

ARTICLE XIII. Wireless Communications Facilities

1. Intent and Purpose

The purpose of this article is to establish general guidelines for the siting of wireless communications facilities. The goals of this ordinance are to:

- 1.1 Protect residential areas and land uses from potential adverse impacts of wireless communication facilities;
 - 1.2 Encourage the location of towers or alternate tower structures in nonresidential areas;
 - 1.3 Minimize the total number of towers or alternate tower structures throughout the community;
 - 1.4 Strongly encourage the joint use of new and existing sites as a primary option rather than construction of additional single-use facilities;
 - 1.5 Encourage users of wireless communication facilities to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
 - 1.6 Encourage users of wireless communication facilities to configure them in a way that minimizes the adverse visual impact of the facilities through careful design, siting, landscape screening, and innovative camouflaging techniques;
 - 1.7 Enhance the ability of the providers of wireless communications services to provide such services to the community quickly, effectively, and efficiently;
 - 1.8 Consider the public health and safety of communication towers to the extent permitted by applicable law; and
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- 4.1 Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

- 1.10** In furtherance of these goals, the Town shall give due consideration to the Town's master plan, zoning map, existing land uses, environmentally sensitive areas and scenic-view corridors in approving sites for the location of wireless communication facilities.

2. Applicability

2.1 General Applicability

Except as specifically provided below, these provisions shall apply throughout the Town limits, and no wireless communication facility shall be permitted except in compliance with these provisions.

2.2 Amateur Radio and Receive-Only Antenna

This Article XIII shall not govern any tower, or the installation of any antenna, that is less than forty-five (45) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.

3. General Guidelines and Requirements

3.1 Principal or Accessory Use

Antennas may be considered either principal or accessory uses. Towers or alternate tower structures, unless specifically accessory to the use of a property, shall be considered a principal use of property. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna on such lot. Where a new lot or leasehold parcel has been created from a larger parcel, for purposes of determining whether the installation of a wireless communication facility complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the larger lot from which the new lot was created shall control. Towers and other wireless communication

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facilities that are constructed, and antennas that are installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a non-conforming use or structure.

3.2 Aesthetics; Lighting

The guidelines set forth in this Subsection 3.2 shall govern the location and installation of all wireless communication facilities governed by this article. Where options for aesthetic treatment are provided, the Town shall direct which option is to be utilized.

3.2.1 Towers or alternate tower structures shall either maintain a galvanized steel finish, or subject to any applicable FAA standards, be painted an approved neutral color so as to reduce visual obtrusiveness, as determined by the town.

3.2.2 At a tower site, the design of the buildings and related wireless communication facilities shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the wireless communication facilities to the natural setting and built environment.

3.2.3 If an antenna is installed on a structure other than a tower, the antenna and supporting wireless communication facilities must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related facilities as visually unobtrusive as possible.

3.2.4 Towers or alternate tower structures shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting must be shielded or directed to the greatest extent possible so as to minimize the amount of light that falls onto public rights-of-way or nearby properties, particularly residences.

3.2.5 No portion of any antenna array may extend beyond the property line.

3.2.6 Ancillary wireless communication facilities shall be no taller than 32 feet in height, and shall be compatible with the surrounding area.

3.2.7 Ancillary wireless communication facilities in areas of high visibility shall, where possible, be sited either below the ridge line, amidst groups of trees, or designed (i.e., placed underground, depressed, or located behind earth berms or otherwise effectively screened) to minimize their profile.

3.3 Federal Requirements

All wireless communication facilities must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities as well as other towers and antennas. If such standards and regulations are changed, then the owners of the wireless communication facilities governed by this ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring any wireless communication facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the facility at the owner's expense.

3.4 Building Codes; Safety Standards

To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes, the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time, and all applicable codes adopted by the Town.

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- 3.4.1 In addition to any other applicable standards and requirements, the following shall apply to all wireless communication facilities:
- 3.4.1(a) Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.
 - 3.4.1(b) No guy wires employed may be anchored within the area in front of any primary structure on a parcel.
 - 3.4.1(c) At least ten feet of horizontal clearance must exist between any antennas and any power lines, unless more clearance is required to meet Colorado Public Utilities Commission standards.
 - 3.4.1(d) All wireless communication facilities must be designed and/or sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower shall be designed and maintained to withstand without failure the maximum forces expected from wind, tornadoes, hurricanes, and other natural occurrences, when the tower is fully loaded with antennas, transmitters, and other wireless communication facilities, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the building inspector prepared by a structural engineer licensed in the State of Colorado describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided pursuant to any applicable codes.
- 3.4.2 If, upon inspection, the Town concludes that a wireless communication facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the

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owner of a wireless communication facility, the owner shall have thirty (30) days to bring such wireless communication facility into compliance with such standards. If the owner fails to bring such wireless communication facility into compliance within said thirty (30) days, the Town may remove such wireless communication facility at the owner's expense.

3.5 Radio Frequency Standards

All applicants shall comply with federal standards for radio frequency emissions. At the time of permit application, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas to be initially installed at the subject site, and which compares the results with established federal standards. In response to any written complaint regarding radio frequency emissions, the operator of a wireless communication facility shall, within thirty (30) days after receiving notice of the written complaint, submit a report to the Town indicating whether all radio frequency emissions generated by that entity's wireless communication facilities are within federal standards. If, in response to such written complaint, it is determined that the emissions from the facility are within allowable federal standards, the entity providing the report shall not be required to make a similar response to further written complaint for a period of at least one year from the date of the prior complaint. If the report indicates that emissions exceed federal standards, the Town may require corrective action within a reasonable period of time, and if not corrected, may require removal of the wireless communication facilities pursuant to section 8 of this article. Any reasonable costs incurred by the Town, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the applicant.

3.6 Signal Interference

All wireless communication facilities must be designed and/or sited so as not to cause interference with the normal operation of radio, television, telephone and other wireless communication services utilized by adjacent residential and nonresidential properties; nor shall any such facilities interfere with any public safety wireless communication.

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3.7 Prohibited Use

Advertising or communication of any visual messages from a wireless communication facility is prohibited, with the exception of safety-related messages.

3.8 Not Essential Services

Wireless communication facilities shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

3.9 Public Notice

For purposes of this ordinance, any conditional use request, variance request, or appeal of an administratively approved use or conditional use shall require public notice to all abutting property owners in addition to any notice otherwise required by this ordinance.

4. Permits

Towers, alternative tower structures, antennas and wireless communication facilities are considered structures, requiring issuance of a building permit described in article V. In connection with the issuance of such a permit, and in order to provide the Town with accurate and current information concerning entities that own or operate wireless communication facilities within the Town; to assist the Town in enforcement of this article; to assist the Town in the collection and enforcement of any licensed fees or charges that may be due the Town; and to assist the Town in monitoring compliance with local, state and federal laws, the applicant shall, prior to a permit being issued, submit registration information and a standard agreement to the Zoning Officer.

4.1 Application Required

All applicants for a permit shall apply with the Town on forms to be provided by the town clerk, which shall include the following:

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- 4.1.1 The identity and legal status of the applicant, including any affiliates.
- 4.1.2 The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- 3 A narrative and map description of the applicant's existing or then currently proposed wireless communication facilities within the Town, and outside of the Town within one mile of its boundaries. In addition, the applicant shall inform the Town generally of the areas of the Town in which it believes wireless communication facilities may need to be located within the next three years. This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments to the location of facilities in various parts of the Town. Rather, it is an attempt to provide a mechanism for the Town and all applicants for wireless communication facilities to share general information, assist in the Town's comprehensive planning process, and promote co-location by identifying areas in which wireless communication facilities might be appropriately constructed for multiple users.
- 4 By submitting an application, all applicants acknowledge that the Town may direct future applicants to discuss co-location with an applicant that has disclosed to the Town the possibility of locating wireless communication facilities in a given area. The town clerk may share such information with other applicants applying for conditional use permits under this article, or other organizations seeking to locate antennas within the Town, provided however that the Town is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- 4.1.5 Information sufficient to determine that the applicant has applied for and received any construction permit, operating license, or other approvals required by the FCC to provide wireless communication services or facilities within the Town.

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4.1.6 Such other information as the Town may reasonably require.

4.2 Amendment

Each applicant shall inform the Town, within sixty (60) days, of any change of the information set forth in Section 4.1.

4.3 Standard Conditions of Permit Application

All permit applications shall include:

4.3.1 An acknowledgment binding the applicant, the property owner (if other than the applicant) and the applicant's and/or owner's successors in interest to properly maintain the exterior appearance of and ultimately the removal of the tower and wireless communication facilities in compliance with the provisions of this article and any conditions of approval.

4.3.2 A statement agreeing to pay to the Town all costs of enforcement of the provisions of this article XIII. Such agreement for reimbursement shall include all costs of collection and reasonable attorneys' fees.

4.3.3 An acknowledgment that the Town may enter onto the property and undertake any maintenance or removal activities so long as:

4.3.3(a) The Zoning Officer has provided the applicant written notice requesting the work needed to comply with this article and providing the applicant at least forty-five (45) days to complete it; and a follow up notice of default specifying failure to comply within the time period permitted, and indicating the Town's intent to commence the required work within ten (10) days of the notice; and

4.3.3(b) The applicant has not filed an appeal pursuant to article III, Section 2 within ten (10) days of the notice of the Town's intent to commence the required work. If an appeal is filed, the Town shall be authorized to enter the property and perform

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the necessary work if the appeal is dismissed or final action on it is taken in favor of the Town.

4.3.3(c) Notwithstanding anything contained in this section to the contrary, the Town shall not be required to provide the notice described herein if there is a significant risk to the public health and safety requiring immediate remedial measures.

4.3.4 An agreement to post a performance bond at the time a permit is issued, in an amount to be set by the Town, reasonably related to the costs that may be incurred by the Town should the applicant fail to comply with any of its obligations pursuant to this Section 4. The bond shall remain in effect for a period of five (5) years from the date of permit issuance.

4.3.5 A statement that the applicant agrees to allow for the potential co-location of additional wireless communication equipment by other providers on the applicant's tower or alternative tower structure, and/or within the same site location, subject to reasonable conditions.

4.3.6 If the applicant seeks a permit for a tower or wireless communication facilities on leased property, a copy of the lease agreement, memorandum of lease, or verified written statement of the landlord indicating that the landlord is permitted to enter into leases of the same property with other wireless communication providers.

4.3.7 A written statement from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems as described in Section 3.6 of this Article. Additionally, the application shall contain an acknowledgment that the applicant will notify the Town at least ten (10) calendar days prior to the introduction of new service or changes in existing service, and allow the Town to monitor interference levels with public safety wireless communication during the testing process.

4.4 Fees

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In addition to any building permit fees and conditional use permit application fees, the applicant shall pay a wireless communication facilities permit fee. The initial wireless communication facilities permit fee shall be in the amount of \$2,500.00 for a new tower or new alternative tower structure, and any related antennas or other ancillary wireless communication facilities to be located on said tower and applied for in connection with the tower permit; and \$500.00 for antennas or other ancillary wireless communication facilities. These permit fees may be modified from time to time by a Board of Trustee's resolution. The Board of Trustee's resolution may further provide for a waiver or reduction of fees in the case of:

- 4.4.1 Construction of new towers or alternative tower structures with excess capacity, where the applicant commits in advance to a low co-location;
- 4.4.2 Co-location of antennas on existing towers and/or alternative tower structures;
- 4.4.3 Location of antennas on existing alternative tower structures;
- 4.4.4 Other conditions which the Town believes will minimize the need for construction of new towers.

5. Permitted Uses

5.1 General

The uses listed in this Section 5 of this Article are deemed to be permitted uses and shall not require a conditional use permit. Nevertheless, all such uses shall comply with Sections 3.2 – 3.7 and Section 8 of this article and all other applicable ordinances.

5.2 Specific Permitted Uses

- 5.2.1 Locating a wireless communication facility, including the placement of ancillary wireless communication facilities used in connection with said wireless communication facility is permitted on Town owned

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property in any zoning district so long as all other requirements of the zoning district are met.

5.3 Administratively Approved Uses

5.3.1 General. The following provisions shall govern the issuance of administrative approvals for wireless communication facilities.

5.3.1(a) The Zoning Officer may administratively approve the uses listed in this Section.

5.3.1(b) Each applicant for administrative approval shall apply to the Zoning Officer providing the information set forth in Section 6.2.1 of this Article and a non-refundable fee as established by resolution of the Board of Trustees to reimburse the Town of Empire for the costs of reviewing the application.

5.3.1(c) The Zoning Officer shall review the application for administrative approval and determine if the proposed use complies with Section 3 of this Article.

5.3.1(d) The Zoning Officer shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application. If the Zoning Officer fails to respond to the applicant within said sixty (60) days, then the application shall be deemed to be approved.

5.3.1(e) If an administrative approval is denied, the applicant shall file an application for a conditional use permit pursuant to Section 6 prior to filing any appeal that may be available under this ordinance 170.

5.3.2 List of Administratively Approved Uses. The following uses may be approved by the zoning officer after conducting an administrative review:

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5.3.2(a) Locating antennas on existing structures or towers consistent with the terms of subsections (i) and (ii) below.

(i) Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the zoning officer as an accessory use to any structure in the RC District, provided:

(a) The antenna does not extend more than twelve (12) feet above the highest point of the structure;

(b) The antenna complies with all applicable FCC and FAA regulations; and

(c) The antenna complies with all applicable building codes.

(ii) Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the zoning officer and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

(a) Height

(i) An existing tower may be modified or rebuilt to a taller height, not to exceed fifteen (15) feet over the tower's existing height, to accommodate the collocation of an additional antenna.

- (ii) The tower's pre modification height shall be used as the height of the tower for all purposes.

5.3.2(b) Locating any alternative tower structure in any zoning district that in the judgment of the zoning officer is in conformity with the goals set forth in Section 1 of this Article.

6. Conditional Use Permits

6.1 General

The following provisions shall govern the issuance of conditional use permits for wireless communication facilities by the planning commission:

6.1.1 If the wireless communication facility is not a permitted use under Section 5 of this article or permitted to be approved administratively pursuant to Section 5 of this article, then a conditional use permit shall be required for the construction or placement of a wireless communication facility in all zoning districts.

6.1.2 Applications for conditional use permits under this section shall be subject to the procedures and requirements of article V, except as modified in this section.

6.1.3 In granting a conditional use permit, the planning commission may impose conditions to the extent the planning commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

6.1.4 Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

6.1.5 An applicant for a conditional use permit shall submit the information described in this section and a non-refundable fee as established by

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resolution of the Board of Trustees to reimburse the Town of Empire for the costs of reviewing the application.

6.2 Towers or Alternate Tower Structures

6.2.1 Information required. In addition to any information required for applications for conditional use permits pursuant to article V, Section 8, applicants for a conditional use permit for a tower or alternate tower structure shall submit the following information:

6.2.1(a) A scaled site plan clearly indicating the location, type and height of the proposed tower or alternate tower structure, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other local governments), master plan classification of the site and all abutting properties, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the zoning officer to be necessary to assess compliance with this ordinance.

6.2.1(b) Legal description of the parent tract and leased parcel (if applicable).

6.2.1(c) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

6.2.1(d) The separation distance from other towers or alternate tower structures described in the inventory of existing sites submitted pursuant to Section 4.1.3. shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

6.2.1(e) A landscape plan showing specific landscape materials.

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- 6.2.1(f) Method of screening and/or fencing, and finished color and, if applicable, the method of camouflage and illumination.
- 6.2.1(g) A description of compliance with Sections 3.3 – 3.7 and 3.9 of this Article and all applicable federal, state or local laws.
- 6.2.1(h) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
- 6.2.1(i) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- 6.2.1(j) A description of the feasible location(s) of future towers or antennas within the Town of Empire based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

6.3 Factors Considered in Granting Conditional Use Permits for Towers

In addition to any standards for consideration of conditional use permit applications pursuant to article V, the planning commission shall consider the following factors in determining whether to issue a conditional use permit, although the planning commission may waive or reduce the burden on the applicant of one or more of these criteria if the planning commission concludes that the goals of this ordinance are better served thereby:

- 6.3.1 Height of the proposed tower;
- 6.3.2 Proximity of the tower to residential structures and residential district boundaries;
- 6.3.3 Nature of uses on adjacent and nearby properties;
- 6.3.4 Surrounding topography;

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- 6.3.5 Surrounding tree coverage and foliage;
- 6.3.6 Design of the tower or alternate tower structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- 6.3.7 Proposed ingress and egress;
- 6.3.8 Whether lighting is required by any applicable authority; and
- 6.3.9 Whether setbacks and offset separation are sufficient to address health and safety concerns.

6.4 Availability of Suitable Existing Towers, Other Structures, or Alternative Technology

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning commission that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the planning commission related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- 6.4.1 No existing towers or structures are located within the geographic area which meet the applicant's engineering requirements.
- 6.4.2 Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
- 6.4.3 Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

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- 6.4.4 The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- 6.4.5 The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- 6.4.6 The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- 6.4.7 The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a microcell network using multiple low-powered transmitters/receivers attached to an existing system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

6.5 Security Fencing

Towers shall be enclosed by security fencing, of a type approved by the Town, at least six feet in height and shall also be equipped with an appropriate anti-climbing device.

6.6 Landscaping

The following requirements shall govern the landscaping surrounding towers or alternate tower structures for which a conditional use permit is required.

- 6.6.1 Tower or alternative tower structures and ancillary facilities shall be landscaped with a buffer of plant or other materials that effectively screens the view of the tower compound from adjacent property, as approved by the Town.
- 6.6.2 Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as

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towers sited on large, wooded lots, natural growth around the perimeter may be sufficient to buffer.

6.7 Decision

The decision on whether to approve or deny an application for a conditional use permit, shall be in writing, based upon evidence presented at a public hearing.

7. Buildings or Other Equipment Storage

7.1 Antennas Mounted on Structures or Rooftops

The equipment cabinet or structure used in association with antennas shall comply with the following:

7.1.1 The cabinet or structure shall be located on the ground and shall not be located on the roof of the structure.

7.1.2 Equipment storage buildings or cabinets shall comply with all applicable zoning and Building codes.

7.2 Antennas Mounted on Utility Poles or Light Poles

The equipment cabinet or structure used in association with antennas shall be located in a front, side or rear yard provided the cabinet or structure is no greater than three (3) feet in Height or ten (10) square feet of gross floor area and the cabinet/structure is located a minimum of two (2) feet from all lot lines. The cabinet/structure shall be appropriately screened.

7.3 Modification of Building Size Requirements

The requirements of sections 7(a) and(b) may be modified by the zoning officer in the case of administratively approved uses or by the Town Board in the case of uses permitted by conditional use to encourage collocation.

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8. Removal of Abandoned Wireless Communication Facilities

Any wireless communication facility that is not operated for a continuous period of six months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned wireless communication facility to be removed. The owner of such wireless communication facility shall remove the same within ninety (90) days of receipt of notice from the Town notifying the owner of such abandonment. Upon removal the site shall be restored and/or revegetated to blend with the surrounding environment. If such wireless communication facility is not removed within said ninety (90) days, the Town may remove and dispose of such wireless communication facility at the owner's expense. If there are two or more users of a single tower or other wireless communication facility, then this provision shall not become effective until all users cease using the wireless communication facility.

9. Nonconforming Uses

Wireless communication facilities that are constructed and installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.