

Add to 200-7 Definitions

WIND ENERGY CONVERSION SYSTEMS - One or more mechanical devices, such as wind chargers, windmills or wind turbines, which are designed and used to convert wind energy into a form of useful energy.

WIND ENERGY CONVERSION SYSTEM (COMMERCIAL) - A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, with a rated capacity greater than 250 kilowatts, a total height of more than 60 feet, not to exceed 450 feet, and intended solely to supply electrical power into a power grid for sale.

WIND ENERGY CONVERSION SYSTEM (NON-COMMERCIAL) - A wind energy conversion system, consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity of not more than 250 kilowatts and a maximum total height of 60 feet.

§ 200-50

Antennas, towers, and **Wind Energy Conversion Systems**, ~~solar collectors and other energy capturing structures.~~

The intent of this section is to promote and protect the public health, safety, welfare and aesthetics of the Town of Richmond while allowing open telecommunications and the ability to capture energy from natural sources.

A. Commercial broadcast and commercial wireless service telecommunications towers and antennas.

(1) Purpose.

(a) The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Town, to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations and to protect the natural features and aesthetic character of the Town with special attention to scenic views from public highways.

(b) These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

(2) Application of special use regulations.

(a) No transmission tower or accessory building shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and zoning permit in accordance with Subsection E and Article VIII, respectively. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.

(b) These regulations shall apply to all property in accordance with the Table of Permitted Uses of Commercial Broadcast and Commercial Personal Wireless Service Towers and Antennas.

Editor's Note: Said table is included at the end of this chapter.

(c) Exceptions to these regulations are limited to new uses, which are accessory to residential uses and lawful or approved uses existing prior to the effective date of these regulations.

(d) Where these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.

(3) Special use standards.

(a) Site plan.

[1] An applicant shall be required to submit a site plan as described in § 200-68. The site plan shall show all existing and proposed structures and improvements, including roads, and shall include grading plans for new facilities and roads. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennas and justification for any land or vegetation clearing required.

[2] The Planning Board shall require that the site plan include a completed visual environmental assessment form and a landscaping plan addressing other standards listed within this section, with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual environmental assessment form.

[3] The Planning Board may determine, based on review of the site plan and visual environmental assessment form, that the use is a Type I environmental action and, as such, will require submission of a full environmental assessment form.

(b) Shared use.

[1] At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antennas on preexisting structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other preexisting structures as an alternative to a new construction.

[2] An applicant intending to share use of an existing tower shall be required to document intent from an existing tower owner to share use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening and other changes, including real property acquisition or lease required to accommodate shared use.

[3] In the case of new towers, the applicant shall be required to submit a written report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for at least three antenna systems for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.

(c) Setbacks. Setbacks for freestanding towers and antennas shall be 1.25 times the total height of the tower and antenna plus the normal building setback for the associated district. Guy wire supports and accessory structures shall be in accordance with normal building setbacks for the associated district. Freestanding towers shall not be closer than 300 feet from a public highway nor 500 feet from a residential dwelling.

(d) Visibility.

[1] All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.

[2] Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding tree line and painted

gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding tree line unless other standards are required by the FAA. In all cases, structures offering slender silhouettes (i.e., monopoles or guyed towers) shall be preferable to larger, unsupported structures except where such structures offer capacity for future shared use. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

[3] Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

(e) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the special permit use. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

(f) Protective fencing. Climbable towers shall be surrounded by at least eight-foot-high fencing, suitably topped to prevent entry.

(g) Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided outside of any protective fencing to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

(h) Access and parking. A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived in meeting the objectives of this subsection.

(4) Authority to impose conditions. The Town Zoning Board of Appeals and the Town Planning Board, respectively, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower special use or site plan.

(a) Removal upon abandonment. Such conditions may include provisions for dismantling and removal of towers and accessory facilities upon abandonment of use.

B. Full-size earth station dish antennas and towers.

(1) Scope. This subsection encompasses residential dishes exceeding one meter in diameter and commercial, governmental and exclusively emergency service point-to-point communications dishes exceeding two meters in diameter.

(2) Use restrictions.

(a) Permitted uses. Full-size dishes are permitted in all districts, subject to building/zoning permits, special use permits, variances and area restrictions, as applicable in accordance with Article VIII, § 200-65, and Subsections B(2)(b), (c) and (d) and B(3) below.

(b) Special uses. The following require special use permits in accordance with Article VIII, § 200-66C, and Subsection E below.

[1] Full-size non-roof-mounted dishes having a total height of greater than 10 feet above grade.

[2] Full-size roof-mounted dishes.

(c) Variances. The following uses may be permitted subject to issuance of area variances in accordance with Article VIII, § 200-67:

[1] Non-roof-mounted full-size dishes having a total height exceeding district building height plus 10 feet above grade.

[2] Full-size roof-mounted antennas having a height above the roofline exceeding 10 feet.

[3] Dishes exceeding two meters in diameter.

(d) Prohibited variance. No facilities exceeding 250 feet in height are permitted and no variance for such facilities may be issued.

(3) Area restrictions.

(a) No more than one facility shall be located on any lot or building.

(b) No full-size freestanding dishes shall be constructed, erected or maintained except as accessory structures to an existing building.

(c) All full-size freestanding dishes shall be located in the rear yard, at least 10 feet from the side and rear lot lines or at a distance equal to the total height of the antenna plus six feet, whichever is greater. All cables, guy wires or other supports shall constitute part of the antenna for side and rear setback measurements.

C. Mini-dish and noncommercial broadcast wire, rod or loop element antennas:

(1) Scope. This subsection encompasses residential dish antennas not exceeding one meter in diameter; commercial, exclusively emergency services and governmental point-to-point communications dishes not exceeding two meters in diameter; broadcast receiving antennas; wireless cable or multichannel, multipoint distribution service receiving antennas; amateur and citizens band radio antennas; and other noncommercial, emergency service and governmental point-to-point communications elemental antennas.

(2) Use restrictions.

(a) Permitted uses.

[1] No use restrictions or building/zoning permits apply for antennas as specified in Subsection C(1) above which meet mini-dish diameter constraints or which have the product of length multiplied by maximum width not exceeding 10% of the roof area for roof-mounted antennas, or which have a total height not exceeding 15 feet above grade or, for roof-mounted antennas, 15 feet above roof line, except that commercial antennas must be located in a commercial or industrial district.

[2] Area restrictions of Subsection C(3) below apply to all antennas described in this section.

(b) Special uses. The following uses are permitted only upon issuance of a special use permit in accordance with Subsection E below and Article VIII, § 200-66, and issuance of a building/zoning permit in accordance with Article VIII, § 200-65.

[1] Roof-mounted elemental antennas having length multiplied by maximum width exceeding 10% of the roof area.

[2] Antennas and associated structures exceeding 15 feet above grade or, for roof-mounted antennas, 15 feet above the roof line.

(c) Variances. The following uses may be allowed upon issuance of an area variance, special use permit and building/zoning permit, in accordance with Subsection E below and Article VIII, should the applicant be able to meet all the legal standards specified therein.

[1] Antennas and associated structures exceeding 60 feet above grade.

(d) Prohibited variances. The following uses are not permitted in any district and no variances shall be granted for such use:

[1] Facilities exceeding 250 feet total height above grade.

(3) Area restrictions.

(a) No more than one facility shall be located on any lot except that two monopoles or masts supporting one wire-type antenna is permitted.

(b) No freestanding antenna shall be erected, constructed or maintained except as an accessory structure to an existing building.

(c) All freestanding antennas, including guy wires and support structures, shall be located in the rear yard at least 10 feet from the rear and side lot lines, or at a distance equal to the antenna height plus six feet, whichever is greater, except that antennas less than 15 feet in total height may be located in the front or side yards to obtain clear communications.

D. Wind Energy Conversion Systems (Non-commercial).

(1) Use restrictions.

(a) Permitted accessory uses. Wind Energy Conversion Systems (Non-commercial) are permitted accessory uses in the A Residential/Agricultural District, subject to receipt of a building/zoning permit and special use permit in accordance with Subsection D(1)(b) and area restrictions of Subsection D(2) below and Subsection E.

(b) Special uses. The following uses are permitted in all districts only upon issuance of a special use permit:

[1] Facilities having a height not exceeding 60 feet above grade.

[2] Wind Energy Conversion Systems (Non-commercial) which do not exceed 60 feet in height above grade to the hub of the propeller.

(c) Variances. The following uses are not permitted but may be allowed upon issuance of an area variance and special use permit in accordance with Subsection E:

[1] Facilities exceeding 60 feet in height above grade.

[2] Roof-mounted facilities.

(d) Prohibited. No Wind Energy Conversion Systems (Commercial) are permitted and no variance for such facility shall be permitted.

(2) Area restrictions.

(a) No more than one Wind Energy Conversion Systems (Non-commercial) shall be located on any lot.

(b) No freestanding energy-capturing device shall be erected, constructed or maintained except as an accessory structure to an existing building.

(c) All freestanding energy-capturing devices shall be located in the rear yard at least 10 feet from the rear and side lot lines, or at a distance equal to the structure height plus six feet, whichever is greater.

E. Additional provisions and fees for antennas, towers and energy-capturing structures.

(1) Application procedures.

(a) Building/zoning permits for permitted uses. Prior to construction of any facility permitted under § 200-50, except for those of Subsection C(2)(a), a zoning permit in accordance with Article VIII, § 200-66, is required.

(b) Special use permit. All applicants for a special permit to construct or maintain a facility within the Town of Richmond must make application to the Code Enforcement Officer on forms prescribed for that purpose. In addition, the applicant must provide the following:

[1] Specific site data placed on a map, acceptable in form and content to the Code Enforcement Officer, which shall be prepared to a scale of not smaller than one inch to 50 feet, and in sufficient detail and accuracy so as to accurately depict the placement of all component parts of the tower or antenna (including guy wires or enclosures) in relation to:

[a] The location of property lines and permanent easements.

[b] The location of all structures on the site and all structures on any adjacent property within 10 feet of the property lines.

[c] The location of all utility poles, above- and below-ground utility lines, trees or other natural or artificial structures.

[d] The location, nature and extent of any proposed fencing, buffering, plantings or other screening measures, if any.

[2] All information prepared by the manufacturer of the facility for which a permit is being sought, including but not limited to the following:

[a] The make and model.

[b] The manufacturer's suggested installation instructions.

[c] The manufacturer's suggested maintenance and/or inspection procedures.

[3] The applicant shall also submit to the Zoning Board of Appeals documentation that shared use of existing towers is not feasible.

[4] With respect to all **Wind Energy Conversion Systems (Non-commercial)**, the following information shall be provided:

[a] A report prepared by a professional engineer licensed by the State of New York or, at the option of the Building Inspector, the manufacturer's design data and calculations required to certify the structural adequacy of the tower, the guy lines, footings and other supporting structures, and to certify compliance of the New York State Building Code. The report shall also specify the expected behavior of the tower and equipment in a failure mode.

[5] The applicant shall give notice by certified mail, return receipt requested, to all property owners within 1,500 feet of the parcel upon which the proposed facility is to be constructed or maintained. Such notice must contain the following information: the street address of the property in question; a scale sketch of the location of the facility on the property; and the date, time and place of the public hearing on said application.

[6] The applicant shall submit certification of approval from the Federal Communications Commission to the Zoning Board of Appeals that the proposed facility meets with its approval.

(2) Special use permit standards. No special use permit shall be granted unless evidence is presented which establishes that:

(a) The proposed facility is located within the geographic area permitted under this section.

(b) The proposed facility complies with all other use and area requirements of this section.

(c) The proposed facility is adequately screened and buffered from neighboring properties in order to minimize impact on said properties.

(d) The installation and use of the facility will not have an adverse impact on the use, enjoyment and value of neighboring property.

(e) The nonionizing electromagnetic radiation (NEMR) emitted from the facility does not result in a ground level exposure at any point outside said facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the United States government or the American National Standards Institute (ANSI).

(3) Maintenance of existing facilities. Existing facilities may be repaired and maintained without restriction. However, any modification to any such facility, whether or not incidental to repair or maintenance, which may result in a change on the surface, subsurface or air space occupied by such facility, including any device used in connection with the same, shall be subject to the provisions of this section. No existing facility shall be modified in any way which will result in any substantial increase in the level, intensity or direction of any NEMR emission existing on the effective date of this chapter, and further, that at no time shall such modification result in any increase in the level of NEMR over the applicable NEMR exposure standards established by any regulatory agency, private (such as ANSI) or governmental, whichever is lower, and further provided that such emissions from the proposed modification will not cause some other site to exceed the standards because of cumulative effect. The NEMR emitted therefrom does not result in a ground level exposure at any point outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the United States government or the American National Standards Institute.

(4) Abandonment or discontinuance of use and operation. In the event that the owner or user of any facility ceases for a period of 90 days to use or operate said facility, then and in that event such facility shall be dismantled and removed from the site and the site shall be restored to its natural state by the owner. Failure to dismantle and remove a facility and restore the site to its natural state within 30 days after said facility has been declared abandoned by the Town Board will result in forfeiture of said letter of credit or cash bond posted by said owner or user of said facility.

(5) Registration and reporting.

(a) The owner, manager or other beneficial party in interest shall file a statement of registration of any commercial broadcast or communication facility defined in Subsection A herein, excepting private use facilities, with the Code Enforcement Officer within 90 days of the effective date of this chapter. Such statement shall contain the following information and any other data which the Code Enforcement Officer requests as incidental and necessary to the administration and enforcement of this chapter:

[1] The nature of the facility, including a description of its function and purpose.

[2] The names of the owners, managers and other parties who are responsible for the control and operation of the facility. This shall also include the names of any persons on whose property the facilities are located.

[3] Emission data pertaining to NEMR, including levels, direction and orientation of emissions, and hours and dates of operation.

[4] The names, telephone numbers and addresses of persons who may be contacted in the event of any emergency.

[5] The names of any regulatory agencies which are involved in any way in the licensing or regulation of the facility, including a statement of any violations cited against the facility and corrective measures mandated.

[6] The names of any insurance companies providing protection against loss or damage to persons or property resulting from the operation or maintenance of the facility.

[7] Any changes in the information or date required to be furnished by this section shall be provided within 30 days of any such changes by the filing of an amended registration form to be provided by the Town Board. Such filing shall not, however, be interpreted to authorize any violation of the provisions of this chapter or of any permit issued pursuant to the same.

(b) The owner or other beneficial party in interest shall submit to the Code Enforcement Officer of the Town of Richmond not less than annually a report describing the research and development, experimental or testing activities of its facilities in the Town of Richmond during the year, including the hours of operation of those facilities, and certifying on a form to be provided by the Town, that during the previous year there have been no NEMR emissions from such facilities at power levels, frequencies, durations, and directional concentrations as would exceed the above standards so as to constitute any health hazard to the citizens of the Town of Richmond. Further, the applicant shall provide to the Code Enforcement Officer of the Town of Richmond any other reports filed with the governmental or regulatory agencies related to the use and operation of these facilities.

(6) Fees.

(a) Application fees. Application fees for building permits, special use permits and variances shall be as established by the Richmond Town Board and kept on file with the Code Enforcement Officer.

(b) Annual registration and inspection fees. Annual registration, initial engineering inspection and annual maintenance inspection fees shall be established by the Richmond Town Board and kept on file with the Code Enforcement Officer.

(7) Miscellaneous provisions.

(a) Inspection. Each facility subject to this section may be inspected on a periodic basis by the Fire Marshal, Building Inspector or other person appointed by the Town Board to ensure compliance with this section.

(b) Maintenance and/or performance bond.

[1] Prior to approval of any application for commercial towers or antennas defined in Subsection A, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Board and Attorney for the Town in an amount sufficient to cover the installation, maintenance and/or construction of said tower or antennas during their lifetime and provide for their removal. The amount required shall be determined in the sole discretion of the Town Board, based upon the unique characteristics of the structure and site.

[2] In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Planning Board prior to approval of any application to accomplish the foregoing.

(c) Insurance. Each owner or user of a facility subject to the requirements of Subsection A shall be required to obtain an insurance policy, naming the Town of Richmond as beneficiary, to protect the Town of Richmond from liability arising out of said facility, if

said insurance policy can be obtained. The amount of said policy shall be determined by the Town Board.

(d) Revocation of permit. Any permit granted hereunder may be revoked by the Zoning Board of Appeals after due hearing on not less than 10 days' notice to the person holding such permit in the event that the use violates any of the conditions or restrictions of this section or any conditions or restrictions imposed by the Zoning Board of Appeals upon the issuance of such permit, or shall have become a nuisance.

(e) Enforcement proceedings. The Town of Richmond shall have all enforcement remedies allowed by the law, including but not limited to criminal enforcement in Justice Court and civil enforcement by injunction in Supreme Court.