

ORDINANCE NO. 2009-3

**BOROUGH OF MALVERN
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING THE BOROUGH OF MALVERN ZONING ORDINANCE TO
PROVIDE FOR MULTI-USE DEVELOPMENT IN THE C-4 HIGH INTENSITY COMMERCIAL
DISTRICT.**

The Borough Council of the Borough of Malvern, Chester County, Pennsylvania, hereby ORDAINS that:

- 1. The Borough of Malvern Zoning Ordinance of May 21, 2003, as amended, Article XV, C-4 HIGH INTENSITY COMMERCIAL DISTRICT, Section 1501(B) is hereby amended, by adding the following:**

(13) Multi-Use Development, as per Section 2425.

- 2. The Borough of Malvern Zoning Ordinance of May 21, 2003, as amended, Article XXV, Off-Street Parking and Loading, Section 2501.C is hereby amended by adding the following:**

Multi-Use Development Parking. It shall be the burden of the applicant to present evidence of the parking needs of the proposed Multi-Use Development. It shall be presumed that the number of on-site spaces required is the sum of the spaces required by all of the uses according to Section 2501.B of the Zoning Ordinance. Multi-Use Developments shall not be entitled to utilize Section 2501.C "Off-Site Parking Alternatives" except to the extent specifically approved by Borough Council upon presentation of proof by the applicant that any such alternatives will provide enough parking spaces to avoid overflow parking. Borough Council, in granting conditional use approval, may attach specific parking requirements that reduce the requirements of Article XXV where Borough Council makes a decision using the criteria of Article XXIV relating to Multi-Use Developments.

- 3. The Borough of Malvern Zoning Ordinance of May 21, 2003, as amended, Article II, Definitions is hereby amended, by adding new definitions or amending existing definitions as follows, indicated by interlineation:**

TRACT. One (1) or more contiguous lots within the Borough, assembled for the purpose of unified development, including a multi-use development, planned residential development, multi-family development, planned shopping center, planned office park, industrial park, cluster development or lot averaging development, or a mobile home park.

MULTI-USE DEVELOPMENT. A lot or building or combination of lots or buildings on one or more unified development tracts, erected, altered, used and/or occupied for any combination of the uses permitted by Section 2425, "Multi-Use Development."

DWELLING UNIT. A room or group of rooms for one (1) family located within a residential building and forming a single habitable unit with a private access and complete independent housekeeping (kitchen, bathroom, bedroom) and living facilities. Multi-Use Developments may provide for upper floor dwelling units in buildings with non-residential components, subject to Section 2425 of this Ordinance.

MASTER DEVELOPMENT PLAN. A plan or plans accompanied by written materials where such are necessary to describe, in graphic form and narrative form, the information required in a Master Development Plan Conditional Use application. Such plan shall be a conceptual plan which visually and verbally defines and describes a comprehensively planned Mixed-Use Development under Section 2425 of this Ordinance.

INDOOR RECREATION FACILITY. A facility such as a studio for dance, martial arts, yoga or other exercise; a facility for fitness training or exercise. Billiards rooms, bowling alleys and firing ranges are excluded from this definition. Notwithstanding the above, principal uses otherwise permitted may utilize pool tables.

4. The Borough of Malvern Zoning Ordinance of May 21, 2003, as amended, Article XXIV, SUPPLEMENTAL USE REGULATIONS is hereby amended, by adding the following:

SECTION 2425. MULTI-USE DEVELOPMENT

- A. Multi-Use Development consists of a lot or building or combination of lots or buildings on one or more unified development tracts, erected, altered, used and/or occupied for any combination of the below listed uses, developed in accordance with a Master Development Plan.
- B. Required Master Development Plan.
1. A Master Development Plan shall be a required component of the Conditional Use application for all proposed Multi-Use Development projects. The Master Development Plan, which is defined in more detail in Section 2425.F.1. below, shall include the proposed buildings, site improvements, building elevations and other information as necessary to present the plan.
 2. Upon Conditional Use approval of a Master Development Plan, the uses and design criteria proposed in the Master Development Plan shall be the uses and design criteria permitted and required for the development of the subject tract(s). Any substantial change in uses or facades constituting a significant deviation from the Conditional Use approval shall require additional Conditional Use approval.
 3. Preliminary and Final Subdivision and Land Development plans submitted for the approved Multi-Use Development shall be in accordance with the Master Development Plan design specifications, documents and plans submitted and approved by Conditional Use.
 4. The tract(s) subject to the Master Development Plan may be subdivided or divided into condominium units or lease units, but only if such division does not interfere with the development of the tract(s) in accordance with the approved Master Development Plan. Any document conveying an ownership or leasehold interest in any portion of the tract(s) subject to the Master Development Plan shall include notice that the development and use of the property is subject to the Master Development Plan.
- C. Permitted Uses. Subject to the Land Use Mix regulations of subsection E, below, any combination of the following uses may be approved by the Borough Council as a component of a Multi-Use Development subject to a Master Development Plan:
1. Parking Garage, Parking Lot, or in-building parking facility designed to serve a Multi-Use Development or Developments and located on the same tract therewith.
 2. Upper Floor Dwelling Units.
 3. Retail Sales Store, including Multi-Shop Retail Stores.
 4. Restaurant, Tavern or similar establishment.
 5. Office, including but not limited to Business or Professional Office or Post Office.
 6. Retail Service Shop, such as bakery, ice cream or similar shop, custom tailoring or millinery shop, clock, watch or jewelry shop, or household appliance repair shop.
 7. Personal Service Shop, such as a barber shop, beautician or clothes cleaner and pressing pick up point, but not including laundry, dry cleaning or clothes pressing establishment.

8. Bank or similar financial institution.
9. Outdoor Café as per Section 2418.
10. Indoor Recreation Facility.
11. Accessory Use as per Section 2401.

D. Area and Bulk Regulations. All Multi-Use Development shall meet the area and bulk regulations as follows, which shall supersede all area and bulk regulations or requirements otherwise applicable in the underlying Zoning District:

1. **Minimum Tract Area.** Two (2) acres.
2. **Minimum Lot Width.** Twenty (20) feet.
3. **Front Build-To Line.** Zero (0) to five (5) feet minimum distance between a building and the front sidewalk.
4. **Minimum Side Yard.** None required.
5. **Minimum Rear Yard.** Twenty (20) feet. The Minimum Rear Yard may be reduced to Ten (10) feet if the applicant demonstrates, to the satisfaction of Borough Council and the Fire Marshall that emergency access to the structure and adjacent structures will remain adequate.
6. **Maximum Building Coverage.** Seventy five (75) percent. Additional building coverage shall be permitted as equal to the non-paved square footage area of all landscaped courtyards, gardens, or tree planting areas, located on upper floor terraces or roof-tops of buildings.
7. **Maximum Lot Coverage.** Ninety (90) percent.
8. **Maximum and Average Building Height.** The maximum building height shall be 65 and the average building height shall be 55 feet. For any building consisting of separate and distinct architectural sections, (an architectural section being a unique building façade, such as an individual row building) the average of all roof sections may not exceed 55 feet and no roof may exceed 65 feet (except as indicated herein, all heights are measured in accordance with the Zoning Ordinance definition of “Building Height” at Section 201). Any averaging of different roof sections shall be weighted based on the horizontal length of each roof section relative to the entire length of the building. For building height purposes, vertical measurement at the mean level of the ground shall be measured from finished, as-built grade.¹

In addition to Article XXIII standards, visual screening of roof top mechanical equipment shall be achieved, where appropriate, through the use of architectural elements including but not limited to parapet walls, roof slopes and dormers.

E. Design Standards

1. Land Use Mix. At a minimum the Master Plan shall include the following requirements:
 - a. At least 10% of the total building area shall be for Office and Retail related uses.
 - b. First floor office and retail space shall range from 30 to 50 feet in depth as measured from the front building façade.
 - c. No residential uses shall be on the first floor.
 - d. No more than 50% of the residential dwelling units shall have less than two (2) bedrooms.

¹ Average building height shall be calculated as the sum of the weighted average of each building section. As an example, for a 50' wide building with two 25' wide sections, one section 65 feet in height and the other 45 feet, the average height would equal 55 feet - $(65' \times 0.5) + (45' \times 0.5) = 55'$.

- e. No off-street parking shall be located between the front of any building and King Street, or within the front portion of buildings along the King Street side, the first floor frontage of which is to be only for retail and office uses.
2. Site Improvements. Required site improvements include the following:
- a. Sidewalks at least 10 feet wide along the King Street frontage with wider sidewalks along outdoor café serving areas.
 - b. On-street parking along King Street.
 - c. Bump-outs at intersections to restrict traffic from travelling in the parking lanes and to improve pedestrian safety.
 - d. Proposed plans for all loading and trash collection shall be provided.
 - e. Parking structures shall not have direct vehicular building entrances on King Street.
 - f. Outdoor lighting shall be in conformance with Section 2307.
 - g. Separate storage facilities for trash and recyclable materials shall be provided in accordance with Section 2424. In addition, all outdoor uses shall provide adequate containers for the separate collection of trash and recyclable materials.
 - h. Streetscape improvements along King Street shall include the following:
 - i. Guidelines for these improvements are included in Appendix A-8 of the Borough Subdivision and Land Development Ordinance.
 - ii. Street trees in tree grates at 45-foot intervals.
 - iii. Applicant shall also investigate and recommend opportunities to provide street tree and sidewalk improvements along the south side of King Street where feasible.
3. Building Design.
- a. The Conditional Use application shall include front, side and rear elevation drawings.
 - b. The King Street façade shall have windows on each floor that are generally compatible with existing fenestration patterns on historic buildings along King Street.
 - c. First floor spaces along King Street shall be designed and used as windowed storefronts. No false storefronts are permitted. Windows shall be predominately of clear glass to permit views into the building or of window displays. Incidental use of decorative stained or etched glass is permitted, provided that most of the window area on each façade is clear.
 - d. All roof-top mechanical equipment shall be screened from street level views.
 - e. All facades that are visible from other properties shall include windows.
 - f. Building exterior surfaces shall replicate natural materials, such as brick, stone, stucco, wood shingles/siding. Any use of vinyl siding is subject to review and approval by the Borough. .

F. Plan Submission Requirements

- 1. Master Development Plan. The base site plan for the Master Development Plan shall be drawn at a scale of not less than one (1) inch equals one hundred feet (100') and shall contain information sufficient to assess the design and impact of future development of the Tract(s), including, but not limited to, the following:
 - a. Schematic groupings of buildings and structures (including a schedule of gross floor areas and heights).

- b. Total building area being proposed, represented by the total square footage of all non-residential development and the number of dwelling units proposed for all residential development.
 - c. Amount of impervious coverage expressed as a total area and as a percentage of total tract area.
 - d. A conceptual depiction of the proposed streetscapes and landscaped area.
 - e. Circulation. The general vehicular and non-vehicular circulation pattern for the entire Tract(s), including points of access to the Tract(s), and the location, dimensions, rights-of-way and ownership of the major road network.
 - f. Phasing Plan. A Phasing Plan that identifies all proposed construction and associated public utilities and infrastructure needs for each phase.
 - g. Plan Detail. These submission requirements shall be indicated in sufficient detail to serve as a firm commitment by the applicant with regard to the future development of the tract(s) and for the Borough Council and the Planning Commission to evaluate the effect of the Master Development Plan on the health, safety and general welfare of the Township. Although a fixed and dimensional layout showing exact building locations, shapes, dimensions, landscape plans and sub-district requirements -- such as is required for land development approval -- shall not be required for Master Development Plan approval, information and specifications shall be provided that clearly set forth design requirements for all subsequent Preliminary and Final Land Development Plans prepared for the proposed Mixed Use Development.
 - h. Anticipated Waivers. Unless otherwise stated in the Master Development Plan submission, compliance with all provisions of the Malvern Borough Subdivision and Land Development Ordinance shall be required. All anticipated requests for waivers of the Subdivision and Land Development Ordinance requirements shall, to the extent feasible at this stage of the development project, be included with the Master Development Plan submission. In addition, in approving a Master Development Plan and/or Conditional Use approval thereof, Borough Council may provide relief to design, area and bulk requirements as might otherwise be applicable in either the Zoning Ordinance or Subdivision and Land Development Ordinance.
 - i. The approved Master Site Development Plan shall be the basis for the Preliminary and Final Land Development Plan submissions and shall be used to determine the design intent when there are discrepancies or omissions in the Land Development Plan submissions.
- G. Criteria For Master Development Plan Application Review. In addition to all other criteria and conditions for conditional use approval, decisions granting or denying conditional use approval shall be based on the following criteria:
- 1. The extent to which the Master Development Plan is consistent with the Borough and County Comprehensive Plans.
 - 2. The extent to which the Master Development Plan's general design and character is reasonably compatible with surrounding properties, including both the improved and natural environment, as well as the following design elements:
 - a. Anticipated building locations, bulk, and height.
 - b. Location and distribution of outdoor recreation space.
 - c. The mix of proposed land uses.
 - d. The extent to which the Master Development Plan adequately preserves significant natural features and historic resources.

- e. The extent to which the Master Development Plan provides safe and adequate transportation systems that include both vehicular and pedestrian access to and from the Master Development Plan Tract(s).
 - f. The extent to which the Master Development Plan is consistent with the public health, safety and welfare.
 - g. The extent to which public facilities and services will be impacted by the development in the Master Development Plan.
 - h. The provision of appropriate landscaping, both on the tract(s) and along public rights-of-way near the tract(s) and/or the payment in lieu of landscaping to fund future landscaping by the Borough.
 - i. The extent to which the Master Development Plan provides safe and adequate vehicular and pedestrian access to and from the tract(s), including on-site circulation, pedestrian and bicycle circulation and safe pedestrian access to adjacent and nearby residential areas, transit stops and neighborhood activity centers. In considering whether the Master Development Plan is adequate from this standpoint, the following elements shall be considered:
 - i. Construction, reconstruction or improvement of the sidewalk network beyond the development tract(s).
 - ii. Provision of traffic signals and signage to facilitate safe access to the development tract(s).
 - iii. Payment of funds in lieu of pedestrian improvements to supplement funds that may be available to the Borough for future installation of such improvements.
 - iv. The extent to which loading areas are designed and managed to reduce delivery vehicle parking on King Street.
 - v. The extent to which “green” materials, systems and techniques are utilized, such as LEED certification.
- H. Infrastructure Improvements. The developer of a Multi-Use Development, in the context of the Conditional Use approval, shall discuss with the borough and agree to reasonable financial contributions for community, recreation, traffic and/or infrastructure purposes, or installation by the developer of actual improvements with a similar value.
- 5. The Borough of Malvern Zoning Ordinance of May 21, 2003, as amended, Article XXIV, SUPPLEMENTAL USE REGULATIONS , Section 2418 OUTDOOR CAFÉ is hereby amended as follows as shown by interlineation:**
- D. This use shall not be located on or extend onto a public sidewalk where the width of said sidewalk is less than ten (10) feet.
- 6. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, parts, or sections hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, part or section thereof not been included herein.**
- 7. All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.**

Passed by Borough Council, this 21st day of April, 2009.

By: _____
Woody J. Van Sciver
President, Borough Council

Approved by the Mayor, this 21st day of April, 2009.

By: _____
Gerard J. McGlone, Jr.
Mayor

Enacted, this 21st day of April, 2009.

BOROUGH OF MALVERN

By: _____
Sandra L. Kelley
Borough Secretary