

# DECISION AND ORDER

**Decision Issue Date** Thursday, September 20, 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): SAM RADHAKRISHNAN

Applicant: HEATHER BREEZE

Property Address/Description: 137 DUNVEGAN RD

Committee of Adjustment Case File Number: 17 159367 STE 22 MV

TLAB Case File Number: **18 144988 S45 22 TLAB**

**Hearing date:** Wednesday, September 05, 2018

**DECISION DELIVERED BY GILLIAN BURTON**

## APPEARANCES

Name	Role	Representative
Heather Breeze	Applicant	
Patrick Jabbaz	Owner	Joe Hoffman
Linda Jabbaz	Owner	
Sam Radhakrishnan	Appellant	Alex Lusty
City of Toronto	Party	Sara Amini
Mary Matthews	Participant	
Edrea Birk	Participant	

## **INTRODUCTION**

The owner of 137 Dunvegan Road in the south Forest Hill area of Toronto, Mr. Patrick Jabbaz, applied to the Committee of Adjustment (COA) for minor variances to permit the construction of a new three storey dwelling on this corner lot. It would retain the same orientation as the present structure, with an integral three car garage facing the flanking street, Kilbarry Road. The Committee allowed the application on March 28, 2018, with three conditions, two for Forestry permits, and one restricting any use of the garage roof for outdoor amenity space.

The owner of 146 Forest Hill Rd. directly to the east of the subject property, Dr. Sam Radhakrishnan, appealed this decision to the Toronto Local Appeal Body (TLAB). Other neighbours sought participant status, and the City of Toronto also became a party to the appeal. By a decision on an earlier Motion, the TLAB extended dates for the required documentary filings, as the parties had entered into settlement discussions (May 24, 2018).

As of the date of the hearing on September 7, 2018 a settlement had been reached, and Minutes of Settlement were signed by all parties, including the City. No participants had made comments on the settlement or appeared at the hearing. Mr. Alex Lusty attended for the appellant in lieu of Mr. Mark Flowers, but merely to monitor the hearing.

## **BACKGROUND**

This property is zoned RD (f18.0; d0.35) (x1416) under By-law 569-2013 (the New By-law). Under the older By-law 438-86 (the old By-law), it was zoned R1 Z0.35 max H: 11.0 M.

The application before the COA proposed 2 driveways, retaining the present situation. The one in the front yard on Dunvegan provides access to the front entrance of the house, and also to Kilbarry Road. This was proposed to be expanded, but is now to retain its present size and shape.

## **MATTERS IN ISSUE**

Despite the parties' agreement to a settlement, the TLAB must hear sufficient planning evidence to satisfy itself that all of the statutory tests for minor variance approval have been met. Its hearing is *de novo*, as if the COA hearing had not taken place. Thus expert planning evidence is usually directed to the satisfaction of the applicable tests.

## **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 (GP) 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**

The owners’ planning evidence was provided by Ms. Janice Robinson, who was qualified as an expert witness due to her extensive experience in this field. She outlined the type of dwelling proposed, and the neighbourhood setting. It is an area of very large executive homes, perhaps one of the most affluent in Canada, designated Neighbourhoods in the City of Toronto Official Plan (OP). She reviewed all of the applicable zoning development standards for the site, then each of the variances granted in the COA decision. There were to be some alterations to those variances, which I found to be minor and not requiring any further notice, as permitted by subsection 45(18.1.1) of the Act. This was reinforced by the settlement reached, and without any participants’ comments.

Commencing with the revised site plan in Exhibit 1, Ms. Robinson testified that the general orientation of the proposed dwelling would be similar to the existing, with the garage off Kilbarry to the rear. The garage would not extend so far to the east, toward the appellant’s property, as the existing garage. There is a length variance, but the

entire structure is included, while the actual dwelling without the garage is only about 18 m. There are two driveways to be retained on the site, with the present front one on the Dunvegan side to be rebuilt exactly where it is now. This would address some of Urban Forestry's (and the neighbours') concerns about tree loss. Despite their retention, there are some variances still required for the driveways. A variance for a sports and terrace use on top of the garage has been removed, as per the COA condition imposed.

Ms. Robinson addressed each of the variances in the Committee decision, those still required as well as the proposed revisions resulting from the settlement.

### **VARIANCES FROM BY-LAW 569-2013:**

**1. Chapter 800.50.210**

A driveway means a passageway providing vehicle access between a street or lane and area used for the parking, loading or storage of a vehicle.

The driveway accessing both the main and flanking streets (Dunvegan Road and Kilbarry Road) of the corner lot, is the second driveway, which does not provide access to the parking, and is providing access to the entrance of the house.

*Ms. Robinson: This is the existing driveway at the front, to be retained in the same location (see also variance 9.)*

**2. Chapter 10.5.100.1.(2)(B)(i)**

The maximum permitted driveway width for a driveway that is not located in or does not pass through the front yard is 6.0 m.

The driveway width of the driveway leading to the integral garage from the flanking street (Kilbarry Road) will be 10.36 m.

*This is the same width as the present driveway, but it will be located further away from the east lot line.*

**3. Chapter 10.20.40.10.(2)(B)(i)**

The maximum permitted height of all side exterior main walls is 8.5 m.

The height of the side exterior main walls will be 10.99 m.

*No change*

**4. Chapter 10.20.40.20.(1)**

The maximum permitted building length is 17.00 m.

The proposed building length is 33.8 m.

*As explained, the building without the garage will be only 18 m.*

**5. Chapter 10.20.40.30.(1)**

The maximum permitted depth for a detached house is 19.0 m.

The new detached dwelling will have a depth of 31.72 m.

*No change*

6. Chapter 10.20.40.40.(1)(A)

The maximum permitted floor space index is 0.35 times the area of the lot: 526.9 m<sup>2</sup>.

The proposed floor space index is 0.654 times the area of the lot: 984.0 m<sup>2</sup>.

*No change –this was reduced from the original application. In Ms. Robinson’s opinion, this is well within the FSI for most variances granted in this area, as seen on her Committee of Adjustment Decision Analysis (in Exhibit 3).*

7. Chapter 10.20.40.70.(1)

The minimum required front yard setback is 13.77 m.

The proposed front yard setback is 11.38 m.

*No change*

8. Chapter 10.20.40.70.(2)(B)

The minimum required rear yard setback is 12.95 m.

The new detached dwelling will be located 6.35 m from the east rear lot line.

*No change. This is a greater distance than the present garage.*

9. Chapter 10.5.100.1.(1) (D)(iii)

For lots with a lot frontage greater than 23.0 metres, a maximum driveway, if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard must be a maximum 2.6 metres if all parking spaces are in the rear yard.

The proposed driveway is 7.31 metres wide.

*Added as a required variance, but reflecting the existing condition. By email of August 28, 2018, Mr. Hoffman set out the reason for this addition:*

“We note this variance was included in the original Committee decision, however, before the Committee the variance read that the driveway width must be a maximum of 9.0 m and the proposed driveway width at the time was 10.49 m. Through discussions with the City, we reduced the driveway width to 7.31 m and therefore believed the variance was eliminated. We now understand that the City’s first Zoning Notice was incorrect. The permitted width is 2.6 m (not 9.0 m) and therefore the variance is still required.”

**VARIANCES FROM BY-LAW 438-86:**

1. Section 6(3) Part I 1

The maximum residential gross floor area is 0.35 times the area of the lot: 526.9 m<sup>2</sup>.

The proposed residential gross floor area of the building is 0.666 times the area of the lot: 1,002.0 m<sup>2</sup>.

*This is the same as the FSI above, just calculated differently under this By-law.*

**2. Section 6(3) Part IV 4(b)**

The maximum width of a driveway that is not located in or does not pass through any portion of the lot between the front lot line and any wall of the building facing the front lot line between the front lot line and any wall of the building facing the front lot line as projected to the side lot lines is 6.0 m.

The width of the driveway leading to the integral garage from the flanking street (Kilbarry Road) will be 10.36 m.

*This is the same width as the present driveway, but it will be located further away from the east lot line and the appellant's property.*

**3. Section 6(3) Part IV 4(C)(iii)**

A driveway that is not located in or passes through any portion of the lot between the front lot line and any wall of the building facing the front lot line as projected to the side lot lines is permitted a maximum width of 3.05 m at the front lot line and 4.9 m for its entire length.

The width of the driveway accessing both the main and flanking streets will be 3.64 m at the front lot line and 7.31 m in the front yard.

*There is a minor revision here – because this driveway is to be maintained rather than replaced, the width at the front lot line would be reduced from the previous 10.49 granted in the COA Notice of Decision.*

**4. Section 6(3) Part II 2(II)**

A building on an inside lot is required a minimum front lot line setback of 13.77 m.

The new detached dwelling will be located 11.38 m from the west front lot line.

*No change*

**5. Section 6(3) Part II 3 B(II)**

The minimum side yard setback is 7.5 m for the portion of the building that exceeds 17.0m in depth.

The portion of the new detached dwelling exceeding a building depth of 17.0 m will be located 2.48 m from the north side lot line and 3.48 m from the south side lot line.

*No change.*

**6. Section 6(3) Part II 4**

The minimum required rear yard setback is 7.5 m.

The new detached dwelling will be located 6.35 m from the east rear lot line.

*No change*

7. Section 6(3) part II 3.A(II)

The minimum required setback from a flanking street is 6.0 m.

The new detached dwelling will be located 2.48 m from the north flanking street.

*No change.*

8. Section 4(2)(a)

The maximum permitted height of a building or structure is 11.0 m.

The new detached dwelling will have a height of 11.13 m.

*There is an overall height requirement in the former By-law, and only an exterior main wall limit in the 2013 By-law.*

A variance (#8 under the new By-law) that was granted by the COA respecting a terrace on the garage roof was deleted, as this is no longer part of the proposal.

Included in the Minutes of Settlement (MOS) and Exhibit 1, Revised Plans, is a landscape plan, which is also integral to the resolution of this appeal.

Ms. Robinson then considered the proposed variances in light of the four tests. Broader provincial policies such as the PPS and the GP did not really apply to such local matters and replacement dwellings, but if so, this would be consistent with the PPS and conform to the GP.

Respecting the general intent and purpose of the Official Plan policies, she considered the proposal to fit extremely well within the objectives of the Neighbourhood policies in section 4.1.5. The Study Area chosen is stable and experiencing re-investment as some original vintage dwellings are replaced with new dwellings, or expanded with substantial renovations. New construction (additions or replacement) of dwellings typically request variances for increased floor space index/gross floor area, building length/depth, height and reduced side yard setbacks, as can be seen in her lot study. It is an area of large scale custom executive homes, and this will be completely in keeping with the neighbourhood.

On the subject of meeting the test of general intent of the By-law requirements, this proposal also satisfies its goals. The length is now reduced, the GFA is found or exceeded in many developments close by.

On the test of minor, the variances are minor not only numerically, but also will have little impact in the context. Indeed she finds no adverse planning impact, especially given the MOS and the included landscape plan.

The proposal would result in a desirable replacement home, Ms. Robinson testified, representing significant investment in the neighbourhood. It would be of a size and

scale appropriate to its surroundings, and be compatible with and contribute to the stability of the neighbourhood, as the OP policy requires.

## **ANALYSIS, FINDINGS, REASONS**

I rely to a significant extent on the participation of the City in the settlement process to agree with Ms. Robinson that the statutory tests are met for this proposal. While for other neighbourhoods the variances requested might seem numerically large, for this one are they are either quite typical or even somewhat smaller than others granted. They will have little or no adverse planning impact in this elegant area.

The principal objector to this new home, the appellant, now appears to have had his issues met by revisions to the plans.

The type, style and scale of the dwelling proposed is not unusual for the area and is in keeping with the built form and character of the neighbourhood. There was no participation or comments from the other neighbours, whose objections to the COA and TLAB I have read carefully. Because of this lack of further objections to the MOS, of which they received notice, I am reinforced in my finding that the statutory tests are met.

## **DECISION AND ORDER**

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

1. The variances to Zoning By-laws 438-86 as listed in Attachment 1, are authorized.
2. The variances to Zoning By-law No. 569-2013 as listed in Attachment 2, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
3. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned trees under Municipal Code Chapter 813, Article III, Private Trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
4. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove City owned trees under Municipal Code Chapter 813, Article II, Street Trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
5. Demolition and construction shall be undertaken in accordance with the requirements and recommendations set out in the Arborist Report and Tree Preservation Plan prepared by Shayne Plowman, ISA Certified Arborist: ON-



0425A, dated July 23, 2018.

6. The property shall be developed and maintained substantially in accordance with the following plans, appended hereto as Attachment 3:

- a. Jabbaz Residence Site Plan, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- b. Jabbaz Residence Landscape Open Space Calculations, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- c. Jabbaz Residence Roof Plan, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- d. Jabbaz Residence Front Elevation, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- e. Jabbaz Residence Rear Elevation, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- f. Jabbaz Residence North Elevation, prepared by Richard Wengle Architect Inc., dated July 25, 2018;
- g. Jabbaz Residence South Elevation, prepared by Richard Wengle Architect Inc., dated July 25, 2018; and
- h. Jabbaz Residence Landscape Concept & Section.

7. The roof above the garage shall not at any time be used as a terrace, recreation space, and/or any other similar outdoor amenity space, and there shall be no stairs or other permanent means of access to the roof of the garage.

8. No portion of the property shall be used for any commercial purpose, including a 'Home Occupation' within the meaning of that term as defined within City of Toronto Zoning By-law 569-2013, as amended.

## **ATTACHMENT 1 – By-law 438-86**

### **1. Section 6(3) Part I 1**

The maximum residential gross floor area is 0.35 times the area of the lot: 526.9 m<sup>2</sup>.

The proposed residential gross floor area of the building is 0.666 times the area of the lot: 1,002.0 m<sup>2</sup>.

### **2. Section 6(3) Part IV 4(b)**

The maximum width of a driveway that is not located in or does not pass through any portion of the lot between the front lot line and any wall of the building facing the front lot line between the front lot line and any wall of the building facing the front lot line as projected to the side lot lines is 6.0 m.

The width of the driveway leading to the integral garage from the flanking street (Kilbarry Road) will be 10.36 m.

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The width of the driveway accessing both the main and flanking streets will be 3.64 m at the front lot line and 7.31 m in the front yard.

4. Section 6(3) Part II 2(II)

A building on an inside lot is required a minimum front lot line setback of 13.77 m. The new detached dwelling will be located 11.38 m from the west front lot line.

5. Section 6(3) Part II 3 B(II)

The minimum side yard setback is 7.5 m for the portion of the building that exceeds 17.0m in depth.

The portion of the new detached dwelling exceeding a building depth of 17.0 m will be located 2.48 m from the north side lot line and 3.48 m from the south side lot line.

6. Section 6(3) Part II 4

The minimum required rear yard setback is 7.5 m.

The new detached dwelling will be located 6.35 m from the east rear lot line.

7. Section 6(3) part II 3.A(II)

The minimum required setback from a flanking street is 6.0 m.

The new detached dwelling will be located 2.48 m from the north flanking street.

8. Section 4(2)(a)

The maximum permitted height of a building or structure is 11.0 m.

The new detached dwelling will have a height of 11.13 m.

**ATTACHMENT 2 - Bylaw 569-2013 By-law 569-2013:**

1. Chapter 800.50.210

A driveway means a passageway providing vehicle access between a street or lane and area used for the parking, loading or storage of a vehicle.

The driveway accessing both the main and flanking streets (Dunvegan Road and Kilbarry Road) of the corner lot, is the second driveway, which does not provide access to the parking, and is providing access to the entrance of the house.

2. Chapter 10.5.100.1.(2)(B)(i)

The maximum permitted driveway width for a driveway that is not located in or does not pass through the front yard is 6.0 m.

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The maximum permitted depth for a detached house is 19.0 m.

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6. Chapter 10.20.40.40.(1)(A)

The maximum permitted floor space index is 0.35 times the area of the lot: 526.9 m<sup>2</sup>.

The proposed floor space index is 0.654 times the area of the lot: 984.0 m<sup>2</sup>.

7. Chapter 10.20.40.70.(1)

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The proposed driveway is 7.31 metres wide.

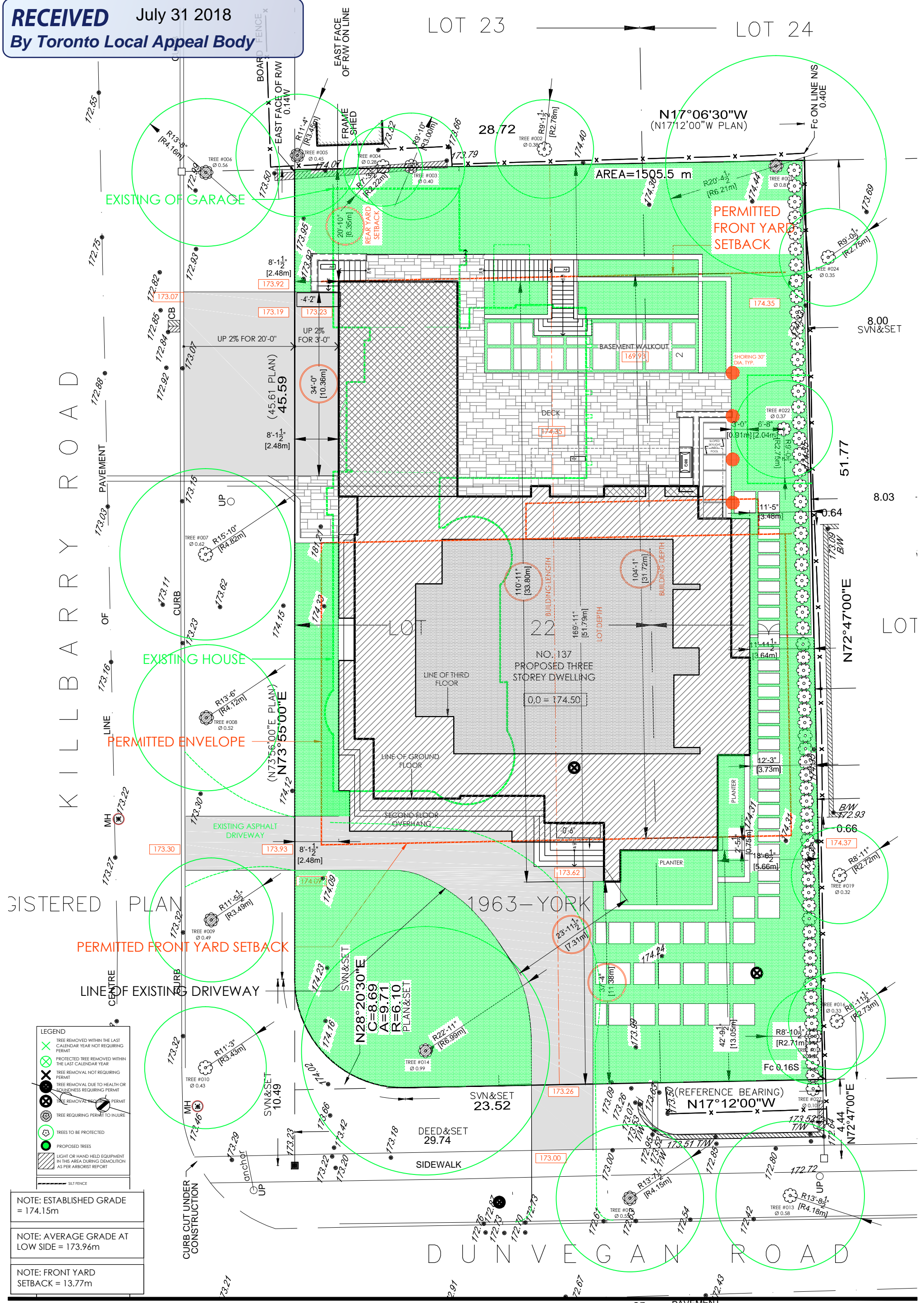
**ATTACHMENT 3 – COMPLETE REVISED PLANS**

X 

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G. Burton

Panel Chair, Toronto Local Appeal Body



RICHARD WENGLE  
ARCHITECT INC.

JABBBAZ RESIDENCE

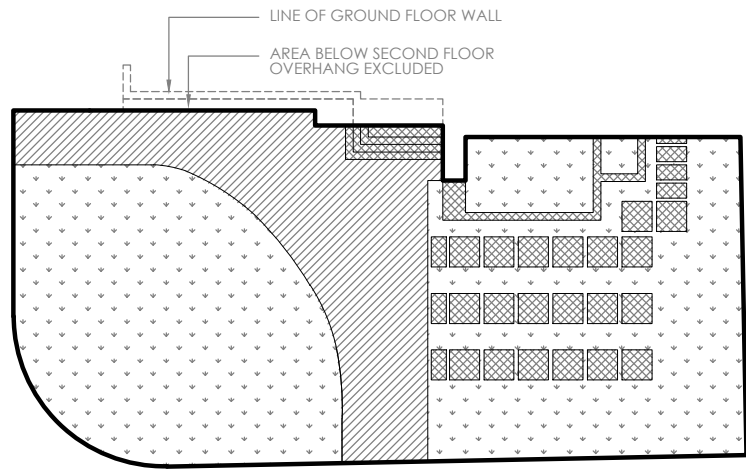
137 DUNVEGAN ROAD  
TORONTO, ONTARIO  
JULY 25, 2018

1652



SITE PLAN

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



FRONT YARD AREA = 396.72 S.M.

HARD PAVED SURFACES  
(DRIVEWAY, RAISED PORCH)

91.12 S.M. (22.97%) OF  
FRONT YARD

LANDSCAPE OPEN SPACE  
PROVIDED

305.60 S.M. (77.03%) OF  
FRONT YARD

SOFT LANDSCAPE AREA CALCULATION

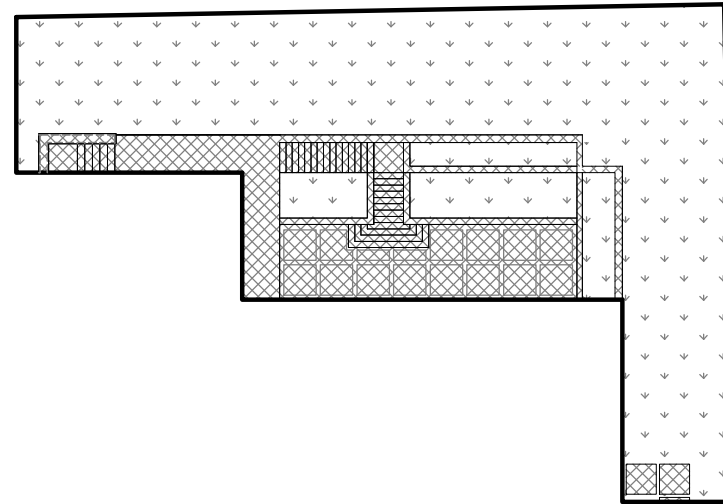
LANDSCAPE OPEN SPACE  
REQUIRED

238.03 S.M. (60.00%) OF  
FRONT YARD

NEW BYLAW REQUIREMENT:  
75% OF LANDSCAPE OPEN  
SPACE REQUIRED  
178.52 S.M.

HARD LANDSCAPED  
AREA  
45.02 S.M.

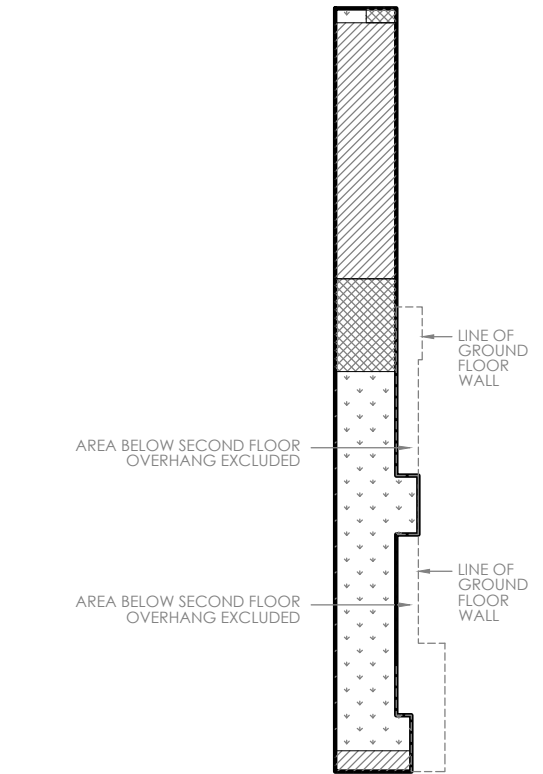
SOFT LANDSCAPED  
AREA  
260.58 S.M. (109.47%)



REAR YARD AREA = 327.23 S.M.

HARD LANDSCAPED AREA  
84.60 S.M. (25.85%)

SOFT LANDSCAPED AREA  
242.63 S.M. (74.15%)



FLANKING SIDE YARD AREA: 80.26 S.M.

HARD PAVED SURFACES  
(DRIVEWAY, RAISED PORCH)

28.35 S.M. (35.32%) OF  
FRONT YARD

LANDSCAPE OPEN SPACE  
PROVIDED

51.91 S.M. (64.68%) OF  
FRONT YARD

SOFT LANDSCAPE AREA CALCULATION

LANDSCAPE OPEN SPACE  
REQUIRED

48.16 S.M. (60.00%) OF  
FRONT YARD

NEW BYLAW REQUIREMENT:  
75% OF LANDSCAPE OPEN  
SPACE REQUIRED  
36.12 S.M.

HARD LANDSCAPED  
AREA  
10.29 S.M. (21.37%)

SOFT LANDSCAPED  
AREA  
41.62 S.M. (86.42%)

## JABBAZ RESIDENCE

137 DUNVEGAN ROAD

TORONTO, ONTARIO

JULY 25, 2018

1652

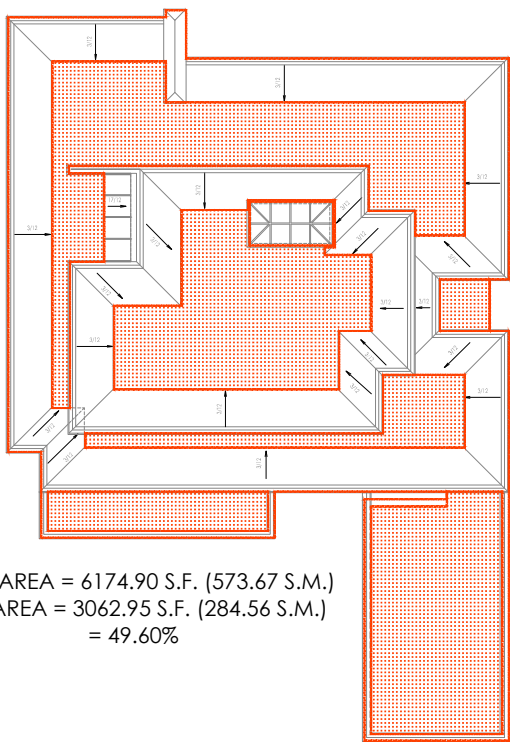
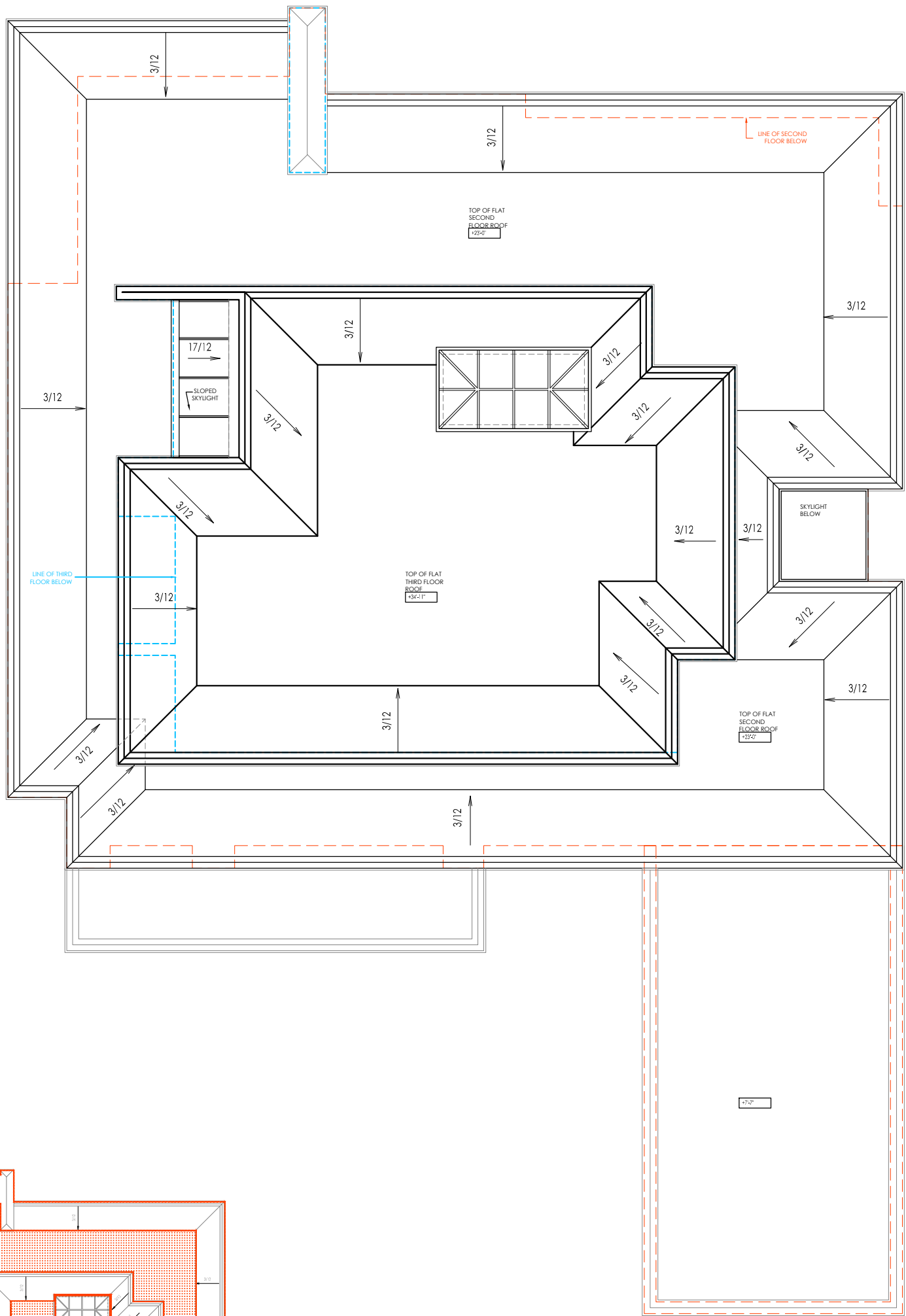
LANDSCAPE OPEN SPACE  
CALCULATIONS

SCALE: N.T.S.



RICHARD WENGLE  
ARCHITECT INC.





ROOF AREA = 6174.90 S.F. (573.67 S.M.)  
FLAT AREA = 3062.95 S.F. (284.56 S.M.)  
= 49.60%



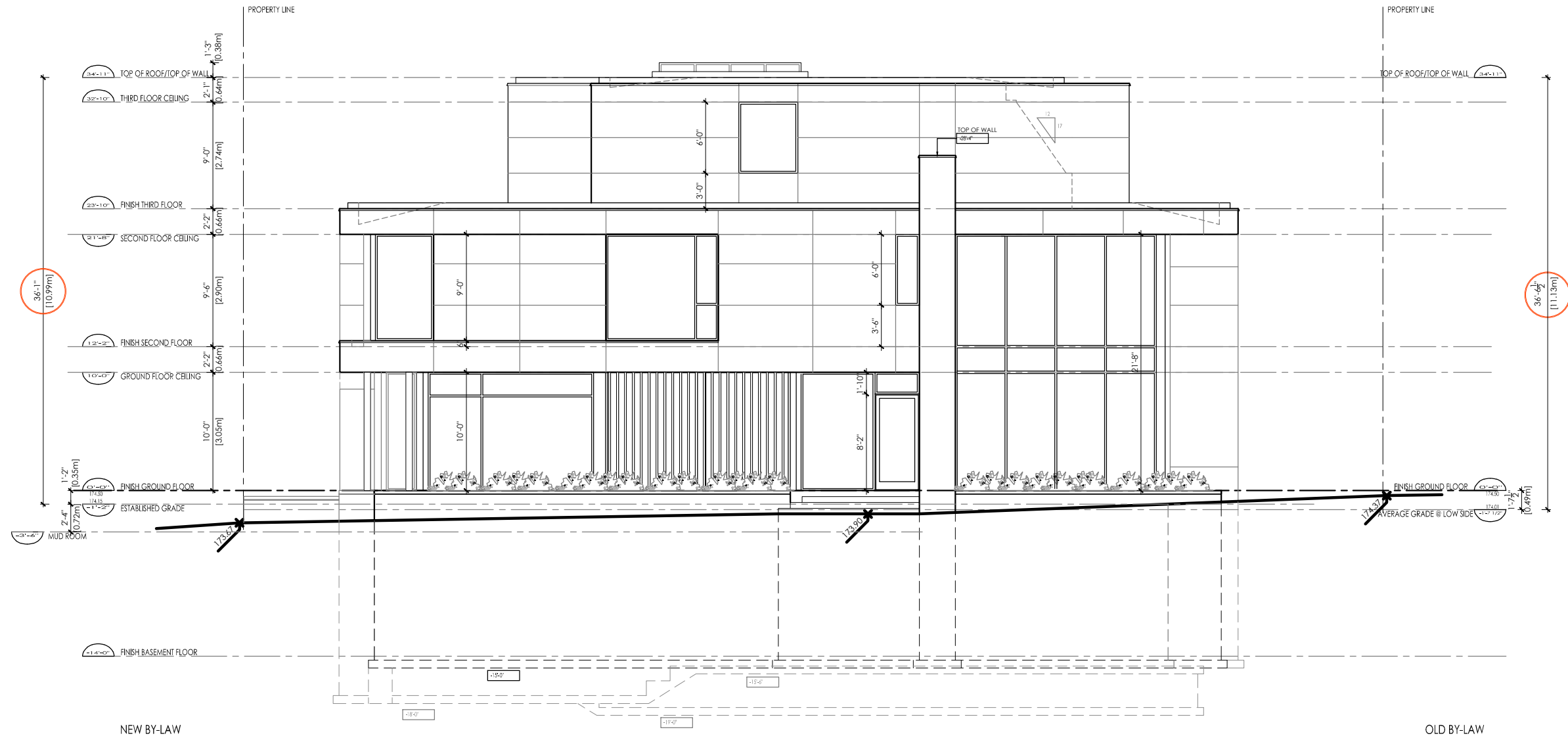
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# JABBAZ RESIDENCE

137 DUNVEGAN ROAD  
TORONTO, ONTARIO  
JULY 25, 2018  
1652



ROOF PLAN  
SCALE: 3/32" = 1'-0"



# JABBAZ RESIDENCE

137 DUNVEGAN ROAD  
TORONTO, ONTARIO

JULY 25, 2018

1652

FRONT ELEVATION  
SCALE: 3/32" = 1'-0"



RICHARD WENGLE  
ARCHITECT INC.







# JABBAZ RESIDENCE

137 DUNVEGAN ROAD  
TORONTO, ONTARIO

JULY 25, 2018

1652



RICHARD WENGLE  
ARCHITECT INC.

 NORTH ELEVATION  
SCALE: 3/32" = 1'-0"



# JABBAZ RESIDENCE

137 DUNVEGAN ROAD  
TORONTO, ONTARIO  
JULY 25, 2018  
1652

**SOUTH ELEVATION**  
SCALE: 3/32" = 1'-0"



**RICHARD WENGLE**  
ARCHITECT INC.





