

DECISION AND ORDER

Decision Issue Date Friday, February 28, 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): Shaodan Lin

Applicant: Corich International Inc

Property Address/Description: 38 Munson Cres

Committee of Adjustment Case File: 19 204264 ESC 21 MV (A0214/19SC)

TLAB Case File Number: 19 232699 S45 21 TLAB

Hearing date: Thursday, January 30, 2020

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Corich International Inc
Appellant	Shaodan (Lena) Lin
	Linke Bi (Appellant's Spouse)
Party	City of Toronto
Party's Legal Rep.	Derin Abimbola
Party's Legal Rep.	Lauren Pinder

INTRODUCTION

This is an appeal in respect of 38 Munson Crescent (subject property) from a decision of the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA). The COA refused the two variances sought for the subject property

to enclose a portion of the existing carport for living space, and to construct an open porch at the rear of the existing house, as set out in **Attachment A** to this decision.

The subject property is located east of Midland Avenue and north of Lawrence Avenue East in what is known as the 'Bendale Community' of the former City of Scarborough. It is improved with a one-storey detached bungalow with an attached carport.

The property is designated *Neighbourhoods* in the City Official Plan (OP). It is zoned Single Family Residential (S) in the Bendale Community Zoning By-law No. 9350 (former By-law), as amended, and Residential Detached (RD) in the new harmonized City-wide Zoning By-law No. 569-2013 (new By-law).

BACKGROUND

The Appellant, Shaodan Lin, and her husband submitted an application to the COA to permit the enclosure of a portion of the existing carport which faces Munson Crescent in order to create a 'mud room' entrance to the existing dwelling on the subject property.

In addition, the Appellant is also extending the rear roof component of the dwelling to completely cover the open porch area along the north elevation of the dwelling, towards the rear of the house.

In order to permit the proposed renovation of the dwelling described above, the Owners requested the following two variances:

By-law No. 569-2013

1. The proposed north side yard setback is 1.1 m
Whereas the minimum required side yard setback is 1.2 m

By-law No. 569-2013 & By-law No. 9350

2. The proposed parking space is located in the front yard
Whereas a parking space may not be in a front yard or a side yard abutting a street.

Upon circulating the application for comments, the COA received a Report from Community Planning staff (Planning Staff), dated September 6, 2019. In that memorandum, Planning Staff recommended that the Committee refuse Variance #2 related to front yard parking. In recommending refusal of that variance, Planning staff highlighted Official Plan Policy 4.1.5, as amended by OPA 320, which states that:

“development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

e) prevailing location, design and elevations relative to the grade of driveways and garages.”

Staff therein noted that the predominant built form in the subject neighbourhood includes parking within a garage or carport and expressed concerns that the applicant's request for front yard parking does not respect and reinforce the physical character of this neighbourhood.

Planning staff concluded that the requested variance for front yard parking did not meet the general intent and purpose of the OP, the former Zoning By-law, as amended, and the City-wide By-law, as amended, and recommended that the Committee refuse Variance #2.

The Committee received no other comments from any other City department.

The COA subsequently refused the application at its hearing on September 18, 2019 and the Owners appealed the Committee's decision to the TLAB The Tribunal set a Hearing date of January 30, 2020 to hear the appeal.

On January 21, 2020, approximately ten days prior to the scheduled Hearing of the appeal, the TLAB received correspondence from City solicitors, Lauren Pinder and Derin Abimbola, indicating that the City and the Appellant had reached a settlement of the matter. The terms of the agreed upon settlement were contained in City's letter, dated January 21, 2019, and were outlined as follows:

1. The Applicant shall pay cash in lieu for the planting of five (5) trees, as of date the cost of each tree being approximately \$583.00 per tree, to the Director, Parks, Forestry and Recreation, Urban Forestry Services. The Applicant may elect to provide such payment in instalments, to the satisfaction of the Director, Parks, Forestry and Recreation, Urban Forestry Services, subject to the following conditions:

a. That the entire payment must be provided to the Director, Parks, Forestry and Recreation, Urban Forestry Services, in full, prior to the issuance of the first building permit, and

b. Within one year from the issuance of the notice of decision from the TLAB, payment must be provided in full to the Director, Parks, Forestry and Recreation, Urban Forestry Services.

2. The Owner shall maintain the carport and enclosed carport area substantially in accordance with the Site Plan. Drawing No. 1905-1-05, prepared by Best Engineering, dated May 1, 2019.

In their Settlement letter, the City solicitors confirmed that as the City and Ms. Lin were the only Parties to the appeal, the Terms of Settlement agreement were only being served on the TLAB, with a copy to the Appellant.

In response to this correspondence, as the presiding Panel Member, I directed TLAB staff, on my behalf, to provide the Parties with the following direction:

“As the letter from the City confirms, and I have reconfirmed, the only Parties/Participants in the subject matter are the City and the Applicant/Appellant. Given that the Appellant has been cc'd on the City's email and served the Settlement terms as per Rule 19.3 of the TLAB's Rules of Practice and Procedure (Rules), I am satisfied that no further service is required.

Given the timing of the service of the Terms of Settlement and the scheduled Hearing date of January 30, 2020, the TLAB will conduct an expedited Settlement Hearing on the terms of the proposed settlement on the scheduled Hearing date, pursuant to TLAB Rule 19.3.

Notwithstanding the settlement reached by the two Parties, the Applicant/Appellant must come to the January 30, 2020 Hearing prepared to address the requested variances as the Tribunal must hear the evidence in order to be satisfied that the two variances meet the statutory tests of the *Planning Act* as this is a hearing *de novo*, as if the COA hearing was to be held afresh.”

MATTERS IN ISSUE

As this is a *de novo* proceeding, and despite a consensus position on the variances, the TLAB is required to consider an evidentiary foundation, to adjudicate on the merit of the two variances requested by the Applicant and to determine whether the settlement agreement reflects good planning.

As well, the Parties jointly agreed to the imposition of conditions, above recited, should the TLAB find favour with the Application.

In the end, the issue is whether the two variances sought, individually and collectively, meet the policy considerations and the statutory tests below recited.

Finally, the TLAB must also determine whether the conditions requested by the City to be imposed on the Applicant, if the Application is approved, are supportable given that there is no evidence that any trees will be impacted by this proposal.

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

The only evidence provided to the TLAB was offered by the Appellant, with the assistance of her husband, Mr. Bi. On consent, I allowed Mr. Bi to present the bulk of the evidence due to Ms. Lin's acknowledged limited abilities with the English language and the fact that her husband had prepared much of the photographic material referred to in testimony.

Prior to swearing both the Appellant and her husband to give testimony, I questioned Ms. Lin as to why neither she nor her husband had pre-filed the requisite documents required by the TLAB to support their appeal. In her limited response, the Appellant apologized for the lack of submissions noting that she was not familiar with the TLAB Rules and had assumed that since a settlement had been agreed to, no additional supplementary supporting materials were required.

However, Mr. Bi did advise that he had prepared an extensive set of photographs of properties within the neighbourhood that exhibited similar examples of enclosed carports as being proposed to support his contention that proposal was a common condition in the area.

This evidence was submitted and marked as exhibits with the consent of the City.

At this point, I admonished the Appellant somewhat for the lack of any filed submissions to the TLAB in support of the requested variances, other than the initial Notice of Appeal (Form 1) filed on October 7, 2019. I advised that the TLAB attempts to avoid trial by ambush by requiring document disclosure well before the scheduled Hearing date as required by the due dates listed in the Notice of Hearing.

However, notwithstanding the lack of submissions to date, and given that a settlement of the issues had been agreed to, I was prepared to hear the Appellant's evidence as it relates to how the two requested variances satisfy the statutory planning tests.

As above noted, the Appellant's husband took the lead in this regard, although Ms. Lin reiterated for the record that she had agreed to honour the terms of the Settlement established and memorialized in the City's January 21, 2020 letter.

**Decision of Toronto Local Appeal Body Panel Member: D. Lombardi
TLAB Case File Number: 19 232699 S45 21 TLAB**

I advised that I had visited the site, walked the immediate area and familiarized myself with the neighbourhood adding that I was very much acquainted with this older part of the former City of Scarborough.

Mr. Bi stated that the couple purchased the subject property in 2018 with the intent of eventually constructing a mud/change room addition as reflected in the drawings submitted with their COA application (Exhibit 2). He noted that the existing house is some 58-years old and that entering the house through the front entrance is 'tight' as one immediately encounters stairs.

As a result, the Owners' wish is to create a small change room separate from the main interior living area, in which to remove their coats and shoes for convenience.

He asserted that the additional space proposed is more reflective of an updated, modern home design and, additionally in his opinion, the enclosure would have absolutely no adverse impacts on neighbouring properties. He also confirmed rather passionately that the space is not intended to be habitable/living space to assuage a concern raised by Planning staff.

Employing 19 large photographs (Exhibit 3) showing properties located on the surrounding streets within the neighbourhood, he highlighted examples of other similar carport enclosures. The City confirmed having reviewed these photos.

He described the building typology of the neighbourhood as consisting predominately of one-storey detached homes that included peaked roofs that sloped and extended, usually on one side, over open carports. He noted, anecdotally, that the majority of these carports are attached to the homes, open to the elements except for the roof structure but that there are intermittent examples throughout the neighbourhood of detached carports positioned in the front part of the lot.

Mr. Bi asserted that the photographic evidence was illustrative of examples of similar conditions on abutting streets such as Dorcot, Brookridge, and Birkdale Avenues, and Rosswood and Cartier Crescents, which he submitted were all within a 5-minute walking distance of the subject property. Although completely unintentional on his part, he agreed with my proposition that this array of properties was reflective of what one would refer to as a neighbourhood 'study area' for the purposes of his analysis.

In reviewing the photographs, he noted that his neighbours at 32 Munson Cres. (Photo 1), two houses south, had constructed a similar enclosed carport as had the owners of 28 Dorcot Ave. (Photo 3), the latter residents informing him that their carport enclosure had been allowed through the approval of a variance application at the COA in 2018.

Mr. Bi asserted that all 19 photos show some form of an enclosure of existing carports, whether that enclosure occupies a portion of the space or is a complete elimination of the entire parking space as illustrated in the houses at 16 and 18 Rosswood Crescent (Photo 11 & 12) and 22 Dorcot (Photo 2).

With respect to 237 Birkdale Avenue (Photo 7), Mr. Bi submitted that the owner of that property received a building permit to partially enclose the existing carport in 2019 on assurance to the City that the interior space being created was not to be used as living/habitable space.

In addressing the enclosed carport at 237 Birkdale, Mr. Bi noted that that property has a shorter driveway than that of the subject property noting this as an important fact given that cars on that property are now forced to park in the driveway. He asserted that the driveway length on the subject property is comparatively longer, at 11.63 m, than many of the other properties in the neighbourhood thereby easily accommodating 2 to 3 cars. He suggested this would negate the need for any additional street parking needs.

He also suggested that many of his neighbours do not use their carports for parking even though they are available and instead choose to park vehicles in their driveways.

Mr. Bi also clarified the need for Variance #1. He explained that the requested relief from the By-law to permit a north side yard setback of 1.1 m relates to the location of what he termed an 'existing shed/porch'. He noted that the shed is a rudimentary unenclosed structure located along the north wall of the house towards the rear; the proposal is simply to extend the roofline over this area permitting some protection.

He confirmed that the 'shed' will not include walls and is intended simply as a covered outdoor space for storing tools, as supported by the drawings in Exhibit 2.

With respect to how the variances satisfy the statutory planning tests, Mr. Bi concluded that the proposal maintains the character of the neighbourhood as there are many examples of similar enclosures in the area. He asserted that the enclosure of carports is common in the area and the proposal would result in a more functional space for his family.

He described the proposal as a 'minor' renovation and asserted that the proposed front renovation of the carport will be more aesthetically pleasing given that it will match architecturally with the front façade of the existing dwelling.

In concluding his testimony, Mr. Bi submitted that there was general neighbourhood support for the proposal given that he had obtained the signature of 13 residents in a petition that was initially presented to the COA in support of his application and pre-filed with the TLAB.

This support, he asserted, was premised on the fact that the enclosure of part of the carport will not adversely impact on the abutting properties, and specifically his neighbour at 40 Munson, who he suggested would be most impacted by the reduced north side yard setback and who unequivocally supports the proposal.

Mr. Bi requested that the appeal be granted and that he be allowed to renovate his home as have many of his neighbours.

Following their testimony, there was no cross-examination by the City of either the Appellant or Mr. Bi.

Prior to asking for closing arguments, I did ask Ms. Abimbola to clarify the comments prepared by City Planning staff to the COA with respect to the proposal considering the settlement reached with the Appellant. I prefaced my question with the suggestion that from their comments to the COA, it appeared the fundamental issue raised by Planning staff was a concern with the proposed front yard parking.

Ms. Abimbola qualified her answer by noting that the planner who had authored the September 6, 2019 memorandum was not present and she was not comfortable speaking on the planner's behalf. However, she did confirm that although there was concern that enclosing a portion of the carport would change the existing physical character of the neighbourhood, subsequent conversations with that City planner have confirmed that Planning staff are now satisfied that the subject proposal will not destabilize the neighbourhood character and, if approved, the variances and the conditions imposed by the City are acceptable.

Ms. Abimbola requested that should the Application be approved, that the TLAB impose the terms of the Settlement outlined in the City's letter of January 21, 2020.

The Appellant made no closing statements other than to reiterated that she would abide by the conditions proposed by the City.

ANALYSIS, FINDINGS, REASONS

This matter comes forward as a 'settlement' in which the only two Parties in the proceeding have agreed that they no longer wish to contest the requested variances. The TLAB encourages settlement and affords great weight to the Parties who have made sincere and diligent efforts to resolve their differences.

I advised that the TLAB is a relatively new body with rules and procedures and the Tribunal is committed to an approach that does not act as a deterrent to persons participating in the hearing process. The TLAB acknowledges that residents or 'laypersons' who are participating in a TLAB hearing for the first time would not have an in-depth knowledge of the Tribunal's Rules of Practice and Procedure.

The TLAB notes for the record the co-operation of the Parties present in arriving at terms of the Settlement agreement and thanked the Appellant and her husband for their concise and cogent evidence and testimony.

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 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 expert opinion evidence on the undisputed variance) and, if granting the variances, resolving the matter through the implementation of the settlement terms.

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 refreshed housing in their communities that is otherwise acceptable.

In that vein, despite the deficiency of the standard of evidence on the individual and cumulative merit of the variances usually proffered by an expert witness, I find on the strength of the Appellant's evidence that provincial policy is not contravened, and the general intent and purpose of the Official Plan policy and the purpose of the zoning by-law is maintained.

I agree with the Appellant that the Application is clearly a 'minor' improvement to the dwelling, not directly related to growth and an investment in the maintenance of an existing property.

Furthermore, I find that the variances related to the renovation of the subject dwelling by enclosing a portion of the carport and covering an open porch at the rear of the home are minor and desirable. I am content on the evidence presented by the Appellant that the applicable tests have been addressed on each variance requested, and satisfactorily met.

I agree with the application and assessment of the tests relevant to the variances, collectively and individually, and I find that the two variances pass the mandatory policy and statutory tests above outlined, for the reasons expressed by the Appellant and her husband, in their oral testimony.

With respect to the proposed conditions contained in the City's Settlement letter, and highlighted earlier in this Decision, the City provided no evidence to tie the conditions to the relief sought, supported and authorized. With counsel present, the City had the knowledge that it had the same evidentiary obligation as was on the Appellant to support their case, and counsel should have proffered, when provided with the opportunity by the presiding Member, evidence to show a demonstrable connection or statutory (Chapter 813, Toronto Municipal Act) basis or rationale for their request.

They did not, and simply reiterated their contention that the Owners of the subject property had acquiesced and agreed to the conditions being sought by the City. I heard no evidence that the subject proposal will impact trees on this property, either through the requirement of tree removal or injury, and there was no comment or report from Urban Forestry Services highlight concerns regarding trees or requesting the imposition of related 'cash-in-lieu payment' condition for this Application.

While I am cognizant that the City and the Appellant have reached a Settlement agreement, with the variance power, jurisprudence requires that the TLAB determine that the requested conditions be reasonable and reasonably related to the relief

requested. In the matter at hand, I find that the City has failed to establish this foundation in any practical sense.

Consequently, on this basis, I find that conditions requested by the City and outlined in the Settlement letter to be generally unacceptable with respect to the matter at hand and I am not prepared to impose those conditions in the Decision to grant the variances sought.

DECISION AND ORDER

The appeal from the decision of the Committee of Adjustment is allowed; the variances set out in Attachment A, below, are approved subject the condition(s) set out in Attachment B and the Site Plan and drawings set out in **Attachment C**.

Attachment A

REQUESTED VARIANCES TO THE ZONING BY-LAW

By-law No. 569-2013

1. The proposed north side yard setback is 1.1 m
Whereas the minimum required side yard setback is 1.2 m

By-law No. 569-2013 & By-law No. 9350

2. The proposed parking space is located in the front yard
Whereas a parking space may not be in a front yard or a side yard abutting a street.

Attachment B

CONDITION(S) OF APPROVAL

The Decision is subject to the following condition(s):

- 1) The proposed development shall be constructed substantially in accordance with the Plans prepared by Best Engineering, dated May 1, 2019, including Drawing 1905-1-01 (Notes), 1905-1-02 (Site Plan), 1905-1-05 (East Elevation), and 1905-1-06 (North Elevation), and attached to this decision. Any other variances that may appear on these plans that are not listed in the decision are NOT authorized.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

NOTE:

1. ROOF SNOW LOAD TO 1.36 KPA, ROOF DEAD LOAD TO BE 0.5 KPA.
2. ALL DIMENSIONS AND EXISTING STRUCTURE INFORMATION MUST BE VERIFIED BY CONTRACTOR, REPORT TO THE ENGINEER FOR ANY DISCREPANCY.
3. CONTRACTORS ARE RESPONSIBLE TO PROVIDE TEMPORARY SUPPORT WHERE NECESSARY, INCLUDING SOIL EXCAVATION SUPPORT
4. ALL CONSTRUCTION MUST FOLLOW ONTARIO BUILDING CODE 2012 AND RELATIVE CODE AND REGULATIONS.
5. DO NOT USE THESE DRAWINGS FOR OTHER PROJECT
6. WOOD MEMBER USE SPF NO.1 OR BETTER
7. ALL EXTERIOR WOOD MUST BE PRESSURE TREATED.

8. SOIL ALLOWABLE BEARING VALUE IS ASSUMED TO BE 75kPa, GEOTECHNICAL ENGINEER TO CONFIRM ON SITE.
9. CONCRETE WORK CONFIRM TO CSA STANDARD A23.1
10. REBAR CLEAR COVER, 3" AGAINST SOIL, 1 1/4" OHTERS
11. WOOD WORK CONFIRM TO CSA-0141-05
12. SHEATHING ON GARAGE WALL AND ROOF SHOULD BE TONGUE AND GROOVE PATTERN. PROVIDE 3" NAILS @ 4"C/C AT PANEL EDGES, AND 12" ELSEWHERE.

SPECIFICATIONS

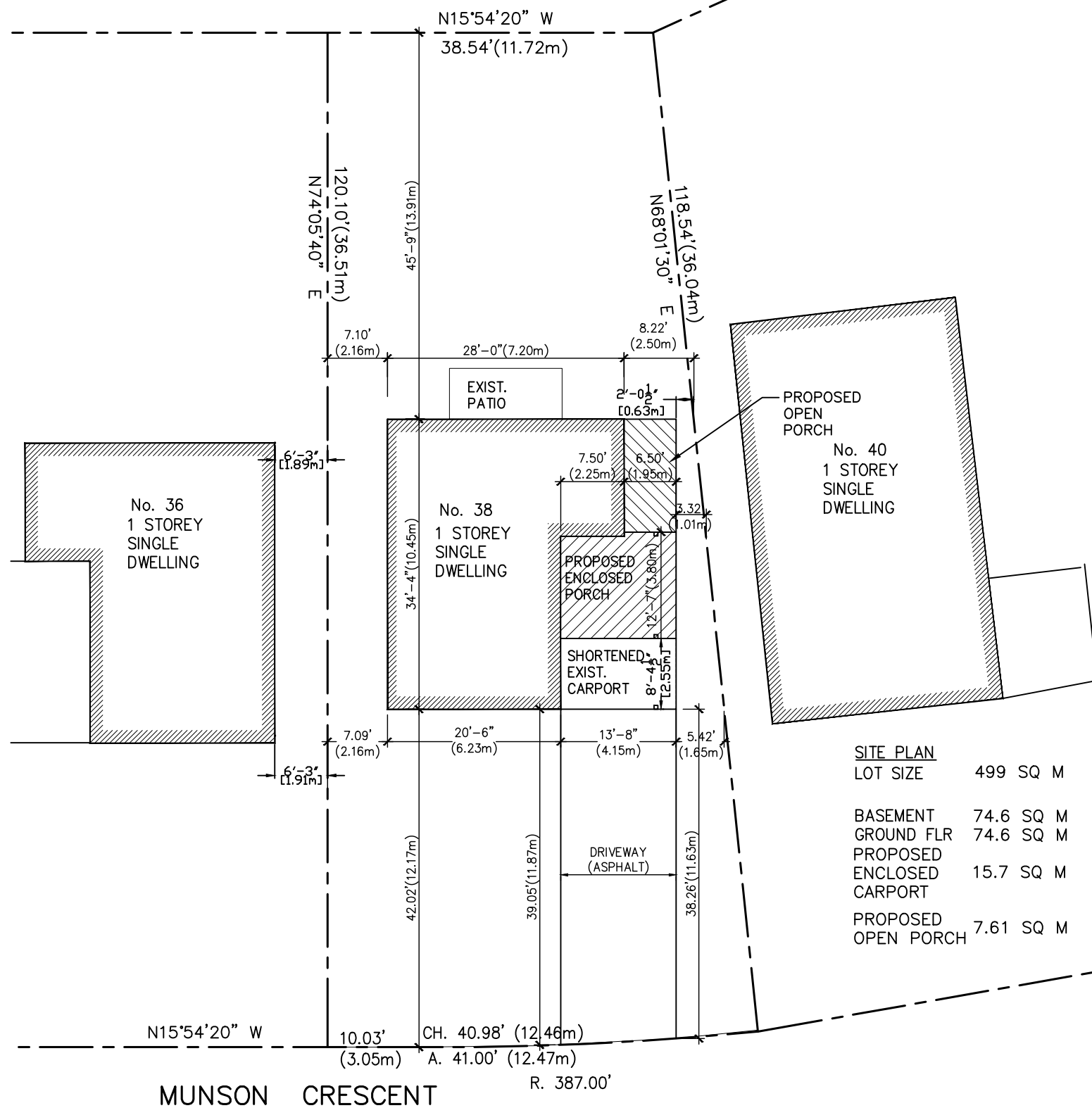
- ① 25MPA, 14"x6" WIDTH CONC FOOTING AND 8" FOUNDATION WALL. MINIMUM DEPTH 4'-0" BELOW GRADE, MATCH EXISTING FOOTING DEPTH ADJACENT TO EXISTING FOOTING, PROVIDE STEP FOOTING IF NECESSARY. INSTALL 1/2" ANCHOR BOLT WITH 5" EMBEDMENT ON EXISTING SILL PLATE EVERY 64". PROVIDE 1 1/2" THICK NON SHRINK GROUT BETWEEN UNDERPIN AND EX SILL PLATE AFTER CONCRETE IS CURED FOR 48 HOURS. EVERY PHASE OF LENGTH MUST BE EQUAL OR SMALLER THAN 4'-0", NUMBER IN CIRCLE INDICATE SEQUENCE OF WORK. DO NOT DO NEXT SEQUENCE OF EXCAVATION UNTIL GROUT TO REACH 70% STRENGTH.
- ② Ø12" 20 MPA CONC SONO TUBE W/ 4'-0" MIN EMBEDMENT, 6" PROJECTION, W/ 1/2" ANCHOR BOLT MIN EMBEDMENT 6", AND POST SHOE FOR 6X6 POST, 6 MIL POLY.
- ③ EX DOOR TO BE DEMOLISHED
- ④ NEW WALL FROM OUTSIDE TO INSIDE: THIN TILE VENEER FINISH, 'TYVEK' HOME WRAP MOISTURE BARRIER, 1/2" OSB SHEATHING, 2X4 @ 16" O.C. STUDS, MIN R22 BATT INSUL, 6 MIL POLY VAPOR BARRIER, 1/2" GYPSUM BOARD.
- ⑤ ADD MIN R40 BATT INSUL BETWEEN EX 2X6 AT 16" O/ RAFTER, 6 MIL POLY VAPOR BARRIER, 1/2" GYPSUM BOARD.
- ⑥ EX SONO TUBE TO BE RESERVED
- ⑦ 15M @ 12" C/C 12" LG DRILL AND EPOXY GROUT INTO EXISTING FDN WALL 6", GROUT FILL THE VOID OF CMU.
- ⑧ ADD ONE PLY 2X10 TO EX (2) 2X10 BEAM
- ⑨ EX ROOF
- ⑩ NEW OPEN PORCH
- ⑪ NEW 6X6 POST
- ⑫ NEW 3 PLY 2X4 POST
- ⑬ NEW ROOF: FROM OUTSIDE TO INSIDE: ROOF ASPHALT SHINGLE, 30 LB BUILDING PAPER, 1/2" OSB BOARD.
- ⑭ 2 2X10
- ⑮ NEW 900W ELECTRIC HEATER



TITLE:					38 MUNSON CRES NOTES				
DRAWN	TZ	MAY 01 19			CLIENT: L BI				ISSUE
CHECKED					DRAWING NO.	1905-1-01			A
APP'D									

ISSUE	REVISION	BY	DATE	ISSUE	REVISION	BY	DATE
A	ISSUED FOR CLIENT REVIEW	TZ	MAY 01 19				


BEST ENGINEERING
 TEL: 416-797-7958
 EMAIL: TOM.ZHU@BESTENGINEERING.CA



SITE PLAN

LOT SIZE	499 SQ M
BASEMENT	74.6 SQ M
GROUND FLR	74.6 SQ M
PROPOSED ENCLOSED CARPORT	15.7 SQ M
PROPOSED OPEN PORCH	7.61 SQ M



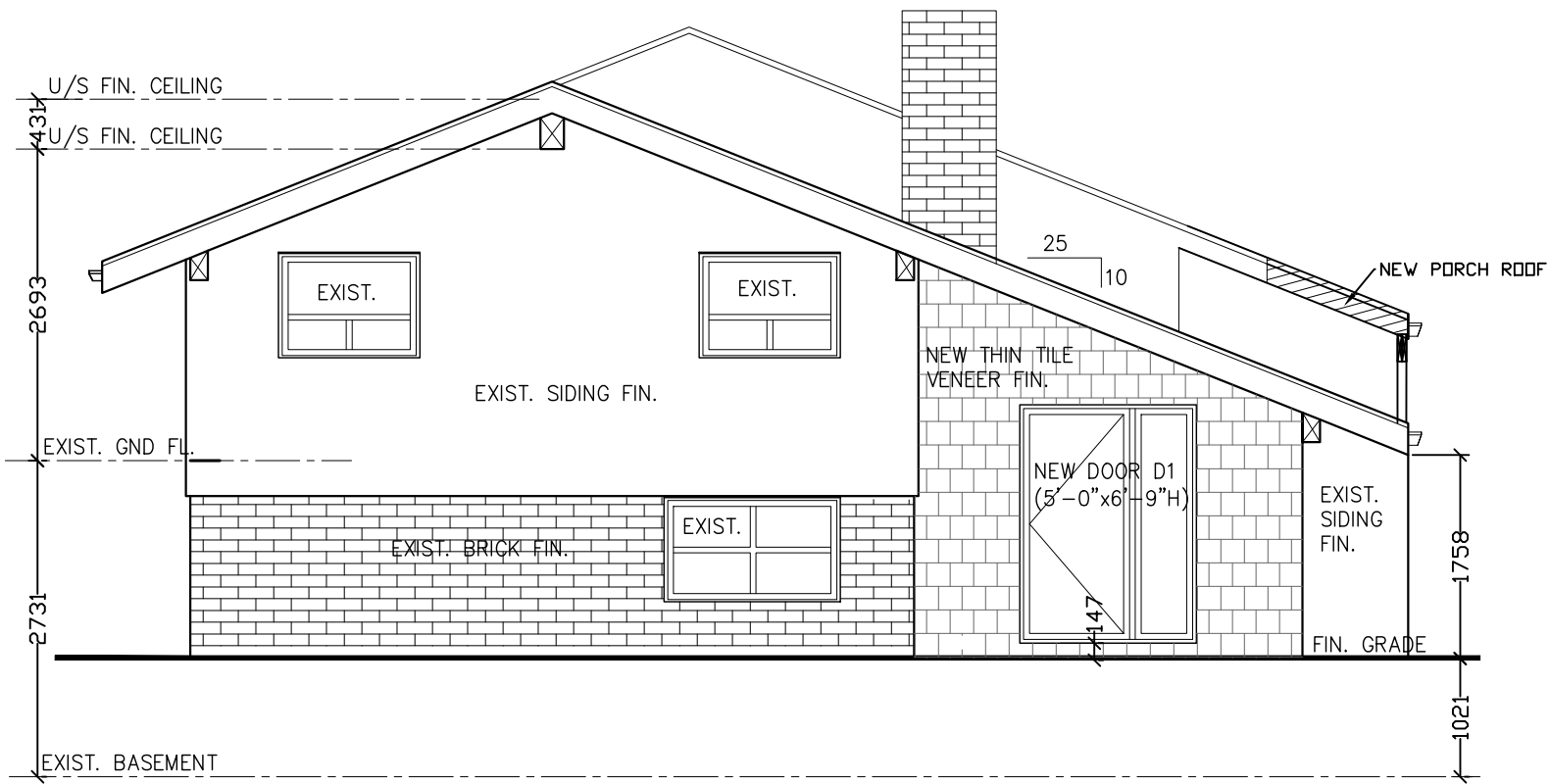
MUNSON CRESCENT
SITE PLAN
 SCALE: 1:64

TITLE:					38 MUNSON CRES SITE PLAN				
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EAST ELEVATION

SCALE: 1:64



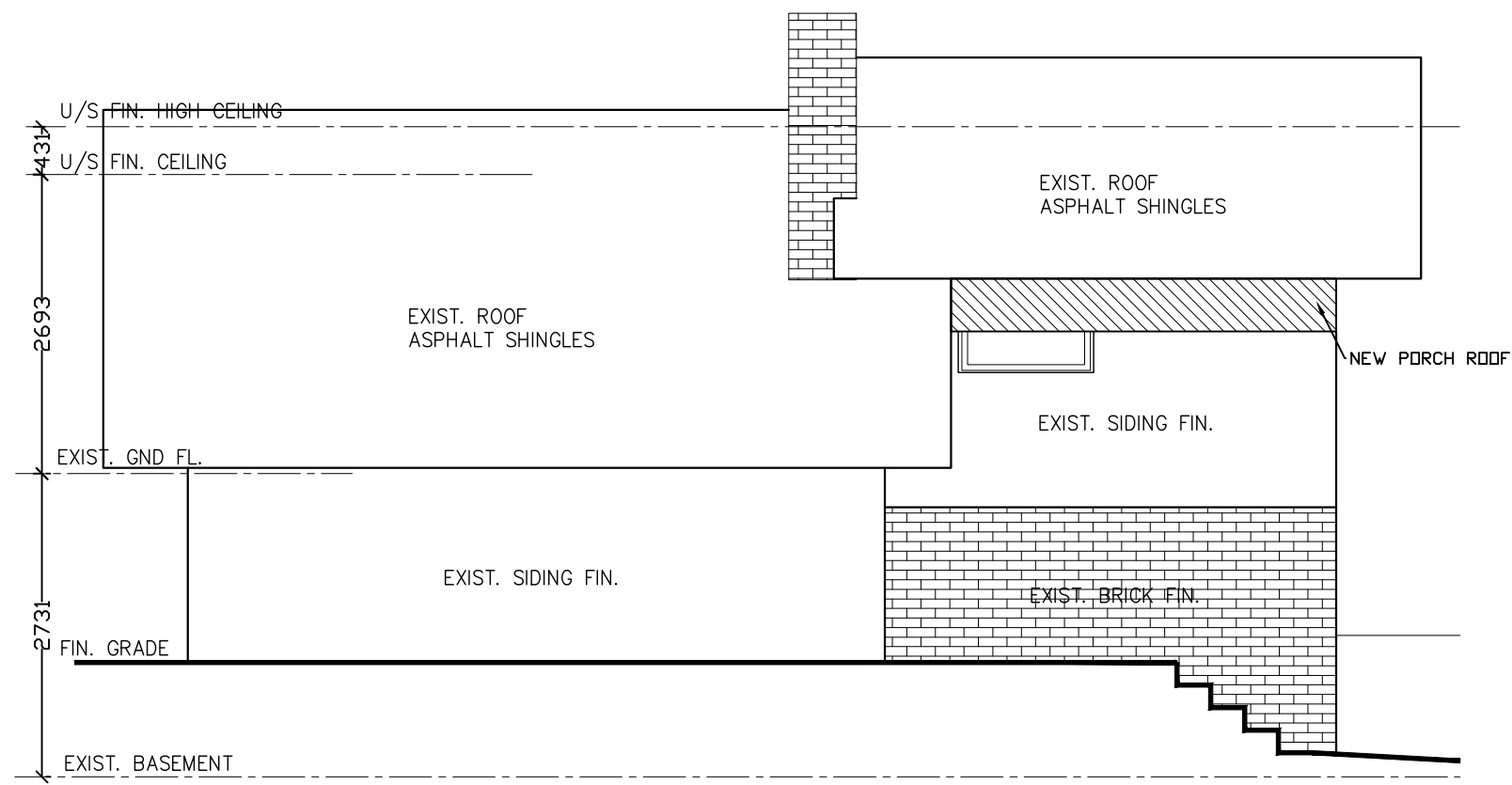
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NORTH ELEVATION
SCALE: 1:64



TITLE:					38 MUNSON CRES NORTH ELEVATION				
DRAWN	TZ	MAY 01 19	CLIENT: L BI		ISSUE				
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APP'D			1905-1-06			A			

ISSUE	REVISION	BY	DATE	ISSUE	REVISION	BY	DATE
A	ISSUED FOR CLIENT REVIEW	TZ	MAY 01 19				


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