

Section 5-40

STANDARDS FOR ADULT THEATERS, ADULT BOOKSTORES, AND ADULT DANCE CLUBS

The operation of an adult theatre, bookstore or dance clubs shall require a Special Permit from the Westfield Planning Board. The applicant for a Special Permit is subject to the rules as defined in Article I, Section 1-50 – Special Permit.

The operation of an adult bookstore, theatre or dance club shall not be situated within 1,000 feet of any establishment that serves or sells alcoholic beverages that are consumed on the premises or taken out. In granting a Special Permit, the Planning Board may provide that adult bookstores, theatres or dance clubs will not be located within 500 feet of a residential use or district, a structure or parcel sued for educational or religious purposes, a structure or parcel owned, operated or maintained by the Commonwealth or City for public purposes such as a library, park, playground or recreational area. An adult use may not be located within 1000 feet of any other adult establishment.

If the business allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed should not be closed off by curtains, doors or screens all should be clearly seen from the center of the establishment. No advertisement, display or other promotional material is to be visible to the public from any public way including not limited to pedestrian walkways.

(7/1/93)

Section 5-50

RULES REGULATING THE SITING OF WIRELESS COMMUNICATIONS FACILITIES

5-50.1 - Purpose of Ordinance.

The City of Westfield seeks to minimize the adverse impacts of the siting of personal wireless service facilities on adjacent properties, residential neighborhoods and the overall health, safety, environmental quality and visual character of the City of Westfield. The City seeks to achieve this by regulating the location, appearance and height of such facilities and by promoting shared use of existing facilities to reduce the need for new facilities. For purposes of this section of the Zoning Ordinance the following definitions shall apply:

- A. *Personal Wireless Services ("Services") –Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.*
- B. *Personal Wireless Services Facilities ("Facilities")—Any and all materials, equipment, storage structures, towers, dishes and antennas, other than customer premises equipment, used by a commercial carrier to provide telecommunications and/or data services.*
- C. *Tower— Any antennae mounting structure (excluding buildings), used by a commercial carrier to provide telecommunications and/or data services, that is utilized primarily to support reception or transmission equipment and that measures twelve (12') feet or more in its longest vertical dimension. The term "Tower" includes, but is not limited to, self-supporting, monopole and lattice towers.*
- D. *Communication Device – Any antennae, dish or panel mounted out of doors of an already existing building or structure used by a commercial carrier to provide telecommunications and/or data services. The term "communications device" does not include a tower.*

5-50.2 - Special Permit/Site Plan Review Required.

- A. Special Permits. No facilities shall be erected, constructed, or installed without first obtaining a Special Permit from the Planning Board unless said facilities are sited on City-owned property. The application for the Special Permit is subject to the requirements and procedures of Article I, Section 1-50 as modified by the terms of this section. No special permit shall be granted unless the facility is proposed to be located within one of the following three categories which are prioritized by desirability of location:
- 1st. On existing buildings, structures or towers in non-residential districts.
 - 2nd. Other sites in non-residential districts.
 - 3rd. A communication device, only, on existing buildings, structures or towers in residential districts.
- Before the Planning Board may grant a Special Permit for a prioritized 2nd or 3^d category location, the applicant shall establish the unavailability of a location in the higher prioritized category or categories.
- B. Site Plan Review. No facilities shall be erected, constructed or installed on City-owned property without first obtaining site plan approval from the Planning Board.
- C. Exemptions. The following types of wireless communication facilities are exempt from this ordinance:
- a. Amateur radio towers used in accordance with the terms of any amateur radio service licenses issued by the Federal Communications Commission, provided that (1) the tower is not used or licensed for any commercial purpose; (2) the tower does not exceed 100 feet; and (3) the tower will be removed if the use is discontinued for one year.
 - b. Municipal facilities are exempt from the special permit requirements but are subject to site plan review. (10/7/02)
 - c. Placement of a communications device on an existing legally permitted tower unless the number of such devices on the tower has been specifically limited in the permit previously issued for the tower.
 - d. Placement of an antenna within an existing building provided, however, said antenna is not visible from outside of the building, no construction is required on the outside of the building and installation is made in accordance with all applicable federal, state and local laws, codes and regulations.

5-50.3 - General Requirements.

- A. Type of Tower. The only towers allowed are freestanding Monopoles and Lattice Towers, with associated antennae and/or panels.
- B. Setbacks
1. The minimum distance from a tower to a non-residentially zoned property line shall be 1½ times the height of the tower, including any antennae or appurtenances.
 2. For those locations where the site abuts a residential zoning district, a tower must be no less than 500 feet from each residential lot line.
 3. The minimum distance from a tower to a walking, biking or other trail dedicated to public recreational use shall be 1½ times the height of the tower, including any antennae and appurtenances.
 4. The setbacks for equipment storage buildings or storage sheds shall comply with the setback requirements for buildings of the zoning district within which it is located.
- C. Safety
1. Towers, facility structures, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state and local codes, standards and regulations, and shall be designed to withstand sustained winds and gusts of all applicable EIA standards. A certification of compliance must be made by a Massachusetts registered structural engineer that the applicant has complied with all requirements outlined herein.

2. *No tower climbing apparatus shall be lower than fifteen (15) feet from the ground.*
3. *Fencing shall be provided to control access to the site of the tower and shall be of sufficient height to prevent access. No razor wire shall be used.*
4. *All utilities serving the facility shall be placed below ground to the extent feasible.*
5. *Noise shall be minimized. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall take place only on weekdays and only between the hours of 8:00 a.m. and 5:00 p.m. The noise restrictions set forth herein are in addition to any other applicable limits of the Code of Ordinances.*

D. Height

1. *In no case shall a tower exceed the height of 190 feet.*

E. Aesthetics

1. *Facilities shall be designed and constructed to assure minimal visual impact and shall be suitably screened from abutters and residential neighborhoods.*
2. *The maximum amount of natural vegetation shall be preserved and additional vegetative screening shall be employed, particularly to screen facilities from abutting property.*
3. *Communication Devices shall be situated or attached to a building or structure in such a manner that they are screened wherever possible, shall be painted or otherwise colored to minimize their visibility, and shall be integrated into such structures or buildings in a manner that blends with the structure or building. Free standing antennas or dishes shall be located on the landscape, screened and painted in a manner so as to minimize visibility from abutting streets and residents. To the extent feasible, all network interconnections shall be installed underground, and all electric services to the site shall be installed underground.*
4. *Lighting shall be limited to that needed for emergencies and/or as required by the FAA.*
5. *Proposed buildings or structures shall be specifically designed and constructed to be aesthetically and architecturally appropriate to the site and zoning districts.*

F. Parking, Access and Drainage

1. *There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the facility and the site. No vehicles may be permanently parked or stored on site.*
2. *Access to the site shall be sufficient for City emergency vehicles.*
3. *Run-off stormwater from a facility, including driveways and parking areas, shall be contained on site. The amount of impervious surface on the site shall be minimized.*

G. Signs

1. *The operator shall post the following signs:*
 - a. *a no trespassing sign;*
 - b. *any signs required to warn of danger; and*
 - c. *a sign providing the following information:*
 - i. *identification of the facility;*
 - ii. *name, address, phone number, and emergency phone number of the landowner; and*
 - iii. *name, address, phone number, and emergency phone number of the operator*
 - iv. *if the landowner is the City, the name, address, phone number and emergency phone number of the police.*
2. *The signs shall comply with the requirements of Article VIII, Section 8-10 of the Zoning Ordinance. The operator shall file all of the information listed in (c) with the police within seven (7) days of the granting of a Special Permit. The Operator shall not post any other signs.*

H. Discontinuation

1. *A tower owner must file with the City Clerk, with copies to the Planning Board and Superintendent of Building, written notice that a tower is no longer being used for active communication purposes within 14 days of the date that such active use ceases. In the event that a tower has not been used for active communication purposes for a period of 12 consecutive months, the Planning Board shall schedule a public hearing to determine whether the special permit as granted should be revoked. Notice shall be given to the last owner of record and the hearing duly advertised following the same advertising requirements as if the hearing to revoke were a new application. Upon a showing that a tower has not been utilized for active communication purposes for more than 12 consecutive months, the Planning Board shall revoke the special permit and the tower shall be removed at the expense of the tower owner.*
2. *Each tower owner shall file with the City Clerk, with copies to the Planning Board and Superintendent of Buildings by December 31st of each year, a statement that the Owner continues to operate the tower to include confirmation that its removal bond and any required insurance remains in force and effect. The statement must list the name and address of the owner of the land upon which the tower is located, and the names and addresses of all providers of personal wireless services using the tower. Upon a change in ownership of the tower or the land upon which the tower is located, a new filing which complies with the foregoing requirements shall be made by the party responsible for the continued operation of the tower.*
3. *Upon approval of the special permit or upon site plan approval under site plan review, whichever is applicable, the applicant for the siting of a tower shall provide a removal bond to the City of Westfield in an amount equivalent to the costs of removing such tower at present day costs. The Planning Board shall not issue a Special Permit and no building permit shall issue until the Treasurer receives the removal bond. No more frequently than each five years after the issuance of the special permit or of the site plan approval, the Planning Board may require of the Owner a revised estimate of the costs of removing the tower and, upon receipt of the revised estimate and its review by and receipt of the recommendation of the City Engineer, may vote to increase the amount of the bond required in which instance the Owner shall be required to obtain and provide to the City Treasurer a removal bond as required.*

5-50.4 - Filing Procedure and Standard of Review.

A. Procedure

1. *The Planning Board shall promulgate regulations for submission of proposals. These regulations will be used by the Planning Board to review applications and to attached conditions to the Special Permit.*
2. *If the applicant is not the owner of the land, the owner shall sign the application. The applicant shall also submit a signed contract between the applicant and the owner. If the owner is a public entity, the applicant shall submit authorization from the entity. If the owner is the City, a lease agreement between the City and the applicant shall establish authorization from the City.*
3. *The Planning Board shall refer all applications to the Airport Commission for review and comment. The Planning Board shall not act upon an application until it has either received written comment from the Airport Commission or 45 days has elapsed from the date that the Planning Board forwards the application to the Airport Commission. Additionally, the application shall be referred to the City Council, Conservation Commission, Health, Police, and Fire Departments.*
4. *In addition to compliance with the general requirements of the special permit application process, an applicant for a special permit for the siting of personal wireless services facilities must submit with its application a written site justification statement with attached site plan. The site justification statement must explain the reason that the applicant finds existing facilities to be inadequate to provide necessary service coverage, must detail all alternate locations considered by applicant for the location of the facility sought to be permitted, must explain the reason each alternate site was rejected, and, for towers, must explain the basis for the proposed height. Failure to supply the site justification statement or a site plan which the Planning Board finds adequate to allow a full review of the application shall be*

grounds for denial. The Planning Board shall employ an independent technical consultant to review the site justification statement and such technical issues raised in the course of the review process as the Planning Board deems appropriate. Municipal facilities are exempt from having to submit a site jurisdiction statement. (10/7/02)

5. In addition to the usual fee required by applicants upon submission of an application for a special permit, all applications filed pursuant to this section shall be accompanied by a check payable to the City of Westfield in the sum of Two Thousand Dollars (\$2,000). This sum shall be used to defray the cost of the consultant hired by the Planning Board to assist its consideration of the application. Should any portion of said sum not be expended, the balance shall be returned at the conclusion of the application process.
6. Each application, whether submitted for a special permit or as part of site plan review, shall include a written list of requested waivers with a statement of justification for each. Only waivers authorized under III.B.3, below are permissible.

B. Standard of Review

1. The Planning Board shall act in accordance with the standards and requirements set forth herein.
2. The Planning Board shall make findings relating to the issues in the site justification statement. Such findings shall include but are not limited to a finding on the extent to which existing facilities are at capacity, findings as to the effect of topography on the site and findings as to the degree of visual impact of the facility as proposed within the context of the specific neighborhood in which the applicant proposes its siting. There is a presumption that financial costs are not reasons that support a determination. The burden remains on the applicant at all times to prove to the Planning Board any reason supporting an assertion of the unavailability or technical unfeasibility of alternate sites.
3. The Planning Board may grant a Special Permit if it finds that the applicant has met the requirements of the ordinance and General Laws Chapter 40A and that the proposal is in harmony with the general purpose and intent of the City of Westfield Zoning Ordinances. Upon written application therefore, the Planning Board may grant a waiver of strict compliance with (a) the setback requirements, (b) dimensional requirements other than maximum tower height which is not subject to waiver, (c) the on-site drainage requirements and (d) the demonstration requirements, provided that it finds the waiver not to be inconsistent with the present use of the property and not otherwise in conflict with the general purpose and intent of the City of Westfield Zoning Ordinances. Failure of the applicant to prove minimal visual impact shall be grounds for denial. Failure of applicant to supply information adequate or sufficient to allow the Planning Board to conduct a full review shall be grounds for denial.
4. The Planning Board shall act on a Special Permit request within a reasonable period of time as set forth in Article I, Section 1-50 and any denial shall be in writing and supported by substantial evidence contained in the record.

C. Requirements

1. Upon submission of the application for a Special Permit, the applicant shall arrange to fly a three foot diameter fluorescent colored balloon at the primary site at the maximum height of the proposed installation or at the request of the applicant and discretion of the Planning Board, request to substitute a crane for the balloon at the tower location for a minimum of 3 days. In either case photos shall be taken from 8 locations showing the test. The date and location of the flights shall be advertised at least fourteen (14) days, but not more than twenty-one (21) days, before the public hearing in a newspaper with a general circulation in the City of Westfield.
2. Communication Devices shall, if feasible, be located on pre-existing buildings, structures or towers, provided such installation shall preserve the character of the structure. The applicant shall have the burden of proving that there are no feasible preexisting building, structures or towers. If a pre-existing tower is not appropriate, but the site is, the old structure shall be dismantled with a new tower put in its place.

3. *Shared use of Towers by commercial carriers is required unless such shared use is shown not to be technologically feasible.*
4. *All Towers and associated structures shall be designed to accommodate the maximum number of users technologically practical, a minimum of three additional users each utilizing three bays of panel type arrays.*
5. *Whenever feasible, city agencies shall be allowed to attach communication antennas at no cost to the city agency. Facilities shall enhance the City of Westfield's telecommunication, computerization and emergency communication goals.*
6. *Annual certification of compliance with Federal Communications Commission, Federal Aviation Administration, Massachusetts Aeronautics Commission and federal, state and local laws, rules and regulations must be provided for all facilities.*
7. *If a Tower is on City property, a Certificate of Insurance for liability coverage in the amounts of \$1,000,000.00 must be provided naming the City as additional insured.*
8. *If a Tower is on City property, an agreement shall be made whereby the user indemnifies and holds the City harmless against any claims for injury or damage resulting from or arising out of the use or occupancy of the City owned property by the user.*
9. *Equipment storage buildings or storage sheds shall not exceed one (1) story in height; no more than three hundred (300) feet in floor area shall be available for each user; any buildings or storage sheds added to a site must be attached to and abut the original building or storage shed and must be compatible in appearance.*
10. *For a tower, execution of an agreement with the City shall be made whereby the applicant will allow other carriers to lease space on the tower so long as such use does not interfere with the applicant's use of the tower is required.*

5-50.5 – Severability.

A determination of invalidity or unconstitutionality of any section of this ordinance shall not invalidate any other section and every other provision and section shall continue in full force and effect.

(04/18/02)