

**Toronto Local Appeal Body** 

40 Orchard View Blvd, Suite 211 Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website: www.toronto.ca/tlab

### **DECISION AND ORDER**

**Decision Issue Date** Tuesday, May 28, 2019

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

Appellant(s): JASON FONG

Applicant: YUJIA HU

Property Address/Description: 25 HILTZ AVE

Committee of Adjustment Case File Number: 18 115009 STE 30 MV

TLAB Case File Number: 18 202278 S45 30 TLAB

Hearing date: November, 20, 2018 and Thursday, May 09, 2019

**DECISION DELIVERED BY S. GOPIKRISHNA** 

#### **APPEARANCES**

Name Role Representative

Yujia Hu Applicant

Man Kuen Xie Owner

Jason Fong Appellant/Primary Owner Russell Cheeseman

Amy Emm Expert Witness

#### INTRODUCTION AND BACKGROUND

Jason Fong is the owner of 25 Hiltz Ave., located in the Toronto-Danforth ward of the City of Toronto (City). Mr. Fong applied to the Committee of Adjustment (COA) to alter the existing two-storey detached dwelling, by constructing a third storey addition, with two rear decks at the third and ground floor levels respectively. The COA heard the application on July11, 2018, and refused the application in its entirety. On July 27, 2018,

Mr. Fong appealed the COA Decision to the Toronto Local Appeal Body (TLAB), which scheduled a hearing on November 20, 2018.

#### MATTERS IN ISSUE

The requested variances, and the corresponding By-law requirements, under the City wide By-law 569-2013, and former Toronto By-law 438-86 are provided below

#### 1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The permitted height of all front exterior main walls is 7.5 metres (10m – 2.5m). The proposed height of the front exterior main walls is approximately 9.45 metres.

#### 2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The permitted maximum height of all rear exterior walls is 7.5 metres (10m - 2.5 m). The proposed height of the rear exterior main walls is approximately 9.22 metres.

#### 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot: 119.41 square metres (199.01 x 0.6). The proposed floor space index is 0.81 time the area of the lot: 161.78 square metres ( $161.78 \text{ m}^2/199.01 \text{ m}^2$ ).

#### 4. Chapter 10.5.50.10.(3)(A), By-law 569-2013

A lot with a residential building, other than an apartment building, must have a minimum of 50 percent of the rear yard for soft landscaping: 49.34 square metres ( $98.69 \times 0.5$ ), if the lot frontage is greater than 6.0 metres. The proposed rear yard landscaping area is 37.27 percent; 36.77 square metres (36.77m<sup>2</sup>/98.67m<sup>2</sup>)

#### 5. Section 6(3)Part II 3.B(1), By-law 438-86

The by-law requires a detached house in a (R2, R3, R4, R4A) district to have a minimum side lot line setback of 0.45 metres for a depth not exceeding 17.0 metres where the side walls contain no openings. The proposed north side lot line setback is 0.19 metres.

#### 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').

#### 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**

Mr. Jason Fong represented himself at the Hearing held on November 20, 2018. One of Mr. Fong's family members was present to provide interpretation where necessary; however, it is important to note that there were no Parties, or Participants involved in the hearing. After being sworn, Mr. Fong explained to me that he wanted to enlarge the existing house to accommodate his extended family. He said that in response to comments received from his neighbours at the time of the COA meeting, he was willing to make changes to the design of his house, and thereby allay the concerns of the neighbours.

By way of editorial comment, his desire "to change the plans" caught my attention, because the magnitude of the changes could trigger the need for new notice, under Section 45.18.1.1 of the Planning Act. However, Mr. Fong could not explain the specific changes, or if new notice was necessary; in response to a question about notice, he said that he may to have consult a planner to come to a decision. I therefore decided, with an abundance of caution, to adjourn the hearing *sine die*, and encouraged Mr. Fong to follow through on his plans to retain a planner, prior to contacting the TLAB to determine when the hearing could be continued.

In March 2019, the TLAB assigned a continuation date of May 9, 2019, to hear the Appeal respecting 25 Hiltz Ave. At the Hearing held on May 9, 2019, Mr. Fong was represented by Mr. Russell Cheeseman, lawyer, and Ms. Amy Emm, a land use planner.

Mr. Cheeseman explained that two of the variances originally requested by the Appellant under By-Law 438-86 had become redundant, because of changes to the Plans and Elevations. He recited the remaining variances (four under Section 569-2013, and one under By-law 438-86) and stated that one of the requested variances, respecting soft landscaping, had been altered. Mr. Cheeseman then requested that the need for new notice be waived under Section 45.18.1.1 because the proposed change increased the soft landscaping, bringing it closer to what was required under the By-law, compared to the percentage of landscaping before the change to the plans. I agreed with Mr. Cheeseman's reasoning, and waived the requirement for new notice.

Ms. Emm was then qualified as an Expert Witness in the area of land use planning. She briefly stated the highlights and history of the Appeal, before discussing the compatibility between the proposal and higher level Provincial Policies. Ms. Emm opined that the proposed development was consistent with the Provincial Policy Statement (2014), because the proposal would promote the continuation of the low density residential, land use pattern seen within the neighbourhood., and will result in housing that will facilitate multigenerational living arrangements.

She then discussed how the proposal was compatible with the Growth Plan for the Greater Golden Horseshoe (2017), because the proposal represents gentle intensification of an individual site, through the addition of a third floor to the existing single detached dwelling, to better accommodate the current owners' individual needs.

Ms. Emm next discussed how the proposal was consistent with the City's Official Policy (OP). She stated that her study area was bound by Coxwell Avenue to the east, Eastern Avenue to the south, the CN Railway line to the north, and Carlaw Aveue on the west. She said that the prevailing building type within this neighbourhood consisted of semi-detached dwellings, as well as single detached dwellings, with a sprinkling of low rise apartment buildings. She asserted that the proposed third storey addition would be compatible with the existing built form in the area, and consistent with the general redevelopment trend in the neighbourhood.

Ms. Emm first discussed how the proposal related to the Healthy Neighbourhoods Policy, as discussed in Section 2.3.1 of the OP. She said that the OP advised that Neighbourhoods are not frozen in time, and directed that new development exist harmoniously with what already exists in the neighbourhood. There is an expectation that with aging housing stock, some change will occur over time through enhancements, additions and infill housing on individual sites throughout a neighbourhood. She claimed that the proposed development will contribute to the renewal of housing stock within the South Riverdale Neighbourhood

She next discussed the Built Form Policies and said that the Subject Property is situated in a "unique section of Hiltz Avenue", which consisted of 21, 23, and 25 Hiltz Avenue, all of which are single-detached dwellings, along with two low rise residential apartment buildings with the municipal addresses of 17 and 19 Hiltz Avenue.

Ms. Emm pointed out that the height of the two-storey dwelling at 25 Hiltz Ave. is currently measured at 8.7 metres to the top of roof. The proposed addition will have a flat roof condition, with an overall increase in height of 0.9 m; in her opinion, this constituted a "squaring of the roofline". She asserted that this marginal increase will not result in a negative impact on light, or privacy, beyond what is created by the current dwelling design..

Lastly, she discussed Policies 4.1.5 and 4.1.8 of the OP, which emphasize that neighbourhoods are intended to be physically stable areas, but not static. The proposed three-storey, single detached residential dwelling is consistent with the neighbourhood, because it respects the size, configuration, and pattern of the lots and the streetscape. The proposed addition will maintain all of the existing setbacks on the lot, and will have a massing and scale typical of the Study area.

She emphasized that the soft landscaping in the rear yard will be increased, resulting in an improved back-yard, and added that this would result in a soft landscaping situation consistent with other backyards in the neighbourhood. She also demonstrated similar renovations had been successfully carried out within the delineated study area, notably at 60 Hiltz Avenue, 66, 75 & 85 Alton, 5 & 10 Greenwood.

Based on this discussion, Ms. Emm concluded that the proposal would maintain the intention and purpose of the Official Plan.

She then discussed how the proposal was consistent with the Zoning By-Laws governing the property.

Ms. Emm said that the Subject Property was zoned "R2 Z0.6 H 10.0" under the former City of Toronto By-Law 438-86, and RD0.6, under the new Citywide By-Law 569-2013. She stated that under By-Law 438-86, semi-detached and detached dwellings are permitted as of right, and that the By-Law allows subject sites with a minimum lot frontage of 6.0 metres, a minimum lot area of 180 square metres, and a maximum density of 0.6 FSI., and a maximum height of 10 metres. No lot area requirement is provided. She followed the above description by demonstrating how individual variances, or related groups of variances, satisfied the specified the corresponding performance standards.

Referring specifically to Variances 1 and 2 ( as recited in the Matters Section of this Decision), she said that the intent of the maximum permitted building height of front and rear exterior main walls, was to regulate the overall allowable height of the building. Due to the concerns raised by neighbouring residents, the owner/appellant had revised the application to reduce the overall height of the building by 11.9% (0.38 of a metre), thereby reducing the proposed height of the front, and rear exterior main wall heights. The revised building height of the detached dwelling is proposed to be 9.62 metres, and is therefore within the allowable 10 m height for this area. Ms. Emm pointed out that the proposed height of the front and rear exterior main walls will be 9.45 metres and 9.22 metres respectively, whereas the By-law permits a maximum height of exterior main walls to be 7.5 metres. This existing condition exceeds the allowable maximum height of the exterior main wall by 1.01 metres, while the proposed building height is to increase by only 0.92 of a metre.

Ms. Emm said that while shadow studies are not required for buildings with the proposed height, the Appellants had nevertheless completed a shadow study, utilizing the City's 3D massing open data. The study demonstrated that the difference between the shadows created by the existing second storey detached dwelling, and the

proposed third storey addition, is minimal, and poses no further impact than what exists, onto the houses behind the Subject property at 18 and 20 Greenwood.

Ms. Emm then alluded to a separate analysis of approved variance applications within 500 metres of the Subject site. Of a total of 128 variance applications, 33 had a variance requesting relief from standards relating to permitted height, inclusive of categories, such as maximum permitted building height, number of storeys, or maximum exterior main wall height. She said that of 33 such applications, 26 had been approved by the COA. Ms. Emm focused on some examples approved by the COA in the vicinity of the subject site, such as 60 Hiltz, 66, 75 & 85 Alton, and 34 & 76 Hastings, with height increases ranging from 1.21 metres to 2.7 metres over the By-law requirement. She concluded that the requested height of 2.31 metres over the By-law requirement is within the identified range of relief seen in nearby properties, and that the requested height variances satisfied the performance standard for increased height.

She then discussed Variance 3, the variance respecting FSI. The intent of the maximum permitted floor space index (FSI) is to minimize the visual impact of new building/development on the existing streetscape, and ensure that new development is compatible with the surrounding residential neighbourhood. The intent is also to regulate the appropriateness of the size, scale and massing of a dwelling, and ensure that an adequate amount of outdoor amenity area remains uncovered by buildings on a given lot. The increase in permitted FSI is numerically minor, and will not result in a visible change in size and scale of the three-storey dwelling. She also said that the increase in FSI will not result in a reduction of amount of outdoor amenity area, and that the front and rear yard setbacks were being maintained, such that they would be consistent with the existing setbacks of both 23 and 27 Hiltz Avenue.

According to Ms. Emm, 35 of the 128 variances applications in the study area sought relief for maximum floor space index, of which 28 were approved. The approved FSI variances ranged from of 0.03 to 0.54 times over the permitted maximum FSI. In this case, the increase of 0.21 times the lot area is in line with what has been approved, and results in 41.79 square metres of additional space. Based on this, Ms. Emm concluded that the variance upheld the intent and purpose of By-Law 569-2013.

Ms. Emm then addressed the variance respecting landscaping. She pointed out that the intentions of the minimum rear yard soft landscaping, and landscaped open space requirements, are to ensure the availability of outdoor amenity space, and adequate permeable surface and drainage. She said that the minimum rear yard soft landscaping requirement as per the City Wide By-law is 50%; whereas the former Toronto By-law required an overall landscaped open space requirement of 30% of the total lot area, and noted that the proposed minimum rear yard soft landscaping at the Subject Site will be 37.27% (36.77sq.m), which translates into 55.45 sq. m. of proposed landscaped open area. She emphasized that the revised Zoning Notice dated March 21, 2019 removed the Landscape Open Space Variance to the former Toronto By-law, and that the requested variance reduces the landscaped open space requirement by a mere 4.26 sq.m., which will not impact the function of the landscaping on the lot ,nor result in visual

inconsistencies. She referred again to the 128 variances sought in the 500 metre radius of the subject site, and said that 18 sought relief of a soft landscaping or an open landscaped space requirement. Of the 18, only 6 sought relief from a rear yard minimum soft landscaping requirement, all of which were approved by the COA

Based on this discussion, Ms. Emm stated that the variance respecting soft landscaping upheld the intent and purpose of Zoning By-Law 569-2013.

Lastly, she spoke to the By-Law respecting the side yard setbacks under By-Law 438-86. She said that the applicant proposed to maintain the existing north side yard setback of 0.19 metres with the existing two glazed openings, and will not be constructing any new glazed opening on the third storey addition. She noted that the present setback is to the north lot line, which is currently along the neighbour's driveway access, ensuring that there is an appropriate separation distance between the two dwelling structures. Based on this, Ms. Emm concluded that the intent and purpose of By –Law 438-86 was being upheld by the requested variances.

Based on the above-referenced discussion, correlating the variances to performances standards and comparisons to what had been granted by the COA in the study area, Ms. Emm concluded that all the variances upheld the purpose and intent of By-Laws 569-2013, and 438-86.

Ms. Emm next discussed how the proposal satisfied the test of "minor". She noted that the word "minor" is not defined, is not a mathematical, or percentage-based calculation. The expression "minor" addresses the issue of adverse impact, upon any adjoining property or other land use. In this case, the requested variances are minor numerically, as well as in impact, and are consistent with surrounding approved variances of the same nature. She described the 5 feet (1.5 m) tall privacy screens that would be erected on the rear yard decks, and said that the screens on the decks, would prevent the proposal from having any adverse impacts on the neighbouring houses.

Based on this discussion, she concluded that the variances satisfy the test of minor.

Lastly, Ms. Emm spoke to the test of the variances being considered desirable and appropriate. She said that for a variance to be considered desirable, it should be in the public interest, as well as relate to site specific conditions. From the site specific perspective, the proposed variances will allow for the construction of a renovated detached dwelling, that will resemble other new builds in the neighbourhood. From a public interest perspective, the proposed development will contribute to an increase in healthy and renewed housing stock in the neighbourhood. Ms. Emm concluded that the proposed renovation would aid in the long term viability of the neighbourhood, and that the variances individually and cumulatively, satisfy the test of being desirable and appropriate.

Based on these discussions, she therefore recommended the Appeal be allowed, and the proposal be approved. She also recommended that a condition requiring the

Appellant to build in substantial conformity with the submitted Plans and Elevations could be imposed, if the TLAB thought it appropriate.

I asked both Ms. Emm, and Mr. Cheeseman if it would be possible to change the height of the privacy screens on the balcony from 5 feet (1.5 m) to 6 feet (1.8 m), to better protect the privacy of the neighbours. They said that they would have to check if it was possible to change the height of the screens, and would provide the TLAB with an update.

On May 21, 2019, the TLAB received a message from Mr. Cheeseman saying that the height of the screen was being increased to 1.8 m, and an updated drawing reflecting the revised height of the privacy screens, accompanied the email.

#### **ANALYSIS, FINDINGS, REASONS**

I must reiterate my reasons for granting an adjournment *sine die* on November 20, 2018. While I appreciated Mr. Fongs willingness to make changes to the Site plans to allay his neighbours' concerns, there was no explanation of what changes needed to be made, and whether this triggered the need for new notice under Section 45(18.1.1). The paucity of information made me think it would be prudent to act with an abundance of caution, and therefore adjourn the case *sine die*, in order for Mr. Fong to retain a planner. Mr. Fong subsequently retained Mr. Cheeseman and Ms. Emm and the TLAB rescheduled the hearing on May 9, 2019.

I do not regard this practice of adjourning the Hearing to help the Appellant retain a planning witness as being precedent setting.

The issue of waiving notice under Section 45.18.1.1 was again discussed on May 9, 2019 at the beginning of the Hearing, when the Appellants stated that the variance respecting soft landscaping was being increased, such that it would come closer to the required percentage. I granted the Appellants' request to waive notice under Section 45.(18.1.1) because the soft landscaping variance was being changed for the better, and the consequent variance was smaller than what was requested earlier.

I am satisfied that the proposal satisfies the higher level Provincial Policies, because of the emphasis on intensification, and efficient land use. On the basis of discussions of Policies 2.3.1, 3.2.1 and 4.1.5, I am satisfied that the proposed build is consistent with the intent and purpose of the Official Policy. While I commend the Appellants for completing a shadow study, I am of the opinion that buildings lower than four storeys don't have to comply with a shadow study.

The evidence convinced me that the spirit of the By-Laws was being upheld because of the discussion of how the variances satisfied the performance standards. I appreciate the effort made by the Appellants to collect data about successful COA applications, and compare the approvals with their proposal, to demonstrate how their request wasn't

out of the ordinary . However, I would recommend that no inferences be drawn from changes to percentage involving FSI (i.e. "the percentage change in FSI is 20% should the latter rise from 50% top 60 of the Lot Area")., because the FSI number is itself a fraction, which correlates the GFA to the lot size, without offering the observer any information about the lot size itself. I see no merit to interpreting a percentage in change to a parameter that is essentially a percentage, more so when the percentage change has no distinctive physical interpretation.

The installation of privacy screens to protect the privacy of the neighbours, and prevent outlook, convinces me that the variances satisfy the test of minor. The argument about the proposal reinforcing what already exists in the community, satisfies me that the test of appropriate development is satisfied.

Given the above findings, I hereby allow the Appeal, and approve the proposal in its entirety.

As suggested, I impose the standard condition about building in substantial compliance with the submitted Plans and Elevations. With an abundance of caution, I also impose the condition about the increased screen height, and advise that i.e. the height of the privacy screens on the decks at the back of the house should be 1.8 m i.e. 6 feet.

I take this opportunity to commend Mr. Fong for his willingness to follow through on the discussion that took place at the first hearing about the importance of retaining a planner.

#### **DECISION AND ORDER**

- 1. The Appeal respecting 25 Hiltz Ave is allowed, and the Decision of the Committee of Adjustment dated July 11, 2018, is set aside.
- 2. The following variances are approved:
- 1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The permitted height of all front exterior main walls is 7.5 metres. The proposed height of the front exterior main walls is approximately 9.45 metres.

#### 2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The permitted maximum height of all rear exterior walls is 7.5 metres. The proposed height of the rear exterior main walls is approximately 9.22 metres.

#### 3. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot: 119.41 square metres (199.01 x 0.6). The proposed floor space index is 0.81 time sthe area of the lot: 161.78 square metres ( $161.78 \text{ m}^2/199.01 \text{ m}^2$ ).

#### 4. Chapter 10.5.50.10.(3)(A), By-law 569-2013

A lot with a residential building, other than an apartment building, must have a minimum of 50 percent of the rear yard for soft landscaping: 49.34 square metres ( $98.69 \times 0.5$ ), if the lot frontage is greater than 6.0 metres. The proposed rear yard landscaping area is 37.27 percent; 36.77 square metres ( $36.77m^2/98.67m^2$ )

#### 5. Section 6(3)Part II 3.B(1), By-law 438-86

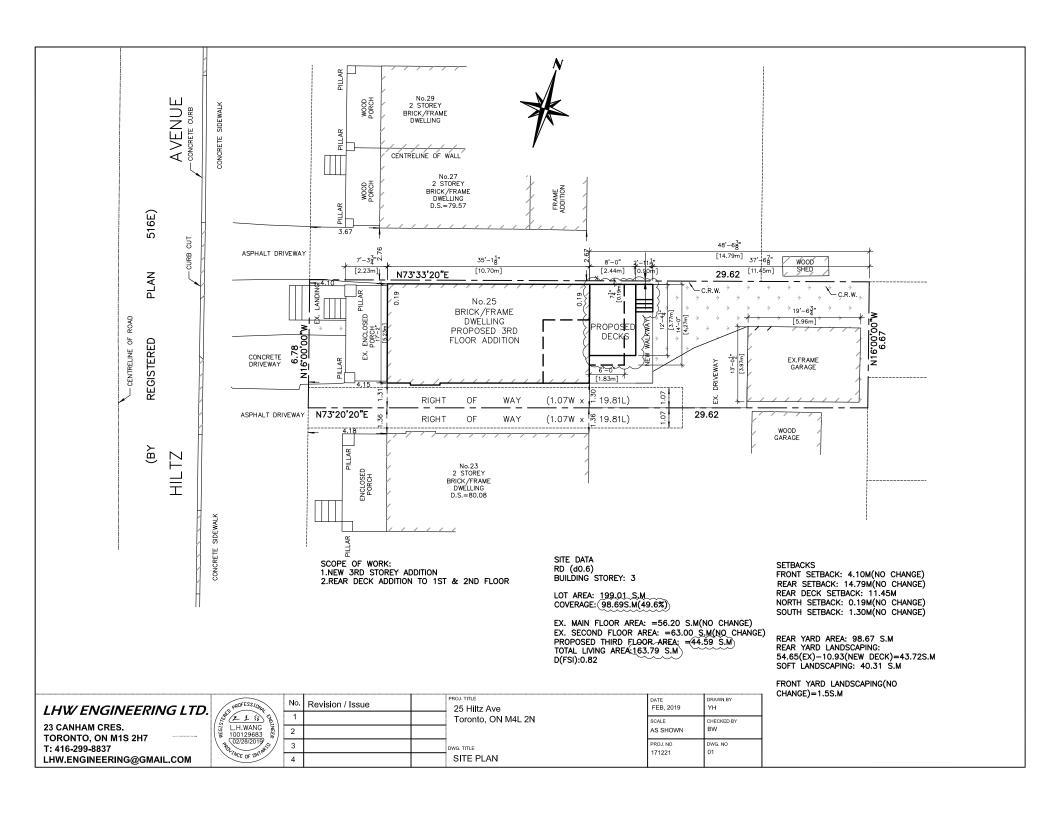
The by-law requires a detached house in a (R2, R3, R4, R4A) district to have a minimum side lot line setback of 0.45 metres for a depth not exceeding 17.0 metres where the side walls contain no openings. The proposed north side lot line setback is 0.19 metres.

- 3. No other variances, other the ones stated above, are approved.
- 4. The following conditions are imposed on the approval of the proposal respecting 25 Hiltz Ave:
- a) The variances herein are granted on the condition that the development on the property shall be in substantial compliance with the attached Site Plans and Elevations prepared by LHW Engineering Ltd., and stamped by L.H.Wang, P. Eng, on 2/6/2018.
- b) The privacy screens on the balconies must be 6 feet (1.8 m) high, as indicated on Sheet 15- Proposed South Elevation diagram.

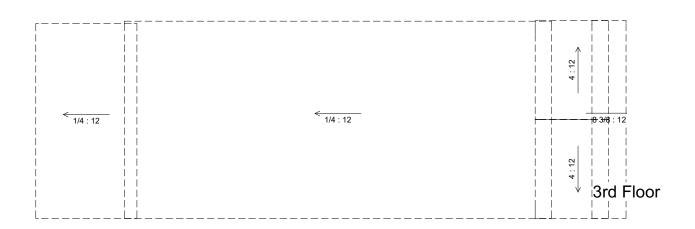
So orders the Toronto Local Appeal Body



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

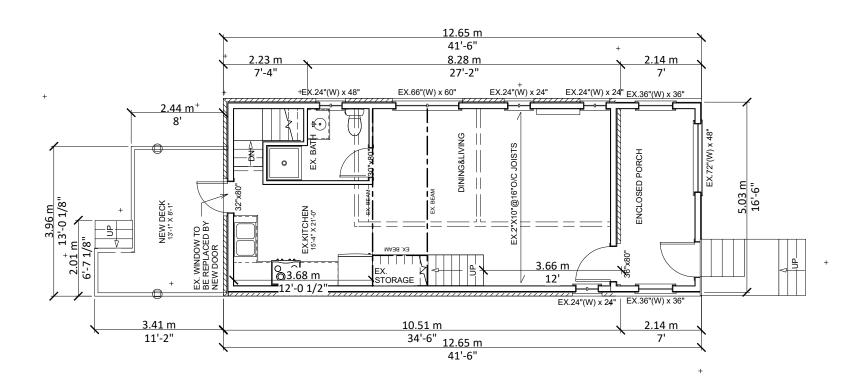


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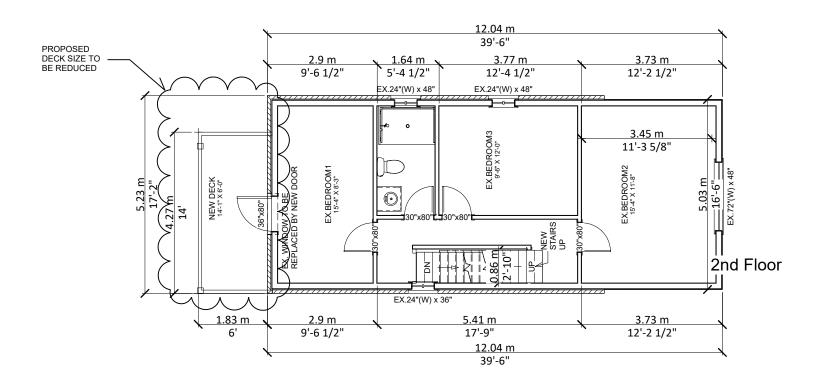
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### **PROPOSED MAIN FLOOR PLAN**

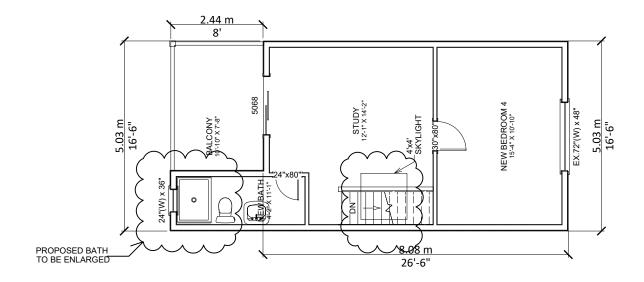
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### PROPOSED SECOND FLOOR PLAN

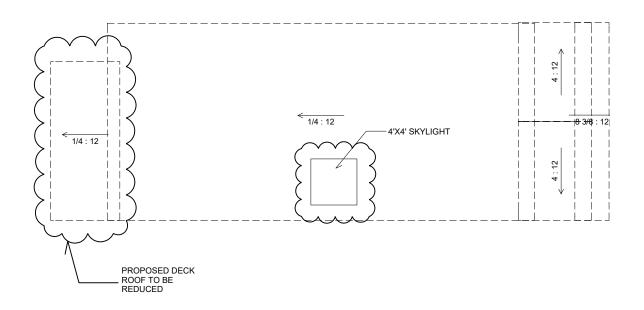
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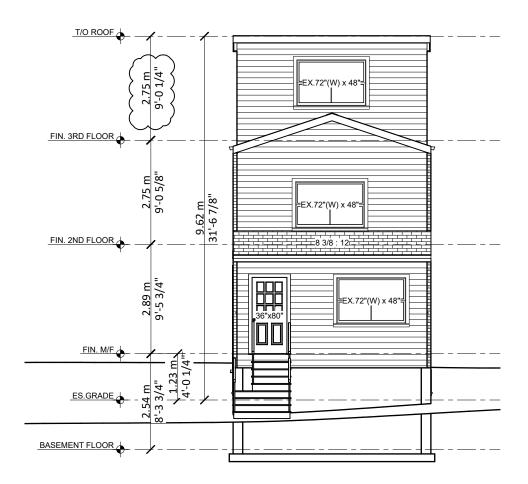
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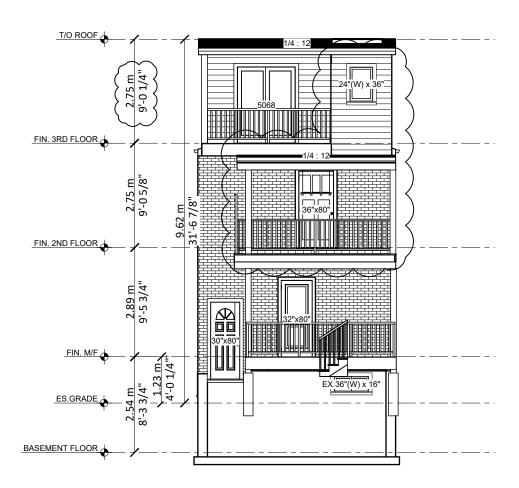
# PROPOSED FRONT ELEVATION SCALE: 1:100

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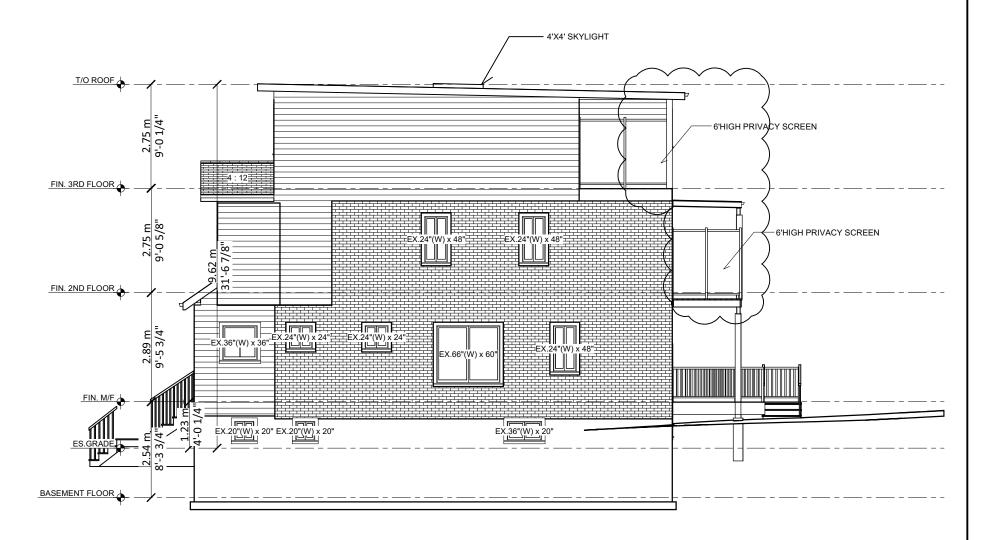
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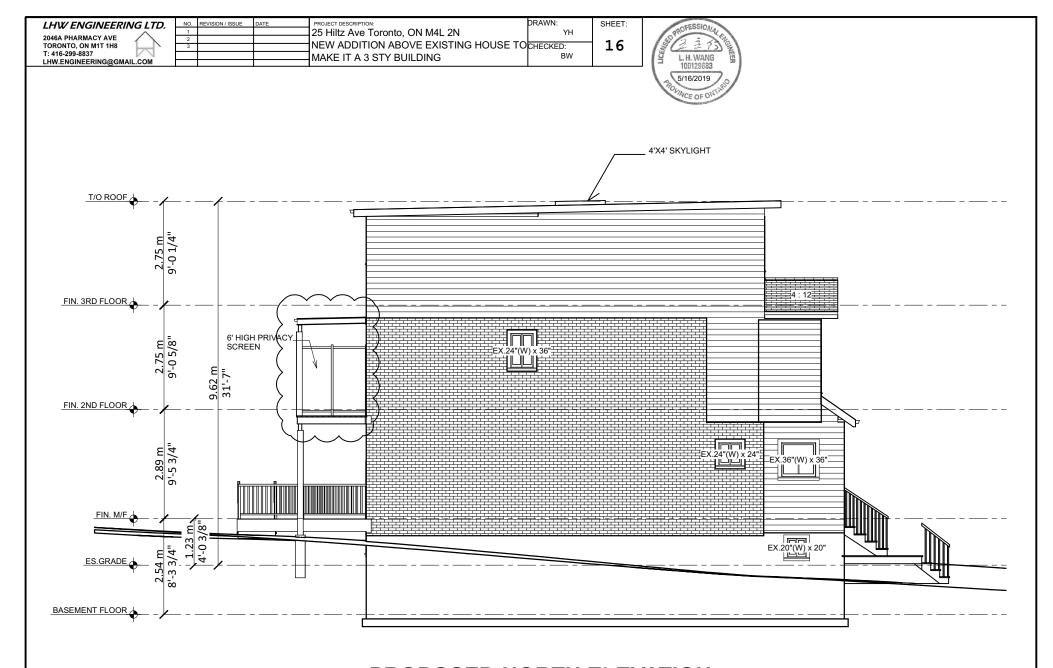


### **PROPOSED REAR ELEVATION**

PROJECT DESCRIPTION: DRAWN: SHEET: REVISION / ISSUE DATE LHW ENGINEERING LTD. OFESSIONAL 25 Hiltz Ave Toronto, ON M4L 2N YΗ 2046A PHARMACY AVE 3 73 NEW ADDITION ABOVE EXISTING HOUSE TO CHECKED: 15 TORONTO, ON M1T 1H8 T: 416-299-8837 MAKE IT A 3 STY BUILDING L. H. WANG 100129683 LHW.ENGINEERING@GMAIL.COM 5/16/2019



### **PROPOSED SOUTH ELEVATION**



# PROPOSED NORTH ELEVATION SCALE: 1:100