

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, March 16, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53 (19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MARIA KUMER

Applicant(s): ARMANDO BARBINI PLANNING & PERMIT SERVICES

Property Address/Description: 32 ROSELAND DR

Committee of Adjustment File

Number(s): 19 209363 WET 03 CO, 19 209367 WET 03 MV, 19 209372 WET 03 MV

**TLAB Case File Number(s): 20 178173 S53 03 TLAB, 20 178174 S45 03 TLAB, 20 178176 S45 03 TLAB**

**Hearing date:**      **February 22, 2021**

**DECISION DELIVERED BY ANA BASSIOS**

## APPEARANCES

Name	Role	Representative
Armando Barbini Planning Permit Services	Applicant	
32 Roseland Drive Ltd.	Owner/Party	Amber Stewart
Maria Kumer	Appellant	Marcin Mazierski
Franco Romano	Expert Witness	
Max Dida	Witness	
Laleh Farhadi	Witness	

## **INTRODUCTION**

This is an appeal by Maria Kumer (Appellant) of the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment's (COA's) approval, with conditions, of the Consent to Sever the property at 32 Roseland Dr (Subject Property), and associated variances to construct two new two-storey dwellings with integrated garages on the resultant lots. The Decision of the COA was appealed to the Toronto Local Appeal Body (TLAB) on August 11, 2020. The Hearing of this matter was scheduled for February 22, 2021.

The Subject Property is located north of Lake Shore Blvd W and west of Brown's Line in the Alderwood Community of the former City of Etobicoke. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RM (u3)(x18) under Zoning By-law No. 569-2013 and R3 pursuant to the former Etobicoke Zoning By-law 1979 – 67.

The COA had before it an application for consent to sever the Subject Property into two lots, and applications for a total of sixteen variances to construct a new dwelling on each of the anticipated newly created lots.

In attendance at the Hearing were; Amber Stewart, legal representative for the Applicant; Franco Romano, Expert Witness on behalf of the Applicant; Adam Prochilo, an observer; and Marcin Mazierski, legal representative for the Appellant.

I advised that pursuant to Council's direction, I had attended on the site and the surrounding area and had reviewed the pre-filed materials.

At the commencement of the Hearing on this matter, the TLAB was advised that the Parties were very close to a settlement of the matter, and jointly requested that the Hearing be recessed for a short period so that the settlement discussions might be concluded. The Hearing was recessed for an hour and a half, during which time the Parties were able to come to an agreement on a settlement of this matter. The settlement agreed to between the Parties included a full withdrawal of the Appeal regarding the Consent to Sever and the Appeal regarding the variances for the east lot. A revised set of variances for the west lot was presented to the TLAB with a request that the TLAB approve the variances as agreed between the Parties.

## **BACKGROUND**

The applications **before the COA** were:

### **THE CONSENT REQUESTED:**

To obtain consent to sever the property into two residential lots.

### **Conveyed - Part 1**

The lot frontage will be 7.62 m and the lot area will be 290.3 m<sup>2</sup>. The existing dwelling will be demolished, and the property will be developed as the site of a new detached dwelling with an attached garage, requiring variances to the Zoning By-law.

## **Retained - Part 2**

The lot frontage will be 7.62 m and the lot area will be 290.3 m<sup>2</sup>. The existing dwelling will be demolished, and the property will be developed as the site of a new detached dwelling with an attached garage, requiring variances to the Zoning By-law.

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

### **PART 1 (WEST LOT)**

#### **1. Section 900.6.10.(18)(B)(i), By-law 569-2013**

The minimum required lot frontage is 12 m.

The new lot frontage will be 7.62 m.

#### **2. Section 900.6.10.(18)(A)(i), By-law 569-2013**

The minimum required lot area is 465 m<sup>2</sup>.

The new lot area will be 290.31 m<sup>2</sup>.

#### **3. Section 900.6.10.(18)(C)(i), By-law 569-2013**

The maximum permitted coverage is 33% of the lot area (95.8 m<sup>2</sup>).

The proposed dwelling will cover 36% of the lot area (105.07 m<sup>2</sup>).

#### **4. Section 1(a), By-law 1979-67 & 1981-272**

The maximum permitted gross floor area is 0.4 times the area of the lot (116.12 m<sup>2</sup>).

The proposed dwelling will have a gross floor area equal to 0.67 times the area of the lot (193.16 m<sup>2</sup>).

#### **5. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

The proposed dwelling will be located 0.61 m from the east side lot line and 0.91 m from the west side lot line.

#### **6. Section 10.80.40.20.(1), By-law 569-2013**

The maximum permitted dwelling length is 17 m.

The proposed dwelling will have a length of 18.14 m.

#### **7. Section 3, By-law 1979-67**

The maximum permitted height is 7.5 m, measured to the midpoint of the roof.

The proposed dwelling will have a height of 8.23 m, measured to the midpoint of the roof.

**8. Section 10.5.40.60.(7), By-law 569-2013**

Roof eaves may be no closer than 0.3 m to a lot line.

The proposed eaves will be located 0.14 m from the east side lot line.

**PART 2 (EAST LOT)**

The variances requested from the COA were the same for both parts, with the exception of:

**5. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

The proposed dwelling will be located 0.61 m from the east side lot line and 0.91 m from the west side lot line.

The request **before the TLAB** was to approve partially revised variances for the west lot (Part 1) reflecting a settlement reached between the Parties, as follows:

**Part 1**

**1. Section 900.6.10.(18)(B)(i), By-law 569-2013**

The minimum required lot frontage is 12 m.

The new lot frontage will be 7.62 m.

**2. Section 900.6.10.(18)(A)(i), By-law 569-2013**

The minimum required lot area is 465 m<sup>2</sup>.

The new lot area will be 290.31 m<sup>2</sup>.

**3. Section 900.6.10.(18)(C)(i), By-law 569-2013**

The maximum permitted coverage is 33% of the lot area (95.8 m<sup>2</sup>).

The proposed dwelling will cover 34.6% of the lot area (100.41 m<sup>2</sup>).

**4. Section 1(a), By-law 1979-67 & 1981-272**

The maximum permitted gross floor area is 0.4 times the area of the lot (116.12 m<sup>2</sup>).

The proposed dwelling will have a gross floor area equal to 0.633 times the area of the lot (183.73 m<sup>2</sup>).

**5. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

The proposed dwelling will be located 0.61 m from the east side lot line.

**6. Section 10.80.40.20.(1), By-law 569-2013**

The maximum permitted dwelling length is 17 m.

The proposed dwelling will have a length of 18.14 m.

**7. Section 3, By-law 1979-67**

The maximum permitted height is 7.5 m, measured to the midpoint of the roof.

The proposed dwelling will have a height of 8.23 m, measured to the midpoint of the roof.

**8. Section 10.5.40.60.(7), By-law 569-2013**

Roof eaves may be no closer than 0.3 m to a lot line.

The proposed eaves will be located 0.14 m from the east side lot line.

## **MATTERS IN ISSUE**

Despite a proffered Minutes of Settlement (MOS), the TLAB must be satisfied that the policy and legal tests set out in the Planning Act are properly satisfied. Of the three applications that were before the COA, two have been withdrawn and thus the TLAB considers these appeals abandoned and will dismiss both the Appeal of the Consent to Sever and the Appeal of the variances for Part 2, the east lot.

The variances requested for Part 1, the west lot, have been revised with consent of the Parties as part of a Settlement of this matter. While the Parties to this matter are in agreement and only uncontested evidence in support of the settlement was led, the authority of the TLAB is sought to approve the revised variances and it therefore remains the duty of the TLAB to come to an independent Decision regarding s. 45(1) of the *Planning Act*.

## **JURISDICTION**

### **Settlement - TLAB Rule 19.4**

Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection, the TLAB may issue an order giving effect to the settlement and any necessary amendments.

### **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**

The Minutes of Settlement were submitted by Ms. Stewart and marked as Exhibit A.

Mr. Romano was called to provide evidence in support of the settlement regarding the revised variances. His Expert Witness Statement was marked as Exhibit B.

The revisions to the variances that were before the COA have resulted in the elimination of the side yard setback on the west side, reduction in the magnitude of the coverage and reduction of the gross floor area of the proposal.

## **OFFICIAL PLAN**

Mr. Romano provided photographic and statistical evidence to support his definition of the broader neighbourhood as being one of a mixture of physical characters and exhibiting a variety of building types. It should be noted that the area has a "Multiple Residential" Zoning that permits semi-detached dwellings, single dwellings and multiple dwelling units. He noted that there has been a considerable amount of regeneration in the neighbourhood. This regeneration mostly consists of replacement dwellings, which have tended to be larger than their predecessors. Lots in the geographic neighbourhood have diverse lot sizes and frontages that range from 6.75 m to over 24 m. Lot areas range from 225.32 m<sup>2</sup> to 781.08 m<sup>2</sup>.

Mr. Romano referenced photographs of dwellings of each type on Roseland Dr. Typically, dwellings are two storeys and side yard setbacks are tight to modest. More recently constructed dwellings generally occupy more of the width of the lots on which they are located, and integrated garages are more common. Lot frontages in the immediate context of Roseland Dr. range from 7.62 m to 18.29 m. Lot areas in the immediate context range from 245 m<sup>2</sup> to 696.77 m<sup>2</sup>.

Mr. Romano briefly referenced the City Planning report to the COA, wherein staff stated that they did not object to the consent application, but that in their opinion the proposed lots were better suited to a semi-detached dwelling. The staff report states that all lots on the block of Roseland Dr. where the Subject Property is located, with lot frontages of smaller than 7.62 m, contain semi-detached dwellings. Mr. Romano disagrees with staff on this point, and asserts that under the RM Zoning, a detached dwelling can be permitted on the same lot as a semi might be.

In Mr. Romano's opinion, the proposal represents development that will respect and reinforce the Subject Property's neighbourhood physical contexts and is materially consistent with the geographic neighbourhood and immediate physical contexts. Further, in his opinion, the proposal conforms to the Official Plan and meets the general intent and purpose of the Official Plan. After review of pertinent policies, he is of the opinion that the proposal is consistent with the PPS and the Growth Plan and that it implements the applicable sections of the Planning Act.

## **ZONING**

The requested variances to the Zoning By-law, in Mr. Romano's opinion, maintain the general intent and purpose of the Zoning By-laws.

The proposed lot area and lot frontage will, in Mr. Romano's opinion, fit in well with the intermingling of lot sizes that exist in the neighbourhood. He asserts that lots smaller than the general zoning requirement are well represented in the Subject Property's physical contexts.

Mr. Romano is of the opinion that the proposed lot coverage provides ample space for amenity and servicing. He asserts that the proposed gross floor area (gfa) is compatible with the gfa represented elsewhere in the neighbourhood and immediate context.

The revision to the side yard setback that is part of the settlement agreement between the Parties eliminates the Variance previously sought for the side yard set back for the west side of the lot. The side yard setback Variance requested for the east side of the lot, (between the proposed two new dwellings) in Mr. Romano's opinion provides adequate space to facilitate spatial separation, access, maintenance and servicing. He notes that the neighbourhood includes commonly found side yard setbacks that are smaller than the zoning requirement with no numeric uniformity, consistency, or pattern.

The building length is articulated, measuring 18.4 m for the first floor which includes an integrated garage. The second floor is recessed and is 15.7 m in length. In Mr. Romano's opinion, the length maintains ample rear yard space. He also notes that the dwellings on either side of the Subject Property have similar building lengths to what is proposed.

In Mr. Romano's opinion, the roof height variance meets the general intent and purpose of the By-law to achieve a low profile, low-rise residential building. He states that the proposal maintains a sloped roof design that is sloped away from all walls. The proposed building height meets the requirements of the City's harmonized Zoning By-law (By-law 569-2013), but as these provisions of the By-law remain under appeal, the lesser height allowance of the former City of Etobicoke Zoning By-law (By-law 1979-67) remains in force.

The roof eaves setback variances are internal to the proposal, i.e. they are between the two new proposed dwellings that are to be located on the Subject Property. Mr. Romano attests that the Variance is for the roof eavestrough, the eaves are set back 0.29 m, which is greater than what the By-law requires.

#### **MINOR AND DESIRABLE**

In Mr. Romano's opinion, the proposal creates no unacceptable adverse impact and is therefore minor in nature. It is his opinion that the proposal will introduce compatible lot size, site design and built form features which are within the planning and public interest. He therefore concludes that they are desirable for the appropriate use and development of the land.

## **ANALYSIS, FINDINGS, REASONS**

The Appeals to the Consent to Sever and the Variances for Part 2 were withdrawn at the Hearing. There being no contest to the Decision of the COA on these two applications, the COA Decision will become final and binding for those. The Parties requested that the TLAB consider and approve a revised set of variances for Part 1, the remaining application.

Mr. Romano provided uncontested evidence to support the settlement, relying on his Expert Witness Statement that had been previously submitted in support of all three applications. The context within which the variances for Part 1 are to be considered are substantially influenced by the reinstatement of the COA approvals regarding the Consent and the Variances for Part 2. In considering the variances for Part 1, I must recognize what is now approved to be built on the other Part of the Subject Property as the immediate context for the application before me. The perspective of the staff report to the COA that asserted a semi-detached dwelling to be more appropriate is rendered moot by the withdrawals.

I accept Mr. Romano's uncontested evidence that the proposal meets the requirements of Provincial policy, the Official Plan, and the pertinent Zoning By-laws.

I note that as a settlement, this case has no precedential value since any findings of fact are for the limited purpose of ensuring that the settlement is not contrary to the *Planning Act (Act)*.

I also find that any revisions to the proposed variances before the TLAB, arrived at in the course of settlement discussions, are minor and therefore do not warrant further notice pursuant to s.45(18.1.1) of the *Act*.

I find that the variances and the associated conditions of approval proposed in the settlement are in the public interest and that the requested variances meet the four tests under Section 45(1) of the *Act*.

## **DECISION AND ORDER**

1. Regarding the Consent to Sever (20 178173 S53 03 TLAB) and the requested Variances for Part 2, (20 178176 S45 03 TLAB):
  - i) The Appeals having been abandoned, the Appeals are dismissed. The Committee of Adjustment decision noted above is final and binding, and the file of the Toronto Local Appeal Body is closed.
  - ii) The jurisdiction of the TLAB has been terminated. The terms of any agreement between the Appellant and the Applicant remain as between the Parties and are not subject to the authority or jurisdiction of the TLAB.

2. Regarding the Variances requested for Part 1 (20 178174 S45 03 TLAB):
- i) The variances to the Zoning By-law set out in Schedule A are authorized, subject to the conditions contained therein and the site plan and drawings set out in Appendix A.
  - ii) Any other variances that may appear on the plans but are not listed in the written decision are NOT authorized.
  - iii) The earlier Decision of the Committee of Adjustment is set aside.

## **SCHEDULE A**

### **APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL**

#### **VARIANCES:**

##### **32 Roseland Dr. (Part 1)**

To construct a new dwelling.

##### **1. Section 900.6.10.(18)(B)(i), By-law 569-2013**

The minimum required lot frontage is 12 m.

The authorized lot frontage is 7.62 m.

##### **2. Section 900.6.10.(18)(A)(i), By-law 569-2013**

The minimum required lot area is 465 m<sup>2</sup>.

The authorized lot area is 290.31 m<sup>2</sup>.

##### **3. Section 900.6.10.(18)(C)(i), By-law 569-2013**

The maximum permitted coverage is 33% of the lot area (95.8 m<sup>2</sup>).

The authorized coverage is 34.6% of the lot area (100.41 m<sup>2</sup>).

##### **4. Section 1(a), By-law 1979-67 & 1981-272**

The maximum permitted gross floor area is 0.4 times the area of the lot (116.12 m<sup>2</sup>).

The authorized gross floor area is equal to 0.633 times the area of the lot (183.73 m<sup>2</sup>).

##### **5. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

A minimum side yard setback of 0.61 m from the east side lot line is authorized.

##### **6. Section 10.80.40.20.(1), By-law 569-2013**

The maximum permitted dwelling length is 17 m.

A maximum dwelling length of 18.14 m is authorized.

**7. Section 3, By-law 1979-67**

The maximum permitted height is 7.5 m, measured to the midpoint of the roof.  
A maximum height of 8.23 m, measured to the midpoint of the roof, is authorized.

**8. Section 10.5.40.60.(7), By-law 569-2013**

Roof eaves may be no closer than 0.3 m to a lot line.  
The proposed eaves are authorized to be located 0.14 m from the east side lot line

**CONDITIONS OF VARIANCE APPROVAL:**

1. The applicant shall comply with the conditions imposed in the Committee of Adjustment's **Consent Decision Number B0048/19EYK**.
2. The proposed dwelling shall be constructed substantially in accordance with the Site Plan (A1) (February 22, 2021), Front Elevation (A7) (February 22, 2021), Rear Elevation (A8) (February 22, 2021), Left-Side Elevation (A9) (February 23, 2021), and Right Side Elevation (A10) (January 9, 2020), prepared by Giancarlo Garofalo Architect and attached as Appendix A
3. Any ground floor rear deck shall be no higher than 150.56 m above sea level, as shown on the plans.
4. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree
5. The following conditions shall be fulfilled to the satisfaction of the Engineering and Construction Services Division:
  - 5.1. Submit a revised first floor plan which indicates the internal dimensions of the garage for each dwelling in metric units, such that they comply with the applicable by-law requirements;
  - 5.2. Submit a revised site plan with the following revisions at no cost to the City;
    - a) Illustrate the existing and proposed grades along the boundary limit and within the proposed site;
    - b) Illustrate a positive slope, minimum 2% and maximum 4% slope, on each of the proposed driveways, as measured between the proposed garage door entrance to the curb line of Roseland Drive;
    - c) Illustrate the portion of the proposed driveways within the Roseland Drive right-of-way; i.e., the section of each driveway from the south property line to the Roseland Drive edge-of-pavement;
    - d) Illustrate that the existing hedges abutting the south lot line of the property shall be removed, as it currently blocks the driveway to the proposed dwelling on the east lot; and
    - e) Show the footprint of the existing house and driveway on the Site Plan. Label any redundant portion of the existing driveway and associated curb cut shall be removed within the right-of-way and any disturbed area shall be restored with sod and raised concrete curb.

f) Add the following notes to the Site Plan:

- i. "The owner shall remove any redundant portion of the existing driveway and associated curb cut within the municipal right-of-way; and the disturbed area shall be restored with sod and raised concrete curb according to City of Toronto Design Standards."
- ii. "The proposed new driveways shall be constructed to the applicable City of Toronto Design Standards at no cost to the municipality."
- iii. "The owner shall submit a Municipal Road Damage Deposit (MRDD) prior to obtaining a Building Permit."
- iv. "The owner shall obtain the necessary authorizations and permits from the City's Right-of-Way Management Section of the Transportation Services before excavating within or encroaching onto the municipal road allowance."

If difficulties arise regarding this Decision and Order, the TLAB may be spoken to.

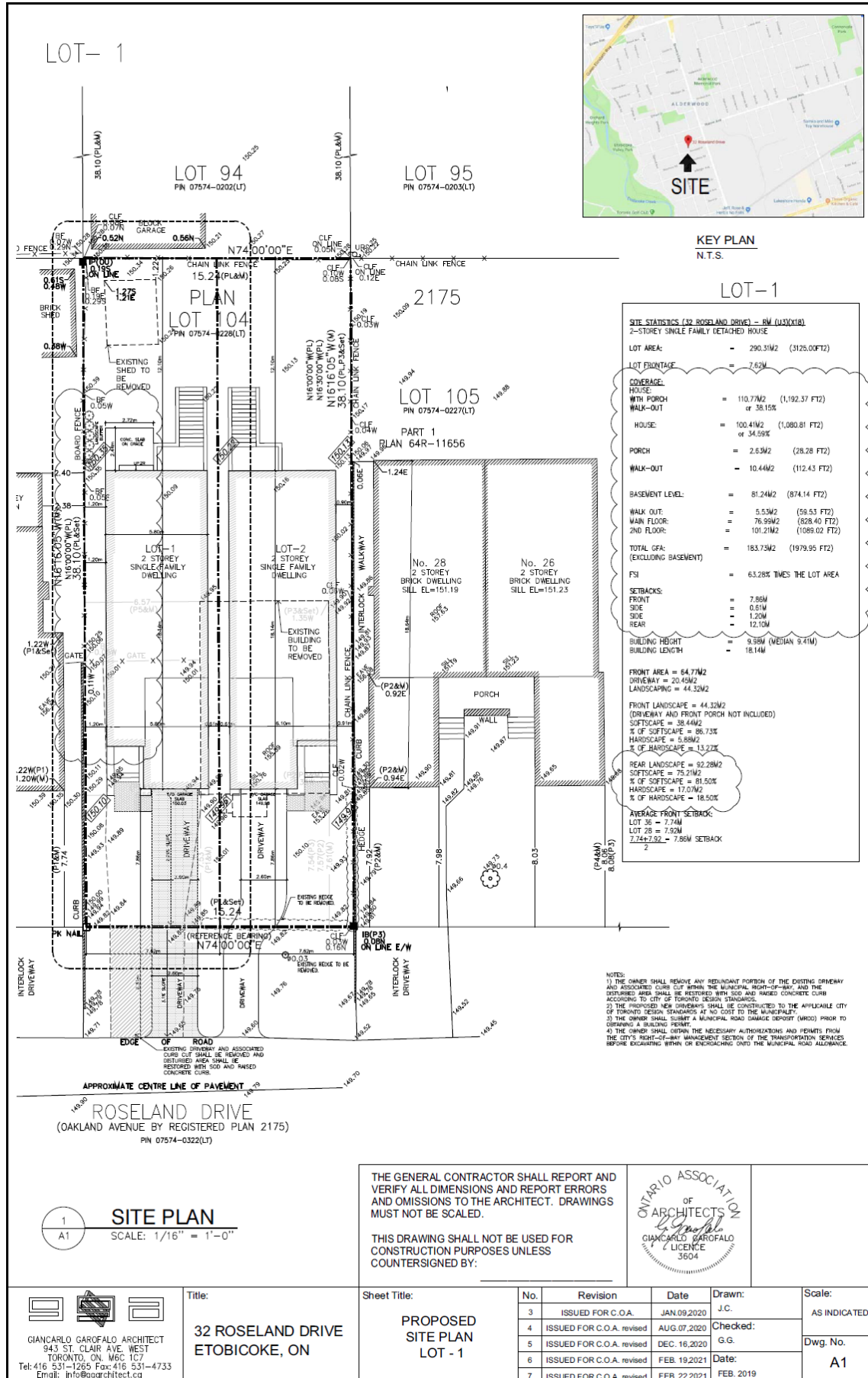
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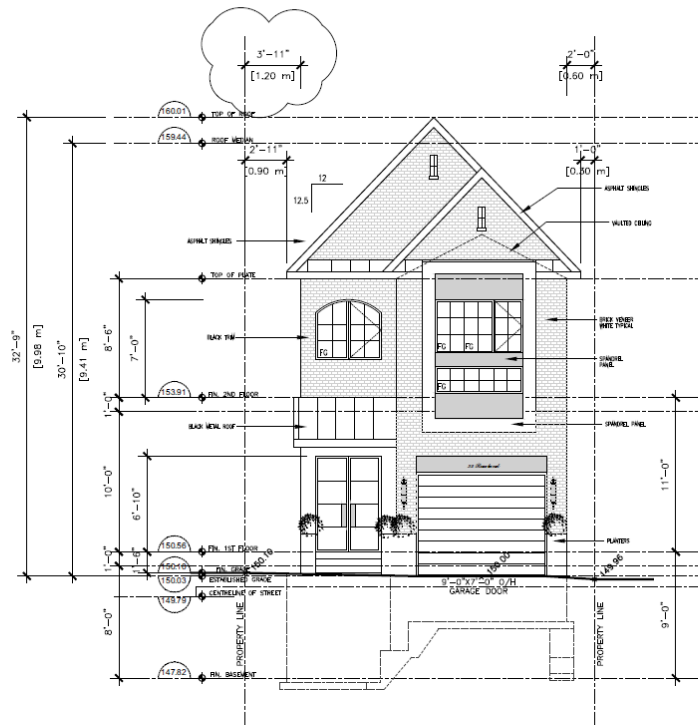
Ana Bassios  
Panel Chair, Toronto Local Appeal Body

## **APPENDIX A**

**Decision of Toronto Local Appeal Body Panel Member: A. BASSIOS**  
**TLAB Case File Number: 20 178173 S53 03 TLAB, 20 178174 S45 03 TLAB, 20 178176 S45 03 TLAB**



LOT-1



**FRONT ELEVATION**

SCALE : 1/8" = 1'-0"

THE GENERAL CONTRACTOR SHALL REPORT AND VERIFY ALL DIMENSIONS AND REPORT ERRORS AND OMISSIONS TO THE ARCHITECT. DRAWINGS MUST NOT BE SCALED.

THIS DRAWING SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNLESS COUNTERSIGNED BY:



GIANCARLO GAROFALO ARCHITECT  
 943 ST. CLAIR AVE. WEST  
 TORONTO, ON M6C 1C7  
 Tel: 416 531-1269 Fax: 416 531-4733  
 Email: info@ggarofalo.ca

Title:  
**32 ROSELAND DRIVE  
 ETOBICOKE, ON**

Sheet Title:  
**FRONT ELEVATION**

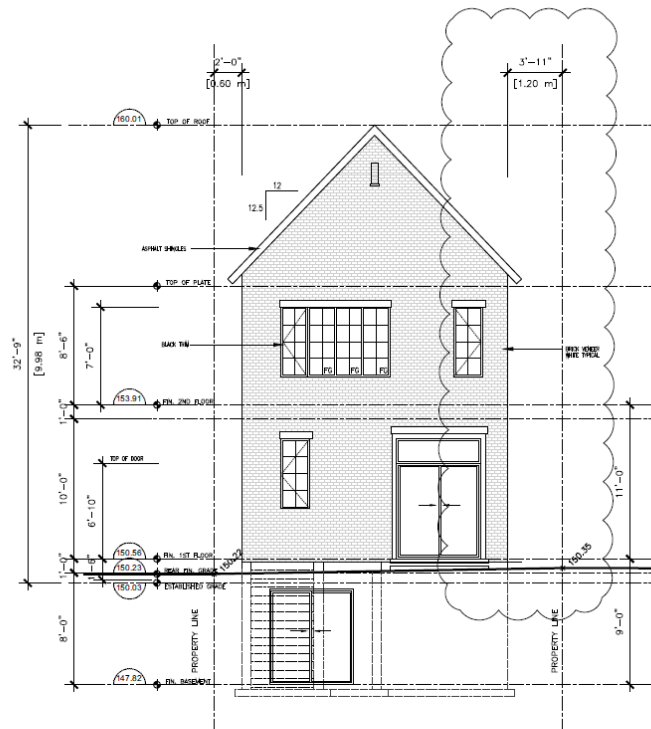
No.	Revision	Date	Drawn:
1	ISSUED FOR REVIEW	FEB. 20, 2019	J.C.
2	ISSUED FOR ZONING CERT.	JUN. 26, 2019	Checked:
3	ISSUED FOR C.O.A.	JAN. 09, 2020	G.G.
4	ISSUED FOR C.O.A. revised	FEB. 22, 2021	Date:
			FEB 2018

Scale:

Dwg. No.  
**A7**

5 of 18

LOT-1



**REAR ELEVATION**

SCALE: 1/8" = 1'-0"

THE GENERAL CONTRACTOR SHALL REPORT AND VERIFY ALL DIMENSIONS AND REPORT ERRORS AND OMISSIONS TO THE ARCHITECT. DRAWINGS MUST NOT BE SCALED.

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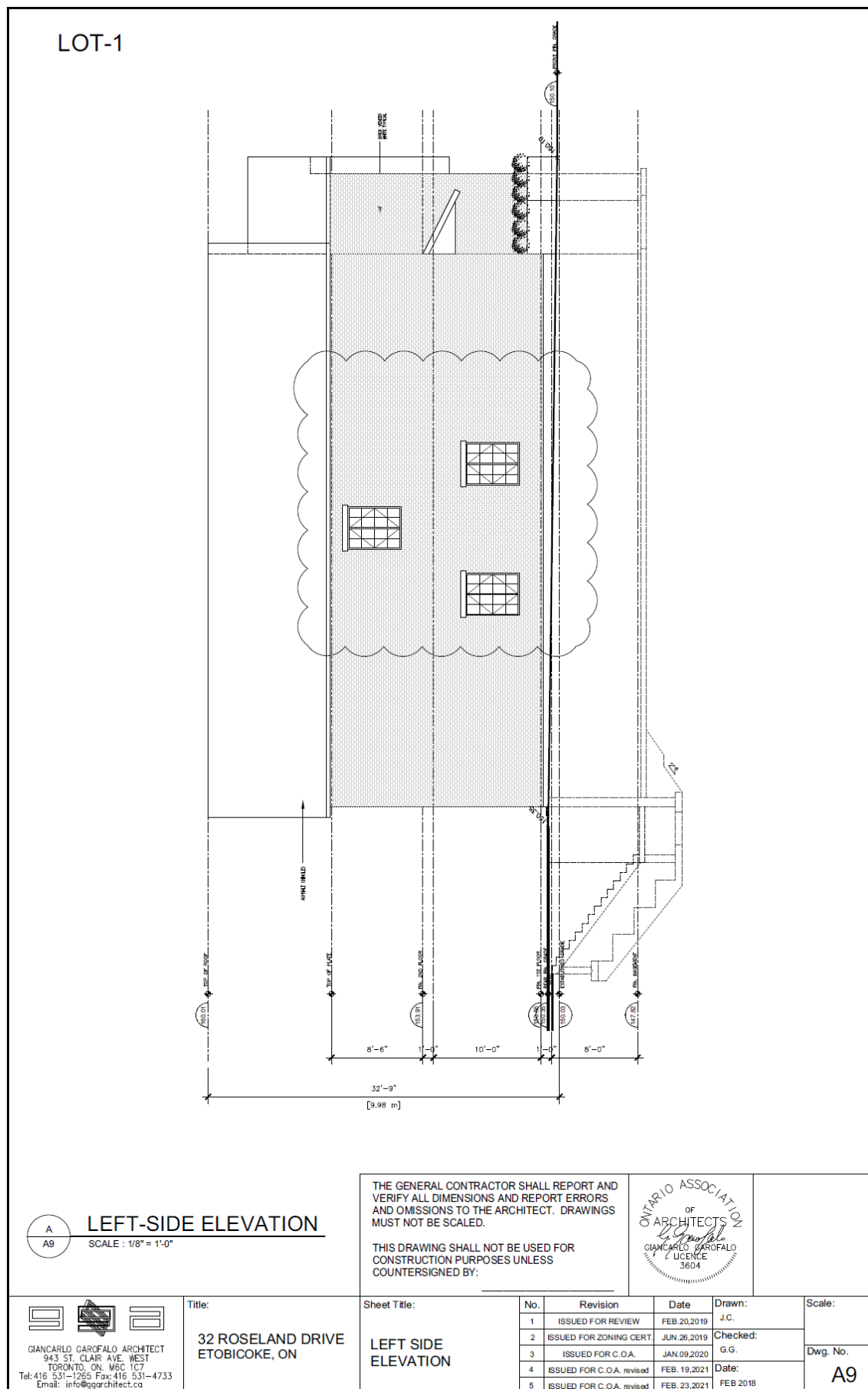
Title:  
**32 ROSELAND DRIVE  
 ETOBICOKE, ON**

Sheet Title:  
**PROPOSED  
 REAR ELEVATION**

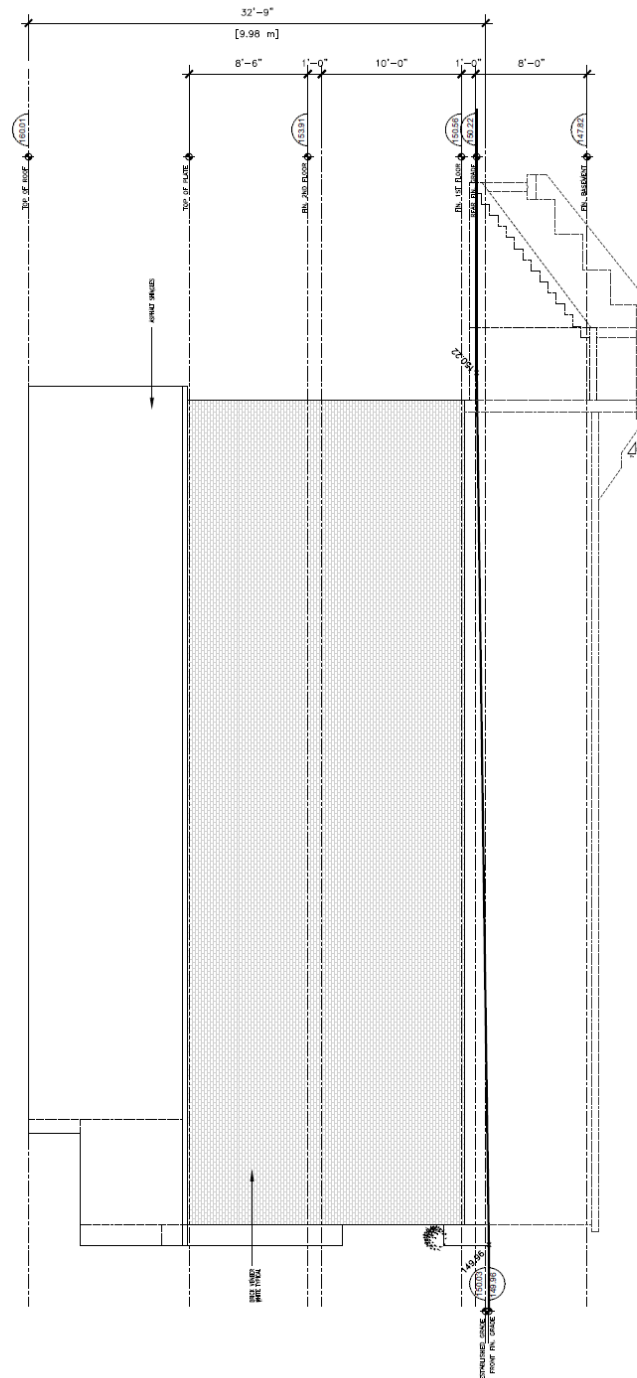
No.	Revision	Date
1	ISSUED FOR REVIEW	FEB. 20, 2019
2	ISSUED FOR ZONING CERT.	JUN. 26, 2019
3	ISSUED FOR C.O.A.	JAN. 09, 2020
4	ISSUED FOR C.O.A. revised	FEB. 19, 2021
5	ISSUED FOR C.O.A. revised	FEB. 22, 2021

Drawn:  
 J.C.  
 Checked:  
 G.G.  
 Date:  
 FEB 2018

Scale:  
 Dwg. No.  
**A8**



LOT-1



A  
A10

**RIGHT-SIDE ELEVATION**

SCALE : 1/8" = 1'-0"

THE GENERAL CONTRACTOR SHALL REPORT AND VERIFY ALL DIMENSIONS AND REPORT ERRORS AND OMISSIONS TO THE ARCHITECT. DRAWINGS MUST NOT BE SCALED.

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Title:  
**32 ROSELAND DRIVE  
 ETOBICOKE, ON**

Sheet Title:  
**RIGHT SIDE  
 ELEVATION**

No.	Revision	Date
1	ISSUED FOR REVIEW	FEB 20, 2019
2	ISSUED FOR ZONING CERT.	JUN 26, 2019
3	ISSUED FOR C.O.A.	JAN 09, 2020

Drawn:  
 J.C.  
 Checked:  
 G.G.  
 Date:  
 FEB 2018

Scale:  
 Dwg. No.  
**A10**