

DECISION AND ORDER

Decision Issue Date **Thursday, November 7, 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): TATIANA ATKINSON

Applicant: OBP CONSULTANTS INC

Property Address/Description: 32 MARKHAM RD

Committee of Adjustment Case File: 18 156069 ESC 36 MV

TLAB Case File Number: 18 206166 S45 36 TLAB

Hearing date: Friday, November 01, 2019

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
OBP Consultants Inc.	Applicant	
Lihua Pang	Owner	
Xiaozhi Chang	Primary Owner	
Tatiana Atkinson	Appellant	
David McKay	Expert Witness	

INTRODUCTION

This is an appeal from a decision allowing minor variances to permit the construction of a two-story addition to an existing one storey dwelling as a result of changes to the proposed plans. This appeal had been before me on two previous occasions; but on each occasion it was impossible to discern the exact nature of the proposed addition, the exact variances, and thus whether the variances should be approval. Moreover,

there was no zoning examiner's notice and some of the variances were inaccurately stated. The requested variances currently being sought are found in Appendix 1.

BACKGROUND

This appeal was opposed only by a neighbouring property owner, to the rear who was concerned about the height of the proposed addition. That owner, Mrs. Atkinson and her husband appeared and gave evidence at the Hearing.

MATTERS IN ISSUE

There were three matters in issue: 1) the exact nature of the height variance and the location of the addition; 2) the need for new notice as two the variances had changed and 3) the impact of the proposed addition on trees near the addition.

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan'). 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

Unchallenged and uncontradicted evidence was presented on behalf of the applicants describing the proposed addition by Mr. David McKay a qualified land use planner. That evidence, orally and as set out in his witness statement on file with TLAB, clearly described the proposed addition, included plans, and had photos and information respecting other properties in the neighbourhood. The requested variances currently being sought and in Appendix 1, are set out in Mr. McKay's witness statement at pages 6-8. I was thus able to understand the application for the first time and for the first time heard and read evidence that the variances met the requirements of the PPS the Growth Plan and the Planning Act. I also heard evidence from the neighbour that she was not opposed to the granting of the variances.

There was clear evidence, as well, that new notice of the revised variances pursuant to s. 45(18.1.1) of the *Planning Act* was not necessary as the changes to the

variances were technical in nature and that conditions respecting curb cuts, conformity with plans on file and Urban Forestry approval should be imposed.

I did not hear evidence, however, that the proposed variances and addition met the intent and purpose of policy 3.4 of the Official Plan: “preserving and enhancing the urban forest by: i. providing suitable growing environments for trees; ii. increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and iii. regulating the injury and destruction of trees.” This policy is relevant; based on the evidence of Mr. McKay that the proposed addition will be very close to certain regulated trees. No arborist report was submitted to address the impact of the development on the trees along the southern boundary of the property.

ANALYSIS, FINDINGS, REASONS

The evidence is clear and uncontradicted that the variances cumulatively and individually meet the provisions of the PPS and the Growth Plan and the four tests of the Planning Act except for the intent and purpose of policy 3.4 of the Official Plan regarding tree protection. I find, therefore, that the variances should be approved subject to the conditions suggested. I do, moreover, find the condition regarding tree protection should be such that my approval should not come into force and effect until after Urban Forestry has granted all necessary permits (if any). In this way my approval cannot be used as a basis to require the issuing permits to injure or destroy trees under the Municipal Code.

DECISION AND ORDER

The appeal is allowed, and the variances requested in Appendix 1 are approved subject to the following required Conditions:

- 1) Construction is substantially in accordance with the proposed site plan and elevations in Appendix 2. Any other variances that may appear on these plans that are not listed in this decision are **NOT** authorized.
- 2) Compliance with any conditions requested by the Department of Transportation.
- 3) This Order does not come into force and effect until after Urban Forestry has reviewed the proposed plans and has issued all necessary permits for the injury or destruction of trees.

A handwritten signature in black ink, appearing to read 'S. Makuch', is written over a horizontal line.

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

Under By-law 569-2013:

Exception RD 1462 A (iii), By-law 569-2013

The maximum permitted floor space index is 0.4 times the area of the lot (607.6 sq. m).

The floor space index of the altered dwelling will be 0.42 times the area of the lot (640.0 sq. m).

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

The maximum permitted building height is 9.0 m (as per the height overlay map).

The altered two storey dwelling will have a height of 9.8 m.

Exception RD 395, By-law 569-2013

The minimum building setback from a front lot line that abuts Markham Rd. is 36.0 metres, measured from the original centreline of the street.

The altered two storey dwelling abuts Markham Rd and will be set back 19.0 m from the centreline of Markham Rd.

Chapter 10.5.50.1 (1)(C), By-law 569-2013

A minimum of 60% of the front yard must be soft landscaped.

In this case, 51% of the front yard will be soft landscaped.

Under By-law 10010:

Section 15.3, By-law 10010

The maximum permitted floor space index is 0.4 times the area of the lot (607.6 sq. m).

The floor space index of the altered dwelling will be 0.42 (639.5 sq. m).

Section 15.1, By-law 10010

TLAB File No. 18 206166 S45 36 TLAB David McKay, MCIP, RPP - Expert Witness
Statement

32 Markham Road, Toronto 8

The maximum permitted building height is 9.0 m.

The altered two storey dwelling will have a height will be 9.8 m.

Schedule B (29), By-law 10010

The minimum required building setback is 36 m from the centreline of the Markham Rd.

The altered two storey dwelling abuts Markham Rd and will be set back 19.0 m from the centreline of Markham Rd.

Section 19.1 (C), By-law 10010

A minimum of 60% of the front yard shall be maintained as landscaping.

In this case, 51% of the front yard will be maintained as landscaping.

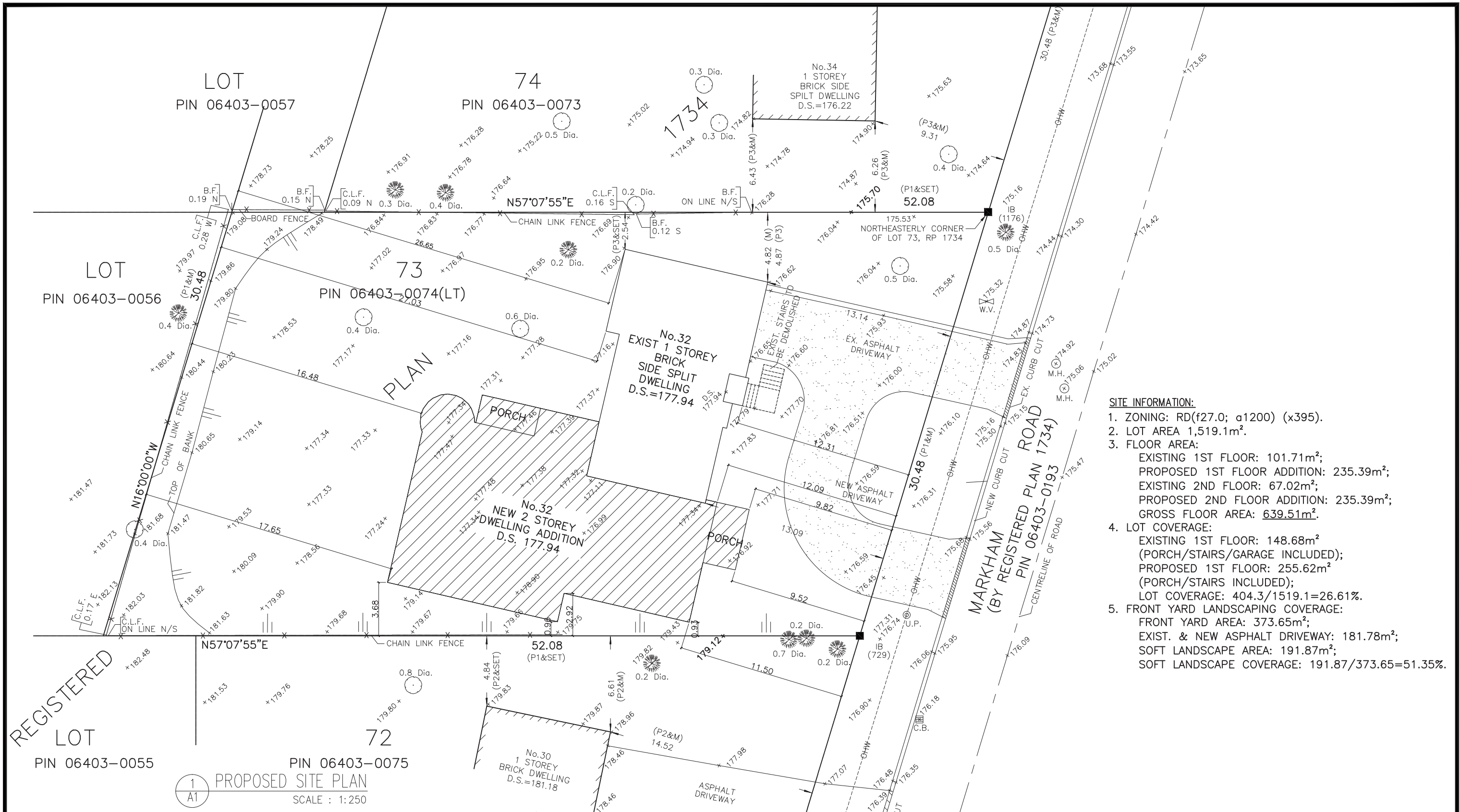
Section 2.1.4 By-law 10010

Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 18 206166 S45 36 TLAB

Accessory buildings shall not exceed a height of 3.6 m measured from the floor of structure to the eaves.

The altered dwelling will have a front porch eave height of 3.9 m and side porch eave height of 3.9 m.

APPENDIX 2



- SITE INFORMATION:**
1. ZONING: RD(f27.0; a1200) (x395).
 2. LOT AREA 1,519.1m².
 3. FLOOR AREA:
EXISTING 1ST FLOOR: 101.71m²;
PROPOSED 1ST FLOOR ADDITION: 235.39m²;
EXISTING 2ND FLOOR: 67.02m²;
PROPOSED 2ND FLOOR ADDITION: 235.39m²;
GROSS FLOOR AREA: 639.51m².
 4. LOT COVERAGE:
EXISTING 1ST FLOOR: 148.68m²
(PORCH/STAIRS/GARAGE INCLUDED);
PROPOSED 1ST FLOOR: 255.62m²
(PORCH/STAIRS INCLUDED);
LOT COVERAGE: 404.3/1519.1=26.61%.
 5. FRONT YARD LANDSCAPING COVERAGE:
FRONT YARD AREA: 373.65m²;
EXIST. & NEW ASPHALT DRIVEWAY: 181.78m²;
SOFT LANDSCAPE AREA: 191.87m²;
SOFT LANDSCAPE COVERAGE: 191.87/373.65=51.35%.

OBP CONSULTANTS INC.
7 MONTREAL STREET
BRAMPTON, ONTARIO L6X 0Z1
PHONE: (905)766-1796

PROJECT: PROPOSED 2 STOREY EXTENSION
32 MARKHAM ROAD, SCARBOROUGH M1M 2Z4

SCALE: AS NOTED

DATE: MAY 2018

DRN. BY: H.X.

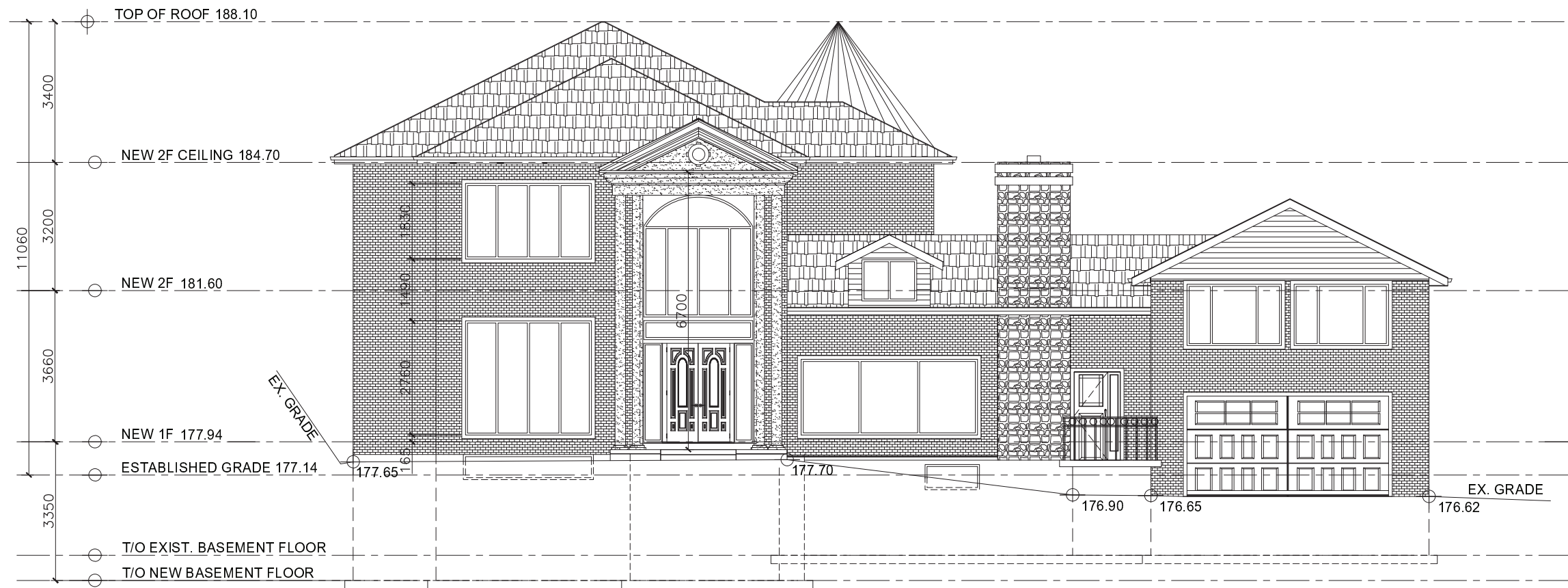
CHK. BY: H.X.

REV.	DATE	ISSUED FOR	BY
01	2018/05/07	ISSUED FOR MINOR VARIANCE	H.X.

NORTH:

DWG.#:

A1



1
A3.1

PROPOSED FRONT ELEVATION
SCALE : 1:125

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01	2018/05/07	ISSUED FOR MINOR VARIANCE	H.X.

NORTH:

DWG.#:

A3.1



1
A3.2

PROPOSED LEFT ELEVATION

SCALE : 1:125

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NORTH:

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A3.2



OBP CONSULTANTS INC.

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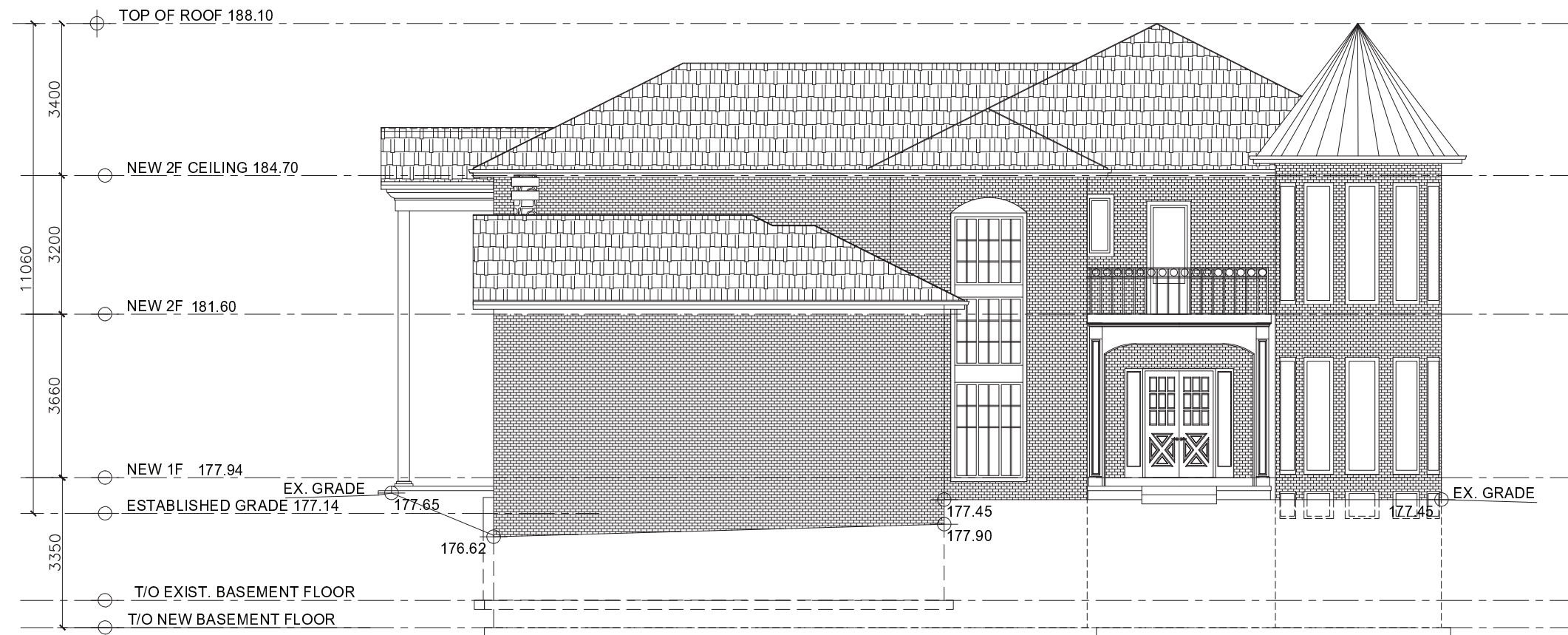
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REV.	DATE	ISSUED FOR	BY
01	2018/05/07	ISSUED FOR MINOR VARIANCE	H.X.

NORTH:

DWG.#:

A3.3



1
A3.4

PROPOSED RIGHT ELEVATION
SCALE : 1:125

OBP CONSULTANTS INC.
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BRAMPTON, ONTARIO L6X 0Z1
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PROJECT: PROPOSED 2 STOREY EXTENSION
32 MARKHAM ROAD, SCARBOROUGH M1M 2Z4

SCALE: AS NOTED

DATE: MAY 2018

DRN. BY: H.X.

CHK. BY: H.X.

REV.	DATE	ISSUED FOR	BY
01	2018/05/07	ISSUED FOR MINOR VARIANCE	H.X.

NORTH:

DWG.#:

A3.4



1
A3.1

FRONT ELEVATION
SCALE: 1:125

PROJECT: PROPOSED 2 STOREY EXTENSION 32 MARKHAM ROAD, SCARBOROUGH M1M 2Z4					NORTH:	
SCALE: AS NOTED	REV.	DATE	ISSUED FOR	BY	DWG. #: A3.1	
DATE:						
DRN. BY:						
CHK. BY:						



1
A3.2

LEFT ELEVATION
SCALE : 1:125

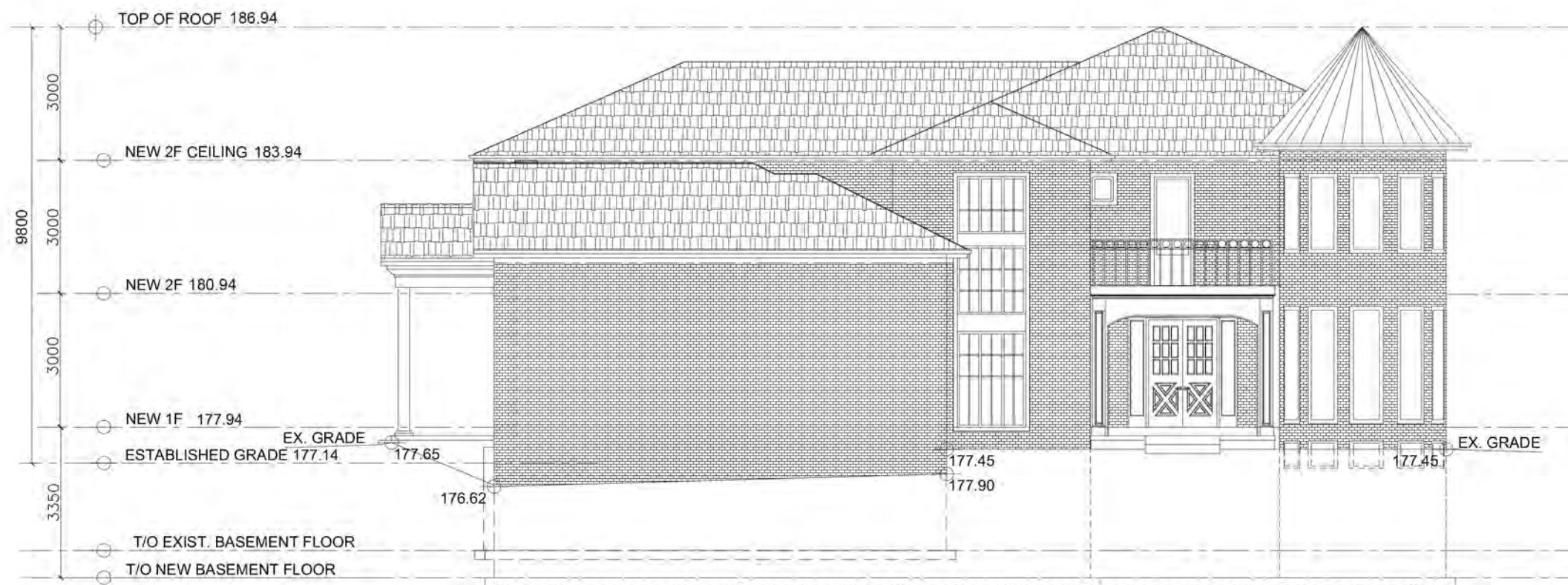
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CHK. BY:					



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A3.3

REAR ELEVATION
SCALE: 1/125

PROJECT: PROPOSED 2 STOREY EXTENSION 32 MARKHAM ROAD, SCARBOROUGH M1M 2Z4					NORTH:
SCALE: AS NOTED	REV.	DATE	ISSUED FOR	BY	
DATE:					
DRN. BY:					DWG.#: A3.3
CHK. BY:					



RIGHT ELEVATION
SCALE : 1:125

PROJECT: PROPOSED 2 STOREY EXTENSION 32 MARKHAM ROAD, SCARBOROUGH M1M 2Z4					NORTH:	
SCALE: AS NOTED	REV.	DATE	ISSUED FOR	BY	DWG.#: A3.4	
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