

DECISION AND ORDER

Decision Issue Date Tuesday, June 26, 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): VALENTINA KARAPICI

Applicant: ESCALA DESIGNS INC

Property Address/Description: 4 ELWAY CRT

Committee of Adjustment Case File Number: 17 123977 NNY 15 MV (A0208/17NY)

TLAB Case File Number: **17 262111 S45 15 TLAB**

Hearing date: Wednesday, May 23, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

Virginia de Fatima Mano
Jose Joachim F. Mano

Nelson Espinola

Valentina Karapici

In person

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) dated October 26, 2017. This had approved a number of variances for the construction of an addition to the existing detached garage at the rear of 4 Elway Court in North York.

The property is located on a short street of (mainly) semi-detached duplexes. Marlee Avenue is on the west and the Allan Expressway to the east, and it is a short distance south of Lawrence Avenue. There is an existing two storey semi-detached dwelling at no. 4, with a shared garage/carport at the rear. The driveway to the garage is accessed via Marlee Avenue to the west, rather than from Elway.

The property is zoned RM (f21.0; a925; d1.0) (x474) in the Comprehensive Zoning By-Law No. 569-2013 (the New By-law) and RM5 in the North York By-Law 7625 (the NY By-law).

BACKGROUND

The COA had deferred this application once to facilitate discussions of a drainage issue, but these discussions did not occur. It came back on at the October 26, 2017 hearing. The present Appellant made submissions at the hearing. The COA approved all of the requested variances. A subsequent Municipal Licensing and Standards complaint by the appellant Ms. Karapici about a drainage issue was addressed, and the file was closed by that office, with no result provided in evidence in this appeal. The COA decision was subsequently appealed to the TLAB in November, 2017 by Ms. Karapici, who owns both 2 and 6 Elway Court. The decision in this appeal was delayed in order to await the requested “lawyer’s letter”, as set out below.

MATTERS IN ISSUE

The principal issue is whether the proposed garage construction is appropriate from a planning perspective. If so, an included question is whether it can legally be constructed flush against the existing wall of the garage at 6 Elway which is owned by the appellant Ms. Karapici, who opposes this proposal. The drainage issue is not part of this application, but there will be a condition to address it.

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 (OP);
- 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 COA decision and the materials that were before that body.

EVIDENCE

The evidence of the owners Mr. and Mrs. Mano was provided by Mr. Nelson Espinola, an Architectural Technologist with a great deal of experience in both design and in representing applicants before the COA. While I could not qualify him as a professional land use planner, I give his testimony significant weight.

These are the variances sought in this appeal:

1. Chapter 10.80.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 35% of the lot area.

The proposed lot coverage is 44.37% of the lot area.

2. Chapter 10.5.60.50.(2), By-law No. 569-2013

The maximum total floor area of all ancillary building or structures on a lot is 40.0 m.

The proposed total floor area of all ancillary buildings is 54.19 m.

3. Chapter 10.5.60.70.(1), By-law No. 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10% of the lot area.

The proposed ancillary buildings or structures cover 16.68% of the lot area.

4. Chapter 10.5.50.10.(3), By-law No. 569-2013

A lot with a residential building other than an apartment building, must have a minimum of 50% of the rear yard for soft landscaping, if the frontage is greater than 6.0 m.

The proposed rear yard landscaping area is 0%.

5. Section 20.2.2, By-law No. 7625

The maximum permitted lot coverage is 35% of the lot area.

The proposed lot coverage is 44.37% of the lot area.

6. Section 6(23)(ii), By-law No. 7625

Accessory buildings in RM zones shall not occupy more than 10% of the lot area.

The proposed accessory building occupies 16.68% of the lot area.

Mr. Espinola pointed out that there are really only 4 variances, because of the duplicate provisions in the two applicable By-laws (nos. 1 and 5, lot coverage, and 3 and 6, area of lot for ancillary buildings). The others are: total floor area of ancillary buildings (54.19 sq. m. rather than 40.0 sq. m.), and rear yard soft landscaping (0% rather than 50%).

He testified that these variances (lot coverage, total floor area of ancillary buildings and rear yard soft landscaping) are consistent with what exists in the neighbourhood. The

proposed built form does not provide for a structure that would in any sense change the character of the neighbourhood.

He summed up the planning merits in this way:

- The proposal is consistent, compatible and in no way destabilizes the neighbourhood.
- It fits within the physical characteristics of the existing neighbourhood and area context.
- Proposed variances are minor and appropriate
- Proposal will not have a negative impact on the adjacent neighbours or the neighbourhood.
- The design, scale and massing of the proposed is appropriate for the lot and area.
- The variances maintain the general intent of the zoning By-Laws, which are to ensure first, compatible built form within an area, and also that there are no unacceptable adverse impacts on the streetscape or on adjacent properties.

The Appellant had outlined the history and her views of the matter very clearly in her submission to the COA dated May 15, 2017. She repeated some of it at this hearing of her appeal, but I told her that because she had provided an excellent outline in her earlier submission, with relevant photos, she need not go into too much detail. Because of the TLAB pre-filing requirements, I had already read her submissions very carefully. Therefore I set out here some excerpts from her original written submissions.

One concern for Ms. Karapici is the proposed construction itself. She states:

"From the year 2011 when I bought 6 Elway Court, the west wall of the garage of 6 Elway Court has had a window that allows in light. The roof of the requested one story is intended to make use of this west wall with the window as support."

She testified that the garage at no. 6 has been fully detached from 4 Elway's garage since it was built, more than 50 years ago. Indeed, she said, all of the garages on the street were detached. She argued that if the garage proposed is approved at all, it should remain fully detached from her property at 6 Elway Court. The west facing window should not be blocked.

In response Mr. Espinola pointed out that under the applicable zoning by-laws and the Building Code, this window is not authorized. He did not know how it got built in this location. He stated that the west wall of the garage at number 6 was in fact built some six inches over on the applicant's property. This is evident from the site plan contained in the Plans (Exhibit 2). Therefore the applicant proposed to build up to that west wall, which Mr. Espinola referred to as a "party wall". As he put it when challenged by Ms. Karapici, "We wouldn't be using it if it wasn't ours". There is no intention to use the proposed structure for parking of vehicles, just for storage. Ms. Karapici said in response that she had obtained a survey when she purchased No. 6 that indicated the location of the garage. It is on her land. However, she could only find a real estate agent's opinion on this point.

Ms. Karapici gave a clear indication of her second or perhaps even her principal concern:

“Up until a couple of years ago, there was a wooden fence separating the north side of the area where Mr. and Mrs. Mano are requesting construction and the property at 745 Marlee Avenue. The eavestrough downspout of the garage of 4 Elway Court was placed such that the water drained on the north-west corner of the requested construction space (bordering the wooden fence and the garage wall of 4 Elway Court). The water then travelled south along the east side of 4 Elway Court, which used to be grass. The slope of the grass terrain supported this flow of water along their property, from the garage area to the street (Elway Court).

A couple of years ago, Mr. Mano removed the above mentioned wooden fence and built a tall wall with concrete blocks instead. This conflicted with the location of the downspout, and so Mr. Mano cut his downspout. As a result, the roof water from his garage would flow onto the driveway of 745 Marlee Avenue. Since the owner of 745 Marlee Avenue forced Mr. Mano to stop the water from draining on their property, Mr. Mano changed the direction of the waterflow from his garage’s roof by lifting his eavestrough so that the rainwater now drains on my property at 2 Elway Court. This was done without my approval.”

An additional issue respecting the drainage was with the very solution the owners proposed to address it. As Mr. Espinola submitted, this was approved by the COA as part of the proposed package of variances, although not specifically. The solution actually proposed by Mr. Mano can be seen in the letter of August 17, 2017 from Mr. Espinola to COA staff. He stated there:

“Please accept this letter as notice that we have revised our Architectural Plans, in order to address the raised concerns from our neighbours at #2 Elway Cres (west of subject property). Consequently, the following was revised:

In order to accommodate the run off water from the proposed roof, a trench drain (soaking pit) will be installed in front of the overhead. Water from the proposed roof will be discharged to the proposed soaking pit via downspouts. This in our opinion will prevent the water to be discharged into the existing driveway.”

This alteration in the plans is reflected in the present plans before the TLAB – Exhibit 2, Drawing A2, Garage Plan. It is shown there as a hatched area in front of the new garage door, labelled “Proposed 1’4” x 8.0’ Soaking Pit.” In Mr. Espinola’s submission, if the garage extension is constructed as proposed, the runoff would tend to travel toward Marlee Avenue in any event.

Ms. Karapici addressed this in her submission to the COA, stating that Mr. Mano had promised to construct “a sloped channel in the asphalt in the front driveway area at number 4”. This would permit any water from the garage eavestrough at 4 to flow toward the Elway street area directly, rather than over the rear of numbers 2 and/or 6. This differed significantly from just a soaking pit directly in front of the proposed garage.

In her submission to TLAB on Feb. 16, 2018, she commented on this proposed soaking pit:

“In looking at the proposed plan, it shows that the water of the old garage of 4 Elway Court and of the new proposed additional garage will drain in proposed soaking pit. This is concerning because the level of this soaking pit is below 6 Elway Court and other properties to the east. This means that this soaking pit will quickly be filled with all water that is found under asphalt that is coming from the east properties. This leaves it no room to collect water from the garage. I have dug up to 30cm holes by my garage at 6 Elway Court to plant and have found that they flood quickly (i.e. become quickly saturated with water so much that no plant have survive).” (sic)

In the hearing Ms. Karapici again expressed fear that this would not suffice to contain the flow from the roof of the proposed garage. This issue is not a planning issue, as it would be resolved ultimately by the City department responsible for resolving drainage issues. Ms. Karapici is already familiar with the department mentioned above, Municipal Licensing and Standards, should there be a problem with discharge in the future. However, since a proposed resolution for the drainage will be made a condition of this approval, I address it as well.

City Planning staff did not provide any comments indicating any concerns with the proposal. In addition no objections or recommendations were provided by any other City Departments.

ANALYSIS, FINDINGS, REASONS

The proposal does indeed constitute an appropriate “fit” within this neighbourhood of consistent duplex structures with either side or rear access to garages. Here, access to the present garage structure appears to occur continually from the driveway to the rear.

The appellant made many adverse comments about the owner’s intent here. She seemed to imply that, leading up to the present application, there was a deliberate course of conduct without her knowledge or consent. To wit, the construction of a cement block rear wall replacing the former wooden wall, and the paving of the entire driveway at the front on Elway. She stated that “enough is enough”. If this application is approved, she feared that a second storey could be added. The result of the existing construction, she testified, is a drainage problem. Water from the eavestrough on the existing garage roof has permeated her properties at numbers 2 and 6 Elway. I make no finding on previous events, as I have no jurisdiction to do so. The TLAB can only consider the application now before it, and determine whether it meets the statutory tests. A person is entitled to bring an application for variances at any time, pattern of conduct or not. I cannot make a finding on a person’s intention. I only comment here that if a further extension were contemplated, another application for variances would have to be made and tested.

While Ms. Karapici did testify as to her opposition to the potential blockage of the garage window at number 6, she did not refute Mr. Espinola’s comment that this window is now blocked from the inside, and had been for some time. Therefore I assume that it is not crucial to her objection to this proposal. It appeared to me that her main concern

was the impact that the new garage structure, with a drainage pit at the front, would have on the drainage on her adjacent properties.

Her argument that all of the garages in this immediate neighbourhood are detached appears to be refuted by the actual attachment of the existing garages for Numbers 2 and 4 Elway. She testified that the existing garage here was “half ours, half his”. She viewed all other garages nearby, but did not canvas the neighbours about drainage issues. Only a small “strip” of land now separates the garages for 4 and 6. It is this strip, seen in the photos as filled with construction materials, that would be closed in. Its overhead door would be only 8’ by 7’, as compared to the garage door at 4 Elway, which is 11’ wide. I asked Mr. Espinola if any vehicle parking is planned within the proposed structure. He stated that this was not contemplated. It would contain storage for construction materials, out of sight and safe from weather. There was no indication from City staff that a variance for the size of a vehicle parking space is required, as this was not part of the application. In the Zoning Certificate prior to the COA hearing the proposed is described merely as an ancillary or accessory building, and not a garage.

However, this construction would indeed involve the use of the west wall of the garage at number 6 belonging to Ms. Karapici. Because of the issue of a possible encroachment of this wall on number 4’s property, I determined that I could not approve of the application to build the proposed garage addition by including the wall, without some proof of its location. I asked that a letter from either City staff or a lawyer providing such proof be submitted, prior to my determination of the appeal. Such a lawyer’s letter, from Nelson Garcia of Nova Law Professional Corporation and dated June 19, 2018 was then filed with TLAB.

Mr. Garcia states that he had carefully examined the documents supplied by the applicant, and consulted the City of Toronto interactive GIS maps and land registry records. In his opinion it would be legally permissible for the applicant to tie into and employ the existing brick west wall of the garage at 6 Elway. It does in fact encroach approximately 6 inches onto the property at 4 Elway Court. No claim could be made by the owner of number 6 for ownership of those six inches. He concludes:

“The location of the encroachment of the brick wall is therefore tantamount to a form of party wall which can be used as part of the proposed garage structure at No. 4 Elway Court.”

His argument about the Land Titles system is conclusive. Even though he finds that the appellant’s garage at number 6 was built some 6 inches over the property line, because of registration of both parcels in the Land Titles system (where ownership is in effect guaranteed), Ms. Karapici could not make a claim for that 6-inch portion of land under the garage. The applicant can therefore treat the west wall of her garage as effectively a party wall, and build right up to it.

Mr. Espinola had stated during the hearing that another reason for using the wall in question as part of the new structure was the direction of the roof joists as designed. Here they ran from back to front, so there was no structural need for a wall next to the one in dispute.

The applicant agreed that, despite having faith in the soaking pit to absorb water runoff, he would construct a small trough just west of the property line, running from the new construction south to Elway Court. This would be within the asphalt of the existing driveway on number 4. If this condition requires a building or other permit and the Buildings Department refuses to issue it, the parties can speak to me.

Therefore I find that the proposal indeed meets the four tests in subsection 45(1) of the Act. I agree with Mr. Espinola that the OP neighbourhood policies are met. The garage extension fits well within the physical characteristics of the existing neighbourhood, and does not destabilize it. Its design and scale are appropriate for the lot and area. The variances are minor in numbers and impact. There will be no negative impact on the adjacent neighbours, despite Ms. Karapici's concerns, if the drainage is properly constructed as proposed. City inspectors may be approached if unsatisfactory drainage occurs, as Ms. Karapici is aware. The general intent of both the OP and the Zoning By-Laws are therefore met. The variances are desirable as an existing eyesore will be remedied, and adequate storage provided.

DECISION AND ORDER

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

1. The following variances to Zoning By-law 7625 are authorized:

1. Section 20.2.2, By-law No. 7625

The maximum permitted lot coverage is 35% of the lot area.

The proposed lot coverage is 44.37% of the lot area.

2. Section 6(23)(ii), By-law No. 7625

Accessory buildings in RM zones shall not occupy more than 10% of the lot area.

The proposed accessory building occupies 16.68% of the lot area.

2. The following variances to Zoning By-law No. 569-2013 are authorized, contingent upon the relevant provisions of this By-law coming into force and effect:

3. Chapter 10.80.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 35% of the lot area.

The proposed lot coverage is 44.37% of the lot area.

4. Chapter 10.5.60.50.(2), By-law No. 569-2013

The maximum total floor area of all ancillary building or structures on a lot is 40.0 m.

The proposed total floor area of all ancillary buildings is 54.19 m.

5. Chapter 10.5.60.70.(1), By-law No. 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10% of the lot area.

The proposed ancillary buildings or structures cover 16.68% of the lot area.

6. Chapter 10.5.50.10.(3), By-law No. 569-2013

A lot with a residential building other than an apartment building, must have a minimum of 50% of the rear yard for soft landscaping, if the frontage is greater than 6.0 m.

The proposed rear yard landscaping area is 0%.

3. The garage addition shall be constructed substantially in accordance with the Plans dated October 2016, filed as Exhibit 2 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. A trench will be constructed from the proposed addition, just west of the property line between numbers 4 and 6, within the existing asphalt on the driveway at 4 Elway Court, leading to the road allowance of Elway Court, for drainage toward Elway Court. If this condition requires a building or other permit and the Buildings Department refuses to issue it, the parties may speak to the TLAB.

ATTACHMENT 1 - PLANS

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

I review and take responsibility for the design work on behalf of a firm registered under subsection 3.2.4 of division C, of the building code. I am qualified, and the firm is registered, in the appropriate classes/categories.

QUALIFICATION INFORMATION
Required unless design is exempt under 3.2.4.1 (3) of the building code

NELSON ESPINOLA
NAME

SIGNATURE

25561
BCIN

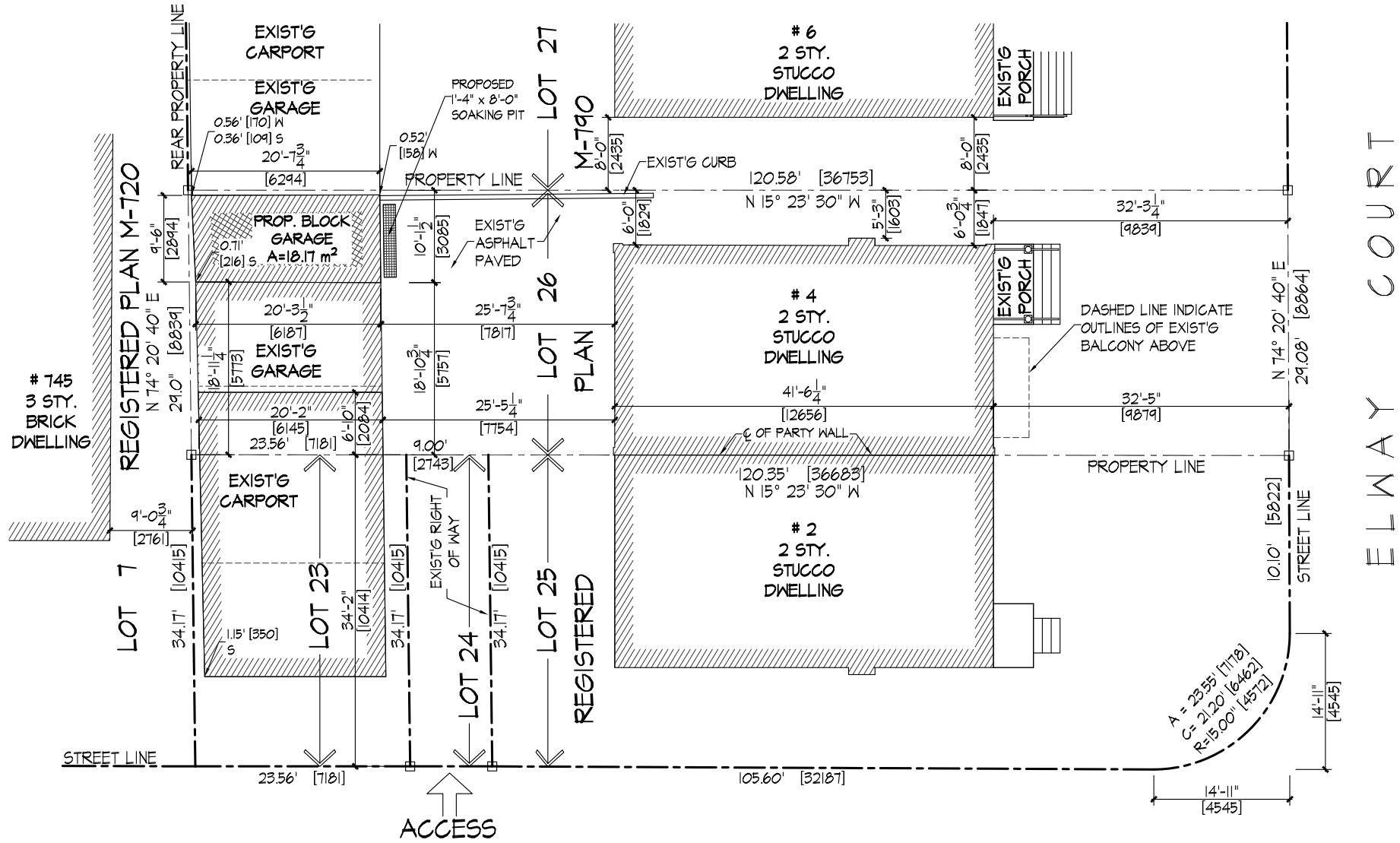
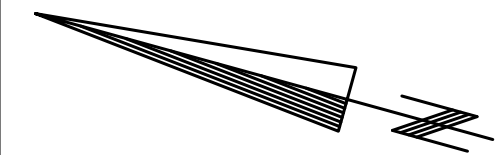
REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.1 (3) of the building code

ESCALA DESIGN INC.
FIRM NAME

30719
BCIN

PLAN SHOWING
LOT 26
REGISTERED PLAN M-790
BEING A RE - SUBDIVISION OR
REGISTERED PLAN M-720
CITY OF NORTH YORK
MUNICIPALITY OF
METROPOLITAN TORONTO

W. S. Gibson & Sons
Limited (O.L.S.)
SEPTEMBER 1ST, 1981



SITE STATISTICS:	FT²	m²
LOT AREA =	3,498.13	324.99
REAR YARD AREA =	1,351.99	125.60
EXIST'G SOFT REAR LANDSCAPED AREA OF REAR YARD (0%) =	-0-	-0-
PROP. REAR SOFT LANDSCAPED AREA PROVIDED (0%) =	-0-	-0-

RECEIVED March 6, 2018
By Toronto Local Appeal Body

1

A1

SITE PLAN

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

escala
designsinc.

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Toronto, Ontario
M6N-1J1

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F: (416) 588-3728

nelson@escaladesigns.com

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5.
4.
3.
2.
1.
No.

Toronto Local Appeal Body

EXHIBIT 2

Case File Number: 17 262111 S45 15 TLAB
Property Address: 4 Elway Crt.
Date Marked: May 23, 2018

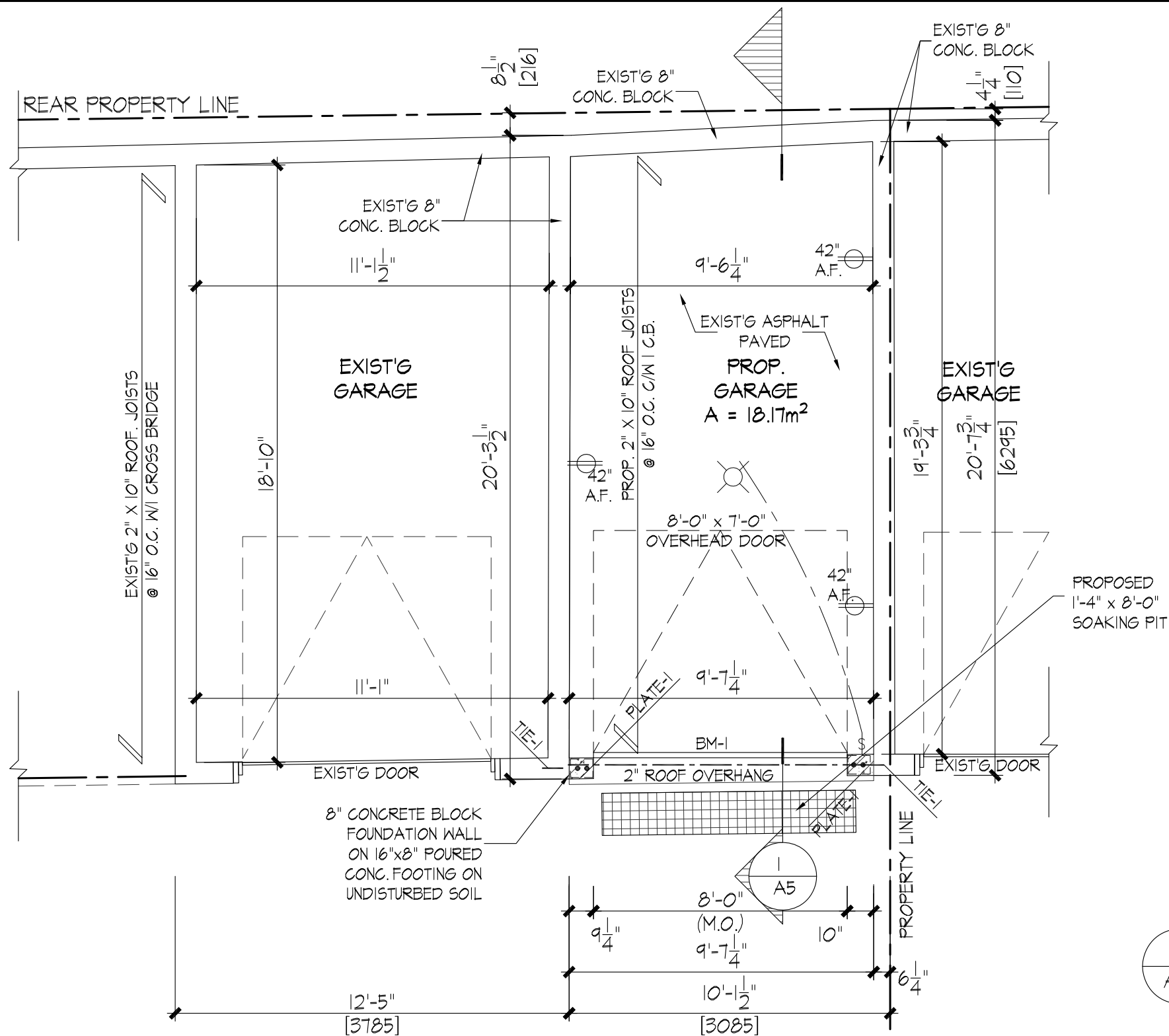
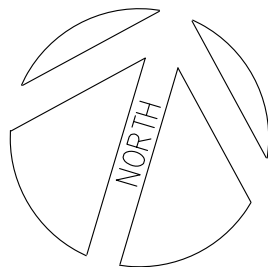
Project :


PROPOSED BLOCK GARAGE
AT 4 ELWAY COURT
CITY OF TORONTO

Drawing Title:
SITE PLAN

Drawn by: LM
Date: FEB., 09, 2017
Project No.
2016-55

Checked by: N.E.
Scale : AS SHOWN
Drawing No.
A1



I review and take responsibility for the design work on behalf of a firm registered under subsection 3.2.4 of Division C, of the building code. I am qualified, and the firm is registered, in the appropriate classes/categories.		
QUALIFICATION INFORMATION		
Required unless design is exempt under 3.2.4.1 (3) of the building code		
NELSON ESPINOLA		2558
NAME		BCIN
REGISTRATION INFORMATION		
Required unless design is exempt under 3.2.4.1 (3) of the building code		
ESCALA DESIGN INC.		30719
FIRM NAME		BCIN

WALL TIE SCHEDULE:

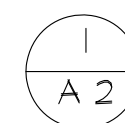
TIE-1 TIE NEW FOOT'G TO EXIST'G W/ 1-10M ROD, 8" LONG 4" INTO EXISTING. TIE NEW FND. WALL TO EXIST'G W/ 1-10M ROD, 8" LONG 4" INTO WALL, EVERY OTHER COURSE

PLATE SCHEDULE:

PLATE-1 WELD STEEL BEAM TO 6"x8"x1/2" THK STEEL PLATE ANCHORED BY 2-1/2" ϕ x 8" LONG ANCHORS BOLTS EMBEDDED IN CONCRETE. (FILL TOP TWO BLOCK COURSES SOLID W/ 20 MPa GROUT)

BEAM SCHEDULE:

BM-1 2L - 6" x 4" x 3/8" STL. CHANNEL



GARAGE PLAN

SCALE : 1/4" = 1'-0"

escala
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CONTRACTOR(S) SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE JOB SITE AND REPORT ANY OMISSIONS OR DISCREPANCIES TO ESCALA DESIGNS INC. PRIOR TO COMMENCEMENT OF CONSTRUCTION.

5.		
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2.		
1.		
No.	Revision	Date

Project :

PROPOSED BLOCK GARAGE
AT 4 ELWAY COURT
CITY OF TORONTO

Drawing Title:

GARAGE PLAN

Drawn by: LM

Checked by: N.E.

Date: FEB., 09, 2017

Scale : AS SHOWN

Project No.

Drawing No.

2016-55

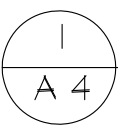
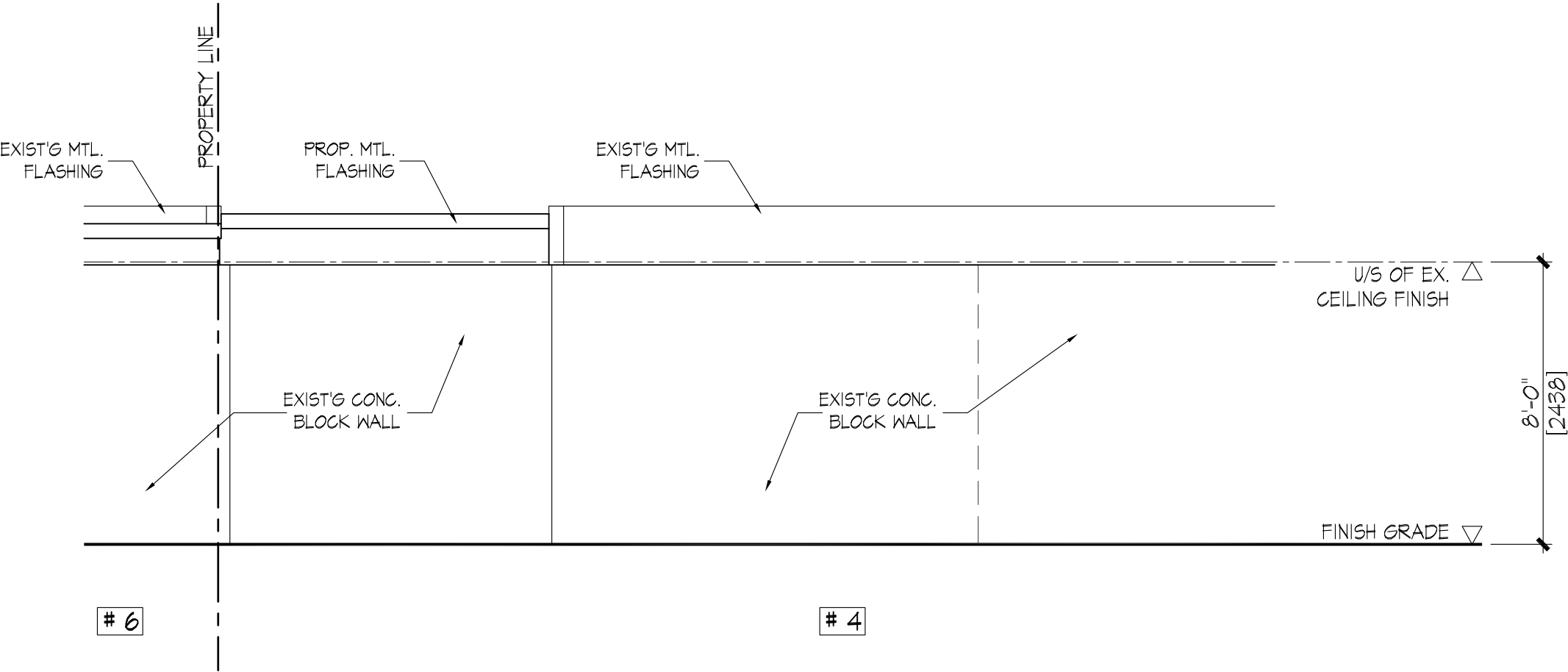
A2

<p align="center">QUALIFICATION INFORMATION</p> <p align="center">Required unless design is exempt under 3.2.4.1.(3) of the building code</p>	
NELSON ESPINOLA	25561
NAME	BCIN
<p align="center"><i>Nelson Espinola</i></p> <p align="center">SIGNATURE</p>	
<p align="center">REGISTRATION INFORMATION</p> <p align="center">Required unless design is exempt under 3.2.4.1.(3) of the building code</p>	
ESCALA DESIGNS INC.	30719
FIRM NAME	BCIN



TIE-1 TIE NEW FOOT'G TO EXIST'G W/ 1-10M ROD,
8" LONG 4" INTO EXISTING. TIE NEW FND.
WALL TO EXIST'G W/ 1-10M ROD, 8" LONG
4" INTO WALL, EVERY OTHER COURSE





NORTH ELEVATION

SCALE : 1 / 4 " = 1 ' - 0 "



1726 St. Clair Ave. W.
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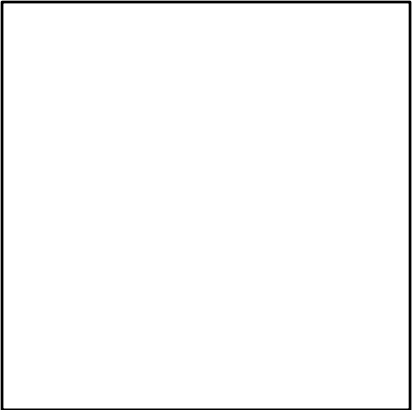
nelson@escaladesigns.com

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2.		
1.		
No.	Revision	Date



Project :

PROPOSED BLOCK GARAGE
AT 4 ELWAY COURT
CITY OF TORONTO

Drawing Title:

NORTH ELEVATION

Drawn by: LM
Date: OCT. 2016

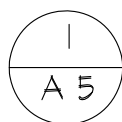
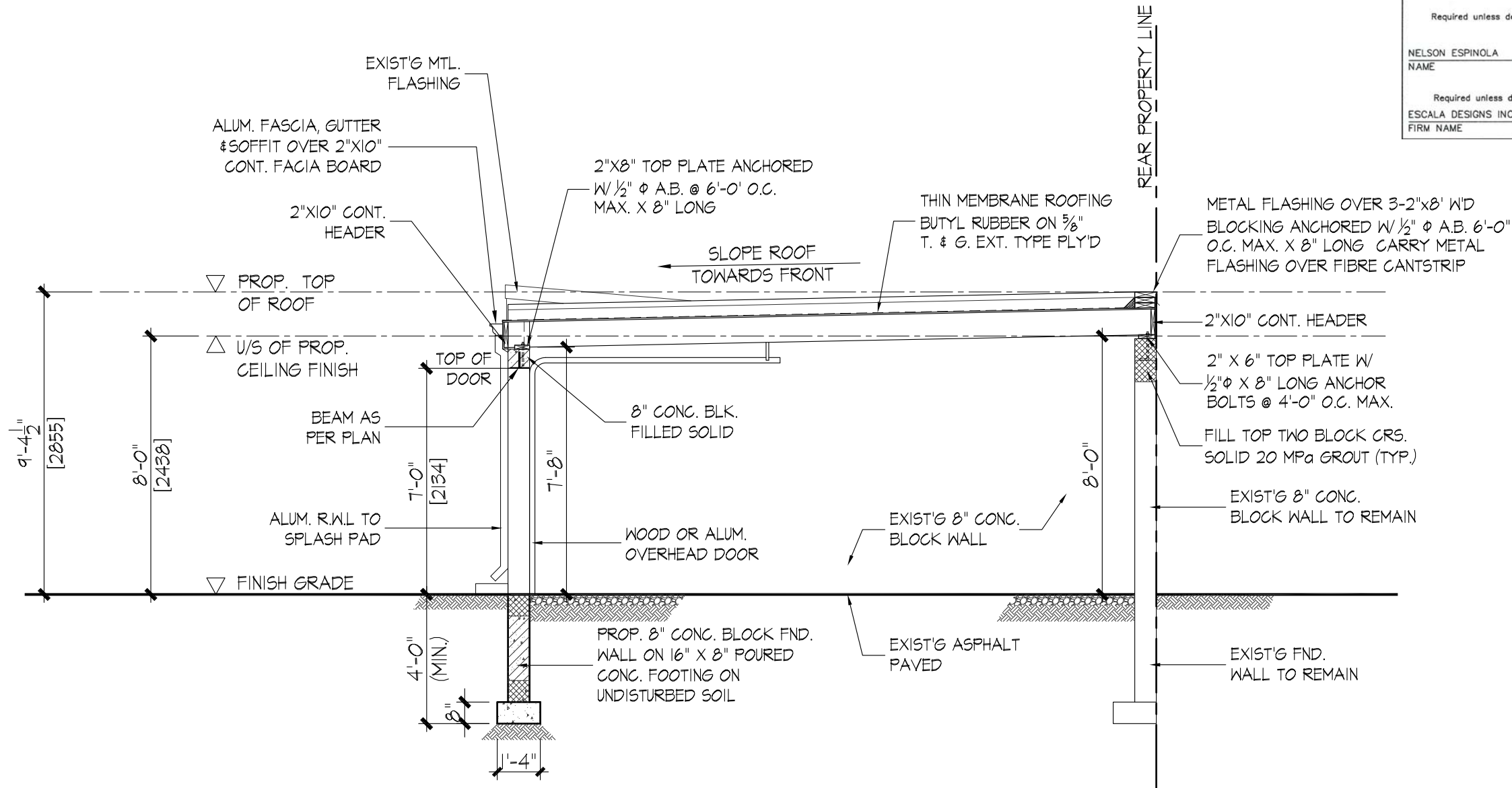
Checked by: N.E.
Scale : AS SHOWN

Project No.

2016-55

Drawing No.

A4



CROSS SECTION

SCALE : 1/4" = 1'-0"

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5.		
4.		
3.		
2.		
1.		
No.	Revision	Date

Project :

PROPOSED BLOCK GARAGE
AT 4 ELWAY COURT
CITY OF TORONTO

Drawing Title:

CROSS SECTION

Drawn by: LM

Date: OCT. 2016

Project No.

2016-55

Checked by: N.E.

Scale : AS SHOWN

Drawing No.

A5