

ORDINANCE NO. 2015-5

**BOROUGH OF MALVERN
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING CHAPTER 220 ZONING
OF THE CODE OF ORDINANCES FOR THE BOROUGH OF MALVERN**

WHEREAS, the Borough of Malvern (“Borough”), in order to promote and benefit the health, safety, morals, and general welfare of the people of the Commonwealth of Pennsylvania and the Borough, desires to promote the preservation of certain historic resources and to regulate, restrict, and manage the design, erection, modification, demolition, alteration, maintenance, condition, and appearance of properties within the Borough as such things or others may relate to certain places, structures, edifices, aesthetics, and elements which are significant or otherwise valuable to the fields of history, architecture, archaeology within the Borough;

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED BY THE BOROUGH AS FOLLOWS:

SECTION 1 – Definitions.

The Borough of Malvern’s Zoning Ordinance of 2003, as amended, is hereby amended as follows.

ARTICLE II: DEFINITIONS, SECTION 201: DEFINITION OF TERMS of the Borough of Malvern’s Zoning Ordinance of 2003, as amended, is hereby amended to add the following definitions in alphabetical order:

HISTORICAL COMMISSION. The Historical Commission of Malvern Borough, Chester County, Pennsylvania, as established by Malvern Borough Ordinance No. 83-12 and whose authorities and powers may be amended herein from time to time.

HISTORIC RESOURCE. A parcel, building, structure, object, monument, landscape, or site that has been designated by the Historical Commission or Malvern Borough Council for its historical, architectural, or archeological importance as provided in the criteria for designation as described in Article XXIII, Section 2301.

SECTION 2 – Overlay District.

ARTICLE III: ESTABLISHMENT OF DISTRICTS, SECTION 300: CLASSES OF DISTRICTS, SUBSECTION D of the Borough of Malvern’s Zoning Ordinance of 2003, as amended, is hereby amended as follows:

Overlay Districts. In addition, there are two overlay districts, the Floodplain Overlay District, contained in Section 2201 of Article XXII, Natural Resource Protection Standards, and the Historic Overlay District, contained in Article XXIII, Historic Resource Protection Standards. An

overlay district shall overlay and be in addition to the regulations of the base zoning districts in which the lot, building, or structure is located. The more restrictive of the district regulations shall prevail.

ARTICLE III: ESTABLISHMENT OF DISTRICTS, SECTION 302: ZONING MAP, SUBSECTION A of the Borough of Malvern’s Zoning Ordinance of 2003, as amended, is hereby amended as follows:

The locations and boundaries of such districts, except the Flood Overlay District and Historic Overlay District, shall be shown upon the map attached to and hereby made a part of this Ordinance, which shall be designated the “Zoning Map.” The Zoning Map and all the notation, references and other data shown thereon shall be as much as part of this Ordinance as if fully described herein. The Flood Overlay District and Historic Overlay District shall be treated as overlay zones to the otherwise applicable base zones.

SECTION 3 – Standards.

ARTICLE XXIII: GENERAL STANDARDS, SECTION 2301 of the Borough of Malvern’s Zoning Ordinance of 2003, as amended, is hereby deleted in its entirety and replaced with the following:

Section 2301 HISTORIC RESOURCE PROTECTION STANDARDS

- A. **Purpose.** It is the intent of this Section to document historic resources and preserve and protect certain significant historic resources and associated properties within the Borough of Malvern that have historical significance or a distinctive character recalling the historical, architectural, residential, commercial, aesthetic, and cultural heritage of the Borough, Chester County and the Commonwealth of Pennsylvania. The documentation, preservation, and protection of historic resources and associated properties is a public necessity and promotes the general welfare for the citizens of the Borough of Malvern.

The provisions of this Article are intended to:

1. Identify, designate, and develop historical context for Historic Resources in the Borough;
2. Encourage the continued use and protection of historic resources and facilitate their appropriate reuse in the context of the Borough’s Comprehensive Plan through reasonable incentives to maintain existing overall aesthetics and relationships to existing uses;
3. Discourage the unnecessary demolition of historic resources, including their settings, landscapes and other similar features by establishing a clear process whereby proposed demolitions affecting historic resources are reviewed and, in certain circumstances, may only proceed with the approval of the Borough Council.;
4. Discourage the unnecessary deterioration and decline of historic resources that lead to blighted conditions through the implementation of regulations to prohibit and discourage demolition by neglect;

5. Minimize adverse impacts on historic resources by establishing standards to regulate the salvage, demolition, destruction, and removal of historic resources through the implementation of the standards contained herein;
6. Promote retention of historical integrity in the context of proposed land use, subdivision, and land development proposals;
7. Ensure the proper documentation of historic resources if their demolition or destruction is necessary or advisable; and
8. Provide information on historic preservation best practices and incentives to property owners and residents.

B. General Provisions. The following provisions shall apply to all parcels located in the Borough.

1. **Compliance.** Any demolition of all or part of a historic resource as designated by this Section shall occur only in full compliance with the terms of this Section and other applicable regulations.
2. **Historical Overlay.** The land parcel associated with each historic resource included on the official list shall be deemed part of the historical overlay on any zoning district now or hereafter enacted to regulate the use of land in the Borough of Malvern. A land parcel associated with a historic resource shall be included in its entirety and shall not be subdivided unless approved by the procedures provided in this Section.
3. **Severability.** Should any portion of this Section be revised as a result of legislative or administrative action or judicial decision separate from and independent of the authority of the Borough of Malvern, the zoning requirements and other regulatory measures applicable to the property in question shall be those of the underlying zoning district and shall remain in full effect without consideration of this Section.
4. **Applicability.** All property, including land, improvements and appurtenances, associated with a historic resource are considered part of the Historical Overlay and are governed by the provisions of this Section.
5. **Other Restrictions.** It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Section imposes greater restrictions, the provisions of this Section shall prevail.
6. **Review & Certification of Completeness.** The Zoning Officer shall review any application prepared by a property owner or the Historical Commission pursuant to this Section. Upon the Zoning Officer's satisfaction that said application is complete, the Zoning Officer shall certify the same upon the face of the document and give notice of the certification to the applicant, the Historical Commission, and the Borough Council. To the extent that any application is not complete, the Zoning Officer shall provide an explanation to the Applicant, in writing, as to what items are missing or deficient within ten (10) days of submission of the application to the Zoning Officer. No time period or requirement arising out of the submission of any application shall commence until such certification is granted by the Zoning Officer.

7. **Records.** The Borough Manager shall maintain a record of all applications associated with the provisions of this Section including all final dispositions of the same.
8. **Reimbursement of Costs.** Any costs incurred by the Historical Commission, as agreed to in advance and in writing by the Applicant, to review the application and any plans or studies submitted therewith to the Historical Commission, shall be fully reimbursed by the Applicant.
9. **Status Communication.** The Zoning Officer, or such other person or agency charged by the Borough Council with the enforcement of the provisions of this Section, shall review the progress and status of the proposed demolition or use revisions as described in this Section and render such reports thereon to the Borough Council and to the Historic Commission as may be necessary to ensure compliance with the provisions of this Section and the conditions of any approval granted by the Borough Council.
10. **Confidentiality of Information.** To the extent that any party is required to provide information which is confidential or proprietary, such party shall submit the required information separately and mark each page of the confidential information conspicuously as “CONFIDENTIAL”. The Borough shall use reasonable efforts to maintain the confidentiality of the same provided it is not already or made public by others. Alternatively, any party may provide redacted copies of confidential documents, provided that the party shall make the redacted information known to the Historical Commission or Borough Council in a confidential manner upon request. The Zoning Officer shall not treat the redaction of such information as a basis for rejecting any application as incomplete.
11. **Violations.** In addition to other remedies available under the Malvern Borough Code or other applicable law which shall be cumulative to remedies described herein, 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 therefore in a civil enforcement proceeding commenced by the municipality, pay a judgment equal to the market value or replacement value of the property demolished or destroyed together with the costs of such enforcement including, without limitation: court costs; professional services such as engineering, surveying, and environmental investigations; expert witness reimbursements and investigation fees; and attorney fees. In addition, no permit for the construction of a new building on the property shall be issued for a twelve (12) month period except as may be necessary to address emergency conditions, deterioration which would constitute demolition by neglect under this Section, or in accordance with any order issued by a court having jurisdiction. Because of the irreplaceable nature of Historic Resources, injunctive relief may be appropriate notwithstanding a lack of physical danger to the general public. Except for the duly appointed representatives of the Borough of Malvern acting as agents for the Borough, no person or entity shall be entitled to demand or otherwise obtain injunctive relief under this Section.
12. **Other Permits and Approvals.** Review and approval by the Borough of proposed work under the provisions of this Article shall be considered prerequisite to the issuance of any other permits and approvals required by the Borough. The issuance of any approval under

13. **Definitions & Construction.** For the purposes of this Section only, the following terms shall have the meanings indicated:

APPLICATION shall mean, a Nominating Application, an Application for Reclassification or Removal, an Application for Demolition of Historic Resource, or either, or both, as context dictates.

THIRD PARTY DESIGNATED RESOURCES shall mean: any building, site, structure or object listed individually in the National Register of Historic Places; or any building, site, structure, or object listed in the database of National Historic Landmarks; or any buildings and structures classified as certified historic structures by the Secretary of the Interior; or all buildings, sites, structures and objects documented as contributing resources in a National Register Historic District; or any resource or district which has received a Determination of Eligibility by the Pennsylvania Historical and Museum Commission; or any resources which are deemed by the Chester County Historic Preservation Office to meet substantially the National Register criteria under the County Certification Program.

DEMOLITION shall mean the permanent destruction, removal, or dismantling of any structural member or a substantial portion of any type of roofing, cladding, siding, concrete or plaster edifice, or other visible, exterior appurtenances, except when in the course of regular maintenance, repair, and replacement for materials as required from time to time, (i) in the context of a substantial alteration or addition to the property; or (ii) without the intention to replace the same with materials such that the end result of such replacement will have a visual appearance which is substantially similar to the original form when viewed from the exterior.

OFFICIAL LIST shall mean the official list of significant historic resources as established and maintained pursuant to this Section.

DEMOLITION BY NEGLECT. The absence of routine maintenance or repair that threatens the structural or weather-tight integrity of an unoccupied building that may lead to its eventual decay, deterioration, or destruction.

ECONOMIC HARDSHIP. Denial of a permit would deny the applicant of all reasonable beneficial use or return on the property.

STRUCTURAL HISTORIC FABRIC. The exterior form of a Historic Resource, consisting of exterior walls, front or side porches, and roof trusses.

HISTORIC RESOURCE, PROPOSED / HISTORIC RESOURCE, NOMINATED. Where context so indicates in this Section, a parcel, building, structure, object, monument, landscape or site which has been nominated for designation as a historic resource may be referred to in this Section as the “nominated historic resource” or “proposed historic resource” without presumption of the parcel’s, building’s, structure’s, object’s, monument’s, landscape’s, or site’s status as a historic resource.

C. **Additional Duties of the Historical Commission.** In addition to the functions and duties established for the Historical Commission elsewhere in the Malvern Borough Code or promulgated by Borough Council from time to time, the Historical Commission shall have the following responsibilities pursuant to this Section:

1. Maintain, in consultation with the Zoning Officer and other Borough staff, the official list of significant historic resources, including the tier of classification for each property on the official list.
2. With a quorum of not less than one half of the members of the Historical Commission present and voting, provide recommendations to the Borough Council concerning the proposed addition, reclassification, or removal of a property as a historic resource on the official list of significant historic resources.
3. Review and comment on subdivision and land development applications which affect historic resources in accordance with the requirements and procedures outlined in this Section. To avoid confusion or ambiguity, such subdivision and land development applications shall be separate and apart from the Nominating Application and Application for Reclassification or Removal as described in this Section.
4. Using internal Borough resources or external services procured in accordance with applicable law and with the approval of the Borough Council, document for posterity certain historic resources which are to be demolished in whole or in part pursuant to this Section.
5. Perform any other lawful activities at the direction of the Borough Council that shall be deemed necessary by the Borough Council to further the purposes of this Section.

D. **Official List of Historic Resources.**

1. **Establishment.** The Official List of Historic Resources is hereby established of buildings, structures, objects, monuments, landscapes, and sites in the Borough. The official list, as amended from time to time by Borough Council in accordance with this Section, shall be available for public inspection in the Borough Administrative Office. Initially, the official list shall consist only of the current Tier I Historic Resources as described herein together with those Tier III Historic Resources designated in Exhibit "A".
2. **Tiers of Designation.** The official list shall consist of three classifications (or "tiers") of historic resources. Tier I historic resources shall be those historic resources which are Third Party Designated Resources (to wit, any historic resource which is so certified or designated by the Federal Government, the Pennsylvania Historical and Museum Commission, or the Chester County Historic Preservation Office). Tier II historic resources shall be those historic resources so designated by the Borough Council. Tier III historic resources shall be those historic resources so designated by the Historical Commission or Borough Council.

3. **Criteria for Designation.** Any nomination or application for the designation, reclassification, or removal of a historic resource or nominated historic resource shall be evaluated using the criteria for designation listed herein. Except for Third Party Designated Resources, no building, structure, object, monument, landscape, or site shall be placed on the official list pursuant to this Section unless such building, structure, object, monument, landscape or site satisfies three or more of the criteria for designation.
 - a. Has significant character, interest or value as part of the development, heritage or cultural characteristics of the Borough, Chester County, region, commonwealth, or nation.
 - b. Is associated with the life of a person or history of an organization of importance to the history of the Borough, Chester County, region, commonwealth or nation.
 - c. Is associated with an event of importance to the history of the Borough, Chester County, region, commonwealth or nation.
 - d. Embodies distinguishing characteristics of an architectural style, vernacular type, or feat of engineering.
 - e. Is the noteworthy work of a designer, architect, landscape architect, designer, or engineer whose work has significantly influenced the historical, architectural, economic, social or cultural development of the Borough, Chester County, region, commonwealth or nation.
 - f. Contains elements of design, detail, materials or craftsmanship which represent a significant innovation.
 - g. Is part of or related to a commercial center, park, community or other distinctive area which should be preserved according to an historic, cultural or architectural motif.
 - h. Owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood, community or Borough.
 - i. Has yielded, or may be likely to yield, information important in prehistory or history.
 - j. Exemplifies the cultural, political, economic, social or historical heritage of the community.
 - k. In the case of structures, objects, or monuments, the structure, object or monument has existed in its current form or configuration for fifty (50) years or more.
4. **Designation of Historic Resources.** A historic resource may be added to the official list through the process of designation as described herein.

- a. Designation of Tier I Historic Resources. The Historical Commission shall monitor lists maintained in relation to Third Party Designated Resources for changes which would trigger designation or reclassification of any historic resource as a Tier I historic resource under this Section. Any district, site, buildings, structures, and objects which are a Third Party Designated Resource at the time of enactment of this Section or hereafter shall automatically be designated as a Tier I historic resource on the official list.
- b. Designation of Tier II Historic Resources. Any proposed historic resource or designated Tier III historic resource may be designated or reclassified as a Tier II historic resource upon the approval of the Borough Council following the nomination, public meeting, and public hearing requirements of this Section.
- c. Designation of Tier III Historic Resources. Any proposed historic resource may be designated or reclassified as a Tier III historic resource upon the approval of the Historical Commission and Borough Council following the nomination, public meeting, memorandum of designation, and appeal requirements of this Section.

5. Historic Resource Reclassification and Removal from Official List.

- a. Upgrades. Any Tier III historic resource may be reclassified as a Tier II historic resource by the Borough Council after a public hearing as required by this Section. Any Tier III or Tier II historic resource which is added to the National Register of Historic Places or database of National Historic Landmarks shall automatically be reclassified as a Tier I historic resource.
- b. Downgrades. Any Tier I historic resource which is de-listed or de-certified from all sources of Third Party Designation at any time in the future shall automatically be reclassified as a Tier II historic resource on the official list. Any Tier II historic resource may be reclassified as a Tier III historic resource, pursuant to the approval of the Borough Council after a public hearing held in accordance with this Section.
- c. Removals. Any Tier I, Tier II, or Tier III historic resource may be removed from the official list entirely upon the approval of the Borough Council after a public hearing held in accordance with this Section.
- d. Application for Reclassification or Removal from Official List. The Borough Council, the Historical Commission, or any owner of any historical resource on the official list may propose the reclassification or removal of any historical resource on the official list by completing an Application for Reclassification or Removal.
 - (i) Such application completely state, and provide any requisite documentation for, the basis(es) which are suggested by the Applicant to

justify the reclassification or removal of any historic resource from the official list.

- (ii) No application fee shall be charged to file an Application for Reclassification or Removal from the official list.
- (iii) The Borough Council shall have no obligation to act upon any Application for Reclassification or Removal from the official list which is submitted by the Historical Commission. Unless extended upon the approval of the Borough Council, any such application which is not acted upon within sixty (60) days shall be deemed rejected.
- (iv) The Borough Council shall hold a public hearing pursuant to this Section within sixty (60) days of the submission of any Application for Reclassification or Removal by the owner of a historic resource and issue a decision on the same within forty five (45) days of the conclusion of such public hearing. In the event that the Borough Council fails to hold such a public hearing, or fails to render its decision within the time period specified, the Application for Reclassification or Removal as submitted by the owner of the historic resource shall be deemed approved.
- (v) The Borough Council may refer any Application for Reclassification or Removal made by the owner of a historic resource to the Zoning Hearing Board if such referral is required pursuant to applicable law.

6. Nominations For Designation of Historic Resources.

- a. Nomination by Historical Commission. The Historical Commission may, pursuant to a vote of its members, nominate any proposed historic resource for designation as a Tier II or Tier III historic resource pursuant to this Section. In considering the nomination of a proposed historic resource, and prior to any vote upon such nomination, the Historical Commission shall substantially complete applicable portions of the Nominating Application as described herein. Upon approval of the Nominating Application by the Historical Commission, the Borough shall notify the property owner of the Historical Commission's nomination, provide a copy of the Nominating Application as prepared by the Historical Commission, and give notice of the time, date, and location of the public meeting to be held in accordance with this Section.
- b. Nomination by Borough Council. The Borough Council may, by resolution, nominate any proposed historic resource for designation as a Tier II or Tier III historic resource pursuant to this Section by instructing the Historical Commission to prepare a Nominating Application as described herein. The Borough Council shall review and approve the Nominating Application as prepared by the Historical Commission. Upon approval of the Nominating

Application, the Borough shall notify the property owner of the Borough Council's nomination, provide a copy of the Nominating Application as prepared by the Historical Commission and approved by the Borough Council, and give notice of the time, date, and location of the public meeting to be held in accordance with this Section.

- c. Nomination by Property Owner. Any property owner may nominate his or her own property for designation as a Tier II or Tier III historic resource pursuant to this Section by submitting a Nominating Application to the Borough.
- d. Nominating Application. The Nominating Application for any proposed historic resource as prepared pursuant to this Section shall include:
 - (i) Recent photographs of the subject property;
 - (ii) A list and site plan of contributing elements and noncontributing elements located on the subject property;
 - (iii) Justification, based upon the criteria for designation described in this Section, for the proposed addition, re-classification, or removal of the subject property to, within, or from the official list; and
 - (iv) An Application Fee payable to the Borough of Malvern in an amount to be determined by Borough Council from time to time and published upon the Application form.
 - (v) A certification from the applicant(s), sworn under penalty of perjury, that all holders of estates in the Historic Resource or the parcel where the Historic Resource is located, including without limitation, any holder of a life estate, fee tail, future interest, leasehold estate, or easement, is listed as an owner upon the application and consents to the application as submitted.

7. **Public Meeting.** Where any public meeting is required under this Section, such public meeting shall be held by the Historical Commission pursuant to the following requirements:

- a. Notice. The Historical Commission shall provide notice of the date, time, and location of any public meeting:
 - (i) via the Borough's website; and
 - (ii) in writing to the owner of any proposed, nominated, or existing historic resource which is to be discussed during the meeting together with a copy of any Nominating Application or Application for Reclassification or Removal, as submitted, which caused the owner's property to be listed for discussion at the public meeting.

- b. Timeframe. Unless otherwise indicated in this Section, the Historical Commission shall hold the public meeting within thirty (30) days of the Historical Commission's receipt of any complete or approved Nominating Application or Application for Reclassification or Removal. Such period shall be extended only with the written consent of any property owner who has submitted an application.
- c. Opinion. Within fifteen (15) days of the completion of the public meeting, the Historical Commission shall publish a written opinion regarding the application under consideration during the public meeting. Such opinion shall include findings of fact, and analysis of the historic resource's, or nominated historic resource's satisfaction of the criteria for designation as described in this Section. A copy of this opinion shall be sent to the property owner.
- (i) In the event that the Historical Commission's opinion is to recommend that the proposed historic resource be designated as a Tier III historic resource, the opinion shall be entitled as a "Memorandum of Designation" and shall be sent to the Borough Manager for review at the next regularly scheduled meeting of the Borough Council. The Memorandum of Designation shall include a comprehensive reference to and explanation for any reasonable objections raised by the property owner or other interested members of the public at the public meeting.
 - (ii) In all other cases, the Historical Commission's opinion shall be forwarded to the Borough Council as the recommendation of the Historical Commission with respect to the matters described therein.
 - (iii) The Borough shall advertise a summary of any property or properties which have been recommended for designation or reclassification as a Tier II or Tier III Historic Resource in a substantially similar method of advertising any proposed ordinance.
- d. Effect of No Meeting or No Recommendation. In the event that the Historical Commission fails to hold a public meeting as required under this Section or fails to issue its written opinion within the time periods specified, such failure shall be deemed an approval of the application before the Historical Commission; excepting, however, that no Nominating Application for a Tier III Historic Resource shall be deemed approved by the Historical Commission without a public meeting and publication of a Memorandum of Designation as described in this Section.
- (i) For the purposes of determining the timeframe or deadline for other proceedings under this Section, the date of the public meeting and publication of the opinion shall be deemed to be the last regularly scheduled meeting of the Historical Commission, which actually

occurred and for which a quorum was present, prior to the expiration of the time period for the public meeting.

e. Memorandum of Designation for Tier III Historic Resources. The Borough Council hereby provides for the limited and specific delegation of its authority to designate Tier III historical resources under this Section subject to the following conditions:

- (i) The Memorandum of Designation must specifically state the nature and extent of the historic resource to be designated as a Tier III historic resource;
- (ii) The Memorandum of Designation may be appealed upon the demand of any owner of the property which is the subject of the Memorandum of Designation, in which case the Borough Council will hold a public hearing in accordance with this Section and upon the conclusion of said public hearing, the Borough Council shall either approve, approve with modifications, or reject the Memorandum of Designation.
- (iii) If the Memorandum of Designation is not appealed by the property owner, and is not rejected pursuant to a vote of Borough Council at its next regularly scheduled meeting, the Memorandum of Designation shall be deemed approved and the nominated historic resource shall be formally designated as a Tier III historic resource.

8. **Public Hearing.** Where any public hearing is required under this Section, such public hearing shall be held by the Borough Council pursuant to the following terms and requirements:

a. Timeframe for Public Hearing. The public hearing shall be held pursuant to the requirements of Section 609, Enactment of Zoning Ordinance Amendments, Act 247, Municipalities Planning Code, as amended.

- (i) If the nomination was made by the property owner(s), the public meeting by the Historical Commission and public hearing by the Borough Council shall both be held within sixty (60) days of receipt of the application, unless an extension of time is formally granted by the applicant.
- (ii) If the nomination was made by the Historical Commission, the public hearing by the Borough Council shall be held within sixty (60) days of the conclusion of the public meeting by the Historical Commission.

b. Party Status at Public Hearing. The granting of party status for any public hearing shall be limited to those persons or entities who demonstrate a substantial, direct, and specific interest in the designation, reclassification, or

removal of the historic resource or proposed historic resource which is the subject of the hearing.

- (i) Any property owner of an adjoining parcel, or if any portion of the parcel(s) owned by such property owner are located within 250 feet of the historic resource or proposed historic resource shall be conclusively presumed to be entitled to party status. Without invalidating this provision, the Borough Council may, at their sole, and revocable discretion, permit comment from interested members of the public who do not have party status.
- (ii) The Historical Commission shall be entitled to present evidence as a Party at any Public Hearing, provided that the Historical Commission held a public meeting and published an opinion on the matter within the applicable timeframes specified in this Section.

9. **Decision of Borough Council.** Within forty five (45) days of the public hearing, the Borough Council shall render its decision regarding the nomination, reclassification, or removal of any property for addition to or removal from the Official List. In its decision, Borough Council may designate, reclassify, or remove the historic resource or proposed historic resource. Written notice of the action taken by Borough Council shall be sent in writing to the property owner and any other individual or organization requesting notification in writing to the Borough.

- a. Effect of No Meeting or No Decision. If the application under review during any Public Hearing is made by the property owner(s) in full compliance with the terms described herein, and Borough Council fails to hold a public meeting or issue its decision within the applicable timeframe(s), the application made by the property owner(s) shall be deemed approved. If the nomination is made by the Historical Commission or Borough Council and Borough Council fails to hold a public meeting or issue its decision within the applicable timeframe(s), the application shall be deemed denied.
- b. Appeals. Any decision of the Borough Council under this Section shall be subject to review and appeal in the same manner and within the same time limitation as is provided for zoning appeals by the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101, et seq.

10. **Initially Designated Properties.** As of the adoption of this Ordinance, Borough Council has authorized the addition of certain historic resources to the Historic Overlay District as indicated in Exhibit “A” to this Ordinance. Notwithstanding the procedures for nomination and addition herein, the historic resources listed in Exhibit “A” shall be designated as Tier III historic resources and may be subsequently upgraded, downgraded, or removed in accordance with this Section.

E. Incentives for Historic Resource Properties.

1. **Additional and Multiple Use Incentives.** Properties which are part of the Historic District Overlay shall be entitled to the uses permitted in the underlying district as well as the following additional uses as defined in this Section:
 - a. The following uses shall be permitted only upon the grant of conditional use approval from the Borough Council, subject to the terms of this Section and of Article XXIX:
 - (i) Bed-and-Breakfast;
 - (ii) Cultural Center; and
 - (iii) Gallery or Museum.
 - (iv) Multi-family Residential; and
 - (v) Any combination of any uses available by-right in the underlying district, uses available upon the grant of a special exception pursuant to Article XXVIII, uses available upon the grant of a conditional use pursuant to Article XXIX, and uses available under this Section.
 - b. Non-Residential Districts. In the case where the underlying district is not residential, the following uses shall be permitted as follows:
 - (i) Any one of the following uses by right:
 - (a) Bed-and-Breakfast;
 - (b) Cultural Center; and
 - (c) Gallery or Museum.
 - (ii) Any of the following uses upon the grant of conditional use approval from the Borough Council, subject to the terms of this Section and of Article XXIX:
 - (a) Multi-family Residential; and
 - (b) Any combination of any uses available by-right in the underlying district, uses available upon the grant of a special exception pursuant to Article XXVIII, uses available upon the grant of a conditional use pursuant to Article XXIX, and uses available under this Section.
2. **Additional Use Definitions & Terms.** As used in this Section, the following uses shall be defined and subject to the terms indicated as follows:

- a. Residential District Additional Uses. For all uses located in a residential zoning district, the following regulations shall apply:
- (i) To the extent that proposed new off-street parking would otherwise be visible from neighboring properties, such parking areas shall be completely screened by plant material or a combination of plant material, fencing, or berms to a height of at least four feet.
 - (ii) There shall be no use of show windows or display or advertising visible outside the premises, other than a single, nonilluminated sign not exceeding two square feet.
 - (iii) No use shall be permitted which generates noise perceptible at the property line.
 - (iv) Site lighting shall be designed to screen the source of illumination and glare completely from adjacent properties.
- b. Bed-and-Breakfast. Bed-and-Breakfast shall be considered a low-impact home-based business and shall be subject to all applicable standards of Section 2412. If there is a conflict between Section 2412 and this Section, this Section shall govern. The following additional terms shall apply to the Bed-and-Breakfast use pursuant to this Section:
- (i) A bed-and-breakfast facility shall be permitted only in single-family detached owner-occupied dwellings, or existing buildings accessory thereto on the same property provided that property.
 - (ii) Notwithstanding any additional uses granted or obtained under this Section, the principal use of the property shall remain that of a single-family dwelling.
 - (iii) No more than four guest rooms may be offered for bed-and-breakfast purposes on any individual residential property.
 - (iv) There shall be provided one full bathroom (including one toilet, wash basin, bath and/or shower) for each two guest rooms.
 - (v) Length of stay shall not exceed seven uninterrupted days for any guest.
 - (vi) Meals shall consist of breakfast only, and for guests of the establishment only. Owners shall comply with all federal, state, and local requirements for the preparation, handling and serving of food.
 - (vii) Any amenities (swimming pool, tennis court, etc.) shall be for the sole use of the resident owner and the bed-and-breakfast guests.
 - (viii) The owner shall maintain a current guest register.

- (ix) There shall be no kitchen or cooking facilities in any guest suite.
 - c. Cultural Center. Cultural Center shall mean building or facility to present cultural, scientific, or academic lectures or performance or art displays to the general public by a nonprofit entity. The following terms shall apply to the Cultural Center use pursuant to this Section:
 - (i) The use shall be limited to one instructional class at a time with not more than ten (10) students in the class and not more than two instructors.
 - (ii) One off-street parking space shall be provided in the amount equal to half of the permitted occupancy rate, with a minimum of four (4) off-street parking spaces.
 - d. Gallery or Museum. Gallery or Museum shall mean a building or facility dedicated to the permanent or long-term installation and presentation of articles of historical significance or artwork. The following terms shall apply to the Gallery or Museum use pursuant to this Section:
 - (i) The area devoted to all Gallery or Museum use shall be limited to 4,500 square feet.
 - (ii) One off-street parking space shall be provided in an amount equal to half of the permitted occupancy rate, with a minimum of four (4) off-street parking spaces.
3. **Area and Bulk Incentives for Tier I and Tier II Historic Resources.** The requirements applicable to the underlying zoning district relating to building area, impervious surfaces and front, side, and rear yard setbacks may be modified by up to 15% with respect to any property containing a Tier I or Tier II historic resource, subject to the recommendation of the Historical Commission and the approval of the Borough Council as follows:
- a. The additional building area and impervious surface coverages permitted by this section may not exceed 50% of the building area of the historic resource.
 - b. Where the requested relief is determined by the Borough Council to be essential to the preservation of the historic resources because without such relief it would not be physically or economically possible to maintain the historic resource, the Borough Council may, by conditional use, reduce such requirements to a greater degree than permitted by this section to protect the historic resource.
4. **Criteria for Evaluation of Conditional Use.** In addition to the criteria listed in Article XXIX, no conditional use shall be granted unless the following requirements have been satisfied:
- a. The applicant shall have the burden of demonstrating that approval of the application will not jeopardize the preservation of historic resource(s) contained

on the property subject to application. To sustain this burden the applicant shall present evidence demonstrating the following:

- (i) Exact location of the area in which the work is to be done.
- (ii) The exterior changes to be made or the exterior character of the structure to be erected.
- (iii) A list of surrounding structures with their general exterior characteristics.
- (iv) The effect of the proposed change upon the general historic and architectural nature of the property.
- (v) The appropriateness of exterior architectural features of structures involved with the proposed work.
- (vi) The general design, arrangement, texture, material, scale, mass and color of any affected building, structure, or site and the relation of such factors to similar features of other structures on the property.
- (vii) That rehabilitation work will not destroy the distinguishing qualities or character of the historic resource and its environment.
- (viii) Distinctive stylistic features or examples of skilled craftsmanship shall be preserved.
- (ix) The most current version of the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, as amended, shall be used as a guideline in carrying out any plans involving the rehabilitation, alteration, or enlargement of historic resource(s).
- (x) Where plans involving the rehabilitation, alteration, or enlargement of the historic resource(s) will result in all or portions of any such resource(s) remaining unoccupied, such unoccupied resources shall be securely sealed and barred off and the utilities turned off for safety, in a manner not jeopardizing historical integrity, as per the most current construction techniques for historic structures.
- (xi) A means to guarantee the protection of the historical integrity of the subject resource(s), such as the establishment of conservation easement(s) or appropriate covenants in a form acceptable to the Borough Solicitor, shall be provided.
- (xii) The applicant shall have the burden of proving that the historical integrity of the historic resource has been provided for through the design of the building improvements as well as through implementation of buffering, landscaping, lighting, storage, access and traffic

management, interior circulation, loading, parking, fencing, signage, and all other land development features.

- (xiii) The applicant shall have the burden of proving that the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties.
- (xiv) The applicant must comply with the parking requirements for the proposed use as set forth in this article. The Borough Council may prohibit any additional parking between the right-of-way and the facade of the building if the Borough Council finds such parking would negatively impact the historical integrity of the resource.
- (xv) The applicant must comply with the requirements of the Malvern Borough Zoning Ordinance with respect to signage. The Borough Council may condition approval on a reduction in the size of the signage if it finds that the permitted signage will obstruct views required to assure the safety of the public or to retain the historic nature of the property.
- (xvi) The Borough Council may attach conditions to achieve the objectives set forth in this section and to promote the public health, safety, and welfare, which conditions may relate to any aspect of the proposed use of the property, including but not limited to buffering, parking, signage, traffic volume and flow, hours of operation, noise, and odor emissions.
- (xvii) Where the Borough Council waives any requirement which thereby increases the rate or volume of stormwater generated on the property, the additional rate and/or volume of runoff caused by such waiver shall be controlled for the one-hundred-year storm.

5. **Pre-Authorization of Demolition Plans for Early Documentation at Owner's Request.** The owner of any historic resource as designated pursuant to this Section may, upon written request to the Historic Commission, request the documentation of the historic resource(s) on the owner's property without submitting an application for a demolition permit or otherwise triggering any requirement for documentation under this section.

- a. In the event that a property owner has requested such documentation be undertaken, and to the extent that the Historical Commission provides the owner with written confirmation that the documentation has taken place, the owner may petition the Borough Council for the pre-authorization of one (1) demolition plan. Borough Council may, in its discretion, choose to grant such a petition for the pre-authorization for a period of up to ten (10) years from the date when documentation was certified as performed by the Historical Commission. In

granting any petition for pre-authorization, the Borough Council may impose reasonable conditions on the same.

- b. The Borough's Code Enforcement Official shall, upon receipt of a compliant demolition permit, and upon reasonable proof of any prior pre-authorization and compliance with any conditions of the same, as well as compliance with all other applicable codes, laws, and ordinances, issue a demolition permit to the holder of such pre-authorization. There shall be no application fee due for any application for a demolition permit provided that such application is filed together with a valid pre-authorization and further provided that the application complies with the terms of the pre-authorization and other applicable laws, codes, and ordinances.
- c. Any pre-authorization granted under this Section shall remove the need for subsequent review by the Borough Council pursuant to this Section only. Such pre-authorization shall not act as a waiver of any other provision of federal or state law or other local Ordinance.
- d. Nothing herein shall permit the owner of a historic resource to proceed with demolition without submitting an application for demolition and obtaining an approved demolition permit, or engage in demolition by neglect for any reason whatsoever. Nothing herein shall be deemed as a preemptive approval of such application or vested right in the owner of any historic resource. No pre-authorization issued under this Section shall be transferable to any third party.

F. **Demolition of Historic Resources.** No person shall demolish, in whole or in part, any historic resource on the official list except as permitted herein and pursuant to a Historic Resource Demolition Permit issued by the Zoning Officer.

1. **Application for Demolition of Tier III Historic Resource.** Any applicant may submit an Application for Demolition for a Tier III historic resource. Such application shall include:

- a. Information about the existing historic resource, including:
 - (i) Disclosure of any known history of the historic resource and its contents;
 - (ii) Recent interior and exterior photographs of the historic resource; and
 - (iii) A site plan showing property boundaries, the entire footprint of all buildings, structures, plantings, driveways, and other features, and historic resources on the property.
- b. A written, narrative statement about the proposed demolition and construction, including:
 - (i) An explanation of the general purpose of the demolition;

- (ii) Proposed method of demolition;
 - (iii) Proposed means for disposition of materials;
 - (iv) Timeline for proposed demolition;
 - c. Written consent from any and all owners of the property as may be required for the Historical Commission or their designated agent(s) to document the exterior elements of the Historical Resource by entering upon the premises where the Historical Resource is located; taking photographs, video, and audio records of exterior elements; and subject to any exceptions indicated on the application by the applicant, disturb any soil or remove any exterior finishes as may be required to ascertain the age of or diligently investigate the historical value of the historic resource.
 - d. An application fee to be determined from time to time by the Borough Council and published upon the face of the application form.
 - e. The application form shall include a separate, optional consent for the Historical Commission to enter the interior of any historic resource in coordination with the owner. Only the exterior consent shall be mandatory in order to apply for demolition of the historic resource and no applicant shall be required to provide access to the interior of any historical resource in order to be granted a demolition permit.
2. **Application for Demolition of Tier II Historic Resource.** Any applicant may submit an Application for Demolition of a Tier II historic resource to the Borough. Such application shall include all elements required for the Application for Demolition for Tier III historic resources together with:
- a. Additional information about the proposed demolition and construction, including:
 - (i) A condition assessment prepared by a registered structural engineer or architect with demonstrated experience in historic preservation;
 - (ii) Proposed future use of the site;
 - (iii) Timeline for implementation of the proposed future use of the site; and
 - (iv) Conceptual renderings of proposed new construction.
 - b. Justification for demolition of the historic resource including credible evidence regarding:
 - (i) The amount paid for the property;
 - (ii) The most recent assessed value of the land and improvements;

- (iii) Any attempt to sell the property during the preceding three (3) years;
- (iv) For depreciable properties, a pro forma financial statement prepared by an accountant or broker of record that includes the annual gross income from the property for the previous three years;
- (v) Itemized operating and maintenance expenses for the previous three years;
- (vi) Any depreciation deduction taken;
- (vii) Annual cash flow before and after debt service, if any;
- (viii) Any consideration by the owner as to profitable adaptive reuse of the property;
- (ix) The current form of ownership and operation of the property, whether an individual, for-profit or not-for-profit corporation, limited partnership, or joint venture;
- (x) A cost estimate of proposed rehabilitation work and demolition;
- (xi) The estimated market value of the property in its current condition and after completion of the proposed construction, alteration, or demolition;
- (xii) A financial summary of operations and maintenance costs for any adaptive uses considered;
- (xiii) Any listing of the property for sale or rent including price asked and offers received during the past three years;
- (xiv) The remaining balance on any mortgage or other financing secured by the owner or applicant and annual debt service, if any, for the previous three years; or
- (xv) Copies of all appraisals obtained within the previous three years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
- (xvi) Uses permitted within the underlying zoning district, either as permitted uses, special exception uses, or conditional uses, have been denied, are not feasible due to constraints created by the historic resource, or do not provide a reasonable economic return based on a reasonable initial investment;
- (xvii) That the razing and removal of the historic resource will not adversely impact the significance, or structural or aesthetic integrity of any adjacent historic resource; and

(xviii) That the applicant has not contributed to the existing conditions, either through neglect or prior renovation, conversion, alteration or similar physical action.

3. **Application for Demolition of Tier I Historic Resource.** Any applicant may submit an Application for Demolition of a Tier I historic resource to the Borough. Such application shall include all elements required for the Application for Demolition of a Historic Resource for Tier II historic resources together with:

- a. Written authorization from the U.S. Department of the Interior and any other governmental agency or authority as may be required by law, expressly authorizing the specific steps described in the Application for Demolition of Historic Resource.
- b. Compelling evidence that the demolition of the Tier I historic resource as described in the application is absolutely necessary to preserve public safety, preserve other more significant historic resources, or otherwise required by law.

4. **Procedures for Demolition of a Historic Resource.** Upon the certification of the Zoning Officer that any Application for Demolition is complete, the Zoning Officer shall notify and provide a complete copy of said application to the Historical Commission and Borough Council.

- a. Documentation Procedures. Upon the Zoning Officer's certification that any Application for Demolition of any historic resource is complete, to the extent authorized in the Application for Demolition, the Historical Commission shall take steps to immediately enter the premises of the historic resource pursuant to the consent(s) provided in the Application for Demolition and document for posterity the historic resources which are located therein as described in this Section.
- b. Tier III Historic Resources. No Demolition of Historic Resources Permit shall be issued until the earlier of
 - (i) Twenty (20) days from the date when the Zoning Officer certified the Application for Demolition as complete; or
 - (ii) The Zoning Officer's receipt of written notice from the Historical Commission that documentation efforts with respect to the Tier III historic resource which is the subject of the Application for Demolition have been completed.
- c. Tier I and Tier II Historic Resources. No Demolition of Historic Resources Permit shall be issued for the demolition of any Tier I or Tier II historic resource without the approval of the Borough Council issued after a public hearing held in accordance with this Section.

- d. Criteria for Review. In reviewing any Application for Demolition where such review is required pursuant to this Section, the Borough Council shall consider the matters required to be addressed in the Application for Demolition for historical resources of the specific classification of the subject property together with:
- (i) The impact of the proposed demolition on the historical importance and architectural integrity of the Historic Resource(s) on the subject property;
 - (ii) The impact of the proposed demolition on the historical importance and architectural integrity of adjacent Historic Resources and contributing resources;
 - (iii) Economic hardship;
 - (iv) Property condition;
 - (v) Feasibility for adaptive reuse of Historic Resources;
 - (vi) Design compatibility of proposed new construction with adjacent Historic Resources and the surrounding neighborhood;
 - (vii) Reasonable alternatives to demolition the structural historic fabric of the Historic Resource; and
 - (viii) The extent to which the nature and timeline for the proposed future use is speculative.
- e. Conditional Approval. In approving any Application for Demolition of a historic resource, the Borough Council may impose conditions which would protect the distinctive historic character of the building, site, or area that is proposed to be changed.
- (i) Refusal of Conditions. In the event that an approval is granted subject to conditions, the Applicant may, within ten (10) days after receiving a copy of the official written communication from the Borough Council, give notice of his or her refusal to accept one or more of the conditions, in which case the Borough Council shall be deemed to have denied the Application for Demolition. In the event the applicant does not, within the said period, notify the Borough Council of his or her refusal to accept one or more of the said conditions, the approval, with all conditions, shall stand as granted.

G. Demolition by Neglect of Historic Resources. When a historic resource is vandalized in the absence of reasonable measures by the property owner to discourage or prevent such vandalism, or is improperly maintained as to allow excessive decay or ruin, it shall be considered demolition by neglect. In order to prevent such demolition by neglect, the following provisions shall be applicable to historic resources of any classification.

1. **Criteria.** Demolition by neglect of a historic resource shall be deemed to have occurred if the structure is unoccupied and exhibits two or more of the following:
 - a. Roof failure or deterioration of roofing material is apparent;
 - b. Substantial rot, collapse, or decay is visible on the exterior of the building;
 - c. Broken windows are present;
 - d. Unsecured entrances are visible or reported;
 - e. Vegetative growth is allowed to damage building fabric;
 - f. Mold, moss or mildew is visible on building surfaces;
 - g. Loss of the exterior building envelope is evident.

H. Procedure In Cases of Demolition by Neglect.

1. Statement of Concern. The process for declaration of demolition by neglect of any historic resource may be initiated by any concerned resident or property owner of the Borough. Said resident or property owner shall notify the Borough of their concern by preparing a written statement and submitting said statement to the Borough Office.
2. Notice of Inspection. At a regular or special meeting, the Historical Commission shall make arrangements to have the property examined by an inspection team. The property owner shall be notified in writing by certified mail of the date and time of the inspection at least ten (10) days prior to the inspection.
3. Inspection. On the scheduled date and time for inspection, the inspection team shall enter the property to evaluate conditions of the property and investigate the allegations set forth in the statement of concern. An inspection of the interior of any building subject to a Notice of Inspection for Demolition by Neglect may be conducted if the property owner, or authorized agent, is present, otherwise, only the exterior of the building will be examined. If the building is occupied, the Codes Enforcement Officer shall determine whether conditions warrant a code enforcement action to protect the health, safety and welfare of its occupants and the general public. If the owner refuses to allow entry into the building, and the Codes Enforcement Officer believes that an internal inspection is necessary, an Administrative Search Warrant shall be requested from the Magisterial District Justice.
4. Inspection Report. The inspection team shall gather information, including photographs, sufficient to convey the condition of the historic resource to the Historical Commission and the Borough Council.
5. Review by the Historical Commission. Within thirty (30) days of the inspection, at its regular meeting or a special meeting, the Historical Commission shall review the results of the inspection. The property owner or authorized agent shall be notified of the meeting and encouraged to present evidence and testimony

pertaining to the claim of demolition by neglect. The Historical Commission shall determine if the historic resource has been vandalized or improperly maintained so as to cause excessive decay or ruin taking into account the following:

- a. The condition of significant architectural features that contribute to the historic importance and/or architectural integrity of the historic resource.
 - b. Whether the property owner has made a reasonable effort to properly stabilize and secure the property.
 - c. Whether there is any current reasonable use of existing buildings on the property.
 - d. Whether property maintenance and stabilization represents a financial hardship for the property owner.
 - e. Any future plans of the property owner for alternative uses of the property.
6. Recommendation of the Historical Commission. Within thirty (30) days of its meeting the Historical Commission shall forward written findings to the Borough Council relative to the claim of demolition by neglect addressing the criteria outlined in this Section.
7. Final Decision on Demolition by Neglect. Within thirty (30) days of receipt of the report, the Borough Council shall review the findings of the Historical Commission. The property owner shall be given ten (10) days notice of the Borough Council meeting. The Borough Council shall consider the report of the Historical Commission as well as any evidence, reports or testimony of interested parties and shall render a decision as to whether or not a demolition by neglect has occurred. The decision shall consist of one of the following based on the evidence and testimony presented:
- a. A demolition by neglect has occurred and shall be remedied through one or more of the actions listed in this Section.
 - b. A demolition by neglect has not occurred and no further action is required of the property owner.

The Borough Council shall, within fifteen (15) days of the aforesaid public meeting, send official written communication of its decision to the property owner including required actions.

8. Initial Action Required of Property Owner. If the final decision of the Borough Council is that a Demolition by Neglect has occurred the decision shall indicate what measures shall be taken to rectify the situation including an initial action with a deadline for compliance of sixty (60) days. For unoccupied properties, the initial action shall be to adequately secure and stabilize the property and turn off utilities. If the deadline for initial action passes without compliance by the property owner, the Borough Council shall take additional action including one or more of the following:

- a. Granting a deadline extension if the property owner has demonstrated due diligence in correcting adverse conditions;
- b. Code enforcement including fines; or
- c. An agent for the Borough may enter the property to secure and repair adverse conditions with a lien placed on the property to recover costs and expenses.

9. Additional Actions Required of Property Owner. After the initial action one or more of the following additional actions with deadlines for compliance, may be required of a property owner when the Borough Council determines that a Demolition by Neglect remains in effect:

- a. Unoccupied historic resources shall be properly secured at the property owner's expense in accordance with the National Park Service Preservation Brief # 31 and utilities turned off.
- b. The property owner, or authorized agent, shall apply for a demolition permit consistent with this Section.
- c. A designated agent for the Borough shall enter, repair and secure the historic resource to prevent further deterioration with costs to be recovered from the owner through a lien placed on the property.
- d. If conditions warrant, code enforcement action with the findings of the Historical Commission and Borough Council forwarded to the proper authority.
- e. Preparation of archival documentation for the historic resource as set forth in this Section.

10. Periodic Inspections. Throughout the course of proceedings the Borough Council may require periodic inspections of the property to monitor conditions and ensure compliance. The interior and exterior of the historic resource shall be inspected periodically by the Building Inspector, a member of the Historical Commission, and the owner or a designated agent to determine compliance.

I. **Emergency Measures.** In the event that a historic resource is damaged by casualty and the owner does not take steps necessary to stabilize and protect the historic resource until either restoration proceeds or a permit for demolition is issued, the Borough may enter the property and repair and secure the historic resource to prevent further deterioration with costs to be recovered from the owner through a lien placed on the property.

J. **Documentation of Historic Resources**

1. **Contents.** The documentation required for a historic resource may depend on the nature of the resource to be demolished. The Historical Commission may prepare or procure documentation and recordation of any or all of the following:

- a. A detailed description of the historic resource and its context, including topography, vegetation, landscaping, driveways, structures and features;

- b. A detailed site plan of the historic resource;
 - c. Measured floor plans, if applicable, and exterior elevations;
 - d. Measured drawings of individual elements of the historic resource;
 - e. Comprehensive photographic record of the major exterior elevations, general photographs of each room, and individual photos of significant decorative elements. Photographs may be black and white or color, and/or in digital format, so long as any prints are of archival quality;
 - f. Chain of title or other information related to the history of the historic resource;
 - g. Documentation of prior uses and historical events associated with the resource;
 - h. A statement of the significance of the historic resource and its context to the Borough and environs.
2. **Professional Preparation.** Such documentation, if required by the Historical Commission, shall be prepared by a person or firm with experience and qualifications relating to historic resource documentation.
3. **Submission.** Two copies of such documentation, all of which shall be of quality and scale acceptable to the Historical Commission, shall be delivered to the Historical Commission for review and approval.
4. **Acceptance.** Upon approval by the Historical Commission, one copy shall be forwarded to the Borough Zoning Officer with evidence of such approval to be added to the property information on file. The second copy shall be retained in the records of the Historical Commission.
5. **Procurement and Costs of Documentation of Historic Resources.** The Historical Commission shall coordinate, and the Borough shall pay for, the performance of documentation efforts including selecting and engaging any professional(s) to conduct the same.
- a. The Property Owner shall provide any reasonable information requested by the Historical Commission or their engaged professional in the performance of these tasks.
 - b. To facilitate and expedite the gathering of documentation of historic resources, the Historical Commission shall solicit standing proposals annually from no fewer than two qualified professionals. Such proposals shall be itemized for typical tasks which are contemplated as part of the documentation requirements under this Section with modifications possible for unusual or extraordinary tasks as may be required based on the nature of the documentation or the nature of the historic resource.
 - c. The selection and retention of any professional(s) to perform documentation as required under this Section shall be at the sole discretion of the Historical

Commission. The Borough Council may limit or direct this discretion via resolution.

- d. In the event that any property owner is determined to have engaged in demolition by neglect under this Section, then the property owner shall pay to the Borough any costs incurred by the Borough in producing the documentation as required under this Section, subject to a maximum limit of \$1,000.
 - (i) Should the property owner fail to make payment in full against these costs within thirty (30) days of written demand for the same by the Borough, then each subsequent day after the expiration of such time period shall constitute a separate offense hereunder.
 - (ii) In addition to any other remedy available under this Ordinance, the Code of the Borough of Malvern, the Pennsylvania Borough Code, or other applicable law, the Borough may bring an action to enforce the repayment requirements described above before a magisterial district judge in the form of a summary offense, subject to a fine of \$1,000 per offense.

K. Integrity of the Historic Setting.

1. **Purpose.** The subdivision or land development of a lot which contains a historic resource shall be accomplished in such a manner that the resulting lot that will contain the historic resource preserves the integrity of the historic setting and effective use of the historic resource. A goal of the Borough shall be to preserve outbuildings, significant site features, immediate yard areas, and public views associated with the historic resource and preserve or create public views of the historic resource.
2. **Historical Commission Responsibilities.** Review and recommendations regarding the historic resource, its subdivided lot, the effect on adjoining parcels which contain previously identified historic resources, and the proposed land development shall be made by the Historical Commission to the Planning Commission and the Borough Council within the prevailing timeline of the Subdivision and Land Development process.
3. **Lot size and configuration.** The size and configuration of the subdivided lot shall depend upon the historic resource and the characteristics of the landscaping of the subdivided lot and adjacent lots. Lot boundaries shall conform to the lines of identifiable landscape features on the site. The Borough may require that a lot size be increased above the minimum lot size for the zoning district in which the resource is located in order to preserve and protect a historic resource.
4. **Density bonuses.** No density bonuses shall be granted to properties where a historic resource has been demolished or demolished by neglect by the current owner in contravention of this Section.

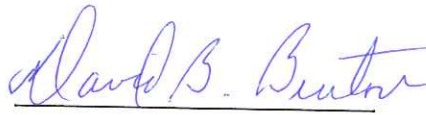
Effective Date. This Ordinance shall become effective upon enactment as provided by law and as described herein.

ORDAINED by Borough Council this 17th day of November, 2015



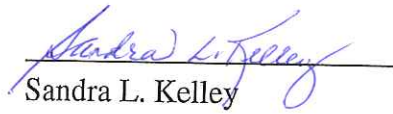
David G. Bramwell
President, Borough Council

APPROVED by the Mayor this 17th day of November, 2015



David B. Burton
Mayor

ENACTED this 17th day of November, 2015



Sandra L. Kelley
Borough Secretary

MALVERN BOROUGH HISTORICAL ORDINANCE LIST OF PROPERTIES INCLUDED IN TIER 1 AND TIER 3

Tier 1 Properties:

Paoli Massacre Grounds (Paoli Battlefield)
Paoli Memorial Grounds
First Baptist Church of Malvern

Monument Avenue
148 Channing Avenue

Tier 3 Properties:

227 E. Broad Street
326 E. Broad Street
328 E. Broad Street
3-5 Channing Avenue (106-108 E. King Street)
203 Channing Avenue
211 Channing Avenue
221 Channing Avenue
233 Channing Avenue
203 Green Street
25 High Street
322 E. King Street
115 Monument Avenue
124 Monument Avenue
137 Monument Avenue
227 Monument Avenue
455 Monument Avenue
17 Powelton Avenue
19 Powelton Avenue
3 North Warren Avenue
121 Woodland Avenue