

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Thursday, June 07, 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): DEBORAH ANNE WILSON, ROBERT PAUL RICHARDSON

Applicant: JONATHAN HATCH

Property Address/Description: 195 SILVER BIRCH AVE - PART 1

Committee of Adjustment Case File Number: 17 127621 STE 32 MV (A0289/17TEY)

TLAB Case File Number: 17 217567 S45 32 TLAB

Hearing date: Wednesday, June 06, 2018

DECISION DELIVERED BY Ian James Lord

APPEARANCES

David Bronskill, solicitor, for the APPLICANT/APPELLANT

Dennis Wood, solicitor, for Parties JADE MAEGHAN LEADBETTER, JANNET HAITAS, MARINA HAUFSCHILD, PATRICIA ANN STODDART, BURKE LAWRENCE, ALEN ZUKANOVIC

INTRODUCTION

This is an appeal from the Toronto and East York Panel of the Committee of Adjustment (COA) of the City of Toronto (City) in respect a variances refused by the COA applicable to a property known municipally as 195 Silver Birch Avenue (Part 1) (subject property).

The subject property is located at the northeast corner of Silver Birch Avenue and Pine Avenue in the reputable 'Beach' Area of the City. It is the north parcel severed from the historical lot of record by order of the Ontario Municipal Board.

The appeal Hearing commenced on February 6, 2018 in conjunction with an appeal on a parcel to the south (now known as 193 Silver Birch Avenue (Part 2)).

The variance appeal on 193 Silver Birch Avenue (Part 2) on a plan of survey filed with the COA, was subsequently withdrawn. Its disposition is the subject of a separated Decision and Order of the TLAB.

The February 6, 2018 sitting failed to complete the evidence and a recommencement following the adjournment that day was scheduled for June 6 and 7, 2018.

As matters ensued, including the above noted withdrawal, there was also a settlement proposed by the parties on June 6, 2018, respecting the subject property.

No participants appeared to speak to the continued Hearing nor the terms of any settlement.

Mr. Bronskill, with the concurrence of Mr. Wood inclusive of content, spoke to the terms of the proposed settlement.

For the reasons that follow, it was unnecessary to hear further from the appellants' planner, Mr. Franco Romano, as to the terms of the settlement or the substance of the proposed conditions in accompaniment.

BACKGROUND

This appeal involves the subject property; it began in conjunction with its parcel to the south with an active set of public planning applications. The corner property was initially known as 195 Sliver Birch Avenue. The two parcels, after an initial refusal by the Ontario Municipal Board, were ultimately severed on a second appeal to that tribunal into two parcels.

Subsequent to that severance decision becoming final, the COA refused additional and separate variance applications on the two parcels (Part 1 (north parcel) and Part 2, (south parcel)).

The appeal herein is specific to only the subject property.

On February 6, 2018, the appeals from the COA on both Parts were commenced and the evidence of the Appellants planner, Mr. Romano was heard in full in respect of the variances sought for both parcels. Mr. Romano provided opinion evidence on the variances under appeal and was subjected to lengthy and detailed cross examination by Mr. Wood. At the conclusion of that days sitting, additional dates to recommence were agreed to (for June 6 and 7, 2018) and Mr. Wood indicated an intent to call 5 witnesses.

Because of the subsequent withdrawal of the appeal to the TLAB above noted applicable to (now) 193 Silver Birch Avenue (Part 2), it is only necessary to consider the evidence provided by Mr. Romano on the subject property.

MATTERS IN ISSUE

At the commencement of the Hearing on February 6, 2018 Mr. Romano addressed two modified variances now under appeal for the subject property. These are:

- 1. Chapter 10.10.40.40.(1)(A), By-law 569-2013. The maximum permitted floor space index is 0.6 times the area of the lot (149.16m2). The new dwelling will have a floor space index of 0.8238 times the area of the lot (204.81m2).
- 2. Section 6(3), Part I 1, By-law 438-86. The maximum permitted gross floor area is 0.6 times the area of the lot (149.16m2). The new dwelling will have a gross floor area of 0.8352 times the area of the lot (207.63m2).

While other variances were sought, they were described as previously granted by the Ontario Municipal Board or otherwise are not required.

Both these variances are reductions, for their respective by-laws, from what was before the COA. As such, consideration is required as to whether any further notice is required for the change, respectively, in the reduced measurements of floor space index and gross floor area.

Cross examination ensued on the aspect of these proposed density requests. Ultimately, the parties petitioned for approval of a settlement, with conditions, that maintain these two measures intact.

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 form 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

I accepted the qualifications of Mr. Franco Romano to provide expert opinion evidence in the discipline of land use planning. As circumstances unfolded, he was the only witness to appear before the TLAB.

Mr. Romano described a study area of 776 lots, including an in depth analysis of its physical character. These measures included lot frontages, lot sizes, fsi ranges (.2x to 3.3x lot area), numbers of stories of built form (1-3), roof lines, building types, parking solutions, building types and regeneration activities.

He concluded that the character of the proposed building on the subject property would maintain the characteristics of the area: landscaped open space in the front and rear; compact form; close side yards; rear yard amenity space; larger new dwelling; front wall alignment; front yard pads; and a similar parking solution in a blending of old and new. He noted some 62% of the lots studied exceed .6 fsi and 26% of the lots on Silver Birch reflected the proposed fsi above 0.8 times lot area.

In his opinion, the proposal, the plans dated September 28, 2017, which he filed as set out in Exhibit 6a, are very much in keeping with the area's physical character.

He noted that since the COA refusal, the project had been scaled back to the smaller fsi and gfa above noted. Several variances had been eliminated: height: main, side and rear wall and, ultimately, for a roof eaves overhang.

Mr. Bronskill requested that only the fsi and gfa variances under the two by-laws are the approvals sought on appeal.

Mr. Romano offered the opinion that the variations to what was before the COA were minor and warranted relief under section 45 (18.1.1).

He noted that the proposed decks on the plans required no variances and the design at 21/2 stories "with use of the floor area under the roof" was a compliant and efficient use of attic space consistent with area approvals and examples in terms of massing, volume, scale and design for new builds.

Mr. Romano was unshaken in his support for area statistics comparability, both in scale and method of measurement.

In considering provincial policy and the statutory tests, he addressed the fsi and gfa variances as compliant, compatible, sensitive and constituted a desirable fit with the neighbourhood. He added that they were not of the character or in areas that lead to

incompatibility given the degree of compliance with all other zoning measures, the minor and insignificant shadow impact and limited overlook condition.

He recommended approval inclusive of the site plan and building elevations but leaving flexibility for internal room layout and redesign.

Mr. Romano defended his use of City statistics to provide a comparative analysis of neighbourhood fsi and gfa measures, noting the common assessment practice of use City statistics on floor area based on definitions excluding basement space. He also described the current propensity to make fuller and better use of habitable attic space through steeper roof inclines and dormers.

In cross examination, he supported a privacy screen of 1.5 m on the second floor deck.

At the commencement of the June 6, 2018 sitting, Mr. Bronskill confirmed the terms of a settlement acknowledged by Mr. Wood. Those terms included the above referenced variances and revisions to the plans to provide notations thereon related to the second level privacy screen and north wall colouring, as expressed in the following three agreed conditions:

TLAB 17 217567 S45 32 TLAB

- 1. Any construction shall be completed substantially in accordance with the drawings prepared by Hatch Designs and dated September 28, 2017.
- 2. An opaque privacy wall of a height of 1.8 metres, constructed of glass or similar material, shall be installed running along the full length of the north edge of the second level deck.
- 3. The north wall siding will be of a light colour to mitigate the visual impact of the wall on 197 Silver Birch

These conditions, on consent, are consistent and supplemental to the evidence of Mr. Romano. Neither Mr. Bronskill nor I suggested any necessity to call a witness to speak to their merit.

I was advised that there were other conditions agreed to in Minutes of Settlement; however, these were not before me as there was no request to have them attached to the Decision of the TLAB, should the settlement be endorsed.

I had reserved as Exhibit No. 7, a production of Mr. Romano; the parties agreed that this reservation, apparently now posted, could be released as being no longer necessary. Nothing turns on that undertaking.

ANALYSIS, FINDINGS, REASONS

Although hotly contested at the outset of the sitting on this appeal, the single variance at issue was ultimately accepted by all parties opposed. In this regard, the hiatus between sittings proved productive. I commended the parties for reaching a consensus thereby avoiding a scheduled 2 days of further Hearing time, and deliberations.

The evidence of the planner, Mr. Romano, was the only professional opinion evidence heard. In the end, it confirmed, which I accept, that the variance proposed was suitable to respect and reinforce the physical built form of the neighbourhood. The new dwelling would 'fit' the subject property. With the modifications proposed by the Appellant and through the agreed Settlement Conditions, it found acceptance with the most immediate neighbours and those supportive of maintaining area character.

I find that the changes to the variances that were before the COA are downscaling and minor and that no further notice is required under section 45 (18.1.1) of the Planning Act. I also find that the variance sought respecting the scale of the residential building is appropriate, meets the provincial policy considerations, is in keeping with the intent and purpose of the Official Plan and zoning by-law, is minor with no undue adverse impact. It represents furtherance of a desirable new dwelling for this recently severed parcel.

I accept that the proposed conditions requested to be imposed by the TLAB are consistent with the evidence heard and are appropriate.

DECISION AND ORDER

The decision of the COA is set aside and the following variance to each by –law is approved, subject the conditions of approval listed below:

- Chapter 10.10.40.40.(1)(A), By-law 569-2013.
 The maximum permitted floor space index is 0.6 times the area of the lot (149.16m2). The new dwelling will have a floor space index of 0.8238 times the area of the lot (204.81m2).
- 2. Section 6(3), Part I 1, By-law 438-86.

 The maximum permitted gross floor area is 0.6 times the area of the lot (149.16m2). The new dwelling will have a gross floor area of 0.8352 times the area of the lot (207.63m2).

Conditions of Approval

- 1. Any construction shall be completed substantially in accordance with the site plan and elevation drawings found in Exhibit 6a to the Hearing, and attached as Attachment 1 hereto prepared by Hatch Designs and dated September 28, 2017, modified by notations to reflect conditions 2 and 3, following.
- 2. An opaque privacy wall of a height of 1.8 metres, constructed of glass or similar material, shall be installed running along the full length of the north edge of the second level deck.
- 3. The north wall siding will be of a light colour to mitigate the visual impact of the wall on 197 Silver Birch.

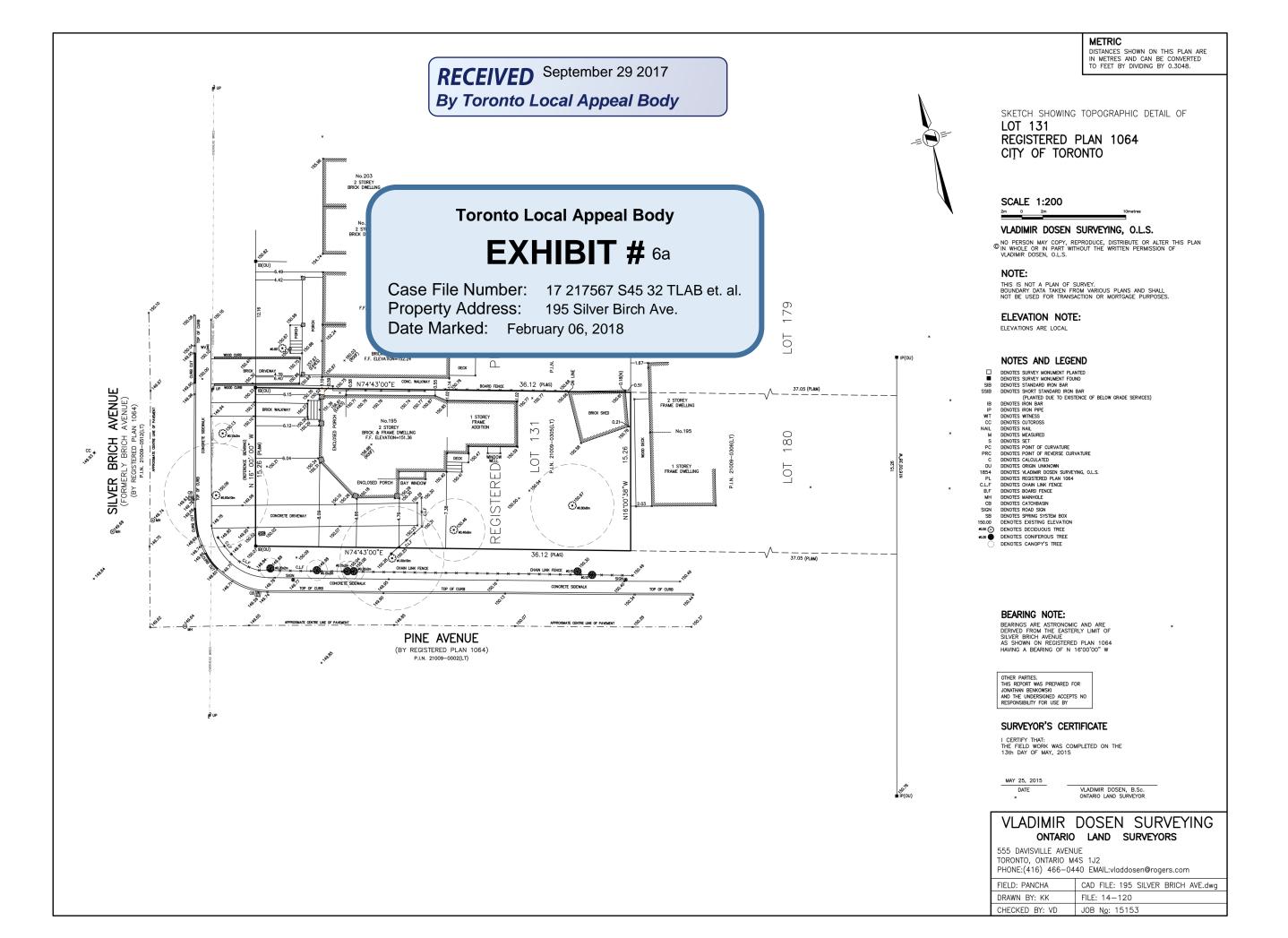
If there are difficulties that arise from the implementation of this decision, including the application of variances previously approved by the Ontario Municipal Board consistent with the Conditions of Approval herein, the TLAB may be spoken to.

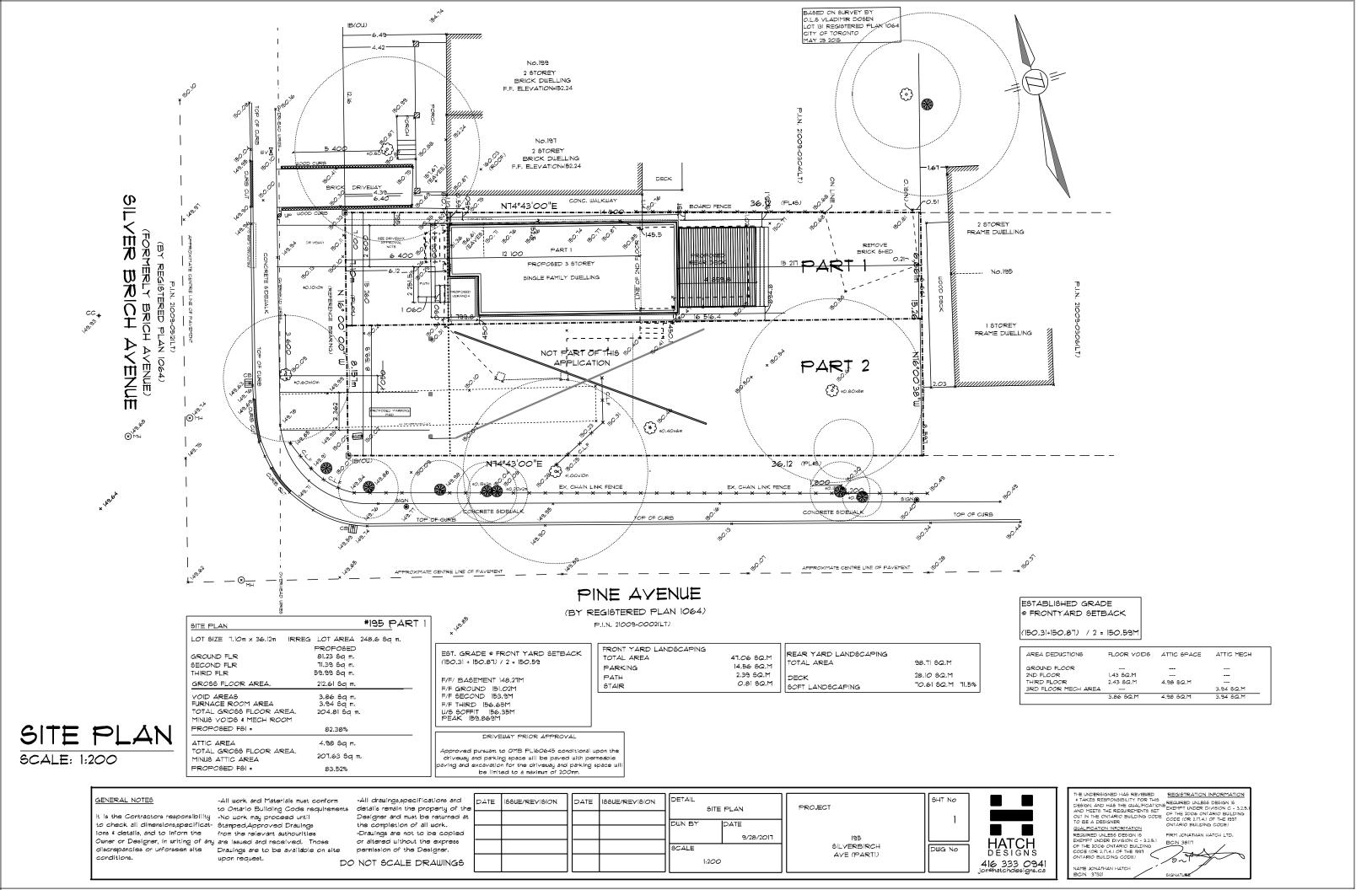
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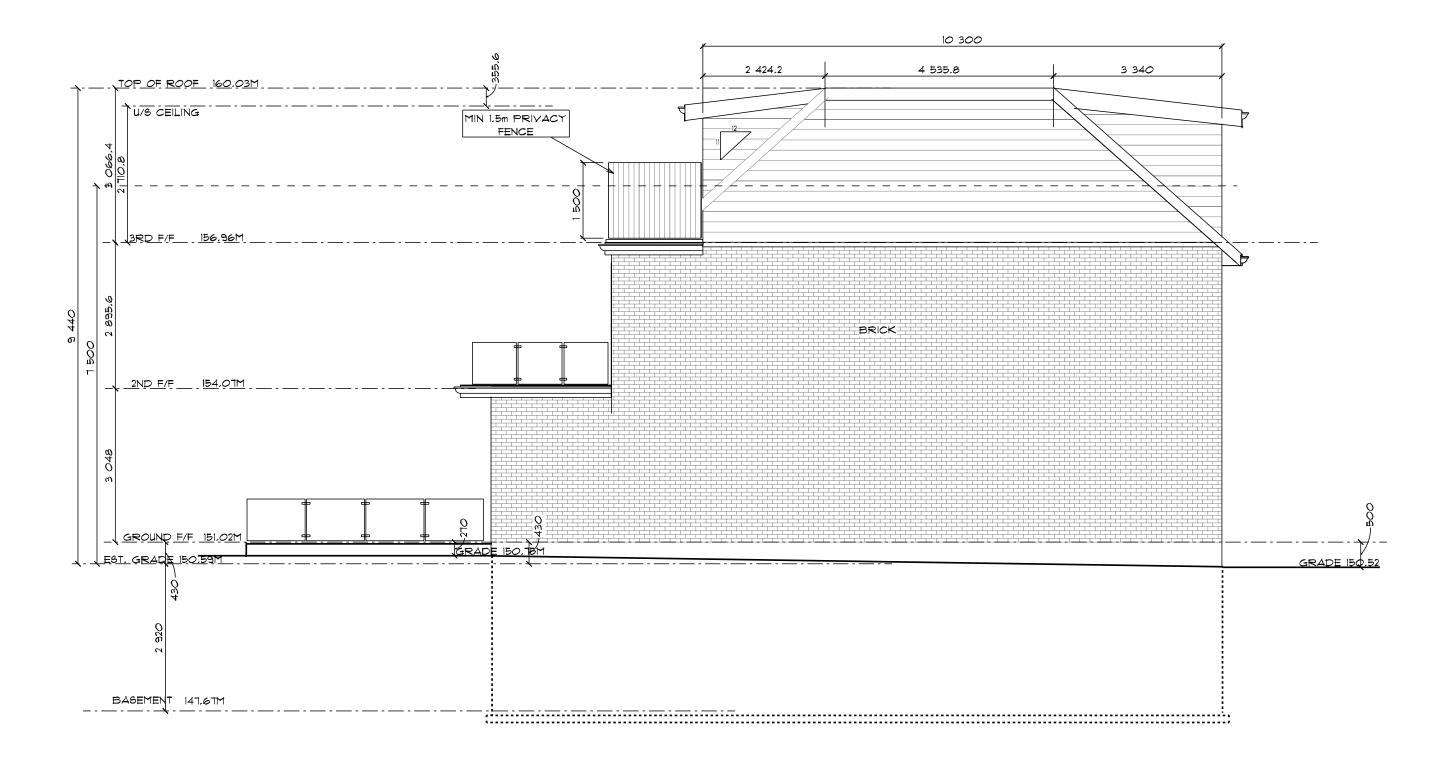
Ian J. Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord







NORTH ELEVATION

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GENERAL NOTES

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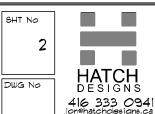
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95 SILVERBIRCH AVE (PARTI)



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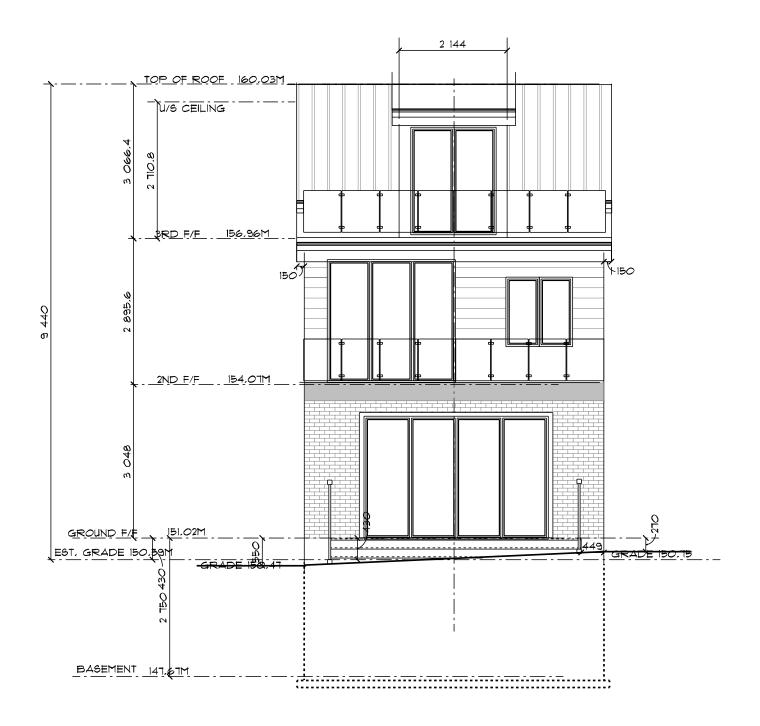
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EAST ELEVATION

SCALE: 1:75

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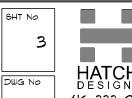
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195 SILVERBIRCH AVE (PARTI)

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HATCH DESIGNS 416 333 0941 jon@hatchdesigns.ca

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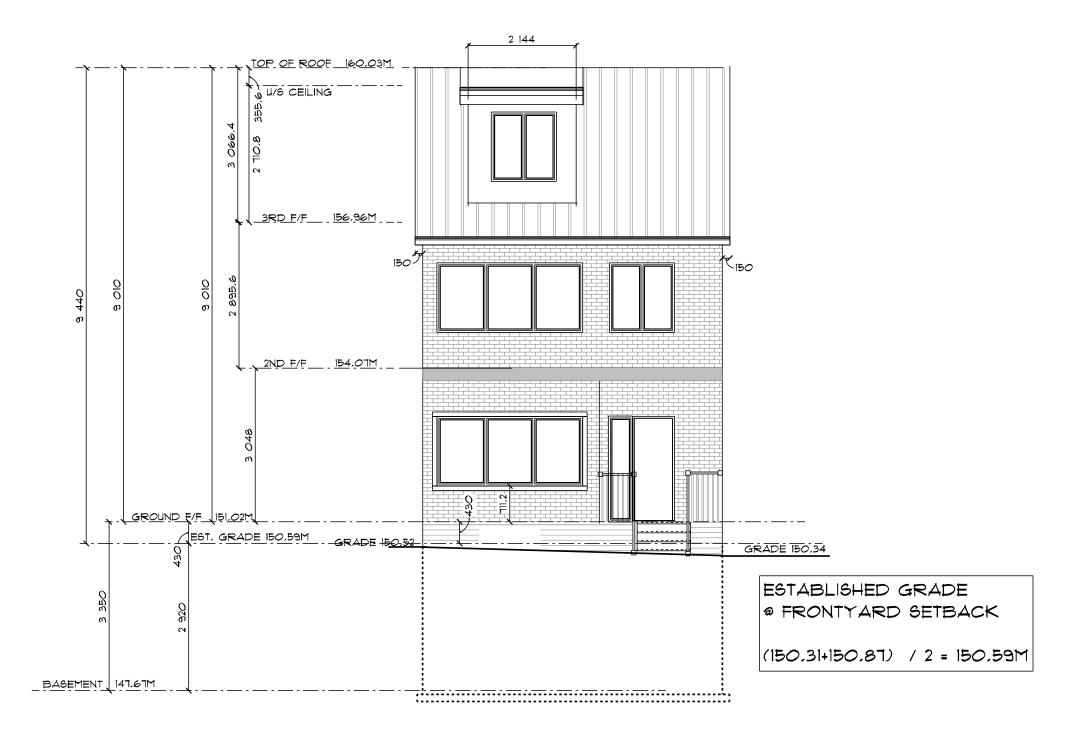
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WEST ELEVATION

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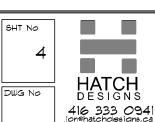
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PROJECT 195 SILVERBIRCH AVE (PARTI)



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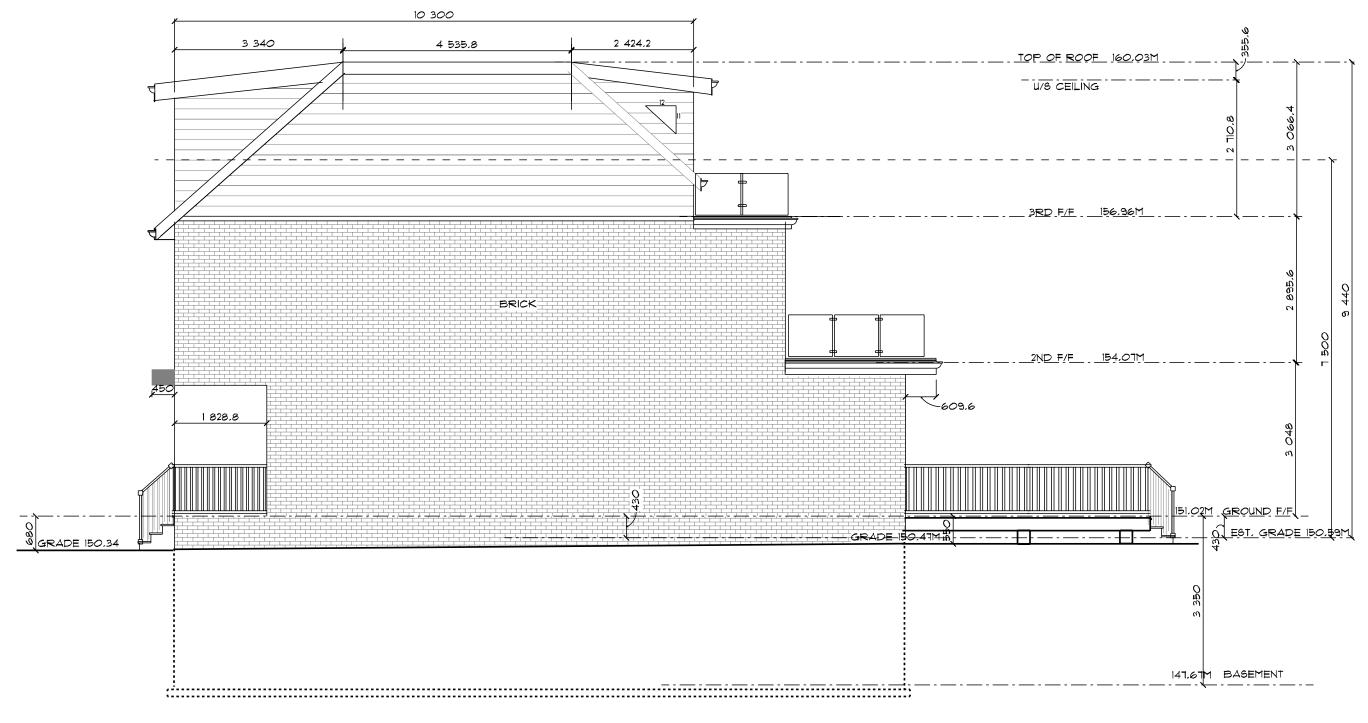
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SOUTH ELEVATION

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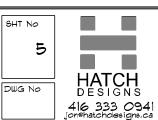
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195 SILVERBIRCH AVE (PARTI)

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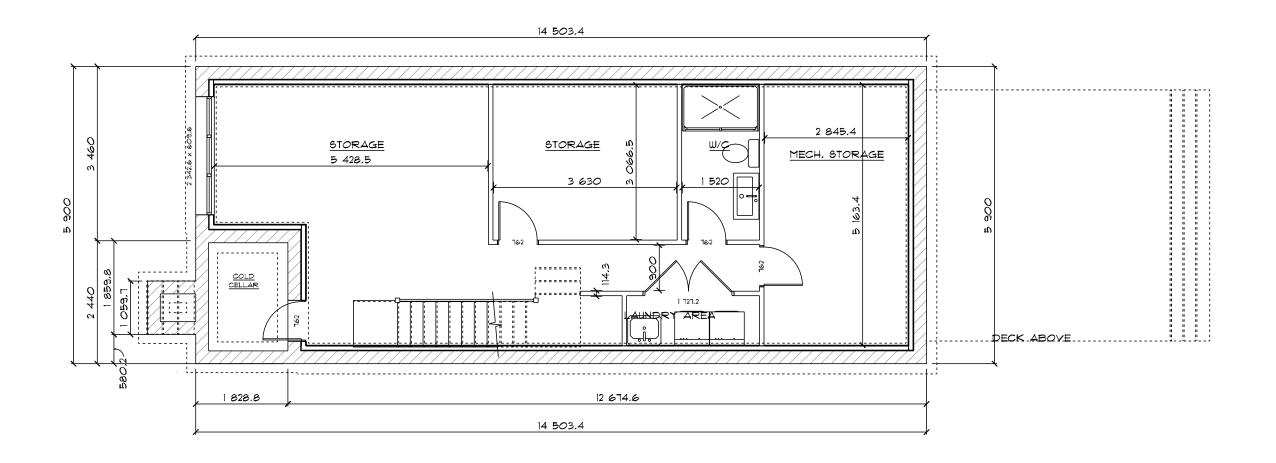
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BASEMENT

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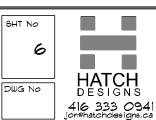
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195 SILVERBIRCH AVE (PARTI)



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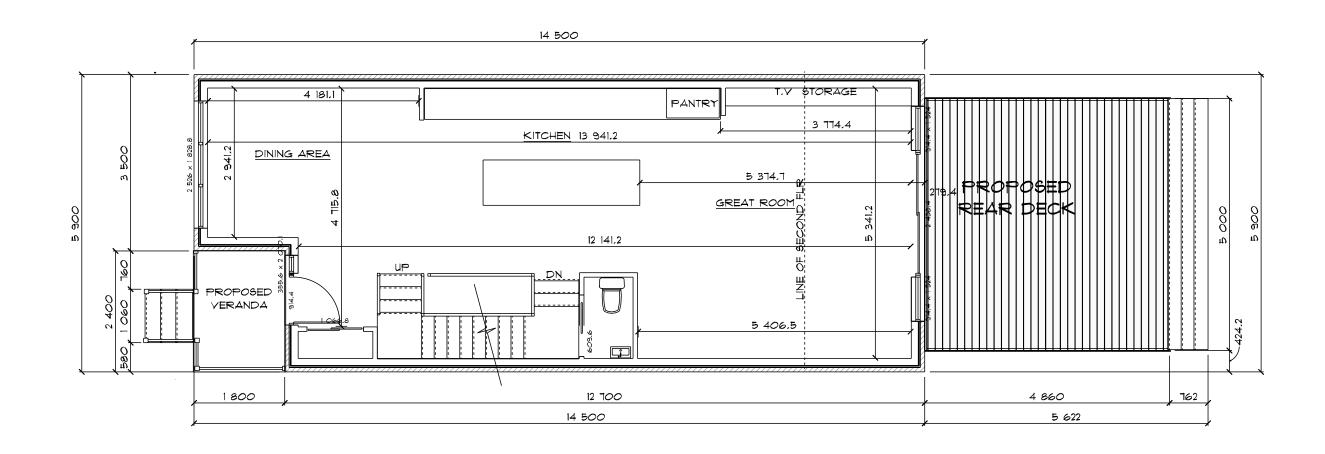
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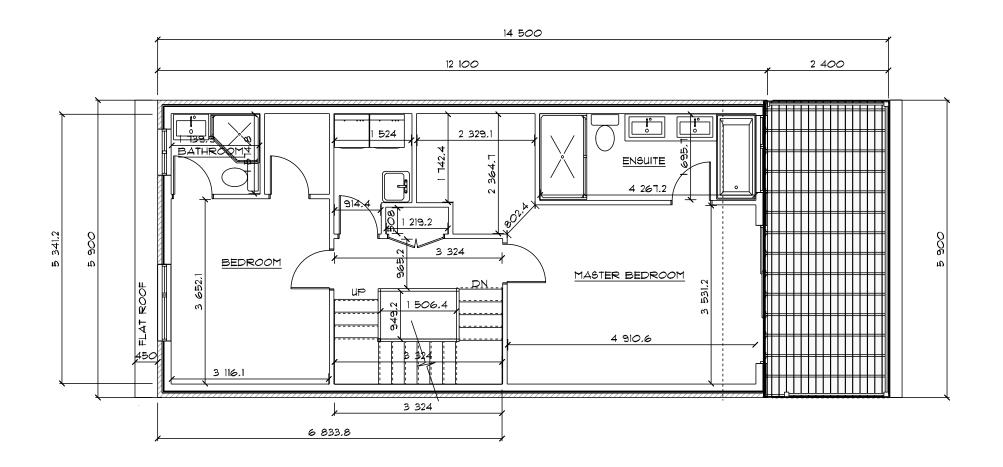
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PROJECT 195 HATCH DESIGNS SILVERBIRCH DWG No 416 333 0941 jon@hatchdesigns.ca

WALL SCHEDULE					
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	EXISTING MASONRY WALLS- AS MARKED				
	PROPOSED EXTERIOR FRAME WALLS, SIDING/STUCCO - AS MARKED				
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195 SILVERBIRCH AVE (PARTI)

PROJECT

SHT NO 8 DWG No

HATCH DESIGNS 416 333 0941 jon@hatchdesigns.ca

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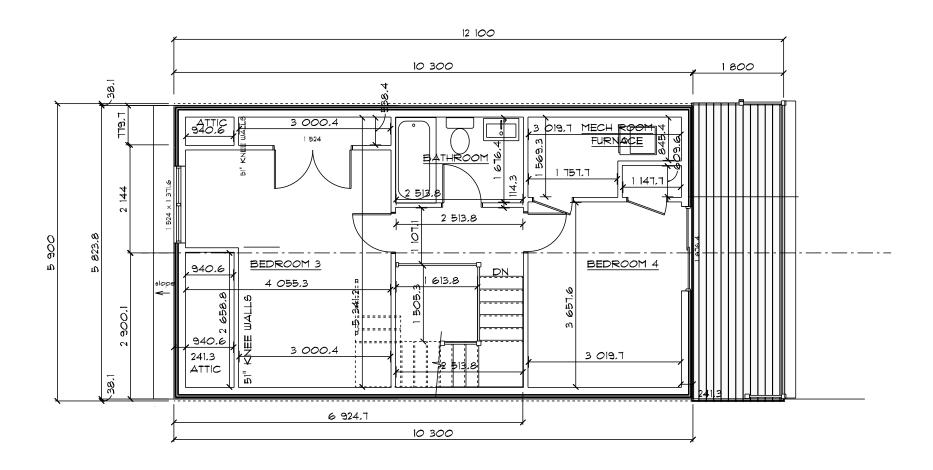
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THIRD FLR SCALE: 1:75

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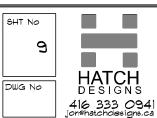
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195 SILVERBIRCH AVE (PARTI)

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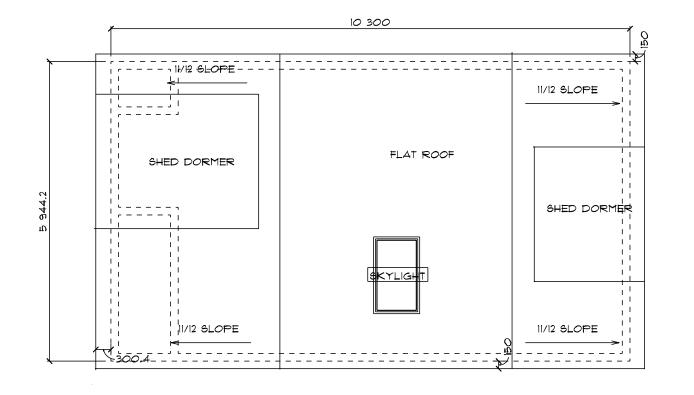
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-Drawings are not to be copied

DO NOT SCALE DRAWINGS

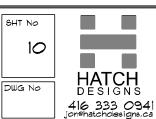
DATE ISSUE/REVISION DATE ISSUE/REVISION SCALE

PROP, ROOF PLAN			
DWN BY	DATE		
	9/28/2017		

1:75

195 SILVERBIRCH AVE (PARTI)

PROJECT



THE UNDERSIGNED HAS REVIEWED

4 TAKES RESPONSIBILITY FOR THIS
DESIGN, AND HAS THE QUALIFICATIONS
AND MEETS THE REQUIREMENTS SET
OUT IN THE ONTARIO BUILDING CODE

1 TO BE A DESIGNER
QUALIFICATION INFORMATION

REGISTRATION INFORMATION

REGISTRATION INFORMATION

REGUIRED UNLESS DESIGN IS
REQUIRED UNLESS DE GUALHICATION INFORMATION
REQUIRED UNLESS DESIGN IS
EXEMPT UNDER DIVISION C - 3.2.5.1
OF THE 2006 ONTARIO BUILDING
CODE (OR 2.11.4.1 OF THE 1991
ONTARIO BUILDING CODE)

FIRM JONATHAN HATCH LTD. BCIN 38117

NAME JONATHAN HATCH BCIN 3732I

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