

DECISION AND ORDER

Decision Issue Date Thursday, September 26, 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): Michael Zemelman

Applicant: Guitberg Group Inc

Property Address/Description: 200 Wanless Ave

Committee of Adjustment Case File: 19 115523 NNY 15 MV (A0110/19NY),
19 115721 NNY 15 MV (A0114/19NY)

TLAB Case File Number: 19 141081 S45 15 TLAB, 19 141083 S45 15 TLAB

Hearing date: Thursday, August 29, 2019

DECISION DELIVERED BY S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Appellant	Michael Zemelman
Appellant's Legal Rep.	David Bronskill
Applicant	Guitberg Group Inc
Party	Eric Daniel Brody
Participant	Albert Bisschop
Expert Witness	Martin Rendl

INTRODUCTION AND BACKGROUND

Michael Zelman and Larisa Vinukurov are the owners of 200 Wanless Ave, located in Ward 15 (Don Valley East) of the City of Toronto. They applied to sever the property into two lots at 200 Wanless Ave., and were approved for the same by the Committee of Adjustment (COA) in August 2018. In February 2019, the Applicants applied to the COA, for approval of variances that would have enabled them to construct a new dwelling, on each of the two severed lots. On April 4, 2019, the COA heard the applications, and refused them in their entirety.

On April 16, 2019, the Applicants appealed the Decision of the COA to the Toronto Local Appeal Body (TLAB), which scheduled an oral Hearing on August 29, 2019. Besides the Appellants, Mr. Daniel Brody, the neighbour residing at 202 Wanless, elected to be a Party.

MATTERS IN ISSUE

Property Address: 200A WANLESS AVE (Part 1, Lot A (West Lot))

REQUESTED VARIANCES TO THE ZONING BY-LAW:

1. Chapter 10.5.40.50, By-law No. 569-2013

A platform without main walls must comply with the required minimum building setbacks for the zone, 0.9 m.

The proposed rear deck is setback **0.6 m** from the east lot line.

2. Chapter 10.10.40.30.(1), By-law No. 569-2013

The permitted maximum building depth is 17.0 m.

The proposed building depth is **18.2 m**.

3. Chapter 10.5.40.60.(7), By-law No. 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The proposed eaves project 0.4 m and are **0.15 m** from the east lot line.

4. Chapter 10.5.40.60.(1), By-law No. 569-2013

A platform without main walls may encroach into the required front yard setback if it is no closer to a side lot line than the required side yard setback, 0.9 m.

The proposed platform encroaches into the required front yard setback and is **0.6 m** from the east side lot line.

5. Chapter 10.10.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 8.28 m.

6. Chapter 10.10.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is **0.719 times** the area of the lot.

Property Address: 200 WANLESS AVE (Part 2, Lot B (East Lot))

REQUESTED VARIANCES TO THE ZONING BY-LAW:

1. Chapter 10.5.40.50, By-law No. 569-2013

A platform without main walls must comply with the required minimum building setbacks for the zone, 0.9 m.

The proposed west side yard setback is **0.6 m**.

2. Chapter 10.10.40.30.(1), By-law No. 569-2013

The permitted maximum building depth is 17.0 m.

The proposed building depth is **18.2 m**.

3. Chapter 10.5.40.60.(7), By-law No. 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The proposed eaves project **0.15 m** from the west lot line.

4. Chapter 10.5.40.60.(1), By-law No. 569-2013

A platform without main walls may encroach into the required front yard setback if it is no closer to a side lot line than the required side yard setback; 0.9 m.

The proposed platform encroaches into the required front yard setback and is **0.6 m** from the west side lot line.

5. Chapter 10.10.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is **8.33 m**.

6. Chapter 10.10.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is **0.719 times** the area of the lot.

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 Hearing held on August 29, 2019, the Appellants were represented by Mr. David Bronskill, a lawyer, and Mr. Martin Rendl, a planner. The neighbour, Mr. Eric David Brody, represented himself.

Mr. Rendl was recognized as an Expert Witness in the field of planning. His evidence was as follows:

200 Wanless Avenue is located on the north side of Wanless Avenue, in the residential area northeast of Yonge Street, and Lawrence Avenue East. The Subject site is one block east of Mount Pleasant Road, and one block north of Lawrence Avenue East. The Subject Site consists of two lots, Parts 1 and 2, which were created through a consent to sever application respecting the original lot at 200 Wanless Avenue, which was heard, and approved by the COA on August 30, 2018. Mr. Rendl emphasized that the resulting lots, referred to as Parts 1 and 2 had frontages of 7.62 m each, and areas of 309 m² and 310 m² respectively. The lots comply with the 7.5 m minimum lot frontage, and 225 m² minimum lot area of the Zoning By-law.

Parts 1 and 2 are designated **Neighbourhoods** in the Toronto Official Plan. This designation permits residential uses in a wide range of low density buildings, including detached dwellings, semidetached dwellings, duplexes, triplexes and townhouses. Parts 1 and 2 are zoned R (f7.5; d 0.6) (x993) under Zoning By-law No. 569-2013. The R zoning permits detached houses, semi-detached houses and townhouses as well as other residential building types on each lot.

Mr. Rendl defined a Neighbourhood Study Area (“NSA”) containing the residential properties in the area generally bounded by Yonge Street on the west, Lawrence Avenue East on the south, Mildenhall Boulevard on the east and Glen Forest Avenue on the north.

Mr. Rendl said that he used the following criteria to define this NSA:

- All properties within the NSA are zoned R (f7.5; d 0.6) (x993) Residential, the same as the Subject Site.
- Yonge Street and Lawrence Avenue East are “logical, hard physical borders”;
- The north and east borders contain properties within a 5 to 10 minute walk of the Subject Site, a distance generally accepted by planners as defining a neighbourhood for these purposes.

The NSA is within a reasonable walking distance of the Subject Site, and represents an area that the local residents would experience daily. Mr. Rendl described the NSA as experiencing reinvestment, both in the form of the construction of new replacement dwellings, or additions to existing dwellings, and provided a photo tour of the community to illustrate how the community was “stable, but not static”. He added that the neighbourhood contained examples of new houses that replaced the original houses in the area; and that these new replacement houses are generally larger than the houses they replaced, in keeping with modern building trends. The new houses generally have involved the approval of minor variances to permit construction of the new larger house.

Mr. Rendl next discussed how the properties are consistent with the Provincial Policy Statement (2014), and the Growth Plan for the Greater Golden Horseshoe (2019). He said that the minor variances are consistent with modest intensification, and consequently with the PPS’ policies for managing and directing land use to achieve efficient and resilient development and land use patterns.

According to Mr. Rendl, the proposed development specifically:

- Promotes efficient development and land use patterns (PPS Policy 1.1.1(a));
- Promotes cost-effective development patterns and standards to minimize land consumption and servicing costs (PPS Policy 1.1.1(e));
- Is an efficient use of land (PPS Policy 1.1.3.2(a)1);
- Efficiently uses the infrastructure and public service facilities which are available (PPS Policy (1.1.3.2(a) 2).

Using similar reasoning, Mr. Rendl concluded that the proposal was consistent with the Growth Plan for the Greater Golden Horseshoe 2019 (“Growth Plan”) , because the latter supports modest intensification. Based on this analysis, Mr. Rendl concluded that the variances do not conflict with the Growth Plan (2019).

Mr. Rendl next discussed the compatibility between the proposal, and the Official Plan. By way of information, it may be emphasized that he referenced the Official Plan (OP), as opposed to OPA 320.

He said that within “Chapter 2: Urban Structure of the Official Plan”, Policy 2.3 acknowledged that **Neighbourhoods** are “stable but not static” and that “neighbourhoods will not stay frozen in time.” Physical change is expected to occur in neighbourhoods, over time through enhancements, additions and infill housing. The objective of the policy is to reinforce the stability of the neighbourhood by ensuring new development respects the existing physical character of the area.

He then explained that Policy 2.3.1.1 stated that development within **Neighbourhoods** “will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas”. The objective of the policy is to reinforce the stability of the neighbourhood through new development, which respects the neighbourhoods’ existing physical character. He added that this intent of Policy 2.3.1.1, regarding change in stable neighbourhoods, is further expressed in Policy 4.1, which sets out the policies for the **Neighbourhoods** designation. Changes to established neighbourhoods are expected to be “sensitive, gradual and generally ‘fit’ the existing physical character” by respecting and reinforcing the general physical patterns in neighbourhoods.

Mr. Rendl also stated that Policy 4.1.5 required proposed development in established **Neighbourhoods**, to respect and reinforce the existing physical character of the neighbourhood. The intent of this policy is further expressed in a series of development criteria, which are to be considered in assessing the appropriateness of the development, regarding matters such as:

- Massing, scale, height and dwelling type of nearby residential properties;
- Prevailing building types;
- Setbacks of buildings from lot lines.

Applying the above criteria to this proposal, Mr. Rendl opined that while the massing of a dwelling is affected by several factors, there were no requests for variances for any of the factors, excepting building length. Adding that the height, massing and scale of the dwellings are appropriate for two storey detached dwellings, he concluded that the resultant proposed massing of the buildings was consistent with what had been approved in the community.

Another characteristic of this neighbourhood is a tight lot fabric, which according to Mr. Rendl, is not uncommon in Neighbourhoods, where lots often have narrow side yards. He pointed to the side yard setback of the adjacent houses at 186 and 202 Wanless Avenue, which are 0.35 m and 0.29 m respectively. According to Mr. Rendl, these narrow setbacks were further reduced by projections of each house’s side wall into these setbacks. Contrasting these side yards to the proposed side yard at 200 Wanless, Mr. Rendl said that the proposed 0.6 m west side yard setback is almost double the 0.35 m side yard setback of the adjacent house to the west at 186 Wanless Avenue, and is consistent with the commonly encountered feature of narrow side yards.

Before segueing into a discussion of the Zoning By-Law, Mr. Rendl referenced Policy 4.1.6 (*sic*), and how it relied on the numerical standards of the zoning by-law to ensure new development is compatible (i.e., not identical to but able to co-exist) with the physical character of established residential neighbourhoods. These standards for development deal with building, height, density and building setbacks from lot lines.

By way of editorial comment, it may be pointed out that the relevant policy is Section 4.1.8 of the OP; the reference to 4.1.6 is attributable to a typo in the written version of the Expert Witness Statement.

Based on this discussion, Mr. Rendl concluded that the requested variances upheld the purpose, and intention of the Official Policy.

Mr. Rendl stated that the general intent and purpose of Zoning By-law is to protect the stable and mature low density character of the **Neighbourhood**, through a combination of performance standards for buildings and properties..

For the purposes of my analysis and discussion, Mr. Rendl grouped the variances into:

- Built Form;
- Setbacks from Lot Lines

He said that the general intent, and purpose of regulating maximum floor area, side main wall height, and building depth, is to control the massing of a dwelling, and avoid the construction of “an out of scale house” (i.e. overbuilding) , with respect to its lot and surroundings. The built form of the proposed dwellings is that of two storey houses, with a 9.99 m maximum building height, which is below the 10.0 m maximum building height permitted by the Zoning Bylaw. The side wall heights of 8.28 m , and 8.33 m, include the dormers within the roof. Mr. Rendl said that the side wall height, measured to the eaves, “better corresponds to the actual side wall”, and is approximately 7.79 m in height to the eaves.

Mr. Rendl also noted that Section 10.10.40.40(2)(A) included a provision which enabled the enlargement of a dwelling with a minimum Floor Space Index (FSI) of 0.6X Lot area, through the addition at the rear of the house, to 0.69X Lot Area . Pointing out that the proposed 0.719 FSI is slightly greater than the “as of right” density of 0.69 for existing dwellings, he emphasized that the buildings are consistent with the Zoning By-law’s intent for the built form character in the R Zone.

He said that the general intent and purpose of building depth, is to prevent the undue extension of a building into the lot, particularly the rear yard, thereby providing for ample space in the rear yard for outdoor amenities. In the case of the proposal, Mr. Rendl emphasized the fact that the Subject lots are “deep”, and opined that the 18.2 m building depth does not represent an excessive building depth, nor does it compromise the amount of open space amenity in the rear yards. The rear yards have a depth of approximately 18 m, which is over double the 7.5 m minimum required rear yard

Based on this evidence, Mr. Rendl concluded that the variances corresponding to the Built Form complied with the intention of Zoning By-Law 569-2013.

He then discussed the Setbacks from the Lot Lines.

The side yard setback for Part 1 adjacent to 186 Wanless Avenue (the house to the west) is 0.9 m, which is the Zoning By-law minimum setback. Similarly, the side yard setback for Part 2 adjacent to 202 Wanless Avenue (the house to the east) is 0.9 m, the Zoning By-law required setback.

The setback variances apply to:

- The setbacks of each front porch from the shared side lot line between Parts 1 and 2 (0.6 m proposed, 0.9 m required);
- The setbacks of each basement walkout from the shared side lot line between Parts 1 and 2 (0.6 m proposed, 0.9 m required);
- The setback of the eaves from the shared side lot line;

Mr. Rendl drew my attention to the fact that 0.6 m side yard setbacks for the front porches, and the basement walkouts, while smaller than the required 0.9 m setbacks under the By-Law, are nevertheless greater than the 0.55 m side yard setback of each new house, from the shared side lot line. Adding that the 0.6 m setback is consistent with the side yard setback of each house, Mr. Rendl opined that the 0.15 m setback of the eaves, from the shared lot line maintains the general intent of the Zoning By-law by preventing the projection of the eaves beyond the lot line, as well as maintain a separation between the eaves of adjacent houses. Mr Rendl pointed out that the City Planning Staff Report dated March 26, 2019 specifically stated that the revised variances, including the variances respecting the eaves, are in keeping with the intent of the Zoning By-law.

Based on this discussion, Mr. Rendl concluded that the proposal maintained the intent, and purpose of the Zoning By-Law.

Mr. Rendl then addressed the issue of the proposal satisfied the test of appropriate development. He said that the “size and scale of the proposed detached dwellings are appropriate, and result in new dwellings that are permitted by the Zoning By-law. They will contribute to its continued stability, and will not result in overdevelopment of the Subject Site”

Mr. Rendl lastly spoke to how the proposal satisfied the test of minor.

He said that the generally acknowledged test of whether a variance is minor in nature, is the extent of any adverse impacts on adjacent properties. He said that there would be no undue adverse impacts resulting from shadow, privacy and overlook impacts, thereby satisfying the test of being minor in nature.

In response to a question from Mr. Bronskill, Mr. Rendl stated that the pattern of alternating houses and driveways, with asymmetric side yard setbacks on sides, as described by Mr. Brody, was found in many “old Toronto neighbourhoods”, but did not reflect any particular specification in the By-Law, or the Official Plan.

On the basis of this evidence, Mr. Rendl stated that the Appeal should be allowed.

I thanked Mr. Rendl for providing evidence, and questioned him about his relying on the former Official Plan, instead of the current Official Plan (i.e. OPA 320), which was adopted on December 7, 2018. By way of information, the application to the COA was filed in February 2019, and was heard in April 2019. Mr. Rendl said that he had looked at

the application through the lens of both the Official Plan, and the new OPA 320, and his opinion would not change substantively from what had been stated.

I asked Mr. Rendl for his thoughts about any conditions to be imposed in case the variances were approved, and his initial answer was “no”. I then drew his attention to the Staff Report submitted to the COA, dated March 26, 2019, where the planner had expressed a concern that *“The proposed wall height is the difference between the height of the wall just under the roof eaves and established grade. City Planning staff are concerned that this wall height is proposed for all sides of the dwelling for the entire width and length, including the front side, which is most visible from the street”*, and had recommended that this variance be refused. This time, Mr. Rendl said that he would recommend a condition which would require the Appellants to build in substantial accordance with the submitted plans and elevations, if the appeal were allowed.

Mr. Brody, the neighbour at 202 Wanless Ave. cross examined Mr. Rendl. Mr. Brody’s cross examination focused on the alleged loss of sunshine, and the impact it would have on the grass on his property, as well as the alleged loss of privacy on his backyard. Mr. Brody tried to get Mr. Rendl to admit that the presence of an integral garage would change the streetscape radically, and prove detrimental to what, in Mr. Brody’s opinion, was an established pattern of driveways alternating with houses. Mr. Rendl was stalwart in his responses, and steadfastly stood his ground, when discussing the alleged adverse impacts brought forward by Mr. Brody. On various occasions, Mr. Rendl patiently explained a germane planning concepts (e.g. distinguishing between unacceptable adverse impact, and adverse impact) , and applied them to the proposal , before refuting the allegations of unacceptable adverse impact brought forward by Mr. Brody.

Mr. Brody then asked to “skim” the pictures in Mr. Rendl’s photo tour to “jog” his memory, and ask any questions that he may have forgotten. Mr. Bronskill objected to this request because it was expected for Parties to make notes when Witnesses were speaking, instead of “skimming” through the material, and make the Witness effectively repeat themselves. I upheld the objection because I agreed that the Parties’ responsibilities includes listening carefully to the evidence of the other Parties, and making notes where appropriate, in order to cross examine the Witness. There is no expectation that evidence be offered in a custom made fashion to satisfy a particular Party.

Mr. Brody then presented his evidence. After being affirmed, he stated that he and Wendy Low have been the owners of 202 Wanless Ave, for 19 years. In his opinion, the requested variances collectively and individually constitute a negative impact, on their home, and quality of life. He said that the proposed two new homes are not in keeping with the overall character of Wanless Ave. streetscape. The character, according to Mr. Brody, is to have one side yard with a greater setback than the other, which was not replicated by the two houses proposed to be built.

He said that since many of the houses were built in the 1930s, they have similar size, height and design, apart from 200 and 205 Wanless Ave. He said that 182 Wanless was

an “anomaly”, and “most do not want this compounded”. Mr. Brody counted 57 traditional homes, 3 new builds with surface garages, and a common pattern of 22 mutual shared driveways in total, on Wanless Avenue.

According to Mr. Brody, homes near corners of other streets have parking on side streets, while houses which don’t “side” on side streets with historic mutual driveways are of a consistent pattern (with front parking). Plans for 200 Wanless do not match the pattern, he said, and added that his preference would be for a parking pad, because this arrangement would allow compliance with main wall height.

Mr. Brody then described each of the variances, and described what in his opinion, was problematic with the variance. He was concerned that if the variances were approved, the rear deck of 200 Wanless would be brought closer to the property line of his house, which was “inappropriate”, and “ does not match the flow of the street.” He was also concerned with the length variance, and stated that the extra length of 1.2 m would create a shadowing house for his house, and asserted that the backyard would be shadowed after 12 noon in late spring, summer, depriving him of his ability to enjoy his backyard.

He asserted that if the variance for bringing the eaves closer to the lot line were approved, then any overflow would cause damage to his house, and would require “expensive repairs”. Mr. Brody specifically pointed out that the City staff had specifically recommended the refusal of the variance respecting the side exterior main walls facing the lot line, because they were 8.28 m against the standard 7.5 m. He reiterated that approving a side exterior wall “this high”, compounded with the overall height of the proposed building, would create a long shadow on his backyard, and added that the house “would not fit into the streetscape”

Mr. Brody then spoke to the variance respecting FSI, and complained about how huge the neighbouring house would be in comparison to his house. He also pointed out that his lot depth was considerably smaller at “90 feet” versus the “130 feet” at 200 Wanless , and concluded by saying that even the allowable FSI of 0.6x lot size would translate into different size on the neighbouring lots, because 200 Wanless had 130 feet x 25 feet frontage, versus 25 feet (or 27 feet) x 90 feet on his property. He added that the proposed house would be “oppressively “ large, compared to his house.

Mr. Brody then described a few steps which could be undertaken by the Appellants to make their house “more sensitive”. He also alluded to a petition signed by the neighbours protesting against the overdevelopment of the house, which had been submitted to the neighbours.

Through his cross examination, Mr. Bronskill cast serious doubts that the height of the houses was so high that it would have a negative impact on Mr. Brody’s backyard. In response to Mr. Bronskill’s pointing out that the hedge on the border of the two properties seem to prevent light falling on the grass, Mr. Brody did not have a convincing response. Lastly, in response to Mr. Bronskill’s question about Mr. Brody’s concluding that the street wall consisted of two houses, separated by a driveway, with

unequal side yard setbacks on both sides, Mr. Brody offered observational evidence, but could not demonstrate any nexus with the By-Law, or Official Plan.

ANALYSIS, FINDINGS, REASONS

I will start by analyzing the evidence of Mr. Brody, the neighbour at 202 Wanless, since addressing the alleged, unacceptable adverse impact, asserted by him is key to the approval of the proposal.

The evidence provided by way of photographs did not demonstrate that there would be an adverse impact on the grass in Mr. Brodie's side yard facing the proposed houses, nor would there be an unacceptable impact on his privacy, when enjoying the backyard amenities. I could not understand Mr. Brody's assertion of shadowing impact in response to pointed questions by Mr. Bronskill about the nexus between the proposal, consequential shadow impact on Mr. Brody's property, and how the requested FSI, or building length, would impact the latter's amenity space in the backyard.

Based on these factors, I conclude that the proposal does not cause any new, unacceptable, adverse impacts on the neighbouring properties.

Through leisurely, if not languid presentation lasting more than an hour, Mr. Brody examined each combination of neighbouring houses on Wanless Ave. (a total of 100+ houses), to demonstrate that the layout of the community largely consisted of a pattern, where neighbouring houses shared a common driveway, such that one of the side setbacks was longer than the opposite setback. While the presentation was marred by the quality of the photographs, a feature conceded by Mr. Brody himself, it was adequate in bearing out the essential idea of how Mr. Brody visualizes his street-houses and mutual driveways alternate with each other, such that the former are separated by the latter, such that the mutual driveways are bordered by asymmetric side yard setbacks.

While I respect Mr. Brody's perspective, the aforementioned arrangement of houses and the driveway is generic enough that it describes many communities- in other words, the pattern described is not unique to Wanless Street, nor does it distinguish it as being a "geographic neighbourhood", with a distinct identity. More importantly, the feature of alternating driveways and houses, is not supported either in the Official Plan policies, or the Zoning. I therefore find that the aforementioned pattern, is not defined in planning terms, in those documents

I conclude that while the Opposition may have correctly identified a Geographic Neighbourhood, they have not been able to demonstrate the nexus between their Geographic Neighbourhood, and the tests under Section 45.1 of the Planning Act.

Another interesting feature of Mr. Brody's evidence is that he objected to the FSI variances because they make his house look small- I got the impression that he had suggested that the size of the proposed houses be limited to 0.6X the size of his lot for

the houses to look comparable, notwithstanding the fact that the neighbouring lot at 200 Wanless Avenue is significantly larger than his lot.

Following his reasoning effectively sets up a new test, where the size of a house is linked to the lot sizes of neighbouring properties i.e. the test is no longer one of “X lot size”, but one of “X neighbouring lot size”, which effectively sets up a new performance standard. I do not see the need for a new performance standard, when there is an effective and replicable performance standard for determining the FSI of an existing house, with respect to its own Subject lot

I find that Mr. Rendl provided fulsome, and uncontradicted evidence about the Zoning By-law, and tests of appropriate development, and minor- I prefer his evidence to that of the opposition on these three tests under Section 45.1 of the Planning Act.

On the matter of upholding the purpose and intent of the Official Plan, Mr. Rendl relied on the former Official Policy, rather than the newer OPA 320. I found this preference to be unusual since the original application was heard by the COA in February 2019, and the TLAB in August 2019, well after December 8, 2018, when OPA 320 became enforceable in the City of Toronto. When examined from a consistency of the chronology of policies, his preference for the former OP over the newer OPA 320, is not consistent with his relying on the newer Growth Plan, which was adopted, after OPA 320.

I do not attach significant weight to an assertion about evidence satisfying a given Policy, unless the latter is canvassed specifically in detail, and firmly believe that one should not rely on former policies which are no longer relevant from a chronological perspective. However, I am prepared to make an exception in this case because the clauses of the relevant policies (e.g. 2.3.1.1. or 4.1.5) referred to by Mr. Rendl in his discussion of the OP, have not changed significantly in the new OPA 320.

While Mr. Rendl’s evidence refers to a Neighbourhood Study Area (NSA) extending over a few streets, as defined in the OP, and Mr. Brody’s study confines itself to Wanless Street, thereby better satisfying the definition of a “Geographic Neighbourhood” under OPA 320, I am more satisfied by Mr. Rendl’s discussion of how the proposal sustains the character of the neighbourhood, rather than Mr. Brody’s evidence about maintaining the character of Wanless Street, because the identified predominant feature of houses and driveways alternating with each other, separated by asymmetric side yard setbacks, is not anchored in demonstrable planning policy.

On the basis of the above finding, I prefer Mr. Rendl’s reasoning for how the proposal satisfies the test of upholding the intent and purpose of the Official Plan. I must hasten to add that I am reluctant to prefer the Appellants’ evidence with respect to the Official Plan is reluctant; I would have been more comfortable with a demonstration of how the proposal satisfied OPA 320, which has been fully implemented since December 7, 2018.

Based on the above reasoning, I find that the Appeal must be allowed in full, and approve the variances for the Subject lots 200A, and 200B, as recited in the Decision and Order section. The approval is subject to the imposition of a standard condition which requires the Appellants to build in substantial confirmation with the submitted Plans and Elevations, dated April 2, 2019. The imposition of this condition addresses the concern raised in the Staff Report dated March 26, 2019, namely *“City Planning staff are concerned that this wall height is proposed for all sides of the dwelling for the entire width and length, including the front side, which is most visible from the street”*.

DECISION AND ORDER

1. The Appeal respecting 200 Wanless Ave is allowed in its entirety, and the decision of the Committee of Adjustment dated April 4, 2019, is set aside.
2. The following variances are approved

Property Address: 200A WANLESS AVE (Part 1, Lot A (West Lot))

1. Chapter 10.5.40.50, By-law No. 569-2013

A platform without main walls must comply with the required minimum building setbacks for the zone, 0.9 m.

The proposed rear deck is setback **0.6 m** from the east lot line.

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Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The proposed eaves project 0.4 m and are **0.15 m** from the east lot line.

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A platform without main walls may encroach into the required front yard setback if it is no closer to a side lot line than the required side yard setback, 0.9 m.

The proposed platform encroaches into the required front yard setback and is **0.6 m** from the east side lot line.

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The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 8.28 m.

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The permitted maximum floor space index is 0.6 times the area of the lot.

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Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.

The proposed eaves project **0.15 m** from the west lot line.

4. Chapter 10.5.40.60.(1), By-law No. 569-2013

A platform without main walls may encroach into the required front yard setback if it is no closer to a side lot line than the required side yard setback; 0.9 m.

The proposed platform encroaches into the required front yard setback and is **0.6 m** from the west side lot line.

5. Chapter 10.10.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 8.33 m.

6. Chapter 10.10.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is **0.719 times** the area of the lot.

3. No other variances, other than the ones listed above, are approved

4. The following condition is imposed on the approval.

1. That the house be constructed substantially in accordance with the site plan and elevations prepared by the Guitberg Group Inc. dated January 2019 and date stamped April 2, 2019, as received by the City of Toronto's Planning Department.

So orders the Toronto Local Appeal Body.



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

SITE PLAN

SCALE 1/16" = 1'

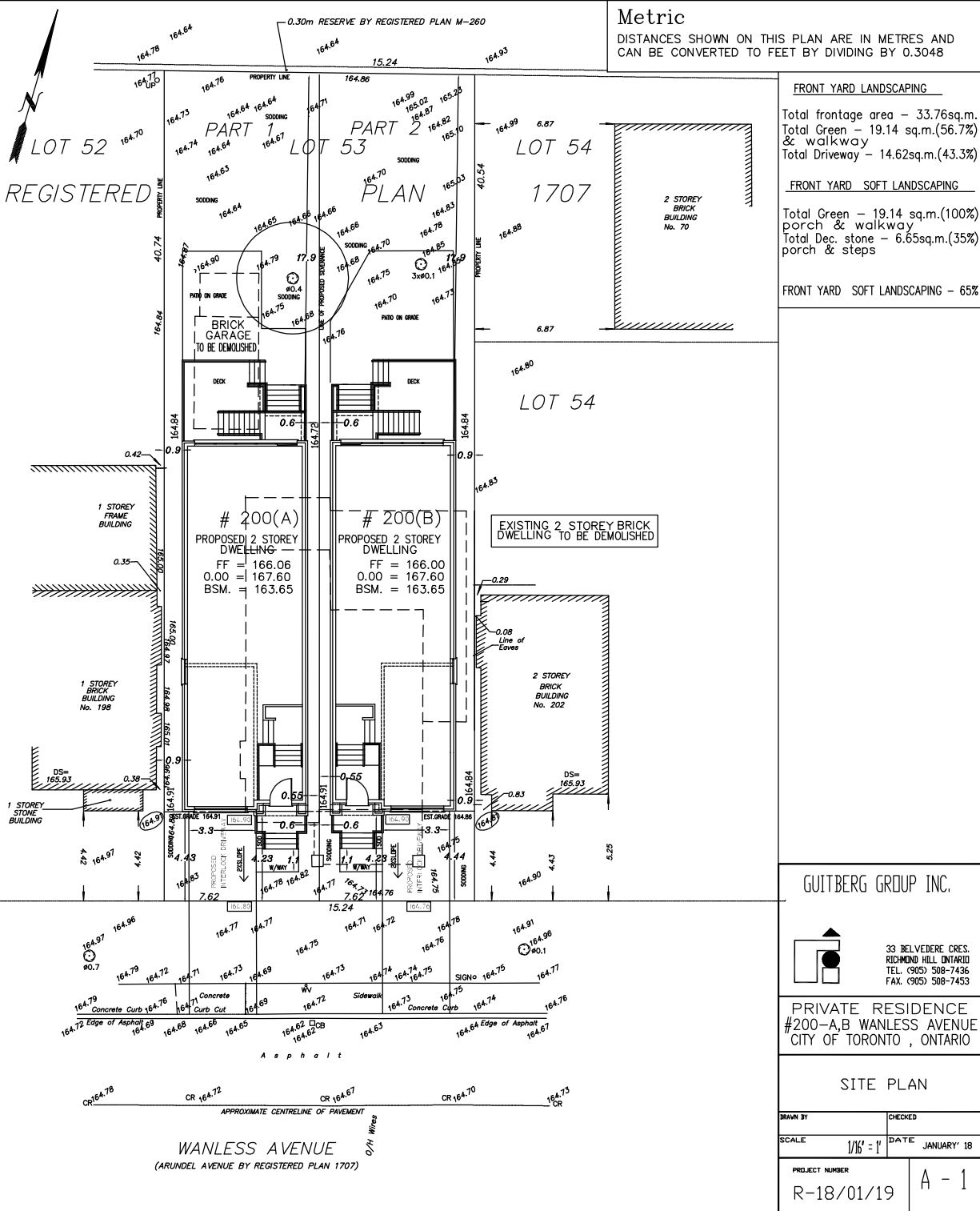
DERIVED FROM
TOPOGRAPHIC SURVEY OF
LOT 53
REGISTERED PLAN 1707
CITY OF TORONTO

ALEX MARTON LIMITED
Ontario Land Surveyors
DATE : DECEMBER 01, 2016

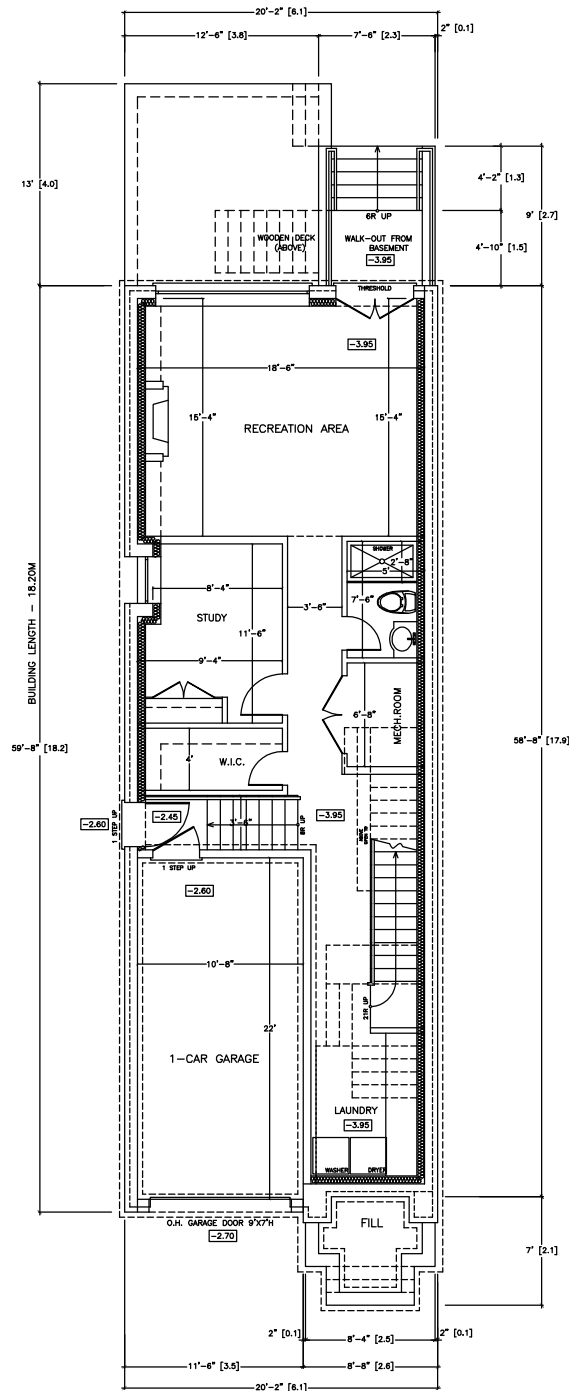
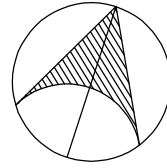
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By City of Toronto Planning at 2:27 pm, Apr 02, 2019

DEVELOPMENT DATA (EACH LOT)			
ZONING DESIGNATION - R/F7.5.D0.6/H10/X33 (BY LAW 569 - 2013)			
LOT FRONTAGE	PROPOSED		ALLOWABLE
	METRIC	IMPERIAL	
LOT FRONTAGE	7.62 M	25'	MIN. REQUIRED - 10.5M
SITE AREA	309.00M ²	3326.16 SQ.FT.	MIN. REQUIRED - N/A
BUILDING AREA(SFA)			
BASEMENT	89.00 M ²	958.0 SQ.FT.	GARAGE EXCLUDED
GROUND FLOOR	111.01 M ²	1195.0 SQ.FT.	
SECOND FLOOR	111.01 M ²	1195.0 SQ.FT.	
TOTAL (G.F.A.)	222.02 M ²	2390.0 SQ.FT.	TWO FLOORS
FIRST FLOOR HEIGHT	1.20M	3'-11"	MIN. REQUIRED - 1.20M
BUILDING HEIGHT	9.99 M	32'-9"	TO THE TOP OF ROOF
BUILDING LENGTH	18.20 M	59'-8"	MIN. REQUIRED - 17.2M (PLUS 2.1M 1-STRENGTHEN)
BUILDING DEPTH	18.20 M	59'-8"	MIN. REQUIRED - 17.2M (PLUS 2.1M 1-STRENGTHEN)
SETBACKS			
FRONT	4.43 M (4.4M FOR B)	14'-6"	REQUIRED 4.4M - AVERAGE SETBACK OF ADJACENT HOUSES
REAR	17.90 M	58'-10"	REQUIRED - 10.18M
SIDES	0.90 M ; 0.55 M	2'-11" ; 1'-10"	MIN. REQUIRED - 0.90M
HEIGHT OF MAIN WALL	8.33 M	27'-4"	7.50 M
SITE RATIO	222.02 M ² - 2390.00 SQ.FT. (0.719)		MAX. REQUIRED - 0.60



BASEMENT FLOOR PLAN



ALL DIMENSIONS ARE IMPERIAL
(DIMENSIONS IN BRACKETS ARE METRIC)

GUITBERG GROUP INC.



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

PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

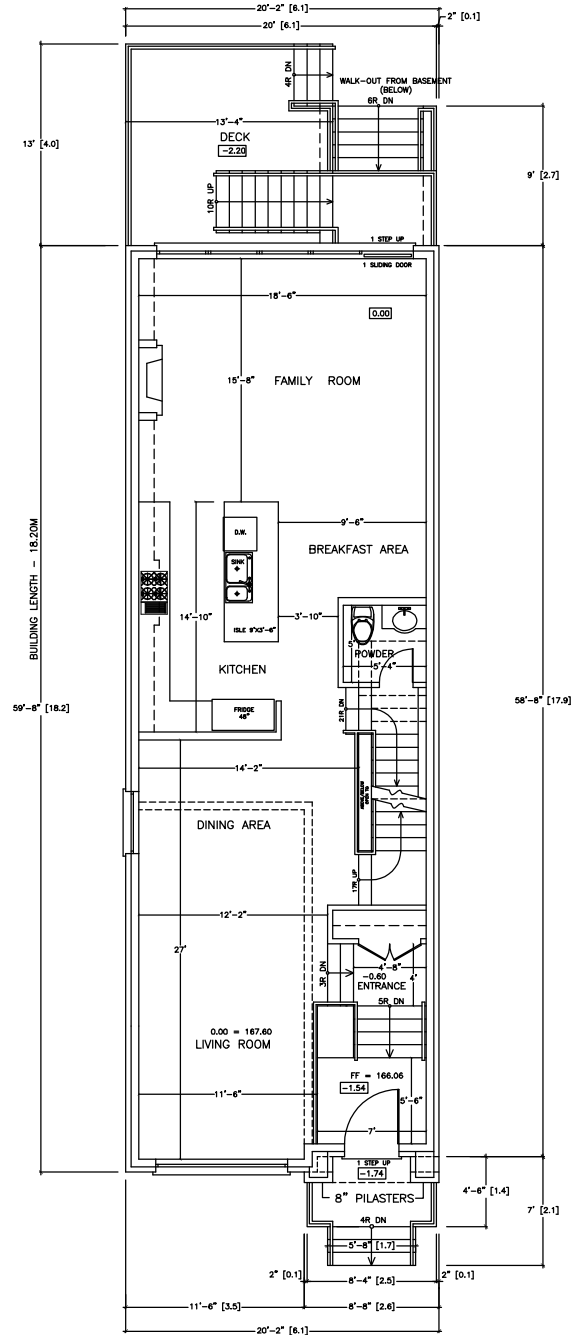
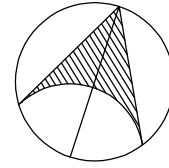
BASEMENT FLOOR PLAN

DRAWN BY J.M. CHECKED V.G.
SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER
R-18/01/19

A - 2

FIRST FLOOR PLAN



GUITBERG GROUP INC.



33 BELVEDERE CRES.
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PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

FIRST FLOOR PLAN

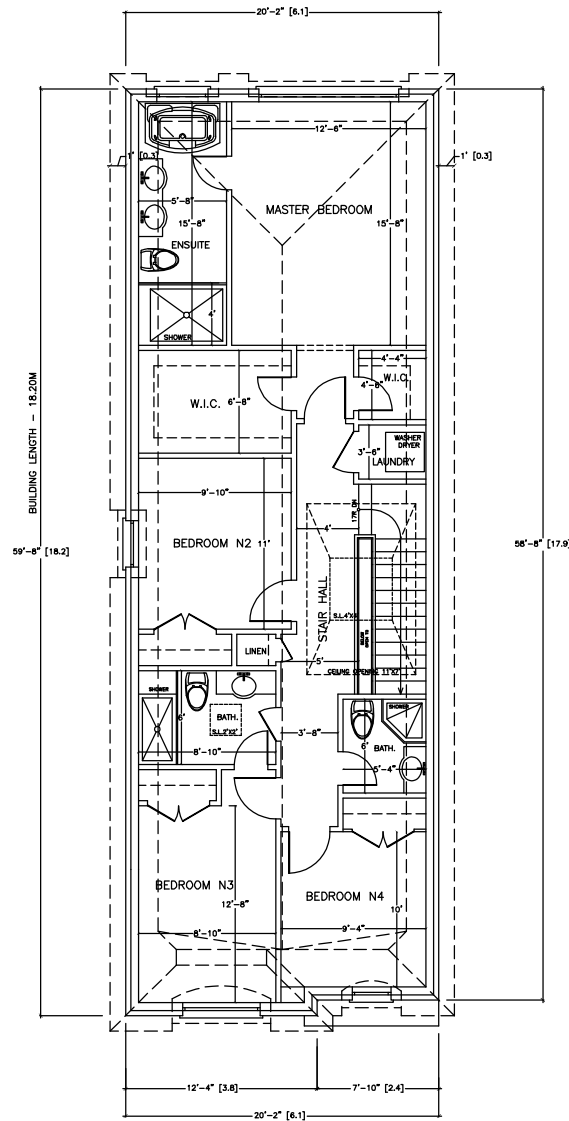
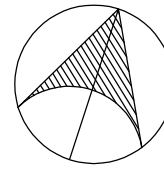
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SCALE 1/8" = 1' DATE JANUARY 19

PROJECT NUMBER
R-18/01/19

A - 3

ALL DIMENSIONS ARE IMPERIAL
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SECOND FLOOR PLAN



GUITBERG GROUP INC.



33 BELVEDERE CRES.
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PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

SECOND FLOOR PLAN

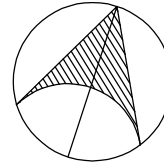
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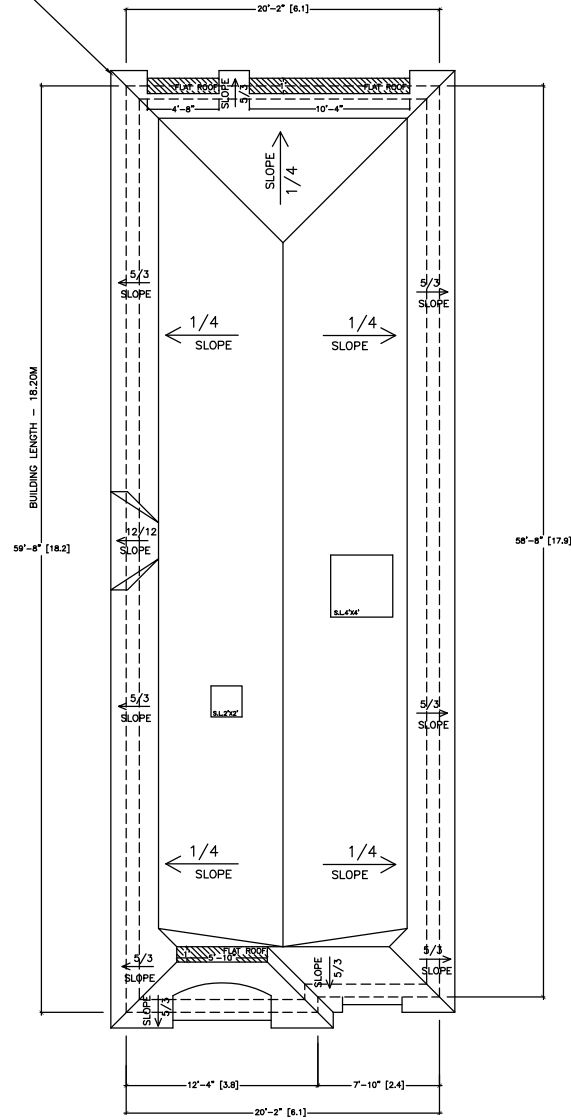
PROJECT NUMBER R-18/01/19 A - 4

ALL DIMENSIONS ARE IMPERIAL
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ROOF PLAN



PREEINGINEERED PREFABRICATED
WOOD TRUSSES @ 18" O/C
AND GIRDER TRUSSES
BEARING ON EXTERIOR WALLS



ALL DIMENSIONS ARE IMPERIAL
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PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

ROOF PLAN

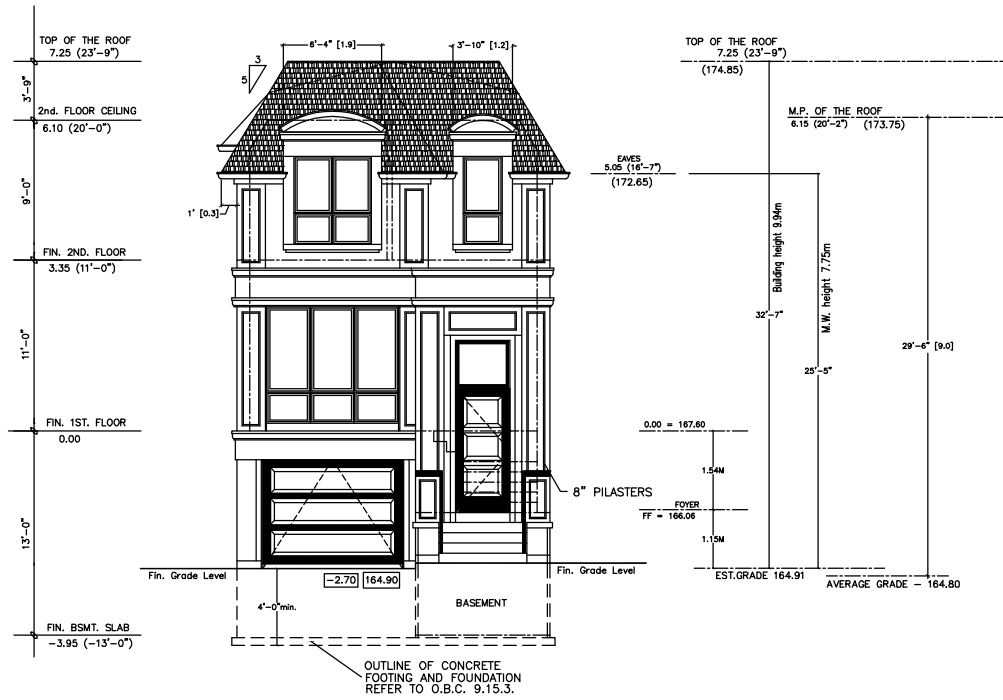
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SCALE 1/8" = 1' DATE JANUARY 19

PROJECT NUMBER
R-19/11/18

A-5

SOUTH ELEVATION



GUITBERG GROUP INC.



33 BELVEDERE CRES.
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PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

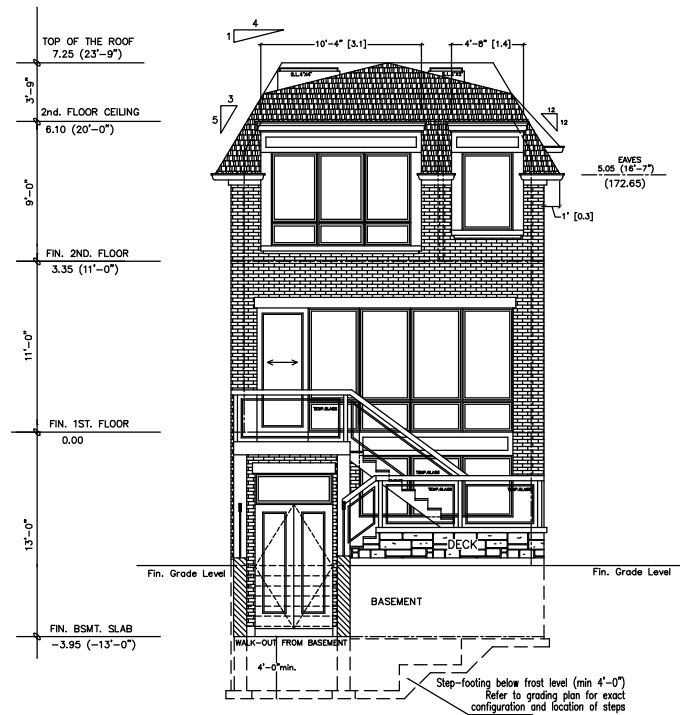
SOUTH ELEVATION

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER R-19/11/18 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
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

NORTH ELEVATION

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1' DATE JANUARY '19

PROJECT NUMBER
R-19/11/18

A - 7



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

PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

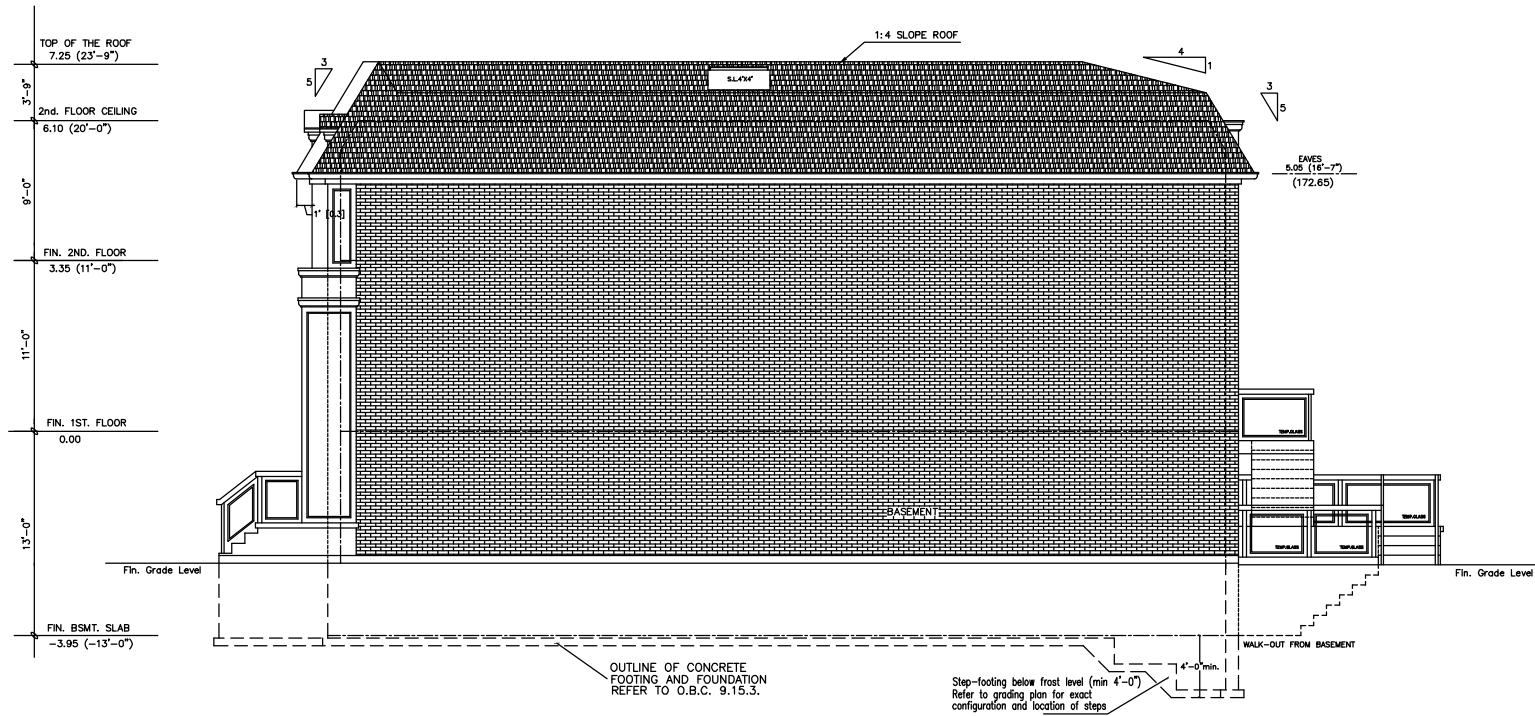
WEST ELEVATION

DRAWN BY J.M.	CHECKED V.G.
SCALE 1/8" = 1'	DATE JANUARY '19

PROJECT NUMBER
R-19/11/18

A - 8

EAST ELEVATION



GUITBERG GROUP INC.



33 BELVEDERE CRES.
RICHMOND HILL
ONTARIO, L4C 8W1
TEL. (905) 508-7436
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PRIVATE RESIDENCE
#200-A WANLESS AVENUE
CITY OF TORONTO, ON

EAST ELEVATION

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER R-19/11/18 A-9

SITE PLAN

SCALE 1/16" = 1'

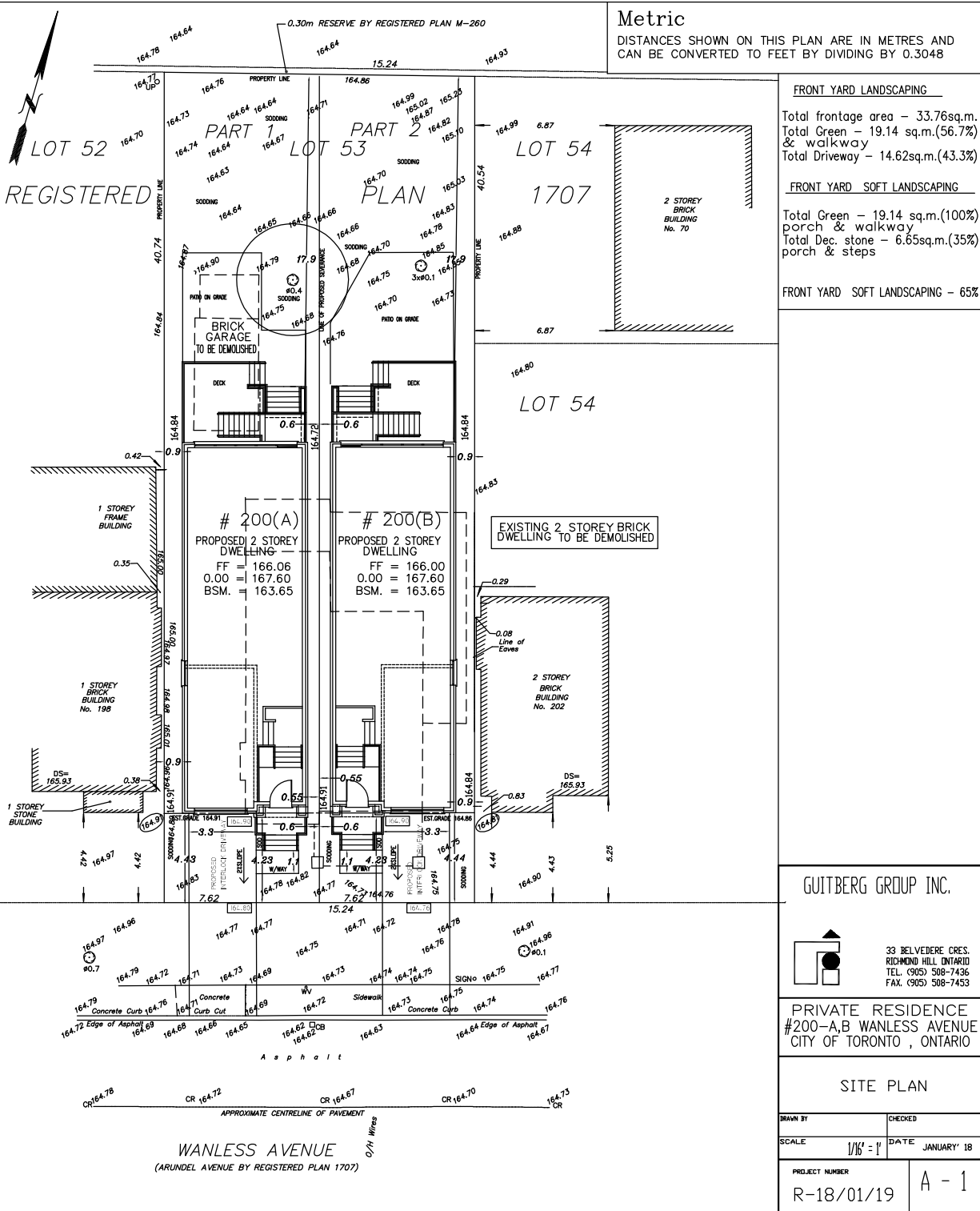
DERIVED FROM
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ALEX MARTON LIMITED
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DATE : DECEMBER 01, 2016

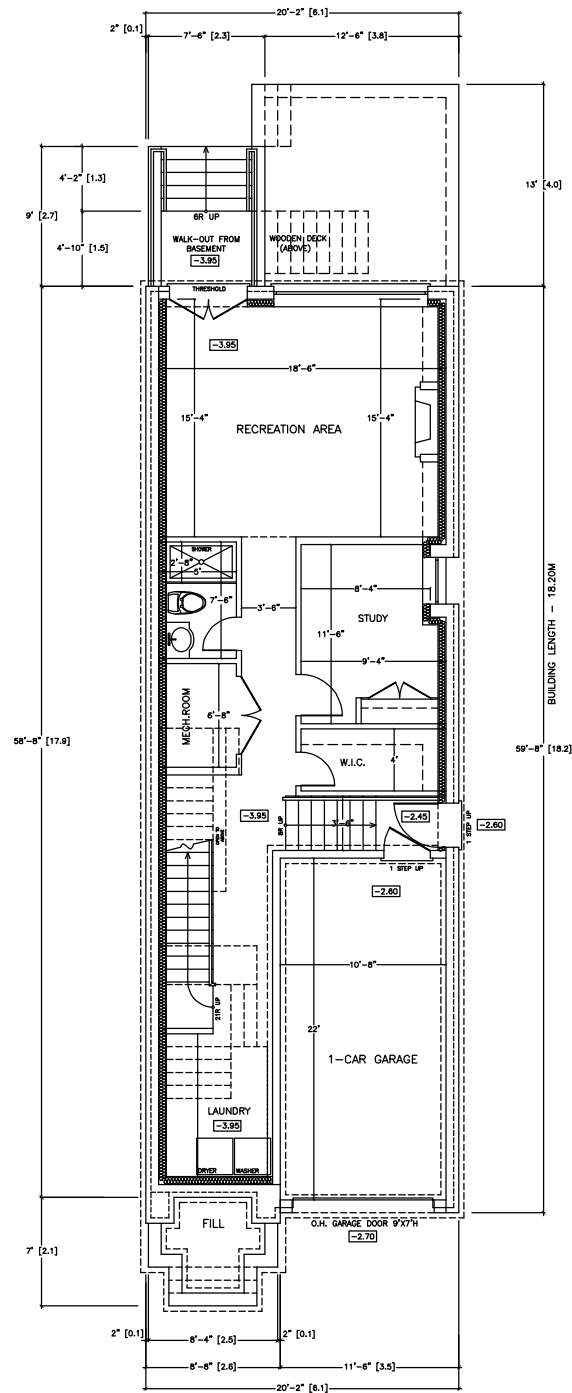
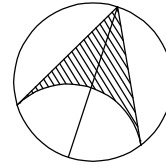
RECEIVED

By City of Toronto Planning at 2:20 pm, Apr 02, 2019

DEVELOPMENT DATA (EACH LOT)			
ZONING DESIGNATION - R/F7.5.D0.6/H10/X333 (BY LAW 569 - 2013)			
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	METRIC	IMPERIAL	
LOT FRONTAGE	7.62 M	25'	MIN. REQUIRED - 10.5M
SITE AREA	309.00M ²	3326.16 SQ.FT.	MIN. REQUIRED - N/A
BUILDING AREA(SFA)			
BASEMENT	89.00 M ²	958.0 SQ.FT.	GARAGE EXCLUDED
GROUND FLOOR	111.01 M ²	1195.0 SQ.FT.	
SECOND FLOOR	111.01 M ²	1195.0 SQ.FT.	
TOTAL (G.F.A.)	222.02 M ²	2390.0 SQ.FT.	TWO FLOORS
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BASEMENT FLOOR PLAN



GUITBERG GROUP INC.



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

PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

BASEMENT FLOOR PLAN

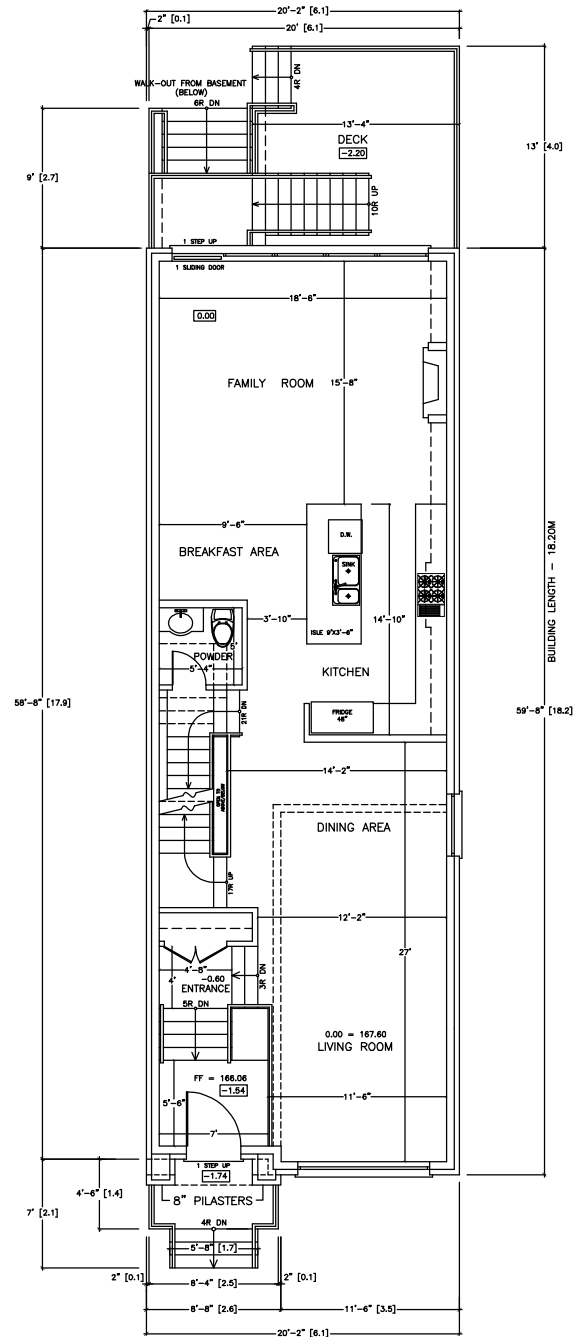
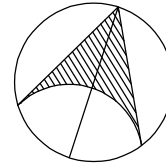
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SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER
R-18/01/19

A - 2

ALL DIMENSIONS ARE IMPERIAL
(DIMENSIONS IN BRACKETS ARE METRIC)



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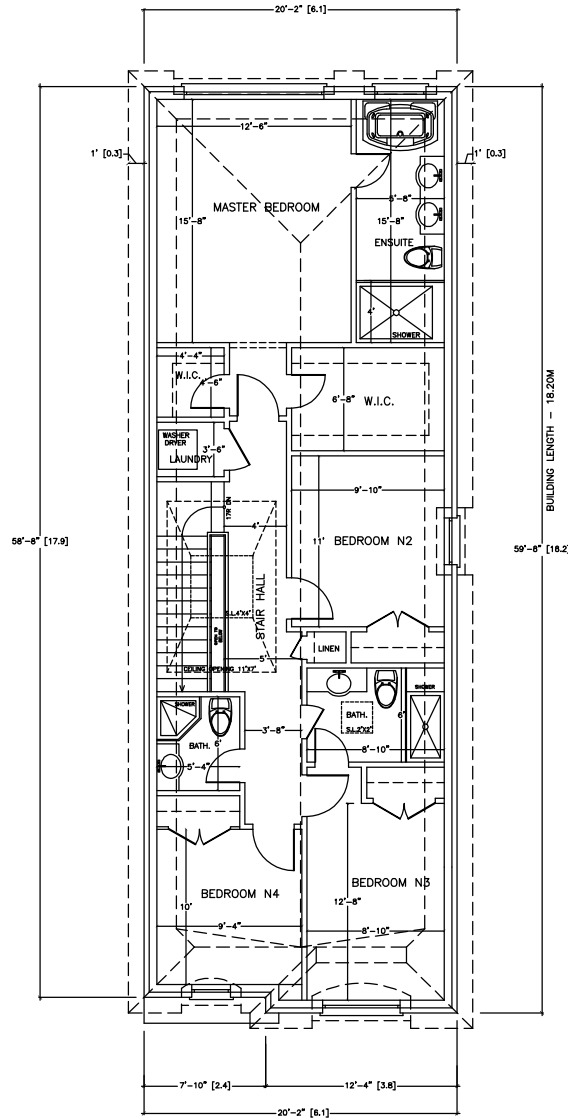
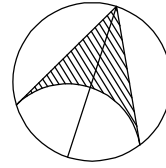
FIRST FLOOR PLAN

DRAWN BY	J.M.	CHECKED	V.G.
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PROJECT NUMBER
R-18/01/19

A - 3

SECOND FLOOR PLAN



GUITBERG GROUP INC.



33 BELVEDERE CRES.
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PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

SECOND FLOOR PLAN

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1' DATE JANUARY 19

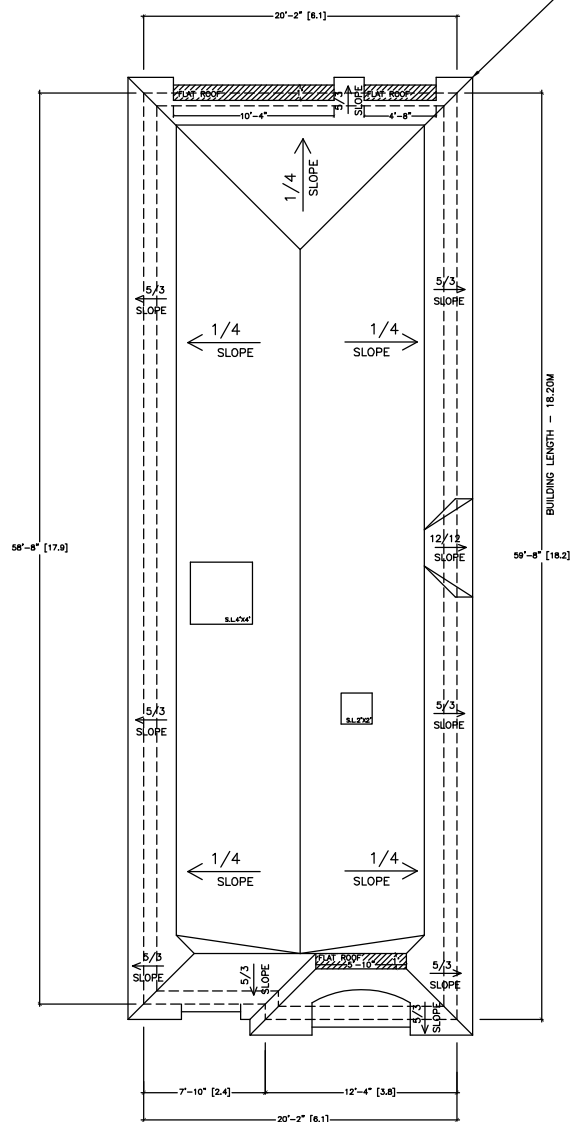
PROJECT NUMBER

R-18/01/19

A - 4

ALL DIMENSIONS ARE IMPERIAL
(DIMENSIONS IN BRACKETS ARE METRIC)

PREENGINEERED PREFABRICATED
WOOD TRUSSES @ 18" O/C
AND GIRDER TRUSSES
BEARING ON EXTERIOR WALLS



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GUITBERG GROUP INC.



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PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

ROOF PLAN

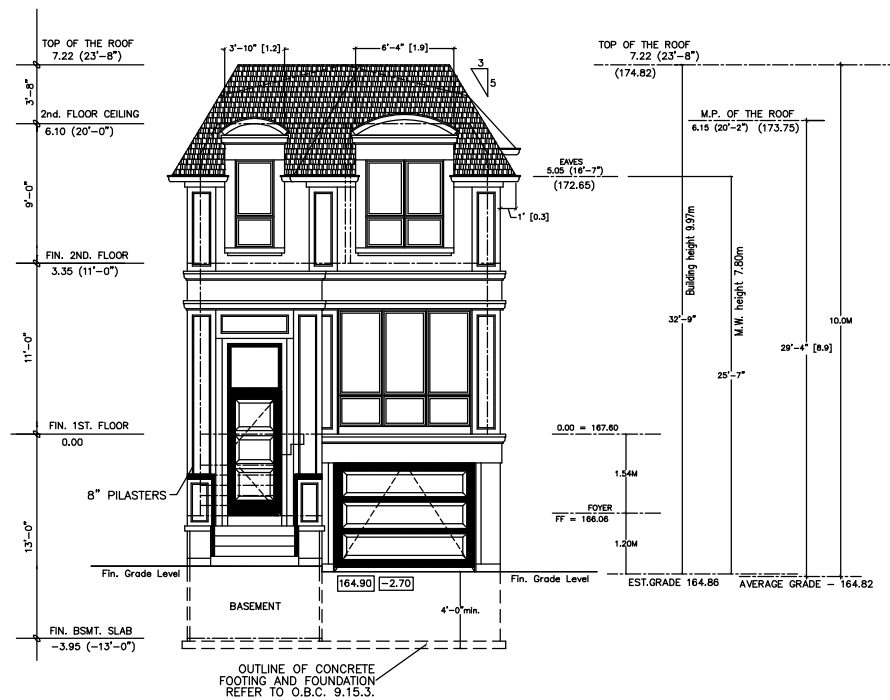
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SCALE	DATE
1/8" = 1'	JANUARY'19

PROJECT NUMBER
R-19/11/18

A - 5

SOUTH ELEVATION



GUITBERG GROUP INC.



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

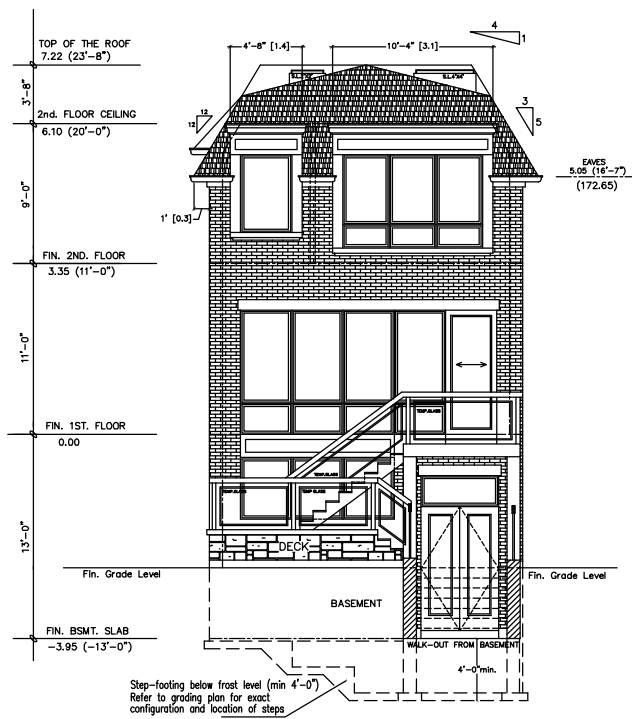
PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

SOUTH ELEVATION

DRAWN BY J.M. CHECKED V.G.
SCALE 1/8" = 1' DATE JANUARY 19

PROJECT NUMBER R-19/11/18 A-6

NORTH ELEVATION



GUISTBERG GROUP INC.



33 BELVEDERE CRES.
RICHMOND HILL
ONTARIO, L4C 8W1
TEL. (905) 508-7436
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PRIVATE RESIDENCE
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CITY OF TORONTO, ON

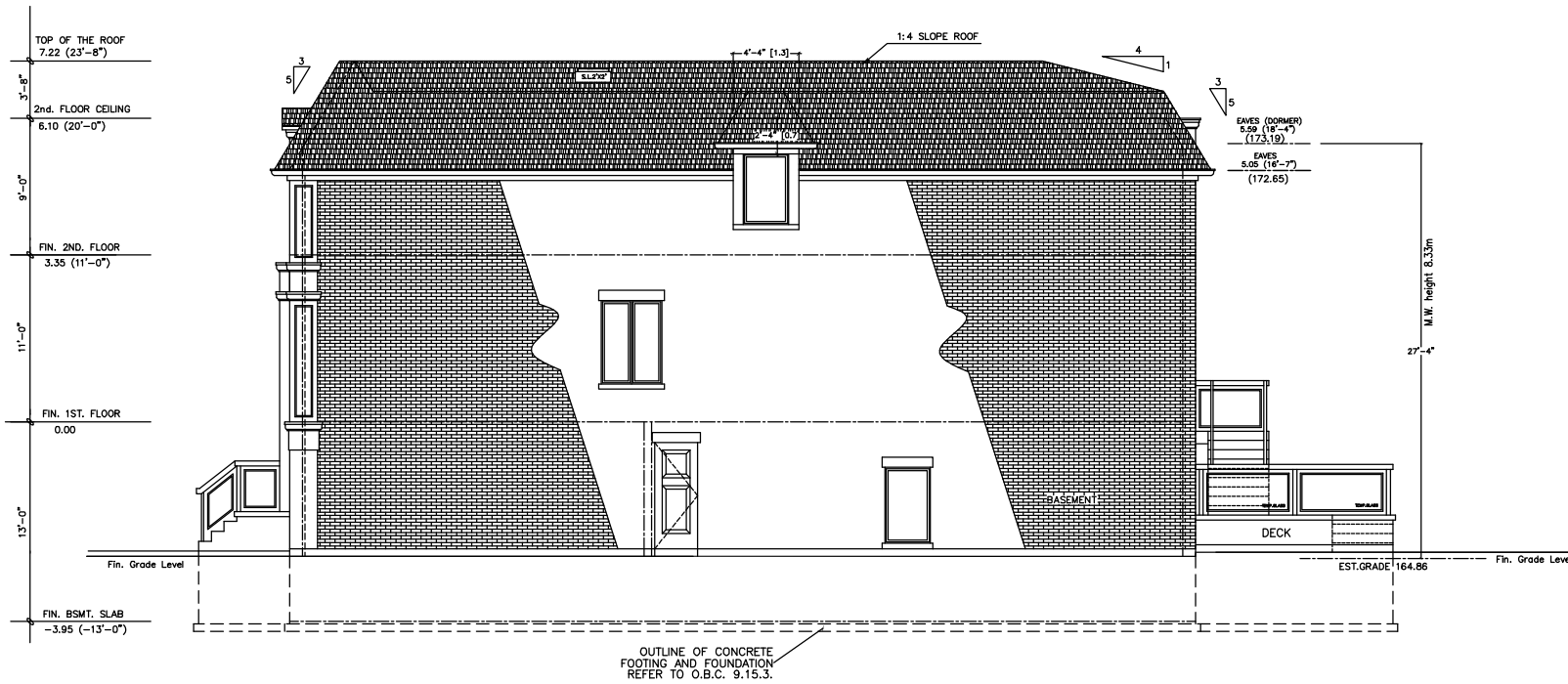
NORTH ELEVATION

DRAWN BY J.M. CHECKED V.G.
SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER
R-19/11/18

A - 7

EAST ELEVATION



PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

EAST ELEVATION

GUITBERG GROUP INC.



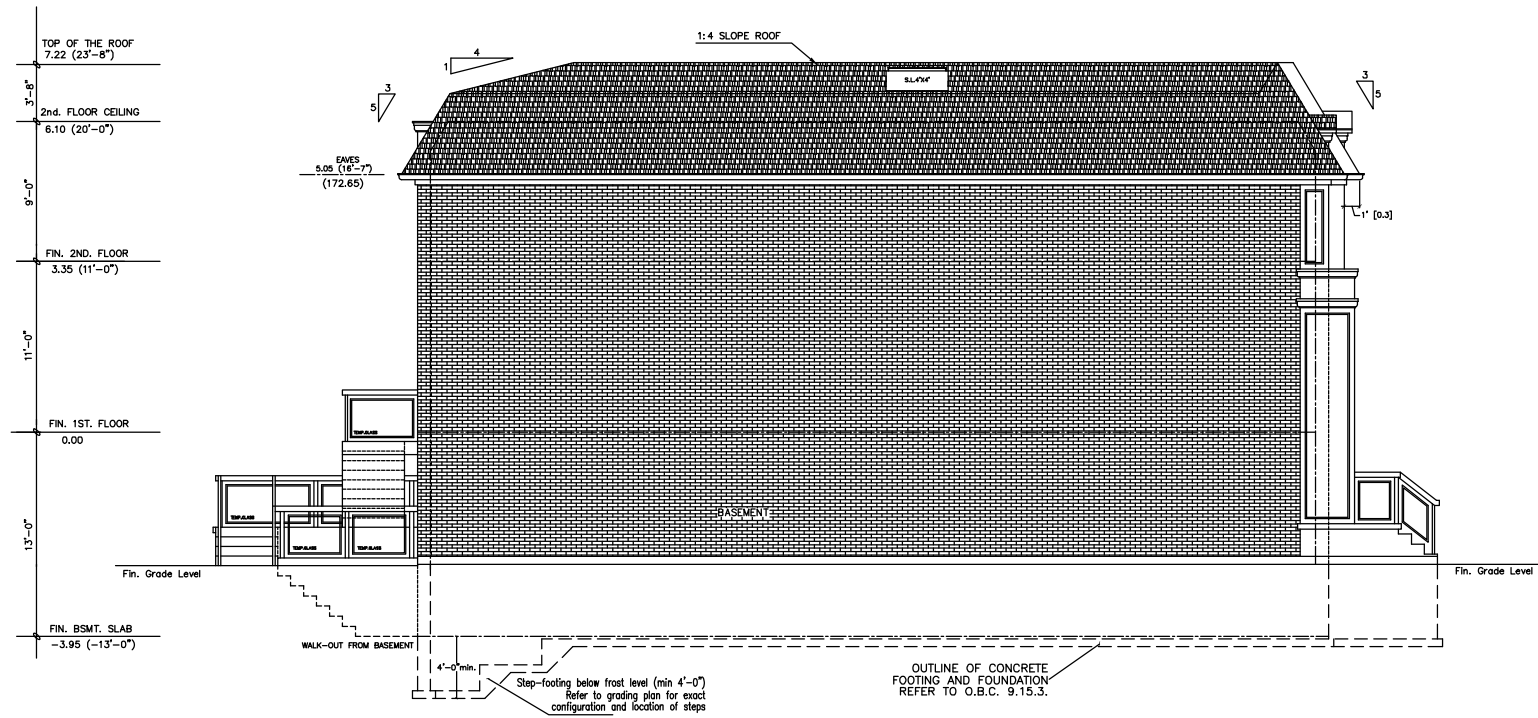
33 BELVEDERE CRES.
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ONTARIO, L4C 8W1
TEL. (905) 508-7436
FAX. (905) 508-7453

DRAWN BY J.M. CHECKED V.G.

SCALE 1/8" = 1' DATE JANUARY'19

PROJECT NUMBER R-19/11/18 A - 8

WEST ELEVATION



PRIVATE RESIDENCE
#200-B WANLESS AVENUE
CITY OF TORONTO, ON

WEST ELEVATION

GUITBERG GROUP INC.



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DRAWN BY	J.M.	CHECKED	V.G.
SCALE	1/8" = 1'	DATE	JANUARY'19

PROJECT NUMBER	R-19/11/18	A - 9
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