

# DECISION AND ORDER

**Decision Issue Date** Friday, January 24, 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): SUANNE TINA E DEBOER-MIEDEMA

Applicant: ARG ARCHITECTS INC

Property Address/Description: 58 PARKVIEW AVE

Committee of Adjustment Case File: 19 232650 NNY 18 MV

**TLAB Case File Number: 19 254643 S45 18 TLAB**

**Settlement hearing date:** Monday, January 21, 2019

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

Name	Role	Representative
ARG Architects	Applicant	
Hui Wang	Owner/Party's Legal Rep	
Suanne Tina Deboer-Miedema	Appellant	
Jiamin Mei	Party	

## INTRODUCTION

This matter involves an appeal by the Appellant of the decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) approving, on condition, variances applicable to 58 Parkview Avenue (subject property).

The variances requested were to facilitate the construction of a new house on the subject property, with rear elevated deck. Eleven variances were requested; the COA

approved 10, modified the 11<sup>th</sup> and restricted its approval to attached drawings of the east and west elevations of the proposed construction.

## **BACKGROUND**

Following the COA decision, a neighbor appealed the disposition in proper form. In the ensuing period and out of compliance with the dictates of the Notice of Hearing forwarded by the Toronto Local Appeal Body (TLAB), none of the requisite filings were forthcoming. There were no experts identified, no Witness Statements of any kind, no disclosure of documents and no Motion materials.

The City took no active role in this matter.

The COA file, forwarded to the TLAB, did contain certain filings including the Applicant's plans, filed November 6, 2019, a Councillor letter to the COA, and two letters opposed to the COA decision focusing on deck size, height, side yard setback reductions and streetscape considerations.

The latter aspects were never pursued.

Prior to convening a Hearing, the TLAB was in receipt of correspondence from the Appellant and the Applicant's appointed representative, Hui Wang.

That correspondence was to the effect that a 'settlement' had been agreed to between Ms. Jaimin Mei and Ms. Suanne Tina Deboer-Miedema.

The correspondence did not appear to engage any other persons. It went on to request that the matter be disposed of as the parties had reached an agreement: namely, to eliminate the elevated deck variance and to revise the elevation drawings to correspond to the elimination of the size variance.

On the strength of implementing the agreement, the Appellant would withdraw the appeal.

On December 20, 2019, the TLAB advised the Parties and representatives that it was prepared to convene a Settlement Hearing. However, the TLAB indicated that the terms of the agreement invoked the jurisdiction of the TLAB as the undertaking to withdraw was conditional on both a change to the requested variances and an amendment to the plans considered by the COA.

The TLAB advised a settlement hearing could proceed on an assurance that all matters were settled with all persons of interest and the Applicant supplied planning opinion advice supporting the variances and settlement terms and was present to so attest to the Tribunal.

A teleconference Hearing was convened for January 21, 2020.

There were no further substantive communications or acknowledgements.

## **MATTERS IN ISSUE**

Whether the settlement agreement reflects good planning; whether the jurisdiction of the TLAB extends to a disposition of the matter via settlement on the evidence presented.

## **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').

### **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 convening the teleconference, I registered the presence of Ms. Mei and Ms. Miedema. No other Parties, Participants or representatives joined the call.

I advised that no submissions had been received but confirmed from the Parties the continuing agreement as to a settlement: the conditional withdrawal of the appeal.

There was no planning evidence. The Parties concurred with the decision of the COA except Ms. Mei agreed to revise the size of the elevated rear yard deck to conform to the permission of the zoning By-law and amend the elevations to reflect the change.

Ms. Miedema in turn agreed to 'withdraw the appeal' on being satisfied those undertakings were secured.

I enquired of the Applicant, Ms. Mei as to whether she had familiarized herself with the TLAB 'Public Guide' and the Rules of Practice and Procedure. She indicated she had referenced the Public Guide but that English was not her first language.

There was nothing further added by either of the Parties.

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I advised that the TLAB was under a statutory jurisdiction to address the appeal independent of the decision of the COA premised upon the considerations above noted, under 'Jurisdiction'.

Neither Party could provide any assistance on those matters.

The teleconference concluded on the following terms:

1. Ms. Mei to provide, in draft, to Ms. Meidema the language of her undertaking to agree to withdraw the variance requesting an increase to the permitted size of a rear elevated platform and amend the side elevation drawings to so reflect;
2. Ms. Mei to supply the agreed wording to the TLAB Caseworker;
3. Ms. Meidema to confirm to the TLAB that on the strength of the revisions provided in 2., above, she withdraws here objection and appeal;
4. All to be accomplished on or before January 28, 2020.

On the strength of those commitments, if received, I undertook to address a decision on the appeal.

The requisite correspondence was received by the TLAB within the time allotted. In addition, the Applicant supplied a revised deck representation on a Ground Floor Plan drawing from ARG Architects Inc. dated 17Nov2019 and marked 're-issued for COA' (Drawing AZ-202), attached as **Attachment 4** hereto.

This is my decision.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB has now conducted sittings and held Hearings as a replacement, within the City, of the Local Planning Appeal Tribunal (formerly the 'Ontario Municipal Board') for a limited jurisdiction, for some three (3) years.

In that period, the TLAB has promulgated and revised two sets of Rules of Practice and Procedure, two editions of its Public Guide and delivered hundreds of Decisions and Order, on line and all available to the public.

In a society that professes acceptance of the rule of law, it is not appropriate, fair or acceptable that the public, personal or corporate representatives or counsel fail to acknowledge and respect the procedures adopted by a quasi-judicial tribunal to administer its process with an equal hand toward all citizens.

Where there are instances of willful neglect, cavalier non-observance, inexcusable conduct, a failure to seek assistance for such matters as complexity, cost or language barriers, or simply a plea of ignorance as to those Rules, Practice Directions and procedural directions, the TLAB is obliged to insist upon their performance and adherence and the players receive the consequences. This obligation

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can extend without regard to the hardship or cost that may be occasioned in re-application, delay or lost opportunity – to any Party.

This appeal has demonstrated an apparent non-observance for the obligations on the Parties to adhere to the standard normally incumbent on City residents.

It has done so in a circumstance where a careful COA decision has addressed planning advice and included revisions, conditions and the attachment of plans all responsive to the inputs received.

The variances approved by the COA are listed, with revision and plans attached in the COA decision dated November 7, 2019, found on the TLAB file.

The TLAB is obliged to have regard for the decision of the COA and the materials before it and upon which it is founded.

Moreover, from the earliest inception of the appeal, a single variance has evolved and triggered neighbourhood opposition and it is that variance that is the subject of an unopposed settlement agreement.

The TLAB has often expressed its desire for Parties to address and resolve disputes and for the TLAB to endorse the same, where the public interest is met and the terms of settlement are within the jurisdiction of the tribunal.

In this circumstance, an appeal has been engaged and not been withdrawn except subject to the settlement terms. Those terms engage the TLAB in assuming jurisdiction, examining the settlement (in this case, in the absence of evidence on the undisputed variances) and resolving the matter through the implementation of the settlement terms by eliminating a COA approved variance.

I see nothing in the contested variance and the condition of plans revision that engages any other aspect of the COA approval. The Staff Planning Report is supportive of these variances, at least through its context and comments as being implemented.

The TLAB was not constituted to make work for the Parties or to discourage the investment by citizens in the fulfillment of their objectives to provide new or refreshed housing in their communities that otherwise appears acceptable.

In that vein, despite the absence of the standard of evidence on the individual and cumulative merit of the other variances, I am prepared to accept jurisdiction and accede to the request of the Parties - in this instance to permit the matter to advance without additional delay or administrative requirements.

I find on the strength of the materials supplied by the COA file: namely, the Staff Report; the COA conditional approval; that provincial policy is not contravened; the general intent and purpose of Official Plan policy and the purpose of the zoning by-law is maintained; and that the related construction and re-investment in new housing stock with the revisions approved by the COA, except for the elevated rear deck, are minor and desirable.

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I do this while acknowledging that the withdrawal of the sole Appellant's objection is only valid if the undertaking of the Applicant is enforceable through a TLAB disposition eliminating the disputed components of the prior approval.

I accept the settlement and provide for its implementation.

## **DECISION AND ORDER**

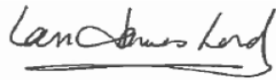
The appeal is allowed, in part, and the decision of the Committee of Adjustment is varied and as varied is approved in accordance with the following:

The variances listed in **Attachment 1** hereto are approved.

Construction is substantially in accordance with: the east and west side elevation drawings attached as **Attachments 2 and 3** (as modified thereon to provide that 'any elevated rear platform at or above the second storey is not to exceed 4.0 square meters'); and the exterior deck representation shown on the Ground Floor Plan, **Attachment 4** to this decision and order.

If difficulties arise in respect of the implementation of this decision, the TLAB may be spoken to.

X



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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

### **Attachment 1**

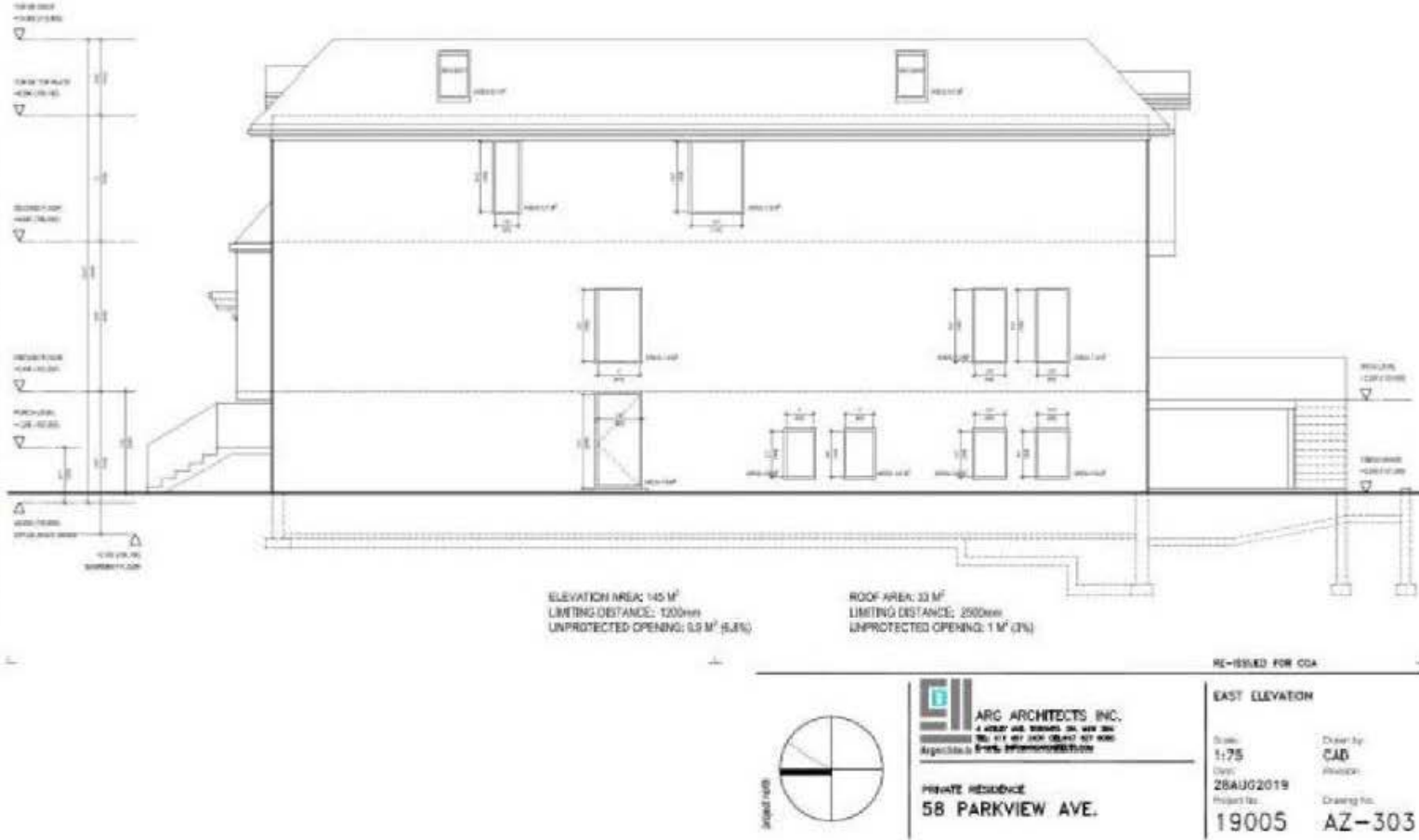
#### **APPROVED VARIANCE(S) TO THE ZONING BY-LAW:**

- 1. Chapter 900.3.10(5), By-law No. 569-2013**  
The required minimum side yard setbacks are 1.8m each side.  
The proposed west side yard setback is **1.2m**
- 2. Chapter 900.3.10(5), By-law No. 569-2013**  
The required minimum side yard setbacks are 1.8m each side.  
The proposed east side yard setback is **1.2m**.
- 3. Chapter 10.5.40.50(2), By-law No. 569-2013**  
The required side yard setback for the front porch is 1.8m.  
The proposed west side yard setback for the front porch is **1.2m**.

- 4. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013**  
The permitted maximum lot coverage is 30% of the lot area.  
The proposed lot coverage is **31.6%** of the lot area.
- 5. Chapter 10.20.40.20(1), By-law No. 569-2013**  
In the RD zone with a minimum required lot frontage of 18.0m or less, the permitted maximum building length for a detached house is 17.0m.  
The proposed building length is **19.0m**.
- 6. Chapter 10.20.40.30.(1), By-law No. 569-2013**  
The permitted maximum building depth for a detached house is 19.0m.  
The proposed building depth is **19.02m**.
- 7. Chapter 10.20.40.10.(2)(B)(i), By-law No. 569-2013**  
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m.  
The proposed height of the side exterior main walls facing a side lot line is **8.55m**.
- 8. Chapter 10.20.40.10.(6), By-law No. 569-2013**  
The permitted maximum height of the main pedestrian entrance above established grade is 1.2m.  
The proposed height of the main pedestrian entrance above established grade is **1.4m**.
- 9. Section 13.2.6, By-law No. 7625**  
The maximum permitted building height is 8.0m.  
The proposed building height is **11.01m**.
- 10. Section 6(30)a, By-law No. 7625**  
The maximum finished first floor height is 1.5m.  
The proposed finished first floor height is **2.41m**

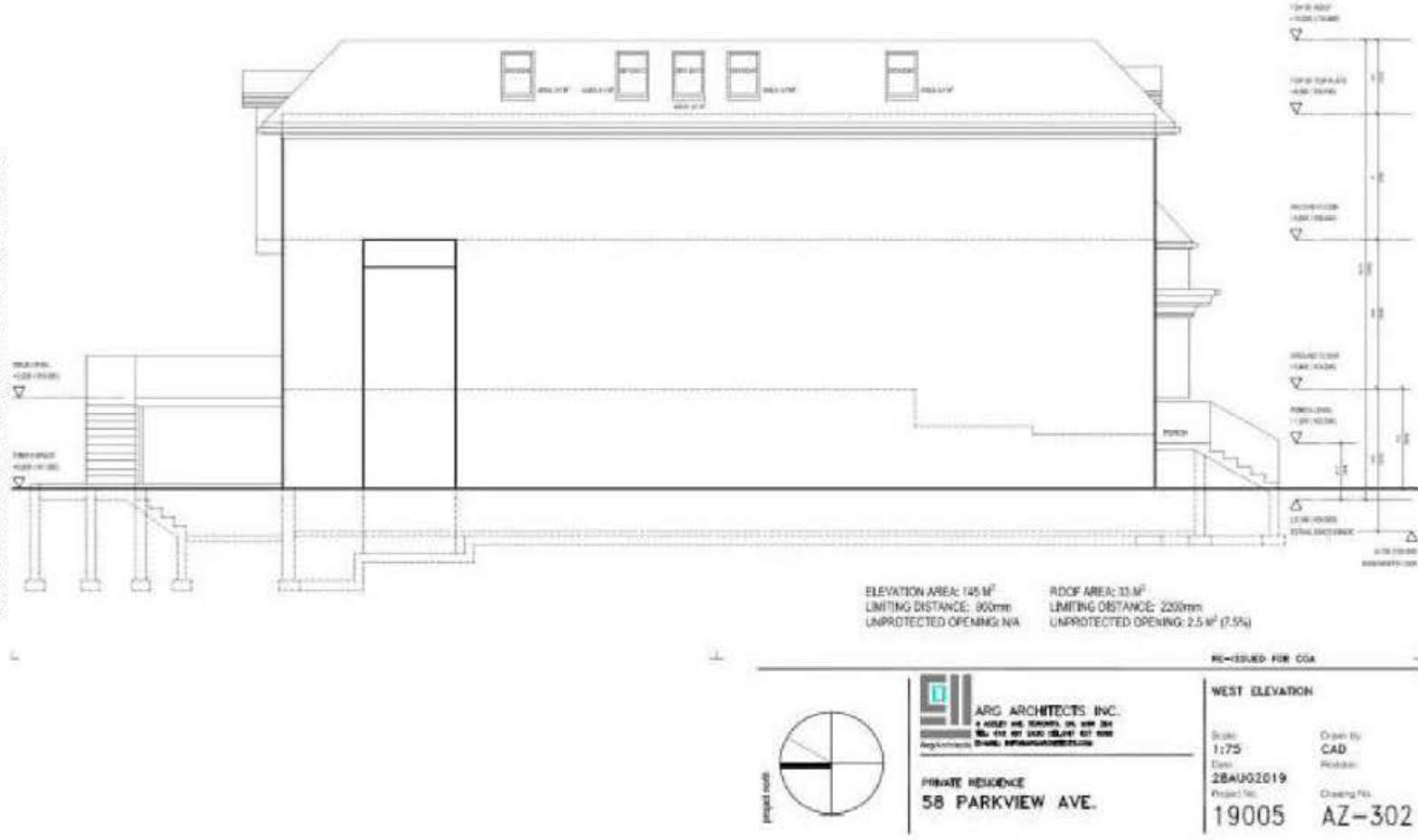
Rear yard elevated platform not to exceed four (4) square meters in area

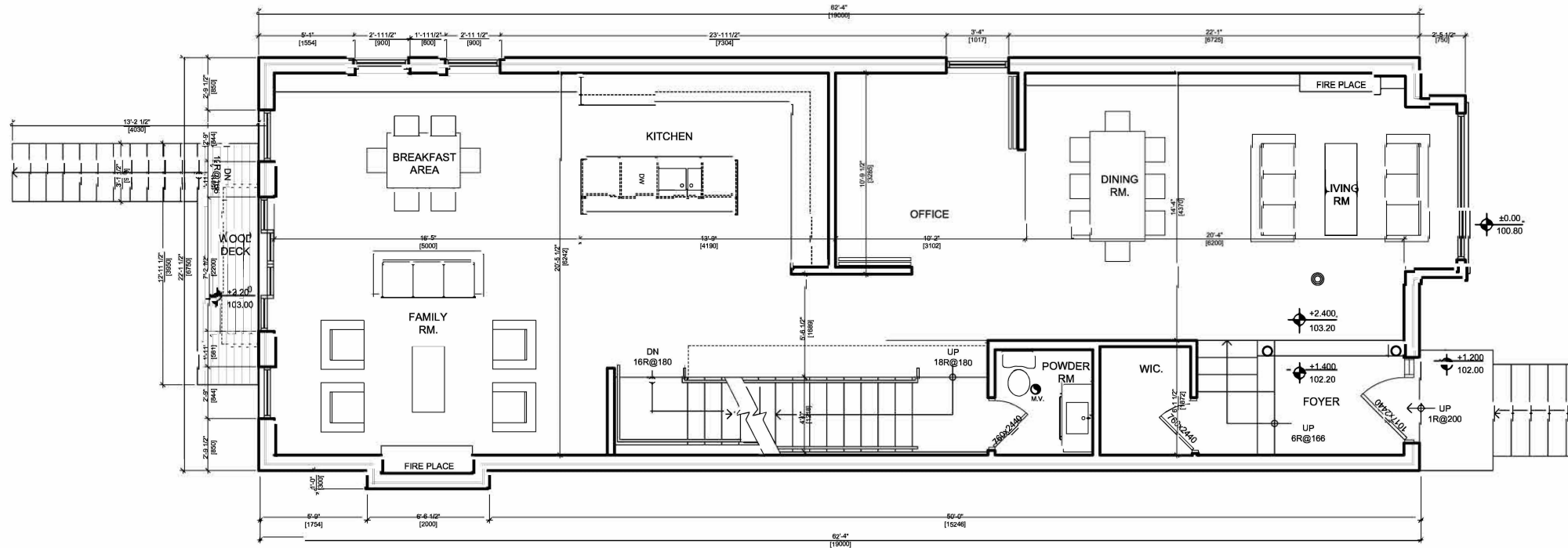
## Attachment 1: East Side Elevation





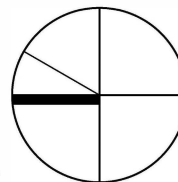
Attachment 2: West Side Elevation





BUILDING FOOT PRINT: 136.8 M<sup>2</sup> (1472.5 SQF)

Project north



**ARG ARCHITECTS INC.**  
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TEL: 416 481 2430 CEL: 847 627 6080  
ArgArchitects E-MAIL: INFO@ARGARCHITECTS.CO

PRIVATE RESIDENCE  
**58 PARKVIEW AVE.**

RE-ISSUED FOR COA

GROUND FLOOR P

Scale:  
**1:75**  
Date:  
**17NOV2019**  
Project No.  
**19005**