



Approved Minutes Malvern Club, Inc.

905 Malvern Drive
Madison, VA 22727

<http://malvernofmadison.org/>

Board of Directors Meeting, Thursday, October 14, 2021, at the Clubhouse, called to order at 7:00 p.m.

Board Members Present: Fred Bourque, Rick Collins, Grover Dean, Jay Graves, Steve Langone, Diana Wright

Members Present: Doug Beaver, Ceil Collins, Melody Langone, Dona Shamburg, Ellie Tarbous

Decisions & Actions

The minutes of the September 9, 2021, Board meeting were approved unanimously.

The debris lodged in the box culvert on Covered Bridge Drive will be removed at a cost of \$1,000.

Tree trimming along the roadways will be performed this fall. Vegetation will be cut back to a distance of 8 feet from the road's edge. A sign will be put up at the entrance to alert members of trimming days.

The verges of all Malvern roads will be mowed to a width of 48 inches from the road's edge.

A new drop box will be installed on the Activity Center door at the Clubhouse complex. The old drop box at the entrance will be removed.

A Grilling Area will be identified at the Clubhouse. Grilling will be prohibited near the Clubhouse complex buildings.

A Roku box has been installed and is working with the television in the Clubhouse Living Room.

Trick-or-treating will be held on Halloween night. Katie Ignaszewski is coordinating the event.

Two architecture applications were approved, one for a new house on Lot 22 on Pine Court, the other for a garage/storage building on Lot 87 on Windmill Lane.

Committee Reports

Roads. Grover said the pavement on Bee Gum Way at the edge of the road just east of Sleighbell Lane was repaired to prevent further deterioration and/or pavement breakup. The cost was \$9.89 for one bag of patching material. He said he had inspected the road surface opposite the new home construction on Lot 93, Covered Bridge Drive. He performed a visual inspection on October 14th, and the roadway showed no evidence of damage. He said the Roads Committee recommends that the refundable portion of the money held in escrow for the road impact fee be returned to the contractor upon sale of the new residence. Fred said the contractor, who is also the lot owner, expects the property to go on sale in the next 3 weeks.

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Grover said the box culvert on Covered Bridge Drive is clogged with limbs and brush again. He said a large pile of debris had washed down Dark Run and is obstructing the entrance to the culvert. A contract for removal will be required, as the Roads Committee does not have the equipment to perform the work. He said he received a quote from Oak Park Excavating for \$1,000 to clear the culvert. Subsequently, an online vote was held by the Board to accept the quote and contract with Oak Park. The online vote was not unanimous, the vote being six to one in favor. Therefore, a vote is required at the Board meeting. After discussion, the motion to accept the quote and award a contract was approved unanimously.

Lake. Rick said the dam certification is still in the works. He is resending the paperwork for the operational certificate as he doesn't believe the State office got it. He is also in the process of sending in the annual report to DCR, which is now DSIS (Dam Safety Inventory System). He said he plans to run the annual siphon test in the coming week. He said he inspected and cleared the spillway and inspected the lower drain. He had to cut down several small trees and spray the weedy brush with a herbicide.

Grounds. Rick said he had identified a replacement for the drop box at the entrance. The new drop box will be installed at the Clubhouse area. The replacement unit is similar to the old one, with a mail slot, but it attaches to a door, with the mail slot on the outside of the door and the collection box on this inside of the door. It is waterproof and more secure than the current one. The cost is \$116. The new drop box will be installed on the Activity Center door, where it will be under the roof and viewable by the security cameras. The old one at the entrance will be taken down. Rick said he will speak with the postmaster again about getting some more parcel boxes. The mail carrier told him the two new boxes that they gave us are working out just fine. Our landscaping contractor has offered do the roadside tree trimming for \$120 per hour. This is for a two-person crew. He said he thought the job could be done in 2 or 3 days at an estimated cost of less than \$2,000. Rick recommended we accept the offer. He said for long-term cost reduction we may need to hire an arborist for a more thorough job at a greater cost, \$4,000 to \$5,000. A motion was approved unanimously to contract with our landscape contractor for a cost not to exceed \$2,500. Rick said he repaired sections of the Clubhouse and Annex vinyl siding, including the area by the Annex office, which was partially melted by members grilling under the portico next to the outside back wall of the Annex. He said it only takes 160 to 165 degrees to warp and melt most vinyl siding. He said this practice needs to be prohibited. The Clubhouse Committee will designate a Grilling Area out on the back patio, possibly using concrete pavers, as suggested by Diana. Fred said they will put up a sign on the Annex outside back wall that says, "No Grilling."

Clubhouse. Steve said that all of the window screens on the Annex have been replaced with new ones, with the exception of the small high storeroom windows, which do not open. He said he's going to procure an air conditioner cover for the Activity Center AC, so the unit doesn't have to be uninstalled for the winter. He said the two main restrooms in the Clubhouse have been painted. He is getting a quote from the painter to do the toilet stall partitions. Steve said the 12 upholstered folding chairs in the Activity Center are soiled. He said the ladies offered to recover them, but he will try to have them cleaned first. Diana asked whether the Clubhouse could be cleaned more often. Fred advised that Clubhouse housekeeping is performed weekly on a varied schedule, depending on when it is reserved and the housekeeper's availability. Diana said the Roku box has been installed and is working with the television in the Living Room.

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Treasurer. Diana provided the following cash balances as of October 14, 2021:

Operating Funds	\$152,225.21
<u>Reserve Funds</u>	<u>\$149,352.79</u>
Total Checking/Savings	\$301,578.00

Diana said there are 20 members who are not current on their dues. Fred said he had received numerous complaints from members that they had been charged a late fee when they hadn't received an invoice in the mail, as required. After discussion, the issue of late fees was tabled.

Social Events. Diana said Halloween trick-or-treating will be held the night of Halloween. She said she had a flyer provided by Katie Ignaszewski, who will be coordinating the event again. Fred said he'd put the flyer in the newsletter.

Architecture. Fred said he received two applications for review. The first is for a new house on Lot 22 on Pine Court. Sheldon Yoder is the owner/contractor. The application requests a 10-foot setback variance to 90 feet, rather than the standard 100 feet from the roadway edge. He said he walked the property with the owner, and the topography is steep beyond 90 feet. He said there is an existing 50-foot variance that was approved by the Board for this lot back in 2002. This approval is still in force, but the owner doesn't think that the additional variance will be necessary. Fred said the proposed project meets all of the requirements of the Construction Guidelines and that the Architecture Committee recommends approval of the application. He said he had received a check for \$1,500 to cover the refundable road impact fee. He said he would collect a check for \$1,000 to cover the non-refundable fee before authorizing the contractor to start work. The application was approved unanimously. The second application is for a garage/storage building on Lot 87 at 106 Windmill Lane. This is Rodney and Sharon Taylor's property. Fred said the proposed project meets all of the requirements of the Construction Guidelines and that the Architecture Committee recommends approval of the application. The application was approved unanimously.

Old Business

Facebook Account. Fred said he had talked to Mary Woodward. Mary is not the account administrator. She said Mrs. McLeod is the administrator, but she has moved out of Malvern. Diana said she would try to contact her and ask her to close the account.

Unightly Malvern Lots. Grover reported on the research he did on this topic, which was raised at the September 9th Board Meeting. The question is whether Malvern Club, Inc., can require Malvern property owners to mow the grass on their property. Grover noted that Malvern's Deed of Dedication addresses this issue, as follows:

Paragraph 12. Owners of occupied or unoccupied lots shall at all times keep and maintain their property in the development in an orderly manner to prevent and eliminate an accumulation of any garbage, rubbish, debris and other like material on the premises.

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He found two cases in which the Virginia Supreme Court had ruled on similar restrictions: *Friedberg v. Riverpoint Building Committee* (1977) quoted in *Bowman v. Wintergreen Property Owners Association, Inc.* (1994), as follows:

Valid covenants restricting the free use of land, although widely used, are not favored and must be strictly construed and the burden is on the party seeking to enforce them to demonstrate that they are applicable to the acts of which he complains....
Substantial doubt or ambiguity is to be resolved against the restrictions and in favor of the free use of property.

Grover noted that Paragraph 12 requires that each lot owner *shall at all times keep and maintain their property...in an orderly manner to prevent and eliminate an accumulation of* three (3) specific listed items: garbage, rubbish, and debris. In the restrictive covenant any wording relating to grass or its height is absent with only three (3) items listed: garbage, rubbish, debris. Therefore, any violation must be strictly construed to match the language of the covenant, not a perceived interpretation.

Grover referred to a well-known legal maxim noscitur a sociis, "when general and specific words are grouped, the general words are limited by the specific and will be construed to embrace only objects similar in nature to things identified by the specific words." Thus, the language *other like material on the premises* must also be similar in definition to the words garbage, rubbish, and debris. The grouping of the words in Paragraph 12 (*garbage, rubbish, debris*) are like and/or similar items by definition: worthless or useless - waste material, trash - something destroyed, ruins, rubble. (Funk & Wagnalls Standard Dictionary).

Grover said that, based on his reading of the two court decisions listed above, in his opinion there is substantial doubt and/or ambiguity that grass or the height of grass is germane. That is, by its likeness or similarity to the three (3) items mentioned (*garbage, rubbish, debris*) in Paragraph 12, would it require mowing? Furthermore, the omission of the word "grass" from the Deed of Dedication covenants would also enhance the argument that it would not.

A lot owner could fulfill the requirements of Paragraph 12, *maintain their property in the development in an orderly manner*, with tall grass, as long as there was not *accumulation of any garbage, rubbish, debris and other like material on the premises*. Therefore, any attempt to interpret a violation of Paragraph 12 involving grass height and/or mowing, Grover believes, would be resolved in favor of the property owner.

Grover said he would conclude that Malvern Club, Inc., has no authority to require members to mow their grass.

Fred said Paragraph 12 could be revised to specify "grass" or "grass height" and thereby making mowing required. The Deed of Dedication would have to be amended, which takes a two-thirds majority vote of all Malvern lot owners. He said, in the meantime, the Architecture and Grounds Committees will review the Lot Maintenance Policy and revise it to bring it in line with the covenant (Paragraph 12).

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Fred said he had spoken with the owners of Lot 89 on Covered Bridge about their wood pile and that they were planning to remove it during October, when dump fees are not charged at the Transfer Station. He said he would speak with them again in November if the pile is still there. Rick said he had spoken with the owner of Lot 205 on Carriage Lane about trimming or removing the large bush at the corner of Covered Bridge. After discussion, the Board authorized Rick to have the verges of all Malvern roadways mowed to a width of 48 inches from the road edge and the vegetation cut back to 8 feet from the road edge. Fred, Steve, and Diana said they would speak with two members about removing the appliances sitting in their driveways and offer to take them to the Transfer Station.

New Business

Signs at Entrance. Fred said he had received a request to put up a sign at the entrance advertising the Ladies Coffee Gathering, which is held the third Monday of each month at the Clubhouse. (Interested ladies may contact Diana for details.) The Board conducted an online vote on whether to permit putting up more signs at the entrance. The vote failed. After discussion, it was agreed that, in the interest of driver safety, the only signs to be put up on the roadway at the entrance would be signs that advertise Board and Membership meetings and Malvern Club events open to all members, such as the Yard Sale. Signs for events that are for smaller or select groups may be planted in the garden next to the flag where members would see them when getting their mail.

Open Forum

Entrance Lighting. Ellie asked that the entrance island and the roadway around it be better lighted. She said at night she can see the sign, which is illuminated, but she can't see where the road is. Fred said the Board would investigate and come up with a solution.

The meeting was adjourned at 8:41 p.m.

Respectfully submitted:
Jay Graves
Director