

DECISION AND ORDER

Decision Issue Date Friday, December 29, 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: ABRAHAM ISRAELSKI AND RIVKA ISRAELSKI

Counsel or Agent: MARK PIEL, ANNIK FORRISTAL (CITY)

Property Address/Description: 23 DONNALYN DRIVE

Committee of Adjustment Case File Number: 17 139745 NNY 23 MV

TLAB Case File Number: 17 197129 S45 23 TLAB

Hearing date: Tuesday, November 14, 2017

DECISION DELIVERED BY S. Ruddock

INTRODUCTION & BACKGROUND

The Applicants made an application to the Committee of Adjustment for a variance in order to demolish an existing dwelling and to construct a new two-storey dwelling on the property municipally known as 23 Donnalyn Drive (the 'Property'). The Property is located on the south side of Donnalyn Drive, south of Steeles Avenue West and east of Bathurst Street. The Property is currently occupied by a one-storey brick dwelling with an integral garage.

The Application on April 5, 2017 requested minor variances from North York By-law No. 7625 and City of Toronto Zoning By-law No. 569-2013, as applicable, as follows:

- (a) Variance of the maximum permitted lot coverage from 30% to 34.4%;
- (b) Variance of the minimum required east side yard setback from 1.80 metres to 1.24 metres;

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(c) Variance of the minimum required west side yard setbacks from 1.80 metres to 1.55 metres;

(d) Variance of the maximum permitted rear deck projection from the rear wall from 2.10 metres to 3.05 metres; and

(e) Variance to permit a rear deck projection with a maximum height greater than 1.00 metre.

The Staff Report prepared by Victoria Fusz, Assistant Planner, dated June 12, 2017, addressed to the Chair and Committee Members of the Committee of Adjustment, recommended reduction of the requested variances to the maximum permitted lot coverage of 30% from the proposed 34.4% of the lot area to within the range of 30% and 32% of the lot area.

On June 22, 2017, the Applicant presented the Committee of Adjustment with revised plans which amended the requested variances to the maximum permitted lot coverage and minimum required east side yard setback as follows: (a) Variance of the maximum permitted lot coverage from 30% to 32.4% of the lot area (instead of to 34.4%); and (b) Variance of the minimum required east side yard setback from 1.80 metres to 1.55 metres (instead of to 1.24 metres). The Committee of Adjustment approved the revised Variance Application by Notice of Decision dated June 22, 2017.

On July 12, 2017 the City of Toronto appealed the Decision to the Toronto Local Appeal Body (TLAB). A hearing date was set at TLAB for November 14, 2017. The Applicants and the Appellant, the City of Toronto were the sole parties to the Appeal. No other parties or participants were identified.

Following the filing of the Appeal, the Applicants and the Appellant reached a settlement prior to the scheduled TLAB hearing date. In the Minutes of Settlement, dated by the City of Toronto on September 5, 2017, the Applicant agreed to further revise its plans in order to further reduce the lot coverage of the proposed building in order to address the City's concerns with respect to maximum lot coverage. As a result of these further revisions by the Applicant to the plans, the lot coverage variances have been further reduced from 32.4% to 31.98% of the lot area. The parties agreed to settle the Appeal subject to and in accordance with the terms contained in the Minutes of Settlement and filed a motion requesting a written settlement hearing. The motion was granted, and a Written Settlement hearing proceeded on the scheduled TLAB hearing date.

For the Written Settlement Hearing the City of Toronto and the Applicant filed Joint Written Hearing Materials which included a written submission; Affidavit of Victoria Fusz; revised plans attached as Exhibit "H" to the Affidavit; and the revised list of variances attached as Exhibit "I" to the Affidavit.

In the Joint Written Submissions, the parties stated that the revised plans found at Exhibit "H" to the Affidavit and which form the basis of the settlement between the City of Toronto and the Applicant, reduce the lot coverage of the proposed building to 31.98% of the lot area. It was their submission that the changes to the revised plans

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are minor and for these reasons it is appropriate for the TLAB to exercise its discretion pursuant to subsection 45(18.1.1) of the Act to provide that no further notice of the Application is required. This position was supported by the affidavit evidence of the expert witness.

The parties requested the following relief in the Joint Written Submissions:

1. An Order of the Toronto Local Appeal Body (the "TLAB") pursuant to subsection 45(18.1.1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act") directing that no further notice is required for the Application.
2. An Order of the TLAB allowing the appeal by the City of Toronto in part and approving the variances listed in Exhibit "I" of the Affidavit of Victoria Fusz dated November 8, 2017 (the "Affidavit"), subject to the following conditions of approval:
 - (a) The proposal shall be built and located on the Property substantially in accordance with the Site Plan, the Front Elevation, the Right Side Elevation, the Left Side Elevation, and the Rear Elevation, prepared by Ian Robertson Design, and all dated August 8, 2017 and attached as Exhibit "H" to the Affidavit; and.
 - (b) Where there are no existing street trees, the Applicant shall provide payment in lieu of planting one street tree on the City road allowance abutting the Property. The cost of planting a tree is \$583.
3. Such further and other relief as counsel may request and the TLAB may permit.

JURISDICTION AND MATTERS IN ISSUE

Even though the parties have reached a settlement on acceptable variance provisions, on an appeal, the TLAB must be satisfied that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of all 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, the variances must be consistent with provincial policy statements and conform with provincial plans, as set out in s. 3 of the Act. A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to any provincial plan such as the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') for the subject area. Under s. 2.1 of the Planning Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

With respect to the revisions, to the extent that the variances requested differ from those before the Committee of Adjustment, TLAB accepts that the Applicant's proposed revision is a reduction of the original application. As such, TLAB finds that no further notice is required pursuant to s.45 (18.1.1) of the Act, and the revision can be considered.

EVIDENCE

Expert evidence by Victoria Fusz, Assistant Planner for the City of Toronto, was presented by way of Affidavit. No contradictory or other evidence was presented. The City and the Applicant were the only parties identified in the proceedings.

For the purpose of her study and opinion evidence, Ms. Fusz identified the neighbourhood as bounded generally by Chelmsford Avenue to the west, Peckham Avenue and Cactus Avenue to the north, Hilda Avenue to the east, and Homewood Avenue to the south. There are approximately 534 dwellings in this neighbourhood and these houses are subject to the same land use designation within the Official Plan (Neighbourhoods) and are subject to the same, or similar, zoning standards under both Zoning By-law Nos. 7625 and 569-2013. It was the expert evidence that the physical character of this neighbourhood is dominated by one prevailing building type, being single-detached dwellings of one or two-storeys.

It was Ms. Fusz's opinion that the further revisions to the plans which reduce the lot coverage to 31.98% of the lot area would result in a built form that better respects and reinforces the character of the neighbourhood. Ms. Fusz opined that the proposed revised variances (as listed in Exhibit "I"), satisfy each of the four tests under subsection 45(1) of the Planning Act, subject to the Applicant's satisfaction of the conditions of approval which the Applicant has agreed to in the Minutes of Settlement with the City.

With respect to s.3(5) of the Act, it was Ms. Fusz's opinion that the Application is consistent with the Provincial Policy Statement, and confirms, and does not conflict with the Growth Plan for the Greater Golden Horseshoe notwithstanding her opinion that the Application does not raise issues that rise to the level of provincial policy or plan considerations.

The expert evidence included a particularized review of each of the four test for a minor variance. It was Ms. Fusz's opinion that the revised Application maintains the general intent and purpose of the City of Toronto's Official Plan. The requested variances listed in Exhibit "I" respect and reinforce the existing physical character of the neighbourhood. In particular, the revised drawings propose a lot coverage and side yard

setbacks that are in keeping with the lot coverage and side yard setbacks of both nearby residential properties on Donnalyn Drive and within the neighbourhood. Ms. Fusz opined that although the proposed lot coverage and side yard setbacks deviate slightly from the standard contained with the Zoning By-laws, the requested variances are compatible with the physical character of the established residential neighbourhood.

With respect to the Zoning By-laws, the expert opinion was that the revised variances satisfy this test as they individually and collectively maintain the general intent and purpose of the Zoning By-laws. Ms. Fusz stated that the proposed lot coverage meets the general intent and purpose of the Zoning By-laws as the proposed dwelling is of a scale that is compatible with the dwellings on adjacent properties. The proposed lot coverage is consistent with other minor variance approvals for increased lot coverage in the neighbourhood. It was Ms. Fusz's opinion that the proposed side yard setbacks of 1.55 metres provides an appropriate separation distance between the neighbouring dwellings and maintains the existing pattern of side yard setbacks along Donnalyn Drive. In terms of the proposed deck, it was Ms. Fusz's opinion that the it does not present any impacts to adjacent properties related to noise, privacy, or overlook issues.

It was Ms. Fusz's opinion that the revised variances are desirable for both the appropriate development of the land and neighbouring lands and are in the public interest. Ms. Fusz indicated that a number of dwellings within the neighbourhood have undergone moderate redevelopment and reinvestment in the form of renovated or new dwellings. This is a trend which is in the public interest and encourages the stability of neighbourhoods. The requested variances are consistent with variances that have been granted for other new dwellings in the neighbourhood. Ms. Fusz opined that the proposed building scale is consistent with adjacent dwellings and maintains consistency across the Donnalyn Drive streetscape. It was her opinion that the requested variances do not present any adverse impacts to neighbouring properties, the neighbourhood, or the Donnalyn Drive streetscape.

It was Ms. Fusz's opinion, that the revised variances are minor. The application is for a single-detached dwelling that is characteristic of other dwellings within the neighbourhood. Ms. Fusz opined that the variances do not significantly depart from the Zoning By-law requirements nor do they present any unacceptable adverse impacts related to loss of light, privacy, or views in respect of neighbouring properties, from the adjacent Donnalyn Drive streetscape, or the neighbourhood as a whole.

ANALYSIS, FINDINGS, REASONS

As previously stated, TLAB found that the Applicant's proposed revision is a reduction of the original application and as such, no further notice is required pursuant to s.45 (18.1.1) of the Act. TLAB can consider the revision proposed.

TLAB accepts the uncontradicted expert evidence that the variances meet the four tests under s.45(1) of the Act. The variances proposed are minor and are desirable for the appropriate use of the land. The physical character of this neighbourhood is dominated by one prevailing building type, being single-detached dwellings of one or two-storeys, and the Application is in keeping with this. The proposed single- detached

dwelling respects and reinforces the existing physical character of the neighbourhood and does not present any adverse impacts to neighbouring properties, the neighbourhood, or the Donnalyn Drive streetscape.

TLAB agrees that the variances are consistent with the standards of the Zoning By-laws and the policies of the Official Plan, and therefore maintain the general intent and purpose of both By-laws and the Official Plan. The revised plans propose a building scale and side yard setbacks that are keeping with the physical character of the neighbourhood. From a streetscape perspective the proposed dwelling seamlessly integrates into the neighbourhood and is consistent with the adjacent dwellings along Donnalyn Drive. The proposal respects and reinforces the existing character of the neighbourhood.

DECISION AND ORDER

For all the reasons expressed above, the appeal is allowed in part as agreed to by the parties. The TLAB orders:

The variances to Zoning By-law No. 569-2013 (contingent on its effective date) and No. 7625 as listed below as 'proposed' are authorized, subject to the conditions that follow.

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 31.98% of the lot area.

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

The minimum required side yard setback is 1.80m.

The proposed east side yard setback is 1.55m.

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

The minimum required side yard setback is 1.80m.

The proposed west side yard setback is 1.55m.

4. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.80m.

The proposed east side yard setback is 1.55m.

5. Section 13.2.3(b), By-law No. 7625

The minimum required side yard setback is 1.80m.

The proposed west side yard setback is 1.55m.

6. Section 13.2.4, By-law No. 7625

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

The proposed lot coverage is 31.98% of the lot area.

7. Section 6(24), By-law No. 7625

The maximum permitted rear deck projection is 2.10m from the main rear wall, a maximum height of 1.00m and is not to be more than half the width of the dwelling.

The proposed rear deck is greater than 1.00m in height and projects 3.05m from the rear wall.

The conditions of approval are as follows:

(a) The proposal shall be built and located on the Property substantially in accordance with the Site Plan, the Front Elevation, the Right Side Elevation, the Left Side Elevation, and the Rear Elevation, prepared by Ian Robertson Design, and all dated August 8, 2017 (affidavit Exhibit "H") attached as Attachment 1 to this decision; and

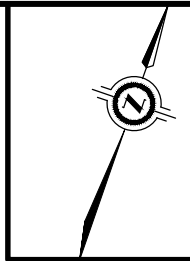
(b) Where there are no existing street trees, the Applicant shall provide payment in lieu of planting one street tree on the City road allowance abutting the Property. The cost of planting a tree is \$583.

[Attachment 1 – Revised Plans (Exhibit "H")]

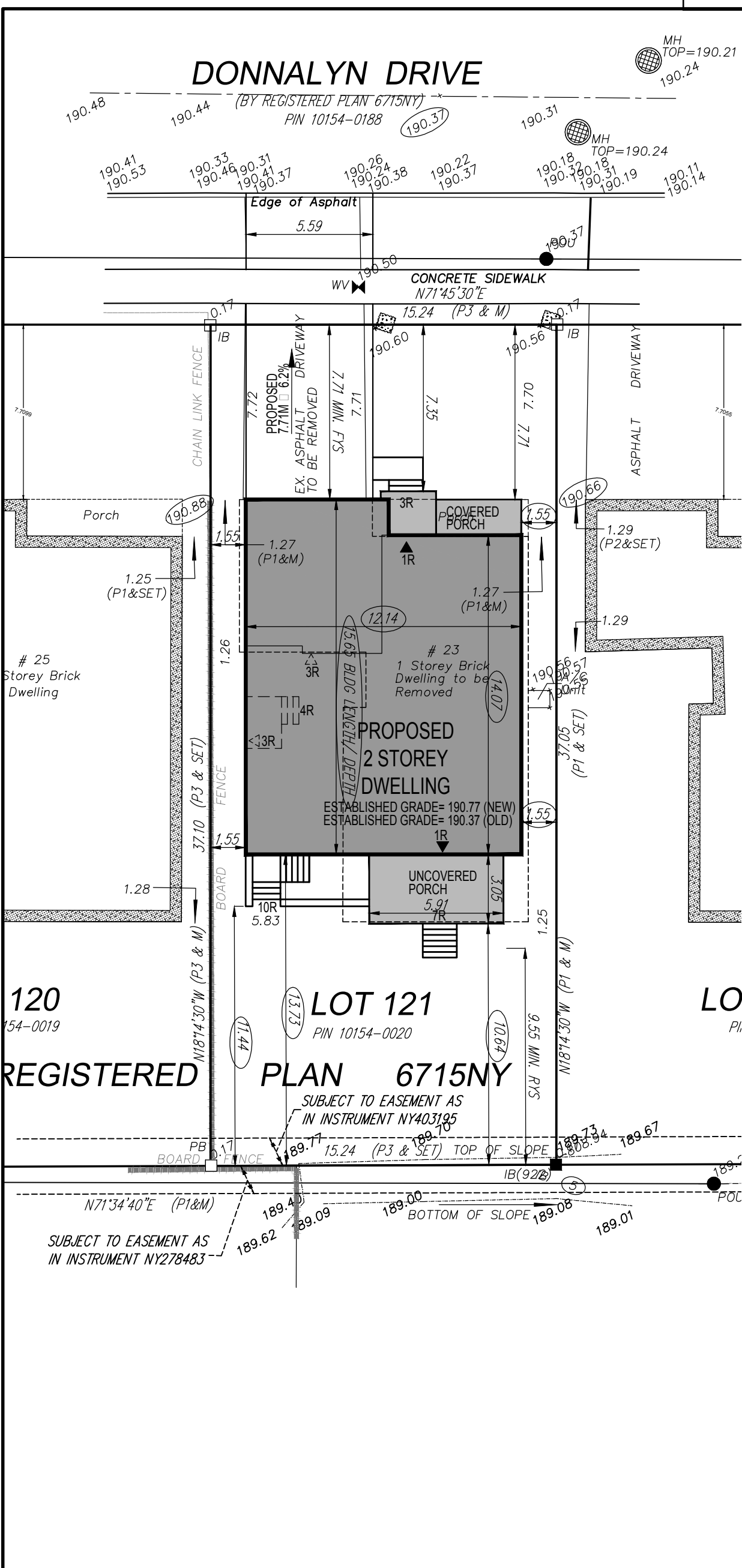
X



S. Ruddock
Panel Chair, Toronto Local Appeal Body
Signed by: Sophia Ruddock



IAN ROBERTSON DESIGN



Attachment 1

ZONING			
SITE DATA	BY-LAW 569-2013	BY-LAW 7625	PROPOSED
ZONE	RD (f15; a550)(x5)	R1	
LOT FRONTAGE	15.0 M	15.0 M	15.24 M
LOT AREA	550 M2	1100 M2	564.75 M2
FRONT YARD SETBACK	7.71 M	7.71 M	7.71 M
SIDE YARD SETBACK	1.80 M	1.80 M	1.55 M
REAR YARD SETBACK	9.26 M	9.50 M	13.73 M/ 10.64 M
AREA OF GROUND FLOOR WITHIN 4M OF FRONT WALL	10 M2	N/A	N/A
MAIN FLOOR AREA	N/A	N/A	141.86 M2
GROSS FLOOR AREA (FSI)	N/A	N/A	242.38 M2
BUILDING LENGTH	17.0 M	16.80 M	15.65 M
BUILDING DEPTH	19.0 M	N/A	15.65 M
1 STOREY EXTENSION	2.0 M	1.80 M	N/A
MAX. DECK PROJECTION	2.50 M		3.05 M
LOT COVERAGE	30% (169.42 M2)	30% (169.42 M2)	31.98% (180.60 M2)
FIN. GND FLOOR TO FIN. GRADE	1.20 M	1.50 M	0.98 M/ 1.38 M
FIN. FLOOR TO ROOF PEAK			8.28 M
FIN. FLOOR TO U/S OF SOFFIT			6.15 M
BLDG HEIGHT TO PEAK	10.0 M		9.26 M
BLDG HEIGHT TO MIDPOINT		8.80 M	7.15 M
BLDG HEIGHT TO SOFFIT	7.50 M	N/A	4.23 M/ 7.13 M
PARKING SPACE WIDTH	3.20 X 5.60 M	3.20 X 5.60 M	5.58 M X 6.02 M
DRIVEWAY WIDTH	5.60 M	5.60 M	5.59 M
EAVE PROJECTION	0.90 M		0.40 M
FRONT YARD AREA			116.45 M2
DRIVEWAY AREA			43.05 M2
WALKWAY & STAIR AREA			2.96 M2
FRONT YARD LANDSCAPING	60% (69.87 M2)		116.45-43.05= 73.40 M2 (63%)
FRONT YARD SOFT LANDSCAPING	75% (52.40 M2)		73.40-2.96= 70.44 M2 (101%)
REAR YARD AREA			162.91 M2
REAR YARD HARD LANDSCAPING			0.0 M2
REAR YARD SOFT LANDSCAPING	50% (81.45 M2)		100% (162.91 M2)

IAN ROBERTSON DESIGN GENERAL NOTES

1. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND CONDITIONS ON SITE BEFORE PROCEEDING WITH CONSTRUCTION. ANY DISCREPANCIES SHALL BE REPORTED TO IAN ROBERTSON DESIGN PRIOR TO COMMENCEMENT OF WORK.
2. IAN ROBERTSON DESIGN IS NOT RESPONSIBLE FOR THE ACCURACY OF SURVEY, STRUCTURAL OR ENGINEERING INFORMATION SHOWN ON THESE DRAWINGS OR FOR CONSTRUCTION STARTED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. REFER TO THE APPROPRIATE ENGINEERING DRAWINGS BEFORE PROCEEDING WITH WORK.
3. AS CONSTRUCTED INVERTS MUST BE VERIFIED PRIOR TO POURING FOOTINGS.
4. IAN ROBERTSON DESIGN HAS NOT BEEN RETAINED TO CARRY OUT GENERAL REVIEW OF THE WORK AND ASSUMES NO RESPONSIBILITY FOR THE FAILURE OF THE CONTRACTOR OR SUB CONTRACTOR TO CARRY OUT WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
5. THIS DRAWING IS AN INSTRUMENT OF SERVICE. IS PROVIDED BY AND IS THE PROPERTY OF IAN ROBERTSON DESIGN. THIS DRAWING IS NOT TO BE SCALED.

- ST — STORM CONNECTION
- SA — SANITARY CONNECTION
- W — WATER CONNECTION
- H — HYDRO CONNECTION
- DOUBLE CATCH BASIN
- CATCH BASIN
- HYDRANT
- VALVE AND CHAMBER
- STREET LIGHT
- VALVE AND BOX
- SANITARY MANHOLE
- STORM MANHOLE
- COMMUNITY MAIL BOX
- DOWNSPOUT LOCATION
- PROP. SWALE
- PROPOSED 3:1 SLOPE
- ENGINEERED FILL LOT
- TRANSFORMER
- CABLE TV PEDESTAL
- BELL PEDESTAL
- HYDRO METER
- GAS METER
- AIR-CONDITIONING UNIT
- TELECOM. UNCTION BOX
- SUMP PUMP
- EXTERIOR DOOR LOCATION
- EXTERIOR DOOR LOCATION GRADE PERMITTING
- WINDOWS PERMITTED
- FINISHED FLOOR ELEVATION
- TOP OF FOUNDATION WALL
- FINISHED BASEMENT SLAB
- UNDERSIDE OF FOOTING
- UNDERSIDE OF FOOTING REAR
- REVERSE PLAN
- WOB WALK-OUT BASEMENT
- WOD WALK-OUT DECK
- PROPOSED GRADE
- EXISTING GRADE

REVISION	DATE
1 ISSUED FOR COFA	MAR. 30/17
2 REVISED AS PER PLANNING COMMENTS	JUNE 19/17
3 REVISED AS PER PLANNING COMMENTS	AUG. 08/17

SITE PLAN

Client: **ABRAHAM ISREALSKI**

Project: **23 DONNALYN DRIVE CITY OF TORONTO**

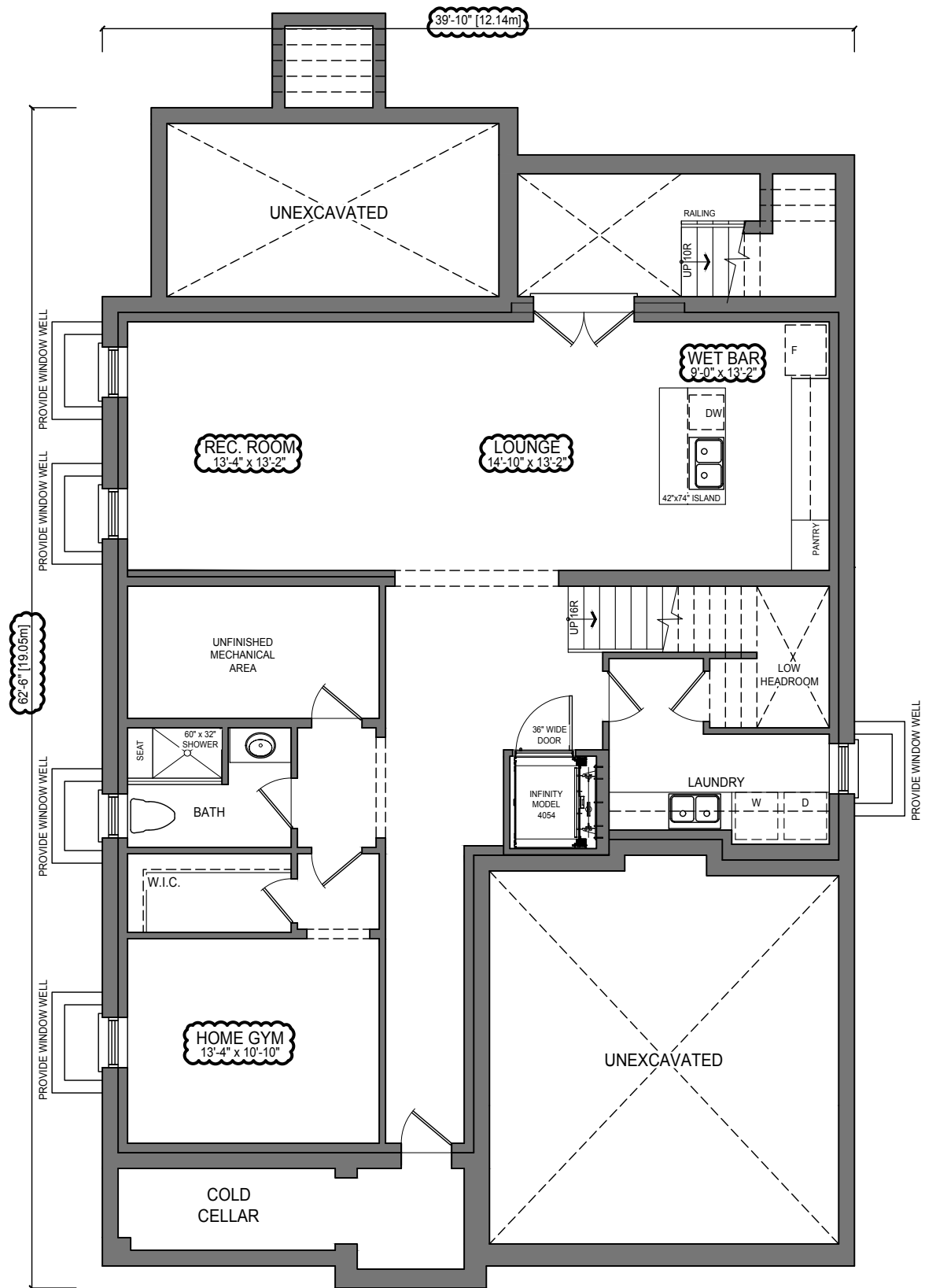
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Drawn by: **BM** Checked by: **XX**

Scale: **1:200** Date: **08/08/17**

Project #: **16-64**

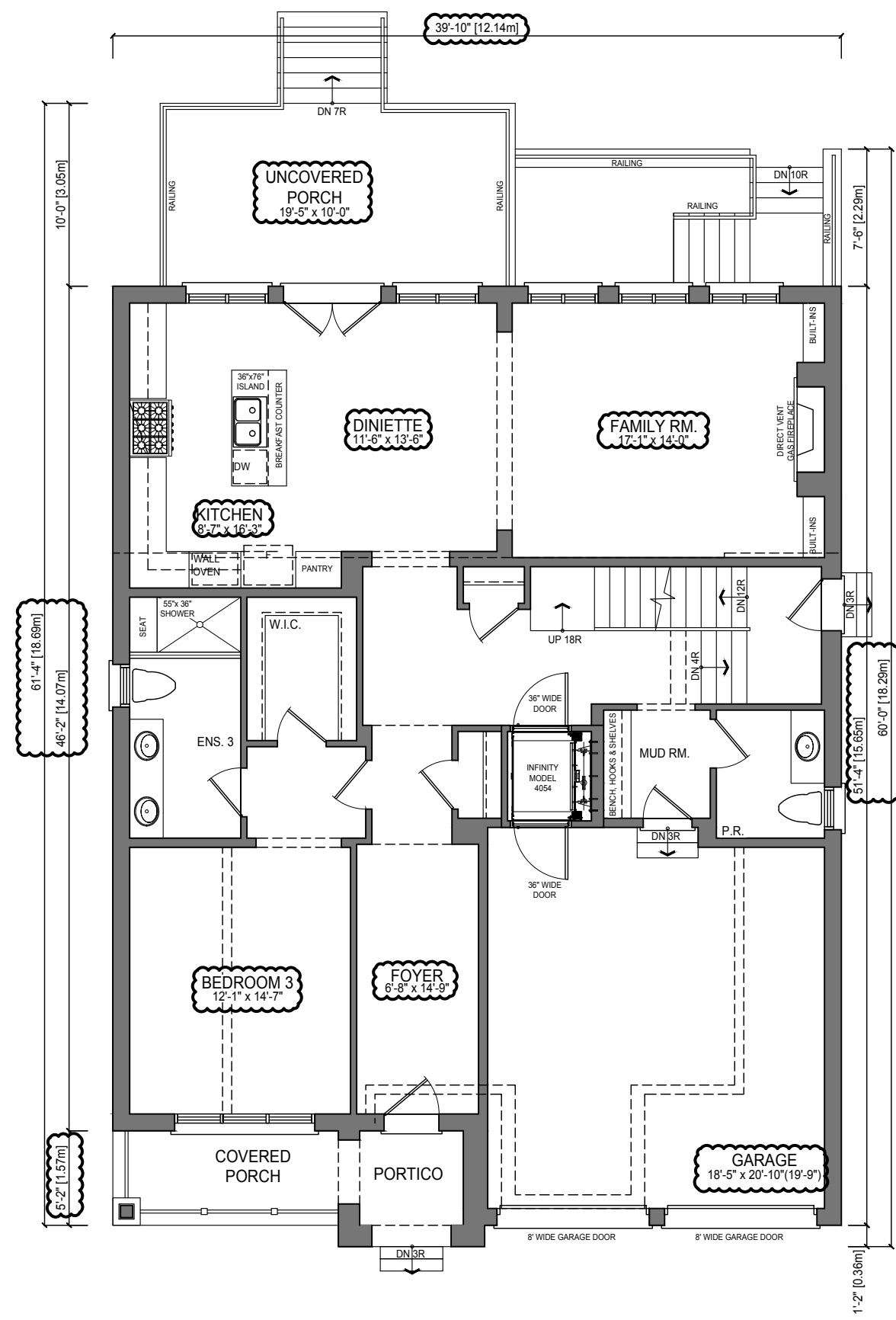
20 RIVERMEDE ROAD, UNIT 101, VAUGHAN, ONTARIO, L4K 3N3
PHONE: (416) 663-0111; FAX: 1 (866) 602-1163; WWW.IANROBERTSONDESIGN.CA



BASEMENT PLAN
FINISHED FLOOR AREA = 1315 sq. ft.

Client:	ABRAHAM ISREALSKI		
Lot:	LOT 121		
Address:	23 DONNALYN DRIVE CITY OF TORONTO		
Sheet Title:	BASEMENT PLAN		
Drawn By:	HL	Date:	AUG. 8/17
Project No.:	16-64	Page:	1 OF 7
Scale:	1/8" = 1'0"		

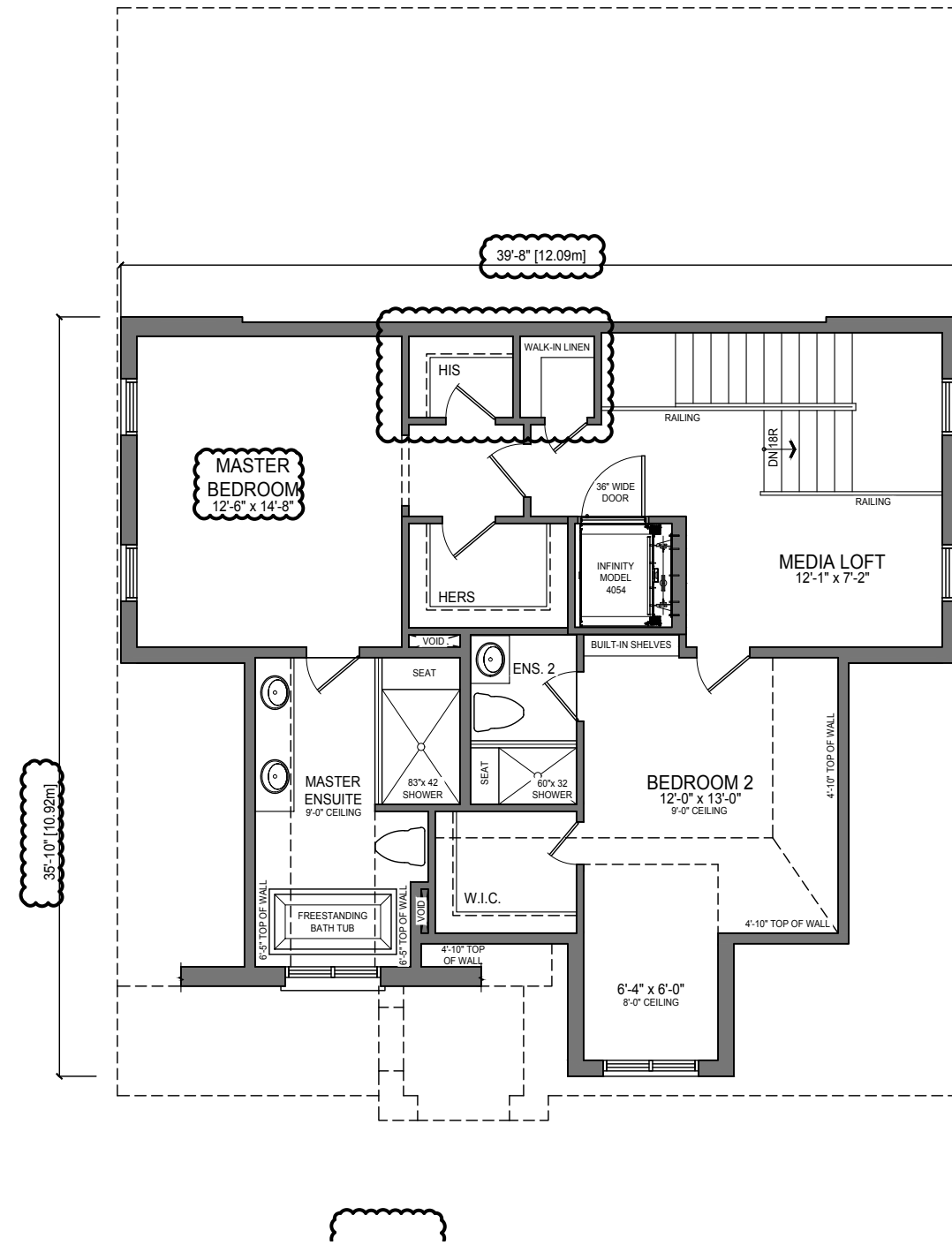
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GROUND FLOOR AREA	= 1527 sq. ft.
OPEN TO BELOW	= 0 sq. ft.
MAX. COVERAGE (Lot area= 6079 sf)	= 1823 sq. ft.
COVERAGE (31.98%)	= 1944 sq. ft.
TOTAL AREA	= 2609 sq. ft.

Client:	ABRAHAM ISREALSKI
Lot:	LOT 121
Address:	23 DONNALYN DRIVE CITY OF TORONTO
Sheet Title:	GROUND FLOOR PLAN
Drawn By:	HL
Date:	AUG. 8/17
Project No.:	16-64
Page:	2 OF 7
Scale:	1/8" = 1'0"

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SECOND FLOOR PLAN
 SECOND FLOOR AREA
 OPEN TO BELOW (incl.) = 1082 sq. ft.
 = 0 sq. ft.

Client:	ABRAHAM ISREALSKI		
Lot:	LOT 121		
Address:	23 DONNALYN DRIVE CITY OF TORONTO		
Sheet Title:	SECOND FLOOR PLAN		
Drawn By:	HL	Date:	AUG. 8/17
Project No.:	16-64	Page:	3 OF 7
Scale:	1/8" = 1'0"		

20 RIVERMEDE ROAD, UNIT 101, VAUGHAN, ONTARIO, L4K 3N3
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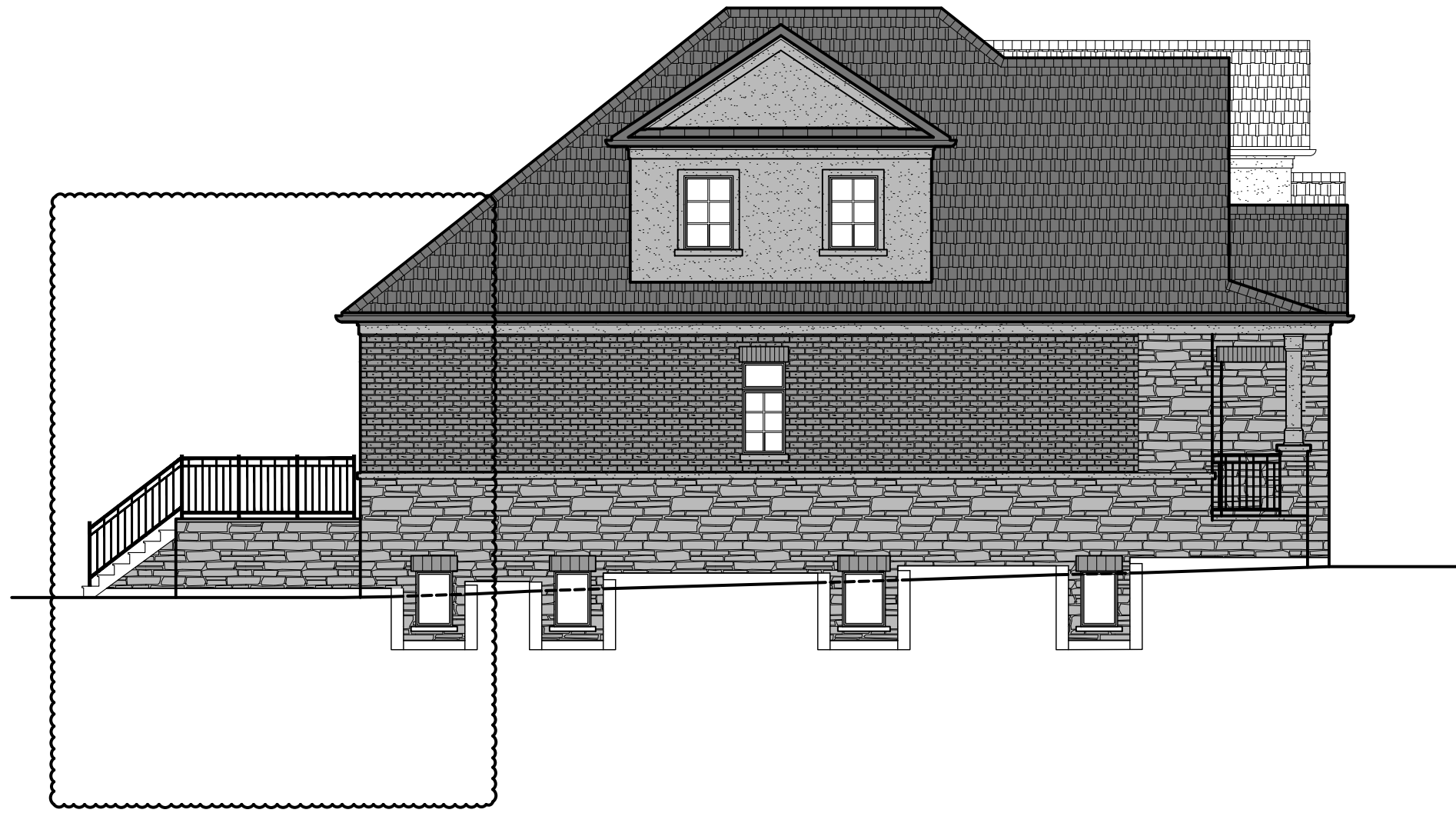
Client: ABRAHAM ISREALSKI

Lot: LOT 121

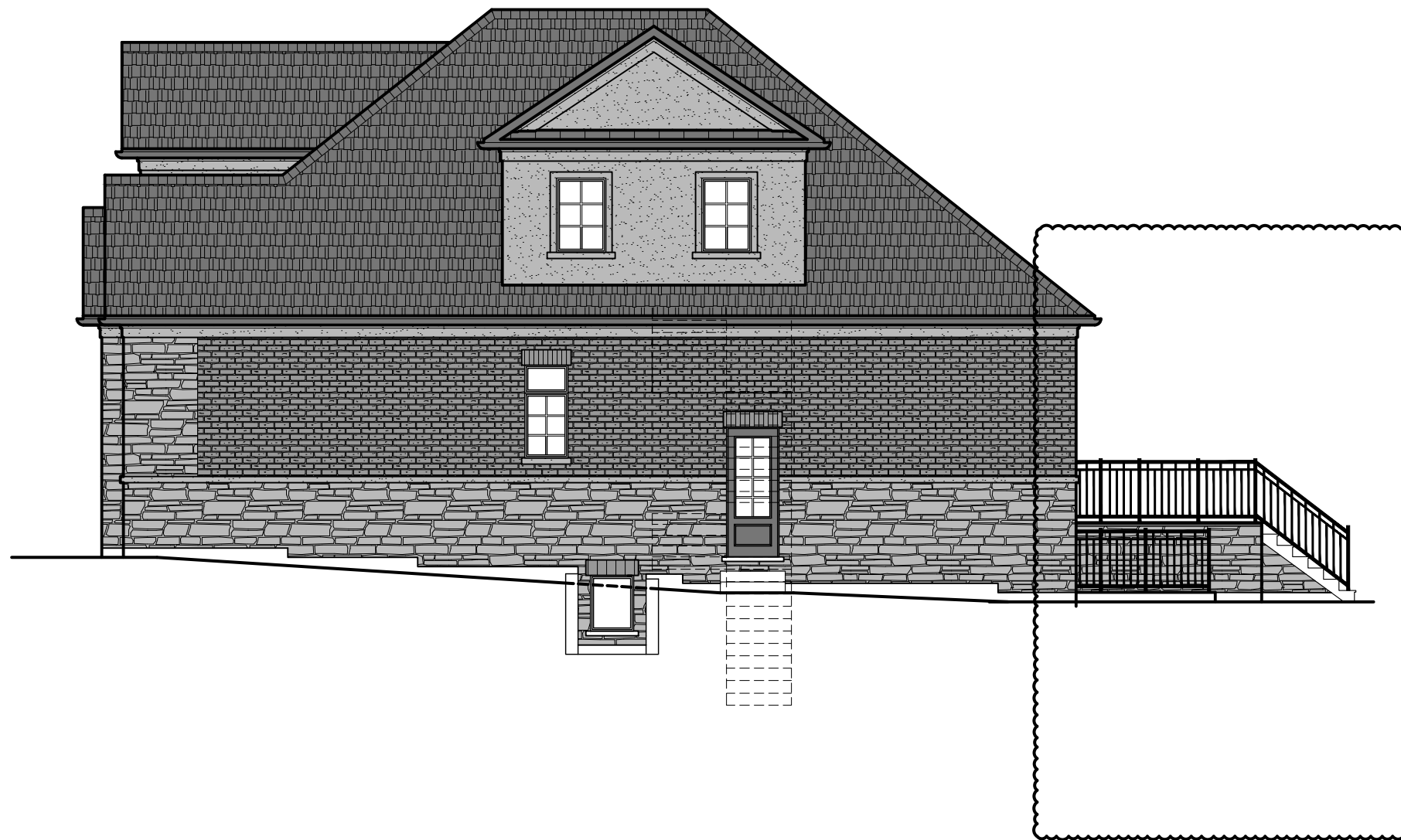
Address: 23 DONNALYN DRIVE
CITY OF TORONTO

Sheet Title: FRONT ELEVATION

Drawn by:	HL	Date:	AUG. 8/17
Project No:	16-64	Page:	4 OF 7
Scale:	1/8" = 1'0"		



Client:	ABRAHAM ISREALSKI	
Lot:	LOT 121	
Address:	23 DONNALYN DRIVE CITY OF TORONTO	
Sheet Title:	LEFT SIDE ELEVATION	
Drawn By:	HL	Date: AUG. 8/17
Project No.:	16-64	Page: 5 OF 7
Scale:	1/8" = 1'0"	



Client:	ABRAHAM ISREALSKI	
Lot:	LOT 121	
Address:	23 DONNALYN DRIVE CITY OF TORONTO	
Sheet Title:	RIGHT SIDE ELEVATION	
Drawn by:	HL	Date: AUG. 8/17
Project No.:	16-64	Page: 6 OF 7
Scale:	1/8" = 1'0"	



Client:	ABRAHAM ISREALSKI	
Lot:	LOT 121	
Address:	23 DONNALYN DRIVE CITY OF TORONTO	
Sheet Title:	REAR ELEVATION	
Drawn By:	HL	Date: AUG. 8/17
Project No:	16-64	Page: 7 OF 7
Scale:	1/8" = 1'0"	

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