

DECISION AND ORDER

Decision Issue Date Thursday, November 23, 2017

PROCEEDING COMMENCED UNDER subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MARIA GRAZIA IERULLO

Applicant: MILENOV ASSOC. ARCHITECTS

Property Address/Description: 0 LIPPINCOTT ST E

Committee of Adjustment Case File Number: 17 157472 WET 11 MV

TLAB Case File Number: 17 191943 S45 11 TLAB

Hearing date: Tuesday, November 21, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

This is an appeal from the Etobicoke and York Panel of the City of Toronto's ('City') Committee of Adjustment ('COA') refusing an application to permit the use of No. 0 Lippincott Street East (the 'subject property') from being used for the purposes of a single detach dwelling. Pursuant to a properly filed Form 5, the only person to appear on the file was Mr. Bruno Ierullo, appointed Representative and son of the owner applicant, Ms. Maria Grazia Ierullo.

Despite extensive Notice, no City representative or other person attended or filed materials. Indeed, the file of the Toronto Local Appeal Body ('TLAB') on this matter, consisted largely of materials before the COA. No witness statements of other documentation was pre-filed. The failure to comply with the TLAB's Rules is not encouraged. In the circumstances extant, the Representative was allowed to speak to the matter of the appeal after first choosing where the Representative or witness roll best suited his instructions.

There being no other persons present, Mr. Ierullo chose to be the witness for the Applicant/Appellant and was sworn in as a lay citizen witness with knowledge of the property, the Application, COA Hearing and the appeal.

The subject property is located on the south side of Lippincott Street East just east of its intersection with Weston Road. Lippincott Street East terminates at its easterly limit upon intersection with the GO Rail Corridor, protected by a major and high concrete sound barrier. East of the subject property, on the south side of Lippincott Street East is a lane and approximately 22 townhouses, culminating with a single detached dwelling immediately abutting the rail corridor barrier wall.

On the north side of Lippincott Street East there is a mixture of new and older one and two-storey detached dwellings in a good state of repair. Immediately across the street from the subject property are six recently constructed two-storey townhouses, with integral garages. To the immediate west is a "Dairy Queen" retail outlet with parking, located at the southeast corner of Weston Road and Lippincott Street East.

As expected, 'Lippincott' extends west of Weston Road; however, the arterial acts as an effective barrier. The intersection occurs at an oblique angle and it is not signalized.

Along the east limit of Weston Road, southerly, are an additional 15 townhouses of near identical form, configuration and apparent scale, perhaps slightly smaller in gross floor area, to those on the south side of Lippincott Street East. All of the townhouse units appear to have identical private open space components between the unit and their respective garages. The garages are accessed by lane to the rear of the dwellings. The string of garages to the rear of the Weston Road townhouses meet at the southerly limit of the subject property. The immediately abutting garage structure and flanking private space of the most northerly Townhouse unit, at 1589 Weston Road, is owned and occupied by the Appellant and her Representative.

A large parking lot servicing a Weston Bakeries Plant, located on the south side of Clouston Avenue, occupies much of the balance of the block in which the subject property is located and which is bounded by Lippincott Street East, the GO Rail Corridor, Clouston Avenue and Dufferin Street.

BACKGROUND AND EVIDENCE

At the outset, I advised Mr. Ierullo that, pursuant to Council's directions in constituting the TLAB I had visited the site and surrounding area and had reviewed the pre-filed materials.

The witness Ierullo provided significant background advice. He advised that significant private funds had been expended on plans and the architects' attendance before the COA and costs were a factor in the ability to pursue an appeal and present professional evidence.

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The subject property is a remnant parcel identified as Part 39, Parts of Lots N,O and P, Registered Plan 500, City of York as shown on a Plan of Survey dated February 28, 1997 identified as Reference Plan 64R15348.

Mr. Ierullo claimed his mother had a registered deed to the subject parcel, having purchased it from the subdivider/builder of one or both sets of townhouses, above described. The deed was not filed; however, a Municipal Property Assessment Corporation ('MPAC') 'Property Assessment Notice issued October 24, 2016 (Exhibit 7) and a City Final Tax Bill for billing date May 5, 2017 (Exhibit 8), both for the subject property, Part 39, were filed as *prima facie* indicators of a separate parcel.

It is noted that the MPAC property classification is "Residential". The City Tax assessment category is "Residential Full Rate".

Currently, the subject property is vacant, fenced and used for private vehicle parking. While fronting on Lippincott Street East, and the lane on its easterly flank from which vehicular access is taken, it is an extremely small parcel. Its former use, apparently, was as a vegetable garden, sales and distribution lot.

The witness entered photographs of nearby housing: Aerial (Exhibit 1; the subject property (Exhibit 2); own private space at 1589 Weston Road (Exhibit 3); Housing on Lippincott Street East, north side (Exhibit 4, 4a and 4b); the single detached unit (#41) at the streets easterly terminus, south side (Exhibit 5); single detached house forms on Clouston (Exhibit 6a-e); and an example of replacement housing at 7 Denison Road East, nearby, pursuant to a COA approval decision, heard February 23, 2017 (Exhibit 7a, 7b).

The latter decision approved, in the applicable zone categories 'RA' and 'RM2 (ZR)', construction of 'a new detached dwelling with an attached garage'.

These zone categories were claimed to those of the subject Application for which similar relief is requested. In a Staff Report to the COA on the subject property, City Planning Staff had simply reported that the applicable zone category did not permit single detached dwellings, that there were no regulations for such a use, and recommended that the Application should be denied. The COA agreed. The property at 7 Denison Road East was said to be under construction, as identified in Exhibit 7a.

The witness described a process of City contacts, initially to build a semi-detached/two townhouse units. This was discouraged because of insufficient lot area. Reverting to a detached dwelling, he was advised that it was not a permitted use and was referred to the COA. The Appellant retained the Applicant architect who drew rough design plans (Exhibit 17) and made formal application.

On June 15, 2017, the COA refused the application without notation beyond reciting the failure to meet the applicable tests. There were multiple indications of neighbor support referenced by the deputation architect and one letter objection/deputation before the COA; no City issues were identified except for the above referenced Planning Report and recommendation and a standard Forestry condition.

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The architects plans, Exhibit 17, present a parcel description and proposed dwelling with the following attributes (the 'Site Statistics'):

- a) Lot Area: 132.80 sq m
- b) Ground Floor Area: 87.18 sq m
- c) Lot coverage: 0.65%
- d) Gross Floor Area: 149.70 sq m
- e) GFA: 1.12 times lot area.
- f) Front yard landscaping: 6 sq m
- g) Landscaped Area: 39.62 sq m
- h) Front yard setback: 0.60 m
- i) Side Yard setbacks: 0.9 m
- j) Rear yard setback (garage): 0.1 m
- k) Integral Garage Dimensions: 6.3 m x 3.7 m
- l) Front Lot Line: 12.17 m
- m) West building length: 7.31 m
- n) East building length: 8.9 m
- o) Main front wall: 10.36 m
- p) Building Height First Floor: 2.74 m
- q) Building height Second Floor: 2.43 m
- r) Elevation of first Floor Above Grade: 0.90 m
- s) Pitched Roof

MATTERS IN ISSUE

In the absence of any articulation of specific issues, the purpose of the application, being permission to construct a new detached dwelling with attached and integral garage, constituted the matter before TLAB. Ancillary to that question is, if so, to what standards?

The Staff Report filed before the COA had several deficiencies - if the advice that the Applicant was directed to apply to the COA is correct.

Even without that direction, once at the COA Staff might have realized the usefulness of addressing such matters as:

- a) Any policies and regulations of general application relating to small or undersized lots;
- b) Applications for single detached dwellings in zones not recognized to permit such, if any;
- c) Servicing availability or constraints;
- d) Appropriate development standards should permission be given to proceeding;
- e) Appropriate conditions;

- f) The applicability of site plan control in the zone category.

In the absence of these considerations, described either by Staff or a qualified professional on behalf of the Appellant, the TLAB is left to speculate and interpolate on the selection of materials placed before the COA and filed by the lay citizen witness.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Uses Defined Generally by the By-Law – S. 45(2)(b)

Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the Panel, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).

In addition to the foregoing, under s. 45 of the Planning Act, the TLAB can apply any condition and make any decision that the COA was permitted to make in the first instance.

EVIDENCE

I can take no issue with the intention of the Application in terms of the Provincial Policy Statements or the Growth Plan. Not raised by Staff, I find that this is an 'inner city' location where intensification through infill is supported, where appropriate.

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The subject property is a vacant, underused lot of record, on the representations made. As such, it is an eligible candidate for consideration for infill housing, being in a residential designation and zone category.

With respect to the Official Plan, the Staff assessment is lacking. I was provided with an excerpt of Chapter Four Policies and text, applicable to the relevant designation: Apartment Neighbourhood. Policy 1 contains the following language:

“...All land uses provided for in the *Neighbourhoods* designation are also permitted in *Apartment Neighbourhoods*.”

The ‘Neighbourhoods’ designations contemplate, inter alia, single detached house form dwellings.

While many of the Apartment Neighbourhood development criteria are necessarily not applicable, Policy 2 h) provides:

“ h) providing buildings that conform to the principles of universal design, and whenever possible contain units that are accessible or adaptable for persons with physical disabilities.”

I was advised that the requested permission is to provide accessible accommodation for the Appellant who is confined to a wheelchair. Internal stairs are designed to that specification.

With respect to the applicable zoning by-laws, Staff, in the form of the Examiners Notice (Exhibit 10) had provided direction to the specific provisions indicating no permission can be found for the use of a detached dwelling.

The new City By-law 569-2013 (not yet in force) zone category is RT(x253). Exception 253 (Exhibit 12) simply directs the reader to Section 16(365) of the former City of York zoning By-law 1-83 (the in-force By-law).

Section 16, General Exceptions, (365) of By-law 1-83 (Exhibit 1) is a comprehensive provision dealing with the lands then at 1575 Weston Road being processed for the 38 townhouse development described above, in 1996. No specific provisions were called to my attention relating to Part 39 on Plan 64R15348 and none were identified by the Plans Examiner or in the Staff comments

The provision and applicable zone category (RM2 16(365) of York Zoning By-law 1-83) does note the following regulations which require relief consideration given the ‘site statistics’, above listed (Exhibit 11):

- a) the lands indicated as public lanes and road allowance are to be conveyed to and dedicated by the City as public lane and public road. I was advised that City snow ploughs and collects waste off the lane adjacent the easterly limit of the subject property.
- b) The minimum front yard setback for lots on Lippincott Street East shall be 2.20 m v. the 0.60 m proposed.
- c) The minimum lot area abutting Lippincott Street East shall be 142 sq m.

- d) The minimum green open space shall be 25% of the lot area.
- e) Minimum side yard setbacks refer to Schedule B;
- f) And all other provisions apply that are not in conflict with the site specific regulations.

The Examiners Notice (Exhibit 10) did not apply these provisions (the 'Zone Provisions') to which the architects plans submitted may or do conflict (Exhibit 17).

ANALYSIS, FINDINGS, REASONS

The subject property is located adjacent residences comprised of townhouses and single detached dwelling unit. Many on the north side of Lippincott Street East are bungalows that appear to be of a similar gross floor area to the proposal, and include garages. Their lot configurations, mainly in respect of size or area do differ significantly. This is due to the remnant parcel lot pattern left over in the subdivision process of the mid to late 1990's.

The issue is what can be built? On the assumption that the subject property is a legal lot of record, I agree with the witness Ierulla that the City arguably let it be created, sold and available for development. The proposal and Site Statistics appear to demonstrate that a small but attractive residence can be accommodated on the site.

The subject property can support the built form and design for an accessible, affordable dwelling consistent with Provincial and City policy.

It is correct that this undersized lot requires recognition of reduced standards from a number of regulations that might otherwise be applicable or appropriate. However, the site is surrounded by two access roads, a commercial use and a willing owner to the rear. Indeed, reduced but identifiable amenity spaces are the order of the day for the townhouses and the subject site not only replicates similarity with that feature, but also provides onsite parking, consistent with the built form in the immediate neighbourhood.

As such, I find that the Site Statistics, above, provide for the development of the subject property in a manner suitable to permit the use of a detached dwelling unit. I find that the Site Statistics represent variances and regulations that, in the circumstances of the subject property and its proposed use, meet the general intent and purpose of the Official plan and that of both the new City By-law 569-2013 and the in-force, former City of York By-law 1-83, as amended. I find as well that each of the Site Statistics, individually and collectively for the subject property, are desirable and minor.

Vehicular access would be taken off the same lane as has existed for many years. The project would have to meet all building code standards and appears to have adequate frontage to provide a compatible façade, height, massing and scale to neighbouring properties. Local opposition is scarce and apparent support is widespread.

A property owner should be entitled to make some use of their property consistent with the public interest and standards of good community planning.

The owner paid the City application fee and achieved a non-supportive disposition by the COA, possibly based on a planning Staff recommendation to refuse, premised on an appreciation that the use is not permitted. I have had regard to that decision and the materials that were before the COA.

The recognition of a use not permitted by the applicable zoning is within the jurisdiction vested in the TLAB under various provisions of s. 45 of the Planning Act.

If I were to follow the Staff proposition and deny the use in accordance with the Site Statistics because they could not find its recognition in zoning, I would be foreclosing a valuable, contributory use being made of the subject property.

Moreover, a TLAB refusal could arguably cast the parcel into a wasteland of residential inutility by the application of the doctrines of *res judicata*, issue estoppel and abuse of process.

I am not prepared to so sterilize the subject property, a parcel that is being brought forward for private and public contribution. Certainly not on the basis of the level of scrutiny and analysis demonstrated to date.

I remain concerned, but optimistic, on a number of issues: certification the lot is a legal lot of record; the ready availability of public communal services; and the comprehensive identification of all regulatory requirements that may impede delivery of the project as proposed in the architects' preliminary plans, Exhibit 17, and the Site Statistics.

I find that those matters can be properly sorted by the use of conditions, a prerogative of the minor variance jurisdiction.

DECISION AND ORDER

The appeal is allowed and variances are granted to the new City By-law 569-2013, contingent on it coming into full force and effect, and to the former City of York By-law 1-83, as amended to:

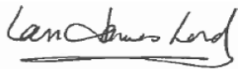
1. Permit the use on the subject property for a detached, two-storey residential dwelling unit;
2. Permit the development and the use of the subject property, also described at Part 39, Plan 64R15348, generally in accordance with the plans filed as Exhibit 17, by Milenov Associates, Architects and Planners, attached hereto and forming part of this decision;
3. Require that the approved performance standards applicable to the use and its development shall consist of the following:
 - a. Lot Area: 132.80 sq m
 - b. Ground Floor Area: 87.18 sq m

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- c. Lot coverage: 0.65%
 - d. Gross Floor Area: 149.70 sq m
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 - o. Main front wall: 10.36 m
 - p. Building Height First Floor: 2.74 m
 - q. Building height Second Floor: 2.43 m
 - r. Elevation of first Floor Above Grade: 0.90 m
 - s. Pitched Roof
4. Prior to building permit issuance, the following conditions shall apply:
- a) Demonstration to the satisfaction of the Chief Building Official of the City that the subject property, known as '0 Lippincott Street East' or such other nomenclature as the City may assign, is a legal lot of record for conveyancing purposes;
 - b) The satisfaction of the Director, Engineering and Construction Services that adequate services can be made available to service the subject property;
 - c) Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting the subject site. The current cost of planting a tree is \$583, subject to changes.
 - d) Payment of any applicable fees including development charges, education development charges and park levy as well as tax arrears, if any.

In the event that difficulties arise in the implementation of this decision, the TLAB may be spoken to.

X



I. Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

Attachment 1

REVISED

2:32 pm, May 17, 2017

LIPPINCOTT STREET EAST

BY REGISTERED PLAN 500
(FORMERLY LIPPINCOTT ROAD)

METRIC NOTE
DISTANCES SHOWN ON THIS
PLAN ARE IN METRES AND
CAN BE CONVERTED TO FEET
BY DIVIDING BY 0.3048

I REQUIRE THIS PLAN TO
BE DEPOSITED UNDER THE
REGISTRY ACT
DATE Feb 25/97

PLAN 64R/5348
RECEIVED AND DEPOSITED
DATE 97-02-28

Paul Kidd
PAUL KIDD
ONTARIO LAND SURVEYOR

M. Mazzavelli
Asst. Dep. Land Registrar
FOR THE REGISTRY DIVISION
OF METROPOLITAN TORONTO
NO. 64

PLAN OF SURVEY OF
PARTS OF LOTS N, O & P
REGISTERED PLAN 500
CITY OF YORK

MUNICIPALITY OF METROPOLITAN TORONTO
1: 500

PAUL KIDD SURVEYING LTD. 1997

PART	PART OF LOT	REG'D PLAN	INST. NO.	AREA m ²	PART	PART OF LOT	REG'D PLAN	INST. NO.	AREA m ²
1				185.9	24				156.1
2				122.1	25				156.2
3				122.1	26				156.3
4				122.1	27				161.6
5				122.0	28				161.7
6				122.0	29				156.7
7				122.0	30				156.8
8				122.0	31				157.0
9				121.9	32				157.1
10				121.8	33				157.2
11				121.8	34				157.3
12				121.8	35				157.4
13				121.5	36				157.5
14				123.8	37				157.7
15				208.1	38				209.5
16				192.9	39				132.6
17				151.0	40				21.2
18				155.4	41				21.2
19				155.5	42				308.7
20				155.8	43				2208.9
21				155.8	44				282.8
22				155.9	45				6.4
23				156.0	46				56.9
					47				2.8

NOTE
■ Denotes Survey Monument Found.
□ Denotes Survey Monument Set
SIB Denotes Standard Iron Bar
IB Denotes Iron Bar
SSIB Denotes Short Standard Iron Bar
CC Denotes Chain Corner
Plan Denotes Registered Plan 500
D1 Denotes Instrument No. CA 376484
D2 Denotes Instrument No. TB 431528
R1 Denotes Plan 64R-15117
R2 Denotes Plan 64R-1727
P Denotes L. Postushok, OLS
MTR Denotes Metropolitan Toronto Roads

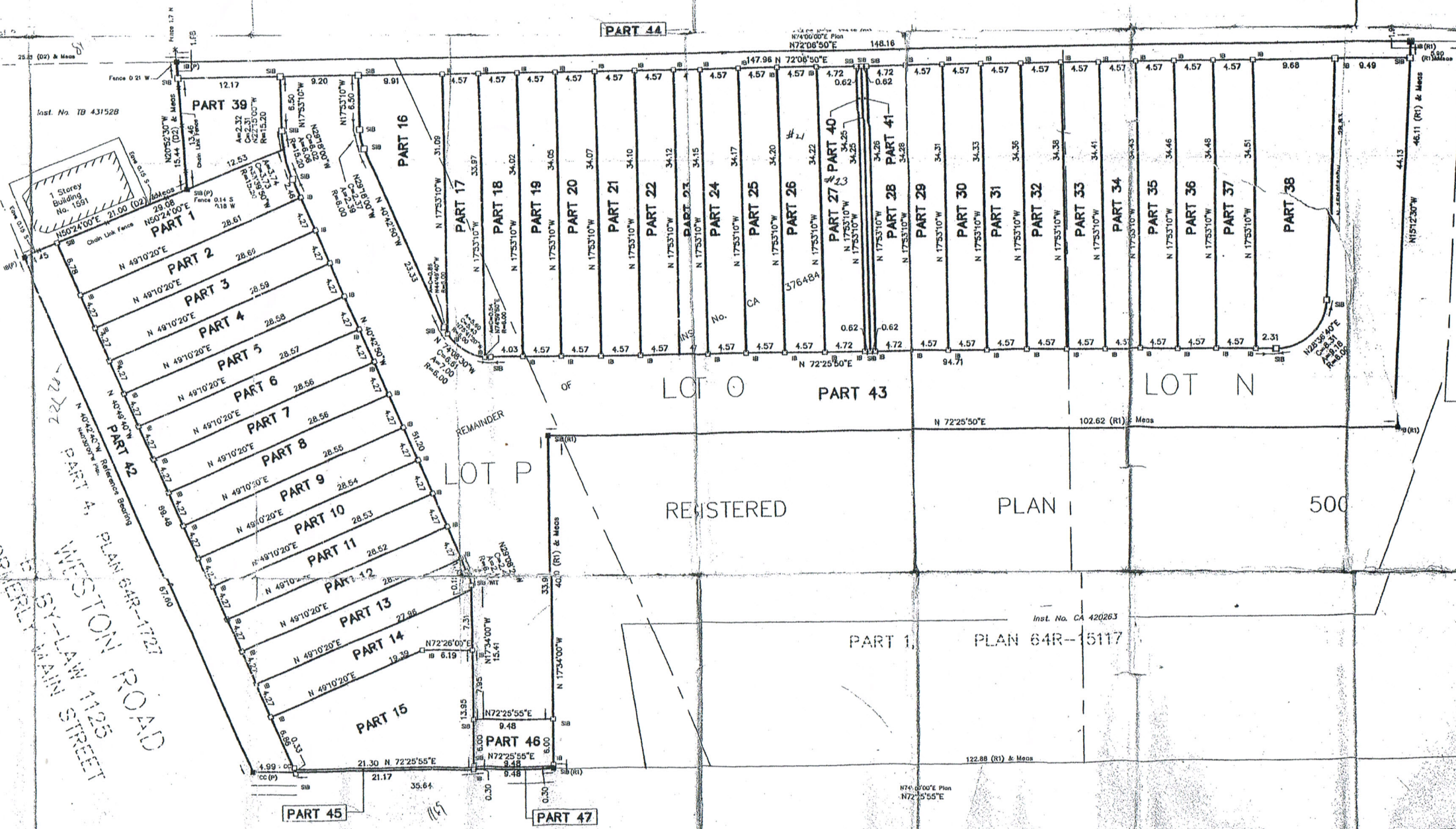
BEARING NOTE
Bearings are astronomic and are referred to the easterly
limit of Weston Road, as shown on Plan 64R-1727
having a bearing of N45°24'0"W.

SURVEYORS CERTIFICATE
I certify that:
1. This survey and plan are correct and in accordance
with the Surveyors Act, the Surveyors Act and the Registry Act
and the regulations made under them.
2. The survey was completed on the 7th day of January, 1997

Paul Kidd
PAUL KIDD
Ontario Land Surveyor

PAUL KIDD SURVEYING LTD
75 RIVERDALE AVENUE
TORONTO, ONTARIO
M4K 1C2
PHONE 463-1539

(By BY-LAW No. 8645 & 8888)
CLOUSTON AVENUE
BY REGISTERED PLAN 500
(FORMERLY ST. JOHN'S ROAD)



2:32 pm, May 17, 2017



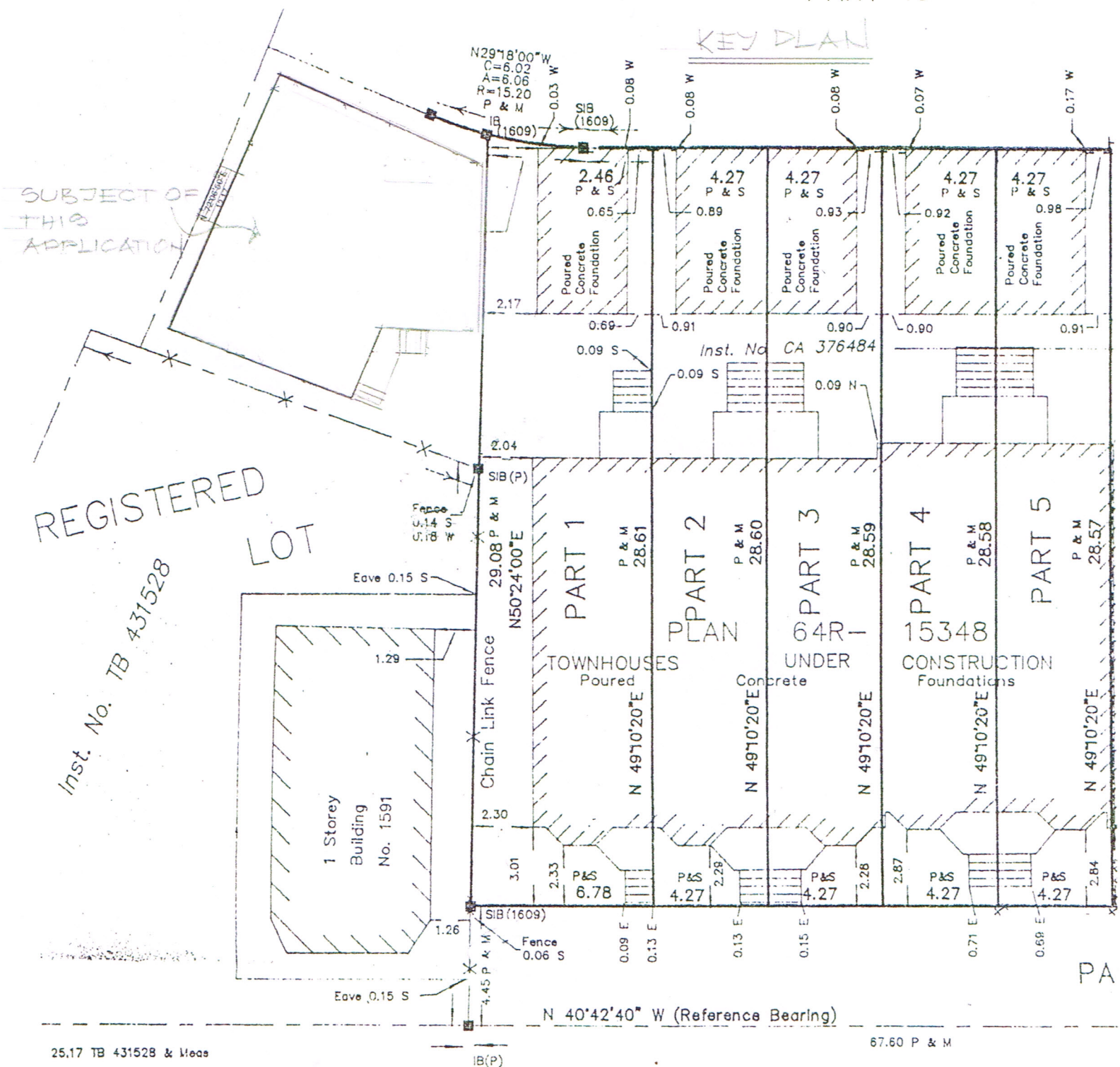
LOT AREA	132.80 m ²
GROUND FLOOR AREA	87.18 m ²
COVERAGE	0.65%
GROSS FLOOR AREA	149.70 m ²
GFA	1.12 TIMES LOT AREA
FRONT YARD LANDSCAPING	6.00 m ²
LANDSCAPED AREA	39.62 m ²

2:32 pm, May 17, 2017

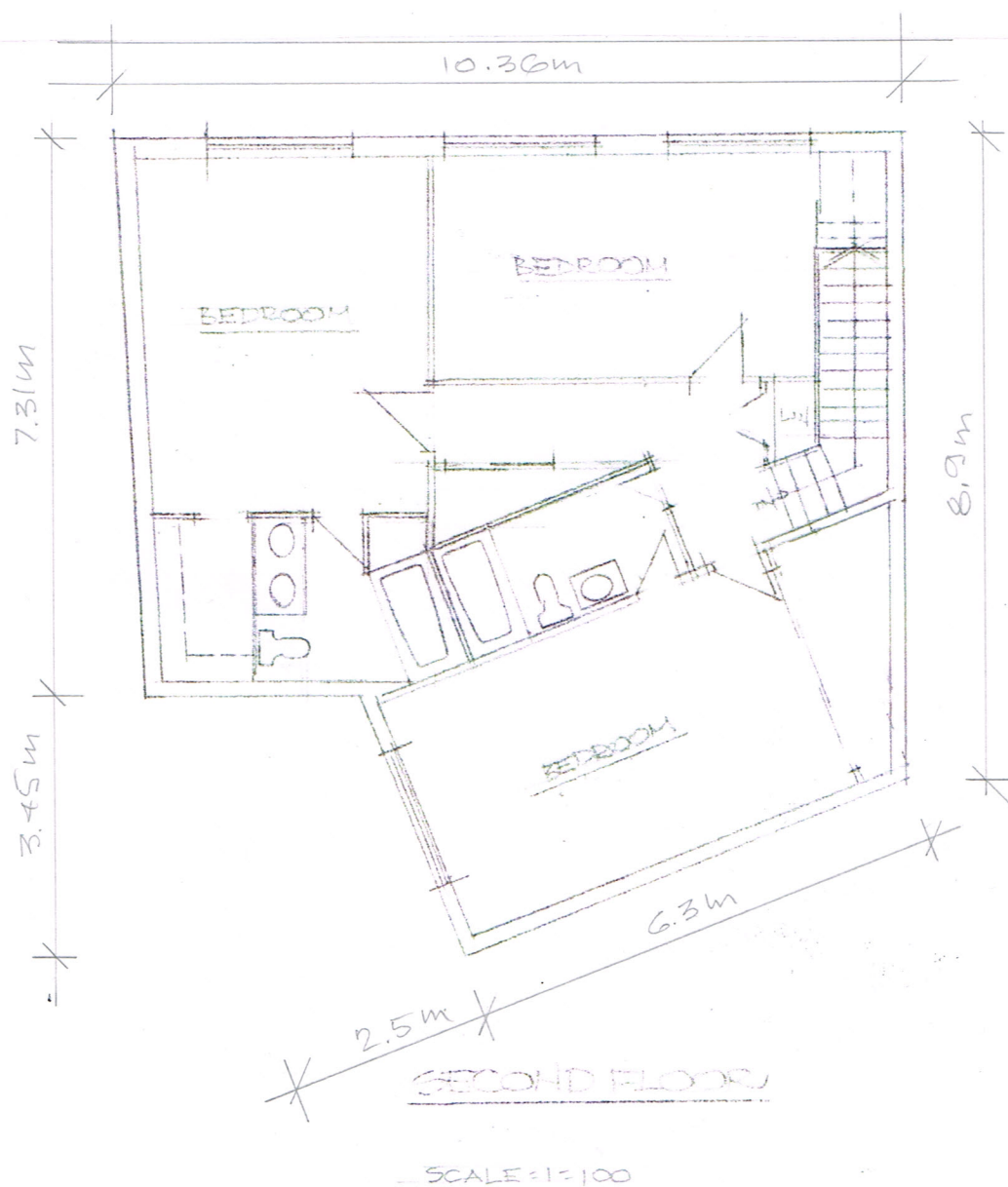
PAUL KIDD SURVEYING LTD.

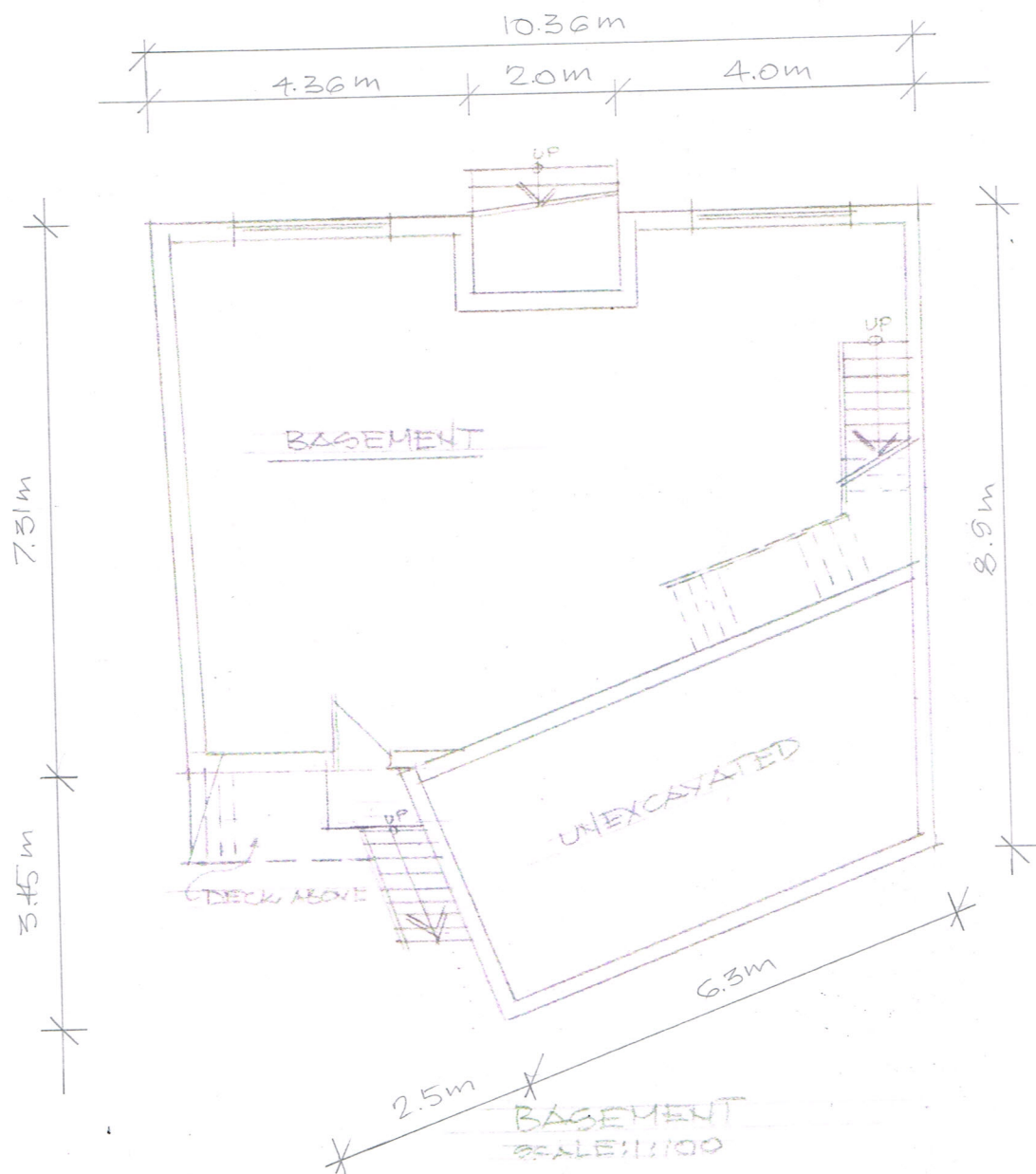
1997 © COPYRIGHT

KEY PLAN



WESTON ROAD
BY-BY--LAW 1125
FORMERLY MAIN STREET
PART 4, PLAN 64R--1727

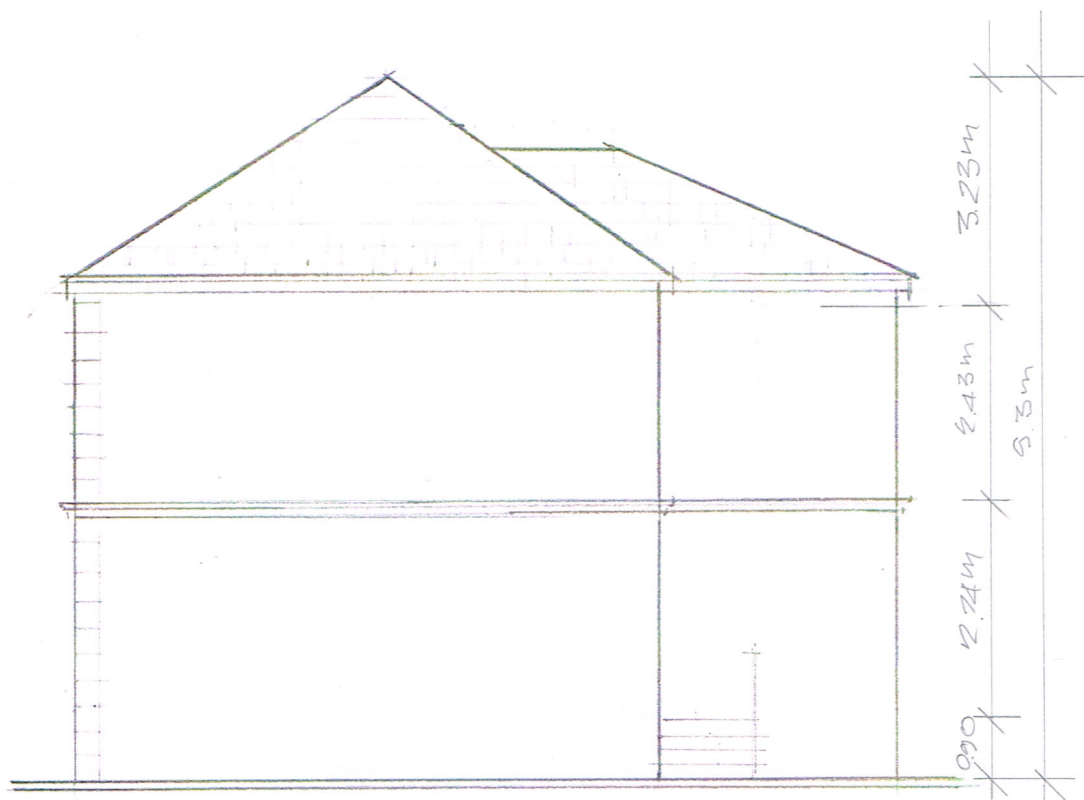






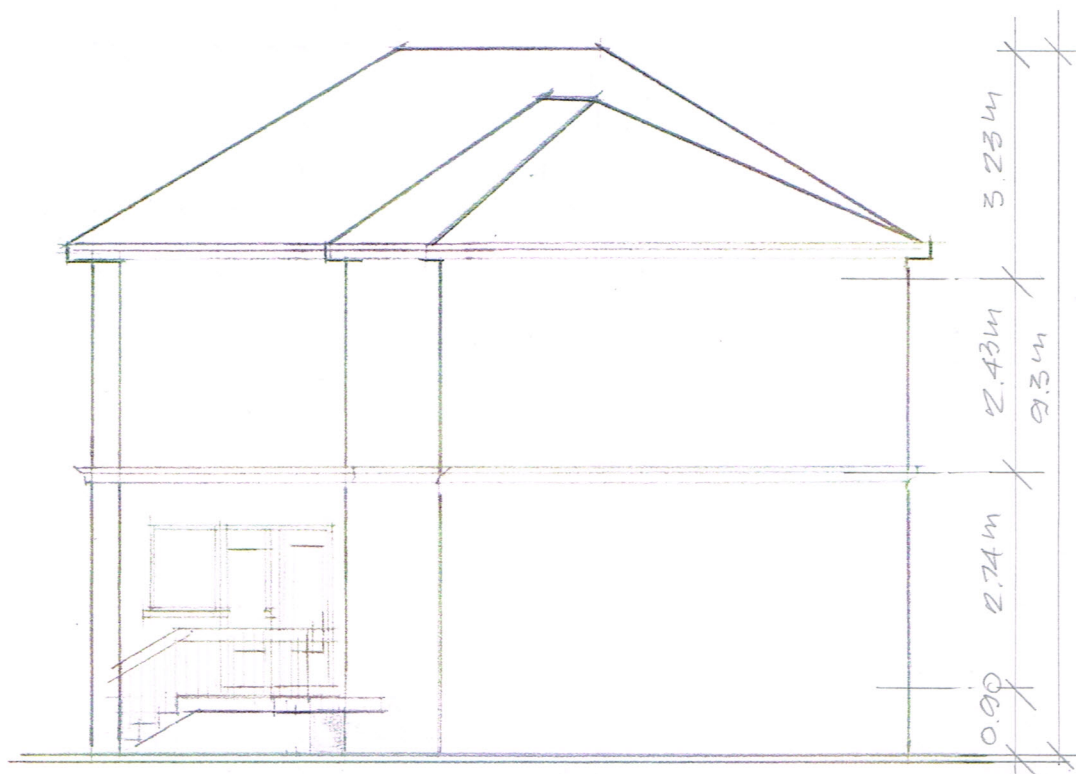
FRONT ELEVATION

SCALE: 1/2"=1'00"



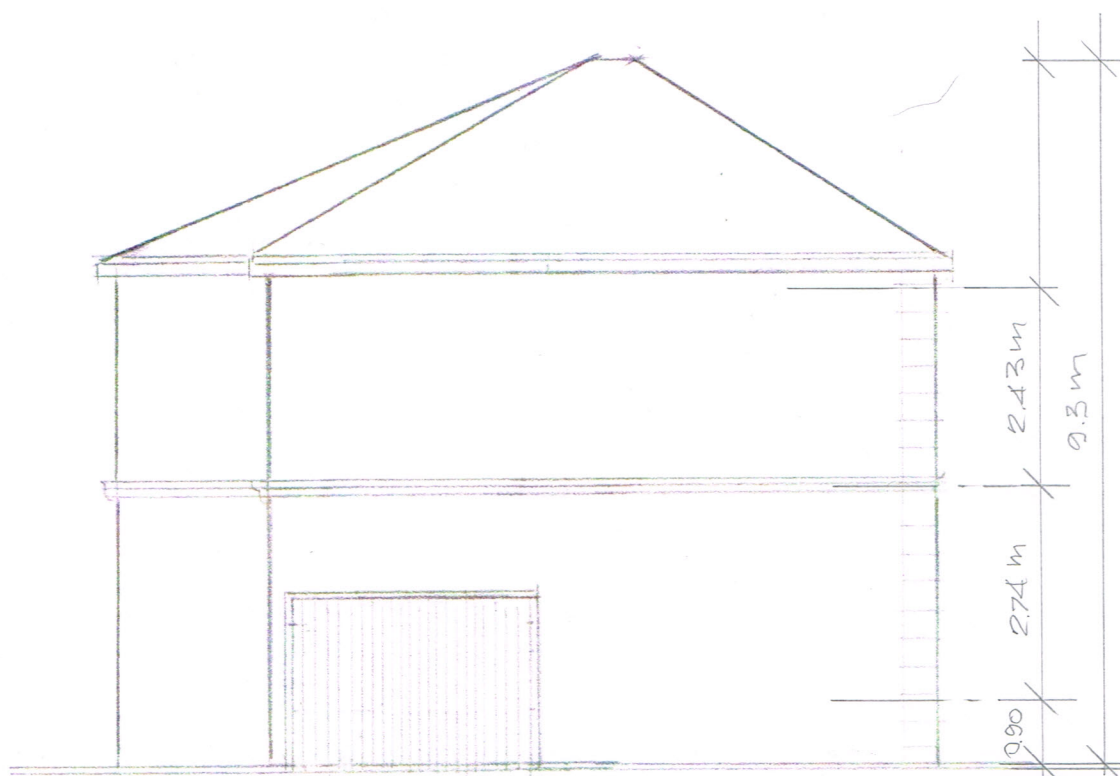
WEST ELEVATION

SCALE: 1:100



REAR ELEVATION (SOUTH)

SCALE: 1/4"=1'-0"



EAST ELEVATION
SCALE: 1:100