

DECISION AND ORDER

Decision Issue Date Friday, October 04, 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): 2662712 ONTARIO INC

Applicant: 2662712 ONTARIO INC

Property Address/Description: 50 ADDISON CRES

Committee of Adjustment Case File: 19 132256 NNY 16 MV

TLAB Case File Number: 19 170443 S45 16 TLAB

Hearing date: Monday, September 23, 2019

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

| Name | Role | Representative |
|----------------------|-----------------|---------------------|
| 2662712 Ontario Inc. | Appellant/Owner | Marc Kemerer |
| Michael Manett | Expert Witness | |
| Nima Ahdami | Project Manager | Wallzcorp Inc. |
| Ali Sirzad | CEO | Addison Development |

INTRODUCTION

This is an appeal brought on behalf of the owners of 50 Addison Crescent (subject property) from the approval by the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) to grant variances to permit the demolition of the existing one-storey, single detached dwelling and the construction of a new two-storey residential dwelling on the subject property.

On March 23, 2019, the COA approved variances for the proposed height of the side exterior main walls facing a side lot line and the building height of the proposed dwelling. However, the Committee modified a third variance being requested from Zoning By-law 569-2013 for the lot coverage which permitted a maximum lot coverage of 25% of the lot area; the owners had requested a lot coverage of 29.47% whereas the COA approved a coverage of 27%.

As a result of the COA decision, the owners appealed the decision in its entirety to the Toronto Local Appeal Body (TLAB) and a Hearing date was set for September 23, 2019.

The owners were represented by Marc Kemerer (counsel), Ali Sirzad (CEO of Addison Development) as well project manager Nima Ahmadi. Michael Manett, a Registered Professional Planner provided the sole support evidence for this Party on the appeal.

There were no other Parties or Participants.

I described that pursuant to Council's direction, I had attended on the site and surrounding neighbourhood. I also advised that I had reviewed pre-filed materials submitted by the Applicant/Appellant but noted that matters of significance to an individual needed to be brought forward in the evidence.

BACKGROUND

At the outset of the Hearing, and prior to calling the Appellant's expert planning witness to give evidence in this proceeding, Mr. Kemerer raised a procedural matter for a ruling from the presiding Member.

He noted that the owners had filed an appeal for 40 Addison Crescent, a property proximate to the subject site, which they also own. Variance applications for both 40 and 50 Addison were filed at the same time and were heard 'back-to-back' by the COA. Given that the TLAB had also scheduled the appeal Hearings for 40 and 50 Addison in the same manner so to speak (40 Addison is to be heard the day after the subject application on September 24th), he advised that the owners had requested that the TLAB consolidate the files into one proceeding in order that both matters be heard in one sitting given that the proposed developments were analogous, had similar contexts and comparable planning instruments.

Anticipating this turn of events, and with the knowledge and confirmation that no formal Motion requesting a consolidation of the files had been received by the TLAB, I queried Mr. Kemerer as to why a requisite Motion in this regard had not been filed as required by the TLAB Rule 17.1 of the Rules of Practice and Procedure (Rules). Rule 17.12 states:

"No Motion, except a Motion brought under Rule 28 (Costs) shall be heard later than 15 Days before a Hearing, unless the TLAB orders otherwise."

His response was neither fulsome nor vigorous – he stated that “it was an issue of timing” providing no further clarification or circumstances. He nevertheless requested that both matters be consolidated and heard together to avoid the duplication of efforts and the possibility of different decisions for two almost identical developments.

Following a short recess during which I gave the request due consideration, I advised the owners that TLAB Rule 22 allows the Tribunal to order that Proceedings ‘be consolidated, heard at the same time, heard one after the other, or stay or adjourn any Proceeding until the determination of any other proceeding’. I noted that the two matters did present certain similarities: the properties are located on the north side of Addison Crescent, three houses apart; applications provide for the demolition of the existing one storey, single detached dwellings on each lot and the construction of a new two storey dwelling on each; and similar variances are requested for lot coverage, height of exterior side main walls, and building height.

However, I also identified additional variance relief for front yard setback, encroachment of a platform into the required front yard setback, and the encroachment of a canopy or awning for the same platform being requested for 40 Addison that are not required or requested for the proposal at 50 Addison.

I reiterated TLAB Rule 17.1 that states that a Motion will not be heard 15 days before the Hearing. I noted that I had spoken with TLAB staff and confirmed that they were unaware of any request from the owners of the subject property, whether informally by discussion or formally by requisite filings, in this regard. I stated that in consideration of this I was not prepared to grant the request and hear the two matters at the Hearing.

I did, however, indicate that I was prepared to adjourn the Hearing for the subject application in order to allow the two appeals to be consolidated and heard at a later date that was agreeable to the Parties and put forward that option to the Appellant. I explained that TLAB staff would be directed to canvas members for availability and could attempt to secure a new Hearing date as expeditiously as possible, hopefully within the next two weeks.

After a brief conference with his clients, counsel indicated that after careful consideration of the option suggested, the owners were prepared to proceed with their appeal for 50 Addison and requested that the Hearing continue as scheduled.

MATTERS IN ISSUE

Given the many similar redevelopments in the immediate neighbourhood, are all the variances sought supportable, including the COA modification of Variance 1, reducing the overall maximum permitted lot coverage from 29.47% of the area of the lot, which was what the owner proposed, to 27% an appropriate modification? The owner is of the opinion that the COA arbitrarily reduced the proposed coverage and that the Committee failed to consider information provided at the hearing.

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

Expert Witness Testimony

Mr. Manett is a very experienced professional land use planner with over 30 years of related planning practice with infill and residential development in the Greater Toronto Area. He has appeared before the former Ontario Municipal Board and the Local Planning Appeal Body, as well as TLAB, and has been qualified as an 'Expert Witness' on numerous occasions.

As a result, I qualified Mr. Manett to provide professional opinion evidence in the area of land use planning.

He submitted his Expert Witness Statement (Exhibit 1) and confirmed that he had been retained by the owner on June 22, 2019 in support of their appeal to the COA decision to 'arbitrarily' reduce the proposed coverage for the subject development proposal.

In addressing the neighbourhood, Mr. Manett first described the immediate context surrounding the subject property, and then how the wider macro neighbourhood exhibits its physical characteristics. In doing so, he employed what I would term a 'generous' Study Area (Exhibit 3. Neighbourhood Map, p. 15) bounded by Lawrence Avenue East to the south, The Donway West from Lawrence Ave. E. to Don Mills Road to the east, the hydro corridor to the west, and the north side property boundaries of the properties on the north side of Addison Crescent to the north. His study area included some 525 properties.

He briefly and concisely described the subject property and the surrounding neighbourhood. The subject property is located on Addison Crescent in the prestigious 'Don Mills' neighbourhood. Addison Crescent is a looped road that begins in the south at Duncairn Road and goes in a north-west direction where it then curves to the east and connects again with Duncairn. The rear yard of the subject property abuts Duncairn Park and an adjoining public parking lot (Exhibit 4, Photos 1-7).

The 'Don Mills' neighbourhood is a uniquely (master) planned, older community developed in the late 1950's and early 1960's by E.P. Taylor, one of Canada's most influential entrepreneurs. It was one of the most innovative "New Towns", centred around a common commercial and civic area, with a road network of traffic-calming culs-de-sac and looping, curvilinear streets. In an effort to create a landmark Modernists community, careful attention was paid to everything from the architectural style and position of buildings to their exterior materials and colours. Existing trees were retained wherever possible and generous green space provided.

Mr. Manett characterized the immediate neighbourhood as consisting of curved, tree lined streets exhibiting an 'eclectic' (his word) variety of dwelling sizes and styles on a wide range of lot configurations and sizes as a result of the curvilinear street pattern. The neighbourhood includes one and two storey single detached and semi-detached dwellings with garages, carports and in some cases open driveway/parking pads.

Utilizing a variety of photographic evidence (Exhibit 4), including a total of 86 photographs both at ground level and with aerial views of the subject property and the surrounding neighbourhood, he attempted to illustrate the diversity of housing sizes and styles - in addition to the varied streetscapes in the area. He highlighted numerous photos of existing dwellings within the area to indicate the transition in built form that he opined was transforming the neighbourhood through the redevelopment and construction of larger homes similar to that being proposed (i.e., 55 to 59 Addison, 161 Duncairn, 24 to 28 Addison, 5 Canfield Place, 133 Duncairn, 8-10 Fordham Place, 43 Hemford Cres., etc.).

Proposal

The owner proposes to demolish the existing one-storey bungalow, which was originally built in the late 1950's/early 1960's and replace it with a two-storey single detached dwelling. In order to construct the proposed dwelling, three variances are requested:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 25% of the lot area.

The proposed lot coverage is 29.47% of the lot area.

2. Chapter 10.20.40.10.(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 **8.0 m**.

3. Section 14.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m. The proposed building height is 9.57 m

Referring to the site plan drawings contained in Exhibit 2 (Site Plan/Elevation dated March 7, 2019), he noted that there are no setback variances required for the proposed dwelling and that the building footprint fits within the permitted setbacks. The depth of the property is 33.534 m (110 ft.) which he suggested is slightly smaller than the other traditional lots in the neighbourhood and characterized as 'modest'.

As a result of this smaller lot, situating the building envelope to align with the main front wall of the dwellings on the abutting properties results in the lot coverage being marginally greater than what is permitted. The proposed dwelling is 328.44 m² with a first-floor size of 165.61 m² therefore requiring a lot coverage variance to 29.47%.

He highlighted Drawing A-6 (South Elevation) in Exhibit 2 and characterized the proposed dwelling as a standard two-storey residential structure, which is permitted 'as of right', with an integral two-car garage at grade and four risers to the main/first floor. The dwelling has a modest mansard roof which does not have an 'exaggerated' (his word) peak. Mr. Manett noted that the proposed height of 9.57 m is below the maximum permitted height of 10 m in the new By-law (569-2013); however, it does require a variance under By-law 7625, which only permits a maximum height of 8.8 m (Variance 3).

He also advised that with respect to the height of the side exterior main walls of the proposed dwelling facing a lot line, the first iteration of the plans proposed a height of 8.94 m. However, following discussions with City Planning staff, the owner agreed to reduce the exterior main wall height to 8.0 m and acknowledged this modification at the COA. As a result, Variance 2 in the COA's decision reflects this agreed to revision.

He opined that the proposed dwelling would fit 'nicely' (his word) into the neighbourhood, irrespective of the fact that the dwellings on abutting properties are bungalows, and would represent re-investment and the transition to a more modern housing style reflecting the evolution of the overall neighbourhood of Don Mills evidenced through the redevelopment occurring in the community.

Because the evidence was uncontested and is aptly canvassed in Exhibit 1, and although the oral evidence canvassed all four tests collectively and individually in great detail, I will provide only a summary of that evidence, by variance.

The variances, their description and import, follow.

ANALYSIS, FINDINGS, REASONS

Variance 1 relates to the lot coverage. The Zoning By-law maximum permitted lot coverage is 25%. The proposed lot coverage on the subject property is 29.47%.

The subject property is designated '*Neighbourhoods*' in the City OP. Mr. Manett (Exhibit 1, p. 2 and 3) submitted that the applicable OP policies include 2.3.1 (Healthy Neighbourhoods) – 'Neighbourhoods are considered to be 'physical stable'; development in Neighbourhoods 'will respect and reinforce the existing physical character of buildings, streetscapes and open spaces patterns in these area'; and 4.1.5 (Development Criteria in Neighbourhoods) – 'development in established Neighbourhoods will respect and reinforce the existing physical character of *each geographic neighbourhood* (my emphasis), including in particular, the following which he emphasized were relevant to the proposed variances:

c. prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

d. prevailing building type(s);

e. prevailing location, design and elevations relative to the grade of driveways and garages; and

f. prevailing setbacks of buildings from the street or streets.

He specifically addressed the amending policies of 4.1.5 found in OPA 320 noting that the direction allows that "the physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the propose development (the immediate context). Proposed development within a neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts."

Furthermore, he noted that Policy 5 states that "the prevailing building type and physical character of a geographic neighbourhood will be determined by the most frequently occurring form of development in that neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type or physical character."

With respect to the meaning of 'prevailing', he submitted that the Policy states that "while prevailing will mean most frequently occurring for the purpose of this policy, the Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood..."

He also made reference to the Central Don Mills Secondary Plan (Exhibit 5), which includes the subject property, in particular, and the study area, in general. He submitted that the following policies were relevant to the proposed development, highlighted Section 2 (Objectives) and specifically the following policy objectives in Policy 2.1 states:

The general goal of this Secondary Plan is to manage change in a community in a manner that retains and enhances the existing character of the area. In order to achieve this goal, the following are defined as specific objectives of this Secondary Plan:

(e) to preserve and protect stable residential neighbourhoods;

(f) to maintain, and where possible, enhance family oriented housing forms;

(g) to preserve the scale, height and built form relationships originally provided for in the development concept of Don Mills; and

(h) to maintain a full range of housing forms and tenures.

He submitted that the proposed dwelling will enhance and upgrade building form and will result in a more modern housing type that addresses policy objectives 9(f) and (h) above. He suggested that family housing demands have evolved since the 1950's when the Don Mills community concept was first considered and submitted that the proposed residential redevelopment will provide for and enhance the family-oriented housing form in this neighbourhood (policy (f)). As to policy objective (e), he opined that 'stable' can include 'change' and redevelopment that can result in the enhancement of the neighbourhood. His summation opinion was that the proposed development conforms to the Central Don Mills Secondary Plan.

To support his opinions, Mr. Manett offered a Select Property Data Analysis (Exhibit 3) and Committee of Adjustment Decision Chart in assessing the neighbourhood study area character. His study area included 525 residential properties of which 156 (or approximately 30%) had a lot coverage above 25%. He noted that some properties had no available lot area information and therefore no coverage could be determined.

Of those properties with a lot coverage above 25%, 70 had a coverage at 30% or above, which is greater than the proposed coverage for the subject property. He submitted that the COA Decision Chart included 112 recent decisions within the identified neighbourhood study area and highlighted the following facts:

- **47 decisions (42%)** had a request for a lot coverage at or above 29.47% (the requested coverage for the subject property); approval was given for **30.98%** coverage at 12 Addison; the highest coverage being at 35 Hemson Crescent (**35%**)
- The COA approved **22** applications for the proposed coverage of 29.47%;

- The COA modified the proposed lot coverage in 14 decisions from the coverage being requested; and
- The COA refused 11 (**23%**) of the proposed lot coverages, many being in excess of 32%.

Additionally, he highlighted 8 recent former OMB/LPAT/TLAB appeal decisions within the study area and noted that 3 decisions regarding a request for a lot coverage at or above 29.47% coverage were approved on appeal. He highlighted the TLAB decision for 57 Addison, issued by Member Burton on September 18, 2017, that allowed a lot coverage variance of 28%.

Mr. Manett returned to the COA's decision of May 23, 2019 in which the Committee modified the lot coverage proposed by the owners of the subject property and approved a reduced coverage of 27%. He argued that the reduction (and subsequent modification) imposed by the COA was completely arbitrary and not based on any perceived impact created by the proposed dwelling or any plan that was considered by the City. Based on the evidence produced, I agree with his opinion that the proposed lot coverage of 29.47% is well within the range of property coverages within the neighbourhood and reflects existing building massing on Addison Crescent itself (i.e., 12 Addison, 28 Addison and 53 Addison). Of particular note is the size and style of 133 Duncairn Road, just around the corner, which was approved at 29 % a lot coverage almost identical to that being proposed.

I agree that the neighbourhood has a substantial number of properties with dwelling coverages that exceed the zoning by-law requirement and I concur that the proposed lot coverage falls well within the range of coverages in the area. In light of the fact that most of the existing residences on this part of Addison Crescent are one storey in height and that two storey dwellings are specifically permitted by the Zoning By-law (Exhibit 6), I agree with Mr. Manett's opinion that the proposed coverage is appropriate with respect to maintaining the character of the neighbourhood.

With respect to whether the proposed development conforms with the general intent and purpose of the OP and zoning, I accept his evidence that the proposed single detached dwelling represents the prevailing building type in the neighbourhood. I agree that the height, massing, and scale are consistent with the land use permissions for nearby residential properties and the proposed two storey built form typology represents a modern upgrade and a positive reinvestment in the neighbourhood.

I find the requested variance to meet the four tests, including being an enhancement that is both minor and desirable.

Variance 2 related to the permitted height of all side exterior main walls facing a side lot line being 7.5 m. The proposed height of the side exterior main walls facing a side lot line for the subject property is 8.0 m. I agree with Mr. Manett that the additional wall height of 0.5 m is minimal and part of the overall two storey design that still fits within the height limits of the new Zoning By-law 569-2013. I understand that the proposed height of 8.0 m is a reduction from the original COA application that requested a height of 8.94 m. The reduction resulted from discussions with City Planning staff and

this variance is now more in keeping with the intent of By-law 569-2013. I note that this was also the conclusion reached by City Planning staff in their comments to the COA, dated May 14, 2019, regarding the subject application.

I accept Mr. Manett's opinion evidence that the proposed dwelling will "fit" appropriately on the subject lot; I find that there will be no impact created by the additional wall height and that the height and the overall design fit within the character of the neighbourhood and the built form context of the 'Don Mills' community, which he highlighted through his evidentiary materials includes a wide variety of two storey dwellings with many different designs. The applicable policy and tests are met.

Finally, Variance 3 relates to the maximum permitted building height being 8.8 m whereas the proposed building height is 9.57 m. Mr. Manett properly noted that this variance is required because of the limitation, in the former North York Zoning By-law 7625 only, and that under the new By-law there is no variance triggered for overall building height.

I agree that the variance for an additional 0.77 m represents a very modest increase that is generally consistent with the existing and approved heights observed within the neighbourhood context. I accept his evidence that the proposed height is appropriate for the proposed dwelling and it will not result in any unacceptable built form impact on neighbouring properties or the streetscape.

Base on the above, I accept that the variances sought, individually and cumulatively, meet the intent and purpose of OP policy and zoning permission, and maintain or enhance their purpose on the subject property within the relevant ranges all while being quantitatively and qualitatively minor and desirable.

I agree with Mr. Manett's submissions that all relevant tests, including the OPA 320 and the Central Don Mills Secondary Plan, are passed on the evidence; that there will be no adverse impacts of a planning nature on abutting properties and that the reinvestment contemplated by the plans in the community is desirable, does not constitute over-development and represents good planning.

DECISION AND ORDER

The request for consolidation is refused.

The appeal herein is allowed; the decision of the Committee of Adjustment dated May 23, 2019, is allowed, in part, with the following variances authorized:

1. Chapter 10.20.40.10.(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 **8.0 m**.

2. Section 14.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.

The proposed building height is **9.57 m**.

Variance 1 is **varied** and **approved** as follows;

1. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 25% of the lot area.

The proposed lot coverage is **29.47%** of the lot area.

Required Condition

- A. The proposed development shall be constructed substantially in accordance with the site plan and elevations (drawings A-1, A-6, A-7, A-8, and A-9), dated March 7, 2019, and found in the Appellant's Exhibit 2, attached as **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

Attachment 1

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

REGISTERED

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12.

456 (LT)

SITE PLAN

SCALE 1:200

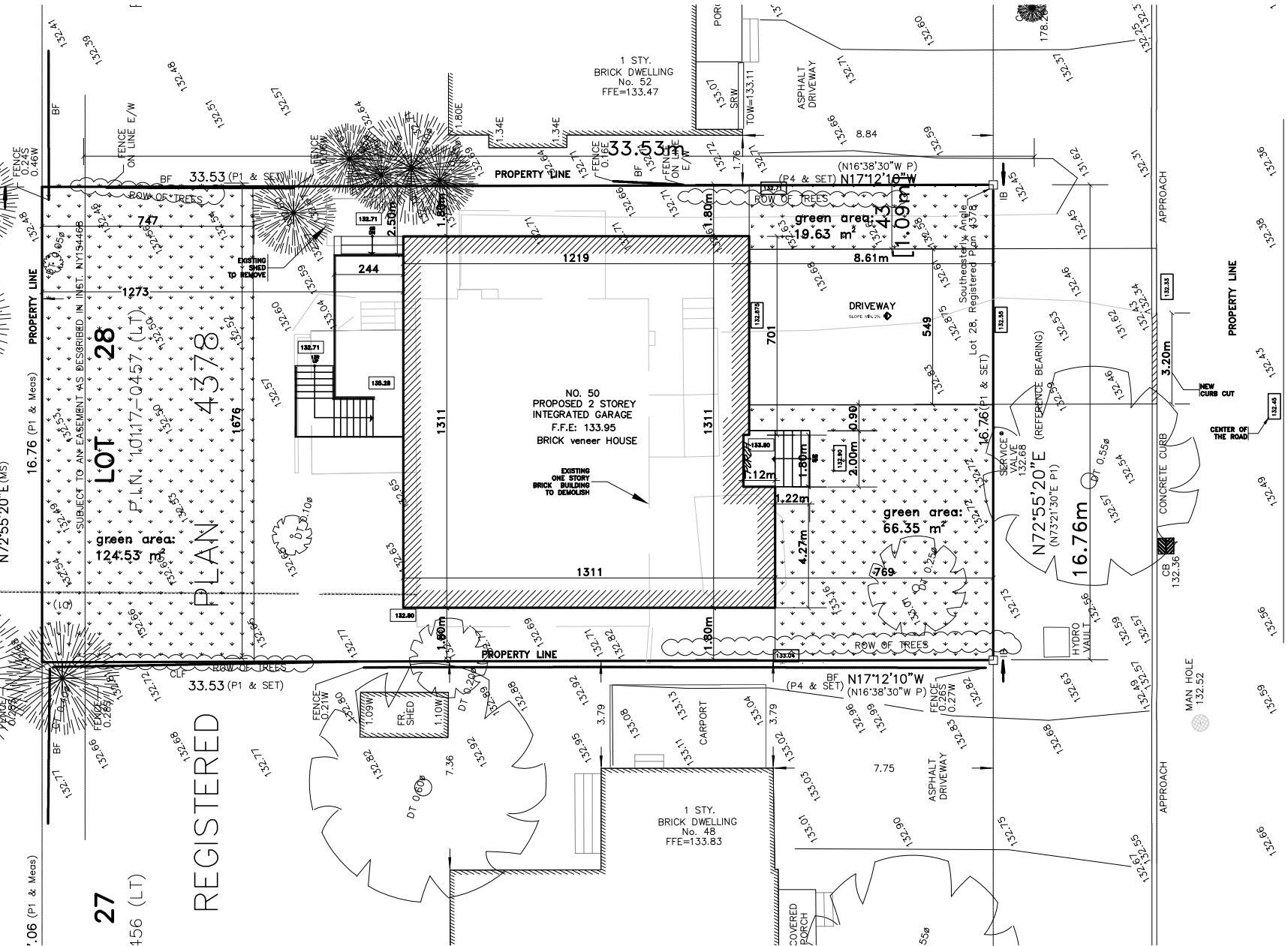
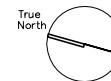
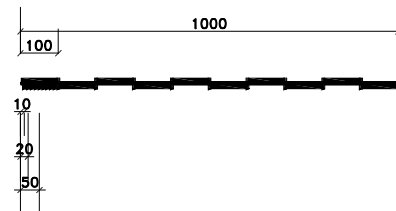
Project Name

50 ADDISON CRS.
TORONTO, ON.

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| Drawing Title |
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SITE PLAN

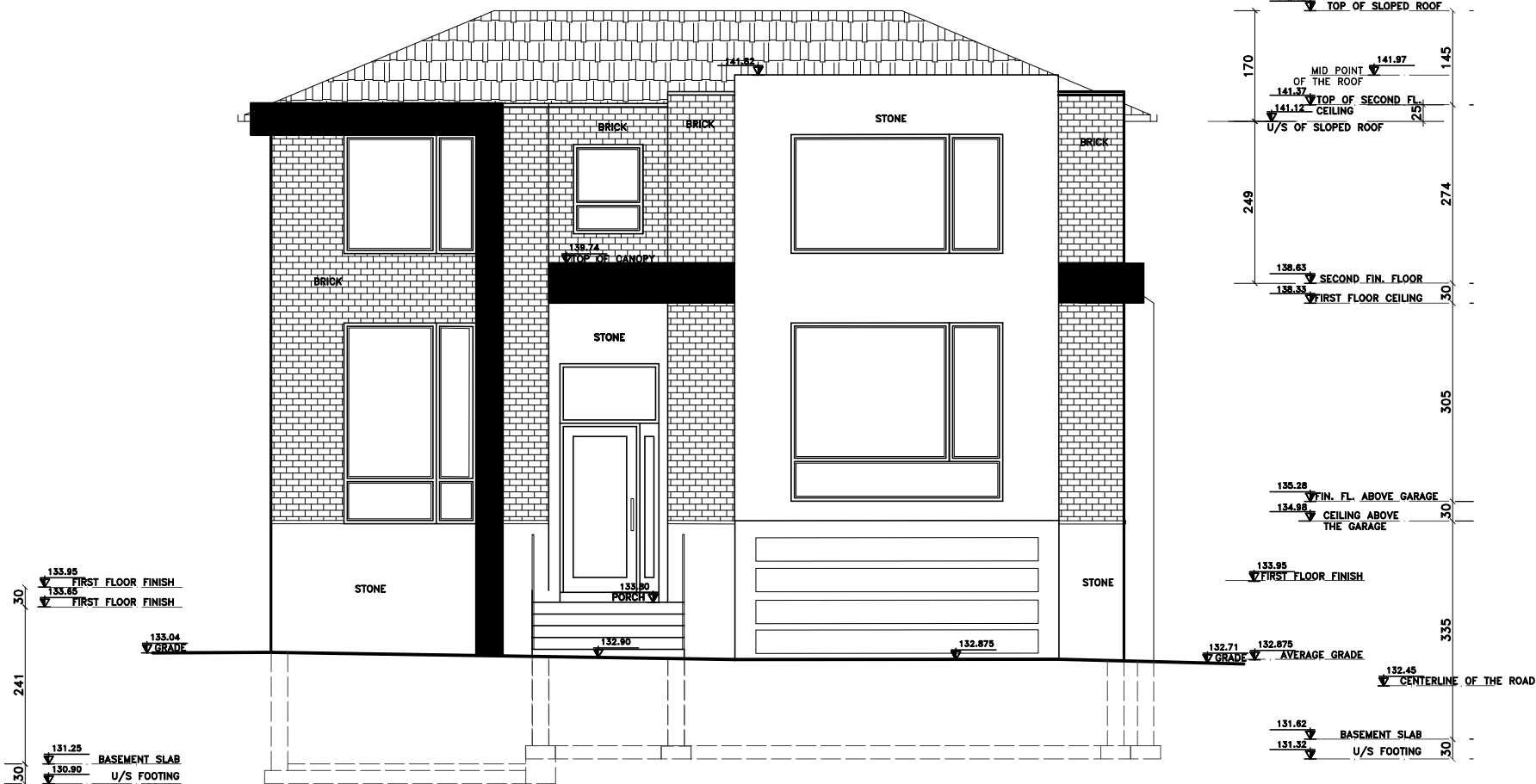
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| A | ISSUED FOR COMMITTEE OF ADJUSTMENT | MARCH, 07, 2019 |
| No. | Description | Date |



ADDISON CRESCENT

(BY REGISTERED PLAN 4378 - P.I.N. 10117-0542 (LT))

(AS CONFIRMED BY PLAN BA-2109)



1
A-6

SOUTH (MAIN) ELEVATION

SCALE 1:100

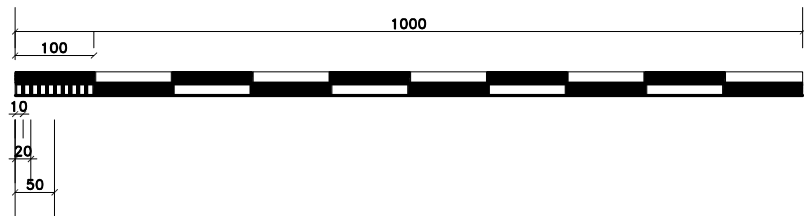
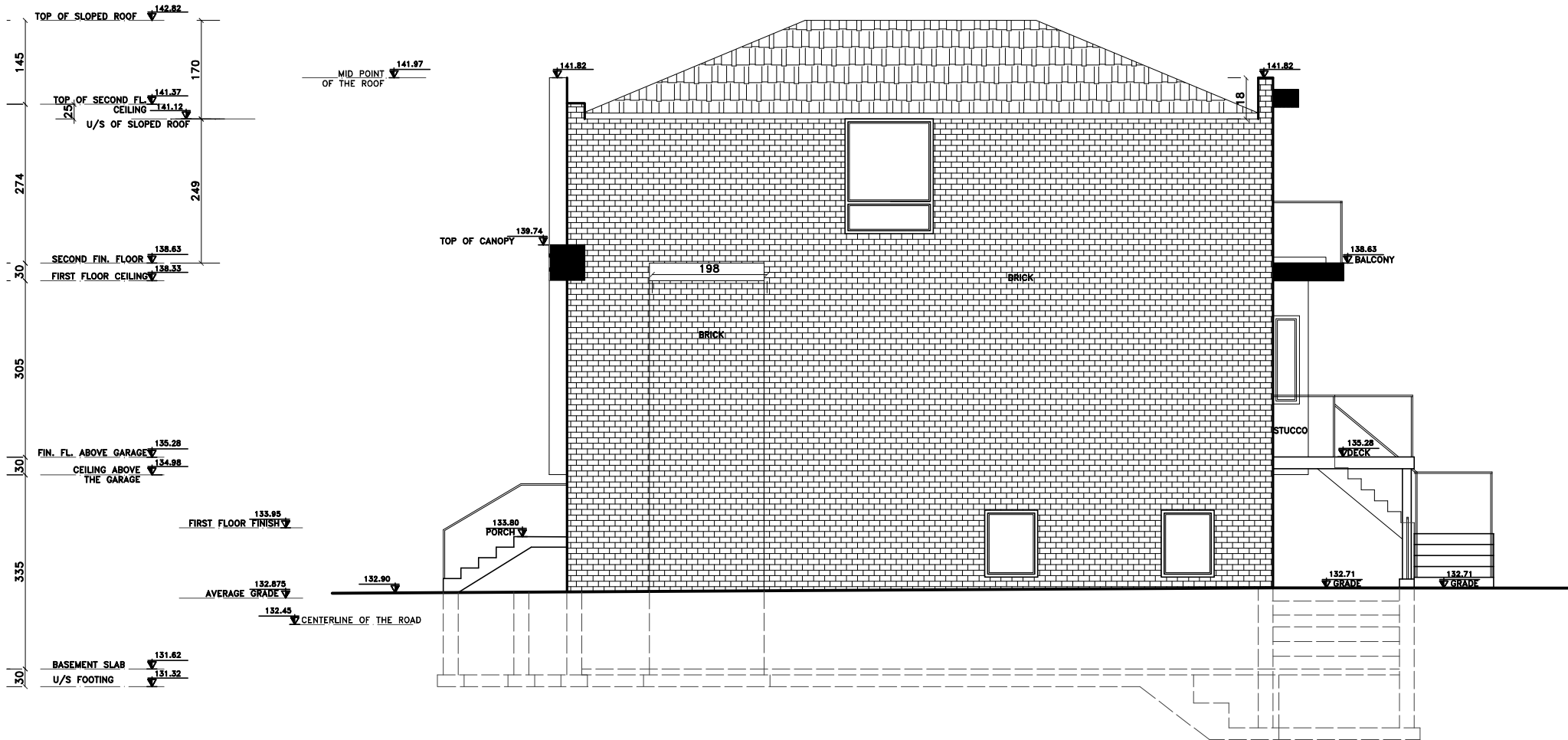
Project Name

50 ADDISON CRS.
TORONTO, ON.

Drawing Title

SOUTH ELEVATION

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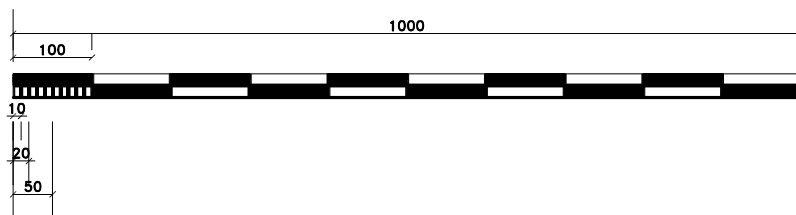
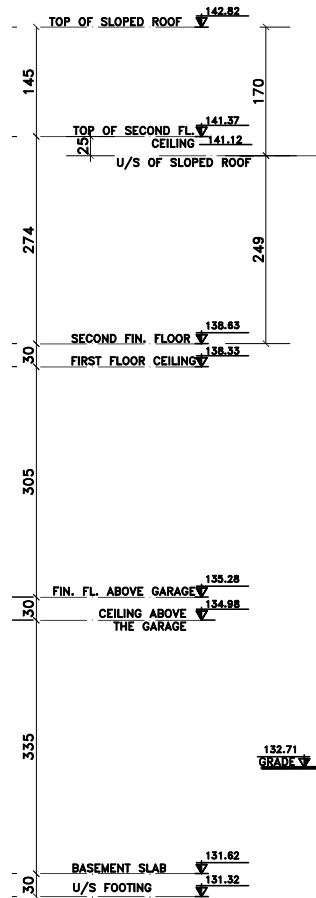
1 EAST ELEVATION
A-7

SCALE 1:100

Project Name
50 ADDISON CRS.
TORONTO, ON.

Drawing Title
EAST ELEVATION

| No. | Description | Date |
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| A | ISSUED FOR COMMITTEE OF ADJUSTMENT | MARCH, 07, 2019 |



1
A-8

NORTH ELEVATION

SCALE 1:100

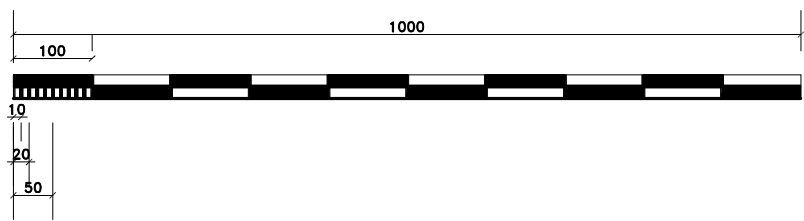
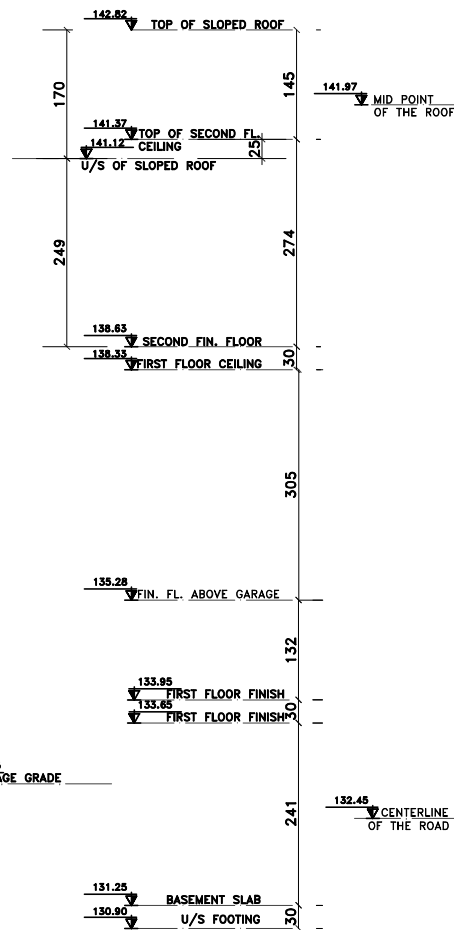
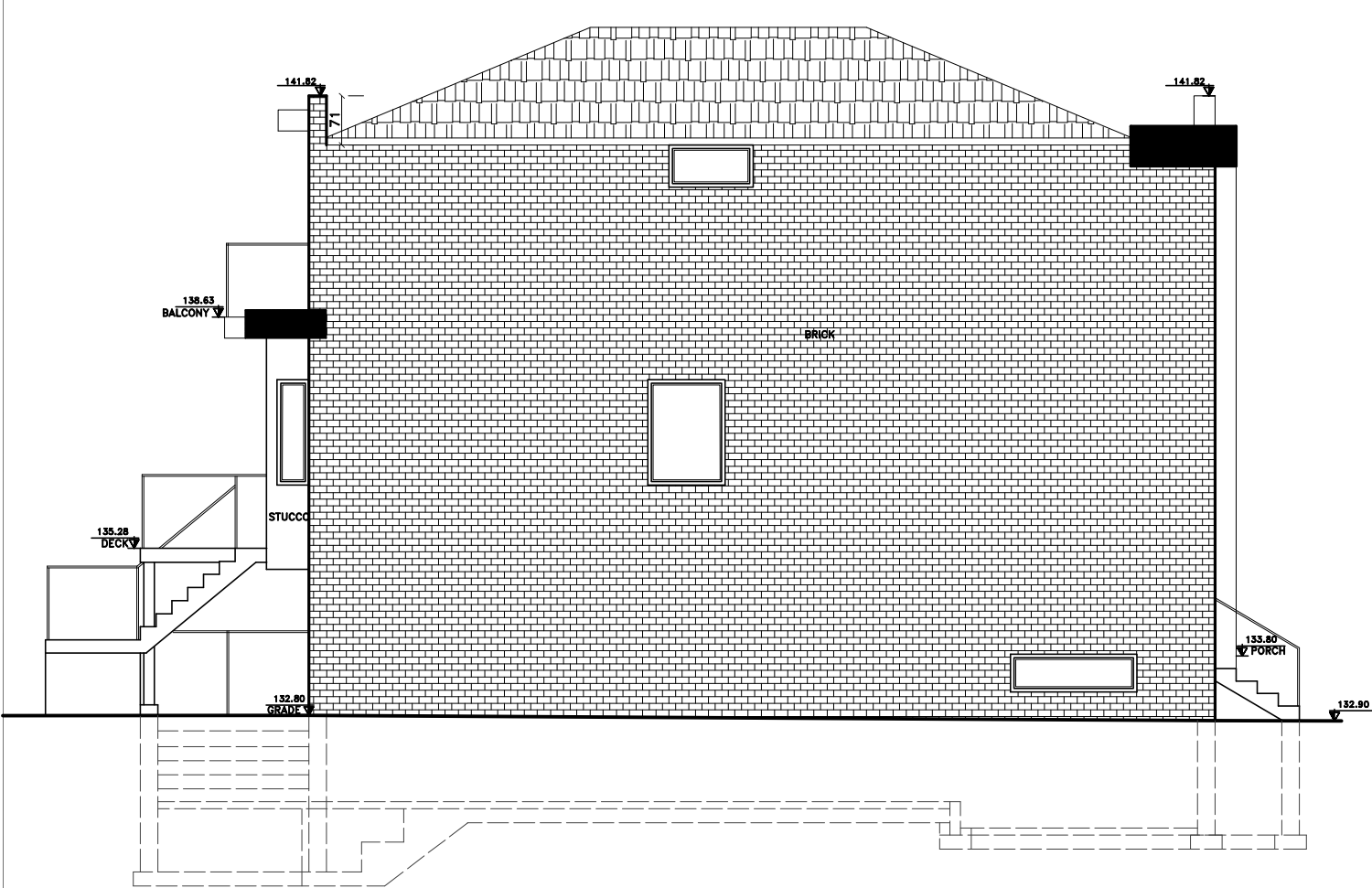
Project Name

**50 ADDISON CRS.
TORONTO, ON.**

Drawing Title

NORTH ELEVATION

| A | ISSUED FOR COMMITTEE OF ADJUSTMENT | MARCH, 07, 2019 |
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| No. | Description | Date |



1 WEST ELEVATION
A-9
 SCALE 1:100

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| Project Name | | |
| 50 ADDISON CRS. TORONTO, ON. | | |
| Drawing Title | | |
| WEST ELEVATION | | |
| A | ISSUED FOR COMMITTEE OF ADJUSTMENT | MARCH, 07, 2019 |
| No. | Description | Date |