

## **ARTICLE V**

### **Special Exceptions**

#### **(Personal Wireless Service Facilities, see Section 9 of this Article)**

#### **9. PERSONAL WIRELESS SERVICE FACILITIES (PWSF)**

##### **A. Purpose**

1. The Town of Webster, in accordance with the Federal Telecommunications Act of 1996 and New Hampshire RSA Chapter 12-K, may regulate the placement, spacing, installation, and number of personal wireless service facilities (PWSF) in the town. As such, the Town of Webster finds it in the public interest to balance the interests of the residents of Webster, PWSF providers, and telecommunications customers in the siting of PWSF within the town. This balancing will ensure coordinated development of a communications infrastructure while preserving the health, safety, and welfare of the Town and its residents, as well as the general character of the environs.
2. This ordinance establishes requirements for the siting of PWSF, predicated on the following goals:
  - a. to conserve and enhance property values;
  - b. to reduce adverse impacts that PWSF may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, and flight corridors;
  - c. to minimize the number of PWSF and/or to reduce their height and visual impact by encouraging colocation and minimal impact siting options through an assessment of technology, siting options, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town;
  - d. to avoid congestion in the location of PWSF by permitting their construction only where all other reasonable opportunities have been exhausted, and to encourage the owners of PWSF to configure them in a way that minimizes their adverse visual impact;
  - e. to encourage, to the highest extent possible, cooperation between and colocation of PWSF operators in order to reduce cumulative negative impacts upon the Town;
  - f. to require that owners/operators of PWSF perform adequate maintenance and safety inspections of said PWSF.

- g. to ensure that PWSF owners/operators are obligated to effect the prompt, safe removal and site restoration of abandoned PWSF.

## **B. Definitions**

1. “Colocation” means the use of PWSF for multiple purposes or by multiple users.
2. “Fall Zone” is a circular area on the ground, centered at the base of the mount, and with a radius equal to 125% of the height of the PWSF, including antennas or other appurtenances. This fall zone is the area within which there is presumed to be a potential hazard from falling debris (such as ice) or collapsing material.
3. “Guyed Tower” means a monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.
4. “Lattice Tower” means a type of mount with multiple legs and structural cross bracing between the legs. It may be either guyed or freestanding.
5. “Mast” means a thin pole that resembles a street light standard, telephone pole, or flagpole. A dual-polarized antenna is typically deployed in the interior of the mast. There is no exterior antenna. It is also called a brown stick or three-sectored Susan.
6. “Monopole” means a mount with a single vertical shaft of wood, steel, concrete, or other material, typically thicker than a mast, and designed for the placement of antennas and arrays along the exterior of the shaft. It may be either guyed or freestanding.
7. “Mount” means the structure or surface upon which antennas are mounted. There are four types of mounts:
  - a. Roof-mounted. Mounted on the roof of a building.
  - b. Side-mounted. Mounted on the side of a building.
  - c. Ground-mounted. Mounted on the ground.
  - d. Structure-mounted. Mounted on a structure other than a building.
8. “Security Barrier” means a wall or fence that protects an area from unauthorized entry or trespass.

9. "Secondary Use" means a use of land or of a building or portion thereof which is unrelated to the principal use of the land or building.
10. "Stealth Design" means a PWSF design employing a camouflage technique, including but not limited to the use of a simulated tree ("monopine"), silo, fire tower, etc., such that a PWSF blends with the natural environment.
11. All other definitions as described in RSA 12-K:2 are incorporated herein.

### **C. Applicability**

The terms of this Ordinance and Site Plan Review Regulations shall apply to all PWSF proposed to be located on property owned by the Town of Webster, on privately owned property in the Town, and on property in the Town owned by any other governmental entity.

### **D. Application Requirements**

1. An application for approval of a PWSF shall be initially submitted to the Selectmen, who will forward it to the Zoning Board of Adjustment and the Planning Board.
2. The Zoning Board of Adjustment will review the application in the context of this Zoning Ordinance.
3. The Planning Board will review the application in the context of a site plan review.
4. The two Boards may elect to meet in joint session for purposes of performing these reviews.
5. Approval of the application requires concurrence from both Boards. Approval or denial by each Board must be in writing and for stated reasons.
6. The following items shall be included in a complete application:
  - a. A copy of the Federal Communications Commission (FCC) license proving that the carrier is eligible to deploy its systems in this geographical area; or copy of the contract with a person with such a license and a copy of such license as required by RSA 12-K:3, IV (a).
  - b. A topographic map showing the location of all externally visible PWSF within a 10-mile radius of proposed PWSF.

- c. A topographic map showing the applicant carrier's current PWSF locations within a 20 mile radius of the proposed PWSF, both active and inactive. See RSA 12-K:3, IV, (b).
- d. A summary of all other sites considered for this application and justification for selecting the proposed site over these other sites.
- e. Site descriptions for each of the carrier's PWSF as discussed in subparagraph c, above, indicating the antenna dimensions and describing all externally visible structures. See RSA 12-K:3, IV (c).
- f. An explanation of why the proposed design has been selected, including a description of why less visually intrusive alternatives for these PWSF were not proposed.
- g. For new ground mounted PWSF the application must include:
  - i. site overview
  - ii. site plan and antenna location
  - iii. access road plan and profile
  - iv. tree location plan
  - v. tree information table including tree heights and average tree height
  - vi. elevation views showing trees in relation to proposed mount
  - vii. a statement that there are no suitable existing structures for the siting of the PWSF.
- h. An application fee will be imposed. See RSA 12-K:4.

## **E. General Provisions**

1. When allowed by this ordinance, and after approval by the Planning and Zoning Boards, a PWSF may be placed upon a property as a primary or secondary use of the property on which it is located. A different primary use of the property shall not preclude the use of the property for a PWSF, provided that the Planning and Zoning Boards approve such use as a conditional use.
2. For purposes of determining whether the installation of PWSF complies with this ordinance, including but not limited to setback requirements, lot coverage requirements, and other requirements, the dimensions of the entire lot shall control, even though the PWSF may be located on a leased parcel within the lot. PWSF that are constructed strictly in accordance with this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure. PWSF shall not be deemed to be an "accessory use."

## **F. Location Requirements**

1. Existing Structures Policy: When possible, PWSF shall be located on existing structures including, but not limited to, buildings, water towers, existing PWSF, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
2. Existing Structures Burden of Proof: The applicant shall have the burden of proving that there are no existing structures that are suitable for its proposed PWSF.
3. Ground Mounted PWSF Policy: If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted PWSF shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees.
4. Locations for Ground Mounted PWSF: Ground mounted PWSF shall be prohibited:
  - a. Within 100 feet of town or state roads
  - b. Within 250 feet of a scenic road or sited in a manner which is readily visible from a scenic road.

#### **G. Use and Dimensional Requirements**

1. Where allowed and as approved in site plan review, PWSF may include reasonable accessory amenities.
2. PWSF shall require a building permit in all cases.
3. PWSF shall comply with the following requirements:
  - a. Height, Existing Structures and Utility Poles: Carriers that locate new PWSF on water towers, electric transmission and distribution towers, utility poles, guyed towers, lattice towers, masts, monopoles, and other existing structures exclusive of PWSF may be permitted to increase the height of those structures no more than twenty (20) feet provided the total resulting height will not exceed one-hundred (100) feet or materially impair the visual impacts of the site. This increase in height shall be permitted only once for each structure. When new PWSF provider elects to collocate on an existing PWSF structure, that structure may be increased in height by ten (10) feet for each of up to 5 such additional users.
  - b. Height, New Ground-Mounted PWSF

- i. Except as permitted in Section 9.G.3.b.iii below, the highest point of any new ground-mounted PWSF shall be at an elevation no more than the greater of 50 feet or 20 feet above the elevation of the highest tree top within 200 feet of any element of the PWSF (exclusive of the access road and any tower guy wires and their foundations), where tree top elevation is measured relative to a horizontal plane at ground level at the base of the mount.
  - ii. If a small number of trees unduly influences the permitted mount height, either the PWSF operator or the Zoning Board of Adjustment may propose an alternative to the increased mount height.
  - iii. If an applicant presents convincing evidence that there is a strong likelihood that additional similar PWSF will be required in the same general geographic location, and if said applicant provides written certification that the proposed facility will be structurally and otherwise suited for colocation of such additional PWSF, the height limitation in Paragraph 9.G.3.b.i. above may be increased by 10 feet for each such colocator, up to a maximum of 5 such additional colocators, i.e. a maximum of 6 total providers utilizing a common PWSF site.
- c. Setbacks: All PWSF and their equipment shelters shall comply with the building setback provisions for the Town of Webster.
  - d. Fall Zone for Ground Mounted PWSF: In order to ensure public safety, a fall zone, as herein defined, must be maintained around any ground-mounted PWSF. Said fall zone must not encroach on any property line, public road, habitable dwelling, business or institutional use, or public recreation area.
  - e. Fall Zone for Non-Ground Mounted PWSF. In the event that an existing structure is proposed as a mount for PWSF, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing nonconforming structures, PWSF and their equipment shelters shall not increase any non-conformities.

## **H. Performance and Design Standards**

- 1. Visibility: The proposed PWSF shall have no unreasonable adverse impact upon scenic resources within the Town of Webster. The Zoning Board prior to the approval of any application may require a balloon test.
- 2. Unreasonable adverse impacts are measured on the basis of:
  - a. Change in community scale, as exhibited in relative height, mass or proportion of the PWSF within its proposed surroundings.
  - b. New visible elements proposed on a contrasting background.

- c. Different colors and textures proposed against a contrasting background.
  - d. Use of materials that are not compatible to its proposed surroundings.
3. Camouflage for PWSF on Existing Buildings or Structures – Roof Mounts: When PWSF extend above the roof height of a building on said PWSF are mounted, every effort shall be made to conceal or camouflage the PWSF within or behind existing or new architectural features to limit its visibility from public ways. PWSF mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
  4. Camouflage for PWSF on Existing Buildings or Structures – Side Mounts: PWSF which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.
  5. Camouflage for Ground-Mounted PWSF: The mount employed by any ground-mounted PWSF may be required to be of a stealth design, i.e. disguised as a tree or otherwise made to blend with the local environment. Any support buildings or other appurtenant structures shall be screened from view in all directions by a buffer of dense tree growth, either pre-existing on the site or planted for that purpose. This vegetative buffer shall be within the area leased by the carrier or protected by a landscape easement. The lease or the easement shall specify that the trees within the buffer shall not be removed or topped, unless said trees are dead or dying and present a hazard to persons or property.
  6. Site Coverage: The land area occupied by any PWSF shall be limited to the minimum required to provide for the mount, the equipment shelter, any appurtenant facilities, and any provisions for anticipated collocated PWSF.
  7. Equipment Shelters: Equipment shelters for PWSF shall be designed consistent with one of the following design standards:
    - a. Equipment shelters shall be located in underground vaults; or
    - b. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance of the buildings in the area of the PWSF; or
    - c. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible from public roads or appears to be a part of the original structure.
  8. Lighting, Signage, and Security.

- a. Lighting: The mounts of PWSF shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties.
  - b. Signage: Signs shall be limited to those needed to identify the property and the owner, and warn of any danger.
  - c. Security Barrier: The Planning Board shall have final authority regarding the need for the installation of a security barrier surrounding a ground-mounted PWSF.
9. Historic Buildings.
- a. Any PWSF located on or within a historic building or structure shall not alter the character, defining features, distinctive construction methods, or original historic material of the building.
  - b. Any alteration made to a historic building or structure to accommodate a PWSF shall be fully reversible.
  - c. A PWSF authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
10. Driveways: If available, existing entrances and driveways shall be utilized to serve PWSF, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve PWSF shall meet existing Town of Webster or State of New Hampshire driveway specifications, as applicable.
11. Hazardous Waste: No hazardous waste shall be discharged on site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designated to contain a least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site. The Webster Fire Department shall be notified of any hazardous materials stored on the site.
12. Radio Frequency Radiation (RFR) Standards: All equipment proposed for a PWSF shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation, under Report and Order, FCC 96-326 published on August 1, 1996, and all subsequent amendments.
13. The Zoning Board reserves the right to hire and consult experts to review any application at the expense of the applicant.



## **I. Monitoring and Maintenance**

1. **Maintenance:** The owner of any PWSF shall maintain said PWSF in good condition. Such maintenance shall include but shall not be limited to painting, preserving the structural integrity of the mount and security barrier and maintenance of the buffer areas and landscaping.
2. **Monitoring:** As part of the issuance of the site plan approval building permit, the property owner shall agree that the Town of Webster may enter the subject property to obtain Radio Frequency Radiation measurements and acoustic noise measurements at the expense of the carrier. The town shall provide reasonable written notice to carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.
3. **Security for Removal:** Recognizing the hazardous situation presented by abandoned and unmonitored PWSF, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned PWSF in the event that PWSF are abandoned and the PWSF owner is unwilling or unable to remove the PWSF in accordance with the removal section herein.
  - a. The amount of the security shall be based upon the removal cost plus twenty-five percent (25%), as provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. Every five (5) years from the date of the Planning Board's approval of the site plan, the owner of the PWSF shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire. If the removal cost has increased more than twenty-five (25%) percent from the previously posted bond, then the owner of the PWSF shall provide additional security in the amount of the increase.
  - b. Furthermore, the Planning Board shall require submission of proof of adequate insurance covering accident or damage.

## **J. Modification of an Existing PWSF**

1. A PWSF owner/operator proposing to modify or upgrade an existing, previously approved PWSF shall submit a letter of intent to the Board of Selectmen, providing a complete and detailed description of the proposed modification.
2. If the Selectmen find that the proposed modification does not increase the height of the PWSF, and at their sole discretion judge the proposed modification to

have minor impact on any other aspect of the facility, they may approve the proposed modification by majority vote.

3. In the event of such approval, written notice thereof shall be provided to the PWSF owner/operator.
4. Absent such approval, the Selectmen shall advise the owner/operator to make application to the Zoning Board of Adjustment and to the Planning Board, where said application shall be considered as a new application, subject to the provisions of this ordinance and all relevant New Hampshire statutes.

#### **K. Abandonment or Discontinuation of Use**

1. Notification: At such time that a carrier plans to abandon or discontinue operation of PWSF such carrier will notify the Town by Certified US Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given not less than thirty (30) days prior to abandonment or discontinuation of operations
2. Removal: Upon abandonment or discontinuation of use, the owner of the PWSF shall physically remove said PWSF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically Remove" shall include, but not be limited to:
  - a. Removal of antennas, mount, equipment shelters, utility lines, and security barriers from the subject property.
  - b. Proper disposal of the waste materials from the site in accordance with local and state waste disposal regulations.
  - c. Restoring the location to its natural condition.
3. Failure to Remove: If the owner of the PWSF does not remove the PWSF, the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the PWSF shall then dismantle and remove the PWSF within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned PWSF is not removed within ninety (90) days, the Town may execute the security to pay for this action.

#### **L. Miscellaneous Provisions**

1. Amateur Radio. In accordance with RSA 674:16, IV, this article shall not apply to any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator.

2. Essential Services and Public Utilities. PWSF shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in this ordinance or any other Town ordinance or regulation. Siting for PWSF constitutes a use of land and is regulated by this article.

#### **M. Waiver/Appeal**

1. In compliance with section 253 of the Telecommunications Act of 1996, the Town does not intend to create barriers to the ability of any entity to provide interstate or intrastate telecommunication service. If any such entity, having duly exhausted all applicable avenues to providing such service, believes that the procedures or standards established by this article have created such a barrier, the entity may apply to the Zoning Board of Adjustment within 30 days after the final administrative decision, for administrative relief in accordance with this section.
2. Upon application duly made in accordance with the procedures required for a permit, the Zoning Board of Adjustment may grant a waiver from the strict application of the requirements of this article where the Board finds that:
  - a. The granting of the waiver will be neither detrimental to public safety, health or welfare nor injurious to other property and will promote the public interest.
  - b. The waiver will not, in any manner, be inconsistent with the provisions of the Webster Zoning Ordinance or the Webster Master Plan.
  - c. Such a waiver will substantially secure the objectives, standards, and requirements of this ordinance.
  - d. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver.

Adopted October 9, 2001 (Special Town Meeting)  
Amended March 12, 2013