

# STATEMENT OF JUSTIFICATION

Cooley Godward LLP

ATTORNEYS AT LAW Broomfield, CO  
720 566-2050  
One Freedom Square  
Reston Town Center  
1951 Freedom Drive  
Reston, VA  
20190-5655  
Main 703 456-8000  
Fax 703 456-8100  
www.cooley.com

June 8, 2005

Mr. Gregory M. Hembree, AICP  
Director, Department of Planning & Zoning  
Town of Vienna, Virginia

HILLARY K. ZAHM  
(703) 456-8095  
hzahm@cooley.com

Mr. Dennis W. King  
Director, Department of Public Works  
Town of Vienna, Virginia

Re: Site Plan Modification for White Oak Tower (Tax Map# 38-3 ((2)) 86E (the "Property"))

Dear Mr. Hembree and Mr. King

I hope this letter finds you well. I am writing on behalf of Trimark VCP, LLC, the owner of the Property (the "Owner"). The following information is provided to outline the site plan modifications requested of the Town Council for the Property.

The Property is generally located in the Town of Vienna, Virginia, west of Maple Avenue and south of Pleasant Street; the Property is identified on the Fairfax County Tax Map as 38-3 ((2)) 86E and is zoned C-1A. The property does not have frontage on a public street; an ingress/egress easement east of the Property provides access to Maple Avenue through the neighboring parcel (38-4 ((2)) 21A), and certain ingress/egress easements south of the Property permit alternate access to Maple Avenue through the neighboring parcel (38-3 ((2)) 86).

### Conformance with Applicable Town of Vienna Regulations

The Property is currently developed with an approximately 48,323 gross square foot, six-story office building and an associated two-story parking structure (please note the Town originally approved a 46,274 square foot office building on the Property and recently administratively approved a 2,049 square foot increase associated with the enclosure of the sixth floor balconies). The Owner intends to convert the existing building into office condominiums in the near future. Section 18-208.1 of the Town of Vienna Zoning Ordinance (the "Ordinance") requires that prior to a condominium conversion, the subject property must "conform to all applicable zoning site plan and subdivision ordinances of the Town." The Ordinance states that if the property does not conform to all applicable regulations, the nonconformities must be addressed through a use permit, variance or special exception.

In lieu of seeking a special use permit, special exception or a variance, at the suggestion of Mr. Hembree and Steve Briglia, the Town Attorney, we respectfully request approval of a site plan modification. Through this site plan modification, we seek to amend the applicable zoning ordinance provisions for the Property, thereby, making the Property a conforming lot and permitting the condominium conversion in accordance with the Ordinance.

Cooley Godward LLP

Mr. Gregory M. Hembree, AICP  
Mr. Dennis W. King  
June 8, 2005  
Page Two

### Modifications Proposed with this Site Plan Modification

The existing office building was developed in 1977. At the time of construction, the Ordinance then in effect was less restrictive than the current Ordinance. The following items require Town Council approval of a site plan modification to permit the proposed condominium conversion. Please note that no new construction is proposed with this site plan modification; the modification is requested to address existing conditions that will remain.

#### 1. 25' Entrance Width Requirement (18-134.B.)

Section 18-134.B. of the Ordinance requires that public street ingress/egress maintain a width of 25'-35' at the street right-of-way line. The Property is not located with frontage on a public street, but ingress/egress is provided to the east and south via ingress/egress easements. In two of the three locations where the ingress/egress meets the eastern and northern property lines, an entrance width of 25' is not currently provided. The pavement width of the eastern property line access is approximately 21.7', and the pavement width of the northern property line access is 23.4'. The existing ingress/egress curb cuts to the Property effectively serve the site, and additional pavement width at the property lines is unnecessary, especially since the ingress/egress at the property line does not provide direct access to a public road. We respectfully request a site plan modification of the 25' ingress/egress width requirement for the ingress/egress width existing on the Property.

#### 2. Commercial Buildings Parking Requirement (Section 18-130.H.)

Section 18-130.H of the Ordinance requires that one parking space be provided for every 200 square feet of commercial floor area. As reflected on the plan included with the site plan modification request, 183 parking spaces (including six handicapped spaces) are provided to serve the existing building. At the time of site plan approval, the approved site plan indicated that 153 parking spaces were required. With the provision of 183 spaces, the site continues to exceed the parking requirement at the time of construction.

You may note that nine parking spaces on the southern side of the site straddle the southern property line. These nine parking spaces have been split by the southern property line since the Property underwent site plan review in 1977 (as indicated on the 1977 site plan approved by the Town of Vienna Department of Public Works). At that time, the Property and Tax Map 38-3 ((2)) 86 (the "Abousy Property") were under common ownership. In 2004, the Abousy Property was sold, and since that time has been under different ownership than the Property. Due to feedback from the Planning Commission and the Town Council, the Applicant worked with the owner of the Abousy Property to obtain an easement for use of the nine parking spaces. While the owner of the Abousy Property was unwilling to grant exclusive use of all nine spaces to the Applicant, the owner was willing to provide exclusive use of a number of the spaces.

Based on coordination with the owner of the Abousy Property, the nine spaces are now subject to a private easement agreement that provides the Applicant with exclusive use of five of the spaces. The easement provides exclusive use of the remaining four spaces to the owner of the Abousy Property. This agreement was

Cooley Godward LLP

Mr. Gregory M. Hembree, AICP  
Mr. Dennis W. King  
June 8, 2005  
Page Three

recently reached between the two property owners and provides resolution to an issue that was unresolved at the time of the original Town Council public hearing.

In addition to resolving the questions about the bisected parking spaces, the Applicant has added 16 parking spaces that were not previously indicated on the plans:

- Eight of these parking spaces are located in the basement of the White Oak Tower building. The Applicant has learned that these spaces were utilized in the past for parking, but throughout the Applicant's ownership of the Property, as well as the Property's ownership by a related party of the Applicant, which dates back to 1990, the spaces have been utilized as storage. Given the Planning Commission and Town Council concerns regarding the utilization of on site parking, the Applicant has agreed to convert this storage area back to parking spaces, to increase the total parking provided by eight spaces.
- One parking space has been added along the second row of parking east of the rear property line to increase the row from 18 to 19 spaces;
- Two spaces are now provided along the northeast property line to increase this row from seven to nine spaces;
- Two spaces have been added at grade underneath the parking deck second level on both sides of the brick entry plaza to the rear door; and
- Three spaces have been added parallel to the existing building on the southern side of the site.

When the Applicant last appeared before the Town Council, a total of 171 parking spaces were indicated on the plans. Of these 171 spaces, 162 spaces were provided for exclusive use by the Applicant, with the remaining nine spaces bisected by the southern property line. With the resolution of the easement issue and the addition of 16 spaces as indicated above, the Property now provides 183 spaces—a net increase of 12 spaces.

Please note that the total of 183 spaces includes seven spaces that have consistently been indicated on the site plan modification plans but are not currently provided on the Property. These spaces will be provided following approval of the site plan modification:

- Five parking spaces due to re-striping throughout the site (further discussed below);
- Two new handicapped parking spaces to bring the site into compliance with the current ADA requirements.

The site will provide a total of 21 new parking spaces with the approval of this site plan modification. These spaces are provided directly in response to the concerns and questions raised by the Town Council and Planning Commission.

Cooley Godward LLP

Mr. Gregory M. Hembree, AICP  
Mr. Dennis W. King  
June 8, 2005  
Page Four

In addition to the increase in spaces exclusively available to the Applicant, the Applicant has recently discovered that 21 nonexclusive spaces are also accessible by the Applicant. These spaces are located south of the Property and the Abousy Property on Tax Map 38-3 ((36)) 1 (the "Kohler Property"). An easement provides nonexclusive use of these spaces by the Applicant, the Abousy Property and the Kohler Property. These nonexclusive spaces can be utilized on a first come-first serve basis by tenants and visitors of the three properties. The 21 nonexclusive spaces are accessed via an ingress/egress easements across the Abousy Property and the Kohler Property.

With the inclusion of 21 nonexclusive parking spaces and 183 exclusive spaces, a total of 204 spaces are available for use by the Applicant. Since the construction of the existing office building, the provided parking has adequately served the Property and the tenants. With the conversion of the building to condominiums, the Owner expects that the parking will continue to adequately serve the site, since no change in the total square footage of the office is proposed.

#### 3. Side Yard Parking Setback (18-131)

Section 18-131 of the Ordinance provides that there shall be no parking within five feet of the side yard property lines in the C-1A zoning districts. Some of the parking spaces provided along the southern property line are located closer than five feet to the property line or cross over the property line. We respectfully request a modification of the Town requirement of a five foot setback between parking spaces and the property line to permit the existing layout and parking configuration to remain.

#### 4. Parking & Loading Space Dimensions (18-128 & 18-132)

The current Ordinance requires that parking spaces be nine feet wide by 20' long. The parking spaces provided generally meet the 9' width requirement; however, the striped spaces are approximately 18' long. The Owner proposes to re-stripe portions of the parking lot to provide 8.5' wide parking spaces in certain areas to allow for additional parking spaces to be provided on the site. By providing 8.5' wide spaces in certain areas of the top level of the parking deck and along the side property line, the Owner is able to increase the provided parking by five spaces.

The Ordinance requires that loading spaces be 15' wide for every 50' of building width and 25' long. Based on this language and a building width of 121.4', a loading space with a width of 45' is required. One existing at-grade loading space is located at the loading dock. The loading space is measured 13' wide and 23' long. The loading dock space is used infrequently by tenants of the building. The loading dock is only utilized when tenants are moving in or out of the building, and during these times, the dock is only utilized for short periods of time—a few hours up to one day.

Given the infrequent use of the loading dock, the Owner has located the property's three dumpsters in the loading dock area. This location provides screening on three sides to minimize visibility of the dumpsters. During the rare times that the loading dock is used, the dumpsters are temporarily relocated outside the loading dock to a nearby parking space. Once the loading space is no longer in use, the dumpsters are immediately

Cooley Godward LLP

Mr. Gregory M. Hembree, AICP  
Mr. Dennis W. King  
June 8, 2005  
Page Five

returned to the loading dock. This sharing of space between the loading dock and the dumpsters allows for screening of the dumpsters and minimization of excess impervious surface on the site. The dumpsters have been located in this area for over 15 years, and the system in place has functioned efficiently and effectively. A note has been added to the plans to indicate the temporary storage of the dumpsters in the location of the loading dock.

A secondary smaller loading space is located on the ground floor of the parking deck and is measured at 10' wide and 18.5' long. This loading space is periodically utilized for loading for deliveries by UPS, Federal Express, etc. This loading space has functionally served the facility for a number of years, and the Owner expects it will continue to serve the loading needs of the site. A modification of the dimensions of the existing parking and loading spaces is requested of the Council.

### Modifications for the Front and Rear Yard Setbacks and Height Requirement Unnecessary

**Building Height**—Please note that the maximum height of the existing office building (65') exceeds the current height limit in the Town of Vienna (35') per Section 18-83 of the Ordinance. The Ordinance states that buildings in existence at the time of the Ordinance are considered conforming structures. A site plan modification is not required, therefore, to address the height of the building, since the structure was in place prior to the current height limitation in the Ordinance.

**Front Yard**—The current Ordinance requires a 15' front yard; however, those structures in existence at the time the Ordinance amendment established the 15' front yard requirement are considered conforming structures as long as the front yard setback requirement in existence at the time of construction is met. The existing building was constructed under an approved site plan and in accordance with the Ordinance in effect at the time of construction; therefore, a site plan modification is not required for the front yard setback.

**Rear Yard**—The Property is located in the C-1A District, which requires a 10' rear yard setback. With the current rear yard setback of 12'-7", the property meets the rear yard setback requirement.

### Town of Vienna Parking Concerns

We understand that the Town Council has expressed concerns about the number of parking spaces provided on the Property. As indicated above, this site plan modification does not seek Town approval to construct additional square footage or alter the uses currently permitted on the Property and yet the Applicant has increased the number of parking spaces provided on the site by 21 with this site plan modification. We further understand that concerns have been expressed about the uses permitted on the property—specifically there are concerns with retail and restaurant uses and the amount of medical office space that could be provided on the property.

The Town of Vienna Zoning Ordinance permits the provision of certain retail and restaurant uses in the C-1A District. To address the Town's concerns with the provision of such uses, the Applicant is willing to commit to exclude retail and restaurant uses as permitted uses on the Property.

Cooley Godward LLP

Mr. Gregory M. Hembree, AICP  
Mr. Dennis W. King  
June 8, 2005  
Page Six

The Town of Vienna Zoning Ordinance does not distinguish between professional office and medical office. Given the Town Council concerns with the parking demand generated by a medical office, the Applicant agrees to limit the percentage of medical office to 50% of the total square footage of the building.

The Applicant respectfully requests Town Council approval of a site plan modification for the above referenced items with a condition indicating that retail and restaurant uses will not be permitted and no more than 50% of the square footage provided on the property shall be medical office use.

### Conclusion

We respectfully request Town Council consideration for the site plan modifications described above. Per Section 18-256 of the Zoning Ordinance, the Town Council may approve site plan modifications if the practical, efficient and aesthetic development of the site cannot be achieved within the constraints of the Ordinance. The site was developed in accordance with the Town of Vienna requirements in effect at the time and has been operating functionally and effectively since the 1970's. The proposed condominium conversion will not adversely affect the functionality of the site or office building, and it will not jeopardize the health, safety and morals of the Town. In fact, with the above proposed commitments to restrict uses and provide additional parking, with approval of the site plan modification, the site will provide more parking than is currently located on the Property, and the permitted uses will be much more restricted than they are currently.

Please feel free to contact me if you would like additional information on the Property or the condominium conversion. Thank you for your continued assistance with this site plan modification request.

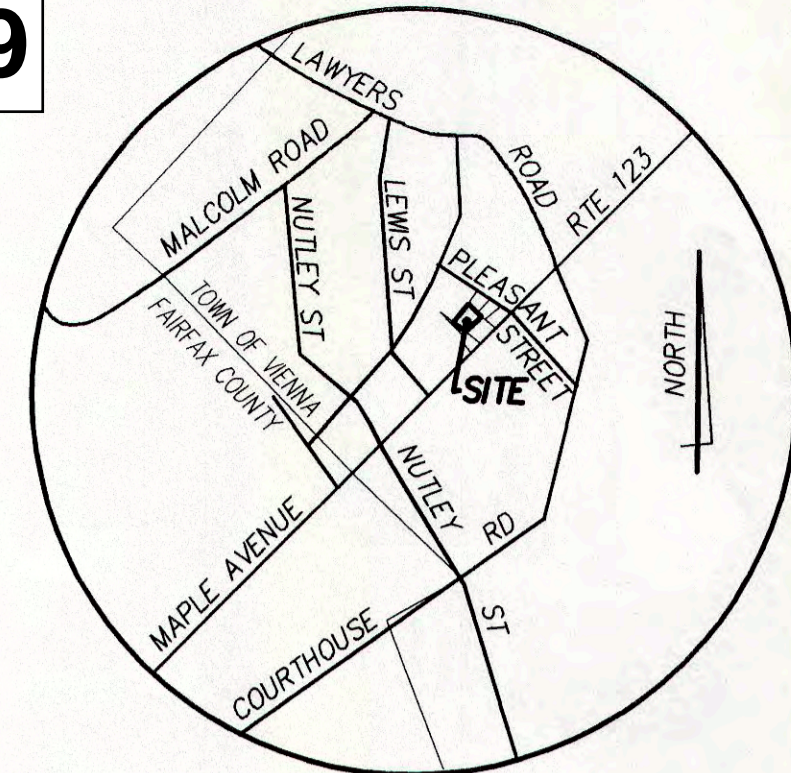
Sincerely,

Hillary Katherine Zahm, AICP  
Senior Urban Planner

cc: Darrell Marsh, Trimark Corporation  
Gavin Klein, Cooley Godward LLP  
Mark C. Looney, Cooley Godward LLP

21141 v5RE

# ATTACHMENT 09



VICINITY MAP  
SCALE: 1"=2000'

## GENERAL NOTES

- THIS PROPERTY IS LOCATED ON T.M. 38-3-((2))-86 E AND IS CURRENTLY ZONED C-1A.
- BOUNDARY AND TOPOGRAPHY ARE FROM A NOVEMBER, 2004 SURVEY.
- ALL BUILDINGS AND STRUCTURES ARE EXISTING AND HAVE BEEN FIELD LOCATED. UNDERGROUND UTILITY LOCATIONS HAVE BEEN TAKEN FROM ORIGINAL SITE PLAN DATED 2/13/78 AND HAVE NOT BEEN FIELD LOCATED.
- THE LOT DOES NOT HAVE DIRECT FRONTAGE ON A PUBLIC STREET. IT IS SERVED BY AN INGRESS-EGRESS EASEMENT THROUGH T.M. 38-4-((2))-21A TO MAPLE AVENUE (D.B. 17166 PG. 1945).
- THIS LOT IS LOCATED OUTSIDE THE CHESAPEAKE BAY RESOURCE PROTECTION AREA.
- WHEN LOADING DOCK IS IN USE, DUMPSTERS ARE TEMPORARILY RELOCATED TO ONE NEARBY PARKING SPACE, THEN RETURNED TO THE LOADING BAY AREA.

## TABULATION

ZONING DISTRICT: C-1A

SITE AREA 58,804 SF

FLOOR AREA:	GROSS	NET (EXCL. STAIRS & ELEVATOR)
	48,323 SF	45,181 SF

MAX. BLDG. HEIGHT ALLOWED = 35' PER SEC. 18-83  
 EX. NUMBER OF STORIES = 6  
 EX. BLDG. HEIGHT = 65' (EXCL. PENTHOUSE & SKYLIGHT PER SEC. 18-164) GRANDFATHERED PER SEC. 18-83

YARDS:	MIN.	REQ'D.	EXISTING
FRONT	15'		9.7'
SIDE	10'	(5'+ 1' EA. FOR 5 STORIES)	36.8'
REAR	10'		12.7' (EXCL. 2ND FLOOR PLANTER)

PARKING REQUIRED PER ORIGINAL SITE PLAN: 153 SPACES  
 PARKING PROVIDED: 97 REG. AT-GRADE  
 54 DECK  
 18 BASEMENT  
 8 OFF-SITE ON T.M. 38-4-((2))-21A PER DB 17166 PG. 1945  
 177 TOTAL REGULAR SPACES  
 + 6 HANDICAP SPACES  
 183 SPACES TOTAL

HANDICAP REQUIRED: 6 PER SEC. 18-130 & ADA REGS.  
 HANDICAP PROVIDED: 4 EXIST. + 2 PROPOSED = 6

LOADING REQUIRED: SPACE W/WIDTH OF 15' FOR EVERY 50' WIDTH OF BLDG.  
 x 121' WIDE BLDG. = 45' WIDE  
 LOADING PROVIDED: 2 SPACES (ONE 13'x23' ON SOUTH SIDE OF BLDG. (ONE 10'x18' UNDER DECK ON WEST SIDE)

TREE COVER REQUIRED: 58,804 SF SITE AREA x 10% = 5880 SF  
 EXISTING TREE COVER TO REMAIN: 5570 SF  
 TREE TO BE PLANTED: 314 SF  
 TOTAL TREE COVER PROVIDED: 5884 SF

## COMPLIANCE WITH C-1A ZONING DISTRICT

- |            |  |
|------------|--|
| SEC. 18-80 | OFFICE IS A PERMITTED USE IN THE C-1A DISTRICT.  |
| SEC. 18-81 | NO CONDITIONAL USES ARE PROPOSED.  |
| SEC. 18-82 | A. N/A<br>B. FRONT YARD OF 15' IS REQUIRED. EXISTING FRONT YARD IS 9.7'. THIS YARD IS GRANDFATHERED UNDER THE PREVIOUSLY APPROVED SITE PLAN.<br>C. N/A<br>D. SIDE YARD OF 5' PLUS 1' FOR EVERY STORY ABOVE THE FIRST FLOOR WITH 5 ADDITIONAL STORIES YIELDS A MINIMUM REQUIREMENT OF 10'. MINIMUM SIDE YARD PROVIDED IS 36.8'.<br>E. REAR YARD OF 10' IS REQUIRED. EXISTING REAR YARD IS 12.7'.<br>F. 25% OF FRONT YARD REQUIRED TO BE LANDSCAPED. OF THE AVAILABLE FRONT YARD, ABOUT 44% IS LANDSCAPED. WE HEREBY REQUEST ACCEPTANCE OF THE EXISTING LANDSCAPING. |
| SEC. 18-83 | MAXIMUM CURRENT HEIGHT LIMIT IS 35'. BUILDING HEIGHT IS 65'. THIS HEIGHT IS GRANDFATHERED UNDER THE PREVIOUSLY APPROVED SITE PLAN.   |

## ENGINEER'S/SURVEYOR'S CERTIFICATE

THIS PROPERTY IS IN THE NAME OF TRIMARK VCP, LLC AS RECORDED IN DEED BOOK 16831 PAGE 453 OF THE LAND RECORDS OF FAIRFAX COUNTY, VA.

OWNER:  
TRIMARK VCP, LLC  
6231 LEESBURG PIKE, SUITE 300  
FALLS CHURCH, VA 22044



RECEIVED  
JUN 9 2005  
DEPT OF PLANNING & ZONING

PACIULLI

SIMMONS & ASSOCIATES

Engineering Planning Surveying Landscape Architecture Wetland Expertise Environmental Science

11212 Waples Mill Road  
Fairfax, VA 22030-7404  
PH 703.934.0900  
FX 703.834.9787  
EM fairfax@psald.com

WHITE OAK TOWER  
CONDOMINIUM  
VIENNA, VIRGINIA

SITE PLAN  
MODIFICATION

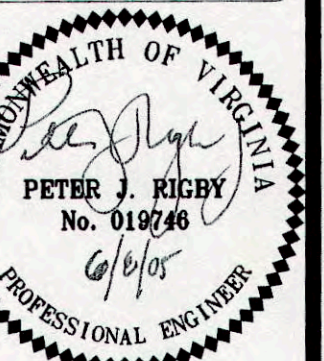
COMMONWEALTH OF VIRGINIA  
Professional Engineer  
PETER J. RIGBY  
No. 418746  
4/05

I HEREBY CERTIFY THAT OTHER THAN THE REVISIONS SHOWN HEREON DATED NO OTHER CHANGES HAVE BEEN MADE ON THIS SHEET EXCEPT THOSE PREVIOUSLY APPROVED

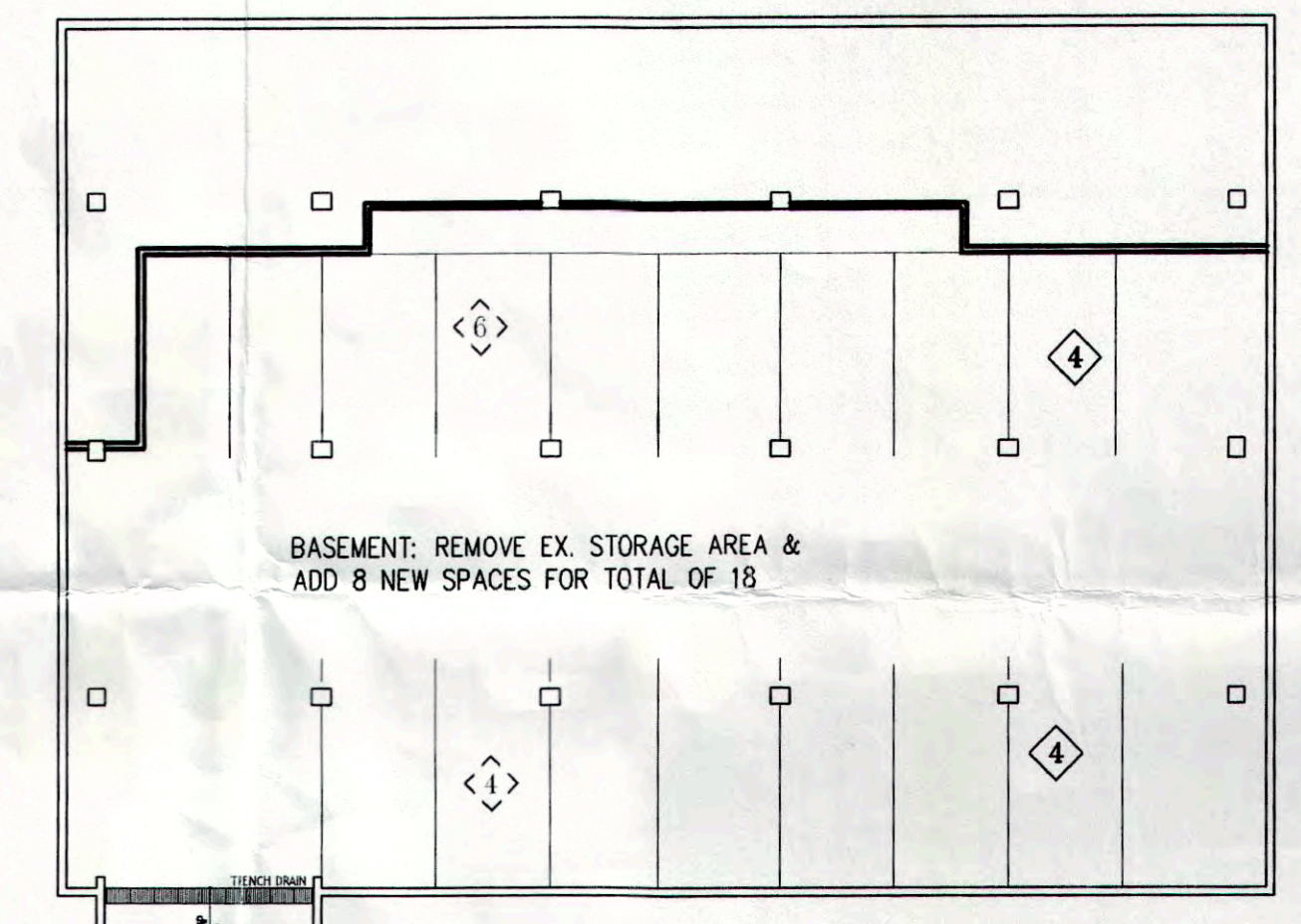
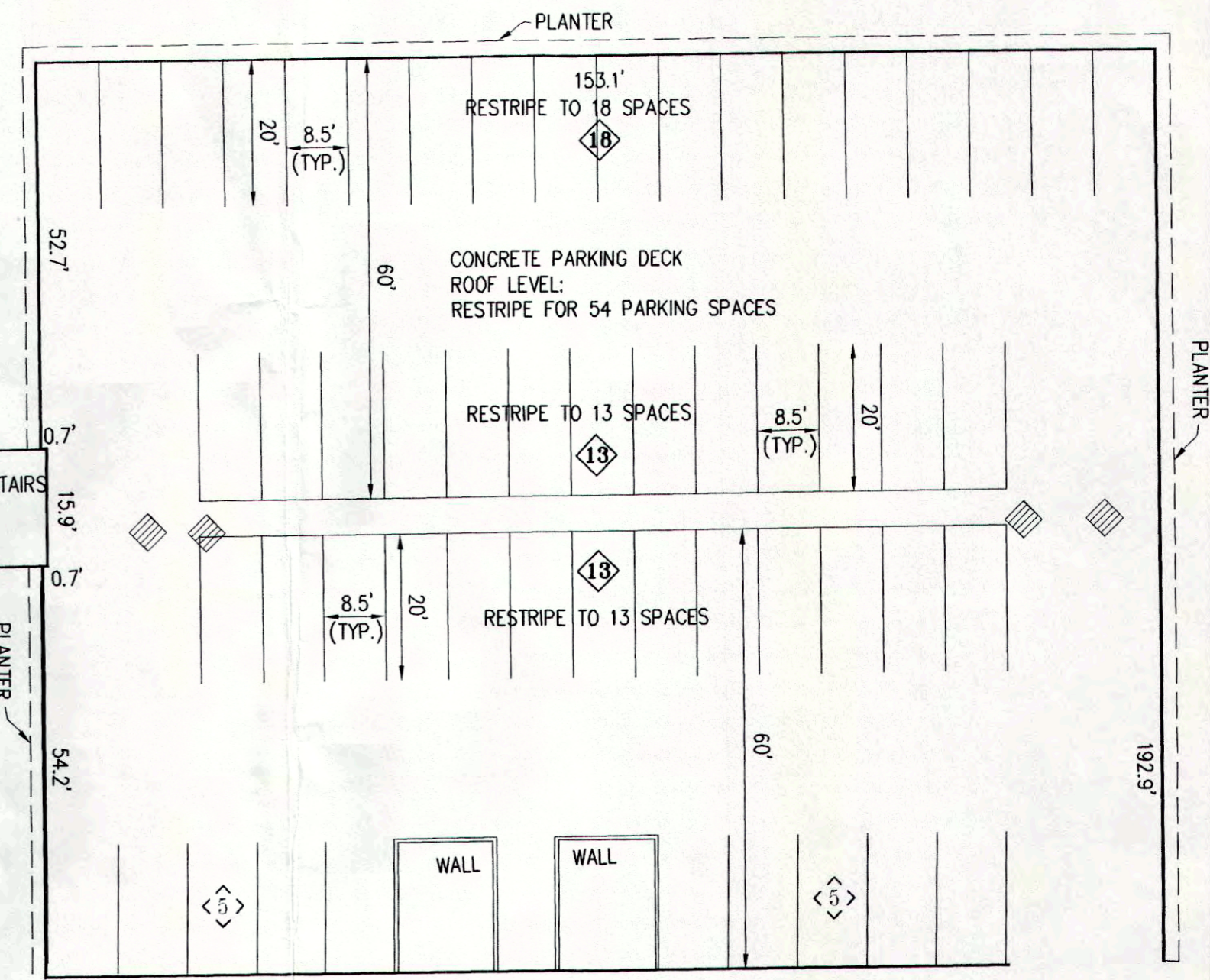
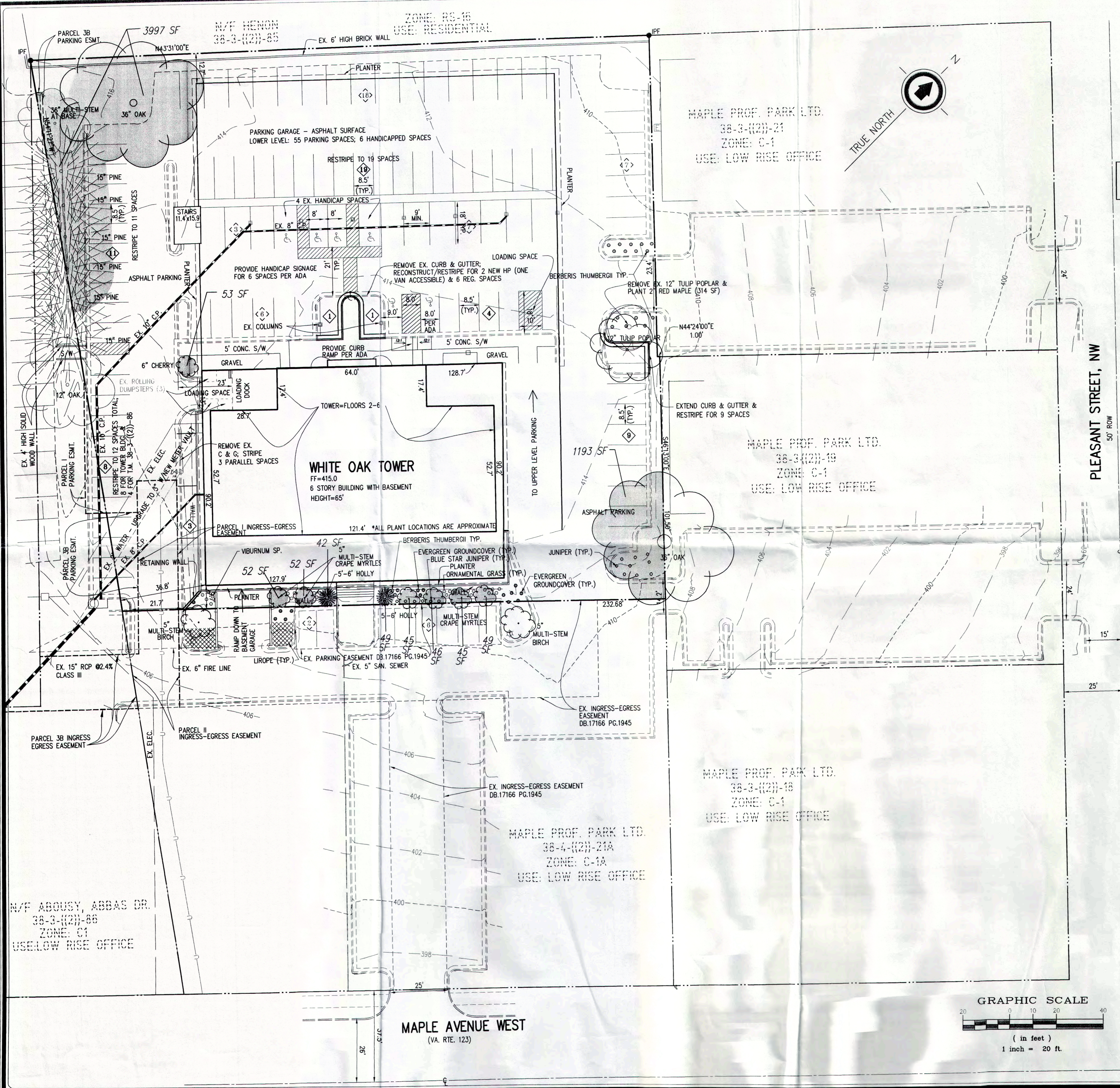
SCALE: NONE  
DATE: 6-7-2005  
DRN: ML  
CKD: TL  
SHEET 1 of 2  
FILE NO:  
04F-3865-4

WHITE OAK TOWER CONDOMINIUM VIENNA, VIRGINIA

SITE PLAN MODIFICATION

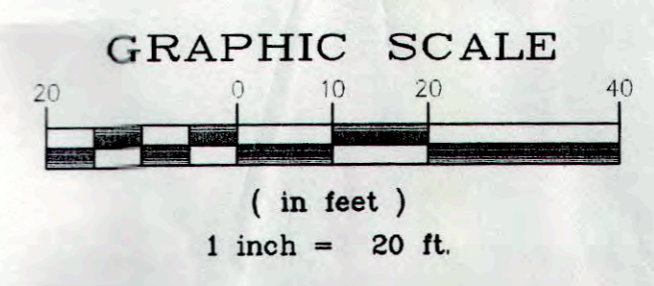


I HEREBY CERTIFY THAT OTHER THAN THE REVISIONS SHOWN HEREON DATED... NO OTHER CHANGES HAVE BEEN MADE ON THIS SHEET EXCEPT THOSE PREVIOUSLY APPROVED. SCALE: 1"=20' DATE: 6-7-2005 DRN: ML CKD: NJC SHEET 2 OF 2 FILE NO: 04F-3865-4



LEGEND

- Sanitary Sewer, Underground Telephone, Storm Sewer & Structure, Retaining Wall, Underground Elec. Line & Box, Light Pole, Water Line & Valve, HC, Sidewalk, Curb & Gutter, Edge of Pavement, Wood Fence, Existing Contour, Existing Tree Cover.



J:\ACAD\3865\SP\3865SP.dwg, 06/08/2005 02:34:13 PM, nancyj, Xerox-510.pcl