

Court Services
Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, November 27, 2017

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

Appellant(s): JUSTICE MANAGEMENT CORPORATION

Applicant: BENJAMIN GRUBNER

Property Address/Description: 112 GARDENVIEW CRES

Committee of Adjustment Case File Number: 17 133388 WET 13 MV

TLAB Case File Number: 17 168392 S45 13 TLAB

Hearing date: Thursday, November 16, 2017

DECISION DELIVERED BY G. Burton

Parties Counsel

James, Alberto OH, and Justice Management Corp.

Benjamin Grubner, Agent

Sarah Rogers

City of Toronto

Participants

Donna Johnston

Ted Dyke

INTRODUCTION

The owners, James Alberto Oh and Justice Management Corporation (the 'Applicants'), applied to the Committee of Adjustment (COA), Etobicoke York Panel, for several variances from both the York Zoning By-law 1-83 ("York By-law"), and the new Citywide Zoning Bylaw 569-2013 (the "new By-law", still under appeal and not yet in force). Their purpose at the time of the application and COA hearing was to covert the existing

attic into habitable space for a total of three residential units, and to add a third parking space. The COA refused the application. The owners than appealed to the Toronto Local Appeal Body (TLAB).

BACKGROUND

The property at 112 Gardenview Crescent ("subject property") is located on the west side of the north-south portion of Gardenview Crescent, a public lane, which is south of Dundas Street West in the former City of York. There are two other properties to the south (Nos. 108 and 110) in close proximity. The subject property is located within a Toronto Region Conservation Authority (TRCA) Regulated Fill Area of the Humber River watershed, and requires a permit prior to any development. It contains a deep slope down to the southwest. It is designated as *Neighbourhoods and Natural Areas* in the City of Toronto Official Plan (OP). Its zoning under the York By-law is Residential (R2), and under the new By-law it is Residential Multiple Dwelling (RM).

City Planning staff had submitted a Staff Report to the COA recommending refusal. since one secondary suite is permitted under both zoning by-laws, but not a third dwelling unit. In their opinion it would constitute overdevelopment, contrary to the general intent and purpose of the By-laws. Several neighbours expressed opposition at the COA hearing, and registered as participants in the TLAB hearing with the same goal.

Therefore the Applicants revised their application on August 31, 2017, and gave notice of this as required under TLAB Rule 11.1. They now request only one variance which would facilitate a single family dwelling with one secondary suite, as is permitted, and allow the conversion of the existing attic space to habitable space. The only variance requested at the TLAB hearing was therefore:

"Section 10.80.40.40 Floor Area (1)(A), By-law 569 - 2013
The maximum permitted floor space index is 0.6 times the area of the lot.
The dwelling in question will have a floor space index of 0.89 times the area of the lot."

MATTERS IN ISSUE

The Participants were not aware of the alterations, which met some of their principal concerns, until the hearing itself. Their Participant Statements were properly filed, but did not address the changes. It is critical that all persons intending to take part in TLAB hearings check the website to see the postings and know the case they must meet. The only matter for determination at the hearing, then, was whether the one variance requested could be supported on the tests that the TLAB must apply.

JURISDICTION

For variance appeals, the TLAB must ensure that the variances sought meet the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the "four tests", and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

The Participants were provided with an opportunity for a brief break to assess the fact that only one variance was now in question. They chose to continue with their prepared statements. The City's representative, Ms. Rogers, stated that she was not in attendance to provide evidence by a witness, as the matter has been resolved to the City's satisfaction. She wished only to ensure that the plans are attached to the TLAB's decision, so that the proposal, if approved, would be constructed substantially in accordance with those plans. The other condition the City would request is that no third dwelling unit be permitted.

The Applicant's case was put forward by Mr. Benjamin Grubner, the Operations Manager for the owners Justice Management Corporation and James Alberto Oh. He outlined the revision made to the application, from the three variances before the COA to only one. This would seek an increased floor space index (FSI) from the new Bylaw's limitation of 0.6 times the area of the lot, to 0.89 times the lot area (Applicant's Disclosure, Form 1, filed August 31, 2017). The City and the TRCA are now in agreement with the revised application.

Mr. Joseph Mazzitelli, an architect with MetaForm Architects, was qualified to provide expert evidence for this application, as he was involved with it at the COA. There was no challenge to this finding. He highlighted the location as the St. Clair/Dundas/Scarlett Road area. Two units are permitted under the applicable zoning by-laws (section 150.10.20.1(2) of the new By-law: "(2) Secondary Suite - ...Within a detached house or semi-detached house, each dwelling unit may have a maximum of one secondary suite." He characterized the owners' intent as an attic renovation, all to be within the built form of the existing house. There would be no external alterations.

He submitted that because the added FSI would be within the existing envelope, there would be no undue hardship for the neighbours or the street. The enlargement of the

interior already existed. He made the point that the present house totaled 220.66 square metres. If the entire lot could be built upon, including the (approximately) half that is ravine land, the FSI would be only 0.3 times the area of the lot, while 0.6 times is permitted. The attic space sought to be approved measures 54.44 sq. m., and adds only 0.08 times the lot area, he stated, resulting in 0.38 times in total if the FSI were applied to size of the entire property. Since only the table land can be built upon, the FSI requested is higher, at 0.89 times the lot area. The 54 sq. m is all internal, he stressed, and already constructed. Therefore there would be no undue impact of the variance, as the mass and scale is the same as the existing. The variance is in his opinion minor, and desirable as it improves the quality of the residential suite. As it results in housing intensification it also meets the OP tests favouring affordable housing in existing stable residential areas. Similar Provincial policies in the PPS and the Growth Plan are also met.

He provided examples of increased FSI granted by the OMB within the area and further afield. The owners were not requesting variances for multiple units, height, setbacks, parking, landscaping or use. It is a reasonable variance that he believes satisfies City planners, the TRCA and the Transportation Department.

Ms. Donna Johnston, who lives next door at 110 Gardenview, provided in her testimony the reasons why she still had objections to the proposal. The fact that half the lot is ravine land leads her to believe that any increase is not warranted. She is of the opinion that the owners are still attempting to create a third unit in the rear attic area, as there has been a history of this. Some extensions were built without a permit. The plans that she saw in the past seemed to show many bedrooms, a storage room and bathroom, and she fears the intention is to create a rooming house. She objects to Mr. Mazzatelli's definition of the area, as this is Humbercrest, a totally different neighbourhood in her opinion from the examples of FSI further afield.

Mr. Ted Dyke, also of 110 Gardenview, alleges that the additions to the subject property were built without permits. He believes that a conversion to three units would still be possible, with just a door preventing such access. Tenants occupy the first floor, which has the appearance of a second floor. There is nothing else resembling this construction on the street. The garage is unusable. He is very concerned with the possibility that the structure would become a rooming house.

Ms. Rogers summed up the City's position that as long as two conditions are imposed by the TLAB, it would favour the granting of the variance. If constructed as per the attached plans, and preventing a third unit, the neighbours could be assured that their fears would not be realized. They would have a remedy if the owners did not meet the conditions. Mr. Grubner said that all of the reconstruction had occurred prior to his company's purchase. They are just attempting to legalize what is there. They will follow the conditions.

The hearing of this appeal became, in the result, a settlement hearing, even though there were objections still from the neighbours. I informed them that the TLAB has no jurisdiction over some of their principal concerns, i.e., matters constructed poorly, or the condition of the property.

Even after a settlement with the City about the objections made by its departments or the TRCA, the TLAB still must hear evidence sufficient to be convinced that the variance requested meets the four tests of section 45 of the Act. I performed a site visit of the subject property and its surroundings, and can understand that the neighbours might find the existing structure to be somewhat overlarge for the site and its environs. However, the professional evidence provided by Mr. Mazzitelli was that the constraints of the site made any increase in FSI already seem very large. Approving the requested increase is somewhat more acceptable in this case. Its effect can easily be assessed as it is already built. I am most convinced by the now-acceptance by the TRCA, as that would seem to be the agency with the most significant objections to any adverse impact or alleged overbuilding.

Therefore I am satisfied that the general intent and purpose of both the Official Plan and the Zoning By-law have been met by recognizing this second housing unit, already within an existing structure. It is desirable for the appropriate development of the building for the same reason. Within its context, the variance is a minor one. Although it adds square footage beyond the allowable on this unusual site, it creates an additional unit, as is permitted under the By-law (yet to be approved.) Its impact should be insignificant as the conditions imposed must be met, or it will be disallowed.

DECISION AND ORDER

The TLAB orders that:

- 1. The appeal is granted, and the variance to Zoning By-law No. 569-2013 as set out in BOLD, above, is approved, contingent upon the relevant provision of this By-law coming into force and effect.
- 2. The proposal shall be constructed substantially in accordance with the Plans filed as Exhibit 2, and attached to this Decision as Attachment 1. These plans shall form part of this order. Any variances that may appear on these plans that are not listed in this decision are not authorized.
- 3. No third dwelling unit will be permitted.

G. Burton

Panel Chair, Toronto Local Appeal Body

Toronto Local Appeal Body

EXHIBIT #3

Case File Number: 17 1683292 S45 13 Property Address: 112 Gardenview Cres

Date Marked: November 16, 2017

Toronto Local Appeal Body

RECEIVED

Date Received: August 31, 2017

REFER TO PREVIOUS PERMIT 02 130639 REV. DEC./01/15

STRUCTURAL EDEQUACY NOTES: VERIFY/REINFORCE EXISTING SUPPORT SYSTEM, INCLUDING FOUNDATIONS. FOR LOADS IMPOSED BY THE PROPOSED CONSTRUCTION STUCTURAL INTEGRITY: ALL MEMBERS SHALL BE SO FRAMED, FASTENED, TIED, BRACED AND ANCHORED TO PROVIDE THE NECESSARY STRENGTH, RIGIDITY AND STABILITY PER OBC 9.23.2.1.

FOAM INSULATION: INSULATION TO CONFORM TO CANJULC - 5705.1, "THERMAL INSULATION-SPRAY APPLIED RIGID POLYURETHANE FOAM, MEDIUM DENSITY- MATERIAL

SPECIFICATIONS. INSULATION INSTALLERS ARE TO BE CERTIFIED BY THE MANUFACTURER. INSTALLED IN ACCORDANCE WITH CANUIC - 5705.2-05 "THERMAL INSULATION - SPRAY APPLIED RIGID POLYURETHANE FOAM, MEDIUM DENSITY. UPON COMPLETION THE CERTIFIED INSTALLER OR A PROFESSIONAL ENGINEER MUST SUBMIT TO THE INSPECTOR, VERIFICATION THAT THE INSTALLATION OF THE SYSTEM HAS BEEN COMPLETED IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS AND STANDARDS. DUE TO THE HAZARDOUS CONDITIONS RELATED TO OFF GASSING, NO INSPECTIONS SHALL BE CONDUCTED UNTIL 24 HOURS AFTER INSTALLATION.

CONSTRUCTION TO ONTARIO BUILDING COL OBTAIN ALL REQUIRED PERMITS AND INSPECTIONS.

VERIFY ALL EXISTING STRUCTURAL AND FRAMING CONDITIONS AND UPGRADE AS REQUIRED TO O.B.C.

STRAPPING & BRIDGING FOR FLOOR JSTS. TO OBC 9.23.9.4

NATURAL VENTILATION SHALL CONFORM WITH TABLE 9.32.2.1 CONTINUOUS BARRIER TO AIR LEAKAGE FROM THE INTERIOR OF THE BUILDING INTO WALL SPACES, FLOOR SPACES OR

DRAINAGE LAYER FOR FOUNDATION WALL TO OBC 9.14.2.1

ATTIC OR ROOF SPACES REQUIRED AS PER OBC 9.25.3

VERIFY SOIL BEARING AND ALL SITE CONDITIONS AND DIMENSIONS AND REPORT ANY DISCREPANCIES.

ALL WINDOWS AND DOORS WITHIN 6'-O" OF ADJACENT GROUND LEVEL AND DWELLING UNIT ENTRANCE DOORS SHALL CONFORM TO "RESISTANCE OF FORCED ENTRY" O.B.C. 9.6.8 AND 9.7.6

CARBON MONOXIDE DETECTORS INSTALLED TO O.B.C. 9.33.4. SMOKE ALARMS SHALL BE INSTALLED ON EACH STOREY OF A DWELLING UNIT, BEDROOMS \$ BASE MENTS, TO CITY OF TORONTO BY-LAW 1994-0580 AND O.B.C. 9.10.18 AND BE INTERCONNECTED.

NO ENCROACHMENT PERMITTED ON PROPERTY LINES WITH FOOTINGS, FOUNDATION WALLS, EAVES OR ROOF OVERHANGS.

THIS PERMIT DOES NOT GIVE THE OWNER / APPLICANT THE RIGHT OF ACCESS TO ADJOINING LANDS.

SURFACE DRAINAGE SHALL NOT BE DISCHARGED DIRECTLY OR INDIRECTLY ONTO A SIDEWALK, DRIVEWAY, STAIRWAY OR ADJOINING PROPERTY.

PROVIDE ALL NECESSARY SHORING AND TEMPORARY SHORING TO O.B.C.

PREVENT WATER & MOISTURE ENTRY THROUGHOUT ENTIRE BUILDING AT ALL WALLS, ROOFS, WINDOWS, DOORS, VENTILATION GRILLES, & PROVIDE METAL FLASHING & COUNTER FLASHING & CAULKING THROUGHOUT & AT ALL JUNCTIONS OF ROOFS, VALLEYS, PARAPETS, HEADS & SILLS OF WINDOWS & DOORS, & WEEP HOLES, TO OBC 9.20.13

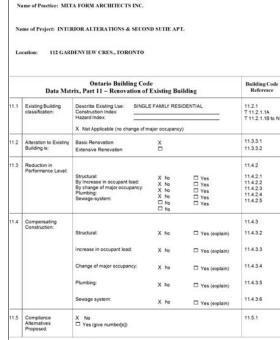
LOT LINE

OF **ARCHITECTS**

LICEN MONTELLI JOSEPH MAZZITELLI

LICENCE

4099



EXIST. 2 CAR GARAGE # II2 2 STY. DWELLING F 2'-816' REG'D PLAN 149- YORK BLOCK A EXIST. 2 CAR GARAGE # II2 2 STY. DWELLING GRANDVIEW (A

114 | STY. DWELLING

TOTAL NEW 2 ND FL. GFA

= 1,472.31 SF 136.78 SM

TOTAL EXIST. GROUND FL. GFA = 1,488.86 SF 138.32 SM

2 REV

12.42 M - 40'-9"

SITE PLAN

TOTAL PROPOSED GFA

= 2,961.17 SF 275.10 SM = 0.37 COV. ASSOC/A

93.35 M

EXIST. 2 CAR GARAGE

LOT AREA = 7,968.37 740.26 SM

ONTRACTOR MUST CHECK AND ERIPY ALL DIMENSIONS ON THE JL. ITE & REPORT ANY DISCREPANCIES OF THE ARCHITECT PRIOR TO PROBE THE ARCHITECT PRIOR TO PROBLED TO THE ARCHITECT PRIOR TO PROBLED TO THE ARCHITECT PRIOR TO PROBLED TO THE PROBLEM TO THE PROBL OO NOT SCALE THE DRAWINGS. ALL DRAWINGS, SPECIFICATIONS, AND RELATED DOCUMENTS ARE THE COPYRIGHT PROPERTY OF THE RCHITECT AND MUST BE RETURNE IPON REQUEST. REPRODUCTIONS OF THE DRAWINGS, SPECIFICATION ND RELATED DOCUMENTS IN PART OR WHOLE IS FORBIDDEN WITHOUTHE ARCHITECT'S WRITTEN CONSE THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNTIL SIGNED BY THE ARCHITECT.

ISSUE RECORD:

PROPOSED SUITE INTERIOR ALTERATIONS

112 GARDENVIEW CRES. TORONTO, ONT.

TE PLAN

NOV. 20/16 REV. ATTIC

608 ORIOLE PARKWAY TORONTO, ONT.

DATE: AUG. 28/16 SCALE:1/16"=1'-0"

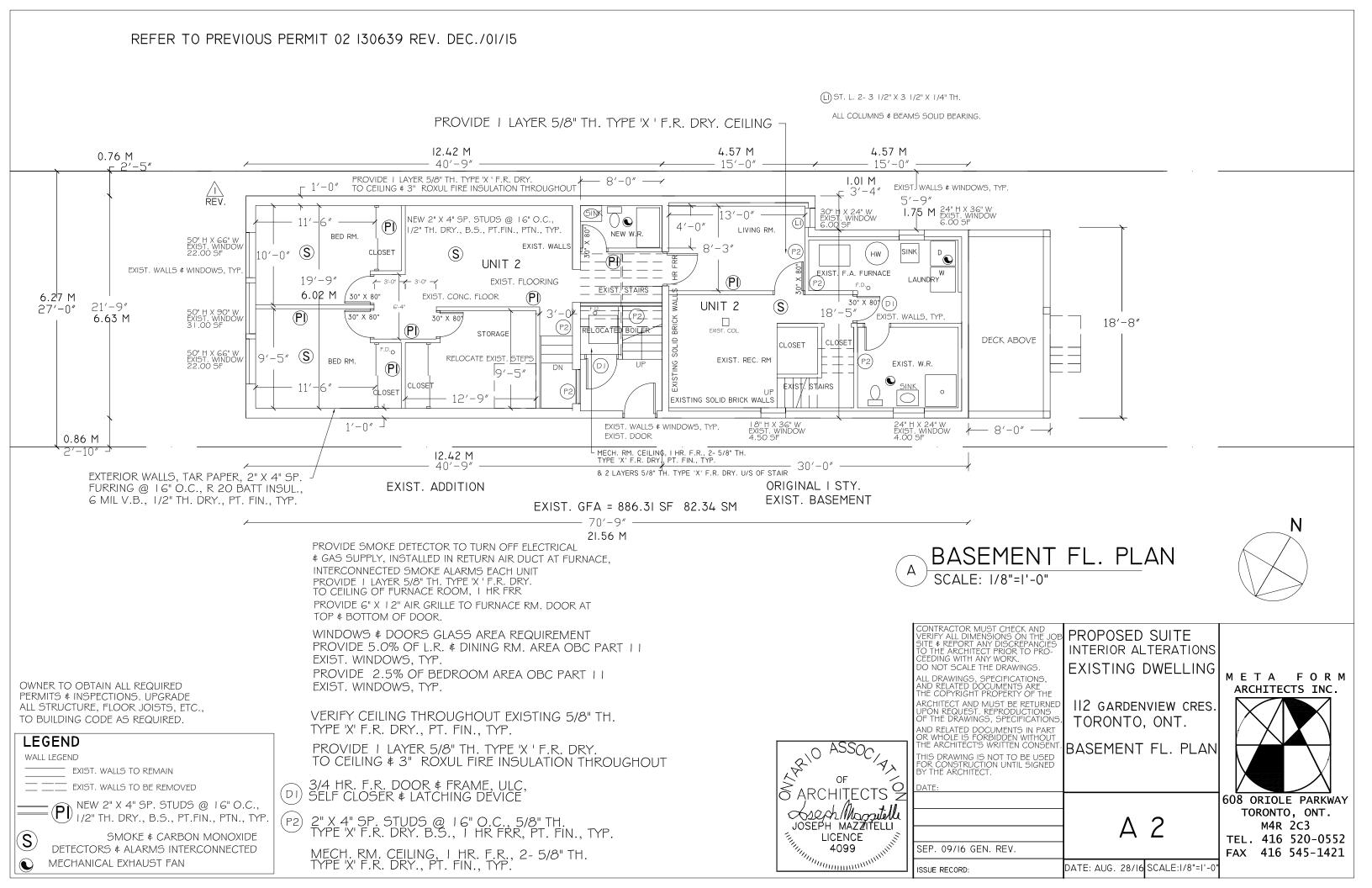
M4R 2C3 TEL. 416 520-0552 FAX 416 545-1421

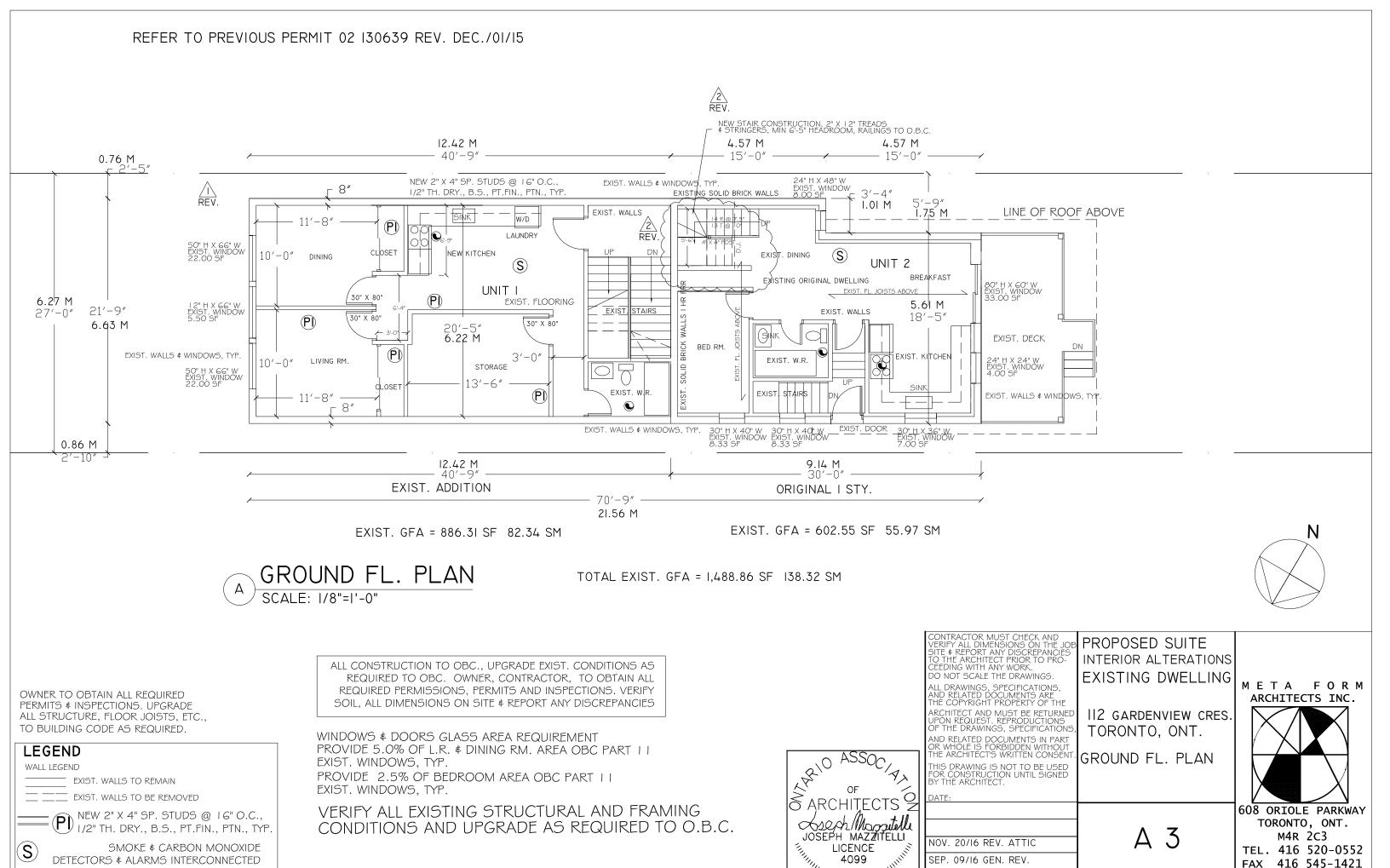
META FORM

ARCHITECTS INC.

December, 201

600

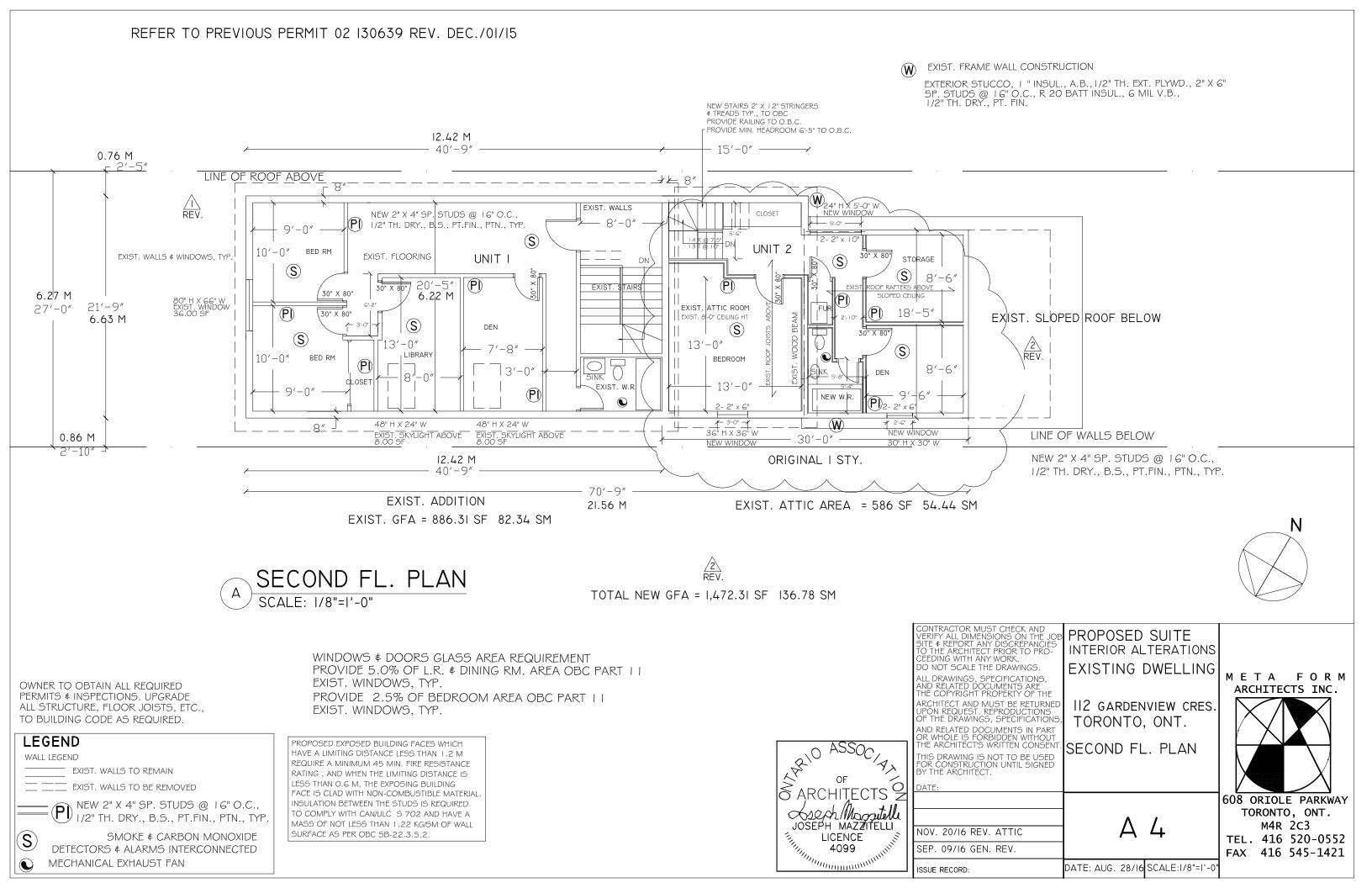


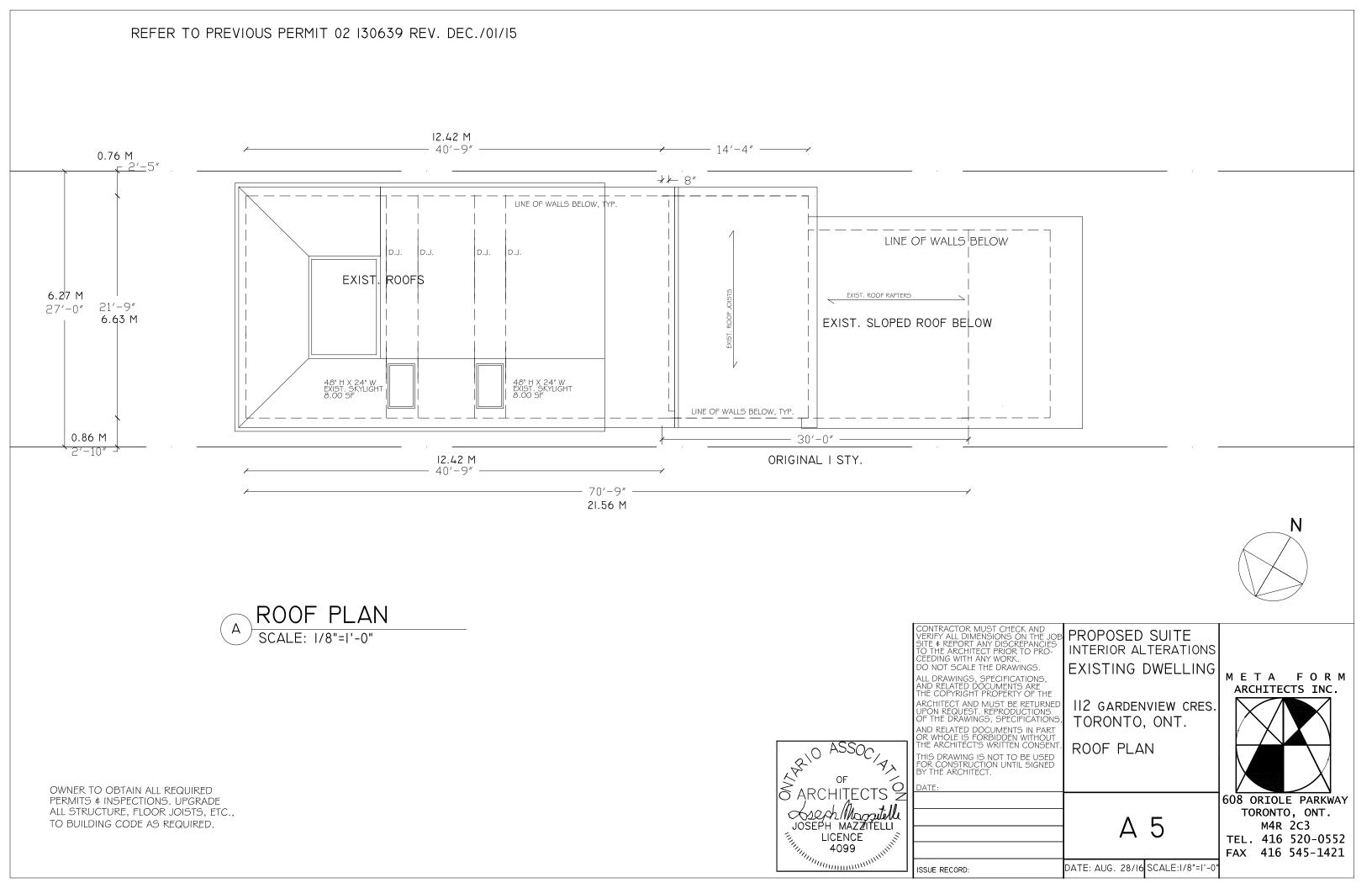


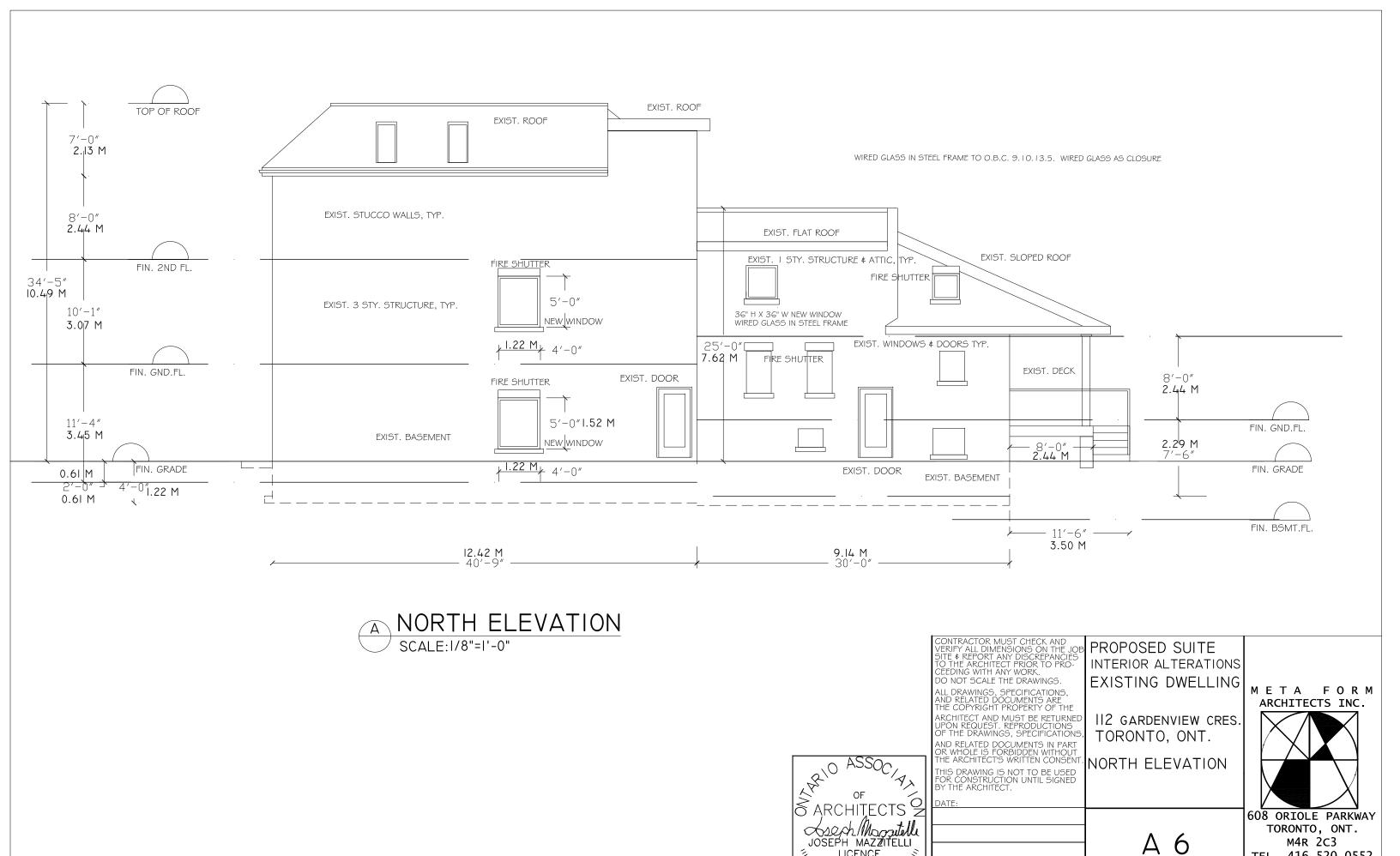
DATE: AUG. 28/16 SCALE:1/8"=1'-0

ISSUE RECORD:

MECHANICAL EXHAUST FAN







TEL. 416 520-0552 FAX 416 545-1421

DATE: AUG. 28/16 SCALE:1/8"=1'-0

ISSUE RECORD:

