

DECISION AND ORDER

Decision Issue Date Monday, August 12, 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): JIMMIE VASSOS

Applicant: HOMELAND

Property Address/Description: 18 RESTWELL CRES

Committee of Adjustment Case File: 19 107179 NNY 17 MV

TLAB Case File Number: 19 137049 S45 17 TLAB

Hearing date: Wednesday, August 07, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
HOMELAND	APPLICANT	
JIMMIE VASSOS	APPELLANT	ALAN HEISEY
CHRISTIAN CHAN	EXPERT WITNESS	
MINA ZARKOOB MANESH	PARTY (TLAB)	MARTIN MAZIERSKI
JIM KOTSOPOULOS	EXPERT WITNESS	

INTRODUCTION

This is an appeal in respect of 18 Restwell Crescent (subject property) from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA). The COA allowed the variances sought for the subject property as set out in **Attachment A** to this decision.

BACKGROUND

The Applicant seeks to demolish an existing single detached dwelling and replace it with a residence in substantially the same built form configuration, although somewhat larger, higher and incorporating more modern building standards and amenities. The Appellant, resident in an adjacent property to the west, at 5 Viamede Crescent, opposed certain of the variances while waiving concerns respecting some others.

The Parties had had discussions on the appeal and, upon convening the Hearing, asked for a period of time for further discussions to determine if agreed conditions could resolve their differences. The TLAB encourages settlement of issues by consensus between interested Parties. A period of, ultimately 90 minutes, was afforded. The Parties returned with a consent position involving an acceptance of the required variances and some seven (7) attendant conditions.

In effect, the Hearing was reconstituted as a Settlement Hearing with the owners' consultant planner, Mr. J. Kotsopoulos, RPP, giving the only evidence heard.

MATTERS IN ISSUE

Despite a consensus position on the variances, the TLAB is required, in this *de novo* proceeding, to consider an evidentiary foundation, generally professional land use planning evidence, to adjudicate on the merit of the variances contained in **Attachment A**. As well, the Parties jointly petitioned the imposition of conditions, supported by the planner, should the TLAB find favour with the Application.

JURISDICTION

Provincial Policy – S. 3

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

Minor Variance – S. 45(1)

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

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

EVIDENCE

At the request of counsel, exhibits were entered and referenced: Aggregated Document Record (**Exhibit 1**); Aggregated Expert Witness Statement (**Exhibit 2**); revised and updated site plan and elevation drawings corrected to properly reference the east and west elevations (**Exhibit 3**).

Mr. Kotsopoulos provided planning opinion advice in respect of each of the variances in the sequence presented in **Attachment A**. As there was no contrary planning advice and no questioning of the witness, apart from clarification, it is necessary to only briefly to allude to the principle opinions:

Variance 1. (Deck projection) The Application includes a rear deck, approximately the same size as an existing covered deck but not extending as deep towards the rear (north) of the substantial ravine lot, being the subject property. Due to a substantial grade change on the subject property, falling west to east, a portion of the deck exceeds the above grade platform height.

The planner opined that the down grade differential, the deck size replication being not discernable and the presence of mature vegetation and a proposed condition for fencing - all mitigated against any impact, thereby making the variance appropriate.

Variance 2. (Driveway width) The Application included a driveway replication similar to the existing condition but accessing a proposed new three (3) car garage. Discussions with Planning Staff had led to a modification, reflected in Exhibit 3, reducing the street width of the driveway to 5.8 m, (despite a by-law permission of 6 m) widening to 8m at the entrance to the garage bays.

The planner noted that the existing driveway at the existing house is 12.65 m. He felt the proposal an appropriate response to Staff, which resulted in a streetscape improvement, was less than the By-law permission and constituted a functionally appropriate design. There is no Landscaped Open Space variance requested nor diminution in landscaping proposed.

Variance 3 (Second storey platform) The Application contemplates one balcony adjacent the rear master bedroom and ensuite, running along the north building face, east of a central projection. The platform would exceed the by-law permission (4.0 m²) at 8.73 m² (94 square feet) and would overlook a proposed in-ground swimming pool and the rear yard. The platform received no objection from the property owner to the east as to a privacy or overlook issue despite the descending grade. It has only limited visibility from the elevated properties to the west, or some of them. Despite this, the Appellant sought and achieved acquiescence to a condition further impeding views to the west, by the erection of vertical wooden slats on the outer limit of the platform.

Mr. Kotsopoulos felt the location, size and added condition appropriate and opined these met the general intent and purpose of the zoning by-law to provide an amenity feature of an appropriate scale while mitigating the potential for impact.

Variance 4 (Finished floor height – by-law 7625 (North York)) The Application contemplates a building design fully compliant under the City's By-law 569-2013 under appeal, but a finished floor height that is 3.9 inches higher than the measurement standard under the prior zoning.

The planner felt that the excess was minimal, not noticeable and met the general intent of both by-laws.

Variance 5 (Maximum building height) The Application, while in full compliance with the more recent zoning standard of 10 m, said to be under appeal, requires a variance under the former North York zoning by-law from a permitted height of 8.8 m to 9.19 m. The need arises from the point of measurement definition differing as between the two enactments.

The planner noted a contour grade differential west to east on the subject property of 5 m. The variance request is to recognize a .39 m (15 inches) differential between the proposal and permitted height. The grade differential between the elevated housing on Viamede Crescent and the subject property is approximately 2 m, in the immediate adjacency relationship. He felt that the variance would not materially vary the appearance of the roof of the new house and would not be noticeable.

Mr. Kotsopoulos had examined height variances within a 500 meter radius of the subject property over the past 10 years. His analysis suggested height permissions as high as 10.59 m and an average at 9.78 m, both considerably greater than that proposed in the Application, under the North York By-law.

Given the full compliance with the new standard of 10 m, Mr. Kotsopoulos opined the general intent and purpose of the By-laws was met.

On a question by the Chair, the planner advised the variances in **Attachment A** are consistent with the Provincial Policy Statement and conform to and do not conflict with both the 2017 and 2019 Growth Plan, in reinforcing development in built up areas.

Individually and collectively he applied the criteria of section 4.1.5 of the Official Plan. He concluded the **Attachment A** variances constituted no change, and respected, reinforced and maintained the existing character of the neighbourhood and streetscape. He stated that while not a replication (which itself is not required), the Application constituted a modern replacement dwelling without in any way undermining the stability of the existing neighbourhood.

He felt the replacement building investment was in the same character as area regeneration thereby meeting the intent and purpose of Official Plan policies.

On the same basis, he concluded a new two storey single detached residence was a desirable modernization in an appropriate built form.

On the test of minor, reviewing the variances, he noted an absence of impact which, coupled with conditions addressing mitigation recognized that the magnitude was in keeping with area norms, notably height. He considered the variances as minor in that they did not undermine or adversely impact adjacent properties.

Mr. Katsopoulos was presented with seven proposed conditions agreed to in discussion by the Parties (**Exhibit 4**). He endorsed the draft as appropriate to reflect:

- a) construction is to be in accord with the site plan and elevations in Exhibit 3;
- b) vertical slats on the one second storey platform are an aid to reducing visibility and enhancing privacy; and
- c) conditions for the construction of perimeter fencing and directing lighting and security cameras internal to the subject property as being common and appropriate.

He felt such conditions related to the variances and could be supplemented, in the case of a second storey platform, by the production of a design drawing showing greater specificity. Counsel requested an Exhibit be reserved for the production of the second floor deck/platform screen design (**Exhibit 5**).

ANALYSIS, FINDINGS, REASONS

The TLAB notes the co-operation of the Parties present in arriving at terms of agreement and the uncontested opinion evidence of the planner, Mr. Kotsopoulos.

I agree with the application and assessment of the tests relevant to the variances, collectively and individually. I find, as the planner did, that the variances pass the mandatory policy and statutory tests above enumerated, for the reasons expressed by the Planner, both in oral evidence and his associated Witness Statement.

I make no comment on the application of the argument submission from *Re Cesario 2018 CarswellOnt 2278* that there is an assumption that “the later by-law has superseded the prior by-law and is closer to the present intent of Council.” It seems to me that there are several variables and different circumstances that can mitigate against this being a principle of broad or universal application.

In this circumstance, I am content on the evidence that the applicable tests have been addressed on each variance requested, and satisfactorily met.

I have had regard to the decision of the COA approving the variances and the imposition of conditions recognizing the defined variances and no others and approving construction in accordance with the revised plans assembled in Exhibit 3.

I find the proposed conditions in Exhibit 4 to be generally acceptable, if somewhat repetitive and I have formulated minor modifications. I prefer to reformulate them as set out in the Decision and Order herein. While I have some latent concern for the appropriateness and necessity for the visual screening proposed for the one platform at or above the second storey level on the proposed dwelling, I am prepared to accept it as an accord duly arrived at in consensual discussions between the Parties.

DECISION AND ORDER

The appeal from the decision of the Committee of Adjustment is allowed, in part.

The variances set out on **Attachment A** that are indicated as 'proposed', are approved subject to the conditions set out on **Attachment B** and the site plan and drawings set out in **Attachment C**.

As an advisory, any other variance(s) that may appear as required on these plans but are not listed in this written decision are NOT authorized and may become the subject of a separate application.

If there are difficulties in implementing any element of this Decision and Order, the TLAB may be spoken to on notice to the Parties.

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

Attachment A

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.5.40.50(4)(C), By-law No. 569-2013
Platforms are limited to projecting 2.5 m from the rear wall.
The proposed rear deck projects 6.10 m from the rear wall.
2. Chapter 10.5.100.1.(1), By-law No. 569-2013
The maximum driveway width is 6 m.
The proposed driveway width is 8 m.
3. Chapter 10.20.40.50.(1), By-law No. 569-2013
The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 m².
The proposed area of *the* platform at or above the second storey is 8.73 m².
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 1.6 m.
5. Section 11.2.6, By-law No. 7625
The maximum permitted building height is 8.8 m.
The proposed building height is 9.19 m.

Attachment B

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

- 1) The proposal be developed substantially in accordance with the revised site plan drawing and attached elevations set out in **Attachment C**, attached.
- 2) For greater certainty, there shall be no second storey platforms, sundecks, porches, deck, or balconies other than the second-storey rear platform proposed on the Applicant's plans dated March 22, 2019 in **Attachment C** hereto, showing one second storey rear platform/balcony attached to, and accessed from, the easterly portion on the rear main northerly wall of the dwelling on the subject lands.
- 3) On the said second-storey rear platform, a vertical finned-styled guard rail of no less than 1.2m metres height from the base of the platform, with individual rail guards of no less than 5 cm in width, and spaced at no more than the required minimum spacing (approximately 10.1cm) between rails or as may be required by the Ontario Building Code shall be constructed as the northerly rail guards on the proposed second storey rear platform as seen on the Applicant's North Elevation Drawing No. 08, **Attachment C** (and any revised drawings requested, submitted within ten (10) days from the date hereof and subsequently added to the said attachment by the TLAB).
- 4) And for further greater certainty to Condition 1 herein, the dwelling shall be constructed substantially in accordance with the North and West Elevations on the Applicant's plans dated March 22, 2019 in **Attachment C**.
- 5) The Applicant/Owner will construct and maintain a solid wood fence with no gaps, of a minimum approximate 2.0 metres height above-ground beginning at approximately 20 metres north from the front lot line, continuing along the west lot line to the rear lot line on the subject property, that complies with the construction and height standards as set forth in the Toronto Municipal Code Chapter 447 – Fences, and any other regulatory authority having jurisdiction.
- 6) The owner shall position any exterior lighting fixtures located on the subject property so that they are not directed and/or cast direct light into the adjacent property at 5 Viamede Crescent.
- 7) The owner shall position any security cameras located on the subject property so that they are not directed and cannot afford views into the adjacent property at 5 Viamede Crescent.

NOTE:

THIS SET OF DRAWINGS, IS THE PROPERTY OF "HOMELAND" AND ANY REPRODUCTION OR USE FOR OTHER PROJECTS, IN WHOLE OR IN PART, WITHOUT A WRITTEN CONSENT OF THE DESIGNER IS FORBIDDEN.

THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF SURVEY, MECHANICAL, ELECTRICAL ETC. AND OTHER ENGINEERING INFORMATION SHOWN ON THE DRAWINGS REFER TO THE APPROPRIATE ENGINEERING DRAWINGS BEFORE PROCEEDING WITH WORK.

CONTRACTOR SHALL CHECK ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. CONSTRUCTION MUST CONFORM TO ALL APPLICABLE CODES, REQUIREMENTS AND BY-LAWS OF AUTHORITIES HAVING JURISDICTION.

THESE DRAWINGS ARE NOT TO BE SCALED.

THE CLIENT/OWNER/BUILDER TO CHECK ALL THE DRAWINGS AND INFORM THE DESIGNER OF ANY DISCREPANCY OR ANY ISSUE WITHIN MAXIMUM A WEEK FROM THE DATE OF THE BUILDING PERMIT, AFTER WHICH THE DESIGNER HAS NO RESPONSIBILITY ABOUT ANY ISSUE WHATSOEVER.

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RECEIVED

By Toronto Local Appeal Body at 8:53 am, Aug 07, 2019

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EXHIBIT # 3

Case File Number: 19 137049 545 17 TLAB
Property Address: 18 Restwell Cres.
Date Marked: August 7, 2019

PROPOSED 2-STOREY DWELLING TO
18 RESTWELL CRES.
NORTH YORK, ON.
M2K 2A3

LIST OF
ARCHITECTURAL DRAWINGS

00	COVER SHEET
01	SITE PLAN
02	BASEMENT PLAN
03	FIRST FLOOR PLAN
04	SECOND FLOOR PLAN
05	ROOF PLAN
06	FRONT ELEVATION
07	LEFT ELEVATION
08	REAR ELEVATION
09	RIGHT ELEVATION
10	WALL SECTION
11	GENERAL NOTES
12	N/A

AREA SCHEDULE (TORONTO)

FIRST FLOOR AREA	422.9	
SECOND FLOOR AREA	475.3	
TOTAL FLOOR AREA	898.2	
FINISHED BASEMENT	423.6	
GROSS FLOOR (DEFINITION)	1311.8	
FINISHED BASEMENT	-423.6	-
50% OF BASE (105.40.40) 3A	-N/A	-
VOID AREA (105.40.40) 3B	-84.3	-
GROSS FLOOR (CALCULATION)	813.9	
PORCH AREA	91	
BUILDING COVERAGE	421	
GARAGE COVERAGE	612	
LOT COVERAGE	482.9	
	S.F.	M ²

EXHIBIT #

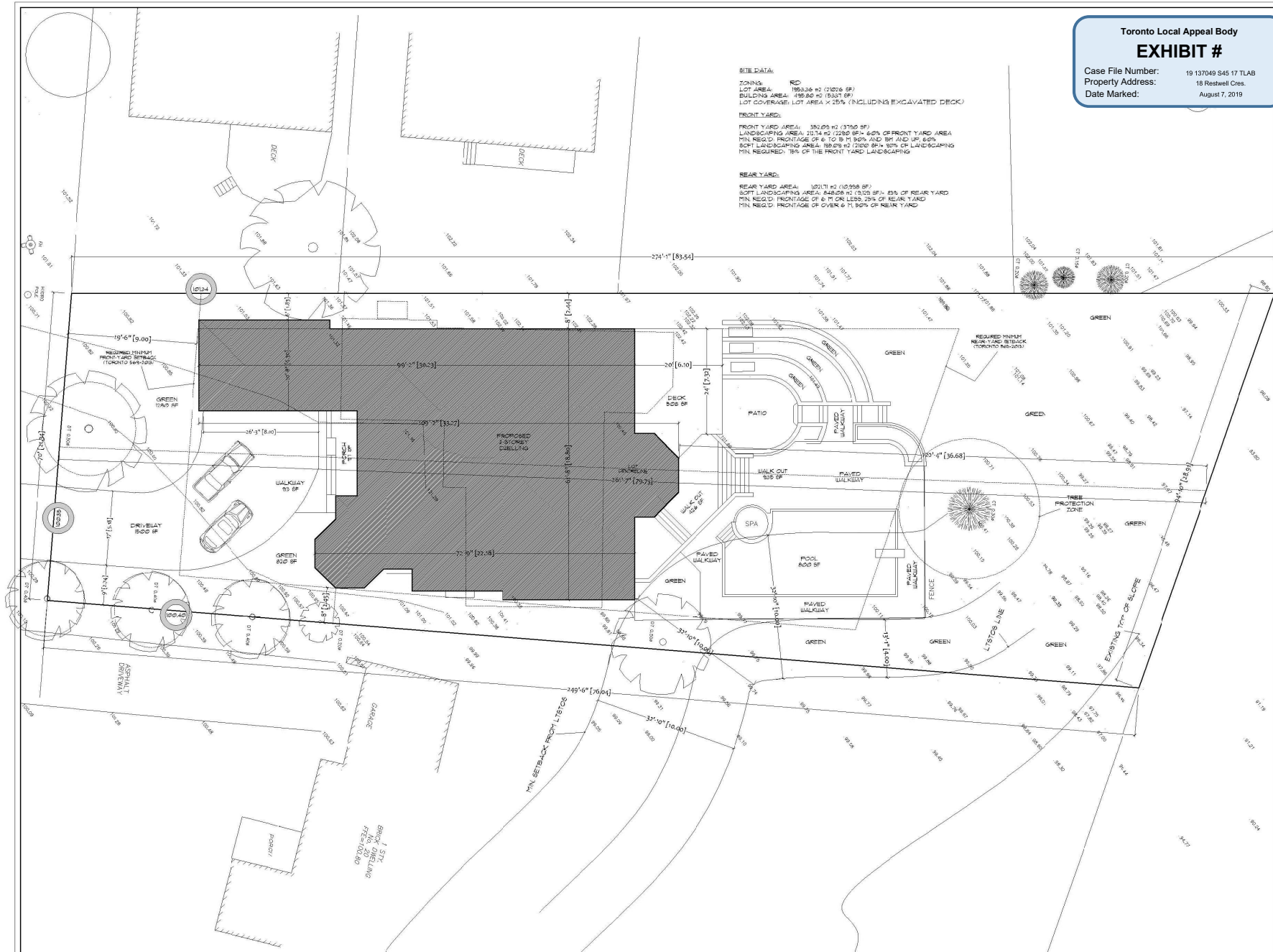
Case File Number: 19 137049 545 17 TLAB
 Property Address: 18 Restwell Cres.
 Date Marked: August 7, 2019

SITE DATA:

ZONING: R50
LOT AREA: 185,346 sq. ft. (7,076 sq. ft.)
BUILDING AREA: 439,800 sq. ft. (19,337 sq. ft.)
LOT COVERAGE: LOT AREA x 25% (INCLUDING EXCAVATED DECK)
FRONT YARD:
FRONT YARD AREA: 352,029 sq. ft. (12,756 sq. ft.)
LANDSCAPING AREA: 20,744 sq. ft. (228,964 sq. ft.) 6.0% OF FRONT YARD AREA
**MIN. REQ'D. FRONTAGE OF 6' TO 5' 11" 50% AND 6' 11" 50%
SOFT LANDSCAPING AREA: 185,346 sq. ft. (7,076 sq. ft.) 10% OF LANDSCAPING
MIN. REQ'D. FRONTAGE OF 6' TO 5' 11" 50% OF REAR YARD**

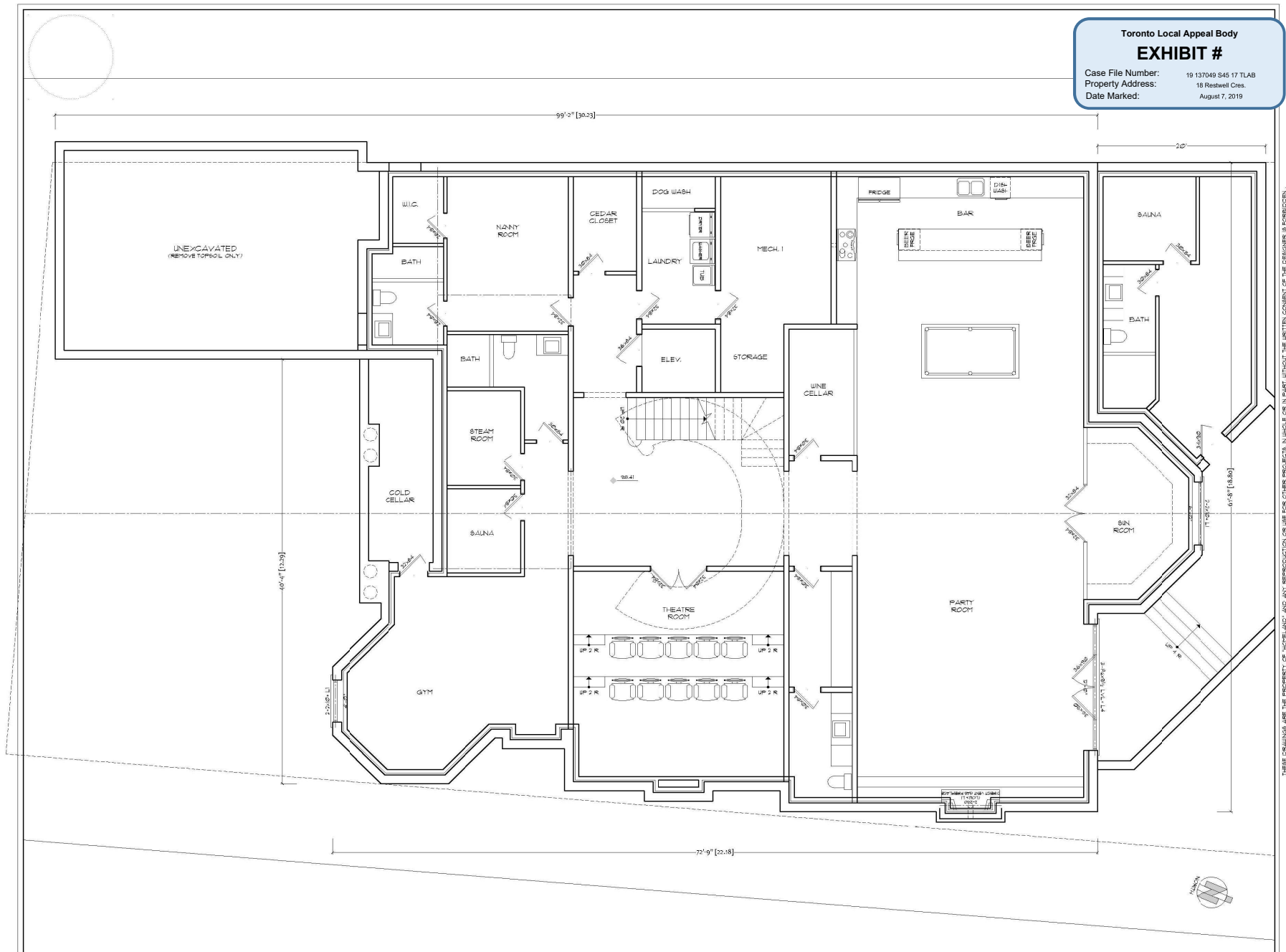
REAR YARD:

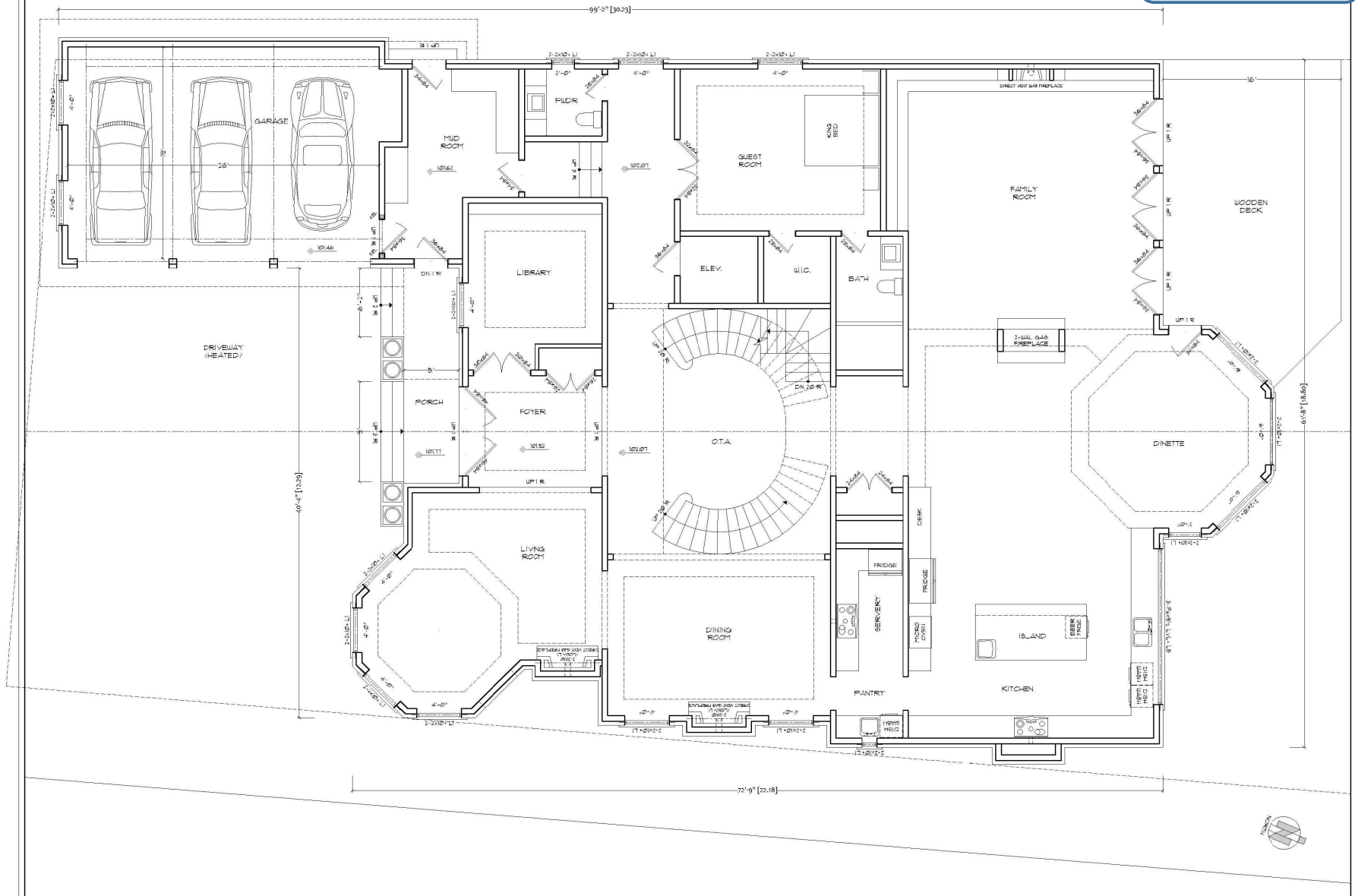
REAR YARD AREA: 100,171 sq. ft. (10,268 sq. ft.)
SOFT LANDSCAPING AREA: 84,808 sq. ft. (13,103 sq. ft.) 8.5% OF REAR YARD
**MIN. REQ'D. FRONTAGE OF 6' TO 5' 11" 50% OF REAR YARD
MIN. REQ'D. FRONTAGE OF 6' TO 5' 11" 50% OF REAR YARD**



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Property Address: 18 Restwell Cres.
Date Marked: August 7, 2019





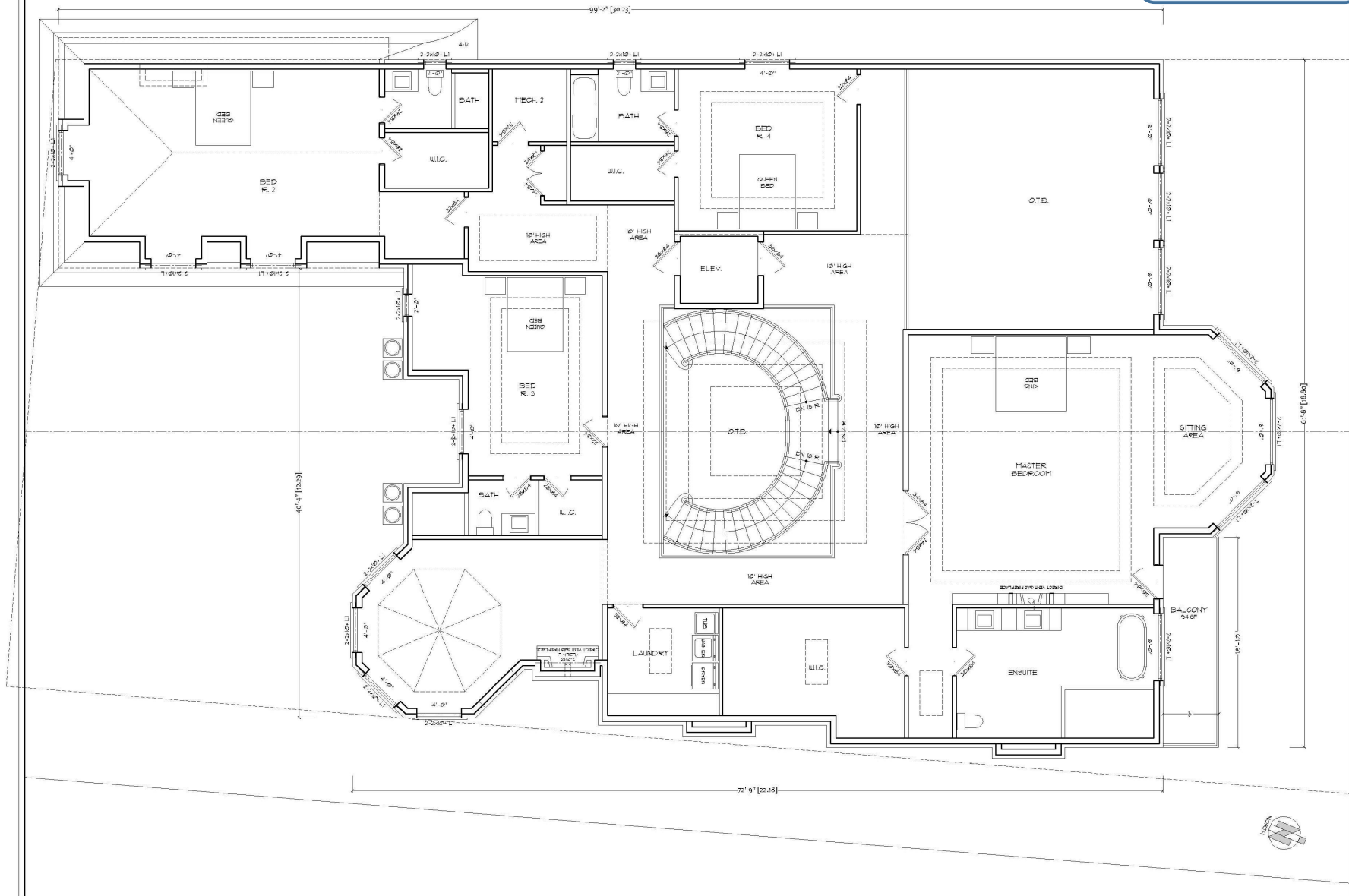
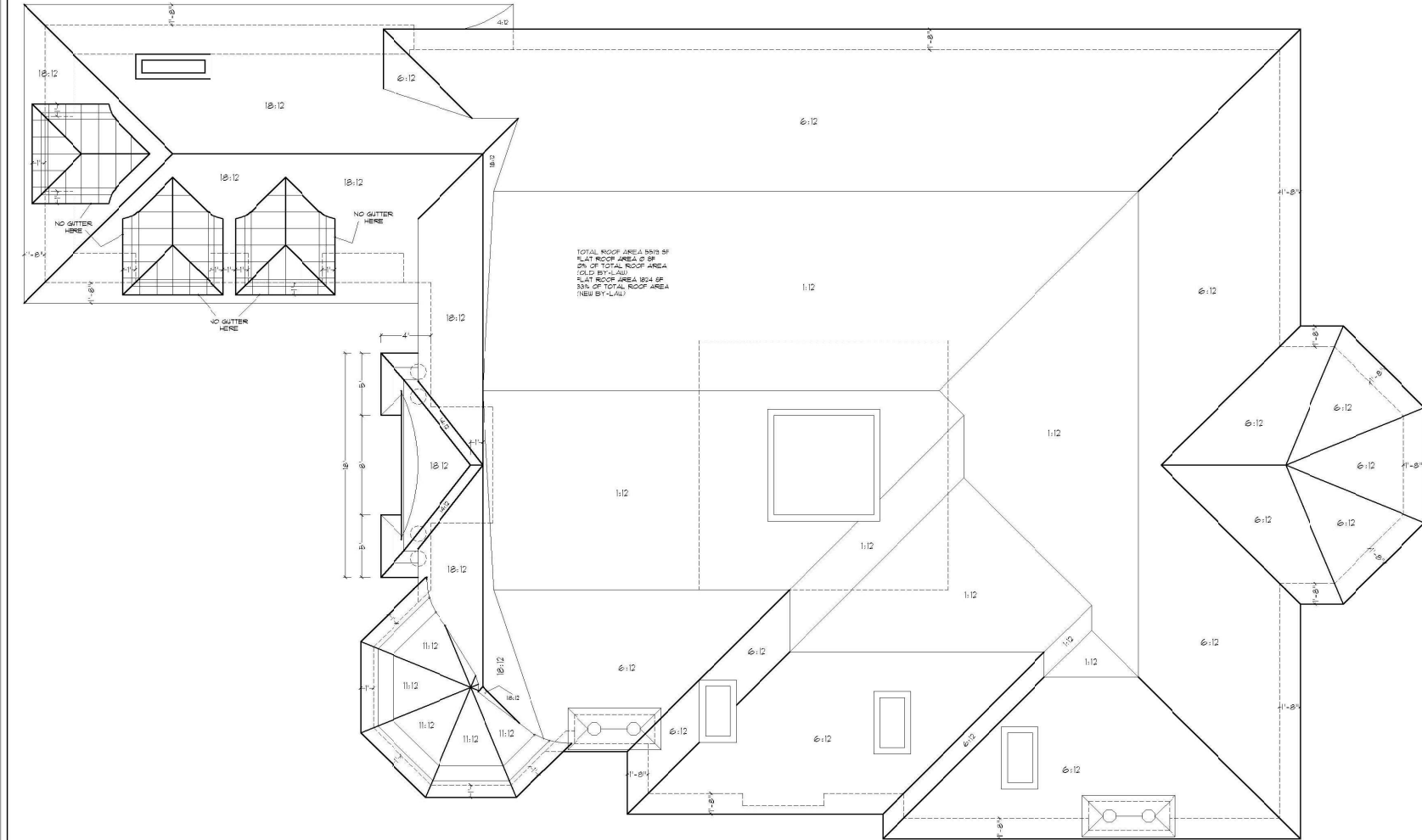


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EXHIBIT

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SOUTH ELEVATION

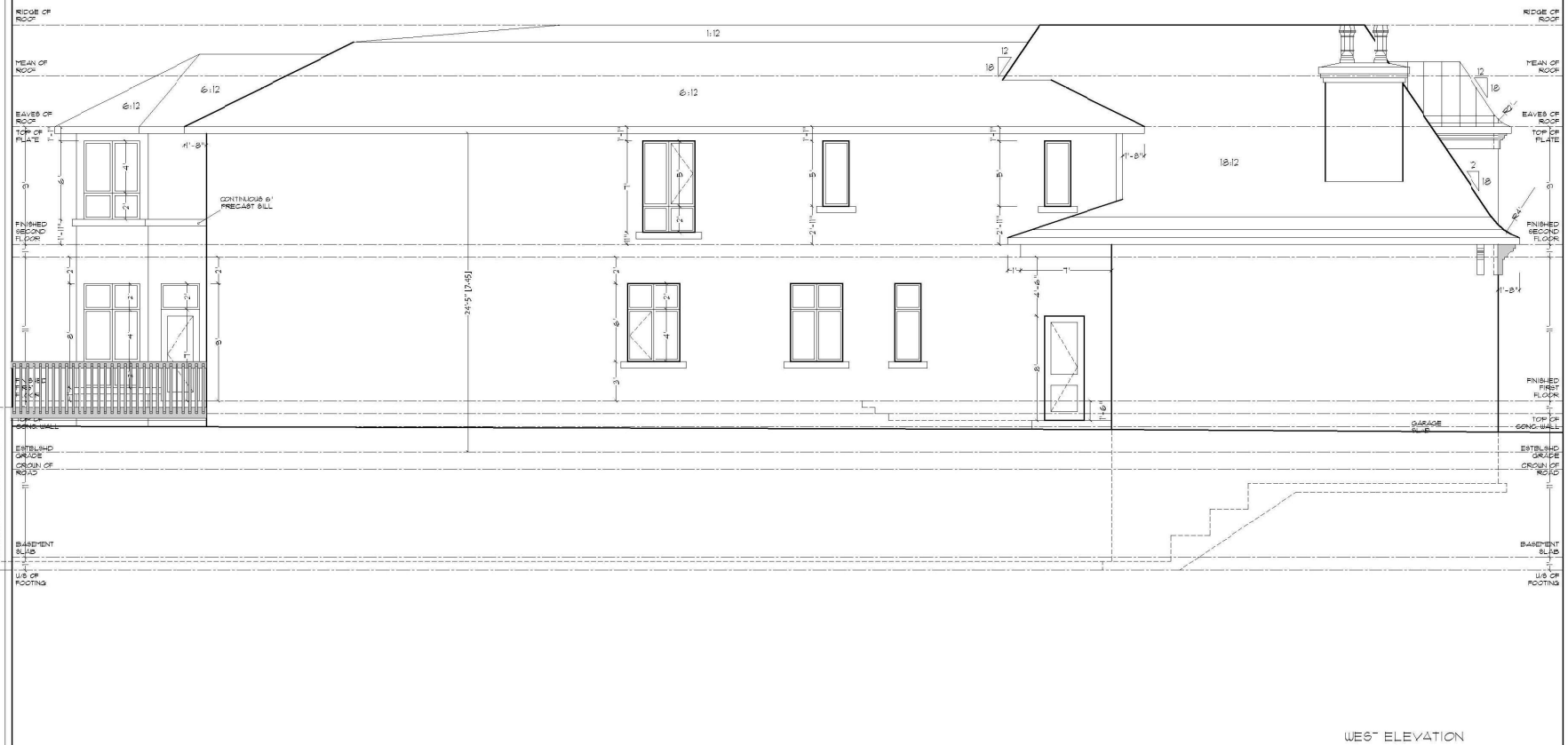
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EXHIBIT #

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UNFROST
WALL AREA
AND BAY WINDOWS: 8 SF.
ALLOWABLE WINDOW AREA
AT 75% FOR 183 = 8107 YARD: 8 SF.
ACTUAL WINDOW AREA
(100% OF OPENING SIZES): 8 SF.



CLIENT	HABIB AND FARID	DATE	JUL 13, 2019	DESIGN	HOMELAND	416-393-6020	PROJECT	18 RESTWELL CRES.	SCALE	3/16"=1'-0"	TITLE	LEFT ELEVATION	07
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EXHIBIT

Case File Number: 19 137049 S45 17 TLAB
 Property Address: 18 Restwell Cres.
 Date Marked: August 7, 2019



NORTH ELEVATION

CLIENT	HABIB AND FARID	DATE	MAR 23, 2019	DESIGN	HOMELAND	416-393-6020	PROJECT	18 RESTWELL CRES.	SCALE	3/16"=1'-0"	TITLE	REAR ELEVATION	08
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EXHIBIT

Case File Number: 19 137049 S45 17 TLAB
 Property Address: 18 Restwell Cres.
 Date Marked: August 7, 2019

UNPROTECTED
 WALL AREA
 AND BAY UP
 ALLOWABLE WINDOW AREA
 AT 85% FOR 2.45 m SIDE YARD: 250 SF.
 ACTUAL WINDOW AREA
 (90% OF OPENING SIZES): 250 SF.

FOR ENERGY EFFICIENCY (SS-12):
 GROSS AREA OF GLAZED OPENINGS IN THIS ELEVATION 278 SF
 GROSS AREA OF PERIPHERAL WALLS IN THIS ELEVATION 2209 SF



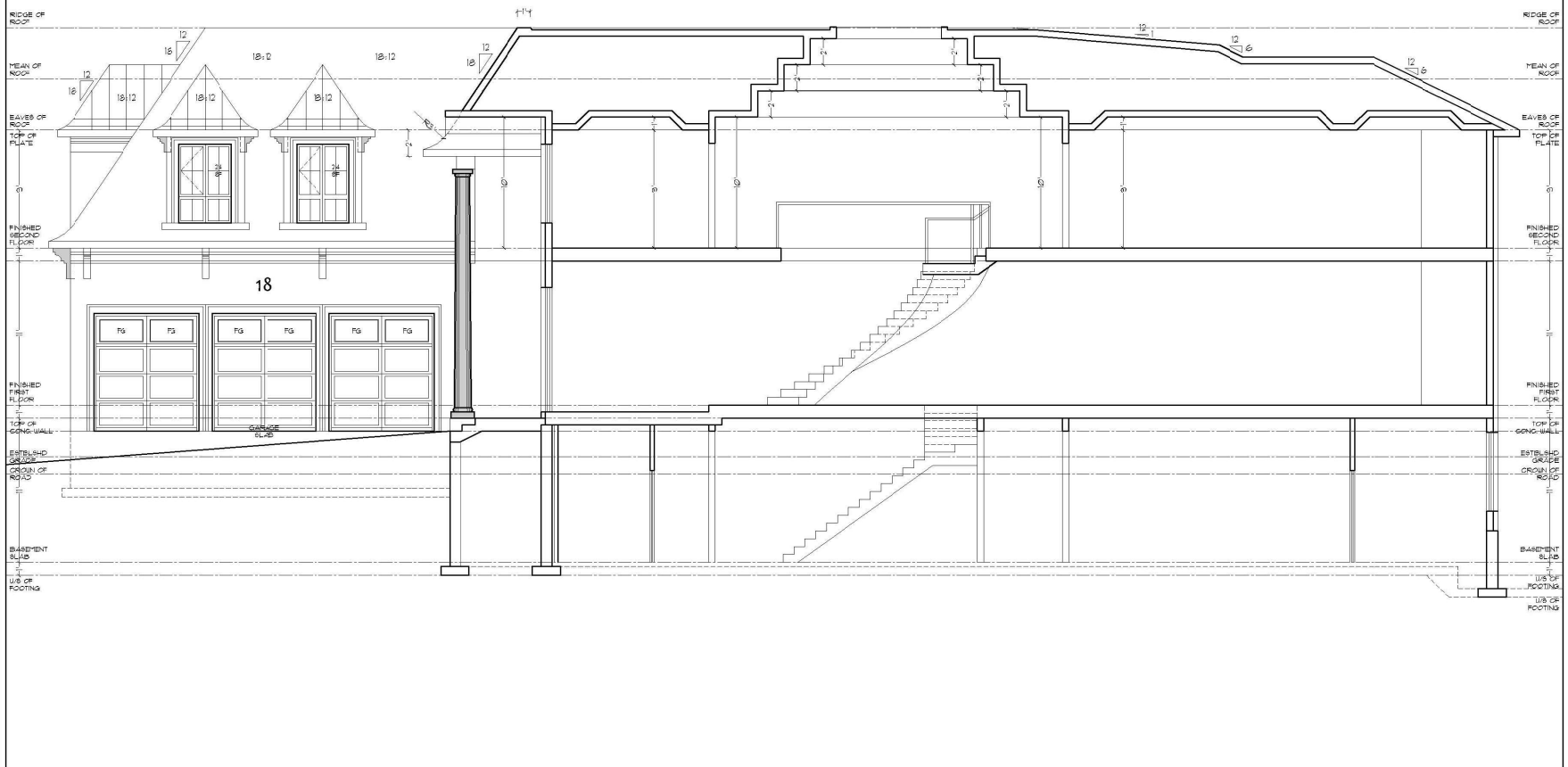
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CLIENT	HABIB AND FARID	DATE	JUL 13, 2019	DESIGN	HOMELAND	416-393-6020	PROJECT	18 RESTWELL CRES.	SCALE	3/16"=1'-0"	FILE	RIGHT ELEVATION	09
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