

# DECISION AND ORDER

**Decision Issue Date** Friday, January 17, 2020

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): Ehsan Vali

Applicant: Glenn Rubinoff

Property Address/Description: 46 Banff Road

Committee of Adjustment Case File: 17 278786 STE 22 MV (A0005/18TEY)

**TLAB Case File Number: 18 180855 S45 22 TLAB**

**Hearing dates:** Wednesday, August 21, 2019, Thursday, August 22, 2019 and Monday, December 16, 2019

**DECISION DELIVERED BY JUSTIN LEUNG**

## REGISTERED PARTIES AND PARTICIPANTS

Appellant	Ehsan Vali
Appellant's Legal Rep.	Jennifer Meader
Party	City of Toronto
Party's Legal Rep.	Sara Amini
Party's Legal Rep.	Marc Hardiejowski
Party	Al Kivi
Party	Bruce Winning
Party	Susan Abbott
Participant	Simon Levy

Participant	Deborah Glassberg
Participant	Catherine Didrichsons
Expert Witness	David Riley

## **INTRODUCTION**

This is an appeal from a decision of the Toronto East York Committee of Adjustment (COA) pertaining to a request to permit 13 variances for 46 Banff Road (subject property).

The variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a two storey detached dwelling with an integral garage.

This property is located in the Mount Pleasant East neighbourhood in the City of Toronto (City) bounded by Mount Pleasant Road to the west and Bayview Avenue to the east. The property is located on Banff Road, south of Eglinton Avenue East and north of Soudan Avenue

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the immediate neighbourhood and had reviewed all materials related to this appeal.

## **BACKGROUND**

The variances that had been requested are outlined as follows:

**1. Chapter 10.5.40.10.(5), By-law 569-2013**

A minimum of 10.0 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall. In this case, 6.38 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

**2. Chapter 900.2.10(930)(C), By-law 569-2013, as amended by By-law 1426-2017**

Despite regulation 10.10.80.40(1), the by law prohibits a vehicle entrance through the front main wall of a residential building, other than an ancillary building. In this case, the new detached dwelling will have a vehicle entrance through the front main wall.

**3. Chapter 900.2.10(930)(D)(i), By-law 569-2013, as amended by 14262017**

Despite regulations 10.5.40.50(2), 10.5.40.60(1)(C) and 10.5.40.60(1)(D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 metre above established grade, must comply with the following: (i) the maximum area of the platform is 4.0 m<sup>2</sup>; (ii) the minimum side yard setback of the platform is 1.8 m; and (iii) may not encroach into the required

rear yard setback. The new detached dwelling will have a rear main floor platform height greater than 1.2 m above grade with an area of 5.5 m<sup>2</sup> and will be located 0.46 m from the south side lot line.

**4. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted building height is 9.0 m. The new detached dwelling will have a height of 9.51 m.

**5. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of all front and rear exterior main walls is 7.0 m. The height of the front and rear exterior main walls will be 9.21 m.

**6. Chapter 10.10.40.30.(1), By-law 569-2013**

The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 20.1218.6 m.

**7. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (210.48 m<sup>2</sup>). The new detached dwelling will have a floor space index equal to 0.70.65 times the area of the lot (245.8228 m<sup>2</sup>).

**8. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line. The roof eaves will be located 0.1 m from the south side lot line.

**1. Section 6(3) Part II 3.B(II), By-law 438-86**

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m. The 3.121.6 m portion of the detached dwelling, exceeding the 17.0 m depth, will be located 0.46 m from the south side lot line and 1.12 m from the north side lot line.

**2. Section 6(3) Part I 1, By-law 438-86**

The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (210.48 m<sup>2</sup>). The new detached dwelling will have a gross floor area equal to 0.70.65 times the area of the lot (245.8228 m<sup>2</sup>).

**3. Section 6(3) Part II 8 D, By-law 438-86**

The projection of an uncovered platform into the required setbacks is restricted to a maximum of 2.50 m from the front or rear wall if it is greater than 1.2 m above grade. The new uncovered platform will project 3.0 m from the rear wall and will be 2.77 m above grade elevation.

**4. Section 1(ii)(A) &(B), Site Specific By law 1425-2017**

The by law prohibits the erection or use of a building or structure on a lot, for the purpose of a detached house having a platform or terrace attached to the rear wall of a residential building with a height greater than 1.2 m above grade, unless: (A) the area of the platform or terrace does not exceed 4.0 m<sup>2</sup>; and (B) the side yard setback of the platform or terrace is not less than

1.8 m; In this case, the rear main floor platform will have a height greater than 1.2 m above grade with an area of 5.5 m<sup>2</sup> and will be located 0.46 m from the south side lot line.

**5. Section 1(i). Site Specific By law 1425-2017**

The by law prohibits the erection or use of a building or structure on a lot, for the purpose of a detached house having an integral private garage if vehicle access to the garage is located in a wall of the building facing the front lot line. In this case, the new detached dwelling will have integral garage with vehicle access located in a wall of the building facing the front lot line.

These variances were heard and refused at the June 6, 2018 Toronto East York COA meeting. Subsequently, an appeal was filed by the property-owners of 46 Banff Road within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled a series of 3 days for hearings on October 5, 2018, December 13, 2018 and January 14, 2019. An interim decision, dated January 29, 2019, was issued by TLAB member Yao on this matter where the member recommended revising the integral garage design. The appellant subsequently requested a review of this decision, which was issued on March 19, 2019 by TLAB chair Lord. Based on the outcome of that review decision, a new set of hearing dates were scheduled for August 21, 2019, August 22, 2019 and December 16, 2019 for all relevant parties to attend.

At the rehearing, the appellant provided a revised set of Variance requests and proposed conditions for approval to the tribunal. These changes were made to, in the summation by the appellant, as a reduction in some of the variance requests and also modification to the overall building design. The revised conditions were also presented to the TLAB, for its consideration, to reflect these changes to the overall proposal. The revised variances are outlined below:

**1. Chapter 10.5.40.10.(5), By-law 569-2013**

A minimum of 10.0 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall. In this case, 6.38 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

**2. Chapter 900.2.10(930)(C), By-law 569-2013, as amended by By-law 1426-2017**

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- (i) the maximum area of the platform is 4.0 m<sup>2</sup>;

(ii) the minimum side yard setback of the platform is 1.8 m; and

(iii) may not encroach into the required rear yard setback.

The new detached dwelling will have a rear main floor platform height greater than 1.2 m above grade and will be located 1.12 m from the north side lot line.

**4. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted building height is 9.0 m. The new detached dwelling will have a height of 9.51 m.

**5. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of all front and rear exterior main walls is 7.0 m. The height of the front and rear exterior main walls will be 9.21 m.

**6. Chapter 10.10.40.30.(1), By-law 569-2013**

The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 18.6 m.

**7. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (210.48 m<sup>2</sup>). The new detached dwelling will have a floor space index equal to 0.65 times the area of the lot (228 m<sup>2</sup>).

**8. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line. The roof eaves will be located 0.1 m from the south side lot line.

**9. Chapter 10.5.50.10 (1)(B), By-law 569-2013**

A minimum of 50% (21.5 m<sup>2</sup>) of the front yard must be landscaping. The proposed front yard landscaping will be 38.1% (16.4 m<sup>2</sup>).

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

A minimum of 75% of the required front yard landscaping must be soft landscaping, which is equal to 16.1 m<sup>2</sup>. The proposed front yard soft landscaping will be 67.4% (14.5 m<sup>2</sup>).

**1. Section 6(3) Part II 3.B(II), By-law 438-86**

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m. The 1.6 m portion of the detached dwelling,

exceeding the 17.0 m depth, will be located 0.46 m from the south side lot line and 1.12 m from the north side lot line.

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(A) the area of the platform or terrace does not exceed 4.0 m<sup>2</sup>; and

(B) the side yard setback of the platform or terrace is not less than 1.8 m;

In this case, the rear main floor platform will have a height greater than 1.2 m above grade and will be located 1.12 m from the north side lot line.

**5. Section 1(i). Site Specific By law 1425-2017**

The by law prohibits the erection or erection or use of a building or structure on a lot, for the purpose of a detached house having an integral private garage if vehicle access to the garage is located in a wall of the building facing the front lot line. In this case, the new detached dwelling will have integral garage with vehicle access located in a wall of the building facing the front lot line.

## **MATTERS IN ISSUE**

The proposal is for a detached dwelling which features an integral garage design. As had been assessed in the previously issued Review Request Order which outlines how the appellant has elected not to revise their proposal to remove the integral garage and has now proceeded with a re-hearing on the merits of the original proposal. As a Davisville Zoning By-law had been passed by Council which provided accentuated planning direction with respect to attempts to control integral garages as they may occur with 'in-fill' housing, the TLAB must assess this proposal to determine if a variance to this respective By-law would be appropriate in this instance.

## **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**

On the first day of the hearing, the appellant's legal counsel Jennifer Meader stated that the Document Disclosure as provided outlines changes to the original variance requests. The deck has been re-oriented to the north side of the property façade. Ms. Meader further notes that the property-owners of 50 Banff Road have reached a tentative settlement agreement with her client and would thus be withdrawing any objections they had registered in relation to this proposal. The adjacent neighbour's were also notified of this tentative agreement. However, Ms. Meader stated that the neighbouring residents did not formally respond to her communication attempts. As previously described, the revisions to the proposal have resulted in alterations to the original variance requests as well. Ms. Meader contends that the changes are minor and should be accepted by the tribunal as it is permitted by the *Planning Act*. The presiding TLAB member accepted these amendments to the variances.

Ms. Meader proceeded to indicate that Mr. Winning and Mr. Kivi were seeking to transition from participant to party status. She argued that this status should not be granted to them. In the previous hearing held on this matter, these persons were granted participant status only. She further contends that as the City has party status they are properly equipped to cross-examine her witness. The inclusion of more parties, she argues, unnecessarily protracts the hearing. She further cites the previous Motion request relating to this matter as delivered by TLAB member Burton, dated May 10, 2019, which resulted in a refusal to adjourn the hearing as requested by participants Susan Abbott and Bruce Winning. The Motion decision stated that these persons did not reside within immediate vicinity of the subject property. As such, these participants should not be granted participant status.

The presiding TLAB member indicated that geographic location is not the only requisite factor in determining an individual's potential interest to an appeal matter. Due

to the proposal at hand and the tribunal's contention that there is a broader public interest, the two participants previously mentioned would be granted party status.

Ms. Meader called her expert witness David Riley to provide evidence. The presiding TLAB member stated that he had reviewed Mr. Riley's curriculum vitae and was willing to qualify him in the field of land use planning. Mr. Riley outlined the changes to the proposal. The proposed driveway will be permeable pavers to address loss of soft landscaped space. Mr. Riley reiterated that the building depth is being increased as per zoning requirements. Ms. Meader inquired about Official Plan Amendment (OPA) 320 and how it relates to this proposal. Mr. Riley responded that as per the City's Official Plan (OP), this property is situated within a 'neighbourhoods' designation. A 'geographic locations map' to look at houses within the immediate neighbourhood. The other parties in attendance indicated that this was not part of the previous submitted disclosure documents and was also objected to being proffered by the City's lawyer. The presiding TLAB member commented that it would be preferable moving forward that the hearing should focus on submitted materials.

Mr. Riley continued by describing building wall height as shown by this proposal would be consistent with the area. As such, he contends that the massing and scale as proposed is similar to other new homes which have recently been constructed in the area. The side yard setback conditions are not being adversely impacted and would be similar to the current condition at the site. He goes on to state that if the building height and integral garage is compatible for the area, the OP indicates that a minor variance application may be sought. Moreover, it further outlines 6 principles which should be met.

The integral garage component is, in Mr. Riley's opinion, satisfactory design for this area and would meet the test relating to compatibility for a neighbourhood. In terms of the test for minor, he goes on to state that he assesses minor in terms of impact. The design, and subsequent changes to the proposal, have resulted in decreasing the impact for the area. This is expressed in terms of the building height being reduced. The building depth varies with houses along the street. They have also recommended privacy screening be placed on side property lines to provide additional privacy to neighbouring properties.

The presiding TLAB member inquired about the parking situation here. Mr. Riley responded that permit parking is not being administered in this area. If a property-owner intended to park in their front yard, then a separate permit would need to be sought. Ms. Meader asked if City Engineering had commented on the variance application. Mr. Riley responded that Engineering staff indicated as the proposal does not include a reverse slope garage and flooding issues would be mitigated here, they had no further comments. She then inquired if the related Davisville By-law for this area had provisions relating to on street parking. Mr. Riley responded that he recalled it did discuss minimizing curb cuts to ensure on street parking supply was not negatively impacted.

The City lawyer Marc Hardiejowski commenced his cross-examination of the witness. He inquired about the neighbourhood policies as contained within the OPA 320. He asked if the criteria in determining physical character were assessed by him as they relate to the integral garage. Mr. Riley stated that his determination is that the policies as outlined specify driveway design. Furthermore, his analysis of the built form



incorporated the integral garage design as well as it pertains to OPA 320 policies. Mr. Hardiejowski then inquired about Mr. Riley's assessment of integral garages of the broader geographic area. Mr. Riley responded that he used a planning criteria to pre-determine the study area he used and did not assess other homes outside his study area as he did not find it pertinent to the matter at hand. Mr. Hardiejowski then asked about the Davisville By-law and its requirements which permit minor variance applications. Mr. Riley commented that while the By-law states that integral garages are prohibited for the Davisville area, that there is a mechanism to permit integral garages by way of minor variance application. In terms of the proposed condition for permeable pavers by the appellant, they accept that this condition has been recommended by them due to the introduction of a driveway which impacts the front yard soft landscaped area.

Party Mr. Winning proceeded to ask Mr. Riley if he was aware of parking regulations for the area. Mr. Riley responded that he had inquired with the City and found that permit parking is not enforced for the area. Mr. Winning asked if the potential curb cut would result in the loss of one on street parking space. Mr. Riley stated he is not sure that this result due to their proposed driveway.

Party Mr. Kivi inquired about about front yard parking. Mr. Riley stated that front yard parking would, in his opinion, be more impactful than driveway parking configuration. Mr. Kivi asked about gross floor area of houses in the area and potential to obtain such data. Mr. Riley responded that he has attempted to obtain this information but has found it to not be accurate especially when attempting to correlate such data to previous COA decisions.

Participant Ms. Didrichsons made a statement relating to this proposal. She contends that the proposed home is oversized in nature and is not consistent with municipal policies and by-laws. The proposal will, in her opinion, act to compromise the privacy of her property, especially as it relates to the rear yard. The roof design and building height could result in issues with snow build up during the winter period. She believes that this proposal could replicate other new home builds in the area which did not incorporate an integral garage.

Ms. Meader asked Ms. Didrichsons about other homes in the area which are of similar built form which she showed on the hearing room screen. Ms. Didrichson acknowledged that these homes had been built but believes there is a different site context for those other homes. The first day of hearings concluded at this point.

On the second day of hearings, Party Mr. Winning provided a statement in relation to the proposal. He opines that the proposal is inconsistent with the 'traditional' housing form which typifies this area. Increased curb cuts could potentially exasperate the on street parking supply. He further outlines that the Davisville By-law as passed clearly states for prohibition for integral garage design as it pertains to a detached dwelling. In assessing the OP, Mr. Winning comments that the prevailing character as stipulated in the municipal policies are not adhered to with this proposal.

Mr. Kivi asked Mr. Winning about the 6 'principles' which had previously been discussed. Mr. Winning responded that he interpreted principles as being less substantial than 'criteria' which he believed the TLAB should take into consideration as part of their review of the matter.

Ms. Meader inquired about the roof line and if the new proposal is consistent with other homes along Banff Road. Mr. Winning stated it appears they may line up with the neighbouring houses, however, he is unable to make a comment if it is consistent with all other homes along the street. In terms of the parking in the area, Mr. Winning commented that in discussions with City staff they indicated that permitted parking system is being considered for the area.

Party Ms. Abbott proceeded to provide testimony to the TLAB. She reiterates as Mr. Winning had indicated how physical character was not being upheld with this proposal. The proposal could act to further disrupt stormwater management for this area. Initially, 10 letters of concern had been submitted when the variance was submitted to COA. She proceeded to outline that other new builds in the area had been done in a manner which, in her opinion, reinforces the physical character of the area.

Ms. Meader asked if the integral garage design is existent in the area. Ms. Abbott respond that there are such design types in the neighbourhood.

Party Mr. Kivi then approached to provide evidence to the tribunal. He provided a historical overview of the area and that most of the original houses were constructed in the early 20<sup>th</sup> century. Mr. Kivi undertook a review of housing stock of the area to determine averages in terms of elements such as floor space index (FSI) and building height. He contends that the OP does not provide more prescriptive language in how to properly identify 'prevailing'. He further comments that some of the adjacent streets may not be an appropriate comparison to the conditions of Banff Road. This concluded the second day of hearings.

On the third day of hearings, Ms. Meader commenced her cross-examination of Party Mr. Kivi. Ms. Meader inquired as to the passing of OPA 320 and if it were relevant to this matter at hand. Mr. Kivi indicated that while OPA 320 was not in full force and effect at initial submission of this variance application, he cites that there have been previous decisions such as 10 Lake Promenade where the Clergy Principle, which is to apply the rules and policies in effect at the time an application was submitted, was set aside. However, Ms. Meader inquired if he were aware of other instances where the TLAB had set aside the Clergy Principle. Mr. Kivi responded that he was not, based on the decisions which he has reviewed.

The presiding TLAB member inquired Mr. Kivi on what criteria he used in formulating his sun/shade study. Mr. Kivi responded that as City of Toronto does not have such study guidelines for low-rise buildings, he used guidelines as formulated by City of Mississauga. Ms. Meader further asked if City of Toronto only requires such studies for hi-rise buildings. Mr. Kivi acknowledged this was accurate. Ms. Meader then asked about the terms 'broader context' and 'immediate context' as they are prescribed in the OP. Mr. Kivi indicated that he recognizes that the 'immediate context' should be first applied in assessing a proposal. However, Mr. Kivi acknowledges Ms. Meader's comment that both context are to be used as part of assessment criteria. Ms. Meader then inquired that if standard deviation was a formula which he placed significance on. Mr. Kivi indicated he did not prioritize the use of this in this instance as he did not feel it relevant to his analysis. Ms. Meader inquired about the Review Decision as issued by TLAB Chair Lord on this matter and the discussion on at grade and below grade garages. Mr. Kivi contends that the data that he has been using does differentiate on

building heights with each separate garage design. Ms. Meader inquires if the OP policies specifically delineate for 'prevailing' as the means of assessing a house proposal. Mr. Kivi states that it does not.

Expert witness Mr. Riley was asked to return to provide testimony to the TLAB. Ms. Meader asked about the sun/shady study was undertaken by Mr. Kivi. Mr. Riley commented that, if in using City of Mississauga's sun/shady study, he believes that the shadow which may be cast in relation to this proposal would still be acceptable in this residential area. Ms. Meader then inquired about the Clergy Principle. Mr. Riley stated that an application is subject to the policies in effect at the time. As such, he believes OPA 320 is not applicable to this application.

In closing statement, Ms. Meader contends that as the City did not bring an expert witness, it is her opinion that the arguments as positing by the City are not as substantively established as those brought forward by her expert witness Mr. Riley. She further references 57 Banff Road which she outlines was permitted height variances greater than the proposal being considered. She goes on to argue that by using median to analyze date of housing stock is more pertinent than using mean. Within the study area as defined by her, she states that she found that there are approximately 20% integral garages of the houses.

Mr. Kivi provided closing remarks that the tribunal does not have to accept expert witness evidence over that of 'lay person' testimony, which has been seen in previous TLAB decisions. He also indicated that with another TLAB matter, 401 Balliol Street, in his opinion, did not provide sufficient rationale in its eventual findings and as such, this tribunal should not provide significant credence towards it as part of its own adjudication of the matter at hand. He goes on to contend that the Davisville By-law must be considered by the tribunal in assessing the intent of the Zoning By-law which is one of the tests for a minor variance as per the *Planning Act*. The planning evidence the TLAB reviews should be comprehensive in nature and not defined meaning it should not just assess recent COA decisions but look at a broader range of developments occurring over a longer period of time in this area.

Mr. Winning stated that the Davisville By-law was passed after work considerable time and effort had been incorporated by Councilors, City staff, residents and other relevant stakeholders. He further argues that the appellant lawyer and their expert witness have not sufficiently assessed the relevant Zoning By-laws pertaining to their proposal. The proposal also does not appear to have climate change mitigation in permitting a larger sized home. This housing type is permitted in other residential zones which, he contends, are more appropriate than in this location.

Mr. Hardiejowski argues that the Davisville By-law was enacted in consideration and respect of OPA 320. He does not believe that conclusive empirical evidence has been provided to justify this proposal. The exemption of the prohibition for integral garages has not been sufficiently shown as being appropriate in this instance as well. The data as presented, of his opinion, does not appear to show integral garages as being a prevailing character in this area. He further advises the tribunal to not provide significant weight to the map of integral garages as proffered by the expert witness as it was submitted later to the TLAB and did not have detailed information and was provided in a general data context instead.

Ms. Meader provided responses to closing remarks that had been made. She contends that the expert witness did appropriately review municipal policies and how they relate to integral garages. She reiterates that the materials as submitted by the expert witness Mr. Riley does show, through the requisite photo book, that taller houses with integral garages are a prevailing character of this area. She recognizes the Davisville By-law is in effect, however, they have applied for a minor variance to permit this which is within their right of the *Planning Act*.

## **ANALYSIS, FINDINGS, REASONS**

In assessing this proposal, the staff report, dated May 31, 2018, which had been prepared has been cited by the parties to this matter at several instances of the hearings. The report outlines concerns relating to the eaves projection and building depth as proposed by the applicant. However, the Planner on file does state that the proposal would be more acceptable to staff if the following amendments were made:

“The applicant agreed to make revisions to the proposed dwelling to address staff’s concerns by reducing the height of the cornice/eaves line from 7.8 metres to 7.5 metres above established grade, and by reducing the building depth from 20.12 metres to 18.6 metres”<sup>1</sup>

This was again expressed at the TLAB hearing. The appellant indicated that revisions had been made to their proposal to address concerns of City staff. The report, while recognizing that there is a ‘prohibition’ as promulgated through the Davisville By-law, does not contain language which acts to restrict the application for such a garage design. This can be attributed to provisions which are contained in this requisite By-law which do permit integral garage by way of a minor variance application, so long as 6 elements are met by a proposal. Once a minor variance application were submitted, it would then be subjected to further review and analysis by the COA to determine if it met the four tests for a minor variance as stipulated under the *Planning Act*. It is noted that throughout the proceedings, the above-mentioned 6 ‘principles’ or ‘elements’ were debated by the various parties. There were divergent perspectives as to whether these ‘elements’ should be categorized as ‘criteria’ or ‘guidelines’. The genesis of these arguments is normative in attempting to, at first instance, to determine if a proposed dwelling with an integral proposal should be permitted to proceed if it did not met these 6 ‘elements’. However, and as stated in the Decision for 401 Balliol Street, dated April 8, 2018, as delivered by TLAB Chair Lord, outlines a substantive commentary which provides further context to this discussion:

“By the same token, when a property owner embarks upon a major re-investment in their property, they have the right to consider and design in accordance with their own goals, having regard to applicable use, zoning and building regulations, among other matters. The *Planning Act* not only permits variances to applicable zoning

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<sup>1</sup> City of Toronto. *Staff Report: Committee of Adjustment: 46 Banff Rd.* 31 May 2018, pp. 2

to be applied for subject to assessment criteria, but also nowhere specifies that in-force zoning should override that statutory right.”<sup>2</sup>

The above statement outlines that however the ‘elements’ as previously described and contained within the Davisville By-law are interpreted, ultimately the principal right to apply for a Planning approval is intrinsically guaranteed to any potential applicant. While a municipality may attempt to further regulate certain building forms and planning developments through instruments such as OP and Zoning By-laws, it cannot act to restrict a person or party from seeking relief by way of a Planning application. However, the municipality may act to review and assess such an application, once submitted, in relation to its in force municipal regulations and policies to determine that proposal’s appropriateness for the community in question. As such, the proposal at hand will be evaluated by the TLAB in a holistic manner by analyzing all pertinent policies and regulations to determine if the proposal has provided appropriate regard to the OP and Zoning By-law, while also ensure it is a minor proposal and will also be compatible for the neighbourhood it is to be situated in.

Prior to this re-hearing, the appellant had attempted and, in principle, secured a settlement with the adjacent neighbor of 50 Banff Road. This property-owner has subsequently withdrawn their party status to this TLAB matter. In addition, revisions to the proposal were made which acted to address concerns from the residents of 50 Banff Road. These amendments have resulted in the rear porch to reduce in overall size and scale. While the formal minutes of settlement were not provided to the TLAB, the tribunal will accept the information as provided by the appellant’s lawyer to be, on prima facie review, accurate. These changes are substantial as, in addition to addressing staff comments, the appellant has acted to, where possible, to achieve a mediated outcome with one of the adjacent neighbours. It is further recognized that, due to the dense urban fabric the property is located within, that constructive attempts to mitigate privacy and shade concerns have been made by the appellant. The site constraints do result in these issues being incongruous and a condition which is seen with several other properties in the area, as illustrated in the disclosure documents and as part of the site visit as conducted by the TLAB member. This is consistent with TLAB Rules which encourage parties to engage in constructive dialogue to resolve differences which have arisen thereby reducing further adjudicative decisions having to be rendered by the TLAB. The Clergy Principle was cited at several instances during the proceedings. The appellant contends that this Principle should be applied for this application. Other opposing Parties find that it should not be applicable here and that the municipal policies and regulations in effect should be used to analyze this proposal. The TLAB was made aware by the disclosure documents, most notably by the appellant, of other recent TLAB decisions in the area adjacent to the subject property. An opposing Party did cite a recent TLAB decision which was in a different geographic area of the City where this Principle was not adopted by the presiding TLAB member. Within this dynamic, these submitted materials do provide an additional means by which to assess this Principle and its potential applicability.

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<sup>2</sup> TLAB Decision and Order: 401 Balliol Street (2018, April 18) Retrieved from [https://www.toronto.ca/wp-content/uploads/2018/04/8e0d-TLAB\\_17-260915-S45-22-TLAB\\_401-Balliol-St\\_Decision\\_ILord.pdf](https://www.toronto.ca/wp-content/uploads/2018/04/8e0d-TLAB_17-260915-S45-22-TLAB_401-Balliol-St_Decision_ILord.pdf)

This is most aptly surmised in the Decision for 610 Soudan Avenue, dated November 11, 2019, as delivered by TLAB member Gopikrishna, which advocates for the materials as provided by the appellant and opposing parties to each be assessed on their individual merits, thereby adopting what is termed a ‘bottom-up’ approach in assessing this appeal matter. His methodology can be summarized as follows:

“I note that the process above does not suggest a new methodology, but rearranges the steps required to make a decision such that the question of determining the applicability of the clergy principle is left to the very last; the question about the applicability needs to be made only when an analysis of the evidence of each party, viewed through the lens of their specific OP, supports their conclusion, about the OP. The reason for my preferring the “bottom up” methodology described above, is that it allows one to be sensitive to the uniqueness of each neighbourhood, with specific reference to the various geographic neighbourhood constituting the neighbourhood, and make decisions on the characteristics of what would best fit, and reinforce the stability of the neighbourhood. This approach provides maximal flexibility to each party to choose the former, or the newer OP, and argue their case on the basis of their preferred OP.”<sup>3</sup>

This method provides both parties providing different perspectives on the proposal to provide their arguments to the tribunal in an environment where their submissions will be weighed equally and within an appropriate localized context. In addition to an opposing Party providing a previous TLAB decision on this matter, the City lawyer did provide previous Ontario Municipal Board (OMB) case law to the TLAB as well which accentuate for instances where the Principle was not applied. The cumulative effect of these materials as provided to the tribunal provide a cursory reference point that the Principle has not attained, as of now, a status as established or applicable law. As such, its merits must be considered on a case-by-case basis by adjudicators who have been provided such issues. These issues must also be weighed according to the specific matter being adjudicated upon to ensure the public interest is secured in that particular instance.

The OP policies were assessed by all the parties involved within the context of ‘prevailing character’ and how this proposal would correlate to this criteria. This criteria was applied to determine if the proposal is in keeping with the existing built form of the area. While the ‘study area’ which was determined and used by the appellant had been scrutinized at great detail by the City lawyer and opposing Parties, the photo book as proffered by the appellant is iterative as it provides visual representation which show that the immediate neighbourhood. The below figure provides a visual context which depicts the varied housing forms and parking configurations for residential dwellings in this Mount Pleasant neighbourhood.

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<sup>3</sup> TLAB Decision and Order: 610 Soudan Avenue (2019, November 11) Retrieved from [https://www.toronto.ca/wp-content/uploads/2019/12/8de7-TLAB-18-246242-S45-22-TLAB\\_610-Soudan-Ave\\_Final-Decision-Corrected\\_SGopikrishna.pdf](https://www.toronto.ca/wp-content/uploads/2019/12/8de7-TLAB-18-246242-S45-22-TLAB_610-Soudan-Ave_Final-Decision-Corrected_SGopikrishna.pdf)

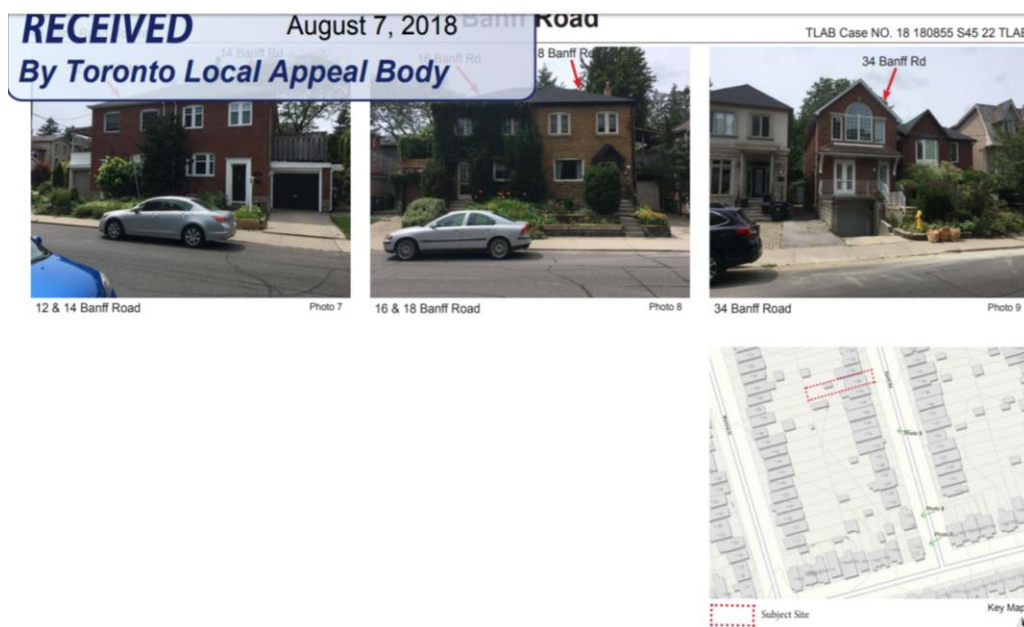


Figure 1 (Photo Book as prepared by expert witness David Riley of SGL Planning & Design Inc, dated July 31, 2018)

As a practical measure, we use a reference point of properties within 60 metre radius of the subject property which is the circulation area per public notification of COA applications as prescribed by the *Planning Act*. This has been contemplated by provincial policy-makers to determine the local context/impact for which a COA application/proposal can potentially have. The tribunal contemplates that this measure would be an appropriate means of assessing the immediate context for this proposal.

While the tribunal recognizes some of these homes may have been constructed prior to the passage of certain municipal policies such as the Davisville By-law, a cursory review of the disclosure documents shows that data, as compiled through official research requests to the City and on the City's Application Information Centre (AIC) website who that there have been more recently constructed homes with integral garage and below grade garages. Within such a circumstance, one can surmise that the 'prevailing character' of the area has, over time, begun to evolve with varied house and parking designs beginning to emerge in this neighbourhood. Relating to this analysis, recent TLAB decisions for similar proposals have also permitted this design context. In terms of curb cuts to facilitate driveway construction as potentially disrupting the on-street parking inventory, it is rationale to assume that an increase in the overall parking supply is being facilitated with driveway construction and associated garages. Furthermore, issues which have occurred with on street parking such as impeding the movement of municipal garbage collection and snow plow vehicles could potentially be mitigated as an increased number of vehicles are now parked on individual residential properties.

With the evidence which has presented before me, the tribunal prefers the evidence of the appellant in presenting a proposal which is consistent with the development pattern which has begun to occur in this area. The proposal will not act to disrupt the neighbourhood rhythm and will contribute to the regeneration of the housing stock in this area. The integral garage, while not viewed by the tribunal as the most



optimal design, is understood and accepted due to the site constraints. It would also aide in decreasing the strain towards on street parking. In terms of potential stormwater and other environmental related concerns as presented by the opposing Parties, it is noted that City Engineering staff did not provide comments on this application. However, any potential 'in-fill' development is, as established by City departmental standards which have been demonstrated in other recent COA application and TLAB decisions, there are typically conditions which an applicant/appellant must address. This would include a series of items such as tree permit for tree removal/replanting, Engineering standards for stormwater runoff management, curb cut permitting process, building permit regulations etc. These conditions act to ensure any new development does not contribute to an overall negative effect on the physical environment of the neighbourhood it will be situated in. Within this context, the appellant did provide a series of proposed conditions relating to changes to the proposal. As part of its review, the tribunal finds that the conditions as proposed are consistent with conditions which had initially been proposed by City staff in their requisite reports on this matter. These revised conditions are not atypical of similar TLAB decisions and, as such, are accepted by the tribunal as being appropriate to be incorporated as part of this written decision.

The tribunal further finds that, even if it were to include OPA 320 and the Davisville By-law, the proposal would still be consistent with overall municipal intent for this area. These policies were crafted with substantial public consultation. While they contain language to provide guidance on development in established neighbourhoods, it has been written, through what is interpreted by the tribunal as intentional in nature, to not be substantively restrictive. In this respect, what is being explained is that while the policy documents may describe certain built forms as being potentially 'unfavourable' for an area, it has also provided a mechanism by which such built forms can be incorporated into an area so long as other criteria are met as well. As such, the tribunal must derive its decisions within this policy framework in order to meet its requisite legal and planning obligations. This ensures the integrity and intent of these polices continues to be upheld.



## DECISION AND ORDER

The appeal is allowed, and the variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans contained in the City staff report in Appendix 2.

X



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J. Leung  
Panel Chair, Toronto Local Appeal Body

## Appendix 1

### *List of proposed variances*

#### **1. Chapter 10.5.40.10.(5), By-law 569-2013**

A minimum of 10.0 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall. In this case, 6.38 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

#### **2. Chapter 900.2.10(930)(C), By-law 569-2013, as amended by By-law 1426-2017**

Despite regulation 10.10.80.40(1), the by law prohibits a vehicle entrance through the front main wall of a residential building, other than an ancillary building. In this case, the new detached dwelling will have a vehicle entrance through the front main wall.

#### **3. Chapter 900.2.10(930)(D)(i), By-law 569-2013, as amended by 1426-2017,**

Despite regulations 10.5.40.50(2), 10.5.40.60(1)(C) and 10.5.40.60(1)(D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 metre above established grade, must comply with the following:

- (i) the maximum area of the platform is 4.0 m<sup>2</sup>;
- (ii) the minimum side yard setback of the platform is 1.8 m; and
- (iii) may not encroach into the required rear yard setback.

The new detached dwelling will have a rear main floor platform height greater than 1.2 m above grade and will be located 1.12 m from the north side lot line.

#### **4. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted building height is 9.0 m. The new detached dwelling will have a height of 9.51 m.

#### **5. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of all front and rear exterior main walls is 7.0 m. The height of the front and rear exterior main walls will be 9.21 m.

#### **6. Chapter 10.10.40.30.(1), By-law 569-2013**

The maximum permitted depth of a detached dwelling is 17.0 m. The new detached dwelling will have a depth of 18.6 m.

**7. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (210.48 m<sup>2</sup>). The new detached dwelling will have a floor space index equal to 0.65 times the area of the lot (228 m<sup>2</sup>).

**8. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line. The roof eaves will be located 0.1 m from the south side lot line.

**9. Chapter 10.5.50.10 (1)(B), By-law 569-2013**

A minimum of 50% (21.5 m<sup>2</sup>) of the front yard must be landscaping. The proposed front yard landscaping will be 38.1% (16.4 m<sup>2</sup>).

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

A minimum of 75% of the required front yard landscaping must be soft landscaping, which is equal to 16.1 m<sup>2</sup>. The proposed front yard soft landscaping will be 67.4% (14.5 m<sup>2</sup>).

**1. Section 6(3) Part II 3.B(II), By-law 438-86**

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m. The 1.6 m portion of the detached dwelling, exceeding the 17.0 m depth, will be located 0.46 m from the south side lot line and 1.12 m from the north side lot line.

**2. Section 6(3) Part I 1, By-law 438-86**

The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (210.48 m<sup>2</sup>). The new detached dwelling will have a gross floor area equal to 0.65 times the area of the lot (228 m<sup>2</sup>).

**3. Section 6(3) Part II 8 D, By-law 438-86**

The projection of an uncovered platform into the required setbacks is restricted to a maximum of 2.50 m from the front or rear wall if it is greater than 1.2 m above grade. The new uncovered platform will project 3.0 m from the rear wall and will be 2.77 m above grade elevation.

**4. Section 1(ii)(A) &(B), Site Specific By law 1425-2017**

The by law prohibits the erection or erection or use of a building or structure on a lot, for the purpose of a detached house having a platform or terrace attached to the rear wall of a residential building with a height greater than 1.2 m above grade, unless:

(A) the area of the platform or terrace does not exceed 4.0 m<sup>2</sup>; and

(B) the side yard setback of the platform or terrace is not less than 1.8 m;

In this case, the rear main floor platform will have a height greater than 1.2 m above grade and will be located 1.12 m from the north side lot line.

**5. Section 1(i). Site Specific By law 1425-2017**

The by law prohibits the erection or erection or use of a building or structure on a lot, for the purpose of a detached house having an integral private garage if vehicle access to the garage is located in a wall of the building facing the front lot line. In this case, the new detached dwelling will have integral garage with vehicle access located in a wall of the building facing the front lot line.

*List of proposed conditions*

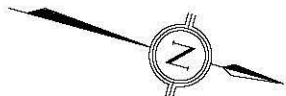
1. The new detached dwelling shall be constructed substantially in accordance with the elevations prepared by Rubinoff Design Group, dated July 20, 2018, rear elevation prepared by Rubinoff Design Group, dated April 24, 2019, and the Site Plan prepared by Rubinoff Design Group, dated April 24, 2019.
2. Permeable materials are to be used for the proposed driveway.
3. The applicant shall submit a complete application for permit to injure or remove City owned trees under Municipal Chapter 813 Article II, Street trees.
4. The applicant shall provide a 1.5-metre high opaque privacy screen on the north side of the rear wood deck.

$$7 \quad 2 \quad 2$$

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P.I.N. 21129-0166 (LT)

P.I.N. 21129-0165 (LT)



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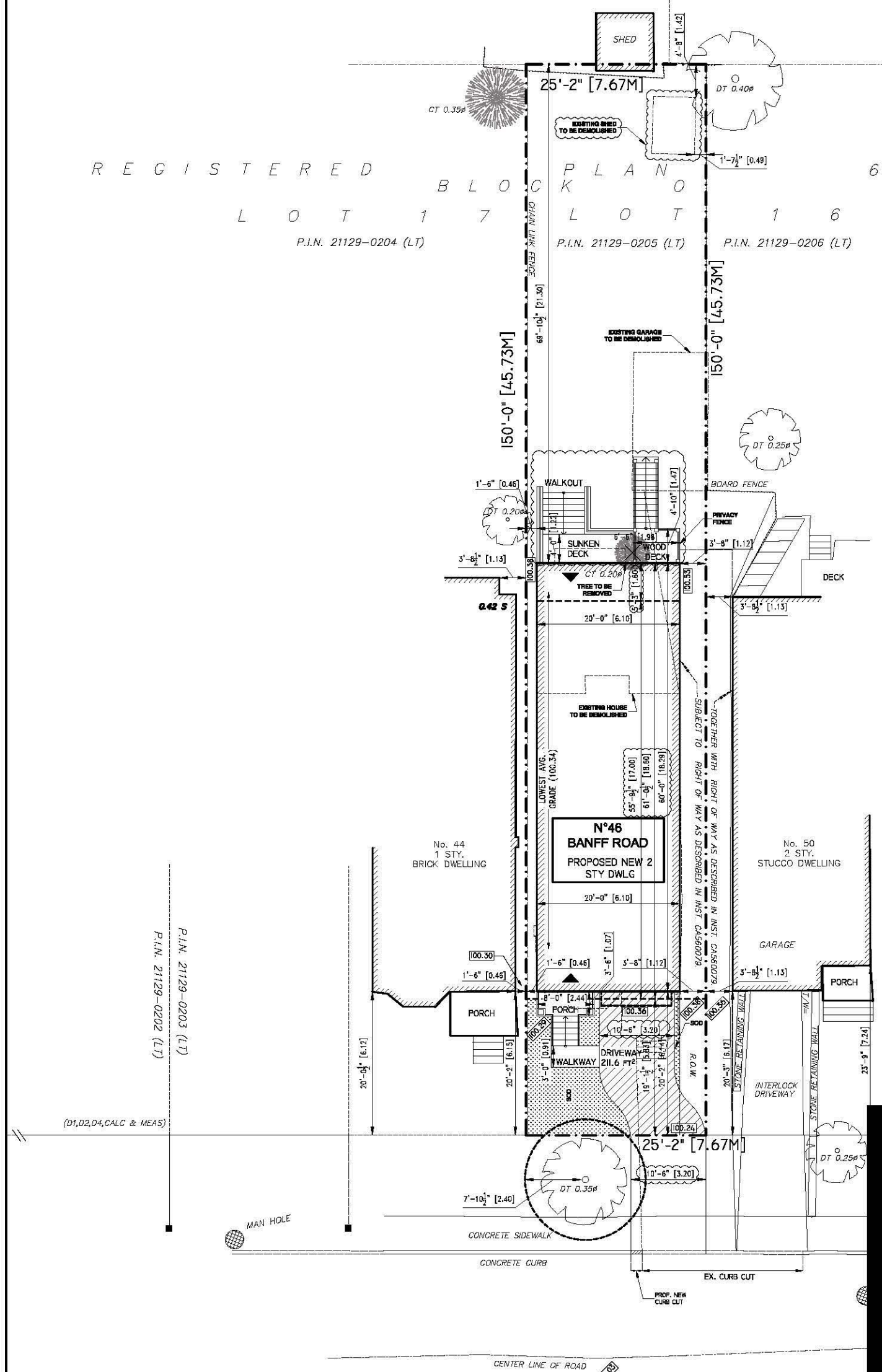
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P.I.N. 21129-0205 (LT

P.I.N. 21129-0206 (LT)



### SITE STATISTICS:

**PART LOT 16 AREA = 3776 ft<sup>2</sup> [350.8 m<sup>2</sup>]**

**FRONT YARD AREA = 462.8 ft<sup>2</sup> [43.0 m<sup>2</sup>]**

**WALKWAY** = 20.2 ft<sup>2</sup> [1.9 m<sup>2</sup>]

**R.O.W. [RIGHT OF WAY] = 60.0 ft<sup>2</sup> [5.6 m<sup>2</sup>]**

**DRIVEWAY AREA = 211.6 ft<sup>2</sup> [19.6 m<sup>2</sup>]**

**FRONT YARD HARD SURFACE AREA = 271.6 ft<sup>2</sup> [25.2 m<sup>2</sup>]**

$$(\text{DRIVEWAY} + \text{R.O.W.}) / (\text{FRONT YARD AREA}) = 58.7\% (50\% \text{ MAX.})$$

PERMITTED)

**FRONT YARD SOFT LANDSCAPED AREA = 171.0**

$$A) - (\text{DRIVEWAY} + \text{R.O.W.}) = 191.2$$

SOFT LANDSCAPED AREA = 171.0 SF (89.4%) MIN 75% REQ'D

**GFA / FS1 = 2445.5 ft<sup>2</sup> [227.2 m<sup>2</sup>] [64.8%]**

**BANFF ROAD**

( FORMERLY MOWAT STREET )

(BY REGISTERED PLAN 694, P.I.N.21129-0524 (LT) )

## PRIVATE RESIDENCE

PROJECT:

## SITE PLAN

PROJECT:

**46 BANFF ROAD  
TORONTO, ONTARIO**



697 Mount Pleasant Rd.  
Toronto, Ontario M4S 2N4  
TEL: 416.667-0322 FAX: 416.667-0751 EMAIL: [Info@rubinoffdesign.com](mailto:Info@rubinoffdesign.com)

PROJECT DESIGNER:

G.R.

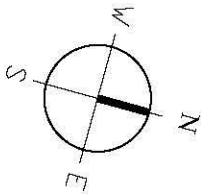
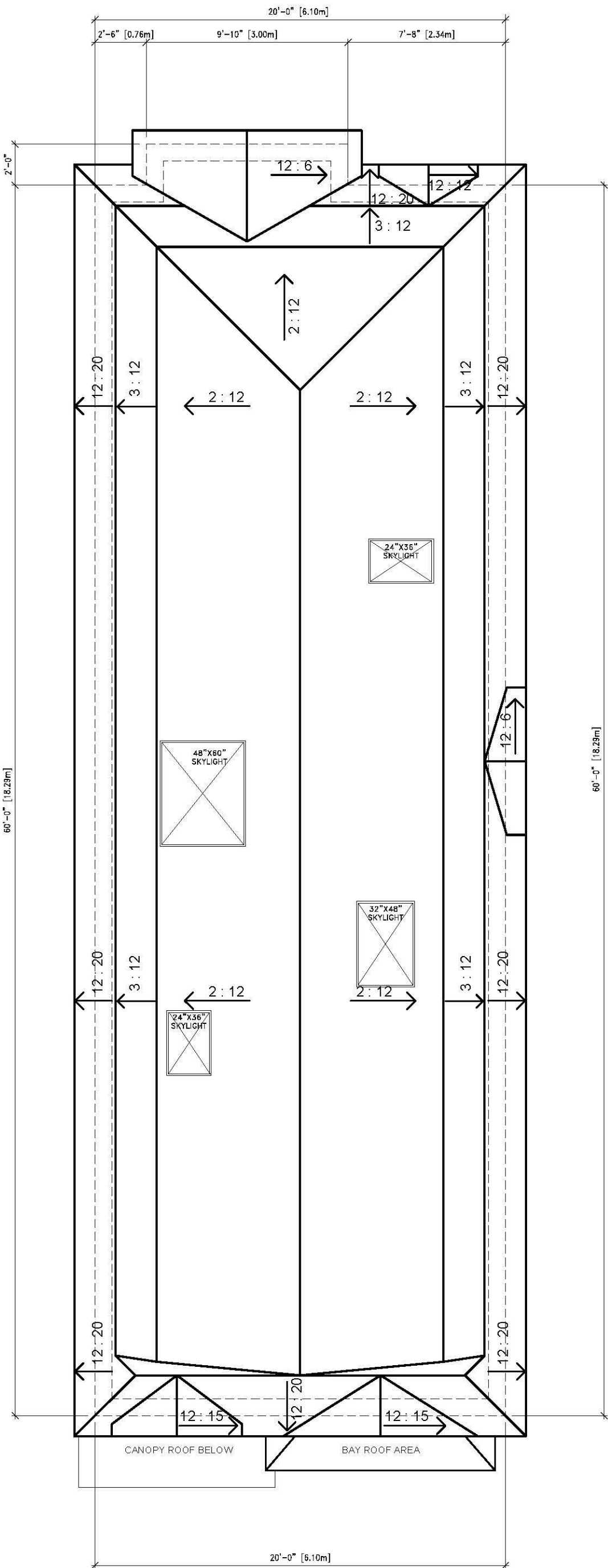
PROJECT NO.	
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DATE: APRIL 24, 2019

SCALE: 1:200

DRAWING NO.

# A



# ROOF PLAN

N°46 BANFF ROAD

**R**ubinoff Design Group

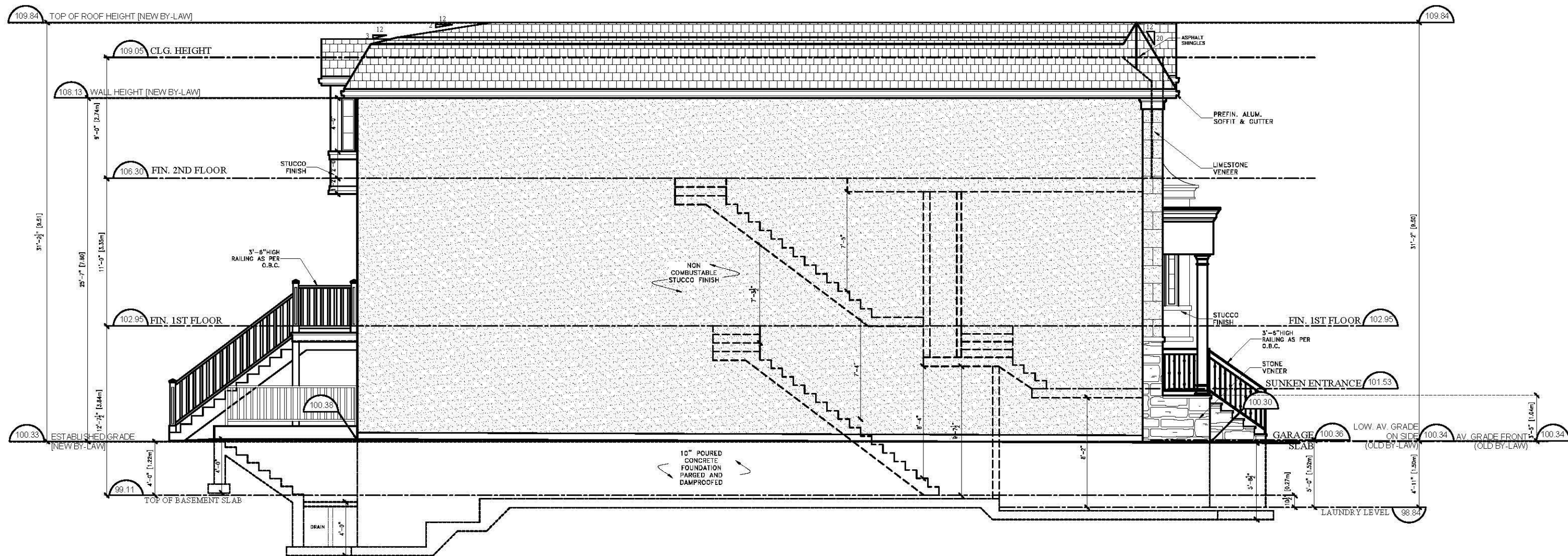
697 MOUNT PLEASANT RD.  
Toronto, Ontario M4S 2N4

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

SCALE : 3/16" = 1'-0" JULY 20, 2018



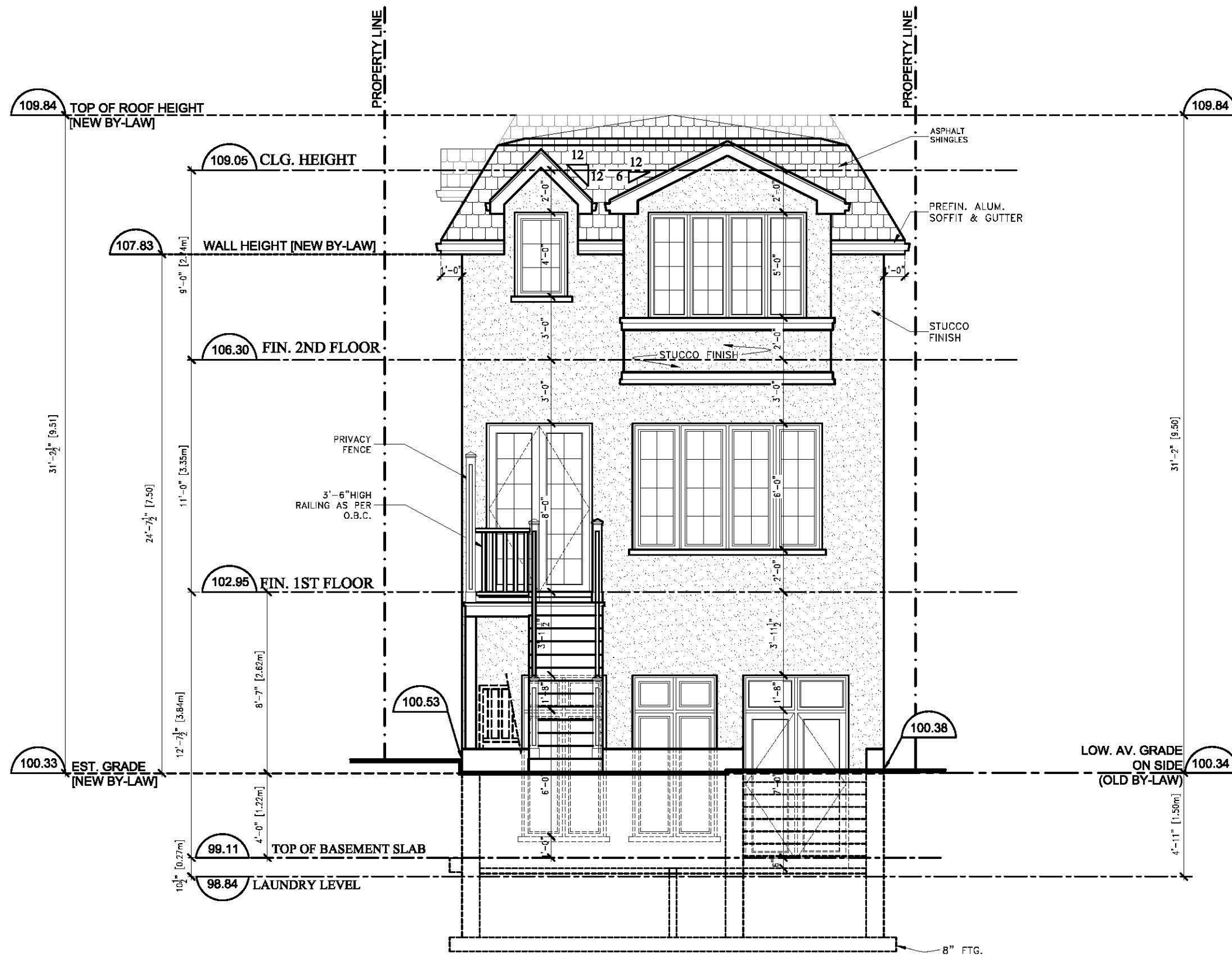




# LEFT ELEVATION (EAST)

N°46 BANFF ROAD





## REAR ELEVATION (SOUTH)

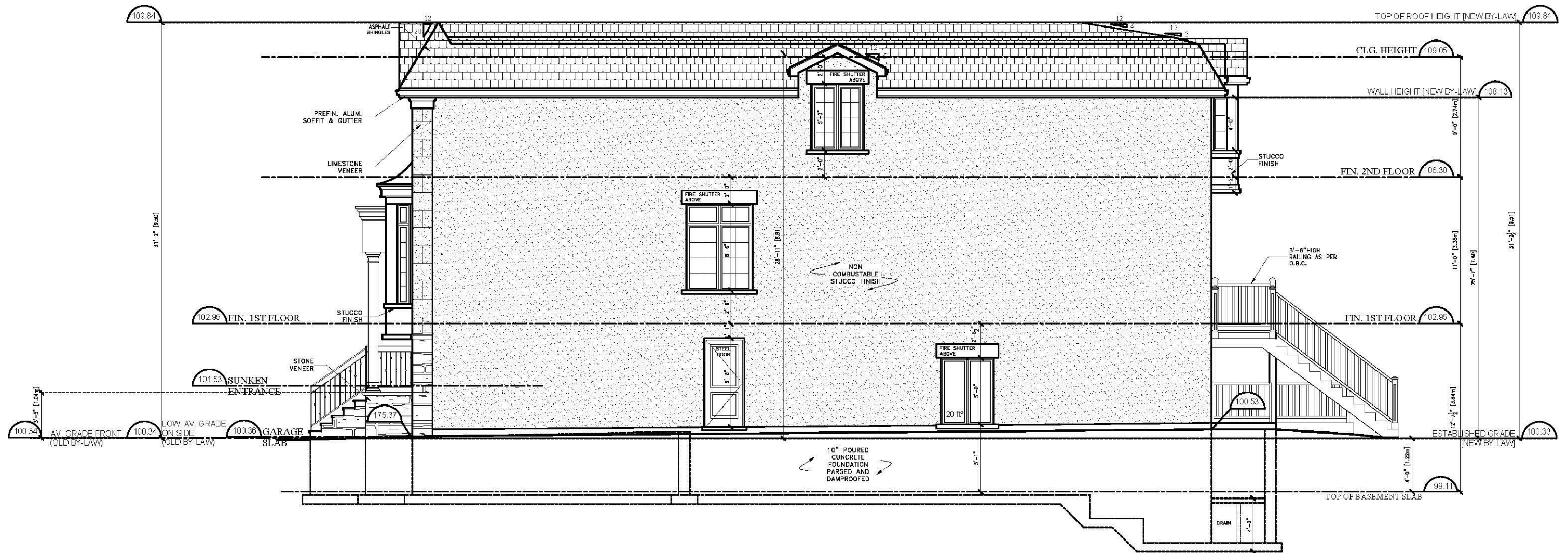
N°46 BANFF ROAD

**Rubinoff Design Group**

697 MOUNT PLEASANT RD.  
Toronto, Ontario M4S 2N4

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

SCALE :  $\frac{3}{16}" = 1'-0"$  APRIL 24, 2019



# RIGHT SIDE ELEVATION (WEST)

N°46 BANFF ROAD