

1 **AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF LEWES,**
2 **CHAPTER 197 ZONING SECTIONS 197-90 APPLICATION AND PUBLIC HEARING**
3 **AND 197-91 ADMINISTRATIVE REVIEW, APPEAL OF ADMINISTRATIVE**
4 **DECISIONS AND DETERMINATIONS AS IT RELATES TO THE BOARD OF**
5 **ADJUSTMENT.**
6

7 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
8 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
9 City of Lewes, Delaware, as amended, by amending the Board of Adjustment regulations;
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11 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
12 the purpose of promoting health, safety, morals or the general welfare of the community, the
13 legislative body of cities and incorporated towns may regulate and restrict the height, number of
14 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
15 of yards, courts and other open spaces, the density of population, and the location and use of
16 buildings, structures and land for trade, industry, residence or other purposes”;
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18 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
19 against fire, promoting health, safety, morals or the general welfare of the community, the City
20 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
21 stores [sic], size of buildings and other structures, the density of population and the location and
22 use of buildings, structures and lands for trade, industry, residence or other purposes”;
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24 **WHEREAS**, Article XV, Chapter 197, Section 104, Text and map amendments, of the
25 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall
26 be made after a public hearing following fifteen (15) days’ notice by publication in an official
27 paper or a paper of general circulation in the City;
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29 **WHEREAS**, a public hearing was conducted on August 7, 2023;
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31 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
32 notice of the time and place of such hearing in an official paper or newspaper of general circulation
33 in the City; and
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35 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
36 of the Lewes community.
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38 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
39 at all times thereto, in the manner following to-wit:
40

41 **Section 1.** Chapter 197 Zoning, 197-90 Application and public hearing of the Municipal
42 Code of the City of Lewes, Delaware, be the same and is hereby amended by removing the
43 strikethrough text and by adding the underlined text.
44

45 D. Board of Adjustment hearing.

46 (1) Scheduling. The Board of Adjustment shall schedule a public hearing.

- 47 (2) Public notice.
48 (a) Contents. The public notice shall specify the time, place, and nature of the hearing.
49 (b) How given. At least 15 days prior to the public hearing, the following notices shall be
50 in place:
51 [1] Publication. A legal notice shall be published in a newspaper of general
52 circulation.
53 [2] Property posting. For an application concerning a specific property, a
54 sufficiently large sign shall be posted on the subject property in a visible location.
55 [3] City Hall. Notice shall be posted at City Hall.
56 [4] Neighboring properties. Notice shall be mailed by the applicant, via
57 certified mail, return receipt requested, to the owners of all adjacent
58 properties. Adjacent properties shall include all properties that would
59 otherwise be immediately adjacent if not for a street, alleyway, or other right-
60 of-way separating that property from the subject property.

61
62 **Section 2.** Chapter 197 Zoning, 197-91 Appeal of administrative decision and
63 determinations of the Municipal Code of the City of Lewes, Delaware, be the same and is hereby
64 amended by removing the strikethrough text and by adding the underlined text.

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66 A. Purpose. Provide a mechanism for appeal where an error is alleged in any interpretation, order,
67 requirement, decision, or determination made by the City Planner, Building Official, or designee,
68 or HPARC in the administration of this chapter.

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70 B. Who may appeal. Pursuant to 22 Del. C. § 324, an appeal to the Board of Adjustment may be
71 taken by any person aggrieved or by any officer, department, board, or bureau of the City affected
72 by any decision of the City Planner, ~~or~~ Building Official or HPARC.

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74 C. Procedure. In order for the Board of Adjustment to conduct an administrative review:

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76 (1) The City Planner, ~~or~~ Building Official, or HPARC shall issue a written interpretation,
77 requirement, decision, or determination. The City Planner, ~~or~~ Building Official's or
78 HPARC's written product shall include information about the applicant's/property owner's
79 situation, request, inquiry, etc., and references to pertinent sections of this chapter to
80 support the interpretation, requirement, decision, or determination.

81
82 (2) The City Planner, ~~or~~ Building Official or HPARC's shall make every effort to present
83 the written product to the applicant, including, but not limited to, return-receipt mailing.

84
85 (3) The applicant shall file a written request for administrative review within 30 days after
86 receiving written notice of the City Planner, ~~or~~ Building Official's or HPARC's action in
87 the office of the Board of Adjustment.

88
89 (4) When the decision of HPARC is being appealed, at least 30 days prior to the Board
90 of Adjustment meeting to review the matter, a transcript of the meeting before the
91 HPARC and/or a recording of HPARC's meeting, along with all documents entered

92 into the record, shall be transmitted to the Board of Adjustment for a review based
93 on the record before HPARC, subject to the procedural rules of the Board of
94 Adjustment. At least 10 days prior to the meeting of the Board, the parties to the
95 appeal shall simultaneously submit a legal memorandum not to exceed 5,500 words
96 outlining the parties' positions as to why the underlying decision of the HPARC shall
97 be upheld or overturned, which memorandum shall be based on the evidence and
98 arguments presented before HPARC. The Board shall meet to discuss the
99 memorandum and hear arguments from both sides, but the Board shall not hear any
100 new testimony. After hearing and considering the arguments presented, the Board
101 shall determine whether to uphold or overturn the decision of HPARC. Anything
102 herein to the contrary notwithstanding, if the Board determines that additional
103 testimony is necessary for the Board to render a decision, the Board may vote to allow
104 additional testimony.

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107 **Section 3.** If any provision of this Ordinance shall be deemed or held to be invalid or
108 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
109 any other provision of this Ordinance which may be given effect without such invalid or
110 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
111 be severable.

112
113 **Section 4.** This Ordinance shall take effect immediately upon its adoption by the Mayor
114 and City Council of the City of Lewes.

115
116 Adopted by the Mayor and City Council
117 of the City of Lewes
118 August 14, 2023

119
120 I, Timothy Ritzert, Secretary of the City Council of the City of Lewes, do hereby certify that the
121 foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its
122 regular meeting on August 14, 2023, at which a quorum was present and voting throughout and
123 the same is still in full force and effect.

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126 _____
127 Secretary

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129 **SYNOPSIS:** This Ordinance amends the regulations regarding the Board of Adjustment
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