

## ZONING HEARING BOARD APPLICATION INSTRUCTIONS

Initialed Instructions, Application, and Fees must be submitted to:  
**Malvern Borough Administration**  
**1 East First Avenue, Suite 3, Malvern, PA 19355**  
(Mon-Fri; 9:00AM – 12:00PM, 1:00PM – 5:00PM)

### **REQUIRED DOCUMENTATION & FEE**

1. **Initialed Instructions.** Submit complete, initialed Instructions (**All pages must be initialed**).
2. **Application.** The application must specify whether the applicant is seeking a variance, special exception, an appeal from a decision of the zoning officer, or some other permission or combination of permit. If the application is for something other than a variance or special exception, the applicant must explain the exact permission sought.
3. **Proof of ownership.** A deed, tax folio number, agreement of sale, option to purchase or a lease may be sufficient.
4. **Survey or Plot Plan.** Of the subject property must accompany the application.
5. **Zoning Officer's Determination.** Only if appealing, copies of the determination must be submitted.
6. **Required Fee.** Check or money order made payable to "*Malvern Borough*"

**Residential Application: \$750.00**

**Commercial Application: \$1,000.00**

**\*\*8 Copies of All Required Documentation\*\***

**\*\*Documentation becomes part of the official record and will not be returned to applicant\*\***

If plans are modified or revised after filing the application, but not before the hearing, the Applicant must file the revision (and required number of copies) with the Borough no later than one (1) week prior to the scheduled hearing.

### **SUPPLEMENTAL DOCUMENTATION (NOT REQUIRED)**

The following documentation is not required and is at the discretion of the Applicant:

1. **Photographs.** Of the subject property for visual reference

## **PLOT PLAN REQUIREMENTS**

### **I. For an addition or change to a single residence, the plot plan:**

- 1) Must be drawn to scale of at least 1 inch = 50 feet
- 2) Must show the layout of existing buildings, driveways, property lines, streets, etc. and the proposed addition or change
- 3) Must show all setbacks for existing and proposed structures and identify neighbors and the type and location of neighboring structures
- 4) Other pertinent information deemed necessary.

### **II. For an addition or change to a nonresidential building or new construction on a vacant property, the plot plan:**

- 1) Must be prepared by a registered surveyor, registered professional engineer, or licensed architect
- 2) Must be drawn to scale of 1 inch = 50 feet
- 3) Must show exact dimensions of the existing and proposed lot lines, lot size, exact location of existing and proposed structures, all setbacks for yards (front, rear, side), exact dimensions of all existing driveways and all existing and proposed rights of way, roads, etc.
- 4) Must include a legend on the face of the survey plan which indicates the following information and data:
  - a. The existing zoning data and requirements (e.g. lot area, lot width, building coverage, lot coverage) that apply to the zoning district where the subject property is located
  - b. The same information for the proposed use as applicant wishes to build it
  - c. The calculation of how the zoning data for the proposed project is different from the zoning data for the district. For example, if the ordinance requires a 30 foot setback, and applicant intends to provide a 20 foot setback, the plan must explain, in table form, the required setback of 30 feet, the proposed setback of 20 feet, and the difference of 10 feet.

## **FOR SUBDIVISION PLANS**

If the applicant requests relief from the Board before submitting a subdivision or land development plan to the Borough Council, the applicant must also submit any plans required by the subdivision ordinance including, but not limited to, survey plans, topographical surveys, sedimentation and erosion plans, to the Board.

## **FOR LEGAL NONCONFORMITY**

If the applicant requests an extension of a legal nonconformity it must present evidence or testimony establishing the length of time the nonconformity has been in existence and why it believes it is legal.

## **PURPOSE OF ZONING HEARING BOARD**

The purpose of the Zoning Hearing Board ("Board") is to help assure fair and equitable application and administration of the zoning ordinance by hearing appeals from the zoning officer's determinations, determining entitlement to conduct types of uses (special exceptions), and granting relief from the literal enforcement of the ordinance (variance) where the provisions of the zoning ordinance inflict unnecessary hardship, The Board is an independent, quasi-judicial body; that is, its powers are to some extent judicial in nature. The Board schedules hearings on applications and appeals that come before it, takes evidence, and issues written decisions with findings of fact and conclusions of law.

### **The Board has exclusive jurisdiction to hear and decide the following:**

- a) Appeals from the determination of the zoning officer's granting a denial of any permit, or failure to act on the application) or the issuance of any cease and desist order, or the registration or refusal to register any nonconforming use, structure or lot;
- b) Applications for variances;
- c) Applications for special exceptions;
- d) Procedural challenges to a land use ordinance;
- e) Appeals concerning any flood plain or flood hazard ordinance;
- f) Appeals concerning transfers of development rights or performance density provisions of the zoning ordinance;
- g) Appeals from the determination of the zoning officer or municipal engineer with reference to erosion or storm water provisions under a zoning ordinance dealing with building on a single
- h) Substantive challenges to the validity of any land use ordinance, except curative amendments; and
- i) Appeals from the zoning officer's determination for a preliminary opinion under the Municipalities Planning Code Section 916.2.

## **WHAT IS A VARIANCE?**

A variance is a request to deviate from current zoning requirements. If granted, it permits the owner to use her/his land in a way that is ordinarily not permitted by the zoning ordinance. It is not a change in the zoning law, but a waiver from the requirements of the zoning ordinance.

An application to the Board for a variance arises when a proposed use, structure, or development does not meet all the requirements of the zoning ordinance.

When applying for a variance, it is the **applicant's responsibility** to demonstrate each of the following factors, where relevant:

- 1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located; and
- 2) Because of such physical circumstances or conditions, there is 110 possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and the granting of a variance is therefore necessary to enable the reasonable use of the property; and
- 3) Such unnecessary hardship has not been created by the applicant or its representative; and
- 4) The variance, if granted, will not alter the' essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent properly, nor be detrimental to the public welfare; and
- 5) The variance, if granted) will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

The Board shall: 1) Approve, 2) Approve with conditions, or 3) Deny a request for a variance.

### **WHAT IS A SPECIAL EXCEPTION?**

A special exception is a permission or approval granted to the applicant to use land in a zoning district for a specific purpose other than that generally permitted outright in that district. The permission or special exception is granted by the Board in accordance with all regulations and standards for that use contained in the zoning ordinance, provided, generally, that the specific application of the use would not injure the public interest or be contrary to law.

In determining whether a special exception or a variance is contrary to the standards of law, the Board shall consider whether the application, if granted, will:

- 1) Substantially increase traffic congestion in the streets.
- 2) Increase the danger of fire or panic or otherwise endanger the public safety,
- 3) Overcrowd the land or create an undue concentration of population.

- 4) Impair an adequate supply of light and air to adjacent property.
- 5) Be consistent with the surrounding zoning and uses.
- 6) Adversely affect the Comprehensive Plan of the Borough,
- 7) Unduly burden water, sewer, school, park, or other public facilities.
- 8) Otherwise adversely affect the public health, safety, morals, or general welfare.

### **NOTICE REQUIREMENTS**

The law requires notice of the hearing be sent to the applicant, to the zoning officer, to any person who has requested to be notified, and to anyone else designated by ordinance.

Notice must be posted conspicuously on the subject property, be published in a newspaper of general circulation, and be mailed to neighbors of the property.

The applicant must accurately describe the property's location to allow the zoning officer to post the notice at least one (1) week prior to the hearing.

All notices will be mailed to the applicant at the subject property's address unless the applicant specifies otherwise on the application.

### **SCHEDULING THE HEARING DATE**

Based on a complete submission of all required documentation, to the Borough office, no later than the end of the calendar month proceeding the month desired to present your case at a hearing. An incomplete application will delay the scheduling of a hearing.

The Board will attempt to schedule a hearing at the next regularly scheduled meeting upon receipt of a timely filing and the applicant will be notified of the time and date; however, it cannot guarantee a hearing schedule.

### **HEARING PREPARATION**

The applicant is responsible to make its case to the Board in support of its application.

**\*\*Success is directly proportional to preparation\*\***

A complete, concise and well-organized presentation saves time and eliminates confusion. The Board may postpone its decision or decide adversely if the evidence presented is not clear. In other words, the applicant has the burden of proof to show that it is entitled to a variance or that it meets the requirements for a special exception or other relief. The Board depends on the applicant to produce all the relevant information and testimony (including expert witnesses when needed).

The applicant may only communicate with the Board during scheduled hearings. If the applicant has any procedural questions, it should contact the Board's solicitor or the Borough administrative staff.

## **THE HEARING**

- The hearing is a formal judicial proceeding open to the public.
- It cannot proceed unless a completed application has been presented and the fee for the hearing has been paid.
- A court reporter records the hearing and prepares a transcript. In addition to the applicant, parties to the hearing are the Borough and any person affected by the application who wishes to be a party and has made a timely appearance of record before the Board.
- The applicant's sworn testimony, that of its witnesses and any party to the hearing, and any documents and plans presented at the hearing become the formal record and form the basis of the Board's decision.
- Parties have the right to be represented by counsel and are given the opportunity to respond to the applicant's presentation and present evidence at the hearing.
- The applicant should be prepared to answer questions from the Board, other parties and the public.
- Some applications may require more than one hearing.
- The applicant may use enlargements of its plot plan to aid its presentation, but to avoid confusion, be sure the enlargement data matches the application.

## **APPEAL PROCESS**

- Any party to the hearing may file an appeal of a decision of the Board if it is believed an official has committed an error, or misinterpreted the law.
- Appeals from a determination of the Board must be filed within thirty (30) days after the action that is subject to an appeal.
- The applicant must file a Notice of Appeal with the Board specifying the grounds on which it appeals.
- If an appeal of the Board's decision is taken to the Court of Common Pleas, the Court will consider the formal record of the original hearing.

## **QUESTIONS?**

Tiffany M. Loomis, Zoning Officer  
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