

DECISION AND ORDER

Decision Issue Date Tuesday, April 23, 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): NORMA BURROWES

Applicant: ALEX SAVANYU

Property Address/Description: 89 WAVERLEY RD

Committee of Adjustment Case File: 18 135796 STE 32 MV

TLAB Case File Number: 18 239573 S45 32 TLAB

Hearing date: Thursday, February 28, 2019

DECISION DELIVERED BY D. LOMBARDI

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ALEX SAVANYU	APPLICANT	
NORMA BURROWES	APPELLANT	GLENN DAVIS
MARTA BELCOURT	APPELLANT'S WITNESS	
LEWEI LI	PARTY	
ALEX SAVANYU	EXPERT WITNESS	
XIAOMEI PAN	PARTY/OWNER	AMBER STEWART
LISAS HORROCKS		

INTRODUCTION

This was an appeal by the neighbour, Norma Burrowes, at 91 Waverley Road, from the Toronto and East York District Panel of the Committee of Adjustment (COA) of the City of Toronto (City) approving variances at 89 Waverley Road (subject property) to permit the construction of a new three-storey detached dwelling with an integral garage.

The subject property is located in the Beaches neighbourhood, more specifically, on the east side of Waverley Road, between Queen Street East and Kewbeach Avenue. Waverley Road is a north-south street that runs from Kingston Road ending at Kewbeach Avenue, at the Lake Ontario beach and waterfront. Beaches Park, a large public City-owned green space that extends to Lake Ontario and the lakefront boardwalk, abuts the rear of the subject property to the east.

The subject property has a frontage of 7.49m, a depth of 35.06m and is 267.8m² in size. There is an existing 2-storey detached dwelling with a covered porch and a paved area that extends along the south wall of the existing structure. There is no existing car parking on the property.

The subject property is designated **Neighbourhoods** in the City Official Plan (OP) and zoned **R (d0.6) Residential** in the comprehensive Zoning By-law 569-2013 (the new By-law). The By-law permits an overall maximum height of dwellings to 10m and limits development to a maximum Floor Space Index (FSI) of 0.6 times the area of the lot.

BACKGROUND

As is the TLAB's required practice, I had visited the subject property and surrounding streets, and reviewed the pre-filed materials. I advised the Parties that I was quite familiar with this particular Beaches neighbourhood as I had been raised in the area.

The Owner/Applicant, Mr. Lewei Li, originally submitted an application for minor variance approval to the COA in March 2018. The initial proposal for the subject property contemplated a 3-storey, 11.82 m tall residential dwelling with integral garage, multiple balconies and a roof terrace. The proposal requiring eight variances in total from both By-law 438-86 (the former By-law) and the new By-law.

Subsequent to that filing, the Applicant retained Johnston Litavski Planning Consultants (Alex Savanyu) to provide land use planning consulting services related to the COA application. In June 2018, the Applicant's consultant received correspondence from the City's Community Planning staff (Exhibit 4 – Tab 17) requesting that the height of the proposed dwelling be lowered to be more in keeping with zoning by-law provisions (10m).

In response, the Applicant submitted a redesign which lowered the overall height of the dwelling in compliance with the Zoning By-law, as requested by Planning staff, and reduced the overall scale of the development resulting in the reduction of the number of required variances to five.

The listing of those variances is recited in the COA decision attached as **Attachment 1** hereto.

As a result of the revised application, Planning staff did not submit a report to the COA objecting to the application. Prior to the COA hearing, neither the Applicant nor his planning consultant was contacted by interested residents. The Appellant, Ms. Burrowes, did not appear at the COA hearing, instead, delegating a representative to appear and speak on her behalf.

The only other City department to provide comments to the COA was Urban Forestry which provided a standard condition for approval. (Exhibit 3 – Tab 19)

The revised application and variances were approved by the COA on September 20, 2018. Ms. Burrowes appealed the COA decision to the Toronto Local Appeal Body (TLAB) and the TLAB set a Hearing date for February 28, 2019.

In her Notice of Appeal (Form 1), dated October 8, 2018, Ms. Burrowes advised that she was not objecting to Variances #4 and #5 of the COA decision, which relate to the integral garage and the permitted height of the first floor above grade, but rather, to Variances #1, #2 and #3 which she stated constituted significant variances in both building height and density.

MATTERS IN ISSUE

Although the proposed three storey dwelling was described by the Applicant as being straightforward and modest, it was the position of the Appellant that the proposal was inconsistent in built form to the neighbourhood, that its massing and scale was not appropriate for the site, and that the proposed development was not minor and would be the cause of undue adverse impacts on her property.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body (TLAB) must have regard to matters of provincial interest as set out in section 2 of the *Planning Act*, and the variances must be consistent with provincial policy statements and conform to provincial plans (s. 3 of the *Act*). Therefore, a decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (PPS) and conform to the Growth Plan of the Greater Golden Horseshoe (Growth Plan) for the subject area.

Minor Variance – S. 45(1)

In considering the application 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.

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

EVIDENCE

In dealing with preliminary matters, and prior to any witnesses being called, Ms. Amber Stewart (Amber Stewart Law), the Applicant's solicitor, brought the Panel Member's attention to an email she received from Marta Belcourt, dated February 26, 2019, submitted on behalf of the Appellant (Exhibit 1).

Ms. Belcourt, a trained architect, is the Appellant's daughter-in-law and wrote to Ms. Stewart asking for advice on TLAB procedural requirements and responsibilities of the Appellant in advance of the Hearing. In her response, Ms. Stewart advised that the TLAB has Rules of Practice and Procedure (Rules) which require filing of materials in advance of the Hearing and stated that she was unable to provide legal advice to the Appellant.

Ms. Stewart asked that the above referenced correspondence be noted for the record and entered as an exhibit. In addressing the matter, she submitted that the COA had approved the subject application before the TLAB and that that decision was subsequently appealed to the TLAB by Ms. Burrowes. In doing so, however, she submitted that the Appellant had failed to file any obligatory evidentiary materials with the TLAB in support of her appeal other than the Notice of Appeal (Form 1) and

suggested that any request from Ms. Burrowes to depart from the Rules in this regard would require my consideration.

Mr. Glenn Davis identified himself as a friend of Ms. Burrowes who was asked to speak at the Hearing. A non-practicing lawyer, with no legal background or training in municipal planning law, he had been asked by Ms. Burrowes to speak extemporaneously on her behalf due to the Appellant's reluctance and discomfort in representing herself in such a forum.

He acknowledged that he was not identified as a duly authorized representative through the submission of a Form 1 nor did he pre-file the requisite Authorized Representative (Form 5) required by the Rules. He did, however, advise that as he had previously met Mr. Savanyu and the Applicant at the COA Hearing for this application and suggested that being allowed to represent the Appellant without having pre-filed the appropriate forms would not, in his opinion, prejudice the Applicant's standing before the TLAB.

Ms. Belcourt noted that she had been retained by Ms. Burrowes to review the proposed development given her training as an architect and the fact she is a family member. She apologized for her ignorance of the TLAB Rules and the requirements of a witness in this matter noting that her work load and busy schedule had resulted in this matter "falling through the cracks." She requested that I allow her to provide opinion evidence on the Appellant's behalf.

In response, Ms. Stewart acknowledged that while the Rules do permit the Chair to grant relief from the Rules and that she is aware of many instances in TLAB hearings where this has been accommodated, the appeal in this matter had been initiated by Ms. Burrowes and as the appellant she has a responsibility to at the very minimum attempt to comply with the Rules, in some part.

Further, she submitted that given that Mr. Davis is a lawyer and Ms. Belcourt is an architect who has had experience before the COA, it is difficult to believe they would not have had some appreciation of the requirements of the Rules, including the obligation of filing a witness statement. She suggested that this is not a matter of late filings but, rather, a case of no filing at all and the Appellant not undertaking the obligations required when taking the serious step of initiating an appeal. She requested a ruling before proceeding any further with the hearing.

I asked Ms. Burrowes to elaborate on the lack of pre-filings in this matter and, although reticent at first, she did concede that other than the filing of 7 photographs in support of her Notice of Appeal she was unaware of any other requirements in her role as an appellant. She was genuinely remorseful for this unfamiliarity with the process.

My Ruling

In providing a ruling in this regard, I briefly referenced the relevant sections of the TLAB Rules germane to the situation. In particular, I highlighted Rules 2.2, 2.5, 2.9, 14.1, 14.2, and 16.

"I noted that the Notice of Hearing for this matter was issued on October 17, 2018 and included the following due dates for the pre-filing of documents which represented obligations on both Parties:

- *Document disclosure – November 16, 2018;*
- *Witness Statement – December 3, 2018; and*
- *Expert Witness Statement – December 3, 2018.*

I advised the Appellant that the Member presiding may or may not, at the Member's discretion, on request allow the submission of an oral statement by the individual.

I stated that I would have expected the requisite pre-filed materials from the Appellant, including a notice authorizing Mr. Davis to represent the Appellant and a Witness Statement from Ms. Belcourt if she was intending to provide expert opinion evidence, either by the above noted due dates or at least prior to the Hearing date. My concern at this point is to avoid "trial by ambush."

With respect to Mr. Davis, I am willing to overlook the absence of the proper authorizing documentation to speak on the Appellant's behalf given that Ms. Stewart has expressed no objection to this allowance. I refer to Rule 2.2 which allows me to liberally interpret the Rules to secure the just, most expeditious and cost-effective determination of the proceedings on its merits.

However, I cautioned Mr. Davis that his participation in this Hearing would be limited to presenting the information already submitted by Ms. Burrowes in her Notice of Appeal and not venturing beyond those parameters. I advised him that I would perform a "gatekeepers' role and police, for lack of a better term, areas in which he is not to stray. I noted that counsel can challenge any attempts to make conclusions beyond those already indicated in filed evidentiary materials, limited as those materials are. So, on that basis, I'm prepared to allow Mr. Davis to proceed in this role.

With respect to Ms. Belcourt, however, I am not so inclined. She has stated that she is as an architect and was engaged by the Appellant to review the subject application and appear before the TLAB in a somewhat professional capacity, notwithstanding the fact that she is Ms. Burrowes' daughter-in-law. She is, in no uncertain terms, being tendered as an expert witness to provide expert opinion evidence in this matter.

I have no issue with Ms. Belcourt being in attendance at the Hearing for moral support and guidance as, generally, TLAB hearings are public and open for attendance. However, I am not prepared to permit Ms. Belcourt to be a witness or provide opinion evidence as she has not submitted a Witness Statement, an Acknowledgement of Expert's Duty form, a Curriculum Vitae or any evidentiary materials for review. To do so, I believe, would be unfair and prejudicial to the Applicant."

With that ruling, I directed Ms. Stewart to call her first witness who was identified as Alex Savanyu.

Mr. Savanyu is a planner with the firm Johnstone Litaviski Limited Planning Consultants, and a Registered Professional Planner in Ontario. I qualified him to provide land use planning opinion evidence.

As previously noted, Mr. Savanyu had been retained by the Applicant for both the COA matter and the subsequent TLAB appeal.

He briefly summarized the proposal noting that it consisted of the construction of a new 3-storey detached dwelling with integral garage, rear yard deck and walk out basement. He characterized the dwelling's design as ground related to the front and rear yard with an entrance on the front façade facing the street. One parking space is located in the integral garage located between the basement and first floor.

The dwelling consists of three above grade levels of living space in a 'split-level' format, including a basement. Living, dining, and kitchen functions are located on the first level, with bedrooms on the remaining upper levels.

He noted that the proposed dwelling included a 3rd storey which is stepped back 7.54m from the front wall and designed to be hidden behind the roofline. This stepped back portion of the roof is flat. The exterior elevation consists of stone and cement siding building materials.

The subject property includes three (3) privately-owned trees along the rear lot line and one (1) City-owned tree located within the municipal right of way between the front lot line and sidewalk. Mr. Savanyu stated that all the existing trees would be retained.

With this back drop, the planner provided a description of the physical characteristics of the area. Employing a generous Neighbourhood Study Area (Exhibit 2, Appendix A) and extensive visual evidence consisting of 35 photographs (Exhibit 2, Appendix 3 – Neighbourhood Study Area 3-storey and Flat Roof Dwellings), Mr. Savanyu assessed the compatibility of the proposed development within the surrounding context.

He described the Study Area as a stable and desirable residential neighbourhood consisting of an eclectic mix of 1, 2, 2 ½ and 3-storey single, semi-detached, townhouse, duplex and multiple unit buildings – in other words, a variety of dwelling forms, typologies, and architectural styles, in relative proximity to the subject property (exhibit 3, p. 14-18). The lotting pattern features a mix of lot sizes and frontages, with larger lots more typical in the western portion of the Study Area, abutting Woodbine Avenue.

The Study Area also includes a range of active recreational use areas and open spaces, including the larger and public Beaches Park and Pantry Park and, by extension, is marked by the presence of many large mature trees and canopy.

In addressing the built form in the neighbourhood, Mr. Savanyu referred to his visual evidence in Exhibit 3, which illustrated examples of similar built form to that proposed by the Applicant incorporating 3rd floor pitched and flat roofs elements as well as integral garages. He noted that many of these dwellings are located on Waverley Road, as well

as on abutting streets such as Kennilworth, Kippendavie, and Kewbeach Avenues, in proximity to the subject property.

He submitted that the proposal will result in an overall building design that is not a 'rectangular box' built form but rather a design with a front elevation incorporating dormers and some pitching to the roofline with a flat rear component towards the rear of the dwelling.

He specifically highlighted several dwellings on Waverley Road - #38, #46 and #54 – to illustrate examples of dwellings with exterior main wall heights that are taller than the abutting dwellings. He asserted many of these exceeded the 7.5m height provision in zoning By-law and suggested this was not an uncommon condition in the neighbourhood.

Additionally, he highlighted Photo #9 (Exhibit 3- Appendix C) of #65, #67, and #71 Waverley Road to show different architectural designs and approaches to front elevations and 3rd floor roofs that are stepped back towards the rear of the dwelling.

The Legislative Tests

Due to the local nature of the matter before the TLAB, Mr. Savanyu abbreviated his analysis of provincial policy. He submitted that the proposed development supports the promotion of provincial interests relating to compact, efficient, and transit-supportive land use development patterns.

He considered the area as a 'stable' Official Plan 'Neighbourhood' consisting of residential buildings of a variety of types, length, scale and tenure, and including many in the vicinity with similar lot penetrations, in building length and depth. He noted considerable regeneration activity and canvassed a variety of COA approvals of variances (Exhibit 2 – p. 13), including similar measures for FSI required by the proposal, all being within a consistent range of the requests made.

In applying the Official Plan evaluation criteria in section 4.1.5, Mr. Savanyu opined that that the proposed physical change/built form is in keeping with the prevailing eclectic character of the neighbourhood, specifically, with respect to height, scale and massing, design as well as setbacks and building type.

He addressed various aspects of the proposal from this context, noting that the proposed front main wall will be moved 0.97 m farther to the rear, generally aligning with the front walls of the abutting properties at #87 and #91 Waverley Road. The proposed rear main wall will also be moved 1.06m to the rear to align generally with the abutting property to the south (#87 Waverley). He submitted that this will result in a consistent street wall and a similar building envelope to the existing condition, reinforcing the existing physical character and streetscape.

With respect to the variance for a garage entrance in the front wall, he noted that an integral garage is not permitted if the lot frontage is less than 7.6m in order to ensure that the garage does not dominate the façade of smaller lots. He suggested that the

variance of 11cm is a minor departure from the requirement and that the proposed façade deemphasizes the garage through the use of varying projections, dormer size and fenestration. As a result, he submitted that the proposal maintains the prevailing pattern in the Study Area, and particularly, on the east side of Waverley Road proximate to the subject property.

He noted that the proposed first floor height at 1.37m above established grade represented a minor 17cm departure from the By-law and opined that first floor and front door height is in keeping with many other dwellings in the neighbourhood, where first floor/front doors appear well above grade.

Taken together, he submitted that the proposed development presented a consistency and 'fit' in accordance with the *Neighbourhoods* criteria and the Built Form policy, section 3.1.2.3.

Mr. Savanyu opined that the variances also meet the general intent and purpose of the zoning By-law, as it will facilitate a dwelling that is compatible with the built form of the surrounding area. He suggested that the proposal represents an appropriate, reasonable and compatible development for this neighbourhood, and submitted that the variances will facilitate a reasonably-sized dwelling with appropriate standards, interface and a functional design that is desirable and compatible with recent development trends.

In addressing the last statutory test, whether the proposal is minor, he opined that the proposal creates no unacceptable adverse light, access to views, or overlook impacts on abutting properties. He confirmed his attendance at the subject property on numerous occasions in preparing his evidence and noted that he was mindful of the issues raised by the Appellant, specifically with respect to views from her backyard. He concluded that the proposed dwelling would not affect views Ms. Burrowes' property.

He submitted that his evidentiary materials illustrate that from a numerical standpoint, the quantum of the FSI, garage entrance, exterior main wall height and first floor height variances being sought, both individually and collectively, are minor and in keeping with the numeric range of approvals within the area.

In summation, Mr. Savanyu submitted that the subject property's physical and planning instruments context supports the proposal, and the proposed variances will result in a development that is reflective of the neighbourhood's physical context in a manner that respects and reinforces that context, with no unacceptable adverse impacts.

Prior to cross-examining the witness, I reminded Mr. Davis of the gist of my earlier ruling at the commencement of the Hearing, which requires that he not stray from the bounds of the issues outlined by the Appellant in her Notice of Appeal or raise any new issues. He reconfirmed that it was not Ms. Burrowes intention to testify or introduce an expert witness at the Hearing, and he expressed an appreciation for the dispensation of allowing the Appellant to perfect her paperwork through his representation of her interests on her behalf.

Mr. Davis reiterated that the crux of Ms. Burrowes' objections to the proposed development relate principally to height and density. He questioned Mr. Savanyu's characterization of the difference between the proposed height of the front and rear exterior main walls as being 'minor', given that the variance is almost 50% greater.

Mr. Savanyu responded by noting that this provision in By-law 569-2013 is still under appeal but that it is not just a numerical exercise. He noted that the front wall elevation at 9.97m is stepped back considerably (7.5m) and the Applicant has incorporated various design features such as the pitching of the roof to offset the height of the walls. Mr. Savanyu did assent to Mr. Davis' assertion that the new By-law is more restrictive regarding the height of exterior main walls when compared to the former By-law

On the issue of density, Mr. Davis suggested that the variance being requested would increase the FSI by 50 to 55%, which he asserted, again, was not minor. While acknowledging that the FSI being sought is 0.9, Mr. Savanyu reiterated his opinion that the test of minor is not simply a numeric one but rather an assessment of each variance must in totality and how the resulting dwelling fits within the lot.

Prefacing his next comments by noting that his intention was not to criticize Mr. Savanyu's methodology in providing photographic evidence showing examples of dwellings in the neighbourhood with similar main wall heights and roof designs as proposed development, Mr. Davis then questioned the relevance and significance of the materials and data referenced by the witness in his testimony. He questioned the inferences that should be drawn from referencing a "couple of ugly square boxes that got through the net" as purported evidence of the evolution of the neighbourhood's development trends.

He further submitted that the extensive photographic evidence prepared and offered by the witness failed to include photos taken from the backyards of the dwellings abutting the subject property, including Ms. Burrowes'. He identified this as a significant omission given that a major concern expressed by the Appellant relates to the impact on light and views in her backyard due to the proposed development.

He submitted that there was no supporting evidence that a three storey rear elevation is common on Waverley Road or that the massing of the structure and its walls will not unduly impact light to, and views from Ms. Burrowes' property. He noted that there are examples on Waverley Road of dwellings where 3rd floors are recessed at the rear to lessen the impact the properties of abutting neighbours, citing #93 Waverley Road which abuts the Appellant's property to the north.

In this regard, he asked permission to introduce 5 additional photos, not previously filed with the TLAB, showing views to the park and Lake Ontario taken from the Appellant's rear yard. Mr. Davis suggested that the photos were intended to further inform the TLAB on the issue of the impact of the proposed development on the Appellant's views as well as illustrating the recessed rear 3rd floor of the abutting dwelling. Ms. Stewart did not object and I allowed the photos: however, I did note that their importance would go to weight in my decision.

ANALYSIS, FINDINGS, REASONS

Although Ms. Burrowes did not take an active part in this Hearing and failed to file the required materials beyond the Notice of Appeal, she was allowed competent representation and was afforded the opportunity through Mr. Davis to participate in the proceedings, albeit in a somewhat moderated manner. I understand that she was disappointed in my ruling regarding Ms. Belcourt's participation in the proceedings.

My thoughts in this regard can be more precisely communicated through the sentiment expressed by TLAB Chair Lord in his decision for 72 Crescent Rd. (17 258503 TLAB), in which he wrote:

"Regrettably, our planning process has rigidities, inefficiencies and lack of precision due to its inherent nature of being opinion oriented, political to a degree and discretionary. That said, a system is nothing if it cannot result in a decision; the alternative is unthinkable.

The TLAB is responsible to resolve disputes that come to it by way of appeal. It must do that in accordance with respect for the rule of law, which, in these cases involves the application of policy, law, statutory 'tests', fact, opinion and judgment on the evidence brought before it.

In the process, weighing opinion evidence, facts and policy are all helpful in resolving disputes. There are principles at play: the right to make and the responsibility to defend an application; the right to be heard, for and against aspects or the entirety of a proposal.

It is also a fact that change represents uncertainty and perceptions of impact. It is the measures of these that help the decision maker reach a conclusion. Vague representations of no injury and unfounded expressions of apprehension are not measures of impact.

The administrative law definition of 'impact', itself a benign term or neutral in its own way, is more severe. All changes have impact, some positive, some negative, some severe in either direction. To be assessed as a negative impact to be attributed weight in the world of land use planning, the common rubric is 'undue adverse impact'."

I appreciate that Ms. Burrowes has concerns regarding the subject development which were expressed rather eloquently and aptly by her representative on the return date, as well as in her Notice of Appeal. She highlighted concerns regarding density, noting that the variance is a significant increase. She submitted that the height variances being sought will result in a new dwelling that will not fit the character of the street or the neighbourhood.

Additionally, she suggested that the proposed third storey should be recessed from the rear and not the front, in order to mitigate impacts on sunlight and views. She also

expressed a concern with the proposed setback of the proposed dwelling being 1 metre farther to the rear than the existing dwelling footprint, thereby further impacting access to natural light and obstructing her views to the park and the Lake.

These are all legitimate concerns and must be considered and assessed within the context of the 'range of tolerance'.

However, in this regard, I must also be satisfied that the requested variances meet the statutory tests. I agree with Ms. Stewart and Mr. Savanyu that land use planning and the policy guidance from provincial, policy on down is to permit change, even encourage it in the form of intensification and reinvestment in neighbourhoods, but also to limit impacts in degree and kind so as to not create undue adverse impact.

However, the intent is not to eliminate impact since impacts from change will occur and can be expected. For those elements of the subject variances that are contested, the tests in the *Planning Act* are a check list of examinations as to acceptable compliance, 'tolerable ranges', reasonableness, and 'fit'.

All of these elements are germane to this matter and I will address the five variances as Mr. Savanyu did in his Witness Statement and testimony.

Floor Space Index (FSI) Variance

The Applicant seeks permission for an FSI of 0.92. I accept Mr. Savanyu's evidence that FSI approvals in the Study Area range from 0.66 to 1.24 times the area of the lot, including six approvals which exceed the proposed FSI. I agree with Mr. Savanyu that the neighbourhood consists of a variety dwelling sizes and types and that the proposed development is compatible with the neighbourhood in terms of scale and massing.

Garage Entrance in Front Wall Variance

Although the By-law does not permit an integral garage if the lot frontage is less than 7.6m, I note that the existing frontage represents a departure of only 11cm from the requirement, which is, in my opinion, undiscernible. I accept Mr. Savanyu's submission that the proposed design will ensure that the garage does not dominate the front façade and that the proposal will be consistent with and maintain the streetscape on Waverley Road.

First Floor Height Variance

This variance results partially from accommodating the integral garage above established grade and the interior design of the dwelling. The internal living space arrangement reflects a 'split-level' arrangement where the front door leads up to the foyer and living room situated on the main floor above the garage, with steps down to the remainder of the first floor living space.

I agree with Mr. Savanyu that this variance, representing an increase in the proposed height of the first floor above established grade of 17cm from the By-law requirement, will not result in a substantial set of stairs leading to the front door.

I accept his submission that this condition mirrors properties on the east side of Waverley Road which have first floors/front doors well above grade. I agree that in this regard, the proposed dwelling is in keeping with the character and the prevailing pattern of development in the neighbourhood.

Exterior Main Wall Height Variance

The intent of this regulation is to prevent a 'rectangular large box' built form with a 3-storey façade and flat roof. I accept Mr. Savanyu's evidence that the proposed development addresses this intent through the use of roof dormers and a pitched roofline that is setback 7.54m from the front main wall which then leads to a flat roof component hidden behind the roofline. I agree with the planner's assessment that this will be virtually unnoticeable from the street and the façade will read as a 2-storey structure.

As an offer of good will, the Appellant has suggested an additional condition if the application is approved by the TLAB which would require the construction of the proposed dwelling in substantial accordance with the Site Plan and elevation drawings before the TLAB. The Plans are attached as **Attachment 2** to this decision.

I also accept his submission that the former By-law does not provide a similar regulation regarding exterior main wall height as the new By-law and that this is a relatively new provision. As such, variances have been approved at the following addresses:

- #46 Kenilworth Avenue – side walls at 9.66m; rear walls at 8.78m;
- #105 Kenilworth Avenue – front and rear walls at 9.25; side walls at 9.25m; and
- 41 Kippendavie Avenue – side walls at 10.67m.

As to the issues of concern expressed by the Appellant with respect access to sunlight, and lake and park views, I am mindful that the overall height of the proposed development is compliant with the By-law and compliant with all the other built form regulations including building length, building depth and front and rear yard setback requirements.

In his closing remarks, Mr. Davis acknowledged that the Appellant has no issue with the dwelling size, per say, or the front elevation, noting that the proposal is "well-done and professionally designed (his words)." She also has no issue with the integral garage although she asserts that the garage and internal floor plan contributes to the increased exterior main wall heights and should be reconsidered.

I note that the current north side yard setback abutting Ms. Burrowes' property is 0m. The Applicant is proposing to shift the new dwelling to the south, resulting in a side yard setback of 0.91m which would be compliant with the By-law and would represent an improvement on the existing condition. Additionally, the rear and front walls will be extended resulting a reasonable 9cm increase in building length.

I accept Mr. Savanyu's submission that this will not considerably diminish the view to the adjacent park at the rear, or to the Lake from Ms. Burrowes' property, which will

continue to be visible looking southeast. I concur with Ms. Stewart there is no right to a view in planning law and no absolute right to unobstructed sunlight particularly when considered within the urban context of this Beaches neighbourhood. Impacts that arise from this application are, in my opinion, well within the 'range of tolerance'.

Although I acknowledge that Ms. Burrowes has concerns, she failed to produce compelling evidence to support her position that impacts from the variances being sought rise to the level of undue adverse impacts of a planning nature.

I prefer Mr. Savanyu's evidence, which was uniformly and almost entirely unchallenged, and accept that the deployment of height and density as a result of this proposal and the relationship to the abutting property, at 91 Waverley Road, are appropriate. Any impact upon sunlight between the side and possibly rear facing windows or rear deck between the two properties is to be expected in this urban condition and not uncharacteristic for the existing neighbourhood context.

Additionally, I am satisfied that the application is supportive and consistent with provincial policy, the variances, individually and collectively, meet the necessary test in subsection 45(1) of the Act, and that the application represents good land use planning, for the reasons reviewed.

DECISION AND ORDER

The appeal is dismissed. The earlier decision of the Committee of Adjustment, dated September 20, 2018, attached as **Attachment 1** to this decision, is confirmed with the following additional Condition of Minor Variance Approval included:

"The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevation drawings prepared by Proplus Contracting and dated May 30, 2018, attached as **Attachment No. 2** to this decision. Any other variance(s) that may appear on these Plans that are not listed in this written decision are NOT authorized."

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body



City Planning Division
Michael Mizzi, MCIP, RPP
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Committee of Adjustment

Committee of Adjustment
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**NOTICE OF DECISION
MINOR VARIANCE/PERMISSION
(Section 45 of the Planning Act)**

File Number: A0329/18TEY
Property Address: 89 WAVERLEY RD
Legal Description: PLAN M37 S PT LOT 63
Agent: ALEX SAVANYU
Owner(s): XIAOMEI PAN
Zoning: R(d0.6) & R2(z0.6) (ZZC)
Ward: Beaches-East York (32)
Community: Toronto
Heritage: Not Applicable

Notice was given and a Public Hearing was held on **Thursday, September 20, 2018**, as required by the Planning Act.

PURPOSE OF THE APPLICATION:

To construct a new three-storey detached dwelling with an integral garage.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

- 1. Chapter 10.10.40.10.(2)(A)(i) & (ii), By-law 569-2013**
The maximum permitted height of all front and rear exterior main walls is 7.5 m.
The height of the front and rear exterior main walls will be 9.97 m.
- 2. Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013**
The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.
The height of all side exterior main walls facing a side lot line will be 9.97m.
- 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (160.55 m²).
The new detached dwelling will have a floor space index equal to 0.92 times the area of the lot (246.75 m²).

4. Chapter 10.10.80.40.(1), By-law 569-2013

A vehicle entrance through the front main wall of a building is permitted, provided the lot has a minimum frontage of 7.6 m.

In this case, the lot has a frontage of 7.49 m.

5. Chapter 10.10.40.10.(6), By-law 569-2013

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

In this case, the first floor of the detached dwelling will have a height of 1.37 m above established grade.

The Committee of Adjustment considered the written submissions relating to the application made to the Committee before its decision and oral submissions relating to the application made at the hearing. In so doing, **IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:**

The Minor Variance Application is Approved on Condition

It is the decision of the Committee of Adjustment to approve this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):

Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

SIGNATURE PAGE

File Number: A0329/18TEY
Property Address: 89 WAVERLEY RD
Legal Description: PLAN M37 S PT LOT 63
Agent: ALEX SAVANYU
Owner(s): XIAOMEI PAN
Zoning: R(d0.6) & R2(z0.6) (ZZC)
Ward: Beaches-East York (32)
Community: Toronto
Heritage: Not Applicable

DATE DECISION MAILED ON: **WEDNESDAY, SEPTEMBER 26, 2018**

LAST DATE OF APPEAL: **WEDNESDAY, OCTOBER 10, 2018**

CERTIFIED TRUE COPY

Sylvia Mullaste
Acting Deputy Secretary-Treasurer
Committee of Adjustment, Toronto and East York District

Appeal Information

All appeals must be filed with the Deputy Secretary-Treasurer, Committee of Adjustment by the last date of appeal as shown on the signature page.

Your appeal to the Toronto Local Appeal Body (TLAB) should be submitted in accordance with the instructions below unless there is a related appeal* to the Local Planning Appeal Tribunal (LPAT) for the same matter.

TORONTO LOCAL APPEAL BODY (TLAB) APPEAL INSTRUCTIONS

To appeal this decision to the TLAB you need the following:

- a completed TLAB Notice of Appeal (Form 1) in **digital format** on a CD/DVD or USB;
- \$300 for each appeal filed regardless if related and submitted by the same appellant;
- Fees are payable to the **City of Toronto** by cash, certified cheque or money order (Canadian funds).

To obtain a copy of the Notice of Appeal Form (Form 1) and other information about the appeal process please visit the TLAB web site at www.toronto.ca/tlab.

LOCAL PLANNING APPEAL TRIBUNAL (LPAT) INSTRUCTIONS

To appeal this decision to the LPAT you need the following:

- a completed LPAT Appellant Form (A1) in **paper format**;
- \$300.00 with an additional reduced fee of \$25.00 for each connected appeal filed by the same appellant
- Fees are payable to the Minister of Finance by certified cheque or money order (Canadian funds).

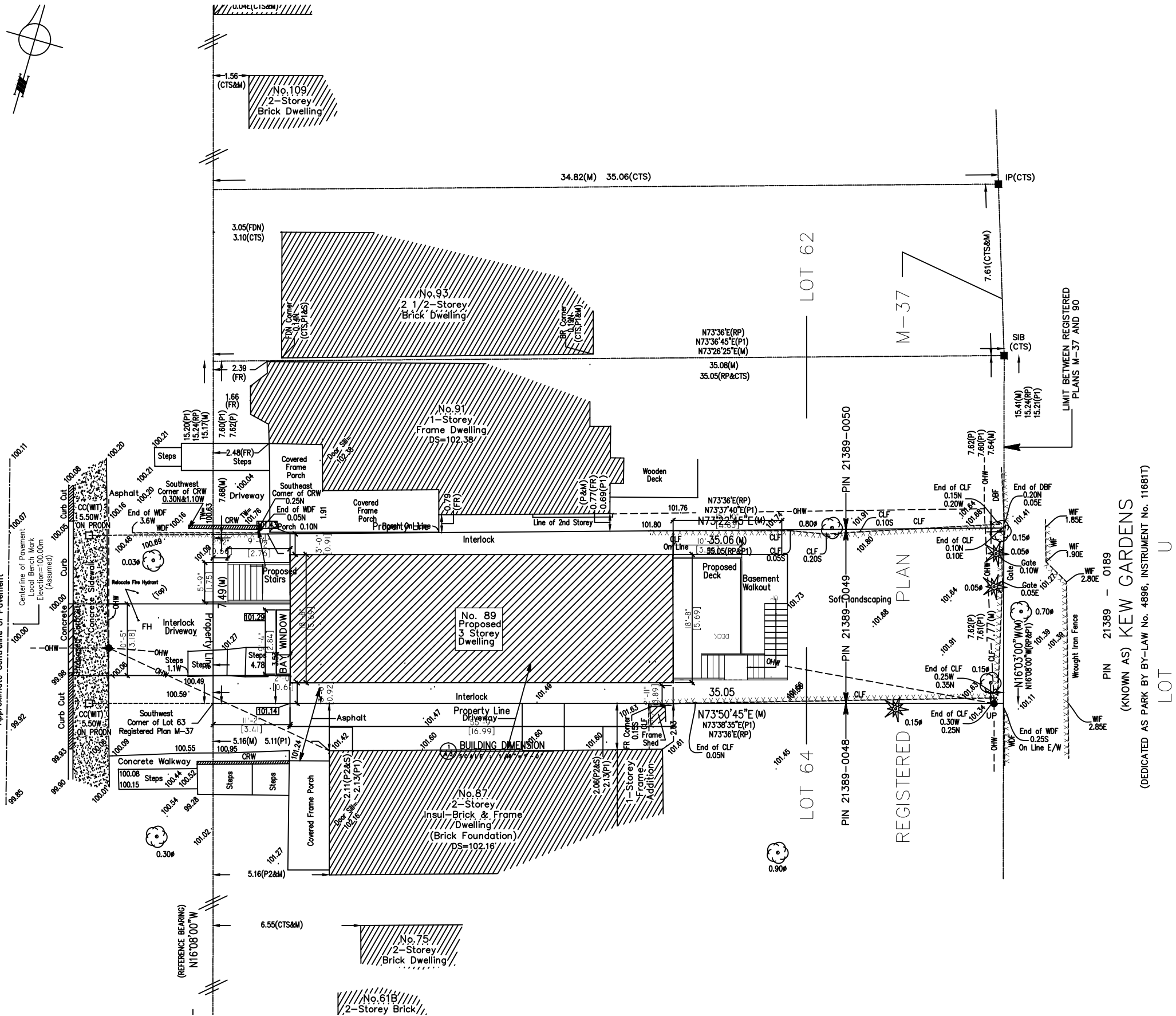
To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Environmental & Lands Tribunals Ontario (ELTO) website at <http://elto.gov.on.ca/tribunals/lpat/forms/>.

*A **related appeal** is another planning application appeal affecting the same property. To learn if there is a related appeal, search community planning applications status in the Application Information Centre and contact the assigned planner if necessary. If there is a related appeal, your appeal to the **Local Planning Appeal Tribunal (LPAT)** should be submitted in accordance with the instructions above.

(KNOWN AS) WAVERLEY ROAD
(FORMERLY WAVERLEY ROAD BY REGISTERED PLAN M-37)

PIN 21389 - 0150

Approximate Centreline of Pavement



SURVEYOR'S REAL PROPERTY REPORT-PART 1
PLAN OF
PART OF LOT 63
REGISTERED PLAN M-37
CITY OF TORONTO

SCALE 1:150
0 1 2 3 4 5 10 15 Metres

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PEARSON & PEARSON SURVEYING LTD. 2018
Ontario Land Surveyors

Metric
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND
CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

- Part 2
1. THE RE-ESTABLISHMENT OF THE SUBJECT PROPERTY BOUNDARIES WAS BASED ON INFORMATION CONTAINED IN THE RELEVANT TITLE DOCUMENTS, REGISTERED PLANS AND ON THE EVIDENCE OF PRIOR SURVEYS FOUND DURING THE COURSE OF PREPARING THE SUBJECT SURVEY.
 2. THE TYPE AND LOCATION OF THE EXISTING BUILDINGS AND OTHER IMPROVEMENTS, FENCES ETC., ON OR NEAR THE SUBJECT PROPERTY ARE AS SHOWN ON THE SURVEY PLAN.
 - NOTED THE STEPS IS 1.1 METERS WEST AT THE WEST BOUNDARY LIMIT AND THE OVERHEAD WIRES RUNNING AT THE EAST BOUNDARY LIMIT. THE EAVE AT THE NORTHWEST CORNER OF DWELLING IS 0.20 METERS NORTH. NOTE THE OVERHEAD WIRES CROSSING INTO THE PROPERTY AT THE FRONT.
 3. COMPLIANCE WITH MUNICIPAL ZONING REQUIREMENTS IS NOT CERTIFIED BY THIS REPORT.
 4. AS WE ARE UNAWARE AT THIS TIME OF THE OWNERSHIP OR AGE OF FENCES, WE ARE UNABLE TO COMMENT AS TO ANY ENCROACHMENTS THEREBY CREATED BY THE LOCATION OF THE FENCES WITH RESPECT TO PROPERTY LINES. THE PRESENT POSITION OF THE FENCES WITH RESPECT TO THE PROPERTY LINES ARE SHOWN ON THE SURVEY PLAN.
 5. No. 89 WAVERLEY ROAD - NO REGISTERED EASEMENTS OR RIGHTS OF WAY ON TITLE.

SURVEY PREPARED FOR: LARRY LI

Bearing Note
BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE EASTERLY LIMIT OF WAVERLEY ROAD (FORMERLY WAVERLEY ROAD) SHOWN ON REGISTERED PLAN M-37 AS HAVING A BEARING OF N16°08'00"W.

Legend	
■	DENOTES SURVEY MONUMENT FOUND
□	DENOTES SURVEY MONUMENT SET
SIB	DENOTES STANDARD IRON BAR
IP	DENOTES IRON PIPE
IB	DENOTES IRON BAR
CC	DENOTES CUT CROSS
WIT	DENOTES WITNESS
OU	DENOTES ORIGIN UNKNOWN
PRODN	DENOTES PRODUCTION
S	DENOTES SET
M	DENOTES MEASURED
N/S/E/W	DENOTES NORTH/SOUTH/EAST/WEST
RP	DENOTES REGISTERED PLAN M-37
P	DENOTES SKETCH OF SURVEY BY C. REUBEN & SONS, O.L.S., DATED AUGUST 9, 1943.
P1	DENOTES PLAN OF SURVEY BY C. E. DOTTERILL LTD., O.L.S., DATED MAY 17, 1977.
P2	DENOTES PLAN OF SURVEY BY BAIRD AND MUCKLESTONE, O.L.S., DATED APRIL 22, 1955.
CTS	DENOTES CITY OF TORONTO SURVEYS
TW	DENOTES TOP OF WALL ELEVATION
CRW	DENOTES CONCRETE RETAINING WALL
DBF	DENOTES DOUBLE BOARD FENCE
WIF	DENOTES WROUGHT IRON FENCE
CLF	DENOTES CHAIN LINK FENCE
WDF	DENOTES WOODEN FENCE
FDN	DENOTES TIES TO CONCRETE FOUNDATION
FR	DENOTES TIES TO FRAME
OHW	DENOTES OVERHEAD WIRES
UP	DENOTES UTILITY POLE
LS	DENOTES LIGHT STANDARD

PROPLUS CONTRACTING

NOTES
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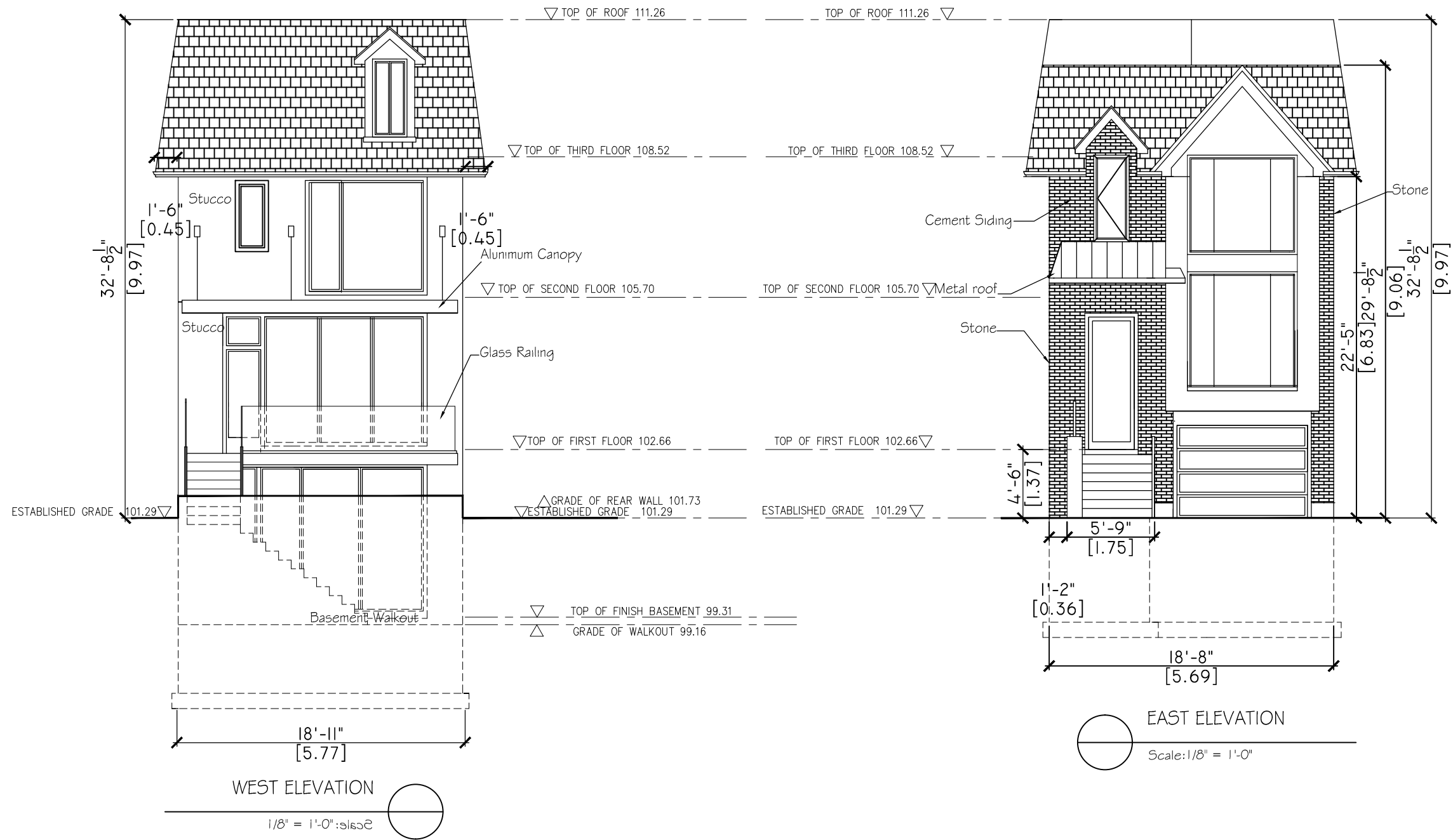
	DATE	DESCRIPTION	PROJECT NO	DRAWING SITE PLAN			DWG NO: S1
			PROJECT 89 WAVERLEY RD	DESIGNER	L. L	CHECKED	DATE 2018/05/30
				DRAWER	L. L	APPROVED L. L.	SCALE 1/16"=1'

PIN 21389 - 0150



(B) SOFT LANDSCAPING AREA % = $84.3 \text{ M}^2 / 113.4 \text{ M}^2 \times 100 = 74\%$

	DATE	DESCRIPTION	PROJECT NO	SITE PLAN			DWG NO: S2
			PROJECT 89 WAVERLEY RD	DESIGNER L. L	CHECKED	DATE 2018/05/30	
				DRAWER L. L	APPROVED L. L.	SCALE 1/16"=1'	



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DATE

DESCRIPTION

PROJECT NO

DRAWING ELEVATION

DWG NO: E 3

PROJECT 89 WAVERLEY RD

DESIGNER L. L.

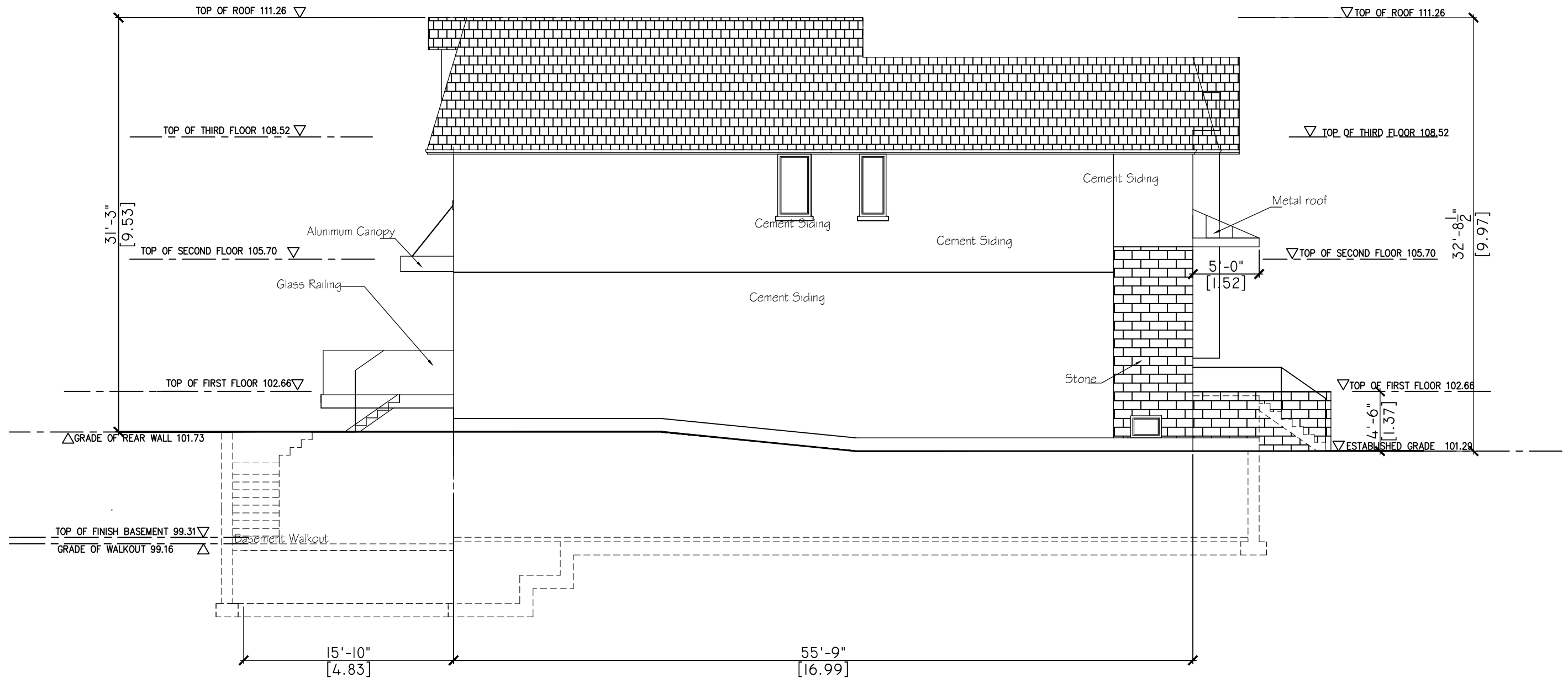
CHECKED

DATE 2018/05/30

DRAWER L. L.

APPROVED L. L.

SCALE 1/8"=1'



NORTH ELEVATION

1/8" = 1'-0"

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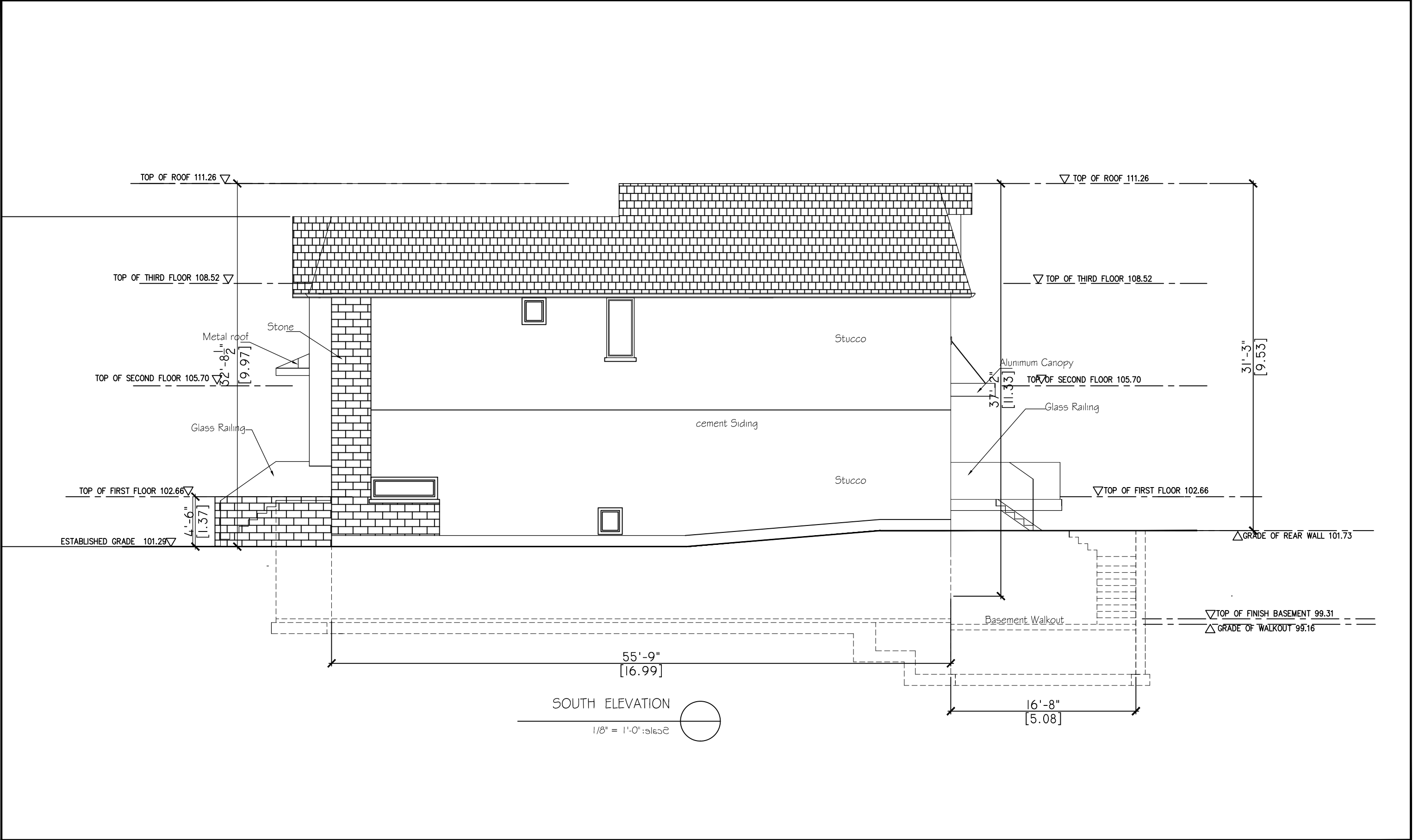
DATE	DESCRIPTION

PROJECT NO
PROJECT 89 WAVERLEY RD

DRAWING	ELEVATION
DESIGNER	L. L.
CHECKED	
DRAWER	L. L.
APPROVED	L. L.

DATE	2018/05/30
SCALE	1/8"=1'

DWG NO: E 1



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DATE	DESCRIPTION

PROJECT NO
PROJECT 89 WAVERLEY RD

DRAWING	ELEVATION
DESIGNER	L. L.
CHECKED	
DRAWER	L. L.
APPROVED	L. L.

DATE	2018/05/30
SCALE	1/8"=1'

DWG NO: E 2