

February 22, 2023

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3400 West Chester Pike  
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Westtown Township  
Attn: Jon Altshul, Township Manager  
1039 Wilmington Pike  
West Chester, PA 19382

**RE: 1632 Associates – Visual Arts Center  
Conditional Use Review  
Westtown Township  
0236-23-0155**

Dear Mr. Altshul,

Thank you for your thorough review of the conditional use application (the “Application”) submitted by my client, 1632 Associates LLC (the “Applicant.”) From you, I note that I have received:

- A February 1, 2023 Completeness Review from the Brandywine Conservancy.
- A February 11, 2023 Fire Review Letter by the Westtown Township Fire Marshal.
- A February 16, 2023 Architectural Review Letter by Linn Architects.
- A February 16, 2023 Conditional Use Traffic Review by Albert Federico Consulting LLC.
- A February 17, 2023 Engineering Review by Cedarville Engineering Group LLC.
- A February 17, 2023 Zoning Review from the Brandywine Conservancy.

I attach copies of each review letter as Exhibits 1-through-6, and will address the issues raised in them seriatim herein.

**I. February 1, 2023 Brandywine Conservancy Completeness Review.**

The February 1, 2023 Brandywine Conservancy Completeness Review (the “Completeness Review”) identifies four areas that require supplementary material. Although not deemed complete, the Application has nevertheless been scheduled for a hearing before the Planning Commission on February 22, 2023, and before the Board of Supervisors on March 13, 2023. Thank you for the courtesy. Kindly allow this letter to respond to the specific issues raised in the Completeness Review.

- A. **Request for Traffic Study.** The Completeness Review specifically notes that “a traffic impact study is not explicitly required under Chapter 10, Zoning, for a visual arts center” but nevertheless recommend that the Township request the applicant complete and submit such a study.

As a matter of law, the Applicant reserves all rights to present an application *without* a traffic study which is, as you correctly note, not required. The Applicant also notes that because a traffic study is not required, it cannot serve as a basis to deny the application as a matter of law. Nevertheless, following the Township’s request, a traffic study is attached hereto at Exhibit 7.

- B. **LEED Certification.** The Completeness Review notes that the Application “shall also show the applicant’s intention with regard to incorporation of LEED...certified building design principals”. Section 170-2009.B.6.e provides that “strong consideration shall be given to incorporation of LEED...certified building design principals recommended by the US Green Building Council” but does not include any requirements with respect to the submission.

As a matter of law, the Applicant reserves all rights to present an application *without* discussion of LEED certification. The Applicant also notes that, because the ordinance does not make LEED certification an objective requirement of conditional use, failure to pursue or obtain LEED certification cannot serve as a basis to deny the application as a matter of law.

Nevertheless, kindly accept this letter as the Applicant’s indication of its intent to pursue LEED certification. Please note, however, that the Township’s Zoning Ordinance contemplates a discussion with the Township regarding the design of the Visual Arts Center and, depending on the Township’s eventual demands, LEED certification may be more or less feasible. Simply put: if LEED certification is of value to the Township, the Applicant respectfully requests that it keep LEED certification in mind in proposing revisions to the present design.

- C. **Conservation Design.** The Completeness Review notes that demonstrating “compliance with the conservation design process pursuant to § 170-1617...is strongly recommended.”

Attached at Exhibit 8, please find the Applicant’s Conservation Plan.

- D. **List of Building Materials.** The Completeness Review finally requires that the

Applicant should provide a full list of general building materials.

The Applicant notes that the Township's Zoning Ordinance contemplates a discussion with the Township regarding the design of the Visual Arts Center and, depending on the Township's eventual demands, the list of building materials may change. With that caveat, the *general* list of building materials will include the following: (1) wood; (2) cement; (3) concrete; (4) glass; (5) steel; (6) aluminum; (7) nickel; (8) ceramic; (9) prefabricated doors and windows; (10) drywall; (11) paint; (12) asphalt; (13) stone; and (14) prefabricated plumbing parts.

## II. February 11, 2023 Fire Marshall Review.

The February 11, 2023 Fire Marshal review (the "Fire Review") identifies two areas of concern, which are addressed below.

- A. Hydrant Relocation.** The Fire Marshall proposes that the existing fire hydrant on Green Lane be moved to the north side of the entrance along the curb line on Green lane, and add a second hydrant to the east side of the entrance along the curb line of the West Chester Pike side.

The Applicant has serious reservations regarding this request. In the first place, relocating the hydrant would make access more difficult for the adjacent gas-station, which poses a much greater fire risk than the proposed Visual Arts Center. It would also place the hydrants farther from the proposed building.

The Applicant is open to discussion regarding this request, but notes that it is not a requirement of conditional use, and would likely (substantially) increase the cost of the project to no benefit.

- B. Turning Radius.** The Fire Marshall also expresses concern that his longest fire apparatus may not be able to enter the West Chester Pike driveway as designed.

We have conducted a thorough engineering review, and it is our belief that the engine described by the Fire Marshall will be able to negotiate the turn from West Chester Pike into the building's entrance. Our engineer will offer testimony to this effect during the conditional use hearing.

## III. February 16, 2023 Review Letter by Linn Architects.

The February 16, 2023 Review Letter by Linn Architects ("Architecture Review") identifies

five requests for revision, which are addressed seriatim below:

- A. Second Front Yard Setback.** The Architecture Review requires two front yard setback lines to be added to the zoning compliance block on Sheet 1.

The Applicant will comply; however, please note that all distances from the property-line are shown on the plan; the second front-yard setback is shown at 99.7', or roughly four times the minimum distance.

- B. Dimension to Wall vs. Roof Element.** Next, the Architecture Review requires that all dimensions be taken from the roof element, which is anticipated to overhang the building wall.

The Applicant will comply; however, please note that because the plan shows that the proposed building is sited far from the lot lines, the revision to the plan will not place the plan out of compliance with the Township's area and bulk regulations.

- C. Maximum Building Height.** Next the Architecture Review notes that the structure is designed at a height of 41'-4" and, "since a story is often considered to be 10 feet in our industry, this minor deviation needs to be discussed, to see how 4-stories is interpreted."

"Story" is a defined term under in the Township's Zoning ordinance, and does not mean "10 feet." Instead, it means "that portion of a building comprised between the surface of any floor and the roof next above, exclusive of any basement or cellar." § 170-201. The proposed building includes only one story.

Nevertheless, the Township's Zoning Ordinance contemplates a discussion with the Township regarding the design of the Visual Arts Center and, depending on the Township's eventual demands, the height of the building may change. To the extent the Township seeks to reduce the height of the building, the Applicant suggests that the change be done on this basis, and not on the basis of the number of 'stories.' Regardless, the Applicant will comply with minor reductions in height proposed by the Board.

- D. Light Spill.** Next, the Architecture Review notes that "the 25-foot-high glass curtain wall and main entrance face south toward the rear of the townhouses, so a prediction of light spill through that façade wall, and to the south should be provided."

Because of the substantial screening provided by the 1+ acre of trees to the south, it is anticipated that no light will spill to the south beyond the border of the Property. To the extent the height of the building overtops the trees, it is suggested that curtains be added to the interior to prevent light spill over the tops of the trees.

- E. **Compliance with § 170-802.G.5.a-g.** Next, the Architecture Review notes that the “Applicant should provide additional information how these screens comply with § 170-802[(G)](5), Section A through G.”

Section 170-802.G.5 imposes a series of seven requirements on the construction and operation of VCT for Visual Art Center uses: (a) the VCT should be structurally integrated into the exterior building façade “as much as possible” and face toward vehicular travelled rights of way; (b) the maximum surface area of a VCT is 500sqft; (c) the VCT may advertise both on- and off-premises advertising, but shall not advertise obscenity; (d) illumination of the VCT must be internal; (e) the VCT must shut down between 12:00am-and-6:00am; (f) the VCT shall not move, flash, scroll, or be otherwise animated; and (g) the brightness of the VCT shall not exceed 0.3 footcandles of light above the normal ambient levels.

The Applicant will comply with each of these requirements, and will present testimony during the hearing before the Board of Supervisors. The Applicant is open to entering into an operating and maintenance agreement with the Township to further secure its obligations with respect to Section 170-802.G.5.

#### IV. February 16, 2023 Traffic Review Letter.

The February 16, 2023 Traffic Review Letter by Albert Federico Consulting, LLC (“Traffic Review”) raises five concerns:

- A. **Traffic Statement.** First, the Traffic Review seeks a traffic statement demonstrating that the additional traffic associated with the development does not add to congestion or create a hazard.

A traffic study is attached at Exhibit 8, and additional information will be supplemented in advance of the March 13, 2013 Conditional Use Hearing. By way of initial response, however, it is the Applicant’s expectation that the proposed Visual Arts Center will generate minimal trip-ends, especially during work-days; digital displays do not generate trip-ends, and do not constitute a traffic hazard when properly sized and sited.

- B. Materials to be presented.** Next, the Traffic Review asks for additional information regarding the materials to be presented on the digital display.

The Applicant intends to comply with the requirements of § 170-802.G.5.c, which permits a VCT to advertise “on-premises businesses or activity, off-premises businesses or activity, public announcements, civic events, and emergency messages or alerts. The VCT shall not display or advertise any content prohibited by 18 Pa.C.S.A. § 5903.” In addition to this, the Applicant is open to entering into an operations and maintenance agreement with the Township that would further restrict advertising content.

- C. Site Improvements.** Next, the Traffic Review suggests that consideration be given to the addition of sidewalks, facilities supporting the existing bus stop, and an accessible crossing of Green Lane.

The Applicant is open to constructing a sidewalk if directed to do so (although it is not a requirement of Conditional Use Approval.) The Applicant is open to constructing a bench area in the vicinity of the bus stop if directed to do so (although it is not a requirement of Conditional Use Approval). The Applicant cannot, however, add a shelter in the vicinity of the bus stop, since doing so would interfere with the safe readability of the proposed VCT. The Applicant is open to a discussion regarding the creation of an accessible crossing of Green Lane, but notes that: (1) Green Lane is controlled by the Township, so striping would be at the Township’s discretion and not subject to the Applicant’s exclusive control; and (2) a crossing over Green Lane would lead to the private shopping center, and might inappropriately encourage off-site parking on private property.

- E. Stormwater Modifications.** Next, the Traffic Review suggests that consideration should be given to an amendment to the stormwater management facilities such that no guardrail would be necessary along Green Lane.

The Applicant is open to a discussion on this subject, but notes that the likely alternative to above-ground stormwater management facilities is an underground system. Underground systems are, of course, significantly more expensive to construct and maintain, and are more easily subject to failure (which can go undetected for months or years.) Because this is not a requirement of Conditional Use Approval, it is the Applicant’s strong preference to maintain above-ground stormwater management facilities.

- F. Work within State Right-of-Way.** Finally, the Traffic Review notes that work within the State right-of-way will require a PennDOT Highway Occupancy Permit.

The Applicant agrees and will obtain all necessary permits, from both the Township and PennDOT, for all work at the site.

#### V. February 17, 2023, Cedarville Engineering Review.

The February 17, 2023 Cedarville Engineering Review (the “Engineering Review”) raises eighteen concerns, which are addressed seriatim below:

**A. Signage Plan.** First, the Engineering Review requires that a signage plan be provided.

The Applicant notes that a Signage Plan is *not* required with respect to the VCT incorporated into the Visual Arts Center. *See*, § 170-802.G.4.a. At present, there is no plan for other signage to be incorporated into the site. As a result, no signage plan is required. *See*, § 170-1815.B. (requiring a signage plan only in conjunction with application for a sign permit.) Alternatively, kindly accept the present site plan, which depicts no additional signage, as the Applicant’s signage plan.

In the event the Applicant’s intentions with respect to additional signage changes, the Applicant will of course supplement its application to include a sign plan.

**B. Landscape Plan.** Next, the Engineering Review requires the submission of a Landscape Plan.

The Applicant has requested a Landscape Plan, and will comply fully with the requirements of the Township’s Landscaping ordinance.

**C. Lighting Plan.** Next, the Engineering Review requires the submission of a Lighting Plan.

The Applicant has requested a Lighting Plan, and will comply fully with the requirements of the Township’s Lighting Ordinance.

**D. Architecture.** Next, the Engineering Review (1) requires a list of building materials; (2) requires the Township to consider retaining an architect; and (3) requires that the Township Planning Commission and Board of Supervisors review the architectural facades.

Applicant has provided a list of building materials above, and the Township has already retained the services of an architect. The Applicant looks forward to addressing the Planning Commission and Board of Supervisors with respect to the plan.

- E. **VCT Placement.** Next, the Engineering Review (1) seeks confirmation that the VCTs will be incorporated into building walls (and not the roof); and (2) requests that the site plan be modified to reflect that change.

The Applicant agrees that it will only incorporate VCT technology into the walls of the proposed Visual Arts Center, and not the roof. The present site plan depicts a building with walls angled to appropriately face the roadway—it is on these angled walls that the Applicant will incorporate the VCT. A note will be added to the site plan to clarify this.

- F. **Compliance with § 170-802.G.5.** Next, the Engineering Review requires that the restrictions of Section 170-802.G.5 be added as a note to the Site Plan, and be imposed as conditions to approval.

The Applicant will amend the site plan to incorporate the requirements of Section 170-802.G.5, and has no objection to the imposition of the same as a condition of approval.

- G. **Steep Slopes.** Next, the Engineering Review requires that steep slopes be shown on the Site Plan, and a tabulation of steep slopes be added showing both the area of precautionary and prohibitive slopes, and proposed disturbances to Precautionary and Prohibitive slopes.

This information is provided and tabulated in the Applicant’s Conservation Plan, which is attached at Exhibit 8.

- H. **Tree Replanting.** Next, the Engineering Review asks that (1) the Applicant acknowledge its obligations with respect to compensatory planting; and (2) although it acknowledges that doing so is “a requirement applicable at Land Development,” the Engineering Review asks that “a plan shall be provided at Conditional Use stage showing the location of existing trees six inches in diameter to provide inventory and to demonstrate that woodlands disturbance is being minimized.”

As the Engineering Review acknowledges, this is not a requirement of conditional use approval. The Applicant is open to preparing such a plan, but would prefer *at this stage* to provide the locations of trees 18-inches in diameter, which are included on the Conservation Plan attached at Exhibit 8. The Applicant will comply if required to do so. Regardless, the Applicant will comply with the requirements of the tree replacement ordinance.



- I. **Parking Spaces.** Next, the Engineering Review requires that the parking space width be changed from 9 feet to 9.5 feet.

The Applicant has requested this change to the Plan and will comply. The site is presently over-parked, so the change can be made (1) without increasing impervious cover; and (2) without reducing the plan below the parking requirements.

- J. **ADA Access.** Next, the Engineering Review requires revisions to the Site Plan to show that ADA access is provided from the designated parking spaces to the building entrance. It also asks to show ADA access “adjacent to the West Chester Pike and Green Lane accesses in order to accommodate proposed sidewalks that may be required.” The Engineering Review also requests proposed grading to the extent ADA access is feasible.

The Applicant will comply with the request to show ADA access from the parking spaces. In the event a sidewalk is required, the Applicant will comply with the request to show ADA access from the sidewalk entrances.

- K. **Parking Grade.** Next, the Engineering Review notes that the “proposed grading within the parking area currently exceeds five [degrees]. The Conditional Use Plan shall be revised accordingly.”

“Parking area” is not a defined term in the Township’s ordinance. If taken to refer to the parking spaces (which is a logical conclusion, since that is the “area” in which one “parks”) then the grade of the parking area is just 5° and is within the requirements of the Ordinance.

If, on the other hand, the Township believes additional space is included within the parking area, the Applicant (1) requests clarification as to what comprises the parking area, and (2) will comply.

- L. **Handicapped Parking.** Next, the Engineering Review requests that the existing handicapped parking (1) be dimensioned in the plan; and (2) be located in an area of less than 2° slope.

The Applicant will comply.

- M. **Deliveries.** Next, the Engineering Review requests that the Applicant demonstrate that “regular deliveries are not applicable for the proposed use.”

The proposed use is for a visual arts center. It is anticipated that there will be

substantially no deliveries, and none on a regular basis. The only items coming to the visual arts center will be visual art when and as exhibits are changed.

- N. Refuse Removal.** Next, the Engineering Review requests that the Applicant address the method of refuse removal.

It is anticipated that residentially-sized trash receptacles (and not dumpsters) will be appropriate for the site. Aside from courtesy trash cans to deter littering, it is not anticipated that the use contemplated for the site will generate trash.

- O. Accessway locations.** Next, the Engineering Review requests that the Site Plan include dimensions for of the accessways from public streets and highways.

The Applicant will comply.

- P. Driveway information.** Next, the Engineering Review requests that: (1) driveway entrance profiles be provided on the site plan; and (2) sight distances at each accessway be provided.

The Applicant will comply.

- Q. Conservation Design.** Next, the Engineering Review requests a Conservation Design plan; a copy is provided at Exhibit 8.

- R. Stormwater Easement and Guardrail.** Finally, the Engineering Review requests clarification regarding an easement for the existing 18-inch culvert crossing West Chester Pike, and the 'extent' of the proposed guardrail along West Chester Pike.

It is not immediately clear that an easement is necessary for an existing culvert. The Applicant accordingly requests clarification; if an easement is necessary, it will be supplied or the Applicant will reconfigure so that one is not necessary.

It is also not immediately clear what information is sought regarding the 'extent' of the proposed guardrail. The Applicant accordingly requests clarification, and will thereafter comply.

## VI. February 17, 2023, Zoning Review from the Brandywine Conservancy.

The February 17, 2023 Zoning Review from the Brandywine Conservancy (the "Zoning Review") raises six concerns addressed to the Applicant, which are addressed seriatim below:

- A. **VAC Use.** First, the Zoning Review asks for clarification as to whether any portion of the proposed building will not be used as a Visual Arts Center, and if so, its intended use.

No—the intent is for the entirety of the proposed building to be used as a Visual Arts Center.

- B. **Section 170-1800.** Next, the Zoning Review recommends that the Applicant verify compliance with Section 170-1800 (Signage).

Section 170-802.G.4.a makes Section 170-1800 applicable to Visual Arts Centers, but not to the VCTs incorporated into them. § 170-802.G.4.a (“Design standards. The following shall apply: (a) Signage (not applicable to a VCT): in accordance with § 170-1800, *et seq.*”). Accordingly, the Signage Ordinance is not applicable to the VCTs proposed as a component of the Visual Arts Center.

As noted above, the Applicant does not contemplate additional signage on the property at this time. In the event that changes, the Applicant will supplement its application and apply for all permits necessary to comply with the requirements of the signage ordinance.

- C. **Size of VCT.** Next the Zoning Review recommends that the Applicant verify the size of the proposed VCT.

The size of the proposed VCT is provided in the architectural renderings, and will be 12x40’

The Zoning Review also seems to suggest that the perforated aluminum siding proposed for the visual arts center building may be considered a VCT. The Applicant respectfully disagrees, because perforated aluminum is not susceptible of “communicating visual messaging.” In the event the Township considers perforated aluminum to be a VCT, however, the Applicant will adjust its siding material accordingly so as not to exceeds the square footage limit of the VCT.

- D. **Section 170-802.G.5.** Next, the Zoning Review recommends that the Applicant provide details addressing its compliance with Section 170-802.G.5.

Section 170-802.G.5 imposes a series of seven requirements on the construction and operation of VCT for Visual Art Center uses: (a) the VCT should be structurally integrated into the exterior building façade “as much as possible” and face toward vehicular travelled rights of way; (b) the maximum surface area of a VCT is 500sqft;

(c) the VCT may advertise both on- and off-premises advertising, but shall not advertise obscenity; (d) illumination of the VCT must be internal; (e) the VCT must shut down between 12:00am-and-6:00am; (f) the VCT shall not move, flash, scroll, or be otherwise animated; and (g) the brightness of the VCT shall not exceed 0.3 footcandles of light above the normal ambient levels.

The Applicant will comply with each of these requirements, and will present testimony during the hearing before the Board of Supervisors. The Applicant is open to entering into an operating and maintenance agreement with the Township to further secure its obligations with respect to Section 170-802.G.5.

- E. Landscape Plan.** Next, the Zoning Review recommends that the Applicant provide a landscape plan.

As noted above, the Applicant will comply.

- F. Lighting Plan.** Next, the Zoning Review recommends that the Applicant confirm that lighting standards are met, and provide a lighting plan.

As noted above, the Applicant will comply.

I would welcome your call to discuss this matter in greater detail once you have an opportunity to review the enclosed documents.

Yours,



Jack Larkin, Esq.  
General Counsel  
Catalyst Experiential