

DECISION AND ORDER

Decision Issue Date Thursday, January 02, 2020

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

Appellant(s): CHRISTOPHER MICHAEL ARNTS

Applicant: ROBERT ABRAHAMS

Property Address/Description: 27 Duart Park Rd.

Committee of Adjustment Case File: 19 105127 STE 19 MV (A0041/19TEY)

TLAB Case File Number: 19 180472 S45 19 TLAB

Hearing date: Friday, December 13, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
GINESSA LYNN ARNTS	OWNER	
ROBERT ABRAHAMS	APPLICANT	
ROSE MARIE JONES	PARTY (TLAB)	PHIL POTHEN
CHRISTOPHER MICHAEL ARNTS	APPELLANT	CHRISTOPHER TZEKAS
MARTIN RENDL	EXPERT WITNESS	GINESSA LYNN ARNTS

INTRODUCTION AND BACKGROUND

The history of the application, and the background to this Appeal, are discussed in my Decision on a Motion put forward by the Appellants dated October 18, 2019, as well as my Interim Decision dated November 29, 2019. It is therefore not necessary to repeat, nor recite the history of the application.

I sincerely appreciate the Appellants' following through on my instructions, provided in my Decision, dated November 29, 2019- they retained Mr. Martin Rendl, a land use planner, who provided the TLAB with an Expert Witness Statement, on December 6, 2019. The Settlement alluded to at the Hearing held on November 4, 2019, was finalized subsequently between the Parties, and presented to me at the Hearing by teleconference, held on December 13, 2019.

MATTERS IN ISSUE

Zoning By-Law 569-2013

Chapter 10.20.40.40.(1)

The maximum allowable floor space index (FSI) is 0.35 times the area of the lot. The requested FSI is 0.818 times the area of the lot.

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

As noted earlier, the Appeal was heard by way of teleconference on December 13, 2019. The Appellant was represented by Mr. Christopher Tzekas, a lawyer, and Mr. Martin Rendl, a planner, while the neighbour, Ms. Rose Marie Jones, (who resides at 29 Duart Park Rd) was represented by Mr. Phil Pothen, a lawyer. Mr. Tzekas informed me that the Appellants, and their architect, Mr. Abrahams, were also in attendance.

Mr. Rendl was affirmed, and then recognized as an Expert Witness in the area of land use planning. The highlights of his evidence are as follows:

The Subject Site is located in the Beaches area of Toronto, one block north of Queen Street East and west of Glen Manor Drive. The site is located on the south side of Duart Park Road, and currently has a one storey detached dwelling, with a lot width of 8.84 m, lot depth of 25.91 m, and a lot area of 229.04 sq. m.

Mr. Rendl asserted that the neighbourhood is stable but not static, and is experiencing reinvestment in the form of the construction of new dwellings, as well as additions to existing dwellings. The purpose of this minor variance application is to request for the approval of a single variance that would permit the construction of a new two-storey detached dwelling at the Subject site. He informed me that many of the originally requested variances were no longer required, as a result of the Settlement. The only variance to be ruled on by the TLAB, involved an FSI of 0.818 X lot size, against the allowable 0.35 X lot size.

Mr. Rendl discussed the compatibility between the proposal, and the higher level Provincial Policies. He stated that the proposal would comply with the Provincial Policy Statement (2014), as well as the Growth Plan for the Greater Golden Horseshoe (2019), by virtue of intensification, which was consistent with PPS policies to achieve efficient land use patterns, efficient use of existing infrastructure, and the emphasis on intensification in municipalities as stated in the applicable Official Plan.

Mr. Rendl then discussed how the proposal satisfied the four statutory tests under Section 45.1 of the Planning Act. He pointed out that the Subject Property is designated “Neighbourhoods”, which are deemed to be stable but not static”, and “neighbourhoods will not stay frozen in time”. He discussed Policy 2.3.1, to demonstrate that the proposal maintained the stability of the neighbourhood, by respecting the neighbourhoods existing physical character. He then discussed Section 4.1.5 of the Official Policy, which requires development to respect and reinforce the existing physical character of the neighbourhood. He specifically discussed the following components of Section 4.1.5 to the proposal:

4.1.5(c) Prevailing, heights, massing, scale, density and dwelling type of nearby residential properties;

4.1.5(d) Prevailing building types

He said that the height, massing, scale and density of the proposed two storey dwelling is consistent with that of other two storey dwellings on Duart Park Road. The new

dwelling fits this existing physical context, with respect to the built form, which consists predominantly of one and two storey detached dwellings.

Coming specifically to the variance respecting the FSI, Mr. Rendl provided examples of houses in the neighbourhood, where comparable FSIs had been approved- the largest approved FSI, at 40 Pine Crescent , is 0.98 x lot size.

Emphasizing that the variance for the proposed two storey dwelling, as settled, does not constitute a change, which threatens the stability of the neighbourhood, Mr. Rendl concluded that the proposal satisfies the purpose, and intent of the Official Plan.

Mr. Rendl pointed out that the only applicable Zoning By-Law is 569-2013, and then stated that the general intent and purpose of zoning by-laws is to protect the low-density character of a neighbourhood, through a combination of performance standards for buildings and properties. He said that the proposed floor area FSI of 0.818 X the lot area, is accommodated completely within the two storey building envelope, which is consistent with the Zoning By-law's regulations for building height, main wall height, building length, building depth, and setbacks from lot lines. Based on this evidence, Mr. Rendl concluded that the proposal upheld the general intent, and purpose of the Zoning By-Laws.

The test of how the proposal satisfied the test of desirable, and appropriate development of the land was discussed next. Mr. Rendl said that the variance, as settled, results in development that is appropriate for the Subject site, and compatible with the neighbourhood. He concluded that the built form of the proposed dwelling satisfies the test of appropriate development for the lot, by virtue of being consistent and compatible with the evolving character of the neighbourhood.

Mr. Rendl discussed how the proposal satisfied the test of minor. He said that the generally acknowledged test of whether a variance is minor is the nature, and extent of any adverse impacts on adjacent properties. He asserted that the proposal, as settled, did not impose unacceptable adverse impacts in terms of shadow, privacy and overlook impacts on adjacent and nearby properties. Based on this evidence, Mr. Rendl concluded that the proposal satisfied the test of minor.

Mr. Rendl concluded by stating that the Appeal should be allowed, because it satisfied all components of the statutory tests listed under Section 45.1. In terms of conditions, he suggested that the following conditions be imposed:

1) The Owners agree not to injure, remove, or request or encourage the issuance any permit to injure or remove, the large deciduous tree whose branches, at the time of this agreement, extend over the parts of the Appellant's rear yard and parts of the Neighbour's rear yard (the "Black Walnut Tree"). Without limiting the foregoing, the Appellant agrees to :

(a) refrain from any excavation beyond the footprint of the proposed building (as shown in the revised drawings), except as necessary to facilitate the construction of the walls and interior of the dwelling.

(b) Refrain from any excavation and any placement of paving or concrete or the placement of any other non-permeable material over the Black Walnut Tree's root zone. For the purposes of this agreement the root zone of the Black Walnut Tree is the drip zone of the Black Walnut Tree, and includes, at minimum, the areas outlined in green or shaded in brown on page 5 of the Expert Witness Statement of D.A. White and attached to this Order.

(c) Refrain from any cutting or removal of the Black Walnut Tree's branches or roots.

I stated that I would also prefer the imposition of a standard condition which required the Appellants to build in substantial confirmation with the submitted plans and elevations, and was advised that the Appellants did not object to the imposition of this condition

Mr. Pothen said that he was satisfied with the changes to the proposal, and was in agreement with the stated conditions to be imposed. Mr. Tzekas emphasized the hard work put in by the Parties, in order to arrive at a Settlement, and summarized how the proposal satisfies the four tests under Section 45.1, and asked that the Appeal be allowed, and the proposal be approved.

I thanked the Parties for their attending the teleconference, and stated that I would reserve my Decision.

ANALYSIS, FINDINGS, REASONS

The proposal, as presented to the TLAB, is the result of a Settlement, between the Appellant, and the neighbour, Ms. Jones, who lives at 29 Duart Park Road.

I note that Ms. Jones' original objection to the Appeal centred on possible damage to a Black Walnut Tree on her property. This issue has been resolved as a result of the Settlement, and is no longer in dispute.

The proposal is consistent with Sections 2.3, and 4.1.5 of the Official Plan, based on Mr. Rendl's explanation, and therefore upholds the intention, and purpose of the Official Plan. The FSI is the ratio of the Gross Floor Area, and the Lot size, and represents an interplay of these two factors. It is important not to read too deeply into a mere ratio, because the FSI is influenced by many different factors. If the GFA satisfies the relevant performance standards, then it would be reasonable to conclude that the FSI does not raise not any concerns. Based on the fact that the stated FSI is the result of a design that was arrived through a Settlement, and does not raise any concerns in terms of performance standards, I conclude that the proposal is consistent with the intent and purpose of the Zoning By-Law 569-2013.

The test of appropriate development is satisfied by virtue of the fact that the development is appropriate for the Subject Site, and is compatible with the neighbourhood, while the test of minor is satisfied by the lack of unacceptable adverse impact on the neighbouring properties.

I therefore find that the proposal satisfies the relevant tests under Section 45.1 of the Planning Act. The Appeal is therefore allowed in part, resulting in an approval of the FSI variance of 0.818 x lot size. The approval in part is the consequence of the fact that there have been changes to the variances before the TLAB, since the COA's decision was appealed to the TLAB. The conditions to be imposed on this approval have been agreed to by the Parties, and are listed below:

- 1) The construction will take place in substantial conformity with the Plans, and Elevations, prepared by Bob Abrahams, OAA, date-stamped December 11, 2019, and attached to this Decision and Order.
- 2) The Owners agree not to injure, remove, or request or encourage the issuance of any permit to injure or remove, the large deciduous tree whose branches, at the time of this agreement, extend over the parts of the Appellant's rear yard and parts of the Neighbour's rear yard (the "Black Walnut Tree"). Without limiting the foregoing, the Appellant agrees to:
 - (a) Refrain from any excavation beyond the footprint of the proposed building (as shown in the revised drawings), except as necessary to facilitate the construction of the walls and interior of the dwelling
 - (b) Refrain from any excavation and any placement of paving or concrete or the placement of any other non permeable material over the Black Walnut Tree's root zone. For the purposes of this agreement the root zone of the Black Walnut Tree is the drip zone of the Black Walnut Tree, and includes, at minimum the areas outlined in green or shaded in brown on page 5 of the Expert Witness Statement of D.A. White and attached to this Order as Schedule "C".
 - (c) Refrain from any cutting or removal of the Black Walnut Tree's branches or roots

By way of an editorial comment, the Minutes of Settlement refer to "regrain" at the beginning of clause (b) under 2), above. I assume that the intended word was "refrain", and have taken the liberty of changing the wording to "refrain".

DECISION AND ORDER

1. The Appeal respecting 27 Duarte Park Road, is allowed in part, and the decision of the Committee of Adjustment dated June 12, 2019, is set aside.
2. The following variance is approved:

By-Law 569-2013

Chapter 10.20.40.40.(1)

The maximum allowable floor space index (FSI) is 0.35 times the area of the lot. The requested FSI is 0.818 times the area of the lot


3. No other variances are approved
4. The approval is subject to the following conditions:
 - 1) The construction will take place in substantial conformity with the Plans, and Elevations, prepared by Bob Abrahams, OAA, date-stamped December 11, 2019, and attached to this Decision and Order.
 - 2) The Owners agree not to injure, remove, or request or encourage the issuance any permit to injure or remove, the large deciduous tree whose branches, at the time of this agreement, extend over the parts of the Appellant's rear yard and parts of the Neighbour's rear yard (the "Black Walnut Tree"). Without limiting the foregoing, the Appellant agrees to:

(a) Refrain from any excavation beyond the footprint of the proposed building (as shown in the revised drawings), except as necessary to facilitate the construction of the walls and interior of the dwelling

(b) Refrain from any excavation and any placement of paving or concrete or the placement of any other non-permeable material over the Black Walnut Tree's root zone. For the purposes of this agreement the root zone of the Black Walnut Tree is the drip zone of the Black Walnut Tree, and includes, at minimum the areas outlined in green or shaded in brown in the document "*General layout of the 27 and 29 Duart Park Road properties*", attached to this Order.

(c) Refrain from any cutting or removal of the Black Walnut Tree's branches or roots

So orders the Toronto Local Appeal Body



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

Bob Abrahams, OAA
454, Kingston Road,
Toronto ON,

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Address Duart Park Road, Toronto, ON

Zoning Compliance

Checked by BOBA

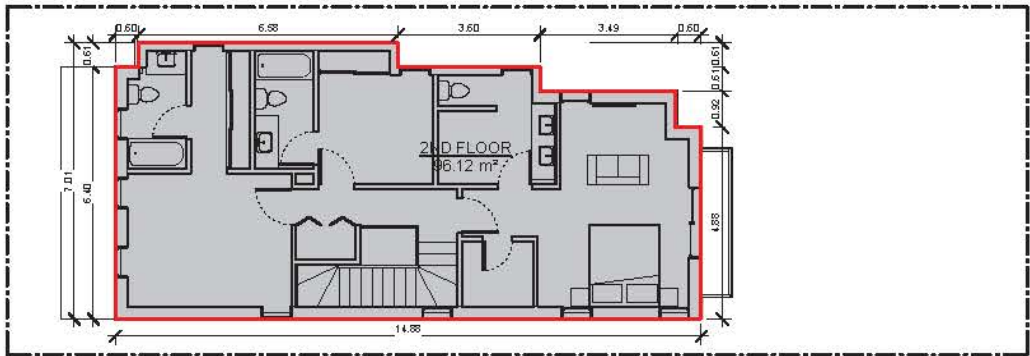
A003

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2nd Floor	= 96.12

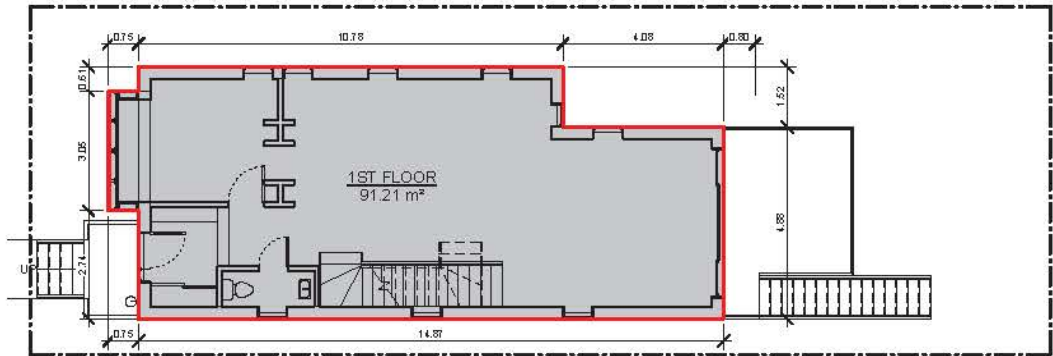
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1st Floor	= 91.21
2nd Floor	= 96.12

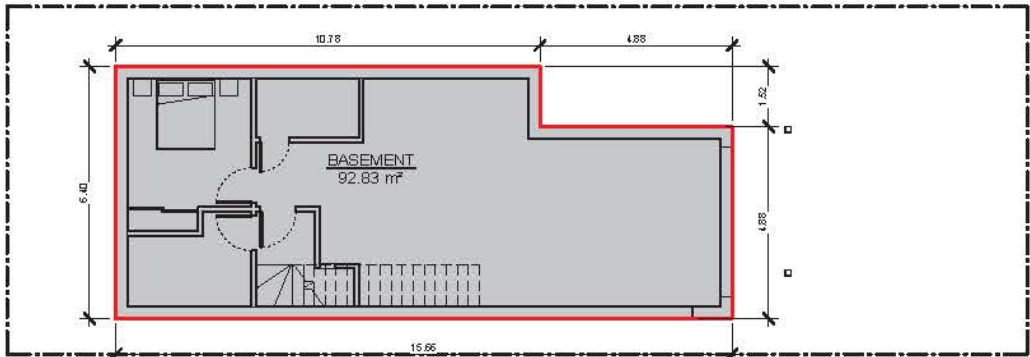
LOT AREA = 229.04
FSI = (187.33 / 229.04) = 0.818



③ 2nd Floor



② 1st Floor



① Basement



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OF
ARCHITECTS
Robert Aspinwall
ROBERT ASPINWALL
LICENCE
0048

Client:	Christopher Arnsts , 27 Duart Park Road, Toronto, ON
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Address	Duart Park Road, Toronto, ON
Sheet	

A200

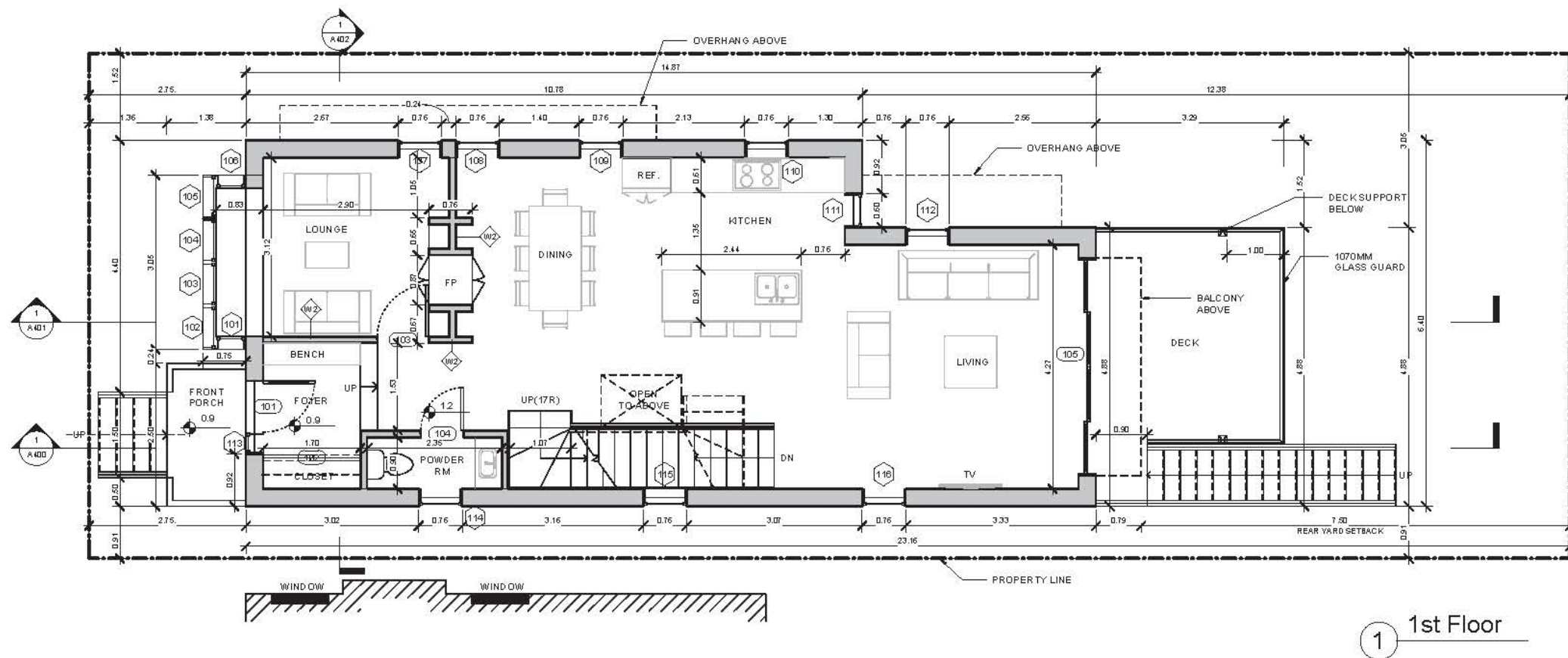
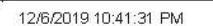




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ROBERT ASAPHAM
LICENCE
0048

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A201

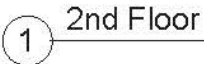




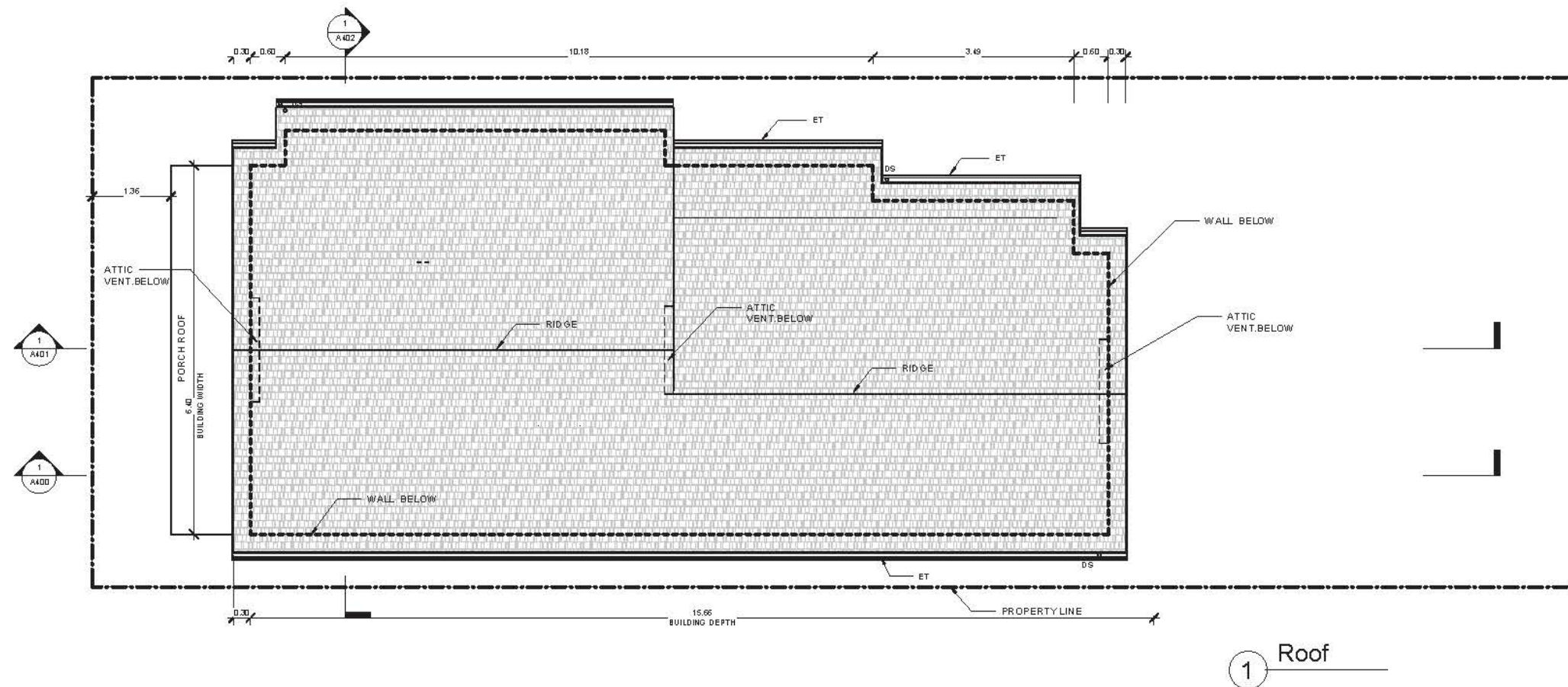
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Client:	Christopher Arnsts , 27 Duart Park Road, Toronto, ON
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Toronto ON,

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Client: Christopher Arnts, 27 Duart
Park Road, Toronto, ON

Project ARNTS RESIDENCE

Address Duart Park Road, Toronto ,ON

Sheet

Roof

Project number	006-01
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Date	2019/12/11
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Drawn by VB

Checked by	BOBA
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A203

ARCHITECT:
Bob Abrahams, OAA
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Toronto ON,

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Client: Christopher Arnts, 27 Duart
Park Road, Toronto, ON

Project ARNTS RESIDENCE

Address Duart Park Road, Toronto ,ON

Sheet

North Elevation

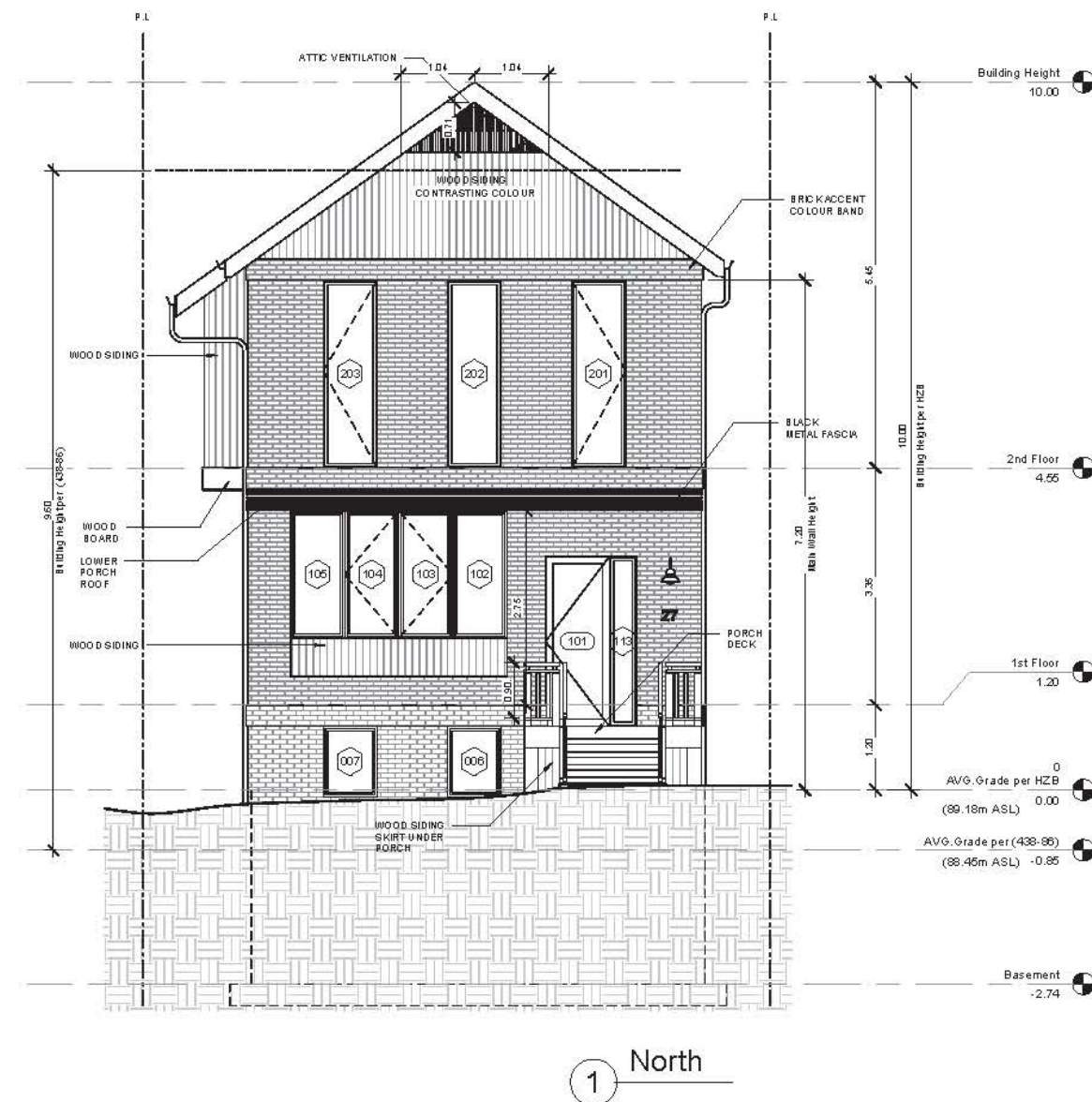
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Drawn by VB

Checked by	BOBA
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A500



ARCHITECT:
Bob Abrahams, OAA
454, Kingston Road,
Toronto ON,

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Client: Christopher Arnts, 27 Duart
Park Road, Toronto, ON

Project ARNTS RESIDENCE

Address Duart Park Road, Toronto ,ON

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South Elevation

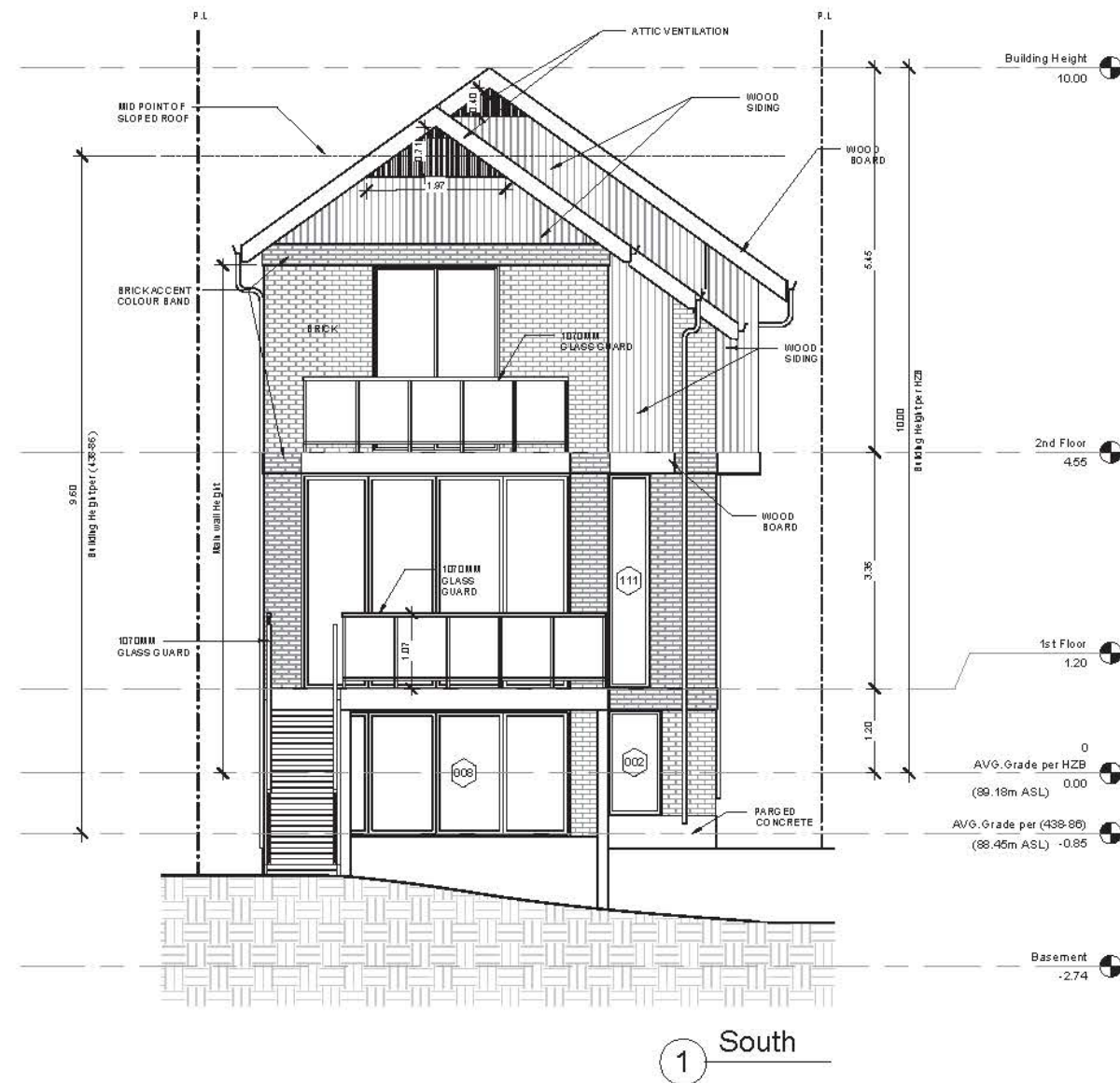
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A501

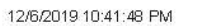




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A502



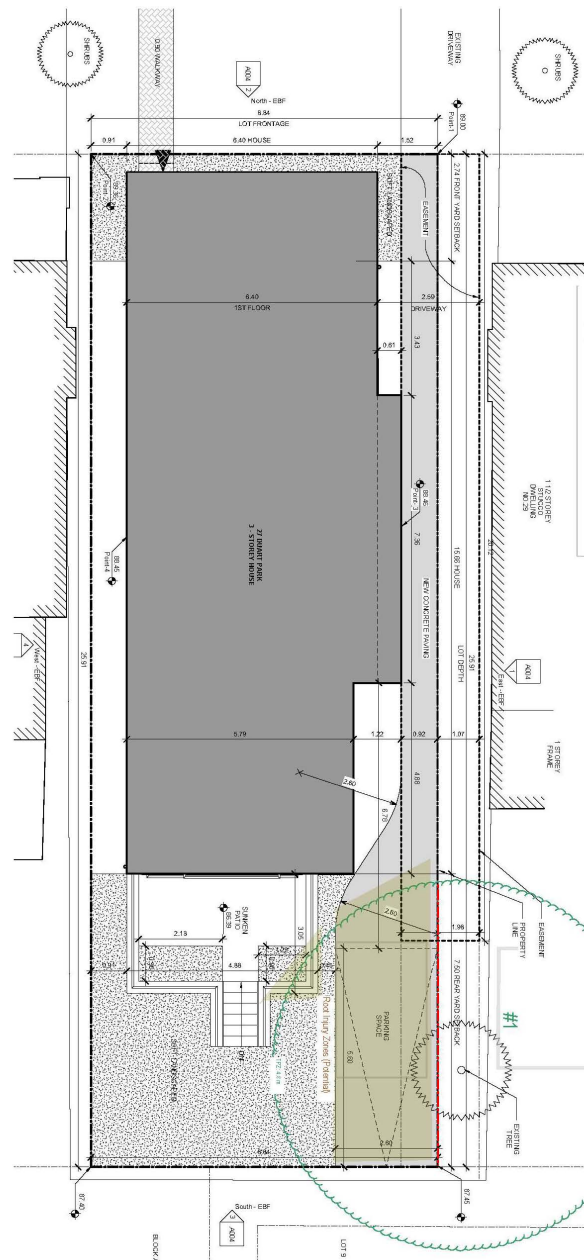


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General layout of the 27 and 29 Duart Park Road properties: Trees are numbered (green), potential root injury zones (brown) and tree protection barrier (red) are indicated. See Figure #1: **full-scale** Tree Protection Plan (TPP) and Site Plan Proposal (SPP) for more details.