

## DECISION AND ORDER

**Decision Issue Date:** Friday, September 27, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CITY OF TORONTO

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 36 MCNAB BLVD

Committee of Adjustment Case File: 17 271221 ESC 36 CO, 17 271225 ESC 36 MV, 17 271231 ESC 36 MV, 18 168457 000 00 OA

**TLAB Case File Number: 18 168454 S53 36 TLAB, 18 168497 S45 36 TLAB, 18 168501 S45 36 TLAB**

**Hearing date:** Friday, July 26, 2019

**DECISION DELIVERED BY STANLEY MAKUCH**

### APPEARANCES

Name	Role	Representative
Rubinoff Design Group	Applicant	
Melissa Spencer	Owner/Party	Amber Stewart
Andrew Spencer	Primary Owner	
City of Toronto	Appellant	Kasia Czajkowski
Catherine Spears	Expert Witness	
TJ Cieciura	Expert Witness	

## **INTRODUCTION**

This is an appeal of decisions of the Committee of Adjustment, by a neighbouring property owner, Mr. Holland, and the City of Toronto. The decisions approved a consent and minor variances to permit the division of a lot in the Cliffcrest Neighbourhood of the former City of Scarborough into two and to construct a new two story dwelling on one lot and to maintain an existing single family dwelling on the retained lot.

## **BACKGROUND**

The variances are set out in Appendix 1 and relate to: 1) lot frontages for both lots which are narrower than required by the zoning bylaw, 2) lot areas for both lots which are smaller than required, 3) a floor area of the dwelling on the new lot which is greater than permitted, 4) a rear yard setback and driveway access which is to be maintained as existing for the dwelling on the retained lot, and 5) permission for a second suite in the dwelling on the retained lot.

## **MATTERS IN ISSUE**

The matters in issue firstly related to whether the frontage and size of the proposed lots, as well as the size of the proposed new dwelling meet the requirements of the Official Plan; that is whether the proposal, as a whole, to divide the existing lot and construct an additional dwelling on the new lot respects and reinforces the physical character of the neighbourhood. There were two additional concerns: whether the new driveway access for the new dwelling would create a dangerous situation, and whether there would be an adverse impact resulting from the new dwelling in terms of loss of privacy and loss of view.

## **JURISDICTION**

TLAB's jurisdiction relates to three discrete areas; Provincial Policy and the Growth Plan, the consent provisions of the Planning Act and the four tests for a minor variance under the Planning Act.

require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision

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**

The evidence was lengthy and detailed and presented by four witnesses. It is set out in considerable detail in the written submissions of the City and the Appellants and I will not repeat it in detail. It may be summarized as follows.

The planning witness for the City was Ms. Spears, a qualified planner, who was retained as an outside consultant to give evidence in opposition to the proposal. Mr. Holland, the abutting neighbour to the north of the property, and Ms. Meyhew, who lived to the northeast of the property, both gave evidence in opposition as well. Mr. Cieciura, also a qualified planner, was retained by the appellant and gave evidence in support of the proposal.

Much of the evidence of the planners focused on whether the proposal would reinforce and respect the neighbourhood as this was the most contentious issue. Ms. Spear's evidence was that the neighbourhood was not the Cliffcrest neighbourhood but a portion of it to the east of the subject property. Her "neighbourhood" was an area made up primarily of lots larger than those proposed and thus a "neighbourhood" which would not be respected and reinforced by the consent and variances. She excluded portions of the neighbourhood to the west and south where there are smaller lots and homes and, indeed, did not find that smaller properties on an abutting street were in the neighbourhood. Her evidence was that the neighbourhood should be determined largely by reference to plans of subdivision and lots of similar frontage and size and not by reference to the schools or parks within it, or the access to it.

Based on her evidence the variances to permit lots of the size and frontage proposed would not respect and reinforce the physical character of the "neighbourhood" as they were too small and thus were contrary to the Official Plan. Moreover, her evidence was that the building type was different in her "neighbourhood" from that in the surrounding area. Her evidence was similarly selective in finding that in the smaller area around the proposed site there were no lots of a similar size and, thus, she excluded an abutting property to the east, properties across the street to the south and properties to the north on the same street in her determination that the variances and

consent did not conform with the provisions of a recent Amendment to the Official Plan, OPA 320.

She also gave evidence that the proposal was contrary to the Official Plan in that it would result in damage to the existing forest canopy as a healthy tree would be destroyed. She was also concerned about the loss of the lush green appearance of the site. In addition, her evidence raised the specter of precedence and the resulting destabilization of the “neighbourhood”.

Mt. Holland raised the issue of loss of privacy as a result of having a new lot created and a house built on it next to his. He also stated that the additional driveway would cause a safety concern. His evidence in part did not support that of Ms. Spears, as he thought his property and the property to be developed were in a pocket in a broader neighbourhood which included smaller lots. Ms. Mayhew agreed that the property was in a broader neighbourhood which included smaller lots, although she too was opposed to the application.

Mr. Cieciora's evidence was that the property to be developed was in the broader Cliffcrest Neighbourhood which included areas of smaller lots and homes to the east and south of the “neighbourhood” Ms. Spears described. He did not find the property to be a gateway to a different neighbourhood but rather at the centre of a neighbourhood with different lot and home sizes. In determining neighbourhood boundaries he considered access to the neighbourhood, and the schools and parks in the vicinity as well as the size of lots abutting the property and on the same street. Given his definition of the neighbourhood, the size and frontage of the proposed lots and houses fit in the neighbourhood and respected and reinforced its physical character.

In addition, he pointed out that the tree to be destroyed was within an as of right building envelope and could be destroyed for the construction of an as of right building. He pointed out that much of the foliage would be preserved and the site plan would be amended to include additional greenery. In addition, it was agreed that the site plan would be amended to include screening the deck and a frosted window in the proposed building to provide additional privacy for Mr. Holland's property. Moreover, the air conditioning unit would be located to the south of the proposed new building.

## **ANALYSIS, FINDINGS, REASONS**

There is no doubt in my mind at all that the evidence of Mr. Cieciora should be accepted and that of Ms. Spears should not be. It appears clear to me that she defined her “neighbourhood” to create a desired result by attempting to rely on plans of subdivision rather than a “common sense of community”, based on “roads, parks” and “schools” which is what the Official Plan contemplates. She created an artificial neighbourhood which would justify her conclusion that the proposal did not respect and reinforce the character of the neighbourhood. Mr. Cieciora's evidence on the other hand was based on what the actual physical neighbourhood was like and included all parts which supported his client's approval and those which did not. It was a professional

objective evaluation. As a result, I conclude that the proposal does meet the most important criterion: that it respects and reinforces the character of the neighbourhood. This conclusion is reinforced by the evidence of Mr. Holland and Ms. Mayhew.

As a result, the variances respecting lot frontage and size should be allowed. Moreover, I heard no evidence that would persuade me that the size of the dwellings and the second suite are inappropriate given the proposed size and frontage. I do not agree one additional driveway on McNab will be dangerous. Finally, I note the rear yard setback and driveway access, both respecting the existing dwelling, are technical in nature and as a result of a technical change of the location of the frontage. As a result, I find the variances cumulatively and individually meet the four tests of the Planning Act and that therefore the consent should be allowed. In conclusion I do agree with the City that the Official Plan is the method by which the PPS and Growth Plan should be implemented. Since this application is in conformity with the intent of the Official Plan if conforms with those two Provincial Documents.

## **DECISION AND ORDER**

The appeal is denied; the variances in Appendix 1 and the consent shown in Appendix 2 are approved; subject to the conditions in Appendix 3

**X** 

---

S. Makuch

Panel Chair, Toronto Local Appeal

### **APPENDIX 1**

Copy variances attached to Stewart closing argument dated August 3, 2019

### **APPENDIX 2**

Attach site plan attached to Stewart closing argument dated August 3, 2019

### **Appendix 3**

Attach all of the conditions and landscape plan, site plan, and elevations attached to Stewart closing argument dated August 3, 2019“

**36 McNab Blvd. – Revised List of Variances and Conditions**  
**Part 1 (South Lot)**

1. To permit the proposed 20.5 metres lot frontage, whereas the Zoning By-law requires a minimum 28.96 metres lot frontage.
2. To permit the proposed 725.9 square metres lot area, whereas the Zoning By-law requires a minimum 1445 square metres lot area.
3. To permit the existing 7.26 metres rear yard setback, whereas the Zoning By-law requires a minimum 8.43 metres rear yard setback.
4. To permit the proposed access to parking be from the front yard, whereas the Zoning By-law requires access to a parking space to be from the flanking street.

**36 McNab Blvd. – List of Variances and Conditions**  
**Part 2 (North Lot)**

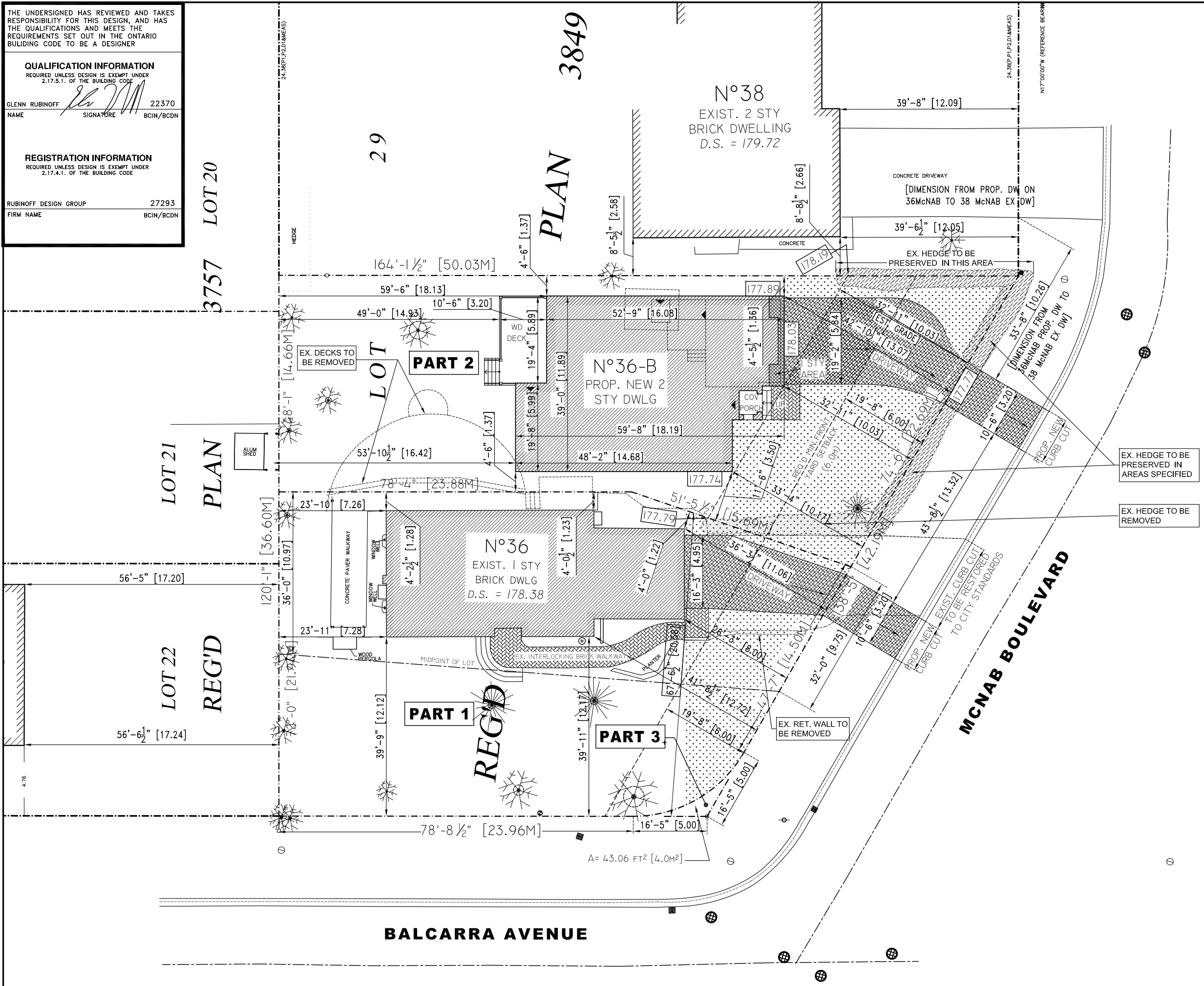
**By-law No. 569-2013**

1. To permit the proposed 22.6 metres lot frontage, whereas the Zoning By-law requires a minimum 28.96 metres lot frontage.
2. To permit the proposed 715.1 square metres lot area, whereas the Zoning By-law requires a minimum 1445 square metres lot area.
3. To permit the proposed 331 square metres floor area or 0.46 times the lot area, whereas the Zoning By-law permits maximum 286.4 square metres floor area or 0.4 times the lot area.
4. To permit the proposed second suite, whereas the Zoning By-law requires the entire building to have been constructed more than 5 years prior to the introduction of a secondary suite.

**By-law No. 9396**

5. To permit the proposed second suite, whereas the Zoning By-law requires the entire building to have been constructed more than 5 years prior to the introduction of a secondary suite.

<b>QUALIFICATION INFORMATION</b>	
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.5.1. OF THE BUILDING CODE	
GLENN RUBINOFF	223793
NAME	SIGNATURE BCIN/BCDN
<b>REGISTRATION INFORMATION</b>	
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.4.1. OF THE BUILDING CODE	
RUBINOFF DESIGN GROUP	27293
FIRM NAME	BCIN/BCDN



SITE STATISTICS : [PARTS 1&3]		
[PT LOT 29] 36 McNAB AREA = 7856.58 ft² [729.90 m²]		
FRONT YARD AREA = 1398 ft² [129.88 m²] PORCH & STEPS + WALKWAY AREA = 38 ft² [3.53 m²] DRIVEWAY = 476 ft² [44.22 m²]		
FRONT YARD HARD SURFACE AREA = 514 ft² [47.75 m²] (PORCH, STEPS, WALKWAY & DRIVEWAY ) / (FRONT YARD AREA ) = <b>36.7%</b> (40% MAX. PERMITTED)		
FRONT YARD SOFT LANDSCAPED AREA = 884 ft² [82.13 m²] (FRONT YARD AREA ) - (DRIVEWAY ) = 922 ft² [85.66 m²] PORCH & STEPS AREA = 38 ft² (4%) SOFT LANDSCAPED AREA = 884 ft² ( <b>96%</b> ) MIN 75% REQ'D		
COVERAGE = 1687 ft² [156.73 m²] [ <b>21.5%</b> ] TOTAL GFA = 1283 ft² [119.19 m²] [ <b>16.3%</b> ]		
SITE STATISTICS : [PART 2]		
[PT LOT 29] 36-B McNAB AREA = 7697.27 ft² [715.10 m²]		
FRONT YARD AREA = 2485 ft² [230.86 m²] PORCH & STEPS AREA = 49 ft² [4.55 m²] WALKWAY AREA = 48 ft² [4.46 m²] DRIVEWAY = 725 ft² [67.35 m²]		
FRONT YARD HARD SURFACE AREA = 822 ft² [76.37 m²] (PORCH, STEPS, WALKWAY & DRIVEWAY ) / (FRONT YARD AREA ) = <b>33 %</b> (40% MAX. PERMITTED)		
FRONT YARD SOFT LANDSCAPED AREA = 1663 ft² [154.50 m²] (FRONT YARD AREA ) - (DRIVEWAY ) = 1760 ft² [163.51 m²] PORCH+ STEPS & WALK AREA = 97 ft² (6%) SOFT LANDSCAPED AREA = 1663 ft² ( <b>94%</b> ) MIN 75% REQ'D		
COVERAGE = 2253 ft² [212.10 ft²] [ <b>29.3%</b> ] TOTAL GFA = 3500 ft² [325.16 m²] [ <b>45.5%</b> ]		
<div>Rubinoff Design Group 697 Mount Pleasant Rd. Toronto, Ontario M4S 2N4 TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com</div>		
PROJECT DESIGNER: <b>G.RUBINOFF</b>	PROJECT NO.	DRAWING NO.
DRAWN BY: <b>P.NARANJO</b>	DATE: <b>MAY/27/2019</b>	<b>A</b>
CHECKED BY:	SCALE: <b>1 : 250</b>	
CLIENT: <b>PRIVATE RESIDENCE</b>		
PROJECT: <b>SITE PLAN</b>		
PROJECT: <b>36 McNAB BOULEVARD TORONTO, ONTARIO</b>		



## Conditions of Consent Approval

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contacts: John House, Supervisor, Land and Property Surveys, at 416 392-8338; or his designates, Elizabeth Machynia, at 416-338-5029; [emachyni@toronto.ca](mailto:emachyni@toronto.ca), John Fligg at 416-338-5031; [jfligg@toronto.ca](mailto:jfligg@toronto.ca)
3. Two copies of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contact: John House, Supervisor, Land and Property Surveys, at 416 392-8338; or his designate, Virgil Gomes at 416 338-5033; [jhouse@toronto.ca](mailto:jhouse@toronto.ca), [vgomes@toronto.ca](mailto:vgomes@toronto.ca)
4. Prepare all documents and convey to the City, at nominal cost, (a 5.0 metre corner rounding at southwest corner of Balcarra Avenue and McNab Boulevard of this property) in fee simple, such lands to be free and clear of all physical and title encumbrances, and subject to a right-of-way for access in favour of the grantor until such time as said lands have dedicated as a public highway, all to the satisfaction to the Chief Engineer & Executive Director of Engineering and Construction Services and the City Solicitor;

Submit a draft Reference Plan of Survey to the Chief Engineer & Executive Director of Engineering and Construction Services, for review and approval, prior to depositing it in the Land Registry Office. The plan should:

- a. be in metric units and integrated with the Ontario Co-ordinate System (3° MTM, Zone 10, NAD 83 CSRS);
  - b. delineate by separate PARTS the lands to be conveyed to the City, the remainder of the site and any appurtenant rights-of-way and easements; and
  - c. show the co-ordinate values of the main corners of the subject lands in a schedule on the face of the plan;
  - d. Pay all costs for registration and preparation of reference plan(s).  
(Contact: Tony Tsui at 416-396-7351; [tony.tsui@toronto.ca](mailto:tony.tsui@toronto.ca))
5. PDF copy of the registered reference plan of survey satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services shall be filed with the Committee of Adjustment.
6.
  - a) The applicant shall submit to Urban Forestry a complete application to Injure or Destroy Trees for privately owned trees, as per City of Toronto Municipal Code Chapter 813, Article III.
  - b) Where there are no existing street trees, the applicant shall provide to Urban Forestry a payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The number of trees required to be planted is two (2) and the current cost of planting each tree is \$583.00. Payments shall be made payable to the Treasurer, City of Toronto and sent to Urban Forestry, Scarborough Civic Centre, 150 Borough Drive, 5th floor, Toronto, Ontario, M1P 4N7.

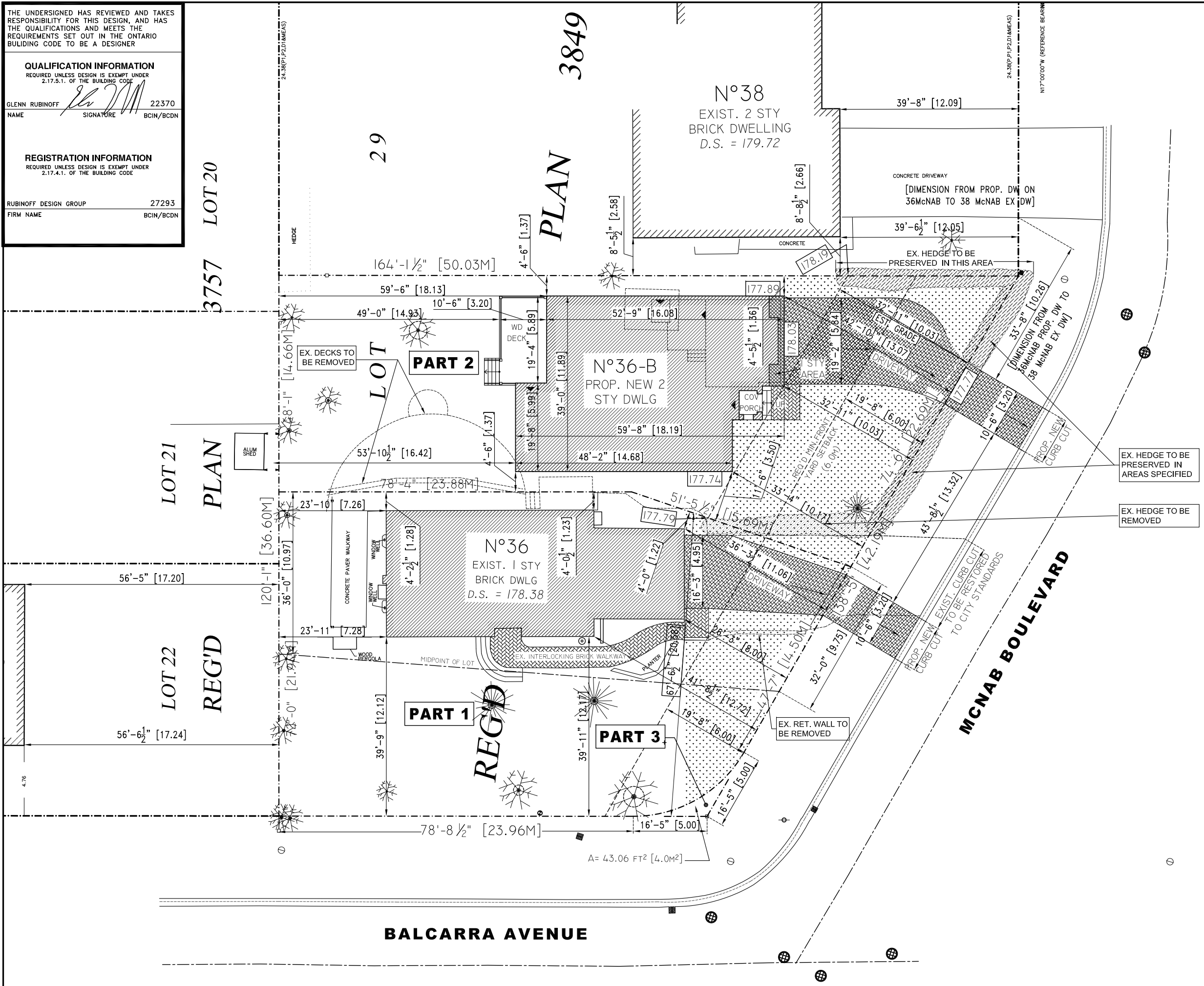
7. The Owner shall obtain Final and Binding Decisions on minor variance applications A0465/17SC and A0466/17SC, to the satisfaction of the Deputy Secretary-Treasurer, Committee of Adjustment, Scarborough Panel.
8. A draft Certificate of Official, as prescribed in Ontario Regulation 197/96 as Form 2 or 4 and in a form satisfactory to the Secretary Treasurer, shall be submitted to the Secretary Treasurer within one year of the date giving of notice of this decision.

### **Conditions of Minor Variance Approval**

1. The site development shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Rubinoff Design Group (various dates), attached hereto.
2. Subject to the satisfaction of the City's Urban Forestry and Transportation Department, the following items shall be provided as shown on the above-referenced Site Plan, and the Landscaping Plan prepared by Rubinoff Design Group dated July 30, 2019:
  - a. The driveways shall be a maximum of 3.2 m wide within the City boulevard;
  - b. The existing hedge on the McNab Blvd. property line, and on the north property line adjacent to 38 McNab Blvd., shall be preserved except where the new driveway for Part 2 is proposed to be located;
  - c. The existing 15 trees on the site that are shown on the Landscaping Plan shall be preserved, even if they are less than 30 cm DBH.
3. A new shrub shall be planted adjacent to the south of the relocated driveway for Part 1 to replace the existing shrub that will be removed.
4. On the new dwelling, the most westerly window on the second storey of the north elevation shall be frosted or translucent glass, as shown on the Right Side Elevation.
5. A privacy fence shall be installed on the north lot line adjacent to 38 McNab Blvd., as shown on the Landscaping Plan.
6. A 1.8 m privacy screen shall be installed on the north side of the rear deck for the new dwelling, as shown on the Landscaping Plan, the Rear Elevation and the Right Side Elevation.
7. An air conditioning unit shall not be located in the north side yard of the new dwelling, adjacent to 38 McNab Blvd.



<b>QUALIFICATION INFORMATION</b>	
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.5.1. OF THE BUILDING CODE	
GLENN RUBINOFF	223793
NAME	SIGNATURE BCIN/BCDN
<b>REGISTRATION INFORMATION</b>	
REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.4.1. OF THE BUILDING CODE	
RUBINOFF DESIGN GROUP	27293
FIRM NAME	BCIN/BCDN



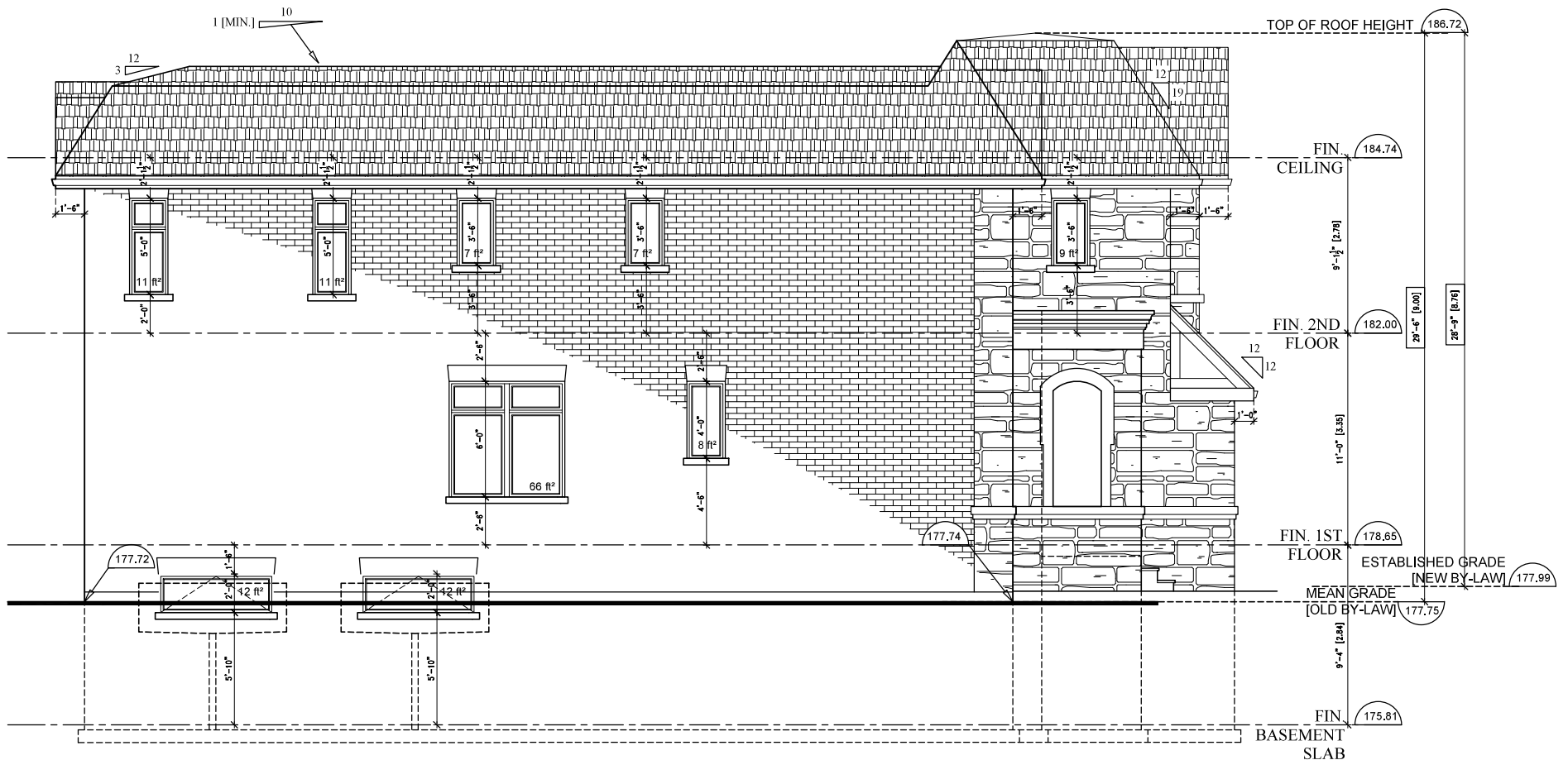
SITE STATISTICS : [PARTS 1&3]		
[PT LOT 29] 36 McNAB AREA = 7856.58 ft² [729.90 m²]		
FRONT YARD AREA = 1398 ft² [129.88 m²] PORCH & STEPS + WALKWAY AREA = 38 ft² [3.53 m²] DRIVEWAY = 476 ft² [44.22 m²]		
FRONT YARD HARD SURFACE AREA = 514 ft² [47.75 m²] (PORCH, STEPS, WALKWAY & DRIVEWAY ) / (FRONT YARD AREA ) = <b>36.7%</b> (40% MAX. PERMITTED)		
FRONT YARD SOFT LANDSCAPED AREA = 884 ft² [82.13 m²] (FRONT YARD AREA ) - (DRIVEWAY ) = 922 ft² [85.66 m²] PORCH & STEPS AREA = 38 ft² (4%) SOFT LANDSCAPED AREA = 884 ft² ( <b>96%</b> ) MIN 75% REQ'D		
COVERAGE = 1687 ft² [156.73 m²] [ <b>21.5%</b> ] TOTAL GFA = 1283 ft² [119.19 m²] [ <b>16.3%</b> ]		
SITE STATISTICS : [PART 2]		
[PT LOT 29] 36-B McNAB AREA = 7697.27 ft² [715.10 m²]		
FRONT YARD AREA = 2485 ft² [230.86 m²] PORCH & STEPS AREA = 49 ft² [4.55 m²] WALKWAY AREA = 48 ft² [4.46 m²] DRIVEWAY = 725 ft² [67.35 m²]		
FRONT YARD HARD SURFACE AREA = 822 ft² [76.37 m²] (PORCH, STEPS, WALKWAY & DRIVEWAY ) / (FRONT YARD AREA ) = <b>33 %</b> (40% MAX. PERMITTED)		
FRONT YARD SOFT LANDSCAPED AREA = 1663 ft² [154.50 m²] (FRONT YARD AREA ) - (DRIVEWAY ) = 1760 ft² [163.51 m²] PORCH+ STEPS & WALK AREA = 97 ft² (6%) SOFT LANDSCAPED AREA = 1663 ft² ( <b>94%</b> ) MIN 75% REQ'D		
COVERAGE = 2253 ft² [212.10 ft²] [ <b>29.3%</b> ] TOTAL GFA = 3500 ft² [325.16 m²] [ <b>45.5%</b> ]		
<div>Rubinoff Design Group 697 Mount Pleasant Rd. Toronto, Ontario M4S 2N4 TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com</div>		
PROJECT DESIGNER: <b>G.RUBINOFF</b>	PROJECT NO.	DRAWING NO.
DRAWN BY: <b>P.NARANJO</b>	DATE: <b>MAY/27/2019</b>	<b>A</b>
CHECKED BY:	SCALE: <b>1 : 250</b>	
CLIENT: <b>PRIVATE RESIDENCE</b>		
PROJECT: <b>SITE PLAN</b>		
PROJECT: <b>36 McNAB BOULEVARD TORONTO, ONTARIO</b>		

WALL OPENING:  
TOTAL FRONT WALL WIDTH = 39'-0" [11.89 m]  
WALL OPENINGS = 13'-10 1/2" [4.22 m]  
[4.22/ 11.89] = 35.5% [40% MAX. ALLOWABLE]







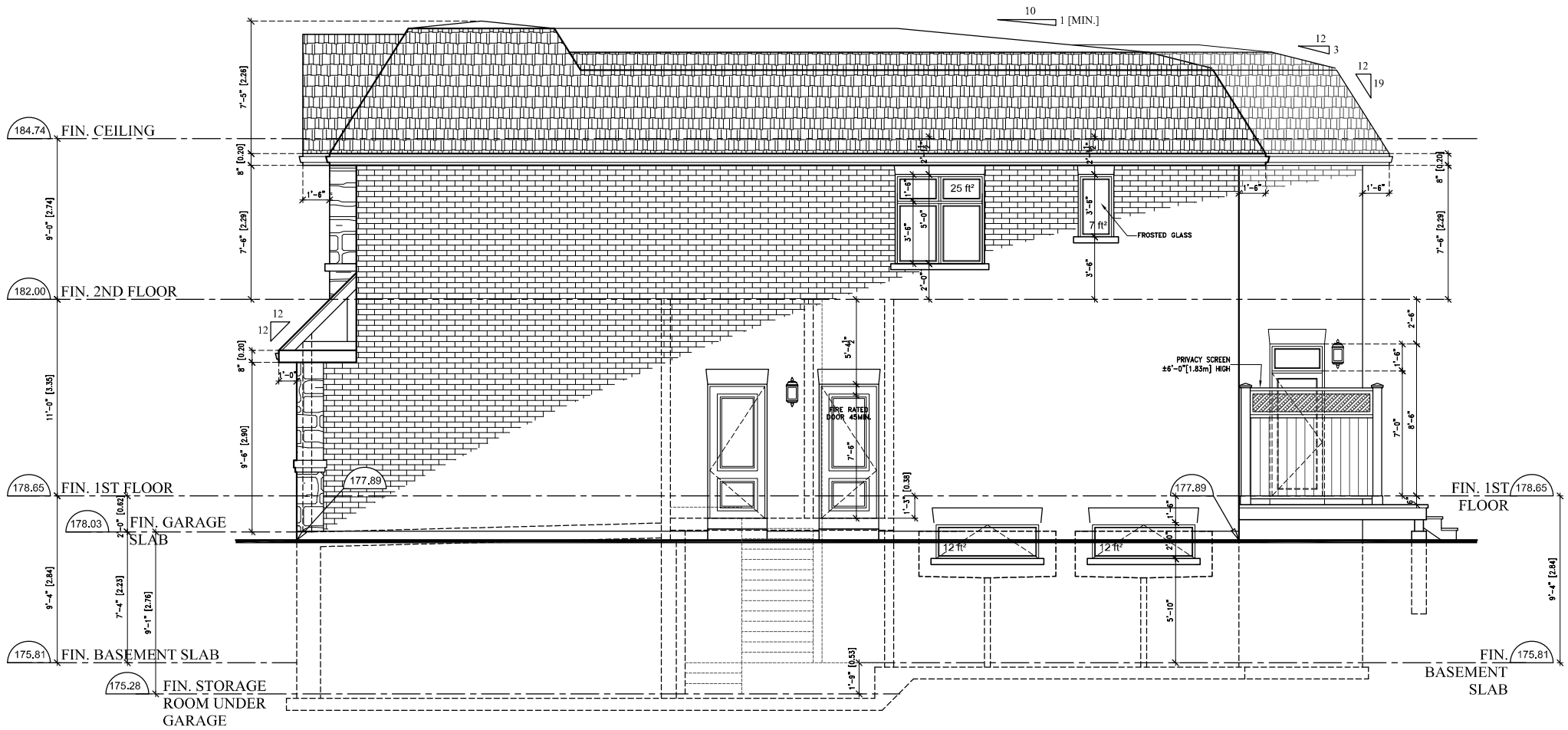


# **LEFT SIDE ELEVATION**

\* 36-B McNAB BLVD \*

SOUTH SIDE ORIENTATION

<b>Rubinfoff Design Group</b> 697 Mount Pleasant Road Toronto, Ontario M4S 2N4 <small>TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinfoffdesign.com</small>	
SCALE : $\frac{3}{16}" = 1'-0"$	FEBRUARY 7, 2018



## RIGHT SIDE ELEVATION

\* 36-B McNAB BLVD \*

NORTH SIDE ORIENTATION

**R**ubinfoff Design Group

697 Mount Pleasant Road  
Toronto, Ontario M4S 2N4

TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinfoffdesign.com

SCALE :  $\frac{3}{16}" = 1'-0"$  JULY 30, 2019