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TOWN OF CHILMARK
CHILMARK, MASSACHUSETTS

TOWN OFFICES:
Beetlebung Corner
Post Office Box 119
Chilmark, MA 02535
508-645-2100
508-645-2110 Fax

July 12, 2013

To Whom It May Concern:

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety (90) days of this date.

Copies of the zoning bylaws, as approved by the Attorney General, may be examined and obtained at the Chilmark Town Hall.

Chilmark Planning Board

Jennifer L. Christy

Administrative Assistant

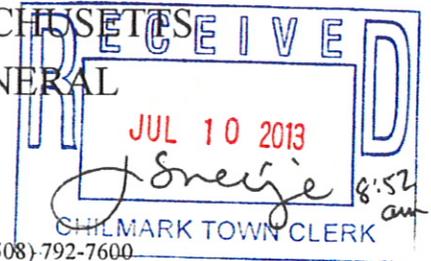
TRUE COPY ATTEST:
Jennifer L. Christy
Chilmark Town Clerk



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
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July 9, 2013

Ms. Jennifer L. Christy, Town Clerk
Town of Chilmark
P.O. Box 119
Chilmark, MA 02535

Re: **Chilmark Annual Town Meeting of April 22, 2013 ----- Case # 6655**
Warrant Articles # 31 and 32 (Zoning)

Dear Ms. Christy:

Articles 31 and 32 - We approve the amendments adopted under Articles 31 and 32 at the Chilmark Annual Town Meeting that convened on April 22, 2013. Our comments on Article 31 are provided below.

Article 31 - The amendments adopted under Article 31 add a new Section 6.11, "Residential Building Size Regulations," to the town's zoning by-laws. Section 6.11 (B) of the by-law imposes a total living area limitation on new construction and projects that seek to increase the total living area of buildings that exist as of April 22, 2013. Specifically, Section 6.11 (B) provides as follows:

1. Total Living Area limit: Subject to the exceptions provided for in subsections B.2 and B.3, below, building permits for new construction or for projects that seek to increase the Total Living Area of a lot with buildings that exist as of April 22, 2013, shall only be issued where, on completion of the project, the Total Living Area of the lot does not exceed 3500 sq ft for 3 acres:

- a. plus 250 sq ft for each additional contiguous acre; or
- b. minus 250 sq ft for each contiguous acre less than 3 acres, as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre

2. Special Permit to exceed the Total Living Area limit: The Total Living Area limit for a lot established in subsection B.1 may be exceeded, up to the cap established by this subsection, by special permit, as provided in the remaining provisions of this Bylaw. Subject to the exception provided for in subsection B.3, no special permit may be issued for any project if the project would result in the Total Living Area of the lot exceeding 6000 sq ft for 3 acres:

- a. plus 250 sq ft for each additional contiguous acre; or
- b. minus 250 sq ft for each contiguous acre less than 3 acres, as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.

Section 6.11 (B) (1) imposes a Total Living Area of "3500 square feet for 3 acres"

Section 6.11 (B) (2) allows an increase in the Total Living Area by special permit, provided however that no special permit may be issued for any project if the project would result in the Total Living Area of the lot exceeding “6000 square feet for 3 acres” We approve the amendments adopted under Article 31 because the Attorney General has a limited power of disapproval with every “presumption made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 796 (1986). If a by-law is capable of any interpretation or application that would make it a legal one, then it must be approved under G. L. c. 40, § 32. See Concord v. Attorney General, 336 Mass. 17, 24-25 (1957). Based upon our review of the text of Section 6.11, the relevant case law, and all of the materials submitted to our Office, we conclude that Section 6.11 is not clearly inconsistent with G.L. c. 40A, § 3 or any other state law. Therefore, we approve Section 6.11 as adopted under Article 31. However, we offer the following comments regarding our analysis.

General Laws Chapter 40A, Section 3 prohibits the regulations or restriction on the interior area of single family residential buildings and provides in pertinent part as follows:

No zoning . . . by-law shall regulate or restrict the interior area of a single family residential building . . . provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. . . .

General Laws Chapter 40A, Section 3, prohibits the regulation or restriction of the interior area of single-family residences; however, single-family residences may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. Despite the prohibition against interior area regulation, the plain language of G.L. c. 40A, § 3, permits zoning by-laws that regulate single-family residences “through devices that operate against the exterior of such structures, and such regulations necessarily will affect its interior area.” 81 Spooner Road, LLC v. Town of Brookline, 425 Mass. 109, 113 (2008).

In 81 Spooner Road, the court concluded that a Brookline by-law creating a maximum gross floor area to lot size ratio was not inconsistent with G.L. c. 40A, § 3. The court concluded that the language of G.L. c. 40A, § 3 prohibiting the regulation of interior space prohibits only “‘direct’ regulation of interior area, and not incidental effects of reasonable dimensional, bulk, and density requirements.” 81 Spooner Road, 425 Mass. at 116; *see also*, White v. Armour, 2008 WL 4946478 (Mass.Land Ct.) (concluding that Weston’s prohibition on Residential Gross Floor Area (“RGFA”) exceeding certain limits was a valid bulk/height regulation and not a violation of G.L. c. 40A, § 3). As the Spooner court explained,

“Construing the prohibition in s. 3, second par., to mean direct regulation of interior area is sensible. It is based on a sound method of analysis used to resolve similar internal conflicts in other statutes, and it would make s. 3, second par., with its proviso a coherent and internally consistent piece of legislation. It permits municipalities to effectuate the legislative purpose of zoning, as set forth in St. 1975, c. 808, s. 2A, while simultaneously preserving the legislative policy against snob zoning and another stated purpose of zoning: “to encourage housing for persons of all income levels.”

Id. at 117.

While not identical to the by-law upheld in 81 Spooner Road, the Total Living Area Limit

imposed under Section 6.11 is similar enough for this Office to conclude that Section 6.11 is not inconsistent with G.L. c. 40A, § 3. Section 6.11's Total Living Area Limit seemingly regulates the bulk of buildings and lot coverage and only incidentally affects the interior area of a single-family residence. For this reason, we approve Section 6.11.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

Kelli E. Gunagan

Kelli E. Gunagan

Assistant Attorney General

By-law Coordinator, Municipal Law Unit

Office of the Attorney General Martha Coakley

Ten Mechanic Street, Suite 301

Worcester, MA 01608

cc: Town Counsel Ronald H. Rappaport (via electronic mail)

TRUE COPY ATTEST:
Jennifer L. Christy
Chilmark Town Clerk



Jennifer L. Christy
Town Clerk

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April 23, 2013

The following article appeared on the warrant of the Annual Town Meeting, held in Chilmark, MA on Monday, April 22, 2013:

ARTICLE 31.

Residential Building Size Regulations Section 6.11

- A. Purpose:** The purpose of this Section is to ensure that residential construction is designed and carried out in a manner consistent with the purposes and objectives set out in Article 1 of these Zoning Bylaws. Section 6.11 seeks to ensure that future residential development: does not overwhelm Chilmark's rural atmosphere; does not detract from its geographic diversity – its seashore, ponds, stonewall boundaries, open agricultural space – or the vistas from its roadsides; is built in scale with past development practices with regard to bulk and building coverage; preserves the existing and historic rural development pattern and character of the Town as set forth in the Town Master Plan; and does not have undue adverse environmental impacts.
- B. Applicability and Exceptions**
1. **Total Living Area limit:** Subject to the exceptions provided for in subsections B.2 and B.3, below, building permits for new construction or for projects that seek to increase the Total Living Area of a lot with buildings that exist as of April 22, 2013, shall only be issued where, on completion of the project, the Total Living Area of the lot does not exceed 3500 sq ft for 3 acres:
 - a. plus 250 sq ft for each additional contiguous acre; or
 - b. minus 250 sq ft for each contiguous acre less than 3 acres,as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.
 2. **Special Permit to exceed the Total Living Area limit:** The Total Living Area limit for a lot established in subsection B.1 may be exceeded, up to the cap established by this subsection, by special permit, as provided in the remaining provisions of this Bylaw. Subject to the exception provided for in subsection B.3, no special permit may be issued for any project if the project would result in the Total Living Area of the lot exceeding 6000 sq ft for 3 acres:
 - a. plus 250 sq ft for each additional contiguous acre; or
 - b. minus 250 sq ft for each contiguous acre less than 3 acres,

as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.

3. Exceptions for Building Additions:

- a. The Total Living Area limit established by subsection B.1 may be exceeded by 5%, without a special permit, for a project which the Building Inspector determines is an addition to a building that existed as of April 22, 2013.
- b. The Total Living Area cap established by subsection B.2 may be exceeded by 5% by special permit for a project which is an addition to a building that existed as of April 22, 2013.
- c. These exceptions apply to more than one project, as long as the Total Living Area limit or cap established in subsections B.1 and B.2 are not exceeded by more than 5%.

4. Applicability to certain dwellings: This Section shall not be construed to limit the number of buildings which would otherwise be permissible under section 1.03 of the Rules and Regulations Governing the Subdivision of Land in Chilmark (in effect as of April 22, 2013) on one lot; provided, however, that the Total Living Area for each building on the lot does not exceed the limitations imposed by subsections B.1 and B.2, respectively, which shall be determined by dividing the total acreage of the lot by the number of buildings permitted and built under Section 1.03.

- C. Initial Determination by the Building Inspector:** The Building Inspector will determine if any application for a permit for the building or construction of a building or structure would result in the Total Living Area exceeding the limitation set out in Section B.1 and whether the exception provided for in subsection B.3(a) applies. If the Building Inspector determines that the applicant cannot proceed without a special permit, the Building Inspector will advise the applicant who may make application to the Zoning Board of Appeals for a special permit. No building permit may be issued hereunder unless the Zoning Board of Appeals has granted a special permit.
- D. Hearing before the Zoning Board of Appeals:** The Zoning Board of Appeals must hold a hearing within 65 days after the filing of an application for a special permit, notice of which shall be given at least 14 days prior to the date thereof. Notice shall be provided in accordance with the procedure set out in the Zoning Act. In addition to persons entitled to notice under the Zoning Act, the Zoning Board of Appeals may determine to also provide notice to:
1. property owners who would be considered abutters if a relevant public body of water were treated as if it were a public road; and/or
 2. property owners within 1000 feet of the applicant's property; and/or
 3. any road or pond association of which the applicant is entitled to membership; and/or
 4. all Town commissions and boards having jurisdiction over any aspect of the applicant's project.
- Any notice in addition to that required under the Zoning Act shall be at the expense of and otherwise solely the responsibility of the Town. The applicant is encouraged to participate directly in person at the hearing.
- E. Documentation for a Hearing:** The applicant must provide schematic architectural drawings (ie scale dimensional drawings including a site plan, floor plans, sections and elevations) prior to the hearing. To assist the Zoning Board of Appeals in its deliberations, the Zoning Board of Appeals may:
1. require the applicant to furnish a model or computer rendering of the project and the surrounding area or other visual aid and such other information as the Zoning Board of Appeals considers necessary; and
 2. engage experts, including architects, engineers and consultants, and assess the applicant a fee(s) to reimburse such expenses.
- F. Consideration by the Zoning Board of Appeals:** In reviewing an application for a special permit under this Section 6.11, the Zoning Board of Appeals must consider the report, if any, of the Site Review Committee and, in addition, whether:

1. the project, when complete, would be visible, including during the winter, from public ways, water bodies, cemeteries and neighboring properties, and if so whether:
 - a. the impact of the project on the existing rural, scenic character of the site and the surroundings has been mitigated through building siting, building design and landscape design;
 - b. the project retains natural buffer areas or, where that is impracticable, provides sufficient landscape screening; and
 - c. the project minimizes the impact of exterior and interior lighting on the surrounding area and minimizes glare from windows or other reflecting materials incorporated in the project;
 2. the project protects the natural features of the site and retains the natural landscape of the site after completion of construction;
 3. the project avoids altering the natural landscape, minimizes the size of lawns and recreational facilities, uses native species for landscaping, and retains natural vegetation on slopes;
 4. the project minimizes grading alterations and executes grading and excavation so that the contours of the land are the same following construction as those previously existing on the site and adjacent to it;
 5. roads and other ways are designed to curve to fit the landscape and permit shared driveway entrances where possible;
 6. the project maintains the visual integrity of ridge lines by keeping construction below the ridge line and at least 10' below the average height of the existing trees on wooded ridges and hilltops on the lot;
 7. in open land, buildings are sited behind fields against the backdrop of adjoining woodlands;
 8. the project preserves and protects natural features of the site such as scenic points, water courses, large trees, historic spots, traditional stone walls and similar community assets;
 9. the project incorporates measures to reduce or mitigate excessive negative water quality impacts on ponds, wetlands and other water bodies both during construction and after completion;
 10. the project is designed to minimize fossil fuel use such as by incorporating energy efficiency, conservation techniques, and using renewable energy sources.
 11. in relation to its construction and possible eventual demolition, the project uses environmentally sound and sustainable design and building techniques.
 12. the project avoids significant adverse impacts on habitat, including:
 - a. whether the project meets the requirements and/or recommendations of the Massachusetts Natural Heritage and Endangered Species Program (NHESP) if the project triggered its review; and
 - b. if the project involves the clearing of more than one acre of NHESP Core or Priority Habitat, whether the project minimizes habitat fragmentation and has a defined development envelope limiting the disturbed area to the smaller of 35% or 2 acres of the designated habitat; and
 13. The project protects and preserves historical and archaeological resources.
- G. **Determination by the Zoning Board of Appeals:** In considering the issues set out in Section F, the Zoning Board of Appeals must determine, as applicable, the degree of impact and any mitigating factors. If the Zoning Board of Appeals determines that the project has adequately addressed all relevant issues so that the concerns have been substantially mitigated, it may grant a special permit, which may contain conditions that mitigate the impact or otherwise ensure that the project is consistent with the purpose of this Section 6.11. Such conditions may include a deed restriction against future development and/or subdivision of the property. Any special permit granted under this bylaw shall lapse if the Building Inspector determines that substantial construction has not commenced within two years from the grant thereof including the time required to pursue and await the determination of any appeal thereto, except for good cause.
- H. **Other Approvals/Amendments:** The procedure set out in this Section 6.11 is not exclusive of any other permit or approval that the applicant may otherwise be required to obtain. Amendments made to any element of the project, pursuant to or as a condition of any permit approval granted by any authority under these bylaws or otherwise, will require a further hearing before the Zoning Board of Appeals with notice as set out above.
-

The following AMENDMENT TO ARTICLE 31 WAS FAVORABLY ACTED UPON at the Annual Town Meeting, held in Chilmark, MA on Monday, April 22, 2013:

Motion: To amend Article 31, Residential Building Size Regulations, Section 6.11 to include:

There shall be a joint Zoning Board of Appeals and Planning Board meeting on a biennial schedule to review the efficiency and address unexpected consequences created by this regulation and they shall report to the town meeting their findings and recommendations of this joint committee.

The motion to adopt the amendment was seconded and it was carried.

The Moderator declared the vote on the main motion proceed by "Australian Ballot." Registrars checked in and provided ballots to 217 voters. The Moderator declared the motion carried with the required 2/3rds supermajority: 162 YES votes, 51 NO votes and 4 BLANKS.

A true copy. Attest:



Jennifer L. Christy

Town Clerk

April 23, 2013

TRUE COPY ATTEST: Jennifer L. Christy Chilmark Town Clerk



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Jennifer L. Christy
Town Clerk

April 23, 2013

The following article appeared on the warrant of the Annual Town Meeting, held in Chilmark, MA on Monday, April 22, 2013:

ARTICLE 32.

Article 2:

DEFINITIONS

Detached Bedroom
Section 2.23

A bedroom not directly connected to a Dwelling; it may be a free standing building or part of some other Structure such as a Garage. It shall be included in all considerations as to the adequacy of the septic system of the Dwelling and may contain plumbing in the bathroom only, including one hand sink, one toilet and one bathtub/shower, but not a stove or refrigerator.

The Maximum Floor Area of a Detached Bedroom shall not exceed 400 square feet, which shall include any roof-covered area enclosed by walls or screening.

Total Living Area
Section 2.24

Total Living Area means the aggregate area of all habitable space, which is generally based on the sum of the exterior dimensions of each above-grade level of a structure but does not include decks or porches, even if roof-covered or enclosed by walls or screening. The measurement includes all Dwellings and Accessory Structures, or portions thereof, that are habitable. It also includes indoor swimming pools; indoor tennis, squash or similar courts; and similar indoor facilities.

Article 4:
Section 4.0

USE REGULATIONS

AGRICULTURAL-RESIDENTIAL DISTRICT I

Permitted Uses

Section 4.1

J. One Detached Bedroom.

The Moderator declared the motion carried, 42-11.

A true copy. Attest:

Jennifer L. Christy

Town Clerk

April 23, 2013

TRUE COPY ATTEST:
Jennifer L. Christy
Chilmark Town Clerk