

DECISION AND ORDER

Decision Issue Date Wednesday, February 07, 2018

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

Appellant(s): George Przybylowski

Applicant: Glenn Rubinoff

Counsel or Agent: Eileen Costello

Property Address/Description: 29 Fairfield Rd

Committee of Adjustment Case File Number: 17 111416 STE 22 MV (A0110/17TEY)

TLAB Case File Number: 17 181891 S45 22

Hearing dates: Friday, September 29, 2017 AND Monday, September 11, 2017

DECISION DELIVERED BY ENTER S. Gopikrishna

INTRODUCTION AND BACKGROUND

Linda Forsythe and George Przybylowski are the owners of 29 Fairfield Road located in Ward 22 of the City of Toronto and the Appellants in this appeal. They want to replace the existing house and build a new two storey detached dwelling with an integral garage, front porch, rear basement walkout and a rear first floor deck, the scope of which required relief from the City's by-laws. The Appellants initially applied to the Committee of Adjustment (COA) requesting relief from the by-laws. The City of Toronto (City)'s Planning Department expressed concerns about some of the variances. The COA heard the application on 30 May 2017 and refused all the requested variances.

The decision was appealed to TLAB on 16 June, 2017. The Appellant subsequently had discussions with the City and modified the proposal to address the City's concerns. The requested variances are recited below:

City Wide Zoning By-Law 569-2013:

1. Chapter 10.5.40.10(5)

A minimum of 10 sq m of the first floor must be within 4 of the front main wall. In this case, 7.29 sq m of the first floor will be within 4 m of the front main wall.

2. Chapter 10.10.40.10.(1)

The maximum permitted building height is 9 m whereas the proposed building here is 9.24 m.

3. Chapter 10.10.40.10(2)

The maximum permitted height of all exterior main walls facing side lot line is 7.0 m. The proposed height of the side exterior main walls facing a side lot line is 7.54 m.

4. Chapter 10.10.40.40 (1)

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (187.26 sq. m). The new detached dwelling will have a floor space index equal to 0.676 times the area of the lot (211.1 sq m).

5. Chapter 10.5.40.70(1)

The minimum required front yard setback is 8.02 m. The new detached dwelling will be located 7.07 m from the north front lot line.

Toronto Zoning By-law 438-86

6. Section 6(3) Part I 1

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (187.26 sq. m). The new detached dwelling will have a floor space index to 0.676 times the area of the lot or 211.1 sq. m.

7. Section 6(3) Part II 2 (II)

The minimum required front yard setback is 8.02 m. The new detached dwelling will be located 7.07 m from the north front lot line.

8. Section 6(3) Part II 3.B(II)

The by-law requires a detached house in a R1S district to have a minimum side lot setback for the portion of the building not exceeding 17 m in depth. The proposed side lot line setback is 0.75 m from the east lot line.

9. Section 6(3) Part II 8 D(I)

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade.

The proposed height of the platform at the front (front porch) is 1.24 metres above grade. front porch will have a height of 1.24 m above grade. The proposed height of the platform at the rear (rear deck) is 2.36 m above grade.

10. Section 6(3) Part IV 3 (II)

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access is located in a wall facing the front line. The proposed integral garage is below grade.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

This appeal involved 2 full day hearings on September 11 and September 29, 2017. The evidence is presented chronologically. On 11 September, the hearing began with an introduction of Parties and Participants. Ms. Eileen Costello introduced herself as the Agent for the Appellants, Linda Forsythe and George Przybylowski. Ms. Adrienne deBacker and Ms. Jessica Braun introduced themselves as Lawyers representing the City of Toronto which had elected for Party Status. Mr. Norman Height, the next door neighbour at 31 Fairfield, introduced himself as a Party as well as the representative of the local Neighbourhood Association. Ms. Costello objected to the recognition of the Neighbourhood Association as a Party because it wasn't incorporated nor had they requested Party status. Reviewing the list of Parties and Participants provided to me by TLAB staff, I didn't see any indication for Party status by the Neighbourhood Association- I informed Mr. Height that while he would be recognized as a Party, the Neighbourhood Association wouldn't be recognized as one. Mr. Height also stated that he had bad eyesight and that he would be helped by Mr. Robert Brown. Mr. Brown introduced himself and said that he would be the "eyes and ears" for Mr. Height. Ms. Costello objected to this to ensure that Mr. Brown wouldn't double as a second agent for the Opposition - I informed Mr. Brown that he could only be the eyes and ears for Mr. Height but couldn't act as agent for any Party.

Mr. Anthony Luke and Ms. Lorraine Ferris then introduced themselves as Participants in this matter. The former lives at 20 Fairfield Road while the latter lives at 31 Fairfield Road. Mr. Marc Willoughby, who resides at 247 Broadway Avenue, also introduced himself as a Participant. Ms. Costello objected to Mr. Willoughby's participation because Mr. Willoughby had not applied to be a Participant. I again reviewed the list of Parties

and Participants provided to me by TLAB and didn't find Mr. Willoughby's name. I therefore informed him that he couldn't be included as a Participant.

Ms. Costello gave her opening statement. She said that her clients were planning to construct a new house at 29 Fairfield with an integral garage, front porch, rear basement walkout and a rear first floor deck. She said that the character of the house was consistent with residential character of the neighbourhood and demonstrably complied with the 4 tests. She also said that the City's not calling evidence was of significant importance and that Mr. Height would discuss the community reaction and opposition as opposed to the cogent and comprehensive planning reasoning that went into the proposal.

Ms. deBacker, representing the City, spoke next. She said that there were no comments about height and other variances. The City had a comment about the size of the rear deck. She also said that they wouldn't be calling any evidence. The City is amenable to changes and will retain its Party status notwithstanding its not calling evidence. They will however make final argument. Finally, Mr. Height provided a brief statement where he said that his evidence would be slanted towards his conclusion that that the development was not sympathetic to the community.

The Appellants began presenting their case with Ms. Costello's introduction of Mr. Martin Rendl who is an experienced Land Use Planner. She reviewed his C.V and asked that he be recognized as an Expert Witness. There were no questions or objections from other Parties. After I recognized Mr. Rendl as an Expert Witness, he began with a brief description of his retainer. He said that he been retained by the Appellant before COA hearing. Prior to the hearing, he had met with the neighbours and had discussions with them. He continued to be involved with the project after the COA's refusal of the project.

He then provided insight into some of the highlights of the project. He pointed out that an integral garage at the end of a positive slope is permissible, there is a variance request because of an ostensible negative slope. This is a technical variance required by the City's Planning Department, which is common where the slope is positive but technically negative. In response to a question from Ms. Costello requesting clarification of the City's position regarding the slope variance, Mr. Rendl said that the City was aware of the request and had not objected to the variance. He also pointed out that the Site Plan (Page 22 of Exhibit 1) was mislabeled because the East and West elevations had been switched. He then briefly discussed the variance related to the deck and said that it had been scaled down from the proposal submitted to the COA where it jutted it further into the backyard. The deck had been scaled down as a result of discussions with the City. There are steps between the house and the deck. While there is a side yard variance requested with respect to Ms. Ferris' property, there is no variance requested with Mr. Height's property. The proposal requests an FSI of 0.676 when the permissible FSI is 0.6. There are no variances for building depth, length or rear yard setback.

Mr. Rendl began by providing the summary of his planning opinion. He said that in his opinion, the variances are consistent with the 2014 PPS (Provincial Policy Statement) and conform to the 2017 Growth Plan for the Greater Golden Horseshoe. In

addition, they satisfy all four tests of Section 45(1) of the Planning Act. He also stated that the variances permitting the development of the lot for a single detached home had been carefully designed to avoid impact on neighbouring lots while ensuring an appropriate residential amenity attuned to the specific needs of the owners. Lastly, in Mr. Rendl's opinion, the proposed development represents good planning.

Mr. Rendl then provided us with a photographic tour of the neighbourhood in which the proposal is situated. Located North of Eglinton Avenue, the area of interest consists of Broadway, Fairfield and Roehampton. Fairfield is a local street with a predominance of two storey detached houses with rectangular lots, which according to Mr. Rendl, is typical of Toronto. The adjoining street of Broadway has a variety of houses, such as two storey buildings, semi-detached, detached dwellings and some townhouses. Redevelopment expresses itself in the form of owners building newer and bigger homes after demolishing their existing houses. On Fairfield Road, many houses don't have garages and front yard parking is common. 26 Fairfield is a new development which has an integral garage. 60 and 62 Fairfield Rd are replacement homes. On the South side of Fairfield, 15 and 17 have internal garages while 22 and 23 Fairfield have no garages. 33 and 35 Fairfield are 2 storied buildings while there are replacement homes at 43-47 Fairfield. Mr. Rendl undertook a similar pictorial walk through Roehampton Avenue and pointed out that houses which back onto Fairfield Road are similar to the latter in type and diversity. There is also a diversity of building heights because the newer houses tend to be higher; likewise one also sees a diversity of site planning and heights/roof patterns. With the help of a Property Analysis Map, Mr. Rendl discussed the statistics.

The community of interest, as defined in the previous paragraph, has houses with densities from 0.26 to 0.89. There is a zoning transition between 44 and 46 Fairfield because this is where the former City of Toronto meets the former City of North York while the new harmonized by-law 569-2013 applies to all houses. The portion falling into the former City of Toronto is zoned R1S while the portion falling into North York is RD. In response to Ms. Costello's questions about the ordinary person's ability to tell the differences between housing governed by different zoning, Mr. Rendl said that one couldn't tell the difference.

Mr. Rendl then discussed the Provincial Policy Statement (PPS) and its application to the proposal of interest. He stated that the proposed development of a detached dwelling at 29 Fairfield exemplified modest intensification because the proposed density was higher than the existing density. The proposed development is also consistent with the PPS' policies for managing and directing land use to achieve efficient and resilient development and land use patterns. The proposed development promoted efficient land development use patterns, cost effective development patterns and standards to minimize land consumption and servicing costs. It made efficient use of infrastructure and available public service facilities and incorporated appropriate development standards which facilitate compact urban form.

Mr. Rendl then discussed the adherence of the project to the Growth Plan for the Greater Golden Horseshoe, 2017. According to Mr. Rendl, the proposal represent modest intensification because it makes efficient use of land and infrastructure and contributes to building compact communities and urban forms, and supports the

achievement of the minimum intensification targets of the Golden Sshow Growth Plan as implemented through the Official Plan and the Zoning By-law.

Mr. Rendl then commenced his discussion of the Official Plan (OP) and its application to the proposal. He began with Policies 1.1.3.2 and 1.1.3.4 which discusses land use patterns and efficient use of land as well as facilitating intensification. He then highlighted the OP's well known characterization of neighbourhoods as being "stable but not static" and added replacement homes constitute one example of implementing such a policy. Change has to be introduced into neighbourhoods without destabilization. Ms. Costello asked Mr. Rendl to comment on the proposal being an example of "massification" and how this related to intensification based on Participant feedback. Mr. Rendl responded by stating that in his opinion, the proposal was modest "intensification" because it wasn't an outlier in terms of either height or density. There is no definition of the expression "massification" in the OP. The next question regarded Mr. Rendl's opinion if the proposal could destabilize the community. Mr. Rendl responded by stating that destabilization was exemplified if an entire apartment complex were dismantled elsewhere and then reassembled on the street of interest. He pointed out that the proposal didn't contemplate such drastic change nor was it the first replacement on Fairfield. He explained that stabilization wasn't synonymous with cloning or replication, even in Heritage Areas.

Mr. Rendl then went on to discuss Chapter 4 of the OP – Land Use designations. In this discussion, he specifically highlighted Section 4.1.5 which defines Physical Character of the Neighbourhood and how the expression "unique" applied to the physical character of a Neighbourhood. According to Mr. Rendl, a community's uniqueness may be defined by the very lack of a single defining feature- the community could be unique because there is no unique landscape nor prevailing built form. Applying specific functions of the this policy, Mr. Rendl pointed out that with respect to massing, scale and FSI., the proposal respected and reinforced what already existed in the community. The building type didn't change and that the front yard setback was consistent with the next house at 27 Fairfield. Mr. Rendl then discussed how change takes place in communities. Changes to established neighbourhoods ought to be sensitive, gradual and "fit" the existing physical character by respecting and reinforcing general physical patterns in neighbourhoods.

In Mr Rendl's opinion, the emphasis for assessing compatibility and fit of new developments is assessed through fulfillment of objectives for change and new development in stable residential neighbourhoods. Development in neighbourhoods should respect and reinforce the existing physical character of the neighbourhood- the appropriateness of the planned development may be assessed through parameters such as

- heights, massing, scale and dwelling type of nearby residential properties,
- Prevailing building types
- Setbacks of buildings from the street.

Mr. Rendl prefaced his discussion of how the variances were consistent with the Zoning. Ms. Costello asked Mr. Rendl if the proposal was consistent with both sets of by-laws. Mr. Rendl replied in the affirmative and then addressed how the variances

maintained the general intent and purpose of the Toronto zoning by-law and the Harmonized By-Law. Mr. Rendl grouped the variances listed into the introduction section into the categories of Built form, Setbacks from Lot Lines, Front Porch. He then discussed each group of variances and their consistency with Zoning By-laws 569-2013 and 438-86.

Variances 1-4 correspond to the Built Form. The general intent and purpose of zoning standards governing built form, including maximum floor area and maximum building height, is to control the massing of a house on a lot. The 9.24 m height is necessary to accommodate an internal elevator needed by the owners to provide for aging and future mobility needs. This is a modest increase above the 9 m maximum height provided. The extra height of 0.24 m is not discernable from the street and has no significant impact. Likewise, the 7.54 m height of the exterior main wall maintains an appropriate height for the side wall in the context of the overall building height and has no resulting impact. Ms. Costello asked again if the extra 0.24 difference would be perceptible from the street and if that would that create an “impact”? Mr. Rendl reiterated that neither would the change be perceptible nor would it create an impact.

Mr. Rendl then discussed the variance requiring a smaller area (7.29 sq m) of the first floor being within 4 m of the front main wall than what is permitted (10 sq m). Mr. Rendl explained this by stating that this was the result of the sunken foyer with an area of 13.2 square metres. In response to Ms. Costello’s question about whether this was perceptible from the street, Mr. Rendl replied in the negative. Ms. Costello followed up by asking if the City’s Planning Department had expressed concerns about this variance to which Mr. Rendl replied in the negative.

Mr. Rendl then discussed the change in FSI- he pointed out that the proposed FSI of 0.676 represented a modest increase above 0.6 FSI allowed under By Law 569-2013 and wouldn’t be perceptible in the overall mass and scale of the proposed house. The length and depth of the new house comply with the Zoning By-law. The proposed FSIs and building heights are below what has been approved for 21 and 26 Fairfield Road as well as being within the range of other new houses approved and built in the area. The variance from the minimum first floor area within 4 m of the front wall is an internal design feature and provides an appropriate amount of internal first floor area at the main front wall.

Mr. Rendl next discussed the setbacks from the Lot Lines- the specific variances pertinent to Lot Lines are Variance 5 under By-law 569-2013, Variances 2 and 3 under By-Law 438-36. After prefacing his comments that the proposed front and side yard setbacks maintain the general intent and purpose of the Zoning By law. After pointing out the general intent and purpose of a front yard setback is to maintain a generally consistent pattern in the relationship between the front walls of houses on the street, Mr. Rendl pointed out that the proposed 7.07 m front yard setback is consistent with an identical setback at 27 Fairfield. The rear wall of 29 Fairfield aligns with the existing rear walls of the houses at 27 and 31 Fairfield. On the matter of side yard setbacks, Mr. Rendl pointed out that the purpose of the side yard setback is to provide appropriate separation between adjacent houses at 27 and 31 Fairfield Road. The proposed 0.75 m side yard setback for the east yard setback, greater than the 0.45 m setback of the

existing house, provides an appropriate separation between 29 and 31 Fairfield which has its driveway adjacent to the east lot line of 29 Fairfield.

Mr. Rendl then discussed the variance pertaining to the Front Porch and Rear Deck. Variance 4 corresponding to By Law 486-86 is the only by-law from which relief needs to be sought. He opined that the proposed height of the front porch and rear deck maintain the general intent and purpose of the Zoning By-law. The 1.24 m height of the front porch is 0.04 m above the 1.2 m maximum height and the difference is imperceptible from the street. Four steps up to the porch platform is consistent with other houses on Fairfield Road.

The rear deck's proposed height of 2.36 m (for a depth of 1.22 m from the rear wall and a 1.2 m height beyond that point) provides for direct access to the deck from the interior of the first floor level. The rear deck's proposed height of 2.36 m satisfies the condition recommended by City Planning staff in their report of May 24, 2017. The owners reduced the rear deck height in response to the only planning concern by City Planning Staff.

Mr. Rendl then discussed the last set of variances pertaining to the garage. After stating that the general intent and purpose of the zoning by-law is to discourage the construction of a true below grade garage i.e. a garage with a negative slope driveway leading to the garage. In this case, the driveway has a positive slope from the street to the garage opening. City Planning Staff didn't object to the variance for the below grade garage because of the positive slope of the driveway. Mr. Rendl opined that the variance for the proposed garage with a floor level below grade is technical in nature since the driveway leading to the garage has a positive slope, directing drainage to the street and thereby satisfying the general intent and purpose of the Zoning By-law.

Mr. Rendl then presented evidence on how minor of the requested variances. He stated that the acknowledged test of the minor nature of a variance is the nature and extent of adverse impacts on adjacent properties. In this case, the variances do not, either individually or collectively, create any impact on the privacy, views or rear yard amenity areas of nearby properties. The variances help build a house which respects and reinforces the existing physical character of the neighbourhood from a density, height scale and setbacks from lot lines and maintain the existing streetscape of Fairfield Road. Based on these observations, Mr. Rendl concluded that the variances are numerically and substantively minor.

Mr. Rendl summarized his evidence as:

- The variances requested meet the four tests of Section 45(1) of the Planning Act and are appropriate for the development of 29 Fairfield Road.
- The variances are consistent with the 2014 Provincial Policy Statement and confirm to the 2017 Growth Plan for the Greater Golden Horseshoe.
- The variances create no adverse impacts on nearby properties and are minor.
- The variances maintain the general intent and purpose of the Toronto Official Plan and Zoning By-law.
- The requested variances respect and reinforce the existing physical character of Fairfield Road and the neighbourhood and represent good planning.

Based on these conclusions, Ms. Costello asked that the Appeal be allowed and that the variances be approved. She discussed the conditions requested by the City and the need for the driveway to have a 2% slope and the standard condition be built substantially in accordance with the submitted Site Plans and that they were amenable to the conditions.

On the afternoon of September 11, 2017, Ms. deBacker representing the City of Toronto introduced Exhibit No 4 and No 5 which are the City's Classification of Streets and Pavements respectively. She began by asking Mr. Rendl questions about the layout of local streets followed by how the City classified local versus collector streets and their characteristics such as traffic volume, position of sidewalks. She had specific questions about the presence and width of sidewalks on streets such as Roehampton, Broadway, Corinth and Fairfield and the accompanying traffic characteristics. Mr. Rendl said that he wasn't aware of the parameters referred to Ms. deBacker and that he couldn't respond to her questions. When Ms. deBacker attempted to follow up with comparative questions based on the same statistics, Ms. Costello objected to the line of questions because Mr. Rendl had stated that he didn't know the answers to the questions. She also said that traffic characteristics didn't impact the character of the community. I upheld the objection because I didn't understand the purpose of probing questions on a topic which lay outside the Witness' declared expertise and knowledge.

Ms deBacker then asked Mr. Rendl about the Property Analysis Document that he had referred to during the Examination-in-Chief. She pointed to the lack of information about heights and setbacks of buildings in the Property Map. Mr. Rendl replied that he compiled the document based on information based on the City's database which didn't provide information about height and setbacks. Ms. deBacker then asked if Mr. Rendl had information about the heights of buildings on Fairfield Road. Mr. Rendl said that he had eyeballed the heights based on the numbers of floors but didn't have exact information about the heights. Ms. deBacker asked Mr. Rendl if the majority of the buildings on Fairfield Road were less than 9 m to which he said that he didn't know the answer. The next question was about reinvestment on Fairfield. Mr. Rendl agreed that there had not been a whole lot of reinvestment on Fairfield. Ms. deBacker then moved onto the issue of FSI of houses on Fairfield- the ensuing exchange established that there are 35 homes with a FSI of 0.4 or less, 25 with an FSI of 0.6 and 11 with an FSI of 0.61 or more. Mr. Rendl also agreed with Ms. deBacker that many of the houses on Fairfield didn't have garages, let alone an internal garage.

Ms. deBacker then asked Mr. Rendl if he agreed that Policy 2.3.1 required new developments to respect the physical character as opposed to the "as of right" zoning standard. She also wanted to know if Policy 4.1 could be interpreted to mean that the key component of development is to reinforce the character of the neighbourhood? Mr. Rendl agreed with the statement. Ms. DeBaeker then pointed out that Chapter 3 (Built Form) of the OP wasn't included in Mr. Rendl's Expert Witness Statement, and then asked if he agreed that Chapter 3 required that new development be designed to fit harmoniously with the planning context. Mr. Rendl agreed with her in a "general sense". She then asked if Policy 3.1.2.3 specifically required that the façade of the proposed build match the existing context and that the impact on the neighbouring streets be limited? Mr. Rendl's comment was that these Planning Policies applied generally to medium and large builds and not to individual dwellings. Ms. deBacker next asked if the

integral garage resulted in increased massing. Referring to Mr. Rendl's stating that the variance for extra building height was necessitated by the need for an elevator to address probable aging issues, Ms. DeBaeker asked if need constituted a fifth test. Mr. Rendl agreed that need did not constitute a fifth test. In response to the question about the setbacks altering the streetscape, Mr. Rendl replied that the setbacks requested for by the Appellant did not alter the streetscape drastically. Lastly, Mr. Rendl didn't agree that with Ms. deBaeker's suggestion that the replacement of one house by another with an increasing massing was inconsistent with the Provincial Policy's requirements of cost-effective development

Mr. Height then started his cross examination of Mr. Rendl. He began by stating that the original plans submitted to the COA, dated May 25, 2017, were drawn up by Mr. Rubinoff who wasn't a qualified architect. Mr. Rendl agreed that Mr. Rubinoff wasn't a qualified architect and was a "designer". Based on this conclusion, Mr. Height questioned the accuracy of the plans and the variances. Mr. Rendl responded by saying that plans had been submitted to the City and that the variances has been decided on the basis of the City's Zoning Notice. Mr. Height then asked why the drawings for the front of the house referred to the North Side elevation when it actually fronted onto the south side of Fairfield? Mr. Rendl conceded that the plans had been mislabeled but this was something that was known to the Parties because he had pointed out the same in his Examination in Chief. Mr. Height wanted to know if the corrected and updated plans had been introduced as evidence? Ms. Costello interjected to state that they had filed the updated and corrected plans with TLAB because this was linked to the City's condition of approval that the house be built substantially in accordance with the plans.

Mr. Height then drew Mr. Rendl's attention to a photograph of the houses on the same side as 29 Fairfield and pointed out that they had a "certain style" and were "1.5 floors" high. Mr. Rendl disputed the conclusion because in his opinion, the same houses were actually 2 floors high since they had living space on 2 floors besides the basement. Mr. Height then asked if the proposed building was 3 floors high based on information provided by the Applicant to the COA? Mr. Rendl responded by saying that the diagrams submitted to the COA had been mislabeled and that the plans made it clear that the proposal was for a house with 2 floors with an internal garage as opposed to a 3 storey building. Mr. Height said that this was yet another example of a misrepresentation and that there were other misrepresentations in the drawings. Mr. Rendl responded by stating that there were no misrepresentations. Mr. Height then asked Mr. Rendl if he agreed that the heights of other houses on Fairfield were around 20 feet each and were mutually consistent? Mr. Rendl said that he didn't know about the heights and had no basis to agree or disagree with Mr. Height's conclusions about the average height of buildings. The heights could be impacted by the grading of the lots which was not uniform throughout the street. The topography was at its highest on the southwest corner at Rawlinson Street and sloped down from there to the east.

Mr. Height then asked Mr. Rendl about the separation between houses to which the latter agreed that the average separation between houses was around 9 feet. Mr. Height remarked that the proposal reduced the separation by around 40% and stated that the change wasn't minor. This was followed by a question from Mr. Height if the front wall of the proposal at 29 Fairfield was significantly closer to Fairfield Street. While Mr. Rendl agreed with Mr. Height's observation that the house was closer to Fairfield

Street, he disagreed with Mr. Height's conclusion that the house was significantly closer. Mr. Height then suggested that proposing a three storey house was what resulted in the extra height. Mr. Rendl disputed this conclusion and stated that height had no relation to numbers of storeys required. Mr. Height then suggested that the elevator and the consequent extra height wouldn't be required if there would be a change of ownership from the present owners. Mr. Rendl responded to this question by stating that a younger person with a physical handicap, requiring the very features requested in the proposal, may be the future buyer if the question of selling the house actually arose. Mr. Height then asked if an ACORSE(stair conveyor) could be used in place of the elevator to reduce the height. Ms. Costello then interjected to object because there was no reference to an ACORSE in the proposal. I upheld the objection and asked Mr. Height to concentrate on the proposal as submitted. Mr. Height then said he didn't have any further questions.

Mr. Rendl was then re-examined by Ms. Costello. She asked Mr. Rendl to comment about the possibility of the requested height of 9.24 m meeting the 4 tests even if there was no elevator? Rendl responded to this question in the affirmative. Ms. Costello then asked how setbacks were measured according to the by-law. Mr. Rendl said that in this case, they were measured from side-wall to lot line. The next question was if there was a request for a variance with respect to the sidewalk on Mr. Height's side of the property? Mr. Rendl responded in the negative. Ms. Costello then asked Mr. Rendl to compare the GFAs as of right and requested. Mr. Rendl said that the difference would be 24 sq m because the requested GFA was 211 sq. m. versus the by-law providing for a maximum of 187.26 sq. m.

Ms. deBacker asked a few questions of clarification- she wanted Mr. Rendl to confirm that there were no variances relate to right-of-way width. She then asked Mr. Rendl how the study area would be impacted by the classification of roads as collectors or local streets. Mr. Rendl did not think that the study area would be impacted based on the classification of roads. Ms. deBacker referred Mr. Rendl to his Witness Statement and had a specific question about the 4 most recent builds dated 2003, 2004, 2010 and 2016 respectively. Ms. deBacker wanted to know if this information identified additions and years of additions or new builds? Mr. Rendl said that generically speaking, no conclusion could be drawn because information from the City database lacked rigour and consistency. However, the data did suggest that the neighbourhood was stable with reinvestment as opposed to being a dormant neighbourhood. These questions marked the end of the Appellants' Case in Chief. A decision was taken to invite Witnesses in Opposition in order to make efficient use of the time remaining before the end of the day.

Mr. Height then introduced his witness, Mr. Tony Luke, the resident of 20 Fairfield Ave. After a very brief examination of Mr. Luke's resume which focused on his expertise in real estate, Mr. Height asked that he be recognized as a Planning Expert Witness. Ms. Costello objected to this request because Mr. Luke had no demonstrable experience as a Planner. I upheld the objection and didn't qualify Mr. Luke as an Expert Witness because he had no demonstrable experience as a planner. In his testimony, Mr. Height discussed the history of the community, namely there were a total of 71 houses out of which 61 come under the City of Toronto bylaws. Under the by-law the allowable height was 8.8 m while under the new bylaw it is 10 m. Mr. Luke suggested that the

comparisons used by the Appellants in the Property Map were mutually consistent because the Toronto City by-law and North York by-law had been used indiscriminately. Mr. Luke said that he had accessed the original plans of the houses- 27 Fairfield had a height of 6.5 m while 29 Fairfield was 5.65m high. Based on this, he said that a house with a 9.24 m height would be an extreme variance. Stating that one did not have to request relief from the by-laws to build a “huge house”, Mr. Luke provided examples of houses with an area of 1200 sq ft on the opposite side of the street and stated that they all fit the by-law. Mr. Luke said that Fairfield had fewer houses, single homes with private drives and a traffic volume so low that children could play on the street, all of which made Fairfield unique and distinguished it from the neighbouring streets.

Mr. Luke then focused his concerns on the size and height of the proposal. He expressed his frustration at the approval of 26 Fairfield by the OMB which he thought was “monstrous”. He said that the introduction of a second building like 26 Fairfield would completely change the fabric of the community. He said that the house, if constructed as proposed, could then be sold at a price unaffordable for most families. Ms. deBacker asked Mr. Luke how he got the information about heights of the houses. Mr. Luke referred to the work of Mr. Buckland, the original builder of many of the houses in the community, which had been donated to the City archives as his source of information. When specifically asked about the height of the house at 29 Fairfield, Mr. Luke replied that he and Mr. Height measured the height of the house from the highest point to the ground with a tape measure because he didn’t believe in the accuracy of geodesic measurements.

In her cross examination, Ms. Costello asked Mr. Luke if he knew where the established grade was. Mr. Luke referred to the Buckland plans referenced in the previous paragraph. When Ms. Costello pointed out that the plans didn’t refer explicitly to “established grade”, Mr. Luke insisted that the grade, in the drawing plans, was established at the point where the height measurement began. Ms. Costello then asked Mr. Luke if he had obtained her client’s consent for going onto 29 Fairfield Road to measure the height of the house with a tape measure. Mr. Luke said that he hadn’t obtained permission from the owners to which Ms. Costello asked if he agreed that this constituted trespassing. Mr. Luke said that was aware that he may have trespassed.

Ms. Costello then asked Mr. Luke if he would have an issue with a building 9 m high, which was of right. Mr. Luke answered that based on what he knew, the allowable height was 8.8 m and that even building to this height would have a negative impact on the neighbours.

Ms. Ferris, the resident of 31 Fairfield, was the next witness. She said that the calm and peaceful nature of the community had attracted her. Since she lived next door to the subject property, she was concerned about the loss of sunlight and the possibility of staring at a “huge, blank wall” if the proposal were approved. The new house would be 3 m higher than her house.

Before the hearing ended on 11 September, 2017, Ms. Costello asked for a ruling that no further evidence be submitted for the 2nd day of the hearing. Ms. Braun objected to the request because based on TLAB’s Rules, new evidence had to be filed by way of Motion which would give other Parties a chance to argue whether or not the new

evidence created prejudice. Mr. Height concurred with Ms. Braun's observations. I concluded by stating that I would not be making a ruling on the admissibility of evidence with respect to Day 2 but would address the appropriateness of the evidence if such a Motion were made.

After some discussion, I determined that the hearing would continue on 29 September, 2017.

On the morning of 29 September, Mr. Height began by introducing Mr. Christian Chan as his Expert Witness. By way of introduction, Mr. Chan stated that he had a bachelor's degree in Planning from Ryerson University. He was an Associate Member of the Ontario Association of Planners and had been qualified as an Expert Witness before the OMB before. He said that he had five years of experience as a planner and had formerly been a Member of the Committee of Adjustment where he had written close to 3000 decisions over a four year period. After reviewing the highlights of Mr. Chan's resume, Mr. Height requested that Mr. Chan be recognized as an Expert Witness. Ms. Costello stated she had questions for Mr. Chan before he was recognized as an Expert Witness.

Ms. Costello asked Mr. Chan if he was a Member or a Provisional Member of the Ontario Professional Planners' Institute, the Canadian Institute of Planners or a Registered Professional Planner. Mr. Chan replied in the negative to all the questions. Ms. Costello then remarked that Mr. Chan wasn't bound by the rules for professional conduct for planners since he wasn't a professional planner. Mr. Chan replied that he was aware of the Code of Professional Conduct and intended to follow the Code. Ms. Costello then asked Mr. Chan if he had accepted the retainer before reviewing the proposal and visiting the site. Mr. Chan replied that he had discussions with Mr. Height and Mr. Brown before accepting the retainer but couldn't confirm if he had visited the site before accepting the retainer. Ms. Costello's stated inference was that Mr. Chan had not visited the site before accepting the retainer. Ms. Costello's next question focused on the necessity of being a planner as a requirement to join the Committee of Adjustment. Mr. Chan agreed that one didn't have to be a Planner to join the Committee of Adjustment. Ms. Costello then asked Mr. Chan if he was relying on his work or was relying on Mr. Rendl's work as the basis for his Witness Statement. Mr. Chan said that he was relying on Mr. Rendl's statement as the basis for his conclusions. Given these responses, Ms. Costello said that she had grave concerns about qualifying Mr. Chan as an Expert Witness. She said that she would reserve the right to comment about Mr. Chan's qualifications if he was recognized as an Expert Witness. Mr. Height reiterated that Mr. Chan ought to be qualified as an Expert Witness. The City took the position that Mr. Chan had enough educational experience and experience and was certainly aware of the obligations of the experts' duty that he could be qualified as an expert. After considering these perspectives, I ruled that Mr. Chan would be qualified as an Expert Witness and Ms. Costello could make submissions about Mr. Chan's expertise when and where appropriate.

After being qualified as an Expert Witness, Mr. Chan provided evidence about the project. He started off by describing the house as it existed and provided information about the GFA, lot depth, single dwelling with a 1.5 storey and front yard setback. He recited the details of what would be constructed. He then described his study area

which consisted of 75 Rawlinson, 1-77 Fairfiled, 2-44 Fairfield and 350-462 Roehampton. The neighbourhood is mixed in terms of the vintages of the houses as well as the types of homes- detached, semi-detached, row houses and singles. Mr. Chan contrasted Roehampton Blvd with Fairfield Road and said that the former was wider, had sidewalks, parking on the north side of the road and had less of a community feel than Fairfield which had little traffic, no sidewalks and much more of a community feel. He then discussed the houses on Broadway and the presence of cul-de-sacs, speed bumps and the existence of street parking with the exception of the part east of Corinth Gardens. The front yards are smaller than Fairfield and rentals are common. On Cardiff, integral garages are common with buildings packed closer together with parking on both sides of the street. Corinth Gardens is a cul-de-sac with many homes with integral garages. There isn't much green space on Corinth Gardens. These feature contrasted with Fairfield punctuated by speed bumps and the tendency of families to use the road as family space.

Mr. Chan described the proposal as submitted to the COA and pointed out that the existing FSI of 0.36 would jump to 0.676 should the proposal be approved. Mr. Height asked Mr. Chan if the proposal fit into the community and the basis for his conclusions. Mr. Chan said that he had looked at the Provincial Growth Plan, Official Plan and Zoning before formulating his conclusions. He then provided the summary of his opinion- he concluded that the matters before the Board are local in nature and don't affect any provincial interest and should be considered within the context of the City's Official Plan, the existing zoning, the neighbouring character and the criteria set out in Section 45(1) of the Planning Act. He concluded that the variances requested individually and cumulatively don't satisfy the 4 tests as set out in Section 45(1) of the Planning Act. Further, they don't maintain the general intent and purpose of the Official Plan and don't maintain the general intent and purpose of the Zoning By-law. The variances are not minor in nature nor are they desirable for the appropriate development of the land.

Mr. Chan began with a discussion of Chapter 2 of the Official Plan. He noted that 29 Fairfield Road falls into the "*Neighbourhoods*" category. Referring to Policy 1, Mr. Chan stated that the key expression for change was "stable but not static". He pointed out that the policies required new development to respect the stability of the area. However, in this case, the height created by the proposal would be undesirable and create a destabilizing precedent for the area contrary to the policy. Chapter 3 requires that a variety of social, economic, environmental and other needs be balanced for development of Neighbourhoods. Relying on this statement, Mr. Chan asked if the Appellant had considered a trade-off between their needs and the intent of the zoning by-law to design their proposal. Mr. Chan then discussed Policy 3.1.2 (Built Form) and the relationship between enjoyment and comfort of living on a given street to the streetscape. He pointed to the fact that the proposal contrasted with the neighbouring properties, which did not have integral garages and had an "at-grade" relationship with the street. This proposal significantly reduced lawn space. Mr. Chan again emphasized that there should be a trade-off between what the Appellants wanted and how the neighbours' experiences of the possible impact of the proposal. He then continued to read the policy and interpreted the section discussing facades and how they helped form a "common wall". Mr. Chan then applied this Policy to the proposal and stated that

the new proposal would break the “common wall” or streetscape because of the requested front yard setbacks.

Mr. Chan then discussed the concept of existing and planned contexts and said that new developments should reinforce the height and density of the existing context. The height and density were decided by the Zoning By-Law when there are no stated limits in the OP. The Zoning-By law provides for a height of 9 m which Mr. Chan described as being ‘generous’. According to Mr. Chan, the requested height variance of 9.24 m, combined with additional height for high sidewalls, would have a severe impact on the neighbours. Mr. Chan pointed out that the neighbourhood consisted of 1-1.5 storey buildings and that “thrusting” a building as large as proposed represented more than gradual change.

At this stage, Mr. Chan attempted to introduce evidence of what he referred to as a “Statistical Analysis” of the Area. Ms. Costello interjected to ask what the Analysis consisted of and if it had been submitted as part of the evidence. Mr. Chan replied that the “Analysis” consisted of his own observations as opposed to actual statistics, and merely provided oral commentary on his Witness Statement. Ms. Costello said that she wanted the record to note that the witness was correcting himself under oath. She believed that this was being done to get around the fact that the evidence had not been disclosed in a timely fashion. Ms. Costello objected since the evidence had not been formally filed and neither she nor Mr. Rendl had an opportunity to review the evidence. Mr. Height interjected to state that part of this analysis had been made available in his filing. Ms. Costello said that she was not aware of any “Statistical Analysis” in the filings and was concerned by how the material was being referred to as an Analysis as well as Mr. Chan’s observations. I decided to exclude the material because it had not been filed by way of Motion, as discussed on 11 September, 2017.

Mr. Chan then discussed the issue of parking. He said that integral garages of the type contemplated by the Appellant were not common in the area though they are allowed. Many houses had parking pads while other had garages as side additions to the dwellings. Applying Section 3.1.2 of the OP to setbacks, Mr. Chan pointed out that the requested front yard setback, if granted, would essentially create a “precedent” for others to move their front walls forward resulting in changes to the street wall. Contrary to what the OP advises for maximizing ground floor usage, the proposal restricts the ground floor for vehicular purposes alone. While the neighbours have 2-3 steps between the ground and the front door, the proposal has many more steps which makes it out of character with the neighbourhood.

Mr. Chan then discussed Policy 2 which discusses vehicular use. After reading out the policy, Mr. Chan used the Site Plan to suggest that the driveway would be extended past the property line onto the City property. Given that there are no sidewalks, this would create a bigger impact for vehicular traffic. Referring to other houses with integral garages, Mr. Chan said that in his opinion, this was the only option for those homes given how narrow the frontages were. If the integral garage were approved, Mr. Chan claimed that up to 3 cars could be parked- one in the garage, another on the driveway and yet another on the street which permitted parking.

Mr. Chan then referred to Policy 3.1.2.3 (e) and (f) which refer to shadow studies. By way of information, the Appellants' disclosure referenced a Shadow Study by Mr. Glenn Rubinoff which wasn't discussed orally when they presented their case. According to Mr. Chan, this study responded to neighbours' concerns on what the shadow impact could be if the proposal were approved. Mr. Height clarified that the Shadow Study related to 31 Fairfield and 27 Fairfield to demonstrate what the impact would be if 29 Fairfield were to be constructed as proposed. In Mr. Chan's opinion, the Shadow Study was flawed because it measured the difference of impacts between what was proposed and what was as of right, as opposed to what was proposed and what currently existed.

Mr. Chan then discussed his concerns with the proposed fenestration at the back of the house. He claimed that the first floor windows in the proposal provided overlook into the neighbours' houses impacting their privacy. In addition, there were 2 large windows and a sliding door opening onto the deck which also impacted the privacy.

Mr. Chan then read excerpts from Policy 5 of the OP and applied it to the heights and massing of the proposed dwelling and concluded that they were excessive. Based on the Density Analysis Chart submitted by the Appellant, Mr. Chan pointed out that the average density (a measure of how closely houses are packed together) of houses on Broadway worked out to be 0.52, Roehampton 0.47 and Cardiff 0.56. The corresponding figure for Fairfield was 0.46 which would increase to 0.67 if the proposal were approved- in his opinion, Mr. Chan thought that this was excessive and would destabilize the neighbourhood. Finally, Mr. Chan referred to the issue of fenestration again and opined that the alignment of doors and windows in the proposal was different from the prevailing alignment on the street, which in turn destabilized the community.

Based on these conclusions Mr. Chan concluded that the proposal did not uphold the policies articulated in the Official Plan.

He then discussed the impact of zoning on the proposal. He said that the area was zoned R1S under the old by law and R under the new by law and proceeded to analyze the variances under both by-laws. He drew attention to the height variances for the roof and the side-walls and stated that they were excessive. In Mr. Chan's view, the height variances could have been avoided if the Appellant had opted for a pitched roof. He also noted that the basement was not included in the GFA calculations but was habitable. There was no concrete planning reason for requesting reduced setbacks. The Variance respecting the deck, required under the old By-law, is not desirable because it is out of character with the neighbourhood and creates privacy related issues for the neighbours. Given these issues, he concluded that the height, density and character of the proposed 2 storey dwelling with an internal garage is not compatible with the character of the nearby and adjacent properties. With specific reference to height and character of the adjacent homes, the proposal at 29 Fairfield Road is not appropriate.

Mr. Chan then stated that the FSI of new developments should be consistent with the prevailing FSI's to be considered acceptable and not destabilize the neighbourhood. The 0.676 FSI is not consistent with the existing and planned context for low rise homes in the study area in the built form proposed. Further, By-law 438-86 allows for additions to buildings with a minimum age of five years an FSI up to 0.69, which is to be

interpreted as support for gradual changes to the neighbourhoods through reinvestment into existing building stock.

Discussing the planned height of the dwelling, Mr. Chan pointed out that the height would impact the properties on both sides. He pointed out that the adjacent residential properties are 1-1.5 stories in height and generally have at-grade relationship to the streetscape. He also pointed out that the sidewall exceeds zoning standards and the cumulative impact of the increased height and the setbacks would have a very significant impact on the neighbouring properties. The adjacent and nearby residential properties are 1-1.5 stories in height and generally have a triangular pitched gable east and west side wall profiles. The side wall height is not consistent with the other side wall heights of the neighbouring houses and will result in a perceptible difference notwithstanding the seemingly small increase in height. Mr. Chan stated that the variances for exceeding side wall height is usually a function of the slope of the property and would be technical in nature and the intent of the by-law is to maintain a consistent roof cornice line and limit the impact of flat roofs. The dwelling at 29 Fairfield will have sidewalls that are too high and out of character, particularly in light of the narrowness of the adjacent lots and setbacks between the homes.

Speaking to how minor the changes were, Mr. Chan stated that the proposed dwelling is not consistent with the existing character of the area. The proposed configuration of the internal garage, height, sidewall height and configuration, first floor above grade and the density would set a "precedent" bringing drastic change to the neighbourhood. Mr. Chan then said that there would be planning impacts even if the dwelling were built as of right. "As-of-right" doesn't contemplate maximizing all applicable zoning standards; Mr. Chan opined that building "as of right" will result in a situation where the development will conflict with the need to achieve harmony, consistency and gradual change in the Neighbourhoods.

Lastly, speaking to the desirability and appropriateness of the variances, Mr. Chan stated that the Built Form Policies are the key to the desirability of proposed development of the Subject Site. One doesn't experience increased density as one walks on Fairfield Road. Proposals have to be consistent with the prevailing pattern of at grade relationships of the entire first/main floor storey and entrances oriented towards the right side of the home to be considered desirable and appropriate for development. Mr. Chan reiterated that the physical change associated with the new development has the potential to destabilize the character of the community with an overwhelming majority of 1 to 1.5 storeys. The proposed dwelling with an internal garage and a main floor significantly higher than the main floors of the surrounding dwellings would not follow the established neighbourhood character marked by buildings with 1-1.5 storeys and modest densities.

Mr. Chan reiterated his conclusions that the Provincial Policy Statement of 2014 and the Growth Plan for the Golden Horseshoe (2017) don't apply given the local nature of the issues in question in this proposal. The case should be decided on the adherence of the proposal to the City's Official Plan, existing zoning, the character of the neighbourhood and the criteria set out in Section 45(1) of the proposal.

Mr. Chan's conclusions are that the proposal does not fit, is not compatible with the existing physical character of the neighbourhood and does not respect nor reinforce the existing physical character. It will adversely affect the physical stability of nearby residential properties and is therefore not minor. The proposal is not an appropriate development of the site and creates an undesirable precedent for both the nearby residential properties and neighbourhood. Based on these factors, Mr. Chan recommended that TLAB deny the requested variances.

Ms. deBacker then asked Mr. Chan if he had concerns with Mr. Rendl's study area, which included Broadway and Rawlinson, as discussed on Day 1 of the hearing? Mr. Chan agreed with Ms. deBacker because he thought that the area ought to have been restricted to Fairfield and Roehampton because of the similarities in lot areas. There were also different zoning categories in Mr. Rendl's study area which had not, in Mr. Chan's opinion, been taken into adequate account by Mr. Rendl. Ms. deBacker then asked Mr. Chan to expand on the section in his witness statement where he had stated that the side walls of the proposal would have a significant impact on the neighbouring houses and asked him to be specific in his description. Mr. Chan said that the side walls of other houses on the south side of Fairfield were less than 7.5 m high and that they had fenestration whereas the wall here was 7.5 m high with no fenestration. The impact of this is that the side wall is completely out of the character with the neighbourhood and will be "imposing" as far as the neighbours are concerned.

Ms. Costello began her cross-examination of Mr. Chan by asking questions what he had done to familiarize himself with the project before he accepted the retainer. Mr. Chan said that he had spoken to Mr. Brown who then referred him to Mr. Height and that they had discussions. Ms. Costello asked him if he had visited the site before he accepted the retainer. Mr. Chan stated that he couldn't confirm if he had visited the site before accepting the retainer. Through her questions, Ms. Costello established that Mr. Chan had observed the site from the public realm and had not visited the backyard nor had he gone into the house. She also established that he had not taken any independent photographs but had relied on what the local residents had taken before Mr. Chan had been retained.

Coming to Mr. Chan's study area, Ms. Costello noted it included 1-77 Fairfield, 2-44 Fairfield, 75 Rawlinson and the south side of Roehampton. She pointed out that, according to his evidence, the average lot frontage was 25 feet whereas 29 Fairfield had a frontage of 33 feet. Ms. Costello asked Mr. Chan, if in his opinion, the frontage was "significantly" larger to which Mr. Chan disagreed. Ms. Costello then reviewed pictures of the houses on Rawlinson and Fairfield taken by Mr. Rendl- Mr. Chan agreed with her observations that the houses had various roof styles and consisted of 1, 1.5 or 2 storeys. A couple of houses had integral garages while others had garages on the side while many also had front yard parking. Mr. Chan agreed with Ms. Costello that the numbers of steps between the ground the front entrance varied from 4 to 14 depending on the house. Ms. Costello established through her questions that the lot frontages of houses 44-61 on Fairfield as well properties on Roehampton backing onto Fairfield were covered by the same zoning by-law as 29 Fairfield Ave. Referring to evidence given earlier that Fairfield felt like a private road, Ms. Costello suggested that the addition of a single detached dwelling with a single driveway would not change the character of the street. Mr. Chan disagreed with the suggestion because he said that the presence of

the integral garage would place a total of three extra cars on the street, one inside the garage, another on the driveway and yet another on the street. Ms. Costello questioned the basis for the conclusion and suggested that this was speculation. She then remarked that nothing in the proposal that would change the level of activity on the street.

Ms. Costello then asked questions of Mr. Chan about how much physical change was being introduced by the proposal. Mr. Chan agreed with Ms. Costello that there was little physical change in that the lot size, lot frontage and building type. Ms. Costello then questioned Mr. Chan about his statement that there had to be a balanced trade-off between the needs of the applicant and the requirements of the zoning-plan; she pointed out to him that this wasn't the test under Section 45(1).

Ms. Costello then reviewed Mr. Chan's evidence regarding the front yard set-back and asked him to confirm that in his opinion, the front yard setback didn't meet the four tests to which Mr. Chan replied in the affirmative. Ms. Costello pointed out that what was desired under the by-law was 8.02 m whereas what was requested was 7.07 m and that this setback was consistent with that of the neighbouring houses. She then said that notwithstanding Mr. Chan's concerns about loss of amenity space, this was unfounded because there were no variances for loss of amenity space. Ms. Costello then asked Mr. Chan to confirm that the zoning by-law measured change from what was of right and not what existed which was confirmed by Mr. Chan.

Ms. Costello asked if the extra 0.24 m requested for height constituted gradual change in Mr. Chan's opinion? Mr. Chan replied that while it may not be a major change from the zoning standard, but that 9.24 m did constitute a major change from what existed in the community. Ms. Costello then asked Mr. Chan about his comments regarding placements of doors and their relevance to the 4 tests. Mr. Chan responded by saying that while the tests didn't directly discuss this issue, the Official Plan did refer to the relative placements of windows and doors. Her next question was if he knew whether this project was controlled through site plan control to which Mr. Chan said that he didn't know the answer. Ms. Costello stated that single detached homes didn't have to go through the site plan control which applied to complex developments. She then commented that sidebars with commentary on the Policies didn't use the expressions "predominant", "prevailing" or "existing" though Mr. Chan made continuous use of these expressions when interpreting the Plan in his Examination in Chief.

Ms. Costello then brought up the issue of the Shadow Analysis Study which Mr. Chan had alluded to in his Examination in Chief. She asked him the reason for bringing up the Shadow Study when it wasn't part of the City's requirements. Mr. Chan responded by stating that he wanted to refute the Appellants' submission. Ms. Costello said that he couldn't possibly refute the evidence because he didn't perform an independent study. Ms. Costello then brought up Mr. Chan's concerns about overlook and loss of privacy into the backyard as a result of the proposal. Ms. Costello asked Mr. Chan to confirm that there was overlook into the backyard of 29 Fairfield currently from the upper floors of the neighbouring houses. Mr. Chan agreed with this statement to which Ms. Costello added that this was a common phenomenon in urban communities like Toronto. As far as the deck is concerned, did Mr. Chan know that this was a specific requirement from

the City? Mr. Chan confirmed that he was aware that the City had indeed signed off on the size of the deck.

In his re-examination, Mr. Height wanted the priority order of ranking among the Provincial Policy, Official Plan and Zoning Policies. Ms. Costello objected to the question because this had not been raised earlier during the examination-in-chief or the cross examination. I upheld the objection. Mr. Height then asked if the fenestration of 3 windows and 1 sliding door proposed was comparable to what existed currently and Mr. Chan's response was that this was speculative. Mr. Height then asked if the proposed FSI of 0.676 was significantly higher than the existing FSI of 0.37 to which Mr. Chan agreed after which Mr. Height concluded his re-examination.

The Parties then provided their Closing Arguments.

Ms. Costello began by citing cases whose rulings she believed to be pertinent to the proposal at 29 Fairfield Avenue. She began with the OMB's decision in the "Levine case", (Levine, Re 2009 Carswell Ont 3817, 62 O.M.B.R. 470) where the Panel held that the physical character could include as of right physical building permissions on the lot. The key objective of the Official Plan was that new developments respect and reinforce the general physical patterns of the neighbourhood, which was an entity broader than the immediate block.

She then discussed the "Barr case" (Barr, Re 2011 Carswell Ont 12564, 71 O.M.B.R. 137) where the delineation of the neighbourhood was defined by a 5 minute walk in the proximity of the subject property. There was a brief reference to the OMB's decision at 26 Fairfield where higher densities and a higher height with an integral garage, as compared to 29 Fairfield, were requested and granted.

Ms. Costello then contrasted the methodologies of the Expert Witnesses. She said that Mr. Rendl has been thorough, had taken pictures and had compiled a comprehensive case to make his case while Mr. Chan had "nothing". In Ms. Costello's words, Mr. Chan's work "lacked rigour and independence". She also pointed out that Mr. Chan had applied the expression "prevailing" to too many parameters describing the community when it ought to refer only to Building Type. Summarizing the discussion on FSI changes, Ms. Costello said that the test focused on whether the change was so significant that it no longer met the purpose of the by-law and zoning by-law

Coming to arguments about loss of amenity space, Ms. Costello stated that the proposal satisfied requirements for green space which meant that arguments about loss of amenity space were misplaced. As far as the overlook is concerned, it is an existing condition which will not change with the new proposal. Based on these arguments, Ms. Costello concluded by asking that the proposal be approved with conditions as discussed earlier.

In her submissions, Ms. deBacker, representing the City said that the proposal ought to be refused because it represented insensitive transition and did not meet the intent and purpose of the official plan. The neighbours had articulated a local, on the ground perspective, about low massing and density which are typical of their community, which contrasted with the proposal for 29 Fairfield. Analyzing Mr. Rendl's methodology, Ms.

deBacker pointed out that Mr. Rendl's evidence did not present information on building height but could provide information on FSI. Even Mr. Rendl had not disputed that the FSI of the proposal was twice that of neighbouring homes.

Ms. deBacker then went to discuss Policy 3.1.2.3 which says that new development should merge into the neighbourhood harmoniously and have an external façade which merges into what exists in the community. However, this is not the case here since Ms. Ferris at 31 Fairfield will only see a brick façade. She then pointed out that Mr. Rendl had agreed that not many houses had integral garages on the street.

Ms. deBacker then discussed the case of *Toronto (City) vs. Toronto (City)* (2017), ([2017] O.M.B.D. No. 596; OMB PL161048) by Member Jones where the Board accepted evidence about the unique nature and character of Meaford Street, the location of the proposed development and talked about how different this was different from the neighbours. Quoting Member Jones, Ms. deBacker said that "*Intensification was not a trump card*".

Lastly, Ms. DeBacker said that OMB's decision on 26 Fairfield did not bind TLAB because each decision is unique. However, she said, if the Board was still inclined to approve the proposal, the City requested that the following conditions be imposed:

- Driveway is constructed with 2% positive slope.
- That the dwelling be constructed substantially in accordance with the plans prepared by Rubinoff Design Group, date stamped August 31, 2017, and marked as Exhibit 7 to these proceedings
- Any variances explicitly not listed here are not authorized

In summarizing his case, Mr. Height did not cite any cases. He said that Mr. Chan's evidence should be given greater weight because he spoke for the community. On 31 Jan, 2017, the application was submitted to the COA at 29 Fairfield Rd. The application triggered variances from both sets of by-laws some of which were duplicates. The COA refused the application TLAB on 30 May, 2017. Of evidence given by Mr. Rendl and Mr. Chan, the latter's evidence outweighs the former because it reinforces the neighbour's position. The proposal ought to fail because it doesn't meet the 4 tests, and doesn't satisfy the Official Plan and doesn't fit the neighbourhood. The proposed FSI of 0.676 is well beyond the demonstrated fabric because the average FSI for the street is 0.46 and the adjacent properties is less than 0.4. The proposal is unsympathetic to the character of this quiet neighbourhood. The development is disruptive with respect to a community whereas the existing house fits right in. The integral garage doesn't fit the prevailing pattern and results in a dwelling that presents itself as a 3 storey home. At the COA, it was stated that it would have the appearance of a 3 storey home and this wasn't disputed. The new home will dwarf its neighbours. The COA decision ought to be upheld and the appeal denied.

In her reply, Ms. Costello began by pointing that the hearing before the TLAB is *de novo* and it was therefore important not to rely on the decision of the COA. Evidence is not based on what the community wants, as suggested by Mr. Height. The City's conclusion that the proposal didn't reflect the heights and setbacks in the community is not the test; rather it is the planned context which is the future.

After prefacing her comments with the observation that the cases cited by the City actually helped her case, Ms. Costello then went on to comment on the cases in question. The Toronto (City) vs. Toronto (City) case cited by the City involved a consent and not a variance; the findings don't apply to the proposal in question. Given the above, Ms. Costello asked that the proposal be approved with the conditions as discussed earlier.

ANALYSIS, FINDINGS, REASONS

As noted earlier, there are 3 Parties- the Appellants, the Opposition and the City of Toronto. There are 2 participants in this case- Mr. Luke and Ms. Ferris. Before presenting my analysis and findings, I am inclined to explain the reasoning behind my rulings on procedural matters made during the course of this 2 day hearing.

At the beginning on Day 1, Mr. Height's request that he be recognized on behalf of two Parties, himself and the Fairfield Neighbourhood Association, was denied because there was no documentation to demonstrate that the latter had applied for Party status. The same reasoning applied to Mr. Willoughby's request for Participant status- namely, there was no documentation demonstrating his intention to be a Participant and the request consequently denied. The TLAB rules are public and clear on the obligations of elections of Party and Participant status and need to be followed.

This case is interesting in that the qualifications and eligibility of Expert Witnesses was challenged more than once. Mr. Height requested that Mr. Luke be recognized as a Planning Expert Witness when he had demonstrable experience only in the area of real estate; the request was consequently denied. While Ms. Costello vigorously challenged Mr. Chan's being accepted as an Expert Witness based on his experience, qualifications and methodology, I nevertheless qualified Mr. Chan as an Expert Witness based on his educational qualifications and appearances before the OMB as an Expert Witness. However, I did pay close attention to Ms. Costello's comments on the quality of Mr. Chan's work both during the cross examination and in closing statements.

.At the end of the first day, Ms. Costello requested for a ruling that no new evidence be submitted after that day for the 2nd day's hearing. TLAB's Rules allow for submission of such evidence and discuss the Motions through which evidence may be introduced later than the corresponding cut off dates. Given the existence of such Rules, I didn't grant Ms. Costello's request requesting for exclusion of evidence submitted after the first day of hearing. By the same token, I excluded evidence from Mr. Chan on the 2nd day during his Examination-in-chief. While I am cognizant of the numerous issues raised by Ms. Costello about Mr. Chan's study, my ruling was based on the fact that the evidence had not been submitted by way of Motion notwithstanding the discussion at the end of the first day of hearing.

Given that there are at least two differing narratives from the Appellants and the Opposition and possibly three where the City expressed its perspectives, it is important to discuss how much weight was given to each narrative. The weightage assigned related to the quality of evidence, of which independence was a very important factor. The City did not introduce evidence but asked some thought provoking questions of both sides. I take this opportunity to acknowledge the very interesting perspectives that

the City brought up. However, limited weight is assigned to the perspectives or the conclusions about refusing the project because no independent evidence was called.

As the Evidence section demonstrates, Ms. Costello vigorously dissected the methodologies of the Expert Witness for the opposition, Mr. Chan. Of various concerns brought up by Ms. Costello, I am confronted by the fact that Mr. Chan undertook no independent work to formulate his Statement. He relied on Mr. Rendl's Statement and attempted to tweak the evidence to come to a different conclusion. The discursive nature of oral evidence provided by Mr. Chan was confusing and diverted attention from the issues at hand- this is exemplified by a detailed analysis of the Shadow Study provided by the Appellant when the Opposition was aware that the study was not required. For these reasons, I assign considerably less weight to Mr. Chan's evidence than Mr. Rendl.

Lastly, Mr. Height's reasoning for assigning higher weight to Mr. Chan's evidence was it represented the opinion of community residents. While the neighbours' opinions are clearly important because it is they that would be impacted should any proposal be approved, popular opinion is no substitute for evidence based reasoning.

There was no evidence introduced to support one of the key contentions of the Party and Participants in opposition, namely the impact of the proposed variances is based on what exists and not what is of right. While some may view what exists on the ground as an axiomatic reference point on the basis of a common sense approach, it is outweighed by the evidence based conclusions about the impacts of variances reflecting the difference between proposed and as-of-right-of-construction. I have applied the reasoning in the Levine and Barr cases, above, of the OMB. These cases have helped inform my conclusions about how the community may be delineated and, as well, the selection of the reference points to determine impact of a proposal- that which exists on the ground versus as-of-right construction.

Given the conclusions above which effectively accept the Appellant's evidence, it is important to discuss the issue of impact on neighbouring properties should the proposed be approved. Given the not very significant nature of numerical changes in the proposed variances, I will dwell on the impacts as opposed to the numerical values themselves. Of the impacts that were discussed by the Opposition, the most critical was the height variance. Approving this variance means that neighbours would stare at a blank wall after the new dwelling is built. The Appellants didn't deny that there would be a significant impact; they chose to focus on the fact that the impact wouldn't be significantly different between the 9 m as of right and 9.24 m that they requested. While I accept the argument about the difference of impact being minimal between the heights of 9 m and 9.24 m, I hope that the Appellants will be cognizant of the change in what their neighbours will see after the proposal is built and do their best to mitigate the impact on neighbours where possible. Neither the integral garage, proposed deck at the rear of the house nor the walk out basement will impact the idyllic serenity of Fairfield Road as it exists now. The variances for setbacks don't impact the privacy of the neighbours. Given these factors, I conclude that the impact of the variances is minimal.

I also acknowledge the frustration and anguish in the community which was very evident at the hearing. While one certainly empathizes with neighbours' perceptions of a

new development impacting them negatively, the onus of demonstrating the negative impact and its extent on the community lies with Parties and Participants in opposition to the proposal. It is important that Parties and Participants articulate objective proof of overdevelopment with the same clarity and passion with which they discuss the subjective impact of a given proposal.

In this respect, the reasoning of the Toronto (City) vs. Toronto City case cited earlier is useful. The cited case is distinguishable, however, from this proposal for two reasons: first, it involved a severance application and requested variances for dwellings to be constructed on each of the sites; this proposal is strictly a request for variances. Second, Member Jones specifically discussed why he accorded significant weight to the opposition voiced by the residents: because it included in-depth, objective evidence of how the proposal did not satisfy the Official Plan.

Given the above, I accept the evidence of Mr. Rendl and the Appellants on the application of Provincial Policy and the 4 tests section 45(1) of the Planning Act. The Appeal respecting 29 Fairfield Road is allowed and all requested variances are approved. The conditions of approval as requested by the City are imposed.

DECISION AND ORDER

1. The appeal respecting 29 Fairfield is allowed and the decision of the Committee of Adjustment, dated May 31, 2017, is set aside.

2. All the variances, as listed below, are approved:

City Wide Zoning By-Law 569-2013:

1. Chapter 10.5.40.10(5)

A minimum of 10 sq m of the first floor must be within 4 of the front main wall. In this case, 7.29 sq m of the first floor will be within 4 m of the front main wall.

2. Chapter 10.10.40.10.(1)

The maximum permitted building height is 9 m whereas the proposed building here is 9.24 m.

3. Chapter 10.10.40.10(2)

The maximum permitted height of all exterior main walls facing side lot line is 7.0 m. The proposed height of the side exterior main walls facing a side lot line is 7.54 m.

4. Chapter 10.10.40.40 (1)

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (187.26 sq. m). The new detached dwelling will have a floor space index equal to 0.676 times the area of the lot (211.1 sq m).

5. Chapter 10.5.40.70(1)

The minimum required front yard setback is 8.02 m. The new detached dwelling will be located 7.07 m from the north front lot line.

Toronto Zoning By-law 438-86

6. Section 6(3) Part I 1

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (187.26 sq. m). The new detached dwelling will have a floor space index to 0.676 times the area of the lot or 211.1 sq. m.

7. Section 6(3) Part II 2 (II)

The minimum required front yard setback is 8.02 m. The new detached dwelling will be located 7.07 m from the north front lot line.

8. Section 6(3) Part II 3.B(II)

The by-law requires a detached house in a R1S district to have a minimum side lot setback for the portion of the building not exceeding 17 m in depth. The proposed side lot line setback is 0.75 m from the east lot line.

9. Section 6(3) Part II 8 D(I)

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade.

The proposed height of the platform at the front (front porch) is 1.24 metres above grade. front porch will have a height of 1.24 m above grade. The proposed height of the platform at the rear (rear deck) is 2.36 m above grade.

10. Section 6(3) Part IV 3 (II)

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access is located in a wall facing the front line. The proposed integral garage is below grade.

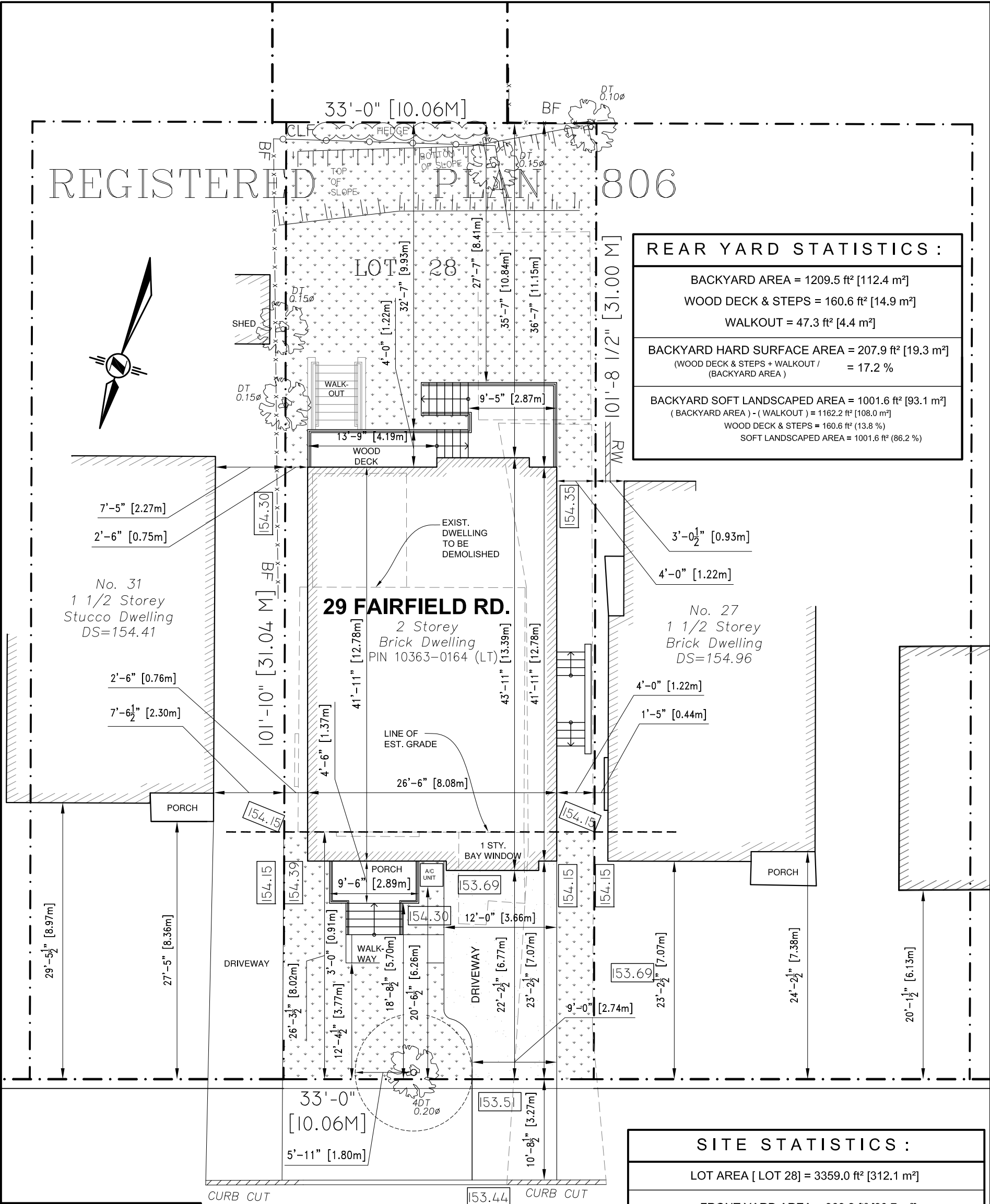
3. The following conditions are imposed:

- a) Driveway is to be constructed with a 2% positive slope, street to dwelling.
- b) The dwelling be constructed substantially in accordance with the plans prepared by Rubinoff Design Group, date stamped August 31, 2017, and marked as Exhibit 7 to these proceedings. The Site Plan diagrams are attached to this decision.
- c) Any variances explicitly not listed here are not authorized.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



REAR YARD STATISTICS :	
BACKYARD AREA = 1209.5 ft² [112.4 m²]	
WOOD DECK & STEPS = 160.6 ft² [14.9 m²]	
WALKOUT = 47.3 ft² [4.4 m²]	
BACKYARD HARD SURFACE AREA = 207.9 ft² [19.3 m²]	
(WOOD DECK & STEPS + WALKOUT) / (BACKYARD AREA)	= 17.2 %
BACKYARD SOFT LANDSCAPED AREA = 1001.6 ft² [93.1 m²]	
(BACKYARD AREA) - (WALKOUT) = 1162.2 ft² [108.0 m²]	
WOOD DECK & STEPS = 160.6 ft² (13.8 %)	
SOFT LANDSCAPED AREA = 1001.6 ft² (86.2 %)	


SITE STATISTICS :	
LOT AREA [LOT 28] = 3359.0 ft² [312.1 m²]	
FRONT YARD AREA = 868.2 ft² [80.7 m²]	
PORCH, STEPS & WALKWAY = 94.7 ft² [8.8 m²]	
DRIVEWAY = 260.8 ft² [24.2 m²]	
FRONT YARD HARD SURFACE AREA = 355.5 ft² [33.0 m²]	
(PORCH, STEPS, WALKWAY + DRIVEWAY) / (FRONT YARD AREA)	= 40.9 % (50% MAX. PERMITTED)
FRONT YARD SOFT LANDSCAPED AREA = 492.3 ft² [45.7 m²]	
(FRONT YARD AREA) - (DRIVEWAY) = 607.4 ft² [56.4 m²]	
PORCH, STEPS & WALKWAY AREA = 94.7 ft² (15.6 %)	
SOFT LANDSCAPED AREA = 512.7 ft² (84.4 %) MIN 75% REQ'D	
COVERAGE = 1111.0 ft² [103.2 m²]	
TOTAL GFA = 2272.6 ft² [211.1 m²] [67.7%]	

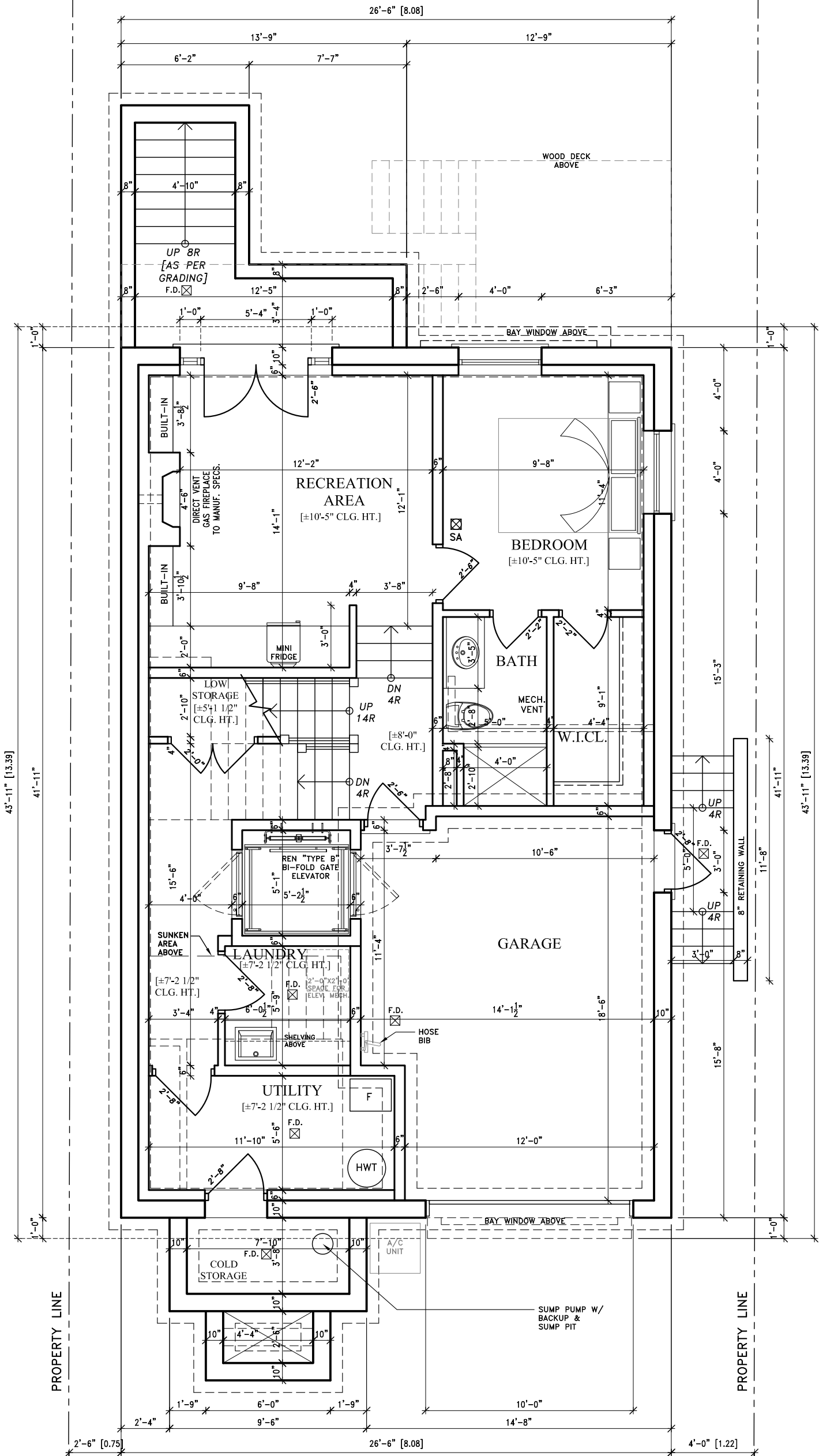
THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THIS DESIGN, AND HAS THE QUALIFICATIONS AND MEETS THE REQUIREMENTS SET OUT IN THE ONTARIO BUILDING CODE TO BE A DESIGNER	
QUALIFICATION INFORMATION REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.5.1. OF THE BUILDING CODE	
GLENN RUBINOFF SIGNATURE	22370 BCIN/BCDN
REGISTRATION INFORMATION REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.4.1. OF THE BUILDING CODE	
RUBINOFF DESIGN GROUP FIRM NAME	27293 BCIN/BCDN

APPROXIMATE CENTRELINE OF PAVEMENT

FAIRFIELD ROAD

(FORMERLY KNOWN AS SMITH STREET,
REGISTERED PLAN 806)
PIN 10363-0176

PROJECT: SITE PLAN	PROJECT DESIGNER: G.RUBINOFF	PROJECT NO.	 ubinoff Design Group 697 Mount Pleasant Rd. Toronto, Ontario M4S 2N4 TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com	DRAWING NO. A
	DRAWN BY: F.BERNALES	DATE: Aug 31, 2017		
PROJECT: Nº29 FAIRFIELD ROAD TORONTO, ONTARIO	CHECKED BY:	SCALE: 3/32" = 1'-0"		

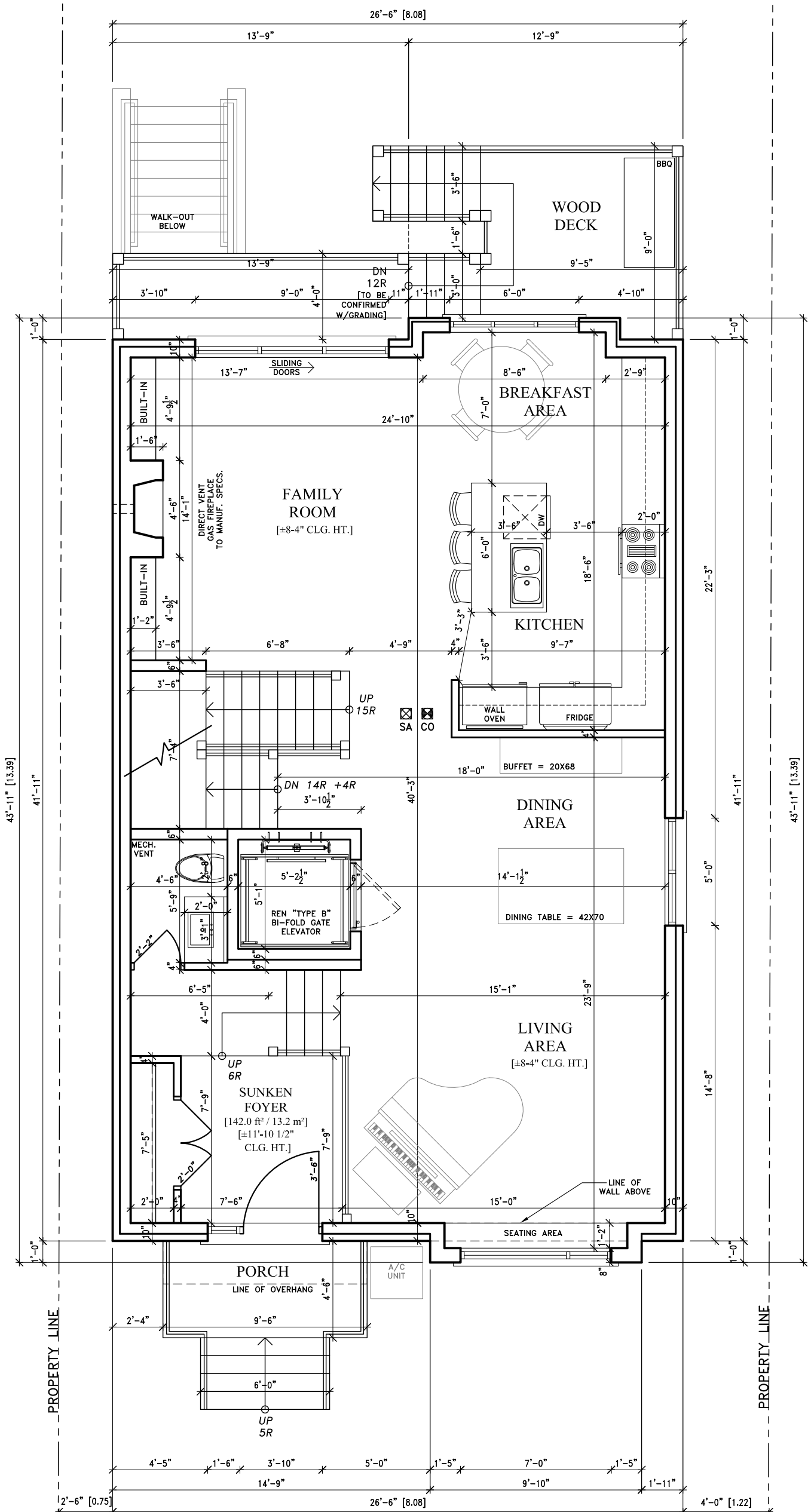


BASEMENT FLOOR PLAN

* 29 FAIRFIELD RD. *

GARAGE WALLS = 23.5 ft² [2.2 m²]
LANDING = 27.1 ft² [2.5 m²]

TOTAL = 50.6 ft² [4.7 m²]



MAIN FLOOR PLAN

* 29 FAIRFIELD RD. *

MAIN FL. AREA = 1111.0 ft² [103.2 m²]
COVERAGE = 1111.0 ft² [33.1 %]

GFA = 2272.6 ft² [211.1 m²] [67.7 %]

Rubinoff Design Group

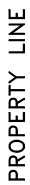
697 Mount Pleasant Road

Toronto, Ontario M4S 2N4

TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com

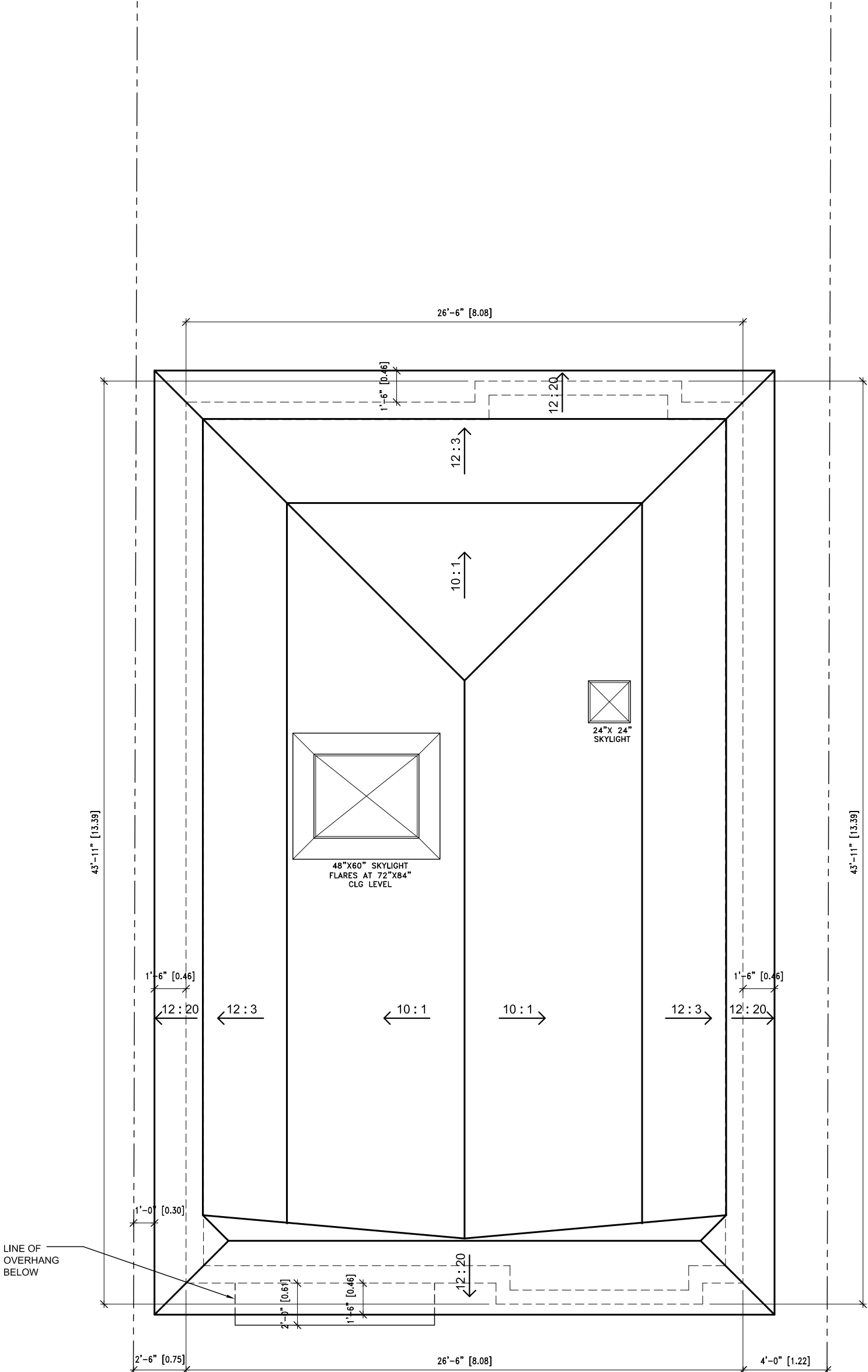
29 FAIRFIELD ROAD

SCALE : 3/16" = 1'-0" AUG. 31, 2017

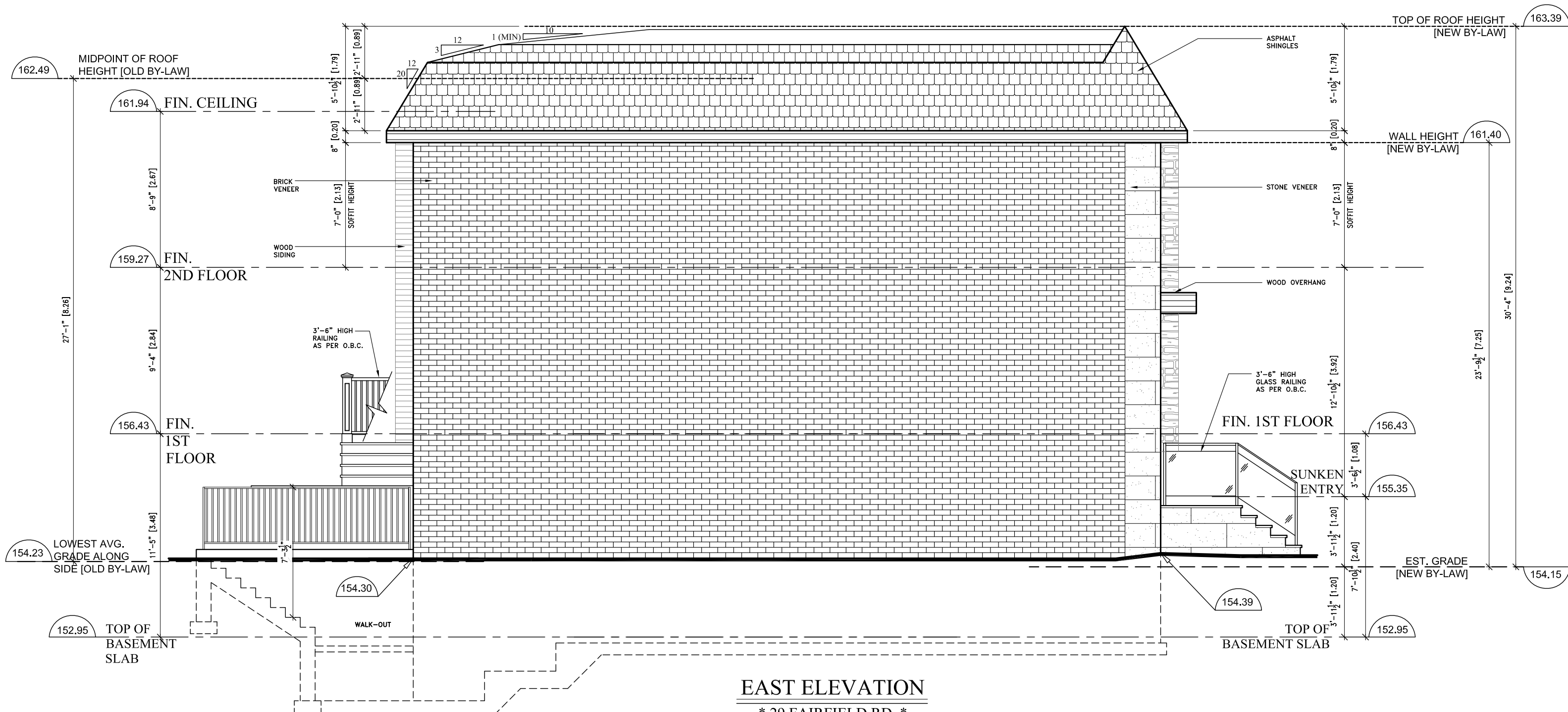


* 29 FAIRFIELD RD. *

PROPERTY LINE



ROOF PLAN
* 29 FAIRFIELD RD. *



EAST ELEVATION
* 29 FAIRFIELD RD. *
(LEFT)

