

ARTICLE XXIX ADMINISTRATION**Section 2900 PURPOSE**

This Article outlines the procedures and regulations by which the Borough Zoning Ordinance shall be administered. Procedures for obtaining and regulating permits, amending the Ordinance, and the responsibilities of the Zoning Officer are included herein.

Section 2901 ZONING OFFICER

- A. The provisions of this Article shall be administered and enforced by the Zoning Officer who shall be appointed by and meet the qualifications of the Borough Council. The duties of the Zoning Officer may include, but are not limited, to the following:
1. To enforce the provision of this Ordinance and all amendments thereto.
 2. To keep an official record of all business and activities, including complaints of a violation of any of the provisions of this Ordinance and of the subsequent action taken on each such complaint. Record and file all applications for permits with accompanying plans and documents.
 3. To issue stop, cease, and desist orders and order, in writing, corrections to all conditions found to be in violation of the provisions of this Ordinance. Such written orders shall be served personally or by certified mail upon persons, firms, or corporations deemed by the Zoning Officer to be violating the terms of this Ordinance. It shall be unlawful for any person to violate any such order lawfully issued by the Zoning Officer, and any person violating any such order shall be guilty of a violation of this Ordinance.
 4. To receive and examine all applications for zoning and other permits, referring applications to the Planning Commission when deemed advisable, and issue building and other permits only when there is compliance with the provision of this Ordinance and with other Borough ordinances.
 5. To issue permits for special exception or variance applications only upon written order of the Zoning Hearing Board. Permits requiring approval by the Borough Council, including but not limited to Conditional Use approval, shall be issued only when authorized by Borough Council.
 6. To receive applications for appeals and variances and forward these applications to the Zoning Hearing Board for action thereon.
 7. To conduct inspections and surveys to determine compliance or noncompliance with the terms of this Ordinance.
 8. To maintain or cause to have maintained an Official Zoning Map showing the current zoning classification of all land in the Borough.
 9. To issue use and occupancy permits in accordance with the terms of Ordinance 5-5017.

Section 2902 CAUSE OF ACTION

- A. In case any building, structure, landscaping or land is, or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance, the Borough Council or the Zoning Officer or any aggrieved owner or tenant of the real property who shows that their property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct, or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of this action shall be served upon the Borough at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint to the Zoning Officer. No such action may be maintained until such notice is given.
- B. Whenever a violation of this Ordinance occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Zoning Officer who shall record such complaint, investigate, take action thereon as provided by this Article and report to the Borough Council regarding the complaint and the action thereon.

Section 2903 NOTICE OF VIOLATION

- A. If it appears to the Borough that a violation of any provisions of this Ordinance, any amendment thereto, any statement or plan approved under the provisions and any amendments thereto, any conditions of a variance or special exception granted the Zoning Hearing Board, any condition of a conditional use granted by Borough Council has occurred or is occurring, the Zoning Officer shall initiate enforcement proceedings by sending notice thereof as provided in this Article. By means of the enforcement notice, the Zoning Officer may order the discontinuance of illegal use of the land or structure(s), removal of illegal structure(s) thereto, or discontinuance of any illegal work being done.
- B. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive such a notice regarding that parcel, and to any other person requested in writing by the owner of record of the parcel.
- C. The enforcement notice shall state at least the following:
1. The name of the owner of record and any other person against whom the municipality intends to take action.
 2. The location of the property in violation.
 3. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the Ordinance.
 4. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 5. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with the procedures set forth in this Ordinance.

6. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

Section 2904 ENFORCEMENT REMEDIES

Any person, partnership, or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced hereunder, pay a judgment of not more than five hundred (\$500) dollars, plus all court costs, including reasonable attorney's fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the District Justice. In the event that any such person against whom a judgment has been rendered by the District Justice neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable Pennsylvania Rules of Civil Procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good faith basis for such person, partnership, or corporation violating this Ordinance to have believed that there was no such violation. In that latter event, there shall be deemed to have been only one (1) such violation until the fifth (5th) day following the date of the determination of a violation by the District Justice, and thereafter, each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Ordinance shall be paid over to the Borough.

Section 2905 ZONING PERMIT

- A. A zoning permit shall be required prior to the erection or structural alteration of any building, structure or portion thereof, and prior to the initial use or for changing use of a building or land and prior to the change, increase or extension of a nonconforming use.
- B. A zoning permit shall also be required before a home occupation, home professional office or home business office is added as an accessory use to an existing residential principal use, or conducted as a part of a new residential use; in the latter case, the zoning permit shall specially identify the principal and accessory use. However, a zoning permit is not required for repair to a structure other than a nonconforming structure, when such repair does not change the nature or intensity of the existing uses.
- C. Zoning permits shall expire if work or the change in use is not commenced within one hundred eighty (180) days from the date of the permit and a new permit shall be required before such work or change of use commences, provided, however, that the Zoning Officer may extend the zoning permit for one (1) additional one (1) year period if the applicant is actively engaged in completing the erection or alteration at the time the application is made for an extension and the initial permit has not expired.
- D. A zoning permit shall not be required for alterations to the interior of an existing building, provided that the use of such building is not changed, or where the entire construction, erection or alteration affects fifty (50) square feet or less of floor area.

Section 2906 ZONING PERMIT APPLICATION

Applications for permits shall be made to the Zoning Officer on such forms provided by the Borough. Each application shall contain all information necessary for the Zoning Officer to ascertain whether the proposed erection, alteration, use or change of use complies with the provisions of this Ordinance. The application shall include at least the following information and such other information as may be required by the form provided by the Borough:

- A. A written statement, including:
 - 1. An identification of the proposed use of the building, structure, or land.
 - 2. A description of any proposed industrial or commercial operations in sufficient detail to indicate effects of those operations in producing noise, heat, vibration, glare, air pollution, water pollution, fire hazards, traffic congestion, or other safety hazards.
 - 3. A description of methods to be employed in controlling any excess noise, air pollution, smoke, fumes, water pollution, fire hazards or other safety hazards.
 - 4. Any other data deemed necessary by the Zoning Officer, to enable determining the compliance of the proposed development with the terms of this Ordinance.
- B. A site plan drawn to scale, showing:
 - 1. The location, dimensions and height of existing and proposed buildings, structures or uses in relation to property and street lines. If the application relates to property which is scheduled to be developed in successive stages, such plans shall show the relationship of the portion scheduled for initial development to the proposed layout and use of the entire property.
 - 2. The location, dimensions, arrangement and capacity of all open spaces and yards and buffer areas, including proposed landscaping and plant materials and screening methods.
 - 3. The location, site arrangement and capacity of all areas to be used for motor vehicle access, off-street parking and provisions proposing lighting for such areas.
 - 4. The size, dimensions, location and methods of illumination of signs, if applicable.
- C. The application must be acknowledged by the applicant and proof establishing the applicant's standing to make the application must be submitted as part of the application.
- D. No zoning permit application is complete unless it is accompanied by the requisite fee. Applications found to be incomplete will not be accepted or processed.
- E. Public notice of said application for a zoning permit shall be conspicuously posted on the affected tract or parcel(s) of land at least one (1) week prior to the hearing along with written notice as provided in Section 2806.

Section 2907 ISSUANCE OF ZONING PERMITS

- A. It shall be the duty of the Zoning Officer to either issue or deny issuance of a zoning permit within thirty (30) days of the filing of a completed application and payment of prescribed fees. The Zoning Officer shall issue a permit only upon the determination that the application is in compliance with the terms of this Ordinance. If the application or plans do not conform to the provisions of this Ordinance, the Zoning Officer shall deny such application in writing to the applicant, with a detailed statement therefor.
- B. No zoning permit for any new use or construction which will involve the on-site disposal of sewage or waste, and no zoning permit for a change in use or an alteration which will result in an increased volume of sewage or waste to be disposed of on the site, shall be issued until a certificate of approval has been issued by the Pennsylvania Department of Environmental Protection, or its authorized agent.

Section 2908 USE AND OCCUPANCY PERMITS REQUIRED

It shall be unlawful for any person to use or occupy any building or other structure or land until a certificate of occupancy has been duly issued. Use and Occupancy Permits shall be in accordance with Borough Ordinance 5-5017.

Section 2909 ISSUANCE OR REFUSAL OF PERMITS

If the Zoning Officer determines that an application is in compliance with the provisions of this Ordinance, the permit shall be issued appropriately. If the Zoning Officer determines that an application is not in compliance with the provisions of this Ordinance, a statement shall be issued to the applicant detailing the reasons for such refusal, in which case the applicant shall be instructed as to the method of appeal to the Zoning Hearing Board. No permit shall be issued to any applicant until any and all fees incurred which are payable to the Borough are paid in full.

Section 2910 CONDITIONAL USES

- A. This Section provides for certain conditional uses to be permitted within the district regulations of this Ordinance. These uses may not be appropriate at every location within a zoning district, and the following standards, procedures, and criteria have been established for the evaluation of conditional use applications. Because these uses have the potential for substantial impacts on the community, they shall comply with the regulations herein. Failure of any proposed conditional use to comply with any of these regulations shall be grounds for denial of a conditional use application. The power to grant a conditional use shall be exclusive to the Borough Council.
- B. **Application.**
1. When a conditional use permit required by this Ordinance is associated with a proposed subdivision and/or land development, all applications for conditional use shall be filed and all plans, documents, and other materials required to accompany the application shall be filed with the Borough simultaneously with the filing of a preliminary plan for subdivision and/or land development, in compliance with the Malvern Borough Subdivision and Land

- Development Ordinance. Such application shall be filed with the Zoning Officer on such forms as provided by the Borough for such purpose with the required fee.
2. Where a preliminary subdivision and/or land development plan is not associated with an application for conditional use approval, such application shall be filed with the Zoning Officer on such forms as provided by the Borough for such purpose. The application shall be accompanied by the required fee and the following information:
 - a. Application Information.
 1. The name, signature, and address of the applicant.
 2. The name, signature, and address of the owner of the property to be affected by the proposed conditional use application.
 3. A description and location of the property on which the conditional use is proposed.
 4. A statement of the present use, zoning classification, and improvements thereon of the property in question.
 5. A statement of the Section of this Ordinance, or amendment thereof, which authorizes the conditional use.
 - b. The application for conditional use shall be accompanied by a proposed site plan that contains the following:
 1. A site plan showing the size and location of the proposed use.
 2. All proposed buildings and all proposed accessory facilities, including location, dimensions, use, coverage, height, and any proposed improvements where applicable, in relation to property and street lines.
 3. Features that present compliance with all applicable area, width, coverage, yard, and design standards as regulated within this Ordinance.
 4. The location, dimension, and arrangements of proposed facilities including sidewalks, roads, access drives, off-street loading and unloading, and parking areas.
 5. The location, dimensions, and arrangement of any areas devoted to open space, buffer areas, landscaping, or recreation.
 6. Provisions for handling of stormwater drainage, disposal of wastewater, and supply of water.
 - c. The Zoning Officer shall review the application to determine if it is complete. If the application is deficient in any way, the Zoning Officer shall notify the applicant in writing, specifying any and all deficiencies. If such deficiencies are not remedied in the form of a resubmitted application rectifying such identified deficiencies by the applicant, this shall constitute sufficient grounds for denial by the Borough Council of the application subsequent to public hearing should the Council deem such deficiencies to be

substantially at variance with the requirements of this or other applicable Borough ordinances.

- d. Any substantial revisions to the application or plan subsequent to filing of the application or its review by the Borough Planning Commission shall be subject to review and recommendation by the Borough Planning Commission as specified in Section 2910.C. prior to the public hearing before Borough Council. In such event, the Zoning Officer shall secure from the applicant a sixty (60) day written extension of the date within which the Borough Council must hold a public hearing pursuant to Section 2910.C. If the applicant fails to execute the extension, Borough Council shall decide the conditional use application on the basis of the plan and application as originally filed.

C. **Procedure.** Upon receipt of an application for conditional use, the Zoning Officer shall submit the application to the Malvern Planning Commission and the following shall occur:

1. The Malvern Planning Commission shall review and consider the application and all supporting materials for compliance with all applicable Borough ordinances and shall schedule, advertise, and hold a public information meeting at which the application shall be considered for public review and comment. Such meeting shall be held within thirty (30) days of the filing of the application being considered for approval in accordance with the following requirements:
 - a. Notification of the public information meeting shall be published in a newspaper of general circulation in the Borough in accordance with the requirements for public notice in Act 247, the Municipalities Planning Code, as amended. Public notice of said public meeting shall be conspicuously posted on the affected tract or parcel(s) of land at least one (1) week prior to the meeting in conjunction with written notice to all adjacent property owners.
 - b. Parties to the public meeting shall include the applicant and owner of the tract or parcel(s) containing the proposed conditional use, the Borough Planning Commission, and the hearing shall be open to the general public. The Borough Planning Commission shall have the power to require that all persons who wish to be considered parties to enter appearances in writing on forms provided by the Borough.
 - c. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
 - d. The Borough shall keep a record of the public information meeting proceedings and copies of written or graphic material received in evidence shall be made available to any party at cost.
 - e. The Borough Planning Commission shall render a written recommendation to Borough Council within ten (10) days after the public information meeting. The decision shall be accompanied by findings of fact and conclusions based thereon, together with any reasons therefore.
 - f. Where the Borough Planning Commission fails to render a decision within the period required by this Section or fails to commence, conduct, or complete the required meeting as provided in this Section, the application shall be forwarded to Borough Council by the Borough Zoning Officer within five (5) days.

- g. The applicant and the parties that were seen before Borough Planning Commission shall receive a copy of the recommendation, delivered to them personally or mailed to them concurrently with submission of the recommendation to Borough Council.
2. Upon receipt of the Planning Commission's recommendations, the Borough Council shall schedule, advertise, and hold a public hearing at which the application shall be considered for public review and comment. The hearing shall be conducted by the Borough Council or the Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Borough Council. However, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the Council and accept the decision or findings of the hearing officer as final. Such hearing shall be held in accordance with the following requirements:
 - a. The first hearing before the Council or hearing officer shall be commenced within sixty (60) days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Council or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon request of the applicant, the Borough Council or hearing officer shall assure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearing to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
 - b. Notification of the public hearing shall be published in a newspaper of general circulation in the Borough in accordance with the requirements for public notice in Act 247, the Municipalities Planning Code, as amended. Public notice of said public meeting shall be conspicuously posted on the affected tract or parcel(s) of land at least one (1) week prior to the meeting in conjunction with written notice to all adjacent property owners.
 - c. Parties to the hearing shall include the Borough, any person affected by the application who has made a timely appearance of record before the Borough Council and any other persons, including civic or community organizations, permitted to appear by the Borough Council. The Borough Council shall have the power to require that all persons who wish to be considered parties to enter appearances in writing on forms provided by the Borough.
 - d. The Chair or President, or acting Chair of Borough Council, or the hearing officer presiding, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

- e. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
 - f. The Borough shall keep a stenographic record of the hearing proceedings and copies of written or graphic material received in evidence shall be made available to any party at cost.
 - g. Borough Council shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the Borough Council. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of this Ordinance or of any ordinance, rule, or regulation shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
 - h. The applicant and the parties that were seen before Borough Council shall receive a copy of the final decisions, delivered to them either personally or mailed to them not later than the day following the date of the decision.
 - i. If, after the conclusion of the public hearing, the application is amended or revised, the Borough Council may hold one (1) or more public hearings as may be necessary and shall issue a new decision thereon in conformance with the regulations in this Section.
 - j. Where the Borough Council fails to render a decision within the period required by this Section 2910.C.2.g, or fails to commence, conduct, or complete the required hearing as provided in Section 2910.C.2.a., the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Borough Council as hereinabove provided to meet or render a decision required by this Section, the Borough Council shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Section 2910.C.2.b. If the Borough Council shall fail to provide such notice, the applicant may do so. Nothing in this Section shall prejudice the rights of any party opposing the application to appeal the decision to a court of competing jurisdiction.
 - k. Appeals from a determination of the Borough Council pursuant to any application of a conditionals use shall be only as prescribed within such times permitted by the applicable provisions of Act 247, the Municipalities Planning Code, as amended.
3. In granting or denying a conditional use or establishing conditions upon the grant of the use, Borough Council shall determine compliance with the regulations in this Ordinance to be mandatory and may attach reasonable conditions and safeguards as necessary and appropriate to insure compliance with this Ordinance and to protect the health, safety, and general welfare of the community. Such conditions may include, but are not limited to, specific modifications to area and bulk requirements; provisions for additional utility or traffic safety facilities; securing of additional easements or property to assure proper sight design; the minimization of noise, glare, and noxious, offensive or hazardous elements; or modification to any applicable design standards. The burden of establishing compliance with those enumerated standards shall be upon the applicant by a fair preponderance of credible

- evidence unless any rule of law shifts that burden to protestants. The standards required by this Ordinance shall be deemed a part of the definitional aspect under which a conditional use may be granted, and the failure of the applicant to establish compliance with all of the standards shall constitute sufficient basis for denial of the application.
4. Nothing in this Section shall be construed to relieve the applicant for a conditional use approval from obtaining other required approvals mandated by the Malvern Borough Subdivision and Land Development Ordinance and any other applicable Borough, state, or federal regulations.
 5. Any approved conditional use application and site plan shall accompany any subsequent application for subdivision of land or land development as prescribed by the Malvern Borough Subdivision and Land Development Ordinance in addition to the requirements normally required and any application for a building permit.
 6. Any grant of conditional use approval shall be deemed null and void six (6) months from the date of such approval if, within that period, no application is made for a building permit, a use and occupancy permit, or subdivision or land development approval, as appropriate, unless the Borough Council shall grant an extension.

D. Standards for Review of Proposed Conditional Use. The following standards shall be used in evaluating a proposed conditional use:

1. The proposed use shall meet all of the specific standards and regulations for eligibility which appear in the Sections of this Ordinance authorizing and governing the proposed conditional use.
2. The proposed use is consistent with the purpose of the Article whereby it is permitted, the overall purpose of the zoning as contained in Article I, and Borough Comprehensive Plan policies. The proposed use will satisfy all of the relevant provisions and requirements of the Malvern Borough Subdivision and Land Development Ordinance and any other applicable ordinance, code and/or regulations.
3. The proposed use shall be limited to those authorized as conditional uses within the zoning district in which the lot or parcel is located.
4. Consideration of the character and the type of development in the area surrounding the location for which the request is made, and a determination that the proposed change will constitute an appropriate use in the area and will not injure or detract from the use or value of the surrounding properties or from the character of the neighborhood.
5. If the development is to be carried out in successive stages, each stage shall be so planned that the condition and intent of this Ordinance shall be fully complied with at the completion stage.
6. The development, if more than one (1) building, will consist of a harmonious grouping of buildings or other structures.
7. The proposed use will be in the public interest and serve the health, safety, and general welfare of the Borough.

8. The proposed use is consistent with, and will have no adverse effect upon, the logical extension of public services and utilities, such as public water, public sewer, police, fire protection, recreational opportunities, open space, and public schools.
9. Proposed new construction and proposed change in use of existing buildings will be compatible with and in keeping with the existing character of the neighborhood.
10. The proposed use reflects an environmentally sensitive approach to land planning and design, and will be sited in a manner sensitive to existing site conditions including streams, vegetation, and other natural resources.
11. The proposed use will provide safe and adequate access to roads, existing or proposed, and will not result in excessive traffic volumes or will make any improvements needed to guarantee compatibility with adjacent streets and public services.
12. The interior traffic circulation for the proposed use shall provide safe and convenient circulation for all users including vehicular and pedestrian modes. Emergency design considerations will be addressed in the proposed plan.
13. The adequacy of sanitation and public safety provisions shall be adequate and a certificate of adequacy of sewage and water facilities from a governmental health agency shall be provided where required or deemed necessary.
14. The proposed use will be developed using effective stormwater management techniques and soil erosion and sedimentation control techniques.
15. Sufficient land area is available to effectively screen the proposed conditional use from adjoining different uses if required by Borough Council.

Section 2911 MUNICIPAL LIABILITY

The granting of any permit under this Ordinance shall create no liability upon, nor a cause of action against, any Borough official or employee for damages or injury that may occur from the use, construction, or enlargement of structures or the use of land.

Section 2912 FEES

- A. Fees for all permits and applications for permits required and/or authorized under the Zoning Ordinance and for all applications and appeals to either Borough Council or the Zoning Hearing Board, pursuant to Ordinance, shall be in accordance with a fee schedule adopted and amended by resolution of Borough Council. The fee schedule shall be posted in the office of the Zoning Officer.
- B. Fees so established for any application or appeal, pursuant to this Ordinance and paid to the Zoning Officer, shall accompany the application or appeal upon submission. The Zoning Officer shall have the sole discretion to determine the total amount due for an application or appeal.
- C. No action on any application or appeal shall taken until all required fees are paid in full.

- D. If, at any time, the charges then made against the applicant's deposit shall render the balance insufficient to ensure payment of all expenses that may accrue in the disposition of the ending appeal or application, the Zoning Officer shall obtain from the applicant additional deposits to assure adequate funds to pay such expenses as they may accrue. Prior to final disposition of the matter, the amount of the deposit shall not be less than fifteen (15) percent of the initial deposit amount. The failure of the Zoning Officer to require and obtain additional deposits from time to time shall not relieve the applicant from liability for expenses in excess of deposits.