

DECISION AND ORDER

Decision Issue Date Wednesday, September 27, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Mohammad Masoud Haghshenas

Applicant: Ali Shakeri

Counsel* or Agent: Amber Stewart*

Property Address/Description: 110 Albertus Ave

Committee of Adjustment Case File Number: 17 121813 NNY 16 MV (A0181/17NY)

TLAB Case File Number: 17 174717 S45 16 TLAB

Hearing date: Thursday, September 14, 2017

DECISION DELIVERED BY Laurie McPherson

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the "TLAB") by the owner ("Applicant") of the decision of the Committee of Adjustment ("Committee") for the City of Toronto ("City") to refuse minor variances related to additions to construct a new detached two-storey dwelling at 110 Albertus Avenue ("the subject property").

The subject property is located on the north side of Albertus Avenue, west of Duplex Avenue. The subject site designated *Neighbourhoods* in the City of Toronto Official Plan ("the Official Plan") and is zoned R (f7.5; u2; d0.6) (x949) under Zoning By-law No. 569-2013 ("new City By-law") and RIS under Zoning Bylaw No. 438-86 ("in-force By-law").

BACKGROUND

The variances sought were as follows:

1. **Chapter 10.10.40.40, By-law No. 569-2013**
The maximum permitted floor space index is 0.60 times the lot area.
The proposed floor space index is 0.70 times the lot area.
2. **Chapter 10.10.40.70, By-law No. 569-2013**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback is 0.45m.
3. **Chapter 10.5.40.10 (5), By-law No. 569-2013**
A minimum of 10.00m² of the first floor must be within 4.00m of the front main wall.
The proposed first floor within 4.00m of the front main wall is 4.05m².
4. **Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for 100.00% of the east side main wall.
5. **Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for 25.00% of the west side main wall.
6. **Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 8.21m for 75.00% of the west side main wall.
7. **Chapter 10.10.40.30, By-law No. 569-2013**
The maximum permitted building depth is 17.00m.
The proposed building depth is 17.68m.
8. **Chapter 900.2.10 (949), By-law No. 569-2013**
The maximum permitted building length is 14.00m.
The proposed building length is 17.68m.
9. **Section 6(3) Part I 1, By-law No. 438-86**
The maximum permitted ground floor area is 0.60 times the lot area.
The proposed ground floor area is 0.70 times the lot area.
10. **Section 6(3) Part II 3, By-law No. 438-86**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback for the portion of the building not exceeding 17.00m in length is 0.45m.
11. **Section 6(3) Part II 8, By-law No. 438-86**
The maximum permitted height of a rear platform is 1.20m above grade.

The proposed rear platform is 1.70m above grade.

12. Section 6(3) Part II 3, By-law No. 438-86

For the portion of a building exceeding 17.00m depth, the minimum permitted side lot setback is 7.50m.

The proposed side lot setback exceeding 17.00m on the east side is 0.45m.

13. Section 6(3) Part II 3, By-law No. 438-86

For the portion of a building exceeding 17.00m depth, the minimum permitted side lot setback is 7.50m.

The proposed side lot setback exceeding 17.00m on the west side is 1.07m.

14. Section 6(3) Part IV 3, By-law No. 438-86

The by-law does not permit an integral garage in a building where the floor level of the garage is located

below grade and vehicle access is on the wall facing the front lot line.

The proposed integral garage is below grade.

15. Section 12 (2) (112), By-law No. 438-86

The maximum permitted building length is 14.00m.

The proposed building length is 17.68m

16. Section 6(3) Part II3, By-law No. 438-86

The minimum required distance to the west wall of the east neighbour (#108 Albertus) is 0.90m if it does not contain openings and 1.20m if it contains openings.

The proposed distance to the west wall of the east neighbour is 0.57m.

The Committee of Adjustment refused the applications on May 18, 2017 and the Applicant has appealed the decision.

Further to TLAB Rule 11, the Applicant, through his Representative, filed Form 3, Applicant's Disclosure, which included intended revisions to the plans and application that was made to the Committee of Adjustment.

The revisions would have the effect of changing 8 of the variances and eliminating 4 of the variances. This is a result of a reduction to the length and setbacks to the building which reduced the gross floor area of the building. These changes will be discussed further in the decision.

MATTERS IN ISSUE

In considering the applications for variances from the Zoning By-laws, the TLAB must be satisfied that the applications meet the four tests under s. 45(1) of the Planning Act. The tests are whether each of 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, building or structure; and
- are minor.

The TLAB will be considering these “four tests” based on the revised plans and variances disclosed as part of this proceeding.

EVIDENCE

The TLAB heard from the Applicant’s professional land use planner, Franco Romano, Additionally, three nearby neighbours testified in opposition to the revised application as Participants represented by Mr. Jeffrey White, who also gave evidence as a Party. The Participants will be identified further in this decision.

Mr. Romano was qualified to provide land use planning opinion evidence (Exhibit 1 – Expert’s Witness Statement and CV). It was his summary opinion that the proposal represented an appropriate regeneration within the neighbourhood; further, that the site and built form respect the neighbourhood character and that the variances sought are minor in nature and satisfy the four tests for minor variances, and do not create any unacceptable adverse impacts.

He described the subject property and location. Exhibit 2 is the Applicant’s Document Book which includes relevant materials from the Provincial government, City of Toronto, Committee of Adjustment and the proposal in a consolidated form. Mr. Romano referred to the zoning map from By-law 438- 86. The subject property is located north of Eglinton Avenue, west of Yonge Street. It is located on north side of Albertus Avenue just west of Duplex Avenue. It is currently developed with 1.5 storey single detached dwelling with a frame shed in rear. Albertus Avenue is part of a crescent that runs east west from Yonge Street and connects to Duplex Avenue and then Craighurst Avenue to the north.

The zoning is R1S, z 0.6 under the in force bylaw which permits a detached residential zoning with a gross floor area permission of 0.6 of the area of the lot. The height permission is 10.0 m and permitted uses include detached, duplex and semi-detached dwellings (the latter with qualifications). Within the neighbourhood, buildings range from 1 to 3 storeys in various forms of low rise residential building types. Under the new City By-law, the zoning similarly accommodates a variety of low rise residential dwellings. The subject property is within an area of the Official Plan designated Neighbourhoods which also provides for low rise residential development with varied dwelling types.

Exhibit 3 is Mr. Romano’s Photo Study. The photos have been cross-referenced with his Committee of Adjustment Decision Analysis (Exhibit 4). Mr. Romano explained that the area has seen some regeneration including building additions and new construction. The Photo Study shows that the neighbourhood consists of a local road network with a predominant grid pattern. The area has a compact lot pattern in terms of lot sizes, and the subject site has a lot frontage of 7.6 m, a depth of 41.8 m and a lot area of 311.4 m².

There are different building types, including semi-detached dwellings along Craighurst Avenue. The property map demonstrates that buildings are arranged such that there are tight side yards conditions. The setbacks are compact in nature, frequently approaching zero, and the prevailing side yard setback is 0.9 m and less. Larger side yards are typically associated with properties that have parking in the rear yard with an accessory structure. These are not typically used for parking because of the tight width of the driveway and parking occurs at the front portion of the lot. Integral garages are the more common format for current parking solutions.

Using the property data map, Mr. Romano explained is that the building footprints on the lots have little to no uniformity, with a front wall condition that provides for enclosure of the street in an appropriate manner. He noted that this is not an area where the buildings are aligned at the front but rather they have an undulating front yard setback condition. Rear yards are generous with setbacks in excess of the zoning standard of 7.5 m and generally contain amenity and parking or storage areas. The rear wall position is also not uniform in nature and the most common condition is a varied rear wall relationship from property to property.

As demonstrated by the Photo Study, Mr. Romano explained that the existing dwellings generally have tight side yard conditions between buildings. There are varied heights and rooflines. Recent parking solutions range from front yard parking pads to integral garages. The new replacement dwellings are typically taller and the houses larger than the first generation homes.

The Decision Summary Table prepared by Mr. Romano outlines a number of variances that have been approved in the neighbourhood. Since 2008, Mr. Romano obtained 176 files, and he included 36 files within the Table which includes the adjoining streets of Albertus Avenue, Briar Hill Avenue and Craighurst Avenue. He highlighted certain decisions within the immediate area.

The building at 178 Albertus Avenue obtained minor variance approval (2008- 2009) for a new 3-storey detached dwelling with a floor space index("FSI") of 0.7 times of area of lot, a west side yard of 0.46 m for a depth up to 14 m, and an overall building depth of 18 m. The dwelling is located 0.8 metres from the sidewall of 180 Albertus Avenue and has a parking pad that overlaps the property line.

The building at 134 Albertus Avenue obtained minor variance approval for a new two-storey dwelling with garage, an FSI of 0.69, a side yard setback of 0.45 m, a building length of 18.82 m and a first floor area of 3.1 m².

The building at 118 Albertus Avenue obtained minor variance approval for a third-storey addition and a front two -storey addition with an FSI of 0.75 m and a building depth of 16.56 m.

It was Mr. Romano's conclusion that minor variances are common for new construction, both for new dwellings and for additions to existing buildings, and that some of the common variances include FSI, building length, building depth, side yard setbacks, parking and landscaping.

New construction typically consists of detached dwellings on Albertus Avenue and Briar Hill Avenue that are 2 - 3 storeys in height, with varied rooflines, integral garages and tight side yards.

His overall opinion is that the area is experiencing gradual transition with replacement and building additions forming part of the regeneration. The new development continues to maintain a stable and healthy residential environment.

Where there is no minor variance decision included in the summary table, it was his opinion that the properties exhibit similar complementary and compatible conditions where strict adherence to the By-law is not a common characteristic of the neighbourhood.

Mr. Romano described the proposed variances. As noted, the plans were revised prior to this hearing. Exhibit 2, Tab 11 contains the revised plans and Exhibit 5 contains the revised variances. The FSI was reduced to 0.68 times the lot area and the building length was reduced to 16.99 m. These changes reflect recommendations in a Planning Staff Report (contained in Exhibit 2) dated May 9, 2017. The Report recommended a reduction in FSI to no more than 0.70 times the area of the lot and a reduction in building length to a maximum of 17 m. Staff also included a condition that the driveway maintain a positive slope. No other City Departments had comments.

I accept that these revisions are minor, were appropriately disclosed in the exchanges required by the TLAB Rules, and no further notice or consideration is required under s. 45 (18.1) of the Planning Act.

The revised variances are as follows:

- 1. Chapter 10.10.40.40, By-law No. 569-2013**
The maximum permitted floor space index is 0.60 times the lot area.
The proposed floor space index is 0.68 times the lot area.
- 2. Chapter 10.10.40.70, By-law No. 569-2013**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback is 0.47m.
- 3. Chapter 10.5.40.10 (5), By-law No. 569-2013**
A minimum of 10.00 m² of the first floor must be within 4.00m of the front main wall.
The proposed first floor within 4.00m of the front main wall is 4.05 m²
- 4. Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for 100.00% of the east side main wall.
- 5. Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for 100 % of the west side main wall.

6. **Chapter 900.2.10 (949), By-law No. 569-2013**
The maximum permitted building length is 14.00m.
The proposed building length is 16.99 m.
7. **Section 6(3) Part I 1, By-law No. 438-86**
The maximum permitted ground floor area is 0.60 times the lot area.
The proposed ground floor area is 0.68 times the lot area.
8. **Section 6(3) Part II 3, By-law No. 438-86**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback for the portion of the building not exceeding 17.00m in length is 0.47m.
9. **Section 6(3) Part II 8, By-law No. 438-86**
The maximum permitted height of a rear platform is 1.20m above grade.
The proposed rear platform is 1.70m above grade.
10. **Section 6(3) Part IV 3, By-law No. 438-86**
The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and vehicle access is on the wall facing the front lot line.
The proposed integral garage is below grade.
11. **Section 12 (2) (112), By-law No. 438-86**
The maximum permitted building length is 14.00m.
The proposed building length is 16.99m
12. **Section 6(3) Part II3, By-law No. 438-86**
The minimum required distance to the west wall of the east neighbour (#108 Albertus) is 0.90m if it does not contain openings and 1.20m if it contains openings.
The proposed distance to the west wall of the east neighbour is 0.59m.

With respect to the existing condition, Mr. Romano directed the TLAB to the survey which shows an existing mutual right-of-way between 110 and 112 Albertus Avenue of 1.04 m along the west property line. On the east side, the dwelling has a current side yard setback is 0.03 m from the property line. The 2.5 -storey dwelling at 114 Albertus Avenue has a varied side yard setback of 18 cm, 12 cm and 13 cm from its western property line.

On the proposed site plan, the west side yard setback remains the same to protect the right-of-way while the east sidewall setback is proposed to be 0.47 m, larger than what exists today. The front wall has an articulated treatment with a good streetscape enclosure that can accommodate a driveway with an integral garage. There are steps leading to the front door.

The proposed dwelling extends 16.99 m into the site and there is an articulated rear wall with a projecting bay window. The rear yard setback is over 16 m in excess of the By-

law requirement of 7.5 m. There is a rear walkout at the west side of the dwelling from the basement. There is a small rear deck on the east side which provides access from the ground floor of the dwelling to the rear yard and acts as a landing with room for a barbeque. The rear platform is 50 cm above what By-law 438-86 allows. The area of the deck is 5.4 m² including the steps.

While the building footprint is longer than the existing footprint and the neighbouring footprint, in his opinion it is consistent with and conforms what is in the neighbourhood in terms of varying building lengths and depths.

The By-law requires that 10.0 m² of the first floor must be within 4 m of main wall. This is an internal measurement and the overall intent is to have a front door facing the street and close to established grade. In this case, the foyer is 4.05 m² and maintains the intent of having a front door facing the street.

The building is a contemporary design with a flat roof and a height of 9.2 m which is lower than the By-law maximum of 10 m.

In the new City By-law, main wall height is measured from the established grade to the top of plate and the established grade may be lower or higher than the hard surface in places.

The main wall height variance is on both sides of the dwelling and is measured from established grade to the top of the plate. This would typically be 2.5 m less than overall height which is 10 m. In neighbourhoods with compact lots, the main wall height provision cannot be fully complied with as there is not enough width on a lot to accommodate enough slope to comply with the required 7.5 m main wall height. On a contemporary building where there is a flat or mansard roof or hybrid roof, the main wall height will need a variance. This condition is commonly found in the neighbourhood and is not unusual or out of keeping with the character of the neighbourhood.

For a 2-storey dwelling, the resulting gross floor area in the building is 210.59 m² and an FSI of 0.68 times the lot area whereas the By-laws permit a maximum is FSI of 0.6.

The below grade garage variance is under in force bylaw. The garage floor has a positive slope to the street however the garage floor is considered below grade based on how grade is calculated. Mr. Romano considers this a technical variance as the positive slope of the driveway is maintained.

In terms of his planning opinion, Mr. Romano reviewed both the Provincial Policy Statement and the 2017 Growth Plan. It is his opinion that the proposal is consistent with the 2014 Provincial Policy Statement, which provides for a Settlement Area designation for the property that encourages a compact form of development and making better and more efficient use of existing infrastructure.

In terms of the Growth Plan, the property is within the Settlement Area of a delineated built up area and the Growth Plan has policies related to achieving a mix and range of housing within the delineated area and encouraging intensification that makes better more efficient use of infrastructure within that area. It is his opinion that the proposal is

in conformity with the Growth Plan and not conflict with Growth Plan. In terms of the Planning Act, the proposal implements and appropriately addresses matters of provincial interest and any approval authority decisions in the area in a reasonable and appropriate manner.

With respect to the applicable Official Plan policies, Mr. Romano referenced numerous policies within Chapters 2, 3 and 4 of the Official Plan.

The site is within a Neighbourhoods designation in the Official Plan. Section 2.3.1 indicates that Neighbourhoods will change over time with some physical change. The Official Plan includes policies to ensure that new development respects the existing physical character of the neighbourhood in order to respect and reinforce the stability of the neighbourhood. Policy 2.3.1.1 indicates that Neighbourhoods are considered stable and development will reinforce the existing pattern of buildings, streetscape and open space in the areas.

In terms of built form policies, s. 3.1.2, directs that new development should locate and organize itself to fit within the existing and/or planned context. The Official Plan recognizes that neighbourhoods are not static but will evolve through change and Mr. Romano pointed out this gradual transition is happening in this neighbourhood.

He explained that the policies recognize that there is going to be some impact from new development and the policies direct that new development appropriately limit impacts on the surrounding area. Relevant built form policies include massing new buildings to frame the street, incorporating elements in the design which provide some articulation, maintaining existing trees where possible, locating and orienting parking to minimize the width of driveways and curb cuts, limiting surface parking and providing adequate light and privacy.

In terms of the latter, the Official Plan recognizes that there will be some impact on light and privacy. In Mr. Romano's opinion, a shadow drawing is not required in this case as they are not typically required for low rise residential development. There will be an increase in shadow and an increase of impact on privacy and light as the proposed building is larger than the existing building. His conclusion is the resulting site development will still maintain an adequate light and privacy condition within its physical context. His opinion is that the proposal maintains this objective.

Section 4 of the Official Plan deals with the land use designations. Neighbourhoods are considered physically stable areas with lower scaled buildings no higher than 4-storeys.

Mr. Romano explained that the Official Plan recognizes that physical changes must be sensitive and gradual and generally fit the existing physical character of the neighbourhood. A key objective of the Plan is to respect and reinforce the general physical patterns in the neighbourhood and new development should fit within those general physical patterns and thereby reinforce the stability of the neighbourhood.

Section 4.1.5 provides development criteria for Neighbourhoods. These articulate the items that would inform the physical character of the neighbourhood. He characterized the nearby residential properties as typically 2 to 3 storeys, with varied heights, mass

and scale depending whether they include an integral garage. The roof style and format varies, and dwellings typically incorporate undulating front and rear wall setback positions. The lot fabric in this area is compact and there are tight side yard conditions. The prevailing building type is a detached dwelling and the prevailing pattern of rear yards is that they are larger than the By-law requirement and may contain amenity features either grade related or elevated and may contain accessory structures. There is generally landscaped open space in the front and rear yards.

It is his opinion the proposal satisfies these criteria and is in keeping with physical character of the neighbourhood.

Finally Section 4.1.8 of the Official Plan, articulates a compatibility consideration under the Zoning By-law standards to see if the proposal is compatible with the physical character of the established neighbourhood. Mr. Romano indicates that this doesn't mean that a proposal has to comply with standards to be compatible, as the Zoning By-law does not always articulate the built form condition as in this neighbourhood which includes lots and buildings that have some variance to the By-law performance standards. When looking at the variances sought and resulting built form, it is his opinion that the proposal is a reasonable implementation of both Zoning By-laws in the neighbourhood and is compatible with the physical character.

It was Mr. Romano's opinion that the general intent and purpose of the Official Plan is maintained with the proposal.

The intent and purpose of both By-laws is for the orderly and compatible development within the site context. In his opinion the overall intent and purpose of the By-laws is maintained. With respect to the variances dealing with density, it is Mr. Romano's opinion that the proposal achieves a reasonable deployment of floor area on the lot within a reasonable footprint, height, massing and scale within the neighbourhood.

The proposal provides an appropriate special separation from the east side yard within the site context. In this area, tight side yard conditions are common and the proposed 0.47 m setback is an improvement over the current condition.

In terms of the first floor area, the proposal maintains the purpose and intent by providing a front door close to grade and at the front of the building. The proposal implements this intent.

The variances dealing with the east and west side main wall height maintain the purpose and intent of the Zoning By-law in the context of the subject site and maintain an overall height which is less than the overall height permission. The variances reflect a side main wall height that is found elsewhere. In Mr. Romano's opinion, this is reasonable and appropriate and found in areas where there is a compact lot fabric, such as this area.

In terms of maximum building length, the plans have been revised to meet the citywide standard. The purpose and intent of the By-law is to ensure that the dwelling does not extend too far into the lot and built near the front portion of the lot. This is maintained in the proposal. The house is oriented to the front of the lot and has an expansive rear

yard. While it is longer than the neighbouring homes, it is not longer than other houses within the neighbourhood and there are longer buildings. This informs the view that the existing length standard in the in-force By-law of 14 m is a development control tool to ensure that any building that exceeds 14 m is required to go through a review process to ensure it fits within the physical context of the neighbourhood in an appropriate manner. In his opinion, proposed length is reasonable within the site context and meets the intent of the performance standards under both By-laws.

The height of the rear platform is 1.7 m as opposed to 1.2 m. The intent and purpose of the By-law is to keep the deck close to ground level and not too elevated for overlook and privacy reasons. In Mr. Romano's opinion, the increase in height accommodates a landing and the deck has been designed in an appropriate manner and is quite small.

With respect to the garage, the intent and purpose of the By-law is maintained as a positive slope to the driveway is maintained.

Based on his analysis, it was Mr. Romano's opinion that the variances both individually and cumulatively maintain the general intent and purpose of the Zoning By-laws.

He opined that the proposal is desirable for the appropriate use or development of the land as it results in a regeneration of the site in a manner that has physical characteristics that are found within the neighbourhood and are compatible with the neighbourhood as well as the neighbouring properties. The proposal results in a dwelling and a built form that is appropriate within the site context and is desirable for the appropriate development of the land.

In addition, it was his opinion that the variances individually and cumulatively are minor in nature with no unacceptable adverse impact. While some impact will come with the change, it is not significant or of an adverse nature that is unacceptable. In terms of order of magnitude, the variance reflects the built form seen within the neighbourhood's physical character. There is no overall height variance. The incremental shadow would not be inappropriate or unacceptable and would be reasonably expected within the urban environment.

Proposed conditions are included in Exhibit 5. In addition to the standard conditions that the proposed dwelling be built substantially in accordance with the Site Plan and the owner shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees), the proposed conditions include the recommended Planning staff condition that the driveway shall maintain a positive slope from the street to the entry of the integral garage. Mr. Romano considers the proposed conditions reasonable.

It is Mr. Romano's opinion that the tests are satisfied and the variances should be approved as good planning.

Concerns of the Participants

Ms. Jane Louise McCullough is the owner of 106 Albertus Avenue. Her major concern is that the house is out of scale for the lot size. In her estimation, the building would

extend to where the existing shed is and use about 90% of the green space and a significant part of the backyard would be lost. This would result in a loss of light and privacy for her. She produced photographs (Exhibit 6) from the 2nd floor of her house which shows the character of green open space with decks. With respect to other houses in the photograph such as 118 Albertus Avenue which can be seen jutting out, she indicated she is fine with it as it does not take up most of the backyard.

Ms. McCullough inserted what she said was a comparable building in terms of height and length onto 110 Albertus to illustrate the depth of the building on the lot and the impact on her view. Her major concern is with the height of the wall that will diminish privacy and security and the dwelling would block the view across the yards. She identified other dwellings on the street that she thought were good examples of newer houses that kept within the character of the area and do not extend beyond the garden space and are proportionate to the lot. She would like a dwelling that maintained the greenspace and preserves the sense of privacy in keeping with the fabric of the streetscape and community. Under questioning by Ms. Stewart, Mr. McCullough acknowledged that her altered photo may not have exact dimensions and that it was for illustrative purposes.

Mr. Laurence Olivio is the owner of 103 Albertus Avenue, across the street from the subject property. His Participant Statement is included as Exhibit 7. He explained that no one is opposed to the construction of a house on the site. Although the area has evolved, Mr. Olivio thinks that the length of the house should be restricted to 14 m and does not agree with the Planning staff recommendation. He shares similar concerns to Mr. McCullough regarding the impact on greenspace, views and shadowing on rear yards. The photo-shopped photograph submitted by Ms. McCullough was, in his view, designed to give an impression that the wall extending past 106 and 108 Albertus Avenue would be high wall and extend far into the backyard. He explains that the proposed dwelling will be roughly twice the length of the existing building next to it and close to the property line with a blank wall. He feels it is a high massive intrusion into the backyard.

Mr. Olivio explained that the major concern of the parties is the variance for building length and that the By-law standard of 14 m in the By-laws should be maintained. In his opinion, the 14 m building length in this area was maintained by the planners because of the need to preserve the rear yard space and keep the scale more consistent with buildings that already exist including the newer ones. He also referenced the building at 118 Albertus Avenue which has a 3rd-storeys addition and extends into the rear but his opinion was that it did not extend a lot and that while there are other long houses they are not in the immediate vicinity.

He references the Official Plan policy 3.1.2 that notes that new development should fit harmoniously with appropriate transition and scale to neighbouring buildings and have adequate light, view and shadow. He doesn't think that the proposed building meets these policies. Policy 5 states that development in established neighbourhoods will respect and reinforce the existing physical character, height, massing and scale of buildings types and the prevailing pattern of rear setbacks. He is concerned about precedent of deep intrusions into rear yards. While acknowledging that the trend is to larger, and taller houses, he feels that the depth should be controlled.

Ms. Heather Tarrison submitted a Notice of Intention to be a Participant; however, she did not provide a Participant Statement and elected not to speak at the hearing.

Mr. White who resides at 108 Albertus Street, a Party to the hearing, was representing both himself and his aunt, Janette White who is the owner of the 108 Albertus Avenue. Exhibit 8 is the Participant Statement provided by Ms. White dated May 10, 2017 and an addendum dated August 12, 2017. Her objection is to the proposal to extend the back of the 110 Albertus Avenue by 20 ft. from the back of the existing structure to approximately where the existing garage is and go up three floors.

She is concerned with the shadow that would be cast on her backyard and the deck of 106 Albertus Avenue in the late afternoon. The effect would be to box in her house. She is also concerned about the front of the house and the proposal to extend the length of the existing porch which would further shade her house. She is concerned with possible leakage into her basement as a result of the close setback. Ms. White notes that the roof of 110 Albertus Avenue currently overlaps with the roof of 108 Albertus Avenue. She concludes that it would be a drastic change from any of the other houses on the street would impact the privacy of herself and her neighbours and would have a direct impact on her property value.

Mr. White also gave evidence and indicated that his concerns were the same as Ms. White's. In a letter to Councillor Carmichael-Greb dated July 18, 2017 (Exhibit 9) he notes his concerns, including that the proposed house is out of proportion with the rest of the neighbourhood, would take up too much of the backyard and impair the sunlight and privacy of 108 Albertus Avenue. He is concerned about the adequacy of the infrastructure and the impact on a mature Maple tree.

The proposed house would be double the size of 108 Albertus Avenue and have a significant impact on the backyard will a tall brick wall down the side of the property. He noted that the dwelling appears as a 3-storey because of the height of the basement. He acknowledged under questioning by Ms. Stewart that the current house at 108 Albertus Avenue is not built to the By-law permission of 14 m and is less than 14 m in length.

In order to reply to the Participants and Party's evidence, Mr. Romano was recalled. He testified that he had reviewed the photograph that had been submitted by Ms. McCullough and that he doesn't believe it be an accurate representation of the building position or the mass. He explained using the photograph that the addition would not extend as far as the photograph indicated using various markers such as the deck at 118 Albertus Avenue, the existing paved area, and the Maple tree. The Maple tree will be retained in the development. The plans show that the rear wall of the dwelling is in excess of 16 m from the rear property line. In his opinion the length of the house would be about 41.6% of the lot depth.

ANALYSIS, FINDINGS, REASONS

The TLAB has carefully considered the evidence and the submissions of the Parties and the Participants based on the revised plans and finds that the application meets the

four tests of the Planning Act under s 45(1). The TLAB finds that the revised variances individually and collectively maintain the general intent and purpose of the OP and the Zoning By-laws, are desirable for the appropriate development of the subject site and are minor.

The Panel also finds that the application is consistent with the PPS and conforms to the Growth Plan.

In considering the evidence heard, the main issue relates to the length of the proposed dwelling (Variances 6 and 11). The proposal was revised to address the Planning staff recommendation that the length be less than 17.0 m. Mr. Romano's evidence demonstrated that there have been a number of variances in the area that have length variances greater than 17.0 m.

TLAB has given careful consideration to the issues raised regarding the length of the proposed dwelling. While the TLAB appreciates the apprehension of the neighbours that the length of the building will have a significant impact on shadowing, privacy and overlook, there was no accurate evidence to support such claims. The panel agrees with the evidence of Mr. Romano that the photograph submitted, which superimposes a structure on the subject property to demonstrate impact, is not an accurate depiction of the proposed development.

The site plan demonstrate that the proposed dwelling will have a rear yard setback in excess of 16 m which is significantly larger than the By-law requirement of 7.5 m. In addition, no relief from the minimum front yard setback was required. The evidence of the neighbours that the proposal would occupy the majority of the lot depth was proven incorrect, with the actual number being closer to 42%.

The panel recognizes that it is difficult for the neighbours to estimate the impact of the proposal without the appropriate tools to do so and in this respect it is hoped that the evidence of Mr. Romano would alleviate to a certain extent the concerns regarding the depth of the house in relation to the backyard.

Mr. Romano testified that the maintenance of the By-law requirement for a maximum building length of 14 m, which is different than the Citywide standard of 17.0 m, is intended to trigger a review process. Indeed, Planning staff did review the proposal and recommended a length of not more than 17.0 m and an FSI of less than 0.7 times the area of the lot.

Ms. Stewart submitted 2 decision of the Ontario Municipal Board. In the first decision, PL030451 dated January 8, 2004 regarding 212 Craighurst Avenue, the qualified planner testified that the 14 m By-law length in this area is different than the rest of the City and the restriction is put in place so that redevelopment required neighbourhood consultation. Further that the proposed variance related to density and is indicative of changing family needs. The variances were approved. In the second decision, PL 150047 dated June 2015 regarding 72 Briar Hill Avenue, the qualified planner stated that the area specific exception allowing only a 14.0 m length in this area was intended to regulate sufficient rear and front yards and address the prevalence of shallower lots and provide for adequate amenity. That proposed building length would occupy 46% of

the lot depth leaving sufficient rear and front yard amenity space. The variances were approved.

The TLAB prefers the evidence of Mr. Romano that in the immediate vicinity, there are rear walls that extend beyond the rear walls of existing houses and this is a common characteristic in the area. The test in the OP is not to replicate what exists but generally fit within the physical patterns in the neighbourhood. The physical pattern in the area has a variety of building lengths. It is noted that the maximum building depth remains less than 17.0 m and therefore 3 of the original variances were deleted. I agree with Mr. Romano that it is reasonable to expect that some loss of light will result from any development of the site and that the incremental shadow would be reasonably expected within the urban context.

With respect to the density, the TLAB has reviewed the evidence provided in Exhibit 4 and finds that the FSI of the development is in keeping with other recent developments in the neighbourhood which contribute to the overall character. In fact, most of the recent approvals have an FSI of 0.7 times the lot area and higher. Planning staff specifically requested that the FSI be under 0.7 times the lot area and the plans were changed to address this comment. No variances to the front or rear yard setback are required and no overall height variance is required. The resulting built form is a reasonable deployment of density on the subject site within the context of the area as shown and this panel finds the density appropriate.

The side yard setback variance is a result of the compact lot pattern in this area and similar setbacks have been approved. The evidence presented demonstrates that tight side yard conditions are typical in the area. The proposed east yard setback is an improvement over the negligible setback that exists today.

The main wall height variances are also related to the compact pattern of lots in the area and do not affect the overall height of the dwelling.

With respect to concern of overlook from the small rear deck, the additional height of 50 cm is necessitated by the raised first floor. The TLAB accepts Mr. Romano's evidence that the size, design and orientation of the deck will mitigate impacts and would have very little effect on privacy.

In conclusion, the TLAB finds that the appeal should be allowed and the application for variances authorized, subject to the conditions noted below.

DECISION AND ORDER

The TLAB orders that the appeal is allowed and the following variances authorized subject to the following conditions:

1. Chapter 10.10.40.40, By-law No. 569-2013

The maximum permitted floor space index is 0.60 times the lot area.

The proposed floor space index is 0.68 times the lot area.

2. **Chapter 10.10.40.70, By-law No. 569-2013**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback is 0.47m.
3. **Chapter 10.5.40.10 (5), By-law No. 569-2013**
A minimum of 10.00 m² of the first floor must be within 4.00m of the front main wall.
The proposed first floor within 4.00m of the front main wall is 4.05 m².
4. **Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for 100.00% of the east side main wall.
5. **Chapter 10.10.40.10, By-law No. 569-2013**
The maximum permitted main wall height is 7.50m.
The proposed height is 9.21m for the west side main wall.
6. **Chapter 900.2.10 (949), By-law No. 569-2013**
The maximum permitted building length is 14.00m.
The proposed building length is 16.99 m.
7. **Section 6(3) Part I 1, By-law No. 438-86**
The maximum permitted ground floor area is 0.60 times the lot area.
The proposed ground floor area is 0.68 times the lot area.
8. **Section 6(3) Part II 3, By-law No. 438-86**
The minimum required side yard setback is 0.90m.
The proposed east side yard setback for the portion of the building not exceeding 17.00m in length is 0.47m.
9. **Section 6(3) Part II 8, By-law No. 438-86**
The maximum permitted height of a rear platform is 1.20m above grade.
The proposed rear platform is 1.70m above grade.
10. **Section 6(3) Part IV 3, By-law No. 438-86**
The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and vehicle access is on the wall facing the front lot line.
The proposed integral garage is below grade .
11. **Section 12 (2) (112), By-law No. 438-86**
The maximum permitted building length is 14.00m.
The proposed building length is 16.99m
12. **Section 6(3) Part II3, By-law No. 438-86**
The minimum required distance to the west wall of the east neighbour (#108 Albertus) is 0.90m if it does not contain openings and 1.20m if it contains

openings.

The proposed distance to the west wall of the east neighbour is 0.59m.

CONDITIONS OF APPROVAL

1. The proposed dwelling shall be built substantially in accordance with the Site Plan and Elevations dated July 11, 201, prepared by Arcica Inc., contained in Exhibit 2, tab 11, identified as A01, A06, A07, A08 and A09 attached hereto and forming part of this decision
2. The owner shall comply with the City of Toronto Municipal Code Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees).
3. The driveway shall maintain a positive slope from the street to the entry of the integral garage.

Attachment

X 

Laurie McPherson
Chair, Toronto Local Appeal Body

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA.

1. ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE.
2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION.
3. DO NOT SCALE DRAWINGS.
4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK.
5. ONLY LAID OUT DIMENSIONS OF DRAWINGS OF THOSE THAT ARE MARKED "ISSUED FOR CONSTRUCTION".
6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.

project:
110 ALBERTUS AVENUE

drawing:
SITE PLAN

scale: $3/32" = 1'-0"$

page: **A 01**

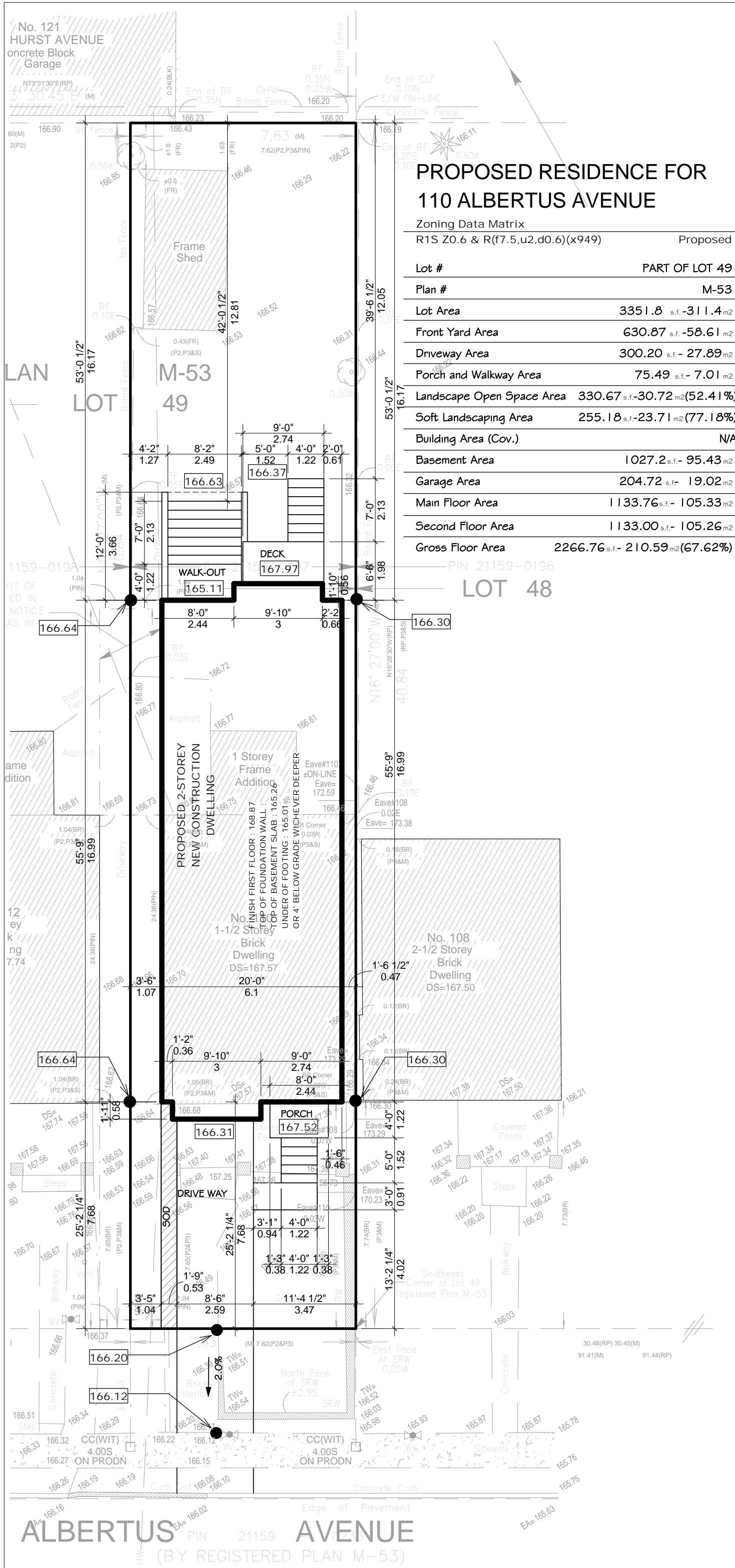
revisions:

APRIL 06,2017 - ISSUED FOR PERMIT
JULY 11,2017 - ISSUED FOR TLAB

THIS UNDERSIGNED HAS REVIEWED & TAKES
RESPONSIBILITY FOR THIS DESIGN, & HAS
THE QUALIFICATIONS & MEETS THE
REQUIREMENTS SET OUT IN THE O.B.C. TO
BE A DESIGNER

Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

At. shd





designed by:

ALI SHAKERI

T.416 8166651 F.416 2508900

ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA,

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project:

110 ALBERTUS AVENUE

drawing:

MAIN ELEVATION(SOUTH)

scale:

1/4" = 1'-0"

page:

A 06

revisions:

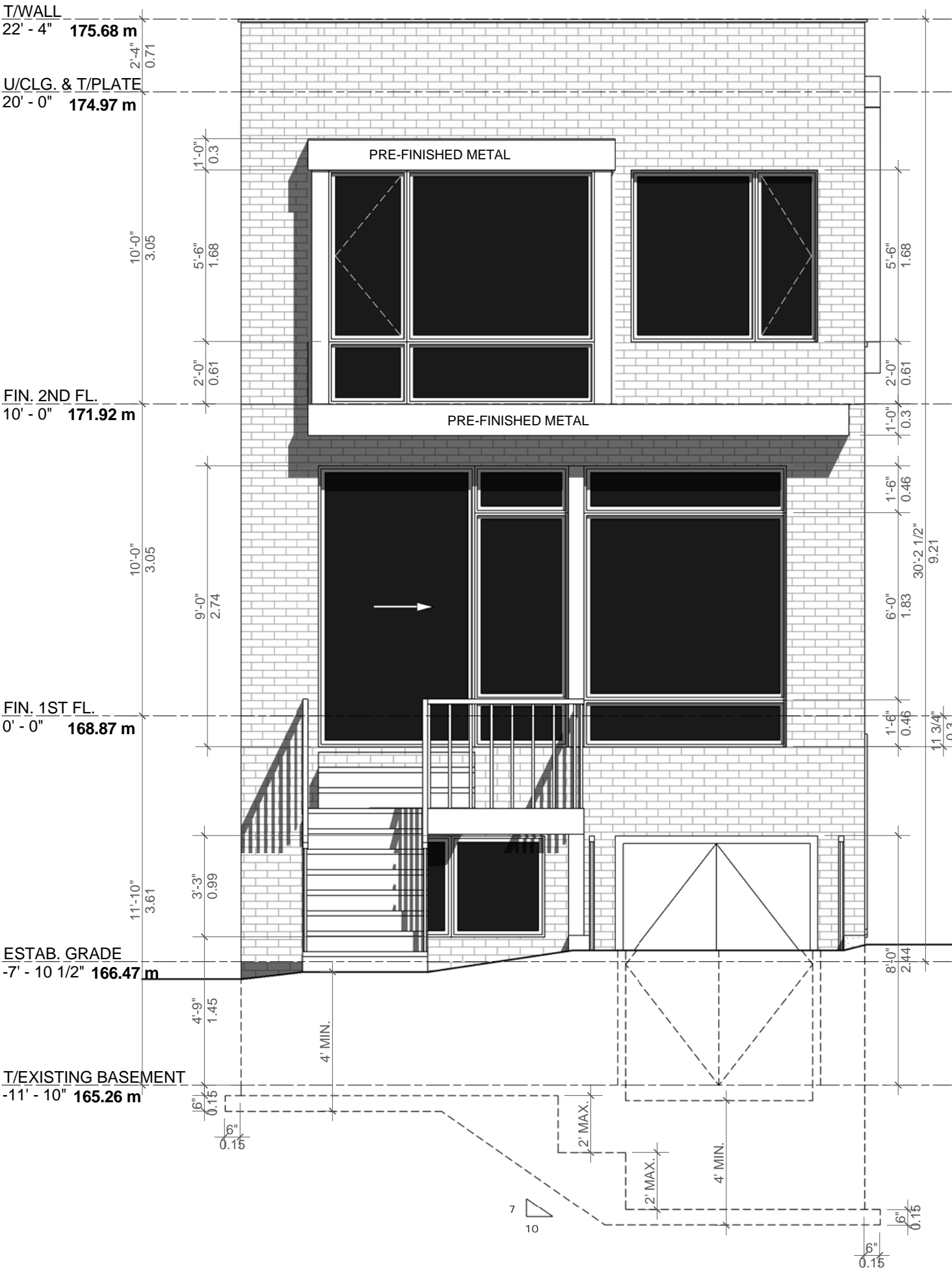
APRIL 06,2017 - ISSUED FOR PERMIT
JULY 11,2017 - ISSUED FOR TLAB

THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER

Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

Ali Shakeri

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project:
110 ALBERTUS AVENUE

drawing:
REAR ELEVATION(NORTH)

scale:
1/4" = 1'-0"

page:
A 07

revisions:
APRIL 06,2017 - ISSUED FOR PERMIT
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THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER
Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

Ali Shakeri



ALI SHAKERI
16 8166651 F.416 25085

ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA,

1. ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE 2012 EDITION OF THE BRITISH STANDARD BS 5950-1:2012, STEEL STRUCTURES, PART 1: SKEWED JOINTS AND MOMENT RESISTING JOINTS.
2. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE IMMEDIATELY REPORTED TO THE ARCHITECT AND RESOLVED PRIOR TO ANY SUBSEQUENT WORKS CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK.
3. USE ONLY LATEST REVISED DRAWINGS OF THOSE THAT ARE MARKED "ISSUED FOR CONSTRUCTION".
4. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY A REGISTERED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.

110 ALBERTUS AVENUE

SIDE ELEVATION(WEST)

$$3/16" = 1'-0"$$

A08

APRIL 06, 2017 - ISSUED FOR PERMIT
JULY 11, 2017 - ISSUED FOR TLAB

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All Shakeri
BCIN#245774
F&A Associates Ltd.
BCIN#30998

BCIN#24574
F&A Associates Ltd
BCIN#30998

designed by:

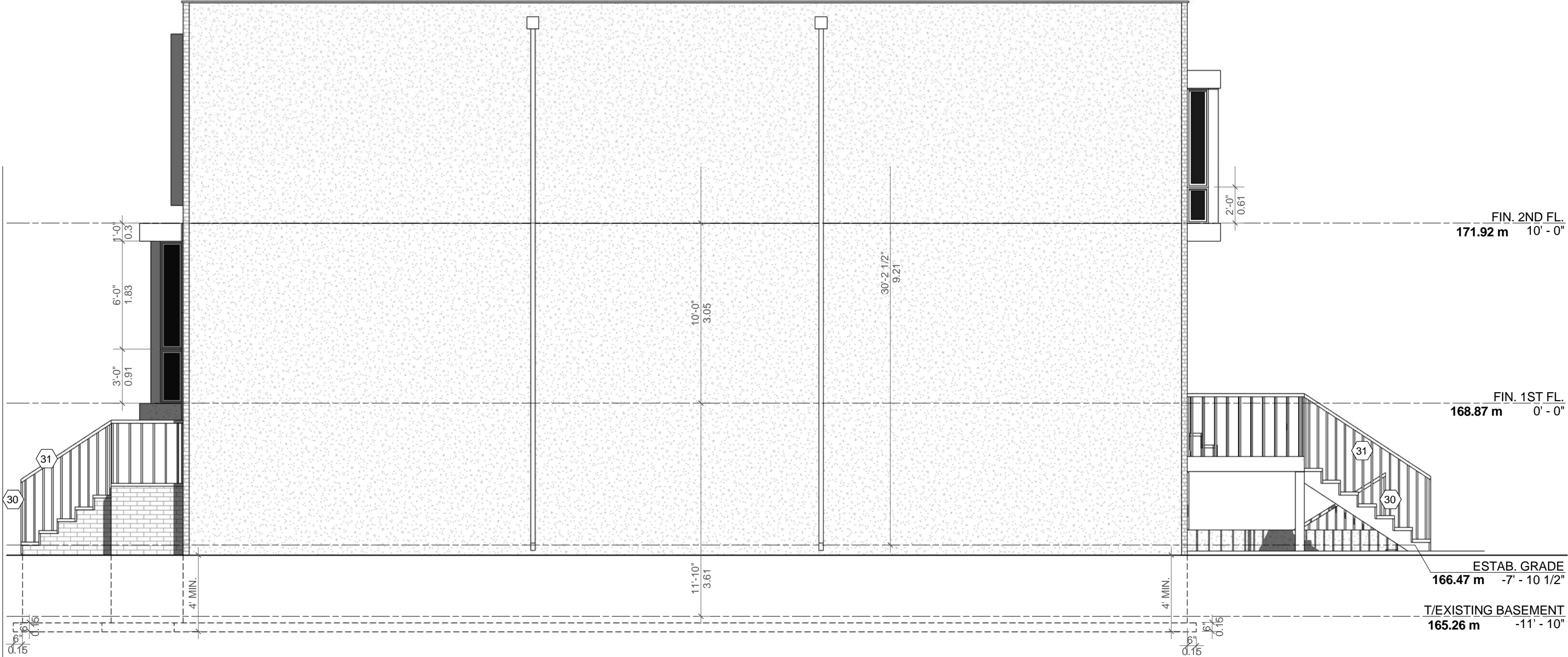
ALI SHAKERI

T.416 8166651 F.416 2508900

ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA,

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3. DO NOT SIGN DRAWINGS UNTIL ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND IN WRITING PRIOR TO THE COMMENCEMENT OF THE WORK
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project:
110 ALBERTUS AVENUE

drawing:
SIDE ELEVATION(EAST)

scale:
3/16" = 1'-0"

page:

A 09

revisions:

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JULY 11, 2017 - ISSUED FOR TLAB

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Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

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