

# DECISION AND ORDER

**Decision Issue Date**      Friday, October 14, 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): RUTH WEINER

Applicant(s): AMBIENT DESIGN LTD.

Property Address/Description: 95-97 FORTIETH STREET

Committee of Adjustment File

Number(s): 19 224770 WET 03 MV (A0475/19EYK), 19 224771 WET 03 MV (A0476/19EYK)

**TLAB Case File Number(s): 20 127187 S45 03 TLAB, 20 127188 S45 03 TLAB**

**Hearing date: January 11, 2021, August 30, 2022**

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

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	Ruth Weiner
Appellant's Legal Rep	Sylvain Rouleau
Applicant	Ambient Design Ltd.
Party (TLAB)	2713949 Ontario Inc.
Party's Legal Rep.	Andrew Biggart
Party (TLAB)	Long Branch Neighbourhood Association
Party's Legal Rep.	Sylvain Rouleau
Participant	Brittany Montemurro
Participant	Steven Vella

Participant	Younghee Middleton
Participant's Legal Rep.	Sylvain Rouleau
Participant	Liz Edwards
Participant	Christine Mercado
Participant	Randy McWatters
Participant	John MacDonald
Participant	Alexander Donald
Expert Witness	Franco Romano
Expert Witness	David Godley

## **INTRODUCTION AND CONTEXT**

This is an Appeal of the Etobicoke York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with conditions, of applications for variances for the properties known as 95 and 97 Fortieth St (subject properties).

The purpose of the application is to construct two new detached dwellings. The properties are located within the Long Branch neighbourhood in the former City of Etobicoke.

The properties are designated *Neighbourhoods* in the City Official Plan (OP) and zoned Residential Multiple (RM) under City of Toronto Zoning By-law 569-2013 and RM1 under the former Etobicoke Zoning Code.

The history of this matter at the TLAB includes several motions. The matter was adjourned pending resolution of a motion for leave to appeal the Decisions and Orders of the TLAB to the Divisional Court of Ontario and the Hearing scheduled for March 25, 2021 was vacated.

On May 1, 2022, the TLAB was advised by new counsel for the Applicant that a settlement had been reached between the Parties. By consent of the Parties, a new Hearing was scheduled to hear evidence in support of the applications for variances, although the request for leave to appeal to the Divisional Court had not been resolved.

This Hearing was therefore convened as an expedited settlement hearing.

In attendance were:

- Andrew Biggart, legal counsel for the Owner, and Expert Witness Franco Romano (Land Use Planning);

- Sylvain Rouleau, legal counsel for the Appellant, Long Branch Neighbourhood Association and Younghee Middleton.
- Christine Mercado and Judy Gibson representing the Long Branch Neighbourhood Association.

The COA had approved variances for maximum floor space index, minimum required side yard setback, maximum permitted dwelling length and maximum permitted soffit height, with conditions, for each of the subject properties.

Variances for side yard setbacks, dwelling length and permitted soffit height are not required for the settlement proposal, although an additional variance is required for minimum driveway width.

The variances requested in support of the settlement proposal are as follows:

### **VARIANCES 95 FORTIETH ST**

#### **1. Section 900.6.10.(2)(D)(i), By-law 569-2013**

The maximum permitted floor space index is 0.35 times the area of the lot (96.9 m<sup>2</sup>). The new dwelling will have a floor space index of 0.65 times the area of the lot (179.6 m<sup>2</sup>).

#### **2. Section 10.5.100.1.(1), By-law 569-2013**

For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard must be a minimum of 2.0m wide.

The proposed driveway is 1.3m wide.

### **VARIANCES 97 FORTIETH ST**

#### **1. Section 900.6.10.(2)(D)(i), By-law 569-2013**

The maximum permitted floor space index is 0.35 times the area of the lot (96.9 m<sup>2</sup>). The new dwelling will have a floor space index of 0.65 times the area of the lot (179.8 m<sup>2</sup>).

#### **2. Section 10.5.100.1.(1), By-law 569-2013**

For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard must be a minimum of 2.0m wide.

The proposed driveway is 1.3m wide.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **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.

## **SUMMARY OF EVIDENCE**

Mr. Romano provided evidence in support of the settlement proposal as follows:

- 95 and 97 Fortieth St are both existing lots of record.
- The variances associated with the settlement proposal have changed from the variances approved by the COA largely as a result of reductions in the size of each dwelling and the relocation of the garages from integral garages to a rear yard location.
- The proposed site design generally overlaps the existing site design. The front wall is in a similar position and both side yard setbacks are larger to neighbouring properties and smaller towards each other.
- Heights of residential buildings in the study area he identified are between one and three storeys and the proposed building height fits the neighbourhood.
- The range of floor space index (FSI) measurements in the immediate area are between 0.12 and 0.62 FSI.
- The range of FSI's in the geographic neighbourhood are 0.04 to 1.68.

## **ISSUES AND ANALYSIS**

This is an uncontested Hearing for the purposes of approving a revised set of variances that have been agreed to by the Parties as part of a settlement agreement. In the interest of consensual resolution of disputes, deference will be given to a settlement provided that the joint submission falls within the range of reasonable outcomes. Any findings of fact are for the limited purpose of ensuring that the settlement is not contrary to the *Planning Act*. As a settlement, this case has no precedential or referential value.

### Maximum Floor Space Index

Mr. Romano's evidence was that the range of densities in the immediate context of the subject property is between 0.12 and 0.62 times the area of the lot. (Gross floor area divided by area of the lot). While the proposed floor space indexes are greater than any other in the immediate context, I shall accept, for the purposes of this settlement, Mr. Romano's opinion evidence that the massing of the proposal is compatible with the physical character of the neighbourhood.

I find therefore that the density (floor space index) proposed for the two subject properties maintains the general intent and purpose of the Official Plan and the Zoning By-law. I find also no undue adverse impacts will be caused by the proposal and that the density proposed is, on balance, desirable for the development of the land.

### Minimum Driveway Width

As a result of the settlement discussions, the proposal has been changed to relocate the parking from an integral garage to the rear yard. The rear yard parking will be accessed by a driveway that will straddle the property line between the two proposed houses. Each property will dedicate 1.3m to the mutual driveway. Thus, while each property does not meet the minimum driveway width required, in combination the shared driveway will exceed the minimum driveway width requirements.

Mutual, or shared, driveways are a common condition in the older parts of Toronto. I find that this is a suitable solution for vehicular access and parking on the properties. Mr. Romano testified that the proposed shared driveway will make use of the existing curb cut. On the basis of Mr. Romano's evidence, I find that the variance for minimum driveway width constitutes an improvement upon the original proposal approved by the Committee of Adjustment and, therefore, I find that no further notice is required pursuant to s. 45(18.1.1) of the *Planning Act*.

In order to ensure that the mutual driveway functions as described, an additional condition of approval will be imposed stipulating that mutual right of way easements be registered for the driveway on the subject properties (as shown on the site plans).

## **CONCLUSION**

I find that, subject to conditions, the variances requested to support the settlement proposal meet the four statutory tests of s.45(1) of the *Planning Act*.

## DECISION AND ORDER

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

The Tribunal may be spoken to if issues arise from this Decision and Order.

A handwritten signature in cursive script, reading "A. Bassios", followed by a period. The signature is written in black ink on a white background.

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A. Bassios

Panel Chair, Toronto Local Appeal Body

## **APPENDIX A**

### **95 FORTIETH ST**

#### **VARIANCES:**

##### **1. Section 900.6.10.(2)(D)(i), By-law 569-2013**

The maximum permitted floor space index is 0.35 times the area of the lot (96.9 m<sup>2</sup>). The new dwelling will have a floor space index of 0.65 times the area of the lot (179.6 m<sup>2</sup>).

##### **2. Section 10.5.100.1.(1), By-law 569-2013**

For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard must be a minimum of 2.0m wide.

The proposed driveway is 1.3m wide.

#### **CONDITIONS:**

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan (drawing A1) and Elevations (A4), dated June 7, 2021 and attached hereto.
2. Prior to Ontario Building Code final inspections, and prior to any sale or occupation of the property, a right of way easement shall be registered in favour of 97 Fortieth St for the mutual driveway as shown on the Site Plan.
3. The owner shall be required to submit a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection
4. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

**97 FORTIETH ST**

**VARIANCES**

**1. Section 900.6.10.(2)(D)(i), By-law 569-2013**

The maximum permitted floor space index is 0.35 times the area of the lot (96.9 m<sup>2</sup>).  
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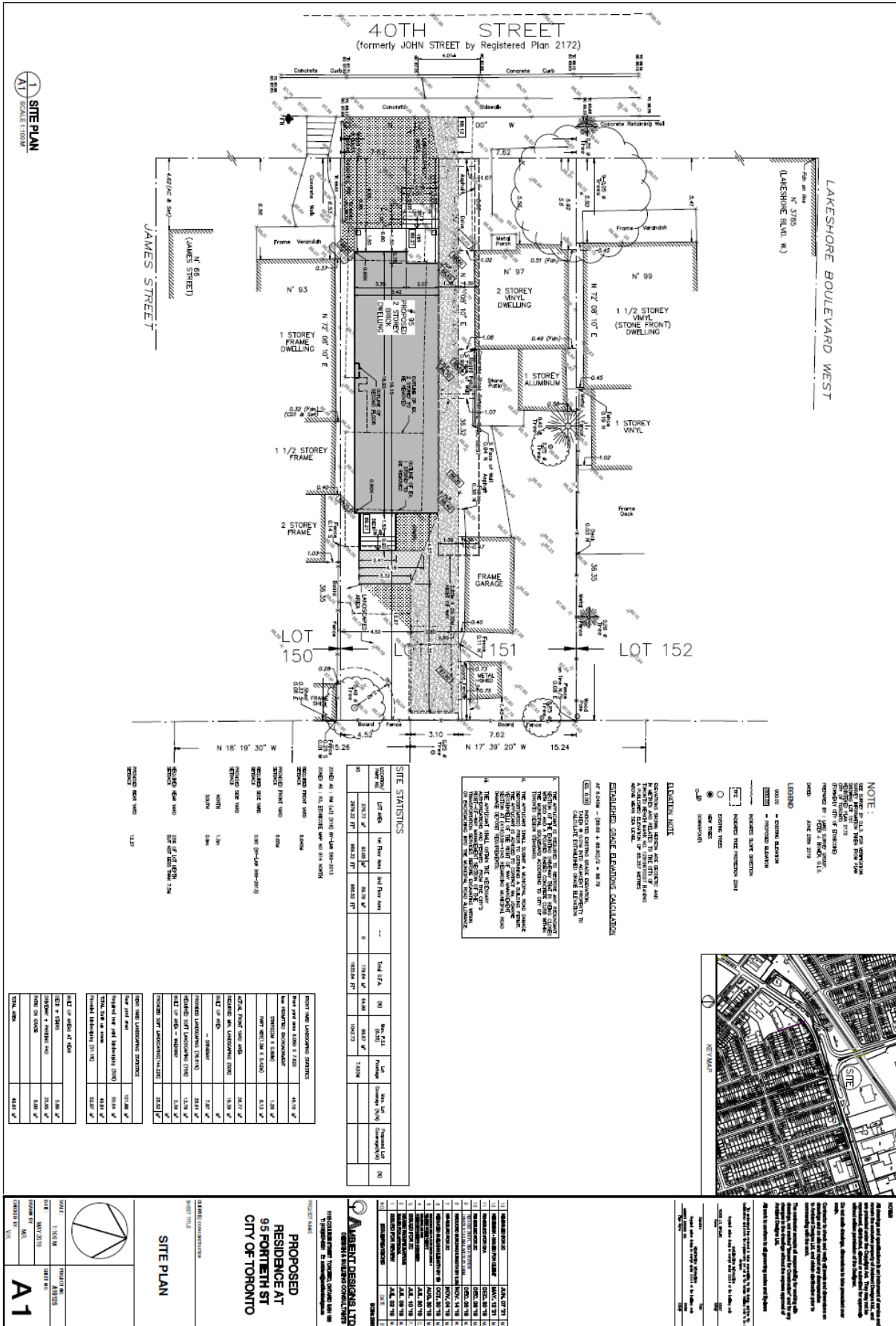
**CONDITIONS:**

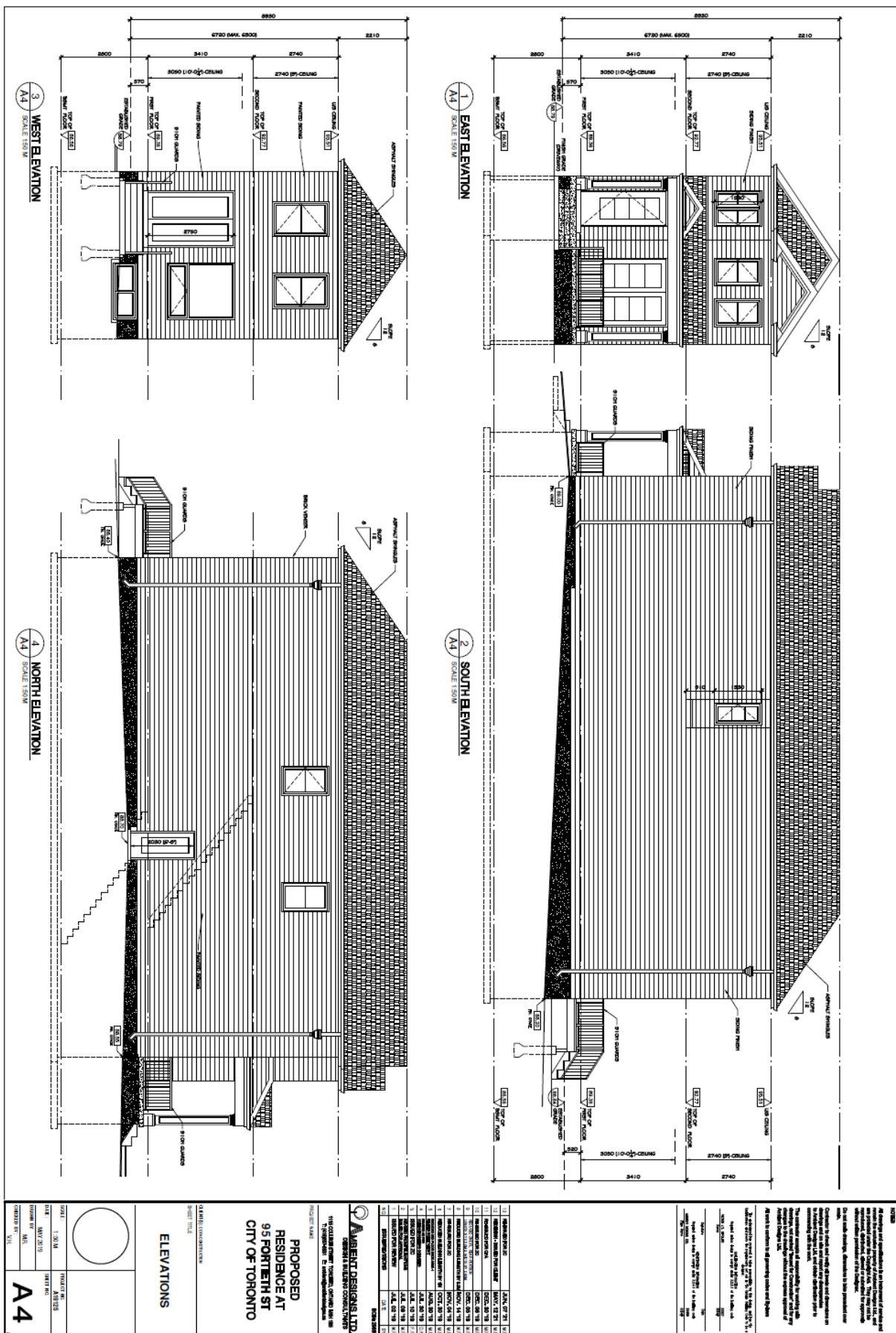
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2. Prior Ontario Building Code final inspections, and prior to any sale or occupation of the property, a right of way easement shall be registered in favour of 95 Fortieth St for the mutual driveway as shown on the Site Plan.
3. The owner shall be required to submit a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection
4. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

**Any other variances that may appear on the 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: 20 127187 S45 03 TLAB, 20 127188 S45 03 TLAB**





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