

## **Town of Burlington General Bylaws and Zoning Bylaws – Small Wireless Facilities**

### **Town of Burlington, General Bylaws, Article XIII 13-13**

#### **2.23 W (Zoning Bylaw description)**

##### **Wireless Communication Facilities (WCF)**

Wireless Communication Facilities” (WCF) shall mean a facility for the provision of wireless communication service, including, but not limited to, towers, monopoles, antennas, antennas attached to existing structures and associated accessory structures, if any, which facilitate the provision of wireless communication services.

##### **Wireless Communication Services (WCS)**

Wireless Communication Services” (WCS) shall mean the provision of the following types of services: cellular telephone, personal communications and enhanced specialized mobile radio service.

#### **1.43 Small Wireless Facilities in Rights-of-Way**

1.43.1 For the purposes of this bylaw, Small Wireless Facilities are facilities as defined in 47 C.F.R. § 1.1312(e)(2) and as such may be amended from time to time.

1.43.2 No person shall install or maintain a Small Wireless Facility in any public or private right-of-way unless first approved by the Select Board.

##### **1.43.3 Policies and Procedures**

The Select Board shall adopt and from time to time amend policies, rules, and regulations relative to the issuance of approvals under this Article XIII Section 1.43. A copy of the policies, rules, and regulations shall be on file with the Town Clerk. Such rules shall include, but not be limited to, prescribing the form, content, style, and number for application forms; the fees collectible with the applications, the process by which the application will be reviewed, the design and location criteria for approval, the time within which the Select Board will issue a decision, and requirements for recertification.

Note: Section 1.43 adopted Art. 3 STM 5/20/19. App. A G 09/05/19 Posted 09/09/19

## **Town of Burlington Zoning Bylaw Section 8.4.0 Wireless Communications Facilities**

### **SECTION 8.4.0 WIRELESS COMMUNICATIONS FACILITIES**

#### **8.4.1 Purpose and Intent**

The Town of Burlington recognizes the quasi-public nature of wireless communications systems and finds that these regulations are necessary to protect public safety, to protect the ecological, scenic, historical and recreational values of the Town and to ensure that adverse visual and operational effects will not contribute to blighting, deterioration or other deleterious effects upon the surrounding neighborhood.

It is the intent of this Section to provide for establishment and/or expansion of cellular telephone, mobile radio and personal communication and similar systems within the Town of Burlington while protecting neighborhoods and minimizing the adverse visual and aesthetic effects of wireless telecommunications

facilities through careful design, siting and screening and in furtherance of the requirements of the federal Telecommunications Act of 1996. More specifically the Section has been developed in order to:

- a) Comply with the intent and obligations of the Federal Telecommunications Act of 1996;
- b) Increase and promote competition in the telecommunications industry;
- c) Regulate the siting of wireless communications facilities relative to visual and aesthetic concerns;
- d) Encourage the use of screening and camouflaging techniques to minimize adverse visual and aesthetic impacts of wireless communications facilities on adjacent properties and residential neighborhoods;
- e) Minimize the overall number of wireless communications facilities and structures as may be necessary to provide wireless communications services within the community, by promoting shared use of facilities among multiple providers while providing reasonable opportunity for all providers to operate facilities within the community;
- f) Maximize use of existing and approved towers and other structures to accommodate new antennas and transmitters in order to reduce the number of wireless communications facilities needed to serve the community;
- g) Minimize the location of facilities in visually sensitive areas;
- h) Site facilities below visually prominent ridge lines;
- i) Protect historic and residential areas from potential adverse impacts of such facilities;
- j) Avoid potential damage to adjacent properties from facility failure through engineering and careful siting of facilities.

#### 8.4.2 Definitions

For the following definitions refer to Article II: Definitions, “Wireless Communication Facilities” (WCF) and “Wireless Communication Services” (WCS).

#### 8.4.3 General Requirements

- a) Wireless communications facilities, including towers, poles, antennas, satellite dishes, and accessory equipment cabinets, shall be considered structures under these Zoning Bylaws and shall be subject to the density and dimensional requirements of Section 5.2.0.
- b) No wireless communications facility, including towers, poles, antennas, and satellite dishes shall be erected or installed except in compliance with the provisions of this Section. Unless otherwise noted in Section 4.3.0 “Accessory Use Regulations Schedule” or in subsection “c” below, a special permit is required from the Planning Board. Any proposed construction of a new freestanding support structure, extension in height of an existing freestanding facility, or replacement of an existing freestanding facility, shall be subject to a new application for a special permit.
- c) Wireless communication facilities may only be located within the overlay districts identified on the map entitled “Town of Burlington - Wireless Communications Overlay Districts”. Such properties are also enumerated by Assessor’s Map and Parcel number in the “Comprehensive Plan for Wireless Communication Facilities in Burlington, MA.” WCF’s involving new freestanding support structures, or any facility proposed to be located within 200 feet of a property occupied by a residence shall be permitted in these overlay districts by special permit, pursuant to the criteria set out under Section 9.2.0 of this Bylaw, in addition to the approval

criteria of this Section. WCF's proposed to co-locate on a previously approved free-standing support structure shall be permitted by right in these overlay districts. Building facade-mounted facilities and building rooftop facilities which are more than 200 feet from a property occupied by a residence shall be permitted by right in the overlay districts. (Municipal communication facilities shall be exempt from this section).

d) Wireless communications facilities shall be screened and/or camouflaged to minimize their visual and aesthetic impacts upon the surrounding neighborhood.

e) Wireless communications facilities shall be sited so as to minimize visibility from abutting streets and nearby buildings and to limit the need to remove existing vegetation.

f) Collocation is generally viewed as preferable to construction of a new freestanding support structure where it is assumed that collocation may often be less imposing on the landscape. To minimize the number of wireless communications facility sites in the community in the future, the proposed facility shall be designed and constructed so it is reasonably capable of accommodating other users, including other wireless communication companies and local police, fire and ambulance companies, unless the Planning Board determines that such use is technically infeasible, based upon the evidence submitted.

g) Where a new freestanding support structure is proposed, alternative structures that employ "stealth" or camouflage techniques, such as artificial trees and flagpoles, shall be considered preferred. Free standing monopoles are less preferable, but may be acceptable where the applicant can successfully demonstrate to the Planning Board that the proposed facility will have minimal visual impact on the landscape. Lattice towers and guyed towers shall not be permitted unless the Planning Board determines that no other structure is feasible due to subsurface conditions, topography, or other extenuating geologic or geographic circumstances. (Structures that were existing when this bylaw became effective shall be exempt from this provision)

h) For freestanding support structures, any principal part of the structure shall be setback from the nearest residential dwelling by a minimum distance equal to the height of the facility (as measured to its highest point, including antennae, etc.), or a distance of two hundred feet (200'), whichever is greater.

i) Wireless communication facilities shall not be permitted within eight hundred (800) feet of a public school building.

j) No artificial lighting shall be installed unless required by the Federal Aviation Administration. If such lighting is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.

k) No interference to existing television, cable television or radio signals, including emergency systems and public safety communications, shall be permitted from the facility or components thereon. If interference occurs, it shall be the responsibility of the facility owner to immediately remedy it.

l) A wireless communications facility may be sited on a lot which already accommodates a lawful principal use. Due consideration will be given to the use, size, and other structures on the lot, and other applicable sections of this bylaw, during the Board's review of the special permit application.

m) All structures and/or equipment erected for providing wireless communication services shall be removed within six (6) months of cessation of use at the owner's expense.

n) Antennas and directly related facilities used exclusively for communication for the purpose of federally licensed amateur radio operators shall be exempt from this section.

#### 8.4.4 Design Criteria

The following guidelines shall be used when preparing plans for the siting and construction of all wireless communications facilities:

- a) All free standing towers and monopoles shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future users.
- b) All satellite dishes and antennas attached to a structure shall be screened or camouflaged so as to minimize visibility from abutting streets and residences. All support equipment shall be painted, colored, molded, and/or installed to blend into the structure or background horizon/landscape.
- c) Free standing wireless communications facilities shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences and to minimize the need to remove existing vegetation. All equipment shall be painted, colored, molded, and/or installed to blend into the landscape.
- d) Wireless communications facilities shall be designed to accommodate the maximum number of users. The intent of this requirement is to reduce the total number of structures which will be required to provide service throughout the community by multiple providers.
- e) All free standing towers, poles, and similar support structures shall maintain a fall zone from any adjacent residential buildings or structures not associated with the wireless communications facility, or the proponent shall submit a structural analysis from a professional structural engineer certifying that the proposed structure does not need a fall zone due to its design specifications. A fall zone shall not be required for antenna panels, whip antennas, or satellite dishes, which are attached to existing structure facades or erected on building rooftops.
- f) Fencing shall be provided to provide security and control access to freestanding wireless communications facilities and ground mounted support equipment. Additional landscaping shall be required to provide additional screening for safety as well as to enhance the visual and aesthetic appearance of the facility, in consideration of the character of the neighborhood in which the facility is proposed. The fencing style and specific landscaping species and quantities shall be shown on a landscaping plan to be approved by the Planning Board as part of the special permit approval process.
- g) There shall be no signs, except for “no trespassing” signs, and any required safety signage. No advertising shall be permitted on the facility. All signs shall conform with the sign regulations of Article XIII of this Bylaw.
- h) Night lighting of facilities shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA. If such lighting is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.
- i) For free standing towers, monopoles, or satellite dishes, there shall be a minimum and maximum of one (1) off-street parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of vehicles or other equipment. When abutting residential districts, such parking space shall be suitably situated and screened to minimize its potential visual impact on such abutting residences.
- j) Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, facilities shall be painted noncontrasting gray or blue in color, or camouflaged with some other treatment deemed acceptable by the Board. Facade mounted antenna(e) shall be non-contrasting or camouflaged to match the background color of the surface to which they are attached.
- k) Any related equipment and appurtenances shall not be more than twelve (12) feet in height.

- l) All utilities proposed to serve the facility shall preferably be installed underground.
- m) Dish antennae shall be no more than six (6) feet in diameter, and shall be mesh (rather than solid). Panel antennae shall be no more than five (5) feet in height.
- n) Antennas or panels which are located on nonresidential buildings shall be mounted so as to be less than twelve (12) feet in height above the roof of the building.

#### 8.4.5 Additional Submittal Requirements for WCF Requiring a Special Permit

In addition to the submittal requirements of Section 9.2.2 of the zoning bylaw, the following items and information are required to be submitted at the time an application under this section is filed:

- a) A locus plan at a suitable scale, which shall show all property lines, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods, and all buildings within three hundred (300) feet of the proposed facility.
- b) A color photograph or rendition of the proposed wireless communications facility. A rendition shall also be prepared illustrating a view of the proposed facility from the nearest street or streets.
- c) A description of the facilities and structures, and the technical, economic and other reasons for the proposed location, height, and design in relation to the regional network of facilities existing and proposed by the provider.
- d) A description of the capacity of the proposed facility with respect to the number and type of panel antennas, drum antennas, and or transmitter receivers that it can accommodate and the basis for these calculations, and the technical specifications for the antennas proposed.
- e) Coverage Maps reflecting current coverage and proposed coverage, including a breakdown of “excellent”, “good”, “fair”, and “poor” reception areas, using the same criteria as the Comp Comm analysis in the “Comprehensive Plan for the Siting of Wireless Communications Facilities in Burlington”: > -74.0 DBM, -74.0 to -80.0 DBM, -80.0 to -86.0 DBM, -86.0 to -93.9 DBM, and < -93.0 DBM (nonexistent), with each range to be illustrated by a different color or shading pattern. Such coverage maps shall include facilities existing or proposed in Burlington and adjoining towns which provide coverage in Burlington.
- f) If a rooftop installation, the layout of the equipment on the rooftop, and/or a floor plan of any interior space to be occupied by such supporting equipment cabinets or backup power sources.
- g) If a ground installation, a site plan layout of all equipment and structures, access drives, and any other site improvements or alterations involved.
- h) Documentation that the proposed facility complies with, or is exempt from, applicable regulations administered by the Federal Aviation Administration and the Federal Communications Commission.
- i) A report by a professional or radio frequency engineer describing the general design and capacity of any proposed installation, including but not limited to the following: The number and type of antenna(e) proposed; A description of the proposed antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height, materials, color and lighting; A description of the proposed antenna(e) function and purpose; The frequency, modulation and class or service; Direction of maximum lobes; An evaluation of the potential to utilize existing facilities for the proposed facility; An evaluation of the feasibility of attaching the proposed facility to existing buildings; Copies of all applicable permits, including but not limited to all State and Federal permits required for this project and a certification of compliance with the

terms and provisions of the license issued for this purpose by the Federal Communications Commission (FCC).

- j) Site Justification or Appropriateness Statement, including a description of the selection process that eliminated other potential sites;
- k) Evidence that the applicant has filed a notice of proposed construction with the Federal Aviation Administration if the proposed facility exceeds 200 feet in height or in the event such notice is otherwise required.
- l) Material describing a specific plan for a “balloon” or similar test, including the date and time, as well as a rain date and time, suitably and clearly described for inclusion in a legal notice in the newspaper and for inclusion in a notice to abutters. The expense of such publication and notice shall be paid by the applicant.
- m) A statement indicating how the proposal meets, in the opinion of the applicant, the intents and purposes of this Bylaw.
- n) For free standing structures proposed to be sited closer to the lot line than the height of the proposed structure, the proponent shall submit a structural analysis from a professional structural engineer certifying that the proposed structure does not need a fall zone due to its design specifications.
- o) An application may be required to undergo review by an independent technical consultant to be selected by the Planning Board for the purposes of evaluating the evidence submitted by the applicant, such review to be performed at the applicant’s expense.

#### **8.4.6 Approval Criteria**

8.4.6.1 In addition to the approval criteria for special permits pursuant to Section 9.2.4 of this bylaw, the Planning Board shall make findings on which to base its determination on the specific issues of:

- a) how well the use and proposal meet all required conditions and specifications of the Zoning Bylaws;
- b) how well the use and proposal meet the policies and recommendations of the Comprehensive Plan for the Siting of Wireless Communications Facilities in Burlington;
- c) whether the proposed facility employs available stealth techniques, or is otherwise camouflaged to the extent possible, in order to minimize the visual impact of the facility upon the adjoining streets and surrounding neighborhood.
- d) the proximity of the facility to residential dwellings and the visual and aesthetic impacts on such residences.

8.4.6.2 Annual RF emissions monitoring is required for all sites by an independent RF engineer to be hired with the Planning Board approval and at the applicant’s expense. Test results will be submitted to the Town as soon as available, and not later than the close of the calendar year. Annual testing of electromagnet emission shall be required to ensure continual compliance with the FCC regulations.

8.4.6.3 A special permit shall only be granted if the Planning Board determines that the intent of this Bylaw and the criteria of Section 9.2.4 are met.

#### **8.4.7 Severability**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision herein.

## **SECTION 8.4.8 SMALL WIRELESS FACILITIES OUTSIDE OF RIGHTS-OF-WAY**

### **8.4.8.1 Purpose and Intent**

The purpose and intent of this bylaw section is to permit regulation of the installation of Small Wireless Facilities outside of rights-of-way so as to respect the neighborhood characteristics in which they are proposed to be installed consistent with the purposes set forth in Section 8.3.1 and with federal and state law.

### **8.4.8.2 Special Permit** All installations of Small Wireless Facilities outside of rights-of-way require a Special Permit. The Special Permit Granting Authority under this Section 8.4.8 is the Planning Board.

### **8.4.8.3 Policies and Procedures**

The Planning Board shall adopt and from time to time amend policies, rules, and regulations relative to the issuance of special permits under this Section 8.4.8. A copy of the policies, rules, and regulations shall be on file with the Town Clerk. Such rules shall prescribe the form, contents, style, and number for application forms, the fees collectible with the applications, the process by which the application will be reviewed, the design and location criteria for approval, the time within which the Planning Board will issue a decision, and requirements for recertification. These policies, rules, and regulations supersede the requirements of Section 9.2.0.