

**RESOLUTION**  
**PLANNING BOARD**  
**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: July 11, 2017

Re: Application No. 2017-17-PFSPV  
Applicant: Universal Microlab, LLC  
Premises: 15-17 Microlab Road, Livingston, NJ  
Block: 102; Lot: 14  
Zone: CI – Commercial Industrial Zone

**SUMMARY OF CASE**

1. The Applicant is the owner of the subject premises on which an existing one-story building is located. The building is currently occupied by the Applicant and the New Jersey School of Ballet. The Applicant proposes to convert newly vacant space to expand its own operations which provide physical therapy services for neurologically injured and impaired patients.
2. The Applicant seeks Site Plan approval, and a parking variance if the Board determines that same is required.
3. During the course of the Application, amendments were made to the Site Plan to more accurately depict the proposed parking design for the premises.

4. The Applicant was represented by Robert Gaccione, Esq., of Gaccione Pomaco, P.C., of Belleville, New Jersey.
5. The Applicant has presented documentation that all required notices of publication and service have been complied with, and that all taxes have been paid to date.
6. Hearings were heard before the Board on May 2, 2017 and June 6, 2017.
7. Testifying on behalf of the Applicant were:
  - A: Lisa Lasso, a Principal of the Applicant firm;
  - B: Gerald J. Novak, admitted as an expert in architecture;
  - C: Joseph Staigar, admitted as an expert in planning and engineering;
8. A Member of the public who appeared to testify as to concerns about the Application was David Fettes, a manager of B&E Real Estate, which is located on Microlab Road, directly across from the Applicant premises.
9. This property was the subject of a prior matter before the Planning Board resulting in a Resolution adopted under Application Number 96-23-PFSPV on June 18, 1996.

#### **FINDINGS OF FACT**

1. The Applicant and the tenant, New Jersey School of Ballet, have operated at the subject premises at least since the adoption of the 1996 Resolution. The Applicant currently has

vacant space in the building which it intends to convert to its own operation which provides rehabilitation services for persons suffering from brain and neurological injuries. All patients are provided with transportation by van to and from the facility. Parking for Applicant's facility is required primarily for employees and visitors as none of the patients, by virtue of their injuries, are capable of self-driving. Based on Township Code Section 170-94.E.(1), the Applicant's expanded facility would require 91 parking spaces.

2. The Applicant proposes to re-stripe and reconfigure the parking on site to provide a total of 118 parking spaces. It further agreed during the course of the hearing to add an additional handicap parking space in the front parking area of the property.
3. An issue arose as to whether the tenant, New Jersey School of Ballet, operates as a school or a dance studio. A dance school would require only 20 additional spaces so that the proposed parking would be compliant with Township Code. If the operation was considered a dance studio, it would require 59 parking spaces; so that there would be a 32 space parking variance required.
4. Based upon the findings of the 1996 Resolution, which approved parking for the facility by considering the New Jersey School of Ballet to be a school, the Board finds that it is proper to continue that designation for that particular tenant so that the parking requirement for the New Jersey School of Ballet would continue to be 20 spaces. The

number of spaces being provided exceeds the requirement and no parking variance is required.

5. The testimony of Ms. Lasso indicated that there are 9 to 12 vans that are parked overnight on the property. This does not cause any interference with the ballet school because there is limited overlapping of the prime operating times for both entities. Additionally, the re-striped parking spaces will provide adequate spaces for the vans which are of several different sizes.
6. With respect to the vans, the Applicant provided photographs accepted into evidence showing the various types of vans that it employs and are parked overnight. These vans run in various lengths of 15' 8", 16' 6", 19' 1", and 19' 7". Nothing longer in length would be parked on the site.
7. The Applicant submitted a schematic site plan Drawing No. A .prepared by Gerald J. Novak and dated June 6, 2017, which showed a limited portion of the premises and specified the parking spaces which would be reserved for van parking. That document was admitted as Exhibit A-1, shows parking spaces by specific number, and a copy is attached hereto as "Attachment A" and incorporated herein.
8. The Applicant agreed in the course of the hearing that it would direct all employees to park on site and to cease any on street parking to ease parking concerns of the neighbors.

9. The Applicant also agreed to add one more handicap parking space in the front yard parking area, bringing the total number of spaces to 119, and to add additional landscaping along the front of the property to screen the front yard handicap parking area.
  
10. The Applicant further represented and agreed that none of the vans being parked would have any lettering, logos or commercial designation thereon. Based on that representation, and based upon the proposed use of the vans solely to provide transportation for its patients, the Board determined that these vehicles are of the type and size permissible for on-site parking under the provisions of Township Code Section 170-94.A.(3).
  
11. The Applicant also agreed to add lettering, on the pavement in front of the spaces as shown on Exhibit A-1 as reserved for van parking, which would identify these spaces as being reserved for van use. The exact text and size shall be submitted to the Township Engineer for approval.

### **CONCLUSIONS OF THE BOARD**

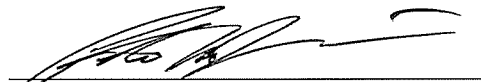
1. The Board finds that the Application is fully compliant with Township Ordinances governing Site Plan review and it hereby grants Preliminary and Final Site Plan approval subject to the terms and conditions set forth herein.

2. The Board determined and finds that no variances are required because the tenant, New Jersey School of Ballet, has been designated as a “school” by prior Resolution and is continuing the same method of operation. The Board further finds that the Applicant’s vans are permitted to park on site because their sole use will be to transport patients of the Applicant business to and from the facility.
  
3. The Board hereby requires compliance with the following terms and conditions:
  - A: The existing storage trailer, storage pods and disabled vehicles shall be removed;
  - B: No vans longer than 19’ 7” shall be parked on the premises;
  - C: None of the vans parked overnight shall have any lettering or commercial designation thereon, including logos or other commercial indications, and said vans shall be used only for transportation of the Applicant’s patients.
  - D: The Applicant shall add lettering on the pavement in front of the parking spaces designated as reserved for van parking as shown on Exhibit A-1. Said lettering shall indicate “Reserved Van Parking” or similar language approved by the Township Engineer.
  - E: The Applicant shall add an additional handicap parking space in the front yard of the property, which shall be van accessible. Additionally, the Applicant shall add additional evergreen shrubbery and landscaping subject to approval by the Township Engineer to screen the front yard parking area;
  - F: The existing salt storage structure shall be removed. A new storage facility shall be installed at the southwest location shown on Drawing SP-1, dated May 17,

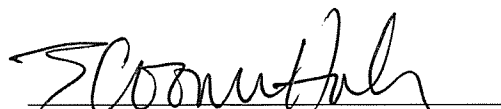
2017 revised through May 25, 2017, subject to approval by the Township Engineer as to compliance with environmental protection standards.

- G. The Site Plan Drawing SP-1 as revised through May 25, 2017 shall be further revised to identify each of the parking spaces that the Applicant agreed would be designated as for Applicant's vans as on Attachment A.
- H. The Board's Model Conditions of Approval attached hereto are incorporated herein and Numbers 1.a, 6, 10, 11, and 19 shall apply.

NOW THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, and consistent with the proofs and testimony presented at the hearing, it is resolved that the Board does hereby approve and grant the Application for Preliminary and Final Site Plan approval, subject to the terms and conditions set forth herein.

  
Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on July 11, 2017 wherein Board Members Dinar, Leopold, Ratner, Santola, Alternate No. 1 Rieber (in place and stead of Member Kalishman), Alternate No. 2 Wishnew (in place and stead of Member Silverman, and Klein voted in favor of the Application; they being all of the members both present and eligible to vote..

  
Jackie Coombs Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval  
(As Amended through  
February 12, 2013)

Every application turns on its own facts and is judged on its own merits. Listed below are models of conditions which may be considered “standard”. A standard can be tailored to specific circumstances, and may not always apply. Other or additional conditions may be tailored for any application.

**1. Architecture**

- a. Rooftop ancillary structures and equipment (other than alternative small energy systems and communications equipment) shall be screened by material compatible with the exterior finish of the building and matching the exterior color of the building as closely as possible.
- b. Enclosures of trash bins, recycling bins or dumpsters shall be of the same type of materials and the same color as the exterior finish of the building.

**2. Blasting**

In the event that blasting be necessary on the Site, the following conditions shall apply in addition to all requirements of federal law or regulations:

- a. All blasting operations shall be performed in strict compliance with N.J.S.A. 21:1A-128 *et seq.* and N.J.A.C. 12:190-1.1 *et seq.*, or superseding requirements.
- b. A pre-blast inspection of all structures on all properties adjacent to the Site or within 200 feet of the intended blasting location (whichever is the greater distance) shall be conducted at Applicant’s expense. It shall be conducted no more than 60, nor less than 30, days before blasting commences. A written report of the inspection results shall be provided to the owner of each structure inspected within 10 days after completion of the inspection.
- c. Blasting shall occur only between 10:00 a.m. and 3:00 p.m. on Monday through Friday. Blasting during other hours may be permitted, temporarily, by the Township Engineer upon his finding that a condition constituting an emergency exists and necessitates such permission.
- d. Applicant shall coordinate all blasting with the Livingston Police and Fire Departments. If traffic control is required, it shall be provided at Applicant’s expense.



- e. Applicant shall give the Township Engineer, the Chief of Police, the Fire Chief, and all owners of structures required to be inspected under “b” above, written notice of scheduled blasting operations to be received not less than 20 days, nor more than 40 days, prior to their commencement. If scheduled blasting operations are delayed or suspended they shall not be resumed until new notice has been given and received. All notices shall include the name and telephone number of Applicant’s representative for purposes of receiving and responding to questions and comments.
- f. These conditions do not supersede any requirements of law or regulation that are more strict or restrictive.

### **3. Cleanliness During Demolition or Construction**

- a. At the close of each work day the Site shall be thoroughly cleaned and all trash and construction debris, including that within buildings under construction, shall be placed in covered dumpsters. Dumpsters shall be removed from the Site, and replaced, before they overflow.
- b. Not less often than weekly, and whenever else required by the Construction Official or the Township Engineer, the public streets adjacent to the Site shall be manually or mechanically broom swept to remove dirt, mud or debris originating from the Site and located within 500 feet of the Site.
- c. Dust suppression methods acceptable to the Construction Official and the Township Engineer shall be utilized on the Site.

### **4. Deeds & Easements**

- a. All conditions of approval that are continuing conditions shall be set forth within all deeds executed with regard to the Site.
- b. All deeds, easements, dedications or restrictions required by this approval shall be subject to review and approval by the Board Attorney prior to signing and shall be filed for recordation after such approval. The Applicant shall submit proof of such recordation to the Board Secretary, the Township Engineer and the Construction Official prior to the issuance of any permits.

## 5. Detention Basins

- a. Stormwater management basins shall be established on lots created for that purpose only. No structures that are not an approved part of the stormwater management system shall be erected on any such lot. Such basins, together with their required landscaping and fencing, shall be completed, and shall have been inspected and approved by the Township Engineer, prior to issuance of the first Certificate of Occupancy.
- b. If the approval of the Application calls for title to such a lot to be transferred to the Township; at such time as the Township accepts any new streets or roads on the Site, title to the lot shall be conveyed to the Township provided that the Township Engineer is then satisfied that the basin has been constructed in full compliance with all applicable requirements. The deed conveying such title shall be subject to prior approval by both the Board Attorney and the Township Attorney.
- c. A maintenance plan meeting the requirements of the Residential Site Improvement Standards or the Township's Stormwater Control Ordinance, or both, as applicable, shall be prepared by Applicant and shall have received the approval of the Township Engineer prior to issuance of any construction permit. Any future revisions to the maintenance plan shall not become effective until the Township Engineer's approval shall have been obtained.
- d. Unless maintenance of the basin is assumed by the Township or a public agency as its direct responsibility, (1) the maintenance plan and any future revisions of it shall be recorded upon the deed of record for the property in terms approved in advance by both the Board Attorney and the Township Attorney; and, (2) the Applicant shall provide a performance bond for such maintenance, including landscaping and cleanliness.

## 6. Final Plans

Prior to the issuance of any Township permit for demolition of any structure, preparation of the Site, or construction of any improvement:

- a. The full text of all of the conditions of this approval, and all plan changes agreed to in the course of the hearing, shall be set out on final plans submitted to the Construction Official, the Township Engineer and the Board Secretary; and
- b. Such final plans shall have been reviewed by the Board Secretary or the Board's Planning Consultant for determination of whether the plans conform to the Board's approvals and shall then have been signed by the Board Chairman, the Board Secretary and the Township Engineer.

- c. Such final plans shall comply with the Uniform Construction Code and the Barrier Free Subcode as then in force in the State of New Jersey. If, during performance of work pursuant to the Board's resolution and permits that have been issued, field conditions indicate need for change(s), such need shall be called to the attention of both the Construction Official and the Township Engineer for approval of any such change before it is implemented. If any such change is significant, permission to amend the Site Plan may have to be sought from the Planning Board. Until all requirements under approved plans and the Uniform Construction Code, including accessibility requirements, have been completed or bonded, any certificates of occupancy issued shall be temporary certificates only.

## **7. Flood Hazards**

- a. Insert on the final site plan and/or subdivision map a metes and bounds description of all flood hazard areas located on the Site.
- b. Insert in all deeds for individual lots that contain or are adjacent to flood hazard areas, and on the preliminary and final subdivision maps or plats, the following covenant: "The lands designated herein contain flood hazard areas. There shall be no disturbance of any kind as to any flood hazard area unless permitted by N.J.D.E.P. pursuant to the Flood Hazard Control Act, N.J.S.A. 58:16A-50 *et. seq.* or superseding requirements."

## **8. Guarantees and Bonds**

- a. The approval of this Application is subject to the posting, with terms acceptable to the Township Engineer, of any and all required performance guarantees, bonds, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the issuance of any permits for commencement of site preparation or construction.
- b. This approval is also conditioned upon the Applicant's providing, prior to issuance of the first Certificate of Occupancy, a performance guarantee acceptable to the Township Engineer for any aspects of the approved landscaping or fencing that has not been completed by the time of issuance of such certificate.

## **9. Landscaping & Environmental Protection**

- a. All deciduous trees planted shall have a caliper of not less than 2.5 inches measured at a height of 4.5 feet above ground level. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.

- b. Street shade trees shall be planted as required by Township Code § 170-72 and shall not be included in the calculation of Replacement Trees required by the Trees Ordinance.
- c. Any tree or other planting installed in accordance with the plans which dies shall be replaced, within the current or next planting season, in kind and at the same size as it had reached at the time of death; except that if it died more than three years after planting its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to any tree or other planting installed in accordance with the plans if subsequently removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed unless removal is approved under the Trees Ordinance or by this Board. Every existing tree to be preserved shall be tagged and shall be shown on the Site Plan or Subdivision Plan. During site preparation and during construction, each such tree shall be protected by snow fencing or a more substantial means approved by the Construction Official. No soils, excavated materials, or any construction equipment or building materials, shall be stored or operated within a root protection zone that shall be the greater distance of (i) the crown drip line, or (ii) a distance equal to caliper multiplied by one (1) foot, (but never less than eight (8) feet from the trunk of a tree to be preserved), or anywhere else where such soil or materials can adversely affect the health of trees to be preserved. All work done within the root protection zone shall be accomplished with hand tools.
- e. The grade of land located within the root protection zone shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining wall methods; but in no event shall welling or retaining walls be installed less than eight (8) feet from the trunk of a tree.
- f. During site preparation or construction, no fuel storage, and no refueling, maintenance, repair or washdown of construction vehicles or equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, Chapter 306 of the Code of the Township of Livingston, that establishes a conflicting standard or requirement shall control.
- h. No mulch shall be placed, or allowed to accumulate, within six inches of the trunk of any tree or shrub planted on the Site in compliance with this resolution. Mulch shall not be applied, or allowed to accumulate, elsewhere within the drip line of the tree or shrub to a depth in excess of four inches.

## **10. Noise**

- a. No site preparation, demolition or construction activity shall be performed on the

Site on Sundays, or before 7:30 a.m. or after 5:00 p.m. on weekdays, or before 9:00 a.m. or after 5:00 p.m. on Saturdays or federal holidays.

- b. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.
- c. No site preparation, demolition or construction activity (other than authorized blasting) shall produce, at the property line, (i) continuous airborne sound at a sound level in excess of 65 dBa, or which has an octave band sound pressure level in decibels which exceeds the standards provided in 32 N.J.R. 2230 et. seq., or (ii) impulsive sound in air which has a peak sound pressure level in excess of 80 decibels, or (iii) impulsive sound in air which repeats more than four times in any hour and has a peak sound pressure level in excess of 50 decibels.
- d. Relief from these noise conditions may be permitted, temporarily, by the Township Engineer upon his finding that a circumstance constituting an emergency exists and necessitates such permission.

## **11. Other Governmental Approvals**

- a. Applicant shall comply with all applicable Federal, State and local laws and regulations and obtain any other governmental approvals required for implementation of this application as approved. If any other governmental agency or authority grants a waiver of or variance from any law, rule or regulation, or imposes any condition or requirement, which affects this approval or any of the conditions contained herein, then this Board shall have the right to review such action as it relates to this Board's approval or conditions and to modify, amend or revoke its approval and/or conditions.
- b. No Township permit for demolition of any structure, or preparation of the Site or construction of any improvement shall be issued until proof of request for such required approvals and any action thereupon, shall have been presented to the Construction Official and the Board Secretary by the Applicant.

## **12. Paving and Sidewalks**

- a. Applicant shall install the top course of street paving:
  - (1) For residential development not later than the earlier of three (3) years after the issuance of the first Certificate of Occupancy or three (3) months after fifty percent (50%) of residential units have received Certificates of Occupancy.

- (2) For non-residential or mixed-use development, prior to issuance of the first Certificate of Occupancy.

b. All manholes, catch basins, and driveway curbs shall be ramped until the top course of street paving has been installed.

c. All sidewalks shall be constructed of concrete or of non-asphalt pavers and shall be not less than four feet wide in a residence district or five feet wide in the Business Improvement District. Existing sidewalks that do not meet prior Township Code requirements shall be replaced to the standard for the new sidewalks.

### **13. Signs**

The Board retains jurisdiction over any and all signs until the final Certificate of Occupancy has been issued.

### **14. Traffic and Parking Safety and Enforcement**

- a. At the time of applying for a building permit the Applicant shall submit proof of having filed a written request pursuant to, and in accordance with, N.J.S.A. 39:5A-1, requesting that N.J.S.A. 39:1-1 *et seq.* be made applicable to the roads, streets, driveways, parking areas, etc. within the Site. The Applicant shall provide proof of the governmental action on such request to the Construction Official prior to issuance of the final Certificate of Occupancy.
- b. Lines of sight established for entrance and exit driveways of the Site shall be shown on the as-built site plans, and no structures, trees or plants that would interfere with such lines of sight shall be permitted at any time.
- c. All traffic and parking provisions in the approved site plans or otherwise required by the Board's resolution shall be accomplished prior to issuance of the first Certificate of Occupancy.
- d. The Applicant shall comply with State law and applicable Township ordinances regarding handicapped parking and shall maintain such spaces and all the traffic and parking signage and markings on the Site in good order and repair.

### **15. Utilities for Site Plans and Major Subdivisions**

Applicant shall construct all utilities underground as required by law, and shall submit to the Engineering Department a written instrument from each serving utility evidencing full compliance with this condition and with Township Code §170-73.A.(17) before issuance of any Certificate of Occupancy.

## **16. Wetlands**

- a. Applicant shall insert on the final subdivision map and/or site plan a metes and bounds description of all wetlands, wetlands transition areas, and buffers on the Site.
- b. Where applicable, each deed for a lot, and the subdivision plat, shall contain the following language: "The lands designated herein contain wetlands and wetlands transition areas. There shall be no disturbance of any kind as to any wetlands or wetlands transition areas unless permitted by N.J.D.E.P. pursuant to law, and Best Management Practices (as defined in N.J.A.C. 7:7A-1.4 or superseding requirements) for prevention or reduction of adverse impacts upon or pollution of wetlands, wetlands transition areas and buffers shall be followed at all times. This restrictive covenant shall run with the land and be binding upon the grantees, their heirs and successors and assigns.

## **17. Developer's Agreement**

Prior to issuance of any permit for site preparation, or construction, the Applicant shall have entered into a Developer's Agreement negotiated with the Township Attorney in conjunction with the Township Engineer.

## **18. Written Response to Memoranda**

Prior to issuance of any permit for site preparation, demolition or construction, the Applicant shall have provided written responses to all issues raised in all memoranda from the Township Engineer, or any consultant to the Township, that were considered by the Board in the hearings.

## **19. As-built Plans**

A final Certificate of Occupancy shall not be issued until the Applicant shall have submitted to the Construction Official four (4) properly signed and sealed copies each of as-built site plans, surveys and building elevations.

# ATTACHMENT A

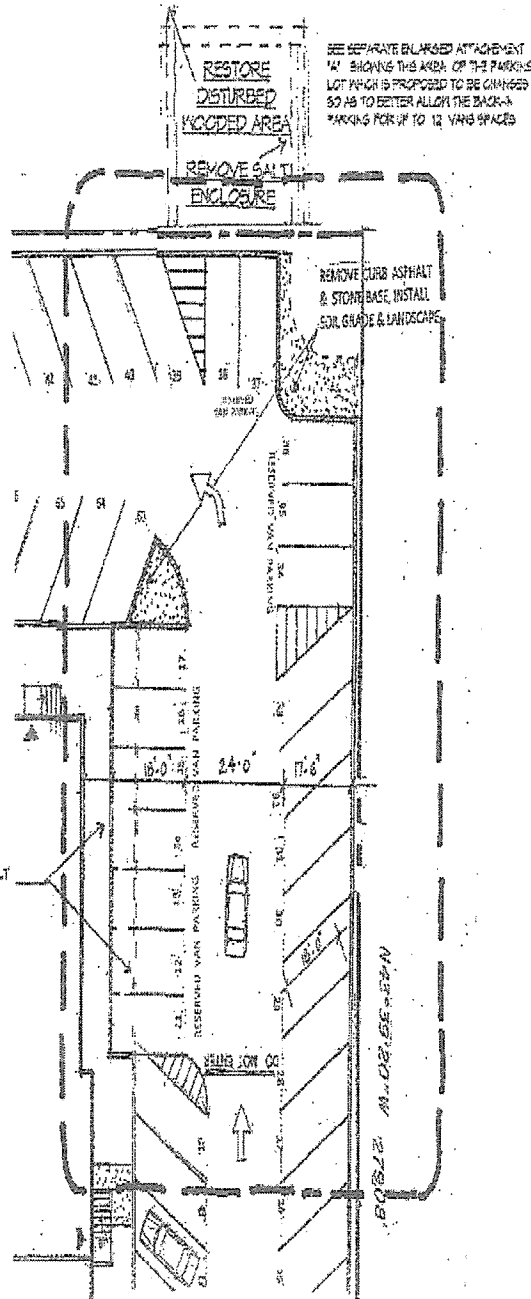
Exhibit  
A1

UNIVERSITY OF MARYLAND SYSTEM  
DESIGN - ARCHITECTURE - INTERIORS - PLANNING  
SCENARIOS - CONSTRUCTION - SURVEY - PHOTOGRAPHY

**GJ**  
GERALD J. NOVAK AIA  
ARCHITECT

46 CONGRESS ST.  
CEDAR RAPIDS IA 52401

515-233-8843 515-233-0372  
563-241-1212 & 571-201-1212



ATTACHMENT "A"  
12 VAN PARKING SPACES

**NOTE "A"**  
PARKING LOT EXPANSION SHALL TAKE PLACE IN THIS AREA (NO SPACES #11 THRU #17) THIS WILL INCREASE THE ASPHALT LOT SURFACE OF 448 SQ. FT. SUCH INCREASE SHALL BE OFFSET BY 483 SQ. FT. OF REMOVED ASPHALT SURFACE & REPLACED WITH PLANTING THERE AND AS DESCRIBED HEREIN

**LOCATION OF ASPHALT REPLACEMENT WITH GRASS**

- 79 SQ. FT. NEXT TO SPACE #1
- 79 SQ. FT. NEXT TO SPACE #12
- 110 SQ. FT. BETWEEN SPACES #7 & #8
- 228 SQ. FT. BETWEEN SPACES #16 & #17
- 416 SQ. FT. REPLACEMENT PARALLEL SPACES

PARTIAL PLOT PLAN  
AT VAN PARKING  
1" = 20'

SCHEMATIC SITE PLAN  
DESIGNED BY  
UNIVERSAL INSTITUTE  
WASHINGTON, DC  
LIVINGSTON, NJ

DATE	1/21/01
NO.	100-0113
PROJECT	UNIVERSITY
DATE	JUNE 6 2017
SCALE	AS SHOWN
PROJECT	

GERALD J. NOVAK AIA  
ILL. CERT. NO. 111142

DRAWING NO.  
**A**  
DRAWING OF