

96-O-12

AN ORDINANCE

**Granting a Special Use Permit for a Planned Development
Located at 1211-1229 Chicago Avenue in the C1 Commercial District
("Trader Joe's")**

WHEREAS, the City of Evanston is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of government, the City has the authority to adopt ordinances and to promulgate rules and regulations that protect the public health, safety, and welfare of its residents; and

WHEREAS, Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the "powers and functions of home rule units shall be construed liberally," was written "with the intention that home rule units be given the broadest powers possible" (*Scadron v. City of Des Plaines*, 153 Ill.2d 164); and

WHEREAS, it is a well-established proposition under all applicable case law that the power to regulate land use through zoning regulations is a legitimate means of promoting the public health, safety, and welfare; and

WHEREAS, Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, *et seq.*) grants each municipality the power to establish zoning regulations; and

WHEREAS, pursuant to its home rule authority and the Illinois Municipal Code, the City has adopted a set of zoning regulations, set forth in Title 6 of the Evanston City Code of 1979, as amended, ("the Zoning Ordinance"); and

WHEREAS, Gendell/WNB, LLC (the "Applicant"), owner of the property located at 1211 Chicago Avenue, Evanston, Illinois (the "Subject Property"), legally described in Exhibit A, which is attached hereto and incorporated herein by reference, applied, pursuant to the provisions of the Zoning Ordinance, specifically Section 6-3-5, "Special Uses", Section 6-3-6, "Planned Developments", and Subsection 6-10-1-9, "Planned Developments" in Commercial Zoning Districts, to permit the construction and operation of a Planned Development with accessory parking located at the Subject Property in the C1 Commercial Zoning District ("C1 District"); and

WHEREAS, the Applicant sought approval to construct a new grocery store, approximately thirteen thousand square feet (13,000 ft²) in area, with eighty-one (81) open, off-street parking spaces; and

WHEREAS, construction of the Planned Development, as proposed in the application, requires exception from the strict application of the Zoning Ordinance with regards to side yard setbacks; and

WHEREAS, pursuant to Subsection 6-3-6-5 of the Zoning Ordinance, the City Council may grant Site Development Allowances to the normal district regulations established in the Zoning Ordinance; and

WHEREAS, on July 11 and August 8, 2012, in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*) and the Zoning Ordinance, the Plan Commission held a public hearing on the application for a Special Use Permit for a Planned Development, case no. 12PLND-0051, heard extensive testimony and public comment, received other evidence, and made written minutes, findings, and recommendations; and

WHEREAS, the Plan Commission's written findings state that the application for the proposed Planned Development meets applicable standards set forth for Special Uses in Subsection 6-3-5-10 of the Zoning Ordinance and Planned Developments in the C1 District per Subsection 6-10-1-9 of the Zoning Ordinance; and

WHEREAS, the Plan Commission recommended the City Council approve the application with conditions; and

WHEREAS, on September 10, 2012, the Planning and Development ("P&D") Committee of the City Council held a meeting, in compliance with the provisions of the Open Meetings Act and the Zoning Ordinance, received input from the public, carefully considered and adopted the findings and recommendations of the Plan Commission, and recommended approval thereof by the City Council; and

WHEREAS, at its meetings of September 10 and September 24, 2012, held in compliance with the Open Meetings Act and the Zoning Ordinance, the City Council considered the recommendation of the P&D Committee, received additional public comment, made certain findings, and adopted said recommendation; and

WHEREAS, it is well-settled law that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124),

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The foregoing recitals are hereby found as facts and incorporated herein by reference.

SECTION 2: Pursuant to the terms and conditions of this ordinance, the City Council hereby grants the Special Use Permit applied for in case no. 12PLND-0051, to allow construction and operation of the Planned Development described herein.

SECTION 3: The City Council hereby grants a Site Development Allowance for a side yard setback of three feet, nine inches (3'9"), whereas Subsection 6-10-2-8 of the Zoning Ordinance requires a minimum of five feet (5') in the C1 District.

SECTION 4: Pursuant to Subsection 6-3-5-12 of the Zoning Ordinance, the City Council imposes the following conditions on the Special Use Permit granted hereby, which may be amended by future ordinance(s), and violation of any of which shall constitute grounds for penalties or revocation of said Special Use Permit pursuant to Subsections 6-3-10-5 and 6-3-10-6 of the Zoning Ordinance:

- (A) **Compliance with Applicable Requirements:** The Applicant shall develop and operate the Planned Development authorized by the terms of this ordinance in substantial compliance with: the terms of this ordinance; the Site and Landscape Plans in Exhibit B and C, attached hereto and incorporated herein by reference; all applicable legislation; the Applicant's testimony and representations to the Site Plan and Appearance Review Committee, the Plan Commission, the P&D Committee, and the City Council; and the approved documents on file in this case.
- (B) **East Lot Line Wall:** The Applicant shall construct a wall, eight feet (8') tall and made of precast concrete with a stone-like appearance, along the east lot line of the Subject Property as depicted Exhibit B, in order to attenuate sound emanating from the Planned Development authorized by this ordinance.
- (C) **Landscape Design:** The Applicant shall install and maintain landscaping as depicted in Exhibit C, including, but not limited to, vines along the east lot line wall, and trees no less than five inches (5") in caliper. All trees planted shall be of species listed in Group A or Group B of City Code Subsection 7-8-8-13, the Tree Preservation Ordinance.
- (D) **HVAC:** The Applicant shall place the rooftop HVAC compressors in the central area of the roof and enclose and shield them in a manner, approved by the City in the building permit process, which reduces noise emanating from them below fifty-five decibels (55 dB) at the lot line, as per the International Mechanical Code, adopted and amended by City Code Sections 4-9-1 and Section 4-9-2, 303.6.

(E) Deliveries and Trash Collection:

1. **Enclosed Loading Dock:** The Applicant shall construct an enclosed loading dock as depicted in Exhibit B. All refuse shall be stored in said loading dock and collected from the exterior area adjacent to the loading dock doors. All deliveries to the Subject Property by trucks longer than thirty feet (30') shall be made via said loading dock. The door to the loading dock shall remain closed at all times except during refuse collections and while trucks enter and exit the loading dock in the course of making deliveries to the Subject Property.
2. **No Alley Use by Commercial Vehicles:** The Applicant shall not permit any vehicle that enters or exits the Subject Property for the purposes of delivery or trash collection to do so via the public alley located immediately east of the Subject Property.
3. **Delivery/Collection Hours:** The Applicant shall not permit any vehicle making a delivery to or collection from the Subject Property to be on-site between 10:00 p.m. and 6:00 a.m. on any day.
4. **Idling:** The Applicant shall not permit any vehicle making a delivery to or collection from the Subject Property to idle on-site unless such idling is necessary to operate auxiliary equipment vital to the vehicle's intended use (e.g., refrigeration).

(F) Lighting: The Applicant shall install lighting of a type and design so as to prevent spillage of light off the Subject Property onto surrounding private property. The Applicant shall extinguish all signage lighting no later than one (1) hour after the store, authorized hereby, closes for the night.

(G) Parking: Pursuant to Subsection 6-16-2-1-(B)-1 of the Zoning Ordinance, the Applicant shall license parking, required for the Planned Development authorized by this ordinance, from the City. For as long as the Applicant operates said Planned Development, it shall maintain and keep current said license, and shall comply with all terms thereof and any amendment(s) thereto.

(H) Recordation: Pursuant to Subsection 6-3-6-10 of the Zoning Ordinance, the Applicant shall, at its cost, record a certified copy of this ordinance, including all exhibits attached hereto, with the Cook County Recorder of Deeds, and provide proof of such recordation to the City, before the City may issue any permits pursuant to the Planned Development authorized by the terms of this ordinance.

SECTION 5: When necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicant" shall be read as "Applicant's tenants, agents, assigns, and successors in interest."

SECTION 6: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 7: Except as otherwise provided for in this ordinance, all applicable regulations of the Zoning Ordinance and the entire City Code shall apply to the Subject Property and remain in full force and effect with respect to the use and development of the same. To the extent that the terms and provisions of any of said documents conflict with the terms herein, this ordinance shall govern and control.

SECTION 8: All ordinances or parts of ordinances that are in conflict with the terms of this ordinance are hereby repealed.

SECTION 9: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 10: The findings and recitals herein are hereby declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: September 10, 2012

Approved:

Adopted: September 24, 2012

September 27, 2012

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, Corporation Counsel

EXHIBIT A

Legal Description

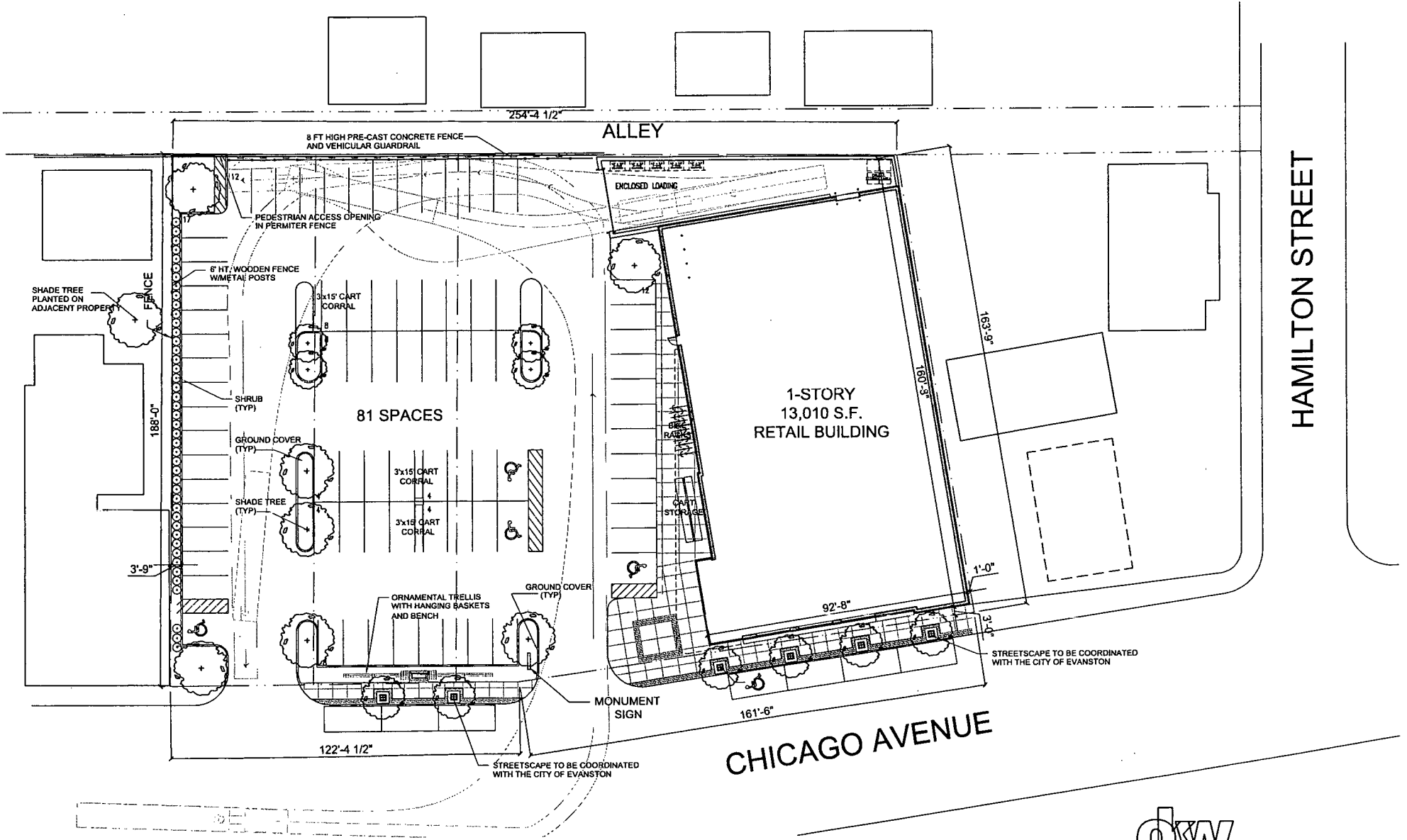
THE NORTH ½ OF LOT 15 AND ALL OF LOTS 16, 17 AND 18 IN BLOCK 76 IN THE CITY OF EVANSTON IN THE NORTH ½ OF THE NORTH ½ OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 11-19-200-025-0000
11-19-200-026-0000

COMMONLY KNOWN As: 1211 Chicago Avenue, Evanston, Illinois.

EXHIBIT B

Development Plans



SITE PLAN

EVANSTON, ILLINOIS

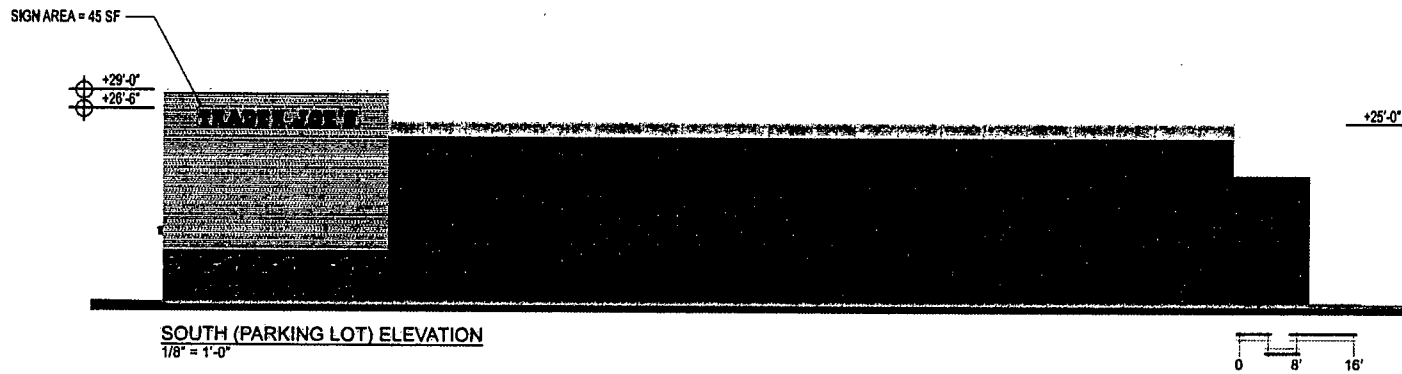
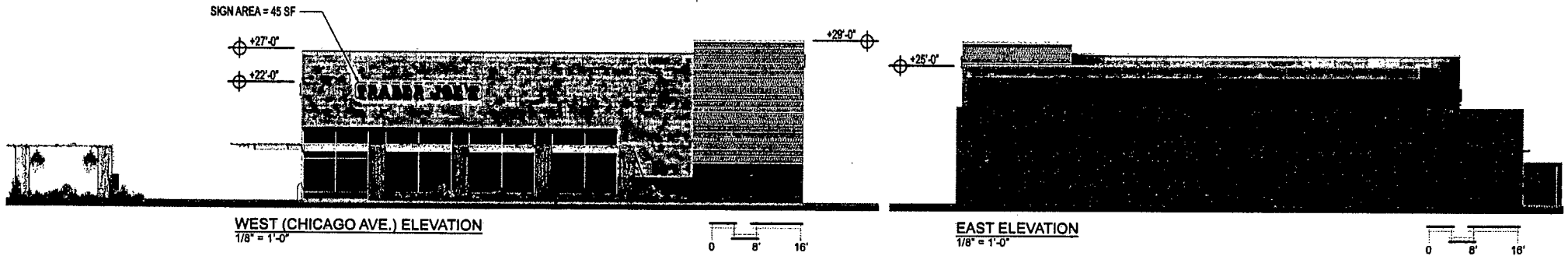
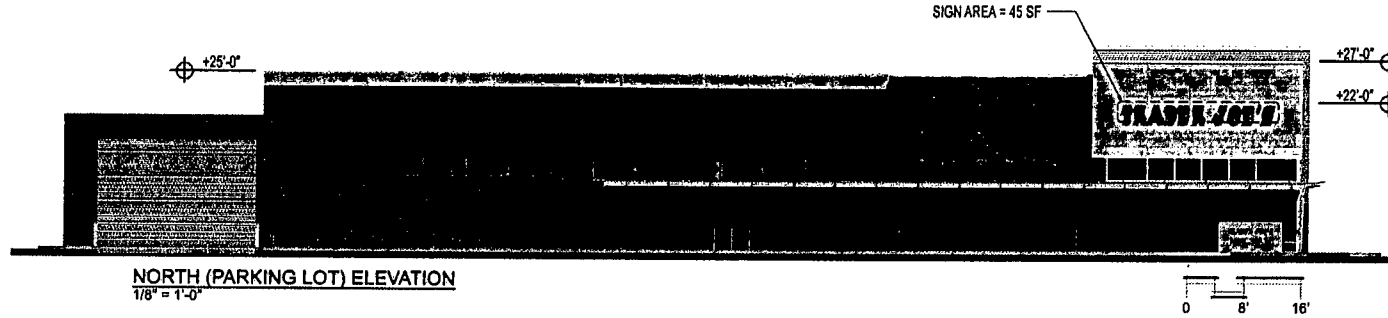
TERRACO, INC.



OKW Architects

DATE: JULY 23, 2012

PROJECT NUMBER: 11047



TRADER JOE'S
EVANSTON, ILLINOIS

TERRACO, INC.

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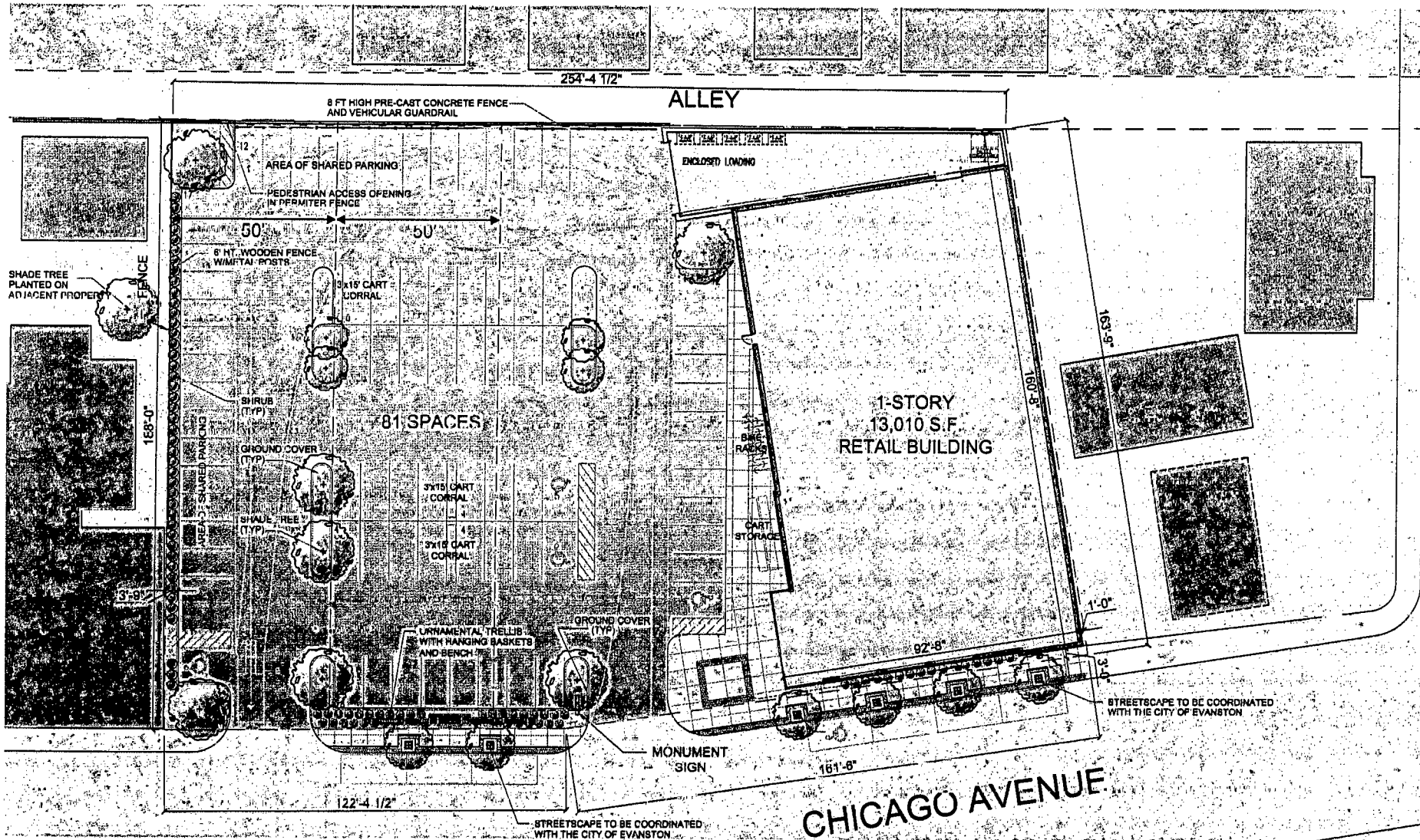
OKW Architects

DATE: AUGUST 8, 2012

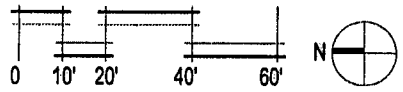
PROJECT NUMBER: 11047

EXHIBIT C

Landscape Plans



HAMILTON STREET



LANDSCAPE PLAN
EVANSTON, ILLINOIS

TERRACO, INC.



OKW Architects

DATE: AUGUST 21, 2012

PROJECT NUMBER: 11047