LOUIS H. NEVINS
ATTORNEY AT LAW
1301 PENNSYLVANIA AVENUE, SUITE 500
WASHINGTON, DC 20004
202 737-5113

RECEIVED
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2001 NOV 14 PM 4:56

November 13, 2001

By FAX: 202.727.6072

Ms. Anne Renshaw
Vice-chairman, Bureau of Zoning Adjustments
441 – 4th Street, NW, Suite 210 South
Washington, DC 20001

RE: BZA Application No, 16559

Dear Ms. Renshaw

I reside at 2208 Foxboro Place, NW. We are among the southern neighbors of the Field School property which is under construction. A serious dispute has arisen between the Field School and its neighbors on this side of the site over an interpretation of a provision of the BZA order granting the school its zoning exception. If necessary, I will proceed with a formal request that the BZA reopen the case to decide an issue that seems clear to the neighbors, the Advisory Neighborhood Council (ANC3D) and to us.

The dispute involves the preservation of thirteen, stately, 50 year old cedar trees that currently provide the sole buffer between the school and our residential property. These trees are so tall and full that they provide a visual buffer for many other neighbors as well. We relied, and we strongly suspect the BZA itself relied, on a site plan submitted by the school with the BZA application. That drawing which is attached has an arrow pointing to the trees on the southern border with the notation, "EXISTING TREES TO BE PRESERVED." Since this was the only proposed site plan made public during the hearing process, and since it seemed to indicate without equivocation that the trees would be preserved, we did not ask, and the BZA did not provide a specific condition that the trees be preserved. What the BZA did do, however, is indicate as one of its factual findings that existing buffers would be preserved on the southern border. The paragraph, which we believe makes clear that the BZA, like our ANC, our neighbors and ourselves took the school at its word, is as follows:

Page 15 of the Decision & Order for Application No. 16559:

56. "Given the large size of the property, its steep slope, the design of structures to follow the terrain, the lighting plan, and the landscape plan, including the substantial buffer along the southern property line, the proposed private school would not result in a significant visual intrusion for the neighboring property owners."

BZA
Case No. 16559
Exhibit No. 489

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.489

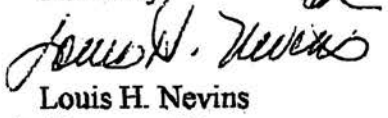
I reiterate that these cedar trees are the sole visual buffer between our property and the school. The school continues to argue that it will abide by the zoning requirements, but asserts the order does not require the preservation of the trees. Field School contends other drawings support its conclusion that the BZA Order does not require the preservation of the trees. But, even taking the Field School arguments at face value, the site plan submitted and made public was highly misleading to us and the BZA, inasmuch as it lulled all of us into believing the wooded buffer was not at issue. Having attended every single session during hearing process, I believe the BZA would have granted us the condition to require preservation of these trees had we asked for it. It would not even have been an onerous condition. Moreover, it is a well-established legal principle that disagreements stemming from ambiguities in language are resolved against the party that prepared it.

The school acknowledges that the trees can be preserved. Indeed, the school hired an arborist to advise it on whether the trees could be preserved. His report, also attached hereto, clearly concludes that all of the trees, save one that is leaning, can be preserved. And with proper care, they have a long life expectancy. We have indicated to the school that we are prepared to share the cost of the maintenance necessary to preserve these beautiful trees. Furthermore, these trees can only be saved if the site design is modified with the addition of a retaining wall outside the area of the tree roots.

We had taken our case to Mr. Michael D. Johnson, Zoning Administrator, but Mr. Johnson resigned from that position and did not resolve the matter before leaving. We are attempting to reach his successor, and I attach my letter to Mr. Toye Bello, Acting Zoning Administrator. Time is very much of the essence, because the school indicates it is ready to move on this issue within the next ten days to two weeks. We regret that there has been no consideration on the part of the school to protect our natural environment from their construction; and, therefore, we need to request that you open this case on an emergency basis.

The school is very powerful, and seems to have unlimited resources to be allocated to get its way. We are overmatched, but we are doing all we can to protect ourselves and our neighbors from the devastation of the institutional structures being built in our fragile residential neighborhood. Hence, this last appeal to you both to reopen the case to resolve this matter of saving 13 mature cedar trees that protect our neighborhood from the Field School and to inform the zoning administrator that action needs to be taken immediately to preserve the status quo of the site work in the vicinity of these trees pending a final decision.

Sincerely,



Louis H. Nevins

cc: Toye Bello, Acting Zoning Administrator (without encl.)
Densel Nobel, Deputy Administrator of BLRA (without encl.)

enclosures: ANC letter, September 13, 2001 to Mr. Michael Johnson
Report of Arborist, Integrated Plant Care
Proposed Site Plan, Field School, from the BZA Application
L.H. Nevins letter to Toye Bello, November 12, 2001

trees. Paragraph 56 speaks to the preservation of the natural buffer. What other meaning would Paragraph 56 have other than to put in writing the reasonable and obvious conclusion which the BZA had reached over the importance of preserving these trees?

The school says there were other drawings indicating these trees were to come down, and that we should have known the grade was to severe to preserve these trees. The public did not see any other drawings during the hearing phase of this application; and, therefore, there was no reason to ask for a specific condition which the BZA would unquestionably have granted. We relied on what they showed us, so did our ANC, and so did the BZA. It is a fundamental rule of law that ambiguous language, or, in this case a drawing, should be interpreted in the light least favorable to the party that prepared it. Furthermore, the written word supercedes a drawing. If the proposed grading was too steep to preserve these trees, the site plan should have indicated the trees to be destroyed as well as the trees to remain. At the very least, the drawing was highly misleading.

Incredibly, the school acknowledges that the trees can be saved by building a retaining wall. But they say they are not willing to bear the added cost. Instead, the school has gone to the expense of retaining an arborist to buttress their contention that the trees should not be saved. While they presumably told him the conclusion they hoped he would reach, even the arborist says unequivocally that all the trees, save one which is leaning, can be saved. He does say that the trees are damaged and may not survive unless vines that threaten to constrict the trees are removed, and he questions whether they will be attractive, but he says clearly that with care the trees can be saved, if the bulldozers do not pour dirt over their roots. For our part, we would be willing to share the cost of caring for these trees with the school, and we have so informed the school in writing. I attach a copy of arborist's report so you can read the conclusions yourself.

Mr. Bello, you are charged with enforcing the BZA order. This seems open and shut to us, but we understand the Field School is relentless and seems to have unlimited resources to get its way. We might hope that they would use these resources more constructively. We have to live as the school's neighbors. They are insinuating themselves on us. We think the issue is crystal clear, but we are now concerned that some time within the next week or so, they will simply pour enough dirt on top of the root system of these trees to assure they won't live.

We are asking the BZA to open up this case on an emergency basis in order to clarify their intentions with regard to the trees. At the very least, the school should be instructed to take no action to damage these trees in the interim. Of course, if the school were to agree to preserve the trees, and make an effort to care for them, none of this would be necessary. We attach hereto, in addition to the arborist's report mentioned above, our letter to BZA Vice-chairman Anne Renshaw.

Sincerely



Louis H. Nevins

Cc: Anne Renshaw, Vice-chairman, BZA/FAX: 202.727.6072

LOUIS H. NEVINS
ATTORNEY AT LAW
1301 PENNSYLVANIA AVENUE, SUITE 500
WASHINGTON, DC 20004
202 737-5113

November 12, 2001

By Facsimile: 202.442.4871

Mr. Toye Bello
Acting Zoning Administrator
441 N. Capitol Street NE
Washington, DC

Dear Mr. Toye Bello:

For the past six months my wife and I have been engaged in a protracted and highly unpleasant struggle with the Field School in an effort to preserve some 13 mature cedar trees which currently provide the only buffer between our home at 2208 Foxboro Place NW and their new school which is under construction. It seems to our neighbors, our Advisory Neighborhood Council (ANC), and us that there can be no other reasonable interpretation of the BZA order providing the Field School with its zoning exception other than one which requires them to preserve these trees. You are responsible for the enforcement and interpretation of BZA orders, and we are asking you to take immediate action to stop the school from destroying these trees – all of them. The school is very likely, either to destroy some or all of these trees, or to take some action (building up grade over the roots of the trees) in the next few weeks unless you stop them.

The facts are quite simple, and we hope you will not allow the school to obfuscate the issue. The school presented the drawing which the BZA adopted as part of its BZA application with an arrow pointing to the trees in question indicating that these trees ("the existing trees) were to be preserved. This was the only site plan that was shared with the public during the hearing process. It was relied upon, not only by the neighborhood and the ANC but also by the BZA itself. How else could the following declaration of fact have been made by the BZA?

Page 15 of the Decision & Order for Application No. 16559:
56. "Given the large size of the property, its steep slope, the design of structures to follow the terrain, the lighting plan, and the landscape plan, <u>including the substantial buffer along the southern property line,</u> the proposed private school would not result in a significant visual intrusion for the neighboring property owners."

It must be underscored that these 50 year old cedar trees provide <u>the only buffer</u> between our property and theirs. The only interpretation of the drawing and the above quoted finding of fact is that the BZA concluded that the school would preserve these trees. Paragraph 56 speaks to the preservation of the natural buffer. What other meaning would Paragraph 56 have other than to put in writing the reasonable and obvious conclusion which the BZA had reached over the importance of preserving these trees?

The Plant Health Specialists
INTEGRATED PLANT CARE
2279 Lewis Avenue ☐ Rockville, Maryland 20851
(301) 881-8180 • Fax (301) 881-3695

September 17, 2001

Ms. Kirstine Larsen
The Field School
2126 Wyoming Ave. NW
Washington, DC 20008

Dear Ms. Larsen,

Thank you for meeting with me this morning to examine numerous trees in the lower right rear corner of the property at 2301 Foxhall Rd. When we spoke, you asked me to address several concerns regarding 13 Eastern red-cedars adjacent to the wire fence. One question was if the trees were healthy. Another was what they would look like if all the vines and dead limbs were removed. A third was what would happen to the trees should the root system on the side facing the new ball field be covered with soil. Having completed the survey, I wish to submit my findings.

Given the diameter of each tree plus the height, I would estimate the trees were planted at least 50 years ago. Given the right location, this species can live to be twice that age. Each tree appears to contain some green branches. Two of them have less than 20% of their foliage still alive because the vines have completely engulfed their canopies. Others may have as much as 80% of their foliage intact. Some are impossible to tell because of the extent of the vines. I noted no root problems or significant cavities in the trunk or limbs. One tree is leaning at approximately 45% and poses an unacceptable risk to the property. It should be taken down. If the vines were removed, all the trees would probably survive. If the vines are not removed soon, they will completely overtake the cedars and kill them within 3-4 years.

The 13 trees have been sorely neglected for quite some time. At least four different types of vines have been permitted to grow up the trunks. Porcelain ivy, English ivy, poison ivy and Virginia creeper are abundantly present. In addition, the trees are filled with dead limbs. The screening the trees provide is misleading as much of the lower visual blockage is created by the greenery from the vines. Once the vines are removed, there are only dead limbs to a height of 8-10'. In addition, there will be numerous holes in the upper canopy as the vines have blotted out the light necessary for the limbs to survive. The trees will have an asymmetrical appearance.

Eastern red-cedar, as a species, are intolerant of construction activity. The root system tends to be somewhat superficial. Should these roots be buried under soil or the soil

compacted by vehicular traffic, they will surely die. In addition, should the roots be cut, there will be a negative impact on the health of the trees as the trees need every available root for survival. The more roots that are destroyed, the greater the chances of the trees being killed.

You can go to some extraordinary measures to preserve these trees. Ballfields can be moved, retaining walls can be built and drainage lines can be altered. If you don't damage the root system either by covering them with soil, compacting the soil around them or making cuts for utilities or drainage, I believe the trees will live. However, there is a quality of life issue that may be worth addressing.

I don't believe the red-cedars will be aesthetically pleasing nor provide the screening they presently provide after the vines and dead limbs are removed. Gaping holes will be created once the leaning tree is removed and the volunteer mulberry taken down. I believe this will compromise the effect of the entire hedge. You may want to consider removing the entire line of trees now and replanting with an evergreen that will provide all the benefits needed for this area.

Should you have any questions or if I may be of assistance in any way, please call. I look forward to being of service.

Sincerely,

Paul L. Wolfe, II
President
Integrated Plant Care, Inc.

Att C

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

September 13, 2001

Mr. Michael Johnson, Chair
Zoning Commission
441 4th Street NW Suite 210S
Washington DC 20001

Re: Construction and planned devastation of trees along southern side of property of Field School

Dear Mr. Johnson:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, September 5, 2001. Proper notice was given of this meeting in a local newspaper and by posting signs throughout the neighborhood.

Several immediate neighbors of the Field School brought to our attention the fact that although the Field School had promised to preserve trees along the southern border; they no longer are planning to live up to their agreement. May I refer you to Page 15 paragraph 56 of the BZA findings which states: Given the large size of the property, its steep slope, the design of structures to follow the terrain, the lighting plan and the landscape plan, including the substantial buffer along the southern property line, the proposed private school would not result in a significant visual intrusion for neighboring property owners."

For the past two years, Advisory Neighborhood Commission 3D has closely watched the purchase of the Cafritz Property by the Field School, its proposed plans for development and its promised agreements to meet with the neighbors on a regular basis to discuss construction activities for the following months. (See # 7 of Resolution attached to 4/24/00 letter to BZA).

ANC3D had originally opposed the construction and development proposed by the Field School (see our letter dated 3/14/00). The Field School then came before us again with modified plans that the Commission approved the attached Resolution, which supported the Field School's application subject to conditions shown on the Resolution.

The Commission was therefore dismayed to learn on September 5, that the School intends to destroy 13 mature evergreen trees that are located on the southern side of the property, which now screens neighborhood residences from the School. The drawings, which we were shown last year at two of our meetings, clearly indicated that these trees would be preserved. If we had been aware that there would have been any doubt about the preservation of these trees. we certainly would have included this as a condition in our resolution concerning the Field school.

We feel that Field School has not lived up to their agreement with the neighbors and with the ANC3D or the BZA order. Not only do they provide shade, privacy and beauty they also prevent the serious and very real threat of a terrible erosion problem.

We ask that the Zoning Commission give great weight to our request that the Field School follow the direction of the BZA Order #16559.

Thank you..

Sincerely

Eleanor Roberts Lewis (sgm)
Chair, ANC3D

Cc: BZA

URBAN FOREST COUNCIL
OF WASHINGTON, D.C.

405 K Street, N.W.
Washington, D.C. 20001
Tel: (202) 216-0900
Fax: (202) 216-9589

3/315-6626/25

October 22, 2001

Michael D. Johnson
Zoning Administrator
Fax: 202 442-4871

Dear Mr. Johnson,

At the request of neighbors, I recently inspected the property boundary between the Field School and houses in FoxBoro Place. I am the Executive Director of the Urban Forest Council of Washington D.C., a non-profit group that promotes urban forest growth in the City of Washington. I am a landscape architect and urban planner.

The Field School neighbors wish to preserve a row of cedar trees along the eastern boundary of the athletic fields that provide a visual buffer between the school and the houses. The trees are about 30 ft high and provide a dense visual screen. The School wishes to remove these trees as part of regrading for athletic fields.

I am somewhat at a loss as to why there is any dispute about these trees. The landscape site plan prepared by the Field School indicates clearly that existing trees along this boundary are to be preserved. The zoning permit was based upon this drawing. The contention by the School representatives that these cedars were not included in the intent of this preservation order has no merit since there was clearly an intent to preserve trees along this boundary for buffering purposes and these are the only trees present in that area. As an urban planner, I would expect to see preservation of forested buffer areas in a situation like this where a use such as a school is so closely juxtaposed to a residential neighborhood, especially a neighborhood that did not wish the school to be constructed in the first place. The 50 odd years of growth of these trees present a density of visual screening that cannot be replaced by new planting.

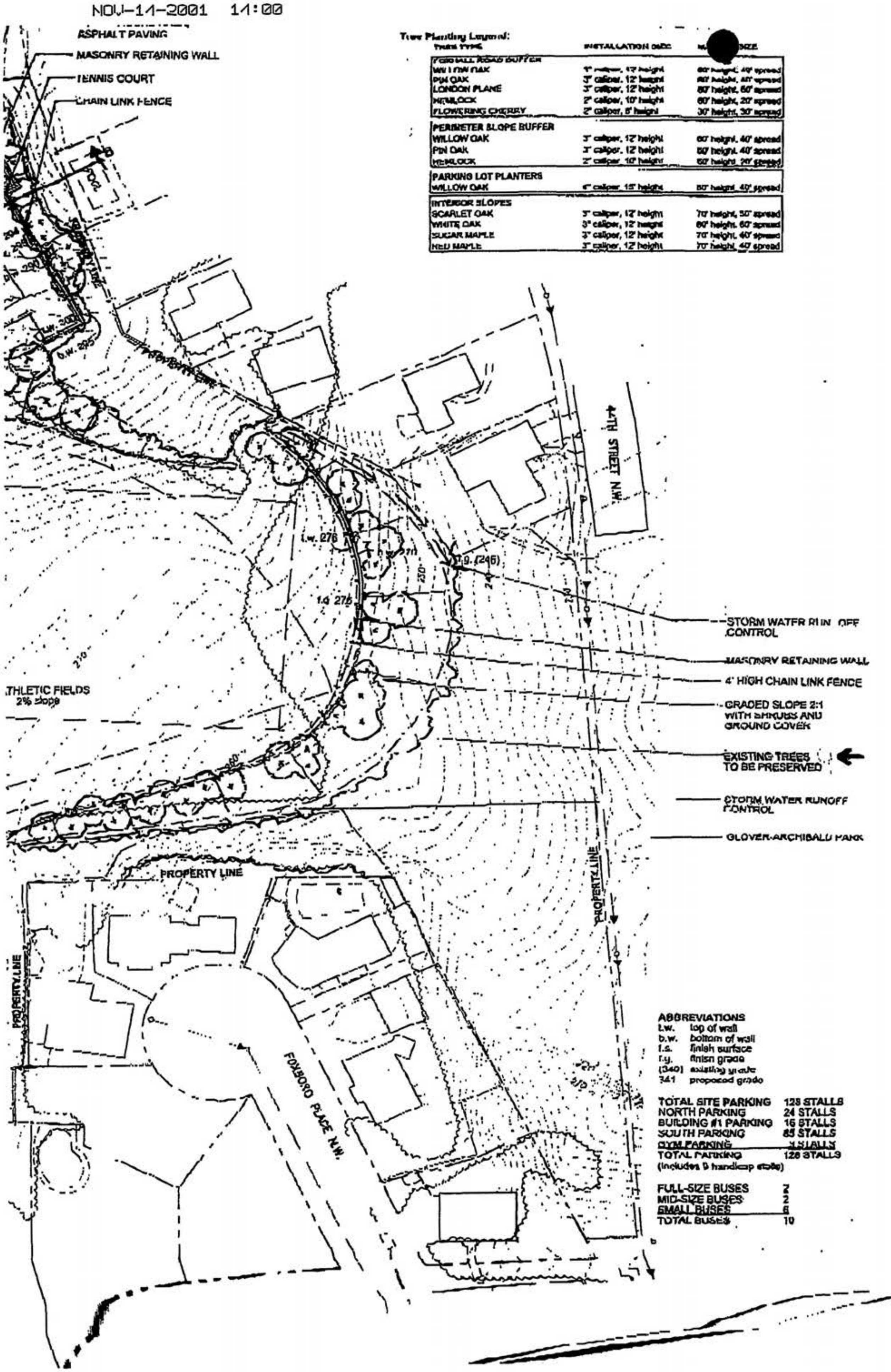
I write to you to urge you to confirm the evident intent of the zoning permit that this important buffer be preserved. I understand that the school' s grading needs can be satisfied with low retaining walls. I would also suggest that you ensure the continuing health of the trees by adding two clarifying conditions to your requirement: first, that the encroaching vines be removed immediately because otherwise they will soon kill the trees; and second, that any regrading or wall construction be excluded from the area within the drip line of the trees. The root zone extends within this area and disturbance could harm the trees by damaging the roots. The School and their contractors should be held responsible for the protection of these trees during construction.

Thank you for your consideration. If I can be of further help please contact me at the telephone number above, or at my direct number 301 315-6625.

Yours sincerely,

Stewart McKenzie

Stewart McKenzie.



Tree Planting Legend:

TREE TYPE	INSTALLATION SIZE	M[illegible]ZE
FOXHALL ROAD BUFFER		
WILLOW OAK	4" caliper, 12' height	60' height, 40' spread
PIN OAK	3" caliper, 12' height	60' height, 40' spread
LONDON PLANE	3" caliper, 12' height	80' height, 60' spread
HEMLOCK	2" caliper, 10' height	60' height, 20' spread
FLOWERING CHERRY	2" caliper, 8' height	30' height, 30' spread
PERIMETER SLOPE BUFFER		
WILLOW OAK	3" caliper, 12' height	60' height, 40' spread
PIN OAK	3" caliper, 12' height	60' height, 40' spread
HEMLOCK	2" caliper, 10' height	60' height, 20' spread
PARKING LOT PLANTERS		
WILLOW OAK	4" caliper, 15' height	60' height, 40' spread
INTERIOR SLOPES		
SCARLET OAK	3" caliper, 12' height	70' height, 50' spread
WHITE OAK	3" caliper, 12' height	60' height, 60' spread
SUGAR MAPLE	3" caliper, 12' height	70' height, 40' spread
RED MAPLE	3" caliper, 12' height	70' height, 40' spread

ABBREVIATIONS

t.w.	top of wall
b.w.	bottom of wall
f.s.	finish surface
f.g.	finish grade
(340)	existing grade
341	proposed grade

TOTAL SITE PARKING	128 STALLS
NORTH PARKING	24 STALLS
BUILDING #1 PARKING	16 STALLS
SOUTH PARKING	85 STALLS
GYM PARKING	3 STALLS
TOTAL PARKING	128 STALLS
(includes 9 handicap stalls)	

FULL-SIZE BUSES	2
MID-SIZE BUSES	2
SMALL BUSES	6
TOTAL BUSES	10

THE FIELD SCHOOL

2301 FOXHALL RD
WASHINGTON, DC

KRESSCOX ASSOCIATES, P.C.
ARCHITECTURE
PLANNING
INTERIOR DESIGN

2909 M STREET, NW
WASHINGTON, D.C. 20007
202 965 7070
FAX 965 7144

RHODESIDE & HARWELL, INC.
LANDSCAPE

320 KING STREET
SUITE 202
ALEXANDRIA, VA 22314
703.683.7447 FAX 683.7440

revisions:

drawing title:
LANDSCAPE SITE PLAN

scale: 1" = 40'

drawn by:
checked by:
project no.: 9903

L1.1

date: