

PETITION TO ZONING BOARD OF APPEALS FOR FINDING, FOR VARIANCE OR APPEAL FROM ORDER OF ENFORCEMENT OFFICER

If you are seeking from the ZBA a Finding, a Variance or are appealing the order of an enforcement officer you will need to file with the town clerk the following items:

A Petition for a Finding, Petition for a Variance or Appeal should include:

1. the name and address of the petitioner or petitioners and of the owner, if different;
2. a description of the area or premises to which the relief requested relates;
3. the street address, if any, or other adequate identification of the location of the area or premises;
4. the subject matter of the application, Petition for Finding, Petition for Variance or Appeal; and
5. the nature of the action or relief requested.

An Appeal should also include copies all orders from which you are appealing and any other relevant correspondence.

If you are filing an Appeal from the denial of a building permit, you must also file either a Petition for a Finding pursuant to 3.42 or Petition for a Variance pursuant to 7.12 of the Town Chesterfield Zoning By-laws.

If you are filing an Appeal, a Petition for a Finding, or a Petition for a Variance, include three copies of as much documentation, such as plans or pictures, as possible.

Applicable sections of Chesterfield Zoning By-laws are attached.

You may see a complete copy of entire Chesterfield Zoning By-laws by requesting from the Town Clerk.

3.21 Additional Dimensional and Density Regulations

Accessory buildings are subject to the same set back requirements as are subject to the same set back requirements as the principal buildings. A rear yard may contain detached or accessory buildings covering no more than 40% of the area of the back yard. Such buildings in the back or rear yard may be located as close as twenty (20) feet to a side or rear lot line.

3.3 GENERAL PROVISIONS FOR NEW BUILDINGS

3.31 Any building or structure hereafter erected, renovated or altered, and used for dwelling purposes, shall conform to the following:

- a. Uniform Building Code, Commonwealth of Massachusetts, January 1, 1975, as amended.
- b. Title V, Environmental Code, Commonwealth of Massachusetts.
- c. Town of Chesterfield, Board of Health Regulations and other applicable Town of Chesterfield and state requirements.

3.32 Occupancy of Dwelling During Construction

A dwelling may be occupied by the owner and his/her family during the construction thereof providing said dwelling conforms to the Board of Health regulations at the time of occupancy and to this Bylaw, as amended, within one (1) year from the date construction is commenced.

3.33 A temporary dwelling on the premises may be occupied by the owner and his/her family during the construction of a permanent residence provided the temporary dwelling conforms to Board of Health regulations and provided the construction of the permanent residence starts within six (6) months of the date of issuance of the building permit and is completed within two (2) years of the date of issuance of the building permit.

3.34 Seasonal Dwellings or Camps

A privy or chemical toilet may be constructed or continued in use only as provided in the Commonwealth of Massachusetts' Environmental Code, Title V, as amended, and Town of Chesterfield, Board of Health Regulations, as amended.

3.4 NON-CONFORMING USES, STRUCTURES, AND LOTS

3.40 Nonconformity by Initial Enactment or Amendment

The provisions of this section apply to actions in connections with nonconforming uses, structures, and lots as created by the initial enactment of this Bylaw or by any subsequent amendment thereto.

Except as hereinafter provided, this Zoning Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice

of the public hearing on this Bylaw, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure, and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alterations, reconstruction, extension or structural change to single or two-family residential structures does not increase the nonconforming nature of said structures.

Pre-existing Nonconforming Structures or Uses May be Changed, Extended or Altered

(a) Pre-existing nonconforming structures may be changed, extended or altered, provided:

1. Where said change, extension or alteration is with regard to the specific pre-existing nonconformity of the structure, that it first receive a finding from the Zoning Board Appeals that such change, extension, or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
2. Where said change, extension or alteration will create a new violation of the present zoning requirements, that appropriate Variances be received.
3. Where all aspects of said change, extension or alteration conform, in all respects, to the present zoning requirements, no Variance or finding (as stated in 3.42-(a)-1 above) is required.
4. Where said change, extension or alteration involves any combination of the above, then each particular Variance or finding (as stated in 3.42(a)-1 above) must be received.

(b) Pre-existing nonconforming uses

May be extended or altered provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and providing that if such change, extension or alteration results in all uses fully complying with the current zoning requirements, then such finding is not necessary.

(c) Pre-existing nonconforming lot - conforming use

When a conforming use on a pre-existing nonconforming lot is changed, extended or altered to a use which requires a larger minimum lot area, minimum lot width or frontage and/or minimum lot depth than is required for the present use, then a variance must be received with regard to the pre-existing nonconformity of the lot. When a conforming use on a pre-existing nonconforming lot is changed, extended or altered to a conforming use which requires the same or less minimum lot area, minimum lot width or frontage, and/or minimum lot depth that is required for the present use, then a finding (as stated in 3.42(b) above) would be required.

(d) Pre-existing nonconforming lot - nonconforming use

Pre-existing nonconforming uses on pre-existing nonconforming lots may be extended or altered provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

(e) Pre-existing nonconforming structure may be changed, extended, or altered only if there is a finding by the Zoning Board of Appeals that such change, extension or alteration is not substantially more detrimental than the existing use to the neighborhood.

3.43 Single Lot Exemption for Single and Two-Family Use

Any increase in area, frontage, width, yard or depth requirements of the Zoning Bylaw shall not apply to a vacant lot for single and two-family residential use, which:

- (a) has at least 5,000 square feet of area and fifty feet of frontage;
- (b) is in an area zoned for single or two-family use (a special permit must be obtained if one is required);
- (c) conformed to existing zoning requirements when the lot was legally created, if any;
- (d) is in separate ownership prior to the Zoning Bylaw adoption vote which made the lot nonconforming, and has maintained its separate identity.

3.44 Abandonment

Any nonconforming use of a conforming structure and lot which has been abandoned for a continuous period of two (2) years or more shall not be used again except for a conforming use. For purposes of this section, the abandonment period shall not be broken by temporary occupancy except when such temporary occupancy is for a period of sixty (60) or more consecutive days.

No Special Permit shall be required for the following:

- a. Moving earth products within the limits of an individual property or series of contiguous properties of land in single ownership.
- b. Removal of earth products from an operating farm, nursery, or cemetery to the extent that such removal is necessary to the operation of same.
- c. The moving and removal of earth products for any municipal purpose by, or on behalf of, any department of the Town of Chesterfield.

6.03 Contents

The application to the Planning Board for a Special Permit for the removal of earth products shall include the following specific information:

- a. The location of the proposed excavation.
- b. The legal name and address of the owner of the property.
- c. The legal name and address of the petitioner.
- d. Names and addresses of all abutting property owners including those on the opposite side of any streets.
- e. A plan of the land involved showing all man-made features, property lines, and existing topography by ten-foot contours, plus proposed contours at ten-foot intervals showing the finish grade of the site after the completion of the proposed excavation project.
- f. The estimated quantity of material to be removed.

SECTION VII - ADMINISTRATION AND ENFORCEMENT

7.0 ENFORCEMENT OF ZONING BYLAW

7.01 This Bylaw shall be enforced by a Zoning Enforcement Officer appointed by the Board of Selectmen. The Board of Selectmen and the Police Department shall assist the Zoning Enforcement Officer where necessary and appropriate.

7.02 No building shall be constructed or changed, or the use changed until a permit has been issued by the Building Inspector. No permit for new construction shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health, the applicant has filed for determination by the Conservation Commission under the Wetlands Protection Act and the proposed building and location thereof conform with the Town's laws and Bylaws. Any new building or structure

shall conform to all adopted State and Town laws, Bylaws, codes, ordinances and regulations. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector where required.

7.03 The Building Inspector shall refuse to issue any permit which would result in a violation of any provision of this Bylaw or in a violation of the conditions or terms of any special permit or variance granted by the Board of Appeals or the Planning Board.

7.04 The Building Inspector shall issue a cease and desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of this Bylaw.

7.05 Construction or operation under a building or special permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of not more than six (6) months after issuance of the permit, and in the uses involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

7.06 Buildings in Course of Construction

Nothing contained herein shall require any change in plans of construction size and use of building, structure or part thereof, which shall have a foundation built upon the date of the adoption of this Bylaw.

7.07 Penalties

a. Non-Criminal Disposition/Violations

Any violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

In addition to the procedures for enforcement as described above, the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may be enforced, by the Building Inspector, by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.

b. Criminal Disposition/Violations

Persons violating any of the provisions of this Bylaw shall be fined not less than twenty-five (25) dollars or more than three hundred (300) dollars for each offense. Each day that such violation continues shall constitute a separate offense.

If the Zoning Enforcement Officer shall be informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been, is being, or is about to be criminally violated, he shall make an investigation of the facts, including the inspection of the premises where the violations may exist. Where written complaint is made to the Zoning Enforcement Officer, he shall take action upon such complaint within 14 days of receipt thereof and shall report such action in writing to the complainant and Planning Board.

If the Zoning Enforcement Officer finds no criminal violation or criminal prospective violation, any person aggrieved by his decision, or any officer or Board of the Town may within 30 days appeal to the Board of Appeals.

If after such order, such criminal violation continues and no appeal to the Board of Appeals is taken within 30 days, the Selectmen shall, upon notice from the Zoning Enforcement Officer forthwith make applications to the Superior Court for an injunction or order restraining the violation and shall take such other action as is necessary to enforce the provision of this Bylaw.

If after action by the Zoning Enforcement Officer appeal is taken to the Board of Appeals, and after a public hearing, the Board of Appeals finds that there has been a criminal violation or prospective criminal violation, the Zoning Enforcement Officer shall issue an order to cease and desist and refrain from such violation unless such order has been previously issued. If such then continues, the Selectmen shall upon notice from the Zoning Enforcement Officer forthwith make application to the Superior Court for an injunction or order restraining the violation and shall take such other action as may be necessary to enforce this Bylaw.

7.08 Appeals on Special Permit Decision

Any persons, municipal officers or municipal boards, aggrieved by any of the following may appeal to Superior Court or to the Hampshire County division of the district court department under the provisions of M.G.L., Chapter 40A, Section 17, as amended: a decision of the Board of Appeals or any Special Permit Granting Authority; the failure of the Board of Appeals to take final action concerning any appeal, application or petition within the required time; or by the failure of the Special Permit Granting Authority to take final action concerning any application for a special permit within the required time.

Any such appeal must be taken within twenty (20) days after the decision is filed with the Town Clerk.

7.1 BOARD OF APPEALS

7.10 Membership

The Board of Appeals shall consist of three (3) members. The Board of Selectmen shall appoint members of the Board of Appeals pursuant to Section 12 of Chapter 40A of the Massachusetts General Laws. The Board of Selectmen shall also appoint three (3) associate members of the Board of Appeals as provided in Section 12 of Chapter 40A of the Massachusetts General Laws. The members of the Board shall be appointed for terms of one, two, and three years, the term of one member expiring each year. Thereafter, appointments are to be for three (3) years. Vacancies shall be filled by the Selectmen for the balance of any unexpired term. No member shall act in any case in which he may have a personal or financial interest. An associate member shall be designated by the Chairman of the Board of Appeals to serve in such cases, and in the case of the absence of, or the inability to act by, a member

- 7.11 The Board is authorized to hear and decide an appeal, as provided in General Laws, Chapter 40A, Section 8, taken by any person aggrieved by reason of his (her) inability to obtain a permit for enforcement action from any administrative officer under the provisions of Chapter 40A, General Laws, or by any person including an officer or board of the Town of Chesterfield, or of an abutting Town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of Chapter 40A, General Laws or of this Bylaw. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed by filing a notice of appeal with the Town Clerk, as provided in Section 15, Chapter 40A, General Laws, as amended.

7.12 Variances

- 7.120 The Board of Appeals shall hear and decide requests for variance from the terms of this Bylaw in accordance with the provisions of Section 10 of Chapter 40A of the General Laws, as may be from time to time amended. The variance may be granted only if the Board finds that owing to circumstances relating to the soil conditions, shape, or topography of land or structures and especially affecting such land or structures but not generally affecting the zoning district in which they are located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw, but not otherwise. Land use variances will not be allowed.

7.121 Upon receipt of a petition for a variance, the Board of Appeals shall ask the Planning Board for an advisory report on said petition. The Board of Appeals shall not grant a variance which would constitute an amendment to this Bylaw.

7.122 The following findings must be made by the Board of Appeals before a variance can be issued:

- a. The variance must be with respect to a particular parcel of land or to an existing building on the land.
- b. There must be circumstances relating to the soil conditions, shape, or topography especially affecting such land or structure, but not affecting generally the zoning district in which it is located.
- c. Literal enforcement of the ordinance or Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
- d. Desirable relief may be granted if there will not be substantial detriment to the public good, or nullification or substantial derogation from the intent and purpose of this Bylaw.

7.123 The Board of Appeals shall make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Bylaw and will not be injurious to the neighborhood or Town, or otherwise detrimental to the public welfare.

7.124 The Board of Appeals may impose limitations both of time and use, and prescribe appropriate conditions and safeguards, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter. Violation of such limitations, conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of this Bylaw.

7.13 Restrictions

In carrying out the provisions above, the Board may impose, as a condition of its decision, such restrictions as to manner and duration of use as will in its opinion safeguard the legitimate use of the property in the neighborhood and the health and safety of the public, and conform to the intent and purpose of this Bylaw. Such restriction shall be stated in writing by the Board and made a part of the permit or variance. No variance shall be conditioned on the continued ownership of the land or structures by the petitioner to whom the variance was issued.

7.14 Meetings and Procedures

The meeting and procedure of the Board of Appeals shall be governed by the provisions of Chapter 40A of the General Laws, as amended. The Board shall adopt

rules and regulations, not inconsistent with law or the provisions of this bylaw, governing its procedure and the transaction of its business. A copy of such rules shall be filed with the Town Clerk.

- 7.140 The Board of Appeals shall not act on any matter unless, and until, a written petition is submitted to such Board, indicating the section of this Bylaw under which it is requested to act and stating the grounds on which the request is based.
- 7.141 Each petition for a variance shall be filed in duplicate with the Board of Appeals together with two sets of plans and information. The Board of Appeals shall submit a copy of the petition with a set of the plans and information to the Planning Board for review and advisory opinion prior to holding a public hearing thereon.
- 7.142 Before exercising any of its powers, the Board of Appeals shall hold a public hearing on the matter referred to it. Notice of the public hearing shall be:
- a. Published in a newspaper of general circulation in the Town of Chesterfield once in each of two successive weeks. The first publication may not be less than fourteen days before the day of the hearing. (The day of the public hearing should not be counted in the fourteen days);
 - b. Posted in a conspicuous place in the Town Office Building and other public places for a period of not less than fourteen days before the day of the hearing;
 - c. Mailed to "parties of interest" who shall include: The petitioner, abutters, owners of land directly opposite on any public or private street or way, and landowners within three hundred (300) feet of the property line of the petitioner as they appear on the most applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the Planning Board of Chesterfield, and the Planning Board of every abutting town. (The assessors shall certify the names and addresses of "parties in interest").
 - d. Mailed to other individuals, Boards or agencies if required by the Zoning Bylaw.
 - e. Such notice must identify the subject matter of the hearing and the following information must be printed in boldface type:
 - (1) Name of the petitioner;
 - (2) The location of the area or the premises which are the subject of the petition including a street address, if any;
 - (3) The time and place of the public hearing; and

(4) The nature of the action requested.

- f. the cost of publication and mailing notices shall be paid by the applicant.

7.143 The decisions of the Board of Appeals shall be made within one hundred (100) days after the date of the public hearing and the Board shall keep a detailed record of its proceedings showing the vote of each member of each question, or, if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions. Copies of all such records shall be filed within twenty (20) days in the office of Town Clerk and in the office of the Planning Board, and notice of decisions shall be mailed forthwith to the parties of interest, to the Planning Board, the Selectmen, and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent.

7.144 Upon the granting of a limited or conditional variance, the Board of Appeals shall issue to the land owner a notice, certified by the Chairman or Clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance shall take effect until such notice is recorded in the Registry of Deeds.

7.15 Two Years Before Next Appeal

No petition considered under Sections 7.12 and 7.13 which has been unfavorably acted upon by the Board of Appeals shall be again considered on its merits by said Board within two years after the date of such unfavorable action unless the Board of Appeals and Planning Board consent thereto under the provisions of Section 16 of Chapter 40A as amended.

7.2 SPECIAL PERMITS

Special permits are requested for certain uses, structures or conditions as specified in Section 3.0, Schedule of Use Regulations.

7.20 Purpose

Special permits are intended to provide detailed review of certain uses and structures which may have substantial impact upon traffic, utility systems, and the character of the Town, among other things. The Special Permit review-process is intended to insure a harmonious relationship between proposed development and its surroundings, and insure the proposals are consistent with the purpose and intent of this Bylaw.

7.21 Special Permit Granting Authority

As specified in Section 3.0 Schedule of Use Regulations, the Planning Board shall be the special permit granting authority for all uses requiring a special permit. The