

DECISION AND ORDER

Decision Issue Date Friday, December 17, 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): SIMON WYNBERG

Applicant(s): 225 BRUNSWICK AVE (KD) LTD

Property Address/Description: 225 BRUNSWICK AVE

Committee of Adjustment File

Number(s): 20 123267 STE 11 MV (A0291/20TEY)

TLAB Case File Number(s): 21 143563 S45 11 TLAB

Hearing date: September 29, 2021 & October 8, 2021

Deadline Date for Closing Submissions/Undertakings: n/a

DECISION DELIVERED BY A. BASSIOS

REGISTERED PARTIES AND PARTICIPANTS

APPLICANT/OWNER	225 BRUNSWICK AVE (KD) LTD
APPELLANT	SIMON WYNBERG
APPELLANT'S LEGAL REP.	MEAGHAN MCDERMID
APPELLANT'S LEGAL REP.	AARON PLATT
PARTY (TLAB)	225 BRUNSWICK AVE (KD) LTD.
PARTY'S LEGAL REP.	DAVID BRONSKILL
PARTICIPANT	FRED MAMMOLITI
PARTICIPANT	JAMES MURDOCH
PARTICIPANT	DONNA LEE
PARTICIPANT	MARGARET ZEIDLER
PARTICIPANT	WILLIAM PEEL
PARTICIPANT	HONORIE PASIKA
PARTICIPANT	NOBU ADILMAN
PARTICIPANT	ROBERT BARNETT
PARTICIPANT	SAMUEL RADZINSKY
PARTICIPANT	SABRINA HASHAM
PARTICIPANT	MONICA WALTERS-FIELD
PARTICIPANT	KATRINA MCHUGH
PARTICIPANT	JOAN ALLEN
PARTICIPANT	ANNE LOUISE LINDSAY
EXPERT WITNESS	JULIUS DE RUYTER
EXPERT WITNESS	SEAN GALBRAITH
EXPERT WITNESS	MICHAEL MCCLELLAND
EXPERT WITNESS	MARY WANG

INTRODUCTION

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with a condition, of an application for variances to convert an existing commercial building into a seven-unit apartment building. A third floor addition is proposed.

The subject property is located in the Harbord Village neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d1.0) (x852) by City-Wide By-Law 569-2013 and R3 Z1.0 by the former Toronto Zoning By-Law 438-86

I advised those present at the Hearing that, in accordance with Council direction, I had attended at the site and the surrounding area and reviewed the pre-filed materials in preparation for the hearing of their evidence.

BACKGROUND

The Applicant seeks to renovate the existing commercial building with interior alterations and addition of a full second and third floor to convert the building to a seven-unit apartment building.

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

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

The maximum permitted depth of an apartment building is 14.0 m.
The altered apartment building will have a depth of 19.03 m.

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

The maximum permitted floor space index of an apartment building is 1.0 times the area of the lot (237.58 m²).
The altered apartment building will have a floor space index equal to 3.365 times the area of the lot (799.57 m²).

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

A minimum of 50% (118.79 m²) of the lot area must be maintained as landscaping.
In this case, 7.47% (17.74 m²) of the lot area will be maintained as landscaping.

4. Chapter 10.5.50.10.(4)(B), By-law 569-2013

A minimum of 50% (59.4 m²) of the required landscaping must be provided as soft landscaping.
In this case, 7.01% (8.33 m²) of the required landscaping will be provided as soft landscaping.

5. Chapter 10.5.50.10.(5), By-law 569-2013

A 1.5 m wide minimum strip of soft landscaping must be provided for a lot with an apartment building, along any part of a lot line abutting a lot in a Residential Zone.
In this case, a 0.08 m to 0.31 m wide strip of abutting soft landscaping will be provided along the north side lot line.
The proposed strip of landscaping is 0 metres wide along the east property line.

6. Chapter 10.5.150.1.(1), By-law 569-2013

All waste and recyclable material must be stored in a wholly enclosed building.
In this case, a wholly enclosed building for waste and recyclable material will not be provided on the lot.

7. Chapter 200.5.10.1.(1), By-law 569-2013

A minimum of six parking spaces are required to be provided.
In this case, zero parking spaces will be provided.

8. Chapter 230.5.10.1.(5)(A), By-law 569-2013

A minimum of seven long term bicycle parking spaces and one short term bicycle parking space are required to be provided on site.

In this case, zero bicycle parking spaces will be provided on site.

1. Section 4(5)(a), By-law 438-86

A minimum of five parking spaces are required to be provided.

In this case, zero parking spaces will be provided.

The condition that the COA imposed on approval of the application was:

The converted building into a seven-unit apartment building shall be constructed substantially in accordance with the plans date stamped received by the Committee of Adjustment on January 21, 2021.

MATTERS IN ISSUE

The central contention for this Hearing is that the proposal constitutes overdevelopment of the property in the context of the surrounding neighbourhood and that the scale and massing of the proposed building are not in keeping with the neighbourhood. The heritage value of the existing building and the way in which the structure is to be adapted for a different use was also at issue.

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

A summary of evidence is presented here for the purpose of providing some context for the following section of this Decision. All of the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings and Reasonings* section below.

Two expert witnesses provided evidence in support of the Applicant's proposal. Mr. Sean Galbraith was qualified as an expert in land use planning and Mr. Michael McClelland was qualified as an expert in heritage architecture and cultural heritage planning. Ms. Mary Wang, an Assistant Planner with the City of Toronto appeared under subpoena.

In support of the Appellant, Mr. Julius De Ruyter was qualified as an expert in land use planning.

GALBRAITH

Mr. Galbraith's opinion was that OP Policy 4.1.9, having to do with redevelopment of infill properties, is the policy which applies to this application. He nonetheless identified a geographic neighbourhood and an immediate context as prescribed by OP Policy 4.1.5 as a useful method for identifying context areas.

Mr. Galbraith described the context for the proposal as follows:

- The building was formerly a place of worship.
- The existing building footprint is 93.56% of the property.
- The Subject Site is currently occupied by a two storey brick commercial office building which has gross floor area of 562.72 m² representing a current floor space index ("FSI") of 2.26. This current condition is 1.26 above the permitted FSI.
- The Subject Site is not typical in terms of its size and configuration relative to its neighbours, or the rest of the neighbourhood. The size of the lot is generally two to three times the width of the other lots on Brunswick and Sussex Avenues; and correspondingly, it has a large lot area relative to the neighbouring lots despite having a shallower than typical depth.
- The Subject Site does not currently contain any parking and no parking has been allocated to the proposed development. This is an existing and historic condition.

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- At some time in the past, 94 Sussex Avenue was created to the rear of the building where a rear yard might have been.
- Referencing Mr. McClelland's Witness Statement, the subject site is not listed on the City of Toronto Historic Register, is not listed under the *Ontario Heritage Act* and is not located within or adjacent to the Harbord Village Heritage Conservation District.

The proposal

- The roofline of the original building would be maintained, which was a priority of the City's Heritage Preservation Services staff. Two modern metal siding "wings" would be added, augmenting the existing second storey and creating a third storey. On the southwest corner, a small balcony inset is proposed.



225 BRUNSWICK AVENUE

Figure 1: Rendering, Tab 8b EX2 suulin architects

- Two units are proposed to be accessed from the existing front doors and five are to gain access from entrances along the south side of the property.
- Garbage storage is proposed to be concealed within planters that are located within the City boulevard.
- The windows on the north side are to be angled in a saw-toothed pattern towards the rear of the property. Frosting of these windows is also proposed.

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- The proposed development would not extend beyond the length, depth or width of the existing building and would maintain the existing setbacks and building footprint on all four sides. The variance to the building depth provision is required for the partial second and third storey additions.
- The height proposed is 0.44m shorter than the 12m allowed by the Zoning By-law.

Mr. Galbraith described the neighbourhood as follows:

- The Geographic Neighbourhood contains approximately 377 lots. It is comprised principally of single and semi-detached dwellings, with some additional visible multiplexes. It features generally similar lot sizes, and follows the same grid-like street patterning.
- This is a neighbourhood with properties commonly accessed by public laneways at the rear of lots. The subject property does not have access to a rear lane.

WANG

Ms. Wang was summoned under subpoena and confirmed that she was the staff person assigned to review this application to the COA. She confirmed that there had been a lengthy process of review and revisions of the plans. She confirmed that she prepared the staff report to the COA that indicated that City Planning had no concerns with the proposal. Her opinion continues to be that the proposal maintains the four tests required for the approval.

MCCLELLAND

Mr. McClelland's evidence was as follows:

- There are two Heritage Conservation Districts in the Harbord Village area, and there is a third in the works which would include this property, but the study has not yet commenced.
- The existing building has characteristics of value. Adaptation for residential is a good use. The proposal does a good job of adaptive reuse of this building. If demolition had been proposed, a process for designation might have triggered.
- The building on the site was constructed circa 1910 as a Christian Gospel Mission Hall and was later used as a synagogue. Since the 1980's, the building has been used as office and commercial space.

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- It was his understanding that the Harbord Village Residents' Association, the City of Toronto's Heritage Preservation Services and other stakeholders were engaged in an iterative design process with the Applicant.
- Heritage Preservation Services' staff report to the COA found the building to have cultural heritage value warranting further evaluation and stated that they are satisfied with the proposed redevelopment strategy. (Exhibit 2, Tab 18)
- From the perspectives of heritage planning and conservation architecture, it is Mr. McClelland's opinion that the proposed alterations represent an acceptable approach to the redevelopment and residential intensification at 225 Brunswick Avenue.
- He supported the renovation and additions to the building in preference to just "refilling" the existing building. He did not agree that the "do nothing" option would be the most successful or best approach and he would like to see better than that.

DE RUYTER

Mr. De Ruyter's evidence was as follows:

- He did not have a concern with the proposal's conformity with the Provincial Policy Statement and the Growth Plan.
- He did not have a concern with the use of the property for apartments.
- The proposed revisions of the second floor and the addition of the third floor would create a building that represents an overdevelopment of the property and is not in keeping with the physical character of the neighbourhood.
- A building with a proposed building mass and density is better deployed within an area designated as an Avenue or a main street, and is not in keeping with the physical character of the neighbourhood.
- The requested FSI is significantly out of the range of previous approvals in this neighbourhood.
- He referenced an error in the drawings which were presented to the COA. Those drawings depicted the height of the adjacent house at 229 Brunswick Ave incorrectly; the existing house at 229 Brunswick is, in fact, of comparable height to the existing building on the subject property. (The Applicant has acknowledged and corrected this error in the submissions to the TLAB).
- The increase in building mass and the windows immediately adjacent to 229 Brunswick would have adverse impacts on 229 Brunswick Ave.

- Most properties on Brunswick Ave come close to, and a few exceed the equivalent 19.03m building depth line of the subject property. What makes the property unique is that the lot has the shallowest lot depth and the existing building covers almost the entire lot to the rear lot line.



Figure 2: Building Depth illustration, EX 7 page 19 De Ruyter

- In the context of the geographic neighbourhood and the immediate context, the subject property has a “somewhat larger lot area” and the FSI is “very large”.
- Apartment buildings are not a predominant built form within the geographic neighbourhood, representing less than 1% of all properties.
- He proposed an “alternative form of development that would be acceptable on the subject property”.

Mr. De Ruyter provided a thorough and useful analysis of property data and statistics in support of his evidence, which is appreciated.

PARTICIPANTS

I am appreciative that the large group of Participants coordinated amongst themselves and nominated three spokespersons.

MARGARET ZEIDLER

Ms. Zeidler is trained as an architect but does not practice. She resides on Brunswick Ave towards the north end. She advised that the neighbours got together and agreed that since only one of them could have their name on the Appeal, that Mr. Wynberg would do so, but they all stand with him.

Ms. Zeidler said that she would not want to see the building demolished but that the massing of the proposal is unfortunate. She said that the group did not just want to say no, so what they did was to put forward a proposal to show how seven units could be achieved in a better way.

Ms. Zeidler advised that she was the one who identified the error in how the height of 229 Brunswick Ave was presented at the COA. She expressed her unhappiness at the COA panel's lack of attention to their advice and well researched submissions.

ROBERT BARNETT

Mr. Barnett does not live close to the subject property but was contributing to the Hearing from his perspective as a past chair of the local residents' association. He expressed that, in his opinion, and from his experience with these kinds of issues, this application is not minor. In his opinion, this should be a rezoning. He offered the TLAB his advice regarding the application of OP Policies and criticized the City for the way they have handled this application.

NOBU ADILMAN

Mr. Adilman is an abutting neighbour. He expressed concern regarding noise from multiple households in the proposed apartments and the impacts on his backyard and kitchen.

He indicated that he was in favour of converting the building to housing, but that the proposal is too much. He was happy to see the alternate plan (that had been submitted by the Appellant).

Mr. Adilman also expressed frustration with what he said was a lack of notification, and consultation. He described the challenge of trying to understand the planning process as a "crash course". He said he felt powerless in the process and asserted that "many By-laws and bureaucratic things need to be discussed as the City grows".

MONICA WALTERS-FIELD

Ms. Walters-Field expressed her feeling that the group had been judged by critics and disrespected and dismissed by the COA panel.

ANALYSIS, FINDINGS, REASONS

This Appeal is supported by a large group of neighbours acting in concert with the named Appellant. It is clear from the Participants who spoke that there is a deep commitment and appreciation amongst the group for the community and the neighbourhood. Such pride in community is a reflection of the success of the neighbourhood and is an intangible but vitally important ingredient in the creation and maintenance of vibrant, livable neighbourhoods.

A thread through the testimony of the Participants who spoke at the Hearing, was a sense of disillusionment with the planning process and with the “process of how a City develops”. In the words of a Participant, “there are many by-laws and bureaucratic things that need to be discussed as the City grows”. At the root of this sentiment was the feeling that the neighbours’ concerns were not taken seriously and that they were subject to rules of engagement that the group felt they were not part of creating, should not be subject to, or are just wrong, from their point of view.

The reality is that the rules of engagement for deciding a variance request are highly developed, through legislation (the *Planning Act*), policy (the Official Plan) and regulation (the Zoning By-law). The City’s Official Plan, which outlines the broad vision for how the City will grow and change, is developed through a very public process, with public consultation, vigorous political debate, and an often lengthy appeal processes. The same is true of the Zoning By-law, which is the implementation of the Official Plan’s vision through numerical site standards and performance standards.

It is understandable that this framework for making decisions about what change will be supported in the City as a whole, and in neighbourhoods, is something of a mystery to most people. Most Torontonians will only become aware of this body of policy and regulation when they are required to apply for a variance themselves, or when they coalesce around a particular application, as in this case. It is often a frustrating experience for people to find that prescriptive ground rules have already been set down, and that some of the established policies and regulations do not necessarily align with their point of view.

The Official Plan and the Zoning By-laws are a laboriously constructed set of policies and regulations which constitute a reconciliation of multiple and contradictory interests and points of view and reflect a prescription for managing growth and change in the City. However well or poorly they align with a particular interest or point of view, they do constitute the only legitimate framework for guiding development and change to the City’s land use and built form.

The Committee of Adjustment, and the TLAB, have jurisdiction to allow variances to the Zoning By-law, but only when the four tests set out in s. 45(1) of the *Act*, are met. The

first two of the tests require that the general intent and purpose of the OP and the Zoning By-laws be maintained.

THE GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN

- Neighbourhoods

The subject property has a *Neighbourhoods* designation. *Neighbourhoods* are areas of the City considered physically stable and made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Parks, low scale local institutions, home occupations, cultural and recreational facilities and small-scale retail, service and office uses are also provided for in *Neighbourhoods*.

- Is this an infill lot?

The Official Plan acknowledges that scattered throughout many *Neighbourhoods* are properties that differ from the prevailing lot size, configuration, and orientation. The Plan says that these lots are typically sites of former non-residential uses, such as an industry, institution, retail stores ... or lots that were passed over in the first wave of urbanization. It recognizes that in converting these sites to residential uses, there is a genuine opportunity to add to the quality of *Neighbourhood* life by filling in the “gaps” and extending streets and paths.

The Official Plan contains a specific policy to address development on “infill” lots.

OP Policy 4.1.9

In established *Neighbourhoods*, infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation will

- a) have heights, massing and scale that are respectful of those permitted by zoning for nearby residential properties, while taking into account the existing form of development on the infill property;
- b) have setbacks from adjacent residential properties and public streets that are proportionate to those permitted by zoning for adjacent residential properties, while taking into account the existing form of development on the infill property;
- c) provide adequate privacy, sunlight and sky views for occupants of new and existing buildings by ensuring adequate distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed;
- d) front onto existing or newly created public streets wherever possible, with no gates limiting public access;
- e) provide safe, accessible pedestrian walkways from public streets; and

- f) locate, screen and wherever possible enclose service areas and garbage storage and parking, including access to any underground parking, so as to minimize the impact on existing and new streets and on residences.

Mr. Galbraith, in support of the application, addressed the proposal in the context of OP Policy 4.1.9, on the premise that the subject property is an infill lot. The opinion of Mr. De Ruyter was that OP Policy 4.1.5 is the applicable policy to apply. OP Policy 4.1.5 is the policy which contains criteria for development proposals in *Neighbourhoods* and which requires that development respect and reinforce the existing physical character of each geographic neighbourhood and emphasizes prevailing characteristics.

On this issue, I agree with Mr. De Ruyter that the applicable policy is OP Policy 4.1.5, not OP Policy 4.1.9, for the following reasons:

Policy 4.1.9 relies on the uniqueness of the lot, in terms of size, configuration and/or orientation, not the uniqueness of the existing use or building. The lot in this case is wider and shallower than most lots in the context and it is one of the larger lots, but it is not significantly different in size and scale than other corner lots in this neighbourhood. Its differences in configuration and size are not sufficient, in my opinion, to take this lot into the category of an infill lot as contemplated in OP Policy 4.1.9.

I do not see this property as a “gap” in the local pattern, as described in the policy. The property has been integrated with the physical character and community life of the neighbourhood for decades. Its past uses are consistent with the expectation of the Official Plan that small-scale retail, service and office uses are an expected feature of neighbourhoods.

- Heritage

There was general support amongst the Parties and the Participants that the existing building on the site should not be demolished. I accept and agree with Mr. McClelland’s evidence that the adaptive reuse of the existing building is a good outcome from a heritage perspective and accept Mr. Galbraith’s evidence that the proposed adaptive reuse respects the heritage policies of the Official Plan.

- Housing

The Official Plan contains policies which seek to provide a full range of housing, in terms of form, tenure and affordability across the City *and* within neighbourhoods. The Plan also seeks to encourage new housing supply through intensification and infill that is consistent with the Plan. This goal of the Official Plan is relevant to consideration of the proposal.

- Compatibility of the proposal – OP Policy 4.1.5

Mr. De Ruyter referenced OP Policies in sections 2.3.1 and 3.1.2 but relied on what he referred to as “the primary operative policy” that applies when considering variance

applications, OP Policy 4.1.5. His analysis of the proposal in the context of OP Policy 4.1.5 led Mr. De Ruyter to advise that, in his opinion, the proposed development does not respect or reinforce the existing physical character of the Geographic neighbourhood or the immediate context and that therefore the proposal does not maintain the general intent and purpose of the Official Plan.

4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;*
- b) prevailing size and configuration of lots;*
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;*
- d) prevailing building type(s);*
- e) prevailing location, design and elevations relative to the grade of driveways and garages;*
- f) prevailing setbacks of buildings from the street or streets;*
- g) prevailing patterns of rear and side yard setbacks and landscaped open space;*
- h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and*
- i) conservation of heritage buildings, structures and landscapes.*

It was Mr. De Ruyter's opinion that criteria c), d), f) and g) are engaged by the proposal.

4.1.5 d) prevailing building types

Mr. De Ruyter asserted that apartment buildings, although permitted under the By-law, are not a type that is typical or prevailing in the neighbourhood. He suggested in his Witness Statement that this was one of the reasons he did not agree that the proposal maintained the general intent and purpose of the Official Plan.

The primary description of *Neighbourhoods* in the Official Plan includes duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. In this neighbourhood, low scale apartment buildings are permitted as of right by the By-law.

A fundamental purpose of the Zoning By-law is to implement the policies of the Official Plan, and the provisions of the By-law are deemed to be in compliance with the policies of the Official Plan.

A use that is sanctioned by the Zoning By-law, which does not require a variance, and is permitted as of right represents a use and a direction consistent with the goals and objectives of the Official Plan and as such I do not find it to be contrary to the general intent and purpose of the Official Plan. If we were to follow along with Mr. De Ruyter's

highly scoped argument regarding the intent of the “prevailing building type” criterion to supersede the permissions of the By-law, no other building type would ever be supportable in *Neighbourhoods* as detached homes predominate in almost every area of Toronto so designated. This is clearly and overtly not the intent of the Official Plan nor the Zoning By-law.

4.1.5 g) and f) Prevailing Setbacks

Mr. De Ruyter stated that since the proposed apartment building is reusing the existing building, it will not meet any of the required setbacks “normally” attributed to an apartment building in a residential area. The proposal consists of a renovation of the existing building and in this context, the existing setbacks are not altered nor is a variance required.

The policy refers to prevailing setbacks and prevailing patterns. Mr. De Ruyter has not provided evidence or analysis of the prevailing setbacks in the area to support an assertion that the proposal does not fit.

The very narrow separation between the building on the subject property and the adjacent structure on 229 Brunswick Ave was noted by Mr. De Ruyter. The closeness of the two structures is long standing, and the limited functionality of the existing side yard is not altered or affected by the proposal. For all intents and purposes, the two buildings relate to one another in this respect as do a pair of semi’s, which are also well represented in the neighbourhood and on Brunswick Ave.

Mr. Galbraith’s evidence was that the physical character of the neighbourhood includes 3-storey buildings with small setbacks.

I prefer the evidence of Mr. Galbraith on this issue, and I do not find the proposal to be inconsistent with the general intent and purpose of the Official Plan with respect to OP Policy 4.1.5 g) and f).

4.1.5 c) Height, Massing, Scale and Density

- Height

Mr. De Ruyter’s Witness Statement contended that the proposed building height is not consistent with what is found in the immediate context as well as the geographic neighbourhood. In his testimony at the Hearing, he stated that he did not have a concern with height as such, but rather the overall size and mass on top of the proposed building. He acknowledged that the height proposed is permitted under the Zoning By-law but argued that height is relevant when considering variances associated with FSI.

I do not find that a proposal which complies with the height provision of the By-law and does not require a variance for height to be inconsistent with the intent of the Official Plan on this aspect.

Similarly, the stipulation of *prevailing* height in the policy must be read in conjunction with the understanding of permitted heights for all building types in the neighbourhood. The By-law permits a 12m height as of right for any detached or semi-detached house and I do not accept that the intent of the Official Plan would be to hold this specific proposal to a lesser height than what would be granted without restriction to neighbouring properties.

The deployment of floor space in a third storey, or at a height permitted by the By-law, is not inconsistent with the intent of the Official Plan. I understand Mr. De Ruyter's perspective that a reduction in FSI could reduce the height of the proposal, but this is not necessarily the case, depending on design. In my opinion, the question of the height of this proposal is an adjunct to the Appellant's challenges regarding massing and density and is not in itself an inconsistency with the Policy.

- Massing and Scale

Mr. De Ruyter described the following aspects of the proposal in support of his contention that the massing and scale of the building do not respect and reinforce the existing physical character of the neighbourhood:

- the lot coverage of the proposal (93%), which he said appears to be the largest lot coverage in the neighbourhood;
- the extent of the building to the east, south and west property lines;
- the additional mass on the top of the building which is proposed to extend to the rear of the building right to the property lines.

Mr. De Ruyter suggested that the full extension of the upper storeys to the property lines is not a typical situation within the neighbourhood as a rear yard setback would help to reduce the impact of the additional mass on top of the building.

Massing and scale are architectural terms having to do with the size and relationship of a building to what surrounds it. In this context, massing refers to the general perception of the shape and form, as well as size of a building. Scale refers to a building's size in relation to something else, for example an adjacent building or a person.

In considering Mr. De Ruyter's analysis, I do not find the lot coverage statistic to be an indicator of overbuilding or undesirable massing. The existing building on the site has occupied the same footprint for many decades and is a historic part of the existing context, and, importantly, a feature of the existing physical character of the neighbourhood. The existing building is a lawfully existing building and what is at issue in this proposal is not the lot line to lot line coverage, which already exists, but the deployment of the proposed additional floor space.

Mr. De Ruyter asserted that a rear yard setback would help to reduce the impact of the additional mass on top of the building. I do not find this comment to be particularly helpful given the facts of the context. I recognize that a three-storey buildout to three property lines is not typical of the neighbourhood, but these comments skirt the issue of

the proposed building's actual massing and how it fits into the physical character of the neighbourhood.

A depiction of the configuration of lots and built form at this corner of Brunswick Ave and Sussex Ave is helpful to understanding the massing and scale of this proposal in context with the immediately surrounding buildings.



Figure 3: extract from EX 3, Tab 2, Galbraith

The above figure offers a perspective on the building's relationship to the surrounding structures. The house that is located where a rear yard for the subject property might have been expected is a separate lot and house, 94 Sussex Ave. Whether the rear portion of 225 Brunswick Ave was severed in the distant past, or whether the lots were laid out in this arrangement in the original plan, is not known. What is recorded though, is that this layout has existed in this form since the early 1920's.

Mr. De Ruyter pinpoints the lack of a backyard (buffer) for the proposal as a limitation, and reason why, in his opinion, the massing of the proposal does not fit the physical character of the neighbourhood. The location of a separate lot where a rear yard might have been expected is a long-standing condition though and is part of the existing context to which residents have long since adapted.

I recognize that the lot arrangement is out of the ordinary, but in my opinion this aspect is backdrop to the consideration of the proposed *building's* massing, which is what is at issue in this instance. The width of the proposed building is not inconsistent with the

width of the nearby buildings, recognizing that the subject property is more than twice the median width of lots on Brunswick Ave (EX 9, Tab 8). The depth of the building is also not inconsistent with the depth of buildings on Brunswick Ave (De Ruyter). The proposed height of the building is permitted, and I have found that the proposed height is not inconsistent with the general intent and purpose of the Official Plan. The proposal builds upon the existing building and preserves heritage features, which are defining elements in the existing context and contribute to the physical character of the neighbourhood.

Mr. Galbraith's opinion was that the proposed development is massed to fit within the existing and planned context. He noted as follows:

- The Proposed Development will result in a 3-storey building, which is common within the immediate and broader neighbourhood;
- From a public realm / streetscape perspective, the 3rd storey provides for better continuity of building faces along Brunswick Avenue
- The massing of the proposal will not overwhelm the adjacent building at 229 Brunswick Ave and 94 Sussex Ave.

I agree with Mr. Galbraith's conclusion that the proposed massing fits within the context of the neighbourhood. I agree that the proposed massing respects, and is compatible with, the public realm and streetscapes on Brunswick Ave and Sussex Ave. I find that the scale and massing of the proposed additions to the building, and the proposal as a whole, respect and reinforce the physical character of the neighbourhood.

- Density

Density, in this context, means the size of the building in relation to the lot on which it is located. In the By-law, the floor space index (FSI) is the numerical indicator of what the OP refers to as "density". It is the ratio of the gross floor area of the building to the area of the lot.

Many of the properties in the neighbourhood exceed 1.0 FSI permitted by the Zoning By-law, as is shown in the property data submitted by Mr. De Ruyter (EX 9, Tab 8).

I questioned Mr. Galbraith as to why 3.365 FSI was the requested FSI variance when the stated FSI of the proposal was 3.321 FSI. Mr. Galbraith confirmed that 3.321 is the correct number and I advised Mr. Galbraith and counsel for the Applicant that, should the application be approved, I would reference the correct FSI number and there would be no contingency allowance beyond the number that has been justified and described in the materials before me.

In Mr. De Ruyter's opinion, the proposed revisions of the second floor and the addition of the third floor would create a building that represents an overdevelopment of the property. In his opinion, the density of the proposed development at an FSI of 3.365 does not respect and reinforce the existing prevailing physical character and the recent approvals of the Committee over the past 10 to 12 years, nor the physical characteristics of the properties within the Geographic Neighbourhood. He asserted

that the existing building already has the highest FSI within the Geographic Neighbourhood and the proposed FSI of 3.365 would significantly exceed the FSI of any other structure in the neighbourhood.

- FSI Comparability

OP Policy 4.1.5 c) requires that in respecting and reinforcing the physical character of neighbourhoods, *prevailing* density is to be considered. The Official Plan says that the word “prevailing” in this policy will mean most frequently occurring.

The density of a proposal (expressed as an FSI number in the Zoning By-law) is a useful indicator, along with an analysis of massing and scale, to understand how well the proposed building would fit within a neighbourhood. Being a statistical ratio, however, it is a challenging characteristic to come to grips with.

One of the difficulties is with the number itself. For apartment buildings, such as the proposal, the By-law includes below-grade floor area in the calculation of GFA and FSI, whereas it is not included in the calculation for all other residential buildings in the Residential Zone category. This makes for a challenging ‘apples to apples’ comparison for the purposes of understanding prevailing density.

Mr. De Ruyter stated that the existing building already has the highest FSI within the geographic neighbourhood. The existing building has been documented to have an FSI of 2.26, but as a non-residential building, the basement area is included in that number. Calculating the FSI of the existing building by the same method that the neighbouring residential properties have been arrived at, yields an FSI for the existing building at 1.4 FSI. Consistently comparing only the above-grade component of the properties, this is not the largest FSI in the immediate context, and drawing from Mr. De Ruyter’s analysis, seems to be in a category that occurs more frequently in the neighbourhood.

Mr. Galbraith calculated that if the below-grade floor area was deducted, (consistent with the method applied to adjacent properties), the FSI number for the proposal would be 2.4 FSI.

In his analysis of FSI, Mr. De Ruyter identified that there were two properties in the immediate neighbourhood and four in the geographic neighbourhood with FSI numbers between 2.0 and 2.49 FSI.^{1,2} The example I found in his table was 228 Brunswick which is a three storey residence located directly across from the subject property and which Mr. De Ruyter’s statistics show has an FSI of 2.17.

In his Witness Statement, Mr. De Ruyter noted the two largest FSI’s in the immediate context as 228 Brunswick and 275 Brunswick and commented with respect to each

¹ It is not clear from the analysis whether these numbers include or exclude the subject property.

² I recognize that it could well be that one or more of the examples in the 2.0 to 2.49 category are apartments or non-residential buildings which would mean that the basement component is included in the number.

having a? “very small lot area”. This is a pertinent comment and illuminates the impact on the lot area can have on the FSI number, escalating the FSI number for a reasonably sized house which is located on a small lot.

In this historic neighbourhood which has developed organically over time, lot areas, frontages and sizes vary, and the buildings have been changed and adapted over time. In these circumstances it is challenging to isolate a prevailing FSI and to determine “fit” on the basis of an FSI number. In these circumstances, I find that an evaluation of scale and massing to be more determinative of whether the proposal respects and reinforces the physical character of the neighbourhood.

- “Main Street” Density

In his Witness Statement, Mr. De Ruyter concluded that buildings with a density as high as that proposed belong on a “main street” such as Bloor Street, (an *Avenue* in the Official Plan terminology), or in areas identified as *Downtown* or *Centres* in the Official Plan.

Mr. De Ruyter suggested that an example of a building built to an FSI of 3.365 would be a mid-rise apartment building or large mixed use building on a main street. This exposes the fundamental problem of extrapolating an FSI number without context, because clearly the proposal is **not** a mid-rise apartment building or large mixed use building. It is a three storey, 789m², seven unit, small scale, apartment building, which is permitted in *Neighbourhoods*. To suggest that such a form belongs in a *Downtown* or *Centres* category is hyperbolic, to say the least.

Conclusion

There are a few contextual factors which should be taken into account in assessing the “fit” of the proposal in the neighbourhood. This corner lot has historically been the site of a small scale “feature” (my term) building, hosting both place of worship and commercial activities. It has valuable heritage features which are to be conserved. The proposed use is for apartments, not for a detached home. In this context, there is more latitude in the notion of “prevailing” than there would be if the property had a more typical lot location, configuration, size, and history.

I find that the proposal respects and reinforces the existing physical character of the geographic neighbourhood (OP Policy 4.1.5). In addition, I find that the proposal supports the goals of the Official Plan with respect to Heritage Conservation and Housing and that it maintains the general intent and purpose of the Official Plan.

THE GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW

There was discussion at the Hearing that a hypothetical “new build” on the property would require many variances from the By-law and that a seven unit apartment building could never be built under this blank slate scenario. The fact remains that the proposal

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is not a new build, and the By-law overtly recognizes what already exists on the property (existing setbacks etc.). Many of the existing buildings in Harbord Village could not be built as of right under the Zoning By-law either. The purpose of the By-law in this case is not to erase existing lawful development and impose a new ideal, but to provide a starting point for evaluating incremental development and change.

Variances

- Building Depth

The proposed building depth variance is required for the second floor extension and the third floor addition, and would mimic the building depth of the first floor, which already extends to the rear property line.

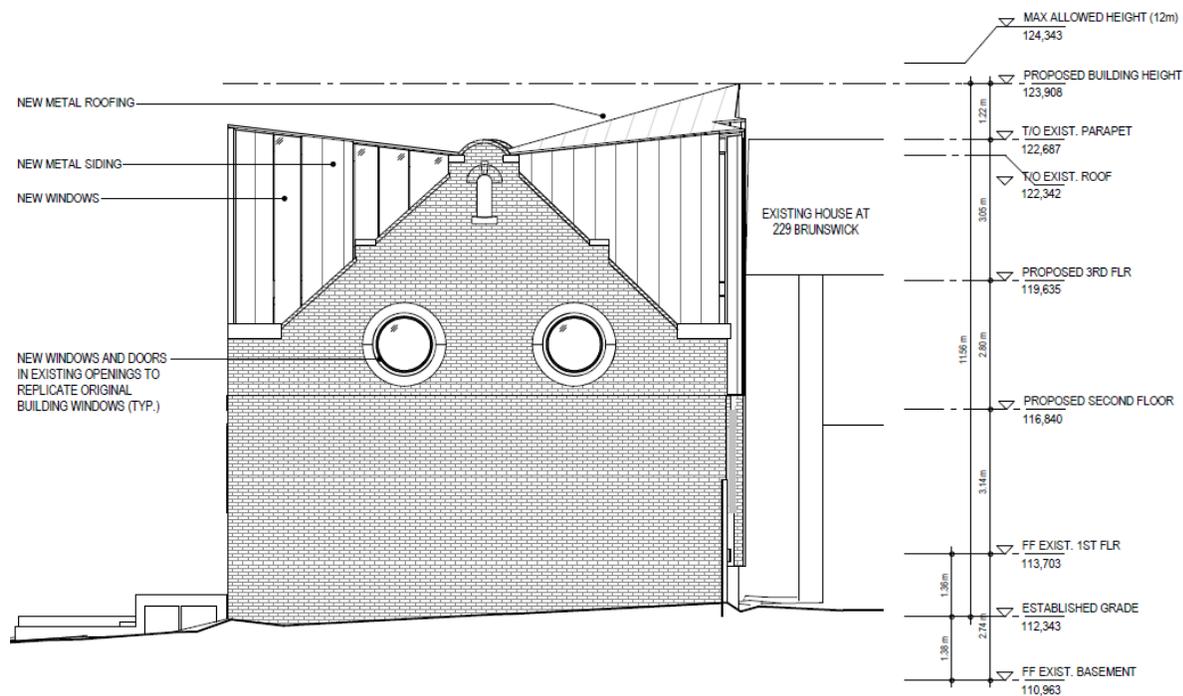


Figure 4: East Elevation (rear), EX 2, Tab 8b.

It is relevant to understand that there is no part of the existing building which recedes from the rear property line. The above figure illustrates the rear of the existing building in grey and the new “wings” which are proposed to be added. It shows that the existing building, with a traditional steep roof pitch, reaches a height above 10m and extends the full depth of the property. In profile, when viewed from Sussex Ave or 229 Brunswick, the building already extends the full depth of the lot to a height of more than 10m.

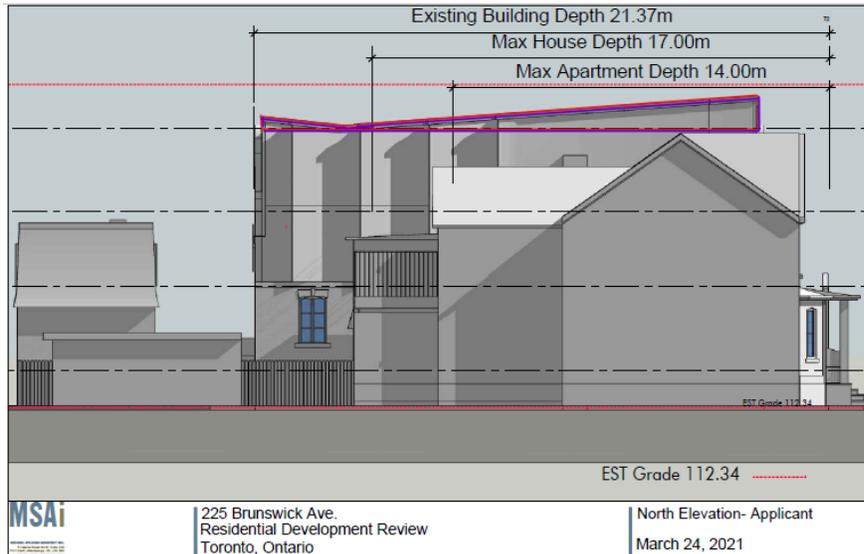


Figure 5: North view, looking at 229 Brunswick and proposal, EX 9, Tab 11

Figure 5 above shows the view from the north and shows that the view plane is already occupied to the full depth of the property. The additional height above the existing parapet is small in this context. (I have outlined the additional height above the existing roof in the figure).

Mr. De Ruyter's evidence was that most properties on Brunswick Ave come close to, and a few exceed the equivalent 19.03m building depth line of the subject property. He acknowledged that the proposed building depth is also consistent with building depths that exist within both the Immediate Context and the Geographic Neighbourhood.

For the above reasons, I find that the requested variance for building depth maintains the general intent and purpose of the Zoning By-law.

- o Floor Space Index (FSI)

In Mr. De Ruyter's Witness Statement, he identified that the purpose and intent of the floor space index standard is to ensure a compatible relationship of building mass between neighbouring properties. He asserted that buildings with excessive building mass could create unacceptable adverse impacts on adjoining properties.

Mr. Galbraith's Witness Statement identified the additional density proposed in the second and third floors as 1.11 FSI. I acknowledge Mr. Galbraith's evidence that this FSI is not deployed in a form that triggers a height or number of storeys variance. Nonetheless, I also recognize Mr. De Ruyter's concerns regarding the "bulking out" of the existing building and that the proposed FSI is unprecedented in the neighbourhood.

As I discussed in relation to the density criterion in the first test above (intent and purpose of the Official Plan), the varying lot areas, frontages, history of redevelopment,

renovation and additions in this neighbourhood make it challenging to use an FSI calculation as a basis for property to property comparisons.

Referencing Mr. De Ruyter's statement regarding the intent and purpose of the FSI standard, I find that while the density/ FSI of the proposal is greater than other FSI numbers in the neighbourhood, it is nonetheless compatible with the adjacent buildings and with the neighbourhood, given its existing context and history. I shall address the concern of adverse impact on the adjoining properties under the third test ("minor") below.

For the reasons above and contained under the headings "FSI Comparability" and "Massing and Scale", I find that the requested FSI maintains the general intent and purpose of the Zoning By-law.

- Landscape (Variances 3, 4 & 5)

Mr. Galbraith identified the intent and purpose of these provisions in the By-law as being to maximize stormwater management capacities on the lot and to ensure that a consistent landscaping standard is upheld in the neighbourhood, with the added regulation for apartment buildings to regulate an appropriate mix of hard and soft landscaping.

Given the existing coverage of the building footprint, achievement of the landscaping standards is not possible without demolishing a significant part of the existing longstanding building. I accept that the Applicant has included as much landscaping as is feasible under the existing conditions.

I find that Variances 3, 4 and 5, having to do with landscaping requirements, maintain the general intent and purpose of the Zoning By-law.

- Waste

Mr. Galbraith stated that the intent of the Zoning By-law is to mitigate any negative impacts from the storage of household waste. He asserted that the proposed development with seven units is not comparable to large apartment buildings where the accumulation of a large amount of waste would be more problematic.

I was advised that a partially enclosed garbage area is proposed to be integrated with planters in the landscaped boulevard area along Sussex Ave. Subject to conditions, I find the proposed means of storing household waste to be appropriate and that it maintains the general intent and purpose of the Zoning By-law.

- Vehicle Parking

Zoning By-law 569-2013 requires that six parking spaces be provided, and the By-law 438-86 (former City of Toronto By-law) requires five.

The area is well served by transit and public services and supports the use of active transportation (bike lanes).

To the best of the Witnesses' knowledge, no parking has ever been provided on this site. Mr. Galbraith advised that permits are available near the property for on-street residential parking. A traffic study prepared by LEA Consulting (EX 2, Tab 10) concluded that on-street parking spaces would adequately support the residential parking demand generated by the subject property.

I find that the variances relating to the provision of parking spaces maintain the general intent and purpose of the Zoning By-laws.

- Bicycle

The By-law requires that seven long term bicycle parking spaces and one short term bicycle parking space be provided on site. The proposal contains seven new bicycle parking spaces on the west side of the lot in an area that is also currently utilized for bicycle parking. The proposed area for bicycle parking is not located on the subject property, but in the boulevard of Brunswick Ave.

Six of the seven proposed units feature at-grade entrances which may be used for secure storage of bicycles. Subject to conditions securing the provision of the proposed bicycle parking in the City boulevard as described in the proposal, I find that the requested variance for bicycle parking maintains the general intent and purpose of the Zoning By-law.

- Conditions

I was advised that a site plan agreement is not required for this development, which raises a concern as to the means by which the commitments for waste handling, landscaping and bicycle parking are to be secured, especially as they are proposed to be located within the City boulevard.

For the above reasons, any approval of the variances for landscaping, garbage storage and bicycle will be subject to conditions to secure the fulfillment of the commitments and the agreement of the appropriate City authorities.

- Conclusion

I find that the requested variances, individually and cumulatively, maintain the general intent and purpose of the Zoning By-laws.

DESIRABLE FOR THE APPROPRIATE DEVELOPMENT OR USE OF THE LAND

The third test mandated by s. 45(1) of the *Act* is whether the variances are desirable for the appropriate development or use of the land.

For the reasons outlined under the headings for the first two tests, I find that the requested variances are desirable for the development and use of the land.

MINOR

Mr. Galbraith stated that the test for “Minor” is not to be determined based on the numerical deviation from the Zoning By-law standard, but instead is meant to address whether or not the proposal would result in unacceptable adverse impacts. In his opinion, the proposed development will not have any unacceptable adverse impacts on the streetscape, neighbourhood, or adjacent neighbouring properties.

In Mr. De Ruyter’s opinion, the additional building mass and the proposed windows will have adverse impacts on 229 Brunswick Ave. He asserted that there would be adverse shadowing conditions onto 229 Brunswick and 94 Sussex Ave as well.

- Overlook and Privacy

Mr. De Ruyter asserted that the impacts resulting from overlook, additional light from the windows of the new units, as well as additional noise would go beyond what can be reasonably expected in an urban environment.

I do not agree with Mr. De Ruyter’s opinion. The proposed building and the existing house at 229 Brunswick Ave have a side to side relationship, with barely any separation between the two structures. There is little ‘sight-on’ from either building into the other and the new windows in the third storey of the proposal are angled to avoid a direct sightline onto the house at 229 Brunswick Ave.

The Appellant’s disclosure did not include photographs taken from the backyard or building at 229 Brunswick, although a drawing that represents a view from the north towards 229 Brunswick and the proposal was provided, which I have inserted as Figure 5 above. In Figure 5, the structure which is viewed abutting the backyard of 229 Brunswick is the house at 94 Sussex Ave.

I find that any potential overlook from the proposal onto the property at 229 Brunswick Ave to be within scope of what might reasonably be expected in this neighbourhood.

- Shadowing

A shadow study was submitted by the Applicant (EX 2, Tab 21). On the basis of the shadow study, I find that the shadowing impact of the proposal beyond that which is currently cast by the existing building to be limited. I do not find shadowing from the proposal to cause unacceptable adverse impact to the neighbouring property.

For the reasons above, I find there to be no unacceptable adverse impacts from the proposal and I therefore find the proposal to be minor.

COMMENTS

- Notice

It was brought to my attention that one of the variances requested, Variance 5, has been revised from the request that was before the COA. This amendment comes about as a result of an omission in the original Zoning Notice, which has subsequently been corrected with a revised Zoning certificate. The site plan and the other drawings are unaffected by this amendment.

In addition to the above correction, I had advised the Parties that I would approve only the FSI of 3.321 that has been described and justified in the materials before the TLAB and any proposed “buffer” would not be authorized.

The Tribunal is not required to give notice under S. 45 (18.1.1) of the *Act*, if, in its opinion, the amendment to the original application is minor. I find that the amendments to recognize the requirement for a landscaping along the east property line and the reduction to the FSI variance to be minor and find that no further notice is required.

- Alternate Proposal

I will make a brief mention of the alternative plan concept that the Appellant submitted for consideration (EX 9). I acknowledge that this is an illustration of what the Appellant and the Participants would much prefer to see occur on the subject property. The mandate of the TLAB is not, however, to choose between possible solutions that Parties might prefer, but to adjudicate on the merits of the proposal that has been filed.

CONCLUSION

I find that the requested variances meet the four tests as set out in s. 45(1) of the *Act*. The approval of the requested variances is subject to two conditions.

DECISION AND ORDER

As there have been revisions to the variances which were before the Committee of Adjustment, (to correct variance 5, relating to landscaping, and variance 2 relating to maximum floor space index), the Appeal is allowed in part and the variances listed in Appendix A are authorized, subject to the conditions contained therein.

X *Abassios.*

Ana Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

VARIANCES:

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

The maximum permitted depth of an apartment building is 14.0 m.

The altered apartment building will have a depth of 19.03 m.

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

The maximum permitted floor space index of an apartment building is 1.0 times the area of the lot (237.04 m²).

The altered apartment building will have a floor space index equal to 3.321 times the area of the lot (789.04 m²).

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

A minimum of 50% (118.79 m²) of the lot area must be maintained as landscaping.

In this case, 7.47% (17.74 m²) of the lot area will be maintained as landscaping.

4. Chapter 10.5.50.10.(4)(B), By-law 569-2013

A minimum of 50% (59.4 m²) of the required landscaping must be provided as soft landscaping.

In this case, 7.01% (8.33 m²) of the required landscaping will be provided as soft landscaping.

5. Chapter 10.5.50.10.(5), By-law 569-2013

A 1.5 m wide minimum strip of soft landscaping must be provided for a lot with an apartment building, along any part of a lot line abutting a lot in a Residential Zone.

In this case, a 0.08 m to 0.31 m wide strip of abutting soft landscaping will be provided along the north side lot line.

The proposed strip of landscaping is 0 metres wide along the east property line.

6. Chapter 10.5.150.1.(1), By-law 569-2013

All waste and recyclable material must be stored in a wholly enclosed building.

In this case, a wholly enclosed building for waste and recyclable material will not be provided on the lot.

7. Chapter 200.5.10.1.(1), By-law 569-2013

A minimum of six parking spaces are required to be provided.

In this case, zero parking spaces will be provided.

8. Chapter 230.5.10.1.(5)(A), By-law 569-2013

A minimum of seven long term bicycle parking spaces and one short term bicycle parking space are required to be provided on site.

In this case, zero bicycle parking spaces will be provided on site.

1. Section 4(5)(a), By-law 438-86

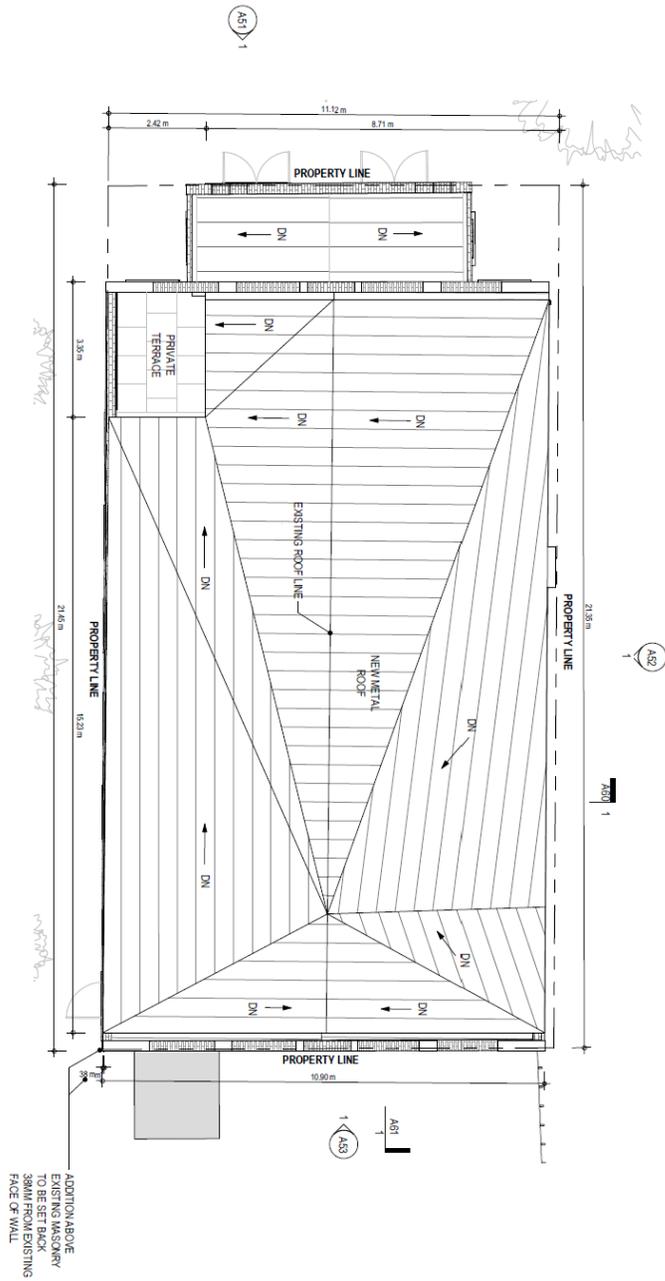
A minimum of five parking spaces are required to be provided.
In this case, zero parking spaces will be provided.

CONDITIONS:

1. The bicycle parking, waste receptacles and landscaping located in the City boulevards shall be constructed to the satisfaction of the appropriate City authorities and substantially in accordance with the attached Site Plan drawing (A02) prepared by suulin architects, dated 27 August 2021.
2. The proposed apartment building shall be constructed substantially in accordance with the Site Plan (drawing A02), Roof Plan (A24), South Elevation (A50), West Elevation (A51), North Elevation (A52) and East Elevation prepared by suulin architects and dated 27 August 2021, attached hereto.

Any other variances that may appear on these plans that are not listed in this decision are NOT authorized.

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A24

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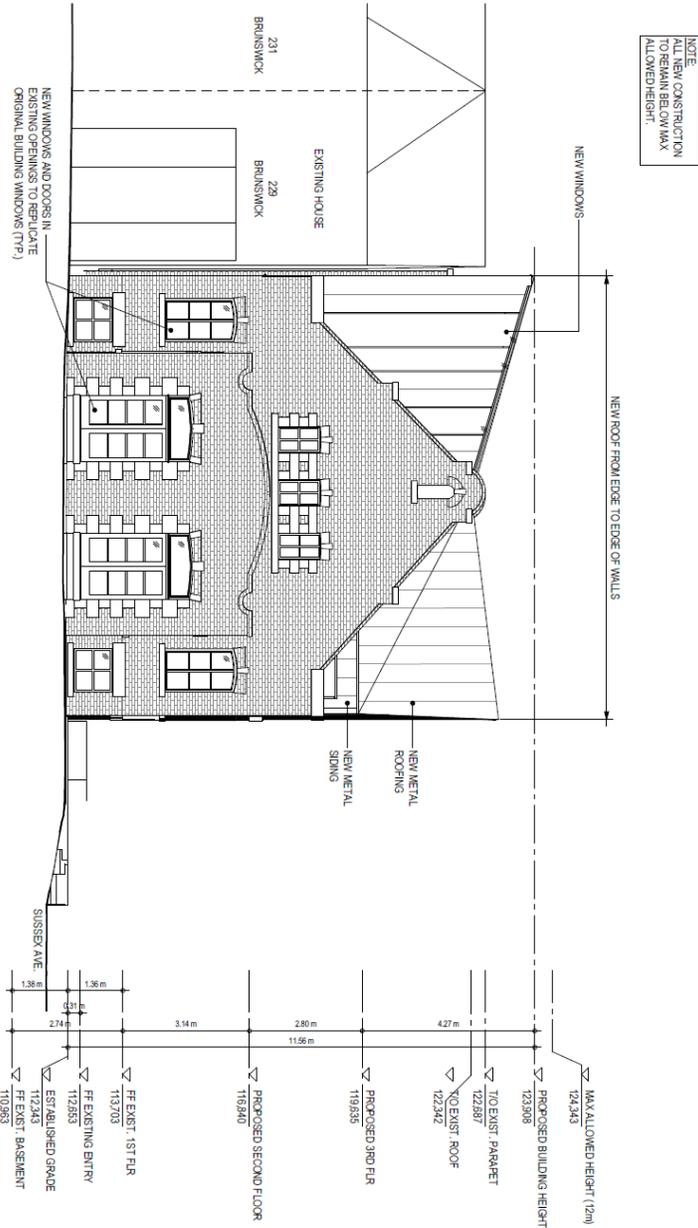


suulin architects
 225 BRUNSWICK AVENUE

ROOF PLAN
 2021-08-27

225 BRUNSWICK AVENUE
 TORONTO, ON, M5S 2M4

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A51

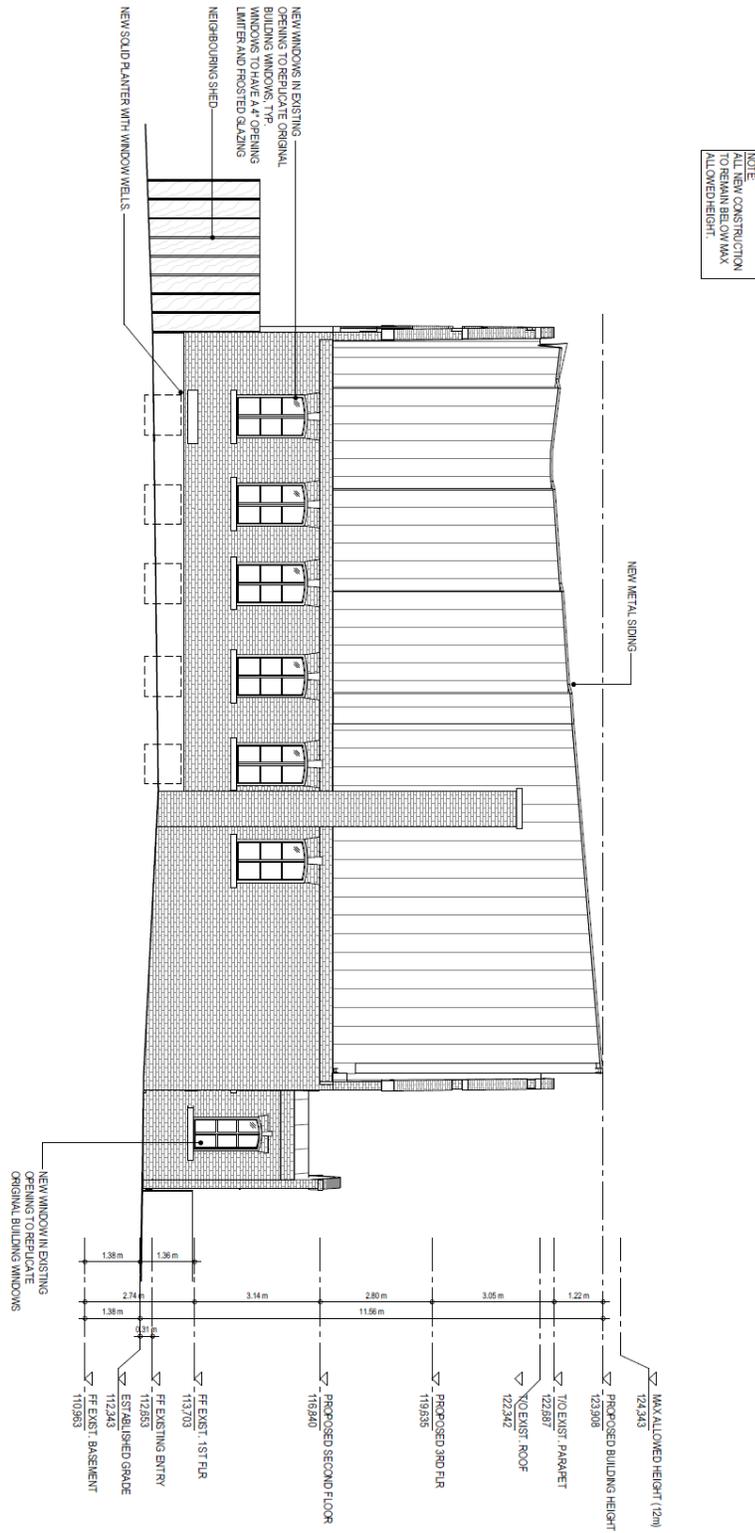
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suulin architects
 225 BRUNSWICK AVENUE

WEST ELEVATION
 2021-08-27

225 BRUNSWICK AVENUE
 TORONTO, ON, M5S 2M4

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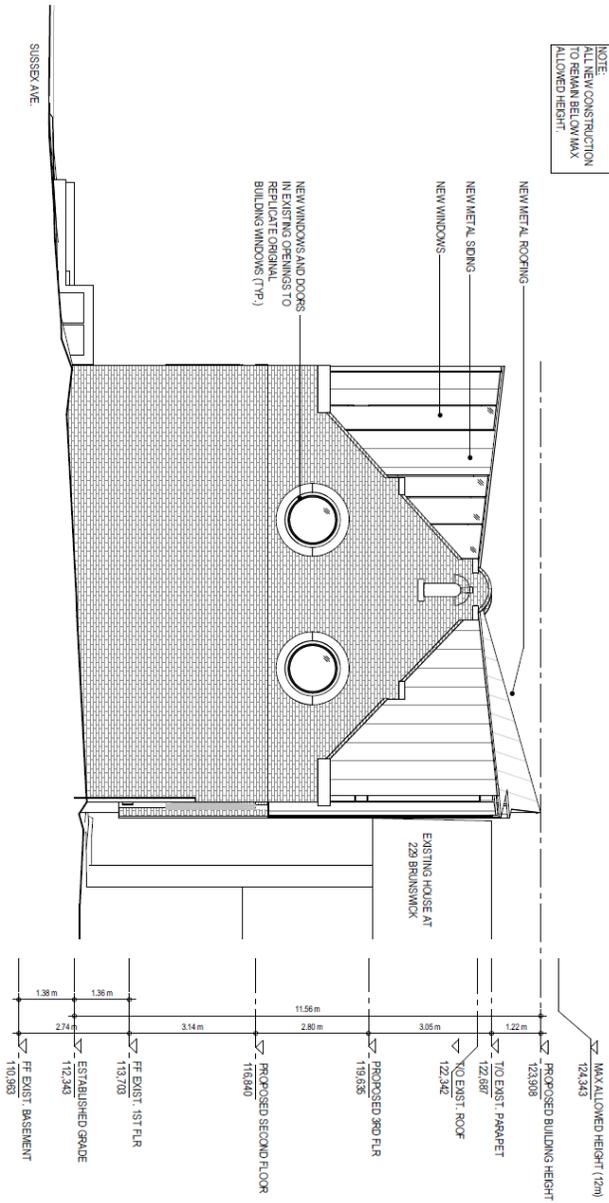
A52

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sulin architects
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NORTH ELEVATION
 2021-08-27
 225 BRUNSWICK AVENUE
 TORONTO, ON, M5S 2M4

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A53

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sulin architects
 225 BRUNSWICK AVENUE

EAST ELEVATION
 2021-08-27
 225 BRUNSWICK AVENUE
 TORONTO, ON, M5S 2M4