

DECISION AND ORDER

Decision Issue Date Wednesday, August 15, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): FARBIA MIKAEILZADEHCHARANDABI

Applicant: GLENN RUBINOFF DESIGN GROUP

Property Address/Description: 97 DELORAINE AVE

Committee of Adjustment Case File Number: 17 269974 NNY 16 MV

TLAB Case File Number: **18 132580 S45 16 TLAB**

Motion Hearing date: Wednesday, July 18, 2018

DECISION DELIVERED BY D. Lombardi

APPEARANCE

Name	Role	Representative
GLENN RUBINOFF DESIGN GROUP	Applicant	
FARBIA MIKAEILZADEHCHARANDABI	Appellant	JENNIFER MEADER
DAVID SYPHER	Participant	
DAVID COULSON	Participant	
VERNON ALVA GOMES	Participant	
JENNA KETTLE	Co-owner of 99 Deloraine Avenue.	

INTRODUCTION

This was an appeal by the owner and Appellant, Ms. Farbia Mikaeilzadhcharandabi, of the March 1, 2018 decision of the North York Panel of the

City of Toronto's (City) Committee of Adjustment (COA) of an application for minor variances to permit the construction of a new two-storey residential dwelling with an integral garage and rear deck at 97 Deloraine Avenue (subject property). It became a settlement hearing in the result, as Minutes of Settlement between the owner and the neighbours residing at 95 Deloraine Avenue and 99 Deloraine Avenue, identified as Participants to this proceeding, had recently been signed resolving the appeal.

The subject property is located on the south side of Deloraine Avenue. Deloraine Avenue is located within a low density residential neighbourhood characterized primarily by single detached dwellings and is generally located west of Yonge Street and north of Lawrence Avenue West.

Contextually, immediately adjacent to the subject property, to the east, is a new single detached dwelling (95 Deloraine Avenue) currently under construction, as well as the rear yards of dwellings along Jedburgh Road, which abuts the rear portion of the east lot line of the subject property.

Immediately adjacent to the subject property, to the west, is a single detached residential dwelling (99 Deloraine Avenue). To the south of the subject property is the rear yard of 92 Melrose Avenue.

The subject property is designated as "*Neighbourhoods*" in the City Official Plan, and is zoned R (f7.5; d0.6) (x604) in the harmonized City Zoning By-law No. 569-2013 (new By-law) and R2 Z0.6 under the former Toronto Zoning By-law 438086 (existing By-law).

BACKGROUND

In order to construct the new detached dwelling on the subject property, the Owner/Appellant sought permission from the COA for a total of twelve minor variances. The minor variances requested are listed in Attachment 1 which is attached to this Decision. The COA scheduled a hearing for March 1, 2018.

In summary, the requested variances can be encapsulated as follows:

- A decrease in the minimum amount of floor area that must be within four metres of the front wall;
- An increase in the maximum permitted height of side exterior main walls facing a side lot line;
- An increase in maximum permitted building depth;
- An increase in the maximum permitted floor space index and gross floor area;
- A decrease in the minimum required setback of roof eaves to the east side lot line;
- A decrease in the minimum required amount of front yard landscaping;
- A decrease in the minimum required amount of front yard soft landscaping;
- A decrease in the minimum required distance to the side wall of an adjacent building (where the side wall contains openings);

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- A decrease in the minimum required east and west side lot line setback for the portion of the building exceeding 17m in depth; and
- An increase in the maximum permitted height of an uncovered platform projecting into required setbacks.

Prior to that Hearing in respect of the minor variance application, the application was reviewed by City Planning Staff (Planning Staff). Following discussions with Planning Staff, the Owner indicated that she would modify the proposal in the following manner:

- *Variance #3 – the Applicant reduced the proposed building depth from 19.81m to 18.5m; and*
- *Variances #4 and #8 - the Applicant reduced the fsi from 0.712 times the area of the lot to 0.66 times the area of the lot.*

Planning Staff prepared a report to the COA, dated February 20, 2018. In that report, Planning Staff recommended that if the Owner failed to make the above-noted revisions, then Staff recommended that the application be refused.

At the March 1, 2018 COA Hearing, the Owner made the promised revisions and modified Variances 3, 4 and 8 on the floor during the hearing in the manner noted above. In addition, Variance 3 was further modified as follows:

3. Chapter 1.10.40.30.(1), By-law No. 569-2013

The permitted maximum building depth for a building is 17m.

The proposed building depth is **18.28m**.

In arriving at a decision, the COA approved Variances 1, 2, 4, 5, 6, 7, 8, and 12 with conditions.

Further, the COA modified and approved the following variance:

9. Section 6(3) Part II 3(II), By-law 438-86

The by-law requires that the proposed building be located no closer than 1.2m to the portion of the side wall of an adjacent building that contains openings.

The proposed building is located **0.83m** from the adjacent building to the east.

The COA also refused the following variances:

3. Chapter 10.10.40.30.(1), By-law 569-2013

The permitted maximum building depth for a building is 17m.

The proposed building depth is 18.28m.

10. Section 6(3) Part II 3.B(II), By-law 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 1.07m on the west side for the portion of the building exceeding 17m in depth.

11. Section 6(3) Part II 3.B(II), By-law 438-86

The minimum required side lot line setback is 7.5 m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 0.46m on the east side for the portion of the building exceeding 17m in depth.

On March 21, 2018, the Owner appealed the COA decision to the TLAB by filing a Notice of Appeal (Form 1) providing the following grounds:

- The COA decision fails to provide any explanation or reason for its generic conclusion that Variances 3, 10 and 11 do not meet the four tests under section 45(1) of the *Planning Act*. The omission is contrary to the *Act*.
- The COA's decision is contrary to the planning analysis from City Planning Staff which did not raise any issues in respect of Variances 10 and 11, and which did not take issue with the proposed development as long as, among other modifications, Variance 3 was modified such that the requested building depth is 18.5m as opposed to the 19.81m variance originally sought. The Owner went beyond this and modified the requested variance for the proposed building depth to 18.28m.
- The proposed development would provide a dwelling that achieves the objectives of compatibility with the existing and prevailing built form in the immediate vicinity of the subject property. In fact, the COA approved a west side yard setback of 0.44m and east side yard setback of 1.07m at 71 Deloraine Avenue on March 10, 2016.
- The proposed development maintains the general intent and purpose of the Official Plan, the Zoning By-laws, and is appropriate and desirable for the site and surrounding area.
- The proposed massing, built form and design are consistent with applicable principles of good community planning and will not create any adverse impacts on the surrounding lands. As such, the requested variances are minor.

The TLAB set a hearing date of July 18, 2018, to hear the appeal. By the date of the hearing Minutes of Settlement (Settlement) had been reached in the form of a revised list of minor variances (Exhibit A), dated July 17, 2018, agreed to by the Appellant and the two Participants to this proceeding, namely David Sypher (residing at 95 Deloraine Avenue) and Vernon Gomes (residing at 99 Deloraine Avenue).

I note that a third Participant, Mr. David Coulson, did not submit a Participant Statement pursuant to TLAB Rules of Practice and Procedures (Rules) 16.5 (Form 13) nor did he attend the hearing. In providing assistance to the TLAB on this matter, Mr. Sypher confirmed that he had spoken with Mr. Coulson recently and advised that he was out of the country. Additionally, Mr. Sypher advised that Mr. Coulson was aware of the terms of the settlement and the new list of variance and had no further concerns with the application.

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In support of the terms of the Settlement, the Appellant's solicitor, Jennifer Meader, submitted two emails identified as Exhibit C1 and C2, from the Participants acknowledging their support of the revised minor variances and the revisions to proposed site plan and elevation drawings, which are dated July 17, 2018 and identified as Exhibit B. The revised list of minor variances is attached as Attachment 2 to this Decision.

The Settlement resulted in revisions to the site plan and elevation drawings which directly addressed concerns expressed by the adjacent neighbours. In summary, the two major revisions made by the Appellant include:

1. Shifted the proposed building footprint forward by 1.24m to align with the front elevations of the two abutting dwellings at 95 Deloraine Avenue and 99 Deloraine Avenue.

As a result, the setback of the proposed dwelling from the rear lot line has increased and the relationship to the adjacent rear yards has improved. In fact, Ms. Meader noted that the rear building elevation of the proposed dwelling now aligns with that of the dwelling at 95 Deloraine Avenue which is currently under construction.

2. The proposed deck at the rear of the dwelling which is to be constructed at a height of 1.35m above the maximum permitted height in the existing By-law. As a result of concerns raised by the abutting neighbor to the west, the overall size of the deck has been reduced to a depth reduced to 1.2m, and the stairs have been reoriented in a north/south direction as shown on Exhibit B.

Ms. Meader advised that for all intent and purposes the utility of the deck has now been altered from an amenity space to one that simply providing access to the rear yard and the walk out below from the main (first) floor.

The resulting modifications have necessitated revisions to the list of requested minor variances being sought by the Appellant.

Variance # 6

Moving the proposed dwelling forward closer to the front lot line has impacted the size of the proposed front yard landscaping. Previously, the Appellant was proposing that **36.77%** of the front yard would be landscaped whereas now that total percentage is **35%**. As a result, Variance #6 has been revised as follows:

6. Chapter 10.5.50.10.(1), By-law 569-2013

The minimum required front yard landscaping is 50%.

The proposed front yard landscaping is 35%.

Variance 7

Correspondingly, the shift in the dwelling forward has also impacted the amount of front yard soft landscaping being proposed by the Appellant. In the previous iteration of

the site plan, the proposed front yard soft landscaping was **65.55%** whereas the revised numerical value is now **62%**. As a result, Variance #7 has been revised as follows:

7. Chapter 10.5.50.10.(1), By-law 569-2013

The minimum required front yard soft landscaping is 75%.

The proposed front yard soft landscaping is 62%.

Variances 13 and 14

In addition, moving the building forward has resulted in two supplemental variances being required in respect of the front yard setback from both the existing and new By-laws not previously required. The variances result from the manner in which both Zoning By-laws regulate front yard setbacks for the proposed lot - averaging the front yard setbacks for the dwellings on the two abutting properties.

These new variances are identified as Variances 13 and 14 in the revised list of minor variances (Exhibit A) as followings:

13. Chapter 10.5.40.70.(1)(B), By-law 569-2013

The minimum permitted front yard setback is the average of the front yard setbacks of those building on the abutting lots (6.22m & 7.80m), which is 7.01m.

The proposed front yard setback is 6.53m.

14. Section 6(3) Part 2(ii), By-law 438-86

The minimum permitted front yard setback is the average of the shortest distances by which the front walls of the adjacent existing building or structures are set back from their front lot lines, which is 7.01m.

The proposed front yard setback is 6.53m.

MATTERS IN ISSUE

Notwithstanding the settlement and the fact that the Parties had resolved to their own satisfaction the specifics of the revised variances requested, the TLAB must hear evidence in order to be satisfied that the proposed variance meets the statutory tests. The reason is that the hearing is a hearing '*de novo*', as if the COA had not heard and decided the matter.

Therefore, the TLAB heard professional planning evidence to assess the acceptability of the revised variances being requested by the Appellant.

JURISDICTION

Provincial Policy – S. 3

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 to provincial plans (s. 3 of the *Act*). A decision of the TLAB must be consistent

with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe, 2017, for the subject area ('Growth Plan').

Under s. 2.1 (1) of the *Act*, the TLAB is also to have regard for the earlier COA decision and materials that were before that body.

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the application meets all of the four tests under s. 45(1) of the *Act*. The tests, which must be satisfied for each variance, individually and collectively, 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 qualified Mr. David Riley as a professional land use planner capable of giving expert opinion testimony on land use planning matters. Mr. Riley was retained by the Appellant in April 2018 to provide an opinion with respect to the proposal and to prepare for and attend the TLAB hearing. He was not involved with the application at the COA hearing on March 1, 2018.

He noted at the outset of his testimony that the application and the variances being requested had been revised as per Planning Staff comments and that he was supporting those revisions. He stated that the revisions were in his opinion reasonable revisions to accommodate the concerns/issues raised by the abutting neighbours.

Mr. Riley proceeded to address matters of provincial interest and section 2 of the *Act*. He opined that the Provincial Policy Statement (PPS), 2014, is a high-level land use planning policy document that provides direction for growth and development. The PPS contains policies that direct growth to settlement areas and require land use patterns within settlement areas to be based on densities and a mix of land uses that make efficient use of land, minimize impacts to the environment, are transit and active transportation supportive, and make efficient use of existing infrastructure. In his opinion, the proposal for the subject lands is consistent with the PPS and has regard for matters of provincial interest.

With respect to the Growth Plan, he further opined that the proposed variances will facilitate the proposed new single detached dwelling in line with the City's Official Plan, and therefore conforms to the Growth Plan.

The Four Tests

In addressing the tests of section 45(1) of the *Act*, Mr. Riley highlighted Exhibit E (Appellant's Combined Document Disclosure Book) and provided uncontested extensive evidence in support of the application and appeal. He supported his expert planning opinion through an extensive photographic record book consisting of 40 photographs of residential detached dwellings along Deloraine Avenue as well as on the surrounding neighbourhood streets of Melrose Avenue, Old Orchard Grove and Ridley Boulevard (Exhibit E, Tabs 3 - 4).

He provided both a Context (Exhibit E – Tab 2) and Aerial Context Mapping (Exhibit B – Tab 3) which he opined showed the overall built form characteristics and lot fabric of the properties in the immediate neighbourhood. He suggested that this mapping was indicative of the predominant character of Deloraine Avenue was a mix of older and newer single detached dwellings with integral garages and additional parking at the front of the property.

He employed a **Study Area** to illustrate the character attributes of the neighbourhood and to address the criteria for the requested minor variances. He identified his Study Area boundaries as Greer Road to the west, Old Orchard Grove to the north (including those properties fronting on the north side of Old Orchard Grove and within the same zoning category as the subject property), Yonge Street to the east (including only the property lines of lots fronting on Yonge St.), and Melrose Avenue to the south.

1. Maintain the Intent and Purpose of the Official Plan

Mr. Riley referenced Map 17 of the City's Official Plan (Exhibit E – Tab 15) noting that the subject property is designated "**Neighbourhoods.**" He then referenced Policy 2.3.1 of the Official Plan, highlighting that this Policy recognizes that neighbourhoods are physically stable areas. He opined, however, that this does not mean that they are to remain 'static' and that the Official Plan recognizes that some physical change within Neighbourhoods will occur over time.

Additionally, he referenced Policy 2.3.1.1 and noted that the Official Plan requires all development within neighbourhoods to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns of the area.

He further highlighted policies in section 3.1.2 related to the built form of development underlining that development will be located, organized, massed and designed to fit harmoniously into its existing and/or planned context. Specifically, he referenced Policy 4.1.5, which provides specific development criteria for development within neighbourhoods, addressing each relevant criterion. He focused particularly on policies c), d), e), and f):

c) heights, massing, scale and dwelling type of nearby residential properties:

Mr. Riley opined that in terms of massing and scale related to floor area and height, the proposed dwelling is similar in size to other dwellings in the

neighbourhood. He referenced Exhibit E – Tab 18, a chart entitled ‘COA *Approved FSI Increases within 500 m Radius of 97 Deloraine Ave.*’, which highlighted COA decisions granting increases in the maximum permitted gross floor area and floor space index within 500 metres of the subject property.

In addition, Tab 18 also contained corresponding mapping illustrating those properties (38 in total) within a smaller radius of the subject property where fsi increases have been granted. He noted that many of those increases reflect are greater values than the floor space index of the proposed dwelling.

From this data analysis, he suggested that the floor space index of 0.66 times the area of the lot proposed by the Appellant fits within the range of approved floor space indexes found within the Study Area, which ***range from 0.61 to a high of 1.18 times the area of the lot.*** Mr. Riley concluded that in his opinion the proposed dwelling size therefore respects the physical character of the neighbourhood.

With respect to building height, the proposed variance for increase in maximum height of side walls is required architecturally to facilitate the overall design of the proposed dwelling. In comparing existing new and recently renovated developments in the Study Area, Mr. Riley referred to photographs 7 to 27 in Exhibit E – Tab 4 to illustrate many of the newer dwellings constructed within the neighbourhood that are similar in architectural style; that is, dwellings with the first floor above the integral garage.

He suggested that incorporating an integral garage has the effect of raising the height of the first floor and results in creating a taller dwelling that, while compliant with the maximum overall height requirement in the By-laws requires side walls that are slightly higher than permitted in the By-laws.

However, he suggested that any visual impact of the height of the proposed dwelling would be mitigated by the design of the roof. He noted that the Appellant’s architect introduced a roof design mimicking a mansard style where the ridgeline is lowered to below the ceiling height of the proposed second floor. He opined that this design approach has the effect of reducing the visual impact of height, and is similar to the architecture of other dwellings in the neighbourhood, particularly 32 and 34 Deloraine Avenue (photo #8), 71 Deloraine Avenue (photo #9), 77 Deloraine Avenue (photo #10), and 72 and 76 Deloraine Avenue (photo #11).

Mr. Riley then addressed the proposed variance for the maximum height of a platform, which he noted was required to accommodate the wood deck at the rear of the dwelling. He suggested that this variance is required because the proposed height of the first floor. He also suggested that the Appellant has mitigated the impact of this deck on abutting neighbours, specifically Mr. Gomes who resides at 99 Deloraine Avenue, by redesigning the deck and reducing its overall size in addition to reorienting the stairs.

In referencing the revised Site Plan (Exhibit B) he confirmed that the depth of the deck is now proposed to be 1.22m, in contrast to the previously proposed dimension of 2.9m. As a result, Mr. Riley suggested that it is no longer considered as a functional amenity space but, rather, will simply allow access to the stairs which lead to the lower level walk out.

With respect to criterion d) and e), Mr. Riley opined that the proposed development reinforces the prevailing single detached building type in the neighbourhood, and the proposal respects the pattern of front yard setbacks on the street.

f) *Prevailing patterns of rear and side yard setbacks and landscaped open spaces*

Mr. Riley noted that the proposal maintains the required side yard setbacks for the small portion of the dwelling that exceeds 17m in depth. However, a variance is required for the projection of eaves that project into the minimum required setback as well as for the minimum separation distance between the proposed dwelling and the dwelling to the east. In this regard, he opined that the proposal improves the existing east side yard setback and the variances are appropriate.

With respect to the portion of the proposed dwelling that exceeds 17m in depth, Mr. Riley highlighted that the revised proposal has actually reduced the extent of the dwelling depth. However, he noted that a variance is required to provide functional interior space within the proposed dwelling due to the width of the lot.

He opined that one of the characteristics of the neighbourhood is deeper lot depths and, as such, an increase in dwelling depth does not create an adverse impact that is out of character with the neighbourhood. In this regard he referred to his *Dwelling Depth Increases COA Decisions* chart and map (Exhibit E – Tab 19), which illustrated that the COA had approved variances for dwelling depth ranging from 17.04m to 20.9m for 37 properties within a 500 m radius of the subject property. In fact, he emphasized that the proposed dwelling depth of 8.28m falls within mid-range within the COA approved depth increase decisions listed in the chart.

In addressing the issue of landscaped open space, Mr. Riley suggested that the revised proposal will provide landscaping in the front yard in a manner consistent with the prevailing pattern in the neighbourhood. Employing a chart titled, '*COA Approved Front Yard Landscaping Decreases within 500 m*' (Exhibit E – Tab 20), he illustrated that the COA has approved decreases in the minimum required front yard landscaping for 14 properties within his Study Area. He opined that these, existing conditions were indicative of the neighbourhood character.

He referenced photos in Exhibit E – Tab 4 to support his position that many homes within the neighbourhood have either driveways leading to a garage or front yard parking, both of which result in a reduction in front yard landscaping and directly impact front yard landscaped open space patterns.

2. Maintain the Intent and Purpose of the Zoning By-law

With respect to the existing and new Zoning By-laws, Mr. Riley noted that a number of variances are required to permit the revised proposal. These variances can be categorized as follows:

- Variances related to maximum permitted floor area and floor space index;
- Variances related to maximum height of side walls;
- Variances related to maximum building depth;
- Variances related to minimum required side yard setbacks;
- Variances related to minimum required landscaping, and
- Variances related to maximum height of an uncovered platform (rear deck).

Mr. Riley referred to his *COA Approved FSI Increases* chart (Exhibit E – Tab 18), *COA Approved Dwelling Depth Increases* chart (Exhibit E – Tab 19), and his photo book (Exhibit E – Tab 4) to support his proposition that the proposed variances, both individually and collectively, maintain the intent and purpose of the Zoning By-law.

He suggested that the COA has granted increases in maximum permitted gross floor area and floor space index as well as dwelling depth increases greater than 17 m within 500m m of the subject property and consequently opined that the massing and dwelling size of the proposal in relation to nearby dwellings was comparable and appropriate.

Mr. Riley highlighted numerous photos in Exhibit E- Tab 4 to illustrate that many of the newer dwellings recently built within the neighbourhood have been constructed in a similar architectural style to the proposed dwelling.

3. Desirable for the Appropriate Development or Use of the Property

Mr. Riley opined that the proposal facilitates a desirable outcome for the subject property and suggested that the proposed dwelling can be adequately and appropriately accommodated on the property. He opined that the proposed dwelling is of a similar size and scale to other dwellings and that the proposed variances facilitate the construction of a dwelling in a manner that respects the existing physical form that exists in the neighbourhood.

4. Minor

In addressing the question of whether the proposed variances are minor in nature, Mr. Riley opined that the basis for determining whether or not a proposed variance is minor is one of impact. He suggested that this determination is not a mathematical exercise even though a variance may seem to be a significant numerical change from what is permitted. Instead, he proposed that it may still be properly judged to be a 'minor variance' (emphasis added) if the actual effects of the proposed variance do not result in any significant adverse impacts to the surrounding properties.

He opined that while the Appellant is requesting a total of fourteen variances, the impacts of those variances have been mitigated through various site specific design solutions and compromises resulting from input from abutting neighbours. He further opined that the overall height, size and massing of the proposed dwelling is compatible with similar dwellings in the neighbourhood and that the requested variances will not result in any adverse impacts to neighbouring properties.

Mr. Riley concluded his testimony by stating that this was a meaningfully different proposal than the one before the COA and the settlement with the abutting neighbours, Mr. Gomes and Mr. Sypher, as well as Mr. Coulson even in his absence, involved those materially affected.

In his opinion the proposed variances, as revised, individually and collectively, meet the test of Section 45(1) of the *Act*, and should be approved, subject to Conditions #1 and #3 listed as part of the COA Decision dated March 1, 2018.

I then heard testimony from both Participants in attendance. Mr. Gomes and Mr. Sypher.

Mr. Gomes immediately noted his support for the revised development proposal and the overall Minutes of Settlement. He noted that the Appellant had made concessions in moving the proposed dwelling footprint forward on the site plan and appreciated the redesign of the rear deck that resulted in a reduction in size of the platform as well as the reoriented stair case leading from the deck.

He further noted his approval of the reduction in size and redesign of the front yard landscaping resulting from the shifting of the proposed dwelling closer to the front lot line of the subject property. However, he did highlight his insistence that permeable materials, perhaps in the form of pavers, be utilized as part of the proposed driveway. He was satisfied that this was memorialized as one of the condition agreed to by the Appellant as part of the Settlement.

Finally, Mr. Gomes agreed with Mr. Riley's suggestion that privacy screening or fencing along the eastern edge of the proposed rear deck as stipulated in Condition 2 of the COA's decision was no longer warranted given the redesign of the deck. He did, nevertheless, suggest that perhaps additional landscaping between his property and the subject property, along the fence line in the vicinity of the rear building edge of his property, would be appreciated and a further gesture of good will on the Appellant's behalf.. The Appellant responded by suggesting that further discussions could be initiated at a later date in this regard, which Mr. Gomes acknowledged..

Mr. Sypher noted that he had owned the property at 95 Deloraine Avenue since 2001 and confirmed that he is currently completing construction of a new dwelling on his property.

He stated that his main concerns initially with the proposed development were privacy and sunlight impacts on his rear yard and he emphasized that he had attended the COA hearing in March to raise express his concerns.

He also clarified the misrepresentation of the alignment of his rear property line as shown on the survey and the original drawings presented by the Appellant. In doing so, he verified that the dimensions shown on the Appellant's plans were unclear and somewhat misleading and not reflective of how much rear yard he actually enjoys.

Nevertheless, Mr. Sypher acknowledged that the revisions to the proposed dwelling have appeased his concerns and he is satisfied with the settlement reached with the Appellant. He also agreed with Mr. Gomes' position that privacy screening was no longer necessary as part of the proposed rear deck and, therefore, not required as a condition of approval.

In concluding remarks, Ms. Meader asked that the TLAB approve the fourteen minor variances, as revised, being requested by the Appellant based on the uncontested land use planning evidence of Mr. Riley. She suggested that Mr. Riley's expert professional opinion supported the position that all of the variances meet the four part test of Section 45(1) of the *Act*, the application constitutes good planning, and it meets all provincial policy objectives.

She suggested that the evidence showed that the revised proposal and variances are sensitive to the surrounding neighbourhood context and is in keeping with the character of the neighborhood. Further, she suggested that the proposal results in no adverse impacts on adjacent properties. She noted that MR. Riley's evidence confirmed that there are many properties within the neighbourhood with approved variances similar to those being requested by the Appellant and, in some cases, of a greater magnitude.

She submitted that it would be procedurally unfair and prejudicial to the Appellant to adjourn the hearing to provide further notice to Mr. Coulson, the only other Participant who communicated having an interest in this appeal but who did not comply with the TLAB Rules by providing a witness statement and who did not attend the hearing. She reiterated the point previously noted in this Decision, that Mr. Sypher did advise that Mr. Coulson was aware of the revised application and has no further concerns.

Ms. Meader submitted that Mr. Riley's uncontested expert planning opinion supports her contention that the revisions to the application before the TLAB are minor in nature and asked that the TLAB amend the application from what was considered at the COA as it has the authority to do under Section 45(18.1.1) of the *Act* and that no further notice be required.

She respectfully requested that, if the TLAB allowed the appeal, that Condition #2 of the COA Decision requiring privacy screening along the easterly edge of the platform (rear deck) be eliminated, as supported by the two Participants in their testimony. She confirmed that the Appellant was in agreement with the remaining conditions as imposed by the COA and further highlighted at this hearing.

ANALYSIS, FINDINGS, REASONS

TLAB is to consider conformity with provincial plans and consistency with provincial policy. There was nothing in the TLAB file, including the COA documentation, or the evidence, that raised any issue on these matters.

Based on the evidence before it, the TLAB finds that revisions to the plan and to Variances 6 and 7 from those submitted to the COA, as well as the addition of Variances 13 and 14, are minor and do not require further notice prior to the TLAB dealing with them.

To determine whether the variances are minor so as to require no notice pursuant to Section 45(18.1.1) of the Act, the TLAB must look to whether the changes substantially change the proposal, and to whether the changes will result in a reduction of the impact, thus rendering the proposal in closer conformity with the requirements of the zoning by-law.

In this case, the proposal is essentially the same albeit somewhat of a slight reduction in the front yard landscaping (both hard and soft) and front yard setback, and a redesign of the rear deck. These revisions were done precisely to eliminate any impacts on abutting neighbours and I find that the result achieved that end. Individually and cumulatively, the revisions operate to reduce the impact of the proposal and can therefore be considered minor in my opinion.

As well, I accept the uncontested evidence of the Appellant's expert planning witness, Mr. Riley, and am satisfied, from the evidence presented, that the variances requested are indeed minor and meet the intent of both the Official Plan and the two Zoning By-laws. I have considered and agree with the conclusions of the COA to approve Variances 1, 2, 4, 5, 8, and 12. They appear to be minor and desirable variations in the By-law requirements. I make this finding also for Variances 3, 10 and 11, which were refused by the COA.

As to Variances 9, which the COA modified and approved the variance as follows:

9. Section 6(3) Part II, By-law 438-86

The by-law requires that the proposed building be located no closer than 1.2m to the portion of the side wall of an adjacent building that contains openings.

The proposed building is located **0.83m** from the adjacent building to the east.

I note that the Appellant is now proposing that the dwelling be located **1.09m** from the adjacent building to the east, which represents a further increase in separation distance of **0.28m**. The result is that the numerical value of requested variance is now closer to the by-law requirement.

Consequently, this variance improves the east side yard setback and the minimum separation distance between the proposed dwelling and the existing dwelling to the east. I find that this variance is appropriate.

As to Variances 6 and 7, which have been revised by the Appellant, and Variances 13 and 14, which have been added to the list of variances being requested, I find that these relate directly to the Appellant's response to neighbours' concerns and resulted in shifting the proposed dwelling's footprint forward in closer proximity to the front lot line.

As noted by the Appellant's expert planning witness, the dimensions of the proposed dwelling have not change but the proposal now brings the dwelling forward approximately 1.24m to match the alignment of the front facade of 95 Deloraine Avenue. Mr. Riley noted that in the Appellant's initial proposal the front wall of the proposed dwelling had been aligned with the existing dwellings at 95 and 99 Deloraine Avenue. Consequently, no front yard setback was required in the original submission to the COA.

Subsequently, a new dwelling with a different front yard setback is under construction at 95 Deloraine Avenue and the revised proposal brings the front facade of the dwelling in line with that new dwelling. As a result, Variances 13 and 14 are required by the Appellant.

Shifting the proposed dwelling forward has also impacted the overall size of the front yard and resulted in a further minor reduction in the amount of proposed front yard landscaping. I accept that the configuration of the front yard remains the same as in the initial proposal; however, the ratio of soft to hard landscaping has been varied, hence the required revisions to Variances 6 and 7.

I accept that the Appellant has attempted to maintain as much soft landscaping as possible and I agree that a reduction in the amount of proposed front yard soft landscaping from **65.55%** to **62%** is minor.

The new Zoning By-law includes a provision to restrict driveways and hard surfaces in order to maintain a minimum front yard landscaping of 50% of the front yard area, of which 75% must be soft landscaping. Front yard landscaping is devised, in part, to maintain a consistent pattern of landscaping visible from the street as well as proper storm water management on site.

The Appellant has agreed to a condition requiring permeable materials be incorporated as part of the proposed driveway, which is also an acceptable solution supported by the abutting neighbor, Mr. Gomes, and Planning Staff as noted in their comments to the COA..

As such, I find that the present application for fourteen variances as agreed to in the Minutes of settlement (Exhibit A) meet all of the required tests in subsection 45(1) of the Act. They also conform with and do not conflict with all applicable provincial policies. The proposed conditions of approval are reflected in the order below.

DECISION AND ORDER

The TLAB orders that the appeal is allowed in part, and that the following variances are authorized:

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

A minimum of 10m² of the first floor area must be within 4m of the front wall.

The proposed first floor area is 5.18m² within 4m of the front wall.

2) Chapter 10.10.40.10(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.

The proposed height of the side exterior main wall facing a side lot line is 8.6m.

3) Chapter 10.10.40.30.(1), By-law No. 569-2013

The permitted maximum building depth for a building is 17m.

The proposed building depth is 18.28m.

4) Chapter 10.10.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is 0.66 times the area of the lot.

5) Chapter 10.5.40.60.(7), By-law No. 569-2013

Roof eaves may project a maximum of 0.9m into a required building setback provided that they are no closer than 0.3m to a lot line.

The proposed eaves project 0.36m into the required east side yard setback and are 0.15m from the east side lot line.

6) Chapter 10.5.50.10.(1), By-law No. 569-2013

The minimum required front yard landscaping is 50%.

The proposed front yard landscaping is 35%.

7) Chapter 10.5.50.10.(1), By-law No. 569-2013

The minimum required front yard soft landscaping is 75%.

The proposed front yard soft landscaping is 62%.

8) Chapter 6(3) Part I 1, By-law No. 438-86

The permitted maximum gross floor area is 0.6 times the area of the lot.

The proposed gross floor area is 0.66 times the area of the lot.

9) Section 6(3) Part II 3(II), By-law No. 438-86

The by-law requires that the proposed building be located no closer than 1.2m to the portion of the side wall of an adjacent building that contains openings.

The proposed building is located 1.09m from the adjacent building to the east.

10) Section 6(3) Part II 3.B(II), By-law No. 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

Decision of Toronto Local Appeal Body Panel Member: D. Lombardi
TLAB Case File Number: 18 132580 S45 16 TLAB

The proposed side lot line setback is 1.07m on the west side for the portion of the building exceeding 17m in depth.

11) Section 6(3) Part II 3.B(II), By-law No. 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 0.51m on the east side for the portion of the building exceeding 17m in depth.

12) Section 6(3) Part II 8 D(I), By-law No. 438-86

The maximum permitted height of an uncovered platform which projects into the required setback is 1.2m above grade.

The proposed rear deck is 2.55m above grade.

13) Chapter 10.5.40.70.(1)(B), By-law No. 569-2013

The minimum permitted front yard setback is the average of the front yard setbacks of those buildings on the abutting lots (6.22m & 7.80m), which is 7.01m.

The proposed front yard setback is 6.53m.

14) Section 6(3) Part II 2(ii), By-law No. 438-86

The minimum permitted front yard setback is the average of the shortest distances by which the front walls of the adjacent existing buildings or structures are setback from their front lot lines, which is 7.01m.

The proposed front yard setback is 6.53m.

The following conditions will apply:

1. The new detached dwelling shall be constructed substantially in accordance with the Plans in Exhibit B, prepared by Rubinoff Design Group (Site Plan dated July 17, 2018) and attached as Attachment 2 to this decision. **Any other variances that may appear on these plans that are not listed in this decision are not authorized.**
2. Permeable materials are to be used for the proposed driveway.
3. The requirements of the Parks and Recreation, Urban Forestry Division:
 - i. Submission of a complete application for permit to injure or remove privately owned trees.
 - ii. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cost of planting a tree is \$583.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

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

1. Chapter 10.5.40.10(5), By-Law No. 569-13

A minimum of 10m² of the first floor area must be within 4m of the front wall.

The proposed first floor area is 5.18m² within 4m of the front wall.

2. Chapter 10.10.40.10.(2), By-Law No. 569-13

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.

The proposed height of the side exterior main wall facing a side lot line is 8.6m.

3. Chapter 10.10.40.30.(1), By-Law 569-13

The permitted maximum building depth for a building is 17m.

The proposed building depth is **18.28m**.

4. Chapter 10.10.40.40.(1), By-Law 569-13

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is **0.66** times the area of the lot.

5. Chapter 10.5.40.60.(7), By-Law 569-13

Roof eaves may project a maximum of 0.9m into a required building setback provided that they are no closer than 0.3m to a lot line.

The proposed eaves project 0.36m into the required east side yard setback and are 0.09m from the east side lot line.

6. Chapter 10.5.50.10.(1), By-Law 569-13

The minimum required front yard landscaping is 50%.

The proposed front yard landscaping is 36.37%.

7. Chapter 10.5.50.10.(1), By-Law 569-13

The minimum required front yard soft landscaping is 75%.

The proposed front yard soft landscaping is 65.55%.

8. Section 6(3) Part I 1, By-Law 438-86

The permitted maximum gross floor area is 0.6 times the area of the lot.

The proposed gross floor area is **0.66** times the area of the lot.

9. Section 6(3) Part II 3(II), By-Law 438-86

The by-law requires that the proposed building be located no closer than 1.2m to the portion of the side wall of an adjacent building that contains openings.

The proposed building is located 0.78m from the adjacent building to the east.

10. Section 6(3) Part II 3.B(II), By-Law 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 1.07m on the west side for the portion of the building exceeding 17m in depth.

11. Section 6(3) Part II 3.B(II), By-Law 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 0.46m on the east side for the portion of the building exceeding 17m in depth.

12. Section 6(3) Part II 8 D(I), By-Law 438-86

The maximum permitted height of an uncovered platform which projects into the required setback is 1.2m above grade.

The proposed rear deck is 2.55m above grade and **projects a maximum of 1.20m from the rear wall.**

Revised List of Variances

1. **Chapter 10.5.40.10(5), By-Law No. 569-13**
A minimum of 10m² of the first floor area must be within 4m of the front wall.
The proposed first floor area is 5.18m² within 4m of the front wall.
2. **Chapter 10.10.40.10.(2), By-Law No. 569-13**
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.
The proposed height of the side exterior main wall facing a side lot line is 8.6m.
3. **Chapter 10.10.40.30.(1), By-Law 569-13**
The permitted maximum building depth for a building is 17m.
The proposed building depth is 18.28m.
4. **Chapter 10.10.40.40.(1), By-Law 569-13**
The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.66 times the area of the lot.
5. **Chapter 10.5.40.60.(7), By-Law 569-13**
Roof eaves may project a maximum of 0.9m into a required building setback provided that they are no closer than 0.3m to a lot line.
The proposed eaves project 0.36m into the required east side yard setback and are 0.15m from the east side lot line.
6. **Chapter 10.5.50.10.(1), By-Law 569-13**
The minimum required front yard landscaping is 50%.
The proposed front yard landscaping is ~~36.37%~~ **35%**.
7. **Chapter 10.5.50.10.(1), By-Law 569-13**
The minimum required front yard soft landscaping is 75%.
The proposed front yard soft landscaping is ~~65.55%~~ **62%**.
8. **Section 6(3) Part I 1, By-Law 438-86**
The permitted maximum gross floor area is 0.6 times the area of the lot.
The proposed gross floor area is 0.66 times the area of the lot.
9. **Section 6(3) Part II 3(II), By-Law 438-86**
The by-law requires that the proposed building be located no closer than 1.2m to the portion of the side wall of an adjacent building that contains openings.
The proposed building is located 1.09m from the adjacent building to the east.

10. Section 6(3) Part II 3.B(II), By-Law 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 1.07m on the west side for the portion of the building exceeding 17m in depth.

11. Section 6(3) Part II 3.B(II), By-Law 438-86

The minimum required side lot line setback is 7.5m from the side lot line for that portion of the building exceeding 17m in depth.

The proposed side lot line setback is 0.51m on the east side for the portion of the building exceeding 17m in depth.

12. Section 6(3) Part II 8 D(I), By-Law 438-86

The maximum permitted height of an uncovered platform which projects into the required setback is 1.2m above grade.

The proposed rear deck is 2.55m above grade.

13. Chapter 10.5.40.70.(1)(B), By-Law 569-13

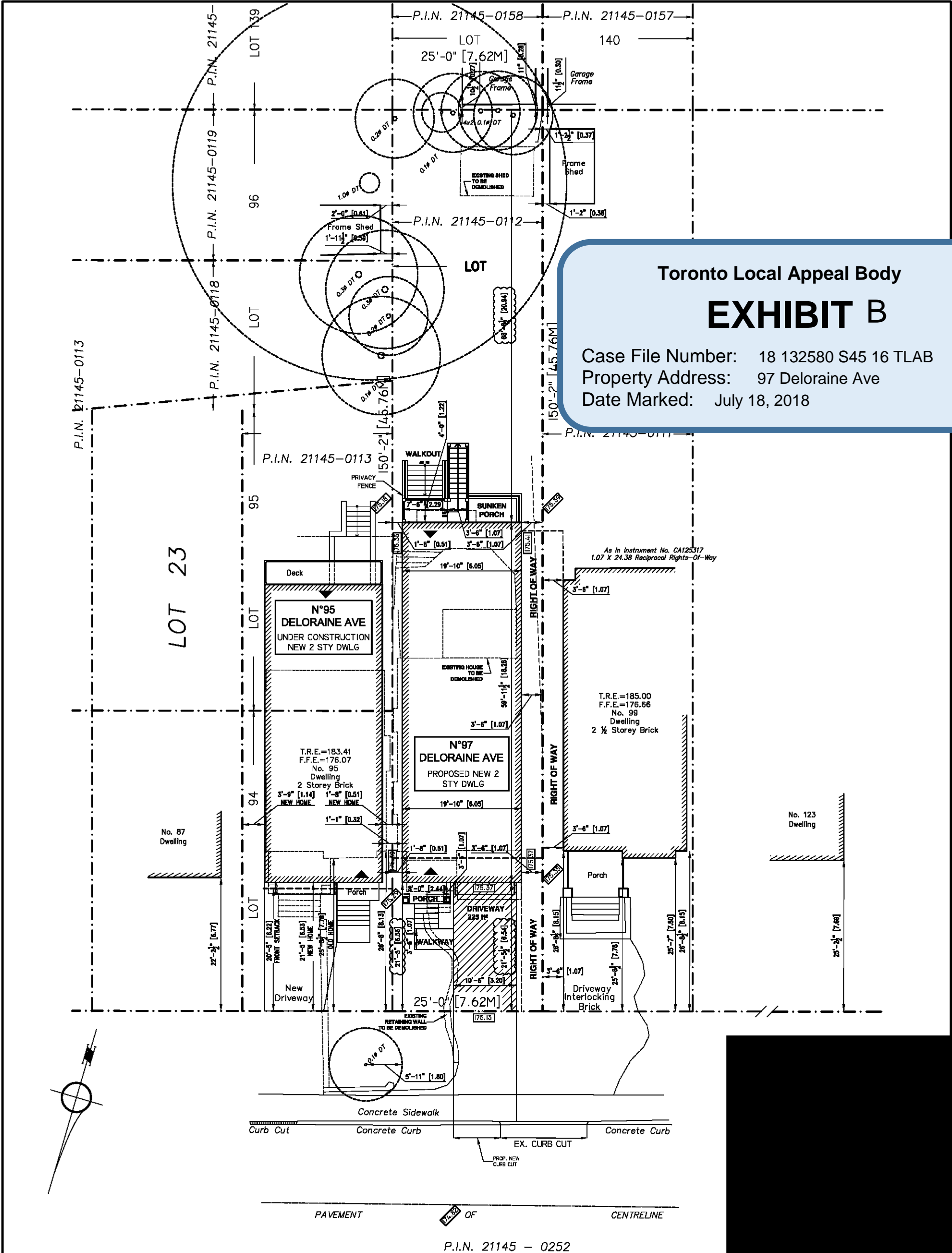
The minimum permitted front yard setback is the average of the front yard setbacks of those buildings on the abutting lots (6.22m & 7.80m), which is 7.01m.

The proposed front yard setback is 6.53m.

14. Section 6(3) Part II 2(ii), By-Law 438-86

The minimum permitted front yard setback is the average of the shortest distances by which the front walls of the adjacent existing buildings or structures are set back from their front lot lines, which is 7.01m.

The proposed front yard setback is 6.53m.



Toronto Local Appeal Body

EXHIBIT B

Case File Number: 18 132580 S45 16 TLAB

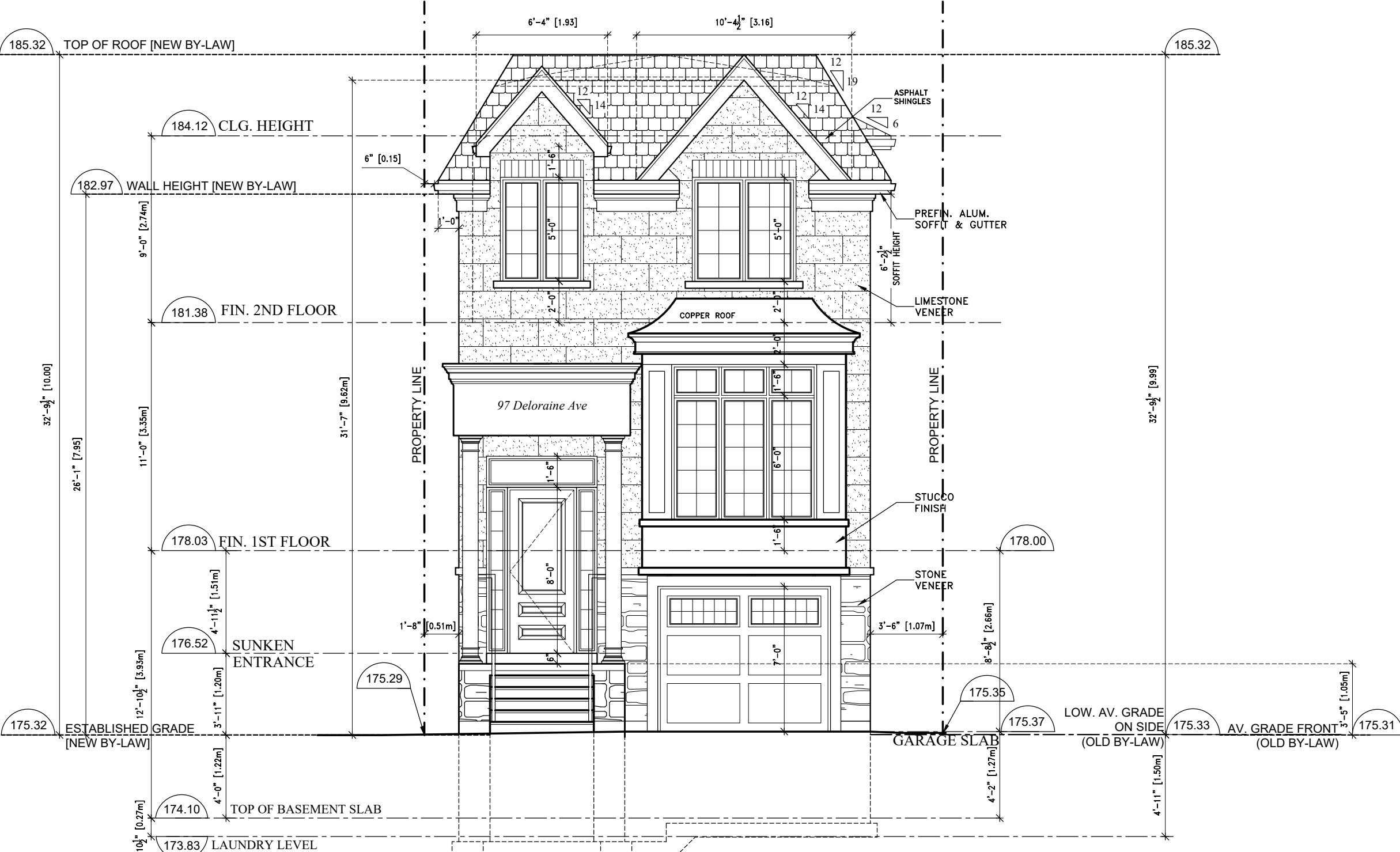
Property Address: 97 Deloraine Ave

Date Marked: July 18, 2018

SITE STATISTICS :	
PART LOT 93 AREA = 3753.1 ft² [348.7 m²]	
FRONT YARD AREA = 536.4 ft² [49.8 m²]	
PORCH, STEPS & WALKWAY AREA = 67.4 ft² [6.3 m²]	
R.O.W. [RIGHT OF WAY] = 74.8 ft² [6.9 m²]	
DRIVEWAY AREA = 225.2 ft² [20.9 m²]	
FRONT YARD HARD SURFACE AREA = 367.4 ft² [34.1 m²]	
(PORCH, STEPS, WALKWAY & DRIVEWAY) / (FRONT YARD AREA) = 68.5% (50% MAX. PERMITTED)	
FRONT YARD SOFT LANDSCAPED AREA = 169.0 ft² [15.7 m²]	
(FRONT YARD AREA) - (DRIVEWAY & R.O.W.) = 236.4 ft² [21.9 m²]	
PORCH, R.O.W. & STEPS & WALKWAY AREA = 142.2 ft² (80.2%)	
SOFT LANDSCAPED AREA = 169.0 ft² (71.5%) MIN 75% REQ'D	
FS1 = 2477.0 ft² [230.1 m²] [66.0%]	

DELORAIN AVENUE			
P.I.N. 21145 - 0252			
(By Registered Plan 1494)			
PRIVATE RESIDENCE		R ubinoff Design Group	
PROJECT: SITE PLAN		697 Mount Pleasant Rd. Toronto, Ontario M4S 2N4 TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com	
PROJECT: 97 DELORAIN AVENUE TORONTO, ONTARIO		PROJECT DESIGNER: G.R.	PROJECT NO.
		DRAWN BY: K.S.	DATE: JULY 17, 2018
		CHECKED BY: G.R.	SCALE: 1/16" = 1'-0"
		DRAWING NO. A	

TOTAL WIDTH OF WALL OPENINGS = 16'-8 $\frac{1}{2}$ " [5.09]
 TOTAL WIDTH OF HOUSE = 20'-0" [6.10]
 [5.09 / 6.10] = 83.4 %



FRONT ELEVATION (NORTH

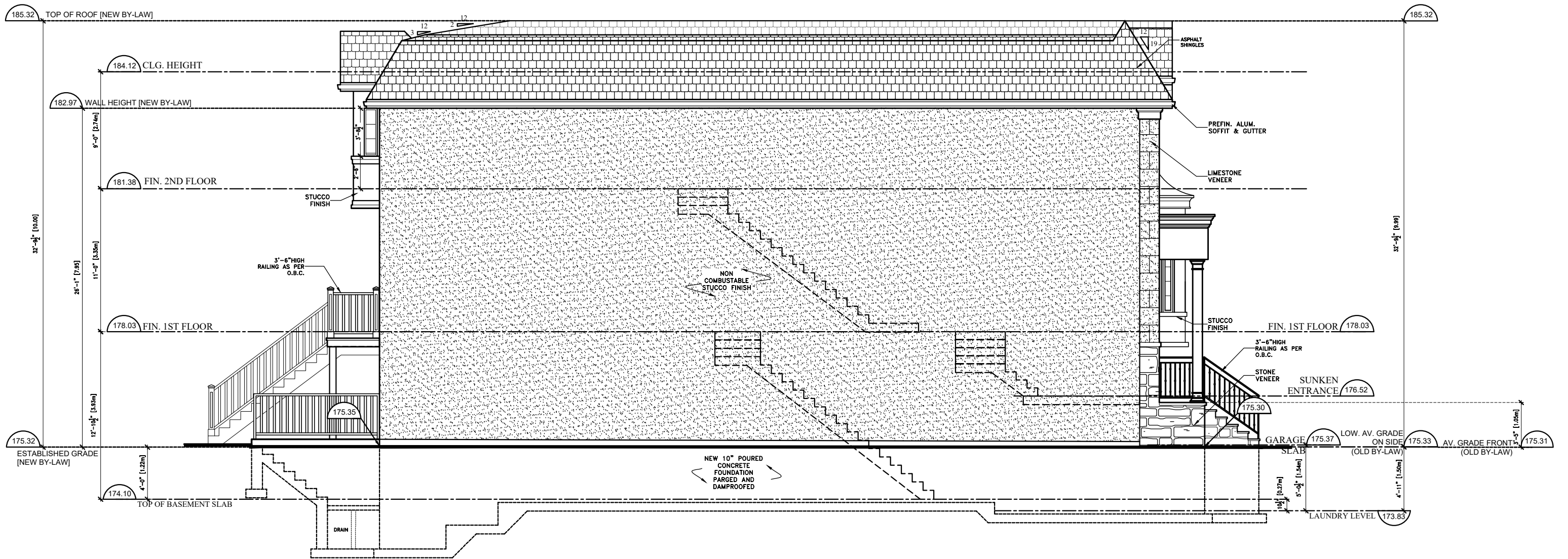
N°97 DELORAINE AVE

©Rubinoff Design Group

697 MOUNT PLEASANT RD
Toronto, Ontario M4S 2N4

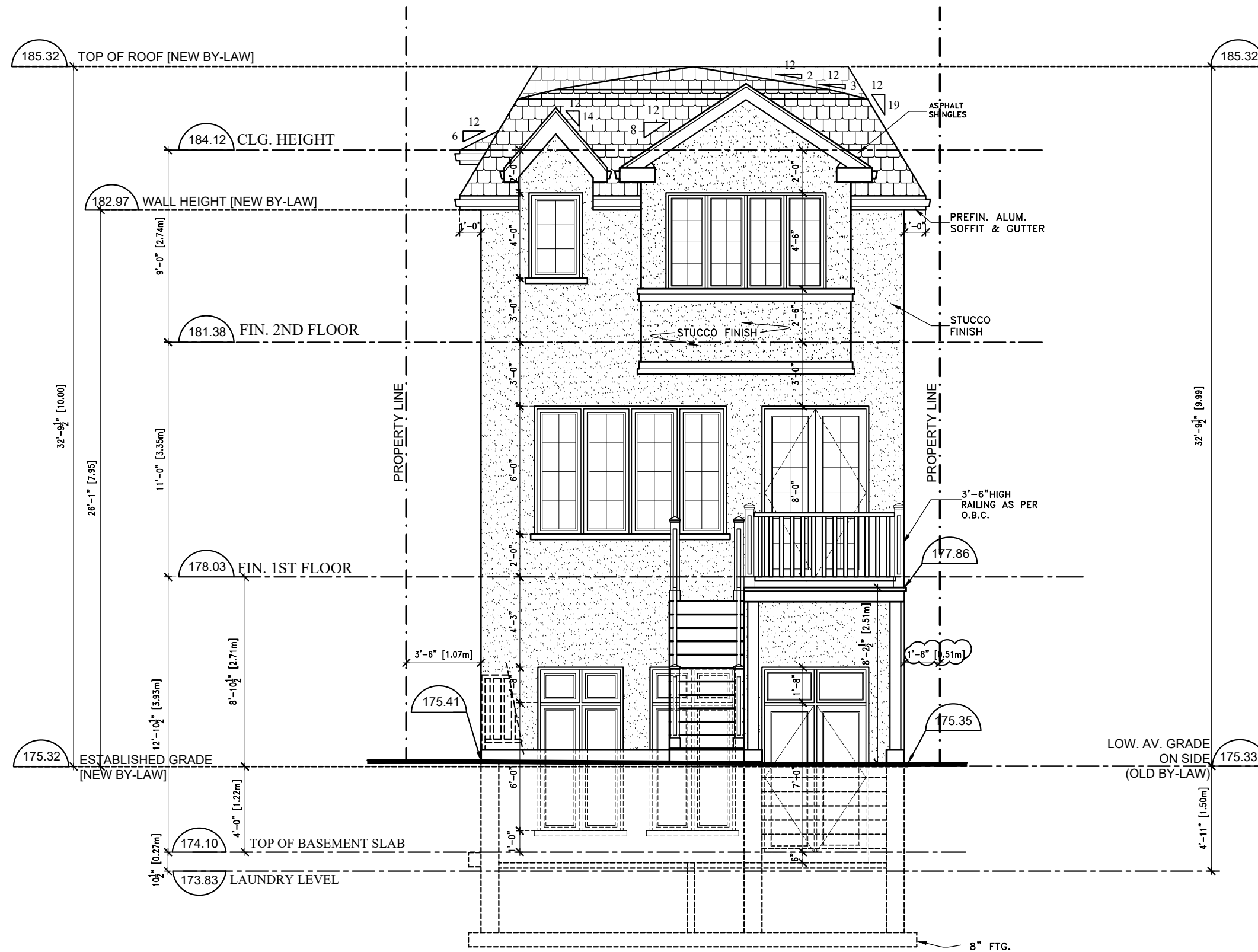
TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com

SCALE : $\frac{3}{16}" = 1'-0"$ AUG 01, 2018



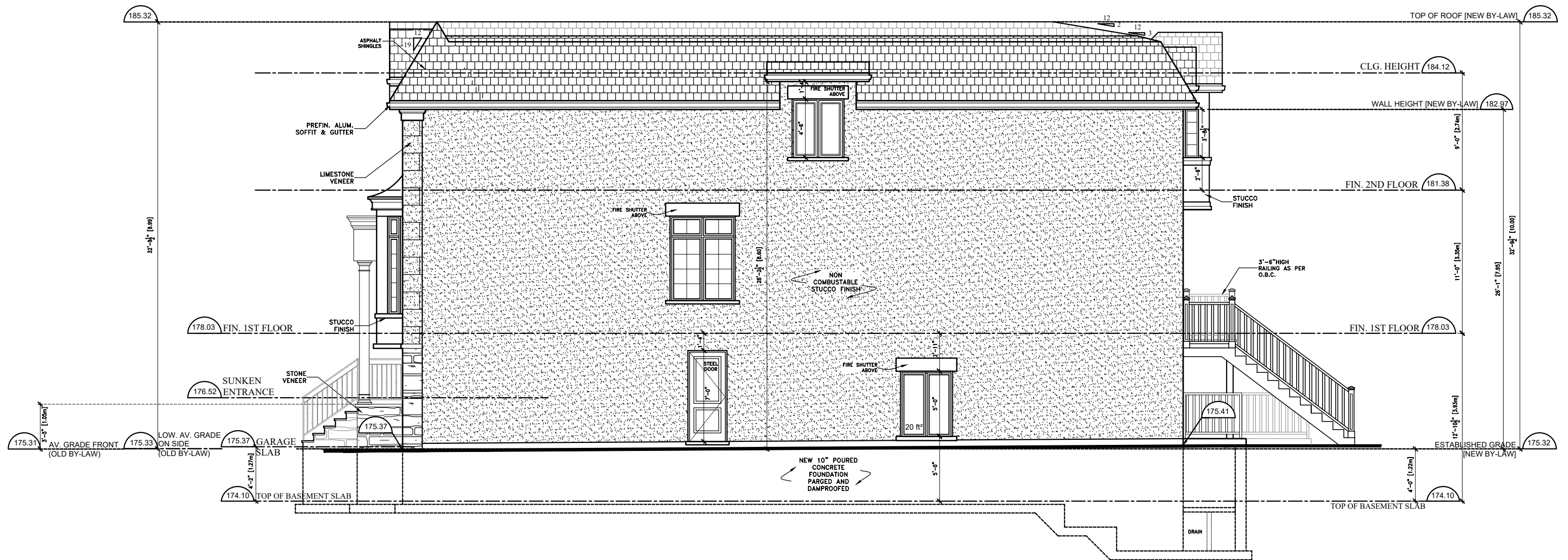
LEFT ELEVATION (EAST)

N°97 DELORAINE AVE.



REAR ELEVATION (SOUTH)

N°97 DELORAINE AVE.



RIGHT SIDE ELEVATION (WEST)

N°97 DELORAINE AVE.