

# DECISION AND ORDER

**Decision Issue Date** Monday, February 4, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Applicant/Appellant: Dionisios Dimitrios Kosmatos

Property Address/Description: 8 Parklea Dr

Committee of Adjustment Case File: 18 137509 NNY 26 MV

TLAB Case File Number: 18 170140 S45 26 TLAB

**Hearing date:** Wednesday, October 10, 2018

**DECISION DELIVERED BY G. Burton**

## APPEARANCES

Name	Role	Representative
Dionisios Kosmatos	Applicant/Appellant/Owner	Matthew Di Vona
Liana Kosmatos	Owner	Matthew Di Vona
Jane McFarlane	Expert Witness – Planning	
Angela Lam Perieteanu	Participant	
Jeffrey Yim	Participant	
Sarah Zimmerman	Participant	
Geoff Kettel	Participant	
Bryan Eckel	Participant	

This is an appeal to the Toronto Local Appeal Body (TLAB) of a May 17, 2018 decision of the Committee of Adjustment (COA), by the owners of the property at 8 Parklea Drive in Leaside (in the Eglinton Avenue East and Laird Drive area). This decision refused the applicants' request for variances to construct a new two-storey detached dwelling with an integral garage.

## BACKGROUND

The subject property is located on the north side of Parklea Drive, west of Laird Drive and south of Eglinton Avenue East, and east of Bayview Avenue. Parklea is a local east-west street three blocks long. It ends at Hanna Rd. to the west, and Laird Dr. to

the east. The property is designated Neighbourhoods in the City of Toronto Official Plan (OP), and zoned RD (/72.0; a370; d0.6,) in the City of Toronto Zoning By-law No. 569-2013 (the New By-law) and R1B in the former Leaside By-law No. 1916 (the Leaside By-law). Its dimensions are 9.14 m in frontage and area is 376.1 sq. m.

There were 19 variances sought at the COA for the proposed construction. As a result of the appeal decision approving most of the New By-law, the owners have been able to reduce the number sought from the TLAB to 9 under the New By-law, and to only one under the Leaside By-law.

Five persons who had selected Participant status in this appeal took part in the hearing.

## **MATTERS IN ISSUE**

The TLAB must determine the usual issue respecting whether the variances meet the statutory tests. However, in this matter, the appropriate neighbourhood to be used for this assessment was a particular focus. As well, most participants raised the question of the effect of the Leaside Design Guidelines on the proposal.

## **JURISDICTION**

Respecting the variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area. Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

## **EVIDENCE**

The owners' planning evidence was presented by Ms. Jane McFarlane, a very experienced professional land use planner. She outlined the extent of a Study Area

(SA) that she chose for evaluation of whether the proposal met the criteria in the Official Plan, as well as the intent of the applicable By-laws.

Many of the variances sought at the COA can now be eliminated, due to the March 1, 2018 OMB (now LPAT) approval of most of the New By-law. The only provisions of the Leaside By-law remaining are a height limitation (and regulations concerning parking, not applicable here). Therefore the variances remaining to be considered for this proposal, as verified by the latest Zoning Examiner's Notice (Ex. 2) are:

1. 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 0.3 m of a building, must comply with the required minimum building setbacks for the zone: 1.2 m side yard setback.  
The proposed west side yard setback to the front porch and rear deck is 0.468 m.

2. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013

The permitted maximum front main wall height is 7.0 m for no less than 60% of the total width of all front main walls.  
The proposed front main wall height is more than 7.0 m for 44% of the total width of all front main walls, and below 7 meters for the remaining width.

3. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013

The permitted maximum rear main wall height is 7.0 m for no less than 60% of the total width of all rear main walls.  
The proposed rear main wall height is 7.27 m for 36% of the total width of all rear main walls, and 7 metres for the remaining width.

4. Chapter 10.20.40.20.(1), By-law 569-2013

The permitted maximum building length for a detached house is 17.0 m.  
The proposed building length is 17.98 m.

5. Chapter 10.20.40.40.(1)(A), 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 0.67 times the area of the lot.

6. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The required minimum side yard setback is 1.2 m.  
The proposed west side yard setback is 0.468 m

7. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The required minimum side yard setback is 1.2 m.  
The proposed east side yard setback is 0.9 m.

8. Chapter 10.20.30.40.(1)(A), By-law 569-2013

The permitted maximum lot coverage is 35% of the lot area.  
The proposed lot coverage is 37% of the lot area.

9. Chapter 10.5.40.60.(7), By-law 569-2013

The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9m if they are no closer to a lot line than 0.3 m.  
The proposed eaves encroach 0.99m into the required west side yard setback of 1.2m and are 0.21 m from the west side lot line.

**10. Section 6.3.3, By-law 1916**

The maximum permitted building height is 8.5 m.  
The proposed building height is 8.8 m

Ms. McFarlane outlined the physical context of the street. The properties on Parklea Drive have consistent front yard setbacks, partially landscaped front yards and many paved parking pads. Parklea Drive is a mix of original two-storey dwellings and newer two-storey rebuilds to the east of Rumsey Rd. (the first street to the east of the subject.) She then provided the history of the application and appeal, focusing on the alterations made to the variances now before the TLAB. The updated Applicant Disclosure was filed as Exhibit 3, and the Building Plans were filed as Exhibit 4. The front elevation and the integrated architectural package, dated September 18, 2018 have not changed since they were presented to the COA, she emphasized.

Variance 1 would permit the minor intrusion of the front porch and rear deck into the side yard setback next to 6 Parklea to the west, Mr. Yim's property. Variances 2 and 3 would allow the dormer windows proposed in the roof to extend beyond the height restrictions in the New By-law. In Ms. McFarlane's opinion this as a minor technical variance only, caused by the inclusion of a gable and dormer design in the roof area. Number 4 for length addresses the slight extension of the dwelling to the rear, measured from the front garage projection to the rear wall. This would be only .68 m more than the By-law requirement. It would not intrude into the rear yard setback. Variance 5 would allow for increased GFA/FSI, from the By-law's 0.60 to 0.67 of the lot area. This was reduced from 0.703 times the lot area in response to the Planning Staff's recommendations, and is acceptable to accommodate today's larger family requirements.

Variances 6 and 7 deal with slight decreases in the permitted side yard setbacks – under only the Leaside By-law, the east side yard would be 0.9 m. (the west side will be dealt with later.) This provides adequate access to the rear, as the existing garage would be removed, leaving a greater distance at the east side. Lot coverage in 8 would be increased to 37%, 2% over the permitted 35%. An eaves encroachment in Variance 9 is needed only for the west side. The extension would be only over the subject property, and not over No. 6 Parklea. There is a slight overall height exceedance over the Leaside By-law (only), of 8.8 m rather than 8.5 m. No height variance is required under the new By-law.

Respecting Variance 6, the side yard setback beside No. 6, she explained that a cutback or cutout is proposed in the new dwelling wall. The present setback of the current dwelling is only 0.45 m. A 4.47 m portion (only) of the new wall would be at 0.722 m, instead of the By-law requirement of 1.2 m. It would in fact be further away from No. 6 than the existing building. She found many decisions shown in the CAO files where variances were granted for even smaller side yard setbacks. There is no window

in this west wall, preserving privacy and overlook. A 1.8 m privacy screen is proposed for the small rear yard deck. This side yard variance is not duplicated on the east side, due to an anomaly in the New By-law discussed below. No. 10 to the east is presently only 0.41 m and 0.46 m from its own west lot line. There is an existing detached garage to the rear of the subject, next to No. 10 and less than a metre from the side lot line, that would be demolished. There are windows on the east side, but not in the rear portion.

There is no variance required for the proposed integral garage or a negative slope. As expressed by Planning Staff, although the proposed garage is technically below grade under the Leaside By-law, the property slopes upward from the street to the garage. The proposed garage floor is higher than the crown of the road in front of the property, resulting in a driveway floor with a positive slope rather than a reverse slope.

Ms. McFarlane introduced into evidence many photos taken within the Study Area (SA) she had chosen (illustrated in Ex. 1, Attachment 7). This SA was based on the principle of a short walk or a 500 m radius, as is usual in determining a neighbourhood for OP purposes. Here the south side of Eglinton is the northern boundary, then the west side of Laird Dr. excluding the mainly commercial/industrial structures on the west side. It would extend south on McRae to Millwood, both busy collectors. She noted subtle changes on paper in the applicable zoning categories throughout. These can be seen in built form changes with smaller frontages and areas. Both the Leaside and the New By-law have corresponding zoning categories, but different terminology – where the New is RD9 and RD12 for frontage, the Leaside By-law categories are R1A and R1B. No decisions were included in her Decision Chart for the properties within the RD (F9.0; a275; d0.45) / R1A or the RM (d0.6) / R2A zone, as there are slightly different zoning regulations in these zones and it would not be a true comparison. It is important to note that the regulations associated with these zones call for less than that of the zoning applicable to the subject property.

She sees gradual regeneration by rebuilds and additions throughout her SA. Both older and new co-exist in harmony here. Although Ms. McFarlane introduced an exhaustive series of photos throughout her SA, she sees a “vicinity” here in the two blocks on Parkside between Hanna Rd. at the west and Sutherland Dr. to the east, as well as those structures in proximity to 8 Parklea on Hanna. She went on to describe in detail the existing and newer developments in these nearby properties. No. 6 to the west has an integrated garage, with two sets of stairs to the front, more than the subject proposal. No. 10 to the east is a large structure with an elevated front entrance, but she was unable to find any COA approval to indicate specific measurements. There is a significant mix of older and newer rebuilds close by. These include 207 Hanna on the east corner of Parklea, which is quite large, and 206 Hanna across on the west that is very large in this context, with an integral garage. She testified that integral garages are frequent here, part of the changing neighbourhood character.

While many “traditional” Leaside homes are a significant presence in this area, with pitched rooves, dormer windows, sloped primary roofs, and garages, sometimes integral but usually to the side or rear. The newer designs of replacement homes or additions have integral garages, tighter side yard setbacks, and centralized, elevated front entrances – many of these can be seen on Sutherland Drive to the east.

To assess the variances requested, she prepared a chart of COA and OMB approvals of similar variances, for length, FSI, side yard setbacks, and for height under the Leaside By-law (Ex. 1, para. 50 et seq.). There have been many variances granted that exceeded these By-law requirements. As one example, No. 31 Parklea was granted the height of 9.1 m (Leaside By-law), FSI of 0.64 and length of 17.93 m. An integral garage was also approved (when this variance was still required). Side yard setbacks of 0.9 and 0.99 m were permitted for 31, as the Leaside By-law requires 0.9 m (as for the east yard in the present application.) No. 31 could be rebuilt to these approved dimensions if desired, and so it is part of the planned context. Many more variances would be required for this structure if application had been made after the New By-law was enacted in 2013. The subject application asks for only 17.98 in length, just 5 cm longer than 31.

Another example from her chart is 138 Hanna Rd. further south, granted a length of 21.82 m, side yard setbacks of 0.9 m, height of 8.92 m, and FSI slightly lower than that proposed for the subject, 0.63 (vs. 0.67 x). 206 Hanna (within a half block) is another example of larger new development – height of 8.84 m, smaller side yard setbacks at 0.6 and 0.45 m. and FSI of 0.65 x.

After consideration of the provincial planning documents, Ms. McFarlane opined that the proposal is consistent with the PPS's intent, and conforms with Growth Plan. It provides intensification an appropriate level and location, and creates space for a growing family.

**City of Toronto Official Plan:** Respecting the test of meeting the general intent and purpose of the OP, Ms. McFarlane considered many policies, beginning with 3.2.1, Housing. This would meet the goal of a full range of housing to provide for the current and future needs of residents (3.2.1.1). New housing is encouraged through intensification and infill that is consistent with the OP (3.2.1.2). This proposal replenishes the housing stock in an existing neighbourhood, in a form that is compatible with its character.

Section 3.4.1 deals with the Natural Environment, seeking to preserve and enhance the urban forest by: providing suitable growing environments for trees, increasing tree canopy coverage and diversity, and regulating the injury to and destruction of trees (3.4.1(d)). Urban Forestry had commented to the COA that the proposed driveway parking space and access would require the destruction of a city-owned Norway maple tree in the boulevard, which Urban Forestry opposed. It went on: "Injury or destruction of this tree is not required to accommodate access to a parking space located in an integral garage. The tree can be retained by aligning the access within the existing driveway footprint ....."

The owners then hired a professional arborist to ensure that this policy would be addressed, and it will be respected through the permit process. Four trees would be preserved. The present driveway and curb cut would not be altered. No portion of the proposed dwelling would be close to this City tree. Ms. McFarlane later clarified that the tree, of concern to Mr. Yim particularly, was in fact located entirely on City land to the south, and not on the subject property. This is confirmed in the Urban Forestry Report.

Section 4.1 of the OP contains the land use policies for the Neighbourhoods designation. This designation is intended to contain a full range of residential uses within low scale buildings: detached houses, semi-detached houses, duplexes, triplexes and townhouses that are four storeys or less.

The criteria for evaluating new development in Neighbourhoods are found in 4.1.5. New development will respect and reinforce the existing physical character of the neighbourhood, including:

- a) patterns of streets, blocks and lanes, parks and public building sites;*
- b) size and configuration of lots;*
- c) heights, massing, scale and dwelling type of nearby residential properties;*
- d) prevailing building type(s);*
- e) setbacks of buildings from the street or streets;*
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;*
- g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and*
- h) conservation of heritage buildings, structures and landscapes.*

Other OP policies and commentary recognize that change within neighborhoods will occur gradually, and that such change should fit within the general physical character of the neighborhood.

In 2003, residents and City staff had devised “Residential Character Preservation Guidelines for House Renovations, Additions and Infill Development in the Community of Leaside” (Leaside Guidelines). These were not adopted as zoning regulations. As set out on page 2:

“They are not intended to mandate a specific design but rather to provide approaches, which are to be applied in a flexible manner in conjunction with other site specific considerations. ....(They are) design principles... for how to extend these attributes to new development.”

Ms. McFarlane took us to page 1 of this Guideline, to the photo on the lower right, where the design elements are quite similar to the proposed: integral garage with living space above, sloped pitched roof line, front gable bay window and elevated front stoop. In her opinion the proposed dwelling included many of the key elements of such design, and so respected the Leaside Guidelines.

It is important to note that the COA and the TLAB on appeal have no comprehensive power to regulate or adjudicate upon architectural style. Mr. Kettel’s argument to the contrary is dealt with below.

In Ms. McFarlane’s opinion, the proposed dwelling is generally consistent with others on the same block and area, and meets the applicable development criteria above:

- c) The height, massing, scale, and dwelling type is consistent with nearby residential properties;

- d) The single detached dwelling is consistent with the prevailing building type;
- e) The dwelling has consistent front yard setback with the two adjacent dwellings;
- f) The rear and side yard setbacks are consistent with prevailing patterns in the area; and
- g) The proposed design incorporates design elements including pitched roofs, dormer windows and a front 'stoop' that respect the historical character of the area.

The side yard setbacks are consistent with or better than the existing structures. Similar distances have been granted in the decisions listed in Ex. 1, para. 50 etc. There had been mention of the driveway requiring a variance for a 2% negative slope, but the architect confirmed on page 1 of the Site Plan (Ex. 4) that the driveway in fact has a positive slope, and would remain as such. The By-law measures the driveway slope from the property line, and it is indeed a positive slope. A shadow study was undertaken, even though none is required for this type of dwelling. It illustrated no significant increase in shadowing above the as of right conditions (Ex. 9). There would be even less shadow than the as of right in the north-west corner, next to No. 6, and also less than that caused by the present garage near No. 10.

Participants had noted concerns with storm water management and flood control. Ms. McFarlane testified that these were matters dealt with by the Building Department upon a building permit application. Development Engineering had not commented, and they would have done so had they any objections.

Schedule B of the OP, part of the Site and Area Specific Policy #305, identifies the Leaside neighbourhood as a potential future Heritage Conservation District. It appears that Staff have been directed to undertake a Cultural Heritage Resource Assessment Study for Leaside. However, there has been no listing or designation of this area or property to date. In any event, she stated, the proposed design essentially meets the historical designs in Leaside, with the pitched roofs, gables, dormer windows and front stoops. Ms. McFarlane considered the effect of the adopted but not approved Amendment 320 to the OP, which she said would reinforce the Neighbourhood policies but not change her conclusions here.

**The Zoning By-laws** By-law 569-2013 zones the subject property as 'Residential Detached – RD (f12.0; a370; d 0.6)', permitting a single detached dwelling on a lot with a frontage of 12 m., a lot area of 370 sq. m., and a maximum density of 0.6 FSI. In addition, it is subject to a maximum length of 17 m, and a lot coverage of 35%. The subject lot has a frontage of 9.14 m (and an area of 376 sq. m.), and so has an undersized lot frontage. The Leaside Zoning By-law zones it 'Residential One B (R1B)', and a single detached dwelling is permitted on a minimum frontage of 12 m, area of 370 sq. m., and a density of 0.6 FSI. The maximum height is 8.5 m and length of 16.75 m., and a maximum lot coverage is 35%.

Ms. McFarlane provided the opinion that the variances met the four tests in the Act. The OP Housing, Neighbourhood and Natural Environment policies were satisfied. The height limitation in the Leaside By-law is almost met, and no such variance is required



under the New By-law. (The difference results from the differing ways of calculating grade – average in Leaside, and established in the New.) The variances are desirable and appropriate for the street and the neighbourhood, where a gradual transition is occurring and side yards are becoming smaller while massing is increasing. They are minor in scope numerically, having been reduced to very small increases, and create no unacceptable impact. In fact, the spacing on the west side of the dwelling will be improved.

### **Objections and responses:**

There had been seven letters in opposition to the proposed variances at the COA, and six persons requested Participant status at the TLAB. Ms. McFarlane stated the main concerns as:

- Height of the proposed dwelling;
- Privacy concerns for surrounding properties;
- Possible removal of the tree in the front yard;
- Location and appearance of the proposed integral garage; and
- Incompatibility with the heritage character of the area.

**Mr. Kettel:** The main evidence in objection was provided by Mr. Geoff Kettel, who has a professional background in planning (B.Sc. and M.Sc. in Geography, and an MBA) and long experience in Leaside planning matters. He has lived close by the subject property at 129 Hanna Road since 1981. He has taken a very active role in development applications throughout the area: Co-President of the Leaside Property Owners' Association (LPOA); Co-Chair of the Federation of North Toronto Residents Associations (FoNTRA); Chair since 2010 of the North York Community Preservation Panel and Member of the Toronto Preservation Board. He has also presented "informed and objective planning evidence" at hearings before the COA, the OMB, and the TLAB since last September.

He termed the proposed reductions in the earlier variances "trivial". The dwelling would still present as a three-storey structure due to its height and massing. It would contravene the Leaside Guidelines, and especially the height and density limitations in the 2013 By-law. These were intended to reduce such massing and to preserve streetscapes. The proposed 0.67 GFI would show on the street. He called it a "jumped-up" design, objecting to the reduced side yard setbacks, the lot coverage (such variances are unusual in Leaside, he stated), the possibility of water runoff, and what he called a "pit" to be dug for the integral garage and driveway. There is an underground creek on this north side, he stated. Creating the garage would lead to a lowering of the driveway, in his opinion, which was against the finding of Urban Forestry respecting tree removal.

He objected fundamentally to Ms. McFarlane's choice of the neighbourhood for assessing compliance with the OP. He said it amounted to "half of Leaside", and he would choose instead both sides of this single block of Parklea, between Hanna and Rumsey to the east. It would also be acceptable, he conceded, if it continued east to Laird, but this smaller area better illustrated the character of the neighbourhood. If there

were alterations lot by lot, the character of this neighbourhood would be lost. He called this a massive structure, which did not meet the Leaside Guidelines – it was a superficial copying of them, but had no sensitivity to the surrounding massing and scale, and is proposed for a narrow, non-complying lot. New construction should meet the by-law requirements. He termed the reductions made by the applicants insignificant, and the proposal should have been illustrated in an elevation showing nearby dwellings.

Mr. Kettel had specific objections to the side yard setbacks, saying they did not improve but exacerbated access to the rear. Together with a “three storey wall”, access to the east would be far worse, even if the garage is demolished. He would prefer a separate garage in general, and not an integral unless the lot is over 30 or 35 feet wide. An integral such as proposed contributes significantly to the massing and a higher structure. He conceded that the Leaside area was not yet a designated Heritage District, although he works to preserve it to the extent he can.

In cross examination he confirmed that the LPOA membership had not voted to oppose this proposal. Mr. di Vona asked him if he could in fact provide independent opinions on this matter, since he lived very near the subject land, and thus had an economic interest. He did not agree. He stated that his “study area”, unlike even Ms. McFarlane’s few blocks, would be limited only to the 20 properties in this block on both sides of Parklea. He called it a small, secluded street that has “kind of a beginning and an end”. He later characterized it as a walkable area that has a similarity to it. He did accept that the height variance for front and rear wall heights related to a very small segment of the design, just the peak of the gable and dormer, and did not represent a large increase in height overall. He refused to discuss individual properties where greater length variances were granted. He also resiled somewhat from his opinion that there would be a pit in the driveway, as it would indeed be a positive slope and in its present location.

He emphasized that while strictly speaking, architectural design could not be dictated by planning authorities, “design” can indeed be considered under policy 4.1.5 g) of the OP - g) *continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood*;... He stated that architectural elements form part of the physical character of the neighbourhood. He disagreed with Ms. McFarlane’s statement that the photo cited in the Leaside Guidelines showed an integral garage with living space above; he called it a reasonable side addition to a centre hall home.

**Mr. Jeffrey Yim** lives at No. 6 Parklea Drive to the west of the subject property with his family, including two young boys who enjoy their back yard. He has many concerns about the proposal, chief among them the height of the rear deck at 6 ft. 1 in above the ground, which together with the proposed privacy screen would be 12 ft. 6 in. next to his rear yard (he did a mock up photo to illustrate this.) It would be a privacy threat at that level. He also objected to the design of the front elevation and the steps, and to stairs within the dwelling’s first floor, creating a high level which forced the rear deck and exit to be high above the ground. He corrected Ms. McFarlane’s description of the steps up to his home – there are two from the garage and 5 more. As for the shadow study, he disagrees that there would be little impact – the existing shadow is 30-35 % in the rear in the morning, and he sees the future at 70- 80 % instead. He objected to the integral

garage on such a narrow lot. According to his calculations, the future driveway would force the removal of the boulevard tree.

Mr. di Vona clarified for Mr. Yim in cross that there is no variance required for the rear deck height. Respecting the proposed privacy screen, Mr. Yim appeared to accept it in the end. There would be no encroachment into Mr. Yim's yard from the eaves, nor water flowing onto his property – Toronto Water had made no comments on this and it would be dealt with at the building permit stage. A permit was required from Urban Forestry before any damage could occur to the boulevard tree, and damage was not anticipated.

**Ms. Sarah Zimmerman** is the neighbour to the east at No.10 Parklea. She purchased her 2500 sq. ft. home from a builder in 2014, and the dwelling had not required variances at all. Her impression of the subject proposal is that it is a three storey structure proposed on an undersized lot. On Parklea between Hanna and Rumsey Rd. the lots are all 35 ft. wide. She thinks that one must choose between an at grade garage and a full main floor living space, as one cannot have both. Her professional experience is with claim settlements for major insurers, so she is very aware of flooding issues. This is on a flood plain, she testified, with an above average risk. The driveway will contribute to this as it will be slightly below the present driveway location. The owner of No. 12 next door had informed her that that property required shoring and double sump pumps, and is always damp. This side of Parklea is unique, as it is higher than the opposite side. The applicant is proposing a "highrise" that does not fit in with the character or design, it "erodes our ability to make our little block special and unique in Leaside". She considers that there is an obligation to maintain cohesion in the spirit of the Leaside Guidelines, and sees no communications of support for this proposal. She is also concerned about obstructed vision for drivers backing out of the proposed garage. She is not convinced that the shadowing of her rear yard will be the same or better, as claimed.

**Ms. Angela Lam Perieteanu** is a lawyer living at 31 Parklea across from the subject property, purchased from a builder in 2015. She foresees no direct negative impacts, but objects to the aesthetic appeal or lack thereof. She too decried the lack of consultation by the owners. No. 31 had received variances when built – a height of 9.1 m, length of 17.93 m, with an integral garage. However, the dwelling was not built to these variances, she testified. She believes that this was done with the intention of keeping what she sees as consistency in the neighbourhood. There are "individual little pockets" such as this, that are unique within the larger area. On Bessborough to the west, for example, lots are wider; and Vanderhoof to the south is mostly semis. She does not seriously object to the increase in FSI, she testified, but the three storey design is excessive, especially with the integral garage. She would eliminate the garage and so reduce the appearance of the dwelling. On cross, she acknowledged that the proposed dwelling could be even taller than proposed. A height difference of 5 cm in height would not in fact cause the building to "tower over" the street.

**Mr. Bryan Eckel** resides at 33 Parklea, also on the south side, and has done so since 1992. He had outlined his objections in his Participant Statement, where he agreed with the neighbours in objecting to the proposed height ("the tallest home of the eight ...on the north side of the block..") and length, both disturbing the airflow for owners to the

east, he stated. The height of the front wall and first floor would result in a taller structure than any of the eight on the north and twelve on the south side. He points out that none on the block have a below grade garage. Side yard setbacks and lot coverage, with less of a permeable surface, will lead to inappropriate drainage issues.

## **ANALYSIS, FINDINGS, REASONS**

I will not outline all of the alterations made to the variances, or their timeline, as this is a hearing de novo before TLAB. The only relevant variances are those now requested in the appeal. They have been reduced in number for 19 to 10, with only one, for a slight height increase, under the Leaside By-law. It appeared that Ms. McFarlane gave details of the process of altering the variances more to educate the participants present than the TLAB. I did not allow continued repetition by others of the process and timing of alterations, as the appeal must concentrate on their substance.

Mr. Kettel mounted a spirited defense of the Leaside Guidelines, and was joined by some of the neighbours. I note that, while not qualified as a professional planner in this hearing, he has been qualified in past TLAB hearings as a “local knowledge expert”, a status between neighbour and expert planner. I granted him this status again. However, I rely in this matter on both the Guidelines’ statement of intention, cited above, and the expressed intent in the commentary to the Neighbourhood policies in the OP, to discount their stringent application in this instance. Chapter 2 on Healthy Neighbourhoods contains explanatory text for Policy 2.3 that acknowledges that neighbourhoods are “stable but not static” and that “neighbourhoods will not stay frozen in time.” Physical change is expected to occur in neighbourhoods like this over time. The objective is to reinforce the stability of the neighbourhood by ensuring new development respects the existing physical character of the area. Regeneration is therefore an important aspect of stability, and the OP clearly anticipates physical change by replacement housing, particularly where it shares most of the desired design characteristics.

While certain neighbours have expressed a concern for the height exceedance proposed, it is this aspect that enables the very design elements (gables and dormers) endorsed by the Leaside Guidelines. These are a clearly appreciated feature of the local street.

Policy 4.1.8 requires that zoning By-laws contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards, to ensure that new development will be compatible with the physical character of established residential Neighbourhoods. As Ms. McFarlane emphasized, “compatible” here means “capable of co-existing in harmony with” and not “replicate”. The zoning standards in this area have not been rigidly complied with, as both old and new structures in this (more than one-block) neighbourhood have differing lot sizes, building design and built form. What exists there is part of the “neighbourhood”, for application of the OP tests. I disagree that this is a three storey proposal, it is clearly at maximum two and one half, and it requires only very minor height variances.

**Decision of Toronto Local Appeal Body Panel Member: G. Burton**  
**TLAB Case File Number: 18 170140 S45 26 TLAB**

As TLAB has in the past (195 Glenvale Blvd, TLAB File Number 17 175387 S45 26 TLAB, Oct. 6, 2017), I reject Mr. Kettel's choice of only 20 properties as a "neighbourhood" for assessment of OP policies and zoning intent. He stated that it was a matter of professional discretion, and could be 2 or 2000 properties. I find that this is unrealistic. At least two or three blocks, what one might see on a walk or a short drive, is the minimum (absent some physical rationale such as a *cul de sac* or ravine).

I believe that many of the photos on the outer limits of Ms. McFarlane's SA were too far away to be relevant. However, it is telling that there are many dwellings of a similar appearance and features to the proposed within a few blocks. I note especially, on the subject block, No. 2, (two sets of steps up, integral garage, same overall appearance), then No. 40 (8 steps, similar roof, integral garage, 47 (almost the same, 6 steps up, integral garage), 65 (large, integral garage, gabled but flat-looking roof), 69 (similar roof line, 7 steps) and especially 100 Parklea. This is very like the proposed design, although slightly more distant.

I reject the neighbours' objections to an integral garage, which is permitted here, and the statement that parking occurs on the driveways in any event.

I discount the concerns about flooding, given the fact raised by the neighbours that this side of the street is higher than the opposite, with the obvious drainage away from the property. No neighbour to the south raised this as an issue. Nor did the Development Engineering Department raise this question.

I also attribute little weight to the objections made by many neighbours that the owners here did not consult with them respecting designs or changes. While highly desirable in most instances, it is not a prerequisite to approval of variances that consultation take place. Mr. Kettel termed some so-called adversarial appeals before the TLAB "a gathering of friends". I find that it is still a formal adversarial process, even if consultation is helpful. Respecting some of the issues raised by the neighbours, it appeared that they had not sufficiently digested the variances now required, nor alterations to the plans before the hearing. This is somewhat understandable because of the several iterations here. However, Mr. di Vona pointed to many instances of attempts at consultation before the hearing. In addition, because of electronic pre-filing, participants had access to all the materials filed before the hearing, and should be able to grasp what is proposed. I found the participants to be well meaning but, regrettably, somewhat misinformed. Variances such as one for first floor height had been eliminated. Ms. Zimmerman and others can place some reliance on the lack of a report from Toronto Water, who would make any adverse comments that it held on a variance application. This applies equally to Transportation, on the issue of safe passage from an integral garage.

I find that the variances, individually and cumulatively, meet the general intent and purposes of the OP and the zoning By-laws, are desirable for this site, and are minor in magnitude, without any unacceptable adverse impact of a planning nature. The proposal will not cause any unacceptable adverse impacts relating to such matters as shadowing, privacy, overlook, vegetation, drainage or traffic safety. The west side yard setback will improve upon existing conditions. The easterly setback will decrease,

but without unacceptable impacts. The Leaside Guidelines are not offended by this dwelling – it features a pitched roof, gables, dormer windows, and a raised front entrance, similar to those pictured therein, and existing close by in this neighbourhood. In addition, the provincial policies and the relevant sections of the Act are met with this proposal. It is consistent with the PPS's intent, and conforms with Growth Plan in that it provides appropriate intensification even in this location.

## **DECISION AND ORDER**

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

1. The variance to Zoning By-law No. 1916 listed in **Attachment 1, as 'proposed'**, is authorized.
2. The variances to Zoning By-law No. 569-2013 as listed in **Attachment 2 as 'proposed'**, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
3. The new detached dwelling shall be constructed substantially in accordance with the Revised Plans dated September 18, 2018, and filed with the TLAB on October 5, 2018, and attached as **Attachment 3** to this decision, except that the privacy screen over the rear deck in Elevation A3 will be no taller than 1.8 m. **Any other variances that may appear on these plans that are not listed in this decision are not authorized.**
4. The Applicant shall comply with the City of Toronto Municipal Code Chapter 813, Article II (Private Trees) and Article III (City-Owned Trees).
5. The driveway shall maintain a positive slope (minimum 2%) from the street to the entry of the integral garage.

### **ATTACHMENT 1 - By-law 1916**

Section 6.3.3, By-law 1916

The maximum permitted building height is 8.5 m.

The proposed building height is 8.8 m

### **ATTACHMENT 2 - By-law 569-2013**

1. 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 0.3 m of a building, must comply with the required minimum building setbacks for the zone: 1.2 m side yard setback.

The proposed west side yard setback to the front porch and rear deck is 0.468 m.

2. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013

The permitted maximum front main wall height is 7.0 m for no less than 60% of

the total width of all front main walls.

The proposed front main wall height is more than 7.0 m for 44% of the total width of all front main walls, and below 7 meters for the remaining width.

3. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013

The permitted maximum rear main wall height is 7.0 m for no less than 60% of the total width of all rear main walls.

The proposed rear main wall height is 7.27 m for 36% of the total width of all rear main walls, and 7 metres for the remaining width.

4. Chapter 10.20.40.20.(1), By-law 569-2013

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

The proposed building length is 17.98 m.

5. Chapter 10.20.40.40.(1)(A), 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 0.67 times the area of the lot.

6. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The required minimum side yard setback is 1.2 m.

The proposed west side yard setback is 0.468 m

7. Chapter 10.20.40.70.(3)(C), By-law 569-2013

The required minimum side yard setback is 1.2 m.

The proposed east side yard setback is 0.9 m.

8. Chapter 10.20.30.40.(1)(A), By-law 569-2013

The permitted maximum lot coverage is 35% of the lot area.

The proposed lot coverage is 37% of the lot area.

9. Chapter 10.5.40.60.(7), By-law 569-2013

The eaves of a roof may encroach into a required minimum building setback a maximum of 0.9m if they are no closer to a lot line than 0.3 m.

The proposed eaves encroach 0.99m into the required west side yard setback of 1.2m and are 0.21 m from the west side lot line.

### **ATTACHMENT 3 – PLANS – SEPTEMBER 18, 2018**



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G. Burton

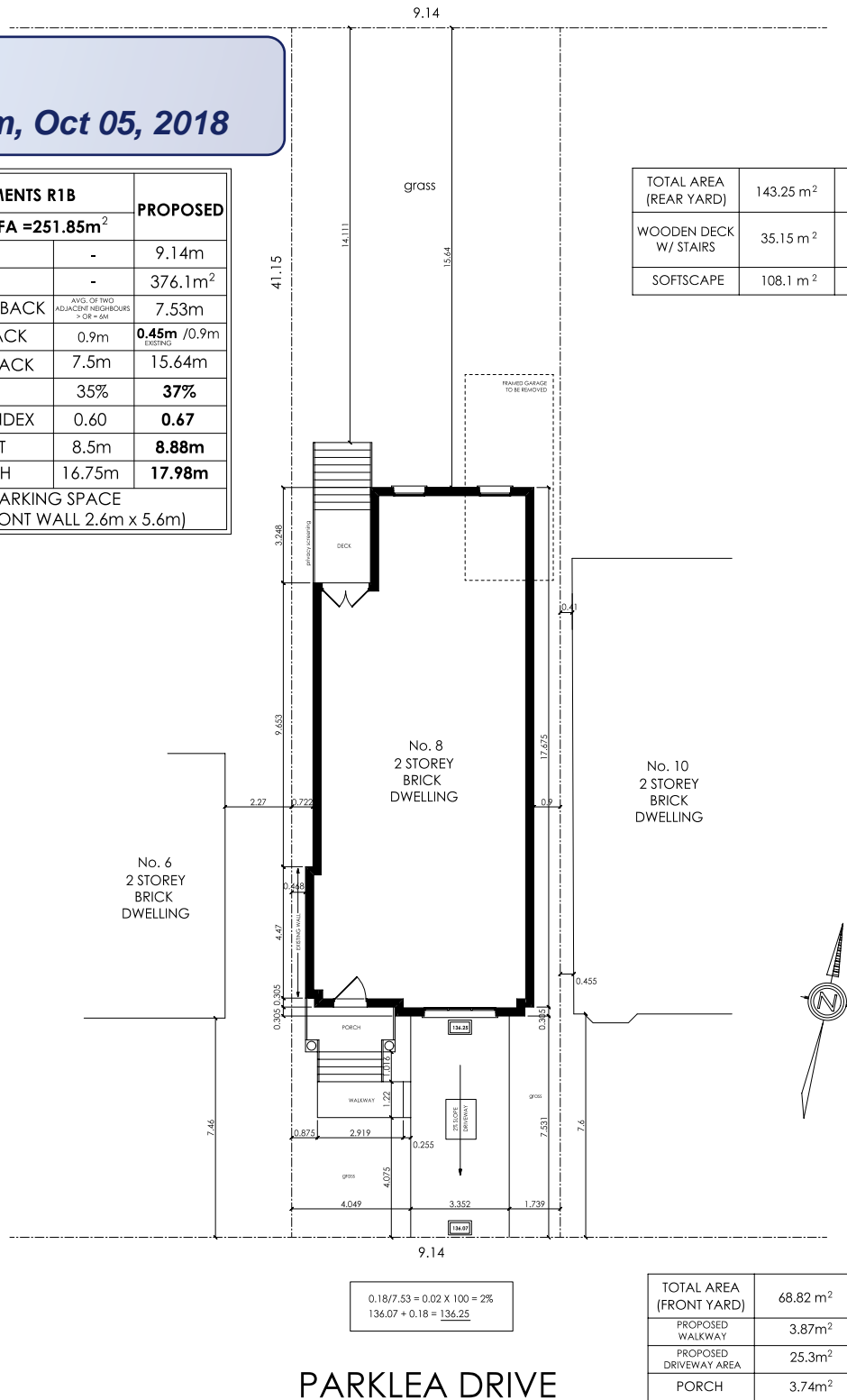
Panel Chair, Toronto Local Appeal Body

**RECEIVED**

By TLAB at 4:24 pm, Oct 05, 2018

REQUIREMENTS R1B		PROPOSED
PROPOSED GFA = 251.85m <sup>2</sup>		
LOT FRONTAGE	-	9.14m
LOT AREA	-	376.1m <sup>2</sup>
FRONT YARD SETBACK	AVG. OF TWO ADJACENT NEIGHBOURS > OR = 6M	7.53m
SIDE YARD SETBACK	0.9m	0.45m / 0.9m
REAR YARD SETBACK	7.5m	15.64m
LOT COVERAGE	35%	37%
FLOOR SPACE INDEX	0.60	0.67
BUILDING HEIGHT	8.5m	8.88m
BUILDING LENGTH	16.75m	17.98m
1 PARKING SPACE (BEHIND FRONT WALL 2.6m x 5.6m)		

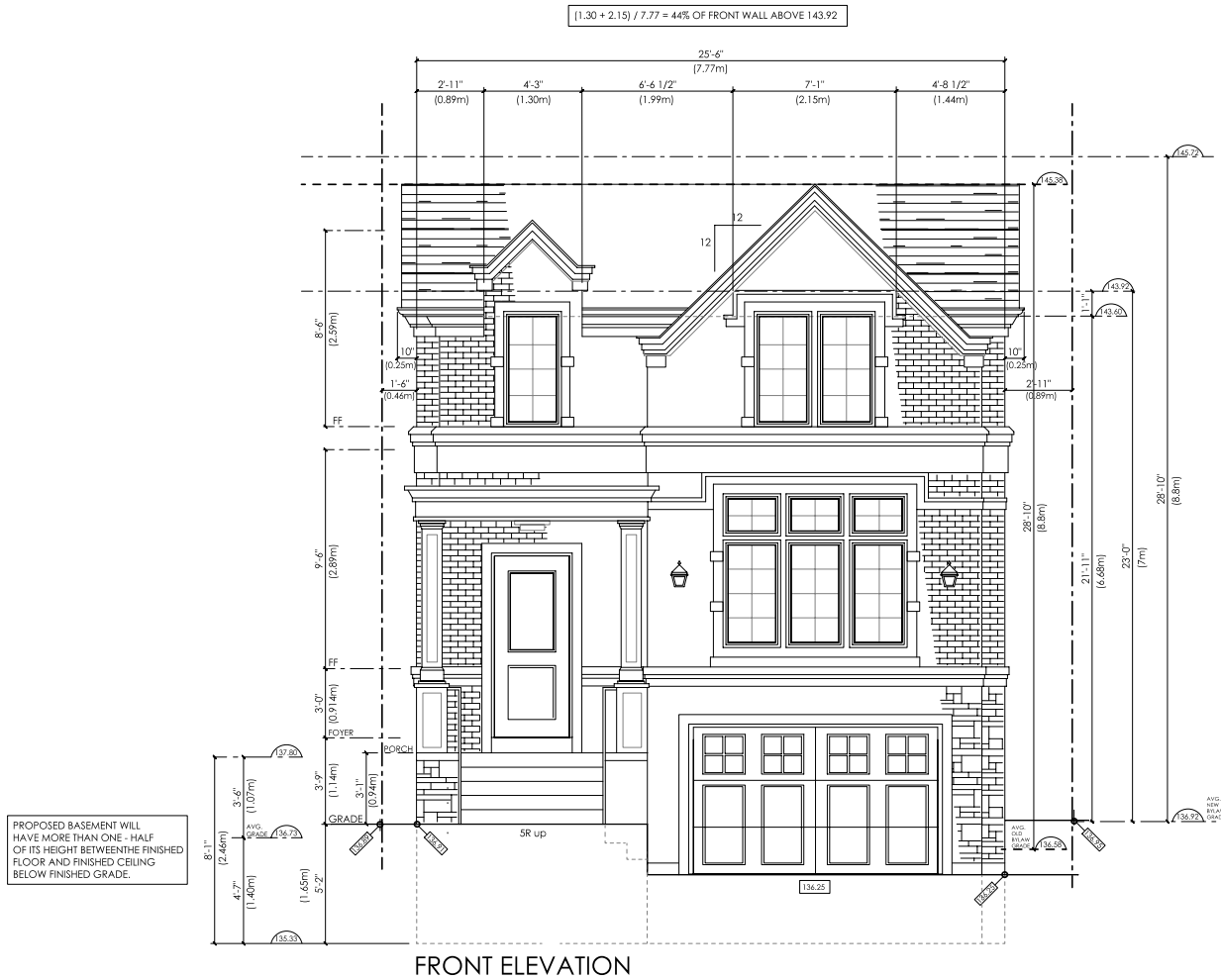
TOTAL AREA (REAR YARD)	143.25 m <sup>2</sup>	100%
WOODEN DECK W/ STAIRS	35.15 m <sup>2</sup>	25%
SOFTSCAPE	108.1 m <sup>2</sup>	75%



TOTAL AREA (FRONT YARD)	68.82 m <sup>2</sup>	100%
PROPOSED WALKWAY	3.87m <sup>2</sup>	6%
PROPOSED DRIVEWAY AREA	25.3m <sup>2</sup>	37%
PORCH	3.74m <sup>2</sup>	5%
STAIRS	2.25 m <sup>2</sup>	3%
SOFTSCAPE	33.66m <sup>2</sup>	49%

NO.	DATE	REVISIONS	<b>B design</b> Structural Engineering www.bdesign.ca T. 416.712.5200 <small>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. Under no circumstances shall the contractor proceed in uncertainty.</small>	SHEET TITLE: <b>SITEPLAN</b>  PROJECT: <b>8 PARKLEA DRIVE TORONTO, ON</b>	SCALE: <b>1: 150</b>  PROJECT No: <b></b>	DATE: <b>SEPT.18.18</b>  DWG No: <b>A1</b>





OLD BYLAW (AVG. GRADE FROM FRONT WALL POINTS)

$$136.91 + 136.25 = 273.16$$

$$273.16 / 2 = 136.58$$

136.58 AVG. GRADE (OLD BYLAW)

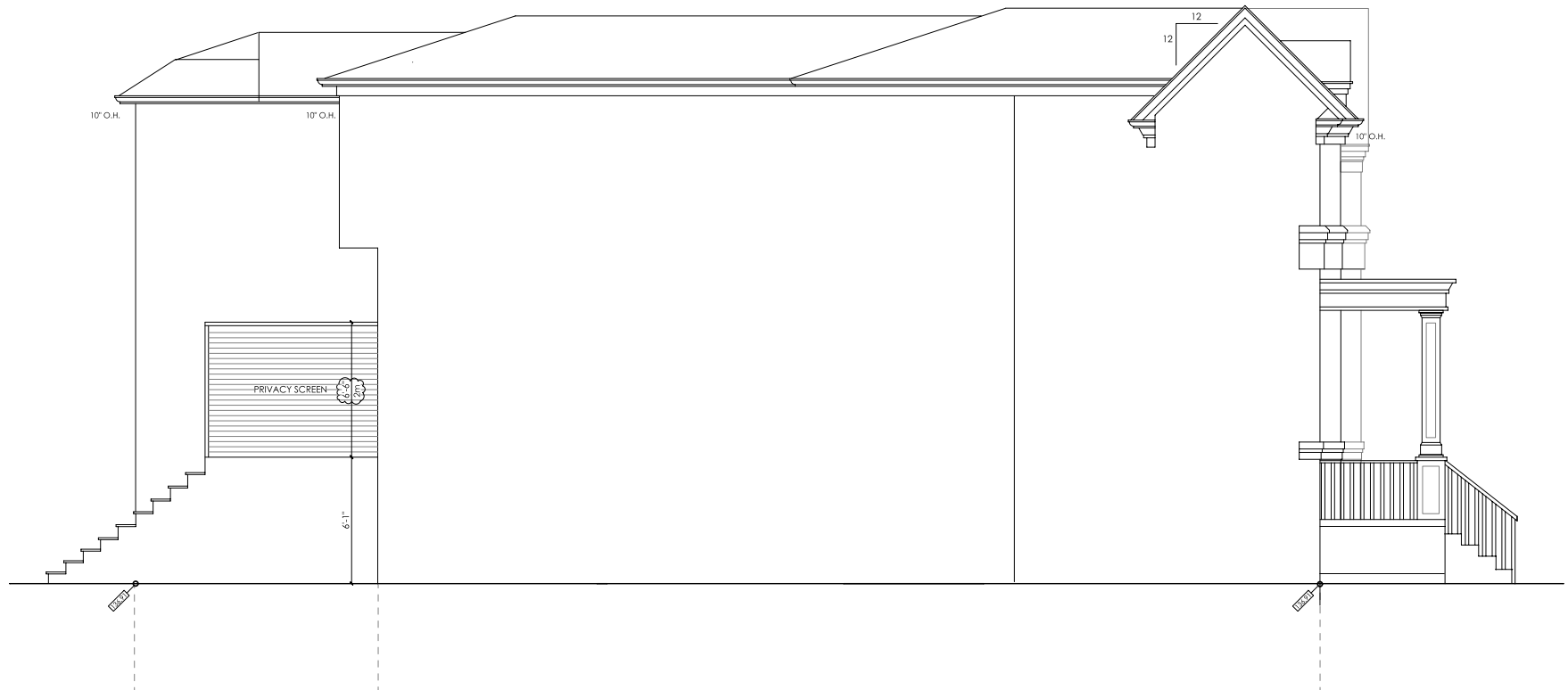
NEW BYLAW  
(AVG. GRADE FROM 0.01 PAST SIDE EACH SIDE YARD LOT LINE)

$$136.89 + 136.95 = 273.84$$

$$273.84 / 2 = 136.92$$

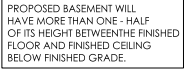
136.92 AVG. GRADE (NEW BYLAW)

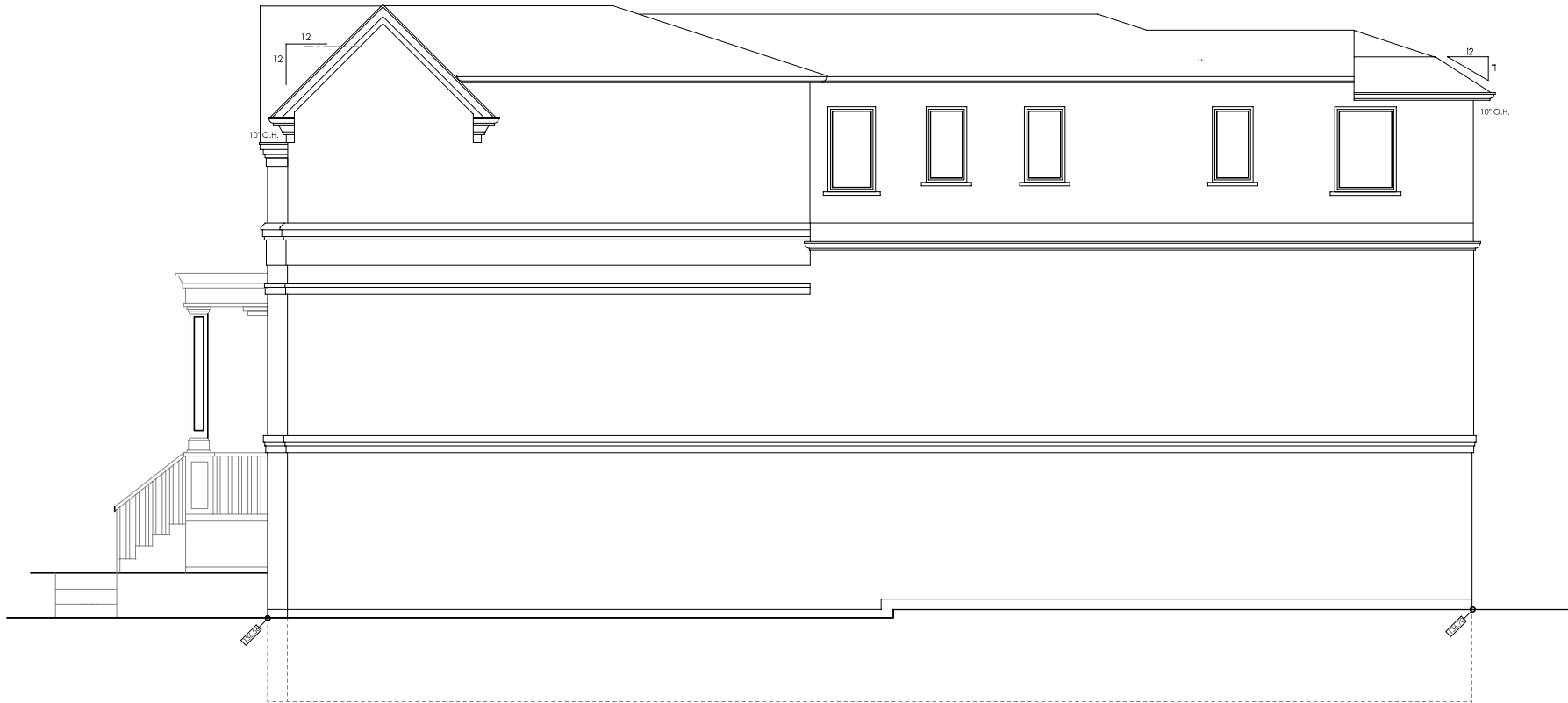
No:	Revisions:	<div><div>B design</div><div>Structural Engineering</div><div>www.bdesign.ca</div><div>T. 416.712.5200</div><div>Drawings are not to be sealed. All dimensions must be verified by contractor prior to commencement of work. The contractor shall be responsible for ensuring that the drawings are in accordance with the latest Ontario Building Code and any amendments thereto. The contractor shall be responsible for ensuring that the drawings are in accordance with the latest Ontario Building Code and any amendments thereto.</div></div>	PROJECT:	8 PARKLEA DRIVE TORONTO, ON	SHEET TITLE: FRONT ELEVATION				
							DWN BY: VG	SCALE: 3/16"= 1'-0"	DATE: SEPT. 18, 18
							CKD BY: VG	PROJECT No:	DWG No: A2



No:	Date:	Revisions:	<b>B design</b> <i>Structural Engineering</i> <a href="http://www.bdesign.ca">www.bdesign.ca</a> T. 416.712.5200 <small>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. Under no circumstances shall the contractor proceed in uncertainty.</small>	PROJECT:	SHEET TITLE:		
					WEST ELEVATION		
					DWN BY:	SCALE:	DATE:
					VG	3/16"=1'-0"	SEP.18.18
					CKD BY:	PROJECT No:	DWG No:
					VG		A3

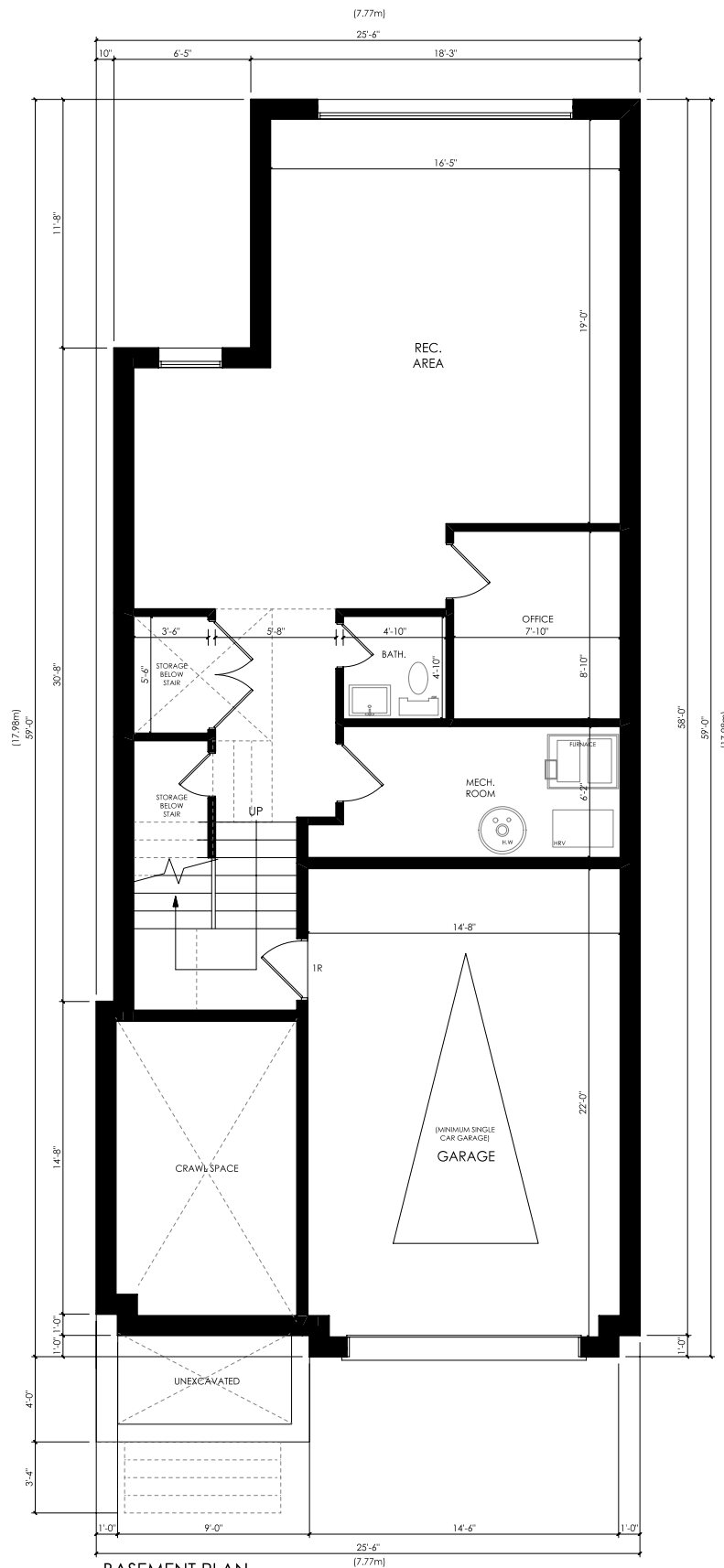
WEST ELEVATION

[illegible]



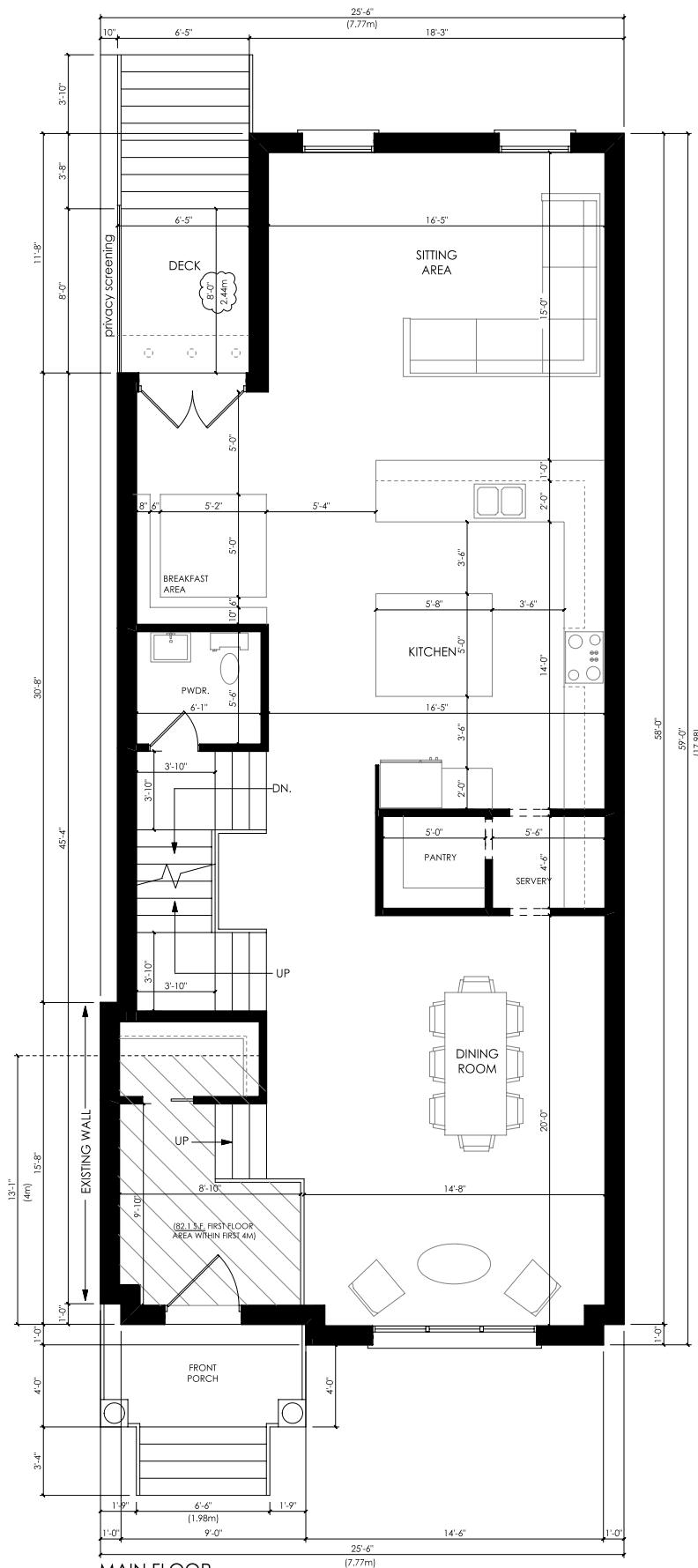
EAST ELEVATION

No:	Date:	Revisions:	<b>B design</b> <i>Structural Engineering</i> <a href="http://www.bdesign.ca">www.bdesign.ca</a> T. 416.712.5200		PROJECT:	SHEET TITLE:		
						EAST ELEVATION		
			<small>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. Under no circumstances shall the contractor proceed in uncertainty.</small>		8 PARKLEA DRIVE TORONTO, ON	DWN BY:	SCALE:	DATE:
						VG	3/16"=1'-0"	SEP.18.18
						CKD BY:	PROJECT No:	DWG No:
						VG		A5

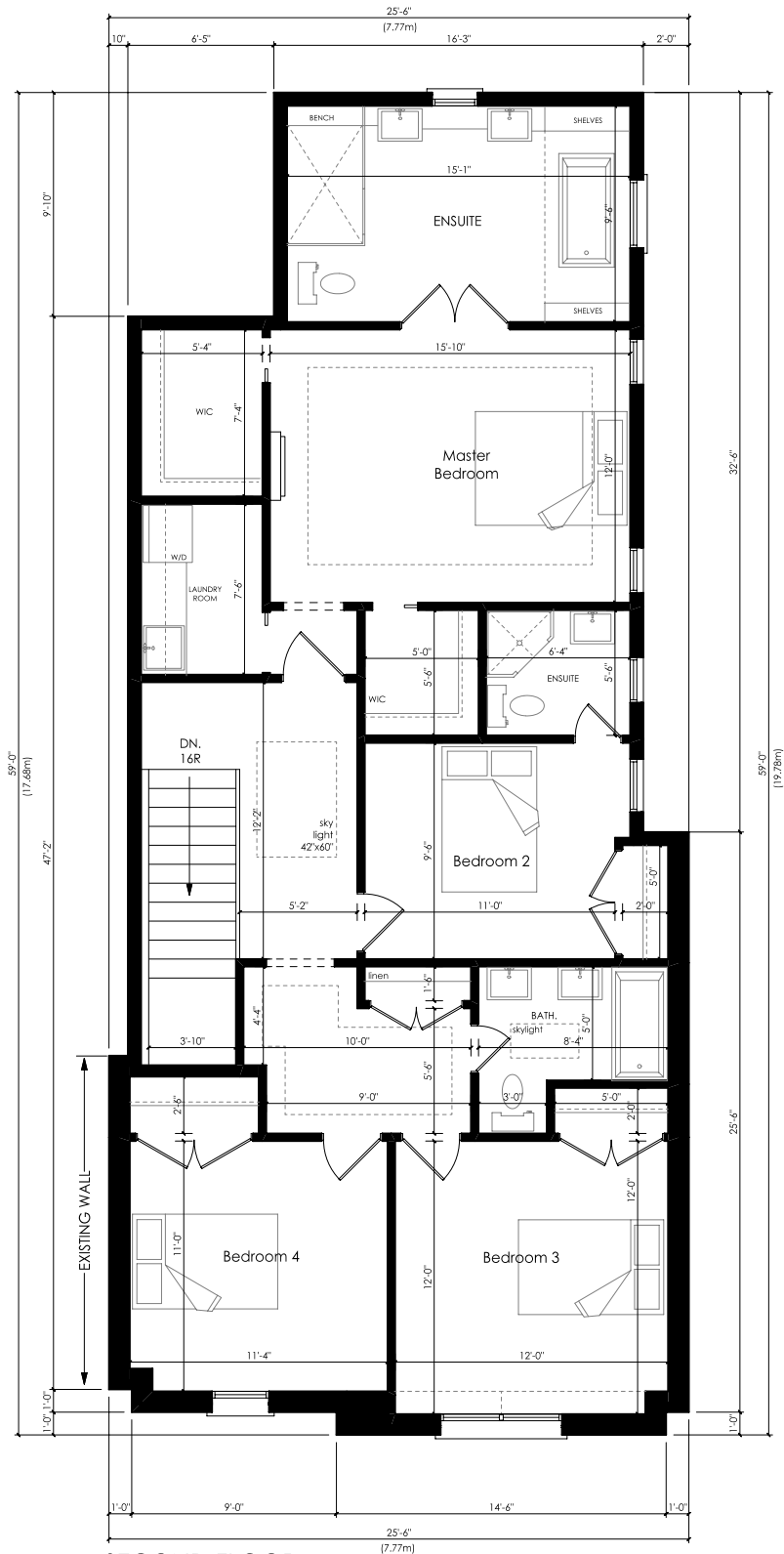


BASEMENT PLAN  
876 s.f.

No:	Date:	Revisions:	<div>B design</div> <div>Structural Engineering</div> <div>www.bdesign.ca</div> <div>T. 416.712.5200</div> <div>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. Under no circumstances shall the contractor proceed in uncertainty.</div>	PROJECT:	SHEET TITLE:		
					BASEMENT FLOOR PLAN		
					DWN BY:	SCALE:	DATE:
					VG	3/16"=1'-0"	SEP.18.18
					CKD BY:	PROJECT No:	DWG No:
				8 PARKLEA DRIVE TORONTO, ON	VG		A6

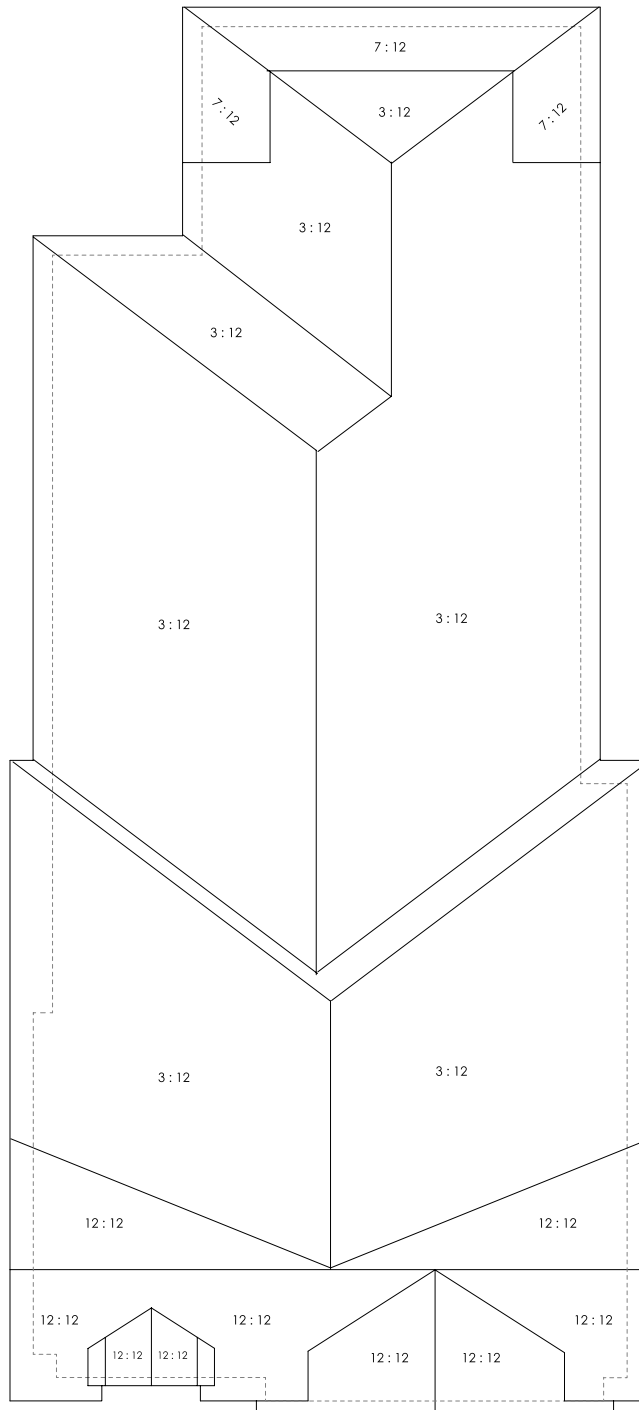


No:	Date:	Revisions:	<div style="text-align: center;"> <h1>B design</h1> <h2>Structural Engineering</h2> <p>www.bdesign.ca</p> <p>T. 416.712.5200</p> <p><small>Drawings are not to be scaled. All dimensions must be verified by contractor prior to commencement of any work. Any discrepancies must be reported directly to the Designer. Under no circumstances shall the contractor proceed in uncertainty.</small></p> </div>	PROJECT:	<div style="text-align: center;"> <h1>8 PARKLEA DRIVE</h1> <h2>TORONTO, ON</h2> </div>	SHEET TITLE:		
						MAIN FLOOR PLAN		
						DWN BY:	SCALE:	DATE:
						VG	3/16"=1'-0"	SEPT.18.18
						CKD BY:	PROJECT No:	DWG No:
						VG		A7



SECOND FLOOR  
1329 s.f.

No:	Date:	Revisions:	<b>B design</b> <i>Structural Engineering</i> <a href="http://www.bdesign.ca">www.bdesign.ca</a> T. 416.712.5200 <small>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. Under no circumstances shall the contractor proceed in uncertainty.</small>	PROJECT:  8 PARKLEA DRIVE TORONTO, ON	SHEET TITLE: SECOND FLOOR PLAN		
					DWN BY:	SCALE:	DATE:
					VG	3/16"=1'-0"	SEP.18.18
					CKD BY:	PROJECT No:	DWG No:
					VG		A8



ROOF PLAN

No:	Date:	Revisions:	<b>B design</b> <i>Structural Engineering</i> <a href="http://www.bdesign.ca">www.bdesign.ca</a> T. 416.712.5200 <small>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. Under no circumstances shall the contractor proceed in uncertainty.</small>	PROJECT:	SHEET TITLE:		
					ROOF PLAN		
					DWN BY:	SCALE:	DATE:
					VG	3/16"=1'-0"	SEP.18.18
					CKD BY:	PROJECT No:	DWG No:
					VG		A9