

Court Services Toronto Local Appeal Body 40 Orchard View Blvd Suite 211 Toronto, Ontario M4R 1B9 Telephone: 416-392-4697 Fax: 416-696-4307 Email: tlab@toronto.ca Website: www.toronto.ca/tlab

### **DECISION AND ORDER**

**Decision Issue Date** Tuesday, March 06, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): DAVID NEAL ADAM

Applicant: RICHARD WENGLE ARCHITECT INC.

Property Address/Description: 129 COLDSTREAM AVE

Committee of Adjustment Case File Number: 17 179762 NNY 16 MV (A0593/17NY)

TLAB Case File Number: 17 235736 S45 16 TLAB

**Hearing date:** Friday, February 16, 2018

**DECISION DELIVERED BY G. BURTON** 

**APPEARANCES** 

Name Representative

David Neal Adam Applicant/Owner Amber Stewart, Counsel

#### INTRODUCTION

This is an appeal from the Committee of Adjustment's (COA) refusal of an application for variances to construct a new dwelling on the subject property. It is located in the Eglinton Lawrence Neighborhood of Toronto, southwest of the intersection of Avenue Road and Lawrence Avenue, on the north side of Coldstream Avenue. It sits at the northern boundary of the former City of Toronto before it becomes the former City of York. It is within the limit of the Ravine and Natural Features Protection (RNFP) By-law, and also within a Toronto and Region Conservation Authority's (TRCA) regulated area.

#### **BACKGROUND**

The property is rectangular in shape with a frontage of 15.27 m on Coldstream Avenue, a lot area of 1030.10 square meters and a lot depth of 67.83 m. down to the ravine at the rear. There is a significant change in grade, approximately 4 m, from the south street level down to the north lot line. There are also more moderate grade changes from west to east. It is designated as Neighbourhoods in the City's Official Plan (OP) and zoned R1 Z0.35 under the former City of Toronto By-law 438-86 (the "Old By-law") and RD (f15.0; d.0.35) (x961) under By-law 569-2013 (the "New By-law")

#### **MATTERS IN ISSUE**

Significant modifications were made to the application even before the COA considered it, principally to meet the concerns set out in the August 22, 2017 Planning Staff Report to the COA. These include the elimination of one variance (front yard setback); and reductions in others [floor space index (FSI), height of exterior main walls, and building height.]

Therefore the issue before the TLAB is whether the variances as altered should be approved, notwithstanding the COA's refusal to do so in its decision of August 31, 2017. The variances sought now have not changed from those considered and rejected by the COA.

#### **JURISDICTION**

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

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

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

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

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

#### **EVIDENCE**

Prior to the professional planning evidence, Ms. Stewart outlined the attributes of the property, and the history of discussions with various authorities. Because of the ravine orientation and the many trees on the property, Ravine and Natural Features Protection Branch will require a permit to authorize construction, as will the TRCA. Although the plans show a pool and court in the rear, these will not require variances. However, there may well be changes to the structures in the rear if the RNFP Branch will not provide a permit for the construction. For example, both agencies want a large red oak there to be protected. Thus there may be an eventual reduction in the length of the pool or the excavated area in the basement, but these would not affect the variances sought.

These concerns would be addressed in the conditions recommended to be applied should the appeal be approved.

Ms. Stewart pointed out that no near neighbour had commented on the application or the appeal. One had objected, but lived at a distance on the next street to the north and east, across the ravine.

Ms. Jane McFarlane provide expert planning evidence in support of the owners' appeal. She testified that the plans and application had been modified even prior to the COA hearing. The change was primarily to the ground floor. The variance for the front yard setback was eliminated, as the building length was reduced. This is illustrated on a statistic page, Tab 13 of Exhibit 1 (Applicant's submissions), where the former and revised variances are set out. The revised site plan (Ex. 1, Tab 14) is dated August 24, 2017. The entire set of revised plans was filed as Exhibit 4.

The present proposal is for a three storey dwelling with an articulated front wall and an integral garage. The revised plans also illustrate the indentations of the second and third floors at front and rear, and a similar one at the west side. The area calculations in Exhibit 4 show these clearly. The site plan also illustrates the dwelling outline that would be permitted under the zoning by-laws.

Ms. McFarlane described the surrounding neighbourhood as one in transition. There are older homes of 2 and 3 storeys with pitched roofs, dormers, central front doors and attached garages, together with new builds of more modern designs, with elevated front entrances, integral garages, tight side yard setbacks and inconsistent rear wall alignments. Generally however, the newer dwellings have consistent front yard setbacks, partially landscaped front yards and paved parking pads leading to integral garages. More modern homes are found nearby, with numbers 125 and 113 Coldstream demonstrating greater massing and a flat roof.

Ms. McFarlane then addressed the requested variances. The numbers in bold indicate the reductions made even prior to the COA hearing:

#### REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

#### 1. Chapter 10.5.40.10.(5), By-law No. 569-2013

A minimum of 10.0 m. of the first floor must be within 4.0 m of the front main wall.

The proposed first floor is not located within 4 m of the front main wall.

#### 2. Chapter 10.20.4.070.(3), By-law No. 569-2013

The required minimum side yard setback is 1.5 m.

The proposed east side yard setback is 1.22 m.

#### 3. Chapter 10.20.4.070.(3), By-law No. 569-2013

The required minimum side yard setback is 1.5 m.

The proposed west side yard setback is 1.2 m

#### 4. Chapter 10.20.40.30.(1), By-law No. 569-2013

The permitted maximum building depth for a detached dwelling is 19.0 m.

The proposed building depth is 24.88 m.

#### 5. Chapter 10.20.40.20.(1), By-law No. 569-2013

The permitted building length for a detached house is 17.0 m.

The proposed building length is 24.88 m.

#### 6. Chapter 10.20.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is **0.559** times the area of the lot.

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

The permitted maximum height of a building is 10 m.

The proposed height of the building is **10.57** m.

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

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 10.3 m.

#### 9. Section 6(3) Part I 1, By-law No. 438-86

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is **0.559** times the area of the lot.

#### 10. Section 6(3) Part II 3.B(ii), By-law No. 438-86

The required minimum side lot line setback is 7.5 m for the portion of the building that exceeds 17.0 m in depth.

The proposed east side lot line is 1.22 m.

#### 11. Section 6(3) Part II 3.B(ii), By-law No. 438-86

The required minimum side lot line setback is 7.5 m for the portion of the building that exceeds 17.0 m in depth.

The proposed west side lot line is 1.2 m.

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

An integral garage is not permitted where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line.

The proposed integral garage has a floor level below grade.

#### 13. Section 4(2), By-law No. 438-86

The maximum permitted height is 10 m. The proposed height is **11.17 m**.

The updated design revises the front yard setback so that it coincides with the existing structure, at 6.72 m, and does not require a variance. The New By-law requires that the setback be the average of the two adjoining dwellings' setbacks, which in this case is 6.7 m, so that the proposed 6.72 complies with the front yard setback requirement. There is no rear yard setback variance as it is a very deep lot.

The side yard setbacks at 1.2 m (west) and 1.22 m (east) are a decrease from the existing, thus are more desirable (variances 2, 3, 10 and 11). Ms. McFarland stated that these measurements are very common in recent decisions for this area, including on the neighbouring properties, and will allow full access to the rear (Exhibit 2, Attachment 5).

Respecting variances 4 and 5, depth and length under the New By-law, these are measured differently. Length runs from the front wall, while depth is measured from the front yard setback, to the back of the structure. In this case these methods result in the same number, 24.88 m. Length was measured from the front wall to the edge of the rear terrace. It measures 21.63 m if the deck is not included. The Basement plan here shows a recreation room and an access below grade, with a breakfast room and terrace above, to maximize the useable space.

The variance for height (7) is requested at 10.57 m under the New By-law. 10 m are permitted in both by-laws, but under the Old, it is measured from the average grade at the side lot line to the top of the flat roof (11.17 m). Under the New, it runs to the highest top of plate supporting a roof.

Variance 8 seeks to change the maximum height of all side exterior main walls facing a side lot line. The New By-law requires 7.5 m, while the proposed dwelling reaches 10.3 m. This is visible in the centre of the design, but only when seen from the side of the property.

The FSI figure requested is 0.559 sq. m. (575.9 sq. m. GFA – Variances 6 and 9). Ms. McFarlane argued that the by-law requirement of 0.35 sq. m is kept deliberately low so as to ensure that any application for an exemption allows for a thorough review. She included a chart illustrating recent approvals in the area at Attachment 5 of Exhibit 2.

While Variance 12 addresses a below grade garage, the Old By-law measures grade (finished elevation) differently than the New (established grade). Established grade can be seen on the East Elevation drawing in Exhibit 4. This garage is on the left side and behind the main wall, so is subject to the Old By-law requirement. The owners must thus seek a variance. Although technically below grade, it is in fact a positive slope from the street to the garage because of the grade change here.

Variance 1 is also a technical one, required to accommodate the design components of centre hall plan here, with the integral garage at one side. Staff concluded that the main wall is an exterior one, thus the garage should be excluded. The main wall behind it

would be the main floor. The By-law requirement is aimed at limiting the height at the front door to 1.2 m, and so to restrict what could be essentially a three-storey dwelling. The measurement here is .7 m within 4.0 m of the front main wall, rather than 10 m.

Ms. McFarlane is satisfied that the proposed variances are consistent with the PPS and conform to the intent of the Growth Plan. They meet the general intent and purpose of the OP policies found in the Neighbourhoods section 4.1, especially 4.1.5 respecting development on established neighbourhoods. This must respect and reinforce the existing physical character, and this proposal does reflect those around it.

Similarly, the test of meeting the general intent and purpose of the zoning by-law is also met. Her chart (Attachment 5 to her witness statement – Ex. 2) includes 10 years of variances granted nearby. Densities granted were 50, 54, 49, and 58% of the lot areas. Therefore the requested at 55.9% is not excessive, especially given the terrain. Many properties nearby (115, 125, 132, 133 and 134 Coldstream) wrote in support. Because this property is on the boundary between the two by-laws, it is not easy to derive and illustrate a desirable density from decisions in this area. She chose properties to the south as more typical of this neighborhood. Many densities granted were above what is sought here.

The variances are also desirable to achieve the gradual transition to a more modern built form. Similar variances were obtained for the property to the east. There will be little overlook, as the windows are few and further to the rear, and the rear walls line up with those of the neighbours.

The variances will create almost no unacceptable adverse impacts, and so can be said to be minor. Although larger than the present home, the new dwelling will be consistent with others in the neighbourhood.

The conditions now suggested accurately capture and reflect the concerns of the commenting agencies. Ms. McFarlane recommends the application as meeting all four tests in the Act.

### **ANALYSIS, FINDINGS, REASONS**

I agree with Ms. McFarlane that the test of compliance with the general intent and purpose of the OP is met with this proposal. The property is within the Neighbourhoods designation. The description in section 4.1 requires that physical changes to established Neighbourhoods must be sensitive, gradual and generally "fit" the existing physical character. A key objective of the Plan in section 4.1.5 is that new development respect and reinforce the general physical patterns in a Neighbourhood. In my opinion this goal is met by this proposal, as there are recent builds of a comparable size and similar type in this attractive area. Attempts have been made to create an articulated structure that fits the area better than other recent builds that appear slab-like by comparison.

Respecting the general intent and purpose of the zoning by-laws, I find that they are mainly addressed satisfactorily. There are many duplications in the provisions of the New By-law and the Old, adding to the impression of many variances in the application.

The only variances of significance still are those for the FSI and the exterior main wall height in the New By-law. I accept that the wall height will have no visible impact on the area. Variances for side yard setbacks, length, depth, and height are minor numerically, and will have no discernable impact on this neighbourhood, where there are many newer designs. Much of the extended length and depth will be actually under the ground, as can be seen from the conditions below. Technical variances for the garage and reduced area of the first floor are of little meaning in the overall proposal.

The FSI and coverage are slightly larger than others in the neighbourhood, but here this can be explained by the attempt to provide extra living space on a site with a significant grade change. Where coverage and FSI is added to merely by providing a portion of a building coverage below the grade and ground level, on the slope at the rear does not extend the structure in an unacceptable way. Part of the length and depth will be below grade and beneath the ground, and accommodated in Condition 4 below.

The test of desirable is also met, as the proposal provides an attractive structure that will contribute to the modernization of the streetscape. Similar variances were obtained for the property to the east. The roof is a more traditional style, unlike the flat roof next door. There will be little privacy concern or interference with views, with the few side windows and uniform rear setbacks.

The last test is that the variances be minor. While some of the variances may appear large numerically, in context the increases will have virtually no adverse impact on neighbours.

Therefore I find that all of the variances, individually and collectively, meet the tests in the Act.

I have also carefully considered the materials before the COA, as well as the applicable provincial planning documents. I find consistency with the PPS, and conformity with the Growth Plan. The proposal adds a very appropriately designed family home as infill in this residential neighbourhood.

#### **DECISION AND ORDER**

The TLAB orders that the appeal is allowed, and that:

- 1. The variances to Zoning By-laws 438-86 as listed 9 through 13, above, are authorized.
- 2. The variances to Zoning By-law No. 569-2013 as listed 1 through 8 above, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
- 3. Subject to any revisions required by the Toronto and Region Conservation Authority, the new detached dwelling shall be constructed substantially in accordance with the Site Plan, Front Elevation, Rear Elevation, East Elevation and West Elevation, dated August 24, 2017 filed as Exhibit 4 and attached as Attachment 1 to this decision.

# Any other variances that may appear on these plans that are not listed in this decision are not authorized.

- 4. The proposed building length from 17.0 metres to 21.63 metres be one-storey only, and any additional length beyond 21.63 metres shall be below grade only.
- 5. The Applicant shall file a permit application to injure and/or remove trees pursuant to the City of Toronto Municipal Code Chapter 658, Ravine and Natural Feature Protection as shown on the approved Site Plan.
- 6. The Applicant shall comply with the City of Toronto Municipal Code Chapter 813, Article II (Private Trees) and Article III (City-Owned Trees).

G. Burton

Panel Chair, Toronto Local Appeal Body

### Toronto Local Appeal Body

#### **EXHIBIT #**4

Case File Number: 17 235736 S45 16 TLAB Property Address: 129 Coldstream Ave Date Marked: February 16, 2018

### STATISTICS, New Toronto By-Law

August 24th, 2017

129 Coldstream Avenue, City of Toronto, Part Lot 260, Registered Plan M-87

**Zoning Designation** RD, ht10, d35, f15, x961

Lot Frontage,15.27 mLot Depth,67.83 mLot Area,1030.10 smFront Yard Area,115.82 smRear Yard Area,616.29 sm

<u>Tł</u>	nird		143.96 sm
	round econd		234.76 sm 197.18 sm
		<u>Allowed</u>	<u>Proposed</u>

Note: the portion of space outside the heated 3<sup>rd</sup> floor is entirely filled with trusses

\*Floor Area in 4m of building Depth 10.0 sm 0.00 sm

 Setbacks;
 Front Rear
 6.95 m
 6.95 m

 \*Side (w) \*Side (e)
 1.5 m
 1.20 m

 1.5 m
 1.22 m

\*Building Depth; 19.0 m **24.88 m** 

Note: as measured from the proposed front yard set back to the back of the rear excavated deck

\*Building Length; 17.0 m 24.88 m

Note: measured from the excavated bay window at the front to the back of the rear excavated deck Note: the building depth excluding the excavated terrace is 21.63 m

\*Height; 10.0 m <u>10.57 m</u>

Note: as measured from the established grade to the highest point of the roof where the flat roof portion (lower slope than 1 in 4) does not exceed 50% of the total roof area

\*Height of Side Main Walls; 7.5 m 10.30 m

Note: as measured from the established grade to the highest top of plate supporting a roof

**Height of First Floor**; 1.2 m 0.70 m

Note: as measured from the established grade to the finished floor closest to the established grade

FY. Landscape Open Space	69.49 sm	92.15 sm
(% of front yard area)	(60%)	(79.56%)
FY. Soft L.scape Open Space	52.12 sm	77.92 sm
(% of Landscape Open Space Required)	(75%)	(112.13%)
RY. Soft L.scape Open Space	308.15 sm	412.18 sm
(% of Landscape Open Space)	(50%)	(66.98%)

Cabana	Allowed	<u>Proposed</u>
Setback to house;	1.80 m	15.91 m
Setback to rear lot line;	1.78 m	17.34 m
Note: the lot is more than 45m in depth,	, therefore the RYS is half th	ne height of the Accessory structure
Setback to west side lot line;	0.30 m	1.27 m
Setback to east side lot line;	0.30 m	11.18 m
Coverage;	51.51 sm	7.35 sm
	(5%)	(0.71%)
Height;	4.0 m	3.55 m

<sup>\*</sup> variances required

### STATISTICS, Old Toronto By-Law

August 24th, 2017

129 Coldstream Avenue, City of Toronto, Part Lot 260, Registered Plan M-87

Zoning Designation	R1Z0.35
Lot Frontage,	15.27 m
Lot Depth,	67.83 m
Lot Area,	1030.10 sm
Front Yard Area,	115.82 sm

		(35%)	<u>(55.91%)</u>
	Total	360.54 sm	<u>575.90 sm</u>
	<u>Third</u>		143.96 sm
	Second		197.18 sm
*GFA;	Ground		234.76 sm
		<u>Allowed</u>	<u>Proposed</u>

Note: the portion of space outside the heated 3<sup>rd</sup> floor is entirely filled with trusses

Setbacks;	Front	6.95 m	6.95 m	
	Rear	7.5 m	35.97 m	
	Side (w)	0.90 m	1.20 m	
	Side (e)	0.90 m	1.21 m	

#### \*Setbacks for the <u>7.88 m</u> portion beyond 17m of dwelling depth;

* <u>Side (w)</u>	7.5 m	<u>1.20 m</u>
<u> *Side (e)</u>	7.5 m	<u>1.22 m</u>

#### \*Height to top of roof; 10.0 m 11.17 m

Note: measured from the average grade at the lower side lot line of the property to the top of the flat roof.

*Garage Slab;	at grade	<u>below grade</u>
Note: while the upper garage slab complies	with the by-law, the lower sl	ab is below the grade
FY. Landscape Open Space	69.49 sm	92.15 sm
(% of front yard area)	(60%)	(79.56%)

FY. Soft L.scape Open Space	69.11 sm	77.92 sm
(% of Landscape Open Space Provided)	(75%)	(84.56%)

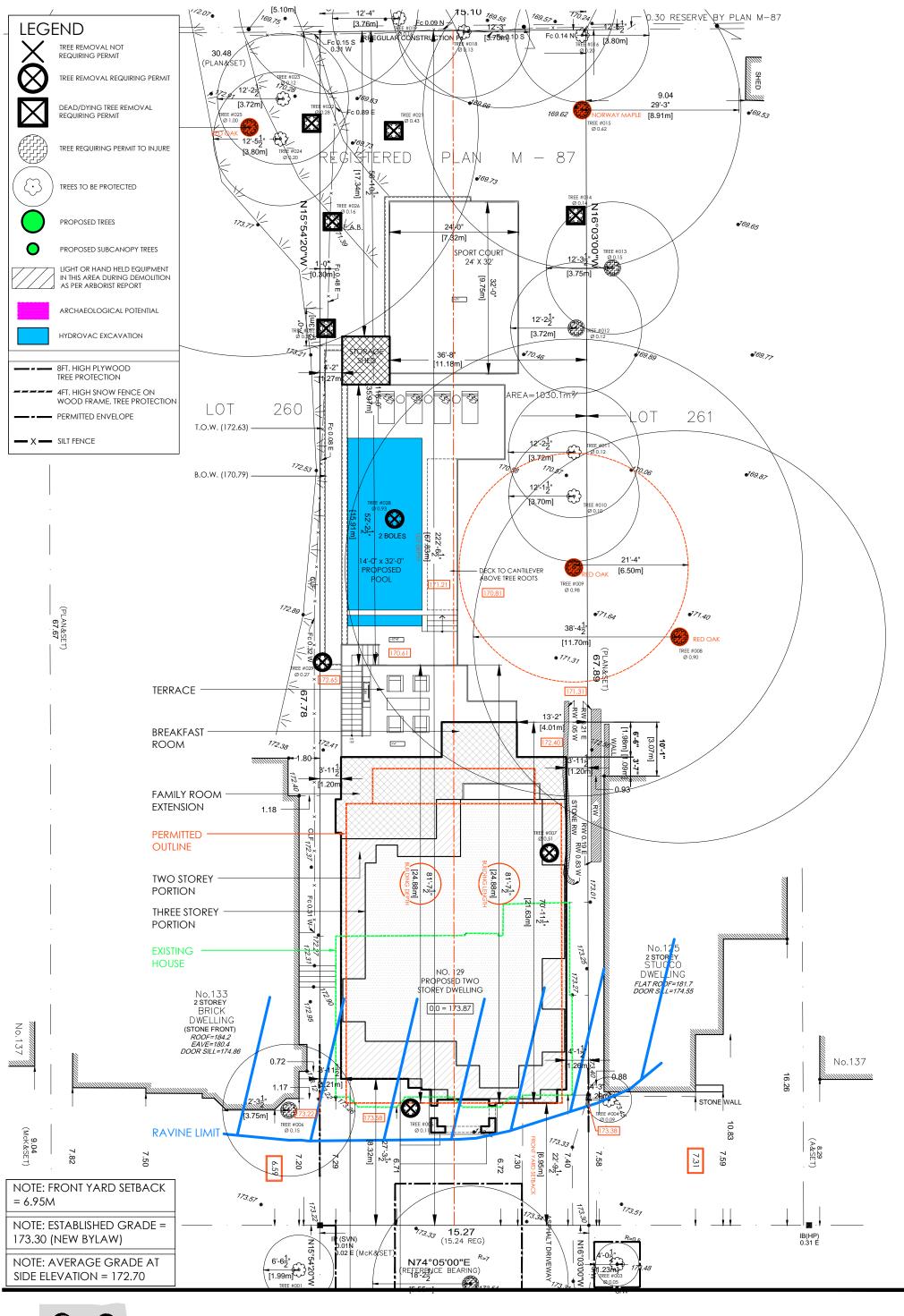
Cabana	Allowed	<u>Proposed</u>
Setback to house;	4.5m	15.91 m
Setback to rear lot line;	3.0 m	17.34 m
Note: the lot is more than 45m in depth, t	herefore the RYS is half th	ne height of the Accessory structure
*Setback to west side lot line;	3.0 m	<u>1.27 m</u>
Setback to east side lot line;	3.0 m	11.18 m
Coverage;	51.51 sm (5%)	7.35 sm (0.71%)

3.55 m

3.70 m

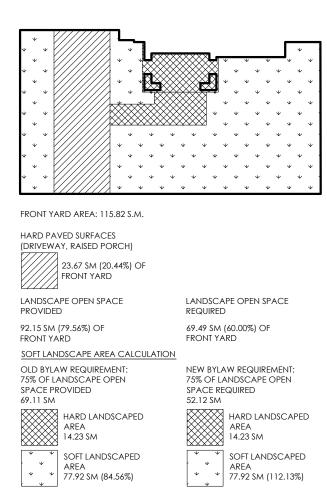
Height;

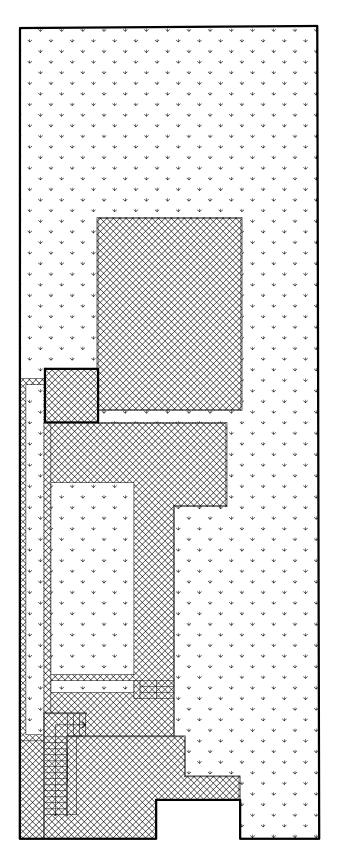
<sup>\*</sup> variances required









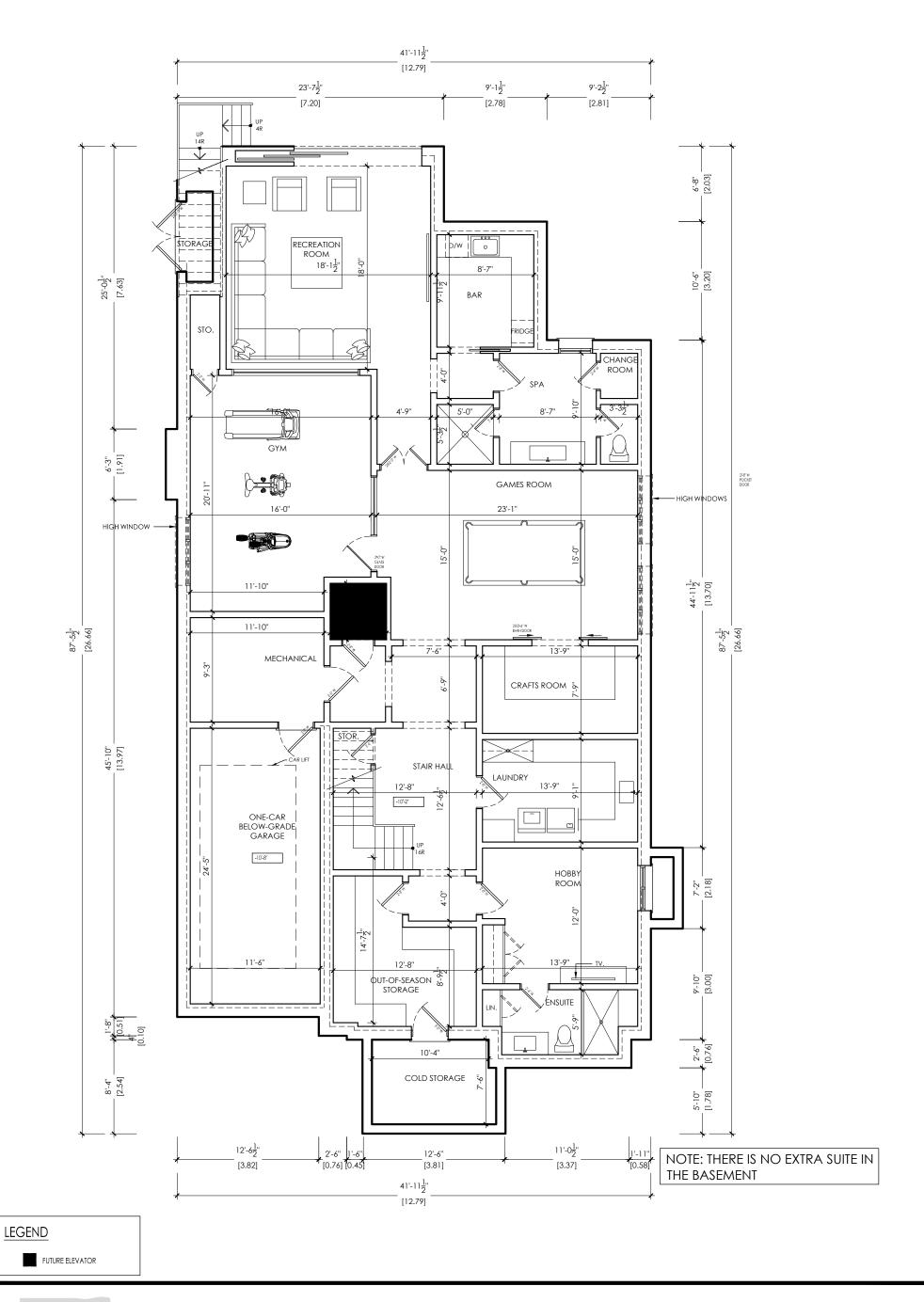


REAR YARD AREA: 616.29 S.M.



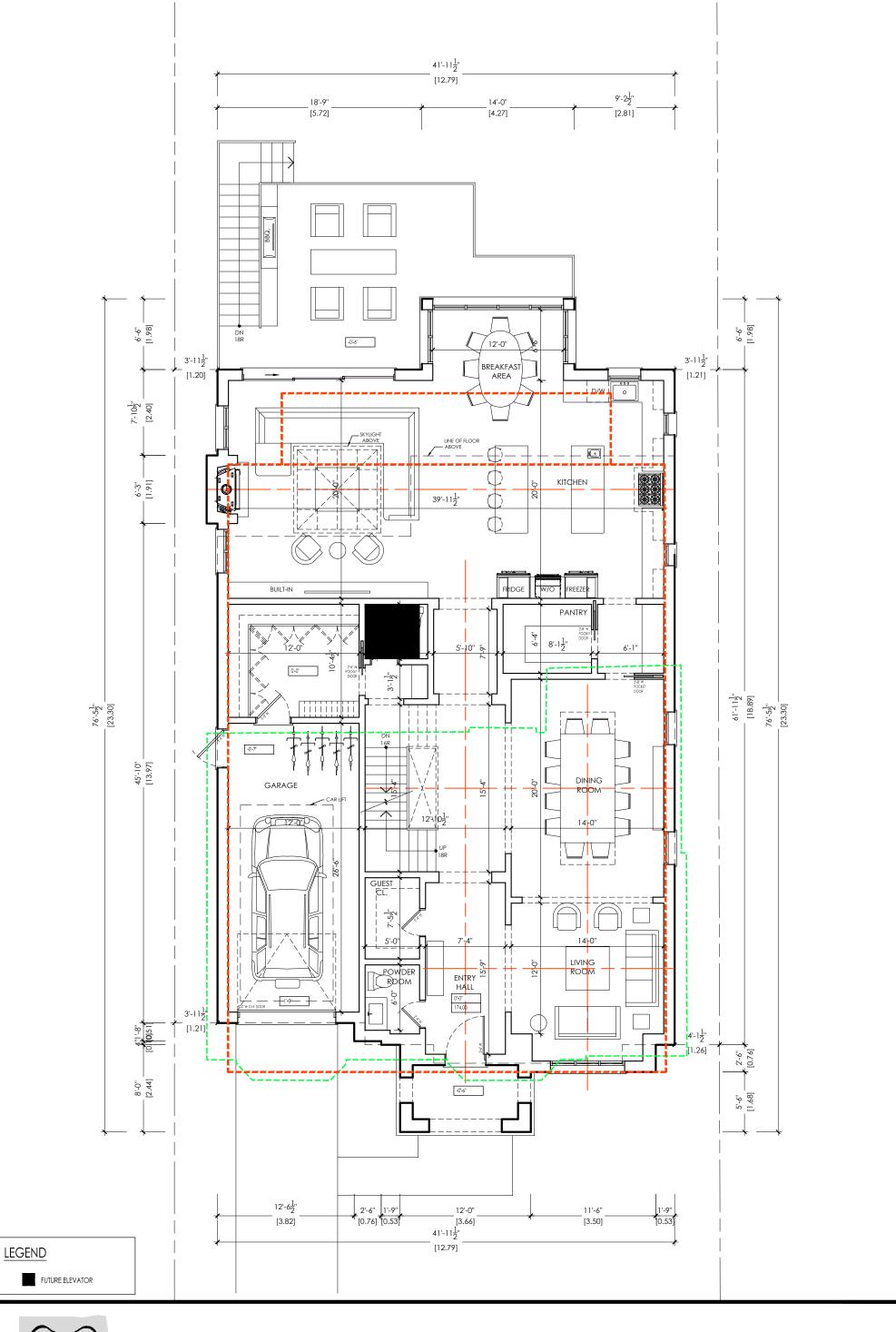




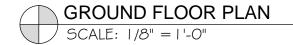


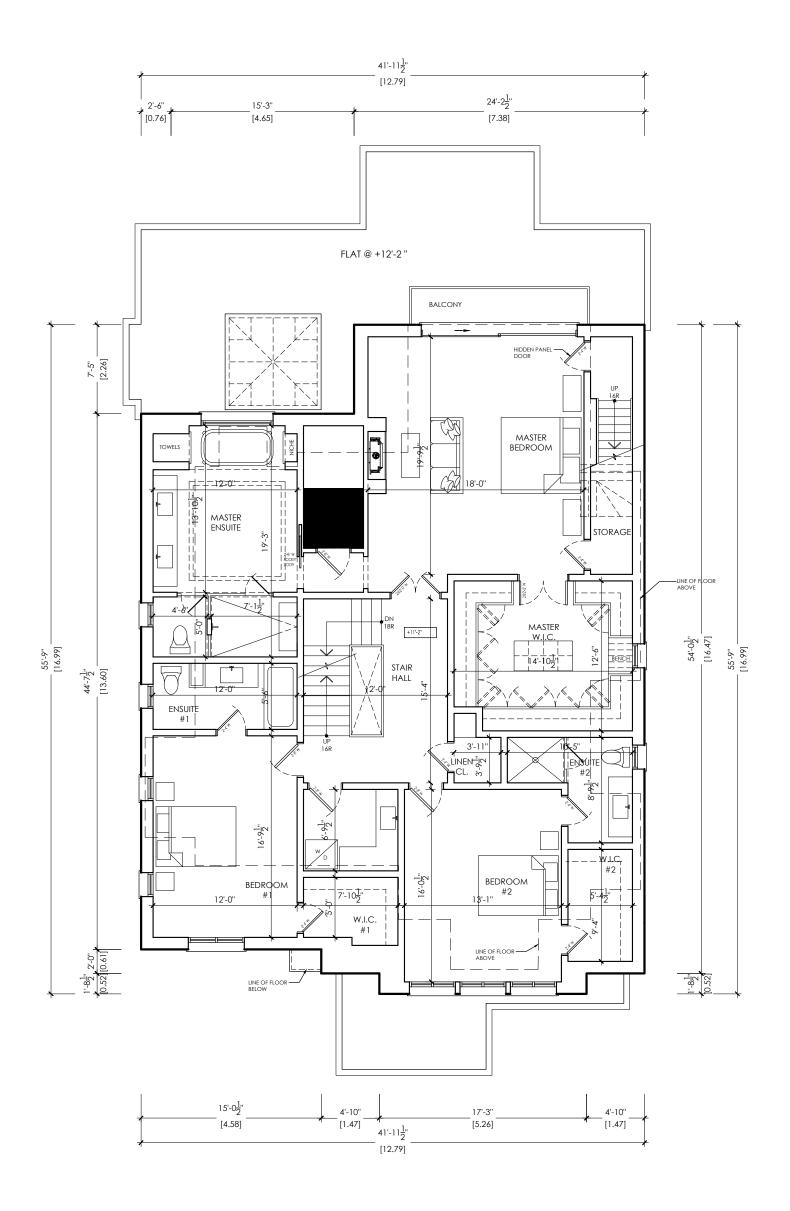






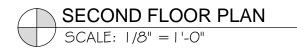


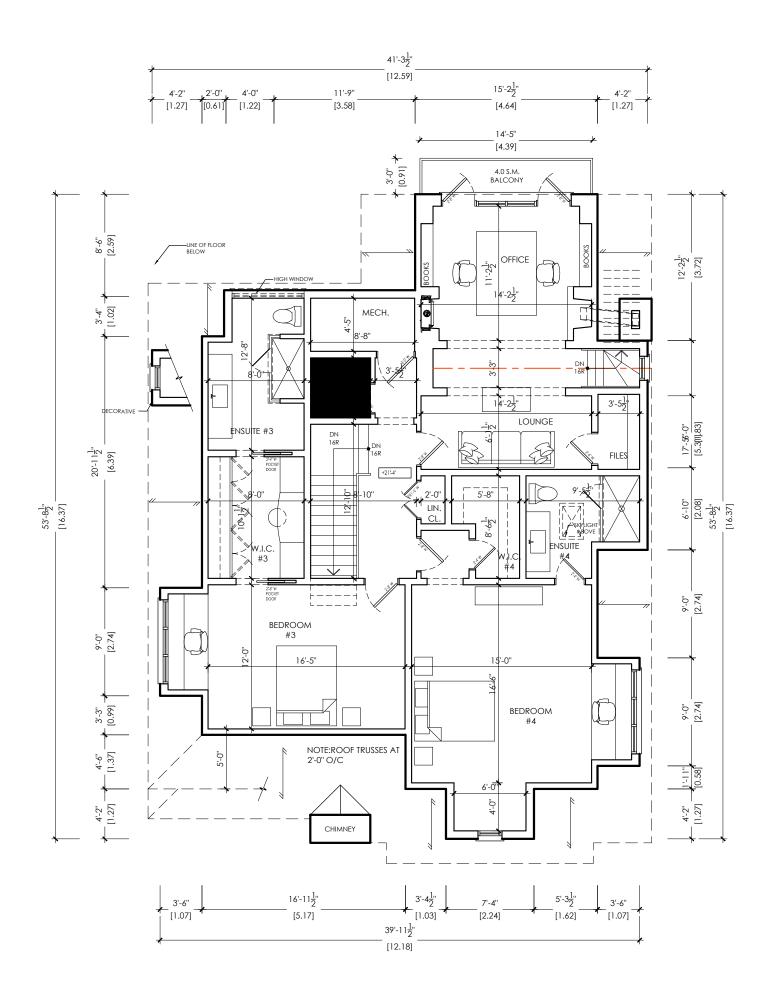






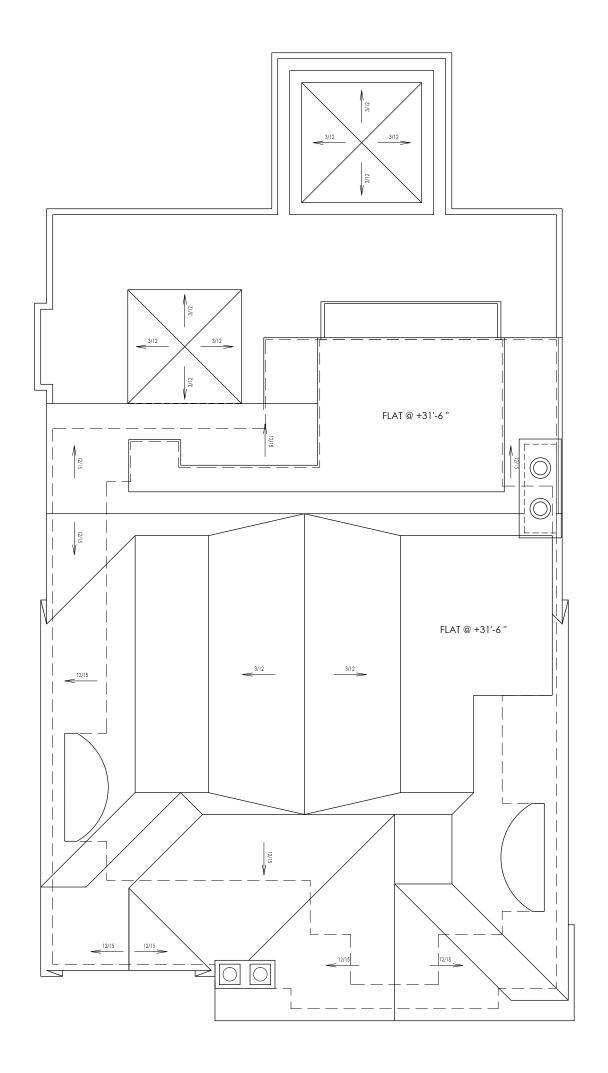


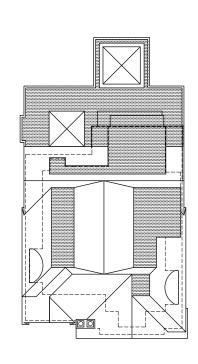












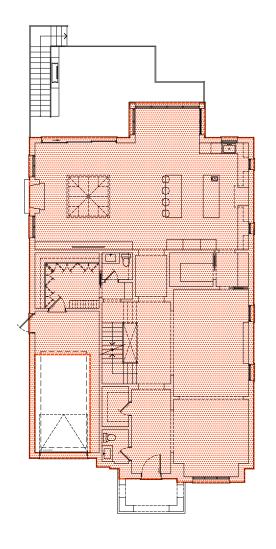
TOTAL ROOF AREA = 3088.67 S.F. (286.95 S.M.) FLAT ROOF AREA = 1149.46 S.F. (106.79 S.M.)

37.22%

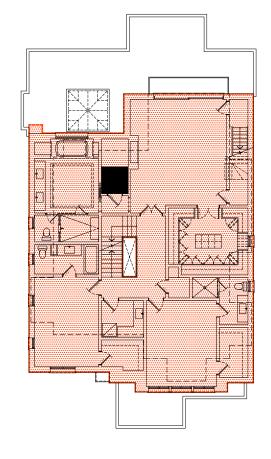


### ADAM/SHAPIRA RESIDENCE





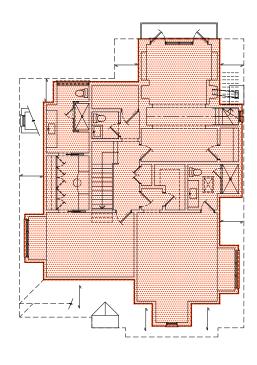
GROUND FLOOR AREA = 2526.88 S.F. (234.76 S.M.)



SECOND FLOOR AREA = 2122.46 S.F. (197.18 S.M.)

LOT AREA = 11087.90 S.F. (1030.10 S.M.) TOTAL GFA = 6223.19 S.F (578.16 S.M.)

56.13%



THIRD FLOOR AREA = 1573.85 S.F. (146.22 S.M.)



### ADAM/SHAPIRA RESIDENCE



