

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, April 19, 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): GERMANO CASIMIRO

Applicant(s): AMBIENT DESIGN LTD

Property Address/Description: 582 OSSINGTON AVENUE

Committee of Adjustment File

Number(s): 21 168619 STE 09 MV (A0760/21TEY)

**TLAB Case File Number(s): 21 229520 S45 09 TLAB**

**Hearing date: Friday, March 11, 2022**

**Deadline Date for Closing Submissions/Undertakings:      March 15, 2022**

**DECISION DELIVERED BY TLAB Vice Chair A. Bassios**

## REGISTERED PARTIES AND PARTICIPANT

Appellant	Germano Casimiro
Appellant's Legal Rep.	Russell Cheeseman, Stephanie Fleming
Applicant	Ambient Design Ltd
Participant	Andrew Maderak
Expert Witness	David Riley

## **INTRODUCTION**

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 582 Ossington Ave (subject property). The purpose of the application is to alter the existing three-storey, three-unit, semi-detached dwelling by constructing a third storey rear addition and to legalize and maintain the second storey rear covered deck.

The subject property is located in the Palmerston neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d0.6)(x735 under Zoning By-law 569-2013.

In attendance at the Hearing were:

- Russel Cheeseman and Stephanie Fleming, legal counsel for the Owner, and Expert Witness David Riley (Land Use Planning);
- Andrew Maderak, Participant, and
- Anna Maderak and Tarina Nadal, observing.

## **BACKGROUND**

I was advised at the commencement of the Hearing that revisions have been made to the proposal. The chimney on the semi-detached structure serves both houses and is mutually owned. The proposal as submitted to the COA would have required a roof change, which would in turn have required that the height of the chimney be increased. Mr. Maderak did not consent to the alteration of the chimney and therefore the design and the requested variances have been revised to draw back from the chimney

This is a three unit property. Two family members are living at the address, and there is a tenant in the basement. The proposal does not entail the creation of an additional unit; its purpose is to expand and renovate the existing three bedroom unit.

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

#### **1. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted building height is 10 m.

The altered semi-detached dwelling will have a height of 10.3 m.

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

Additions to the rear of a semi-detached dwelling erected before October 15, 1953 are permitted provided the residential floor space index of the building, as enlarged, does not exceed 0.69 times the area of the lot (164.9 m<sup>2</sup>).

The altered semi-detached dwelling will have a floor space index equal to 0.9 times the area of the lot (214.9 m<sup>2</sup>).

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

A minimum of 50% (57.6 m<sup>2</sup>) of the rear yard must be maintained as soft landscaping. In this case, 23% (26.6 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

## **MATTERS IN ISSUE**

Mr. Maderak's concerns focused on construction which has taken place on the subject property without the benefit of permit.

This is an appeal of the COA's refusal of the requested variances, which have subsequently been revised. For the requested variances to be approved, the TLAB must be satisfied that all four tests of the *Planning Act* have been satisfied.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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**

### Expert Planning Witness Riley

A summary of evidence is presented here for the purpose of providing some context for the following sections 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, Reasons* section below.

Mr. Riley provided evidence in support of his opinion that the proposal meets the four statutory tests. He provided photographs of the surrounding context and maps showing properties where variances for maximum building height, increase in floor space index,

and a decrease in minimum rear yard soft landscaping have been granted by the COA, or on appeal.

Part of the stated purpose of the application to the COA and the TLAB is to legalize and maintain the second storey rear covered deck which was constructed without a building permit. Mr. Riley advised that none of the variances relate to the second floor balcony.

#### Participant Maderak

Mr. Maderak identified what he described as incomplete and inaccurate information on the drawings that had been submitted as part of the COA application. He acknowledged that the errors he identified have been corrected in the revised drawings.

Mr. Maderak's primary concern was with the illegal construction which has taken place on the property. He expressed his concern that the safety of the public is compromised when someone builds without a permit. In particular, he was concerned that the renovation that created the second floor balcony is placing weight on the shared wall between the semi's and that structural damage could result.

Mr. Maderak identified illegal construction that has occurred in the back yard. He described a shed that has been added to the preexisting garage, which has a second storey (above the shed) that is accessed by a ladder. In his opinion, there would be ample space for soft landscaping if the illegal structure was removed.

An email from the Zoning Examiner was included in one of Mr. Maderak's Witness Statements, included in Exhibit 5, part 3. The email to Mr. Maderak from the City Zoning Examiner includes the following statements:

*"...it is noted about the rear garage structure and the addition that occurred. This structure was not included in the scope of the original zoning review submission but it is now noted that this structure will need to be legalized through a building permit submission and has been added to the current Zoning deficiency notice. The applicant of the Zoning certificate file is aware of this item.*

*It is noted in the file for the Zoning review that the certificate wouldn't be released or at the minimum, a requirement would be added to the building permit stage requiring the rear structure to be legalized so any permits for the main house wouldn't be released until the item is addressed."*

## **ANALYSIS, FINDINGS, REASONS**

I accept Mr. Riley's evidence that the proposal is consistent with the 2020 Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe for the subject area.

#### Height Variance

The roof on the existing house exceeds the height that is being requested for the addition and the roof of the addition would not be visible from the street. In the figure, I have marked the location and extent of the rear addition and note that it does not project above the existing profile of the house.

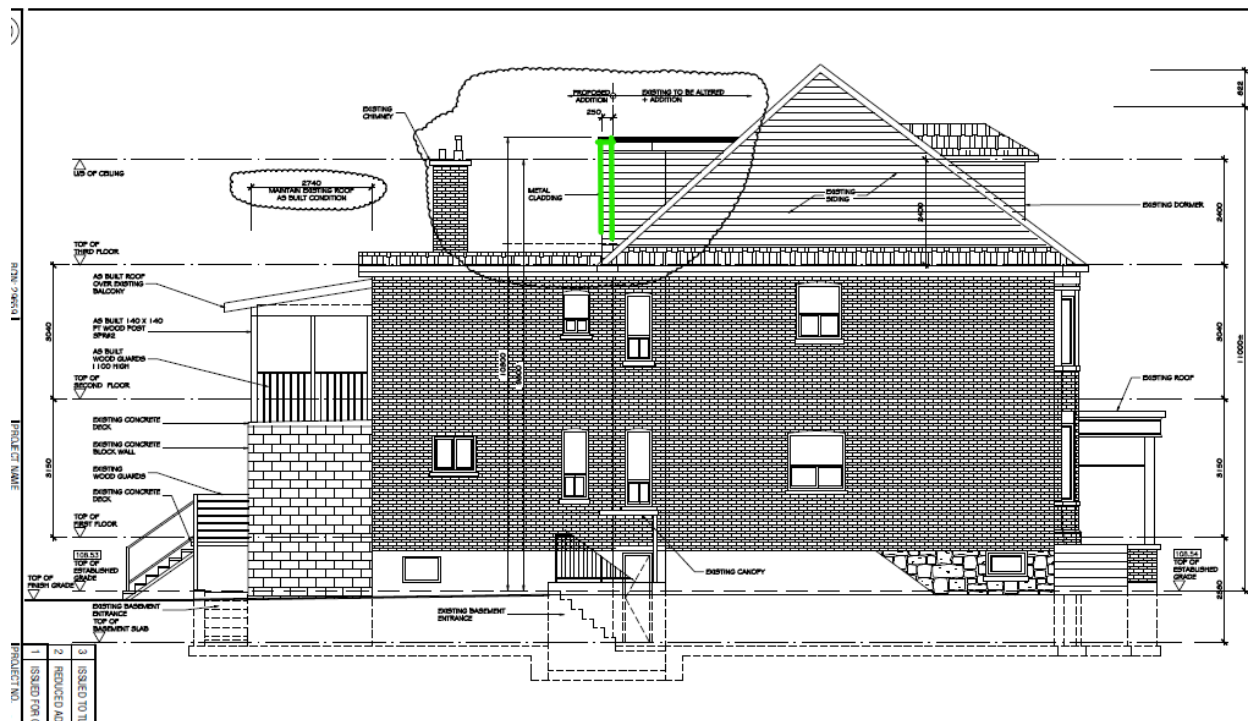


Figure 1: Revised South Elevation, submitted March 17, 2022

Mr. Maderak had no objection to the requested variance for maximum height.

On the basis of the evidence provided by Mr. Riley, I find that the requested height variance maintains the general intent and purpose of the Official Plan and of the Zoning By-law. I find also that the requested height variance is minor and desirable for the development of the land.

Floor Space Index Variance

The requested increase of floor space, subsequent to the revised proposal, is 1.85m<sup>2</sup>, resulting in only a fractional increase in the floor space index above that which already exists.

On the basis of the evidence provided by Mr. Riley, I find that the requested floor space index variance maintains the general intent and purpose of the Official Plan and the Zoning By-law. I find also that the requested floor space index variance is minor and desirable for the development of the land.

Soft Landscaping Variance

Mr. Riley stated that the intent of the soft landscaping requirement was to ensure an appropriate balance of hard and soft surfaces, as well as ensuring an appropriate amount of amenity space.

Mr. Riley referenced evidence of comparable variances which have been granted in the neighbourhood. In support of his opinion on the soft landscaping variance, Mr. Riley asserted the following:

- a significant portion of the rear yard is occupied by the existing garage (58 square metres). The balance of the space in the rear yard is taken up by the portion between the laneway and the garage, as well as between the rear wall of the dwelling and the garage.
- Currently there is no soft landscaping provided in the rear yard.

In his Expert Witness Statement, Mr. Riley concluded his evidence regarding the intent and purpose of the soft landscaping provision in the Zoning By-law with the following justification.

*“As such, it is my opinion that the intent of the by-law is maintained, in that it there is no other physical location in the rear yard to provide for any additional amount of soft landscaping, beyond that which is proposed.”*



**View from Rear Yard of Subject Property of Existing Garage** Photo 11

Figure 2: photograph of rear yard structure. Ex 2, Tab 4

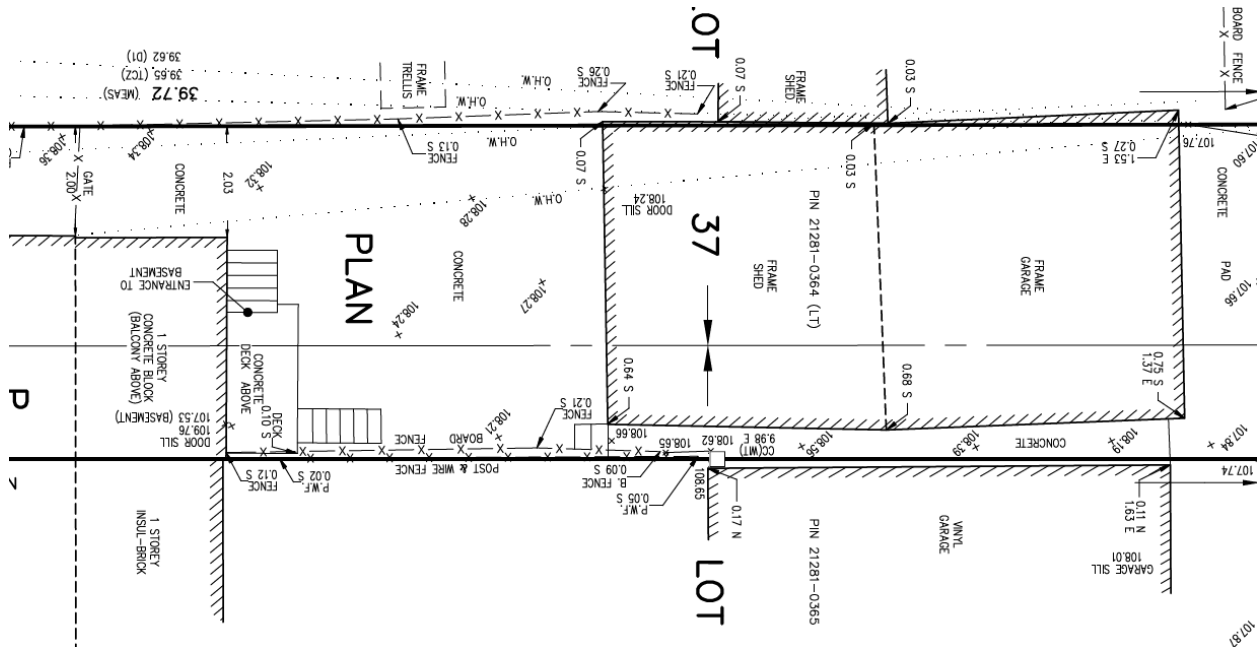


Figure 3: Portion of property survey. Ex 2, Tab 7

The photograph in Figure 2 shows the two-level structure which exists in the rear yard. An extract of the survey submitted by the Applicant (Figure 3) identifies one part of the structure as a garage and a second part as a “frame shed”.

Mr. Maderak has provided correspondence from the City Zoning Examiner confirming that this structure will need to be legalized through a building permit submission. I note that while legalization of the unpermitted second storey balcony was part of the stated intent of this application, the Applicant has made no mention of the unpermitted status of construction in the rear yard.

Mr. Riley has professed the existence of this backyard structure as a reason why the soft landscaping requirements of the By-law cannot be met. Yet, it has been established that a substantial part of the existing structure will be subject to a separate building permit submission, the resolution of which is not known.

The granting of a variance is a privilege, there is no right to a variance. The soft landscaping variance has been requested and justified as part of this application before the TLAB as legalization, or improvement, of an existing condition. (The third storey addition that is proposed does not consume any part of the rear yard).

I find that the evidence provided in support of the soft landscaping variance to be incomplete and insufficient. It is my opinion that the variance for soft landscaping that is proposed has been precipitated by the encroachment of this unpermitted structure in

the rear yard and should be considered in conjunction with application for permission to construct an accessory structure in the rear yard, and not on the premise of legalization of an existing soft landscape deficiency, as has been submitted by the Applicant.

### Construction compliance

Mr. Maderak's concern was primarily the reversal of process whereby approval was being sought after construction had already taken place, and that as a result the mandatory construction inspection process could potentially be subverted.

The TLAB's mandate does not include Building Code matters. The purview of the TLAB is confined to the variances that have been requested, however the TLAB has wide discretion to impose terms and conditions of approval (s.45(9) of the *Planning Act*).

It is common for the TLAB to impose a condition on approval of variances which stipulates that construction must be substantially in accordance with the drawings that have been justified through the course of the proceedings. The premise being that construction would proceed through the building permit process and that all requirements of the Building Code will be certified through that process.

In the circumstance of this application, legalization of the second storey balcony has been included as part of the purpose of the application, even though no variances are required. Mr. Maderak sought confirmation that if the construction is to be legalized, he be provided assurance that the construction is safe and that it complies with the requirements of the Building Code.

In order to re-integrate the TLAB approvals and the building permit and inspection process, and to vouchsafe that the construction does indeed meet Building Code standards, the customary TLAB condition requiring substantial accordance with the submitted drawings will be amended.

### Conclusion

I find that the requested variances for maximum height and for floor space index, as revised, meet the four tests (s.45(1) of the *Planning Act*).

I find that the revision to the proposal constitutes a reduction in the request for a floor space index variance and I therefore find that no further notice is required under s.45(18.1.1).

I find that the requested variance for soft landscaping does not maintain the general intent and purpose of the Zoning By-law, and that it is not desirable for the development of the land.



## DECISION AND ORDER

The Appeal is allowed in part and the variances listed in Appendix A are authorized, subject to the condition contained therein.

The requested variance for soft landscaping is not authorized.

No further notice is required in accordance with s.45(18.1.1) of the *Planning Act*.

X 

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A. Bassios  
Panel Chair, Toronto Local Appeal Body

## **APPENDIX A**

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

#### **1. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted building height is 10 m.

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

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The altered semi-detached dwelling will have a floor space index equal to 0.9 times the area of the lot (214.9 m<sup>2</sup>).

### **CONDITION:**

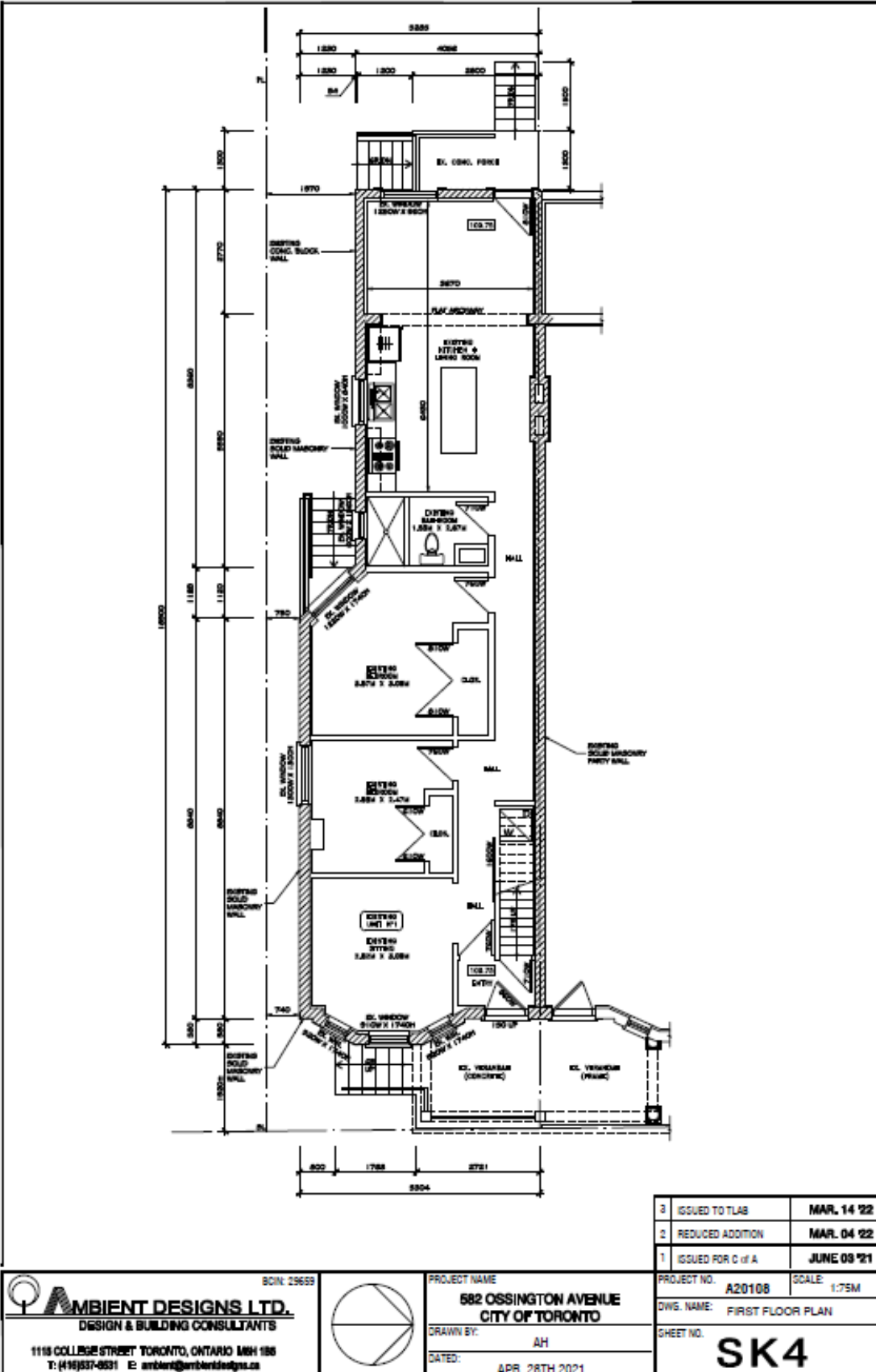
1. Approval of the requested variances is subject to confirmation from the Chief Building Official that the as-built condition of the dwelling on the subject property complies with the requirements of the Ontario Building Code.
2. The proposed addition and alteration shall be constructed substantially in accordance with the following drawings, attached hereto:

Drawings prepared by Ambient Designs Ltd. Dated March 14, 2022:

1. SK4 First Floor Plan
2. SK5 Second Floor Plan
3. SK6 Third Floor Plan
4. SK7 East Elevation
5. SK8 West Elevation
6. SK9 South Elevation

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

Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
 TLAB Case File Number: 21 229520 S45 09 TLAB

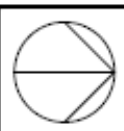


3	ISSUED TO TLAB	MAR. 14 '22
2	REDUCED ADDITION	MAR. 04 '22
1	ISSUED FOR C of A	JUNE 08 '21

BCIN: 29693

**AMBIENT DESIGNS LTD.**  
 DESIGN & BUILDING CONSULTANTS

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 T: (416) 937-8531 E: ambient@ambientdesigns.ca



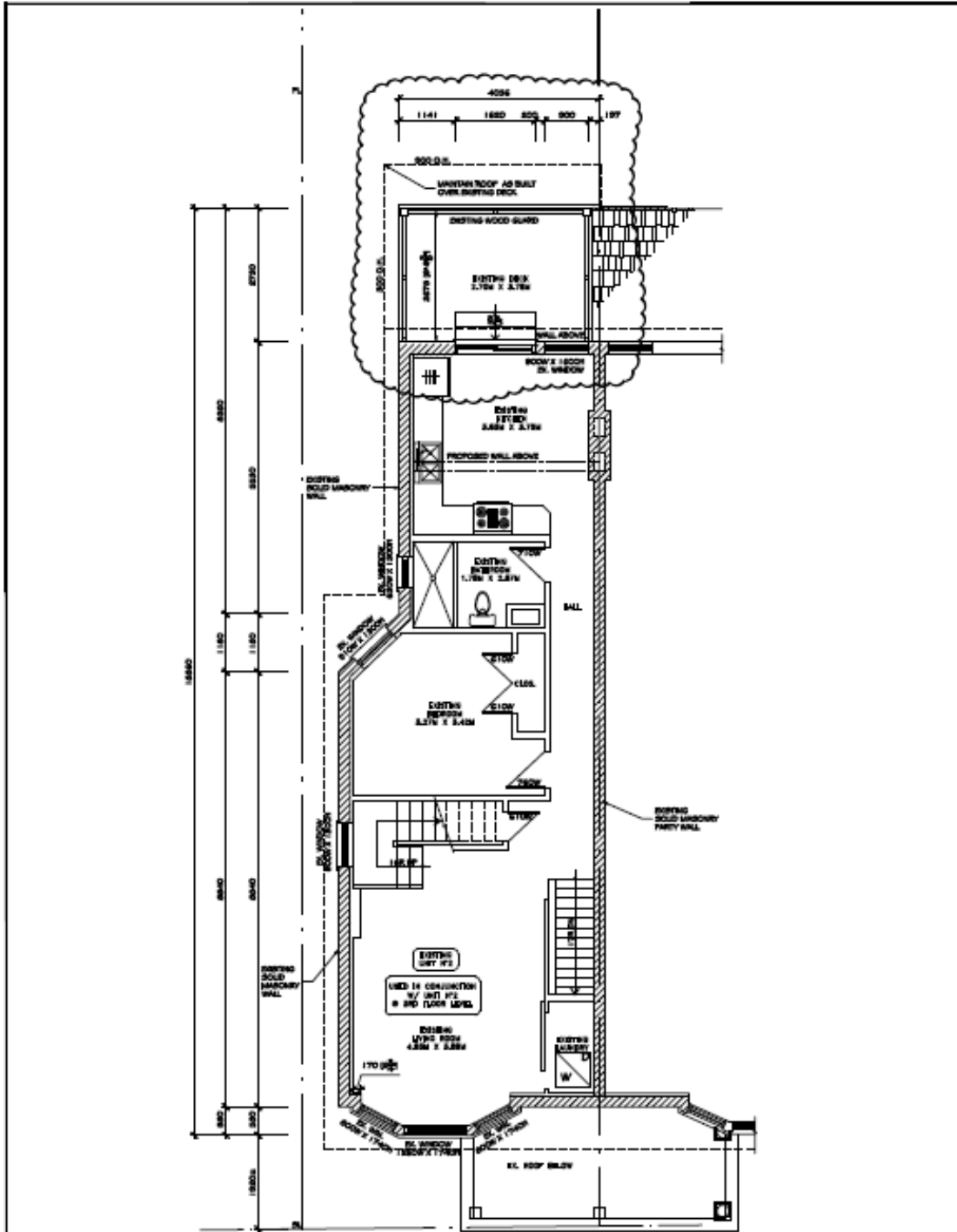
PROJECT NAME  
**582 OSSINGTON AVENUE  
 CITY OF TORONTO**

DRAWN BY: AH

DATED: APR. 28TH 2021

PROJECT NO.	A20108	SCALE:	1:75M
DWG. NAME:	FIRST FLOOR PLAN		
SHEET NO.	<b>SK4</b>		

Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
 TLAB Case File Number: 21 229520 S45 09 TLAB



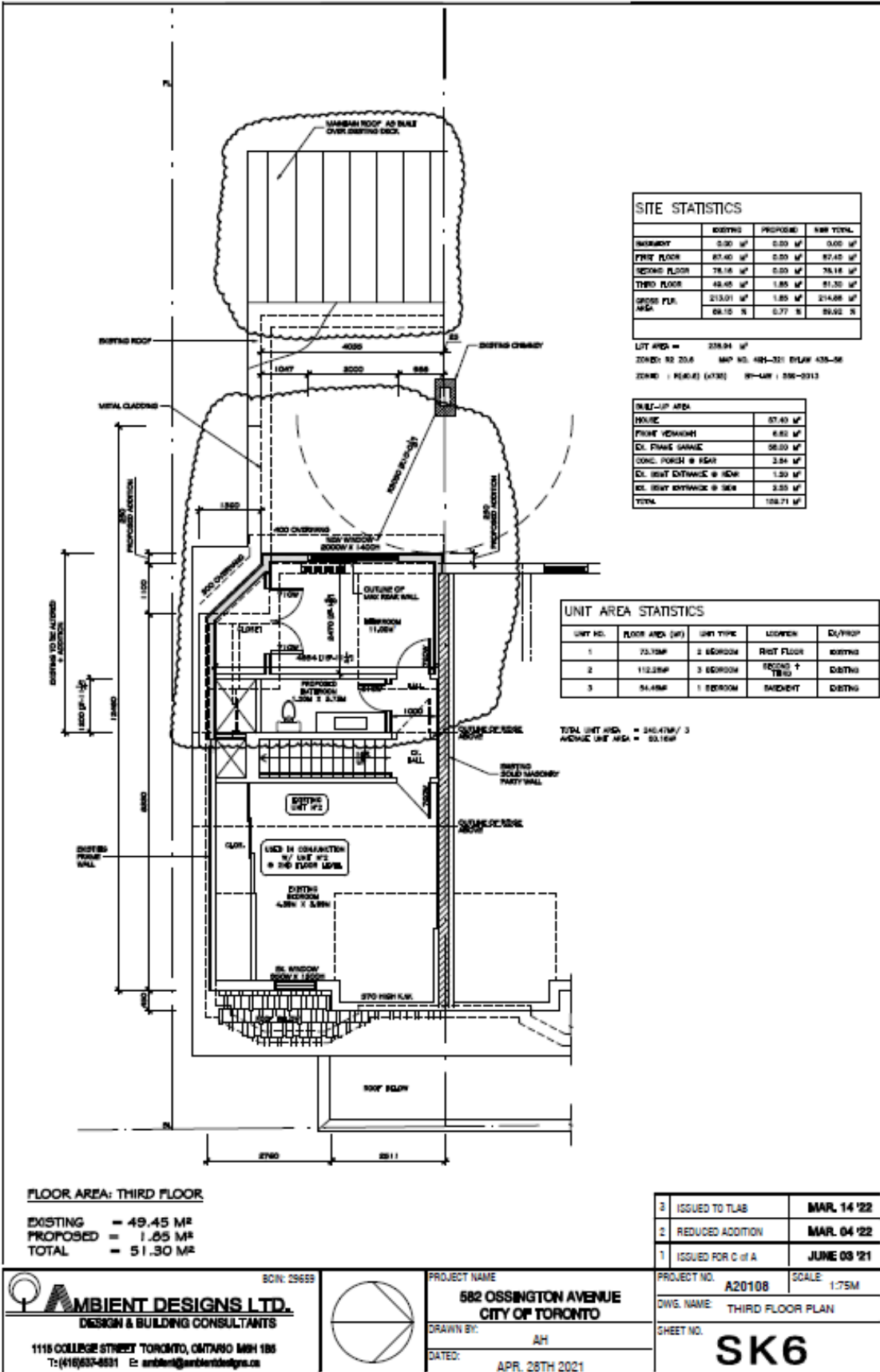
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PROJECT NAME  
**582 OSSINGTON AVENUE**  
**CITY OF TORONTO**  
 DRAWN BY: AH  
 DATED: APR. 28TH 2021

PROJECT NO. **A20108** SCALE: 1:75M  
 DWS. NAME: SECOND FLOOR PLAN  
 SHEET NO. **SK5**

Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
 TLAB Case File Number: 21 229520 S45 09 TLAB



3	ISSUED TO TLAB	MAR. 14 '22
2	REDUCED ADDITION	MAR. 04 '22
1	ISSUED FOR C of A	JUNE 03 '21

<p><b>AMBIENT DESIGNS LTD.</b>          DESIGN &amp; BUILDING CONSULTANTS</p> <p>1116 COLLEGE STREET TORONTO, ONTARIO M5H 1B5          T: (416) 637-8891 E: ambient@ambientdesigns.ca</p>		PROJECT NAME <b>582 OSSINGTON AVENUE</b> <b>CITY OF TORONTO</b>	PROJECT NO. <b>A20108</b> SCALE: 1:75M
		DRAWN BY: <b>AH</b> DATED: <b>APR. 28TH 2021</b>	DWG. NAME: <b>THIRD FLOOR PLAN</b> SHEET NO. <b>SK6</b>

Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
 TLAB Case File Number: 21 229520 S45 09 TLAB



3	ISSUED TO TLAB	MAR. 14 '22
2	REDUCED ADDITION	MAR. 04 '22
1	ISSUED FOR C of A	JUNE 03 '21

BCIN: 29659

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PROJECT NAME  
**582 OSSINGTON AVENUE  
 CITY OF TORONTO**

DRAWN BY: AH

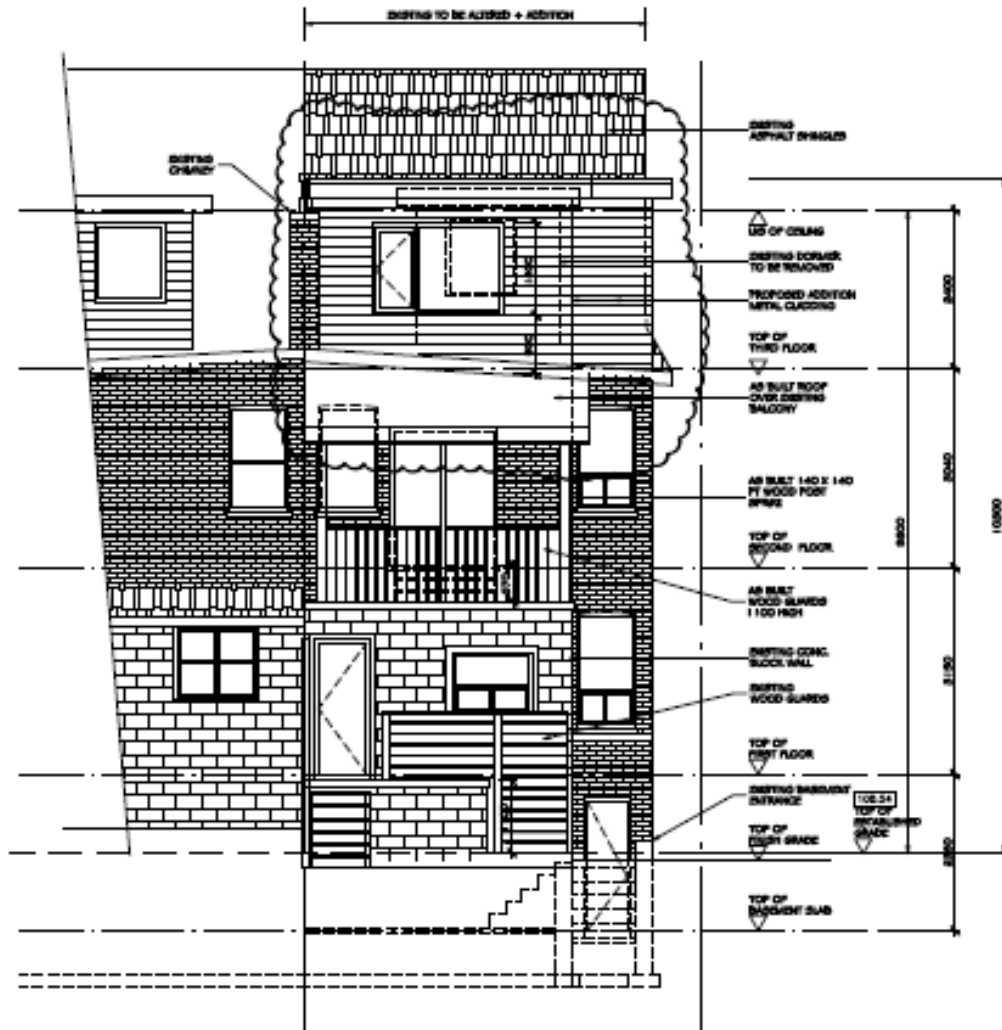
DATED: APR. 28TH 2021

PROJECT NO. **A20108** SCALE: 1:75M

DWG. NAME: **EAST ELEVATION**

SHEET NO. **SK7**

Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
 TLAB Case File Number: 21 229520 S45 09 TLAB



3	ISSUED TO TLAB	MAR. 14 '22
2	REDUCED ADDITION	MAR. 04 '22
1	ISSUED FOR C of A	JUNE 03 '21

BCIN: 29653

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PROJECT NAME  
**582 OSSINGTON AVENUE  
 CITY OF TORONTO**

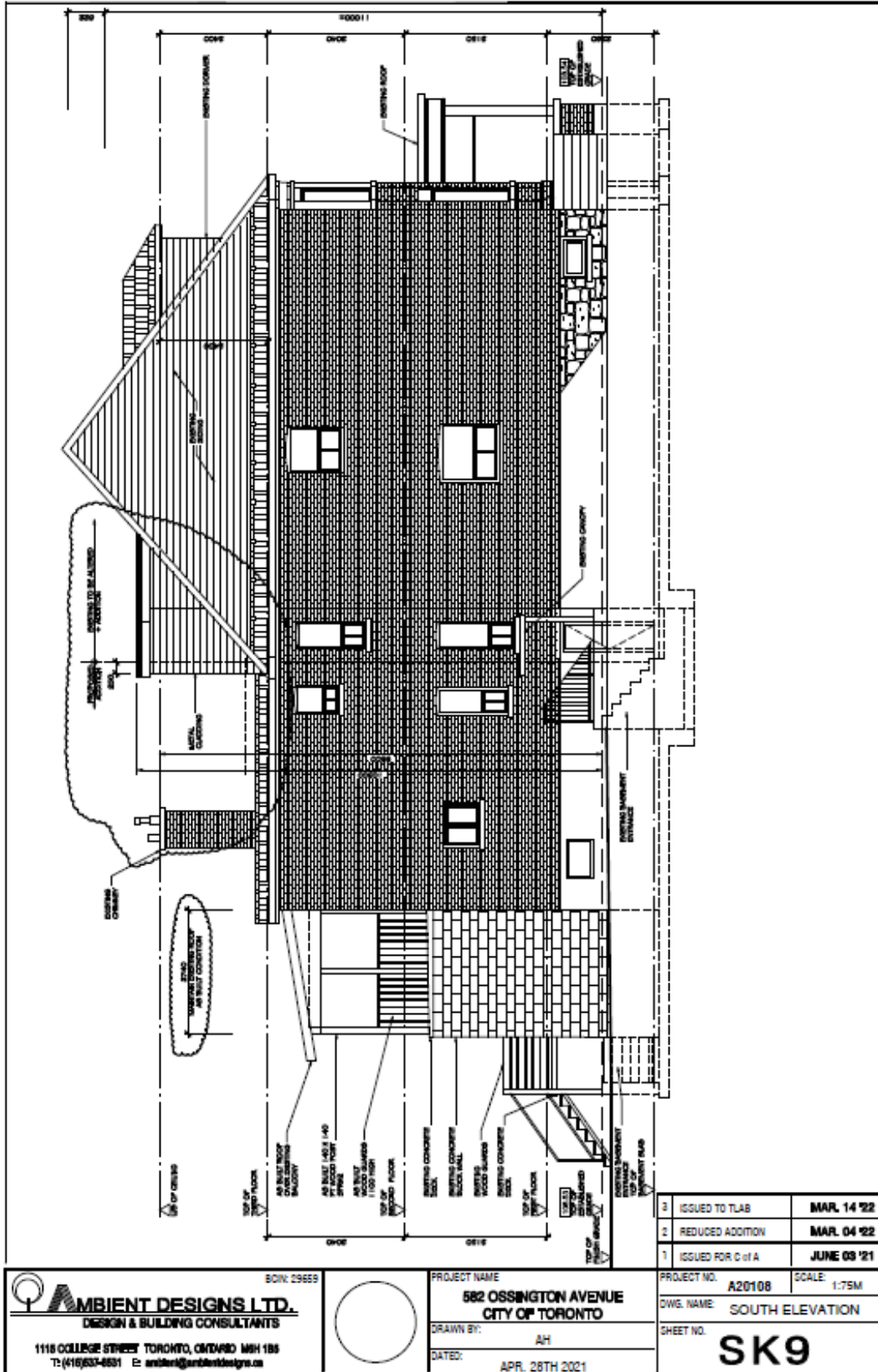
DRAWN BY: AH

DATED: APR. 28TH 2021

PROJECT NO. A20108 SCALE: 1:75M

DWG. NAME: WEST ELEVATION

SHEET NO. **SK8**



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PROJECT NAME  
**582 OSSINGTON AVENUE**  
**CITY OF TORONTO**  
 DRAWN BY: AH  
 DATED: APR. 28TH 2021

PROJECT NO. **A20108** SCALE: 1:75M  
 DWG. NAME: **SOUTH ELEVATION**  
 SHEET NO. **SK9**