

DECISION AND ORDER

Decision Issue Date **Tuesday, February 18, 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): JOHN IVAN PERSIC, JASON PERSIC

Applicant: EKP DESIGNS INC

Property Address/Description: 133-137 SHERWOOD AVE

Committee of Adjustment Case File: 17 198702 NNY 25 MV (A0683/17NY), 17 200597 NNY 25 MV (A0682/17NY)

TLAB Case File Number: 18 141139 S45 25 TLAB, 18 141144 S45 25 TLAB

Hearing date: Tuesday, September 10, 2019

DECISION DELIVERED BY S. MAKUCH

APPEARANCES

Appellant	John Ivan Persic
Appellant	Jason Persic
Appellant's Legal Rep.	Amber Stewart
Applicant	EKP Designs Inc
Owner	Wai-Ming Persic
Owner	Scott Quach
Party	City of Toronto
Party Legal Rep.	Adrienne deBacker
Party Legal Rep.	Nathan Muscat
Party	Lynn Holloran

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 18 141139 S45 25 TLAB, 18 141144 S45 25 TLAB**

Party	Ivy Ng
Participant	Gary Tham
Expert Witness	Terry Mills
Expert Witness	Xin Zhou
Expert Witness	Franco Roman

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment refusing variances to permit the construction of a new two storey semi-detached dwelling with integrated garages. This would involve the demolition of two detached dwellings. The plans, which were revised, are attached as Appendix 1 (the plans) and the variances finally requested are attached as Appendix 2 (the variances).

BACKGROUND

There are currently two detached dwellings on two separate lots which would be demolished and pad parking which would be replaced by the integral garages. 133-137 Sherwood Ave (subject property) is located in a low rise residential neighbourhood north of Eglinton Ave. East, and west of Mount Pleasant Blvd. It is on the south side of Sherwood Ave. which runs east-west and is adjacent to the rear of properties fronting on Mount Pleasant Ave.

The City was in opposition to the variances but brought no evidence and requested that construction be in accordance with the plans and certain conditions if the variances were approved. There were two other parties in opposition, Ivy Ng, of 1024 Mount Pleasant and Lynn Holleran of 131 Sherwood. Both gave evidence, as did Mr. Tham, Ms. Ng's husband. Ms. Ng's backyard abuts the property to the east and Ms. Holleran's property abuts the length of the subject property to the west. They both had understandable concerns as the variances would result in changes on the property which would impact their rear yards. What was a vacant rear yard on the property would be partially occupied by the dwellings and decks. Ms. Holleran was represented by legal counsel, Mr. Roberts; she also retained a planner, Mr. Mills, who gave evidence. The appellants were represented by legal counsel, as well, Ms. Stewart, and also retained a planner, Mr. Romano, who gave evidence.

MATTERS IN ISSUE

The matters in issue relate not so much to whether the variances would result in a semi-detached dwelling that did not respect and reinforce the character of the area. Indeed, there was evidence of similar dwellings in the area and numerous integral

garages. The evidence focused more on the impact of the variances on the adjacent properties of Ms. Ng and Ms. Holleran.

In that respect a major issue raised by Mr. Mills was that the variances should not be allowed because the property is a “key lot” in that it is perpendicular to Ms. Ng’s property which faces Mount Pleasant. It was his evidence that that the side to rear lot relationship demanded special consideration. Linked to this concern was the issue of whether the proposed dwelling would cast an inordinate amount of shadow on Ms. Ng’s property and privacy and massing impacts on Ms. Holleran’s back yard.

These issues were tied into the impact of the integral garages on the overall mass and depth of the dwelling and rear decks. It was clear that the parties had a serious issue with the integral garages and believed that if they were deleted then the dwelling would have less impact. Their position was that the variances, which included permission for the integral garages, should not be approved as they would result in the semis extending into the rear yards of the property and thus causing privacy, overlook, and massing concerns for Ms. Ng and Ms. Holleran. Ms. Ng demonstrated this with a picture from a rear window. This issue related to an issue of whether the applicant had consulted sufficiently with the community and had adequately responded to neighbours concerns.

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 of 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

Mr. Romano gave evidence that the variances were consistent with the PPS and conformed to the Growth Plan. I find that conformity to these documents is largely an issue of conformity with the official plan as it implements the documents. As I will outline below the evidence supports the conclusion that the proposed variances conform to the Official Plan and thus both provincial documents. Little evidence was given by Mr. Mills to find that the variances did not meet provincial requirements.

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With respect to the character of the neighbourhood, again, Mr. Mills did not provide detailed or persuasive evidence that the proposed dwelling would be out of character. Indeed, Mr. Roberts in his argument appeared to concede that the proposal respected and reinforced the character of the area.

Mr. Mills' evidence appears to have focused on the theory that because the property is a "key lot" it requires "special consideration" as it is shorter than other lots on Sherwood Ave. However, Mr. Mills' theory did not stand up under cross examination as there was no historical basis for finding the property to be a "key lot". Moreover, there are no special provisions regarding the length of dwellings on such lots as the property, and no variance for the length of the building was being sought.

Mr. Mills also gave evidence regarding shadow impact which was not persuasive when he had to agree the proposal would cast less of a shadow than an as of right building; the FSI was not out of keeping with the area; and the removal of the garages would have little impact on height.

The evidence was clear that although the bylaw prohibited an integral garage on lots with a frontage of less than 7.6 m, these lots already exist with frontages of 6.1 and that no parking could be legally provided without this variance which is to be preferred to a front yard parking pad.

There was evidence that, although the applicants did not delete the integral garages as requested, numerous meetings had been held with neighbours and a number of changes had been made to the variances and to the plans as a result of those meetings.

The evidence of Mr. Romano, both orally and in his witness statement, clearly supported the conclusion that the variances meet the four tests of the *Planning Act*. The proposed dwellings respect and reinforce the character of the neighbourhood which is characterized as a low density residential neighbourhood consisting largely of single and semi detached dwellings. There are numerous dwellings with integral garages, including such garages on lots of less than 7.6 frontage.

Similarly, the proposed FSI is not out of keeping with the neighbourhood and neither is the proposed heights. Finally, the variances, themselves, will cause less of a shadow impact than an 'as of right' building and the height and massing, therefore, is acceptable. The applicant has not requested a variance for an increased depth. Moreover, turning the garage into a basement would not reduce the extension of the building to the rear. The variance for the height of the first floor was not noticeable.

ANALYSIS, FINDINGS, REASONS

The failure of Mr. Mills to support his theory of the "key lot" calls into question his credibility respecting his evidence generally. In addition, he did not realize that a shadow from an as of right dwelling could have more of an impact than the proposed dwelling.


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While I sympathize with the concerns of Ms. Ng and Ms. Holleran in that they do not want building and deck to be placed where there is basically empty space now, I have to recognize that there is no building length variance and that removing the integral garages from the dwellings will not reduce the impact of a new dwelling on them. I do believe that a privacy screen should be placed on the decks adjacent to their property although this may create the appearance of more building mass on the property. Moreover, although there were concerns that their children would not want to play in their respective yards as a result of the new dwellings I am not persuaded that is so.

DECISION AND ORDER

The appeal is allowed, and the variances set out in Appendix 2 are approved subject to the following:

- 1) Construction is to be substantially in accordance with site plan and elevations attached as Appendix 1.
- 2) Opaque screening or fencing with a minimum height of 1.5 m is to be constructed along the edges of the proposed rear platforms adjacent to the properties of Ms. Ng and Ms. Holleran.

X 

S. Makuch

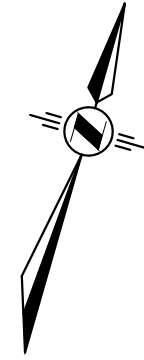
Panel Chair, Toronto Local Appeal

APPENDIX 1
SITE PLANS AND
ELEVATIONS

INFORMATION OF SITE PLAN WAS DERIVED FROM SURVEYOR'S REAL PROPERTY REPORT - PART 1 PLAN AND TOPOGRAPHIC DETAIL OF PLAN OF LOT 10 AND PART OF LOT 11 REGISTERED PLAN 497E CITY OF TORONTO, PREPARED BY: VLADIMIR DOSEN SURVEYING, O.L.S.

RECEIVED
By Toronto Local Appeal Body

SHERWOOD AVENUE
(BY REGISTERED PLAN 497E)
PIN 21137-0037(LT)



EKP DESIGNS INC.

537 ROGERS ROAD
TORONTO, ONTARIO
M6M-1B4
TEL. No. 416-658-6737
CELL No. 416-723-6983
EMAIL: ekpdesigns@outlook.com

THIS DRAWING AS AN INSTRUMENT OF SERVICE IS PROVIDED BY AND IS THE PROPERTY OF EKP DESIGNS INC. THE CONTRACTOR MUST VERIFY AND ACCEPT RESPONSIBILITY FOR ALL DIMENSIONS AND CONDITIONS ON SITE AND MUST NOTIFY EKP DESIGNS INC. OF ANY VARIATIONS FROM THE SUPPLIED INFORMATION. THE DRAWING IS NOT TO SCALE. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF SURVEY, STRUCTURAL, MECHANICAL, ELECTRICAL ETC. VERIFY INFORMATION SHOWN ON THE DRAWINGS BEFORE PROCEEDING WITH WORK. CONSTRUCTION MUST CONFORM TO ALL APPLICABLE CODES AND REQUIREMENTS OF AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR WORKING FROM DRAWINGS NOT SPECIFICALLY MARKED 'FOR CONSTRUCTION' MUST ASSUME FULL RESPONSIBILITY AND BEAR COSTS FOR ANY CORRECTIONS OR DAMAGES RESULTING FROM HIS/HER WORK.

No.	REVISIONS	DATE
1	COFA-REV	11/20/2017
2	REVISED-DRIVEWAY	10/19/2018

SITE STATISTICS # 133 SHERWOOD AVE
LOT AREA = 260.128m²(2800.086 ft²)
60% ALLOWABLE G.F.A. = 156.08m²(1680.09 ft²)

1ST FL. AREA = 91.56m²(985.54 ft²)
2ND FLOOR AREA = 91.56m²(985.54 ft²)
TOTAL G.F.A. = 183.12m²(1971.15 ft²) 70.40%

FRONT YARD AREA = 43.82m²
-CONC. PORCH & STAIRS = 4.60m²

TOTAL FRONT YARD AREA = 39.22m²
50% MIN LANDSCAPING = 19.61m²
DRIVEWAY AREA = 19.09m² 48.67%
ACTUAL LANDSCAPING AREA = 20.13m² 51.33% OK

75% MIN. SOFT LANDSCAPING
20.13 m² x 0.75% = 15.10m²
-WALKWAY = 2.46 m²
ACTUAL SOFT LANDSCAPING = 17.67m² 87.18% OK
50% MIN. OPEN SPACE = 18.04m²
ACTUAL OPEN SPACE = 12.14m² (46.69% OK)

SITE STATISTICS # 137 SHERWOOD AVE
LOT AREA = 260.128m²(2800.086 ft²)
60% ALLOWABLE G.F.A. = 156.08m²(1680.09 ft²)

1ST FL. AREA = 91.56m²(985.54 ft²)
2ND FLOOR AREA = 91.56m²(985.54 ft²)
TOTAL G.F.A. = 183.12m²(1971.15 ft²) 70.40%

FRONT YARD AREA = 43.37m²
-CONC. PORCH & STAIRS = 4.60m²

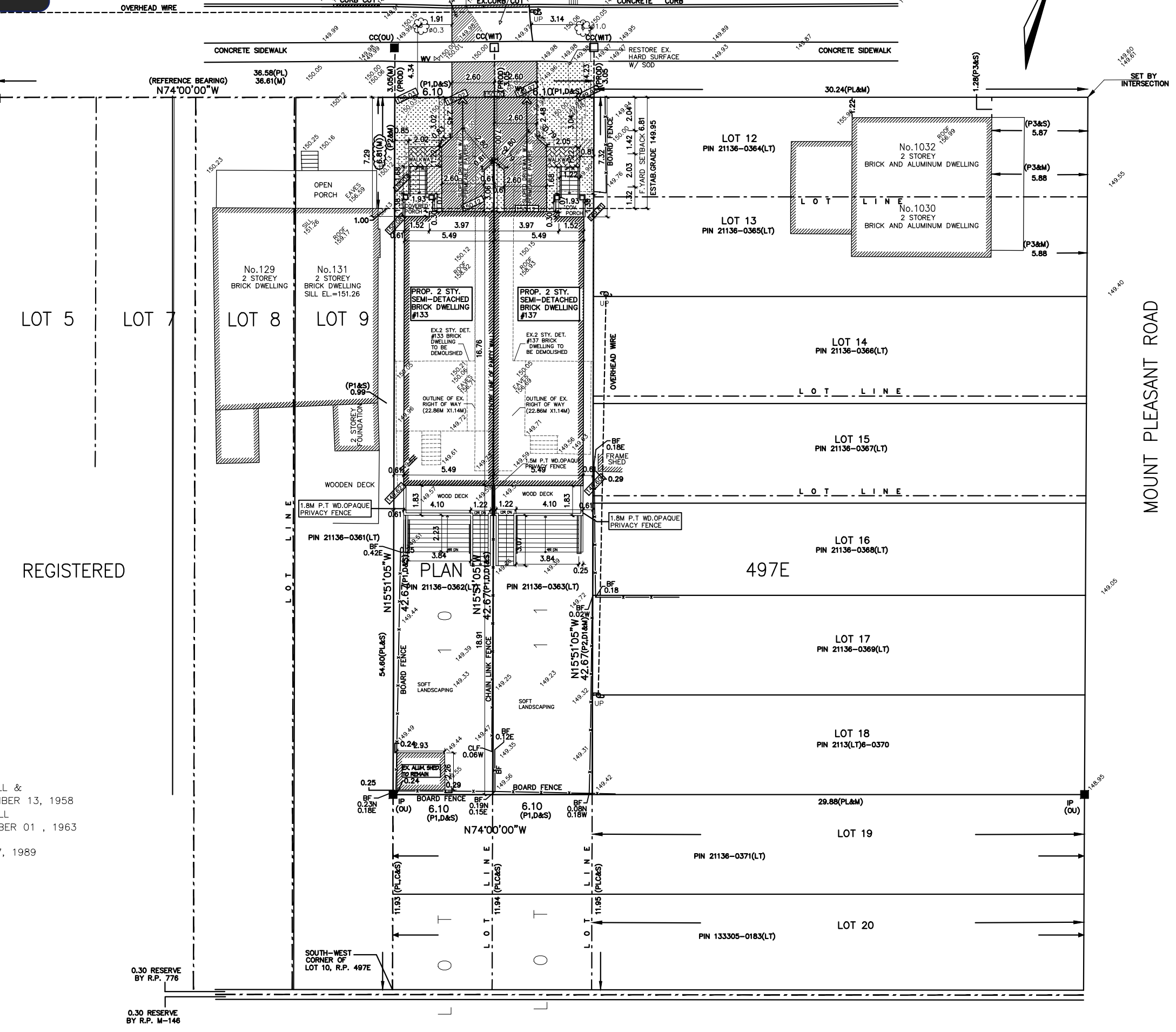
TOTAL FRONT YARD AREA = 38.77m²
50% MIN LANDSCAPING = 19.385m²
DRIVEWAY AREA = 19.08m² 49.21% OK
ACTUAL LANDSCAPING AREA = 19.69m² 50.79% OK

75% MIN. SOFT LANDSCAPING
19.69m² x 0.75% = 14.77m²
-WALKWAY = 2.50 m²
ACTUAL SOFT LANDSCAPING = 17.19m² 87.30% OK
50% MIN. OPEN SPACE = 18.04m²
ACTUAL OPEN SPACE = 12.91m² (44.59% OK)

1 SITE PLAN
A1 SCALE 1:250

NOTES AND LEGEND

- DENOTES SURVEY MONUMENT PLANTED
- DENOTES SURVEY MONUMENT FOUND
- SIB DENOTES STANDARD IRON BAR
- IP DENOTES IRON PIPE
- IB DENOTES IRON BAR
- RIB DENOTES DENOTES IRON BAR
- CC DENOTES CUT CROSS
- M DENOTES MEASURED
- S DENOTES SET
- WIT DENOTES WITNESS
- C DENOTES CALCULATED
- OU DENOTES ORIGIN UNKNOWN
- PL DENOTES REGISTERED PLAN 497E
- P1 DENOTES PLAN OF SURVEY BY BROWNE, CAVELL & ASSOCIATES O.L.S DATED NOVEMBER 13, 1958
- P2 DENOTES PLAN OF SURVEY BY BROWNE, CAVELL AND JACKSON O.L.S. DATED OCTOBER 01, 1963
- P3 DENOTES PLAN OF SURVEY BY UNWIN, MURPHY AND ESTON O.L.S. DATED APRIL 17, 1989
- N/S/E/W DENOTES NORTH/SOUTH/EAST/WEST
- HYD DENOTES FIRE HYDRANT
- MH DENOTES MANHOLE
- CB DENOTES CATCH BASIN
- UP DENOTES UTILITY POLE
- SEPTIC DENOTES SEPTIC TANK
- BF DENOTES BOARD FENCE
- CLF DENOTES CHAIN LINK FENCE
- ∅ DENOTES DIAMETER
- WV DENOTES WATER VALVE
- DENOTES DECIDUOUS TREE
- PLT DENOTES PLANTER
- D DENOTES INSTRUMENT No. CA646114
- D1 DENOTES INSTRUMENT No. C7741367



No.	REVISIONS	DATE
1	COFA-REV	11/20/2017
2	REVISED-DRIVEWAY	10/19/2018

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents.

QUALIFICATION INFORMATION
Required unless design is exempt under 3.2.4.3(5) Division C of the Ontario Building Code.

EDDIE PERES 5726
NAME SIGNATURE BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.1, Division C of the Ontario Building Code.

EKP DESIGNS INC. 5628
FIRM NAME BCIN

PROJECT PROPOSED SEMI-DETACHED 2 STOREY DWELLING 133 & 137 SHERWOOD AVENUE, CITY OF TORONTO

DRAWING NAME		
SITE PLAN		
DESIGNED BY EKP	DRAWN BY D. VINCANI	APPROVED BY EKP
PROJECT No. 2017-16	DATE APRIL 2017	SCALE AS SHOWN
FILE 2016		DRAWING NO. A1

Oct 24, 2018



1 NORTH (FRONT) ELEVATION
A6 SCALE : 3/16" = 1'-0"

EKP DESIGNS INC.

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No.	REVISIONS	DATE
1	COFA-REVISION	11/20/2017
2	COFA-REVISION	01/16/2018
3	COFA-REVISION	03/02/2018

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QUALIFICATION INFORMATION
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EDDIE PERES 37296
NAME SIGNATURE BCIN

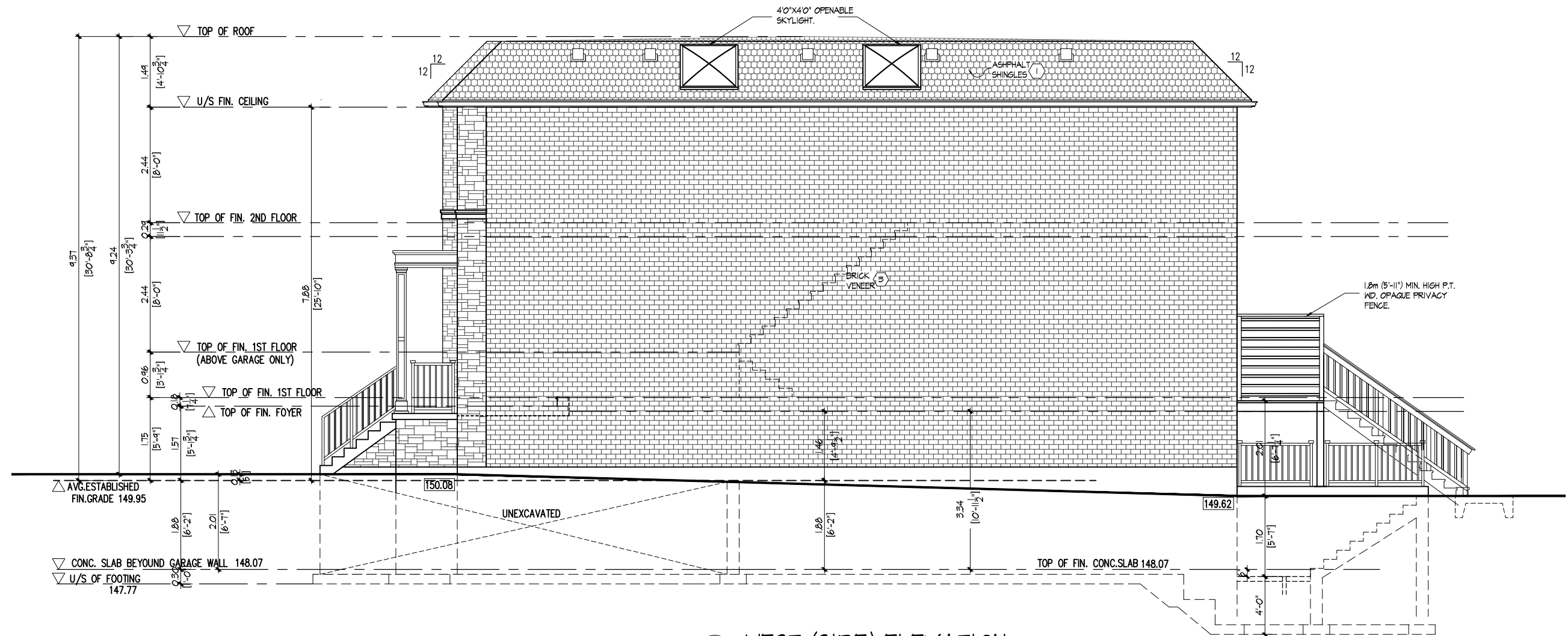
REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

EKP DESIGNS INC. 38281
FIRM NAME BCIN

PROJECT
PROPOSED SEMI-DETACHED 2 STOREY DWELLING
133 & 137 SHERWOOD AVENUE
CITY OF TORONTO

DRAWING NAME
NORTH (FRONT) ELEVATION

DESIGNED BY	DRAWN BY	APPROVED BY
D. VINCANI	D. VINCANI	EKP
PROJECT No. 2017-16	DATE APRIL 2017	SCALE AS SHOWN
FILE: 2017	DRAWING NO. A6	



1 WEST (SIDE) ELEVATION
A7 SCALE : 1/8" = 1'-0"

EKP DESIGNS INC.

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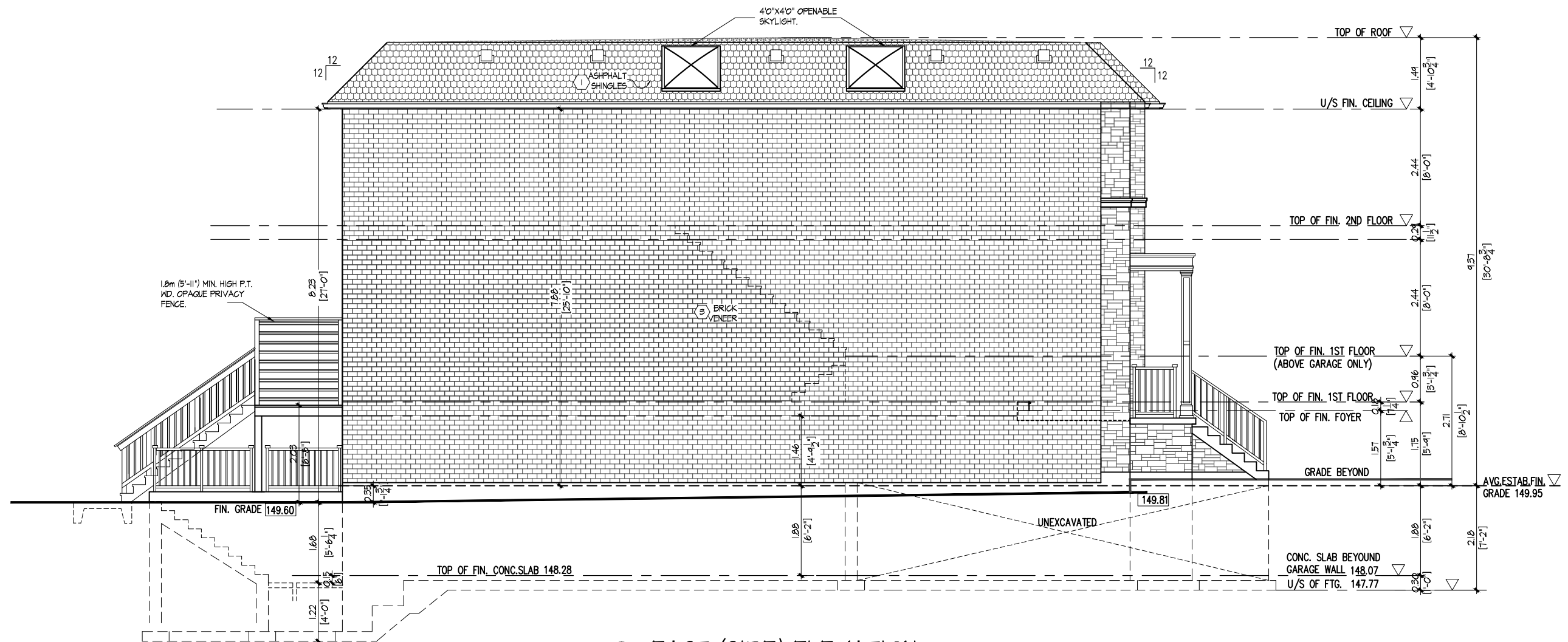
QUALIFICATION INFORMATION
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EDDIE PERES 37296
NAME SIGNATURE BCIN

REGISTRATION INFORMATION
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EKP DESIGNS INC. 38281
FIRM NAME BCIN

PROJECT		
PROPOSED SEMI-DETACHED 2 STOREY DWELLING 133 & 137 SHERWOOD AVENUE CITY OF TORONTO		
DRAWING NAME		
WEST (SIDE) ELEVATION		
DESIGNED BY	DRAWN BY	APPROVED BY
D. VINCANI	D. VINCANI	EKP
PROJECT No.	DATE	SCALE
2017-16	APRIL 2017	AS SHOWN
FILE:	DRAWING NO.	
2017	A7	



1 EAST (SIDE) ELEVATION
 A B SCALE : 1/8" = 1'-0"

EKP DESIGNS INC.

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 TORONTO, ONTARIO
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EDDIE PERES 37296
 NAME SIGNATURE BCIN

REGISTRATION INFORMATION
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EKP DESIGNS INC. 38281
 FIRM NAME BCIN

PROJECT PROPOSED SEMI-DETACHED 2 STOREY DWELLING 133 & 137 SHERWOOD AVENUE CITY OF TORONTO		
DRAWING NAME EAST (SIDE) ELEVATION		
DESIGNED BY D. VINCANI	DRAWN BY D. VINCANI	APPROVED BY EKP
PROJECT No. 2017-16	DATE APRIL 2017	SCALE AS SHOWN
FILE: 2017	DRAWING NO. A8	



EKP DESIGNS INC.

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EDDIE PERES 37296
 NAME SIGNATURE BCIN

REGISTRATION INFORMATION
 Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

EKP DESIGNS INC. 38281
 FIRM NAME BCIN

PROJECT PROPOSED SEMI-DETACHED 2 STOREY DWELLING 133 & 137 SHERWOOD AVENUE CITY OF TORONTO		
DRAWING NAME SOUTH (REAR) ELEVATION		
DESIGNED BY D. VINCANI	DRAWN BY D. VINCANI	APPROVED BY EKP
PROJECT No. 2017-16	DATE APRIL 2017	SCALE AS SHOWN
FILE: 2017	DRAWING NO. A9	

APPENDIX 2
LIST OF VARIANCES

133 Sherwood Avenue – List of Variances

1. **Chapter 10.10.40.40.(1), By-Law No. 569-13**
The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.7039 times the area of the lot.
2. **Chapter 10.10.80.40.(1), By-Law No. 569-13**
Vehicle entrances through the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6m. The proposed/existing lot frontage is 6.1m.
3. **Chapter 10.10.40.10.(1), By-Law No.569-13**
The permitted maximum height of a building is 9m.
The proposed height of the building is 9.37m.
4. **Chapter 10.10.40.10.(2), By-Law No. 569-13**
The permitted maximum height of all side exterior main walls facing a side lot line is 7m.
The proposed height of the side exterior main wall facing a side lot line is 7.88m.
5. **Chapter 10.10.40.10.(6), By-Law No. 569-13**
The permitted maximum height of a pedestrian entrance through the front main wall is 1.2m.
The proposed height of the pedestrian entrance through the front main wall is 1.57m.
6. **Section 6(3) Part I 1, By-Law No. 438-86**
The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.7039 times the area of the lot.
7. **Section 6(3) Part IV 3(I), By-Law No. 438-86**
The by-law does not permit an integral garage in a building on a lot having a frontage of less than 7.62m where access to garage is located in a wall facing the front lot line.
The proposed integral garage is in a wall that faces the front lot line.
8. **Section 6(3) Part II 8 D(I), By-Law No.438-86**
The by-law limits the height of an uncovered platform which projects into the required setback to a maximum of 1.2m above grade.
The proposed height is 1.27m above grade for the front porch.
9. **Section 6(3) Part II 8 D(I), By-Law No.438-86**
The by-law limits the height of an uncovered platform which projects into the required setback to a maximum of 1.2m above grade.
The proposed height is 1.53m above grade for the rear deck.
10. **Section 4(2), By-Law No. 438-86**
The permitted maximum height is 9m.
The proposed height is 9.47m.
11. **Section 6(3) Part II 8 D, By-Law No. 438-86**
A deck or porch located in the front or rear of a building is not permitted to project beyond the side walls of the building.
The proposed front porch extends 0.08m beyond the side walls of the building.

137 Sherwood Avenue – List of Variances

1. **Chapter 10.10.40.40.(1), By-Law No. 569-13**
The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.7039 times the area of the lot.
2. **Chapter 10.10.80.40.(1), By-Law No. 569-13**
Vehicle entrances through the front main wall of the building are permitted provided the lot has a minimum frontage of 7.6m. The proposed/existing lot frontage is 6.1m.
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The proposed height of the building is 9.37m.
4. **Chapter 10.10.40.10.(2), By-Law No. 569-13**
The permitted maximum height of all side exterior main walls facing a side lot line is 7m.
The proposed height of the side exterior main wall facing a side lot line is 7.88m.
5. **Chapter 10.10.40.10.(6), By-Law No. 569-13**
The permitted maximum height of a pedestrian entrance through the front main wall is 1.2m.
The proposed height of the pedestrian entrance through the front main wall is 1.57m.
6. **Section 6(3) Part I 1, By-Law No. 438-86**
The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.7039 times the area of the lot.
7. **Section 6(3) Part IV 3(I), By-Law No. 438-86**
The by-law does not permit an integral garage in a building on a lot having a frontage of less than 7.62m where access to garage is located in a wall facing the front lot line.
The proposed integral garage is in a wall that faces the front lot line.
8. **Section 6(3) Part II 8 D(I), By-Law No.438-86**
The by-law limits the height of an uncovered platform which projects into the required setback to a maximum of 1.2m above grade.
The proposed height is 1.4m above grade for the front porch.
9. **Section 6(3) Part II 8 D(I), By-Law No.438-86**
The by-law limits the height of an uncovered platform which projects into the required setback to a maximum of 1.2m above grade.
The proposed height is 1.66m above grade for the rear deck.
10. **Section 4(2), By-Law No. 438-86**
The permitted maximum height is 9m.
The proposed height is 9.61m.
11. **Section 6(3) Part II 8 D, By-Law No. 438-86**
A deck or porch located in the front or rear of a building is not permitted to project beyond the side walls of the building.
The proposed front porch extends 0.08m beyond the side walls of the building.

Conditions of Approval Applicable to Both Lots

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan and Elevations prepared by EKP Designs (various revision dates) and attached hereto, except that the owner shall not expand the existing 3.86 m curb cut. The final location of the curb cut shall be subject to the satisfaction of Transportation Services and Right of Way Management.
2. The driveways shall be constructed of permeable pavers.
3. The owner shall satisfy all matters relating to Private and City-owned trees, pursuant to Chapter 813 of the Municipal Code, Article II and III, to the satisfaction of Urban Forestry, Parks, Forestry and Recreation.