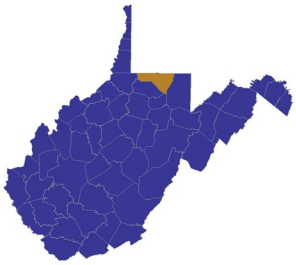
MCPC
MONONGALIA COUNTY
PLANNING COMMISSION

243 High Street, Rm 026
Morgantown, WV 26505
Phone 304.291.9572
Fax 304.291.9573
www.monongaliacounty.gov



Planning Commissioners:

Matthew Ridgway PE, President

Vince Putkowski, Vice President

Jeff Arnett, County Commissioner

Joe Panico

Joe Kaehler

Ed Hawkins

PLANNING STAFF:
Director of Planning:
Andrew Gast-Bray, AICP

County Planner:
Patricia Booth, AICP

Regular Meeting
April 9, 2025
6:00 pm
In-Person/Via Tele-Conference

AGENDA

I. Call to Order and Roll Call

II. Approval of Minutes – MCPC President
A. Action on Absences (March 12, 2025)
B. Action on Minutes (March 12, 2025)

III. Public Hearings

Case DSI 001-2025: A proposal to consider a Development of Significant Impact review for the property legally described as Morgan Tax Map 8A parcels 63, 64, 65 and 66.1 located off of Idlewood Drive. The applicant is proposing to install 13 2-bed townhomes and an office on 0.82 acres.

IV. Public Comments/Questions

V. Financial/Administrative Report - Planning Director

VI. Announcements/Communications

VII. Sub-Committees Updates – MCPC President

Personnel Committee: Putkowski, Ridgway, Arnett
Comprehensive Plan Committee: Hawkins
Zoning Committee: Kaehler, Panico, Hawkins
Budget Committee: Putkowski, Kaehler

VIII. New Business

IX. Old Business

AI regarding Hotel
AI/TA regarding datacenter

X. Adjournment

MEMORANDUM

MONONGALIA COUNTY PLANNING COMMISSION

To: The Monongalia County Planning Commission

From: Andrew Gast-Bray, AICP, Director of Planning

Date: March 31, 2025

Subject: Request for site plan approval of a Development of Significant Impact by Brandon Kupec in lieu of Little Mar, LLC for property legally described as Parcels 63, 64, 65, 66.1 of Map 8A in the Morgan Tax District

Meeting: April 9, 2025

I. REQUEST:

The applicant is requesting approval of a development of significant impact in order to develop the site with 13 2-bed townhomes and an office on the subject property. The development would utilize 4 building groupings consisting of 2, 4, 4, and 4 units per grouping. (**see Exhibit A**).

Location:

Address: Idlewood Drive (Across from Avalon Place and Adj. to Manchester Place), Morgantown, WV 26505

Legal Description: Parcels 63, 64, 65, 66.1, Tax Map 8A of the Morgan District

II. RELEVANT PRIOR COUNTY ACTIONS:

Previously, on October 8, 2021, Ms. Hillary Cale submitted an application for DSI 001-2021, a development of significant impact in order to develop the site with 12 two-bedroom and a rental office on the subject property. The development would utilize 3 building groupings consisting of 5 (has office), 4, and 4 units per grouping (**see Exhibit C**).

On November 10, 2021, DSI 001-2021 was denied for concerns regarding the property being linked to the development across the street, Avalon Place, as a staging area and for issues regarding the access easements adjacent to the property (see letter of denial for DSI 001-2021 for full details).

On October 6, 2023, Bowles Rice, for Mottie Pavone, attempted to submit an application for a DSI on Idlewood Drive. However, it was found that not only were items missing (building elevations and floor plans), but there were issues with some of the submitted items, notably that there was no confirmation regarding whether or not WV DEP had approved all the requirements for Avalon II as the parcels for The Residences were tied into the other project. Such a 'release' was not provided until October 13, 2023. It was provided to the MCPC on November 13th.

On November 10, 2023 Bowles Rice, for Mottie Pavone, submitted an application for a DSI on Idlewood Drive in order to develop the site with 12 two-bedroom and a rental office on the subject property. The development would utilize 3 building groupings consisting of 5 (has office), 4, and 4 units per grouping (**see Exhibit D**).

There were concerns with this application as well.

On December 6, 2023 Millard Nicholson Jr., for Mottie Pavone, submitted an addended version of the application in digital form for the DSI on Idlewood Drive.

On December 14, 2023, DSI 001-2023 was denied for concerns regarding the rear setback design proposed by the applicant encompassing a vast majority of the floor area ratio of all the structures and encroaching heavily for all structures on the neighboring property. Additionally, the submission, while extensive, was either incomplete or had issues at the time of decision-making. (see letter of denial for DSI 001-2023 for full details).

On October 4, 2024 (and ongoing), Mr. Brandon Kupec had a meeting with staff regarding the property, including the prior denials and how he might want to move forward.

On February 12, 2025, the MCPC had a work session with Mr. Kupec including concerns with the proposed conceptual design including his outline for setbacks, which are different than what the graphics in the WRZO indicate.

On March 6, 2025, Mr. Kupec submitted a DSI application with the same site plan as proposed during the work session.

III. BACKGROUND INFORMATION:

A. Size of Parcel: 0.82+/- acres (35,719.2+/- sq ft)
B. Zoning District: Medium Density Residential (R-3)
C. Existing Vegetation: Previously developed with a multi-family structure consisting of 12 units that has already been demolished (**see Exhibit G**)
D. Community Character of Immediate Vicinity: Mixture of high and medium density residential, as well as a pocket of commercial and some undeveloped land.

IV. REVIEW OF APPLICATION:

Pursuant to Section 2300.07 of the West Run Planning District Zoning Ordinance, no land within the zoned planning districts of Monongalia County shall be developed or altered for the purpose of constructing buildings or establishing uses without first having received site plan approval from either the Planning Office, the Planning Commission, or the Board of Zoning Appeals. It shall be the duty of the Planning Official, or his/her designee, in conjunction with other appropriate departments and agencies, to perform complete and thorough review of all plans submitted to the Planning Office.

Due to the length of this review, portions of the DSI where the applicant is in compliance are in smaller type. Areas of concern are highlighted yellow. Additionally there is a support document: 1-2025 DSIReview_supportdoc. This includes subsidiary information related to the DSI review standards as well as additional exhibits not listed here.

Developments of Significant Impact (DSI) are those that have a broader impact. Residential projects of 12 to 99 dwelling units are defined as a DSI. The Planning Commission shall consider the following standards concerning applications that are defined as a DSI:

1. Purpose of the R-3 District (§1200.01): In Compliance.

   The West Run High Density Residential District (R-3) is created to provide for duplex and other medium density residential and other compatible uses where public water, sewer, and suitable roadway networks are available, near employment centers, and possessing other characteristics which make medium to high densities appropriate and desirable.

The project site is surrounded by other similar density residential uses as well as adjacent to city sewer and water.

2. Permitted Uses (§1200.02): In Compliance.

   The following uses and structures shall be permitted in the West Run Medium Density Residential District:

   A. Uses permitted in the R-2 District.
   B. Multi-family dwellings or apartment buildings
   C. Licensed group homes and residential treatment facilities for a maximum of 12 adults exclusive of staff.

      The construction of townhomes is a permitted use within the R-3 District. Construction of between 12 and 99 units requires review by the Planning Commission via a Development of Significant Impact (this application and staff report).

3. Permitted Accessory Uses (§1200.03): In Compliance.

   The following accessory uses and structures shall be permitted in the West Run Medium Density Residential District (R-3) provided they are incidental and subordinate in height, area, bulk and extent to the principal use. Accessory structures shall not be erected prior to the erection of a principal building or use.

   A. Detached garages and storage buildings for use of residents
   B. Required off-street parking
   C. Private swimming pools tennis/basketball courts.
   D. Any other use, which the Board of Zoning Appeals determines is one customary, and incidental to the principal permitted use of the property.

   The applicant is not proposing any accessory structures.

4. Residential Density – Multi-Family Residential (§1200.05): **In Compliance???**

   Multi-Family Residential

   A. Maximum of 4 structures per acre with a maximum of 32 bedrooms per acre.

      With 0.82 acres of land, the applicant is allowed a maximum of 3.28 (3 rounding down) structures comprised of 26.24 (26 rounding down) beds. Based on the plans submitted, the applicant is proposing 4 structures with 13 two-bed units (26 beds) and an office.

      While the number of beds is within the permitted number, the applicant is proposing a number of structures ABOVE the permitted number.

      Since state requirements regarding townhome construction now require an independent sprinkler system for all townhomes with 5 or more connecting units.

Staff is willing to allow this as addressing a health and safety issue imposed at the state level.

5. Height (§1200.05): In Compliance.

   A. The height of the principal structure shall not exceed 4 stories or 45 feet whichever is less.
   B. Structures of 4 or 5 stories, or exceeding 40 feet, shall be constructed with independent fire detection and suppression systems.

   Based on the plans submitted (**See Exhibit H**), the proposed building will consist of 3 stories of habitable floor area not exceeding 36 feet.

6. Lot Requirements (§1200.05): In Compliance.

   A. Size. 6000 SF minimum (0.137 acre).
   B. Width. 75 feet minimum.

   The parcel consists of 0.82 acres with ~317 feet of width.

7. Lot Disturbance Standards – Minimum Yard Setbacks (§1200.05): **Compliance to be determined. Variance required but not applied for. See 1-2025 DSIReview_supportdoc.**

   A. Front yard shall have a minimum depth of 25 feet.
   B. Rear yard shall have a minimum depth of 40 feet.
   C. Side yards shall have a minimum width of 15 feet.
   D. Parking Lot/drive aisle setbacks shall have a minimum depth of 5 feet.

   The site plan outlines what the applicant presumes to be the required front, rear, and side yard setbacks. The required 5-foot minimum drive aisle setback is also delineated as shown on the site plan (**see Exhibit A**).

   Additionally, the property line goes out into the middle of the road, the buildable area is further reduced. The applicant has not measured this distance (as required by the Planning Office) **from the edge of pavement**.

   There are portions of the development which will be up to 15 feet away from the rear property line (see Exhibit B). A variance application HAS NOT been applied for by the Applicant. Even if the applicant can successfully argue that the easement can be used as a street qualifying as frontage, then there would be 3 front setbacks, 1 rear setback and NO side setbacks according to the WRZO. The applicant would still need a variance.

   Furthermore, Edge of pavement has been the standard for some time. Precedence has determined that a 5 foot minimum utility easement at the front of the property is needed (hence the 5 foot interior drive aisle/parking setback).

As there is no topographic need (in fact just the opposite – see supportdoc under setbacks) to impinge on this rear setback, let alone allow the buildings entirely within it, AND the applicant has not applied for a variance, Staff strongly feels this application cannot be approved based on precedent and lack of justification. Other designs that can address all of the concerns have been offered but were not proposed by the applicant.

*Rather, a much less impactful layout that infringes far less on the setbacks – one with the buildings toward the front (**see Exhibit C?**).*

8. Required Parking (§2500.04): In Compliance.

Required Parking

Specific Use	Multiplier	Proposed	Required Spaces
Dwelling, Townhome	2 per unit	13 2-bedroom units	26 Spaces
		Total	**26 Spaces**

According to the site plan submitted, the Applicant is providing 26 parking spaces for the units in the form of a one-car garage, with 22 feet of driveway for additional parking if needed.

9. Required Landscaping (§2550.02): In Compliance.

New nonresidential and/or multi-family development adjacent to single-family residential property (existing or zoned) shall provide a landscape buffer yard ten (10) feet wide planted with five medium to large trees and fifteen (15) shrubs per 100 linear feet of buffer yard between the nonresidential or multi-family uses and single-family residential uses as denoted in Graphic 2550.06.01.

The landscaping plan addresses the single-family property to the east, which requires a buffer (**see Exhibit E**).

10. Signs: In Compliance.

The Monongalia County West Run Planning District Zoning Ordinance does not provide any regulations for signage.

No signage is proposed for this development.

11. Building plans and elevations illustrating construction, alteration, materials, textures and colors: In Compliance.

The applicant did provide building floor plans and elevations but they did not list the types of materials, textures and colors to be used.

It is assumed that the project site will utilize similar siding, roofing, colors and textures as the current Avalon Place and Avalon II across the street.

The applicant has submitted floor plan outlining for both the two-bed units. Additionally, the units have been identified within the town house groupings (**see Exhibit A and H**).

12. Lighting and Illumination: In Compliance.

    The applicant stated that any outdoor lighting would be used as part of this development would be full-cutoff, focused downward, therefore staff does not anticipate glare to affect neighboring properties.

13. Drainage and Stormwater Management (§2650.01): **Compliance to be determined.**

    For a project disturbing over 1 acre, a WVDEP permit must be applied for. All drainage and stormwater systems shall be designed and built in accordance with the WVDEP standards. In the case of this area, 'Stormwater Management' is overseen by MUB.

    The Applicant has submitted a proposed stormwater management plan as part of their application and will also be grading the site in such a manner to ensure stormwater is not directed onto adjacent properties.

    MUB has sent a letter of requirement of stormwater permitting prior to construction onsite. Detailed review of the project and any necessary adjustments will be made prior to execution of the installation.

    Normally, as the project site is under an acre, no permitting from the WVDEP is required. However, this property still has constraints from WVDEP remaining from the activities on Avalon II, though the Avalon II property was released.

    Additionally, an email was received from MUB on December 6 2021 (See Exhibit K) stating concerns for the impact the building foundation, both during construction and post construction, on the stormwater diversion with a recommendation to move the building footprint out of the channel or prove that it will not impact the necessary volume to convey the runoff from the drainage basin. As such the MCPC can determine whether or not the proposal is in compliance.

14. Water Facilities (§2650.01): In Compliance. **Condition would be needed.**

    The Applicant will have access to City Water. MUB has sent a letter of availability for water facilities. Detailed review of the project and any necessary adjustments will be made prior to execution of the installation.

    Staff is recommending that prior to the issuance of the Land Use Permit, the Applicant shall submit documentation from MUB indicating approval of the water facilities plan.

15. Sewerage Facilities (§2750.01): In Compliance. **Condition would be needed.**

The Applicant will have access to City Sewer. MUB has sent a letter of availability for sewer facilities. Detailed review of the project and any necessary adjustments will be made prior to execution of the installation.

Staff is recommending that prior to the issuance of the Land Use Permit, the Applicant shall submit documentation from MUB indicating approval of the sewer facilities plan.

16. Fire Protection: In Compliance.

Approval of fire protection is contingent on documentation provided by the applicant from the State Fire Marshal prior to issuance of a Certificate of Compliance.

As the applicant has redesigned the site plan to keep townhome units in groupings of 4 or under, State Fire Marshal approval of a sprinkler system is not required.

17. Access: **Not in Compliance – Compliance in Question**

Access will be provided via two proposed driveway accesses. Per the site plan the minimum is 24 feet, which is equal or greater than a single lane of a road classified as a Collector.

Interior traffic width for the parking lot is a minimum of 22 feet for a majority of the travel way. Per Graphic 2500.07.1 Parking Angles Detail two-way aisles must be at a minimum of 24 feet.

However, Article 2500 does not have any sort of graphic where the aisle is two-way, but there is only parking on one side. WV DOH has requested that there be more than one access, but a standard one way in and one way out would meet that request.

Staff feels that a variance, such like the one sought and approved for by VAR 004-2024 would be appropriate.

18. Traffic Generation: In Compliance. **Condition would be needed.**

For uses which, in the opinion of the Planning Official, may create excessive negative traffic impacts on existing public rights-of-way in the immediate vicinity that serve the use, the Planning Official may require a Traffic Impact Analysis on current and future traffic flows, at the applicant's expense. The Planning Commission may also table consideration of a development and require the applicant to prepare and submit a Traffic Impact Analysis. If the study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service of any public right-of-way directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the applicant's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results.

In the opinion of the Director of Planning and DOH, a traffic analysis was not required for this project and submitted as part of the application, since Mr. Pavone widened Idlewood as previously proposed.

Per the 8th Edition ITE Trip Generation Report, for a Residential Townhouse with 14 units, the Calculated Daily Trips is 81 with Peak PM Trips of 7 with 5 in and 2 out. This will only be a minor impact.

However, as part of two prior DSIs, DSI 002-2020 and DSI 004-2020 an agreement had been reached between the two project properties stating which portions of the project each is applicant is responsible for, as well as an exhibit stating the same (**see Exhibit H**)

Staff is recommending that prior to issuance of a Certificate of Compliance and sale or rent of any units, the Applicant shall be required to ensure that the widening of Idlewood, as required per DSI 004-2020 and ensuing Amendments, shall not be reduced below the required 18 feet wide, and a sidewalk shall also be installed to ensure safe pedestrian access according to WVDOH standards for their streets.

19. **Summary: Compliance for the DSI in Question**

As this application is for a DSI, the question as to what is best to address neighborhood needs given that this development is sufficiently large as to impact the neighborhood adversely unless something is done to compensate. This discussion then mostly hinges on the idea of whether putting the buildings forward on the site with parking to the rear or vice versa. If there were some overriding public need that would favor the buildings being placed in the rear setback – e.g. for traffic safety, then that would be a good reason to do so. Unfortunately, for the applicant's proposal, the applicant has not shown such 'neighborhood positive' reasons to place the buildings in the rear. The applicant has asserted that parking in front is simply a better design, but there are a number of factors that militate against this assertion as shown in the attached supportdoc.

Thus, though the number of dwelling units/bedrooms can be accommodated on the site, especially with the earlier design, the design proposed does not do so without negatively impacting the neighborhood. Thus, since the MCPC has already ruled against similar aspects of this design, Staff cannot recommend this design.

V. RECOMMENDATION:

Staff recommends DENIAL to the Planning Commission (without prejudice against a future application) due to the concerns listed below:

A. The applicant is requesting to build the town homes wholly within the rear setback. This design style has previously gone before the MCPC and been denied as the rear setback in the design proposed by the applicant includes all structures onsite, encompasses a vast majority of the floor area ratio of all the structures, and encroaches heavily for all structures on the neighboring property.

B. The applicant has not applied for a variance to any of the required setbacks or even re-interpretation of the setbacks.
C. The width of the two-way drive aisle is undersized at 22 feet when it should be 24 feet minimum.

VI. PLANS REVIEWED:

1. Proposed Site Plan by CTL Engineering – dated March 3, 2025
2. Existing Conditions by Cheat Road Engineering – dated March 3, 2025
3. Grading Plan by CTL Engineering – dated March 3, 2025
4. Landscaping Plan by CTL Engineering – dated March 3, 2025
5. Erosion and Sediment Control Plan by Cheat Road Engineering – dated March 3, 2025
6. Stormwater Plan by CTL Engineering – dated March 3, 2025
7. MUB Availability Letter – dated February 19, 2025
8. Floor Plans – submitted March 7, 2025
9. Building Elevations– submitted March 7, 2025

VII. ATTACHMENT:

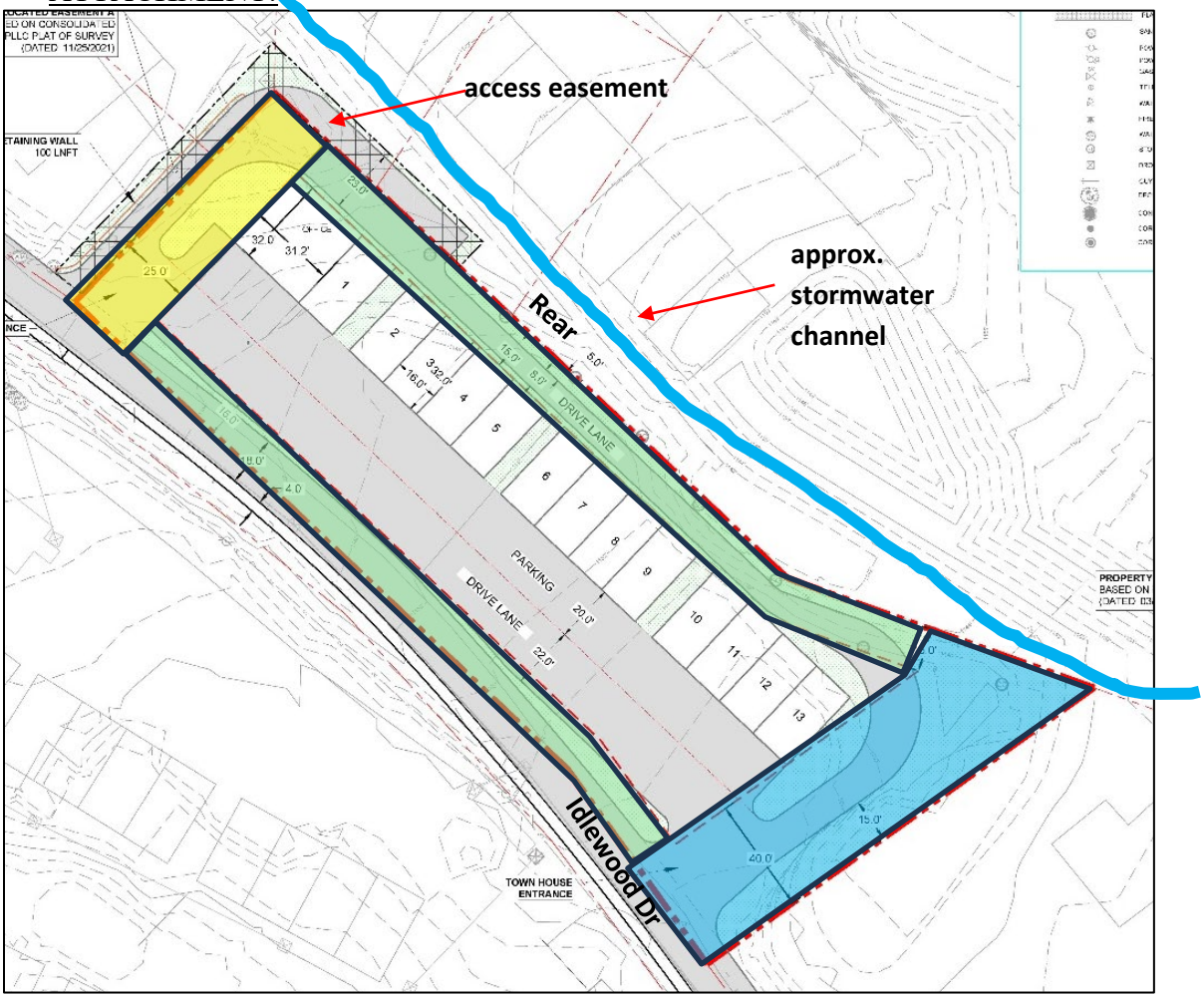


Exhibit A: Site Plan of the townhomes which shows 14 townhomes. The site plan outlines what the applicant presumes to be the required front (yellow), rear (blue), and side (green) yard setbacks. The required 5-foot minimum drive-aisle setback (which is not an issue for the rear of the property) is also delineated as shown on the site plan.

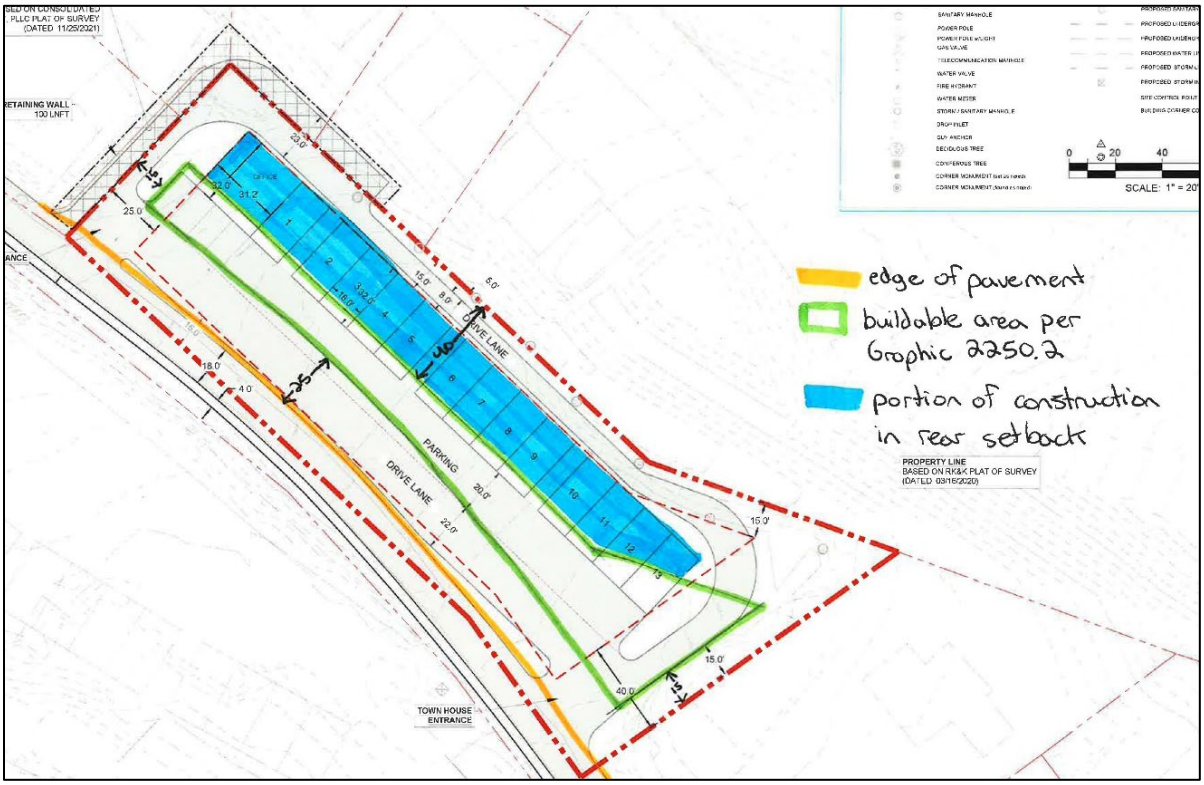


Exhibit B: Staff interpreted version of the site plan.

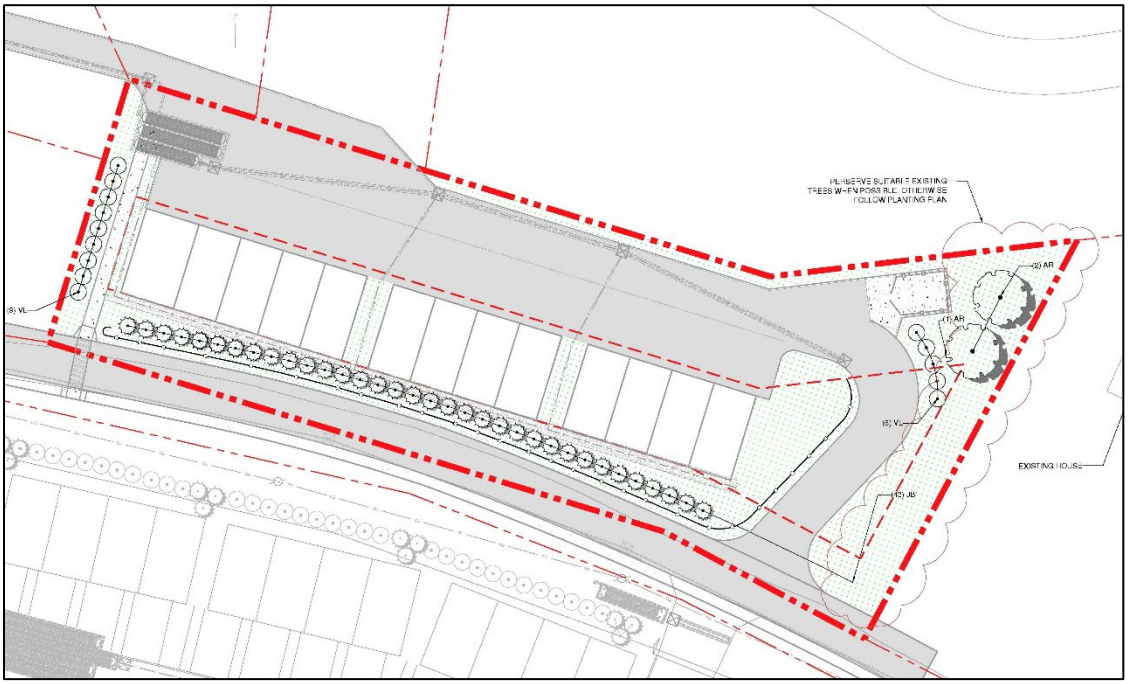


Exhibit C: ALTERNATE plan of the townhomes originally submitted October 2021, which shows 13 townhomes with DSI 001-2021.

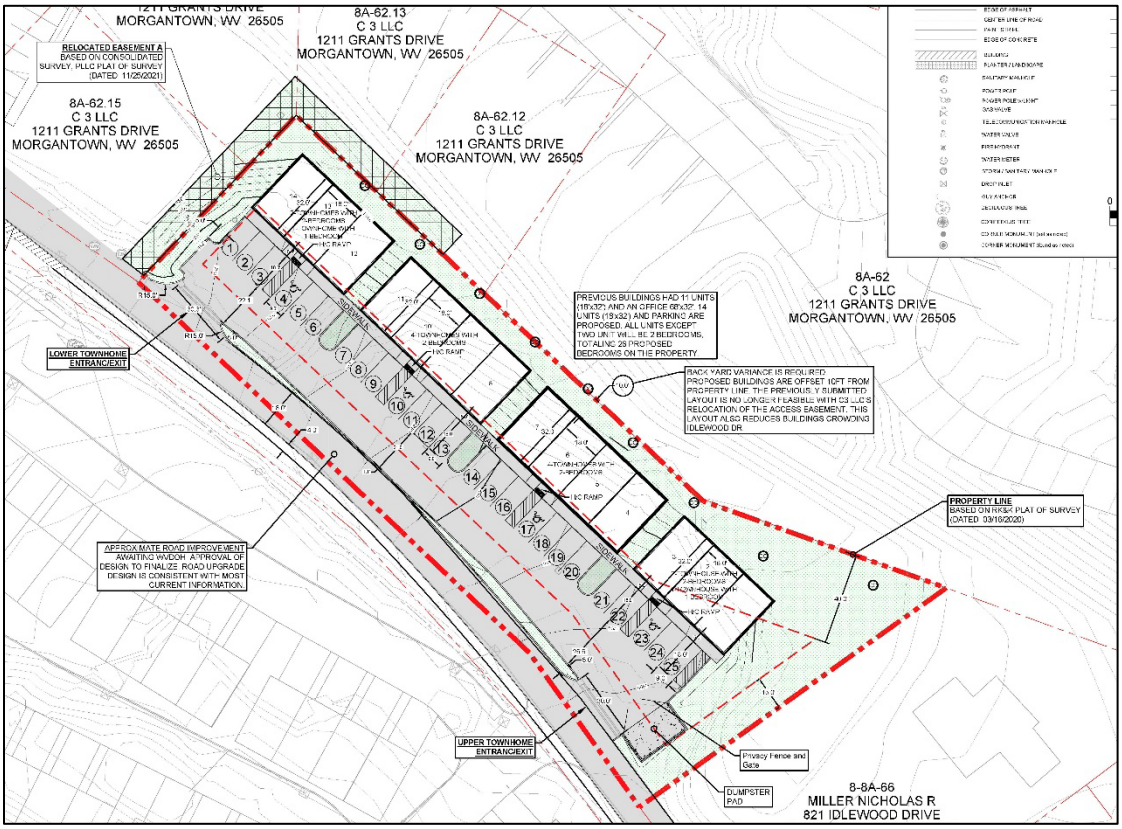


Exhibit D: Plan of the townhomes originally submitted October 2023 and amended November 2023, which shows 14 townhomes with DSI 001-2023. These proposed townhomes encroached wholly within the rear setback.

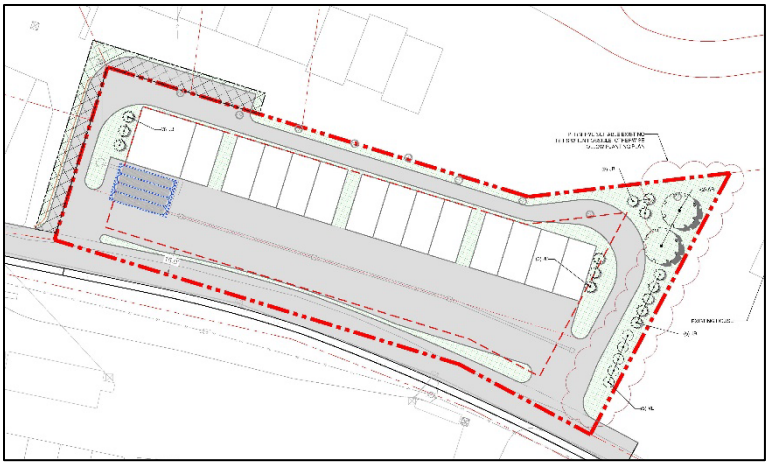


Exhibit E: Landscaping Plan



16x32 Townhome
Elevation View
(36' ht.)

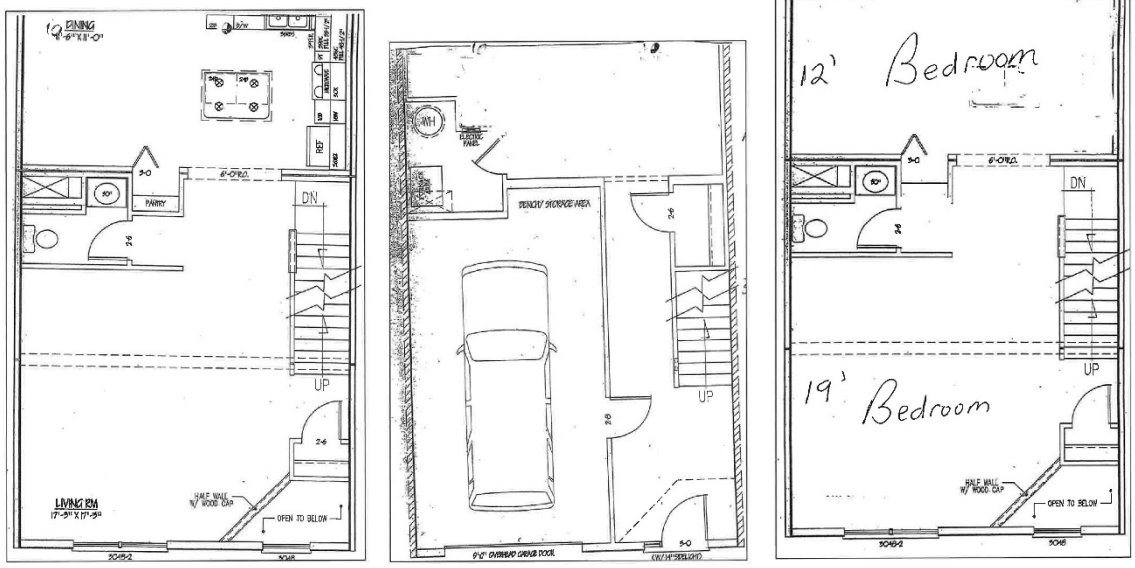


Exhibit H: Elevations and Floor Plans

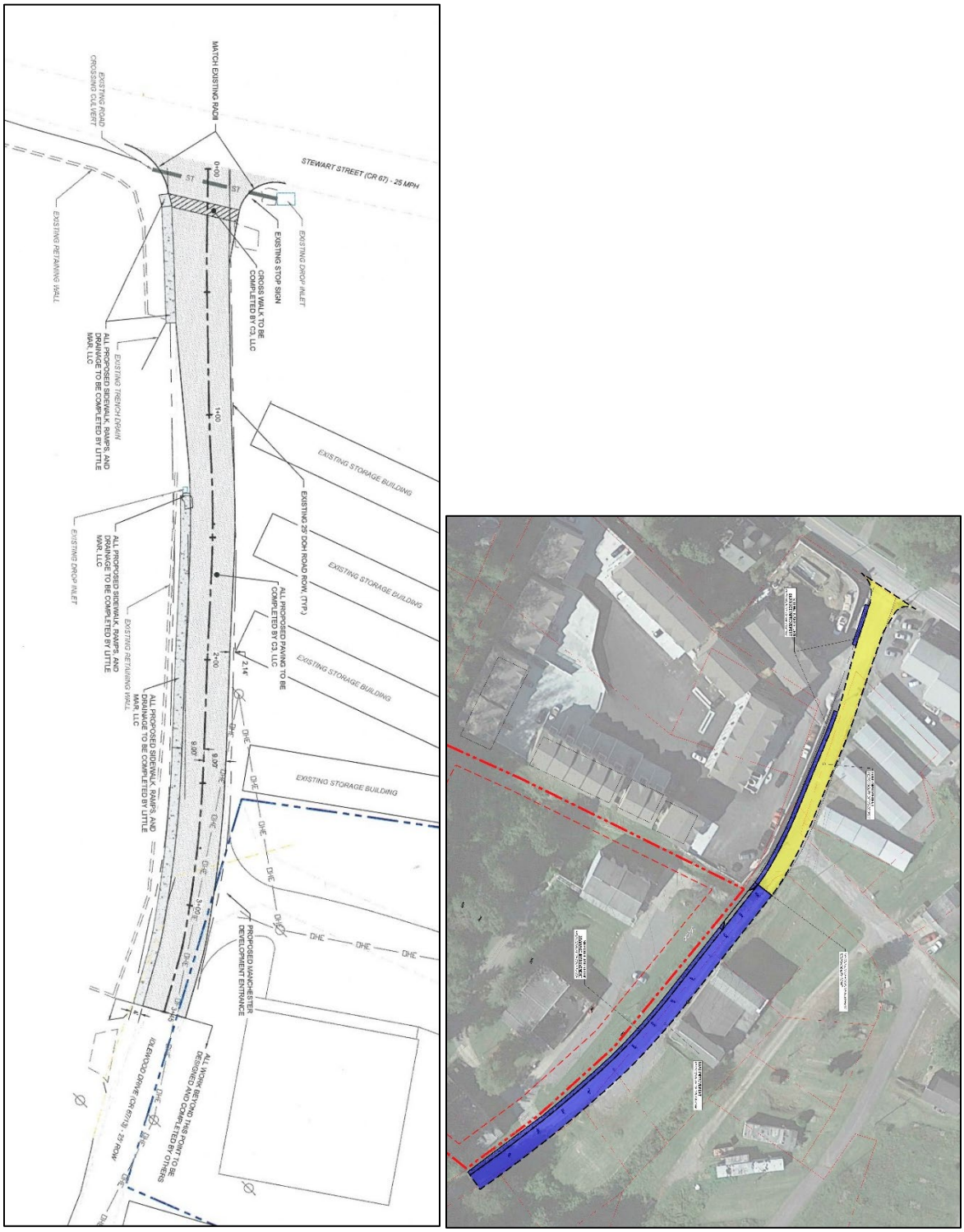


Exhibit I: The exhibit for the Idlewood Drive Agreement and the road schematic outlining areas of construction by each developer. **This is a condition of approval of DSI 003-2020 and part of Resolution P01-21**

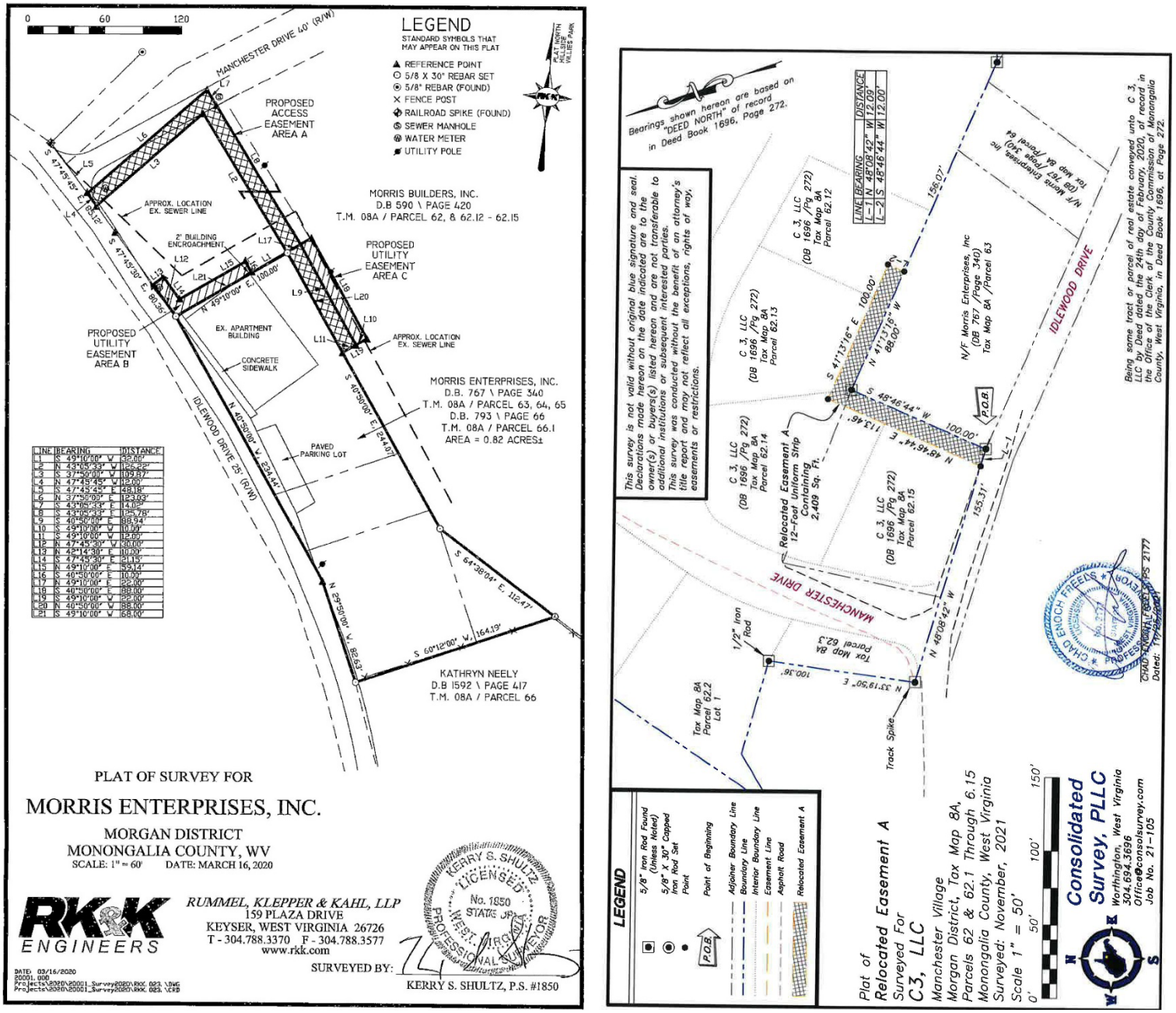


Exhibit J: The survey showing the three easements (right-of-way, water and sewer) as part of a deed between Morris Enterprises Inc. et al and C3, LLC as it was originally (left) and as it was changed (right).

From: Andrew Gast-Bray
To: Patricia Booth
Subject: FW: Idlewood Dr. Projects, CR 67/13, Mon. Co.
Date: Tuesday, October 26, 2021 8:21:08 AM

Andrew Gast-Bray, **Director of Planning/MCPC**
Phone: 304 291-9572
Email: agastbray@monongaliacounty.gov

From: Michael R Davis [*] <michael.r.davis@wv.gov>
Sent: Tuesday, October 26, 2021 8:19 AM
To: Andrew Gast-Bray <agastbray@monongaliacounty.gov>
Subject: Idlewood Dr. Projects, CR 67/13, Mon. Co.

To date, the stormwater line from the outfall of the proposed Avalon II development identified in the plans approved by WVDOH encroachment permit 04-2021-0551 has not been installed. In consideration of the existing stormwater problems in the area, this work needs to be completed prior to beginning construction on additional development. Note also that, to date, no encroachments have been permitted on the Idlewood Enterprises development proposed on the north side of Idlewood Dr.

Michael Davis
WVDOH District Four

From: Andrew Gast-Bray
To: Patricia Booth
Subject: FW: Idlewood Enterprises (The Residence)- MUB Permit #3502
Date: Thursday, December 7, 2023 6:32:17 AM
Attachments: MUB Stormwater Inspection and Maintenance Agreement Revised 12-20-20.pdf

To include with the report…

Andrew Gast-Bray, **Director of Planning/MCPC**
Phone: 304 291-9572
Email: agastbray@monongaliacounty.gov

From: Kenneth Hacker [*] <khacker@mub.org>
Sent: Wednesday, December 6, 2023 10:14 AM
To: Millard L. Nicholson Jr. <MNicholson@ctleng.com>
Cc: Hillary Cale <hcale@ctleng.com>; Ken Willis <kwillis@mub.org>; Jimmy Turner <jturner@mub.org>; Andrew Gast-Bray <agastbray@monongaliacounty.gov>
Subject: RE: Idlewood Enterprises (The Residence)- MUB Permit #3502

Bucky,
After our initial review, we have some concerns.

Erosion and Sediment Control Plan

- We have noticed that a great deal of water enters the site off Idlewood. This has been diverted over land down to the inlet in the back. We would recommend doing something in the front along Idlewood to prevent any water from leaving the DOH ROW.
- "Straw wattle" and "compost filter sock" is not consistent throughout the drawings.
- We have been instructed that DEP will no longer be accepting straw wattles as an approved perimeter control BMP. Compost filter sock of appropriate size or a properly installed silt fence (possibly super silt fence, please confirm) would be the minimum, but we believe that CFS alone will not be enough to control the runoff at the bottom of the slope in the back.
- Please make sure that the owner is aware of the proposed E&S plan with our comments addressed. We need assurance that the plan will be followed per design. Please have the owner download the MUB Stormwater Design Manual at this link https://www.dropbox.com/s/cov9n4c99pnf58d/2018%20MUB%20Stormwater%20Design%20Manual.pdf?dl=0 and return to us the signed Certification of Receipt within Appendix B.

Post Construction

- Cross section on Sheet C-104.1- shows the back of the proposed building within the flow of the clean water diversion that appears will reduce the capacity significantly. We will need calculations to show what storm the remaining channel will pass and if it is acceptable for the drainage basin. The building footprint could be moved towards Idlewood and out of the stormwater channel to avoid having to evaluate the drainage basin.
- The entrances onto Idlewood will need to be constructed such that water from Idlewood cannot enter the proposed trench grates and private SWMS.
- Downspout connections and roof lines are not shown. To ensure all water from the rooftops are being sent to the SWMS, we need this detail shown.

Perforated 36" pipe is required for the proposed ADS system.

- An underdrain system should be installed within the clean stone base of the SWMS and connected to the outlet structure.
- The attached Inspection and Maintenance Agreement needs completed and returned to our office following the final design with these comments addressed.

Ken Hacker, P.E.
Senior Engineer
Morgantown Utility Board
Direct: 304-284-9870
Phone: 304-292-8443 Ext. 177
www.mub.org

Follow us on Facebook and on Twitter: @MUBWater

Exhibit K: Email from DOH dated October 26, 2021 (left) and from MUB dated December 6, 2023 (right)

Issues with review

Kupec/Pavone have submitted an application for development of a property that we have already reviewed a number of times. Despite our goodwill efforts to provide workable/agreeable alternatives, they have not followed any the recommendations of Staff, DOH, MUB, neighbors and the MCPC work sessions and have challenged how the MCPC applies the zoning ordinance and the basis for precedence with their (re)sub-mission of the development proposal that does not meet the requirements set forth in the ordinance (at least to all previously recorded interpretations).

Background

The original property was developed years ago fronting along Idlewood (as shown below) with an easement to allow access/driveway to the rear for parking. Mr. Pavone tore this down.

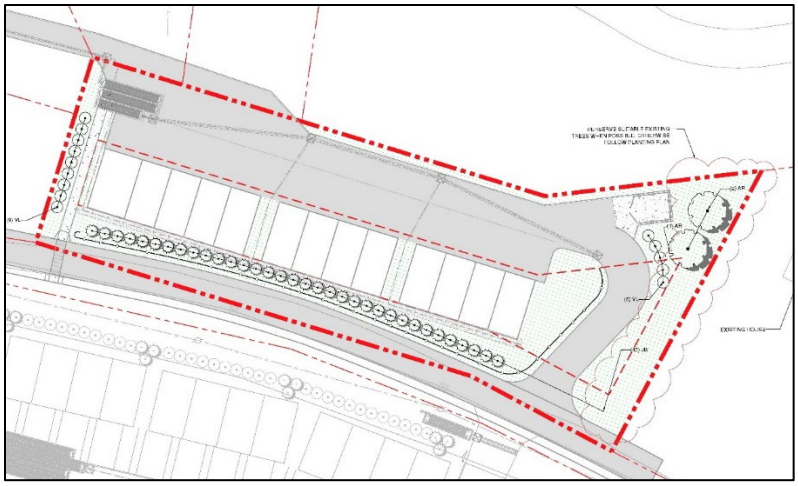




Google view of prior building and aerial of property prior to redevelopment.

Pavone used this site questionably (cf. DEP rulings and below) as a staging and dumping area for his Avalon II development across Idlewood from this property.

Then, Pavone attempted to develop this property. The proposal (see design below), DSI 001-2021 was denied for DEP concerns regarding the property being linked to the development across the street, Avalon II, as a staging area AND for issues regarding the access to and easements owned by the adjacent property (Manchester Glen-MG). Note that the setbacks for this proposal were also incorrect, but this was not addressed as there were other concerns that were focused on. These were eventually resolved.



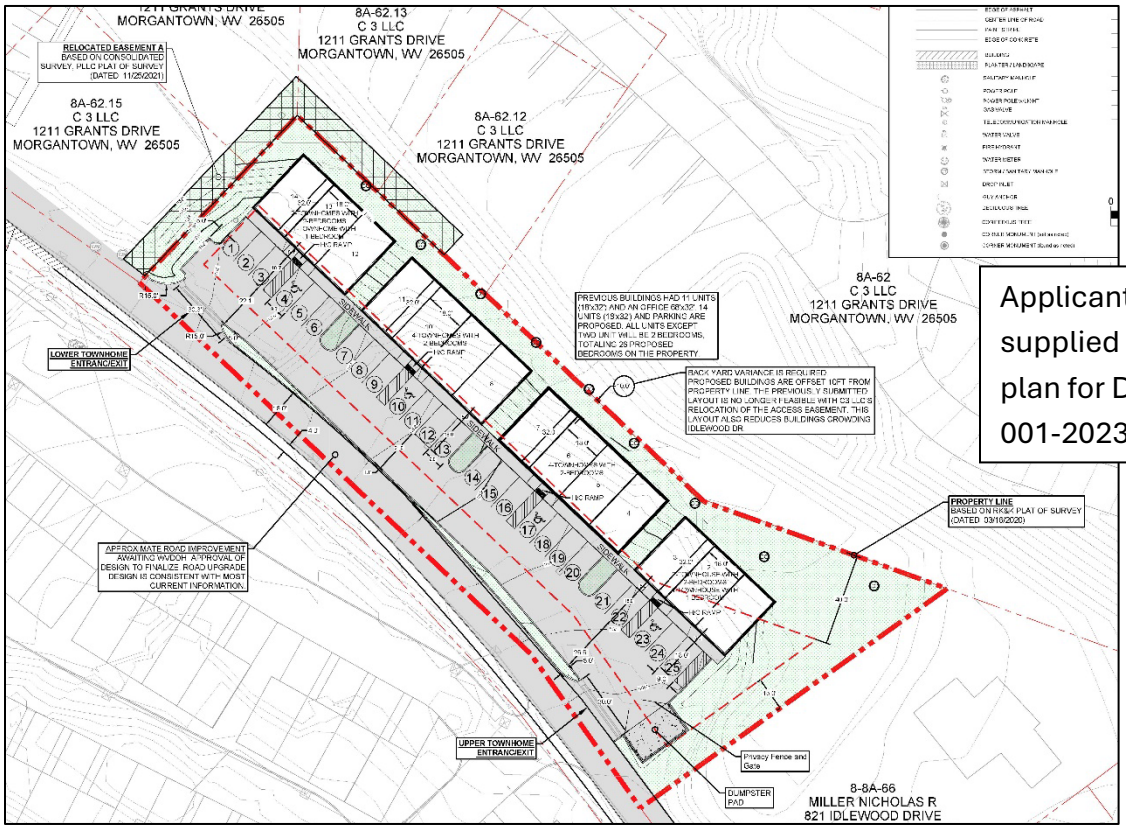
Applicant supplied site plan for DSI 001-2021.

Once the DEP concerns were laid to rest and the access was resolved with an easement that hugged Pavone's property (rather than through MG), the concept shown below would have been approved by all parties



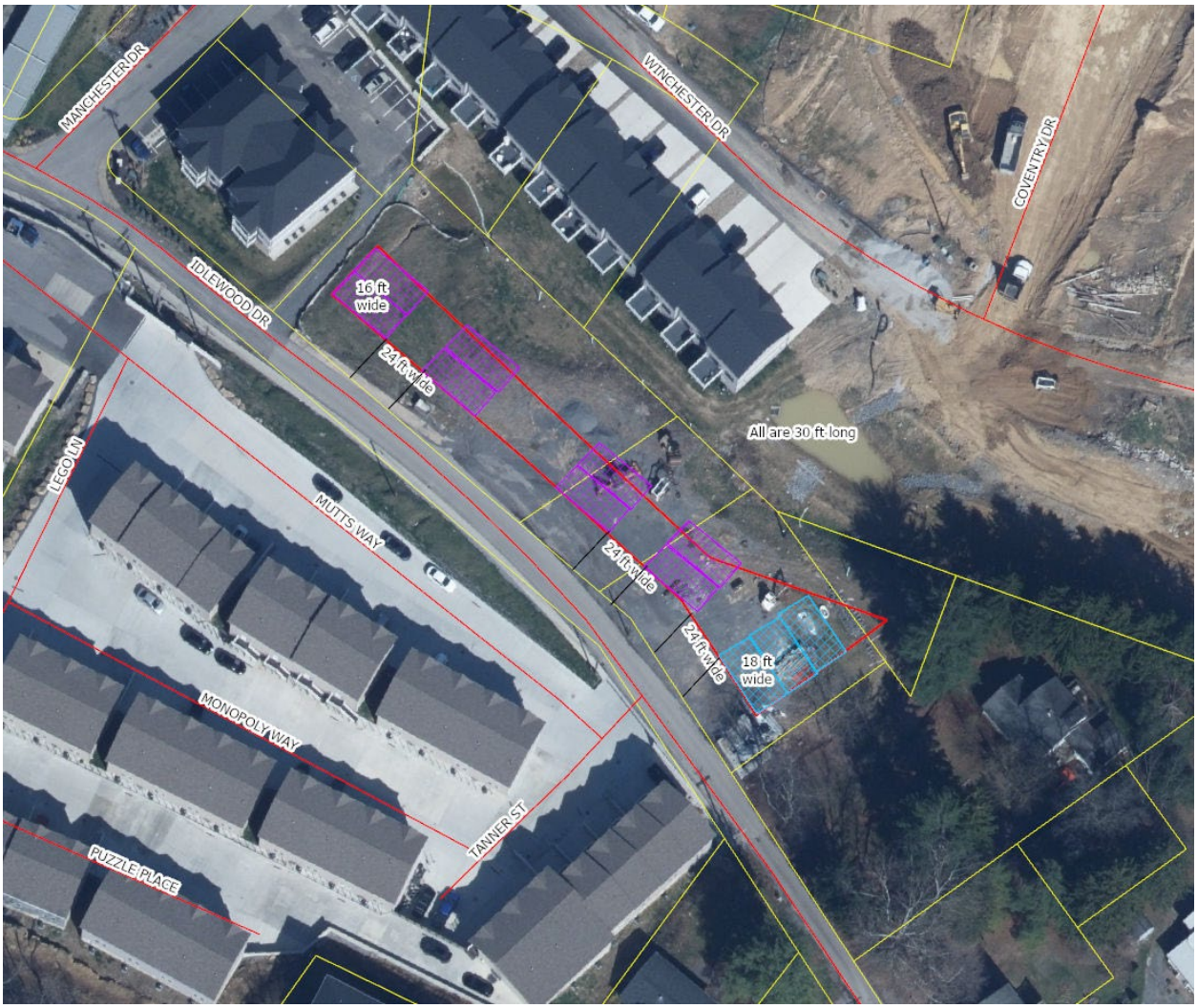
DOH was happy with the driveway locations and willing to allow the buildings to encroach the front setback (Idlewood) consistent with the earlier construction. The rear access with parking helped with giving more area for stormwater (cf. Shorty Anderson – 2 1000-yr flood events) - but it still had issues with the front setback starting in the road right of way. However, the previous building onsite was also directly adjacent to the road, and preliminary discussion suggested that a variance would be granted with DOH's endorsement/history of the property. The neighbor (MG) would also be satisfied with this development for the same reasons.

Nevertheless, the applicant proposed the following:



The problem is that this design encroached on the rear setback (actually was wholly within it) and that setback was needed to avoid stormwater issues. All wondered why Pavone did not simply propose what had been discussed. No understandable practical reason was provided other than an unsubstantiated cost (presumably removing the illegal fill was all of the sudden too expensive – though Pavone was the one who put it there).

Though he tweaked the design, he never addressed the issues raised by the MCPC, so they continued to deny the application. Afterward, Brandon Kupec, a colleague approached Staff with the opportunity to buy the property off of Pavone. Kupec wanted to build the same development as Pavone had proposed. Staff shared the many reasons why it was denied in the first place and why applying with largely the same development (i.e.without taking into account the problems cited through the many reviews of this development) would not be a good idea. Staff showed the original plan that was likely to be approved. Kupec claimed it was too expensive to access the rear of the property – and that Staff was making the site undevelopable. Staff showed another possibility (debunking that assertion – see below).



This design would also have been acceptable to DOH, MUB, MG, etc. Kupec said it was not doable.

So, there was another work session with MCPC to discuss what essentially was the denied design from the earlier application (see pg 6 design for the building layout). The MCPC still felt the same way as Staff and indicated that they needed to see demonstration of practical reasons why Kupec proposed development in the rear setback for all the same reasons as the earlier denials. Had Kupec placed the parking area to the rear between the rear drive-aisle and moved the buildings into the space where the parking was indicated, the MCPC would be favorable – the front drive-aisle would also then be unnecessary (as Idlewood makes it redundant) seemingly saving money.

Mr. Kupec felt that he should reinterpret the setbacks such that he could develop further back WITHOUT a variance and did not appear to understand that a DSI could deny the application because of the unaddressed impact on the surrounding area (viz. stormwater management area at the rear). Staff reminded Kupec that we review ALL application proposal setbacks the same way

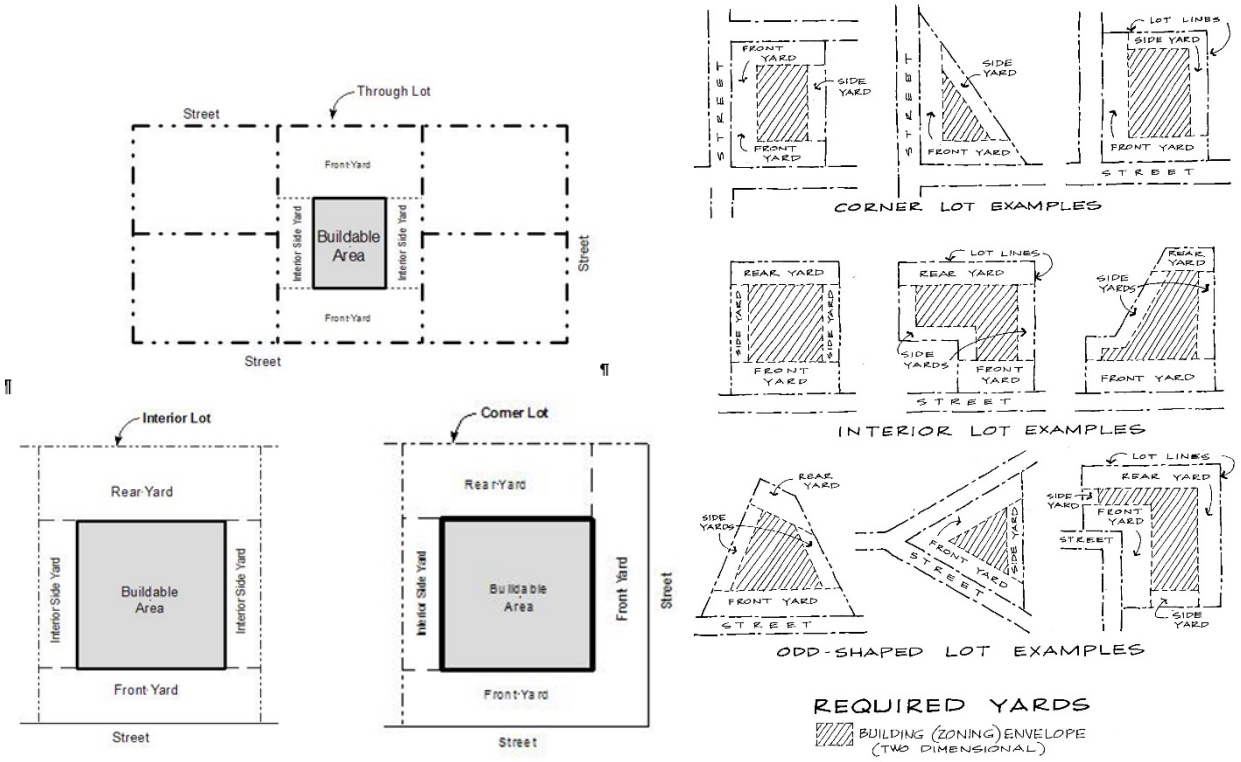
and that Kupec's interpretation would be inconsistent with the ordinance as regularly interpreted and a lot of precedent. Kupec said he understood but disagreed.

On March 11, he and Mr. Pavone submitted an application with a different interpretation of setbacks despite Staff admonition.

Setbacks

The setbacks per the ordinance are:

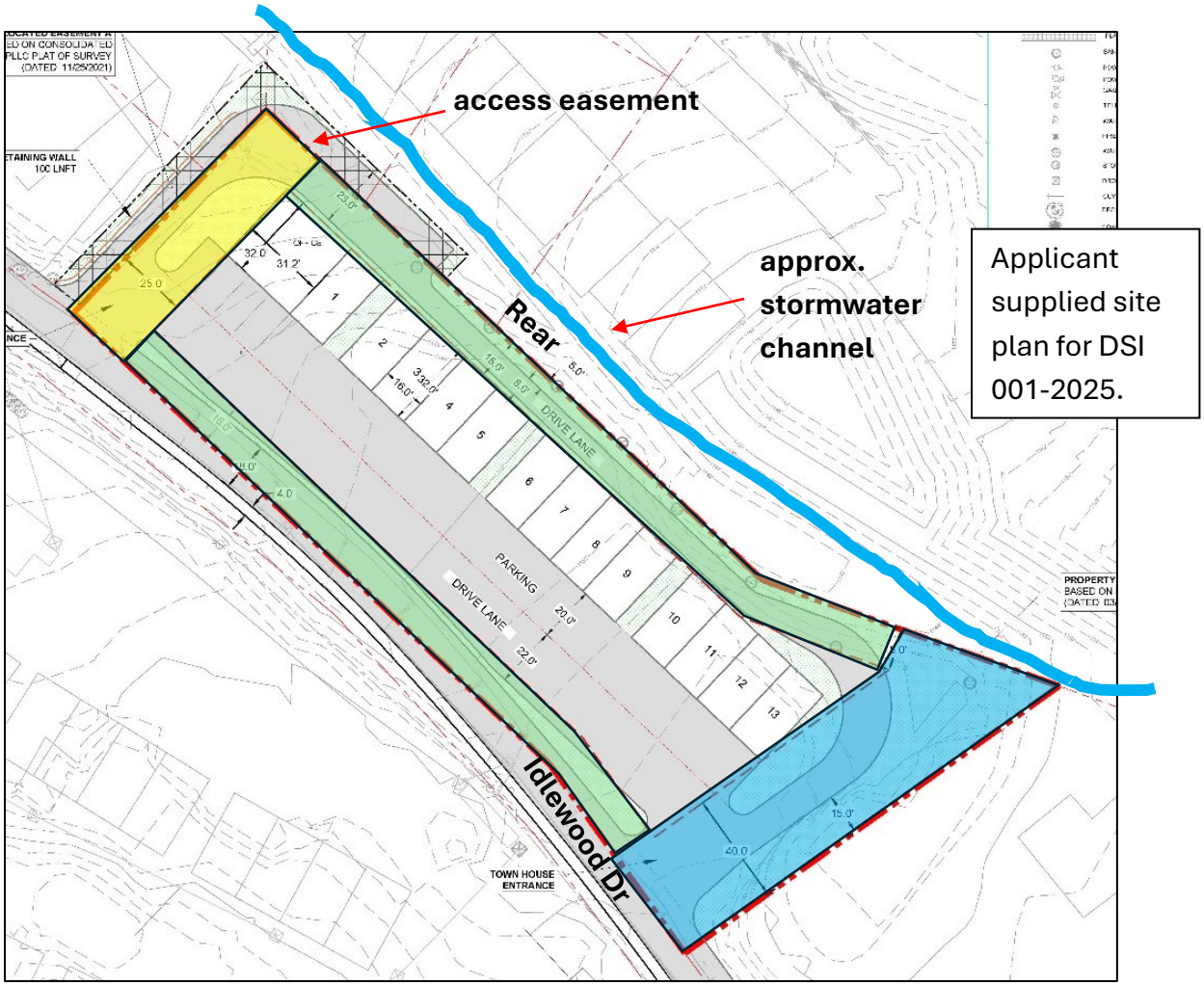
A. Front yard shall have a minimum depth of 25 feet.
B. Rear yard shall have a minimum depth of 40 feet.
C. Side yards shall have a minimum width of 15 feet.
D. Parking Lot/drive aisle setbacks shall have a minimum depth of 5 feet.



Graphic 2250.02 (left) and 2250.39 (right) used for setback requirements.

The applicant posited that the setbacks for the property differ from the Graphic 2250.02 and 2250.39 which are used to determine setbacks as required per the ordinance.

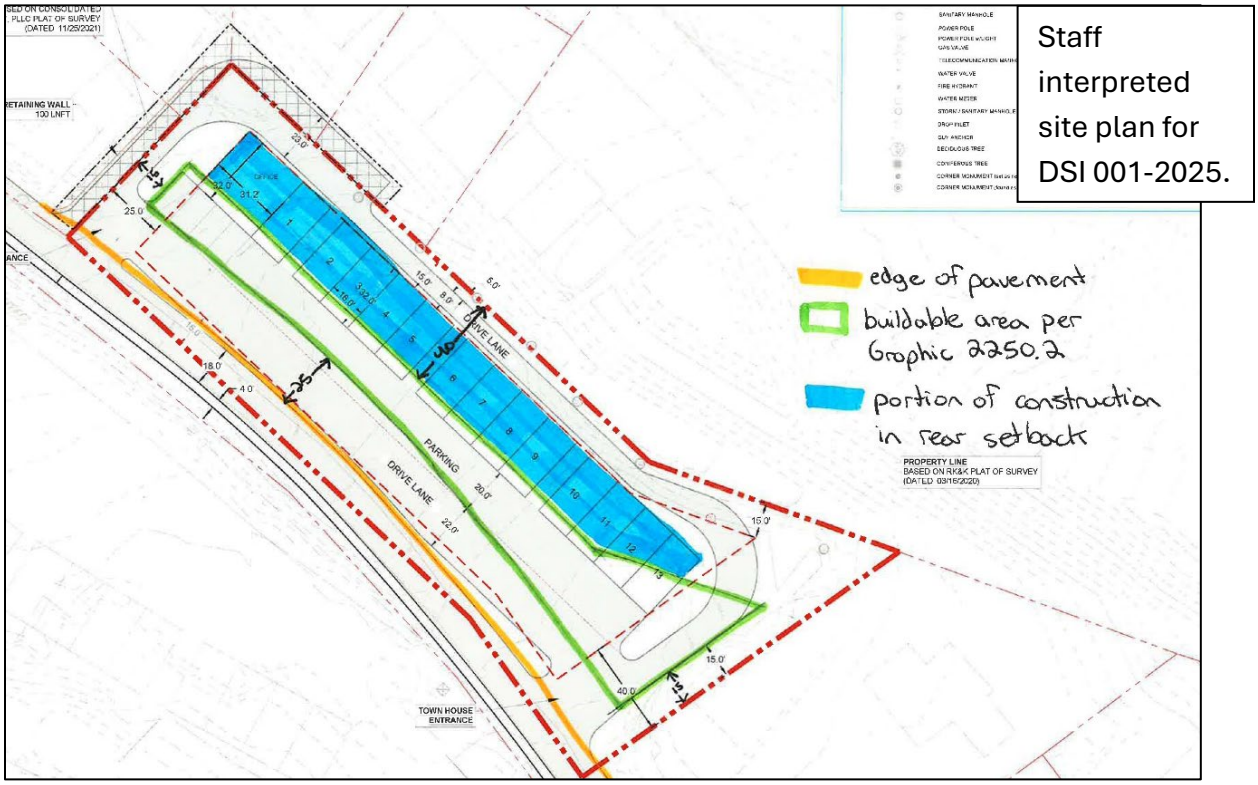
What the applicant proposes (note the NW and NE access area is an easement owned by neighboring property):



The site plan outlines what the applicant presumes to be the required front (yellow), rear (blue), and side (green) yard setbacks. The required 5-foot minimum drive-aisle setback (which is not an issue for the rear of the property) is also delineated as shown on the site plan. Based on 'saying' that the NW access easement can be considered THE 'frontage' street.

That easement is on land owned by the neighboring property, does not meet DOH street standards and was only provided historically to allow 'driveway access to the parking in the rear of the property for buildings close to Idlewood (see old photo pg 1). Even if we were to consider this the road, by 2250.39 that would mean that there would be 3 front yards of 25' setbacks.

Additionally, the property line goes out into the middle of the road, the buildable area is further reduced. The applicant has not measured this distance (as required by the Planning Office) from the edge of pavement.



Edge of pavement has been the standard for some time. There is usually a 5-foot utility easement at the front of the property, hence the 5 foot interior drive aisle/parking setback. This is to ensure there would be minimal damage in the case of needed repairs.

This precedent was most strongly underscored in VAR 001-2022/LUP 001-2022 which entailed the construction of a Sheetz on 705. They had expressed permission from DOH to enter the RoW for parking, but still a Variance was required for only plantings in the rear of the property. Additionally, the pre-existing layout of the site was considered when doing approval.

There is also CUP 001-2013/LUP 004-2013 which construction of a set of storage units on Bakers Ridge Rd. The property extends into the road right of way as per the plat shown in Deed Book 1267 Pg 539, but they had to define the setback from the edge of pavement.

Additional projects utilizing the specialized setbacks as per Graphic 2250.02 (left) and 2250.39 due to unusual property layout:

DSI 002-2013, DSI 004-2020, DSI 002-2023, DSI 001-2024, MDSI 001-2014

No Variance requested

For all the reasons indicated, it is unclear how any DSI could be approved without a variance to address any of the setback or frontage issues, even if the MCPC would approve the 'frontage road

interpretation' proposed. However, the precedent set by the earlier applications for DSI 001-2023 and VAR 003-2023 denied a number of the possible variances that could be sought.

Additional projects utilizing a variance request setbacks:

Greatest setback reduction : VAR 001-2014 from 15 feet down to three feet for a medical complex adjacent to an extra wide DOH right of way, with 24 feet to the edge of pavement. DOH was consulted and approved.

Additional information from earlier reports:

> *There is no topographic need (in fact just the opposite – see below) to impinge on this rear setback, let alone allow the buildings entirely within it* ***(cf. earlier MCPC ruling for DSI 001-2023).*** *Rather, a much less impactful layout that infringes far less on the setbacks – one with the buildings toward the front (****see Exhibit C****), as was proposed with an earlier submission, as well as others provided as workable templates by staff. The work session raised this as a viable way to address the DSI 'impacts' of the development – and thus looked like a simple way to move the process forward.*
>
> *This is the most problematic part of the application in the opinion of staff (****see Summary****). First, as a part of this application, the layout places the houses entirely in the rear setback, rather than toward the front with the parking to the rear, as was the case with the earlier application. The lot predates the zoning ordinance, and the former structure also had buildings toward the street with parking/access to the rear* ***(see Exhibit G).*** *The lot topography is more conducive to this layout with a drop of roughly 10-15 feet from front to rear. The low area is also more conducive to stormwater storage for stormwater events over the 25-year design flood, as these are occurring far more frequently in recent years (cf. 2 1000+yr flashfloods during the summer of 2022). The email from MUB supports this notion (****see Exhibit K****) – specifically with the first bullet after 'Post Construction' where MUB is trying to protect the stormwater channel. The adjacent development was requested to make sure it provided some extra stormwater storage as a result, and it did so. Furthermore, with parking/drive aisles to the rear, there is less impact.*
>
> First, the design is replacing a building forward arrangement (**see Exhibit G**). As the lot preexisted the zoning ordinance, the site/lot was designed with that in mind and may explain why there is insufficient room for the more 'modern', more land-consumptive design proposed. The older design adapted to the lay of the land, having the building on the street at street level and the rear maintaining the natural slope and being used for parking/access. This avoided the cost of a retaining wall. By being designed with the natural topography, it was less impactful on the neighborhood, which leads to the next point.
>
> Second, the topography and stormwater issues of the site: As the proposed design is in contrast to the natural topography, it is possible to assume that there will be negative impacts when it comes to the management of stormwater. The site HAS been cleared by MUB as meeting the required 25-year storm events, but in the past 5 years we have had

over a dozen rain events above that level, including two 1000 year+ flashflood events during the summer of 2022. Though MUB cannot 'require' protection of the channel to safely handle large storm events, they can strongly recommend it, and have done so. Consequently, staff would feel more comfortable with a design that allowed stormwater during those events to have some place to sojourn other than in the basements of this development and the ones behind. Those stormwater considerations were essentially the ONLY request from the neighborhood (i.e. in terms of neighborhood impacts/DSI – a reasonable condition for a DSI), basically placing the buildings forward and having the parking area behind allowing the parking lot and natural low area to absorb/hold the water without channeling during such rain events over the 25 year design.

Finally, inherently, is parking in front better? Opinion arguably varies on the subject, but without any 'performance' requirement, Monongalia County has not weighed in on 'aesthetic' choices – so arguments based on 'aesthetics' would set a precedent here. Certainly, there is no guidance provided by the zoning ordinance on this. Furthermore, most of the country is actively preferring a 'building forward' approach as being better for the aesthetics of the street – in particular because it has been shown to be more conducive to pedestrians/walking and their safety. The ULI has shown that walkable neighborhoods generate higher purchase/house prices. The MCPC may judge this for themselves – two 'equivalent neighborhoods from the DC area were shown in earlier hearings with the applicant. This should be a 'moot' point as mentioned – the MCPC does not evaluate based on 'aesthetics', but conversely, one cannot then assert that 'aesthetics' is a sufficient argument for the MCPC to pick one option over another without some other factors.



Exhibit F: Two different street views of townhouses, one with the parking in the front and the other with parking in the rear.



Exhibit G: Street views and aerials of the property prior to redevelopment.