

DECISION AND ORDER

Decision Issue Date Monday, June 18, 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): ABDUL HANNAH RATAN

Applicant: DREW LASZLO ARCHITECT INC

Property Address/Description: 10 JOCELYN CRES

Committee of Adjustment Case File Number: 17 185434 NNY 25 MV

TLAB Case File Number: **17 260382 S45 25 TLAB**

Hearing date: Monday, May 28, 2018

DECISION DELIVERED BY G. Burton

APPEARANCE

Name	Role	Representative
Abdul Hannah Ratan	Appellant/Owner	Tae Ryuck

INTRODUCTION

On October 26, 2017 the Committee of Adjustment (COA) considered an application for minor variances for a new two storey dwelling with integral garage at 10 Jocelyn Crescent in North York.

Variances applied for from the comprehensive By-law 569-2013 (the New By-law) would permit 0 sq. m. of the first floor within 4 m of the front wall, rather than 10 sq. m.; a lot coverage of 29.49% of the lot area rather than 25%; and from the old North York By-law 7625 (the NY By-law), a rear yard setback of 9.19 m, rather than 9.5 m required therein. The COA approved the first, modified and approved the second at a reduced 27.50% of the lot area, and refused the rear yard setback variance.

The owner appealed this decision to the Toronto Local Appeal Body (TLAB).

BACKGROUND

This property is located in the Don Mills area, one block north of Lawrence Avenue East and a half block west of The Donway West. Jocelyn Crescent is a short block that indeed curves significantly between the Donway to the east and its northwestern end at Duncairn Road. It is designated Neighbourhoods in the Official Plan (OP) and zoned RD (x5) in the new By-law, and R5 in the NY By-law.

MATTERS IN ISSUE

The only issue in this hearing was whether the application could be found to meet the tests in subsection 45(1) of the Act, and provincial policies. The TLAB must make a determination on these issues because the hearing before it is a hearing *de novo* of the entire matter. No person other than the applicant's planning witness took part in the hearing.

JURISDICTION

For variance appeals, the TLAB must ensure that all of the variances sought meet 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.

In addition, the 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

Mr. Tae Ryuck, a professional planner with extensive experience, was qualified to give expert testimony respecting this application. As mentioned, he was the only attendee at the hearing. He is a member of the Canadian Institute of Planners (MCIP) and a Registered Professional Planner (RPP).

Mr. Ryuck chose as his study area for the application of the tests, Duncairn Road to the north, The Donway to the east, Lawrence Avenue East to the south, and Leslie Street to the west. This reflects what a person would experience in their day-to-day life walking the streets. It is a stable residential neighbourhood, consisting of single detached and semi-detached dwellings of one and two storeys. While it is stable, there is considerable regeneration in the form of redevelopment and additions.

To the south towards Lawrence Avenue East there is a mixture of commercial uses, including retail uses, and within walking distance of the subject property there is public transit. Overall the neighbourhood is very well served by public transit.

Prior to the COA hearing, the owner corresponded with neighbours and City Planning staff to discuss the proposal and to consider their concerns and opinions. A few neighbours had corresponded with the COA, but Planning staff did not provide any comments to the COA indicating any concerns with the proposal (as is usual if they object). In addition, no objections or recommendations were provided by any other City departments.

Presently on the site there is a one storey single detached dwelling with a driveway off Jocelyn Crescent. The lot measurements are: Lot Area – 580.56 m²; Frontage – 12.19 m, Depth – +/-30.5m. It is relatively flat, without any major features that would limit a new dwelling. A new two storey single detached dwelling with an integral garage is proposed. These are the measurements:

- a. Total GFA of 312.71 m²
- b. Proposed building height of 10 m
- c. Proposed building length of 13.44 m
- d. Proposed lot coverage of 29.49% of the lot area

The integral garage would have a positive slope. Mr. Ryuck testified that the front and rear walls of the proposed dwelling are consistent with homes in the area and neighbourhood context.

This new dwelling would comply with the By-law height and length requirements. The front yard setback is also compliant, and is consistent with adjacent properties. No variance is required for the side yard setbacks.

Mr. Ryuck considered the provincial policies, as is required by the Act. In summary terms, he testified, the policies of the PPS and Growth Plan encourage and promote the following:

- a. The efficient use of land, resources and infrastructure, including existing and planned public transportation.
- b. Compact form.
- c. Redevelopment and intensification.
- d. Mixed uses, at densities that makes efficient use of land, resources and infrastructure.

In his opinion, this proposal is consistent with the applicable policies of the PPS and in conformity with the Growth Plan. It is an efficient use of the property in a compact form, the very type sought by the Plans. Overall, it does not have issues that rise to the level of provincial concern. Other provincial policy is not specifically relevant.

Mr. Ryuck examined the existing and approved dwellings in his study area to evaluate the proposed in light of the OP tests. His Lot Area Study (Exhibit 2) illustrates the many structures nearby that are at or greater than 30% lot coverage (29.49% is sought in this application).

The subject site is designated Neighbourhoods in the OP. The Plan generally directs intensification toward designated growth areas, but states in the introduction to Policy 2.3 that Neighbourhoods shall be stable but not static.

“A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.” In his opinion the proposed single detached dwelling does respect and reinforce the existing physical character of the neighbourhood. It is modest in size and height. It is deployed appropriately on the site. It maintains all setback requirements (except the rear yard). Its building envelope is in keeping with the context. The existing physical character of the neighbourhood is one that already experiencing regeneration and intensification in the form of redevelopment and additions, but none has impacted the stability of the neighbourhood. This would similarly meet neighbourhood standards.

The OP also requires that physical changes to established neighbourhoods be sensitive, gradual and generally fit the existing physical character. A key objective of the OP in Policy 4.1 is that new development respect and reinforce the general physical patterns in a Neighbourhood. The test and the development criteria to meet are contained in Policy 4.1.5. However, it is important to understand the structure of the policy, he opined. The test is in the opening words – “establishes the benchmark that new development must meet” – “must respect and reinforce the existing physical character of the neighbourhood.”

The criteria enumerated in 4.1.5 (a) through (h) are the criteria that the OP directs one to use in assessing the character and evaluating whether the

test is met. Its intent is to ensure that new development does not create changes to these criteria that are out of keeping with other nearby development. Some of these are applicable in evaluating this proposal:

c) *heights, massing, scale* – speaks to deployment of built form on the lot. The proposed is consistent with other homes with respect to heights, massing and scale.

The proposed dwelling is reflective of the urban fabric characteristic of the neighbourhood, and in his view is the opposite of over-development. The building height is in conformity with the zoning By-laws. Setbacks are consistent with adjacent dwellings on the street. From a streetscape perspective it seamlessly integrates into the neighbourhood and would have no impacts on the streetscape.

d) *prevailing building types* – (i.e. the type of housing - singles, semis, towns). The proposed is a single detached dwelling as are all in the area.

e) *setbacks of buildings from the street* – the goal is to maintain uniformity of setbacks where they are uniform – the proposed is in conformity with the front yard setback requirement.

f) *prevailing patterns of rear and side yard setbacks and landscaped open space* – the proposed meets all requirements for side yard setbacks and landscaped open space. The proposed rear yard setback of 9.19 m would not introduce a building that projects beyond the rear walls of adjacent homes. Furthermore, the proposed dwelling is set back further from the rear yard lot line than the existing dwelling.

Policy 8 also provides guidance about how to assess character. Performance standards in the zoning By-law are intended to provide guidance to ensure compatibility of new development with physical character.

Mr. Ryuck testified that three things are relevant to determine character – existing conditions, By-law standards, and minor variances already granted.

In his opinion the two storey dwelling represents and maintains the general physical patterns of the neighbourhood. Its design and orientation is consistent with many other homes here. It will result in a consistent streetscape, reinforcing its physical character.

It was his conclusion that the proposed variances individually and cumulatively meet the general intent and purpose of the OP.

Respecting the existing zoning By-laws, the requirements of the RD zoning in both the new By-law No. 569-2013 and the R6 in the NY By-law 7625 are generally met.

Zoning By-laws are intended to:

a. Ensure compatible built form within an area

b. Ensure no unacceptable adverse impacts on streetscape or on adjacent properties.

Here, the lot coverage has been deployed on the property and within a built form that is consistent with the homes within the neighbourhood. There have been similar approvals within the neighbourhood for coverage up to 31%. However, each site needs to be evaluated individually. The coverage proposed does not allow for a building form that changes physical character of the neighbourhood. Also, the

character of the neighbourhood is one in which newer homes exceed the by-law requirements.

Respecting the rear yard setback, at 9.19 m (rather than 9.5) it does not push the building envelope. Rather the proposed dwelling would be set back further from the rear lot line than the existing dwelling. In addition, the proposed will be consistent with the rear walls of the adjacent dwellings to the east and west. It would not be out of character with the neighbourhood.

The overall goal of the zoning By-law is to maintain a built form (i.e. massing, height, setbacks) and lot sizes that are compatible with what is on the street and in the neighbourhood. However, compatible does not mean the same. The proposed does maintain this intent and purpose, and does not introduce an inappropriate building form that creates any adverse impacts to the neighbourhood.

Therefore, in his opinion the proposed variances individually and cumulatively meet the intent and purpose of the zoning By-laws.

Another test for assessing a proposed minor variance is whether it is desirable for the appropriate development of the land. In his opinion this test is also met. The two storey dwelling is of a size and type that is entirely within the character of the neighbourhood. The variances related to lot coverage, rear yard setback and first floor area are not the result of a structure that is too large. Rather, they reflect the existing character of this neighbourhood. Considering the policy directions of the OP, the proposal does not seek approval at the expense of the neighbourhood. There would be no shadowing or overlook uncharacteristic of the existing context.

The design and size of the proposed has been carried out with sensitivity to its relationship to adjacent properties and the neighbourhood. There would be no material changes with respect to privacy, views and enjoyment currently experienced by the adjacent neighbours (despite the claim to the contrary by Ms. Susan Rooke at 9 Langbourne Place to the rear.) It integrates well within the existing area context, which in the end reflects the established physical character of the neighbourhood. It is in no way an overdevelopment, but rather in his opinion is a form of intensification that is appropriate here. Therefore it is appropriate and desirable.

The remaining test is whether the variances are minor. Variances can be considered minor for two reasons, namely, that it is not too large, or too important in its impact to be considered minor. However, the test is not whether there is no impact, but whether the impact is considered acceptable in the context. He testified that some impacts are almost always acceptable in an urban setting, especially in the neighbourhood context. This design does not test the limits of "unacceptable". The proposed deployment in the form of a two storey dwelling does not create adverse overlooks, shadows, setbacks, or massing or height that are uncharacteristic of the neighbourhood. Thus in his opinion the proposed variances are minor in nature.

ANALYSIS, FINDINGS, REASONS

I agree that this proposal fits within the ongoing development by additions and new dwellings within the immediate neighbourhood, if not on Jocelyn itself. I have carefully read and considered the comments of neighbours that were submitted to the COA. None of these sought to participate in this appeal hearing.

There is technically no requirement for the first variance as of this date, as the OMB effectively eliminated this section of the new By-law in April of this year. However, I agree with Mr. Ryuck that the proposed does not contravene the intent of this provision in any event. It does not resemble the elevated first floor that was proscribed by the section.

This leaves only the coverage and rear yard setback variances. I find that the rear yard setback requested would be almost imperceptible. The length of the new structure would actually be shorter than the existing, but the technical setback would be slightly greater. The increase in lot coverage for this dwelling results from the fact that the lot is not deep. In fact, as Mr. Ryuck pointed out, it can be observed when driving or walking on Jocelyn or Duncairn that the lots in mid-blocks are somewhat shallower.

The coverage variance seemed to be the most contentious, with neighbours originally objecting to a seemingly large two storey structure along this short block, when most others are the Don Mills original bungalow style. However, there are indeed no front yard or side yard setbacks, just a small rear yard one. Therefore I conclude that the By-laws would essentially permit the almost identical structure to be built here. There is no Gross Floor Area variance for increased space in the structure. The site is directly across from two large institutional uses, a library and a seniors home, and a large parking lot. The immediate neighbourhood's context of bungalows is therefore already altered.

Four neighbours had objected before or at the COA hearing. While they sought no role in the TLAB hearing, as mentioned I must consider materials before the COA (s. 2.1 (1) of the Act). Three of the four emails believed that this "monster home" as Mr. Salis at No. 14 termed it, would interfere with privacy by creating views and overlook. In my opinion his home would not be affected. Ms. Susan Rooke at 9 Langbourne Place to the rear was concerned also for her uninterrupted view through the rear of the subject property. Mr. Wickramasinghe next door at No. 8 expressed only concerns about construction (to be addressed as usual by the Building Department.) In the neighbours' view, the zoning By-laws suffice and should not be exceeded here.

Dr. and Mrs. Etzkorn at 12 Jocelyn also raised compliance with the Don Mills Secondary Plan, citing Policy 2.1 (g), "to preserve the scale, height and built form relationship originally provided for in the development concept of Don Mills." In my view, this specific policy is subject to the overarching policy in the City's OP that neighbourhoods

are to be stable but **not static** (see above). Therefore appropriate developments can deviate from this policy, as many on nearby streets have.

Ms. Rooke's concerns about views and massing I believe are answered by the facts that the rear yard setback will in fact be larger than the present, and that her view is already at a significant angle to the west of the present dwelling. Based on all of the evidence, including my site visit, I concluded that her view would not be affected to the extent she claimed. While there may well be some visible increase in the size of the structure, it will not substantially interfere with her present view. There are also many trees and shrubs in the rear, none of which are affected.

I find it telling that Planning staff had not provided a Report to the COA indicating any concerns with the proposal. A report is almost inevitable if they have any objections to a proposed variance application. There are many existing two story homes, some with integral garages throughout the neighbourhood, as can be seen in Exhibit 3. I agree with Mr. Ryuck that the existence of these structures makes them already part of the neighbourhood context. Thus the proposed structure is an acceptable addition.

In conclusion, I agree with Mr. Ryuck's professional opinion that the proposed variances individually and cumulatively meet the tests of subsection 45(1) of the Act, as well as provincial policy.

DECISION AND ORDER

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

1. The variance to Zoning By-law No 7625 listed as Variance 3 below, is authorized.
2. The variances to Zoning By-law No. 569-2013 listed as follows as Variances 1 and 2 below, 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 filed as Exhibit 6 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.**

These are the variances:

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

An area of 10 m. of the first floor must be within 4 m of the front main wall.
0 m. of the first floor is within 4 m of the front main wall.

2. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 25% of the lot area.
The proposed lot coverage is 29.49% of the lot area.

3. Chapter 14.2.3, By-law No. 7625

The minimum rear yard setback is 9.5 m.

The proposed rear yard setback is 9.19 m.

ATTACHMENT 1 - PLANS

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

RECEIVED

By Toronto Local Appeal Body at 2:26 pm, Mar 19, 2018

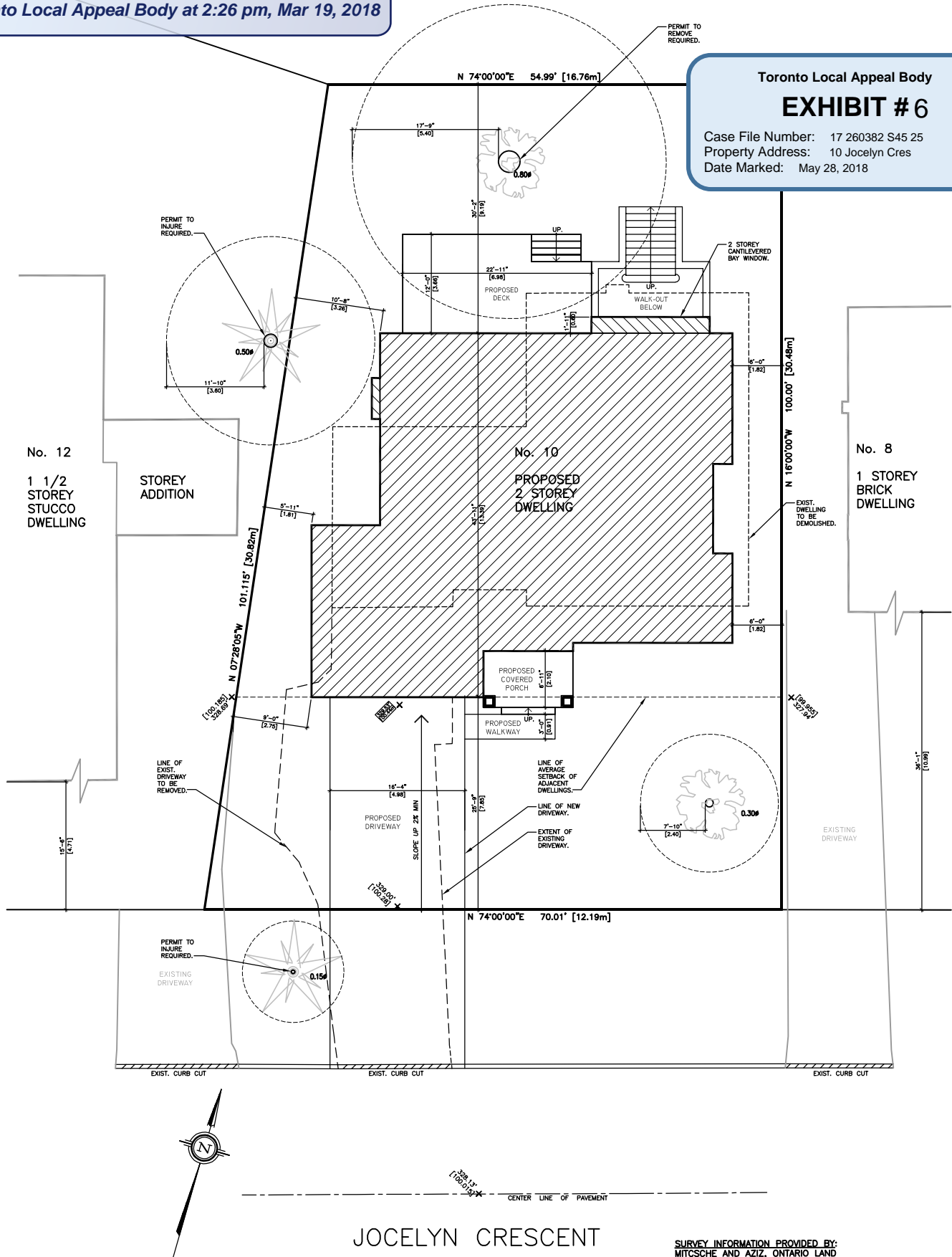
Toronto Local Appeal Body

EXHIBIT #6

Case File Number: 17 260382 S45 25

Property Address: 10 Jocelyn Cres

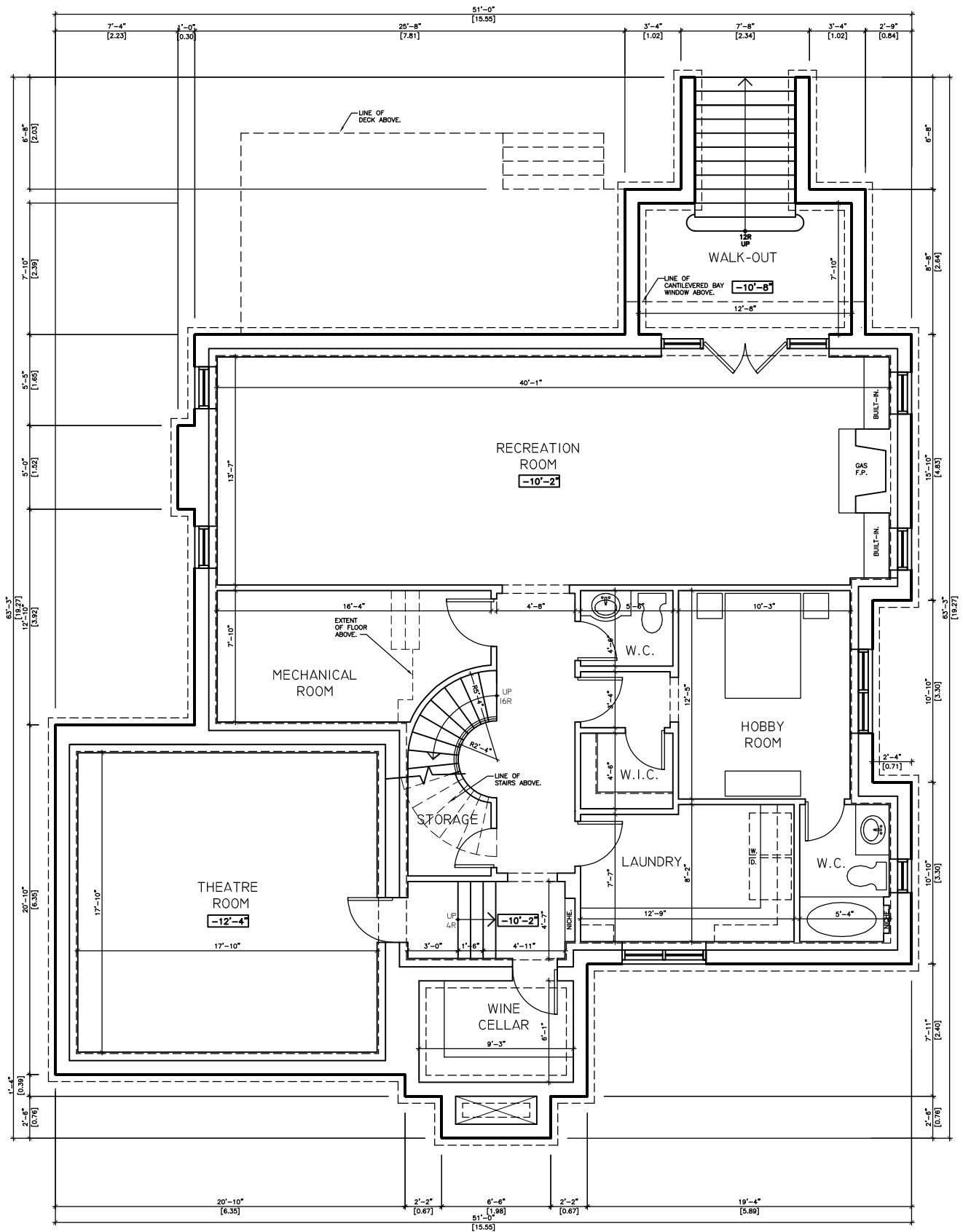
Date Marked: May 28, 2018



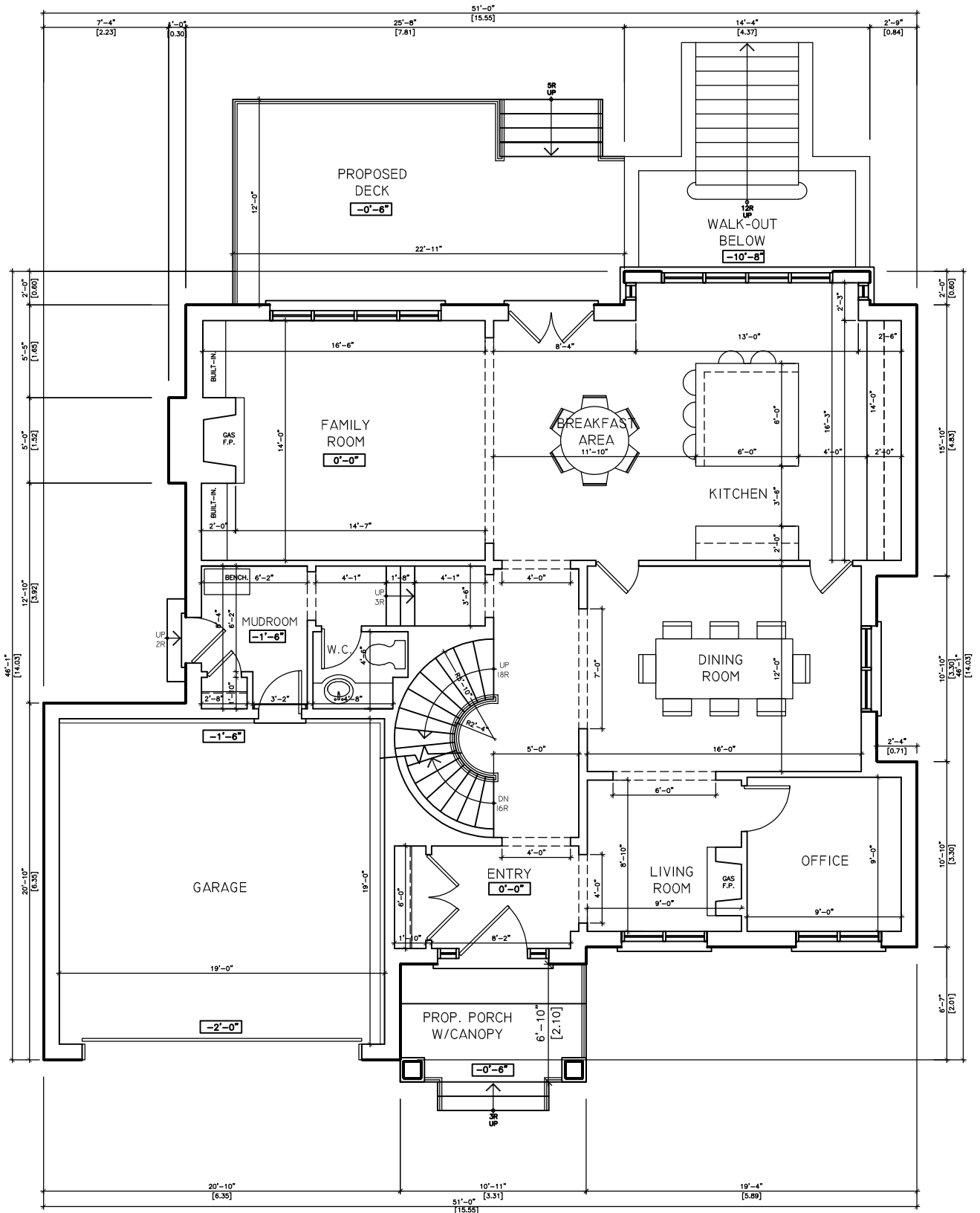
SITE PLAN
R 1:200
10 JOCELYN CRES.

SURVEY INFORMATION PROVIDED BY:
MITSCHE AND AZIZ, ONTARIO LAND
SURVEYORS LTD., 2017.

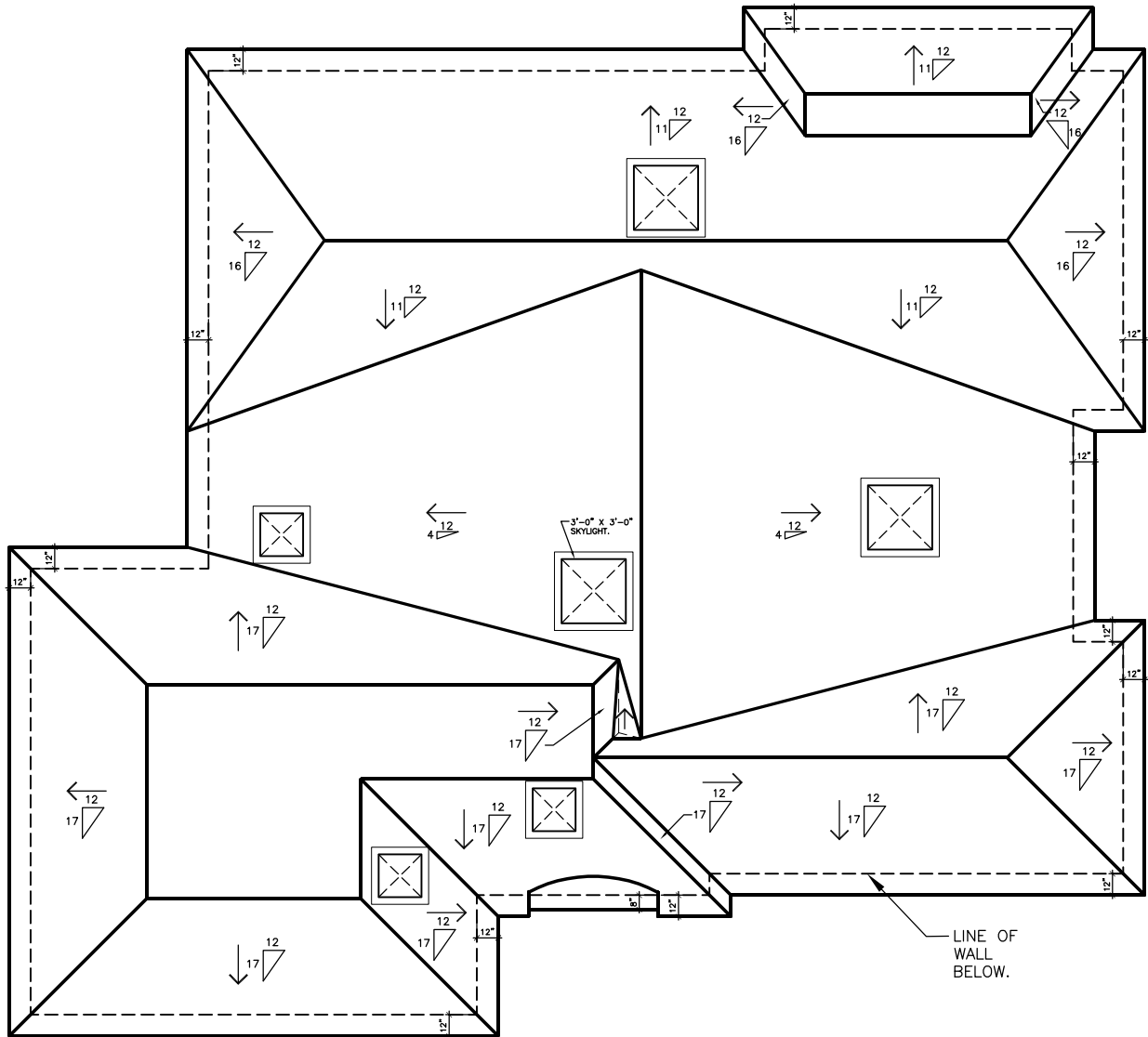
DREW LASZLO ARCHITECT
416 781 5800



BASEMENT FLOOR PLAN
R 1:100
10 JOCELYN CRES.



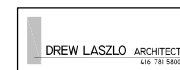
GROUND FLOOR PLAN
 R 1:100
 10 JOCELYN CRES.



ROOF PLAN
 R 1:100
 10 JOCELYN CRES.



FRONT ELEVATION
R 1:100
10 JOCELYN CRES.





SIDE (EAST) ELEVATION
R 1:100
10 JOCELYN CRES.

DREW LASZLO ARCHITECT
L10 781 5800



REAR ELEVATION
R 1:100
10 JOCELYN CRES.





SIDE (WEST) ELEVATION
R 1:100
10 JOCELYN CRES.

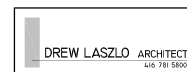
DREW LASZLO ARCHITECT
416 791 9600

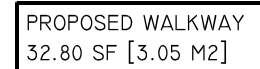
SITE STATISTICS:

10 JOCELYN CRES.
PART I
PLAN OF LOT 86
REGISTERED PLAN 4332
CITY OF TORONTO
(FORMERLY CITY OF NORTH YORK)

ZONE:	R5 / RD (F15.0; A550) (X5)	
LOT AREA:	6,249.34 S.F.	[580.56 m2]
BUILDING HEIGHT:	± 28.87'[8.80M] / ± 32.81' [10.0M]	
LOT FRONTAGE:	39.99'	[12.19M]
LENGTH OF DWELLING:	44.09'	[13.44M]
SETBACKS:		
FRONT	25.75'	[7.85M]
REAR	30.15'	[9.19M]
SIDE (EAST)	6.00'	[1.82M]
SIDE (WEST)	5.11'	[1.81M]
GROSS FLOOR AREA:		
GROUND FLOOR	1,495.07 S.F.	[138.89 m2]
SECOND FLOOR	1,871.04 S.F.	[173.82 m2]
TOTAL	3,366.11 S.F.	[312.71 m2]
COVERAGE	1,842.97 S.F. (29.49%)	[171.21 m2]
LANDSCAPING:		
FRONT YARD LANDSCAPING	78.76% (144.91M2)	
FRONT YARD SOFT LANDSCAPING	92.67% (134.29M2)	
REAR YARD LANDSCAPING	75.41% (118.99M2)	

STATISTICS
R 1:100
10 JOCELYN CRES.

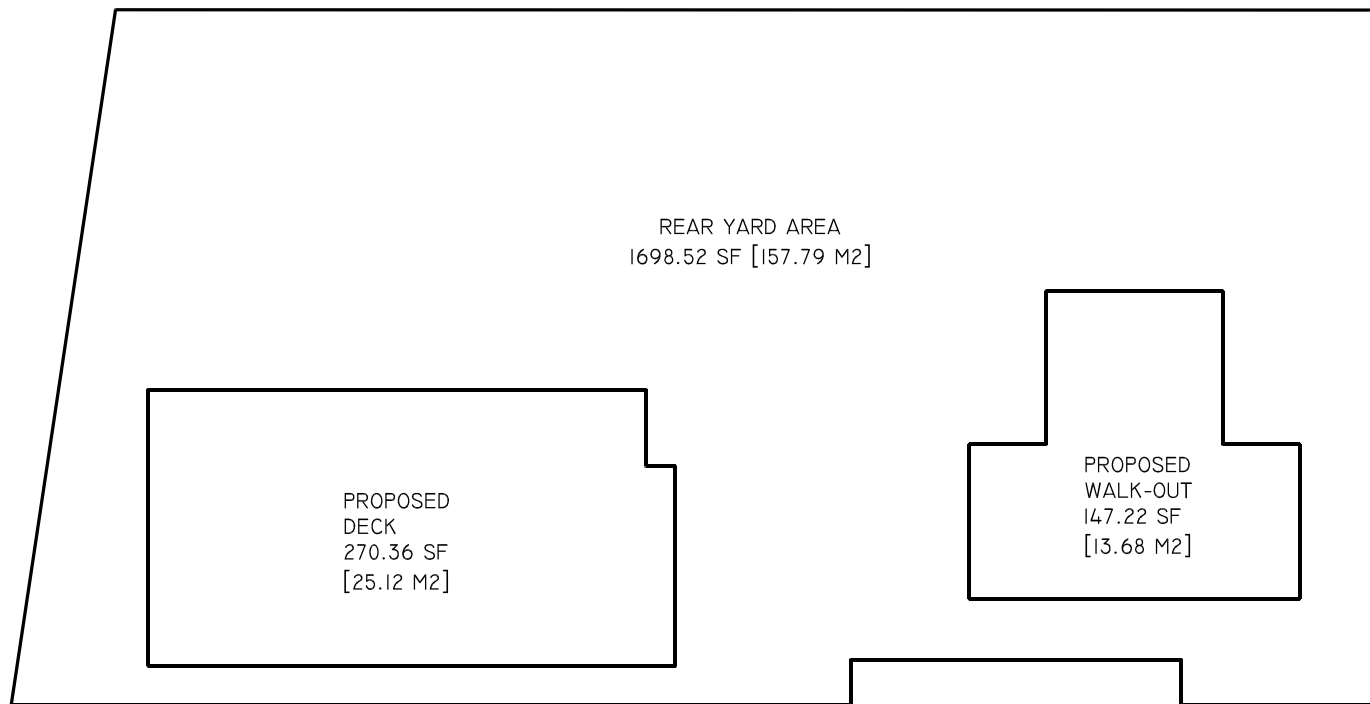




1445.58 SF (92.67%)

10 JOCELYN CRES.





LANDSCAPING 1280.94 SF (75.41%)

REAR LANDSCAPE AREAS
R 1:100
10 JOCELYN CRES.

