

DECISION AND ORDER

Decision Issue Date Tuesday, July 13, 2021

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): DANNY MENDES REIS

Applicant(s): AMBIENT DESIGNS LTD

Property Address/Description: 613 HARVIE AVE

Committee of Adjustment File Number: 20 200304 STE 09 MV

TLAB Case File Number(s): 21 118941 S45 09 TLAB

Hearing date: June 24, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. GOPIKRISHNA

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Ambient Designs Ltd.	Applicant	
Danny Reis	Appellant	Russell Cheeseman/Stephanie Fleming
TJ Cieciura	Expert Witness	

INTRODUCTION AND BACKGROUND

Taline Melkonian and Danny Mendes Reis are the owners of 613 Harvie Ave. located in Ward 9 (Davenport) of the City of Toronto. They applied to the Committee of Adjustment (COA) for variances to alter the existing one-storey detached dwelling into a three-storey detached dwelling. The COA heard the application on February 4, 2021, and refused the application in its entirety.

On February 22, 2021, the Applicants appealed the decision of the COA to the Toronto Local Appeal Body (TLAB), which scheduled an Electronic Hearing to be held on June 24, 2021.

MATTERS IN ISSUE

Chapter 10.80.40.10.(2)(B)(ii) By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 8.50 m.

The altered detached dwelling will have side exterior main wall heights of 10.53 m.

2. Chapter 10.5.50.10.(1)(B) By-law 569-2013

A minimum of 50% of the front yard must be landscaping (19.81 m²).

In this case, the front yard landscaping area is 44% of the front yard (17.32 m²).

3. Chapter 10.5.50.10.(1)(D) By-law 569-2013

A minimum of 75% of the required front yard landscaping must be soft landscaping (14.86 m²). In this case, the front yard soft landscaping area is 57% of the required front yard landscaping (11.22 m²).

Chapter 10.5.50.10.(3)(A) By-law 569-2013

A lot with a residential building, other than an apartment building, must have a minimum of 50% of the rear yard for soft landscaping (107.86 m²).

In this case, the rear yard landscaping area is 34% of the rear yard (74.14 m²).

5. Chapter 150.10.40.1.(2)(A) By-law 569-2013

An addition or exterior alteration to an existing building to accommodate a secondary suite is permitted if it does not alter or add to a front wall, or roof that faces a street.

In this case, the front main wall that faces the street will be altered.

JURISDICTION

Provincial Policy – S. 3

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

Variance – S. 45(1)

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

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

EVIDENCE

At the Hearing held on July 24, 2021, the Appellants were represented by Mr. Russell Cheeseman, and Ms. Stephanie Fleming, both of whom are lawyers, and Mr. T.J.Cieciura, who is a land use planner. It is important to note that there were no other Parties or Participants involved in this Hearing. Mr. Cieciura was sworn in, and recognized as an Expert Witness in the area of land use planning. The highlights of his evidence are as follows:

The Subject Property, municipally known as 613 Harvie Avenue is located on the East side of Harvie Avenue, between Eglinton Avenue West and Thornton Avenue, in the community popularly referred to as “Caledonia-Fairbank”, within the municipality of Toronto. For the purposes of this discussion, the front of the Subject Property on Harvie Avenue is considered to be the west lot line. The Subject Property is rectangular in shape, with 7.62m of frontage and a depth of 45.72m, with a lot area of 348.40 sq.m..

According to Mr. Cieciura, the neighbourhood is characterized by the simultaneous presence of both narrow and wide dwellings, which typically have small side yard setbacks from abutting lot lines. There is a mix of integral garages, and rear detached garages within the neighbourhood. The Site is classified as being in the “Neighbourhoods” category by the Official Plan, and is currently zoned “RM (f12.0; u2; d0.8) (x252)”, under the City of Toronto Zoning By-law 569-2013. This is a residential multiple dwelling zone, with a maximum floor space index of 0.8x the area of the lot, with special exception RM 252. Special exception RM252 permits a minimum frontage of 8.0m, and also applies regulations to a list of specific municipal addresses, from which the Subject Property is excluded.

The proposal before the TLAB is to alter the existing one-storey detached dwelling into a three-storey detached dwelling with a secondary suite, by constructing a front porch, a rear ground floor deck, a full second and third storey addition, and front and rear third-storey balconies.

Mr. Cieciura then recited the variances, as stated in the “**Matters in Issue**” Section.

Mr. Cieciura opined that the Application results in a 3(three) storey single detached dwelling, which represents modest development in an urban area, and contributes to the vitality and regeneration of settlement areas within the City of Toronto, thereby satisfying Policy 1.1.3 of the Provincial Policy Statement (2020). The proposal will also allow for a larger number of occupants to live in this dwelling, consequently fulfilling the Growth Plan for the Greater Golden Horseshoe 2020.

Mr. Cieciura spoke to how the proposal fulfilled Section 45.1 of the Planning Act.

He said that the neighbourhood study area is bound by Eglinton Avenue W to the north, Nairn Avenue to the east, Redhill Avenue to the south, and Harvie Avenue to the west.

Speaking to how the proposal satisfied Section 2.3 of the OP, Mr. Cieciora pointed out how the neighbourhood redeveloped over the last decade, with older dwellings being modified, altered or replaced with new and more “efficient” dwellings. The proposed development reflects the same trend of redevelopment in the form of an addition to an existing bungalow.

Speaking next to Policy 3.1.2, (Built Form Policies) Mr. Cieciora said that the Application would result in a 3-storey single detached dwelling, where a one storey single detached dwelling currently exists. Through a brief photo tour of the immediate context, he demonstrated how the proposed dwelling will fit in with the surrounding area, which consists of a wide range of housing types.

The next policy to be addressed was Policy 3.4 of the Official Policy, which addresses urban forestry issues. Mr. Cieciora stated that the Applicant did not intend to injure/remove any trees on the Property, and added that as such, a Tree Permit from the City of Toronto’s Urban Forestry Department would have to be obtained to cut down trees.

Speaking next to the relationship between the proposal, and Policy 4.1.5 of the OP, Mr. Cieciora spoke to Component c) ***prevailing heights, massing, scale and dwelling type of nearby residential properties***, He said that the proposed height, massing, scale, and dwelling type of the proposed dwelling would be similar to, and compatible with the dwellings immediately abutting it, as well in the surrounding area, after the completion of the proposed additions

Speaking to 4.1.5 d) ***prevailing building type***, he said that the proposal will not change the building type, which will remain a single detached dwelling, in an area dominated by single detached dwellings. He added that the area is zoned for a single detached dwelling, which is the prevailing building type in the neighbourhood.

Mr. Cieciora next spoke to the following components of Policy 4.1.5
f) prevailing setbacks of buildings from the street or streets;&
g) prevailing patterns of rear and side yard setbacks and landscaped open space

He said that the existing landscape, and open space conditions currently existing on the Subject Property will be “generally” being improved through this proposal, though relief was still required from the By-Law. He said that the proposal will maintain the existing pattern of front yard, side yard and rear yard setbacks seen in other houses within the geographic neighbourhood.

On the basis of this evidence, Mr. Cieciora concluded that the proposal maintained the intent and purpose of the Official Plan.

The test respecting the By-Laws was addressed next. Mr. Cieciora said that the general intent and purpose of the Zoning By-law is to achieve development that is appropriate for, and compatible with what already exists in the neighbourhood, without the creation of any unacceptable, negative adverse impacts.

Speaking to the variance requesting relief for main wall height, Mr. Cieciura said that the intent of the performance standard is to maintain a consistent massing in the neighbourhood, and to help control the height of the overall living space within the dwellings. He added that the overall height of the building complies with the By-Law, from which it can be concluded that the requested variance will not increase the massing from the street along Harvie Avenue, beyond what is already permitted under the Zoning By-law.

Discussing the variance where relief was requested for less than 50% of the front yard to be landscaped, Mr. Cieciura said that the intent of the minimum front yard landscaping performance standard is to ensure that the property has adequate landscaping to “maximize functionality of the front yard “ through the provision of walkways, and steps leading to front entrances. In this case, he pointed out that the Application actually improved the existing front yard landscaping by 0.3 sq.m, and is merely 2.49 sq.m. short of meeting the landscaping requirement, for the front yard. Given that the existing front yard was being improved on, however slightly, and the fact that there would be adequate space left for walkways, Mr. Cieciura concluded that the requested variance met the intent and purpose of the By-Law.

Mr. Cieciura next discussed the variance where the Application proposes soft landscaping for 57% of the required front yard landscaped area, versus the required 75%.

He said that intent of the front yard soft landscaping standard is to allow for “ample green space”, as well as the infiltration of storm water, and drainage. After emphasizing that the proposed soft scape is “merely 3.64 sq.m. short” of the requirement, Mr. Cieciura stated that the area within the municipal boulevard, in conjunction with the proposed front yard landscaping, helped satisfy the intent of the performance standard for soft landscaping, by allowing adequate opportunities for infiltration of storm water, and drainage. Based on this explanation, Mr. Cieciura concluded that the Application meets the intent of the minimum front yard soft landscaping requirement.

Mr. Cieciura next spoke to the variance which required a lot with a residential building to have a minimum of 50% of the rear yard for soft landscaping, or 107.86 sq.m. in this case. The Applicants’ request for relief is based on their proposing 28% of the rear yard, or 74.14 sq.m. as soft landscaping. He pointed out that the intent of a minimum soft landscaping requirement is to provide adequate amenity/open space area in the rear yard for the home -owners, as well as provide adequate space for storm water infiltration in the rear of the property. It was pointed out that while the Application is 33.72 sq.m. less than the required rear yard soft landscaping as per Zoning By-law requirements, it actually improved the existing rear yard soft landscaping condition by 8.56 sq.m., compared to what currently exists on the Subject Property. The existing shortage of rear yard soft landscaping was justified on the basis of the existing rear detached garage, and the need to provide access from Harvie Avenue to the garage. On the basis of this information, Mr. Cieciura concluded that the proposal satisfied the intent and purpose of the Zoning By-law.

Lastly, he spoke to the variance respecting the secondary suite, where an addition, or an exterior alteration to an existing building is permitted to accommodate a secondary suite, if it does not alter or add to a front wall, or roof that faces a street. However, the application proposes to alter the front main wall facing a street, to provide access to the secondary suite.

Mr. Cieciora stated that the intent of not allowing alterations to the front main wall for an application, including secondary suites is to ensure that the existing massing and streetscape, does not experience “rapid change” as a result of including secondary suites in redevelopments. He pointed that if the secondary suite were not proposed as part of this application, then the proposed front main wall would be permitted as-of-right. Given that the secondary suite, located in the basement which will not be altered in any fashion through this proposal, Mr. Cieciora concluded that the proposed secondary suite in this proposal, has no effect on the proposed increased massing proposed for the primary unit in the dwelling, and consequently satisfies the intent of the Zoning By-law.

Based on the above explanation, Mr. Cieciora concluded that the proposal maintained the intent and purpose of the Zoning By-law.

Mr. Cieciora next spoke to the test of appropriate development of the land. He said that the proposed addition to an existing detached dwelling implements the intention of the OP, to direct growth and development to settlement areas. The proposal embodies the modest redevelopment and regeneration taking place in the community, and would not have any negative impact on the Study Area, if approved. Based on this evidence Mr. Cieciora concluded that the proposal satisfied the test of appropriate development of the land.

Lastly, Mr. Cieciora spoke to how the test satisfied the test of minor. He asserted that the variances do not create any undue adverse impacts on the streetscape, or the adjacent neighbours, including shadows, privacy or overlook, and concluded that the proposal satisfied the test of minor.

Based on the evidence, as recited, Mr. Cieciora recommended that the Appeal be allowed, and the proposal be approved as presented. While he did not initially recommend any conditions to be imposed on the approval of the variances, I insisted that the Applicant propose specific language to ensure that the proposal would be built in substantial conformity with the elevations, and plans submitted to the TLAB. After the completion of the Hearing, the TLAB staff forwarded me email from Ms. Fleming stating the following:

The Owner must ensure that the development shall be constructed substantially in accordance with the approved Site Plan and Elevations, prepared by Ambient Designs Limited, dated Sep 25, 2020 , which are contained at Pages 5, 13, 14, 15 & 16 of Exhibit 1.

ANALYSIS, FINDINGS, REASONS

Mr. Cieciora's evidence was uncontroverted in this Appeal, because there were no other Witnesses to present evidence before the TLAB. I accept Mr. Cieciora's opinion on the question of compatibility between the proposal and the higher level Provincial Policies, by virtue of the proposal exemplifying intensification, and redevelopment within a Settled Area.

Mr. Cieciora's discussion of the OP covered Policies 2.3.1, 3.1.2, 3.2.1 and 4.1.5. He demonstrated that the proposal would be part of a continuum of development that the community was experiencing, as well as consistent with the ongoing development, which meant the development satisfied Policy 2.3.1. The evidence demonstrated that the proposed built form existed in the community and would not cause adverse impacts, which meant that Policies in Chapter 3 of the OP were satisfied. It was demonstrated that the requested front wall height, and front yard setback variances do not create adverse impacts on the neighbouring properties, or the street wall. Each of the variances respecting soft-landscaping is an improvement on the existing situation, and provides green space and greenery on the Property. On the basis of this evidence, I find that the proposal satisfies the test of maintaining the intent, and purpose of the OP.

The proposal satisfies the performance standards that correspond to the wall-height by not creating adverse shadow, or privacy impacts. The requested variance for the side yard, front yard, and rear yard setbacks would not impact access to the back of the house, nor would they negatively impact amenity space in the backyard. . I find that the proposal maintains the intent and purpose of By-Law 569-2013, because all the relevant performance standards are upheld by the proposal.

On the basis that there are no unacceptable adverse impacts on its neighbouring properties, I find that the proposal satisfies the test of minor. I also find that the proposal satisfies the test of appropriate development, on the basis of the evidence demonstrating that the proposal will not introduce a new built form into the community, nor will it destabilize the community, if approved.

On the basis of the analysis above, I find that the Appeal may be allowed, and that all of the requested variances be approved.

The recommended condition to be imposed is the standard conditions of building in substantial accordance with the submitted Plans and Elevations- namely that the dwelling be built in substantial compliance with the Plans and Elevations, drawn up by Ambient Designs Limited, dated Sep 25, 2020 , and submitted to the TLAB on April 30, 2021. The requisite Plans and Elevations are appended to this Decision.

DECISION AND ORDER.

1. The Appeal respecting 613 Harvie is allowed, and the Decision of the Committee of Adjustment, respecting 613 Harvie Ave., dated February 4, 2021 is set aside.
2. The following variances are approved:

1. Chapter 10.80.40.10.(2)(B)(ii) By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 8.50 m. The altered detached dwelling will have side exterior main wall heights of 10.53 m.

2. Chapter 10.5.50.10.(1)(B) By-law 569-2013

A minimum of 50% of the front yard must be landscaping (19.81 m²). In this case, the front yard landscaping area is 44% of the front yard (17.32 m²).

3. Chapter 10.5.50.10.(1)(D) By-law 569-2013

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4. Chapter 10.5.50.10.(3)(A) By-law 569-2013

A lot with a residential building, other than an apartment building, must have a minimum of 50% of the rear yard for soft landscaping (107.86 m²). In this case, the rear yard landscaping area is 34% of the rear yard (74.14 m²).

5. Chapter 150.10.40.1.(2)(A) By-law 569-2013

An addition or exterior alteration to an existing building to accommodate a secondary suite is permitted if it does not alter or add to a front wall, or roof that faces a street. In this case, the front main wall that faces the street will be altered

3. No other variances are approved.

4. The following condition is imposed on the approval:

The development shall be constructed substantially in accordance with the Site Plan and Elevations, prepared by Ambient Designs Limited, dated Sep 25, 2020, as submitted to the Toronto Local Appeal Body on April 30, 2021. The requisite Plans and Elevations are appended to this Decision.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

NOTE :
SEE SURVEY BY O.L.S. FOR VERIFICATION.
SURVEY INFORMATION TAKEN FROM PLAN
SHOWING LOT 371
REGISTERED PLAN 1530
CITY OF TORONTO
(FORMERLY CITY OF YORK)
PREPARED BY : LAND SURVEY GROUP
JANSKY T.C. LAU, OLS

DATE: JULY 06, 2020

LEGEND

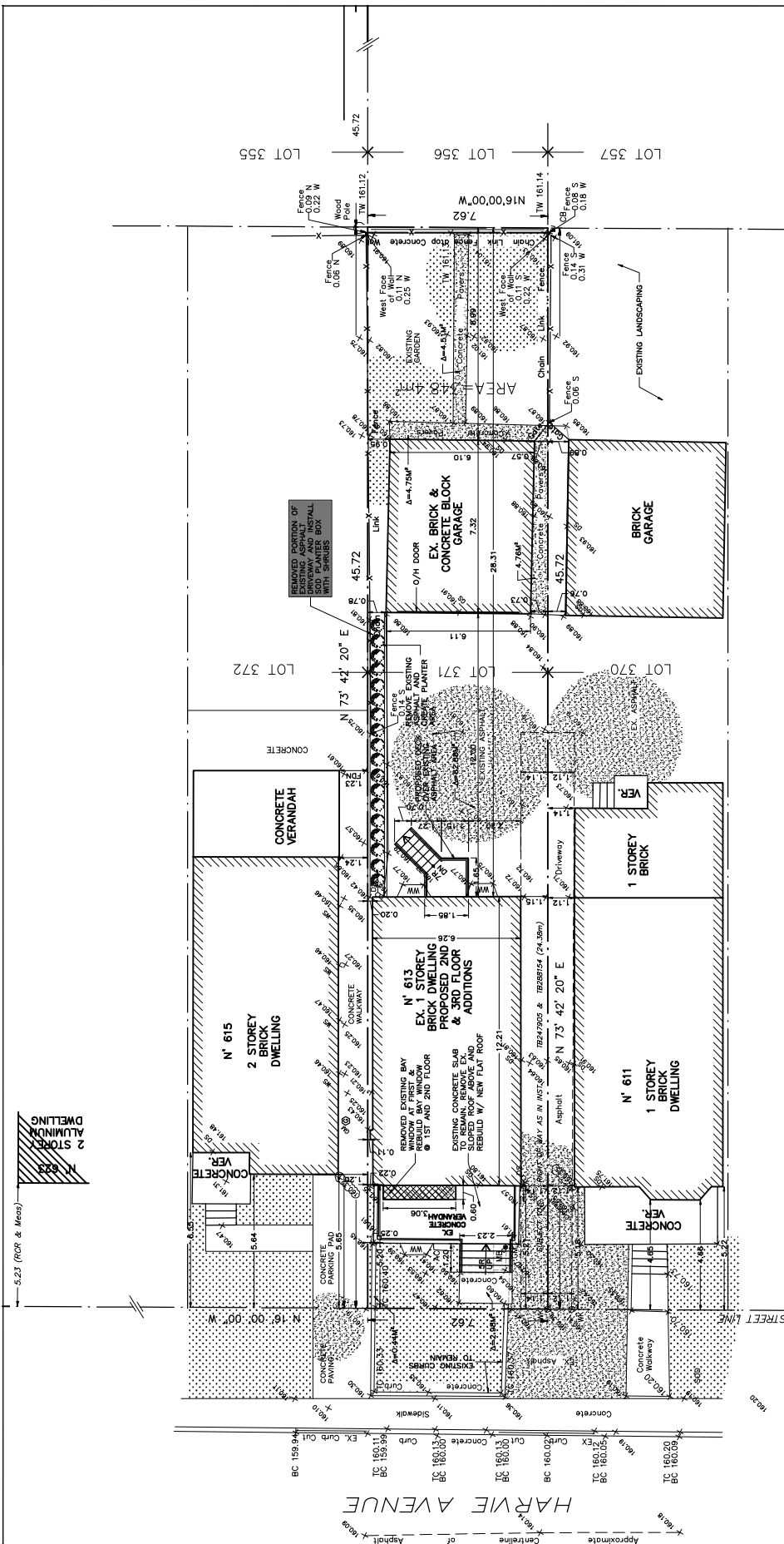
- 000.00 = EXISTING ELEVATION
- 000.00 = PROPOSED ELEVATION
- INDICATES SLOPE DIRECTION
- INDICATES TREE PROTECTION ZONE
- EXISTING TREES
- NEW TREES
- DOWNSPOUTS

ELEVATION NOTE

ELEVATIONS SHOWN HEREON ARE GEODETIC
AND IN METRES AND ARE RELATED TO
CITY OF TORONTO BENCH MARK N° 7716
HAVING A PUBLISHED ELEVATION OF
160.091 METRES (C.O.D. 1928-Pre-1978).

BEARING NOTE

BEARINGS ARE ASTRONOMIC AND
ARE REFERRED TO THE EASTERLY LIMIT
OF HARVE AVENUE HAVING A BEARING
OF N 16° 00' 00" W AS SHOWN ON
REGISTERED PLAN 1530



1	ISSUED FOR CoTA	SEP. 25 '20	M.R.
PROJECT NO.	A20131	SCALE:	1:175M
DWG. NAME:	SITE PLAN		
SHEET NO.	SK1		

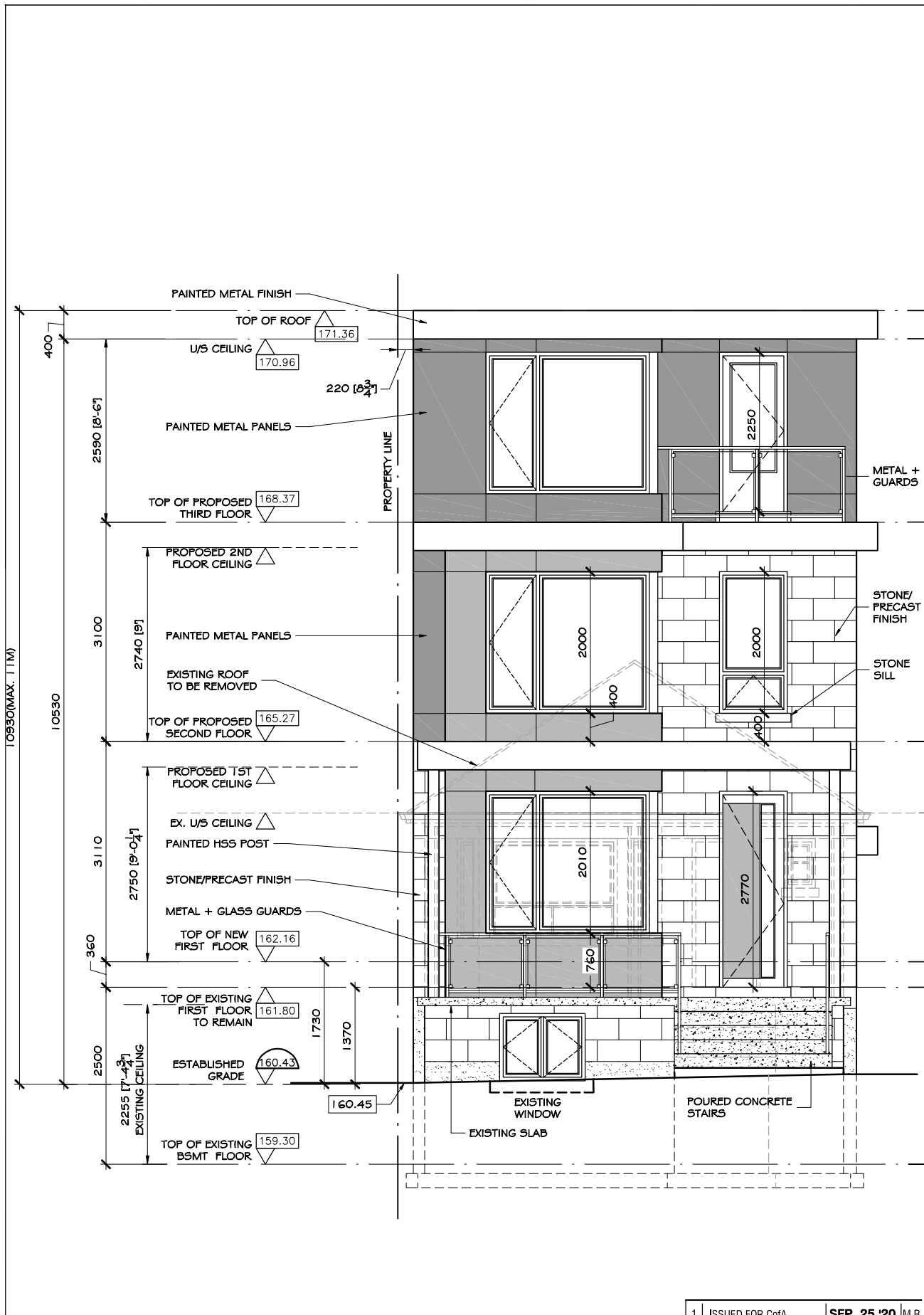
AMBIENT DESIGNS LTD.
DESIGN & BUILDING CONSULTANTS

1115 COLLEGE STREET TORONTO, ONTARIO M6H 1B5
T: (416)537-8531 E: ambient@ambientdesigns.ca

PROJECT NAME
**613 HARVIE AVENUE
CITY OF TORONTO**

DRAWN BY: M.R.

DATED: SEP. 16, 2020



1	ISSUED FOR CoFA	SEP. 25 '20	M.R.
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BCIN: 29659

PROJECT NAME

**613 HARVIE AVENUE
CITY OF TORONTO**

DRAWN BY:

M.R.

DATED:

SEP. 16, 2020

PROJECT NO.

A20131

SCALE:

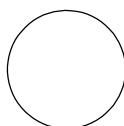
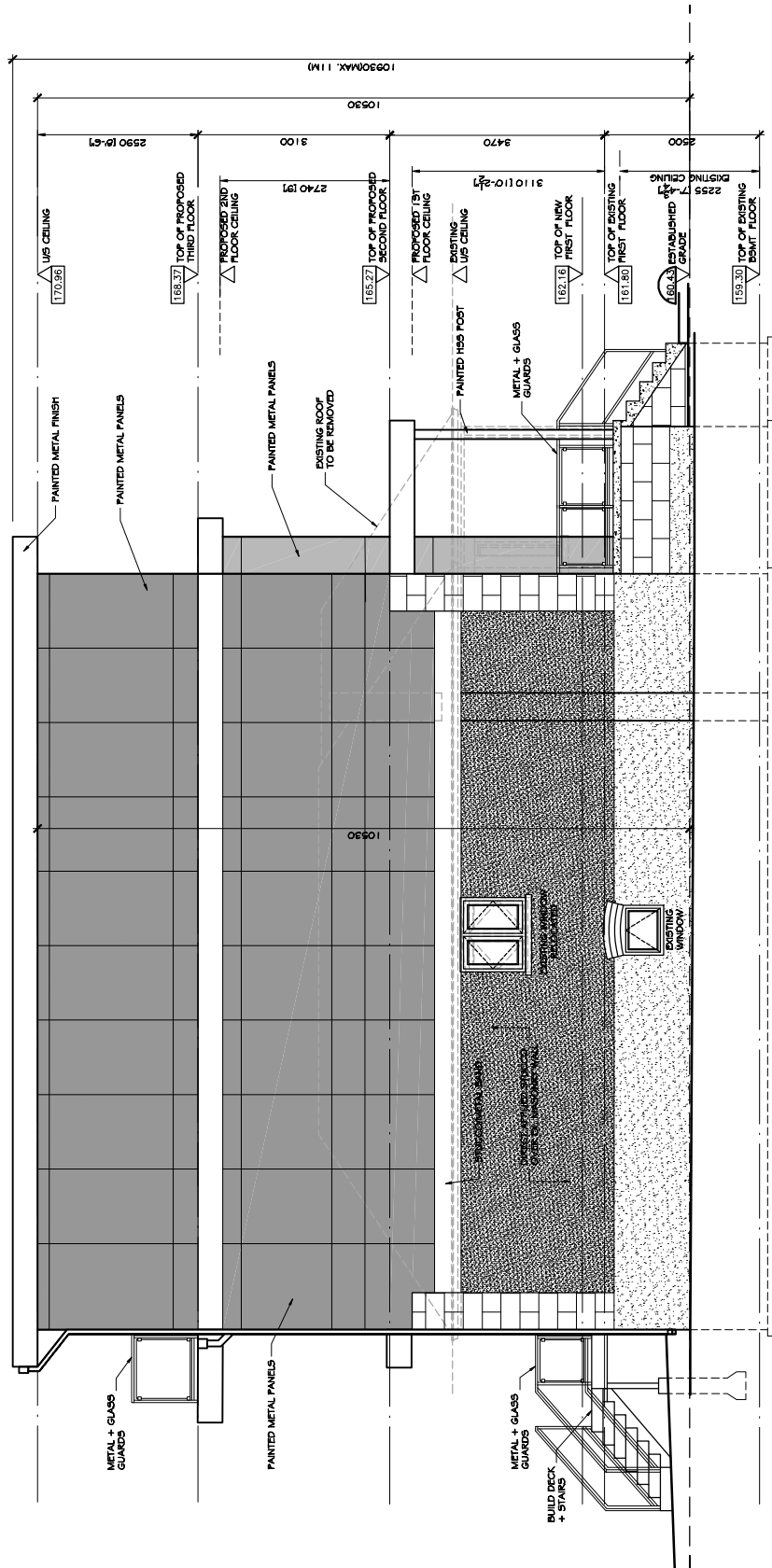
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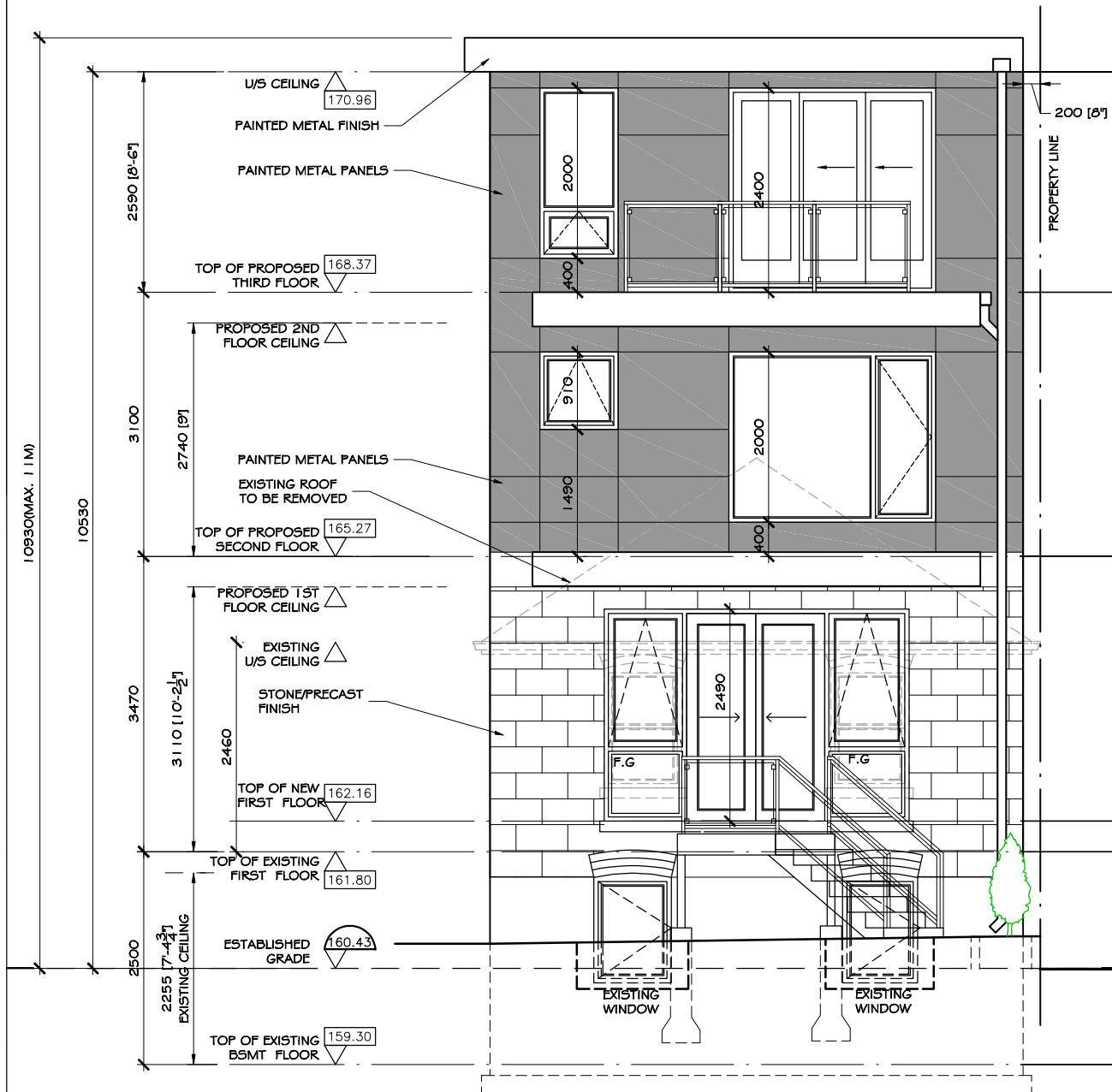
DWG. NAME:

WEST ELEVATION

SHEET NO.

SK8





1 ISSUED FOR CoA SEP. 25 '20 M.R.

AMBIENT DESIGNS LTD.
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BCIN: 29659

PROJECT NAME

**613 HARVIE AVENUE
CITY OF TORONTO**

DRAWN BY:

M.R.

DATED:

SEP. 16, 2020

PROJECT NO.

A20131

SCALE:

1:50M

DWG. NAME:

EAST ELEVATION

SHEET NO.

SK11