

DECISION AND ORDER

Decision Issue Date Tuesday, January 23, 2018

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

Appellant(s): 1513316 ONTARIO INC

Applicant: DREW LASZLO ARCHITECT INC

Property Address/Description: 569 ARLINGTON AVE

Committee of Adjustment Case File Number: 17 149921 STE 21 MV

TLAB Case File Number: **17 229638 S45 21 TLAB**

Hearing date: Monday, January 08, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

1513316 Ontario Inc.

Tae Ryuck, Planner

City of Toronto

Adrienne deBacker,

Sarah Amini, Counsel

Alon Eizenman

In person

Monica Ackermann

In person

Kevin Ghiglione

In person

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) by the Company owning the property and its principal Mr. Jonathan Kudlats, from the refusal of the Committee of Adjustment (COA) to approve certain variances from the City-wide Zoning By-law No. 569-2013 (the “New By-law”, not yet in force) and the York Zoning By-law No. 3623-97 (the “York By-law”). The property is located on the east side of Arlington Avenue, north of St. Clair Avenue and immediately west of the Cedarvale Ravine. It is designated as Neighbourhoods in the Official Plan, and zoned RM (f12.0; u2; d0.8) in the New By-law and R2 Z0.8 in the York By-law.

The proposal is to permit the construction of a new three-storey detached dwelling with an integral garage. The site is within an area regulated by the Toronto Region Conservation Authority (“TRCA”), and is also subject to the City’s Ravine and Natural Protection Feature Protection By-law, requiring a clearance from the City’s Urban Forestry department.

BACKGROUND

The City of Toronto (“City”) appeared as a party at the appeal, and three of the neighbours also sought party status to express their concerns. Shortly before the hearing the City and the owner reached a settlement addressing the City’s objections. The Minutes of Settlement and an amendment to the design were submitted at the hearing, as well as conditions that the TLAB was requested to impose if the appeal is granted.

MATTERS IN ISSUE

The City’s principal objection was to the location of the front entrance door on the north side of the proposed dwelling. This would exit right onto the existing driveway between the home and the neighbours’, Ms. Ackermann and Mr. Ghiglione at 571 Arlington. Many of those in opposition at the COA and the TLAB hearings shared this concern. There were other objections, as set out in Councillor Mihevc’s letter to the COA (August 21, 2017):

“...the driveway's width exceeds the width of the parking space to which it leads, and as a result prioritizes the garage entrance over the front door of the dwelling. This variance also increases the amount of hard surface space, while minimizing the amount of soft space, which fails to maintain the purpose of the provision. In doing so, it also triggers significant variances and does not facilitate appropriate development for the area.”

JURISDICTION

On 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 new

consideration of the variances before 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.

The TLAB must also have regard to matters of provincial interest as set out in section 2 of the Act, be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) the 2017 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 COA decision and the materials that were before that body. I have carefully examined these materials.

To the extent that the variances requested differ from those before the COA, I accept that the Applicant’s proposed revision is to only one feature of the plans, and involves only one variance in the original application. The change to the entrance is considered minor, as all parties appeared to favour it. As such, I find that no further notice is required pursuant to s. 45 (18.1.1) of the Act, and the revisions can be considered.

EVIDENCE

Planning evidence for the applicant was provided by Mr. Tae Ryuck, qualified as an expert witness based on his many years’ and broad depth of land use planning experience. He outlined the events to date, and explained the revisions made to the plans because of the relocation of the front door.

These are the variances sought before the COA :

1. Chapter 10.80.40.10.(2)(B)(i), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 8.5 m.

In this case, the height of the side exterior main walls facing a side lot line will be 9.0 m.

2. Chapter 10.80.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.80 times the area of the lot (249.25 m²).

The proposed floor space index is equal to 0.908 times the area of the lot (282.99 m²).

3. Chapter 10.80.40.70.(3)(A), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The proposed east side yard setback is 0.60 m from the east side lot line.

4. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves are permitted to project a maximum of 0.9 m provided that they located no closer than 0.30 m to a lot line.

The proposed roof eaves project 0.9 m and will be located 0.15 m from the east lot line.

5. Chapter 10.5.100.1.(1)(C)(ii), By-law 569-2013

The maximum permitted driveway width is limited to the width of a parking space provided beyond the front wall, which in this case is 3.3 m.

The driveway width will be 4.6 m.

6. Chapter 5.10.40.70.(6), By-law 569-2013

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 m from that shoreline hazard limit or stable top-of-bank.

The proposed dwelling is set back 2.92 m from a shoreline hazard limit or stable top-of-bank.

7. Section 8.3.(A), By-law 1-83

The maximum permitted floor space index is 0.8 times the area of the lot.

The proposed floor space index equal to 0.908 times the area of the lot.

Mr. Ryuck outlined the nature of the site and its neighbourhood context. The lot has a frontage of 9.91m and a depth of about 30 m. It is located in a residential neighbourhood of mainly one- to three-storey single-detached dwellings. While stable, there has been significant regeneration in the form of redevelopment and additions. There is a mixture of lot sizes and frontages on the street.

In his opinion the proposed three-storey home would indeed fit within this area, which is comprised of many building forms - older dwellings, some semi-detached, and also newly constructed three-storey homes (Photos, Ex. 4). This dwelling would have a consistent massing, height and density with many in close proximity. Nearby are schools, parks and Eglinton Ave., a major arterial providing transit and shopping.

The property shares a driveway with the lot to the north, 571 Arlington. This permits access to garages now at the rear of the two lots. The proposal for 569 includes an integral garage since no new garage can be placed at the rear because of the ravine restrictions. The integral garage would have a positive slope, so no variance is required for this. The existing driveway would not be impacted, permitting the neighbours to retain access to their garage at the rear.

He commented specifically on the variances. Respecting Variance 1, the height of the side exterior main walls, these would be similar to nearby homes and others within the area. The overall height of 11 m does not require a variance, and is also consistent with other structures nearby. There is also no variance needed for building length, as the proposed home at 14.47 m is well under the by-law standard of 17 m.

Variances 3 and 4 deal with side yard setbacks, and are also common in the setting. In this area most lots have a reduced side yard setback on one side; this is the prevailing pattern on the street.

Respecting Variances 2 and 7 for increased density, this proposal would be consistent with the height, massing and scale of nearby properties.

Variance 5 concerning driveway width is needed to accommodate the integral garage. Because of the mutual drive that will be retained, the width of the front portion of the lot will have to increase. It still meets the overall landscape perspective, and retains the streetscape as there are many others that are similar.

The lot itself slopes down toward the ravine to the rear, but the Toronto Regional Conservation Authority and Urban Forestry had no objections to the proposed Variance 6 (Exhibits 8 and 9).

Respecting the Official Plan policies, the site is designated Neighbourhoods. The OP directs intensification towards designated growth areas, but states in section 2.3 that Neighbourhoods shall be stable but not static. A cornerstone policy is to ensure that new development in neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood. In Mr. Ryuck's opinion, the proposed dwelling respects and reinforces the existing physical character of the neighbourhood. It is a single detached home, modest in size and height, and is deployed appropriately on the lot. The existing character of the neighbourhood is one that is already experiencing regeneration and intensification by redevelopment via severances and additions, while not impacting the stability of the neighbourhood.

He stated that physical changes to established neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective is found in section 4.1: that new development respect and reinforce the general physical patterns in a neighbourhood. Policy 5 is the key test. The criteria enumerated in (a) through (h) are those that provide direction in assessing the character and evaluating whether the test is met. If the proposal does not offend any of the characteristics and criteria identified, then the policy is met. The applicable criteria are:

(c) heights, massing, scale – speaks to deployment of built form on the lot. In his opinion the proposed here is completely consistent with other heights/massing/scale on the street. It is a modest house, the opposite of overdevelopment. The proposed 11 m height is within the zoning by-law requirements. From a streetscape perspective the proposal seamlessly integrates into the neighbourhood, and provides architectural character to the streetscape.

(d) prevailing building types – speaks to type of housing, (i.e. singles, semis, townhomes). The proposed is a single detached dwelling, consistent in form and massing with other homes in the area.

(e) setbacks of buildings from the street – this is the desire is to maintain uniformity of setbacks if present – here the front setback is consistent with the street and adjacent dwellings, requiring no variance.

(f) prevailing patterns of rear and side yard setbacks and landscaped open space – the proposed is reflective of the prevailing building setbacks (see Area Context Map, Exhibit 3). There is no front or rear yard setback variance required. The site would meet the landscaping requirements in spite of the increased driveway. Permeable pavers are proposed.

By policy 8, the OP also provides guidance about how to assess character. Performance standards in the zoning by-law are intended to provide guidance to ensure compatibility of new development with existing physical character. Mr. Ryuck testified that three things are relevant to determine character – existing conditions (including those that pre-date the by-law), by-law standards, and minor variances already granted. The proposed dwelling represents the general physical patterns of the neighbourhood. The design and orientation of the home are consistent with other homes within the neighbourhood. The proposed will result in a consistent street frontage and a building envelope reinforcing the physical character and streetscape.

His conclusion was that the proposed variances individually and cumulatively meet the general intent and purpose of the OP.

The test of the intent and purpose of the zoning by-law is also met, he testified. The subject site is zoned RM in the New By-law and R2 in the York Zoning By-law. The general intent of a zoning by-law is to ensure compatible built form within an area, and that there will be no unacceptable adverse impacts on the streetscape or on adjacent properties.

The FSI has been deployed on the property and within a built form that is consistent with the homes within the neighbourhood. There have been other approvals nearby of FSI up to 1.0 FSI. However, each site needs to be evaluated individually. The proposed does not envisage a building form that changes the physical character of the neighbourhood. Also, many houses in the neighbourhood already exceed the by-law requirements. This pattern is characteristic of this neighbourhood. In his opinion, the proposed does not represent a dramatic increase that reflects overdevelopment.

Integral garages are permitted in the neighbourhood, and do exist there. Existing side yards do not meet the by-law standards, and this too is typical of this neighbourhood. The proposed side main wall height of 9.0m, from a quantitative and more importantly qualitative perspective, does not result in a built form that is out of character with immediate adjacent properties or the neighbourhood. The proposed height integrates seamlessly within the Arlington Avenue streetscape.

Mr. Ryuck's testimony was that the goal of the zoning by-laws is to maintain a house form (i.e. massing, height, setbacks) and lot sizes which are compatible with what is on the street and in the neighbourhood. However, as with the OP policies, compatible does not mean "the same as." The overall intent of the by-law is to arrive at a built form with development standards that will be compatible and will have no adverse impacts on the existing neighbourhood. The proposed does maintain this intent and purpose, and does not introduce an inappropriate building form that

creates any adverse impacts. Therefore in his opinion the proposed variances individually and cumulatively meet the intent and purpose of the zoning by-laws. There would be no detrimental effect on neighbouring properties with respect to views, massing or shadowing. He concluded that the test of “minor” is indeed met, from both a quantitative and qualitative perspective.

The test of desirable for the appropriate development or use of the land, building or structure is also met by this fairly modest proposal. It does not push the permitted building envelope in any undesirable way, i.e., that neighbours experience undue shadowing or overlook. Some such impacts are expected in urban areas. This would not create undesirable adverse impacts for neighbours or the neighbourhood, in his opinion.

Mr. Ryuck responded to Ms. deBacker’s questions of clarification. The change in location of the front entrance does meet the OP policy 3.1.2.1 (b). This states:

“1. New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by:...

b) locating main building entrances so that they are clearly visible and directly accessible from the public sidewalk;”

Under cross examination by Ms. Ackermann, he stated that there may be some impact on sight lines from her second storey at 571 Arlington. However, the height requirements and separation distances were met. Thus even if there is some impact it was a permissible one. There would be no direct view into the rear yard. Windows would be placed only in the front two-thirds portion of the building on the west side, next to her property. Ms. Ackermann said that she merely wanted clarification of any impacts.

Mr. Eisenman lives at 565 Arlington, two down from the subject. He asked Mr. Ryuck in cross about the second floor windows on the west side. There are no windows on the south side. Mr. Ryuck replied that there is no obligation to place windows only where there would not be views into neighbouring properties. These are placed appropriately in compliance with the Building Code, are relatively small and are separated from 571 by the width of the driveway. They are required to admit light into the new building. Those on the first floor would be frosted glass to protect privacy.

Ms. Ackermann was grateful that the main entrance had been altered from the mutual driveway. She expressed some residual concern about retention of the driveway access, and was assured that it would be maintained, as had been agreed to many years ago. Her reservation about reduction in the width was allayed by a reassurance that it applied only to the front of the subject property, and that no side yard setback was required for this area. It was the owners’ intent to use only the integral garage for parking, and perhaps another space in front of it if necessary. There would be no impact on the mutual drive.

She maintained her concern about views into the main living spaces at 571 which are on the second floor. The neighbour to their north had installed frosted windows on his second floor to address this concern. She was also worried about location of a fence and construction issues, and was informed that TLAB had no jurisdiction over these issues.

In addition to his professional opinions respecting the section 45 tests, Mr. Ryuck's opinion was that the proposal is consistent with the Provincial Policy Statement as well as the Growth Plan. It would optimize the efficient use of land, resources and infrastructure, including existing and planned public transportation, in a compact form.

ANALYSIS, FINDINGS, REASONS

The TLAB has closely considered the opinion evidence of the expert planning witness, as well as that of the City and the neighbours. It accepts Mr. Ryuck's conclusion that the four tests under s. 45(1) of the Act are met for the requested variances.

Respecting the test of "minor", the variances must be found to be minor in measurement as well as in impact for them to be approved. Numerically and practically these variances are minor, even the seemingly large FSI variance of 0.908 versus the By-laws' limitation of 0.8 times the area of the lot. There have been approvals on Arlington up to 1 times the lot area. Mr. Ryuck's uncontradicted professional opinion is that this proposal is well within the range of approvals causing no 'undue' adverse impact. Therefore I find these variances to meet the numeric test of "minor". It is somewhat more difficult to conclude that they will not have any adverse impact, in that the neighbours have testified to the opposite. Any changes will initially seem to have an impact. However, a structure that meets almost all of the zoning restrictions would not in my view unduly impact the neighbours from a planning perspective. It is instructive to examine what the resulting structure actually requires by way of variances. The only variances of any significance are for FSI (a total FSI of 282.99 m² ; and driveway width (just over a metre- 4.6 versus 3.3 m). There are no variances required for the proposed overall building height, length, or lot coverage.

Responses by the City departments to the application expressed no objections, but requested certain conditions. The City has agreed to the proposed variances by the amended Minutes of Settlement (Ex. 12.)

I disagree with the observation found in correspondence and expressed by the Councillor (above, p. 2) and some of the neighbours concerning the front of the property, as it is evident from the photos that there are many very similar designs at the front of other neighbourhood properties.

Respecting Variance 6, the Conservation Authority had the following comments:

"At its closest extent, the new dwelling will be located three meters from the top of bank. The ravine slope to the rear is gradual and well-vegetated, backing onto a field and footpath in the Cedarvale Park. The new dwelling remains no closer to the top of bank than the dwellings of the neighboring properties. TRCA geotechnical staff agree that the

slope is stable and the new dwelling will not be within the erosion hazard limit. Given that the new development will be outside of the erosion hazard and the proposal has regard for the existing development setbacks along the corridor reach, we can support the proposed development in principle and therefore the reduced setback variance.”

I accept that this variance is indeed minor, although it appears to be a somewhat large number. It is a “fit” with the neighbouring properties, as the TRCA found.

Respecting the tests of maintaining the general intent and purpose of the Official Plan and the zoning by-laws, again, the FSI variance appears large. However, when considered in the context of the other variances, and within the neighbourhood, the proposed home is not excessive. Neither objector focused on the density issue. The test is rather whether the proposal is appropriate in the neighbourhood built context. The home would not require a length variance. An integral garage is permitted as of right. The height variance is not large, and would have no unacceptable shadowing or overview of neighbours’ properties. It is accepted law that there is no right to an unobstructed view in an urban setting, or to be free from shadowing, or a claim that privacy should be paramount where there might be overlook. Here there is the very acceptable distance of the driveway between the subject property and 571. Both OP and zoning policies are thus met.

The fourth test in subsection 45(1) is also satisfied. The development is desirable for the appropriate development or use of the land. It will be a more modern interpretation of a permitted structure, but one that meets the test of “fit” for this expanding neighbourhood where many are similar in design and scope.

This panel likewise finds 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 and conforms to the 2017 Growth Plan for the Greater Golden Horseshoe.

A replacement single detached dwelling on the subject property, as proposed, is a desirable contribution, with reasonable and minor variations to both by-laws.

DECISION AND ORDER

The TLAB orders that:

1. The appeal is allowed, and the variance to the City of York By-law No. 3623-97 listed above as number 7 is authorized and approved.
2. The variances to Zoning By-law No. 569-2013 listed above as 1 through 6 are authorized and approved, contingent upon the relevant provisions of this By-law coming into force and effect.

The approval in paragraphs 1 and 2 are subject to the following conditions (numbered 3 to 8):

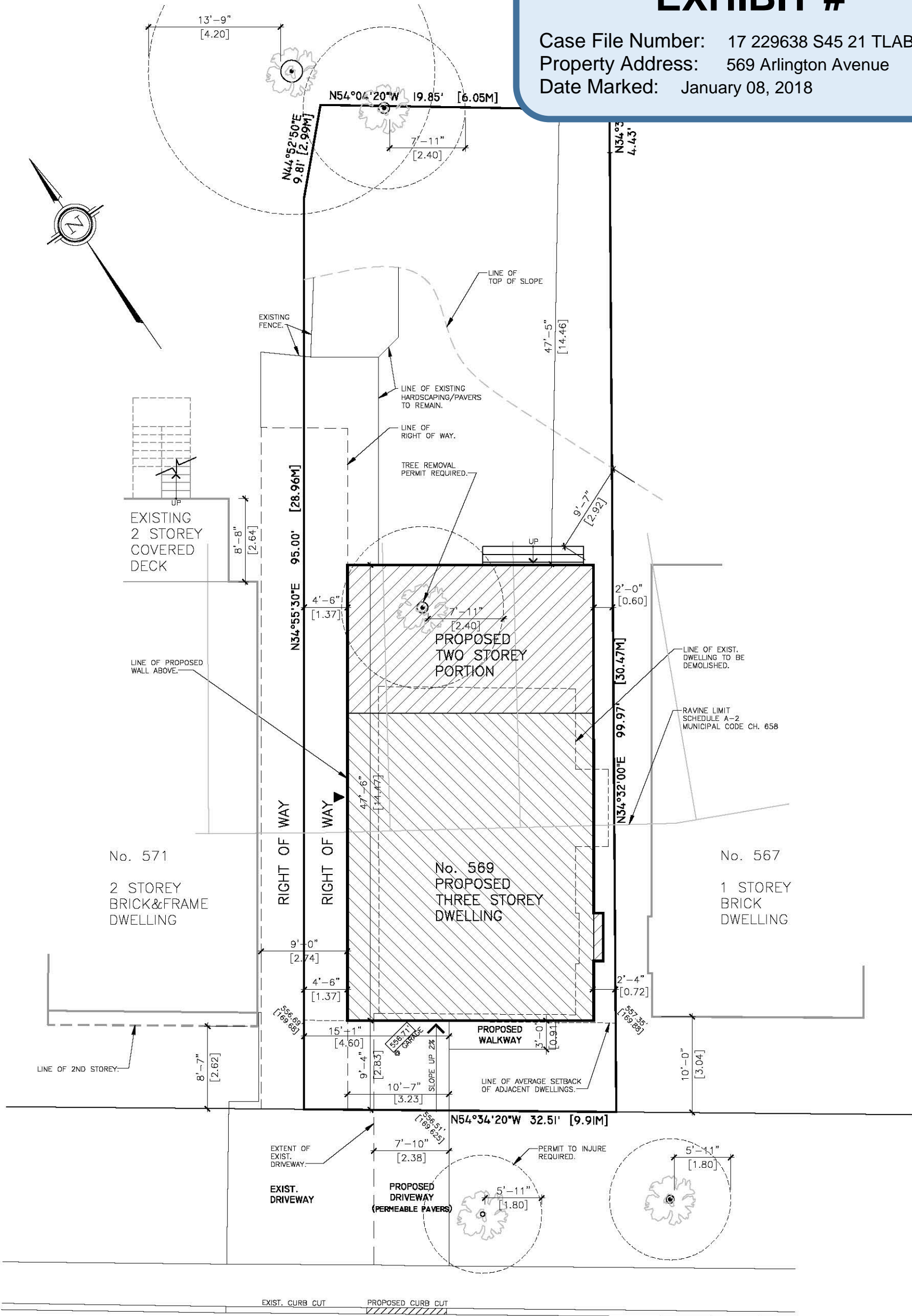
3. The proposed three–storey development shall be constructed substantially in accordance with the site plan and elevation drawings prepared for 569 Arlington Avenue by Drew Laszlo Architect, dated December 4, 2017, and appended as Exhibit 12, the revised Minutes of Settlement, particularly with respect to the changed location of the main entrance to the dwelling from the west elevation to the front elevation, which plans form part of this order. Any other variances that may appear on these plans that are not listed in this decision are not approved.
4. The Applicant agrees that no first floor entrance shall be constructed along the west elevation of the building, as depicted by the west elevation drawing prepared by Drew Laszlo Architect, dated December 4, 2017, and appended to Exhibit 12.
5. The Applicant agrees to construct and maintain the driveway using permeable pavers, as noted on the plans prepared by Drew Laszlo Architect dated December 4, 2017, and appended to Exhibit 12.
6. Prior to the issuance of a building permit, the Applicant shall obtain a permit from Ravine and Natural Feature Protection (“RNFP”) and satisfy all conditions to the satisfaction of the General Manager of Parks, Forestry & Recreation.
7. Prior to the issuance of a building permit, the Applicant shall apply for and obtain required permit(s) from the Right-of-Way Management Section of Transportation Services (i.e., curb cut permits, etc.) and satisfy all conditions imposed, if any, in order to construct the proposed driveway.
8. Prior to the issuance of a building permit, the Applicant shall apply for and obtain a permit from the Toronto and Region Conservation Authority.

X 

G. Burton
Panel Chair, Toronto Local Appeal Body

EXHIBIT # 12

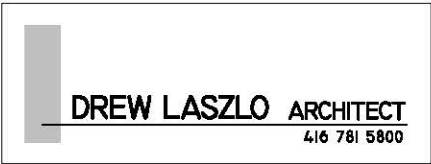
Case File Number: 17 229638 S45 21 TLAB
Property Address: 569 Arlington Avenue
Date Marked: January 08, 2018



ARLINGTON AVENUE

SITE PLAN
3/32"=1'-0"
569 ARLINGTON AVE.

SURVEY INFORMATION PROVIDED BY:
AKSAN PILLER CORPORATION LTD,
ONTARIO LAND SURVEYORS, 2016



Date: December 4, 2017



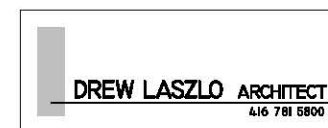
FRONT ELEVATION
3/16"=1'-0"
569 ARLINGTON AVE.

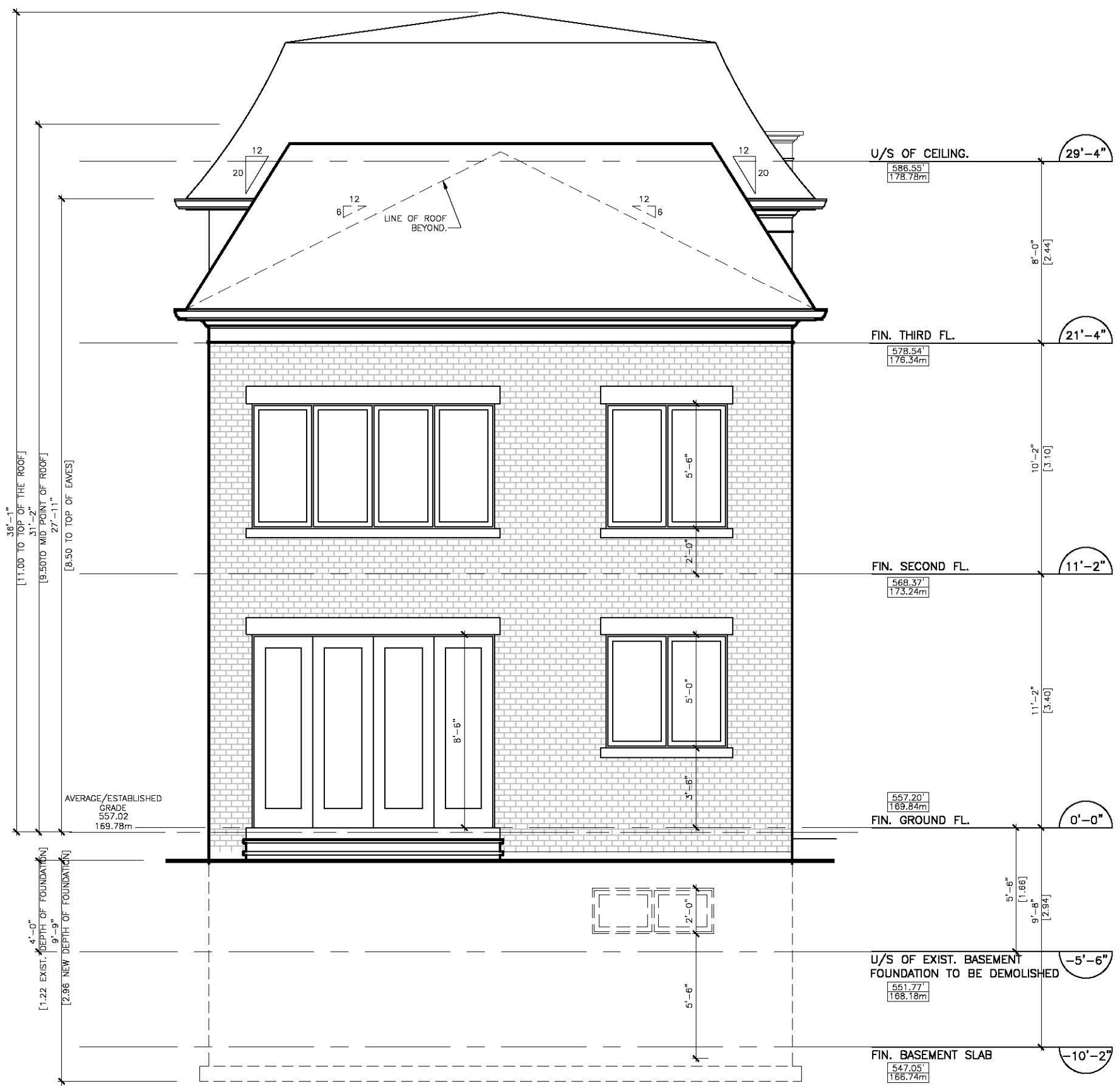




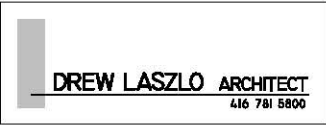
SIDE (WEST) ELEVATION
3/16"=1'-0"
569 ARLINGTON AVE.

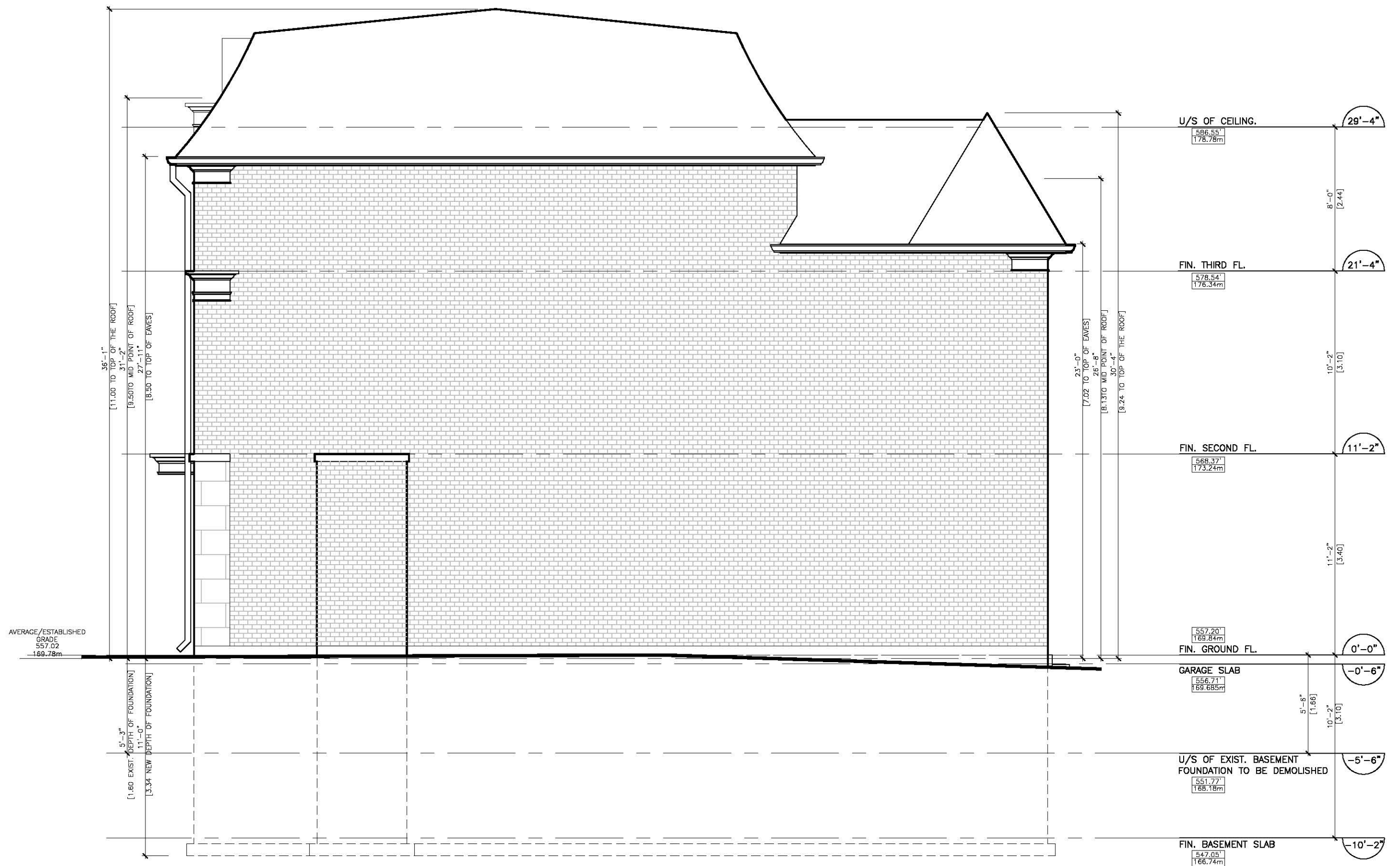
Date: December 4, 2017



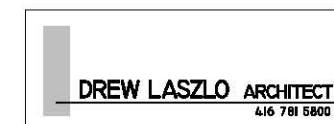


REAR ELEVATION
3/16"=1'-0"
569 ARLINGTON AVE.





SIDE (EAST) ELEVATION
3/16"=1'-0"
569 ARLINGTON AVE.



Date: December 4, 2017