Article 6: DIMENSIONAL AND DENSITY REQUIREMENTS

MINIMUM LOT SIZE AND SETBACKS
Section 6.0

A. Each dwelling or structure (other than a barn or silo) and its permitted accessory structure or uses hereafter erected or placed upon a lot in Agricultural-Residential District I or in Agricultural-Residential Districts II-A or II-B shall have a minimum area of land of three (3) acres dedicated thereto and each such dwelling or structure together with all permitted uses and accessory uses in connection therewith shall be set back a minimum of 50 feet from each boundary line of said lot.

B. Each dwelling or structure (other than a barn or silo) and its permitted accessory structures or uses, hereafter erected or placed upon a lot in the Agricultural-Residential District III shall have a minimum area of land of three (3) acres dedicated thereto and each such dwelling or structure together with all permitted uses and accessory uses in connection therewith shall be set back a minimum of 50 feet from each boundary line of said lot.

C. Each dwelling or structure (other than a barn or silo) and its permitted accessory structures or uses, hereafter erected or placed upon a lot in Agricultural-Residential District IV shall have a minimum area of land of one and one half (1.5) acres dedicated thereto and each such dwelling or structure together with all permitted uses and accessory uses in connection therewith shall be set back a minimum of 25 feet from each boundary of said lot.

D. Each dwelling or structure (other than a barn or silo) and its permitted accessory structures or uses hereafter erected or placed upon a lot in Agricultural-Residential District V shall have a minimum area of land of two (2) acres dedicated thereto and each such dwelling or structure together with all permitted uses and accessory uses in connection therewith shall be set back a minimum of 35 feet from each boundary line of said lot.

E. Each dwelling or structure (other than a barn or silo) and its permitted accessory structures or uses hereafter erected or placed upon a lot in Agricultural-Residential District VI shall have a minimum area of land of three (3) acres dedicated thereto and each such dwelling or structure together with all permitted uses and accessory uses in connection therewith shall be set back a minimum of 50 feet from each boundary line of said lot.

Section 6.1

A. Excepting that pre-existing lots of one and one half (1.5) acres or less in any zoning district shall have minimum setbacks of twenty-five (25) feet.

B. Excepting that pre-existing lots of more than one and one half (1.5) acres but less than 3 acres in any zoning district shall have a minimum setback of 35 feet.

HEIGHT LIMITATIONS

Section 6.2 No building or structure shall be erected in any district of the Town after the effective date of this Zoning Bylaw, having a shed roof or a flat roof, or a curved or rounded roof exceeding a maximum height of thirteen (13) feet, or having the ridge of a gabled or hip roof exceeding a maximum height of twenty-four (24) feet. This limitation shall not apply to barns or silos not built for human occupancy or to curved or rounded or "eye-brow" dormers.

Section 6.3 The Board of Appeals may, after notice and public hearing, grant a special permit to allow the height of a dwelling with a gabled or hip roof to be increased to a maximum of 28 feet, if it finds that:

1. the increased height is necessary to produce the architectural dimensions and form of a dwelling built in Chilmark before 1850,

2. the proposed dwelling is so located that surrounding trees, hills or other landscape elements are of an average height at least equal to the height of the proposed dwelling, and

3. the proposed dwelling will not interfere substantially with the continuity of any views of water or of skylines.

EXCEPTION TO MINIMUM LOT SIZE REGULATION

Section 6.4 For the purpose of helping young people who have grown up in Chilmark and lived here for a substantial portion of their lives and who, because of the rising land prices, have been unable to obtain suitable land for their permanent home at a reasonable price, and who desire to continue to live in Chilmark, the Board of Appeals may grant a special permit to build a one-family dwelling for owner occupancy upon a lot having an area less than the minimum lot size prescribed by this bylaw for the district in which such lot is located, if the Board finds that placing of a one-family dwelling on such lot will not have a material, detrimental effect upon, or be inconsistent with, the established and future character of the neighborhood and the Town, and the applicant for the special permit covenants, in a form satisfactory to the Board, not to sell or otherwise transfer the ownership or lease, except for summer occupancy, such lot for a period of ten years, except for cases of hardship as approved by the Board of Appeals. Not more than one such permit shall be issued for a lot held in common ownership with other lots containing a total acreage of less than 36 acres on the effective date of this section and not more than two such permits shall be issued for lots held in

common ownership with other lots containing more than 36 acres on the effective date of this section.

Section 6.5

The Planning Board shall approve or endorse a definitive subdivision plan covering only such a lot or lots provided that the requirements of the subdivision control law are otherwise met and the Board of Appeals has granted a special permit pursuant to this section for such lot or lots.

For the purposes of this section "young people" shall be deemed to be persons who have not attained their thirtieth birthday and who have been residents of the Town of Chilmark for eight consecutive years.

Section 6.6

The Board of Appeals may, after a public hearing, grant a special permit to build or place a one-family dwelling, or a structure, at a location on a lot which is set back less than the minimum distance, as required by this Article, from any lot line, if the owners of the lots whose property is within 100 feet of the proposed construction consent thereto in writing.

FLEXIBLE SITING
Section 6.7

The Planning Board may, after consultation with the Board of Health and the Board of Appeals, grant a special permit to build or place a one-family dwelling, for owner occupancy, upon a lot located in a subdivision having an area less than the minimum lot size and setback limitations as prescribed by this section for the district in which the lot is located, if in the opinion of the Board such use is necessary for the protection of agricultural land or dry woodlands, is consistent with the preservation and enhancement of existing large trees, large exposed boulders, water courses, hills and other natural features as well as vistas, water views and historic locations and will not have a material detrimental effect upon, or be inconsistent with the established and future character of the neighborhood and the Town; provided that an area of open space which equals or exceeds the area by which any lots in the subdivision are reduced below the minimum lots size prescribed by this section for the district in which such lots are located is conveyed to the Town or conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or conveyed to a corporation or trust owned or to be owned by the owners of the lots within the subdivision. A restriction in perpetuity against such conveyed area, enforceable by the Town or the Planning Board, providing that such area shall be dedicated to and kept for agricultural or dry woodland purposes or for recreational uses which do not disturb the natural condition of the land, shall be recorded in the registry of deeds. In no event shall the density (number of dwelling units per minimum lot size in each subdivision) of the subdivision be greater than the density allowed for such

subdivision if no special permit as provided herein had been granted. Such special permit shall specify the location on the lot of such dwelling.

REQUIREMENTS FOR ROAD FRONTAGE AND LOT WIDTHS
Section 6.8

A. The minimum frontage on a public or private road providing access to a lot shall not be less than 100 feet.

B. Frontage shall be measured along a straight line connecting points of intersection of the side lot lines with the road boundary on which the lot is located.

C. Divisions of land allowed under Section 6.7of the Zoning Bylaw, Exception to Minimum Lot Size, may have a minimum road frontage of 40 feet.

D. With the exception of paragraph C above, the distance between side lines of a lot shall be no less than 100 feet at all points between those lines.

HOMESITE HOUSING
Section 6.9

A. PURPOSE

The Town of Chilmark values being a diverse community that accommodates residents of varying income levels. As the cost of the land and housing increases on Martha's Vineyard many local residents are being priced out of the market for homes. The Town of Chilmark desires to enhance the availability of housing that is affordable to the entire range of its residents, without encouraging excessive growth that detracts from the Town's quality of life. Furthermore, the Town of Chilmark desires to sustain said housing as affordable for future generations of Chilmark residents. Therefore, the Town establishes this section to allow the construction of individual residences on lots that do not satisfy minimum lot size requirements, provided:

1. that the owner-applicant:

    a. meets the qualifications of the Chilmark Housing Committee under the Homesite Housing Implementation Guidelines in effect at the time of filing of the necessary Special Permit Application;

    b. is granted a Special Permit from the Zoning Board of Appeals to build a one-family dwelling for owner occupancy upon a Homesite Housing Lot as prescribed in this bylaw; and

c. attaches to the property deed, before the issuance of a building permit, the Homesite Housing long-term affordability Deed Restriction for the purpose of maintaining the property in a permanently affordable pool; and

2. that the lot otherwise meets the requirements of the subdivision control law and the Planning Board.

B. DEFINITIONS

1. Homesite Housing: Housing for persons who live or work in Chilmark whose total household adjusted gross income is not more than 150% of median income for Dukes County.
2. Eligible Purchaser: Any private purchaser over the age of 18 who meets the Homesite Housing Implementation Guidelines in effect at the time of purchase.
3. Homesite Housing Lot: A parcel of land which
    a. may be less than three (3) acres in size but not less than one (1) acre and has the approval of the Planning Board as a Homesite Housing Lot;
    b. satisfies all other Town zoning and conservation requirements in effect at the time of application;
    c. is fully compliant with the Town Board of Health rules and regulations in effect at the time of application; and
    d. is available for
        i. purchase only to Eligible Purchasers as defined above, or
        ii. lease only to Eligible Purchasers as defined above, in the case where the land is held by a municipal or state agency, or by a non-profit entity dedicated to developing affordable housing.
4. Long-term Deed Restrictions: Legal covenants which guarantee, by capping the resale price of the property (including improvements), that, in the event of a resale, the property remains affordable to other Eligible Purchasers. Said restrictions shall run for the maximum term permitted by law and shall be enforceable by the Town.

C. HOMESITE HOUSING LOTS

1. Creation of Homesite Housing Lots. A Homesite Housing Lot may be created by:
    a. the Town from land owned by or donated to the municipality.

    b. a property owner of a lot which does not satisfy minimum lot size requirements of the zoning bylaw and is not protected as a non-conforming lot.

c. a property owner from a lot created by a Planning Board approved subdivision of a larger lot containing more than the minimum acreage required by town zoning, provided that the proposed Homesite Housing lot or lots conform to all conditions in Section 6.9 B.(3), and the remaining lot meets minimum lot size requirements.

2. Distribution of Homesite Housing Lots.

a. Homesite Housing Lots created by the Town shall be awarded by lottery, limited to Eligible Purchasers as defined above. Such lottery shall be held at a public meeting of the Board of Selectmen.

b. Homesite Housing Lots created by a property owner shall be limited to Eligible Purchasers as defined above. Selection of the purchaser shall, at the option of the property owner, be made by the property owner or by lottery to be held at a public meeting of the Board of Selectmen.

c. Homesite Housing Lots may be sold or donated to a non-profit organization, which organization may hold the lot for resale without profit. Any such sale may only be made to an Eligible Purchaser selected by lottery to be held at a public meeting of the Board of Selectmen.

3. Initial Conditions for Homesite Housing Lots.

a. Cost of a Homesite Housing Lot: The maximum cost of Homesite Housing Lots (improved or unimproved) shall be established by the Housing Committee and set forth in the Homesite Housing Implementation Guidelines.

b. Recipient of a Homesite Housing Lot: A Homesite Housing Lot may only be created for a recipient who is an Eligible Purchaser qualified under the Homesite Housing Implementation Guidelines of the Housing Committee.

c. Special Permit from the Zoning Board of Appeals: The ZBA may approve a Special Permit for a substandard lot to be buildable as a Homesite Housing Lot provided that the following standards and criteria are met:

1) The proposed lot has been approved as a potential Homesite Housing Lot by the Planning Board;

2) The sale price of the Homesite Housing Lot has been established and posted;

3) The proposed lot satisfies all Town zoning and conservation requirements in effect at the time of application, with the exception of lot size;

4) The proposed lot is fully compliant with the Town Board of Health rules and regulations in effect at the time of application;

5) The proposed lot is available for purchase or lease only to an Eligible Purchaser as defined by the Homesite Housing Implementation Guidelines approved by the Housing Committee. Such eligibility shall be certified in writing by the Housing Committee;

6) The proposed lot shall be subject to terms and limitations in accordance with the long-term Deed Restrictions approved by the Housing Committee in effect at the time of award of the Lot; and

7) The proposed lot may be subject to additional conditions imposed by the Zoning Board of Appeals to assure that the provisions of this bylaw are met.

D. USE, RESALE and TRANSFER of HOMESITE HOUSING LOTS

Homesite Housing Lots shall be subject to Deed Restrictions, as set forth in a Deed Rider approved by the Housing Committee, which shall run for the maximum term permitted by law, shall be enforceable by the Town, and shall limit:

1. the Initial Cost of the land;

2. the time within which to secure a Building Permit;

3. the use of the property to one dwelling which shall be the owner's primary residence;

4. the maximum allowable rental time per year;

5. the rental conditions to those described in the Implementation Guidelines in effect at the time the rental of the Homesite Housing Lot;

6. the resale value to an affordable formula; and

7. the resale or transfer to Eligible Purchasers and Heirs.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any

section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Town of Chilmark's zoning bylaw.

EXCEPTION FOR AFFORDABLE RENTAL HOUSING
Section 6.10

For the purpose of providing affordable rental housing in the Town of Chilmark on land owned by the Town or by a non-profit agency, land trust or other non-profit legal entity dedicated to affordable housing, the Town establishes this section as a limited exception to its zoning requirements. In order to come within this exception, all of the following conditions must be met.

A. Conditions

1. Rental units may be rented only to tenants who qualify for affordable housing under the guidelines for affordable rental housing established by the Chilmark Housing Committee and approved by the Board of Selectmen, or in the absence of such guidelines then by the guidelines established by the Dukes County Regional Housing Authority.

2. The number of rental units on a property shall not exceed two dwelling units for each three acres.

3. The property on which the rental units are located must be dedicated to use for affordable housing in perpetuity, subject only to release by action of the Board of Selectmen and the Planning Board.

B. Rental Housing

Subject to the foregoing conditions, rental housing is allowed in the Town of Chilmark for affordable housing purposes provided:

1. Rental structures shall be free standing single-family or multi-family structures not to exceed three-family.

2. No rental unit shall exceed 4 bedrooms. No two-family structure shall exceed a total of seven bedrooms and no three-family structure unit shall exceed a total of nine bedrooms.

3. Buildings may be clustered provided the remaining open space is not further developed, except for appropriate out-buildings.

4. All set back and height regulations shall apply. Road access to the property on which the rental units are located shall be adequate to provide for safe ingress and egress by emergency vehicles and shall meet the road requirements for Form C subdivisions under The Town of Chilmark's Rules and Regulations Governing Subdivision of Land.

5. Plans for design and siting of all buildings, parking areas, road access, and any other uses shall be subject to Planning Board review and public hearing prior to approval.

6. All requirements of the Board of Health and Conservation Commission shall apply.

7. Tenant selection shall be made by the Chilmark Housing Committee in accordance with guidelines established by the Chilmark Housing Committee and approved by the Board of Selectmen, except that vacancies in units located on Town owned land (limited to one such unit for each group of up to 12 units in any one development) may be filled by the Board of Selectmen from among essential Town employees who are otherwise qualified under Housing Committee Guidelines.

8. Housing intended for affordable rental under this section shall be exempt from rate of development and building cap regulations.

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.

I. **Biennial Review:** 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.