

MALVERN BOROUGH ZONING HEARING BOARD INSTRUCTIONS and APPLICATION

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

Briefly, the Board has exclusive jurisdiction to hear and decide the following:

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

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

When Applying For A Variance, It Is The Applicant's Responsibility To Demonstrate Each Of the Following Factors (where relevant):

- 1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located; and
- 2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and the granting of a variance is therefore necessary to enable the reasonable use of the property; and
- 3) Such unnecessary hardship has not been created by the applicant or its representative; and
- 4) The variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- 5) The variance, if granted, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

Applicant's Initials: _____

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

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

- a) Substantially increase traffic congestion in the streets.
- b) Increase the danger of fire or panic or otherwise endanger the public safety.
- c) Overcrowd the land or create an undue concentration of population.
- d) Impair an adequate supply of light and air to adjacent property.
- e) Be consistent with the surrounding zoning and uses.
- f) Adversely affect the Comprehensive Plan of the Borough.
- g) Unduly burden water, sewer, school, park, or other public facilities.
- h) Otherwise adversely affect the public health, safety, morals, or general welfare.

SUBMISSIONS: AN ORIGINAL AND 7 COPIES OF ALL DOCUMENTS, INCLUDING ANY PLOT PLANS AND PHOTOGRAPHS, ARE REQUIRED TO BE SUBMITTED WITH THE APPLICATION. They become part of the record and will not be returned to applicant.

IF PLANS ARE MODIFIED OR REVISED AFTER FILING THE APPLICATION BUT BEFORE THE HEARING, THE APPLICANT MUST FILE THE REVISION (AND APPROPRIATE NUMBER OF COPIES) WITH THE BOROUGH OFFICE NO LATER THAN 1 WEEK PRIOR TO THE SCHEDULED HEARING.

PLOT PLAN: For an addition or change to a single residence, the plot plan:

- a) Must be drawn to scale of at least 1"=50';
- b) Must show the layout of existing buildings, driveways, property lines, streets, etc. and the proposed addition or change;
- c) Must show all setbacks for existing and proposed structures and identify neighbors and the type and location of neighboring structures; and
- d) Other pertinent information deemed necessary.

PLOT PLAN: For an addition or change to a nonresidential building or new construction on a vacant property, the plot plan:

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

Applicant's Initials: _____

intends to provide a 20 foot setback, the plan must explain, in table form, the required setback of 30 feet, the proposed setback of 20 feet and the difference of 10 feet.

FOR SUBDIVISION PLANS:

If the applicant requests relief from the Board before submitting a subdivision or land development plan to the Borough Council, the applicant must also submit any plans required by the subdivision ordinance (including survey plans, topographical surveys, sedimentation and erosion plans, etc.) to the Board.

FOR LEGAL NONCONFORMITY:

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

FEEES

The Borough Council has established reasonable fees as set forth in the attached fee schedule and is subject to change. They include compensation for the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The applicant should contact the Borough Manager concerning current fees.

APPLICATION

The application must specify whether the applicant is seeking a variance, special exception, an appeal from a decision of the zoning officer, or some other permission or combination of permits. If the application is for something other than a variance or special exception, the applicant must explain the exact permission sought.

Proof of ownership is required. A deed, tax folio number, agreement of sale, option to purchase, or a lease may be sufficient.

A survey or plot plan of the subject property must accompany the application, and its requirements are described in more detail below.

Applicant should submit its complete, initialed Instructions and Application (all 7 pages) and plot plans to the Borough office no later than the end of the calendar month proceeding the month desired to present its case at a hearing. The Board will attempt to schedule a hearing at the next regularly scheduled meeting upon receipt of a timely filing and the applicant will be notified of the time and date; however, it cannot guarantee a hearing schedule. **An incomplete application will delay the scheduling of a hearing.**

NOTICE REQUIREMENTS

The law requires notice of the hearing be sent to the applicant, to the zoning officer, to any person who has requested to be notified, and to anyone else designated by ordinance. Notice must be posted conspicuously on the subject property, be published in a newspaper of general circulation, and be mailed to neighbors of the property. The applicant must accurately describe the property's location to allow the zoning officer to post the notice at least one week prior to the hearing. All notices will be mailed to the applicant at the subject property's address unless the applicant specifies otherwise on the application.

HEARING

The hearing is a formal judicial proceeding open to the public. **It cannot proceed unless a completed application has been presented and the fee for the hearing has been paid.** A court reporter records the hearing and prepares a transcript. In addition to the applicant, parties to the hearing are the Borough and any person affected by the application who wishes to be a party and has made a timely appearance of record

Applicant's Initials: _____

before the Board. The applicant's sworn testimony, that of its witnesses and any party to the hearing, and any documents and plans presented at the hearing become the formal record and form the basis of the Board's decision. Parties have the right to be represented by counsel and are given the opportunity to respond to the applicant's presentation and present evidence at the hearing. The applicant should be prepared to answer questions from the Board, other parties and the public. Some applications may require more than one hearing. The applicant may use enlargements of its plot plan to aid its presentation, but to avoid confusion, be sure the enlargement data matches the application.

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

CONCLUSION:

THE APPLICANT IS RESPONSIBLE TO MAKE ITS CASE TO THE BOARD IN SUPPORT OF ITS APPLICATION. SUCCESS IS DIRECTLY PROPORTIONAL TO PREPARATION.

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

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

Please return the INSTRUCTIONS and APPLICATION, initialed on each page to indicate that the applicant has read and understands them.

Applicant's Initials: _____

MALVERN BOROUGH ZONING HEARING BOARD
Application for Variance, Special Exception, and Notice of Appeal

Date: _____

1. Applicant's name and telephone number:

2. The location of the property: (Please give the Tax Parcel (Folio) Number if possible):

3. Mailing address of the property:

(NOTE: Notices from the Zoning Hearing Board will be sent to the address above unless applicant completes Section 4.(a) below:)

4. (a) The address for notices, if different from the address of the property:

(b) Applicant's attorney's name and address, if applicant is represented by counsel:

5. The current owner's name and address:

6. Please give a brief, detailed description of the property. (Example: "2.5 acres located at 2525 Borough Road, with three-story residence, adjacent to cemetery, Tax Parcel (Folio) Number 15-2-89.1")

Applicant's Initials: _____

7. What is the present zoning classification of the property involved?

8. What buildings or other structures are now on the property?

9. What is the property being used for now?

10. The reason for this application, choose one:

Variance

Appeal from a determination of the zoning officer or engineer (attach copy of determination appealed)

Special Exception

Other relief as may be granted by the Zoning Hearing Board

11. Indicate by number the relevant sections of the Borough Zoning Ordinance (from the Borough Code) that applicant believes would allow the Zoning Hearing Board to approve the applicant's request.

12. If the applicant is appealing a determination of the zoning officer, attach a copy of the zoning officer's determination and explain the reasons that the applicant believes the zoning officer's determination is incorrect with reference to any applicable sections of the Borough Zoning Ordinance (from the Borough Code).

13. What additions to or improvements in the property does applicant intend to make under this application, if any? Describe below as completely as possible, and attach a survey or plot plan of the

Applicant's Initials: _____

property indicating the size of the lot, size of buildings or other structures now erected and size and location of those to be erected together with all other required plan details. (If the plan submitted with this application does not meet requirements, additional plans may be submitted prior to the scheduled hearing, or a continuance may be necessary.)

14. If the applicant is changing the use of the property, describe the nature of the proposed use and explain why the use should be permitted, listing any sections of the Borough Zoning Ordinance (from the Borough Code) that it believes to be related to its proposal.

Signature of the Applicant or the Applicant's Attorney

Date

Applicant's Initials: _____

RESOLUTION NO. 546

A RESOLUTION REVISING THE MALVERN BOROUGH FEE
SCHEDULE RELATING TO PERMIT AND REGISTRATION FEES

IT IS HEREBY RESOLVED that the Permit and Registration Fee Schedule last revised and adopted on June 15, 2004, is revised and the following shall be the applicable Permit and Registration Fee Schedule for the items enumerated therein until further notice or amendment:

<u>CONTRACTORS' REGISTRATION</u>	<u>FEE</u>
ALL TRADES	\$50.00 annual registration for 12 months from application date

<u>PERMITS</u>	<u>FEE</u>
----------------	------------

BUILDING

Residential (New)

- Basements, garages, porches & decks \$0.08 per square foot
- Living space including finished basements \$0.14 per square foot
- Accessory Structures \$0.14 per square foot; or, \$50.00, whichever is greater

\$50.00 Minimum

Residential (Existing)

- Alterations – Additions \$14.00 per 100 square feet

\$50.00 Minimum

Non-Residential (New or Existing)

\$225.00 first 1000 square feet
\$20.00 each add'l. 100 sq.ft. to 10,000 sq.ft.
\$15.00 each add'l. 100 sq.ft. over 10,000 sq.ft.

MISCELLANEOUS (Cont'd)

Returned Check/Dishonored Check/ Insufficient Funds Fee	\$25.00 per check
Roofing/Siding (Existing)	
• Residential (Single, Duplex/ Semi-Detached)	\$100.00 per dwelling unit
• Townhouses/Condominiums Apartments/Motels	\$100.00 per unit
• Commercial/Industrial/ Institutional	\$100.00 per 1,000 sq. ft.
Signs	\$25.00 per side up to 10 sq.ft./side \$75.00 per side over 10 sq.ft./side \$50.00 Minimum
Soil & Erosion Control Permit	\$150.00 plus cost of Engineering Inspection
Street Opening (See Ordinance 2006-7)	\$100.00 Application Fee; plus, \$75.00 surface opening greater than 20 square feet. \$50.00 surface opening less than 20 square feet; plus, Engineering Inspection Costs
Swimming Pools (over two feet)	\$75.00 above-ground \$100.00 in-ground
Temporary Trailers, Tents, & Buildings (on construction sites) Residential Use	\$150.00 limited to six months

PLAN REVIEW

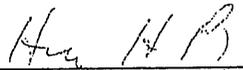
Residential Building – plus each MEP
discipline \$125.00

Commercial Building – plus each MEP
discipline \$250.00

An additional \$2.00 fee shall be assessed for all construction and building and other permits issued pursuant to the Malvern Borough Building Code, pursuant to PA Act 45. *This fee is mandated by, and paid to, the Pennsylvania Department of Labor & Industry.*

This Schedule shall go into effect immediately and shall continue in effect from year to year unless revoked or amended by Resolution or Ordinance.

Resolved by Borough Council this 6th day of June, 2006.



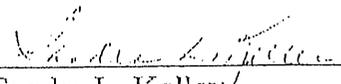
Henry H. Briggs
President, Borough Council

Approved by the Mayor this 6th day of June, 2006.



Gerard J. McGone, Jr.
Mayor

Enacted this 6th day of June, 2006.



Sandra L. Kelley/
Secretary-Manager