

BOROUGH OF MODENA, PA

APPLICATION for CONDITIONAL USE HEARING

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Modena's Borough Council and Code Inspector

3/19/2019

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Modena Borough

5 Woodland Avenue P.O. Box 116

Modena, PA 19358

Phone: 610-384-6777

Email: boroughofmodenapa.org

APPLICATION FOR HEARING CONDITIONAL USE

Applicant's Name: _____

Mailing Address: _____

Telephone: _____ e-Mail: _____

The Applicant is: Owner Agent for Owner Purchaser Other _____

Project Name: _____

Property Address: _____

Project Description: _____

If the Applicant is NOT the Owner, the following information must be provided. Otherwise, this section may be left blank.

Owner's Name: _____

Mailing Address: _____

Telephone: _____ e-Mail: _____

You are not required to have legal representation, but many Applicants choose to have an attorney act on their behalf or be part of the project team. If you will have an attorney, we would like to have the following information. If you provide this information, the Borough will assume that we may contact this individual regarding legal issues and questions relative to this application. This is likely to result in additional charges by the attorney to the Applicant. You are therefore not required to provide this information, but if you do not, the review process may be slowed as we will be required to resolve legal concerns through the Applicant or the plan preparer.

Name of Firm: _____

Name of Attorney: _____

Mailing Address: _____

Telephone: _____ e-Mail: _____

The following section may be filled out by or with the assistance of Borough Staff:

Zoning District(s): _____

Tax Parcel Number(s): _____

Will this project require review by the Historical Commission: YES or NO

Reason conditional use approval is required: _____

Signature of Applicant Signature of Owner: _____

(if different from Applicant)

Date of Signature Date of Signature: _____

PLEASE NOTE: This Application will not be considered complete nor will it be accepted for review unless accompanied by (1) a check or money order payable to Borough of Modena for the full amount of the Borough review fee and (2) a completed Reimbursement Agreement.

TO BE COMPLETED BY BOROUGH STAFF:

I have reviewed this Application Form and accompanying documents and determined that it is sufficiently complete to be accepted for review.

Name of Staff member accepting Application

Date Application deemed complete

APPLICATION for CONDITIONAL USE HEARING APPLICATION INSTRUCTIONS

Applicant: The individual or corporation that is submitting the application, which will be responsible for payment of Borough charges related to the hearing and the administration of the process, and to which the Borough's correspondence will be directed. If the Applicant is a corporation, the name of a specific contact person must also be provided.

You are the **Owner** if your name (or the name of your corporation) is shown on the deed for the subject property. Frequently, an attorney or engineer will act as **Agent for Owner**. This term includes any person or corporation that has a contractual obligation to or agreement for services with the Owner. We consider you the **Purchaser** if you are in the process of purchasing all or part of the subject property, or if you intend such purchase contingent upon approval of this plan. If none of these terms apply to you, indicate **Other** and explain your interest in the space provided.

Project Name: If this is a non-residential project, the name of the business or other agency that will occupy the site should be indicated here. If you do not have a specific name for this project and leave this space blank, we will refer to it by the name of the Applicant.

Property Address: If the project site does not have a street address, please provide a description of the location, including the name of the street that will be the principal point of access for the project and the nearest intersecting street.

Project Description: Briefly describe the project, including the approximate size of the property and a description of the intended use(s) of the property as well as any existing or proposed structures. If you are subdividing the property, indicate the number of lots to be created and their intended use.

Owner's Name: This section does not need to be filled out if the Applicant is the owner: just be sure that you have checked the proper line under "Applicant" to tell us that the Applicant is the Owner. Otherwise, this information MUST be provided and the Owner or their authorized representative MUST sign the application form.

Name of Attorney: As noted on the form, you are not required to have legal representation, although – in light of the formal nature of the hearing – the great majority of our Applicants choose to have an attorney as part of their project team. If you complete this part of the form, we will assume that we have your permission to contact the firm or individual named to respond to questions on legal matters regarding your application.

Borough Staff Assistance: The information required in this section may not be readily available to you. Borough Staff will be happy to assist you in identifying the applicable zoning district, the tax parcel number, and determining whether your project will need to be reviewed by the Borough's Historical Commission. As stated in the Borough's Zoning Ordinance, the Historical Commission has the duty to review all conditional use applications where the property line of the project site is within three hundred (300) feet of the exterior walls of a structure identified by the Borough as a historic resource.

Signatures and dates: We must have the Applicant's signature as well as the signature(s) of the owner(s) if the Applicant is not the owner. These signatures do not need to be notarized. The Application will not be considered complete until an authorized Staff member has provided their name and indicated the date that the application has been found complete. Please note that the 60-day period within which we must schedule your hearing will not start until we have determined that your application is complete.

APPLICATION for CONDITIONAL USE HEARING APPLICATION CHECKLIST

When you submit your application to the Borough, begin the review process for your project, the following items will be required in order for your application to be deemed complete; incomplete applications will not be accepted. Blank versions of the first three items are included with this application package.

- Completed application form
- Signed Reimbursement Agreement
- Signed Legal Counsel form
- Check made out to "Borough of Modena" for Borough review fee
- Complete copies of plan drawings. Seventeen (17) complete copies must be provided for all applications; if your project will be reviewed by the Borough Historical Commission, ten (10) additional complete copies are required.

- Copies of supporting documentation, which may include but is not necessarily limited to reports and calculations supporting the design of proposed storm water management facilities, traffic impact studies, or fiscal impact studies. Technical documents such as these are always reviewed by our consultants, but they are not always provided to the volunteer members of our boards and council members. Borough Staff will advise you as to what supporting documentation must be provided as well as the number of copies needed of each.

PLEASE NOTE: When you are ready to file your application, you must contact the Borough's Secretary and make an appointment. If you do not have an appointment, no qualified personnel may be available to review the application and it may not be accepted. Final acceptance of an application is subject to review for completeness by the Borough's Code Inspector or his designee.

APPLICATION for CONDITIONAL USE HEARING

DESCRIPTION of CONDITIONAL USE PROCESS

Introduction

In Pennsylvania, the authority to regulate the land development processes is given to the most local level of government (i.e., Modena Borough in our case) by the Pennsylvania Municipalities Planning Code, or Act 247 of 1968, which is commonly referred to as the "MPC." Among the regulatory tools permitted by the MPC is the Zoning Ordinance, and one of the principal functions of the Zoning Ordinance is to establish what uses of land are permitted in various parts of the Borough. There are three principal classifications of permitted land use. The first is the "by right" classification. As the name implies, a use by right is permitted with minimal restriction, and in the Borough of Modena most permits for uses by right are issued by staff without the need for the Applicant to appear before any Borough Council. The other permitted use types are the "special exception," which requires review and approval by the Borough Zoning Hearing Board, and the "conditional use," which requires review and approval by the Borough's governing body, which is the Borough Council. Special exceptions and conditional uses are similar in that the Board that grants final approval is permitted under the MPC to attach reasonable conditions to their approval. These conditions may be in response to issues brought to light during the review process and do not need to be anticipated or specifically required by any passage in the Zoning Ordinance. Whether a given use is permitted by right, by special exception, or by conditional use is completely at the discretion of the Borough.

Getting started

Not every project requires approval as a conditional use. Specific types of development permitted as a conditional use are listed in the "use regulations" section for each zoning district in the Zoning Ordinance. Other types of development that require conditional use approval are found in the portions of the Zoning Ordinance that address floodplains, steep slopes, and historic preservation.

- any subdivision that creates fifteen or more lots,
- any project (subdivision or land development) that will create fifteen or more dwelling units, and
- any project that will create 20,000 square feet or more of non-residential floor space.

Borough staff can help you to review the Zoning Ordinance if you are uncertain whether your project will require conditional use approval.

Although there are exceptions, most projects requiring conditional use approval will also require approval as a land development or subdivision. Please note that this is a separate process. For projects that require both types of approval, you should start with the conditional use application. If your project does not fully comply with all of the provisions of the Zoning Ordinance (and you cannot modify it so that it does), then the project will also require one or more "variances" from the Zoning Ordinance. This too is an entirely separate process that requires a formal hearing before the Borough Zoning

Hearing Board. If your project requires a variance, we still recommend beginning with the conditional use process. The reason for this is that the Zoning Hearing Board is very specific about the limits of the variances they grant. The design of a project typically evolves during the course of a conditional use review, and it is possible that the variance required by the project design will change during conditional use process.

If your project will require approval as a subdivision or land development, or if you will be applying to the Zoning Hearing Board for a variance, we strongly recommend that you submit a Sketch Plan for discussion with Borough Staff, the Planning Commission and the Borough Council prior to submitting a conditional use application. A Sketch Plan review is an informal process that allows Borough Staff, the Planning Commission, and the Board of Council to raise concerns regarding a project prior to an Applicant having spent significant funds on design and engineering. There is a separate application form and process for Sketch Plan reviews.

Process

Regardless of whether a project will require review as a subdivision or land development, we recommend that conditional use Applicants provide some sort of plan of the project site showing the improvements that are proposed. This plan may look quite similar to a land development plan. Additional items required as part of the conditional use application are shown on the checklist provided with this application packet. As you prepare your application, you should review the Borough Zoning Ordinance, which lists the Borough's standards for review for conditional use applications. It should be clearly evident from the information you provide that your project will comply with all of the items on the list. Many Applicants provide a written description of their project with their application that states how the project satisfies the conditional use standards.

Conditional use applications are submitted to the Planning & Zoning Committee through the Borough's Secretary. You must make an appointment with her in order to submit a conditional use application. Once the Borough's Code Inspector has determined that your application is complete, the Secretary will take receipt of all of the items you are submitting. The Borough will then be responsible for transmitting your application to our various consultants for review and for scheduling your hearing before the Borough Council. The MPC requires that we schedule your hearing not more than sixty days following our acceptance of your application. With rare exceptions, hearings are scheduled on the same night as a regular business meeting of Council, so the Secretary will most likely schedule your hearing for the evening of the last Council meeting before the end of this sixty-day period. Before your hearing with Council, your application will need to be reviewed by the Borough's Planning Commission and, depending upon the location of the project, by the Borough's Historical Commission. The Borough's Secretary will advise you of when you are scheduled to appear before the Planning Commission and will coordinate with the Historical Commission to be sure that that Commission reviews your project in a timely manner. Neither Commission takes precedence over the other, so the first one you see will just depend upon the calendar and how full their respective agendas are. The Commission(s) will need to have passed a motion making a recommendation to the Board regarding your application prior to the beginning of your hearing. If the Commission(s) has/have not acted on your application by the hearing date, the Borough's Secretary will contact you about how to proceed.

PLEASE NOTE: *You will actually need to send the notice letter TWICE, once by regular first class mail and again by certified mail, return receipt requested. Both letters must be sent at least two weeks prior to the date of your hearing.*

Your meetings with the Planning Commission and (if required) the Historical Commission will be similar to a presentation for a land development plan. You will be given an opportunity to present your project, and the Commission will discuss their concerns with you. Prior to these meetings, Staff will have prepared a memorandum of Staff and consultant concerns. Copies of this memorandum will be provided to you and to each Commission member several days before the meeting. If your project is large, complex, or has numerous concerns, it may take more than one meeting to complete your discussion with the Commission(s). Once each Commission is satisfied that their concerns have been addressed, they will pass a motion recommending that the Board approve your conditional use application. These motions typically suggest conditions of approval to the Board of Council deems appropriate.

In contrast to the meetings with the Commissions, your presentation to Borough Council is a formal hearing. The arrangement is similar to a courtroom, with Council acting as "judge." You will be asked to present testimony, to enter exhibits, and to document what you are proposing and how it complies with our conditional use standards. Council will discuss any remaining concerns with you as well as items that they may make conditions of approval. Council will also invite comments from any members of the public who may be present. There will be a court stenographer present who will make a verbatim record of the proceedings. Nearly all of our conditional use applicants choose to be represented by an attorney at their hearing, even if they did not have one for their presentation to the Commission(s). Once you have completed your testimony and Council has no further questions, Council will direct the Borough Solicitor to prepare a draft version of their Decision and Order ("D&O") regarding your application. If the decision is to approve your application, the D&O will state that and will include all conditions of approval. Copies of the draft D&O will be provided to you prior to your next meeting with Council.

At your next meeting with the Council – officially still part of the hearing – you will have an opportunity to discuss any concerns or questions you may have about the draft D&O. Once any remaining issues have been resolved to the satisfaction of all, Council will take action on the D&O. In most cases, Council will pass a motion to approve the D&O with revisions as may be necessary to address the prior discussion. Once the motion passes, the conditional use is approved subject to the conditions listed in the D&O, the hearing is concluded, and the process is complete.

APPLICATION for CONDITIONAL USE HEARING FEES

Borough Council establishes a fee for the review of conditional use applications at their reorganization meeting held at the beginning of each calendar year.

The current application fee is **\$500.00** and covers your first hearing, but please note:

- The application fee includes the cost of one (1) copy of the transcript (i.e., the written verbatim record prepared by the court stenographer) for the first meeting of your hearing. **Please note: a single hearing typically takes place over the course of several meetings.** You will be charged for transcripts for all meetings comprising your hearing after this first meeting. The charge will vary depending upon the length of the meeting(s) and court stenographer's own fee schedule.

- If – as typically occurs – your hearing is not completed in a single meeting, it will be “continued on the record” to a specific date. If you appear as scheduled and are prepared for the hearing on that date, the only additional charge to you will be for the transcript, as noted above. However, if you are not prepared to appear or to provide testimony on a night that you previously agreed to, we will continue the hearing again, and you will be charged for the court stenographer's appearance. The amount of the appearance charge varies according to the stenographer's fee schedule and whether or not other conditional use applicants appeared – or were scheduled to appear – that same night.

- The application fee is in addition to fees payable under the provisions of the Reimbursement Agreement, which is included in this application package and must be submitted with your application.

- If you withdraw your conditional use application from consideration sufficiently early in the process, you may be eligible for a refund or partial refund of this fee. Any refund will be subject to receipt of applicant request for a refund and will require a determination that the Borough's costs relative to the administration of the plan up to and including the date of such request have not exceeded the fee amount. You are not entitled to any refund if you complete the process and the Borough Council ultimately denies your application.

In addition, there is an **optional fee of \$275.00** to advertise the conditional use decision after the completion of the hearing. This fee covers the cost of publishing the Borough Council's final decision in the Daily Local News and assures that their decision cannot be legally challenged after the appeal period.

APPLICATION for CONDITIONAL USE HEARING REIMBURSEMENT AGREEMENT

The undersigned, a duly authorized representative of the Applicant for the plan identified below, hereby authorizes and directs the staff and consultants of the Borough of Modena ("Borough") to review the said plan, together with all pertinent supporting documentation, and to prepare a report of their findings and recommendations with respect to same for the Borough's use for the purpose of advising the Borough in the course of the review process. In addition, the Applicant hereby authorizes and directs the Borough's consultants to perform all inspections required, both during and following construction, to confirm that all improvements are constructed in full conformance with the plan as may be approved. Such reviews and reports and any services relative thereto shall be carried out in accordance with good engineering practices and the requirements of the ordinances of the Borough.

The Applicant hereby authorizes and directs the Borough's solicitor to review such portion of the plans and documents submitted in conjunction with the application as the Borough may require, and to prepare such additional documentation, including reports, agreements, easements, and other legal documents necessary to insure compliance with the provisions of the ordinances of the Borough.

The undersigned hereby agrees to reimburse the Borough for all costs, expenses, charges, and fees pursuant to such review as may be incurred by the Borough. Such costs, expenses, charges, and fees shall be in compliance with the hourly rates established for the staff and consultants for the applicable calendar year by resolution of Borough Council.

The Borough reserves the right not to commence processing the Applicant's submission until this agreement has been signed. If the Borough elects to begin such processing prior to signature of this agreement, such action shall in no way be deemed a forfeiture of the Borough's right to reimbursement as described herein for costs attributable to such processing, including those costs incurred prior to the date of signature.

This agreement shall in no way require the Borough, its staff, its consultants, or its solicitor to approve or to recommend approval of the Applicant's plan as originally submitted or as may be subsequently modified.

Signature of Applicant or Representative

Printed Name

Project Name Continued on other side

Address of Applicant

Applicant's Telephone Number

E-Mail Address

Date

**APPLICATION for CONDITIONAL USE HEARING
LEGAL COUNSEL**

Please review the following statements and check the appropriate box. If you would like an explanation, you may consult with Borough Council or your own attorney.

Regarding this Application for conditional use, the attendant conditional use hearing, and the decision ultimately to be rendered by Borough Council:

I hereby authorize the Borough's Solicitor to represent both the Board of Council in its adjudicative (i.e., decision-making) capacity and the Borough of Modena as an interested party in the Application. I understand that the representation of the Borough may include cross-examination of the Applicant's witnesses and presentation of the witnesses on behalf of the Borough. By this authorization, I hereby waive any conflict of interest that exists or may arise in the Solicitor's representation of both the Borough Council and Borough of Modena.

I hereby request the appointment of independent legal counsel to represent The Borough of Modena as an interested party in the Application.

I hereby defer this decision until the time of the hearing.

Signature

Date

APPLICATION for CONDTIONAL USE HEARING
SAMPLE NOTIFICATION LETTER

Date

*** SENT VIA CERTIFIED MAIL AND REGULAR U.S. MAIL ***

Name of property owner
Address
City, State Zip

Dear Neighbor:

This letter is to advise you that I have filed a conditional use application with the Borough of Modena. You are receiving this notice, because you own property within three hundred feet of (**street address of the subject property**), which is where I intend to (**briefly describe your project**).

The conditional use hearing before the Borough Council has been scheduled for 6:30 p.m. on (**date of your hearing**) at Modena's Borough Hall, which is located at 5 Woodland Ave., Modena, PA.

The conditional use application will also be reviewed by the Borough's Planning Commission at least one time prior to the hearing. The Planning Commission generally meets on..... All agendas for upcoming meetings are provided on the Borough's website at www.boroughofmodenapa.org or you can call the Borough, M-F, 8a to 12 noon @ 610-384-6777 to confirm meeting dates and when this project is to be discussed.

You are not required to attend the hearing or any other meeting, but these are all open to the general public and you are welcome to attend if you are interested. This is the only notice you will receive regarding this project.

Sincerely,

Your name
