

# Regulatory Audit for Chesterfield August 2024

This is an audit of Chesterfield's Zoning Ordinance, site plan regulations, and subdivision regulations as they exist in August 2024. It addresses barriers to housing choice, as part of the Housing Opportunity Planning grant.

In the following section we will address specific sections of the code and their effect on housing choice.

## Chesterfield Zoning Ordinance Review

### **203.4 Area, Frontage and Coverage Requirements**

All uses shall comply with the following:

- A. Lot Area: Minimum of two acres except four acres for a two family dwelling. Multiple family dwellings are governed by Sections 403.1 and 403.2.
- B. Frontage: Minimum of 200 feet, except 300 feet for two family dwellings. Multiple family dwellings are governed by Section 403.1.

Requiring twice as much acreage for a duplex as for a single unit residence is unnecessary for health and safety reasons and contributes to increased housing costs. Requiring 300 feet of frontage is also unnecessary and has the added disadvantage of increasing road maintenance costs for the town by spreading tax-paying residences further apart.

### **204 RURAL/AGRICULTURAL DISTRICT (R/A)**

#### **204.1 Purpose**

The purpose of the R/A District is to regulate the future use of land in Chesterfield in a manner compatible with the goals of the Chesterfield Master Plan for rural/agricultural areas. The regulations set forth herein encourage land uses and densities of development compatible with the pursuit of rural and agricultural living.

#### **204.2 Permitted Uses**

In the R/A District only the following uses are permitted:

- A. Single family detached dwellings.

Restricting this district to single family only is unnecessary. Allowing house-sized duplexes and multifamily buildings is one way of adding housing choice and availability without affecting the look of feel of the district. This clause also prohibits the conversion of an existing building into a multifamily. Such conversions provide the most likely path toward naturally occurring affordable housing.

### **205 VILLAGE DISTRICT (V)**

#### **205.1 Purpose**

The purpose of the V District is to regulate the future use of land in West Chesterfield and Spofford Villages in a manner compatible with the town village character that now exists.

The regulations set forth herein are designed to assure that new development is compatible with the land uses and structural types of the village while currently allowing for the filling in of vacant land with appropriate residential and commercial uses.

#### **205.4 Area, Frontage and Coverage Requirements**

All uses shall comply with the following area, frontage and coverage requirements:

- A. Lot Area: Minimum of two (2) acres.
- B. Lot Frontage: Minimum 200 feet, except two-family dwellings which require 300 feet

This district is intended to continue a village form of development; however, the lot area and frontage requirements will produce a suburban development pattern. While lots must have adequate area to accommodate both well and septic it is possible to do that in less than two acres. Requiring 200 feet of frontage for each lot, and 300 for a duplex, will work against a village feel. If a village feel is what the town desires then these requirements should be reconsidered, with a close look at what the soil types will allow in terms of smaller lots.

#### **205.5 Setback and Yard Requirements**

No structures, except fences and walls, shall occupy any yard areas established by the setbacks listed below. Driveways may cross front setbacks.

- A. Front Setback: 50 feet.
- B. Side Setbacks: 20 feet.
- C. Rear Setbacks: 20 feet.

Here, too, the setbacks are decidedly suburban in character and don't match the existing fabric of the villages. These deep setbacks also make it difficult to site an accessory building such as an accessory dwelling unit.

### **207 REQUIREMENTS APPLICABLE TO ALL USE DISTRICTS**

#### **207.1 One Residential Building per lot**

There shall be only one single-family detached dwelling on a lot. Single-family detached dwellings in combination with other dwellings options are NOT permitted on a lot. (See specific use district for permitted/excepted dwelling options.)

Restricting all lots to one single-family detached dwelling is unnecessarily restrictive, and may make repurposing existing buildings impossible. While provision for adequate well and septic is essential, not permitting second dwellings on a lot should be reconsidered.

## **207.2 Accessory Dwelling Units**

### **207.2 1 Purpose and Definition**

For the purpose of providing expanded housing opportunities and flexibility in household arrangements, accessory dwelling units as described by RSA: 674:71-73 and further described below, shall be permitted by a conditional use permit granted by the Planning Board or their designee in any district in conformance with these regulations.

Accessory Dwelling Unit (ADU): a secondary dwelling unit within or attached to and subordinate to the permitted principal dwelling unit in accordance with the provisions of this section.

Detached Accessory Dwelling Units are not permitted under this regulation

Prohibiting detached accessory dwelling units works against providing housing choice and availability. Requiring a conditional use permit for the construction of an ADU makes it less likely that such a unit will be constructed. Best practice is to allow ADUs by right, subject to appropriate standards. As written, this ordinance is not likely to provide expanded housing opportunities and flexibility in household arrangements.

### **207.2 2 Standards**

New construction for an accessory dwelling unit shall comply with all the development standards for a single family detached dwelling including, but not limited to, setbacks, height limits and lot coverage and shall not increase any nonconforming aspect of any existing structure unless otherwise addressed by this section. Existing non-conforming structures must comply with current codes and regulations at the time the ADU conditional use permit is applied for.

While requiring buildings to conform to health and safety codes is reasonable, requiring all existing non-conforming structures to comply with all current codes and regulations at the time the ADU conditional use permit is applied for is likely to severely dampen the creation of ADUs. For example, if the existing building does not meet lot and yard standards, particularly setbacks, this clause would mean that an ADU could not be created even though the building has been in place for many years.

### **207.2 3 Requirements/Limitations**

b. Exterior alterations, enlargements, or extensions of the structure shall not alter its character or appearance as a single -family residence. Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.

This is imprecise and unwieldy. How is “the character or appearance as a single-family residence” to be determined?

d. An accessory dwelling unit shall have an area of no less than 300 square feet and no greater than 800 square feet measured by the outside dimension of the exterior wall or the

interior dimension of a common wall. An attached accessory dwelling unit shall occupy no more than 30% of the total heated, above grade floor area of the total dwelling unit, including the accessory dwelling unit.

The 30% maximum area for attached, with a maximum of 800 square feet, eliminates the possibility of a home that is less than 1,000 square feet having an attached ADU. For example, 30% of a 900-square-foot house is 270 square feet, which is less than the required minimum of 300 square feet.

e. An attached accessory dwelling unit shall be designed to allow for re-incorporation into the principal dwelling unit. Internal access to the principal dwelling unit shall be maintained or constructed. The accessory dwelling unit and the principal dwelling unit must share internal heated living space through a common wall.

This requirement is complicated and unnecessary. A door between the units is required by state statute but the clause regarding shared internal heated living space through a common wall is very confusing and certainly unnecessary.

g. Adequate off-street parking shall be provided. In addition to the parking required for the existing structure, at least one additional parking spot for each ADU bedroom added shall be provided.

Given the small size of ADUs this parking requirement is excessive. Additionally, single family unit parking requirements are not based on the number bedrooms, so that this requirement falls afoul of RSA 674:72, IV.

#### **207.2 5 Existing illegal accessory dwelling units**

Accessory dwelling units constructed after March 10, 1987 and before March 2017, which do not have either a building permit or certificate of occupancy, shall apply to the code enforcement officer for a determination of compliance with section 207.2. 2. Applications shall be accompanied by the filing fee, plans and other documentation requested by the code enforcement officer to enable him/her to evaluate compliance with section 207.2 2. The code enforcement officer shall issue one of the following:

- a. A determination of compliance with 207.2 2 and a certificate of occupancy;
- b. A conditional determination of compliance with 207.2 2 and a description of the corrective changes needed to bring the accessory dwelling unit into compliance. The required changes shall be completed within 90 days of the date of the determination of conditional compliance. Upon successful completion of the required changes, the code enforcement officer shall issue a certificate of occupancy; or
- c. A determination of non-compliance with one or more of the requirements of 207.2 2, together with a listing of those requirements and conditions for which compliance cannot be achieved through corrective changes.

The requirements for bringing illegal units into compliance imposes the same burdens as for existing

nonconforming homes (207.2 2). There is no defined process for identifying the illegal units, nor is there any incentive for a property owner to come forward.

#### **207.2 7 Owner Occupied**

The principal dwelling unit or the Accessory dwelling unit shall be owner occupied and the owner shall certify occupancy to the Planning Board or its designee yearly by April 1<sup>st</sup>. If the property owner cannot comply with this provision due to hardship such as but not limited to, job relocation or medical/family emergency; the owner may apply to the Zoning Board of Adjustment for a Special Exception. Such relief may be reviewed by the Board of Adjustment annually but in no case shall the relief granted be greater than two years.

**Requiring owner occupancy has been documented to depress the creation of ADUs. If the town is concerned about public safety then that should be addressed elsewhere.**

#### **207.2 8 Maximum occupancy**

The ADU may be occupied by a maximum of two (2) persons per bedroom.

The ordinance cannot limit the number of people per bedroom in an ADU unless that limitation also applies to single-family homes (RSA 674:72, IV).

### **300 MANUFACTURED HOUSING PARKS AND SUBDIVISIONS**

#### **300.2 Manufactured Housing Parks**

##### **B. Criteria**

1. **Park Size:** Manufactured housing parks shall be located on parcels of at least ten (10) acres and shall contain at least four (4) manufactured housing unit spaces. No manufactured housing park shall be larger than 40 acres.
4. **Spatial Requirements:**
  - a. **Area:** Each manufactured housing unit space shall contain at least 10,000 square feet and 75 feet of frontage. All spaces shall be individually marked and no space shall be occupied by more than one (1) manufactured housing unit.

**This requirement would prohibit manufactured housing units from being used in cottage courts or pocket neighborhoods, infill uses that are excellent uses for manufactured housing units. Additionally, these area requirements will increase the cost of creating a manufactured housing park, working against the ability of manufactured housing to deliver safe, attractive, affordable housing.**

##### **5. Access and Circulation**

- b. **Interior access streets** shall have a paved width of at least 24 feet, if no on-street parking is provided. If on-street parking is provided, the width shall increase eight (8) feet per side of parking.

This road width will produce internal roads which encourage excessive speeding and are not necessary to adequate fire and safety response. This width also increases impervious coverage on the site and adds to road maintenance costs, which increases housing cost. Best practice for a site such as this is a road width of between 14 and 18 feet.

### **300.3 Manufactured Housing Subdivisions**

Manufactured housing subdivisions shall be at least ten (10) acres in size; shall contain at least four (4) conforming lots; and shall be occupied only by manufactured housing units. Such subdivisions shall comply with all requirements for the subdivision of land, as set forth in the Planning Board's Land Development Regulations.

Requiring a parcel of 10 acres makes it unlikely that any such subdivision will be created, given the lot sizes called for elsewhere in the Chesterfield zoning ordinance. The financial outlay to purchase such a parcel and make it ready for manufactured units is unlikely to be sustainable given the likely sale price of such lots.

### **300.4 Criteria Applicable to All Manufactured Housing**

- A. Manufactured Housing Standards: All manufactured housing units, except temporary ones, whether located in parks or subdivisions, shall meet the standards for manufactured housing of NH RSA 674:31, as amended. Additionally:

- 1. Living Area: Each manufactured housing unit shall have a living area of at least 400 square feet.

This square foot requirement conflicts with the state statute's definition of manufactured housing, which calls for a minimum square footage of 320 square feet (8 feet wide by 40 feet long).

### **301.1 Purpose**

The purpose of the cluster development provisions of this ordinance is to preserve significant natural land features and/or open spaces while providing greater land development flexibility for larger parcels of land. In a cluster development lot sizes and frontages may be reduced and development densities may be increased in order to permanently preserve areas within the development which contain significant natural features and/or open spaces.

### **301.2 Criteria**

- A. Parcel Size: Cluster developments shall not be permitted on parcels less than thirty (30) acres in area. Wetlands and slopes in excess of 25 percent may be counted to make up the minimum parcel size but may not be counted to determine the number of dwellings permitted under Section 301.2 C.
- B. Type of Dwellings: In a cluster development only single-family detached and single-family attached dwellings are permitted. No building may contain more than four (4) single-family attached dwellings.

Confining building types only to single family attached and detached units makes it unlikely that any less-expensive units will be built. House-sized multi-family are a reasonable building type for Chesterfield.

C. Number of Dwelling Units: In cluster developments the total number of dwelling units shall not exceed one dwelling unit for every two (2) acres of gross land area of the tract, not including wetlands or slopes in excess of 25 percent.

Because there is no assurance that additional units will be allowed under this ordinance, there is very little incentive for a developer to choose this development style over a conventional subdivision.

D. Net Development Densities:

1. Single Family Detached Dwellings: In a cluster development that includes single family detached dwellings on individually owned lots, the lot area and frontage requirements of the applicable use district may be reduced to not less than 30,000 square feet and 120 feet respectively. Front setbacks may be reduced to forty (40) feet.

While 30,000 square feet is a reasonable lot size for providing on-site well and septic, a 120 foot frontage requirement will require more infrastructure than is necessary, increasing the cost for purchasers permanently.

2. Single Family Attached Dwellings: In a cluster development that includes single family attached dwellings the density of the portion(s) of the tract on which such dwellings are sited shall not exceed four (4) dwelling units per acre. All buildings shall be spaced at least thirty (30) feet apart.

Attached single family dwelling units are not a typical building typology in Chesterfield.

3. Land Capability Adjustment: The above increases in development densities are allowable only if the slope/soils capability of the site will support the increase. The Planning Board shall amend its subdivision and site plan review regulations to assure that the increased development densities allowed by this article will be appropriately adjusted for the soils/slope capability of particular sites.

As noted above, without any assurance that additional density will be permitted there is little incentive for a developer to undertake the more onerous prospect of using this ordinance.

### 303 SENIOR HOUSING

#### 303.6 Area

Lot Area shall be a minimum of five (5) acres.

Requiring a 5 acre parcel for this use is likely to produce projects that are out-of-scale for the predominantly single family development pattern of Chesterfield.

### **303.7 Setback and Yard Requirements**

No structures, except fences and walls shall occupy any yard areas established by the setbacks listed below. Driveways may cross front setbacks.

A. Front Setback: 50 feet.

A. Side Setback: 50 feet.

A. Rear Setback: 30 feet.

The areas defined by the setbacks shall constitute a buffer zone, the composition of which shall be approved by the Planning Board as part of its Site Plan Review.

**These setbacks are very large and requiring that one form of housing be buffered from any other use, including other forms of housing, is unnecessary and contributes to a sense of disconnectivity.**

### **303.10 Parking**

A minimum of two (2) parking spaces per dwelling unit shall be provided.

**Of all forms of housing, housing for the elderly is the least likely to require two parking places per dwelling unit. Excessive parking requirements increase housing costs.**

## **304 WORKFORCE HOUSING**

### **304.5 Applicable Zoning Regulations**

Workforce Housing is allowed only in those Zoning Districts where it is listed as a Permitted Use. Unless otherwise specified in Section 304, the requirements of the Zoning District shall apply. The requirements of Section 403 Multiple Family Dwellings do not apply to this Section.

### **304.6 Area Lot**

Area shall be a minimum of five (5) acres.

**There is no reason that a house-sized workforce building should require more lot area or more frontage than a single unit dwelling. Required additional land increases housing costs.**

### **304.7 Setback and Yard Requirements**

No structures, except fences and walls shall occupy any yard areas established by the setbacks listed below. Driveways may cross front setbacks.

A. Front Setback: 50 feet.

B. Side Setback: 50 feet.

C. Rear Setback: 30 feet.

The areas defined by the setbacks shall constitute a buffer zone, the composition of which shall be approved by the Planning Board as part of its Site Plan Review.

**This buffer requirement will raise housing costs because of the need for a larger lot; additionally it implies that workforce housing is different from all other housing.**

#### 304.10 Parking

A minimum of two (2) parking spaces per dwelling unit shall be provided.

Thirty percent of all households nationally and statewide are single person households. Even in a location where no public transportation is available this requirement is excessive.

### *403 MULTIPLE FAMILY DWELLINGS*

#### *1. Minimum Lot Area and Frontage*

No multiple family dwelling or group of multiple family dwellings shall be converted or constructed on a lot of less than five (5) acres and less than 300 feet of frontage.

There is no reason that a house-sized multifamily building should require more lot area or more frontage than a single unit dwelling. Required additional land increases housing costs.

#### 403.2 Density

The lot area of a multiple family dwelling lot shall contain at least:

A. 10,000 square feet for the first bedroom of each dwelling unit on the lot, plus

B. 5,000 square feet for each additional bedroom on the lot.

Again, these are unnecessarily onerous area requirements.

#### 403.3 Building Spacing

All buildings shall be spaced at least seventy five (75) feet apart.

This will require more land area, thus increasing costs while not contributing to health and safety outcomes.

#### 403.4 Dwelling Units Per Building

No building shall contain more than five (5) dwelling units.

Financial realities may require more than five units for a project to be successful. Controlling building size rather than unit number is a more effective way to encourage appropriately scaled construction.

#### 403.5 Buffer

All lots on which new multiple family dwellings are built shall have a buffer one hundred (100) feet wide on all sides. The composition of the buffer shall be approved by the Planning Board in accordance with its Site Plan Review Regulations.

Requiring one form of housing to be hidden is frankly exclusionary. This buffer requirement will raise housing costs because of the need for a larger lot; additionally it implies that multifamily housing is somehow shameful.

## APPENDIX A DEFINITIONS

**FAMILY: A family is: (1) an individual; (2) group of two or more persons related by blood, marriage, or adoption; or (3) not more than six (6) other persons not so related; provided that in each of the foregoing, all persons constituting any such group are normally living together and sharing the same dwelling unit.**

Defining a family creates unnecessary complications. If the town is concerned about overcrowding then addressing this through life-safety regulations is preferable.

### **Conclusion**

As the code stands now single family detached housing is the most likely form of housing to be built in Chesterfield. Single-family detached is always the most expensive form of housing, particularly in a rural context where on-site water and septic must be provided. If the town wishes to provide other forms of housing some changes will need to be made to the zoning ordinance.

## **Chesterfield Land Development Regulations Review**

### **303 FINAL APPLICATIONS (Based on 2022 and 2023 Legislative Changes)**

#### **303.4. C. 65 Day Review Period/Failure of the Board to Act**

- The Regulation should note that the 65 days will be extended by an additional 30 days if the proposed project is found to have regional impact.
- If the Planning Board does not act on the application within the 65 (or 95) days, the Select Board is required to approve the application. If the Select Board fails to approve the application, the applicant may appeal to superior court, which must act within 30 days. If the court finds that the Select Board's failure to act was unjustified, it may order the Town to pay the applicant's reasonable costs, including attorney's fees.

#### **303.4. D. Extension of 65 Day Review Period**

- The Planning Board is no longer allowed to apply to the Select Board for an extension. Now, in order to have more than 65 (or 95) days to act, the applicant must waive the time period, and the Board and the applicant must agree on the time of the extension.

#### **303.4.F. Final Decisions**

- The written decision must now contain Findings of Fact that support the decision.
- The Decision must be prepared within five (5) business day.

#### **703 BONDING REQUIREMENTS**

SB 78 in the 2023 Legislative session made a number of changes to RSA 674:36 relative to performance bonds, which are summarized below.

- A planning board may not limit the type of security to only one type of security. Instead, it must allow at least two of a letter of credit, cash, or passbook. No forfeiture or automatic call bonds are allowed to be required by the planning board.
- Cost escalation factors applied by the planning board are now allowed to be up to 15 percent per year, instead of 10 percent. However, no cost increases are allowed for engineering, administration, or other non-construction reasons.
- A planning board must allow road and utility construction to start without a bond, however, a bond for infrastructure, including roads and utilities, must be in place prior to sale of any parcel or an application for a building permit for structures.
- Partial releases of securities are prescribed “when substantial improvements are made” during the course of project building. If an inspection is required by the municipality for release of a bond, it must be completed within 30 business days of written request delivered by hand or sent by courier.

Notification by the municipality of non-compliance shall be sent within 15 business days of the inspection to the bonded party. Any fix must be completed within 30 days of receipt of notification, and reinspection must occur within 15 business days of notification that the fix has occurred. All bonds shall be released within 90 days of final sign off.