

DECISION AND ORDER

Decision Issue Date Wednesday, August 29, 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): LORENZO SANTINI

Applicant: ANTONIO SANTINI

Property Address/Description: 25 EVELYN CRES

Committee of Adjustment Case File Number: 17 226386 WET 13 MV

TLAB Case File Number: **17 268856 S45 13 TLAB**

Hearing dates: Tuesday May 11, 2018, Friday, June 08, 2018, Monday August 13, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
Antonio Santini	Applicant	
Sandra Santini	Owner	
Lorenzo Santini	Appellant	Jennifer Meader
David Riley	Expert Witness	
Lynda Chubak	Participant	
Sophie Rasper	Participant	
Vladimir Rasper	Participant	
Christopher Sears	Participant	
Scott Forbes	Participant	

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment, November 9, 2017, refusing an application to permit the construction of a new detached dwelling. The existing dwelling is to be demolished. The variances are set out in Appendix 1 to this decision. There is a very minor modification to a section number in variance 9. It is included in the Appendix 1 and does not require new notice. City Transportation stated that it had no problems with the application and City Planning expressed no opinion with respect to it. There were no parties, as such, in opposition. A number of neighbours, all of whom are participants, appeared in opposition.

BACKGROUND

The variances relate to: size of the dwelling; setbacks - rear and flanking street; landscaping - rear and side yard and flanking street; and parking spaces - location and size. The new dwelling is to be similar in massing and siting as the existing building is in line with existing front yard setbacks. It is also consistent in height, massing, and size with other dwellings in the neighbourhood. The amount of soft landscaping will be increased. Parking will be maintained its current location. Two large large trees in the front yard are to be preserved.

MATTERS IN ISSUE

The participants raised a number of issues through their evidence-in-chief and cross examination. In order to hear all the neighbourhood concerns, the participants were not restricted to the evidence in their witness statements and were allowed to ask questions of the applicant's planner who was the only witness for the applicant.

The following residents were heard and their submissions reviewed: Mr. Rasmussen (46 Evelyn Cres.), Ms. Rasper (21 Evelyn Cres.), Ms. Chubak (117 Evelyn Ave.), Mr. Rasper (21 Evelyn Cres), Mr. Forbes (117 Evelyn Ave.), Mr. Sears (124 Evelyn Ave.).

The issues raised included the following: the size and scale of the proposed dwelling; shadow; privacy; tree preservation; character of the neighbourhood and driveway location and size. In addition, there were additional issues which participants thought to be of special importance: one related to a desire to mediate; and the other related to the setback from 117 Evelyn Ave. and its impact on the foundation, the maintenance, and the light entering a dining room window of the dwelling at 117 Evelyn Ave.

JURISDICTION

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').

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.

EVIDENCE

A description of the proposed dwelling was largely summarized in paragraph 5 of the participant witness statement of Mr. Sears:

“The proposed design maintains the existing building form of a 2 storey home within the physical constraints of the existing building foot print thus not negatively impacting the existing setbacks, built form, and density of the property. The size, scale, and landscaping are in keeping with the existing site conditions and surrounding properties”.

This conclusion was supported by the evidence of Mr. Riley and was not contradicted by City planning. My own visit to the site and neighbourhood confirms this conclusion. With respect to specific variances the uncontradicted evidence was that soft landscaping would be increased; an ugly fence, fronting on the street, will be removed; two large trees will be preserved and as Mr. Sears also points out, the “proposed design marginally improves the parking space” which in my view is not out of keeping with the neighbourhood.

There was no professional evidence that the setback from the rear property line would adversely affect the foundation of 117 Evelyn Ave or that its location would prevent maintenance of the dwelling of that property. On a visit to the site I was able to see the dining room window at 117 Evelyn Ave. when looking along the side of the existing dwelling at 25 Evelyn Cres.

The evidence was that the applicants would not participate in mediation and that the application met the four tests of the Planning Act and was consistent with the PPS and conformed with the Growth Plan. In particular, Mr. Riley’s evidence was, as reinforced by Mr. Sears, that the new dwelling was similar to the existing building and that, although it did not have a large sloped roof occupying much of the second story, it respected and reinforced the character of the neighbourhood.

ANALYSIS, FINDINGS, REASONS

I can only conclude, based on the evidence presented by Mr. Riley, that the variances, individually and cumulatively, meet the four tests of the Planning Act and are

consistent with the PPS and conform with the Growth Plan. The participants not only presented some evidence in support of Mr. Riley's opinion, but, more importantly, they did not demonstrate that the proposed dwelling would be out of keeping with the character of the neighbourhood as it is to be a building which is similar in massing and scale and is appropriate for the site and the area.

In any event, the main focus of the opposition appeared on the following issues: (1) the impact of the proposed dwelling on the privacy of the rear yard of the neighbour on Evelyn Cres.; (2) the impact on the foundation, maintenance and shadowing of 117 Evelyn Ave., and (3) the failure of the applicant to engage in mediation.

The impact on the privacy of the neighbouring property on Evelyn Cres. in my view was minimal with one additional window overlooking a backyard. It does not exacerbate the existing situation significantly and such a window can be expected in an urban neighbourhood.

The impact on the shadowing the dining room window of 117 Evelyn Ave. is similarly minor, in my opinion. With respect to the rear yard setback having an adverse impact on the foundation of 117 Evelyn Ave., there was no significant evidence to support this concern. The dwelling at 117 is built virtually to the property line but that does not create a right to a setback on a neighbouring property. The owners of 117 have a legal right to support of their foundation and if it is damaged they will have a remedy. It is not the purpose of the zoning bylaw to protect foundations during construction and, in any event, no reliable evidence was presented regarding it. In my view the same analysis applies to the issue of maintenance, as a photo of the relationship of the eaves of both buildings (Exhibit 4) was not sufficient to demonstrate the assertion that maintenance could not be undertaken.

This leaves only the issue of the failure of the applicant to mediate the dispute. There is no obligation on any party to mediate. Although I believe it is a much preferred route TLAB is unable to force a resolution by mediation - it is in reality a voluntary procedure. In any event as the hearing progressed the essence of the case came down to whether the dwelling could be moved forward on the site by two metres to increase the rear yard setback which would satisfy the owners of both 27 Evelyn Cres. and 117 Evelyn Ave. The proposed dwelling had not been moved forward out of a concern for two large trees. The participants argued that it could be moved forward although there was no clear evidence that to do so would not injure or destroy the trees.

The applicant in essence agreed to mediation as it was agreed that if Urban Forestry would approve the moving of the proposed dwelling forward by two metres then the applicant would move it. An adjournment was granted of the hearing on May 8, 2018 to June 8, 2018 so that the applicant could seek the necessary permits to move the dwelling forward. On June 8, 2018, when the hearing reconvened the applicant reported that a satisfactory answer had not been received from Urban Forestry and the matter was adjourned once again to August 13, 2018. At this last hearing it was reported that Urban Forestry "would not agree to the proposed impact " on the trees if the dwellings were moved forward (See Exhibit 6).

It is my opinion, given that the trees would be injured if the dwelling were to be moved forward that it should remain where proposed. I reach this conclusion also based

on the lack of sound evidence of any adverse impact on the two adjacent properties if the variances were to be granted.

DECISION AND ORDER

The appeal is allowed and the variances in Appendix 1 are approved, subject to the condition the dwelling is constructed substantially in accordance with the plans in that Appendix.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

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

1. **Section 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index is 0.6 times the lot area (174.3 m²).
The proposed dwelling will have a floor space index of 0.75 times the lot area (217.6 m²).
2. **Section 6(3) Part II 3.A(I), By-law 438-86**
The minimum required setback flanking a street is 5.4 m.
The side platform of the proposed dwelling will be located 4 m from the flanking street (Evelyn Avenue).
3. **Section 10.10.40.70.(2), By-law 569-2013 & Section 6(3) Part II 4, By-law 438-86**
The minimum required rear yard setback is 7.5 m.
The proposed dwelling will be located 0.9 m from the rear lot line.
4. **Section 10.5.50.10.(1)(D), By-law 569-2013**
A minimum of 75% of the front yard, not covered by a permitted driveway, shall be maintained as soft landscaping (63 m²).
A total of 73% of the front yard, not covered by a permitted driveway, will be maintained as soft landscaping (60.9 m²).
5. **Section 10.5.50.10.(2)(A), By-law 569-2013**
A minimum of 60% of the side yard abutting a street shall be maintained as landscaping (37.2 m²). A total of 42% of the side yard abutting a street will be maintained as landscaping (26.3 m²).
6. **Section 10.5.50.10.(2)(B), By-law 569-2013**
A minimum of 75% of the side yard shall be maintained as soft landscaping (27.9 m²). A total of 71% of the side yard will be maintained as soft landscaping (26.3 m²).
7. **Section 10.5.50.10.(3)(A), By-law 569-2013**
A minimum of 50% of the rear yard shall be maintained as soft landscaping (7.6 m²). A total of 47% of the rear yard will be maintained as soft landscaping (7.1 m²).
8. **Section 10.5.80.10.(6)., By-law 569-2013**
Parking for a corner lot must be in a structure in the rear yard or side yard that does not abut a street. The proposed parking space is in a side yard that abuts a street.
9. **Section 200.5.1.10.(2)(A)(i), By-law 569-2013 & Section 4.(17)(A), By-law 438-86**
The minimum required parking space length is 5.6 m. The proposed parking space will have a length of 5.5 m.

NO.	DESCRIPTION	DATE
1	ISSUED FOR 2018B CERTIFICATE	10/26/17
2	RECEIVED FOR 2018B CERTIFICATE	10/27/17
3	ISSUED FOR COMMITTEE OF ADJUSTMENT	3/28/17

CONTRACTOR MUST CHECK & VERIFY ALL DIMENSIONS ON SITE.
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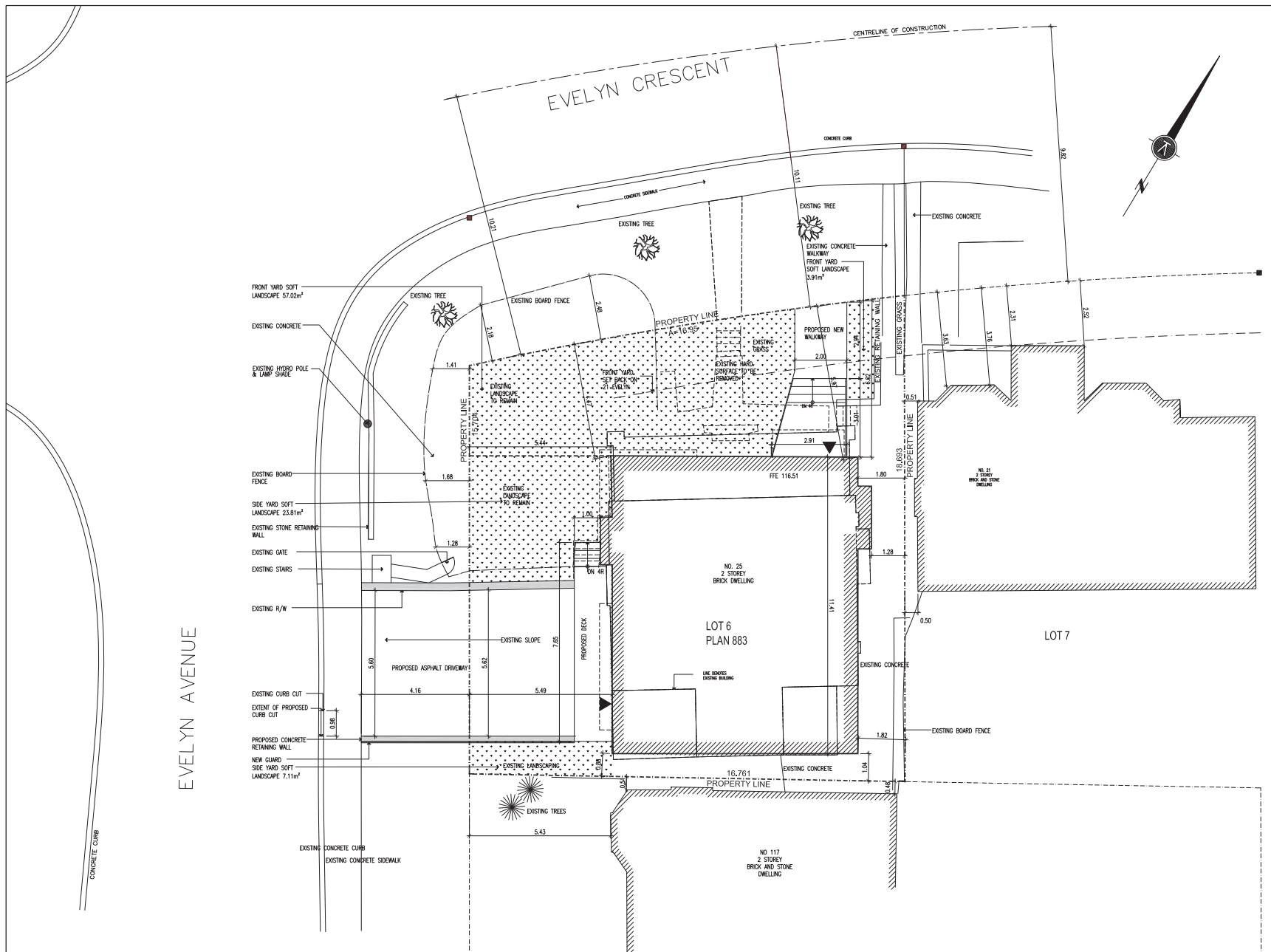
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PROJECT INFORMATION
25 EVELYN CRESCENT,
TORONTO, ON
M4P 2T8

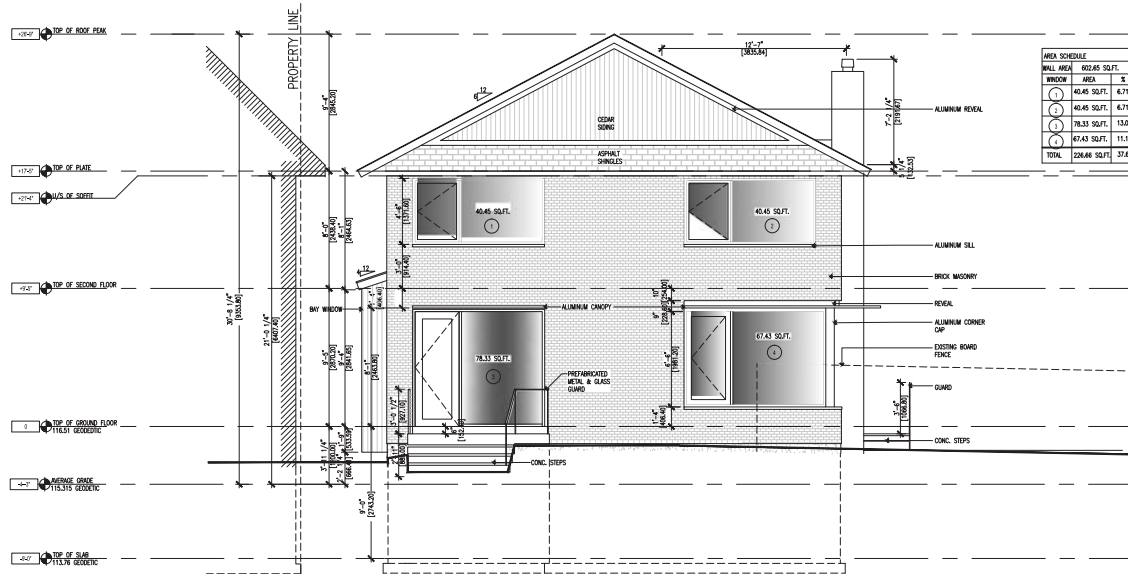
DRAWING TITLE
PROPOSED SITE PLAN

PROJECT NO.: 1741125
DATE: 3/28/17
SCALE: 1/8" = 1'

DRAWN BY: J.S.
REVIEWED BY: A.S.



NO.	DESCRIPTION	DATE
1	ISSUED FOR ZONING CERTIFICATE	12.06.2017
2	RE-ISSUED FOR ZONING CERTIFICATE	19.07.2017
3	ISSUED FOR COMMITTEE OF ADJUSTMENT	21.08.2017



NORTH ELEVATION

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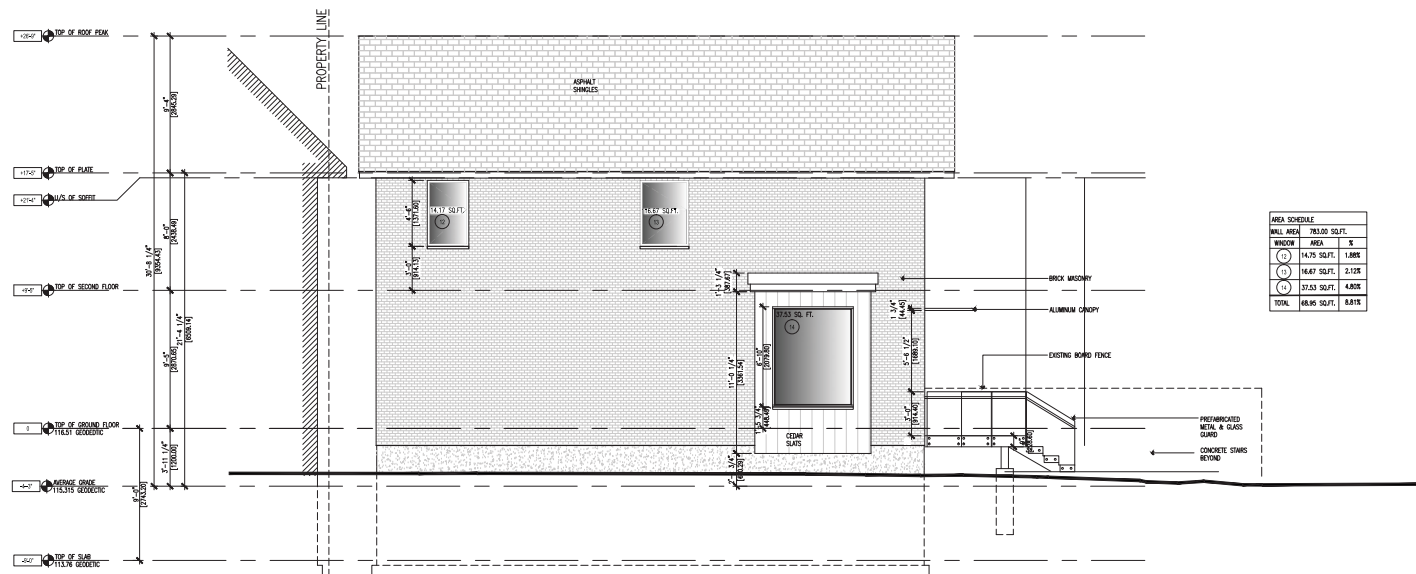
PROJECT INFORMATION PRIVATE RESIDENCE
25 EVELYN GREENE
ETOBICOKE, ONTARIO
M9P 1Z1

DRAWING TITLE
PROPOSED NORTH ELEVATION

PROJECT NO.: 17-2175
DATE: 05/01/2017
SCALE: AS SHOWN

DRAWN BY: JT
REVIEWED BY: AS

NO.	DESCRIPTION	DATE
1	ISSUED FOR ZONING CERTIFICATE	12.06.2017
2	RE-ISSUED FOR ZONING CERTIFICATE	19.07.2017
3	ISSUED FOR COMMITTEE OF ADJUSTMENT	21.08.2017



AREA SCHEDULE		
NO.	DESCRIPTION	AREA
1	WALL AREA	783.00 SQ. FT.
2	WINDOW	14.75 SQ. FT.
3	DOOR	16.67 SQ. FT.
4	SCREEN	37.53 SQ. FT.
5	TOTAL	852.95 SQ. FT.

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PROJECT INFORMATION PRIVATE RESIDENCE
25 EVELYN GREENE
ETOBICOKE, ONTARIO
M9P 1Z1

DRAWING TITLE
PROPOSED EAST ELEVATION

PROJECT NO.: 17-2175
DATE: 05/01/2017
SCALE: AS SHOWN

DRAWN BY: JT
REVIEWED BY: AS

2 PROPOSED EAST ELEVATION
A2.06 1/4" = 1'-0"

NO.	DESCRIPTION	DATE
1	ISSUED FOR ZONING CERTIFICATE	12.06.2017
2	RE-ISSUED FOR ZONING CERTIFICATE	19.07.2017
3	ISSUED FOR COMMITTEE OF ADJUSTMENT	31.08.2017



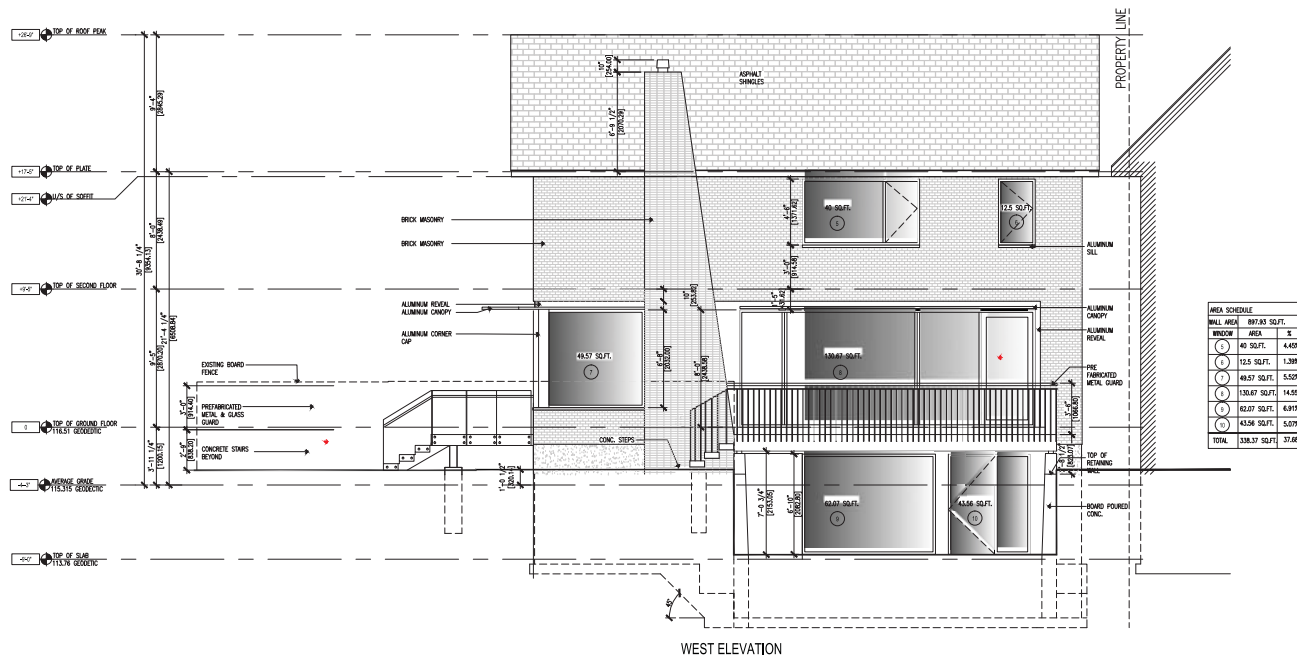
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DRAWING TITLE
PROPOSED SOUTH ELEVATION

DRAWN BY: JF
REVIEWED BY: AS

07

NO.	DESCRIPTION	DATE
1	ISSUED FOR ZONING CERTIFICATE	12.06.2017
2	RE-ISSUED FOR ZONING CERTIFICATE	19.07.2017
3	ISSUED FOR COMMITTEE OF ADJUSTMENT	20.08.2017



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PROJECT INFORMATION PRIVATE RESIDENCE
25 EVELYN GREENE
ETOBICOKE, ONTARIO
M9B 1Z1

DRAWING TITLE
PROPOSED WEST ELEVATION

PROJECT NO. 17-2175
DATE 05/01/2017
SCALE AS SHOWN

DRAWN BY: JT
REVIEWED BY: AS