

# DECISION AND ORDER

**Decision Issue Date** Monday, May 25, 2020

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): 1742385 ONTARIO INC

Applicant: BATTAGLIA ARCHITECT INC

Property Address/Description: 939 WARDEN AVE

Committee of Adjustment Case File: 17 207626 ESC 37 MV

**TLAB Case File Number: 19 212994 S45 21 TLAB**

**Hearing date:** Thursday, January 09, 2020

**DECISION DELIVERED BY SEAN KARMALI**

## APPEARANCES

Name	Role	Representative
1742385 Ontario Inc. (Hatcho Narcessian)	Owner/Appellant	Mark Russell
Adam Layton	Expert Witness	
City of Toronto	Party	Lauren Pinder
Royal Canadian Legion (Branch 617)	Participant	Stephen Graham

## INTRODUCTION

[1] The Appellant seeks relief from the applicable rear yard setback performance standard, which is the same request for relief on appeal from the City's Committee of Adjustment (COA) Scarborough Panel refusal on August 22, 2019.

[2] There are no transportation-related variances, including no parking-related variances for me to consider and decide.

[3] While the TLAB hearing is a *de novo* hearing, the *Planning Act* requires me to give consideration to provincial policy, statutory tests, and the decision on initial consideration.

[4] The Appellant required more space to rent to its long term tenant, Hot Spot Auto Parts. The Owner sought variance approval to construct a 183 square metre one-storey addition to the east side of the existing automotive supply warehouse building at 939 Warden Avenue (the 'subject property'). The request for variance is for a proposed rear yard setback of 4.97 metres whereas the minimum required rear yard setback is 7.5 metres.

[5] The COA refused the variance application. It found that the Application did not meet any of the four tests required to approve a variance. The Committee did not provide substantive reasons for its decision.

[6] The subject property is located in the former municipality of Scarborough, which is subject to Scarborough Zoning Bylaws. The property is located on the east side of Warden Avenue, south of Bertrand Avenue and north of Eglinton Avenue East (Figure 1). It is located explicitly within the Golden Mile Employment District, and, therefore, subject to the Golden Mile Employment District By-Law No. 24982 (By-Law No.24982).

*Figure 1: Location of Subject Property, Source: Toronto Maps v2*



[7] The property is designated *Employment Areas* in the Official Plan and Core Employment Areas under the Official Plan Amendment (OPA) 231. The property is zoned Industrial (M-361-913-991-1054-1055s) under By-Law No. 24982.

[8] More than one City Zoning Examiner found that the subject property is not subject to the City-wide Zoning By-Law No. 569-2013, as amended.<sup>1</sup>

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<sup>1</sup> See Tab 1 and Tab 2 of Exhibit 1.

[9] Mr. Stephen Graham, of the Royal Canadian Legion (the 'Legion') – the property to the immediate south of the subject property at 937 Warden Avenue - requested to be a participant at the proceeding on the day of the proceeding. Mr. Russell, a licensed lawyer under the Bar of Ontario, objected to this because Mr. Graham neither provided an intention to be a participant nor a participant witness statement under the TLAB's Rules of Practice and Procedure. I noted that Mr. Graham was present at the Committee meeting on August 22, 2019. He seemed to express a continuing intention to provide his perspective concerning the matter. Furthermore, his position as an immediate neighbour would be of assistance to me, the trier of fact. I allowed him to participate in the proceeding.

[10] Ms. Lauren Pinder, a Solicitor for the City, was instructed by Toronto City Council, her client, to be present for the matter. She reserved her right to cross-examine the Appellant's witnesses. I observed no fresh evidence provided by the City for this Appeal.

[11] I communicated to those in attendance that I visited the subject site and property and familiarized myself with the online filings.

## **BACKGROUND**

[12] The only request before me, as indicated above, is that the Owner seeks relief to reduce the rear yard setback condition, which has triggered a variance.

[13] The proposal is the result of years in the administrative process because of deferrals at the Committee, changes to the development contemplated by the Owner, and ongoing discussions between the Owner and City divisions, including Toronto Building and Transportation Services.

[14] Prior to the Owner acquiring the subject property, the property was used as a furniture store. The building structure at that time was one-storey, and evidently had a parking supply of thirteen parking spaces, on the north side of the lot. While there were no legal parking spaces on the other sides of the building, there are visuals that illustrate cars parked in demarcated parking spaces on some of these sides, though these spaces seemed to be unauthorized.

[15] Mr. Narcessian is the President and Director of 1742395 Ontario Incorporated, and the Principal Owner of the subject property. He desired more space for business operations. He submitted a Zoning Certificate application, which is a detailed review of a proposal intended for a future permit application, to determine zoning compliance and confirm compliance with other applicable law. The submission would have included a survey, site plan, floor plans, and applicable elevations and cross-sections.

[16] A City Zoning By-Law Notice had been issued by a Zoning Examiner on December 12, 2016. It had revealed requirements to comply with the use of building, minimum parking rate based on gross floor area (gfa), minimum parking space dimensions, minimum parking dimensions for parallel parking, and minimum width of drive aisles. This Notice had specifically identified a minimum of thirty parking spaces contingent on the proposed office use for new mezzanine in the front portion being an ancillary use to the warehouse. The same Notice had also identified that there were thirty proposed parking spaces, as indicated in the site statistics on the site plan that had been submitted.

[17] On January 19, 2017, a representative for the Owner had submitted a revised site plan, which indicated no parking spaces on the south side. The representative had also proposed, with the revised site plan, to demolish the existing rear main wall to provide eleven parking spaces in the rear yard and to comply with the rear yard setback requirement.

[18] Mr. Narcessian had written to Toronto Building, much later, which revealed his intention to demolish:

“As the Owner of the company had to make a business decision based on this communication from the City. In order to obtain a building permit we demolished a portion of the existing building and located as much parking as we could on the site which allowed us to comply with the zoning requirement that was wrongfully communicated to us.”

(Exhibit 1, Tab 3).

[19] The Owner had applied for a building permit to raise the existing roof, to construct an interior office and warehouse, and to make exterior alterations.

[20] On July 14, 2017, a building permit had been issued with a project description of ‘Warehouse; Multiple Projects’ and in compliance with all zoning requirements. The permit had been issued based on information submitted with the building permit application, including the architectural drawings dated April 13, 2017. The site plan, then, had indicated thirteen parking spaces on the north side, as existing, and had proposed eleven perpendicular parking spaces on the east side and six parallel parking spaces on the west side, for a total of thirty parking spaces.<sup>2</sup>

[21] On October 25, 2017, the City’s Community Planning division, in the Scarborough District, had prepared a report, which noted that the building is under construction to raise the roof of the building to 10.9 metres, to construct a one-storey east side addition as well as additional parking around the building. Community Planning had recommended refusal of the proposal because the parking spaces are undersized, and the drive aisle width is not appropriate. It could result in vehicles encroaching onto the adjacent property at 937 Warden Avenue or onto the City right-of-way to maneuver around the building.

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<sup>2</sup> I note there are superseded plans revised at July 19, 2017. The parking supply did not change, although the arrangement of this supply on the east side changed from rows of parallel parking to a single row of perpendicular parking.

[22] On November 1, 2017, the City Councillor for the ward of the subject property had provided a letter which expressed concerns as to the reduced size of the drive aisle as well as the functionality of vehicular movement on the property. The letter had stated its lack of support for the parking variances.

[23] On November 2, 2017, the Committee of Adjustment had deferred the application *sine die* to allow the Applicant an opportunity to 'rethink overall parking' and submit a revision to the Committee.

[24] Many months later, on September 17, 2018, the Owner applied for a second building permit to reconstruct the rear addition he had previously demolished. This somewhat important fact was missing from Mr. Layton's otherwise helpful timeline, as indicated in Exhibit 2, Tab B, page 10.

[25] On October 4, 2018, a City Zoning By-Law Notice had been issued on account of the second building permit application. It had revealed minimum performance standard compliance required for parking rate and rear yard setback. This Notice had specifically identified a required minimum of thirty-two parking spaces whereas the proposed number of parking spaces was nineteen, and a minimum required rear yard setback of 7.5 metres whereas the proposed setback was for 4.97 metres.

[26] In November 2018, the architect of the proposal, Mr. Joseph Battaglia, a currently licensed architect in Ontario and Applicant for the Owner, provided revised plans, which included a site plan drawing with an update noted for September 12, 2018. The floor plans and elevations noted October 6, 2017.

[27] These plans had been presented to the COA on January 30, 2019. In advance of this meeting, on January 23, 2019, City Transportation Services had created a Memorandum advising of a shortfall of thirteen parking spaces. Still, they noted that a parking study was required, which could justify the shortfall. The Memo recommended the deferral of the Application to allow more time for Mr. Battaglia to provide the requisite parking study.

[28] On January 25, 2019, Community Planning in the Scarborough District had created a Staff Report, which recommended that Committee consideration of the proposal be deferred based on the comments noted in the Transportation Services memo.

[29] The COA had considered the Memo, the Staff Report, the Committee decision from 2017, and letters of support and opposition. It had decided to defer the application *sine die* this time to allow the Applicant to complete a 'traffic study.'

[30] At some point after this Committee meeting, the Owner seemed to have received advice from LEA Consulting Limited, which suggested that the Owner seek legal advice because of alleged inaccurate parking rate requirements.

[31] Between February 2019 and July 2019, there were electronic discussions between the Owner/representative and staff from the City's Toronto Building. The parking rate issue was eventually resolved. Some of the detail of that resolution is indicated in Mr. Nersesian's testimony below.

[32] On June 3, 2019, another City Zoning By-Law Notice was issued by a Zoning Examiner. It revealed one minimum performance standard in issue for rear yard setback: a required rear yard setback of 7.5 metres, whereas the proposed setback is 4.97 metres, which is the proposal on Appeal, the Application before me.

## **MATTERS IN ISSUE**

[33] Whether a further notice is required because the Application is accompanied by amended plans?

[34] Whether the Application is consistent with the 2014 Provincial Policy Statement ('PPS') and the 2019 Growth Plan for the Greater Golden Horseshoe ('Growth Plan')

[35] Whether the Application for relief from the Golden Mile Employment Zoning By-Law meets the four tests under Section 45(1) of the *Planning Act*?

## **JURISDICTION**

### **Provincial Policy – S. 3**

[36] A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 PPS and conform to the 2019 Growth Plan.

### **Variance – S. 45(1)**

[37] 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.

## **EVIDENCE**

[38] I accepted and marked the following tendered exhibits in this way:

- Exhibit 1: Witness Statement of Mr. Hatcho Nersesian for 1742385 Ontario Inc.
- Exhibit 2: Expert Witness Statement of Mr. Adam Layton from Evans Planning Inc.
- Exhibit 3: Plans Dated: August 14, 2019

### **Mr. Hatcho Nersesian**

[39] Mr. Nersesian was sworn in. He stated that he purchased the property in March 2017. Prior to this, the subject property was supported as a one-storey structure that operated as a furniture store. Mr. Nersesian indicated that he raised the height of the building roof while having retained the footprint of the building.

[40] He stated that on December 12, 2016, he received a Zoning By-law Notice from the City, which identified a minimum parking rate of thirty parking spaces. He clarified that the subject property could accommodate approximately nineteen spaces, not thirty.

[41] He stated that on October 4, 2018, he received another Zoning By-law Notice from the City, which, this time, identified a minimum parking rate of thirty-two parking spaces.

[42] He testified that because the parking rate is determined by use and gross floor area, he had to demolish a portion of the rear wall of the building to reduce the footprint of the building to meet the rate requirement.

[43] He stated that on January 23, 2019, the City's Transportation Services gave him two options to consider: comply with a parking supply of thirty-two parking spaces in accordance with the Zoning By-law requirements; or submit a parking study prepared by a qualified transportation engineering consultant that can justify the parking shortfall.

[44] Mr. Nersesian retained a parking consultant who advised him that there is no deficiency with parking and that a parking study should not be provided because the City was in error about the requirement for thirty-two parking spaces.

[45] Mr. Nersesian proposed a couple of suggestions to Toronto Building to resolve the matter. He suggested this to Toronto Building:

“2. Acknowledge that the issued building permit (17 136830 BLD 00 BA) required us to maintain 13 legal parking spaces as a lawfully existing building was present and calculate the parking requirements for the floor area that we're rebuilding as part of permit 18 226312 BLD 00 BA I believe our proposed 19 parking spaces would still allow us to comply and would move forward with our committee of adjustment application minus any parking variance.”

[46] He referred to the email correspondence in Exhibit 1 at Tab 3, which showed that Mr. Dwayne Tapp, Manager of Plan Review at Toronto Building in the Scarborough District, asked Mr. Nersesian to provide an affidavit to confirm that there were only thirteen parking spaces on the north side of the existing building that existed prior to July 24, 1979, and that the parking spaces continued to exist to present.

[47] Mr. Nersesian provided an affidavit. He read out Mr. Tapp's reply:

“After undertaking considerable research and accepting your affidavit I was able to consider the parking available as legal nonconforming. This resolves your parking compliance issue as proposed by you in the April 4<sup>th</sup> email (suggestion 2 above). I expect that you will now move forward with you C of A application minus any parking variance.”

[48] Mr. Russell asked Mr. Nersesian, his client, whether Exhibit 3 – the Plans – were submitted to the City. Mr. Nersesian confirmed that the Plans were submitted to Toronto Building.

[49] Ms. Pinder had a few modest questions for Mr. Nersesian. She was able to obtain the following answers from him: That the City never directed him to demolish the building, that the footprint of the building would be the same after restoration, and that there is a difference between a building addition with a height of 4.55 metres and one with a height of 10.9 metres.

### **Mr. Adam Layton**

[50] Mr. Layton was affirmed. He confirmed that he obtained an Honours Bachelor's degree in Urban Planning and Environmental Studies from the University of Waterloo in 2009. He testified that he is a Member of the Canadian Institute of Planners and a Member of the Ontario Professional Planners Institute. He holds the designation of Registered Professional Planner in Ontario and has been practicing for approximately ten years.

[51] Mr. Layton stated that he is a Partner at Evans Planning Incorporated. Before this, he was a Senior Associate Planner at Evans Planning and provided urban planning and project management services to development interests, local resident associations and government agencies. He stated that he processed and managed development applications across the Greater Toronto Area and the Province of Ontario.

[52] I asked him when he last appeared before the TLAB as an expert witness. He said that he provided expert testimony for 50 Marmion Avenue, a hearing in May 2018, which concerned an appeal requesting variances for a replacement dwelling.



[53] I asked Mr. Layton to confirm the duties expected of him as contained in the TLAB's Acknowledgement of Expert's Duty Form 6. He confirmed them. I qualified him as able to give opinion evidence in land use planning.

[54] Mr. Layton was retained by the Owner in December 2019. He said he formed his opinion based on the Plans identified in Exhibit 2, Tab 9 (First Iteration), a site plan dated September 12, 2018, alongside related plans dated October 6, 2017. The First Iteration of plans was before the Committee on January 30, 2019, and on August 22, 2019. These plans are different from those contained in Exhibit 3 (Second Iteration), which were provided to the Parties and me on the day of the hearing by Mr. Russell. The Second Iteration shows the site plan and related plans for floor and elevation, with each plan dated August 14, 2019. A key difference between the site plans is that the First Iteration notes the addition will have a low roof (4.55 metres), whereas the Second Iteration does not note a low roof, although the site statistics seem to suggest otherwise. Mr. Layton confirmed that he looked at the Second Iteration and did not believe that his expert opinion would change.<sup>3</sup> He confirmed that the height on the Second Iteration should read 10.92 metres.

[55] Mr. Layton moved onto describing the subject property. He said the property is located in an established employment/industrial area. This area generally extends along Warden Avenue from the northern property boundaries of the properties abutting the north side of the Eglinton Avenue East to the Hydro Corridor, and from the lands west of Warden Avenue to Birchmount Avenue (Exhibit 2, p.9). Next to the subject property, to the south, is the Royal Canadian Legion, which enjoys a large surface parking area in the rear of the Legion building. He stated that access to the Legion property is provided from Bertrand Avenue, a driveway entrance east of the subject property. Mr. Layton indicated that signage is posted adjacent to both rights-of-way of Warden Avenue and Bertrand Avenue. He opined that the proposed addition would maintain a setback of approximately 10 metres from the Legion's signage on Bertrand Avenue (Exhibit 2, p.9).

[56] Mr. Layton acknowledged that the Legion seemed to have experienced issues during the construction of the replacement building, as well issues concerning the availability of snow storage on the subject property, the visibility of the Legion's signage and the potential for restricted visibility to/from their driveway access from Bertrand Avenue (Exhibit 2, p.11).

[57] He testified that the proposal satisfies the four tests as provided within Section 45 of the *Planning Act* and that the proposal represents good planning. He recommended that the Appeal be allowed and that the proposed variance be approved.

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<sup>3</sup> I note there are site plans concerning the proposal which date prior to October 7, 2017. However, for organization, currency, and my disposition, I focus only on these two iterations.

*Provincial Policies*

[58] Mr. Layton testified that the proposed variance is consistent with the Provincial Policy Statement (PPS) and that the approval of the variance will be consistent with the goals and objectives in the PPS.

[59] He stated that the subject property is located within a Settlement Area, and the replacement structure represents the regeneration of uses within an established Employment Area, which is consistent with Policy 1.1.3.1 of the Provincial Policy Statement. He further stated that the subject property, which is adjacent to existing transit infrastructure, makes efficient use of serviced land within the urban area under Policy 1.1.3.2 of the PPS.

[60] He noted that development standards are established by the City of Toronto and implemented through the Zoning By-Law, which is consistent with Policy 1.1.3.4. In this case, he opined that the proposed rear yard setback of 4.97 metres would re-establish the condition which previously existed on the subject property for years prior to building changes. He pointed to a 1993 survey of the subject property, which showed that the property possessed a rear yard setback of 16.29 feet or 4.97 metres.

[61] Mr. Layton discussed Policy 1.3.1 concerning Employment Areas. He opined that this form of development is compatible with adjacent development and efficiently utilizes the lands. He further opined that a sufficient rear yard would continue to be provided that will not impede the ability of the adjacent properties to continue to be utilized for their intended functions. The building, he said, contains an automotive parts warehouse, which is an economic activity that is supportive of other uses within the area.

[62] He testified that the approval of the proposed variance would be consistent with and conform to the goals and objectives in the Growth Plan.

[63] Mr. Layton opined that the subject property is identified within the City of Toronto's Official Plan as being an Employment Area, which restricts non-employment uses. This, he said, conforms with the Growth Plan because municipalities plan for all employment areas within settlement areas. He stated that the proposed addition seeks to provide additional floor space for the warehouse use, which will facilitate the expansion of this use, which is in keeping with Policy 2.2.5.1. He inferred that extra floor space would make the use of the subject property more efficient. He further opined that surface parking is consistent with the past condition of the property as well as the character of the surrounding area in keeping with Policy 2.2.5.4.

***Official Plan***

[64] Mr. Layton testified that the reduction in the required rear yard setback requested to permit the proposed addition to the structure on the subject property maintains the general intent and purpose of the Official Plan.

[65] Mr. Layton stated that while there is an updated consolidation (February 2019) of the City's Official Plan (OP), the OP contains a number of policies which remain under consideration at the Local Planning Appeal Tribunal but are policies that nevertheless remain the stated intent of Toronto City Council.

[66] He determined the sections of the Official Plan relevant to the proposal on Appeal, which are:

- Section 2.2.4 – *Employment Areas: Supporting Business and Employment Growth*
- Section 3.1.2 – *Built Form*
- Section 4.6 – *Employment Areas*

[67] He stated that Section 2.2.4.3 provides that more intensive use of lands in Employment Areas for business and economic activities will be encouraged to make better use of the limited supply of lands for these activities.

[68] He referred to Section 4.6.3 and stated that the subject land is within the General Employment land use designation in which warehousing is a permitted use.

[69] He stated that Section 2.2.5.4 provides that in planning for employment, surface parking will be minimized, and the development of active transportation networks and transit-supportive built form will be facilitated. Mr. Layton stated that the subject property had been changed by the Owner to permit the reuse of the structure on existing employment lands with employment uses. He further noted that there is an existing transit infrastructure: a bus stop located immediately adjacent to the building and opposite the property, on the west side of Warden Avenue. (Exhibit 2, Tab B, p.14).

[70] He referred to Section 3.1.2.1 and stated the building presents a consistent setback along both Warden Avenue and Bertrand Avenue. He further stated that entrances to the building are located along both streets and clearly visible and accessible from the public realm (Exhibit 2, Tab B, p.17).

[71] He referred to (e) and (f) of Section 3.1.2.2, which provides that new development will locate and organize vehicle parking, vehicular access, service areas and utilities to minimize their impact on the property and surrounding properties by (e) limiting surface parking between the front face of a building and the public street or sidewalk; and (f) integrating above-ground parking structures.

[72] I asked Mr. Layton whether he can identify any issues concerning parking and this development, generally speaking. He stated that while he is not a transportation engineer, based on his multiple visits to the site, parking is provided and that anecdotally there seems to be sufficient supply. He testified that the parking supply now continues the parking rate that existed at the property for many years before the purchase by the current Owner.

[73] He referred to Section 4.6.6(f), which states that creating a competitive, attractive and highly functional Employment Area can be achieved by, among the other items of 4.6.6, providing adequate at-grade parking and loading on-site. Mr. Layton testified that the City's Building Department determined there is sufficient parking and loading facilities to satisfy the Zoning By-Law.

[74] He continued to analyze some of the other criteria of 4.6.6. He stated that adverse effects from noise, vibration, air quality or odour are not expected. There is also no plan for open storage or outdoor processing of goods.

[75] He referred to Section 3.1.2.3 and stated the massing, scale, and materiality of the existing building provides a high-quality form to the area. He further said on this point that the proposed addition represents a continuation of the existing form and maintains adequate separation from the Legion right-of-way to permit light and privacy.

### ***Zoning By-Law***

[76] Mr. Layton testified that the requested variance meets the general intent and purpose of the Former City of Scarborough Employment Districts Zoning By-Law 24982, which is Golden Mile Employment District By-Law 24982 (the 'By-Law').

[77] He stated that the subject property had not been incorporated into the City-wide comprehensive By-Law 569-2013.

[78] He pointed to Schedule A of By-Law 24982, which indicates that the property is located within the Industrial zone and is subject to the performance standards of gfa, street yard setback, rear yard setback, side yard setback, and side yard setback measured from the south lot line.

[79] Mr. Layton stated relief from the By-Law is only required to reduce the minimum rear yard setback from 7.5 metres to 4.97 metres (a difference of 2.53 metres) to permit the proposed addition. The existing setback of the building is 10.83 metres. He further stated as noted previously, the property survey from 1993 illustrates that the proposed setback of 4.97 metres is consistent with the condition of the subject property before the partial demolition of the building in 2017 (Exhibit 2, Tab B, p.19).

[80] He testified, in the context that the subject property is a corner lot, the western lot line adjacent to Warden Avenue is thus the front lot line, and the eastern property boundary is the rear lot line. He explained that the purpose of the rear yard setback is to create appropriate transitions between developments of different intensity and scale. He further explained that the objective is to respect and reinforce the existing physical character of the area, as well as prevailing patterns and the existing context. Finally, he said this type of setback ensures that neighbouring property owners retain adequate access, privacy, and space on their property" (Exhibit 2, Tab B, p.19).

[81] Mr. Layton commented on concerns raised regarding driveway access from Bertrand Avenue. He repeated that the proposed addition would not impede the ability of visitors to the Legion building from accessing Bertrand Avenue. He said the proposed rear addition would not impair the visibility of the existing signage for the Legion building. Mr. Layton mentioned that one could generally assume the Legion will experience an imperceptible visual effect on the streetscape. He said the visibility of the Legion Hall building from Warden Avenue would be unaffected by the proposed addition. He stated there would not be any adverse impacts upon the Legion and other adjacent property owners (Exhibit 2, Tab B, p.20).

***Desirable for Appropriate Development or Use of the Land***

[82] Mr. Layton testified that the proposed reduction for the rear yard setback is appropriate and desirable.

[83] He explained this test looks at whether the building is consistent and compatible with other buildings in the surrounding area. To assess this, he said, one should generally look to the scale of the building, the location on the property, and the ability to use the land in a generally similar fashion vis-à-vis other buildings.

[84] He stated that the proposed addition to the building would have a similar scale as others in the area and will not visually overwhelm the streetscape and will not be easily discernible to the passersby from the public realm. He indicated that the nearest corner of the proposed addition will be located approximately ten metres from the existing Legion sign and that the ability of people to visit the Legion property to read the signage or locate the driveway access would not be impeded.

[85] He testified that he read the letter provided by the Legion, and opined that there seem to be sufficient snow storage areas to permit the continued operation of the warehouse land use (Exhibit 2, Tab B, p.20).

***Minor***

[86] Mr. Layton testified that the variance is minor and would not be necessary to have relief sought through a more formal Zoning By-Law Amendment.

[87] Mr. Layton stated that from a perspective of the community he does not believe that the structure will be noticeably different than what could be built within the established Employment Area. He stated that the previous building operated harmoniously with the operations of the Legion property during this time, and he does not believe the modest decrease in the rear yard setback is more than minor.

[88] Ms. Pinder asked helpful clarifying questions in her cross-examination of Mr. Layton. She challenged Mr. Layton's response made early on that he had formed his planning opinion on the First Iteration of plans. She took Mr. Layton to his renderings in his visual evidence book, which can be found in Exhibit 2, Tab 2, pp 52-53. The renderings show the addition with a high roof that matches the current high roof of the building. She asked Mr. Layton if the full height of the addition came to his attention before filing his written evidence. Mr. Layton hesitated. He replied that he had asked the architect to provide conceptual elevations, and Mr. Layton 'guesses' the architect based these elevations on the new plan (Second Iteration); the architect not understanding that Mr. Layton had submitted old plans. Mr. Layton stated he does have renderings that show the lower height/low roof as well.

[89] Ms. Pinder then took Mr. Layton to Exhibit 3 – the Second Iteration of plans. She took him specifically to the site plan, which notes an 'existing asphalt pavement' on the south side. She asked Mr. Layton that whether the Owner no longer contemplates a circular driveway. Mr. Layton said not to his knowledge. He further answered that there is landscaped area at the southwest corner of the building and one large tree, which is on a different property. He said that there is no existing formalized easement with the Legion to provide for such type of access.

[90] Ms. Pinder asked Mr. Layton that if all of the notations regarding the driveway are no longer valid. Mr. Layton agreed, not to his knowledge. He said that these notations could just be an error on the plans from a previous version. Ms. Pinder, then asked once more, if there is no intention at this time to provide a driveway along that side. Mr. Layton said not to his knowledge. Ms. Pinder also highlighted the note about the 'proposed front addition' on the site plan. She asked Mr. Layton to confirm that no more existing additions are being proposed to the front of the building. Mr. Layton agreed with this and said that the note is probably a remnant from the previous building permit application, which included adding in the office in the mezzanine.

[91] Ms. Pinder put to Mr. Layton that the proposed addition would be larger than what was previously proposed. Mr. Layton said it is larger in terms of height and volume, but not in terms of floor area: it remains the same because the addition is one storey. Ms. Pinder asked Mr. Layton if he would agree that the proposed addition would appear to be more than one storey to a layperson. Mr. Layton cleverly said that it could, but it would match the height of the existing building.

[92] Ms. Pinder asked Mr. Layton a hypothetical question: if the Owner were to proceed with a one-way driveway, noted on the plans, that would require a greater level of snow removal. Mr. Layton agreed. Ms. Pinder further asked if that is because the entirety of the perimeter would have to be ploughed to remove snow. Mr. Layton agreed. Ms. Pinder asked that this hypothetical situation would minimize the snow storage area. Mr. Layton agreed. Ms. Pinder insisted that the addition of 183 square metres would mean 183 square metres less of snow storage area. Mr. Layton agreed, and commented that should a need arise, the snow could be theoretically trucked off from the site.

[93] Ms. Pinder referred to Exhibit 1, Tab 3, page 47. She recited Section 1.5 of By-Law 24982, which I noted is contained in a cut-and-paste email exchange and not referenced separately elsewhere, as would be the case when considering the propriety of evidence. She referred to Section 1.5.1.3 and stated the requirement that parking space deficiencies shall not be increased as a result of alterations or renovations and the total number of parking spaces on the lot shall not be decreased. She asked Mr. Layton if he agreed that the six additional parking spaces (on the west side) were required for the proposed addition, including the addition at the front and the mezzanine. Mr. Layton said that appears to be what Mr. Tapp had suggested in his email.

[94] Moving from the email exchange back to the photos contained in Mr. Layton's visual evidence book (Exhibit 2, Tab 2), Ms. Pinder asked Mr. Layton whether he could visually confirm that there are three cars parked wide across the front whereas the site plan indicates the availability of parking in one row. Mr. Layton agreed.

[95] Ms. Pinder asked Mr. Layton if there is a retail use component for the business. Mr. Layton said not to his knowledge. Ms. Pinder said if there was a retail component, that would require parking spaces for clients. Mr. Layton agreed and commented there is no retail component being proposed.

[96] Ms. Pinder referred to Policy 3.1.2.2 and Policy 4.6.6 (f) of the Official Plan and asked Mr. Layton that this policy speaks to the adequacy of parking. Mr. Layton answered that he would classify the OP as providing general policies of site design, built form, parking, but that the specific details of how one satisfies adequacy is through the instrument of the Zoning By-Law. The City's Toronto Building had determined the adequacy of parking in this case.

[97] Ms. Pinder asked Mr. Layton to confirm that he did not have the benefit of a transportation or parking study to inform his opinion on the proposal. Mr. Layton agreed and commented that the notice from Toronto Building confirmed that parking in all respects was not an issue: that the only issue is the rear yard setback. Mr. Layton said that the project, including the rear addition, satisfies the requirement of nineteen spaces.

### **Mr. Stephen Graham**

[98] Mr. Graham was affirmed. He is the current President of the Royal Canadian Legion 'Dambusters' Branch 617, which is situated at 937 Warden Avenue. He referred to his letter dated August 21, 2019, which was before the Committee and a copy of it can be found in Exhibit 2, Tab A, pp.215-216.

[99] He stated in the proceeding that his main concern is about snow storage. He said that in his experience, snow clearing vehicles place snow that had fallen on the subject property onto the driveway of the property of the Legion.

[100] He stated that parking has also been an issue. He stated that he has seen and heard of vehicles parked on the property of the Legion. These vehicles, he said, seem to belong to people who are visiting the subject property. He wondered if an unauthorized retail use is unfolding on the subject property.

[101] Mr. Graham stated that the containers on the south side of the subject property, ought to be moved because they encroach on the property of the Legion. He suggested the erection of a fence to prevent encroachments of any kind.

### **Mr. Narcessian (Recalled)**

[102] Mr. Russell requested that Mr. Narcessian, a non-expert, be recalled as a witness. Ms. Pinder communicated she was fine with this request. I granted this request, with a view to reconciliation, and Mr. Narcessian was allowed the opportunity to respond to Mr. Graham's testimony.

[103] Mr. Narcessian was sworn in again. He stated that he has nineteen business locations and over one hundred people to manage. He said that he is at the subject property at most twice a week. He shared that Mr. Graham could contact him directly by email if there are any encroachments, including those of snow clearing, snow storage, and parking. Mr. Narcessian gave his word that these would be rectified immediately.

[104] Regarding snow storage, Mr. Narcessian said that he would contact a snow plough company in the winter to instruct them not to dump any snow onto the property of the Legion.

[105] On the issue of using the south side existing asphalt paving as a driveway, Mr. Narcessian confirmed he has no intention to use the south side as a driveway.

## **ANALYSIS, FINDINGS, REASONS**

[106] I have considered the testimony of Mr. Narcessian, Mr. Layton, and Mr. Graham, the marked exhibits, and the legal arguments presented by Mr. Russell and Ms. Pinder.

[107] The Appellant, in this case, has the onus to have identified and provided evidence that the one variance being requested satisfies the *Planning Act*<sup>4</sup>. If even one of the four tests in Section 45(1) of the *Act* is not satisfied, the Appeal must fail.

[108] I am charged with the responsibility to decide on the Appeal, and not create additional problems or defer a decision to be resolved at another time.

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<sup>4</sup> Regard to matters of provincial interest; Section 3 – consistent with provincial policy statements and conform with provincial plans; Section 45(1) – commonly expressed as the four tests.



[109] Mr. Layton was the only qualified land use planning expert in this proceeding. He prepared and provided helpful comments about issues raised by Mr. Graham, issues related to parking, as well, and appropriately so, the variance request itself. And, while there were a couple of very modest errors in Exhibit 2, Mr. Layton presented expert opinion evidence that I found was, overall, thorough and credible. I am satisfied that Mr. Layton indicated that he reviewed the Second Iteration of plans in Exhibit 3 of this decision.

[110] I commend Ms. Pinder's skillful efforts in challenging Mr. Layton's stated opinion. She made me hesitate about the Second Iteration of plans, namely that the notations on the site plan seem to indicate an existing or proposed one-way circular driveway. However, when the idea of a one-way circular driveway was put to Mr. Layton and Mr. Narcessian, each had stated there is no intention to have vehicular circulation around the building at this time. Mr. Russell had also said there is no such intention. However, if parking circulation is in fact being contemplated, I would have a good deal of hesitation over this Appeal on account of potential inadequate parking provision, including locating and organizing vehicle parking to minimize impacts on the property and surrounding properties.

[111] That Mr. Narcessian is somehow using his building as a retail or service use is unfounded. I do not have any credible evidence that supports this claim. Now, if Mr. Narcessian decides in the future to apply for a new use or change of use to retail, for example, which has the effect of attracting more of the general public, I think, that would necessitate a consideration of transportation impacts on the *Employment Area*. And, if the property is designated as a *Core Employment Area* under Official Plan Amendment 231, as suggested by the City's Community Planning, a proposed retail use here could disrupt the industrial operations in the interior of employment lands.

[112] However, the Official Plan does also state at Section 4.6.6 (g) that development in *Employment Areas* is to contribute to the creation of a competitive, attractive, and highly functional Employment Areas: "by sharing driveways and parking areas **wherever possible**" (my emphasis). I have heard that the Legion had a good relationship with the previous Owner of the subject property and that this kind of relationship afforded some latitude in terms of parking. I also observed the letter from the Legion dated August 21, 2019, which indicated that members of the Legion voted not to allow an easement for the current Owner because they felt disrespected. I think it would be prudent for the Owner of the subject property, Mr. Narcessian, to seriously consider taking steps to restore what was, at one point, a good relationship with the Legion.

[113] That said, with respect to the planning merits of the proposal, I accept Mr. Layton's evidence. I find that the subject property occupies a prominent spot on a corner lot of an Employment Area at the southeast quadrant of Warden Avenue and Bertrand Avenue. While a parking study would have been helpful to be better informed about the adequacy of parking, based on Mr. Layton's visual evidence book, there does not appear to be a current supply issue. However, I do accept Ms. Pinder's point that there is evidence that shows that vehicles have parked in a manner not consistent with the demarcated parking lines. There is also evidence which shows that cars park in the city boulevard. This is a behavioural issue to be pursued the City's By-law enforcement.

[114] I find that the general intent and purpose of the Official Plan and Zoning By-Law are maintained. The variance is desirable for the appropriate development or use of the land. On this point, I find that the rear yard setback variance would restore the building to a footprint identified in a land survey of the subject property dated May 28, 1993 (Exhibit 2, Tab 3). The variance is desirable for the appropriate use of the land, which is warehousing. I agree that this is a minor variance. The variance meets the statutory tests.

[115] Furthermore, I find the plans that were before the Committee and the plans before the TLAB constitute a minor change. No further notice is required, as per Section 45(18.1.1).

[116] However, I do not accept the notations on the site plan of 'one way driveway' and 'proposed front addition' as I have heard in the proceeding that these are not valid notations. The site statistics on the site plan should also correctly reflect the height of the proposed rear addition. The site plan must be updated to reflect **only** these minor changes.

## **DECISION AND ORDER**

1. The Appeal is allowed, and the decision of the Committee of Adjustment dated August 22, 2019, is set aside.
2. The variance request identified in **Attachment A** of this Decision and Order is approved subject to the following conditions:
  - a. The Appellant must submit an updated and corrected site plan that is consistent with the Appeal Application and as described herein.
  - b. The Appellant shall construct the rear addition substantially in accordance with:
    - i. the updated and corrected site plan, which is to be provided to the TLAB by the Owner of 939 Warden Avenue no later than June 30, 2020; and,
    - ii. the elevation and floor plans dated August 14, 2019, which are contained in **Attachment B** of this Decision and Order.
3. This Decision and Order does not come into effect unless and until the updated and corrected site plan is provided to the TLAB by June 30, 2020. Once it is received and reviewed, it will form **Attachment C** of this Decision and Order.
4. The minor amendments to the plans in **Attachment B** and the minor amendments to the plan in **Attachment C** do not require further notice as per Section 45(18.1.1) of the *Planning Act*.
5. Any other variances that may appear on the plans that are not listed in this decision and order are expressly not authorized.

X

A handwritten signature in black ink, appearing to read "Sean Karmali". The signature is written in a cursive, flowing style.

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Sean Karmali  
Panel Chair, Toronto Local Appeal Body

## **ATTACHMENT A**

Purpose of Application:

To permit the rear yard setback to be reduced for the existing building and one-storey, 183 square metre addition to the east side of the existing warehouse building.

By-law No. 24982

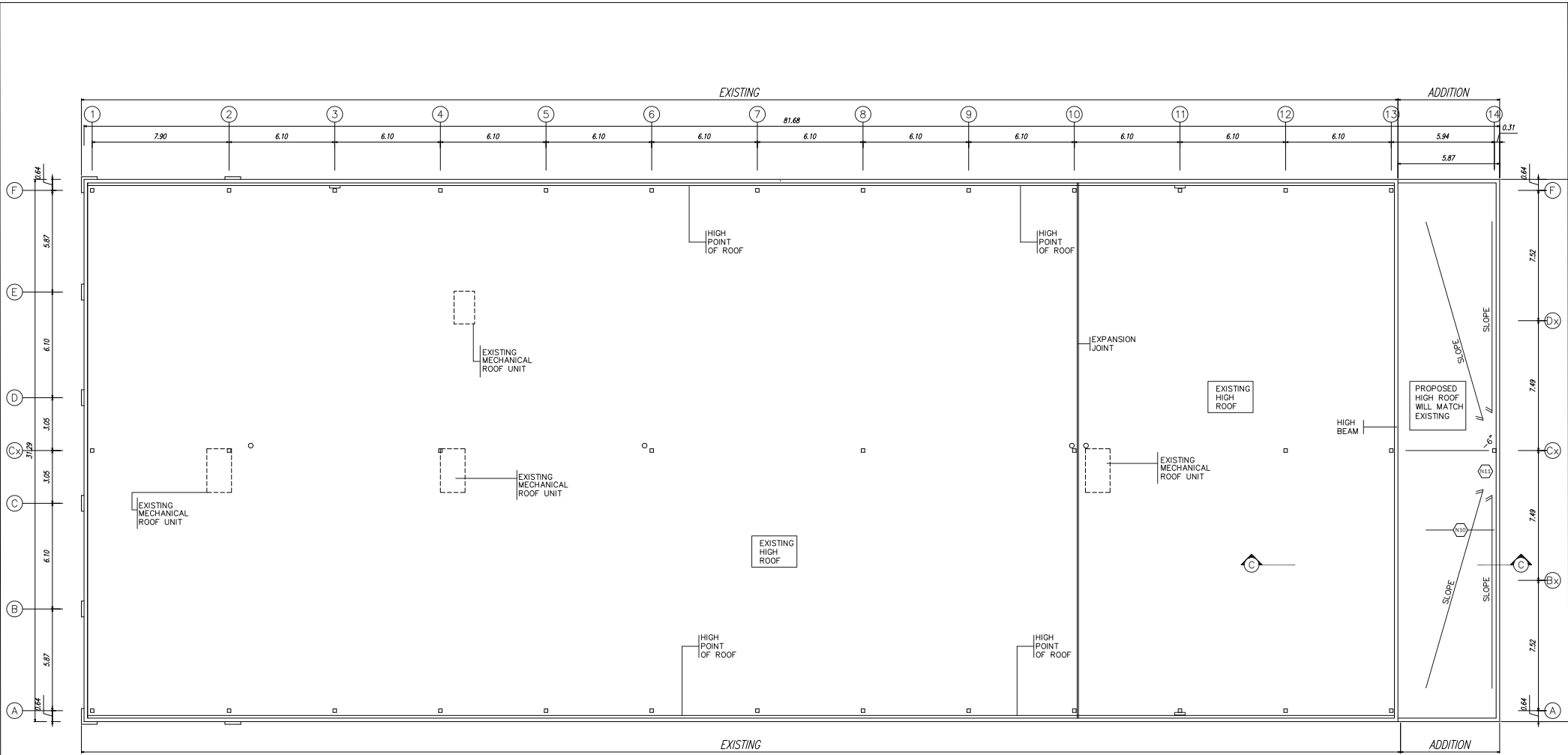
1) [Schedule "B" – Performance Standards – 991.Rear Yard Setback]

The proposed rear yard setback is 4.97 metres

Whereas the minimum required rear yard setback is 7.5 metres

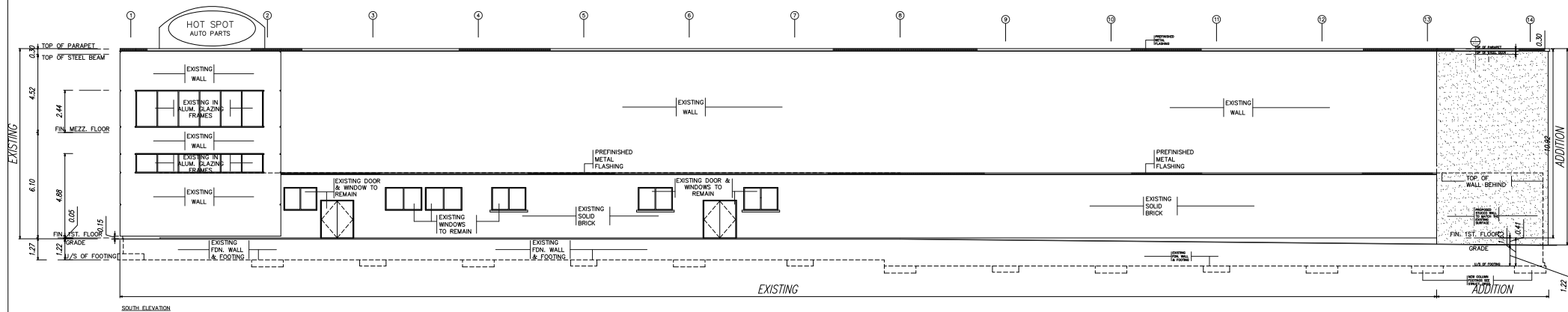







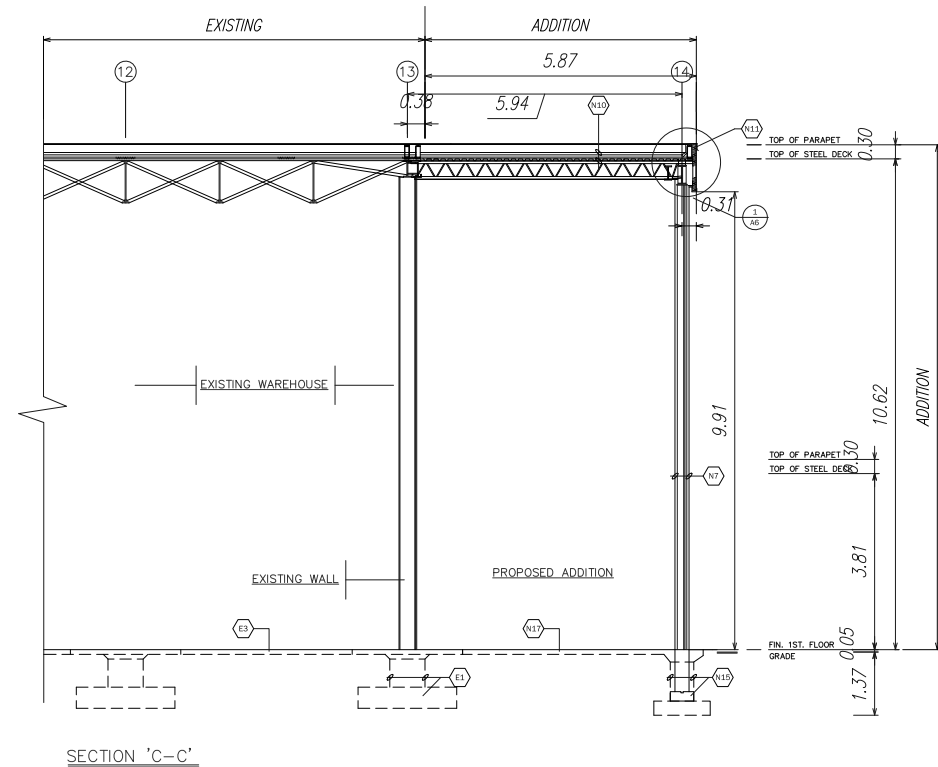
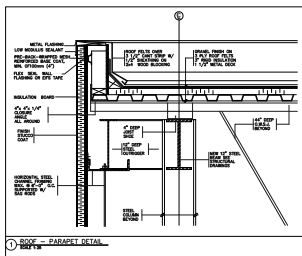
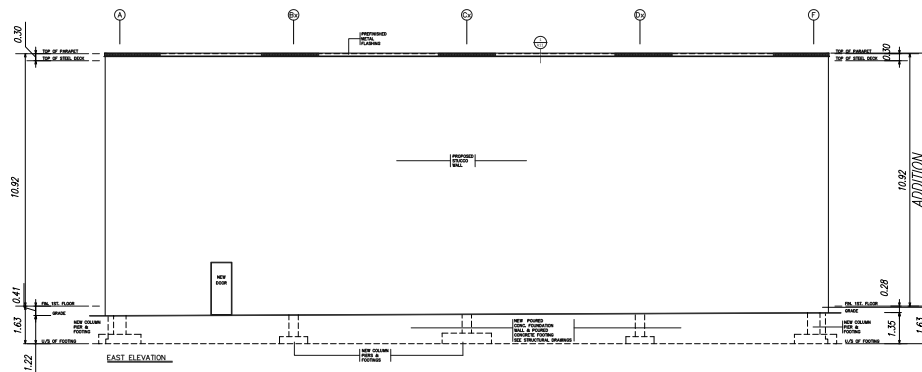
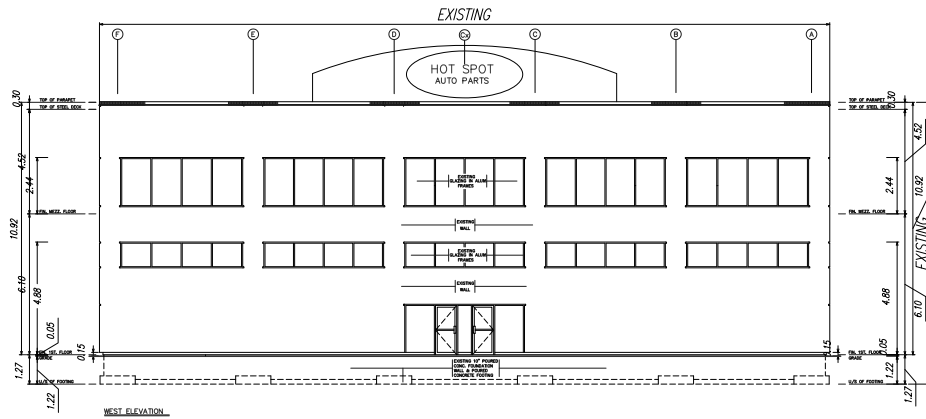
ROOF PLAN

2	AS PER CITY COMMENTS	AUG 14 2019
1	ADDITION	SEPT 12 2018
NO.	ISSUE/REVISION	DATE
The contractor shall check and verify all dimensions and report all errors and omissions to the architect before proceeding with the work. The drawing is the property of the architect and must be returned on completion of the work. Do not make changes.		
BATTAGLIA ARCHITECT INC.		
8888 KEELE STREET, CONCORD, ONT. L4K 3N8 905-305-0568		
Project 939 WARDEN AVE.		
ADDITION BUILDING		
Drawing ROOF PLAN		
Sheet AUG 14 2019		
Scale 1:500		
Drawn by JPM		
Project no. 17-939		
Drawing no. A4		



1			
2	AS PER CITY COMMENTS	AUG14.2019	
3	ADDITION	SEP12.2019	
4	NO. 1234 DIVISION	DATE	
<p>The contractor shall provide and verify all dimensions for the structure before proceeding on the work. This drawing is the property of the architect and shall not be returned in completion of the work. It is not scale drawings.</p>			
<p><b>BATTAGLIA ARCHITECT INC.</b></p>			
<p>8888 KEELE STREET, CONCORD, ONT. TEL: 905.909.0568</p>			
<p>Project 939 WARDEN AVE.</p>			
<p><b>ADDITION BUILDING</b></p>			
<p>drawing</p>			
<p><b>SIDE ELEVATIONS</b></p>			
		<p>DATE AUG 14 2019</p> <p>SCALE 1:1000</p> <p>DRAWN BY JPM</p> <p>PROJECT NO. 17-939</p> <p>drawing no. 4</p>	





#### OCCUPANCY CLASSIFICATION

HOTSPOT AUTO PARTS 3.2.2.70. GROUP F DIVISION 2  
UP TO 4 STOREYS

#### BUILDING STATISTICS

1 STOREY  
FACING 2 STREETS  
MAXIMUM 4000 M2  
BUILDING AREA 27342.10 S.F. > 28009.33 S.F. (2602.15m2)  
MEZZANINE AREA 667.23 S.F.  
OFFICE AREA 2190.33 S.F. (203.49m2)

#### OCCUPANT LOAD

BUILDING & MEZZANINE AREA (2602.15m2) / 28 = 92.93 PERSONS  
OFFICE AREA (203.49m2) / 9.3 = 21.88 PERSONS  
TOTAL 114.81 PERSONS  
115 PERSONS

#### 3.7.4. PLUMBING FACILITIES

3.7.4.9. PLUMBING FIXTURES FOR INDUSTRIAL OCCUPANCIES

TABLE 3.7.4.9

		W/C AND LAVS NEEDED	W/C AND LAVS DESIGNED
GROUND FLOOR	MALE EMPLOYEE	49	3
	FEMALE EMPLOYEE	44	3
MEZZANINE	MALE EMPLOYEE	9	1
	FEMALE EMPLOYEE	13	2

2	AS PER CITY COMMENTS	AUG14,2019
1	ADDITION	SEPT12,2018
NO.	ISSUE/REVISION	DATE
The contractor shall check and verify all dimensions and report all errors and omissions to the architect before proceeding with the work. The drawing is the property of the architect and shall not be returned or copied without the written consent of the architect.		
BATTAGLIA ARCHITECT INC.		
3300 KEELE STREET, CONCORD, ONT. L4C 6H8 508-0568		
Project 939 WARDEN AVE.		
ADDITION BUILDING		
drawing ELEVATION/SECTION		
DATE AUG 14, 2019		
SCALE 1:500		
DESIGNED BY JAMES		
PROJECT NO. 17-939		
drawing no. A6		

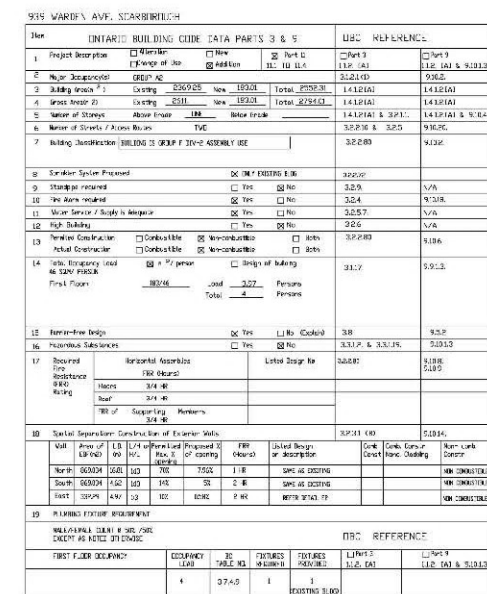
**ATTACHMENT C**  
**UPDATED AND CORRECTED SITE PLAN**

**{TO BE PROVIDED BY THE OWNER NO LATER THAN JUNE 30, 2020}**

1ST. FLOOR REAR	(183)M2
<hr/>	
ADDITION GFA	(183)M2
<hr/>	
EXISTING GFA(GROUND FLOOR)	(2369.25)M2
EXISTING GFA(MEZZANINE)	(241.77)M2
ADDITION GFA	(183)M2
TOTAL GFA	(2794)M2

**RECEIVED** June 9, 2020  
 By Toronto Local Appeal Body

**RECEIVED** June 9, 2020  
By Toronto Local Appeal Body



3	REVISED	JUN 06 2002
2	AS PER CITY COMMENTS	AUG 14 2002
1	ADDITION	SEPT 02 2002
NO	SCALE	VERSION
		DATE
<p>1. ALL DIMENSIONS ARE IN FEET &amp; INCHES. DIMENSIONS OF WALLS, PARTS OF WALLS, AND OTHERS, ARE TO BE VERIFIED BY THE ARCHITECT. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE VERIFICATION OF THE DIMENSIONS AND THE LOCATION OF THE WALLS.</p>		
<p><b>BATTAGLIA ARCHITECT INC.</b>          300 N. MICHIGAN AVE. 10TH FLOOR, CHICAGO, IL 60610</p>		
<p>Project: 938 WARDEN AVE.          ADDITION OF DOOR/EST SIDE</p>		
<p>drawn by</p>		
<p><b>SITE PLAN</b></p>		
<p>DATE: JUN 06 2002</p>		
<p>SCALE: 1" = 20'</p>		
<p>Drawn by: [Signature]</p>		
<p>Project No: 17-339</p>		
<p>Sheet No: 1 of 4</p>		