

DECISION AND ORDER

Decision Issue Date Friday, March 25, 2022

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): HOWARD BORTENSTEIN

Applicant(s): DAVID COLUSSI/CITY OF TORONTO

Property Address/Description: 233 CARLTON ST

Committee of Adjustment File

Number(s): 19 259695 STE 13 MV (A1274/19TEY)

TLAB Case File Number(s): 20 126130 S45 13 TLAB

Hearing date: January 27, 2021 & March 19, 2021

DECISION DELIVERED BY S. TALUKDER

APPEARANCES

NAME	ROLE	REPRESENTATIVE
CITY OF TORONTO	APPLICANT/ PARTY	DAVID COLUSSI ALEXANDER SURIANO
HOWARD BORTENSTEIN	APPELLANT	
KAREN MARREN	PARTY	
GALE MOORE	PARTY	
CABBAGETOWN RESIDENTS ASSO.	PARTY	
DANIEL MEGLY	PARTY	
STEPHEN YEATES	PARTY	
RAMI LAMA	PARTY	
TERRY LEWIS	PARTY	
JORDAN ALLISON	PARTY	
CHARLES JONES	PARTY	
MICHAEL STRATHMAN	PARTY	
BARBARA JESSON	PARTY	
 AISLINN FORD	PARTY	
PATRICIA RENWICK	PARTY	
ERIKA RUMMEL	PARTY	
MATTHEW ZENTNER	EXPERT WITNESS	
PAULA THRALL	PARTICIPANT	
JOHN DOLAN	PARTICIPANT	
SALLY MARTIN	PARTICIPANT	
DEE LEWIS	PARTICIPANT	
SUSAN DINEEN	PARTICIPANT	
VICTORIA HADDEN	PARTICIPANT	
MARTHA FUSCA	PARTICIPANT	

INTRODUCTION

1. The Shelter Support and Housing Administration Division of the City of Toronto (City) made an application to the Committee of Adjustment (Committee) for approval of a variance for the property located at 233 Carlton Street (subject property). The subject property is in the Cabbagetown neighbourhood and is leased by the City.
2. The City plans to alter the three-storey, mixed-use building on the subject property to provide 24/7 drop-in services and accommodation for women experiencing homelessness in downtown Toronto. The Adelaide Resource Centre for Women will be relocated on the subject property. The alterations necessary for this renovation required the approval on one variance for Floor Space Index (FSI) for an FSI of 2.45, whereas the maximum permitted is 2 times the area of the lot.
3. The Committee approved the application. Howard Bortenstein, a resident of Cabbagetown, appealed the Committee's decision to the TLAB. Many members of the community including the Cabbagetown Residents Association opposed the application and appeared either as Parties or Participants at the TLAB.

MATTERS IN ISSUE

4. The variance subject to this appeal is as follows:

Chapter 40.10.40.40.(1), By-law 569-2013

The maximum permitted floor space index of a mixed-use building is 2.00 times the area of the lot (622.0 m²).

The altered mixed-use building will have a floor space index equal to 2.45 times the area of the lot (763.0 m²).

5. For an application for a variance to be approved, the four tests under s. 45(1) of the *Planning Act* must be satisfied. The variance must:
 - maintain the general intent and purpose of the Official Plan;
 - maintain the general intent and purpose of the Zoning By-laws;
 - be desirable for the appropriate development or use of the land; and
 - be minor.
6. The Cabbagetown Residents Association and the Cabbagetown residents who oppose the application also oppose the use of the building as a municipal shelter. They elaborated and explained how the use of the building is not suitable or

beneficial for their neighbourhood. Therefore, one issue to determine is whether the use of the building as a municipal shelter can be considered when assessing the four tests for approval of the variance for FSI.

7. I must also consider other documents, such as the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe (Growth Plan). These documents are higher level in nature; for example, the Provincial Policy Statement discourages lot creation on prime agricultural land and prefers municipal water and sewage over private systems. In this case, I accept that there is consistency with and conformity to these policies.
8. The site plans and elevations for the proposal are included in this decision as Schedule "A".

EVIDENCE

9. The following witnesses testified at the Hearing:
 - a) Matthew Zentner, a City planner and an expert witness in the area of land use planning, who testified in support of the application.
 - b) Howard Bortenstein, the Appellant in opposition to the application.
 - c) Karen Marren, president of the Cabbagetown Residents Association who testified against the application.
 - d) Dr. Gale Moore, a resident who testified against the application.
 - e) Sean O'Donovan, representing the Cabbagetown Residents Association, who testified against the application.
 - f) Michael Strathman, a resident who testified against the application.
 - g) Dee Lewis, a resident who testified against the application.
10. The following documents were filed and accepted as exhibits (with their respective exhibit number) by the presiding Member:
 1. Mr. Zentner's witness statement
 2. Document Disclosure of the City
 3. City's Additional Visual Evidence Package
 4. Mr. Bortenstein's Document Disclosure
 5. Mr. Bortenstein's Witness Statement
 6. Documentation on 2015 Emergency and Transitional Shelters filed by Mr. Bortenstein
 7. Appendix E and Appendix H of Ms. Marren's Witness Statement
 8. Ms. Marren – Comparison chart of the two plans for the building on the subject property

9. Arkinson Brandon Summary documents – February 15, 2021, which was part of Ms. Moore’s presentation to be filed by Ms. Moore after the hearing
10. PowerPoint presentation by Ms. Moore – March 18, 2021, to be filed by Ms. Moore after the Hearing
11. Witness statement of O'Donovan including Appendix A and B.
12. Witness Statement of Mr. Strathman along with part 2 of the Witness Statement
13. List of services and housing in Winchester Park to be filed by Ms. Lewis after the Hearing.

ANALYSIS, FINDINGS, REASONS

The neighbourhood

14. The subject property is located on the south side of Carlton Street and west of Parliament Street. The existing building on the subject property is a three-storey building that abuts the buildings east and west of it, such that there is zero setback between the buildings. This building currently has an FSI of 2.4.
15. The corner of Carlton and Parliament and Parliament Street itself has a variety of build forms and uses. The mixed-use buildings in this area have retail or restaurant on the first floor.
16. The subject property, along with the neighbouring properties, are designated as *Mixed Use Areas* in the OP. The subject property is also located within the Downtown Area under the OP. Mr. Zentner testified that the Downtown Plan also applies.
17. The subject property is zoned CR, which permits a range of commercial and residential uses, including a municipal shelter. The maximum permitted FSI for residential use is 2.0 times the area of the lot.

The Proposal

18. Mr. Zentner’s Witness Statement succinctly summarized the proposed changes to the building as follows:

“...the proposed use will be contained within the existing built form and does not involve significant alterations to the exterior of the structure beyond the creation of a recessed terrace at rear of the second level and a roof top deck, both of which are located within the existing building footprint and do not require any additional variances. Internal changes are proposed to optimize use of the space and install an elevator to make all levels of the building accessible. The basement level would be used for a staff lounge and offices, and for laundry facilities for clients. The first level would contain the main building entrance and reception, and would provide 24 hour drop-in and dining

space along with a commercial kitchen and server. The second level would provide quiet rest areas and shower facilities, a pet area, counselling offices, and the covered terrace. Finally, the third level would provide training facilities and space for other support services, including a medical exam room.¹

19. Mr. Zentner testified that the building envelope will not be enlarged due to any of the changes proposed and that the internal changes required the variance for FSI being sought. The recessed terrace with privacy screening and the rooftop deck do not require any variances. The storage spaces in the basement were not included in the calculation of the Gross Floor Area (GFA).
20. Mr. Zentner noted that the existing glazing and the door at the front of the building would be retained. On the east side of the building, the recessed terrace and rooftop terrace can be seen. At the rear of the building (south side), the garage will be maintained for two parking spaces.
21. Mr. Zentner noted inconsistencies or errors with the application when it was before the Committee, which included the following:
- a. The City's Zoning Examiner issued two separate zoning reviews, as the first review referred to the proposed use as an "office." After the City filed revised plans to eliminate a variance related to parking, the second Zoning Notice correctly referred to the proposed use as "municipal shelter."
 - b. The Shelter Support and Housing Administration Division refers to the use of "municipal shelter" as defined by the Zoning By-law, as a drop-in centre.
22. This inconsistency in describing the use of the subject property has resulted in much confusion among the residents in the neighbourhood. For the appeal before me, I have accepted that the proposed use for the subject property is as a "municipal shelter," which has the following definition:

Municipal Shelter means premises in which short-term emergency accommodation and associated support services are provided and supervised, and is operated by or for the City of Toronto, or an agency of the City of Toronto. (Zoning By-law 569-2013; 800.50.(480))

23. A municipal shelter is a permitted use under the residential label of the CR Zone, which allows for a maximum FSI of 2.0.

OP Policies

24. Mr. Zentner discussed various applicable OP policies, such as OP 2.2.1, 2.3.1, 3.2. and 4.5.2. I summarize his testimony on the main policies as follows:

¹ Mr. Zentner's Witness Statement, para. 5.

- a. The shelter satisfied OP 2.2.1.3(d) as it falls under the category of “community service” and therefore improves the quality of the Downtown; and,
 - b. The shelter is also a community facility and will enhance the community and neighbourhood amenities by addressing the needs of the community (OP 2.3.1.7(b) and OP 3.2).
 - c. The shelter is near higher order public transit such as bus routes and subway stations. Therefore, the location of the shelter reduces the dependency on automobiles (OP 4.5.2(a) and (h)).
25. The subject property is located within the secondary plan for downtown, which is referred to as the Downtown Plan. He testified that a municipal shelter is a “community services facility” as it satisfies the definition of the term in the Plan, as follows:

Community service facilities – buildings and public spaces that accommodate a range of non-profit programs and services provided or subsidized by the City or other public agencies to support people in meeting their social needs and enhance their well-being, health and quality of life. Community service facilities include recreation, community centres, libraries, child care and spaces for the provision of public health services, human services, cultural services and employment services; (policy 15.4.1.)

26. Mr. Zentner stated that since a municipal shelter is a community service facility, policy 3.1 encourages the provision of this service to encourage complete communities. He also noted policy 6.40, which is applicable to Priority Retail Streets, such as Carlton Street. He noted that the municipal shelter has a community use. Further, the front of the first floor will be used as a reception area with staff and people accessing the area, which will animate the space at the entrance and thus satisfy this policy.
27. I have accepted Mr. Zentner’s testimony with respect to whether the FSI variance and the proposed building, resulting from the increased FSI. I find that his evidence satisfies the OP policies and, therefore, I find that the variance meets the general intent and purpose of the OP.

Zoning

28. Mr. Zentner noted that given that a municipal shelter is a residential use, it is permitted to have an FSI of 2.0. However, the subject property currently has an FSI of 2.4 with a GFA of 745 m² and the proposed FSI change from 2.4 to 2.45 results in increasing the GFA to 763m². Therefore, the actual difference in GFA would be 18m². He noted that this increase would be internal and can be accommodated without any changes to the exterior of the building that could result in GFA increase, and as such, the increase would not have an external effect on the neighbourhood.

29. Mr. Zentner reviewed the recent Committee variance decisions in a study area, which included properties fronting on Carlton Street and Parliament Street with CR zoning and which were designated as Mixed Use Area under the OP and also part of the Downtown Secondary Plan. Based on this review, Mr. Zentner submitted that there are higher density buildings located near Carlton Street and Parliament Street and the density decreases as one moves west on Carlton Street. He noted that a density higher than what is permitted by the Zoning By-law was approved by the Committee in the vicinity of the intersection of Carlton Street and Parliament Street.
30. The increased density of mixed-use buildings near the Parliament and Carlton intersection indicates that this area can accommodate higher density buildings. Accordingly, I find that a higher density building will not be incompatible in this area and, given that the proposed FSI increase on the subject property is completely internal to the building, I find that the increase in FSI is not contrary to the purpose of the restriction on FSI imposed by the Zoning By-law, which is to limit the density and massing of a building so that that building is not incompatible with the buildings in the neighbourhood.
31. Based on the foregoing, I am satisfied that the FSI variance satisfies the general intent and purpose of the Zoning By-Law.

Desirable for the appropriate development or use of the building

32. Based on the evidence of Mr. Zentner as summarized above, I find that the existing building on the subject property will be renovated with features such as a rooftop patio and outdoor terrace so that a service can be provided for the community. I find this development to be desirable and appropriate for the existing building.

Minor

33. Determining whether a variance is minor requires both a numerical and qualitative analysis. The increase of FSI from 2.0 to 2.45 results in an increase in floor space of 141m². However, as the existing FSI of the building is 2.4, the actual increase in floor space would be 18m². This increase is not significant and is internal to the building, and I am satisfied that will not have any impact on the neighbourhood or the adjacent properties. Further, both the terrace and roof-top patio have privacy screening which will assist in mitigating any impacts of privacy or overlook. As such, I find that the FSI variance is minor in nature.

Should the use of the building be considered in the analyzing the four tests for approval of FSI variance?

34. There were several witnesses in opposition to the application who focused on the proposed use of the building, and they all provided similar testimony on the detrimental effects to the community if the subject property is used for a drop-in municipal shelter. Although those witnesses all acknowledged that the use of the building is not subject to any variance approval, given that the use as a municipal shelter is a permitted use, they provided varying opinions on the concept of use and

its detrimental effects. They submitted that their submissions should be considered by the TLAB in determining whether the variance requested satisfies the four statutory tests.

35. As the witnesses' testimonies and submissions were similar in nature, I will address them collectively. I summarize and categorize the testimony as follows:

- a. The community already has many services for community members, including existing shelters in the neighbourhood. The community is disproportionately bearing the burden of accommodating these services such that the community cannot accommodate another municipal shelter.
- b. Shelters are associated with an increase in crime near the shelter, including the presence of perpetrators who seek out vulnerable women to exploit. I note that this specific submission is not relevant for the purposes of this Hearing.
- c. This area of the Cabbagetown already experiences significant crime. Ms. Lewis testified that her neighbourhood is not a safe neighbourhood, and a shelter is not appropriate in this neighbourhood, as the women using the shelter services will not be safe in this area. This specific submission as well is not relevant for the purposes for this Hearing.
- d. A shelter generates significant garbage, and the subject property does not have sufficient space or storage to accommodate for the garbage. This includes an increase in use of needles and them being left unattended.
- e. The alteration in the basement will result in lack of storage space, which will further contribute to the lack of space for storing garbage.
- f. Issues of noise and odor (smoking) in the terrace which will impact abutting properties.
- g. The additional space resulting from an increase in FSI to 2.45 would result in higher occupancy. That would also increase the detrimental effects associated with having a municipal shelter.

36. While I am sympathetic to residents' concerns, I find that their testimonies are not relevant or appropriate for the four tests with respect to a variance. The concerns expressed by those residents in opposition to the proposed shelter are specifically related to the use of the building on the subject property, a use which is permitted in the Zoning By-law as 'as-of-right' *municipal shelter and no variance is required or sought by the Applicant*.

37. I prefer the evidence of Mr. Zentner to that offered by the Parties and Participants in opposition to the Application and find that Mr. Zentner's testimony and evidence that the variance requested that increases the FSI to 2.4 times the area of the lot satisfies the four tests convincing. I find that evidence proffered by those residents in

opposition relate to the use of the building as a municipal shelter, which is not an issue before me.

Conditions attached to the approval of variance

38. On the last day of the Hearing, Mr. Bortenstein requested a few conditions be imposed if the Application is approved and the variance for FSI authorized. However, the conditions proposed by Mr. Bortenstein were not planning related and were not offered at the commencement of the Hearing. As a result, at this late point in the Hearing, the City has not had an opportunity to review and provide comments as to the conditions put forward by Mr. Bortenstein. As a result, I am not prepared to consider them in making my decision.
39. The City requested that the Site Plan and Site Elevations should not be tied as a condition to the approval of the variance, as the City would like to have the flexibility to change the plans because the FSI increase is internal to the building. However, I have concerns with a request to not include a standard condition requiring the Applicant to construct the proposal “substantially in accordance with the Site Plans and Elevations as attached.”
40. I am approving the Application and authorizing the FSI variance based on the plans submitted by the City and before the TLAB and based on the evidence provided by the City that the increase in FSI will be internal to the building. Without this condition, should the City decide to change the Site Plans and Elevations, the resulting proposal may not necessarily satisfy the four tests. Therefore, the Applicant is required to construct the proposal substantially in accordance with the Site Plans and Elevations as attached as Schedule “A” to this decision.

DECISION AND ORDER

41. The Appeal is denied.
42. The following variance is approved:

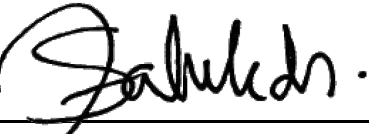
Chapter 40.10.40.40.(1), By-law 569-2013

The maximum permitted floor space index of a mixed-use building is 2.00 times the area of the lot (622.0 m²).

The altered mixed-use building will have a floor space index equal to 2.45 times the area of the lot (763.0 m²).

43. The approval of the above referenced variance is subject to the following condition:

Development shall be constructed substantially in accordance with the Site Plan and Elevation drawings prepared by Workshop Architecture Inc. dated February 13, 2020, which are attached as Schedule “A” to this decision.

X 

Shaheyneor Talukder
Panel Chair, Toronto Local Appeal Body

Project Summary

Existing building consists of a 3-storey 745 m² Gross Floor Area. Existing use is an office as permitted under City of Toronto Zoning By-Law 569-2013.

Scope of Proposed Work:

Renovation of Basement to accommodate staff spaces. Addition of a new elevator, universal washroom and barrier free washrooms and showers. Changes to occupant load, plumbing count, HVAC and electrical services. The addition of an unconditioned terrace space on Level 2 and a rooftop terrace.

Proposed gross floor area:

745 m² existing - 18m² (elevator) - 20m² (terrace) - 10m² (mezzanine) + 50m² (basement renovation/conversion) + 16m² (Level 1 addition) = 763 m²

Proposed use: Office (24 Hour Drop-In)

RECEIVED

By Committee of Adjustment at 9:49 am, Feb 13, 2020

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DATE	ISSUE/REVISION
Dec 2019	Minor Variance
Jan 2020	Minor Variance R1
Feb 2020	Minor Variance R2

Zoning Summary

Zoning: CR2.0 (c1.0; r2.0) SS2 (x1911)		Part of Lots 24 & 25 in Block D, Registered Plan D-138	
Lot Area: 311 m2	Frontage: 7.6m	Depth: 40.4m	
Gross Floor Area	Existing 745 m2	Proposed 763 m2	
Floor Space Index	Existing 2.4	Proposed 2.45	
Front Setback	Existing 0-1.3m (unchanged)		
Side Setback (East)	Existing 0.3m (unchanged)		
Side Setback (West)	Existing 0m-0.2m (unchanged)		
Rear Setback	Existing 0m (unchanged)		
Building Height	Existing 12.9m (unchanged)		
Vehicular Parking	Existing 0	Required 2	Proposed 2
Bicycle Parking	Existing 0	Required 2	Proposed 2



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Scale: 1 : 48
Drawn by: EC
Checked by: DC
Date: February 2020

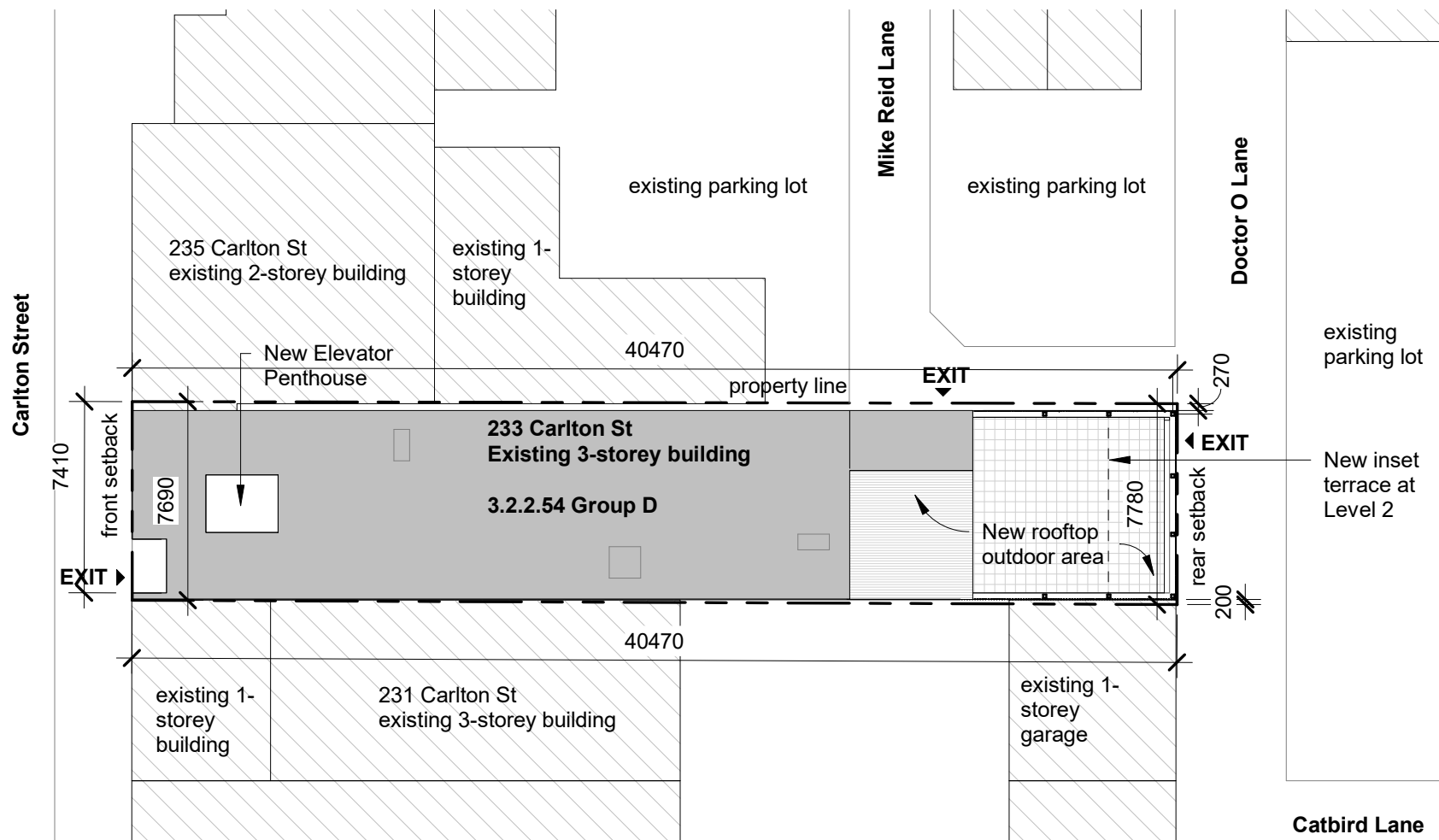
Site Statistics

drawing number

MV1

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1 **Site Plan** 1 : 250

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Site Plan



drawing number

MV2

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Dec 2019	Minor Variance
Jan 2020	Minor Variance R1
Feb 2020	Minor Variance R2



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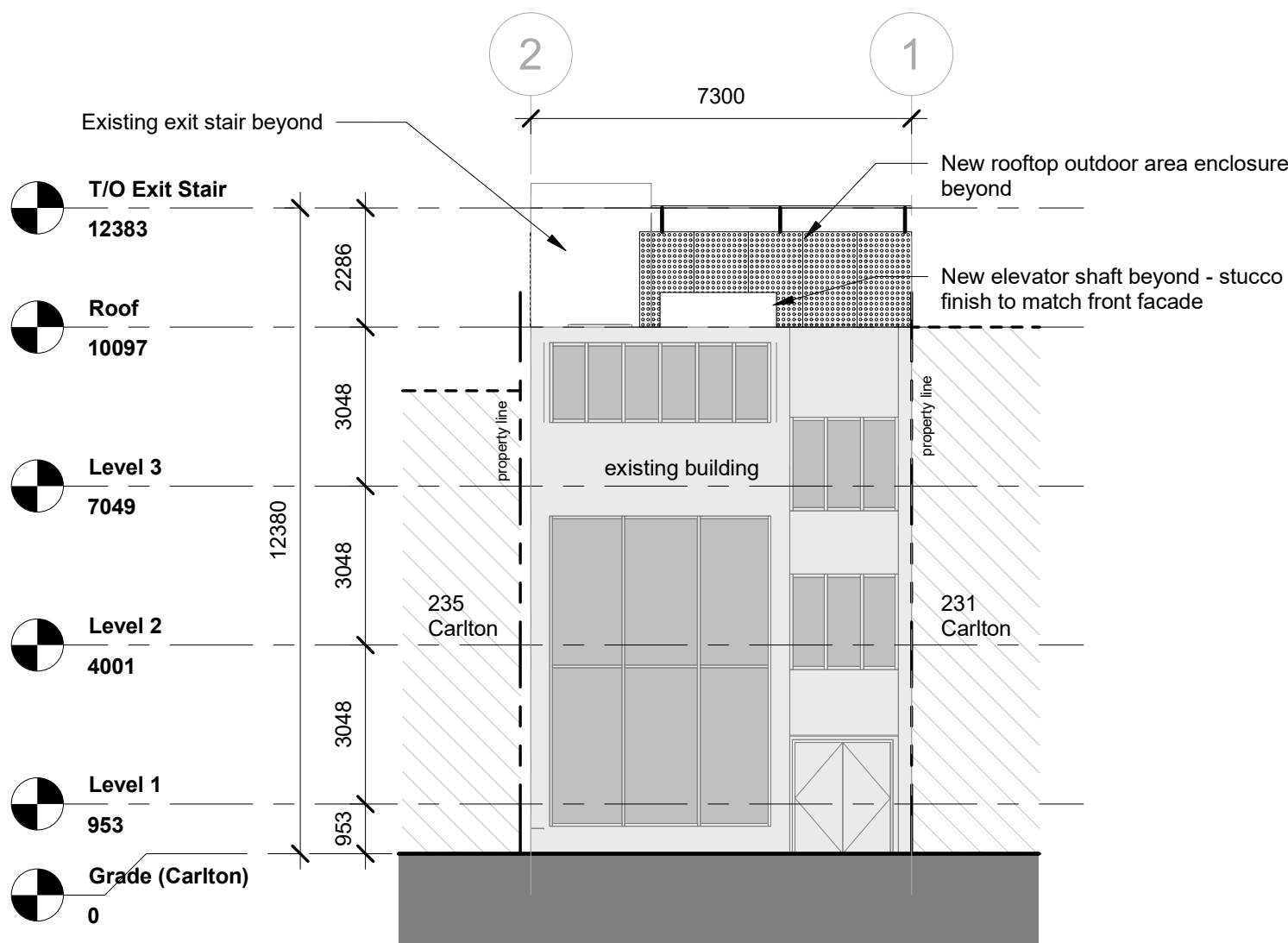
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North Elevation

drawing number

MV16



1 Proposed North Elevation
1 : 125

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Feb 2020	Minor Variance R2



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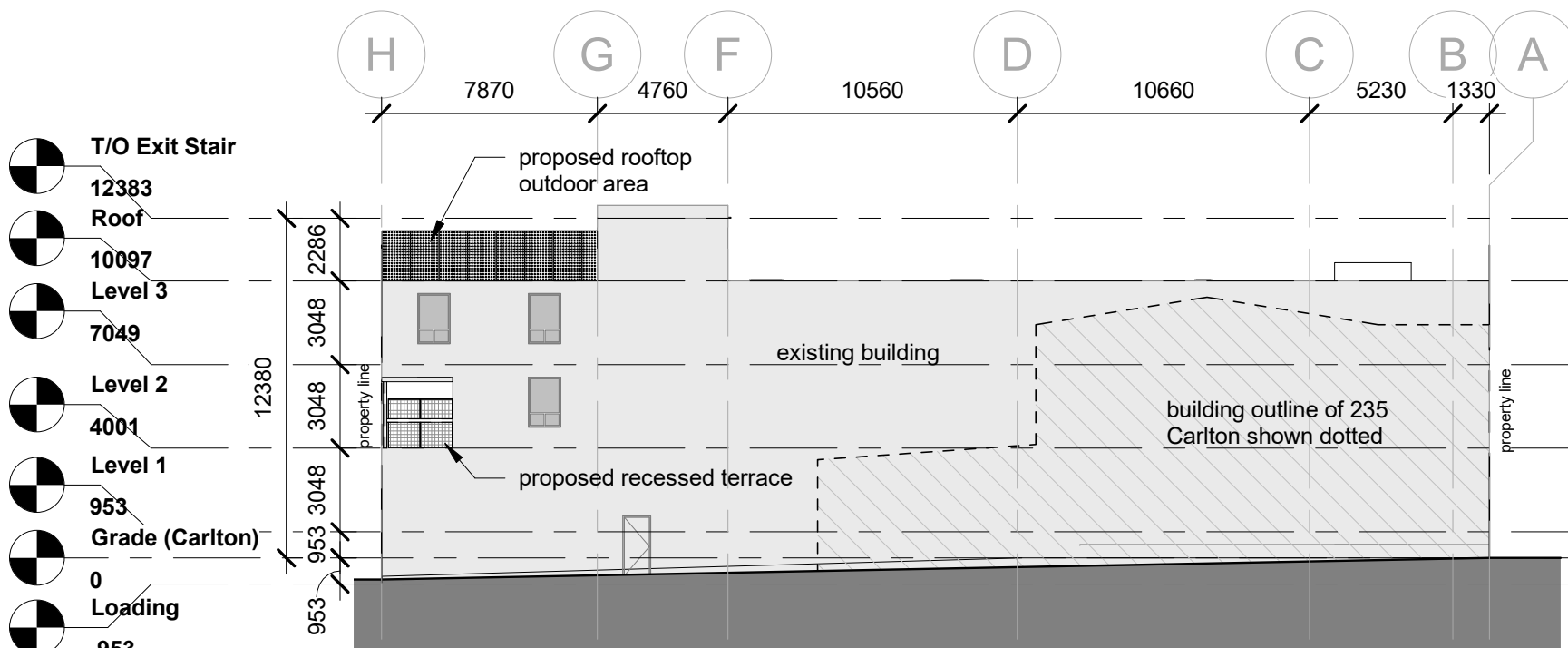
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East Elevation

drawing number

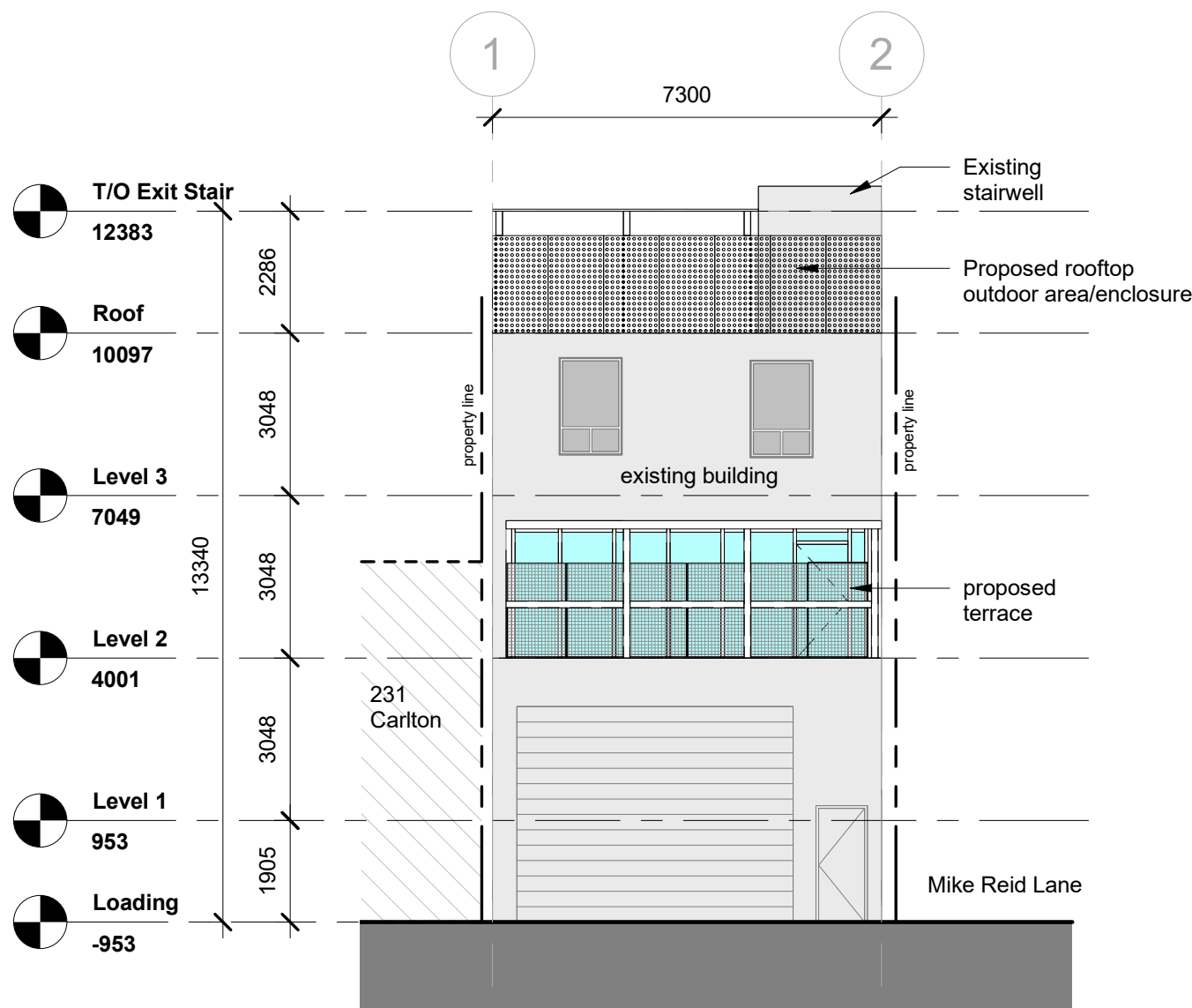
MV17



1 **Proposed East Elevation**
1 : 250

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DATE	ISSUE/REVISION
Dec 2019	Minor Variance
Jan 2020	Minor Variance R1
Feb 2020	Minor Variance R2



1 Proposed South Elevation
1 : 125



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Date: February 2020

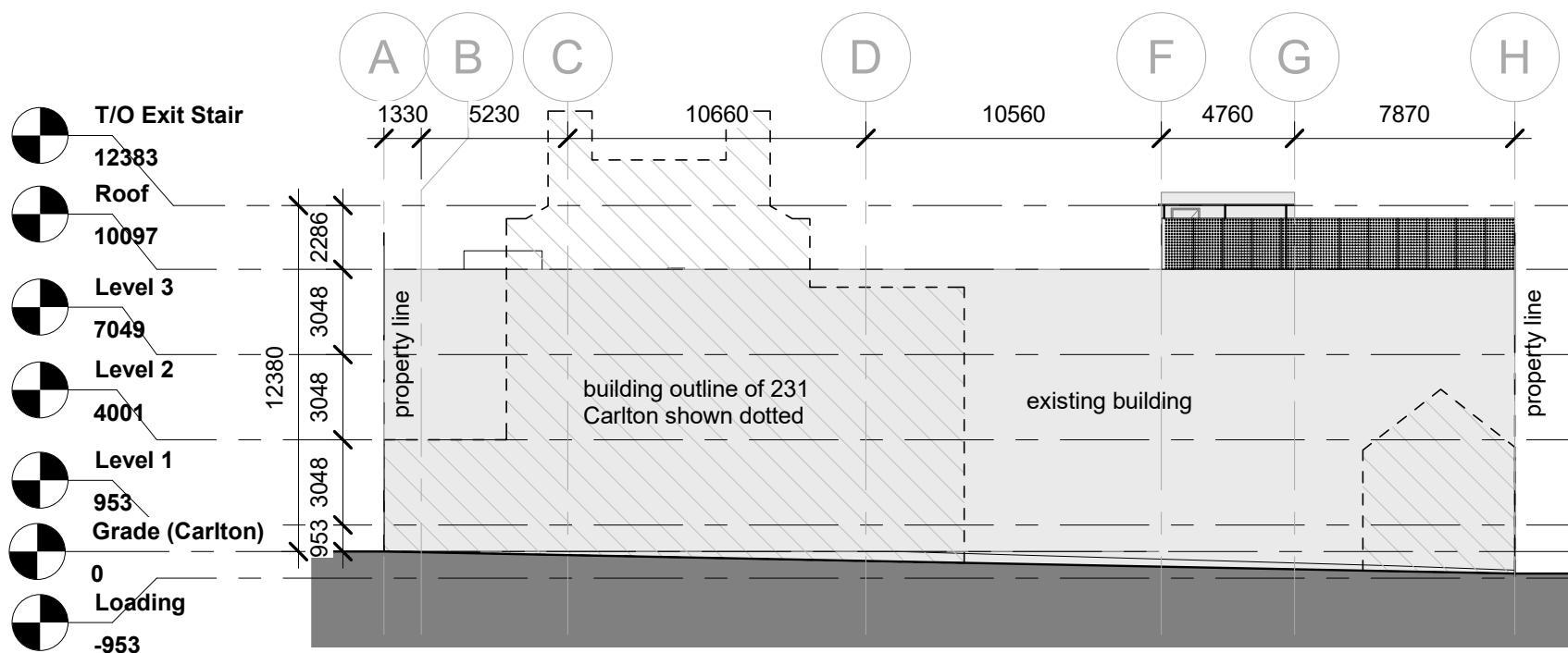
South Elevation

drawing number

MV18

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DATE	ISSUE/REVISION
Dec 2019	Minor Variance
Jan 2020	Minor Variance R1
Feb 2020	Minor Variance R2



1 **Proposed West Elevation**
1 : 250



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West Elevation

drawing number

MV19