

## DECISION AND ORDER

**Decision Issue Date**      **Thursday, June 21, 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): SHOKOOFEH SHAFIEI EBRAHIMI, ZUO WANG

Applicant: ARCA DESIGN INC

Property Address/Description: 30 ALEXIS BLVD

Committee of Adjustment Case File Number: 18 109371 NNY 10 MV (A0050/18NY)

TLAB Case File Number: **18 141872 S45 10 TLAB**

**Motion Hearing date:**      Thursday, May 31, 2018

**DECISION DELIVERED BY S. MAKUCH**

### APPEARANCES

Frank Bellini of ARCA Design - Expert witness for the Owners/Applicants

Basir and Roya Qadiri - Owners/Applicants

Shokoofeh Shafiei Ebrahimi - Appellant

Zuo Wang - Appellant

### INTRODUCTION

This was matter originally brought forward as a motion on behalf of the owners, Basir and Roya Qadiri by Najia Qadiri seeking an earlier date for the hearing of this matter which is an appeal of a decision of the Committee of Adjustment approving minor variances to permit the construction of a two story dwelling. All parties agreed to the granting of the motion and furthermore agreed to the immediate hearing of the appeal of the minor variances.

## **BACKGROUND**

The two appellants each own a detached dwellings, one to the east and the other to the west west of the Qadiri's property. The Qadiris propose to demolish an existing dwelling and to construct a much larger two story dwelling. The variances being sought relate to: main building length, building and wall height, the size of a rear balcony, and the height of the first floor. The Committee approved all the variances but imposed a condition that the dwelling be constructed substantially in accordance with the elevation plans attached as Appendix 2 to this decision and a condition that the rear balcony be screened on the east side.

## **MATTERS IN ISSUE**

There were three issues raised by the appellants. Mr. Wang was concerned that the new dwelling did not conform with the zoning bylaw. Ms. Shokoofeh Shafiei Ebrahimi and her husband had the same concern but raised two additional issues; firstly, that the proposed dwelling was longer than permitted and because of its length and height would cast a shadow on a deck at the rear of their dwelling, would block their view, and would result in a wall beside her deck. Secondly, that a second floor balcony should not be permitted as it intruded on her privacy and screening of it would result in the appearance of a high wall if screening were placed on top of it.

Planning staff was not opposed to the variances; except the variance with respect to the size of the rear balcony. It, therefore, recommended that that variance allowing a balcony larger than permitted by the bylaw not be approved and the dwelling be constructed in accordance with the elevation plans attached as Appendix 2 to this decision. Planning staff's uncontradicted report stated that part of the variance with respect to building length was the result of a one story rear bump out.

## **JURISDICTION**

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.

In addition 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').

## **EVIDENCE**

Although there was no evidence regarding the PPS or the Growth Plan, in my opinion, it is clear that the application is consistent with the former and does not conflict with the latter.

With respect to the four tests of the Planning Act the only expert evidence was that of Mr. Bellini. He was qualified as an expert in planning with respect to minor variances as he has worked in architecture and planning for many years and has been employed by ARCA to deal with minor variances and the four test for minor variances under the Planning Act. He has given evidence before the Committee of Adjustment of the City of Toronto many times.

He reviewed the character of the neighbourhood and described how the proposed dwelling respected and reinforced the character of the neighbourhood. Moreover, he presented a number of photos, Exhibits 1-5 indicating how the dwelling was not out of keeping with the height of the neighbouring dwellings and he referred to the site plan on file in the Supporting Documentation to demonstrate that the walls of the proposed dwelling would not significantly interfere with views from the neighbours or cast a significant shadows. As a result he concluded that the development was appropriate and the variances minor. He submitted one TLAB decision to support his opinion, although it was not related to this property and was not helpful.

The evidence of the appellants was; there should be no variances granted; the bylaw should be enforced; the variances are too large to be minor; and there would be a shadow and privacy impact on their rear yards and decks.

## **ANALYSIS, FINDINGS, REASONS**

I understand the concerns of the two appellants. They simply do not want the variances to be granted and want the bylaw to be enforced. I explained that a desire that the variances not be granted, because they violate the bylaw, is not a sufficient reason to deny the variances. Moreover, I pointed out that I must evaluate the application based on the four tests and that such an evaluation is not simply based on numbers or the size of the variances.

With respect to their other concerns I find that they are not sufficient to deny the variances for the following reasons: (1) the height of the proposed dwelling is not out of keeping with the height of their dwellings, taking into account the dormer windows; (2) no significant shadow will be cast from the two story addition with a balcony, and all dwellings face south; (3) privacy will not be an issue with a smaller deck; (4) they did not see the need for landscaping on the balcony to mitigate the impact of height of screening; (3) the balcony is off a bedroom and likely not to be used regularly.

The evidence of Mr. Bellini was largely uncontradicted and was helpful in demonstrating that the variances would result in a building that would not have a significant impact on the homes or deep lots of both appellants.

## DECISION AND ORDER

Based on the consent of the parties I grant the motion to grant an earlier date, May 31, 2018, for the hearing. I dismiss the appeal and as recommended by staff, grant the variances set out in Appendix 1, subject to the condition that the dwelling be constructed substantially in accordance with the plans in Appendix 2.

X 

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S. Makuch

Panel Chair, Toronto Local Appeal

## Appendix 1

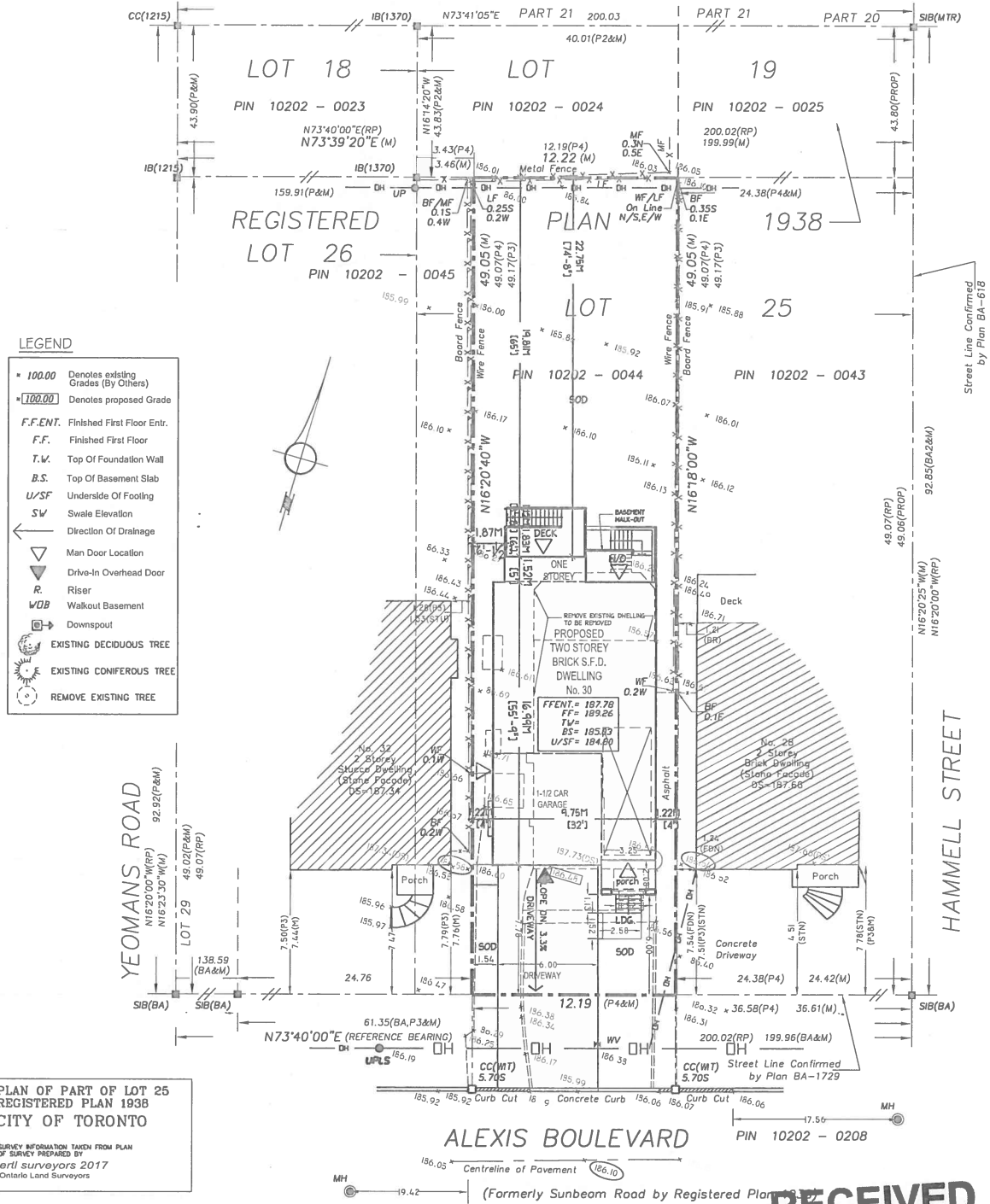
### **REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

- 1. Chapter 10.20.40.20.(1), By-law No. 569-2013**  
The maximum permitted building length is 17.00m.  
The proposed building length is 18.51m.
  
- 2. Chapter 10.20.40.10.(2), By-law No. 569-2013**  
The maximum permitted height of all side exterior main walls facing a side lot line is 7.50m.  
The proposed height of the side exterior main walls facing a side lot line is 8.60m.
  
- 3. Section 14-A(8), By-law No. 7625**  
The maximum permitted building height is 8.80m.  
The proposed building height is 9.30m.
  
- 4. Section 14-A(9), By-law No. 7625**  
The maximum permitted building length is 15.30m.  
The proposed building length is 19.29m.
  
- 5. Section 6(30), By-law No. 7625**  
The maximum permitted finished first floor height is 1.50m.  
The proposed finished first floor height is 1.59m.

Appendix 2

SHEPPARD AVENUE WEST

EXPROPRIATION PLAN 8434  
DEDICATED AS ROAD BY BY-LAW 71-72



**LEGEND**

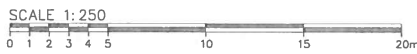
- \* 100.00 Denotes existing Grades (By Others)
- 100.00 Denotes proposed Grade
- F.F.F.F.T. Finished First Floor Entr.
- F.F. Finished First Floor
- T.W. Top Of Foundation Wall
- B.S. Top Of Basement Slab
- U/SF Underside Of Footing
- SW Swale Elevation
- ← Direction Of Drainage
- ▽ Man Door Location
- ▷ Drive-In Overhead Door
- R. Riser
- WDB Walkout Basement
- Downspout
- EXISTING DECIDUOUS TREE
- EXISTING CONIFEROUS TREE
- REMOVE EXISTING TREE

PLAN OF PART OF LOT 25  
REGISTERED PLAN 1938  
CITY OF TORONTO

SURVEY INFORMATION TAKEN FROM PLAN OF SURVEY PREPARED BY  
erfi Surveyors 2017  
Ontario Land Surveyors

**SITE DATA**

Zoning	RD(f.12.0;a370)(x1463) +R6 old zoning
Lot Area	598.773 Sq.m
Building area	
Ground floor area	172.17 Sq.m
Garage area	43.40 Sq.m
front Conc. porch area	6.77 Sq.m
Rear Deck area	10.56 Sq.m
Second floor area	164.74 Sq.m
Basement floor area	101.68 Sq.m
Lower Bsmt. floor area	25.56 Sq.m
<b>TOTAL GROSS FLOOR AREA</b>	<b>336.91 Sq.m</b> (56.26 %)
Ground Floor Area coverage (40% max.)	178.94 Sq.m (33.46 %)
Max. Height 10.0m (32'-9.5") to top of roof	
Max. Height 9.5m (31.16') to mid point of roof	



**TOTAL FRONT YARD LANDSCAPE AREA - PRINCIPLE DRIVEWAY**  
= 96.211 SQ.M.(100%) minus 46.68 sq.m.(7.78m x 6.0m)  
= 49.53 sq.m.(51.48%) MIN. REQUIRED 60%

**TOTAL SOFT LANDSCAPE AREA - HARD (WALKWAY, STEPS, PORCH)**  
49.53 SQ.M. minus 12.38 sq.m. = 37.15 SQ.M

**HARD LANDSCAPING** = (3.08m x 2.08m) + (1.52m x 2.58m)  
**TOTAL SOFT** = 37.15 SQ.M (75.00%) 75% MIN. REQUIRED.

**ARCA** Planning & Design  
202-A Ostrale Road, Suite 2  
North York, Ontario, M2N 2S5  
(416) 745-2940

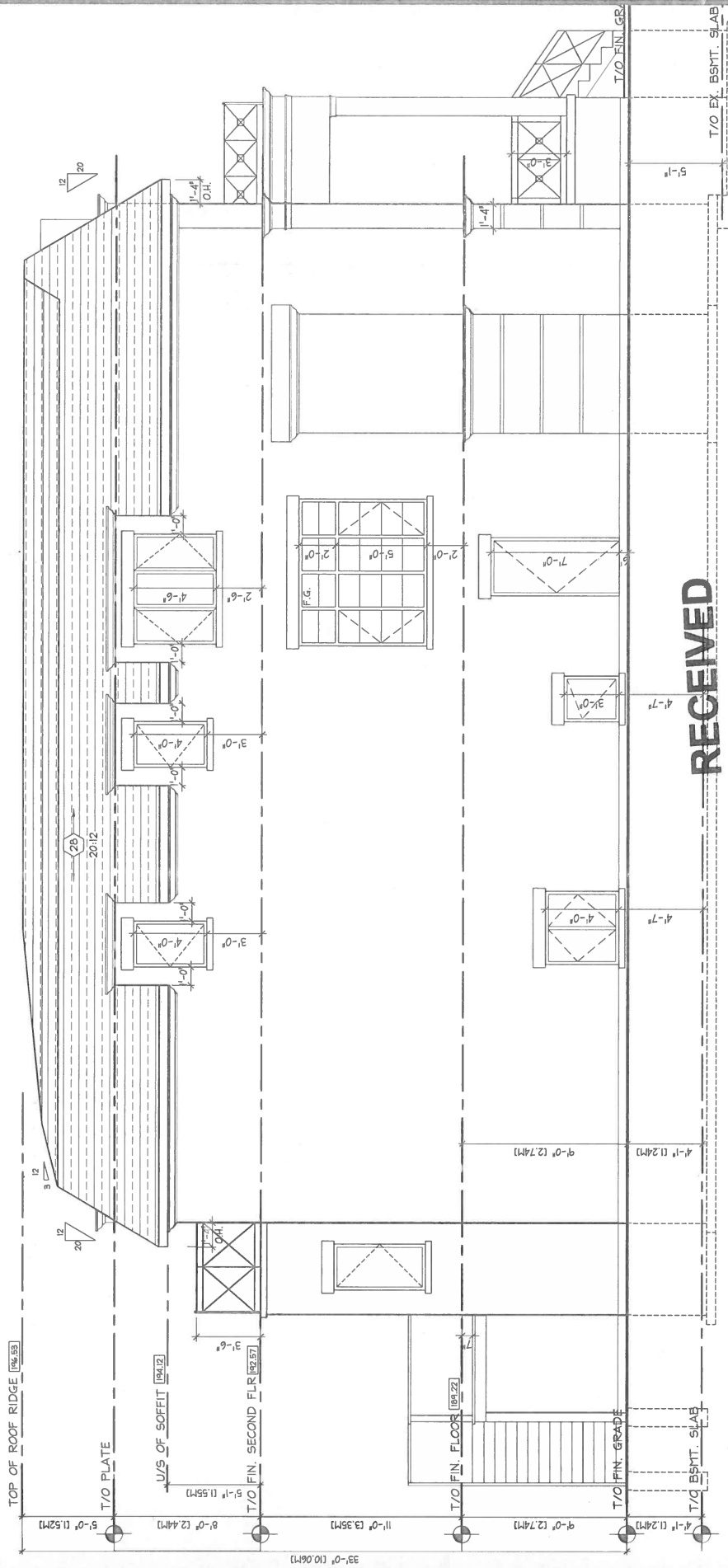
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DATE: AUG.2017

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2 WEST ELEVATION

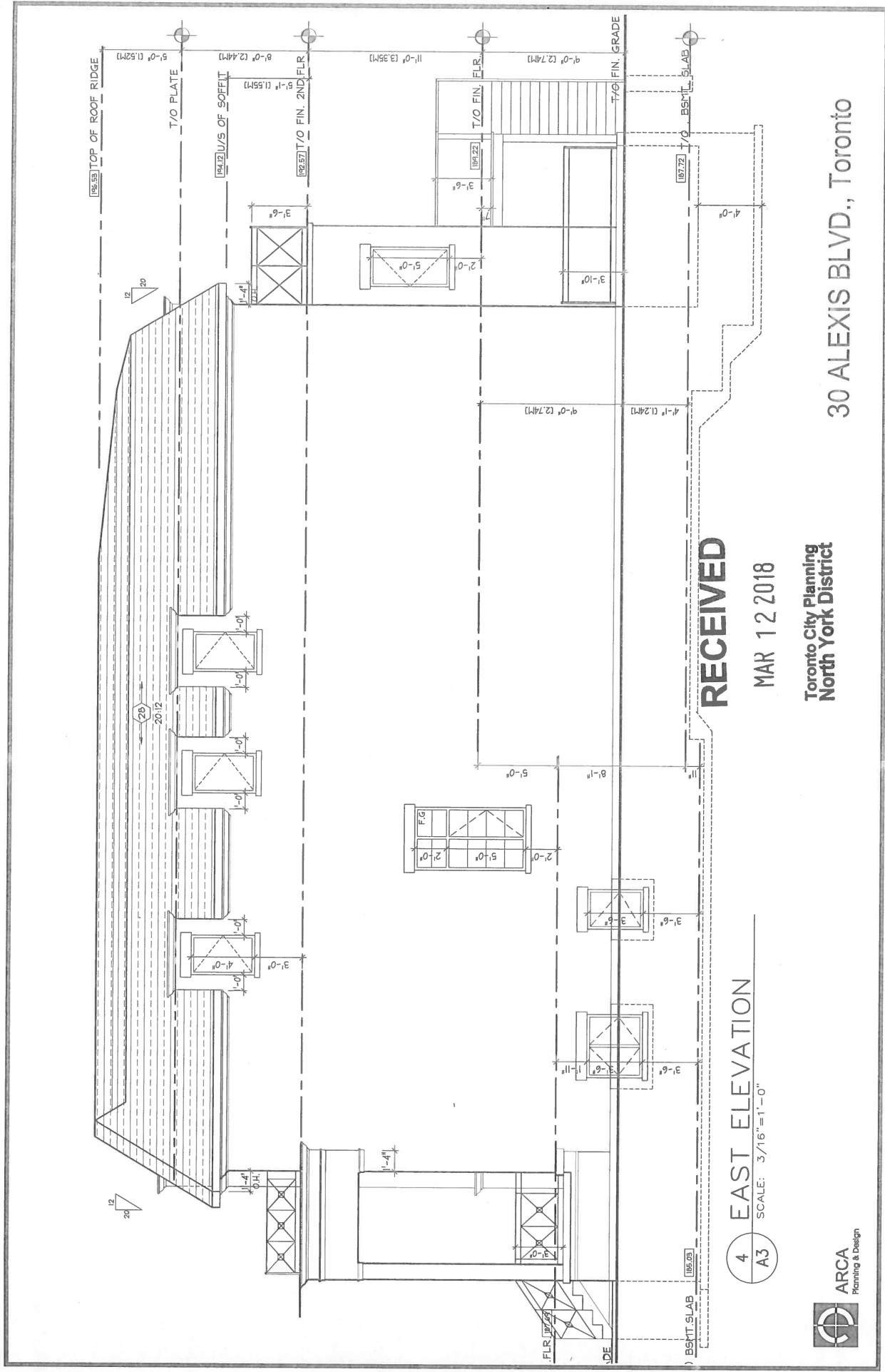
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4 EAST ELEVATION  
 A3 SCALE: 3/16"=1'-0"

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