

DECISION AND ORDER

Decision Issue Date Thursday, December 03, 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): John Formosa

Applicant: Great Life Group LTD

Property Address/Description: 697 Richmond St W

Committee of Adjustment Case File: 19 214534 STE 10 MV (A0957/19TEY)

TLAB Case File Number: 19 238301 S45 10 TLAB

Hearing date: Monday, February 10, 2020

DECISION DELIVERED BY J. Tassiopoulos

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Great Life Group LTD
Owner	Phil Blackmore
Alternate Owner	David Ross Huether
Alternate Owner	Jeffrey Huether
Appellant	John Formosa
Appellant's Legal Rep.	Alex Lusty
Party	Russell Herman
Party	Jeremy Boxen
Participant	Elizabeth Stewart
Participant	Burke Paterson

Participant Alfred Chin Pang Kwan

Participant Carmela Tartaglia

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on Wednesday October 9, 2019, being the refusal of the variance requested for the proposed alteration of a two-storey detached house with a rear ground and second floor addition, front integral garage, and a new third storey addition at 697 Richmond Street West (subject property). The COA refused a variance to the maximum permitted floor space index (FSI) of Zoning By-law 569-2013 which permits an FSI of 1.0x (213.55m²) whereas the proposal was for an FSI of 1.28x (274.23m²). As a result of the refusal of the variance by the COA, the Applicant appealed the decision to the TLAB, whose Hearing date was set as noted above. The proposal presented at the TLAB Hearing included an increase of the FSI to 1.33x (284.56m²). Two additional variances were also requested: for a dwelling depth of 17.58m whereas the maximum permitted depth is 17.0m, and a proposed 0.0m sideyard setback on the west side of the subject property whereas the minimum required sideyard setback, where there are no windows or doors, is 0.45m. The modified variance and two additional variances did not materially alter the revised proposal and its elevations generally remained the same as the proposal that was refused by the COA.

The Appellant / Owner was represented by Alex Lusty (counsel) and Julius De Ruyter an expert witness, who provided planning evidence for this appeal. The Appellant John Formosa and the Owner Phil Blackmore were also in attendance.

Mr. Jeremy Boxen, a Party in opposition to the proposal, was in attendance while the other Party, Mr. Russell Herman, was absent due to an unforeseen health incident. Ms. Elizabeth Stewart and Mr. Burke Paterson, who requested Participant status, were also present at the Hearing.

I disclosed to those in attendance that I had visited the site and the surrounding neighbourhood, in preparation for the Hearing.

BACKGROUND

The subject property is located on the south side of Richmond Street West, west of Tecumseth Street and east of Niagara Street. The property flanks residential dwellings to the east, west, and south sides. It is designated Neighbourhoods in the Official Plan and zoned Residential (R) pursuant to City of Toronto By-law 569-2013. The proposal is to alter a two-storey detached house by constructing a rear ground floor addition, a front integral garage, a rear second storey addition with a rear terrace, a new

front second storey terrace, a new third storey addition with both front and rear terraces, a new rooftop stairwell and a partial green roof.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Appellant / Owner for the alteration of a two storey dwelling, through floor plan additions and a new third storey, appropriate under applicable policy and statutory tests?

Do the proposed alterations to the existing building create adverse impacts to the adjacent neighbours and surrounding neighbourhood?

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

Mr. Alex Lusty provided a brief introduction to the appeal noting that the application was a reinvestment in an eclectic downtown neighbourhood that was comprised of a range of uses and building types, and that in addition to older and more contemporary residential dwellings, it also included institutional, industrial, and apartment buildings adjacent to one another. He explained that only three variances were being sought for an FSI of 1.33x, building length of 17.58m, and a west side yard setback of 0.0m. He noted that Mr. De Ruyter would be providing planning evidence in support of the variances sought.

Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos
TLAB Case File Number: 19 238301 S45 10 TLAB

Mr. Jeremy Boxen, a Party to the matter, also provided a brief introduction noting he resided directly behind the subject property, at 12 Mitchell Avenue. He explained that the focus of his presentation will be on the uniqueness of block within the neighbourhood and that the FSI, scale, and physical character of the proposal did not fit into the neighbourhood. He noted that he would rely upon the expert witness' evidence and his own prepared drawings and analysis.

Following the brief introductions, Mr. Lusty called upon Mr. Julius De Ruyter as an expert witness and he was affirmed. Mr. Lusty asked Mr. De Ruyter to provide a synopsis of his planning experience, and he indicated that he had been a practicing planner for over forty years, is a Registered Professional Planner with both the Ontario Professional Planners Institute and the Canadian Institute of Planners, and currently operates his own practice. He has appeared before TLAB and similar tribunals in the past. Having noted his land use planning experience, outlined verbally and in his witness statement (Exhibit #1), and his signed acknowledgement of expert's duty, I qualified Mr. De Ruyter to provide professional opinion evidence in the area of land use planning. He has also appeared before the TLAB and had previously been qualified as an 'Expert Witness'.

Mr. Lusty asked Mr. De Ruyter to explain the nature of his being retained for this matter and he explained that he was approached following the COA's refusal of the variances. Upon reviewing the COA materials and planning context, together with his knowledge of Provincial policy, and Official Plan policies, Mr. De Ruyter felt comfortable in supporting the proposal and the appeal.

Mr. De Ruyter provided a description of the location of the subject property and the existing building as indicated in the property survey (Exhibit #2, Tab 24). He then noted that the proposal is to build the house to the same front and rear limits of the existing building, which is a revision from the original proposal that extended further into the rear yard. He went on to explain that the variance for the west sideyard setback to reduce it to 0.0m could be argued technical in nature as it reflects the existing setback condition but was indicated by the zoning examiner and that the increase sought for floorspace index was a result of the house size.

Mr. Lusty noted that the proposal had some history and had been changed since the summer of 2019; he asked Mr. De Ruyter to describe the changes and background to the plans. Mr. De Ruyter referred to his witness statement (Exhibit #1) and noted that more than one proposal had been submitted to the COA and that the plans submitted in July 31, 2019 were for a larger building requiring numerous variances including height, reduced side and rear yard setbacks, and FSI. This proposal was refused by the COA. The Applicant missed the deadline to appeal the decision and decided to submit a new proposal with changes. The new proposal, filed on August 30, 2019, was a response to City Staff concerns with respect to the scale of the building, the building depth and the rear yard setback. The overall dwelling was revised to remove the variances for height and east side yard setback, slightly reduced the FSI, and increased the rear yard setback, reducing the number of variances sought. Community planning still had concerns regarding the height and massing of the revised proposal and the plans were further redesigned and proposal put forward to the COA was for one variance of 1.28x

FSI where 1.0x is permitted. This was refused by the COA leading to the appeal to TLAB. Mr. De Ruyter then explained that the plans before TLAB are the same as the proposal considered by the COA but that the zoning examiner had indicated that the FSI was actually 1.33x because the proposed elevator shaft and some space within the garage would not be deducted from the FSI calculation, resulting in the variance request for 1.33x. Another zoning review was undertaken and it was noted that the building depth was 17.58m whereas 17.0m is permitted and that the west side yard was 0.0m whereas 0.45m is required. Mr. De Ruyter explained that these variances were not previously sought because they were both existing conditions of the present dwelling and the Applicant thought they had legal non-conforming status. Because the zoning examiner indicated these variances would also be required, the proposal presented to TLAB included the variances for building depth and side yard setback.

Mr. De Ruyter provided a description of the current proposal and noted that the front yard and rear yards were generally being maintained as per the existing dwelling green space except that the proposal had additional building height in the rear of the property and that the main entry was located in the east side of the dwelling. He went on to describe the massing of the building and floor plans describing the additions and changes in the floor plans.

Mr. Lusty asked Mr. De Ruyter to describe the site and surrounding neighbourhood and he indicated that it was zoned R or Residential in Zoning By-law 569-2013 which permits a broad range of residential dwellings including duplexes, triplexes, row houses and apartment buildings and that it was located in the inner city but at the edge of the downtown. He mentioned that the lot pattern was of narrow lots with very tight setbacks or no setbacks at all. In his review of the area and minor variances he determined that most of the area was composed of townhouses whereas as the subject property was a single detached dwelling.

He went on to describe his study area boundaries for the geographic neighbourhood, that was based on being within a 5-minute walking distance and the immediate neighbourhood that included both sides of Richmond Street West between Niagara and Tecumseth Streets. Mr. De Ruyter mentioned his evaluation considered both neighbourhood areas. He mentioned that this was an established neighbourhood with low building heights of two to four storeys and that the immediate area included an office building, a church, and detached, semi-detached and several townhouse dwellings.

Mr. Lusty asked, referring to an aerial image (Exhibit 1, Figure 3A, if Mr. De Ruyter could speak to existing overlook and potential privacy concerns to which he responded that in such inner city neighbourhoods overlook is a common existing condition "as everything is tight and close together" (Hearing excerpt). Turning to his photo study of the immediate neighbourhood, Mr. De Ruyter analysed the street frontage moving from east to west along Richmond Street, noting that building wall faces were generally aligned. He pointed out that the existing condition of access and sideyard setback between 695 Richmond Street West and the subject property would be continued with the proposal. Continuing westward he noted the variety of massing types, building heights, the contemporary buildings or additions on the south side of the

street, and that 707 Richmond Street West, which had an FSI of 1.26x, was comparable to the proposal. Turning to the north side of the street he pointed out that long sections were composed of predominantly original construction two-storey townhouses and that they transitioned to single detached units, including new construction, opposite the subject property followed by the office building and church. Looking at photos of the rear yard of the subject property, Mr. De Ruyter noted the varied surrounding rear elevation building depths and that the proposal in terms of height and wall face distance would be similar to the existing condition. Given the proposal has a setback at the third floor he was of the opinion that the proposal would not lead to “any additional issues with overlook or privacy than what we have today” (Hearing excerpt). He concluded his photo study by pointing to buildings south of the subject property on Mitchell Street that included contemporary designs and an example of a contemporary dwelling with a higher FSI than the proposal and a rooftop terrace.

Mr. De Ruyter was asked to analyse Committee of Adjustment and OMB/TLAB Decisions on variance applications in the neighbourhood which he described as being comprised of the geographic neighbourhood. He analysed the decisions based on the three similar variances that were being proposed for the subject property and noted that there were 57 properties identified within the geographic neighbourhood where variances were approved in the past ten years. His analysis indicated that the average FSI approved was 1.43x and that 40 of the applications required relief from the FSI requirement. This was also true of building depth variances which averaged 17.67m which is close to the 17.58m depth of the proposal. With respect to the sideyard setback almost all of the applications required this variance and the majority were at a 0.0m setback.

Mr. Lusty asked Mr. De Ruyter to summarize his thoughts on the FSI variance, to which he replied that even in his review of the immediate neighbourhood variances to FSI were sought and that it serves as a development control tool and that “the limit of 1.0 really isn’t reflective of the existing neighbourhood and the new approvals that are coming on stream” (Hearing excerpt). When asked by Mr. Lusty if he was of the opinion that the FSI in the zoning by-laws was artificially low, Mr. De Ruyter agreed and noted that when the proposed FSI was compared to other approvals, it was consistent within the context of the geographic and immediate neighbourhoods.

With respect to building depths Mr. De Ruyter pointed out that in the immediate neighbourhood almost all of the variance applications required a building depth variance and they were on lots where a 14.0m depth was permitted. Of the 57 properties in the geographic area, the COA granted variances for 29 properties that required building depth variances up to 25.8m. with an average 17.67m which is close to what is being proposed. He reminded the Chair that the depth variance sought for the proposal was technical as the depth is to the same location of the rear wall of the existing house. He noted that the immediate neighbourhood approvals had an average building depth of 18.61m which was greater than the proposal. Mr. De Ruyter said that the proposal would still result in a generous rear yard and that it would be larger than the rear yards of the adjacent properties on 695 and 699 Richmond Street West.

**Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos
TLAB Case File Number: 19 238301 S45 10 TLAB**

With respect to the side yard setback variance for the west side of the property, Mr. De Ruyter indicated that this was also technical in nature as it is similar to the existing sideyard and that in the geographic neighbourhood 42 of the 57 properties sought variances for side yards and that a majority were for 0.0m, which was also the case for the immediate neighbourhood. He explained that it was a very common condition for this neighbourhood and for the inner city in general.

Turning to the four statutory tests under s. 45(1) of the Planning Act, Mr. De Ruyter began with a review of the Official Plan (OP) policies stating that one of the cornerstone policies of the OP was to ensure that new development in a neighbourhood respects the physical character of the area and reinforces the stability of the neighbourhood as outlined in section 2.3.1 of the OP. He explained that the proposal is in keeping with the OP general policy that there will be change in neighbourhoods over time and that they will not be frozen. He referred to policy 4.1.5 and the policies associated with neighbourhoods. He explained that this policy gives direction on what constitutes a geographic neighbourhood and that his analysis reflected this policy in terms of both the geographic and immediate neighbourhood study areas he selected.

Mr. Lusty asked “if there was one neighbourhood characteristic(?) that should rule the day here” and Mr. De Ruyter answered there was not and that, as per the end of policy 4.1.5, there are areas that do not have a prevailing physical character, such as the study area neighbourhood because of the various building types, elevation treatments, and heights that are not uniform. He opined that one has to be satisfied that a proposed development is materially consistent with the physical character of the neighbourhood and that materially consistent meant that it had to be compatible. When he considered whether the proposal could coexist in harmony the surrounding area, he felt that it could. He noted that Community Planning was now supportive of the proposal before TLAB.

Mr. De Ruyter explained that policy 4.1.5 provides criteria with respect to development and existing physical character and that sections 4.1.5 c) and g) were applicable to the proposal and the variances sought. He noted that the proposed height was 11.86m, which was below the permitted 12.0m, and that deployment of the massing on the property and maintaining the existing front and rear yard setbacks was compatible with the physical character of the neighbourhood. He also noted that the proposal was in keeping with existing rear and side yard conditions of the existing dwelling and lot pattern. He concluded that the proposal maintains the general intent and purpose of the Official Plan because it is compatible and will not undermine the stability of the neighbourhood.

Turning to the Zoning By-law he mentioned that policy 4.1.8 of the OP addressed performance standards in terms of height, density, building depths and setbacks. These are to ensure compatibility of new development in a neighbourhood. Mr. De Ruyter pointed out that in his analysis of variance approvals it was common to see variances for FSI, building depth and side yards setbacks that were either similar or greater than the variances being sought for the proposal. Given his opinion that the building depth and sideyard setbacks were technical in nature, because they were existing conditions, he explained that it was FSI that would need to be considered and that he was satisfied

it was consistent with the neighbourhood and with other previous approvals. For these reasons he concluded that the proposal maintains the general intent and purpose of the Zoning By-law.

In considering whether the proposal was desirable for the appropriate development or use of the land, Mr. De Ruyter indicated that a two-storey building was being replaced with a three storey dwelling and integral garage, and that providing parking on the lot was desirable as on-street parking alone could not be relied upon. He went on to say that the 52% lot coverage is not excessive and that the rest of the lot provides for green front and rear yards with access space, and the proposal was not “over occupying the property with building” (Hearing excerpt) due to its building design.

On whether the proposal was minor in nature, Mr. De Ruyter said that determining minor was more than a “numbers exercise” and that one had to consider planning impacts such as shadowing, privacy and overlook and whether they are adverse. In his assessment of the proposal, he concluded that he could not identify issues of a planning nature. With respect to the front and rear terraces in the proposal he explained that there is a potential for overlook but that this was an existing condition in downtown neighbourhoods. He was satisfied that the variances sought were minor in nature.

Mr. Lusty asked if Mr. De Ruyter could speak to his January 13, 2020 response (Exhibit #3) to the Witness Statements submitted by the Parties and Participants and the issues that were raised. Mr. De Ruyter went through each issue beginning with height. He indicated that the zoning examiner review characterized the proposal as a three storey building and not four storeys as suggested by Mr. Boxen, and that the proposed height of 11.86m was permitted as-of-right by the Zoning By-laws.

Mr. De Ruyter then spoke to the idea of “consensus as a planning requirement” and Mr. Boxen’s statement referring to page 1-1 of the OP and suggesting that the proposal had failed the consensus test. Mr. De Ruyter explained there is no discussion that speaks to how decisions are to be achieved, how the COA should reach its decision, or having to consult with the neighbourhood to obtain consensus. He explained the high level of transparency required for development submissions to the City and that information, including updated plans and submissions, can be accessed online, at its website.

With respect to heritage concerns and incompatibility expressed by Parties and Participants, Mr. De Ruyter noted that the subject property was neither listed nor designated in the heritage property database, it was not located in a heritage district, and is not subject to heritage restrictions.

He then turned to the concern that the proposed driveway would remove a parking space from the street and explained that the proposal would potentially remove a space in front of the property but would provide the equivalent of two parking spaces: one in the garage and the other on the driveway.

**Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos
TLAB Case File Number: 19 238301 S45 10 TLAB**

Mr. De Ruyter concluded his response with respect to structural concerns raised by the neighbour, Mr. Herman, at 699 Richmond Street West. Mr. Lusty asked if such concerns were in the realm of land use planning and Mr. De Ruyter answered that this was not a planning issue but rather would be addressed through the building permit process.

Mr. Lusty asked if the view from the west to the east of the upper storey of the proposed dwelling would have any adverse impacts. Mr. De Ruyter answered that in his review of the proposed balconies in the plans, he did not see any adverse impacts with respect to overlook or privacy. Mr. Lusty then asked if there was a need for new development to emulate what has been developed before. Mr. De Ruyter answered that there is a great mix of building styles, designs, and types and that "it is not desirable to mimic or duplicate" but rather the "test is: are you going to be physically compatible with the neighbouring properties" (Hearing excerpt).

Mr. De Ruyter concluded his testimony by noting that Figure 9 of his Witness Statement (Exhibit #1) listed the variances sought for the proposal and the Urban Forestry department condition with respect to a fee for street tree planting. He confirmed that this condition should be included.

Mr. Jeremy Boxen, a Party to the Hearing, proceeded to ask Mr. DeRuyter which plans were being considered at the COA on October 9, 2019 and whether they were submitted late. Mr. De Ruyter turned to the plans and explained that they were the plans before the COA during their decision. Mr. Boxen pointed to paragraph 16 of Exhibit #1 where it stated the plans were submitted late and Mr. De Ruyter said that it may have been the case because the process was iterative but that these were the plans considered in the COA decision.

Mr. De Ruyter was asked if, with respect to the FSI of 1.28x being exclusive of the proposed elevator shaft, he was certain that the drawings submitted to the COA were not different from those submitted to TLAB. Mr. De Ruyter responded that he was aware that the difference in FSI was due to the inclusion of the elevator shaft in the FSI and that this was conveyed to him from the Appellant, John Formosa, regarding their discussions with the zoning examiner. Mr. Boxen then asked if he was aware if the floor plans presented to COA included the elevator shaft and Mr. De Ruyter responded that he was not sure but understood that the COA had been informed of the elevator.

Mr. Boxen asked if the proposal's 1.33x FSI was artificially inflated due to the inclusion of the elevator shaft and Mr. DeRuyter responded that it was. Mr. Boxen then asked if the proposal's FSI should be given special consideration and Mr. De Ruyter responded that in his review of the zoning, the elevator shaft should have been excluded from the FSI calculation and that its inclusion inflated the FSI for the proposal. When asked if he thought other approvals cited in his analysis of FSI for previous approvals were also inflated, Mr. DeRuyter responded that he was not sure if they were but that the figures he presented in his analysis were from COA applications that had been approved.

Mr. Boxen asked if the proposal's description of three storeys would be the way that the building would be perceived from the street. He responded that it could be perceived differently from the street but that even though there are four levels, the proposal is described as three storeys and that this is not uncommon.

Mr. Boxen asked if the OP directs that the physical characteristics of the immediate neighbourhood take precedent if a discrepancy exists between the analysis of the geographic neighbourhood and that of the immediate neighbourhood. Mr. De Ruyter indicated that "it would apply if the very last section of the plan didn't apply, which talks about, if there is a neighbourhood with a lot of variation" (Hearing excerpt). Mr. Boxen then quoted the Community Planning staff report of October 4, 2019, stating:

"The built form along the Neighbourhoods designated areas of Richmond Street West is quite consistent and characterized by 2-storey semi-detached and detached dwellings. It is noted that the immediate dwellings abutting the subject property are 2 storeys." (Exhibit #2, Tab16)

He asked if Mr. De Ruyter agreed with that assessment and he responded that he did not agree with that assessment or description of the area.

Mr. Boxen then asked if in the analysis of the geographic neighbourhoods' physical characteristics where those houses were located, were they consistent with the physical characteristics in the immediate neighbourhood? Mr. De Ruyter answered that he looked at the larger overall geographic neighbourhood. Mr. Boxen asked if the OP places importance on FSI to create a consistent physical character in the neighbourhood. Mr. De Ruyter responded that policy 4.1.8 of the OP states that zoning regulations, like FSI, are used to ensure compatibility between buildings and that building FSI could be larger and still provide compatibility.

Mr. Boxen asked if in the FSI analysis there was a variation between the range of FSI approvals in the immediate neighbourhood and the geographic neighbor. Mr. De Ruyter agreed there was and that the immediate area had, on average, a lower range of FSI but that it was due to the geographic neighbourhood providing a greater number of properties; he noted that both the immediate and geographic neighbourhood must be considered together. Furthermore, the eclectic nature of the neighbourhood suggests that both the immediate and geographic areas should be considered equally.

Mr. Boxen asked how many houses in the immediate area had an integral garage facing the street and Mr. De Ruyter responded that a count was not done but that he knew it existed although it was not a common feature in the area. Mr. Boxen asked Mr. De Ruyter to respond to an excerpt from the COA hearing transcript of July 31, 2019 (Exhibit #4), where a COA member stated:

"...in addition to which you're removing street parking. And it's the – one of the appellants indicated and he was quite right, what that in effect does is it removes a parking space from the street that's available to everybody and makes it

available only to this – this particular dwelling unit which I don't think is appropriate.”

Mr. De Ruyter opined that a proposal that accommodates parking on their site whether it is a driveway, parking pad or garage is a good thing from a planning perspective and is in keeping with the notion of parking being provided that “every land use should be able to supply its own parking for its own property” (Hearing excerpt). He explained from a planning evaluation this is a positive condition because although it takes away a street space it provides a space or more on the property.

Mr. Boxen asked if Mr. De Ruyter had consulted with any of the neighbours in his analysis and he responded that he had not but that he had reviewed written statements submitted and was aware of those concerns.

Mr. Boxen asked about the west side yard and Mr. Herman's concerns regarding structural impacts and Mr. De Ruyter answered that that was more of a matter regarding the building permit stage and not a planning matter. He was further asked whether there wouldn't be structural concerns if the 0.0m setback was not being requested for the proposal and Mr. De Ruyter responded that the existing setback was 0.0m and that the proposal builds upon the same location and that during the building permit process the Building Department would look for protection of the adjacent property wall.

Mr. Boxen concluded by asking if the plans provided to TLAB were the same plans as those considered by the COA on October 9, 2019 and Mr. De Ruyter indicated that they were.

Mr. Lusty followed by asking whether the reference to late submission in the Witness Statement was correct and Mr. De Ruyter note that he was not sure if the revised plans were submitted late but that they would have been the drawings before the COA, because it would have required the drawings showing the change in the requested FSI.

Following some clarification questions from the TLAB Member, Mr. De Ruyter's testimony was concluded.

Mr. Jeremy Boxen, a Party to the Hearing, was affirmed and began providing his testimony noting that he resided with his spouse at 12 Mitchell Avenue immediately behind the subject property and that the proposed addition to the proposal will be out of keeping with the existing character of the property. He expressed concern that the massing of the proposal would be overwhelming and take up the view from their backyard. The proposal would be a departure of the character of the neighbourhood where the scale is more modest and “would be out of place.” He expressed concern that neighbouring properties and residents had not been consulted by the Applicant since the COA hearing on October 9, 2019.

Mr. Boxen began by referring to the photo studies in his Witness Statement (Exhibit #4) and in his Reply to Responding Witness Statement (Exhibit #5) and described the streets and surrounding neighbourhood noting the variety of land uses

and properties. He also indicated where some of the larger FSI approvals were located noting that in each case their context was different than what was found in the immediate Neighbourhood on Richmond Street West.

Mr. Boxen went on to provide a review of photos illustrating the two storey and two and a half storey massing forms that were present between 734 and 772 Richmond Street West, noting that it was essentially a low rise neighbourhood when compared to the surrounding areas. He then turned to a photo from the perspective of his rear yard at 12 Mitchell Avenue looking north towards the subject property, 695 and 699 Richmond Street West (Exhibit #4). He suggested that the proposal's rear elevation would be twice as high and wide as the existing dwelling's rear elevation. From his point of view it would be out of keeping with respect to the other rear yards.

Mr. Boxen noted that the proposed building depth variance, when applied to the majority of the proposed building height, would have an impact on the enjoyment of his back yard. He pointed out that the properties adjacent to the subject property extended a similar depth but that they were only first storey additions whereas the subject property would be that deep with multiple storeys.

Following Mr. Boxen's testimony, Mr. Lusty asked him what line of work he was involved in, and he answered that he was a writer and producer for television. Mr. Lusty then asked about the height and the number of storeys, asking if he had seen the City staff's description, and he agreed that the City provided that description but that the plans looked like a four storey dwelling to him.

The TLAB Member asked for clarification on Mr. Boxen's concerns about the variances sought and Mr. Boxen mentioned it was primarily the FSI variance and that the combination with building depth was of greatest concern as he felt it would be imposing on his back yard and out of character with what is seen now. He was concerned that the proposal to him "would be quite a tower, a fortress" (Hearing excerpt). This concluded Mr. Boxen's testimony.

The room was canvassed for other Participants who were prepared to speak to the matter. Mr. Burke Paterson, who had requested Participant status in the proceeding, asked to speak to the matter. Mr. Lusty objected to this as he explained Mr. Patterson had not filed any disclosure documents or statement with TLAB. The Chair asked Mr. Paterson about the statement he wanted to make and Mr. Paterson indicated he wanted to make a few comments. Paterson was asked to provide a copy of his statement for Mr. Lusty and that he focus on those statements during his testimony and not to present any other new information. Mr. Lusty agreed that would be acceptable.

Another Participant in the matter, Ms. Elizabeth Stewart, came forward and was affirmed. She indicated that she was two addresses away from the subject property, a neighbour to Mr. Herman, and resided in one of the six heritage listed cottages known as the Garrison Commons cottages, which inform the character of the neighbourhood. She noted that having lived in the neighbourhood for over 30 years there was a distinct difference between the geographic neighbourhood and the immediate neighbourhood.

Looking at character she pointed out that there were 81 houses in the neighbourhood and only 7 were three storeys in height and that only one is a four storey building and the remaining were all two and two and a half storey. She stated that in her past education as a designer she learned that a storey height was specific and that the proposal height was equivalent to four storeys. She noted this was an outlier in the neighbourhood. She said in terms of character the proposal was entirely out of character with the neighbourhood.

She pointed out that the two previous applications to the COA were refused based on the proposal being out of character. She concluded that the COA had recommended in the July 2019 hearing that the Appellant come back with a proposal at an 8.0 to 9.0m height, which would be more in keeping with the neighbourhood and that the plans submitted at the October 9, 2019 hearing ignored that recommendation.

Mr. Lusty recounted that Ms. Stewart noted she was a designer and she corrected him indicating that she was not a designer but that she had been educated in design and that she was a consultant. Mr. Lusty went on to ask her if she was aware that 697 Richmond St. West was not heritage listed. She replied that she was referring to the Garrison Commons cottages with respect to heritage listings and was not referring to the subject property. This concluded Ms. Stewart's testimony.

A copy of Mr. Paterson's statement was provided to Mr. Lusty for his review and the hearing was paused to provide time for his review of the document. Following the break, Mr. Lusty indicated he reviewed the statement and was ready to proceed and Mr. Burke Paterson was affirmed to provide testimony.

Mr. Paterson mentioned that he was at the Hearing to provide support for Mr. Herman and he was concerned about the potential construction impact to Mr. Herman's house from the proposal, if it is approved. He pointed out that he was concerned about accessibility and that the proposal does not provide access from the main entry and it may be difficult to access the rear yard. In a reversal of roles, he then asked that if there were an issue with the foundation, would this potentially lead to a proposal for a completely new building. Mr. Lusty explained that he did not have an answer for this question.

Mr. Lusty, referring to the plans for the proposal, indicated to Mr. Paterson that there was access to the elevator from the garage level. He then referred to Mr. Paterson's residence and, pointing to outdoor areas, he asked if they were terraces and Mr. Paterson confirmed that they were.

Following Mr. Lusty's questions, Mr. Boxen asked if Mr. Paterson used the terraces frequently and he answered that it depended on the user. When asked if the terraces permitted overlook he confirmed that they did. This concluded Mr. Paterson's testimony.

During his closing, Mr. Lusty summarized the evidence provided by Mr. De Ruyter noting that height was presented as an issue, but that no variance for height was sought and that with respect to overlook the evidence indicated similar existing

conditions of overlook throughout the neighbourhood. With respect to the impact on Mr. Boxen's view, he referred to a TLAB Decision (File No. 17 126229 STE 31 MV) by Member G. Burton, for *105 Binswood Avenue*, where she stated that, "*It is accepted law that there is no right to unobstructed view through backyards, or to be free from shadowing, or a claim that privacy should be paramount where there might be overlook.*"

Mr. Lusty further noted that Mr. De Ruyter had addressed the concern about parking space loss and that the proposal would not only provide a space, but would also provide a garage for another space and the potential to charge electric vehicles, which would not be possible with street parking. He also reiterated that the structural support concern raised with respect to Mr. Herman's adjacent dwelling was not a planning concern but rather one that would be dealt with as part of the building permit process.

He concluded that the main issue put forward by the opposing Parties was the duel between the geographic and immediate neighbourhood in determining physical character, and that the immediate neighbourhood character be given more weight. He referred to a TLAB Decision (File No. 19 170443 S45 16 TLAB) by Member Dino Lombardi, for *50 Addison Crescent*, where he quotes the evidence provided from the Expert Witness that stated, "*Proposed development within a neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts.*" He mentioned that this was consistent with the evidence presented by Mr. De Ruyter and asked that his evidence be accepted as uncontroverted.

Mr. Boxen in his closing statement also mentioned that the concern was about neighbourhood character and that the analysis with respect to the immediate neighbourhood should take precedent over the geographic area. He noted that in the COA approvals analysis, the FSI variances sought in the geographic area was larger and that it was due to the more modest scale of the dwellings found in the immediate neighbourhood. He further suggested that 707 Richmond Street West was referred to as similar to the proposal and that Mr. De Ruyter described it as unique. He felt this meant it was inconsistent with the common character found or else it would not be discerned as being unique, and that this applied to the proposal as well. He also pointed out that Mr. Paterson had confirmed there was overlook to adjacent properties from the terraces of 707 Richmond Street West and that this condition would also occur with the proposal.

Mr. Boxen concluded that the variances must be considered not just individually but also cumulatively and that, cumulatively, they were not minor in nature and the variances should be refused.

ANALYSIS, FINDINGS, REASONS

In consideration of the evidence presented during the Hearing I found Mr. Boxen's to be well considered but that Mr. De Ruyter's land use planning evidence was

uncontroverted. Mr. De Ruyter provided a more thorough review and analysis of the variances and the land use planning policy that was informative to the Hearing.

There was considerable discussion with respect to whether the immediate neighbourhood character should take precedent over the geographic or broader neighbourhood in the variance analysis and in determining the prevailing building type and physical character. Having visited the immediate and surrounding neighbourhood the one aspect that was evident was the variety of residential dwelling types and land uses within the immediate and geographic area. Although Mr. Boxen insisted that built form or physical character in the immediate neighbourhood was consistent in scale, his photo study of the immediate area was very selective in capturing predominantly two-storey dwellings comprised of many rowhouses along the north side and two-storey detached buildings on the south side, at the west end of the street (741 to 759 and 734 to 772 Richmond Street West). These properties accounted for just over a quarter of all the properties on the street and did not provide a complete picture of the immediate neighbourhood. Although Mr. De Ruyter's photo study does provide a more complete photo study of the immediate area it leaves out what Mr. Boxen has included. In combining the two, along with my impressions from my site visit, they confirm the varied physical character found in this segment of Richmond Street West. What is consistent is the inconsistency of residential dwelling types, styles, and form. The land uses are also varied when the office building and church structure, opposite to the subject property, are also considered.

I accept Mr. De Ruyter's evidence that the study area did not have a prevailing physical character due to the various building types, elevation treatments, and heights that are not uniform. He noted that the proposed development is materially consistent with the physical character of the neighbourhood and that materially consistent meant, compatible and that compatibility was determined by whether the proposal could coexist in harmony with the surrounding area.

With respect to Mr. Boxen's concern about the impact of the proposal to his rear yard views, I agree with the TLAB decision for *105 Binswood Avenue* by Member G. Burton, referenced in Mr. Lusty's closing arguments that "*there is no right to an unobstructed view through backyards...or that privacy should be paramount where there might be overlook.*" This opinion is further reinforced by the fact that a variance for a rear yard setback or height has not been sought for the proposal.

Finally, the concern regarding potential structure and foundation impact of the proposal to 699 Richmond Street West, mentioned during the Hearing and the predominant concern expressed in Mr. Herman's witness statement, is a matter that is not within the purview of land use planning concerns for this application but is rather a concern dealt with through the building permit process. That being said, the potential issues raised by Mr. Herman should be taken into consideration by the Applicant and some effort should be made to engage with him early in the process to hopefully address his concerns.

Turning to the requested variances for the proposal and in consideration of the four tests under s. 45(1) of the Planning Act, my assessment is as follows.

Variance 1 - Relates to the proposed building depth of 17.58m whereas the maximum depth permitted is 17.0m. Having considered Mr. De Ruyter's evidence and reviewing the COA Decision Analysis (Exhibit #3, Table 2: Summary of Minor Variances on Richmond Street West), I am of the opinion that this variance is minor and within the range of similar COA approvals for properties in the immediate and geographic area. Given that the proposal is being built at the same depth as the current building on the subject property, and that there is no rear yard variance required, I agree with Mr. De Ruyter's assessment that the variance is technical in nature. For this reason I find the variance is appropriate and minor.

Variance 2 – Relates to the proposed FSI of 1.33x the lot area whereas the maximum permitted is 1.0x. I accept the Mr. De Ruyter's explanation that the slight increase to the FSI from 1.28x to 1.33x was a result of the inclusion of the elevator shaft area and my own simple calculation confirmed that difference. The increase in the FSI is due to the addition of a stepped back third floor and the two storey addition at the rear east side of the existing dwelling. I agree with Mr. De Ruyter that the FSI numbers do not tell the whole story and that is actually the way massing is deployed on the site that should be considered. It is not simply a quantitative analysis that should be considered but also the qualitative aspects of the proposal and the proposed massing. Given that the additions have not required variances for height, rear yard setback and side yard setback, suggest that the proposed dwelling generally fits within the property zoning envelope. In addition, the third floor addition has a smaller footprint and is setback from the second floor with sloped roofs. A review of the plans indicate that the rear main wall will be setback 3.44m from the second floor providing for more sensitive massing as it relates to the rear elevation. For these reasons I find the variance is appropriate and minor.

Variance 3 - Relates to the proposed building setback on the west side yard lot line of 0.0m whereas the minimum required side yard setback is 0.45m. As per Mr. De Ruyter's evidence and a review of the survey the proposed 0.0m sideyard setback to the west is an existing condition and the variance is technical in nature. For this reason I find the variance is appropriate and minor.

For the reasons stated above, I find that the appeal should be allowed and that the three variances sought, individually and cumulatively, meet policy and all four tests under s. 45(1) of the *Planning Act*.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated October 9, 2019, is allowed. The following variances are authorized subject to the condition listed below:

1. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted depth of a detached house is 17.0 m.
The detached house will have a maximum depth of 17.58.

2. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached house is 1.0 times the area of the lot (213.55 m²).
The detached house will have a floor space index equal to 1.33 times the area of the lot (284.56m²).

3. Chapter 10.10.40.70.(4)(A), By-law 569-2013

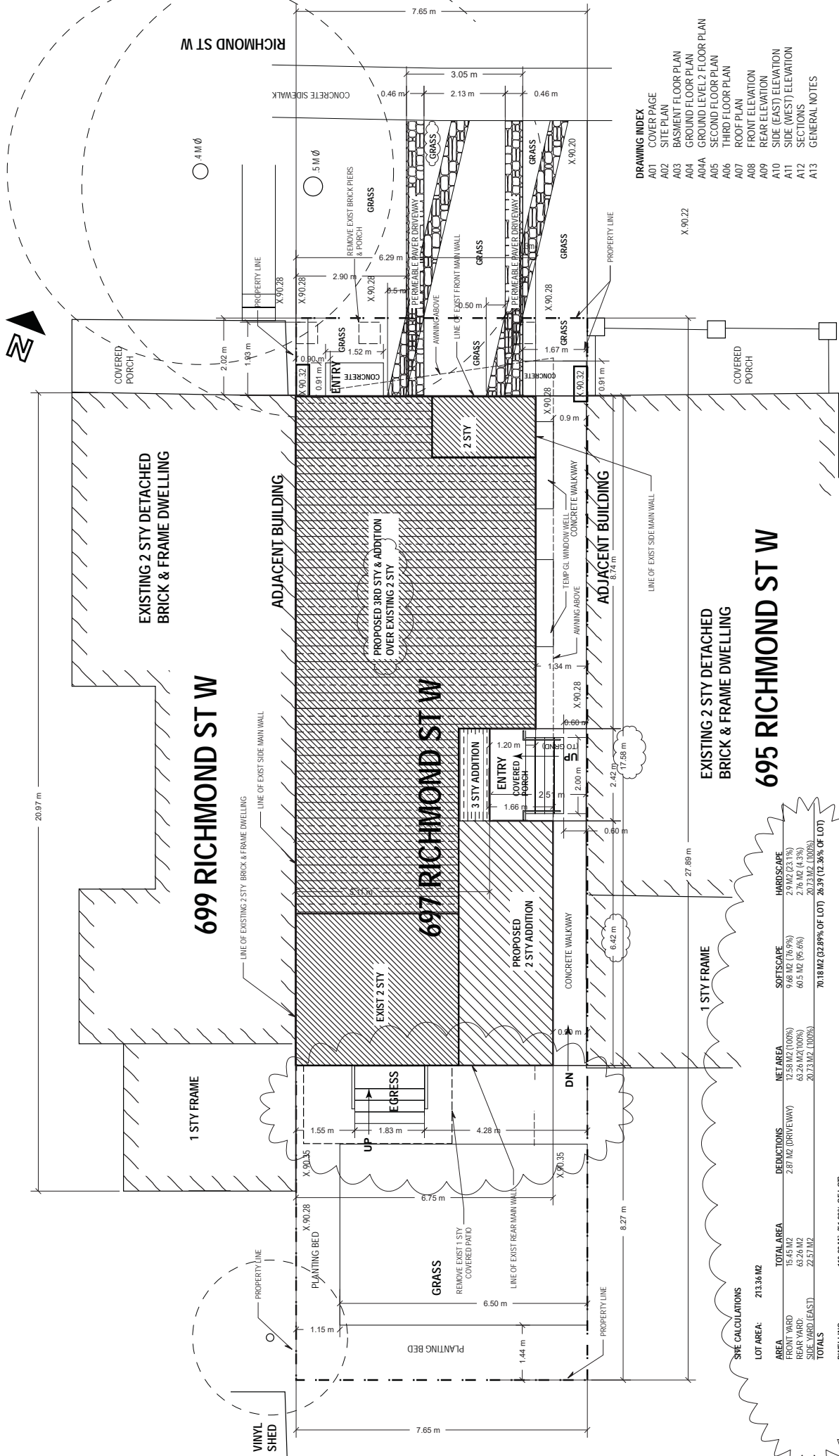
The minimum required side yard setback where there are no windows or doors is 0.45 m.
The detached house will be located 0.00 m from the west side lot line.

Required Condition

- A. The proposed development shall be constructed substantially in accordance with the site plan, roof plan, and building elevations (Drawings A-02, A-08, A-09, A-10, and A-11), dated August 28, 2019, and found in **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.
- B. Where there is no existing street tree, the owner shall provide to the City payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application.

X

John Tassiopoulos
Panel Chair, Toronto Local Appeal Body



- DRAWING INDEX**
- A01 COVER PAGE
 - A02 SITE PLAN
 - A03 BASMENT FLOOR PLAN
 - A04 GROUND FLOOR PLAN
 - A04A GROUND LEVEL 2 FLOOR PLAN
 - A05 SECOND FLOOR PLAN
 - A06 THIRD FLOOR PLAN
 - A07 ROOF PLAN
 - A08 FRONT ELEVATION
 - A09 REAR ELEVATION
 - A10 SIDE (EAST) ELEVATION
 - A11 SIDE (WEST) ELEVATION
 - A12 SECTIONS
 - A13 GENERAL NOTES

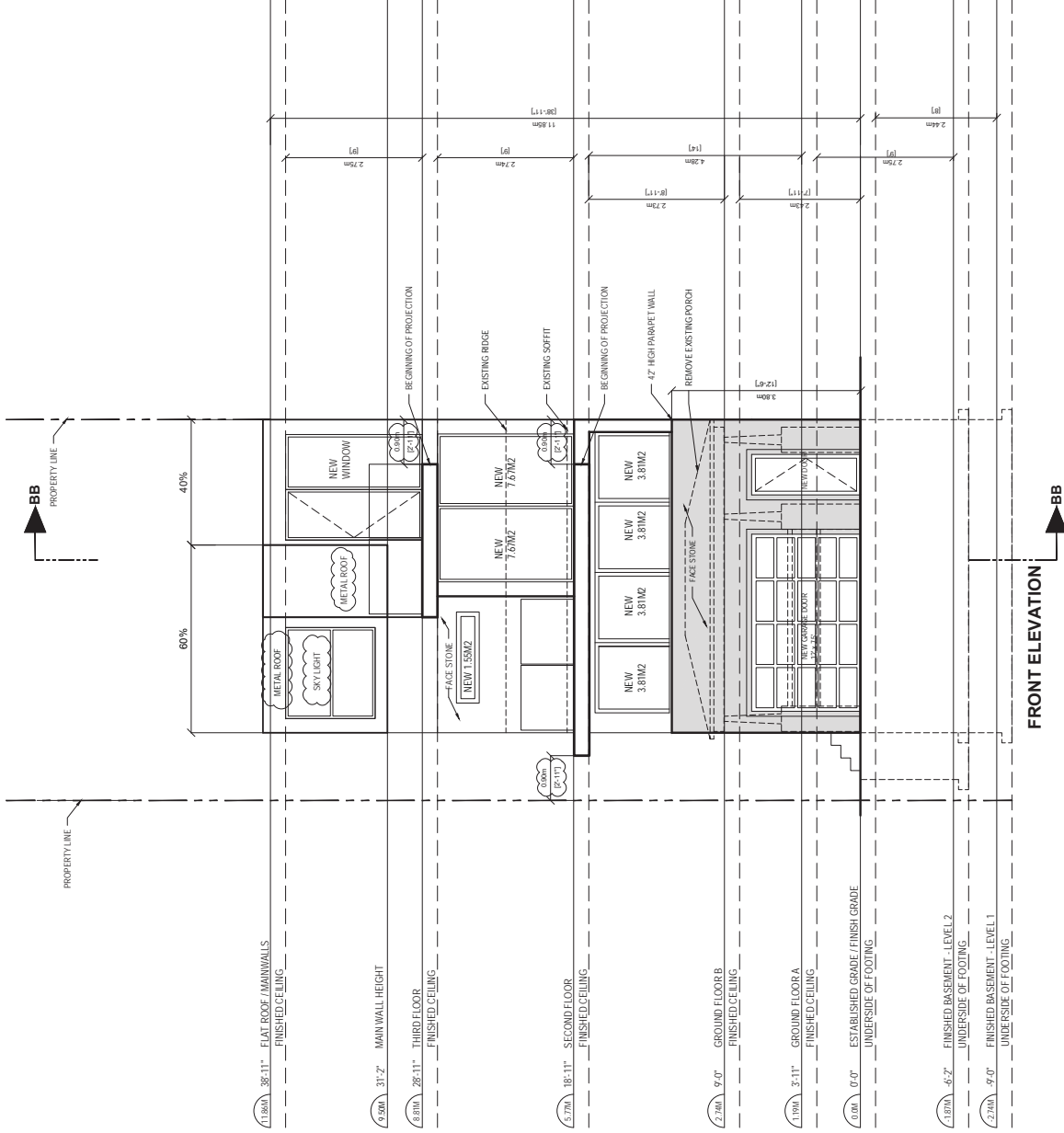
SITE CALCULATIONS

AREA	TOTAL AREA	DEDUCTIONS	NET AREA	SOFTSCAPE	HARDSCAPE
FRONT YARD	15.45 M ²	2.97 M ² (DRIVEWAY)	12.58 M ² (100%)	9.68 M ² (16.9%)	2.9 M ² (23.1%)
REAR YARD	63.26 M ²		63.26 M ² (100%)	2.16 M ² (1.3%)	2.16 M ² (1.3%)
SIDE YARD (EAST)	22.57 M ²		20.73 M ² (100%)	6.03 M ² (95.6%)	6.03 M ² (95.6%)
TOTALS			70.18 M² (22.89% OF LOT)	70.18 M² (22.89% OF LOT)	20.39 M² (12.36% OF LOT)

DWELLING 110.93 M² (51.98% OF LOT)

<p>SCALE: 1/64 3/16" = 10"</p>	
<p>PROPERTY OWNER: K. HEUTHER</p>	<p>DRAWING NO: A02</p>
<p>DATE: AUGUST 28, 2019</p>	<p>CHECKED:</p>
<p>DRAWN:</p>	<p>DATE: AUGUST 28, 2019</p>
<p>ADDRESS: 697 RICHMOND ST. W., TORONTO, ON</p>	
<p>EXISTING: EXISTING DETACHED - 2 STY. BRICK VENEER & FRAME SINGLE FAMILY DWELLING</p>	<p>DATE: JULY 6, 2018</p>
<p>PROPOSED: MAKE INTERIOR & EXTERIOR ALTERATIONS TO CREATE REAR 2 STY ADDITION, 3RD STY ADDITIONS AND FRONT INDOOR GARAGE</p>	<p>DESIGN: AUGUST 29, 2018</p>
<p>DATE: AUGUST 28, 2019</p>	<p>PPR: OCTOBER 9, 2019</p>
<p>CONSTRUCTION ACCORDING ORC. ALL DIMENSIONS ARE NOMINAL REPORT ANY INCONSISTENCIES TO DESIGNER BEFORE COMMENCEMENT OF WORK.</p>	<p>DATE: AUGUST 28, 2019</p>
<p>ALL NEW LUMBER TO BE NO. 2 GRADE S.P.F. UNLESS SPECIFIED OTHERWISE.</p>	<p>PPR: OCTOBER 9, 2019</p>
<p>MAKE GOOD ALL FINISHES WHERE NEW MATERIAL INTERSECTS WITH EXISTING TO BE RETAINED.</p>	<p>PPR: OCTOBER 9, 2019</p>





FRONT ELEVATION

AREA OF EXISTING FRONT WALL :

EXISTING	38.6 M ²
TO BE REMOVED	28.2 M ²
TO BE RETAINED	11.0 M ²

- DRAWING INDEX
- A01 COVER PAGE
 - A02 SITE PLAN
 - A03 BASEMENT FLOOR PLAN
 - A04 GROUND FLOOR PLAN
 - A05 SECOND LEVEL 2 FLOOR PLAN
 - A06 THIRD FLOOR PLAN
 - A07 ROOF PLAN
 - A08 FRONT ELEVATION
 - A09 REAR ELEVATION
 - A10 SIDE (EAST) ELEVATION
 - A11 SIDE (WEST) ELEVATION
 - A12 SECTIONS
 - A13 GENERAL NOTES

SCALE: 1/8" (31/16"=1'0")	DRAWING NO. A08
PROPERTY OWNER: K. HIEHER	
DATE: AUGUST 28, 2019	DRAWN: _____ CHECKED: _____
DRAWN: _____	

ADDRESS 697 RICHMOND ST. W., TORONTO, ON
DRAWING TITLE FRONT (NORTH) ELEVATION

EXISTING: EXISTING DETACHED - 2 STY. BRICK VENEER & FRAME SINGLE FAMILY DWELLING
PROPOSED: MAKE INTERIOR & EXTERIOR ALTERATIONS TO CREATE REAR 1 STY ADDITION, 3RD STY ADDITIONS AND FRONT INDOOR GARAGE

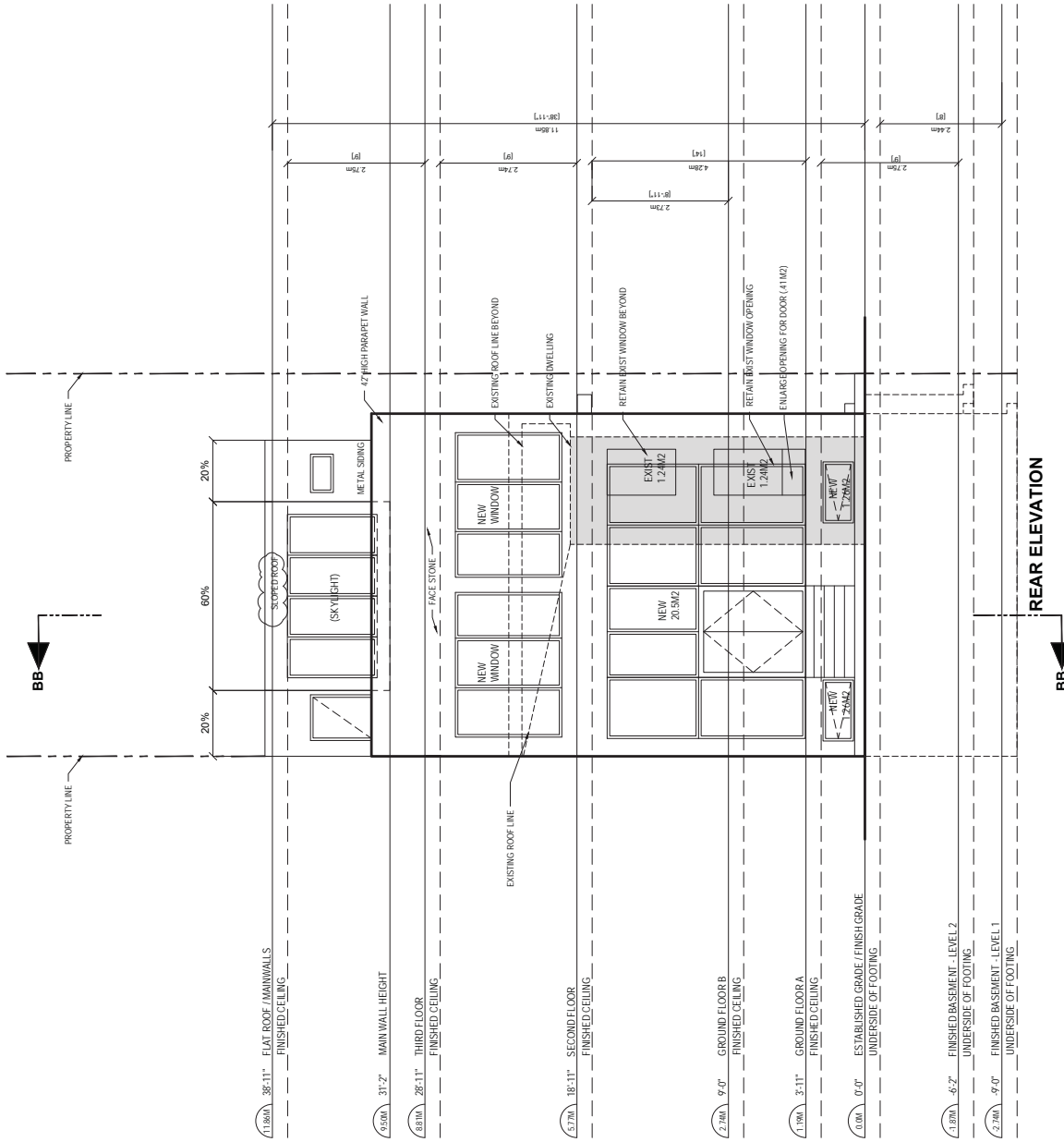
PURPOSE	DATE
DESIGN	JULY 6, 2018
PPR	AUGUST 29, 2018
PPR	AUGUST 28, 2019
PPR	OCTOBER 9, 2019

CONSTRUCTION ACCORDING OBC. ALL DIMENSIONS ARE NOMINAL. REPORT ANY INCONSISTENCIES TO DESIGNER BEFORE COMMENCEMENT OF WORK.

ALL NEW LUMBER TO BE NO.2 GRADE S.P.F. UNLESS SPECIFIED OTHERWISE.

MAKE GOOD ALL FINISHES WHERE NEW MATERIAL INTERSECTS WITH EXISTING TO BE RETAINED.





REAR ELEVATION

AREA OF EXISTING REAR WALL :

EXISTING	TO BE REMOVED	TO BE RETAINED
39.99 M2	28.80 M2	11.90 M2

CONSTRUCTION ACCORDING OBC. ALL DIMENSIONS ARE NOMINAL. REPORT ANY INCONSISTENCIES TO DESIGNER BEFORE COMMENCEMENT OF WORK.
 ALL NEW LUMBER TO BE NO.2 GRADE S.P.F. UNLESS SPECIFIED OTHERWISE.
 MAKE GOOD ALL FINISHES WHERE NEW MATERIAL INTERSECTS WITH EXISTING TO BE RETAINED.

PURPOSE	DATE
DESIGN	JULY 6, 2018
PPR	AUGUST 29, 2018
PPR	AUGUST 28, 2019
PPR	OCTOBER 9, 2019

EXISTING:
 EXISTING DETACHED - 2 STY. BRICK VENEER & FRAME SINGLE FAMILY DWELLING

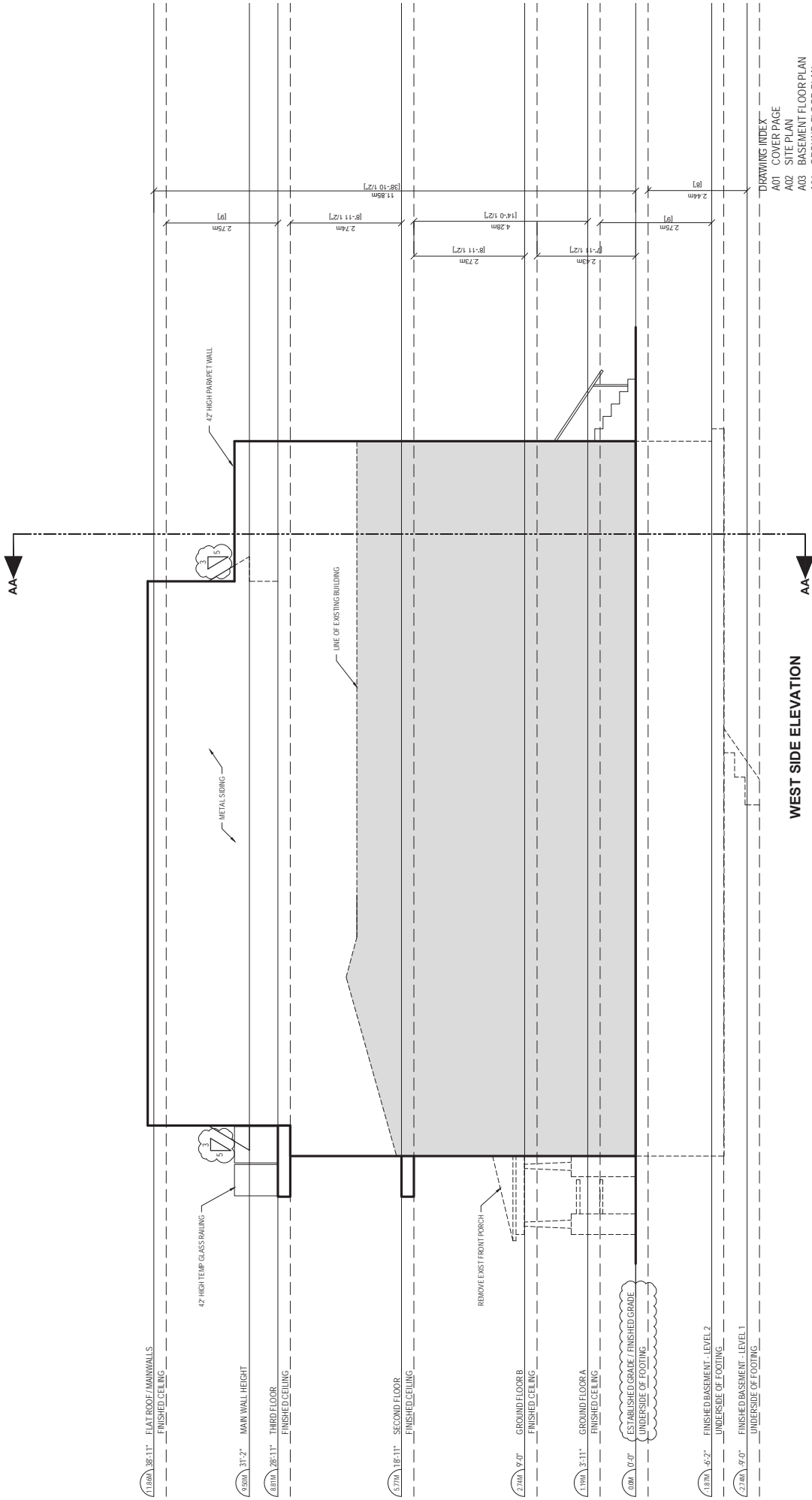
PROPOSED:
 MAKE INTERIOR & EXTERIOR ALTERATIONS TO CREATE REAR 1 STY ADDITION, 3RD STY ADDITIONS AND FRONT INDOOR GARAGE

ADDRESS
 697 RICHMOND ST. W., TORONTO, ON

DRAWING TITLE
 REAR (SOUTH) ELEVATION

SCALE: 1/84 (31/64"=1'0")	DRAWING NO. A09
PROPERTY OWNER: K. HIEYER	
DATE: AUGUST 28, 2019	NORTH: N
DRAWN: []	

- DRAWING INDEX**
- A01 COVER PAGE
 - A02 SITE PLAN
 - A03 BASEMENT FLOOR PLAN
 - A04 GROUND FLOOR PLAN
 - A04A GROUND LEVEL 2 FLOOR PLAN
 - A05 SECOND FLOOR PLAN
 - A06 THIRD FLOOR PLAN
 - A07 ROOF PLAN
 - A08 FRONT ELEVATION
 - A09 REAR ELEVATION
 - A10 SIDE (EAST) ELEVATION
 - A11 SIDE (WEST) ELEVATION
 - A12 SECTIONS
 - A13 GENERAL NOTES



WEST SIDE ELEVATION

AREA OF EXISTING EXTERIOR WALL :

EXISTING 116.37 M² TO BE REMOVED .08 M²

TO BE RETAINED 116.29 M²

- DRAWING INDEX**
- A01 COVER PAGE
 - A02 SITE PLAN
 - A03 BASEMENT FLOOR PLAN
 - A04 GROUND FLOOR PLAN
 - A04A GROUND LEVEL 2 FLOOR PLAN
 - A05 SECOND FLOOR PLAN
 - A06 THIRD FLOOR PLAN
 - A07 ROOF PLAN
 - A08 FRONT ELEVATION
 - A09 REAR ELEVATION
 - A10 SIDE (EAST) ELEVATION
 - A11 SIDE (WEST) ELEVATION
 - A12 SECTIONS
 - A13 GENERAL NOTES

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						<p>DRAWING TITLE</p> <p>SIDE (WEST) ELEVATION</p>

PROPOSED:

MAKE INTERIOR & EXTERIOR ALTERATIONS TO CREATE REAR 1 STY. ADDITION, 3RD STY. ADDITIONS AND FRONT INDOOR GARAGE