

DECISION AND ORDER

Decision Issue Date Monday, July 29, 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): OLEKSANDR MURADOV

Applicant: DTAH ARCHITECTS LTD

Property Address/Description: 29 YORK RIDGE RD

Committee of Adjustment Case File: 18 236434 NNY 25 MV

TLAB Case File Number: 19 114854 S45 15 TLAB

Hearing date: Tuesday, June 18, 2019

DECISION DELIVERED BY J. TASSIOPOULOS

APPEARANCES

NAME	ROLE	REPRESENTATIVE
THOMAS CHARLES H BALDWIN	OWNER/PARTY	MONICA NEACSU
DTAH ARCHITECTS LTD	APPLICANT	
OLEKSANDR MURADOV	APPELLANT	
ANNE LISA BALDWIN	ALTERNATE OWNER	

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) dated January 24, 2019, which approved an application for two minor variances for 29 York Ridge Road in North York. These would permit construction of a new detached two storey dwelling. This decision was appealed by the neighbour, Mr. Oleksandr Muradov, residing at 31 York Ridge Road.

Mr. Muradov appealed the COA approval because he did not believe it fully clarified the condition for variance #2:

Section 10.2.6, By-law No. 7625

The maximum permitted building height is 9.5 m.

The proposed building height is 12.82 m.

The decision of the COA was subject to the following condition:

“1) The proposal be developed in accordance with the east elevation drawing attached to this decision.”

Mr. Muradov appealed the decision because he did not believe the condition adequately addressed the concern that only the skylight feature of the proposed building would be at a height beyond the parapet height and that no other structure would measure to the 12.82 metre height sought in the variance. Mr. Muradov speculated that given there is no further clarification in the language of the condition, that a railing may be introduced within that height. The Panel Member noted that the plans presented did not indicate any such railing and that what was being considered were the plans and variances before TLAB – not speculation of what might occur. Mr. Muradov explained that he did not believe that Mr. Baldwin would build any structure or railing on the rooftop, but that he had not received assurances to the contrary, which is why he was still concerned. Mr. Baldwin believes that the condition tied to the east elevation drawing and dimensions provided on the drawing does address Mr. Muradov’s concern.

During the course of the hearing the Panel Member provided a break to allow both Parties to further discuss the potential of arriving at an agreement with respect to clarification in the condition and to hopefully reach an agreement on language that would satisfy both the Owner and the Appellant. They were not able to come to a resolution on the condition language.

I disclosed to the Parties that I had visited the site prior to and in preparation of the hearing.

MATTERS IN ISSUE

Does the COA decision’s condition tied to Variance #2, that the building “*be developed in accordance with the east elevation drawing*”, adequately address the approved height variance and only permit the skylight feature to be built beyond the roof parapet?

I must be satisfied that the variances sought meet the four tests under s. 45(1) of the *Planning Act*.

No expert witnesses were retained by either Party, so I must exercise my independent judgement as to the statutory tests.

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

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

EVIDENCE

Neither Party provided expert witnesses to present evidence at the hearing. Mr. Muradov presented the reasons for his appeal. According to Mr. Muradov, at the COA hearing, he, Stan Kumarek, and Trevor Jones (Interested Party) met with Brian Brownlie, Mr. Baldwin's Architect, to express their concerns and objections to the proposal. Mr. Muradov stated that the agreement included the condition "*that **only** the protruding skylight would be above the roof line*" as indicated in the email sent to Mr. Muradov by Mr. Trevor Jones and submitted as Exhibit #2 at the hearing. He explained that he was entering the emails from Mr. Mark Lawrence of the York Ridge Homeowners Association and from Mr. Trevor Jones. Muradov explained that having come to this agreement they abandoned their objection to the minor variance application. Subsequent to the decision, Mr. Muradov states that he attempted to finalize the agreement and requested further clarity on the condition as part of that agreement, namely, that Mr. Baldwin confirm in writing that "*that the top of the roof parapet as shown in your drawings be the limit of the all built form, with the exception of the skylight*". Having not received this assurance Mr. Muradov indicates that he had no choice but to appeal the COA decision and that he was still willing to withdraw his

appeal to TLAB should Mr. Baldwin agree to this wording. This requested clarification was indicated in the email sent by Mr. Muradov to Mr. Baldwin on February 19, 2019, submitted as part of Exhibit #1.

Mr. Muradov further explained that the nature of the requested wording was to ensure that there was no structure or railing that would provide a useable area on the rooftop and that this concern had also been raised by Mr. Mark Lawrence of the York Ridge Homeowners Association in his June 17, 2019 email to Mr. Muradov (Exhibit #1).

Ms. Monica Neacsu, Representative for Mr. Baldwin, mentioned that Exhibit #1 is not applicable to the Appeal because the nature of the appeal was with respect to the wording of the COA condition. She further explained that this was the first time that she was aware of a concern over a potential railing as it had not been indicated in previous emails to Mr. Baldwin and is not indicated in any of the drawings submitted. She felt that the COA condition along with its reference to the east elevation drawing were clear.

Mr. Muradov explained that a concern over a potential railing for maintenance was previously discussed with the Architect, Mr. Brownlie and felt that his concern was relevant.

Ms. Neacsu stated that she could not understand the appeal as the COA decision and condition was tied to the drawings of the house that will be ultimately be built. Mr. Baldwin noted that they did not have any questions of Mr. Muradov but wanted to make a statement.

Mr. Baldwin was concerned that the specific language that Mr. Muradov proposed for the condition. He was not sure if "*with the exception of the skylight*" meant that the skylight was not permitted, and this is why he was not willing to agree to this condition. He was worried that agreeing to this condition would create ambiguity with respect to the COA condition. He stated that he had revised the drawings to address the neighbors' concerns as well as Mr. Muradov's and that the house would be built as per the drawings submitted to the COA and the approved variances.

ANALYSIS, FINDINGS, REASONS

From the beginning of the hearing, I expressed concern that the Parties had not arrived at an amicable agreement and resolved their mutual concerns regarding this matter. I provided a break during the hearing to allow Mr. Muradov and Mr. Baldwin to see if they could come to a resolution and submit to me language for a condition that they might both agree to. Unfortunately, they were not able to resolve their respective issues during the break and Ms. Neacsu informed me that an agreement with respect to language had not been reached.

It is worth noting, in passing, that although an appellant may wish to focus concerns on a specific variance, condition or aspect of attached plans and, while that can be helpful, an appeal is not so limited. The responsibility of the TLAB is to apply the policy and statutory tests to all aspects of the relief originally requested (and subsequently

modified). It does so in a completely new Hearing, from that conducted by the COA and this was indicated to the Parties at the Hearing.

Having heard the concerns of both Mr. Muradov and Mr. Baldwin and Ms. Neacsu, it is clear that each Party has interpreted the condition applied by the COA to Variance #2 of its decision differently.

Mr. Muradov has appealed the COA decision because he does not feel it explicitly states a condition in the manner that is acceptable and provides him with assurance that the building design will not be altered. During the hearing I was able to surmise from Mr. Muradov that he was concerned with rooftop uses because it would compromise his privacy because the rooftop would be at a level that would lead to overlook into his bedroom. I am not aware if this concern was expressed to Mr. Baldwin, but it is an appropriate concern. At the same time, however, speculation of what might be built, such as railings beyond the roof parapet, is not what is being considered in this appeal but whether the language provided in the condition tied to the COA's approval of Variance #2 ensures that the building will be built as per the architectural plans.

For Mr. Baldwin and his representative Ms. Neacsu, the variances and condition as approved by the COA are appropriate. Further, the inclusion of the east elevation as part of the decision should provide adequate assurance as to what will be built: it indicates the skylight feature within the height variance. They believe that the condition should remain as per the COA approval. I understand that Mr. Baldwin is concerned with potential ambiguity should the language of the condition change to reflect Mr. Muradov's suggestion and how it may affect the building of his house. Although this concern seemed inflexible, when I referred to Mr. Baldwin's emails to Mr. Muradov (Exhibit #2), I was able to determine that Mr. Baldwin had indicated that the roof would *"...not be permitted to have any platforms or enclosed spaces since the approvals are tied to the drawings submitted..."* (February 15, 2019) and that he did not agree with the revised wording because the meaning was *"...vague and ambiguous"* (February 22, 2019).

However, I am concerned with this position because the COA condition only tied the condition for Variance 2 to the east elevation drawings because of the indicated height. This unfortunately only tells part of the story and I believe is the reason why Mr. Muradov does not feel assured. Furthermore, it is puzzling to me that the COA decision did not tie the approval to the complete drawings. If the drawings showing all building elevations and the roof plan had been tied to the approval, it may have provided the "complete story", and confirmed to the Appellant that the rooftop was not a useable space and avoided the ambiguity with respect to the condition.


Taking into consideration the presentations from the Parties, review of the plans and COA variances, the COA decision, as well as the emails in the Exhibits that relate to the condition specifically, I believe the matter is straight forward. I am satisfied that the two variances meet the applicable provincial policy and tests, the latter set out in Section 45(1) of the Planning Act and mentioned above. I am not satisfied that the condition tied to the Variance #2 COA approval was adequate with regard to referencing the

plans for the proposed dwelling. I understand the nature of Mr. Muradov's appeal, but I believe resolution to his concern is possible if the condition to the variance sought referred to the complete set of drawings and not just the east elevation as per the COA condition. Finally, I am satisfied that Mr. Baldwin intends to build his home substantially in accordance with the drawings that had been submitted to COA as he has stated this both in email correspondence and reiterated this during the hearing.

DECISION AND ORDER

The TLAB allows the appeal in part. The following variances and condition in Attachment 1 are approved, and the proposed dwelling is to be constructed substantially in accordance with the plans dated November 27, 2018, especially sheets A204 (Roof Plan), A300, A301, A302 and A303, provided in Attachment 2. Any additional variances not identified in this decision that are required and as may appear on the plans referenced are expressly not authorized.

X



John Tassiopoulos

Panel Chair, Toronto Local Appeal Body

ATTACHMENT 1

1. Chapter 900.3.10.(501), By-law No. 569-2013

The minimum building setback from the front lot line is 7.5 m.
The proposed front yard setback is 6.5 m.

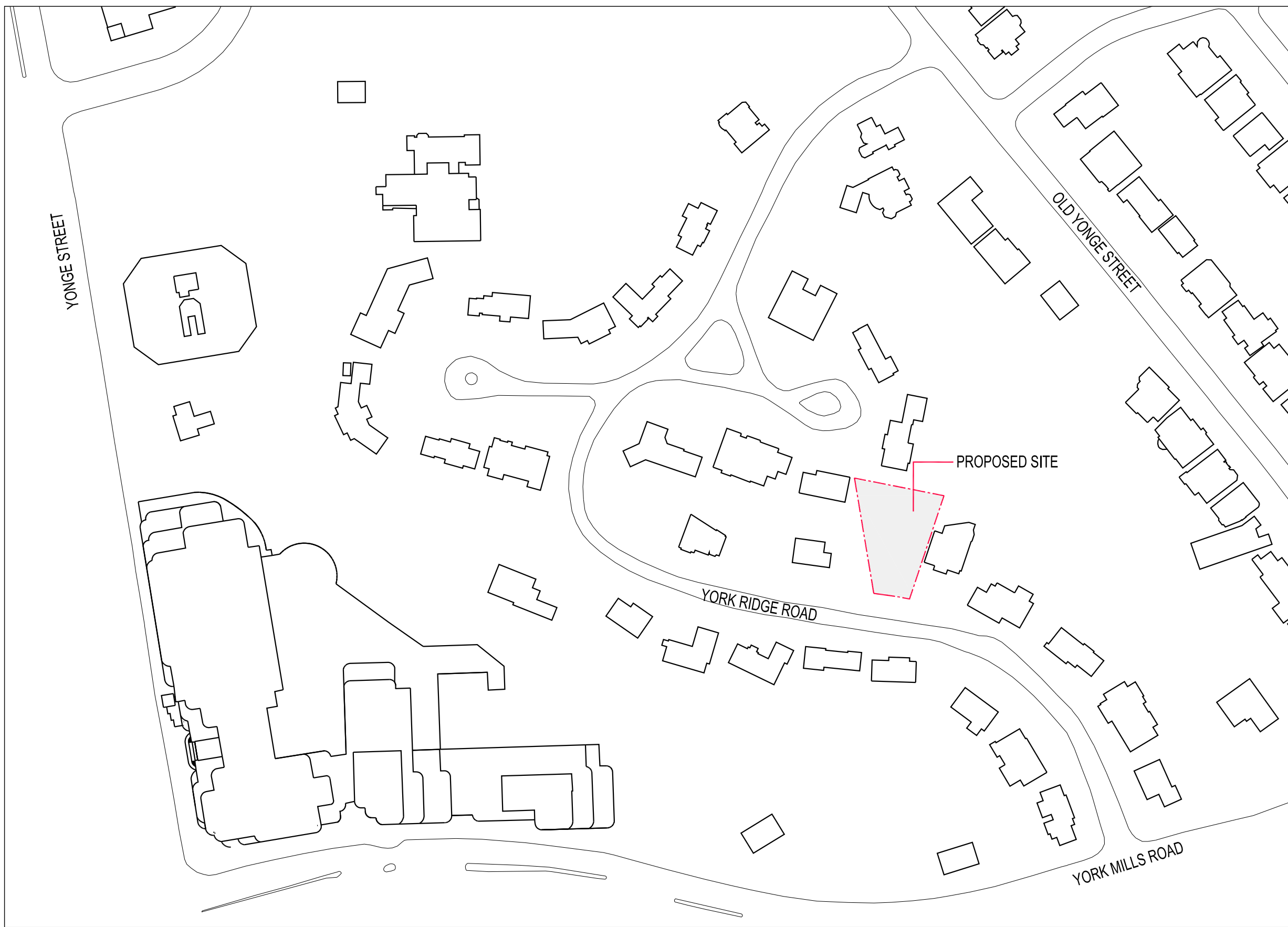
2. Section 10.2.6, By-law No. 7625

The maximum permitted building height is 9.5 m.
The proposed building height is 12.82 m.

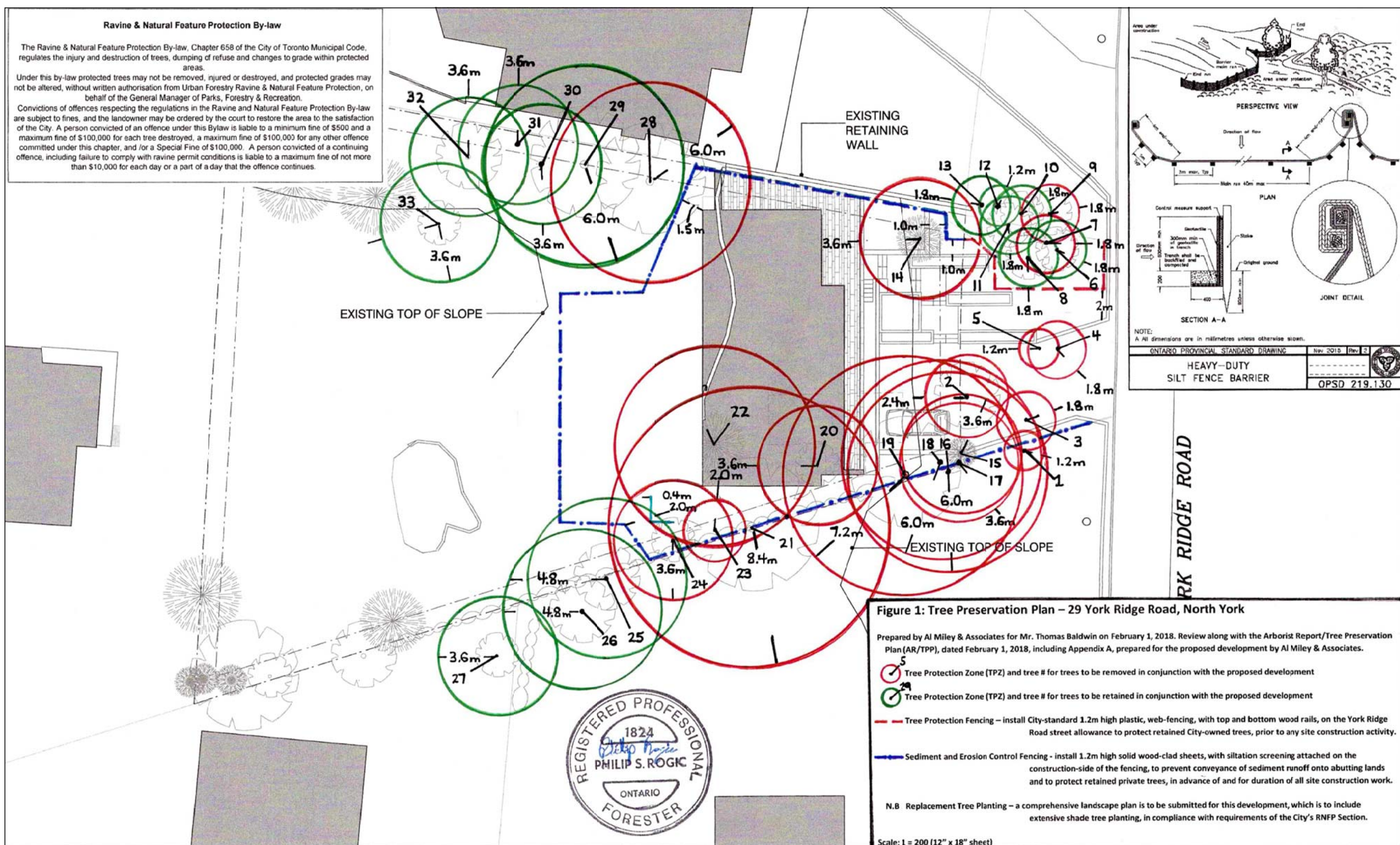
This decision is subject to the following condition(s):

- 1) This approval is to be developed substantially in accordance with the site plan, the north, south, east and west elevations, and the roof plan of the drawings in Attachment 2 to this decision.

ATTACHMENT 2 - Plans dated November 27, 2018



3 LOCATION PLAN
NTS



1 TREE PRESERVATION PLAN
NTS



2 SITE PLAN
1:125

LEGEND

- RETAINING WALL
- EXISTING TREE
- PROPOSED TREE

SITE STATISTICS

GFA (SEE 4/A101)	305.4m ²
PLATFORM GFA	80.1m ²
LOT AREA	1,306m ²
LOT COVERAGE	(177/1,306) = 13.6%
BUILDING DEPTH	11.3m
OBC CLASSIFICATION	PART 9
FRONT YARD AREA	114m ²
FRONT YARD LANDSCAPED AREA	74.6m ²
FRONT YARD SOFT LANDSCAPED AREA	55.1m ²

CITY OF TORONTO BY-LAW 569-2013
ESTABLISHED GRADE 105.98
(105.99+105.96)/2

CITY OF NORTH YORK BY-LAW 7625
ESTABLISHED GRADE 98.68

MAX BUILDING HEIGHT 10.0m
PROPOSED HEIGHT 5.52m
(111.5-105.98)

CITY OF NORTH YORK BY-LAW 7625
ESTABLISHED GRADE 98.68

MAX BUILDING HEIGHT 9.5m
PROPOSED HEIGHT 12.82m
(111.5-98.68)

SETBACKS PROPOSED

FRONT YARD	7.5m	7.5m LEVEL 01
		6.5m LEVEL 00
EAST YARD	1.2m	1.2m
WEST YARD	1.2m	1.2m
REAR YARD	11.9m	29.5

NOTES

1. ILLUSTRATED FRONT YARD PLANTERS WILL NOT HAVE CONCRETE BASES.

NO.	DATE	DESCRIPTION
06	2018-11-27	COMMITTEE OF ADJUSTMENT RESUBMISSION
05	2018-11-27	ZONING CERTIFICATE RESUBMISSION
04	2018-10-25	COMMITTEE OF ADJUSTMENT RESUBMISSION
03	2018-09-28	ISSUED FOR COMMITTEE OF ADJUSTMENT
02	2018-08-02	ZONING CERTIFICATE RESUBMISSION
01	2018-04-25	ISSUED FOR ZONING CERTIFICATE

ISSUE RECORD

THE CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB SITE AND INFORM THE ARCHITECTS IMMEDIATELY OF ANY DISCREPANCY OR VARIATION FROM THE DRAWINGS. DO NOT SCALE THE DRAWINGS.

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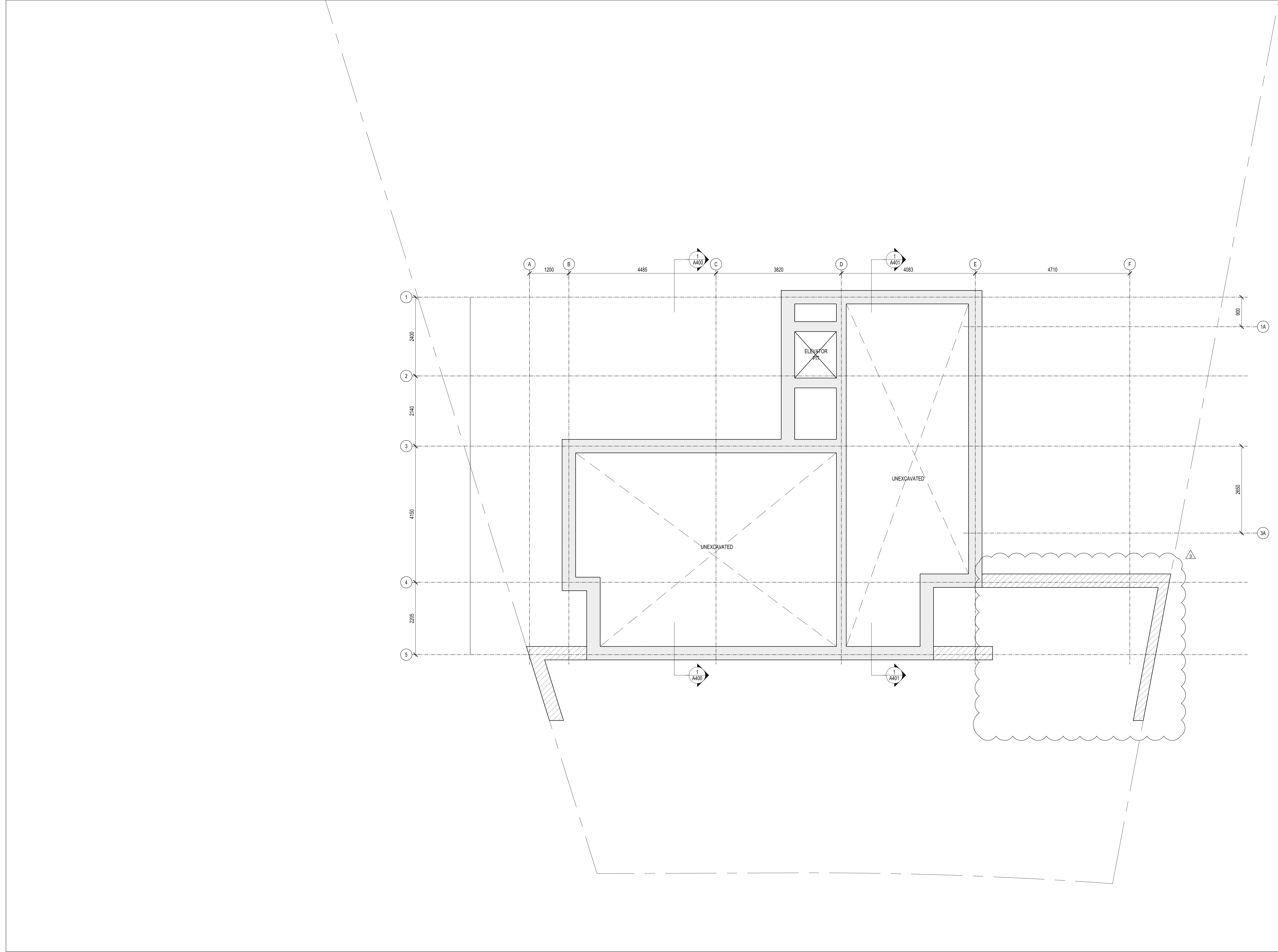
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BALDWIN HOUSE
29 YORK RIDGE ROAD
NORTH YORK, ONTARIO

DRAWING TITLE:
SITE PLAN, LOCATION PLAN,
TREE PRESERVATION PLAN

PRINT DATE: 2018-11-27
SCALE: 1:125
PROJECT NO. 17-052-B
DRAWN BY: JD
CHECKED BY: BB

A100



LEGEND

BUILDING WALL

RETAINING WALL

06	2018-11-27	<div></div>	COMMITTEE OF ADJUSTMENT RESUBMISSION
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NO.

DATE

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BALDWIN HOUSE

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NORTH YORK, ONTARIO

DRAWING TITLE:

FOUNDATION PLAN

PRINT DATE:

2018-11-27

SCALE:

1:50

PROJECT NO.

17-052-B

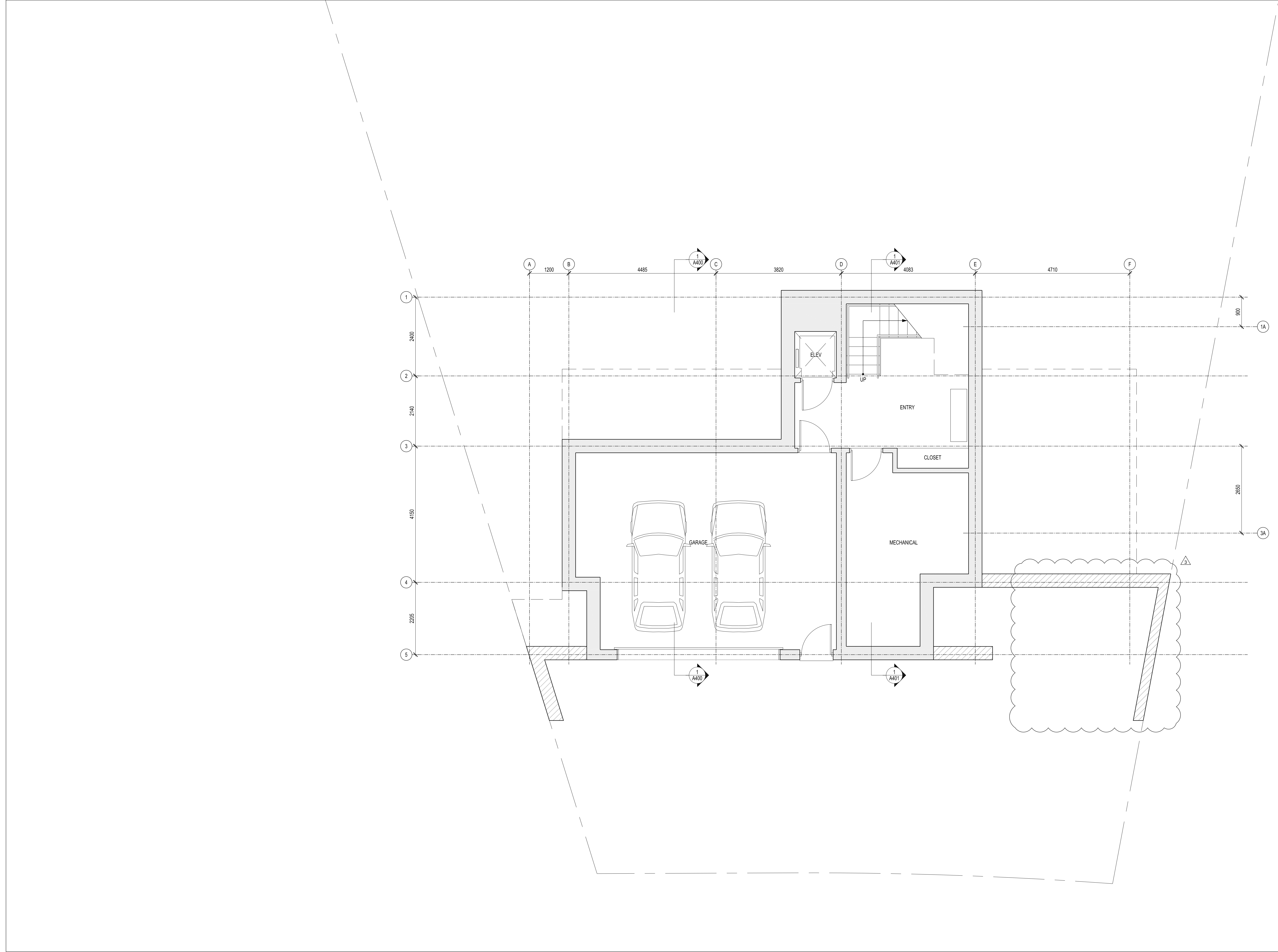
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JD

CHECKED BY:

BB

A200



LEGEND

BUILDING WALL

RETAINING WALL

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DRAWING TITLE:

LEVEL 00 PLAN

PRINT DATE:

2018-11-27

SCALE:

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PROJECT NO.

17-052-B

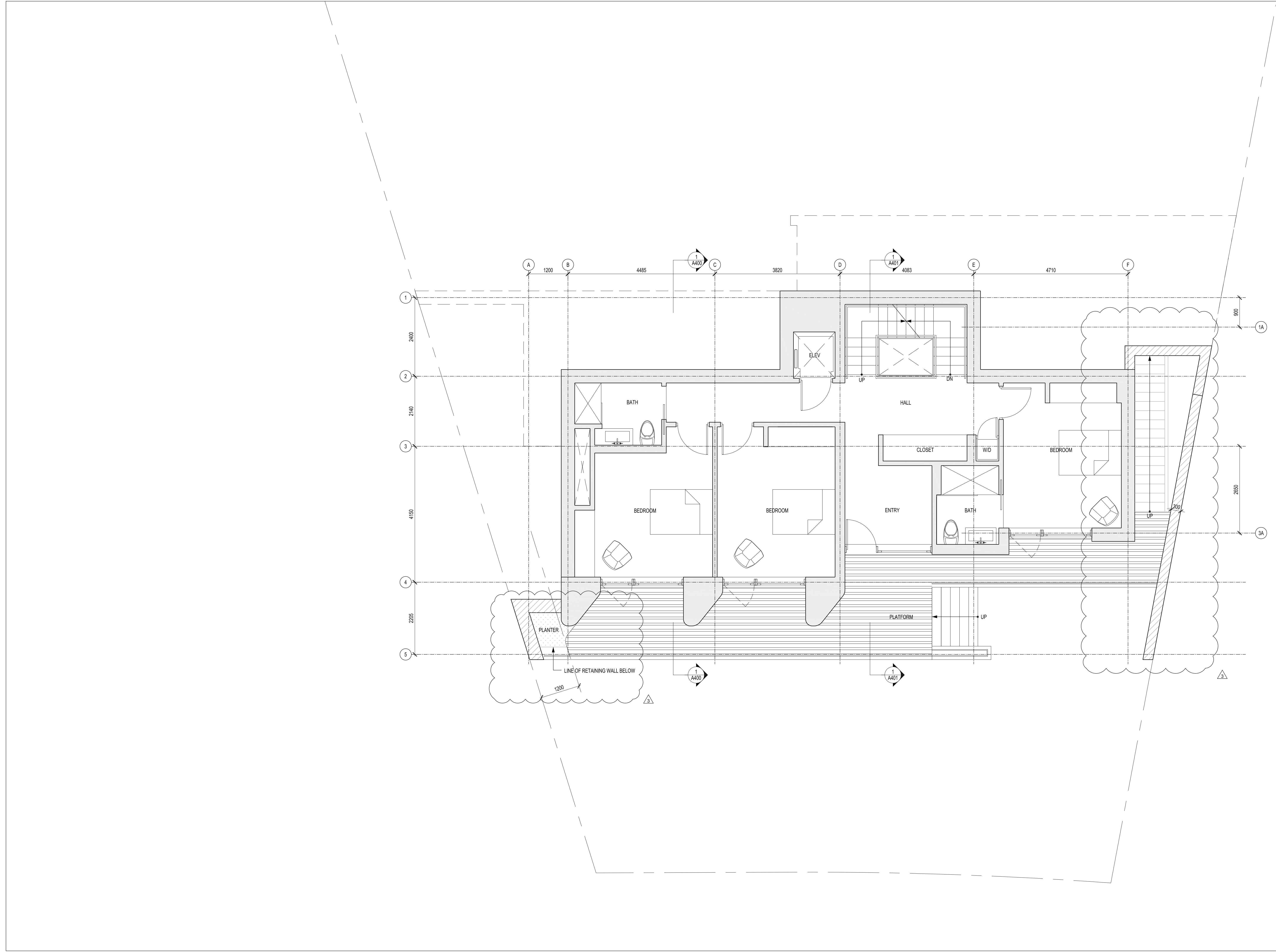
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JD

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A201



LEGEND

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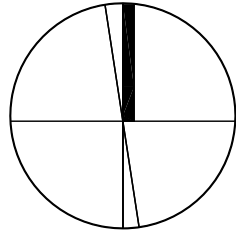
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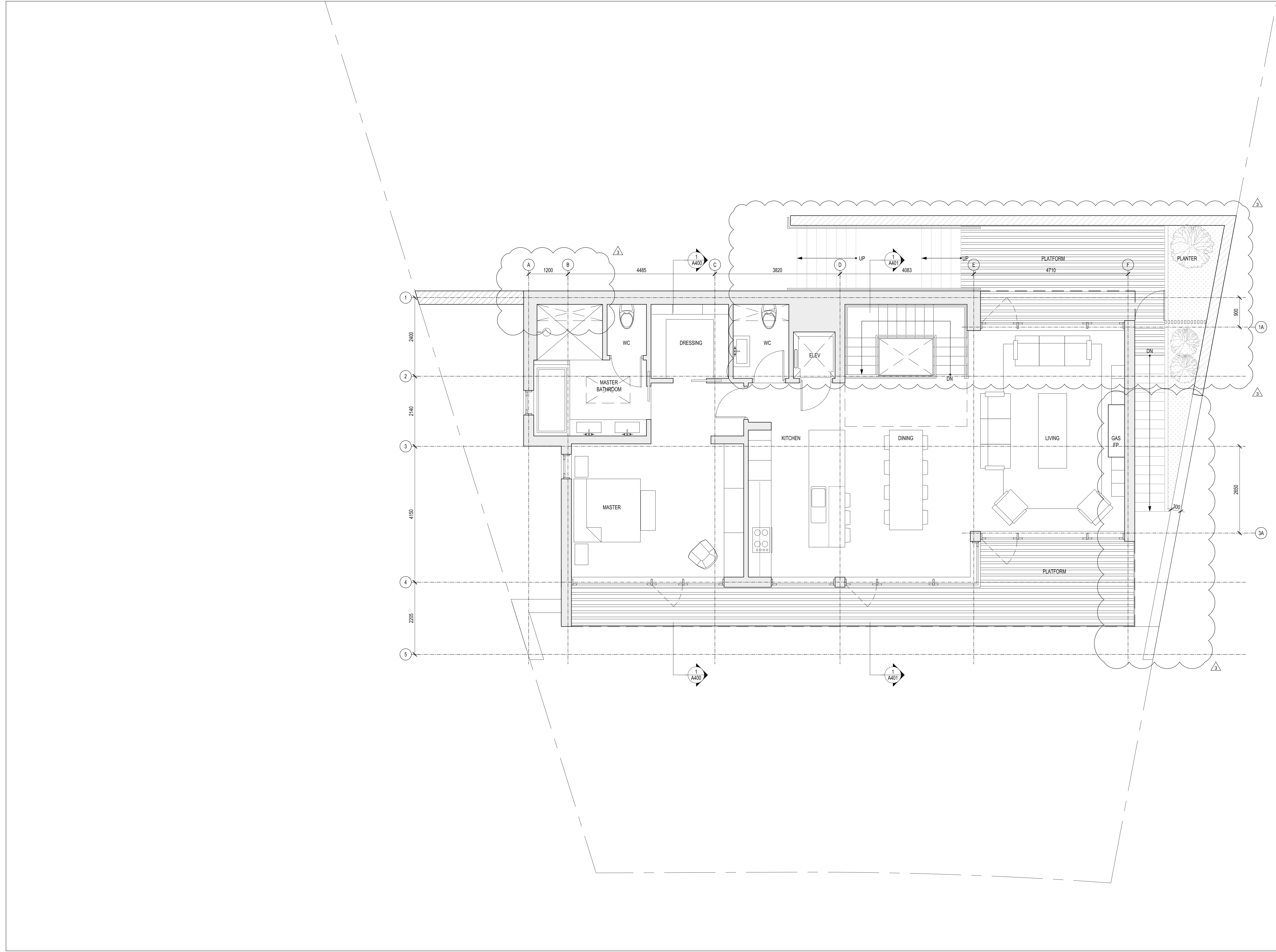


BALDWIN HOUSE
29 YORK RIDGE ROAD
NORTH YORK, ONTARIO

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LEVEL 01 FLOOR PLAN

PRINT DATE: 2018-11-27
SCALE: 1:50
PROJECT NO. 17-052-B
DRAWN BY: JD
CHECKED BY: BB

A202



LEGEND

BUILDING WALL

RETAINING WALL

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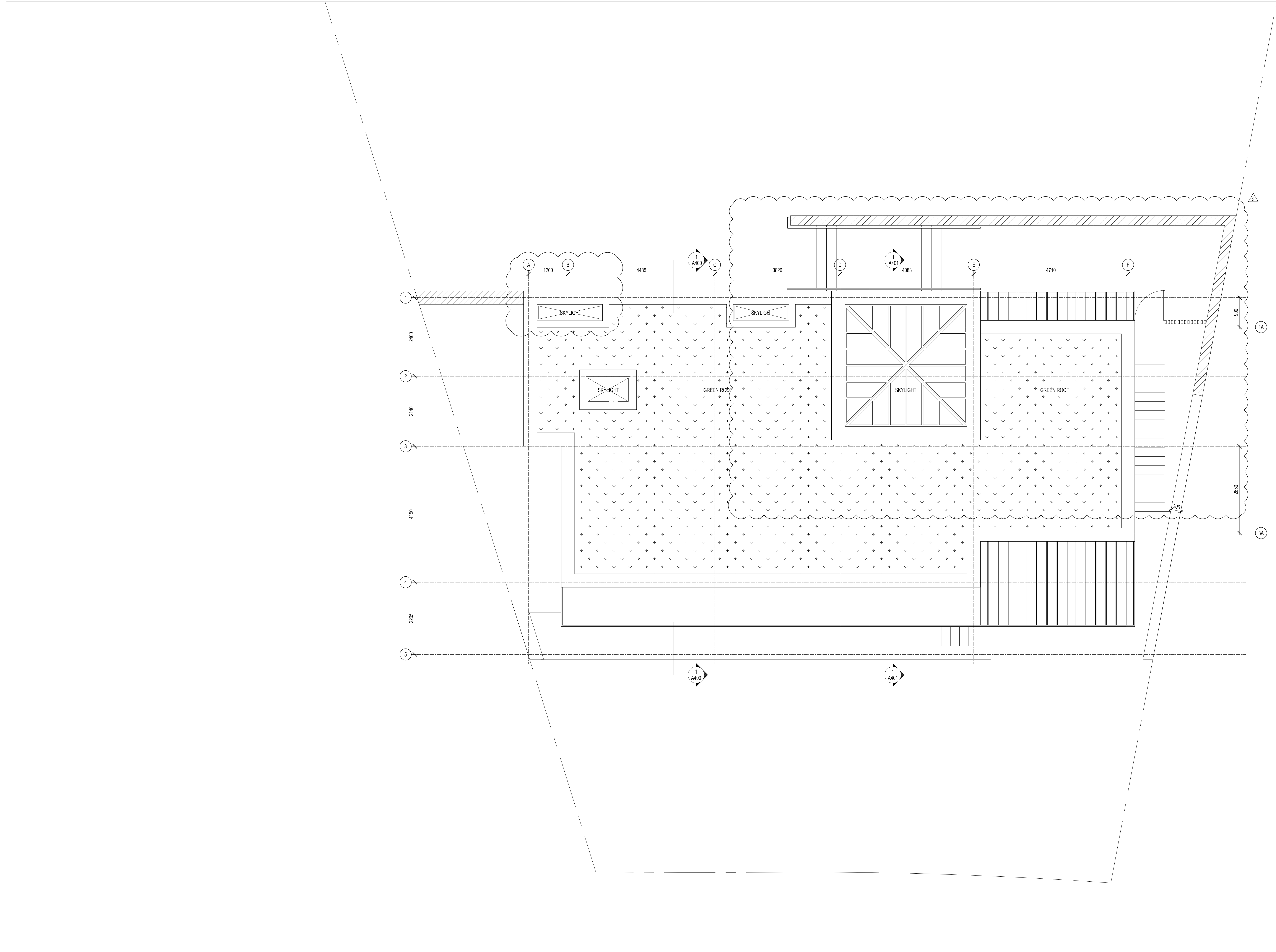
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LEVEL 02 FLOOR PLAN

PRINT DATE: 2018-11-27
SCALE: 1:50
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A203



LEGEND

BUILDING WALL

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ROOF PLAN

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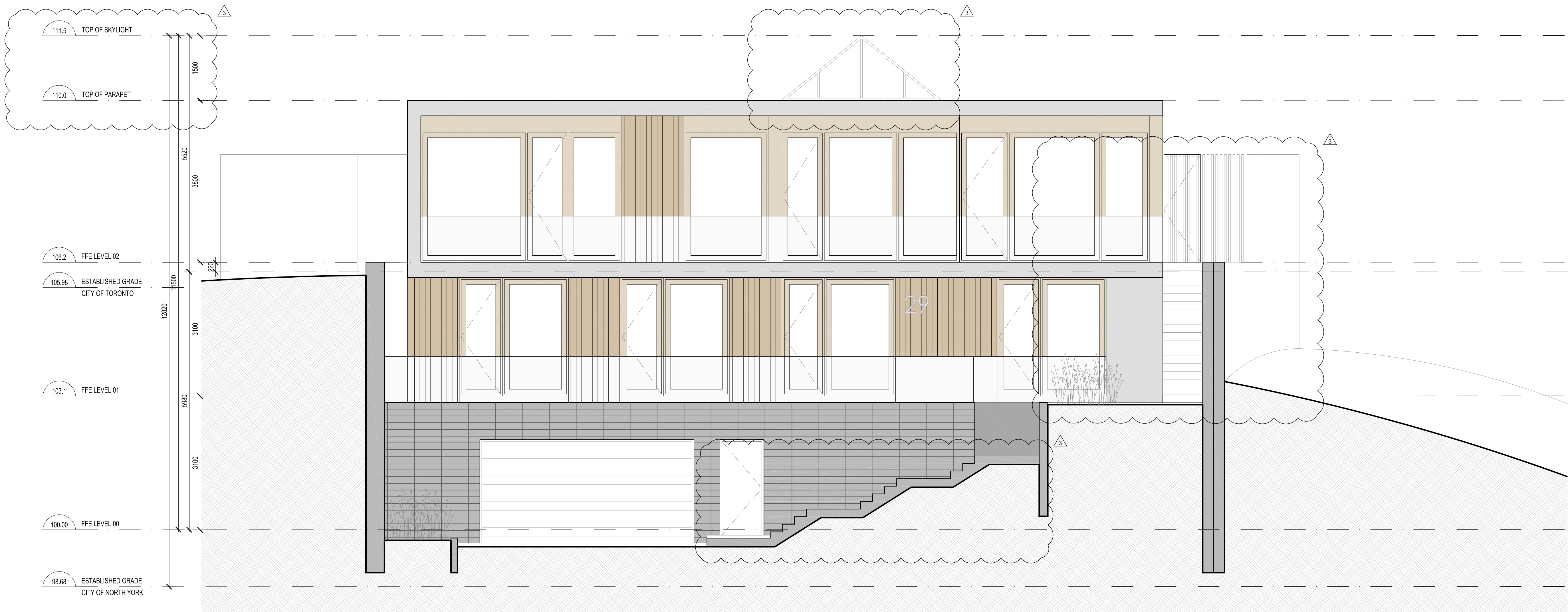
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PROJECT NO. 17-052-B

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A204



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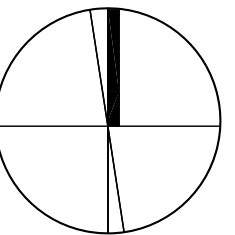
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DRAWING TITLE:
SOUTH ELEVATION

PRINT DATE: 2018-11-27

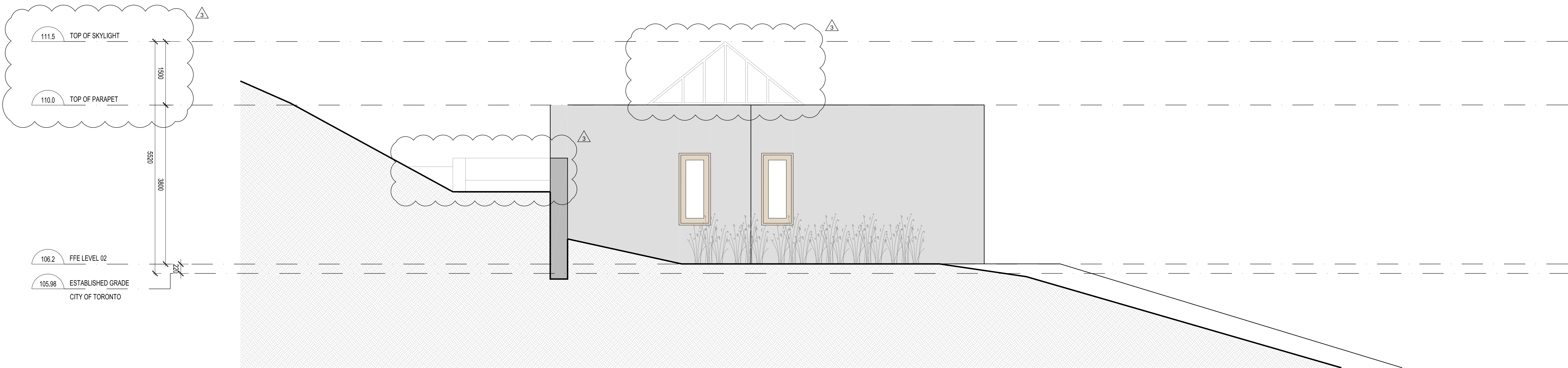
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


PROJECT NO. 17-052-B

DRAWN BY: JD

CHECKED BY: BB

A300



06	2018-11-27		COMMITTEE OF ADJUSTMENT RESUBMISSION
05	2018-11-27		ZONING CERTIFICATE RESUBMISSION
04	2018-10-25		COMMITTEE OF ADJUSTMENT RESUBMISSION
03	2018-09-28		ISSUED FOR COMMITTEE OF ADJUSTMENT
02	2018-08-02		ZONING CERTIFICATE RESUBMISSION
01	2018-04-25		ISSUED FOR ZONING CERTIFICATE
NO.	DATE		DESCRIPTION

ISSUE RECORD

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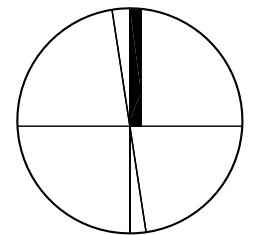
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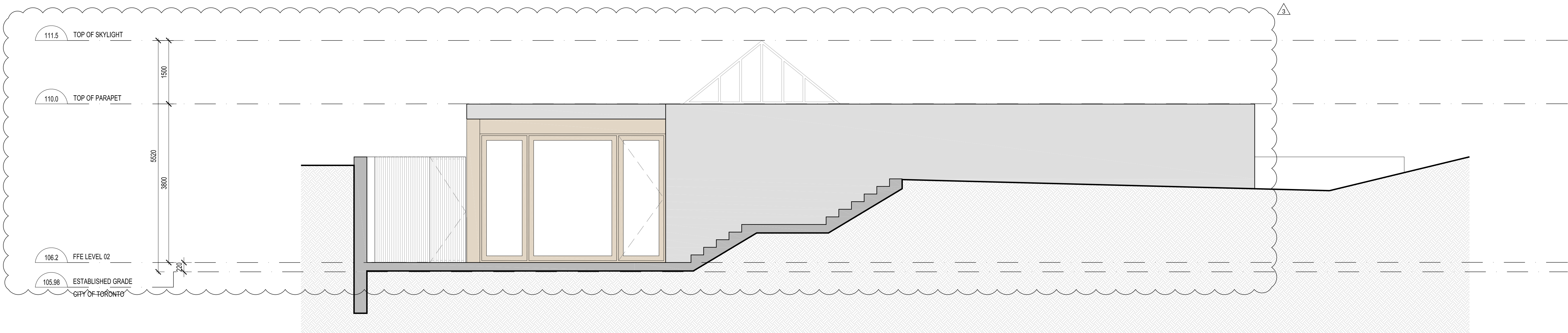
BALDWIN HOUSE





29 YORK RIDGE ROAD
NORTH YORK, ONTARIO

DRAWING TITLE:
WEST ELEVATION

PRINT DATE: 2018-11-27
SCALE: 1:50
PROJECT NO. 17-052-B
DRAWN BY: JD
CHECKED BY: BB

A301



06	2018-11-27		COMMITTEE OF ADJUSTMENT RESUBMISSION
05	2018-11-27		ZONING CERTIFICATE RESUBMISSION
04	2018-10-25		COMMITTEE OF ADJUSTMENT RESUBMISSION
03	2018-09-28		ISSUED FOR COMMITTEE OF ADJUSTMENT
02	2018-08-02		ZONING CERTIFICATE RESUBMISSION
01	2018-04-25		ISSUED FOR ZONING CERTIFICATE
NO.	DATE		DESCRIPTION
ISSUE RECORD			

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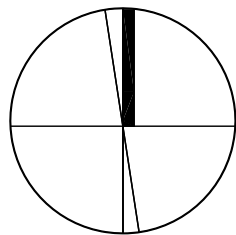
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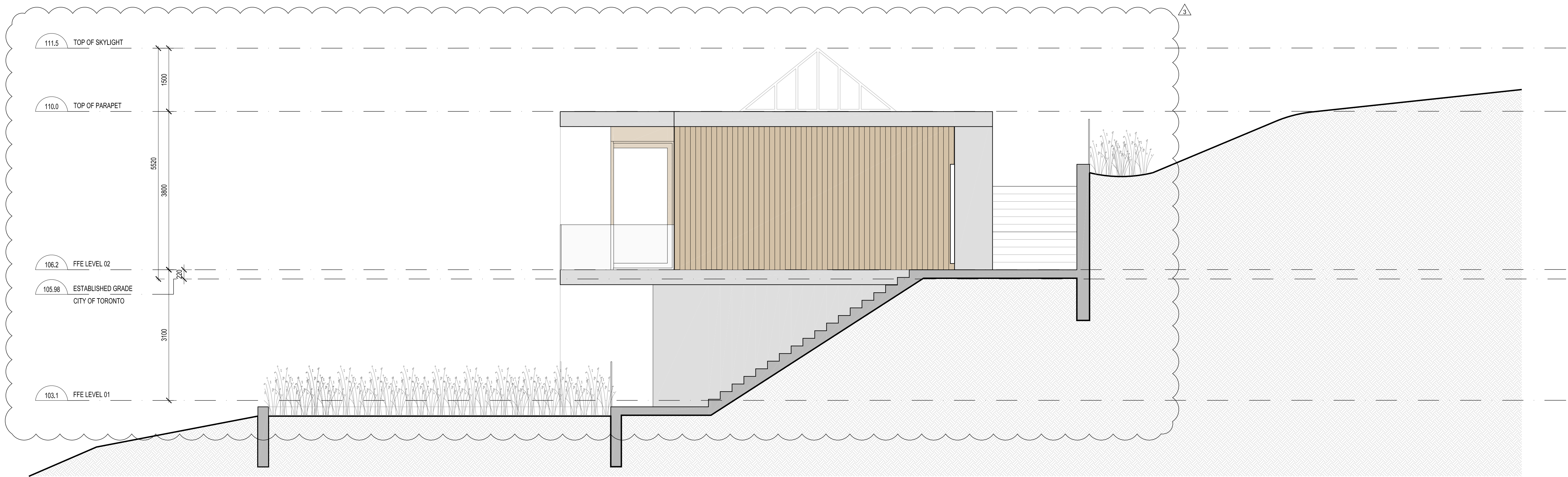


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29 YORK RIDGE ROAD
NORTH YORK, ONTARIO

DRAWING TITLE:
NORTH ELEVATION

PRINT DATE: 2018-11-27
SCALE: 1:50
PROJECT NO. 17-052-B
DRAWN BY: JD
CHECKED BY: BB

A302



06	2018-11-27		COMMITTEE OF ADJUSTMENT RESUBMISSION
05	2018-11-27		ZONING CERTIFICATE RESUBMISSION
04	2018-10-25		COMMITTEE OF ADJUSTMENT RESUBMISSION
03	2018-09-28		ISSUED FOR COMMITTEE OF ADJUSTMENT
02	2018-08-02		ZONING CERTIFICATE RESUBMISSION
01	2018-04-25		ISSUED FOR ZONING CERTIFICATE
NO.	DATE		DESCRIPTION

ISSUE RECORD

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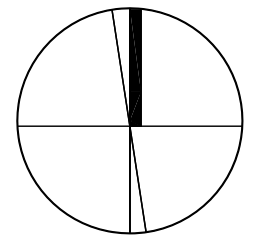
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DRAWING TITLE:

EAST ELEVATION

PRINT DATE: 2018-11-27

SCALE: 1:50

PROJECT NO. 17-052-B

DRAWN BY: JD

CHECKED BY: BB

A303