Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Tuesday, November 27, 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): REECA COBB

Applicant: SAL APRILE

Property Address/Description: 33 BRUMWELL ST

Committee of Adjustment Case File Number: 15 250686 000 44 MV, 15 250694 000 44 MV

TLAB Case File Number: **18 139589 S45 44 TLAB, 18 139594 S45 44 TLAB**

Hearing date: Thursday, September 06, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Sal Aprile	Applicant/Party	Bruce Ketcheson
		Tina Kaplos
Marco Aprile	Owner	
Reeca Cobb	Appellant	Phil Pothen
Martin Rendl	Expert Witness	
Michael Manett	Expert Witness	
Kathryn Rowe	Participant	

INTRODUCTION

This is an appeal from a decision of the Scarborough District panel of the City of Toronto's (City) Committee of Adjustment (COA) approving variances applicable to Parts 2, 3 and Part 4 on a draft reference plan identified herein as **Attachment 1** and included in the COA decision mailed March 27, 2018.

The variances requested originate from both City By-law 569-2013 (new zoning) and former City of Scarborough By-law 12077 (existing zoning) for the Centennial Community.

The draft reference plan and associated land division matters are noteworthy and require description. The draft reference plan depicts a severance from 35 Brumwell Street of a small, rectangular shaped parcel identified as Part 2 on **Attachment 1** and its addition to the original lot at 33 Brumwell Street. In turn, the reconfigured lot so created is divided, more or less equally, to form two new parcels, identified as Parts 2 and 3 (north parcel), and Part 4 (south parcel), also shown on **Attachment 1**.

This severance activity, a lot addition and a lot severance, was before the COA, was approved and was not appealed. Counsel for the Applicant did acknowledge that the variances sought and which were appealed, related to the specific parcels created by the consents granted.

Taken together, Parts 2, 3 and Part 4 constitute the lands subject to the variance appeals (subject property). That said, the variances sought in their application to each were said to differ only slightly as they apply to the new north and south parcels.

The draft reference plan is attached as **Attachment 1** to this decision and order (also found in the Notice of Decision, page 3, on COA files A351/15SC and A352/15SC and Exhibit 4).

BACKGROUND

At the outset of the sitting, I advised I had visited the site, read the materials filed as an overview but required that matters of specific importance need to be addressed by the person with an interest.

I also noted to counsel for the parties, for their consideration, that I have periodically participated, for several years, with an intended witness, Mr. Rendl, in the co-teaching of a continuing education course sponsored by the Ontario Professional Planners Institute.

I invited consideration of that past association and comment as counsel considered appropriate. There were no questions or concerns raised before or after a lengthy adjournment, requested by Mssrs. Ketcheson and Pothen, for continuing settlement discussions.

In opening remarks, Mr. Ketcheson concisely outlined the evolution of the Applications and the appeals, described above, that are before the TLAB, including a brief review of the types of variances approved by the COA. He also advised of the progress of settlement discussions.

Mr. Ketcheson made a joint request for a short adjournment to see if those matters could be finalized, indicating they could result in some revisions to the variances under appeal. He had no objection to including the Neighbourhood Association representative, which he understood to be a Participant in like interest to the Appellant, in those discussion.

He also raised the existence of a late filed Motion by the Appellant to add a Witness Statement of its planner, Mr. Michael Manette.

I heard from Mr. Pothen, counsel for Reeca Cobb, the Appellant and a neighbor across Brumwell Street, opposite the subject property. He supported the request to permit further discussion.

The joint request to advance settlement discussion was encouraged and granted.

A period of 70 minutes, ultimately extended to several hours ensued, during which the Hearing stood down

MATTERS IN ISSUE

The variances under appeal are set out in the Notice of Decision applicable to Parts 2 and 3 and to Part 4, as depicted on the draft reference plan, Exhibit 4 to the Hearing and **Attachment 1 hereto.**

Associated requested variances identified in Exhibit 5 to the Hearing are shown listed on **Attachment 2 (north parcel) and Attachment 3 (south parcel)**, save and except that the modifications or alteration proposed as a result of agreed settlement discussions, are shown bolded.

For the purposes of the consideration of the revised variances, I have examined their content and find them eligible for consideration, without further notice. I find pursuant to section 45 (18.1.1) of the Planning Act that they are minor and are more responsive to their respective zoning provisions. No further Notice is required.

Despite this and the laudable prospect of a settlement, the TLAB has an independent responsibility to examine and ascertain whether the variances sought, individually and cumulatively, meet the standards and considerations mandated by statute in the public interest. These are summarized under 'Jurisdiction', next following.

The Applicant called its planning witness, Mr. Rendl, to address these statutory considerations.

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

As a result of the discussions, Mr. Ketcheson was able to advise of a settlement with the Appellant and others present. He called Mr. Rendl, on consent, to provide expert land use planning opinion evidence on the variances, as revised. Both Mr. Pothen and a substitute for Kathryn Rowe (the named Participant who could not attend), had no questions of Mr. Rendl.

As a consequence, the matter of the Motion was not needed to be addressed. Mr. Manette remained available to Mr. Pothen throughout.

Having heard the evidence of Mr. Rendl on consent, the TLAB did not require final submissions from the Parties. No other Participant had expressed a desire to speak.

In the circumstances, only a brief canvass of the issues and evidence appears appropriate as I am in agreement with the comprehensive opinion evidence expressed by Mr. Rendl and am satisfied that the statutory considerations to the standards dictated have been addressed and met. My reasons for acceptance follow:

1. Mr. Rendl confirmed the detailed the revisions to the variances approved by the COA and varied by the settlement discussion, all as above described and contained in **Attachment 2** and **Attachment 3.**

2. He filed and updated his Witness Statement, Exhibit 1, containing a fulsome description of the physical character of the area, generally described as well landscaped, one and two storey detached residential buildings built post 1950 and comprised of at-grade two car garages on generous sized lots.

3. The Official Plan designated the subject property as 'Neighbourhood' and the new and (legacy) existing zoning apply. No variances are sought for lot frontage, lot depth, length or depth of

building, rear yard setback, height or dwelling type. There is a significant private maple tree in the front area of the north parcel The conditions respecting this tree are addressed in the consent approval, not appealed.

4. The settlement discussions resulted in the bolded revisions on **Attachments 2 and 3** and are derived from an agreed 0.5 m reduction in building size on two floors. This yields reductions in proposed floor areas (under both by-laws) and increased front yard setbacks (under new zoning) applicable to both of the approved lots. Both proposed houses are relocated more easterly on the lots with rear main walls more or less in line with that of 35 Brumwell Street, the parcel to the north, thereby providing a greater front yard setbacks.

5. By way of notations on the elevation plans, as distinct from the site plan, he advised that the parties agreed to certain revisions to the location and façade character of building materials and landscaping of the two new buildings. These were sought to be protected by an agreed condition, which he endorsed: construction substantially in accord with the revised plans.

6. Mr. Rendl provided the opinion that the variances sought in Attachments 2 and 3 and the notations agreed to on Exhibits 6 and 7, being the revised site plan and revised elevation drawings:

i) are consistent with the Provincial Policy Statements;
ii) conform to the Growth Plan;
iii) provide for two detached dwellings that respect and reinforce the existing physical character of the area and represent 'sensitive, and gradual change that 'fit' the neighbourhood' in a manner that conforms to the intent and purpose of the policy and design criteria of sections 2, 4.1, 4.1.5 and 4.1.8 of the Official Plan;
iv) maintain the intent and purposes of the zoning by-law by providing: a reduced lot area that accommodates the revised building envelopes, amenity and access spaces; adequately sized and area typical houses constrained by a number of unchanged regulations on generous lots without undue adverse impact in terms of shadow or privacy incursions. He supported as good planning the revised front and flanking setbacks to be revisions more in keeping with the new zoning and area character providing for front yard parking and landscaping.
v) were desirable and minor as responding to encouragement for infill housing without any undue impacts, adverse planning staff comment or continued neighbourhood expressions of concern.

On the basis of these assessments, and in the absence of further opposition, he recommended the variances as modified as good planning consistent with the approved consents applicable to the subject property.

ANALYSIS, FINDINGS, REASONS

I listened carefully to the evolution and terms of the settlement discussions. It was obvious that precise, detailed assessment and consideration had been given to the reasons for the appeal and to the decision not to appeal the related consent matters. Not only did this demonstrate prudence and a conservation of resources, but also proved to be a fruitful foundation for settlement discussions.

I commended the parties on their resourcefulness and demonstrable contributions to reach a satisfactory resolution. Standing back to examine the process in its entirety and apply the statutory tests, I find the concept and approach taken to deliver two new dwellings to be somewhat novel, balanced, nuanced and appropriate. The result, on the evidence, is consistent with the principles of good community planning.

I agree with the evidence tendered on consent through Mr. Rendl, both as contained in his viva voce evidence and his updated and corrected Witness Statement, Exhibit 1, and as above described.

DECISION AND ORDER

The appeal is allowed in part and the revised variances as shown on **Attachments 2 and 3** as proposed are approved, subject to the following Conditions:

1. The Draft Reference Plan (Ref As 15-8450-3) attached to the Notice of Decision on Committee of Adjustment files A351/15SC and 352/15SC is **Attachment 1** hereto;

2. The Applicant shall provide, within a period of ninety (90) days from the date hereof, a revised Site Plan and revised Elevation Plans consistent with **Attachments 2 and 3** and, as well, the modifications shown in hand script on Exhibits 6 and 7 to the Hearing; such modifications may also provide enhanced text notes providing greater specificity, particularly on the revised Site Plan related to areas marked 'Landscape Areas A and B';

3. Construction shall be in substantial compliance with the revised Site Plan and Elevation Plans as provided in Condition 2;

4. This Decision and Order shall not become final and binding until the replacement Site Plan and replacement Elevation Plans, signified as satisfactory by Mr. Potham, have been received by the TLAB and until such are attached as **Attachment** 4 (north parcel, Parts 2 and 3 on Attachment 1) and **Attachment 5** (south parcel, Part 4 on Attachment 1) hereto and the same is issued by the TLAB.

Nothing in this decision and order is intended to address any aspect of the consent decisions made in respect of the subject property.

The Attachments hereto form part of this decision and order.

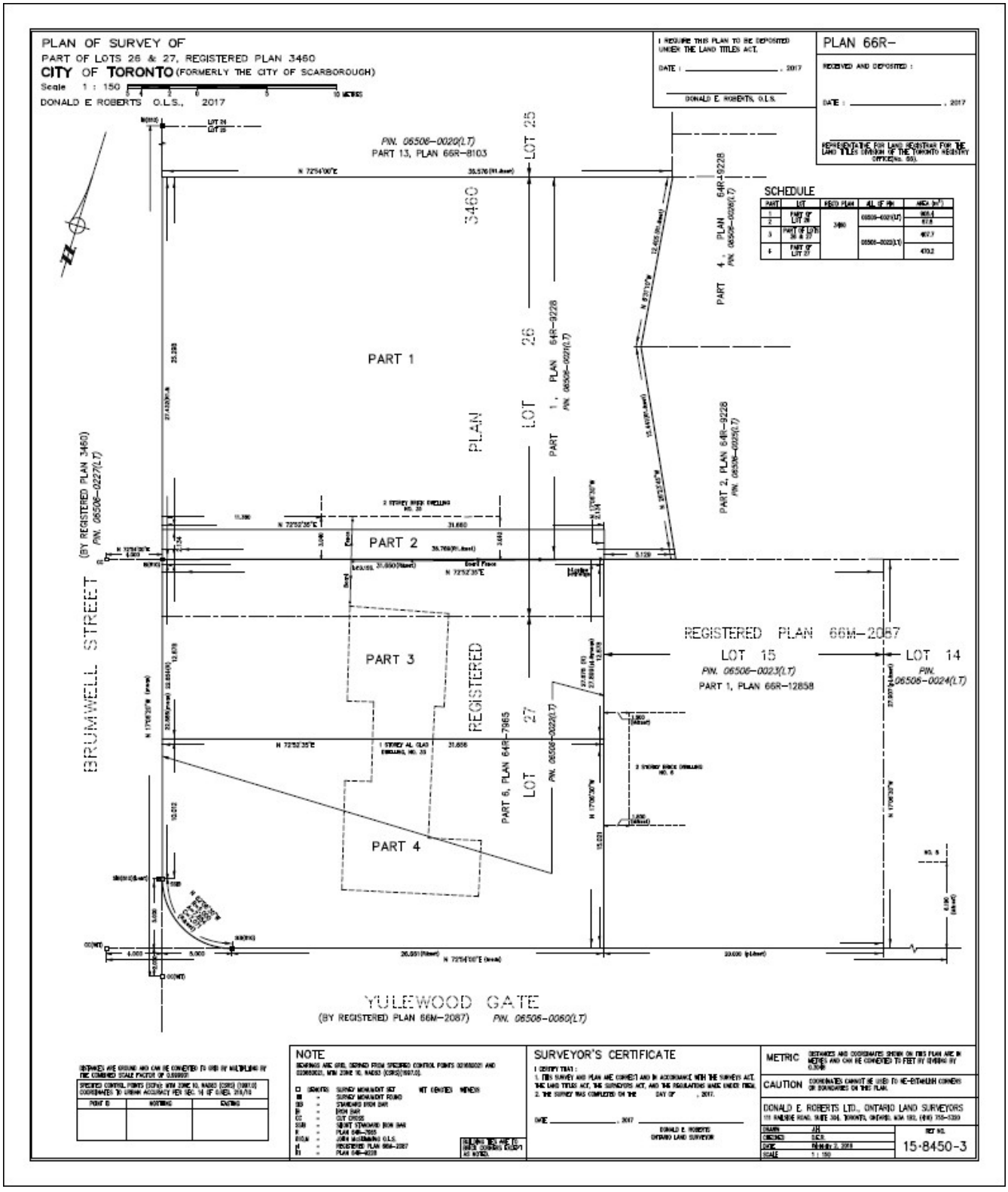
If difficulties arise in the fulfillment of the terms specified, the TLAB may be spoken to.

X 

Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

ATTACHMENT 1

Draft Reference Plan (follows)


PLAN OF SURVEY OF
PART OF LOTS 26 & 27, REGISTERED PLAN 3460
CITY OF TORONTO (FORMERLY THE CITY OF SCARBOROUGH)
Scale 1 : 150
DONALD E ROBERTS O.L.S., 2017
I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.
DONALD E. ROBERTS, O.L.S.
PLAN 66R-
RECEIVED AND DEPOSITED :
REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES DIVISION OF THE TORONTO REGISTRY OFFICE(No. 66).
SCHEDULE
PART
LOT
REG'D PLAN
ALL OF PIN
AREA (m²)
PART OF LOT 26
PART OF LOTS 26 & 27
PART OF LOT 27
3460
PART 1
PART 2
PART 3
PART 4
LOT 25
LOT 26
LOT 27
PLAN 3460
REGISTERED PLAN 66M-2087
LOT 15
LOT 14
PART 1, PLAN 66R-12858
PART 1, PLAN 64R-9228
PART 2, PLAN 64R-9228
PART 4, PLAN 64R-9228
PART 6, PLAN 64R-7965
BRUMWELL STREET
(BY REGISTERED PLAN 3460)
YULEWOOD GATE
(BY REGISTERED PLAN 66M-2087)
NOTE
SURVEYOR'S CERTIFICATE
I CERTIFY THAT :
DONALD E. ROBERTS
ONTARIO LAND SURVEYOR
METRIC
CAUTION
DONALD E. ROBERTS LTD., ONTARIO LAND SURVEYORS
15-8450-3

ATTACHMENT 2

REQUESTED VARIANCES TO THE ZONING BY-LAW:

Parts 2, 3 (north parcel)

By-law No. 569-2013:

1) The proposed floor area is **295** m^2 (**0.5** x lot area)
   Whereas the maximum permitted floor area is 235 m^2 (0.5 x lot area)
2) The proposed lot area is 475 m^2
   Whereas the required minimum lot area is 557 m^2
3) The proposed front yard setback is **10.18** m
   Whereas the required minimum front yard setback is 11.38 m

By-law No. 12077:

4) The proposed lot area is 475 m^2
   Whereas one single family dwelling is permitted per parcel of land having a minimum frontage on a public street of 15 m and a minimum lot area of 557 m^2
5) The proposed floor area is **276** m^2 (**0.58** x lot area)
   Whereas the maximum permitted floor area is 235 m^2 (0.5 x lot area)

ATTACHMENT 3

REQUESTED VARIANCES TO THE ZONING BY-LAW:

Part 4 (south parcel)

By-law No. 569-2013:

1) The proposed building setback from the side lot line that abuts Yulewood Gate is 3 m
   Whereas the minimum required building setback from a side lot line that abuts a street is 4.5 m
2) The proposed floor area **296** m^2 (**0.63** x lot area)
   Whereas the maximum permitted floor area is 235 m^2 (0.5 x lot area)
3) The proposed lot area is 470 m^2
   Whereas the required minimum lot area is 557 m^2
4) The proposed front yard setback is **8.0** m
   Whereas the required minimum front yard setback is 11.38 m

By-law No. 12077:

5) The proposed lot area is 470 m^2
   Whereas one single family dwelling is permitted per parcel of land having a minimum frontage on a public street of 15 m and a minimum lot area of 557 m^2

6) The proposed floor area is **277** m^2 (0.61 x lot area)
Whereas the maximum permitted floor area is 235 m^2 (0.5 x lot area)

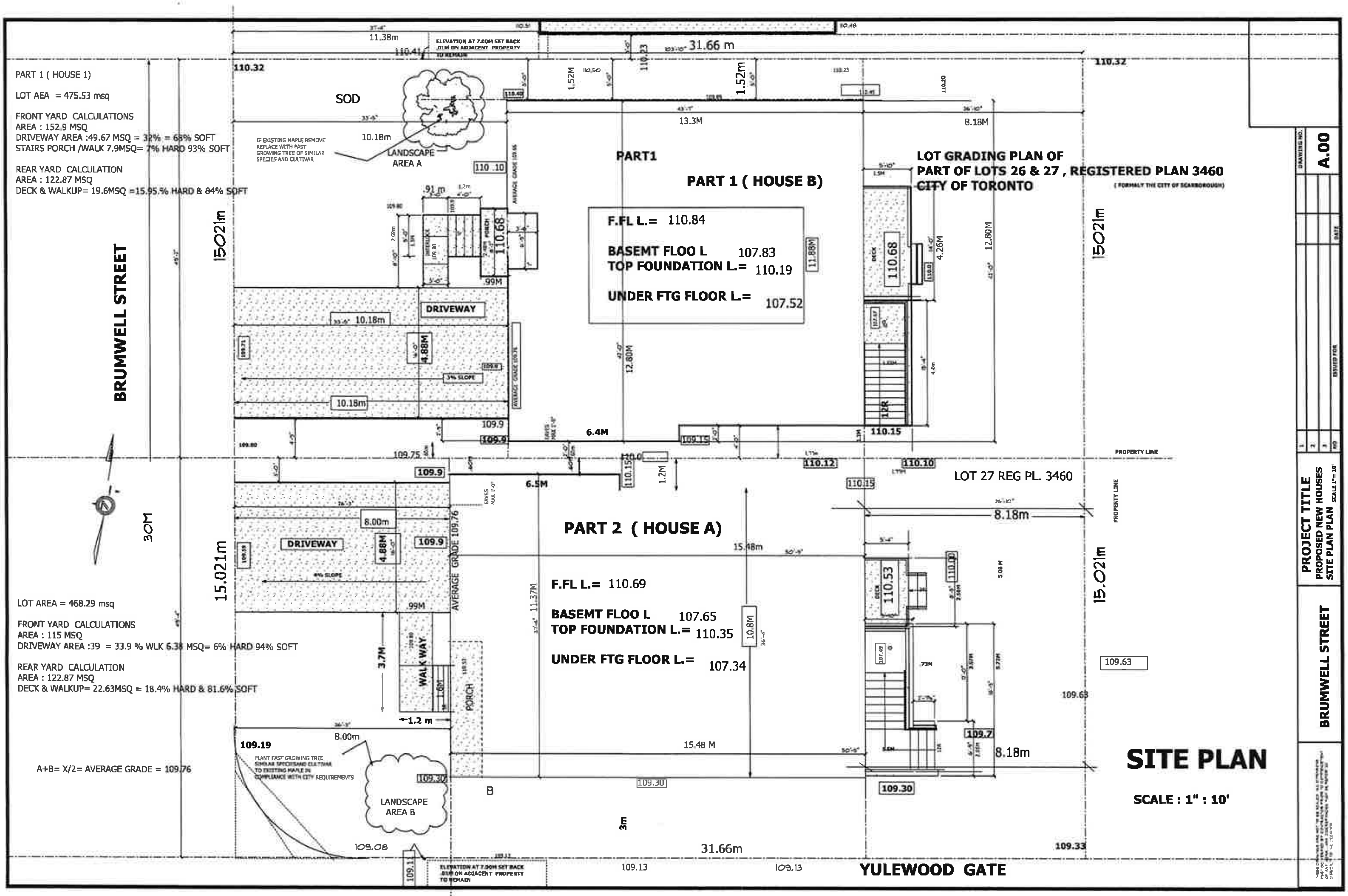
7) The proposed building setback from the side lot line that abuts Yulewood Gate is 3 m
Whereas the minimum required building setback from a side lot line that abuts a street is 4.5 m

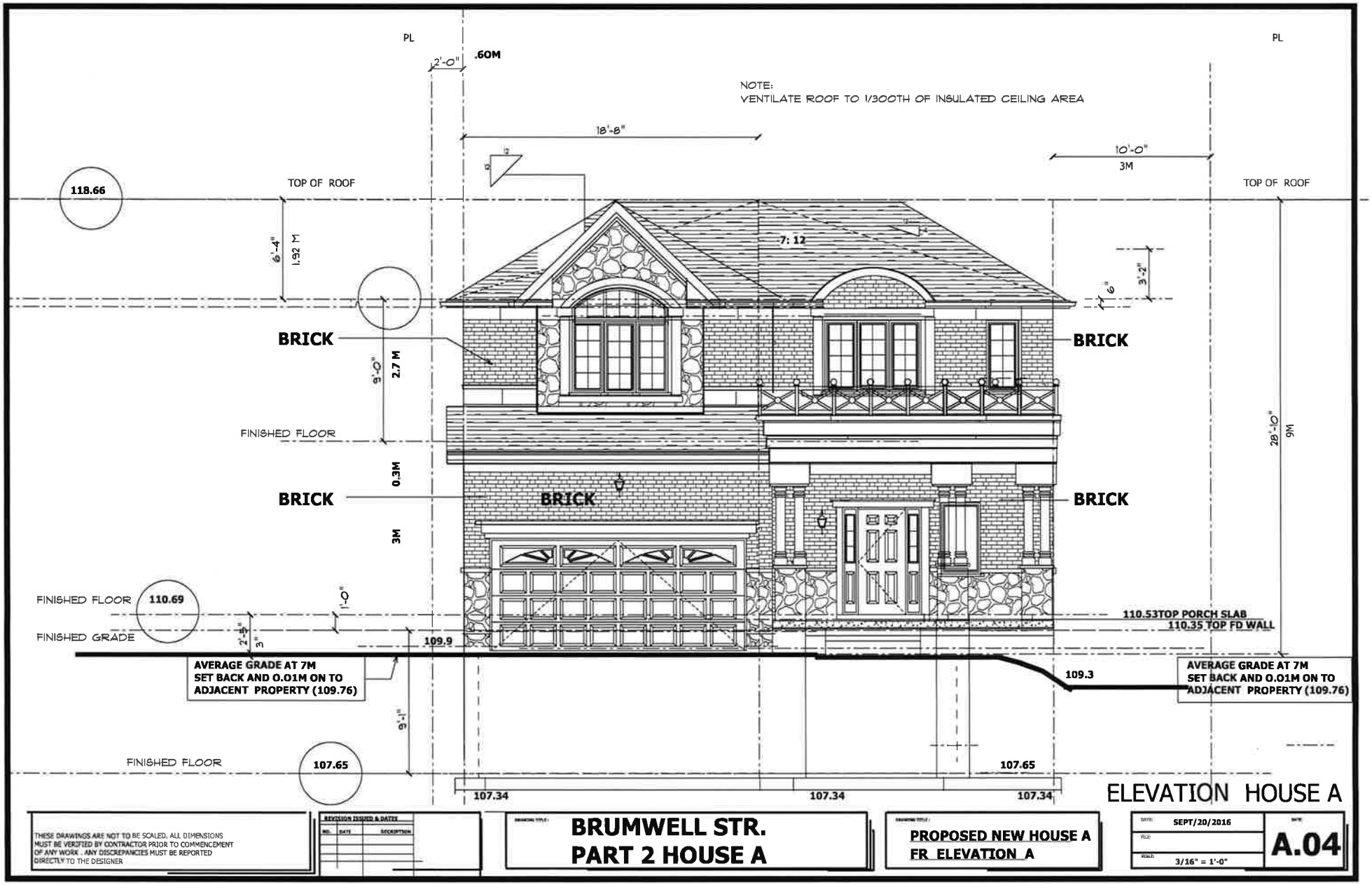
ATTACHMENT 4

Revised Site Plan Part 2 House A

ATTACHMENT 5

Revised Site Plan Part 1 House B


PART 1 (HOUSE 1)
LOT AEA = 475.53 msq
FRONT YARD CALCULATIONS
AREA : 152.9 MSQ
DRIVEWAY AREA :49.67 MSQ = 32% = 68% SOFT
STAIRS PORCH /WALK 7.9MSQ= 7% HARD 93% SOFT
REAR YARD CALCULATION
AREA : 122.87 MSQ
DECK & WALKUP= 19.6MSQ =15.95.% HARD & 84% SOFT
BRUMWELL STREET
30M
LOT AREA = 468.29 msq
FRONT YARD CALCULATIONS
AREA : 115 MSQ
DRIVEWAY AREA :39 = 33.9 % WLK 6.38 MSQ= 6% HARD 94% SOFT
REAR YARD CALCULATION
AREA : 122.87 MSQ
DECK & WALKUP= 22.63MSQ = 18.4% HARD & 81.6% SOFT
A+B= X/2= AVERAGE GRADE = 109.76
SOD
LANDSCAPE AREA A
IF EXISTING MAPLE REMOVE REPLACE WITH FAST GROWING TREE OF SIMILAR SPECIES AND CULTIVAR
ELEVATION AT 7.00M SET BACK .01M ON ADJACENT PROPERTY TO REMAIN
31.66 m
11.38m
PART1
PART 1 (HOUSE B)
F.FL L.= 110.84
BASEMT FLOO L 107.83
TOP FOUNDATION L.= 110.19
UNDER FTG FLOOR L.= 107.52
DRIVEWAY
PORCH
DECK
LOT GRADING PLAN OF
PART OF LOTS 26 & 27 , REGISTERED PLAN 3460
CITY OF TORONTO
(FORMALY THE CITY OF SCARBOROUGH)
15021m
PROPERTY LINE
LOT 27 REG PL. 3460
PART 2 (HOUSE A)
F.FL L.= 110.69
BASEMT FLOO L 107.65
TOP FOUNDATION L.= 110.35
UNDER FTG FLOOR L.= 107.34
DRIVEWAY
WALK WAY
PORCH
DECK
AVERAGE GRADE 109.76
15.021m
PLANT FAST GROWING TREE SIMILAR SPECIESAND CULTIVAR TO EXISTING MAPLE IN COMPLIANCE WITH CITY REQUIREMENTS
LANDSCAPE AREA B
31.66m
YULEWOOD GATE
ELEVATION AT 7.00M SET BACK .01M ON ADJACENT PROPERTY TO REMAIN
SITE PLAN
SCALE : 1" : 10'
PROJECT TITLE
PROPOSED NEW HOUSES
SITE PLAN PLAN
BRUMWELL STREET
A.00



ELEVATION HOUSE A

THESE DRAWINGS ARE NOT TO BE SCALED. ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORK . ANY DISCREPANCIES MUST BE REPORTED DIRECTLY TO THE DESIGNER

REVISION ISSUED & DATES

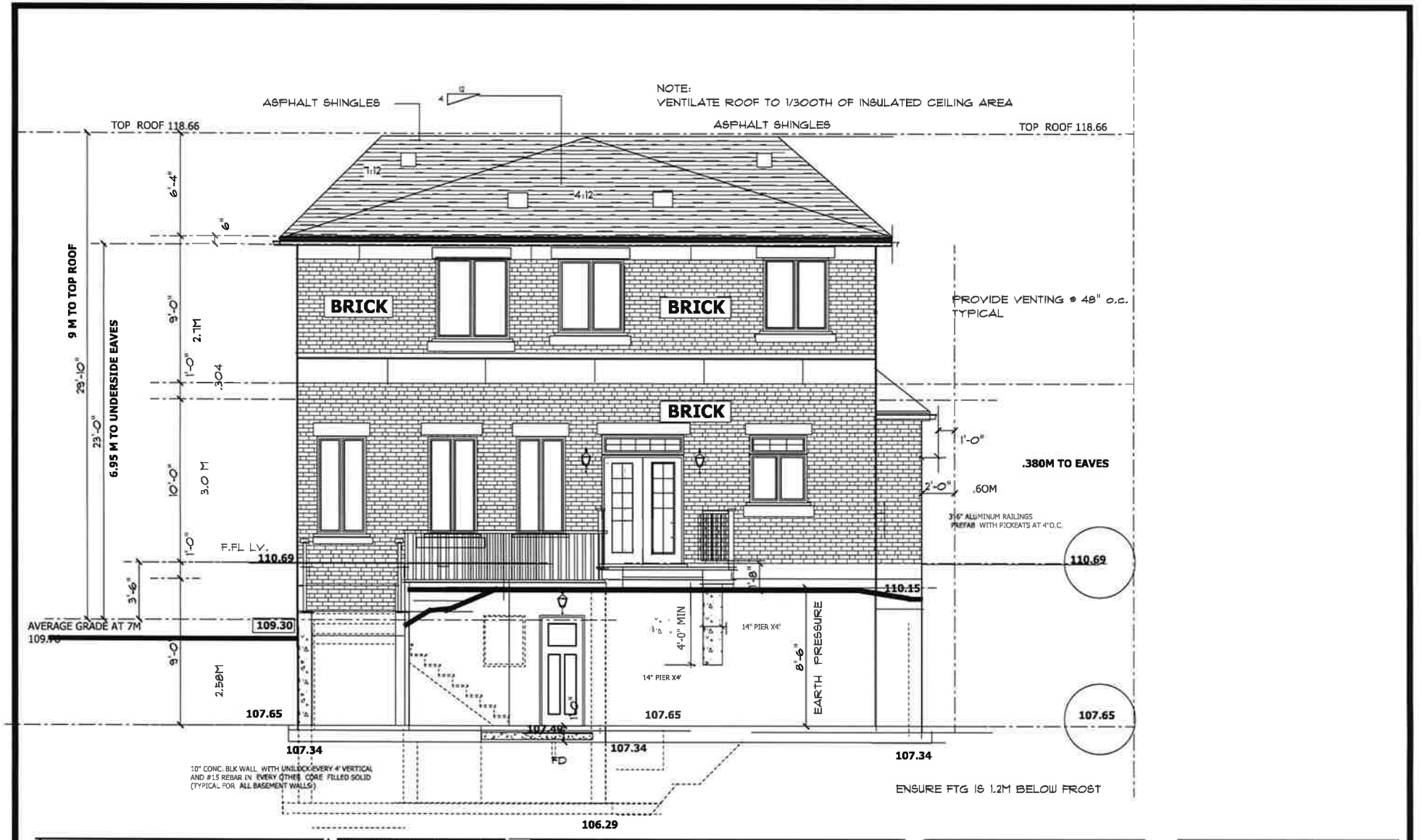
NO.	DATE	DESCRIPTION

BRUMWELL STR.
PART 2 HOUSE A

PROPOSED NEW HOUSE A
FR ELEVATION A

DATE: SEPT/20/2016
FILE:
SCALE: 3/16" = 1'-0"

SHEET: **A.04**



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NORTH

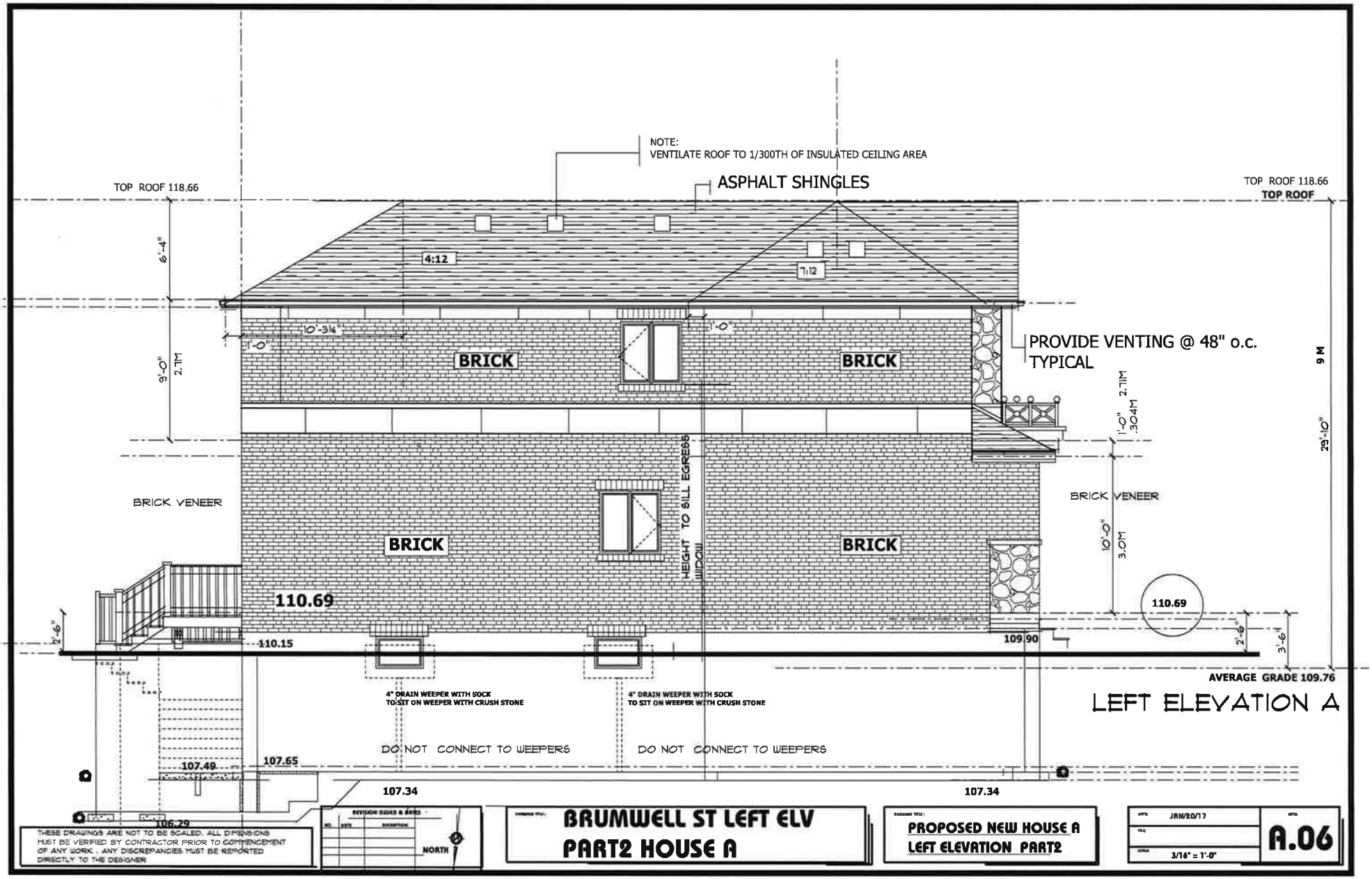
BRUMWELL STR.
PART2 HOUSE A

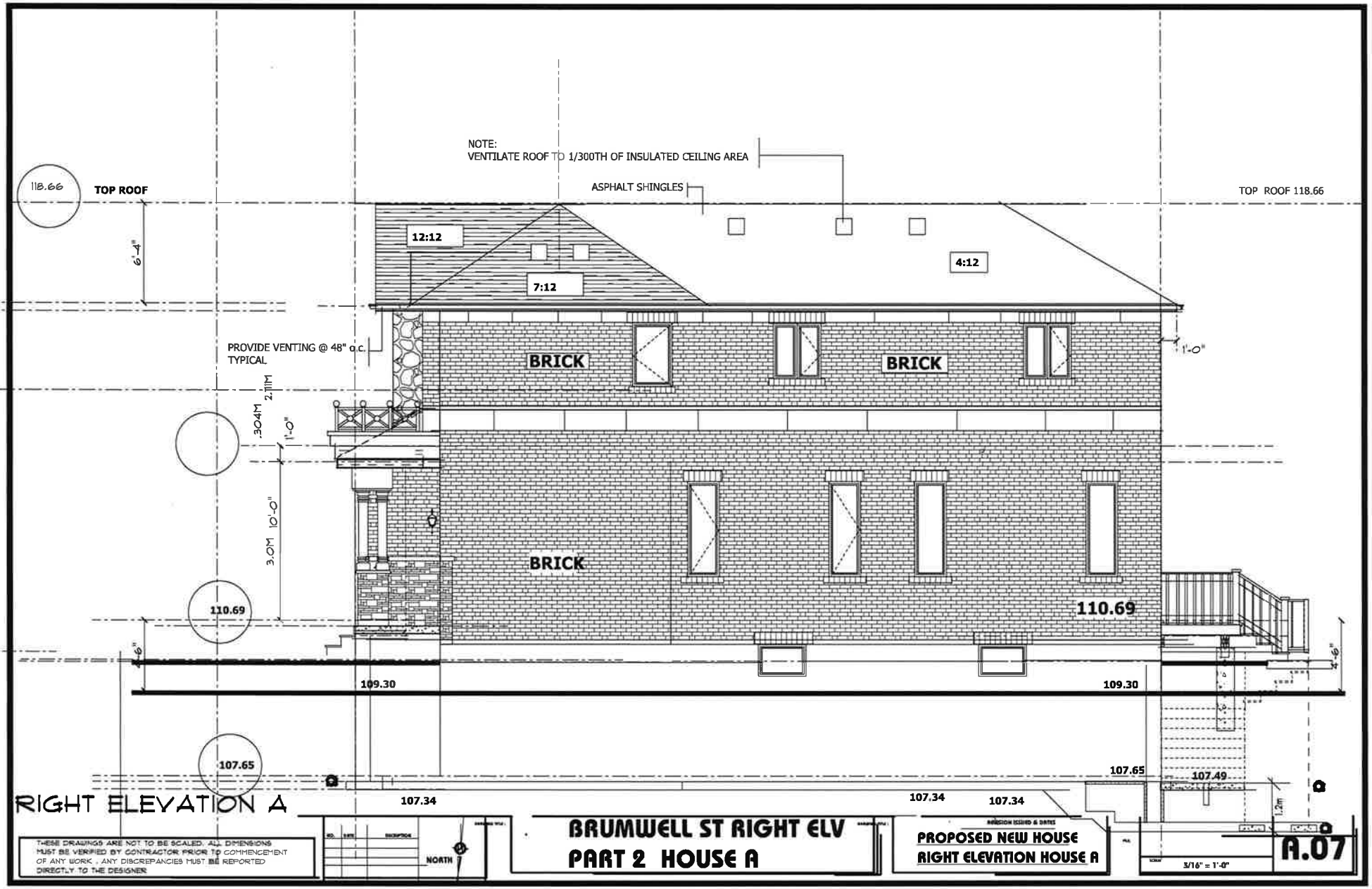
PROPOSED NEW HOUSE A
REAR ELEVATION

JAN/20/08

3/16" = 1'-0"

A.05


NOTE:
VENTILATE ROOF TO 1/300TH OF INSULATED CEILING AREA
ASPHALT SHINGLES
TOP ROOF 118.66
TOP ROOF 118.66
TOP ROOF
6'-4"
9'-0"
2.7M
4:12
7:12
10'-3¼"
1'-0"
1'-0"
BRICK
BRICK
PROVIDE VENTING @ 48" o.c.
TYPICAL
1'-0"
.304M
2.71M
9 M
29'-10"
BRICK VENEER
BRICK
BRICK
HEIGHT TO SILL EGRESS WINDOW
BRICK VENEER
10'-0"
3.0M
110.69
110.69
2'-6"
110.15
109.90
2'-6"
3'-6"
AVERAGE GRADE 109.76
4" DRAIN WEEPER WITH SOCK
TO SIT ON WEEPER WITH CRUSH STONE
4" DRAIN WEEPER WITH SOCK
TO SIT ON WEEPER WITH CRUSH STONE
DO NOT CONNECT TO WEEPERS
DO NOT CONNECT TO WEEPERS
107.49
107.65
107.34
107.34
106.29
LEFT ELEVATION A
THESE DRAWINGS ARE NOT TO BE SCALED. ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORK. ANY DISCREPANCIES MUST BE REPORTED DIRECTLY TO THE DESIGNER
NORTH
BRUMWELL ST LEFT ELV
PART2 HOUSE A
PROPOSED NEW HOUSE A
LEFT ELEVATION PART2
JAN/20/17
3/16" = 1'-0"
A.06



RIGHT ELEVATION A

THESE DRAWINGS ARE NOT TO BE SCALED. ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORK. ANY DISCREPANCIES MUST BE REPORTED DIRECTLY TO THE DESIGNER

NO. DATE DESCRIPTION

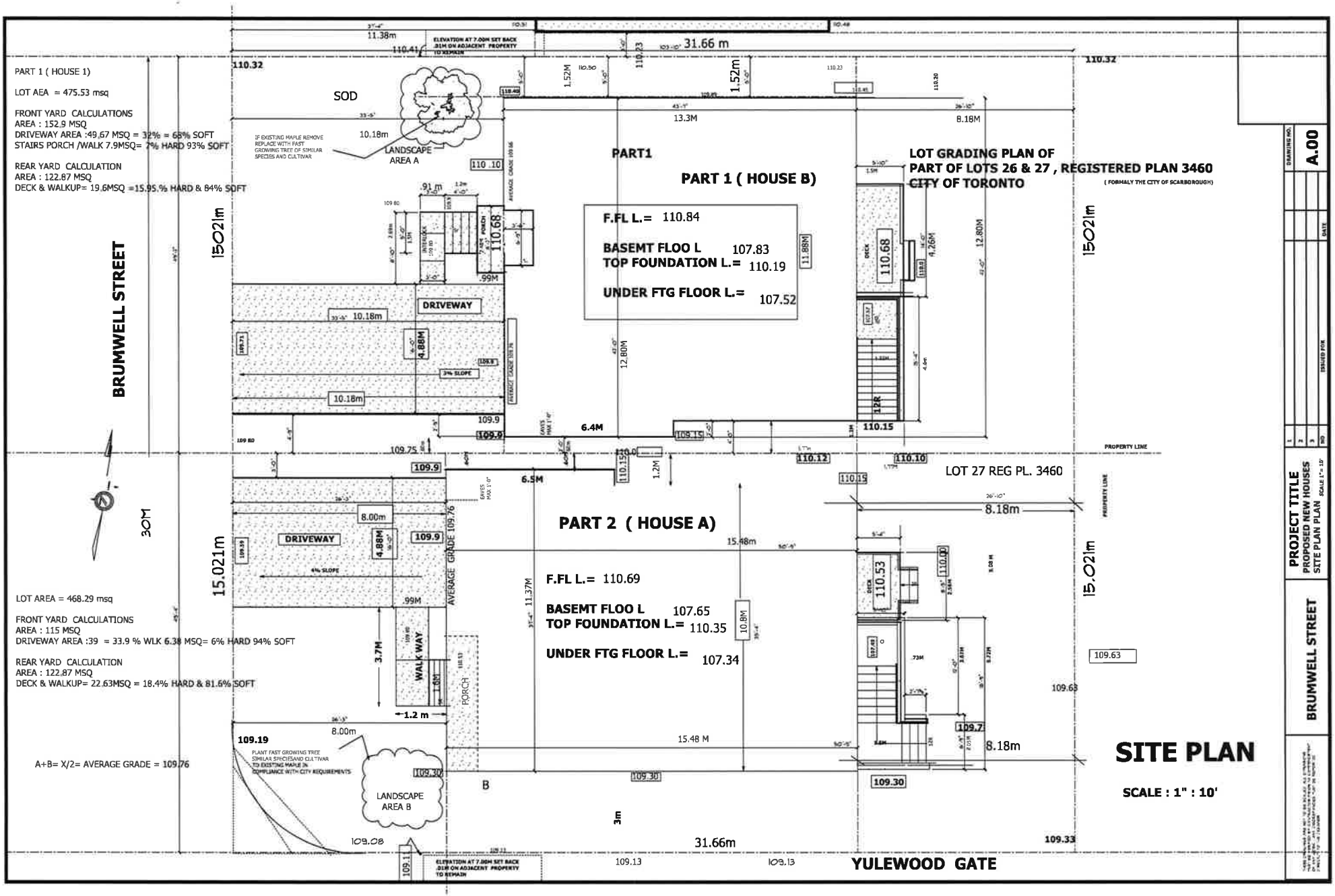
NORTH

BRUMWELL ST RIGHT ELV
PART 2 HOUSE A

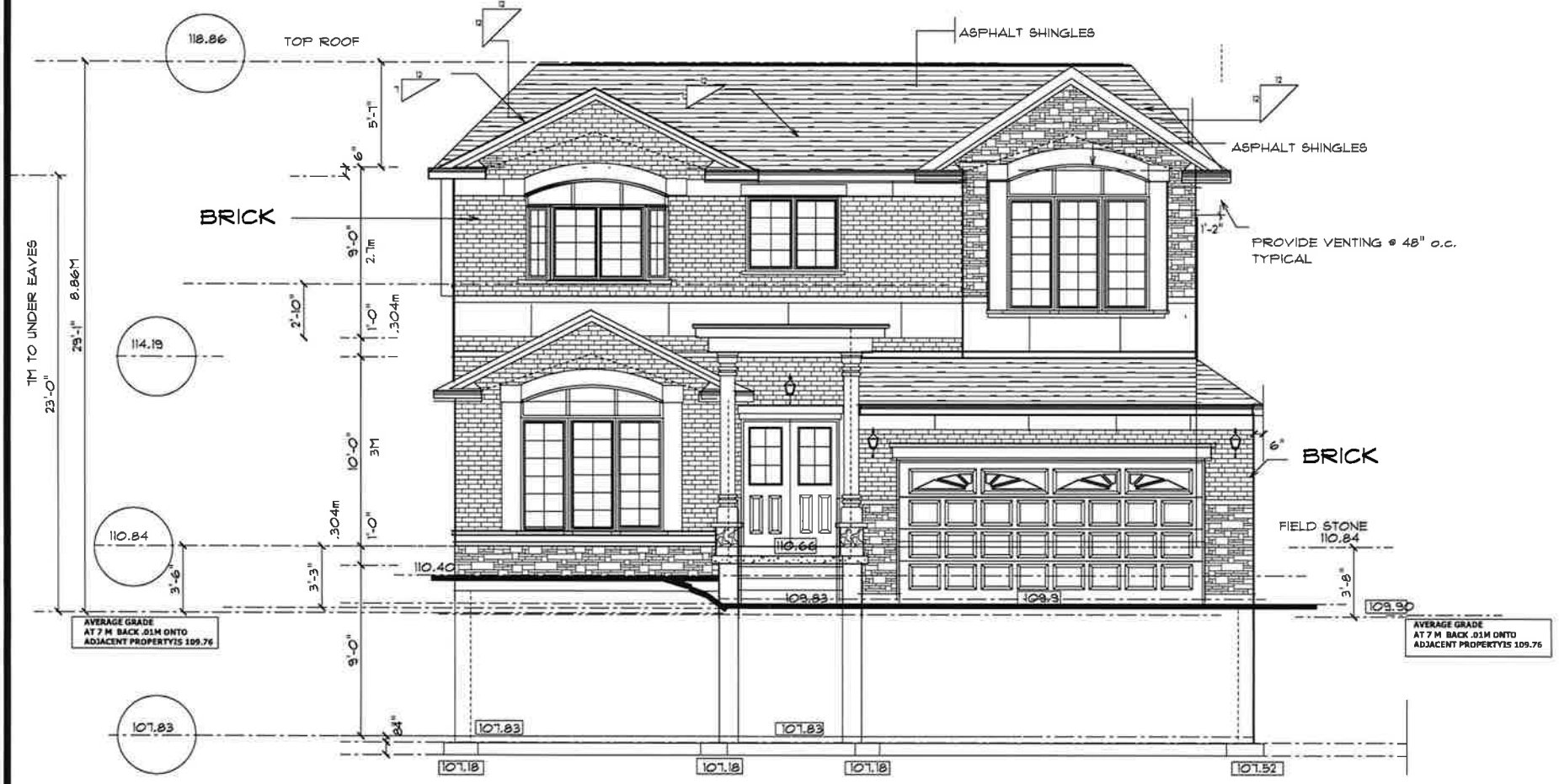
REVISION ISSUED & DATES

PROPOSED NEW HOUSE
RIGHT ELEVATION HOUSE A

A.07


PART 1 (HOUSE 1)
LOT AEA = 475.53 msq
FRONT YARD CALCULATIONS
AREA : 152.9 MSQ
DRIVEWAY AREA :49.67 MSQ = 32% = 68% SOFT
STAIRS PORCH /WALK 7.9MSQ= 7% HARD 93% SOFT
REAR YARD CALCULATION
AREA : 122.87 MSQ
DECK & WALKUP= 19.6MSQ =15.95.% HARD & 84% SOFT
LOT AREA = 468.29 msq
FRONT YARD CALCULATIONS
AREA : 115 MSQ
DRIVEWAY AREA :39 = 33.9 % WLK 6.38 MSQ= 6% HARD 94% SOFT
REAR YARD CALCULATION
AREA : 122.87 MSQ
DECK & WALKUP= 22.63MSQ = 18.4% HARD & 81.6% SOFT
A+B= X/2= AVERAGE GRADE = 109.76
BRUMWELL STREET
SOD
LANDSCAPE AREA A
LANDSCAPE AREA B
DRIVEWAY
WALK WAY
PORCH
PART1
PART 1 (HOUSE B)
F.FL L.= 110.84
BASEMT FLOO L 107.83
TOP FOUNDATION L.= 110.19
UNDER FTG FLOOR L.= 107.52
PART 2 (HOUSE A)
F.FL L.= 110.69
BASEMT FLOO L 107.65
TOP FOUNDATION L.= 110.35
UNDER FTG FLOOR L.= 107.34
LOT GRADING PLAN OF
PART OF LOTS 26 & 27 , REGISTERED PLAN 3460
CITY OF TORONTO
(FORMALY THE CITY OF SCARBOROUGH)
LOT 27 REG PL. 3460
PROPERTY LINE
AVERAGE GRADE 109.76
SITE PLAN
SCALE : 1" : 10'
YULEWOOD GATE
31.66 m
31.66m
15.021m
15.48m
15.48 M
10.18m
8.18m
8.00m
6.4M
6.5M
1.2 m
3m
PROJECT TITLE
PROPOSED NEW HOUSES
SITE PLAN PLAN
BRUMWELL STREET
A.00

NOTE:
VENTILATE ROOF TO 1/300TH OF INSULATED CEILING AREA



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DIVISION ISSUED & DATES

NO.	DATE	DESCRIPTION

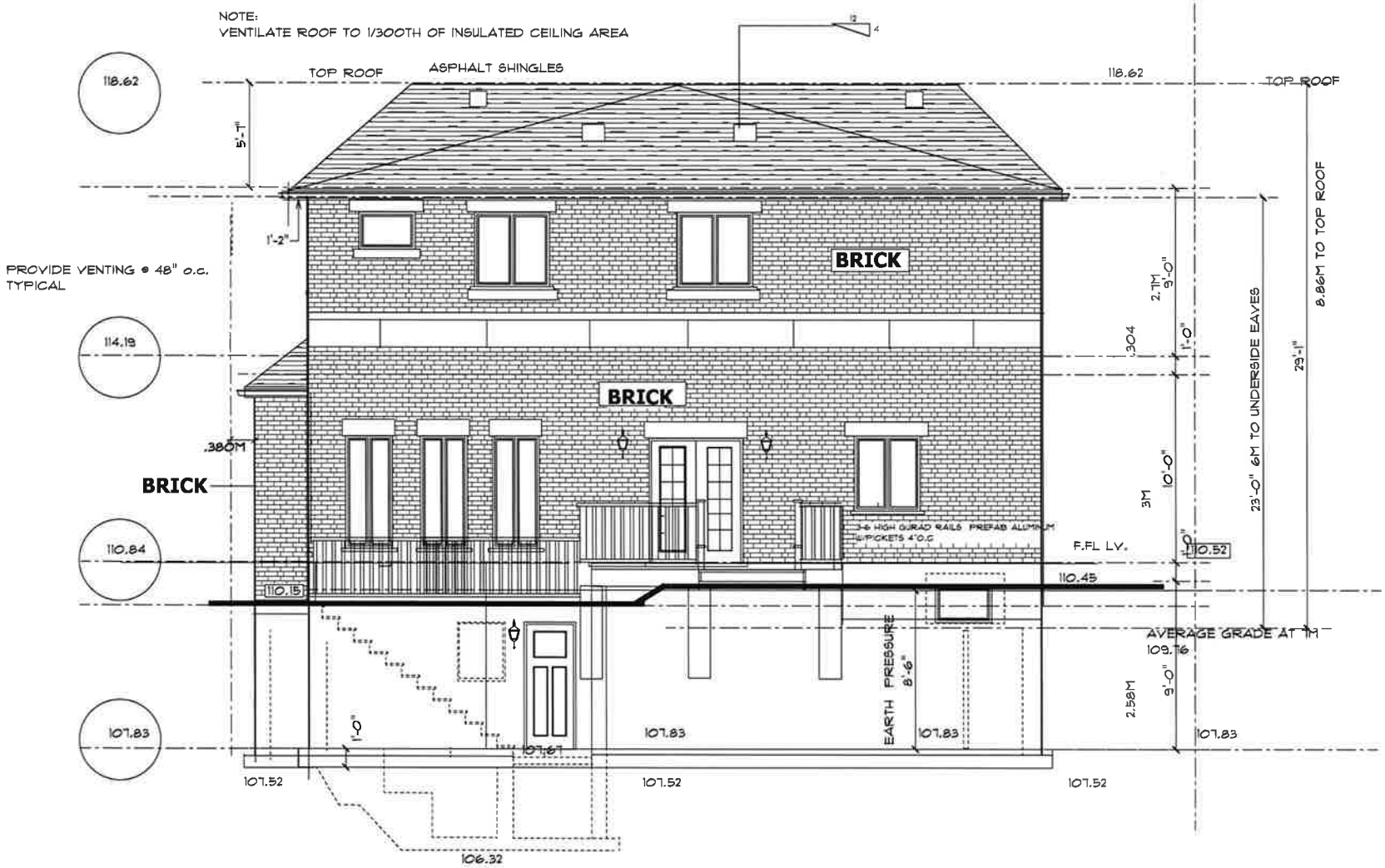
NORTH

BRUMWELL ST.
PART1 HOUSE B

PROPOSED NEW HOUSE B
FRONT ELEVATION

DATE: JAN/20/08
SCALE: 3/16" = 1'-0"

A.04



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REVISION ISSUED & DATES

NO.	DATE	DESCRIPTION

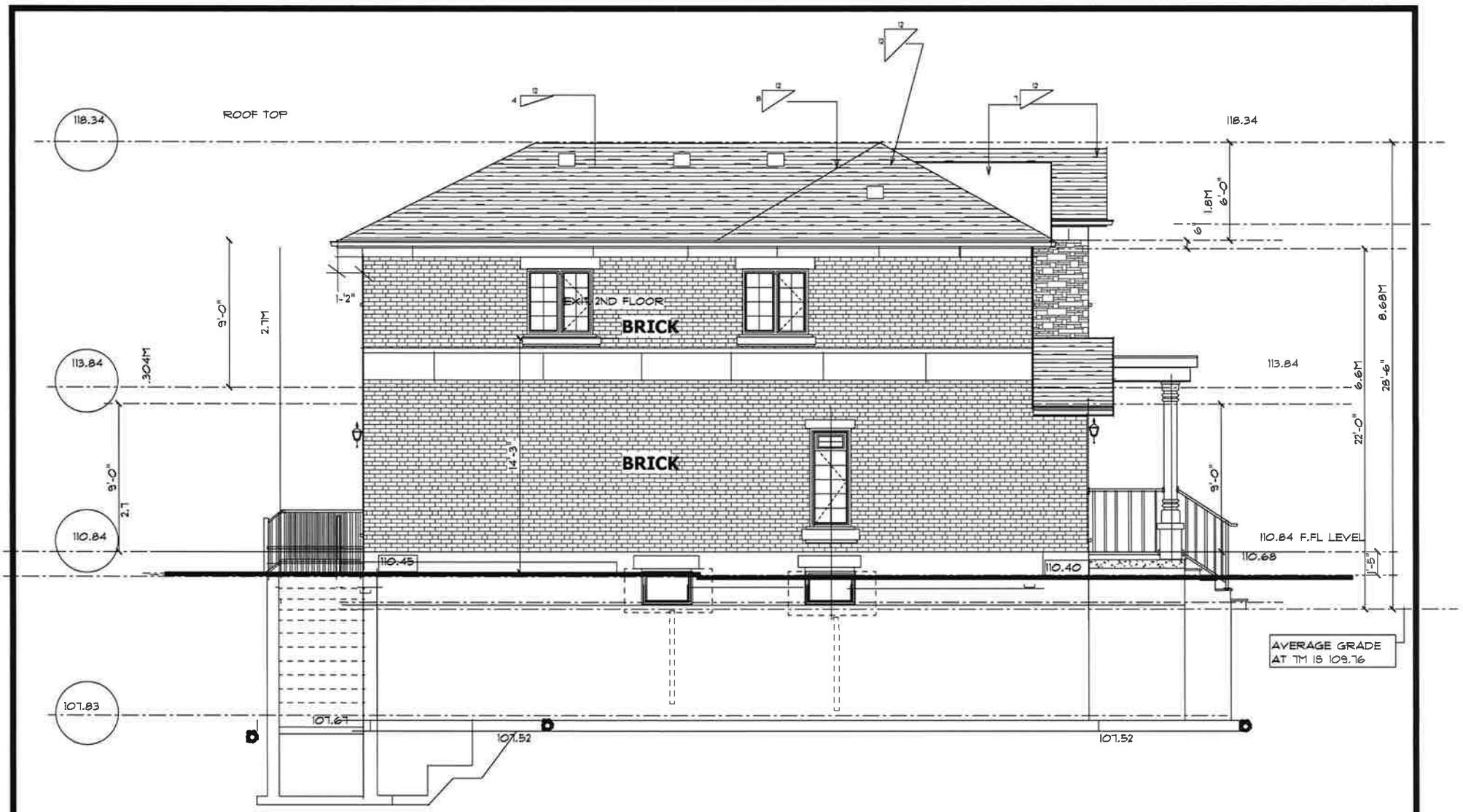
NORTH

BRUMWELL STREET
REAR PART 1 HOUSE B

PROPOSED NEW HOUSE
REAR ELEVATION PART1

DATE: JAN/20/08
SCALE: 3/16" = 1'-0"

A.05



THESE DRAWINGS ARE NOT TO BE SCALED. ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORK. ANY DISCREPANCIES MUST BE REPORTED DIRECTLY TO THE DESIGNER

REVISION ISSUED & DATES

NO.	DATE	DESCRIPTION

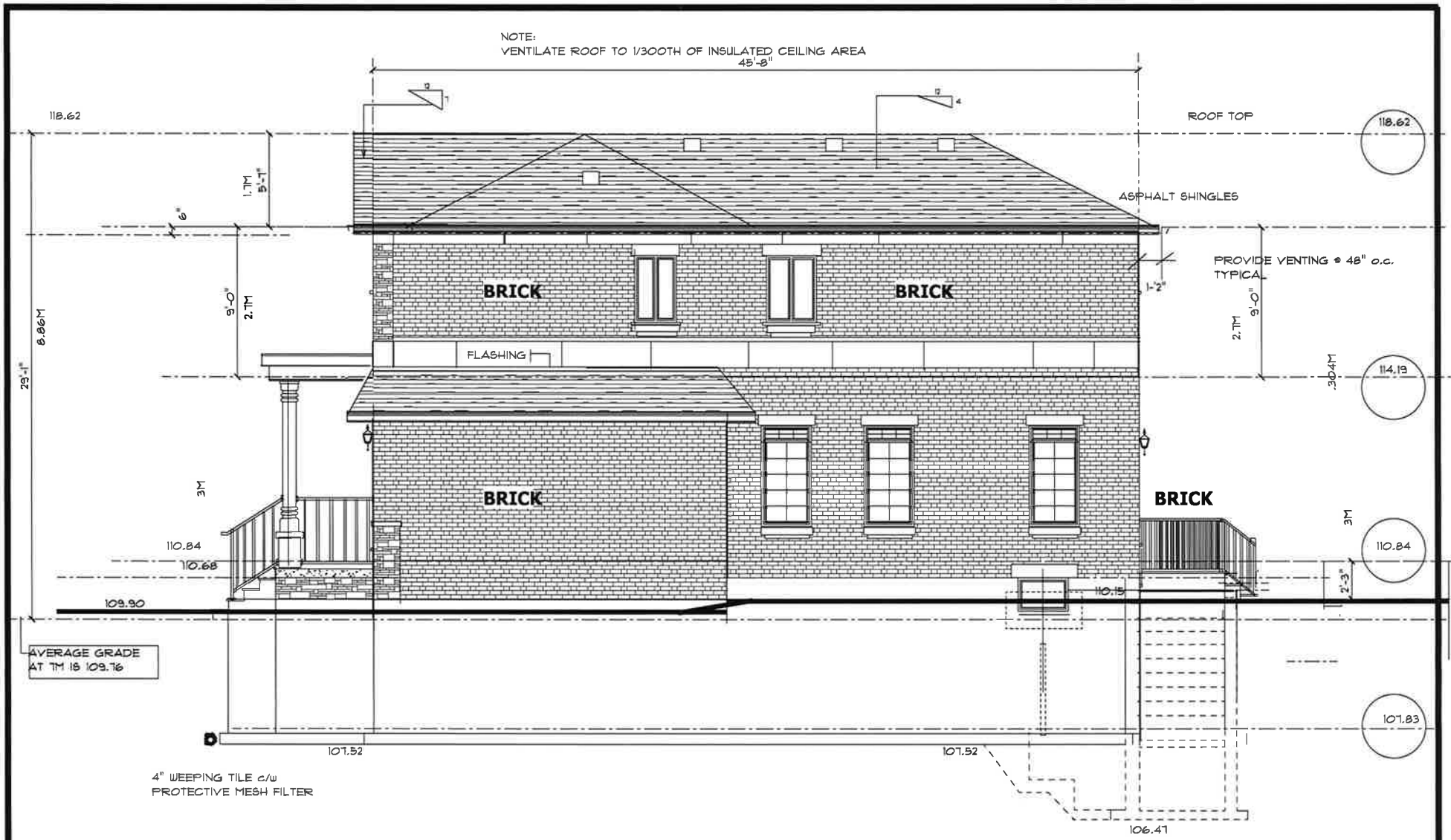
NORTH

BRUMWELL STREET
PART1 HOUSE B

NEW HOUSE
LEFTT ELEVATION

DATE: JAN/ED/08
FILE:
SCALE: 3/16" = 1'-0"

DWG NO: A.06



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REVISION ISSUED & DATES

NO. | DATE | DESCRIPTION

NORTH

BRUMWELL STREET
PART1 HOUSE B

PROPOSED HOUSE B
RIGHT ELEVATION SOUTH

DATE: JAN/20/06

SCALE: 3/16" = 1'-0"

A.07