Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Thursday, May 16, 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): RONIT SHARMA

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 106 POYNTZ AVE

Committee of Adjustment Case File Number: **17 185801 NNY 23 CO (B0047/17NY), 17 185808 NNY 23 MV (A0672/17NY), 17 185812 NNY 23 MV (A0673/17NY)**

TLAB Case File Number: **17 260926 S53 23 TLAB, 17 260927 S45 23 TLAB, 17 260928 S45 23 TLAB**

Hearing date: Wednesday, April 10, 2019

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Rubinoff Design Group
Owner	Namita Sharma
Appellant	Ronit Sharma
Appellant's Legal Rep.	Amber Stewart
Party	City of Toronto
Party's Legal Rep.	Daniel Elmadany
Expert Witness	Franco Romano
Expert Witness	Victoria Fusz

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by Ronit Sharma (Appellant) of the refusal by the Committee of Adjustment (COA) for the City of Toronto (the City), North York Panel, of applications for consent to sever one lot into two lots and associated minor variances to construct a new two-storey dwelling on each of the severed lots. The existing dwelling is to be demolished.

The property is located at 106 Poyntz Avenue (subject property). Poyntz Avenue is a local road that runs generally east-west, two blocks south from Sheppard Avenue West, and west of Yonge Street.

The subject property is designated *Neighbourhoods* in the City's Official Plan (the OP) and is zoned RD (f15.0; a 550)(x5) under Zoning By-law No. 569-2013 (By-law 569-2013) and R4 under the former North York Zoning By-law No. 7625 (By-law 7625).

BACKGROUND

The COA refused the consent and minor variance applications for the subject property on October 26, 2017. The Appellant subsequently appealed that decision to the TLAB.

The City filed with the TLAB a Notice of intention to be a Party to the proceedings and requested possible scheduling dates for a hearing in order to coordinate City staff availability to appear on those dates. The TLAB issued a Notice of Hearing (Form 2) and set the Hearing date for June 5, 2019. Upon becoming aware of this date, the City solicitor contacted the TLAB to advise that City staff would not be available on the scheduled Hearing date.

Subsequently, the City filed a Notice of Motion to adjourn the scheduled Hearing and, on consent, the Hearing (Day 1) was rescheduled to June 20, 2018. At the end of Day 1 of the Hearing, it became evident that a second day would be required to complete the sitting of this matter and the parties agreed to the setting of a Day 2 Hearing for October 18, 2018.

However, on October 16, 2018, the City filed a Notice of Motion with the TLAB requesting an order to adjourn Hearing Day 2 due the unavailability of the City solicitor to attend the scheduled Hearing. The Motion was granted, and the Day 2 Hearing date was rescheduled to February 7, 2019.

On Day 2 of the Hearing it again became evident that a third day would be required to complete the hearing of this matter. As a result, the TLAB scheduled an additional Hearing date (Hearing Day 3) for April 10, 2019.

Overview of the Subject Property and the Proposal

The subject property, which is a corner lot, has a rectangular lot configuration with a lot frontage of 15.24m, a lot depth of 33.5m and a lot area of 511.5m^2. There is an existing two-storey dwelling with an attached garage with driveway access in two locations: at the front from Poyntz Avenue; and at the rear from the flanking Beaman Road side yard.

The dwelling is situated along the front central portion of the lot with accessory features in the front and rear. There are mature trees located mostly along the perimeter with one near the existing dwelling's rear wall.

The property is located within the second block west of Yonge Street, two blocks south of Sheppard Avenue West and is situated at the northeast corner of Poyntz Avenue and Beaman Road, within the former municipality of North York within the Willowdale and West Lansing communities.

I indicated that I had visited the subject property and the surrounding neighbourhood and had familiarized myself with the pre-filed materials.

The neighbourhood within which the subject property is situated is proximate to and within the shadow of the North York Centre and Sheppard Avenue Commercial Area (designated intensification areas and/or urban growth centre) where mid-rise to high-rise intensification is directed.

The Proposal

The Appellant filed three applications with the COA, which are as follows:

A. An application for consent to sever the subject property into two lots comprised of two parts: Part 1 – retained lot (106A Poyntz Avenue); and Part 2 – the conveyed lot (106B Poyntz Avenue) - COA File No. B0047/17NY;
B. An application to vary Zoning By-law No. 569-2013, as amended, and the former Zoning By-law No. 7625 in respect of the lot to be retained (Part 1); and
C. An application to vary Zoning By-law No. 569-2013, as amended, and the former Zoning By-law No. 7625 in respect of the lot to be convey (Part 2).

The Appellant wishes to create two lots of 7.62m frontage/width, 33.5m depth and 255.8m^2 (Part 1) and 255.7m^2 (Part 2) lot areas. A new two-storey, single- detached dwelling is to be constructed on each lot for a total of two new buildings. The Variance Applications sought the approval of 48 individual variances to both the new Zoning By-law and the former Zoning By-law in order to permit the proposed development. The proposed variances and conditions are set out in Exhibit 1 (COA Notice of Decision).

However, as a result of the March 1, 2018 decision of the former Ontario Municipal Board with respect to appeals of Zoning By-law 569-2013, the number of variances required to implement this proposal, corresponding to Zoning By-law 7625, has been reduced as follows:

Part 1 (retained lot) - Variances Eliminated

5. Chapter 10.5.40.10.(5), By-law No. 569-2013 An area of 10m² of the first floor must be within 4m of the front main wall. The proposed is 3m² of the first floor (sunken foyer) is within 4m of the front main wall.

12. Chapter 10.5.40.60.(3), By-law No. 569-2013 Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6m. The proposed rear deck stairs are setback 0.59m from the west side lot line.

14. Section 13.2.1, By-law No. 7625 The minimum required lot frontage is 15m. The proposed lot frontage is 7.615m

15. Section 13.2.2, By-law No. 7625 The minimum required lot area is 550m². The proposed lot area is 255.8m²

16. Section 13.2.3(a), By-law No. 7625 The minimum required front yard setback is 6.5m. The proposed front yard setback is 6.01m.

20. Section 6(30)a, By-law No. 7625 The maximum finished first floor height is 1.5m. The proposed finished first floor height is 1.57m.

21. Section 6(8), By-law No. 7625 The minimum required lot width is 15m. The proposed lot width is 7.615m

Part 2 (conveyed lot) – Variances eliminated:

4. Chapter 10.5.40.10.(5), By-law No. 569-2013 An area of 10m² of the first floor must be within 4m of the front main wall. The proposed is 3m² of the first floor (sunken foyer) is within 4m of the front main wall.

14. Section 13.2.1, By-law No. 7625 The minimum required lot frontage is 15m. The proposed lot frontage is 7.615m

15. Section 13.2.2, By-law No. 7625 The minimum required lot area is 550m². The proposed lot area is 255.7m²

16. Section 13.2.3(a), By-law No. 7625 The minimum required front yard setback is 6.5m. The proposed front yard setback is 6.01m.

20. Section 6(30)a, By-law No. 7625 The maximum finished first floor height is 1.5m. The proposed finished first floor height is 2.23m.

21. Section 6(8), By-law No. 7625 The minimum required lot width is 15m. The proposed lot width is 7.615m

As a result, a revised list of minor variances was filed by the Appellant with the TLAB and is included under the **Decision and Order** section of this decision as **Attachment**

1. A total of 36 variances are now required for Part 1 and Part 2, reduced from 48, in respect to the following matters:

a) Reduced lot area;
b) Reduced lot frontage;
c) Reduced side yard setbacks;
d) Reduced driveway width;
e) Reduced front porch and rear deck setbacks;
f) Increased building height;
g) Increased height of exterior side main walls;
h) Increased lot coverage;
i) Encroachment of platforms on side yard setbacks;
j) Encroachment of a canopy above a platform to a lot line;
k) Encroachment of rear deck stairs and roof eaves; and
l) Decreased number of parking spaces.

The revised list also includes consent to sever and minor variance conditions of approval acceptable to both the Appellant and the City, with the exception of Minor Variance Condition #2, which remains in dispute. The City`s Engineering and Construction Services staff, in their memorandum to the COA dated August 11, 2017 (Exhibit 1/Tab 14 – Appendix `B`), indicated no objection to the subject applications, subject to a number of conditions being satisfied including:

Condition 1.1.1 Transportation Services

"The maximum allowable width of a driveway must be equal to the garage on-site. The current site plan is proposing a one-car garage 3.3m in width, therefore the ***proposed driveway width must not exceed 3.3m for each of the houses***."

The dispute centers on the highlighted wording in the above-referenced Condition and the disagreement between the Appellant and the City regarding the wording is addressed later in this decision through testimony from the Appellant`s land use planning expert and the City's planner.

The City was a Party to the proceedings. There were no Participants.

MATTERS IN ISSUE

The matters in this appeal are not complex. The primary issue is whether the creation of two undersized lots and the resultant single detached dwellings respect and reinforce the existing physical character of the neighbourhood, as required by s.4.1.5 of the City`s OP. This is also the major issue with respect to the granting of the variances.

The bulk of the evidence of both parties at the TLAB Hearing focused on the "physical character of the neighbourhood" as determined by the lot frontage studies prepared by each party. Other issues in this matter related to: Official Plan policies on intensification and dwelling targets and housing and intensification policies of the

Provincial Policy Statement, 2014 (PPS) and the Growth Plan for the Greater Golden Horseshoe, 2017 (Growth Plan); proximity to a major transit station; the relevance of transition in the *Neighbourhoods* designation from adjacent designated areas; the origin of lot sizes (plan of subdivision or consent); and precedent.

As well, the City contends that the proposed development would require the removal or unacceptable injury to three (3) trees on the subject property, although Urban Forestry has no objection to the removal of one of those trees, a privately-owned Balsam Fir tree, measuring 37.5 cm in diameter, which is located within the as-of-right building envelope. There is also an issue with the alignment and width of the proposed driveway for the conveyed lot (Part 2)

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 for the Greater Golden Horseshoe for the subject area (Growth Plan).

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

> (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
>
> (b) whether the proposed subdivision is premature or in the public interest;
>
> (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
>
> (d) the suitability of the land for the purposes for which it is to be subdivided;
>
> (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
>
> (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

(f) the dimensions and shapes of the proposed lots;

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

Minor Variance – S. 45(1)

In considering the applications for variances form 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

As previously noted, this matter required three non-consecutive days of hearings during which the TLAB heard from the Appellant's land use planner, Mr. Frank Romano, and the City's land use planner, Ms. Victoria Fusz, as well as the City's witness in urban forestry matters, Ms. Cindy Hignett.

Franco Romano's Evidence

Mr. Romano was qualified to give professional planning opinion evidence in the area of land use planning. He provided a summary description of the subject property and the surrounding area utilizing various evidentiary materials (Exhibit 1 – Applicant's Combined Document Book, Exhibit 2 – Witness Statement). To assist in illustrating the character of the neighbourhood, he referred to Exhibit 3 – Visuals, which included a Lot Study Snapshot Map, consisting of 25 photographs of various properties on Poyntz Avenue and surrounding streets in the neighbourhood, and a coloured Lot Study Map with corresponding statistical and decision Summary Table of lot frontage data within the area.

The subject property is located on the corner of Poyntz Avenue, which is a local road that runs generally east-west, and Beaman Road. The property is proximate to the North York Centre and Sheppard Avenue Commercial Area, a designated intensification area and an urban growth centre. While these specific areas may now in some places contain detached residential dwellings, they are slated for redevelopment with more intense land uses that do not included residential.

Both Yonge Street and Sheppard Avenue West are well served by transit which includes surface transit and higher order subway service. Similarly, both major streets contain a mixture of land uses that complement community services and facilities that are located on the local road network. Mr. Romano noted that the subject property is located within the measured distance of a Major Transit Station Area (MTSA) as defined under provincial policies.

He explained that the Appellant proposes to subdivide the existing lot into two lots and on each construct a two-storey detached dwelling featuring a building footprint (Exhibit 1, p. 193) that reflects a:

- building length of 14.2m;
- building height of 9.38m (Part 1) and 9.69m (Part 2) – height is measured differently in each By-law. Under By-law 7625, height is measured from the centerline of the road;
- front yard setback of 6.01m and larger to create an appropriate front wall alignment along Poyntz Avenue;
- interior side yard setbacks of 0.59m (Part 1 – east lot) and 0.6m (Part 2 – west lot);
- rear yard setback of 13.3m;
- lot coverage of 32%;
- one driveway access to each lot from Poyntz Avenue;
- front yard landscaping; and
- perimeter and boulevard tree protection.

He reviewed the building envelope and elevations (Exhibit 3, p. 5) for each proposed lot and noted that there is a rise of 2m from the road to the base of the existing dwelling along the flankage lot line. As a part of the development proposal, the curb cut and access to the property from Beaman Road will be removed and replaced with landscaping.

On the proposed westerly lot (Part 2 – 106B Poyntz Avenue), the driveway alignment has been proposed to wrap around the existing City-owned boulevard tree. In order to facilitate the turning movement to allow a vehicle to access the parking space and the garage on this lot, the driveway width at the boulevard is 2.44m and widens to 4.39m on private property and narrows again to 3.5m at the entrance of the proposed integral garage.

As part of the construction of the dwelling on the severed east lot (Part 1-106A Poyntz Avenue), one privately-owned tree is to be removed which is currently within the 'as-of-right' building envelope of the existing dwelling. Mr. Romano submitted that the injury or removal of trees is not uncommon as part of a severance application and subsequent development of a property. He also noted that no additional existing trees will require removal as a result of this development.

Mr. Romano submitted that there has been regeneration occurring within the overall neighbourhood area zoned for detached dwellings in the form of consents, replacement structures and building additions.

He identified a study area for his review of the neighbourhood's physical characteristics bounded by Sheppard Avenue West, Yonge Street, Cameron Avenue and Easton Road. The defined Study Area contains a total of 767 lots (Exhibit 3, p. 6), and all of the lots are similarly designated by the OP as *'Neighbourhoods'* and zoned for low rise residential purposes.

He referenced his visual evidence and, in particular, his Lot Study Map and corresponding Lot Frontage Table. The Table is colour coded and includes 6 categories of lot frontages in 1.83m increments within the Study Area. The smallest frontage category is '7.62m and smaller', which reflects what is being proposed. The map demonstrates that lot frontages within the neighbourhood have the following characteristics:

- range from 4.9m to 22.8m regardless of the zone category;
- 65.4% are smaller than 15m and 9.4% are 7.62m or smaller;
- Lot depths range from 30.5m to 40.54m;
- Lot areas range from 194.19m^2 to 881.42m^2; and
- 83.3% of lots are smaller than 550m^2

Utilizing the visuals and submitted documents, he noted that there are 6 lots on Poyntz Avenue that have lot frontages at 7.62m or smaller. He opined that there is a mixture of lot sizes in the neighbourhood that are situated next to or adjacent to one another (such as the subject property and 100 Poyntz Avenue) or adjacent to the street, and that the proposed 7.62m lot frontages are well represented in the neighbourhood`s lot fabric. In addition, the proposed lot areas of 255.7m^2 and 255.8m^2 are also well represented in the neighbourhood.

The new lots that have been created have a varied lot size that is in keeping with the neighbourhood`s prevailing varied lot fabric which includes lot frontages and/or lot areas that are smaller than the subject property`s applicable 15m/550m^2 lot size zoning

standards and similar in size to the proposal. This undersized zoning characteristic has some planning support within the subject property`s physical context, as illustrated in the Project Decision Sampling Table in Exhibit 2 (i.e., 71 Poyntz Avenue, 72 Johnston Avenue, 93 Bogert Avenue, etc.) and in some cases, not supported (i.e., 116 Bogert Avenue, 90 Johnston Avenue, etc.).

As a result, he opined that the proposed development will contribute appropriately to the lot fabric in a manner that respects and reinforces its physical characteristics. Buildings have been constructed or renovated with physical characteristics that are at variance with the applicable zoning by-laws. However, lots and buildings continue to be developed in a manner that reflects the varied tapestry and prevailing diversity within the neighbourhood.

Within his Study Area, Mr. Romano noted that the western area (that area generally west of Pewter Road) has a greater number of larger lots and the eastern area has a greater number of smaller lots. There are several 7.62m lots and smaller lots scattered throughout the area east of Pewter Road. He noted that there are a variety of zoning categories within the study area with various minimum frontage requirements including 9.0m, 12m and up to 15m. He suggested that on Poyntz Avenue itself, almost 50% of the existing lots have frontages less than 15m whereas in the neighbourhood as a whole, that number increases to 65.4%. He concluded that undersized lot frontage and lot area are “fairly significant characteristics” of the area in which the subject property is located.

In his opinion, regardless of where the line is drawn to distinguish a ‘so-called’ dividing boundary, the proposal represents a reasonable reflection of what is happening in the neighbourhood. He submitted that the OP recognizes that change within neighbourhoods will occur over time and referred to OP Policy 4.1.5 which states that development in established neighbourhoods will respect and reinforce the existing physical character of the neighbourhood. However, he also noted that the *Neighbourhoods* policies do not require replication of existing physical character, but instead provide that new development should fit the general physical patterns recognizing that different patterns can be found within and contribute to that character.

He opined that the OP permits `modest intensification` within Neighbourhoods in accordance with policies in Sections 2.3.1, 3.1.2, 4.1.1, 4.1.5, and 4.1.8. With respect to the subject proposal, he submitted that the proposed lot frontage, lot depth and lot are fit in well with those found in the neighbourhood. As well, the proposed buildings’ siting, size, height, scale and massing, and rear and side yard setbacks are appropriately proportionate to each lot and compatible with the prevailing neighbourhood patterns. He submitted that the proposal appropriately addresses the Built Form policies, which effectively direct a compatibility assessment.

Mr. Romano addressed OPA 320 which was approved by the LPAT on December 7, 2018. He submitted that although the subject applications are not affected by this decision, since they were filed prior to the implementing decision, the OPA is often advanced as Council`s direction to be considered, but not be determinative in a proposal`s review and outcome.

He opined that the proposal conforms to and meets the general intent and purpose of the OP, as reflected in modifications contained within OPA 320. He submitted that OPA 320 does not place any determinate value on the numeric outcome or consideration of any feature that may be considered to prevail. In other words, OPA 320 does not alter the planning evaluation to one of a mathematical exercise that would render a single majority attribute or attributes to be determinate and still requires a balanced consideration of physical character even recognizing that neighbourhoods can have more than one prevailing physical character, in whole or in part.

With respect to provincial policy, Mr. Romano identified a number of policies within the PPS that are relevant, specifically Policies 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.2, 1.1.1.3.3, 1.1.13.4, 1.4.1, 1.4.3, 1.6 and 4.0 and the applicable definitions. In his opinion, the proposal properly implements the policy thrust and direction in the PPS, particularly as it relates to achieving an appropriate mix and range of housing, optimizing the use of land and making better, and more efficient use of existing infrastructure.

With respect to the Growth Plan, he opined that the proposal conforms to, and does not conflict with the 2017 Growth Plan, in particular Policies 1.2.1, 2.2.1, 2.2.2, 2.2.6, 5.1, 5.2 and the applicable definitions. Policy 2.2.2.4 specifically encourages intensification to reflect the desired urban structure. He submitted that the proposal appropriately implements intensification policies that achieve the objective of complete communities with transit-oriented growth focused within settlement areas in delineated areas where a diverse range and mix of residential land uses is to be achieved.

He noted that Section 4.1.8 of the OP indicates that the zoning will set standards for compatibility and that as this neighbourhood continues to evolve it is not uncommon to vary the by-law, thus contributing to the neighbourhood character. The City has recognized this and has changed the zoning in this neighbourhood through studies to make it easier to redevelop without the need for minor variances. Prior to Zoning By-law 569-2013, the City introduced additional zones in the area to recognize the lot sizes. More recently, Council amended the Zoning By-laws through the adoption of the recommendations in the West Lansing Zoning Study (Exhibit 22) in May 2018 for the block closer to Yonge Street in recognition that the zoning no longer reflected what was on the ground.

In Mr. Romano`s opinion, the proposed variances, individually and cumulatively, meet the general intent and purpose of Zoning By-laws and the proposal reflects a site development that is orderly, reasonable and appropriate within its physical context. The proposal is for single detached dwellings. The proposed coverage continues to allow for an appropriate amount of open space. The proposed side yards provide for adequate access for servicing and spatial separation. The ground floor is close to grade and oriented to the street, and the proposed dwellings maintain a 2-storey low-rise character with a front wall that aligns well along Poyntz Avenue. The proposed porch and canopy elements are subordinate and accessory. The proposed driveways achieve adequate and suitable on-site vehicular access and adequate parking.

He opined that the proposal will contribute to the mixed housing character of the neighbourhood while incorporating compatible and complementary built form and site design attributes; the intent and purposes of the zoning by-law is maintained.

In Mr. Romano`s opinion, the proposal is desirable for the appropriate use and development of the land. The variances will facilitate, for each lot, reasonably sized homes with suitable standards, interface and a functional design that is compatible with recent development trends represented elsewhere in the neighbourhood.

In Mr. Romano`s opinion, the proposal creates no unacceptable adverse impacts such as shadowing, privacy or overlook and the proposed lot size and built form condition is one that is reasonable given the physical context of the subject property. Further, the order of magnitude of the minor variance request is reasonable, maintains a compatible detached residential land use that can be suitably accommodated on the site within a physical context that exhibits similar and complementary characteristics. He submitted that the Project Decision Sampling Table he prepared illustrates that the proposed variances are in keeping with the numeric range of approvals within the neighbourhood.

With respect to the Section 2 of the *Planning Act*, it was Mr. Romano`s opinion that the proposal properly implements the applicable sections of the *Act,* as amended, including having proper regard to matters of provincial interest. With respect to Part 1, Section 2, the proposal adequately addresses and satisfies the relevant criteria in 2d), e), h), j) and r).

With respect to the consent, he opined that a plan of subdivision is not necessary to facilitate the severance proposal. As to the consent criteria of Section 51(24), Mr. Romano was of the opinion that the proposal satisfies each criterion individually and cumulatively, specifically criteria a), b), c), d), e), f), g), h) and l).

In summary, in Mr. Romano`s opinion, the proposal represents a `modest and gentle form of intensification and results in a site development that is compatible with its physical context with no unacceptable adverse impacts of a planning nature. He recommended that the proposal be approved subject to the list of conditions in Exhibit 4.

He then addressed issues raised by City staff in their comments to the COA regarding the subject applications which are highlighted in the Witness Statements filed as part of the TLAB hearing process for this matter.

With regard to the issue of the impact on the existing trees on the subject property identified by Ms. Cindy Hignett (Urban Forestry) in her Expert Witness Statement (Exhibit 5), Mr. Romano advised that the City-owned 35cm in diameter White Cedar located within the boulevard on the flanking Beaman Road (Tree #4) had sustained storm damaged in May 2018 and had since been removed by the City. Therefore, he submitted that that tree it is no longer an issue relative to the development of this property.

He also commented as to a statement made by Ms. Hignett in her Witness Statement (at paragraphs 22 and 23) dealing with the City-owned boulevard tree impacted by the alignment of the proposed driveway of the west (Part 2) lot. He noted that there is an error in the Site Plan that was reviewed by Urban Forestry and clarified in his testimony that the driveway width is 2.6m wide. As a result, no variance is required.

He addressed comments by City Planning staff provided to the COA in their memorandum dated October 17, 2017 (Exhibit 1) recommending refusal of the subject applications. In that memorandum, he noted that the neighbourhood study area referenced by staff included more lots and a wider geographic area, extending further west to Gwendolen Crescent.

He took issue with the statement in the memorandum referencing lots in the neighbourhood west of Pewter Road and the statement that, "The majority of the lots either comply with or exceed the minimum lot frontage requirements of the Zoning By-law. The lots that are undersized in area are generally historic and do not have records of land division associated with them." He submitted that consents have occurred and disagreed with staff's characterization of the number of lots as reflecting a quantitative "majority" suggesting that this is not a test or criterion for assessment in the planning instruments.

Mr. Romano took issue with the fact that Planning staff identified Botham Road as an "artificial" (his word) dividing line between smaller sized lots and larger sized lots and disagreed with this approach. He submitted that there is no direction in any of the planning instruments that support this methodology and opined that there are lots west of Botham Road that are similar in size and frontage to what is being proposed.

With respect to the fifth paragraph on Page 8 of that memorandum, he noted that Planning staff errored in stating that "The lots east of Botham Road, between Poyntz Avenue and Cameron Avenue, have narrower frontages that have typically been created through consent applications. These lots are within the first block east of Yonge Street…" Mr. Romano indicated that this should have read "within the first block ***west*** of Yonge Street…"

He opined that the comments in Planning staff's memorandum dealt specifically with the issue of lot frontage but made no particular references to other elements of built form. He reiterated that there are many lots with the neighbourhood and proximate to the subject property that are similar in size and but also with smaller lot frontages than that being proposed by the Appellant.

Mr. Romano then addressed comments contained in the Witness Statement (Exhibit 18) of Ms. Fusz, the City's land use planner. At paragraphs 94-96 (p. 13), Ms. Fusz discusses the corner lot treatment of the proposed dwelling on the west lot Part 2 – 106B Poyntz Avenue) suggesting that the proposed dwelling "fails to give prominence to the corner." She goes on to state that "the west side elevation lacks any architectural detail or articulation to give prominence to the corner of Poyntz Avenue and Beaman

Road." She also notes that the elevation "illustrates a blank stucco-finish wall …The design fails to add any distinction or animation to the site's flankage (para. 95)."

He noted that the Appellant has agreed to improvements both at the basement level and above, at the 1st and 2nd storey levels (Exhibit 2, p. 17), through the provision of additional fenestration and a wrap-around elevation treatment that includes a combination of brick and stone treatment. This revised elevation (west) drawings is attached as **Attachment 2** to this decision. The Appellant is agreeable to securing this commitment through an additional condition of approval that requires that the Appellant build in substantial compliance with this revised elevation drawing.

Finally, he addressed the proposed conditions of approval (Exhibit 4). He submitted that the conditions as listed are standard practice conditions of the TLAB and noted that conditions related to Urban Forestry are, in his opinion, sufficient to comply with Urban Forestry requirements.

However, with respect to proposed Minor Variance Condition #2 as required by Transportation Services, Mr. Romano disagrees with the wording found in Recommendation 1.1.1 in the August 11, 2017 memorandum (Exhibit 4, p.10) which states that, "The current site plan is proposing a one-car garage 3.3.m in width, therefore the proposed driveway width must not exceed 3.3m for each of the houses." He suggested that this requirement is superfluous and submitted that there is no explanation as to why it is needed given his earlier testimony in this regard.

Consequently, he has recommended revised wording as found in Minor Variance Condition #2 in Exhibit 4 found below (highlighted):

> "The applicant shall be required to comply with all of the Engineering and Construction Services Conditions and all of the Engineering and Construction Services Advisory Comments outlined in the Staff Memorandum Report from Alick Wong, Acting Manager, Development Engineering – North York, dated August 11, 2017 (Appendix "B"), ***except that the driveway widths may exceed 3.3 m."*** (highlighted section is the Appellant's recommended revision)

On cross-examination by Mr. Elmadany, Mr. Romano addressed the issue of housing targets, intensification and Major Transit Station Areas (MTSA) in the PPS and the Growth Plan, and the proposition that there are no targets in the OP. He referred to the Dwelling Type table in his Witness Statement (Exhibit 2) which he suggested shows there has been a decrease in the single detached low-rise residential category and that the proposed development is an opportunity to maintain and replenish this type of housing stock.

Mr. Elmadany questioned the accuracy of the data contained in Mr. Romano's Lot Study analysis and mapping. He suggested that properties (15-35 Poyntz Avenue) that were designated 'mixed use' and included in the North York Centre Secondary Plan area, and which have a different planned context, should have been excluded from his Study Area. Mr. Romano responded that the properties were included because they are zoned for detached residential.

Mr. Elmadany introduced three consent decisions on Poyntz Avenue that were refused by the COA (Exhibit 12 – Poyntz Avenue Refusal Decisions). The decisions relate to 64, 71, and 109 Poyntz Avenue and were highlighted to illustrate the COA's position on these consents.

Quoting from the decision for 64 Poyntz Avenue issued in 2002, he noted that the COA added an additional comment to their decision indicating that the application was refused on the grounds that "the proposed lots are not in keeping with the general pattern of development in the area…the shape and sizes of the proposed lots are not consistent with the lots in the area." Mr. Romano disagreed with this statement and opined that the sentiments expressed by the COA are not reflective of what the neighbourhood is like today.

Mr. Elmadany provided examples on other streets in the neighborhood where consent applications have been refused through the COA or through appeals (i.e., 119 Bogert and 96 Cameron Avenue).

In addressing the planned context within which the subject property is located, Mr. Elmadany asked Mr. Romano to agree that the block in which the subject property sits has a different relationship to the adjacent blocks when compared to the rest of the neighbourhood. Mr. Elmadany referenced Exhibit 13, the City's Lot Study data, and submitted that Poyntz Avenue has the lowest number of small lots and the largest number of larger lots with frontages of 15m or greater (50.3%).

He specifically highlighted properties on both the north and south sides of Poyntz Avenue, providing an address-by-address summary of lot frontages which he indicated as being at 12.2m or greater. He submitted that the majority of the lots, other than the two lots of record at 91 and 103 Poyntz Avenue, complied with the zoning by-law. Mr. Elmadany argued that those lots of record have not been tested against today's planning framework and, in his words, "one or two lots do not make a pattern."

Mr. Elmadany referred to a decision of the former Ontario Municipal Board (OMB) for 89 Johnston Avenue (Exhibit 14 – *Sandusky v. Toronto (City) 2002 CarswellOnt 7282)*, a property within this neighbourhood. He noted that Mr. Romano had been retained by the City at that time to provide land use planning opinion in opposition to the consent application. He referred to paragraph 6 in that decision:

> "In 1993, Plan 1743 was 'deemed' (By-law 32023) not to be a plan of subdivision, which Mr. Romano testified was an attempt by (North York) Council to eliminate, or limit, potential redevelopment on the basis of 25-foot lots. Without the 'deeming' by-law, the 'double lots' could have reverted to legal 25-foot lots by the simple action of removing any dwellings that straddled the lot lines."

Further, at paragraph 7, Mr. Romano stated that, "As I understood the historical perspective, responding to a large number of applications seeking to divide 'double lots' and larger holdings into smaller parcels, (North York) Council undertook a major review of this issue culminating in the Small Residential Lot Study (SLS) of September 1991

(exhibit 2). Flowing from the SLS, residential (half) blocks were rezoned on the basis of the number of 'small lots'."

Asked to explain his comments, Mr. Romano noted that the Small Residential Lot Study (SLS) was a North York wide study related to permissions to create smaller lots from lots with 15m frontages for the purposes of minimizing the number of consent applications going before the Committee of Adjustment. He noted that it was Council's decision on a half block basis to rezone the majority of lots within that study area with lot frontages that were either between 9-12m or less than 9m into the R6 or R7 zones, respectively.

Mr. Elmadany then referred to the Planning Staff report that supported the West Lansing Zoning Study (Exhibit 2), a study which resulted in the rezoning of a portion of these lands in May 2018 to allow 7.5m lot frontages. He confirmed that the lands rezoned did not include the subject property.

In re-examination, Ms. Stewart referenced the 2006 Growth Plan and addressed with Mr. Romano the import and applicability of the policies related to MTSAs. Ms. Stewart laid the foundation for a brief discussion of this provincial document by suggesting that the City had raised questions of the applicability of MTSAs of Mr. Romano in cross-examination.

The introduction of this previous iteration of the Growth Plan was challenged by Mr. Elmadany on the basis of relevance and purpose since the City had not yet met the mandatory obligation to delineate MTSAs in the OP. In response, Ms. Stewart argued that the City's failure to do so is not a rationale for not considering those policies. I allowed Ms. Stewart to introduce the 2006 Growth Plan with the caveat that I would allow her very limited reference to it, and it would go to weight in my decision. I further advised that the 2017 Growth Plan policies and language were of more relevance in this matter.

She confirmed that the defined areas are similar in both versions as is the terminology used and Mr. Romano confirmed that the City had yet to update its OP regarding the delineation of MTSAs.

Ms. Stewart then reviewed *Sandusky* and, specifically, Mr. Romano's testimony in that matter. Mr. Romano confirmed that the property, 89 Johnston Avenue, is not in the immediate block context of the subject property. Ms. Stewart highlighted paragraph 4 in the decision, where the Board Member wrote "The deciding issue in this hearing is compliance with a plethora of policy in the North York Official Plan (OP) dealing with intensification within stable residential neighbourhoods of which the area south of Sheppard and west of Yonge (excluding frontages on these two main thoroughfares) is a prime example. I agree with Mr. Romano that the decision turns on an interpretation of Official Plan policy..."

Mr. Romano suggested that the policies in place at that time (2002) were more restrictive of intensification and new policies have since been introduced that impact this neighbourhood. Ms. Stewart concluded her re-examination of the witness by reviewing

a number of decisions in Mr. Romano's Consent Decision Summary Table (Exhibit 2) and decisions/Planning Staff reports for 71 Poyntz Avenue (Exhibit 15), 35 Poyntz Avenue (Exhibit 16), 109 Poyntz Avenue (Exhibit 12), 64 Poyntz Avenue, and 23-27 Poyntz Avenue (exhibit 17).

The Evidence of Ms. Hignett

Mr. Elmadany called Ms. Cindy Hignett, an Urban Forestry Assistant Planner with the City's Urban Forestry Department, North York District, as an expert witness. I note that Ms. Hignett's testimony was provided out of order on the afternoon of Hearing Day 1 (June 20, 2018) on consensus, as she was scheduled to be on maternity leave shortly thereafter.

On a question of clarification related to Ms. Hignett`s credentials raised by Ms. Stewart, Ms. Hignett advised that she holds no degree in arboriculture, is not a member of the International Society of Arborists (ISA), although she is eligible for membership, and is not certified in tree risk assessment. She also confirmed that she does not hold a planning degree nor is she seeking qualification as a land use planner.

Ms. Hignett was qualified to give expert opinion evidence as an environmental technician with a focus on urban forestry matters (Exhibit 5 – Expert Witness Statement).

She advised that there are eight (8) by-law protected trees on or adjacent to the subject property (Exhibit 6 – Ms. Hignett`s Visuals). Four trees are located on the City road allowance and four are located on private property (Note: Tree #2 in her Witness Statement has since been removed as previously noted).

She informed the panel that the Appellant has not submitted a replanting plan or arborist report and the Site Plan that has been submitted for review is inaccurate and missing certain detailed information (i.e., missing trees, incorrect diameter measurements, etc.).

She noted that are several undersized trees and shrubs present on the property that are not protected under the Tree By-law, as they are located on private property and measure less than 30cm in diameter, and that all City-owned trees are botanically vigorous and would be considered healthy and maintainable, and should be retained.

She noted that the proposed new east lot (Part 1), which is labelled on the Site Plan drawings as 106A Poyntz Avenue, will require the removal of Tree #6 (a privately-owned Balsam Fir) because the tree is located within the footprint of the proposed new dwelling. She advised that Urban Forestry does not object to the removal of this tree as there is no requested variances for building length or depth and because it is within the as-of-right existing build envelope.

She advised that three privately-owned trees will be impacted by the proposed development and will require permits to injure: Tree #7 (White Spruce) as a result of the existing Beaman Road driveway being remove; Tree #8 (Norway Maple) – this injury is

acceptable to Urban Forestry; and Tree #9 (Norway maple) – this injury is also acceptable to Urban Forestry.

With respect to City-owned Trees #3 (White Spruce), Ms. Hignett advised that the proposed west setback variances for the west lot (Part 2 – 106B Poyntz Avenue) would require significant encroachment into the Tree Protection Zone (TPZ) of that tree to the extent that it would not allow the trees to survive. As a result, Urban Forestry does not support the removal of these healthy By-law protected, City-owned trees, and advised that if an application were submitted to injure or remove these trees, Urban Forestry would likely deny the application.

Further, she advised that the proposed lot severance and construction of the proposed driveway for the west lot (Part 2 – 106B Poyntz Avenue) would require excavation within the minimum TPZ of City-owned Tree #1. She characterized this as a "significant encroachment" based on the comments of Transportation Services staff (Right of Way Management) who advised that the proposed driveway as shown on the submitted Site Plan does not meet their legal setback or minimum width requirements. In order to meet these requirements, the driveway would be required to encroach closer to Tree #1 resulting in an injury to the extent that it would not allow the tree to survive. Urban Forestry does not support the removal of this tree.

In summary, Ms. Hignett concluded that there are three trees that would require removal or unacceptable injury that they would likely not survive. Urban Forestry does not object to the removal of Tree #6 conditional on the submission of a replanting plan demonstrating that three trees are planted to replace this tree. However, Urban Forestry objects to the removal of City-owned Trees #1 and #3.

In her opinion, the consent and minor variance applications fail to meet the general intent and purpose of the OP, particularly Sections 2.3 and 3.4 and that the proposal fails to adhere to the relevant policy and guideline directions adopted by Council including the Every Tree Counts and Toronto`s Strategic Forest Management Plan. She submitted that, if approved, the proposal will have a negative impact on the urban forest in the neighbourhood.

She referred to the *Planning Act* and opined that the applications fail to satisfy Section 2(a) and (s) dealing with the protection of ecological systems and climate change, or Section 51(24)(a), as the proposal will necessitate the removal of trees. Removal of the trees will eliminate the benefits provided by the subject trees and does not represent the best interest for either the neighbourhood or the City as a whole.

Ms. Hignett provided the TLAB with a summary of other urban forestry guidelines and Council policy direction. She noted that in 2013, the City adopted the Urban Forestry Plan which included the strategic goal of increasing tree canopy through protection of the existing forest and setting targets for tree planting. In 2016, Council also adopted the Tree Planting Strategy to further support expanding the urban forest. In her opinion the proposal does not align with the recommendation to increase tree canopy.

With respect to the OP, she referred to Policies 2.3.1.5 and 3.4.1 dealing with environmental sustainability and preserving and enhancing the urban forest and opined that the proposal does not conform to or maintain the general intent and purpose of the OP.

She advised that although Urban Forestry is against approval of the consent and variance applications before the TLAB, the City`s Municipal Code Chapter 813 (exhibit 7 – Tab 27) regulates tree removal should the applications be approved. She specifically highlighted Sections 813-7, 813-8, 813-10 which outlined the permit procedure process, and reiterated that Urban Forestry has not received a landscape plan or arborist report/tree protection plan for this proposal and has not undertaken a detailed assessment.

In summation, Ms. Hignett opined that the applications should not be approved as the removal of two mature, healthy City-owned trees is not desirable for the community or the City as a whole. In general, she noted that the Appellant has yet to demonstrate how the removal of such trees will be mitigated to any extent and questioned the benefits of replacement trees as an incentive or mitigation of healthy tree removal(s) unless and until the necessity of the tree removal(s) has been established.

Under cross-examination, Ms. Hignett acknowledged that Urban Forestry is concerned with the two City-owned trees only and not with the remaining catalogued trees on the subject property. She also acknowledged that the Appellant would be required to apply to injure or remove a tree that could result in changes to the Site Plan that might affect the viability of retaining the trees in question. This is outside of the TLAB process.

Ms. Stewart referred her to Policy 3.1.2.1 d) of the Official Plan (Exhibit 1 –Tab 14) which are the Built Form policies that direct new development to be located and organized to fit with its existing and/or planned context and sets out a number of directions. Subsection d) directs: “preserving existing mature trees wherever possible and incorporating them into landscaping designs.” Ms. Stewart advised that it is the Appellant`s intent not to remove any existing trees except for Tree #6 which has already been acknowledged as being within the building envelope.

Ms. Hignett asserted that she was not comfortable in commenting further on the Site Plan since a detailed tree permit review has not been undertaken by Urban Forestry. Ms. Stewart questioned whether Urban Forestry had already assumed an outcome in this regard, to which Ms. Hignett assented that it is ***“likely***” (her word) that tree removal would be required as a result of the proposed development.

Ms. Hignett also acknowledged that it is possible through a detailed review process to work with the Appellant and his arborist to arrive at a possible solution that may not require the removal of any trees. Regardless, Urban Forestry retains absolute discretion to refuse any permits to injure or remove trees.

Finally, Ms. Hignett acquiesced to the possibility, as suggested by Ms. Stewart, that alternative mitigation techniques could be employed to diminish tree injury on the subject property. The techniques suggested included such as approaches as: hydrovac excavation inside the TPZ; horizontal hoarding for tree protection; hand tools to excavate inside the TPZ; the installation of core root protection adjacent to the driveway; and jogging the basement footprint to mitigate impacts on the TPZ of trees in close proximity.

The Evidence of Victoria Fusz

Ms. Fusz is an Assistant Planner, City Planning Division, North York District, who has previously been qualified to give land use planning opinion before both the former Ontario Municipal Board (OMB) and the Local Planning Appeal Tribunal (LPAT). I qualified Ms. Fusz to give planning opinion evidence (Exhibit 18 – Witness Statement package) in this matter.

Ms. Fusz was assigned the subject file subsequent to the Appellant filing an appeal with the TLAB and she acknowledged that she did not author the original Planning Staff report to the COA, dated October 17, 2017, regarding the subject applications.

Ms. Fusz provided an overview of the proposal and the neighbourhood (Exhibit 19 – Revised Visuals and Lot Frontage Map, Exhibit 20 – Revised Lot Study Summary Chart, and Exhibit 21 – City Revised Graphics). She referenced the City-initiated West Lansing Zoning Study (Exhibit 22) which was undertaken in May 2018 and which the area west of Yonge Street generally from the south side of Franklin Avenue to the north side of Poyntz Avenue. The Study, she noted, originated in response to the evolving character of the area resulting from several consents in the area, with the objective of determining whether the existing zoning of the lots was still representative of the emerging character.

The Study culminated in the updating of the Zoning by-laws (By-law 644-2018 and 645-2018) to amend the minimum performance standards such as: lot frontage requirements (7.5m); lot area (300m^2); and side yard setbacks (0.92m and 1.2), in recognition of the emerging character of smaller lots in this area. She noted that following extensive public input the initial study area boundaries for the Study were revised shifting the northern boundary to the north side of Johnston Avenue, thereby excluding the subject property.

Ms. Fusz identified a neighbourhood Study Area (Exhibit 20) with boundaries similar to that of Mr. Romano. However, her study area extended west to include Easton Road. The Study Area included 833 detached dwellings with the same land use designation within the OP and the same, or similar, zoning standards under both Zoning By-laws, as the subject property. The most notable distinction between the various zones found within this Study Area is the minimum lot frontage and lot area requirements.

She noted that since filing her Expert Witness Statement, in March 2018, four (4) additional consent applications have been approved as reflected in Exhibit 19 (116 Bogert, 90 Johnston, 48 Johnston and 67 Cameron). As a result, the number of lots in her study area increased to 837.

She then suggested that her study area could be viewed as having three distinct character or sub-areas:

1. A western sub-area - Lots west of Pewter Road where the overwhelming majority of the lots either comply with or exceed the minimum lot frontage requirements (12m and 15m) with a few exceptions of undersized lots generally historic in nature;

2. A central sub-area - Lots west of Beaman Road and Botham Road, including the subject property, between Bogert Avenue to the north and Cameron Avenue to the south, which she submitted was the most distinct character area. This sub-area contains more undersized lots and a greater range of zones in the zoning by-laws. Lot areas are generally reflective of the zones in which they are located, except for one street where they are the product of consents; and

3. An eastern sub-area – Lots east of Beaman and Botham Roads. Lots within this area are also subject to a range of zones, and the emerging character is that of narrower frontages generally created through consent applications. This sub-area includes the original West Lansing Zoning Study area.

Referencing her Lot Study analysis (Exhibits 19, 21 and 21), she submitted that lots within the neighbourhood have a range of lot frontages which she opined were due, in part, to the range of zones found in the area. Although there are a number of lots of a comparable size to the proposed lots, these lots are mostly concentrated within the first block west of Yonge Street on Johnston Avenue, Florence Avenue, and Cameron Avenue. She noted that there are only three lots on Poyntz Avenue proximate to the subject property that have a frontage of 7.62m or less.

She indicated that approximately 79 lots are comparable to the proposed lots of which 44-49 (Exhibit 19) are located within the south eastern quadrant of the neighbourhood and are now compliant with the new zoning. The remainder include various historic lots in the western portion, mainly on Cameron Avenue and north of the subject property.

Ms. Fusz addressed the relevant planning instruments applicable to the subject applications. She opined that the applications conform to and are generally consistent with the PPPS and the Growth Plan. She nevertheless highlighted Policy 4.7 in the PPS (Exhibit 7 – Tab 16) which states that the official plan is the most important vehicle for implementation of the PPS in ensuring that long-term planning is both comprehensive and integrated, and Policy 5.2.5.8 of the Growth Plan dealing with the identification of strategic growth areas and intensification policies.

With respect to Section 51(24) of the Planning Act, Ms. Fusz addressed each of the criteria individually, specifically highlighting a), c) and f):

a) She agreed with the opinion evidence of Ms. Hignett regarding the matters of provincial interest under Section 2 of the Act and the impact of the applications on the ecological system;

c) Regarding OP conformity, she referred to Section 2.3.1 of the OP which indicates that neighbourhoods are considered physically stable areas and directs that development will respect and reinforce the existing physical character. Section 4.1 of the Plan states that "physical changes to established *Neighbourhoods* must be sensitive, gradual, and generally 'fit' the existing physical character." Policy 4.1.5 identifies the criteria that are to be considered when assessing development in order that new development respects and reinforces that character including b) size and configuration of lots.

She referred to OPA 320 (Exhibit 23 – LPAT's Order) which strengthens and refines the *Neighbourhoods* policies and noted that it incorporates the word 'prevailing' into the development criteria of "size and configuration of lots." She advised that her review of the subject applications was undertaken prior to the approval of OPA 320 by the LPAT in December 2018 and that it is not determinate to her opinion. However, she opined that it would support her delineation of character areas and her opinion that the proposed lots are not consistent with the character of the neighbourhood. She submitted that the proposed lots would be the smallest created by consent on the block in which the subject property is located and on Poyntz Avenue, and that the undersized nature of the proposed lots fails to respect and reinforce the existing physical character of buildings, streetscape and open space patterns of the neighbourhood.

f) With respect to Section 51(24)(f), she suggested that the proposed lots would create two considerably undersized parcels with significantly narrower frontages and smaller lot areas. Consequently, she noted that the substandard size of the proposed lots, specifically the lot frontage, would result in on-site constraints specifically related to the provision of a private driveway on the conveyed lot (Part 2 – 106B Poyntz Avenue).

In this regard, she reviewed the proposed driveway at 106B Poyntz Avenue which abuts the subject property's eastern property line. A retaining wall is proposed adjacent to the western edge of the driveway. She noted that the proposed driveway is angled to avoid encroachment into the TPZ of the existing City-owned boulevard tree. To avoid encroachment, the driveway has a width of 2.44m, which then widens to 4.39m on private property, and then narrows again to 3.5m at the garage entrance.

Referring to Transportation Services' memorandum of March 16, 2018 (Exhibit 18, p. 26), she noted that the minimum width of the proposed driveway is to be 2.6m with a minimum 1.2m setback required from the new retaining wall and 0.6m setback from the eastern property line. As a result, the proposed driveway cannot comply with the minimum setbacks required by Transportation Services while avoiding encroachment into the TPZ and maintaining a minimum 2.6 m width.

With respect to the requested variances and the statutory planning tests, Ms. Fusz concluded her testimony by addressing whether variances maintain the general intent and purpose of the OP. She specifically highlighted the Built Form policies and Policy 3.1.2 regarding corner lots, directing new development to be located along both adjacent street frontages and give prominence to the corner.

Highlighting the proposed west elevation of 106B Poyntz Avenue (West lot), she noted that the elevation illustrates a blank stucco-finished wall and lacks any architectural detail and articulation and, therefore, fails to give prominence or animation to the property's flankage profile.

She also addressed Policy 4.1.5 of the OP and criteria (b) and (f) which she submitted were relevant to this appeal. She reiterated that the size and configuration of the proposed lots do not respect and reinforce the existing physical character of the neighbourhood given that the overwhelming majority of lots that remain in the neighbourhhood, and more specifically along Poyntz Avenue, are larger in size. She opined that if the proposed lots are deemed appropriate, they would 'significantly alter' (her words) the physical character of this portion of Poyntz Avenue.

Additionally, Ms. Fusz submitted that the proposed interior side yard setbacks will interrupt the rhythmic pattern along Poyntz Avenue characterized by sufficient landscaping and separation distances between dwellings. She opined that the proposed side yard setbacks of 0.59m (for 106A Poyntz) and 0.295m (for 106B Poyntz) are not the prevailing pattern and are not consistent with side yard setbacks for similarly sized properties created through consents on Johnston, Florence, and Cameron Avenues, properties, located west of Yonge Street.

She then addressed the three remaining tests: do the variances maintain the general intent and purpose of the zoning by-law; are they desirable for the appropriate development of the subject lands; and are they minor. She opined that the proposed lots are not consistent with the minimum frontage requirements under either By-law, that the concentration of consent applications have occurred on those streets south of Poyntz Avenue where the lotting pattern has evolved, and that the applications, cumulatively, would permit lots and dwellings that differ from the prevailing lot pattern of both the block on which the subject property is located and the remainder of Poyntz Avenue.

In summary, Ms. Fusz opined that the shape, size and dimensions of the proposed lots are not appropriate, and she recommended that the appeals be dismissed.

In cross-examination, Ms. Stewart addressed several non-contentious (her words) planning principles with the witness. Ms. Fusz acknowledged that some intensification is envisaged in the *Neighbourhoods* designation and that developments such as that being proposed by the Appellant can respect and reinforce the existing physical character and contribute to a neighbourhood's stability.

Ms. Fusz agreed that 'fit harmoniously' is the same as 'compatibility' and that compatibility is essentially the assessment of the impact arising from a proposed development and the context within which a property is located. She agreed that neighbourhoods can include more than one pattern of development and the test is not fitting within the predominate and prevailing pattern.

She also acknowledged that in evaluating proposed development relative to the context of the character of the neighbourhood, any assessment is based on the community as a whole and the existing OP does not require a numeric quantification of neighbourhood character in order to determine if propose lot sizes and configuration 'fit'.

Ms. Stewart addressed the two issues raised by the City with respect to the proposed development: Urban Forestry's concerns regarding the trees on the subject property; and Transportation Service's comments regarding the proposed driveway for the west (conveyed lot – 106BPoyntz Avenue) identified in their March 2018 memorandum.

Ms. Fusz acknowledged that trees are sometimes removed as a result of development and that Policy 3.4.1 of the OP anticipates that there will be development in the City and that the injury or destruction of the urban forest is not 'prohibited' but rather 'regulated' through the City's Municipal Code (Chapter 813 (Exhibit 7 – Tab 27). Ms. Stewart submitted that only one privately-owned tree, located within the as-of-right build envelope, is anticipated to be removed as a result of the proposal.

Ms. Stewart introduced correspondence, dated April 4, 2019, addressed to the owner of the subject property from Urban Forestry confirming that they have preliminarily reviewed an application to injure two City-owned trees and to remove one privately-owned tree related to the subject proposal and acknowledging that they will not process the application until such time as the TLAB has issued a decision regarding the subject appeals.

With respect to the driveway alignment on the conveyed west lot (106B Poyntz Avenue), Ms. Fusz assented that the City's concern was not necessarily the proposed alignment but rather that the severed lot is "tight" (her word) and the required driveway setbacks could challenge the proposed driveway's viability. In this regard, Ms. Fusz agreed that the setback requirements recommended by Transportation Services are not zoning related standards but, more accurately, a departmental condition.

Ms. Stewart noted that the provision related to driveway widths in the front yard for certain residential building types in Zoning By-law 569-2013 – Chapter 10.5.100.1 (Exhibit 1) requires that "if an individual private driveway leads directly to the door, a driveway which is in the front yard or passes through the front yard may have the following dimensions in the front yard: minimum width of 2m."

With respect to side yard setbacks within the neighbourhood, Ms. Fusz acknowledged that she has no issue the 0.6m side yard setback variance being requested and that this is side yard setbacks of less than 0.6m are a prevailing pattern in the neighbourhood.

Ms. Stewart also challenged Ms. Fusz's opinion that the neighbourhood has different lot patterns and a greater distinction of smaller lots in the western portion of the neighbourhood based on her Lot Study frontage Map (Exhibit 19). Ms. Fusz acknowledged that there is a concentration of smaller lots in the eastern portion of the neighbourhood where the subject property is located. In addition, she assented to the fact that there is a characteristic pattern of larger lots abutting smaller lots (i.e., 15m lot frontages beside 7.62m frontages) in the neighbourhood east of Pewter.

Finally, Ms. Fusz acknowledged that the revised west elevation for the west lot (106B Poyntz Avenue) and attached to Mr. Romano's Expert Witness Statement (Exhibit 2, p. 17), which included additional fenestration and improvements to materiality through masonry treatments, addresses the concerns raised in her Witness Statement.

ANALYSIS, FINDINGS, REASONS

As stated under "Issues', the matters in this appeal are not complex. The primary issue, in my opinion, is whether the creation of two undersized lots and the resultant single detached dwellings respect and reinforce the existing physical character of the neighbourhood, as required by s.4.1.5 of the City`s OP. The provincial policy context supports intensification within the framework of municipal planning policy, in this case, the Official Plan.

The OP recognizes that some physical change within neighbourhoods will occur over time, but that change must be sensitive, gradual and generally 'fit' the existing character. The assessment framework, which is set out in Section 4.1.5, also requires that any new development proposal must have regard for the Built Form policies of the OP.

Counsel for both parties provided several cases for guidance, for which I am appreciative. I address each party's submission below, separately and briefly, as both Ms. Stewart and Mr. Elmadany submitted several cases for assistance. While I advised counsel that I was appreciative, ultimately the determination of the appeals must bear strong bonds to the evidence heard.

Ms. Stewart provided the following six recent TLAB decisions: *351 Hollywood Avenue* (a decision I issued in 2018); *20 Horsham Avenue* (June 28, 2018); *319 Horsham Avenue* (Jan. 22, 2019; *116 Bogert Avenue* (May 23, 2018); *90, 92 Johnston Avenue* (August 1, 2018); and *116 Briar Hill Avenue* (A Review Request Order issued January 18, 2019). She submitted these decisions provided broader principles of applicable and relevant law and policy interpretation within the Study Area, as well as similar fact situations to the subject proposal

She suggested that while the decisions reflect a reasonable expectation of consistency of application of policy to the facts and consistency of outcome in decision making, they are not to be taken as an assertion of 'precedent or binding case law.

Ms. Stewart spent an inordinate amount of time reviewing the decision for *351 Hollywood*, with which I am very familiar. That decision involved a proposal analogous to the subject proposal in consent and variance applications and located in a neighbourhood of comparable characteristics.

The issues in that matter were whether the severance of the lot for the purpose of introducing infill housing as a form of gentle intensification in that particular neighbourhood was appropriate and fit the physical character, whether the lots created were substandard, and the question of precedent. Ms. Stewart highlighted page 20 of *351 Hollywood* which, on the issue of precedent, where the Tribunal Member wrote "The Board appreciates that prior Committee decisions and Board decisions are relevant to the question of what is happening in the neighbourhood, but they are not determinative of any particular application, which stands and falls on its own merits."

210 Horsham Avenue and *319 Horsham Avenue* are situated outside of the study area boundaries delineated by both Mr. Romano and Ms. Fusz but, nevertheless, proximate to that study area for assessment purposes. Mr. Romano was the expert planning witness in both of those matters and the numeric threshold in both cases was far less favourable to the proposed development being approved given that there were fewer examples of similar sized lots having been approved or existing in the respective study areas.

In both cases, the Member found favour with the application based on the context of the proposed development within that neighbourhood given that there were a variety of lot sizes and similar sized lots proximate to the property being developed. With respect to the *319 Horsham Avenue decision*, Ms. Stewart referred to Page 15 where the TLAB Member made reference to the former OMB decision of *Mahmoudi v. Toronto(City)*, PL120799, 2013, which she submitted was a seminal Board decision dealing with how to assess and evaluate consents in the *Neighbourhoods* designation.

In that case, the Board Member wrote:

> "[T[he Board notes that the OP neither defines 'neighbourhood' to assist with determining compliance nor stipulates that a neighbourhood, once defined, can be anatomized or otherwise treated in terms of which of its characteristics predominate and which do not. On the face of the text employed, the policies speak to the notion of a neighbourhood as a unitary or singular construct, despite the accepted reality that any neighbourhood will contain diversities. Indeed, such diversities, however subtle, are part of a neighbourhood's character."

Ms. Stewart submitted that the same principles apply to the subject proposal; that is, that the current OP directs assessment of a neighbourhood but there is no basis or support for 'anatomizing' a neighbourhood into sub-parts. Once a neighbourhood has been defined, it must serve as "your benchmark for analysis." (her words)

Finally, with respect to the TLAB decisions for *90, 92 Johnston Avenue*, and *116 Bogert Avenue*, Ms. Stewart submitted that these decisions are also applicable to the subject proposal as they are within the same neighbourhood, not within the first block

west of Yonge Street, and west of what she termed *"the imaginary divide"* of Botham Road. Both properties in those decisions are within the same study area, were decided by the TLAB within the past year, and involve the City in opposition and the same planning witnesses (Ms. Fusz and Mr. Romano) giving evidence in the proceedings. She noted that they were decided under the same planning framework and the TLAB sought fit to approve both applications finding that the respective consent and variance applications respected and reinforced the existing physical character of the 'subject' neighbourhood.

Mr. Elmadany also submitted a 'Book of Authorities' in this matter with the following eight decisions from both the former OMB and the TLAB: *41-51 Lawrence Avenue East & 84 Weyboune Crescent* (PL151111) (OMB); *48 Oriole Gardens* (PL130577) (OMB); *15 Stanley Avenue*, September 4, 2018 (18 126898 S53 06 TLAB); *Oh Re*, 2013 CarswellOnt 1164 (OMB); *105-107 Churchill Avenue*, January 29, 2018 (TLAB); *Inacio v. Toronto(City)*, 2018 CarswellOnt 471 (96 John Street)(OMB); and *Guidicci, Re*, 2018 CarswellOnt 4719, March 7, 2018 (TLAB 17 201219 S53 06 TLAB, 17 201220 S45 06 TLAB, 17 201221 S45 06 TLAB).

Additionally, he included *Niagara River Coalition v. Niagara-on-the-Lake(Town)* (2010 Ontario Court of Appeal decision), and a copy of the Order in Council of the Province enacting the 2017 Growth Plan , Bill 139, and the *Planning Act* (R.S.O. 1990, Chapter P.13) in the above-referenced Book.

He addressed the issues of intensification and Major Transit Station Areas and their interpretation within the policies outlined in both the PPS and the Growth Plan suggesting that that interpretation should be consistent. In this regard, he highlighted various passages in *Niagara River Coalition*, the *Order in Council*, *Bill 139* and the *Planning Act*.

With respect to *41-51 Lawrence Avenue East*, he submitted that this decision addressed the interpretation of policies related to the appropriateness of intensification and matters of provincial interest as outlined in the *Act*. He highlighted paragraph 62 in the decision: "The Appellant's site-specific, "kick start" approach to intensification justified by the provincial policies that encourage intensification, if accepted by the Board, would grant paramountcy to the broad intensification policies and objectives in the PPS and Growth Plan and dismissively minimize the role that the Official Plan policies serve…"

In the same decision, at paragraph 63, the Board wrote "The City's OP is consistent with the provincial policy framework and is drafted to recognize its function as the "vehicle" to implement the intensification, growth and development policies within the PPS." Similar principles were expressed in *48 Oriole Gardens* which also addressed the issue of intensification and a property's proximity to a major transit station area.

Both the TLAB decisions regarding *15 Stanley Avenue* (issued by Chair Lord) and the OMB decision of *Oh Re* were highlighted by Mr. Elmadany because they dealt with relevant matters involving impacts of development on the City's urban forest. In both decisions, the tribunals found that the removal of trees does not conform to the

policies of the OP which seek to ensure the preservation and enhancement of the City's urban forest canopy.

Finally, he referenced *105-107 Churchill Avenue (TLAB), Inacio (OMB)* and *38 Thirty Sixth Street* (TLAB), the last three decisions he submitted. These decisions addressed, respectively, the general principles of the OP's direction that new development respect and reinforce the existing physical character of a neighbourhood, narrower lots and the historical origin of severances and new lot creation, the assessment of the impact of development on the urban forest, and the issue of precedent.

I accept the general concurrence of both planners that there is no issue with the application of the PPS or the Growth Plan, although the City disagrees with the interpretation offered by Mr. Romano of some relevant policies. I agree with Ms. Stewart that in applying higher level policies to a site-specific local application "we must strive to view the OP through the lens that is mindful of the higher-level provincial policy objectives which it must implement." When two different interpretations of OP policies, or application of those policies that are reasonable, lead to different outcomes based on the same facts we should strive to interpret those policies in a way that furthers provincial policy objectives.

I agree with Mr. Romano that the provincial policy context supports intensification within the framework of municipal planning policy, which is in this case the existing OP. The *Neighbourhoods* policies and the general application of the statutory tests in these policies recognize that a development application is not required to replicate any single element of neighbourhood character; it directs that new development fits within the general physical patterns that exist. I also agree that these policies recognize that any specific neighbourhood can have varying patterns of elements and a consent application can be found to meet the criteria and the test of respecting and reinforcing the existing physical character of the neighbourhood.

Clearly the City Official Plan holds out for special attention to be paid to its *Neighbourhoods* and that the delineation of a study area is a necessary first step by planning practitioners to attempt to encapsulate measures that replicate the existing physical character. I concur with Ms. Stewart that the applicable and relevant OP speaks to the neighbourhood as a singular construct and does not *'anatomize'* a neighbourhood according to the immediate or a broader context. I also concur with Ms. Stewart, based on the evidence provided by both planners, that dividing or 'breaking down' the neighbourhood into separate areas or quadrants is an interpretation that is not supported in the policy language of the current OP although I acknowledge that immediate neighbourhood context is relevant.

I agree with Mr. Romano that when the OP refers to the existing physical character of a neighbourhood, 'existing' suggests what is on the ground and does not distinguish or differentiate between properties based on their genesis or how they were created. I agree that the assessment of whether a lot fits is not a numerical evaluation of a minimum 'quota' of similar or same sized lots in order to meet the OP criterion of "respecting and reinforcing the size and configuration of lots."

I concur with Ms. Stewart that the relevant and applicable OP does not include the word 'prevailing' in front of 'lot size and configuration' and that a lot does not need to fit into the majority or a minimum number of representative lots to meet that test.

I agree with Mr. Romano that the neighbourhood lot fabric and physical characteristics have not remained static. New lots and buildings have been created in the evolution of this neighbourhood. The new lots that have been created have a varied lot size that is in keeping with the neighbourhood's prevailing varied lot fabric which includes lot frontages and/or lot areas that are smaller than the subject property's applicable 15m/550m^2 lot size zoning standards, and similar in size to the proposal. The undersized zoning characteristic is a fundamental physical characteristic of this neighbourhood regardless of zone classification.

However, while it is important to assess the neighbourhood as a whole, I echo the sentiment expressed by TLAB Member McPherson who wrote in her decision for *90, 92 Johnston Avenue*, that "it is also important to assess patterns of development at a finer level to ensure `fit` within a specific context as patterns can vary." While I acknowledged that both Ms. Fusz and Mr. Romano employed different categories of lot frontage in their analyses to demonstrate lot size, the resulting lot studies demonstrated that, throughout the neighbourhood, there are a significant variety of lot sizes.

As Member McPherson recognized in the above-referenced decision, and with which I agree, "part of the variation recognizes the three zoning categories within the study area, each with a different lot frontage minimum. The range in lot sizes is also attributable to the numerous severances that have taken place, particularly in the eastern section of the neighbourhood, which has been identified in the recent City Zoning Study and the resulting By-laws."

On a finer level of analysis, I accept Mr. Romano`s submission that there is more uniformity in lot sizes and consistency in lot frontages of 12m or greater in the western section of the neighbourhood. Conversely, east of Pewter Road, the smaller lots are more represented and there is a diversity of lot frontages, as well as smaller lots beside larger lots.

I agree with Mr. Romano that the City Zoning Study and resulting By-laws did not result in a prohibition of smaller lots in the overall area, it merely recognized that the character of eastern portion of the neighbourhood has evolved over time and the existing zoning no longer reflected this character.

In terms of the consent application, the panel must consider Section 51(24) of the *Planning Act* with particular regard to (c) whether the plan conforms to the official plan and adjacent plans of subdivision; and (f) the dimensions and shapes of the proposed lots. I find that the proposed consent meets the statutory requirements in the *Act* and that the proposal supports the intent of efficient use of land and energy by providing a modest form of intensification in an area well-served by transit and adjacent to a designated intensification area. I am also satisfied that a plan of subdivision is not required for the subject property.

I accept Mr. Romano`s opinion that the proposal contains lot configuration, lot size, site design, built form features and physical characteristics that exhibit complimentary and compatible features which will contribute positively to respect and reinforce the neighbourhood`s physical character. I agree that the proposed dwellings will have a height, mass and scale that fits well with the typology of nearby properties and will fit appropriately and proportionately to the proposed lots without the need for extraordinary treatment to accommodate same.

With respect to the issues raised by Urban Forestry, the TLAB recognizes and appreciates the importance of maintaining and enhancing the City's tree canopy. The facts in this matter are that one privately-owned tree is proposed to be removed since it is located within the building envelope of the existing building footprint. Urban Forestry has consented that that tree removal is permitted as of right by the City's Tree By-law. With respect to the remaining five trees, the City has expressed a specific concern with the potential removal of, or unacceptable injury to only two City-owned trees (Trees #1 and #3).

Urban Forestry was adamant that the removal of healthy City-owned trees is not desirable for the community and removal from the site would result in a loss of environmental and economic benefits to the community provided by these trees. Ms. Hignett opined that she does not consider the benefit of replacement trees as an incentive to, or mitigation of healthy tree(s) removal unless and until the necessity of the tree removal(s) has been established. She acknowledged that while the removal of trees with residential development/construction is not uncommon, the removal should be in keeping with relevant provincial legislation and policies in conjunction with municipal by-laws.

As indicated during her testimony, Ms. Hignett noted that the Appellant would be required to apply to the City for a permit to remove or injure a tree under the Municipal Act and Urban Forestry retains the discretion or ability to refuse a permit application regarding the two highlighted trees in the City's jurisdiction. I note that she conceded in her *viva voce* evidence that it was not a certainty that these trees would have to be removed. As well, and as noted by Ms. Stewart and acknowledged by Ms. Hignett, it is typical for Urban Forestry to work with an applicant's arborist to determine solutions that mitigate injury to trees and to retain the trees that Urban Forestry anticipated might require removal.

I am cognizant that the potential loss of any healthy mature tree is not supportive of the Natural Environmental policies of the Official Plan. However, I am also of the opinion that tree removal alone is not a determinant of the applications. In this case, the Appellant has submitted that no trees will be removed as a result of the proposed development, other than Tree #6. As per the Tree Protection Plan included in Mr. Romano's Witness Statement that illustrates tree protection measures, the proposal maintains the perimeter and boulevard landscaping and mature trees in the site design. Additionally, the Appellant requires no variance for front landscaping as there is no suggested loss in planting area.

The Official Plan recognizes that trees may be removed as a result of new development. However, in this panel's opinion, the possible outcome anticipated by Ms. Hignett that two trees 'may' or 'likely will' (her words) require injury or removal without the benefit of a review of a detailed tree protection plan is not sufficient reason to refuse the consent application. While I acknowledged that Urban Forestry did not have the opportunity to review such a plan in preparing their comments regarding this proposal, a Tree Protection Plan drawing was highlighted by Mr. Romano in his Witness Statement (Exhibit 2, p. 9) although not provided directly to Urban Forestry.

Nevertheless, there is a separate permitting process that will determine the ultimate disposition of this issue and Urban Forestry retains absolute discretion to refuse any permits.

With respect to the on-site constraints related to the provision of a private driveway at 106B Poyntz Avenue (Part 2 – conveyed lot), I am cognizant of the issues raised by the City's planning witness that in her opinion the proposed driveway may not be able to comply with the minimum setback requirements recommended by Transportation Services. However, I concur with Ms. Stewart that refinements can be made to the site plan to address Transportation Services' concerns and that these issues are not insurmountable. I accept Mr. Romano's opinion that the proposed driveway width achieves adequate and suitable on-site vehicular access and the intent of the Zoning By-law is maintained. Again, this would involve a separate implementation mechanism with the ultimate disposition resting with Transportation Services as part of a condition of consent approval.

In her testimony, Ms. Fusz raised the concern of precedent if this application is approved. In this regard, I believe, the evidence is clear. Given the Official Plan and Zoning By-law for the remainder of the neighbourhood are unchanged, I am of the opinion that future consent applications will be gradual and sensitive. I cannot agree that the lot frontage and area relief being sought will likely to have a destabilizing effect on the neighbourhood as the proposal achieves a lot frontage and area that is well represented. The coverage variance is minimal, and the proposed setbacks have been approved before in this area, the front door will address the street, the exterior side wall height variance maintains a two-storey dwelling. The height variance under By-law 7625 is the result of the grade of the street. No overall height variance is required under By-law 569-2013.

The Official Plan and Zoning By-law provide appropriate direction and criteria for the consideration of such consent proposals and any future applications would be considered on their own merits based on the specifics of the proposal and its context such as its size and location.

In light of the foregoing, having considered the decision of the COA, the applicable statutory tests and evidence, I find that that the consent and the associated minor variances, as listed below, together with the conditions, meet the criteria set out in Section 45(1) and Section 51(24) of the *Planning Act.* They are appropriate and desirable, minor in nature and in keeping with the general intent and purpose of the City Official Plan and Zoning By-laws.

In addition, I am satisfied that the applications are consistent with the 2014 Provincial Policy Statement and the 2017 Growth Plan and represent good planning, for the reasons reviewed.

DECISION AND ORDER

1. The appeal regarding the application for consent is allowed in part subject to the conditions set out in Attachment 1;
2. The minor variances to the Zoning By-laws set out in Attachment 1 are authorized, subject to the conditions set out in Attachment 1.
3. The earlier decision of the Committee of Adjustment is set aside

Attachments

X

D. Lombardi
Panel Chair, Toronto Local Appeal Body

Attachment 1

List of Requested Variances – 106 Poyntz Avenue

(Part 1 – Retained Lot - 106A Poyntz Avenue)

1. **Chapter 900.6.10(5), By-law No. 569-2013**
   The minimum side yard setback is 1.8m. The proposed west side yard setback is 0.59m.

2. **Chapter 900.6.10(5), By-law No. 569-2013** The minimum side yard setback is 1.8m. The proposed east side yard setback is 1.2m.

3. **Chapter 10.5.100.1(1), By-law No. 569-2013** The minimum required driveway width is 6m. The proposed driveway width is 3.51m and the width of the parking space behind the front main wall is 3.3m.

4. **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 0.3m of a building, must comply with the required minimum building setback is 1.8m. The proposed front porch and rear deck is setback from the west side lot line by 0.59m.

5. **Chapter 10.20.30.10.(1), By-law No. 569-2013** The required minimum lot area is 550m2. The proposed lot area is 255.8m2.

6. **Chapter 10.20.30.20.(1), By-law No. 569-2013** The required minimum lot frontage is 15m. The proposed lot frontage is 7.615m.

7. **Chapter 10.20.40.10.(2), By-law No. 569-2013** The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m. The proposed height of the side exterior main walls facing a side lot line is 8.47m.

8. **Chapter 10.20.30.40.(1), By-law No. 569-2013** The permitted maximum lot coverage is 30% of the lot area. The proposed lot coverage is 32% of the lot area.

9. **Chapter10.5.40.60.(1), By-law No. 569-2013** A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback by 2.5m if it is no closer to a side lot line than the required side yard setback. The proposed platform encroaches 1.22m into the required front yard setback and is setback from the west side lot line by 0.59m whereas the required setback is 1.8m.

10. **Chapter 10.5.40.60.(2), By-law No. 569-2013** A canopy, awning or similar structure above a platform may encroach into a required building setback to the

same extent as the platform it is covering. The proposed canopy above the platform is setback 0.59m from the west side lot line whereas the required setback is 1.8m.

11. **Chapter 10.5.40.60.(3), By-law No. 569-2013** Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6m. The proposed rear deck stairs are setback 0.59m from the west side lot line.

12. **Chapter 10.5.40.60.(7), By-law No. 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 proposed eaves project 0.305m and are 0.28m from the west side lot line.

13. **Section 13.2.3(b), By-law No. 7625** The minimum required side yard setback is 1.5m. The proposed west side yard setback is 0.59m.

14. **Section 13.2.3(b), By-law No. 7625** The minimum required side yard setback is 1.5m. The proposed east side yard setback is 1.2m.

15. **Section 13.2.6, By-law No. 7625** The maximum permitted building height is 8.8m. The proposed building height is 9.38m.

16. **Section 6(24)(d), By-law No. 7625** In the rear yard, unexcavated porches or decks attached to or detached from the main building shall not be located closer to the side lot lines than the minimum side yard setback for the main building. The proposed rear deck is setback 0.59m from the west side lot line, whereas the required side yard setback is 1.5m.

17. **Section 6(9)(f), By-law No. 7625** Porches and decks, either excavated or unexcavated, and canopies shall be permitted to project into the minimum front yard setback not more than 2.1m but no closer to the side lot line than the minimum side yard setback for the main building is 1.5m. The proposed front porch and canopy above projects 1.22m and is setback from the west side lot line by 0.59 m.

18. **Section 6(f)(c), By-law No. 7625** Exterior stairs shall be permitted to project into one minimum side yard setback only, not more than 1.6m, but no closer to than 0.6m from any side lot line. The rear deck stairs are setback from the west side lot line by 0.59m.

(Part 2 – Conveyed Lot - 106B Poyntz Avenue)

1. **Chapter 900.6.10(5), By-law No. 569-2013** The minimum side yard setback is 1.8m. The proposed west side yard setback is 1.2 m.

2. **Chapter 900.6.10(5), By-law No. 569-2013** The minimum side yard setback is 1.8m. The proposed east side yard setback is 0.295m.

3. **Chapter 10.5.100.1(1), By-law No. 569-2013** The minimum required driveway width is 6m. The proposed driveway width is 4.39m and the width of the parking space behind the front main wall is 3.3m.

4. **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 0.3m of a building, must comply with the required minimum building setback is 1.8m. The proposed front porch and rear deck is setback from the west side lot line by 1.2m.

5. **Chapter 10.20.30.10.(1), By-law No. 569-2013** The required minimum lot area is 550m2. The proposed lot area is 255.7m2.

6. **Chapter 10.20.30.20.(1), By-law No. 569-2013** The required minimum lot frontage is 15m. The proposed lot frontage is 7.615m.

7. **Chapter 10.20.30.40.(1), By-law No. 569-2013** The permitted maximum lot coverage is 30% of the lot area. The proposed lot coverage is 32% of the lot area.

8. **Chapter 10.20.40.10.(2), By-law No. 569-2013** The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m. The proposed height of the side exterior main walls facing a side lot line is 8.13m.

9. **Chapter 10.5.80.40.(3), By-law No. 569-2013** Vehicle access to a parking space on a corner lot must be from a flanking street that is not a major street. The proposed vehicle access to a parking space is from Poyntz Avenue and not from the flanking street (Beaman Road).

10. **Chapter10.5.40.60.(1), By-law No. 569-2013** A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback by 2.5m if it is no closer to a side lot line than the required side yard setback. The proposed platform encroaches 1.22m into the required front yard setback and is setback from the west side lot line by 1.2m.

11. **Chapter 10.5.40.60.(2), By-law No. 569-2013** A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering. The proposed canopy above the platform is setback 1.2m from the west side lot line.

12. **Chapter 10.5.40.60.(7), By-law No. 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 proposed eaves project 0.305m and are 0.29m from the east side lot line.

13. **Section 13.2.3(b), By-law No. 7625** The minimum required side yard setback is 1.5m. The proposed west side yard setback is 1.2m.

14. **Section 13.2.3(b), By-law No. 7625** The minimum required side yard setback is 1.5m. The proposed east side yard setback is 0.295m.

15. **Section 13.2.6, By-law No. 7625** The maximum permitted building height is 8.8m. The proposed building height is 9.69m.

16. **Section 6A(2)a, By-law No. 7625** The minimum required number of parking spaces is 2. The proposed number of parking spaces is 1.

17. **Section 6(24)(d), By-law No. 7625** In the rear yard, unexcavated porches or decks attached to or detached from the main building shall not be located closer to the side lot lines than the minimum side yard setback for the main building. The proposed rear deck is setback 1.2m from the west side lot line.

18. **Section 6(9)(f), By-law No. 7625** Porches and decks, either excavated or unexcavated, and canopies shall be permitted to project into the minimum front yard setback not more than 2.1m but no closer to the side lot line than the minimum side yard setback for the main building is 1.5m. The proposed front porch and canopy above projects 1.22m and is setback from the west side lot line by 1.2 m.

CONDITIONS OF MINOR VARIANCE APPROVAL

1. The applicant shall build the proposed dwellings substantially in accordance with the Site Plan and Elevations for 106 Poyntz Avenue, prepared by Rubinoff Design Group and dated June 2017 (Part 1) and April 2018 (Part 2), attached as **Attachment 3**.

   (a) In particular, the materials (combination of brick and stone) and fenestration for the corner lot (Part 2) shall be substantially as shown on the Front and West Elevation drawings dated April 2018, attached as **Attachment 2.**

2. The applicant shall be required to comply with all of the Engineering and Construction Services Conditions and all of the Engineering and Construction Services Advisory Comments outlined in the Staff Memorandum Report from Alick Wong, Acting Manager, Development Engineering – North York, dated August 11, 2017 (Appendix “B”), except that the driveway widths may exceed 3.3 m.

CONDITIONS OF CONSENT APPROVAL

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.

2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.

3. Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City and Privately-owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services, as per City of Toronto Municipal Code, Chapter 813.

4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of the General Manager, Parks, Forestry and Recreation.

5. Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, Technical Services.

6. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.

7. The applicant shall be required to comply with all of the Heritage Preservation Services Conditions outlined in the Staff Report from Mary L. MacDonald, Senior Manager, Heritage Preservation Services, dated July 27, 2017 (Appendix “A”). More specifically the following conditions:

    a. The applicant shall retain a consultant archaeologist, licensed by the Minister of Tourism, Culture and Sport, under the provisions of the Ontario Heritage Act (R.S.O. 1990 as amended) to carry out a Stage 1-2 archaeological assessment of the entire development property and following through on recommendations to mitigation, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. The assessment is to be completed in accordance with the 2011 Standards and Guidelines for Consulting Archaeologists, Ministry of Tourism, Culture and Sport.

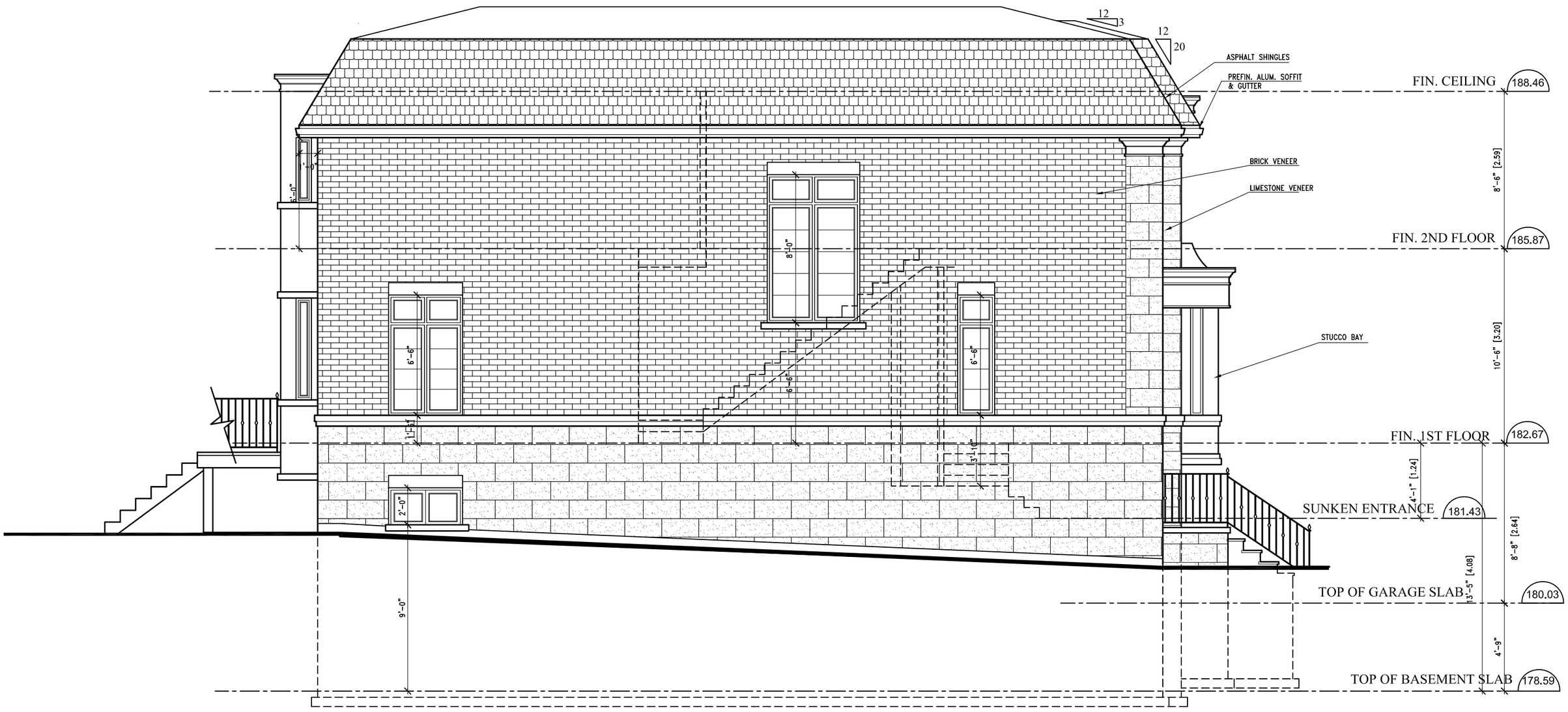
    b. The consultant archaeologist shall submit a copy of the relevant assessment report(s) to the Heritage Preservation Services Unit in both hard copy format and as an Acrobat PDF File on CD.

    c. No demolition, construction, grading or other soil disturbances shall take place on the subject property prior to the City’s Planning Division (Heritage Preservation Services Unit) and the Ministry of

Tourism, Culture and Sport (Heritage Operations Unit) confirming in writing that all archaeological licensing and technical review requirements have been satisfied.

8. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Attachment 2



Rubinoff Design Group

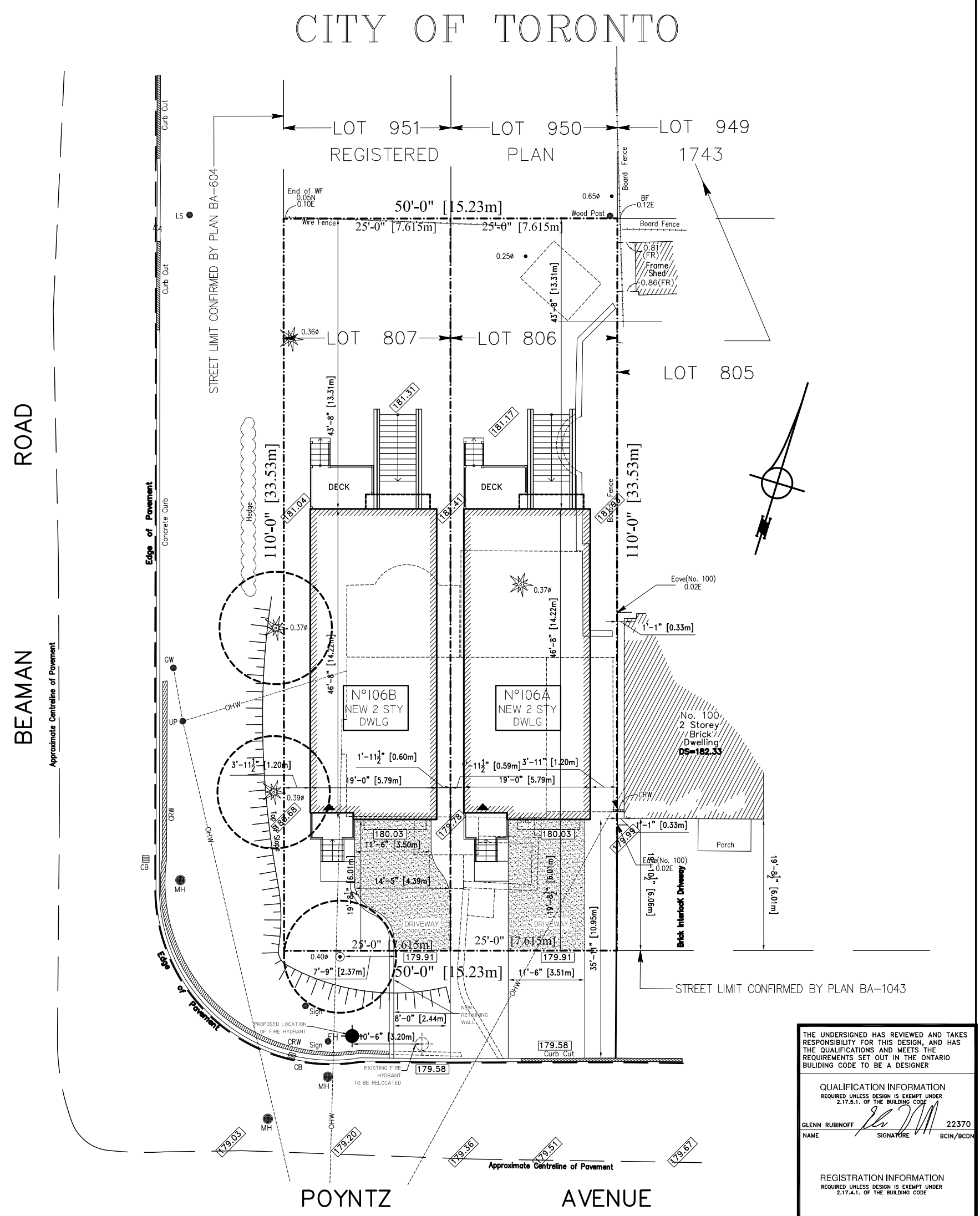
697 Mount Pleasant Road
Toronto, Ontario M4S 2N4
TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com

SCALE : 3/16" = 1'-0" APRIL 2018

WEST ELEVATION

106B POYNTZ AVE

Attachment 3



THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THIS DESIGN, AND HAS THE QUALIFICATIONS AND MEETS THE REQUIREMENTS SET OUT IN THE ONTARIO BULIDING CODE TO BE A DESIGNER

QUALIFICATION INFORMATION
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.5.1. OF THE BUILDING CODE

NAME	SIGNATURE	BCIN/BCDN
GLENN RUBINOFF		22370

REGISTRATION INFORMATION
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.4.1. OF THE BUILDING CODE

FIRM NAME	BCIN/BCDN
RUBINOFF DESIGN GROUP	27293

106 A POYNTZ AVE

SITE AREA: 2753.4 SQ.FT. (255.8 SQ.M.)
COVERAGE: 880 SQ.FT. (81.75 SQ.M.) (31.9%)
GFA: 1760 SQ.FT. (163.5 SQ.M.)

HARD SURFACE CALCULATIONS:

TOTAL FRONT YARD AREA: 504.3 FT^2 (46.9M^2)
DRIVEWAY AREA: 224.8 FT^2 (20.9M^2)
TOTAL FRONT YARD EXCLUD. DRIVEWAY: 279.5FT^2 (26M^2)
PORCH & STAIR WALKWAY AREA: 53.3 FT^2 (4.9M^2)

FRONT YARD HARD SURFACE AREA: 224.8 FT^2 (20.9M^2) 44.6%
FRONT YARD SOFT LANDSCAPING AREA: 226.2 FT^2 (21.0M^2) 80.9%

106 B POYNTZ AVE

SITE AREA: 2752.3 SQ.FT. (255.7 SQ.M.)
COVERAGE: 880 SQ.FT. (81.75 SQ.M.) (31.9%)
GFA: 1760 SQ.FT. (163.5 SQ.M.)

HARD SURFACE CALCULATIONS:

TOTAL FRONT YARD AREA: 502.4 FT^2 (46.6M^2)
DRIVEWAY AREA: 227.3 FT^2 (21.1M^2)
TOTAL FRONT YARD EXCLUD. DRIVEWAY: 275.1FT^2 (25.6M^2)
PORCH & STAIR WALKWAY AREA: 53.3 FT^2 (4.9M^2)

FRONT YARD HARD SURFACE AREA: 227.3 FT^2 (21.1M^2) 45.2%
FRONT YARD SOFT LANDSCAPING AREA: 221.8 FT^2 (20.6M^2) 80.6%

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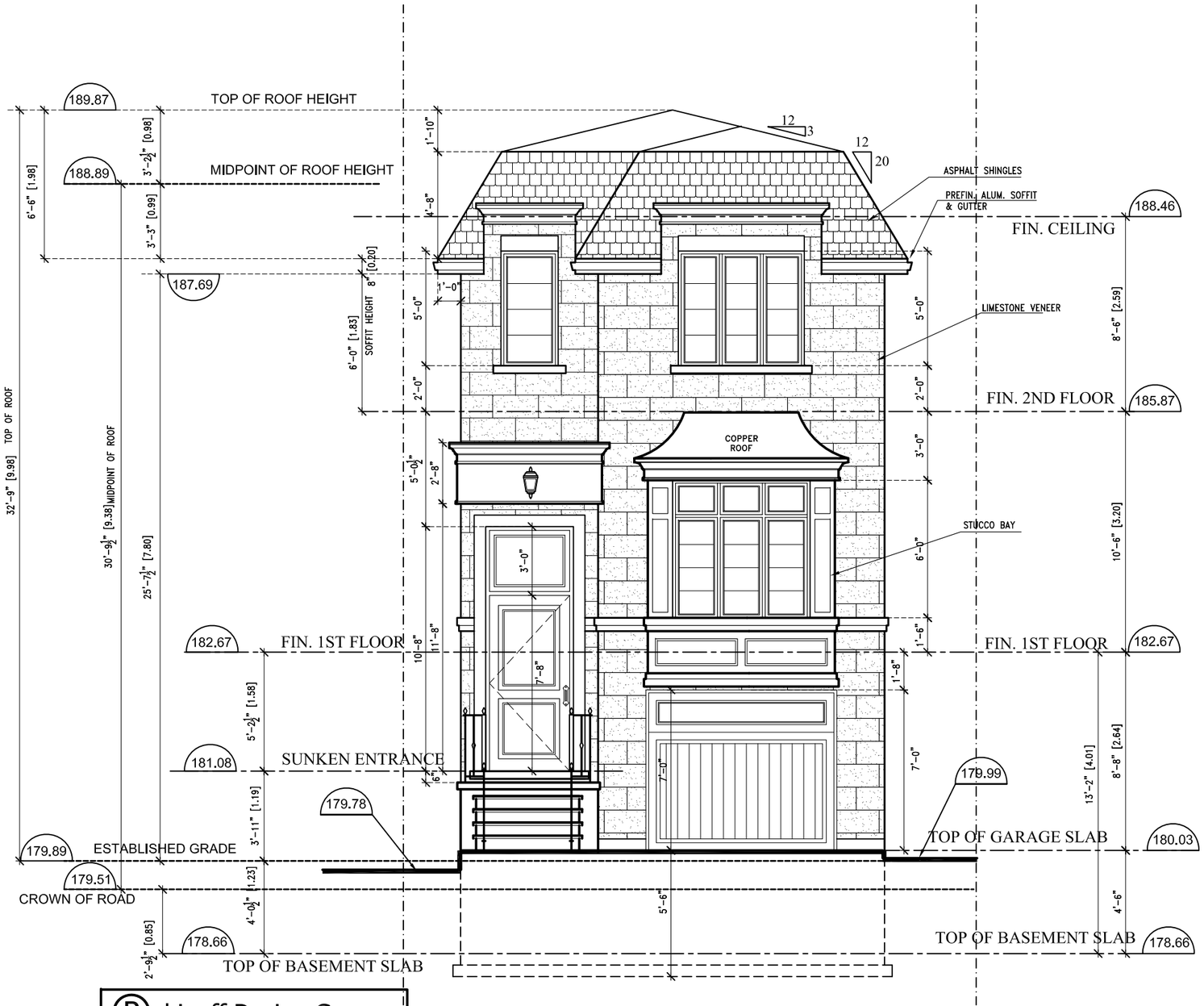
PROJECT DESIGNER: G.R.	DATE: JUNE 2017	DRAWING NO. A
DRAWN BY: S.B.	SCALE: 1:100	



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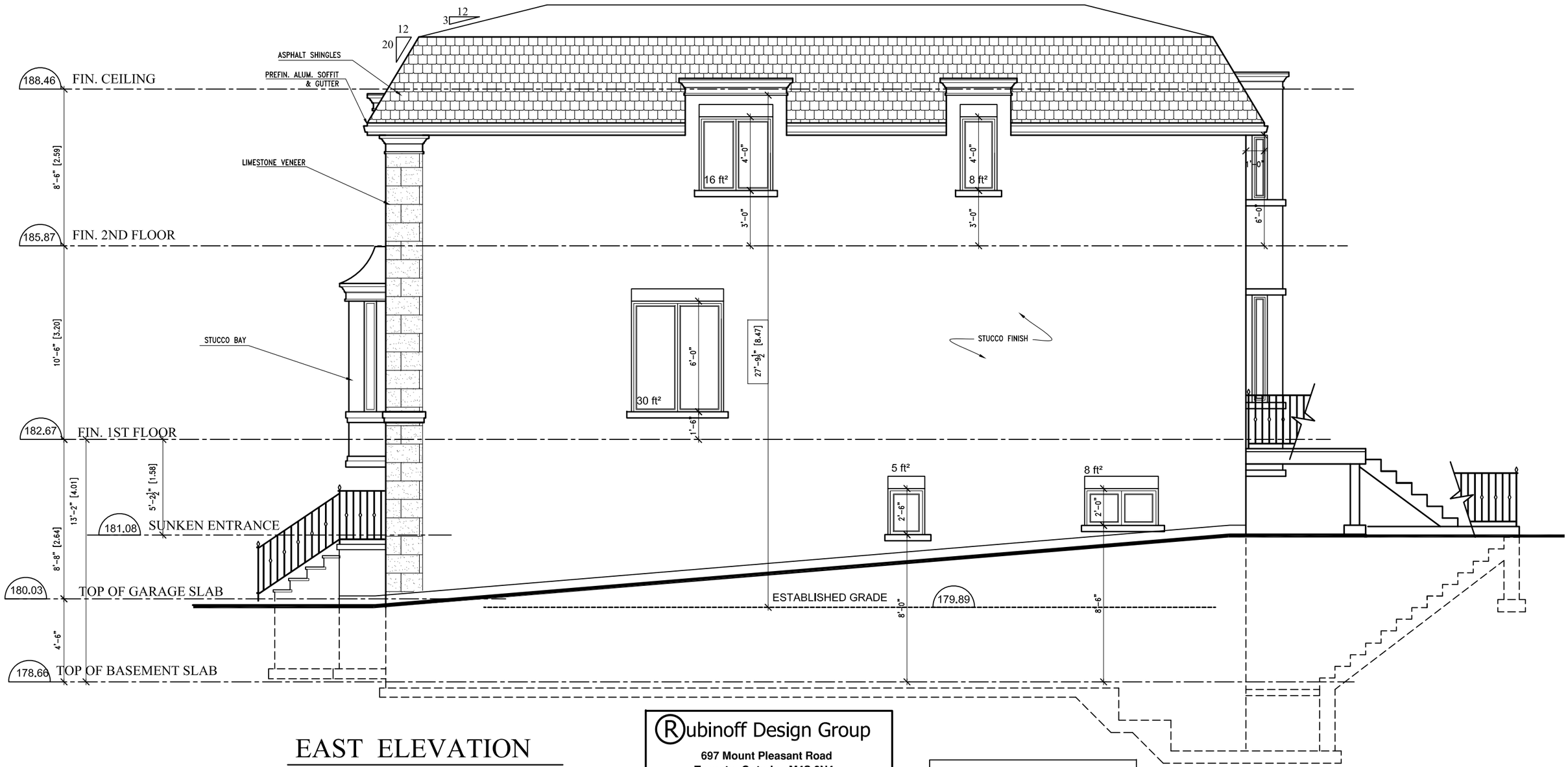
SCALE : 3/16" = 1'-0" JUNE 2017

SOUTH ELEVATION

106A POYNTZ AVE



EAST ELEVATION

106A POYNTZ AVE

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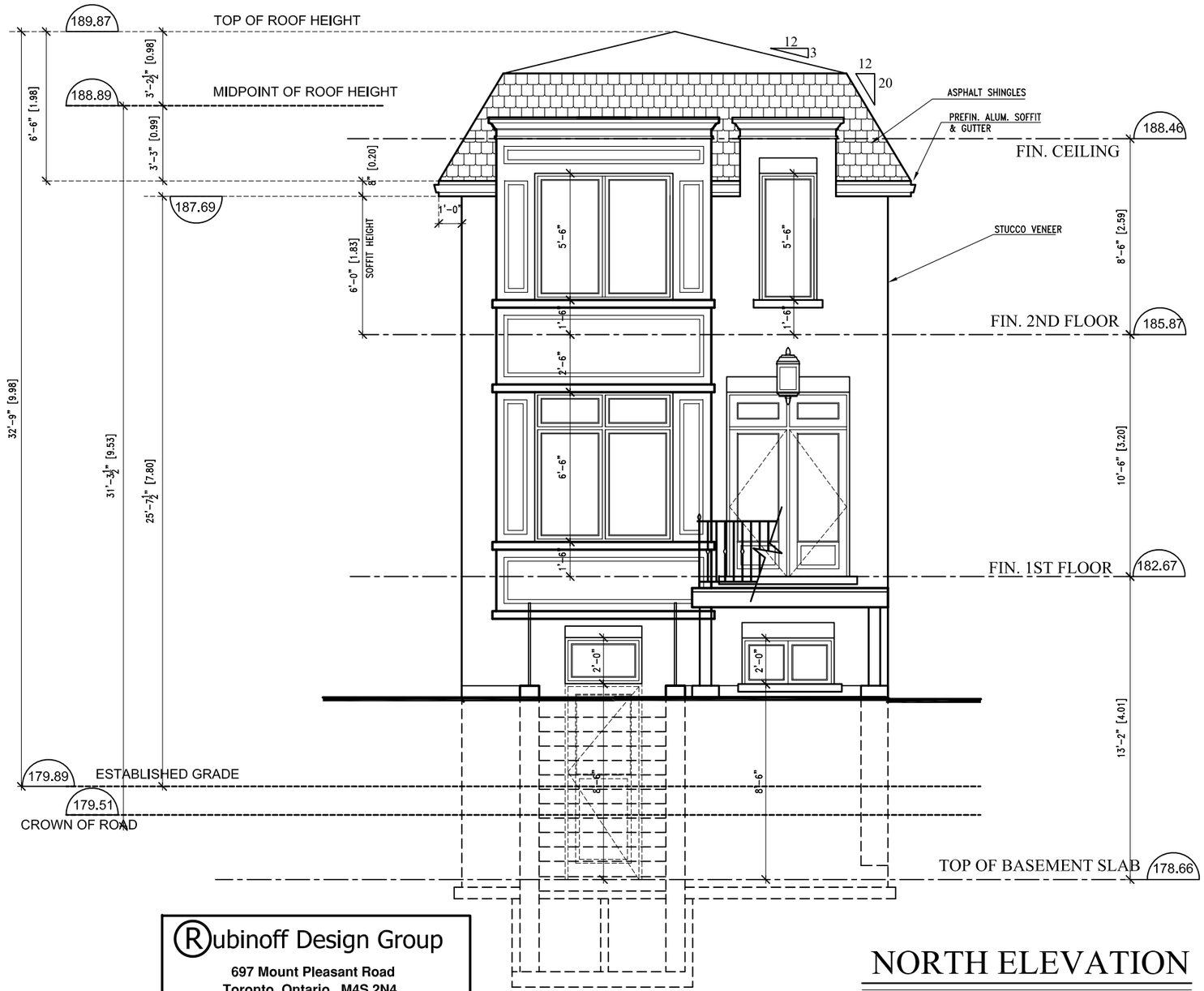
WALL AREA = 1189 ft²
7% ALLOWED = 83.23 ft²
PROPOSED WINDOW AREA = 67 ft²



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NORTH ELEVATION

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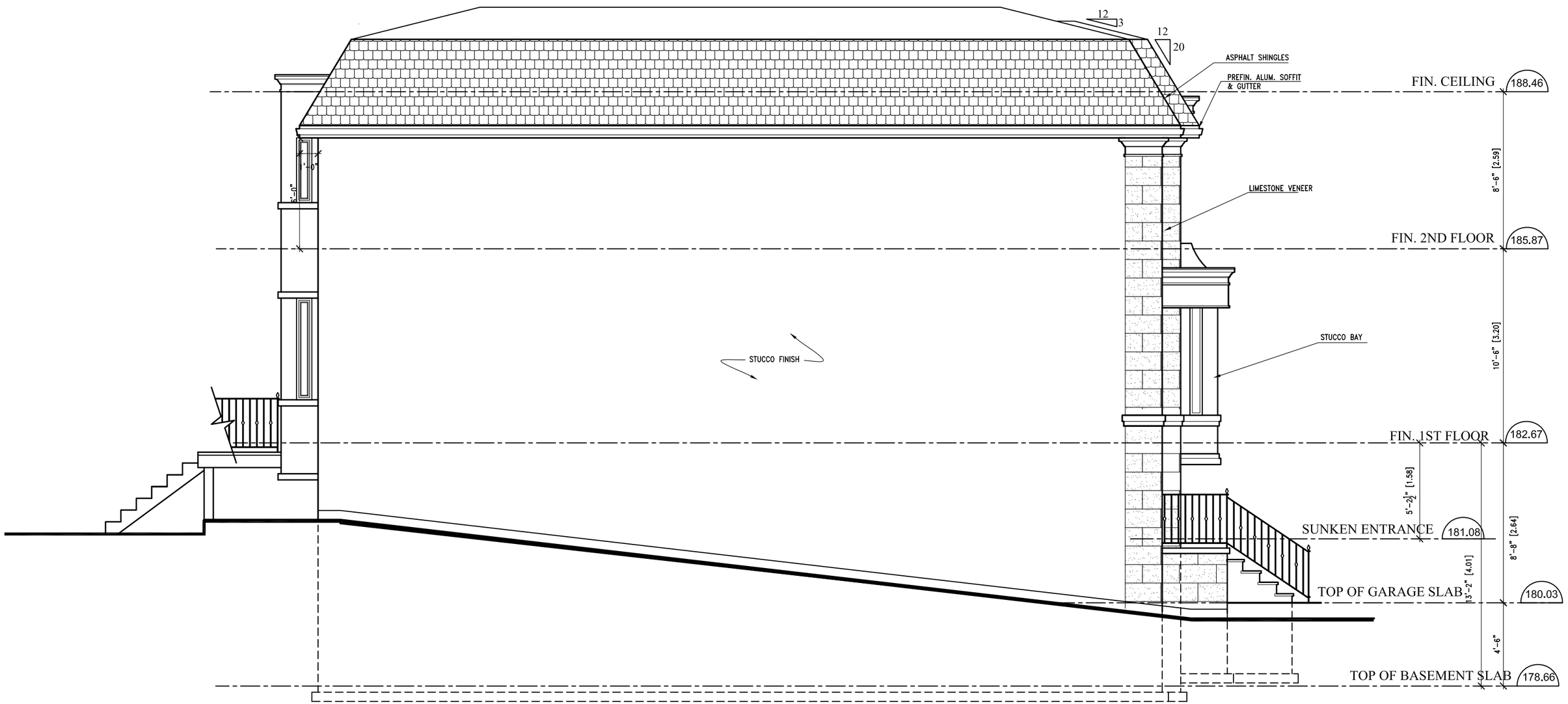

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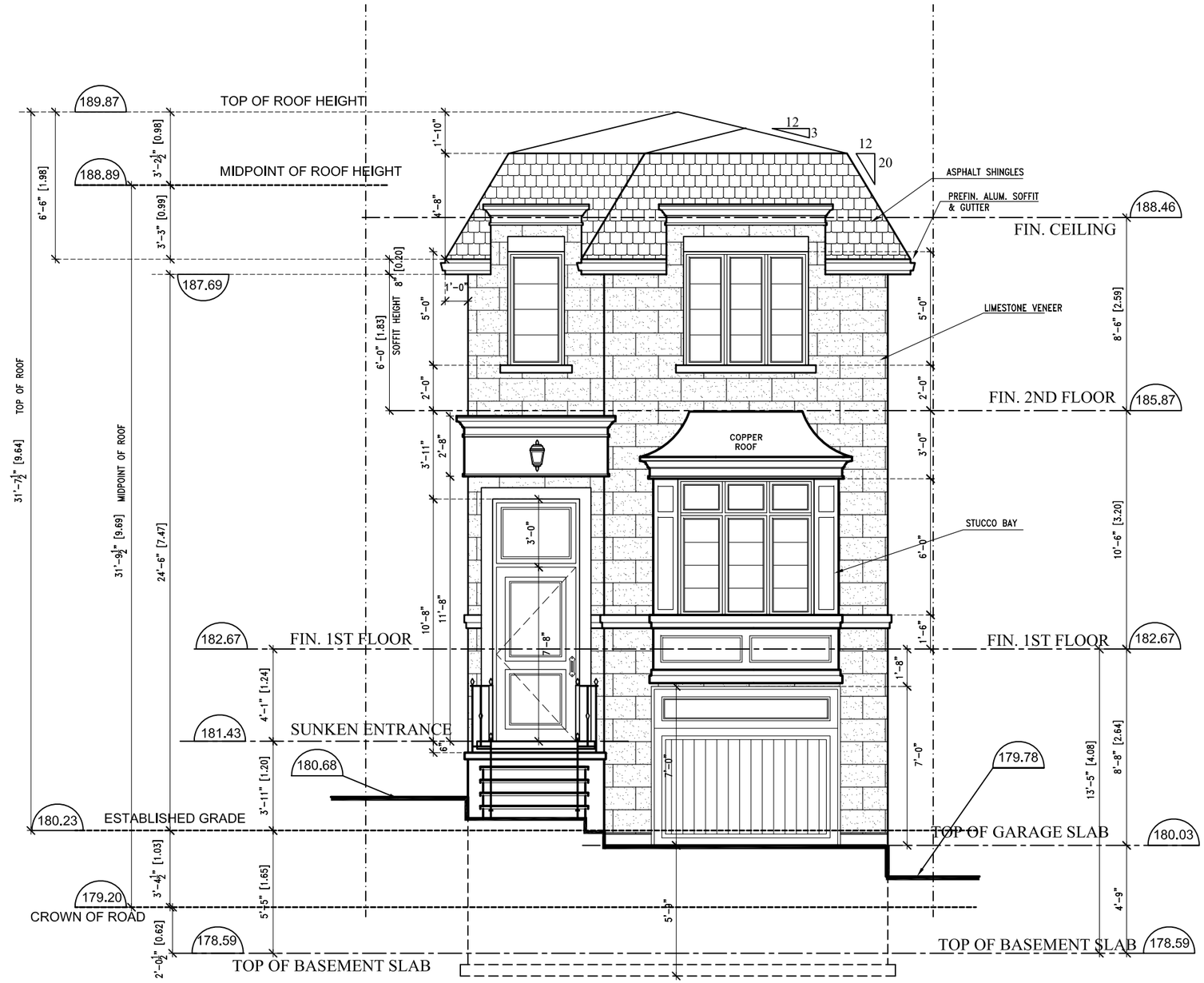
WEST ELEVATION

106A POYNTZ AVE



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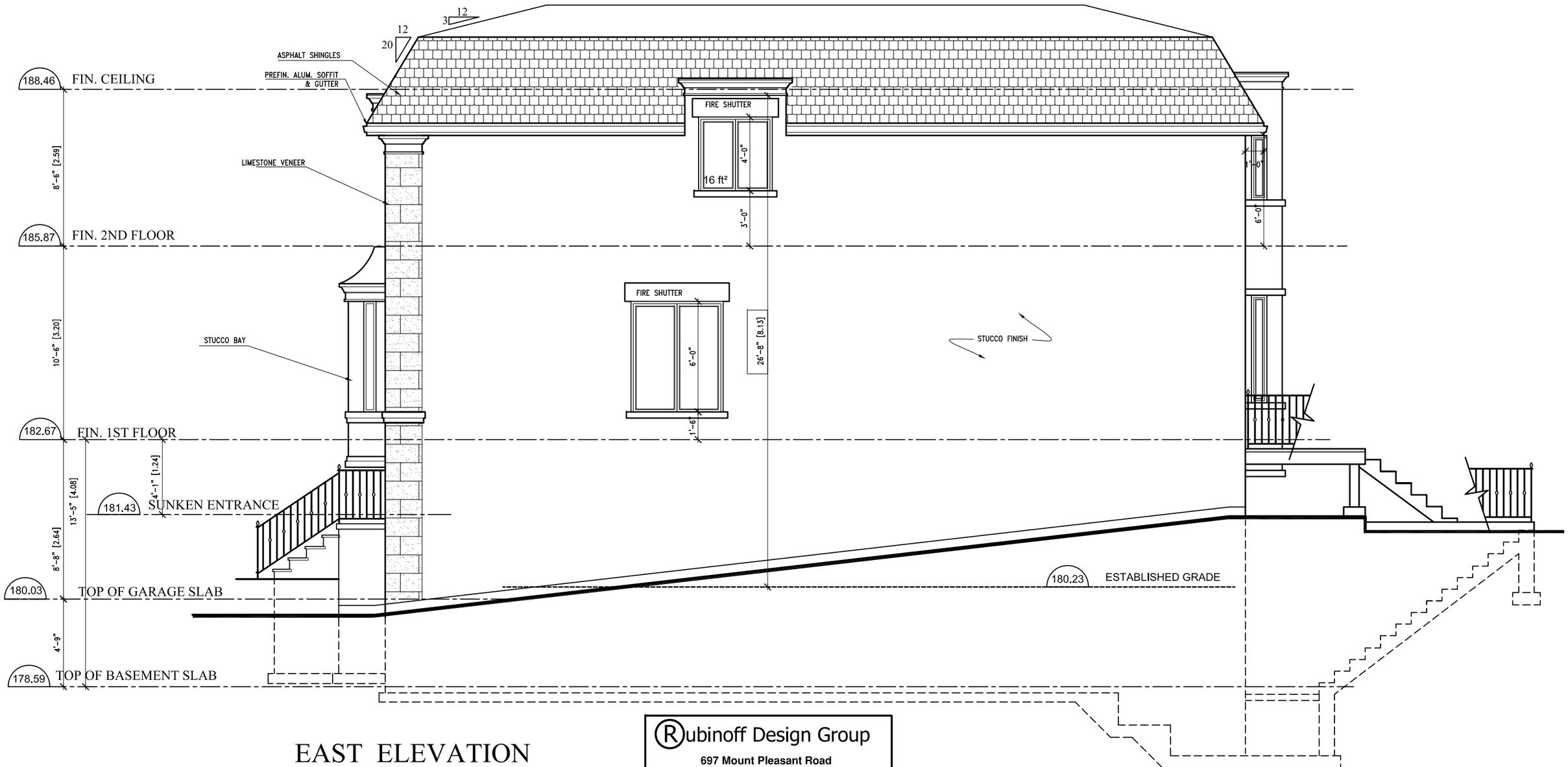
SOUTH ELEVATION

106B POYNTZ AVE



EAST ELEVATION

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NORTH ELEVATION

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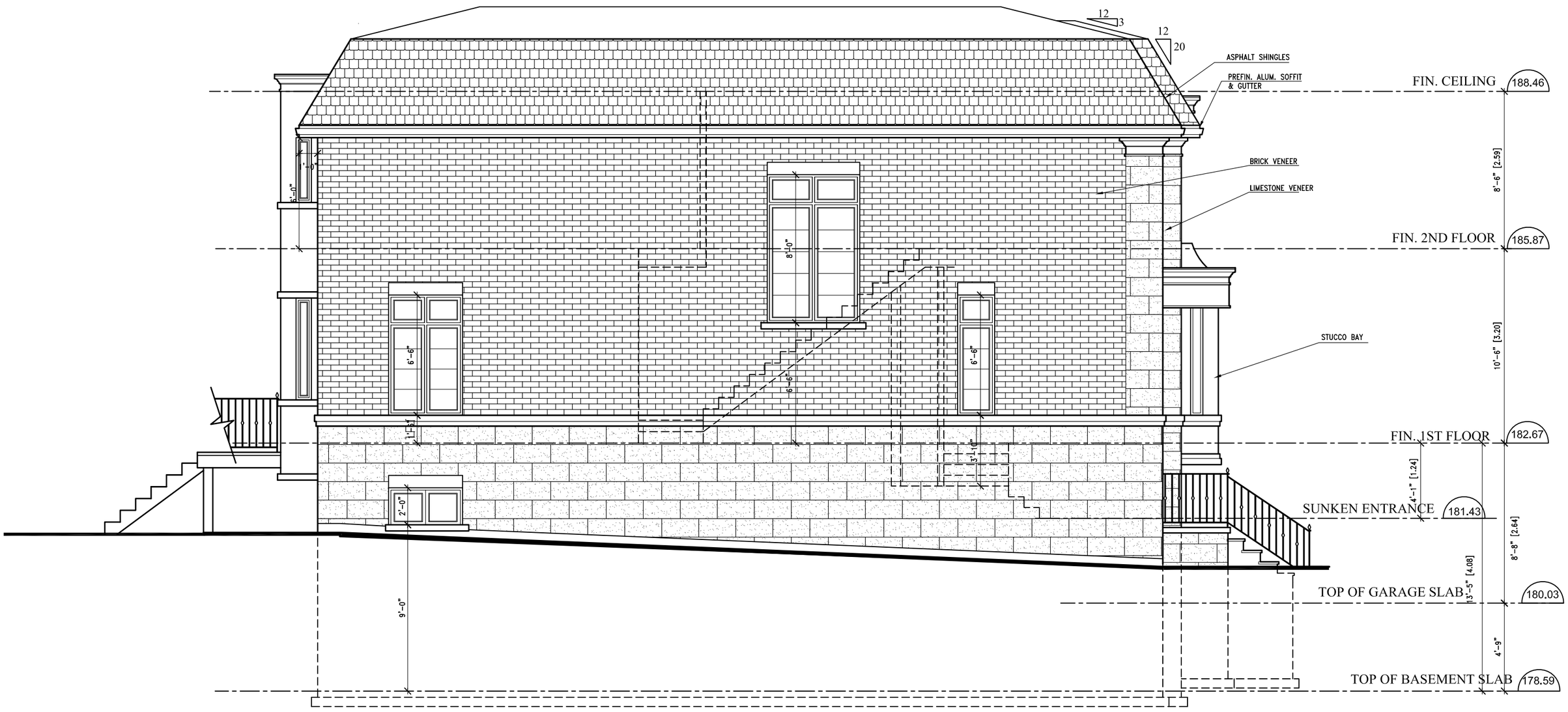

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