

DECISION AND ORDER

Decision Issue Date Monday, September 23, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): VINCENZO RACCO

Applicant: VICTOR HIPOLITO

Property Address/Description: 983 DOVERCOURT RD

Committee of Adjustment Case File: 18 104614 STE 19 MV

TLAB Case File Number: 19 129421 S45 09 TLAB

Hearing date: Monday, September 09, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

Name	Role	Representative
Victor Hipolito	Applicant	
Vincenzo Racco	Appellant/Owner	Russel Cheeseman
Eloisa Slimmon-Negrini	Party	
David Riley	Expert Witness	
Lori Jean Eisler	Participant	
Hsiang Fei Lu	Participant	
Marilisa Racco	Participant	
Ryan Haslett	Participant	
Patrick Slimmon	Participant	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the owners of 983 Dovercourt Road (subject property) from a decision of the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA). The subject property is located on the east side of Dovercourt Road, south of Hallam Street.

The COA refused to approve a total of seventeen (17) variances needed to establish a second storey dwelling unit inside an existing two-storey mixed-use building by constructing a front second storey balcony, a third storey addition with a front balcony and a rear three storey addition with second and third storey rear balconies. The basement and ground floor of the building will continue to be used by the commercial use with dwelling Unit 1 being located on the second floor and dwelling Unit 2 being located on the third floor (as expressed in the COA Notice of Hearing and Decision dated March 6, 2019).

The subject property is zoned CR 1.5(c1.0;r1.0) SS2 (x1434) & H12.0) under the City Zoning By-law 569-2013 (the new By-law) and CR T1.5 C1.0 R.10 H12.0 (ZZC) in Zoning By-law 438-86 (the old By-law). It is designated "Mixed Use Areas" under the Official Plan (OP).

BACKGROUND

The owner (Applicant/Appellant) of the subject property first applied to the COA on August 30, 2017 and the Committee heard the application at a Public Hearing on June 27, 2018. At that hearing the application was deferred to allow the owner to address a number of concerns raised by residents in the area.

The owner subsequently retained David Riley of the planning firm SGL Planning & Design Inc. and initiated discussions with concerned area residents, and in particular with the owners (Ryan Haslett and Maria Pettler) of 121 Hallam Street located immediately behind the subject property, in this regard. A meeting was held on September 11, 2018, facilitated by the local Councillor's office, and discussions occurred primarily with respect to the proximity of the proposed addition to the abutting properties, the potential for overlook associated with the proposed rear platform, as well as drainage to 121 Hallam Street.

As a result, an amended application including revised was brought back to the COA on March 6, 2019 reflecting the following proposed changes, as reflected in the revised plans: a reduction in the overall length of the building (from 21.29m to 20.99m); a reduction in total Floor Space Index (FSI) from 2.23 times the area of the lot to 2.18; an increase in the rear yard setback (from 5.5m to 5.8m); a reduction in the size of the rear platforms on the 2nd and 3rd storeys (reduced in depth from 2.5m to 2.0m); and the addition of 1.5m high privacy screens on the east and north sides of the proposed 2nd and 3rd storey rear platforms (balconies).

The overall revisions resulted in the reduction of variances related to FSI and an improvement in the variances related to rear yard setback.

Decision of Toronto Local Appeal Body Panel Member: D. LOMBARDI
TLAB Case File Number: 19 129421 S45 09 TLAB

The application was refused and the owner subsequently appealed the application to the TLAB on March 22, 2019, on the grounds that the COA had erred in its decision. The TLAB set aside two Hearing days, September 9 and September 10, 2019, to hear the appeal.

The variances being requested can be summarized as follows:

- An increase in the total maximum permitted Floor Space Index (FSI), as well as an increase in the maximum permitted non-residential and residential floor space indexes;
- A reduction in the minimum required side lot line setback for a main wall of a building that has windows or openings, and that is not adjacent to a street or lane;
- A reduction in the minimum required amount of parking spaces;
- Permission for the required bicycle parking space to be located outdoors instead of located within the building;
- A reduction in the minimum distance away from a pedestrian access for a non-residential use on a lot abutting a Residential Zone;
- Permission to allow a rear ground floor pedestrian access located in a wall that does not abut a street;
- Permission to construct balconies on the second and third storeys attached to the front main wall where balconies must be above the first three storeys;
- Permission to construct balconies on the second and third floors attached to the front main wall that will not be entirely located behind the front main wall; and
- A reduction in the minimum required rear yard setback.

The actual variances before the TLAB can be found in **Attachment 1** to this Decision.

Six residents elected status before the TLAB in this matter; Ms. Eloisa Slimmon-Negrini elected Party Status and filed the requisite forms and documents. The remaining five residents including Ryan Haslett, Patrick Slimmon, Lori Jean Eisler, Marilisa Racco, and Hsiang Fei Lu, elected Participant Status. Of those Participants however, only Mr. Haslett filed a Participant Witness Statement and attended the TLAB Hearing on September 9th.

The only Party in this matter, Ms. Slimmon-Negri, is the Studio Director of Liberty Movement & Wellness Studio, a yoga business that currently occupies the 2nd floor space in the subject building. Her business will be displaced if the proposed minor variance application is approved and a second residential dwelling unit is introduced in that space, as proposed by the owner of the subject property.

On August 13, 2019, Ms. Slimmon-Negrini filed a Motion for Dismissal with the TLAB arguing that the subject minor variance application had not been revised to address local resident's concerns as suggested by the Applicant/Appellant. In addition, she asserted that the subject appeal is vexatious and only filed as a means of exhausting the resources of the Party thereby reducing the level of opposition to the application.

As the Moving Party, she also requested that if her Motion was not granted that the TLAB provide an extension of filing deadlines pursuant to the TLAB's Rules of Practice and procedure (Rules).

In his Decision dated August 19, 2019, Member Leung denied the Moving Party's request to dismiss the appeal and confirmed that the Hearing date set would proceed as originally scheduled. However, the request to allow an extension in filing deadlines was allowed with the caveat that filing by those other than the Applicant/Appellant be completed within ten days of the issuance of the Decision and Order.

In arriving at his Decision, and as outlined in the 'Analysis, Findings, Reasons' section of that Decision, Member Leung wrote at p. 5, "At this point, the TLAB will clearly state that issues relating to landlord-tenant matters should be addressed in their appropriate forum, such as the Landlord and Tenant Board (LTB); they would typically not be accounted for in the TLAB variance appeal process."

Furthermore, he states "As described earlier, landlord-tenant issues and planning merits are not inter-connected and should be handled separately." And, at p. 6, he concludes that "The minor variance proposal at hand contains legitimate planning issues which, at this stage, should be adjudicated by the TLAB..."

MATTERS IN ISSUE AND JURISDICTION

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan').

I must also be satisfied that the application meets the meets all of the four tests under s. 45(1) of the Planning Act (Act); that is, whether they individually and cumulatively:

- 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.

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

EVIDENCE

As noted previously, Ms. Slimmon-Negrini was identified as the only Party to this matter. Late in the afternoon of September 6, 2019, on the Friday before the scheduled Hearing Day on September 9th, she filed two documents with the TLAB. The first was a two-page statement outlining her position and submitting that her interests (livelihood), and the interests of the neighbourhood as a whole would be negatively impacted if the

variances were approved. She requested that the TLAB uphold the COA decision and deny the variances.

The second document she filed was a letter from her doctor, dated September 4, 2019, essentially indicating that for reasons of health, she was unable to attend “any court related hearings.”

While I note that although Ms. Slimmon-Negrini filed this documentation only a couple of days before the Hearing, she did not submit or request of the TLAB an adjournment of the proceedings in order to accommodate her attendance on another date when available. She was absent on the day of the Hearing and she did not authorize any representative to attend on her behalf. In view of this, and without any additional communication from the Party as to the extenuating circumstances, I proceeded with the scheduled Hearing with the participation of those in attendance.

The only expert witness, David Riley, was called by the Applicant/Appellant. I qualified Mr. Riley to give expert professional opinion in the area of land use planning.

Utilizing photographic evidence contained in the Applicant/Appellant’s Combined Document Book (Exhibit 2), he briefly described the location of the subject property and the surrounding neighbourhood

At this juncture of the Hearing, I advised that pursuant to Council’s direction, I had attended on the site and had walked the surrounding neighbourhood to familiarize myself with the area context. I also advised that I had reviewed the materials pre-filed with the TLAB in this matter but that matters of significance to an individual needed to be brought forward in the evidence.

Mr. Riley described the stretch of Dovercourt Road within which the subject property is situated as characterized by mixed use, commercial and residential buildings, with commercial uses primarily at grade and residential uses above. Referring to photos 7- 25 (Exhibit 2, Tab 4), he asserted that the majority of the properties along Dovercourt and at the corner of Dovercourt and Hallam Street in proximity to the subject property are characterized by long, narrow lots with buildings that are typically two to three storeys in height with varying depths and sizes, and rear yard conditions.

He highlighted the unique character of the varying streetscape and built form along the sections of Dovercourt Road and Hallam Street within the same Mixed Use Areas designation as the subject property and that are subject to the same zoning requirements.

He then focused specifically on the subject property and its immediate context noting that proximate to the subject property, both to the north and south, are a series of two, two and a half, and three-storey buildings similar in built form to the existing building, with commercial uses at grade, and residential above (985, 987, and 989 Dovercourt and specifically 973 Dovercourt (photo 12). He suggested that 973 Dovercourt, an existing three-storey building, is almost identical in built form to what is being proposed on the subject property.

To the west of the subject property, on the west side of Dovercourt Road, are a series of buildings ranging in height from two to three storey including two, three-storey buildings at 982-984 Dovercourt under construction for which variances to permit alterations were recently approved by the COA (November 2018).

He noted that the subject property is located within a very “walkable” neighbourhood, with convenient access to public transit, being located along the Dovercourt Road bus route and approximately a 12-minute walk to the Ossington subway station.

The Proposal

Mr. Riley described the subject property as containing a two-storey mixed use building which currently contains a restaurant on the ground floor and a yoga studio on the 2nd floor. He referred to the yoga studio as an existing “use” (his emphasis) occupying a space that is intended to be a residential use in the current proposal. As such, he submitted that the plans submitted as part of the application (attached as **Attachment 2** to this Decision) describe the proposed second floor unit as a residential unit, which is the intended and proposed use.

He briefly reviewed the proposal and the revised site plan (Exhibit 2, Tab 9). He indicated that the proposal would introduce a balcony at the front elevation on the second floor, inset from the building’s main wall. A third floor would be added to the front of the existing building, which would be setback 1.5m from the front main 2nd floor wall and also include an additional balcony.

The building currently includes an external two-storey wooden staircase at the rear allowing access to the 2nd floor unit (exhibit 2, photo 3 at p. 6). The owner proposes to introduce a three-storey addition at the rear intended solely to enclose a new staircase as well as second and third storey balconies.

He noted that as a result of discussions with the neighbour (Mr. Haslett) at 121 Hallam Street, opaque, continuous, permanent privacy screens with a minimum height of 1.6m will be installed on the east and north sides of the proposed rear 2nd and 3rd storey balconies. The owner has agreed to include this as a condition of approval.

Policy Framework Overview

Mr. Riley introduced his Expert Witness Statement (Exhibit 1- Form 14 – Schedule “A”) and submitted that Section 2 of the Planning Act sets out matters of provincial interest, for which authorities shall have regard. He suggested that matters of provincial interest include but are not limited to: the development of healthy and safe communities; the provision of a full range of housing, including affordable housing; the appropriate location of employment opportunities; the promotion of well-designed built form that encourages a sense of place, etc.

He opined that the proposal is consistent with the high-level policies of the Provincial Policy Statement (PPS), 2014, in that it makes efficient use of land and provides for additional dwelling units, situated in close proximity to public transit. With respect to the Growth Plan for the Greater Golden Horseshoe (Growth Plan), 2017, he

opined that the proposal conforms to the policies of that Plan in that the proposed variances will facilitate the provision of an additional dwelling unit in an accessible and walkable neighbourhood in close proximity to rapid transit.

Mr. Riley then provided opinion as to how the proposal and the requested variances meet the four test of s. 45(1) of the *Planning Act*. He submitted that a number of variances are required to facilitate the development proposal and he categorized the variances as related to:

- Floor Space Index;
- Rear and side yard setbacks;
- Vehicle and bicycle parking;
- The location of pedestrian access doors; and
- The location of the proposed balconies.

He submitted that the subject property is designated “Mixed Use Areas” in the City OP, 2006 (Exhibit 2 – Tab 14), and is subject to the healthy neighbourhood policies of Section 2.3.1 of the OP. Policy 2.3.1 recognizes that neighbourhoods are physically stable areas but that some physical change will occur over time. He further submitted that Policy 2.3.1.2 addresses development within Mixed Use Areas and noted that this requires “all development adjacent to “Neighbourhoods” designated lands to be compatible with those Neighbourhoods, to provide a gradual transition of scale and density, to maintain adequate light and privacy for residents in Neighbourhoods and to attenuate any resulting traffic and parking impacts on adjacent neighbourhoods.” (Exhibit 1, para. 6.3)

He opined that the proposed variances maintain the applicable policies of Section 2. Of the OP since they respect and reinforce the existing physical character of the neighbourhood in the context of the City’s Built Form policies in Section 3.1 and the land use policies for the Mixed Use Areas designation. He asserted that the proposal will fit harmoniously into the existing and planned context, creating appropriate transitions in scale to neighbourhood buildings, providing for adequate light and privacy and adequately limiting any shadowing on neighbouring properties, as illustrated by his photographic evidence.

He addressed the proposed variances in view of Policies 4.5.1 and 4.5.2 of the OP reviewing the development criteria for Mixed Use Areas (MCA), and opined that they maintain the general intent and purpose of the policies for the MCA. With respect to the proposed increase in FSI, he submitted that the increase in massing is appropriate for the site and is a re-investment on the property by adding another residential dwelling unit.

Mr. Riley provided planning opinion evidence in respect of each of the variances as outlined in his Witness Statement (Exhibit 1). As there was no contrary planning opinion advice and no questioning of the witness, part from some minor clarifications, it is necessary to only briefly allude to the principle opinions:

Increase in Floor Space Index

The altered two-storey mixed-use building will have an FSI for all uses on the lot of 2.18 times the area of the lot (330.54 m²). Variances are also required for the FSI for all non-residential uses of 1.01 times the area of the lot (152.06 m²) and for the FSI for all residential uses of 1.17 times the area of the lot (176.48 m²). In the rear yard, the additional and proposed massing relates specifically to a staircase providing access to the 2nd and 3rd floor units. This staircase is not included in the Gross Floor Area (GFA) calculation.

Mr. Riley highlighted a relatively small sampling of COA approvals for increases in total FSI and in residential FSI in Tables 1 and 2 found in his Witness Statement (Exhibit 1, para. 6.18). Seven properties in total were highlighted, all situated along Dovercourt Road in close proximity to the subject property, and included in his analysis and supported his assertion that the proposed massing of the building is appropriate for the site given the varied nature of the street and the built form on adjacent properties.

He also noted that a portion of the overall floor area and non-residential floor area for which variances are sought is located in the basement and, therefore, he submitted there is no massing impact from this floor area. He further opined that if these areas were excluded, the massing, as visible from the street, would not require a variance for non-residential floor area.

Reduction in Side Yard Setback

Mr. Riley noted that the proposed reduction in the side yard setback is to maintain the existing condition, and will be replicated on the 3rd floor and rear additions. A variance is sought to maintain the existing condition where a third storey window on the north side wall of the building is only 0.55 m from the side lot line.

He opined that in the context of older commercial areas, such as found on Dovercourt Road in this location, a common characteristic of buildings is that they are located side by side, often with very tight side yards such as is the case on the subject property. He noted that within the context of the proposed development, access to the rear yard will remain unchanged, and the additional window on the 3rd floor will create no adverse impact on the neighbouring property to the north.

Reduction in Rear Yard Setback

A reduction in the rear yard setback is also proposed, where a variance is sought to permit a setback of 5.8 m where 7.5 m is required. He opined that varying rear yard setbacks are a common characteristic of buildings on this block and other blocks nearby, highlighting buildings exemplars at 987 Dovercourt (two properties to the north of the subject property) which has virtually no rear yard, and the abutting property at 985 Dovercourt, immediately to the north, which has a very limited open yard between a wooden, rear 2nd floor deck and existing cabana (Exhibit 2, Photos 4 & 5).

He opined that the proposal is compatible with what already exists on nearby adjacent properties and it will not create adverse impacts on the neighbouring property to the east (Mr. Haslett's property at 121 Hallam Street).

Reduction in Parking

Mr. Riley asserted that a common characteristic of older commercial areas, such as the block in question, is that there are no parking spaces provided on-site. He noted that the current context is that there is no vehicle access to the site and the proposal is to maintain the existing situation where no parking spaces are provided. He further noted that the subject property is located on a bus route and approximately 1 km from the Ossington subway station.

As well, an indoor bicycle space is required by the new By-law and the applicant proposes a space underneath the overhang of the 2nd storey balcony at the rear of the building for a bicycle space which will serve as an adequate area for element protection and bicycle storage.

He therefore opined that the variances requested will not have any impact on the way the site currently functions, the need for parking is mitigated by access to transit, and the proposal will still provide an opportunity for bicycle storage.

Pedestrian Access to the Building

With respect to the variances required for pedestrian access, Mr. Riley submitted that the intent of the By-laws is to both provide appropriate separation between zone uses and to encourage pedestrian accessibility from the street for non-residential uses where that access is located within 12 m of a residential zone. He highlighted the revised site plan drawings in Exhibit 2 (Tab 9) to illustrate the primary access to the commercial use (the coffee shop at grade level) currently exists at the front of the building, with direct and accessible sidewalk access. An existing door on the north side wall providing access to the commercial use on the property at the rear is located generally in the same location as a proposed door.

He submitted that the variances are reflective of an existing condition and opined that they will not impact the way the site functions, are appropriate and maintain the general intent and purpose of the By-law.

The Proposed Platforms (Balconies)

Mr. Riley indicated that two variances are required for the platforms proposed on the front face of the building, one (Variance 9) because placement of the two platforms is below the 3rd storey and the other (Variance 10) because the balconies are not located behind the front main wall. He submitted that the placement of the proposed balconies will serve to "break up" (his words) the massing of the building and improve the building's front façade. He noted that the balconies also function as areas of refuge to address building code requirements.

As such, he opined that the overall impact of the proposed balconies assist in respecting and reinforcing the existing context of the property's surroundings, and maintaining the general intent of the OP policies and the Zoning By-laws.

The Remaining Planning Act Tests

With respect to the test of desirability, he opined that the proposal facilitates a desirable outcome for the subject property, whereby an additional dwelling unit can be realized in a building in close proximity to transit and in a manner that maintains a compatible built form with the immediate surroundings. Consequently, he opined that the proposed variances are desirable for the appropriate development and use of the subject property.

He opined that the basis for determining whether or not variances are minor is not a mathematical exercise and, even though variances may seem to represent substantial numerical changes, they may be properly judged to be minor if the actual effects of the variances do not result in significant adverse impacts on the surroundings. With respect to the subject proposal, Mr. Riley opined that the proposed variances will not generate any adverse impacts to the neighbouring buildings and properties.

In concluding his testimony, Mr. Riley opined that the proposed variances, both individually and collectively, meet the tests of s. 45(1) of the *Act* and they should be approved, subject to the following conditions of approval as proposed by the owner which would address concerns expressed by the owner of 121 Hallam Street (found on p. 162, Exhibit 2):

1. *That opaque, continuous, permanent privacy screens with a minimum height of 1.6 metres be installed on the east and north sides of the rear 2nd and 3rd floor balconies;*
2. *That the lower half of the east-facing windows at the second and third floor landings in the rear stairwell be opaque glass;*
3. *That the owner ensure water runoff is addressed appropriately and that a concrete barrier be installed at the rear of the lot to prevent water runoff onto neighbouring properties;*
4. *That the owner plant evergreen trees at the rear of the subject lot to mitigate privacy impacts on neighbouring properties; and*
5. *That light-coloured cladding be used on the rear of the building.*

Mr. Ryan Haslett was the only other resident to attend the Hearing, along with his spouse, Maria Pettler. He filed a Participant Witness Statement (Form 13) with the TLAB dated May 31, 2019, in which he identified concerns with the proposed plan related to the variance for the rear yard setback from his property, water drainage/runoff from the subject property, and how the proposed development will affect the enjoyment of his property specifically with respect to the loss of privacy due to the rear balconies.

He noted, as stated in his Witness Statement, that the owner of the subject property, through his agent, Mr. Riley, had promised in good faith to address his concerns through the incorporation of the conditions noted above, in a legal document. However, at the Hearing, he confirmed that discussions had subsequently been held with the

owner regarding his concerns and he is satisfied that they will be addressed through the approval conditions being proposed.

Mr. Haslett indicated that he is not against development occurring in the neighbourhood and, specifically, the subject proposal. He stated that he simply wants development that is considerate and respectful of the immediate neighbours, including his own property.

He then briefly addressed the concerns raised in his Witness Statement. With respect to the decreased setback to his property, he noted that the distance between the proposed rear additions and his side lot line would be extremely tight and would impact the enjoyment of his rear yard, which he characterized as his family's 'sanctuary' and where they spend a great deal of time. He agreed, however, that the proposed conditions introducing permanent privacy screens on the 2nd and 3rd floor rear balconies and the planting of evergreen trees at the rear of the subject property would add to the improved screening of his yard and mitigate overlook issues and the loss of privacy.

Mr. Haslett expressed concern that the increase in the size of the building being proposed and the corresponding reduction in the amount of soft landscaping in the rear yard would exacerbate the water runoff and drainage to his property from the subject property. He stated that water runoff from mixed use properties on the east side of Dovercourt Road immediately adjacent to the subject property, specifically 987 Dovercourt, had contributed to drainage issues on his lot. Additionally, he noted that he had already spent a considerable amount of money over the last couple of years waterproofing his basement as a result of this situation. He asked that the proposed development not contribute to this drainage situation.

Mr. Cheeseman, the owner's solicitor, did not cross-examine Mr. Haslett; however, he did reiterate the owner's agreement to the conditions being proposed. He referred to Photo 2 in Exhibit 2 (p. 6) showing the existing condition of the rear yard of the subject property and submitted that the owner would be improving the current soft landscaping condition through the introduction of grass and the planting of the proposed evergreen trees. He also noted that the proposed privacy screening for the rear balconies would be 'upscale' (his word) and that the top portion could include a lattice.

With respect to the issue of drainage from the subject property, he suggested this matter would be addressed by the City through the building permit process and that any future issues could be monitored by the City.

ANALYSIS, FINDINGS, REASONS

The TLAB notes the co-operation of the Parties present in undertaking civil discourse in arriving at mutually agreeable solutions to the issues raised by Mr. Haslett, and the uncontested evidence of the planner, Mr. Riley.

I agree with the application and assessment of the tests relevant to the variances, cumulatively and individually. I find, as did the planner, that the variances

pass the mandatory policy and statutory tests above enumerated, for the reasons expressed by Mr. Riley, both in oral evidence and his associated Witness Statement.

I agree with the Planner that the proposal will fit harmoniously into the existing and planned context, will create an appropriate transition in scale to neighbouring buildings, provide for adequate light and privacy, and adequately limit any shadowing and overlook on neighbouring properties. I also find that the proposal will respect and reinforce the existing physical character of the neighbourhood and fit into the built form character of the area, and that the increase in massing is appropriate for the site and the proposed addition will

I find that the owner has revised the proposal from the original as applied for at the COA in a number of ways in consideration of the concerns of abutting neighbours, especially Mr. Haslett's. The mass of the proposed rear addition has been reduced as has the building length and the rear roofline has been altered to mitigate potential impacts on the property at 121 Hallam Street. Although the rear setback is proposed at 5.8 m it is more generous than those at the rear of 987 and 989 Dovercourt, properties immediately to the north of the subject dwelling.

With respect to the proposed increase in FSI, I agree that the proposal is appropriate within the context of the properties in Mixed Use Areas. I agree with the Planner that a portion of the overall floor area and non-residential floor area for which variances are required is located in the basement and that there is no massing impact from this floor area. I concur with his opinion that if these areas were excluded from the FSI calculations, the massing, as visible from the street, would not require a variance for non-residential floor area.

I find that the variances for the propose reduction in the parking on the subject property are appropriate given that the property is located within a very walkable neighbourhood, with convenient access to transit and the proposal maintains the existing situation. In addition, the owner is proposing a protected bicycle storage area at the rear of the building sufficient to accommodate numerous bicycles for the occupants of the building.

With respect to the proposed balconies at the front of the building, I agree with Mr. Riley that the two platforms will contribute to an interesting, less monotonous and more esthetically pleasing front building façade. This is accomplished through setting the 3rd floor balcony back from the street, which is similar to the existing building at 973 Dovercourt as well as 982 and 984 Dovercourt, across the street. The 2nd floor balcony will also be recessed into the building as opposed to projecting forward, serving to mitigate privacy and massing impacts.

The size of the proposed 2nd and 3rd floor balconies at the rear of the building have also been reduced in size and depth from the original design before the COA and the owner has proposed conditions of approval including 1.6 m high opaque, continuous, permanent privacy screens on those balconies as well as the planting of evergreen trees along the rear property line to address concerns raised by Mr. Haslett.

As such, I agree with Mr. Riley and find that the proposal fits the neighbourhood context with varied lot and building sizes and the variances will not generate any adverse impacts on the surrounding properties. Furthermore, with a mix of two, two and a half and three-storey buildings in the area, I agree that the variances will not impact the streetscape on Dovercourt Road or the relationship of the proposed built form to neighbouring buildings and properties.

In this circumstance, I am satisfied on the evidence that the applicable tests have been addressed on each variance requested, and satisfactorily met.

I find the proposed conditions in Exhibit 2 (Tab 18, p. 162) to be generally acceptable, as they have been formulated as an accord duly arrived at in consensual discussions between the owner of the subject property and the resident of 121 Hallam Street. I note that proposed Conditions 3 and 5 are normally addressed through the building permit process; as a result, I prefer to reformulate those specific Conditions as set out in the Decision and Order herein.

DECISION AND ORDER

The TLAB orders that the appeal is allowed, and the following variances set out in **Attachment 1** are approved subject to the Conditions identified in **Attachment 2**:

ATTACHMENT 1 – requested Variances to the Zoning By-law

1. Chapter 40.10.40.40.(1)(A), By-law 569-2013

The total maximum permitted floor space index for all uses on the lot is 1.5 times the area of the lot (226.89 m²).

The altered two-storey mixed-use building will have a total floor space index of 2.18 times the area of the lot (330.54 m²).

2. Chapter 40.10.40.40.(1)(B), By-law 569-2013

The maximum permitted floor space index for all non-residential uses on the lot is 1.0 times the area of the lot (151.26 m²).

The altered two-storey mixed-use building will have a floor space index for all non-residential uses of 1.01 times the area of the lot (152.06 m²).

3. Chapter 40.10.40.40.(1)(C), By-law 569-2013

The maximum permitted floor space for all residential uses on the lot is 1.0 (151.26 m²).

The altered two-storey mixed-use building will have a floor space index for all residential uses of 1.17 times the area of the lot (178.48 m²).

4. Chapter 40.10.40.70.(2)(C), By-law 569-2013

The minimum required side lot line setback for a main wall of a building that has windows or openings, and that is not adjacent to a street or lane, is 5.5 m.

The altered two-storey mixed-use building will have a third storey window located 0.55 m from the north lot line.

5. Chapter 200.5.10.1, By-law 569-2013

One parking space is required to be provided on the lot.

No parking space will be provided on the lot.

6. Chapter 230.5.1.10.(6)(9), By-law 569-2013

One bicycle parking is required to be provided and must be located in a building.

In this case, one bicycle parking space will be provided outdoors.

7. Chapter 40.10.40.(1)(6), By-law 569-2013

Pedestrian access for a non-residential use on a lot which abuts a lot in the Residential Zone category may not be within 12.0 m of a lot in the Residential Zone category.

The altered two-storey mixed-use building will have a rear ground floor pedestrian access for the non-residential use that will be located 9.81 m from the rear lot in the Residential Zone category at 121 Hallam Street.

8. Chapter 40.1.40.1.(2), By-law 569-2013

The floor level of the first storey must be within 0.2 m of the ground measured at the lot line abutting the street directly opposite each pedestrian entrance.

The altered two-storey mixed-use building will have a rear ground floor pedestrian access located in a wall that does not abut a street.

9. Chapter 40.10.40.60.(1)(i)(C)(i), By-law 569-2013

A platform or similar structure attached to or less than 0.3 m from a building subject to Development Standard Set 2 (SS2), and attached to the front main wall with a floor level higher than the first floor level of the building, must be above the three storeys closest to established grade.

The altered two-storey mixed-use building will have balconies on the second and third floors attached to the front main wall.

10. Chapter 40.10.40.60.(1)(i)(C)(ii), By-law 569-2013

A platform or similar structure attached to or less than 0.3 m from a building subject to Development Standard Set 2 (SS2), and attached to the front main wall with a floor level

higher than the first floor level of the building, must be located entirely behind the front main wall of the three storeys closest to established grade.

The altered two-storey mixed-use building will have balconies on the second and third floors attached to the front main wall that will not be located entirely behind the front main wall.

11. Chapter 40.10.40.70.(2)(B)(i), By-law 569-2013

The minimum required setback for a building from the rear lot line is 7.5 m.

The altered two-storey mixed-use building will be located 5.8 m from the rear lot line.

1. Section 4(4)(b), By-law 438-86

One parking space is required to be provided on the lot.

No parking space will be provided on the lot.

2. Section 8(3) Part II 1(A)(II), By-law 438-86

The minimum required setback for a window of a dwelling unit is 5.5 m from a lot line that is not a street line or from a wall of a building.

The altered two-storey mixed-use building will have a third storey window located 0.55 m from the north lot line.

3. Section 8(3) Part XI 2(3), By-law 438-86

All exterior commercial entrance doors are required to be directly accessible from the sidewalk by a level surface.

The altered two-storey mixed-use building will have a rear commercial entrance that will not be directly accessible from the sidewalk and will be accessed by stairs.

4. Section 8(3) Part I 1, By-law 438-86

The maximum permitted combined non-residential and residential gross floor areas is 1.5 times the area of the lot (226.89 m²).

The altered two-storey mixed-use building will have a combined gross floor area of 2.3 times the area of the lot (352.62 m²).

5. Section 8(3) Part I 3(A), By-law 438-86

The maximum permitted residential gross floor area is 1.0 times the area of the lot (151.26 m²).

The altered two-storey mixed-use building will have a residential gross floor area of 1.24 times the area of the lot (188.57 m²).

6. Section 8(3) Part I 2, By-law 438-86

The maximum permitted non-residential gross floor area is 1.0 times the area of the lot (151.26 m²).

The altered two-storey mixed-use building will have a non-residential gross floor area of 1.08 times the area of lot (164.05 m²).

ATTACHMENT 2

Conditions of Minor Variance Approval

This decision is subject to the following conditions:

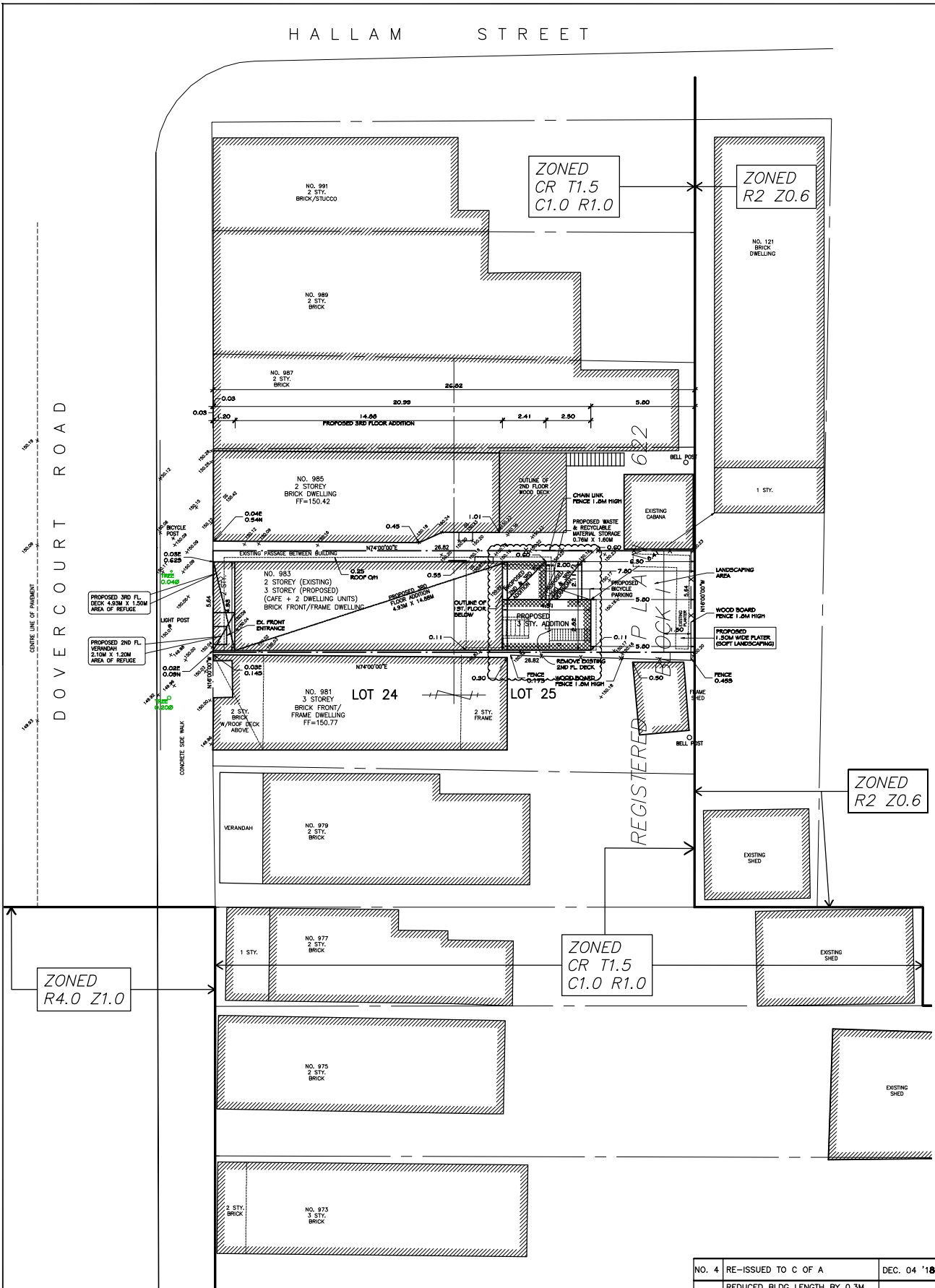
- 1) The proposal shall be constructed substantially in accordance with the site plan and elevation drawings (re-issue #4) dated December 4, 2018, prepared by Ambient Designs Ltd., inclusive of drawings SK1, Sk-7 to SK 10, as set out in **Attachment 3 (to be attached)**, herein attached.
- 2) That opaque, continuous, permanent privacy screens with a minimum height of 1.6 metres be installed on the east and north sides of the rear 2nd and 3rd floor balconies.
- 3) That the lower half of the east-facing windows at the second and third floor landings in the rear stairwell be opaque glass.
- 4) That the owner ensure that water runoff is addressed appropriately on-site to prevent water runoff onto the property at 121 Hallam Street.
- 5) That the owner plant evergreen trees at the rear of the lot in accordance with good arboricultural planting practices to mitigate privacy impacts on neighbouring properties.

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to.

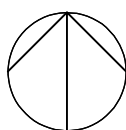
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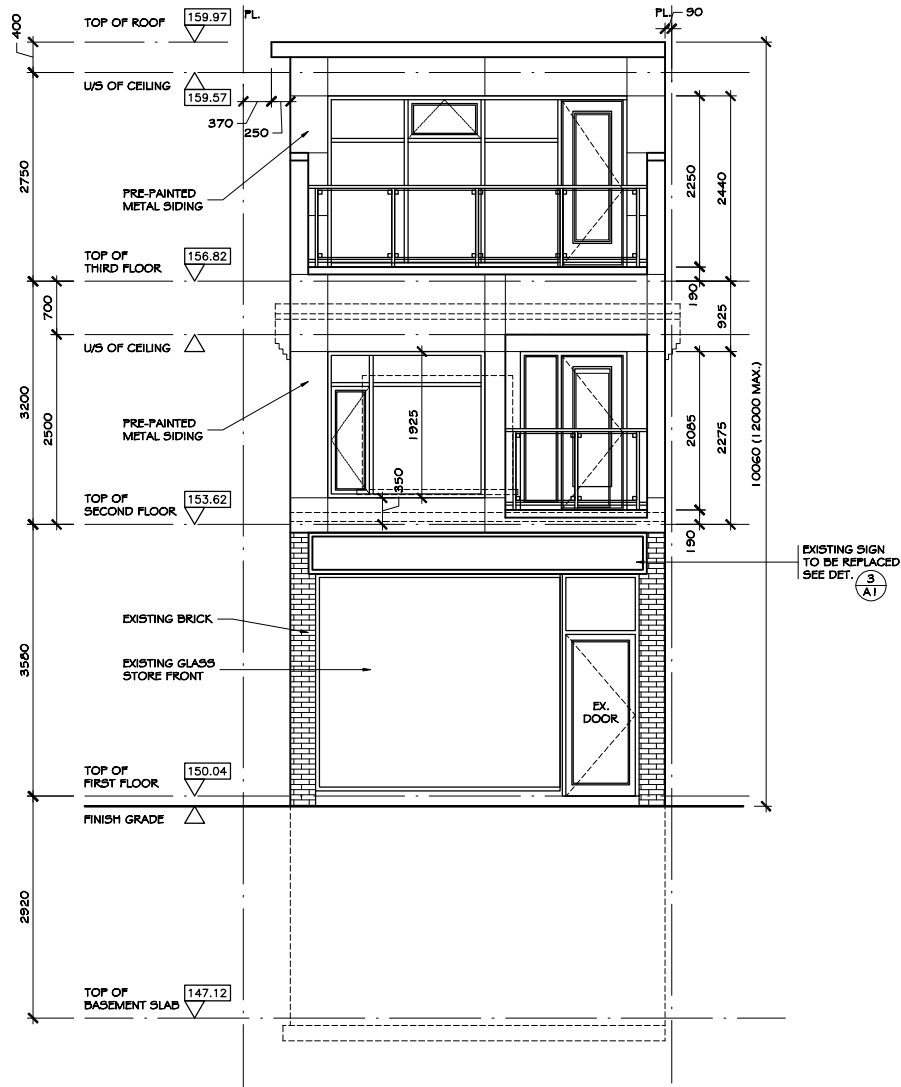
Dino Lombardi
Panel Chair, Toronto Local Appeal Body

ATTACHMENT 3 (Plans)



NO. 4	RE-ISSUED TO C OF A	DEC. 04 '18
NO. 3	REDUCED BLDG LENGTH BY 0.3M AS PER PLANNING COMMENTS	JUL. 10 '18
NO. 2	RE-ISSUED TO C OF A	MAR. 27 '18
NO. 1	REDUCED BLDG LENGTH BY 1.07M AS PER PLANNING COMMENTS	FEB. 22 '18



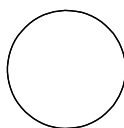


NO. 4	RE-ISSUED TO C OF A	DEC. 04 '18
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BCIN: 29659



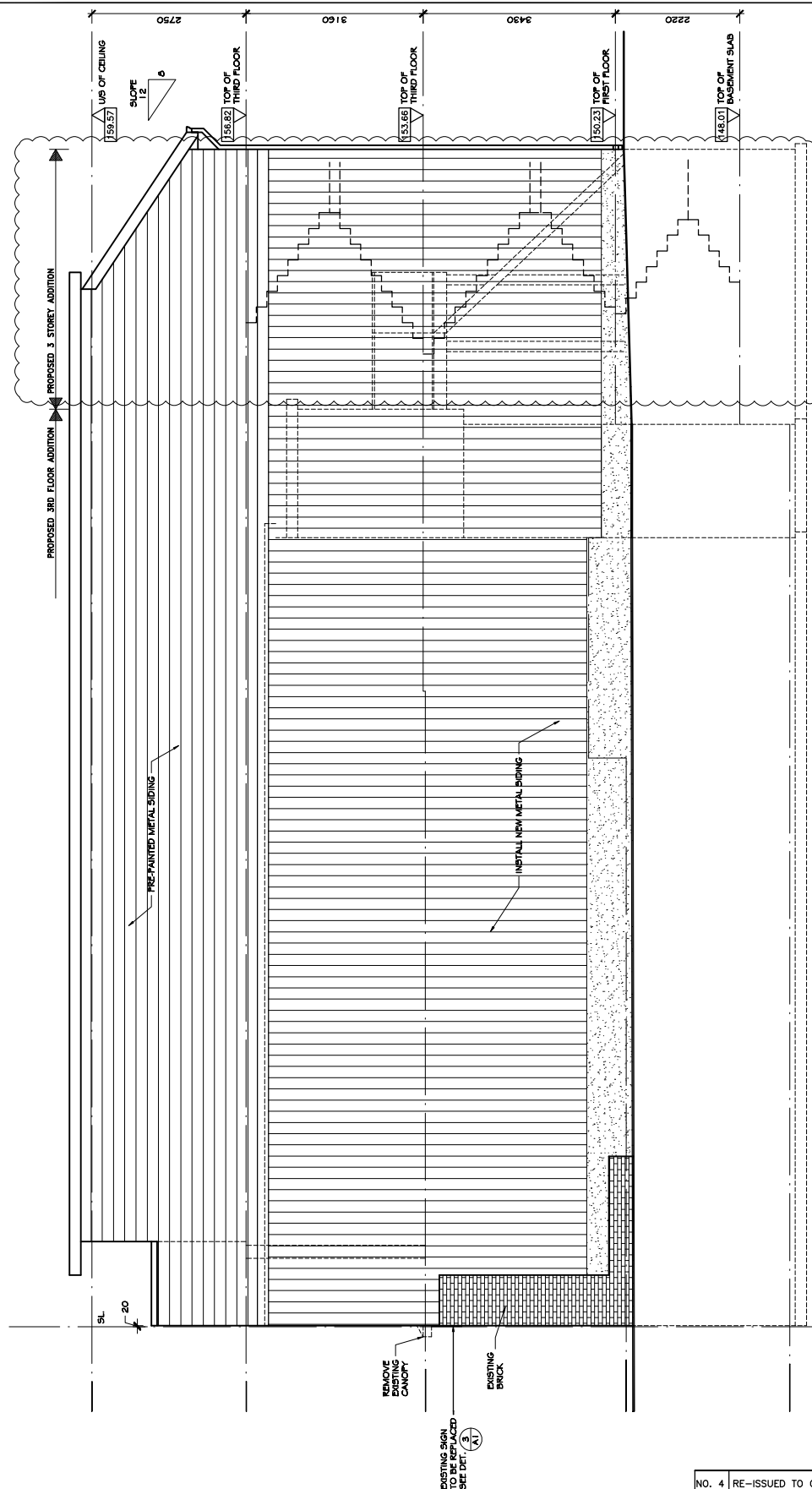
PROJECT NAME
983 DOVERCOURT RD.
CITY OF TORONTO

DRAWN BY: D.N.
DATED: FEB. 22, 2018

PROJECT NO. A16124 SCALE: 1:50 M

DWG. NAME: WEST ELEVATION

SHEET NO. SK7

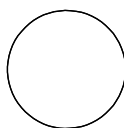


NO. 4	RE-ISSUED TO C OF A	DEC. 04 '18
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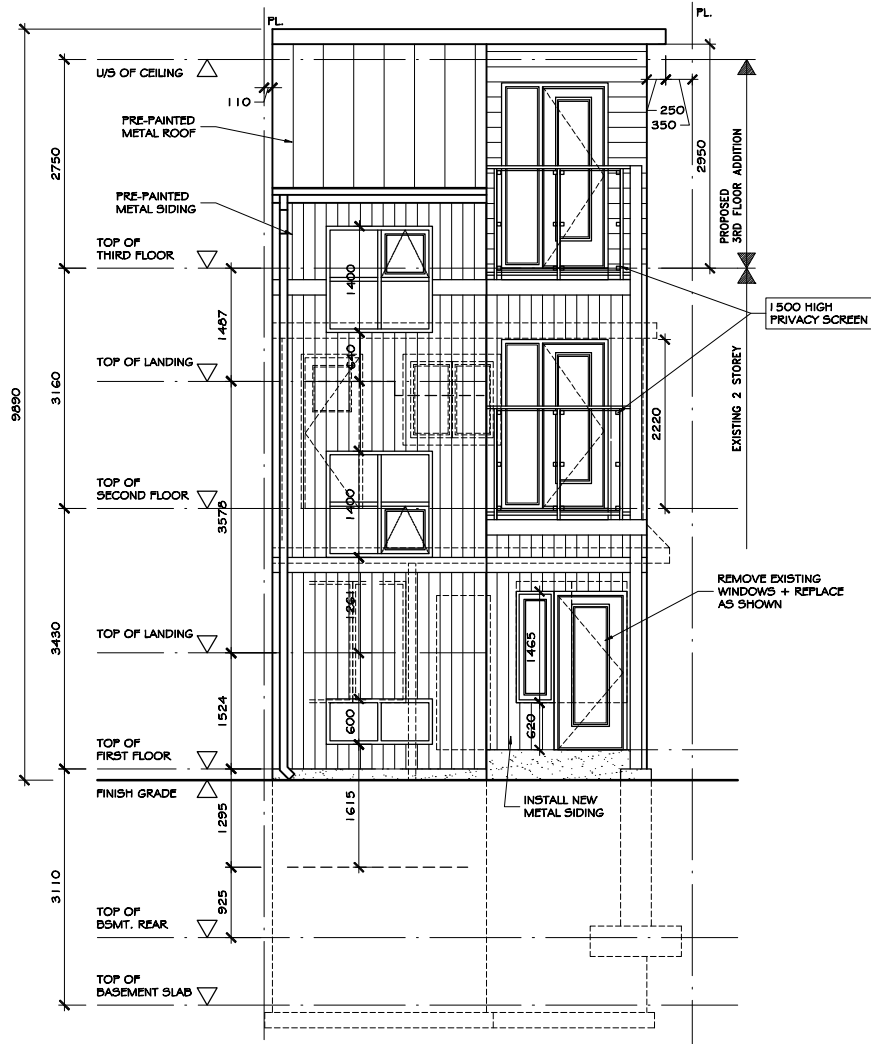
BCIN: 29659



PROJECT NAME
983 DOVERCOURT RD.
CITY OF TORONTO
DRAWN BY: D.N.
DATED: FEB. 22, 2018

PROJECT NO. A16124 SCALE: 1:75 M
DWG. NAME: SOUTH ELEVATION
SHEET NO.

SK8

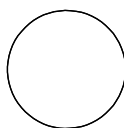


NO. 4	RE-ISSUED TO C OF A	DEC. 04 '18
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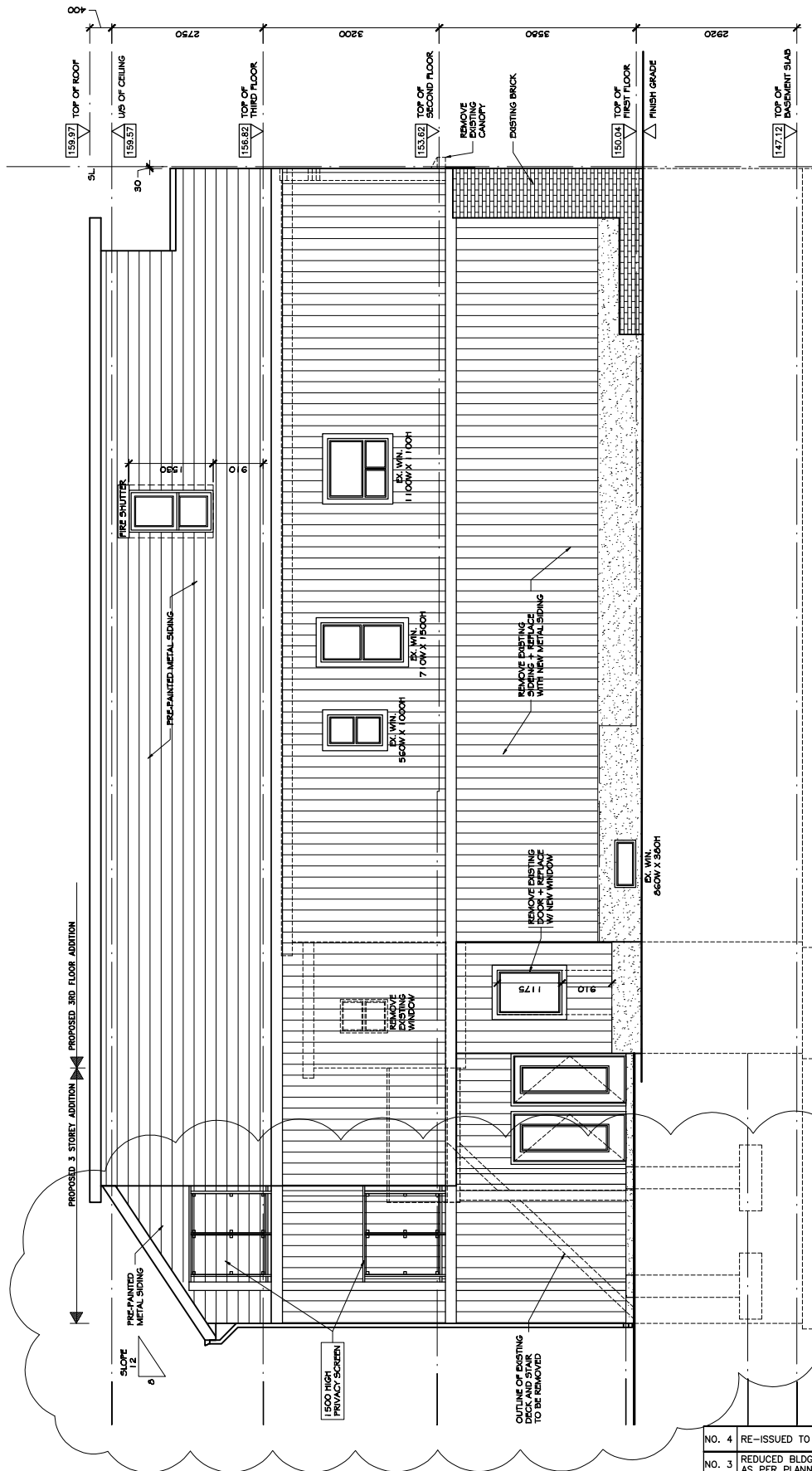
DRAWN BY: D.N.

DATED: FEB. 22, 2018

PROJECT NO. A16124 SCALE: 1:50 M

DWG. NAME: EAST ELEVATION

SHEET NO. SK9

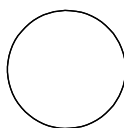


NO. 4	RE-ISSUED TO C OF A	DEC. 04 '18
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NO. 2	RE-ISSUED TO C OF A	MAR. 27 '18
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BCIN: 29659



PROJECT NAME
983 DOVERCOURT RD.
CITY OF TORONTO

DRAWN BY: D.N.
DATED: FEB. 22, 2018

PROJECT NO. A16124 SCALE: 1:75 M
DWG. NAME: NORTH ELEVATION
SHEET NO.

SK10