

DECISION AND ORDER

Decision Issue Date Friday, November 09, 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): CITY OF TORONTO

Applicant: GOLDBERG GROUP

Property Address/Description: 51 ELMWOOD AVE

Committee of Adjustment Case File Number: 18 140481 NNY 23 MV

TLAB Case File Number: **18 181844 S45 23 TLAB**

Hearing date: Wednesday, October 10, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Goldberg Group	Applicant	
Henry Chiang	Owner/Party	Marisa Keating
City of Toronto	Appellant	Aderinsola Abimbola
Michelle Charkow	Expert Witness	

INTRODUCTION AND BACKGROUND

Henry Chiang is the owner of 51 Elmwood Street, located in Willowdale, and the Applicant in this matter. In 2013, he received permission from the Ontario Municipal Board (OMB) to facilitate the construction of the existing, 2-storey, detached dwelling with an integral, at-grade garage. During the process of building the new dwelling, he elected to convert the unexcavated area beneath the rear deck into a small basement room which included a second kitchen. The Applicants state that the rear deck remains

identical to what was approved by the OMB, except the basement now extends beneath the deck and includes a room.

On April 19, 2017, the Applicants received an Order to Comply notice from the City. The addition of this habitable space beneath the rear deck prompted the need for a second minor variance application, which was submitted to the COA on April 9, 2018, and approved on 31 May, 2018.

The City of Toronto appealed the COA Decision to the TLAB, which scheduled a hearing for 10 October, 2018. On 3 August, 2018, I was informed that the Parties had reached a Settlement, which would be presented to the TLAB at the time of the scheduled hearing on 10 October, 2018. While there were no changes to the proposed variances under By Law 569-2013, a proposed variance under By Law 7625 (former North York by-law) was removed because of redundancy as a result of the OMB Decision released on 1 March, 2018. While the City was no longer in opposition to the application, it asked for imposition of conditions, (discussed later in this Decision) as part of the Settlement reached with the Applicants.

MATTERS IN ISSUE

By-law 569-2013:

- Chapter 10.20.30.40.(1)

The permitted maximum lot coverage is 30% of the lot area.

WHEREAS the proposed lot coverage is 38.86% of the lot area.

- Chapter 10.20.40.20.(1)

The permitted maximum building length for a detached house is 17.0 m.

WHEREAS the proposed building length is 20.42 m.

- Chapter 10.20.40.30.(1)

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

WHEREAS the proposed building depth is 20.72 m

JURISDICTION

Minor Variance – S. 45(1)

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

As per the narrative in the Introduction and Background Section, the City and the Applicants arrived at a Settlement, which was presented to the TLAB on 10 October, 2018. At this hearing, the Applicants were represented by Ms. Marisa Keating, a lawyer and Ms. Michelle Charkow, a land use planner. The City of Toronto was represented by Ms. Aderinsola Abimbola, lawyer.

The only matter that came up in the pre-hearing was the substitution of Mr. Michael Goldberg, the Expert Witness who had authored the original Statement, with his colleague, Ms. Michelle Charkow. I noted the fact that while the Settlement between the Parties precluded any assertion of prejudice as a result of the substitution of the Expert Witness, I needed to know the details of what Ms. Charkow had done in order to adopt Mr. Goldberg's evidence, so that I could satisfy myself that the obligations of the Expert Witness were being satisfied.

Ms. Charkow said that she completed a site tour, read the witness statement and relevant policies, and zoning before agreeing with Mr. Goldberg's conclusions. I was satisfied that the obligations had been met, and allowed the proceeding to go forward.

In her opening statement, Ms. Keating provided a brief account behind the Application and Appeal, which by way of editorial comment, is consistent with the application history as discussed in the "Introduction and Background" Section. On behalf of the City (the Appellants), Ms. Abimbola indicated that she would not be calling any witnesses, and stated that the City would support the Application as long as an approval would be subject to its requested conditions.

Ms. Keating reviewed Ms. Charkow's CV and work experience and asked that the latter be recognized as an expert in the field of land use planning. There were no questions nor objections from Ms. Abimbola in regards to Ms. Charkow's expertise as a land use planner. I then recognized Ms. Charkow as an expert in the area of land use planning.

Ms. Charkow discussed the area context first, and stated that the subject site was located in the broader Willowdale Neighbourhood, and was immediately across the street from the high density, mixed use Downtown area of North York Centre. Referring to the vintage dwellings in the area, Ms. Charkow indicated that there were original 1940s and 1950s bungalows, 1 1/2 storey and 2 storey dwellings mixed with the considerable quantity of replacement dwellings on all streets in the neighbourhood of the Site. She added that reinvestment was occurring in the form of large rear yard additions and replacement dwellings in the range of 250 sq. m (2700 sq. ft.) to 500 sq. m (5400 sq. ft.). The subject site is a corner lot, currently occupied by the new 2-storey detached dwelling with an integral garage, and a rear deck accessed from the ground floor kitchen at the rear of the dwelling

Ms. Charkow then discussed the compatibility with higher level Provincial Policies. In her opinion, this application was a local planning matter which does not have significant Provincial policy implications. She however, noted that the proposal would permit

modest intensification within the built up area, resulting in an efficient and compact use of an existing site and infrastructure, which was broadly consistent with the Provincial objective of “Intensification”. Based on the proposal’s emphasis on intensification, Ms. Charkow concluded that the proposal is consistent with the PPS 2014 and conforms to the Growth Plan 2017

She then discussed the compatibility between the proposal and the Official Plan (OP). Ms. Charkow noted that the property is in the area denoted “Neighbourhoods” by the Official Plan, and proceeded to discuss the relevant policies. She began by discussing “Policy 2.3: Stable But Not Static”, and referenced the “eclectic” nature of the neighbourhood, including its being home to low rise apartments, a high school, commercial shops and other uses. She then discussed how the community had been continuously evolving, without any serious impact on the overall stability.

Ms. Charkow then discussed Section 3.1.2.1, Built Form, which discusses various factors, that need to be considered to ensure that the proposed development will fit into the existing built context, without disturbing the former or causing negative impacts. After reviewing the various policies, Ms. Charkow pointed out how the policy focused on the visibility of the façade of the building, and the visual impact of the construction, as seen from the street. She then discussed the lack of relevance of these policies to the proposal, which by virtue of being underground wasn’t visible from the street. Likewise, Policy 3.1.2.2, focusing on Parking, was found by Ms. Charkow to be not relevant, because of the underground nature of the project, which would not impact parking in any form. Ms. Charkow then reviewed Section 4.1.5 – Built Form policies, and then discussed the project’s ability to fulfill this Policy. Many of the subsections of the Policy were not applicable, because all of the requested variances related to the portion that was below ground, and did not disturb the prevailing building type, with the only perceptible impact being restricted to a small visual change, restricted to the portion of the basement above ground. Likewise, there were no changes to massing or height, given the underground nature of the proposed development. Emphasizing that the setbacks were not being altered. Ms. Charkow concluded that the proposed variances complied with Section 4.1.5, by virtue of the fact that the Section was not relevant to the below-the-ground nature of the requested variances.

Based on this discussion, Ms. Charkow concluded that the proposal was consistent with the intention of the Official Policy.

The compatibility of the variances with the Zoning Plan, was discussed next.

She then discussed the compatibility between the proposal and the zoning by-law. She noted that under By-Law 569-2013, the property was zoned RD(x5) which permits single detached dwellings. She discussed the generic principles to determine compatibility with the zoning by-law, namely: the Identification of permitted uses, which together with performance standards, when applied to a building or property, will result in a development which:

- Implements the Official Plan;
- Will not give rise to adverse planning impacts on the immediate or broader neighbourhood; and
- Results in a building compatible with the subject land and neighbouring developments

Specifically referring to the request in increase for GFA, Ms. Charkow pointed out that there was no impact in real terms, because the area relevant to the sought variance already existed, even if not used for GFA calculations. After discussing the differences in the measurement of the building length and depth, Ms. Charkow pointed out that neither variances had an impact, because they existed at the ground level, at the back of the house. Given that the changes don't manifest themselves above grade, and their alignment with performance standards. Ms. Charkow concluded that the proposal was consistent with the intention of the Zoning By-law 569-2013.

Discussing the test of being minor, Ms. Charkow said that order of magnitude of the variances being requested was numerically minor. She emphasized that variances both individually and cumulatively do not give rise to adverse planning impacts. Based on this, she concluded that the proposal is minor.

Lastly, speaking to desirability, Ms. Charkow pointed out that reinvestment on this property is tantamount to better utilizing the zoning permissions and capability of the site. She said that the size, scale and standards applied to this proposal are appropriate and such reinvestment is compatible and fitting with the neighbourhood, and will contribute to the ongoing stability of this neighbourhood. She concluded that together with the minor variances both individually and cumulatively, I am satisfied that the application is desirable and appropriate for development of the land and building.

She then spoke to the conditions that were agreed upon with the City, and recommended that the approval be tied to the conditions.

Ms. Abimbola, representing the City, spoke briefly to the proposed conditions to be imposed on the approval of the application. There was a condition which required the Applicant to build in substantial compliance with the Subject Site Plan and Elevations, dated 30 January, 2018. Further, the condition requested by the City specifically referenced various pages of the submitted drawings, including the Basement and Ground Floor Plans, Second Floor and Roof Plans, Front, East, North and South Elevations. The City also highlighted its request for a condition which ensured that the existing rear deck would not be enclosed, nor would the width, length, height of the existing rear deck/terrace be extended through expansion of the existing structure, nor would future decks be added.

Ms. Keating stated that the conditions requested by the City were acceptable to her client, and requested approval of the project, given the uncontroverted evidence from the Expert Witness. She reiterated in closing, that they did not have an issue with any of

the conditions requested by the City of Toronto, and supported the imposition of the discussed conditions.

ANALYSIS, FINDINGS, REASONS

This proposal is unusual in a number of ways, starting with the history. The owners' decision to enclose the space beneath the deck approved through an earlier OMB decision, resulted in a work order, the resulting application to the COA and the TLAB Appeal. Different aspects of the project in question have been looked at by the COA on two different occasions, and once each by the TLAB and the OMB. It would have been ideal for the Applicant to get approvals for the construction of the kitchen, before commencing construction.

The other interesting feature of this proposal is the lack of impact of the variances under consideration because the improvements are not visible from the ground or street level. The proposal is compliant by virtue of the framework not being applicable, due to the latter's emphasis on what is visible, and is above ground.

The uncontroverted evidence of the Expert Witness, Ms. Charkow, is accepted, and the proposal is found to fulfill all the 4 tests listed under Section 45(1). The conditions, requested by the City, embody the standard condition of building in substantial compliance with the submitted Plans and Elevations, and expand on them to explicitly ensure that there be no further identified construction, which as stated earlier, seems a reasonable precaution.

The Appeal is therefore considered to be granted in part, with conditions imposed as per the request of the City of Toronto.

DECISION AND ORDER

.1. The Appeal is allowed in part, and the Decision of the Committee of Adjustment dated 31 May, 2018, is confirmed, subject to the altered variances and conditions below identified:

2. The following variances are approved under By- Law 569-2013:

Chapter 10.20.30.40.(1)

- The permitted maximum lot coverage is 30% of the lot area.

WHEREAS the proposed lot coverage is 38.86% of the lot area.

□Chapter 10.20.40.20.(1)

- The permitted maximum building length for a detached house is 17.0 m.

WHEREAS the proposed building length is 20.42 m.

Chapter 10.20.40.30.(1)

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

WHEREAS the proposed building depth is 20.72 m.

3. The following conditions are imposed on the approval:

a) The basement room, including a small kitchen, built below the deck needs to be in substantial accordance with the following drawings prepared by Lorne Rose Architect, dated January 30, 2018, with specific reference to:

- o Drawing No. A1 – Construction Notes, Site Plan, Statistics
- o Drawing No. A2 – Basement Floor Plan
- o Drawing No. A3 – Ground Floor Plan
- o Drawing No. A4 – Second Floor & Roof Plans
- o Drawing No. A5 – Front & East Elevations
- o Drawing No. A6 – North & South Elevations

b). The owner shall not enclose the existing rear deck/terrace.

c). The owner shall not extend the width, length and/or height of the existing rear deck/terrace through expansion of the existing structure or the addition of any new platforms or decks.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna

Panel Chair, Toronto Local Appeal Body

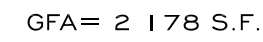
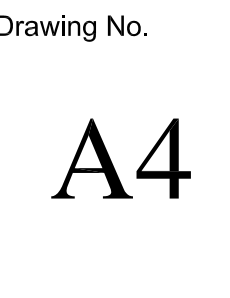
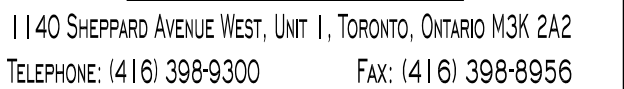


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2	REVISION	9 JULY 14
1	ISSUED FOR PERMIT	11 MAR 14
No.	Issued For	Date

SECOND FLOOR & ROOF PLANS

51 ELMWOOD AVE.
NORTH YORK, ONTARIO



The Architect is not responsible for the accuracy of survey, structural, mechanical, electrical, etc. engineering information shown on the drawing. Refer to the appropriate engineering drawings before proceeding with work.

Contractor shall check all dimensions on the work and report any discrepancies to the Architect before proceeding. Construction must conform to all applicable Codes, Requirements and By-laws of Authorities having jurisdiction.

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No.	Revision	Date
1	BASEMENT KITCHEN	30 JAN. 18

Drawing Title
FRONT & EAST ELEVATIONS

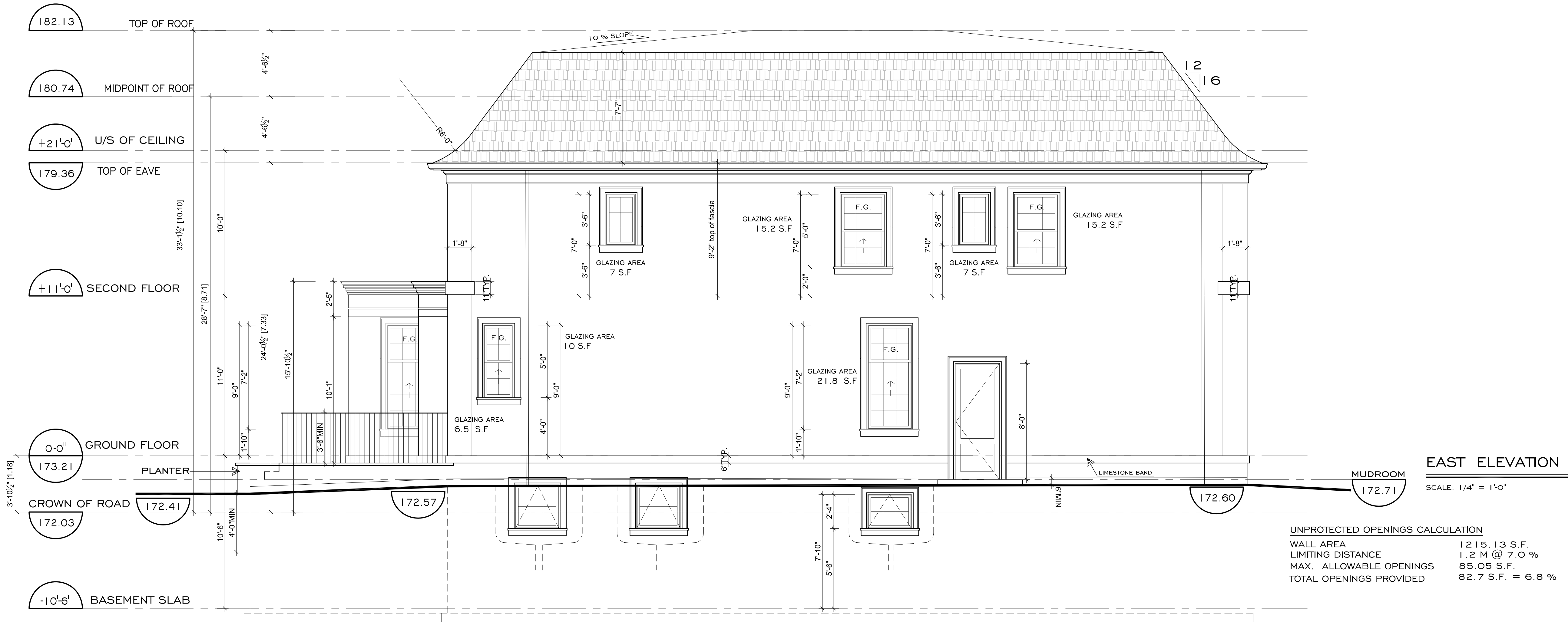
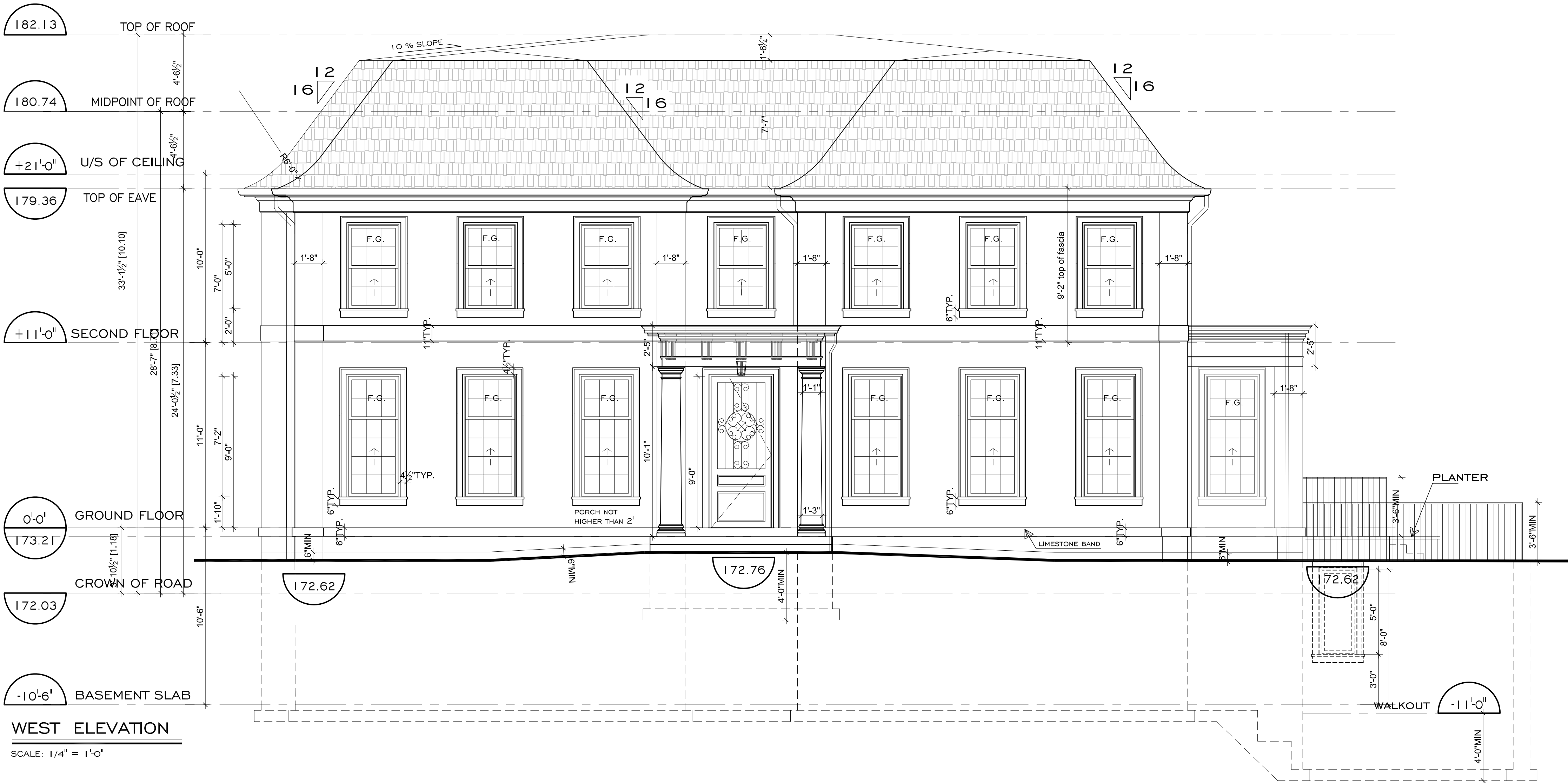
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