

AN ORDINANCE

NO. 4289

**AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, Chapter 155, Entitled Zoning, Article II, Definitions, § 155-2.1, Definitions Of Terms, To Revise The Definition For School And Create A Definition for Private School; Article III, General To Districts, § 155-3.4, Lot Locations, Subsection (F), To Clarify The Requirements For Setbacks For Accessory Buildings And Structures; Article III, General To Districts, § 155-3.5, Frontages, Subsection (F), To Permit Private Electric Vehicle Charging Stations In Front Yards In Residential Districts Provided They Meet the Setback Of The Underlying District; Article III, General To Districts, § 155-3.14, Service And Trash Area Standards, Subsection (A), To Clarify That The Applicable Setbacks Are The Principal Setbacks; Article V, Uses, Tables 5.1, Uses, 5.2, Uses for Institutions, And 5.3, Use Regulations, To Permit Day-Cares As A Regulated Use In the VC, TC, NC, LI, RHR, BMV, And CAD Districts Subject To Certain Standards To Be Provided For Therein; And Article XI, Process And Procedure, To Conform §§ 155-11.1, Zoning Administration, § 11.2, Zoning Hearing Board, And § 11.4, Zoning Enforcement, Penalties, Remedies, And Charges, To Pennsylvania's Municipalities Planning Code.**

The Board of Commissioners of the Township of Lower Merion hereby ordains:

**Section 1.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definition, § 155-2.1, Definitions, is hereby amended to revise the definition for School, and also create a new definition for Private School, as follows:

**PRIVATE SCHOOL**

A school, other than a public school, maintained, or classes conducted, for the purpose of offering instruction for a consideration, profit or tuition to five or more pupils at one and the same time, or to twenty-five or more pupils during any school year, the purpose of which is to educate an individual generally or specially or to prepare an individual for more advanced study, and shall include all schools engaged in such education, except any type of private school which is nonacademic in character.

**SCHOOL**

Any public or private place of education, including preschool, elementary, middle and high school, college and university, which may include instructional and recreational uses, living quarters, dining rooms, and other incidental facilities.

**Section 2.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.4, Lot Occupation, subsection (F), is hereby amended, in relevant part, as follows:

§ 155-3.4. Lot Occupation.

\* \* \* \* \*

- F. Accessory buildings and structures shall be erected to the rear of the principal building and may project into the reduced side or rear yard setback as established in the form tables of the underlying district subject to compliance with the following:

**Section 3.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.5, Frontages, subsection (F), is hereby amended, in relevant part, as follows:

§ 155-3.5. Frontages.

\* \* \* \* \*

- F. Frontage yards are subject to the requirements of Table 3.5.1, Frontage Yard Types, and the following:

- (1) The following structures and equipment are prohibited in frontage yards:

\* \* \* \* \*

- (h) Vehicular fueling device (gas pump, electric vehicle charging station).

- [1] Private electric vehicle charging stations are permitted in residential districts provided that they meet the principal building setback of the underlying zoning district and the following:

- [a] The private electric vehicle charging station shall be placed as close to the principal building as practical.

- [b] The height of the private electric vehicle charging station shall not exceed four (4') feet.

- [c] The private electric vehicle charging station shall be screened from view from any frontage or any abutting residential property, to the extent practical and feasible.

**Section 4.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.14, Service and trash area standards, subsection (A), is hereby amended, in relevant part, as follows:

§ 155-3.14. Service and trash area standards.

- A. All outdoor storage, electrical, plumbing, mechanical, communications equipment and appurtenant enclosures, trash dumpsters and loading areas shall be located in compliance with required setbacks for principal buildings, shall be located behind the line of the facade, and screened from view from any frontage and from any abutting residential property, except across an alley. These shall not be allowed as encroachments on any setback, except for those existing at the effective date of this Code.

**Section 5.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article V, Uses, is hereby amended, in relevant part, as follows:

- 1. Table 5.1, Uses, is hereby amended to reflect Day-care as a regulated use, rather than a permitted use, in the VC, TC, NC, LI, RHR, BMV, and CAD Districts. The relevant portion of Table 5.1 shall hereafter read as follows:

Table 5.1. Uses												
<b>Key:</b> P = Permitted use R = Regulated use C = Conditional use S = Special exception												
Uses	LDR	MDR	VC	TC	NC	I	LI	MC	BMMD	RHR	BMV	CAD
Day-care			R	R	R	(3)	R			R	R	R

- 2. Table 5.3, Use Regulations, is hereby amended to add Day-care as a regulated commercial use in the VC, TC, NC, LI, RHR, BMV, and CAD Districts, subject to the following regulations. Where applicable, Table 5.3 shall hereafter include rows applicable to those Districts which are consistent with the following:

USES	USE PERMITTED			VC/N C	TC1	TC2
	VC	NC	TC			
<b>COMMERCIAL (CONT'D)</b>						
Day-care	R	R	R	Day-care uses shall be permitted subject to the following provisions: <ul style="list-style-type: none"> <li>• <b>Day-care</b> Staff shall monitor drop-offs/pick-ups in order to ensure that surrounding traffic circulation is maintained and unimpeded.</li> <li>• 200 linear feet of space for queuing during drop-offs/pick-ups, in compliance with 155- 8.7B, Loading, unloading and queuing, shall be provided; except that one designated parking space in addition to any parking spaces required pursuant to Article VIII, Parking Standards, may alternatively be provided as a dedicated drop-off/pick-up area in lieu of every twenty feet of required queuing that cannot otherwise be provided.</li> </ul>		

**Section 6.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article XI, Process and Procedure, is hereby amended, in relevant part, as follows:

1. Section 155-11.1, Zoning administration, subsection (B) is hereby amended to read as follows:

§ 155-11.1. Zoning Administration.

\* \* \* \* \*

B. Administrative processes and procedures for determining compliance with the provisions of this chapter are established in this article, except that it is not the intent of this article to amend any applicable standards or procedures established by the Pennsylvania Municipalities Planning Code which may be in conflict herewith.

2. Section 155-11.1, Zoning administration, subsection (E)(8) is hereby amended to read as follows:

§ 155-11.1. Zoning Administration.

\* \* \* \* \*

E. Zoning permits and preliminary opinions.

\* \* \* \* \*

- (8) Application for preliminary opinion. Pursuant to § 10916.2 of the Municipalities Planning Code (53 P.S. § 10961.2), with respect to a challenge related to an application for land development, in order not to unreasonably delay the time when a landowner, who intends to build to secure assurance that the proposed development, relative to this chapter, is free from challenge, and recognizing that the procedure for preliminary approval of their development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any such challenge by adhering to the following procedure:

\* \* \* \* \*

- (b) If the Zoning Officer's preliminary opinion is that the use or development complies with the provisions of this chapter, notice thereof shall be published each week for two successive weeks in a newspaper of general circulation in the Township and the property shall be posted with the preliminary opinion. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. Appeal from a favorable preliminary approval shall be to the Zoning Hearing Board, the time therefor to run from the date when the second notice thereof has been published.

3. Section 155-11.2, Zoning Hearing Board, subsection (B), Jurisdiction, is hereby amended, in relevant part, as follows:

§ 155-11.2. Zoning Hearing Board.

\* \* \* \* \*

**B. Jurisdiction.**

- (1) Pursuant to § 10909.1 of the Municipalities Planning Code (53 P.S. § 10909.1), the Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications consistent herewith.

- (a) The Zoning Hearing Board shall have exclusive jurisdiction in the following matters:

- [1] Substantive challenges to the validity of any land use ordinance, except those brought before the Board of Commissioners pursuant to Sections 609.1 and 916.1(a)(2) of the Municipalities Planning Code, as amended (53 P.S. §§ 10609.1 and 10916.1(a)(2)).
- [2] Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease-and-desist order or the registration or refusal to register any nonconforming use, structure or lot.
- [3] Appeals from a determination related to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.
- [4] Applications for variances under this Code or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section § 10910.2 of the Municipalities Planning Code (53 P.S. § 10910.2)
- [5] Applications for special exceptions under this Code or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section § 10912.1 of the Municipalities Planning Code (53 P.S. § 10912.1).
- [6] Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Code.
- [7] Appeals from the determination of the Zoning Officer with respect to a Preliminary Opinion issued pursuant to § 155-11.1.E(8).
- [8] Appeals from the determination of the Zoning Officer or the Township Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to development not involving Article V or VII applications pursuant to the Municipalities Planning Code (53 P.S. § 10501 et seq. and 53 P.S. § 10701 et seq., respectively).

- (b) Rules of procedure. The Board may adopt rules of procedure in accordance with the several provisions of this chapter as to the manner of filing appeals or applications for special exceptions or variances from the terms of this chapter.

4. Section 155-11.4, Zoning enforcement; penalties; remedies; charges, is hereby repealed in its entirety and shall be replaced with the following:

§ 155-11.4. Zoning enforcement; penalties; remedies; charges.

- A. A failure to secure a building permit, zoning permit or Zoning Hearing Board certificate prior to the erection, construction, extension or addition to a building, when required, or a failure to secure a use registration permit prior to the initiation of that use shall be a violation of this chapter.
- B. The Zoning Officer shall issue an enforcement notice to any person, firm, partnership, corporation, or other entity responsible for violating any of the provisions of this chapter, or any amendment thereto, or any detailed statement or a plan approved thereunder. If the enforcement notice is not complied within the time period set forth in said notice, unless extended by appeal to the Zoning Hearing Board, the Zoning Officer shall order the discontinuance of such unlawful use of structure, building, sign, and/or land involved in said violation or impose such other sanctions described in the enforcement notice.
  - (1) The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
  - (2) An enforcement notice shall state at least the following:
    - (a) The name of the owner of record and any other person against whom the Township intends to take action.
    - (b) The location of the property in violation.
    - (c) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this chapter.
    - (d) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

- (e) That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time in accordance with procedures set forth in the ordinance.
  - (f) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.
- C. In any appeal of an enforcement notice to the zoning hearing board, the municipality shall have the responsibility of presenting its evidence first.
- D. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this chapter, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays, nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the Magisterial District Judge determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the Magisterial District Judge and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this chapter shall be paid over to the Township.
- E. In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building or land is used or any hedge, tree, shrub or other growth is maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the Township, in addition to other remedies, may institute in the name of the Township any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building or land or to prevent any illegal act, conduct, business or use in or about such premises.
- F. Charges and fees for appeals, applications, petitions and certifications shall be paid as set forth in the Township Schedule of Fees, as adopted and amended from time to time by the Board of Commissioners; provided, however, that any filing fee paid by a party to appeal an enforcement



notice to the Zoning Hearing Board shall be returned to the appealing party by the Township if the Zoning Hearing Board or any court in a subsequent appeal rules in the appealing party's favor.

**Section 7.** Nothing in this Ordinance or in Chapter 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 155 prior to the adoption of this amendment.

**Section 8.** Nothing in this Ordinance or in the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Code of the Township of Lower Merion prior to the adoption of this amendment.

**Section 9.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

**Section 10.** This Ordinance shall take affect and be in force from and after its approval as required by law.

Approved by the Board of Commissioners of the Township of Lower Merion this 17th day of April, 2024.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF LOWER MERION

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Todd M. Sinai, President

ATTEST:

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Jody L. Kelley, Secretary