4. The granting of the Variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements of the aesthetic value in the vicinity. As in other locations in the City, the retaining wall will be aesthetically pleasing with an intended rockscape finish.

Variance Request Burden of Proof (Cont'd)

5.	That the granting of the Variance will be consistent with the character of the surrounding area.
	See attached
	<u> </u>
	*
••••	

END

5. The proposed wall will be consistent in terms of both size and materials with the many examples of retaining walls found in the surrounding area.

VARIANCES BURDEN OF PROOF FORM

The Applicant has requested an interpretation of the Agoura Hills Municipal Code to determine whether the portion of the Building along Canwood Street constitutes the Building's primary frontage and the portion along the parking lot constitutes its secondary frontage for signage purposes. If that interpretation is that the frontage along Canwood Street is not the primary frontage or the portion along the parking lot is not the secondary frontage, then the Applicant requests a Variance to allow the signage for the Agoura Business Center West as if it were pursuant to Agoura Hills Municipal Code Section 9676 as follows:

 That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

The subject property is irregularly trapezoidal in shape, containing approximately 2.01 acres, and bound by Canwood Street on the south, Derry Avenue on the east, Applicant owned industrial property on the north and unimproved property on the west. The subject property is also topographically irregular as there is more than a 25 foot drop on the 240 feet deep pad equating to an almost 10% grade change. Due to such irregular shape and sloping topography, the proposed building was situated parallel to Canwood Street with public entrances and the parking lot located on the north to allow for two drive entrances; one to the west of the building on Canwood and one to the north on Derry. As a result of this orientation, the rear of the building faces the primary public right of way, Canwood Street, instead of the front of the building.

Due to these extenuating site conditions and an atypical building orientation, a Variance is requested to approve of Signage Program dated December 1, 2008 and allow the placement of one sign of 18 square feet maximum and five signs of 28 square feet maximum along Canwood Street (one sign for each of the six tenants), six signs of 18

square feet maximum along the parking lot (one for each tenant), and one sign of 10 square feet maximum along the west side of the building.

Presently, an overwhelming majority of the retail properties and businesses in the City enjoy the privilege of advertising signage on the building side that faces the main public right-of-way. The surrounding businesses all have signs facing Canwood Street, as well as the 101 Freeway. Signage is located in this way in order to attract the maximum number of trips into the parking lot thereby capturing potential customers. The Applicant's Sign Program provides for signs along Canwood Street, however, views from the 101 Freeway would be limited to the signs for possibly the two eastern most tenants.

Strict application of the Municipal Code would deprive the subject property of the privilege of tenant signage on the side of the building facing the public right of way, which would render it and the businesses unable to compete in the surrounding market. Additionally, other businesses would have an unfair advantage over the subject property for merely having the front of these buildings facing the public right of way.

The granting of this Variance will be consistent with Division 5 Section 9655 of the Agoura Hills Municipal Code (Code), which states that the intent and purpose of the regulations is to establish uniform sign regulations to "assure proper expression through visual communications," "promote fairness in competition, and retain identity in the business community."

2. That the granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated;

The granting of this Variance will not constitute a grant of special privileges as there are currently several buildings in the City with signage on the back or side of the building facing the primary public right of way, even though a public entrance is not located on such building face. Examples include Fedex Kinkos located at 5045 Cornell Road, Washington Mutual Bank located at 5695 Kanan Road, and Citibank located at 5837 Kanan Road. With other surrounding business enjoying signage facing Canwood Street and the 101 Freeway, a granting of the variance would not be for special privileges, but would rather allow the subject building and its tenants to compete in the marketplace in the same manner as those surrounding businesses.

3. That the strict interpretation and enforcement of the provisions of the Zoning Ordinance would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance;

Strict interpretation and enforcement of the Zoning Ordinance would minimize or prohibit signage facing the primary public right of way. As stated above, among the list of purposes of the Zoning Ordinance is to "promote fairness in competition and retain identity in the business community." The strict interpretation of the ordinance would place the subject building's tenants in an unnecessary hardship by failing to allow their business signs along Canwood Street merely because the front of the building or rather the side of the building with the entrances is not facing Canwood Street.

4. That the granting of the Variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements of the aesthetic value in the vicinity; and

The granting of this Variance will not be detrimental to public health, safety, or welfare as each tenant's sign will be designed by a qualified professional, permitted by the City's Building Department, installed by a licensed contractor, and thoroughly inspected by the City. Furthermore, the granting of this Variance will not be materially injurious to

properties of the aesthetic value in the vicinity as the design, illumination, materials, and finishes will be consistent with the City Sign Regulations and Sign Guidelines and the character of the surrounding community.

5. That the granting of the Variance will be consistent with the character of the surrounding area.

The granting of this Variance will be consistent with the character of the signage currently in the City as evidenced by the previously mentioned Fedex Kinkos, Washington Mutual, Citibank, and surrounding businesses along Canwood Street. The immediate surrounding area is predominately composed of buildings of commercial uses with Business Park-Manufacturing (BP-M), Business Park Office Retail (BP-OR), and Commercial Retail/Service (CRS) General Plan and Zoning designations. The proposed Signage Program will not only be consistent with but also an upgrade to the signage currently in this commercial zoned corridor.



RETAIL DEVELOPMENT FOR THE PROPERTY LOCATED AT THE NORTHWEST CORNER OF DERRY AVENUE & CANWOOD STREET, AGOURA HILLS

CONDITIONAL USE PERMIT CASE NO. 07-CUP-010
SIGN PERMIT CASE NO. 07-SP-036
VARIANCE REQUEST CASE NO. 08-VAR-006
VESTING TENTATIVE PARCEL MAP 69426
GENERAL PLAN AMENDMENT CASE NO. 07-GPA-001
ZONE CHANGE CASE NO. 07-ZC-001

EXHIBIT B Applicant's Letter

AGOURA BUSINESS CENTER WEST, LLC

5304 DERRY AVENUE, SUITE A
AGOURA HILLS, CALIFORNIA 91301
TELEPHONE (818) 889-2822 • FAX (818) 889-8750

May 14, 2009

City of Agoura Hills Planning Commission 30001 Lady Face Court Agoura Hills, CA 91301

Re: Agoura Business Center West/07-CUP-10/07-GPA-001/07-ZC-001/TPM 69426

To the Members of the City of Agoura Hills Planning Commission:

We write in accordance with Section 9655.11 of the Agoura Hills Municipal Code (Code) to request and provide our interpretation of (i) the meaning and application of Section 9655.2.N "Frontage, primary" and (ii) the meaning and application of Section 9655.8.B.1.j relating to "second public frontage".

On December 8, 2009, Agoura Business Center West, LLC (Applicant) re-submitted its application for a development permit to allow the construction of approximately 20,000 square feet of commercial retail development at the northwest corner of Canwood Street and Derry Avenue in the City of Agoura Hills (City). Along with the application, a proposed Signage Program dated December 1, 2008 was submitted and comments from the City were received by the Applicant regarding the locations of the primary and secondary frontages of the subject building (Building). From these comments received, it appears there are differing interpretations of "primary frontage" and "secondary frontage" as it applies to the Applicant's Sign Permit.

"Ambiguity" is addressed in Code Section 9655.11.B which provides:

Whenever any ambiguity arises as to the interpretation of the provisions of this part. [sic] The applicant for a sign permit may request that the planning commission make a determination as to the meaning and application of the ambiguous provisions.

I. Primary Frontage:

On the Applicant's proposed Sign Permit, the "primary frontage" of the Building is identified and located as the *south* side of the Building along Canwood Street. However, the Applicant understands the City Staff's position to be that the Building's primary frontage is the *north* side along the parking lot as the storefronts and Building's public entrances are along this side.

"Frontage, primary" is defined in Code Section 9655.2.N as:

Frontage, primary means the frontage, which provides the subject building with its main or principal orientation to a public or private right-of-way, whether or not such frontage has a public entrance to the building. In shopping centers or multiple tenant buildings, the primary frontage shall be established as part of a sign program (emphasis added).

The Building's primary frontage is the *south* frontage along Canwood Street because it provides the main or principal orientation to a public right-of-way, Canwood Street. Additionally, the Canwood Street side of the Building should be recognized as the primary frontage as it runs the length of the Building and is visible from both Canwood Street and the 101 Freeway. If the *north* side is designated as the primary frontage, the Building will not have any signage along Canwood Street and the public will not know of the Building's tenants until arrival in the parking lot, which would only happen if the existence of the tenants are already known. Although the Building does not have a public entrance on this frontage, it appears that Section 9655.2.N contemplates this situation by adding "whether or not such frontage has a public entrance to the Building." In other words, the primary frontage of a building can be the rear of that building without any public entrance.

Establishing the *south* side of the Building as the primary frontage furthers the intent of the City's sign regulations by promoting fairness in competition, recognizing the critical function and importance of signs for businesses, and supports and promotes viable businesses by allowing signage that provides adequate identification (See generally Code section 9655.).

II. Secondary Frontage:

On the proposed Sign Permit, the secondary frontage of the Building is identified and located as the *north* frontage along the parking lot as this is the frontage with public entrances to the Building. The Applicant understands that the City Staff's position is that the secondary frontage is the *east* side of the Building along Derry Avenue as this is the frontage that actually faces a public right-of-way.

"Frontage, secondary" is defined in Code Section 9655.2.O as:

Frontage, secondary means <u>any frontage</u>, other that the primary frontage, <u>that has a public entrance to the subject building</u> (emphasis added).

There are no public entrances to the Building on Derry Avenue so, under Section 9655.2.0, the portion of the Building fronting on Derry Avenue cannot be a secondary frontage. The only public entrances are on the north side of the Building fronting on the parking lot and this is the Building's only secondary frontage. Section 9655.8.B.1.j deals with businesses located on two streets – here Canwood Street and Derry Avenue – and allows larger signs on the primary frontage – here Canwood Street – and smaller signs on the second smaller frontage – here the parking lot.

The Applicant respectfully requests the Planning Commission to (i) find and determine that the "primary frontage" of the Building is the south frontage along Canwood Street and the "secondary frontage" is the north frontage along the parking lot and (ii) approve such Sign Permit in total.

Sincerely,

Brian Gelt Project Manager



RETAIL DEVELOPMENT FOR THE PROPERTY LOCATED AT THE NORTHWEST CORNER OF DERRY AVENUE & CANWOOD STREET, AGOURA HILLS

CONDITIONAL USE PERMIT CASE NO. 07-CUP-010
SIGN PERMIT CASE NO. 07-SP-036
VARIANCE REQUEST CASE NO. 08-VAR-006
VESTING TENTATIVE PARCEL MAP 69426
GENERAL PLAN AMENDMENT CASE NO. 07-GPA-001
ZONE CHANGE CASE NO. 07-ZC-001

EXHIBIT C Vicinity/Zoning Map

Vicinity/Zoning Map



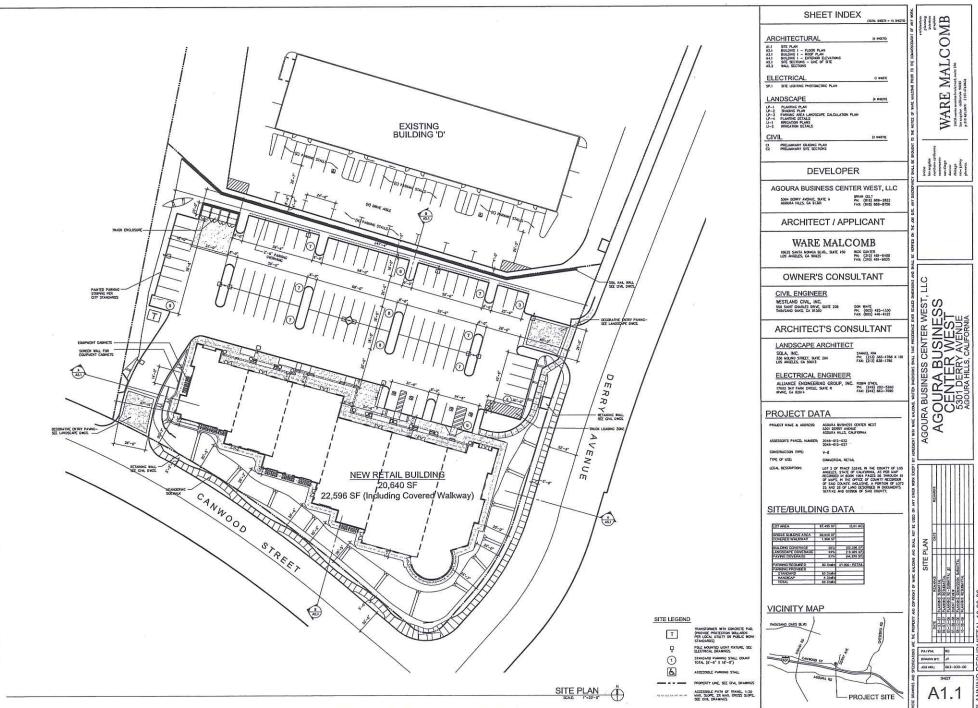
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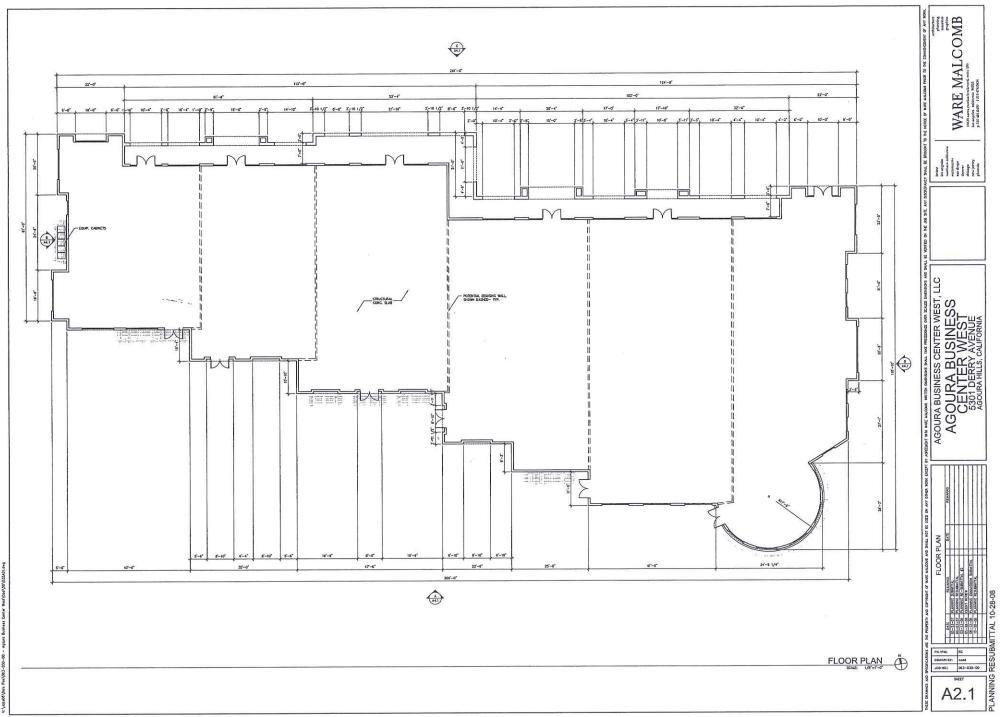


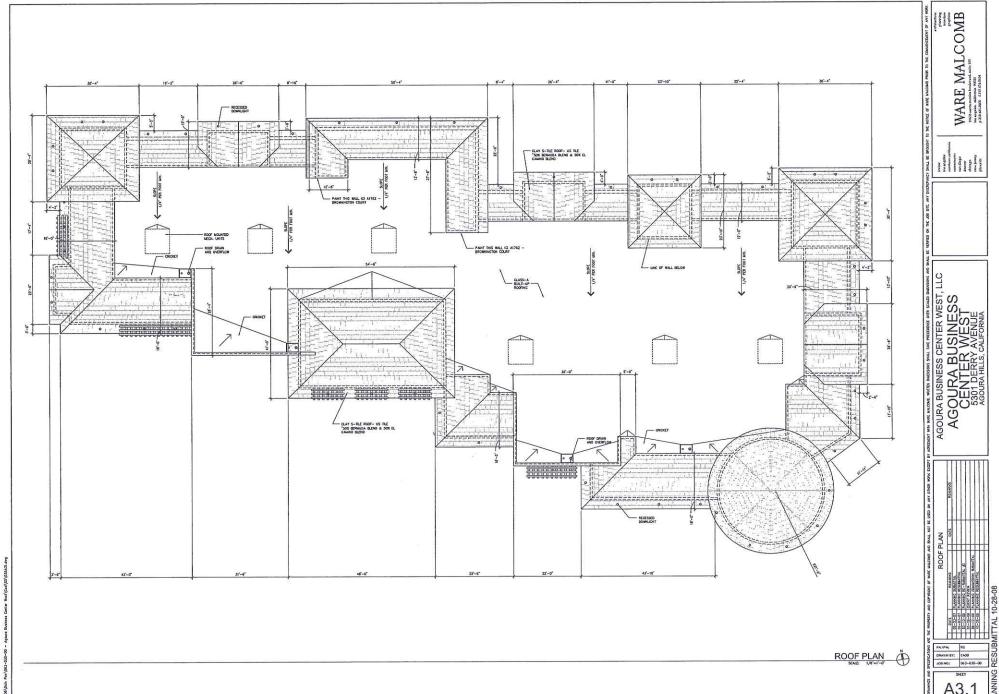
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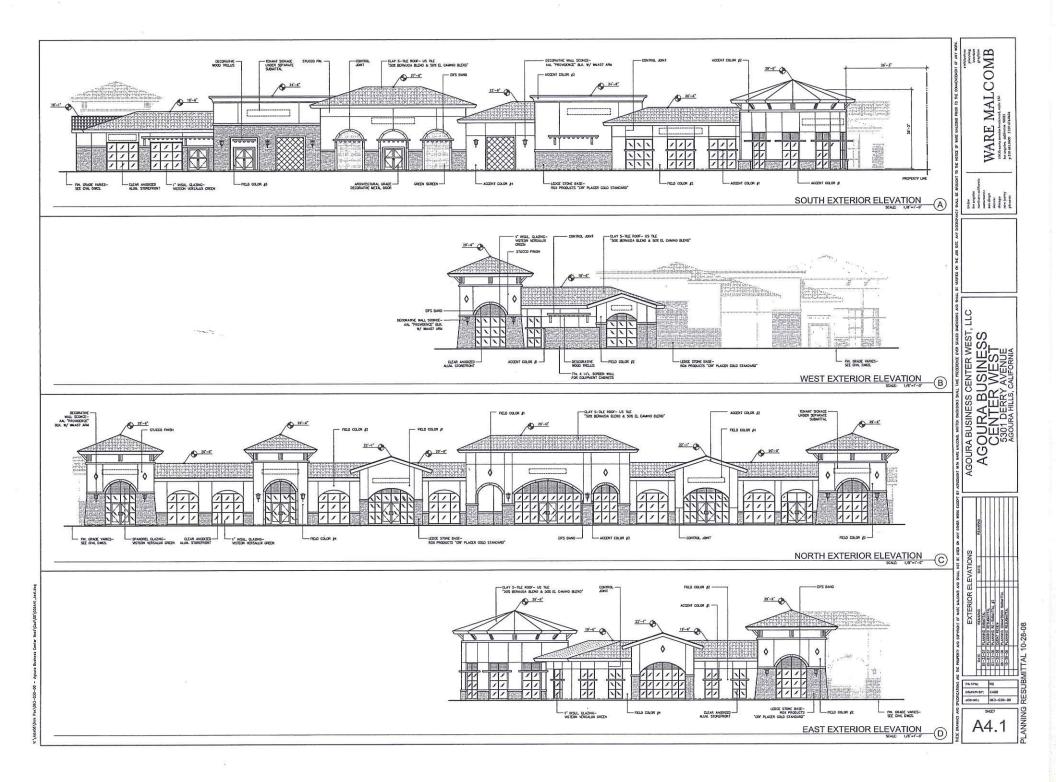
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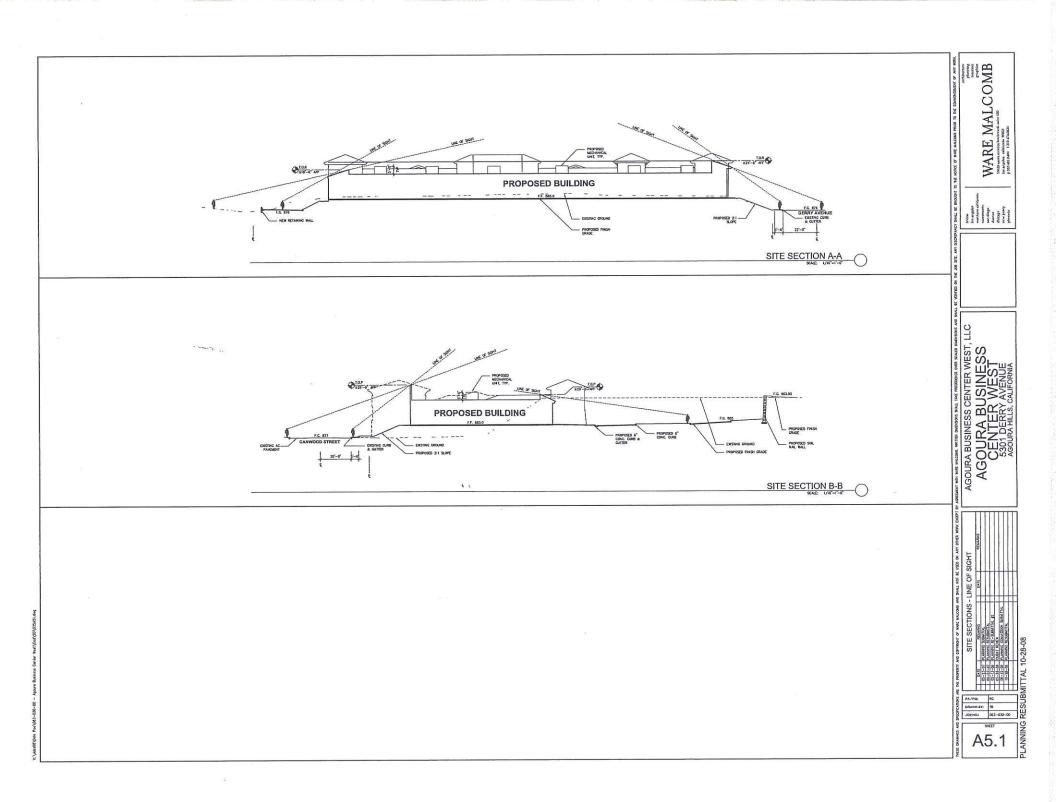


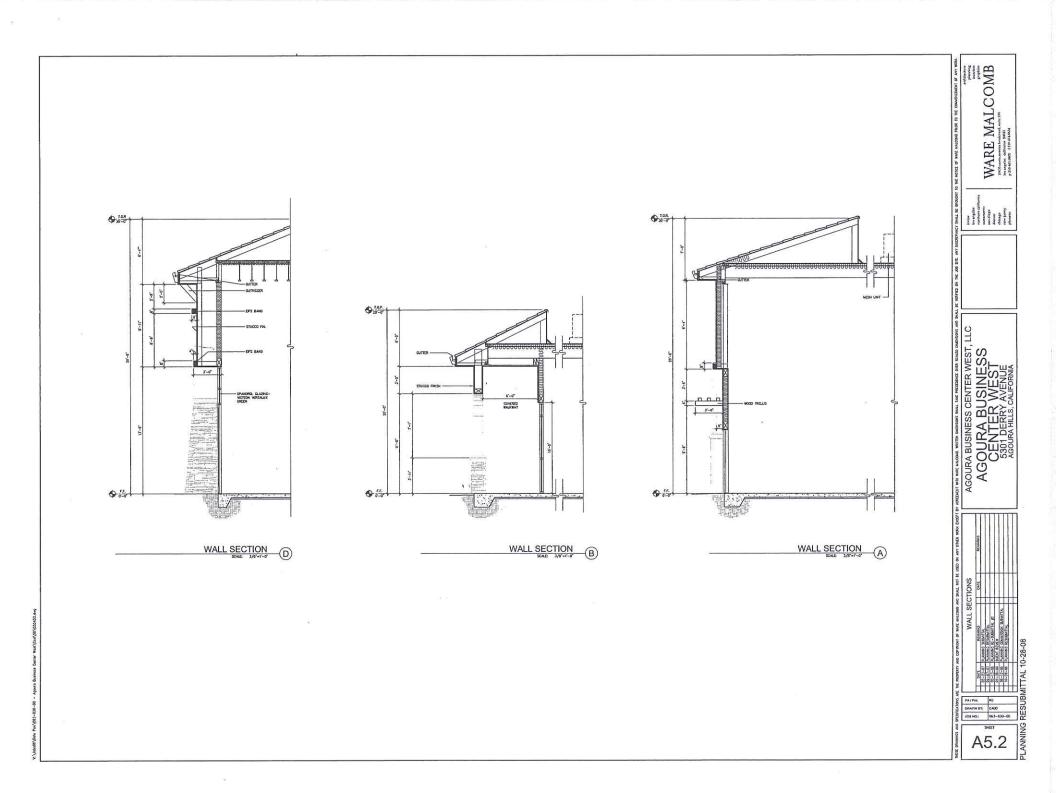


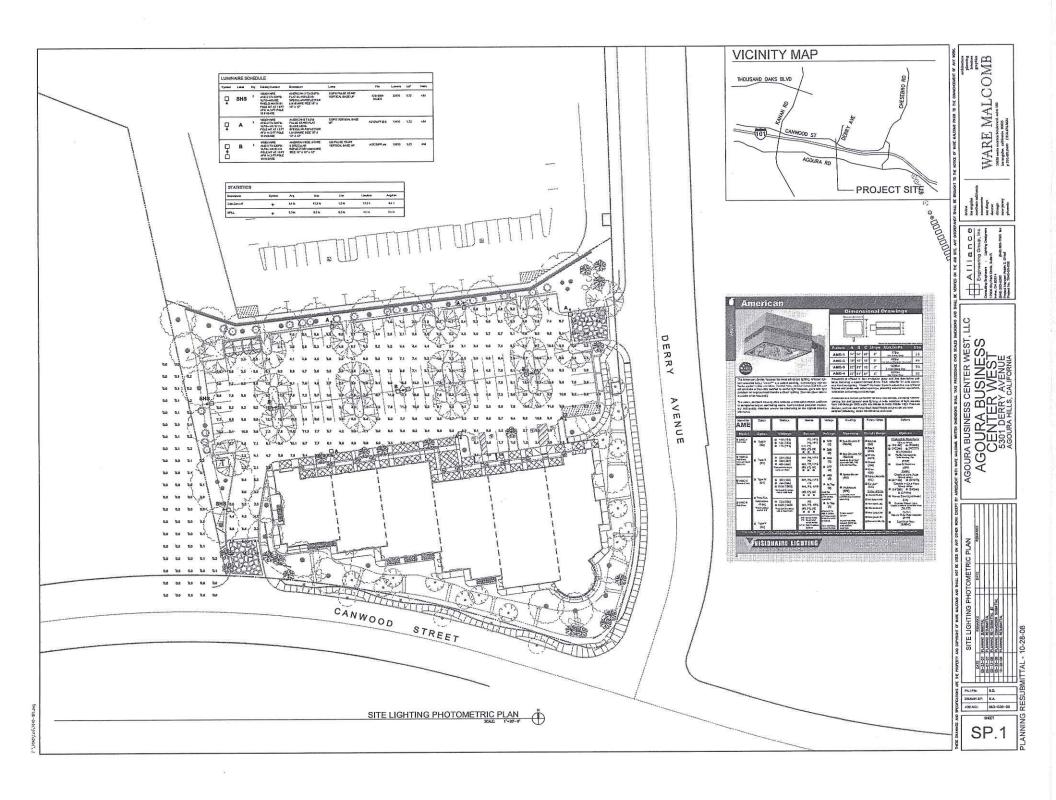


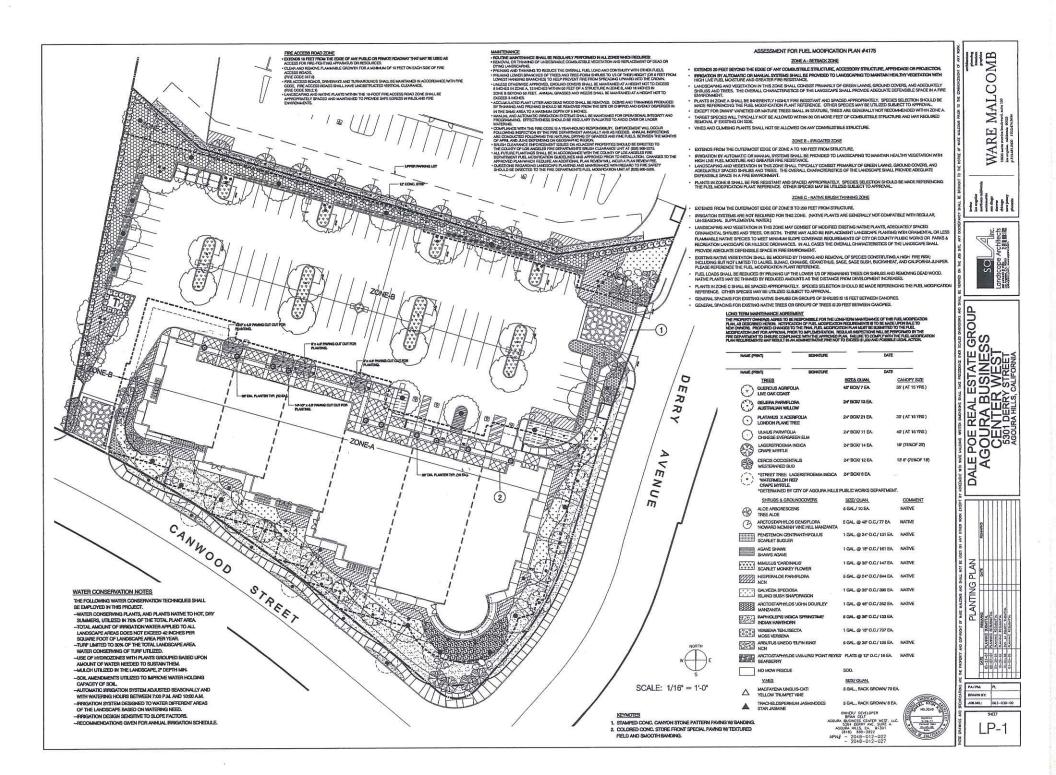
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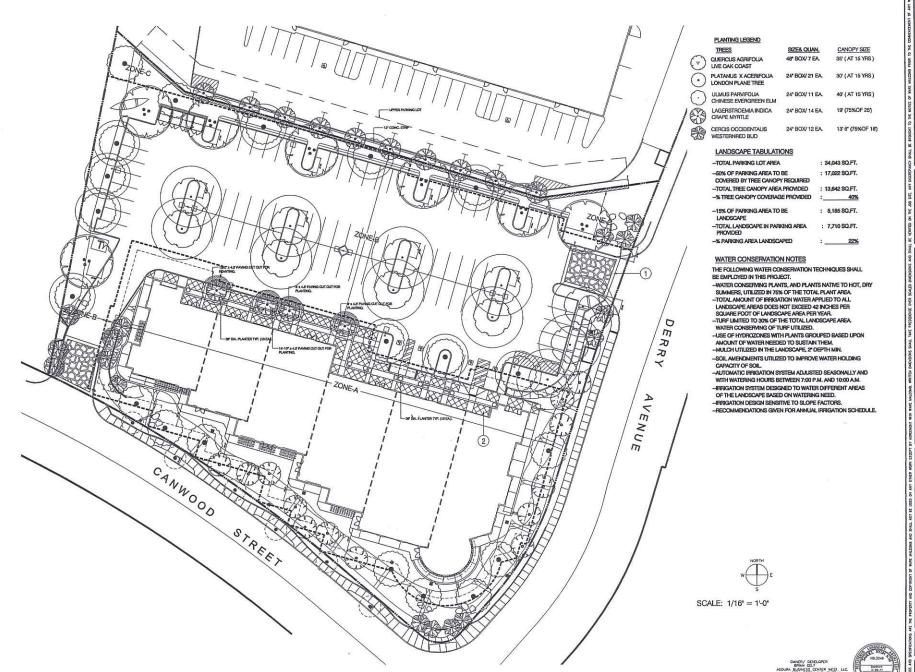












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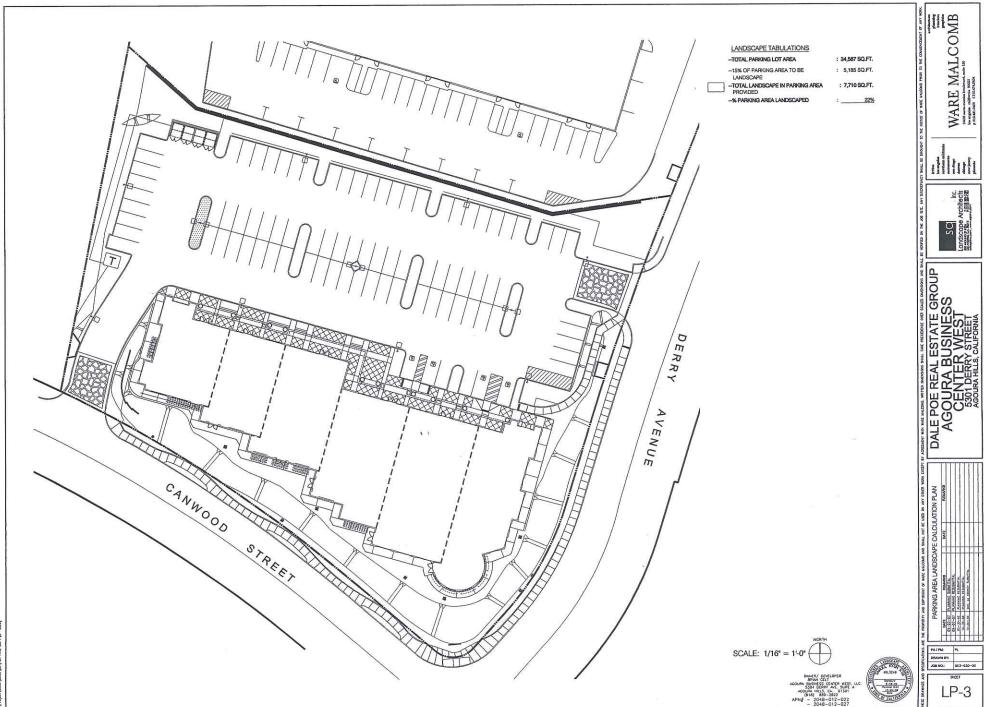
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5301 DERRY STREET

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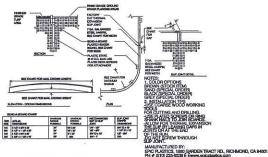
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LANDSCAPE PLANTING NOTES

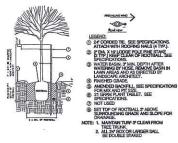
- 1. THE LANDSCAPE CONTRACTOR SHALL FURNISH ALL LABOR, EQUIPMENT, MATERIALS AND SERVICES FOR THE COMPLETE INSTALLATION AS DESCRIBED BY THE LANDSCAPE
- ANY DEVIATION FROM THE PLAN IS TO HAVE PRIOR WRITTEN APPROVAL BY THE OWNER OR HIS REPRESENTATIVE.
- 3. THE LANDSCAPE CONTRACTOR IS TO REMOVE ALL WEEDS AND OR GRASSES
- (INCLUDING THE ROOTS) EXISTING IN THE PROPOSED GROUND COVER AREA.

 4. THE PROPOSED GROUND COVER AREA SHALL RECEIVE THE PRE-EMERGENT HERBICIDE
 SURFLAN 75W PER MANUFACTURERS INSTRUCTIONS. APPLICATION OF THIS HERBICIDE SHALL BE DONE BY PERSONNEL LICENSED TO HANDLE AGRICULTURAL CHEMICALS.
- 5. ROUGH GRADING OTHER THAN THAT NOTED ON THE LANDSCAPE FINISH GRADING IS THE RESPONSIBILITY OF THE LANDSCAPE DRAWINGS IS BY THE GENERAL CONTRACTOR FINISH GRADING WILL CONSIST OF RACKING ALL AREAS TO A SMOOTH GRADE, LOOSENING TO THE SOIL TO A DEPTH OF 6" AND REMOVING ALL ROCKS OR CLODS OF 2" DIAMETER IS INCLUDED. FINISH GRADE IS TO BE 2" BELOW TOP OF ADJACENT CURBS AND SIDEWALKS.
- 6. ALL LANDSCAPE AREAS ARE TO RECEIVE AN EVEN APPLICATION OF 6 CUBIC YARDS OF NITROGEN MINERALIZED STABILIZED WOOD SAWDUST, 30 POUNDS OF 6N-20P-20K FERTILIZER, 10 LB. OF SOIL SULFUR FOR EACH 1,000 SQUARE FEET. THE ABOVE AMENDMENTS ARE TO BE INCORPORATED UNIFORMLY INTO THE TOP 6°
- 7. ALL ROCK OR UNBROKEN SOIL CLODS OVER 1" IN DIAMETER BROUGHT TO THE
- SURFACE ARE TO BE REMOVED FROM THE SITE.

 8. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE HORTICULTURAL SOILS. FERTILITY REPORT PRIOR TO SOIL PREPARATION AND PLANT INSTALLATION. SOIL CONDITIONING AMENDMENTS AND PLANTING BACKFILL MIXES SHALL BE IN ACCORDANCE TO SOIL AND PLANT LAB RECOMMENDATIONS. SOIL AND PLANT LAB: (714)-282-8777, 1594 N. MAIN STREET, ORANGE, CA 92867
- GROUNDCOVERS ARE TO BE PLANTED SO THAT AFTER SETTLING, THE CROWN OF THE THE PLANT IS EVEN WITH FINISH GRADE, ROOTS FULLY COVERED WITH SOIL AND FIRMED. 10. WATERING OF PLANTS IS TO TAKE PLACE IMMEDIATELY AFTER PLANTING.
- 11. MULCH ALL SHRUB AND GROUNDCOVER AREAS WITH A 1" LAYER OF 1/2" TO 3/4" REDWOOD BARK.
- 12. AT THE COMPLETION OF ALL PLANTING OPERATIONS, THE PREMISES ARE TO BE LEFT NEAT AND CLEAN, ALL PLANTING UPENATIONS, THE PREMISES ARE TO BE I NEAT AND CLEAN, ALL SURPLUS MATERIALS, NURSERY TAGS AND WASTE ARE ARE TO BE REMOVED FROM THE SITE.
- 13. THE LANDSCAPE CONTRACTOR IS TO MAINTAIN ALL LANDSCAPE AREAS FOR A PERIOD OF THIRTY CALENDAR DAYS FROM THE DATE OF COMPLETION, ESTABLISHED BY THE OWNER OR HIS REPRESENTATIVE. ALL AREAS ARE TO BE KEPT WELL WATERED, FREE OF GRASSES AND TRASH DURING THIS MAINTENANCE PERIOD.
- 14. AN APPLICATION OF FERTILIZER (18% NITROGEN, 6% PHOSPHORIC, 8% POTASH) STO BE MADE JUST PRIOR TO THE COMPLETION OF THE MAINTENANCE PERIOD, OR AT 30 DAYS INTERVALS IF MAINTENANCE PERIOD IS GREATER THAN 30 DAYS.
- 15. ALL TREES, SHRUBS AND PLANT MATERIAL (OTHER THAN FLATTED MATERIAL) LESS THAN 15 GALLON SIZE SHALL BE GUARANTEED FOR A PERIOD OF 1 MONTH; 15 GALLON SIZE SHALL BE GUARANTEED FOR A PERIOD OF 90 DAYS. ALL MATERIAL LARGER THAN 15 GALLON SIZE SHALL BE GUARANTEED FOR A PERIOD OF 1 YEAR.



4 PLASTIC EDGING



MALCOMB

WARE

GROUP 3S

DAL

NG

1 TREE PLANTING



(1) LOCATE PLANTS WITH FOUNL SPACING AS INDICATED

(2) 1/2 ON-CENTER SPACING

2 SHRUB & GROUNDCOVER SPACING

3 PAVING, CURB, BUILDING, OR HEADER - SHOWING PLANTING AREA LIMIT PROVIDE A MINIMUM OF 2' DEPTH MULCH LAYER IN ALL LANDSCAPE AREAS

(1) SHRUB - CENTER IN PIT

2 DEEP WATERING BASIN, SEE SPECIFICATIONS.

(3) FINISH GRADE.

(4) AMENDED BACKFILL SEE SPECIFICATIONS.

⑤ PLANTING TABLETS, PLACE IN PIT 2/3 UP FROM PIT BOTTOM. SEE SPECIFICATIONS.

(6) SCARIFY SIDES AND BOTTOM OF PLANTING PIT

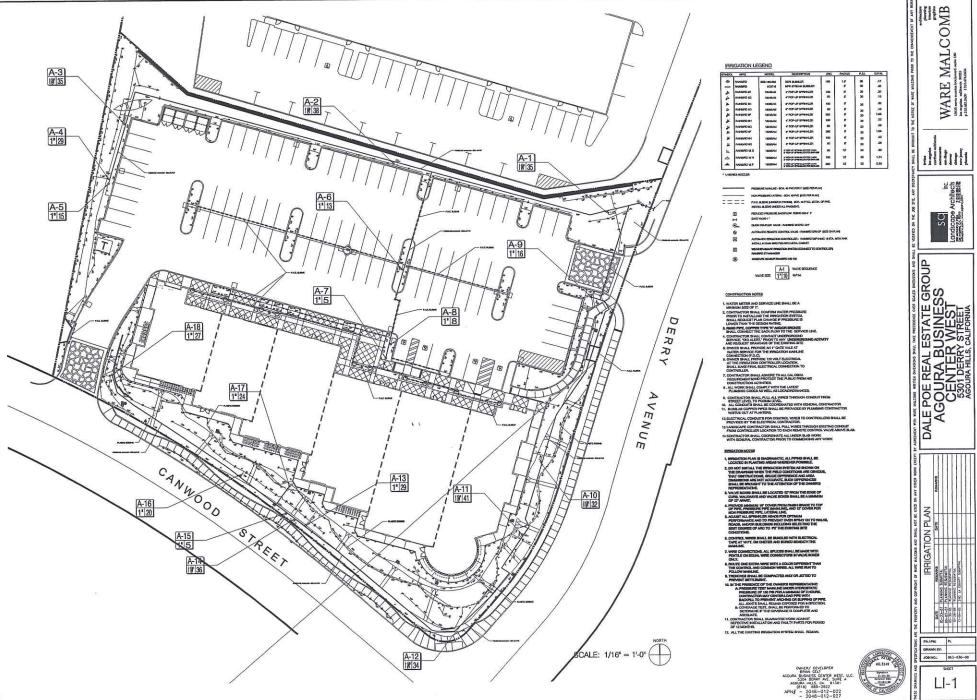
10 UNDISTURBED NATIVE SOIL

(B) SET TOP OF ROOTBALL 1* ABOVE SURROUNDING GRADE AND SLOPE FOR DRAINAGE.

3 SHRUB PLANTING







WARE MALCOMB





PAIPLE PL JOB NO.: 063-030-00 SHEET

LI-1