



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015
www.anc3e.org

June 22, 2009

BY FAX AND FIRST CLASS MAIL

Marc D. Loud
Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite 200 South
Washington, DC 20001

RE: Application No. 17926 of LT Propco LLC

Dear Chairperson Loud:

I enclose ANC 3E's resolution in support of the above-referenced application and a voluntary agreement upon which the resolution rests in part.

I respectfully request that BZA give the resolution great weight despite its submission less than seven days before the hearing scheduled on the application. Please do not hesitate to contact me if you have any questions or if I can otherwise be of assistance.

Sincerely,

JONATHAN BENDER
Chairperson

cc Phil Feola (e-mail only)

Enclosure



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WHEREAS, LT Propco LLC ("LT Propco") proffered a draft voluntary agreement in connection with the above-referenced application ("Application"), and

WHEREAS, during the course of a properly noticed ANC 3E meeting held on May 12, 2009, at which a quorum was present, three issues were raised that were not addressed in the then-current draft of the Voluntary Agreement -- community meetings, clarity on the kinds of trees to be planted, and use of green building technologies, and

WHEREAS, LT Propco and ANC 3E pledged to work together to attempt to address these issues in advance of the BZA hearing;

NOW THEREFORE BE IT RESOLVED, upon review of the submissions made by LT Propco to the BZA, presentations it has made to ANC 3E, and subject to the terms of the attached Voluntary Agreement, ANC 3E fully supports the LT Propco application for a special exception in the above-referenced matter and urges the BZA promptly to grant such a special exception, and

BE IT FURTHER RESOLVED, ANC 3E respectfully asks that the BZA incorporate the terms in Section 5 of the attached Voluntary Agreement in its Order granting the requested special exception, and notes that, pursuant to Section 6 of the attached Voluntary Agreement, LT Propco supports this request.

The resolution passed by a vote of 3-0-1 with Commissioners Bender, Frumin and Sklover voting yes and Commissioner Serebin abstaining.



Jonathan Bender
Chairperson

VOLUNTARY AGREEMENT

This Voluntary Agreement (the "**Agreement**") is made and entered into as of the 22nd day of June, 2009, by LT Propco LLC, the applicant in BZA Application No. 17926 ("**LT Propco**"), and Advisory Neighborhood Commission ("**ANC**") 3E (LT Propco and ANC 3E each being a "**Party**" hereunder or collectively, the "**Parties**").

WITNESSETH:

WHEREAS, LT Propco has filed an application with the District of Columbia Board of Zoning Adjustment (BZA Application No. 17926) related to two properties, Lot 811 in Square 1660 and Lot 33 in Square 1580 (the "**LT BZA Properties**"), which are located within the boundaries of ANC 3E; and

WHEREAS, LT Propco is seeking to construct a retail building on Lot 811 in Square 1660 which must obtain special exception relief from the District of Columbia Zoning Regulations which require that all parking spaces be located on the same lot with the buildings they are intended to serve; and

WHEREAS, ANC 3E agrees to support BZA Application No. 17926 ("**Application**"), in reliance in part on LT Propco's agreement to certain restrictions, to hold further discussions about the proposed mix of retailers in the new building, and to the provision of financial benefits to organizations that benefit the quality of life in ANC 3E; and

WHEREAS, LT Propco agrees to the meetings and provisions set forth herein only in the instance that the Board of Zoning Adjustment approves the Application and LT Propco receives all required permits for construction and occupancy; and

WHEREAS, LT Propco and ANC 3E desire to set forth their agreement with respect to ANC 3E's support of BZA Application No. 17926 as more fully set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Meeting to discuss possible retail tenants.** LT Propco hereby agrees that a senior representative of LT Propco will attend a meeting with representatives of ANC 3E and residents of ANC 3E to discuss the possible mix of tenants that may occupy the new retail building to be located on Lot 811 in Square 1660. This meeting shall occur prior to September 30, 2009.

2. **Donations by LT Propco.** An affiliate of LT Propco will provide a total of \$25,000 of financial contributions to organizations that positively impact the quality of life for residents of ANC 3E ("**Contributions**"). The Parties agree that the following organizations shall receive these portions of the Contributions ("**Recipients**"):

- a. A non-profit organization to be created that will provide and/or facilitate provision of aging-in-place services, to be designated by ANC 3E;
- b. Community Council for the Homeless at Friendship Place; and
- c. The Alice Deal Middle School PTA.

The Contributions shall be made to the appropriate representatives of the Recipients after any and all permits, licenses and approvals have been obtained which are necessary for the construction and development of the new retail building on Lot 811 in Square 1660. LT Propco will make these contributions at a formal groundbreaking ceremony (“Groundbreaking”) for the project. LT Propco will provide ANC 3E at least 45 days notice of the date it intends to hold the Groundbreaking. ANC 3E will provide notice to LT Propco at least five (5) days before the Groundbreaking of the precise allocation of the Contributions among the Recipients. If one or more Recipients is unable to receive what would otherwise be its allocation of the Contributions, ANC 3E may direct LT Propco to reallocate these funds, in proportions specified by ANC 3E, to the other Recipients and/or to additional recipients agreed to by the Parties.

3. **Exploration of Business Improvement District Membership.** LT Propco agrees that it and its affiliates involved in business activities in the Friendship Heights area of Washington, DC, will explore in good faith the possibility of joining and/or forming a business improvement district (BID) or similar organization that would serve all or some portion of the business districts of the Friendship Heights and Tenleytown neighborhoods of Washington, DC. The parties agree that “good faith” as used in this Section shall mean at a minimum that LT Propco will make a senior representative available to attend up to two meetings convened by ANC 3E with other business entities to explore the aforementioned possibility.

4. **Community Input.** Once every two years for the next ten years, a senior representative of LT Propco will attend an ANC 3E meeting to provide the community the opportunity to raise issues or problems related to or arising out of the Application and approval thereof.

5. **Other Benefits and Restrictions.** LT Propco agrees that it will:

- a) Install, maintain and replace, as necessary, a six foot high wood stockade fence along the entire length of the Lord & Taylor property to the rear of the houses from 4401 through 4447 Harrison Street, N.W.;
- b) install, maintain and replace, as necessary, the evergreen trees shown on the Landscape Plan, Sheet C-102, amended, of the plans submitted with the Application, and these evergreen trees shall be between eight and ten feet in height upon installation;
- c) design the lighting of the parking deck and the surface parking lot behind the existing Lord & Taylor Store so all direct lighting is confined on the surface in accordance with D.C. law so as to avoid spillage onto the adjacent properties.
- d) restrict use of the loading docks including trash removal at the Lord & Taylor store and the new building to be built on the Homeplate Lot pursuant to District of Columbia law, which currently restricts us to the daytime hours of 7:00 a.m. to

9:00 p.m.; and,

- e) provide customers of the future stores on the Homeplate Lot with the same parking privileges as customers of the Lord & Taylor store.

6. **Sustainable Building Elements.** LT Propco agrees that the building for the Homeplate Lot, once construction is completed, will include the following two environmentally sustainable design features:

- a) Energy-efficient HVAC mechanical equipment that will also include economizers; and
- b) a white roof.

7. **Request for Inclusion of Conditions in Zoning Order.** The Parties agree that ANC 3E may state in its resolution and/or other communication(s) concerning the Application that LT Propco requests that any BZA order approving the Application contain language mirroring the language in Section 5 of this Agreement.

8. **ANC 3E support for BZA Application No. 17926.** ANC 3E will fully support BZA Application No. 17926. ANC 3E's support will be evidenced by a formal resolution supporting LT Propco's application which will be submitted to the BZA by June 23, 2009 and/or testimony presented at the BZA's public hearing regarding this application on June 23, 2009.

9. **Choice of Forum / Choice Of Law.** Any controversy, claim, or dispute arising out of or related to this Agreement or any breach thereof shall be resolved in the Superior Court of the District of Columbia and/or the District of Columbia Board of Zoning Adjustment. The substantive law, excluding choice of law principles, of the District of Columbia shall govern litigation or other dispute resolution under this Section.

10. **Miscellaneous Provisions.**

Modification: A modification or waiver of any provision of this Agreement shall be effective only if made in writing and signed by the Parties.

Waiver: The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement. The failure of either party to insist upon such promises of any part of this Agreement shall not be construed as a waiver of a subsequent default of the same or similar nature.

Entire Agreement: This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

Binding on Survivors: All covenants, stipulations, promises, agreements, and

provisions in this Agreement shall apply to, bind and be obligatory on the parties hereto, their heirs, executors, administrators, personal representatives, and successors.

Severability: If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court or administrative agency finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Assignment and Subcontracts: Neither party may assign any rights or delegate any duties under this Agreement without the express prior written consent of the other party.

Headings and Paragraphs: Headings in this Agreement are for convenience only and shall not affect the meaning of this Agreement. References in this Agreement to any Section or paragraph are to the applicable numbered section of this Agreement unless otherwise clearly noted.

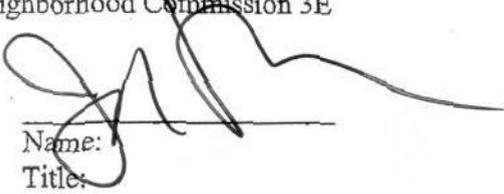
Counterparts: This Agreement may be executed simultaneously in one or more counterparts, by original or facsimile signature, and when executed by all parties shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date and year first written above.

LT PROPCO LLC

By: Jerrold G. Birmingham / P. Teale - attorney for LT Propco LLC
Name: JERROLD G. BIRMINGHAM
Title: EXECUTIVE VICE PRESIDENT

Advisory Neighborhood Commission 3E

By: 

Name:
Title:

The Shops at



The Shops at Lord & Taylor
 Square 1660, Lot 811 and
 Square 1580, Lot 33
 Western Avenue, NW
 Friendship Heights,
 Washington, DC 20016

Applicant / Owner:
L.T. Proproco LLC
 c/o NRDC Equity Partners Fund III L.L.
 3 Manhattanville Road
 Purchase, NY 10577

And
John W. Ridenour III
 11 E. Melrose Street
 Chevy Chase, MD 20815-4903

And
Linda Ridenour
 6911 Oak Ridge Avenue
 Chevy Chase, MD 20815

Master Planner:
Street-Works, LLC
 30 Glenn Street
 White Plains, NY 10603
 914-949-6505

Architect of Record:
kennethpark architects
 360 Lexington Avenue, 7th Floor
 New York, NY 10017
 212-599-0044

Civil Engineer:
Bohler Engineering
 22630 Davis Drive, Suite 200
 Sterling, VA 20164
 703-709-9500

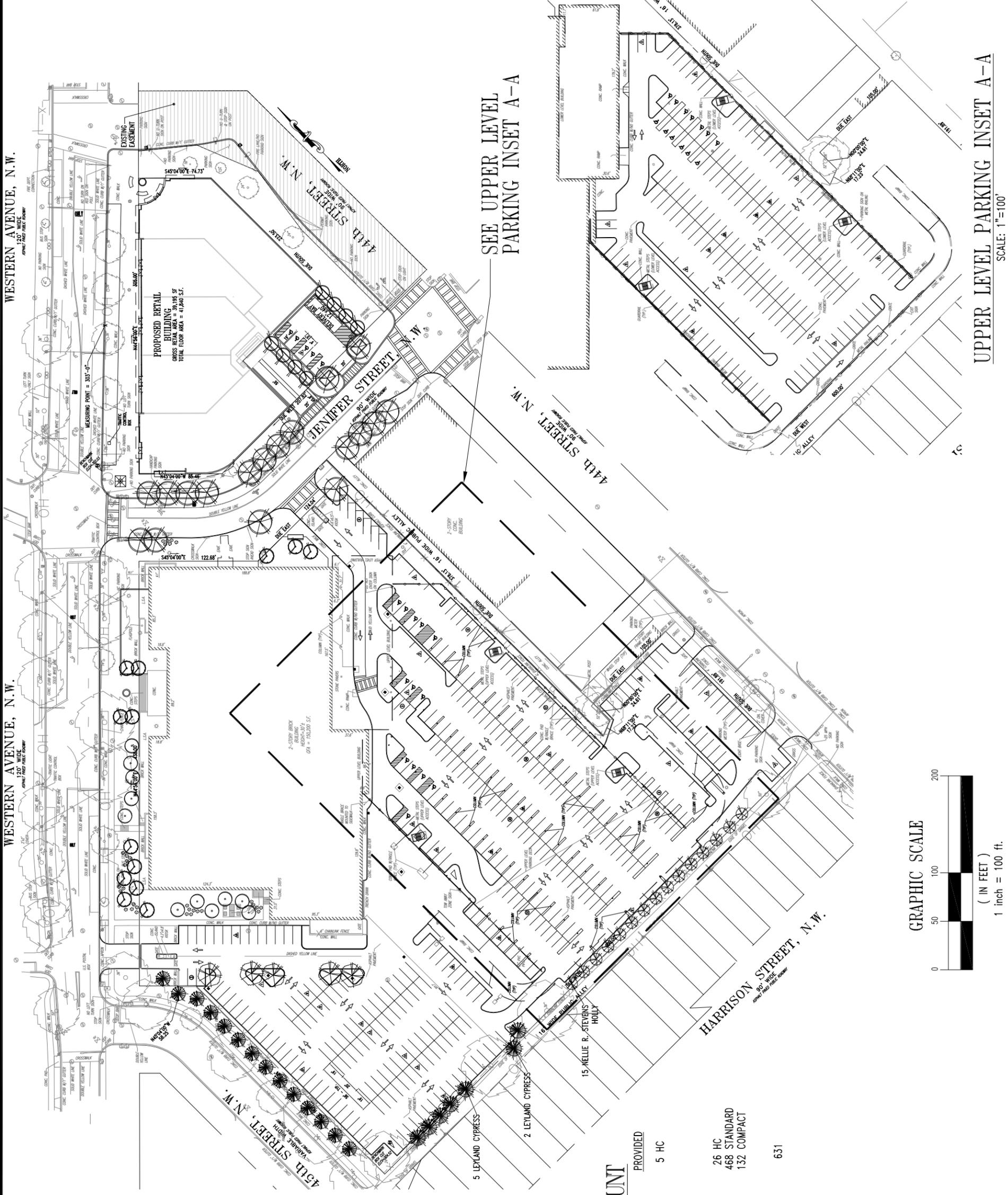
Traffic Engineer:
Wells & Associates
 1420 Spring Hill Road, Suite 600
 McLean, VA 22102
 703-917-6620

PLANTING NOTES	DATE	REVISION
4	06/22/09	RE. PER NEW BUILDING
3	04/18/08	RE. PER NEW BUILDING
2	04/10/08	RE. PER NEW BUILDING
1	04/04/08	SPECIAL EXCEPTION PL.
△	DATE	REVISION

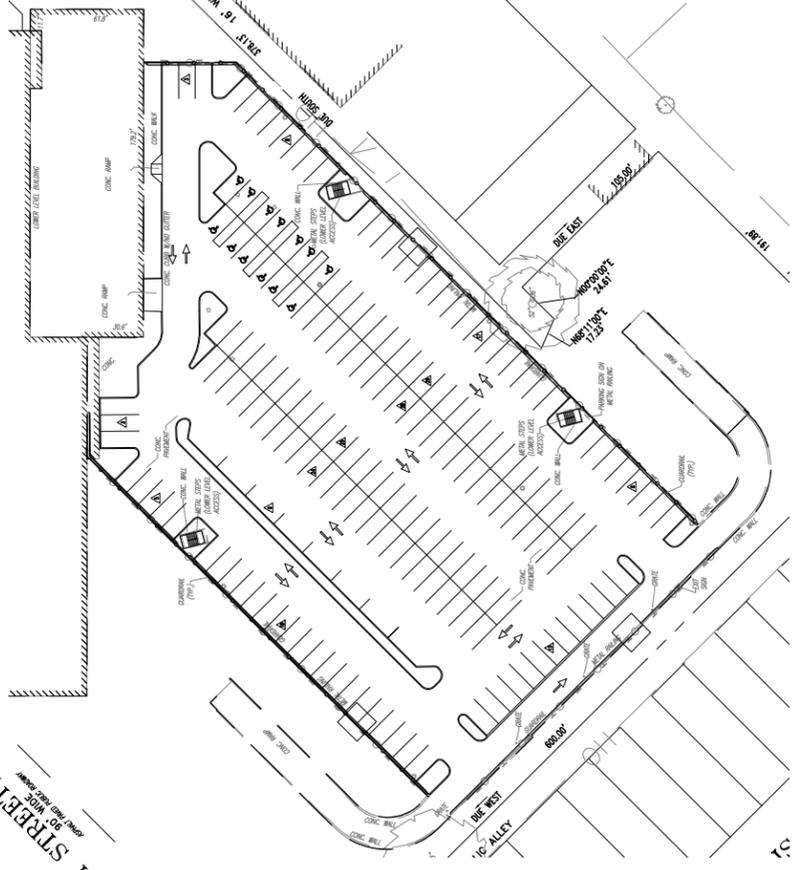
SHEET TITLE:
**OVERALL SITE AND
 LANDSCAPE PLAN**

PROJECT NO. S062020
SCALE: AS SHOWN
DATE: APRIL 04, 2008
DRAWN BY: BAS II
REVIEWED BY: R.J.B.
SHEET NO.

C-102



SEE UPPER LEVEL
 PARKING INSET A-A



UPPER LEVEL PARKING INSET A-A
 SCALE: 1"=100'

PLANTING NOTES

- LEYLAND CYPRESS 'NAYLOR BLUE' (X CUPRESSOCYPARIS LEYLANDII)
- INITIAL INSTALLATION SIZE: 6 - 8' TALL
- ULTIMATE SIZE/HEIGHT: BETWEEN 30 - 40' TALL WITH A 15 - 20' SPREAD
- SURVIVABILITY: HEARTY AND TOLERATES POOR CONDITIONS AND SHOULD DO WELL IN AN URBAN, NARROW PLANTING AREA.
- NELLIE R. STEVENS HOLLY (ILEX X 'NELLIE R. STEVENS')
- INITIAL INSTALLATION SIZE: 6 - 7' TALL
- ULTIMATE SIZE/HEIGHT: BETWEEN 15 - 25' TALL WITH A 15 - 20' SPREAD
- SURVIVABILITY: HEARTY AND TOLERATES POOR CONDITIONS AND SHOULD DO WELL IN AN URBAN, NARROW PLANTING AREA.

NOTE: DUE TO CONSTRAINED PLANTING AREAS, IT IS RECOMMENDED THAT PLANT SIZES LARGER THAN NOTED ABOVE ARE NOT TO BE USED ON SITE.

OVERALL PARKING COUNT

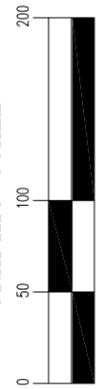
OVERALL PARKING REQUIREMENTS	REQUIRED	PROVIDED
ON-SITE - HOME PLATE LOT (1 SPACE/ 300 S.F. OVER 3,000 S.F.)	121	5 HC
OFF-SITE - LORD AND TAYLOR LOT (1 SPACE/ 300 S.F. OVER 3,000 S.F.)	491	26 HC 468 STANDARD 132 COMPACT
TOTAL	612	631

LEGEND

- EVERGREEN TREES
- DECIDUOUS PARKING LOT TREES
- DECIDUOUS STREET TREES ON GRASS PANELS
- DECIDUOUS SPECIMEN TREE
- ORNAMENTAL TREES
- SHRUBS

NOTE: FINAL LOCATION OF TREES IS DEPENDENT ON EASEMENTS AND OVERHEAD WIRE LOCATIONS.

GRAPHIC SCALE



(IN FEET)
 1 inch = 100 ft.