

RECEIVED

Sep 01 2023

ZHB Case # 230012

MOUNT JOY TOWNSHIP

Mount Joy Township

8853 Elizabethtown Rd

Elizabethtown, PA 17022

Phone: (717)367-8917 - Fax: (717)367-9208

Zoning Hearing Board Application

1. Applicant Information

Name: Vistablock Westmount, LLC

Address: 150 Farmington Lane City/State/Zip: Lancaster, PA 17601
c/o Reilly Noetzel, Esquire

Phone: 717-299-5201 Fax: 717-291-4660

E-mail: moetzel@barley.com

2. Landowner Information (if different from the Applicant)

Name: same as applicant

Address: n/a City/State/Zip: n/a

Phone: n/a Fax: n/a

E-mail: n/a

3. Property Information

Property Address: 1607 Harrisburg Ave and unaddressed parcel North of Harrisburg Ave

Parcel ID Nos.: 461-15182-0-0000 and 461-95688-0000

City/State/Zip: Mount Joy, PA 17552

Existing Use: vacant/agricultural Proposed Use: Apartments and Townhouses

Total Property Area (Sq. Ft. or Acres): +/- 34.46 acres

FOR TOWNSHIP USE ONLY

Date Application Received: September 1, 2023

Date Application to be heard: October 4, 2023

Tax Parcel #: 461-15182-0-0000 & 461-95688-0-0000

Zoning District: Medium Density Residential (R-2)

Application Denied/Approved: _____

4. Request for Special Exception

Section(s) of Zoning Ordinance for which a Special Exception is requested:

Provide an explanation of your proposal, particularly, why you need a special exception and for what type of use the special exception is being requested for:

This site is suitable for a Special Exception Use because:

How will the request affect adjacent properties? (Dust, noise, fumes, odors, glare, increased traffic, character of the neighborhood etc.):

5. Expansion of Special Exception Uses

Are there any existing nonconformities on the lot, if so list them:

Existing and proposed square footage of the structure:

Percentage of Expansion:

Existing front, side and rear yard setbacks:

Proposed front, side and rear yard setbacks:

6. Request for a Variance

Section(s) of the Zoning Ordinance for which a Variance is requested:

Appeal of zoning interpretation. In the alternative, Applicant seeks a variance from §135-262.L and §135-262.D of the Zoning Ordinance. Applicant also requests a 2-year extension of the approval of these variances in accordance with Section 135-383.C.3. to provide additional time to complete construction.

Why do you need a variance and what is your proposed alternative from the requirements of the Township Zoning Ordinance?

see addendum

What physical characteristics of the property prevent it from being used for any of the permitted uses in your zoning district? (Topography, size and shape of lot, environmental constraints, etc.):"

see addendum

Explain how the requirements of the Zoning Ordinance would result in difficulties or undue hardships in the use of your property, buildings and/or structures:


see addendum

Explain how the granting of a variance will not be a substantial detriment to the public good or a substantial impairment of the intent and purpose of the Zoning Ordinance:

See addendum

I/we, the undersigned, do hereby certify that:

- Vistablock Westmount, LLC


Applicant Signature

8/31/23
Date Signed

Brandon Conrad, CEO, vistablock

same as applicant
Landowner Sign (if different from Applicant)

Date Signed _____

same as applicant
Landowner's Name (Printed)

ADDENDUM TO ZONING HEARING BOARD APPLICATION

Applicant: VISTABLOCK WESTMOUNT, LLC

Property: 1607 Harrisburg Avenue (Parcel ID No. 461-15182-0-0000)

Unaddressed parcel north of Harrisburg Avenue (Parcel ID No. 461-95688-0-0000)

Project: Westmount (proposed Townhouses and Apartments)

Zoning: R-2

The Applicant, as the legal owner of the Property, submits this Application to appeal the interpretation of the zoning officer enclosed as Exhibit A (the “Interpretation”) and, in the alternative, to seek variances from Sections 135-262.D. and 135-262.L. of the Zoning Ordinance.

By way of background, the Applicant is in the process of obtaining final land development plan approval for the Project, which will consist of a mixture of apartments and townhomes to be located across several site condominium units on the Property. An excerpt from the land development plan, entitled “Overall Site Layout Plan”, prepared by ELA Group, Inc. as Project No. 1212-004, and dated May 5, 2023 (the “Plan”) is enclosed with this Application. As part of the zoning review of the proposed land development plan, the zoning officer, through the Township solicitor, issued the Interpretation, which concluded as follows:

1. With respect to Section 135-262.D., the zoning officer determined that townhomes situated on looped access drives do not meet the requirements of this Section, and “the Developer must either obtain a variance from Section 135-262.D or acquire one of the lots fronting on Harrisburg Avenue near the western boundary of the Property to create another street which will intersect with Harrisburg Avenue.”
2. With respect to Section 135-262.L., the zoning officer determined that the required lot width for each condominium unit containing townhomes is determined by multiplying the number of townhomes in that unit by twenty (20), being the required width of a townhome lot. This results in a required lot width of 1,660 feet for condominium unit 4.

APPEAL OF INTERPRETATION

The Applicant appeals the Interpretation for the following reasons:

Section 135-262.D. – This section prohibits townhouse buildings on cul-de-sac or dead-end streets. The Plan has one street that ends in a cul-de-sac (Street A). However, there are two (2) entrances in the development (one via Street B and one via Street A). All of the townhomes would therefore have access to two points of ingress and egress. The Interpretation incorrectly takes the position that all of the townhomes west of Street B would require a variance from this Section because they are located on the portion of the street that dead ends. Applicant appeals this determination for two (2) reasons.

First, at a minimum, the townhomes served by the “looped” access drive to the south of Street A and west of Street B would meet the requirement of Section 135-262.D. under the

plain language of the Zoning Ordinance. “Street” is defined to include “alleys” and other “ways”, which would include access drives. Because of this broad definition, the townhomes along the looped access drive would meet the requirements of Section 135-262.D. because the looped access drive neither dead-ends or ends in a cul-de-sac.

Second, none of the townhomes are situated directly on the cul-de-sac street, but are instead served by individual parking spaces/access drives. Even with respect to the dead-end parking spaces/access drives, vehicles can still pull in to a townhouse parking space in the dedicated parking lots, and travel directly to either one of the two entrances of the development without ever needing to use the cul-de-sac on Street A.

Section 135-262.L. – This section provides that the minimum lot width for townhouse lots shall be 20’ per dwelling unit. The Plan depicts that each townhome dwelling unit will be 20’ wide. The Interpretation takes the position that the minimum lot width is based on the total number of dwellings located in a lot, rather than the actual width of the townhome dwelling itself. The Applicant appeals this determination for the following reason:

The Interpretation requires lot width to be calculated based on an arbitrary formula that has no bearing on the actual dimensions of the lot itself. “Lot width” is defined in the ordinance as “the horizontal distance measured between side property lines.” The Interpretation suggests that lot width is not measured on actual lot lines or distances between them, but rather based on a factor of how many dwellings are located in a lot. This suggested calculation is more akin to a density calculation, as opposed to a dimensional calculation, which is supposed to be purely based on actual measurements. This calculation also has no correlation to the actual width of a lot.

Furthermore, the Applicant submits that the intended purpose of this Section is that each townhouse dwelling must be 20’ wide. The Section goes on to state that areas comprising townhouse buildings must be 150’ wide, which further supports the Applicant’s position that the width requirements in 135-262.L. are intended to be based on the actual buildings as opposed to the lot itself. Any other interpretation would be contradictory to the definition of “lot width” and creates a situation where lot width is being used to control density, which is not consistent with the purely dimensional definition of lot width in the Zoning Ordinance.

VARIANCES

In the alternative, the Applicant requests a variance from Section 135-262.D. to permit the townhouses west of Street B to be served by a street ending in a cul-de-sac and a dimensional variance from Section 135-262.L. to permit a proposed lot width of Lot 4 of approximately 975’, as measured at the front yard setback line. Applicant is also seeking a 2-year extension of the approval of these variances to provide sufficient time to begin and complete construction of the Project, in accordance with Section 135-383.C.3.

The Applicant meets the criteria for these variances set forth in Section 135-383.C, as described below:

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of a lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions generally created by the provisions of this chapter in the neighborhood of or district in which the property is located.

The Property is rectangular in shape, abuts an active railroad to the north, and is extremely shallow from Harrisburg Avenue to the railroad right-of-way. A 100' PP&L easement bisects the Property, which limits developable area. The Property is located behind many occupied/improved properties with frontage along Harrisburg Avenue. Public sewer offsite improvements required to develop this Property cost multiple millions of dollars and require drilling beneath the railroad right-of-way. This configuration (i) makes it challenging to have multiple thoroughfares between the Property and Harrisburg Avenue, especially with respect to the western half of the Property, which does not have street frontage and (ii) restricts flexibility for design and placement of townhouse lots. Townhouses must also be arranged along the main streets within the development. Due to existing site access constraints, there is an undue hardship in arranging the townhomes to conform to the literal requirements of the ordinance.

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

The shape and configuration of the Property necessitate these variances. Without the grant of the requested variances, the Property would be rendered undevelopable. The easements and other limitations affecting the Property, including the PP&L easement and sewer infrastructure improvement challenges, require placement of a higher concentration of townhomes at the sides of the Property as opposed to being spread out across the various lots/units comprising the Property. No buildings are permitted within the PP&L easement area. Due to the proximity of the railroad and neighboring residences to the south, improvements must also be arranged to provide for additional setback areas and greenspace.

(c) That such unnecessary hardship has not been created by the applicant.

The Applicant did not create the hardship as the Applicant did not configure the Property. The Applicant has attempted to secure other areas for access but has no control over whether adjoining landowners agree to grant access over their respective properties.

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

The Property is located in a residential area, in proximity to another townhome community as well as other adjacent residential uses. The variances are "design" variances

and would not be noticeable to the naked eye. The nearby townhome community has a cul-de-sac street that serves some of the townhomes in that neighborhood.

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The requested variances are the minimum variances needed to afford the desired relief. The lot width variance is also a dimensional variance. Under the standard set forth in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Pennsylvania Supreme Court recognized that the burden to prove hardship for a dimensional variance is less than a use variance. When seeking a dimensional variance with any permitted use, the property owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, a grant of a dimensional variance is of lesser threshold than a grant of a use variance.

In the case of dimensional variances, the applicant does not need to show that the strict application of the ordinance would result in making the property "practically valueless," as may be the case for a use variance. Rather, the Court called for application of a rule of reason when considering a dimensional variance by permitting a "slight relaxation," or less stringent application of the variance criteria. In the context of a dimensional variance, courts may consider multiple factors, including "the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood."

For the foregoing reasons, the Applicant requests that the Zoning Hearing Board grant the appeal of the Interpretation or, in the alternative, grant the requested variances.

Exhibit A
Interpretation

ANTHONY P. SCHIMANECK
JOSELE CLEARY
ROBERT E. SISKI
JASON M. HESS

LAW OFFICES
MORGAN, HALLGREN, CROSSWELL & KANE, P.C.

P. O. BOX 4686
LANCASTER, PENNSYLVANIA 17604-4686

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(1971 - 2021)

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659 E WILLOW STREET
ELIZABETHTOWN, PA 17022
717-361-8524

OF COUNSEL
WILLIAM C. CROSSWELL
RANDALL K. MILLER

August 2, 2023

VIA -EMAIL

Justin S. Evans, AICP, Township Manager
Mount Joy Township
8853 Elizabethtown Road
Elizabethtown, PA 17022

Re: Final Land Development Plan for Westmount
Our File No. 10221-1

Dear Justin:

I reviewed the letter from Brent Good of ELA Group, Inc., ("ELA") which he entitled "Selective Responses to Key Comments" (THE "Selective Responses") relating to the Final Land Development Plan for Westmount (the "Plan") filed by Vistablock Westmount, LLC ("Developer"). The Selective Responses address comments in the Township Engineer's letter relating to Zoning Ordinance issues and waivers which were either requested or were failed to be requested by ELA. This letter will address questions relating to the Zoning Ordinance issues. ELA has not responded to my review letter dated May 23, 2023, raising issues relating to the eventual ownership of the lots to be created by the Plan, and that may also impact zoning issues.

You, as Zoning Officer, are required to "administer the zoning ordinance in accordance with its literal terms, and [you] shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance." Pennsylvania Municipalities Planning Code ("MPC") §614. Where terms in a zoning ordinance are ambiguous, they are to be interpreted in favor of the landowner and against any implied restriction on development. MPC §603.1. Commonwealth Court issued a decision on July 27, 2023, concerning interpretation of zoning ordinances and stated:

We apply the principles of statutory construction when interpreting a zoning ordinance. Applying Section 1921(a) of the Statutory Construction Act of 1972 to zoning ordinances, our objective is to "ascertain and effectuate the intention" of the municipality that enacted the zoning ordinance. See 1 Pa.C.S. § 1921(a). An ordinance's plain language generally provides the best indication of legislative intent and, thus, statutory construction begins with examination of the text itself.

We construe words and phrases in a zoning ordinance "according to the

rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903(a). A given phrase must be interpreted in context and read together with the entire ordinance. In addition, we presume the municipality did not “intend a result that is absurd, impossible of execution or unreasonable.” 1 Pa.C.S. § 1922.

Gaydos v. South Park Township Zoning Hearing Board, 640 CD 2022 (Pa. Cmwlth. 2023) (citations omitted).

The Zoning Ordinance expressly states that, “Townhouse buildings shall be prohibited on cul-de-sac or dead end streets.” Zoning Ordinance §135-262.D. All of the townhouse buildings to the west of Street B will have access (via access drives) to Street A, a cul-de-sac street which dead ends at the western property line. The “looped access drives on the south side of the site” cited in the Selective Response intersect only with the cul-de-sac or dead end street to the west of Street B. The only change to this design proposed in the Selective Response is to enlarge the cul-de-sac bulb to make the cul-de-sac street eligible for Liquid Fuels Tax reimbursement.

The Selective Response concludes that there is no violation of Zoning Ordinance Section 135-262.D because the townhouse buildings “are not directly on the cul-de-sac street but are served by individual access drives.” Having a townhouse building served by an access drive instead of by an individual driveway for each townhouse unit does not comply with Zoning Ordinance Section 135-262.D. Taking the construction which Mr. Good proposes to its logical conclusion, a townhouse building directly facing a cul-de-sac street would not be on the cul-de-sac street if there was a single entrance on to the leading to the parking area street behind each unit in that townhouse building because the building be on an access drive.

The Developer must either obtain a variance from Section 135-262.D or acquire one of the lots fronting on Harrisburg Avenue near the western boundary of the Property to create another street which will intersect with Harrisburg Avenue.

The Selective Response appears to request that the Township interpret Zoning Ordinance Section 135-262.L in a manner which is not in accordance with the literal meaning. Section 135-262.L states, “The minimum lot width for townhouse lots shall be 20 feet per dwelling unit at the minimum building setback line, provided that the minimum width of an area comprising a townhouse building shall be 150 feet.” I also note that Section 135-262.K states that the minimum lot area for townhouses is “3,000 square feet *per dwelling unit*, provided that the minimum size of the tract shall be two acres.” The Selective Response states, “We believe the word, ‘per’ is possibly misleading and suggesting the total lot with must add up to a certain length, in this case 1660 feet, which is unreasonable.” The calculation of the required minimum lot width of 1,660 square feet is in accordance with the literal language of Section 135-262.L, and this literal reading is also consistent with the interpretation of the phrase “per dwelling unit” in Section 135-262.K.

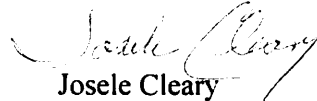
The Developer must either obtain a variance from the requirements of Section 135-262.L of the Zoning Ordinance or the Development must reduce the number of townhouse units to be in

Justin S. Evans, AICP, Township Manager
August 2, 2023
Page 3

compliance with Section 135-262.L.

If you have any questions concerning these comments, please contact me.

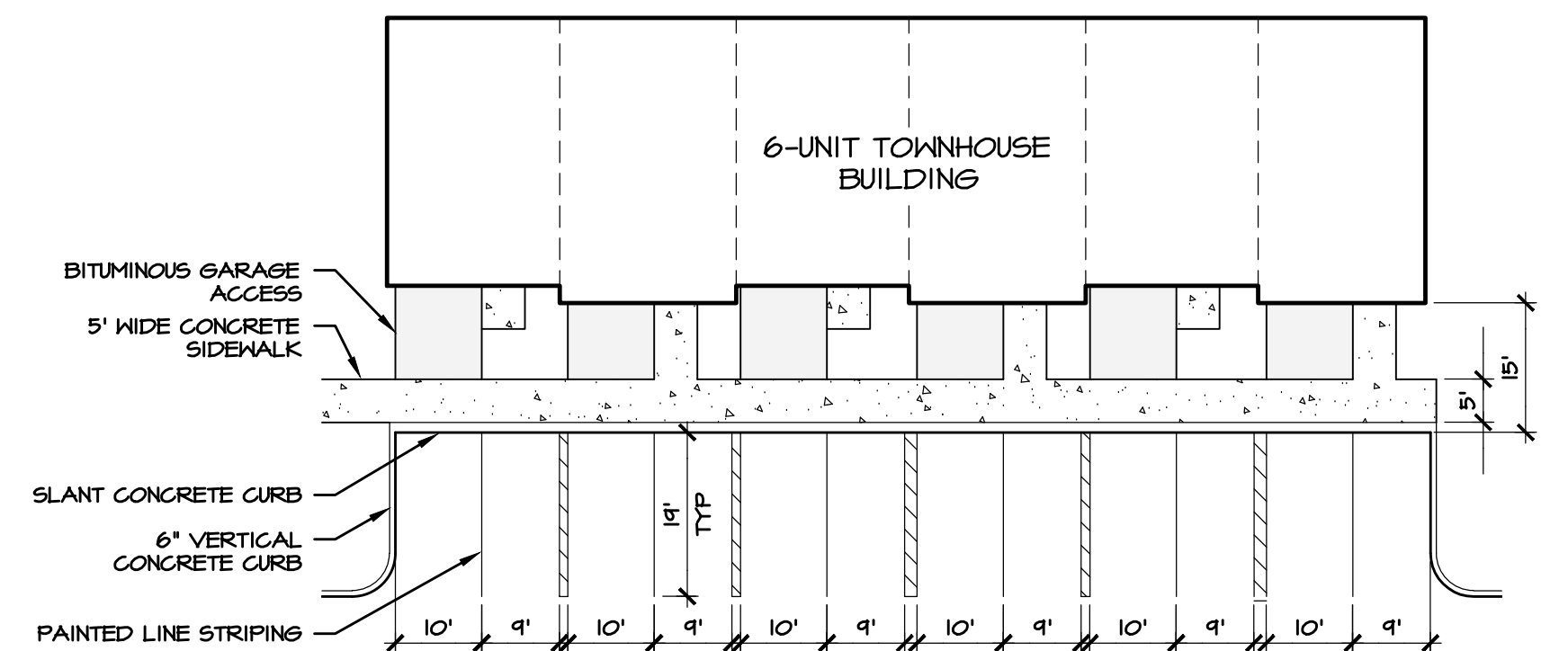
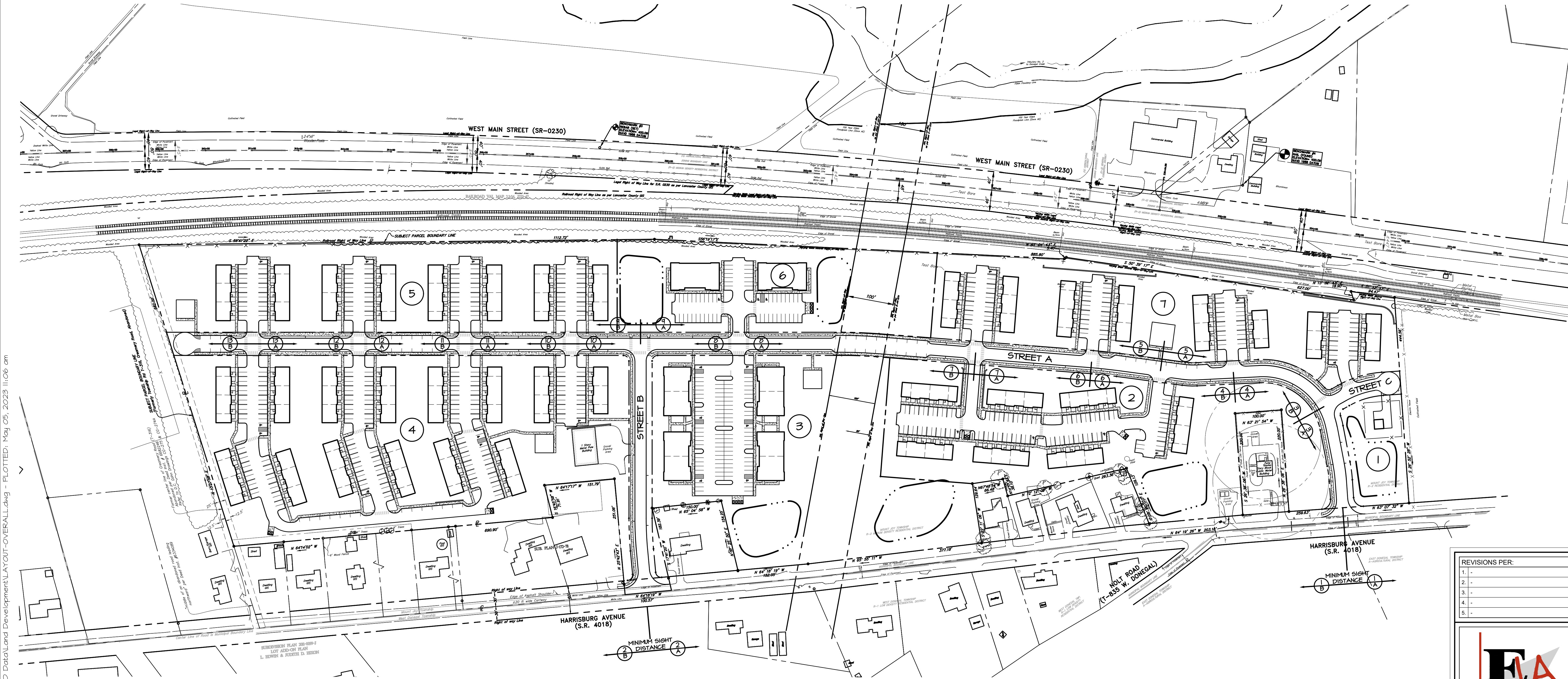
Very truly yours,


Josele Cleary

JC:sle
MUN\10221-1(700)\230802\11

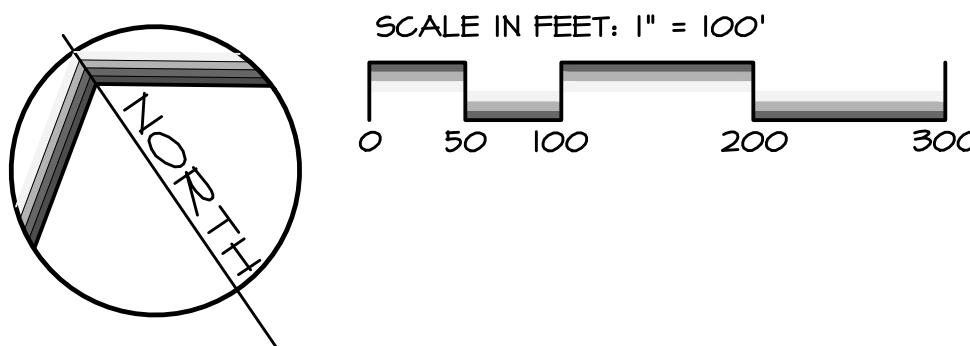
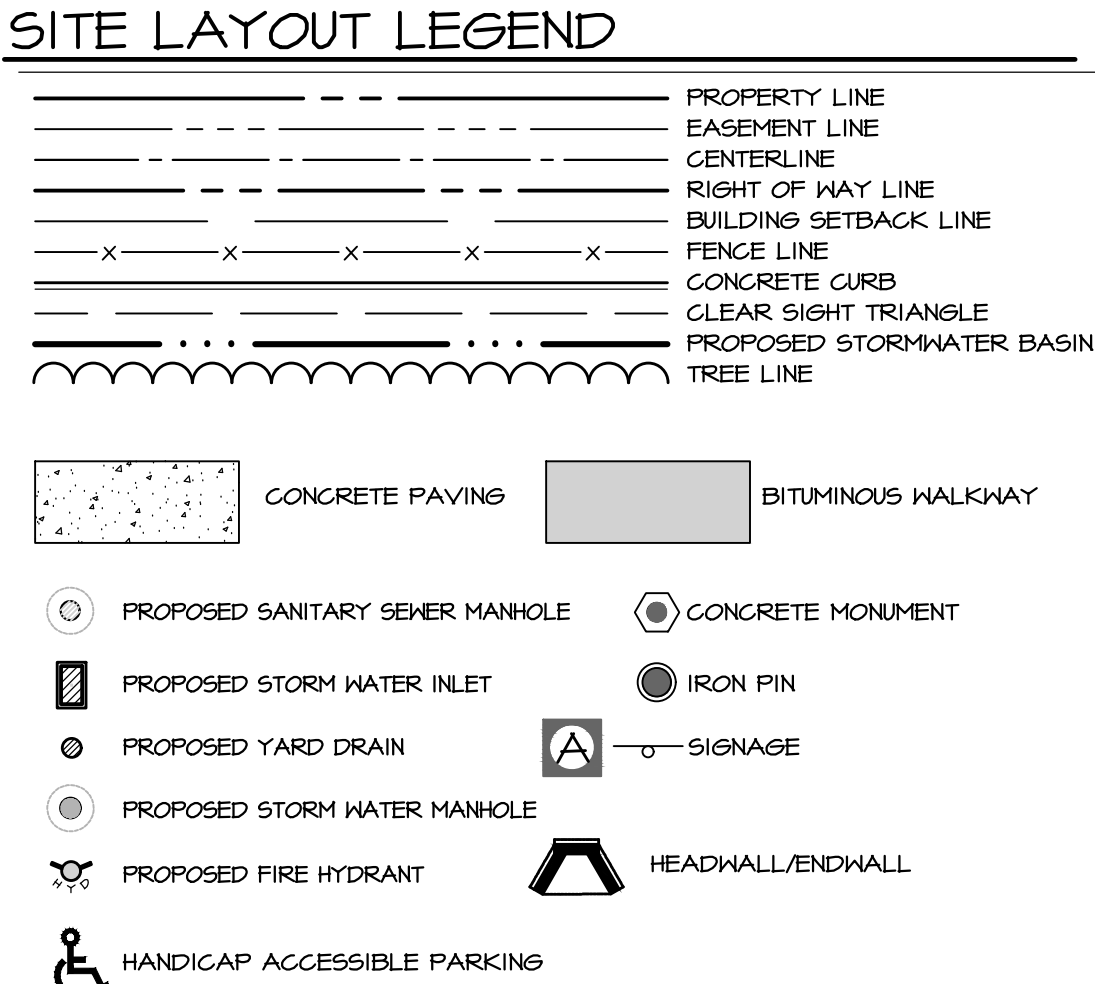
cc: Patricia J. Bailey, Secretary (via e-mail)
Benjamin S. Craddock, P.E. (via e-mail)
Brent D. Good, RLA (via e-mail)

DRAWING: C:\Users\brandon\Documents\Projects\212-004 Westmount Development\Project Files\CAD Data\Land Development\Layout-Overall.dwg - PLOTTED: May 05, 2023 11:06 am



A TYPICAL TOWNHOUSE LAYOUT WITH PARKING
SCALE: 1" = 20'

SIGHT DISTANCE SCHEDULE				
INTERSECTION	DIRECTION 'A' REQUIRED	DIRECTION 'A' PROPOSED	DIRECTION 'B' REQUIRED	DIRECTION 'B' PROPOSED
1	415' @ -4% @ 45 MPH	510'	398' @ -2% @ 45 MPH	1,000'
2	310' @ +2% @ 45 MPH	1,000'+	406' @ -3% @ 45 MPH	1,000'
3	144' @ +2% @ 25 MPH	240'	151' @ -3% @ 25 MPH	200'
4	143' @ +3% @ 25 MPH	230'	151' @ -3% @ 25 MPH	200'
5	143' @ +3% @ 25 MPH	260'	151' @ -3% @ 25 MPH	200'
6	143' @ +3% @ 25 MPH	240'	155' @ -5% @ 25 MPH	300'
7	140' @ +5% @ 25 MPH	240'	153' @ -4% @ 25 MPH	250'
8	144' @ +2% @ 25 MPH	260'	150' @ -2% @ 25 MPH	140'
9	150' @ -2% @ 25 MPH	300'	144' @ +2% @ 25 MPH	300'
10	144' @ +2% @ 25 MPH	300'	150' @ -2% @ 25 MPH	300'
11	150' @ -2% @ 25 MPH	300'	150' @ -2% @ 25 MPH	300'
12	144' @ +2% @ 25 MPH	300'	143' @ +3% @ 25 MPH	300'
13	144' @ +2% @ 25 MPH	300'	150' @ -2% @ 25 MPH	175' TO PROPERTY LINE



REVISIONS PER:	DATE:	BY:
1. -	-	-
2. -	-	-
3. -	-	-
4. -	-	-
5. -	-	-

EVA
group, inc.
ENGINEERS • LANDSCAPE ARCHITECTS

743 S. BROAD ST.
LITITZ, PA 17543
(717) 626-7271
elagroup.com

FINAL LAND DEVELOPMENT
SUBJECT:
OVERALL SITE LAYOUT PLAN
FOR
WESTMOUNT
MOUNT JOY TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA
CLIENT:
VISTABLOCK, LLC
150 FARMINGTON LANE
LANCASTER, PA 17601
717-682-8775

MANAGER:	BDG	DATE:	MAY 5, 2023
DESIGNER:	BDG	PROJECT NO.:	1212-004
DRAWN BY:	BLM	SCALE:	1" = 100'



MOUNT JOY TOWNSHIP

• Lancaster County, Pennsylvania •

8853 Elizabethtown Road, Elizabethtown, PA 17022

717.367.8917 • 717.367.9208 fax

www.mtjoytp.org

September 13, 2023

Certified Mail # 9407 1118 9876 5413 0041 38

Vistablock Westmount, LLC
150 Farmington Lane
Lancaster, PA 17601

Re: Proposed Residential Development
Property Located at 1607 Harrisburg Avenue, Mount Joy, PA 17552
Tax Parcel Account #461-15182-0-0000 & 461-95688-0-0000
Case #230012

Dear Sir or Ms.:

I have reviewed the above-referenced zoning hearing application submitted to Mount Joy Township on September 1, 2023. The hearing for the application is scheduled for **6:00 P.M. on Wednesday, October 4, 2023** at the Mount Joy Township Municipal Building located at 8853 Elizabethtown Road, Elizabethtown, PA 17022. I offer the following comments on the application:

- I have printed out an aerial image of the site so the Zoning Hearing Board can see the context of the area surrounding the subject property.
- The subject property is located within the R-2, Medium Density Residential District, consisting of approximately 34.46 acres. The property was historically used for agricultural purpose and generally undeveloped except for a pole building.
- The land development application proposes to develop the property with 217 townhomes and 72 apartment units with the construction of public streets and private parking areas.
- The applicant is seeking and has requested approval of the proposed project via Chapter 135 of the Code of Ordinances of the Township of Mount Joy, i.e. the Mount Joy Township Zoning Ordinance of 2012. Applicant is appealing the determination of the Zoning Officer, through the Township Solicitor, dated August 2, 2023, pursuant to Chapter 135 of the Code of Ordinances of the Township of Mount Joy. The appeal has been made in regard to the following ordinance sections:
 - (1) Chapter 135, Article XXII, §135-262.D to permit the construction of townhouse units on a cul-de-sac/dead-end street
 - (2) Chapter 135, Article XXII, §135-262.L regarding minimum lot width

In the alternative, variances have been requested from the above ordinance sections. An additional variance has been requested from the following section:

- (3) Chapter 135, Article XXVIII, §135-383.C(3) to permit a 2-year extension to begin and complete construction

In the event the Mount Joy Township Zoning Hearing Board would approve the application, the Township recommends the following conditions be applied to any approvals:

1. Applicant and/or the owner(s) of the subject property shall comply with all other provisions contained in Chapter 135 of the Code of Ordinances of the Township of Mount Joy for which relief has not been requested or granted.
2. Applicant shall submit and gain approval of a subdivision/land development plan through the Mount Joy Township Planning Commission.

3. Applicant and any representatives of the Applicant shall comply with and adhere to the testimony and any evidence presented to the Mount Joy Township Zoning Hearing Board at the hearing held on October 4, 2023 and any continued hearings, if applicable, except to the extent modified by the conditions imposed by the Mount Joy Township Zoning Hearing Board herein.

The Township reserves its right to revise, amend and/or extend the aforementioned list of recommended conditions of approval based upon the testimony presented at the hearing. Please note that these conditions are a recommendation from the Township. If the Mount Joy Township Zoning Hearing Board approves the application, they may change or add conditions if they determine such actions are appropriate based on the testimony and evidence presented and submitted at the hearing.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Justin S. Evans". The signature is written in a cursive, flowing style.

Justin S. Evans, AICP
Township Manager/Zoning Officer
Mount Joy Township

Copy: Vistablock Westmount, LLC – First Class Mail
Reilly Noetzel, Esq. – Email
Brent Good, RLA - Email
MJT Zoning Hearing Board
File

Enclosures

