

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Tuesday, April 24, 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): PENG JIN

Applicant: PENG JIN

Property Address/Description: 11 SIMPSON AVE

Committee of Adjustment Case File Number: 17 110177 STE 30 MV (A0099/17TEY)

TLAB Case File Number: 17 265413 S45 30 TLAB

Hearing date: Friday, April 13, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

| Name | Role | Representative |
|--------------|------------------|----------------|
| Peng Jin | Applicant/ Owner | Ron Kanter |
| Peng Jin | Appellant | Ron Kanter |
| Martin Rendl | Expert Witness | |

INTRODUCTION

This was an appeal by the property owner, Peng Jin, from a decision of the Committee of Adjustment (COA) of November 8, 2017 that refused requested variances for construction of a new home on the vacant parcel. The property is located in the Riverdale area on the south side of Simpson Avenue, east of Broadview Avenue and one street north of Gerrard St. The proposal was described in COA documents as a new three storey detached dwelling with an integral garage.

The parcel is designated Neighbourhoods in the Official Plan (OP), and zoned R2 Z0.6 in Zoning By-law 438-86 (the Old By-law) and R(d0.6)(x736) in City By-law 569-2013 (the New Bylaw, not yet in force.)

BACKGROUND

This proposal had been deferred by the COA earlier, on May 30, 2017, for the opportunity to discuss it with Planning Staff and neighbours. Planning Staff had recommended refusal of the application based on non-compliance with the OP neighbourhood policies. Several neighbours opposed the application in correspondence to the COA, principally because of the proposed height, side yard setbacks and the style of the structure. The application returned on November 8 with revised plans and a reduced height. The owner had reached a settlement with the neighbours at 9 Simpson Ave., L'Arche Toronto, resulting in revisions to the plans and certain conditions to be imposed. The Revised Plans are found in Exhibit 1 at Tab 13. The variances before the COA continue to be sought in this appeal.

MATTERS IN ISSUE

The issue is whether the alterations to the proposal suffice to meet the present policies for the Neighbourhood designation, and the applicable zoning standards for this area.

JURISDICTION

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

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

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

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

The owner's case was presented in the expert evidence of Mr. Martin Rendl, a very experienced land use planner, who performed an extensive study of this area. He testified that there was no change to the variances or the plans considered by the COA.

The Planning Report of November 2, 2017 had repeated the staff's earlier objection. It stated that the purpose of the OP Neighbourhood policies were to ensure that proposals respect and reinforce the existing physical character of the neighbourhood. The predominant and consistent character of Simpson Avenue, staff stated, is two- and two and a half storey homes with pitched roofs and modest dormers, and consistent expression of rooflines, massing, and building proportions. This physical character is well established and the variances requested would in their opinion result in a cumulative impact that would destabilize that character. The Report also found that the proposed three storey design would not comply with the Zoning By-laws, which are to respect and reinforce a stable built form and to limit the impact of new development on adjacent residential properties.

Mr. Rendl acknowledged that the prevailing character of this area of Riverside was of two- and two and a half storey older homes of the traditional gabled roof design, on tight lots, with similar massing. However, there are generally three floors of living space within the structures. He presented photos of much of the street (Exhibit 3) and the area (Exhibit 2.) Some lots have mutual drives, but many have front yard or on-street parking. There are some renovations and additions, which he termed modest. Streets to the north demonstrated a tighter lot fabric.

He addressed the requested minor variances:

- 1. Chapter 10.5.40.10.(5),By-law 569-2013
 A minimum of 10.0 m2 of the first floor is required to be within 4.0 m of the front main wall. In this case, a total of 3.93 m2 of the first floor will be within 4.0 m of the front wall.
- 2. Chapter 10.10.40.10.(I)(A),By-law 569-2013
 The maximum permitted height of a building or structure is 10.0 m. The new dwelling will have a building height of 10.57 m.

- 3. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013
 The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m. The height of the side exterior main walls facing a side lot line is 1 0.57 m.
- 4. Chapter 10.10.40.40.(I)(A),By-law 569-2013

 The maximum permitted floor space index is 0.6 times the area of the lot (157.64 m2).

 The new detached dwelling will have a floor space index equal to 0.84 times the

The new detached dwelling will have a floor space index equal to 0.84 times the area of the lot (221.4 m2.

- 5. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013
 The minimum required side yard setback for a detached house is 0.9 m.
 The new detached dwelling wilt be located 0.5 m from the west side lot line.
- 6. Section 4(2){a), By-law 438-86
 The maximum permitted height of a building is 10.0 m. The new dwelling will have a building height of 10.57 m.
- Section 6(3) Part I 1, By-law 438-86
 The maximum permitted residential gross floor area is 0.6 times the area of the lot (157.64 m2).
 The new detached dwelling will have a residential gross floor area equal to 0.84 times the area of the lot (221.4 m2.
- 8. Section 6(3) Part II 3(11), By-law 438-86
 The minimum required side lot line setback from the side wall of an adjacent building that contains openings is 1.2 m.
 The new detached dwelling will be setback 0.9 m from the side wall of the west adjacent building at 9 Simpson Avenue, which contains openings.
- 9. Section 6(3) Part II 3.8(11), By-law 438-86
 The minimum required side lot line setback for the portion of the dwelling not exceeding a depth of 17 m is 0.9 m.
 The new detached dwelling will be located 0.5 m from the west side lot line.

The variance for overall height was reduced to 10.57 m before the COA meeting (the By-laws require 10 m.). Mr. Rendl pointed out that it is only the New By-law that limits side exterior main walls to 7.9 m in height, and the proposed side walls would be 10.57 m high. The side yard setback next to number 9 to the west would be reduced in two aspects, as required by the two By-laws – to 0.5 m (from the required 0.9 m) from the dwelling to the side lot line, and to 0.9 m (from the required 1.2 m) from the wall of the adjacent building containing windows. The Gross Floor Area/Floor Space Index (GFA/FSI) in both By-laws is 0.6 times the lot area, while 0.84 is proposed.

A variation is needed as well for the planned front vestibule. It would be 3.93 sq. m. within 4 m. of the front wall, where 10 sq. m. is required.

Mr. Rendl emphasized that there are no minor variances required for building depth, building length, or for front or rear yard setbacks. He termed it a replacement home, but not one beyond the building envelope permitted by the By-laws. There had been revisions that addressed issues to the satisfaction of the immediate neighbours at number 9 Simpson. No others had commented, nor had the Planning Department.

He thus provided his opinion that the proposal complied with the PPS, and conformed to the Growth Plan. In particular, it is consistent with the PPS' policies for managing and directing land use to achieve appropriate development. It:

- Promotes efficient development and land use patterns (Policy 1.1.1(a));
- Promotes cost-effective development patterns and standards to minimize land consumption and servicing costs (Policy 1.1.1(e));
- Is an efficient use of land (Policy 1.1.3.2(a) 1;
- Efficiently uses the infrastructure and public service facilities which are available (Policy 1.1.3.2(a) 2;
- Incorporates appropriate development standards which facilitate compact urban form (Policy 1.1.3.4).

It also conforms to the Growth Plan. It is an example of intensification as defined, i.e., "the development of a property, site or area at a higher density than currently exists." This represents modest intensification that makes efficient use of land and infrastructure (Guiding Principle 1.2.1); and contributes to building a compact and complete community as well as compact urban form (Where and How to Grow: 2.1 Context). He called this the "poster boy of infill on vacant lots".

Respecting the test of maintaining the general intent and purpose of the OP, in his opinion it is met. 11 Simpson Avenue is designated Neighbourhoods in the Toronto Official Plan. The general intent of the Neighbourhoods designation is to maintain stable low density neighbourhoods. While stable, Chapter 2.3 provides that they will not be static: "neighbourhoods will not stay frozen in time." Physical change is expected to occur over time through enhancements, additions and infill housing. The objective is to reinforce the stability of the neighbourhood by ensuring that new development respects the existing physical character of the area. By Chapter 2.3.1.1, development within neighbourhoods will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.

Chapter 4.1 sets out the same intent. Change in stable neighbourhoods is expected to be sensitive, gradual and generally "fit" the physical character by respecting and reinforcing the general physical patterns.

He testified that the OP assesses compatibility and "fit" not in numbers such as density, but rather by stating objectives for change and new development. Chapter 4.1.5 provides a series of development criteria which are to be considered in assessing the appropriateness of the proposal. These include:

- Heights, massing, scale, and dwelling type of nearby residential properties;
- Prevailing building types:
- Setbacks of buildings from lot lines.

In his opinion, the proposed detached house is the prevailing building and dwelling type in the area. The height, massing, scale and setback of the proposed house from lot lines respect and reinforce the existing physical character of the area.

In Chapter 4.1.8 of the OP, the numerical standards of the Zoning By-law are to ensure that new development is compatible with the physical character of established residential neighbourhoods. In his opinion, the variances for the new house maintain the general intent and purpose of the OP by generally respecting the Zoning By-laws.

The proposed new house respects and reinforces the existing physical character of Simpson Avenue and the neighbourhood. It fits the existing physical context with respect to its height, density and setbacks from lot lines. The required variances do not result in a change that is out of keeping with the established physical character of the neighbourhood or one that threatens its stability. The alterations made to the design result in a closer fit to the sloped roof lines of neighbouring homes. The flat roof to the rear is a contemporary expression of features found nearby. He called this roof design typical of existing renovations and new builds, and of existing homes as well.

On the test of general intent and purpose of the Zoning By-laws, he opined that this too is met. He addressed the variances as two groups: built form, and setbacks from lot lines:

Built Form (Variances Nos. 1, 2, 3, 4, By-law 569-2013; Variance No. 6 & 7, By-law 438-86):

The general intent and purpose of the zoning standards that determine built form (maximum floor area, maximum building height) is to control the massing of a house on a lot. In his opinion the proposed 10.57 m building height is a modest increase above the 10.0 m maximum. The additional 0.57 m height is imperceptible from the street and has no resulting impact. The 10.57 m height of the side exterior main wall maintains an appropriate height for the side wall in the context of the overall building height. It too has no resulting impact.

In the context, the proposed 0.84 FSI is a modest increase in floor area above the 0.60 maximum. This increase is in scale with many other houses on the street and in the area. The proposed FSI and building height are below others recently approved, such as 21 and 26 Simpson Avenue, as well as other properties in the area. He provided a chart of similar variance approvals that demonstrates this (Exhibit 1, Tab 16).

The variance to the minimum first floor area within 4.0 m of the main front wall is an internal design feature. It provides an appropriate amount of internal first floor area at the front wall. It does not affect the exterior appearance of the house, which has a typical two and a half storey look from the street.

Setbacks from Lot Lines (Variance No. 5, By-law 569-2013; Variance Nos. 8 & 9, By-law 438-86)

In his opinion, the proposed west side yard setback maintains the general intent and purpose of the Zoning By-law, which is to provide appropriate separation between adjacent houses. As mentioned, the 0.5 m side yard setback for the west side yard is a sufficient separation between 9 and 11 Simpson Avenue, while the 0.9 m separation between the walls of the dwellings provides pedestrian access if required. The owner of 9 Simpson to the west does not object to the reduced setbacks.

The third test for a minor variance is whether it is desirable for the appropriate development of the land or building. In Mr. Rendl's opinion the variances result in development that is desirable and appropriate for the lot and area. The variances provide for the development of a new house on a vacant residential lot. This infill development fits the established physical character of the street and is not an overdevelopment of the lot.

Simpson Avenue and the neighbourhood are experiencing gradual change as they mature and evolve as a stable neighbourhood adjacent to the Downtown. This process of change and reinvestment is expected in Toronto and is supported by the policies of the Official Plan. He stated that this type of change is part of the process that is keeping Toronto's neighbourhoods viable and attractive as living areas, particularly in Riverdale.

The variances must also be found to be minor. Part of the generally acknowledged test of whether a variance is minor is the nature and extent of any adverse impacts on adjacent properties. In Mr. Rendl's opinion the variances individually and cumulatively do not create any impacts that adversely affect the privacy, views or rear yard amenity areas of nearby properties. The variances provide for a new house that respects and reinforces the physical character of the neighbourhood with regard to the type of house as well as density, height, scale and setbacks from lot lines. The existing Simpson Avenue streetscape will be maintained. He therefore believes that the variances individually and cumulatively are minor. As well, the variances numerically and substantively are minor.

ANALYSIS, FINDINGS, REASONS

I agree with Mr. Rendl that the variances required for this new structure meet the statutory tests. They are within the range of those for other houses approved and built in the area, as can be seen on his 'Chart of Similar Minor Variance Approvals in the Vicinity' (Exhibit 1, Tab 16). Therefore these approvals form part of the existing Neighbourhood with which the dwelling must be compatible under the OP.

This proposal, as he stated, "fits" the existing physical context with respect to its height, density and setbacks from lot lines. The variances do not result in changes that conflict with the established physical character of the neighbourhood, or threaten the stability of the neighbourhood. The design now includes a partly sloped roof line to the front, making it similar to nearby homes. The flat roof at the rear of the dwelling is no longer visible from the street. No one objected to it.

This proposal also meets the requirement that it satisfy the general intent and purpose of the Zoning By-laws. The only zoning standard that appears upon first consideration to be significantly exceeded is that for FSI/GFA. However, I agree with Mr. Rendl that the 0.84 FSI in this case is not a large increase in floor area above the 0.60 maximum. There are many other homes on the street and in the area with similar or greater FSI, existing or recently approved. This is true also of the proposed height. The photos he provided illustrate a great variety of roof styles and overall heights along Sinclair.

The variance to permit the minimum first floor area of 3.93 sq. m. within 4.0 m of the main front wall (rather than 10 sq. m) results from the design itself, effectively two and a half storeys, then three, distributed from front to rear. This provides an appropriate amount of internal first floor area at the front wall. It does not affect the exterior appearance of the house, which has a two and a half storey with integral garage appearance from the street, as seen in Exhibit 1, Tab 13, North Elevation.

Respecting the west side yard setback, I find that the variances provide appropriate separation between adjacent houses. A 0.5 m side yard setback at the west may seem small but given the 0.9 m between the new and the existing structure at 9 Simpson, typical of many in the area, it will satisfy the purpose of the By-law standards. There is a settlement with 9 Simpson agreeing to this.

The third test for a minor variance is whether it is desirable for the appropriate development of the land or building. I find this proposed structure to be appropriate for this vacant lot, and that it does not constitute overdevelopment in this neighbourhood context. It fits the established physical character of the street, albeit with a more contemporary design. This forms an acceptable change and is an appropriate reinvestment, one complying with OP policies.

In addition, the variances must be found to be minor. While on the surface some numbers appear somewhat large, the second aspect of the test for minor is indeed met. There will be few if any adverse impacts on adjacent properties. I agree with Mr. Rendl's conclusion that the variances do not adversely affect the privacy, views or rear yard amenity areas of nearby properties. Even though there are large windows to the rear, in this tight urban context some loss of privacy has been found to be acceptable. There are only small side windows. The variances provide for a new house that respects the physical character of the neighbourhood respecting house type, density, height, scale and setbacks from lot lines. The existing Simpson Avenue streetscape will be maintained. I find that the variances individually and cumulatively are minor. As well, the variances numerically and substantively are minor.

I also find compliance with the policy directives in the PPS and the Growth Plan.

The Settlement agreement with the owner of 9 Simpson Ave. provided for conditions to be applied to any approval. I will accept those conditions in my approval of the appeal. These are:

- 1. The new detached dwelling shall be constructed substantially in accordance with the Plans dated November 7, 2017, filed as Exhibit 1, Tab 13 and attached as Attachment 3 to this decision.
- 2. The Owner will erect at its expense a fence along the west lot line to a height and material compliant with the City of Toronto Fence By-law, in consultation with the Owner of 9 Simpson Avenue.

DECISION AND ORDER

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

- 1. The variances to Zoning By-laws 438-86 as listed in Attachment 1, are authorized.
- 2. The variances to Zoning By-law No. 569-2013 as listed in Attachment 2, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
- 3. The new detached dwelling shall be constructed substantially in accordance with the Plans dated November 7, 2917, filed as Tab 13 to Exhibit 1, and attached as Attachment 3 to this decision. Any other variances that may appear on these plans that are not listed in this decision are not authorized.
- 4. Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting the site or elsewhere in the community if there is no space.
- 5. The owner will erect at its expense a fence along the west lot line to a height and material compliant with the City of Toronto Fence By-law, in consultation with the owner of 9 Simpson Avenue.

ATTACHMENT 1 - By-law 438-86

- 1. Section 4(2){a), By-law 438-86
 The maximum permitted height of a building is 10.0 m. The new dwelling will have a building height of 10.57 m.
- Section 6(3) Part I 1, By-law 438-86
 The maximum permitted residential gross floor area is 0.6 times the area of the lot (157.64 m2).
 The new detached dwelling will have a residential gross floor area equal to 0.84 times the area of the lot (221.4 m2.
- 3. Section 6(3) Part II 3(11), By-law 438-86
 The minimum required side lot line setback from the side wall of an adjacent building that contains openings is 1.2 m.

The new detached dwelling will be setback 0.9 m from the side wall of the west adjacent building at 9 Simpson Avenue, which contains openings.

4.. Section 6(3) Part II 3.8(11), By-law 438-86

The minimum required side lot line setback for the portion of the dwelling not exceeding a depth of 17 m is 0.9 m.

The new detached dwelling will be located 0.5 m from the west side lot line.

ATTACHMENT 2 - Bylaw 569-2013

1. Chapter 10.5.40.10.(5),By-law 569-2013

A minimum of 10.0 m2 of the first floor is required to be within 4.0 m of the front main wall. In this case, a total of 3.93 m2 of the first floor will be within 4.0 m of the front wall.

2. Chapter 10.10.40.10.(I)(A),By-law 569-2013

The maximum permitted height of a building or structure is 10.0 m. The new dwelling will have a building height of 10.57 m.

3. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m. The height of the side exterior main walls facing a side lot line is 1 0.57 m.

4. Chapter 10.10.40.40.(I)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (157.64 m2).

The new detached dwelling will have a floor space index equal to 0.84 times the area of the lot (221.4 m2.

5. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013

The minimum required side yard setback for a detached house is 0.9 m.

The new detached dwelling wilt be located 0.5 m from the west side lot line.

ATTACHMENT 3 – Plans

G. Burton

Panel Chair, Toronto Local Appeal Body

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| U | DESCRIPTION | 17 |

A -00
A -01
SITE PLAN
A -02
BASEMENT FLOOR PLAN
A -03
FIRST FLOOR PLAN
SECOND FLOOR PLAN
A -05
THIRD FLOOR PLAN
ROOF PLAN
ROOF PLAN
NORTH ELEVATION

A -01

A -02

SOUTH ELEVATION

A -03

EAST ELEVATION

WEST ELEVATION

SECTION A

A -01 SECTION A

| TGC | Consulting Inc. |
|---|--|
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| www.t-g-c.ca | |

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COVER SHEET

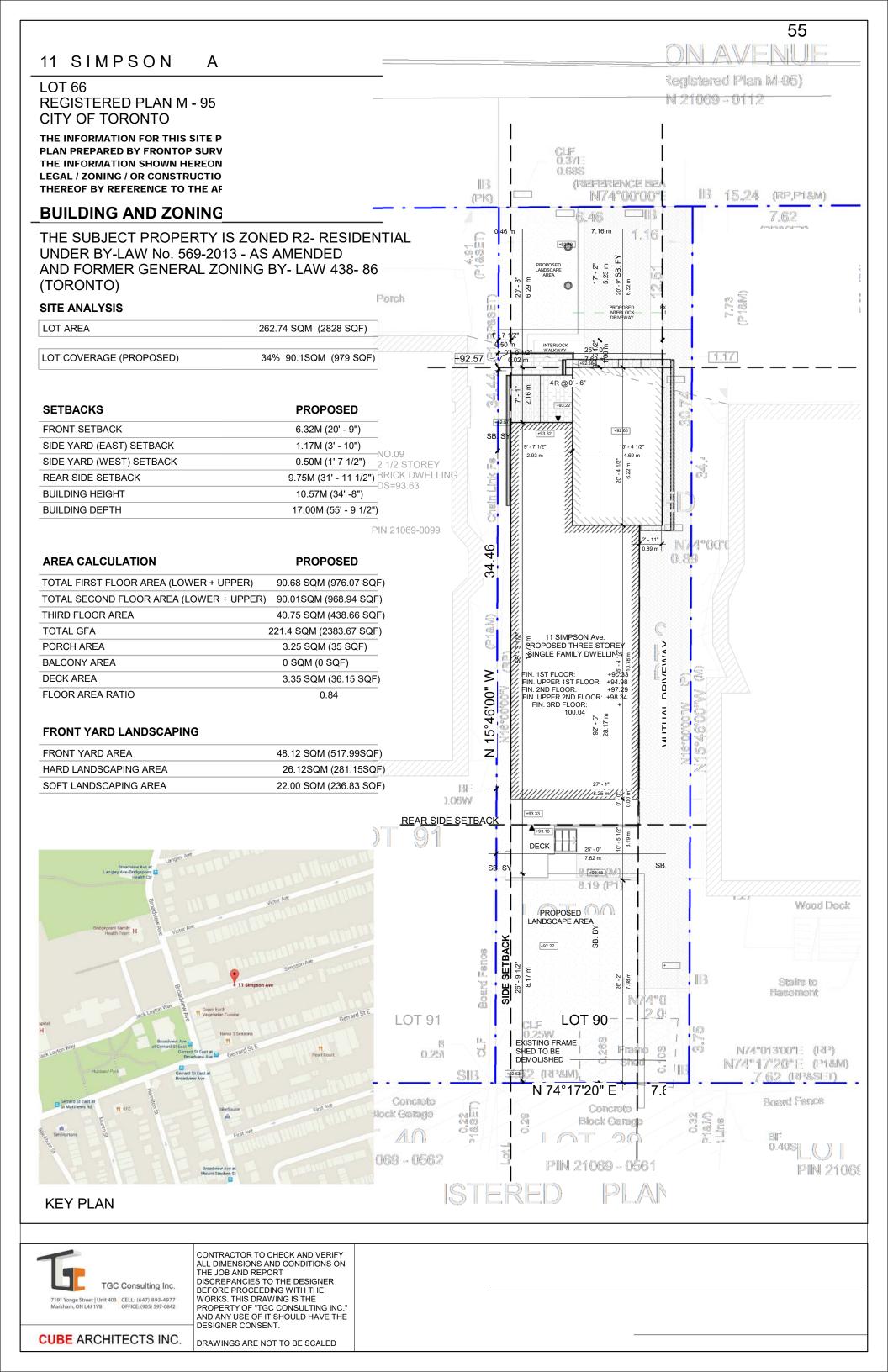
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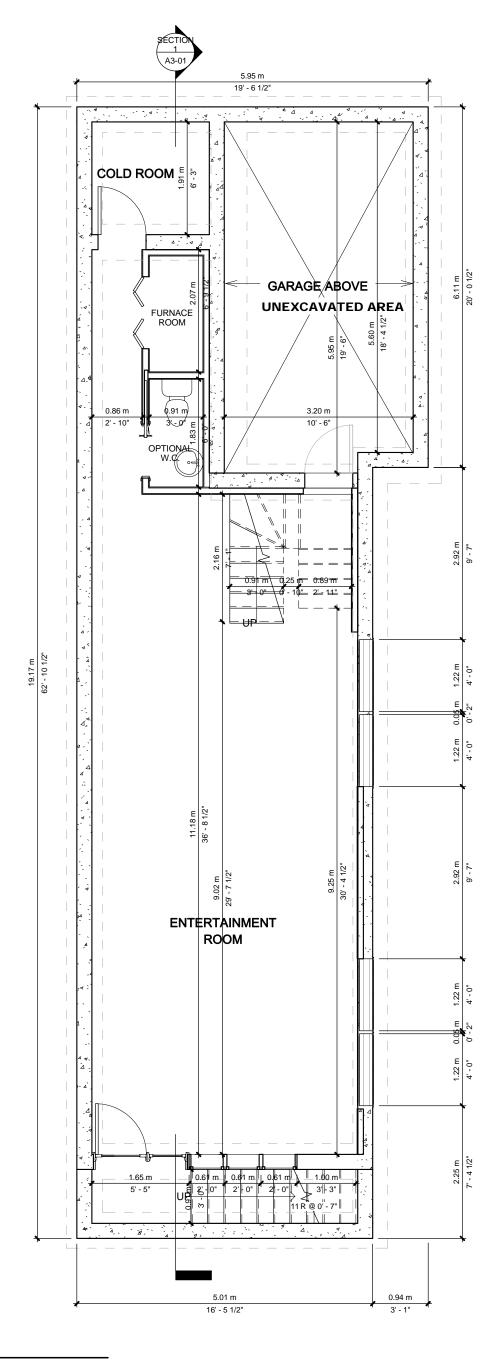
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| Date | August 30, 2017 | |
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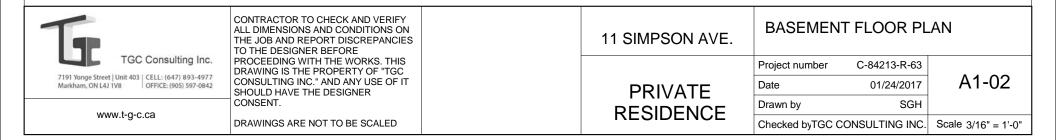
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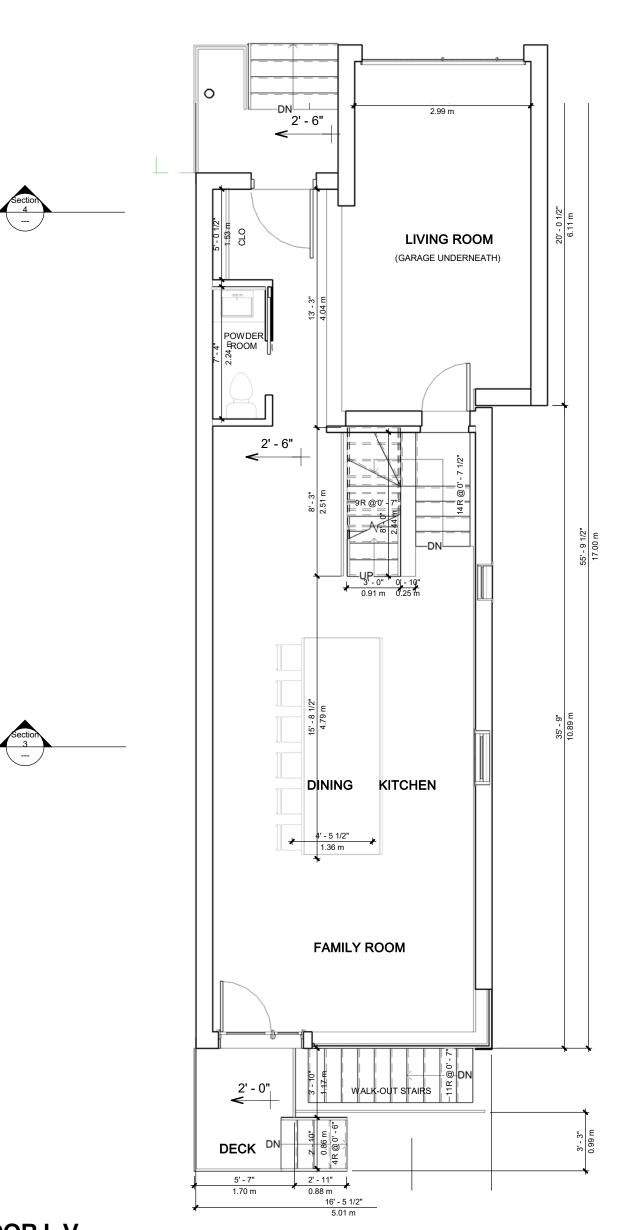




BASEMENT PLAN

SCALE: 3/16" = 1'-0"





1st FLOOR L.V. SCALE: 3/16" = 1'-0"



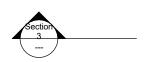
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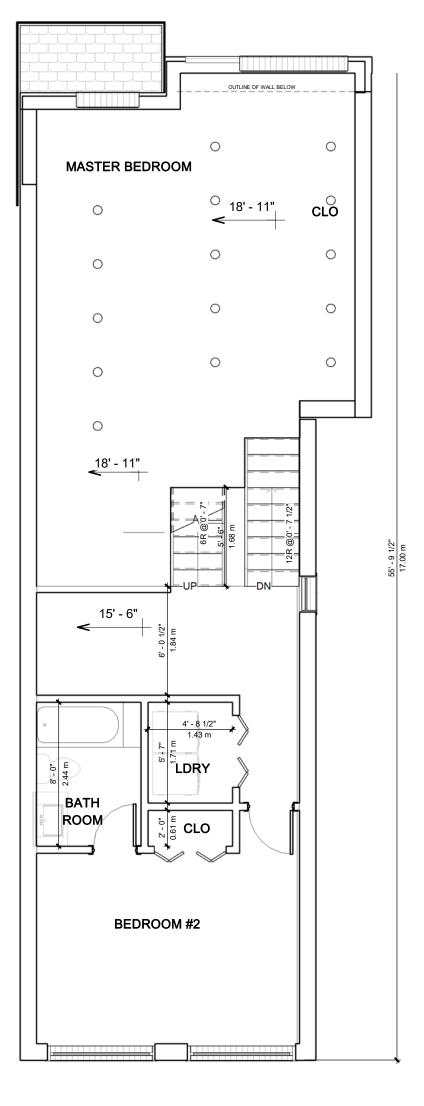
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ENSUITE BATHROOM





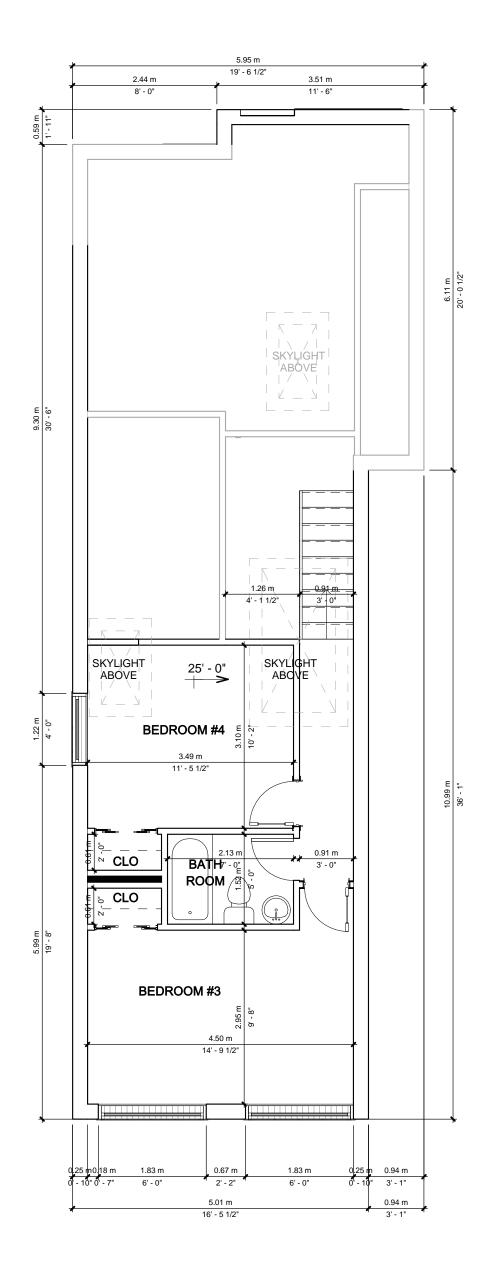
2nd FLOOR L.V. SCALE: 3/16" = 1'-0"

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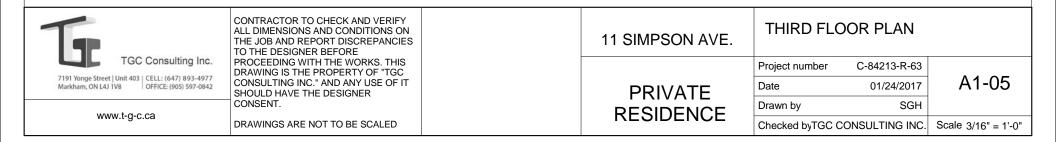
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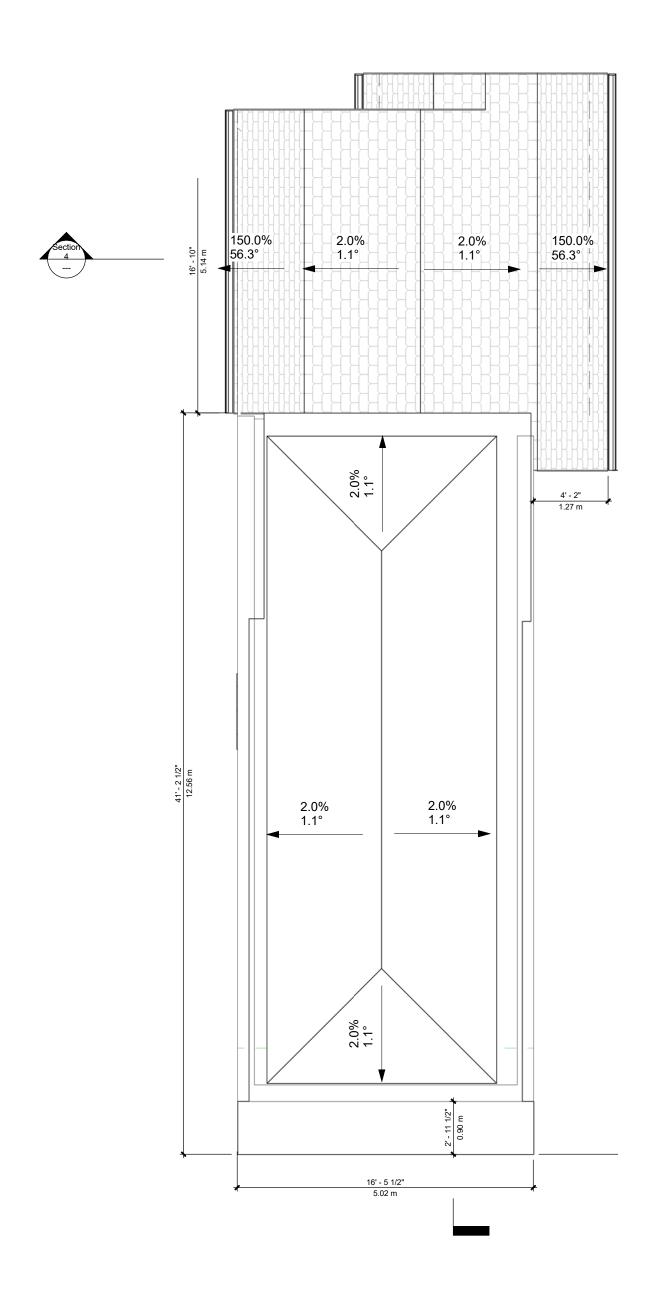
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THIRD FLOOR PLAN

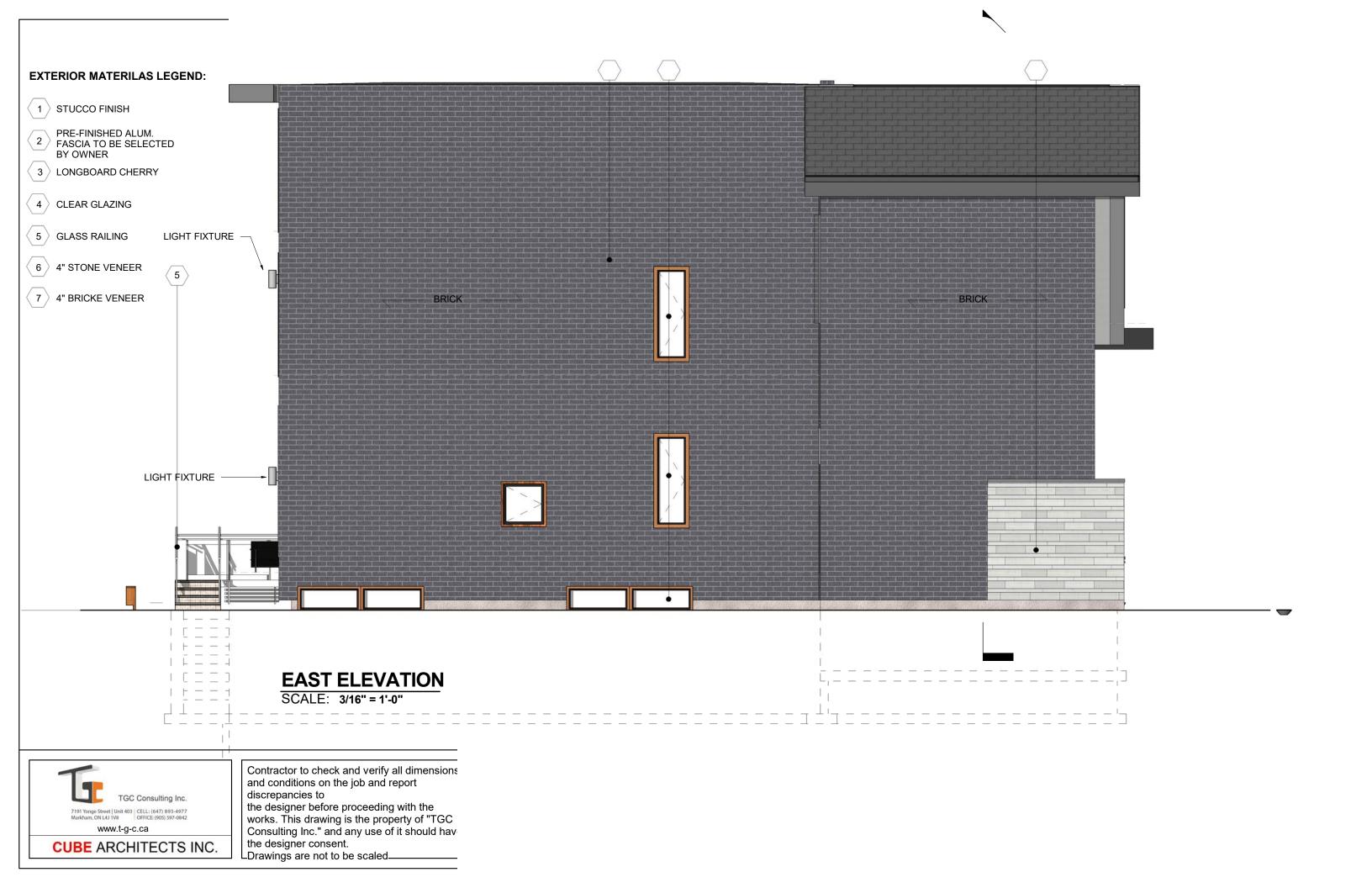
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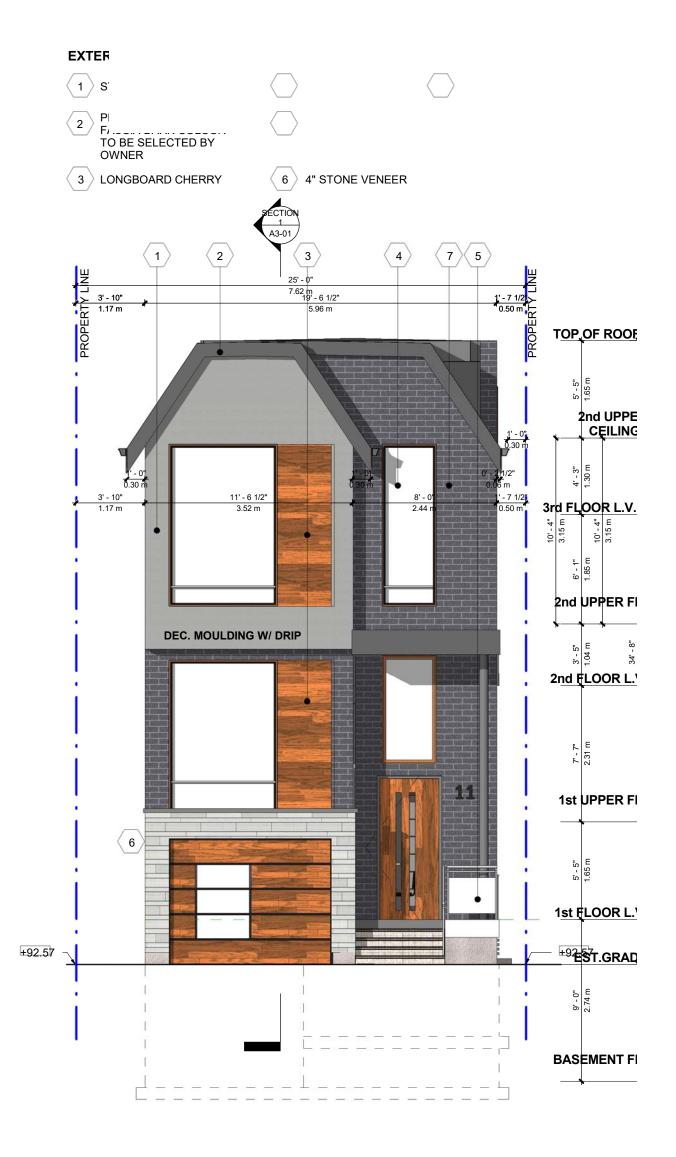






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NORTH ELEVATION SCALE: 3/16" = 1'-0"



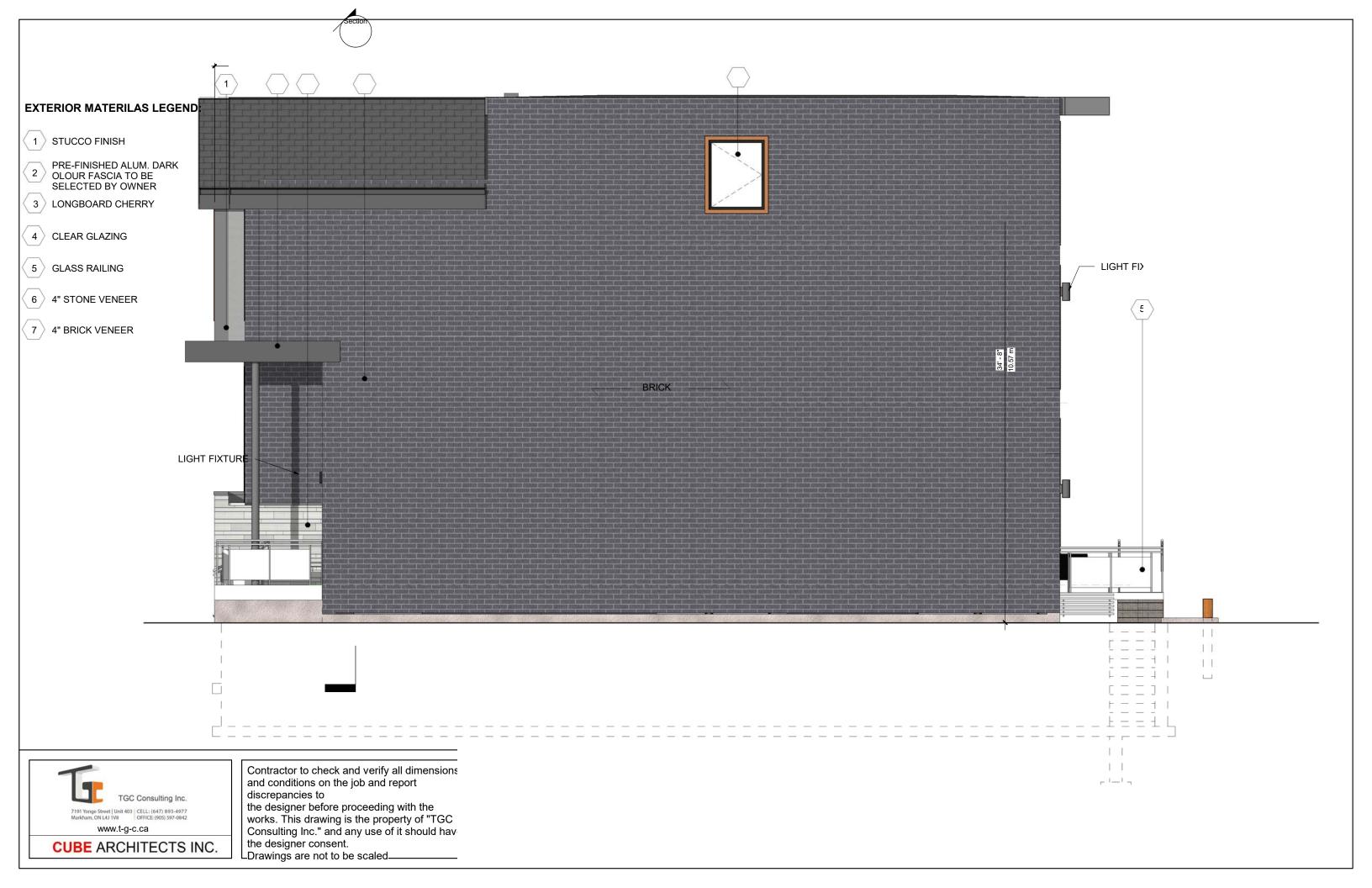
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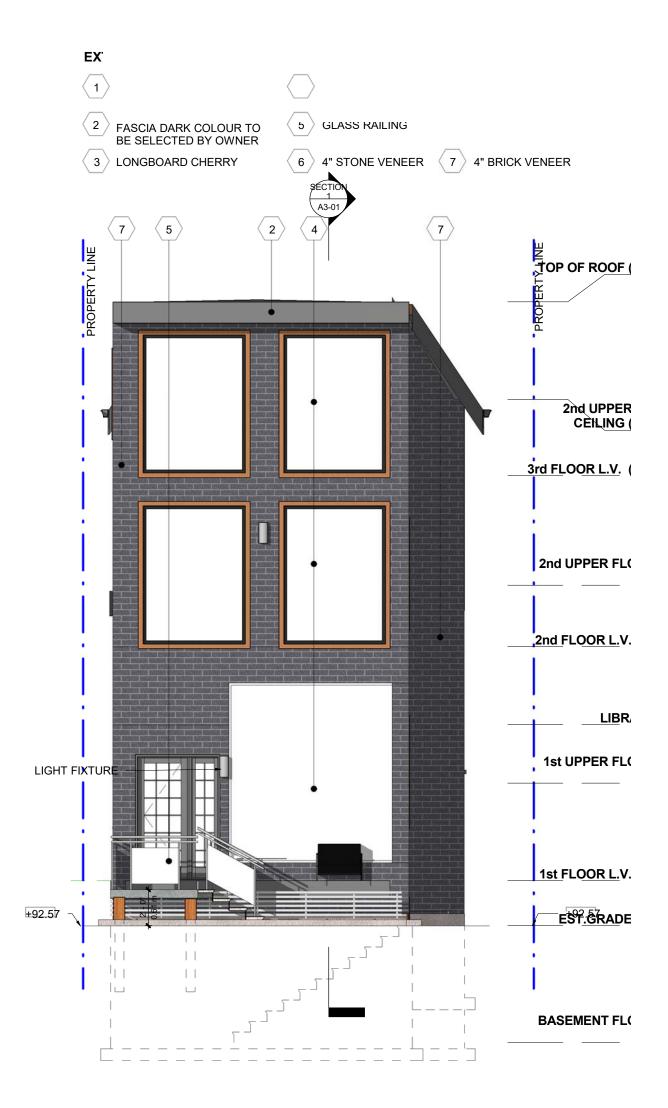
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RESIDENCE

SGH Drawn by Checked bTGC CONSULTING INC. | Scale 3/16" = 1'-0"





SOUTH ELEVATION

SCALE: 3/16" = 1'-0"



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