

Appendix K - Personal Wireless Telecommunications Facilities

Purpose

The purpose of this Appendix is to provide specific regulations for the placement, construction, and modification of personal wireless telecommunications facilities. In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, the Board of Trustees finds that these regulations are necessary in order to:

- A. Facilitate the provision of wireless telecommunications services to the residents of the Village, as well as to other persons, firms, and/or corporations in the vicinity of the Village;
- B. Minimize adverse visual effects of towers, antennas and related structures and equipment, through careful design, siting, screening, and landscape buffering standards;
- C. Avoid potential damage to adjacent properties from falling ice and tower failure through structural standards and setback requirements;
- D. Promote, encourage, and maximize the shared use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community; and
- E. Promote, encourage, and maximize the use of existing tall structures that have been established for public utility purposes within the community.

Interpretation

- A. The provisions of this Appendix are not intended to and shall not be interpreted or applied so as to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Appendix be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services. To the extent that any provision or provisions of this Appendix are inconsistent or in conflict with any provision of the Municipal Code, the provisions of this Appendix shall be deemed to control.
- B. In the course of reviewing any request for any approval required under this Appendix made by an applicant to provide personal wireless service or to install personal wireless service facilities, the Board of Trustees shall act within a reasonable period of time after the request is duly filed with the Village, taking into account the nature and scope of the request. There shall be a rebuttable presumption that a reasonable period of time to take final action on applications for collocated facilities is 90 days and for new facilities 150 days; provided that such period shall be tolled during any time the applicant needs to respond to reasonable requests for additional

information. Any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record.

- C. No decision to deny an application for a special use permit or a zoning variance for the construction or installation of a personal wireless service facility may be based on the environmental effects of radio frequency emissions to the extent that such facility complies with the FCC's regulations concerning such emissions based upon competent scientific testimony and evidence received at a public hearing on the application.

Definitions

Personal Wireless Service and Personal Wireless Service Facilities. As used in this Appendix, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as amended now or in the future. Generally, these terms refer to licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that are marketed to the general public. For the purpose of this Appendix the term “personal wireless service facilities” includes each of its component parts, including ground-mounted support equipment, screening, landscaping, towers and/or or antennae, as deemed appropriate in the context, and any other appurtenant improvements required as a condition of authority to construct such facilities.

Placement of Personal Wireless Service Facilities

Personal wireless service facilities shall be considered a special use only (i) in the General Business (B-2) and Industrial (I), and Agriculture (A-1) Districts, and (ii) attached to or otherwise similarly closely integrated with tall structures established for public utility or municipal utility purposes in any zoning district. (*Revised Ord. 2015-24*)

A personal wireless service facility, including related electronic equipment and structures, shall require a special use permit and shall also require a zoning variance for any portion of the height of the personal wireless service facility in excess of the maximum height requirements of the applicable District.

Preference for Shared Use

- A. The shared use of existing towers and antenna facilities (“Collocation”) shall be preferred to the construction of new facilities. Provided that such shared use is accomplished in a manner consistent with the terms of this Appendix, then applications for collocation facilities may be approved administratively without any new or additional special use permit approval. Proper plans must be submitted and permits obtained for such collocation facilities as required by the terms of this Appendix.

- B. An applicant for a special use permit for a new tower or support structure shall submit a report inventorying existing towers and antenna sites within a reasonable distance from the proposed site outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed tower or antenna cannot be accommodated on an existing approved tower or facility due to one or more of the following reasons:
 - 1. Refusal of the owner to entertain the proposed facility.
 - 2. The planned equipment would exceed the structural capacity of existing and approved towers and facilities, considering existing and approved uses for those facilities.
 - 3. The planned equipment would cause interference with other existing or approved equipment, which cannot reasonably be prevented.
 - 4. Existing or approved towers or facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
- C. The Board of Trustees may consider existing towers and antenna sites located in adjacent municipalities and unincorporated areas which are capable of serving the Village when examining an application for an additional new facility.

Conditions

- A. Except as otherwise provided in this Appendix, the personal wireless service facility shall conform to all applicable Federal laws and regulations concerning its use and operation, and shall also conform to all applicable provisions of the Zoning Code and all other applicable provisions of the Village of Spring Grove Municipal Code.
- B. Towers and all other structures and equipment involved with a personal wireless service facility shall be located in compliance with the following:
 - 1. **Setbacks.**
 - a. Maintain a minimum distance setback of four hundred (400) feet from a residential zoning district.
 - b. Maintain a minimum distance setback of two hundred (200) feet from a public right-of-way.
 - c. Shall not be located between the front lot line and the principal building, if any, on the site.
 - d. Maintain a minimum setback from property lines a distance equal to 110% of their height.

- e. All personal wireless service facilities shall be separated from other personal wireless service facilities by at least seven hundred and fifty (750) feet.
2. Departures from the above standards shall be considered as part of a special use permit and/or variance application for facilities proposed to be attached to or otherwise similarly closely integrated with tall structures established for public utility purposes.
- C. In considering a request for approval of a special use to permit the installation of personal wireless service facilities, the applicant shall submit competent evidence to the Planning and Zoning Commission and the Board of Trustees so that they each may consider, in addition to other relevant standards for approval:
 1. Whether the applicant has sought and been denied the opportunity to co-locate its personal wireless service facility on an existing antenna supporting structure.
 2. Whether a significant gap in coverage exists in the applicant's coverage area for the provision of personal wireless telecommunications service. A "gap in coverage" exists when a remote user of such services is unable to either connect with the land-based national telephone network or to maintain a connection capable of supporting a reasonably uninterrupted communication. This standard shall be applied separately to each personal wireless communications service provider.
 3. Whether the means chosen to fill a significant gap in coverage are the least intrusive on the conditions set forth in this Appendix.
 4. Whether there are specific and unique aesthetic, visual and safety objections relative to such application and/or the subject property, either in isolation or cumulatively, that are distinct from those generalized concerns otherwise addressed in this Appendix.
 5. Whether the proposed site would encroach in a historically-significant area.

Nonconformities

Any personal wireless service facility installed and operating prior to the enactment of this Appendix which would be prohibited under this Appendix shall be considered to be legal nonconforming uses and/or legal nonconforming structures, as the case may be, and shall be subject to the rules on nonconforming uses and structures as provided by the Zoning Code.

Tower and Antenna Design Requirements

All tower and antenna designs, as well as designs for associated facilities, shall be approved by the Board of Trustees, or its designee, after receiving a recommendation and any conditions from the Planning and Zoning Commission, as part of the required special use permit. Proposed or modified towers and antennas shall meet the following design requirements:

- A. Personal wireless service facilities shall be of a monopole design unless the Board of Trustees determines that an alternate design would better blend into the surrounding environment.
- B. Towers and antennas shall be designed to blend into the surrounding environment through the use of color, camouflaging and/or architectural treatment, where possible. A tower shall be painted a single, neutral color, the color of which shall be approved by the Board of Trustees, and any tower, antenna(s), and/or associated facilities shall be well maintained at all times. The material and color design elements shall match the surrounding environment and/or structures as closely as possible.
- C. Towers shall not be illuminated by artificial means and shall not display lights unless such lights are specifically required by a Federal or State authority. Lights are permitted to be operated during on-going maintenance activities.
- D. Site location and development shall preserve the existing character of the site as much as possible. Existing vegetation must be preserved or improved, and disturbance of the existing topography of the site must be minimized.
- E. Ground mounted facilities and equipment shall be enclosed in structures composed of masonry materials and having gabled or other peaked-roof type features unless the Board of Trustees determines that an alternate design would better blend into the surrounding environment. Fences, if utilized, shall be a solid six foot (6') high wooden board-on-board style. Landscaping a minimum of five foot (5') in height at installation shall be required and maintained so as to screen as much of any proposed building, fence or other ground mounted structure as possible and to discourage vandalism. Equipment enclosures may be required to be sized to accommodate co-location of additional facilities as part of a special use permit approval.

Abandoned or Unused Towers or Antennas; Enforcement; Lien

- A. A tower or antenna shall be deemed abandoned if it remains unused or unoperated for a period of twelve (12) consecutive months, unless a shorter abandonment period is provided in the applicable lease of the facility, in which event, the abandonment period specified in the applicable lease shall govern, and such abandonment shall be as determined by the Board of Trustees. All or any portion of a personal wireless service facility deemed abandoned or unused under this Appendix shall be removed according to the Decommissioning and Restoration Plan described in this Section.

- B. All abandoned or unused portions of a personal wireless service facility shall be removed within six (6) months of the Board's determination that such facilities are abandoned, unless a time extension is approved by the Board of Trustees. Before the Board makes a finding or issues an order for removal of the facility resulting from its abandonment or nonuse, the applicant and the owner shall be given an opportunity for a pre-deprivation hearing in the manner described below:
1. When the Village believes a facility has been abandoned, the Village's Code Official shall cause a Notice of Facility Abandonment to be sent via first class mail to the applicant and owner. The Notice of Facility Abandonment shall state the name and address of the applicant, the name and address of the owner, a summary of the grounds for the Village's determination and describe the opportunity for a hearing.
 2. Failure to request a hearing within 21 days from the date of the notice will result in the Village Board making its determination solely on the basis of evidence presented by Village staff.
 3. A person may challenge the validity of the Notice of Facility Abandonment by requesting a hearing and appearing in person to submit evidence which would conclusively disprove abandonment or the term for which the facility has not been used or operated. Upon a request for a hearing, the Village Clerk shall schedule the hearing for a Village Board meeting.
 4. All parties shall be given a reasonable opportunity to present testimony and evidence at the hearing. Continuances of the hearing date must be made in person before the Village Board and may be granted upon a showing of good cause. The formal rules of evidence will not apply any such hearing held pursuant to this provision.
- C. Written notice of the Board's determination shall be sent via regular mail and via certified mail, return receipt requested, to the owner of the tower(s) and associated facilities and to the applicant for the special use permit following a hearing or following a determination by the Village Board if no hearing has been held as provided above.
- D. Decommissioning and Restoration Plan
1. Prior to receiving a building permit and/or special use permit for the construction of a personal wireless telecommunication facility, the owner and/or operator must include a Decommissioning and Restoration Plan with the application to ensure such facility and all related equipment is properly decommissioned. The owner of the facility and the underlying property owner(s) shall be jointly liable for the removal of all equipment associated with the facility at the end of the special use permit period, if any, the useful life of the facility, or when the facility is abandoned as herein described. The Decommissioning and Restoration Plan shall state how the facility will be decommissioned and how the site will be restored, and shall further provide:

- a. Provisions for removal of the facility and all related equipment, including those below the soil surface.
 - b. Provisions for the restoration of the property and improvements upon completion of the decommissioning of the facility and all related equipment.
 - c. An estimated cost of decommissioning certified by a licensed professional engineer and the financial resources to be used to accomplish decommissioning.
 - d. The Village is granted the right of entry onto the site, pursuant to reasonable notice to effect or complete decommissioning and/or restoration.
- E. Any facility which remains erected more than six (6) months after the end of the special use permit period, if any, the useful life of the facility, or when the facility is determined to be abandoned shall be deemed a nuisance.
- F. Lien on Costs of Enforcement or Removal
- 1. If the Village incurs any costs to enforce or perform the applicant's Decommissioning and Restoration Plan, then that cost is a lien upon that underlying parcel. If, for any one parcel, the Village engaged in any enforcement activity or performed Restoration Plan activities on more than one occasion during the course of one year, then the Village may combine any or all of the costs of each of those activities into a single lien.
 - 2. To perfect a lien under this section, the Village must, within one year after the cost is incurred, file notice of lien in the Office of the McHenry County Recorder. The notice must consist of a sworn statement setting out:
 - a. a description of the underlying parcel that sufficiently identifies the parcel;
 - b. the amount of the decommissioning, restoration, enforcement and/or removal cost; and
 - c. the date or dates when the enforcement or removal cost was incurred by the Village.
 - 3. The removal cost is not a lien on the underlying parcel unless a notice is personally served on, or sent by certified mail, to the applicant and the person who was sent the tax bill for the general taxes on the property for the taxable year immediately preceding the decommissioning, restoration, enforcement and/or activities. The notice must (i) state the substance of this section; (ii) identify the underlying parcel, by common description; and (iii) describe the Village's activity.

4. A lien under this section may be enforced by proceedings to foreclose as in case of mortgages or mechanics liens. An action to foreclose a lien under this section must be commenced within 2 years after the date of filing of the notice of lien. Failure to file a foreclosure action does not, in any way, affect the validity of the lien against the underlying parcel.
 5. Upon payment of the lien cost by the applicant, owner of the underlying parcel or other interested party after notice of lien has been filed, the Village shall release the lien, and the release may be filed of record by the applicant, owner or other interested party at his or her sole expense.
- G. Unused operating antenna facilities shall be removed within six (6) months of the time of antenna relocation or abandonment.

Interference with Public Safety Telecommunications

No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an inter-modulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new services or changes in existing service, telecommunication providers shall notify the Village at least ten (10) calendar days in advance of such changes and allow the Village to monitor interference levels during the testing process. If at any time it is determined by the Board of Trustees, or its designee, that public safety communications experience interference from the new, modified, or existing telecommunications service so as to jeopardize or impede emergency services to residents of the Village, the owner and/or operator of said telecommunications service shall immediately take the appropriate action to either modify its transmissions in order to eliminate any such interference, or cease and desist from any transmissions at the subject site and remove the tower and/or any affected antenna facilities from the premises within six (6) months of such determination according to the Decommissioning and Restoration Plan.

Additional Application Requirements

In addition to the information required elsewhere in this Appendix and the Municipal Code, applications for a special use permit and, where required, an application for a variance, for a wireless telecommunication antenna or tower shall include the following supplemental information:

- A. An architectural site plan including tower and ground structure elevations, and landscaping.
- B. A report including design drawings from a qualified and licensed professional engineer which:
 1. Describes the tower height and design including a cross section and elevation;

2. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 3. Describes the tower's capacity, including the number and type of antennas that it can accommodate;
 4. Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 5. Includes a professional engineer's stamp and registration number;
 6. Includes any other information necessary to evaluate the request.
- C. For all new wireless telecommunication service towers and facilities, a letter of intent committing the owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- D. A plan indicating how specific visual impacts created by the proposed facilities will be minimized.
- E. If the applicant is not the owner of the subject property, a copy of the lease agreement pursuant to which the applicant is granted authority to erect the proposed Tower.

The Village shall be given not more than thirty (30) days to review an application and provide prompt notice to the applicant of whether the application is complete. A failure to provide notice shall result in the application being deemed complete. The timeline to take final action on an application shall not commence until an application is deemed complete.

Village-Owned Land

- A. **Priority of Users.** Priority for the use of village-owned land for wireless telecommunication antennas and towers will be given to the following entities in descending order:
1. Village of Spring Grove;
 2. Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the village;
 3. Other governmental agencies, for uses which are not related to public safety;
 4. Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that are marketed to the general public; and
 5. Entities providing unlicensed commercial wireless information services.

- B. **Exemption.** Notwithstanding anything herein to the contrary, any application for placement, construction and modification of personal wireless telecommunications facilities on village-owned real property shall be exempt from the requirement to obtain either a special use or variance, it being hereby declared to be the policy and intent of the village that personal wireless telecommunications facilities are to be considered permitted uses on village-owned real property.

- C. **Reservation of Rights.** The Board of Trustees, acting in its capacity as and exercising the commercial rights of a property owner, reserves the right to deny, for any reason or no reason, the use of any or all village-owned property by any one or all applicants.