

## DECISION AND ORDER

**Decision Issue Date** Friday, August 23, 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): DAVID WASSERSTEIN

Applicant: RICHARD WENGLE ARCHITECT INC

Property Address/Description: 14 CORWIN CRES

Committee of Adjustment Case File: 18 212851 NNY 10 MV

**TLAB Case File Number: 18 249825 S45 10 TLAB**

**Hearing date:** Friday, May 03, 2019

**DECISION DELIVERED BY J. Tassiopoulos**

### APPEARANCES

NAME	ROLE	REPRESENTATIVE
RICHARD WENGLE ARCHITECT INC	APPLICANT	
DAVID WASSERSTEIN	APPELLANT	DAVID BRONSKILL
RYAN GUETTER	EXPERT WITNESS	
JAN KUZINA	PARTICIPANT	
MICHAEL GREENWALD	PARTICIPANT	
CANDICE WASSERSTEIN	PRIMARY OWNER	

### INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) dated October 11, 2018, which approved six of seven minor variances, with one of the approved six variances including a modified lot coverage percentage, to permit the construction of a two storey dwelling at 14 Corwin

Crescent in North York. The approved COA modified minor variance, concerning maximum lot coverage, reduced the lot coverage permitted from 40.97% to 37.97%. The maximum permitted lot coverage in Chapter 10.20.30.40.(1) of By-law No. 569-2013 is 30% of the lot area. A seventh variance for the reduction of the west side yard setback from the minimum requirement of 1.8m in Chapter 900.3.10(5) of By-law No. 569-2013 to 1.52m, was refused. It was indicated by David Bronskill, counsel, that because of the *de novo* nature of the TLAB hearing, they were appealing the COA decision so that the modified and denied variances would be considered.

This property is located on the north side of Corwin Crescent, in the North York district of the City of Toronto (City) which is situated east of Wilson Heights Boulevard and north of Wilson Avenue. The property is zoned RD(f15.0; a550)(x5) in the City of Toronto Zoning By-law No. 569-2013.

The Appellant was represented by David Bronskill, and provided a land use planning Expert Witness, Ryan Guetter, to provide evidence with respect to the appeal. Two Participants had been indicated in the TLAB list, Mike Greenwald and Jan Kuzina; only Mr. Mike Greenwald appeared at the hearing. Ms. Kuzina sent an email to TLAB indicating she could not attend the hearing for personal reasons.

I disclosed to the Party and the Participant that I had undertaken a site visit of this subject property prior to, and in preparation for the hearing.

## **MATTERS IN ISSUE**

The Appellant feels that the modified lot coverage that reduced the proposed 40.97% to 37.97% and the refusal of the proposed side yard setback of 1.52m should have both been considered minor and that the variances should have been accepted as they were also the result of reductions made in consultation with City Planning staff.

I must be convinced that the two variances in question, sought by the Appellant, as well as the other five variances approved by the COA are indeed minor and meet all applicable policy and the four tests under Section 45(1) of the Planning Act.

## **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 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**

Mr. Bronskill, offered the Participant, Mike Greenwald, the opportunity to make their statement at the hearing first so as to allow them to either leave at any point afterward or to stay to hear the land use planning evidence of Ryan Guetter. I explained that I did not have an issue with this and Mr. Greenwald expressed a preference to go first.

Prior to presenting his statement Mr. Greenwald, questioned whether the Appellants document book and expert witness statement had been filed within the due dates specified in the TLAB Notice of Hearing. Mr. Bronskill took exception to the comment and indicated that all documents had been submitted in accordance with the notice and noted that Participants cannot act as Parties during the hearing requesting the striking of documents. I indicated that I would look into the concern Mr. Greenwald expressed on submission dates but what I wanted more importantly was to hear his statement and understand his position on the Appeal. Mr. Bronskill also proposed that he could provide the emails that show the submission date to TLAB. As an aside, I looked at the hearing folder and was able to verify that the documents in question were not noted as late filings. Furthermore, both documents were date stamped the following day which suggests it may have been submitted after 4:30pm of the due date. Regardless, this discrepancy does not warrant striking these documents from my consideration and I am allowed to extend the time limit, as per TLAB Rules 4.4 and 4.5, to address this technicality.

Mr. Greenwald noted that his property is immediately behind 14 Corwin Crescent and presented his Participant Statement (Exhibit #3) regarding the proposed variances for the subject property. He went on to provide a statement with respect to the four tests as outlined in section 45 (1) of the Planning Act. He indicated that the general intent of the Official Plan and cited section 4.1 *Neighbourhoods* of the Official Plan, noting *“development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular . . . heights, massing, scale, and dwelling type of nearby residential properties.”* He felt that the cumulative effect of the requested variances, especially the west side yard setback variance that had been turned down by the COA, will be perceptible and impact immediate residents because the scale and massing of the proposed building will not fit in with the character of the neighbourhood.

With respect to meeting the intent of Zoning By-Law 569-2013, Mr. Greenwald stated that the purpose of the Zoning By-law was to implement the Official Plan, limit impact on the neighbourhood and ensure compatibility with adjacent lots. He felt that the proposed dwelling and associated variances, both individually and cumulatively, did not meet the intent of the Zoning By-law because it did not implement the requirements of the Official Plan and would have an adverse visual impact.

Mr. Greenwald, went on to speak to the notion of whether the proposal is minor. He stated that this test was to determine “*whether that impact is considered acceptable or whether it constitutes a “lessening of livability.”*” He felt that the increase in lot coverage sought would lead to less permeable ground that would result in stormwater run-off onto neighbouring properties. He did mention that stormwater run-off was not a matter for the TLAB and that updated drawings from the Appellant indicated soak away pit that may potentially address this issue. However, he still felt that the potential risk of flooding presented an unacceptable impact and that flooding has occurred on other properties on Redmount Avenue following other new development. He mentioned that the reduced west sideyard setback would allow no room for privacy or tree planting to address the neighbours sideyard privacy. He mentioned that the immediate neighbours had not signed a letter of support, circulated by the Appellant, for the proposed dwelling. He concluded that the “*variances requested are not minor, in that they do not meet the important test of no adverse, undue, or unacceptable impact on the surrounding properties.*”

With respect to whether the proposal was desirable for the appropriate development of the property, Mr. Greenwald stated that in his opinion the proposed dwelling size and scale was too large for the property, that the COA decision does not cause undue hardship to the Appellant and referred to an example of a recent new house at 12 Redmount Road that was appropriately sized for the property. He concluded that the requested variances were not desirable for the development of the property and that the proposal does not meet the other three tests: TLAB should not allow the appeal and not authorize any of the variances.

Following the Participant’s statement, Mr. Bronskill, asked who had prepared the Participant Statement and Mr. Greenwald responded it was a joint effort between him and Jan Kuzina. Mr. Bronskill then mentioned that the concerns brought forward in the Participant Statement by Mr. Greenwald had not been brought up at the COA and Mr. Greenwald indicated that he did not speak to concerns about drainage because he understood it was not a matter for TLAB. I mentioned to Mr. Bronskill, that this would not deter me from accepting the statement since the TLAB hearing treated this as a new and separate hearing from that of the COA. Mr. Bronskill took issue with the reference of the immediate neighbours not signing a letter of support and asked Mr. Greenwald whether either of those neighbours had attended the COA objecting to the development. Mr. Greenwald said that, in conversations with them that they had expressed they were not happy about the development and that this was probably the reason why they had not signed the letter of support. Mr. Bronskill countered that neither of those neighbours had sent in a letter of objection or attended the COA hearing to object, and were not present at this hearing. I indicated that I would not accept hearsay with respect to the neighbours in question. Finally, Mr. Bronskill asked if Mr. Greenwald had read the City

of Toronto Planning Staff report to COA and Mr. Greenwald replied that he must have but could not recall.

Mr. Bronskill called Mr. Ryan Guetter, a Registered Professional Planner, who I accepted as qualified to give professional land use planning opinion evidence. Mr. Guetter provided the sole source of expert planning evidence at the hearing.

Mr. Guetter proceeded to describe the subject property and its surrounding context highlighting that: there is relative uniformity in the front yards but not in the rear yards because of additions over time; that the neighbourhood consists of single and two-storey dwellings; that the property was relatively flat; and that recent developments have garages integrated into the dwelling and include reduced sideyard setbacks. He provided photos and aerials of the area indicating the varied composition and character of the neighbourhood. For his presentation, he provided a plan in his Witness Statement (Exhibit #1) of the study analysis area bounded by Palm Drive to the north, De Quincy Blvd. / Vinci Crescent to the south, Collinson Boulevard to the east and Faywood Boulevard to the west. He accompanied this plan with a table entitled “Recent Committee of Adjustment Decisions within the Study Area” (Exhibit #1), indicating recent COA decisions and referred to paragraph 39 of his witness statement which identified approximately 50 applications relevant to the variances being sought for the proposed dwelling.

Mr. Guetter went on to state that his analysis of the COA decisions illustrated to him that the variances sought by the Appellant are in keeping with other COA variance approvals in the study area over the past 10 years. He then went on to speak to the revised plans for the proposed dwelling and the variances related to them in site plan and floor plans. He mentioned that the revised application had increased sideyard setbacks from the original proposal of 1.22m to 1.37m on the east side and 1.52m on the west side, the building length was decreased from 21.88m to 21.37m, building depth was decreased from 20.94m to 20.84m, the front yard setback variance remained at 7.15m as did the building height of 9.14m, which no longer required a variance. The lot coverage was decreased from 44.56% to 40.97% (including the main dwelling, outdoor room and cabana). He also mentioned, as part of the appropriateness of the development, that the rear yard setback should be considered because no variance was required, and the proposed dwelling will be greater than the required 9.72m setback with the closest portion being 12.29m. He pointed out that the variances that were approved by COA were appropriate and that he was in agreement with those approvals.

Mr. Guetter described the building elevations and in his opinion felt the composition and form of the proposed dwelling was in keeping with the emerging character of new developments in the area. He further mentioned that with respect to lot coverage, the permitted coverage is 30% and that the proposed dwelling itself was 35.25% which is consistent with other variances in the neighbourhood. It was the covered outdoor room, along with the cabana structure, that added 4.2% and 1.52%, respectively, of coverage that led to the requested variance for lot coverage of 40.97%. He noted that those two features will not be perceived from the street or from the rear.

I asked Mr. Guetter during his presentation whether there were other examples of lot coverage COA variance approvals that included similar dwelling and features as the one proposed. He pointed to the approval of 11 Corwin Crescent which had a lot coverage percentage close to the requested variance. He mentioned that Planning staff in their report also refer to the approval of

11 Corwin Crescent (Exhibit #2, Tab 9). As an aside, following the hearing I referred to Exhibit #1 for the COA approval which indicated that the approval was conditional on a dwelling lot coverage of 35% and a deck /terrace that was 4.4% for a total of 39.4%.

Mr. Guetter then went through the four tests with respect to section 45 (1) of the Planning Act. He began with whether the proposal meets the general intent and purpose of the Official Plan. Referencing sections *2.3.1 Healthy Neighbourhoods*, *3.1.2 Built Form*, *3.2.1 Housing* and *4.1 Neighbourhoods* (Exhibit #2, Tab 17) he stated that the proposed building fits into the neighbourhood and is in keeping with COA approvals in the area, it maintains existing housing stock, and is in keeping with the *Neighbourhoods* designation by respecting and reinforcing the general character of the surrounding neighbourhood and that the streetscape character will be maintained.

With respect to meeting the intent of Zoning By-Law 569-2013, Mr. Guetter stated that all the variances meet the intent of the Zoning By-law. Focusing on the two variances that were at the centre of the appeal, he presented the variance for lot coverage, stating that lot coverage is to ensure that the lot can function with proper rear and front yards and that the intensity is appropriate. He mentioned that the lot coverage value of 30% is a low lot coverage value with respect to contemporary building development and that many of the variances approved in the area exceed 30%. He opined that the added lot coverage of the outdoor room and Cabana structure did not impact the surrounding neighbourhood and that their additional lot coverage percentage was not a departure of the intent of what lot coverage is to regulate.

Speaking to the sideyard setbacks he indicated that the requirement is for 1.8m but that adequate functional separation could be achieved in a sideyard less than the 1.52m requested and is consistent with other Toronto neighbourhoods. In terms of transition to the property to the west he mentioned that there is still ample separation between the dwellings and to the lot line. He also indicated that recent COA approvals on Corwin Crescent had similar setbacks to those requested for this property and that from a functional perspective one could consider a setback as low as 1.2m.

He then proceeded to speak to the other five variances and provided evidence to that effect, where he indicated he was in agreement with the COA approved variances, that did not require modification, and concluded that the proposed dwelling does meet the intent of the Zoning By-law 569-2013.

Mr. Guetter then spoke to the test of whether the proposal was desirable for the appropriate development of the property indicating that it contributes to the stability of the neighbourhood, that the variances proposed do not create undesirable impacts or relationships to adjoining properties or dwellings, and that the architecture of the building responds to its site and surroundings. For these reasons he felt the variances were desirable and appropriate for the development of the property.

Finally, Mr. Guetter addressed the test of whether the proposed variances were minor and stated that determining whether the variance is minor should not be limited to a numerical exercise but that a 3% difference in coverage he feels should be perceived as

minor. With respect to the west sideyard setback he mentioned the relationship is to an attached garage and that there is no outdoor space and there are no windows on the adjacent dwelling's elevation, therefore privacy and overlook are not impacted by moving one foot closer to the property line. He further mentioned that the variances for building depth and building length were triggered by one storey element at ground level and do not create unacceptable impacts and that there are other examples in the surrounding neighbourhood with similar conditions. With respect to the privacy perspective, he mentioned that the rear yard setback to Mr. Greenwald's property is greater than what is permitted and that the Cabana structure will not have a privacy impact because it is a single storey structure. For these reasons he felt the variances were both individually and cumulatively minor in nature.

Mr. Guetter turned to addressing concerns by surrounding neighbours with respect to flooding and drainage as indicated by the Participant at the hearing. He suggested that these were not matters for TLAB and are more appropriately dealt with by City of Toronto Engineering Services and that there was a letter from a neighbour thanking the Appellant's Architect for providing a soak away pit on the site plan.

Mr. Guetter concluded that the proposed variances meet the four tests, are good planning, that they are appropriate to be approved by TLAB.

## **ANALYSIS, FINDINGS, REASONS**

I have reviewed the five variances that were approved by the COA and considered them in light of the evidence presented by Mr. Guetter and my own review in applying the four tests. I am satisfied that these variances meet the four tests. Having established this, I turn to the two variances that were the reason for the applicant's appeal of the COA decision.

I accept Mr. Guetter's uncontradicted opinion evidence and find that his analysis and review provided evidence that the two variances in question are indeed minor and meet all the policy and the four tests of section 45(1) of the Planning Act. Relevant examples of other approved lot coverage variances were provided during the hearing and the requested variances for 14 Corwin Crescent are generally in keeping with similar variances granted not just in the surrounding area but more specifically on Corwin Crescent.

What is important to consider is that the 35.25% coverage of the dwelling appears in line with other COA approvals. The additional coverage is due to other features in the site plan including the covered outdoor room and the Cabana structure, that added 5.72% to the coverage for a lot coverage total of 40.97%. The approval of this variance will require that the coverage is explicitly stipulated for each of the dwelling, the cabana structure and the outdoor room, to ensure the coverage is allotted appropriately.

The variance for the reduced sideyard setback on the west side of dwelling, of 1.52m, is also minor and is also in keeping with the range of reduced sideyards approved for

other properties in the neighbourhood and on Corwin Crescent. I believe the reduced setback variance sought is a modest change, is minor and agree with Mr. Guetter's evidence that it does not create undue adverse impact to the adjacent property.

## **DECISION AND ORDER**

The TLAB allows the appeal of the COA decision. The following variances and conditions in Attachment 1 are approved, and the proposed dwelling is to be constructed substantially in accordance with the plans dated April 1, 2019 and 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**



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John Tassiopoulos  
Panel Chair, Toronto Local Appeal Body



## **ATTACHMENT 1 – Approved Variances for 14 Corwin Crescent**

**1. Chapter 900.3.10(5), By-law No. 569-2013**

The required minimum side yard setbacks are 1.8 m each side.  
The proposed east side yard setback is **1.37 m for the garage portion only**.

**2. Chapter 900.3.10(5), By-law No. 569-2013**

The required minimum side yard setbacks are 1.8 m each side.  
The proposed west side yard setback is **1.52 m**.

**3. Chapter 10.20.40.20(1), By-law No. 569-2013**

The permitted maximum building length for a detached house is 17.0 m.  
The proposed building length is **21.37 m**.

**4. Chapter 10.20.40.30(1), By-law No. 569-2013**

The permitted maximum building depth for a detached house is 19.0 m.  
The proposed building depth is **20.84 m**.

**5. Chapter 10.20.40.70(1), By-law No. 569-2013**

The required minimum front yard setback is 7.68 m.  
The proposed front yard setback is **7.15 m**.

**6. 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 **40.97%** of the lot area of which **35.25% is for the dwelling, 1.52% for the cabana and 4.2% for the outdoor room**.

**7. Section 13.2.6, By-law No. 7625**

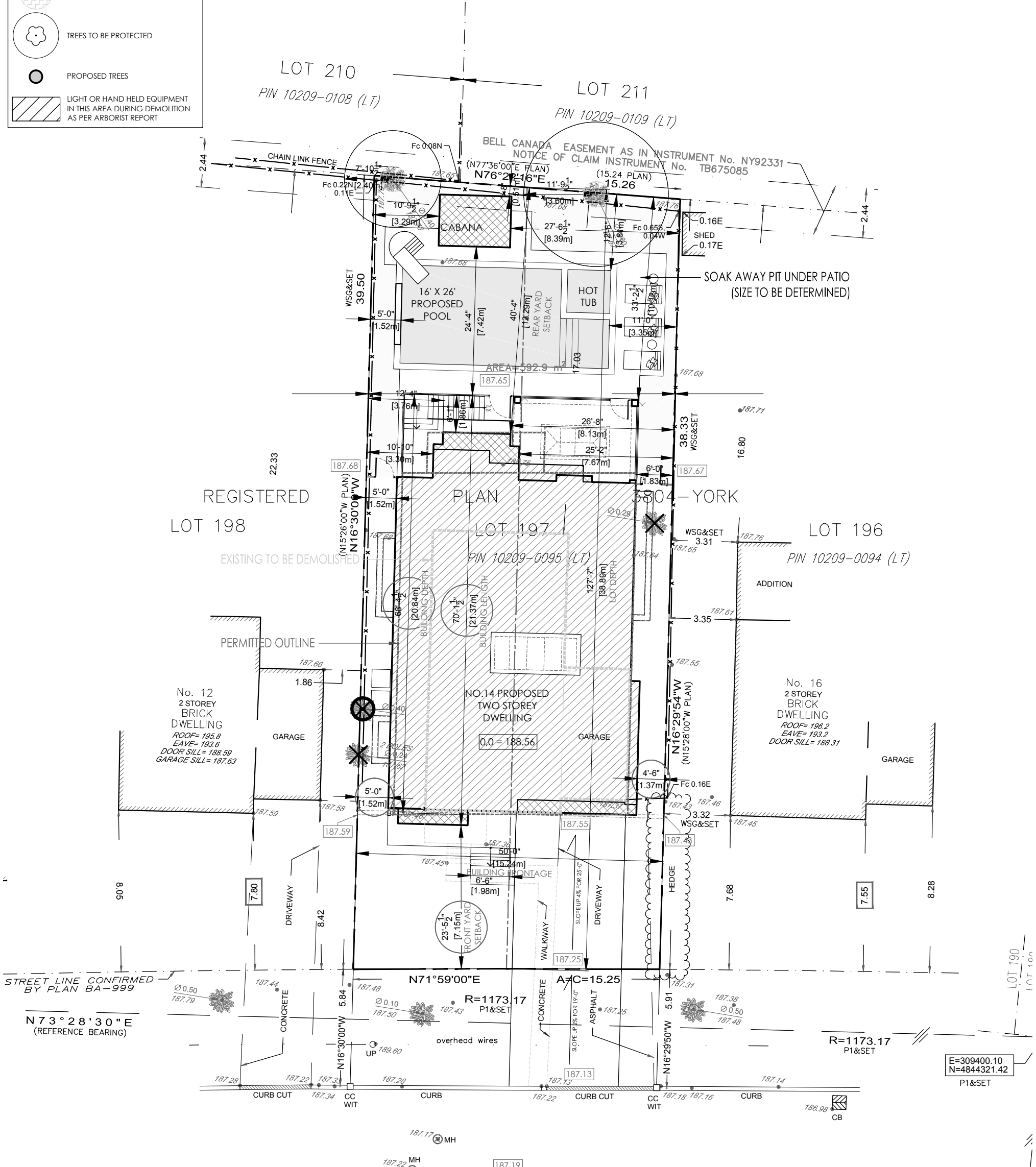
The maximum permitted building height is 8.8 m.  
The proposed building height is **9.14 m**.

RECEIVED

By Toronto Local Appeal Body at 10:40 am, Apr 23, 2019

LEGEND

- HAZARDOUS TREE
- TREE REMOVAL NOT REQUIRING PERMIT
- TREE REMOVAL REQUIRING PERMIT
- TREE REQUIRING PERMIT TO INJURE
- TREES TO BE PROTECTED
- PROPOSED TREES
- LIGHT OR HAND HELD EQUIPMENT IN THIS AREA DURING DEMOLITION AS PER ARBORIST REPORT



NOTE: AVERAGE SETBACK OF ADJACENT 2 HOUSES = 7.68M  
NOTE: ESTABLISHED GRADE AT FRONT YARD SETBACK = 187.51 (NEW BYLAW)  
NOTE: GRADE @ CENTERLINE OF ROAD = 187.19 (OLD BYLAW)

CORWIN CRESENT

BY REGISTERED PLAN 3804-YORK

(FORMERLY MONARCHWOOD AVENUE)

PIN 10209-0183 (LT)



SITE PLAN

SCALE: 1/16" = 1'-0"

WASSERSTEIN RESIDENCE

14 CORWIN CRESENT

TORONTO, ONTARIO

APRIL 1, 2019

1802

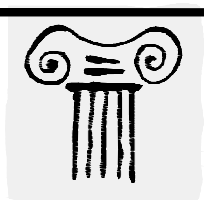
RICHARD WENGLE  
ARCHITECT INC.



HEIGHT CALCULATION  
NEW BY-LAW

NOTE:  
AVERAGE GRADE AT FRONT WALL OF HOUSE = 187.51 M  
THE GARAGE IS LOCATED AT OR ABOVE 187.55 M

HEIGHT CALCULATION  
OLD BY-LAW

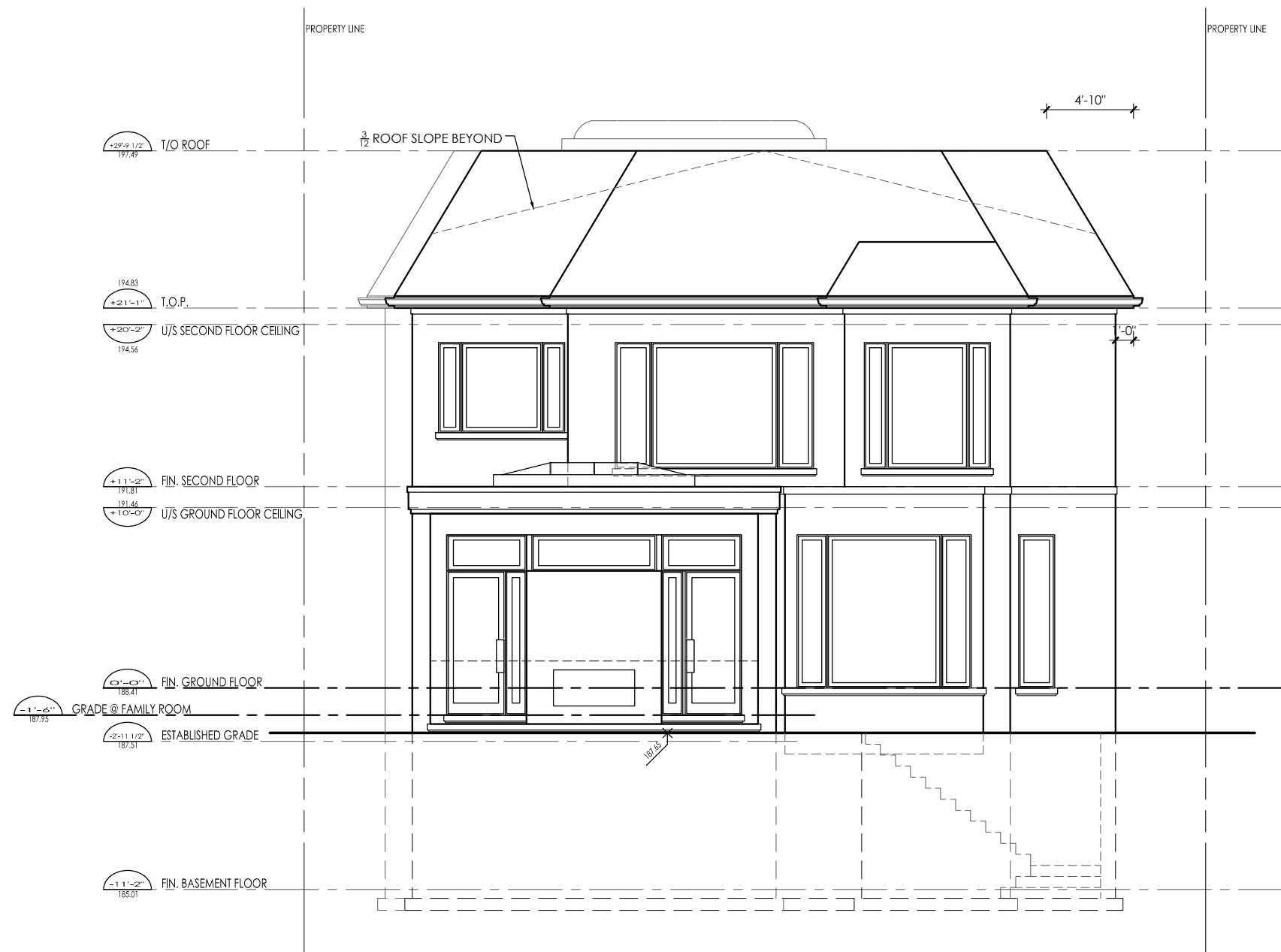


RICHARD WENGLE  
ARCHITECT INC.

## WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802

FRONT ELEVATION  
SCALE: 1/8" = 1'-0"



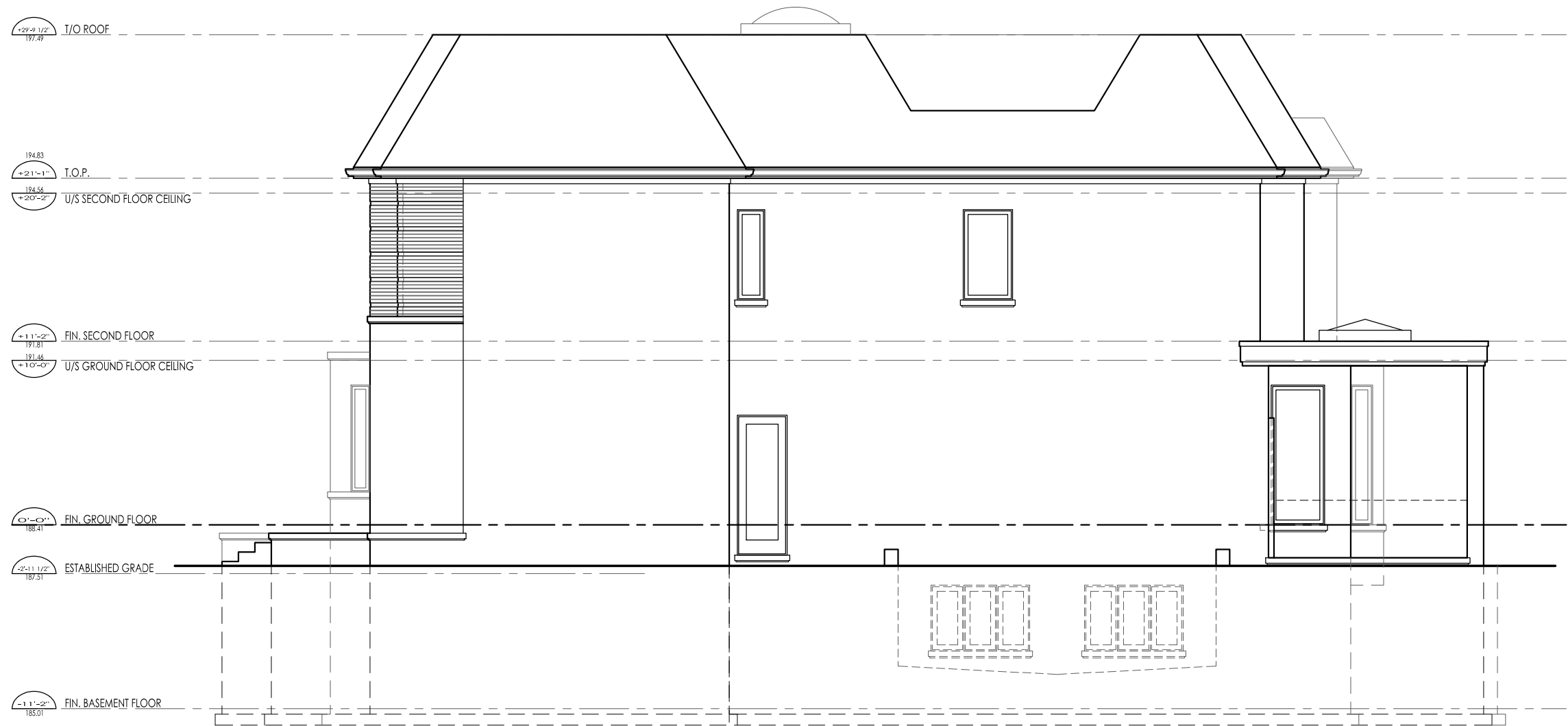
# WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802

REAR ELEVATION  
SCALE: 1/8" = 1'-0"



RICHARD WENGLE  
ARCHITECT INC.



# WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802

 EAST ELEVATION  
SCALE: 1/8" = 1'-0"



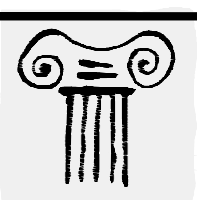
RICHARD WENGLE  
ARCHITECT INC.



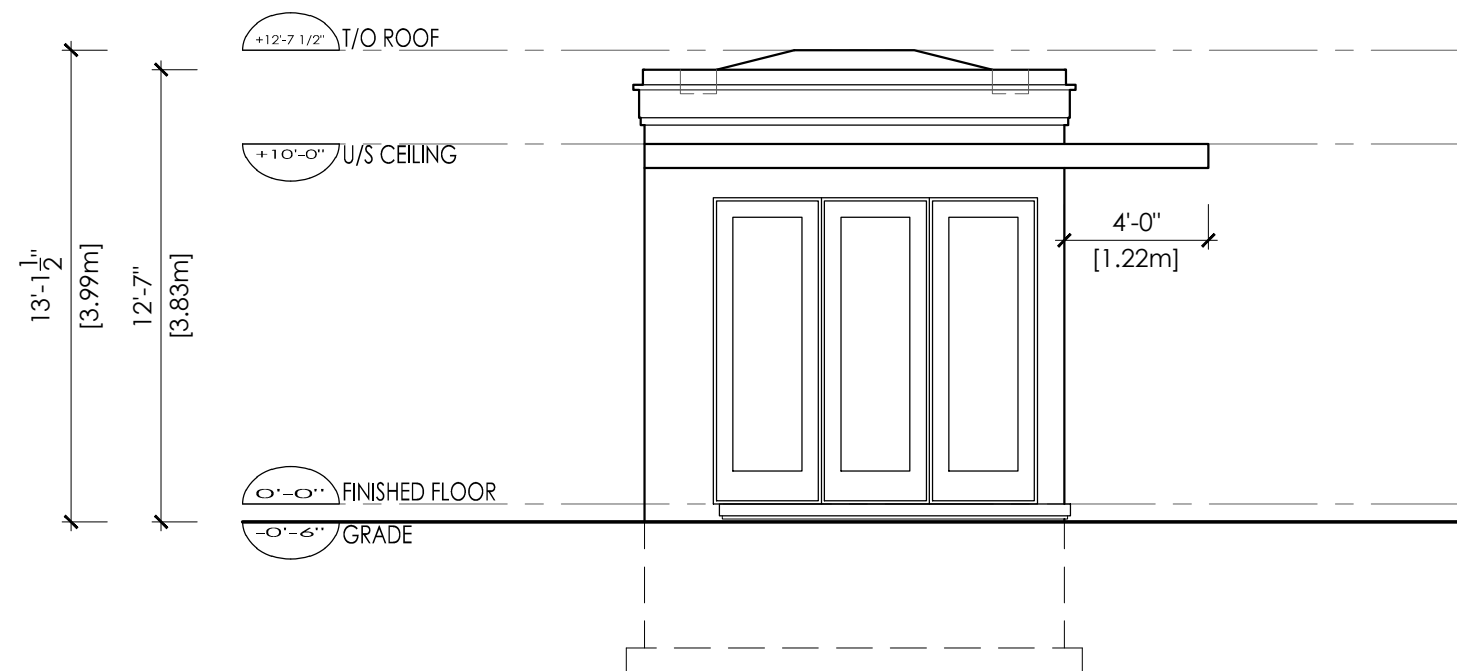
## WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802

WEST ELEVATION  
SCALE: 1/8" = 1'-0"



RICHARD WENGLE  
ARCHITECT INC.



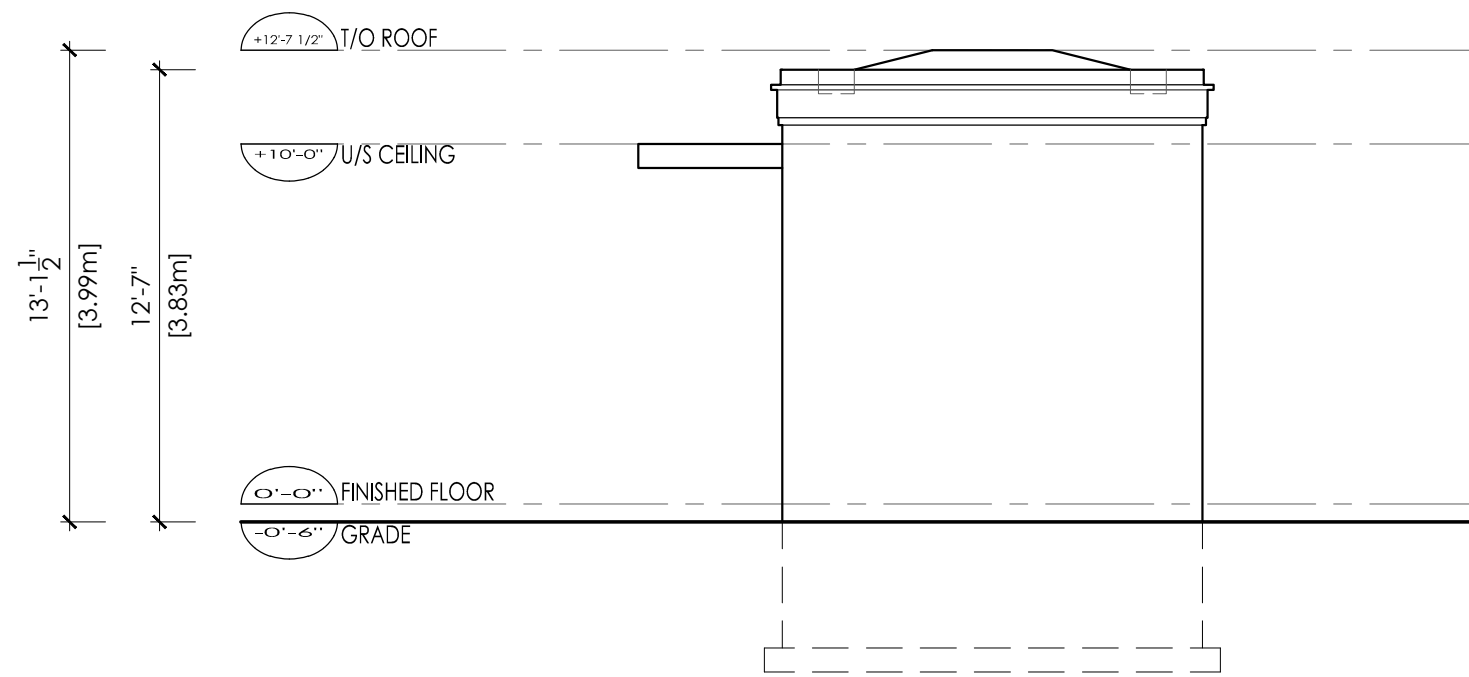
## WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802

CABANA FRONT ELEVATION  
SCALE: 3/16" = 1'-0"



RICHARD WENGLE  
ARCHITECT INC.



RICHARD WENGLE  
ARCHITECT INC.

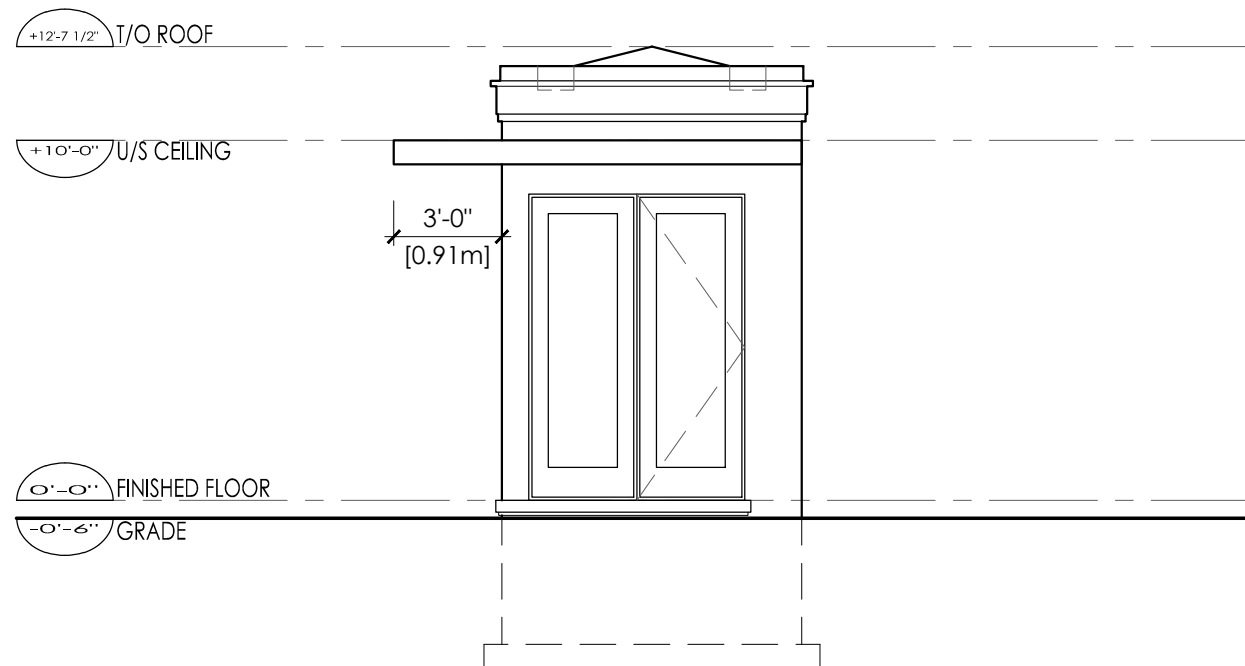
## WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802



CABANA REAR ELEVATION  
SCALE: 3/16" = 1'-0"





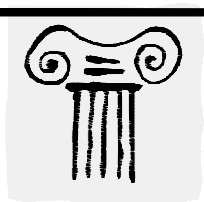
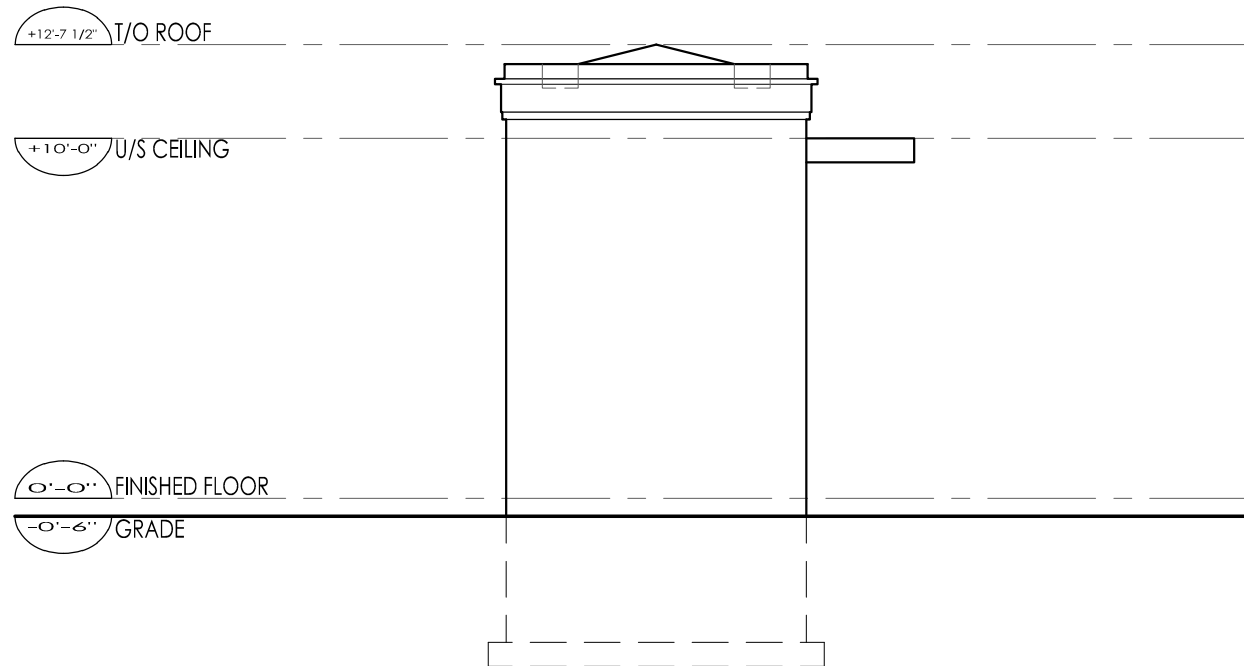
RICHARD WENGLE  
ARCHITECT INC.

## WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802



CABANA EAST ELEVATION  
SCALE: 3/16" = 1'-0"



RICHARD WENGLE  
ARCHITECT INC.

WASSERSTEIN RESIDENCE

14 CORWIN CRESCENT  
TORONTO, ONTARIO  
APRIL 1, 2019  
1802



CABANA WEST ELEVATION  
SCALE: 3/16" = 1'-0"