



TOWN OF CHILMARK, MASSACHUSETTS

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TO: Honorable Board of Selectmen/Select Board
FR: Chilmark Planning Board
RE: Proposed Zoning Bylaw Amendments
DT: October 29, 2021

Selectmen/Select Board:

The Planning Board, at a properly posted meeting on Monday, October 25, 2021, voted to initiate a process to amend Articles 2 & 4 of the Chilmark Zoning Bylaws and send the attached proposed zoning bylaw amendments to you for review.

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.

Thank you on behalf of the Planning Board,

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

CHILMARK PLANNING BOARD

Rich Osness, Chair Catherine Thompson Ann Wallace Peter Cook

Janet Weidner Hugh Weisman Mitchell Posin

Proposed Chilmark ZBL amendments Oct. 29, 2021

New Article 2 section proposed amendment

Proposed Amendment to ZBL Article 2:

Add a definition to Article 2:

ARTICLE 2: DEFINITIONS

Tennis Court

Section 2.28

Tennis court includes pickle ball, platform tennis and a similar sports court.

Redlined Article 4 language showing proposed amendments

Proposed Amendments to ZBL Article 4, Section 4.2A, 3.:

Article 4: USE REGULATIONS

Section 4.2A ACCESSORY USES

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

A swimming pool and a tennis court, **pickle ball court, and a similar sports court**, 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:** A Special Permit is required for a swimming pool or **tennis such** court. The Special Permit is issued by the Zoning Board of Appeals 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 **tennis such** 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. Special Permits for new swimming pools and **tennis such** courts may not be transferred to new owners.
- c. **Use:** Such swimming pool or **tennis such** court is used only by the residents of the principal dwelling and their guests.
- d. **Setbacks:** No portion of the swimming pool or **tennis such** court 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.
- e. **Enclosure:** 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. **Location:** The location of the swimming pool, related equipment or **tennis such** court shall not materially impair the view of 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 swimming pools will be equipped with a winter safety cover for off-

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season use.

- h. **Energy Use:** 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.
- i. **Light:** The swimming pool or ~~tennis~~ such court must comply with Chilmark Zoning Bylaw Article 5, Section 5.5, 5.6 and 5.7. Submerged in- pool lights and path lights are permissible. ~~Tennis~~ Such courts may not be lighted.
- j. **Noise:** The swimming pool and related equipment or ~~tennis~~ such court must comply with Chilmark Zoning Bylaw Article 5, Section 5.9.
- k. **Screening and Landscaping:** A screening plan shall consist of native, non-invasive species, provided they are consistent with Article 4.2A, sections 3.f and 3.j and must be perpetually maintained for the life of the pool.
- l. **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.
- 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 e. Enclosure and the pool area may 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.

Article 2: DEFINITIONS

Accessory Building

Section 2.0 Any building customarily accessory and incidental to a permitted principal building.

Barn

Section 2.1 A structure erected for the storage of farm products and the sheltering of farm animals.

Curved or Rounded Roof

Section 2.1.1 A roof with no ridge

Dwelling

Section 2.2 A structure used in whole or in part for human habitation. A dwelling does not include a mobile home, however mounted, trailer or similar transportable facility.

Flat or Shed Roof

Section 2.3 A roof, any segment of which has a rise of less than four (4) inches in each foot or the ridge of which lies within a distance from either opposing wall supporting the roof of not more than twenty-five (25) percent of the distance between those walls.

Gabled or Hip Roof

Section 2.4 a roof, each segment of which has a rise of at least four (4) inches in each foot and the ridges of which lie within the middle fifty (50) percent of the distance between the opposing walls supporting the roof.

Guest House

Section 2.5 A subordinate dwelling in common ownership with the principal dwelling on the same lot. The main function of the guest house is to provide accommodation for guest or tenants, limited to not more than one family, of the occupants of the principal dwelling. The only exception to this regulation is that the owner of the property may live in the guest house and use the principal dwelling for guests or tenants. In either case, no agreement or arrangement allowing occupancy of the principal dwelling or the guest house shall provide for (i) a right of occupancy extending beyond one calendar year, (ii) renewal of the occupancy for any additional period of time; or (iii) any payment or financial obligation attributable to any period of time extending beyond one calendar year, except that such an agreement or arrangement will be allowed if it is for the purpose of providing affordable housing for a family as defined in section 2.17. Such an affordable housing tenancy shall continue only so long as the tenants qualify for affordable housing.

Lot

Section 2.6 A parcel of land in one ownership, with definite boundaries, occupied or suitable to be occupied for a certain use.

Maximum Height

Section 2.7 The distance between the highest point of the structure, including railings of roof decks (excluding radio and television antennas, chimneys, flag poles and similar slender structures) and the mean of the natural ground level on the perimeter of the proposed structure.

Segment

Section 2.8 Any continuous line of a roof other than the ridge. Any dormer or similar interruption in a roof line shall be considered a separate segment.

Silo

Section 2.9 A structure erected for the storage of ensilage.

Structure

Section 2.10 A combination of materials assembled at a fixed location to give support or shelter, or act as a barrier. A structure includes any building. A fence or wall over four (4) feet height shall be considered to be a structure; an open terrace not more than three (3) feet above grade level shall not be considered a structure.

Floor Area

Section 2.11 The area of a building or structure determined by adding all horizontal areas of the several floors above grade level having a height clearance of six (6) feet or more, as measured from the interior faces of the exterior walls.

Driveway

Section 2.12 An area of a lot that is designed and intended to provide for the passage of one or more vehicles to and from a road or way. Two adjacent lots may be accessed by a common driveway.

Use, Principal

Section 2.13 The main or primary purpose for which a lot and a building or structure thereon are designed, intended or arranged to be used.

Use, Accessory

Section 2.14 A use of a lot and a building or structure thereon normally incidental to the permitted principal use of the lot.

Two-Family Dwelling

Section 2.15 A dwelling divided into two separate habitable units each of which has a separate entrance, kitchen and toilet, each of which unit is designed, built, and used for occupancy, primarily by one and the same family except that when such family is not in occupancy not more than one other family during any one time period may occupy each unit, provided that no agreement or arrangement allowing such occupancy by other than the principal occupying family shall provide for (i) a right of occupancy extending beyond one calendar year, (ii) renewal of the occupancy for any additional period of time; or (iii) any payment of financial obligation attributable to any period of time extending beyond one calendar year except that such agreement or arrangement will be allowed if it is for the purpose of providing affordable housing for a family as defined in Section 2.17. Such an affordable housing

tenancy shall continue only so long as the tenants qualify for affordable housing.

One-Family Dwelling

Section 2.16 A dwelling, having no more than one principal entrance and one kitchen, designed, built and used for occupancy primarily by one and the same family except that when such family is not in occupancy, not more than one other family during any one time period may occupy dwelling; provided that no agreement or arrangement allowing such occupancy by other than the principal occupying family shall provide for (i) a right of occupancy extending beyond one calendar year, (ii) renewal of the occupancy for any additional period of time; or (iii) any payment of financial obligation attributable to any period of time extending beyond one calendar year except that such agreement or arrangement will be allowed if it is for the purpose of providing affordable housing for a family as defined in Section 2.17. Such an affordable housing tenancy shall continue only so long as the tenants qualify for affordable housing.

Family

Section 2.17 One or more persons related by blood, adoption or marriage, living and cooking together as a single, non-profit housekeeping unit, provided that no more than six persons unrelated by blood, adoption or marriage so living together shall be deemed a family.

Light Pollution

Section 2.18 Man-made light which radiates into the nighttime sky.

Light Trespass

Section 2.19 Man-made light spilling from one property onto another.

Wireless Communications 2.20

Section 2.20.1 Antenna means the device from which radio frequency emissions are transmitted and received to and from free space.

Section 2.20.2 Antenna Support means any device which may support an Antenna, which includes such means as existing buildings, towers, masts, poles and the like.

Section 2.20.3 Base Station means the equipment for one or more wireless services installed at a site to propagate and receive wireless communications.

Section 2.20.4 Base Station Facility means the place within which one or more wireless services install equipment to support the operation of an antenna system.

Section 2.20.5 Chilmark Plan Review Committee means a special committee, the members of which are the members of the Planning Board, the members of the Zoning Board of Appeals and a member appointed by the Board of Selectmen, who may be a Selectman.

Affordable Housing

Section 2.21 Housing for a single person or family qualified for low cost housing under the guidelines adopted by the Town of Chilmark, or in the absence of such guidelines, under the guidelines of the Dukes County Regional Housing Authority. The monthly rental for such housing shall comply with applicable standards.

Swimming Pools

Section 2.22

For the purposes of this Bylaw, a Swimming Pool shall be defined as any structure, basin, chamber or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designed to contain, or is capable of containing water more than 42 inches deep at any point and has an area of 100 square feet or more.

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.

Accessory Apartment

Section 2.25

An "Accessory Apartment" is a separate living area (attached to or detached from the principal dwelling) which is equipped with a kitchen, a bathroom and a separate entrance and is intended for accessory use to a single-family dwelling, on any sized lot.

Caregiver

Section 2.26

"Caregiver" is an adult who resides on site for the purpose of caring for an elderly, chronically sick or disabled person.

Historic House
Section 2.27

“Historic House” means any one of the historic structures listed in the Appendix to the 1985 Chilmark Master Plan (as may be amended from time to time), which is classified as either “Pre-Revolutionary” or “Federal and Greek Revival Eras to Civil War”. Any addition to an Historic House completed after 1980 shall not be considered part of the Historic House.

Article 4: USE REGULATIONS

Section 4.0 Except as the Board of Appeals may grant a variance from the provisions of this Zoning Bylaw, no building or structure shall be constructed, and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized. All uses not specifically permitted shall be considered to be prohibited.

AGRICULTURAL-RESIDENTIAL DISTRICT I

Permitted Uses

Section 4.1

- A. Detached one-family dwelling.
- B. Storage on a lot of one or more boats.
- C. Religious, educational, municipal, and governmental or public utility structure or area.
- D. Public Parks, playgrounds, or recreation buildings, for recreation or community use, not for profit.
- E. Renting of rooms or furnishing of board to not more than three (3) people by a family resident in the dwelling.
- F. Farm, barn or silo, riding stable, nursery, including the display and sale of natural products usually sold by farms or nurseries, and the raising of stock, and the storage of equipment used in connection with such uses.
- G. Use of premises or structures for fishing, shell fishing or agriculture; or work related directly or indirectly thereto.
- H. A garage (attached or detached for no more than three cars) and other accessory structures such as a pump house or tool shed.
- I. A shed roof dormer may be added to a dwelling with a gable roof existing before March 1976, provided that the length of the dormer is no more than 75% of the distance of the roof segment parallel to the ridge and the dormer spans no more than 75% of the distance of the roof segment between the ridge and eave. The pitch of such shed roof dormer shall have a rise of no less than two inches in each foot.
- J. One Detached Bedroom.

USES WHICH MAY BE SPECIALLY PERMITTED BY THE BOARD OF APPEALS

Section 4.2 The Board of Appeals may, after notice and hearing as provided in Article 9 of this bylaw, grant a special permit to conduct a use as herein specified, provided that if such use involves the erection or placement of a building or structure the applicant shall submit to the Board plans and other data showing to the satisfaction of the Board that the site preparation and location of the proposed building or structure will preserve and enhance existing large trees, large exposed boulders, water course, hills and other natural features as well as vistas, water views and historic locations and will minimize the intrusion of the building or structure into the character of the existing development in the area and will not unduly burden the water supply for surrounding area as determined by the Board of Health and the Conservation Commission.

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.

1. **Guest House**, provided that:

- a. The lot on which the principal dwelling and the accessory dwelling are located contains a minimum area of land of (3) acres,
- b. The maximum floor area of the accessory dwelling shall not exceed 800 square feet, which shall include any roof-covered area enclosed by walls or screening.
- c. Soil percolation tests and location of a septic system for the exclusive use of the accessory dwelling shall be approved by the Board of Health prior to granting of a special permit by the Board of Appeals. If the applicant illustrates to the satisfaction of the Board of Health through the submission of suitable drawings prepared by a Professional Engineer or Registered Sanitarian, that a septic system can be permitted in full compliance with all applicable regulations to serve the guest house only, then the applicant may substitute in place of said guest house septic system, connection to a common septic system on a single parcel of land. Said common septic system must also be in full compliance with all applicable rules and regulations of the Board of Health and any other Board which may have regulatory power, and
- d. A covenant against the lot shall be recorded in the registry of deeds prohibiting any subdivision of the lot on which an accessory dwelling is specially permitted unless the minimum acreage for each subdivided lot conforms to the minimum lot size for the district in which the lot is located as provided in the bylaw.
- e. The owner must own the principal dwelling for five years before a guest house maybe built.

Exception: On a parcel of land containing a minimum of six (6) acres held in continuous ownership for at least five (5) years, a guest house may be built within five (5) years of the principal dwelling construction if the owner thereof covenants against any subdivision of the parcel.

- f. permits for unbuilt guest houses may not be transferred to new owners.
- g. An Historic House may be converted into or used as a Guest House (even if it exceeds 800 square feet) provided it meets the above requirements (a) through (d). [See section 6.11.B.3.d. Applicability to Historic Houses.]

2. The use of a portion of a dwelling or any accessory building by the owner and occupant for the pursuit of a home occupation, which term shall be construed to mean any activity which results in a product of service of the sale of the same, which is carried on in a residence or accessory building and meets all the following requirements:
 - a. The use is clearly secondary to the use of the dwelling for dwelling purposes.
 - b. Not more than one-third of the area of one floor of the dwelling structure is used for such uses, and the total ground coverage of areas within the dwelling and other buildings or structures accessory thereto used for such uses shall not exceed 1,500 square feet.
 - c. No part of any building built after the adoption of this bylaw used wholly or in part for such uses shall be situated within 200 feet of the front line or of a road or way open to or used by the Public, or within a distance equal to one half of the depth of the lot if the depth of the lot be less than 400 feet. This setback area and the front yard area of any existing dwelling shall not be used for any parking, sales, storage, display or other use connected with any home occupation.
 - d. Trees, shrubs and natural growth shall be left uncut within 50 feet, or within a distance consisting of 12.5 percent of each dimension of the lot, if that be less than 50 feet of the front, back and all side lines of the lot.
 - e. Sufficient parking spaces to accommodate in all normal conditions the cars of occupants, employees, customers, and visitors of the premises shall be provided behind the rear line of the principal dwelling and shall, if visible at normal eye level from any point on an abutting lot, be screened with a substantially sight-impervious screen of evergreen foliage which will reach a height of eight feet in three years.
 - f. All outdoor storage, loading and service areas must be screened from the view of the public road and adjacent residences with a substantially sight-impervious screen of evergreen foliage.
 - g. No odors, dust, fumes, glare or any noise audible at the lot lines in amounts exceeding those normal to residential use, will be made or created by any use on the premises.
 - h. Such use must not cause or contribute to any erosion of the land or increase surface water drainage from the lot.
 - i. Such use must not cause any pollution of the water or air.

- j. No external change shall be made which alters the residential appearance of the buildings and structures on the premises and new structures for such use shall conform in appearance and in exterior materials to the residential character of the neighborhood.
- k. Site preparation and location of structures must preserve and enhance existing large trees, water courses, hills and other natural features as well as vistas, water views and historic locations and must minimize the intrusion into the character of existing development in the area.
- l. Any use permit issued under this bylaw shall be revocable should any provision of this bylaw not be met. A permitted use shall be limited in time for a period no longer than the period of occupancy or ownership, whichever is shorter, of the premises by the applicant or heirs of the applicant.

3. Swimming Pool and/or Tennis Court.

A swimming pool and a tennis court are considered accessory to the use of a principle 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:** A Special Permit is required for a swimming pool or tennis court. The Special Permit is issued by the Zoning Board of Appeals 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 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. Special Permits for new swimming pools and tennis courts may not be transferred to new owners.
- c. **Use:** Such swimming pool or tennis court is used only by the residents of the principal dwelling and their guests.
- d. **Setbacks:** No portion of the swimming pool or tennis court 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.
- e. **Enclosure:** 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. **Location:** The location of the swimming pool, related equipment or tennis court shall not materially impair the view of 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.
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- i. **Light:** The swimming pool or tennis court must comply with Chilmark Zoning Bylaw Article 5, Section 5.5, 5.6 and 5.7. Submerged in-pool lights and path lights are permissible. Tennis courts may not be lighted.
- j. **Noise:** The swimming pool and related equipment or tennis court must comply with Chilmark Zoning Bylaw Article 5, Section 5.9.
- k. **Screening and Landscaping:** A screening plan shall consist of native, non-invasive species, provided they are consistent with Article 4.2A, sections 3.f and 3.j and must be perpetually maintained for the life of the pool.
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