

INTERIM DECISION AND ORDER

Decision Issue Date Monday, August 24, 2020

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

Appellant(s): CITY OF TORONTO

Applicant: LEO MASTANDREA

Property Address/Description: 3272 DANFORTH AVE

Committee of Adjustment Case File: 19 199058 ESC 20 MV (A0205/19SC)

TLAB Case File Number: 19 257023 S45 20 TLAB

Hearing date: Tuesday, August 11, 2020

DECISION DELIVERED BY D. LOMBARDI

APPEARANCES

NAME	ROLE	REPRESENTATIVE
KAYRA HOLDINGS INC	PARTY/ OWNER	MATTHEW DI VONA
CITY OF TORONTO	APPELLANT (CITY)	JASON DAVIDSON
TERESA LIU	EXPERT WITNESS	
JANE MCFARLANE	EXPERT WITNESS	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the City of Toronto (City) from a November 14, 2019 decision of the Scarborough Panel of the Committee of Adjustment (COA) approving variances to both the new, harmonized Zoning By-law 569-2013 (new By-law) and the former City of Scarborough Oakridge Community By-law 9812 (former By-law). The COA approved nine variances to permit the construction

of a proposed third storey addition and a three-storey rear addition to the existing commercial and residential building municipally known as 3272-3274 Danforth Avenue (subject property).

The subject property consists of two attached building units, 3272 Danforth Avenue and 3274 Danforth Avenue, which are connected to each other by a main wall, and are consolidated under the legally registered ownership of (John) Karaca Yildirim (Owner/Party). As such, the lands are referred to and addressed in this Decision as a singular building entity described for the purposes of the Decision as the 'subject property'.

The subject property is located on the north side of Danforth Avenue in the Oakridge Neighbourhood of the former City of Scarborough, east of Pharmacy Avenue and west of Danforth Road.

It is currently occupied by a two-storey brick, mixed use building that forms a continuous street wall between August Avenue (to the west) and Byng Avenue (to the east). The aging and dilapidated mixed-use building on the subject property formerly consisted of ground-level retail and second-floor residential space; the building is currently vacant.

The subject property is designated '*Mixed Use Areas*' in the City's Official Plan (OP) and is situated along Danforth Avenue which is also designated an '*Avenue*' in the OP. Furthermore, it is subject to Site and Area Specific Policy Area 120 – Danforth Avenue and Danforth Road within Area B which includes policies related to prohibited uses.

The property is zoned '*Commercial Residential – CR 2.5 (c2.5; f1.9) SS2 (x812)*' in the City's harmonized Zoning By-law 569-2013 (new By-law) and '*Commercial Residential (CR)*' in the City of Scarborough Oakridge Community Zoning By-law 9812 (former By-law).

BACKGROUND

The initial application to the COA was submitted by the Owner's architect, Leo Mastandrea, LEMCAD Consultants (Applicant), in July 2019.

The proposal contemplated a new, 3-storey addition and a 3rd storey addition atop the existing two-storey building, incorporating two (2) expanded commercial units at grade with a total commercial Gross Floor Area (GFA) of approximately 294 m². A total of eight (8) residential dwelling units, 4 per floor on the upper floors, are proposed above resulting in a total residential GFA of approximately 697.35 m²; residential dwelling unit typology consists of a mix of four, 2-bedroom units and four 1-bedroom units

The Applicant proposes a 9-car stacker system at the rear of the building to provide parking for the new residential units.

To accommodate this proposed development, the Applicant applied to the COA requesting approval of (9) variances in total, seven from the new By-law and two from the former By-law. The requested variances were based on a Zoning Notice (Tab 11, Exhibit 2) dated July 25, 2019, which identified the following:

By-law 569-2013

1. Relief to permit dwelling units on the second storey, per Exception CR 812;
2. Relief to reduce the building setback from the rear lot line abutting a residential zone from 7.5 to 6.17 m, per Exception CR 812;
3. Relief to reduce the side setback along the east side elevation wall from 5.5 m to 1.21 m;
4. Relief to not provide a soft landscaping strip along the rear lot line abutting the residential zone;
5. Relief to reduce the required accessible parking spaces from 1 to 0;
6. Relief to reduce the required parking spaces for residential, retail & visitor parking from 13 to 9 spaces;
7. Relief to reduce minimum parking space size for an obstructed parking space to 2.5 m wide by 5.4 m long by 1.75 m high for each space from 3.3 m wide by 5.6 m long by 2 m high.

By-law 9812

8. Relief to reduce the required parking spaces for residential, retail parking from 11 to 9 spaces; and
9. Relief to reduce minimum parking space size for an obstructed parking space to 2.5 m wide by 5.4 m long by 1.75 m high for each space from 3.3 m wide by 5.6 m long by 2 m high.

The COA hearing was scheduled for November 14, 2019. On November 8, 2019, Community Planning issued a Staff Report (Tab 13, Exhibit 2), recommending refusal of the following variances: Variance No.3 for the reduced setback of a wall with windows and doors from a side (east) lot line; variance #5 for the provision of 0 accessible parking spaces; Variances Nos. 6 and 8 for the number of parking spaces; and Variances Nos.7 and 9 for the dimensions of proposed parking spaces.

In expressing their concerns in the Report, Staff dealt with each of the problematic variances individually. Staff recommended refusal of Variance No. 3 (proposed east side yard setback) on the basis that the variance does not meet the general intent and purpose of the Zoning By-law, and is not desirable for the orderly development of the land or building given that the proposal will result in light/shadow

and overlook concerns and will not maintain appropriate levels of light and air circulation.

Planning Staff also advised that following discussions with Transportation Services Staff regarding the subject Application, and specifically variances Nos. 5, 6, 7, 8 and 9, concerns were expressed regarding the deficiency of parking spaces and parking space dimensions in the proposal. Transportation Services Staff particularly noted that reliance on parking stackers will limit convenient, accessible parking for building tenants and visitors, and could encourage undue parking impact on adjacent properties and neighbouring streets.

In the November 8th Planning Report, Staff referenced consent and variance applications (COA File Nos. B0014/18SC, A0079/18SC) for 3268-3270 Danforth Avenue, located immediately west and adjacent to the subject property, and submitted by the same owner as the subject property. These applications proposed a nearly identical development requiring similar variances as the proposal for the subject property and Staff expressed analogous concerns regarding that proposal. In their comments to the Committee, Staff requested deferral of the applications to enable discussions with the applicant.

Nevertheless, those applications were approved by the COA and no appeal was filed by the City or any neighbours.

The COA heard the Application for the subject property on November 14, 2019. At that hearing, the Committee approved the subject Application. On December 4, 2019, the City filed a Notice of Appeal of that decision with the TLAB and the Tribunal set a Hearing date of March 24, 2020 to hear that appeal.

In the interim, the Owner of the subject property retained Weston Consulting (Jane McFarlane), a planning consulting firm, to provide expert witness services in support of the variance Application. In the process of reviewing the materials associated with Application, Ms. McFarlane identified a concern with the incorrect parking calculations related to the original Zoning Review dated July 25, 2019 (Tab 11, Exhibit 2). These inconsistencies were subsequently relayed to City staff.

As a result, a new Zoning Notice was re-issued by the Zoning Examiner on February 11, 2020 (Tab 16, Exhibit 2) revising the number of parking spaces required for residential, retail and visitor parking under the new By-law, from 13 to 10 parking spaces for the proposed redevelopment.

Ms. McFarlane undertook further engagement with the Zoning Examiner to verify the methodology for rounding the required number of parking spaces and this on-going dialogue ultimately resulted in a further iteration and re-issuance of a Zoning Notice, dated February 27, 2020 (Tab 17, Exhibit 2), which confirmed that the subject proposal currently meets the parking space requirements and, therefore, requested variances Nos. 6 and 8 are no longer required.

As previously noted, this appeal was scheduled to heard by the TLAB on March 24, 2020. In the ensuing period between setting the Hearing date and the return date, the world encountered a global pandemic in the form of COVID-19. As a result, effective as of March 16, 2020, the Tribunal ordered a cessation of all Hearing events and the suspension of filing timelines, pursuant to the Government of Ontario's Emergency Order, Ontario Regulation 73/20.

This interval, in effect a 'Suspension Period', reflected the widespread concern for the COVID-19 virus, evident across the world and the City. Initially anticipated to possibly end on May 29, 2020, that Suspension Period eventually became a protracted timeframe with extensions issued by the Tribunal to April 30, 2020, then May 29, 2020, and then, ultimately, a further extension to August 14, 2020.

However, the TLAB has recognized the possibility of undertaking limited 'virtual or remote' Hearing events such as consent and settlement proceedings where appropriately supported. Given this option, the subject appeal was identified by the TLAB as a matter that could be accommodated as such and Parties were canvassed for an assessment of their technological ability to participate in a remote Hearing as well as their willingness to do so.

Following consultation with the Parties, and on consent, the TLAB issued a Notice of Electronic Hearing pursuant to the Rule 10.1 of the TLAB's Rules of Practice and Procedure (Rules) setting a Hearing date of August 11, 2020, to hear the matter.

On August 10, 2020, the day prior to the scheduled virtual Hearing, TLAB staff received correspondence, by email, from the Applicant's solicitor, Matthew Di Vona, carbon copied to the Parties. In that email, Mr. Di Vona stated that the Applicant and the City had settled the matter. In support of this declaration, he attached a revised set of architectural Site Plan drawings (Exhibit 3) and a 'Revisions to the Requested Variance List' (Exhibit 4), which he indicated would be presented to the presiding Member at the Hearing.

No one other than the Parties, above recited, attended the remote Hearing and the TLAB received no further responses.

MATTERS IN ISSUE

Notwithstanding the notice of settlement acknowledged by the Applicant, the TLAB must hear evidence in order to be satisfied that the requested variances satisfy the statutory tests in s.45(1) of the *Planning Act*. The reason is that the Hearing is a hearing *de novo*, as if the COA had not heard and decided the matter.

Additionally, the TLAB was required to hear from all the Parties to assess the acceptability of the settlement given the fact that the Tribunal had received no formal communication from the City acknowledging recognition of the settlement.

Finally, the TLAB heard professional planning evidence on behalf of the Applicant to assess the appropriateness of the Application, whether the settlement reflects good planning and whether the requested variances, as revised and agreed upon, satisfy the four statutory tests in s.45(1) of the *Planning Act (Act)*.

Notwithstanding the declaration of an acknowledged settlement, the Tribunal is still required by its authority to oblige the Applicant to adduce its evidence.

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').

Minor Variance – S. 45(1)

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

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

EVIDENCE

On convening the remote WEBEX Hearing, I registered the presence of the following parties: Matthew Di Vona, counsel for the Applicant; Jane McFarlane, the Applicant's land use planning expert witness; Jason Davidson, counsel for the City; and, Teresa Liu, a planner with the City and its expert witness.

I advised that I had attended the subject property, walked the immediate area (neighbourhood) and familiarized myself with the materials filed but that it is the evidence to be heard at the Hearing that is of importance.

As to the issue of the absence of correspondence from the city regarding the settlement in this matter, I asked Mr. Davidson to confirm that he had been served with the revised materials filed with the TLAB, including: the revised architectural plans; the revised variances list dated August 10, 2020; and the email from Mr. Di Vona, also dated August 10, 2020, confirming that the matter had been settled.

He acknowledged receipt of all the requisite documents which he noted reflected the issues resolved and matters agreed to and confirmed that the matter had indeed been settled. He also confirmed that the City would not be opposing the Application and that the City would not be presenting any witnesses.

At the request of Mr. Di Vona, the following exhibits were entered and referenced: Ms. McFarlane's final Expert Witness Statement, filed with the TLAB on March 9, 2020 (Exhibit 1); the consolidated Document Disclosure submission, dated March 9, 2020 (Exhibit 2); the revised architectural Site Plan set of drawings dated July 24, 2020 (**Attachment #2** to this Decision) and filed with the TLAB on August 10, 2020 (Exhibit 3); and, the 'Revised List of Requested Variances' received by the TLAB on August 10, 2020 (**Attachment #1** to this Decision and Exhibit 4).

For the record, I advised Mr. D Vona that upon reviewing the filed materials prior to the Hearing and after undertaking a comparison of the previously filed Site Plan drawings with the revised drawings filed on August 10th, the east elevation drawings, #A9, was missing from Exhibit 3. This, I noted, is of material importance in this matter because drawing A9 reflects the most significant revisions to the proposed 2nd and 3rd floor additions and directly impacts the Applicant's position as to why Variance #3 is no longer required.

In reviewing the revised drawing package, Mr. Di Vona acknowledged the error and apologized for the omission. He assured the Member that the missing drawing would be provided posthaste and following a brief recess of the Hearing, the revised drawing was provided to TLAB staff and incorporated, contemporaneously, into the set of drawings identified as Exhibit 3.

Ms. McFarlane, a Registered Professional Planner (RPP), was the only witness proffered by the Applicant. I qualified Ms. McFarlane to give expert opinion evidence in the area of land use planning. As there was no contrary evidence provided and no questioning of the witness by the City's solicitor, except for one point of clarification at the conclusion of her testimony (which I briefly detail below), it is necessary only to briefly allude to the principle opinions.

Employing a rather extensive number of photographs (various TABS in Exhibit 2), consisting of some 66 photos arranged as part of photo board of the subject property and surrounding neighbourhood, Ms. McFarlane proceeded to provide a description of the property, the local context, and various development/redevelopment projects in the neighbourhood.

She described the subject property as consisting of a 'mixed use building' which is currently vacant but formerly consists of ground-level space and 2nd-floor residential space above. There is a two-storey concrete block addition located at the rear of 3274 Danforth Avenue and a wooden deck at the 2nd-floor levels at the rear of both 3272 and 3274 Danforth Avenue (Tab 4, Ex. 2, photos 1-7).

Driveway access to the rear of the property is from August Avenue to the west, across a reciprocal easement that traverses the rear of the subject property as well as

the properties at 3264-3270 Danforth Aves., and 3278 Danforth Ave. This easement maintains a 3.05 m right-of-way which separate the rear of the properties from the abutting residential dwellings to the north.

There are currently four surface parking spaces available at the rear of the subject property.

Ms. McFarlane described the neighbourhood as consisting of a variety of mixed-use, commercial, institutional, and residential uses within predominantly two-storey and some single storey buildings primarily situated along Danforth Avenue, between Victoria Park Avenue and Danforth Road (Tab 7, Exhibit 2). Newer and taller mixed-use buildings are observed along this stretch as well (photo 18, Tab 7, Exhibit 2), including a 10-storey apartment building owned by Toronto Community Housing Corporation located at 3330 Danforth Avenue.

The mixed-use built form in her study area is typically occupied by a variety of ground-level commercial uses with 2nd floors typically occupied by either commercial, office or residential units.

A residential neighbourhood is located to the north of the subject property consisting of detached and semi-detached dwellings mostly older in age although with significant newer, recently built redevelopment. The street network is primarily linear forming a grid pattern running east-west and north-south oriented around Danforth Avenue.

She described Danforth Avenue as incorporating a pedestrian environment consisting of wide sidewalks, street furniture and tree plantings on both sides of the street. Municipal 'Green P' street parking is provided along both sides of Danforth Avenue and is restricted during weekday morning peak times during 7:00 am and 9:00 am.

In identifying recent development approvals in the neighbourhood, she identified multiple examples of residential and mixed-use developments which achieved variances for reduced parking requirements, specifically highlighting COA decisions for 3268, 3266 and 3334 Danforth Avenue (Tab 21, Exhibit 2).

She noted the active application for a proposed 8-storey building at 3258 Danforth Avenue (west of the subject property) owned by the same Owner.

Ms. McFarlane also emphasized the abundance of transit opportunities in the vicinity of the subject property including multiple bus routes along Danforth Avenue as well as proximity to the GO Lakeshore East rail line and the Line 2 of the Bloor Danforth subway, which is located approximately 650 metres from the site.

The Proposal

The original proposal before the COA contemplated a new 3-storey rear addition and a new 3rd storey above the existing two-storey building (Tab 10, Exhibit 2). The

ground level will accommodate two expanded commercial units with a total of eight residential units, four units per floor, proposed for the upper floors.

The general design remains the same but certain aspects of the Application have been revised as a result of the Applicant's discussions with City staff to address their concerns. These modifications are reflected in the revised architectural plans identified in Exhibit 3 and attached as **Attachment 2** to this Decision. Ms. McFarlane asserted that City Planning Staff principle concern with the subject proposal relates specifically to variance #3 for reduced setback of a wall with windows and doors from a side (east) lot line.

The zoning by-law provisions for the subject property permit a 0 metre setback from a side lot line where there are no windows or openings in the main wall. Initially, the Applicant had proposed an east side yard setback of 0.95 m and 1.21 m setback for the 2nd and 3rd storeys. The proposed 2nd and 3rd floor east elevation incorporates windows and balcony openings for the proposed, new upper floor residential units.

In their Report, Planning Staff expressed concern that *"should the neighbouring property to the east develop their property as-of-right with a main wall without windows or openings, the proposed massing of the subject development could create a 1.2 metre wide, two-storey deep "well" in the massing where balconies, windows, and doors are currently proposed."* (Tab 13, Exhibit 2, p. 41)

Furthermore, Staff noted that *"in addition to the light, air circulation and amenity impacts, this well-like condition has the potential to cause issues related to snow accumulation and flooding from stormwater and snowmelt."* (Tab 13, Exhibit 2, para 43)

As part of settlement discussions with the City and revisions agreed to, the Applicant has redesigned the internal configuration of the proposed 2nd and 3rd floors residential units eliminating all the windows and openings on the east elevation previously incorporated. The result is the maintenance of a 0 m east lot line setback. By reconfiguring the interior floor plans for the residential units, the Applicant has reoriented the units by positioning bedrooms to face in a north-south alignment thereby removing the necessity for any openings along the east elevation wall.

As a result of this redesign, Ms. McFarlane asserted that the previously requested Variance #3 is no longer required and has therefore been removed from the revised list of variances required to permit this development.

The only other revision of any material note relates to nominal increases in the proposed total residential and commercial floor area. In total, the residential component of the redevelopment has increased by 40.63 m² to 560.22 m², and the ground-floor commercial component has increased by a nominal 0.74 m² to 295.32 m². Ms. McFarlane confirmed that the overall, proposed GFA of 1033.07 m² is not consequential as the Applicant has not requested a variance for an increase in permitted GFA.

With respect to the *Planning Act* tests, I advised that the TLAB was under a statutory jurisdiction to address the appeal independent of the decision of the COA

premised upon the considerations above noted, under 'Jurisdiction'. In this regard, Ms. McFarlane addressed each of the four tests individually. I summarize her 'viva-voce' testimony below.

In addressing the applicable planning documents, the *Provincial Policy Statement* 2014 (PPS) and the *Growth Plan for the Greater Golden Horseshoe* 2019 (Growth Plan), she opined that provincial policies direct development to growth area and allow development in areas identified for intensification and growth. The subject property is located within an area designated for growth and the proposal represents an opportunity for a compact form, mix of uses, and densities that allow for the efficient use of the lands.

As to the Growth Plan, she specifically highlighted Policy 2.2.4 discussing the identification of Major Transit Station Areas (MTSA) within Official Plans. Utilizing a Context Map found at Tab 6 in Exhibit 2, Ms. McFarlane asserted that the subject property falls within the buffer zone of 500-800 m of a subway station as quantified by the Growth Plan for the delineation of MTSA's and priority transit corridors.

She, therefore, opined that the proposed variances are consistent with the policy objectives of the PPS and conform to the Growth Plan.

She then addressed the four statutory tests, individually, as follows.

1. Are the Variances in Keeping with the General Intent and Purpose of the OP?

Ms. McFarlane identified the subject property as being designated 'Mixed Use Areas' and on a stretch of Danforth Avenue designated as an 'Avenue' in the OP. She asserted that pursuant to Policy 2.2.3 in the OP, this stretch of Danforth Avenue is considered a corridor where re-urbanization should occur, and new housing also built. Correspondingly, the *Avenues* are key corridors within the OP along which new housing and job opportunities are encouraged.

As such, she asserted that the proposed variances would enable the redevelopment of the subject property consistent with the policies of the OP providing for new residential development and commercial space along an Avenue within a Mixed Use Area. She opined that the proposed addition of eight residential units is an excellent example of the type of incremental change and intensification intended by the OP and submitted that the development will create a high-quality mixed use, built form that will accommodate adequate parking, and transition appropriately to adjacent properties.

2. Are the Proposed Variances in Keeping with the General Intent and Purpose of the Zoning By-law?

Ms. McFarlane reviewed the revised list of six variances now being requested, five from the new By-law and one from the former By-law, as follows:

I. Second Storey Dwelling Units (Variance #1)

She noted that this variance is not required as it results from a technical error in the new By-law as confirmed by Community Planning Staff in their November 8, 2019 Report to the COA. Given that the former By-law includes a provision permitting dwelling units on the second storey of properties abutting Danforth Avenue in the CR zone, she asserted that this provision was not carried forward to the new By-law.

In that Report, Planning Staff (Tab 13, Exhibit 2, p. 3) reaffirmed this anomaly and acknowledge that *“staff are currently preparing a technical amendment by-law to correct a number of by-law errors, including Exception CR 812, which is anticipated to be considered by City Council in the next few months.”*

II. Building Setback from Rear Lot Line (Variance #2)

Ms. McFarlane suggested that the rear building setback from the abutting residential zone is intended to ensure an appropriate amount of separation to transition between properties and land uses. The Applicant is requesting a reduction of slightly more than one metre, from the required 7.5 m to 6.17 m. As illustrated in an aerial photo and survey (Tabs 3 and 5, Exhibit 2), she asserts this is reflective of similar setback conditions along segments of Danforth Avenue generally, and of properties in the immediate context of the subject property, specifically.

III. Side Yard Setback (East Side) (Variance #3)

This variance is no longer required because of the redesign of the east elevation and the elimination of windows and openings, as illustrated in East Elevation drawing A9.

IV. Soft Landscaping Strip Abutting Residential Zone (Variance #4)

Ms. McFarlane asserted that the soft landscaping strip required by the new By-law is intended to ensure an appropriate amount of permeable surface and buffering between the abutting residential properties. She argued, however, that it is not possible to address this zoning deficiency given the cross-access easement currently applicable at the rear of the subject property. She opined that as the Applicant cannot legally comply with this variance, the variance should be permitted.

V. Accessible Parking (Variance #5)

Whereas the new By-law requires one accessible parking space, Ms. McFarlane noted that the proposed redevelopment will provide 0 accessible spaces. She asserted that the proposal consists of ground-floor units with access to Danforth Avenue and walk-up residential dwellings on the 2nd and 3rd floors.

She argued that the street parking available along the segment of Danforth Avenue in proximity to the subject property can adequately accommodate the accessible parking requirement for this development. Additionally, she submitted that an

accessible parking permit for a space, likely on August Avenue, could be obtained from the City.

VI. Minimum Parking Space Size (Variance Nos. 6, 7, 8 and 9)

Variances in both the former and new By-laws are required to provide relief related to parking space size as well as for the number of parking spaces proposed for the retail, visitor, and residential uses. Ms. McFarlane opined that the general intent and purpose of both the in-force and new By-laws are to ensure sufficient parking for the intended uses is provided on site.

The Applicant is proposing a parking stacker with the capability of accommodating nine (9) cars at the rear of the building; however, the chosen stacker model technology provides a slightly reduced parking space dimension than required by the By-laws as noted below.

Parking Space Dimensions

	<i>Required</i>	<i>Proposed</i>
<i>Width</i>	3.2 m	2.5 m
<i>Length</i>	5.6 m	5.4 m
<i>Height</i>	2 m	1.75 m

In their November 8th Report, Planning Staff also identified this aspect of the proposal as problematic. They echoed similar Transportation Services Staff's concerns with parking space deficiency and dimensions associated with the parking stacker, which they had articulated in comments concerning the development application for 3268-3270 Danforth Avenue.

At page 4 of their Report, Planning Staff stated that *"the reliance on the use of vehicle stackers will limit conveniently accessible parking for building occupants and particularly for visitors. These limitations can also be anticipated to encourage undue parking impact on adjacent properties and neighbourhood streets."*

Ms. McFarlane noted that in response to these expressed concerns, the Applicant engaged the services of a parking consultant (LEA Consulting Ltd.) to conduct an analysis of the proposed parking approach. The consultant determined that from a technical standpoint the proposed stacker is an appropriate off-street parking option that addresses Staff's concerns. They also confirmed adequate egress/ingress to and from the rear parking stacker, to the satisfaction of Transportation Services staff.

In response to my question of the City solicitor as to whether the issue of parking was still a concern, Mr. Davidson confirmed that City Staff's concerns regarding the parking solution proposed for this development have now been resolved.

3. Are the Proposed Variances Desirable for the Appropriate Development or Use of the Land?

In addressing this test, Ms. McFarlane submitted that the proposed redevelopment of the subject property is appropriate based on the mixed use building typologies in the area, is transit supportive, will result in expanded retail space and new, upgraded residential dwelling units that are proximal to higher-order and surface transit.

4. Are the Variances Minor?

She argued that the variances are reflective of the planned development of the surrounding areas. Given that the redesign of the east elevation has resulted in the elimination of any windows or openings at the upper floors along this wall, she submitted that the proposal would not create any adverse impacts of a planning nature on the adjacent properties or streetscapes including with respect to shadowing, privacy, overlook or parking.

She opined that the order of magnitude of the variances requested is reasonable and the resulting built form can be accommodated on the site within a physical context that exhibits similar and complementary characteristics.

In concluding her testimony, Ms. McFarlane opined that the proposal satisfies all applicable policy, four statutory tests, and represents good planning. She recommended that the TLAB approve the Application and the associated variances, as revised, based on the Zoning Notice dated February 27, 2020.

She advised, however, that due to various reasons most likely resulting from the on-going COVID-19 impact, the Applicant had been unable to obtain a new Zoning Notice from the City prior to the Hearing confirming the final list of required variances. As a result, she asked that, if granted, approval of the Application be conditional on the Applicant receiving a final Zoning Notice confirming the revised list of required variances based on the revised set of drawings forming Exhibit 3 to this Decision with amended Drawing A9 included.

I was advised that a Zoning Notice is typically received within 3-4 weeks once requested but that in the current situation the anticipated timeframe for the document was difficult to predict. Mr. Davidson was unable to provide any additional information in this regard, but he did offer to contact the Zoning Examiner to expedite issuance of the Notice. I thanked him for his expression of assistance.

Mr. Davidson advised the Member that the City would not be cross-examining Ms. McFarlane but he did ask the witness a clarifying question regarding her testimony concerning MTSAs. Mr. Davidson asserted, and Ms. McFarlane agreed, that MTSAs in the City's OP are to be delineated as part of the Municipal Comprehensive Review (MCR) process currently underway. He noted that the MCR is being undertaken by the City in segments and that as part of that process there is to be a phased review of

MTSAs; however, he acknowledged that some MTSAs studies could be completed prior to the conclusion of the MCR process.

He further asserted, and Ms. McFarlane agreed, that while the situation of the subject property within 650 m of a subway station can be considered as within the Growth Plan's definition of an MTSA on a priority transit corridor, that MTSA has yet to be delineated.

ANALYSIS, FINDINGS, REASONS

I take this opportunity to thank the Parties, the Applicant, and the City, for their cooperation, civility, and collaboration in this proceeding. Their participation in advancing discussions and their perspicacity in arriving at a settlement of the issues, although somewhat at the 'eleventh-hour', is nevertheless greatly appreciated by the Tribunal.

To the extent that the variances requested differ from those before the COA, I accept that the Applicant's proposed revisions to the east elevation above the ground floor, and reducing the variances from nine to six, while significant constitutes reductions to, or improvements from the original application previously advanced. As such, I find that no further notice is required pursuant to s.45(18.1.1) of the *Act*, and the revisions can be considered, and no further notice is required. In any event, the evidence showed that all interested persons appeared to have received notice, so the hearing on the merits then proceeded.

I agree with Ms. McFarlane and concur with her assessment that the subject property's physical and planning context support the proposed variance application and the resulting development; I find the proposed redevelopment is reflective of the area's physical context and represents good planning.

I note that the subject property is within the study area of the Danforth Avenue Study adopted by City Council in January 2008. That Study created a vision for revitalization and enhancement of the segment of Danforth Avenue between Victoria Park Avenue and Medford Avenue and was implemented through the adoption of amendments to the OP and the former By-law. That segment of Danforth Avenue, along which the subject property is located, has begun to experience redevelopment in the last ten years as evidenced by redevelopment that has occurred at both 3087 Danforth Avenue (residential mid-rise) and 3313 Danforth Avenue (commercial), west of the subject property.

Additionally, there are currently two applications for Site Plan Control proposing new, mid-rise, mixed-use buildings under review including a proposed 8-storey building at 3258 Danforth Avenue and a proposed 6-storey building at 3359 Danforth Avenue. As well, consent and variance applications for 3268-3270 Danforth Avenue, immediately west of the subject lands, were approved by the COA on December 13, 2018. Those applications proposed a nearly identical development requiring analogous variances to

those proposed by the Applicant, including reduced parking supply. As earlier stated, no appeal was filed by the City or the neighbours in that matter.

I find Ms. McFarlane's evidence convincing that approved variances and development applications along Danforth Avenue and Danforth Road in proximity to the subject property indicate that the current and emerging development context is active in the area and that this 'Avenue' has begun to experience reinvestment and redevelopment. I concur that the proposed Application will permit a high-quality, mixed use, built form to occupy a currently vacant, underutilized property in an area where the OP stipulates growth should occur.

The 'Avenues', of which Danforth Avenue is one, are identified by the OP as key corridors which are anticipated to experience re-urbanization; development within this corridor is intended to accommodate most of the anticipated increase in new housing and employment opportunities while enhancing the pedestrian environment and supporting transit. In that regard, this stretch of Danforth Avenue is well-served by public transit and I find that the proposed parking arrangement, along with the available on-street parking options, are ample to ensure sufficient parking for the intended uses.

I also find Ms. McFarlane's evidence compelling regarding the fact that the proposal will create no adverse impact on the adjacent properties or streetscape including with respect to shadowing, privacy, and overlook. I find the variances are reflective of the existing built form found particularly in the pattern of buildings along this stretch of Danforth Avenue, many of which are original builds. I agree that the resulting redevelopment will allow reinvestment to occur on the subject property in a manner that is compatible with the adjacent properties, including the previously approved application for 3266-3268 Danforth Avenue.

Furthermore, I agree with the Applicant and find the revisions now before the Tribunal improve the state and appearance of the current buildings, lessen the overall impact of the proposed 2nd and 3rd storey additions on the adjacent properties, and are generally more in keeping with the immediate commercial neighborhood. Therefore, I find the changes are within the spirit of s.45(18.1.1) and no re-notification is required.

With respect the requirement of a 1.5 m soft landscaping strip along the rear lot line abutting the residential zone, I find Ms. McFarlane's opinion that the Applicant cannot legally comply with this zoning standard deficiency convincing given the existence of the existing cross-access easement. Her argument was persuasive in illustrating that such a landscaping strip is no possible within the current context. There is some semblance of suitable landscaping already existing on the abutting residential properties.

As Ms. McFarlane illustrated in her photo evidence in Exhibit 2 (Tabs 3, aerial photo, and Tab 4, photo 7) there are a series of large, coniferous trees planted along the residential side yard lot lines that abut the rear of the subject property.

Finally, I find on the strength of the materials submitted by the Parties and the evidence provided at the Hearing by the Applicant's expert witness, that: provincial

policy is not contravened; the general intent and purpose of OP policy and the purposes of the Zoning By-law are maintained; and the variances are minor and desirable.

I accept the settlement and provide for its implementation.

With respect to the issue of the outstanding final Zoning Notice, I find that counsel for the Applicant properly sought to insulate, in providing a revised list of required variances resulting from the redesigned plans which may require some alterations, any approval from the TLAB without this document. As such, I agree with the counsel that the Owner, the City, and the TLAB must have assurance that there are no further variances necessary to pursue the Owner's intention for the redevelopment of the subject property. Therefore, the requested variances will be approved conditionally on the condition that a final Zoning Notice being filed with the TLAB confirming the requirement for no additional or varied variances other than those found in Attachment 1, below.

INTERIM DECISION AND ORDER

1. The appeal is dismissed, and the decision of the Committee of Adjustment is confirmed, in part, but in accordance with the Revised Plans depicted in Attachment 2 hereto as follows:
 - a) The Variances as set out in Attachment 1 hereto are conditionally approved, subject to the Owner or Applicant:
 - i. The Owner shall have a period of two (2) months from the date of the issuance of this Interim Decision and Order to submit a final Examiner's Zoning Notice. Electronically, to the TLAB and copied to the Parties. If reflective of the variances listed in Attachment 1 to this Interim Decision and Order, the TLAB upon such receipt may issue a final Decision and Order, with or without conditions.
 - ii. If the TLAB is not in receipt of the document describe in paragraph 1.a) i) hereof within the time period set out in paragraph 1.a) i), or any extensions thereto granted by the TLAB, or if there are discrepancies in the number of variances or the wording of the variances, the approval in respect of paragraph 1.a) of this Interim Decision and Order shall be dismissed.
 - iii. Prior to the occupancy of any residential unit, providing and operationalizing a variance compliant nine (9) unit motor vehicle parking stacker on the subject property, satisfactory to the Director of Transportation Services, or designate.

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

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

ATTACHMENT 1 – Requested Variances to the Zoning By-law

By-law No. 569-2013

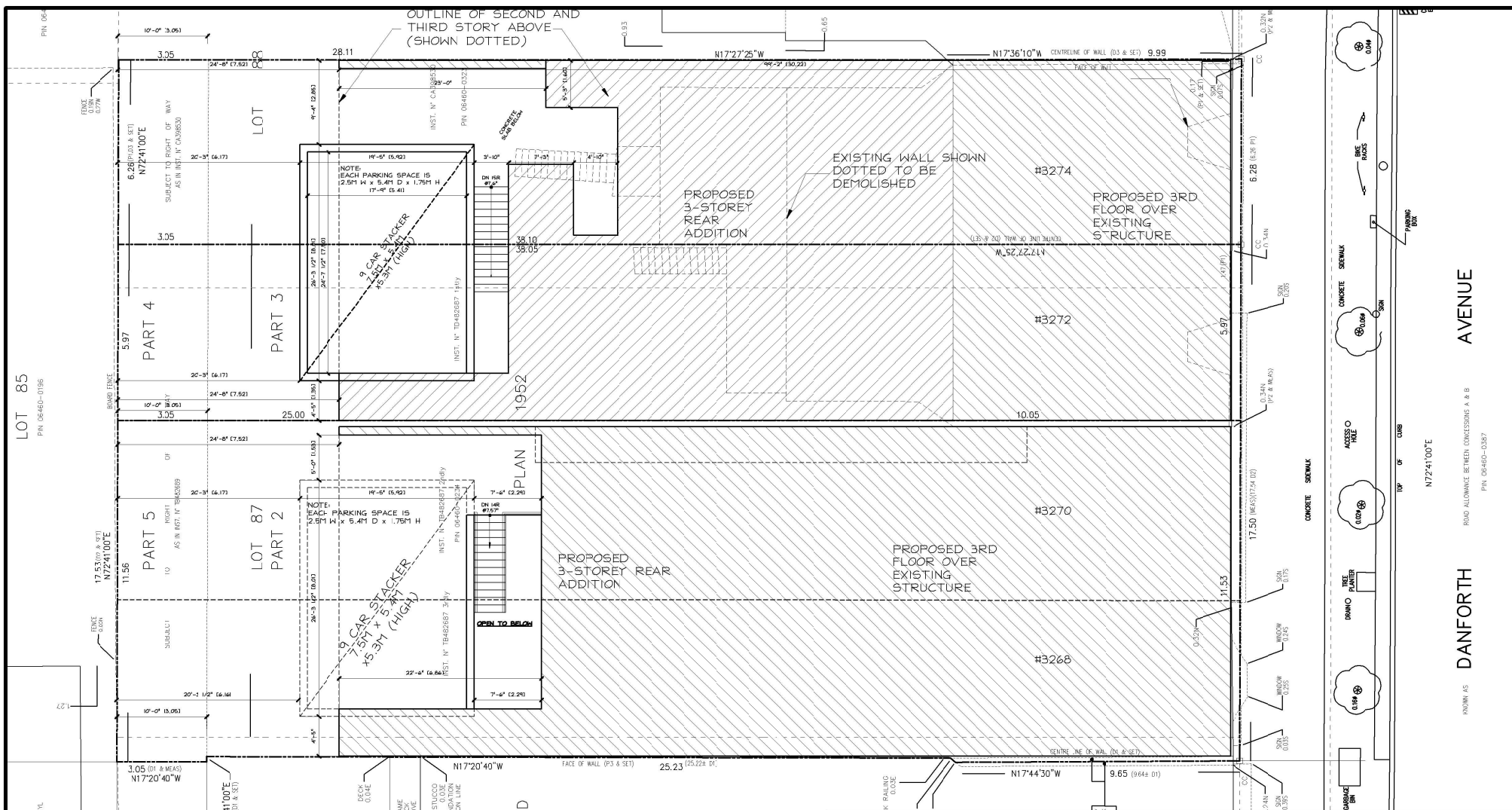
1. The proposed dwelling units are located on the second and third storey. Whereas a dwelling unit must be entirely located above the second grade storey of the building; or at least 18.0 m from a lot line that abuts Danforth Avenue.
2. The proposed building setback is 6.17 m from the rear lot line abutting the Residential Zone category. Whereas the minimum required building setback from a lot line that abuts a lot in a Residential Zone category is 7.5 m.
3. A soft landscaping strip would not be provided along the rear lot line abutting the Residential Zone category. Whereas if a lot in the CR zone abuts a lot in the Residential Zone category, a minimum 1.5 m wide strip of land used only for soft landscaping must be provided along the part of the lot line abutting the lot in the Residential Zone category.
4. No accessible parking spaces are proposed. Whereas one accessible parking
5. The dimensions of the proposed parking spaces located inside the parking stacker are 2.5 m wide by 5.4 m long by 1.75 m high for each space. Whereas the required minimum parking space size is 3.2 m wide by 5.6 m long by 2 m high for an obstructed parking space.

By-law No. 9812

6. The dimensions of the proposed parking spaces located inside the parking stacker are 2.5 m wide by 5.4 m long by 1.75 m high for each space. Whereas the required minimum parking space size is 3.3 m wide by 5.6 m long by 2 m high for an obstructed parking space.

ATTACHMENT 2

Revised Site Plans



1 **PROPOSED SITE PLAN** SCALE= 1:125

SITE PLAN INFORMATION TAKEN FROM:
SURVEYOR'S REAL PROPERTY REPORT
PART 1: PLAN OF
LOT 87 and PARTS OF LOTS 86 & 88
REGISTERED PLAN 1952
CITY OF TORONTO
GEOGRAPHIC TOWNSHIP OF SCARBOROUGH
E.W. BOWYER B.Sc., O.L.S.

LEM CAD CONSULTANTS

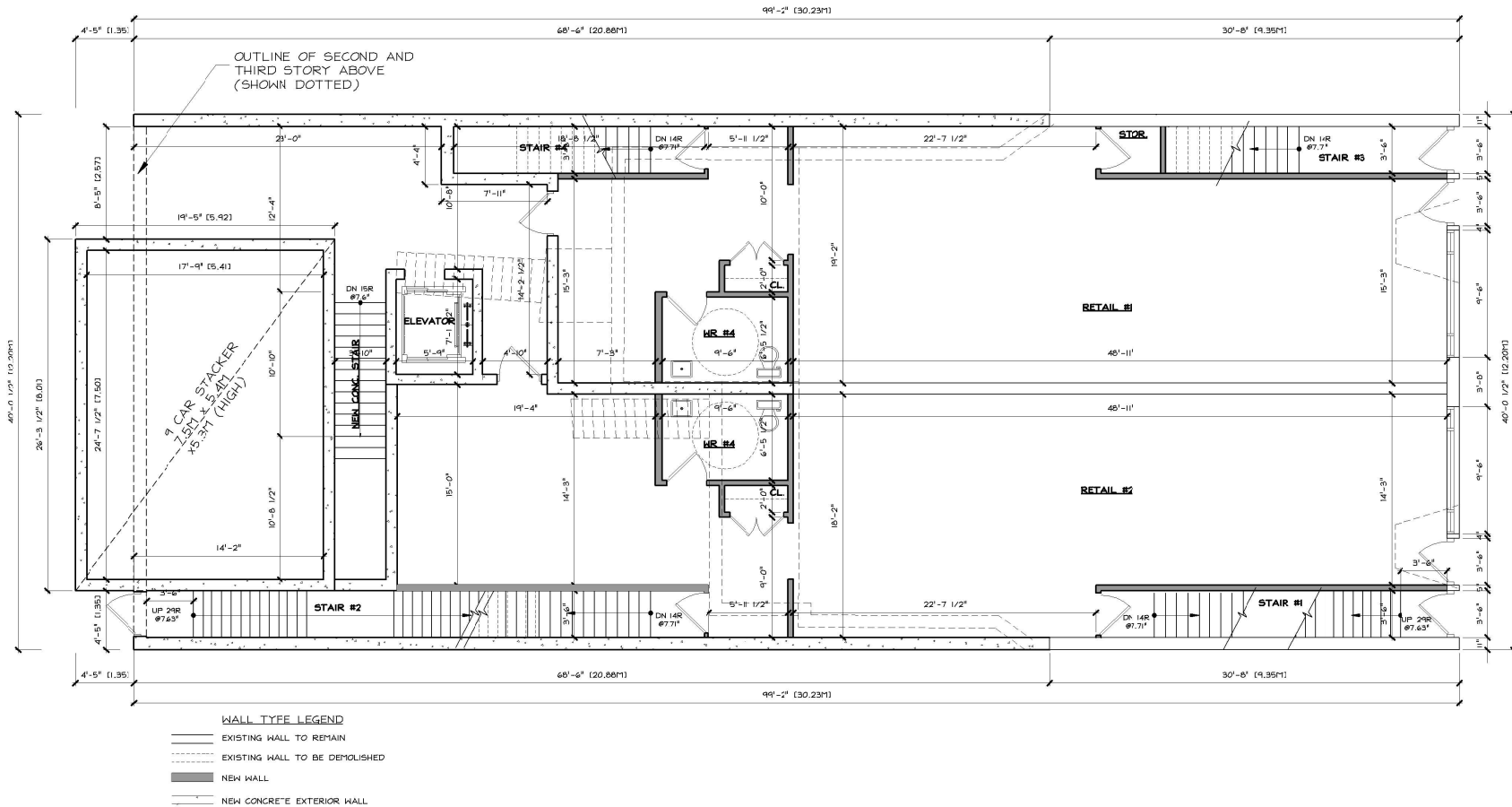
817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A1

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A1 OF 11 CADD-NAME: 170619



ORIENTATION



**PROPOSED
GROUND FLOOR PLAN**
SCALE= 1:100

LEM CAD CONSULTANTS

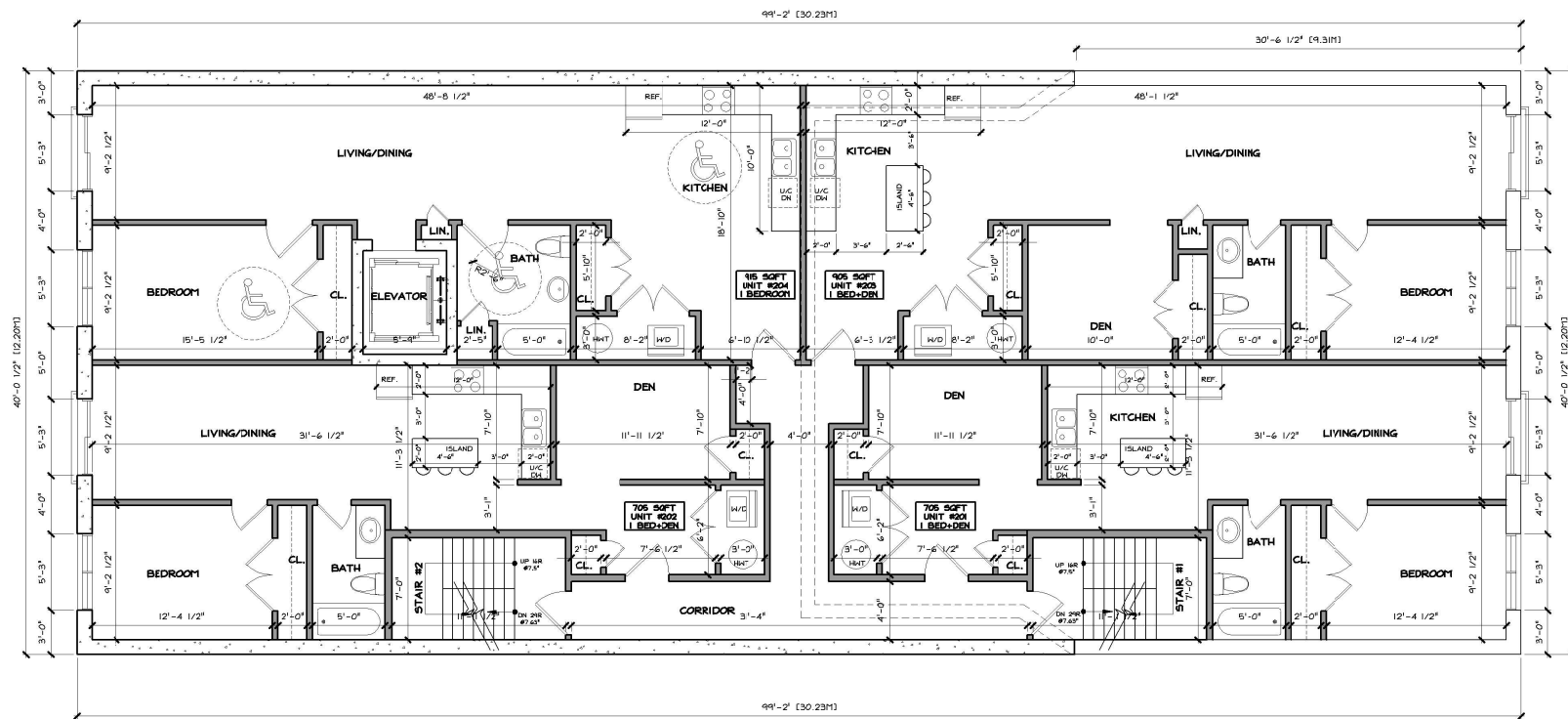
817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A3

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP. BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A3 OF 11 CADD-NAME: 170619



ORIENTATION



1
A4
PROPOSED
SECOND FLOOR PLAN
SCALE: 1:100

LEM CAD CONSULTANTS

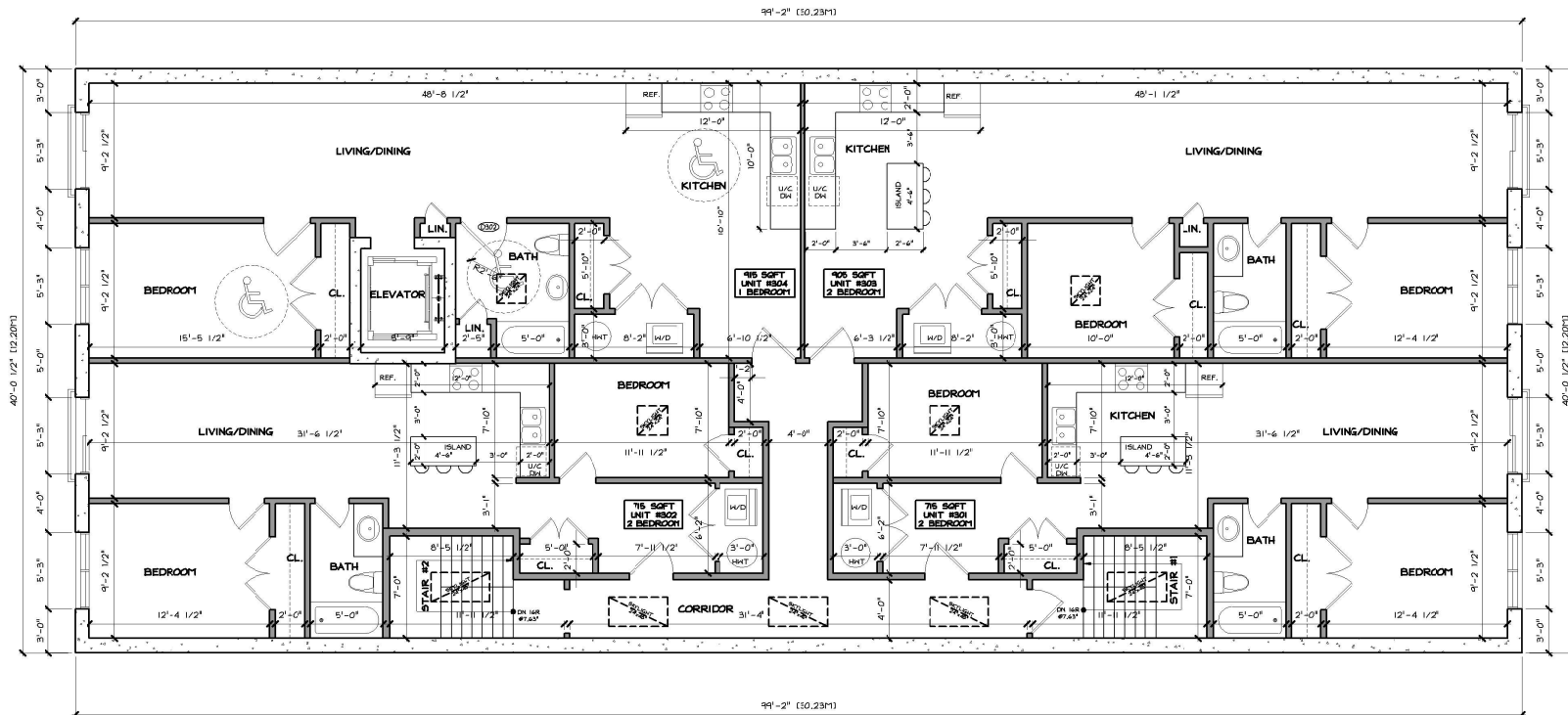
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PHONE: (416) 405-8164 FAX: (416) 405-9601

A4

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP. BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A4 OF 11 CADD-NAME: 170619



ORIENTATION



WALL TYPE LEGEND

- EXISTING WALL TO REMAIN
- - - EXISTING WALL TO BE DEMOLISHED
- NEW WALL
- NEW CONCRETE EXTERIOR WALL

**PROPOSED
THIRD FLOOR PLAN**
SCALE = 1:100

LEMCAD CONSULTANTS

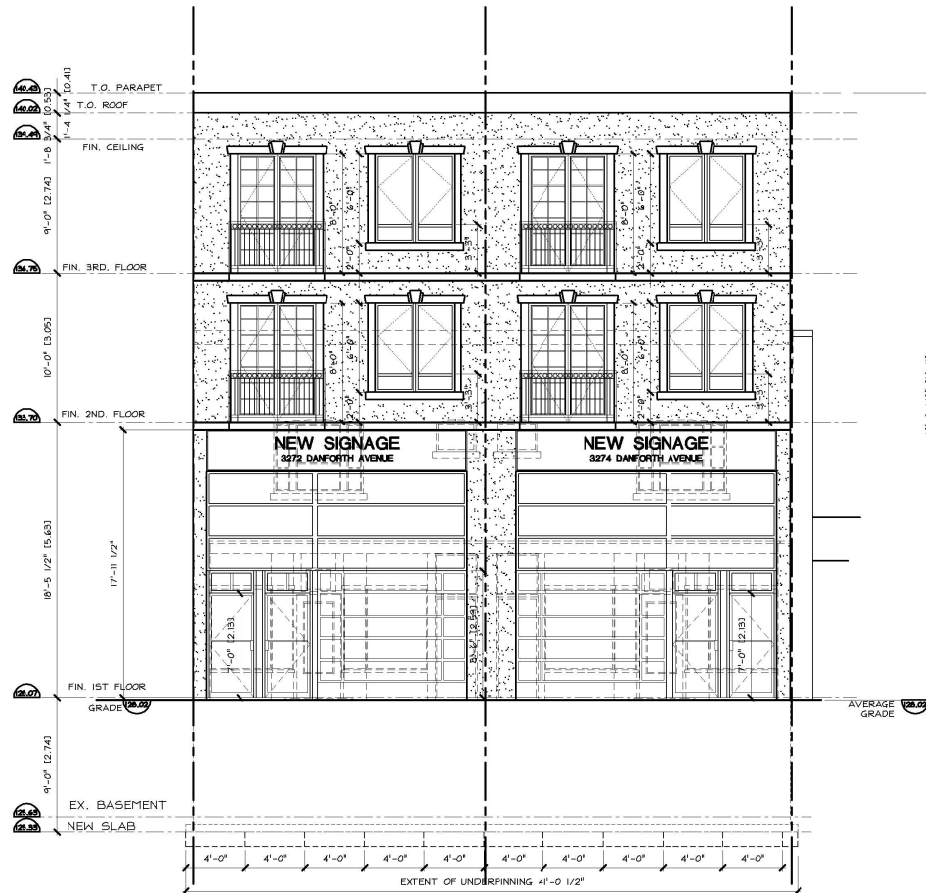
817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A5

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP. BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A5 OF 11 CADD-NAME: 170619



ORIENTATION



PROPOSED
FRONT (SOUTH) ELEVATION
SCALE= 1:100

LEMCAD CONSULTANTS

817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A7

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP. BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A7 OF 11 CADD-NAME: 170619



ORIENTATION



PROPOSED
REAR (NORTH) ELEVATION
SCALE= 1:100

LEMCAD CONSULTANTS

817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A8

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING

LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH

DWG. BY: LM

CK'D BY: LM

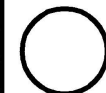
APP. BY:

DATE: JULY 24, 2020

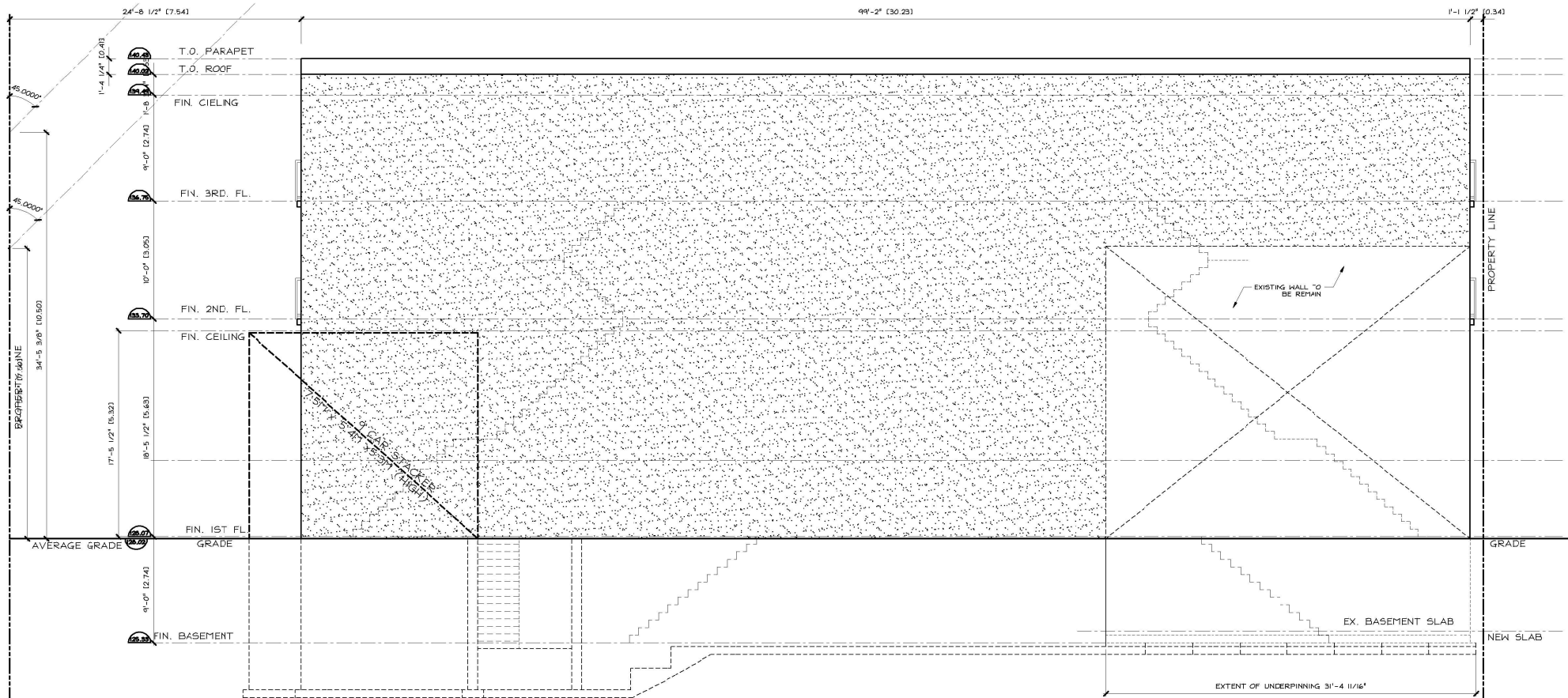
JOB NO.:

DWG. NO.: A8 OF 11

CADD-NAME: 170619



ORIENTATION



PROPOSED
SIDE (WEST) ELEVATION
SCALE= 1:100

LEMCAD CONSULTANTS

817 COSBURN AVENUE, Toronto, Ontario M4C 2V9
PHONE: (416) 405-8164 FAX: (416) 405-9601

A10

PROJECT: PROP. 3 STY REAR & NEW 3RD STY OVER EXISTING
LOCATION: 3272-3274 DANFORTH AVENUE, SCARBOROUGH
DWG. BY: LM CK'D BY: LM APP. BY: DATE: JULY 24, 2020
JOB NO.: DWG. NO.: A10 OF 11 CADD-NAME: 170619



ORIENTATION