

# **AMERICAN TOWERS LLC**

## CONDITIONAL USE PERMIT & SITE PLAN APPLICATION (CUP# 02-21; SP#01-21)

### **STAFF REPORT**

March 17, 2021

**SITE:** 143 Dracut Road; Map 259 Lot 011-000

**ZONING:** General-One (G-1), Residential-Two (R-2)\*

\*Besides a new access easement to access the new radio tower, no development is proposed on the portion of the property within the R-2 zone

**PURPOSE OF PLANS:** Proposed 155-foot camouflaged “monopine” tower with T-Mobile antennas, associated 48’ x 48’ fenced ground area for carrier equipment with access from Dracut Road over existing paved driveway to proposed crushed stone driveway to the locked entrance gate and underground utilities.

**PLANS UNDER REVIEW:** “SITE NAMES: HUDSON 3 NH, SITE NUMBER: 202096, SITE ADDRESS: 143 DRACUT ROAD, HUDSON, NH 33011”; prepared by American Tower, 3500 Regency Parkway Suite 100, Cary, NC 27518; consisting of 17 sheets, with project notes 1-5 on Sheet G-001, additional general notes on Sheet G-002 and Sheet V-201; dated November 9, 2020.

### **ATTACHMENTS:**

- A. Peer Review Comments (on third submissions of materials) by Fuss & O’Neill, dated March 3, 2021.
- B. Excerpt from previous Development Agreement entered into on December 29, 2017.

### **APPLICATION TRACKING:**

- February 12, 2021 – Conditional Use Permit & Site Plan Application received.
- March 17, 2021 – Meeting scheduled.

### **WAVIER REQUESTS:**

- §275-9.A – Stormwater Management Plan
- §275-9.B – Traffic Study
- §275-9.C – Noise Study
- §275-9.D – Fiscal Impact Study
- §275-9.G – Copy of all applicable Town, state, country or federal approvals or permits
- §275-9.I – Environmental Impact Study
- §276-11.1.B(12) – Location of Building Setback Lines

- §276-11.1.B(17) – Existing Topography
- §276-11.1.B(20) – Location of all Existing Buildings (including size and height)
- §276-11.1.B(25) – Access Road within side yard setbacks
- §290-7 – Stormwater Management Plan

## COMMENTS & RECOMMENDATIONS:

### BACKGROUND

A single-family house with a swimming pool, landscaped yards, and a paved driveway currently occupy the portion of the lot closest to Dracut Road (also the majority of the lot that lies within the R-2 district). Immediately beyond the house and the R-2 district are three accessory buildings (a 1-story framed building and two metal-clad detached garages), alongside a gravel extension to the aforementioned paved driveway that leads to the accessory buildings.

The lot extends much further beyond these buildings and, about halfway down the length of the lot, widens behind the abutting lot to the North. Except around the “neck” where the lot widens, the undeveloped portion of the lot is largely clear of tall trees. However, various wetlands have been delineated at the rear portion of the lot. There are also several notable dirt piles in the rear portion of the lot.

The proposed development will take place within the area between the accessory buildings to the “neck” where the lot widens: a 155-foot camouflaged “monopine” tower alongside a 48’ x 48’ fenced ground area around the tower, and a new gravel driveway with a ditch that will replace the existing gravel driveway extension and connect to the tower location.

The tower location is sited with a 68’ radius fall zone that stays within the lot. No development is proposed on the existing wetlands.

### STAFF COMMENTS

**Summary:** The proposed tower development meets the dimensional requirements but requires a conditional use permit. Both the staff and town’s peer reviewer had identified various issues that the applicant should address before the Planning Board decides on granting the conditional use permit.

Most notably, the applicant should provide evidence that there are no co-location opportunities that might preclude the need for the new tower and fall zone calculations. Furthermore, the applicant should also resolve and/or adequately address other issues relating to the submitted plan as identified by the town’s peer reviewer. Lastly, the Planning Board will have to set appropriate bonding security for the proposed tower.

### **On Conditional Use Permit**

1. **Use (§334-21, Article IX):** The proposed use is classified under “Wireless communications facility, per Article XVIII, §§ 334-91 – 334-107” and, as noted, is

subjected to the provisions under Article XVIII, Commercial Wireless Telecommunication, Radio Service and Receive-Only Facilities.

The existing single-family residence will remain and constitutes a different use. Multiple or mixed uses on a single lot typically require a Special Exception from the Zoning Board of Appeals per §334-10(A)(2)(D); however, with wireless communications facility, this is preempted by §334-95(A) under Article XVIII.

2. **Article XVIII:**

- a. **Districts where conditionally permitted (§334-96):** Staff identifies the proposed tower as “Monopole +1000, +5xCOR, -5xRES” under the Table of Conditionally Permitted Facilities, and therefore conditionally permitted.
- b. **Conditional Use Permit Criteria:** According to §334-96.2, “the Planning Board shall determine the applicant has satisfied the general guidelines set forth in §334-92 and the siting standards set for in §334-95, and the Board may impose such conditions of approval on the conditional use permit as are consistent with this Article XVIII and other provisions of the Hudson Zoning Ordinance.”
- c. **Antenna and master height (§334-101):** The proposed tower with a 155-foot mast and four antenna arrays situated between 121’ and 151’, complies with the maximum height of 180’.
- d. **Fall Zone Calculation (§334-102):** The fall zone calculation chart attached to the Ordinance is not helpful. Not only are the chart’s axis not labeled, but the height of the proposed tower also exceeds the range of parameters on the chart. Instead of using the chart for the calculation, staff suggest the Planning Board to ascertain, through a consultant if necessary, that:
  - i. The proposed tower will not be capable of falling or collapsing beyond the bounds of the property on which it is situated
  - ii. The low point of height at which the basis of any fall zone analysis shall be the ground attachment point of the mast
  - iii. The proposed tower, comprising of antennas and mast, shall be assembled and erected to the manufacturer’s standards using sound practices
  - iv. In addition to the requirement of §334-102: The proposed tower will not be capable of failing or collapsing on any on-site structures currently used for or intended for human occupancy.

Note: Peer Review Comments by Fuss & O’Neill dated March 3, 2021, notes that the applicant had not provided the required fall zone calculation for their review.

- e. **Bonding security and insurance (334-97):** The applicant had submitted a “Removal Cost Estimate Letter” as part of the application. The Planning Board

should examine the estimates and set an appropriate bonding security amount for the removal and disposal cost, in the event that the tower is abandoned and the owner is incapable and/or unwilling to remove the tower.

### **On Site Plan**

3. The applicant is requesting the Planning Board to waive a series of site plan review and administrative requirements. Several of these requests, related to various studies, are not necessary unless the Planning Board requires the studies for the application. Those are:
  - §275-9.A – Stormwater Management Plan
  - §275-9.B – Traffic Study
  - §275-9.C – Noise Study
  - §275-9.D – Fiscal Impact Study
  - §275-9.I – Environmental Impact Study
  - §290-7 – Stormwater Management Plan
  
4. Other waivers requested for the Board's consideration include:
  - §275-9.G – Copy of all applicable Town, state, country or federal approvals or permits
  - §276-11.1.B(12) – Location of Building Setback Lines
  - §276-11.1.B(17) – Existing Topography
  - §276-11.1.B(20) – Location of all Existing Buildings (including size and height)
  - §276-11.1.B(25) – Access Road within side yard setbacks

### **PEER REVIEW**

Staff summarized the unresolved issues identified in the Peer Review Comments by Fuss & O'Neill dated March 3, 2021 (**Attachment A**) into the following list. Staff recommends the Planning Board to ascertain these issues would be resolved and/or adequately addressed by the applicant.

1. Revised Easement Document that reflected on the new tower and access road location
2. Missing approval blocks and approval blocks that do not meet requirements
3. Error of closure on the revised plans (not noted)
4. Snow storage areas not noted
5. Driveway design concerns about slope on each side of the road crown
6. Sizing calculations for the proposed rip-rap not provided
7. MS4 permit requirements
8. Staging and stockpile areas not shown for erosion control/wetland impacts
9. Wetlands boundaries certification not provided

- 10. Required fall zone calculation not provided
- 11. Printed drawings not to stated scale
- 12. Title Block on plans does not meet regulation
- 13. Verify abutters' information are up-to-date
- 14. Zoning Ordinance referenced for the Special Exception (334-31.D.24) appears to be incorrect
- 15. Sizes for signs other than the ATC site sign not indicated

**DEPARTMENTAL COMMENTS**

- 1. Town Engineer (February 12, 2021)
  - a. Applicant shall provide drainage report demonstrating that it meets pre vs post conditions. Currently there are no drainage treatment or storage shown
  - b. Applicant shall provide a structural report, stamped by a licensed structural engineer in NH, which demonstrates the fall radius of this structure at 68 feet.
- 2. DPW (February 12, 2021): No comments
- 3. Chief Assessor (February 16, 2021): No comments
- 4. Police (February 18, 2021): The Police Department has inquired about the possibility of installing a repeater for their radio system on the tower.

**PREVIOUS APPROVAL**

A previous approval was granted for a tower at this site, and a development agreement was signed on December 29, 2017. It is staff's understanding that the location of the tower as previously approved was problematic due to driveway grading and potential environmental contaminants. **Attachment B** shows the conditions of the previous approval.

**DRAFT MOTIONS**

**ACCEPT the site plan & conditional use permit application:**

I move to accept the site plan & conditional use permit application for Americans Towers LLC at 143 Dracut Road, Map 259 Lot 11.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

*[If the Board needs more information, move to **defer** the application and indicate why]*

**CONTINUE the public hearing to a date certain:**

I move to continue the public hearing for the site plan & conditional use permit application for Americans Towers LLC at 143 Dracut Road, Map 259 Lot 11, to date certain, \_\_\_\_\_.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

*[If the Board needs more time to deliberate, move to **continue** the hearing]*

**GRANT a waiver:**

I move to grant a waiver from §275-9.G – Copy of all applicable Town, state, country or federal approvals or permits, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**GRANT a waiver:**

I move to grant a waiver from §276-11.1.B(12) – Location of Building Setback Lines, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**GRANT a waiver:**

I move to grant a waiver from §276-11.1.B(17) – Existing Topography, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**GRANT a waiver:**

I move to grant a waiver from §276-11.1.B(20) – Location of all Existing Buildings (including size and height), based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**GRANT a waiver:**

I move to grant a waiver from §276-11.1.B(25) – Access Road within side yard setbacks, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**APPROVE the site plan application:**

I move to approve the Commercial Wireless Telecommunication Facility Conditional Use Permit & Site Plan application titled "SITE NAMES: HUDSON 3 NH, SITE NUMBER: 202096, SITE ADDRESS: 143 DRACUT ROAD, HUDSON, NH 33011"; prepared by American Tower, 3500 Regency Parkway Suite 100, Cary, NC 27518; consisting of 17 sheets, with project notes 1-5 on Sheet G-001, additional general notes on Sheet G-002 and Sheet V-201; dated November 9, 2020; subject to, and revised per, the following stipulations:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the HCRD, together with the Plan.
2. Prior to the issuance of a final certificate of occupancy, a L.L.S. certified "As-Built" plan shall be provided to the Town of Hudson Land Use Division confirming that the site conforms to the Plan.
3. Final administrative review by Town Planner and Town Engineer.
4. Construction activities involving the approved plan shall be limited to the hours between 7:00 A.M. and 7:00 P.M., Monday through Saturday. No exterior construction activities shall occur on Sunday.
5. The applicant shall schedule a pre-construction meeting with the Town Engineer prior to applying for a building permit.
6. This approval shall replace any previously approved site plans and development agreements.
7. The Applicant, as well as all future assigns to the subject wireless tower, shall provide access to the tower for Town emergency service communications needs.
8. The Applicant, as well as all future assigns to the subject wireless tower, shall provide access for co-location as availability provides.
9. If a back-up generator is installed, on suite testing of same will only occur Monday through Friday only, between the hours of 7:00 A.M and 5:00 P.M.
10. The applicant shall provide the town with a bond in accordance with §334-97 in an amount approved by the Town Engineer.



March 3, 2021

Mr. Brian Groth  
Town Planner  
Town of Hudson  
12 School Street  
Hudson, NH 03051

Re: Town of Hudson Planning Board Review  
American Tower Site Plan, 143 Dracut Road  
Tax Map 259, Lot 11; Acct. #1350-893  
Reference No. 03-0249.1990

Dear Mr. Groth:

Fuss & O'Neill (F&O) has reviewed the third submission of the materials received on February 15, 2021, related to the above-referenced project. Authorization to proceed was received on February 16, 2021. A list of items reviewed is enclosed. The scope of our review is based on the Site Plan Review Codes, Stormwater Codes, Driveway Review Codes, Sewer Use Ordinance 77, Zoning Regulations, and criteria outlined in the CLD Consulting Engineers Proposal approved September 16, 2003, revised September 20, 2004, June 4, 2007, September 3, 2008, and October 2015.

The phased project appears to consist of the construction of a telecommunications tower, gravel access road, underground utilities, landscaping and other associated site improvements. It is not noted whether the existing buildings on the site are serviced by Town water and sewer. The plan notes that the proposed tower compound does not need water or sewer services.

We note that previous reviews of the proposed site plan were performed in May and July of 2017. This current review letter addresses outstanding comments from those reviews as well as provides new review comments. For clarity/brevity we have deleted any previously addressed or closed comments. A copy of our review letter dated July 25, 2017, has been attached for reference.

The following items have outstanding issues:

**1. Site Plan Review Codes (HR 275) & Administrative Review Codes (HR 276)**

- f. *Former Fuss & O'Neill Comments: HR 275-9.F. and 276-11.1.B.(20). No existing easements, covenants or deed restrictions were noted on the plan set nor were copies of the same received as part of the review package. The plans note a proposed access and utility easement for the access road and lease for the communications tower area, a copy of which was included in the application package. / The applicant has shown a proposed access easement on the plans and forwarded a copy of an existing slope and embankment easement. The applicant noted that the existing easement is depicted on Sheet V-102; however, we were unable to find the easement on the plan.*

**Current Fuss & O'Neill Comment:** The applicant has revised the access easement for the new tower location. Revised easement documents were not provided for review.

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- j. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(4)(a). The approval block on the plans does not meet the Regulation for location, size, or wording.*

**Current Fuss & O'Neill Comment:** The applicant has added an approval block to the plans that meets the Regulation. We note that there is a typographical error within the approval block (“recieves”) that should be corrected.

- k. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(4)(b). The approval block is only located on the cover sheet, not each plan sheet as required by Regulation. / The applicant has added the approval block to all plan sheets except Compound Detail sheet V-101 and Existing Conditions sheet V-102.*

**Current Fuss & O'Neill Comment:** The applicant continues to show the approval block on select sheets. The approval block is missing from sheets G-002, C-501-503, E-501 and R-601.

- l. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(5). The applicant has not provided the approval block language regarding expiration of approval as required by the Regulation. / The applicant has added the expiration of approval language to all of the plan sheets except Compound Detail sheet V-101 and Existing Conditions Sheet V-102. The note is not written in the specified two inch by one and one-half inch space (2"×1-1/2").*

**Current Fuss & O'Neill Comment:** The applicant continues to show the expiration of approval language block that does not meet the size required and also is not on every plan sheet.

- q. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(9). The applicant has not noted the error of closure on the plans. / The applicant has noted the error of closure on the plans. No further Fuss & O'Neill comment.*

**Current Fuss & O'Neill Comment:** The applicant has not noted the error of closure on the revised plans.

- y. *Former Fuss & O'Neill Comment: 290.5.K.(22). Snow storage areas are not noted on the plans. / The applicant has added snow storage areas on the plans. No further Fuss & O'Neill comment.*

**Current Fuss & O'Neill Comment:** Snow storage areas are not noted on the current plan set.

## 2. Driveway Review Codes (HR 275-8.B. (34)/Chapter 193)

- e. **New Fuss & O'Neill Comment:** The applicant has proposed a 4% slope on each side of the crown of the access road. As this is an unpaved roadway the applicant may want to consider lesser slopes to prevent potential rutting and washout of the gravel surface.

## 4. Drainage Design/Stormwater Management (HR 275-9.A./Chapter 290)

- b. *Former Fuss & O'Neill Comment: HR 290-5.L. The applicant should provide rip-rap stone size information for what is labelled “R3 Rip Rap” upon the plan set, plus include any supporting calculations illustrating that the stone size is adequate for the proposed flow. / The applicant has noted that the R3 Rip Rap size is indicated on Plan Sheet C-501 and is typically 3”-6” stone. We continue to recommend that the specific size be added to the plan set.*

**Current Fuss & O'Neill Comment:** The applicant has added a detail with zoning information to the plan set. We note that no sizing calculations were provided for review.

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- d. **New Fuss & O'Neill Comment:** The applicant will be required to comply with all provisions of the Town of Hudson's MS4 permit, including but not limited to annual reporting requirements, construction site stormwater runoff control, and record keeping requirements.
- e. **New Fuss & O'Neill Comment:** Please note that this review was carried out in accordance with applicable regulations and standards in place in New Hampshire at this time. Note that conditions at the site, including average weather conditions, patterns and trends, and design storm characteristics, may change in the future. In addition, future changes in federal, state or local laws, rules or regulations, or in generally accepted scientific or industry information concerning environmental, atmospheric and geotechnical conditions and developments may affect the information and conclusions set forth in this review. In no way shall Fuss & O'Neill be liable for any of these changed conditions that may impact the review, regardless of the source of or reason for such changed conditions. Other than as described herein, no other investigation or analysis has been requested by the Client or performed by Fuss & O'Neill in preparing this review.

#### 5. Erosion Control/Wetland Impacts

- a. *Former Fuss & O'Neill Comments: HR 290-5.K.(14). The applicant has not shown a staging or stockpile area. Associated erosion control measures should be indicated for these locations. / The applicant has noted that the snow storage areas noted on the plans will also be used as staging areas and stockpiles during construction. Associated erosion controls were not included on the Erosion & Sedimentation Control Plan that shows these snow storage/stockpile areas.*

**Current Fuss & O'Neill Comment:** The applicant has not shown staging and stockpile areas during construction on the revised plan set.

#### 6. Zoning (ZO 334)

- e. *Former Fuss & O'Neill Comment: ZO 334-35. The applicant has not shown any existing wetlands within the subject site on the plans. Soil boundaries are not shown for the entire parcel.*

**Current Fuss & O'Neill Comment:** The applicant has added wetlands boundaries to the plan set along with the 50' wetlands buffer line. The applicant has not indicated on the plans that the wetlands were delineated by a certified soils scientist and/or certified wetlands scientist. The tower compound was relocated to be outside the wetlands buffer. We were unable to find any additional soil boundary data in the latest submittal.

- j. *Former Fuss & O'Neill Comments: ZO 334-102. The applicant has not provided a fall zone calculation with the review package as required by the Regulation. / The applicant has added a fall zone radius to plan Sheet C-401. We noted that the center of the 155' monopole is shown as 154' +/- from the southern property line of the site on Sheet C-101 (the property line is not shown in this proximity on Sheet C-401). The applicant should review the monopole location and provide an actual fall zone calculation to ensure that it is not capable of falling or collapsing beyond the bounds of the property on which it is situated.*

**Current Fuss & O'Neill Comment:** The applicant has relocated the tower and fall zone from the previous plan location. We note that the applicant provided a copy of Zoning

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Determination #20-039 letter dated April 29, 2020, which states that the proposal would appear to satisfy the required fall zone per Ordinance Section 334-102A based on engineering details that were not submitted at that time. We note that the plan submitted for Fuss & O'Neill review does not match the date of the plan referenced in the letter from the Town. We also note that a fall zone calculation as described in Ordinance Section 334-102.A was not provided to Fuss & O'Neill as part of the structural design report. Fuss & O'Neill will coordinate with the Town for a review of this structural design report under a separate letter.

## 9. Other

- d. **New Fuss & O'Neill Comment:** The applicant has provided both full size (22" x 34") and half size (11" x 17") copies of the project plan set. When measured with a scale, the written scales included in both sized plan sets do not actually agree with the values noted. The applicant should review and adjust the scales or the printed plans accordingly to prevent potential errors during construction.

The following items require Town evaluation or input:

### 1. Site Plan Review Codes (HR 275) & Administrative Review Codes (HR 276)

- c. *Former Fuss & O'Neill Comment:* HR 275-9.B. *The applicant did not include a Traffic Study within the Site Plan Application nor was a waiver from this Regulation included in the package received for review.*  
**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.
- d. *Former Fuss & O'Neill Comment:* HR 275-9.C. *The applicant did not include a Noise Study within the Site Plan Application nor was a waiver from this Regulation included in the package received for review.*  
**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.
- e. *Former Fuss & O'Neill Comment:* HR 275-9.D. *The applicant did not include a Fiscal Impact Study within the Site Plan Application nor was a waiver from this Regulation included in the package received for review.*  
**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.
- g. *Former Fuss & O'Neill Comment:* HR 275-9.G. *No copies of applicable approvals or permits were provided in Fuss & O'Neill's review package. / The applicant appears to have requested a waiver from this Regulation. We suggest that the applicant clarify the intent of the waiver request.*  
**Current Fuss & O'Neill Comment:** The applicant has requested a waiver for this requirement.
- h. *Former Fuss & O'Neill Comment:* HR 275-9.I. *The applicant did not include an Environmental Impact Study within the Site Plan Application.*  
**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.

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- i. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(3). The title block provided on the plans does not meet the Regulation.*

**Current Fuss & O'Neill Comment:** The applicant has noted that the title block indicates all necessary information requested. The Town should confirm that they are satisfied with the applicant's presentation of the data.

- m. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(6). The Owner's signature is not included on the plan set.*

**Current Fuss & O'Neill Comment:** The applicant has added a block with the Owner's name and address along with a line for the Landlord's signature to the plans, and has noted that each sheet will be signed before project commencement.

- n. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(7). The applicant has noted several abutters as "unknown".*

**Current Fuss & O'Neill Comment:** The applicant has noted that abutters have been updated as necessary. Fuss & O'Neill did not verify the five-day update criteria.

- s. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(12). The applicant has not shown any building setback lines on the plans. / The applicant has added building setback lines to the plans; however, the front setback line is shown at 30'. This should be 50' as Dracut Road is considered an Arterial road per ZO 334-11.A. Also, the applicant appears to have requested a waiver from this Regulation (the waiver request does not note this specific Regulation).*

**Current Fuss & O'Neill Comment:** The applicant has added the 50' building setback lines to the plans and has requested a waiver from this Regulation since they are not proposing construction of a building, parking or display areas.

- t. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(17). The applicant has not shown permanent monuments for the parcel boundaries on the plan set.*

**Current Fuss & O'Neill Comment:** Permanent monumentation (property corner pins or bounds) is not shown at most of the property corners, including the lot corners at Dracut Road. The applicant has requested a waiver from this Regulation.

- u. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(20). The applicant has not shown the height of existing buildings on the plan set. / The applicant has noted that existing building heights were not available at the time of review. Heights have been added to the plan set for all of the existing buildings except for the 1-story frame building.*

**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.

- x. *Former Fuss & O'Neill Comment: HR 276-11.1.B.(25). The applicant has proposed construction of the access road within the side setback adjacent to parcel 254-3.*

**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.

#### 4. Drainage Design/Stormwater Management (HR 275-9.A./Chapter 290)

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- a. *Former Fuss & O'Neill Comment: HR 290-5.L. The applicant did not include a Stormwater Management Plan with the review package, nor was a waiver request included in the package received for review.*

**Current Fuss & O'Neill Comment:** The applicant has requested a waiver from this Regulation.

## 6. Zoning (ZO 334)

- a. *Former Fuss & O'Neill Comment: ZO 334-17, 334-20 and 334-23. The applicant has noted that the portion of the site where the telecommunications tower is located is within the General-1 (G-1) District, while the overall site is bisected with district R-2 also. The plans do not show the R-2/G-1 District boundary. According to ZO 334, Attachment 1, the proposed use requires a Special Exception in the G-1 District.*

**Current Fuss & O'Neill Comment:** The applicant has added a zoning boundary line to the plan set. In their narrative to support the Conditional Use Permit and Site Plan approval, the applicant has noted that they have separately filed an application for Special Exception with the Hudson Zoning Board of Adjustment, and noted that a wireless communications facility is an allowed use by Special Exception. We note that the Zoning Ordinance referenced for the Special Exception (334-31.D.24) appears to be incorrect.

- f. *Former Fuss & O'Neill Comment: ZO 334-57. The applicant has provided details for fence mounted signs. It is noted that the actual sizes of the signs were not indicated on the details. No other signs are proposed.*

**Current Fuss & O'Neill Comment:** The applicant has provided the size for the ATC site sign. Other sign sizes are not indicated.

- i. *Former Fuss & O'Neill Comments: ZO 334-96.1. The proposed tower location is greater than 880' from any corridor, but is within 880' of residential use. Based on the table in the Regulation, for the G-1 zoning district a Conditional Use permit is required. / The applicant has noted that they will get a Conditional Use permit. No further documentation or explanation was provided.*

**Current Fuss & O'Neill Comment:** The applicant has provided a copy of their application for Conditional Use Permit and Site Plan Approval with the current review documents. The CUP application appears to be address the various related sections of the Ordinance. Please note that Fuss & O'Neill did not perform a detailed review of the CUP documents such as radio frequency reporting, photographic simulations or the real estate market study.

## 8. State and Local Permits (HR 275-9.G.)

- a. **Former/Current Fuss & O'Neill Comment:** *The applicant should forward copies of all documentation related to any permitting for the facility to the Town for their records.*

The following items are resolved or have no further Fuss & O'Neill input:

## 1. Site Plan Review Codes (HR 275) & Administrative Review Codes (HR 276)

- o. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(8). The applicant has provided a location plan on the cover sheet. The plan does not include a scale and is not very legible. Another plan sheet includes a vicinity map at 1:2000 scale. / The applicant has provided a more legible location plan on the cover sheet. A scale for this plan is not noted. The applicant has directed use of the Vicinity Map on Sheet V-101 to*



Mr. Brian Groth

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*meet the requirement; however, the scale of the Vicinity Map on Sheet V-101 does not meet the Regulation (1:1000 scale).*

Current Fuss & O'Neill Comment: The applicant has revised the scale of the Vicinity Map. No further Fuss & O'Neill comment.

- w. *Former Fuss & O'Neill Comments: HR 276-11.1.B.(24). The applicant has not provided open space lot coverage calculations. / The applicant has added lot coverage notes to plan sheet C-101, but has not provided the corresponding coverage percentages.*

Current Fuss & O'Neill Comment: The applicant has added lot coverage notes to plan sheet C-101 with the corresponding coverage percentages. No further Fuss & O'Neill comment.

## **2. Driveway Review Codes (HR 275-8.B.(10) and (34)/Chapter 193)**

- b. *Former Fuss & O'Neill Comment: HR 193.10.C. The applicant has proposed a steeply sloped driveway extension to access the telecommunications facility. The driveway design includes very low crest and sag K values, and includes a short grade break at the bottom of the slope at the approach to the facility. The turnaround provided does not appear to be adequate for a small fire engine to turn around. If there is a possibility of Hudson Emergency Services needing to respond to this area, we suggest that adequate turnaround facilities be provided. / The applicant has noted that their design takes into account a maximum speed of 10 MPH on the road which allows for lower K values. The applicant has also modified the turn-around at the tower compound to allow a small fire engine to maneuver. The Town should confirm they are comfortable with the design.*

Current Fuss & O'Neill Comment: The applicant has revised the tower and driveway location which has removed the lower k value and steep slope. No further Fuss & O'Neill comment.

## **4. Drainage Design/Stormwater Management (HR 275-9.A./Chapter 290)**

- c. *Former Fuss & O'Neill Comment: HR 290-5.L. The applicant should note how much flow is anticipated for the level spreader. / The applicant has removed the level spreader from the plans due to the flow being "fairly miniscule" (0.71 cfs as noted on the plans). Calculations were not provided that supported this assessment.*

Current Fuss & O'Neill Comment: The applicant has revised the location of the tower and driveway location. No further Fuss & O'Neill comment.

## **5. Erosion Control/Wetland Impacts**

- b. *Former Fuss & O'Neill Comments: HR 290-5.K.(20). The applicant has not shown any proposed erosion controls other than a rock construction entrance. The need for items such as silt fence and erosion control blankets for steep slopes should be clearly illustrated on the plans. / The applicant has added an Erosion and Sedimentation Control Plan which includes erosion control blanket and silt fence installations. No erosion controls are proposed for the north side of the access road. Portions of the proposed silt fence on the south side of the access road are perpendicular to the grading contours, and in our experience when these devices are installed in this manner rilling occurs. The applicant should review the design to determine if an alternative layout can be developed.*

Current Fuss & O'Neill Comment: The applicant has added an Erosion and Sedimentation

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Control Plan and layout. No further Fuss & O'Neill comment.

## 6. Zoning (ZO 334)

- c. *Former Fuss & O'Neill Comments: ZO 334-27.1. The applicant has not included setback lines or dimensions on the plans. The applicant has noted setback dimensions in a table on sheet C-101. / The applicant has added building setback lines to the plans; however, the front setback line is shown at 30', instead of 50', as Dracut Road is considered an Arterial road per ZO 334-11.A. Also, the applicant appears to have requested a waiver from this Regulation (the waiver request does not note this specific Regulation).*

Current Fuss & O'Neill Comment: The applicant has added the 50' building setback lines to the plans. No further Fuss & O'Neill comment.

- h. *Former Fuss & O'Neill Comment: ZO 334-92.I. The applicant has not noted how the siting of the proposed telecommunications tower will provide for the protection of the environment and open space, and preserve community character, scenic vistas, and historic heritage. / The applicant has noted that they utilized an existing woods buffer for screening to the North, West, and South, and have reduced their limits of disturbance and shifted the tower out of wetlands to avoid environmental impacts.*

Current Fuss & O'Neill Comment: The applicant has revised the tower location further away from the wetlands and is still maintaining the existing site vegetation. No further Fuss & O'Neill comment.

## 9. Other

- a. *Former Fuss & O'Neill Comment: The applicant has referenced American Tower Master Specifications for the construction of the access road. Copies of these specifications were not included in the review package.*

Current Fuss & O'Neill Comment: The applicant has noted that Construction Managers all have a full set of ATC master specifications. The applicant should ensure that these specifications are available and followed during construction. No further Fuss & O'Neill comment.

Please feel free to call if you have any questions.

Very truly yours,



Steven W. Reichert, P.E.

**Steven W.  
Reichert, PE**

Digitally signed by Steven W. Reichert,  
PE  
DN: cn=Steven W. Reichert, PE, c=US,  
o=Fuss & O'Neill, Inc., ou=Fuss &  
O'Neill, Inc.,  
email=sreichert@fando.com  
Date: 2021.03.03 15:20:35 -0500

SWR:

Enclosure

cc: Town of Hudson Engineering Division – File  
Duval & Klasnick  
Dklasnick@dkl-legal.com

*Camela O'Laughlin*

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Hudson Planning

FEES:	26.00
SURCHARGE:	2
CASH:	-

### SITE PLAN DEVELOPMENT AGREEMENT

This Agreement is entered into this *29th* day of December 2017, between American Tower Corporation, 10 Presidential Way, Woburn MA, 01801 and the Town of Hudson, NH, 12 School Street, Hudson, NH, 03051. It represents the understanding of the parties regarding the granting by the Hudson Planning Board of site plan approval in accordance with the ordinances of the Town of Hudson, and to contain improvements pursuant to the plans and conditions referenced below.

WHEREAS, the Applicant (American Tower) is proposing: construct a 155 ft. monopole-design communications tower with antennas, associated 100' x 100' fenced gravel compound with shelter, landscaping, driveway extension, and underground utilities., and

WHEREAS, the Hudson Planning Board has been duly authorized to regulate the subdivision of land and to approve and disapprove site plans for multifamily dwelling units and nonresidential developments pursuant to RSA 674 et seq.; and

WHEREAS, Applicant has applied for approval for the above described project in compliance with Town zoning ordinances and the rules and regulations of Hudson Planning Board.

WHEREAS, site plan approval is conditioned upon the execution of a Development Agreement.

In consideration for the Hudson Planning Board granting site plan approval, the parties hereby agree as follows:

Final site plan approval is granted for the Site Plan entitled: American Tower, Hudson, NH, Site #: 202096, 143 Dracut Rd., Hudson, NH, prepared by: Patrick P. Barry, NH LPE, dated: 11 JUL 2017, last revised 03 JAN 18, consisting of Sheets 1 – 19 (namely: G-001 - 002, V-101, V-102, C-101, C-401 – 405, C-501 – 505, E-401, E-501 – 502, R-601, and Project Notes 1 – 5, shown on Sheet G-001 in accordance with the following terms and conditions:

1. All stipulations of approval for this concurrent Site Plan and Conditional Use Permit shall be incorporated into the Development Agreement, which shall be recorded at the HCRD, together with the above-cited Plan-of-Record (hereinafter referred to as the Plan).



2. All improvements shown on the Plan, including Notes, 1- 5 shown on Sheet G-001, shall be completed in their entirety and at the expense of the Applicant or his assigns.
3. Prior to the issuance of a final certificate of occupancy, a L.L.S. certified "As Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Plan.
4. Construction activities involving the subject lot shall be limited to the hours between 7:00 A.M. and 5:00 P.M., Monday through Saturday.
5. Prior to Planning Board endorsement of the plan, it shall be subject to final engineering review.
6. The applicant shall schedule a pre-construction meeting with the Town Engineer prior to applying for a building permit.
7. All terms and conditions of approval previously approved by the Planning Board for 143 Dracut Road, Map 259/Lot 011 shall remain in effect with the approval of this Plan.
8. The Applicant, as well as all future assigns to the subject wireless tower, shall provide access to the tower for Town emergency service communications needs.
9. The Applicant, as well as all future assigns to the subject wireless tower, shall provide access for co-location as availability provides.
10. If a back-up generator is installed, on site testing of same will only occur Monday through Friday only, and between the hrs. of 7:00 A.M. – 5:00 P.M.

## I

All conditions contained in the notes of the plan are incorporated herein by reference as approved by the Planning Board. Furthermore, all representations of fact or intention made by the applicant or any of applicant's representatives during testimony before the Planning Board relative to the obtaining of approval of this plan, shall be considered conditions of this approval regardless of the fact that such fact or intentions were not specifically stated as part of the motion to grant.

## II

Applicant shall comply with all subdivision, site review and zoning regulations which have been promulgated by the Town and which are in effect as of the date of this Agreement. If this Agreement contains terms, including but not limited to variance and special exception stipulations granted by the Hudson Zoning Board of Adjustment, which are stricter or impose higher standards than the above-mentioned regulations, the stricter or higher standards shall control. All improvements shall meet the standards of workmanship as required by the Town, as required by the New Hampshire Department of Environmental Services, as required by the New Hampshire Department of Transportation, and as required by the New Hampshire Wetlands Board.

**III**

Applicant shall obtain all necessary local, state and federal permits prior to commencing work and shall comply fully with their terms.

**IV**

Applicant shall comply with the plan as submitted to, reviewed by and approved by the Planning Board, including but not limited to, notations set forth on the plan. Deviation from or amendments to the plan may only be made with the written approval of the Planning Board, or the Town Engineer, as appropriate.

**V**

Applicant acknowledges that it will have sole responsibility for ensuring the quality of the construction and that Applicant will not hold the Town, building inspector or other officers, employees, agents or assigns of the Town responsible for any claims, damages, fees or costs alleged to be incurred on account of the Town's negligent inspection of the improvements to be constructed. Similarly, Applicant agrees to hold harmless and indemnify the Town for any claims, damages, fees or costs sought or asserted by third parties against the Town on the grounds of negligent or improper inspection of the construction of the improvements called for herein.

**VI**

Applicant shall provide and install erosion and sedimentation control measures as required by the plan, by RSA Chapter 485-A and as deemed necessary by the Town Engineer or his designated agent.

**VII**

The Applicant shall be responsible for any off-site problems, which arise from this construction. This includes, but is not limited to, erosion, runoff, sedimentation, drainage, and property damage by construction equipment, including damage to existing streets, sewers and drainage systems. Upon notification by the Town in writing, the developer must submit a plan within one week to remedy the problem. The Town Engineer division shall then set a construction schedule in consultation with the developer so that the problem can be corrected as soon as practical.

**VIII**

It is the intent of the signatories to the Agreement that only they can sue to enforce the Agreement's terms. The Agreement confers no rights on third parties.

**IX**

The Applicant's promise to perform improvements incorporated herein is an obligation independent from any alleged breach by the Town, once the Planning Board has given the developer site plan/subdivision approval and work on the site has begun.

**X**

Applicant shall notify the Town Engineer at least sixty (60) days prior to anticipated construction. A pre-construction meeting shall be held at least thirty (30) days prior to commencement of construction. A three-party inspection agreement and any other pertinent documents shall be finalized prior to the pre-construction meeting.

**XI**

The Agreement to complete bonded or otherwise secured improvements is not contingent upon the commencement of work on the site or on the sale of any of the lots or property contained in the approved plan.

**XII**

The Applicant shall remove all waste from the particular site prior to the issuance of any Certificate of Completion or occupancy permit. All waste will be removed in compliance with applicable Town, State and Federal regulations.

**XIII**

Prior to commencing construction, Applicant agrees to pay all fees as required by all ordinances and regulations of the Town in effect at the time of this Agreement, as well as any other fees imposed by the Hudson Planning Board, upon application for a building permit, unless phased payments are provided for.

**XIV**

Applicant agrees that if in the future the Town determines that Applicant has committed a material breach of this Agreement or has violated any Town zoning, subdivision, site plan or any State land use or environmental law or regulation or building code, and said material breach or violation is decided against Applicant by a court of competent jurisdiction in a legal action by the Town against Applicant, Applicant agrees to pay, on demand, all reasonable attorney fees, court costs, sheriff charges and related costs incurred by the Town in connection with the breach or violation to the extent that said fees, costs and charges would not have been incurred had the breach or violation not occurred.



XV

A note shall be added to the recorded plan. This note shall state the existence of this Development Agreement, and that a copy of it is on file with the Planning Department or other designated Town department. This Agreement shall be recorded with the plan.

XVI

This agreement shall run with the land and shall be binding on any subsequent purchaser of the proposed development on applicant's heirs and assigns, and on any successor entity.

XVII

Severability: If any section, clause, provision, article or portion of this contract shall be invalidated by any court of competent jurisdiction, such holding shall not invalidate any other section of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first written above.

American Tower Corporation

William @mm  
Witness

Mike Eacho  
by: Mike Eacho

TOWN OF HUDSON, NH

Burke Ed Dubowik  
Witness

Glenn Della-Monica  
by: Glenn Della-Monica, Chairman  
Hudson Planning Board