

# DECISION AND ORDER

**Decision Issue Date**      Thursday, January 31, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): MUHANED KILLU

Applicant: MARCO VIEIRA

Property Address/Description: 48 PLAYTER CRES

Committee of Adjustment Case File: 17 241072 STE 29 MV

TLAB Case File Number: **18 166530 S45 29 TLAB**

**Motion Hearing date:**      Tuesday, September 25, 2018

**DECISION DELIVERED BY D. LOMBARDI**

## APPEARANCES

Name	Role	Representative
MUHANED KILLU	Owner	
MARCO VIEIRA	Applicant	
VITO ANTHONY PARTIPILO	Primary Owner	
MUHANED KILLU	Appellant	JANE PEPINO
LILLIAN ADAMAKIS	Party (TLAB)	
CITY OF TORONTO	Party (TLAB)	ALEXANDER SURIANO
PETER DAVIS	Participant	
DON MATTHEWS	Participant	
LOLA BRATTY	Participant	
LEONE EARLS	Participant	
ROLF STRUTHERS	Participant	

RACHEL DEVITT	Participant
STEPHANE ETHIER	Participant
JOAN JUNG	Participant
KAREN KATES	Participant
DAVID NICHOLSON	Participant
ROSALIND CAROL KINDLER	Participant
DILIN BAKER	Participant
RAYMOND EARL STOREY	Participant
BENITA BLACK	Participant
ALEXANDRA LOUISA JENKINS	Participant
GAIL HANDLEY	Participant
MICHELE MACARTNEY-FILGATE	Participant

## INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the Applicant of the decision of the Toronto and East York District Panel of the Committee of Adjustment (COA) for the City of Toronto (City) to refuse minor variances to legalize and maintain the “as constructed” three-storey detached dwelling at 48 Playter Crescent (subject property).

The subject property is located on the north side of Playter Crescent in the Playter Estates neighbourhood, which is generally located north of Danforth Avenue and east of Broadview Avenue. The subject property is designated *Neighbourhoods* in the City of Toronto’s Official Plan (Official Plan) and zoned RD (d0.35)(x961) under Zoning By-law No. 569-2013 (new By-law) and R1 Z0.35 under former Zoning By-law No. 438-86 (former By-law).

The subject property is currently occupied by a 3-storey detached residential dwelling with a rear cabana and swimming pool. The property has a shared right-of-way along the west side lot line with the neighbour to the west at 46 Playter Crescent for driveway access to the rear yard.

## BACKGROUND

An application for minor variances was originally submitted by Vito Anthony Partipilo and Muhaned Killu (the Owners) to the COA in 2016 (original application) for the purpose of altering the original 2-storey single detached dwelling by constructing a third storey addition and a rear third storey addition, a new front porch, rear deck and swimming pool.

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The original application, approved by the COA on December 7, 2016, proposed the following variances:

***By-law 569-2013***

- *Zero parking space will be located behind the main front wall;*
- *The altered dwelling will have a building height of 10.62 m and will be three-storeys;*
- *The altered building will have a floor space index equal to 0.92 times the area of the lot (281.02 m<sup>2</sup>);*
- *The area of the third storey deck will be 7 m<sup>2</sup>;*
- *The altered dwelling will be located 0.46 m from the east side lot line.*

***By-law 438-86***

- *The altered dwelling will have a residential gross floor area equal to 0.92 times the area of the lot (281.02 m<sup>2</sup>);*
- *The altered dwelling will be located 0.46 m from the east side lot line, for the portion of the dwelling not exceeding 17.0 m in depth;*
- *The altered dwelling will be located 1.05 m from the east adjacent building, 50 Playter Crescent, where the side wall contains openings;*
- *Zero parking spaces will be located behind the main front wall;*
- *The altered dwelling will have a building height of 10.62 m.*

A building permit was obtained on March 21, 2017, and construction commenced on the subject development. On August 25, 2017, an Order to Comply notice was issued by the City Building Division (Exhibit 6 – Tab 8) due to construction that was found to be in excess of the previously obtained approvals with respect to two areas regarding height.

Subsequently, the Owners submitted a second minor variance application to the COA on September 28, 2017 (A1056/17TEY), in order to legalize and maintain the as-built dwelling height of 10.96 m (an increase of 0.34 m) and the as-built first floor height of 1.4 m (1.2 m was permitted). On May 9, 2018 the application was refused, and the Owner appealed the decision to the TLAB.

A Notice of Appeal (Form 1) was submitted to the TLAB on May 25, 2018 with the following grounds (briefly summarized):

1. The dwelling is a modest form of intensification and is consistent with the PPS and conforms to the Growth Plan;
2. Through the previous variance approvals, the dwelling has already been found to be compatible with the massing and scale of existing dwellings in the neighbourhood, especially new or renovated buildings, and the extremely modest 'overbuild' does not change this;
3. The minor variance application meets the four tests under Subsection 45(1) of the *Planning Act*. The law is clear that construction completed is to be judged on its merits against the four tests and no penalty should result from the construction process;

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4. The dwelling was found desirable for the appropriate development of the subject site and the modest height variances sought do not render it inappropriate; and
5. The variances are extremely minor in their numerical values and will not create negative impacts on neighbouring properties.

The variances that were presented to the COA have not been amended and the variances before the TLAB are the same. Below is the list of Minor Variances being requested by the Appellant:

*Zoning By-law 569-2013*

**1. Chapter 10.20.40.40.(1)**

The maximum permitted building height is 7.2 m for a detached dwelling with a flat or shallow roof. Minor Variance Decision A0929/16TEY permits a building height of 10.62 m.

WHEREAS the 3-storey detached dwelling has a height of 10.96 m.

**2. Chapter 10.20.40.10.(6)**

The maximum permitted height of the first floor of a dwelling above established grade is 1.20 m. Minor Variance Decision A0929/16TEY permits the height of the first floor of a dwelling above grade to 1.20 m.

WHEREAS the first floor of the 3-storey detached dwelling has a height of 1.40 m above the established grade.

*Zoning By-law 438-86*

**1. Section 4(2)(a)**

The maximum permitted building height of a detached dwelling is 10.0 m. Minor Variance Decision A0929/16TEY permits a building height of 10.62 m.

WHEREAS the 3-storey detached dwelling has a height of 10.96 m.

A Hearing was set for September 25, 2018. In attendance were three Parties: the Appellant (owners); the City of Toronto; and Ms. Lillian Adamakis. In attendance also were the following Participants (in no particular order):

- Lola Bratty (resident at 43 Jackman Avenue)
- Rolf Struthers (resident on Jackman Avenue)
- Rachel Devitt (resident at 46 Jackman Avenue)
- Dilin Baker (resident at 35 Jackman Avenue)
- Leone Earls (resident at 52 Jackman Avenue)
- Karen Kates (resident at 51 Playter Crescent)
- David Nicholson (resident at 29 Jackman Avenue)
- Gail Handley (resident at 64 Jackman Avenue).

At the start of the Hearing, the TLAB was advised by Mr. Alexander Suriano, that the City had reached a Settlement with the Appellant and would not be opposing the requested variances.

### *Settlement Terms*

In providing context to the Settlement, Mr. Suriano submitted that the appeal before the TLAB essentially deals with an increase in the overall height of the dwelling as well as the finished first floor height, in excess of the already permitted variances granted by the COA in 2016.

In an attempt to mitigate concerns from residents arising from the requested variances, the City entered into negotiations with the Appellant. Those Settlement discussions resulted in an agreement with the Appellant to install additional and permanent landscaping both at the front of the existing dwelling to address the elevated finished first floor, and additional plantings along the rear property line and on the rear third storey balcony.

More specifically, the additional landscaping will include several new planter boxes at the front of the dwelling placed strategically on a masonry wall and will incorporate a variety of shrubs. Additionally, the proposed planting at the rear will include permanent landscaping consisting of three equally spaced Purple Beech trees (a minimum of 4.57 m in height) planted along the existing fence at the rear property line, and a planter box containing Columnar 'Faux' Cedars (minimum 1.83 m in height) across the base of the third-storey balcony.

As part of the Settlement discussion, the City requested, and the Appellant agreed to imbed commentary with respect to proposed landscaping within the set of revised drawings 'Final Elevations – Sept. 24, 2018' which were identified as Exhibit 7 (attached as **Attachment 1**).

In addition, the City also requested that a condition be included that requires the owner of the subject property, and any subsequent new owner(s), to construct and maintain the proposed landscaping as shown on the revised drawings (Exhibit 7). As a result, a Proposed Condition of Approval (Exhibit 8) was submitted which ties the landscaping to the above referenced plans.

Mr. Suriano clarified that the intent of revising the plans to include the landscaping details and to include the proposed Condition of Approval is to provide a permanent and ongoing mitigation of potential conditions if the requested variances for an increase in height are granted by the TLAB.

He confirmed that the City is in support of the Settlement, including the revised Final Elevation plans, as well as the proposed Condition of Approval. He submitted that the plans propose revisions that are, in his opinion, minor and do not change the requested variances. As a result, for the purposes of Section 45(18.1.1), he proposed that no further notification or circulation is required.

## **MATTERS IN ISSUE**

The matter at issue is whether the requested variances and the proposed condition meet the applicable tests under Section 45(1) of the *Planning Act (Act)* and

provincial policy. The TLAB is to consider the variances from the perspective that the increase in the height of the overall dwelling and the finished first floor have not yet been built.

## **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 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**

Ms. Janice Robinson, a Senior Associate with the Goldberg Group, provided evidence on behalf of the Appellant. She was qualified to give expert land use planning evidence (Exhibit 1, Exhibits 1, 2 and 3 – Witness Statement, Area Context Plan and visual disclosure). She described the proposal.

At this juncture in the Hearing, I advised that pursuant to the standing direction of Council to the TLAB I had visited the subject property and the surrounding streets and had familiarized myself with the area.

### *Overview and Study Area*

Ms. Robinson advised that the subject property is designated *Neighbourhoods* in the OP and is zoned RD under the new By-law and R1 under the former By-law. She specifically highlighted the relevant standard in the both By-laws related to building height.

She advised that in the former By-law the maximum height permitted is 10 m to the mid-point of a sloped roof and 10 m to the top of a flat roof. In the new By-law, the maximum permitted height is 10 m to the top of a sloped roof and 7.2 m to the top of a flat roof

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Regarding the new By-law, she informed the TLAB that the 7.2 m flat roof height restriction remains under appeal by the Ontario Association of Architects (OAA). She submitted that the argument being reasoned by the OAA's is that this standard is unduly restrictive on modern architecture and, from the City's perspective, the intent of the standard is to prevent "square three-storey box house dwellings" (her words).

She advised that the matter was heard by the former Ontario Municipal Board (OMB) in 2017 and an interim decision was rendered not approving the standard.

Ms. Robinson delineated a Study Area for the purposes of evaluating the application generally comprised of lands bounded by Hurndale Avenue to the south, Jackman Avenue to the east, Butternut Street to the north, and Erindale Avenue to the west (Exhibit 2 – Area Site & Context Map). She opined that the Study Area contains within it the neighbourhood known as Playter Estates.

She described the Study Area as containing a range of lot sizes, frontages, and a mix of architectural styles. She characterized the neighbourhood as a stable residential area which is not static with reinvestment over the last 15 to 20 years in the form of large rear and third storey additions as well as new replacement dwellings. She submitted that renovations and replacement dwellings have required Minor Variance approvals which she suggested are reflected in her COA Decision Analysis table (Exhibit 4).

The Study Area is comprised of 2- and 3-storey single family detached residential dwellings, including what Ms. Robinson depicted as 'vintage' dwellings constructed in the early 1900's. There are a variety of traditional architecture styles. She described the properties in the neighbourhood as primarily well landscaped and maintained, with parking being accommodated through detached rear garages, front yard parking pads and attached and integral garages.

Ms. Robinson referenced the curvilinear nature of the street pattern, noting that lot frontages, lot depths and lot areas vary throughout the Study Area. She submitted that the curve of the street of Bayfield Crescent and Playter Boulevard create reverse pie-shaped lots where the lots are wider in the front and narrower at the rear. Lots on other streets within the Study Area are more typically rectangular in shape but still vary in lot size and width.

Within the Study Area the subject property is located mid-block on the north side of Playter Crescent (Exhibit 2). She highlighted that within this context the rear yard of the subject property is perpendicular to the rear of those lots on Playter Boulevard and Jackman Avenue to the north. As a result, she advised that the rear of the subject dwelling does not directly overlook the rear elevations of the dwellings on those lots.

### *The Proposal*

Ms. Robinson provided an overview of the revised Final Elevation drawings, dated September 24, 2018 (Exhibit 7 - drawings A7-A10), referenced by Mr. Suriano as part of the Settlement. She confirmed that the proposed landscaping improvements had been incorporated into one set of drawings along with the final elevations in part to

address the City's request to include specific notations within the plans to show the additional landscaping agreed to by the Appellant.

Ms. Lola Bratty, a Participant in the Hearing, questioned whether the revised drawings had been circulated to the other Party (Ms. Adamakis) and Participants for review and comments, as part of the Settlement discussions. Mr. Suriano advised that the plans in question had indeed been circulated by email on a 'without prejudice' basis to Participants, the week prior to the Hearing.

Mr. Suriano confirmed that emails were sent to Ms. Bratty, Mr. Nicholson, Mr. Thompson, Ms. Earls, Ms. Baker, Ms. Macartney-Filgate, and the local Councillor's office. He validated that the final plans circulated contained the notations regarding the proposed additional landscaping agreed to as part of Settlement discussions and further explained that the City had requested that those notations form part of the plans due to the importance and specificity of the details. The City also requested the notations so that the notations would be visible on the plans should there be any issues of interpretation by the Chief Building Officer, should the variances be granted.

Considering the confirmed circulation list for the final plans, and with the understanding that the list highlighted by Mr. Suriano did not appear to be inclusive of all the Participants present at the Hearing, I inquired as to whether there was any one else in attendance who would like an opportunity to review the plans. In the interest of fairness and equality, I queried the attendees as to whether a 15 minutes recess was warranted to allow the plans to be reviewed or whether the preference was to allow Ms. Robinson to provide an overview of the plans as part of her testimony. All in attendance preferred the latter option.

Ms. Robinson addressed the Elevations plans in Exhibit 7, focusing specifically on Drawings A7 and A8. She noted that there were two A7 (South Elevations) included in the drawing set showing the same front elevation, one illustrating the dwelling without the existing vegetation, and the other showing the existing large Linden and Columnar Maple trees in conjunction with the proposed landscaping. She specifically noted the location of planter boxes proposed along the front elevation, at approximately 1.12 m above grade, combining a generous number and variety of shrubs and tall grasses.

The rear (north) elevation (Drawing A8), illustrated the proposed landscaping at the rear of the subject property. Ms. Robinson highlighted the proposed landscaping along the rear property line, adjacent to the existing fence. She confirmed that the Appellant had agreed to plant three equally spaced Purple Beech trees (a minimum 4.6 m in height) to augment the already existing and extensive high-quality plantings. Asked to clarify the rationale for choosing this specific species, she opined that Beech trees were chosen because they grow well in urban conditions, grow very fast and tall, and provide excellent screening.

In addition, she noted that additional planting is proposed along the face of the 3<sup>rd</sup> floor rear balcony consisting of a row of Columnar 'Faux' Cedars (1.83 m in height) sufficient for screening purposes. She explained that 'faux' plantings were selected because of the lack of irrigation on the balcony and to ensure year-round screening.

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In explaining the anticipated effect of the proposed landscaping at the rear of the subject property, Ms. Robinson opined that views of the 1<sup>st</sup> floor would be eliminated, and views to, and overlook from the 3<sup>rd</sup> floor balcony would be significantly reduced if not eliminated entirely.

Ms. Robinson reiterated that the Owners have consented to the condition requested by the City that secures the construction and maintenance of this landscaping in order to address concerns raised by the neighbours with respect to overlook to abutting rear yards and loss of privacy.

Ms. Robinson then described the subject property within the general and more local context and character of the neighbourhood utilizing a total of 38 photos (Exhibit 3) to illustrate views to and from the subject property.

The first three photographs highlighted the front elevation of the existing dwelling at 48 Playter Crescent. She emphasized the height of the finished 1<sup>st</sup> floor is 1.4 m (resulting in Variance No. 2) specifically noting the 7 steps leading to the porch and front door. Photos 2 and 3 included the adjacent properties at 46 and 50 Playter Crescent, respectively, and were introduced as a comparative of the first-floor level of the flanking houses.

She submitted that the photos show 6 steps leading up to the 1<sup>st</sup> floor and front door of 46 Playter Crescent and suggested this condition is similar to the subject dwelling. She made a similar assessment of 50 Playter Crescent, noting there were also 6 steps to the 1<sup>st</sup> floor front door and porch and concluded that the height of the front porch of the subject dwelling did not stand out as being excessively higher in comparison.

Photos 4 and 5 provided panoramic views of the rear of the subject property and dwelling from both a north and south perspective. Ms. Robinson noted the renovations already completed on the subject dwelling – a two-storey rear addition and 3<sup>rd</sup> storey addition, and a 3<sup>rd</sup> floor rear balcony and highlighted the abutting property to the west, 46 Playter Crescent, noting it also had a 3<sup>rd</sup> storey balcony with a flat roof.

She also submitted (through photos 7 and 8) that the rear elevations of the properties on Jackman Avenue, visible from the subject property, also included rear 2<sup>nd</sup> and 3<sup>rd</sup> storey balconies, supporting her assertion that this is a neighbourhood where large rear balconies and terraces are more prevalent in comparison to other neighbourhoods in Toronto.

Finally, Ms. Robinson highlighted Photos 5 and 6 which showed the existing and extensive landscaping at the rear of the subject property in addition to the significant landscaping at the rear of 50, 52 and 54 Playter Crescent and 46 Jackman Avenue which she noted consisted of large and densely planted deciduous trees.

She then turned her attention to offering her planning perspective as to what constitutes the 'character' of a neighbourhood. She opined that the OP considers streetscape and how a property is perceived from the public realm. She also submitted

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that in this neighborhood, a secondary distinguishing trait of character is the prevalence of rear balconies and terraces.

In this regard, she highlighted Photos 9 and 10, showing views westerly along Playter Crescent and the south side of the street, and characterized the block as containing houses that were “tall, proud and prominent.” She also suggested that the houses could be described as “vintage houses,” in contrast to the dwellings on the south side of the street which she suggested were not as prominent as they were mostly two-storeys in height.

Ms. Robinson introduced Exhibit 5, a letter from Donald E. Roberts Ltd., Ontario Land Surveyors, dated June 29, 2018, which provided geodetic height elevations for dwellings in close proximity to the subject dwelling, including five properties on Jackman Avenue, one on Hurndale Avenue, and seven on Playter Crescent

The dwellings for which geodetic measurements were provided in Exhibit 5 were calculated to include the height (in metres) measured to the roof peak and to the top of a spire, if present. Of note are the following properties:

Address	Geodetic (m) to Roof Peak	Top of Spire
• 42 Playter Cres.	129.06	132.10
• 46 Playter Cres.	129.12	
• <b>48 Playter Cres. (subject property)</b>	<b>129.00</b>	
• 52 Playter Cres.	127.97	129.64

To provide a visual perspective, Ms. Robinson referenced Photos 10 through 14, which highlighted the same properties. She submitted that the dwellings listed above provided a comparative height context of the block and she concluded that what this data suggests is that the dwellings are similar in height to the ‘as built’ dwelling on the subject property.

She confirmed the geodetic height of the existing dwelling at 48 Playter Crescent is 129.00 m and submitted that the three dwellings immediately to the west are slightly taller at 129.00 m. The property to the east, 52 Playter Crescent, which has an architectural spire, has a height of 129.64, and 54 Playter Crescent, which is further east, is similar in height to No. 52.

Ms. Robinson highlighted the COA Decision Analysis table (Exhibit 4) in which a total of 21 decisions within the Study Area encompassing variances for increases in building height from both the former and new Zoning By-law were listed. The table included decisions for properties on Playter Cres., Bayfield Cres., Butternut St., Ellerbeck St., Hurndale Ave., Jackman Ave., and Playter Blvd., over an 18-year period.

Utilizing Photos 13 to 34 in Exhibit 3, she highlighted various examples to illustrate an eclectic mix of architectural styles and examples of height variances and dwellings similar in height to the subject dwelling. These included dwellings at 28 and 34 Playter Cres., 13 and 15 Bayfield Cres., 18 and 75 Ellerbeck St., 50 and 76 Jackman

Ave., and 50 Playter Crescent, for which a variance was recently approved permitting a building height of 10.62 m (geodetic height is 128.75).

Ms. Robinson submitted that the COA had granted a range of height variances within the Study Area between 10.1 m to 10.65 m, with just over half of the variances being greater than 10.5 m. In addition, she noted that many of the variances were to Zoning By-law 438-86, where the measurement for maximum permitted height is to the mid-point of the roof (suggesting that the physical height is greater than the dimension of the variance).

She opined that the COA Decision Analysis table suggests that the height variances granted have resulted in a built form that includes dwellings with a height in the range of what is being requested by the Appellant. She submitted then that the as-built subject dwelling is well within the range of existing and approved dwellings in the Study Area.

She opined that the photo evidence demonstrated that the residential block within which the subject dwelling is situated, both east and west of the property, has dwellings of similar height to what is being requested. She submitted this applies to the height of the finished 1<sup>st</sup> floor as well, as evidenced by the number of steps to the front porch which she submitted her supports her opinion that the existing dwelling fits within the character of the block, specifically, and the neighbourhood, in general.

Ms. Robinson noted that there were both letters from residents of the neighbourhood expressing support/no objection to the requested variances in addition to letters of objection. She specifically highlighted 31 letters of support/no objection were received by the COA regarding the proposed application, and 24 letters in opposition, including letters from the residents' association and adjacent neighbours.

She suggested that the letters of opposition did not speak to impacts as a result of the requested variances but were primarily focused on punitive comments on the circumstances of the increased height of the dwelling. She specifically stated that the two prevalent views expressed by those in opposition were that the dwellings "was built too high and it will set a precedent."

In addressing the issue of precedent, Ms. Robinson clarified that the COA may grant variances and, in doing so, is not bound by precedent. In a corollary statement, she submitted that TLAB hearings are 'de novo' and, as such, are also not bound by precedent. As a result, she opined that precedent is not a valid argument or concern in this matter.

### *The Statutory Tests*

In terms of provincial policy, Ms. Robinson referred to the Provincial Policy Statement 2014 (PPS) and the Growth Plan for the Greater Golden Horseshoe 2017 (Growth Plan). She noted that both documents have policies addressing infill development. She opined that the subject dwelling is a modest form of infill in so far as it adds additional living space in the third floor.

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She concluded that the subject application is primarily a local planning application which does not bring rise to matters of provincial interest and to the extent that these documents are applicable, the proposal is consistent with the PPS and conforms to the Growth Plan.

With respect to the four statutory tests of Section 45(1) of the *Planning Act (Act)*, whether the requested variances maintain the general intent and purpose of the OP and the Zoning By-law, whether they desirable and appropriate for the development of the land and building, and whether they are minor in nature, she addressed each separately.

With respect to the OP (Exhibit 6 – Tab 3), Ms. Robinson referred to the policies in Section 4.1 which promote a full range of residential uses. The Urban Structure policies and commentary in Section 2.3 state that *Neighbourhoods* are to be considered physically stable, but not static, and not frozen in time. Under Section 2.3.1, the policies recognize that some physical change will occur over time as enhancements, additions, renovations and new housing occur on individual sites.

She highlighted the Built Form policies in Section 4.1- *“physical changes to our established Neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective of this Plan is that new development respects and reinforces the general physical patterns in a Neighbourhood.”*

She opined that the photographic evidence she provided established the existing physical character of the immediate residential block and the neighbourhood as a whole and opined that the existing dwelling with the variances for the increased overall building height and the increased 1<sup>st</sup> floor height is compatible with neighbouring dwellings and is consistent with the existing physical character.

She highlighted Section 4.1.5 (Development Criteria in Neighbourhoods) which sets out criteria for development and deals with a wide variety of development types. She identified the relevant provisions applicable to the subject application as: c) dealing with height, massing, scale and dwelling type; and g) continuation of special landscape or built-form features that contribute to the unique character of a neighbourhood.

*c) Height, Massing and Scale*

In Ms. Robinson’s opinion, the proposal respects the existing character of the neighbourhood and fits the character of the street, block and the neighbourhood. There is no change to the massing of the existing dwelling as a result of the requested variances, as the Appellant is requesting a very minor variance for overall height of 0.34 m. and an increase in the height of finished 1<sup>st</sup> floor above grade of 0.2 m.

*g) Continuation of special landscape or built-form features*

She submitted that the dwelling as constructed, and the requested variances meet this criterion and opined that the requested variances meet all the criteria in Section 4.1.5.

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With respect to Section 4.1.8 of the OP, she underscored the applicable wording: *“Zoning by-laws will contain numerical standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages...and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.”* She opined that the relevant criterion in relation to the proposed variances is ‘building height’ and she opined that the requested height variances are compatible and conform to the intent of this policy.

In summary, after having reviewed the plans in conjunction with the minor variance list, that both individually and cumulatively, Ms. Robinson opined that the general intent and purpose of the OP is satisfactorily addressed and maintained by the subject application.

With respect to the Zoning By-laws, she opined that the intent of zoning by-laws is to identify permitted uses, together with performance standards, which once applied to a building or property, will result in a development that implements the OP; will not give rise to adverse planning impacts on the immediate or broader neighbourhood; and will, result in a building compatible with the subject land and neighbouring developments.

She also suggested that one of the performance standards within both the former and new By-laws relates to the control of building height. In this regard, she opined that the requested height variances will result in a dwelling that is compatible with surrounding developments. The height variance for the dwelling is within the general range of variances granted in the neighbourhood, and the height of the front door and porch are comparatively similar in height to neighbouring dwellings creating no discernable impact on either adjacent property. In her opinion, the general intent and purpose of the Zoning By-law is maintained.

In Ms. Robinson’s opinion, the proposal is desirable for the appropriate development of the subject lands. The subject proposal represents a reinvestment within the property through the incorporation of an addition to the existing single detached dwelling. She further asserted that the size, scale and standards applied to this proposal are appropriate and such reinvestment is compatible and fits the character of the neighbourhood.

In her opinion, the additional landscaping as requested by the City both at the front and the rear of the existing dwelling addresses the issues of privacy and overlook that were identified by the neighbours. She submitted that there will be minimal visual impact from the street as the proposed front landscaping in combination with the existing vegetation will ‘soften’ the impact of this elevation from the public realm.

She also submitted that the proposed planting both along the rear property line and along the front of the 3<sup>rd</sup> floor balcony will almost completely eliminate overlook and privacy impacts.

In Ms. Robinson’s opinion, the variances, individually and collectively, are minor in nature. In terms of order of magnitude, she submitted that the requested height variances are numerically minor as evidenced by the COA Decision Analysis table.

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She opined that the variances will not give rise to adverse planning impacts and will not result in issues related to overlook, loss of privacy and shadowing at the rear. She also submitted that there will be no streetscape related impacts. As a result, she is therefore satisfied that this application should be considered minor.

In summary, in Ms. Robinson's opinion, the proposal meets all four of the statutory tests, is consistent with the PPS, and conforms to the Growth Plan. The proposal represents good planning that is in the public interest and the height differential resulting from variances, in her opinion, will not be discernable

She recommended approval of the variances, subject to the revised plans and condition (as set out in Exhibits 7 and 8, respectively) and submitted that the additional landscaping agreed to by the Appellant will further enhance the property and lessen the impact of any additional building height.

Ms. Robinson attempted to address circumstances that resulted in the current variances being requested by the Appellant. She offered her understanding of the events suggesting that the pitch of the roof of the subject dwelling was slightly altered during construction to improve drainage. In addition, the thickness of the first-floor joists was increased to reinforce the structural capacity of the overall structure which contributed to an overall building height increase of 0.34 m.

She submitted that there may have been an error on the survey prepared for the subject dwelling which underrepresented the established grade of the structure. She asserted that the Appellant was unaware that the actual height of the dwelling was in excess of that approved by the COA until after the renovation of the dwelling was completed.

However, she confirmed that the number of storeys has remained at three and there has been no increase in ceiling heights from the plans approved by the COA in 2016.

On cross-examination of Ms. Robinson, Mr. Suriano addressed several issues for clarification purposes. With respect to the matter of the discrepancies in the height, he confirmed that the City undertook an inspection of 48 Playter Crescent after the renovations were completed and noticed a violation. Subsequently, the City issued an Order to Comply on August 25, 2017 and the Owners submitted a new application to the COA for variances which are the subject of this Hearing.

In addressing Ms. Robinson's testimony regarding the flat roof standard in Zoning By-law 569-2013, he confirmed that the By-law standard permits a maximum dwelling height of 7.2 m. He submitted that although some parts of the By-law are still under appeal, all variance applications that are submitted to the City are subject to this By-law and, therefore, the Appellant is seeking a variance from that standard.

With respect to the issue of 'precedent', he reconfirmed previous testimony that applications before the COA and the TLAB are determined on their own merits and submitted that each variance sought must satisfy the four statutory tests in the *Planning Act*. As such, if the TLAB grants the requested variances, he asserted that such

approval should not be deemed a 'precedent' for subsequent applications or, for that matter, for other applications for properties in the neighbourhood.

He questioned Ms. Robinson's assertion that neighbourhood character is in part determined by how the dwelling addresses the streetscape and public realm. In this regard, he highlighted Section 4.1.5 in the OP and specifically policy f) *prevailing patterns of rear and side yard setbacks and landscaped open space*. In response, Ms. Robinson agreed that rear yards are important to determining character as well and submitted that the neighbourhood character in this area also includes 2<sup>nd</sup> and 3<sup>rd</sup> storey balconies which she argued are extremely prevalent.

On cross-examination by Ms. Adamakis, Mr. Robinson was questioned as to why the City was not immediately contacted by either the contractor or by the Owners of the subject property when the error was noticed. Ms. Robinson again reiterated that the contractor likely did not realize the error until the construction was complete.

Ms. Adamakis then referenced the photographic evidence provided by the witness in Exhibit 3, submitting that there were no examples of houses with flat roofs that were similar in height to the subject dwelling. She characterized all the dwellings in the photos as having sloped, peaked, and slanted roofs.

Highlighting Photos 4 to 8 in Exhibit 3, showing the rear (north) views of the subject dwelling, Ms. Adamakis suggested that the subject dwelling 'towers' over the neighbouring 3-storey homes, many of which she asserted were 10 m in height. She disagreed with Ms. Robinson's characterization that the houses on this block were 'tall and proud'.

Further, she also depicted the as-built dwelling as being "*an overly large structure with a rear balcony which did not look in character with the neighbourhood*" since there were few third-floor balconies in the area.

In response, Ms. Robinson opined that based on her many years of planning experience managing development projects in neighbourhoods throughout the City, the Study Area included a significant number of dwellings that had 2<sup>nd</sup> and 3<sup>rd</sup> storey rear balconies.

Ms. Adamakis challenged Ms. Robinson's earlier testimony in which she stated that there would be no increase in the massing of the subject dwelling as a result of the requested variances. Ms. Adamakis disagreed suggesting that the requested variances, in addition to the previous 2016 COA approvals, cumulatively resulted in additional massing and scale. She also asserted that the rear balcony has contributed to issues of overlook and loss privacy for abutting neighbours.

Ms. Robinson once again clarified that the requested variances before the TLAB are to permit an increase in the height of the dwelling from 10.62 to 10.96 and to permit a 1<sup>st</sup> floor height increase of 0.2 m. She submitted that this differential is not discernable from the street or from the rear, and that the shape and design of the dwelling had already been established through the COA approval of the initial application.

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She also confirmed that City Planning and Engineering staff had provided no comments regarding the proposed application which she noted is the City staff's protocol if there are no concerns with the application.

As to the issue of overlook and loss of privacy, Ms. Robinson submitted that the requested height variances do not change the overlook conditions, as the 3<sup>rd</sup> storey balcony at the rear is permitted and is not being adjudicated at this Hearing.

Two Participants, Ms. Earls and Ms. Devitt, were provided with an opportunity to ask 'clarifying' questions of Ms. Robinson.

Ms. Earls asked whether the City supported the 'faux' cedars proposed for the 3<sup>rd</sup> storey balcony. Although I note that this was not a question of clarification by definition, Mr. Suriano graciously agreed to respond to the question. He confirmed that this alternative planting solution was indeed supported by the City because the additional, year-round screening potential and would be the Owner's responsibility if they needed to be replaced.

Ms. Devitt questioned the choice of the three Purple Beech trees proposed along the rear property line of the subject property. She noted that a portion of her rear yard and existing fence abuts the subject property and she wanted assurances that the proposed trees would survive. Ms. Robinson noted that the Owners had conferred with an arborist and Purple Beech trees were preferred in this situation due to their hardiness and ability to thrive in urban conditions.

Finally, Ms. Adamakis noted her concern with the survivability of the existing Linden tree at the front of the subject property. Ms. Robinson assured her that the tree would be replaced if it does not survive.

I was advised that David Nicholson, a Participant and resident at 29 Jackman Avenue, had to leave the Hearing early and he asked for permission to read his Participant's Statement at this juncture in the Hearing. I heard no objections from the other Parties and allowed him the opportunity.

Mr. Nicholson reiterated that the Appellant had already been before the COA in 2018 and the requested variances had been refused. He stated that he was opposed to the application and suggested that if approved by the TLAB, the variances would set a dangerous precedent in the neighbourhood whereby builders "*could build whatever they want and go through the appeal process begging for forgiveness after the fact.*"

He also attempted to provide 'hearsay' evidence regarding extemporaneous comments and conversations involving the Appellant prior to the 2018 COA hearing. I cautioned Mr. Nicholson for attempting to provide this type of information and noted that it would be given no weight in my analysis.

Mr. Suriano advised that the City would not be calling any witnesses.

*Ms. Adamakis' Testimony*

Ms. Adamakis is a Party and the owner and resident of 48 Jackman Avenue, the property which abuts the subject property perpendicularly to the rear. She filed a Witness Statement and supporting documentation with the TLAB on July 19, 2018. She has lived at her current address for 17 years.

She opposes the current application because she wants to maintain the character of the Playter Estates neighbourhood. She suggested that Playter Estates is a charming and historic neighbourhood in which renovations and additions to homes have been undertaken with adherence to the existing By-laws.

She noted that she is not a lawyer or a land use planner but submitted that the TLAB should consider the historical context of this application in order to judge whether the requested variances should be granted or refused. In this regard, she argued that the Appellant is utilizing the 2016 COA decision as an 'as-of-right' baseline to suggest that a 0.34 m increase in the height of the dwelling is minor and acceptable. She asserted that the Appellant is attempting to minimize the significance of this additional height and is seeking approvals "in increments." (her words)

She submitted that the Appellant has obtained a number of variances for the subject dwelling since submitting the original application in 2016, and argued that the issue for the neighbours is not just an additional 0.34 m in height but an increase of 3.76 m, which is the difference between the permitted maximum height of a flat roof (By-law 569-203) and the as-built height of 10.96 m.

Ms. Adamakis introduced a series of photographs (Exhibits 9 to 16) showing various views of the rear of the subject property and the existing dwelling from the perspective of her backyard and those of some of her neighbours. She employed this photographic material and referenced specific policies in the OP applicable to the subject application to address whether, in her view, the variances meet the four statutory tests in the *Planning Act*.

She highlighted several sections and policies within the OP to support her submission that the requested variances do not meet the general intent and purpose of the OP. In particular, she references: Section 2.3.1 – Healthy Neighbourhoods; Policy 2.3.1.1; Section 3.1.2 – Built Form; Section 3.1.2 – Exterior Design – Character, Scale and Appearance; Policy 3.1.2.3 b), c), d) and e); and Policy 4.1.5 – Development Criteria in Neighbourhoods c), d) f), and g).

She then referenced Exhibit 9 (Views of the Front) and highlighted Photos 1 to 4 which show the subject dwelling within the context of abutting properties on Playter Crescent. She suggested that Photos 3 and 4 illustrate that the subject dwelling is taller than both 46 and 50 Playter Crescent and the flat roof is out of character.

Exhibit 10 (Streetscape Playter and Jackman) consists of 19 photos illustrating the streetscape on Playter Crescent and Playter Boulevard, as well as Jackman Avenue. She submitted that Photos 1- 12 support her opinion that the elevation of the subject dwelling does not fit the neighbourhood and that the subject dwelling stands out

from the other homes in the area and is completely different in style, massing and built form.

With respect to privacy and overlook, Ms. Adamakis introduced Exhibit 11 (Backyard View at 48 Jackman) showing views of the rear elevation of the subject dwelling from her rear yard. She compared the roof style of 48 Playter Crescent to abutting homes, noting numerous slanted and peaked roofs that do not 'overpower' their neighbours, unlike the subject dwelling

She referenced Exhibit 12 (Rear of 48 Playter Cres.), which consisted of a total of 8 photos looking west from the subject property. In her opinion, the 'square' (her word) design of the subject dwelling exacerbates the height difference between the abutting properties at 46 and 50 Playter Crescent and suggested that the subject dwelling would not appear as 'huge' as it does if the Appellant had incorporated a peaked roof. In this regard, she referred to additional photos in Exhibit 14 to illustrate the prevalence of peaked and sloped roofs in the area.

She suggested the extensive photographic evidence she provided was intended to counter the evidence submitted by Ms. Robinson. She suggested that many of the newer renovated dwellings and new builds highlighted by Ms. Robinson were located on Ellerbeck Street which is on the fringes of identified Study Area.

With respect to the geodetic height measurements referenced by Ms. Robinson in Exhibit 5, Ms. Adamakis questioned the relevance of this data as it related to the subject dwelling suggesting that a flat roof design contributes visually to the overall massing of a dwelling. Nevertheless, she noted the geodetic height measurements for the dwellings at 35, 50 and 54 Jackman Avenue (128.80 m, 128.53 m and 128.70 m, respectively) suggesting they were all lower than that of the subject dwelling (129.00 m).

With respect to the general intent and purpose of the new By-law, Ms. Adamakis submitted that from the City's perspective the intent of the by-law standards is to prevent the construction of what she termed "square and rectangular 3-storey dwellings." She argued that flat roofs have a different height standard than peaked roofs because flat roofs result in greater massing and visual impact. Since she was advised by the City (p. 8, para. 23 a) in her Witness Statement) that the most restrictive by-law would apply, in this case By-law 569-2013, she submitted that the requested variances do not meet the intent of the By-law.

With respect to the last two tests, she submitted that the variances are not desirable and appropriate for the development of the land and building because the subject dwelling is too high, too massive and already at an FSI of 0.92. She suggested that if approved, the variances would create a negative precedent both in terms of overall permitted building height and size, as well as to how variance approvals are sought. She, again, used the term 'incremental approvals' to describe this process and submitted that such an approach should be discouraged.

She submitted that the variances requested for height are not minor. She argued that the 10.96 m height of the subject dwelling should be reviewed within the context of

maximum height permitted for a flat roof of 7.2 m in the new By-law. She submitted that for the reasons noted above the requested variances should be refused.

On cross-examination, Ms. Pepino asserted that the examples identified by Ms. Adamakis were all examples of variance decisions granted by the COA and, in fact, variances to the former By-law which measures maximum permitted height of a dwelling at the mid-point of the roof. She submitted that Ms. Adamakis did not understand how the By-law works with respect to a minor variance to a provision that sets the measured height at the mid-point of the roof and, therefore, suggested that the visual examples offered by Ms. Adamakis were not helpful to the TLAB.

She also questioned the validity of some of Ms. Adamakis' photos, specifically in Exhibits 11 and 12, suggesting that they were mislabeled and, therefore, inaccurate.

On the meaning of the term '*after the fact*' variances, Ms. Adamakis was asked if she understood this term and whether she was supportive of such variances. Ms. Adamakis responded by suggesting that it would depend on the variances being requested, but that she does not support the approval of the variances in the subject application.

With respect to Ms. Adamakis' perception of what is considered a flat roof, Ms. Pepino referenced 23 Jackman Avenue (Exhibit 14, 4<sup>th</sup> photo). Ms. Adamakis agreed with Ms. Pepino that although the roofline of that dwelling appears as a flat roof from the street and that it begins to slope toward the rear of the 3<sup>rd</sup> storey.

With respect to Ms. Adamakis' critique of the COA Decision Analysis table and the height variances identified by Ms. Robinson, Ms. Pepino again noted that Ms. Adamakis is not a land use planner and has no basis to disagree with information contained in the table.

Ms. Pepino submitted that the geodetic measurements in Exhibit 5 represent elevations measured to the top of the roof. She submitted that the overall height being requested by the Appellant is to the top of the roof and, therefore, the variance addresses the height of the roof no matter how it is designed.

Ms. Pepino inquired as to the basis of Ms. Adamakis' objection to the subject variances and in response to a question as to whether she liked the design of the existing dwelling, Ms. Adamakis responded that the overall massing was not appropriate.

Finally, Ms. Adamakis reluctantly agreed with Ms. Pepino that the additional planting being proposed as part of the Settlement with the City would contribute to mitigating the impact of overlook to her property, specifically the planting proposed on the 3<sup>rd</sup> floor balcony.

#### *Participant's Statements*

Ms. Lola Bratty is a Participant and owner and occupant of 43 Jackman Avenue, and she filed a Participant's Statement and supporting documentation with the TLAB on

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June 18, 2019. She also confirmed that she is a board member of the local ratepayer's association.

She advised that she has experience in building and renovating homes in Toronto and has served as a municipal councilor in a community in central Ontario, where she helped develop the municipality's official plan.

She is opposed to the variances being requested and described the dwelling as an *"appalling building that reflects cheap construction with "a flat roofed box on top of a 2-storey structure."* (Participants Statement, p. 1)

She submitted that a central tenet of the OP (Sections 2.3.1 and 3.1.2.) is to ensure that new development respects and reinforces the existing physical character of the area and fits with the neighborhood improving its character. She argued that the 'height, massing and scale' of the subject dwelling does not fit the character of the neighbourhood and, therefore, does not meet this standard.

She submitted that substituting a flat roof structure for a peaked roof with shed dormers, which she suggested is characteristic of the neighborhood, results in a structure that does not meet the intent of the Zoning By-law.

Ms. Bratty acknowledged that she does not oppose renovations and redevelopment of properties in which 'good design' (her words) incorporating peaked roofs and shed roof dormers is utilized; however, she submitted that the existing dwelling is overly large, too high, out of character, and will have a negative impact on abutting neighbours.

She argued that, cumulatively, the variances would set a negative precedent for style and height in the area, as evidenced by 50 Playter Crescent, and that she is opposed to the breaking of by-laws, ignoring variance approvals, and building illegally.

On cross-examination by Ms. Pepino, Ms. Bratty confirmed the local ratepayer's association took no position on the subject application.

Ms. Diana (Dilin) Baker is a Participant and owner and resident at 35 Jackman Avenue. She filed a Participant Statement with the TLAB on July 9, 2018. Ms. Baker stated that she supports the May 9, 2018 COA decision to refuse the variances because they do not maintain the general intent and purpose of the OP and Zoning By-law, are not appropriate for the development of the land. In addition, she stated that 'after the fact' variances should not be considered minor.

She stated that the excessive height of the dwelling has resulted in a reduction in privacy and increased shadowing impacts on abutting properties. She submitted that the ceiling heights of the first floor (3.1 m) and the 2<sup>nd</sup> and 3<sup>rd</sup> floors (2.7 m) of the subject dwelling are not typical of those of dwellings in the neighbourhood. She submitted that the increase in the finished first floor height has resulted in a porch and front door that is higher than neighbouring porches.

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She rejected the Appellant's characterization of the existing dwelling as a modest overbuild and suggested that the as-built house is not consistent with the built form found in the neighbourhood. She submitted that the variances should be refused.

Ms. Baker confirmed, on cross-examination by Ms. Pepino, that there is no shadow impact on her property from the subject dwelling as she stated in Participant Statement and the rear of the subject property is not visible from her rear yard.

Ms. Leona Earls is a Participant and owner and resident at 52 Jackman Avenue. She submitted a Participant Statement and supporting documentation to the TLAB on July 18, 2018.

Ms. Earls acknowledged that she has lived at her residence for the past 40 years. She is not opposed to the redevelopment and renovation of properties in the neighbourhood, noting that she had previously renovated her home adding a 3<sup>rd</sup> floor, a rear addition and skylights. She referred to the photo submitted with her Participant's Statement noting that the rear of the subject dwelling is visible from her kitchen window and back deck but conceded that views of the 2<sup>nd</sup> floor of the subject dwelling will be mitigated with the planting of the additional Beech trees at the rear of the property.

She submitted that the height, massing and scale of existing dwelling is not in keeping with the character of the neighbourhood and argued that it does not meet the general intent and purpose of the OP, specifically referencing Section 3.1.2.

She submitted that if the subject appeal is allowed, it will set a precedent in the neighborhood allowing for *"large box-like structures dominating backyards, designed with no thought to maintaining what privacy, especially at 46, 48, 50 and 52 Jackman Avenue, have enjoyed."* (p. 2, para. 2, Participant's Statement)

Ms. Earls referenced two decisions of the former Ontario Municipal Board (OMB) which were submitted at the May 9, 2018 COA hearing identifying them as 212 Vesta Crescent and 151 Airdrie Road. I note that she provided no OMB case or file numbers for the Member's benefit. She specifically highlighted the latter decision suggesting that it is a similar planning matter to the subject application, and she noted that the OMB denied the variances in that case.

In cross-examination by Ms. Pepino, Ms. Earls conceded that her rear kitchen window is a significant distance from the subject property and agreed that the Appellant has already mitigated the impact of lighting at night through window blinds. She also acknowledged the considerable soft landscaping in the rear yard of the subject property.

Ms. Rachel Devitt is a Participant and co-owner and resident at 46 Jackman Avenue, along with Stephane Ethier, who could not attend the Hearing. She and Mr. Ethier filed a joint Participant's Statement and supporting documentation to the TLAB on July 19, 2018.

She confirmed her backyard is perpendicularly and connected directly to the rear of the subject property. She stated that her home is a modest 2-storey structure with a sloped roof and is typical of and consistent in appearance with other dwellings in the neighbourhood. She indicated two specific concerns with the subject application.

The first concern relates to the impact of the subject dwelling on their property and she respectfully disagrees with Ms. Robinson's statement in her earlier testimony that there was no mention of 'impact' expressed by neighbours in letters opposing this application.

She acknowledged that while she understands that the area is a dense urban neighbourhood she stated that the height and massing of the subject dwelling is overwhelming resulting in an unacceptable and unreasonable loss of the privacy. She referred to four photographs she submitted with her Participant's Statement demonstrate the visual impact on her rear yard and patio.

Her second concern is that the requested variances do not meet the four statutory tests in the *Planning Act*. She referenced Section 4.1.5 in the OP and submitted that the subject dwelling, with a flat roof and building height of 10.96 m is out of keeping with the physical character of the neighbourhood. She suggested that the area "*consists predominantly of homes with pitched roofs and dormers consistent in rooflines, massing and building proportions.*" (p.1, para. 5, Participant's Statement)

Ms. Devitt stated that she was opposed to the requested variances because they result in a dwelling that greatly exceeds the maximum permitted height for a house with a flat roof that does not fit the character of the street or the neighbourhood.

Ms. Devitt also referenced the case law highlighted by Ms. Earls, in which variances for additional building height were refused. She noted in the case of 151 Airdrie Road, the OMB clearly indicated that "the additional height was not necessary, that Official Plan policy could not be ignored, and that the height limits should be respected." (p. 3, para. 1, Participant's Statement)

In addition to the cases noted above, she also referenced decisions related to 8 Eastview Crescent and 594 Curzon Avenue, although, again, no actual case briefs or file numbers were provided.

On cross-examination by Ms. Pepino relating to loss of privacy, Ms. Devitt conceded that there are other dwellings in the vicinity of her home other than the subject dwelling that have third floor balconies that overlook her rear yard. She also acceded that the existing landscaping in the rear yard of the subject property is, in her words, satisfactory and that the additional landscaping agreed to by the Appellant will improve screening between the two properties.

Ms. Gail Handley is a Participant and the owner and resident at 64 Jackman Avenue who did not intend to speak at the Hearing. She filed a Participant's Statement and supporting documentation with the TLAB on July 19, 2018. She opposes the requested variances and asked to read her Statement.

She has lived at her current address for 34 years and does not experience the subject dwelling on a daily basis, only seeing it when she walks the neighbourhood. She disagrees with the Appellant's claim that the requested height variances are minor and stated that granting the variances would be unjust.

No other Participants in attendance requested to speak.

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In closing remarks, Ms. Pepino submitted that I make a decision in this matter based on planning evidence from a land use planner qualified to give opinion evidence in this regard. She argued that there is a distinction to be made between perceptions of impacts or concerns and concerns that actually rise to the level of being adverse planning impacts sufficient to denying the requested variances.

She submitted that the TLAB is charged with making a planning decision based on the planning merits of the case and in this regard, she asked that I prefer the planning evidence of Ms. Robinson, which she suggested was objective, non-partisan, comprehensive, and not undermined.

She requested that the requested variances be granted subject to the condition I Exhibit 8 proposed by the City.

Ms. Pepino provided the following cases, both recent decisions of the former OMB and the TLAB, for guidance in this matter, which I appreciate (I refer to them by their popular name):

- *Varatheswaram v. Toronto (City)* OMB 2002 CarswellOnt 3052 O.M.B.R 357 (“*Varatheswaram*”) re 146 Roywood Drive;
- *Re Tanna* TLAB (18 110922) May 24, 2018 (“*Tanna*”) re 454 Rhodes Avenue;
- *MacDonald v. Richmond Hill (Town)* OMB 2002 CarswellOnt 7424 re Forest Ridge Road;
- *MacDonald v. Richmond Hill (Town)* OMB 2001 CarswellOnt 5276 re 278 Forest Ridge Road;
- *Holt v. Township of Wilmot* OMB 2000 CarswellOnt 6065 re 37 Riverview Avenue;
- *Re Galbraith* TLAB (17 267941) June 5, 2018 (“*Galbraith*”) re 821 Carlaw Avenue;
- *Frank Sciabarrasi Holdings Ltd. V. Milton (Town)* OMB CarswellOnt 5692 re 153 Derry Road;
- *Re Cunha Design Consultants Ltd.* TLAB (17 279960) June 6, 2018 re 11 Academy Road;
- *Re Alex Boros* TLAB (17 248302) March 27, 2018 re 6 Lorraine Gdns.

She noted that these cases were pre-filed with the TLAB on July 4, 2018 for review and scrutiny, in the hope that the residents would seek some confirmation about the state of the law. She submitted that the cases are provided to address many of the misconceptions that have driven objections from the residents to this application, both at the COA and the TLAB.

Although a total of nine cases were submitted, Ms. Pepino focused specifically on the following three for the benefit of the Tribunal.

1. *Galbraith* – 821 Carlaw Avenue

Ms. Pepino submitted that this is a decision of the TLAB rendered by Member McPherson, in which the Applicant sought variances to legalize and maintain a number

of additions to an 'as constructed' dwelling without the benefit of building permits. The TLAB allowed the appeal in part and granted the variances requested.

Ms. Pepino contrasted the circumstances of that case with the current application noting that Appellant in the subject matter has gone through an extensive process including obtaining a COA decision that granted variances permitting the 'as constructed' dwelling. The Appellant is now before the TLAB requesting relief to permit an additional 0.34 m in overall height and a 0.2 m increase in the height of the finished first floor.

She emphasized that the subject dwelling was constructed with a building permit. When an Order to Comply was issued by the City, the Appellant submitted a second application to the COA. She argued that the Appellant has carefully and methodically followed the City's process and attempted to rectify the error in construction that has occurred, in contrast to the above referenced case in which the applicant, to paraphrase Ms. Pepino, "*played fast and loose with the rules.*"

Ms. Pepino highlighted numerous other paragraphs in the *Galbraith* decision, including paragraph 74, where Member McPherson wrote: "*There was considerable concern by the other Parties, regarding the cumulative impact of the additions on their properties, particularly the improvements made without the required permits.*"

Ms. Pepino stated that Ms. Adamakis has suggested that the TLAB consider the historical context of the subject application in considering the requested revisions. She argued that the position expressed by Ms. Adamakis' is not an appropriate approach for the TLAB to take. Ms. Pepino stated that there should be no consideration for the cumulative impact that takes into consideration, as part of this matter, the permissions already granted for the subject development, all of which were done with permits.

On the issue of perceived 'animus' towards the Appellant/Owners, Member McPherson in her decision observed: "*There were obviously some negative feelings towards the Applicant relating to the condition of the exterior of the building and other ongoing issues, including the tree in the backyard and the use of the neighbour's yard to access the lane.*" Ms. Pepino noted that although no one has criticized the Appellant's upkeep of the subject property in this matter, she submitted that there are negative feelings toward her clients from the neighbours as evidence through a review of the COA record and that of the TLAB (letters in opposition).

Finally, at paragraph 78 of the *Galbraith* decision, Ms. Pepino noted that Member McPherson observed that: "*The City has attempted, through conditions of approval, to address a number of issues that are not directly related to the variances, but of concern to the City and the neighbours.*" She submitted that the same has situation has occurred in this matter.

## 2. *Tanna* – 454 Rhodes Avenue

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Ms. Pepino highlighted the observation made by Member Lord in the above referenced TLAB decision at paragraph 14: *“The TLAB is to consider the variances from the perspective that the improvements have not yet been built.”*

3. *Varatheswaram* – 146 Roywood Drive

Ms. Pepino noted that this was an OMB decision concerning a shed that was built without a building permit. The shed was found to conflict with two zone standards and variances were required. She highlighted paragraph 3 in the decision related to the issue of ‘after the fact’ variances, where the Member wrote: *“The Board’s stance on variances involving an illegal structure is to consider the merits of the application in relation to the four ‘tests’ of the Act as if the structure did not exist.”* Ms. Pepino submitted that the Board’s stance reflects that aesthetics of a structure are not within the Board’s jurisdiction and she submitted that this equally applies to this Tribunal.

Ms. Pepino then provided her perspective of the residents’ concerns based on a review of the submissions filed with the TLAB and the testimony provided by Ms. Adamakis and the Participants opposing the subject application. She summarized the concerns as follows:

- *Residents don’t like the ‘look’ of the house after seeing the ‘as-built’ dwelling;*
- *Residents in opposition to the variances feel that the flat roof design of the dwelling is too high and is out of the character with the neighbourhood, notwithstanding that similar examples exist in the area and that flat roofs are permitted in both the former and new Zoning By-laws;*
- *Residents feel that ‘rules are rules’ and the Appellant should somehow be punished for not abiding by the rules;*
- *Residences feel that the subject dwelling will set a precedent if the variances are granted.*

With respect to the ‘look’ of the dwelling, she argued that the aesthetic appeal of the structure is not a test within the *Act* and therefore not within the jurisdiction of this Tribunal.

In addressing the assertion by residents that there are no other residential dwellings with flat roofs within the neighbourhood, Ms. Pepino asserted that there were at least 4 other examples of flat roofs in the neighbourhood which Ms. Adamakis acknowledged. She also submitted that the photograph evidence provided by Ms. Robinson illustrated that there are significantly more dwellings that incorporate a flat component as part of the roof which may or may not be evident when viewed from the street. As a result, she argued that the subject dwelling does generally fit the character of the neighbourhood.

As to Ms. Adamakis’ debate regarding the relevance of geodetic measurements in addressing the measured height of the subject dwelling, Ms. Pepino submitted that she appears to be conflating geodetic height, which measures the highest point of a structure whether the roof is peaked or flat, with the height permitted in Zoning By-law 438-86, which measures the height to the mid-point of the roof. As a result, she

submitted that Ms. Robinson's evidence should be absolutely preferred to that of Ms. Adamakis.

With respect to whether the Appellant should be punished for "not following the rules," Ms. Pepino reiterated that after becoming aware of an error in construction the Appellant has attempted to rectify that error. She argued that this is not an anomalous situation but a problem that the Planning Act was designed to address. Consequently, she argued that the Appellant should not be blamed or punished.

Finally, with respect to the issue of precedent, she argued that the case law submitted acknowledges that the TLAB and the former OMB has taken a position that 'after the fact' variances can be permitted if they satisfy all four tests in s. 45(1) of the *Act*. She also submitted that the law is clear in that the requested height variances must give rise to proven and unacceptable adverse planning impacts relating to overlook, loss of privacy or shadowing.

She submitted that in this matter, the residents have not been able to prove unacceptable and adverse planning impacts. She noted that no residents attended the Hearing in opposition to the variances from either Playter Crescent or Playter Boulevard. In addition, only Mss. Adamakis, Devitt, and Earls own homes located on the west side of Jackman Avenue near the subject dwelling and attended the Hearing in opposition.

She submitted that in each of those circumstances, the properties in question do not have an abutting relationship to the subject property and the concerns of overlook and privacy can be explained by the existing urban context and properties with oblique views

Ms. Pepino submitted that the TLAB has been provided with no credible expert evidence other than that provided by Ms. Robinson and argued that the themes advanced by those proponents objecting to the subject application through submissions before both the COA and the TLAB, related to 'precedent', 'punishment' and 'failure to adhere to rules', are inappropriate and not at all *Planning Act* related matters. As such, she submitted that the appeal should be allowed, and the requested variances granted.

Mr. Suriano restated the City's position, reconfirming that the City is not objecting to the variances given the Settlement terms reached with the Appellant. Those terms are reflected in the revised Final Elevation plans (Exhibit 7) and propose additional landscaping at the front and rear of the subject property, including plantings along the 3<sup>rd</sup> floor rear balcony.

He submitted that the proposed additional landscaping, secured through the condition agreed to by the Appellant, is specifically intended to mitigate the increased building and finished 1<sup>st</sup> floor height which are the subject of the requested variances. He reiterated his position that no further notice of the application is required.

With respect to the issue of precedent, Mr. Suriano noted that all hearings are '*de novo*' and submitted that if the TLAB grants the requested variances such an approval should not be a guide for future applications. He strongly argued that this understanding

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was important to basis of the settlement terms in this matter and should be underscored in any decision of this Tribunal.

Mr. Suriano requested that if the subject variances are granted, this be subject to the condition as noted in Exhibit 8 and that the revised final plans identified as reflecting the proposed additional landscaping (Exhibit 7) be appended to the decision for reference purposes.

Ms. Adamakis noted that residents who attended the Hearing did so without the benefit of obtaining legal advice or an expert planning witness and evidence. She also argued that there would have been no need to need for a hearing had the Appellant corrected the error in height when it was discovered.

She argued that residents are concerned about incremental variances being granted and suggested that subject dwelling is “too high.” She submitted that the flat roof design of the subject dwelling does not fit the character of the neighbourhood, and the dwelling is much taller than any other houses in the area.

She suggested that the application before the TLAB should be considered from an historical context (the original COA application) and reviewed against the cumulative variances already granted. She argued that from that perspective the actual impact of the height of the constructed dwelling on neighbouring houses is greater than simply an additional 0.34 m in height, as the Appellant’s planner would have us believe.

Contrary to the suggestion by Ms. Pepino, she submitted that objections from the residents to this application are not “personal” and there is no animosity towards the Appellant. Rather, she suggested, it is an objection to the design of the dwelling and the direct impact of the as-built structure on the continued enjoyment of adjacent properties.

In conclusion, Ms. Adamakis referred to the case law with relevance to this matter already referred to by many of the Participants. She highlighted three specific cases for guidance:

- Arzhang Sohrabi v. Toronto (City), (“*Sohrabi*”) 151 Airdrie Road, OMB Case No. PL150665 (December 9, 2015)
- Babber v. Toronto (City), 2016 CarswellOnt4336 re 8 Eastview Crescent; and
- Jing v. Mississauga (City), 2016 CarswellOnt 19417 re 594 Curzon Avenue.

She submitted that in *Sohrabi* (the case commonly referred to as 151 Airdrie Road by the Participants) the Board refused the variances being requested for an increase in the height of the as-built dwelling of 0.51 m. She advised that the Board’s refusal of the variances subsequently resulted in the owner being required to reconstruct the roof in order to lower the height of the dwelling.

She concluded that in that decision the Board Member summarized the concerns of the participants who testified against the application by stating: “*The height variation is noticeable and therefore objectionable.*” (p. 5, para 14) In the same paragraph (bullet point 3), the Member wrote: *The witnesses stated that the application did not represent intensification, which is a primary provincial development objective, but is instead a form*

*of “massification” because only building volume, rather than resident density, was being increased.”*

### ***Epilogue - Post Hearing***

This matter was scheduled as a one-day Hearing and concluded at the end of that day. However, within two days post-Hearing, TLAB staff received correspondence from Ms. Adamakis and Ms. Karen Kates, dated September 27, 2018 and September 28, 2018, respectively. The substance of these emails concerned issues of procedural fairness relating to the submission of documents during the Hearing.

After considering the content of these emails and the requests being made, and in response, I directed TLAB staff to schedule a telephone conference call with the following persons: Ms. Pepino (Appellant’s representative); Mr. Suriano (Party and City of Toronto legal representative), Ms. Adamakis (Party); and Ms. Kates (Participant).

The conference call occurred on October 4, 2018 (at 2:00pm). In addition to the persons listed above, Mr. Josh Hilbert (planner with Aird & Berlis) and Ms. Hsing Yi Chao (TLAB Supervisor) joined the conversation. The following is a summary of my notes regarding the call.

I informed the participants that I had requested the teleconference call to address the issues raised in the emails from Mses. Adamakis and Kates. I noted that after reviewing the emails my initial inclination was to respond to the parties and participants impacted through an email. Upon further reflection, I concluded that the better option would be to address the matters in person in a follow-up face-to-face meeting.

However, given that this is occurring after the conclusion of the Hearing and in considering the time, cost and inconvenience of attempting to assemble all persons to attend the TLAB offices, I decided that the best option was to arrange a teleconference call.

At the outset, I advised that this was neither an opportunity to re-adjudicate the appeal nor to probe beyond the bounds of the matters raised in the aforementioned emails. I highlighted the pertinent rules of the TLAB Rules of Practice and Procedure (the Rules) of guiding my approach to this situation:

- Rule 2. – I noted this Rule is important as an overview;
- Rule 2.2 – “These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.”
- Rule 2.10 – “The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.”

I also referenced Rule 3 – Forms, Format, Filing, Service and Documents, as well as Rules 12, 13, and 16, although I did not regurgitate them during the call.

I confirmed that everyone in the call had a copy of the emails in question and had been given an opportunity to review them prior to the call. I addressed each email

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individually and chronologically, starting with Ms. Adamakis' email received by the TLAB on September 27, 2018 at 5:39pm.

I noted that at the beginning of her email, Ms. Adamakis had expressed frustration with the Hearing process itself and she stated that those in attendance had felt "bullied" (her words). In response, I advised her that the TLAB, and by extension myself as the presiding Member, attempts to make proceedings fair, equitable and transparent for all. The TLAB tries to make everyone feel at ease, even though at times the process can feel somewhat adversarial.

As to the first issue identified in her email suggesting a sense of reluctance on my part to accept the submission of case law, I advised Ms. Adamakis that this is customarily accepted by the presiding Member and does not have to be identified as an exhibit. It is appreciated if it is submitted in advance of the hearing and can be in the form of a 'book of authorities' for obvious reasons. My experience has been that case law, most often, is submitted the day of the hearing and it is customary for the party/legal representative to then address the cases identifying specific section.

In her email, Ms. Adamakis inferred that I did not allow the cases she identified to be submitted based on an objection from Ms. Pepino. I reminded her that I had indeed agreed to accept the cases and asked that they be provided to the TLAB staff. I confirmed this through listening to the recording (DAR) of the Hearing. Regardless, I advised Ms. Adamakis that I been provided copies of the cases in question and I confirmed that she had every opportunity to address them during the Hearing once they were provided to the other Parties.

With respect to "*Sohrabi*" PL150665 (151 Airdrie Road), I confirmed that in reading the filings to the TLAB I had made note that a few Participants had referenced this OMB case in their submissions. In anticipation of the Hearing, I advised that I familiarized myself with the case in preparation anticipating that it would be raised.

More importantly, I reminded Ms. Adamakis she was able to refer to that decision in her closing remarks. I, nevertheless, thanked Ms. Adamakis for submitting the case law she identified.

With respect to the email from Ms. Kates, I confirmed that she attended the Hearing during the morning portion but left early. She gave her prepared statement to a neighbour, Ms. Adamakis I believe, to read at the Hearing. She stated in her email that Ms. Pepino had objected to her Statement being read on the basis that: "I had not submitted prior documents, which is blatantly untrue."

Ms. Kates argued that her name appeared on the sign-in sheet at the Hearing and she had submitted the requisite documentation as per the TLAB Rules and, therefore, her statement should have been allowed.

I attempted to explain why Ms. Adamakis was prevented from reading her statement at the Hearing. I advised that I considered the statement a 'new and late filing', if you will, which the TLAB discourages. This prevents the disclosure of such filing to other parties and participants, allowing time for a review of the material and an

opportunity to respond thereby preventing 'trial by ambush' which the TLAB attempts to avoided.

In addition, I noted that it would have been unfair to allow the submission as the document has not been verified or attested to, and Ms. Pepino would not have had an opportunity for cross-examination to address matters identified in the statement. I noted that Ms. Kates should have informed me of her need to leave the Hearing early at which point I would have provided her an opportunity to read her statement, as I did with one other Participant, Mr. Nicholson.

In preparation for the conference call, I compared Ms. Kates' statement attached to her September 28, 2018 email to her Participant's Statement dated July 19, 2018 (essentially her letter to the COA) filed with the TLAB. I have concluded they are almost identical, with a few additional facts and sentiments added to the former document.

Pursuant to TLAB Rule 13.7 c) (the Role of a Participant) "a Participant to a Proceeding may – make an oral or written statement to the TLAB at a time set for such a statement." In addition, Rule 13.8 d) states that: "A Participant may not make opening and closing submissions."

In view of these TLAB Rules, and to obtain as much information as I can in order to fairly and justly adjudicate this matter, I advised that I would allow Ms. Kates' written statement to be accepted into evidence but I noted that it would carry minor weight in my final analysis. More importantly, as to Ms. Kates' involvement in this Proceeding, I advised that I would rely on her Participant's Statement dated July 19, 2018, which was filed as per the TLAB Rules, as her position in this matter.

Finally, I noted that I felt obliged to address the sentiment raised in the subject emails alluding to the feeling of being 'bullied' at the Hearing. I explained that the TLAB tries to make the process fair and transparent for all and the Rules have been established in order to ensure that all the information is submitted upfront. This allows Parties and Participants ample time to prepare for a hearing in order to feel more comfortable and less intimidated by the process.

I concluded the call by advising the participants that I would not be issuing a written ruling but, rather, I would be incorporating my ruling as part my written decision in this matter.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB has carefully considered the evidence provided on behalf of the Appellant's professional planner and the Parties in this matter. There was considerable concern expressed by Ms. Adamakis and the residents in opposition to the requested variances regarding the cumulative impact of the additional increase in the finished 1<sup>st</sup> floor height and the overall height of the dwelling. There were obviously some negative feelings towards the Appellant relating to constructing of the subject dwelling with the additional height without the required approvals.

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Ms. Pepino submitted that this was a planning case in which the Order to Comply should not have any effect on the planning decision to be made. Therefore, in her view, the starting point was a building with the permissions as given in the December 7, 2016 COA decision, notably a maximum building height of 10.62 m.

It is important to note that the TLAB must consider the merits of the proposed variances based on the four tests of the *Act* and provincial policy. Further, the TLAB's consideration of the variances is premised on the assumption that the development has not proceeded.

To the extent that the variances requested have not changed, I accept that the additional landscaping agreed to by the Appellant arrived at in the course of settlement discussion is an attempt to mitigate impacts resulting from the subject application. As such, I accept that the revisions to the plans that were part of the Applications before the COA are minor as they include proposed landscaping improvements. No new variances are being introduced, therefore, I find that no further notice is warranted pursuant to s. 45(18.1.1) of the *Act*. In any event, the evidence showed that all interested persons appeared to have received notice.

Several genuinely held concerns were raised by Ms. Adamakis and the other Participants relating to overlook, loss of privacy and enjoyment of their properties as a result of the subject dwelling. These are relevant considerations that must be considered when evaluating any variances.

The City has attempted, through the condition of approval, to address a number of issues that are directly related to the variances and which are a concern to the City and the neighbours. This includes additional landscaping at the front and rear of the existing dwelling as well as plantings along the face of the 3<sup>rd</sup> floor rear balcony. I agree with Ms. Pepino and Ms. Robinson that these landscaping improvements will address and substantially mitigate the concerns raised by the abutting residents.

#### *Official Plan Compliance*

The variances must conform to the Official Plan. The preamble to "Development Criteria" states: "*Physical changes to our established Neighbourhoods must be sensitive, gradual and generally 'fit' the existing physical character.*" A key OP provision is section 4.1.5: "*Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including, in particular:*

*c) heights, massing, scale...of nearby residential properties."*

I accept Ms. Robison's opinion that the existing dwelling is compatible with and fits the existing physical character of the neighbourhood. The photographic evidence provided by Ms. Robison illustrated that the height of the subject dwelling is comparable to the height of other houses in the area and is within the range of existing and approved dwellings within the Study Area.

Ms. Robinson was able to show that a number of dwellings within the Study Area had received minor variances related to overall building height and the COA recently

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approved a minor variance for a permitted height of 10.62 m (geodetic height of 128.75) for the adjacent dwelling at 50 Playter Crescent.

The subject dwelling is situated within the middle of a short block of 7 dwellings and has a geodetic height of 129.0 m. Utilizing the survey information outlined in Exhibit 5, Ms. Robinson was able to successfully demonstrate that the geodetic heights of the dwellings immediately to the west of the subject property are all slightly greater than 129.0 m. In addition, 52 Playter Crescent, the dwelling immediately to the east, has a geodetic height of 129.64 m measured to the top of architectural spire. Although not included in the measurements provided in Exhibit 5, Ms. Robinson's photographic evident (specifically Photo 9, Exhibit 3) illustrated that 54 Playter Crescent is similar in height to the abutting dwellings including the subject dwelling.

I agree with Ms. Robinson's statistical analysis found in her COA Decision Analysis table in Exhibit 4. The table provides one dimension of consideration of the quantitative extent of variances over the last 18 years in the Study Area. I agree with her opinion that it is important to also evaluate the qualitative aspects of the subject development which should be given a greater amount of planning weight when compared to the quantitative aspect of the variances being requested.

I concur with Ms. Robinson's opinion that the data provided within the COA Decision Analysis demonstrates that the variance to permit a height of 10.96 m is in the range of other height variances found in the Study Area. I am cognizant of the fact that most of the variances granted were to Zoning By-law 438-86, where the measurement for height is to the mid-point of the roof, meaning that the physical height is greater than the dimension of the variance.

With respect to the height of the finished 1<sup>st</sup> floor, this zoning requirement is a provision in By-law 569-2013 that did not previously exist in the former By-law. As a result, there are no variances for the finished 1<sup>st</sup> floor height in the Study Area. However, I accept Ms. Robinson's proposition as illustrated through her photographic evidence that dwellings in the Study Area have a variety of first floor heights, with many having 4 to 6 steps up to the front porch and door. I also agree that the dwellings on the north side of Playter Crescent within proximity to the subject dwelling have comparable finished 1<sup>st</sup> floor heights.

I concur with Ms. Robinson's conclusions based on her analysis of the measured heights of existing and planned dwellings on the block as well as the variances for height already approved in the Study Area that the height of the subject dwelling is within the range of existing and planned heights.

However, the test of the 'existing physical character' of a neighbourhood is, in my view, not whether the variance falls within the 'range' or is below the average, but whether the height variance *respects and reinforces the existing physical character*. "Existing physical character" is what exists.

Seeing the other dwellings that exist in the neighbourhood and the existing dwellings as shown through the photo study, I accept Ms. Robinson's opinion that the type, style and scale of the subject dwelling is not unusual for the area and is in keeping

with the built form character of the neighbourhood. I concur that the subject application meets the general intent and purpose of the Official Plan.

*Intent of the Zoning By-law*

Ms. Robinson opined that the general intent and purpose of the zoning by-law is to identify permitted uses, together with performance standards, which will result in a development that implements the OP, will not bring rise to adverse planning impacts on the immediate or broader neighbourhood, and will result in a building compatible with the subject land and neighbouring developments.

With respect to building height, all the Parties acknowledged that height regulation is important. To quote a fellow TLAB Panel Member in a recent decision: “It (height regulation) contains an element of fairness; people may not be able to expand horizontally, but they can always build upwards.” The OP uses the phrase “heights, massing and scale” and in that sense I believe height and massing have to be considered together.

The prevailing typology in this neighborhood is two and three-storey residential dwellings and the previous COA approval granted, among other variances, relief for building height and number of storeys. As a result, the renovated subject dwelling includes a third storey addition and what is characterized as a flat roof.

I agree with Ms. Adamakis and some of the Participants who argued that Zoning By-law 569-2013 discourages flat roofs. Section 10.20.40.10(4)(A) is evidence of the By-law’s intent to control massing and flat roofs as it imposes a height limit of 7.2 m and a limit of two storeys.

A flat roof design does add bulk to the upper stories of a residential dwelling and creates ‘height for height’, and a somewhat more imposing presence. And while the Appellant was successful before the COA in 2016 in explaining that this design maintained the intent and purpose of the By-law, it has to be considered and explained again for the proposed new height.

Ms. Robinson provided several examples of flat roofs in the Study Area and confirmed that there were various roofs styles and flat roof components evident in the neighbourhood. Ms. Adamakis also agreed that it is difficult to tell from looking at dwellings from the street whether a roof is entirely or partially flat throughout. This is also true with respect to the subject dwelling.

I agree with Ms. Pepino, supported by the photographic evidence, that it is difficult to ‘read’ the roof of 48 Playter Crescent from the street. However, what Photos 1 and 2 in Exhibit 3 indicate is a roof that slopes away from the 2<sup>nd</sup> floor to a peak, being the top of the 3<sup>rd</sup> floor. There is a dormer within the front roof elevation, although what is behind seems to recede away from the front elevation to a flat roof at the rear.

I am satisfied, having regard for the plans before the TLAB, together with the requested minor variances, that the application maintains the general intent and purpose of the Zoning By-law(s).

*Minor*

According to *Degasperis*, an often-cited authority, the test of whether a variance is minor in nature is whether it is numerically small and whether there is undue adverse planning effect or consequence. Ms. Adamakis and many of the Participant's argued in this regard, suggesting impacts from the subject dwelling related to overlook, loss of privacy, and shadowing at the rear. I note, however, that there was no evidence presented to suggest a shadow impact from the subject dwelling and the residents at 35 Jackman Avenue and 64 Jackman Avenue, specifically, who attended the Hearing in opposition acknowledged that they could not see the rear of the subject dwelling from their properties.

I agree with Ms. Robinson that any impacts resulting from the variances for height related to overlook and loss of privacy will be mitigated by the proposed additional landscaping. The Appellant has made revisions to the plans and agreed to a condition with the City to address the concerns raised by the neighbours related to the requested variances.

I agree that there will be no impact on the streetscape, which includes dwellings of similar finished first floor height and overall height. I am therefore satisfied that the application can be considered minor.

*Desirable*

The subject proposal represents reinvestment on this property through an addition to the existing single detached dwelling. I agree with Ms. Robinson that the size, scale and standards applied are appropriate and compatible with the character of the neighbourhood. I believe that the height of the dwelling and the height of the finished first floor are comparable with those of adjacent dwellings within the Playter Crescent block specifically, and the neighbourhood, in general.

As a result, I find that the variances are desirable for the appropriate development of the land at 48 Playter Crescent, and that the result and the process followed is appropriate and in accordance with the purposes of the *Act*. The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

As to Ms. Adamakis' concerns that this proposal does not fit the character of the neighbourhood and that, if granted, the variances will set a precedent in the area, I accept that these are legitimate and relevant concerns. The question I must ask is whether Ms. Adamakis through her testimony and the evidence presented has demonstrated the presence and growing potential for similar applications 'down the road.' I find that she has not.

There are likely to be other properties in the area that might become the subject of future height variance applications. The TLAB must assess the appropriateness of any future variance applications in the context of what exists but more importantly whether there is sound planning justification for more of these types of variances. Simply pointing to the variance granted to 50 Playter Crescent is not enough.

I applaud the enthusiastic and well-organized evidence provided by the residents in opposition to this application. They provided compelling and eloquent statements about the neighbourhood and their perceptions of the subject dwelling. I understand their frustration with 'after the fact' variances and an assumption that the COA and the TLAB are partners in maintaining an enforceable system of planning permissions.

However, I cannot agree with the sentiment expressed by Ms. Adamakis and many of the Participants that the variance relief sought by the Appellant "is already very generous and to flout the original decision of the COA is incomprehensible." I prefer the evidence of Ms. Robinson that this particular built form exists within the area, will not have a destabilizing effect on the neighbourhood, and will result in a pattern of development that respects and reinforces the existing physical character of the neighbourhood.

The TLAB is satisfied that the variances, together with the condition, meet the assessment and evaluation criteria set out in Section 45(1) of the Planning Act. The general intent and purpose of the OP 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 context.

## **DECISION AND ORDER**

The appeal is allowed, and the following variances are authorized:

**1. Chapter 10.20.40.10.(4)(A), By-law 569-2013**

The maximum permitted building height is 7.20 m for a detached dwelling with a flat or shallow roof.

Minor Variance Decision A0929/16TEY permits a building height of 10.62 m.

In this case, the three-storey detached dwelling has a height of 10.96 m.

**2. Chapter 10.20.40.10.(6), By-law 569-2013**

The maximum permitted height of the first floor of a dwelling above established grade is 1.2 m.

Minor Variance Decision A0929/16TEY permits the height of the first floor of a dwelling above grade to 1.20 m.

In this case, the first floor of the three-storey detached dwelling has a height of 1.40 m above the established grade.

**1. Section 4(2)(a), By-law 438-86**

The maximum permitted building height of a detached dwelling is 10.0 m.

Minor Variance Decision A0929/16TEY permits a building height of 10.62 m.

In this case, the three-storey detached dwelling has a height of 10.96 m.

## **CONDITION OF MINOR VARIANCE APPROVAL**

The Owner shall construct and maintain the development substantially in accordance with the site plan and elevation drawings for 48 Playter Crescent identified as Final Elevations - September 24, 2018 (prepared by Epic Designs Inc., dated August 2018),

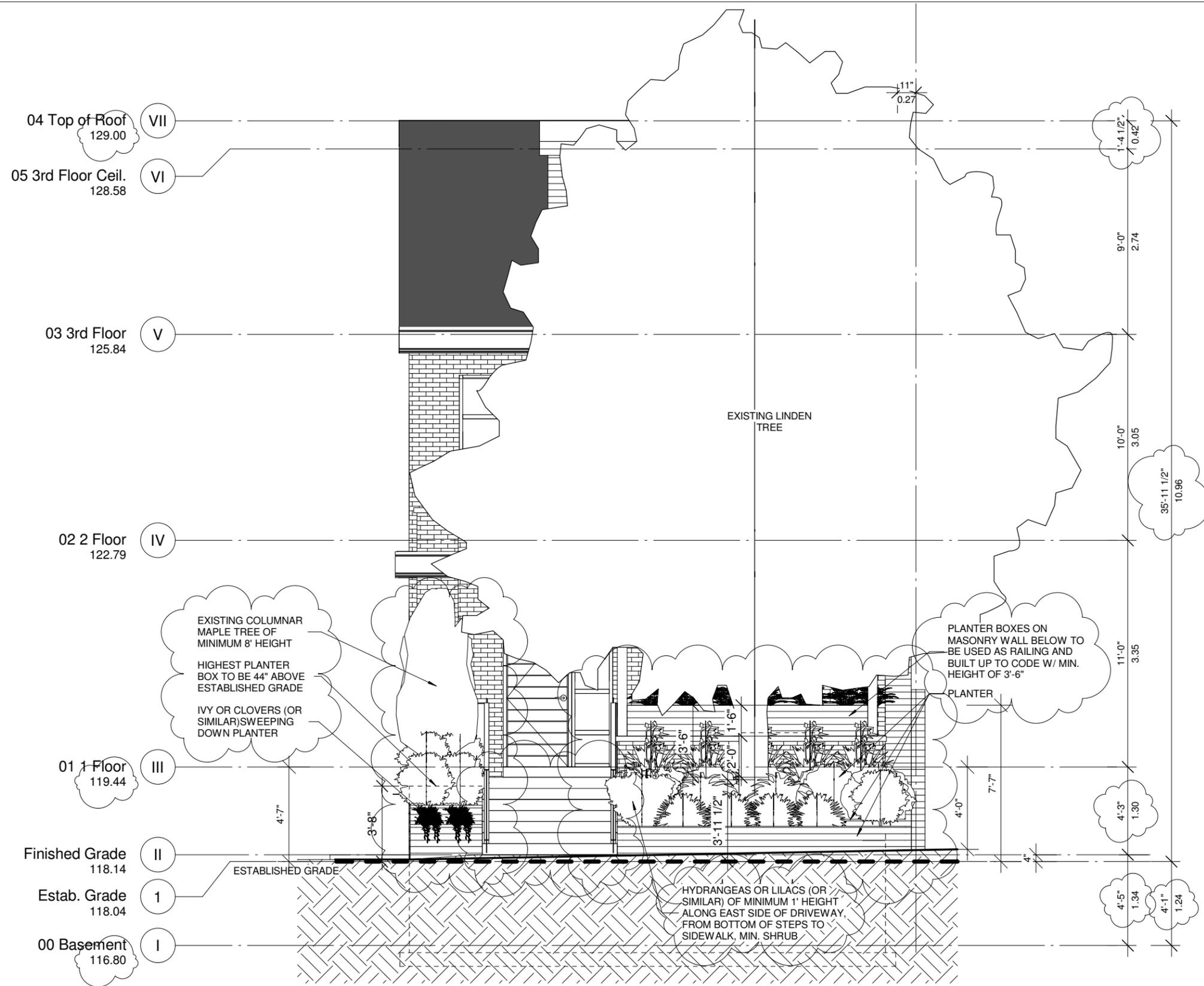
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and marked as Exhibit No. 7 at the Toronto Local Appeal Body hearing for LPAT Case No. 18 166530 S.45 29 TLAB, attached as **Attachment No. 1**. The Owner shall install and maintain the landscaping on the subject property as shown on the above mention plans.

X 

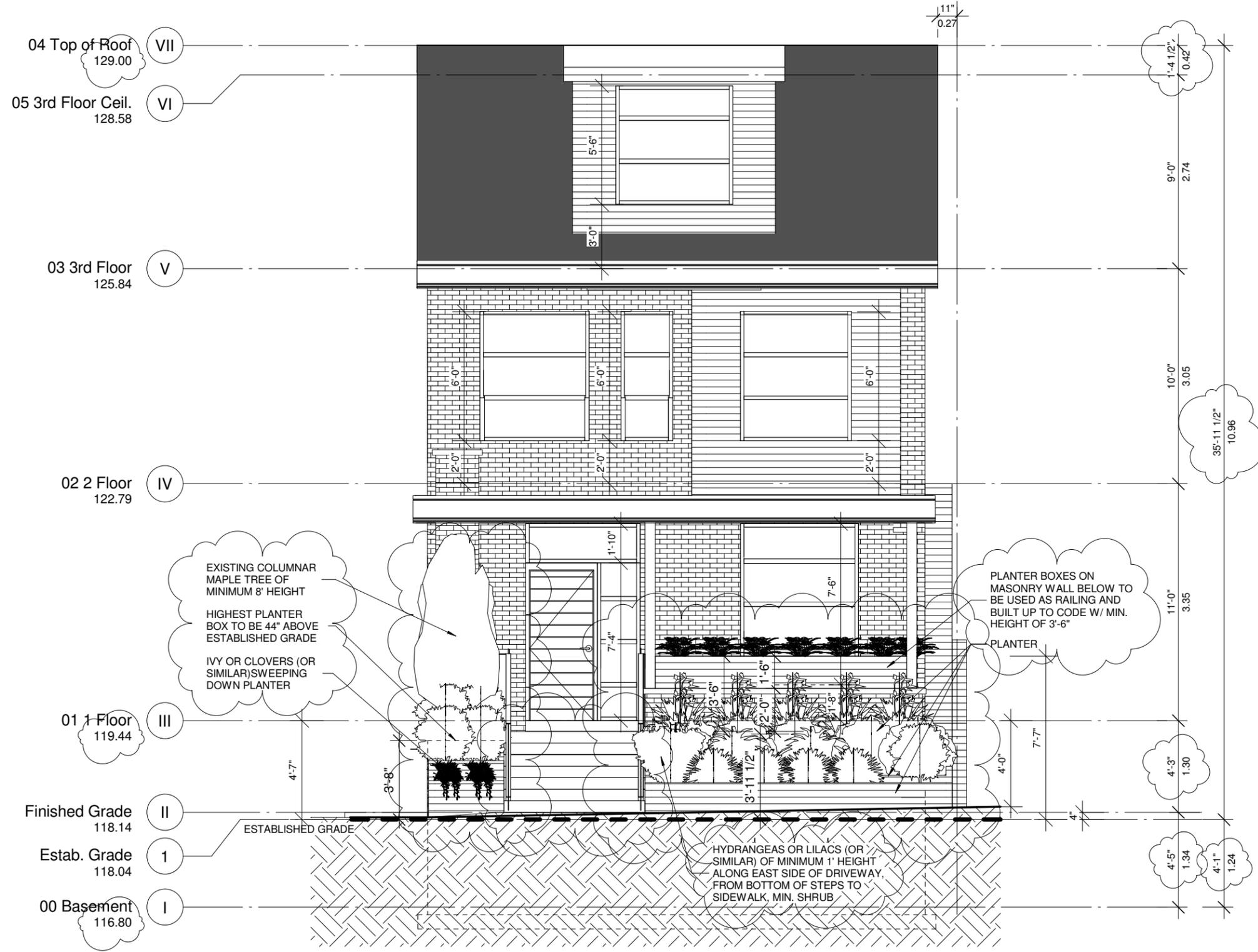
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Dino Lombardi  
Panel Chair, Toronto Local Appeal Body



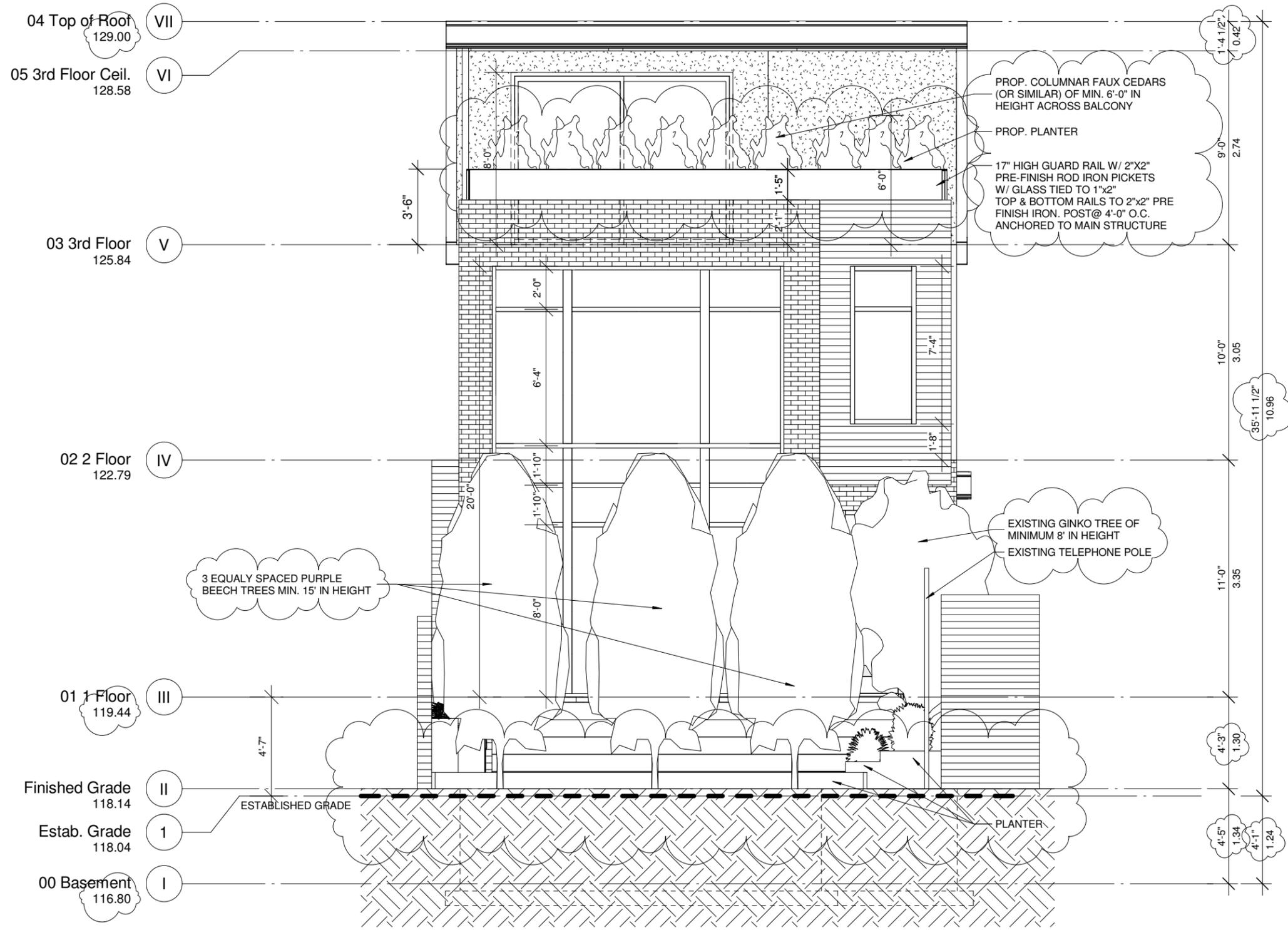
**1**  
**A7** **SOUTH ELEVATION**  
Scale: 3 / 16" = 1' - 0"

DRAWING SOUTH ELEVATION	SCALE: 1 : 64	DRAWN BY: CLARA CUNHA
	DATE: AUGUST, 2018	APPROVED BY: M.V.
DO NOT SCALE DRAWINGS CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT OMISSIONS OR DISCREPANCIES TO EPIC DESIGNS INC. BEFORE PROCEEDING WITH WORK.		PROJECT No. 2016 - 44
ALL PRINTS SPECIFICATIONS ARE THE PROPERTY OF EPIC INC. AND SHALL NOT BE COPIED, IN PART OR WHOLE PRIOR WRITTEN PERMISSION		PROJECT: PROPOSED BUILDING & FIRST FLOOR HEIGHT @ 48 PLAYTER CRESC. CITY OF TORONTO
The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the		
<b>QUALIFICATION INFORMATION</b> Required unless design is exempt under 3.2.1 of the building code MARGO VIEIRA 25562 BCIN NAME SIGNATURE		
<b>REGISTRATION INFORMATION</b> Required unless design is exempt under 3.2.1 of the building code EPIC DESIGNS INC. 3071B BCIN FIRM NAME		
		
257 DUNRAVEN DRIVE TORONTO, ONTARIO, M6M - 1H8 TEL: (416) 564 - 2435 WWW.EPICDESIGNSINC.CA		



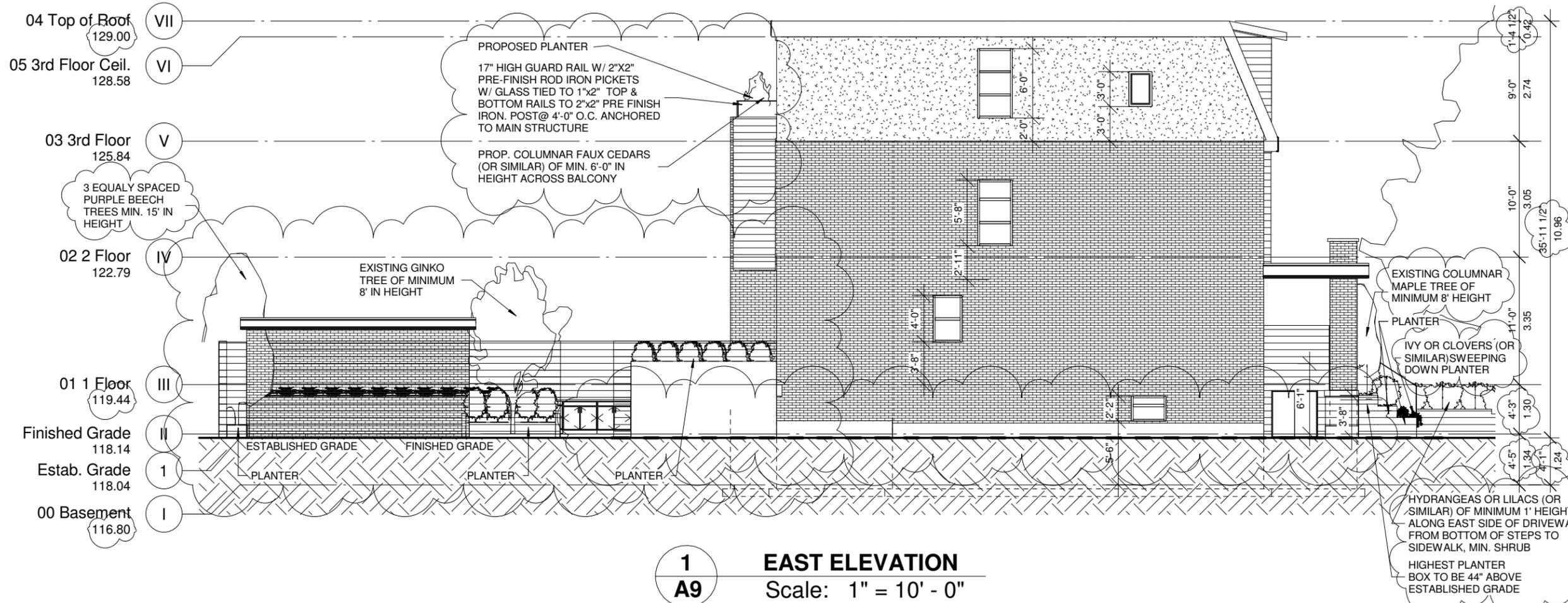
**1**  
**A7**      **SOUTH ELEVATION**  
Scale: 3 / 16" = 1' - 0"

<b>epic</b> designs inc.	<p>257 DUNRAVEN DRIVE TORONTO, ONTARIO, M6M - 1H8 TEL: (416) 564 - 2435 WWW.EPICDESIGNSINC.CA</p>
<p>The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the drawing.</p> <p>Required unless design is exempt under 3.2.1 of the building code</p> <p>MARGO VIEIRA NAME SIGNATURE</p> <p>25562 BCIN</p> <p>Required unless design is exempt under 3.2.5.1 of the building code</p> <p>EPIC DESIGNS INC. FIRM NAME</p> <p>BCIN</p>	<p>DO NOT SCALE DRAWINGS CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT OMISSIONS OR DISCREPANCIES TO EPIC DESIGNS INC. BEFORE PROCEEDING WITH WORK.</p> <p>ALL PRINTS SPECIFICATIONS ARE THE PROPERTY OF EPIC INC. AND SHALL NOT BE COPIED, IN PART OR WHOLE PRIOR WRITTEN PERMISSION</p> <p>PROJECT: PROPOSED BUILDING &amp; FIRST FLOOR HEIGHT @ 48 PLAYTER CRESC. CITY OF TORONTO</p>
DRAWING SOUTH ELEVATION	<p>SCALE: 1 : 64</p> <p>DATE: AUGUST, 2018</p> <p>PROJECT No. 2016 - 44</p> <p>DRAWN BY: CLARA CUNHA</p> <p>APPROVED BY M.V.</p> <p>DRAWING No. A7</p>



**1**  
**A8** NORTH ELEVATION  
Scale: 3 / 16" = 1' - 0"

DRAWING NORTH ELEVATION	DRAWN BY: CLARA CUNHA	APPROVED BY: M.V.
	SCALE: 1 : 64	DATE: AUGUST, 2018
DO NOT SCALE DRAWINGS CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT OMISSIONS OR DISCREPANCIES TO EPIC DESIGNS INC. BEFORE PROCEEDING WITH WORK.		PROJECT No. 2016 - 44
ALL PRINTS SPECIFICATIONS ARE THE PROPERTY OF EPIC INC. AND SHALL NOT BE COPIED, IN PART OR WHOLE PRIOR WRITTEN PERMISSION		PROJECT: PROPOSED BUILDING & FIRST FLOOR HEIGHT @ 48 PLAYTER CRESS. CITY OF TORONTO
<p>The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the</p> <p><b>QUALIFICATION INFORMATION</b> Required unless design is exempt under 3.2.1 of the building code MARGO VIEIRA 25562 BCIN NAME SIGNATURE</p> <p><b>REGISTRATION INFORMATION</b> Required unless design is exempt under 3.2.5.1 of the building code EPIC DESIGNS INC. 5071B BCIN FIRM NAME</p>		
<p><b>epic</b> designs inc. 257 DUNRAVEN DRIVE TORONTO, ONTARIO, M6M - 1H8 TEL: (416) 564 - 2435 WWW.EPICDESIGNSINC.CA</p>		



**1**  
**A9** **EAST ELEVATION**  
Scale: 1" = 10' - 0"

DRAWING EAST ELEVATION PLAN	SCALE: 1 : 120	DRAWN BY: CLARA CUNHA
	DATE: AUGUST, 2018	APPROVED BY: M.V.
DO NOT SCALE DRAWINGS CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT OMISSIONS OR DISCREPANCIES TO EPIC DESIGNS INC. BEFORE PROCEEDING WITH WORK.		PROJECT: PROPOSED BUILDING & FIRST FLOOR HEIGHT @ 48 PLAYTER CRESC. CITY OF TORONTO
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The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the		QUALIFICATION INFORMATION Required unless design is exempt under 3.2.1 of the building code MARGO VEIRA NAME SIGNATURE 25562 BCIN
Required unless design is exempt under 3.2.1 of the building code		REGISTRATION INFORMATION Required unless design is exempt under 3.2.1 of the building code EPIC DESIGNS INC. FIRM NAME 3071B BCIN
<p>257 DUNRAVEN DRIVE TORONTO, ONTARIO, M6M - 1H8 TEL: (416) 564 - 2435 WWW.EPICDESIGNSINC.CA</p>		

