

DECISION AND ORDER

Decision Issue Date Friday, March 01, 2019

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

Appellant(s): BENITO ANTONIO ZAPPIA

Applicant: PAUL MARQUES ARCHITECTS INC

Property Address/Description: 57 FAIRLAWN AVE

Committee of Adjustment Case File: 18 193556 NNY 16 MV

TLAB Case File Number: 18 227720 S45 16 TLAB

Hearing date: Monday, February 11, 2019

DECISION DELIVERED BY G. BURTON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
PAUL MARQUES ARCHITECTS INC	APPLICANT	
FRANK GARIERI	APPELLANT	AMBER STEWART
FRANCO ROMANO	EXPERT WITNESS	
KARIN MACPHERSON	PARTY (TLAB)	
ARNOLD MACPHERSON	PARTICIPANT	

INTRODUCTION AND BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) by the owner of 57 Fairlawn Avenue in North Toronto from a decision of the Committee of Adjustment (COA) of August 30, 2018 that refused his application for three variances. The purpose stated in the application was "To legalize and maintain the existing detached dwelling." This was somewhat misleading, as the three variances were principally to rectify errors in a previous approval for a new dwelling on the site. The dwelling has been constructed.

The errors, one a variance that was missed by City staff, resulted in a Building Permit in 2016 that allowed construction of eaves and soffit too close to the property at 55 Fairlawn Ave to the east. These neighbours took part in the TLAB hearing. The three variances now sought would result in a structure that complied with the intent of the previous approval.

The subject property is designated Neighbourhoods under the Official Plan, and zoned R (f7.5; dO.6)(x604) under the City of Toronto Zoning Bylaw No. 569-2013 (the New By-law) and R2 under the former City of Toronto Zoning By-law No. 438-86 (the Old By-law).

MATTERS IN ISSUE

The owners of 55 Fairlawn Ave., Karin MacPherson and Arnold MacPherson, are concerned about improper drainage of water onto their property to the east of the subject. The easterly portion of the roof of 57 is encroaching on their property.

JURISDICTION

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

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

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

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

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Expert planning evidence was provided for the owner by Mr. Franco Romano, who had appeared at the COA hearing in 2016 on the same file but not in 2018. A building permit was issued for the present structure following that 2016 approval. As mentioned, there were errors made in identifying the required variances in the earlier application, resulting in the present application to rectify them. In fact, the evidence illustrated that the variances requested would result in even smaller measurements than those granted in 2016.

The zoning notice provided in 2016 does not identify any eaves or roof slope deficiencies. The variances granted then were:

- Front stair width of 2.14m.
- Main wall height of 10.64m for east side wall.
- Main wall height of 8.2m for west side wall.
- Building depth of 18.29m.
- East side yard setback of 0.46m for building depth in excess of 17m.
- West side yard setback of 1.12m for building depth in excess of 17m.
- Uncovered platform height of 2.56m.
- Parking space width of 3.2m.
- Building height of 10.5m. This was reduced from the originally requested 10.95m.
- FSI/GFA of 0.69. This was reduced from the originally requested 0.7.

A building permit was issued on December 19, 2016 following the minor variance approval on July 21, 2016 for variances relating to these items. It should be noted that the zoning notice at that time did not identify any eaves or roof slope deficiencies. The 2016 approval was not appealed. It is now constructed virtually in compliance with the approval granted, including the present eaves extension to the east. There was then an order to comply issued respecting the eaves, partly resulting in the present application.

Mr. Romano outlined the present application. The proposal is to legalize and maintain the existing dwelling, with a reduced roof eaves and east side yard setback, a side main wall in excess of the zoning, and roof slope dimensions.

In its report of August 20, 2018 to the COA, Planning Staff had no objections to the application. The Report described the application in this way:

“The applicant requests increased side exterior main wall heights of 10.49 metres as measured under Zoning By-law No. 569-2013, whereas a maximum side exterior main wall height of 7.5 metres is permitted. The increased side exterior main wall height is due, in part, to the design of the roofline to accommodate a flat roof section containing stairs and a skylight that measures approximately 25% of the length of the roofline in the east elevation. The remainder of the east side wall, and the full length of the west side wall have heights of 8.2 metres. In addition, in July 2016, the property was approved by the Committee of Adjustment for an east side exterior main wall height of

10.64 metres, and a west side exterior main wall height of 8.2 metres.”

The variances now requested are as follows:

1. Chapter 10.5.40.60.(7), By-Law 569-2013

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line.

The existing dwelling has eaves that project 0.41m and are 0.05m from the east lot line.

2. Chapter 10.10.40.10.(2), By-Law 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.

The existing dwelling has side exterior main wall heights of 10.49m facing a side lot line.

3. Chapter 10.10.40.10.(4), By-Law 569-2013

The permitted maximum roof slope above the second storey is 5.0 vertical units for every 3.0 horizontal units.

The existing roof slope above the second storey is 5.5 vertical units for every 3.0 horizontal units.

Mr. Romano pointed out the anomalies with this development following the 2016 approvals:

- In 2016 the zoning notice did not identify an eaves variance, despite the fact that the eaves in those drawings are the same, with the same dimensions as those of the newly constructed dwelling. This appears to have been an oversight in the zoning review at that time. It should be noted that eaves projections and setbacks were only established in the 2013 zoning by-law – the Old By-law 438-86 does not have an eaves performance standard (or main wall height limitations). Therefore there are dwellings in the neighbourhood with no eaves setback at all, which is a By-law 438-86-compliant condition. The former structure at 57 actually touched the next door dwelling at 55, so that the requested setback of 0.41 m at the distance of 0.05 m is an improvement over the past situation.

- The current proposal is to cut the existing eaves back, as they encroach over the property at 55. There would be a 0.05 m setback to the side lot line. This would include the provision of an eavestrough, as desired by the neighbours. This may be seen in the Front Elevation drawing, Number A6, in Exhibit 2 (p. 123). The broken line there illustrates what would be removed. The setback would run to the soffit, then a 0.5 cm setback to the eavestrough.

- The side main wall height as built is less than the 10.64 m that was approved in 2016. The requested height for the side main wall is just for a portion of it, a dormer to accommodate a skylight. Otherwise the east side main wall height is 8.2 m, as was approved for the west side wall. This elevated portion of the east side wall was shown in the 2016 plans approved by the COA, but for some reason the approved design did

not show up in the Building Permit plans. These were supposed to be revised by the architect but were not. Thus there was a resulting encroachment over number 55 to the east, since the eaves were constructed in accord with the permit which indicated a non-compliant eavestrough, and an extension over the property line. The eavestrough was then removed by the owner because of the encroachment, resulting in runoff. Then an Order to Comply was issued to the owner.

- There is a slight difference in the roof slope as constructed. It is 5.5 vertical units for every 3.0 horizontal units, versus the By-law's maximum of 5.0 vertical units for every 3.0 horizontal units. The effect of this variance is that the roof slope, as it rises towards the rooftop, is at a slightly different pitch. This can be seen in cross section in Exhibit 1, paragraph 6. He stated that in his opinion this is imperceptible.

Mr. Romano also stated that the plans submitted for the 2016 minor variance application are strikingly similar to those submitted to the COA and the TLAB for this application. The differences essentially relate to the reduction in height (from that approved in 2016) and the eaves setback. Otherwise, the eaves, height and roof exhibit similar features and dimensions to the 2016 approval.

In providing his opinion on the applicable tests for minor variance approval, Mr. Romano described his neighbourhood study area, between Yonge Street and Greer Road and from Bedford Park Avenue to Deloraine Avenue. The immediate area exhibits similar characteristics to the broader neighbourhood, with the same OP designation of Neighbourhoods and same zoning provisions (R and R2 Z0.6).

Properties here have a variety of lot sizes, building and dwelling types, site design and architectural typology. There is no uniformity of lot or dwelling sizes: there are some very similar or remarkably different. These variations are shown in the photos in his Witness Statement (Exhibit 1). Thus there is a compatible setting for this proposal.

While most dwellings in the area were constructed in the early 1900's, more recent construction in the last twenty years or so is typically larger and taller, occupying more space on the lot than older buildings. The reinvestment and regeneration here has not affected the stability of the neighbourhood. Detached and semi-detached dwellings are the prevailing building types in the study area and the immediate neighbourhood. There are also three storey dwellings, with some split level and raised first floors throughout the area. More recent construction typically includes an integral garage.

It must be recalled, however, that most of the variances required to construct the existing dwelling were granted in the 2016 decision, and are not challenged here, except for the slight revision or clarification of the eaves setback, side wall height and roof slope.

Respecting the side yard setback and the eaves distance, he referred to the prevailing patterns of side yard setbacks as tight to modest. In fact the prevailing side yard pattern is one of non-compliance with the zoning by-laws. There are larger side yards, but these are typically associated with a driveway, providing servicing for older or multi-unit

residential properties. The present proposal incorporates modest and modestly-tight side yards, appropriate for this area. The New By-law permits the eaves to project 0.9 m, and there is no such variance for the eaves here. The issue arises because the standard requires a 0.3 m side yard setback for this 0.9 m projection, and this is not available here. Thus the requested variance.

The former dwelling had side yards of minimum 0.05 m to 1.1 m, while No. 55 Fairlawn (the two storey MacPherson property) has a west side yard abutting the subject site of 0.09 m to 0.32 m. It is important to note that new dwelling is farther away from the east side yard than the former structure on the site. The survey illustrates that the former dwelling had an east side yard setback ranging from 0.05 m to 0.29 m. The existing dwelling, as built, has an east side yard setback of 0.46 m. The setback of the proposed eaves would be located where portions of the former wall were located.

In Mr. Romano's opinion, the proposal would be consistent with the Settlement Area-related policies of the PPS, and it effectively conforms to and does not conflict with the Settlement Area, Delineated Built Up Area policies of the Growth Plan. It is a local replacement dwelling that has limited Growth Plan-related implications. It contains site design and built form features that respect and reinforce the neighbourhood's physical character. The proposal is compatible with and maintains features that complement the neighbourhood.

Official Plan

Respecting the section 45 tests for minor variances, it conforms to, and maintains the general intent and purpose of the OP. The Neighbourhood policies recognize that change within neighbourhoods will occur over time, and that any change should respect and reinforce the existing physical character of the neighbourhood. This does not require replication of existing physical character, but instead provides that new development should fit the general physical patterns. Therefore, different patterns can be found within and contribute to the character of a neighbourhood.

In his opinion the proposal (already granted its existing built form in the 2016 decision) illustrates a lot size, site design and built form that respects and reinforces the physical patterns of this neighbourhood. Further, the proposal results in a development that fits in well with the existing and planned context of this neighbourhood. This would meet the urban structure policies in section 2.3.1, the built form policies of 3.1.2, the housing policies found in 3.2.1, the Natural Environment policies in Section 3.4, the Neighbourhoods land use designation and the development criteria found in Sections 4.1.1, 4.1.5 and 4.1.8 of the OP.

Mr. Romano also considered the effect of OPA 320, now a part of the OP. It would not be a factor in his opinion here, which is that the proposal conforms to and meets the general intent and purpose of the OP. This new policy, OPA 320, still requires a balanced consideration of physical character. It recognizes that neighbourhoods can have more than one prevailing physical character in whole or in part. The proposal for 57 Fairlawn respects and reinforces the physical characteristics of the neighbourhood and the smaller geographic area here.

Zoning By-laws

On the test of the general intent and purpose of the zoning by-laws, the subject site has a multiple residential zoning – R and R2 which permits low rise residential, including detached, semi-detached, duplex and triplex dwellings, subject to applicable performance standards. Their purpose is to achieve an orderly, compatible form of low rise residential dwellings. This general intent and purpose is maintained. As the structure has been approved in the main, and is mostly existing already, the proposed variances would achieve a dwelling that is appropriately sized to reflect the site and its physical context.

The eaves east side yard setback meets the general intent and purpose to ensure that the eaves do not encroach onto the side lot line. The offending portion would be removed, improving the existing condition. The proposed side main wall height meets the general intent and purpose to limit the height of main walls, thereby achieving a context-suitable low-rise residential building. The height would be less than the variance granted in 2016. This By-law limitation is intended to control inappropriate upper levels (such as third storeys in areas where two storeys are required, or flat roofs where pitched roofs are encouraged). The dwelling has varied wall heights, the east side maintaining an appropriate two storey height only to accommodate an interior stair and skylight. This may be seen in the photos in Exhibit 3. (This main wall height limitation in the By-law is still under review, as it has been difficult to comply with it, particularly for lots having a lot frontage of 12 m or smaller.) The proposed roof slope variance meets the general intent and purpose to achieve a pitched roof with an appropriate slope.

Minor

In Mr. Romano's opinion, the proposal creates no unacceptable adverse impact. The existing dwelling's built form is reasonable, but for the encroachment that is the effective cause of the variance requested for the eaves. The proposed variances will not cause any unacceptable adverse impacts (shadowing, privacy or overlook) but instead will rectify the existing problem of water escape onto number 55. The eaves will channel water appropriately onto the subject site, without adverse impact.

The determination of minor is not an abstract mathematical calculation. In his opinion the order of magnitude of the variances here is miniscule, and can be suitably accommodated within a physical context that exhibits compatible and complementary characteristics. He provided previous minor variance decisions that illustrate that the proposed variances are in keeping with the numeric range of approvals within the neighbourhood.

Desirable for the Appropriate Development and Use of the Land

Mr. Romano also opined that the proposed variances will contribute to the housing stock in an appropriate manner, by compatible site design and built form features which are within the planned context, and are desirable for the appropriate use and development of the land. The variances now proposed will rectify earlier errors, and contribute to the mix of housing choices in this neighbourhood, in a manner that reflects and reinforces its physical character.

Party and Participant

The owners of 55 Fairlawn Ave, next door to the east, became a Party (Karin MacPherson) and Participant (Arnold MacPherson) in this appeal in order to express the problems they have had with the as-built structure, approved in 2016.

As indicated in her Witness Statement, many of Ms. MacPherson's concerns related to the variances granted in 2016. During construction of the new dwelling, there were many difficulties (damage to fence and sprinklers, materials on her property, a necessary chimney rebuild, water discharge from the roof of 57 onto her property). The discharge from the roof has continued, since the eavestrough installed at 57 has since been removed. She had not requested this, roofers working on 57 had informed her that this would occur. She submitted that just because the eaves used to meet in 1924, they should provide better water management today. Mr. Romano pointed out that the eaves setback standard is new (2013), and that the same standard of projection applies here as in Forest Hill or the Bridle Path, with larger lots. Here, the request is suited to the neighbourhood context, so a close to zero eaves setback is acceptable. It would be 5 centimetres from the eavestrough to the property line, with the eaves and soffit entirely within the property line of 57 Fairlawn.

Ms. MacPherson stated that the higher dormer at 57 forms only 25% of its east wall, but that it takes up over 50% of the length of her dwelling. She questioned the amount of eavestrough to be constructed, so that her property is protected from water from the roof. The response was that no eavestrough is required along a flat-roofed section, but that the owner would take care to ensure that the runoff was managed appropriately onto his own property.

She also referred to the as-built dwelling as a four storey structure, with the space now requested inside the roof slope accommodating the extra floor. She stated that the increased slope would contribute to the problem of overhanging eaves, as a mansard roof requires a larger soffit. Mr. Romano stated that the By-laws and the Building Code determined the requirements for a sloped roof. There is no planning reason why this is measured as it is, but a variance is required.

In questioning Mr. Romano, he assured her that the present structure was only a two storey dwelling, even though the 2016 application had been for a three storey one.

ANALYSIS, FINDINGS, REASONS

I find that the variances before the TLAB in this appeal meet all applicable tests, as Mr. Romano testified. The reduction in certain By-law requirements, as requested, clarify and will improve the existing as-constructed dwelling. No other City department commented on the application, as is usual if Forestry or Transportation Engineering, for example, have any concerns.

Ms. MacPherson's issues in this appeal result from two main factors: the MacPhersons' objections to aspects of the 2016 approvals, and the results of the encroachment of the eaves of 57 over their property at 55 to the east.

There was a misconception based on the earlier request in 2016 for a three storey dwelling. It is now constructed as a two storey structure. Ms. MacPherson also testified that the owner had "missed" necessary variances in 2016. I assured her that it was the Zoning Examiner who determined which variances were needed for the plans as submitted. It now seems to be clear with the present application exactly which variances are still required following the 2016 approvals. There are minor improvements for the neighbours to the east, such as the height of the east wall dormer segment. This was approved in 2016 at 10.64 m, but was not constructed as such. It is only 10.49 m now.

As to the proposed variance for an eaves setback, it is clear from the photos in evidence that there are many properties nearby with either touching or overlapping eaves, such as 59 and 63 Fairlawn. This will correct an existing error, as described.

The as-built structure is now part of the existing context, a factor that the OP requires to be considered when assessing a proposal's conformity to the Neighbourhood standards in Policy 4. The variances now requested represent very slight increases over those granted for this dwelling in 2016. The eaves setback will ameliorate the present non-conforming condition, and rectify the neighbours' concerns. The approval of the variances requested from TLAB would result in construction that matched these variances. The building permit will also be revised, as appears to be underway. Ms. MacPherson appeared satisfied that the water management for the new structure would be contained entirely on the owner's side, for the entire length of the building, and with some form of downspout. There will be no formal condition about this, but conversations took place following the hearing that appeared to satisfy the owners of 55 Fairlawn.

As Mr. Romano testified, the variety of both compliance and non-compliance with By-law standards in this area means that such dwellings as the existing do fit within the neighbourhood. In an unusual twist, a compatible condition is in fact created (as section 4 of the OP requires) if dwellings do NOT comply with By-law standards here. The variety is extensive.

I agree with Ms. Stewart's submission that even though variances need to be evaluated as if the proposal was not yet built, here there were mere inadvertent errors, made by more than one participant during the previous approval and issuance of a building permit. The proposed height is lower, the encroachment would be corrected, and the setback improved. A new permit would issue.

The three variances requested in this appeal merely clarify variances granted earlier, and reduce them somewhat. They comply with all the required tests.

DECISION AND ORDER

The appeal is allowed with respect to the variances set out in Attachment 1, subject to the following condition:

1. The east side roof eaves shall be constructed such that the eaves, including the eavestroughs, are setback a minimum of 0.05 m from the east side lot line, as shown on the Front Elevation prepared by Paul Marques Architect Inc. and dated October 2015 (revision dated July 12, 2018) and attached as Attachment 2.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.5.40.60.(7), By-Law 569-2013

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line.

The existing dwelling has eaves that project 0.41m and are 0.05m from the east lot line.

2. Chapter 10.10.40.10.(2), By-Law 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.

The existing dwelling has side exterior main wall heights of 10.49m facing a side lot line.

3. Chapter 10.10.40.10.(4), By-Law 569-2013

The permitted maximum roof slope above the second storey is 5.0 vertical units for every 3.0 horizontal units.

The existing roof slope above the second storey is 5.5 vertical units for every 3.0 horizontal units.

ATTACHMENT 2 – FRONT ELEVATION

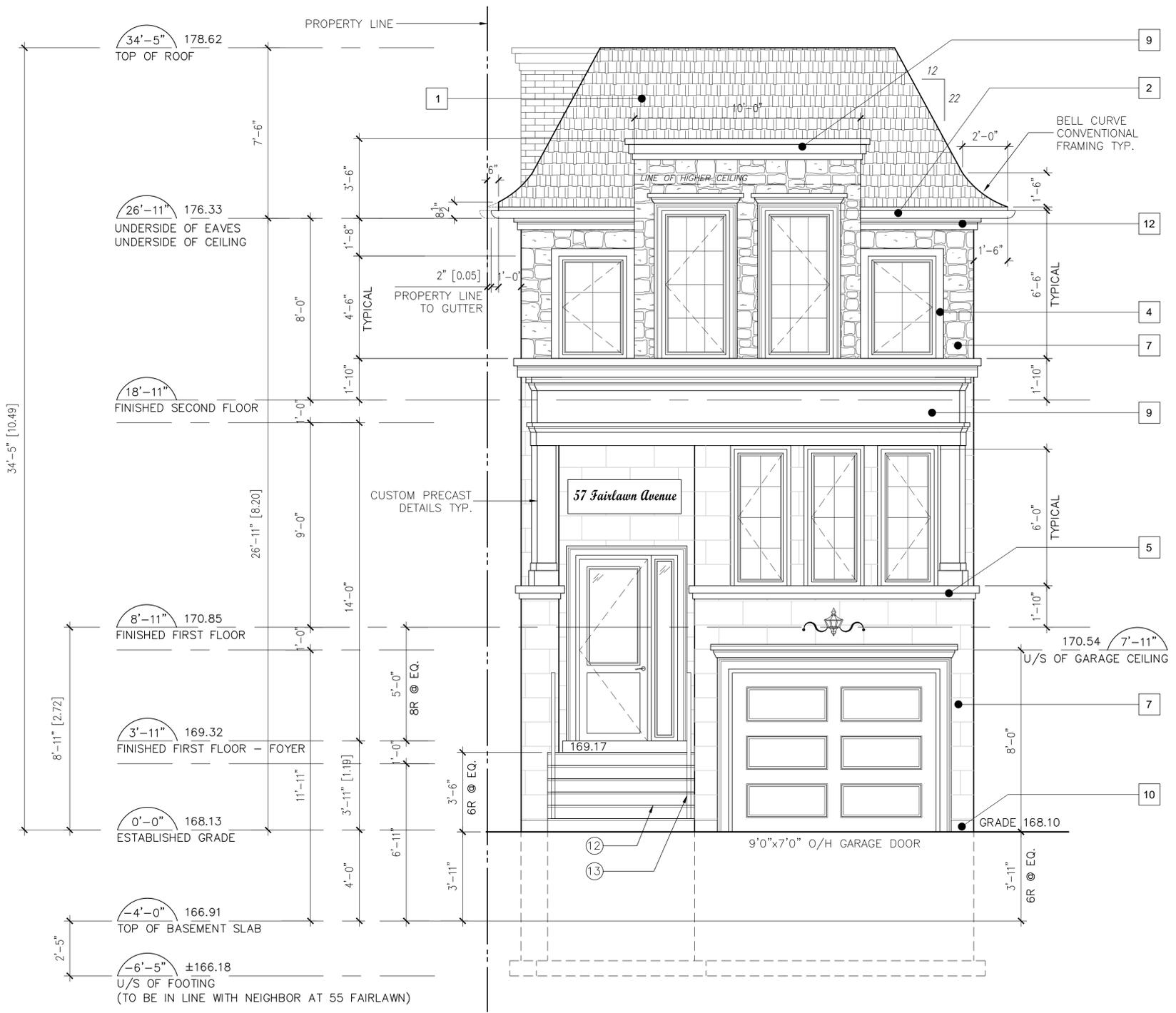
X 

G. Burton

Panel Chair, Toronto Local Appeal Body

This drawing, as an instrument of service, is provided by and is the property of Paul Marques Architect Inc. The contractor must verify and accept responsibility for all dimensions and conditions on site and must notify Paul Marques Architect Inc. of any variations from the supplied information. This drawing is not to be scaled. The architect is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

FINISHES LEGEND			
1	ASPHALT ROOF SHINGLES, (TYP.)	4	PRECAST CONCRETE LINTEL/ SURROUND (TYP.)
2	ALUM. FASICA, SOFFIT, AND GUTTER (TYP)	5	PRECAST CONCRETE BAND
3	PRECAST SILL (TYP.)	6	BRICK VENEER (TYP.)
7	STONE VENEER (TYP.)	8	ALUMINUM/WOOD SIDING
9	PRECAST (TYP.)	10	EXPOSED FOUNDATION WALL (TYP.)
11	STUCCO FINISH [EIFS] MED. SANDBLAST FIN. (TYP.)	12	DECORATIVE FRIEZE TRIM BOARD (TYP.)



NOTE: THE UNDERSIDE OF FOOTING DEPTH FOR 55 FAIRLAWN AVENUE IS ASSUMED. IT IS CALCULATED BASED ON FINISHED FIRST FLOOR OF 168.82m AND VERBAL CONFIRMATION FROM THE OWNER OF THE BASEMENT DEPTH.

NOTE: CONTRACTOR TO CONDUCT A TEST PIT ON 55 FAIRLAWN AVENUE PRIOR TO ANY EXCAVATION OR DEMOLITION TAKING PLACE TO VERIFY DEPTH OF FOOTINGS. FOOTING DEPTH FOR THE PROPOSED DWELLING AT 57 FAIRLAWN AVENUE SHOULD BE AT SAME FOOTING DEPTH.

1 NORTH ELEVATION
SCALE: 3/8" = 1'-0"

REV.	ISSUED FOR:	DATE:
	ISSUED FOR CLIENT REVIEW	10.19.2015
	ISSUED FOR CLIENT REVIEW	01.18.2016
	ISSUED FOR CLIENT REVIEW	01.27.2016
	ISSUED FOR CLIENT REVIEW	02.01.2016
	ISSUED FOR ZONING REVIEW	02.08.2016
	ISSUED FOR COMMITTEE OF ADJUSTMENT	03.14.2016
	ISSUED FOR CLIENT REVIEW	08.09.2016
	ISSUED UPDATED PLANS FOR ZONING REVIEW	08.12.2016
	ISSUED FOR PERMIT	10.20.2016
1	ISSUED REVISIONS AS PER COMMENTS	11.09.2016
2	ISSUED REVISIONS AS PER COMMENTS	11.29.2016
	ISSUED FOR CLIENT REVIEW	05.01.2017
	ISSUED FOR CLIENT REVIEW	03.21.2018
	ISSUED REVISION TO PERMIT #16240781	03.23.2018
	ISSUED REVISIONS AS PER COMMENTS	06.20.2018
	ISSUED FOR COMMITTEE OF ADJUSTMENT	07.12.2018

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SEAL:

Project:
NEW SINGLE FAMILY DWELLING
57 FAIRLAWN AVENUE
TORONTO, ONTARIO

Drawing Name:
ELEVATION

Proj no.: 15-427 Date: OCTOBER 2015
Drawn by: ES Scale: AS NOTED
Checked by: PM

North: Drawing No:
A6