

Court Services
Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, November 13, 2017

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

Appellant(s): CITY OF TORONTO

Applicant: PETER HIGGINS ARCHITECT INC.

Property Address/Description: 42 GWENDOLEN AVE

Committee of Adjustment Case File Number: 17 139885 NNY 23 MV

TLAB Case File Number: 17 197126 S45 23 TLAB

Hearing date: Friday, November 03, 2017

DECISION DELIVERED BY G. Burton

APPEARANCES:

Ilia and Bertina Koka Eileen Costello *

Nicholas Smith

City of Toronto Sara Amini *

Nathan Muskat* (*Counsel)

INTRODUCTION

The City of Toronto has appealed to the Toronto Local Appeal Body ("TLAB") from a Committee of Adjustment ("COA") decision which allowed the applicant's request for variances for the construction of a new two storey dwelling at 42 Gwendolen Avenue (the "subject property"). This is located west of Yonge Street and south of Sheppard Ave. in the City of Toronto. The design includes an at-grade integral garage.

BACKGROUND

The subject property is on the north side of Gwendolen Avenue, in a pleasant neighbourhood of single family residential structures, both older and recently constructed or reconstructed. It is designated *Neighbourhoods* in the Official Plan (the "OP"). Under former North York Zoning Bylaw 7625 (the "North York By-law") it is zoned R4, and under the new City of Toronto By-law 569-2013 (the "new By-law", not yet in force) it is zoned RD (f12.0; a370).

These are the variances approved by the COA, and now sought again before this tribunal:

1. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30.00% of the lot area.

The proposed lot coverage is **32.90%** of the lot area.

2. Chapter 10.20.40.10.(1), By-law No. 569-2013

The maximum permitted building height is 10.00m.

The proposed building height is 10.31m.

3. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.50m. The proposed height of the west side exterior main wall facing a side lot line is 8.60m.

4. Chapter 10.20.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The proposed east side yard setback is 0.90m.

5. Chapter 10.20.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The proposed west side yard setback is 0.90m.

6. Section 14-A(5)c, By-law No. 7625

The minimum required side yard setback is 1.20m.

The proposed east side yard setback is 0.90m.

7. Section 14-A(5)c, By-law No. 7625

The minimum required side yard setback is 1.20m.

The proposed west side yard setback is 0.90m.

8. Section 14-A(6), By-law No. 7625

The maximum permitted lot coverage is 30.00% of the lot area.

The proposed lot coverage is **32.90%** of the lot area.

9. Section 14-A(8), By-law No. 7625

The maximum permitted building height is 8.80m.

The proposed building height is 9.17m.

10. Section 6(30), By-law No. 7625

The maximum permitted finished first floor height is 1.50m.

The proposed finished first floor height is 1.69m.

11. Section 14-B(9), By-law No. 7625

The maximum permitted building length is 15.30m.

The proposed building length is 16.42m.

The variances requested are principally in the categories of increased lot coverage, building and first floor heights, building length; and reduced side yard setbacks. There are some duplicates in the list as both by-laws apply to the proposal.

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Planning Act (the "Act"). This involves a reconsideration of the variances considered by the Committee, in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the "four tests", and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). Therefore a decision of the TLAB must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body. There are no alterations sought in this hearing to those approved by the Committee. It is important to note that variances 1 and 8 relating to lot coverage, requesting 32.90% of the lot area rather than 30.00% (which both by-laws require as a maximum), were reduced to this figure from a higher one (33.50%) before the COA deliberation. The Committee then approved a lot coverage of 32.90%, the figure sought again in this hearing.

MATTERS IN ISSUE

The City opposes the variances as counter to the purpose of the *Neighbourhoods* designation in the Official Plan and of the zoning standards, especially the height and lot coverage provisions.

EVIDENCE

Ms. Janice Robinson, a land use planner with extensive expertise and experience in the Young-Sheppard area as well as elsewhere, was qualified to provide expert evidence for this matter on behalf of the applicant. She provided the results of her area study, consisting of about 232 properties, which make up this revitalizing neighbourhood of detached homes, laid out in a fairly regular grid pattern (Exhibit 1, Attachment 2 - Committee of Adjustment Decision Analysis -- 42 Gwendolen Avenue.) She explained that the data shown on this chart is supplied by the City, but only with respect to the variances sought, and does not show all categories of approvals. There had been no attempt to eliminate certain categories, or properties. She illustrated that there are no consistent heights in the area, as it is an eclectic mix of roof lines and styles. Even the two neighboring properties are of different designs – 44 Gwendolen is a traditional pitched roof and 40 Gwendolen, a recent built, is a modern flat roof design. Respecting coverages,

there have been many approvals in this area of up to 32% lot coverage, with some even above this, although these mostly involved a rear addition or a garage (Exhibit 1, Attachment 4.) With heights, approvals have been given at 9.19 m (44 Gwendolen Ave), 9.12 m (192 Cameron Ave.), and 9.4 m (64 Stuart Ave). 10.31 m is sought here.

Ms. Robinson addressed the variances as follows:

<u>Variances 2 and 9:</u> <u>Building Height.</u> The requested variances for total building height are 10.31 m, when 10.00 m is the permitted maximum (new By-law), and a requested 9.17m when 8.80 m. is specified in the North York By-law. The difference results for the method of measurement. The increase requested under the new By-law, Variance 2, is only 0.31 metres, just over the by-law requirement. This is the case also with only 0.37 m sought under Variance 9. (Variance 9 under the North York By-law is a technical one, resulting from the method of measurement from the centre line of the road to the midline of the roof.) The increase in height results from the necessary low pitched area in only the centre of the roof, designed to facilitate water runoff. It would have no impacts on shadowing or privacy, in Ms. Robinson's opinion. This is the subject of the City's principal objection to the proposal, as the height variances seem to result in a height numerically greater than most homes in the area. Ms. Robinson testified that this is an imperceptible difference, having no impact, as the central rise will be virtually impossible to see from the street (Exhibit 1, Attachment 6 illustrates this.)

<u>Variance 3:</u> <u>Height, Side Exterior Main Walls (EMW)</u> This new Bylaw requirement (under appeal) is to ensure that there are no tall blank wall designs, and to create acceptable massing. The measurement to the top of the dormer in the plan is 8.6 m, while the actual wall measurement is only 6.9 m from grade to the roof line for most of its length. If there were no dormer, no variance would be required.

<u>Variance 10:</u> <u>First Floor Height</u> The North York By-law calls for a maximum height of 1.50 m above grade while the requested increase is to 1.69 m. The By-law's purpose is to ensure that front doors are not much higher than street level. With the four steps proposed, there will be no impact noticed from the street.

<u>Variances 1 and 8:</u> Lot Coverage - The applicant is requesting that both variances be granted at 32.90% of the lot area, whereas 30.00 % is permitted. This is the other principal concern of the City. The COA approved this reduced figure of 32.90 % from the initial application (33.50%), as agreed to at the Committee hearing.

<u>Variances 4, 5, 6 and 7:</u> <u>Side Yard Setbacks</u> These reductions, she asserted, result in very little impact, as they amount to only .3 m. and are similar to those of the neighbours and to others granted (0.9 m) as seen in the Chart (Exhibit 1, Attachment 4.) There will still be adequate passage to the rear, and the lot patterns are maintained.

<u>Variance 11 – Building Length.</u> The proposed building length is 16.42 m., a 1.12 m difference from the maximum permitted building length in this area under the North York By-law of 15.30 m. No one appeared to object to this variance. The front walls of the adjacent properties would line up. The length is to be measured from the minimum front yard setback line. The building location was set back somewhat to align with the adjacent homes. The COA approved the present requested length. There have been no objections to it.

Ms. Robinson then addressed the many variances granted in her study area of 232 homes, found at Attachment 2 of her Witness Statement (Ex. 1.) She discussed principally those for coverage and height. In this area of detached homes, there have been many additions and

rebuilds and coverage variances. Some have been granted coverages over the 32.29 % requested here, although at the higher figures they have usually occurred to accommodate garages or rear additions, and not a new build. 38 Gwendolen, for example, was granted 35.8 % coverage, but this was to permit a rear addition. Even if such coverage permissions do allow for outbuildings or additions, Ms. Robinson stated that they are now part of the built form of this neighbourhood and the mixed character of the street. The COA appears to consistently grant coverage increases up to 32%. The increase would not be visible from the sidewalk. It amounts to only 4.78 sq. m. of additional built space. In the case of this proposal, the size of house can be larger by comparison as the garage is integral rather than attached.

The heights on Gwendolen have not been consistent – there is an eclectic mix of roof lines and styles, some contemporary such as 40 Gwendolen next door. Ms. Robinson stresses that the neighbours were nearly unanimous in support of the proposal, with 36, 40, 43, 44 47 and 54 Gwendolen all approving of the variances requested, and clearly, the design of the home.

Ms. Robinson's overall conclusion was that the proposed two-storey home is well within the numeric range of most replacement homes in this area. Its scale is not unusual. The height does not have to be the same as that of neighbourhood properties to be compatible, and so meet the Official Plan test. The coverage increase is only about 5 square metres, and thus it should have no impact on the neighbourhood or the street. Many of the nearby neighbours support the proposal, especially the adjoining neighbours and those directly across at No's 43 and 47 Gwendolen. No City department, such as Technical Services or Forestry, had required any conditions for the granting of the variances.

Respecting the four tests, Ms. Robinson first addressed that of the general intent and purpose of the Official Plan. This property is designated *Neighbourhoods* in the Plan, and the Healthy Neighbourhoods policies in Section 2.3.1 consider *Neighbourhoods* to be physically stable areas. Development within these areas will respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns. Nevertheless they are not to be static, as gradual change and infill is envisaged if it respects and reinforces the physical character of the neighbourhood. This is said to be the overriding principle of these provisions.

Ms. Robinson disagreed with the City Planner Ms- Fusz' contention that the variances for height and coverage would create a precedent for future decisions. (If so, they would not conform with the OP requirements for physical stability in *Neighbourhoods*.) Because the variances here are not excessive, the massing is in keeping with the OP policies. This proposed dwelling fits well within the existing homes as a sensitive, gradual infill. She added that new OPA 320 (not yet fully in force) is met, as it merely adds "prevailing" as a test for the Neighbourhood designation. No factors prevail here, just that of detached single dwellings.

She testified that the design is considerate of the zoning standards, and meets the test of respecting and reinforcing the existing physical character with respect to massing. Although the City argues that the height sought will constitute a precedent, it is so close to meeting the Bylaws and will be imperceptible from the street, that she felt it can be approved.

The second test under subsection 45(1) is that of the general intent and purpose of the zoning by-laws be maintained. Zoning by-laws contain numerical standards for matters such as building type and height, density, lot dimensions, building setbacks from lot lines, and other performance standards, to ensure that new development will be compatible with the physical character of established residential Neighbourhoods. In her opinion this proposed dwelling is compatible with the scale of nearby properties, can coexist in harmony and fit well within this attractive neighbourhood, both original and as redesigned. There would be no adverse impact created by any of the variances requested.

The development for a new single detached dwelling in this residential neighbourhood would thus be desirable, she said, and meet the third test. This is whether the variances are desirable for the appropriate development or use of the land, building or structure. As a reinvestment in this neighbourhood, it continues the dynamic of the many such redevelopments over the past 10 to 20 years. It will reinforce the stability of the area.

Respecting the last test, whether the variances are minor, in her opinion they are, both in order of magnitude and in the fact that they would have no adverse impacts on any other property or the neighbourhood. Individually and cumulatively, then, they can be said to be minor.

Thus all four tests in section 45(1) have been satisfied, in the planner's view. The variances represent good planning, and are in the public interest.

ANALYSIS, FINDINGS, REASONS

The TLAB has closely considered the opinion evidence of the expert planning witnesses, and accepts Ms. Robinson's conclusion that the four tests under s. 45(1) of the Act are met for the requested variances.

There was a great deal of evidence devoted to slightly varying numerical approvals granted in the past, even back to 2007. I did not find the extensive references to very small differences persuasive in evaluating whether the specific variances requested were too excessive to be approved. It merely highlighted the significant scale of activity in rebuilds and additions, and the eclectic nature of the neighbourhood. Ms. Robinson provided a plausible explanation for the examples of large numbers for lot coverage. She concluded that there was a good reason for the overage in height for this roof. It would not constitute a precedent, in my view even if it appeared to be so on a chart. A difference of .31m above the height required by the by-laws would not be perceived from the street, as Ms. Robinson's evidence showed. Although there were few examples of side yard setback variances in rebuilds, here the variances are only for a portion of the building, and they are similar to the neighbours'.

Ms. Amini for the City pointed out that Council opposed these variances, as they pushed the envelope into the unacceptable range over existing approvals. This issue was highlighted in OMB decisions that she put forward, Darling v Toronto, (City) Committee of Adjustment, para 22, PL151145 and in para. 11, Swerhun v. Toronto, (City) Committee of Adjustment [2005] O.M.B.D. no. 833, 2005 Carswell Ont. 3666. These decisions concluded that further deviation for the by-law standards would be "highly influential if not determinative" of a precedent, (p. 6, Darling). At p.3 of Swerhun the Board found that, with cumulative impacts of larger variances over time in neighbourhoods. "Such a result would defeat the general purpose and intent of the zoning by-law" (p. 3). Ms. Amini argued that, if approved, the home would appear on the next Committee of Adjustment Decision Analysis chart as the highest, with the greatest lot coverage to be permitted in the area to date.

However, in my view if the TLAB imposes the condition that the proposal must be constructed in accordance with the plans submitted, it will be clear that there is a special circumstance and purpose for the height excess, for drainage of the roof. It can be seen from the plans that the height variance to 10.31 m is not for the exterior walls all around the structure, but merely for the central peak, and the single dormer window. The variance for coverage does require careful consideration, but I do not consider it to be so beyond the by-law requirements that this carefully considered design should be rejected.

The City's planning witness, Ms. Victoria Fusz, provided expert testimony objecting to the variances requested. She stressed that the OP Healthy Neignbourhoods policies (2.3.1) and development criteria required by section 4.1.5 were not met, particularly those respecting height. No variances of this magnitude had been granted in this area since the new By-law was enacted in 2013, with its emphasis on height reductions. The roof line would not be consistent with the others nearby, and would set a numerical precedent. The site is not constrained, and thus could meet the by-law standards, as had number 40 next door. She admitted that the only adverse impact she could see would be on the streetscape, and that a .31 cm difference in height would not destabilize the neighbourhood. She said that the OP policy does not call for consistency, but for respecting and reinforcing the general physical patterns of the neighbourhood. A change could respect and reinforce the standards without matching the height of the properties nearby, she concluded. There is no consistent roof line in this area, but instead a variety. She maintained her view that the height difference would be visible from the sidewalk.

I agree with Ms. Costello's concluding argument that the planned context of this active neighbourhood is changing as variances were granted in the past. They become part of the built fabric that the Plan seeks to maintain. This proposal will not extend the coverage or height beyond reasonable measurements in its context. She distinguished the OMB decisions as made in the context of severances, where larger variances on smaller lots might well destabilize the neighbourhoods and thus not meet the OP and the section 45 tests. She argued that the City's opposition was really only to the height variance, as Ms. Fusz admitted. Not only are the variances quantitatively minor in amount, they are qualitatively acceptable in having no perceptible impact on neighbouring properties. They need not be "consistent with" nearby numbers; the test is rather whether the changes will respect and reinforce the physical character of the neighbourhood. In my view they will do this.

There is the additional requirement that the general intent and purpose of the zoning by-laws be met. The general intent and purpose of the zoning by-laws is to regulate the use of the land to ensure that development both fits on a given site and within its surrounding context, and reduces impacts on adjacent properties. The proposed size of this dwelling will require several small exceptions from the zoning limits. These are grouped as coverage, building height and length, side yard setback, and first floor height. I find that there will be virtually no impact on adjacent properties. There have been no objections from the neighbours.

I likewise find that the development, being compatible with the City's Official Plan and Zoning, properly addresses matters of provincial interest as set out in section 2 of the Act, and that the variances are consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). It therefore is consistent with the 2014 Provincial Policy Statement ('PPS') and conforms to the Growth Plan for the Greater Golden Horseshoe ('Growth Plan').

DECSIONS AND ORDER

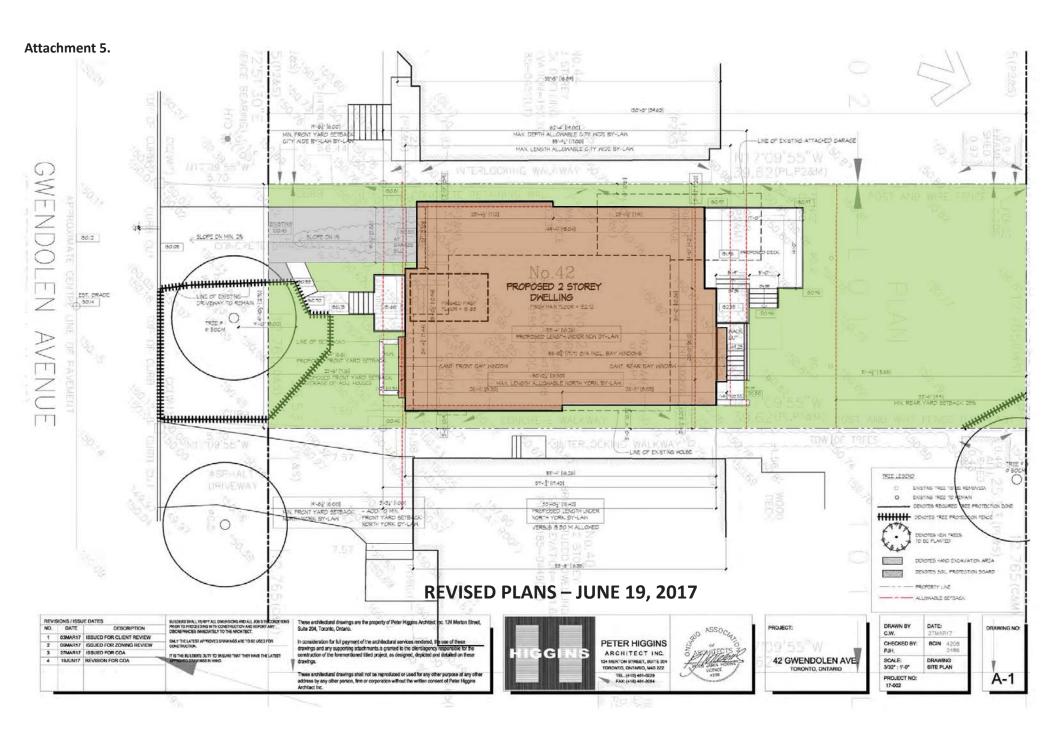
The TLAB orders that:

- 1. The appeal is dismissed and the variances to Zoning By-law 7625 as listed 6 through 11, above, are authorized.
- 2. The variances to Zoning By-law No. 569-2013, as listed 1 through 5 above are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
- 3. The new two-storey detached dwelling shall be constructed substantially in accordance with the Plans filed as Attachment 5 to Exhibit 1, marked as "Revised Plans". These plans shall form

part of this order. Any other variances that may appear as required on these plans and that are not listed in this decision are not authorized.

G. Burton

Chair, Toronto Local Appeal Body



42 GWENDOLEN AVENUE .	ZONING INFORMAT	ION (NORTH YORK)	42 GWENDOLEN AVENUE	ZONING INFORMAT	ION (CITY WIDE BYLAW)
ZONING: LOT AREA: MAXIMUM GOVERAGE: 30%	R6 5,444.70 sq.ft. 1,633.41 sq.ft.	505.83 sq.m. 151.75 sq.m.	ZONING: LOT AREA: MAXIMUM COVERAGE: 30%	RD (f120; a370) 5,444.70 sq.ft.	505.83 sq.m.
PROPOSED MAIN FLOOR PROPOSED 2ND FLOOR PROPOSED LOWER FLOOR	1,812.25 sq.ft. 1,806.61 sq.ft. 1,549.36 sq.ft.	168.36 sq.m. 167.84 sq.m. 143.94 sq.m.			
PROPOSED TOTAL GFA = 66.4% PROPOSED GARAGE	3,618.86 sq.ft. 237.45 sq.ft.	336.20 sq.m. 22.06 sq.m.	PROPOSED TOTAL FSI: DOES NO	T APPLIED	
PROPOSED COVERAGE: 32.9%	1,793.85 aq.ft.	66.65 sq.m. VARIANCE	PROPOSED COVERAGE: 32.9%	1,793.85 sq.ft.	166.65 sq.m. VARIANCE
SETBACKS	ALLOWABLE	PROPOSED	SETBACKS	ALLOWABLE	PROPOSED
FRONT YARD SETBACK	19.68' (6M)	22.34' (6.8IM)	FRONT YARD SETBACK	19.68' (6M)	22.34' (6.8IM)
REAR	31.17' (9.5M)	51,38' (15.66M)	REAR 7.5M OR 25%	32.5' (9.91M)	51.38" (15.66M)
SIDE (EAST)	3.94' (1.2M) 3.94' (1.2M)	3.0' (0.90M) VARIANCE 3.0' (0.90M) VARIANCE	SIDE (NORTH) SIDE (SOUTH)	3.94' (1.2M) 3.94' (1.2M)	3.0' (0.90M) VARIANCE 3.0' (0.90M) VARIANCE
BUILDING LENGTH BUILDING HEIGHT	50.2" (15.3M) 28.87" (8.8M)	53.81' (16.42M) VARIANCE 30.08' (9,17M) VARIANCE	BUILDING LENGTH BUILDING HEIGHT	55.77' (17.0M) 32.81' (10.0M)	56.33' (IT.ITM) (INCL. BAY WINDOWS 35.79' (IO.5IM) VARIANCE
			WALL HEIGHT	24.6" (7.5M)	28.21' (8.60M) VARIANCE
TOP OF FIN. FIRST FLOOR	4.92' (1.5M)	5.54" (1.69M)	TOP OF FIN. FIRST FLOOR	3.94' (L2M)	3,94' (I,2M)

REVISIONS / ISSUE DATES		EDATES	BUILDERS SHALL VERIFY ALL DIMENSIONS AND ALL JOB SITE CONDIT	
1	03MAR17	ISSUED FOR CLIENT REVIEW	PRIOR TO PROCEEDING WITH CONSTRUCTION AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT.	
2	06MAR17	ISSUED FOR ZONING REVIEW	ONLY THE LATEST APPROVED DRAWINGS ARE TO BE USED FOR	
3	27MAR17	ISSUED FOR COA	CONSTRUCTION.	
4	19JUN17	REVISION FOR COA	IT IS THE BUILDER'S DUTY TO ENSURE THAT THEY HAVE THE LATE APPROVED DRAWINGS IN HAND.	
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PETER HIGGINS

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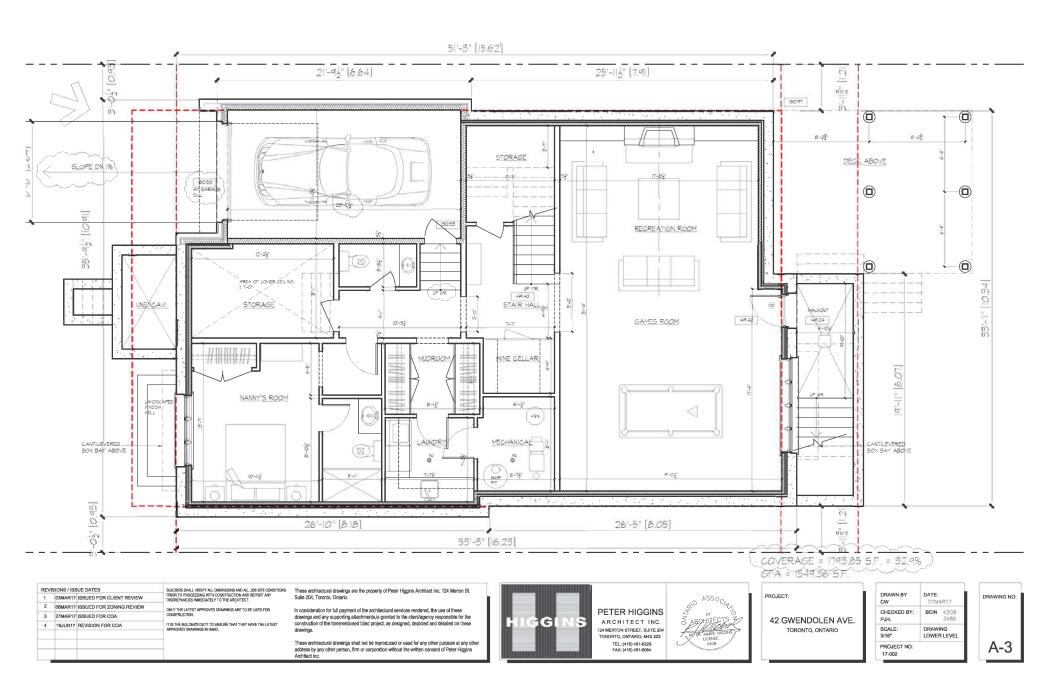
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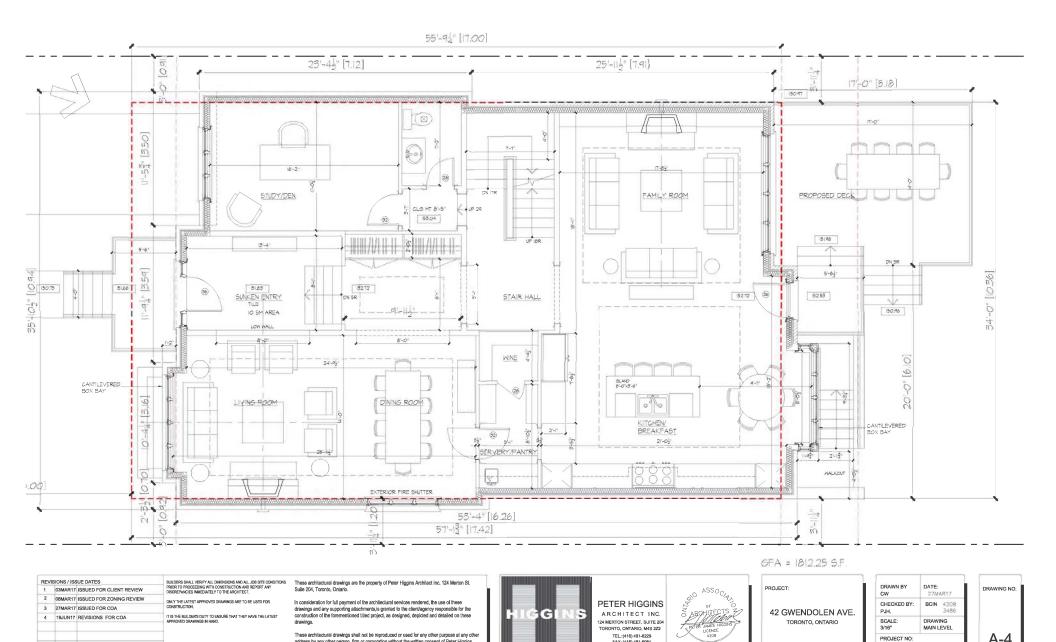
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PROJECT:
PROPOSED RESIDENCE 42 GWENDOLEN AVE.
TORONTO, ONTARIO

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C.W.	27MAR17
CHECKED BY:	BCIN 4208
PJH.	3486
SCALE:	DRAWING
3/16"	ZONING
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4 19JUN17 REVISIONS FOR COA

ARCHITECT INC.

124 MERTON STREET, SUITE 204

FORONTO, ONTARIO, M4S 2Z2

TEL.:(416) 481-6229 FAX: (416) 481-8084

PJH.

TORONTO, ONTARIO

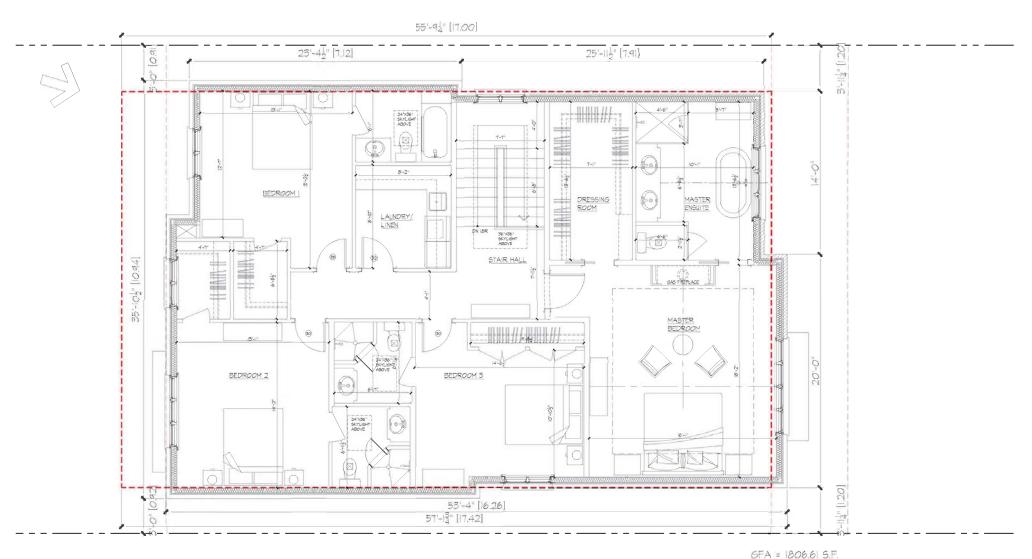
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MAIN LEVEL





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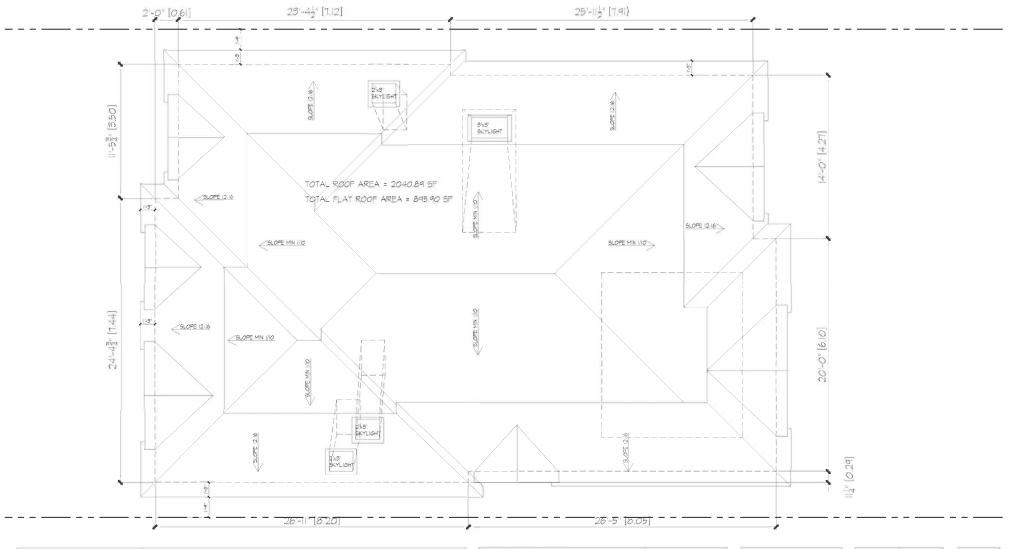
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TORONTO, ONTARIO, M4S 222
TEL:(416) 481-8029
FAX: (416) 481-8084



PROJECT:
42 GWENDOLEN AVE. TORONTO, ONTARIO

DATE: 27MAR17
BCIN 4208 3486
DRAWING UPPER LEVEL

DRAWING NO:





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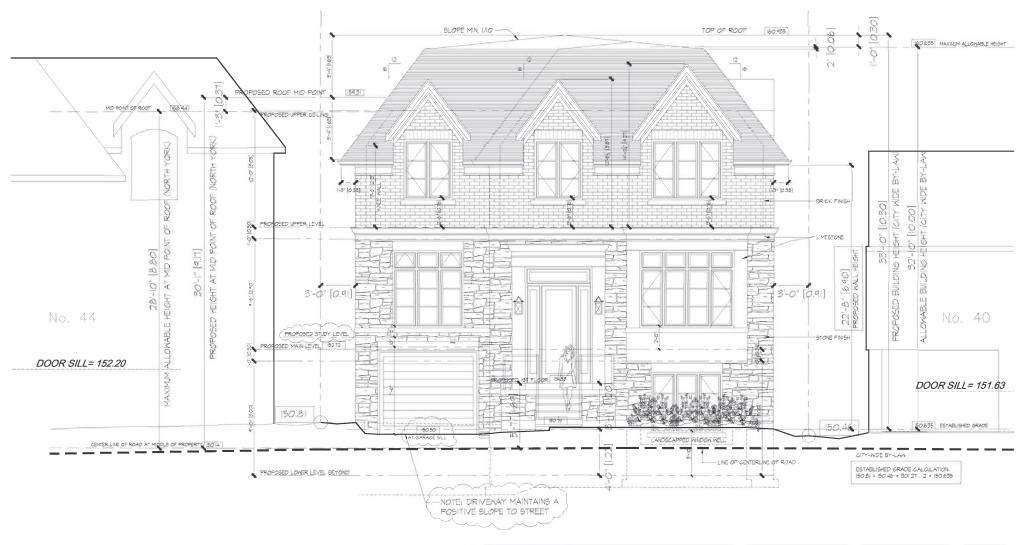
PETER HIGGINS ARCHITECT INC. 124 MERTON STREET, SUITE 204 TORONTO, ONTARIO, M4S 2Z2 TEL.:(416) 481-6229 FAX: (416) 481-8084



PROJECT: 42 GWENDOLEN AVE. TORONTO, ONTARIO

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CHECKED BY: PJH.	BCIN 4208 3486
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42 GWENDOLEN AVE. TORONTO, ONTARIO

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CW	27MAR17
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PJH.	3488
SCALE:	DRAWING
3/16*	SOUTH ELEV
PROJECT NO: 17-002	

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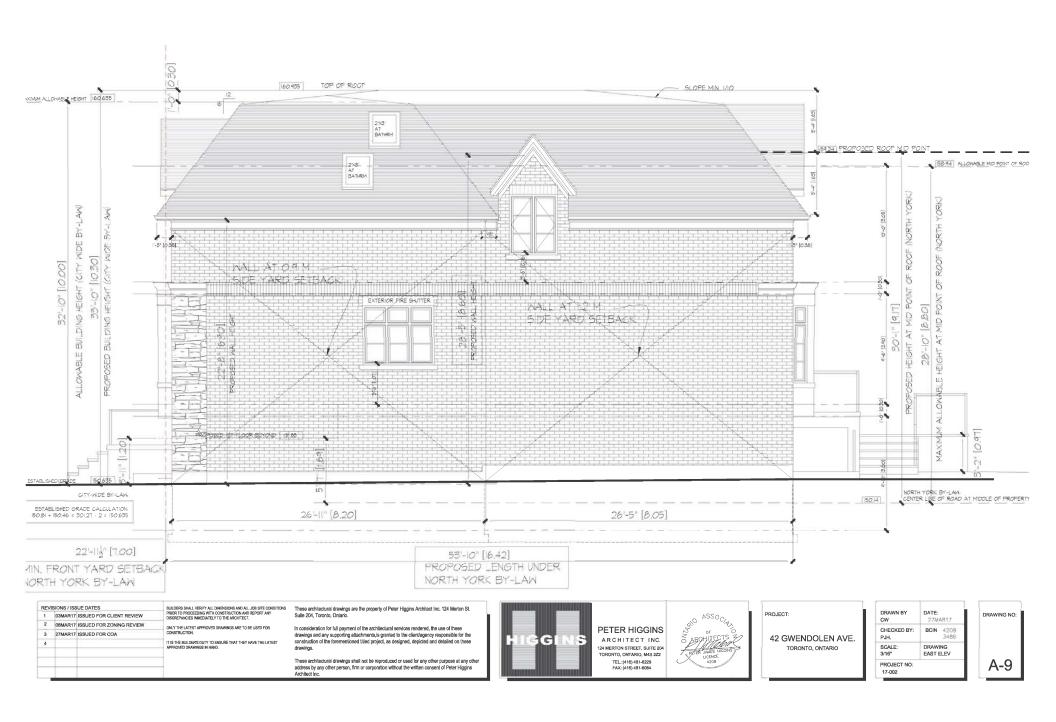
PETER HIGGINS ARCHITECT INC. 124 MERTON STREET, SUITE 204 FORONTO, ONTARIO, M4S 2Z2 TEL.:(416) 481-6229 FAX: (416) 481-8084

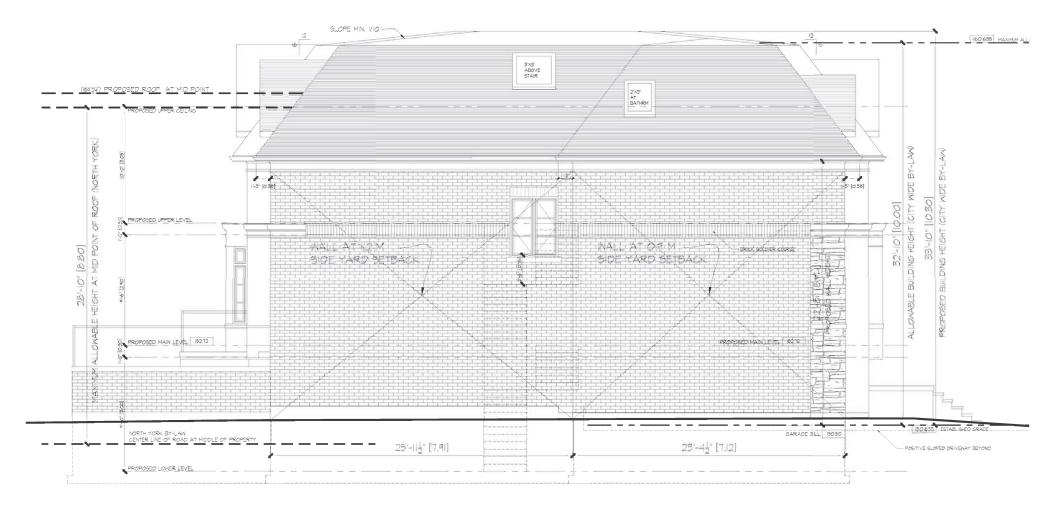


42 GWENDOLEN AVE. TORONTO, ONTARIO

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SCALE:	DRAWING
3/16*	NORTH ELEV
PROJECT NO: 17-002	

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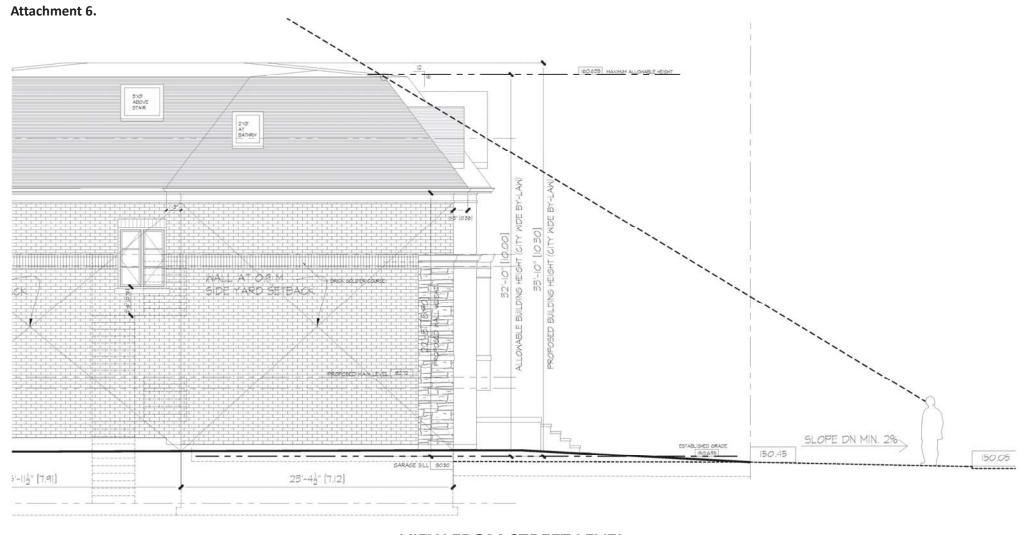
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3/16"	WEST ELEV



VIEW FROM STREET LEVEL







DRA CW
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SCA 3/16
PRO 17-4

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