

DECISION AND ORDER

Decision Issue Date Tuesday, August 20, 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): JEFFREY WOO

Applicant: PMP DESIGN GROUP

Property Address/Description: 224 & 226 WILLOWDALE AVE

Committee of Adjustment Case File: 18 216194 NNY 23 MV

TLAB Case File Number: 19 131591 S45 18 TLAB

Hearing date: Tuesday, July 23, 2019

DECISION DELIVERED BY G. BURTON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
JEFFREY WOO	APPELLANT	RALPH GRITTANI
YIFU WANG	OWNER	
PMP DESIGN GROUP	APPLICANT	
TJ CIECIURA	EXPERT WITNESS	

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) by a neighbour from the decision of the Committee of Adjustment dated March 7, 2019 that granted approval to variances requested for a new dwelling on a new lot, previously created by consent. Two large lots on the southwest corner of Willowdale Avenue and Hillcrest Ave. (east of

Yonge Street and north of Sheppard Avenue East) were divided into three, with the result that two of the lots face onto Hillcrest Avenue. This appeal does not concern the consent, which was not appealed. The stated purpose for development of the most westerly lot, Lot C (see Exhibit 1, Expert Witness Report, p. 31, where Parts 3 and 7 are shown in green) was for a new single detached residential dwelling. Lot C is immediately east of the appellant's dwelling at 201 Hillcrest Ave. It would be assigned a municipal address on Hillcrest Avenue.

The property is zoned RD (f12.0; a370) under the City-wide Zoning By-law No. 569-2013, as amended. It is also subject to Zoning By-law No. 7625 as it is located in the former municipality of North York, and is zoned R6, in the Neighbourhood Spring Garden (Schedule Q) in District No. 4 (Schedule A). Surrounding uses are predominantly residential detached.

BACKGROUND

The appellant Mr. Jeffrey Woo appealed on several grounds: overall height and wall height, and concerns with privacy and sunlight. Shortly following the COA hearing, the parties began to assess whether some compromise could be reached to resolve Mr. and Mrs. Woo's concerns. They reached an agreement respecting modifications to the design, signed only a few days before the TLAB hearing.

MATTERS IN ISSUE

Notwithstanding a settlement between the parties, the TLAB must hear sufficient evidence so that it can ascertain whether the proposal meets the applicable tests for a minor variance. It is a new hearing before TLAB, as if the COA hearing had not taken place. Sufficient planning evidence must therefore be adduced and assessed.

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the "four tests", and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area. Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Professional planning evidence for the owner was provided by Mr. T. J. Cieciora, a very experienced professional land use planner, qualified as an expert witness. He filed an Expert Witness Statement shortly before the hearing, so that it could incorporate the agreed-upon alterations to the site as well as the executed agreement. Mr. Cieciora stressed that there had been no alterations at all to the variances requested before the COA and granted by them. Nor were changes to them sought in the TLAB hearing. The alterations as settled upon were only to the design, respecting the location of features at the rear, as seen on the Settlement Drawings, Exhibit 2.

These were to move the proposed basement walkout in the rear yard, previously next to the appellant's property, to the other side of the dwelling. Similarly, a proposed deck was also moved to the east side, away from the appellant's property.

These were the variances approved, with conditions, by the COA. They are sought again in this appeal:

1. Chapter 10.20.40.10.(2), By-law No. 569-2013

The permitted maximum side exterior main wall height is 7.5 m, 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.

The proposed height of the east and west side exterior main walls is 8.58 m.

2. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 30% of the lot area.

The proposed lot coverage is 32% of the lot area.

3. Section 14-A(8), By-law No. 7625

The maximum permitted building height is 8.8 m.

The proposed building height is 9.87 m.

4. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.

The proposed finished first floor height is 2.26 m.

Mr. Cieciura outlined the neighbourhood characteristics. The property is designated *Residential* under the Official Plan (OP). Surrounding uses are predominantly single detached residential, but for Earl Haig Secondary School to the northwest of the subject property. Hillcrest Avenue is a local road that runs west from Bayview Avenue to Yonge Street. The property is well served by transit along Willowdale Avenue and Yonge Street, with connections to the subway Line 1 (North York Centre).

In his opinion, in sum, the application and variances are consistent with the policies of the PPS, 2014, and also conform to or do not conflict with the Growth Plan. He then addressed the four tests for minor variances under the Act.

General Intent and Purpose of the OP: In OP policy 2.3, “Stable but not Static: Enhancing our Neighbourhoods and Green Spaces”, 2.3.1 refers to “Healthy Neighbourhoods”. The preamble addresses diversity, stating that neighbourhoods will not stay frozen in time. Some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites. A new single detached residential dwelling is within the physical changes contemplated in this section.

Policy 2.3.1.1 states that neighbourhoods are physically stable areas, and development within neighbourhoods will be consistent with and respect and reinforce the existing physical character of buildings, streetscapes and open space patterns. The subject proposal meets this intent.

Policy 3.1.2, the “Built Form” section, states : “For the most part, future development will be built on infill and redevelopment sites and will need to fit in, respecting and improving the character of the surrounding area.” This contemplates development on infill and redevelopment sites such as the subject property, provided that it fits in, respecting and improving the character of the surrounding area. This policy is also met.

It also fits within its existing and/or planned context, as in Policy 3.1.2.1. Respecting Policy 3.1.2.3, respecting new development and massing, it will be designed to fit harmoniously into the existing or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties. The following clauses apply:

- a) the proposed dwelling will front onto Hillcrest Avenue, with similar height and scale to the neighbouring properties, and so will meet the policy to mass new buildings to frame adjacent streets in a way that respects the existing and/or planned street proportion. It is in similar form, scale and proportion to the abutting properties, and also meets clause b).
- c) creates appropriate transitions in scale, as it is two storeys like the surrounding dwellings.
- d) provides adequate light and privacy. There should be reduced impact now, and the appellant neighbour is now satisfied.
- e) adequately limits resulting shadowing on neighbouring streets, properties and open spaces. Two storey dwellings are permitted in the area, and again, there will be no adverse planning impacts.

Chapter 4 of the Official Plan contains the “Neighbourhoods” policies addressing

uses and development within Neighbourhoods. The proposal is a single detached residential dwelling in a neighbourhood of single detached residential dwellings, which is a permitted use. The preamble to Policy 4.1.5 states that physical changes to established Neighbourhoods must be sensitive, gradual and “fit” the existing physical character. “A key objective of this plan is that new development respect and reinforce the general physical patterns in a Neighbourhood.” In his opinion, due to the use of the word “general”, it is not intended that development be identical or mimic the existing character of the neighbourhood. This proposal fits well within the existing detached residential neighbourhood.

He then addressed the applicable development criteria in Policy 4.1.5. Development must respect and reinforce the existing physical character of the neighbourhood, and does so in the following ways:

- a) There is no change to the lot size or configuration.
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties. The proposed height, massing and scale of the proposed dwelling is consistent with existing dwellings, and fits with its surrounding context.
- d) the proposed is the prevailing building type.
- f) the proposed meets the required setbacks from the street.
- g) it also meets the required rear and side yard setbacks and landscaped open space, and is consistent with prevailing patterns in the area.

Policy 4.1.8 states that zoning by-laws will contain numerical site standards (height, FSI, building setbacks etc.), and as noted below, many of the variances are only slightly below/above what is required by the zoning, and generally meet the intent of the official plan.

The neighbourhood designation does contemplate some development. Since neighbourhoods are to be “stable but not static”, here the proposal to construct a detached residential dwelling, designed to fit with the existing physical character of the lot and neighbourhood, meets the intent. It is Mr. Cieciora’s opinion that the requested minor variances maintain the purpose and intent of the official plan.

General Intent and Purpose of the Zoning By-law In considering this test he addressed each variance, concluding that all meet the intent. The lot coverage is only 7.51 sq. m (80.84 sf) over what is permitted, and the increase will not be noticeable from the street nor have any impact on neighbouring properties. The footprint and heights of various parts of the dwelling and garage mitigate this potential, as does the adequate amenity area on the site. The overall height increase is only required under the former North York By-law (if measured differently, as the 2013 By-law does, it would comply.) He found the increase in finished first floor height to be negligible, not impacting the way the dwellings are perceived from the street.

Desirable for the appropriate development of the land The proposed single detached residential dwelling will not have an adverse impact on the abutting neighbours, the

streetscape or the broader neighbourhood, when considering issues such as visual appearance, or the need for open space and managing stormwater.

Minor in nature There will be little to no impact on the adjacent dwellings other than what might be experienced if the land was developed in accordance with the as-of-right zoning. Approval of these variances would not create a noticeable difference in shadow, overlook, privacy, or other impacts on the adjacent dwellings.

Mr. Cieciura concluded that the minor variances meet the tests set out under subsection 45(1) of the Planning Act. He pointed out that North York is experiencing significant redevelopment, and that the secondary plan specifically encourages reinvestment and revitalization. The age of the housing in this older area is leading to a choice between investing in renovations versus redeveloping to larger dwellings, more in keeping with an urban environment. Reinvestment and revitalization have been identified as goals for this neighbourhood. This modest redevelopment contributes to this vision.

ANALYSIS, FINDINGS, REASONS

I find that the requested variances here are indeed minor in both nature and measure. They comply in general with the four tests, as well as the provincial policies and section 2 of the Act. There will be no adverse impact of a planning nature on the neighbourhood or the appellant's property. The City Planning Staff Report to the COA dated February 26, 2019 on the consents and variances had concluded:

"The proposed dwellings are of an appropriate size and scale, and respect and reinforce the character of the existing dwellings within the neighborhood.....

Staff are of the opinion that the consent applications and related minor variance applications are generally in keeping with the existing physical character of both Hillcrest and Willowdale Avenue as well as the broader neighbourhood."

This is additional confirmation of Mr. Cieciura's professional opinion.

As revised, the Site Plan and Elevations are set out in the Settlement Drawings in Exhibit 2, Settlement Drawings, dated 2019/06/11 and in the Completed (Settlement) Agreement, Exhibit 3.

I am glad to see that the parties were willing to compromise in the design of the property, so that the Woo family is more completely satisfied with the proposed structure next door.

DECISION AND ORDER

The TLAB orders that the appeal is allowed in part, and that the variances in **Attachment 1** are authorized, but with the following conditions:

1. the new detached dwelling shall be constructed substantially in accordance with the **REVISED** Site Plan (A1), East Elevation (A8) and West Elevation (A9), by PMP Design Group, originally dated August 21, 2018. There were filed as part of Exhibit 2 to the hearing. These are attached as **Attachment 2**. Any other variances that may appear on these plans that are not listed in this Decision are not authorized.

The Settlement Agreement reached by the parties, called “Completed Agreement 072219.pdf “ as filed at the hearing, is attached as **Attachment 3**, for information only and not for enforcement purposes.

2. The applicant will pay the costs for an extension of the municipal sanitary sewer for approximately 45 metres.

3. Submission of a complete application for a permit to injure and/or remove City-owned trees pursuant to City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

4. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.20.40.10.(2), By-law No. 569-2013

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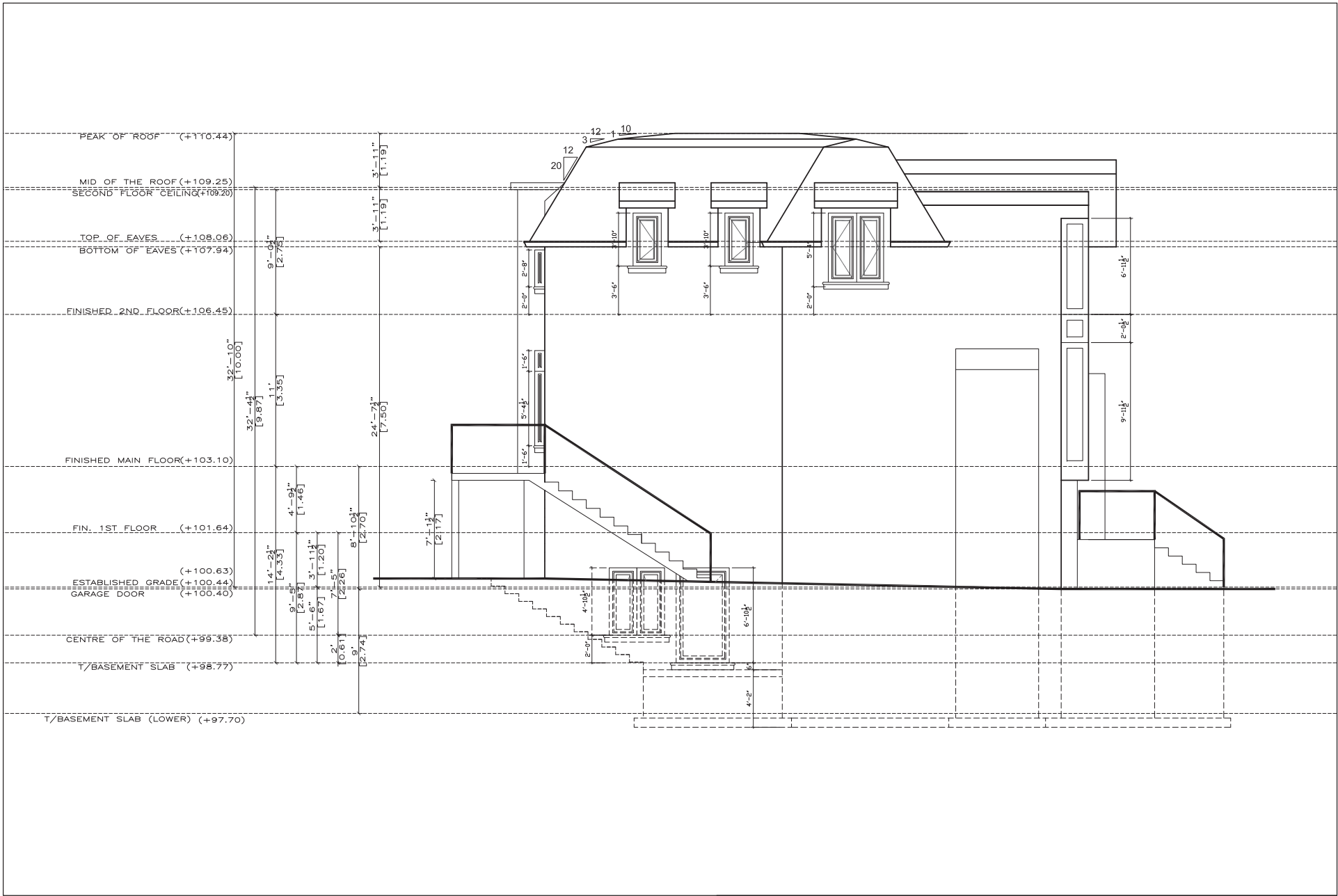
ATTACHMENT 2 - PLANS

ATTACHMENT 3 – SETTLEMENT AGREEMENT



G. Burton

Panel Chair, Toronto Local Appeal Body

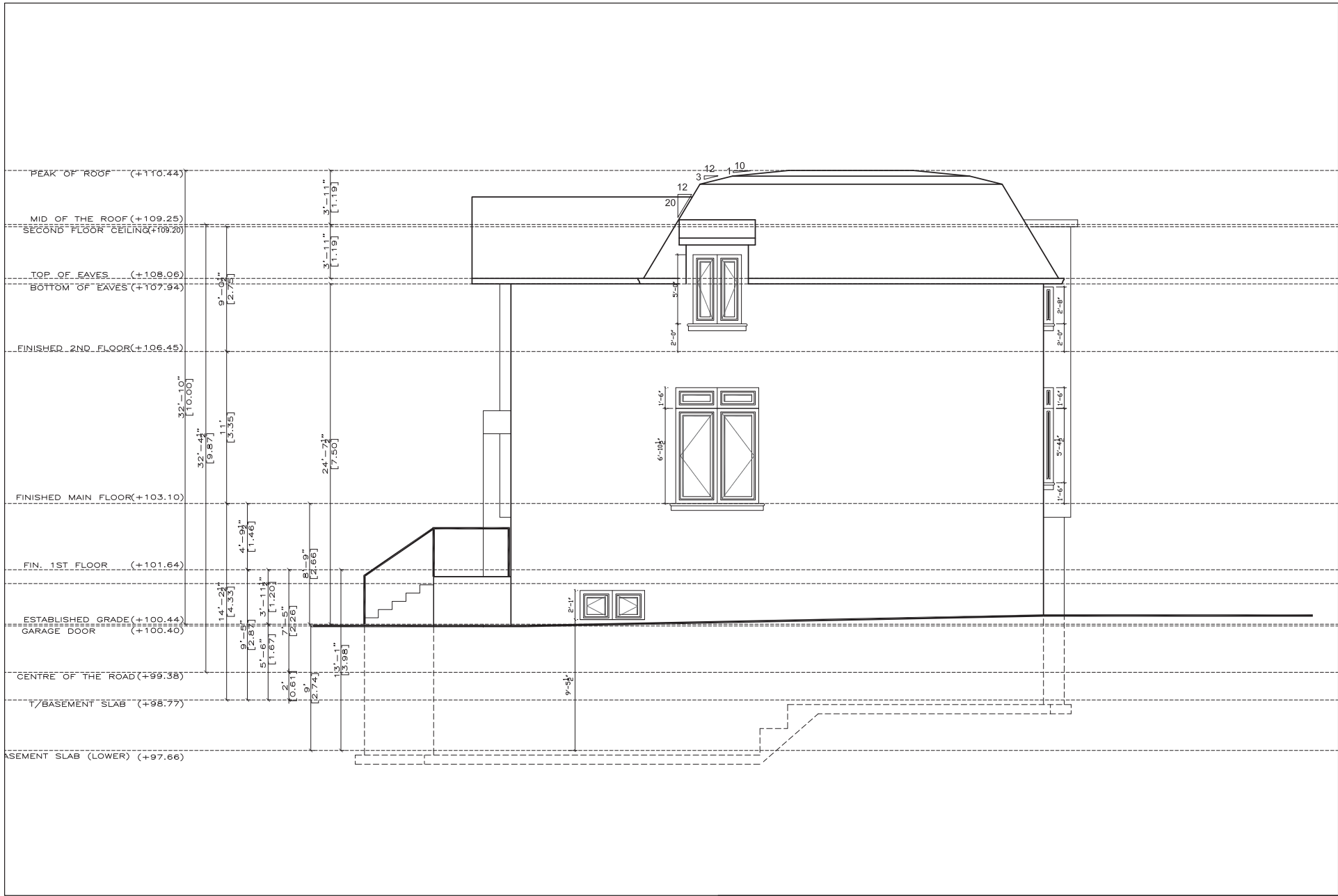


A8	
Scale:	1/75
Drawn by:	M.H.
Checked by:	M.H.
Project No.:	529
Date:	AUG 21, 2018

PROJECT Title:	224-226 WILLOWDALE AVE (PART C) NORTH YORK ONTARIO
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Drawing Title:	SIDE ELEVATION (EAST)
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PMP Design Group Exclusive Residential Design	
3. I.L.A.B.	11.06.2018
8. I.L.A.B.	24.05.2018
1. I.L.A.B.	03.05.2018
6. I.L.A.B.	20.09.2018
5. F.O.I.N.G.	20.08.2018
NO SUBMISSION	00.MM.YYYY



A9	
Scale: 1/75	Drawn by: M.H.
Checked by: M.H.	Project No.: 529
Date: AUG 21, 2018	

PROJECT Title:	224-226 WILLOWDALE AVE (PART C)
	NORTH YORK
	ONTARIO

Drawing Title	SIDE ELEVATION (WEST)
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11.06.2018	11.06.2018
24.05.2018	24.05.2018
20.09.2018	20.09.2018
20.08.2018	20.08.2018
NO SUBMISSION	NO SUBMISSION

EXHIBIT

MINUTES OF SETTLEMENT date

Case File Number: 19 131591 S45 18

Property Address: 224 & 226 Willowdale Ave.

Date Marked: July 23, 2019

BETWEEN:

JEFFREY WOO and MICHELLE WU

(the "Appelants")

and

YIFU WANG by his agent PMP Design Group

(the "Respondent")

WHEREAS:

- A. On Thursday March 7, 2019 a Public Hearing was held with respect to the Respondent's application for minor variance to the zoning by-laws pertaining to 224 & 226 Willowdale Avenue, Parts 1 & 5 as well as Parts 3, 4, 7 & 8.
- B. The Appelants are the registered owners of 201 Hillcrest Avenue, Toronto, being the neighbouring property adjacent to the lands in question and situated on the west side of the Respondent's property.
- C. The Appelants were unable to attend the Public Hearing held on Thursday March 7, 2019 due to previous commitments during their childrens' March Break and expressed their concerns with respect to the approval of such variances by way of correspondence directed to Adam Wills, Application Technician for City Planning Division, North York Panel, Toronto, dated March 5, 2019.
- D. By way of Notice of Decision dated March 7, 2019 the Committee of Adjustments approved requested variances with respect to Parts 1 & 5, as stipulated in Schedule A hereto.
- E. By way of Notice of Decision dated March 7, 2019 the Committee of Adjustments approved requested variances with respect to Parts 3, 4, 7 & 8, as stipulated in Schedule B hereto.
- F. The Appellants seek to appeal the decision of the Committee of Adjustments to the Toronto Local Appeal Body (TLAB), having been issued a Notice of Hearing scheduled for July 23, 2019.
- G. The Appelants and Respondent entered into discussions to resolve their differences and settle the TLAB appeals.
- H. The Respondent has agreed to certain changes within its Site Plan and agrees to ensure all construction adheres to such changes.

- I. The Respondent shall ensure all changes are in accordance with the terms herein and in strict compliance with the Red Lined drawing prepared by PMP Design Group on behalf of the Respondent and attached hereto as Schedule C.

NOW THEREFORE in consideration of the mutual promises and covenants contained in these Minutes of Settlement, the receipt and sufficiency of which is acknowledged, the parties agree:

1. That the above recitals are true and correct in substance and in fact, and form part of these Minutes of Settlement.
2. All of the commitments in these Minutes of Settlement shall be complied with and that an amended Site Plan which is in compliance with Schedule C attached hereto shall be provided by the Respondent one prior to the TLAP hearing date of July 23, 2019.
3. Except as provided herein, each party will pay its own legal costs, incurred in relation to the TLAB appeal, and related to all other matters contemplated by these Minutes of Settlement.

TERMS OF SETTLEMENT WITH RESPECT TO THE TORONTO LOCAL APPEAL BODY APPLICATION


4. Upon execution of these Minutes of Settlement by the parties, the Respondent will engage its agent to provide an amended Site Plan for the agreed upon changes, at its own expense.
5. The Respondent will honour the following terms in conformity with Schedule C hereto:
 - a. A new fence shall be erected on the western limit of the Respondent's property and the eastern limit of the Appellant's property. Such fence shall be constructed using pressure treated wood, to a height of 5' 11" above finished grade and shall extend and replace the full length of the existing fence. A new gate shall be erected on the Appellant's property and situated where the old gate was taken down, and shall be constructed to a height of 5' 11" above finished grade. Both fence and gate shall be made using pressure treated wood. The Respondent shall be responsible for the cost of both supplying and installing the fence and gate, which shall include without limitation the excavations, foundations, supports and fence hardware.
 - b. Three (3) trees shall be planted in the locations marked "T1" "T2" and "T3" on the south western limits within the Respondent's property, as indicated on the attached Red Line diagram. Such trees shall be *Fagus Sylvatica*, 'Dawyck' Purple Beech and shall be minimum 8 feet in height. The trees shall be planted at 6-8 feet on centres.
 - c. The rear deck of the Respondent's proposed dwelling directly adjacent to the Appellants' shall be constructed no larger than 2.10m x 3.90m and shall be a minimum of 11.82m distance from the Appellant's property.
 - d. The basement walkout to the proposed dwelling directly adjacent to the Appellants' property shall be constructed on the east side of the proposed dwelling.

- e. The construction shall ensure that the grading does not cause water run off to the Appelants' property and if necessary an artificial swale be constructed, or other comparable measures are taken, to eliminate the risk of water run off and flooding to the Appelants' property. Nevertheless the parties acknowledge that the Respondent shall not be responsible for water damage not caused by the construction.
- J. In the event the Respondent does not provide an amended Site Plan reflecting the terms herein by July 16, 2019 the Appelants shall proceed with the hearing scheduled with TLAB and dated July 23, 2019.
- K. The Respondent shall ensure that all work stipulated herein shall be professionally constructed and completed within eighteen (18) months of the commencement of construction. The Respondent shall ensure that best efforts are made to obtain permits expeditiously so as to not cause undue delay with respect to same.
- L. The parties agree that time shall be of the essence with respect to the commitments made in these Minutes of Settlement.
- M. These Minutes of Settlement, together with all schedules, and all other documents to be prepared and executed pursuant to these Minutes of Settlement constitute the entire agreement between the parties and supersede all prior negotiations and understandings.
- N. These Minutes of Settlement shall be governed and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario.
- O. If any term or provision in these Minutes of Settlement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term or provision of these Minutes of Settlement.
- P. The parties agree to act reasonably and in good faith in respect of all dealings between the parties pursuant to these Minutes of Settlement.
- Q. These Minutes of Settlement are binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns and transferees.
- R. Any amendment to these Minutes of Settlement or waiver of any provision of these Minutes of Settlement must be in writing and signed by both parties.
- S. These Minutes of Settlement may be executed in counterparts, which together shall constitute a complete set of these Minutes of Settlement. Executed counterparts may be delivered by email and shall be considered originals for all purposes. Once executed by both parties, these Minutes of Settlement shall be of full force and effect.
- T. The following Schedules form part of these Minutes of Settlement:
 - a. Schedule A – Notice of Decision re: 224 & 226 Willowdale Ave., Parts 1&5
 - b. Schedule B - Notice of Decision re: 224 & 226 Willowdale Ave., Parts 3, 4, 7 & 8

- c. Schedule C – Red Line Drawing prepared by PMP Design Group on behalf of the Respondent

[Signature Page Follows]

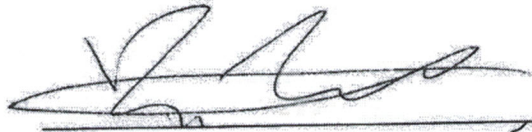
These Minutes of Settlement are effective on the date first written above.

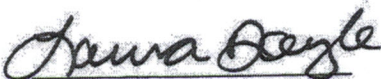


Witness

Respondent

Per: YiFu Wang




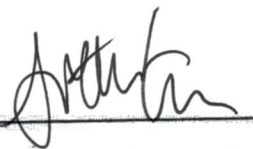


Witness

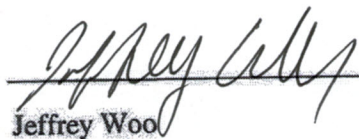
Michelle Wu

Appellant





Witness



Jeffrey Woo
Appellant