

**Wireless Telecommunications Facilities:** Shall mean any antenna tower, or other structure which is intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum based transmissions/receptions.

**505.2 Purpose:** These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Rye to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to furnish such services to the community quickly, effectively, and efficiently.
- B. Balance the Town's responsibility to provide reasonable opportunities for wireless telecommunications facilities with the other objectives of this zoning ordinance and with the goals and objectives of the Rye Master Plan.
- C. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to persons and property and property values.
- D. Provide for co-location and minimal impact siting options through an assessment of technology, electronic compatibility, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- E. Permit the construction of new towers only when all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- F. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Rye.
- G. Provide for the timely maintenance and safety inspections for any and all facilities.
- H. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger.
- I. Provide for the removal or upgrade of facilities that are technologically outdated. Provide for the removal of inactive facilities.

**505.3 Wireless Telecommunications Facilities District and Map:** (Rev. 2003)

The Wireless Telecommunications Facilities District shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows :

<u>Map/Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled By</u>	<u>Map Key</u>
10/4-1	Breakfast Hill	New Water Tank	Rye Water Dist.	TC-1
7/108; 108-1; 109 & 112	South from Garland Rd.	Water wells & pumping  (See Note 1 below)	Rye Water Dist.	TC-3
Map 12	Rye Center	(See Note 2 below)		TC-2
18/34	Lang's Corner	School Soccer Field	Rye School	TC-5
7-96	Off Grove Rd.	Conservation Land	Rye Conservation Comm. (Adopted 2003)	

\*Portion of "Perkins Heirs Parcel," west of Grove Road, Conservation Land, Rye Cons. Com. (Adopted 2004)

**Note 1.** At site TC-3 towers and other telecommunication facilities are prohibited within the 400 ft. sanitary radius exclusion zone of the Rye Water District water wells. (Revised 2009)

**Note 2.** Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including Bethany Church, provided that such facilities do not exceed 20 feet height above the existing structure. Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with Section 303.

**505.4 Permitted Uses within the Telecommunications Facilities District:** In addition to uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Special Use Permit as provided for in Section 505.7. All such uses must comply with other applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

Prior to approving an application for a special use permit, the Planning Board shall determine that all requirements of this ordinance will be met.

- A. **Principal or Secondary Use:** Antennas and towers may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of telecommunications facilities as a secondary use as long as all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a tower or an antenna on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the towers or antennas may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

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\* This portion of the "Perkins Heirs Parcel" measures approx. 150' X 780', north of and adjacent to Tax Map 7 Lot 96, easterly of the PSNH Power-line.

- B. **Height Requirements:** These requirements and limitations shall preempt all other height limitations as required by the Town of Rye Zoning Ordinance and shall apply only to telecommunications facilities. Telecommunication tower height for each site must be substantiated and this evidence reviewed by the Town’s consultant (at applicant’s expense) and approved by the Planning Board. No tower shall exceed 150 feet except in Zone TC-3 and on Parcel 7-962 and on the portion of the “Perkins Heirs Parcel” rezoned on March 9, 2004, where the limit is 190 feet. (Amended 2003, 2004)
  
- C. **Amateur Radio; Receive-Only Antennas:** This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.
  
- D. **Essential Services & Public Utilities:** Wireless telecommunications facilities shall not be considered infrastructure essential services, public utilities or public utilities buildings, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for telecommunications facilities is a use of land, and is addressed by this article.

**505.5 Construction Performance Requirements:**

**A. Tower Structural Design:**

- 1. Towers shall be structurally designed to accommodate a minimum of four (4) antenna levels. The application for a special use permit shall include the certification of a professional engineer registered in the State of New Hampshire that the tower is capable of structurally supporting four (4) antenna locations. As a condition of approval, any applicant proposing to build a new tower shall certify, in a form acceptable to the Planning Board, that it will allow three (3) other antennas to be co-located on the tower, including antennas of other carriers. This certification shall be executed as an agreement in a form acceptable to town counsel.
  
- 2. All tower components, including antennas, shall be designed to avoid accelerated failure as caused by wind excitations that could occur at or near the fastened natural frequency of these components.
  
- 3. All fasteners shall have proven self-locking features.
  
- 4. Towers including attachments thereto and ground anchors must be able to withstand wind loads as required by the standards published by the Electronic Industry Association or meet the set back requirements of Section 505.6.A1.
  
- 5. Tower components must be made from durable, non-corroding non-rusting materials.

- B. **Federal Requirements:** All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, and retrofit of existing towers and antennas is required by any Federal agency,

then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months or the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling Federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

**C. Tower Maintenance and Inspection Requirements:**

1. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.
2. **Tower Inspection:** Inspection of the facility shall be carried out every three years by an independent professional structural engineer to verify adequate tower system structural integrity. Inspection to verify structural integrity shall also be accomplished after any storm having local wind velocities in excess of 65 mph as measured by a tower mounted anemometer with continuous recording. Local measurement may be waived by the Planning Board where wind velocities can be obtained from another reliable source. The cost of these inspections shall be borne by the tower owner. An inspection report shall be submitted to the Rye Building Inspector and the Planning Board for each required inspection.
3. If any inspection reveals that a tower constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 60 days to bring such tower into compliance with such inspection recommendations and code standards. If the owner fails to bring such tower into compliance within 60 days, such action shall constitute abandonment and grounds for the removal of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

**D. Aesthetics and Lighting:** The guidelines in this subsection, shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements only if it determines that the goals of this ordinance are better served thereby.

1. Towers shall be painted a color blending in with surroundings so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.
6. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 50 feet wide outside the perimeter of the compound. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

**505.6 Additional Requirements for Wireless Telecommunications Facilities:** These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

**A. Setbacks and Separation:**

1. If the requirements of Section 505.5A are not met, then the towers must be set back a distance equal to 120% of the height of the tower from the edge of the property on which they are located.
2. Towers, guys, anchor structures, and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Towers must be set back a minimum of 120% of tower height from any building used for residential, business or commercial purposes (except buildings which are part of the telecommunication facilities).
4. Towers must be set back a minimum of 100 feet from wetland soils, marshes and year-round streams and ponds.

**B. Security Fencing:** Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

**505.7 Special Use Permits:**

**A. General:** All Wireless Telecommunications Facilities, whether located within the Wireless Telecommunications Facilities District or elsewhere, shall require a Special Use Permit from the Planning Board. All applications under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements and procedures in the *Rye Planning Board Land Development Regulations*. In addition, applications under this ordinance shall also be required to submit the information provided for in paragraphs B and C below. (Amended, March 2011)

B. **Plan Requirements:** Each applicant requesting a Special Use Permit under this ordinance shall submit a scaled plan in accordance with the *Rye Planning Board Land Development Regulations* and further information including:

1. A scaled elevation view; this shall be a three dimensional perspective color-rendered drawing of the proposed site and abutters' property and buildings up to a radius of 500 feet.
2. Topography.
3. Radio frequency coverage.
4. Tower height requirements.
5. Setbacks to adjacent uses (up to 225 ft. away); location of all buildings and structures within 500 feet of proposed tower.
6. Driveways and parking.
7. Fencing.
8. Landscaping.
9. Lighting (if required by FAA) electric power requirements, location and configuration of power access.
10. Signage (limited to basic identification and safety information).
11. Tree cutting at site.
12. Permit(s) from State of New Hampshire and Rye Board of Adjustment allowing crossing of wetlands, if required.

C. **Other Information Required:** In order to assess compliance with this ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulation on radio frequency (RF) exposure guidelines.
2. The applicant shall submit written proof that an evaluation has taken place, as well as the results of evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the Federal 30 day comment period, and the Town process shall become part of the application requirements. Applicants shall identify all environmental impacts and mitigation plans and schedules.

3. Each applicant for an antenna or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers.

The Planning Board may share such information with other applicants applying for approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

4. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence may consist of:
  - a. Substantial evidence that no suitable existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.
  - b. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
  - c. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. Substantial evidence that 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.
  - e. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable.
  - f. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
  - g. Information on how many wireless facility sites each provider will require, other sites outside of Rye being considered, type of use (analog or digital) and impact of future technology on tower height.
  - h. Information on what sites outside the Town of Rye are being considered for other sites.
  - i. Information on how future technology may reduce or eliminate the need for tall antenna sites.

- j. Information on how the siting of a wireless facility affects the ability to allow a competitor's antennas on the same property.
  - k. Information on what wireless carriers use the system known as CMI/HIC which utilizes cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones.
  - l. Information on whether there are any of the carriers using CMIL/HIC in other cities and towns.
  - m. Information on whether it is feasible for carriers to locate base station equipment underground.
5. The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. The Agreement shall be reviewed and approved by town counsel. Such agreement shall become a condition to any approval. This agreement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Rye.

D. **Issuance of Special Use Permits:** In granting the Special Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

- 1. **Decisions:** Possible decisions rendered by the Planning Board, include approval, conditional approval, or denial of the special use permit. All decisions shall be rendered in writing, in accordance with RSA 676:3. Notice of Decision shall be filed within 72 hours and in the event of denial shall include written reasons for same. In accordance with the National Wireless Telecommunications Siting Policy Section 332© (47 U.S.C.332©), a denial shall be based upon the substantial evidence contained in the written record.
- 2. **Factors to be Considered in Reviewing Applications:**
  - a. Height of the proposed tower or other structure does not exceed that which is essential for its intended use and public safety within the limits of Section 505.4B.
  - b. Proximity of tower to residential development or zones.
  - c. Nature of uses on adjacent and nearby properties.
  - d. Surrounding topography.
  - e. Surrounding tree coverage and foliage.
  - f. Design characteristics of the tower that have the effect of reducing or eliminating visual obtrusiveness.



- g. Structural safety margin of the tower system with wind velocities of 75 mph (measured at or near the top).
- h. Proposed ingress and egress to the site.
- i. Availability of suitable existing towers and other structures as discussed in Section 505.7.C.4.
- j. Visual impacts on view sheds, ridge lines, and other impacts caused by tower location, tree and foliage clearing and placement of incidental structures.
- k. Impact on view from any public park, public beach, natural scenic vista, historic building or site or major view corridor.
- l. That the proposed facility/tower/dish is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.
- m. That monopoles have been carefully considered for use.
- n. Compatibility with surrounding land uses and the neighborhood.
- o. The goals and objectives of the Rye Master Plan.

**505.8 Bonding, Security and Insurance:** Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and the amount of security that represents the costs for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable or unwilling to remove the tower in accordance with Section 505.9. Satisfactory security shall be submitted to the Town and approved by town counsel prior to any Planning Board approval. Upon construction of the tower, the Planning Board shall also require a certificate of appropriate insurance covering the constructed facilities, with ten days notice of any changes in coverage.

**505.9 Removal of Abandoned Antennas and Towers:** Planned tower deactivation or abandonment by lessee or owner shall be the subject of prompt noticing of the Rye Building Inspector and the Planning Board. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the lessee or owner of said tower provides proof of quarterly inspections. The lessee or owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the lessee or owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

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

not limit or restrict in any way the Board's ability to require other investigative studies under its site plan review authority.

**505.11 Waivers:** Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

**A. Requirements for Waivers:**

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver will not, in any manner, vary the provisions of the Rye Zoning Ordinance, Rye Master Plan or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
  - a. Topography and other site features.
  - b. Availability of alternative site locations.
  - c. Geographic location of property.
  - d. Size/magnitude of project being evaluated and availability of co-location.

**B. Conditions:** In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

**C. Procedures:** A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit a petition in writing shall require an automatic denial.

**505.12 Compliance with RSA 12-K: 7:** (Adopted, March 2011) (Rev 3/11/14/)

- A. Upon receipt of an application to construct a new tower or to complete a substantial modification to an existing tower or mount which will be visible from any other New Hampshire municipality within a 20 mile radius, the town shall:

1. Provide written notification of such application to the other municipality, per RSA 12-K:7, I (b); and
  2. Publish a notice in a newspaper customarily used for legal notices by the town, as required by RSA 12-K: 7, I (b). Such notice shall be published not less than 7 days nor more than 21 days prior to the date of any public hearing which may be required.
- A. For applications to the Zoning Board of Adjustment relative to a proposed Wireless Telecommunications Facility, the building inspector shall provide the above notifications required by RSA 12-K:7.

**505.13. Collocations/Modifications:** Pursuant to RSA 12-K: 10, collocations and modifications are exempt from the requirements of §'s 505.3 to 505.11. Applicants for collocation or modification shall apply to the building inspector for a building permit. The building inspector's review and decision shall comply with RSA 12-K: 10, II. This exemption does not apply to substantial modifications of existing towers, mounts or PSWFs. (Adopted 3/11/14)

## **SECTION 506            ACCESSORY APARTMENTS** (Adopted 3/10/98, Revised 3/18/2017)

**506.1 Purpose:** The Town of Rye recognizes the public need for the provision of a variety of housing types, including efficient and affordable housing for singles, couples, single parents, elderly and new households. Throughout the town opportunities exist within under utilized and/or large single family dwellings to create small accessory dwelling units to meet these needs, as well as to provide a source of income and other assistance for property owners. To accomplish this purpose and to protect the health, safety and welfare of the existing neighborhoods, accessory units may be permitted subject to the following requirements. (Amended 3/18/2017)

**506.2 Conditional Use Permit:** The Planning Board may grant a conditional use permit to allow the construction of, addition to, renovation of and use and occupancy of a single family dwelling in the Single Residence District, the General Residence District or the Business District, in order to create one subordinate accessory dwelling unit as an integrated part of said single family dwelling, in accordance with the following performance standards. (Amended 3/18/2017)

**506.3 Performance Standards:** The Planning Board shall determine that an accessory dwelling unit complies with the following standards. (Amended and renumbered 3/18/2017)

- A. Each accessory dwelling unit shall have a minimum floor area of 600 sf and a maximum floor area of 1200 sf and shall contain, at a minimum, a separate cooking area with a kitchen sink, one full bathroom, and not more than two bedrooms. (Rev. 2002, Amended 3/18/2017)
- B. Each accessory dwelling shall be limited to a maximum occupancy of three persons. A one bedroom accessory dwelling unit shall not have more than two (2) occupants. (Amended 3/18/2017)
- C. Two additional off-street parking spaces shall be provided for the accessory dwelling unit (Amended 3/18/2017).
- D. The accessory dwelling shall be constructed and maintained in such a manner as to retain the appearance and character of the structure and site as a single family dwelling. (Amended 3/18/2017)