

**EAST BRANDYWINE TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
ORDINANCE NO. 3 of 2023**

AN ORDINANCE OF THE TOWNSHIP OF EAST BRANDYWINE, CHESTER COUNTY, PENNSYLVANIA, AUTHORIZED BY THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE AMENDING THE EAST BRANDYWINE TOWNSHIP CODE, CHAPTER 399, TITLED "ZONING," AND KNOWN AS THE EAST BRANDYWINE TOWNSHIP ZONING ORDINANCE OF 1989, BY AMENDING ARTICLE XIX, TITLED "ZONING HEARING BOARD" AND ARTICLE XX, TITLED "AMENDMENTS"

IT IS HEREBY ENACTED by the Board of Supervisors of East Brandywine Township, Chester County, Pennsylvania, that Chapter 399 of the Code of East Brandywine Township, titled "Zoning," is amended as set forth in Sections 1 and 2 hereinbelow:

SECTION 1. Article XIX, titled "Zoning Hearing Board", is amended as set forth in Exhibit A attached hereto and incorporated herein by reference, specifically by deleting text indicated by ~~strikethrough~~ and adding text indicated by underlining.

SECTION 2. Article XX, titled "Amendments", is amended as set forth in Exhibit B attached hereto and incorporated herein by reference, specifically by deleting text indicated by ~~strikethrough~~ and adding text indicated by underlining.

SECTION 3. Severability. 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, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

SECTION 4. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 5. Effective Date. This Ordinance shall be effective 5 days following enactment, as by law provided.

ENACTED this 6 day of April, 2023.

**BOARD OF SUPERVISORS
EAST BRANDYWINE TOWNSHIP**

ATTEST:



Carl K. Croft, Chairman



Kyle P. Scribner, Vice Chairman

Lisa Taraschi, Secretary

Jason R. Winters, Member

EXHIBIT A

Article XIX
Zoning Hearing Board

§ 399-138 Membership.

A. Appointment. [Amended 2-17-1997]

- (1) The members of the Zoning Hearing Board shall consist of five residents of the Township appointed by resolution of the Board of Supervisors. Each term of office shall be five years and shall be so fixed that the term of office of one member shall expire each year. ~~The Zoning Officer shall not be eligible to serve as a member.~~
 - (2) The Board of Supervisors ~~of East Brandywine Township shall annually~~ may appoint by resolution from one to three ~~two~~ alternate members to the East Brandywine Township Zoning Hearing Board. Said members shall be residents of the East Brandywine Township and shall have a term of office of three years. ~~The Zoning Officer shall not be eligible to serve as an alternate member.~~ [Added 3-17-1998 by Res. No. 98-07; amended 8-20-2003 by Ord. No. 03-04]
- B. Vacancies. Appointments to fill vacancies on the Zoning Hearing Board shall be for the duration of the unexpired portion of the term only.
- C. Removal of members. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors. No vote shall take place until such time as the member has received a fifteen-day advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
- D. The term "Board," if and when used in this article, shall mean the Zoning Hearing Board.

§ 399-139 Organization.

- A. Conduct of the Board. The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board. The Board may appoint a hearing officer from its own membership to conduct the hearing on its behalf, and the parties may waive further action by the Board and accept the decision or findings of the hearing officer as final, as provided in § 908 of the MPC ~~Municipalities Planning Code~~.
- B. Establishment of procedure. The Zoning Hearing Board may make, alter

and rescind rules and forms for its procedure consistent with the ordinances of the Township and the laws of the Commonwealth. Such rules and forms may require applicants and/or parties to Board proceedings to provide properly certified or authenticated surveys, plans, reports and like documents to the Board. The Board shall maintain full public records of its business. [Amended 4-5-1995]

§ 399-140 **Expenditures; fees.**

- A. Expenditures. Within the limits of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be established by the Board of Supervisors.
- B. Fees. An applicant or appellant before the Zoning Hearing Board shall pay to the Township at the time of filing the application or appeal, the fees deposit with the Zoning Officer the appropriate filing fee. Fees shall be as established by resolution of the Board of Supervisors, for purposes as prescribed in § 908(1.1) of the MPC. Municipalities Planning Code.

§ 399-141 ~~Powers and functions~~ Jurisdiction.

- A. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final decisions in the matters designated by Section 909.1(a) of the MPC attached as Attachment 6 of this chapter and incorporated herein by reference and made a part hereof.
- B. For special exception applications, the Zoning Hearing Board may grant a special exception only if the application complies with all of the express standards and criteria set forth in this chapter applicable to the specific special exception use. The Zoning Hearing Board has no jurisdiction to grant a variance from any of the express standards and criteria. If an express standard and criteria cannot be complied with, the application shall be considered and decided as an application for a use variance.

~~The Zoning Hearing Board shall function in strict accordance with and pursuant to the Municipalities Planning Code and shall have the following powers and functions:~~

- A. ~~Appeals from the Zoning Officer. The Board shall hear and decide appeals where it is alleged that the Zoning Officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map of the Township or any valid rule or regulation covering the duties of the Zoning Officer.~~
- B. ~~Special exceptions. The Board shall hear and decide requests for special exceptions authorized by this chapter in accordance with the standards and criteria set forth below. The Board may attach such reasonable conditions and safeguards as it may deem necessary, as prescribed in § 399-145, to implement the purposes of this chapter.~~
- C. ~~Variances. The Board shall hear requests for variances where it is alleged that the provisions of this chapter create unnecessary hardship on an applicant when applied to a tract of land. In granting a variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary, including those prescribed in § 399-144, to implement the purposes of this chapter.~~
- D. ~~Validity of the Zoning Ordinance. The Board shall hear and make findings on challenges to the validity of any provision of this chapter with respect to substantive questions.~~

§ 399-142 ~~Public hearing procedures.~~ Standing before the Zoning Hearing Board and hearing procedure.

~~The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:~~

- A. Standing. Filing appeals and requests to the Zoning Hearing Board. Requests for hearings before the

~~Zoning Hearing Board shall be made as follows:~~

- (1) A substantive challenge or an appeal to the Zoning Hearing Board pursuant to Sections 909.1(a)(1), (3), (4), (7), (8) or (9) of the MPC (attached as Attachment 7 of this Chapter and incorporated herein by reference and made a part hereof) ~~An appeal to the Zoning Hearing Board~~ may be filed by the landowner affected, any officer or agency of the Township, or any person aggrieved. Such appeal shall be taken within the time as stipulated by the MPC Municipalities Planning Code and the Rules of Procedure of the Zoning Hearing Board, if any, by filing with the Zoning Officer a notice of substantive challenge or notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Zoning Hearing Board all the papers constituting the record upon which the action appealed from was taken.
 - (2) An application request for a variance or special exception may be filed by any landowner, ~~or any tenant with evidence of consent from the landowner.~~
 - (3) ~~The appropriate fee, established by the Township, shall be paid in advance for each appeal or application for a special exception or variance.~~
- B. Notice. Upon filing a request for a hearing, the Zoning Hearing Board shall fix a reasonable time and place for a public hearing and shall give notice thereof as follows:
- (1) By giving public notice thereof, as defined in § ~~399-9300-17~~ 300-17 of this chapter.
 - (2) By mailing providing, by certified mail, a written notice thereof to the applicant or appellant at least 14 days before the date fixed for the hearing.
 - (3) By mailing a written notice thereof to the Zoning Officer, the Township Secretary, each member of the Board of Supervisors, each member of the Planning Commission, ~~the Director of the Chester County Planning Commission,~~ and to every person or organization who shall have registered with the Board for the purpose of receiving such notices, ~~accompanied by the appropriate mailing fee. The Board of Supervisors may fix an annual fee for provision of notices to such registered persons or organizations.~~
 - (4) By posting the written notice thereof of said hearing in a conspicuous location on the affected tract of land, at least one week prior to the hearing.
 - (5) ~~When the Board shall so order, B~~ by mailing ~~or delivering~~ written notice thereof to the owner, ~~if his residence is known, or to the occupier of every lot on the same street within 1,000 feet (measured along the street frontage) of the lot~~ subject of the hearing or building in question, and of every lot not on the same street but within a 1000 one thousand-foot radius of the said lot ~~or building~~, provided that failure to give notice as required by this paragraph B(5) shall not invalidate any action taken by the Zoning Hearing Board.
 - (6) The notice herein required shall state the date, time and place of the hearing, the location of the lot or building subject of the application or appeal, and the general nature of the request-question involved.
- C. The hearing shall be scheduled and conducted and the application or appeal shall be decided in accordance with Section 908(1.1) of the MPC, attached as Attachment 8 of this chapter and incorporated herein by reference and made a part hereof.

~~Timing. A hearing shall be held within 60 days from the official application date requesting a hearing. Where an historic resource impact study is required as part of a special exception application under the terms of this chapter, the application shall not be deemed complete, and the sixty-day period for holding the hearing shall not commence, until the HRIS is submitted. [Amended 11-29-2018 by Ord. No. 05-2018]~~

~~D. Parties to the hearing. The parties to the hearing may be any person or entity entitled to notice under Subsection B above and any other person permitted to appear by the Board.~~

- ~~E. Powers of the Chairman. The Chairman or Acting Chairman of the Board, presiding, shall¹⁹ have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.~~
- ~~F. Rights of the parties. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond, to present evidence, and to argue and cross-examine adverse witnesses on all relevant issues.~~
- ~~G. Exclusion of evidence. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded by the Board.~~
- ~~H. Record of the proceedings. A stenographic record of the proceedings shall be made by a court reporter. The appearance fee for the court reporter shall be shared equally by the applicant and the Board. Any party requesting the original transcript or a copy of the transcript shall bear the cost of same. Copies of graphic or written material received in evidence shall be made available to any party at cost.~~
- ~~I. Communications. Once an application has been duly filed, the Board shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and opportunity for all parties to participate; and shall not take notice of any communication unless the parties are afforded an opportunity to contest the material; and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.~~

~~§ 399-143 Decisions of Board.~~

- ~~A. The Board shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing. Where the application is contested or denied, each decision shall be accompanied by findings and conclusions, together with the reasons for such conclusions. Conclusions based on any provisions of this chapter or of any act, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. All decisions shall be made at a public hearing.~~
- ~~B. Notice of the final decision shall be delivered to the applicant personally or mailed to him not later than the day following its date. The Board shall provide, by mail or otherwise, a brief notice of the decision or findings and a statement of the place where the full decision may be examined, to all other persons who have filed their names and addresses with the Board no later than the last day of the hearing.~~

§ 399-144 Standards for review of variance requests.

- A. Required findings. The Zoning Hearing Board may grant a variance to the provisions of this chapter, provided the findings prescribed in § 910.2 of the MPC Municipalities Planning Code are made where relevant in a given case. § 910.2 of the MPC is attached as Attachment 9 of this chapter and incorporated herein by reference and made a part hereof.
- B. Conditions. In granting any variance, the Zoning Hearing Board may attach and impose such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the MPC.
- C. Design standards. The applicable standards of Article **XIII** of this chapter shall be complied with.

§ 399-145 Standards for review of special exception requests.

The Zoning Hearing Board shall hear and decide all requests for special exceptions, as identified within this chapter, in accordance with the following standards:

- A. Relationship to the Comprehensive Plan. Consideration of the size, scope, extent, and character of the proposed special exception and assurance that such proposal is consistent with the purposes and

- B. Suitability of the tract. Consideration of the suitability of the proposed tract including, as applicable, environmental conditions, highway access, and availability of sewer and water service.
- C. Impact on existing neighborhood character; consideration of the extent to which the proposed special exception will alter unduly the character of the existing neighborhood and adjacent tracts, and the effectiveness of proposed or potential mitigation measures. Where required by this chapter, an historic resource impact study prepared by the applicant and the review and recommendations of the East Brandywine Township Historical Commission shall be presented to the Zoning Hearing Board by the applicant and made a included as part of the record of for the hearing. **[Amended 11-29-2018 by Ord. No. 05-2018]**
- D. Impact on circulation. Consideration of the effects the proposed special exception may have on traffic patterns and volumes, access, and parking.
- E. Economic impact. Consideration of the character and type of development proposed in terms of generating revenue for the Township and imposing demands on municipal services.

§ 399-146 (Reserved)

EXHIBIT B

Article XX
Amendments§ 399-147 **Power of amendment.**

The Board of Supervisors may from time to time amend this chapter, including the Zoning Map and its overlays, by proceeding in the manner prescribed in this article and in accordance with the applicable provisions of the MPC. Municipalities Planning Code.

§ 399-148 **Initiators of amendment proposals.**

- A. Proposals for amendment of this chapter may be initiated by the Board of Supervisors, including a municipal curative amendment in accordance with § 609.2 of the MPC of Supervisors on its own motion, by the Township Planning Commission, by a landowner as a landowner curative amendment in accordance with § 609.1 of the MPC, or by petition of one or more landowners of property to be affected by the proposed amendment.
- ~~B. A landowner may submit a proposed curative amendment, challenging the validity of the Zoning Ordinance, in accordance with the terms of § 609.1 of the Municipalities Planning Code. The Board of Supervisors shall proceed and act upon any such proposal in the manner stipulated by § 609.1.~~

§ 399-149 **Procedures for consideration of proposed amendments.**

- A. The Board of Supervisors shall determine in its sole discretion whether to consider a landowner petition authorized by § 399-148.A hereinabove. The Board of Supervisors shall notify the petitioner within 60 days of the filing of the petition whether the petition will be considered. If the Board of Supervisors determines to consider the landowner petition, the procedure set forth in § 399-149.B shall be followed.
- B. The Board of Supervisors shall comply with the procedural and notice requirements of §§ 609, 609.1, 609.3 and 610 of the MPC for proposed amendments to this chapter, including Zoning Map and overlay map amendments, as applicable in a given case.
- ~~A. Proposals initiated by the Board of Supervisors. The Board of Supervisors shall refer every proposed amendment that it originates, or that is submitted to it and deemed appropriate for its formal consideration, to the Township Planning Commission and the County Planning Commission.~~
- ~~B. Proposals initiated by the Township Planning Commission. The Township Planning Commission may at any time transmit to the Board of Supervisors any proposal for the amendment of this chapter.~~
- ~~C. Proposals initiated by property owners' petition. Each petition by one or more owners of property to be affected by a proposal for amendment shall be submitted in writing to the Township Secretary, together with a fee in accordance with a fee schedule adopted by resolution of the Board of Supervisors. No part of such fee shall be refundable to a petitioner. Upon receipt of said petition, the Board of Supervisors shall transmit a copy of the petition to the Township Planning Commission and the County Planning Commission.~~
- ~~D. Referral to Township and County Planning Commission.~~

~~(1) Any proposed amendment, other than one originated by the Township Planning Commission²², shall be referred by the Board of Supervisors, at least 30 days prior to the hearing on the amendment, to the Township Planning Commission. That Commission shall consider whether or not such proposed amendment would be, in its view, consistent with and desirable in furtherance of the comprehensive plan upon which this chapter is based, as the same may be modified from time to time. The Commission shall transmit its conclusion thereon, together with its reasons therefor, to the Board of Supervisors. The Board of Supervisors shall take such conclusion and reasons into consideration in reaching its decision, but shall not be bound thereby.~~

~~(2) All proposed amendments shall be submitted by the Board of Supervisors to the Chester County Planning Commission for review and comment, in accordance with the terms of Article VI of the Municipalities Planning Code. The Board shall not act upon the proposed amendment until a report is received from the County Planning Commission or the time period for such a response has elapsed; the Board shall not be bound by the recommendations of the County.~~

~~§ 399-150 Public hearing for proposed amendments.~~

~~A. The Board of Supervisors shall determine whether any proposal for amendment prepared and submitted in accordance with § 399-149 is appropriate to be presented at a public hearing. Where the Board deems it appropriate, the procedure for notice, hearing and enactment shall be as set forth in the Municipalities Planning Code, as from time to time amended. [Amended 8-20-2003 by Ord. No. 03-05]~~

~~B. The Board of Supervisors shall, by resolution, fix the time and place for the public hearing, and shall give notice of such hearing as prescribed in § 610(a) of the Municipalities Planning Code. The notice shall state the particular nature of the matter to be addressed through the proposed amendment and a reference to a place in the Township where copies of the proposed amendment may be examined or purchased at a charge not exceeding the cost thereof.~~

~~C. If the proposed amendment involves a Zoning Map change, notice of the public hearing shall be conspicuously posted by the Township along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.~~

~~§ 399-151 Enactment of ordinance amendments.~~

~~A. In the event substantial amendments are made to the proposed amendment, then the Board, at least 10 days prior to the scheduled enactment, shall readvertise, in a newspaper of general circulation within the Township, a brief summary setting forth all the provisions in reasonable detail together with a summary of the proposed amendments. The Board also shall readvertise any proposed amendment where the scheduled date of enactment is more than 60 days following the date of the last advertisement of the proposed amendment.~~

~~B. Within 30 days after enactment, a copy of the amendment shall be forwarded to the Chester County Planning Commission.~~