

Section 904.05. - Expansion, increase, or change of nonconformities.

- (1) *Generally.* No nonconformity shall be enlarged, increased, or changed to a different nonconformity, except upon a determination by the director of community development or his designee that the change results in lessening of the degree of the nonconformity.
- (2) *Additions to nonconforming structures.* Additions to nonconforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related regulations.
- (3) ***Additions to, and development or re-development of, establishments with site-related nonconformities.***
Additions to, and development or redevelopment of, structures on property with site-related nonconformities, where the structural additions and associated improvements do not warrant the submittal of a major site plan, may be permitted provided that such additions are in conformance with all applicable laws and ordinances of the county, do not create nonconforming uses or structures, and do not increase the degree of the existing site-related nonconformity. Where an addition or redevelopment proposal warrants the submittal of a major site plan application, all site-related nonconformities shall be terminated and brought into compliance with all applicable regulations of the county, with the following exceptions:
 - (a) Site-related nonconformities pertaining to building encroachments into required setback areas, and
 - (b) Site-related nonconformities created by public right-of-way acquisition.
- (4) *Verifying post right-of-way acquisition status.* Nonconformities, including nonconformities on single-family residential sites, created or increased in degree on a site by public right-of-way acquisition may be authorized by the community development director or his designee upon issuance of a letter verifying the post-acquisition legal nonconformity status of the site.
- (5) *Cure plan required for commercial and multi-family sites where impacts of nonconformities created by right-of-way acquisition require mitigation.* Where right-of-way acquisition by a governmental agency such as Indian River County or the State of Florida from a commercial (includes multi-family) site will result in a nonconformity related to setbacks, open space, stormwater management, parking, landscaping, or buffer width, or will result in an increase in the degree of such a nonconformity that existed prior to the acquisition, such nonconformity or increase in the degree of nonconformity shall be allowed upon approval of a "cure plan" site plan.
 - (a) A cure plan site plan shall identify the following:
 1. Site design changes and site improvements necessary to accommodate the right-of-way acquisition and reduce the degree of or mitigate the impacts of nonconformities. Such design changes and improvements may include but are not limited to parking and driveway additions and modifications, pedestrian and hardscape improvements, landscape and buffer plantings, sign relocations and modifications, and stormwater management system changes.
 2. The parties responsible for installing the cure plan improvements, along with timeframes for completion of the changes and improvements.
 - (b) The cure plan site plan shall be accompanied by a document, in a form approved by the county attorney's office, providing written acknowledgment of cure plan related responsibilities by the parties involved in the acquisition.
 - (c) The community development director or his designee is authorized to approve cure plan site plans and may attach approval conditions to reduce the degree of or mitigate the impacts of nonconformities and/or ensure implementation of the cure plan site plan.

These regulations are intended to authorize non-conformities resulting from right-of-way acquisitions and provide for cure plans used in conjunction with the right-of-way acquisition process. These regulations are not intended to create any obligations beyond those obligations addressed in the right-of-way acquisition process.

- (6) *Single-family home non-conformities created by county-initiated rezoning*. For a legally established non-conforming single-family home that became non-conforming due to a county initiated rezoning action occurring after January 1, 1980, a setback non-conformity may be extended for an attached accessory structure such as a screen enclosure provided such extension does not exceed the degree of setback non-conformity of the single-family residence.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 91-23, § 3, 5-15-91; Ord. No. 2012-015, § 1, 7-10-12; Ord. No. 2017-013, § 1, 10-3-17)

Section 971.44. - Utility uses.

- (1) **Non-wireless commercial communications towers seventy (70) feet or more in height (administrative permit and special exception).**

NOTE: Wireless facilities are regulated under section 971.44(5).

The intent of these regulations is to reasonably accommodate telecommunications needs in a non-discriminatory and competitive neutral manner while ensuring safety, appropriate locations of communications towers and antennas, avoiding an unnecessary proliferation of new tower sites, and minimizing negative aesthetic impacts of communications towers and antennas.

Additions (such as antennas or support structures) to existing, legal nonconforming communications towers shall not require special exception use approval unless such additions result in an increase in the original tower height by ten (10) percent or more, as referenced in section 971.05(3), and the increased height requires special exception use approval under the requirements of this section. Where no special exception use approval is required, staff level approval may be granted. (Note: see section 901.03 definition of "communications tower" for limitations applicable to utility poles.)

- (a) Camouflaged commercial communications towers seventy (70) feet to one hundred fifty (150) feet tall: administrative permit use approval is required: no planning and zoning commission review or approval required if associated with a site plan reviewed as an administrative approval or minor site plan. Criteria 2, 4, and 7 as specified in subsection (g) below must be satisfied for approval of any application. Applies in all zoning districts.
- (b) Monopole commercial communications towers seventy (70) feet to one hundred fifty (150) feet tall, structurally designed and built to accommodate at least two (2) users: administrative permit use approval is required. Criteria 1, 2, 4, and 7 as specified in subsection (g) below must be satisfied for approval of any application. Applies in the following districts: A-1, A-2, A-3, PRO, OCR, MED, CL, CG, CH, IL, IG, Con-1, Con-2, and Con-3.
- (c) Commercial communications towers seventy (70) feet to one hundred fifty (150) feet tall not camouflaged and not monopole (with minimum structural capacity for two (2) users):
 1. Within one mile of urban service area: special exception use approval is required. Criteria 1—16 as specified in subsection (g) below must be satisfied for approval of any application. Applies in the following districts: A-1, A-2, A-3, Con-1, PRO, OCR, MED, CN, CL, CG, CH, IL, and IG.
 2. More than one mile from urban service area: administrative permit use approval is required. Criteria 1—16 as specified in subsection (g) below must be satisfied for approval of any application. Applies in the following districts: A-1, A-2, A-3, and Con-1.
- (d) **All commercial communications towers one hundred fifty (150) feet* and taller:** special exception use approval is required. **Criteria 1—17, as specified in subsection (g) below must be satisfied for approval of any application.** Applies in the following districts: A-2, A-3, Con-1, IL, and IG.
- (e) Non-conforming commercial towers may be replaced with a new tower that does not meet the setback standards of criteria (g)1. below if: the degree of setback non-conformity is not increased, the tower is designed for and used by multiple users, and the applicable approval procedures and criteria for the type of tower specified in (a)—(d) above are satisfied.
 1. Commercial communications towers over seventy (70) feet tall may be approved as a special exception use on a publicly owned site in any zoning district, subject to satisfying criteria 1—17 of subsection (g) below, and subject to the following:
 - a. The site shall be twenty (20) acres or larger in size, and
 - b. The proposed tower shall be set back from the nearest boundary of developable private property a distance equal to three hundred (300) percent of the tower height.
- (f) *Additional information requirements:*
 1. Documentation of the possession of any required license by any federal, state or local agency;
 2. A site plan, pursuant to the requirements of Chapter 914;
 3. A map showing the distance from the proposed tower to the closest towers over seventy (70) feet in height located north, south, east, and west of the proposed tower.
 4. Information on how fair market value rates will be determined and applied to other potential users for leasing/renting space on the proposed tower.
 5. Additional requirements relating to towers may also be found in Chapters 911, 912, and 917.
- (g) *The following criteria must be used for administrative permit and special exception uses, as previously specified:*
 1. All towers not related to amateur radio communications use and not constituting a "camouflaged commercial communications tower" shall have setbacks from all property lines or boundaries of development sites (areas of

development) involving more than one property equal to one hundred (100) feet or one hundred (100) percent of the tower height, whichever is greater. In addition, the application shall demonstrate that the tower is to be located a distance more than equal to three hundred (300) percent of the tower height from the nearest residential dwelling (existing or under construction). Said distance shall be measured from the closest point of the tower structure to the closest point of the dwelling.

Towers constituting a "camouflaged commercial communications tower" need satisfy only the building setbacks for the type of structure used or simulated.

2. Towers shall be designed and constructed according to applicable building code wind-loading requirements.
3. The distance of any guy anchorage or similar device shall be at least five (5) feet from any property line.
4. All accessory structures shall be subject to the height restrictions provided in Accessory uses, Chapter 917. Accessory buildings and shelters shall meet the requirements of section 917.06(8)(D).
5. If more than two hundred twenty (220) voltage is necessary for the operation of the facility and is present in a ground grid or in the tower, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter: four (4) inches) the following: "HIGH VOLTAGE - DANGER."
6. No equipment, mobile or immobile, which is not used in direct support of the transmission or relay facility shall be stored or parked on the tower site area of development unless repairs to the facility are being made (applies only on A-1, A-2, or A-3 zoned property).
7. No tower shall be permitted to encroach into or through any established public or private airport approach path as provided in the airport height limitations. All proposed towers shall satisfy the airport zoning ordinance requirements.
8. Suitable protective anti-climb fencing (e.g. eight-foot fencing with barbed wire) and a landscape planting screening shall be provided and maintained around the structure and accessory attachments. One canopy tree (minimum height of twelve (12) feet with six-foot spread at time of planting) and two (2) understory trees (minimum height of eight (8) feet at time of planting) shall be provided for every thirty (30) feet of the tower base/accessory structures' fenced perimeter. Credit shall be given for existing tree located between the tower base perimeter and adjacent areas that are being buffered. The required trees shall be planted in a pattern to maximize screening of the base area of the tower from the view of adjacent road rights-of-way and adjacent residentially designated or residentially used properties, without conflicting with any guy wires. Trees credited or planted to meet this screening requirement shall be located on property under the control of the applicant to ensure that the screening trees are preserved and maintained.
9. All towers shall submit a conceptual tower lighting plan. Louvers or shields may be required as necessary to keep light from shining down on surrounding properties. Where lighting is required by a government agency, dual (day/night) lighting must be used unless otherwise directed by other agencies.
10. For special exception use requests for towers in the urban service area, all property owners within six hundred (600) feet of the property boundary shall receive written notice via certified mail. For towers outside the urban service area, all property owners within one-half (½) mile of the tower site shall be notified, as follows: certified mail to owners of property within the first six hundred (600) feet, regular mail to the remainder.
11. Applicants shall justify in writing why no other existing tower or other potential collocation facility within the "accepted search area," as defined below, could be used to meet the applicant's transmitting/receiving needs. An application may be denied if the justification does not show the use or an existing tower or potential collocation facility within the "accepted search area" is not feasible. The written justification shall include the following:
 - (a) A scaled map showing the "acceptable search area." Said area shall be one hundred fifty (150) percent of the search area radius of the proposed facility, which shall be demonstrated based on radio-frequency information (including field data) and specifications, antenna height, terrain, and proposed telecommunications service.
 - (b) Said scaled map (see (a), above), shall show the location, height, and users of the following: existing, approved, and proposed tower sites and potential collocation sites (e.g. transmission pole corridors, ballfield lighting facilities, steeples, water towers, silos, and other tall structures).
 - (c) A countywide map showing the general location of the applicant's existing facilities and tentative five-year location plan for future facilities.
 - (d) For each existing, approved, and proposed facility mapped under (b), above, a written explanation of why such facility cannot be used. Justifiable reasons may include owner rejection. Reasons given that involve inadequate height, inadequate space or structural capacity and radio-frequency interference shall include an explanation of why structural

modifications that could overcome such problems are not feasible; any such reasons shall be reviewed by a county engineering consultant, as referenced in (e) and (f) below.

- (e) Submittal of a fee established by resolution of the board of county commissioners, separate from site plan and special exception review fees, to cover the county's costs of hiring an engineering consultant to review the written justification, where a county consultant review is required under subsection (d), above.
- (f) Within ten (10) working days of receiving a written justification that requires county consultant review, the county's engineering consultant shall submit to county staff written comments regarding the applicant's justification and reasons.

Prior to scheduling the tower application for planning and zoning commission consideration, the county shall obtain from a hired engineering consultant review comments on the applicant's justification. The county's consultant shall present said comments to the planning and zoning commission, (and to the board of county commissioners for applications to be considered by the board), and said comments and presentation shall be considered in the county's decision on the tower application.

12. Applicants shall provide notice of the proposed tower to potential users.

- (a) At least forty-five (45) days prior to planning and zoning commission consideration of an application, the applicant shall send a notice by certified mail to all known potential tower users, as specified by the planning division. Said notice shall provide tower technical specifications, location, height, and an invitation to respond within twenty (20) days to both the applicant and planning division if co-use of the tower is desired. Said notice shall also include the phone number, facsimile number, and address of the applicant's contact person and the planning division. Respondents shall provide the applicant and the planning division with the name and phone number of a contact person who has authority to negotiate co-location arrangements. "Technical tower specification" shall include the following:

- Structural capacity characteristics of the tower
- Output frequency and modulation characteristics of all proposed users
- Manufacturer, type, model number, radiation diagram, and manufacturers specifications of all proposed antennas
- Site elevation and antenna height range (maximum and minimum heights above ground level)
- A list of proposed accessory buildings and available equipment space on-site or within proposed buildings

- (b) Within fifteen (15) days of receiving a timely response from an interested potential co-user, the applicant shall inform the respondent and the planning division in writing as to whether or not the co-use is acceptable and under what conditions. If the co-use is not acceptable, then the applicant must provide the respondent and the planning division written justification as to why the co-use is not feasible.

13. Towers shall be designed to accommodate multiple users, as follows:

- Lattice towers shall be engineered and constructed to accommodate a minimum of three (3) users.
- Monopole towers may be engineered and constructed to accommodate a single user.
- Camouflaged towers may be engineered and constructed to accommodate a single user.

14. A condition of approval for any tower application shall be that the tower shall be available, at market rate costs, for other parties and interests. This shall be acknowledged in a written agreement between the applicant and the county, on a form acceptable to the county, that will run with the land. Said notice shall be recorded in the Indian River County public records, at the applicant's expense.

15. If the use of a non-camouflaged tower is abandoned for more than twelve (12) consecutive months, then the tower shall be dismantled and removed from the site.

- (a) Prior to release of an approved tower site plan, the property owner shall acknowledge in writing, in a manner acceptable to the county attorney's office, his or her responsibilities as the property owner to perform or contract to perform and pay all costs associated with dismantling and properly removing and disposing of an abandoned tower.

16. Except where superseded by applicable state or federal regulations, non-camouflaged towers shall be painted or constructed in neutral color (e.g. non-contrasting gray or blue) to blend into the surrounding environment.

17. Except for the exemptions cited below, non-camouflaged towers over one hundred fifty (150) feet tall shall be separated as follows:

- a. Proposed lattice towers over one hundred fifty (150) feet in height shall be separated a distance of at least five thousand (5) approved lattice towers over one hundred fifty (150) feet in height, and at least one thousand five hundred (1,500) feet from non-lattice towers (over one hundred fifty (150) feet in height).
- b. Proposed non-lattice towers over one hundred fifty (150) feet in height shall be separated a distance of at least one thousand five hundred (1,500) feet from existing and approved non-camouflaged towers over one hundred fifty (150) feet in height.

Exemptions.

Tower applications shall be exempt from the separation distance requirements specified above, as follows:

- (1) Where the tower is proposed to be located more than two thousand five hundred (2,500) feet from any public road and from any existing residence; or
- (2) Where the applicant can demonstrate that applying the separation distance criteria to his or her application would result in a net increase in the number of communications towers needed.
- (3) Where the tower is proposed to be clustered with another tower(s) by being located no more than two hundred (200) feet from the tower(s) within the cluster.