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Permit Processing

Mike Brennan
Director
Development Services Division
City of Bellevue
450 110th Ave. NE
Bellevue, WA 98009

Re: Request for Land Use Code Interpretation

Dear Mr. Brennan:

I am writing on behalf of Brenner Construction Co., D/B/A Brenner Properties (Brenner), to request a Land Use Code Interpretation. We are requesting that the site known as Cascade Place II be determined to be an "Existing Condition" pursuant to LUC 20.25D.060 such that Brenner is entitled to continue marketing and leasing office spaces to tenants engaged in businesses that were allowed under the light industrial zoning in effect at the time the zoning was changed from LI to Bel-Red Residential.

Applicant and Site.

Brenner is a family-held corporation that was formed in 1958. Brenner initially developed Cascade Place II in 1977-1981 by designing and constructing two buildings divided into approximately fifty small, individually-accessed tenant spaces with shared surface parking. The development was designed to provide small, moderately-priced leased spaces to businesses allowed under the Light Industrial zoning classification. The business plan for the complex was formulated to meet this segment of demand for leased office space.

Cascade Place II is located at 12727/29 Northup Way, on a 5.2 acre site designated King County Assessor's Parcel Number 2825059057. The complex is located below the street grade on property that slopes downward to the south and west. The complex is accessed via a private easement shared with neighboring properties.

The area surrounding the site remains industrial in character. Neighboring land uses include Pacific Topsoil's storage and loading yard; the Metro bus maintenance base; Republic Services/Allied Waste garbage hauling and recycling warehouse facility; and Cadman sand and

gravel mining and processing. These businesses produce significant noise and dust. Their operations generate significant heavy truck and bus traffic. Business activities include vehicle maintenance, outside storage, truck and bus parking, and loading and hauling of soils, sand and gravel.

The Cascade Place II Development and Leasing Operations are No Longer Allowed under BR-R Zoning.

The site was developed as a "Multiple Function Complex," a type of development and land use that was encouraged under LI zoning. Brenner marketed tenant spaces to the broad range of LI service and other businesses allowed under LI zoning. Upon adoption of the Bel-Red Subarea Plan and Zoning in 2009, the site was zoned Bel-Red Residential. Under BR-R zoning, many of these types of businesses are no longer permitted uses.

Under LI zoning, Multiple Function Buildings and Complexes were favored in that certain types of businesses were only allowed if located in Multiple Function Buildings or Complexes. After rezoning to Bel-Red Residential, Multiple Function Buildings and Complexes are no longer allowed:

> *Multiple Function Building or Complex. A building or complex of buildings containing multiple activities such as office, warehousing, manufacturing, or services, as determined by the Director pursuant to LUC 20.10.440 provided this definition does not apply to multiple function buildings or complexes located in Bel-Red Land Use Districts. (Ord. 5876, 5-18-09, § 41; Ord. 4176, 11-26-90, § 5).*

LUC 20.50.034 M.

Land Use Code Provisions Provide Protection for Existing Conditions.

The City Council recognized that adoption of the Bel-Red Subarea Plan and Zoning represented a very significant shift in land use policy and regulations. The Council recognized protection was needed for developed light industrial properties that would be severely impacted unless the right to continue operating existing developments was protected. To address this situation, the Council adopted protections for "existing uses and development" that are unique to the Bel-Red Subarea.

LUC 20.25D.060 provides a protective classification for "Existing Conditions." The purpose of the Existing Conditions section is to allow land uses and developments such as Cascade Place II to continue operations despite the fact they are no longer permitted land uses under the new Bel-Red zoning:

> *Many existing uses and developments would not be allowed pursuant to the Bel-Red Land Use District Charts (refer to LUC 20.25D.070) and district-specific standards and guidelines in this Part 20.25D that are in effect to implement the policies of the Bel-Red Subarea Plan. The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on May 26, 2009. An additional purpose of this section is to allow limited expansion of existing uses and developments that are compatible with residential and higher intensity mixed use development that was introduced with the adoption of the plan.*

LUC 20.25D.060 A. (Emphasis added).

LUC 20.25D.060 protects the right to continue to operate existing "uses of land and structures", and to continue to operate "existing development." LUC 20.25D.060 B provides:

> *B. Types of Existing Conditions – Definitions.*
>
> *A site may be considered an existing condition because it contains either an existing use or existing development as defined in this subsection and based on documentation provided pursuant to subsection D of this section.*
>
> *1. Existing Use. The use of a structure or land which was permitted when established, in existence on May 26, 2009, and not discontinued or destroyed, but is not otherwise allowed under LUC 20.25D.070.*
>
> *2. Existing Development. A structure or site development which was permitted when established, in existence on May 26, 2009, and not discontinued or destroyed, but does not otherwise comply with Part 20.25D LUC.*

The Cascade Place II site meets the criteria for being allowed to continue operations as an Existing Condition. We have included the Declaration of Teresa Malone, including attached plans, permits and photographs with our application to demonstrate that the Cascade Place II development and Brenner's commercial leasing business operations were legally established and in operation at the Cascade Place II site as of May 26, 2009. These documents establish that the site development at Cascade Place II was legally permitted and that leasing operations have been continuously operated to the present time. (If more documentation is required, please notify us and we will provide it).

The Right to Lease to the Full Range of LI Tenants is a Critical Part of the Operation of Cascade Place II.

The economic viability of Brenner's commercial leasing business depends on the ability to market and lease space in the complex to the broad range of businesses allowed under LI zoning. However, when Brenner has sought to clarify with the City the protection available to it as an Existing Condition, the City response has been to apply the code as a limitation on the right to conduct business rather than a protection of the right to continue operations. Brenner's representatives have been advised that, for a tenant to be allowed in the complex:

(1) the tenant must be engaged in a type of business that has the same land use classification as a tenant that legally occupied a portion of the complex on May 26, 2009 (the effective date of the rezoning), and

(2) there must be no period of two years or more following rezoning during which no tenant engaged in the same land use classification has occupied the complex. A greater period will be presumed to constitute "abandonment" of the right to lease to this type of tenant.

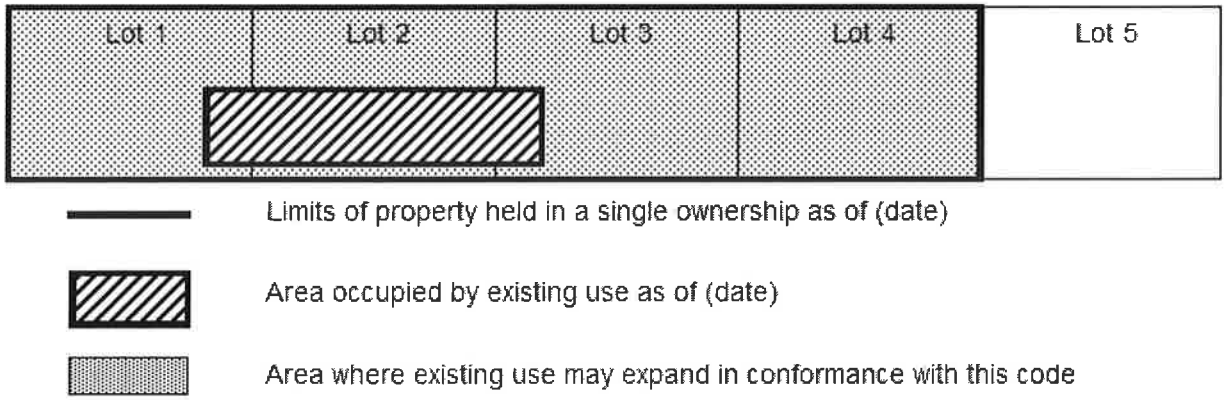
This interpretation applies the Existing Conditions regulations on a tenant space-by-tenant space basis, while ignoring the overall Cascade Place II business operations and site development as a Multiple Function Complex. This interpretation treats each tenant space as a "use of a structure or land which was permitted when established, in existence on May 26, 2009" rather than applying this classification to the overall Cascade Place II use of structures and land for operation of its commercial leasing business.

This interpretation is very narrow and restrictive. It does not protect the right to continue operations of the Cascade Place II site as a Multiple Function Complex. This is inconsistent with the code language that states this classification is to be applied to a "site," a term that is defined by the Land Use Code as:

> *A lot or group of lots associated with a certain application, building or buildings or other development.*

LUC 20.50.046. There is no language in the code that suggests a building is to be separated into segments for purpose of implementing the Existing Condition regulations. To the contrary, the provisions of LUC 20.25D.060.F.2.c – Figure 1 allowing expansion of an Existing Condition graphically illustrate that the Existing Condition classification is applied to a "site":

Expansions within nodes and residential Land Use Districts 20.25D.060.F.2.c – Figure 1



The use of the buildings and development on the site as a whole, and the operation of that development, is protected by the Existing Condition Classification. The code provides assurance of the right to continue operations. It does not impose restrictions on operations of existing businesses.

Narrowing the breath of available types of businesses that can be housed in the complex to those types of businesses that happened to be tenants in the complex on May 26, 2009 threatens the economic viability of Brenner's operations. Under this interpretation, Brenner will not be able to adapt to changing demands for leased space. The types of businesses that leased spaces in the development in 2009 are not the same as the businesses that need space of this type today or that will need these spaces in the future. Under LI zoning, Brenner lawfully marketed its tenant spaces to the full range of businesses allowed in that zone. When the zoning was changed, the Existing Conditions regulations ensured Brenner's right to continue operations as then lawfully conducted—not the ability to operate a restricted version of leasing to a list of tenant types "frozen in time."

In 2009 the local economy was in recession. Many spaces in Cascade Place II were vacant at that time due to the poor economy. This magnifies the detrimental effect of freezing the list of allowable types of tenants based on the arbitrary date of May 26, 2009. This result is not consistent with the stated purpose of the Existing Conditions section of the code:

> *The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on May 26, 2009.*

Brenner's buildings and site improvements were designed and constructed to meet the needs of a range of tenants whose businesses were allowed uses under the LI zoning. Leasing was broadly targeted to all permitted businesses whose activities required modest sized leased spaces. To

have a viable business, Brenner needs to be able to continue to provide leased spaces to this range of tenants.

Interpreting the Existing Conditions Classification as a Restriction on Continued Operations is Contrary to the Intent of the Subarea Plan and Zoning.

The current restrictive interpretation of the Existing Condition regulations appears to serve the view that former LI business operations such as Brenner's should be economically pressured to conform to Bel-Red Residential zoning requirements. At some point in time the character of the area around Brenner's site will change and economic conditions will support redevelopment of the site. But that time has clearly not yet arrived. For now, Brenner must be able to rely on the protection the City Council built into the new regulatory scheme in the form of the Existing Condition classification which allows it to continue to operate its business as it was operated under the LI regulations. This is clearly consistent with the intent of the Bel-Red Policies and Regulations as reflected in the Existing Condition purpose statement:

> *. . . . The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on May 26, 2009. . . .*

The City Council was mindful that its vision for the future of the Bel-Red Subarea was a long-term vision when it adopted the Subarea Plan and Zoning. The Council clearly did not intend that property owners be pressured into redeveloping their properties. In Ordinance 5874, the City Council stated its intent:

> *. . . the area will transition gracefully over time, with existing businesses being accommodated while new types of development occur as conditions warrant . . . .*

The code language the Council adopted is very clear on this point:

> *LUC 20.10.375 A. Purpose and Intent.*
>
> *Bel-Red is a major mixed use employment and residential area characterized by a transit-oriented, nodal development pattern, over time replacing the area's original low intensity light industrial and commercial past. . . . Redevelopment of the Bel-Red area will occur over decades, and the City encourages a graceful transition of land use over time. Therefore special provisions are appropriate for existing uses that may not be part of the area's long-term envisioned future.*

The Bel-Red Subarea Plan addresses the point at pages 14-15:

> *By taking advantage of the Bel-Red area's unique location, and the opportunities associated with high capacity transit, this Plan steers Bel-Red onto a new path. Departing from its low intensity, industrial past, Bel-Red's future will become a model of smart growth and sustainability, the type of planning needed in this era of global climate change. It will offer outstanding opportunities for living and working, while occupying a unique economic niche for Bellevue and the Eastside. Clearly this entails a major transformation for parts of the area, but change will happen over time, with some areas changing earlier and other areas remaining very much the same for years to come.*

(Emphasis added).

Cascade Place II is Not Suited to Residential and Retail Development.

The BR-R zoning classification encourages residential and retail uses by permitting these types of uses. It discourages formerly allowed LI uses by eliminating many LI uses from the list of permitted uses under the BR-R zone. Brenner's site development is not suited to the needs of retail or residential tenants:

- The site is surrounded by industrial operations with significant external land use impacts.

- The development consists of two buildings, each about 25,000 SF in size, divided into a total of about 50 small tenant spaces. The buildings were designed and built in 1978-1980. They are low-rise, one and two story wood frame construction with relatively low ceiling heights typical of suburban office development at that time. The buildings do not have the higher floor to ceiling heights desired by retail tenants.

- Physical and visual access is critical to retailers. The complex was developed on a sloped site, with building floor elevations below the grade of the adjacent principal street. They do not have large glass fronts with visibility into the interior spaces.

- The existing leasing operations and development are not at all suited to residential uses. Residential use would require complete demolition and redevelopment of the structures to provide living spaces that meet current residential building and fire codes.

All of this is to say that it is very critical to the continued viability of Brenner's land use and development that it be able to continue operations as an Existing Condition by marketing and leasing to tenants whose businesses were classified as permitted uses under LI zoning as it did at the time of the rezone.

The Land Use Code and Subarea Plan are Intended to Produce Gradual Change, with Support for Existing Businesses Until Economic Conditions Warrant Redevelopment.

Use of the Cascade Place II site for Brenner's commercial leasing business is the land use that is critical to the economic viability of the Brenner's investment in the property. It is not appropriate to disregard this land use when identifying the "use of a structure or land" that is entitled to protection as an Existing Condition. The property owner's use of these structures and land for the operation of its commercial leasing business is a protected Existing Use.

The right to continue leasing to LI businesses is also protected as a right to continue operations of "Existing Development." LUC 20.25D.060 B1 defines the term "Existing Development":

> *A structure or site development which was permitted when established, in existence on May 26, 2009, and not discontinued or destroyed, but does not otherwise comply with Part 20.25D LUC.*

Prior to adoption of the Bel-Red Subarea Plan and Zoning, the Cascade Place II buildings were classified as "Multiple Function Buildings" and the site was classified as a "Multiple Function Complex." These terms were defined by LUC 20.50.036 M. Its leasing operations were encouraged by the Land Use Code in that certain LI land uses could only be located in Multiple Function Buildings or Complexes. (See, e.g., note 5 to the "Services—Nonresidential Districts" Land Use Chart, LUC 20.10.440).

Having the right to continue to lease to the full range of tenants allowed under LI zoning is an essential part of the right to continue to operate a development that consists of a Multiple Function Building Complex. Leasing is not a static activity. Leasing is an ongoing, dynamic activity that must be able to change and adapt to the market and attract new and different types of tenants to fill vacant spaces. Tenants occupy the buildings under leases of specified duration. Tenants come and go. The tenant mix must continually change and evolve as some businesses go out of favor or are outmoded by changing technology and consumer needs.

Interpretation of the Existing Conditions Regulations will Not Impact Interpretation of other Provisions of the Land Use Code.

The criteria to be considered in making a Land Use Code Interpretation include what impact the interpretation will have on other provisions of the Land Use Code. The Existing Conditions

regulations are unique to Bel-Red zoning. Interpretation of these regulations will not have an impact on interpretation of other provisions of the Land Use Code.

Interpretation of the Existing Conditions Regulations will Not Have Unintended Implications for Development within the City as a Whole.

The criteria for making a Land Use Code Interpretation include consideration of what implications the interpretation will have on Development within the City as a Whole. The Existing Conditions regulations are unique to the Bel-Red Subarea. Interpretation of these regulations will not affect development within the City as a whole. Within the Bel-Red Subarea, the interpretation we have requested is entirely consistent with clear intent of expressed in City policy and the regulations. The requested interpretation will have no unintended consequences.

Conclusion.

Interpreting the Land Use Code as an assurance of Brenner's right to continue to market and lease spaces in Cascade Place II to tenants allowed under the LI zoning classification is consistent with the expressed intent of the City Council:

> *The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on May 26, 2009.*
>
> *A site may be considered an existing condition because it contains either an existing use or existing development as defined in this subsection and based on documentation provided pursuant to subsection D of this section.*
>
> *Redevelopment of the Bel-Red area will occur over decades, and the City encourages a graceful transition of land use over time. Therefore special provisions are appropriate for existing uses that may not be part of the area's long-term envisioned future.*
>
> *Clearly this entails a major transformation for parts of the area, but change will happen over time, with some areas changing earlier and other areas remaining very much the same for years to come.*

Interpreting the Existing Condition regulation narrowly as a limitation on the right to continue business operations, rather than as a guarantee of the right to continue business operations, is inconsistent with the Code. Applying the Existing Condition classification to individual tenant businesses on a tenant-space by tenant-space approach is inconsistent with the plain language stating that a "site" is the subject of an Existing Condition classification. Limiting the scope of allowed leasing using a "musical chairs" approach with the music stopping on May 26, 2009 is

inconsistent with the intent that the transition from industrial area to residential neighborhood be "graceful."

The expressed City council intent is that existing businesses and developments will be "accommodated" rather than pressured to change, and that redevelopment will occur "as conditions warrant." It is more consistent with the clear intent expressed by the Council policy statements and regulatory language of the code to protect the operations of Brenner's commercial leasing business and its developed site than to limit it. The Code requires that Brenner be allowed to market and lease to tenants whose businesses were permitted in the LI zone at the time of adoption of the Bel-Red Subarea Plan and Zoning. Freezing the scope of permitted tenants as of the arbitrary date of rezoning is inconsistent with the Land Use Code.

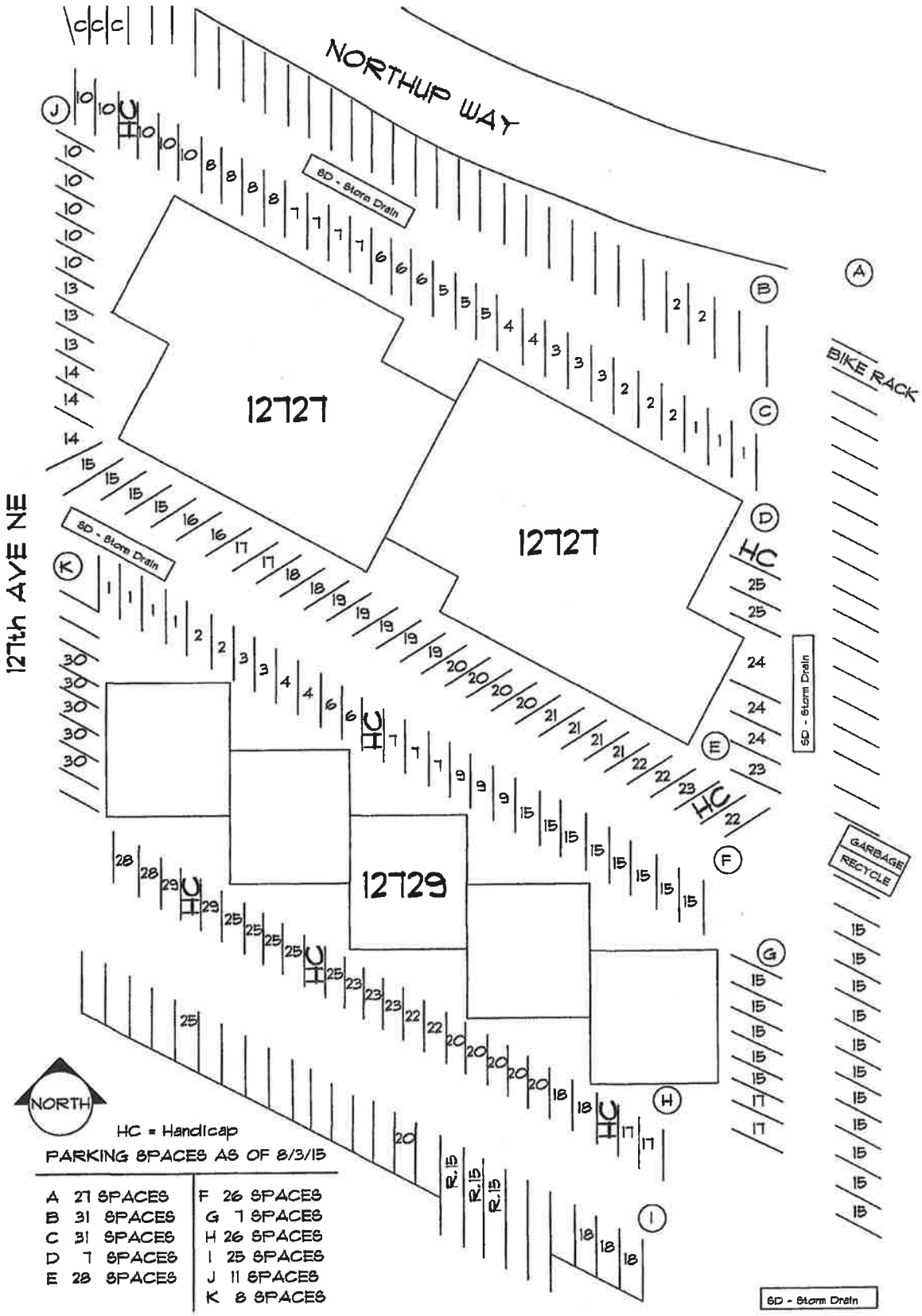
For the reasons set forth above, we respectfully request that the site known as Cascade Place II be determined to be an "Existing Condition" pursuant to LUC 20.25D.060 such that Brenner is entitled to continue marketing and leasing office spaces to tenants engaged in businesses that were allowed under the light industrial zoning in effect at the time the zoning was changed from LI to Bel-Red Residential

Very truly yours,

Davis Wright Tremaine LLP

Larry Martin

cc: Teresa Malone



PARKING SPACES AS OF 8/3/15

A 27 SPACES	F 26 SPACES
B 31 SPACES	G 7 SPACES
C 31 SPACES	H 26 SPACES
D 7 SPACES	I 25 SPACES
E 28 SPACES	J 11 SPACES
	K 8 SPACES

SPACES 227

Google earth

feet 300
meters 100