

**TOWN OF
DENMARK, MAINE**
“Beautiful by Nature”



Proposed Amendments To The
Zoning Ordinance of the Municipality of Denmark, Maine

SECTION 5.15.

**WIRELESS COMMUNICATION FACILITIES AND
COMMUNICATION TOWERS**

**PREPARED FOR THE TOWN OF DENMARK SELECT BOARD
MARCH 26, 2024 PUBLIC HEARING**

MARCH 08, 2024

Proposed amendments to Section 5.15., Wireless Communication Facilities and Communications Towers (and other Sections) of the Zoning Ordinance of the Municipality of Denmark, Maine,. Synopsis is below:

- The amendments bring the existing tower ordinance in line with mandates of the Federal Communications Commission Telecommunications Act of 1996.
- Adds tower height restrictions in Resource Protection and Shoreland Districts per Maine Department of Environmental Protection rule.
- Bans tower beacons and lights.
- Provides technical analyses and standards tests to prove a need for a tower.
- Provides standards for site access, safety, and layout.
- Provides permitting, operational, abandonment, and decommissioning standards.
- Definitions are added.

5.15. Wireless Communication Facilities and Communications Towers.

Wireless Communications Facilities and Towers and antennas (Communications Tower) are permitted as a Conditional Use only as follows:

5.15.1. The placement of antennas and associated equipment onto an existing structure may be allowed without a conditional use permit, except in in the Shoreland District, when they are designed to be incorporated into the architecture of new or existing buildings or into the fabric of other manmade or natural structures or features so as to be inconspicuous when viewed at any point beyond the limits of the host property.

5.15.2. The height of any Communication Tower shall not exceed the height of the existing vegetation surrounding the base of the tower without a radio frequency analysis prepared by a registered professional engineer indicating the proposed height is the minimum needed to provide reasonable service for the intended purposes. The maximum height of any Communication Tower shall not exceed 190 feet except in Shoreland and Resource Protection Districts where the maximum height shall be 35 feet. The height of an antenna shall be included in the total height limitation as allowed for a Communication Tower.

~~The Communication towers shall be set back from all property lines a minimum of its height.~~

~~5.15.2.1. All Communication Towers must be located such that adequate setbacks are provided on all sides to prevent the tower's fall zone from encroaching onto adjoining properties. The fall zone, in each case, shall be determined and certified by a Maine licensed Professional Engineer.~~

~~5.15.2.2 The required setback shall be maintained as an undisturbed buffer.~~

~~5.15.3. The Communication Towers shall not be lit nor include a beacon or other lights. A Communications Tower shall not be permitted or operated at any time with any beacon light if required by any regulation. In those cases, towers shall be lowered or removed.~~

~~Communication towers shall have no signage, writing, or pictures, that may be construed as advertising. No flags, streamers or banners shall be attached.~~

~~5.15.4. The Communication Towers shall remain unpainted galvanized steel or be painted gray or silver.~~

~~5.15.5. Road access to the Communication Tower shall be the minimum size necessary to allow safe access.~~

~~5.15.6. A security fence not less than 8 feet in height from the finished grade shall be provided around the Communication Tower.~~

~~5.15.7. At its base the tower shall be no wider than four feet. No individual member of the tower may have a diameter or thickness larger than four inches.~~

~~5.15.7.1. The Planning Board may waive the dimensional provisions of the preceding paragraph if the Communications Tower's use and particulars fall within the mandates of the Federal Communications Commission and the Telecommunications Act preempting state and local laws and practices. The applicant for a Communications Tower shall present satisfactory evidence to the Planning Board that such mandates and preemptions apply to the subject tower.~~

5.15.8. The applicant shall present evidence to the Planning Board that there are no existing structures which may be used to support the antenna and associated equipment and provide an equivalent level of service as the proposed facility and tower.

~~The applicant shall present to the Planning Board a visual impact analysis prepared by a landscape architect or other qualified professional that quantifies the amount of visual impact of the properties located within 2 miles of the proposed structure. The analysis shall include recommendations on how to mitigate adverse impact on such properties, if necessary.~~

~~5.15.8.1. The applicant shall present to the Planning Board an analysis prepared by a qualified professional that describes why this site and structure is critical to the operation for which it is proposed. The analysis shall address, at a minimum; existing and proposed service area maps; how this structure is integrated with other company operations, particularly other structures in Denmark and surrounding communities; future expansion needs in the area; the affecteffect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location.~~

5.15.9. The applicant shall present to the Planning Board a visual impact analysis prepared by a landscape architect or other qualified professional that quantifies the amount of visual impact of the properties located within 2 miles of the proposed structure. The analysis shall include recommendations on how to mitigate adverse impact on such properties.

5.15.9.1. The proposed Communications Tower, antennae or accessory structure(s) shall be placed in locations where visual impacts on natural and historic resources shall be minimized, while allowing the facility to function in accordance with minimum standards imposed by applicable communications regulations and design requirements.

5.15.10. The applicant shall demonstrate that all conditions for approval contained in this Ordinance for the area are met including application of setback requirements of the underlying zoning district; that all applicable building code requirements are met; and that the permitted use shall not endanger the safety of residents, employees, travelers, or neighboring properties, particularly in the event of structural failure.

5.15.11. The applicant shall allow other users to co-locate on the proposed Communications Tower, subject to the engineering capabilities of the structure, frequency considerations, reservation of space for future expansion, and availability at prevailing market rates.

5.15.12. The proposed Communication Tower shall not contain signs on any surface, except as is required by applicable state or federal law, rule, or regulation; signs for the purpose of identification, warning, emergency function or contact may be placed as required in accordance with standard industry practice; commercial messages shall not be displayed on the tower.

5.15.13. The Communication Tower owner and each co-located antennae owner shall provide written certification from a radio frequency specialist that the proposed facility will not radiate power density levels or collective power density levels for all co-located antennae that exceed federally approved levels or American National Standards Institute (ANSI) standards, whichever proves the stricter requirements.

5.15.14. The applicant shall present to the Planning Board certification by a Maine licensed Professional Engineer ~~structural engineer~~ that the construction of the structure shall satisfy all Federal and State code requirements.

5.15.15. Performance Bond

5.15.15.1. No building permit may be issued and no construction of any kind may commence until the applicant has filed a performance guarantee with the Town, equal to 100% of the cost of completing the construction of any drainage system, erosion and sedimentation control measure and other site improvements required by the Planning Board. The guarantee shall be of form and substance reasonably acceptable to the Municipal Officers of the Town of Denmark.

5.15.16. ~~Wireless~~ Communications Towers ~~facilities~~ which have been abandoned or which have remained unused for a period of six months as determined by the Code Enforcement Officer shall be removed. The ~~Communications~~ Tower owner shall notify the Code Enforcement Officer on an annual basis regarding the status of the use of the ~~facilities~~ tower. The tower, any associated buildings used only for sheltering communications equipment, and any fencing or other appurtenances shall be removed at such time as they have no longer been used for a period longer than six months.

5.15.17. Decommissioning Bond

5.15.17.1. Prior to ~~approval~~ any Communications Tower construction, the applicant shall submit a guarantee of form and substance reasonably acceptable to the ~~Town~~ Municipal Officers of the Town of Denmark in an amount sufficient to pay for the cost of removal of the facility. The guarantee shall be made available to the town upon a finding by the Code Enforcement Officer, including adequate written notice to the applicant, that the facilities have not been used for a six-month period and have not been satisfactorily removed.

5.15.17.2. The value of the guarantee shall be equal to 125 percent of the estimated cost of removal of the facility and associated buildings and equipment and restoration of the site. At the end of the fifth year of operation of the facility and for each successive 5-year period that the facility is in operation the operator or landowner shall be required to submit an updated cost estimate to the Code Enforcement Officer and the Municipal Officers of the Town of Denmark. ~~The Code Enforcement Officer~~ The Municipal Officers of the Town of Denmark shall have the authority to reasonably accept or not accept the cost estimate value(s). Within 90 days of acceptance, the operator or landowner shall provide the Town of Denmark with a new guarantee in the amount equal to 125 percent of the new estimate reasonably accepted by the ~~Code Enforcement Officer~~ Municipal Officers of the Town of Denmark.

~~Communications towers owned by agencies of the State or Federal Government, erected for the purpose of installing antenna(s) and ancillary equipment necessary to provide~~

~~communications for public health and safety, may be exempted from the standards of subsections 5.15.6., 5.15.7., and 5.15.8. above, provided the exemption does not result in increased risk to public health, safety or the environment.~~

5.15.18. In addition to the submission requirements for Conditional Use Permits in this Ordinance, the applicant shall furnish the following documentation to complete the formal application to the Planning Board:

5.15.18.1. A site plan drawn to scale delineating property boundaries, applicable underlying zoning setbacks, tower location and height, guy wires and anchors (if required), foundations, transmission building and other accessories, parking areas and driveways, landscaped areas, fences, adjacent land uses and adjoining property owners; photographs of the site and immediate area; and photographs or elevation drawings depicting design of proposed structures and landscape treatment.

5.15.18.2. A recommendation from a Maine licensed Professional Engineer of a tower-type appropriate for this intended use, indicating its antennae capacity by type and number, providing certification that it is designed to withstand winds required by applicable building codes, providing certification that adequate setbacks are established on all sides to prevent the tower's fall zone from encroaching onto adjoining properties, and certification that the tower has sufficient structural integrity to accommodate multiple users.

5.15.18.3. A copy of a signed lease or written authorization from the property owner.

5.15.19. Upon approval of the application for a Communications Tower by the Planning Board, and prior to issuance of a building permit or Communications Tower construction of any kind, a Maine licensed Professional Engineer shall verify that the tower to be installed conforms to the requirements of this Ordinance.

5.15.20. As Built Survey and Certification.

5.15.20.1. After completion of all Communication Tower construction and prior to its operation the owner shall have an As-Built survey prepared by a Maine licensed Professional Land Surveyor and submitted to the Code Enforcement Officer.

5.15.20.2. The As-Built survey shall include at least actual locations of any structures and their components; above and underground utilities; roads, swales, and ditches; detention/retention facilities; Best Management Practices grading, land and landscaping alterations; or other infrastructure and facilities after construction has been completed.

5.15.20.3. A letter from the Maine licensed Professional Land Surveyor or from a Maine licensed Professional Engineer shall certify that the Communication Tower had been constructed in accordance with any Planning Board approvals, including any conditions of approval and any accompanying plans and specifications, or the letter shall otherwise note the significant differences.

CHAPTER 9 – CONSTRUCTION OF LANGUAGE AND DEFINITIONS

9.2. Definitions

~~**Communication Tower:** Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purpose of supporting one or more antenna. The term includes radio or television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and similar structures.~~

Communication Tower: A tower, pole, or similar structure of any size which supports wireless telecommunication equipment, transmission or reception, and is utilized by commercial, governmental, or other public or quasi-public users, above ground in a fixed location, free-standing, guyed, or on a structure. This definition does not include communication towers for amateur radio operators licensed by the Federal Communications Commission (FCC), which are exempt from local zoning restrictions. A Communication Tower may also be utilized as part of a mobile system for purposes of providing short-term emergency, supplemental or specialized wireless telecommunications services.

Wireless Communication Facility: A staffed or unstaffed facility for the transmission and/or reception of radio frequency, microwave or other signals for commercial communications purposes, including and typically consisting of antennas, equipment shelter or cabinet, transmission cables, a support structure required to achieve the necessary elevation, and reception and transmission devices and antennas.