

DECISION AND ORDER

Decision Issue Date Friday, August 30, 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): YURI KVYETKO

Applicant: GUITBERG GROUP INC

Property Address/Description: 12 BEARWOOD DR

Committee of Adjustment Case File: 18 253849 WET 04 MV

TLAB Case File Number: 19 110854 S45 02 TLAB

Hearing date: Monday, July 22, 2019

DECISION DELIVERED BY GILLIAN BURTON

APPEARANCES

Name	Role	Representative
Guitberg Group Inc.	Applicant	
Yuri Kvyetko	Appellant/Owner	Amber Stewart Anthony Soscia, Student
Walter Lowes	Party	
Franco Romano	Expert Witness	
David Andrew White	Expert Witness	
Danica Nekic	Participant	
Dale Kucharczyk	Participant	

Julius Fritsch	Participant
Susan Gibbs	Participant
Sev Falcomer	Participant

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body (TLAB) by the owner of 12 Bearwood Drive in the Etobicoke area, from a decision of the Committee of Adjustment (COA, January 24, 2019). This decision refused variances required to construct a new detached dwelling with an integral garage on the subject lot. Mr. Walter Lowes, who lives at 14 Bearwood next door, has been delegated by many of the neighbours on Bearwood Drive to represent them in this appeal. Seven neighbours had written letters of objection to the COA. The property is zoned RD (f21.0; a835; d0.45) under the City Zoning By-law No. 569-2013, and under Etobicoke Zoning Code the property is zoned R1 and is also subject to By-law(s) 1982-252(P).

BACKGROUND

Mr. Lowes is a party to the appeal. He had earlier brought a motion to the TLAB requesting (in essence) three things: to exclude the owner's revised Arborist Report; as well as certain opinions in the Expert Report of the owner's planning witness, Franco Romano, because they were based on the impugned Arborist Report; and also, to find that Mr. Romano is "not recognized as having expert witness status in the specific hearing."

My colleague Mr. Yao found in his decision of May 9, 2019 in this matter that, in his opinion, the facts did not support the request to exclude any reports already appearing on the TLAB file. The ultimate decision should be left to the Member hearing the appeal. As he stated, "It is true that a trier of fact may ignore new evidence, but I do not think it is useful to have a hearing in which the witnesses must do so.... A planner is entitled to rely on another expert in coming to a planning conclusion, but an opponent can attack the planner's conclusion by showing that the other witness's expertise was faulty in some way, and I have indicated the path is open for Mr. Lowes to do so..... I do not think there is a compelling reason to exclude the second White report or Mr. Romano's conclusions based on that report."

Mr. Lowes put forward the same submissions and arguments at the beginning of the appeal hearing. In sum, he argued that Mr. Romano had altered his Witness Statement after a second Report by Arborist D. Andrew White was prepared after the COA decision. Mr. Lowes had hired his own arborist to assess the tree situation as considered in Mr. White's first Report. He claimed that the resulting Peer Review Report caused a second and later response from Mr. White, with differing conclusions on the

necessity for removal of a tree. Mr. Romano had then considered and attached the second White report as an appendix to his Expert Witness Statement.

I conclude that on the issue of admitting Mr. Romano's entire report with its appendix, there was no intent to alter either Mr. White's opinion, or Mr. Romano's Planning Report. As is usual with COA hearings, accommodations are made with neighbours. In this case, not only were revisions made to the requested variances (reducing them), but there was also a reassessment of whether a tree on Mr. Lowes' property could be retained, as he strongly wished. In the revised Arborist Report attached by Mr. Romano, it was found that it could possibly be retained. It is left to me to determine the weight of that opinion, but I found that it should be accepted into evidence. Mr. Lowes was free to elicit evidence in response in questioning Mr. White. The purpose and goal of TLAB is to have complete and open evidence, filed in advance, so hearings can lead to the best planning decision in the public interest.

On the issue of Mr. Romano's professional qualifications, and his objectivity in this hearing, I support without hesitation his testimony that he has acted for many different parties, public and private over a lengthy career. The claim that he works only for developers is far from the truth. His memberships in professional planning bodies requires objectivity, no matter who the client is. He has signed TLAB Form 6, Acknowledgement of Expert's Duty in this matter, in which he affirms that that this duty to the tribunal prevails over any obligation to the party engaging him. I ruled that his expert testimony would be accepted into evidence, since it is and was fair, objective and non-partisan. I have frequently qualified Mr. Romano as an expert to provide planning evidence in TLAB hearings, and have always found that his duty to be objective has been fulfilled. He had accepted the file on behalf of the owner on January 28, 2019, just after the COA decision – see Exhibit 1, p. 3.

MATTERS IN ISSUE

Mr. Lowes and the other neighbours nearby (who registered as Participants but did not attend the hearing) oppose the proposed new dwelling on many grounds. They say that it does not meet the requisite tests in the Act, principally because of its size and location at the base of a reverse ravine. There are many factors on which this opposition is based; these are dealt with in the evidence section below.

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 (OP);
- 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

As mentioned, the owner’s expert planning evidence was provided by Mr. Franco Romano, a very experienced professional planner. He outlined the location of the subject parcel and his choice of Study Area (SA) for assessment of the merits of the proposal. Bearwood is in the interior of the neighbourhood bounded by Royal York Road to the west, North Drive and Taylorwood Drive to the north and northeast, Edenbridge Drive to the east on the edge of the Humber River ravine, and Westridge Rd. to the south. It is a “circuitous” cul de sac, he stated, commencing at Edenbridge Drive. The result is that some dwellings on Bearwood back onto the ravine rather than face it. Number 12 is on the northwest side of Bearwood, and is improved at present with a two-storey dwelling over an integral garage. The entire street area is designated Residential under the OP, and zoned detached residential.

There is significant variation in the topography here, with Valecrest Drive to the northwest of Bearwood being higher tableland. Then there is a “reverse ravine” drop-off of at least 4 metres toward Bearwood and the properties surrounding the subject property at number 12. The effect is that the rear yards of the properties slope fairly steeply upwards toward Valecrest to the north.

South and southeast of this area is Scarlett Mills Park, next to the Humber River. The area forms part of the OP overlay of a Natural Heritage System, as regulated by the Toronto Region Conservation Authority (TRCA). However, Mr. Romano stressed, it is not part of any provincially significant **or** environmentally sensitive area, such as an ANSI (Areas of Natural and Scientific Interest). The environment is a principal concern of the neighbours, so he outlined the many controls in place. For all the streets in his SA, prior to constructing a dwelling, one would require a Toronto and Region Conservation Authority (TRCA) permit, a permit under the Ravine and Natural Features Protection Department of the City (RNFP), as well as a regular Urban Forestry permit. The owner **has obtained a TRCA permit** for the proposed structure. The

considerations for this include topography, vegetation, grading, drainage and effects on a slope. This authority works closely with RNFP at the City, which is part of the Urban Forestry department.

The subject lot is a reverse pie shape, with dimensions of: frontage, 16.3 m (17.8 m at front lot line), depth 52.7 m (sides range from 51.8 m to 54 m), rear lot line 9.75 m, with area of 689.4 sq. m. Mr. Romano outlined the proposed replacement dwelling as similar to the existing, and using mostly the existing footprint (as seen on the site plan). It would be two storeys, with integral garage, and two levels above the garage. The driveway location would remain the same, using the existing curb cut. The structure would be more aligned with or perpendicular to the front lot line than the existing, which is slightly skewed. It would be longer, but set slightly differently. The proposed roof design is a more modern one, but the total height would still comply with the zoning requirement. Two levels would be apparent from the rear, with a rear walkout, but this is due to the rise in topography into the reverse ravine in the rear yard. The foyer in the new dwelling would be very close to the height of the existing first floor. The new dwelling would be taller by only about .4 m.

He illustrated the variation in nearby structures by many photos, including all of the nearby Bearwood properties, and provided detailed descriptions of the various structures. In general, the dwellings occupy the front portion of the lots, but depending on lot shape, may be in the central portion, with expansive rear yards. He put it that they were etched into the topography. Roof styles were a mix of pitched and flat throughout his SA. Many were nominally different in height, but some structures were a storey taller than others here. The differences are part of the physical character of the neighbourhood, he opined. There are many double garages. The rise in topography often necessitates many steps upward from the street level. There is even a slope on the other side of the street, with accommodations in the structures and, usually, narrow side yard setbacks. There is also a variety in architectural expressions, especially in the new builds on the streets to the north, North Drive, Edenbridge and Taylorwood, and Edgehill Rd. to the south.

Mr. Romano provided a Decision Summary Table of the COA decisions of the past ten years, the usual timeframe provided by the City upon request. As can be seen on p. 55 of Exhibit 1, there has not been much activity on Bearwood – only one addition at 21 Bearwood, and no new dwellings, although there have been many on the other streets nearby.

He discussed the requested variances in detail. These are listed in Attachment 1 to this Decision. He concluded that the overall order of magnitude is well within those in his SA. Most rebuilds within neighbourhoods, including this one, create larger structures to accommodate modern lifestyles. Ms. Stewart filed a revised rendering on the day of the hearing (Exhibit 3) which represented an artist's view of the proposed structure on the lot and its surroundings. It was prepared from a base photograph of the existing dwelling, then the survey and proposed site plan were superimposed. (Mr. Lowes objected to its accuracy – see his testimony below.)

From Mr. Romano's testimony, the new dwelling would feature (with required variances underlined):

- Front yard setback of minimum 7.2 m, appropriately aligning with neighbouring Bearwood Drive dwellings (computed by average of neighbouring front walls). The front of the properties along Bearwood generally have good front wall alignment. The varied lot size, configuration and curvilinear road network results in dwellings that are in front or behind neighbouring dwellings. The proposed front yard setback will continue to contribute to a good front wall alignment (except for No. 10).
- Rear yard setback of minimum 25.7 m. (By-law: minimum 13.1 m).
- Lot coverage of 29.95% (By-law: maximum 33%. This would be 29.95 % less than the By-law).
- Building length that is articulated from 16.54 m to 17.68 m.
- Building depth that is articulated of 17.1 m to 17.68 m. Depth is measured from a point on a straight line at right angles from the front yard setback, from front of the structure to the rear wall. Here, it is taken from pinch points at the front wall to the rear projection, which functions as a bay window.
- Side yard setbacks of:
 - For a building depth of 17 m, minimum 1.2 m side yard setback – the zoning notice stated that minimum is 1.8, but the north side yard is staggered so that 1.2 m is only to pinch points. In Mr. Romano's view, the minimum side yard setback based on the existing 16.3 m lot frontage is 1.5 m, not 1.8 m. It is important to note that the side yard setback at the rear is only for the portion of the basement walkout that is underground, because of the topography.
 - For the building depth exceeding 17 m from the main front wall, minimum side yard setbacks of (south) 5.34 m and (north) 1.2 m. The rear basement walkout has a south side yard setback of 1 m. The required setback is 7.5 m, according to the zoning notice. The purpose of this standard is to ensure structures are oriented toward the front to the lot, and do not extend excessively into the rear yard. However, Mr. Romano noted that this provision does not apply to lawful lots with a lot frontage smaller than 18 m, and here the lawful lot frontage is 16.3 m. The rear yard setback is easily met.
- the front porch has a south side yard setback of 1.2 m (minimum in zoning notice was 1.8 m side yard setback.) This will preserve it as an accessory and subordinate portion of the structure.
- Sloped roof design. (no variance required).
- Eaves that project 0.61 m (or within the generally permitted 0.9 m) with side yards of minimum 0.59 m (or more than the minimum required 0.3 m) (identified in the zone examination as projecting 1.29 m, 2.85 m and 6.99 m with setbacks from 0.51 m to 4.65 m). It is to be noted that the eaves do not touch or cross the side lot line.

- Building heights:
 - 2 storeys (not regulated);
 - 9.4 m to the highest roof ridge. (complies).
 - Side main wall height of 8.31 m (by-law is 7.0 m).
 - Soffit height of 8.31 m. (Etobicoke By-law is 6.5 m). This is a technical variance. Because of the rising topography front to rear, this measurement begins *underground* along most of the side walls. The wall and eaves height measurements are from 7.85 m to 8.31 m. However, because of the slope up, the wall and eaves heights from ground level are lower (from finished grade level, the wall and eaves height measurements are only approximately 6.25 m to 6.53 m).
- Gross floor area of 406.62 sq. m or 0.59 times the lot area (FSI) (By-law is 0.45 times the lot area, representing a GFA of 310.23 sq. m). Both lot coverage and FSI are controlled in this area, as both City and Etobicoke zoning by-laws apply. Irregular lot sizes nearby result in a variety of structures, many requiring zoning adjustments. Even along Bearwood, he found FSI of 0.2 to 0.59 times the lot area. The latter is a more realistic size for a modern dwelling. However, FSI is an imperfect way of assessing the height, width and depth of a structure, so that mass and scale could differ.
- On-site parking supply behind the main front wall of the dwelling (complies).
- Front and rear yard landscaping (complies).

In a general comment, Mr. Romano opined that the individual numbers for setbacks and eaves should not be as important, as they are calculated based on required setbacks and are not physical manifestations of eaves projections and setbacks. This is a reasonable building configuration and siting for this property. Some are technical variances only, reflecting only a zoning interpretation of length and depth.

Trees One of Mr. Lowes's main concerns was potential tree loss. Mr. Romano testified that the proposed site design, with the building in the front central portion of the property, will minimize tree injury and removal (see para. 7.i.f of Exhibit 1, and the attached Arborist Report). All City trees would be maintained, while one private tree larger than 10 cm was proposed to be removed. All available information (Arborist report, site plan, portion of the Tree Protection Plan, etc.) had been supplied to the City before the various departments considered the issue of tree removal. Mr. Romano had personally questioned why one of the private trees (the flowering crab) was recommended for removal. Mr. White, the arborist, then re-evaluated his opinion, and issued a second report in which his opinion and recommendation were altered to involve possible injury rather than removal. Mr. Romano then attached the revised report to his Expert Witness Statement of April 9, 2019. He testified that this exchange with other experts is frequent, both before and after a COA decision. Had the arborist not altered his opinion, that would have been the end of Mr. Romano's inquiry.

The revised plans include a drafting correction to remove the south side elevation window that was incorrectly shown in the Applicant Disclosure package.

These physical features, quantitatively and qualitatively, are in his opinion in keeping with what is found within the neighbourhood, respecting and reinforcing the physical character of the neighbourhood.

He discussed the City's processing of the original application for variances. The first Planning Report (Jan. 17/19, not 18 as stated), had objected to the FSI, and preferred that the main wall height variance be clarified by tying construction to the plans. There was no real objection to the variances. This is what was said:

“Planning Staff have discussed these concerns with the applicant and the applicant has submitted revised plans proposing a floor space index of 0.59. Planning Staff are satisfied with these revisions. in addition, in discussions with Planning Staff, the applicant has outlined that the main wall height and soffit height variances of 8.31 metres only pertain to a portion of the elevations. The applicant has advised that the remainder of the walls will have heights of approximately 7.85 metres. Planning Staff recommend that approval be tied to plans, in order to ensure that the main wall height variance requested only applies to a portion of the building main wall height.”

These revisions were made prior to the COA hearing, and remain today. Urban Forestry had no objection, and requested only the standard Condition 1 respecting a permit for any *City*-owned trees (Jan. 17 and 24/19). The RNFP division of Urban Forestry (with jurisdiction over ravine areas) also had no comment. The TRCA's comments of January 14/19 were positive, and it had already issued a permit for the proposed design, on 1/20/19. The plans are consistent with the permit.

Respecting provincial policies, the proposal is consistent with the Settlement Area-related policies of the 2014 PPS, especially respecting an appropriate mix and range of housing, optimizing/maximizing energy and infrastructure, and proper and reasonable integration with the natural environment features. He referred to Policies 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.4.1, 1.4.3, 1.5, 1.6, 1.8, 2.0, 1.2.1, 2.2.1, 2.2.2, 2.2.6, 4.0, 4.2, 5.1, 5.2 and the applicable definitions. The proposal conforms to, and does not conflict with the Settlement Areas and Delineated Built Up Area policies of the 2017 Growth Plan. It also appropriately implements intensification policies to meet the objective of complete communities, that will optimize land use and infrastructure, and integrate the natural environment features. There is sufficient area in this lot for a detached residential dwelling, leaving the rest of the lot for preservation of natural features. He also stressed that creating an attractive and capacious modern dwelling in this area would prevent owners who are seeking one like it from contributing to urban sprawl, also satisfying the Growth Plan policies.

Respecting the tests for a minor variance in subsection 45 of the Act, Mr. Romano testified that in his opinion, the proposal conforms to, and maintains the general intent and purpose of the OP.

The Official Plan

He testified that it is also important to interpret the OP in a manner that implements the applicable provincial policies. The property and all around it are designated *Neighbourhoods*. The OP policies recognize that change within neighbourhoods will occur over time. Neighbourhoods are not static in any respect. However, change must respect and reinforce the existing physical character of the neighbourhood. This does not mean that the existing physical character must be replicated, but provides that new development should fit the general physical patterns.

These policies recognize that different patterns can be found within and contribute to the character of a neighbourhood. In his opinion, the proposal exhibits site design and built form features that respect and reinforce the physical patterns of this neighbourhood. Further, the proposal would result in a development that would fit in well with the existing or planned context of this neighbourhood, and be compatible. The proposal would achieve an appropriate form of development as is envisaged by the policy context: the urban structure policies in section 2.3.1 (the low-rise nature of this area); the environmental sustainability promoted in 2.3.1.5; the built form policies of 3.1.2 (building siting, servicing, design matters); the housing policies found in section 3.2.1 (residential supply, mix and intensification); and the natural environment policies in section 3.4 (integration and regulation of natural features). The sidebar there states that TRCA is a partner in managing such resources. Here, TRCA's permit and RNFP's lack of objections assist him in concluding that the proposal conforms to the natural environment policies.

The Neighbourhoods designation and the development criteria found in sections 4.1.1, 4.1.5 and 4.1.8, referring to physical features and permissions are also met. The test is to respect and reinforce the general physical patterns of the neighbourhood. The visuals in Exhibit 1, consisting of mapping, photographs, aerial and other graphics, help to illustrate this physical character in qualitative and quantitative form. Properties within his SA consist of a mosaic of shapes and sizes, rectangular to irregular, modest to estate-like. Detached dwelling styles, building sizes and site designs are diverse. There is no uniformity. Thus in his opinion the proposed design does respect the general physical patterns, since they are varied.

Overall, the heterogeneous nature of the SA represents a compatible setting. New and older dwellings continue to respect and reinforce the physical character in a manner that maintains the stability of the neighbourhood.

OPA 320

Now in force, a recent amendment to the OP was considered in his analysis. His opinion is that the proposal meets the general intent and purpose of the entire OP, including the OPA 320 modifications. The new text still requires a balanced consideration of physical character, and recognizes that neighbourhoods can have more than one such prevailing character. The proposal respects and reinforces the physical characteristics of the neighbourhood and the present street, as these currently exist. It is materially consistent with the SA, as well as being well represented on properties in the immediate physical context. The proposal respects and reinforces the prevailing variation of physical characteristics within the site's context.

The Zoning By-laws

The general intent and purpose of zoning by-laws is to achieve an orderly, compatible form of low rise residential where so designated. This general intent and purpose is maintained here. As set out above, it is zoned detached residential, permitting low rise residential development including detached dwellings and ancillary/accessory features, subject to applicable performance standards.

Here, his opinion is that the proposal achieves a conventional form of low-rise detached residential, appropriately designed and sized to reflect the site and its physical context. He summarized the application of some zoning standards to this site as follows:

1. The proposed FSI meets the general intent and purpose of ensuring that the floor area of the dwelling is appropriate for the lot. It is reasonably deployed here for a low-rise residential building. The GFA is reasonable within this site's physical context.
2. The side yard setbacks meet the general intent and purpose to provide adequate space to facilitate access, maintenance and servicing, as well as to provide spatial separation from abutting lands. The proposed minimum 1.2 m overlaps the existing dwelling's 1.23 m to 1.27 m side yards, and these are comparable with neighbouring side yards of minimum 1.2 m to 1.26 m. The neighbourhood side yard setbacks are generally small, with no uniformity, consistency or pattern. No. 10 next door has a 1.2 m setback in general, and No. 14, Mr. Lowes' dwelling, runs from 1.62 to 1.2 m at the rear. Respecting the front platform (porch), the intent for the setback includes ensuring that this feature is subordinate to the main dwelling. This intent is satisfied.
3. The side yard setbacks for the building depth exceeding 17 m meet the general intent and purpose to minimize the extent to which main buildings are located deeper into the lot. The small portions that exceed 17 m are appropriately recessed and minimized, and fit with the staggered rear walls of buildings within the site's physical context. Considering the rear basement walkout setback, the intent includes ensuring that this feature is subordinate to the main dwelling. This intent is satisfied.
4. The proposed roof eaves projection and side yard setbacks meet the general intent to achieve suitable eaves, and space between the eaves and the lot lines. The dwelling's eaves measure approximately 0.61 m from the walls (i.e., projection), where side yards are larger than 0.5 m.
5. The proposed soffit height and/or side main wall height variances meet the general intent and purpose to limit the height of main walls to achieve a context-suitable low-rise residential building. The side main wall height limit is intended to minimize the creation of inappropriate upper levels (such as third storeys

where proscribed, or flat roofs where pitched roofs are encouraged). It should be noted that the side wall height restriction is still under review and is not in effect.

Minor

Mr. Romano pointed out that the determination of minor is not to be based on an abstract mathematical calculation. In his opinion, the order of magnitude of the variances here is reasonable, and maintains a compatible residence that can be suitably accommodated on the site, within a physical context that has compatible characteristics. On the other aspect of “minor”, he opined that the proposal creates no unacceptable adverse impact of a planning nature. It will not cause any unacceptable impacts such as shadowing, loss of privacy, views or overlook; nor any loss related to trees, or parking.

His attached minor variance decision summary table illustrates that the proposed variances are in keeping with the numeric range of approvals within the neighbourhood. The proposal seeks a development with features reflected elsewhere within the neighbourhood study area and beyond.

Desirable for the Appropriate Development or Use of the Land, Building or Structure

It is also his opinion that the proposal will have appropriate and compatible site design and built form features. It would be within the planning and public interest, and thus be desirable for the appropriate use and development of the land. It will contribute to the mix of housing choices in his neighbourhood SA, in a manner that reflects and reinforces its physical character. Therefore this test is satisfied.

In his extended and close **cross examination** of Mr. Romano, Mr. Lowes concentrated on several issues. He asked many questions about the provincial policies in the PPS and Growth Plan. I will not set these out in full as Mr. Romano’s responses were self-explanatory, and quite satisfactory as explanations to a non-planner. For example, Mr. Lowes asked many questions about intensification, infrastructure, energy, building costs and affordability, based on his and the neighbours’ belief that the proposed constituted significant overbuilding on this site. Mr. Romano stated that if it were understood what the zoning by-laws actually permit on this site, their concerns could be lessened. There would in his opinion be no significant adverse planning impact here.

On the OP provisions, Mr. Lowes cited section 3.1.1.3, ’s objective to preserve ravine views and vistas, but it was pointed out that the wording was to preserve views “from” a valley, not from the hill down into a valley from above.

He challenged Mr. Romano’s selection of a neighbourhood for purposes of assessing the statutory tests. He limited his own study area to Bearwood itself, and the nearby portion of Edenbridge. He questioned the inclusion of the surrounding area such as North Drive, Edgehill and Valecrest Drive, as this was tableland. Mr. Romano explained that both natural features and man-made can define an area where one usually travels. Here it was harder to define the neighbourhood features, as there is the park and park

system as one edge, then North Drive to the north. There is a different lotting pattern off Bearwood where the topography is flatter. He had included Westridge to provide a better sample size. All 266 properties he included are similarly zoned. Bearwood itself contains much variety in lot size and structures. However, it is not an adequate study area, since one had to travel further afield for provisions, school, etc. – the usual test for what constitutes a “neighbourhood.”

Mr. Lowes objected to the second rendering offered in evidence, calling it “disconcertingly misleading”. The proposed dwelling would be larger and higher. He had many questions about the driveway door and location, but Mr. Romano stated that the rendering dealt only with the building and not the driveway. Its location would not be altered.

Respecting the side wall height, Mr. Lowes asked about the statement in para. 6 of Ex. 1, where Mr. Romano stated: “The wall and eaves height measurements are from 7.85m to 8.31m. With the rising topography from front to rear, the wall and eave heights from ground level are lower (i.e., from finished grade level, the wall and eaves height measurements are approximately 6.25m to 6.53m).” Mr. Lowes found no place where it would be 6.25 m. Mr. Romano repeated the portion in parentheses, as from ground level it would measure 6.25, in part.

There was discussion of the nature of the roof proposed. Mr. Lowes found it to be peaked. Mr. Romano stated that this slightly peaked roof was not inconsistent with those in the neighbourhood. There is no overall height variance, or one for the roof as designed. A different roof could be designed that would eliminate the side wall variances, but it would be bulkier, with dormers. In his opinion the proposed design would not affect Mr. Lowes’ view from his property at all.

Mr. Lowes asked many questions about what he saw to be the need for studies to be done before the various authorities provided opinions or permits. One example was his belief that an impact study is required where a development is proposed in an area found to be within a Natural Heritage System. Mr. Romano clarified that there is no identified environmentally sensitive area here, and thus no such report is needed. The Arborist Report deals adequately with the effect on vegetation here, and this suffices for the TRCA’s analysis. He also pointed out that no department requested any further report here, as the site contains no forested area, hydrogeological function, or other features that would necessitate further inquiry.

Mr. Andrew White was qualified as an expert witness to comment on his Arborist Report. He confirmed that the property is entirely inside of a “Ravine” Protected Natural Feature (PNF) area associated with the Humber River watershed. His conclusion was that only one privately owned tree over 10 cm DBH would be removed, and two private trees over 10 cm DBH would be placed at risk of injury. On the subject of the blue spruce between nos. 12 and 10, it could most likely be preserved, as the roots are already covered by driveway paving. They could be protected by a horizontal barrier during construction. On the subject of the flowering crab next to Mr. Lowes’ property, it could possibly be retained, but it would be subject to injury no matter whether its

location is wrongly shown or not, or if the structure were to be moved further to the rear. In his experience, Urban Forestry almost never objects to the removal of a non-native tree such as the crab. The maple tree discussed by Mr. Lowes in his testimony is in poor condition. It has a thinly foliated crown and exposed deadwood. Mr. White also stated that despite Mr. Lowes' fears of inability to access the rear of the property, the proposed side yard setbacks were wide enough for the root balls of replacement trees. Access could be had beside the spruce if necessary.

From Mr. Romano's tables, only 10.5 % of the properties on Bearwood have an FSI of over 0.59, Mr. Lowes stated. This amounted to only two (numbers 8 and 21). Mr. Romano said that the GFA figures may not be accurate, as they are assessed only at the building permit stage, and are not necessarily similar to the FSI figures.

There was discussion respecting the distance of the proposed eaves from Mr. Lowes' dwelling next door at no. 14 Bearwood. He performed his own measurement of heights by using a plumb line, from which he assessed the distance as a 0.61 m projection. Mr. Romano stated it as about 0.59 m.

Mr. Lowes asked if moving the dwelling back 1 or 2 metres would permit the retention of his flowering-crab tree in the front of his property, which was proposed to be removed. Mr. Romano envisaged a similar impact on trees should the house be moved back. The removal of the crab would be caused by construction of the new foundation. Mr. Lowes also stated that the crab's location was improperly shown in the Arborist Report. Mr. Romano had said that the blue spruce on the side of the driveway next to No. 10, on the other hand, could probably be preserved. It already has asphalt over the roots, and is further from the new construction than the crab tree. It is a balancing exercise respecting tree retention for this proposal, considering the following factors: retaining the front wall alignment; not placing the new structure too deeply in the tapering lot; and the fact that the crab is a non-native species and less desirable from Urban Forestry's perspective. Mr. Lowes' objection was to the dwelling size, but Mr. Romano pointed to the fact that if placed further back, what might occur at the rear bore no relation to the possible loss of the crab in the front. The size of the structure would not affect the tree.

Mr. Lowes challenged the accuracy of the staff Planning Report and its opinion, based he claimed on an admitted error by the Zoning Examiner. He wondered if it was prepared before or after the second Zoning Notice. Mr. Romano did not know. The COA would have relied on the second corrected Report.

Mr. Lowes' testimony

Mr. Lowes' testimony was very well prepared and extensive, stretching over one and one-half days. He emphasized that he had agreed to perform a representative role in this hearing, believing as he does that he and the neighbours are stewards in protecting the neighbourhood and the environment. The neighbours would prefer a renovation of this structure on the same footprint, rather than a demolition and reconstruction. He had done this for his home next door at 14 Bearwood, which took two years. A renovation would respect the neighbourhood's views and vistas. He elaborated on the beauty of

the reverse ravine with its tree cover, as well as views toward the Humber River valley. He admitted that his own home of 5500 sq. ft. greatly exceeds the by-law requirements, as it was built in the 1970's without any variances. He would oppose any application for it today.

He testified as to the history of the neighbourhood. The tablelands above Bearwood were constructed from 1935 – 1960 or so, and are now being replaced with much larger rebuilds. Bearwood was developed later, of “mid-century modern” architecture from about the '70s. This featured a minimalist aesthetic, angular brick structures with large planes and emphasis on the outdoors. In the immediate area they were built into the side of the hill, with flat roofs to permit enjoyment of the views of the reverse ravine to the rear, as well as views into the valley lands below.

He filed 7 separate documents on all topics raised by the owners, many with several subparts. He first reviewed the styles and features of all surrounding homes, emphasizing their similarity. He had measured the heights of most surrounding homes by laser pointer, none of which were higher than 7.1 m, while the proposed would be 9.5 m. He finds this not to be a gradual change as the OP requires. The FSI would be 48% greater than the average nearby, and it would have a peaked roof. 64% of those nearby are flat. His Document Lowes 2 – Impact on Amenities, illustrates what he sees as adverse effects on views, sunlight and privacy from the proposed structure. He will no longer be able to see to the CN Tower in the summer, and will see only the bedroom next door. The rear wall will protrude 3 m longer (17 m, versus his at 14 m), and be two storeys, blocking views and threatening privacy. The narrow side yards would not permit maintenance to be conducted. He regretted the lack of a shadow study by the owner, as he sees a far greater shadow on his backyard pool. There are no other homes that have a large peaked roof and a front porch with pillars. He sees the proposed size here as much larger than what is shown on the new rendering.

Another concern mentioned by many neighbours is that of hydrogeological effects, or potential flooding, as has been experienced before in this area, from what Mr. Lowes termed a creek running in the rear. Thus he is very concerned about the “structure underground” represented by the walkout to the rear, as seen on the plans. A “new wall” would be constructed 12 feet below ground level, creating a “huge dam” right beside his property, in what he termed this environmentally sensitive area. Even though TRCA made no comment on this creek, he testified that they do not know of the impacts. He believes that a study should be done before any structure is built here.

The neighbours had in fact expected that there would be detailed impact studies performed by all authorities having jurisdiction over this application. The entire street is in a Natural Heritage Area, and it is just upstream from an environmentally sensitive area. There have been no demolitions and complete reconstructions on the entire length of Bearwood, although there have been many on Edenbridge and surrounding streets. This is the reason he restricted his “neighbourhood” and “study area” to Bearwood and Edenbridge close by it. Only 130 Edenbridge and 21 Bearwood have had renovations, in his variance searches. The wider neighbourhood study area of Mr. Romano included the reconstructions on Edgehill and Valecrest, which Mr. Lowes

termed “mansions” costing double or triple the prices paid. He stated that Bearwood alone, with 25 homes, is not too small a sample size for evaluation of the variances sought.

He provided comments on each of the variances, in addition to his summary above. Some of these were: Respecting the FSI variance of 0.59, he found the average in the area to be 0.45. No. 21 Bearwood is a larger figure, but it is on a tiny lot without a backyard. The side yard setback next to 14 should be 1.5 m, not 1.8 m as Mr. Romano stated, which makes access to the rear “a long tight squeeze” since the new structure from porch to walkout is very close to his home. The eaves at 0.51 m from his lot line would interfere with his views and maintenance. In total the neighbours view the size and design as destabilizing the neighbourhood.

Mr. Lowes filed within his Witness Statement, Exhibit #4, 4b, Destruction of Trees, in which he took many pictures of trees on the lot and on those neighbouring it. He decried the fact that there was no arborist report prior to the COA hearing, but got no response to his calls to Urban Forestry at that time. Discovering the second updated report led to his hiring his own arborist. He regrets the loss of the flowering crab, and the maple on his property now must be trimmed to keep it healthy. He fears that the spruce on No. 12 (next to no. 10) would be threatened as it would block access to the rear. Because of the size of this spruce, over the only access path, his conclusion is that it would die. Then the only access in the future will be over his property. The driveway will be wider, and at a lower grade. He feels that the new rendering is not accurate, as the front steps are not in the right location and there would be an 8.5-ft steep path or hill to get from the front to the rear.

He raised the Strategic Forest Management Plan (Parks Forestry and Recreation) as support for maintaining larger trees, as 30-35 cm diameter trees contribute to the required canopy for the City. They form less than 5% of the existing trees. This Plan should be enforced by the education/compliance model, meaning in his view that citizens must act as stewards and promote its enforcement. In Every Tree Counts, (Ex. 4b), the comments stress that tree size affects the absorption of carbon dioxide, so removal of a 30 cm tree here would have an exponential effect. A 5 cm tree takes 30 years to grow to 30 cm. He is very much against removal of the flowering crab, as proposed in the initial Arborist Report. If he must remove part of the crown of the maple, it too will affect the canopy. In a 2016 Report, Actions to Grow Toronto’s Tree Canopy, cooperation from neighbourhood groups on private land is highlighted. Canopy expansion areas are mostly to be on private lands, he stated. He protests the removal of the non-native flowering crab in favour of a smaller native replacement tree.

He selected his study area of only Bearwood and a small portion of Edenbridge as it is all within the Natural Heritage System (Ex. 9). The reverse ravine here encircles Bearwood completely, providing wonderful views both back up the rear ravine, and down to the river valley. Flat roofs contribute to this. He testified that there is also a stream called “North Drive River Tributary”, and one that runs at the rear of all the nearby properties on this side, as well as down a steep hill west of No. 16 Bearwood. Neighbours have had to do remedial drainage work, some up to three times. He sees

an Environmentally Sensitive Area to the south called Lambton Woods in the interactive map of the Heritage System (Ex. 9), and is concerned about the “24 m underground wall” that is proposed on the subject property (the walkout). He fears it will damage the hydrogeological features of the site. He has had soil wash away from his front steps in the past, and there have been sinkholes nearby on Edenbridge.

Another concern is the threat to existing wildlife in the area, with the larger structure here. There has been no staff consideration of this potential. He transitioned temporarily to the OP on this point, considering the preamble to Policy 3.4, that new developments must be carefully assessed in natural heritage areas. “....To this end, proposals for new development may need to be accompanied by a study assessing their impact on the natural environment.” In his mind this requires a study prior to this proposal proceeding. 3.4.3 states: : A study will be required, when appropriate, to assess a proposed development’s impact on the natural environment and propose measures to reduce negative impacts on and where possible improve, the natural environment.”

He had contacted the City Planner to point out an error in measurement that he had confirmed with another planner. This had led to the Zoning Examiner providing the wrong figures. She agreed, and so the variance for setback was altered to what is now proposed. Thus Mr. Lowes challenged the opinion in her favourable Planning Report, since he says that it was based on an incorrect statistic.

Mr. Lowes realized, he stated, that the new driveway of the home would be 1 m lower than the current driveway, and be shored up by a retaining wall. This made him challenge again the planner’s conclusions as to wall height. The figure of 8.3 m was requested, but in his view, as measured from established grade the wall height would in actuality be 10.5 m. On his figures the height of the dwelling from the street would be 11.6 m, rather than the by-law requirement of 9.5, or the figure given by the zoning examiner and the planner, of 9.4 m. He cited a previous TLAB decision for 30 West Ridge, concerning a structure built over the height variance granted and whether the excess should be removed (the excess height was not allowed, and this was upheld upon a TLAB review). This height proposed for the new dwelling would be perceived as massive on this street of 1 ½ storeys with flat roofs. The front stairs would be much closer (as much as 2/3) to the property line. He again raised his measurement by laser from his bedroom to the ground level, finding that 7.5 m would be only to the row of windowsills of the dwelling.

He called the proposed a huge increase in mass, closer to the street and taller. He again challenged the accuracy of the rendering. He fears, as do many neighbours, that construction of the proposed would create a negative precedent for this uniform street.

He found sections of the Growth Plan that affected this development as well, principally that natural heritage areas should be protected; hard surfaces should not exceed 10% (this would), again stressing the lack of hydrogeological information. He quarreled with the conclusion that demolition of the existing would contribute to housing affordability under the PPS, or conserve energy. His expertise is in energy conservation systems,

and a recent UBC study found that demolition and rebuilds cause a negative increase in energy efficiency, requiring 168 years to compensate for. This does not in his view contribute to intensification addressed in the provincial policies, as his definition would mean taking advantage of existing infrastructure (transportation, energy, garbage). “Intensification” would mean lot division.

He then addressed the OP policies he said mitigated against this development. (Ex. 7a). He stressed in particular the notion that neighbourhoods are not frozen in time, stating that much regeneration had occurred on Bearwood without variances. Policy 3.1.8’s reference to harmonious views of valleys and ravines would be breached, as this would “completely block the view” of the reverse ravine and the hillscape down to the river valley. He finds it not to comply with the development standards address in Policy 4.1.8, disagreeing with Mr. Romano that numbers do not matter when assessing whether variances are minor. Respecting the test of intent of the zoning by-laws, he objected to Mr. Romano’s choice of the larger study area, finding that Bearwood alone had no precedents for teardowns and rebuilds, unlike many in the larger area. He criticized the proposed plans for the interior, saying that large bedrooms, each with a bath and walk in closets, as well as an elevator, created a monster home only for the purpose of profit. He challenged the usual view that all property values on the street would be raised as a result, since changes to Bearwood are so infrequent and of a much smaller scale.

ANALYSIS, FINDINGS, REASONS

I find that the proposed variances that have been altered from those considered by the COA require no further notice, as they are improvements from the objectors’ perspective and are minor. I accept them as provided for under subsection 45(18.1.1) of the Act.

Mr. Lowes deserves commendation for his exhaustive research and preparation for this appeal. He delivered well on his stated goal of being a steward for preservation of the natural and built environment of Bearwood Drive. However, questions respecting provincial policies were illustrative of a non-professional lay person’s misunderstanding of the provisions. I will not repeat them as in my view Mr. Romano’s responses were accurate and informative. He also had some difficulty accepting that past actions and procedures have no bearing on this appeal, since it is a new hearing as if the COA hearing had not happened.

I asked many clarifying questions of Mr. Lowes during his testimony, not to challenge it in any sense, nor to usurp Ms. Stewart’s role. However, much of his evidence was the result of misunderstandings, and required clarity where possible. I asked him not to read OP policies in full, as the parties were aware of their contents. I have also read with great care all the communications from the neighbours, both at the COA and in the TLAB file (as required under the Act).

Mr. Lowes admitted in cross that the actual neighbourhood he lived within included streets beyond Bearwood, as one must travel beyond for groceries, schools, etc. All of

Mr. Romano's included streets are physically connected, and Mr. Lowes admitted to driving throughout. The grade situation here made for significant differences, and this resulted in an atypical, curving street configuration, complicating the lot designs. The result was many pie-shaped lots, limiting permissible dwelling designs. He was informed that the subject dwelling would not be 11 m tall. The height was configured in accordance with the zoning by-law methodology, which he acknowledged he was not familiar with. Grade issues are established on a site by site basis, so his figures or perceptions are not accurate. If the driveway is cut into the existing grade as proposed, Mr. Lowes admitted that the actual height of the structure would be less (8.3 m) than what he stated (10.5 m and 11 m). Height is determined based on grades of the adjacent properties, so that it cannot be manipulated. It would still be two storeys above grade, as it is now, with the garage placement permitting a functional first floor, and a less sloping driveway. Both this design, and garages sunk into the grade here on this side of the street are common characteristics, seen in all the photos supplied in evidence. A great deal of hearing time was devoted to pouring over the site plan and survey to prove or disprove the height measurements. I found that this was caused by a misunderstanding of what a rendering represents, and what the felt perception of the new structure would be from the street. Neither was helpful in assessing its impact.

The Arborist Mr. D. Andrew White testified to respond to Mr. Lowes' concerns about tree removal or damage. In his opinion the spruce could well be protected and preserved. The maple tree would not be placed at risk of mortal injury. Almost all the TPZ infringement would be inside areas that are already covered by hardscape surface, i.e., protected from soil compaction-related root injuries. The tree should not be at risk of mortal injury, but may require crown trimming on the corner closest to the house. At most 10% of the tree's live foliage may need to be trimmed to accommodate the proposed new storey, and to allow access for roofing work. He found it to be in poor condition at present. The flowering crab would be in the direct area of the construction, and is a non-native species and so would be removed. It would be replaced by a native species. As Ms. Stewart said, destruction of one tree out of the 30 on the arborist plan does not seem excessive. The final decision on removal of the flowering crab would be made by Urban Forestry at the building permit stage.

I find that the proposed meets contemporary building standards for new homes, with no increase in number of bedrooms but having more modern accessories. An elevator would assist with the goal of accessibility for elders, permitting growing in place. Since Mr. Lowes' home has existed since it was constructed, it too forms part of the existing fabric of the neighbourhood. It is a very large structure. The new home will not overpower his, being so much below his, even if it is further forward or to the rear. The variety of architectural and roof styles nearby means that the proposed would not be incompatible with the neighbourhood. Mr. Lowes did admit to this, albeit reluctantly. He still saw the proposed as destabilizing because of its size. I see only a wide variety of building styles and lot sizes in the wider neighbourhood in Mr. Romano's study area, which I agree with is appropriate for assessing the proposal. Mr. Lowes also agreed that the increased height or depth would not be truly perceptible from the street, seemingly his main objection to the proposal. Mr. Lowes had difficulty accepting that the proposed maximum height was within the by-law requirement. It is. And the corner of his own

house would be 2.55 metres “taller in the sky” as Ms. Stewart put it, than the eaves line of the proposed (this after exact figures were provided in detail). The height of the proposed eaves next to his dwelling would be much shorter than his home, and the roof is almost a flat one. He ended by agreeing as well that the landscaping and grading at the front, even though lower, was appropriate, as accommodating a window well.

Mr. Lowes displayed a fairly fundamental lack of faith in the staff who carried out the processing of this application prior to and following the COA decision. He questioned the thoroughness of various City departments as well as the TRCA in assessing the effects of this application for a new dwelling. The neighbours appeared to be confused as to responsibilities of various City Departments, versus TRCA, and the effect of permits already issued. It is important to understand the process of circulation of COA applications to departments and authorities responsible, prior to the COA hearing. The City and the TRCA are also notified of TLAB appeal hearings, and have another chance to object if they wish. They have not done so here, and have instead issued necessary permits. In Mr. Lowes’ opinion, staff ought to have insisted on studying the proposal, especially its effect on the natural surroundings, far more carefully. However, studies are not generally mandatory. In the OP sidebar to policy 3.4, it is stated: “ When development is proposed on or near lands shown as part of the natural heritage system, the proposed development’s impact on the system is to be evaluated and an impact study **may** be required. “ (emphasis added).

A “no comment” response or none at all does not equate to **a refusal** to respond to an undesirable proposal, as Mr. Lowes suggested. He was not persuaded that a lack of comment meant that the reviewing department had no objections, which is the usual view. The City took no part in the appeal hearing, which it can and usually does when there is a serious concern with an application. The issuance of permits apparently was not persuasive to him. Respecting the TRCA permit, I include the following by way of information for the objectors here. TRCA outlined their jurisdiction in the following terms in another appeal respecting 92 Glenview Ave on June 18, 2019 :

“The subject property is located within a TRCA Regulated Area of thewatershed and is regulated with respect to the top of bank associated with theravine corridor. In accordance with Ontario Regulation 166/06 (Development, Interference with Wetlands and Alterations to Shoreline and Watercourse Regulation), a permit is required from the TRCA prior to any new development taking place within this property.

In addition, the TRCA’s Living City Policies (LCP) sets out development guidelines for properties influenced by valley and stream corridors. The overall objective of the LCP policies is to prevent new development from occurring within areas that may introduce risk to life and property associated with natural hazards, in this case, erosion.....

TRCA Permit Application:

An Ontario Regulation 166/06 Permit Application was received by TRCA staff on November 3, 2016 to facilitate the construction of the replacement dwelling. The drawings circulated to TRCA as part of this Minor Variance application are consistent with the plans most recently received with the TRCA permit application....

City of Toronto Ravine By-Law:

Please be advised that the subject property is located within the jurisdiction of the City of Toronto Ravine Bylaw, and as such is subject to the approval of Urban Forestry Ravine Protection.

Conclusion:

TRCA staff reviewed the requested variances and they have no impact on TRCA's policies and programs. As such, TRCA has no objections to the approval of Minor Variance Application No."

The same analysis for the subject application resulted in issuance of a Permit.

I find that these aspersions on staff are not merited. There may have been an error in one statistic early on, as Mr. Lowes claimed. However, it appeared from the statement cited above that the reductions desired by Planning were indeed made by the applicant. At no point did any authority having jurisdiction say that further study or a report was needed. Mr. Lowes himself had provided many possible alerts and concerns to the staff members of all of the departments he contacted. However, following his inquiry, he admitted that Urban Forestry did not even reply. There was no evidence of adverse hydrogeological effect, which is addressed by City staff only at the stage of applying for a building permit, and not at this hearing. Ms. Stewart put it that he was not seeing any impact, just objecting to the lack of study. Every policy that Mr. Lowes cited that referred to a "study" used permissive language and not mandatory.

I am satisfied from the permits issued, and the lack of adverse comments from three regulatory authorities here, that there will be no adverse planning impacts from the proposal. The owner here has not merely had the proposal studied, but has gone through all required permit processes required to date. Urban Forestry permits would only be considered following approval of the variances. The neighbours did not commission their own study, nor call a City witness to challenge the reports. Mr. Romano's professional opinion was based on detailed assessment of the neighbourhood, while Mr. Lowes expressed only an "apprehension of concern" not substantiated by the facts or by City or TRCA staff. Ms. Stewart argued that it really did not matter if the neighbourhood was limited only to Bearwood itself, that Mr. Romano's professional opinion would be the same. The street, or even this block, is characterized by differences, not similarities, in massing, architectural style, articulations, parking solutions, and so on. Mr. Lowes' own home is taller, and is part of the neighbourhood's physical character.

I find that the views here will not be affected to a greater degree that if an as-of-right structure were built instead. Mr. Lowes acknowledged that there is no right to a view, but in any event his view here should not be significantly adversely affected. The new dwelling is lower in absolute height and its roof meets the by-law requirements. Both the front and rear yard setbacks are met, so that neither portions of the new structure would wrongly block his view, despite his claims. What seem like tall side wall heights are the result of the rising topography here, causing this measurement to begin underground along much of the side walls. They would be lower than they seem from the measurements.

The 30 Westridge decision has no application to this proposal. It concerned a structure built over the height variance granted, and whether the excess should be removed. The excess height was not allowed, and this finding was upheld upon a TLAB review.

Close questioning of such immaterial issues as the rendering and the driveway location was not helpful, since the rendering was prepared by a third party contractor and is meant to provide only an artist's sketch and not a 3-D model. The true story is told by the site plan and the elevations.

There was also error in insisting on applying environmental policies to the subject area that do not apply to it, such as calling it an environmentally sensitive area in the technical sense. Mr. Lowes saw an Environmentally Sensitive Area called Lambton Woods to the south, in the interactive map of the Heritage System (Ex. 9). He then expressed concerns about the "24 m underground wall" that is proposed on the subject property, because of an underground stream. He suggested damage to the neighbourhood as well as the ESA. No City engineering or other department mentioned this, nor did the TRCA.

I find that the proposed dwelling will meet the policy goals of the province as well as the Toronto OP and zoning By-laws. Just because there are no teardowns and rebuilds on Bearwood here does not mean that variances should not be granted for one, if it meets the statutory tests. In general, regeneration on this parcel will mitigate against urban sprawl elsewhere, utilize existing infrastructure, and permit appropriate intensification (the definition was explored at length). This would be a compatible structure in planning terms, which does not mean the same or even similar to the surrounding dwellings. It merely has to co-exist in harmony. The OP test is that new development respects and reinforces the general physical patterns in a Neighbourhood. In my view this would meet this test.

Ms. Stewart challenged Mr. Lowes in cross as to whether his frequent references to the much larger size of his own dwelling at No. 14 meant that he wished to retain the largest dwelling on the street. He rejected this notion entirely. However, I found that he was saying, in effect, "do not do as I do and enjoy, but do as I say." He admitted that his house could never be built today, and that he would fight any such proposal. I do find it somewhat disingenuous that he would so oppose a dwelling next to his that would in fact meet the height requirement, and then complain about it interfering with his views and sunlight.

Individually and cumulatively, the proposal meets the general intent and purpose of the applicable documents. As Mr. Romano concluded, while the structure will occupy more space on the lot, the compliant lot coverage, articulated building footprint, height, mass and scale results in building siting and a built form that is reasonable, appropriate and to be anticipated here, particularly in the context of this urban neighbourhood.

DECISION AND ORDER

Conditions:

1. The variances identified as 'proposed' in **Attachment 1** hereto, are approved.

2. The proposed dwelling shall be constructed substantially in accordance with the revised plans A1, A6, A7, A8 and A9, by Guitberg Group Inc. date stamped January 17, 2019 and attached as **Attachment 2**.

Any other variances that may appear as required on these plans but are not listed in the written decision are NOT authorized.

3. In issuing a building permit, City staff are requested to pay special attention to appropriate grading and drainage conditions on the site to ensure no adverse impact on nearby properties.

ATTACHMENT 1 – VARIANCES

1. Section 10.20.40.40.(1)(A), By-Law 569-2013

The maximum permitted floor space index is 0.45 times the area of the lot (310.23 sq. m.).

The proposed dwelling will have a floor space index equal to 0.59 times the area of the lot (406.62 sq. m.).

2. Section 10.20.40.70.(3)(E), By-law 569-2013

The minimum required side yard setback is 1.8 m.

The proposed dwelling will be located 1.2 m from the north and south side lot lines.

3. Section 10.20.40.70.(5)(A), By-law 569-2013

The minimum required side yard setback is 7.5m where the building depth is greater than 17 m from the main wall of the building.

The proposed dwelling will be located 5.34 m from the south side lot line and 1.2 m from the north side lot line where the building depth is greater than 17m from the main wall of the building.

4. Section 10.5.40.50.(2), By-law 569-2013

The minimum required side yard setback for a platform without main walls such as a deck, balcony or similar structure, attached to or within 0.3 m of a building is 7.5 m.

The proposed basement walkout will be located 1.2m from the south side lot line.

5. Section 10.5.40.60.(1)(A)(i), By-law 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach 2.5 m into the required front yard setback if it is no closer to a side lot line than the required side yard setback.

The proposed front platform will be 0.6 m closer to the south side lot line than the required side yard setback.

6. Section 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.3m to a lot line.

The proposed eaves project 1.29m and are 0.51m from both the south and north lot lines where the required side yard setback is 1.8m.

The proposed eaves project 2.85m and are 4.65m from the south side lot line and project 6.99m and are 0.51m from the north lot line where the required side yard setback is 7.5m.

7. Section 10.20.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

The proposed dwelling will have a side exterior main wall height of 8.31m facing a side lot line.

8. Section 320-42.1.B.(2)

The maximum permitted soffit height is 6.5m.

The proposed dwelling will have a soffit height of 8.31m.

ATTACHMENT 2 – PLANS

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

SITE PLAN

SCALE 1 : 300

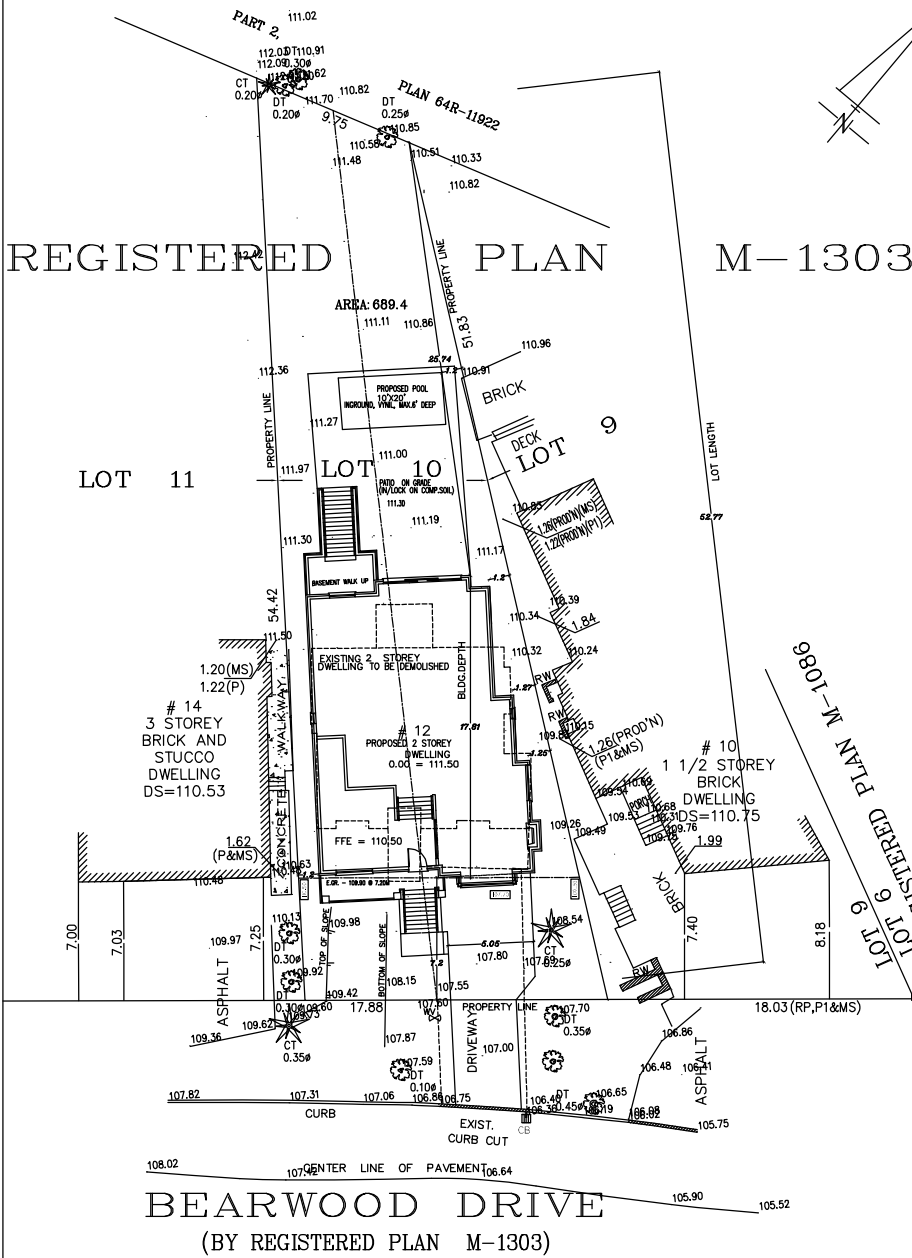
DERIVED FROM
SURVEYOR'S REAL PROPERTY REPORT OF
PART 1 : PLAN OF LOT 10
REGISTERED PLAN M-1303
CITY OF TORONTO
(FORMERLY CITY OF ETOBICOKE)

A. AZIZ SURVEYORS INC
Ontario Land Surveyors
DATE: AUGUST, 17, 2018

DEVELOPMENT DATA			
ZONING DESIGNATION - R0,F12, A835,H19.5, D 45, (BY LAW 569 - 2013)			
	PROPOSED		ALLOWABLE
LOT FRONTAGE	METRIC	IMPERIAL	MIN.REQUIRED - 12.0M
	16.38 M	53'-9"	
SITE AREA	689.40M ²	7421.00 SQ.FT.	MIN.REQUIRED - 835.0M ²
BUILDING AREA(GFA)			
BASEMENT	166.29 M ²	1790.0 SOFT	GARAGES EXCLUDING
GROUND FLOOR	204.38 M ²	2200.0 SOFT	
SECOND FLOOR	202.24 M ²	2177.0 SOFT	
TOTAL (G.F.A.)	406.62 M ²	4377.0 SOFT	TWO FLOORS
FIRST FLOOR HEIGHT	0.60M	2'-0"	MAX.REQUIRED - 1.2M
BUILDING HEIGHT	9.40M	30'-10"	FROM ESTABLISHED GRADE TO THE TOP OF ROOF
BUILDING LENGTH	17.66 M	58'-0"	
BUILDING DEPTH	17.81 M	58'-5"	REQUIRED - 15.0M (PLUS 2.0M 1-ST.EXTENSION)
SETBACKS			
FRONT	7.20 M	23.62'	REQUIRED 7.20M - AVERAGE SETBACK OF ADJACENT HOUSES
REAR	25.74 M	84'-6"	REQUIRED - 13.19M
SIDES	1.20M ; 1.20 M	3'-11", 3'-11"	MIN.REQUIRED - 1.20M
HEIGHT OF MAIN WALL	8.31 M	27'-3"	7.00 M
SITE COVERAGE	206.42 M ² - 2222.00 SQ.FT. (29.95%)		MAX.REQUIRED - 33%
FLOOR SPACE INDEX	406.62 M ² (58.98%)	4377.0 SOFT	MAX.REQUIRED - 45%

Metric

DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048



FRONT YARD LANDSCAPING	
Total frontage area -	122.00sq.m.
Total Green -	83.00 sq.m.(68.0%) & walkway
Total Driveway -	39.00sq.m.(32%)
FRONT YARD SOFT LANDSCAPING	
Total Green -	83.00 sq.m.(100%) porch & walkway
Total Dec. stone -	20.00sq.m.(24.1%) Concrete porch & steps
FRONT YARD SOFT LANDSCAPING -	75.9%
FRONT YARD SOFT LANDSCAPING	
Total Yard -	277.40 sq.m.(100%)
Total Dec. stone -	90.40sq.m.(33%) sw.pool & steps
REAR YARD SOFT LANDSCAPING -	67%

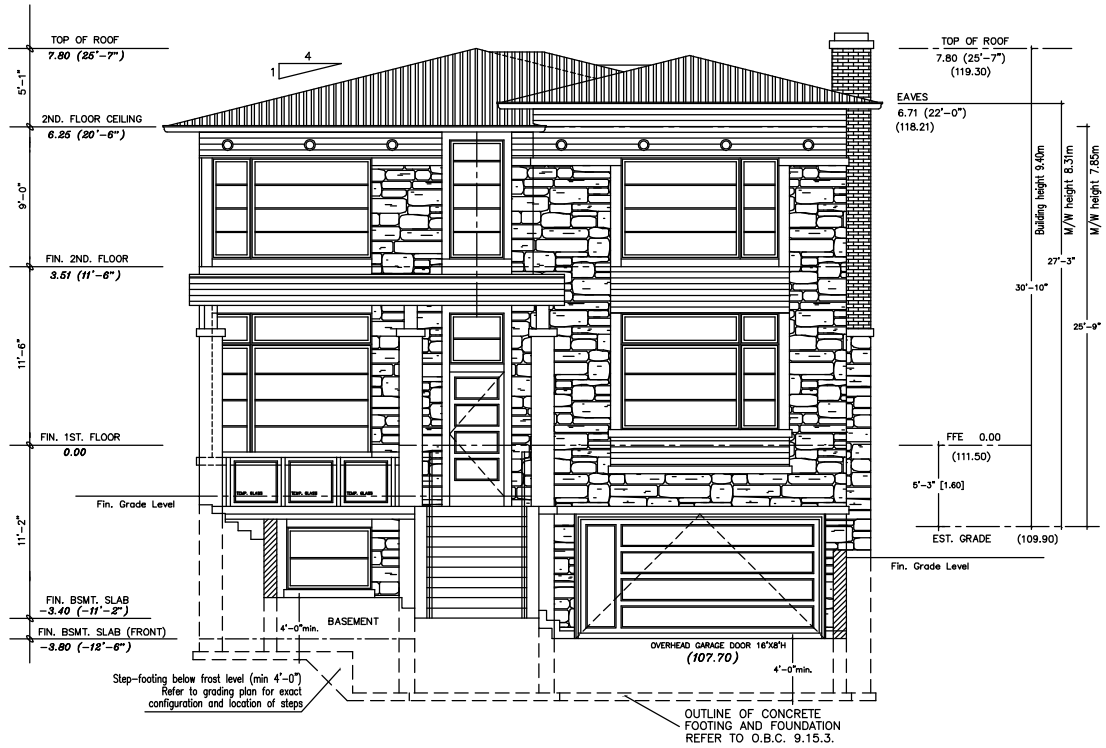
GUITBERG GROUP INC.

33 BELVEDERE CRES.
RICHMOND HILL
ONTARIO, L4C 8W1
TEL. (905) 508-7436
FAX. (905) 508-7453


PRIVATE RESIDENCE
AT 12 BEARWOOD DRIVE
CITY OF TORONTO, ONTARIO

SITE PLAN	
DRAWN BY	V.G.
CHECKED	
SCALE	1:300
DATE	OCTOBER '18
PROJECT NUMBER	R-17/10/18
	A - 1

SOUTH ELEVATION



GUITBERG GROUP INC.



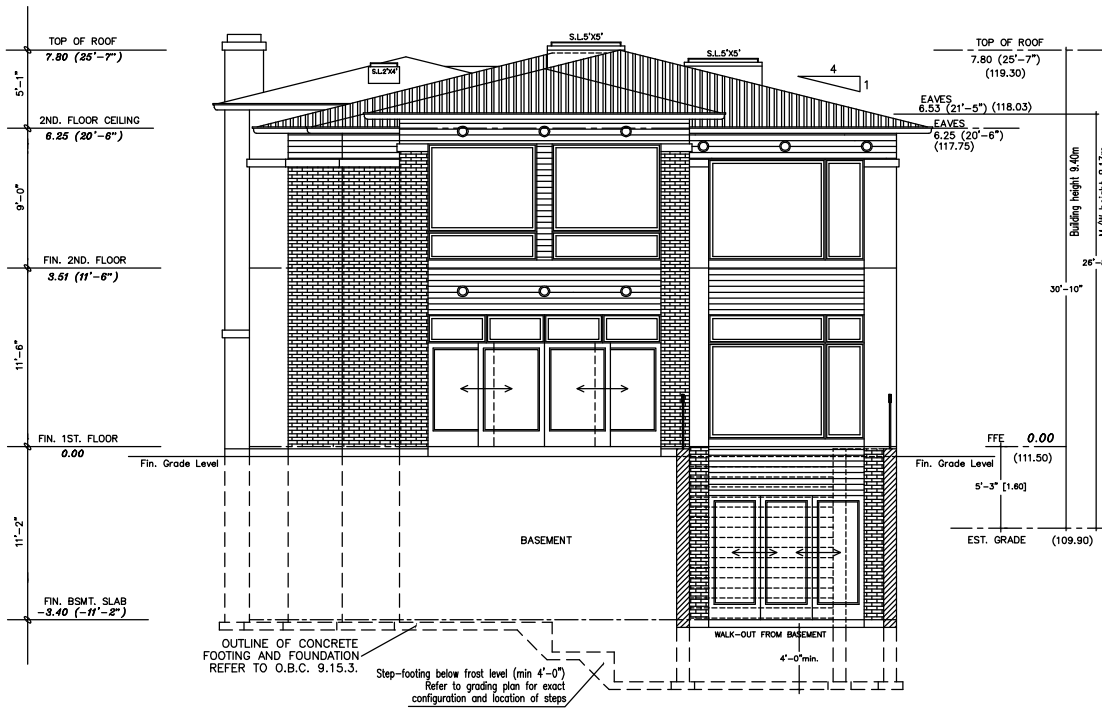
33 BELVEDERE CRES.
RICHMOND HILL
ONTARIO, L4C 8W1
TEL (905) 508-7436
FAX (905) 508-7453

PRIVATE RESIDENCE
AT 12 BEARWOOD DRIVE
CITY OF TORONTO, ONTARIO

SOUTH ELEVATION

DRAWN BY	J.M.	CHECKED	V.G.
SCALE	1/8" = 1'-0"	DATE	OCTOBER '18
PROJECT NUMBER	R-17/10/18	A-6	

NORTH ELEVATION



GUITBERG GROUP INC.



33 BELVEDERE CRES.
RICHMOND HILL,
ONTARIO, L4C 8W1
TEL. (905) 508-7436
FAX. (905) 508-7453

PRIVATE RESIDENCE
AT 12 BEARWOOD DRIVE
CITY OF TORONTO, ONTARIO

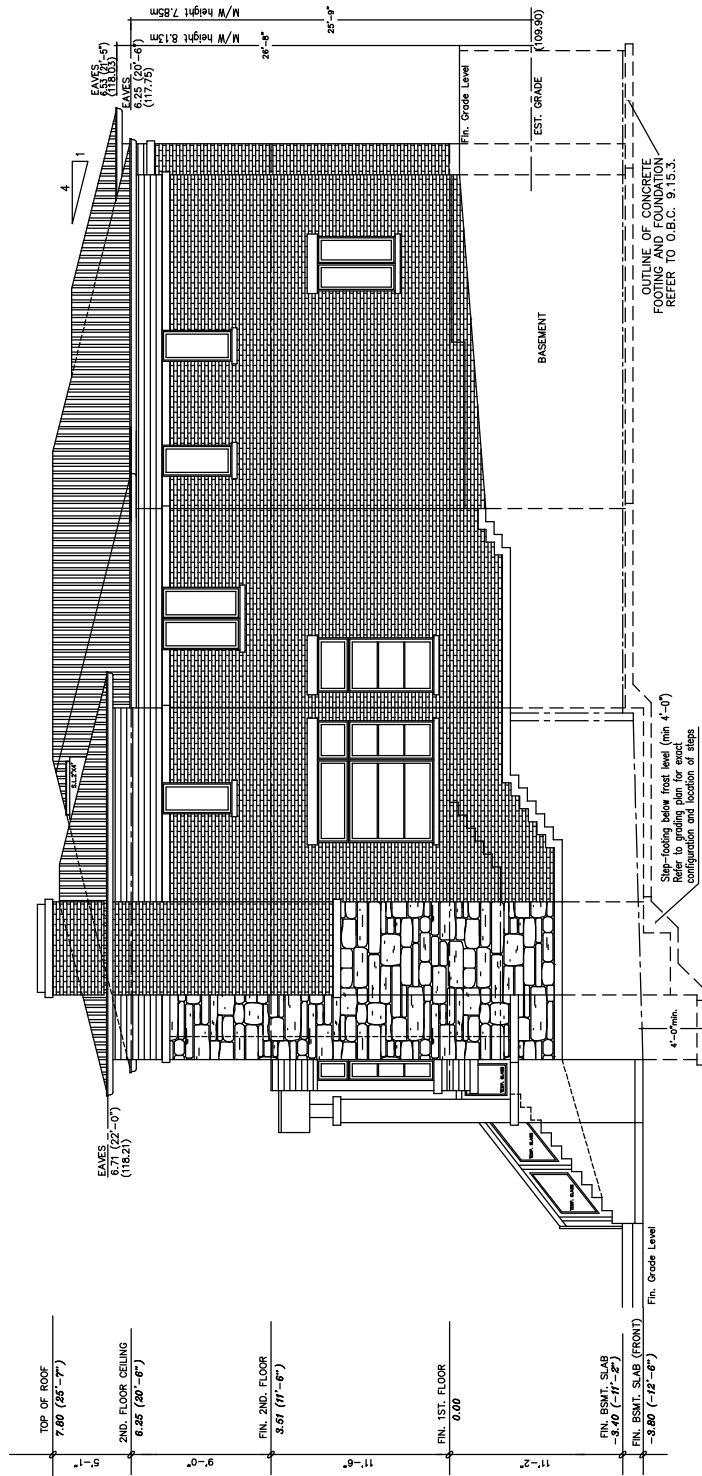
NORTH ELEVATION

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1'-0" DATE OCTOBER '18

PROJECT NUMBER R-17/10/18 A-7

EAST ELEVATION



GUITBERG GROUP INC.



33 BELVEDERE CRES.
 RICHMOND HILL
 ONTARIO, L4C 8W1
 TEL. (905) 508-7436
 FAX. (905) 508-7453

PRIVATE RESIDENCE
 AT 12 BEARWOOD DRIVE
 CITY OF TORONTO, ONTARIO

EAST ELEVATION

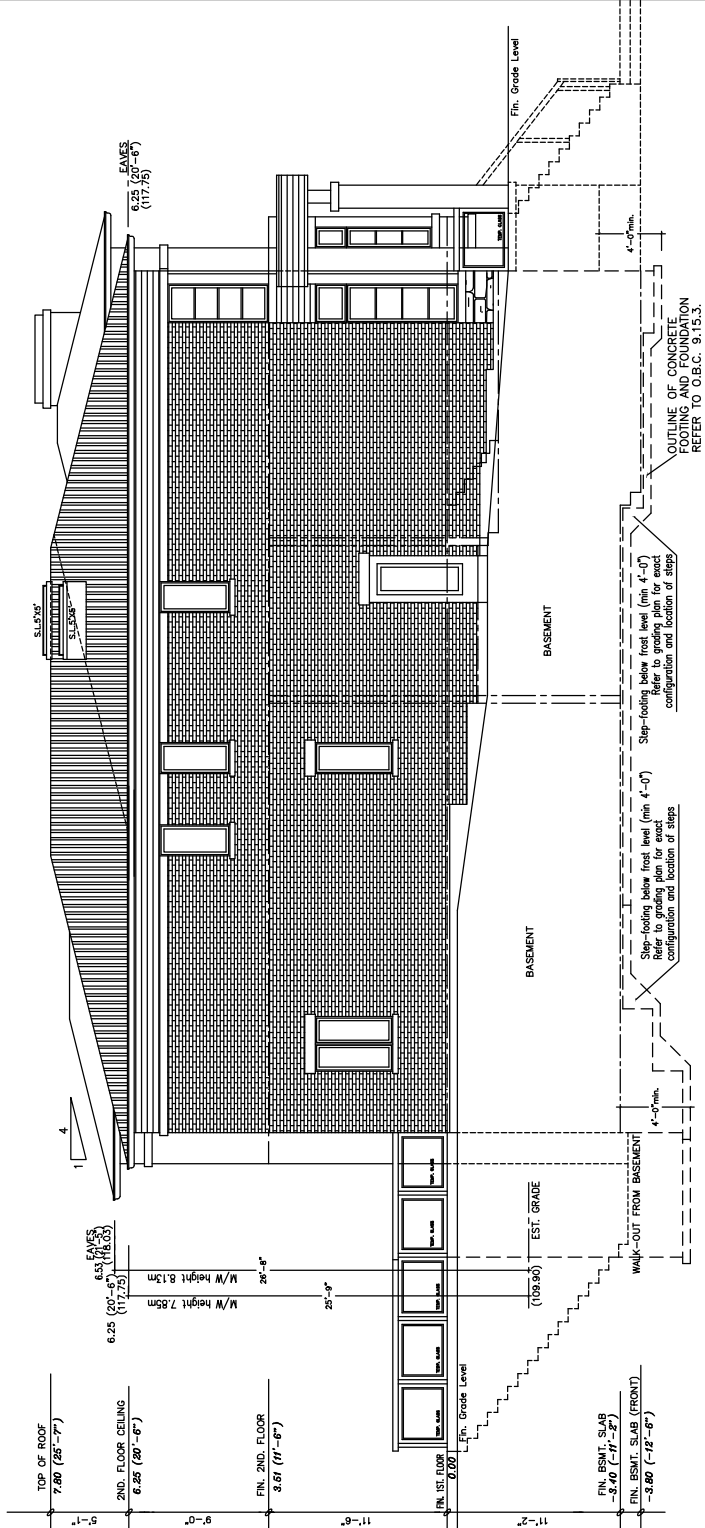
DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1'-0" DATE OCTOBER '18

PROJECT NUMBER R-17/10/18

A-8

WEST ELEVATION



GUITBERG GROUP INC.

33 BELVEDERE CRES.
 RICHMOND HILL
 ONTARIO, L4C 8W1
 TEL. (905) 508-7436
 FAX. (905) 508-7453

PRIVATE RESIDENCE
 AT 12 BEARWOOD DRIVE
 CITY OF TORONTO, ONTARIO

WEST ELEVATION

DRAWN BY J.M. CHECKED V.G.
 SCALE 1/8" = 1'-0" DATE OCTOBER '18

PROJECT NUMBER R-17/10/18 A-9