

and west lot lines than permitted by the bylaw, although no closer to those lot lines than the existing lobby. The variances permitting the vertical extension to be closer to the south and west lot lines results in the loss of the window. The vertical extension also results in the need to vacate the property during construction as the new roof on the lobby is to be linked to the second floor unit.

MATTERS IN ISSUE

As with all variance appeals before TLAB, the issue is whether the variances meet the four tests of the Planning Act and the requisite provincial policies. This case is made more complex by the fact that the appeal is brought by the tenant of a unit in the building. Added to the standard issues therefore is the question of whether a tenant is affected by the granting of the variances and can seek relief under s. 45 of the Planning Act and whether conditions can be imposed related to the tenancy.

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

The evidence was clearly given by two witnesses, Mr. Ivanov for the owner of the building, and Ms. Moella, the tenant, for herself. Neither one was a professional planner. The evidence, however, related largely to the need to vacate the unit during construction and the loss of the window and the effect of those two impacts on Ms. Moella .

Mr. Ivanov gave evidence that the owners were willing to provide Ms. Moella with similar accommodation at a similar rent while she had to vacate the unit, that the owners were willing to pay for reasonable moving expenses, that her temporary move would not alter her status in any way under her lease of the temporarily vacated unit, and that she would only be required to vacate during construction which would be approximately four months. Mr. Ivanov also gave evidence that the renovation would be of benefit to all tenants in the building as it would result in a more attractive, safer lobby with more light, and improved landscaping and hidden garbage storage.

Ms. Moella, importantly, pointed out that while there might be a general benefit to all tenants; she alone would suffer the detrimental impacts from the reconstruction and vertical extension. She alone was being required to vacate her premises temporarily; and she alone was losing a window which provided a view on the street, light into her home and could be opened for fresh air. Moreover, she was concerned that there was no certainty: that she would be compensated for the cost of moving from and back to her current accommodation; that comparable accommodation at a similar price will be provided during construction; and that her moving to another unit will not diminish her rights under her current lease. If she lost those rights then she stated she could be “homeless”. She stated the Official plan s. 3.2.1 had a policy to preserve housing and these variances, in this case, would not preserve housing for her unless her concerns were addressed. She believed her interests should be protected.

ANALYSIS, FINDINGS, REASONS

I find that both parties have legitimate points of view. The variances for the reconstruction and extension will meet the four tests in numerous ways. They improve the housing of all tenants by improving the access lobby, landscaping and garbage collection. They respect and reinforce the character of the neighbourhood by respecting and reinforcing the apartment character of the neighbourhood. They are minor in not impacting on neighbouring buildings and meet the general intent of the zoning bylaw by approving a reconstruction and addition that respect preexisting setbacks. Mr. Ivanov gave excellent evidence on these matters.

In contrast it must also be noted that the variances are not minor for Ms. Moella . They have a very negative impact on her. She is to be barred from her home for an uncertain

period of time. Her home is to be negatively impacted by the removal of a living room window which opens to provide fresh air. Were she a neighbouring home owner she would have a legitimate objection to a variance to a neighbouring property which allowed a brick wall within inches of a living room window. Although there is no doubt the construction noise and dust are not a grounds for refusing a variance, a variance which would prohibit access to a neighbour's property, could certainly be refused.

Ms. Moella is certainly in a difficult position. She is willing to withdraw her appeal but a mere withdrawal provides her with no certainty that her concerns will be addressed. Mr. Ivanov, states, without proof, that she need not be concerned as the owners will meet her needs.

I find that the manner by which these opposing positions can be reconciled is to grant the variances on condition that the owners provide Ms. Moella with an agreement that addresses the matters she has raised. I make this finding to impose a condition to require an agreement on the basis that TLAB can impose "such conditions... as (it) considers advisable" under s. 45(9) Planning Act. I find it appropriate to protect Ms. Moella's interest in this case as a tenant should have the same rights as an owner as shown by the requirement that tenants are required to be given notice of the Committee of Adjustment hearing and by the fact that she is impacted like an owner in terms of loss of use of her premises and loss of light and view from a window.

I note as well that this improvement to the apartment building benefits all tenants of the building and respects and reinforces the physical character of the neighbourhood. It, therefore, should not be needlessly delayed by unreasonable demands by Ms. Moella. I will, therefore, make provision for this in the condition I impose.

I find it necessary to address the argument made by Mr. Ivanov that this is a matter that should be dealt with under the Residential Tenancies Act and should be taken to the Landlord and Tenant Board. While the concerns raised by Ms. Moella are landlord and tenant related I find that they are incidental to the exercise of my authority under the Planning Act and thus I may address them as part of my decision. My condition relates to the landlord and tenant relationship as it is affected and altered by a planning decision under the Planning Act.

I am imposing as a condition that the owner provide an agreement based on the terms that Mr. Ivanov said were agreeable to the owners. I believe that both parties acting in good faith can agree to the details of such an agreement. If they do not, and either party is unreasonable, the matter can be brought back before me. Otherwise the agreement is to be finalized on or before June 30 2022.

DECISION AND ORDER

The appeal is granted in part as follows:

A. The variances set out in Appendix 1 are approved on an interim basis until I have approved an agreement, under seal, which binds the owner and any future owner and provides for the following:

1. Alternate renovated accommodation for Ms. Moella at 95 Lawton Blvd.; at the same rent she is currently paying during the construction which is the subject of this appeal.
2. Payment of the reasonable cost of Ms. Moella's moving to and from her current accommodation to a maximum amount in order for the construction subject to this appeal to be completed safely.
3. A covenant that her relocation as a result of this agreement will not affect her status as tenant under her current lease.
4. A covenant that Ms. Moella would only be required to vacate her current apartment while necessary for construction to occur safely.

B. If an agreement is executed by both parties on or before June 30, 2022, it may be filed with TLAB. The variances will be thereby be approved and in force subject to condition D.

C. If the agreement is not reached by June 30, 2022, either party may request the matter be brought back before me for final determination of its terms and final approval of the variances.

D. Once the variances are in force construction will be substantially in accordance with the plans attached as Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 10.10.40.70.(3)(C)(ii), By-law 569-2013

The minimum required side yard setback for an apartment building with a height of more than 12 m is 7.5 m. The altered apartment building will be located 5.56 m from the side (south) lot line.

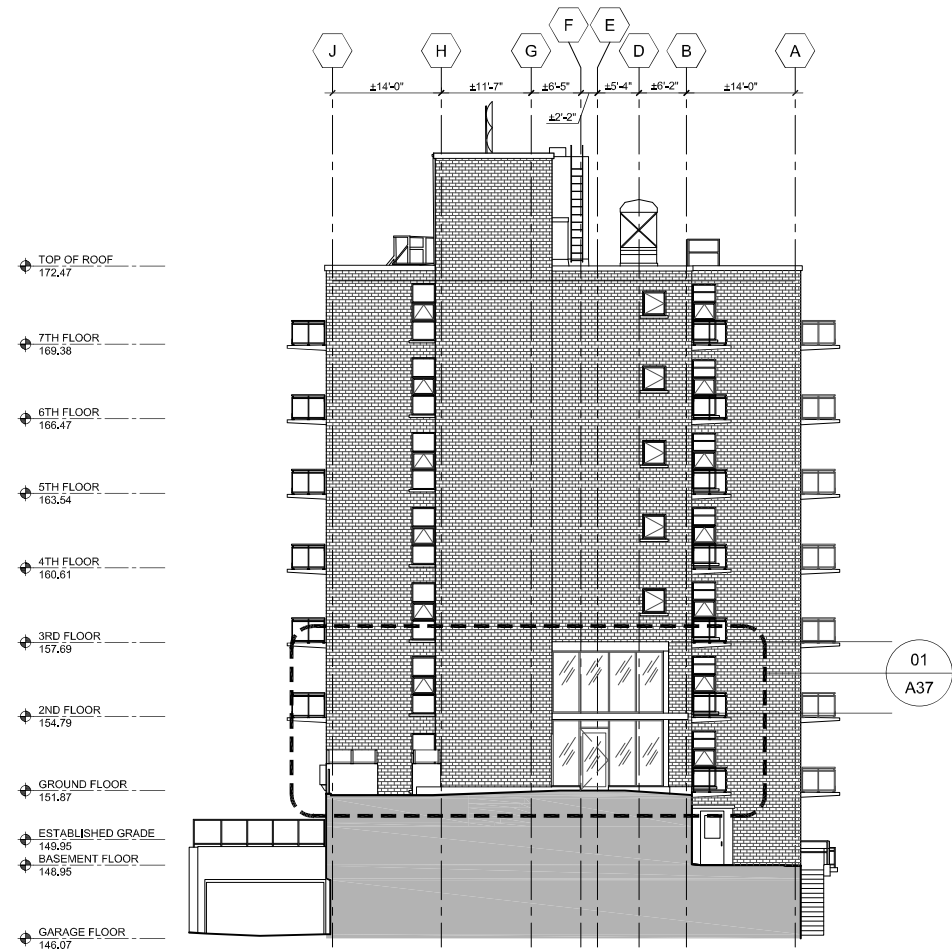
2. Chapter 10.10.40.70.(1), By-law 569-2013

The minimum required front yard setback is 22.53 m. The altered apartment building will be located 3.25 m from the front (west) lot line.

3. Chapter 10.5.40.60.(2)(B)(i), By-law 569-2013

A canopy, awning or similar structure may encroach in a front yard 2.5 m if it is no closer to a side lot line than the minimum required side yard setback (7.5 m). The canopy will encroach 20.53 m into the minimum required front yard setback and will be located 4.85 m from the side (south) lot line.

APPENDIX 2



FRONT ELEVATION (WEST)

PROPOSED

1/16"=1'-0"



345 VICTORIA, SUITE 300
WESTMOUNT, QC H3Z 2N2
TEL: (514) 481-1665
www.guptaarchitecture.com

NOT FOR CONSTRUCTION



| | | |
|-----------------------------|----------|------------|
| DMIS FOUR ISSUED FOR: | REV/REV: | DATE: |
| ZONING CERTIFICATE | 00 | 2020-12-18 |
| ZONING CERTIFICATE REV R1 | 01 | 2021-05-07 |
| ZC REV R2 - MINOR VARIANCES | 02 | 2021-09-02 |

PROPOSED WEST ELEVATION

TITLE/TITLE:
NEW VESTIBULE AND FRONT LANDSCAPING
95 LAWTON BLVD., TORONTO, ON M4V 1Z8
PROJECT/PROJECT:

DESIGN REF:
REF DWG:
VGA NO. 16569

REF:
DESIGNER:
DRAWN BY: ADC
VERIFIED BY: VG

DATE: 2020-12-11
ECHELLE/
SCALE: AS SHOWN
A34
NO. PAGE/
SHEET NO.

3RD FLOOR
157.69

NEW POURED CONCRETE WALL
WITH PERFORATED METAL
FENCING PAINTED BLACK FOR
GARBAGE AND RECYCLING BIN
ENCLOSURE.

2ND FLOOR
154.79

5'-10" (1.8m)
MAX 2m

GROUND FLOOR
151.87

NEW GUARDRAIL PAINTED
BLACK. MINIMUM 42" HIGH.

ESTABLISHED GRADE
149.95

TOP OF PARAPET
157.71

NEW VESTIBULE WITH SAME
FOOTPRINT AS EXISTING
VESTIBULE.

TOP OF CANOPY
154.92

VESTIBULE CANOPY

LOW PLANTER WITH CONCRETE
CURB, TOP OF CURB +6" FROM
GROUND FLOOR LEVEL.

EXISTING GUARDRAIL TO
BE PAINTED BLACK.

FRONT ELEVATION

01

3/16"=1'-0"



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ZONING CERTIFICATE

ZONING CERTIFICATE REV R1

ZC REV R2 - MINOR VARIANCES

REV/REV:

00

01

02

DATE:

2020-12-18

2021-05-07

2021-09-02

BLOW UP OF PROPOSED
WEST ELEVATION

TITLE/TITLE:

NEW VESTIBULE AND FRONT LANDSCAPING
95 LAWTON BLVD., TORONTO, ON M4V 1Z8

PROJECT/PROJECT:

DESSIN REF:

REF DWG:

-

VG-A NO.

16569

REF:

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DESSIN PAR/

DRAWN BY:

ADC

VERIFIE PAR/

VERIFIED BY:

VG

DATE: 2020-12-11

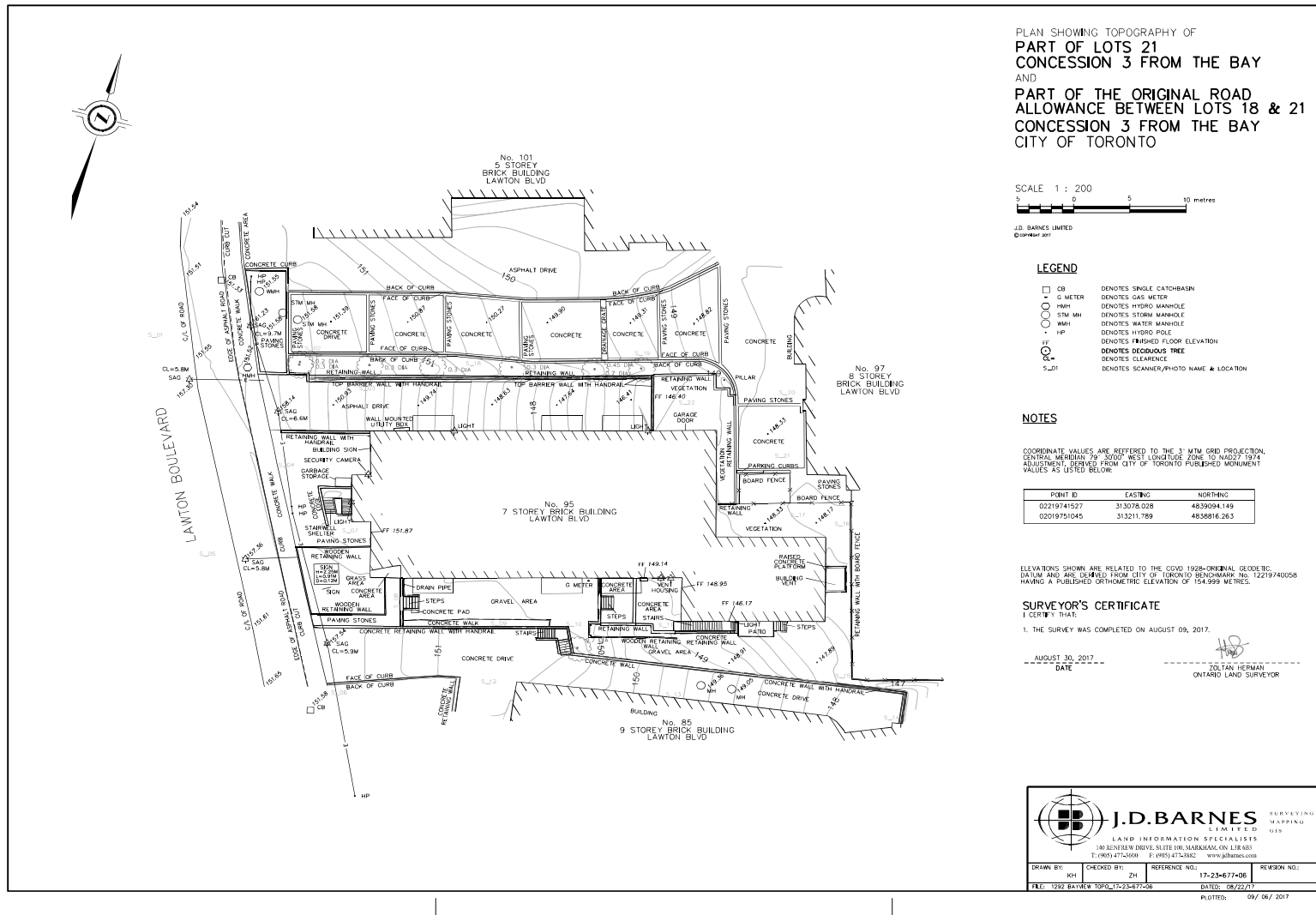
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NOTE: 3D IMAGE FOR REFERENCE ONLY. PLEASE REFER TO ARCHITECTURAL PACKAGE FOR MORE ACCURATE SCOPE OF WORK.



NEW PLANTER WITH
CONCRETE CURB

PROPOSED TWO STOREY
GLAZED VESTIBULE ON SAME
FOOTPRINT AS EXISTING
VESTIBULE

NEW PLANTER WITH
CONCRETE CURB



GUPTA ARCHITECTURE INC. 3D OF PROPOSED VESTIBULE AND FRONT LANDSCAPING

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NEW VESTIBULE AND FRONT LANDSCAPING

GA PROJECT NO.16569

95 LAWTON BLVD
TORONTO, ONTARIO
M4V 1Z8

REVISED 2021.05.07

ISSUED FOR ZONING CERTIFICATE_REVISION R1



A09

NOTE: 3D IMAGE FOR REFERENCE ONLY. PLEASE REFER TO ARCHITECTURAL PACKAGE FOR MORE ACCURATE SCOPE OF WORK.



NEW GUARDRAIL WITH OPEN DESIGN TO ALLOW CARS COMING OUT OF THE GARAGE TO SEE ONCOMING TRAFFIC AND PEDESTRIANS

PROPOSED TWO STOREY GLAZED VESTIBULE WITH OVERHANGING CANOPY. PROPOSED VESTIBULE ON SAME FOOTPRINT AS EXISTING.

SOFT LANDSCAPING ALONG NEIGHBOURING LOT

PROPOSED BIKE PARKING AREA

EXISTING GUARDRAIL TO BE REPAINTED IN BLACK. NO WORK BEING DONE PAST THIS GUARDRAIL.



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NEW VESTIBULE AND FRONT LANDSCAPING GA PROJECT NO.16569

95 LAWTON BLVD
TORONTO, ONTARIO
M4V 1Z8

REVISED 2021.05.07

ISSUED FOR ZONING CERTIFICATE_REVISION R1



A10