

DECISION AND ORDER

Decision Issue Date Tuesday, June 30, 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): Mike Jochi Tsay

Applicant: Mike Jochi Tsay

Property Address/Description: 21 Braeside Rd

Committee of Adjustment Case File: 19 185184 NNY 15 MV (A0484/19NY)

TLAB Case File Number: 19 247024 S45 15 TLAB

Hearing date: Wednesday, June 17, 2020

DECISION DELIVERED BY S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Appellant/ Applicant Mike Jochi Tsay

INTRODUCTION AND BACKGROUND

Mike Jochi Tsay is the owner of 21 Braeside Ave., located in Ward 15 (Don Valley West) of the City of Toronto (City). He applied to the Committee of Adjustment (COA) to construct a new front yard parking pad. A Staff Report issued by the City of Toronto's Planning Department, dated October 15, 2019, recommended refusal, because of concerns about storm water management, and the diagonal orientation of the parking pad, which "creates a prominent element, which "does not respect nor reinforce the character of the neighbourhood". On the same day, the City's Transportation department issued a separate Report which did not object to Variances 1 and 4, as recited in the "Matters in Issue" Section. The Report from the Transportation department noted that "The parking space in the front yard is consistent with the surrounding neighbouring conditions, and the parking pad is accommodated entirely on private property." It may be noted that the Report from the Transportation department did not express any opinion about Variances 2 and 3, as recited in the "Matters in Issue" Section of this Decision.

The COA heard the application, and refused the same in its entirety. The Applicants appealed the COA's decision to the Toronto Local Appeal Body (TLAB) on October 23, 2019.

The TLAB set a Hearing date for June 17, 2020.

MATTERS IN ISSUE

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.5.80.10.(3), By-law No. 569-2013

A parking space may not be located in a front yard or a side yard abutting a street. The proposed parking space is located in a front yard.

2. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 50% of the front yard must be landscaping. The proposed front yard landscaping is 43.3%.

3. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 75% of the required front yard landscaping must be soft landscaping. The proposed front yard soft landscaping is 65.4%

4. Chapter 200.5.10.1.(1), By-law No. 569-2013

The required minimum number of parking spaces for the dwelling is 1 space. The proposed number of parking spaces is 0 spaces.

JURISDICTION

Provincial Policy – S. 3

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

Variance – S. 45(1)

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

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

EVIDENCE

At the Electronic Hearing held on June 17, 2020, Mr. Tsay represented himself. There were no other Parties or Participants involved in this Appeal.

I briefly explained the workings of an Electronic Hearing to Mr. Tsay, and asked him if he understood the procedure to be followed. Mr. Tsay replied that he understood the procedure, and was then affirmed as a Witness.

Mr. Tsay expressed his dissatisfaction at not being allowed to make a fulsome presentation, at the Hearing before the COA on October 23, 2019. According to Mr. Tsay, he was not allowed to make a presentation, and was asked “only one” question by one of the Members, before his application was refused in its entirety.. Mr. Tsay expressed his disappointment, with the procedure followed by COA to arrive at a decision, in no uncertain terms.

Mr. Tsay recited the variances (as listed in the “Matters In Issue” Section in this Decision), and emphasized that “there are no reasonable alternatives to parking in the front yard”. He also asserted that the “application has the full support of the neighbours.”, and “ it does not set new precedents, since similar Front Yard Parking applications have been deemed minor variances, and approved on the same street.”

Mr. Tsay said that the Honda Odyssey owned by him, with a width of 6 feet and 11 inches, cannot fit into the existing laneway going to the back to the house, because the latter is 6 feet and 4 inches wide. He added that “the parking issue is exacerbated by the fact that there is no street parking”.

Describing the immediate neighbourhood, Mr. Tsay said that Braeside Rd, Kapelle Ave., and Haslemere Road, form a rectangle, with Braeside constituting two of the four sides of the aforementioned rectangle, because it turns through a right angle, becoming perpendicular to itself. He asserted that parking on the front yard was common, because “half the houses on Braeside Road, with mutual driveways, have Front Yard Parking”. He said that 26 Kapelle Road had been granted a similar parking variance by the COA in 2019, and that the design of the front yard parking at 21 Braeside mirrored what had been approved at 26 Kapelle Ave. Mr. Tsay briefly reviewed a number of

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properties in the vicinity which had been approved for front yard parking, including 188 Snowdon, 223 Wanless, 311 Melrose, 350 Keewatin, 283 Snowdon.

Mr. Tsay critiqued the Landscaping By-Law by saying that “while the 50% landscaping / 75% soft landscaping is well intentioned, it does not distinguish between professionally designed gardens and a patch of weed and grass”. Speaking to the landscaping variance, Mr. Tsay said that “Permeable Interlock” would be used to capture the runoff, and defined Permeable Interlock as “a porous membrane, penetrable by liquids”

In support of the request for 0 Parking Spaces, Mr. Tsay provided examples of 35 Kappelle Ave. and 28 Kappelle Ave., 223 Wanless Ave., 189 Glenforest Ave., 239 Snowdon Ave, 217 Ronan Ave and 115 Ronan Ave.

He spoke briefly to the Official Plan (OP), and said that the variances should be granted because the proposal “maximized green space, and maintains the City tree.” By way of editorial comment, Mr. Tsay provided a number of other reasons about how the proposal is consistent with the OP, which I find not to be related to planning , and are consequently not recited here..

At the end of the Hearing, I advised Mr. Tsay that while the presentation had given me a good idea of what he wanted to accomplish, it was important that he demonstrate that the proposal satisfy the four tests under Section 45.1 of the Planning Act. I gave him extra time until June 24, 2020, to make any additional submissions to demonstrate that the proposal satisfied the four tests. I also advised Mr. Tsay that while I could understand the logic behind his mirroring his proposal on the basis of what had been approved at 28 Kappelle Ave., an Appeal before the TLAB could not be approved on the basis of “what is good for the goose, is good for the gander”.

On 24 June, 2020, the TLAB staff forwarded a letter to me from Mr. Tsay, he provided more material on how his proposal satisfied the four tests. Relevant reasons are excerpted below:

According to Mr. Tsay, the proposal represents gradual and sensitive change, which “fits” what exists in the community, as stated in Sections 2.3.1, and 4.1.5 of the OP. He asserted that the proposal for front yard parking, and the consequent reduction in landscaping, do not establish a new “form” or “pattern”, and that the variances, if approved, will result in one more example of a house with front yard parking, of which numerous examples may be found in the neighbourhood.

Based on this information, Mr. Tsay concluded that the proposal was consistent with the Official Plan.

Mr. Tsay utilized Chapter 200.5.10.1, of the City wide By-Law 569-2013 to establish that a “ detached dwelling needs to have a minimum of one parking spot” He then added that this parking spot does not exist in the case of 21 Braeside Ave., because the parking, which is at the back of the house, cannot be accessed as a result of the width of the driveway not being wide enough to accommodate Mr. Tsay’s car, while parking on the

street is not allowed by the City. By way of an editorial comment, the inference is that the proposed front yard parking helps provide the requisite parking spot for the residence.

Based on this information, Mr. Tsay concluded that the proposal was consistent with the Zoning By-Law 569-2013.

Mr. Tsay also asserted that the requested variances, “would not impact the neighboring properties, or raise issues of sunlight, privacy, views, spacing and openness” of neighbouring properties, and added that the length and width, of the proposed parking spot are consistent, with what is allowed under By-Law 569-2013.

Based on this information, Mr. Tsay concluded that the proposal satisfies the test of appropriate development, as well as the test of minor.

By way of editorial comment, the letter also discusses the proposal's adherence to the previous City of Toronto By-Law 438-86, but this discussion is not recited here, because the requested variances respect to By-Law 569-2013 alone. Other arguments put forward by Mr. Tsay regarding By-Law 569-2013 are not recited, because they focus on perceived flaws in By-Law 569-2013, rather than adherence to the same.

The letter also provided various examples of approvals of similar variances by the COA in a 500 m radius of the residence.

ANALYSIS, FINDINGS, REASONS

This Hearing involves nobody but the Appellants; in other words, there are no Parties, nor Participants, in opposition to the Appeal. It may also be noted that while the City's Planning Department issued a Report recommending refusal, the City did not elect for Party status in this Appeal.

While acknowledging the Appellant's disappointment, and discontentment at not being allowed to make a presentation to the COA, I note that what happened procedurally at the COA is not important to my decision making, because of the *de novo* nature of the Appeal before the TLAB. The *de novo* nature of the Appeal means that the matter is being heard anew, or from the beginning, without reference to what happened before the Appeal.

The Appellant may not have formally designated a Study Area, or a Geographical Neighbourhood, but used a 500 m radius as the basis of locating COA decisions pertinent to the proposal. He also described the neighbourhood bound by Kappelle Avenue, Braeside Ave, and Haslemere Ave. in some detail, and described the prevalence of front yard parking in this area. On the basis of his description, and the definition of Study Areas, and Geographical Neighbourhoods, I conclude that the 500 m is effectively the Study Area, while the rectangular area bound by Braeside Ave., Kappelle Ave., and Haslemere Ave. is effectively the Geographic Neighbourhood.

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The evidence proffered at the Hearing on June 17, 2020, demonstrated to me that a diamond shaped front yard parking pad has been approved by the COA at 28 Kapelle Avenue, while front yard parking is a common phenomenon on Braeside Ave.

The written submissions provided to me on June 24, 2020, explain how the proposal is consistent with Sections 2.3.1 and 4.1.5 of the Official Plan. The COA decisions demonstrate that the neighbourhood is not frozen, but in constant evolution, and that approving the proposal at 21 Braeside, represents the next increment of continual change in the community. The front yard parking solution is demonstrably common in the neighbourhood, and does not create any adverse impact on the neighbours, as discussed in Section 4.1.5 of the OP.

Notwithstanding the modicum of information presented about Sections 2.3.1 and 4.1.5, I find that the proposed front yard parking is consistent with the intention, and purpose of the OP. .

The Appellant provides an interesting explanation of Section 200.5.10., of By-Law 569-2013, to establish that the By-Law allows for one parking spot for every detached house- my conclusion is that the proposal creates a “pseudo” parking space in front of the house, in lieu of the parking space, and consequently meets the performance standard. It may be important to reiterate here that the Appellant’s car is wider than the driveway, eliminating other parking solutions at the side or back of the house.

The City’s Transportation Department, in its Report dated October 15, 2019, concluded that “The parking space in the front yard is consistent with the surrounding neighbouring conditions, and the parking pad is accommodated entirely on private property.”. The first part of the sentence above supports the conclusion that the proposed parking solution, is “consistent” with surrounding neighboring conditions, and will meet the performance standards.

I find that the proposal is consistent with the intention, and purpose of By-Law 569-2013.

The submissions dated June 24, 2020, also assert that the proposal does not create any unacceptable adverse impacts on the neighbouring properties. There are no letters of opposition from the neighbours, while the storm water management concerns expressed by the City in their Report dated October 15, 2019, will be addressed through the use of Permeable Interlocking. I understand that Permeable Interlocking consists of solid concrete paving units, which create permeable openings when assembled into a pattern, such that water can freely penetrate through the openings into the soil.

Given that there is no information about a significant storm water-management issue in this neighbourhood in the City Report, my conclusion is that the City Report was issued with an abundance of caution, to prevent any future occurrence of storm water management issues. Given how common front yard parking is in this community, and the absence of the identification of a nexus between storm water management, and front yard parking, I find that approving the requested variances at 21 Braeside will not

morph into the proverbial straw that broke the camel's back, in terms of storm water management.

Based on the above discussion, I find that the proposal satisfies the tests of minor, and appropriate development.

Given the above findings, I conclude that the proposal satisfies the four tests under Section 45.1 of the Planning Act, and that the Appeal may be allowed. Consequently, the decision of the COA, respecting 21 Braeside Ave, dated October 23, 2019, may be set aside.

The conditions imposed on the approval of the Appeal include preserving the City Tree at the front of the property, and constructing the parking at the front yard, in substantial accordance with the submitted Plan. Since the Appellant has stated his willingness to preserve the City Tree at the front of the property, I have chosen to impose only such conditions that would allow him to preserve the tree, but not destroy the same. The condition speaking to the preservation of the City Tree is:

- a) Prior to the submission of a building permit application, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the General Manager, Parks, Forestry & Recreation, Urban Forestry Services.

I also believe that is important for the Appellant to complete the creation of the space for front yard parking in substantial compliance with the Plan dated July 8, 2019, as submitted to the COA, and therefore impose the following condition on the Approval:

- b) The proposed front yard parking, shall be constructed in substantial conformity with the Plan dated June 8, 2019, and attached to this Decision.

DECISION AND ORDER

1. The Appeal is allowed, and the Decision of the Committee of Adjustment respecting 21 Braeside dated October 23, 2019, is set aside.
2. The following variances are approved:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. **Chapter 10.5.80.10.(3), By-law No. 569-2013**

A parking space may not be located in a front yard or a side yard abutting a street. The proposed parking space is located in a front yard.

2. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 50% of the front yard must be landscaping. The proposed front yard landscaping is 43.3%.

3. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 75% of the required front yard landscaping must be soft landscaping. The proposed front yard soft landscaping is 65.4%.

4. Chapter 200.5.10.1.(1), By-law No. 569-2013

The required minimum number of parking spaces for the dwelling is 1 space.
The proposed number of parking spaces is 0 spaces.

3. No other variances are approved.

4. The following conditions are imposed on the approval of the variances:

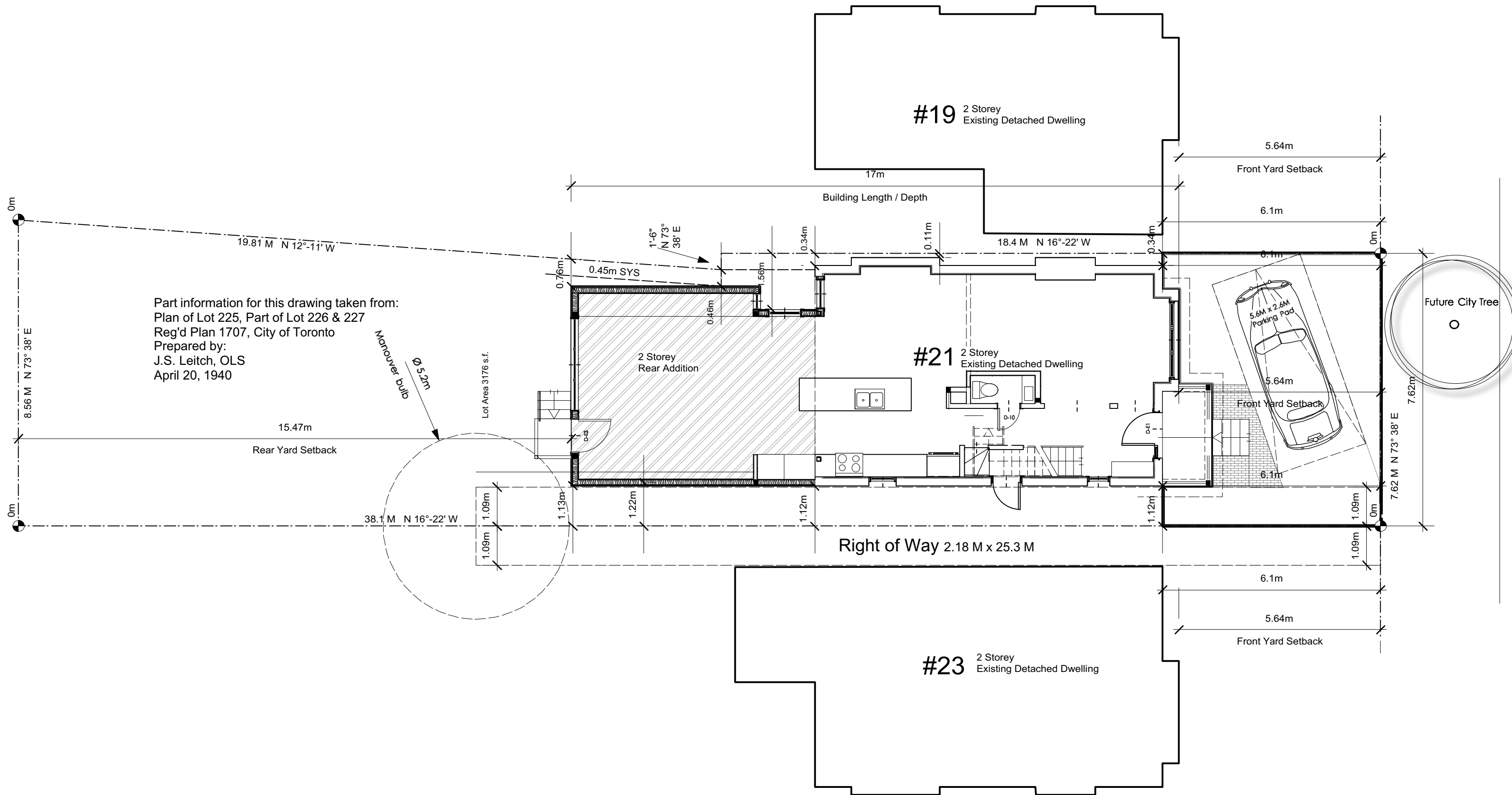
- a) Prior to the submission of a building permit application, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the General Manager, Parks, Forestry & Recreation, Urban Forestry Services.
- b) The proposed front yard parking, shall be constructed in substantial conformity with the Plan dated June 8, 2019, and attached to this Decision.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

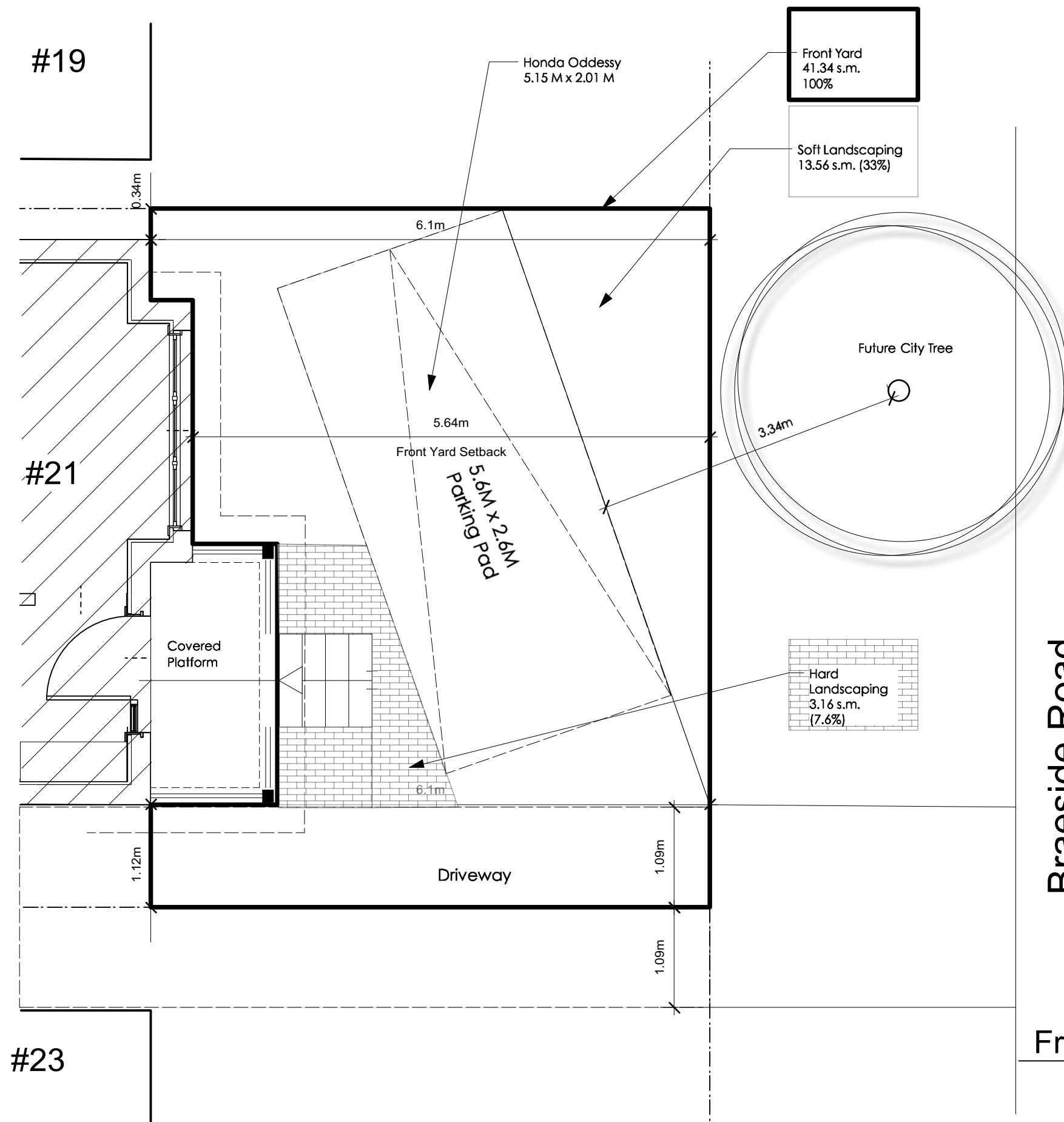


Part information for this drawing taken from:
 Plan of Lot 225, Part of Lot 226 & 227
 Reg'd Plan 1707, City of Toronto
 Prepared by:
 J.S. Leitch, OLS
 April 20, 1940

Site Plan
 Scale: 1:100



21 Braeside Road, Toronto



10.5.50 Yards
10.5.50.10 Landscaping

(1)
Front Yard Landscaping for Certain Types of Residential Buildings
In the Residential Zone category, on a lot with a detached house,
semi-detached house, duplex, triplex, fourplex or townhouse, the
following front yard landscaping regulations apply:

(A)
for lots with a lot frontage less than 6.0 metres, or a townhouse
dwelling unit less than 6.0 metres wide, the front yard, excluding a
permitted driveway, must be landscaping;

(B)
for lots with a lot frontage of 6.0 metres to less than 15.0 metres, or
a townhouse dwelling unit at least 6.0 metres wide, a minimum of
50% of the front yard must be landscaping;

(D)
a minimum of 75% of the front yard landscaping required in (A),
(B), and (C) above, must be soft landscaping.

(395)
Landscaping
means an area used for trees, plants, decorative stonework,
retaining walls, walkways, or other landscape or architectural
elements. Driveways and areas for loading, parking or storing of
vehicles are not landscaping.

(780)
Soft Landscaping
means landscaping excluding hard-surfaced areas such as
decorative stonework, retaining walls, walkways, or other
hard-surfaced landscape-architectural elements.

Braeside Road

Front Yard Plan
Scale: 1:50

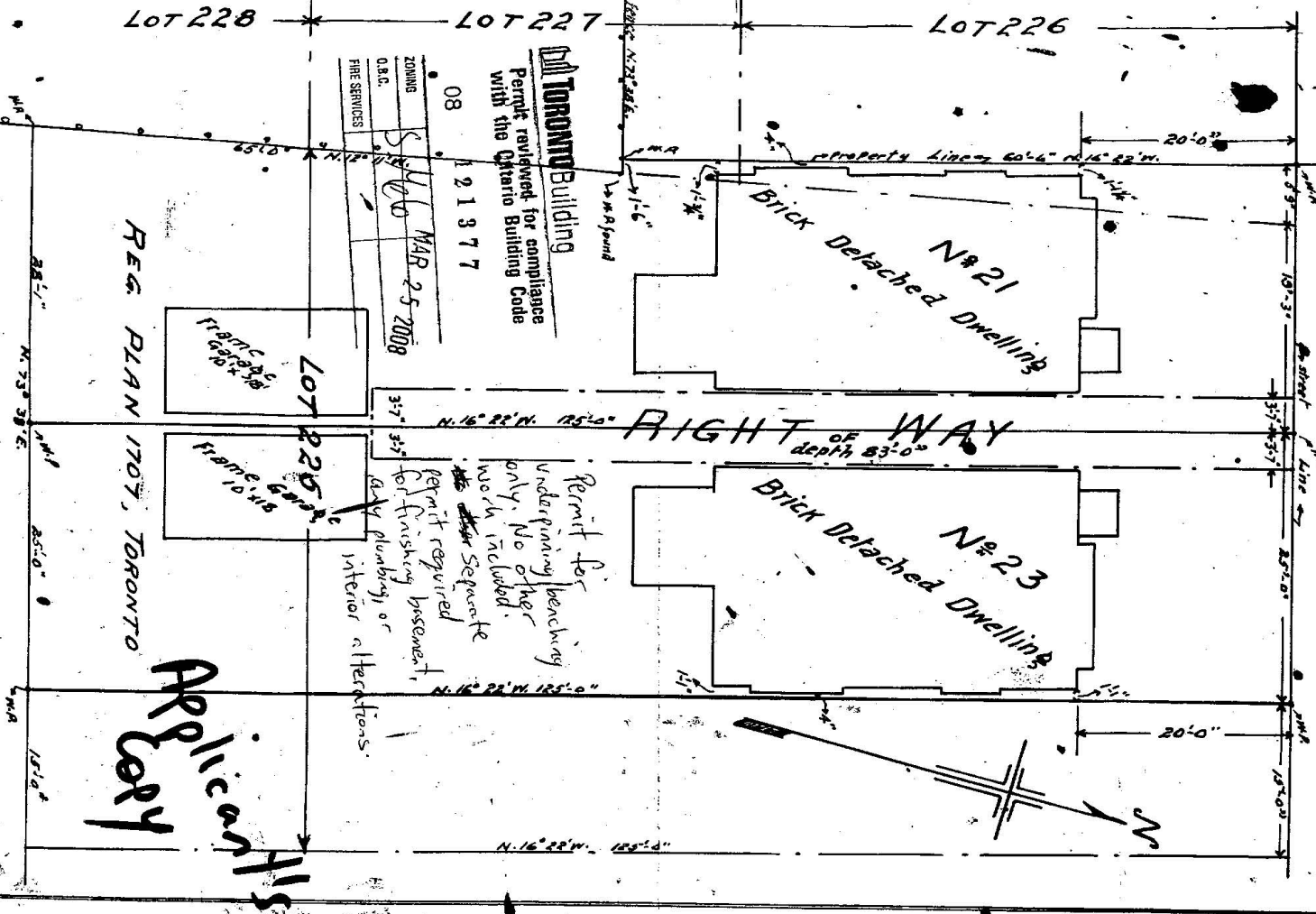


21 Braeside Road, Toronto

BRASIDE AVE. (W. 35' EASE)

10' on each

2' easement each side



Toronto Building
 Permit reviewed for compliance
 with the Ontario Building Code

ZONING	08
O.B.C.	121377
FIRE SERVICES	MAR 25 2008

Permit for
 underlying benching
 only. No other
 work included.
 Separate
 permit required
 for finishing basement,
 dry plumbing or
 interior alterations.

Applicant's
 Carey

PLAN of LOT 225 + part of LOTS 226 + 227
 REG. PLAN 1707, CITY of TORONTO

Scale: 1" = 10'

Toronto April 28th 1900
 Original Plan

Surveyed for
 22 Jarvis Blvd

AS Laid Out
 1900