

DECISION AND ORDER

Decision Issue Date Monday, June 29, 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): 2662712 ONTARIO INC

Applicant: 2662712 ONTARIO INC

Property Address/Description: 40 ADDISON CRES

Committee of Adjustment Case File: 19 132247 NNY 16 MV

TLAB Case File Number: 19 170440 S45 16 TLAB

Hearing date: Tuesday, September 24, 2019

DECISION DELIVERED BY JOHN TASSIOPOULOS

APPEARANCES

Name	Role	Representative
Addison Development Corp	Applicant	
2662712 Ontario Inc.	Appellant/Owner	Marc Kemerer
Michael Manett	Expert Witness	
Nima Ahdami	Project Manager	Wallzcorp Inc.

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on the May 23, 2019 granting of variances to permit the construction of a new two storey dwelling at 40 Addison Crescent (subject property). The COA approved four of the six requested variances, however, it modified the first variance with respect to lot coverage and refused the second variance with respect to the proposed front yard setback. Zoning By-law 569-2013 permits a maximum lot

coverage of 25% of the lot area; the Owner had requested a lot coverage of 29.06% whereas the COA modified the request and approved a lot coverage of 27%. The request for a reduction in the front yard setback to 9.16m, whereas a minimum 11.905m is required, was refused.

As a result of the modified and refused variances by the COA, the Applicant appealed the decision to the TLAB, whose Hearing date was set as above noted. The Appellant / Owner was represented by Marc Kemerer (Counsel) and Michael Manett, an expert witness, who provided Planning evidence for this appeal. Project Manager Nima Ahmadi of Wallzcorp Inc. was also in attendance.

I disclosed to Counsel and those in attendance that I had visited the site and the surrounding neighbourhood, in preparation of the Hearing.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are all the variances sought by the Appellant / Owner supportable?

Was the COA modification of Variance 1, reducing the requested lot coverage of 29.06% of the lot area to 27% an appropriate modification? Counsel explained that the Appellant / Owner is of the opinion that the COA arrived at the 27% lot coverage modification arbitrarily as no planning rationale for the change was provided.

Was the COA refusal of Variance 2, reducing the required front yard setback to 9.16m, whereas a minimum 11.905m is required, appropriate?

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. Marc Kemerer provided a brief introduction to the matters at hand and indicated that the reason for the appeal was for the lot coverage modification and the front yard setback, which he explained were *“well within the range of what is existing and approved in the neighbourhood.”* He went on to explain that City Planning staff had no concern about lot coverage only about maximum wall height which the Appellant revised in order to comply with the requirement. He concluded that the variance that was refused, was the existing front yard setback of the original house and that this was a technical variance.

Following this introduction Mr. Michael Manett was affirmed and provided a brief overview of his experience as a professional land use planner which began in 1974 and includes both public and private sector experience. He has appeared before the former Ontario Municipal Board and the Local Planning Appeal Body, as well as the TLAB, and has been qualified as an ‘Expert Witness’ on numerous occasions. I qualified Mr. Manett to provide professional opinion evidence in the area of land use planning.

Mr. Manett submitted his Expert Witness Statement (Exhibit 1) and confirmed that he had been retained by the Appellant / Owner on June 22, 2019 in support of the appeal of the COA decision to modify lot coverage and refusal for the front yard setback which he explained was a technical variance. He suggested that the arbitrary reduction in lot coverage by the COA to 27% would require completely new designs to be prepared for the lot and is unnecessary *“because there is no impact, of any kind, created by the coverage proposed at 29.06%.”* He explained that the test should be whether the proposed house fits on the site and without adverse impact to the adjacent neighbours or the neighbourhood. In his opinion, the proposal meets that test.

He went on to provide historical context for the neighbourhood explaining that the Don Mills neighbourhood is a post-war master planned community and created by the E.P. Taylor estate. It included a combination of commercial, employment and residential areas of mostly single-detached dwellings with a road network of curvilinear streets. Turning to a description of the subject site, he indicated that it is located in the north end of the northwest quadrant of the Don Mills neighbourhood defined by Lawrence Avenue East to the south, Don Mills Road to the east, a hydro corridor to the west and a CN rail line and city park to the north.

Referring to a map where he conducted a property data analysis based on material received from City of Toronto, he was able to assess the lot coverage for individual properties including existing and those approved through COA. There are a large number of lots that exceeded the By-law for coverage and suggest that the requested 29.06% fits within the range of the lots as they currently exist in the area (Exhibit 2). Furthermore, he explained that the photographic evidence would illustrate the variety of dwelling types, size and design which he called an *“eclectic community that’s in transition and has been in transition for some time.”* With respect to the analysis for lot coverage in the study area, he indicated that it was comprised of 525 single detached lots which would be referred to later in his evidence.

Mr. Manett went on to describe the proposal that included the demolition of the existing one storey bungalow and replacing it with a two storey single detached dwelling that would require the following six requested variances to the Zoning By-Law:

1. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 25% of the lot area.

The proposed lot coverage is **29.06%** of the lot area.

2. Chapter 10.20.40.70.(1), By-law No. 569-2013

The required minimum front yard setback is 11.905 m.

The proposed front yard setback is **9.16** m.

3. Chapter 10.5.40.60.(1), By-law No. 569-2013

A platform without main walls, attached to or less than 0.3 m from a building, with a floor height no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 m if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches **2.84** m into the required front yard setback.

4. Chapter 10.20.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is **8.0m**.

5. Chapter 10.5.40.60.(2), By-law No. 569-2013

A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering.

The proposed canopy encroaches **2.84** m beyond the platform it is covering.

6. Section 14.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.

The proposed building height is **9.56** m.

Mr. Manett explained the reasons for the variances requested, in addition to lot coverage, noting that variance #2 for the proposed front yard setback (9.16m) was consistent with the existing building setback (9.15m) as illustrated in the survey (Exhibit 4). The encroachment variances, #3 and #5 for the proposed porch and canopy, are a result of the reduced front yard setback. The porch and its covering are proposed to be 0.34m beyond the permitted encroachment of 2.5m and, in his opinion, this is minimal, did not have adverse impact and was approved at the COA. Variance #4 he explained was for the exterior wall height which was originally 8.8m but was reduced to 8.0m to address City Planning concerns; it was approved by the COA. Finally, he mentioned that variance #6 was triggered because of the older North York By-law which measured height differently (i.e., from the crown of the road) than the new 569-2013 Zoning By-law. A variance was only required under the former while the current Zoning By-law did

not require a height variance; it was requested at the time as the older zoning requirements were still applicable to this submission (Exhibit 1).

Mr. Manett then proceeded to his photographic evidence (Exhibit 3) which included aerial and streetscape images as well as individual images of recently redeveloped residential lots both on Addison Crescent and the surrounding neighbourhood. He described the character of the neighbourhood and the streetscape noting that there was a mixture of house designs and sizes as well as landscape treatments on properties predominantly composed of single detached dwellings. He explained that the proposal was in keeping with this character in terms of built form and type, single detached two storey dwelling, and that it maintains, reinforces, and respects the existing development in the community as per the Official Plan (OP) policies.

He went on to individual property photos and noted that 38 Addison Crescent (Exhibit 3, photo #12), the objector to the front yard setback reduction at the COA, had a significant spatial separation between the buildings due to the driveways. He also pointed out numerous examples of redeveloped lots throughout Addison Crescent and the surrounding neighbourhood that had a similar built form streetscape relationship, mix of architectural styles and varied front yard setbacks that are not that different from the proposal.

Mr. Manett provided an overview of the proposed site plan and building elevations (Exhibit 5). The site plan included the lighter outline of the existing building footprint for comparison with the proposed building footprint. He then went over the building elevations and pointed out the elements in the design that were related to the variances proposed. He concluded that the proposed dwelling size was modest relative to the lot size and was in keeping with similar redevelopment in the neighbourhood.

Turning to a review of Provincial and applicable Official Plan policies, Mr. Manett pointed out that the proposal was consistent with the Provincial Policy Statement (PPS) and conformed to the Growth Plan for the Greater Golden Horseshoe (Growth Plan) because it reinvests in the neighbourhood and provides a family dwelling in a residential neighbourhood, which fits the intent of their direction.

With respect to the OP, Mr. Manett gave a concise oral presentation of the policies that he considered relevant with respect to the proposal and which was also summarized in his Witness Statement (Exhibit 1). Mr. Manett noted that the subject property was designated 'Neighbourhood' in the OP and submitted that the applicable OP policies included 2.3.1 *Healthy Neighbourhoods* and 4.1 *Neighbourhoods* with particular emphasis on 4.1.5 *Development Criteria in Neighbourhoods*, including the amending policies for this section found in OPA 320.

He mentioned that the key aspect of policy in 2.3.2 is that "*Neighbourhoods are low rise and low density residential areas that are considered to be physically stable*" and in his opinion, the proposed redevelopment, is a single detached low rise dwelling that maintains the stability of the neighbourhood through reinvestment and it's design

and it reinforces the streetscape by maintaining the existing pattern in terms of driveway locations and landscaped space.

With respect to section 4.1, he quoted policy 4.1.1 *"Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses.."* which he explained is what was being proposed, is a detached dwelling. He identified what he felt to be the most important policy as 4.1.5 which notes *"Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood.."* from which the most relevant criteria were:

- c. *prevailing heights, massing, scale, density and dwelling type of nearby residential properties,*
- d. *prevailing building type(s),*
- e. *prevailing location, design and elevations relative to the grade of driveways and garages,*
- f. *prevailing setbacks of buildings from the street or streets*

He explained that these policies speak to prevailing heights, massing, and scale and what was being proposed in terms of site plan and building both address and meet these policy requirements. He further mentioned that OPA 320 amended 4.1.5 and has expanded and states that physical character includes proposed development on the same block and block opposite. He provided an example of earlier that the proposal meets this test and the requirements of section 4.1.5.

He concluded that section 4.1.8 regarding Zoning by-laws outlines the intent and what type of regulations are applicable. He opined that this policy allows the opportunity for a variance as long as the intent is met. In his view the proposed plans meet that intent and that the building fits the site, the street and the neighbourhood.

Having provided his evidence on the Zoning By-law and variances earlier in his testimony he referred to the *Central Don Mills Secondary Plan* (Exhibit 6) which he explained was applicable to the subject site and indicated its location on Maps 24-1 and 24-2. He highlighted the relevant policies of section 2, *Objectives*, and specifically Policy 2.1 that states:

The general goal of this Secondary Plan is to manage change in a community in a manner that retains and enhances the existing character of the area. In order to achieve this goal, the following are defined as specific objectives of this Secondary Plan:

- (e) to preserve and protect stable residential neighbourhoods;*
- (f) to maintain, and where possible, enhance family oriented housing forms;*

- (g) to preserve the scale, height and built form relationships originally provided for in the development concept of Don Mills; and*
- (h) to maintain a full range of housing forms and tenures.*

He submitted that the proposed development conforms to the Secondary Plan especially objective (f) which he suggested is addressed by the proposal because it provides enhanced housing that would provide a family with more current facilities and amenities that the existing bungalow could provide. He explained that objectives (g) and (h) were addressed because the proposal is for a two storey home, an as of right use, and the form is single detached which is permitted in the zoning for this area.

Mr. Manett returned to the Property Data Analysis (Exhibit 1, p.7 and Exhibit 2) to indicate the neighbourhood study area that was reviewed with respect to lot coverage. His study area was comprised of 525 residential properties of which 156 had a lot coverage above 25% and of those properties above 25% lot coverage, 70 properties had a lot coverage at or above 30%. Given these results, he stated that the lot coverage variance falls within the range of these lot coverages and is in character with the neighbourhood. He also submitted a COA Decisions Chart that included 112 recent decisions, going back 10 years, within the identified neighbourhood study area. He noted that:

- 47 decisions had a request for a lot coverage variance at or above 29.06%:
- Of the 47 lots, 22 had lot coverage variances approved by the COA;
- The COA modified the proposed lot coverage variance in 14 decisions from the coverage being requested; and
- The COA refused 11 of the proposed lot coverages, many having a lot coverage higher than the proposed.

In addition, Mr. Manett highlighted 8 recent OMB/LPAT/TLAB appeal decisions in the neighbourhood study area and noted that 3 decisions regarding a request for a lot coverage at or above 29.06% coverage were approved on appeal.

Mr. Manett turned to the four tests under s. 45(1) of the Planning Act and his evidence is summarized as follows:

- **maintain the general intent and purpose of the Official Plan; -**
The proposed development meets the intent and the purpose of the OP because it is a low rise, low density, residential detached houses which is a permitted use that reinforces the physical stability of the neighbourhood as per section 2.3.1 of the OP. The proposed development conforms to the Development Criteria for Neighbourhoods outlined in policy 4.1.5 of the OP with respect to heights massing, scale, dwelling type and building setbacks.

- **maintain the general intent and purpose of the Zoning By-laws;**
The proposed development requested variances meets the intent and the purpose of the Zoning By-laws as follows:

Variance 1 - Lot coverage of 29.06% for the proposed development is appropriate because as outlined in the Property Data Analysis the requested variance falls within the range of lot coverages found in the neighbourhood and the proposed building footprint falls within the required rear and sideyard setbacks, maintains the front yard setback and therefore the requested lot coverage is appropriate for the property. In addition, recent decisions at the COA, OMB, LPAT and TLAB have approved lot coverage in excess of 29.06%;

Variance 2 - The requested 9.16m front yard setback, whereas the required setback is 11.905m, maintains and is consistent with the front yard setback of the existing building of 9.15m as indicated in the Survey. The proposed development's front yard setback will have no adverse impact on the immediate neighbours or the overall neighbourhood.

Variance 3 - Relates to a platform (front porch) which may encroach into the front yard setback 2.5m if it is no closer to a side lot line than the required side yard setback. Due to the reduced front yard setback and the building being forward, the proposed platform will encroach 2.84m into the required front yard setback. This difference of 0.34m is minor and has no impact on the streetscape and is appropriate.

Variance 4 - Relates to the height of the exterior walls and the design of the building. The drawings were revised to lower the height to 8.0m which was accepted by City staff.

Variance 5 - Relates to the canopy above the platform (front porch) as per variance #3, the proposed canopy encroaches 2.84m into the front yard setback and in the same manner as the front porch (platform) variance. This difference of 0.34m is minimal and will not create any adverse impact.

Variance 6 - Relates to the maximum building height permitted in the old By-law of 8.8m. Under the new By-law (569-2013) the permitted height is 10.0m and the proposed building height is 9.56m. The proposed height variance is appropriate since it only relates to the old By-law and no concerns were raised by City staff.

- **are desirable for the appropriate development or use of the land;**
The house was designed with the appropriate setbacks from the property and adjacent dwellings, the increase in lot coverage is minor and in the range of the neighbourhood and recent COA approvals. It represents a positive reinvestment

in the neighbourhood and fits well in the built form context of the community and neighbourhood.

- **are minor.**

He explained that the variances were minor because the proposed development will have no adverse impact on neighbouring properties or the neighbourhood, the setbacks generally comply with zoning requirements, the height is in compliance with the new Zoning By-law and the variance for front yard setback maintains the existing building setback. The lot coverage variance is minor and in the range of the neighbourhood and recent COA approvals. In his opinion the COA alteration of coverage was arbitrary and not on any perceived impact the variance may have caused.

Mr. Manett concluded his evidence by stating that the proposed variances were appropriate both individually and collectively, represented good planning, and should be approved.

ANALYSIS, FINDINGS, REASONS

The evidence of Mr. Manett was uncontested and it was provided in a concise and thorough manner that was informative to the Hearing. Although his opinions on the requested variances were generally thoughtful and well-reasoned, I need to consider the four tests under s. 45(1) of the Planning Act in my analysis of the requested variances and do so as follows:

Variance 1 – In reviewing the Hearing recordings, Mr. Manett's expert witness statement and the property data analysis, I agree that there are properties within the neighbourhood and on Addison Crescent, that not only exceed the zoning by-law requirement but also that being sought in the variance for the subject property. In addition, given that two storey dwellings are permitted and that single detached dwellings are the prevailing building type in the neighbourhood, I accept Mr. Manett's evidence that the height, massing, and scale of the proposed dwelling is consistent with the land use permissions for the neighbourhood. The requested variance meets the four tests, and the slight increase in coverage is minor and desirable for the appropriate development of the property.

Variance 2 – Mr. Manett explained that the reduced front yard setback to 9.16m was consistent with the existing building's setback (9.15m) and was only for the eastern portion of the proposed building wall face. In reviewing both the Survey (Exhibit 4) and the site plan (Exhibit 5) I was able to confirm this and noted that the western portion of building wall face was further setback approximately 0.9m. Although the proposed reduction in front yard setback is consistent with the existing building setback I was initially concerned with the potential impact a two storey massing may have on the property to the west, 38 Addison Crescent. Having visited the site, reviewed the

photographic evidence (Exhibit 3) that displayed similar built form relationships in the neighbourhood, and considered separation between the two properties due to the proposed 1.8m side yard setback and the existing neighbouring driveway, I agree with Mr. Manett that there is no adverse impact created by the proposed 9.16m front yard setback.

Variances 3 and 5 – These variances are related to one another and are a result of the variance sought for the reduced front yard setback to 9.16m. The approval of these two variances and refusal of the front yard setback by the COA was an obvious error in the decision. Having refused Variance 2, these variances were no longer applicable. Having said that, it is my opinion that these variances are technical in nature, the resulting porch and canopy are modest in size, and that they are a result of variance 2.

Variance 6 – Relates to the maximum permitted building height in the former North York Zoning By-law 762 of 8.8m whereas the proposed building height is 9.56m. Mr. Manett noted that this variance is only required for the old zoning by-law and a variance was not required under the new Zoning By-law 569-2013, which permits a maximum height of 10.0m. Even under the previous By-law, the additional 0.76m in height is modest and I accept the evidence presented that it will not result in adverse impact on neighbouring properties or the streetscape.

For these reasons, I find that the appeal should be allowed and that the six variances sought, individually and cumulatively, meet all four tests under s. 45(1) of the *Planning Act*.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated May 23, 2019, is allowed. The following variances are authorized subject to the conditions listed below:

1. Chapter 10.20.30.40.(1), By-law No. 569-2013

The permitted maximum lot coverage is 25% of the lot area.

The proposed lot coverage is **29.06%** of the lot area.

2. Chapter 10.20.40.70.(1), By-law No. 569-2013

The required minimum front yard setback is 11.905 m.

The proposed front yard setback is **9.16** m.

3. Chapter 10.5.40.60.(1), By-law No. 569-2013

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The proposed platform encroaches **2.84** m into the required front yard setback.

4. Chapter 10.20.40.10.(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is **8.0m**.

5. Chapter 10.5.40.60.(2), By-law No. 569-2013

A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering.

The proposed canopy encroaches **2.84** m beyond the platform it is covering.

6. Section 14.2.6, By-law No. 7625

The maximum permitted building height is 8.8 m.

The proposed building height is **9.56** m.

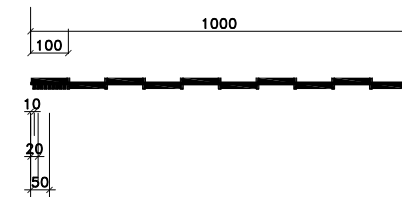
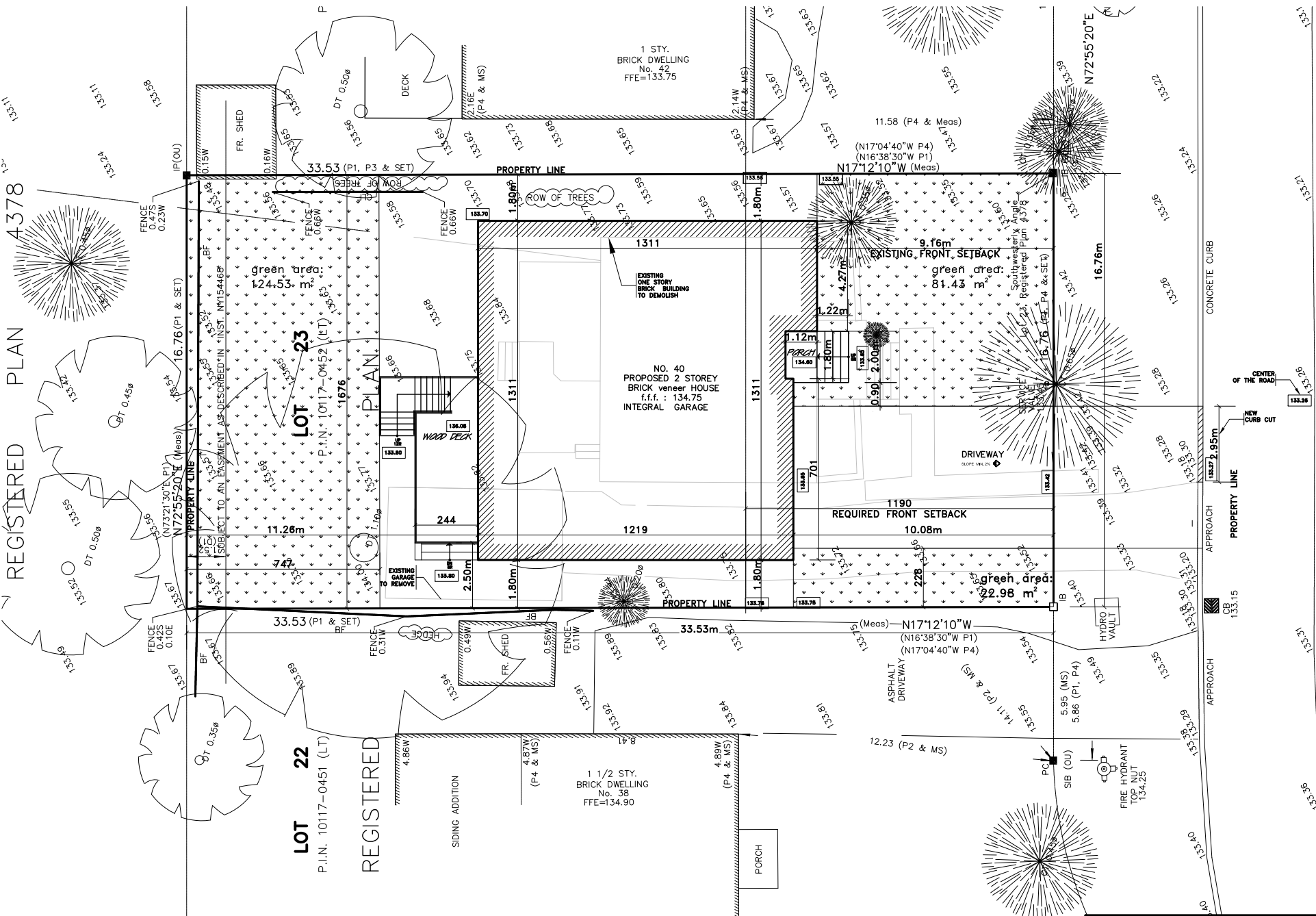
Required Conditions

- A. The proposed development shall be constructed substantially in accordance with the site plan, roof plan, and building elevations (Drawings A-1, A-5, A-6, A-7, A-8, and A-9), dated March 7, 2019, found in the Appellant's Exhibit 5, and attached as **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.
- B. To consider the advisory comments in the May 9, 2019 letter from the Urban Forestry's Tree Protection and Plan Review - North Section, regarding injury or removal of trees as they relate to the subject property.

X

John Tassiopoulos

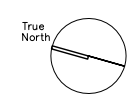
Panel Chair, Toronto Local Appeal Body



1
A-1

SITE PLAN

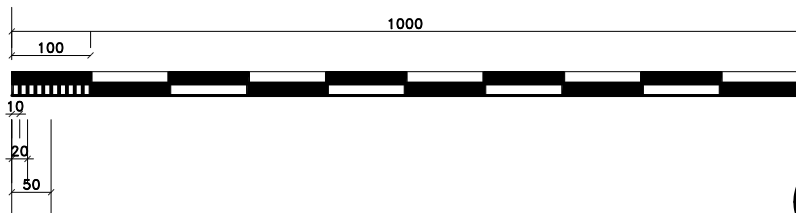
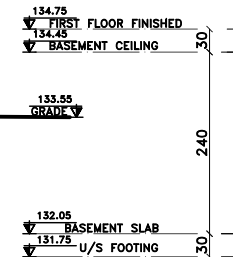
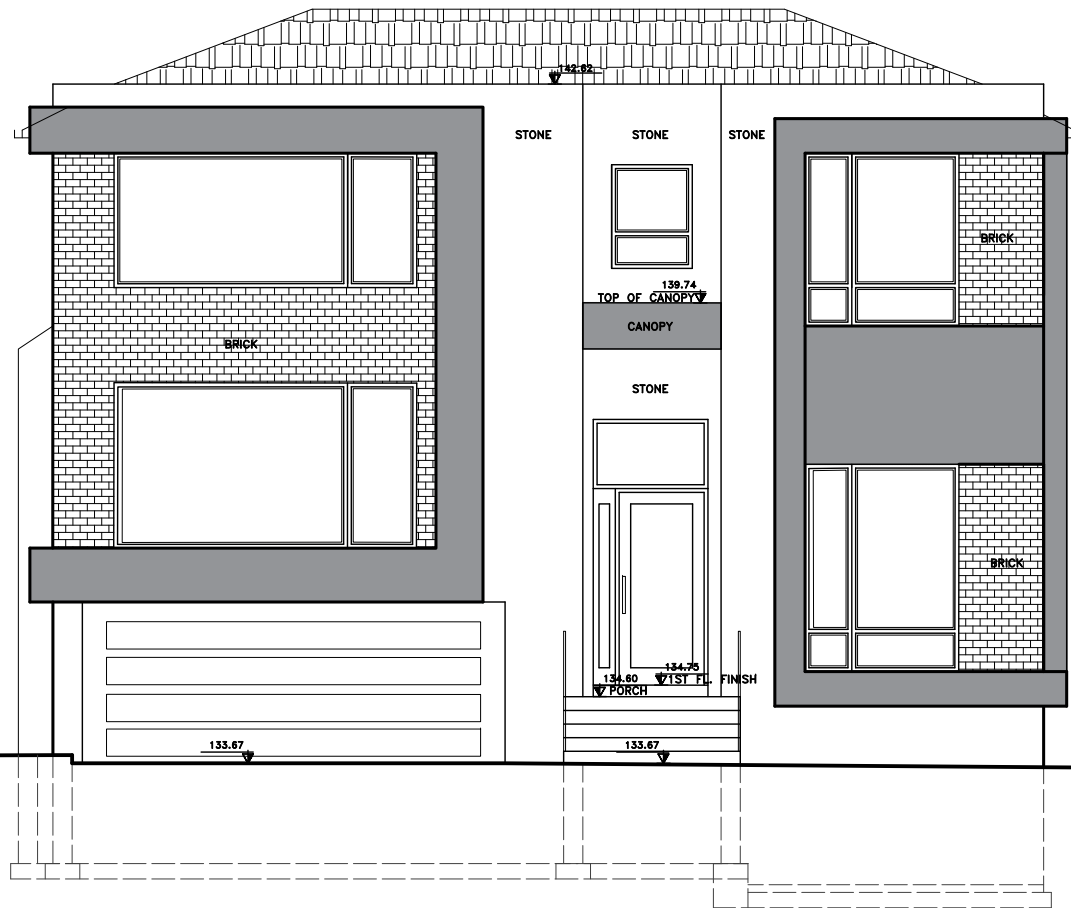
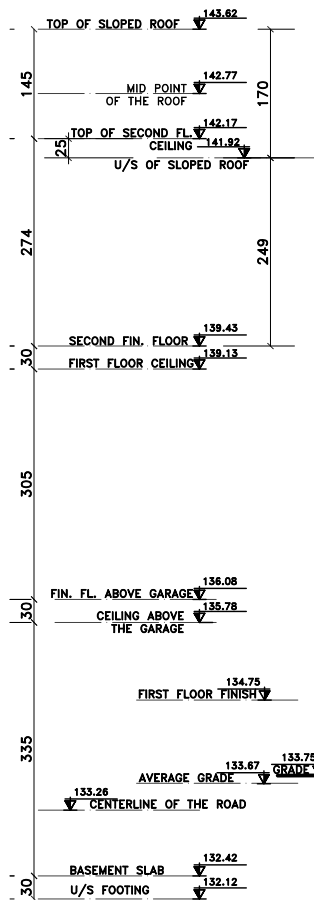
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Project Name
**40 ADDISON CRS.
TORONTO, ON.**

Drawing Title
SITE PLAN

No.	Description	Date
A	ISSUED FOR COMMITTEE OF ADJUSTMENT	MARCH, 07, 2019



1
A-6

SOUTH (MAIN) ELEVATION

SCALE 1:100

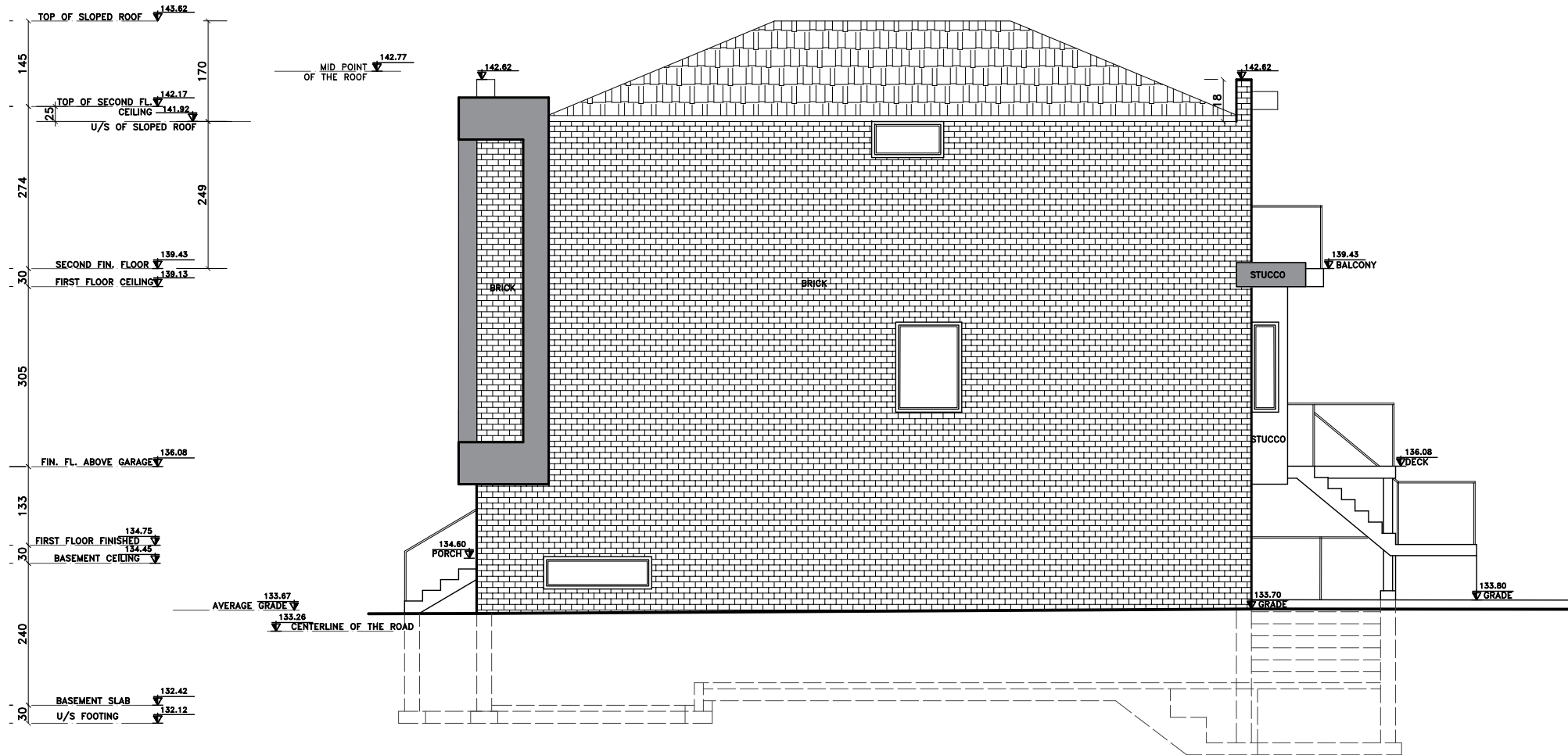
Project Name

40 ADDISON CRS.
TORONTO, ON.

Drawing Title

SOUTH ELEVATION

No.	Description	Date
A	ISSUED FOR COMMITTEE OF ADJUSTMENT	MARCH, 07, 2019



1
A-7

EAST ELEVATION

SCALE 1:100

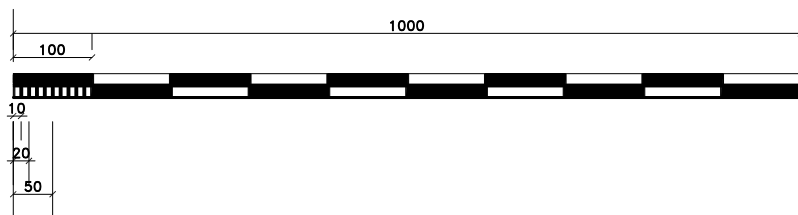
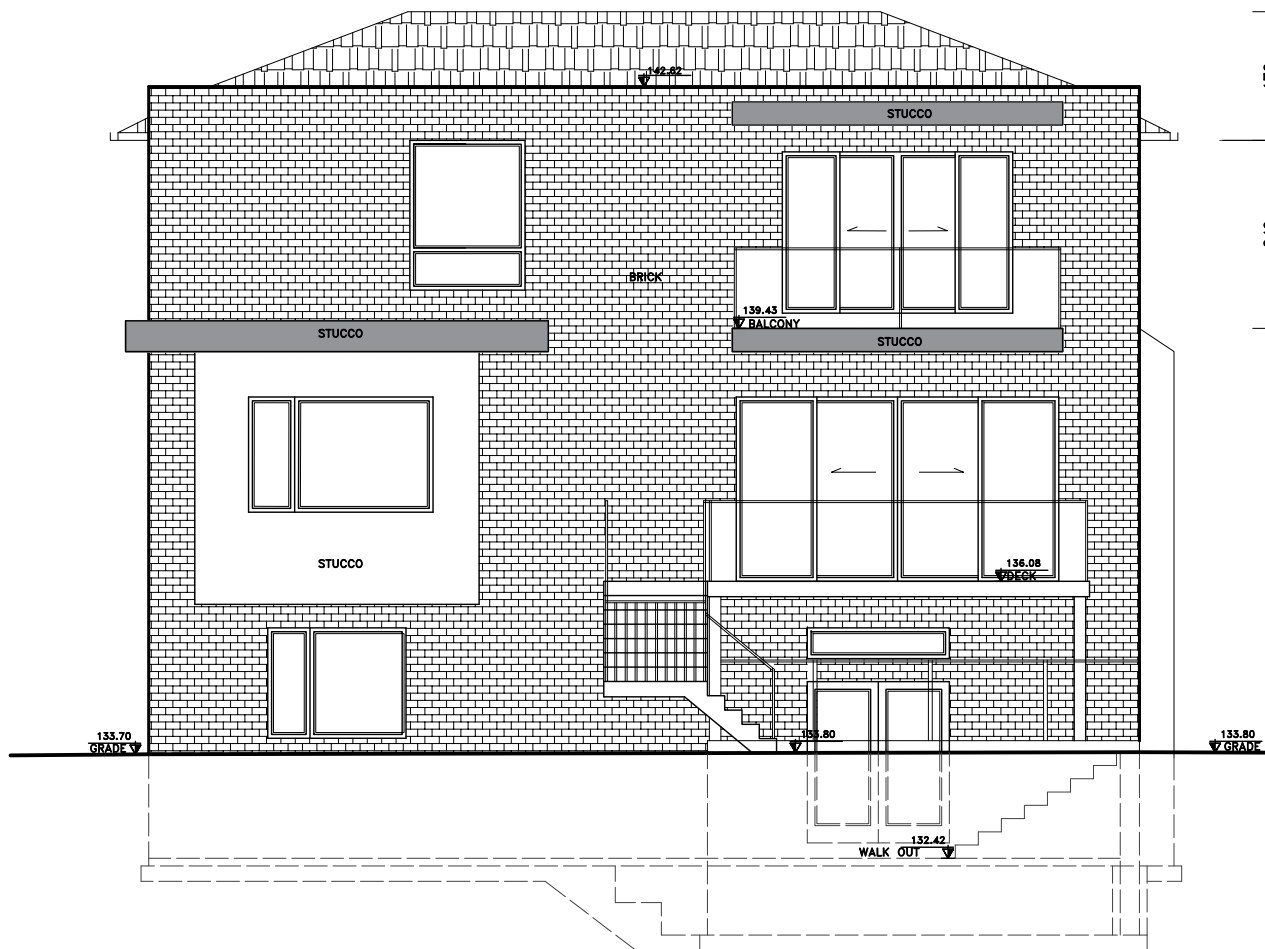
Project Name

40 ADDISON CRS.
TORONTO, ON.

Drawing Title

EAST ELEVATION

No.	Description	Date
A	ISSUED FOR COMMITTEE OF ADJUSTMENT	MARCH, 07, 2019



1
A-8

NORTH ELEVATION

SCALE 1:100

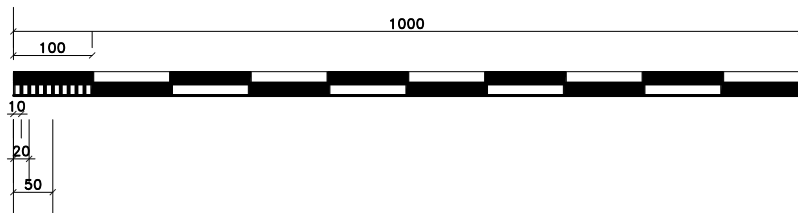
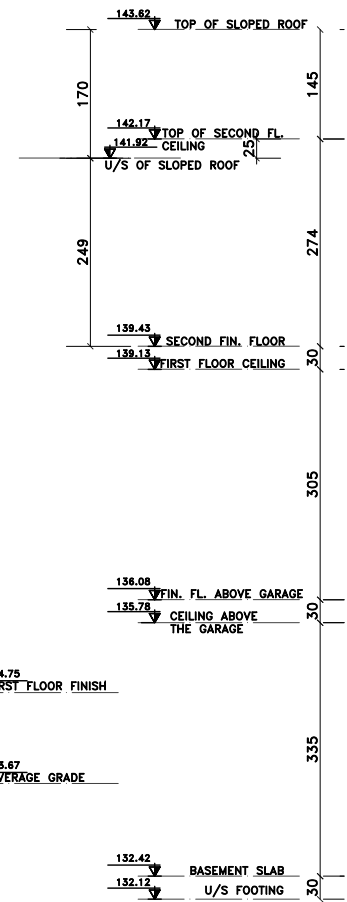
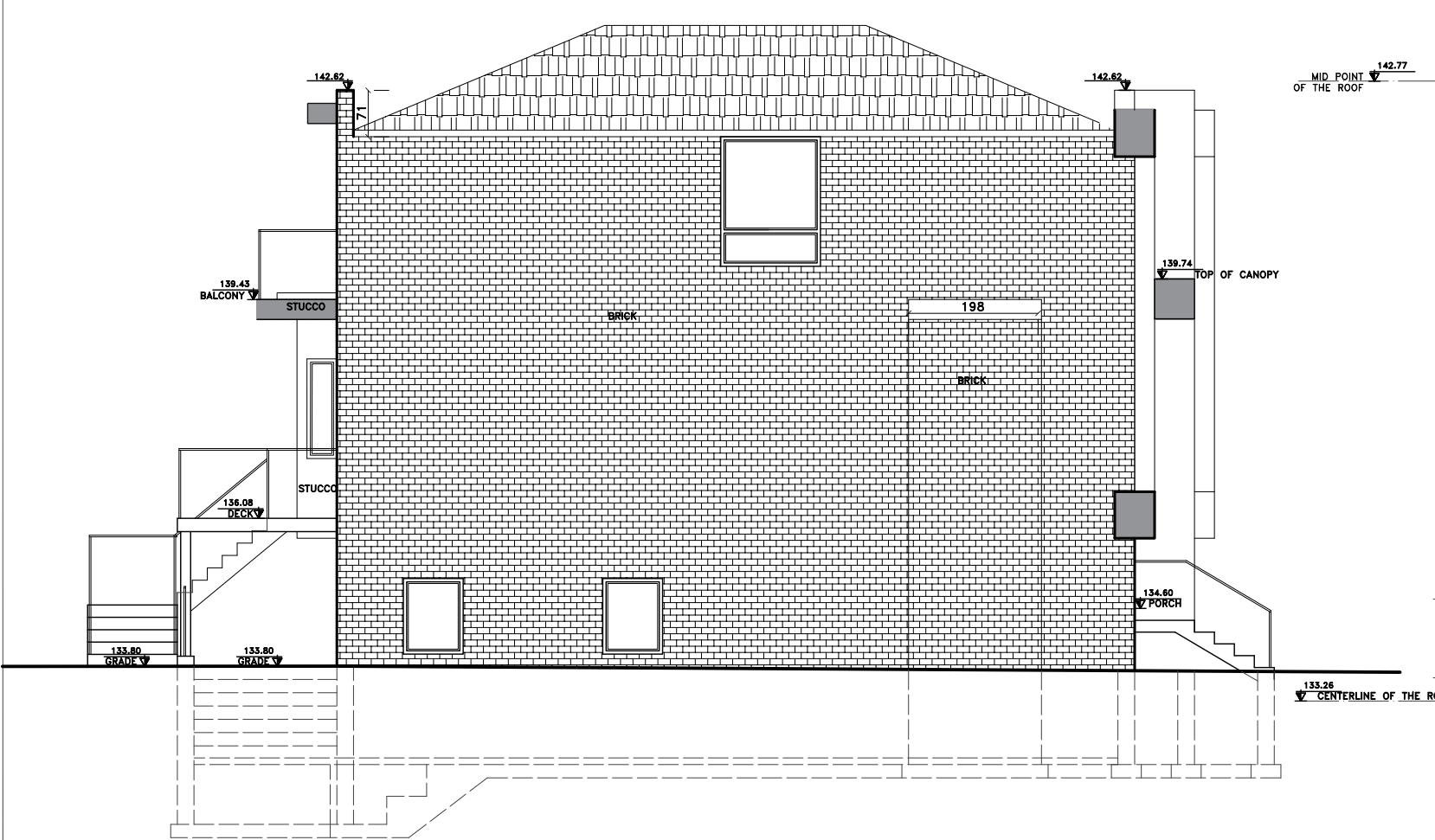
Project Name

40 ADDISON CRS.
TORONTO, ON.

Drawing Title

NORTH ELEVATION

A	ISSUED FOR COMMITTEE OF ADJUSTMENT	MARCH, 07, 2019
No.	Description	Date



1 WEST ELEVATION A-9 SCALE 1:100

Project Name
40 ADDISON CRS.
TORONTO, ON.

Drawing Title
WEST ELEVATION

No.	Description	Date
A	ISSUED FOR COMMITTEE OF ADJUSTMENT	MARCH, 07, 2019