**Chilmark Zoning Bylaw for Pool/Tennis Court**

**Article 4 Section 4.2A3**

**Proposed Revised Bylaw**

**October 24, 2018**

**Accessory Uses Article 4.2A**

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

a. **Permitting and Enforcement:** A Special Permit is required for a swimming pool or tennis court. The Special Permit is issued by the Zoning Board of Appeals which, in its discretion, will determine whether the applicant/owner’s plan meets the purposes and requirements of this section. Special Permits granted under this section will be enforced by the Building Inspector.

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

This bylaw is not new and the 2 years from ownership is a non-issue, but the occupancy permit language has certainly caused major inefficiencies and undue additional disturbance to neighbors and the general public while in effect. New home construction/renovation is obviously a major undertaking and the construction timeframe is when the neighbors and public are disturbed the most. When a house is under construction a pool can be built simultaneously within the same timeframe, if not faster. This article forces the neighbors and public to go through that process twice within 2 years, when we could have otherwise not created any additional impact. I know of 3 instances in Squibnocket alone where this article caused lots of issues amongst neighbors and the general public.

**SUGGESTED REVISION**

b. **Application:** The applicant/owner The applicant/owner must own the property for two (2) years before applying for a Special Permit for a swimming pool or tennis court. Special Permits for new swimming pools and tennis courts may not be transferred to new owners.

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

d. **Setbacks:** No portion of the swimming pool or tennis court or any related fencing or any pool-related mechanical equipment shall be located within 50 feet of any boundary line of said lot.

Restricting the fencing and equipment to the 50’ would be detrimental to the purpose of the bylaw in many cases. Both of these issues are only related to neighbors/public visibility and sightlines (the equipment noise is addressed elsewhere in this bylaw).

Requiring the fencing to be outside the 50’ setback would often make the fencing more visible and directly in sightlines of neighbors and public spaces. Often fencing best disappears when buried in vegetation and would be most beneficial to neighbors/public when installed within the 50’ setback. Additionally, general fencing is regulated elsewhere in the town bylaws and a 48” fence can be installed right up to their property line without ZBA approval at all. Not sure why a fence would be viewed and regulated any differently when connected to a pool project.

As for equipment, the contour of the land often provides natural opportunities to locate the equipment in an underground vault or sound insulated shed hidden in vegetation. Again, requiring these structures to be outside the 50’ setback may be a detriment to the neighbors/public view and the purpose of this bylaw.

During the last two revisions of these pool bylaws, both of these two issues were thoroughly discussed and ultimately determined were best to leave to the discretion of the ZBA on a case-by-case basis and left to be “…as approved by the ZBA”. This really is the best way to allow the fencing and equipment to be located in the most logical and best location for owner, neighbors and the general public.

**SUGGESTED REVISION:**

d. **Setbacks:** No portion of the swimming pool or tennis court shall be located within 50 feet of any boundary line of said lot.

e. **Access and Enclosure:** The purpose of this section (e) and sections (f) and (g) below is to prevent a child from gaining unsupervised access to the pool (a) directly from the principal dwelling on the property (or from any other structure outside the pool enclosure on the property), or (b) by getting a foot hold to climb over any pool enclosure fencing (including any stone wall) or any nearby vegetation.

While I am in complete agreement with above, I would caution the Town from commenting on what is otherwise dictated already by building codes. Everything above is thoroughly covered in the 2015 International Swimming Pool and Spa Code. I would consult Town counsel to make sure the Town is not assuming any undue liability by interpreting the code when it already technically covers what you are trying to protect. That goes for all the following 1-5, as you are not only restating what is otherwise building code, but in some instances, you are stating incorrect details and things that are against code.

1. The pool shall be securely and completely enclosed and maintained on all sides with both a fence and self-locking gate(s) with the locks mounted on the pool-side of the gate(s). The fence and gate(s) shall be not less than 4 feet in height above ground level. The fence must be child-proof, e.g. a wire mesh size of 1” wide x 2” high. (This is specifically NOT code) Again, law and code override what you are stating here, it is not necessary and technically incorrect.
2. No portion of the principal dwelling (or any other structure on the lot) shall act as any section of the fence. If a stone wall is used for any section of the fencing, it must meet the minimum height requirement, and the exterior stone joints must be filled with mortar and flush with the exterior face of the wall.

I understand the initial thought of a fence being more secure than a portion of the house, but I strongly disagree and the building code would not agree as well. A “Pool Enclosure” is defined by the ISPSC and lawyers and experts have thoroughly debated this issue, certainly far more than we have. Not only have they determined a house can act as part of the enclosure, they have reinforced these access points with better security than a 48” fence. The code is very specific here and absolutely provides better security and means of alert than a traditional fence. I would again caution the Town from removing the ability to better secure your pool area with well-established law and code. Not only does the new code require doors to be alarmed, but also windows. The code also leaves the ability for the building inspector to authorize other/better means of protection than just alarms. For example, the house door leading to the pool area can be self-closing, self-latching, a mechanism over 54” and an audible alarm.

There is no better defense regarding pool safety than supervision, but restricting owners from options better than a standalone 48” fence seems counter-productive to this bylaw and possible put the Town in legal issues.

1. Any vegetative screening of the pool or the pool enclosure shall be planted and maintained at least four feet outside the pool enclosure and at a height not to exceed four feet. This is in the building code
2. No pool may be approached from the principal dwelling (or other structure on the lot) or any associated deck without entering through a gate restricted as above.

This seems to just be restating #2. See above

1. The separation between the principal dwelling (or other structure on the lot outside the pool enclosure) or any associated deck and the swimming pool enclosure must be at least ten (10) feet, and the enclosure/fencing must be located no more than 50 feet distant from the pool. Distance from dwelling is in code. Not sure the purpose of 50’, but again would be detrimental to visibility issues. Again, case-by-case and at the discretion of the ZBA seems much more logical here.

**SUGGESTED REVISION:**

e. **Access and Enclosure:** When a wall of a dwelling or structure serves as part of the barrier and where doors or windows provide direct access to the pool through that wall, doors and windows shall offer the same or better means of protection required of fences per building codes, as determined by the Building Inspector.

f. **Line-of-Sight Observation:** A pool must be situated reasonably close to the principal dwelling and provide a clear and direct line of sight – not dependent upon by a closed circuit camera or other equipment enabling remote observation -- from a highly used room or place, such as a kitchen, living room or outside deck. Any fencing and/or vegetative screening between the principal dwelling and the pool must not interfere with a clear line of sight.

I would caution the use of subjective terms like “reasonably close”, as it is likely to cause more problems then solutions. Also, how can you have a 48” fence between the house and pool and not interfere with a clear line of sight?

A side note, while this article often makes pools harder to build on certain lots, it really does nothing in terms of the purpose of the bylaw as stated above in regard to safety. As stated above, there is no substitution for supervising young children within the pool enclosed area. If someone is irresponsible enough to NOT supervise children in the pool, they are certainly not sitting by their windows waiting to see if someone is in their pool. I understand the thought process here, but in practice, it is not helpful and just sometimes makes owners place a pool in a worse spot overall to accommodate this bylaw. For example, what happens if a property has a great location hidden from neighbors and the public, but does not have a direct line of sight from a “highly used room or place” as determined by the ZBA. In this case, the pool may be located in a less desirable location to the owner, neughbors and public simply to abide by this bylaw. Again, another reason to leave this one to the discretion of the ZBA to make the correct decision.

**SUGGESTED REVISION: DELETE OR…**

f. **Line-of-Sight Observation:** A pool must be situated to provide a clear and direct line of sight from the principal dwelling.Any vegetative screening between the principal dwelling and the pool must not interfere with a clear line of sight.

g. **Covers:** All swimming pools shall be equipped with automatic, retractable pool covers.

As stated above, there is no substitution for supervision, BUT an automatic cover is certainly a very good line of defense and in no way would I ever debate its effectiveness and overall cannot disagree with the intent here. I do want to make the Town aware of the cost associated with these covers. I would also caution the Town to specify the type of automatic cover, as unless it is certified per code, it can do more harm than good.

**SUGGESTED REVISION:**

g. **Covers:** All swimming pools shall be equipped with a safety cover that is listed and labeled in accordance with ASTM F 1346.

h. **Energy Use:** If a swimming pool is heated, all swimming pool-related pumps, filters, circulators, and the heating system shall be powered with solar or sustainable energy that is consistent with current best practices as determined by the Board. Any on-site, sustainable source of power shall meet the requirement of section 4.2A3g. If a heating system is added to an existing swimming pool, a Special Permit is required prior to its installation and it shall comply with this section.

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

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

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

1) If the applicant/owner intends to plant any vegetation between the principal dwelling and pool or between the pool and an abutting property, a specific landscape plan, if required must be approved by the Board. Any vegetative screening, whether specifically allowed in the Special Permit or otherwise, shall consist only of native, non-invasive species. Any such vegetation must at all times comply with sections e and f above.

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

l. **Fire Protection:** A standpipe for Fire Department access is required for all pools containing over 10,000 gallons of water. The Fire Chief shall also approve the standpipe design and placement before obtaining a Building Permit.

m**. Initial Filling:** The initial filling of the pool shall come from an off-site source and shall not occur until the pool is in compliance with 4.2A3f. (line of sight article, correct?)

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