

# DECISION AND ORDER

**Decision Issue Date** Tuesday, November 06, 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): MURRAY MALCOLM FISHER

Applicant: PETER HIGGINS ARCHITECT INC

Property Address/Description: 80 BRAESIDE RD

Committee of Adjustment Case File Number: 17 205121 NNY 25 MV

TLAB Case File Number: **18 188647 S45 25 TLAB**

**Hearing date:** Tuesday, October 30, 2018

**DECISION DELIVERED BY LAURIE MCPHERSON**

## APPEARANCES

Name	Role	Representative
Peter Higgins Architect Inc.	Applicant	
Leila Taherzadeh	Owner/Party	Martin Mazierski
Murray Fisher	Appellant	Joe Hoffman
City of Toronto	Party	Nathan Muscat/Aderinsola Abimbola
Michael Manett	Expert Witness	
Sally Peterson	Participant	

## **INTRODUCTION**

This was a Settlement Hearing before the Toronto Local Appeal Body (TLAB) in the matter of an appeal of the Committee of Adjustment (Committee) approval of a minor variance application, by a neighbour, Mr. M. Fisher.

On June 14, 2017, the Committee approved a minor variance application to permit the construction of a new two-storey dwelling with an integral garage at 80 Braeside Road.

## **MATTERS IN ISSUE**

The Parties entered into a Settlement Agreement which resulted in changes to the plans and a revised set of variances and conditions. The matter at issue is whether the proposed variances meet the applicable tests.

## **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 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**

The TLAB heard from Mr. Michael Manett, the planner for the Applicant. Mr. Manett was qualified to give expert planning opinion evidence (Exhibit 1 – consolidated filings of Mr. Manett, Exhibit 2 – Expert Witness Statement of Mr. Manett).

The revised variances can be summarized as follows:

- the variance under Chapter 10.5.40.60. (3) of By-Law 569-2013, which deals with setback of the exterior stairs, has been eliminated.
- the variance under Chapter 10.10.40.40.(1) of By-Law 569-2013, which deals with the floor space index, has been reduced from 2.49 to 2.1.
- the variance under Chapter 10.5.40.50.(4) of By-Law 569-2013, which deals with the level of a rear deck platform, has been reduced from 1.9m to 1.66m.

The resulting variances are as follows:

1. Chapter 10.10.40.10. (1), By-Law 569-2013

The permitted maximum height of a building or structure is 10.0m.

The proposed height of the building is 10.49m.

2. Chapter 10.10.40.70. (3), By-Law 569-2013

The required minimum side yard setback for a detached house is 0.9m.

The proposed south side yard setback is 0.6m

3. Chapter 10.5.40.50. (2), By-Law 569-2013

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3m of a building, must comply with the required minimum building setbacks for the zone (0.9m).

The proposed rear yard side yard setback 0.6m.

4. Chapter 10.10.40.40. (1), By-Law 569-2013

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

The proposed floor space index is 2.1 times the area of the lot.

5. Chapter 10.5.40.50. (4), By-Law 569-2013

The level of the floor of a platform, such as a deck or balcony, located at or below the level of the first storey of a residential building other than an apartment building, may be no higher than 1.2m above the ground at any point below the platform, except where the platform is attached to or within 0.3m of:

(A) a front main wall, the floor of the platform may be no higher than 1.2m above established grade;

(B) a side main wall, the floor of the platform may be no higher than the level of the floor from which it gains access; and

(C) a rear main wall, any part of the platform floor located 2.5m or less from the rear main wall may be no higher than the level of the floor from which it gains access.

The proposed rear deck projects 3.57m from the wall and is 1.66m above ground.

6. Chapter 5.10.40.70. (6), By-Law 569-2013

If the Toronto and Region Conservation Authority (TRCA) 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 10.0m from that shoreline hazard limit or stable top-of-bank. The proposed setback is 0m.

7. Chapter 5.10.40.80. (1), By-Law 569-2013

On lands under the jurisdiction of the TRCA, a building or structure on a lot must be no closer than 10.0m from a shoreline hazard limit or a stable top-of-bank not on that lot. The proposed setback is 0m.

8. Chapter 90.20.20.10. (1), By-Law 569-2013

A residential dwelling (rear deck) is not permitted in the Open Space-Natural Zone. The proposed use is a residential dwelling (rear deck).

Subject to the following proposed conditions that:

1. The property shall be developed and maintained substantially in accordance with the plans dated September 21, 2018.
2. The Applicant agrees that no portion of the Attic Level of 80 Braeside Road as shown on plan A-6 dated September 21, 2018 shall be used as habitable space

Mr. Manett described that the subject site is located on the east side of Braeside Road, where Braeside Road curves to the west, east of Langton Road and north of Haslemere Road and Mildenhall Road. The majority of the site contains a natural ravine feature with a steep slope at the rear of the property. Mr. Manett explains that this slope significantly limits the developable area of the property. In the applicable Zoning By-law 569-2013, the lot area used to calculate the fsi is limited to the area above the stable top of bank. This reduces the effective lot area to 116.52m<sup>2</sup> (1254 ft<sup>2</sup>), resulting in a much higher fsi for the proposed dwelling than would be the case if the entire lot area were used in the fsi calculation.

For the purposes of his study area analysis, Mr. Manett established a study neighbourhood that is bounded by Lawrence Avenue East to the south, Mount Pleasant Road to the west, Rosedale Golf Club to the north and the West Don River to the east. He describes this area as a stable neighbourhood that has experienced reinvestment through modern development and redevelopment that has generally maintained the physical character of the neighbourhood. Part of this character is the spatial separation between homes through the maintenance of adequate/generous side yard setbacks and dwellings that are relative in size to the lots they are built on.

Braeside Rd curves and lots on the east side back are large estate lots that back onto a steep ravine. Only the front part of the lot is developable and the resulting floor space index of 2.1 whereas the fsi would be 0.2 if the density were averaged over the entire site.

The main concern of the Appellant was the massing of the dwelling on the site and specifically the potential to use the third-storey as livable space.

Mr. Manett described the area as stable with reinvestment taking place. There have been a number of renovations and replacement dwellings in the area which generally have a higher fsi than the By-law maximum. The majority of houses are 2 storeys in

height with some having a partial third storey with varied roof styles within the same block. There are also a number of different garage styles including below grade garages. In his opinion, the reinvestment has maintained the physical character of single detached homes. The property data information (Exhibit 4) indicates a range in dwelling size of 800 ft<sup>2</sup> to over 4,000 ft<sup>2</sup>. In his opinion, the proposed house size of 2,632 ft<sup>2</sup> is modest and within the range of other dwellings in the neighbourhood and the massing is reasonable and within the limitations of the lot.

The proposed dwelling is a replacement dwelling which will be situated generally on the same footprint as the previous dwelling. The increased height is only for the front peak portion of the dwelling. The third floor does not include habitable space. The reduced deck is within the footprint of the previous larger deck. City planning staff did not have an issue with the application (which was revised to the recommended height of 10.49 m before the Committee). Forestry staff has requested the standard conditions.

In Mr. Manett's opinion, there is no issue with respect to provincial policy and the proposal is consistent with the PPS and conforms to the Growth Plan.

With respect to the Official Plan, Mr. Manett referred to policies 2.3.1, 4.1.1, 4.1.5 and 4.1.8 regarding Healthy Neighbourhoods and Neighbourhoods. In Mr. Manett's opinion, the proposed development is for the development of new two storey residential detached dwelling which is compatible with the existing physical character of the established neighbourhood and generally meets the numerical site standards except for those effected by the topography of the site. Therefore, in his opinion, the proposal meets the general intent and purpose of the Official Plan.

With respect to the zoning by-law, in Mr. Manett's opinion, the revised variances with regard to height, fsi, side yard setbacks, reduced setbacks to protected open space, and other matters related to the TRCA, will allow for a single family detached dwelling that is compatible with the character of the neighbourhood and meets the general intent and purpose of the Zoning By-law.

In Mr. Manett's opinion, the proposed development is appropriate for the property because it allows for the redevelopment of the site with reinvestment in the neighbourhood to replace an older residential detached dwelling with a modern residential detached dwelling. The replacement dwelling and deck have a building footprint that is similar to the original dwelling to allow for a new home that fits on the site and within the neighbourhood. In his opinion, the requested variances provide for a development with a massing, height, and scale that is appropriate for the property.

With respect to the test for minor, Mr. Manett opines that the proposed fsi should be considered as minor, as it does not represent the true fsi relationship of the dwelling to the size of the property due to the reduced lot area resulting from the existing slope (top-of-bank) on the property. In addition, he advised that the variance for height is also minor since it is only for a small portion of the roof, and does not create any adverse impacts on the adjacent neighbours or the neighbourhood. Therefore, it is his opinion

the variances are minor.

In summary, it was Mr. Manett's opinion that the requested variances, with the associated conditions, individually and collectively meet the four tests for minor variance under section 45(1) of the Planning Act and represent good planning. He recommended that the proposed variances and conditions be approved.

The City was present to ensure that the Forestry condition was included in the conditions to approval.

Ms. Peterson, the Participant, did not have any concerns with the revised proposal.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB is satisfied that the revised variances, together with the proposed conditions, meet the criteria set out in Section 45(1) of the Planning Act. I accept that the proposed revisions are minor from the Application before the Committee as they represent a reduction in the number and scope of variances and no further notice or consideration is required under s. 45 (18 1.1) of the Planning Act.

The proposed dwelling maintains the single detached dwelling character of the neighbourhood. The variance for fsi is a result of the reduced qualifying lot area because of the ravine. The proposed dwelling and deck are generally within the footprint of the original dwelling. Concerns of the Appellant have been addressed through the revised variances and proposed conditions. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The proposal results in an appropriate and desirable development for the subject property and the variances are considered minor in the context. The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

## **DECISION AND ORDER**

The appeal is allowed, in part, and the variances to Zoning By-laws 569-2013 as set out below, including the conditions, are approved.

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**8. Chapter 90.20.20.10. (1), By-Law 569-2013**

A residential dwelling (rear deck) is not permitted in the Open Space-Natural Zone.

The proposed use is a residential dwelling (rear deck).

**CONDITIONS**

1. The property shall be developed and maintained substantially in accordance with the following plans attached:

a. Site Plan drawing A-1 dated September 21, 2018.

b. Attic Level drawing A-6 dated September 21, 2018.

c. Roof plan drawing A-7 dated September 21, 2018.

d. West elevation drawing A-8 dated September 21, 2018.

e. East elevation drawing A-9 dated September 21, 2018.

f. North elevation drawing A-10 dated September 21, 2018.

**Decision of Toronto Local Appeal Body Panel Member: L. MCPHERSON**  
**TLAB Case File Number: 18 188647 S45 25 TLAB**

- g. South elevation drawing A-11 dated September 21, 2018.
- 2. No portion of the Attic Level of 80 Braeside Road as shown on plan A-6 dated September 21, 2018 shall be used as habitable space.
- 3. Submission to the City of a complete application for permit to injure or destroy privately owned trees.

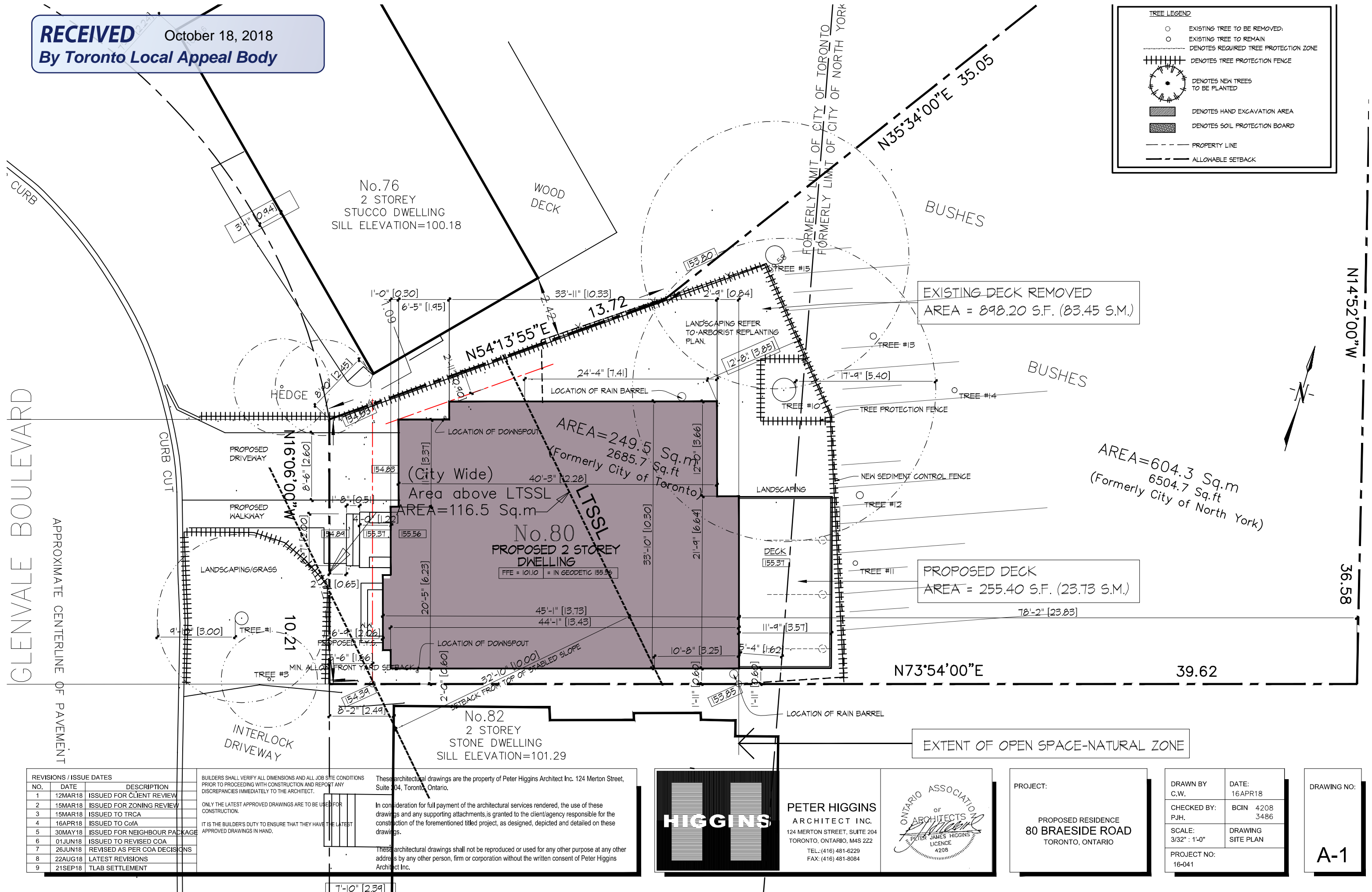
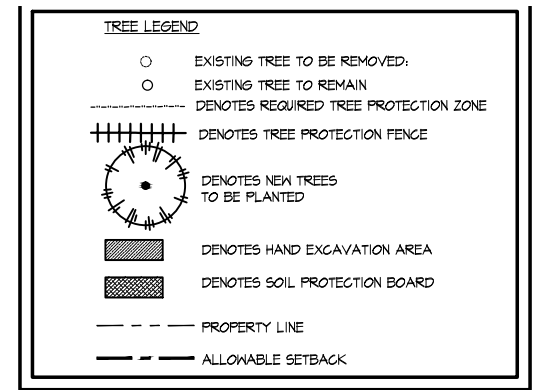
**X** 

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Laurie McPherson  
Panel Chair, Toronto Local Appeal Body



**RECEIVED** October 18, 2018  
**By Toronto Local Appeal Body**



REVIEWS / ISSUE DATES		
NO.	DATE	DESCRIPTION
1	12MAR18	ISSUED FOR CLIENT REVIEW
2	15MAR18	ISSUED FOR ZONING REVIEW
3	15MAR18	ISSUED TO TRCA
4	16APR18	ISSUED TO CoA
5	30MAY18	ISSUED FOR NEIGHBOUR PACKAGING
6	01JUN18	ISSUED TO REVISED COA
7	26JUN18	REVISED AS PER COA DECISIONS
8	22AUG18	LATEST REVISIONS
9	21SEP18	TLAB SETTLEMENT

BUILDERS SHALL VERIFY ALL DIMENSIONS AND ALL JOB SITE CONDITIONS PRIOR TO PROCEEDING WITH CONSTRUCTION AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT.

ONLY THE LATEST APPROVED DRAWINGS ARE TO BE USED FOR CONSTRUCTION.

IT IS THE BUILDER'S DUTY TO ENSURE THAT THEY HAVE THE LATEST APPROVED DRAWINGS IN HAND.

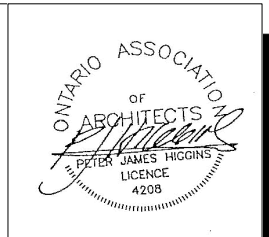
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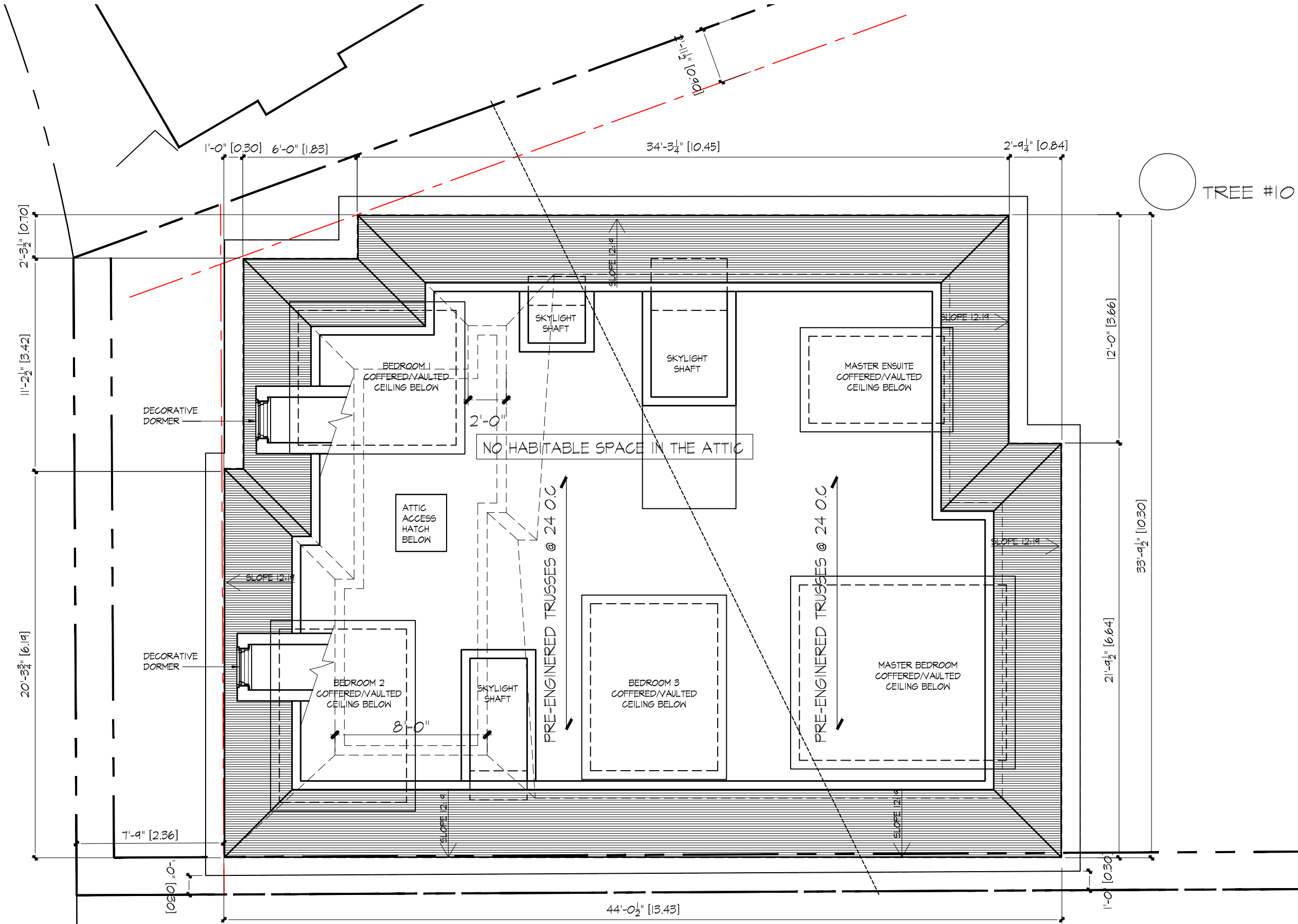
PROJECT:

PROPOSED RESIDENCE  
80 BRAESIDE ROAD  
TORONTO, ONTARIO

DRAWN BY C.W.	DATE: 16 APR 18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/32" = 1'-0"	DRAWING SITE PLAN
PROJECT NO: 16-041	

DRAWING NO:

A-1



REVISIONS / ISSUE DATES		
1	12MAR18	ISSUED FOR CLIENT REVIEW
2	15MAR18	ISSUED FOR ZONING REVIEW
3	15MAR18	ISSUED TO TRCA
4	16APR18	ISSUED TO CoFA
5	30MAY18	ISSUED FOR NEIGHBOURS
6	01JUN18	ISSUED TO REVISED COFA
7	26JUN18	REVISED AS PER COFA
8	31JUL18	LATEST REVISIONS
9	08AUG18	REVISIONS FOR NEIGHBOUR
10	21SEPT18	TLAB SETTLEMENT

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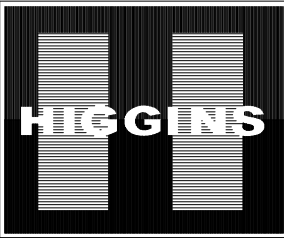
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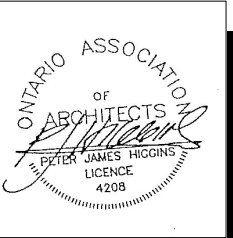
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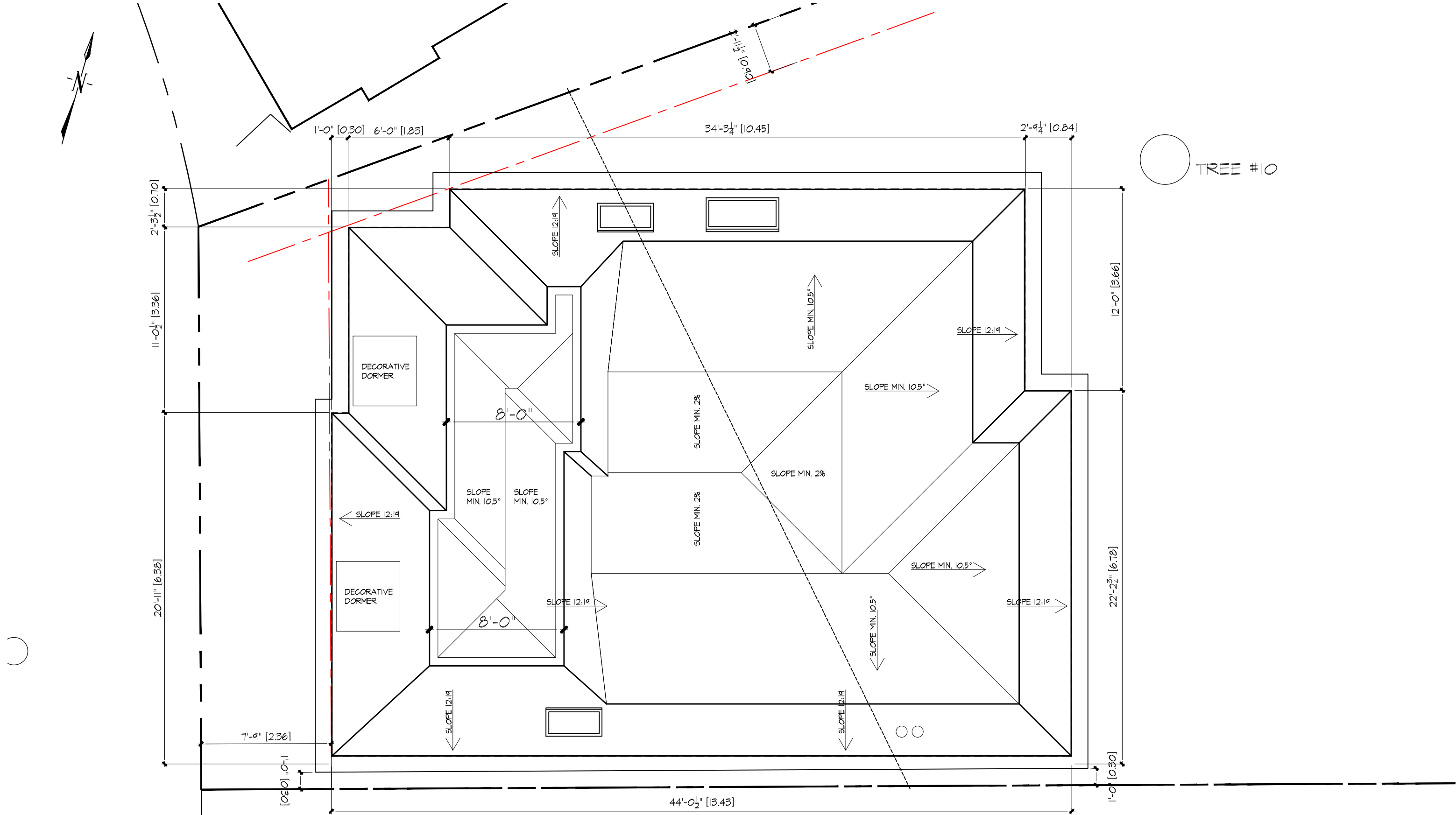
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PROJECT:  
**80 BRAESIDE ROAD**  
TORONTO, ONTARIO

DRAWN BY C.W.	DATE: 12MAR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING ATTIC LEVEL
PROJECT NO: 16-041	

DRAWING NO:  
**A-6**



REVISIONS / ISSUE DATES		
1	15MAR18	ISSUED FOR ZONING REVIEW
2	15MAR18	ISSUED TO TRCA
3	16APR18	ISSUED TO CoFA
4	30MAY18	ISSUED FOR NEIGHBOURS
5	01JUN18	ISSUED TO REVISED COFA
6	26JUN18	REVISED AS PER COFA
7	31JUL18	LATEST REVISIONS
8	08AUG18	REVISIONS FOR NEIGHBOUR
9	21SEP18	TLAB SETTLEMENT

BUILDERS SHALL VERIFY ALL DIMENSIONS AND ALL JOB SITE CONDITIONS PRIOR TO PROCEEDING WITH CONSTRUCTION AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT.

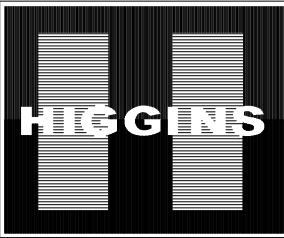
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PROJECT:  
**80 BRAESIDE ROAD**  
TORONTO, ONTARIO

DRAWN BY C.W	DATE: 12MAR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING ROOF PLAN
PROJECT NO: 16-041	

DRAWING NO:  
**A-7**



REVISIONS / ISSUE DATES		
2	15MAR18	ISSUED FOR ZONING REVIEW
3	15MAR18	ISSUED TO TRCA
4	16APR18	ISSUED TO CoFA
5	30MAY18	ISSUED FOR NEIGHBOURS
6	01JUN18	ISSUED TO REVISED COFA
7	26JUN18	REVISED AS PER COFA
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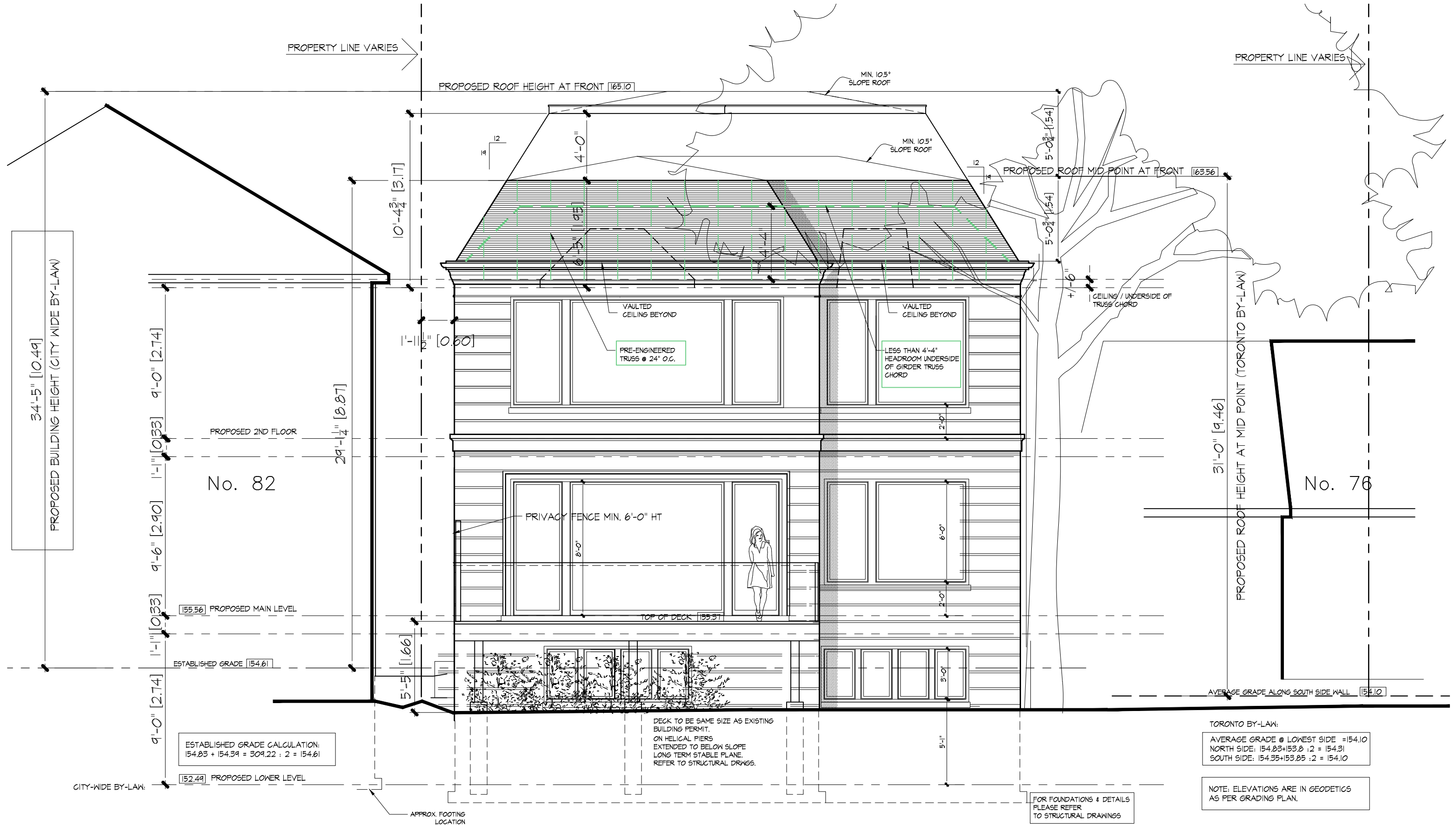


PROJECT:  
**80 BRAESIDE ROAD**  
TORONTO, ONTARIO

DRAWN BY: C.W.	DATE: 16APR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING WEST ELEV
PROJECT NO: 16-041	

DRAWING NO:  
**A-8**





REVISIONS / ISSUE DATES		
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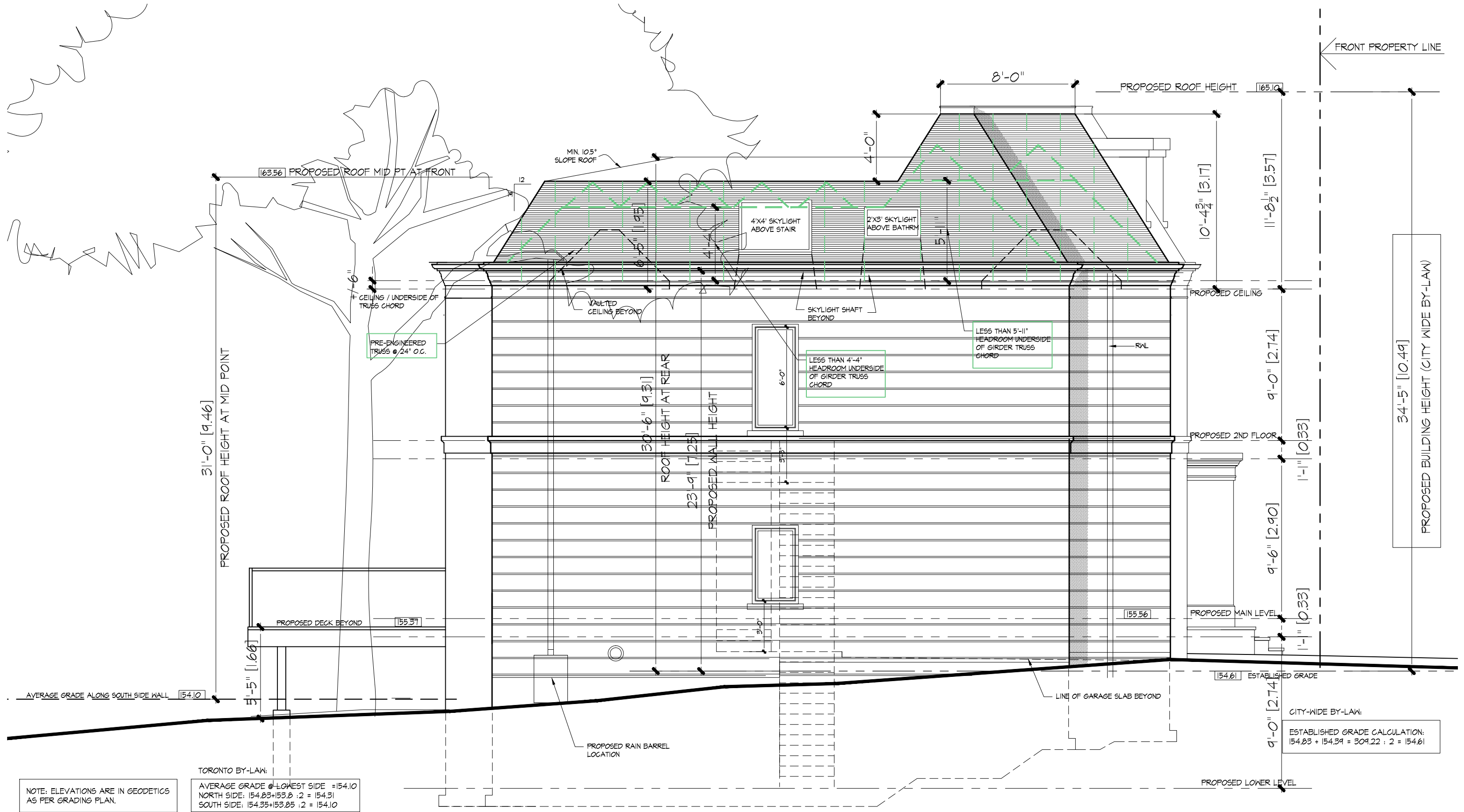
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PROJECT:  
**80 BRAESIDE ROAD**  
TORONTO, ONTARIO

DRAWN BY C.W.	DATE: 12MAR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING EAST ELEV
PROJECT NO: 16-041	

DRAWING NO:  
**A-9**



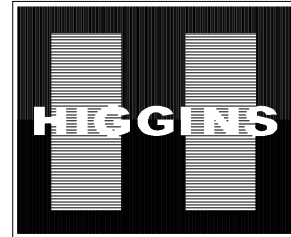
NOTE: ELEVATIONS ARE IN GEODETICS AS PER GRADING PLAN.

TORONTO BY-LAW:  
AVERAGE GRADE @ LOWEST SIDE = 154.10  
NORTH SIDE:  $154.83 + 153.8 : 2 = 154.31$   
SOUTH SIDE:  $154.35 + 153.85 : 2 = 154.10$

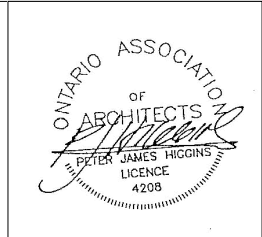
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6	01JUN18	ISSUED TO REVISED COFA
7	26JUN18	REVISED AS PER COFA
8	31JUL18	LATEST REVISIONS
9	08AUG18	REVISIONS FOR NEIGHBOUR
10	21SEP18	TLAB SETTLEMENT

BUILDERS SHALL VERIFY ALL DIMENSIONS AND ALL JOB SITE CONDITIONS PRIOR TO PROCEEDING WITH CONSTRUCTION AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT.  
ONLY THE LATEST APPROVED DRAWINGS ARE TO BE USED FOR CONSTRUCTION.  
IT IS THE BUILDER'S DUTY TO ENSURE THAT THEY HAVE THE LATEST APPROVED DRAWINGS IN HAND.

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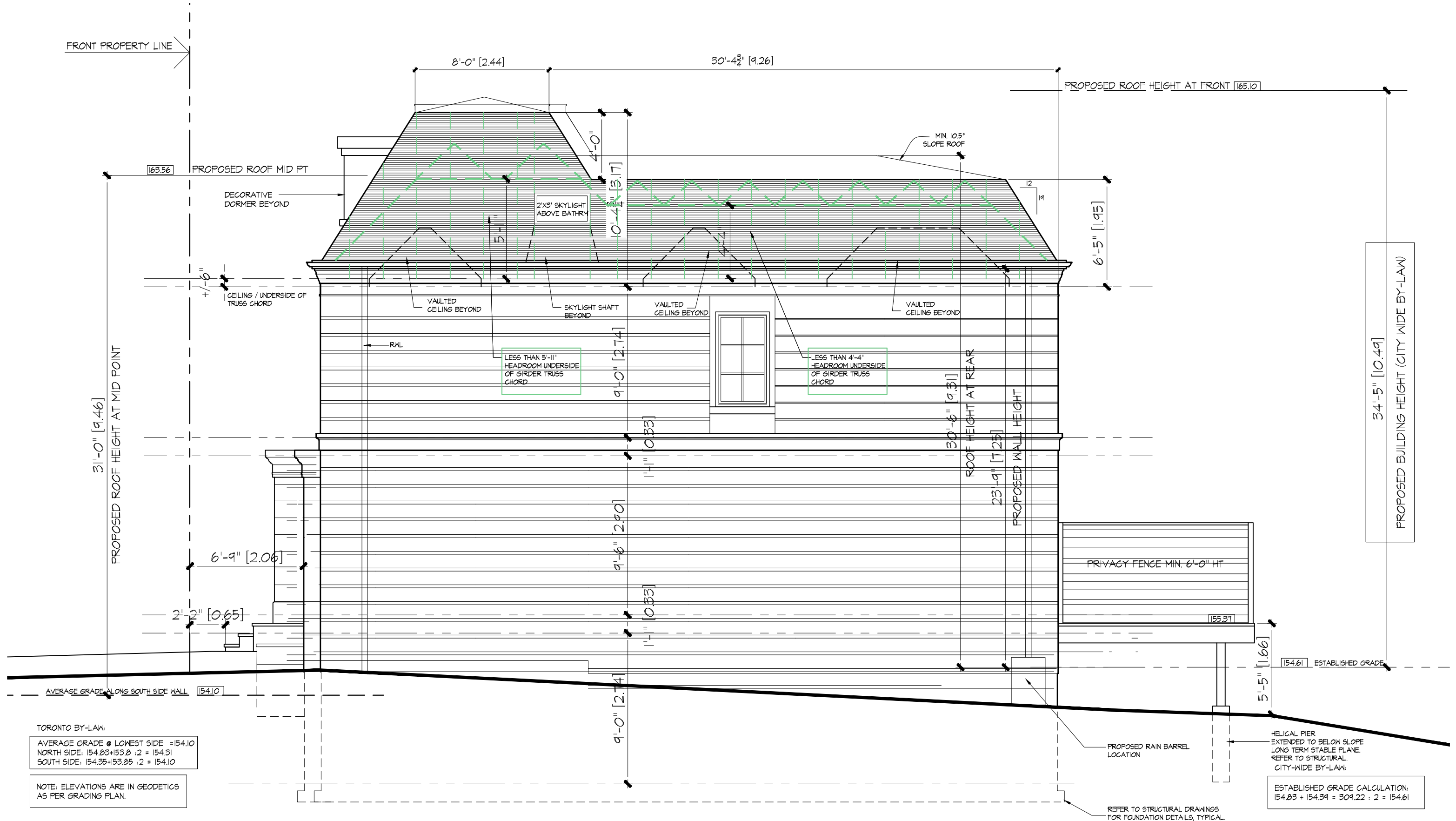
PETER HIGGINS  
ARCHITECT INC.  
124 MERTON STREET, SUITE 204  
TORONTO, ONTARIO, M4S 2Z2  
TEL: (416) 481-6229  
FAX: (416) 481-8084



PROJECT:  
80 BRAESIDE ROAD  
TORONTO, ONTARIO

DRAWN BY C.W.	DATE: 12MAR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING NORTH ELEV
PROJECT NO: 16-041	

DRAWING NO:  
A-10



TORONTO BY-LAW:  
AVERAGE GRADE @ LOWEST SIDE = 154.10  
NORTH SIDE:  $154.83 + 153.8 : 2 = 154.31$   
SOUTH SIDE:  $154.35 + 153.85 : 2 = 154.10$

NOTE: ELEVATIONS ARE IN GEODETICS  
AS PER GRADING PLAN.

ESTABLISHED GRADE CALCULATION:  
 $154.83 + 154.31 : 2 = 154.61$

REVISIONS / ISSUE DATES		
2	15MAR18	ISSUED FOR ZONING REVIEW
3	15MAR18	ISSUED TO TRCA
4	16APR18	ISSUED TO CoFA
5	30MAY18	ISSUED FOR NEIGHBOURS
6	01JUN18	ISSUED TO REVISED COFA
7	26JUN18	REVISED AS PER COFA
8	31JUL18	LATEST REVISIONS
9	08AUG18	REVISIONS FOR NEIGHBOUR
10	21SEP18	TLAB SETTLEMENT

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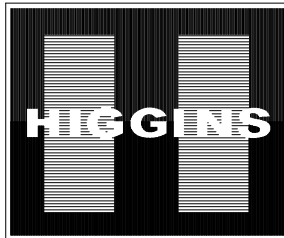
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PROJECT:  
**80 BRAESIDE ROAD**  
TORONTO, ONTARIO

DRAWN BY: C.W.	DATE: 12MAR18
CHECKED BY: PJH.	BCIN 4208 3486
SCALE: 3/16"	DRAWING SOUTH ELEV
PROJECT NO: 16-041	

DRAWING NO:

**A-11**