

DECISION AND ORDER

Decision Issue Date Monday, April 08, 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): BO CHHOUR

Applicant: GARY DOWMAN

Property Address/Description: 24 HIGHBOURNE RD

Committee of Adjustment Case File: 17 277756 STE 22 MV (A1401/17TEY)

TLAB Case File Number: 18 175830 S45 22 TLAB

Hearing date: Tuesday, February 12, 2019

DECISION DELIVERED BY S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Owner	Kimny Lo
Appellant	Bo Chhour
Appellant's Legal Rep.	Ian Perry
Expert Witness	Philip Stewart

INTRODUCTION AND BACKGROUND

Kimny Lo and Bo Chhour are the owners of 27 Highbourne Rd, located in the Municipality. of the City of Toronto. He applied to the Committee of Adjustment (COA) to legalize and maintain the reconstructed rear detached garage with a rooftop deck which commenced construction with the benefit of a building permit. The COA heard the application on May 23, 2018, and refused all the variances.

On June 12, 2018, Bo Chhour appealed the Refusal to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on February 12, 2019.

MATTERS IN ISSUE

The following variances are requested:

1. Chapter 10.5.60.40.(5)(A), By-law 569-2013

A platform, such as a deck or similar structure may not be located on top of any ancillary building. In this case, the platform will be located on top of an ancillary building.

2. Section 6(3) Part 12, By-law 438-86

An accessory building is permitted a maximum floor area no greater than 5% of the lot area (14.52 m²). The accessory building will have a gross floor area equal to 11% of the lot area (33.36 m²).

3. Section 6(3) Part II 7(1) , By-law 438-86

The minimum required setback of an accessory structure to all lot lines is 3.0 m. The accessory building will be located 0.39 m from the north lot line and 2.75 m from the south lot line.

4. Section 6(3) Part XI (2), By-law No. 438-86

No person shall, on any lot in an R district, erect or use an accessory building in the rear yard of a residential building where both the front lot line and the rear lot line adjoin a street and the street adjoining the rear lot line is of a width of at least 9 m.

The accessory building will be located in the rear yard where the street at least 9 m in width abuts the rear lot line.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all 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 February 12, 2019, the Appellant was represented by Mr. Ian Perry, lawyer and Mr. Philip Stewart, a land use planner. There was nobody in opposition to the Appeal. Mr. Stewart was sworn in, and was recognized as an expert witness in the area of land use planning, after a discussion of the highlights of his education and professional experience.

Mr. Stewart began with a discussion of two different Survey Plans, the first dated March 19, 1985, by C.E. Dotterill Ltd. O.L.S. which represented the as-built condition, identifying the existing ancillary detached garage with roof deck, being approximately 36.15 m² in Gross Floor Area (GFA). The ancillary detached garage as it existed then, was located in the rear yard, with a roof deck fronting onto a 7.97 m wide mutual driveway with direct access onto Oxtown Avenue.

The second plan was dated July 11, 2018, and was prepared by Greater Toronto Acres Surveying Inc., which identified the proposed ancillary detached garage with a roof deck. The scale of the proposed detached garage with a roof deck was approximately 5.40 m wide by 6.16 m long, and approximately 33.36 m² in GFA. According to Mr. Stewart, the proposed ancillary detached garage with a roof deck was located in the rear yard, fronting onto a 7.97 m wide mutual driveway with direct access onto to Oxtown Avenue.

Mr. Stewart described the property as having a lot area of 290.92 m² (3,131.54 ft²), which included residential, two storey building with a ground floor area of 92.10 m² (991.39 ft²) inclusive of a proposed ancillary detached garage, with soft and hard landscaped areas, including a mutual driveway with access onto Oxtown Avenue.

Describing the surrounding area, he said that there was a single detached residential dwelling on Oxtown Avenue, and a 10 storey midrise residential apartment building to the north of the building. There are low density residential areas to the south and west of the Subject property, and Medium Density Residential lands fronting onto Oxtown Avenue and Oriole Parkway, to the east.

Mr. Stewart then discussed the historical context of the building. He said that 27 Highbourne Road was a 'through lot' as it faced both Highbourne Road and Oxtown Avenue. The established grade of the subject property was substantially higher, where it fronted onto Highbourne Road, compared with the rear of the property, about 2 m lower, which opened onto Oxtown Avenue. In Mr. Stewart's opinion, the downward sloping grade of the property, had contributed to the current position of an ancillary detached garage structure, and resulted in the ancillary detached garage being below grade, relative to Highbourne Road and the existing residence.

He added that the property also shares a mutual driveway with 23 and 25 Highbourne Road located to the south, both of which had ancillary detached garages located on their respective properties. According to Mr. Stewart, the roof deck was historically a component of the rear yard amenity area, and had to be rebuilt because the older

structure posed a safety and health hazard. He suggested that the roof deck's being 1.06 m above the existing grade of the rear yard and the mutual driveway was necessary to make the garage functional, and that the roof deck, with incorporated metal railings around the edges, was necessary to enhance safety..

Mr. Stewart then discussed the compatibility between the proposal and the Provincial Policy Statement (PPS (2014) and the Growth Plan for the Greater Golden Horseshoe(Growth Plan(2017)), and said that the subject property was an '*as-built*' residential condition, located within an established and stable residential community. He asserted that the replacement of an existing ancillary detached garage complied with the aforementioned high level provincial planning policies.

Mr. Stewart then discussed the compatibility of the project with the Official Policy (OP)., with specific reference to OPA 320, which he held to be determinative since its adoption in December 2018. He pointed out that the subject property was classified "Neighbourhoods", as defined by the OP, and discussed how the proposal was consistent with Section 4.1.5 of the OP. He then highlighted his conclusion that the prevailing type of development in the neighbourhood block consisted of single detached residential dwellings, notwithstanding the presence of medium density residential apartments on Oxton Avenue.. He added that in the context of the neighbourhood, the replacement of an existing ancillary detached garage by another garage was consistent with the existing physical character of the neighbourhood. Referencing Policy 4.1.9 of the OPA 320, he opined that the infill to create a new ancillary garage was consistent with the existing character of the residential neighbourhood. Based on this discussion, he concluded that the proposal was consistent with the intent of the Official Plan.

Mr. Stewart then discussed the Zoning By-law. He said that the area was zoned RD1.0 under Zoning By-law 569-2013, and R2Z1.0 under 438-86. He emphasized that the replacement of an existing ancillary detached garage by another garage meant that the performance standards were still satisfied. Mr. Stewart said that the minor variances sought for 27 Highbourne Road were the consequence of its unique location, and did not impact any performance standard established by the By-laws, nor the neighbourhood. Based on these discussions, Mr. Stewart concluded that the proposal maintained the intent and purpose of the By-law.

Discussing the test of "minor", Mr. Stewart emphasized that "minor" was a relative term, because one had to consider the impact of what was proposed relative to what is as of right. He pointed out that the new ancillary detached garage was also slightly smaller in GFA than the former garage, and could be fitted within the footprint of the former. In conjunction with the lack of any demonstrable adverse impacts on the neighbouring properties, Mr. Stewart concluded that the proposal satisfied the test of being "minor".

Lastly, he touched on the test of the variances being desirable for appropriate development of the property. He emphasized that neighbourhood had several detached garages, and provided examples of the same. Mr. Stewart drew attention to the strict vehicular parking rules applying to Highbourne Road, its proximity to the

existing medium density residential structures to the north and east, and emphasized the importance of having a garage to park cars under these strict conditions . He added that a new garage also provided value to the community, because it replaced one which was at the end of its physical life and had deteriorated considerably. Based on this discussion, he concluded that the proposal satisfied the test of being desirable for development.

After highlighting the fact that the evidence had demonstrated that the proposal satisfied all the tests under Section 45(1), Mr. Stewart recommended that the Appeal be allowed, and the proposal be approved.

He then addressed the City Urban Forestry Department's comments regarding the application, and noted that it recommended the imposition of standard tree protection requirements. He added that there were no trees in the rear yard, and no expressed concerns from the Forestry Department regarding the backyard, close to the location of the ancillary garage, and rooftop deck. Mr. Stewart recommended that the condition of fulfilling the standard forestry conditions be imposed on the approval of the proposal.

When I asked him about the imposition of another standard condition requiring Applicants to build on considerable compliance with the submitted plans and elevations, Mr. Stewart did not express any concern.

ANALYSIS, FINDINGS, REASONS

It is important to note that there was no opposition to the Appeal from any of the neighbours, and that Mr. Stewart's evidence as an expert in the area of land use planning was uncontroverted. The proposal involved the replacement of an aging ancillary garage by another, with the distinguishing feature of an added rooftop deck. The evidence demonstrated in various ways that ancillary garages were common in the neighbourhood, and the unusual arrangement of a roof top deck on top of an ancillary garage merely took advantage of the topography of the lot, which had a considerable slope from the front to the back of the house.

It is interesting to note that the Appellant opted to demonstrate the compatibility of their proposal with OPA 320, rather the City of Toronto's OP, notwithstanding the fact that the original application to the COA predated the OPA's being declared to be determinative by the Local Planning Appeals Tribunal (LPAT). I specifically asked Mr. Perry about the applicability of OPA 320, to which his response was that it made sense to apply OPA 320, given this was the Official Plan that was current. I

I note that the Clergy Principle could have been followed, which meant that the OP, as it existed at the time of the application to the COA, would have been applicable. However, I am not in disagreement with Appellants' preference for the OPA 320, since the Clergy Principle does not have to be adhered to. Added to the fact that only one Party was involved in this Appeal, I allowed the Appellants to apply OPA 320 to argue their case. However, I do not regard this approach as constituting precedent for the adjudication of

other Appeals where the applications were made to the COA before OPA 320 became determinative.

The written submissions did not reference a Geographic Neighbourhood; I had to prevail upon the Appellant to demonstrate an appropriate Geographic Neighbourhood after we agreed on the applicability of OPA 320. Notwithstanding this confusion, I am in agreement with their evidence on the proposal's compatibility with the OPA 320.

The evidence also demonstrated that the proposal satisfied the performance standards discussed in the Zoning By-Laws 569-2013 and 438-86, which govern this neighbourhood. The proposal demonstrated that the new garage was smaller than what it replaced, and therefore did not create any new impact that did not exist before. Given the modest impact of the proposal and the lack of opposition from the neighbours, I accept Mr. Stewart's conclusions that the proposal is both minor and desirable for the development of the lot.

Given the above discussion, I allow the Appeal in its entirety, and approve all the variances.

As noted in the Evidence section, the Appellants recommended the imposition of the following standard forestry condition, as recommended by Urban Forestry:

Submission of complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees.

As noted earlier, the Appellant was amenable to the imposition of a condition requiring construction in substantial compliance with submitted Plans and Elevations. The above conditions are therefore imposed on the approval of this proposal.

DECISION AND ORDER

1. The Appeal respecting 27 Highbourne Road. is allowed in its entirety, and the Decision of the COA, dated May 23, 2018, is set aside.

2. The following variances are approved:

1. Chapter 10.5.60.40.(5)(A), By-law 569-2013

A platform, such as a deck or similar structure may not be located on top of any ancillary building. In this case, the platform will be located on top of an ancillary building.

2. Section 6(3) Part 12, By-law 438-86

An accessory building is permitted a maximum floor area no greater than 5% of the lot area (14.52 m²). The accessory building will have a gross floor area equal to 11% of the lot area (33.36 m²).

3. Section 6(3) Part II 7(1) , By-law 438-86

Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 18 175830 S45 22 TLAB

The minimum required setback of an accessory structure to all lot lines is 3.0 m. The accessory building will be located 0.39 m from the north lot line and 2.75 m from the south lot line.

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No person shall, on any lot in an R district, erect or use an accessory building in the rear yard of a residential building where both the front lot line and the rear lot line adjoin a street and the street adjoining the rear lot line is of a width of at least 9 m.

The accessory building will be located in the rear yard where the street at least 9 m in width abuts the rear lot line.

3. No other variances are approved.
4. The following conditions are imposed on the approval:
 - a) Submission of complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees.
 - b) The building needs to be built in substantial compliance with the submitted plans and elevations diagrams, prepared on July 11, 2018, by Greater Toronto Acres Surveying Inc.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

EXHIBIT #

Case File Number: 18 175830 S45 22 TLAB

Property Address: 27 Highbourne Rd

Date Marked: February 12, 2019

EXHIBIT 5

PLAN OF SURVEY OF PART OF LOT 178 REGISTERED PLAN 569E CITY OF TORONTO

MUNICIPALITY OF METROPOLITAN TORONTO

10/11/18
 10/11/18
 10/11/18

C.E. DOTTERILL O.L.S. 1985

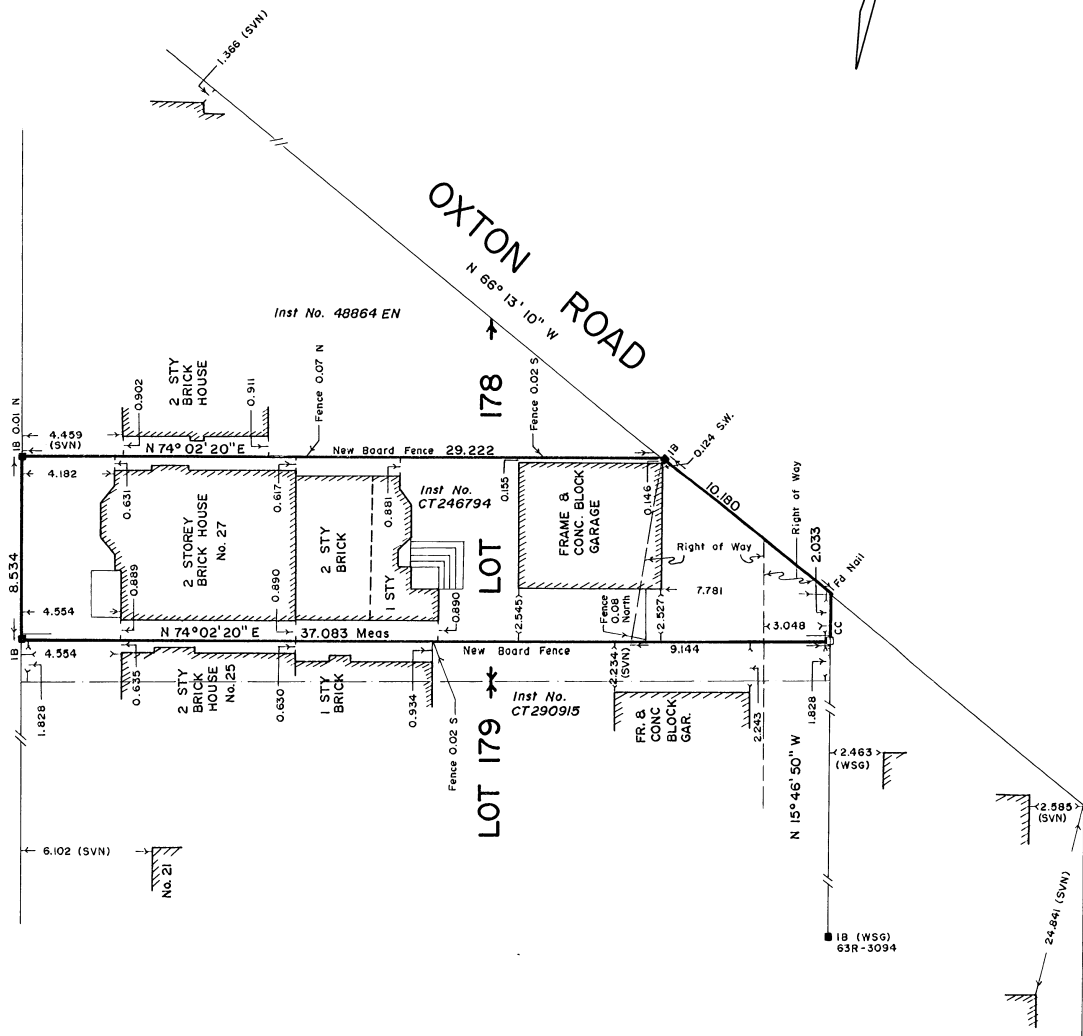
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By CofA TEY at 11:02 am, Dec 28, 2017

HIGHBOURNE ROAD

N 15° 44' W

Sidewalk

**NOTE**

S.I.B. denotes standard iron bar.
 S.S.I.B. denotes short standard iron bar.
 I.B. denotes iron bar.
 I.T. denotes iron tube.
 C.C. denotes cut cross.
 ⬢ denotes set.
 ⬢ denotes found.

SURVEYOR'S CERTIFICATE

I CERTIFY THAT
 The field survey represented on this plan was
 completed on the 19th day of March 1985.

C. E. Dotterill
 Ontario Land Surveyor

BEARING NOTE

Bearings are astronomic and are referred
 to the Easterly limit of Highbourne
 Road as shown on Plan
 569E having a bearing of N 15° 44' W

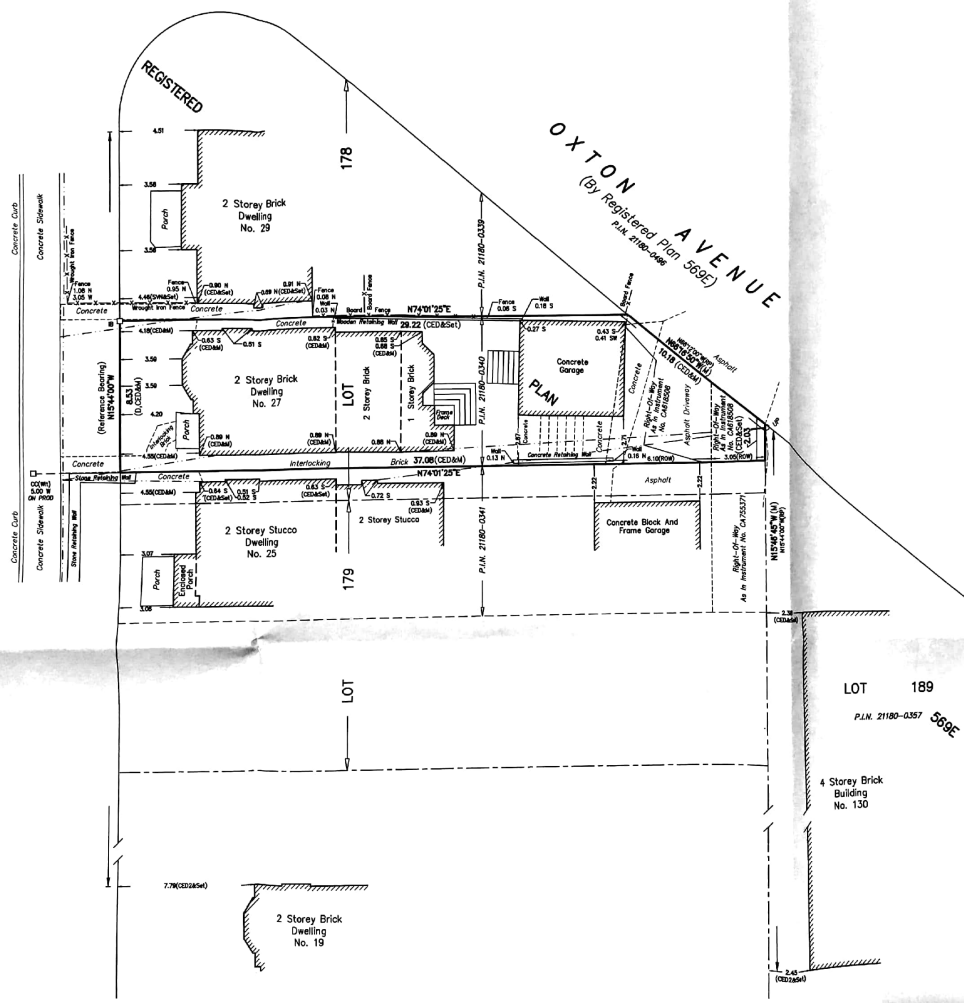
METRIC

Distances shown on this plan are in metres and
 can be converted to feet by dividing by 0.3048.

C. E. DOTTERILL LTD.

ONTARIO LAND SURVEYOR
 122 CAMBRIDGE AVENUE
 TORONTO 4 61 - 0 381

HIGHBOURNE ROAD
(By Registered Plan 569C)
P.L.N. 21180-0467



SURVEYOR'S REAL PROPERTY REPORT - PART 1
PLAN OF SURVEY OF
PART OF LOT 178
REGISTERED PLAN 569C
CITY OF TORONTO
SCALE 1:100
GTA SURVEYING INC.
© COPYRIGHT 2018

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

BEARING NOTE
BEARINGS ARE ASTROMETRIC AND ARE REFERRED TO THE
EAST LIMIT OF HIGHBOURNE ROAD, HAVING A BEARING OF
N35°40'00"W ACCORDING TO REGISTERED PLAN 569C

LEGEND
□ DENOTES SURVEY MONUMENT SET
■ SURVEY MONUMENT FOUND
N/S/E/W NORTH/SOUTHEAST/WEST
M MEASURED
CC CUT CROSS
IB IRON BAR
PROD ON PRODUCTION
WT WITNESS
P.L.N. PROPERTY IDENTIFIER NUMBER
RP REGISTERED PLAN 569C
D INSTRUMENT NO. C481808
CED PLAN BY G.E. DOTTRELL LTD., O.L.S.
DATED MARCH 16, 1985
SPDNT A VAN NOSTRAND, O.L.S.
DATED FEBRUARY 10, 2003
UP OVERHEAD WIRES
DOWN RIGHT-OF-WAY

ASSOCIATION OF ONTARIO
LAND SURVEYORS
PLAN SUBMISSION FORM
2058383
THIS PLAN IS NOT VALID
UNLESS IT IS AN EMPLOYED
ORIGINAL COPY
ISSUED BY THE SURVEYOR
IN ACCORDANCE WITH
REGULATION 1008, SECTION 29(3)

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE
WITH THE SURVEY ACT, THE SURVEYORS ACT, AND THE
REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 4TH DAY OF
JULY, 2018.

JULY 11, 2018
DATE
JACK WALCZAK
ON TARIO LAND SURVEYOR

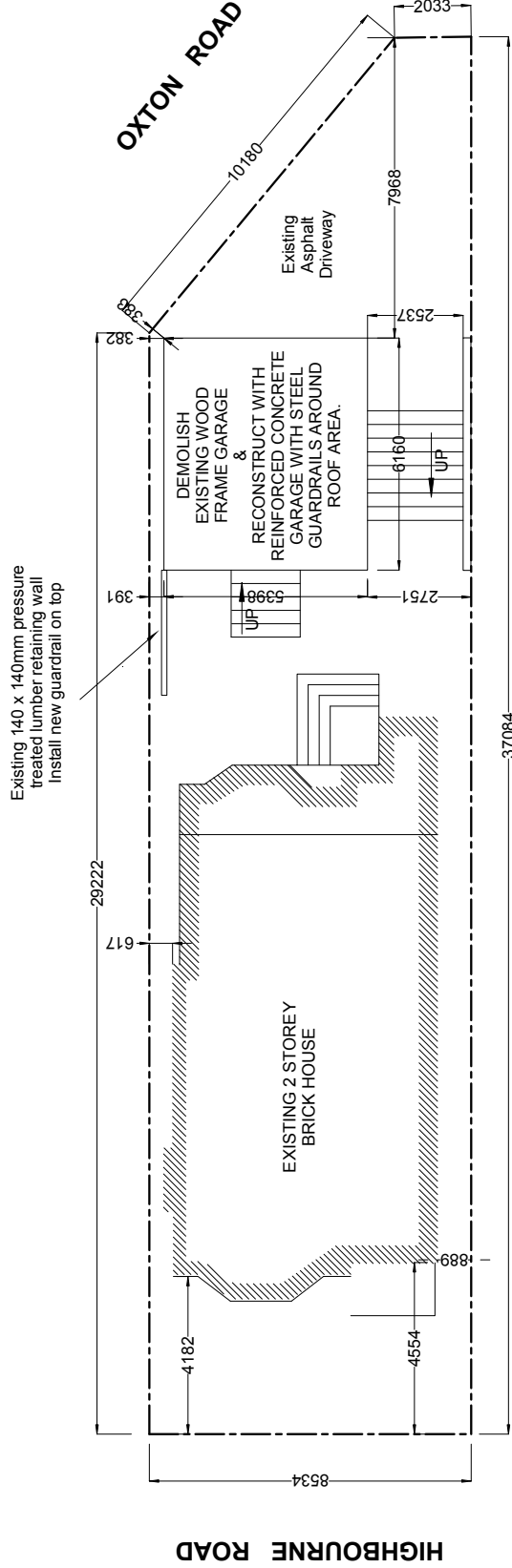
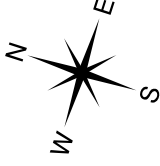
THIS PLAN WAS PREPARED FOR GARY DOMAN

PART 2 - SURVEY REPORT

1) PLEASE NOTE LOCATION OF FENCES, GARAGE, AND
OVERHEAD WIRES
2) REGISTERED EASEMENTS AND/OR RIGHTS-OF-WAY, SUBJECT
TO RIGHTS-OF-WAY AS IN INSTRUMENT NO. C481808
3) THIS PLAN DOES NOT CERTIFY COMPLIANCE WITH ZONING
BY-LAWS

GTA
Greater Toronto Area
SURVEYING INC.
7003 Steeles Ave. West, Unit 12, Toronto ON M3J 0A2
Tel: (416) 679-0572
E-MAIL: jwalc@gtasurveying.ca
DRAWN: S.C. CHECKED: J.W. PROJECT 18261

NOTES:
All work to comply with the requirements of the 2012 Ontario Building Code.



No.	Revised:	Date:	By:

Design, Construction & Inspection,
38 Caulfield Ave.
Toronto, M6N 5B3
Phone: (416) 762-8366
Fax: (416) 762-3351

This drawing is valid only with the original signature of the Designer. It is not to be used for any other project. This drawing remains the property of Design, Construction & Inspection. No part of this drawing may be reproduced or used without written authorization from D.C.I.

Single Family Dwelling
27 Highbourne Rd
Toronto, Ontario.

Project:
**Proposed Reconstruction
of Existing Garage**

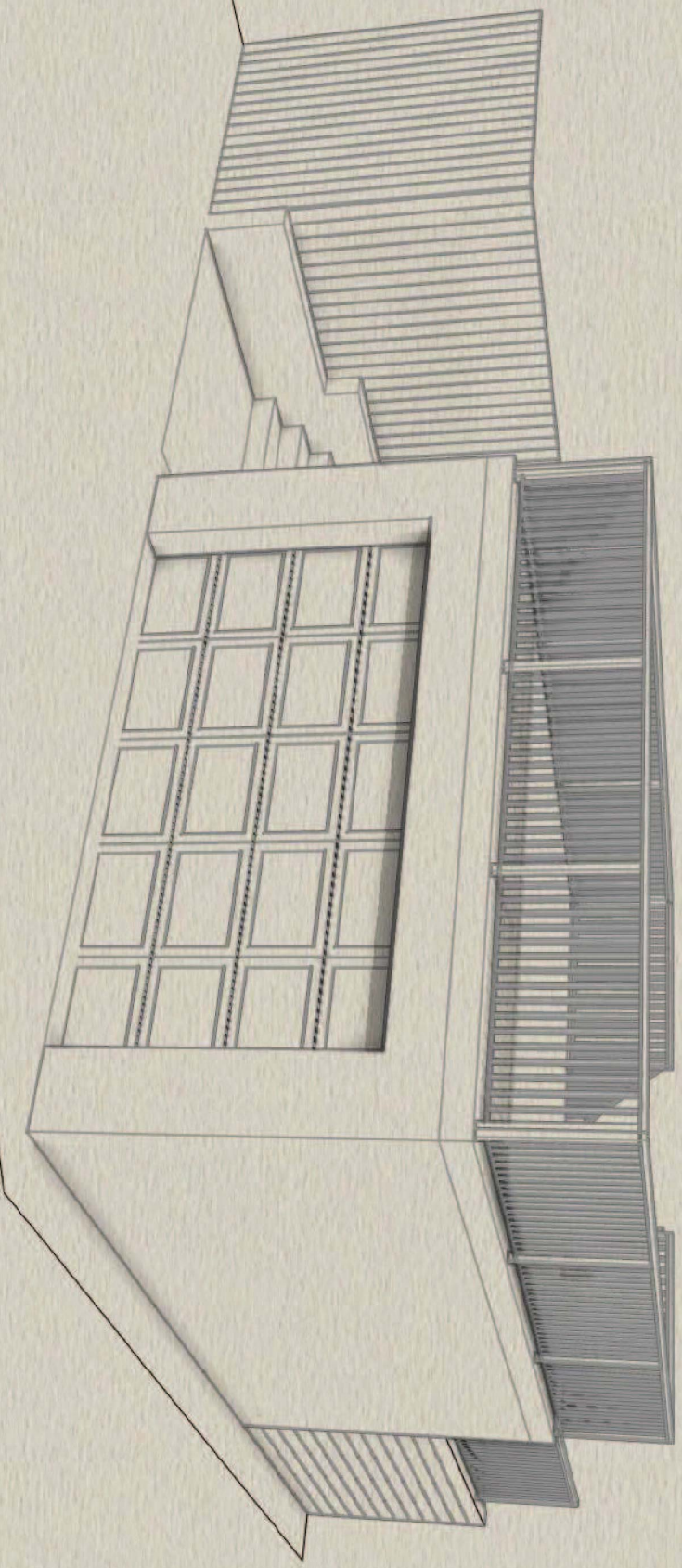
Title:
Site Plan

Date: 12 December 2017
Scale: 1/4" = 1'-0"
Drawing Number: 770-171212-A01

EXISTING LOT AREA	= 290.92 m ²	EXISTING LOT AREA	= 290.92 m ²
EXISTING HOUSE AREA	= 92.10 m ²	EXISTING HOUSE AREA	= 92.10 m ²
EXISTING LOT COVER	= 37.5%	EXISTING LOT COVER	= 37.5%
EXISTING GARAGE AREA	= 36.15 m ²	PROPOSED GARAGE AREA	= 33.36 m ²
EXISTING LOT COVER (House + Garage)	= 44.1%	EXISTING LOT COVER (House + Garage)	= 43.1%

RECEIVED
By CofA TEY at 11:01 am, Dec 28, 2017

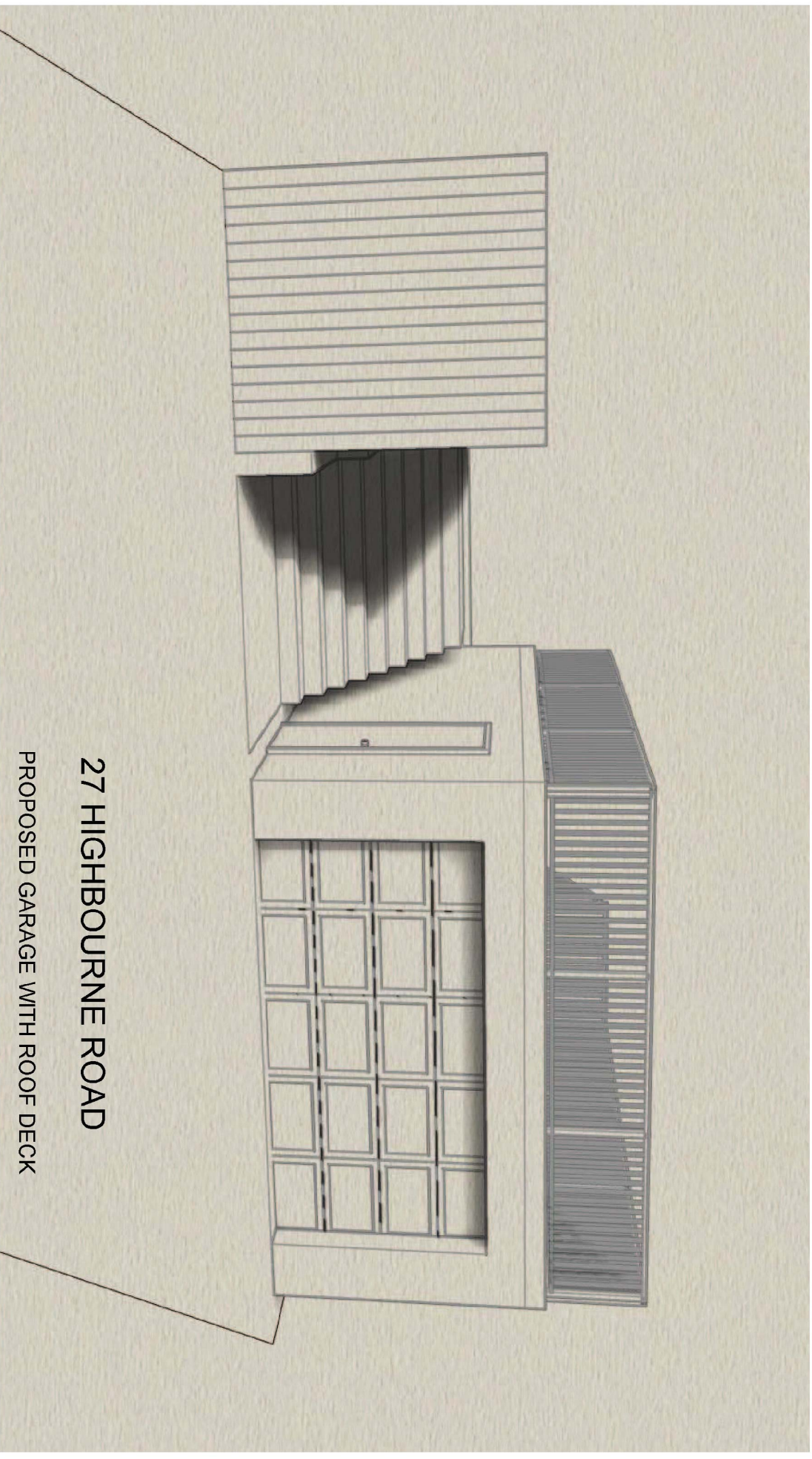
PERSPECTIVE 1 - TORONTO LOCAL APPEAL BODY CASE NO. 18 175830 S45 22



27 HIGHBOURNE ROAD

PROPOSED GARAGE WITH ROOF DECK

PERSPECTIVE 2 - TORONTO LOCAL APPEAL BODY CASE NO. 18 175830 S45 22

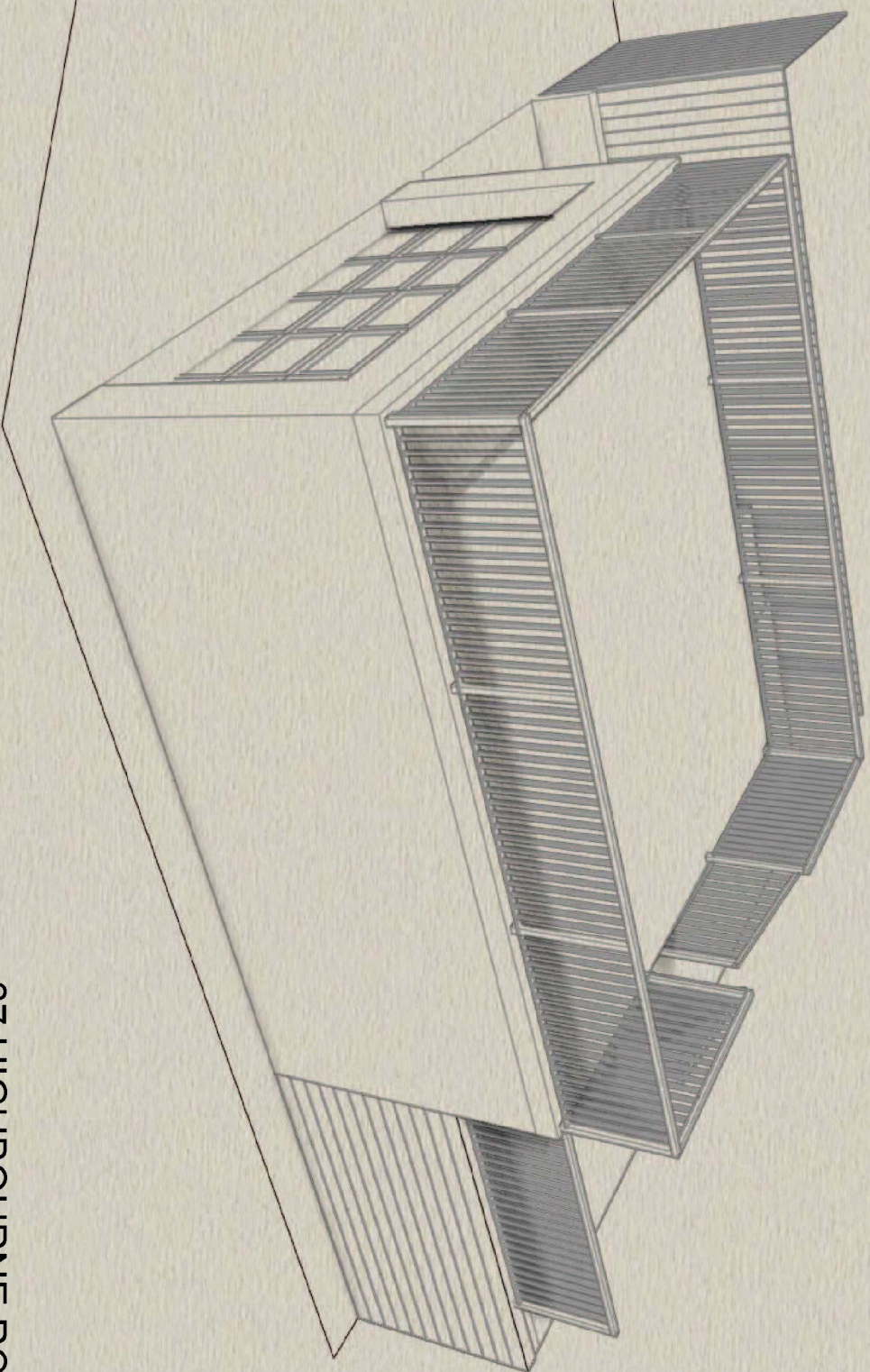


27 HIGHBOURNE ROAD

PROPOSED GARAGE WITH ROOF DECK

EAST VIEW

PERSPECTIVE 3 - TORONTO LOCAL APPEAL BODY CASE NO. 18 175830 S45 22

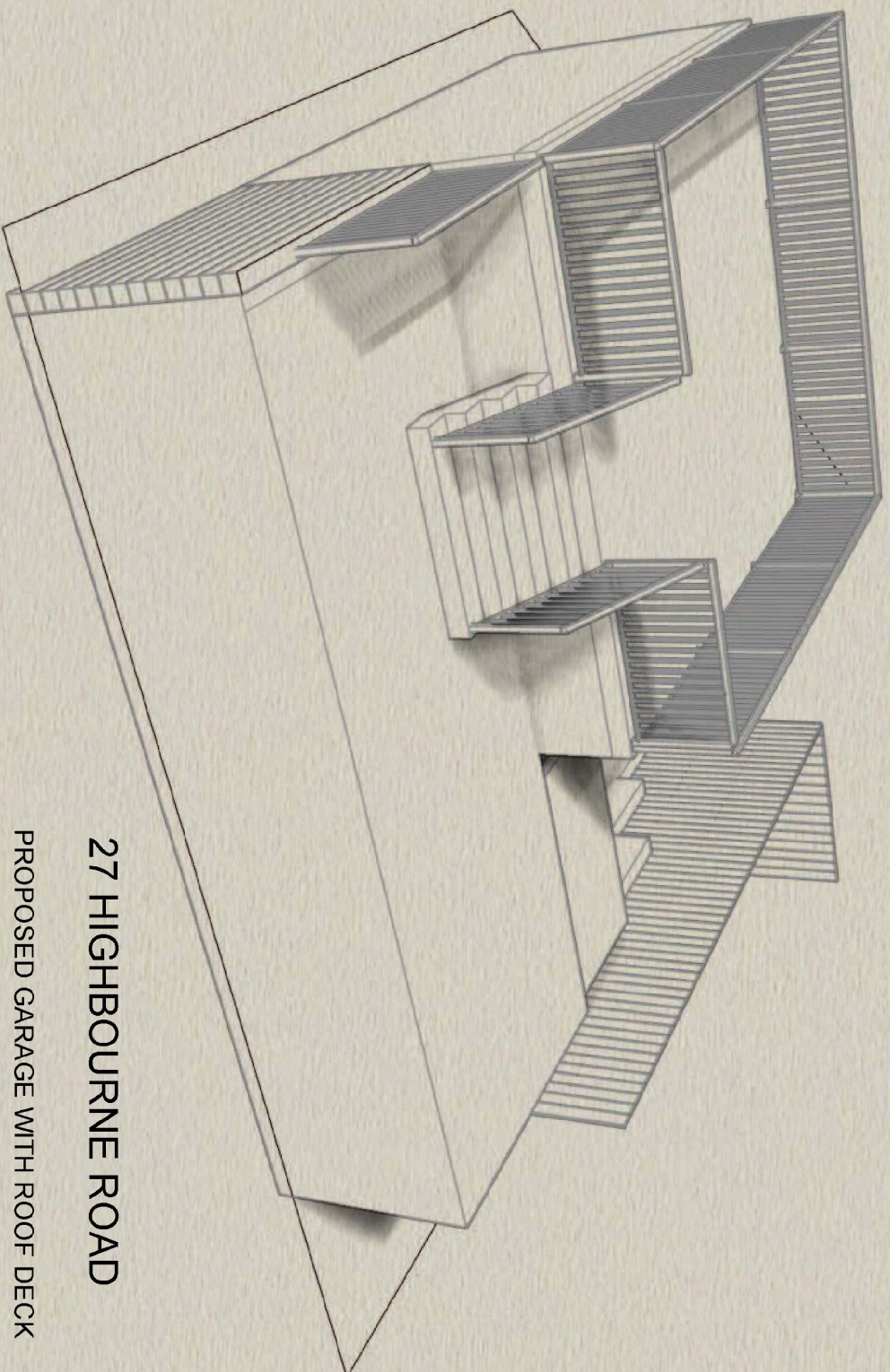


27 HIGHBOURNE ROAD

PROPOSED GARAGE WITH ROOF DECK

NORTH VIEW

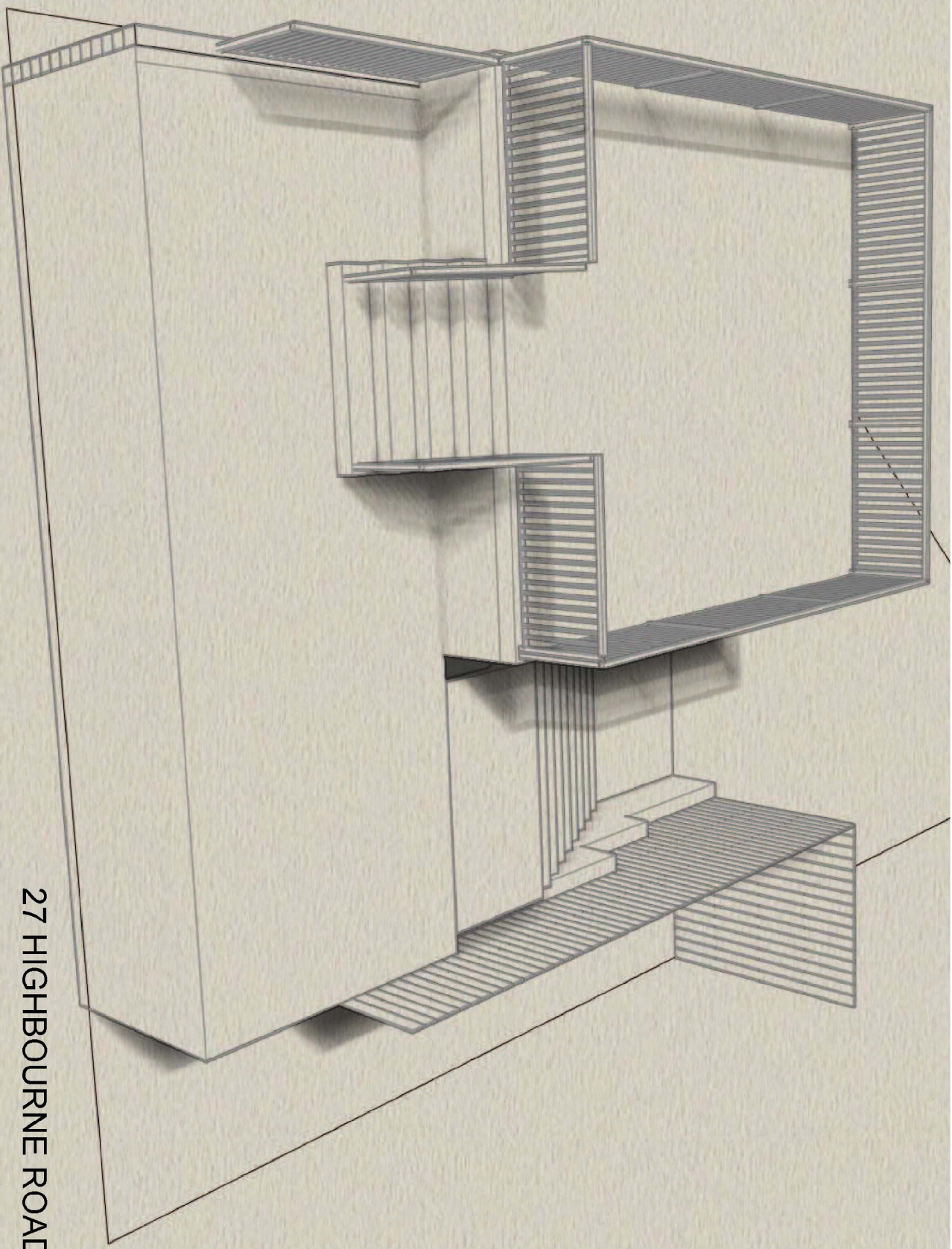
PERSPECTIVE 4 - TORONTO LOCAL APPEAL BODY CASE NO. 18 175830 S45 22



27 HIGHBOURNE ROAD

PROPOSED GARAGE WITH ROOF DECK

PERSPECTIVE 5 - TORONTO LOCAL APPEAL BODY CASE NO. 18 175830 S45 22



27 HIGHBOURNE ROAD

PROPOSED GARAGE WITH ROOF DECK
TOP VIEW