

DECISION AND ORDER

Decision Issue Date Monday, March 30, 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): DANOUSH HOSSEINZADEH

Applicant: DANOUSH HOSSEINZADEH

Property Address/Description: 82 HANNA RD

Committee of Adjustment Case File: 19 181910 NNY 15 MV

TLAB Case File Number: 19 248153 S45 15 TLAB

Hearing date: Monday, March 09, 2020

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Danoush Hosseinzadeh	Owner/Appellant	Meaghan Barrett
City of Toronto	Party	Marc Hardiejowski
Leaside Residents Association	Party	Geoff Kettel
Franco Romano	Expert Witness	
Kevin Bolger	Participant	
Christine Bolger	Participant	
Scott Martin	Participant	
Elizabeth Gibson	Participant	

INTRODUCTION AND BACKGROUND

Danoush Hosseinzadeh is the owner of 82 Hanna Ave, located in Ward 15 (Don Valley West), of the City of Toronto (City). He applied to the Committee of Adjustment (COA) , for the approval of various variances to construct a new house at the Subject Property. The COA heard the application on October 23, 2019, and refused the application in its entirety. Mr. Hosseinzadeh appealed the COA's decision to the Toronto Local Appeal Body (TLAB) on November 7, 2019, which set a Hearing date for March 9, 2020. The Leaside Residents Association elected Party status, while a number of the neighbours, above recited, elected Participant status before the TLAB.

In January 2020, the City brought forward a Motion, requesting Party status as a result of missing the deadline for election of Party status; this Motion was allowed through a Decision released on January 31, 2020.

On March 6, 2020, I was made aware of a Settlement between the Appellants and the other Parties, and Participants, and was forwarded a copy of the Minutes of Settlement, which presented a different set of variances than what had been submitted to the COA.

MATTERS IN ISSUE

The revised set of variances, as submitted to me, at the Hearing held on March 9, 2020, is as follows:

1. 10.20.40.20.(1), Zoning By-law No. 569-2013

The permitted maximum building length for a detached house is 17.0 meters.
The proposed building length is 17.8 metres.

2. 10.20.40.40.(1), Zoning By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.64.

3. 10.20.40.70.(3), Zoning By-law No. 569-2013

The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres.
The proposed northern side yard setback is 0.9 meters.
The proposed southern side yard setback is 0.95 meters.

4. 10.5.40.60.(3), Zoning By-law No. 569-2013

The maximum width of stairs in the front yard is 2m. The proposed width of the stairs is 2.44m.

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

At the Hearing held on March 9, 2020, the Appellants were represented by Ms. Meaghan Barrett, a lawyer, and Mr. Franco Romano, a land use planner. The City of Toronto was represented by Mr. Marc Hardiejowski, a lawyer. Other Parties and Participants, including the signatories of the above noted Settlement, were not in attendance.

In her opening remarks, Ms. Barrett drew my attention to the Minutes of Settlement, in the Appellant which requested an Interim Order, while a Zoning Review had been submitted to the City regarding the updated variances. She also discussed the four variances before the TLAB, subject to finalization, by the Zoning Examiner, in addition to the conditions that the City wanted imposed on the Settlement. She also pointed out that under Section 45.18.1.1 of the Planning Act, further notice was not necessary because the variances had been altered to be "smaller" (i.e. they were closer to what was as of right, than before), and all the Parties were aware of the changes when they signed on the Minutes of Settlement.

Mr. Romano was sworn in, and recognized as an Expert Witness in the area of land use planning. Mr. Romano provided an overview of the Site and stated that the original proposal had been altered to protect the maple tree in front of the house, and added that preserving the tree had been one of the key concerns of the neighbours. He discussed how the driveway had been altered, such that it turned at a right angle from Hanna Rd onto the proposed driveway, and would then "curve to meet the entrance of the garage". He discussed the conditions that the City wanted included in the Settlement, and said that "the driveway plans were independent of the Plans and Elevations of the dwelling". He then recited the requested conditions from the City, as reproduced below:

1. The applicant shall apply to Urban Forestry Services, City of Toronto (North York District) for a permit to injure or remove street trees, pursuant to City of Toronto Municipal Code, Chapter 813, Article II.
2. Prior to the submission of a building permit application, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the General Manager, Parks, Forestry & Recreation, Urban Forestry Services.
3. The front yard and driveway shall be constructed in substantial conformity with the Tree Protection Plan, as approved by Urban Forestry Services (the "Driveway Plans").
4. The proposed development, irrespective of the Driveway Plans, shall be constructed in substantial conformity with the plans and elevations dated March 2, 2020

Mr. Romano repeatedly emphasized that the conditions stated above pertain to the Urban Forestry conditions, and the positioning of the driveway to protect the maple tree in the front of the house. In response to a question from me about how much of change could be expected in the positioning of the driveway, he said that the driveway would be positioned such that it "could move away from the tree", but would not move "towards the tree".

Before discussing the compliance how the variances (as recited in the "Matters in Issue" Section in this Decision) satisfied the statutory tests, Mr. Romano discussed the Geographic Neighbourhood chosen by him, which was bounded on the west by Bayview Ave., Millwood Rd on the south, Rumsey Rd. and McRae Blvd on the east, and Parkhurst Blvd. on the north. He said that while the proposal did not rise to the significance of being directly impacted by higher level Provincial Policies, it complied with the Provincial Policy Statement (2014), and the Growth Plan (2019) by virtue of using existing infrastructure.

Mr. Romano stated that while Policies 3.1.2 (Built Form Policies) , 3.4 (Natural Environment Policies), and 4.1.5 (Development Criteria in Neighbourhoods) were of relevance to the proposal, Policy 4.1.5 of the Official Plan was the most pertinent policy with respect to the proposal. He spoke about how the proposal "respected and reinforced" what existed in the neighbourhood through a photo tour of the community, and then explained how the neighbourhood stability would be maintained by the proposal, notwithstanding its "modern twist", to a community that was originally developed in the 1950s. Of the criteria listed in Section 4.1.5, Mr. Romano said that criteria (h), and (i) did not apply because they referred to heritage related matters. He said that criteria (a) and (b) were not relevant because the street pattern, or the lot pattern would not be changed as a result of this proposal. Speaking to criterion (c), Mr. Romano said that the policy spoke to various variables of the properties in the immediate vicinity- he described how the expression "nearby" and "density" could be interpreted in different ways, before stating that the proposal contemplated a low rise dwelling in an area where low rise buildings were common. He said that the proposed FSI of the dwelling, as well as the "unit count" (number of dwelling units on the lot), were consistent with the low density character of the immediate neighbourhood. He then said that the Appellants proposed to build a semi-detached house at the Subject Site, consistent with the prevailing dwelling type in the neighbourhood. In response to a question from me about how he established the "prevailing" type with respect to any of

the characteristics listed in Section 4.1.5 of the OP, Mr. Romano referred to the definition of “prevailing” provided in the OP, or the “most frequently occurring” . He added that the determination of what was the most frequently occurring type, did not constitute a mathematical exercise, and that the determination of material consistency for the purposes of this policy was restricted to physical characteristics listed in Policy 4.1.5 of the OP. He stated that criterion (e) was satisfied by virtue of the fact that the dwelling would have an above grade garage, and that (f) was satisfied by virtue of conforming rear-yard and front yard setbacks, and that proposed side yard setbacks were compliant with the modest-to-tight side yard setbacks found in the immediate neighbourhood. Mr. Romano then discussed the compatibility between the proposal and the Built Form Policies, and emphasized how it satisfied the “fit” criterion in the Policy.

Based on this discussion, Mr. Romano concluded that the proposal satisfied the purpose and intent of the Official Plan.

. He opined that the FSI, (which he interpreted the ratio of the built up area of the house to the are of the lot) was appropriately deployed for the lot, and maintained a low scale, low rise building, while the building length of 17.8 m satisfied the building standard of orienting the house towards the street, and was appropriate, given the lengths of other houses on Hanna Road. The proposed sideyard setbacks achieved the performance standard of spatial separation between adjacent dwellings, for the purposes of access to maintenance, and minimize impact on the neighbours. The variance respecting stair width satisfied the performance standard by maintaining a “subordinate, accessory condition on the lot.”, by virtue of being attached to the front porch, “such that no landscape variance” is triggered.

Based on this discussion, Mr. Romano concluded that the intent and purpose of the Zoning By-law was maintained by the proposal.

Briefly speaking to the tests of minor and appropriate development, Mr. Romano said that the test of minor was satisfied because there were no demonstrable, adverse impacts on the neighbouring houses, as well as the magnitude of the requested variances being consistent with what had been previously granted in the neighbourhood. The test of appropriate development was satisfied because the proposal is to build a replacement dwelling, that fits well within the built form typology the street, and surrounding context, resulting in a “regeneration that is desirable for the land”. Mr. Romano re-emphasized that the maple tree in front of the house would be protected, which “added to the desirability of the proposal”.

Based on this opinion ecdence, Mr. Romano concluded that the proposal satisfied the tests of both minor, and appropriate development, and asked that the proposal be approved, subject to confirmation of the variances by the Zoning Examiner, and the conditions requested by the City, as above recited.

In her closing remarks, Ms. Barrett reiterated that the proposal satisfied the four tests under Section 45.1 of the Planning Act. She asked that the proposal be allowed in part, subject to the conditions requested by the City.

I thanked the Parties for attending the Hearing and presenting evidence in support of their Appeal, and reserved my Decision, in response to a request from Ms. Barrett for an oral decision.

ANALYSIS, FINDINGS, REASONS

The revised proposal, as presented to the TLAB, is a result of a Settlement, between the neighbours who had elected to be Parties, Participants, the Leaside Residents Association, and the Appellants. The involvement of all the relevant neighbours, and stakeholders who would have been directly impacted by the revisions to the proposal in arriving at the Settlement, added to the reduction in the number of variances, and their magnitude, made it possible for me to waive Section 45.18.1.1, resulting in my hearing the Appeal as scheduled.

What makes this proposal unusual is that the variances before the TLAB are tentative in the sense that they have not been confirmed by the Zoning Examiner, and Appellants' position that the "driveway plans" are independent of the Plans and Elevations of the planned dwelling presented to the TLAB. One of the key features of the Settlement is that it allows for the protection of the maple tree in front of the property. The evidence presented by the Appellant suggested that what could change between the revised Plans as presented to the TLAB, and the Plans to be finalized based on the Zoning Notice, would be the positioning of the driveway, reflecting advice obtained by the Appellants, from Urban Forestry. To quote Mr. Romano, "the driveway can move away from the tree, but cannot move towards it".

Given that the variances before the TLAB do not directly involve the driveway, I am prepared to pass an Interim Order, as requested by the Appellant. This Interim Decision will have to be confirmed by a Final Decision and Order, which will reflect the final set of variances, as confirmed by the Zoning Examiner, and any consequent changes to the Plans and Elevations.

The TLAB reserves the right to schedule subsequent Hearing should the Zoning Examination result in the identification of new variances, or significant changes in magnitude to the variances presently before the Tribunal.

I am in agreement with Mr. Romano's evidence that the proposal is consistent between with the higher level Provincial Policies, namely the PPS (2014), and Growth Plan (2019), through its emphasis on use of existing infrastructure.

When discussing the Official Policy (OP), Mr. Romano largely addressed Policy 4.1.5, and discussed the compatible criteria in detail. He discussed how density can be interpreted in different ways (i.e. FSI, Gross Floor Area, Number of Residential Units on a Plot), before interpreting density to mean FSI in the context of this proposal. He spoke briefly to the Built Form Policies, and the Urban Forestry Policies, and emphasized how protecting the maple tree, was consistent with the Environment Policies in the OP. While the final positioning of the driveway would have to be confirmed through

discussions with Urban Forestry , I find that the proposal, as presented, upholds the intent, and the purpose of the Official Policy.

Mr. Romano's discussion of how the variances individually satisfy the performance standards of each relevant category, was succinct, and comprehensive, and does not need to be repeated here by way of analysis. I am satisfied that the proposal maintains the intent, and purpose of By-Law 569-2013.

I am in agreement with Mr. Romano that the proposal satisfies the test of minor by virtue of the absence of demonstrable adverse impact on the neighbouring properties, and satisfies the test of appropriate development through its promoting regeneration in the community, while preserving features important to the community, such as the maple tree.

Based on this discussion, I allow the Appeal in part conditionally, and set aside the COA decision dated October 23, 2019. The Site Plan is approved, and is attached to this Interim Decision.

The purpose of the conditions requested by the City of Toronto, is to ensure the protection of the maple tree, irrespective of the final positioning, and configuring of the driveway. The conditions, have been agreed to by the Appellant, and may be consequently imposed on the issuance of the Final Decision and Order of the subject proposal. The conditions are not repeated here, since they appear in the Evidence Section.

The Final Decision and Order will be issued after the variances are confirmed by the Zoning Examiner, and will be accompanied by the Elevations and Plans, to which the final dwelling will have to substantially confirm. The Elevations, are not attached to the Interim Decision and Order, since no such requested has been made of the TLAB. The TLAB also recognizes that the Plans and Elevations may be subject to change, should new, or revised variances be required, and requires the submission of the confirmed variances with corresponding Plans and Elevations, with any minor revisions, as appropriate.

INTERIM DECISION AND ORDER

1. The Appeal respecting 82 Hanna Rd is allowed in part, and the decision of the Committee of Adjustment, dated October 23, 2019, is set conditionally aside, subject to the confirmation of the variances by the Zoning Examiner.
2. The Settlement Plan is approved in principle, and is attached to this Order as an attachment.
3. The Final Decision and Order, confirming the approval of the requested variances and conditions, will be released with the approved Plans, and Elevations, will be released after the Appellant confirms the variances through

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submitting the updated Zoning Notice, together with any minor revisions to the Plans and Elevations, where appropriate.

4. The Appellant is given six months until September 30, 2020, to submit the updated Zoning Notice, Plans and Elevations. Should the updated Zoning Notice, Plans and Elevations not be submitted by September 30, 2020, the Appeal herein is refused, and the decision of the COA will be confirmed.

The TLAB may be spoken to should any issues arise, including timelines to submit the Zoning Notice, Plans and Elevations

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

HANNA RESIDENCE

82 Hanna Rd, East York, ON M4G 3N3

ZONE RD (f12.0, a370, d0.6)

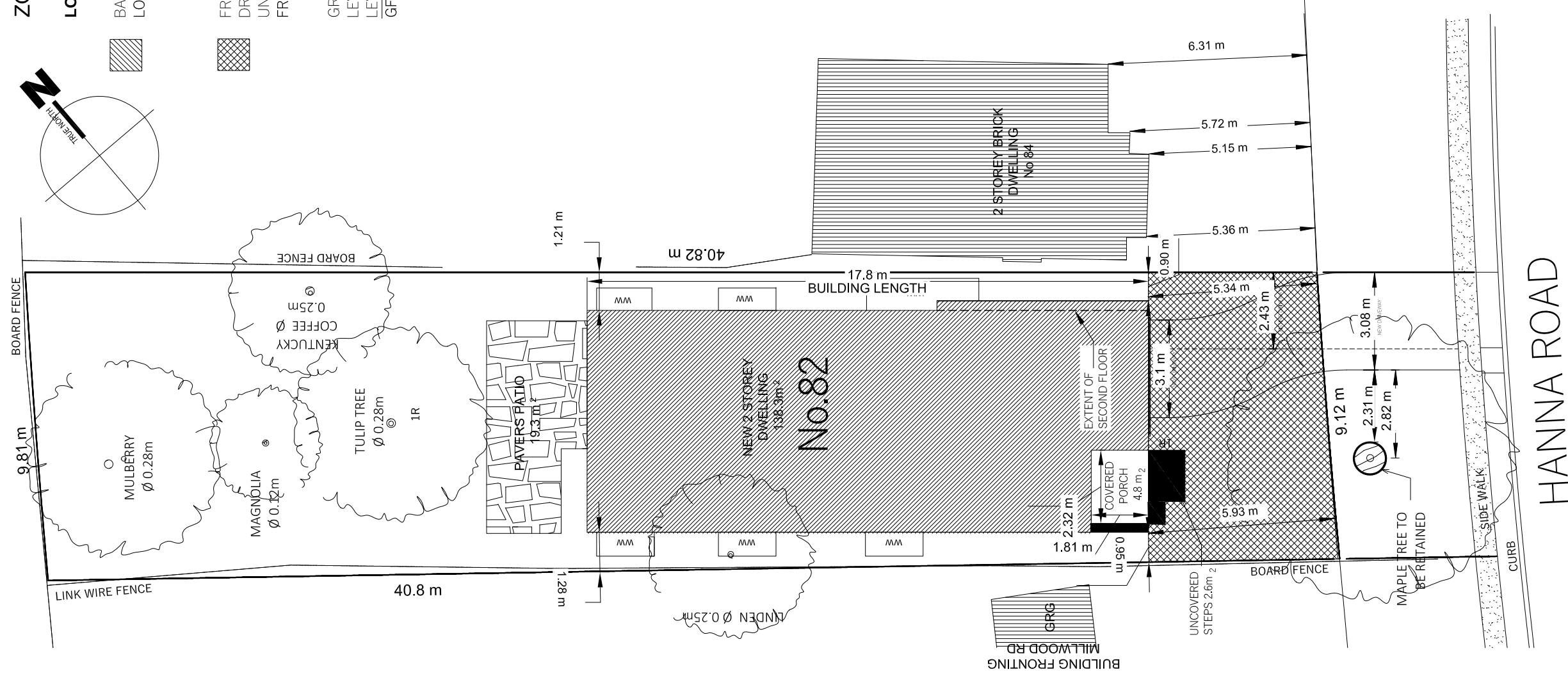
LOT AREA 386.9 M²

BACK PATIO = 19.3 m² (4.9% OF LOT AREA)
LOT COVERAGE 127.5 m² = 33%

FRONT YARD = 52.0 m²
DRIVEWAY = 16.9 m²
UNCOVERED FRONT STEPS = 2.6 m²
FRONT SOFT LANDSCAPE = 32.5 m² (62.5%)

GROSS FLOOR AREA
LEVEL 1 121.2 m²
LEVEL 2 126.4 m²
GFA 247.6 m² FSI=0.64

ZONING PARAMETERS RD (f12.0, a370, d0.6)		
SINGLE DETACHED	REQ.	PROPOSED ft (m)
MIN. FRONT YARD	5.12m	5.34m
MIN. REAR YARD	7.5m	15.61m
MIN. INT. SIDE (NORTH)	1.2	0.9m (front) / 1.21m (rear)
MIN. INT. SIDE (SOUTH)	1.2m	0.95m (front)/ 1.28m (rear)
MAX. LOT COVERAGE %	35%	33%
FSI	0.6	0.64
BUILDING HEIGHT	8.5m	8.5m
BUILDING LENGTH	17m	17.8m (MAIN LEVEL) 17.8m (SECOND LEVEL)
BUILDING DEPTH	19m	18.4m



1 SITE PLAN - A
SCALE: 1 : 150

DWG No: P1	DATE: 03/02/2020	REV.# COA REVISION	STATUS: COA REVISION	SITE PLAN
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