

7. If a new structure is being proposed to support or accommodate the personal wireless service facility:

- i. The new structure cannot exceed 500 square feet in footprint area;
- ii. The new structure is necessary to the operation or functioning of the personal wireless service facility;
- iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space; and
- iv. There are no existing structures on the land, which could be utilized or occupied to adequately support the personal wireless service facility and the relevant deficiencies associated with each existing structure, as provided by the applicant pursuant to N.J.A.C. 2:76-23.5(a)9i, support that conclusion;

8. The personal wireless service facility does not interfere with the use of the land for agricultural purposes;

9. The personal wireless service facility uses the land in its existing condition, except as otherwise allowed pursuant to (a)7 above;

10. (Reserved)

11. The personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved and is consistent with the deed of easement and land use approvals and any other applicable approvals that may be required by Federal, State, or local laws, rules, regulations, or ordinances, provided that if such approvals contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter or the special permit itself, the special permit will be denied.

- i. To the maximum extent possible, the facility shall avoid being placed on soils classified as prime farmland and Statewide importance;

12. The location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

13. All necessary local zoning and land use approvals, and any other approvals required by Federal, State, or local law, rule, regulation or ordinance have been obtained, and such approvals do not contain any requirements for implementation of the personal wireless service facility that are

inconsistent with N.J.S.A. 4:1C-32.2, this subchapter or the special permit itself;

14. Additional factors, such as traffic generated and the number of employees are limited to the maximum extent possible to limit the intensity of the activity and its impact on the land and surrounding area;

15. The personal wireless service facility provider has agreed in writing to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility or any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, as permitted by the Committee;

16. The personal wireless service company is not requiring conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;

17. The owner of the premises is not in violation of any provision of the deed of easement; and

18. The personal wireless service facility otherwise complies with N.J.S.A. 4:1C-32.2.

2:76-23.7 Review by board or nonprofit easement owner

(a) A board or a qualifying tax exempt nonprofit organization as the owner of a development easement shall review an application for a special permit pursuant to N.J.A.C. 2:76-23.6 and N.J.S.A. 4:1C-32.2.

(b) The board or qualifying tax exempt nonprofit organization shall confirm that it is in possession of the following documents related to the purchase of development easement on the subject premises:

- 1. A copy of the recorded deed of easement;
- 2. A copy of the title policy issued at the time the deed of easement was recorded; and
- 3. A copy of the original survey of the premises.

(c) The board or qualifying tax exempt nonprofit organization shall inform the Committee of its determination to approve or deny the issuance of the special permit, state the reasons for its decision, and submit the following to the Committee for its review:

- 1. Notification of any commercial nonagricultural activities already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;
- 2. The recommended time period for which the special permit shall be effective, and any appropriate conditions of approval;

3. A resolution of the board or qualifying tax exempt nonprofit organization setting forth the approval, or disapproval, of the application and the reasons therefore;

4. A determination as to whether the applicant is in violation of any provision of the deed of easement; and

5. A checklist of documents provided by the applicant to the board/qualifying tax exempt nonprofit organization.

2:76-23.8 Committee review and issuance of permit

(a) The Committee, as the owner of a development easement, shall review an application and in its sole discretion may issue a special permit pursuant to N.J.S.A. 4:1C-32.2 and this subchapter.

(b) If a development easement is owned by a board or qualifying tax exempt nonprofit organization, the Committee, upon receipt of a complete application and notice of approval by the board or qualifying tax exempt nonprofit organization, shall review the application using the criteria set forth in this subchapter.

1. Approval of an application by a board or qualifying tax exempt nonprofit organization shall not be binding on the Committee if the Committee makes an independent determination that the application does not meet the criteria set forth in this subchapter.

2. If an application has been denied by a board or qualifying tax exempt nonprofit organization, no further action by the Committee is required.

3. If the Committee is missing any of the following documents related to the preservation of the premises, the board or qualifying tax exempt nonprofit organization shall provide the Committee with the documents upon request:

- i. A copy of the recorded deed of easement;
- ii. A copy of the title policy;
- iii. A copy of the original survey of the premises; and
- iv. The special permit application.

(c) The Committee shall inform the applicant of its decision to approve or deny the application and shall inform the board or qualifying tax exempt nonprofit organization that owns the development easement.

(d) Approval of any special permit shall be subject to the applicant providing evidence that he or she has obtained all necessary local, State and Federal approvals, provided that if such approvals contain any requirements for implementation of the personal wireless service facility that are inconsistent with N.J.S.A. 4:1C-32.2, this subchapter, or the special permit itself, the special permit will be deemed denied.

(e) The Committee may include other reasonable requirements to limit, to the maximum extent possible, the intensity

of the permitted activity and its impact on the land and surrounding area.

(f) When issuing a special permit, the Committee shall:

1. Identify the time period for which the special permit shall be effective; and

2. Stipulate a time period during which the landowner must exercise the special permit and initiate the erection of the personal wireless service facility.

i. The Committee may provide for an extension up to six months upon a showing of special circumstances or need presented by the applicant.

ii. If the owner fails to exercise the special permit and initiate the erection of the personal wireless service facility within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to (f)2i above.

(g) In the event that the record owner obtains a special permit from the Committee, and subsequently contracts for the sale of the premises, the contract-purchaser of the premises may seek approval to continue the personal wireless service facility special permit after conveyance of the property by applying for a new special permit pursuant to N.J.A.C. 2:76-23.5, prior to the actual sale to avoid termination of the special permit.

1. The contract-purchaser shall provide a copy of the executed contract for the purchase of the premises as part of his or her application.

2. The contract-purchaser must obtain a special permit issued by the Committee pursuant to N.J.A.C. 2:76-23.8 prior to the conveyance of the premises.

(h) Upon the death of the record-owner of the premises, the heir(s) or estate representative may apply for a special permit pursuant to N.J.A.C. 2:76-23.5.

1. The heir(s) or estate representative may apply for and obtain Committee approval for a special permit within six months of the record-owner's death.

2. The special permit shall automatically expire six months from the date of death of the record-owner of the property holding that permit unless the heir(s) or estate representative applies for and obtains a special permit, or applies for and obtains an extension of the six-month period, within that time.

3. Upon request by the estate representative or heir(s), the Committee may extend the period to apply for and obtain approval of the special permit for up to one year where required for settlement of estate issues provided that the period of any such extension shall not exceed the period of the initial special permit.