

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Friday, November 16, 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): CONSTANTINE HARMANTAS

Applicant: GREN WEIS ARCHITECT + ASSOCIATES

Property Address/Description: 65 GLENGOWAN RD

Committee of Adjustment Case File Number: 18 141331 NNY 25 MV

TLAB Case File Number: 18 178087 S45 25 TLAB

Hearing date: Wednesday, October 17, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name Role Representative

Gren Weis Architect Assoc. Applicant

Constantine Harmantas Owner/Appellant Denise Baker

David Riley Expert Witness

INTRODUCTION AND BACKGROUND

Constantine Harmantas is the owner of 65 Glengowan Road, located in the former City of North York. He applied to the Committee of Adjustment (COA) to build a two storey dwelling; the COA heard the Application on May 31, 2018, and approved five of the eight variances applied for under City-wide Zoning By-law 569-2013, Toronto Zoning By-law 438-86 and By-law 1198-2009.

The three variances that were refused by the COA were appealed to the TLAB on 13 June, 2018. However, it may be noted that the documentation submitted to TLAB in

support of the Appeal contained information pertaining to all 8 variances, including some that were modified when Appealing the original decision.

There were no other Parties or Participants, other than Mr. Harmantas.

MATTERS IN ISSUE

Revised List of Variances

1. Chapter 5.10.40.70(6), By-Law No. 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority pursuant to the Conservation Authorities Act, R.S.O 1990 c. C.27, as amended, other than in the Open Space Zone category, if the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10m from that shoreline hazard limit or stable top-of-bank.

The proposed dwelling is setback 0.5m from the stable top-of-bank.

2. Chapter 5.10.40.80(1), By-Law No. 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority pursuant to the Conservation Authorities Act, R.S.O 1990 c. C.27, as amended, other than in the Open Space Zone category, a building or structure on a lot may be no closer than 10m from a shoreline hazard limit or a stable top-of-bank not on that lot, as determined by the Toronto and Region Conservation Authority. The proposed dwelling is setback 0.5m from the stable top-of-bank.

3. Chapter 10.20.40.10.(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 walls facing a side lot line is 8.23m.

4. Chapter 10.20.40.20.(1), By-Law No. 569-2013

In the RD zone with a minimum required lot frontage of 18m or less, the permitted maximum building length for a detached house is 17m.

The proposed building length is 18.34m.

5. Chapter 10.20.40.40.(1), By-Law No. 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is 0.689 times the area of the lot.

6. Chapter 10.5.80.40.(2), By-Law No. 569-2013

For a detached house dwelling unit where an individual private driveway leads directly to the dwelling unit, the elevation of the lowest point of a vehicle entrance in a main wall of the building must be higher than the elevation of the centreline of the driveway at the point where it intersects a lot line abutting a street; 161.20. The proposed elevation of the lowest point of a vehicle entrance in a main wall of the building is 160.85

7. Section 6(3) Part IV 3(II), By-Law No. 438-86

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located

in a wall facing the front lot line.

The proposed integral garage is below grade.

8. By-Law No. 1198-2009

For a detached house, the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be higher than the elevation of the street the lot abuts measured at its centreline directly across from the driveway leading to the parking space (160.85) is lower than the elevation of the street the lot abuts measured at its centreline directly across from the driveway leading to the parking space (161.75).

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances form 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

At the hearing held on 17 October, 2018, Party Harmantas was represented by Ms. Denise Baker, lawyer and Mr. David Riley, land use planner.

Before the hearing commenced, Ms. Baker drew my attention to the fact that three of the eight variances had been appealed, based on what she stated was, the practice followed by the former Ontario Municipal Board (OMB), now Local Planning Appeal Tribunal (LPAT). After stating that she was prepared to argue all the 8 variances in the application or just the three that had been refused by the COA and appealed to the TLAB, she asked me what my preference would be. I indicated my preference for hearing evidence pertaining to all 8 variances by virtue of the hearing being *de novo*, but suggested that the evidence could be provided at a fairly high level on variances that were not under appeal, while providing detailed evidence on the variances that had been refused by the COA.

Mr. Riley was then sworn in, and recognized as an Expert Witness in the area of land use planning.

He began by providing details regarding the location and description of the Subject Property. Mr. Riley stated that the subject property was located on the south side of Glengowan Road, a few blocks south of Lawrence Avenue East, east of Mount Pleasant Road, in a low density residential neighbourhood, characterized by single detached dwellings. He alluded to the variation, in the size and width of lots in the area. Mr. Riley stated that the neighbouring properties to the north, east and west of the subject property were single detached dwellings; the rear of 65 Glengowan Road faced the rear yard of 190 Strathgowan Avenue, as well as a small portion of the rear yard of 6 Garland Avenue, both of which lay to the south of the subject property.

Mr. Riley then discussed the compatibility of the proposal with high level provincial policies, including the Provincial Policy Statement, (2014), (PPS) and the Growth Plan for the Greater Golden Horseshoe, 2017 (Growth Plan). Based on the fact that a new single detached dwelling would be constructed as a result of the requested variances, Mr. Riley argued that the proposal was consistent with the PPS(2014) and Growth Plan (2017), because both Plans direct growth to settlement areas, and a mix of land uses that make efficient use of land.

After reciting the variances as stated in the "Matters Under Consideration" section, Mr. Riley briefly dwelt on the variances which had been modified between the application submitted to the COA, and as appealed to the TLAB. Referring to the Site Plans, he stated that the current Plans referenced "a garage slab at a higher elevation, than the earlier Plans submitted to the COA". In other words, while there was still a requirement of a reverse slow driveway and a below-grade garage, the entrance to the garage had increased in height from 160.47m to 160.85m (the reference point being the sea level). This change "improved" Variances no 6 and 8, both of which were before the TLAB in that they had been brought closer to what was as—of-right.

Before Mr. Riley started discussing the test of compliance with the Official Plan (OP), I requested him to elucidate By-law 1198-2009, while discussing the specific test under Section 45(1) requiring compliance with the intent and purpose of the Official Plan. He stated that the purpose of By law 1198-2009 was to amend the former City of Toronto Zoning By-law No. 438-86, so as to establish the minimum elevation of the entrance to an area used for the parking of a vehicle in association with certain residential buildings, and referred to documentation from the City of Toronto which stated that:

BY-LAW No. 1198-2009, ENACTED AND PASSED this 4th day of December, A.D. 2009'

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Despite any other general or specific provision in Zoning By-law No. 438-86 of the former City of Toronto, enacted under section 34 of the Planning Act or its predecessor section, the following shall apply to the area depicted in the attached Schedule 1: (1) for a DETACHED HOUSE, DUPLEX, ROW HOUSE, ROOMING HOUSE, ROWPLEX, SEMI-DETACHED HOUSE, SEMIDETACHED DUPLEX, TRIPLEX HOUSE, SEMI DETACHED TRIPLEX HOUSE, the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be higher than the elevation of the street the lot abuts measured at its centerline directly across from the driveway leading to the parking space.

ENACTED AND PASSED this 4th day of December, A.D. 2009'

The "area" in Schedule 1 included a large portion of the former City of North York, and small portions of the former cities of East York, and York, including the neighbourhood in which 65 Glengowan Road was located.

It may be noted that the COA refused Variances 6, 7 and 8, all of which pertain to the integral garage

Turning to the Official Plan, Mr. Riley pointed out that the property fell under the "Neighbourhoods" designation of the Official Plan, and then discussed important policies impacting the Neighbourhoods including Policies 2.3.1, 3.1.2 and 4.1.5 of the Official Plan. He stated that Policy 2.3.1 requires change in neighbourhoods to be stable but not static, while Policy 2.3.1.1 required all development within neighbourhoods to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns of the area. He then discussed Section 3.1.2 of the Official Plan which consists of policies to be looked at while determining the built form of development; this policy requires new development to be located, organized, massed, and designed to fit harmoniously into its existing and/or planned context in terms of its relationship to the public realm and neighbouring properties.

Mr. Riley then pointed out that some of the requested variances were caused by the location of the house on the stable top-of-bank which opens into a valley at the back of the house. Referring to correspondence dated May 28, 2018, from the TRCA (Toronto Region Conservation Authority), Mr. Riley pointed out that the existing dwelling, and other dwellings in the neighbourhood have historically been constructed within the "valley feature", or beyond the original top of valley slope. He then drew attention to the Living City Policies of the TRCA, which require a 10-metre setback from the stable top of-bank, as reflected in the zoning by-law. He then demonstrated how the proposal complied with what the policies permit for alternative setback requirements satisfying the following conditions:

a) The development has regard for the existing development setbacks on the subject property and within the context of existing development patterns and characteristics within the valley and stream corridor reach, the Lake Ontario shoreline reach or adjacent to a wetland;

- b) There is no increase in risk to life or property; and
- c) There is no impact to the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land, which may need to be demonstrated through a comprehensive environmental study or technical report;

Mr. Riley indicated that the TRCA, in its correspondence, had opined that since the rear wall of the proposed dwelling will be in alignment with the rear wall of the adjoining dwelling along this reach of the valley feature, the TRCA has no objections to the variance for a reduction in the minimum required setback to the stable top-of-bank.

With respect to the height of the side main wall, building length and floor space index, Mr. Riley stated that the proposal demonstrated no adverse impact, and was comparable and compatible, in size and scale to nearby dwellings

With respect to the below grade garage, Mr. Riley opined that the proposal fit into the existing and planned context of the neighbourhood, as demonstrated by the numerous homes in the area with similar garages, visible in a photo tour of the community.

Mr. Riley then discussed Section 4.1.5 of the Official Plan. After reviewing clauses (a)-(h), he demonstrated that some of the clauses did not apply to the proposal e.g. heritage, special built form, while the proposal complied with applicable clauses by virtue of being consistent with corresponding features on neighbouring properties e.g. side wall height, setbacks, gross floor area. He said that the height variance requested applied only to a small portion of the side walls towards the front of the dwelling, where there is a parapet wall. This, Mr. Riley explained, was reflective of an architectural style that fits in with the character of the neighbourhood, and minimized impact on the neighbours because the additional height is confined to the front portion of the dwelling. With respect to building length he pointed out that the requested variance only applied to the east portion of the dwelling, whereas the west portion of the dwelling is less than the maximum required building length, because the latter backs onto the valley feature, which restricted the depth. Lastly, he noted that the rear wall of the proposed dwelling aligned with the dwelling to the east, and did not project beyond the same, implying that there was no adverse impact..

Mr. Riley then discussed the FSI figure, which was a consequence not so much of the size of the house, but the calculations of the effective lot size used for the calculation, which excluded the area under the "valley feature".

Based on this discussion, Mr. Riley concluded that the proposal fulfilled the first component of the 4 part test under Section 45(1), requiring compliance with the intent and purpose of the Official Plan.

He then discussed the compatibility between the project and the zoning by-laws. After pointing out that the subject property is zoned RD under City-wide Zoning By-law 569-2013 and R1 under City of Toronto Zoning By-law 438-86, Mr. Riley categorized the variances as:

- variances for setback from the stable top-of-bank;
- variance for height of side exterior main wall;
- variance for building length;
- variance for floor space index; and
- variances related to the below-grade garage

He pointed out that the intent of the minimum setback requirement from the stable top-of-bank, as stated in the TRCA correspondence dated 28 May, 2018, is "to prevent new development from occurring within areas that may introduce risk to life and property associated with natural hazards", and that the same correspondence states the property's compliance with the stated intent of the zoning. Discussing the height requirement, Mr. Riley said that the intent of maximum building height requirements is to ensure that dwellings in a neighbourhood are compatible with one another in terms of massing and size. Discussing the height of the side wall, Mr. Riley pointed out that this variance only applies to a small portion of the side walls towards the front of the dwelling, which was reflective of the architectural style of the proposed dwelling, and which had no impact on the neighbouring properties. Referring to the variance respecting building length, Mr. Riley asserted that it did not have any impact on the neighbouring properties, and was therefore compliant with the intent and purpose of the zoning by-law.

On the matter of below grade garages, the intent of the provisions related to below-grade garages is to prevent flooding of the garage and the basement level below grade, as stated in the Toronto Staff Report, "Zoning Amendments to regulate Reverse Slope Driveways in the North York Community Council District Boundary", NY090007 (2009), which recommended the enactment of zoning by-law amendments to restrict reverse slope driveways. The report states that reverse slope driveways are a significant source of water flow and contribute to basement flooding. The report concluded that for the intent of the by-law to be maintained, the proposed below-grade garage must be designed in such a way to mitigate the risk of flooding. Mr. Riley then referred to communication from Mr. Mauro Savoldelli, Professional Engineer at Edilesse Consulting Civil Engineers Ltd., dated 30 July, 2018, in which the following mitigation measures were discussed:

- That the adjacent landscaped areas are graded away from the driveway as much as possible;
- That the downspout discharge should be directed away from the driveway area; and
- That the trench drain, driveway, and street gutter near the driveway are kept clear of leaves, snow and other obstructions at all times

Mr. Riley then reviewed the test for desirable and appropriate development of the property. He said that the test was if the proposed house can be adequately and appropriately accommodated at a similar size and scale to other properties in the Neighbourhood, and noted that this proposal was for a dwelling, of a size and scale that respects the prevailing physical form and character of the neighbourhood. On the

matter of the setback to the stable top-of-bank, he reiterated that the proposal complied with the requirements of the TRCA's Living City Policies, as discussed earlier. Regarding the variances related to the below-grade garage, he concluded that the below-grade garage can be accommodated on the subject lands in such a way with minimal risk of basement flooding. On the basis of these conclusions, Mr. Riley stated that the proposal met the test for desirable and appropriate development.

Lastly, Mr. Riley discussed compatibility with the fourth and last component of Section 45(1), the test of being minor. He reiterated the fact that there was no demonstrable negative impact on the neighbouring properties, and that the below-grade garage variances were designed so as to minimize the risk of basement flooding, and the dwelling itself was compatible with numerous dwellings in the neighbourhood. Based on this discussion, Mr. Riley concluded that that the proposal satisfied the test of being minor.

Based on the evidence, Mr. Riley reiterated that the proposal met the tests of Section 45(1) of the Planning Act, and that the Appeal ought to be allowed so as to approve all 8 variances.

I asked Mr. Riley if he recommended conditions of approval, to which he responded in the negative.

In oral argument, Ms. Baker supported Mr. Riley's conclusions and drew my attention to the matter of *Boyd vs. City of Toronto* (*Boyd, Re, 2011, CarswellOnt 12561*), decided by Member Rossi, for the construction of a two storey building at 214 Broadway Avenue, where a below grade integral garage was requested under Zoning By-laws 438-86 and 1198-2009. She discussed the similarity of requests between the 2 properties, and highlighted the reasoning as provided in the Decision behind not permitting integral, below grade garages, namely to:

- preclude basement flooding,
- ensure that neither the existing streetscape nor pedestrian safety are impacted negatively, and that
- the water impact not be loaded onto the City's existing storm drain system.

Ms. Baker then stated the evidence provided by Mr. Riley had clearly satisfied the first two criteria, and directed my attention to the third criterion, of ensuring that the City's existing storm drain system not be impacted negatively, as a result of the proposed variances. She then suggested, that "with an abundance of caution, and to give TLAB comfort", that the "trench and drain for drainage purposes, be constructed to comply with the requirements of the City of Toronto's Water Division.", be included as a condition of the TLAB Decision.

I thanked Mr. Riley and Ms. Baker for their discussion of what I found to be an interesting proposal, and reserved my Decision.

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ANALYSIS, FINDINGS, REASONS

On the pre-hearing matter, namely, on the issue of which variances to argue (i.e. the omnibus versus only those which were rejected by the COA and appealed to the TLAB), I reiterate my perspective, as stated at the hearing, that the Applicants/Appellants should discuss all of the variances, because the appeal to the TLAB is *de novo*. It may be noted that not only does the TLAB have the right to uphold refusal of any variances by the COA, but also reverse the Decision of the COA on variances that were approved.

There are a few aspects which make this proposal interesting, beginning with the Subject site being subject to By-law 1198-2009, namely the "elevation of the lowest point of an opening to an area that may be used for parking, or storage of a vehicle, located inside, or abutting the dwelling, shall be higher than the elevation of the street the lot abuts measured at its centerline directly across from the driveway leading to the parking space". In this proposal, the intent has been met because of the measures taken to prevent flooding; I note that the proposal brought forward to the TLAB was revised slightly from the version submitted to the COA to reduce the variance and bring it closer to what is as- of- right.

The other issues are the length of the building and the FSI calculations, which have been influenced tremendously, by the location of the property and its proximity to the valley. The FSI number, which seems excessive *prima facie*, is skewed by the reduction in how the lot area is calculated because of the valley feature, notwithstanding the size of the house, which is comparable to its neighbours.

Lastly, here is the issue of storm water drainage. I am satisfied that the three pronged strategy for storm water management as suggested by Mr. Savoldelli, P.Eng, will adequately address storm water management. In addition, I appreciate Ms. Baker's drawing my attention to the Decision of the OMB respecting 214 Broadway, and follow the same, by imposing a condition requiring that the trench and drain for drainage purposes, be constructed to comply with the requirements of the City of Toronto's Water Division.

It would also be prudent to impose a standard condition which requires that the dwelling be built in substantial condition with the final set of Plans and Elevations submitted to the TLAB.

These specific conclusions about the proposal and conditions, combined with the uncontroverted evidence from the expert planner, Mr. David Riley, which address the 4 tests under Section 45(1) in a fulsome manner, leads me to the conclusion that the Appeal should be allowed in full.

DECISION AND ORDER

- 1. The Appeal respecting 65 Glengowan Road is allowed in full, and the Decision of the Committee of Adjustment dated 31 May, 2018, is set aside.
- 2. The following variances, identified as proposed, are approved:

1. Chapter 5.10.40.70(6), By-Law No. 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority pursuant to the Conservation Authorities Act, R.S.O 1990 c. C.27, as amended, other than in the Open Space Zone category, if the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-ofbank crosses a lot, a building or structure on that lot must be set back a minimum of 10m from that shoreline hazard limit or stable top-of-bank.

The proposed dwelling is setback 0.5m from the stable top-of-bank.

2. Chapter 5.10.40.80(1), By-Law No. 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority pursuant to the Conservation Authorities Act, R.S.O 1990 c. C.27, as amended, other than in the Open Space Zone category, a building or structure on a lot may be no closer than 10m from a shoreline hazard limit or a stable top-of-bank not on that lot, as determined by the Toronto and Region Conservation Authority. The proposed dwelling is setback 0.5m from the stable top-of-bank.

3. Chapter 10.20.40.10.(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 walls facing a side lot line is 8.23m.

4. Chapter 10.20.40.20.(1), By-Law No. 569-2013

In the RD zone with a minimum required lot frontage of 18m or less, the permitted maximum building length for a detached house is 17m.

The proposed building length is 18.34m.

5. Chapter 10.20.40.40.(1), By-Law No. 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is 0.689 times the area of the lot.

6. Chapter 10.5.80.40.(2), By-Law No. 569-2013

For a detached house dwelling unit where an individual private driveway leads directly to the dwelling unit, the elevation of the lowest point of a vehicle entrance in a main wall of the building must be higher than the elevation of the centreline of the driveway at the point where it intersects a lot line abutting a street; 161.20. The proposed elevation of the lowest point of a vehicle entrance in a main wall of the building is 160.85

7. Section 6(3) Part IV 3(II), By-Law No. 438-86

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line. The proposed integral garage is below grade.

8. By-Law No. 1198-2009

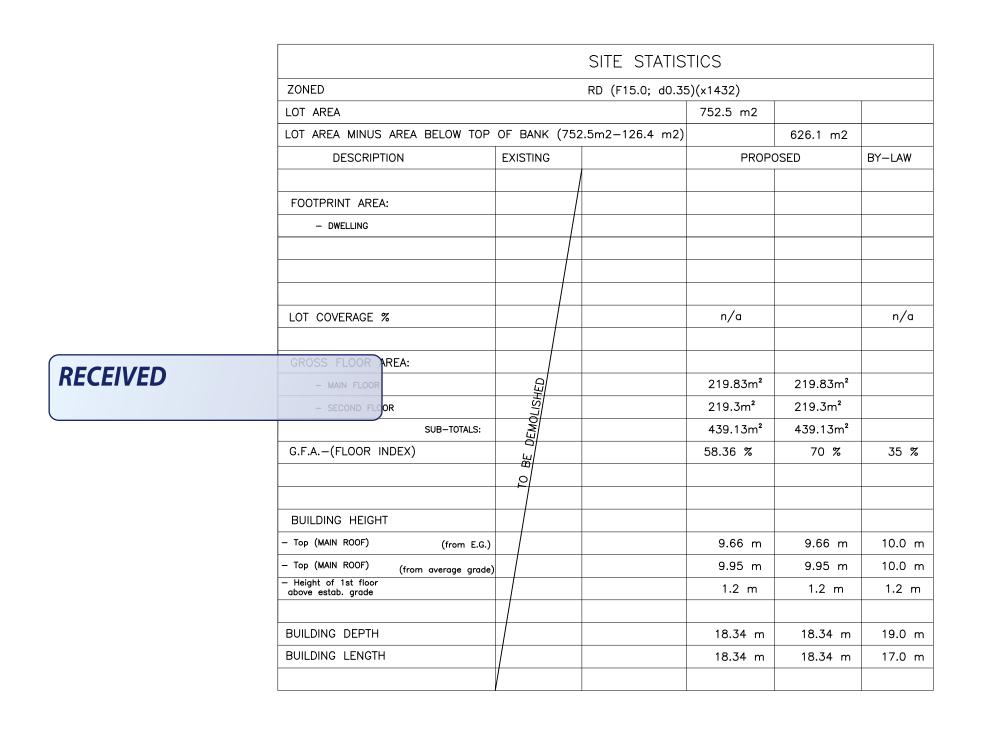
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- 3. No other variances, other than the ones listed above, are considered approved.
- 4. The following conditions are imposed on this approval:
- a) The trench and drain for drainage purposes, be constructed to comply with the requirements of the City of Toronto's Water Division.
- b) The dwelling be constructed in substantial accordance with the Site Plans and Elevation drawings, prepared by Glen Weis Architect and Associates, dated July 30, 2018.

So orders the Toronto Local Appeal Body

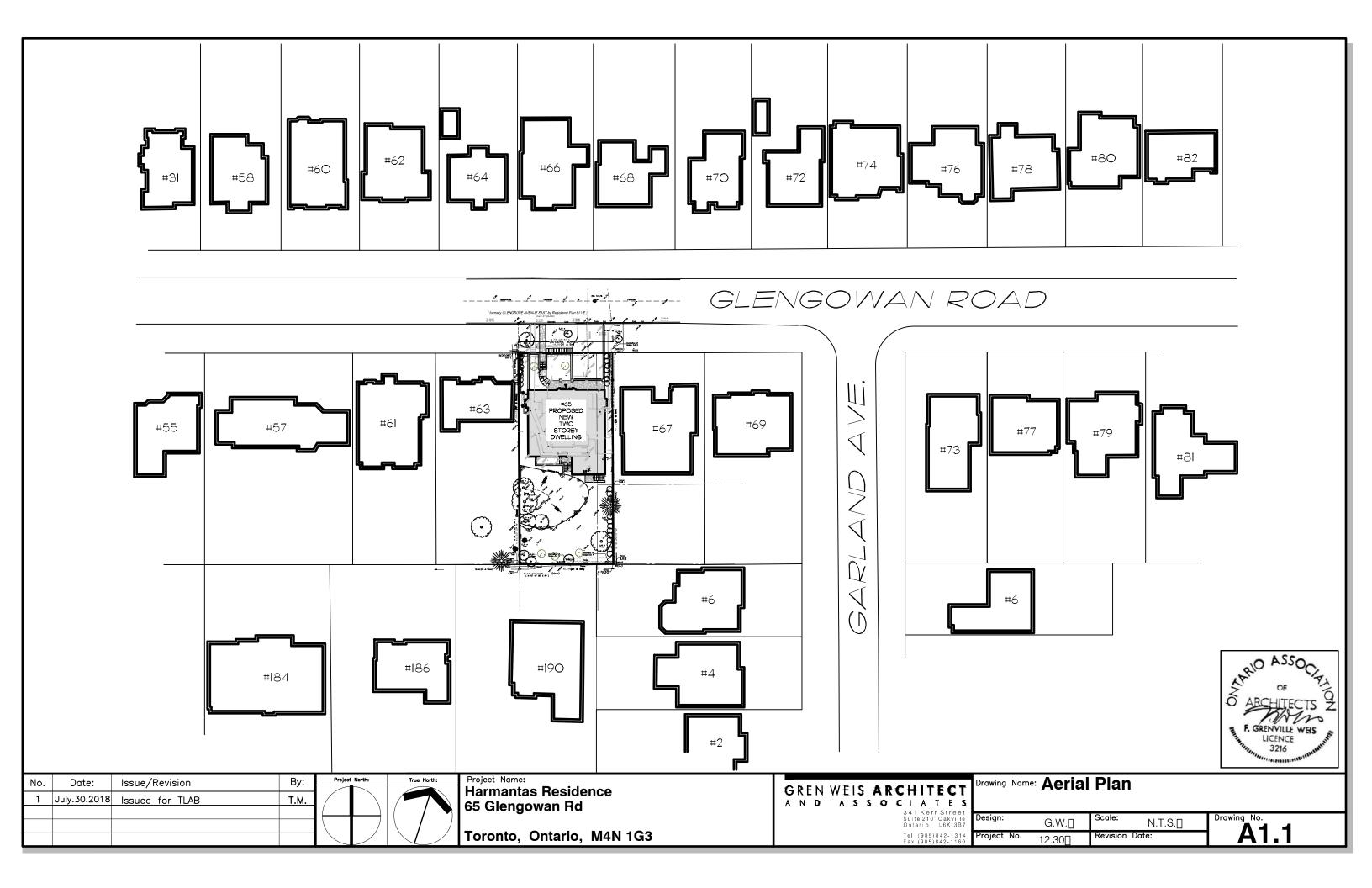
S. Gopikrishna

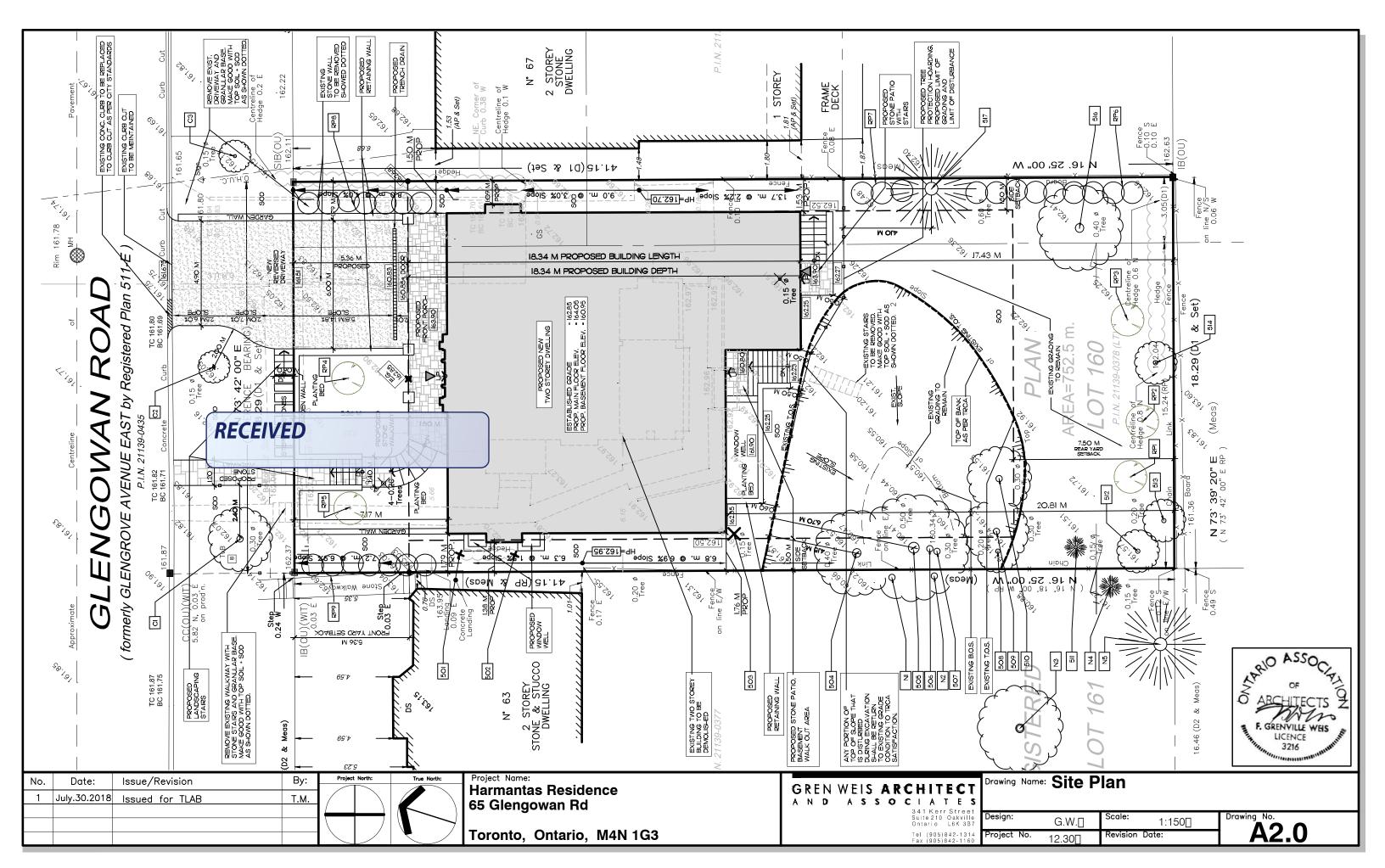
Panel Chair, Toronto Local Appeal Body

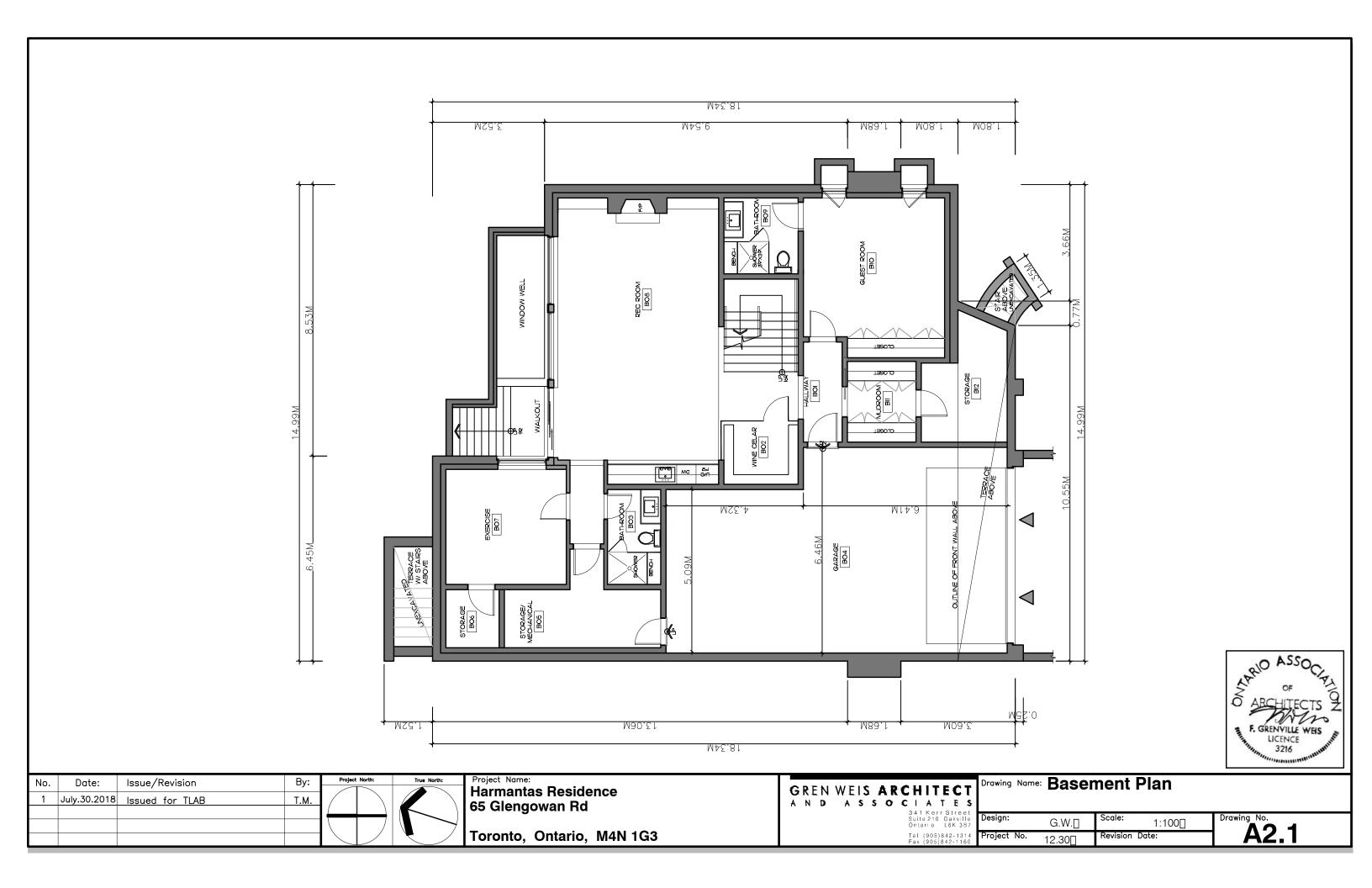


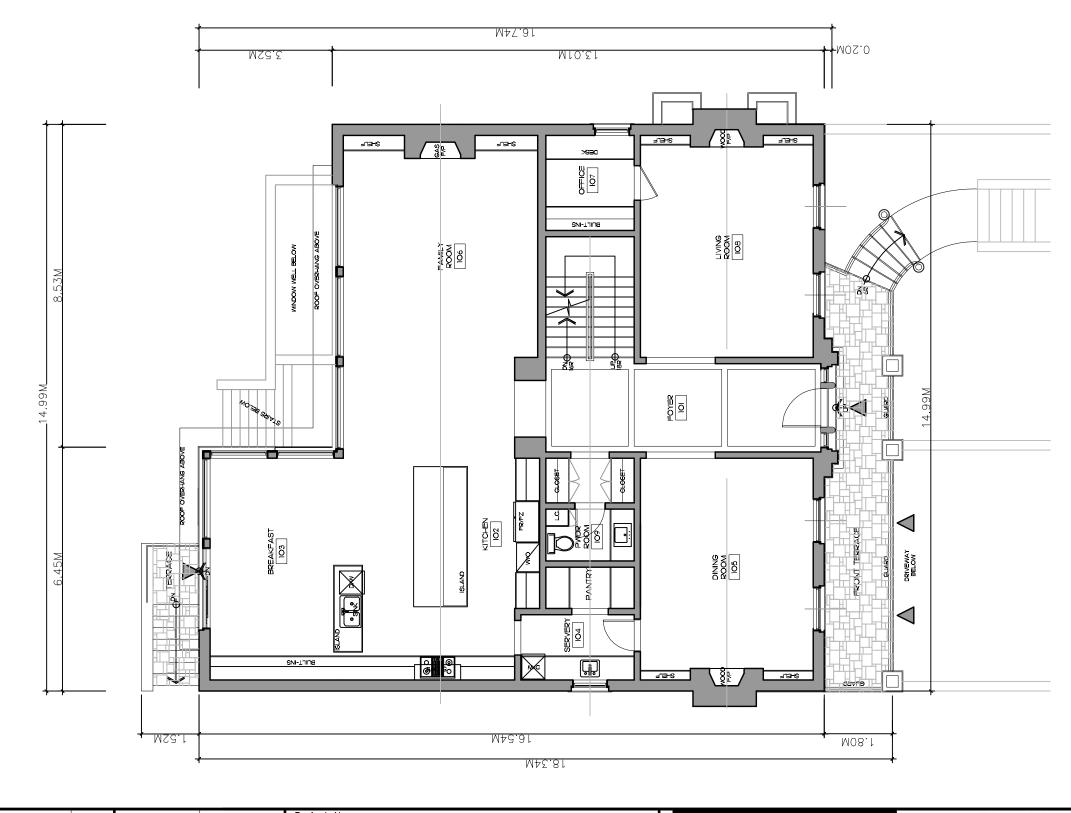


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No.	Date:	Issue/Revision	By:	Project North:	True North:	
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Project Name:
Harmantas Residence
65 Glengowan Rd
Toronto, Ontario, M4N 1G3

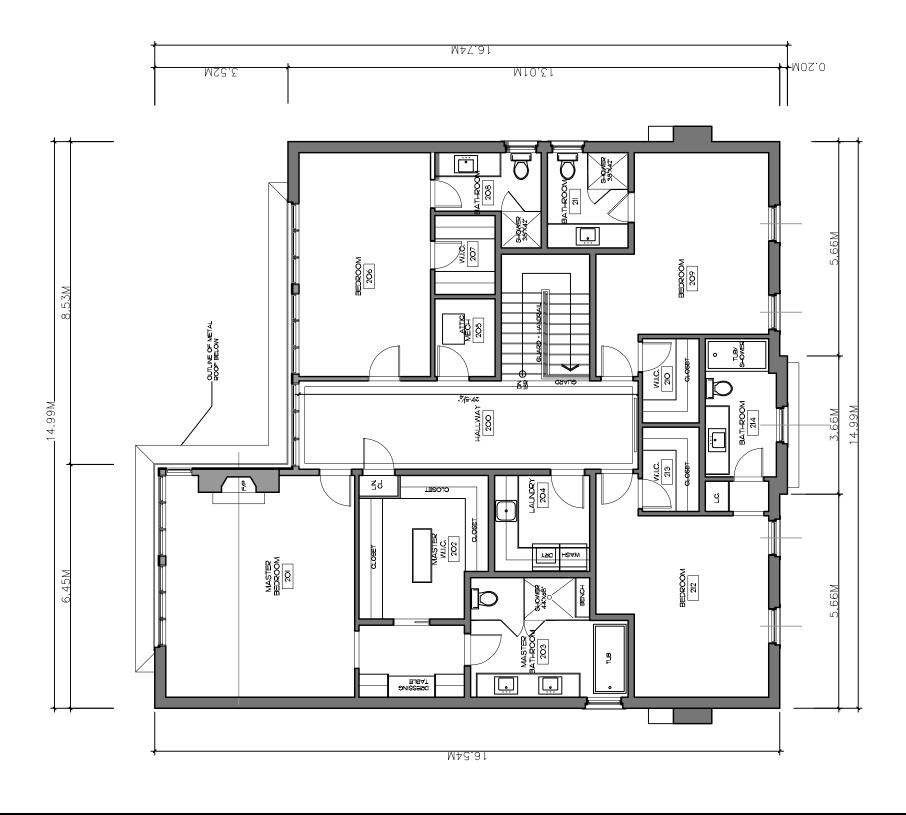
GREN WEIS ARCHITECT
AND ASSOCIATES

341 Kerr Street
Suite 210 Oakville
Ontario L6K 3B7

Tel (905)842-1314
Fax (905)842-1160

Drawing Name:	First	Floor	Plan
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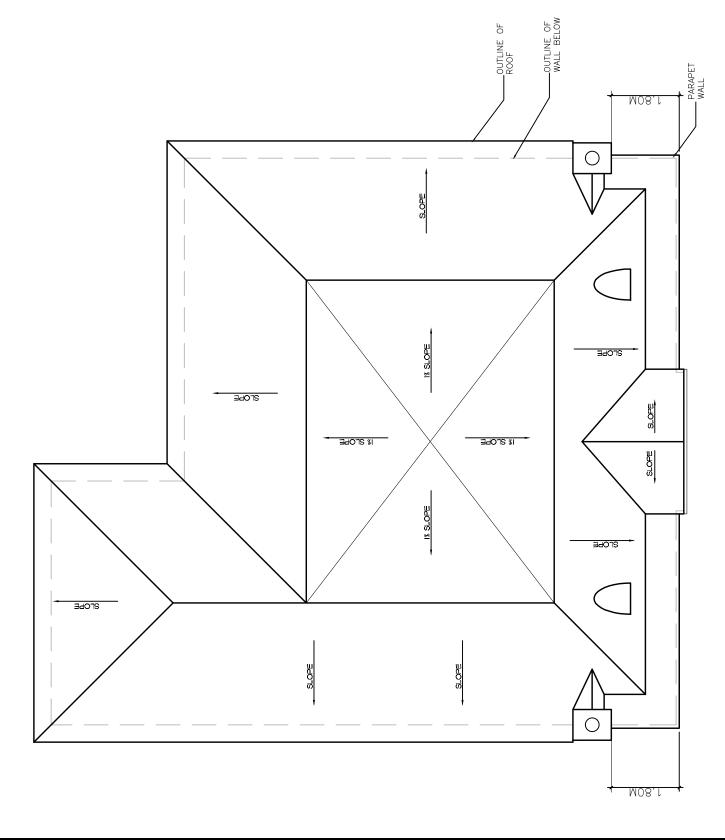
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Harmantas Residence
65 Glengowan Rd
Toronto, Ontario, M4N 1G3

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Project Name:
Harmantas Residence
65 Glengowan Rd
Toronto, Ontario, M4N 1G3

GREN WEIS ARCHITECT
AND ASSOCIATES

341 Kerr Street
Suite 210 Oakville
Ontario L6K 387

Tel (905)842-1314
Fax (905)842-1160

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Harmantas Residence

Toronto, Ontario, M4N 1G3

65 Glengowan Rd

Date:

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Issue/Revision

Ву:

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Revision Date:

Drawing Name: North Elevation

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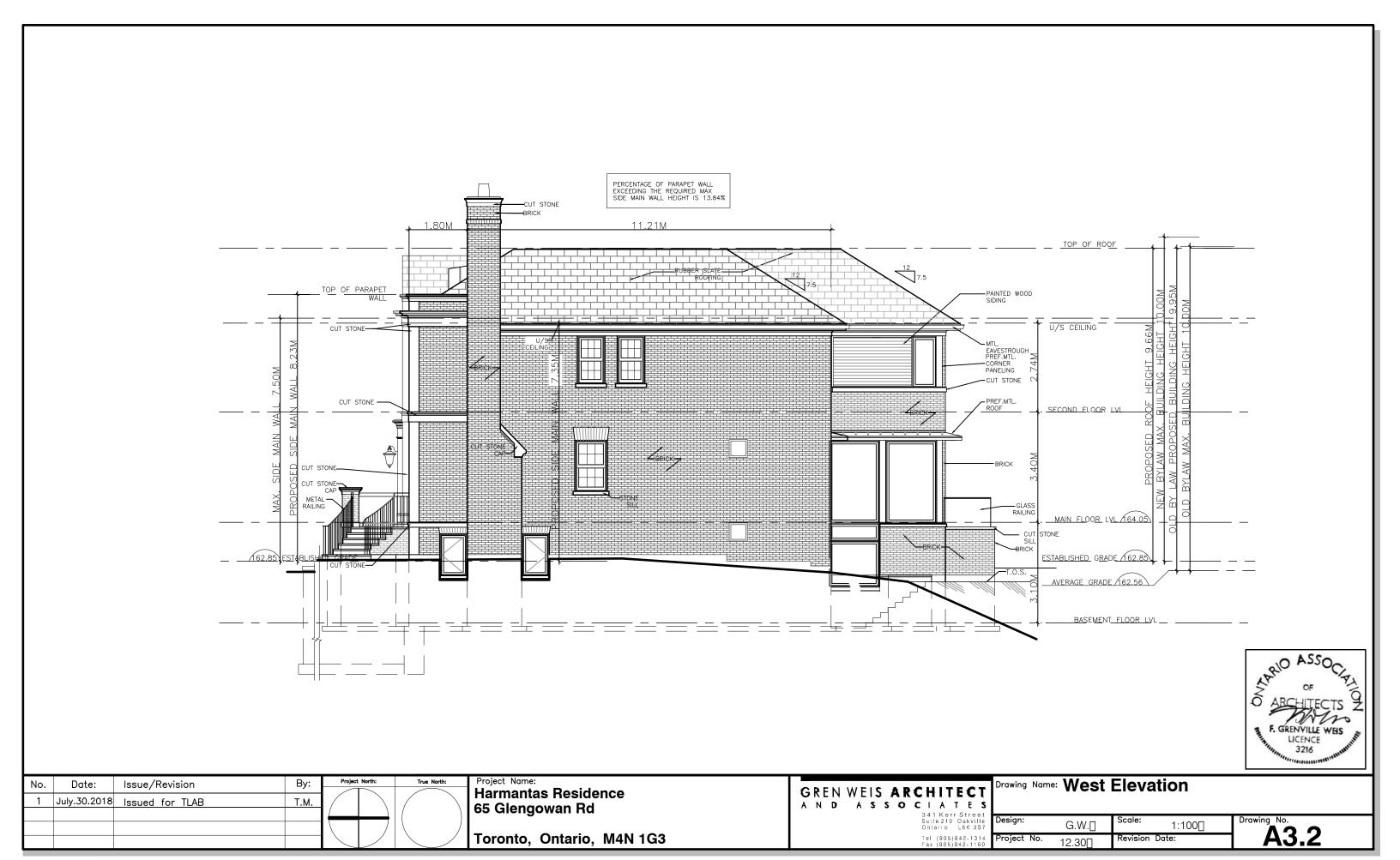
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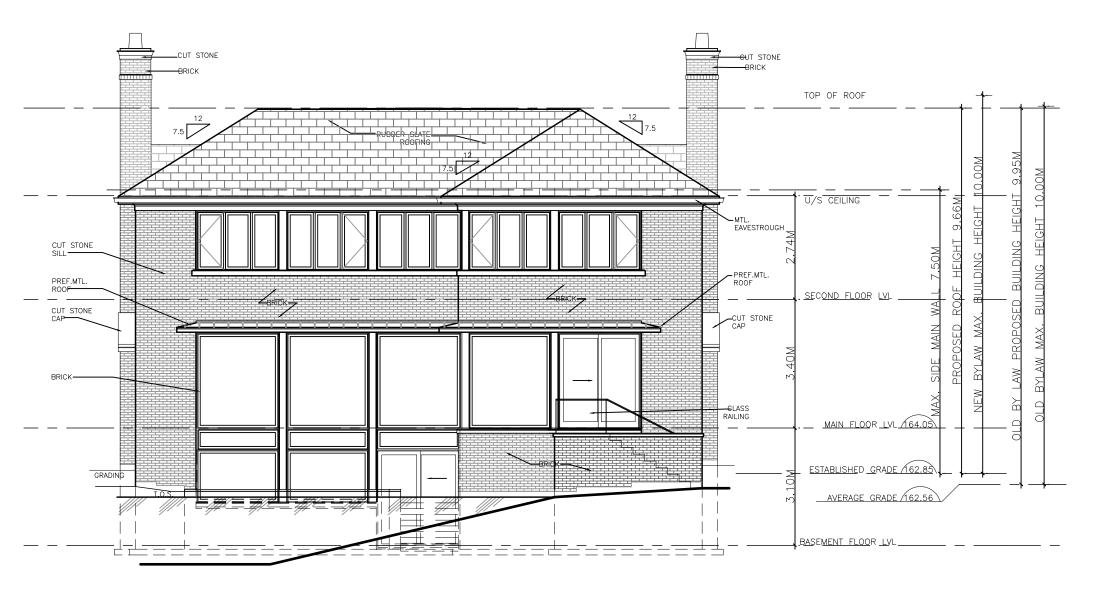
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GREN WEIS ARCHITECT
A N D A S S O C I A T E S

341 Kerr Street
Suite 210 Oakville
Ontario L6K 3B7

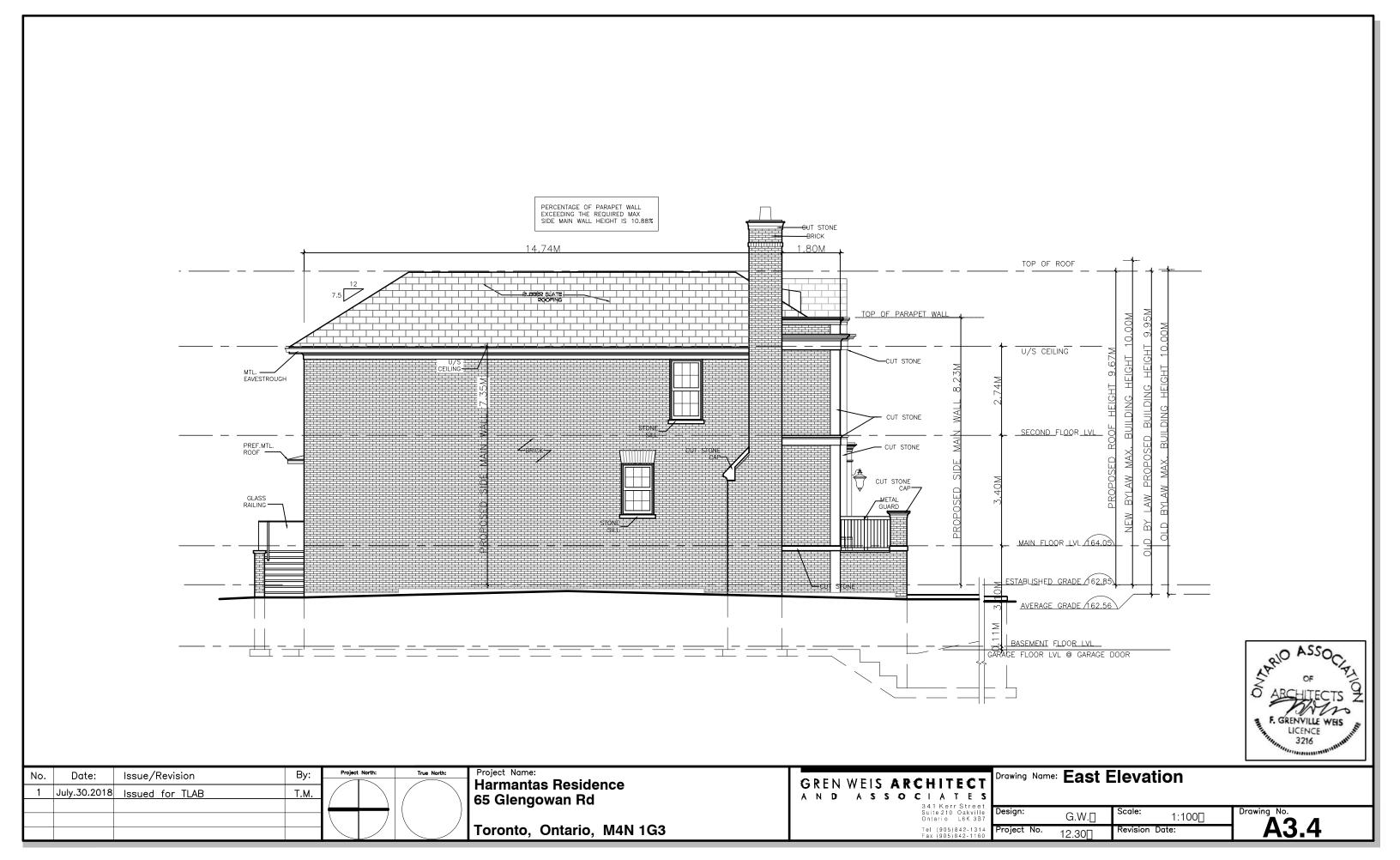
Tel (905)842-1314 Fax (905)842-1160

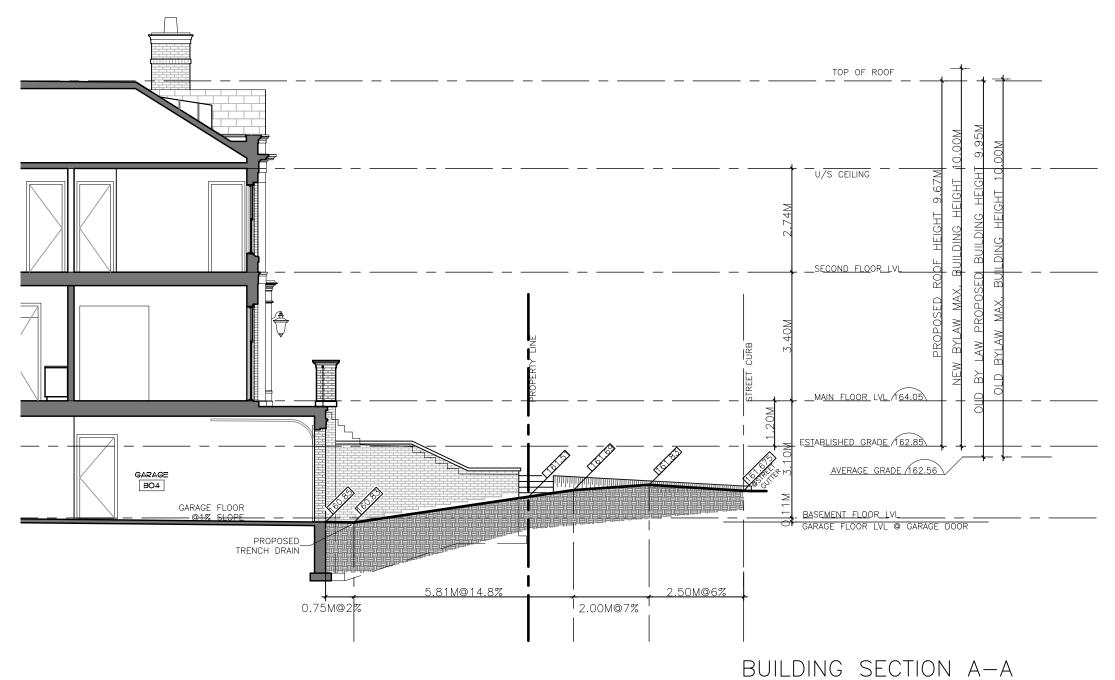


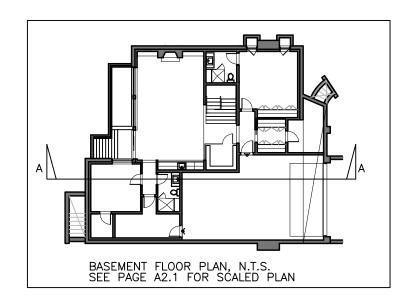




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