

**Toronto Local Appeal Body** 

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### **DECISION AND ORDER**

**Decision Issue Date** Monday, July 08, 2019

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

Appellant(s): BEN DOMINGOS

Applicant: SCOTT BARKER ARCHITECT

Property Address/Description: 135 EVANS AVE

Committee of Adjustment Case File: 18 162644 WET 13 MV (A0414/18EYK)

TLAB Case File Number: 18 249091 S45 13 TLAB

**Hearing date:** Friday, March 22, 2019

**DECISION DELIVERED BY S. Gopikrishna** 

#### **APPEARANCES**

Applicant Scott Barker Architect

Owner Atina Holdings Group Inc.

Appellant Ben Domingos

Party Mauro Vitti

Party's Legal Rep. Amber Stewart

Expert Witness Jordan Kemp

#### INTRODUCTION AND BACKGROUND

Mauro Vitti is the owner of 135 Evans Ave., located in Ward 3 of the City of Toronto (Toronto). He applied to the Committee of Adjustment (COA) to construct new second and third storey additions above the existing dwelling. The COA heard the application on October 11, 2018, and approved the application in its entirety.

Mr. Ben Domingos, the neighbour at 133 Evans Ave., appealed the Decision to the Toronto Local Appeal Body (TLAB) on October 29, 2018. The TLAB scheduled a Hearing for the Appeal on March 22, 2019.

#### **JURISDICTION**

#### Provincial Policy - S. 3

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

#### Minor Variance – S. 45(1)

In considering the applications for variances 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.

#### **MATTERS IN ISSUE**

#### City-wide Zoning By-law 569-2013

Your property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, your property is zoned R (d0.6) (x737).

The following variances are required:

A) The permitted maximum floor space index is 0.6 times the area of the lot: 170.4 square metres. The proposed floor space index is 0.88 times the area of the lot: 252.1 square metres. [10.10.40.40.(1) Floor Space Index]

#### JURISDICTION

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- are desirable for the appropriate development or use of the land; and
- are minor.

#### **EVIDENCE**

At the Hearing held on March 22, 2019, the Appellant, Mr. Domingos represented himself, while the Applicant, Mr. Vitti was represented by Ms. Amber Stewart, a lawyer, and Mr. Jordan Kemp, a planner. At the beginning of the Hearing, Ms. Stewart asked to speak first, and present the Applicant's case.

Notwithstanding Ms. Stewart's stated preference for the Applicants to present before the Appellants, I asked the Appellant to present before the Applicants, and explained that my preference was in accordance with Rule 27.3, which allows the TLAB considerable latitude in determining the order of presentation between the Applicant and the Appellant. I believe that when, and where the Applicant is not the Appellant, it is helpful for the Adjudicator to understand what the Appellant's reasons for appealing the COA decision are, in order to better understand the Applicant's evidence, and run the Hearing smoothly.

Mr. Domingos then put forward a Motion, asking to be recognized as an Expert Witness, because he was "familiar with how variances are identified, by virtue of being an Architect", and "had participated in many COA hearings". Ms. Stewart objected to Mr. Domingos' being recognized as an Expert Witness because of his "lack of objectivity", by virtue of the Appellant. I stated that I did not disagree with Ms. Stewart's reasoning, and then pointed out while there was no Rule which explicitly addressed the question of an Appellant 's request to be an Expert Witness, Rule 14.3 of the Rules states very clearly that an Expert Witness could not be a Representative, in the same proceeding. I interpreted the rule contextually to point out since Mr. Domingos was his own Agent, he was effectively precluded from becoming his own Expert Witness.

I ruled that Mr. Domingos could not be an Expert Witness in the Hearing respecting 135 Evans Ave.

Mr. Domingos then said that his evidence was going to focus on variances, which he claimed, had been "missed" by the Zoning Examiner, as well as the Applicants, but were nonetheless necessary for the completion of the project. When he brought forward a submission that had not been provided to the TLAB, prior to the hearing, Ms.

Stewart objected to the submissions, and the inclusion of the variances, because the Applicants had not had an opportunity to review the submissions.

By way of editorial comment, I point out that the Rules referred to are the TLAB's Rules of Practice and Procedure, before revision and implementation, effective May 6, 2019.

I granted a fifteen minutes break, to provide an opportunity to the Applicants, to review Mr. Domingos' submissions, because he had not submitted anything prior to the Hearing earlier.

After the fifteen minute break, Ms. Stewart said that she was ready to proceed with the Hearing, because she "could deal" with the variances being brought forward by the Appellant. While she and the Architect, Mr. Baker, felt that the variances were not necessary, they would "nevertheless, approach the variances with an open mind", and make a determination at the end, if they were required. She asked that the need for additional notice, under Section 45.(18.1.1) be waived, for any variances that may be included; Mr. Domingos stated that he had no objection to a waiver of notice, and I ruled that further notice would be waived for any variances to be included.

Mr. Domingos stated that he resided at the neighbouring property at 133 Evans Ave., and was an architect by training. He was familiar with the area, by virtue of being a resident, as well as representing many clients with properties in the area before the Committee of Adjustment. He said that he was familiar with the "City planner" who had written the report for the COA, and opined that while the "planners"" work was generally of high quality, "they made mistakes, because of the pressure they are under" and "All humans make mistakes". He discussed how he had drawn the attention of the "planner" to a mistake in the GFA calculation, and had the FSI related variance changed from 0.88X to 0.91X, before the COA hearing, scheduled for July 5, 2018. According to Mr. Domingos, the change to the variance, resulted in an adjournment of the original hearing.

However, in the updated Hearing notice for the hearing on October 11, 2018, "the variance with a 0.91X GFA had disappeared", and was replaced by a variance requesting a GFA of 0.88 X. Mr. Domingos claimed that there were voids in the structure, which were so significant, that they had to be added to the GFA calculations, increasing the FSI variance from 0.88X to 0.91X. He also claimed that a variance related to the inclusion of a secondary suite, had been removed from the updated Notice. According to Mr. Domingos, community members living in the vicinity of the Subject Property, originally opposed to the Application, had inferred that there would be no secondary suite included in the project at 135 Evans based on the elimination of a variance respecting the secondary suite in the Notice for the hearing scheduled on October 11, 2018, and had "dropped their opposition". Mr. Domingos stated that the conclusion was "misleading", because the project continued to include a secondary suite, though the variance had been eliminated. He added that the community "could not object, to something that was not listed in the Notice".

Mr. Domingos claimed that he had not been allowed to voice these concerns, and others, at the COA hearing, because he had been "cut short by the panel". He

concluded that he "had not been heard", and had decided to appeal the COA decision to the TLAB.

Mr. Domingos complained about how the Applicant tore down the roof, and attempted to cut trees, without adequate notice to the neighbours, or obtaining requisite permission from the City, and said that a work order had to be obtained by a different neighbour, to stop the unauthorized renovations at 135 Evans Ave.

He said that the massing proposed at 135 Evans Ave., was so significant that "there were two floors, in the envelope of a building with three floors". He said that the height of the main walls was such that they exceeded the permissible 7.5 m by 2.25 m, and had to have an extra variance to recognize the height.

Mr. Domingos said that he was concerned by the height of the building, its massing, with specific reference to the "sharp transition" between the heights of the proposal, and its neighbours, compared to each other. He complained about the loss of the view through the window in the dormer of the second floor of his house as a result of the proposed construction, and described the "wonderful view" he had through the dormer. He added that the proposal could have tempered the transition through the use of a mansard roof, but had chosen not to do so, resulting in an unacceptable transition, unprecedented in the community.

He said that secondary suites were allowed "as long as the walls, and the roof, are not changed". However, in this case, the roof of the building had "been gutted", and would have to be rebuilt", in which case a separate variance had to be applied for, to permit the secondary suite. Mr. Domingos provided examples of other houses in the vicinity of the Subject property, which had applied for variances specific to secondary suites, because they made changes to the walls, and the roof of the subject properties. He identified 387 Kennedy Ave., as being the property whose "roof form" was closest to what was being proposed at the Subject property, and pointed out that 387 Kennedy had to seek a specific variance, for a Secondary Suite. He referenced the Building Form Policies in 3.1.2 of the OP, and section 4.1.5, in support of his comments.

At this stage, Ms. Stewart pointed out that the numbering of the pages on Mr. Domingo's presentation, as it appeared on the screen, was different from the numbers she had hand written on a hard copy of the "same" presentation that she printed off during the break- by way of information, the version that "appeared on the screen" is marked Exhibit 1 in the list of the exhibits for this hearing. Ms. Stewart noted that not only did the page numbering seem different, even the content appeared to be different, and that the page numbers did not tally "even if it is the same exhibit". Mr. Domingos first said that Ms. Stewart's page numbering was "inaccurate", then said that he did not know why there was a difference, and finally said that what he had on the screen, was "the truth". Ms. Stewart expressed her frustration about Mr. Domingos' not making any submissions prior to the Hearing, and then making what was ostensibly a different submissions to the TLAB, than what was disclosed to the Applicants. She said that she was" deeply concerned" by the quality of the submission, because she did not know what to respond to.

I agreed with Ms. Stewart's submissions on this matter, and remarked that the late disclosure of documents, with requests for the inclusion of variances not disclosed before, had effectively defeated the purpose of my site visit, because I had no way of checking to see if the inclusion of the requested variances was reasonable. I then requested that "we carry on with the hearing, as best as we can".

Mr. Domingos opined that the "City Planner" had "it wrong" when identifying the load bearing walls, which in effect, would become the main walls of the house. He said that while she had identified the front and back walls as being the main walls, or the load bearing walls, the configuration of the building, the high side walls effectively meant that the side walls of the house were the" main walls". He then said that if the side walls were determined to be the main walls of the house, based on his reasoning, then a number of variances pertaining to side wall height, and the secondary suite would have to be included.

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Mr. Domingos then suggested that the following variances were needed

- The FSI should be 0.91X, and not 0.88X, as stated in the Zoning Notice,
- A variance recognizing the width of the dormer, because it is 46% of the width of the wall, versus the 40% allowable under the By-Law.
- The slope of the roof above the second floor required a variance, because the roof here has 5.75 vertical units, against 3 horizontal units, as opposed to the allowable 5 vertical units, against 3 horizontal units.
- There is a variance required for maximum height of the main wall, because they 9.95 m, 2.45 m higher than the allowable 7.5 m.
- There should be a variance to recognize the height of the platform at the rear deck because it is 0.215 metres in this case, when it should be no higher than 0.21 m.
- Because the Secondary Suite requires an exterior alteration that faces the street, a specific variance respecting the Secondary Suites is required,.

Per the submission of Mr. Domingos on the day of the hearing, these variances are listed as:

#### Variance One- FSI density of 0.88d 10.5.40.40.(1) Inclusion of Attic Space as GFA

in a Residential Building. GFA includes the portion of floor area in an Attic that has a vertical clearance of more than 1.4m between ceiling joists and roof rafters. From my own several examples of attic GFA calcs on my projects as well as conversations with planners - the Attic GFA is measured from the 1.4m wall height, regardless of where you indicate a partition. The original zoning calculation of 0.91d was correct.

Variance Two 10.10.40.10.(5)Width of Dormers in Roof Above Second Storey or higher.

Max width of dormer is 40% of total width of wall. -Actual width of dormer is 3.22m OR 46% of overall width of wall which is 7.05m.

#### Variance Three 10.10.40.10. (4) Roof Slope Restriction for a Detached House.

Roof above second storey or higher may not slope greater than 5.0 vertical units for every 3.0 horizontal units. Elevations show roof slope as 5.75 vertical units for every 3.0 units horizontal.

#### Variance Four 10.10.40.10.(2)(B) Max. height of Specified Pair of Walls. A

Allowable height of walls is the higher of 7.0m above established grade or 2.5m less than permitted max. height. In this case max. height is 10.0m - 2.5m = 7.5m max wall height. The Side walls supporting the 3rd floor flat roof are approx. 9.75m high.

## Variance Five 10.5.40.50(3) Platforms at or above the Second Storey of a residential building other than an apartment.

Platform such as a deck or balcony may be no higher than 0.2m above the level of the floor of the storey from which it gains access. Front Balcony is 0.210m above second floor. Rear Third Floor Deck is 0.215m above the third floor.

Variance Six 150.10.40 A Secondary Suite is a permitted use provided that an addition or exterior alteration to a building to accommodate a secondary suite does not alter or add to a main wall or roof that faces a street.

The proposed addition significantly alters openings in the existing main wall, deletes the roof in its entirety, and replaces the front porch with a completely different porch and canopy.

Mr. Domingos concluded his presentation by saying that sharp transitions and massing were his main concerns, and that the TLAB should either refuse the Application, or send it back to the Examiner for further consideration of the variances. In response to specific questions from me about whether the proposal satisfied the other tests listed in Section 45.1 of the Planning Act, Mr. Domingos said that the proposal did not satisfy the intent and purpose of the Zoning By-law, but did not elaborate on the lack of compliance . He also added that he did not disagree with the Applicants' submission that the proposal satisfied the tests of appropriate development, and being minor.

Through the cross-examination of Mr. Domingos by Ms. Stewart, it was established that the "Zoning Examiner" (and not a "Planner", as stated by the former) is responsible for the identification of variances in a given proposal, and that the job of the Community Planner, is to provide a recommendation to the COA, where appropriate, on whether the proposal should be approved. Ms. Stewart demonstrated, through a series of questions, that the Zoning Examiner had been cautioned by the Applicants to re-examine the variances related to the application, because of the objections raised by Mr. Domingos

at the first COA hearing, and had two meetings with two different Managers, besides the Zoning Examiner- on the basis of these conversations, they were confident that they had received confirmation from the Zoning Examiner, that no other variances, other than the FSI related variance, were needed.

Mr. Domingos also agreed with Ms. Stewart, that a void could be introduced between two floors "to a certain extent", without impacting the FSI calculation.

With respect to the concern regarding the "sharp transition" between adjacent houses, Ms. Stewart established that the determination of "transition" was made when examining the interaction of neighbouring properties, but in different zones- this was different from the situation at the Subject Property, which looked at transition between properties in the same zone.

Ms. Stewart also referred to a Staff Report dated June 27, 2018, which recited a number of variances, which had been since removed, including one referring to a alternation of a front wall to create a secondary suite. The report stated:

"The proposal is requesting a variance for a secondary suite that will after the front main wall that faces a street (Evans Ave.). In this case, the front elevation, and ground floor plan shows two front doors facing the street. Planning Staff are of the opinion that access to the units should be internalized via a main entrance. Staff recommend that the alterations to the front to accommodate the secondary suite only have one entrance facing the street."

Ms. Stewart said that the Applicants had followed the advice of the Staff Report, with the result that there was only one entrance to the building, from the street. Mr. Domingos vehemently disagreed with Ms. Stewart's suggestion, and said that there were enough alterations to the roof and walls of the house, that the proposal was tantamount to a new structure, which meant, that a new variance was required to accommodate the secondary suite.

He also disagreed vociferously about the variances respecting the "main walls", because in his opinion, the walls in question would be the side walls, by virtue of being the "load bearing walls", and not the front walls. He added that the "orientation of the roofs" confirmed that the front and back walls were not the "main walls".

Before the examination-in-chief of Mr. Kemp, Ms. Stewart said that she had consulted with Mr. Baker, her client's architect, and conceded that the variance about the slope of the roof, suggested by Mr. Domingos, may be required. The variance, by way of editorial comment, was required because this design required 5.75 vertical units for every 3 horizontal units, against the allowable 5 vertical units for every 3 horizontal units. Ms. Stewart said that she and the architect were in agreement that the other variances were not required. Ms. Stewart added that after the Hearing, the Applicant would determine, whether to include the variance, and retain the submitted Plans and Elevations, or change the Elevations to eliminate the variance

Mr. Kemp was then sworn in, and recognized as an Expert Witness, after his work experience, and qualifications were reviewed; there were no objections from Mr. Domingos regarding Mr. Kemp's qualifications.

Mr. Kemp began with a description of the site, and said that the subject site consists of a parcel located on the east side of Evans Avenue, with an area of approximately 284 square metres, frontage of approximately 8.5 metres and a depth of approximately 33.3 metres. The subject site has an existing 1-1/2 storey detached dwelling. The building is one of only two detached dwellings on Evans Avenue, less than two storeys in height. The dwelling has a length of approximately 15.9 metres, and a front yard setback of approximately 3.9 metres. The existing side yard setbacks are approximately 0.95 metres to the south, and 0.55 metres to the north. Vehicular access to the subject site is provided by way of a rear public laneway, which will remain unchanged as a result of the proposed development.

Mr. Kemp described the proposal as comprising a second- and third-storey addition, to the existing one-and-a-half, storey detached dwelling. The proposed dwelling has an overall height of 9.95 metres and a gross floor area of 252.1 square metres (0.88 FSI).

There is a ground floor suite, and a second unit on the second and third storeys. The third storey of the proposed dwelling consists of a bedroom, with an ensuite bathroom and closet, mechanical space, as well as a void, which is open to the second storey below. The proposal incorporates a combination of different gable roofs. At the front of the dwelling, facing Evans Avenue, a gable roof spans the width of the dwelling, with a main wall height of approximately 7.5 metres, and a peak roof height of 9.95 metres. The main wall height of 7.5 metres extends along the sides of the dwelling, for a length of approximately 5.0 metres, before rising to the full permitted height. The full permitted height of the main walls, is achieved for a length of just 6.54 metres, or 40% of the existing building length. At the rear of the dwelling, there is a sloped roof down to the second storey.

Mr. Kemp emphasized that the proposal would maintain the existing building length, front and side yard setbacks, in their present, existent condition. There are no new windows on the second or third storey of the proposed dwelling. On the ground floor, no new windows are proposed on the south elevation of the proposed dwelling; there are two small windows proposed on the north elevation.

The proposed dwelling fits entirely within an as-of-right building envelope permitted by the Zoning By-law, with respect to building height, main wall height, building depth, front and side yard setbacks, and landscape coverage. The only proposed variance to By-law 569- 2013, seeks to increase the permitted floor space index from 0.6 times the area of the lot (170.4m2) to 0.88 times the area of the lot (252.1m2).

Mr. Kemp said that the Subject site is located, in a low-rise residential neighbourhood that is generally known as "Baby Point" or "Bloor West Village", and is approximately 60 metres south of the Evans Avenue and Annette Street intersection. He stated the "neighbourhood" chosen, for study purposes, was based on the following considerations:

- A) the pattern of streets, blocks and lots, on interior portions, of the low-rise residential neighbourhood:
- B) the edges of major roads, such as Jane Street and Runnymede Street; and,
- C) the extent of existing zoning regulations

The lands within the Study Area neighbourhood, predominantly consist of detached, and semi-detached dwellings, largely developed during the late-1910s through the mid-1920s, on lots that typically range in width from approximately 6.0 to 9.0 metres. All of the dwellings in the Study Area are subject to the same zoning regulations under the Citywide By-law 569-2013 i.e. "R (d0.6) ("x737)"); exception 737 did not apply to this Subject property.

To the immediate south of the Subject site, there is an existing 2-1/2 storey detached dwelling (133 Evans Avenue) that features a tall gable roof, along the width of the house facing Evans Avenue. The existing dwelling at 133 Evans Avenue, has a north side yard setback of approximately 0.56 to 0.60 metres, and the north elevation contains four small windows: three on the main wall, and one small dormer window. Further south are four pairs of semidetached dwellings (117 - 131 Evans Avenue), that feature a variety of gable roofs.

To the immediate north of the subject site, there is a two-storey detached dwelling (137 Evans Avenue), featuring a gable roof facing Evans Avenue. The dwelling has a "notch" on the south side that creates an area used as a small deck. There is a large shade tree in the rear yard of 137 Evans Avenue. Further north are a pair of semi-detached dwellings (139 - 141 Evans Avenue) that feature gable roofs facing the street, and a detached dwelling (143 Evans Avenue) with a traditional hip roof.

To the west of the subject site, on the opposite side of Evans Avenue, there are semi-detached dwellings (106 – 140 Evans Avenue), that feature a combination of gable roofs, perpendicular to the street, and flat roofs at the rear of the dwellings. To the east of the subject site is a rear public laneway and the garages and rear yards of dwellings fronting onto Willard Avenue.

Mr. Kemp opined that the proposal was consistent with the 2014 Provincial Policy Statement (PPS), in particular Policies 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, and 1.4.3. He submitted that the proposed variance will facilitate the ongoing regeneration of homes in the surrounding neighbourhood by permitting the construction of a new detached dwelling, which is compatible with the general height and scale of other existing and approved dwellings in the neighbourhood. In response to a question from me, Mr. Kemp added that the proposal directly aligned with the PPS, because of the creation of a secondary residential unit.

Mr. Kemp also said that the proposal was consistent with applicable policies in the Growth Plan for the Greater Golden Horseshoe (2017), because of the development on an "underutilized" site, in a built-up urban area in a manner that supports the efficient

use of land and infrastructure, as well as a range and mix of housing for a variety of household types.

Mr. Kemp then discussed the compatibility between the proposal, and the Official Plan, and noted that the house is in an area designed "Neighbourhoods", in the Official Plan. He noted that a new dwelling can be simultaneously different and compatible, with its neighbours, because "the latter, does not mean the same as, or even similar to", but capable of "coexisting in harmony". The question of "harmonious coexistence", is informed by a review of the Built Form policies of the Official Plan. The Built Form policies of the Official Plan emphasize that new development should be located, and organized, to fit with its existing and/or planned context (Policy 3.1.2(1)), and that where there are no height and density limits in the Plan, height and density limits of area zoning, implementing the Plan, will be the "benchmark" for assessment of those aspects of the planned context.

Additionally, the Official Plan acknowledges that the harmonious relationship of a new façade, in its context, can be achieved with a contemporary expression, provided that the existing context, proportions, forms and sizes and scale, are fully respected and appropriate materials are used. With respect to scale and character, the OP recognizes that a new façade can be contemporary, and "need not be a simple replication of adjacent building façades."

Further, Policy 3.1.2(3) states that new development will be massed and its exterior façade designed to "fit harmoniously" (similar to "compatibility") within its existing or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by, amongst other matters:

- massing new buildings to frame adjacent streets and open spaces that respects the existing and/or planned street proportion; incorporating exterior design elements, their form, scale, proportion, pattern and materials, to influence the character, scale and appearance of the development,
- providing for adequate light and privacy; and,
- adequately limiting any resulting shadowing on neighbouring streets and properties.

Mr. Kemp then pointed out that the proposed dwelling fits entirely within a building envelope, that is permitted as-of-right by the applicable Zoning By-law, which represents the planned context for the subject property. In particular, the proposal retains and reinforces the existing pattern of front, side and rear yard setbacks, frames the adjacent public street with good proportion and is not anticipated to create unacceptable built form impacts on adjacent properties, particularly with respect to light, views and privacy, or shadowing.

He added that a small balcony on the third storey has been inset, to help minimize potential opportunities for overlook. Although the partial third storey is taller than the main wall height of the existing dwellings to the immediate north and south, it is permitted as-of-right. The tallest portion of the main wall only comprises 40% of the

building depth and is setback to the rear portion of the dwelling, approximately 7.2 metres from the front main wall. From the street, the partial third storey will be primarily visible as a pitched roof. In response to a concern raised by the Appellant, the project Architect reconfirmed with the City zoning examiner, that the proposed main wall height is compliant. The architectural approach to the proposed dwelling, includes a gable roof facing Evans Avenue, which complements the existing context of 2- and 2-1/2 storey dwellings, with gable roofs along the street. The tallest point of the gable roof appears to approximately align with the top of the gable roof of the dwelling to the south (133 Evans Avenue).

The third storey is not anticipated to create unacceptable built form impacts, particularly with respect to net incremental shadowing. The main wall of the dwelling at 137 Evans Avenue on the north side of the deck is approximately 3.2 metres from the main wall of the existing dwelling on the subject site. Given that the height of the main wall of the existing dwelling is approximately 3.8 metres in this area, a preliminary review suggests that the existing deck is in shadow on the equinoxes. Additionally, the proposed dwelling is not anticipated to create shadowing on the rear yard of the dwelling to the south (133 Evans Avenue).

A streetscape rendering was prepared by the Architect to demonstrate how the proposal will fit in with its surrounding context. In my opinion, the rendering helps to visualize that the new dwelling will provide a more contemporary façade, and massing that fits well into its built form context

Based on the foregoing, Mr. Kemp concluded that the proposed variance for floor space index maintains the general intent and purpose of the Official Plan. As emphasized earlier, I had suggested that Mr. Kemp could provide broad strokes, to establish the conformity between the proposal, and the other tests under Section 45(1), such that the right balance, could be struck, between the *de novo* nature of the Hearing, and the lack of objection from the Appellant, regarding the other tests, excluding the OP.

Mr. Kemp discussed the compatibility between the proposal, and the Zoning By-Law. He emphasized that the only required variance was for the FSI of the proposed dwelling, with respect to By-Law 569-2013. He said that the general intent and purpose of the Zoning By-law is to establish zoning regulations (i.e. massing, scale and location of buildings) in relation to neighbouring properties so that there is a consistent and cohesive character and feel, in terms of built form and other standards. Mr. Kemp asserted that , the proposed two-unit dwelling is permitted as-of-right, from a land use perspective ,and would create no unacceptable, adverse impacts. The proposal provides the required vehicular parking, and will not create impacts on nearby community amenities and services. Mr. Kemp emphasized that the proposed FSI of 0.8, is well within the range of permitted densities approved by the COA , which range between 0.71 and 0.94 FSI, and concluded that because the variance satisfied the stated performance standard, and did not create any adverse impacts, the proposal maintained the intention and purpose of the Zoning By-Law.

Mr. Kemp next spoke to how the proposal satisfied the test of appropriate development.

He said that the proposed dwelling will facilitate development on an underutilized site, and reflects a positive cycle of renovations and reinvestment in an older neighbourhood that is characterized by a variety of detached and semi-detached dwellings with a variety of built form and architectural styles.

From a built form perspective, the proposed dwelling reflects a desirable and attractive architectural approach to intensification on the subject site that fits harmoniously within the context of the residential neighbourhood. The gabled roof is consistent with adjacent dwellings to the north and south, and the proposed third storey is setback from the public street. It will primarily be visible as a sloped roof, is permitted within the as-of-right zoning regulations, and will not create undesirable built form impacts.

Based on this discussion, Mr. Kemp concluded that the proposal satisfied the test of desirable development.

Lastly, Mr. Kemp discussed how the proposal satisfied the test of being "minor".

Emphasizing that the test did not emphasize numerical increases, Mr. Kemp explained that the real test of "minor" was in determining whether the proposal created undesirable, adverse impacts on abutting properties. He then asserted that there were no negative impacts, and concluded that the test of "minor" had been satisfied.

Both Mr. Kemp, and Ms. Stewart concluded that the proposal should be approved, on the basis of Mr. Kemp's evidence.

By way of editorial comments, Mr. Domingos' "cross examination" of Mr. Kemp was very brief, and primarily consisted, of comments on some of the properties that had been discussed earlier; Ms. Stewart objected to these comments, because "no questions are being asked". I upheld the objection, and am not reproducing the comments here.

Ms. Stewart also recommended the imposition of two conditions, including one, which required the Applicants to build in substantial conformity with submitted Plans, and Elevations. The other recommended condition required the Applicants to submit an application to the City, and obtain a permit to destroy any trees.

On April 24, 2019, I received an updated set of Plans and Elevations by way of a submission from Ms. Stewart, who confirmed to me that the revised Elevations reflected a roof slope of 5 vertical units, for every 3 horizontal units. In other words, there is no new variance before the TLAB to be ruled on; the FSI related variance that was argued before the TLAB, is effectively the only variance under the Appeal.

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

I note that there were two pre-hearing matters that arose before the commencement of the Hearing- namely, the question of the Appellants or the Applicants presenting their evidence first, and the issue of recognizing Mr. Domingos as an Expert witness.

I have discussed my decisions, as well as the underlying reasoning, in appropriate detail, in the Evidence section of this Decision, and do not have anything to add to my stated reasoning.

Before I delve into Mr. Domingo's evidence, I would like to highlight an unusual feature of Mr. Domingo's evidence- he started with a discussion of why the FSI should be 0.91X, instead of 0.88X, but then proceeded in a different direction to discuss why more variances were needed, on the basis of the OP. He stated, in passing, and in a very brief, response to a very specific question from me, that the proposal, as submitted, did not fulfill the intent of the Zoning By-Laws, "because it did not have the adequate variances"; however, he did not elaborate on his statement.

Given that variances are the consequence of By-Laws governing a property, I find it unusual that the Appellant chose to focus on the OP to explain the need for more by-laws, without any exploration of how the existing variance, or proposed variances, interact with the Zoning By-Law 569-2013. I would have expected to hear some evidence, at the very least, on the variance respecting the FSI, and its ability to fulfill the corresponding performance standard. The only response I got from the Appellant, with respect to a specific question, about the compatibility between the proposal, and the Zoning By-law, was that the existing proposal did not fulfill the intent of the By-law, because it did not include the other variances, recommended by the Appellant. In the absence of a discussion about performance standards, the Appellants' statement is reduced to an assertion, and does not explain whether the intent of the Zoning By-Law, would be fulfilled, even if all the suggested variances are collectively included.

The observation above, is further compounded by the Appellants' stated conclusion, that the proposal, as submitted to the TLAB, satisfied the test of being minor, as well as appropriate development. While the four tests under Section 45.1 are independent of each other, it is difficult to see, *prima facie*, how a proposal, failing the test of satisfying the Official Plan, can simultaneously satisfy the test of appropriate development, since the test of appropriateness, does touch on the proposal's ability to be consistent with the OP, and the Zoning.

With this planning paradox in mind, I will then examine whether the new variances put forward by the Appellant can be included in the application, and the basis on which they should be included.

While the TLAB has the ability to admit new variances at the time of the Hearing, the source of the identified variances, before the TLAB, is usually the Zoning Notice. In this case, the final form of the Zoning Notice, identifying a single variance requesting an FSI of 0.88 X, was confirmed by the Zoning Examiner's office, after conversations between the Applicant's architect, and two different managers, besides the Zoning Examiner herself. No weight is assigned to the Appellant's comment about the examiner being ordered not to engage in conversation with him, because this constitutes neither a denial of justice, nor a violation of planning principles.

On the basis of the above observations, I conclude that the Appellant has not demonstrated why extra variances are needed, notwithstanding the Zoning Examiner's conclusions to the contrary

As Ms. Stewart noted, much of the Appellant's evidence concentrated on determining which set of walls are the "main walls" of the proposed dwelling, and using these walls as the reference point to determine what variances should be sought. The specific By-Law relied on by the Appellant, namely 10.10.40.10.(2)(B) Max. Height of Specified Pair of Walls, reads:

#### 2) Maximum Height of Specified Pairs of Main Walls

In the R zone, the permitted maximum height of the exterior portion of **main walls** for a **residential building**, other than an apartment building, is the higher of 7.0 metres above **established grade** or 2.5 metres less than the permitted maximum height in regulation 10.10.40.10(1), for either (A) or (B) below:

- (A) for no less than 60% of the total width of:
  - (i) all front main walls; and
  - (ii) all rear main walls; or
- (B) all side main walls:
  - (i) for no less than 60% of the total width of the side **main walls** facing a **side lot line** that abuts a **street**; and
  - (ii) for no less than 100% of the total width of the side **main walls** that do not face a **side lot line** that abuts a **street**.

and Main Wall is defined by By-Law 569-2013 to mean:

#### 55. Main Wall

means any exterior wall of a building or structure, including all structural members essential to the support of a roof over a fully or partly enclosed area.

The Appellant concludes that the side walls (as opposed to the front and back walls) are the main walls, "based on the orientation of the roof", and uses this as the basis for other conclusions. However, it is surprising that there was no evidence brought forward on what the orientation of the roof is, and how the roof orientation relates to the determination of what the main walls. There is no demonstrated, and logical link between the Appellant's statement of the principle, and his conclusion.

While the Zoning By-law defines the Main Walls as the "load bearing walls", there was no discussion of how the load bearing parallel walls are determined, nor is there a discussion of whether the determination lies with the TLAB's jurisdiction.

On the basis that there is insufficient evidence in support of the Appellants' position, I find that there is no reason to use his conclusions to determine which pair of walls qualify as the "main walls". Equally, there is no demonstrated connection to the reasoning behind asking for variances related to the width of dormers.

No evidence was put forward by the Appellant to dispute the removal of the variance respecting the secondary suite, because the extra entrance to the suite, as proposed originally, had been removed.

I find that no planning rationale has been put forward by the Appellant to include the new variances.

Lastly, I look at the impact that the proposal has on the property of the Appellant.

In terms of impact of the proposal on his property, Mr. Domingos discussed how the height of the proposal, would block his view from his dormer window. He was also critical of he massing, and the "sharp transition", caused by the proposal

On the matter of the loss of view, it is trite law to state that there is no absolute right to a view in the Province of Ontario. The height of the walls sought by the proposal is within what is as- of-right, and consequently no unreasonable adverse impact is established.

Listening to the evidence on the Built Form Policies in Chapter 3 of the OP, and the Development Criteria in Chapter 4, I find that the Appellant has not established a nexus between how the transition in heights, and massing, between the proposal and his house, violates the Official Plan through an "edge condition", which occurs when there is a change in zoning. I disagree with the Appellant's interpretation of edge conditions, as occurring between residences in the same zoning designation. The Appellants' characterization of the unappreciable sharpness of the transition, comes across as being subjective, and constitutes an example of how the lack of beauty lies in the eye of the beholder.

On the basis of the above analyses, I find that there is no need to consider the variances referred to by Mr. Domingos, and that the Appeal can confine itself to considering the original FSI related variance of allowing a density of 0.88.

I am satisfied that the evidence put forward by the Applicants regarding the zoning demonstrates that the performance standard has been satisfied, and that the FSI variance, if approved, would merely add to what has already been approved in this community.

Regarding the test of minor, I am satisfied that there will be no unacceptable, adverse impacts on the neighbouring properties, if the proposal were approved. Regarding the test of appropriate development, I agree that the proposal will contribute to the revitalization of a community that is experiencing constant, and consistent change. Given that the Appellant himself agreed with the submissions of the Applicants on these tests, I conclude that the tests of minor, and appropriate development, are satisfied.

The conditions to be imposed, as stated by the Applicants, are standard conditions- the first is that the building be constructed in substantial accordance with the submitted plans and elevations,. The second recommendation follows from a report from the Forestry Department, which requires that the Applicants submit a Permit be obtained to injure, or destroy privately owned trees.

Lastly, by way of an *obiter* remark, I would like to comment on the Appellant not adhering to the Rules on disclosure of documents, and the discursive nature of evidence, as presented in the Examination-in-chief, a conclusion compounded by the confusing page numbering on what are ostensibly, different versions of the same document. It is important that witnesses not approach TLAB hearings in an impetuous manner, but take the initiative of familiarizing themselves about the Rules, and proceed in a thoughtful, and respectful manner, by giving the other Parties, a reasonable opportunity to respond to evidence, by way of submissions, and reply evidence.

#### **DECISION AND ORDER**

- 1. The Appeal is refused in its entirety, and the decision of the Committee of Adjustment dated October 11, 2018, is confirmed.
- The following variances are approved:

#### By-law 569-2013

- A) The maximum permitted floor space index is 0.6 times the area of the lot (170.4 m2).
- B) The altered dwelling will have a floor space index of 0.88 times the area of the lot (252.1 m2).
- 3. No other variances are approved.
- 4. The following conditions are imposed on the approval:

#### **Conditions of Approval**

- 1. The dwelling shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Scott Barker Architect, revision dated April 3, 2019, attached to this Decision. The Plans and Elevations appear between Pages A1 and A14 of the Attachment.
- 2. The Owner shall submit a complete application for permit to injure or destroy privately owned trees.

So orders the Toronto Local Appeal Body

S. Gopikrishna

Panel Chair, Toronto Local Appeal Body

# 135 EVANS AVE, TORONTO 18 249091 S45 13 TLAB



#### PROJECT DESCRIPTION

'SECONDARY SUITE' THREE BEDROOM DWELLING UNIT WITH FRONT AND REAR DECKS ON 2ND FLOOR AND REAR DECK ON 3RD FLOOR. RENOVATION AREA = 200.5 M2, NEW CONSTRUCTION AREA = 141.4 M2

#### **DRAWING LIST**

COVER PAGE/PROJECT DATA 1 SURVEY SITE PLAN LANDSCAPING AREAS **BASEMENT PLAN** Α7 THIRD FLOOR AREAS SOUTH ELEVATION

#### PROJECT TEAM

SECTION A

SECTION B

#### ARCHITECT

A13

A14

SCOTT BARKER OAA SCOTT BARKER ARCHITECT 220-11 ELM AVE, TORONTO ON M4W 1N2 416.939.0690

#### **MECHANICAL DESIGN**

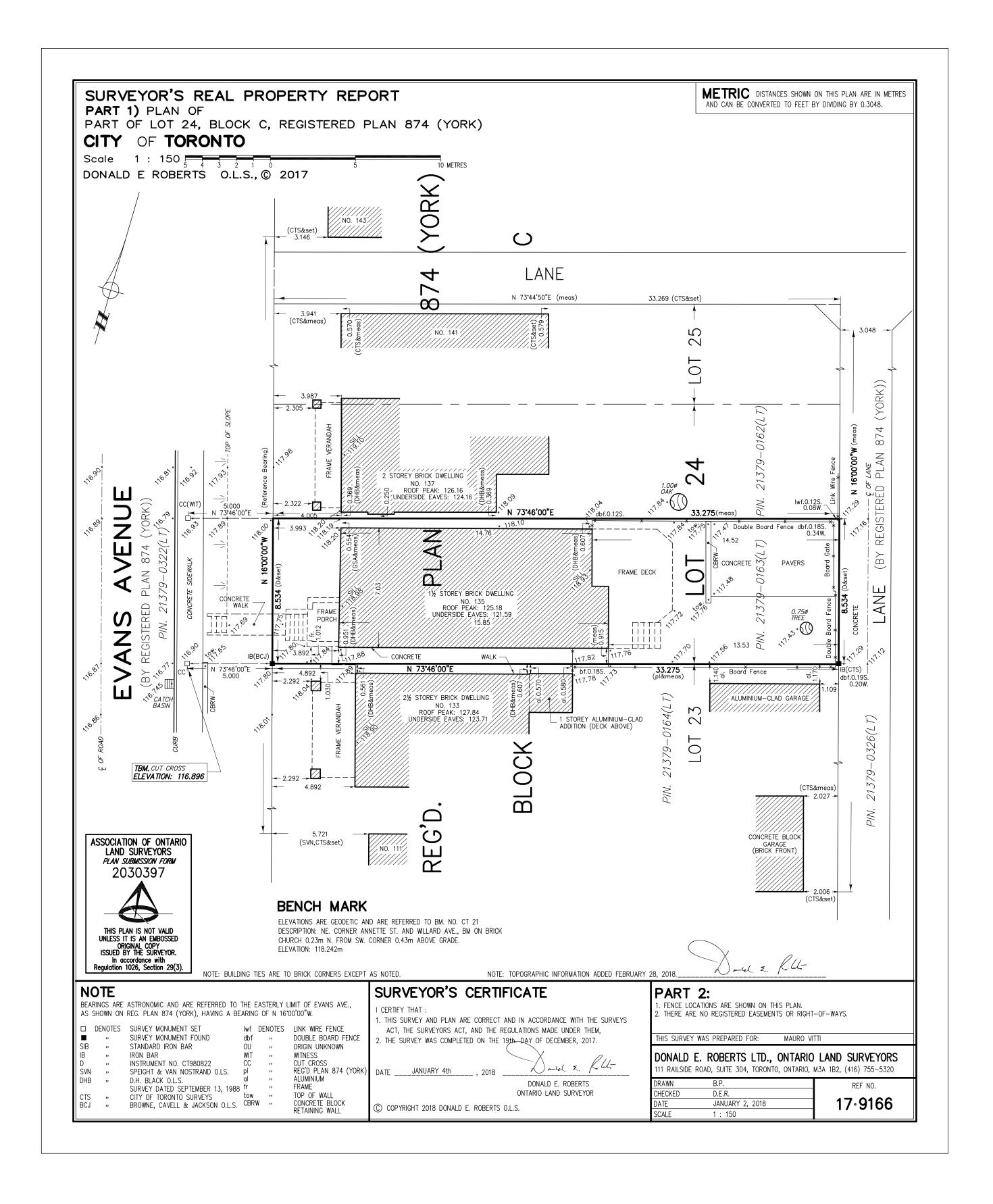
TLAB (REVISED) TLAB FORM 3

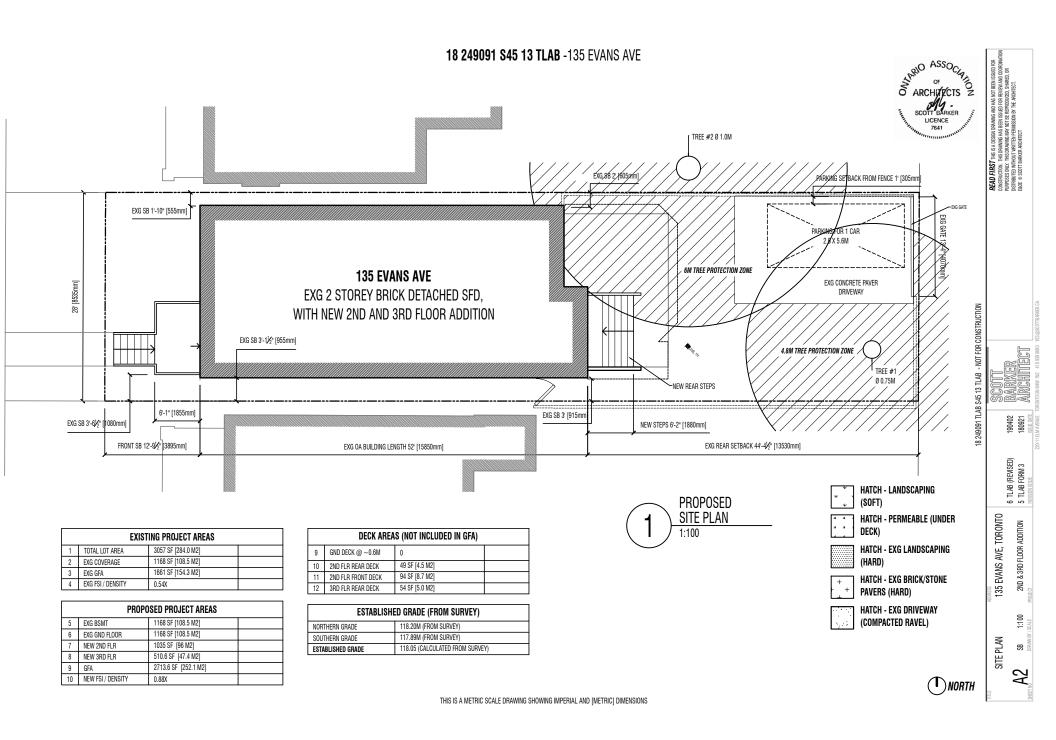
135 EVANS AVE, TORONTO 2ND & 3RD FLOOR ADDITION

NTS

SB

**COVER PAGE** 







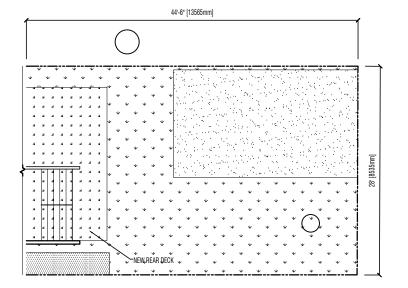
HATCH - LANDSCAPING (SOFT)

HATCH - PERMEABLE (UNDER DECK)

HATCH - EXG LANDSCAPING (HARD)

HATCH - EXG BRICK/STONE PAVERS (HARD)

HATCH - EXG DRIVEWAY (COMPACTED RAVEL)



REAR LANDSCAPE AREAS				
TOTAL AREA	1243 SF	100%		
LANDSCAPING (SOFT)	623 SF	50%		

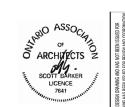


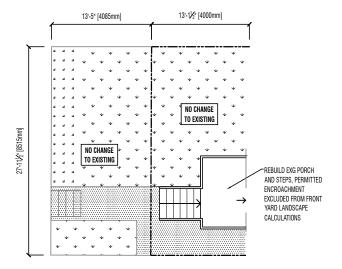
LANDSCPAE PLAN 1

18 249091 TLAB S45 13 TLAB

6 TLAB (REVISED) 5 TLAB FORM 3

135 EVANS AVE, TORONTO 2ND & 3RD FLOOR ADDITION





CITY BOULEVARD LANDSCAPE AREAS					
TOTAL AREA 375 SF 100%					
LANDSCAPING (SOFT)	306 SF	81%			
LANDSCAPING (HARD)	69 SF	19%			

FRONT LANDSCAPE AREAS					
TOTAL AREA 276 SF 100%					
214 SF	76%				
LANDSCAPING (HARD) 62 SF 24%					
	276 SF 214 SF				

¥	* \ *	HATCH - LANDSCAPING (SOFT)
ы	· ·	HATCH - PERMEABLE (UNDER Deck)
. L		DECK)

 HATCH - EXG LANDSCAPING
 (HARD)

+	HATCH - EXG BRICK/STONE
+	HATCH - EXG BRICK/STONE Pavers (Hard)

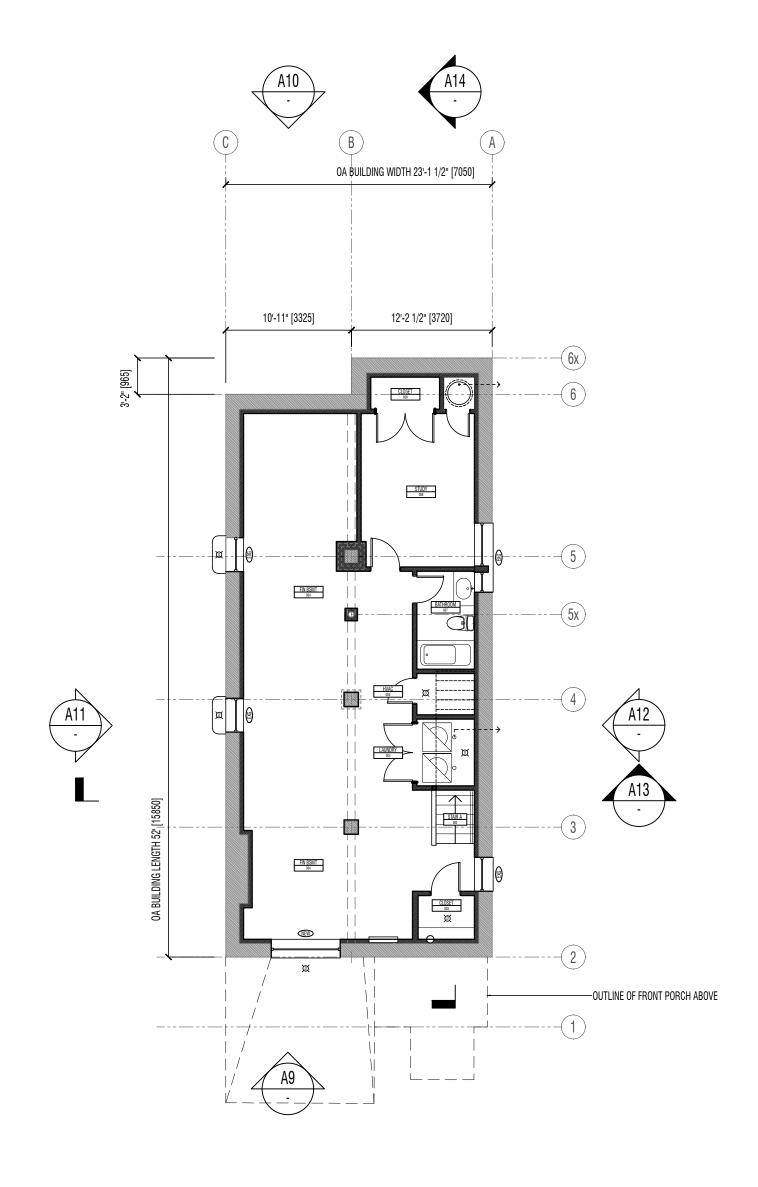
HATCH - EXG DRIVEWAY
(COMPACTED RAVEL)

18 249091 TLAB S45 13 TLAB - NOT FOR CONSTRUCTION

135 EVANS AVE, TORONTO
6 TLAB (REVISED)
200 ZND & 3RD FLOOR ADDITION 5 TLAB FORM 3

LANDSCPAE PLAN 2
A3b sb 1:10





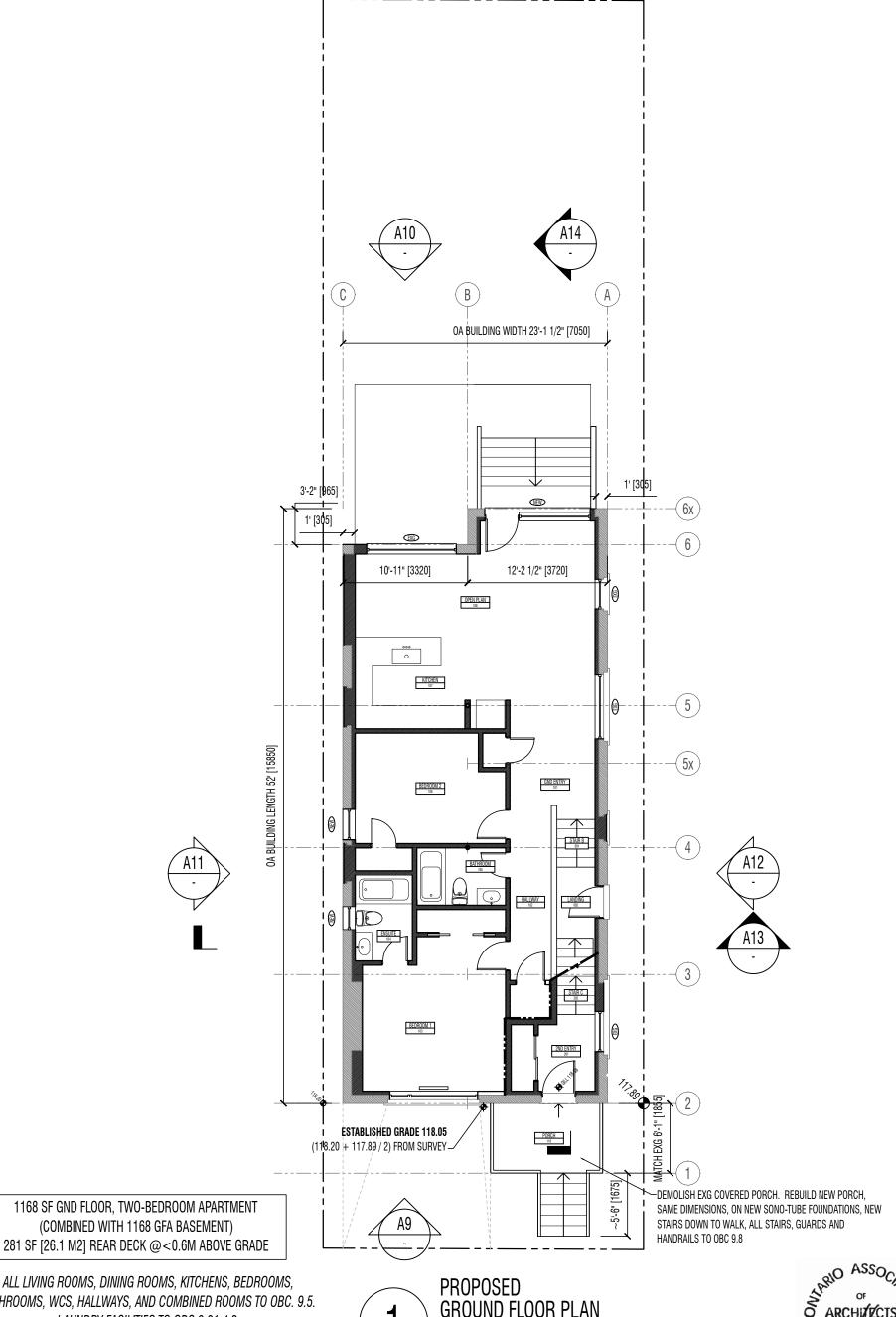






18 249091 TLAB S45 13 TLAB - NOT FOR CONSTRUCTION

TITLE	BASEMENT F	PLA	N	135 EVANS AVE, TORONTO			SCOTT	<b>READ FIRST</b> This is a design drawing and has not been issued for construction. This drawing has been issued for review and coordination pupposes only. This drawing may not be reproduced, shared, or
SHEET NO	44 SB	/N BY /	1:100 SCALE	2ND & 3RD FLOOR ADDITION	6 TLAB (REVISED) 5 TLAB FORM 3 REVISION ISSUE	190403 180921 ISSUE DATE	BARKER ARCHITECT	DISTRIBUTED WITHOUT WRITTEN PERMISSION BY THE ARCHITECT.  E&OE © SCOTT BARKER ARCHITECT
							ORONTO ON M4W 1N2 416 939 0690	YES@SCOTTBARKER.CA



ALL LIVING ROOMS, DINING ROOMS, KITCHENS, BEDROOMS, BATHROOMS, WCS, HALLWAYS, AND COMBINED ROOMS TO OBC. 9.5. LAUNDRY FACILITIES TO OBC 9.31.4.2. ALL STAIRS, GUARDS, AND HANDRAILS TO OBC 9.8

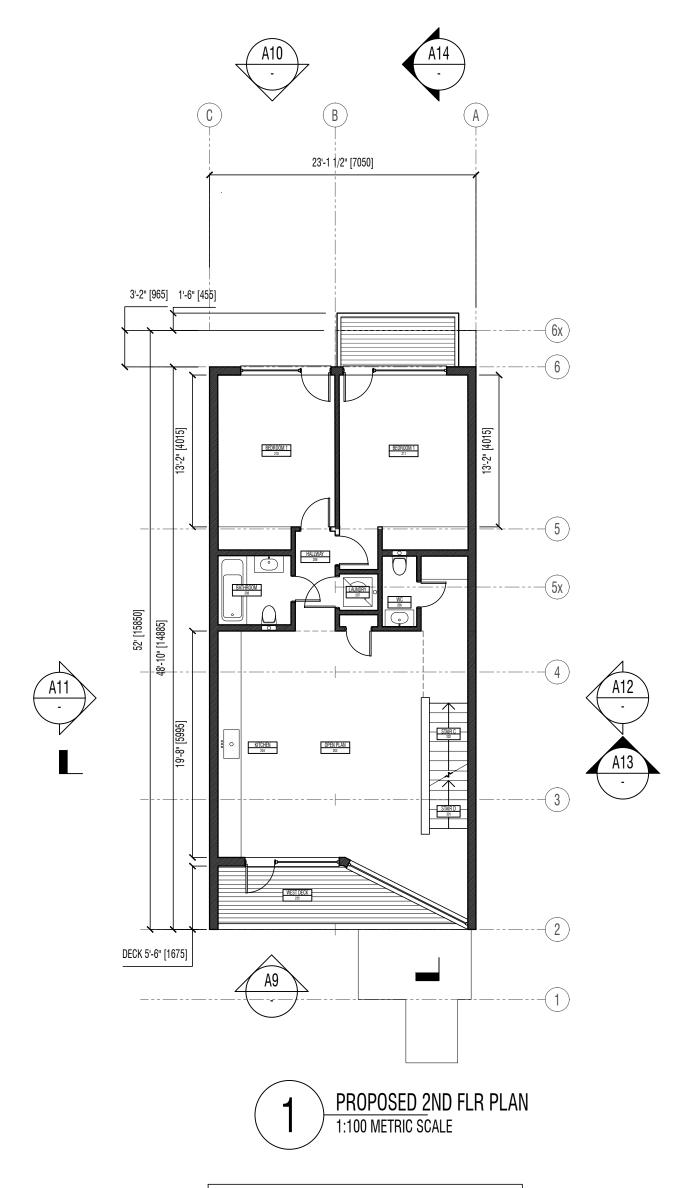
GROUND FLOOR PLAN 1:100 METRIC SCALE





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1035 SF [96 M2] 2ND FLOOR, THREE-BEDROOM APARTMENT 94 SF [8.7 M2] FRONT (WEST) DECK, 188 SF [17.5 M2] REAR (EAST) DECK

ALL LIVING ROOMS, DINING ROOMS, KITCHENS, BEDROOMS, BATHROOMS, WCS, HALLWAYS, AND COMBINED ROOMS TO OBC. 9.5. LAUNDRY FACILITIES TO OBC 9.31.4.2. ALL STAIRS, GUARDS, AND HANDRAILS TO OBC 9.8

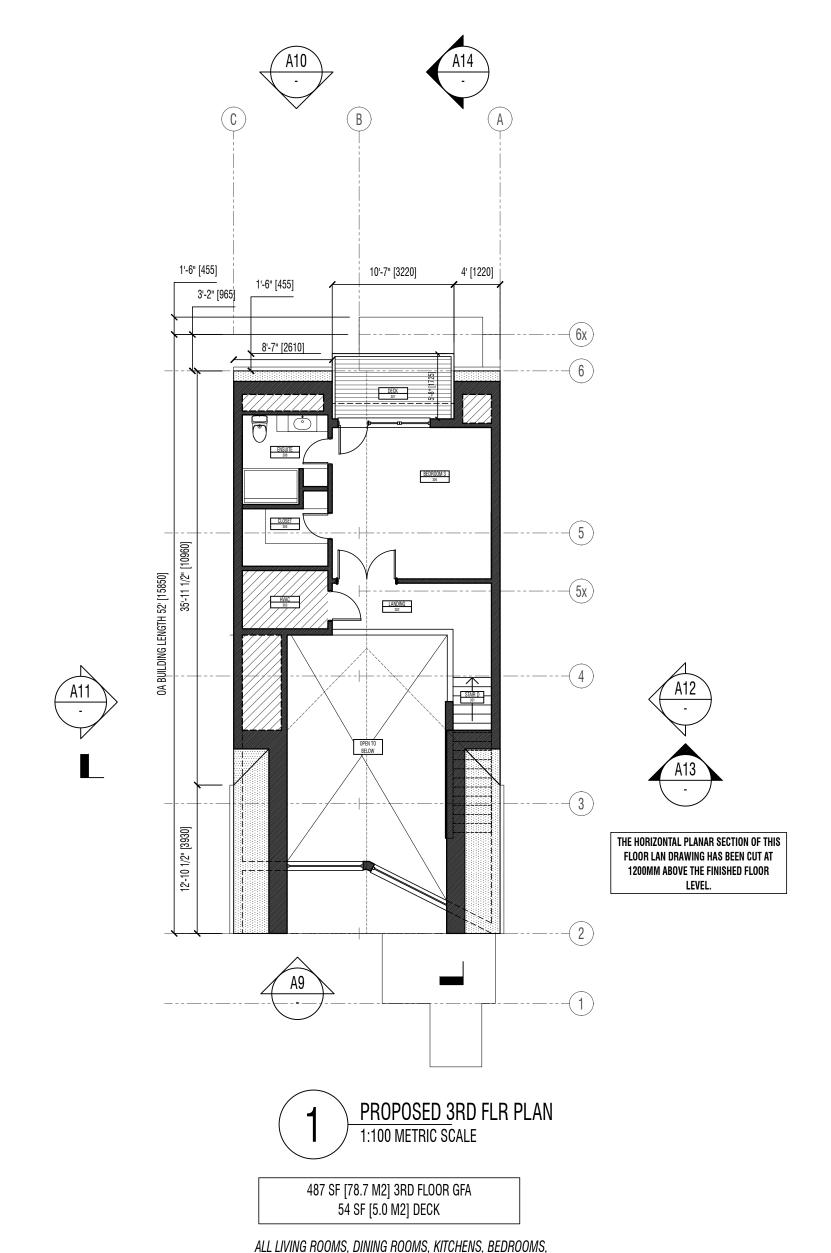




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SECOND	FLOOR PLAN	135 EVANS AVE, TORONTO			SCOTT	<b>READ FIRST</b> THIS IS A DESIGN DRAWING AND HAS NOT BEEN ISSUED FOR CONSTRUCTION. THIS DRAWING HAS BEEN ISSUED FOR REVIEW AND COORDINATION
۸.0			6 TLAB (REVISED)	190403	BARKER	PURPOSES ONLY. THIS DRAWING MAY NOT BE REPRODUCED, SHARED, OR DISTRIBUTED WITHOUT WRITTEN PERMISSION BY THE ARCHITECT.
Ab	SB 1:100	2ND & 3RD FLOOR ADDITION	5 TLAB FORM 3	180921	ARCHITECT	E&OE ⊚ SCOTT BARKER ARCHITECT
SHEET NO	DRAWN BY / SCALE	PROJECT	REVISION ISSUE	ISSUE DATE		

220-11 ELM AVENUE TORONTO ON M4W 1N2 416 939 0690 YES@SCOTTBARKER.CA



BATHROOMS, WCS, HALLWAYS, AND COMBINED ROOMS TO OBC. 9.5.

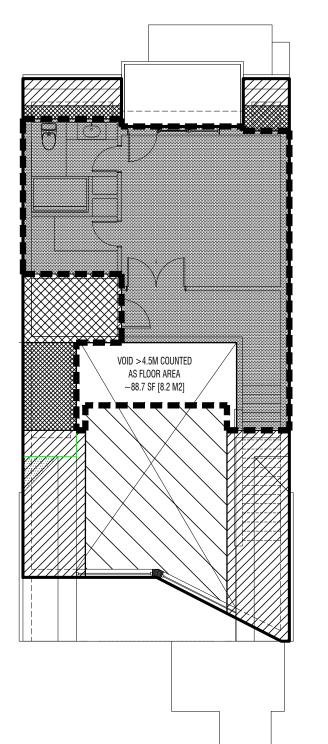
LAUNDRY FACILITIES TO OBC 9.31.4.2.

ALL STAIRS, GUARDS, AND HANDRAILS TO OBC 9.8



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991.2 SF [92.1 M2]		GROSS FLOOR AREA
-----------------------	--	------------------

	(1) AREA UNDER SLOPED ROOF,
M21	HEIGHT LESS THAN 1.4M AFF
IVIZ]	"KNEE WALL EXEMPTION"

53.4 SF SF [5.0 M2]		(2) UNOCCUPIED ATTIC SPACE
------------------------	--	----------------------------

51.0 SF [4.7 M2]		(3) HVAC & MECHANICAL SPACE
------------------	--	--------------------------------

183.4 SF [17.0	(4) PERMITTED EXEMPTION
M21	FOR VOIDS GREATER THAN
IVIZ	4.5M IN HEIGHT

422.0 SF [39.2	OCCUDIED ELOOD ADEA
M2]	 UUUUFIED FLUUN ANEF

135 EVANS FSI/GFA/FLOOR AREA CALCU	LATIONS
SITE AREA	3057 SF [284.0 M2]
0.6X PERMITTED FSI/GFA	1834.2 SF [170.4 M2]
AREA OF GND FLR	1168 SF [108.5 M2]
AREA OF 2ND FLR	1035 SF [96.2 M2]
AREA OF 3RD FLOOR (WITHOUT DEDUCTIONS)	991 SF [92.1 M2]
TOTAL AREA (WITHOUT EXCLUSIONS)	3194 SF [296.7 M2]
(1) LESS KNEE WALL EXEMPTION, EVERYTHING BELOW 1.4M	-192.6 SF [-17.8 M2]
(2) LESS UNOCCUPIED ATTIC SPACE	-54.4 SF [-5.0 M2]
(3) HVAC ATTIC AREA [10.5.40.40 (2) UP TO 5% PERMITTED GFA] MAX PERMITTED IS 91.7 SF [8.5 M2]	-51.0 SF [-4.7 M2]
(4) VOID AREA >4.5M CLEAR HEIGHT [10.5.40.40.(3)(B) UP TO 10% PERMITTED GFA] MAX PERMITTED IS 183.4 SF [17.0 M2]	-183.4 SF [-17.0 M2]
(5) 3RD FLOOR AREA WITH EXEMPTIONS (1-4 ABOVE)	510.6 SF [47.4 M2]
TOTAL AREA WITH EXEMPTIONS (1-4 ABOVE)	2713.6 SF [252.1 M2]
PROPOSED FSI/GFA	0.88 X

PROPOSED 3RD FLR PLAN AREAS 1:100 METRIC SCALE

THE HORIZONTAL PLANAR SECTION OF THIS FLOOR LAN DRAWING HAS BEEN CUT AT 1200MM ABOVE THE FINISHED FLOOR LEVEL.

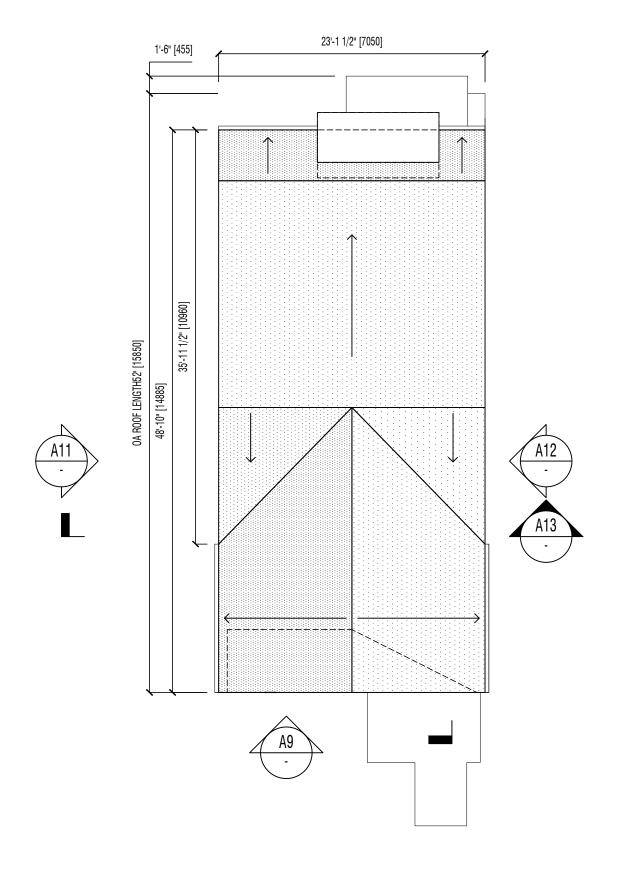


6 TLAB (REVISED) 5 TLAB FORM 3 135 EVANS AVE, TORONTO 2ND & 3RD FLOOR ADDITION THIRD FLOOR PLAN AREAS 1:100

SB

A7a









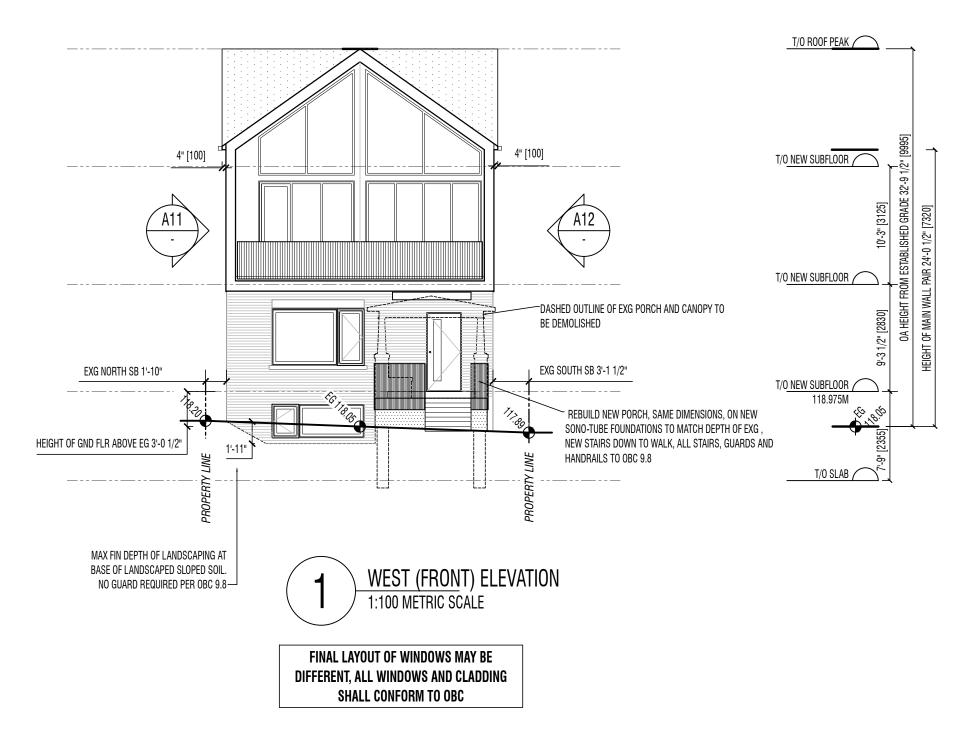


18 249091 TLAB S45 13 TLAB - NOT FOR CONSTRUCTION

ROOF PLAN 135 EVANS AVE, TORONTO

6 TLAB (REVISED) 190403
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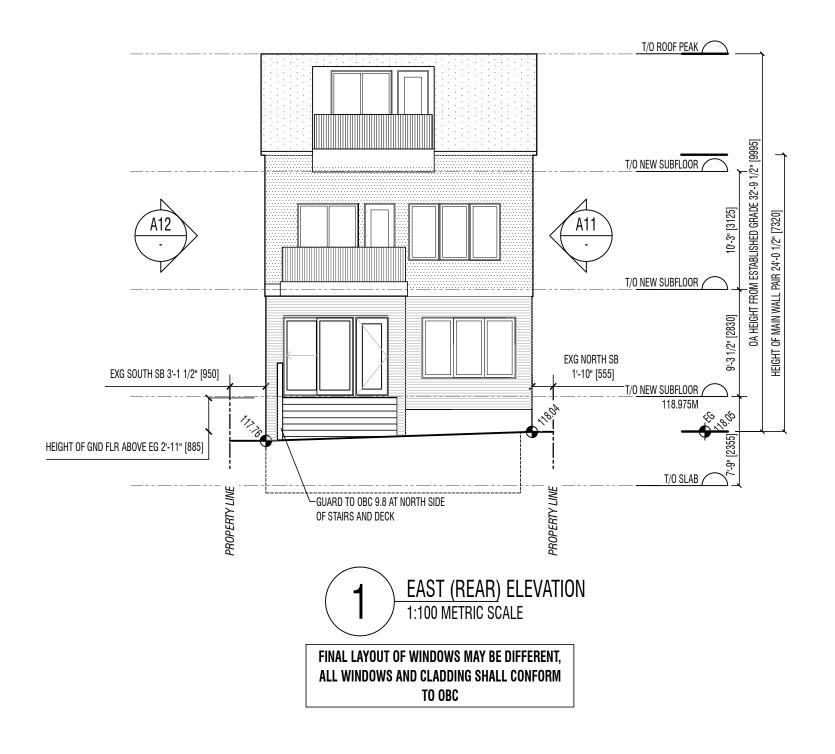






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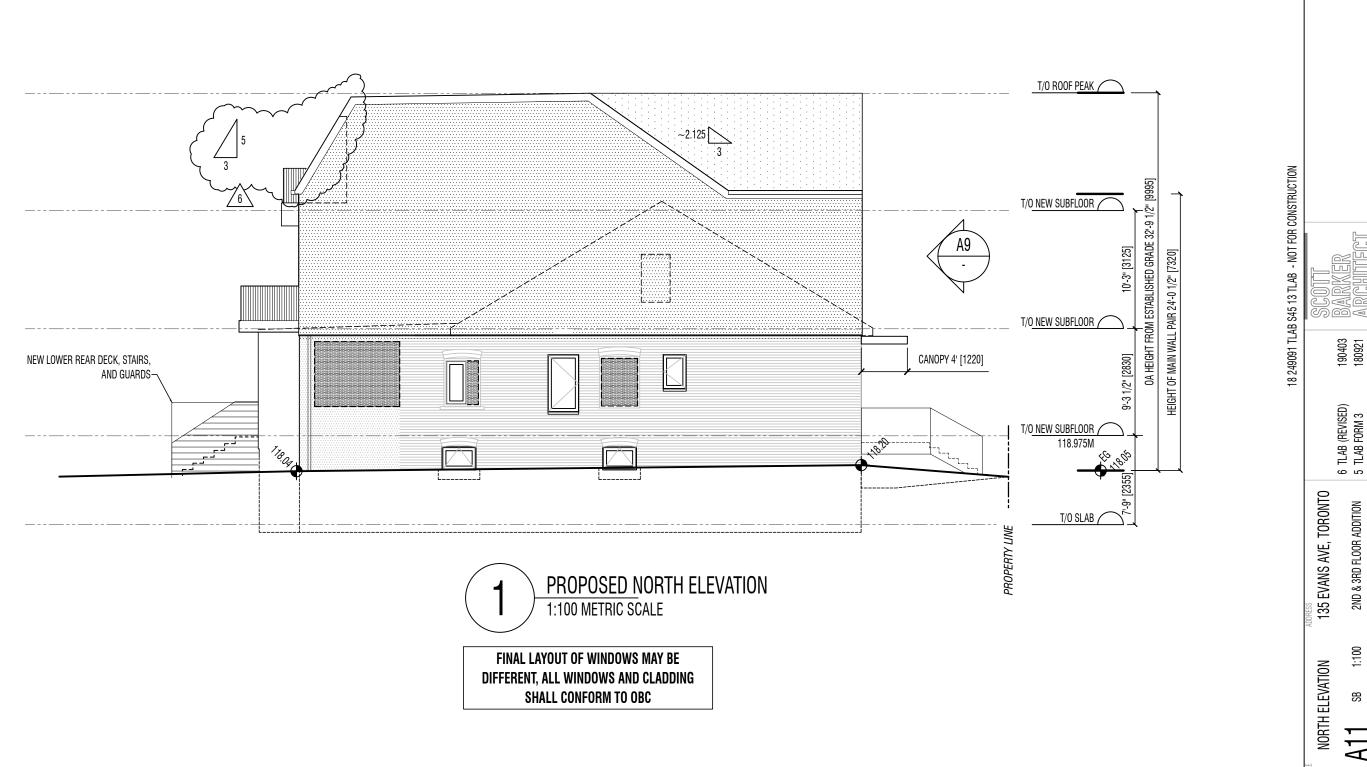


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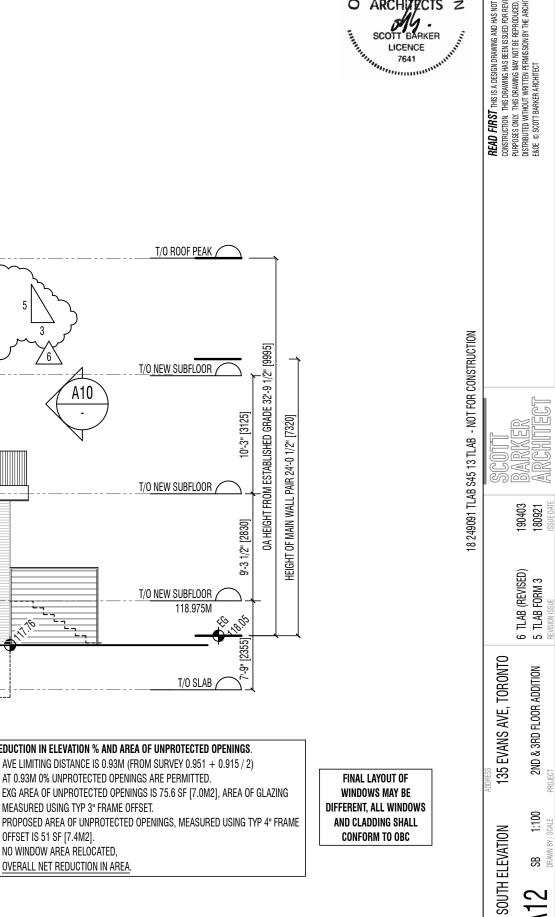
EAST ELEVATION 135 EVANS AVE, TORONTO

6 TLAB (REVISED) 190403
5 TLAB FORM 3 180921
SHEET NO DRAWN BY / SCALE PROJECT 150 DRAWN BY /









A12



1:100 METRIC SCALE

PROPOSED SOUTH ELEVATION

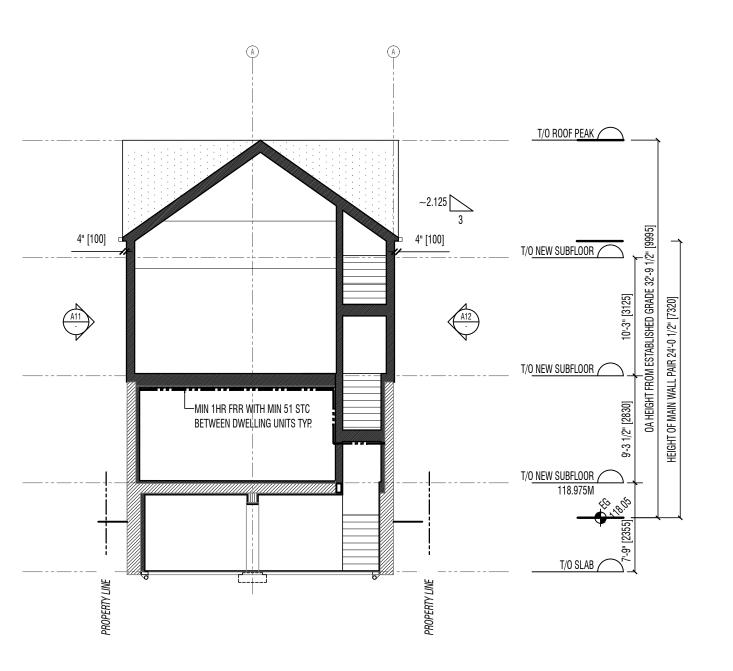
NET REDUCTION IN ELEVATION % AND AREA OF UNPROTECTED OPENINGS. AVE LIMITING DISTANCE IS 0.93M (FROM SURVEY 0.951 + 0.915 / 2)

OFFSET IS 51 SF [7.4M2]

NO WINDOW AREA RELOCATED,

OVERALL NET REDUCTION IN AREA.







6 TLAB (REVISED) 5 TLAB FORM 3

135 EVANS AVE, TORONTO 2ND & 3RD FLOOR ADDITION

1:100

SB

A13

SECTION A



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6 TLAB (REVISED) 5 TLAB FORM 3

2ND & 3RD FLOOR ADDITION

1:100

SB

A14

