

TOWN OF FALMOUTH, MAINE

REQUEST FOR CONDITIONAL REZONING APPROVAL
TO INCREASE THE HEIGHT
OF AN EXISTING
TIER II PERSONAL WIRELESS SERVICE FACILITY
LOCATED AT
356 US RTE 1, FALMOUTH, ME

PROPOSAL BY
AT&T MOBILITY

EXHIBIT #3

ZONING AND SITE PLAN
REVIEW ORDINANCE
§3.12
CONDITIONAL REZONING

SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

3.11 "OSRD" - Open Space Residential District [Adopted, 3/27/89] [Repealed 6/19/06]

3.12 Conditional Rezoning [Adopted, 7/23/90]

On occasion, general zoning district designations and traditional zoning methods are inadequate to fully deal with the unusual nature or unique location of specific proposals for development. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas.

To achieve this flexibility, conditional rezoning is hereby adopted pursuant to authority granted under Title 30-A, M.R.S.A., § 4352. Conditional rezoning imposes stricter and more individualized restrictions on development than those imposed by the general zoning standards in order to mitigate potential negative impacts on subject, abutting, and nearby properties caused by the rezoning.

Such rezonings may also permit development that is more consistent with the growth management objectives of the Town.

All conditional rezonings by the Town Council must: 1) be consistent with the Comprehensive Plan and the Open Space Plan; 2) establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and 3) only include restrictions which relate to the physical development or operation of the property.

3.12.1 Requests for conditional rezoning shall be submitted in writing to the Town Council with a fee as established by the Town Council. Upon receipt of a request for conditional rezoning, the Town Council may adopt an order referring the request to the Planning Board for review and recommendation. The Town Council shall conduct at least one public hearing before any property is rezoned under this subsection. Notice of the hearing shall be posted in the Town Hall at least fourteen (14) days before the public hearing and shall be published in a newspaper of general circulation at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. Notice shall also be sent to the owners of all abutting property at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

3.12.2 All development and use of rezoned property must comply with the performance standards of this Ordinance and with the use and spatial requirements of the zoning district in which the rezoned property is placed. Conditions imposed by the Town Council may be more restrictive, but not less restrictive, than the applicable requirements of this Ordinance. Conditions and restrictions shall relate to the physical development or operation of the property and may include, without limitation, the following:

- a. Limitations on the number and types of permitted and conditional uses, and re-designation of permitted to conditional uses and vice versa.
- b. Restrictions on the scale and density of development, and on the days and hours of operation.

SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

- c. Specifications for the design and layout of buildings or other improvements, including landscaping.
- d. Schedules for commencement and completion of construction.
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.
- f. Preservation of open space and buffers, and protection of natural areas and historic sites.
- g. Provisions for reservation or dedication of land for public purposes.
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning.
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

3.12.3 Preliminary site plan or subdivision review must be completed before the Town Council conducts its final hearing and takes final action to approve the request for rezoning. The Planning Board may conduct the preliminary site plan or subdivision review concurrently with Council review of the request for rezoning.

3.12.4 If the Town Council rezones the proposed property under this section, the conditions, uses, and standards shall remain in effect unless and until such time as:

- a. one hundred and eighty (180) days pass without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is necessary due to required local, state, or federal permits or approvals;
- b. the Planning Board denies the request for final site plan or subdivision approval based upon the criteria and standards of those ordinances; or
- c. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded. The Council may also initiate said rescinding if it is determined to be in the public interest.