



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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July 30, 2015

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

**Re: Chilmark Annual Town Meeting of April 27, 2015 - Case # 7520
Warrant Article # 37 (Zoning)**

Dear Ms. Christy:

Article 37 - We approve Article 37 from the Chilmark Annual Town Meeting of April 27, 2015.

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.

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
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cc: Town Counsel Ronald H. Rappaport

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.

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.
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.
 - g. **Covers:** All swimming pools will be equipped with a winter safety cover for off-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 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.
 - 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.
4. **Windmill.** A windmill shall be exempted from the height limitations of Section 6.5 of the Zoning Bylaw and considered accessory to the use of a dwelling or dwellings, subject to the following conditions:

- a. The building inspector may require certification of a registered Massachusetts engineer, furnished by the applicant for safety of structure, installation and operation of the windmill.
 - b. Climbing access to any tower shall be limited by the installation of a six foot high fence with locked gate, or by limiting tower climbing apparatus to no lower than ten feet above ground.
 - c. A recommendation by the Site Review Committee (Section 11.3) shall be made regarding the height and siting of the windmill. The committee may require that the applicant erect temporary poles, to a height designated by the building inspector, to mark the proposed location.
 - d. The Board of Appeals shall determine that the proposed height and location of the windmill does not interfere with the rights of abutters to enjoy their property and that the granting of the Special Permit will satisfy sections 1.0, 4.2 and 9.8 of the bylaws.
 - e. The building inspector shall be responsible for a biannual inspection of all standing windmills. Any designated safety hazard or nuisance (such as excessive noise, radio and/or television interference) shall be corrected within 60 days or, failing that, dismantled within 30 days. Such action to be subject to approval of the Board of Appeals.
5. **Unlicensed Vehicles.** The outdoor storage of not more than two (2) unlicensed vehicles (other than farm vehicles) on a lot provided that no such vehicle is within 50 feet of any boundary line of the lot and that if any one of such vehicles is visible from any point on a way used by the public, public land, or abutting lot, the vehicles will be screened with a substantially sight-impervious screen of evergreen foliage which will reach a height of eight feet in three years.
6. **Conversion of a Barn.** Conversion of a barn which existed before January, 1973 to a single family guest house, provided that:
- a. It conforms to all conditions for a guest house in section 4.2 A, except that it may exceed the floor area limitation.
 - b. The converted barn shall be the only guest house accessory to the main dwelling and no additions shall be allowed.
 - c. The visual character of any part of the barn which is in the public view shall be retained.
7. **Room Rentals or Bed and Breakfast Accommodations.** Room rentals or bed and breakfast accommodations for more than three (3) people in a dwelling are subject to the following provisions:

- a. The use shall be clearly secondary to the use of the dwelling as the primary residence of the owner and/or occupant and shall not alter the residential character of the neighborhood.
 - b. Accommodations shall be limited to not more than six (6) overnight guests and the number of rooms to be rented shall not exceed three (3).
 - c. Breakfast service shall be operated for only overnight guests.
 - d. Parking areas shall be located and screened with dense natural vegetation so as to minimize noise and visual intrusion upon neighbors and roadsides.
 - e. The owner of a dwelling renting rooms to more than three (3) persons shall be required to be licensed annually by the Board of Selectmen after approval by the Board of Health, the Fire Department and the Building Inspector. The use shall be limited in time to the period of occupancy of the licensee.
 - f. The owner of a dwelling who has rented rooms to more than three (3) persons prior to the adoption of this bylaw may continue to rent the number of rooms rented in 1987, but shall be licensed as described above and shall conform to the other requirements of this bylaw as far as is possible within the lot where the dwelling is located.
8. **Satellite dishes** may be installed providing they are either located in such a way or screened with dense natural vegetation so that they are not visible from public or private ways or from neighbors' dwellings.
9. **Accessory Apartments** – See Section 6.12

NON-ACCESSORY USES

Section 4.2B Non-accessory uses specified below which are not accessory to a permitted use may be permitted subject to the following conditions:

1. A private club, not conducted for profit, a gasoline station, a boat storage and repair or boat building facility, an aquacultural development facility, a marine biological station, a museum, swimming pool, laundromat, tennis courts, non-profit skating rink, boat railway and ramps, practice of a recognized profession, provided:
 - a. A determination of need or usefulness to the residents of the Town is made by the Board of Appeals,
 - b. It is the opinion of the Board that such use will not have a material detrimental effect upon, or be inconsistent with the established and future character of the neighborhood and the Town,

- c. Any such building or structures shall be faced on the exterior with wood or clay brick, and
 - d. Any other conditions or safeguards deemed necessary to protect the surrounding neighborhood shall be imposed by the Board of Appeals.
2. Conversion of a one-family dwelling existing on January 15, 1973, into a two-family dwelling.
3. Conversion of a barn over 24 feet in height, existing on January 15, 1973, into a single family dwelling.
4. Removal of gravel, loam, sand and stone provided that:
 - a. The Board may restrict the depth and extent of the removal and the distance of the removal from abutting lots in order to insure that such removal will not cause subsidence of any such lots.
 - b. If the operation is to continue for more than one year, the area of such removal shall be screened by any method, such as plantings or fencing, as approved by the Board, and
 - c. When such removal operation has been completed, or abandoned for two years, the area of removal shall be graded and restored to a sightly condition and planted with soil improving plants, with a permanent cover crop or reforestation.
5. An inn, subject to the following:
 - a. Such a business must be located on a site comprising not less than ten (10) acres,
 - b. No building or structure used in connection with such business shall be located nearer than 400 feet from any way used by the public,
 - c. The facilities shall be limited to accommodations for not more than thirty (30) overnight guests in any arrangement of single and double rooms,
 - d. Facilities must be operated for the service of at least two meals to all overnight guests,
 - e. Trees, shrubs and natural growth shall be left uncut within 100 feet of all lot lines, and
 - f. An inn shall be licensed annually by the Board of Selectmen after approval by the Board of Health, Fire Department and Building Inspector.

- g. These requirements apply to the renting of rooms to more than six (6) people.
6. Wireless Communications Equipment and Facilities, subject to the following:
- a. Purpose: The purpose of this provision is to balance the need for the safety and convenience of wireless communications with the Town's desire to preserve the rural nature of the Town as set forth in its Master Plan.
 - b. Applicants seeking approval for any wireless communications Antenna, Antenna Support, Base Station or Base Station Facility shall comply with the following:
 - 1) If feasible, any Wireless Communications Antenna shall be located on existing telecommunications facilities or other suitable existing Supports. The applicant shall submit documentation of the legal right to install and use the proposed Antenna Support. Otherwise, the applicant shall have the burden of proving that a good faith effort has been made to so locate and that it is not feasible to locate on an existing Support. Failure to meet this burden shall be grounds for denial of the application. Any owner of an existing Antenna Support, which currently supports an Antenna, must provide appropriate space on a reasonable and non-discriminatory basis or documentation from an impartial expert stating the reasons for not allowing the applicant to share the Antenna Support. All wireless communications Antennas, Antenna Supports, Base Stations and Base Station Facilities built in Chilmark shall be constructed to accommodate additional providers and the owners must make the Support available for use by other wireless communications providers on a reasonable and non-discriminatory basis.
 - 2) All applications shall be completed on a form provided by the Town. Such form shall contain an agreement indemnifying the Town from all legal liability resulting from the construction and operation of the wireless communications Antenna, Antenna Support, Base Station or Base Station Facility. The form shall be signed by an individual authorized to execute a binding indemnification.
 - 3) All applications shall contain the following information and supporting documentation:
 - a) Inventory of the applicant's existing Antenna Support, Base Station and Base Station Facility sites, including but not limited to specific information about the location, height and design of each Antenna Support:
 - b) The availability of suitable pre-existing Antenna Supports or other structures in Chilmark and abutting

towns:

- c) A scaled site plan and elevation view for any proposed Antenna Support, Antenna Base Station, Base Station Facility or any combination thereof;
 - d) A copy of all FCC licenses for the provision of wireless services and related communications links (if any) that the applicant intends to operate
 - e) Such additional information as may be relevant to the factors listed in 4)b) below.
- 4) Permitting for Antennas, Antenna Supports, Base Stations and Base Station Facilities.
- a) There is hereby created a Chilmark Plan Review Committee, the members of which shall be 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.
 - b) The Chilmark Plan Review Committee may issue a special permit for any proposed Antenna, Antenna Support, Base Station, Base Station Facility, and modifications made to existing Antenna, Antenna Support, Base Station, Base Station Facility, or combination thereof by a two-thirds (2/3) vote of the membership of such committee in accordance with the following procedures:
 - 1. A joint public hearing by the Site Review Committee and the Chilmark Plan Review Committee shall be held for the applicant to present the proposed Antenna, Antenna Support, Base Station or Base Station Facility plan;
 - 2. Recommendations from the Site Review Committee shall be submitted to the Chilmark Plan Review Committee;
 - 3. The Chilmark Plan Review Committee shall provide a written opinion explaining its decision. Such decision shall consider and be based upon the following factors:
 - a. Height and type of proposed Antenna and its Support;
 - b. Visibility of the Antenna and its Support in the view shed of any property owner(s);
 - c. Need for reception in the area;
 - d. Proposed location(s) versus possible alternate location(s);
 - e. Ability to mask the nature of the Antenna Support;
 - f. The number of Antennas involved in the system and in any particular area;
 - g. Intrusion of the Antenna or its support above the ridge lines or in public views;
 - h. Distance from any residence or public building

- i. property line of the Antenna Support;
Compliance with all applicable Town regulations for structures, except for setbacks along public or private ways;
- j. The maximum level of radio frequency (RF) output of any Antenna, Base Station or Base Station Facility;
- k. Ability of the applicant to financially and functionally provide and maintain the proposed system;
- l. Proposed location of any Antenna or Antenna Support in the Roadside or Coastal Districts.

c) The terms of the special permit may take into account the written recommendations of the Site Review Committee. The Chilmark Plan Review Committee may require the applicant to agree to conditions for the issuance of the special permit.

- 5) Height. The maximum height of any Antenna or Antenna Support shall be determined by the Chilmark Plan Review Committee taking into account all of the factors listed in 6.b.4)b)3. but not greater than seventy (70) feet above the preconstruction natural grade unless a greater height is permitted by a three-fourths (3/4) vote of the Chilmark Plan Review Committee membership.
- 6) Fencing. Climbing access to any Antenna Support shall be limited by either the installation of a six (6) foot high fence with locked gate or by limiting climbing apparatus to no lower than fifteen (15) feet above ground.
- 7) Lighting. An Antenna Support shall not be illuminated except as required by the FAA or other applicable Federal or State agencies.
- 8) Testing. After transmission begins, the owner(s) of any Antenna, Base Station or Base Station Facility shall pay for an independent consultant, selected by the Town, to conduct a test to monitor the compliance of the installation with federal and state radio frequency emissions regulations by any facility site's primary Antennas as well as from repeaters (if any). The independent consultant shall prepare and execute a protocol satisfactory to the Chilmark Plan Review Committee and specific to each facility for evaluating that facility's compliance with such regulations. A report of the compliance test shall be prepared by the independent consultant and submitted to the Chilmark Zoning Officer and the Chilmark Plan Review Committee within thirty (30) days of completion of the testing. Any modification of an existing facility, or the activation of any additional permitted channels, shall require new monitoring. The Chilmark Plan Review Committee may revoke any permit for equipment which does not pass the required testing until such time as it does past the test.
- 9) At any time thereafter if the Chilmark Zoning Officer has

reasonable cause to question the compliance of any installation with radio frequency emissions regulations, he may require the applicant to provide substantiation of such compliance in accordance with the procedure in Section 8) above and shall furnish the report of compliance or non-compliance to the Chilmark Plan Review Committee. If state or federal regulations are not met, the wireless communications Antenna, Base Station or Base Station Facility shall cease to operate immediately and up until such time as such installation passes such standards as contained in a subsequent written report of the independent consultant.

- 10) Noise. Wireless communications equipment shall be essentially noiseless at the property line of the equipment or facility, provided that an emergency generator servicing such equipment or facility may emit noise no greater than fifty (50) dBA. Any violation of this excessive noise provision must be corrected within five (5) business days of notice to the provider by the Chilmark Zoning Officer. The Chilmark Zoning Officer shall immediately report any failure to correct such excessive noise violation to the Chilmark Plan Review Committee.
- 11) Term. All permits issued under this bylaw shall be for a term not exceeding ten (10) years. At the end of such term as contained in the permit, the permit shall automatically expire unless renewed in accordance with Section 6.b.4) above.
- 12) Abandonment and Disassembly. Any wireless communications equipment which becomes damaged to the extent of being a public hazard, for which a permit has expired or been revoked, or which ceases to operate for one year or more shall be considered abandoned and must be disassembled at the direction of the Town and at the expense of the owner/operator. Before any permit is issued, every owner/operator of a wireless communications Antenna, Antenna Support, Base Station or Base Station Facility may be required to post and maintain a bond with the Town of Chilmark to cover such costs. The Chilmark Plan Review Committee shall determine the amount of the bond and approve the company that will issue the bond.
- 13) Exceptions. This bylaw shall not apply to:
 - a) An amateur radio or television Antenna not licensed for any commercial use.
 - b) FCC approved devices containing Antennas sold to consumers in the mass market for their use.

**AGRICULTURAL-RESIDENTIAL DISTRICTS II-A, II-B, III, IV, V and VI
PERMITTED USES**

Section 4.3 The permitted uses, and uses which may be specially permitted by the Board of Appeals shall be the same as those prescribed for Agricultural-Residential District

CONSERVATION DISTRICT PERMITTED USES

Section 4.4 In the conservation District, no new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and due to the fragile nature of the area, no land shall be used for any purpose except as follows:

- A. Conservation of soil, water, plants and wildlife.
- B. Maintenance of the existing Luce Family Cemetery, and of ways or paths provided that a vegetative cover is maintained in such ways.
- C. Maintenance of existing open areas, subject to such monitoring as may be required by the Conservation Commission.
- D. Selective clearing of new areas to establish or protect natural wildlife habitat and to protect or maintain rare and endangered species may be permitted by an Order of Conditions issued by the Conservation Commission.

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 6.7 of 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.

Section 6.12

A. Accessory Apartments

This section is intended (a) to help provide affordable year-round rental housing opportunities within the context of Chilmark's predominantly single-family home character (and to give homeowners an opportunity for supplemental income), and (b) to provide housing for an owner's immediate family members (i.e., children, grandchildren, parents, in-laws) and Caregivers.

One Accessory Apartment (pre-existing or to be constructed) may be allowed by Special Permit and with approval of the Board of Health, subject to compliance with all these Bylaws and to the following conditions:

1. Permitted Use: An Accessory Apartment must be either (a) rented as affordable housing (as further set forth herein) or (b) rented or provided free of charge to immediate family members or Caregivers (as further set forth herein). No other occupancy is permitted.
2. Requirements for Affordable Housing Apartments:
 - a. The principal dwelling and the Accessory Apartment must be owned by the same party.
 - b. The owner of the property need not be a year-round resident of Chilmark.
 - c. The Accessory Apartment must be rented on a year-round basis to persons eligible to rent affordable housing in Chilmark following basic income certification by DCRHA*
 - d. The maximum rental rate shall be established annually by the Federal Department of Housing & Urban Development (HUD) and administered by the Dukes County Regional Housing Authority (DCRHA) which will also administer the Accessory Apartment program for those apartments used as affordable housing.

*Dukes County Regional Housing Authority

3. Requirements for Immediate Family Member/Caregiver Apartments:
 - a. The principal dwelling and the Accessory Apartment must be owned by the same party.
 - b. The owner of the property must be a year-round resident of Chilmark and must occupy either the principal dwelling or the Accessory Apartment (with the exception of seasonal Caregivers as set forth in 3.e below).
 - c. The Accessory Apartment must be rented or occupied on a year-round basis (with the exception of seasonal Caregivers as set forth in 3.e below).
 - d. There is no minimum or maximum rental rate.
 - e. Notwithstanding 3.b and 3.c above (regarding the year-round residency requirement of the property owner and the year-round occupancy requirement of the Accessory Apartment), if the owner of the property is not a year-round resident of Chilmark and the Special Permit specifically so provides, the Accessory Apartment may be rented or provided free of charge on less than a year-round basis for an owner's Caregiver while the owner is in residence on the property.
4. Size Restriction: Accessory Apartments (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) shall not exceed 800 square feet (or, if a Guest House would not be permissible on such lot, such Accessory Apartment shall not exceed 400 square feet).
5. Conversion of Accessory Apartment to Guest House (Accessory Apartment is more than 400 sq.ft.): Any Special Permit for a detached Accessory Apartment (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) of more than 400 square feet shall specify that such Accessory Apartment may not be used other than as affordable rental housing (in accordance with the requirements of the DCRHA) or by an owner's Caregiver or immediate family members unless and until such Accessory Apartment is formally approved by the Town as a permissible Guest House pursuant to these Bylaws (including, without limitation, the 5 year waiting period requirement for a Guest House).
6. Conversion of Accessory Apartment to Detached Bedroom or Guest House (Accessory Apartment is 400 sq. ft. or less): Any Special Permit for a detached Accessory Apartment (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) of 400 square feet or less shall specify that such Accessory Apartment may not be used other than as affordable rental housing (in accordance with the

requirements of the DCRHA) or by an owner's Caregiver or immediate family members until either (i) the kitchen is removed and such structure qualifies as a Detached Bedroom or (ii) the structure is formally approved by the Town as a permissible Guest House pursuant to these Bylaws (including, without limitation, the 5 year waiting period requirement for a Guest House).

7. Both Guest House & Accessory Apartment Permissible: For the avoidance of doubt and subject to the other provisions of these Bylaws, an owner of a property shall not be precluded from having both an Accessory Apartment and a Guest House. No property may have more than one Guest House.

B. Filing Requirements

To ensure compliance with the requirements of this Section 6.12, the owner of an Accessory Apartment shall file the following with the DCRHA or the Town Clerk as noted below, and the Chilmark Housing Committee shall be authorized to administer these provisions:

1. All Accessory Apartments: Prior to the issuance of an occupancy permit for the Accessory Apartment and within 30 days of any change in ownership of the premises, the owner of the Accessory Apartment must file with the Town Clerk an affidavit attesting to the owner's understanding of the occupancy restrictions of this Bylaw and the owner's intention to comply with its requirements.
2. Affordable Housing Apartments: On or before January 31 of each year, the owner of the Accessory Apartment must file with the DCRHA the names of lessees of the Accessory Apartment who are year-round residents of Martha's Vineyard, together with copies of the year-round lease and the lessee's driver's license or other appropriate proof of island residency. Any such lease shall clearly state that year-round occupancy of the Accessory Apartment is a condition of the lease.
3. Immediate Family Member/Caregiver Apartments: With respect to Accessory Apartments rented to or occupied by immediate family members and Caregivers as permitted hereunder: On or before January 31 of each year, the owner of the Accessory Apartment shall provide the Town Clerk with the names of year-round lessees or occupants of the Accessory Apartment who are immediate family members of the owner (children, grandchildren, parents or in-laws) or Caregivers for the owner or the owner's family.

C. Enforcement

The Chilmark Building Inspector is authorized to enforce the provisions of this Bylaw.

D. **2-Year Review**

There shall be a joint Zoning Board of Appeals, Planning Board and Chilmark Housing Committee meeting every 2 years to review the effectiveness of this Bylaw. These committees shall report to the next town meeting their findings and recommendations. The first such review meeting shall be scheduled no later than one month in advance of the town meeting 2 years after this Bylaw's adoption.