

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Thursday, October 17, 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): Jacques Hache

Applicant: Robert Green

Property Address/Description: 85 Torrens Avenue

Committee of Adjustment Case File: 18 270651 STE 14 MV (A1200/18TEY)

TLAB Case File Number: 19 140944 S45 14 TLAB

Hearing date: Tuesday, August 27, 2019

DECISION DELIVERED BY S. KARMALI

APPEARANCES

Appellant/Owner Jacques Hache

Appellant's Legal Rep. David Bronskill

Expert witness Tae Ryuck

INTRODUCTION

- [1] The subject property is located in the East York Broadview North community at a point east of Broadview Avenue, west of Pape Avenue, north of Cosburn Avenue, and south of O'Connor Drive. The subject property is designated Neighbourhoods in the City of Toronto Official Plan ('Official Plan') and zoned RD (f6.0; a185; d0.75) under Zoning By-law No. 569- 2013 & R1C (ZZC) under the Borough of East York By-law 6752.
- [2] The Appellant/Owner would like to construct a new three-storey flat-roof detached dwelling with a front third storey deck and a third storey courtyard, on the east side.
- [3] While this is a *de novo* hearing, the *Planning Act* requires the TLAB to give consideration to, among other things, provincial policy, prescribed statutory tests, and the decision and reasons of initial consideration: see Jurisdiction, below.

- [4] On April 3, 2019, the Toronto East York District Committee of Adjustment (COA) Panel decision refused the Appellant's variance application. The TLAB's online application filings show the written submissions made to the COA which were before the COA. The COA's Revised Notice of Decision indicates the COA also considered oral submissions made at its public meeting. I do not have such submissions before me, and, therefore, cannot have regard for them.
- [5] On April 16, 2019, the TLAB received a Notice of Appeal (Form 1) from the Appellant's legal representative David Bronskill. Mr. Bronskill provided an accompanying letter, which explains the Appellant's basis for appeal. The letter states the only evidence before the COA was in support of approval and it was unclear how the COA had any evidence before it to support its decision.
- [6] The Appellant's spouse was in attendance. The record will show she did not participate in the proceeding. The City did not appear and there were no other Parties, Participants or Persons in attendance.
- [7] I informed those in attendance I visited the subject property and surroundings, and had familiarized myself with the pre-filed application materials related to this matter on appeal.

MATTERS IN ISSUE

[8] The Appellant requests five variances with respect to building height, number of storeys, side yard setback, and front-yard soft landscaping to build a larger, new detached dwelling. There are four variances to By-law 569-2013, and one variance to By-law 6752. The five variances are identified in **Attachment A**, and in Table 1, as stated in the COA decision:

Table 1: List of Requested Variances

1. Chapter 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted building height is 7.2 m.

The new detached dwelling will have a height of 8.9 m.

2. Chapter 10.20.40.10.(4)(C), By-law 569-2013

The maximum permitted number of storeys is 2.

The new detached dwelling will have three-storeys.

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

The minimum required side yard setback is 0.9 m.

The new detached dwelling will be located 0.32 m from the west side lot line.

4. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (14.17 m^2) of the required front yard landscaping must be soft landscaping. In this case, 49% (9.34 m^2) of the required front yard landscaping will be soft landscaping.

5. Section 7.5.3, By-law 6752

The maximum permitted building height is 8.5 m.

The new detached dwelling will have a height of 8.9 m.

[9] The following conditions for the approval of the variances were identified before the COA. They are attached to this decision as **Attachment B**, and identified below in Table 2. The Community Planning Condition below indicates Revised Plans. These Plans are Exhibit 2 of the evidentiary record, and form **Attachment C** of this decision.

Table 2: Conditions

Community Planning Condition

1. The proposed dwelling be constructed substantially in accordance with the dimensions shown in drawings SK-07 (proposed roof plan), SK-10 (proposed east elevation) and SK-11 (proposed west elevation) in the revised plans received by the Committee on March 27, 2019 (the "Revised Plans"). The purpose of this condition is to ensure the step-ins are to be maintained and to prevent unduly severe main walls in case of future redevelopment.

Urban Forestry Conditions

- 2. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.
- [10] Does the minor variance application meet the required tests under the *Planning Act* and applicable provincial policy, as specified under 'Jurisdiction'?

JURISDICTION

[11] 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').

[12] 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

- [13] Mr. Bronskill called Tae Ryuck, a Registered Professional Planner, who I accepted as qualified to give independent expert opinion evidence in land use planning. Mr. Ryuck's qualifications and experience are further described in Exhibit 1: Expert Witness Statement. He read, completed and signed an Acknowledgement of Expert's Duty (Form 6).
- [14] Mr. Ryuck provided the sole source of viva voce evidence. There was no contrary evidence presented.
- [15] Mr. Ryuck stated the Appellant canvassed the neighbourhood and consulted with his neighbours. Mr. Ryuck testified, according to the Appellant, there were no opposing concerns raised by neighbours.
- [16] Mr. Ryuck testified Community Planning advised of concerns with the original application, which requested a building height of 9.9 m. He stated Community Planning recommended the building height request be reduced to 8.9 m, and that step-ins are incorporated from the front and the rear elevation so as to mitigate further impact of an increased flat-roof building height. He further stated Community Planning recommended the following condition:

The proposed dwelling be constructed substantially in accordance with the dimensions shown in drawings SK-07 (proposed roof plan), SK-10 (proposed east elevation) and SK-11 (proposed west elevation) in the revised plans received by the Committee on March 27, 2019 (the "Revised Plans").

- [17] He confirmed Community Planning staff have generally limited height variances in study area to 9 m.
- [18] Mr. Ryuck stated he selected his study area as the area bounded by O'Connor Avenue to the north, Pape Avenue to the east, Cosburn Avenue to the south and Broadview Avenue to the west. He stated the property is located on the south side of Torrens Avenue. He testified this study area is well-served by public transit. He indicated various land uses in the study area, namely apartment dwellings along Gamble Avenue and further down on Cosburn Avenue. He indicated commercial uses along the study area portion of Broadview Avenue, as well as commercial and office institutional centres along Pape Avenue.
- [19] Mr. Ryuck defined this study area as a tightly knit urban area with little separation distance between houses. He stated there are various lot areas and frontages, and a range of residential uses in terms of single-detached, semi-detached dwellings and walk up apartments. He explained there are one-storey, two-storey, and three-storey dwellings, different roof lines, a mix of flat roofs and pitched roofs, a mix of integral garages and parking pads, and newer homes. He stated the area is experiencing regeneration in the form of renovations, additions, and new development.

- [20] He specifically stated 81 Torrens Avenue is a three-storey dwelling with a pitched roof and a building height of 8.9 m. He stated that 72 and 72A Torrens Avenue are single-detached homes with smaller lot frontages with front-pad parking. He stated 67 Torrens Avenue is an existing home with an added third-storey to roof line. This home is located immediately next to a single-storey detached dwelling. He further stated 54 Torrens Avenue has a building height of 8.9 m, and a unique roof articulation.
- [21] He discussed varieties and ranges of physical characters along Woodville Avenue, a street just north of the subject property, and Hassard Avenue, a street perpendicular to Torrens Avenue to the north.
- [23] He opined about the depth of the proposed step backs. On the west elevation, at the front, there is a proposed step back of 1.506 m. Another step back of 1.506 m is proposed for the rear of the dwelling. He further opined these step backs are significant to break the impact of massing.
- [24] Mr. Ryuck testified the proposal does not have issues which rise to the level of provincial concern. He stated the proposal is consistent with the applicable policies of the PPS and in conformity with the Growth Plan. He elaborated the proposal represents modest intensification to make more efficient use of a property. The proposal does not cause any undue impacts to the area of neighboring properties.
- [25] He further testified the proposal maintains the general intent and purpose of the Official Plan. Mr. Ryuck confirmed the Official Plan has a cornerstone policy, which is to ensure new development in neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood. He explained the proposed dwelling introduces a building envelope which is in keeping with the neighbourhood context. He stated the neighbourhood is experiencing regeneration and intensification in the form of redevelopments and additions.
- [26] As the Appellant proposes a new development, Mr. Ryuck provided expert opinion on how development criteria (in 4.1.5 of the Official Plan as modified by OPA 320) can be assessed to meet the test of respecting and reinforcing the existing physical character of the neighbourhood.
- [27] He pointed out what he believed to be the applicable development criteria: (c) heights, massing, scale and dwelling type of nearby residential properties; (d) prevailing building type(s); (e) setbacks of buildings from the street or streets; (f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- [28] Although the 2018 Committee of Adjustment Application shows a date of December 20, 2018 online, the Application itself was technically signed by the Appellant/Owner on October 18, 2018, prior to the Local Appeal Planning Tribunal settlement decision which led to Official Plan Amendment 320. I left it to Mr. Ryuck to discuss the (c) and (e) criteria in the context of prevailing, which would mean most frequently occurring.

- [29] Mr. Ryuck recognized the neighbourhood as containing a mix of physical characters. In respect of criterion (c), he stated 67 Torrens Avenue, and 81 Torrens Avenue are each three storeys by way of addition to the existing building. He opined the number of storeys does not necessarily dictate massing. A better measure, he said, is height. He provided the example of a dwelling with an integral garage, which can be technically considered a two-storey dwelling. He stated 103 Torrens Avenue is a two-and-a-half-storey dwelling with an integral garage, and an overall building height greater than or equal to 8.9 m. He contrasted this with 42A, 42B and 44 Torrens Avenue of which each has an integral garage and at an-grade entrance, which renders them three-storey buildings with building height of greater or equal to 8.9 m. Mr. Ryuck concluded there is more than a mere presence of three storey dwellings in the immediate context of the geographic neighbourhood. He stated the prevailing character in terms of storeys is in transit.
- [31] Mr. Ryuck provided expert opinion for criteria (d), (e), and (f). He stated a single detached dwelling is consistent in form and massing with the predominant building type in the area. He further stated the proposal complies with the front yard setback requirement and will maintain the existing setback from the street. He confirmed the proposed side yard setbacks maintain the current side yard setbacks of the existing dwelling. He testified the prevailing pattern is that the majority of existing homes do not meet the side yard requirement of 0.9 m. Mr. Ryuck opined about landscaped open space. He stated minimal front yard landscaping is characteristic of the neighbourhood.
- [32] He stated the orientation, scale and massing of the proposed dwelling is consistent with many other homes within the neighbourhood. The proposal will reveal a consistent streetscape. He opined the proposed dwelling reflects the general physical patterns of the neighbourhood. He further opined the requested variances individually and cumulatively meet the general intent and purpose of the Official Plan.
- [33] Mr. Ryuck stated the general intent of the City zoning by-laws is to ensure compatible built form within the area and to ensure there are no unacceptable adverse impacts on the streetscape or on adjacent properties.
- [34] With respect to the first and fifth variances of building height, Mr. Ryuck opined the effect of massing is mitigated by incorporating step-ins from the front and rear walls, as recommended by Community Planning. He stated the proposed front and rear walls are in line with the walls of adjacent dwellings and, therefore, will not result in unacceptable or unexpected adverse impacts in terms of view, privacy, shadows and massing within the tight urban area.
- [35] With respect to the second variance of the number of storeys, Mr. Ryuck stated the proposed dwelling will not protrude over other dwellings in the neighbourhood. The proposal is consistent with other homes in the area and will contribute to a consistent streetscape.

- [36] With respect to the third variance of the side yard setbacks, Mr. Ryuck stated a variance request is required for the west side yard setback. He testified the request generally reflects the existing condition and is therefore a technical request. He opined the east side yard setback is compliant with the Zoning By-law at 1.13 m.
- [37] With respect to the fourth variance of front yard landscaping, Mr. Ryuck stated the limited size of the front yard limits the availability for landscaping, which is the result of the parking pad and mutual driveway. He stated the proposal will maintain the existing condition of front yard landscaping and soft landscaping. He testified this variance, if accepted, would not disrupt the streetscape. He opined the intent of compatible built form does not mean the same.
- [38] Mr. Ryuck stated the variances, in his opinion, individually and cumulatively meet the general intent and purpose of Zoning By-law 569-2013, and the former Borough of East York Zoning By-law 6752.
- [39] He testified the requested variances are desirable for the appropriate development and use of the land and its surrounding context. He stated the proposal will not create any additional or excessive shadows or overlook which would be uncharacteristic of the existing context. He further stated the scale, massing and size has been designed with sensitivity, and does not represent over-development.
- [40] Mr. Ryuck testified the requested variances are individually and cumulatively minor in nature. He stated the test for minor is not whether there is no impact. Rather, it is whether the impact is unacceptable. He opined some amount of impact is considered acceptable and expected in an urban setting, especially in tight urban areas like the one of the subject property. He further opined the proposal has been carefully designed to be mindful of height. He pointed out there are no built form variances for density, building length or building depth.

ANALYSIS, FINDINGS, REASONS

- [41] The subject property, as mentioned, is zoned RD (f6.0; a185; d0.75). There are no built form variances for lot frontage, lot area, and floor space index before me.
- [42] The Appellant has taken steps to reduce the impact of massing caused by this three-storey dwelling. The Appellant has also taken steps to ensure a result of similar roof lines.
- [43] I have accepted Mr. Ryuck's uncontradicted expert testimony. I do not believe I need to repeat it for analysis.
- [44] Based on the evidence, the requested variances for the proposed minor variance application are consistent with the policy direction in the PPS and policies of the Growth Plan, as these policies promote intensification within built up areas.

- [45] In my view, I conclude the variances individually and cumulatively have met the four tests of the *Planning Act*.
- [46] With conditions attached, I find the proposal sensitive, gradual and fits into the character of the neighbourhood.

DECISION AND ORDER

[47] The decision of the Committee is set aside and the requested variances listed in Attachment A are approved subject to the conditions set out in Attachment B and the revised plans set out in Attachment C, again, to which construction shall be in substantial compliance.

X

S. Karmali

Panel Chair, Toronto Local Appeal Body

San Kagruh

ATTACHMENT A: LIST OF REQUESTED VARIANCES

1. Chapter 10.20.40.10.(4)(A), By-law 569-2013

The maximum permitted building height is 7.2 m.

The new detached dwelling will have a height of 8.9 m.

2. Chapter 10.20.40.10.(4)(C), By-law 569-2013

The maximum permitted number of storeys is 2.

The new detached dwelling will have three-storeys.

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

The minimum required side yard setback is 0.9 m.

The new detached dwelling will be located 0.32 m from the west side lot line.

4. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (14.17 m^2) of the required front yard landscaping must be soft landscaping. In this case, 49% (9.34 m^2) of the required front yard landscaping will be soft landscaping.

5. Section 7.5.3, By-law 6752

The maximum permitted building height is 8.5 m.

The new detached dwelling will have a height of 8.9 m.

ATTACHMENT B: CONDITIONS

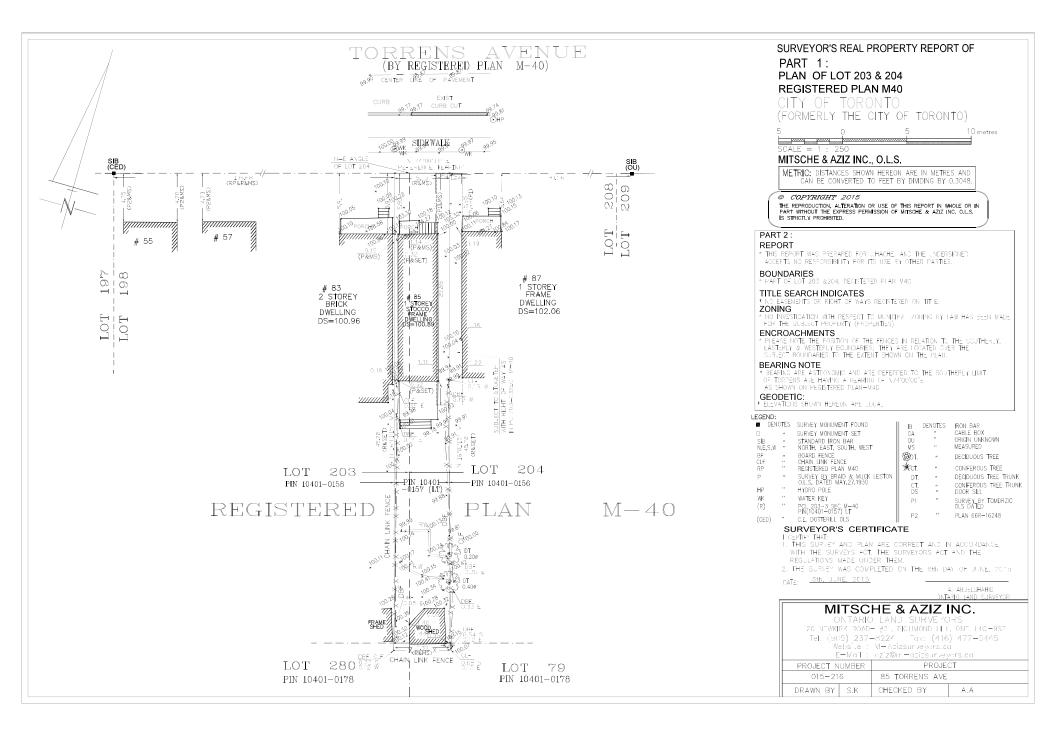
Community Planning Conditions

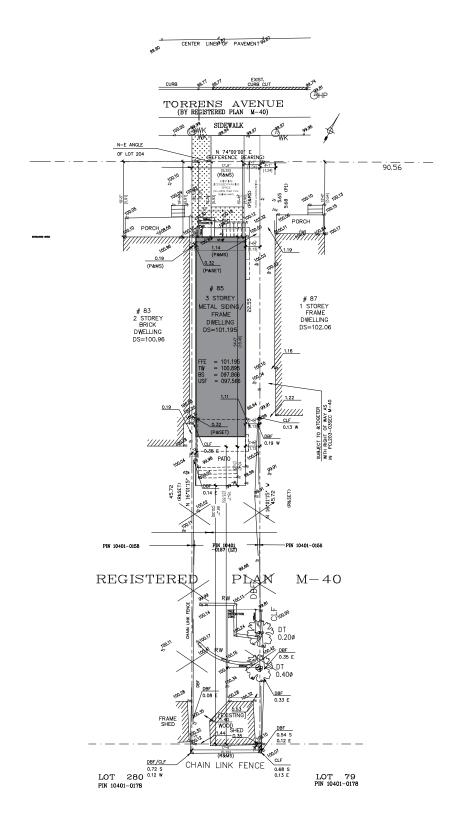
1. The proposed dwelling be constructed substantially in accordance with the dimensions shown in drawings SK-07 (proposed roof plan), SK-10 (proposed east elevation) and SK-11 (proposed west elevation) in the revised plans received by the Committee on March 27, 2019 (the "Revised Plans"). The purpose of this condition is to ensure the step-ins are to be maintained and to prevent unduly severe main walls in case of future redevelopment.

Urban Forestry Conditions

2. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

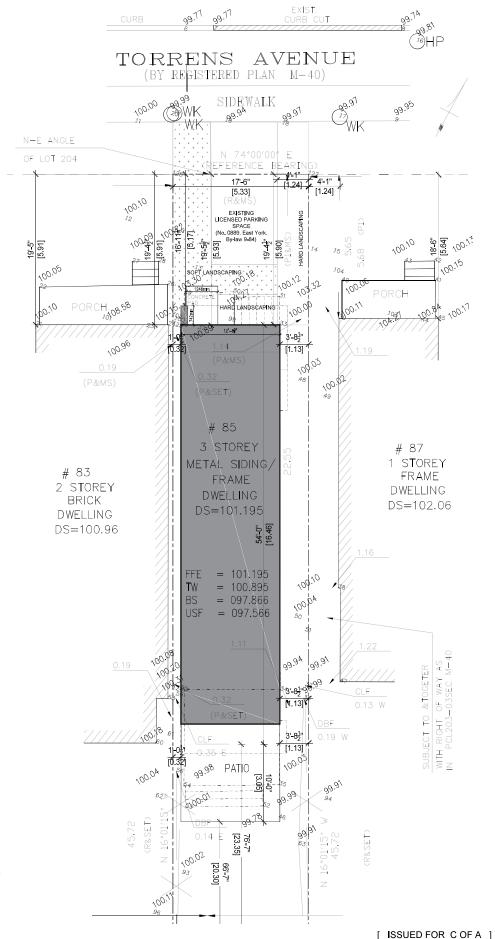
ATTACHMENT C: REVISED PLANS



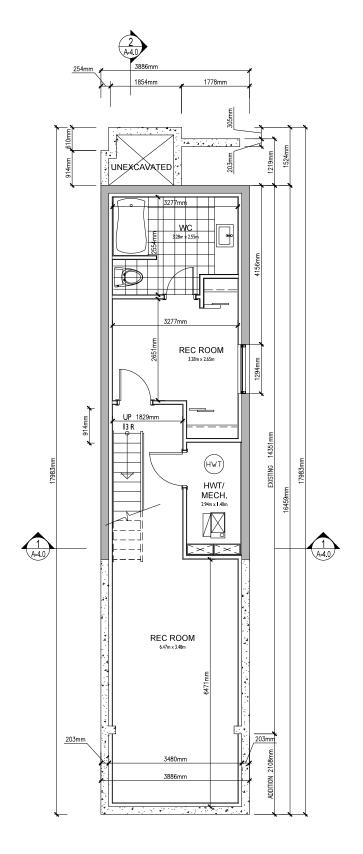




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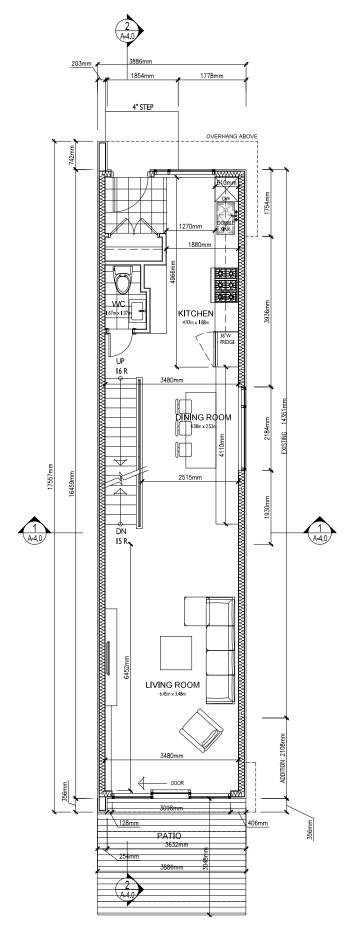
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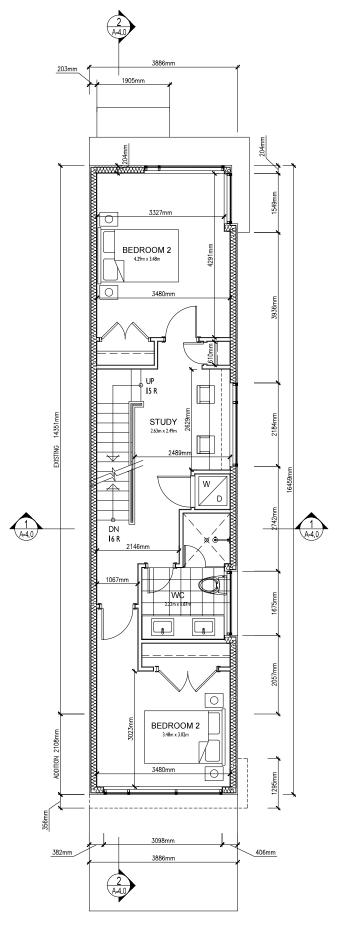


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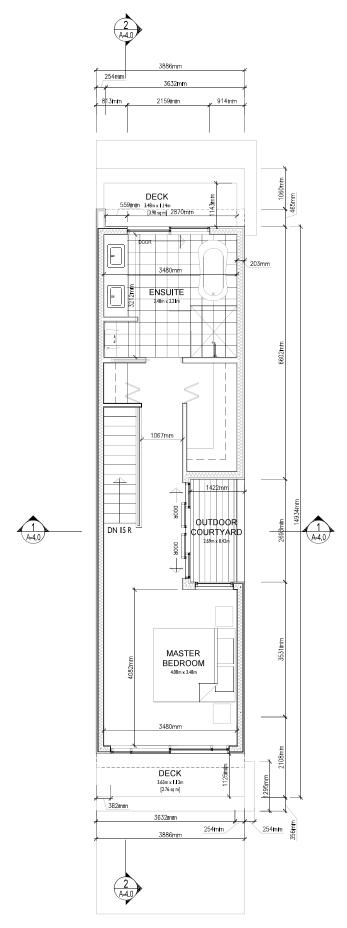


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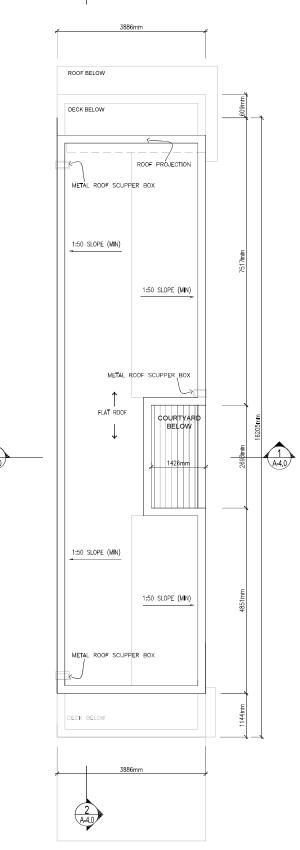
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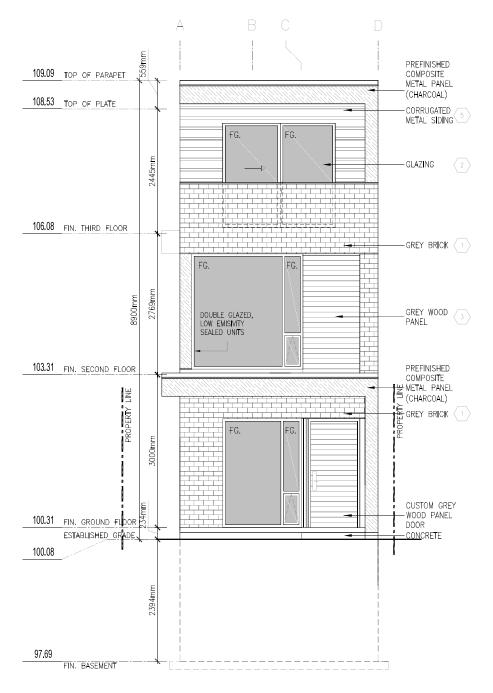
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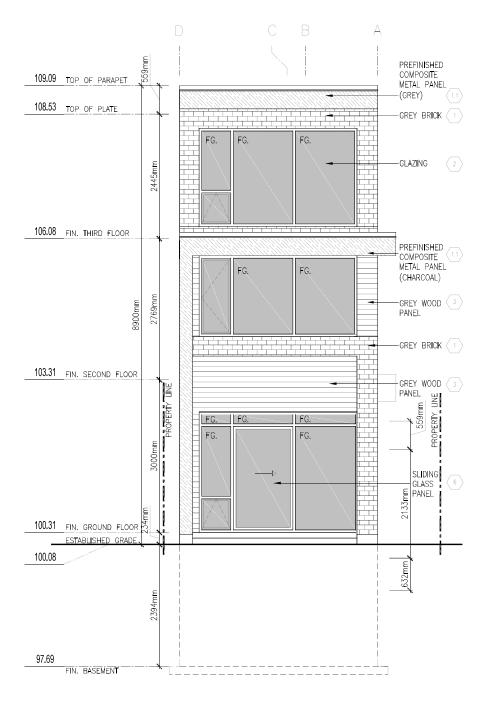


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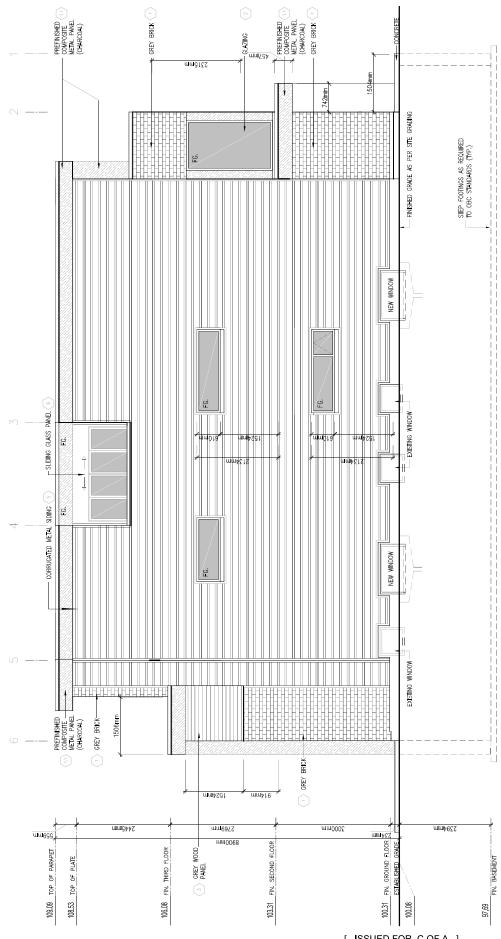


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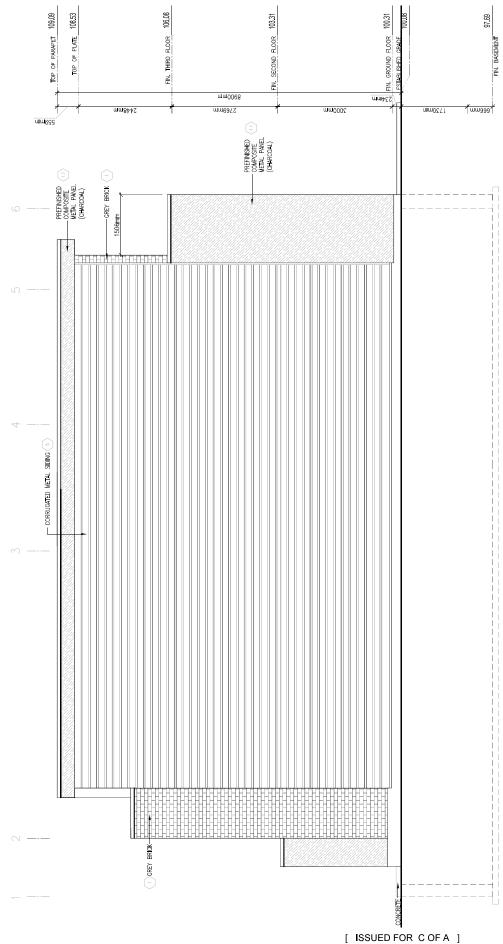


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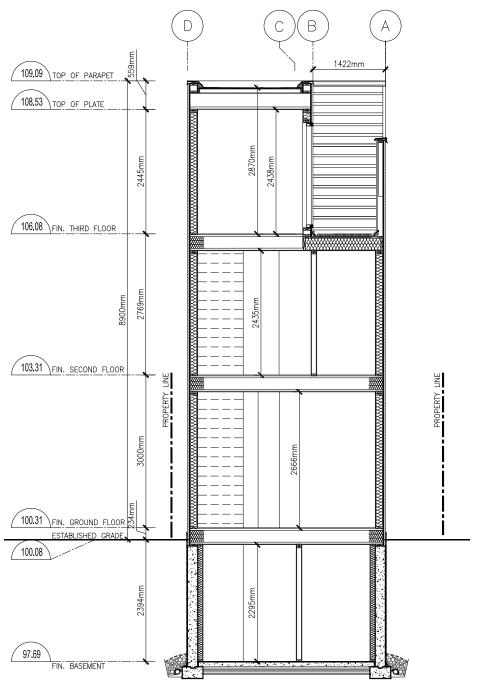
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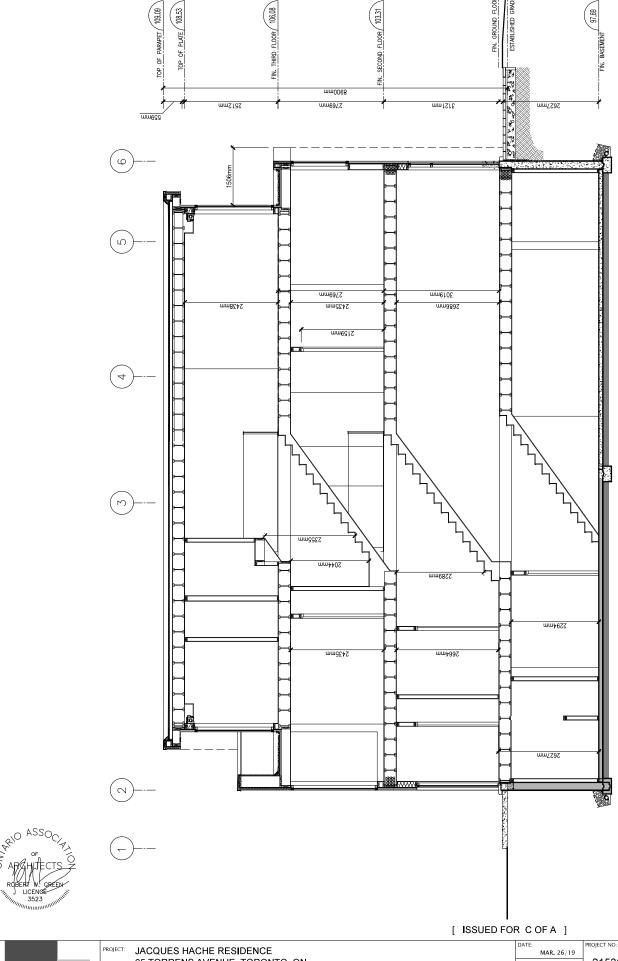
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SITE STATISTICS

85 TORRENS AVENUE, TORONTO, ON PART 1: PLAN OF LOT 203 & 204 REGISTERED PLAN M40 CITY OF TORONTO (FORMERLY CITY OF NORTH YORK)

 ZONING CLASSIFICATION
 RD(f6.0) (d0.75)

 TOTAL EXISTING LOT AREA
 243.65 SM (2622.74 SF)

 GFA (PROPOSED)
 177.41 SM (1909.58 SF)

 DENSITY (PROPOSED)
 72.8% OF LOT AREA

EXISTING GFA

BASEMENT FLOOR AREA [55.66 SM (599.20 SF)]
GROUND FLOOR AREA 55.66 SM (599.20 SF)
TOTAL EXISTING G.F.A. 55.66 SM (599.20 SF)

PROPOSED ADDITION GFA

BASEMENT FLOOR AREA [21.227 SM (228.49 SF)]
GROUND FLOOR AREA 9.83 SM (92.3 SF)
SECOND FLOOR AREA 63.21 SM (680.41 SF)
THIRD FLOOR AREA 49.95 SM (537.67 SF)
TOTAL PROPOSED G.F.A. 121.74 SM (1310.38 SF)

PROPOSED BUILDING GFA (EXISTING + ADDITION)

BASEMENT FLOOR AREA [63.96 SM (89.3 SF)]
GROUND FLOOR AREA 64.24 SM (691.5 SF)
SECOND FLOOR AREA 63.21 SM (680.41 SF)
THIRD FLOOR AREA 49.95 SM (537.67 SF)
TOTAL BUILDING G.F.A. 177.41 SM (1909.58 SF)

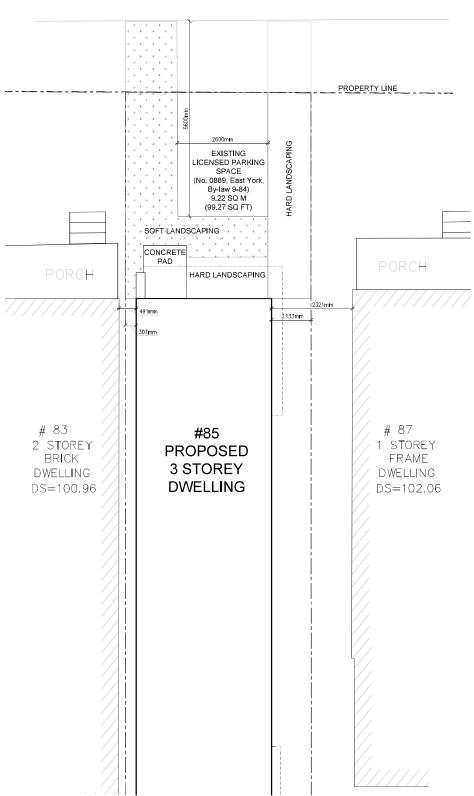
HEIGHT OF BUILDING (PROPOSED) (FROM ESTABLISHED GRADE (@ FRONT GRADE TO TOP OF PARAPET) 8.90 M (29'-2")



CG architects	PROJECT:	JACQUES HACHE RESIDENCE 85 TORRENS AVENUE, TORONTO, ON.	DATE: MAR. 26/19 SCALE: N/A	PROJECT NO: 21530
	DRAWING:	SITE STATISTICS	DWN BY: HM/MC CHK BY: RG	DWG. NO: SK-14

TORRENS AVENUE
(BY REGISTERED PLAN M-40)

SIDEWALK



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C G architects	JACQUES HACHE RESIDENCE 85 TORRENS AVENUE, TORONTO, ON.	DATE: MAR. 26/19	PROJECT NO:
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