

- A. 7.10 Radio/TV PWSF. *Revise the article to reduce / eliminate requirements for antenna only installations.*

dated 12-3-09

ARTICLE 7. SUPPLEMENTARY REGULATIONS AND STANDARDS

7.10 Radio/TV Tower or Antenna and Personal Wireless Service Facility (PWSF)

Definition Section [To save space, several definitions are not shown. They are not affected by this amendment.]

Antenna shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.

Antenna only applications shall mean proposed installations where antenna(s) are mounted on an existing building or on an existing tower and where the ground level floor area of new related structures is not more than 1200 square feet.

Board or Planning Board shall mean the Town of Bow Planning Board, which shall be the regulator of this Ordinance.

Camouflaged shall mean a personal wireless service facility that is disguised, hidden, part of an existing or proposed building or structure, or placed within an existing or proposed building or structure.

Height shall mean, when referring to a tower or other structure, the distance measured from ground level of the natural grade of a site to the highest point on the tower or other structure, even if said highest point is an antenna.

Mount shall mean the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.

Personal Wireless Service Facility(ies) or PWSF(s) or facility(ies) shall mean any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services, which for purposes of this Ordinance shall also include, as the context may require, all towers and antennas used in connection therewith.

Stealth Facility/Stealth Technology shall mean any PWSF designed to look like a structure which may commonly be found in the area surrounding such proposed facilities such as, but not limited to, flagpoles, farm silos, ranger or forest fire watch towers, or artificial trees.

Tower shall mean any structure that is designed in part and constructed primarily for the purpose of supporting one or more antennas. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, stealth facilities, utility poles, monopoles and the like.

Viewshed shall mean the geographic area visible from a particular point (location) of view.

A. Authority

This Ordinance is adopted by the Town of Bow on May 9, 2006, in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16, 674:21, and 12-K.

B. Purposes

These regulations have been enacted in order to establish general guidelines for the siting of personal wireless service facilities (PWSF), including towers and antennas and to enhance and fulfill the following goals:

1. Further the goals, objectives and recommendations of the Bow Master Plan and preserve the authority of the Town of Bow to regulate and to provide for reasonable opportunity for the siting of personal wireless service facilities, by enhancing the ability of providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.
2. Reduce adverse impacts such personal wireless service facilities may create, including, but not limited to impacts on: aesthetics, environmentally sensitive areas, conservation lands, historically significant locations, ridge lines, scenic areas and vistas, viewsheds, flight corridors, health and safety by reducing injurious accidents to person and property, and prosperity by protecting property values.
3. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town of Bow.
4. Permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the construction of new PWSFs in a way that minimizes the adverse visual impact of such facilities.
5. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Bow.
6. Provide for the regular maintenance and safety inspections for any and all personal wireless service facilities.
7. Provide for the removal of abandoned personal wireless service facilities that are

no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town of Bow to remove these abandoned facilities to protect the citizens from imminent harm and danger at other than municipal expense.

8. Provide for the removal of personal wireless service facilities that are technologically outdated.

C. Overlay District

Personal wireless service facilities shall be permitted as a principal or accessory (secondary) use in all zoning districts within the Town of Bow governed by this Ordinance only after obtaining a Conditional Use Permit as provided in this Ordinance.

1. Existing Uses or Structures. The existence of a permitted use on a site shall not preclude the addition of a PWSF as a secondary use provided all other provisions of this Ordinance are satisfied. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a PWSF, tower, or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the PWSF, tower, or antenna may be located on an easement or leased parcel within such lot. PWSF, towers that are constructed, and antennas that are installed, in accordance with the provisions of this Ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure.

D. Applicability

1. General. The terms of this Ordinance shall apply to all personal wireless service facilities proposed to be located within the Town of Bow whether on property owned by the Town of Bow, on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier.
2. Exceptions.
 - a. Amateur Radio / Receive-Only Antennas. This Ordinance shall not govern 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 or is used exclusively for receive only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.
 - b. Essential Services & Public Utilities. Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town of Bow's ordinances and regulations. Siting for personal wireless service facilities is a use of land, and is addressed by this Section 7.10.

E. Location, Construction, and Performance Requirements

1. **Setbacks.** All personal wireless service facilities, including equipment compounds, utility buildings, structures, towers and antennas must meet the minimum setback requirements of this Ordinance. Further, towers must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower's height; provided, however, that this requirement shall not apply to PWSFs and appurtenant facilities (1) located on or within existing buildings or structures; or structures less than thirty-five (35) feet in height from surrounding grades, and (2) camouflaged as otherwise required by this Ordinance.
2. **Height Limitations**
 - a. **General.** Subject to any stricter standards as set forth below, a personal wireless service facility shall not exceed ninety (90) feet in height, measured as the vertical distance from the average finished grade surrounding the facility, to its highest point, including all attachments. **The 90 feet height limit shall not apply to antenna only applications where the antenna(s) will be mounted no higher than the existing tower or building.** The height of any structure will be the minimum necessary in order to transmit and receive commercially feasible transmissions. The intent to serve a large area with one tall installation will not be accepted as justification of height. Multiple, minimum-height towers are preferred, and may be required.
 - b. **PWSFs in Wooded Areas.** A personal wireless service facility located in a wooded area shall not project higher than twenty (20) feet above the average tree canopy height of the proposed site. Further, a PWSF located in a wooded area must be camouflaged to blend in with the natural character of such area and must employ stealth technology in order to make the site less obtrusive to surrounding properties and the community. Appropriate stealth technologies for wooded areas include: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.
 - c. **PWSFs in Fields or Agricultural Areas.** A personal wireless service facility located in a field or other open area without a tree canopy shall employ stealth technology. Appropriate stealth technologies for fields or open areas include agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size and configuration typically found in the State of New Hampshire.
 - d. **PWSFs in or on Existing Structures.** A PWSF may be located on or within an existing building or structure provided that such facilities shall employ stealth technologies and shall be architecturally compatible with the host building or structure.

- e. New PWSF Structures. A PWSF may be located in a new building or structure provided that such building or structure (a) shall not exceed the maximum building height in the zoning district where a PWSF is proposed, and (b) shall be architecturally compatible with the buildings in the immediately surrounding area.
3. Location Prioritization. Any new personal wireless service facility shall be located in accordance with the following priorities, starting with the first. An applicant shall show proof of having exhausted each option before moving on to succeeding options. **Antenna only applications shall be located in accordance with priority a or c, as applicable.**
 - a. Concealed or camouflaged on or within an existing building or structure, including but not limited to an historic building, an agricultural building or structure, a water tank, a utility transmission pole, an outdoor lighting structure, or a church steeple.
 - b. On or within a new building or structure having a height not greater than the maximum building height in the zoning district where the PWSF is proposed.
 - c. On an existing PWSF (co-location);
 - d. On a new facility which is camouflaged using stealth technologies subject to the height limitations set forth above.
 4. Easements or Leased Areas. If a PWSF is to be located on an easement or leased area, said easement or leased area shall have a minimum area equal to an area having a radius of 125% of the tower's height plus additional area for accessory structures and access, if required. **Antenna only applications need only provide easement or leased area for accessory structures.**
 5. Tower Construction. All new PWSFs must employ appropriate stealth technologies that are visually compatible and in scale with the rural character of the Town and its villages and shall satisfy the following additional requirements:
 - a. The design of the tower, buildings and related structures on a PWSF site shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend such facilities with the natural setting and man-made environment. The design also should call for installation of appropriate techniques to mitigate the effects of noise produced by the PWSF's equipment and reduce the impact of noise pollution to neighboring properties. These facilities shall also be subject to all other requirements of the Zoning Ordinance and Site Plan Review Regulations.
 - b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a color satisfactory to the Board that is identical to, or closely compatible with, the

color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

- c. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
 - d. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by law for such facilities.
 - e. An applicant constructing a PWSF in a wooded area shall utilize appropriate construction techniques to minimize damage to trees and other vegetation within the PWSF site and surrounding areas. Moreover, all trees used to determine the average tree canopy height for the PWSF site shall not be damaged or removed during construction, maintenance, repair and operation of the PWSF. In all cases, the applicant also shall demonstrate legal capacity to control tree-cutting and removal from the proposed camouflage area.
6. Viewshed Analysis. As a part of the initial application, the applicant shall submit a map showing the areas within 2000' from which the PWSF would be visible. As part of the review process the applicant shall conduct a viewshed analysis, using a methodology approved by the Board. Such analysis may include: (1) a mapped viewshed delineation; (2) a test balloon or crane extension moored at the site; or (3) other technology to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the PWSF site and other vantage points as determined by the Planning Board.
7. Landscaping. The following landscaping requirements shall apply to personal wireless service facilities constructed under this ordinance.
- a. Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent property. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound. Natural vegetation is preferred.
 - b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
 - c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
8. Federal Requirements. [Not included to save space]

9. Building Codes-Safety Standards. [Not included to save space]

F. Conditional Use Permits

1. General. Any person seeking to construct a personal wireless service facility, **except for antenna only applications**, shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Town's Site Plan Review Regulations. In addition, ~~such~~ **each** applicant shall submit the information required in this Section 7.10 F.
2. Issuance of Conditional Use Permits. In granting a Conditional Use Permit, the Planning Board may impose such conditions as the Board determines are necessary to minimize any adverse effect of the proposed PWSF on adjoining properties, and to preserve the intent of this Ordinance.
3. Procedure on Applications. The Planning Board shall act upon an application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. In addition, applicants shall submit a list of all communities within twenty (20) miles of the Town of Bow, and the local newspapers used by the towns, with mailing addresses for each, as required by RSA 12-K. Applicants shall also pay all fees required to notify each community.
4. Decisions. Possible decisions that may be rendered by the Planning Board include approval, approval with conditions, disapproval without prejudice, or disapproval. All decisions shall be rendered in writing, in accordance with RSA 676:3. Further, in accordance with the National Wireless Telecommunications Siting Policy - Section 332(c)(47 U.S.C. 332(c)), a denial shall be based upon substantial evidence contained in the written record. Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but may be appealed under State or Federal law.
5. Application Requirements. All applications shall meet the standards set forth in Section 7.10 E.
6. Other Factors. Other factors to be considered by the Board in reviewing applications shall include:
 - a. The height of the proposed tower or other structure shall not exceed that which is essential for its intended use and public safety.
 - b. Nature of uses on adjacent and nearby properties.
 - c. Surrounding topography.
 - d. Proposed ingress and egress to the site.
 - e. Availability of suitable existing towers and other structures as discussed in Section 7.10 E.3.

7. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including: **the below items. Items b., g., h., j., k., l., n., and o. are not required for antenna only applications.**
- a. A scaled elevation view;
 - b. Topography;
 - c. Propagation Maps showing proposed radio frequency coverage and coverage from alternative sites within the Town of Bow;
 - d. Radio frequency coverage;
 - e. Setbacks;
 - f. Adjacent uses (up to 400 feet away);
 - g. The location of all buildings and structures within 500 feet of the proposed tower;
 - h. Diagram of the average tree canopy height determined for the proposed PWSF site;
 - i. Driveways and parking;
 - j. Fencing, including anti-climbing techniques;
 - k. Landscaping;
 - l. Proximity of tower to residential development;
 - m. Impact on identified historical resources;
 - n. Surrounding tree cover and foliage;
 - o. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - p. Visual impacts of the Viewshed, ridge lines, open fields and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
8. Other Information Required. In order to assess compliance with this Ordinance, the Planning Board shall require the applicant for a PWSF to submit the following information prior to any decision by the Board:
- a. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure

guidelines.

- b. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed wireless telecommunication facility, tower or antenna, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town proceedings with respect to the proposed wireless telecommunication facility, tower or antenna shall become part of the FCC application requirements.
 - c. The applicant shall submit written proof that it has complied with the requirements of Section 106 of the National Historic Preservation Act.
 - d. Each applicant for a PWSF shall provide to the Planning Board an inventory of all existing personal wireless service facilities and towers that are within the jurisdiction of the Town of Bow and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. This inventory shall include all existing towers, all towers that have been approved but not yet built, and all towers that have been proposed. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
9. New PWSF Construction. If an applicant proposes to build a new PWSF tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence shall consist of:
[Not included to save space]
10. Co-location on New PWSF. The applicant proposing to build a new PWSF shall submit an agreement with the Town of Bow that allows for the maximum allowance of co-location upon the new facility. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other personal wireless service providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Bow and grounds for a denial.
11. Size / Coverage Requirements. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The

Board may retain the services of a consultant qualified in personal wireless services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, I (g), that the applicant reimburse the Town of Bow for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.

G. Waivers

The Planning Board may grant waivers to these regulations provided that a majority of the Board finds that the criteria set forth in Article 13.02 B. 2. a. For “use” variances for unnecessary hardship of the Zoning Ordinance have been satisfied.

1. Conditions. In approving waivers, the Board may impose such conditions, as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
2. Procedures. A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

H. Bonding and Security Insurance. [Not included to save space]

I. Removal of Abandoned PWSFs. [Not included to save space]

J. Requirement to Maintain and Monitor. [Not included to save space]

As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Board of Selectmen or its designee may enter upon the premises to inspect the facilities as it deems necessary. No prior notice shall be required for said inspection. Results of any inspection by the Board of Selectmen shall be shared with the property owner and the facility owner, when different.