

DECISION AND ORDER

Decision Issue Date: Monday, April 29, 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): SAMSOO CHARLES KIM

Applicant: HOSSEINI HOMES CORPORATION

Property Address/Description: 29A JOHNSTON AVE, 29B JOHNSTON AVE

Committee of Adjustment Case File: 18 200258 NNY 23 MV, 18 200262 NNY 23 MV

TLAB Case File Number: 18 244646 S45 23 TLAB, 18 244649 S45 23 TLAB

Hearing date: Wednesday, April 03, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
HOSSEINI HOMES CORPORATION	APPLICANT	
AE RYUN ANNA KIM	PRIMARY OWNER	
SAMSOO CHARLES KIM	APPELLANT	HOSSEINI HOMES CORPORATION
FRANCO ROMANO	EXPERT WITNESS	

INTRODUCTION AND BACKGROUND

Samsoo Charles Kim and Ae Ryun Anna Kim are the owners of 29 Johnston Ave., located in Ward of Willowdale, in the City of Toronto (Toronto) . They applied to the Committee of Adjustment (COA) for approval of variances to construct two new detached dwellings, each of which would be located on one of two severed lots, which collectively

share the address at 29 Johnston Ave. The two lots were created through a severance application approved by the COA in 2017 . On September 27, 2018, the COA heard the application and refused the application. On October 17, 2018, the Appellants applied to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on April 3, 2019.

MATTERS IN ISSUE

Johnston Ave. Part 1 - A0581/18NY List of Variances

1. Chapters 900.3.10.(5) Exception RD 5 & 900.3.10.(559) Exception RD 559, By-law No. 569-2013

The minimum required side yard setback is 1.80m (RD 5) and/or 0.9m (RD 559).
The proposed west side yard setback is 0.61m.

2. Chapter 900.3.10.(5) Exception RD 5, By-law No. 569-2013

The minimum required side yard setback is 1.80m. The proposed east side yard setback is 1.20m.

3. Chapter 10.5.40.50.(2), By-law No. 569-2013

In the Residential Zone category, a platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone.

The proposed rear deck east side yard setback is 1.2m, whereas 1.8m is required. The proposed front deck/porch west side yard setback is 0.61m, whereas 1.8m or 0.9m is required.

4. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30.00% of the lot area. The proposed lot coverage is 32.0% of the lot area.

5. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.50m for 100% of the width of the wall. The proposed height of the exterior main walls facing a side lot line is 7.98m.

6. Chapter 10.5.100.1.(1), By-law No. 569-2013

For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard may be for lots with a lot frontage of 6.0 metres to 23.0 metres inclusive, or a townhouse dwelling unit at least 6.0 metres wide, a maximum of 3.23 metres wide. The proposed driveway is 3.81m wide.

7. Chapter 10.5.40.60.(7), By-law No. 569-2013

Roof eaves may project a maximum of 0.90m provided that they are no closer than 0.30m to a lot line. The proposed eaves are 0.11m from the west lot line.

8. Chapter 10.5.50.10.(1)(B), By-law No. 569-2013

The minimum required front yard landscaping is 50.00%. The proposed front yard landscaping area is 37.06%.

9. Chapter 10.5.50.10(1)(D), By-law No. 569-2013

The minimum required front yard soft landscaping is 75.00%. The proposed front yard soft landscaping is 61.96%.

10. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.80m. The proposed building height is 9.06m.

11. Section 6(30), By-law No. 7625

The maximum permitted finished first floor height is 1.50m. The proposed finished first floor height is 1.56m.

29 Johnston Ave. Part 2 - A0582/18NY

List of Variances

1. Chapters 900.3.10.(5) Exception RD 5 & 900.3.10.(559) Exception RD 559, By-law No. 569-2013

The minimum required side yard setback is 1.80m (RD 5) and/or 0.9m (RD 559).
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The minimum required front yard soft landscaping is 75.00%.The proposed front yard soft landscaping is 61.96%.

10. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.80m.The proposed building height is 9.10m.

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').as referred to in section 2 of the Planning Act;

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

At the hearing held on 3 April, 2019, the Appellants were represented by Mr. Franco Romano, a Planner. It is important to note that there were no Parties or Participants in opposition to the Appeal. Mr. Romano was sworn in, and recognized as an Expert witness in the area of land use planning.:

Mr. Romano began with an account of the history of applications on the Subject Site, and said that it consisted of two registered lots, created through a severance application approved by the COA in 2017. He said that each of the two lots has a lot frontage of 7.91m, lot depth of 39.62m and lot

area of 313.39m²; and added that there were minor changes between the variances refused by the COA, and the variances included in the Appeal to the TLAB. The reason behind the changes was because of the adoption of new by-laws governing the Subject Site by the City, as well as a specific exception- these changes were introduced between the time the application to the COA commenced, and the Appeal before the TLAB.

Mr. Romano drew my attention to the requested variances, and highlighted the ones that were different – the main difference is that where the side main wall variances are referenced, the City enacted new By-laws 644-2018, and 645-2018 modifying the City wide By-law 569-2013, and the former North York By-law 7625, governing the area in which 29 Johnston lies. He added that an Exception Chapter reference RD 559 had been added, which resulted in the comparator for the requested side yard set-back being changed to 0.9 m, from the former 0.61 m. By way of an editorial remark, I have explained the By-laws and the exception in more detail in the Analysis Section.

Mr. Romano emphasized that the stated change was not in the variances, but in the comparators, and that new notice was not necessary under Section 45.18.1.1 of the Planning Act under these circumstances. I agreed with his reasoning because the actual variances had not changed in any way, and ruled that new notice did not have to be given.

Mr. Romano described the area surrounding the Subject property as being west of Yonge Street and south of Sheppard Avenue West, within the former municipality of North York, in which Johnston Road is a local road that runs in an east-west direction. He then defined the neighbourhood study area as being bounded by Yonge Street and Easton Road respectively on the east and west, and by Sheppard Avenue West and Cameron Avenue respectively in the North and South. He said this study area falls within the “Neighbourhoods” designation of the City of Toronto’s Official Plan, and was zoned for detached residential, although properties within the neighbourhood study area consist of a variety of lot sizes, building and dwelling types, site design and architectural typology. Mr. Romano emphasized that there was no uniformity of lot sizes, or of dwelling sizes. He demonstrated through examples, that residential properties in the vicinity of each other have site designs, architectural features and building sizes, that are very similar or remarkably different.

Mr. Romano then described the compatibility between the proposal and the higher level policies. He said that the proposal is consistent with the Settlement Area-related policies of the 2014 Provincial Policy Statement, and the 2017 Growth Plan for the Greater Golden Horseshoe, primarily because it looks to replace an existing house with two replacement dwellings.

He then discussed the compatibility between the proposal and the Official Plan policies. By way of general information and opinion, Mr. Romano said that the Official Plan (OP) recognizes that change within neighbourhoods will occur over time, and that such changes should respect and reinforce the existing physical character of the neighbourhood. He said that these policies do not require replication of what exists on the ground, but require that new developments to respect the established, general physical patterns. Mr. Romano opined that the proposal exhibits lot size, site design and built form features, which manifest themselves in a manner that respects and reinforces the physical patterns of the study area. He referred to the urban structure policies in Section 2.3.1, the built form policies of 3.1.2, the housing policy in Section 3.2.1, the Natural Environment policies in Section 3.4, the Neighbourhoods land use designation and development criteria found in Sections 4.1.1, 4.1.5 and 4.1.8, and discussed how the proposal was consistent with these policies. Based on this discussion, he concluded that the proposal upheld the purpose, and the intention of the OP.

Mr. Romano next discussed the compatibility between the proposal and the Zoning governing the site- the two Zoning by-laws of interest to the proposal are Toronto By-law 569-2013 and North York By-law 7625 (RD and R4, respectively). Mr. Romano said that the overall general intent and purpose of the Zoning By-laws is to achieve an orderly, compatible form of low rise residential detached dwelling for each lot, such that the dwelling is appropriately sized to reflect the Subject Site and its physical context. He then elaborated on how each group of variances satisfied the corresponding performance standard.

Mr. Romano said that the intent of the side yard setback regulation is to provide adequate space for access, maintenance, servicing and spatial separation, that is is context appropriate. Emphasizing that the actual variances sought by the proposal had not changed notwithstanding changes to the comparator enumerated in the By-law, Mr. Romano opined that the resulting access allows for suitable maintenance, servicing and spacing that is context appropriate as well as provides for landscaping. He said that the proposed lot coverage provides for ample open space on the lot, as well as amenities, servicing and setback opportunities to ensure that the proposal is not an overdevelopment.

Mr. Romano then stated that the purpose of the proposed side main wall height by-law is to minimize the extent to which walls may rise to create inappropriate "upper levels" (e.g. third storeys in areas where two storeys are regulated, or disproportionate flat roofs where pitched roofs are encouraged). He added that the proposal at 29 Johnston has a varied wall height treatment, with the associated eaves maintaining a height appropriate at the second storey level for buildings in the study area. . Mr. Romano also noted that that while this provision is still under review before the LPAT, the variance had been included, with an abundance of caution

The intent of the By-law respecting drive way width is to achieve adequate and suitable on-site vehicular access- Mr. Romano opined that this purpose is adequately satisfied by the proposed drive way width of 3.81 m. The purpose of the By-law respecting the projection of the eaves is to ensure that they not encroach onto the side lot line, which is achieved by the design and placement of these eaves, and the 0.11 m separation between the eaves and the property line.

Mr. Romano explained that the intent of the landscaping standards is to balance hard and soft surfaces within the front yard in order to achieve landscaping and enhance water percolation on site, and added that the proposal satisfied this intent through maximizing landscaping, and incorporating permeable pavers for the driveway. He added that the advantage of using permeable pavers was that they are not included in landscaping calculations, but meet the purpose of maintaining the balance between hard and soft surfaces.

He then stated that the purpose of the proposed North York By-law governing height was to achieve a low rise, two storey pitched roof. He pointed out that the proposal maintained a sloped roof design and expression, and added that the height was measured from the centre-line of the road, which is lower than grade near the dwelling, because of the local topography.

Lastly, Mr. Romano addressed the proposed North York By-law finished first floor height variance for one of the dwellings, which exceeds the permissible 1.5 m by 6 cm. He said that the general intent and purpose of this By-law is to ensure that the entrance feature is close to grade, and added that the 6cm variance for Part 1 is the height measurement from the road centre-line which, again, because of the topography, is lower than grade level near the dwelling. In other words, the topography resulted in the creation of the height variances.

Mr. Romano then addressed the test of how the proposal satisfied the test of minor. Mr. Romano asserted that the proposal creates no unacceptable adverse impact such as shadowing, privacy or overlook or any other issues, such as access and maintenance. Adding that each house was compatible with the urban fabric of the immediate neighbourhood, Mr. Romano concluded that the test of minor had been satisfied.

Lastly, the test of appropriate development was addressed. Mr. Romano said that the proposal would contribute to the housing stock, through the creation of two houses in place of one. The proposal exhibited compatible and complementary site design, and built form features which are within the planning and public interest, and are thereby desirable for the appropriate use and development of the land.

Based on this evidence, Mr. Romano concluded that the proposal satisfied all the tests under Section 45(1) of the Planning Act, and recommended that the variances be approved. He recommended two conditions be attached to the approval.

- Require the developments to be substantially in accordance with the attached site plan and elevation drawings.
- Require the proposed driveway to be constructed of permeable materials.

I thanked Mr. Romano for providing evidence, and indicated that I would reserve my Decision.

ANALYSIS, FINDINGS, REASONS

It may be noted that Mr. Romano's evidence was uncontroverted because there were no Parties nor Participants in opposition to the proposal.

It is important to discuss the exceptions to the Chapters alluded to by Mr. Romano, and my decision to waive notice under Section 45.18.1.1 of the Planning Act. In 2018, the City enacted By-Laws 644-2018 and 645-2018 which modify City Wide By-Laws 569-2013 and the former North York By-law 7625 respectively:

<https://www.toronto.ca/legdocs/bylaws/2018/law0644.pdf>

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The specific exception that Mr. Romano alludes to, is listed below:

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections:

Site Specific Provisions:

(A) Despite Regulation 10.20.40.70(3), the minimum required side yard setback:

(i) for lots with a lot frontage of less than 15.0 metres, is 0.9 metres for one side yard setback and 1.2 metres for the other side yard setback; and

(ii) for lots with a lot frontage of 15.0 metres and greater, is 1.5 metres for each side yard setback

The impact of the exception on the variance request is that the comparator against which the variance request is modified to 0.9 m, though there is no change to the variance. The conclusion about no changes to the variance resulted in my determining that new notice did not have to be given under 45.18.1.1 of the Planning Act.

It is also important to note that notwithstanding changes to the By-laws between the filing of the Application to the COA, and its adjudication by the TLAB, Mr. Romano did not rely on the Clergy Principle, and chose to apply the updated specifications, and comparators.

I accept Mr. Romano's conclusions about the proposal being consistent with the intent and purpose of the Official Plan based on his discussion of various policies. When discussing the compatibility with the zoning, Mr. Romano reviewed the performance standards of each family of variances, and demonstrated how the intent and purpose of the corresponding performance standards were upheld. Based on the proposal's satisfying various performance standards, I accept his conclusion that the intent and the purpose of the Zoning By-laws have been upheld.

Given how Mr. Romano demonstrated that the proposal would not result in any unacceptable impacts that did not exist previously, I agree with his conclusion that the proposal satisfies the test of being minor. Given how the proposal contributes to the creation of two new dwellings on the street while reinforcing the existing character of the street, I agree that the proposal also satisfies the test of appropriate development. Based on these discussions, I agree with Mr. Romano's conclusion that the proposal satisfies all the four tests under Section 45(1) - I therefore allow the Appeal in its entirety, and approve all the variances for both lots.

The conditions about building in compatibility with submitted plans and elevations, and using permeable material for the driveway are standard conditions, and imposing them on the approval of the proposal is reasonable. The drawings should have been dated and included the name of the individual preparing these drawings, so that the Decision can make a clear reference to the drawings. In the absence of a date on which the diagrams were created, the Decision refers to the plans and elevations as the ones prepared by Mitsche and Aziz, submitted to the TLAB on 3 November, 2018. Accordingly, I impose these conditions on the approval.

DECISION AND ORDER

1. The Appeal respecting 29 A and 29 B, Johnston Avenue, is allowed in its entirety, and the corresponding Decision of the Committee of Adjustment, dated September 27, 2018, is set aside.
2. The following variances are approved:

Johnston Ave. Part 1 - A0581/18NY List of Variances

1. Chapters 900.3.10.(5) Exception RD 5 & 900.3.10.(559) Exception RD 559, By-law No. 569-2013

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10. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.80m. The proposed building height is 9.06m.

11. Section 6(30), By-law No. 7625

The maximum permitted finished first floor height is 1.50m. The proposed finished first floor height is 1.56m.

29 Johnston Ave. Part 2 - A0582/18NY List of Variances

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10. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.80m.The proposed building height is 9.10m.

3. No other variances, other than the ones listed above, are approved.

4. The Approval is subject to the following conditions:

1. The driveway for each property shall be constructed of permeable pavers.
2. The property shall be developed substantially in accordance with the attached site Plan and Elevation drawings, prepared by Mitsche and Aziz, included as part of Exhibit 2, submitted at the hearing completed on April 3, 2019.

So orders the Toronto Local Appeal Body

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', written over a light gray rectangular background.

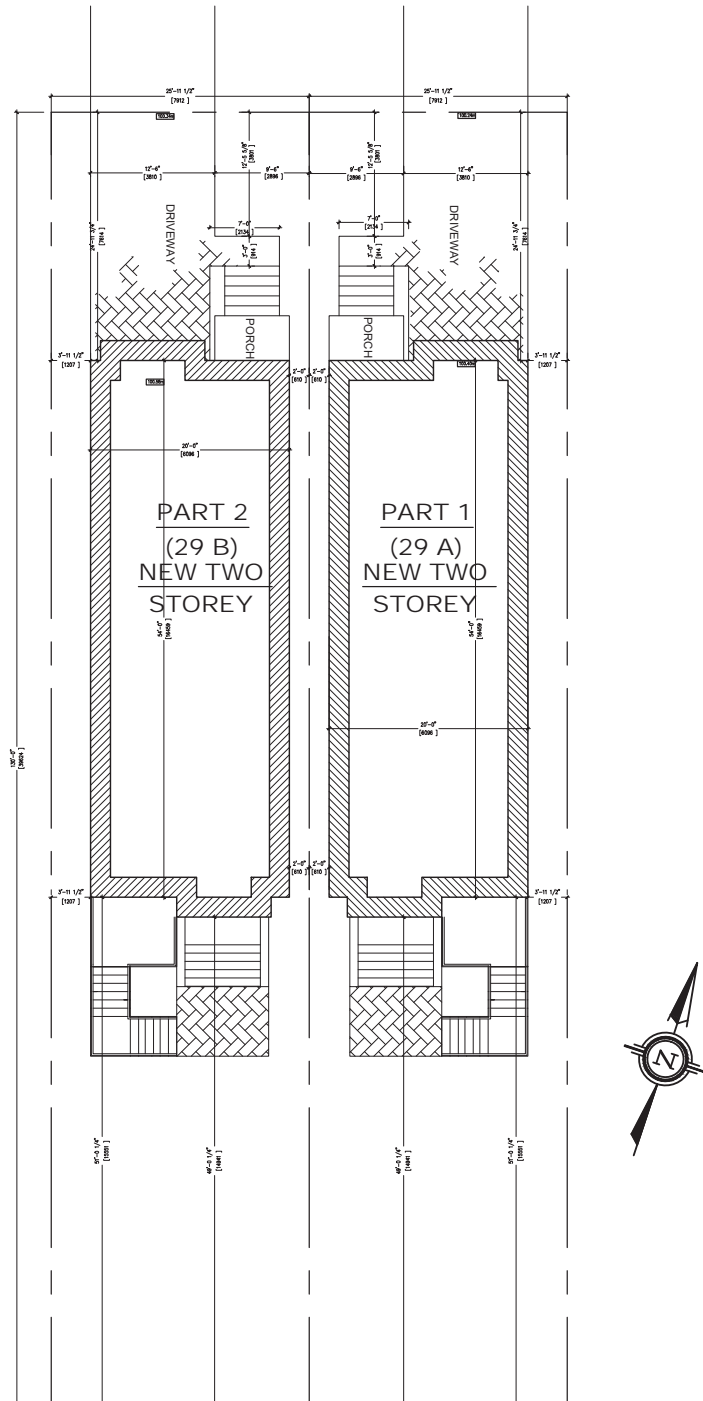
S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

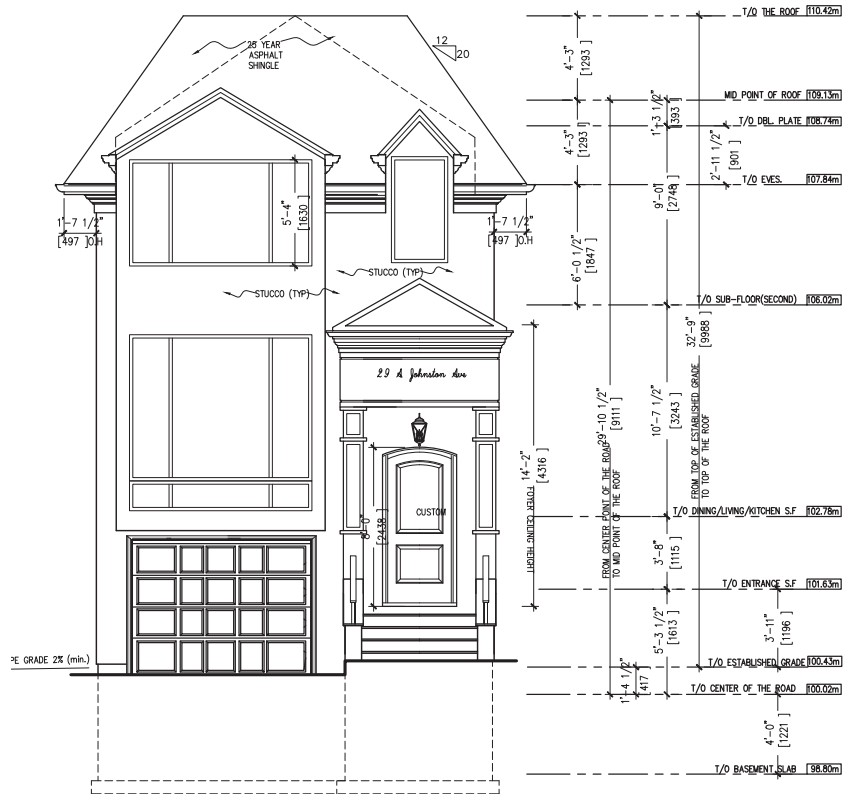


NOTE:
FOR MORE INFO. RE. TO: SURVEY

Proposed New House GFA CALCULATION SAME FOR A & B

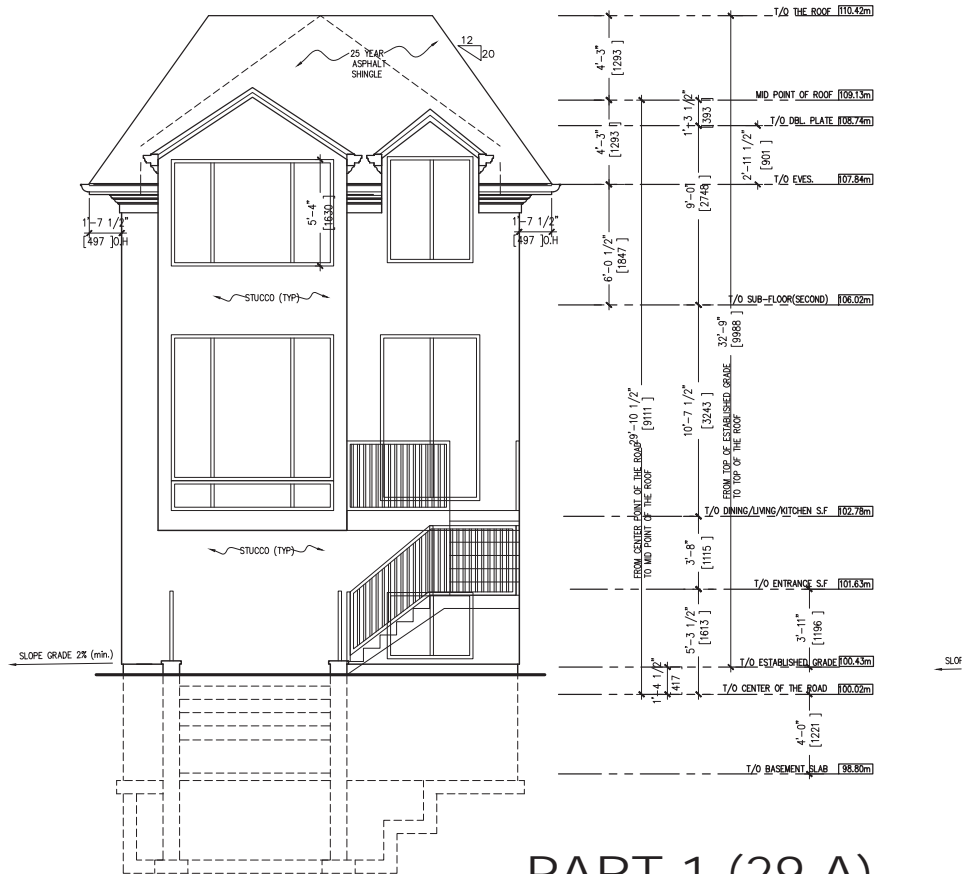
	sqf	sqm
Lot Area	3373.300	313.389825
G.F.A		
First Floor	1108.800	103.011
Second Floor	1108.800	103.010891
Total GFA	2217.600	206.022
Basement	868.800	80.714
Lot Coverage(30%)		
Allowable Lot Coverage	1011.990000	94.016947
Proposed Lot Covered	1108.800	103.011
Lot Covered %	32.870	
Front Yard Landscaping Calculation		
Front Yard Area	638.600	59.328
Driveway Area	312.250	29.009
landscape Req. (50% of total area)	319.300000	29.664
Landscape proposed (Front Yard-Driveway)	326.350	30.319
Soft Landscaping Req. (75% of Landscape)	244.763	22.739
Soft Landscape Proposed	259	24.062





1
A06 FRONT ELEVATION
SCALE: 3/16" = 1'-0"

PART 1 (29 A)



PART 1 (29 A)

2 REAR ELEVATION
A06 SCALE: 3/16" = 1'-0"



WEST ELEVATION

SCALE 1:75

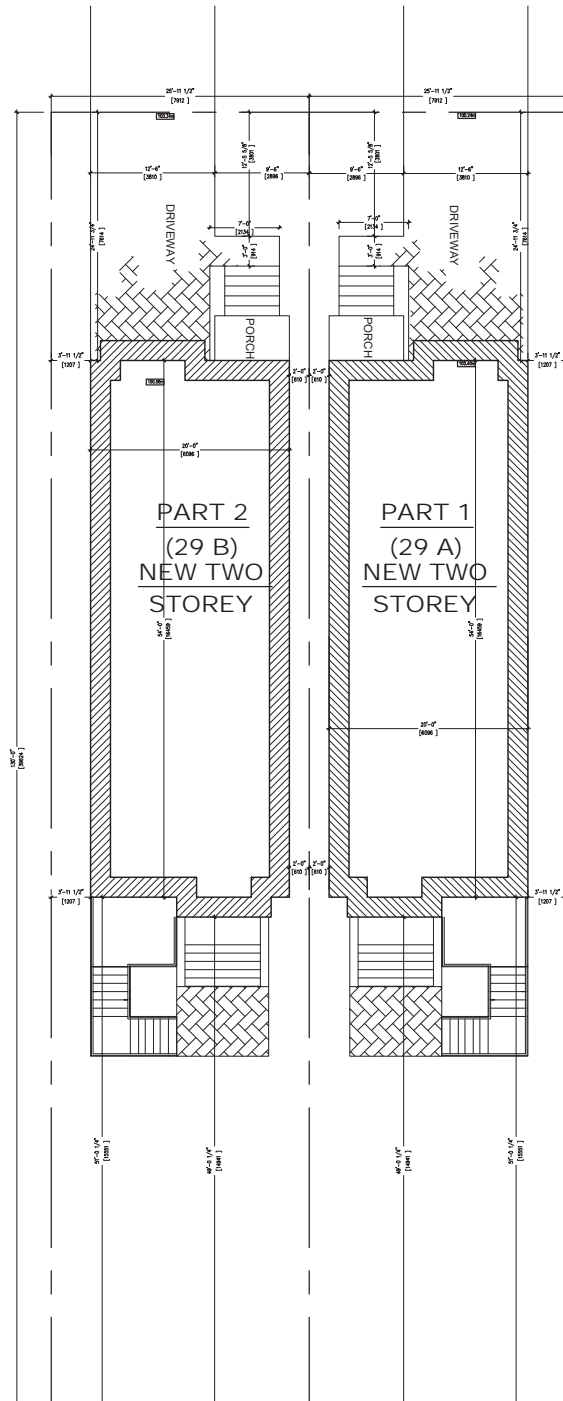
A08

SCALE 1:250

NOTE:
FOR MORE INFO. RE. TO: SURVEY

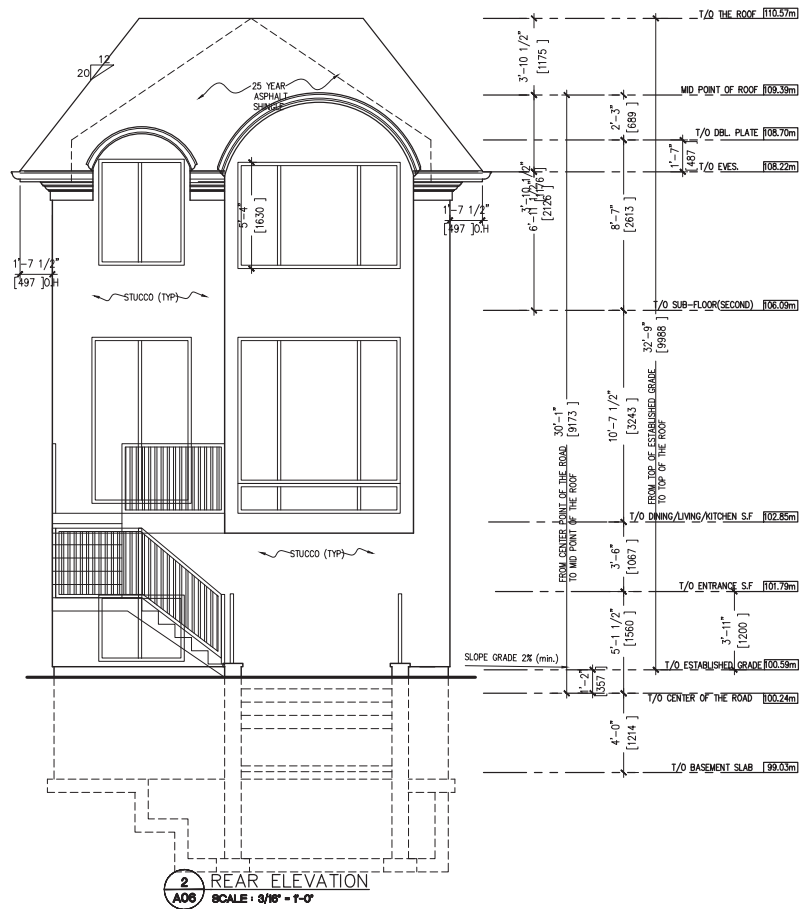
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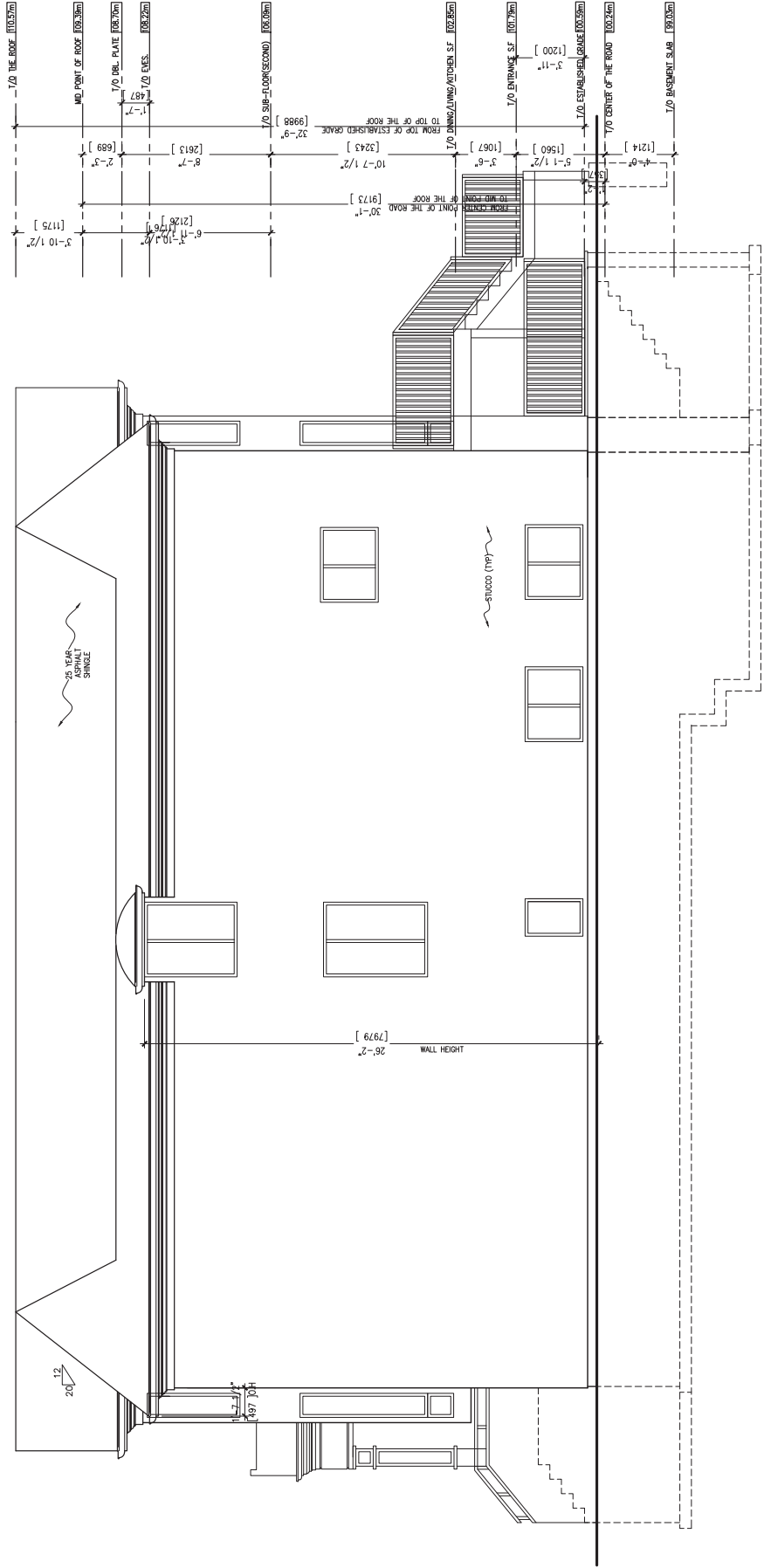




A06



PART 2 (29 B)



2 WEST ELEVATION
A08 / SCALE: 3/16" = 1'-0"

PART 2 (29 B)

WEST ELEVATION

SCALE 1:75

A08

