



TOWN OF CHILMARK, MASSACHUSETTS

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TO: Honorable Select Board
FR: Chilmark Planning Board
RE: Proposed Zoning Bylaw Amendment to Section 4
DT: August 12, 2022

Select Board:

The Planning Board, at a properly posted meeting on Monday, August 8, 2022, voted to initiate a process to amend the zoning bylaws and send the following documents to you for review.

- A document showing the Chilmark Zoning Bylaws Article 4, Section 4.2A, 3. marked up to show proposed amendments
- A document showing the Chilmark Zoning Bylaws Article 4, Section 4.2A, 3. without mark up to show the proposed amendments as they would be incorporated
- A summary of the changes to provide guidance in understanding the changes proposed

The Planning Board respectfully requests the Board of Selectmen/Select Board to submit these proposed zoning bylaw amendments to the Planning Board for review and public hearing within 14 days of receipt.

On behalf of the Planning Board,

Jennifer L. Christy,
Administrative Assistant to
The Chilmark Planning Board

CHILMARK PLANNING BOARD

Rich Osnoss, Chair Catherine Thompson Ann Wallace Peter Cook

Janet Weidner Hugh Weisman Mitchell Posin

Proposed Zoning Amendment to the "Swimming Pool" Zoning Bylaw

Assumes amendments to tennis courts are approved by AG

ARTICLE XX. To see if the Town will vote to amend Section 4.2A(3) of the Zoning Bylaws, which governs swimming pools as accessory uses by special permit, by deleting the text identified in the body of this article with "strike-throughs" and by adding the text identified in the body of this article with "italics". The proposed additions and deletions to this Section also include those additions and deletions approved by the Annual Town Meeting in 2019, which the Planning Board has determined are consistent with the Attorney General's review of those amendments set out in correspondence to the Town Clerk dated October 4, 2019.

TWO-THIRDS MAJORITY REQUIRED

ACCESSORY USES

Section 4.2A. Accessory uses as specified below which are customarily accessory and incidental to a permitted use, subject to the following provisions.

3. Swimming Pool and/or Tennis Court.

Swimming pools and tennis courts are considered accessory to the use of a principal dwelling. The Town will follow the current approved MA Building Code on Swimming Pools 780 CMR and will adhere to the following process:

a. **Permitting and Enforcement:** *Applicants are required to demonstrate compliance with all requirements set out in the International Swimming Pool and Spa Code, as adopted by and incorporated into the Massachusetts Building Code. In addition, a A-Special Permit is required for a swimming pool or a tennis court. The Special Permit is issued by from the Zoning Board of Appeals which, in its discretion, will determine whether the applicant/owner's plan meets the purposes and requirements of this section. Special Permits granted under this section will be and is enforced by the Building Inspector.*

b. **Application:** The applicant/owner must own the principal dwelling for two (2) years before applying for a Special Permit for a swimming pool or a tennis court. Principal dwelling ownership begins when an occupancy permit for the principal dwelling is issued by the Building Inspector or from the date of transfer of property with an existing ~~occupiable~~ dwelling for which an occupancy permit has been granted. Special Permits for new swimming pools and tennis courts may not be transferred to new owners.

c. **Use:** A swimming pool or tennis court permitted under this Section *may only be* is used ~~only~~ by the residents or tenants of the principal dwelling and their guests.

d. **Setbacks:** No portion of the swimming pool or tennis court *or any related fencing or pool-related equipment* may be located within 50 feet of any boundary line of said lot. ~~Related equipment will be placed in a location approved by the Zoning Board of Appeals. Depending on the lot, the Zoning Board of Appeals may require a sound~~

~~insulated shed or underground vault for pool related equipment.~~ Setback relief may be available under Section 6.6.

~~e. **Access and Enclosure:** As noted in Section 3(a), applicants are required to demonstrate compliance with the barrier requirements set out in the International Swimming Pool and Spa Code, as adopted by and incorporated into the Massachusetts Building Code. Swimming pool enclosures are required and must be in accordance with current MA Building Code 780-CMR-120.M. If a stone wall is used for fencing, it must meet MA State Building Code Guidelines for Solid Barrier Surfaces, 780-CMR-120.M-105 Barrier Requirements, Section 3.~~

~~f. **Line-of-Sight Observation Location:** A pool must be situated so as to provide a clear and direct line of sight to the entire pool area – not dependent upon by a closed circuit camera or other equipment enabling remote observation – from a highly used room or place, such as a kitchen or living room located within the principal dwelling or an area attached to the principal dwelling, such as a deck. The Zoning Board of Appeals may approve another room or place from which the line-of-sight is established. No portion of any swimming pool barrier, pool mechanicals, renewable energy infrastructure or vegetative screening may be installed so as to interfere with the required line-of-sight. Vegetative screening must be maintained to preserve the line of sight. The location of the swimming pool, related equipment or tennis court shall not materially impair the view of the natural surroundings from a way used by the public, from public land or from abutting lots. For safety reasons, there must be a clear line of sight from the principal dwelling to the swimming pool as determined by the Zoning Board of Appeals.~~

~~g. **Covers:** All owners with swimming pools are encouraged to outfit their pools with covers to protect against accidental damage or injury to persons and property, particularly during the off-season or times when the owner or renter will not be present on the property. All swimming pools will be equipped with a winter safety cover for off-season use.~~

~~h. **Pool Heaters Energy Use:** If a swimming pool is heated, applicants are strongly encouraged to use a heating system which does not rely on the use of fossil fuels on site. Heated swimming pools (including the heating system, pool related pumps, filters and circulators) are permitted if the heat is supplied by solar or alternative systems, which are the most current energy efficient systems, as approved by the Zoning Board of Appeals. If a water heating system is added to an existing swimming pool, a Special Permit is required for the installation and the system must comply with this section.~~

~~i. **Light:** The swimming pool or tennis court must comply with Chilmark Zoning Bylaw Article 5, sections 5.5, 5.6 and 5.7 of these Zoning Bylaws. Submerged in-pool lights and path lights are permissible. Tennis courts ~~may~~ must not be lighted.~~

~~j. **Noise:** The Zoning Board of Appeals may require all pool-related mechanical equipment to be located in an enclosed, sound-insulated shed or in an underground vault to reduce noise. The location of such shed or vault must be approved by the Zoning Board of Appeals. Any such equipment which the Zoning Board of Appeals~~

~~does not require to be so located. The swimming pool and related equipment or tennis court must comply with the provisions of Chilmark Zoning Bylaw Article 5, Section 5.9 of these Zoning Bylaws.~~

k. Landscaping Screening and Visibility: ~~A screening plan shall consist of native, non-invasive species, provided they are consistent with Article 4.2A, section 3.f and 3.j and must be perpetually maintained for the life of the pool. The purposes of this provision are (a) to allow vegetative screening provided it does not unreasonably interfere with an abutting property owner's enjoyment of their property and views from that property, and (b) to protect public vistas.~~

1) ~~A detailed landscaping plan may be required by the Zoning Board of Appeals and, if so, it must be approved prior to construction of the pool or tennis court. All vegetative screening, whether in a plan or not, must consist of native, non-invasive species. No portion of the swimming pool or tennis court, the pool/court barriers/enclosures, the pool mechanicals and any vegetative screening may be sited so as to interfere with the view of the natural surroundings from a way used by the public or from public land, as determined by the Zoning Board of Appeals. Vegetative screening must be planted at least 4 feet outside the pool barrier and maintained at a height not to exceed 4 feet.~~

2) ~~No portion of the swimming pool or tennis court or any related fencing or any pool-related mechanical equipment or vegetative screening may be sited so as to interfere with the view of natural surroundings from a way used by the public or public land.~~

i. Fire Protection: ~~An accessible and functional standpipe is required for pools containing more than 7500 gallons of water with the design, placement and operation to be approved by the Chilmark Fire Chief. A standpipe for Fire Department access is required for all pools containing over 10,000 gallons of water. The Fire Chief must also approve the standpipe design and placement before an applicant may obtain a building permit.~~

m. Initial Filling: ~~The initial filling of the pool shall come from an off-site source and shall not occur until the pool is in compliance with this Section e. Enclosure and the pool area must be safely secured.~~

n. Drainage: ~~The concentration of potentially hazardous chemicals in the water must be significantly reduced and properly tested before any necessary draining of the pool water directly into the ground of the property. Pool water must not be drained into any 'buffer zone' (as that term is defined in the Wetlands Protection Act).~~

o. Maintenance/Compliance with Laws. ~~Swimming pools, barriers, pool-related mechanicals and covers must be maintained in good working order and in compliance with state building codes and these Zoning Bylaws.~~

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Proposed Zoning Amendment to the "Swimming Pool" Zoning Bylaw

ARTICLE XX. To see if the Town will vote to amend Section 4.2A(3) of the Zoning Bylaws, which governs swimming pools as accessory uses by special permit, by deleting the text identified in the body of this article with "strike-throughs" and by adding the text identified in the body of this article with "italics". The proposed additions and deletions to this Section also include those additions and deletions approved by the Annual Town Meeting in 2019, which the Planning Board has determined are consistent with the Attorney General's review of those amendments set out in correspondence to the Town Clerk dated October 4, 2019.

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3. Swimming Pool and/or Tennis Court.

A swimming pool and a tennis court are considered accessory to the use of a principal dwelling. The Town will adhere to the following process:

a. **Permitting and Enforcement:** Applicants are required to demonstrate compliance with all requirements set out in the International Swimming Pool and Spa Code, as adopted by and incorporated into the Massachusetts Building Code. In addition, a Special Permit is required for a swimming pool or tennis court from the Zoning Board of Appeals which, in its discretion, will determine whether the applicant/owner's plan meets the purposes and requirements of this section. Special Permits granted under this section will be enforced by the Building Inspector.

b. **Application:** The applicant/owner must own the principal dwelling for two (2) years before applying for a Special Permit for a swimming pool or tennis court. Principal dwelling ownership begins when an occupancy permit for the principal dwelling is issued by the Building Inspector or from the date of transfer of property with an existing dwelling for which an occupancy permit has been granted. Special Permits for new swimming pools and tennis courts may not be transferred to new owners.

c. **Use:** A swimming pool or tennis court permitted under this Section may only be used only by the residents or tenants of the principal dwelling and their guests.

d. **Setbacks:** No portion of the swimming pool or tennis court or any related fencing or pool-related equipment may be located within 50 feet of any boundary line of said lot. Setback relief may be available under Section 6.6.

e. Access and Enclosure: As noted in Section 3(a), applicants are required to demonstrate compliance with the barrier requirements set out in the International Swimming Pool and Spa Code, as adopted by and incorporated into the Massachusetts Building Code.

f. Line-of-Sight Observation: A pool must be situated so as to provide a clear and direct line of sight to the entire pool area – not dependent upon by a closed circuit camera or other equipment enabling remote observation – from a highly used room or place, such as a kitchen or living room located within the principal dwelling or an area attached to the principal dwelling, such as a deck. The Zoning Board of Appeals may approve another room or place from which the line-of-sight is established. No portion of any swimming pool barrier, pool mechanicals, renewable energy infrastructure or vegetative screening may be installed so as to interfere with the required line-of-sight. Vegetative screening must be maintained to preserve the line of sight.

g. Covers: All owners with swimming pools are encouraged to outfit their pools with covers to protect against accidental damage or injury to persons and property, particularly during the off-season or times when the owner or renter will not be present on the property.

h. Pool Heaters: If a swimming pool is heated, applicants are strongly encouraged to use a heating system which does not rely on the use of fossil fuels on site. If a water heating system is added to an existing swimming pool, a Special Permit is required for the installation and the system must comply with this section.

i. Light: The swimming pool or tennis court must comply with sections 5.5, 5.6 and 5.7 of these Zoning Bylaws. Submerged in-pool lights and path lights are permissible. Tennis courts must not be lighted.

j. Noise: The Zoning Board of Appeals may require all pool-related mechanical equipment to be located in an enclosed, sound-insulated shed or in an underground vault to reduce noise. The location of such shed or vault must be approved by the Zoning Board of Appeals. Any such equipment which the Zoning Board of Appeals does not require to be so located must comply with the provisions of Article 5, Section 5.9 of these Zoning Bylaws.

k. Landscaping and Visibility: The purposes of this provision are (a) to allow vegetative screening provided it does not unreasonably interfere with an abutting property owner's enjoyment of their property and views from that property, and (b) to protect public vistas.

- 1) A detailed landscaping plan may be required by the Zoning Board of Appeals and, if so, it must be approved prior to construction of the pool or tennis court. All vegetative screening, whether in a plan or not, must consist of native, non-invasive species. No portion of the swimming pool or tennis court, the pool/court barriers/enclosures, the pool mechanicals and any vegetative screening may be sited so as to interfere with the view of the natural surroundings from a way used

by the public or from public land, as determined by the Zoning Board of Appeals. Vegetative screening must be planted at least 4 feet outside the pool barrier and maintained at a height not to exceed 4 feet.

2) No portion of the swimming pool or tennis court or any related fencing or any pool-related mechanical equipment or vegetative screening may be sited so as to interfere with the view of natural surroundings from a way used by the public or public land.

l. Fire Protection: A standpipe for Fire Department access is required for all pools containing over 10,000 gallons of water. The Fire Chief must also approve the standpipe design and placement before an applicant may obtain a building permit.

m. Initial Filling: The initial filling of the pool shall come from an off-site source and shall not occur until the pool is in compliance with this Section.

n. Drainage: The concentration of potentially hazardous chemicals in the water must be significantly reduced and properly tested before any necessary draining of the pool water directly into the ground of the property. Pool water must not be drained into any 'buffer zone' (as that term is defined in the Wetlands Protection Act).

o. Maintenance/Compliance with Laws. Swimming pools, barriers, pool-related mechanicals and covers must be maintained in good working order and in compliance with state building codes and these Zoning Bylaws.

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Proposed Swimming Pool Bylaw Changes

The principal differences between the pool bylaw in effect in 2019 and that now proposed for amendment relate to (a) enhancing the pool safety provisions and (b) ensuring the bylaw is consistent with the MA Swimming Pool Code. Notable changes are as follows:

1. Several changes were made to remove provisions which were inconsistent with the Building Code. In some cases, reference is now simply made to the Code – like in sections a (“Permitting and Enforcement”), e (“Access and Enclosure”), and o (“Maintenance/Compliance with Laws”). In other cases, the language has been amended to comply with the Code, as in the case of section g (“Pool Covers”).
2. The proposed change to section f (“Line of Sight”) is to promote additional safety by adding some specificity to ensure a clear line of sight from the house to the pool.
3. Section h (“Pool Heaters”), written many years ago, was vague and difficult to implement. As proposed, it stresses the importance of no on-site fossil fuel for heating.
4. Section k (“Landscaping and Visibility”) now melds both visibility and landscaping issues. It mandates appropriate vegetation and requires that it be maintained – as a safety feature – to ensure that pools remain visible from the house. And it requires that pools and tennis courts not be located so as to interfere with public views. In general terms, there is nothing new here.
5. Section l (“Fire Protection”) was amended largely in response to the request of the Fire Chief.
6. Section n (“Drainage”) recognizes the important of our wetlands and prohibits pool draining into wetlands.
7. Other changes were made to group related provisions under a single heading (eg see the changes in section d and j) where no substantive changes are proposed.
8. A few other minor changes were made for clarity – that would encompass the changes in sections b, d, i,