

# DECISION AND ORDER

**Decision Issue Date** Monday, March 23, 2020

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

Appellant(s): LORRIE MARIE WILLSON, LEONTINE PATRICIA EBERS

Applicant: FILOMENA AUCIELLO

Property Address/Description: 15 ROXBOROUGH ST W

Committee of Adjustment Case File: 19 161280 STE 11 MV

**TLAB Case File Number: 19 222591 S45 11 TLAB**

**Hearing date:** Wednesday, January 15, 2020

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

Name	Role	Representative
Filomena Auciello	Applicant/Party	Marisa Keating
Gianni Pacitti	Owner	
Lorrie Willson	Appellant	David Bronskill
Leontine Ebers	Appellant	David Bronskill
Eldon Theodore	Expert Witness	
Elizabeth Howson	Expert Witness	
Marianne McKenna	Expert Witness	
Carla Brewer	Participant	Curtis Cusinato

## **INTRODUCTION**

This is an appeal from a decision of the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA) allowing variance requests applicable to 15 Roxborough Street West (subject property).

The Applicant received approvals with one condition to alter an existing semi-detached dwelling of 2 ½ storeys to construct a three storey rear addition with a basement walkout, ground floor deck and, second and third storey balconies.

Improvements proposed to the design of the front façade involved window and front step reconfigurations.

The subject property is the east one-half of a prestigious semi-detached unit, located on the south side of Roxborough Street West, just a short distance west of Yonge Street, in the Ramsdon Park Neighbourhood of the City. Parking is accessed via a Lane to the rear, affording apparent parking for two vehicles within an attached row of two car garages serving adjacent properties at No.'s 13 and 17 Roxborough Street West.

The subject property is designated 'Neighbourhoods' in the City Official Plan (OP) and is zoned as Residential having a maximum floor space index of 0.6x lot area.

I described that I had walked the vicinity and reviewed the filings in brief, but required the Parties to identify in evidence matters germane to the consideration of the appeals.

The City did not participate in the proceeding and there were no City Staff concerns expressed by any department or agency.

Both counsel took the opportunity to provide opening remarks that proved helpful in identifying the issues and the position of the witnesses and Parties.

The Toronto Local Appeal Body (TLAB) heard from two professional planners and an urban design consultant. The Applicant's planner, Mr. Theodore, was also qualified to give urban design expert testimony.

One neighbour, Ms. Lorrie Willson, spoke in opposition to the variances. Other filings by Parties or Participants were formally withdrawn or not proven.

The Participant, while present on the first Hearing day through representation, took no further part in the proceedings.

## **BACKGROUND**

Ms. Keating, counsel for the Applicant, described the application as a request for variances to enable the investment in and the expansion of the dwelling on the subject property to better accommodate 'family expansion'.

The variances, for which confirmation of approval was requested, are set out in **Attachment A** (Application). Aspects of some were described as recognition, in part, of existing conditions.

Mr. Bronskill cited the reasons for his clients' opposition describing the 'expansion' not as intensification but being of a height, mass and scale that 'change the streetscape and that is not respectful in the immediate context of the pairs of semi-detached dwellings that abut' the subject property. He asserted the Applicant had held no consultation with the neighbours before or after the COA consideration, had made no changes to the Application or the Plans, and the proposed massing caused privacy, overlook and shadow impacts. He asserted the primary rationale of the Applicant using numeric supports was flawed as presenting no meaningful analysis of compatibility whereas his clients' consultant would demonstrate qualitative assessments of planning impact.

Counsels' comments, as stated, are instructive. However, they are not evidence and their weighing requires an audit of the supporting opinions in the Hearing.

## **MATTERS IN ISSUE**

As a variance appeal, the overarching challenge to the Application is centred on the streetscape and rear yard impacts.

## **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**

Mr. Eldon Theodore was qualified without objection to provide expert opinion evidence on behalf of the Applicant in the disciplines of urban planning and urban design (Exhibit 1). He provided a road map of his evidence relying on Exhibit 2, Expert Witness Statement and Document Book, and Exhibit 4, his Responding Witness Statement. He was the sole witness on behalf of the Applicant.

His evidence made the following salient contributions:

1. The subject property has a frontage of 6.86 m, a depth of 45.73 m and an area of 325.58 square meters for an existing FSI of 0.62x lot area (201.83 sq m). Third floor accommodation is currently and will continue on expansion to be built within the roof line, without any absolute height increase.
2. In a 'geographic' and 'immediate' study area analysis, employing the terminology of OPA 320, by photo montages in Exhibit 2, he asserted slight differences exist today as between the front facades of the existing semi-detached buildings, No's 15 and 17. Further, that no streetscape façade uniformity existed and significant examples of built form improvements, including modern 'vernacular' design forms, are seen along both sides of Roxborough Street West, between Yonge Street and Avenue Road.
3. Rear yards demonstrate building extensions, some alignment irregularity and roof top terraces, rear balconies and decks.
4. In describing the 'eclectic' nature of both defined areas and for the immediate context, Exhibit 2, Tab 6 provided 'best available' statistical measures of:
  - a. Lot size range: 141-594 square meters (338 square meter average).
  - b. Floor space index (fsi): 0.44x – 1.6x (0.89x average).
  - c. Variances would add 88.97 square meters, detailed for each of three floors, resulting in an fsi of 0.89x proposed, located primarily in the rear; adding, as well, repeating additional outdoor living and amenity space.
5. The third floor, recipient of the largest floor area enhancement: would be built within the permitted and existing height limit; require recognition of the existing main wall height; fill out the existing dormer (to permit more usable washroom space) - consistent with the modernization of the two existing bay window projections, in alignment, below; and extend a smaller terrace than existing, to the rear.

6. The rear façade of the proposed building improvements is tiered or terraced with smaller decks, balconies and terraces and stepped back in a manner that is characteristic and emulates the immediate context, without themselves requiring any variance approval.
7. The decision of the COA and its condition of front yard walkway permeable pavers is supportable and all *Planning Act* considerations, including Provincial policy and the applicable 'four tests', individually and collectively, are met. In this latter regard, he opined:
  - a. The intent and purpose of the 'Neighbourhoods' OP designation, including:
    - i. 2.2.2.1, to provide a full range of housing;
    - ii. 2.2.14 b), promoting housing opportunities
    - iii. 3.1.2, having: 'new development' respect and reinforce: fit harmoniously (meaning 'compatible'); no undue adverse impact; appropriate frame the street with appropriate setbacks and direct main entrance access while preserving trees;
    - iv. 3.2.1.2 providing improved and replenished housing stock; all are met by the Application.
8. An architect's rendering as a 3 dimensional model, Exhibit 2, Tab 7, was described and supported to coexist in harmony and demonstrate:
  - a. The design fit of the rear yard tiered step backs;
  - b. Comparative sun-shadow impacts described as 'minimal' on No's 13 and 17 Roxborough Street West;
  - c. The preservation of adequate light and privacy protecting 5 hours of solar access during the main parts of the day for the principle parts of the rear yards and no instance of full shadow, even exclusive of adding existing trees.
9. The design criteria of Chapter 4 and section 4.1.5 of the OP were termed 'compatibility' measures and were opined to be met, specifically:
  - a. c), the focus on the density variance from 0.62x FSI (existing) to 0.89x (proposed); he noted the criteria speak to 'height, massing and scale' all considered appropriate in the context having regard to:
    - i. FSI exceedances on Gibson Street to the south, No's: 2 (1.25x; 9 (1.12x); 27 (1.34x) 38 (1.5x); 48 (1.29x and 114 McPherson (0.94x), all exceeding that proposed for the subject property.
    - ii. FSI average of 0.89x FSI in the immediate context is with a similar range for new and existing housing, all without undermining the physical character of either context.
  - b. c), the main wall height, at 10.62 m exceeds the 9.5 m permission, but is essentially existing in the front and rear dormers and no overall height variance is requested. The immediate context analysis supports the proposed main wall height exceedances via examples on Roxborough Street West,

No's: 47 (10.18m); 61 (11.71m); 72 (10.48m) – all in the last three years of COA approvals; 76 (11.25m) and 89 (10.02 m) and 114 MacPherson (10.49m).

- c. c), the front bay windows are proposed to be squared off in their existing location with a modern columnar treatment and recognizing the existing setback. This was described as having no drastic difference to the streetscape experience, presented no impacts and reflected no new precedent to the approaches to renovations already existing and occurring on the street.
  - d. c), the building depth variance was described as an exceedance of only 0.83 m over the permitted depth of 17 m and would occur only on the first floor level, all having no perceptible effect or offence to the design criteria to have regard to height, massing and scale.
10. The zoning standards, addressed for each variance, were said to meet their respective intent and purpose based upon: the eclectic standards of the neighbourhood demonstrating tolerance for design expression: minimal shadowing; the average FSI of 0.89x; the technical recognition of the front yard setback at 3.87 m from 4.43 m with reconfigured stairs creating 'no visible obstruction'; similar and modest patterns on the street of soft landscaping reductions; the established pattern of rear yard decks, balconies, terraces; building extension step backs; as well as the maintenance of an ample rear yard of 25.5 m, whereas 7.5 m is required.

Mr. Theodore concluded his evidence in support of the Application and **Attachment A** as 'good planning' by opining that the proposed improvements are desirable investments in the resiliency of the subject property and its housing stock. He was of the opinion that they were within established ranges, reasonable in scale, of high quality and fit the broader and immediate neighbourhoods. He held them to be minor and quantitatively had no impact; they presented no undue adverse consequences as to the streetscape, light, views and privacy.

He advised of an instruction to accede to an additional condition to require 1.8 m high screen fencing to the sides of all balcony, decks and terraces, 'if felt appropriate'.

He had no objection, on an approval, to adding a condition requiring construction substantially in accord with the plans and elevations upon which the variances are premised.

In a lengthy cross-examination by Mr. Bronskill, Mr. Theodore:

- 1. Clarified that while he did not recommend privacy screening, although they could further enhance privacy.
- 2. Acknowledged that the shadow study had not been updated to include privacy screens, although time had permitted same.

3. Said that he had encouraged consultation between neighbours, but did not direct consultation and understood the solicitors had held discussions.
4. Agreed that the immediate three (3) dwellings had the same even pattern of rear yard main walls.
5. Agreed that in the 'immediate area', all COA approvals save one (1) had lesser FSI increases; further, that of sixteen (16) approvals the average FSI approved would have to be produced as an undertaking, and that only four (4) engaged combined FSI and building depth requests and only one (1) involved a third storey.
6. Agreed the FSI information available has flaws, "is not perfect but is the best we have."
7. Agreed to a nuanced change in opinion that the Application is not to be considered 'intensification' or 'infill' in OP definitions of those terms, but as 'an addition' and 're-investment' that constitutes: "gentle intensification in built form density"; "sensitive infill"; and 'new development', in the sense that that language relates to expansion and alterations to an existing property.
8. Agreed that the criteria in section 4.1.5 of the OP constitute different tests that are more demanding than mere 'compatibility'.
9. Agreed that while there are some shadow impacts depicted by the model, they are expected and not anticipated to be egregious and the study helps inform that level and his opinion of no undue adverse impact.

Ms. Lorrie Willson was called by the Appellants as a neighbour to the subject property and client of Mr. Bronskill. Her brief witness statement was filed as Exhibit 4, dated December 9, 2019.

While only a resident on-site for four (4) months at the time of the initial TLAB Hearing, she professed an interest in outdoor activities and was concerned for the loss of sunlight to her rear yard and possible privacy incursions from overlook.

She felt the proposal would not be attractive with 'huge walls all the way up'.

She said a neighbour had asked her to help in opposition and be a witness.

This Hearing concluded with almost a full second day of evidence and argument, by counsel, on March 12, 2020.

Ms. Keating filed without objection, Exhibit 5, being the Response to the Undertaking made by Mr. Theodore. It included the requested calculation of average FSI's received through COA approvals in his 'immediate context' study area: 0.77x.

Mr. Bronskill tendered Elizabeth Howson who, as a Registered Professional Planner of broad experience. She was qualified without objection to give expert opinion evidence on land use planning matters.

Ms. Howson supplemented her oral evidence with her Witness Statement (Exhibit 6), including photo exhibits (Attachment D) and references to the pre-filed materials of the Applicant. She had been retained after the COA decision upon contact from the Goodmans' law firm and accepted the retainer on behalf of Ms. Willson (17 Roxborough) and Ms. Ebers (21 Roxborough), in November 2019.

She generally accepted the 'geographic neighbourhood' depicted and described, above, by Mr. Theodore, including its description as being not static.

However, she differed in the application of section 4.1.5 of the Official Plan in her identification of the 'immediate context' first foreshortening it to end, on the west, at Molsen Street extended southerly - but ultimately and essentially to four lots and the three (3) semi-detached units on the south side of Roxborough West known municipally as Numbers 11-13, 15-17 and 19-21, being either side of the subject property.

Although acknowledging the definition of 'immediate context' in the Official Plan as the street facing, the same block and the block opposite, she preferred to put more emphasis on the policy direction, partially quoted, that the "immediate context is of greater relevance."

Her evidence was largely focused on this context selected and on what she described as a "qualitative" perspective without reference or reliance on statistics drawn from the greater or immediate neighbourhood defined for possible analysis. She described such measures as not being reliable and 'misleading', "nor reflective of my definition of the immediate neighbourhood."

Her Witness Statement, Exhibit 6, reflected this perspective as expressed in the thorough commentary on the Official Plan policies (Table 2, paragraph 10.2.4) and OPA 211 (Table 3, paragraph 10.2.5), without significant reference to comparative statistics.

She cited that the Application's requested FSI of 0.89x lot area is not reflected in Exhibit 5 undertaking response of Mr. Theodore, related to his 'immediate area'. Nor, in her view, can it be supported as the 'average' statistic, generated for the geographic neighbourhood of 0.89x, within a larger range, as these measures were reliant on Gibson Avenue properties, south of the subject site on a dead ended street built out at a lower grade.

Her evidence included the following factual and opinion advice:

1. Appreciation of the scale and impact of the Application can best be gleaned 'closer to the ground' from standing in the rear yard of the adjacent semi at 17 Roxborough, where the 'flavour and feel' of the cumulative impact of massing, shadowing and built form can be observed.
2. Although all variances are to be considered, she listed FSI and height as having the most 'impact'.
3. In challenging the variance relief sought applicable to both the front and rear improvements of the subject property, she relied on the



Official Plan policies in 4.1.5, OPA 211 and its direction to the COA to consider the Urban Design Bloor-Yorkville North Midtown Guidelines respecting the specific direction to consider neighbourhood and site impacts, all subject to an 'overarching' direction that 'good planning governs'.

4. From the Official Plan, section 3.1.2 she emphasized a 'civic responsibility (for the Application) to meet the needs of those who encounter the building' as the crux of her objections more particularly described as:
  - a. The front façade improvements and associated variances failed to respect the neighbours as their appearance did not constitute appreciate change to the subtle distinction existing between the pairs of semi-detached buildings on this uniformly prestigious street;
  - b. The FSI and height proposed would create a change in massing that also failed to respect the neighbours and was 'out of keeping with the prevailing massing, density and scale creating a 'look at me' building', differentiating itself from the streetscape;
  - c. The massing, shadowing and feeling of dominant enclosure generated by the extension into the rear yard would be inconsistent and not 'fit harmoniously' to existing physical built form. She felt the dimensions were significantly greater than existing development and out of character;
  - d. In referencing Table 2, 3 and 4 of Exhibit 6 she applied the Guidelines to conclude the variances sought qualified as 'new development' whose height and FSI created a massing that leads to a loss of privacy inconsistent with their intent;
  - e. She concluded that the variances sought do not maintain the intent and purpose of the Official Plan as they constituted new development in a planned context that would permit a front design that changes and modifies a longstanding relationship and that does not improve the symmetry of existing relationships in a harmonious and respectful way.
5. With respect to zoning, Ms. Howson was of the opinion that the changes proposed do not result in the direction for compatibility with the immediately adjacent houses.
6. The planner 'grouped' the desirable and minor tests, above, 'to mean the same thing' and to find that the impact on the streetscape, by interrupting its harmony, and with the significant rear yard impacts of FSI, height, shadowing and overview affecting privacy, the loss of landscaping and storm water absorption potential, all constituted impacts out of keeping with neighbouring properties, inappropriate and neither desirable nor minor.

She recommended against approval of all variances, declined to make alternative suggestions and recommended the Applicant 'try again'.

In questioning, she acknowledged any extension would have impacts and that she was unable to judge as-of-right expansion against what was proposed.

She agreed that her opinion was founded on what she was observing and was framed, for the purpose of her Witness Statement, Exhibit 6, on one site visit and without the benefit of the subsequent shadow study provided by the Applicant.

She acknowledged that front façade design changes between conjoined semi-detached dwellings existed on Roxborough, from photographs of Numbers 72, 82, 89, 130, 95-97, of which many were in her initial 'immediate neighbourhood', including examples of the 'squaring off' or modernization of bay windows.

She acknowledged that no project shadow extended to her client at No. 21 Roxborough West but that it in turn had a rear yard extension similar in character, design and extent as that proposed. Further that that property had shadow impacts on adjacent properties. She acknowledged the subject property with the Application in place would have no rear yard shadow impact before 3:15 in the afternoon.

She also acknowledged the presence of existing three storey tiered decks and no variances being sought for any reduced side yard, rear yard, main building height, third storey deck or for balconies.

She agreed the extension proposed by the Application was not a 'new building' and that the Official Plan Amendment 211 itself made no reference to 'context' as found in the Guidelines.

In submissions, Ms. Keating reminded the Tribunal that what is being sought consists of design changes to the front recognizing existing setbacks and a rear yard addition, not visible from the street. She noted the common presence of undulating rear yards, tiered rear facades and three levels of rear decks and balconies existing and as proposed. She observed that the building length variance applied to the ground floor only and the step backs in the rear façade, on the shadow study reflected an 'adequate provision of 'Light ,View and Privacy', meeting the design characteristics of existing development and design guidelines.

She tendered a Document Book of eight (8) authorities which she briefly addressed.

Ms. Keating challenged the evidence of Ms. Howson as flawed by failing to follow and analyze the policy direction for the immediate neighbourhood and the customarily accepted description of a 'five minute walk' referenced and further described by Ms. Campbell in *Re Levine* 2009 CarswellOnt 3817 at paragraph 18.

She asked adoption of the evidence of the planner Theodore as to 'fit' and the acceptance of shadowing as having minimal impact and within the range of tolerance

expected in a built up, inner city environment where there is 'no right to a view or to be free from shadow or privacy impact as a sacrosanct policy' imperative.

She noted that Ms. Howson performed no analysis of the individual variances, their purpose, application or objective comparisons. Her cumulative impact analysis was devoid of example, impression related, qualitatively focused on six dwellings and was not a professional evaluation.

She noted no impact observations on No. 21 Roxborough were asserted and suggested that the opposition was not about land use planning as, in her submission, there were no legitimate land use planning concerns.

Ms. Keating urged a consideration of the TLAB decision at Tab 8 of her authorities book, *Re Calhoun* 2019 CarswellOnt 21530, paragraphs 61-66, wherein Member Gopikrishna granted similar relief with a greater FSI in the circumstance of a new home development within this geographic neighbourhood, at 114 MacPherson Avenue.

She asked the variances in Exhibit 2, Tab 8 found in **Attachment A** hereto, be allowed.

In submissions, Mr. Bronskill asked that the TLAB reject the mathematical approach at justification used by the Applicant's planner. He stated that the *Re Calhoun* decision was founded on an absence of impact and an appreciation of its accommodation and responsiveness to neighbours design and impact concerns, the very issues raised against the Applications.

Mr. Bronskill challenged Mr. Theodores' reliance on quantitative measures and cited multiple mistakes and opinion changes admitted to by the planner on such aspects as:

- a. Retracting that the Application constituted 'additional housing opportunity;
- b. Acknowledging the Application was not 'infill' development;
- c. Agreeing that four examples of greater FSI approvals lie outside the immediate context study area;
- d. Agreeing that FSI numbers for any specific site could be in error and that averaging is unreliable;
- e. Agreeing no reference is made to the Guidelines;
- f. Agreeing to a change from the initial consideration to now acknowledging that the Application constituted 'new development';
- g. Agreeing that the Official Plan does not distinguish between FSI and dwelling unit type.

From these, Mr. Bronskill argued the long list of opinion evidence supplied by the planner was unreliable. Namely, that Ms. Howson's description of this 'look at me' designed dwelling caused incremental shadowing, loss of morning light and massing of all three floors being extended, caused qualitative impact. He urged that the policy

direction of the Official Plan, 3.1.2.3 incorporates qualitative considerations and the Secondary Plan, OPA 211 and its Guideline, section 3.1.4.7, specifically directs that new development is to respect and reinforce the established low-rise character of the neighbourhood 'in the context of the individual setting, its architecture and landscape character'.

He submitted that the proposal must respect the neighbours and the evidence of Ms. Howson should be preferred: namely, that it does not, and she performed the more proximate impact observation.

He noted that no massing was presented for a suggested as-of-right density of 0.69x, to permit the assessment of the proposal at an FSI of 0.89x. and that it is not for those opposed to do that work. He described the issue of 'fit' as being a local assessment premised upon the 'oasis and refuge' afforded Ms. Wilson, in her rear yard at No. 17 Roxborough. In that perspective, he urged that the policy of 'respect and reinforce' was not being met and the consequences of shadows, overview, massing and experience of place were not protected and would be disrupted: i.e., "start again."

## **ANALYSIS, FINDINGS, REASONS**

This appeal was closely framed as a choice between the 'quantitative' and the 'qualitative' merits of assessment of the variances requested, both individually and qualitatively.

It is true that Ms. Howson urged, almost exclusively, a preference of a 'qualitative' assessment of impact considerations. In this regard her opinions as demonstrated in her tables were direct, clear but largely absent support from apparent objective measures. Similarly, professional planning opinion based exclusively on a numeric approach, if that is the case, can fall far short of a balanced, deliberative assessment methodology.

I do not read the City Official Plan, the Secondary Plan, the studies or the Guidelines applicable herein as supporting an exclusive priority or preference for either form or assessment methodology. Indeed, I find that the policy language, from the province on down to the City documents to be the encouragement of assessment criteria and measures that draw from planning principles, the existing circumstances and permissions, the experiential, the planned and the proposed. In the end, I agree with the expression by both Mr. Theodore and Ms. Howson that the rubric most appropriate, and arguably not so helpful, is the common objective of advancing 'good community planning'.

By any measure, I find that Mr. Theodore undertook the more traditional and thorough approach to analyzing the subject property and neighbourhood from a variety of perspectives, measures, assessments and policy direction. I do not find that his approach was unduly tied to statistical or quantitative measures as asserted. He was

careful not to attribute absolute weight to the statistical analysis, readily acknowledging the limitations initially and again brought to his attention by Mr. Bronskill, but also acknowledged in his Witness Statement and Reply.

I cannot find that either his methodology or credibility was undermined by the admissions on cross-examination, above listed.

Mr. Theodore was accepted and qualified in the fields of both urban planning and urban design and where his opinion appears to have clashed with that of Ms. Howson on design aspects, I prefer his evidence above recited, qualifications, specificity of example and descriptive commentary. His area analysis, photography and qualitative assessment of area architectural examples was demonstrative and thorough and creditably acknowledged by Ms. Howson.

In contrast, Ms. Howson demonstrated little by way of research into contemporary neighbourhood character attributes (geographic and immediate), impact assessment, design opinion testing or objective methodology considerations. Her Witness Statement does contain photographic exhibits. Her evidence, however, was framed almost exclusively on personal and client perceptions, without measurement or comparables, and taken from the perspective of the locale of the immediately adjacent neighbour. I saw little or no detachment in her evidence, especially in the arena of impact. There was no hint of objective measurement comparisons, comparative examples, impact analysis quantification, existing conditions or recognition of features affecting those considerations. I have no doubt, from her evidence and that of Ms. Willson, that the proposed extensions of the subject property's built form will create an impact and difference on the one property identified - but in fairness there is more required to that assessment than mere impression.

I found her evidence to be impressionistic and while genuinely perceived, to be of little assistance as an aid in any analysis of the degree of impact or even a recognition or articulation of the impact standard rising to the degree of 'undue adverse impact'.

While Ms. Howson expressed the view that the rear yard expansion attributes of the Application, predominantly 'massing', were 'significant' and generated, in her, concerns for shadowing, confinement and privacy, I was left with no tangible measure or compelling basis, demonstration or opinion foundation as to the degree of such influence – let alone whether it constituted 'unacceptability', as is the generally acknowledged test.

While FSI and height were targeted by her as the principle variances in issue, Ms. Howson did not afford me, separately or cumulatively, the reasons behind why it is that she assessed these as failing the requisite tests, beyond the mere repeated statements of conclusion of incompatibility.

There is no absolute height increase, although there is an extension of third floor space associated with the main wall height recognition. That extension does indeed feed the FSI increase and massing, experienced by contributions on all three levels but

that fact alone is, in my view an insufficient basis to conclude adversely against the improvements sought.

Ms. Howson introduced no comparative assessment of differentiation between the Application, existing and as-of-right massing.

To deny a consideration of the Application on such an opinion foundation would effectively deny the right to make applications for variance approval.

It is instructive to examine the variances sought in light of the evidence. Only Mr. Theodore analyzed the variances individually and cumulatively in the oral evidence. Ms. Howson made little or no specific reference to the variances other than in a general sense.

Variance 1 would raise the front and rear main wall height to 10.62 m from the by-law maximum of 9.5 m. The effect is to allow a greater floor area within the existing roof height and its extension with no absolute height change in the roof ridge. From this variance there is no streetscape impact, although a third level bay window is squared off, in line with the similar treatment of those below.

For the windows, I can attribute no weight to the observation that the 'squaring off' is an increase in gross floor area and FSI. While that is so, its significance appears *de minimus*, was not measured nor brought to my attention as having anything but aesthetic and functional impact. I accept that the design element of the proposed bay window improvements have precedent on nearby Roxborough West properties and I have no basis to prefer Ms. Howson's concern for their design 'fit' over the Applicants desire for design direction and Mr. Theodores urban design support for their compatibility, harmony and fit.

It is nowhere mandated that both halves of a semi-detached unit must continue to exhibit design similarity. Indeed, both planners admit to subtle design distinctions in the frontages now existing and diversity in comparative examples exist on this street in close proximity.

The expansion of floor area and consequent reduction in balcony space on the build out of the third floor was also a reality not challenged as having undue adverse impact. The balcony exists and the increased floor space presented no demonstrable increase in shadowing, overlook, or privacy invasion, from that existing.

The Applicant's planner agreed to but did not advocate the addition of privacy screens on all three levels in the rear façade of decks and balconies. Ms. Howson declined comment on any amelioration conditions.

The presence of decks and balconies appears the norm on these and adjacent properties. I cannot find that a continuation of the stepping back and inclusion of decks and balconies is in any way a departure from existing conditions, built form of neighbourhood character. The built form design proposed is not a distinguishing feature of this or any other of the variances requested going to compatibility or departure or

change from the existing physical character prevailing in the neighbourhood, and that is an Official Plan policy consideration.

Certainly, there are no streetscape considerations to the extensions occurring to the rear of the dwelling unit.

Variance 2 seeks to add a building depth permission for an additional 0.83 m extension into the rear yard over that permitted as-of-right. I find that variance to be inconsequential in magnitude in itself. It is not observable from the streetscape and no evidence was called to quantify any impact associated with this aspect of the relief claimed. There is no doubt that the gross floor area of the building would be extended as above described, thereby adding to the FSI. However, the existing FSI at 0.62x floor area, compared to the suggested as-of-right FSI of 0.69x and the requested FSI at 0.89x were not individually segregated as having demonstrable impacts associated, let alone in respect of the contribution element associated with building length.

I am not prepared to refuse a variance unless demonstrable impact exists of a measurable character or is openly appreciable and of a nature that is adverse and undue, assuming the other relevant tests are met.

Again, while Mr. Theodore did a variance test by test analysis and asserted successful passage, individually and cumulatively, Ms. Howson did no such analysis.

Variance 3 requests an FSI of 0.89x over the permitted maximum set at 0.60x set in zoning. It is this variance that is the most hotly contested. It is supported as being within the geographic neighbourhood 'range' of permitted and existing FSI measures with dwellings and recent approvals in both study areas. The data for these conclusions is rightfully challenged but not dislodged as being without utility; such measures are employed in aggregate by the planning profession, within its recognized limitations, throughout the City.

Ms. Howson raised that COA approvals within Mr. Theodore's 'immediate context' did not support an FSI of 0.89x, as Exhibit 5 acknowledged. Even adopting her use of a statistic, I find both the immediate and geographic neighbourhood to be one of large, often three storey substantial and prestigious homes in close proximity one to another. The appearance of significant massing is present throughout. Neither planner was able to quantify individual FSI measures nor deny general appearance of buildings of considerable mass in a uniform and dense pattern of inner city development.

Previously, I have placed little value in ranges when derived over large study areas or where obvious aberrations occur in built form, zoning permissions or other unique constraints. Here, while eclectic, the neighbourhoods, geographic and immediate, are quite uniform in dwelling unit types, built form, grid pattern, lot characteristics and continuity. Moreover, I agree with my colleague, Mr. Gopikrishna in *Re Calhoun*, and others, wherein the observation is made that FSI on its own, with design creativity, can render impact considerations ranging from volatile and extreme to being of no consequence.

In this matter, I find the absence of distinction between as-of-right and the proposal leaves only the observations and perceptions of impact to be resolved. On those measures, I prefer the volunteered shadow study, even though it does not consider existing offsite buildings and vegetation, to be compelling over the apprehensions of shadow impact. I accept that the tiered back structuring of the proposed plans to be an existing and mitigating element of the proposed design, over the perception and statement by Ms. Willson of huge blank walls. I accept the offer to further mitigate overlook and privacy concerns with opaque side wall screens on decks and balconies and find these features to be accepted practice in inner city neighbourhoods.

The Applicant acknowledges there will be some minor incursions on direct sunlight. The shadow study, not required for variances but volunteered, depicts that those encroachments already exist in part, will be relatively minor and of short duration. Indeed, the built form can offer a degree of enhanced privacy for Ms. Willson, if these measures of tiers and opaque screens are undertaken and required. There is no risk to by-law protected trees.

While the absolute FSI is an increase, I find that it is appropriately distributed over three levels and presents no policy, zoning or impact incidence that is offensive to the principles of good community planning.

Variance 4 acknowledges an existing front yard condition of a 3.87 m setback from that prescribed of 4.43 m. I find nothing in the evidence that makes this recognition objectionable. There is no advance or increase in the setback and the plans show a modernized façade and re-aligned front steps that respond to practical consideration without disruption to the public realm. I do not accept that design in Ontario is the prerogative of those who encounter a property on a day-to-day basis; rather, that a significant element of design freedom remains and is owing with the owner, absent significant streetscape considerations or other criteria identified in the Official Plan and zoning by-law.

I find that the assertion that the owner's design proposal is a 'look at me' circumstance is at best unfortunate and at worst, entirely judgmental in the mind of the beholder. In my view, there are sufficient examples of the recognition of exterior design flexibility on this street. Its agreed eclecticism supports this variance and its consequent results, as proposed.

The subject property is not heritage designated nor listed; the design Guidelines are not so expressive as to constitute a freeze on design distinction.

Variance 5 would authorize a front porch encroachment 3.15 m into the required front yard setback. There is an existing front porch that is to be minimally reconfigured. On the evidence, a front porch is a common attribute in the neighbourhood. The existing and proposed steps offer no obstruction and are almost entirely invisible to the public realm. In the absence of any compelling objection to this variance, I find it to be compliant with the relevant tests and worthy of support.



Variance 6 requests a reduction to 47% the standard set for front yard landscaping, from 75% set under zoning. The City has suggested a condition in allowing this variance of requiring the entrance (front) walkway to be constructed of permeable pavers. Ms. Howson did not discuss this variance and the Applicant agrees with the condition. In the absence of a challenge, I agree with the disposition of the COA.

Variance 7 requests a reduction to 43.7% for the standard set for rear yard landscaping, from 50% set under zoning. This reduction, approximately 10.7 square meters (115 sq ft), is not accompanied by a rear yard setback as that is fully compliant.

Ms. Howson included in her observations a consequent reduction in rear yard infiltration but acknowledged the grade on the site and the absence of comment from the City Engineering Services Division. With a greater than required rear yard, and double rear garage, I find no compelling basis to reject this variance. There is nothing to suggest that storm water management is of particular concern on this or adjacent sites and while the decrease may well be caused by the proposed built form, there was nothing to connect it to a differential between as-of-right construction and the proposal.

In summary, and considered cumulatively, I accept that the variances requested reflect a modest expansion of an existing building replicating a built form design format that is existing and common in the immediate neighbourhood. The changes to the front façade are minimal and apparently in character with minor façade enhancements along the immediate street. In dispersing the FSI space increase throughout three levels, the effect on built form is shared and major components of the design retain the substance and flavor of existing decks and balconies.

## **DECISION AND ORDER**

The appeal is allowed, in part.

The variances identified in **Attachment A** and approved by the Committee of Adjustment are confirmed and approved.

The variances in **Attachment A** are approved subject to the following conditions:

1. Construction shall be in substantial compliance with the Plans found in **Attachment B** hereto;
2. The front walkway shown on the said Plans shall be constructed with permeable pavers.
3. Opaque screening to a height of 1.8 meters shall be erected and maintained on all rear yard decks, balconies and platforms on their east and west limits, where not otherwise substituted by solid building walls.

If difficulties arise in the implementation of this Decision and Order, the TLAB may be spoken to.

X

A handwritten signature in black ink, appearing to read "Ian Lord", is written over a light blue rectangular background. The signature is cursive and fluid.

---

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

## Attachment A

### Requested Variances

1. Chapter 10.10.40.10. (2)(A)(ii) – Exterior Main Wall Height

The maximum permitted height of all side exterior main walls is 9.5 m.

The altered dwelling will have front and rear exterior main wall heights of 10.62 m.

2. Chapter 10.10.40.30. (1)(A) – Building Depth

The maximum permitted building depth for a semi-detached house is 17.0 m.

The altered dwelling will have a building depth of 17.83 m.

3. Chapter 10.10.40.40. (1)(A) - FSI

The maximum permitted floor space index is 0.6 times the area of the lot (195.71 m<sup>2</sup>).

The semi-detached dwelling will have a floor space index equal to 0.89 times the area of the lot (290.8 m<sup>2</sup>).

4. Chapter 10.10.40.70. (1) – Front Yard Setback

The minimum required front yard setback is 4.43 m.

The altered dwelling will be located 3.87 m from the front lot line.

5. Chapter 10.5.40.60. (1)(A)(i) – Platform Without Main Walls

A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade, may encroach into the required front yard setback 2.21 m if it is no closer to a side lot line than the required side yard setback.

The altered dwelling will have a front porch that encroaches 3.15 m into the required front yard setback.

6. Chapter 10.5.50.10(1) (D) – Front Yard Soft Landscaping

A minimum of 75% (22.92 m<sup>2</sup>) of the front yard is required to be maintained as soft landscaping.

In this case, 47% (14.47 m<sup>2</sup>) of the front yard will be maintained as soft landscaping.

7. Chapter 10.5.50.10(3) (A) – Rear Yard Soft Landscaping

A minimum of 50% (86.38 m<sup>2</sup>) of the rear yard is required to be maintained as soft landscaping.

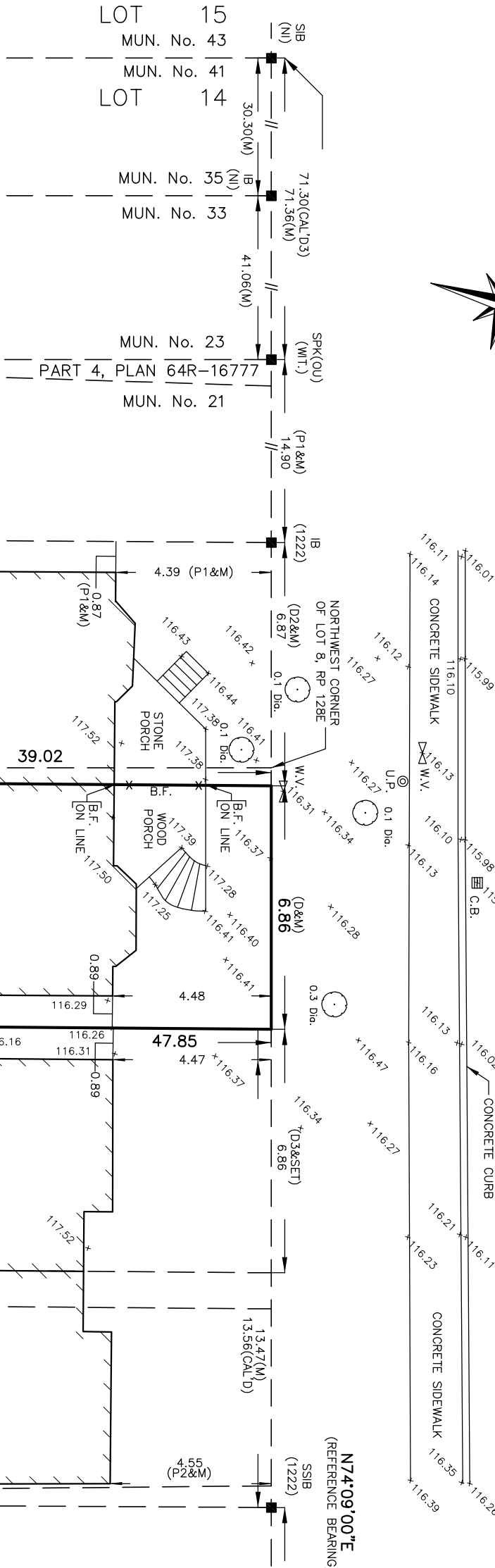
In this case, 43.7% (75.61 m<sup>2</sup>) of the rear yard will be maintained as soft landscaping.

SURVEYOR'S REAL PROPERTY REPORT  
PART 1 – PLAN OF  
PART OF LOT 8  
REGISTERED PLAN 128E  
CITY OF TORONTO

SCALE 1:150  
5m 2.5 0 10 METRES  
MANDARIN SURVEYORS LIMITED, O.L.S. ©  
METRIC  
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE  
CONVERTED TO FEET BY DIVIDING BY 0.3048



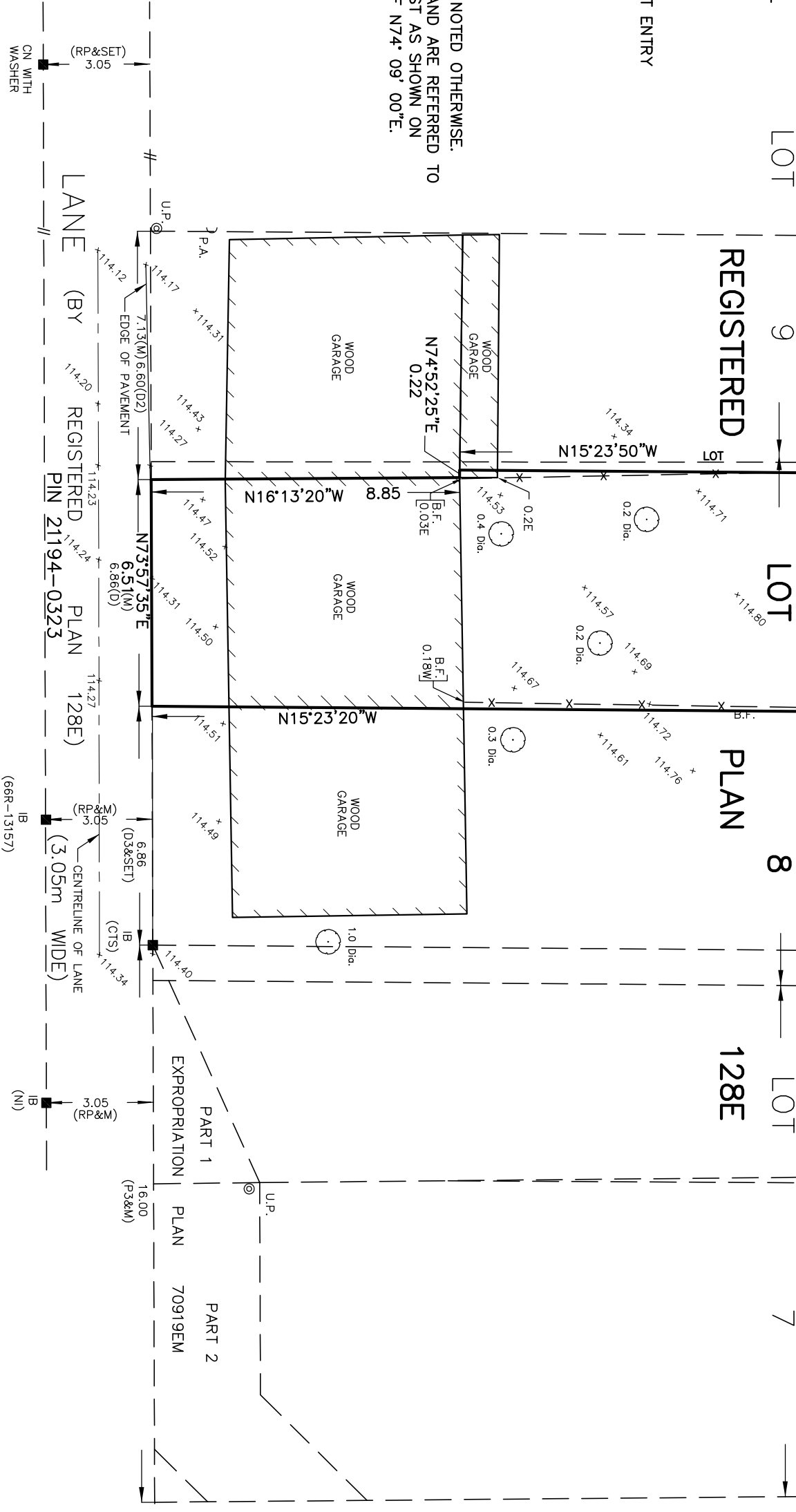
(BY REGISTERED PLAN 22E)  
ROXBOROUGH STREET WEST  
PIN 21194-0243



LEGEND

- DENOTES MONUMENT SET
- DENOTES MONUMENT FOUND
- SIB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- SSIB DENOTES SHORT STANDARD IRON BAR
- CC DENOTES CUT CROSS
- SPK DENOTES SPIKE
- P1 DENOTES PLAN OF SURVEY BY BENNETT YOUNG LTD., O.L.S.  
DATE JUNE 06, 2006
- P2 DENOTES PLAN 64R-14995
- P3 DENOTES EXPROPRIATION PLAN 70919EM
- P4 DENOTES PLAN 63R-1860
- RP DENOTES REGISTERED PLAN 128E
- D2 DENOTES INST. NO. CT527740
- D3 DENOTES INST. NO. CA135995
- CAL/D DENOTES CALCULATED FROM P2 & D3
- CAL/D2 DENOTES CALCULATED FROM P3 & P4
- CAL/D3 DENOTES CALCULATED FROM RP & P1
- WT DENOTES WITNESS
- PIN DENOTES PROPERTY IDENTIFIER NUMBER
- M DENOTES MEASURED
- N,S,E,W DENOTES NORTH, SOUTH, EAST, WEST
- B.F. DENOTES BOARD FENCE
- CTS DENOTES CITY OF TORONTO SURVEY
- 1222 DENOTES C. E. DOTTERILL, O.L.S.
- N DENOTES NOT IDENTIFIABLE
- OU DENOTES ORIGINAL UNKNOWN
- D.S. DENOTES FINISHED SILL ELEVATION AT ENTRY
- 2A DENOTES POLE ANCHOR
- 2UP DENOTES UTILITY POLE
- W.W. DENOTES WATER VALVE
- CB DENOTES CATCH BASIN
- DENOTES CONIFEROUS TREE
- DENOTES DECIDUOUS TREE

ALL TIES TO CONCRETE FOUNDATION, UNLESS NOTED OTHERWISE.  
BEARINGS SHOWN HEREON ARE ASTRONOMIC AND ARE REFERRED TO  
THE SOUTHERLY OF ROXBOROUGH STREET WEST AS SHOWN ON  
REGISTERED PLAN 128E HAVING A BEARING OF N74° 09' 00"E.



BENCHMARK NOTE

ELEVATIONS SHOWN HEREON ARE GEODETIC AND ARE REFERRED TO THE CITY  
OF TORONTO BENCHMARK No.CT585 HAVING AN ELEVATION OF 116.865 METRES  
LOCATED AT NS CRESCENT ROAD EAST ON YONGE STREET. BENCHMARK ON  
2 STOREY BRICK BUILDING, 0.60 M NORTH FROM SOUTHEAST CORNER, 0.45 M  
ABOVE GROUND LEVEL.

THIS REPORT WAS PREPARED FOR CACHET DEVELOPMENTS AND THE UNDERSIGNED  
ACCEPTS NO RESPONSIBILITY FOR ITS USE BY OTHER PARTIES.

PART 2 (SURVEY REPORT)

1. REGISTERED EASEMENTS AND/OR RIGHT OF WAYS: NONE.
2. ADDITIONAL COMMENTS: NOTE THE LOCATION OF THE FENCES AROUND THE  
NORTHERLY, EASTERLY AND WESTERLY LIMITS OF THE SUBJECT PROPERTY.  
NOTE THE LOCATION OF THE GARAGES.
3. THIS PLAN DOES NOT CERTIFY COMPLIANCE WITH ZONING BY-LAWS.

SURVEYOR'S CERTIFICATE

1. I CERTIFY THAT:  
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE  
WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE  
REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 12th DAY OF DECEMBER, 2018

DECEMBER 20, 2018

Z. ZENG

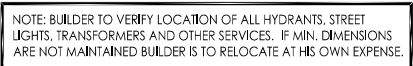
ONTARIO LAND SURVEYOR



ASSOCIATION OF ONTARIO  
LAND SURVEYORS  
PLAN SUBMISSION FORM  
2077395  
THIS PLAN IS NOT VALID  
UNLESS IT IS AN EMBOSSED  
ORIGINAL COPY  
ISSUED BY THE SURVEYOR.  
In accordance with  
Regulation 1026, Section 29(3).

MANDARIN SURVEYORS LIMITED  
ONTARIO LAND SURVEYOR  
CANADA LANDS SURVEYOR  
WWW.MANDARINSURVEYOR.COM  
2400 MIDLAND AVE., #121 PHONE: (647) 430-1366 FAX: (647) 799-4068  
SCARBOROUGH, ONTARIO, M1S 1X7 E-MAIL: MANDARINSURVEYOR@GMAIL.COM

SURVEY BY: S.Z. CAD No. 18-3925RPR JOB No. 2018-392



BUILDING STATISTICS	
REG. PLAN No.	128E
ZONE	R
LOT NUMBER	15
LOT AREA(m) <sup>2</sup>	325.58
BLDG AREA(m) <sup>2</sup>	106.56
LOT COVERAGE(%)	32.73%
No. OF STOREYS	3
MEAN HEIGHT(m)	.
PEAK HEIGHT(m)	11.53
DECK LINE(m)	.


### LEGEND


FFE	FINISHED FLOOR ELEVATION		SUMP PUMP
TFW	TOP OF FOUNDATION WALL		BELL PEDESTAL
TBS	TOP OF BASEMENT SLAB		CABLE PEDESTAL
USF	UNDER SIDE FOOTING		CATCH BASIN
USFR	UNDER SIDE FOOTING @ REAR		DBL. CATCH BASIN
USFG	UNDER SIDE FOOTING @ GARAGE		ENGINEERED FILL
TEF	TOP OF ENGINEERED FILL		HYDRO CONNECTION
R	NUMBER OF RISERS TO GRADE		FIRE HYDRANT
WOD	WALKOUT DECK		STREET LIGHT
LOB	LOOKOUT BASEMENT		MAIL BOX
WOB	WALK OUT BASEMENT		TRANSFORMER
REV	REVERSE PLAN		SEWER CONNECTIONS 2 LOTS
STD	STANDARD PLAN		SEWER CONNECTIONS 1 LOT
△	DOOR		WATER CONNECTION
○	WINDOW		WATER VALVE CHAMBER
	AIR CONDITIONING		HYDRANT AND VALVE
	DOWN SPOUT TO SPLASH PAD		HYDRO METER
	DOWNSPOUT TO STM		GAS METER
→	SWALE DIRECTION		MANHOLE - STORM
	_____X_____		MANHOLE - SANITARY
	_____XX_____		
	_____XXX_____		
	_____BASED ON _____		

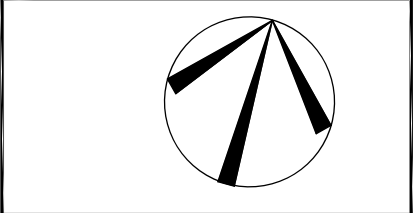
CHAINLINK FENCE  
 PRIVACY FENCE  
 SOUND BARRIER  
 FOOTING TO BE EXTENDED TO 18" (448) BELOW GRADE

NOTE: USF IS BASED ON 150mm (6") FOOTING DEPTH. CONTRACTOR TO CONFIRM WITH WORKING DRAWINGS FOR SPECIFIC SIZES THAT MAY SUPERSEDE THIS SIZE.

[illegible]

 EX. DWELLING

 PROPOSED ADDITION



[WWW.RNDESIGN.COM](http://WWW.RNDESIGN.COM)  
 T:905-738-3177  
[WWW.THEPLUSGROUP.CA](http://WWW.THEPLUSGROUP.CA)

I, \_\_\_\_\_, DECLARE THAT I HAVE REVIEWED AND TAKEN DESIGN RESPONSIBILITY FOR THE DESIGN WORK ON BEHALF OF **RN DESIGN LTD.** UNDER DIVISION C, PART 3 SUBSECTION 3-2.4 OF THE BUILDING CODE. I AM QUALIFIED AND THE FIRM IS REGISTERED IN THE APPROPRIATE CLASSES / CATEGORIES.

QUALIFIED DESIGNER BCIN:  
FIRM BCIN:  
DATE:

SIGNATURE: \_\_\_\_\_

Cachet Estate Homes Inc

PROJECT/LOCATION  
15 Roxborough Street West,  
Toronto

DRAWING SITE PLAN

DRAWN BY RP	SCALE 1:200
PROJECT No. 19001	LOT NUMBER 15



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Tel: 905-738-3177  
WWW.THEPLUSGROUP.CA

client

Cachet Estate  
Homes Inc.

project  
15 Roxborough  
Street West

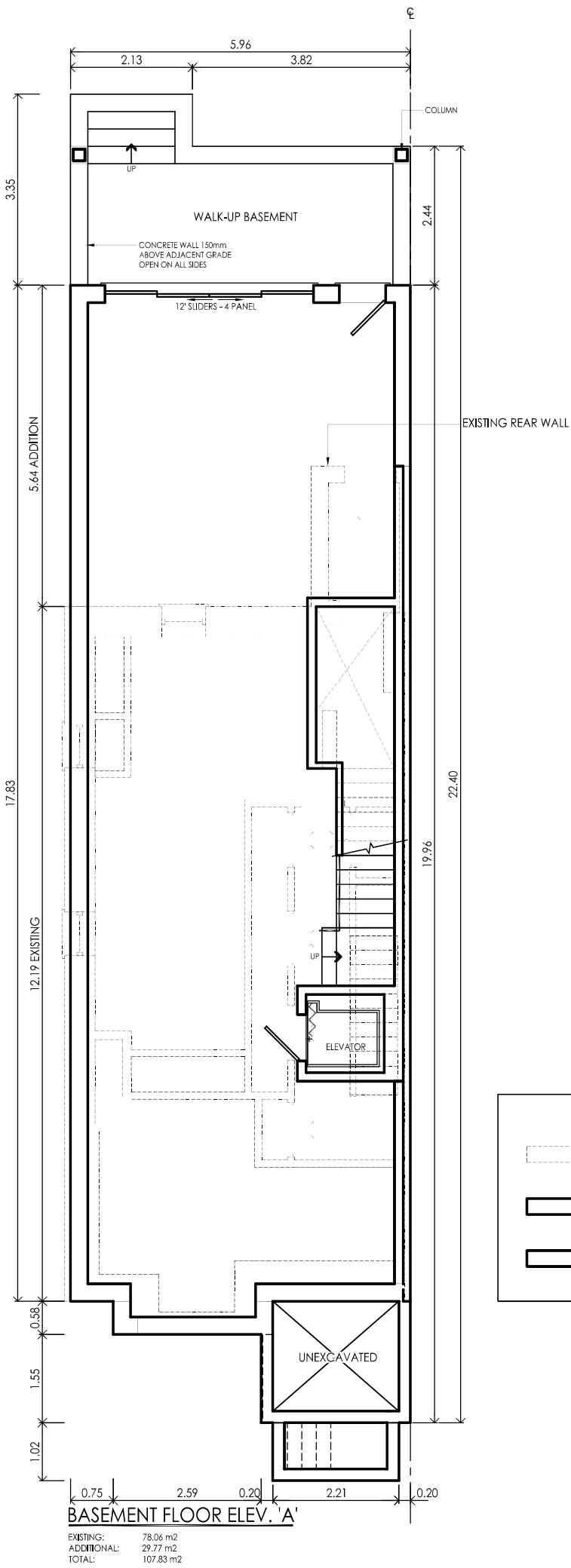
model

project #

scale

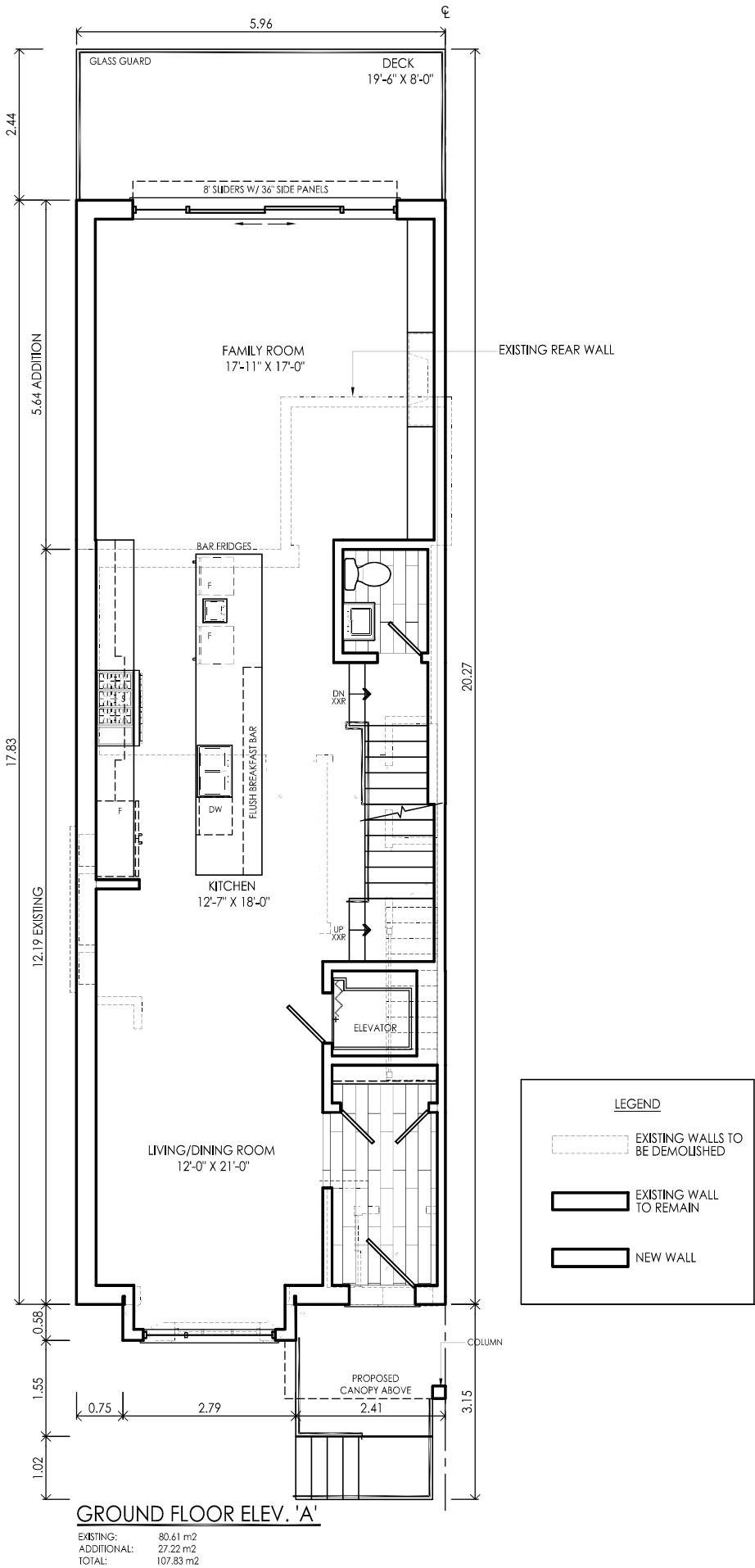
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B1



revisions	initials	date
1 ISSUED FOR ZONING REVIEW	MJS	28-MAR-19

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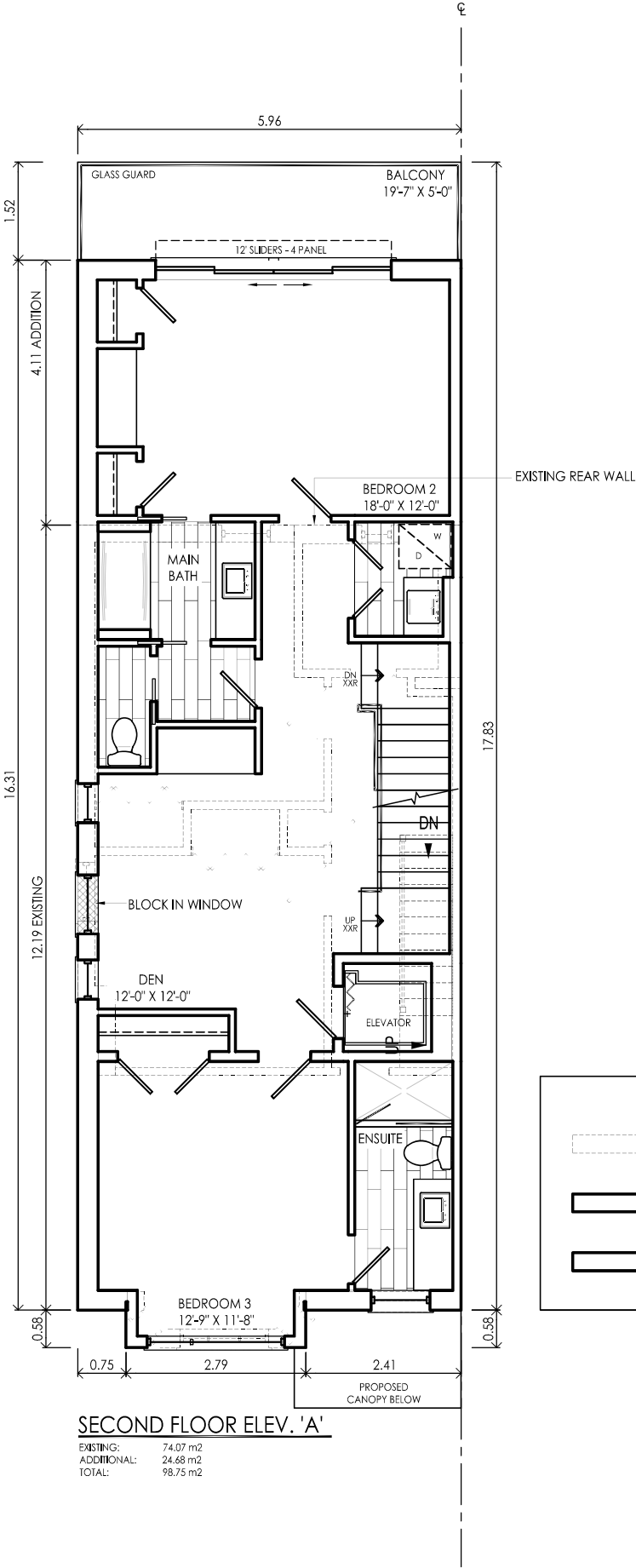
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client  
Cachet Estate  
Homes Inc.

project  
15 Roxborough  
Street West

model  
C





revisions		initials	date
1	ISSUED FOR ZONING REVIEW	MSJ	28/06/19

client	Cachet Estate Homes Inc.
project	15 Roxborough Street West
model	C
project #	19001
scale	1:100
page	B3

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revisions		initials	date
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client

Cachet Estate  
Homes Inc.

project

15 Roxborough  
Street West

model

C

project #

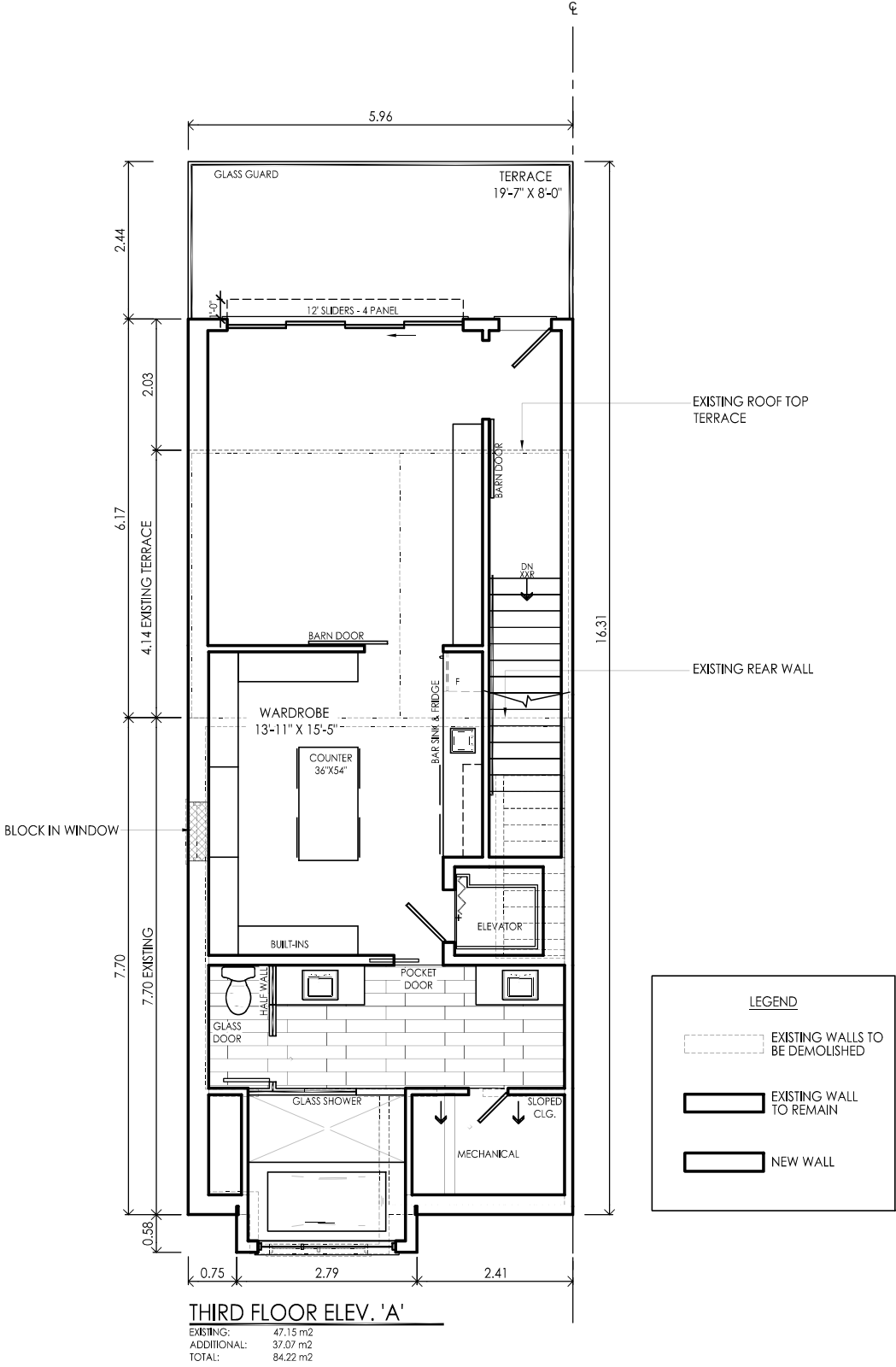
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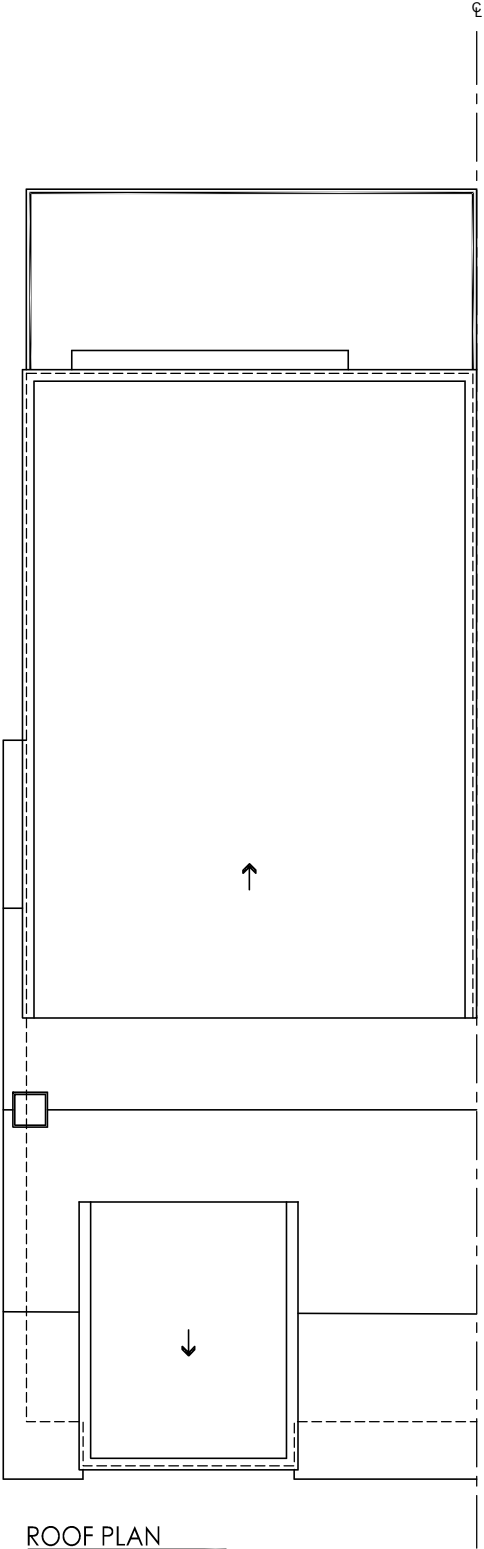
page

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ROOF PLAN

client

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Homes Inc.

project

15 Roxborough  
Street West

model

C

project #

19001

scale

1:100

page

B5

revisions		initials	date
1	ISSUED FOR ZONING REVIEW	MJS	28/May/19

client  
Cachet Estate  
Homes Inc.

project  
15 Roxborough  
Street West

model  
C

project #  
19001

scale  
1:100

page

B6



revisions		initials	date
1	ISSUED FOR ZONING REVIEW	MS	28/06/19



revisions	initials	date

client

Cachet Estate  
Homes Inc.

projec

15 Roxborough  
Street West

mode

C

projec

19001

scale

$$1/8'' = 1'0''$$

page

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