must be submitted to the Town Planning Board for review, who will refer the application to the Town Board for final approval after this review. Additionally, the CEO may require an application to be sent to the Planning Board for further review in his or her sole discretion in instances where unique circumstances are present within the application that require further review in order to ensure compliance with the Town Code generally. Approval will be contingent upon the recommendation of the Planning Board and final approval by the Town Board for all applications that require a deviation from the co-location requirements and guidelines set forth in this chapter.

- E. **Planning Board review.** The erection of all new wireless support structures within the Town will be subject to review by the Planning Board and approval by the Town Board. This heightened level of review is required due to the increased level of disruption to the public right-of-way necessary for the erection of a new wireless support structure and the need to avoid possible congestion of the public right-of-way. Additionally, the erection of a new wireless support structure is more likely to negatively alter the character of the surrounding areas than those applications for co-location. Approval of an application is contingent upon a satisfactory showing that the specific negative effects that the erection of a new wireless support structure will have on the surrounding area have been satisfactorily mitigated and that compliance with this chapter has been achieved.
- F. **Equipment maintenance, repairs and modifications.** The operator may maintain, repair, replace and make like-kind modifications to any small wireless facility that do not materially change the size, height and weight of the small wireless facility or exceed the structural capacity of the wireless support structure without requiring a new small wireless permit. The operator/applicant must still obtain a right-of-way work permit from the Highway Superintendent in accordance with § TBD of the Code for any work performed in the right-of-way.

#### **§ 172A-5 Fees.**

All fees related to small wireless facilities are listed within § TBD of the Town of Alden Code.

#### **§ 172A-6 Small wireless design guidelines.**

- A. **Purpose.** The purpose of these guidelines is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, co-location, modification, relocation, operation and removal of small wireless technology within the Town's right-of-way. The goals of these guidelines are to:
  - (1) Provide standards, technical criteria and details for small wireless facilities in the Town's right-of-way to be uniformly applied to all applicants and owners of small wireless facilities or support structures for such facilities.
  - (2) Enhance the ability of wireless communications carriers to deploy small wireless technology in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from ubiquitous and robust wireless service availability.
  - (3) Preserve the character of the Town's neighborhoods, districts and corridors.
  - (4) Ensure that small wireless facilities and support structures are in conformance with all applicable health

and safety regulations and will blend into their environment to the greatest extent possible.

- (5) Comply with, and not conflict with or preempt, all applicable state and federal laws.
- B. Requirement to comply. Placement, modification, operation, relocation and removal of a small wireless facility and/or wireless support structure shall comply with the specifications of this section: at the time the permit for installation, modification, relocation or removal is approved and as amended from time to time.
- C. Locations of small wireless facilities, related ground equipment, and wireless support structures.
  - (1) Most preferable zone locations: Industrial areas (if not adjacent to a municipal park or residential area); highway right-of-way areas (if not adjacent to a municipal park or residential area); and retail and commercial areas (if not adjacent to a municipal park or residential area).
  - (2) Least preferable zone locations. Residential districts are the least preferred areas for new small wireless facilities.
  - (3) Duration of permit validity.
  - (4) Co-location preference. It is the Building Department's strong preference that whenever an applicant proposes to place a new wireless support structure with a small wireless facility within 250 feet from an existing wireless support structure, the applicant either co-locate with the existing facility or demonstrate that a co-location is either not technically feasible or space on the existing facility is not potentially available.
  - (5) Order of preference for wireless support structures. The following list indicates the order of preference for wireless support structures for small wireless facilities, from most preferential to least preferential locations:
    - (a) Existing utility poles.
    - (b) Light poles.
    - (c) Ornamental municipal service poles.
    - (d) New wireless support structures.
- D. Consideration of alternate locations.
  - (1) In instances where an applicant seeks to co-locate, the Building Department reserves the right to propose an alternate wireless support structure to the one proposed in the application, which the applicant shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose substantial technical limits or substantial additional costs.
  - (2) Where the applicant seeks to erect a new wireless support structure, the Building Department reserves the right to propose a different location than the location proposed within the application. The applicant shall use the Department's proposed location unless the new proposed location has the effect of or

prohibits the provision of wireless service to the particular location sought by the applicant.

E. Guidelines on placement and location of support equipment.

- (1) Facility maintenance and placement. Generally, an applicant shall construct and maintain small wireless facilities and wireless support structures in a manner that does not:
  - (a) Obstruct, impede or hinder the usual travel or public safety on a right-of-way.
  - (b) Obstruct the legal use of a right-of-way by other utility providers.
  - (c) For new wireless support structures, create an unreasonable obstruction to property sight lines.
- (2) Preferred placement. Preferred placement for new small wireless facilities and wireless support structures is generally on an extension of the side-yard property line at the intersection with the line of streetlights, utility poles, or trees in the right-of-way, to avoid interference with building faces, views, business signage, pedestrian flow, etc. Small wireless facilities and wireless support structures shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single- or two-family residence and the street. When located adjacent to a commercial establishment, small wireless facilities and wireless support structures shall not be located in front of store windows, primary walkways, primary entrances or exits, or in such a way that would impede a delivery to the building
- (3) Antennas on existing or replaced utility poles. The antenna(s) associated with co-location on existing or replaced utility poles must have concealed cable connections, antenna mounts and other hardware. The maximum dimensions for antennas shall not be more than three cubic feet in volume, including any enclosure for the antenna.
- (4) Height above ground.
  - (a) Small wireless facilities: Small wireless facilities shall be installed at least eight feet above the ground. If a small wireless facility attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the Building Department may require the attachment to be installed no less than 16 feet above the ground.
  - (b) New wireless support structures in residential districts: In areas where there are no wireless support structures or utility poles taller than 30 feet in height above ground level and the maximum allowable height for building construction in the underlying zoning district is 35 feet in height above ground level, the overall height of a new wireless support structure and any co-located antennas shall not be more than 35 feet in height above ground level.

[1] In all other areas, the overall height of a new wireless support structure and any co-located antennas shall not be more than 50 feet in height above ground level.
  - (c) Existing wireless support structures: For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be co-located at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure to a height of more than 50 feet or by more than 10%, whichever is greater.

- (5) Protrusion. No protrusions from the outer circumference of the existing structure or pole shall be more than 30 inches. The Building Department, at its option, may waive the requirement to limit the protrusion to no more than 30 inches on a case-by-case basis.
- (6) Location of equipment - general. Small wireless facilities and related equipment shall not impede pedestrian or vehicular traffic in the right-of-way. If any small wireless facility or wireless support structure is installed in a location that is not in accordance with the plans approved by the Building Department, impedes pedestrian or vehicular traffic and/or does not comply or otherwise renders the right-of-way noncompliant with applicable laws, including the Americans with Disabilities Act, then the operator shall promptly remove the small wireless facilities and/or wireless support structure. If the operator does not complete removal in a reasonable time frame, the Town will remove it and bill the operator for the cost of the removal. The operator must remove it within 30 days from receipt of notice.
  - (a) Utility lines: Service lines must be undergrounded whenever feasible to avoid additional overhead lines. For new metal poles, undergrounded cables and wires must transition directly into the pole base without any external junction box. If pulling power from existing overhead utility lines, all wiring must be placed in a conduit colored to match or complement the pole. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Building Department.
  - (b) Spools and coils: To reduce clutter and deter vandalism, excess fiber optic or coaxial cables for small wireless facilities shall not be spooled, coiled or otherwise stored on the pole except within the approved enclosure such as a cage or cabinet. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Building Department.
  - (c) Aboveground conduit: On wood poles, all aboveground wires, cables and connections shall be encased in the smallest section or smallest diameter PVC channel, conduit, U-Guard™, or shroud feasible, with a maximum dimension of four-inch diameter. Such conduit shall be grey or brown PVC, colored to complement the wood poles.
  - (d) Noise suppression: The applicant is required to incorporate ambient noise suppression measures and/or required to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.
- (7) Ground-mounted equipment. Ground-mounted equipment shall not be permitted unless the applicant demonstrates that no other feasible options for containing the necessary equipment are available. When allowed, ground equipment should be as minimally intrusive as possible. The equipment shroud or cabinet must contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment must be concealed from view, routed directly through the metal pole (with the exception of wood power poles) and undergrounded between the pole and the ground-mounted cabinet.
- (8) Pole-mounted equipment. All pole-mounted equipment and cabinets must be installed as flush to the pole as possible. Equipment attached to metal poles must be installed using stainless steel banding straps or other mounting methods that reduce the likelihood of creating negative visual effects on the surrounding area. Equipment attached to wood poles may be bolted to the pole or installed using stainless steel banding straps. When the straps are attached to a metal pole, they must match or complement the color of the pole. All pole-mounted equipment shall be located as close together as

technically possible and, if possible, on the same side of the pole, and in the smallest possible equipment box, cabinet, or other unit that may include ventilation openings.

- (a) Pole-mounted equipment: When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment cabinet. Equipment cabinets, including cabinets for telephone and/or fiber optic utilities, may not extend more than 30 inches from the face of the pole. The Building Department's general preference is for the equipment cabinet to be nonreflective, colored to match the existing pole if attached to a metal pole, and in the color of grey or tan if attached to a wood pole. The Building Department retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference.
- (b) Electric meter: The Building Department strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. When a meter is necessary, site operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the Building Department's general preference is for the electric meter base to be painted to match the pole; however, the Building Department retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference on a case-by-case basis.
- (9) Undergrounded equipment vaults. Equipment in an environmentally controlled underground vault may be required in some areas where technologically feasible and appropriate for the location.
- (10) New wireless support structures.
  - (a) Spacing: The Building Department strongly discourages more than one new wireless support structure per block and will not approve more than one per 250 feet on each side of the street to minimize the hazard of poles adjacent to roadways and minimize visual clutter and distractions to vehicular traffic. Wireless support structures shall be spaced apart from utility poles or wireless support structures supporting small wireless facilities at the same spacing between utility poles in the immediate proximity. An exemption may be granted if the applicant can demonstrate that this spacing restriction prohibits or has the effect of prohibiting wireless service to the proposed location.
  - [1] If multiple requests are received to install two or more poles that would violate the spacing requirement or to co-locate two or more small wireless facilities on the same wireless support structure, priority will be given to the first request received that meets these guidelines.
  - (b) General restrictions on new wood poles: In all locations, the Building Department reserves the right to require a metal pole rather than a wood pole based on the build and/or natural environmental character of the proposed site location.
  - (c) Wood pole footings and foundations: In the event that the Building Department allows for the erection of new wood poles, all poles must be direct buried to a depth determined, stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Building Department's review and approval.
  - (d) Metal pole footings and foundations: All new metal poles must be supported with a reinforced concrete



pier or other self-supporting means. The design, including the pier, footings and anchor bolts, shall be stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Building Department's review and approval. All anchor bolts must be concealed from public view with an appropriate pole boot or cover, subject to the Building Department's prior approval.

[1] The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cables, beams or other means. The design should utilize a monopole configuration.

- (e) Metal pole material: All metal poles must be constructed from hot-dip galvanized steel or other corrosion-resistant materials approved by the Building Department and finished in accordance with these guidelines to avoid rust stains on adjacent sidewalks, buildings or other improvements.
  - (f) Lighting, planters, flags, banners: The Building Department may require the applicant to install functional streetlights and/or brackets to hold hanging flower planters, flags and/or banners when technically feasible and when the Building Department determines that such additions will enhance the overall appearance and usefulness of the proposed facility that are necessary to match the character of the immediate streetscape. The Town may install hanging flower planters, flags and/or banners utilizing the brackets.
- (11) Town-owned wireless support structures.
- (a) Required load analysis: Installations on all Town-owned poles shall have an industry standard pole load analysis completed, sealed, and signed by a professional engineer licensed and registered by the State of New York and submitted to the Building Department, with each permit application indicating that the Town-owned pole to which the small wireless facility is to be attached will safely support the load.
  - (b) Power source: A small wireless facility on a Town-owned wireless support structure may not use the same power source that provides power for the original purpose of the wireless support structure.
  - (c) Installations on traffic signals and streetlights: Installations on all traffic signal structures or streetlights must not interfere with the integrity of the facility in any way that may compromise the safety of the public. The installation must not interfere with other existing uses on the pole such as traffic signals, streetlights, hanging flower planters, flags, and/or banners. Installation of small wireless facilities on any traffic signal structure or street light shall a) be encased in a separate conduit than the traffic light electronics; b) have a separate electric power connection than the traffic signal/streetlight structure; and c) have a separate access point than the traffic signal/streetlight structure.
  - (d) Reservation of space for future public safety or transportation uses: An application which relates in any way to space on a Town-owned or -operated wireless support structure that conflicts with space reserved for future public safety or transportation uses documented in an approved plan in place at the time of the application will be denied unless the operator pays for the replacement of the pole or wireless support structure and the replaced pole or wireless support structure will accommodate the future use and the small wireless facility.
- F. Undergrounding requirements. The Building Department may deny requests to install structures and facilities in the right-of-way in an area where the Building Department has required all structures and facilities, except those owned by the Town, to be placed underground or elsewhere in the right-of-way

or in a utility easement. The Building Department may deviate from this requirement where strict application would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the Small Wireless application.

G. General aesthetic requirements.

- (1) Uniformity of appearance. The Building Department desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials of the adjacent utility poles of the surrounding area adjacent to their location.
- (2) Concealment.
  - (a) Generally: To the maximum extent possible, as determined by the Building Department in its sole discretion, on a case-by-case basis: wireless support structures and small wireless facilities shall be designed to blend in with the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where color is dictated by federal or state authorities such as the Federal Aviation Administration; and, every small wireless facility and wireless support structure shall be of neutral colors that blend in with the natural features, buildings, and structures surrounding such small wireless facility and wireless support structure.
  - (b) When underground vaults are proposed, they shall be located to minimize disruption to the placement of street trees. Adequate planting depth shall be provided between the top of the vault and the finished grade to allow plants to grow in a healthy condition. Access to vaults shall not require destruction of decorative plant growth.
- (3) Signage/lights/logos/decals/cooling fans.
  - (a) Signage: The operator shall only post signage required for safety purposes as required by the FCC. No other signage shall be permitted unless approved by the CEO.
  - (b) Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
  - (c) Logos/decals: operators must remove or paint over unnecessary equipment manufacturer decals. New small wireless facilities and wireless support structures shall not include advertisements or logos and may only display information required by a federal, state or local agency. The operator shall utilize the smallest and lowest visibility radio-frequency (RF) warning sticker required by government or electric utility regulations, and said RF sticker shall be placed as close to the antenna as possible.
  - (d) Cooling fans: In residential areas, the operator shall use a passive cooling system. In the event that a fan is needed, the operator shall use a cooling fan with a low noise profile.

H. General provisions.

- (1) Tree maintenance. The operator, its contractors, and its agents shall obtain written permission from the Town before trimming any trees in the right-of-way. When trimming such trees on private property, the operator, its contractors, and its agents shall notify the Town and obtain written permission from the property owner. When directed by the Town, the operator shall trim under the supervision and direction of the Town. The Town shall not be liable for any damages, injuries, or claims arising from the operator's actions under this section.
- (2) Graffiti abatement. As soon as practical, but not later than 14 calendar days from the date the operator receives notice thereof, the operator shall remove all graffiti on any of its small wireless facilities and/or wireless support structures located in the right-of-way and restore such facilities/structures to their pre-graffiti appearance. The Building Department, in its sole discretion, may agree to an extension of time for abatement when necessitated by the need to order replacement equipment when such equipment is ordered in a timely manner.
- (3) Minor technical exceptions. The Building Department recognizes that in some circumstances strict compliance with these guidelines may result in undesirable aesthetic outcomes and that minor deviations should be granted when the need for such deviation arises from circumstances outside the applicant's control.
- (4) Waivers if requirements have the effect of prohibiting the provision of wireless service to a location. In the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed small wireless facility, would effectively prohibit the provision of personal wireless services, the Building Department may grant a limited, one-time exemption from strict compliance.

**§ 172A-7 Safety and liability requirements.**

- A. Prevention of failures and accidents. Any operator of a small wireless facility and/or wireless support structure located in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- B. Compliance with fire safety and FCC regulations. Small wireless facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electrical Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- C. The operator shall provide RF emissions letters for each small wireless facility prior to and as a condition of each and every small wireless permit being issued proving that the site is in compliance with all RFE regulations.
- D. Changes in state or federal safety standards and regulations. If state or federal safety standards and regulations are amended, the owner/operator of the small wireless facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small wireless facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for revocation of the small wireless permit and

removal at the owner's expense.

- E. Indemnification. All operators shall comply with the indemnity and insurance requirements found within § TBD of the Town of Alden Code, for so long as the small wireless facilities or wireless support structures remain in the Town's right-of-way.
- F. Removal bond or equivalent financial tool for cost of removal. All operators must procure and provide to the Town a removal bond, or a letter of credit acceptable to the Town, to ensure compliance with all provisions of this chapter. The bond or letter of credit must be maintained for as long as the owner/operator has small wireless facilities and/or wireless support structures located in the right-of-way. The bond or letter of credit must specifically cover the cost of removal of unused or abandoned small wireless facilities and/or wireless support structures or damage to Town property caused by an operator or its agent of each small wireless facility and/or wireless support structure in case the Town has to remove or pay for its removal. The amount of the bond or letter of credit shall be determined by the CEO with input from the Town Engineer.

**§ 172A-8 Installation requirements.**

- A. Completion within 365 days. The co-location or erection of a new wireless support structure for which a small wireless permit is granted shall be completed within 365 days after issuance of the small wireless permit unless the Building Department and the applicant agree to extend this period. The Building Department will agree to an extension if the operator has made a timely request within 300 days after the issuance of the small wireless permit. The additional time to complete installation may not exceed a total of 547 days after the issuance of the small wireless permit.
- B. Procedure for request for extension of time. In situations where the applicant requests an extension of time, such request must be completed by a written submission to the Building Department, which includes the length of time being requested and the reason for the delay.

**§ 172A-9 As-built maps and records.**

- A. As-built maps. The operator shall maintain accurate maps and other appropriate records, including an inventory, of its small wireless facilities and wireless support structures as they are actually constructed in the right-of-way or any other Town-owned property. The inventory shall include GIS coordinates, date of installation, type of wireless support structure used for installation, wireless support structure owner/operator and description/type of installation for each small wireless facility and wireless support structure.
  - (1) Inactive facilities: Upon the Building Department's written request, the operator shall provide a cumulative inventory within 30 days of the Building Department's request. Concerning small wireless facilities and wireless support structures that become inactive, the inventory shall include the same information as active installations, in addition to the date the small wireless facility and/or wireless support structure was deactivated and the date the small wireless facility and/or wireless support structure was removed from the Right-of- Way. The Building Department may compare the inventory to its records to identify any discrepancies.

**§ 172A-10 Liability and signal interference.**

- A. No liability. The Town shall not be liable to the operator by reason of inconvenience, annoyance or injury to the small wireless facilities, wireless support structures, and related ground- or pole-mounted

equipment or activities conducted by the operator therefrom, arising from the necessity of repairing any portion of the right-of-way, or from the making of any necessary alteration or improvements in, or to, any portion of the right-of-way, or in, or to, the Town's fixtures, appurtenances or equipment.

- B. Signal interference prohibited. In the event that an operator's small wireless facility interferes with the public safety radio system, or the Town's or State of New York's traffic signal system, then the operator shall, at its cost, immediately cooperate with the Town to either rule out the operator as the interference source or eliminate the interference. Cooperation with the Town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

**§ 172A-11 Requirements for removal, replacement, maintenance and repair.**

- A. Replacement of municipal-owned wireless support structure. When necessary to accommodate small wireless facility, the Building Department may require, in response to an application to co-locate a small wireless facility on a Town-owned wireless support structure, the replacement or modification of the wireless support structure at the operator's cost if the Town determines that replacement or modification is necessary for compliance with construction and safety standards. Such replacement or modification shall conform to this chapter. The Town may retain ownership of the replacement or modified wireless support structure.
- B. Removal or relocation required for Town project. The operator shall remove and relocate the permitted small wireless facility and/or wireless support structure at the operator's sole expense to accommodate construction of a public improvement project by the Town. To the extent possible, the Town will work with the operator to provide an alternate location on either a temporary or permanent basis.
  - (1) Failure to remove upon request: If the operator fails to remove or relocate the small wireless facility and/or wireless support structure or portion thereof as requested by the Town within 120 days of the Town's notice, then the Town shall be entitled to remove the small wireless facility and/or wireless support structure, or portion thereof, at the operator's sole cost and expense, without further notice to the operator.
  - (2) Reimbursement for removal: The operator shall, within 30 days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the small wireless facilities and/or wireless support structure, or portion thereof.
- C. Removal required by Town for safety and imminent danger reasons. The operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure within the time frame and in the manner required by the Town if the Town reasonably determines that the disconnection, removal, or relocation of any part of a small wireless facility and/or wireless support structure is necessary to protect the public health, safety, welfare, or Town property.
  - (1) Imminent danger. If the Town reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure at the operator's sole cost and expense.

- D. Removal/abandonment of facilities. The operator shall remove small cell facilities and/or wireless support structures when such facilities are abandoned, regardless of whether it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the small wireless facility and/or wireless support structure being abandoned, or within 60 days of receipt of written notice from the Town. When the operator abandons permanent structures in the right-of-way, the operator shall notify the Town in writing of such abandonment and shall file with the Town the location and description of each small wireless facility and/or wireless support structure abandoned. Prior to removal, the operator must make application to the Town and receive approval for such removal. The operator must obtain a right-of-way work permit for the removal. The Town may require the operator to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.
- (1) Transfer of ownership: The Town may, at its option, allow a wireless support structure to remain in the right-of-way and coordinate with the owner to transfer ownership of such wireless support structure to the Town, instead of requiring the owner and/or operator to remove such wireless support structure.
- E. Restoration. The operator shall repair any damage to the right-of-way, any facilities located within the right-of-way, and/or the property of any third party resulting from operator's removal or relocation activities (or any other of the operator's activities hereunder) within 10 calendar days following the date of such removal or relocation, at the operator's sole cost and expense. Restoration of the right-of-way and such property must be to substantially the same condition as it was immediately before the date the operator was granted a small wireless permit for the applicable location or did the work at such location (even if the operator did not first obtain a small wireless permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town.

**§ 172A-12 Rulemaking authority.**

The Building Department is hereby authorized to promulgate additional rules and regulations, including but not limited to the adoption of forms and application submittal requirements, to carry out the purpose and intent of this chapter in order to protect the public health, safety and welfare. Such rules, and amendments thereto, shall be consistent with this Town Code, and shall be subject to the approval of the Town Supervisor.

**§ 172A-13 Effect of partial invalidity.**

The provisions of this chapter are hereby declared to be severable, and if any section, subsection, or clause of this chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this chapter that can be given effect.

**§ 172A-14 Failure to comply.**

In addition to any penalties under §TBD, if the operator fails to abide with all provisions of this chapter and obtain all applicable licenses, permits, and certifications, the operator's small wireless permit shall be revoked and the operator, at its sole cost and expense, shall promptly disconnect, remove, and/or relocate its small wireless facility(ies) and/or wireless support structure(s).

**§ 172A-15 Penalties for offenses.**

Violation of any of the provisions of this chapter shall be a violation punishable by a fine of a minimum of \$250 per day and a maximum of \$1,000 per day, or 15 days in jail, or both. Each day that a violation occurs or is permitted to exist by the operator constitutes a separate offense.