

DECISION AND ORDER

Decision Issue Date: Friday, September 27, 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): Felix Leicher

Applicant: Felix Leicher

Property Address/Description: 33 Fernwood Park Ave

Committee of Adjustment Case File: 17 239907 STE 32 MV (A1046/17TEY)

TLAB Case File Number: 18 144824 S45 32 TLAB

Hearing date: Monday, June 24, 2019

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
Felix Leicher	Appellant	Mark Kemerer
Gord Holtam	Party	Kathleen Coulter
Allan Venema	Party	
Paul Johnston	Expert Witness	
Robert Brown	Expert Witness	
Janet Moorfield	Witness/Participant	
Michael McHenry	Witness	
Garry Carr	Witness	
Todd Wilson	Participant	
Name	Role	Representative

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 18 144824 S45 32 TLAB**

Marlene Oleniuk	Participant	
Valerie Bourne	Participant	
June Clark	Participant	
Diane Carr	Participant	
Maria Crawford	Participant	
Michael Pillon	Participant	
Mary Hiron	Participant	
Dani Petch	Participant	
Nazifa Djafarova	Participant	
Adriane Lam	Participant	
David Wuebbolt	Participant	
Alexandra Jacobs	Participant	
Judith Wells	Participant	
Maureen Mckee	Participant	
Luanne Pucci	Participant	
Maisaa Abdalrahmanalaraj	Participant	
Ralph Detko	Participant	
Elisa Moolecherry	Participant	
Karen Macmillan-Wuebbolt	Participant	
Lise Desrochers	Participant	
Susan Walker	Participant	
David Toto	Participant	
Ruth Hayes	Participant	
Danielle Telford	Participant	
Name	Role	Representative
Frank Yee	Participant	

Adrianus Van Den End	Participant
Elan Desrochers-O'Sullivan	Participant
Janine De Vries	Participant
John Cowdery	Participant
Kristin Holtam	Participant
Linda Speers	Participant
Martin Ralph	Participant
Michael O'Sullivan	Participant
Rachel Beatty	Participant
Steve Bain	Participant
Barbara Cooper	Participant
Michael McHenry	Participant
Donald Collinson	Participant
Sandy Walker	Participant
David Swadden	Participant
Rebecca Mollemann	Participant
James Lim	Participant
Michaela Jergentz	Participant
Kelvin Yu	Participant

INTRODUCTION

This is an appeal by the owner of property of a decision of the Committee of Adjustment refusing minor variances to permit a pair of three story semi-detached dwellings, located one behind the other, on one lot, with the entrance to each dwelling fronting on the street. .

BACKGROUND

The appeal was opposed by approximately fifty neighbours in the area, including Mr. Holtam, the owner of the property to the north of the site and Mr. Venena owner of the property to the south, both of whom had party status. The variances being sought are with respect to frontage, density and driveway width. The concerns of those in opposition focussed on whether the proposal fit in the neighbourhood and the impact that it would have on neighbouring properties.

MATTERS IN ISSUE

The matters in issue relating to neighbourhood fit were: whether two semi-detached dwellings, located one behind the other on the same lot, fit within this neighbourhood, and whether the character and design and massing of the building fit. Those matters relating to impact related to the shadowing of, and the loss of privacy for properties to the side and rear. No significant issue was raised respecting driveway width.

JURISDICTION

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

Moreover, 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

Evidence was presented in opposition by numerous participants, the parties in opposition and Mr. Brown who was qualified to give expert opinion evidence as a result of his many years on the City of Toronto's Committee of Adjustment. The evidence in support was presented by Mr. Johnston, a qualified planner, retained by the appellant and Ms. Major, a planner employed by the City of Toronto and subpoenaed by the appellant.

The evidence of those in opposition was passionate and intense. They did not believe the proposed building would fit in their neighbourhood and they were concerned

that there were no other semi-detached dwellings, one behind the other, on the same lot in the neighbourhood. Their evidence was that if the proposed building is to be divided vertically, like other semi-detached dwellings each dwelling should be on a separate lot. If the two units were to be on one lot they should be divided horizontally and be one above the other. They were also concerned that the proposed building would be larger than the building which exists on the lot currently and that it would be a new building on a street which was made up of old buildings with additions rather than “new builds”. As a result they were opposed to granting the variance for lot frontage which allowed the two semi-detached dwellings to front on a lot which was substandard and to the granting of the variance for FSI which allowed a large three story building.

With respect to impact their concerns were equally serious. The neighbours to the north and south to the south believed their properties would overshadowed by the proposed dwellings and that their loss of sunlight would be significant as did the tenants in those properties. The neighbours to the rear feared a loss of privacy as a result of the rear unit facing the rear yard. There was a general concern that the proposed building would be larger than the existing old building.

The evidence of both planners for the appellant was, not surprisingly, contrary to that of those in opposition. Their evidence focused on the character of the neighbourhood being one of a mixture of dwellings including multi-unit buildings with entrances facing the street. Indeed, there is a multi-unit apartment complex in the neighbourhood. Their evidence was that the proposed building would respect and reinforce that character. The proposed building would have two entrances facing the street and would not appear significantly different from other dwellings and, indeed, would be very similar to an existing building with two front doors. They did not find the massing or height to be out of character in the neighbourhood.

There are no variances being sought for height, length or side yard setbacks. The FSI was not out of keeping with some densities in the area. A plan, showing an as of right building, demonstrated that the proposal would have no greater impact than an as of right building in terms of shadow and privacy. The lack of side yard and rear yard setback variances, Mr. Johnston stated, demonstrated the lack of impact. Finally, the evidence showed many different lot frontages, including ones of the proposed size, or less. It was also Mr. Johnston’s uncontradicted evidence that the variances conform to the PPS and the Growth Plan

ANALYSIS, FINDINGS, REASONS

I find that the variances meet the four tests of the Planning Act and are consistent with and conform to the PPS and the Growth Plan, respectively, and that therefore the appeal should be allowed.

They meet the general intent of the official plan because they provide for a building which respects and reinforces the character of this neighbourhood. I visited the

neighbourhood and saw that the neighbourhood has numerous multi-unit dwellings including a multi-unit apartment building. It has buildings of differing heights and scale. The proposed semi-detached dwelling respects and reinforces that character. Moreover, my view of the neighbourhood leads me to conclude that, whether a second unit is located above or beside another unit on the same lot or on another lot, makes no significant difference to that character. I find that two entrances to two dwellings on the same lot is not out of keeping with the character and does not impede the goal of “eyes on the street”. Given the variety of lot frontages, the variance respecting lot frontage respects and reinforces the character as well. In my view the driveway width is not a noticeable variance and was not raised as a significant issue.

In my view the general purpose of the zoning bylaw is to implement the policies of the Official Plan. The variances to the zoning bylaw will respect and reinforce the character of the area. The bylaws, however, are also to prevent an adverse impact on neighbouring properties. The evidence demonstrates that the proposal has no greater impact than a building permitted under the zoning bylaw without the variances. Therefore the variances have no adverse impact and meet this test.

As a result of the above analysis, I find that the variances are also appropriate and minor as the building will fit into the neighbourhood and has no impact beyond what could be built as of right.

In conclusion the variances also conform with the PPS and the Growth Plan and individually and cumulatively meet the four tests of the Planning Act .

DECISION AND ORDER

The appeal is allowed and the variances set out in Appendix 1 are approved on the condition that construction is substantially in accordance with the site plan and elevation set out in Appendix 2.

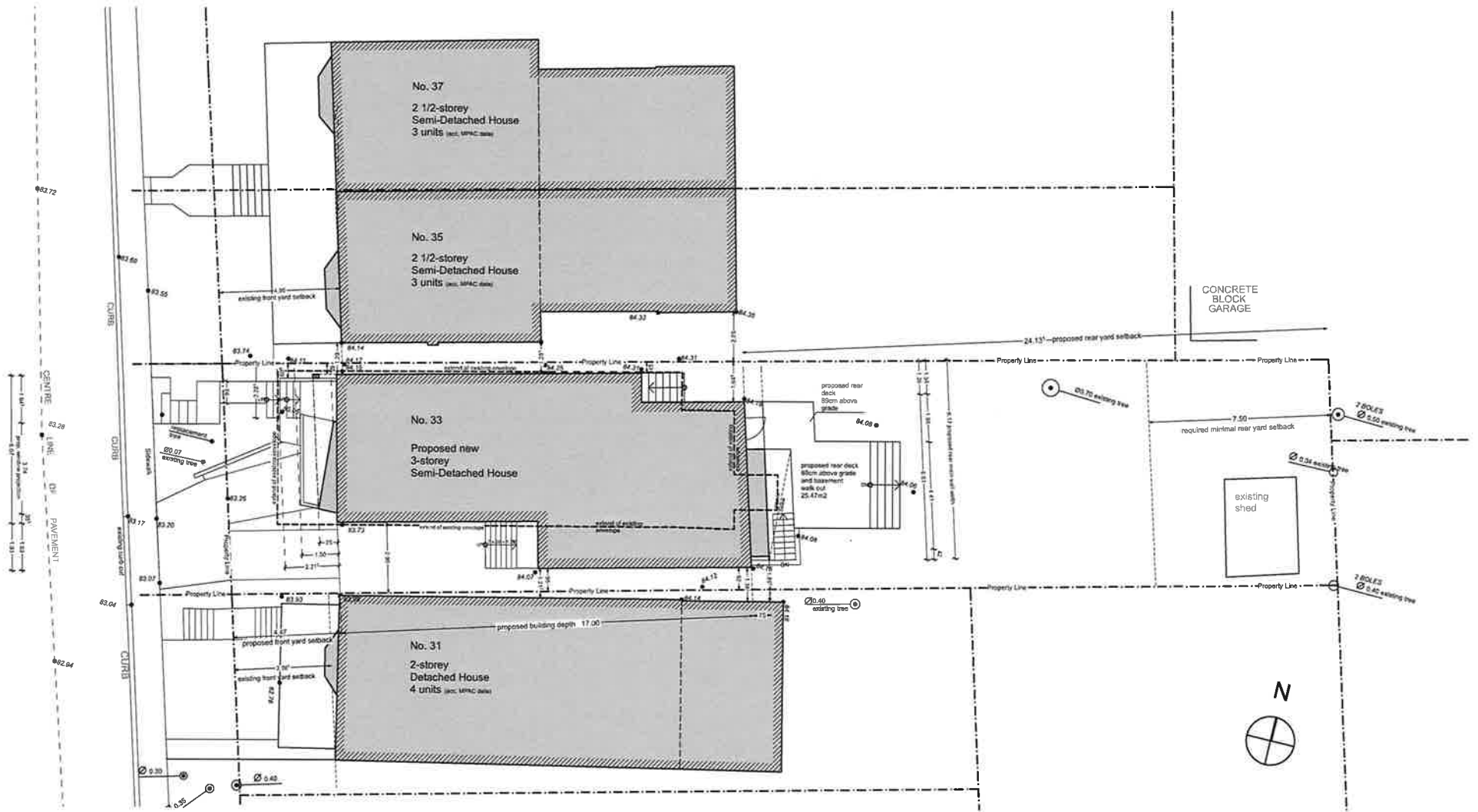
X 

S. Makuch
Panel Chair, Toronto Local Appeal

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 18 144824 S45 32 TLAB**

Appendix 1: the 3 variances in the Zoning Notice in The Applicant's Disclosure Book 2 filed by M. Kemerer June 29 ,2018, Tab 21

Appendix 2: the elevations and site plan for 33 Fernwood prepared by the owner in Applicant's Disclosure Book 2 filed by M. Kemerer June 29, 2018, Tab 21



drawings prepared by owner

33 Fernwood Park Ave

Date: 31.05.18
 Sheet Title: Proposed Site Plan
 Scale: 1:150



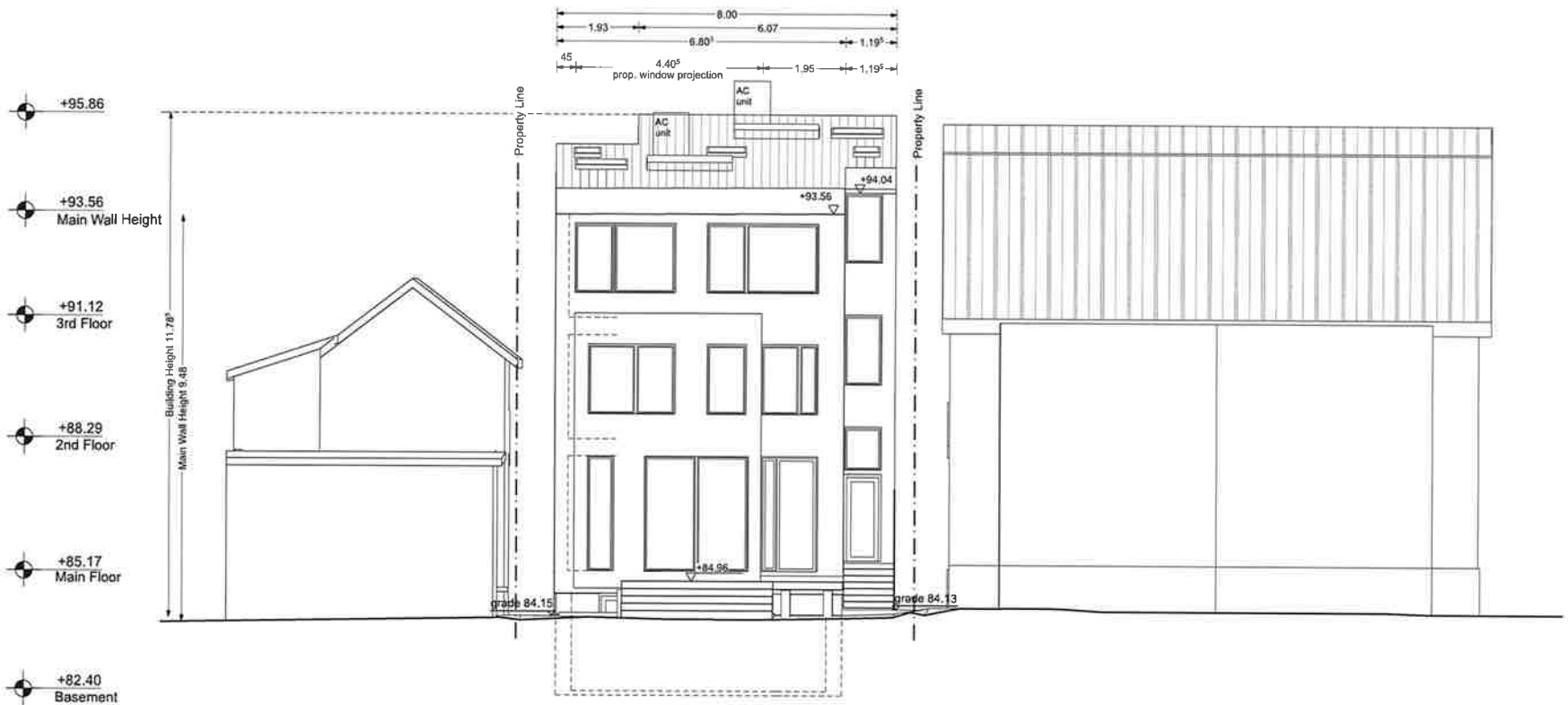
33 Fernwood Park Ave

Date: 31.05.18

Sheet Title: Proposed Elevation West/Front

Scale: 1:100

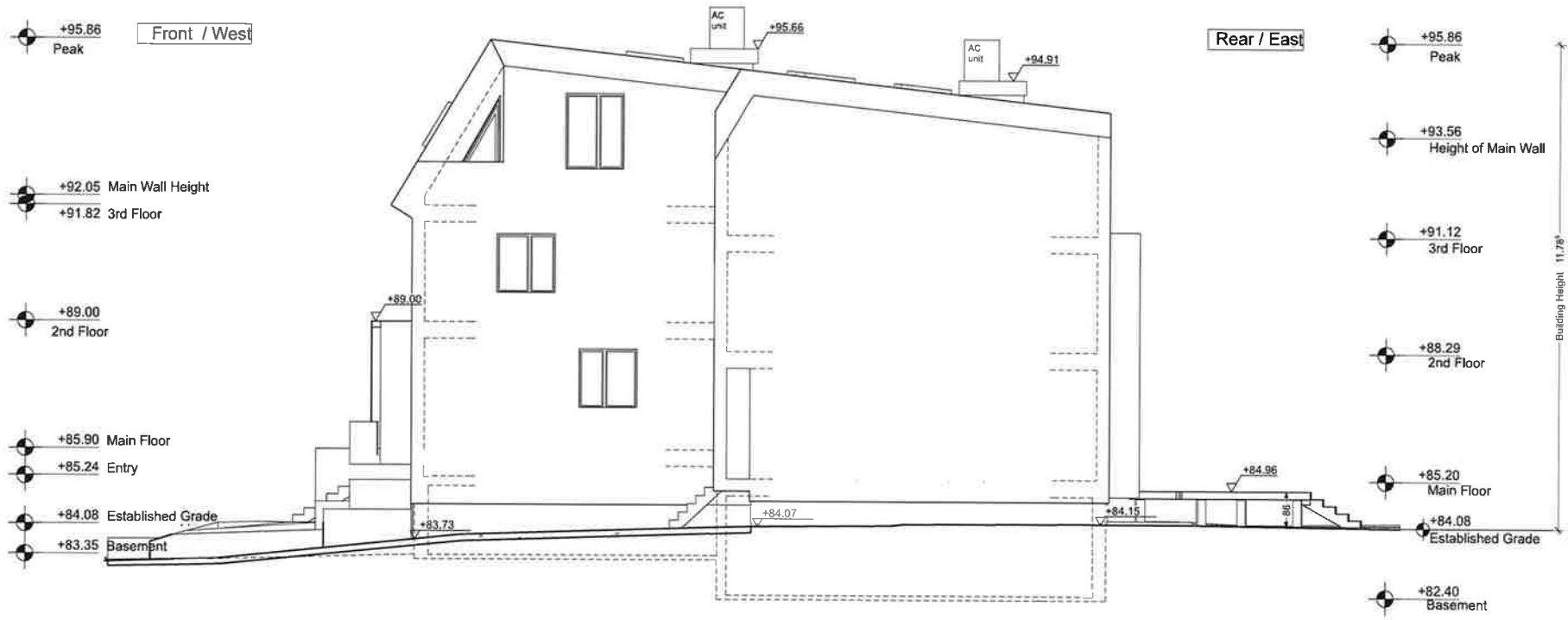
drawings prepared by owner



drawings prepared by owner

33 Fernwood Park Ave

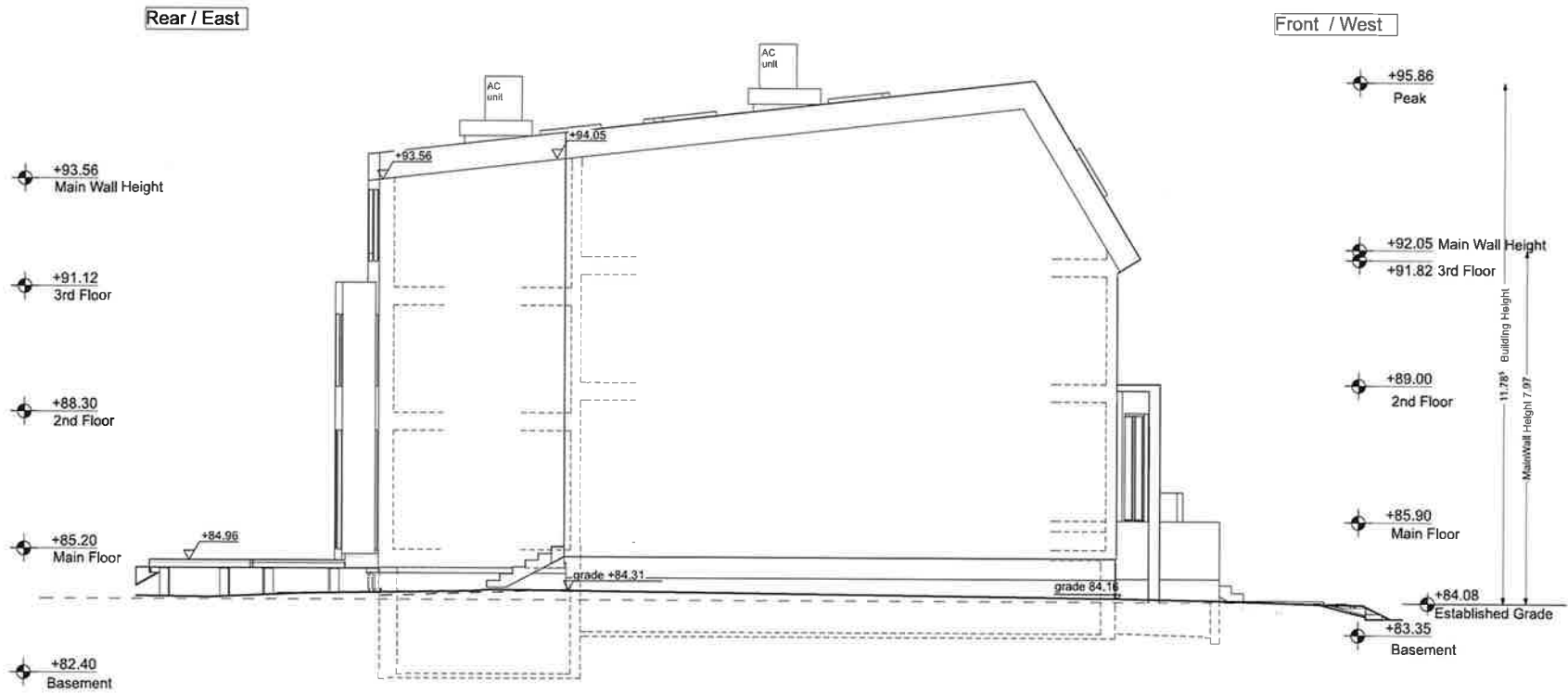
Date: 31.05.18
 Sheet Title: Proposed Elevation East/Rear
 Scale: 1:100



drawings prepared by owner

33 Fernwood Park Ave

Date: 31.05.18
 Sheet Title: Proposed Elevation South
 Scale: 1:100



drawings prepared by owner

33 Fernwood Park Ave

Date: 31.05.18
 Sheet Title: Proposed Elevation North
 Scale: 1:100

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1. C)(i) The required minimum lot frontage for a semi-detached house is 6 metres for each dwelling unit, a total of 12m frontage is required. The proposed lot frontage is 9.48 metres.

[10.10.30.20.(1) Minimum Lot Frontage]

2. A) The permitted maximum floor space index is 0.6 times the area of the lot: 256.38 square metres. The proposed floor space index is 0.908 times the area of the lot: 388.06 square metres.

[10.10.40.40.(1) Floor Space Index]

3. (C) For a detached house, semi-detached house, or duplex, and for an individual townhouse dwelling unit if an individual private driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard may be for lots with a lot frontage of 6.0 metres to 23.0 metres inclusive, or a townhouse dwelling unit at least 6.0 metres wide, a maximum of 3.2 metres wide (width of one of the parking spaces). The proposed driveway is 5.12 metres at widest point. The North driveway is 2.04m width and the South driveway is 2.02m in width.

[10.5.100.1.(1) Driveway Width in the Front Yard for Certain Residential Building Types]
