

ORDINANCE NUMBER 2024-01

BRADY TOWNSHIP, BUTLER COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING, IN PART, CHAPTER 350 OF THE CODE OF THE TOWNSHIP OF BRADY, OTHERWISE KNOWN AS THE BRADY TOWNSHIP ZONING ORDINANCE, TO: REVISE NONCONFORMING USE STANDARDS AND ORDINANCE AMENDMENT PROCEDURES; ADD AGRITOURISM AS A PERMITTED USE; DELETE SEWAGE PLANNING EXEMPTIONS FOR MEDICAL HARDSHIPS; UPDATE PRD REGULATIONS AND CONDITIONAL USE AND ZHB HEARING PROCEDURES; AND MAKE OTHER MINOR CHANGES TO ENSURE CONSISTENCY.

IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors of Brady Township, Butler County, Pennsylvania, that Chapter 350, Zoning, of the Code of the Township of Brady is hereby by amended as follows:

§ 1. ARTICLE I General Provisions.

- (a) Section 350-107.C(7), Duties of Public Officials, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

(7) Deleted.

§ 2. ARTICLE II Terminology.

- (a) Section 350-202, Definitions, of the Code of the Township of Brady is hereby amended by the addition of the following:

AGRITOURISM - A low intensity, commercial outdoor educational, historical, cultural, ceremonial or recreational activities or events for which enjoyment of the outdoors in an open space or on land in its natural state is a necessary component.

GOVERNING BODY – The Board of Supervisors, Brady Township, Butler County, Pennsylvania.

- (b) The definition of “Home-Based Business (No Impact)” in Section 350-202, Definitions, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

HOME-BASED BUSINESS (NO IMPACT) - A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, or pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use.

§ 3. **ARTICLE IV** Land Uses.

- (a) Section 350-401, Permitted, Conditional, Uses by Special Exception and Accessory Uses, of the Code of the Township of Brady is hereby amended by the addition of the following:

*D. USES NOT ADDRESSED WITHIN THIS CHAPTER. Whenever a proposed use is not specifically allowed in the Residential or Agricultural Residential Zoning Districts, the Board of Supervisors shall have the authority, at a public hearing, subject to the public notice requirements of **Section 350-1104**, to permit, as a conditional use, the proposed use in accordance with the standards governing the applicable zoning district if it makes a determination that the proposed use is similar to or of the same general character as a permitted or accessory use allowed in the district and is compatible with the intent, general planning objectives and supplemental regulations of this Chapter.*

§ 4. **ARTICLE VI** Planned Residential Development.

- (a) Section 350-601.C, Processing of Tentative Plans, of the Code of the Township of Brady is hereby revised in its entirety to read as follows:

*C. Within 60 days after the filing of an application for tentative approval of a planned residential development, the governing body shall conduct a public hearing on the application, pursuant to the public notice and written notice requirements of **Section 350-1104**.*

- (b) Section 350-601.D, Processing of Tentative Plans, of the Code of the Township of Brady is hereby revised in its entirety to read as follows:

D. The governing body may continue the hearing from time to time, and where applicable, may refer the matter back to the planning commission for a report, provided, however, that in any event, the public hearing or hearings shall be concluded within 60 days after the date of the first public hearing.

- (c) Section 350-601.E, Processing of Tentative Plans, of the Code of the Township of Brady is hereby revised, in part, to read as follows:

E. The governing body within 60 days following the conclusion of the public hearings or within 180 days after the date of filing of the application, whichever occurs first, shall notify the landowner, by official written communication, that the development plan is either:

- (d) Section 350-601.E(4), Processing of Tentative Plans, of the Code of the Township of Brady is hereby revised in its entirety to read as follows:

(4) Failure of the governing body to hold the public hearing or communicate its decision within the time periods required by this

section shall be deemed to be a grant of tentative approval of the development plan as submitted.

- (e) Section 350-601.G(2)(a), Permitted Uses, of the Code of the Township of Brady is hereby amended by the addition of the following;

*[6] Banks;
[7] Restaurants;
[8] Childcare Centers;
[9] Commercial Recreational Facility;
[10] Veterinary Office;
[11] Catering Services;
[12] Professional or Business Offices;
[13] Personal Services;
[14] Retail Sales and Services.*

§ 5. ARTICLE VII Supplemental Regulations.

- (a) Section 350-701.E, Exceptions to One Principal Building or Use Per Lot or Property Rule, of the Code of the Township of Brady is hereby revised in its entirety to read as follows:

E. Only One Principal Building or Use Per Lot Rule.

(1) Generally, a lot shall contain only one principal permitted or approved conditional or special exception use or only one principal building plus accessory buildings. However, an agricultural operation property may contain a dwelling as well as all necessary buildings for that agricultural operation. A commercial or multi-family residential development may occupy several buildings on the same property.

(2) Deleted.

- (b) Section 350-705.F, Individual Manufactured, Mobile or Modular Homes, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

F. Deleted.

- (c) Section 350-706, Home-Based Business (No Impact), of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

- A. The business activity shall be compatible with the residential use of the property and surrounding residential uses.*
- B. The business shall employ no employees other than immediate family members residing in the dwelling.*

- C. *There shall be no display or sale or retail goods and no stockpiling or inventory of a substantial nature.*
 - D. *There shall be no outside appearance of a business use, including but not limited to storage, parking, signs or lights.*
 - E. *The business activity may not use any equipment, machinery or process which creates noise, vibration, glare, fumes, odors, or smoke, or electrical interference, or interference with radio, television, cable or internet reception, which is detectable in the neighborhood.*
 - F. *The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.*
 - G. *The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.*
 - H. *The business may not involve any illegal activity.*
- (d) Section 350-707.A(4), Off-Street Parking, Loading and Unloading, General Regulations, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

(4) Deleted.

§ 6. ARTICLE VIII Conditional Uses and Uses by Special Exception.

- (a) The title and text of Section 350-801, Application Requirements, the Code of the Township of Brady is hereby revised in its entirety to read as follows:

§ 350-801. Conditional Use; Application Requirements.

- (b) Section 350-801.A(2)(a), Application Requirements, the Code of the Township of Brady is hereby revised in its entirety to read as follows:

(a) A detailed description of all aspects of the proposed use.

- (c) Section 350-803, Board of Supervisors, the Code of the Township of Brady is hereby revised in its entirety to read as follows:

§ 350-803. Board of Supervisors; Conditional Use Hearings.

The Board of Supervisors shall conduct conditional use hearings and make decisions in accordance with the following requirements:

- A. *The Board of Supervisors shall hold public hearings, pursuant to the public notice and written notice requirements of **Section 350-1104**, on and decide requests for conditional uses in accordance with the express standards and criteria of this Chapter. The hearing shall be conducted by the governing body, or the governing body may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the governing body. However, the appellant or the applicant, as the case may be, in addition to the Township, may, prior to the decision of the hearing, waive decision or findings by the governing body and accept the decision or findings of the hearing officer as final. In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary.*
- B. *The first hearing before the governing body or hearing officer shall commence within 60 days from the date of receipt of the application unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the governing body or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided that persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.*
- C. *(1) The governing body shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the governing body. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of any statute, ordinance, 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.*
- (2) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.*

*(3) Where the governing body fails to render the decision within the period required by this section or fails to commence, conduct or complete the required hearing as required by this section, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the governing body to meet or render a decision as required by this section, the governing body shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of **Section 350-1104**. If the governing body fails to provide such notice, the applicant may do so.*

D. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

- (d) Section 350-808.C, Bed and Breakfast, of the Code of the Township of Brady is hereby revised in its entirety to read as follows:

C. An approved means of sewage disposal and potable water supply shall be provided.

- (e) Section 350-822.F, Farm Equipment Sales and Service, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

F. Deleted.

- (f) Article VIII, Conditional Uses and Use by Special Exception. of the Code of the Township of Brady is hereby amended by the addition of the following:

§ 350-818.A. Agritourism.

Conditional use in the AR Agricultural Residential Zoning District.

A. Minimum Area Requirements: 25 contiguous acres.

B. All outdoor activity shall cease at 10:00 PM, prevailing time.

C. Approved methods of sewage disposal and potable water supply shall be provided.

D. Adequate off-street, on-lot, all weather parking facilities shall be provided.

E. Site plan shall be submitted with the conditional use application package showing, at a minimum, all existing and proposed facilities, structures, improvements, amenities and property lines.

- F. *All lighting shall be shielded to eliminate glare on adjacent streets and properties.*
- G. *The proposed use shall not significantly affect surrounding lands devoted to farm use.*
- H. *All structures shall meet setback, buffer yard and dimensional requirements of this Chapter for the applicable zoning district.*
- I. *The maximum sound emitted from any source on the site, as measured at the property line with an abutting property, shall not exceed 55 DBA.*
- J. *Parking and other activities on-site shall be arranged so as to provide and allow direct access and egress to the site for emergency vehicles at all times.*

§ 7. ARTICLE IX Nonconforming Uses.

(a) Section 350-902, Nonconforming Uses of Land and Structures, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

§ 350-902. *Nonconforming Uses, Structures and Lots.*

The following provisions shall apply to all nonconforming uses, structures and lots in all zoning districts:

- A. *Continuation. A nonconforming use may be sold or otherwise transferred to other owners and may be continued but shall not be changed in use unless to a conforming use or as otherwise set forth in this Section.*
- B. *Abandonment. If a nonconforming use is discontinued for a period of 12 consecutive months or longer and an intent to abandon such use has been demonstrated, such use shall be deemed to be abandoned and any use of the property thereafter shall be in accordance with the regulations of this Chapter for the zoning district in which the property is located.*
- C. *Enlargement, Expansion or Extension. A nonconforming use may be enlarged, expanded or extended only upon approval by the Board of Supervisors as a conditional use and subject to compliance with the following criteria:*
 - (1) *The extension becomes an attached part of the principal structure and does not utilize additional or adjoining land area other than the original parcel.*
 - (2) *The extension shall not encroach upon the setback, lot area coverage, maximum building height and other dimensional requirements of the zoning district in which the nonconforming use is located.*

- (3) The extension is for the purpose of expanding the existing nonconforming use.*
- (4) The extension does not result in an increase in total floor area or lot coverage area of more than 50% of the existing floor and lot coverage areas.*
- (5) A nonconforming use may not be extended if such expansion will displace a conforming use.*
- (6) Adequate parking shall be provided in conformance with this Chapter to serve both the original and the expanded use.*
- (7) The expansion does not present a threat to the health or safety of the community or its residents.*
- (8) A nonconforming use, when expanded, shall also meet the specific criteria to be applied to particular conditional uses to the extent the use falls within the definition of any such conditional use.*

D. Change of Nonconforming Use.

A nonconforming use shall not be changed unless to a conforming use, except as permitted by approval of the Board of Supervisors as a conditional use and subject to compliance with the following criteria:

- (1) The proposed use is equally compatible or more compatible with the uses permitted in the zoning district than the preceding nonconforming use.*
- (2) The proposed use shall have the same or more limited hours of operation as the existing use.*
- (3) The proposed use shall have reasonably similar or less trips generated.*
- (4) The proposed use shall have similar or less overall impact.*
- (5) The proposed use shall not increase outside storage or noise or have any other adverse impact.*
- (6) A nonconforming use, when changed, shall also meet the specific criteria to be applied to particular conditional uses to the extent the use falls within the definition of any such conditional use.*
- (7) Once a nonconforming use is changed to a conforming use, it may not thereafter revert to a nonconforming status.*

E. Reconstruction of Nonconforming Structures.

If a nonconforming structure is partially or completely damaged or destroyed by fire, collapse, explosion or other disaster, it may be reconstructed or repaired, provided that the reconstruction and repair activities for the structure commence within one year of the date that the original structure was damaged or destroyed and are completed within two years of the date that the original structure was damaged or destroyed. However, reconstruction or repair shall not make the structure more nonconforming, in any respect, than it was prior to damage or destruction.

F. Nonconforming Signs.

- (1) Nonconforming signs may be repaired or reconstructed, provided that no structural alterations are made which increase the gross surface area of the sign; however, nonconforming signs which are damaged or destroyed to an extent of more than 50% of the sign area at the time of destruction shall not be reconstructed except in conformity with the provisions of this Chapter.*
- (2) Nonconforming signs may not be enlarged, added to or replaced by another nonconforming sign, use or structure, except that the interchange of poster panels shall be permitted.*
- (3) Repair or maintenance. Nothing in this section shall be deemed to prevent the strengthening or restoring of any sign or part thereof to a safe condition.*

§ 8. ARTICLE X Signs.

- (a) Section 350-1005.B, Residential Signs, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

B. Repealed.

§ 9. ARTICLE XI Zoning Hearing Board.

- (a) The text “Article XI Zoning Hearing Board” is hereby revised to read as follows:

Article XI Zoning Hearing Board and Other Administrative Proceedings.

- (b) Section 350-1101.B(3), Operation of Board, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

- (3) The Board of Supervisors may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate*

members of the board. The term of office of an alternate member shall be three years. Alternates shall hold no other elected or appointed office in the Township, including service as a member of the planning commission or as a zoning officer, nor shall any alternate be an employee of the Township.

- (c) Section 350-1101.E(1), Operation of Board, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

(1) The Board shall annually elect officers from among its membership, to include a Chairperson, Vice Chairperson and a Secretary.

- (d) Section 350-1101.E(2), Operation of Board, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

(2) Deleted.

- (e) Section 350-1101.E(5), Operation of Board, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

(5) The chairperson (or vice chairperson, if acting), of the Board may designate alternate members of the Board to replace any absent or disqualified member and if, by reason of absence or disqualification of a member, a quorum is not reached, the chairman (or vice chairperson) shall designate as many alternate members of the Board to sit on the Board as may be needed to reach a quorum. Any alternate member of the Board shall continue to serve on the Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Board has made a final decision on the matter or case. Designation of an alternate pursuant to this section shall be made on a case by case basis in rotation according to declining seniority among all alternates.

- (f) Section 350-1101.E(7), Operation of Board, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

(7) Deleted.

- (g) Section 350-1101.E(8), Operation of Board, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

(8) For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Board.

- (h) Section 350-1101.E(9), Operation of Board, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

(9) Deleted.

- (i) Section 350-1103.A, Appeals from the Decisions of the Zoning Officer, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

A. Appeals from the Determination of the Zoning Officer.

- (1) The Board is vested with authority to hear 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 therefore, the issuance of any cease and desist order, or the registration or refusal to register any non-conforming use, structure or lot.*
- (2) An appeal from determination of the zoning officer must be filed within thirty (30) days after notice of the determination is issued. However, if a person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given, the appeal can be filed promptly after the aggrieved person learns of the decision, even if the thirty (30) day-time limit has expired.*

- (j) Section 350-1103.B, Challenges to the Validity of a Land Development Ordinance, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

B. Challenges to the Validity of a Land Use Ordinance or Map.

- (1) A landowner who, on substantive grounds, desires to challenge the validity of a land use ordinance or map which prohibits or restricts the use or development of land in which he has an interest has two choices: (i) a request for a curative amendment or (ii) a substantive validity challenge. The Board has exclusive jurisdiction to hear the landowner's substantive validity challenge.*
- (2) Persons aggrieved by the use or development permitted on land of another by an ordinance or map, who desires to challenge its validity on substantive grounds, shall first submit their challenge to the Board. The Board has exclusive jurisdiction to hear a substantive validity challenge brought by a person aggrieved by a use or development permitted on the land of another.*
- (3) A substantive validity challenge must be in writing, and request that the Board conduct a hearing on the challenge. The request shall contain reasons for the challenge.*
- (4) In reaching its decision on whether the challenged ordinance or map is defective, the Board must consider the testimony of record, any*

submitted amendments, plans and explanatory materials and the following criteria:

- (a) Impact of the proposal upon roads and other public service facilities;*
- (b) If the proposed use is residential, the impact on regional housing needs and effectiveness of the proposal in providing affordable housing;*
- (c) Suitability of the site for the intensity of the use proposed by the site's natural features, such as soils, slopes, woodlands, floodplains, etc.;*
- (d) Impact of the proposed use on the site's natural features, the degree to which these are protected or destroyed, the tolerance of these features to development and any adverse environmental impacts; and*
- (e) Impact of the proposal on preservation of agriculture and other land uses which are essential to public health and welfare.*

*(5) The Board shall commence its public hearings, pursuant to the public notice and written notice requirements of **Section 350-1104**, within sixty (60) days after the request is filed unless the applicant requests or grants an extension of time.*

(6) Based on testimony presented at the hearing, the Board shall determine whether the challenged ordinance or map is defective. If the challenge is found to have merit, the decision of the Board shall include recommended amendments to the challenged ordinance or map which will cure the defects found.

(7) If the Board fails to conduct a hearing on the substantive validity challenge within 60 days of its filing or fails to render a written decision 45 days after the close of the last hearing on the challenge, the result is a deemed denial of the challenge.

(k) Section 350-1103.C(1), Variances, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

(1) The Board is vested with the authority to hear requests for variances where it is alleged that the provisions of this Chapter, if strictly applied, would cause an unnecessary hardship upon the applicant.

(l) Section 350-1103.D, Determinations Upon Nonconforming Uses, of the Code of the Township of Brady is hereby repealed and amended in its entirety to read as follows:

D. Deleted.

- (m) Section 350-1103, Functions of the Zoning Hearing Board, of the Code of the Township of Brady is hereby amended by the addition of the following:

E. Special Exceptions.

- (1) A special exception is a use that the governing body has determined is in the public health, safety, and welfare in the zoning district proposed, but is subject to specific standards and more detailed review.*
- (2) The Board shall hear and decide such requests in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Chapter, as it may deem necessary to implement the purposes of this Chapter.*
- (3) The Board may not grant any use as a special exception. Rather, it may only consider as a special exception a use specifically permitted by this Chapter as a special exception.*
- (4) The applicant for a special exception must first show that the proposed use is a use allowed under this Chapter as a special exception. The applicant must next show that the specific standards and criteria contained in this Chapter for that use are met by the proposed development. Specific criteria, for example, may refer to such factors as lot size, increased setbacks, buffering or landscaping requirements or additional parking spaces, or to special studies such as traffic studies and environmental impact studies.*
- (5) An applicant for special exception is not required to carry the burden of proof of general or non-specific criteria. Examples of non-specific criteria include such provisions that the use may not be more detrimental to the neighborhood or, that the use be in harmony with the spirit and purposes of the district. An opponent bears the burden of proving nonspecific requirements, that is, sufficient evidence that the use would be detrimental to public health, safety, or general welfare. The mere possibility of an adverse impact or speculation or belief of harm is not enough. The objector must show that there is a high probability that the proposed use will generate a harm greater than normally generated by that type of use. An opponent must prove harm by offer of credible and particularized – often expert – evidence.*
- (6) The application for special exception must be granted where the applicant demonstrates compliance with the specific requirements set*

forth in Section 350-819, unless an objector proves that the use would be detrimental to public health, safety or general welfare.

- (n) Section 350-1103, Functions of the Zoning Hearing Board, of the Code of the Township of Brady is hereby amended by the addition of the following:

F. Advisory Opinions. The Board is not authorized to render advisory opinions.

- (o) Section 350-1104, Hearings and Procedural Requirements, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

§ 350-1104. Public Hearings.

- A. After receiving a zoning appeal, challenge to the validity of the zoning ordinance, variance request or other zoning or floodplain related application properly before the Zoning Hearing Board, the Board shall hold public hearings on and decide the request in accordance with the statutory and common law of the Commonwealth of Pennsylvania and the express standards and criteria of this Chapter for the applicable zoning district.*
- B. **PUBLIC NOTICE REQUIREMENTS.** Public notice of the hearings shall be published once each week for two successive weeks in a newspaper of general circulation in the Township. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.*
- C. **WRITTEN NOTICE REQUIREMENTS.** Written notice of the hearing shall be mailed at least 14 days before the hearing to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance, any person who has made timely request to the Board for such notice and to owners or properties adjacent to or directly across the street from the property affected by the hearing. In addition, a copy of the written notice shall be conspicuously posted on the affected tract of land and at the Township building at least one week prior to the hearing.*
- D. The hearing shall be conducted by the Board, or the Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings, shall be made by the Board. However, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.*
- E. The chairperson or acting chairperson of the Board or the hearing officer presiding shall have 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. The parties to the hearing shall be the applicant, the Township and any person affected by the application who has made a timely appearance of record before the Board or hearing officer and any other person permitted to appear by the Board or hearing officer.*
- G. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.*
- H. The Board or hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Township. The cost of the original transcript shall be paid by the Township if the transcript is ordered by the Board or hearing officer or shall be paid by the person appealing from the final decision if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.*
- I. The Board or hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.*
- J. The first hearing shall commence within 60 days from the date of receipt of the applicant's application unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the Board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided that persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and Township, be granted additional hearings*

to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

- K. The Board or hearing officer, as the case may be, 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 of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of any statute, ordinance, 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.*
 - L. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the decision of the Board shall be entered no later than 30 days after the report of the hearing officer.*
 - M. Where the Board or hearing officer, as the case may be, fails to render the decision within the period required by this section or fails to commence, conduct or complete the required hearings as provided by this section, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board or hearing officer to meet or render a decision as hereinabove provided, the Board shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of **Section 350-1104**. If the Board fails to provide such notice, the applicant may do so.*
 - N. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to the applicant not later than the day following its date. To all other persons who have filed their name and address with the Board or hearing officer not later than the last day of the hearing, the Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.*
- (p) Section 350-1105, Hearings; Conduct, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

§ 350-1105. Conditional Use Hearings; Board of Supervisors.

- A. After receiving recommendations from the planning commission, the governing body shall hold public hearings, pursuant to the public notice and written notice*

requirements of Section 350-1104, on and decide requests for conditional uses in accordance with the statutory and common law of the Commonwealth of Pennsylvania and the express standards and criteria of this Chapter for the applicable zoning district.

- B. The hearing shall be conducted by the governing body, or the governing body may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the governing body. However, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the governing body and accept the decision or findings of the hearing officer as final. In granting a conditional use, the governing body or hearing officer, as the case may be, may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary.*
 - C. The governing body or hearing officer shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of any statute, ordinance, 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.*
 - D. Where the governing body or hearing officer fails to render the decision within the period required by this section or fails to commence, conduct or complete the required hearing as required in this section, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the governing body or hearing officer to meet or render a decision as required by this section, the governing body shall give public notice of the decision within ten days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this act. If the governing body fails to provide such notice, the applicant may do so.*
 - E. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date.*
 - F. Nothing in this section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.*
- (q) Section 350-1106, Zoning Appeals, of the Code of the Township of Brady is hereby amended in its entirety to read follows:

§350 - 1106. Zoning Appeals; Time Limitations.

- A. No person shall be allowed to file an appeal with the Zoning Hearing Board later than 30 days after an application for development, preliminary or final, has been approved by the zoning officer if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.*
- B. All appeals to the Board from zoning enforcement notices issued by the zoning officer shall be filed by the appellant within 30 days after the notice is issued.*
- C. All appeals from all land use decisions rendered by the Zoning Hearing Board or governing body pursuant to this Chapter shall be taken to the Butler County Court of Common Pleas and shall be filed within 30 days after entry of the decision or, in the case of a deemed decision, within 30 days after the date upon which notice of the deemed decision is given.*
- D. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption shall be raised by appeal taken directly to the Butler County Court of Common Pleas.*
- E. Nothing contained in this Chapter shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091.*

§ 10. ARTICLE XII Administration.

- (a) Section 350-1203.I, Zoning Permits, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:
 - I. Special Exceptions. A zoning permit for a special exception may be issued by the Zoning Officer only upon the order of the Zoning Hearing Board after a hearing.*
- (b) Section 350-1203.J, Zoning Permits, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:
 - J. Conditional Uses. A zoning permit for a conditional use may be issued by the Zoning Officer only upon the order of the Board of Supervisors after a hearing.*
- (c) Section 350-1205.C, Enforcement, Violations and Penalties, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

C. In any appeal of an enforcement notice to the Board, the Township shall have the responsibility to present its evidence first.

(d) Section 350-1206.G, Amendment of Chapter, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

G. (1) The governing body shall publish the proposed amendment once in a newspaper of general circulation in the Township not more than 30 days and not less than 7 days prior to passage.

(2) In the event substantial amendments are made in the proposed amendment, before voting on enactment, the governing body shall, at least 10 days prior to enactment, readvertise in a newspaper of general circulation in the Township a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(e) Section 350-1206.H, Amendment of Chapter, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

H. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, the governing body shall hold another public meeting, subject to the public notice requirements of this Chapter, before proceeding to a vote on the amendment.

(f) Section 350-1206.I, Landowner Curative Amendments, of the Code of the Township of Brady is hereby amended in its entirety to read as follows:

I. Procedure for Landowner Curative Amendments

A landowner who, on substantive grounds, desires to challenge the validity of a land use ordinance or map which prohibits or restricts the use or development of land in which he has an interest has two choices: (i) a request for a curative amendment or (ii) a substantive validity challenge. The governing body has exclusive jurisdiction to hear a landowner's curative amendment request.

(1) An application for a landowner curative amendment must be in writing, request that the governing body conduct a hearing on the request and contain plans and explanatory materials describing the proposed use or development and a proposed amendment to cure the alleged defect.

(2) The governing body shall refer the curative amendment to the County and Township planning commissions for review, comment and recommendations before making its determination on the amendment.

*(3) The governing body shall commence a public hearing, subject to the public notice requirements of **Section 350-1104**, within sixty (60) days*

after the request is filed unless the applicant requests or grants an extension of time.

- (4) The municipal solicitor shall represent and advise the governing body at the hearing.*
- (5) The governing body may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present witnesses on its behalf.*
- (6) In reaching its decision on whether the challenged ordinance or map is defective, the governing body shall consider the curative amendment, testimony of record, any submitted plans and explanatory materials and the following criteria:*
 - (a) Impact of the proposal on roads and other public service facilities;*
 - (b) If the proposed use is residential, the impact on regional housing needs and effectiveness of the proposal in providing affordable housing;*
 - (c) Suitability of the site for the intensity of the use proposed by the site's natural features, such as soils, slopes, woodlands, floodplains, etc.;*
 - (d) Impact of the proposed use on the site's natural features, the degree to which these are protected or destroyed, the tolerance of these features to development, and any adverse environmental impacts; and*
 - (e) Impact of the proposal on preservation of agriculture and other land use which are essential to public health and welfare.*
- (7) Based on testimony presented at the hearing, the governing body shall determine whether the challenged ordinance or map is defective. If the challenge is found to have merit, the governing body may accept the curative amendment with or without revision or may adopt an alternative amendment which will cure the challenged defects.*
- (8) The challenge shall be deemed denied when the governing body:*
 - (a) Fails to conduct a hearing on the challenge within 60 days of its filing or fails to render a written decision 45 days after the close of the last hearing, unless the time is extended by mutual consent by the landowner and the Township;*

(b) Notifies the landowner that it will not adopt the curative amendment; or

(c) Adopts another curative amendment which is unacceptable to the landowner.

§ 11. The Township reserves the right to adopt, from time to time, additional rules, regulations and standards as it shall deem necessary and proper to regulate the location and use of buildings, structures and land in the Township to encourage orderly, coordinated and compatible growth and development.

§ 12. Whenever there is a difference between the standards specified in this Ordinance and those indicated in other applicable regulations, the more stringent requirement shall apply.

§ 13. The provisions of this Ordinance are severable. Should any section, sentence, clause, part or provision hereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision shall not effect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Township that this Ordinance would have been enacted if such illegal, invalid, or unconstitutional sections, sentence, clause, part, or provision had not been included herein.

§ 14. The provisions of this Ordinance, as far as they are common to those regulations in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such prior regulations and not as new enactments.

§ 15. The adoption of this Ordinance does not make legitimate development activity in the Township under provisions of prior regulations illegal, nor does it annul any litigation currently being pursued or that may be pursued in the future against such illegal activity.

§ 16. All other ordinances or regulations, or parts of such ordinances or regulations, in conflict with this Ordinance or inconsistent with its provisions, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

§ 17. **EFFECTIVE DATE:** Under the pending ordinance doctrine, this Ordinance shall take effect on April 25, 2024, and shall remain in effect until modified, amended or rescinded.

ENACTED AND ORDAINED, by the Board of Supervisors in lawful session duly assembled this the 21st day of May 2024.

ATTEST:

**BRADY TOWNSHIP
BOARD OF SUPERVISORS**

Secretary
SEAL

By: 
Chair



350-R1-21

By: Chad Deems
Vice Chair

By: Donald H. Staiger
Supervisor

I hereby certify that the foregoing Ordinance was advertised, under the pending ordinance doctrine, in the Butler Eagle, a newspaper of general circulation in the Township, on April 25, 2024, and May 2, 2024, and was duly enacted and approved as set forth at a regular meeting of the Board of Supervisors on May 21, 2024.

Michelle Y. Thompson
Secretary