

DECISION AND ORDER

Decision Issue Date Monday, July 13, 2020

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

Appellant(s): NARENDRA ARMOGAN

Applicant: VELTA MUSSELLAM

Property Address/Description: 31 MAPLE AVE

Committee of Adjustment Case File Number: 16 248550 STE 27 MV

TLAB Case File Number: 17 188180 S45 27 TLAB

DATES OF HEARING:

September 13, 2018
September 18, 2018
November 26, 2018
February 21, 2019
February 22, 2019
July 12, 2019

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

NAME	ROLE	REPRESENTATIVE
NARENDRA ARMOGAN	OWNER	
VELTA MUSSELLAM	APPLICANT	
NARENDRA ARMOGAN	APPELLANT	JASON PARK MICHAEL COOK
MICHAEL GOLDBERG	EXPERT WITNESS	
ALLAN KILLIN	EXPERT WITNESS	

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PETER KUNTZ	EXPERT WITNESS	
MICHAEL LABRECQUE	PARTY	IAN FLETT
CHRISTIAN CHAN	EXPERT WITNESS	
CHRIS BORGAL	EXPERT WITNESS	
CECILIA ATANACIO RAMOS	PARTY (TLAB)	
BECHIR RABAT	PARTICIPANT	

INTRODUCTION AND BACKGROUND

Narendra Armogan and Navroop Gill are the owners of 31 Maple Ave, located in Ward 11 (University- Rosedale) of the City of Toronto. On 11 October 2016, Applicant Narendra Armogan applied to the Committee of Adjustment for approval of various variances to build a three floor rear addition at 31 Maple Ave. On 7 June 2017, the Committee of Adjustment (COA) heard the application, and refused the variances.

The COA's decision was appealed to the Toronto Local Appeal Body (TLAB) on June 27, 2017. The following couples and individuals elected to be Parties

- Michael Labrecque and Cecilia Ramos (residents of 29 Maple Avenue)
- Peter and Heather Senst (residents of 33 Maple Avenue) ,
- James Carr (resident of 24 Maple Avenue)
- Robert Henderson (resident at 74 Glen Road)
- John Emery (President of Fairmont Properties)

A number of community members, and the South Rosedale Residents Association (SRRA) also registered as Participants. Two adjournments were granted in November 2017, and March 2018 Hearing, before the proceeding finally commenced on September 13, 2018. The matter was heard over six Hearing dates, culminating on July 12, 2019.

It is important to note that Parties Senst and Labrecque jointly retained Mr. Christian Chan, a land use planner, to provide planning evidence on their behalf, before the commencement of the Hearings, while Mr. Christian Borgal, a Heritage Architect, was retained only by Party Senst, to provide heritage related evidence before the Hearings began.

A few days before the start of the proceeding, I was made aware that Party Senst and the Appellants had reached a Settlement.

MATTERS IN ISSUE

VARIANCES REQUESTED TO BY-LAW 569-2013

1. Chapter 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length for a detached dwelling is 17.0 m.

The existing building has a length of 24.11 m.

The building length measured to the extension of the basement built under permit 14 267538 BLD is 25.28 m which should have required Committee of Adjustment approval.

The west side three-storey addition will have a building length of 19.89 m.

2. Chapter 10.20.40.30.(1), By-law 569-2013

The maximum permitted depth of a detached dwelling is 19.0 m.

The existing building has a depth of 24.88 m. The building length measured to the extension of the basement built under permit 14 267538 BLD is 26.05 m which should have required Committee of Adjustment approval.

The west side three-storey addition will have a depth of 20.66 m.

3. Chapter 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (793.63 m²). The altered detached dwelling will have a floor space index equal to 0.681 times the area of the lot (900.36 m²).

4. Chapter 10.5.100.1.(1)(C)(iv), By-law 569-2013

The maximum permitted driveway width for a driveway that is located in or passes through the front yard is 2.6 m.

In this case, the driveway width will be 4.47 m at the front gate.

5. Chapter 10.5.100.1.(2)(B), By-law 569-2013

The maximum permitted driveway width for a driveway that is not located in or does not pass through the front yard is 6.0 m. In this case, the driveway width will be 9.29 m in the backyard.

6. Chapter 10.5.50.10.(3), By-law 569-2013

A minimum of 50% (274.38 m²) of the rear yard must be maintained as soft landscaping.

In this case, 39.83% (218.57 m²) of the rear yard will be maintained as soft landscaping.

7. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The maximum permitted building height is 10.0 m.

The altered detached dwelling will have a height of 10.54 m.

8. Chapter 10.10.40.10.(2)(B), By-law 569-2013

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

The height of the existing side exterior main walls is 10.54 m on the west side, and 7.83 m on the east side. The height of the side exterior main walls facing a side lot line will be 10.54 m.

VARIANCES REQUESTED TO BY-LAW 438-86

1. Section 6(3) Part I 1, By-law 438-86

The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (793.63 m²).

The altered detached dwelling will have a gross floor area equal to 0.687 times the area of the lot (908.67 m²).

2. Section 6(3) Part II 3.B(II) 2, By-law 438-86

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m.

The portion of the altered detached dwelling, exceeding the 17.0 m depth, will be located 4.01 m from the west side lot line.

3. Section 6(3) Part IV 4(a)(ii)C, By-law 438-86

The maximum permitted width of a driveway is 2.6 m. In this case, the driveway width will be 8.69 m in the rear yard.

4. Section 6(3) Part II 7(I), By-law 438-86

The minimum required setback of an accessory structure to all lot lines is 3.0 m.

The pool will be located 1.85 m from the west side lot line.

5. Section 4(2)(a), By-law 438-86

The maximum permitted building height is 10.0 m.

The existing building has a height of 12.36 m. The west side three-storey addition will have a height of 11.13 m.

It may be pertinent to point out that the case is unusual because of the complexity of the issues involved in decision making- besides land use planning and zoning issues, there are heritage, and landscaping related matters, that need to be examined in order to come to a Decision

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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

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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

I would like to begin with an editorial comment about the reasons for the sheer length of the Evidence Section. While reciting the evidence obtained through a proceeding with six Hearing dates can be expected to take up a significant amount of time and space, the recitation in this case, has been influenced by how the style of presentation of the Witnesses- in many cases, they did not merely explain their perspective, but expanded and expounded on their theories on numerous occasions. I have endeavoured to accurately reproduce the discursive style in which the evidence was presented, in addition to reciting the evidence itself.

At the beginning of the Hearing on September 13, 2018, Mr. Allan Heisey, Counsel for the Sensts, the residents of 33 Maple Ave., confirmed to me that his clients had reached a Settlement with the Appellants, and, spoke to the conditions that had been agreed upon between the Parties, when they reached a Settlement. He said that his clients recommended that the TLAB impose the following conditions, if it chose to allow the Appeal respecting 31 Maple Ave:

The Conditions are:

1. The owner shall frost, or otherwise make opaque the existing glass screening on the north, and east sides of the deck located above the car garage, forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.
2. The owner shall reposition any exterior lighting located on the Subject lands, so that it is not directed into the adjacent lands at 33 Maple Avenue.
3. Urban Forestry: Approval of Variance #3, respecting the width of the driveway in the rear yard, shall be substantially in accordance with the Site Plan dated April 3, 2018 and included as part of Exhibit 8.
4. Heritage Preservation Services: Prior to the issuance of a building permit, building permit drawings including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provisions of Section 42 of the *Ontario Heritage Act*.

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Mr. Jason Park, Counsel for the Appellants, confirmed that his clients had reached a Settlement with Party Senst, and that they had no objections to accepting the conditions, recited above, if the Appeal were allowed.

Party Labrecque then put forward a Motion, asking the TLAB to allow Mr. Borgal, who had formerly been retained solely by Party Senst, to give evidence on heritage matters, on their behalf. Mr. Flett, Counsel for Party Labrecque, explained that given that the Subject property was part of a Heritage Conservation District (HCD), his client was concerned that the planned reconstruction at 31 Maple Ave, would result in loss of heritage elements at the Subject Property.

Mr. Park objected to the Mr. Borgal's being allowed to give evidence on behalf of Party Labrecque, because he had not submitted a Witness Statement to the TLAB on behalf of Party Labrecque, which meant that the Appellants "would be blindsided by his evidence". Mr. Flett said that the loss of Heritage value elements would impact the whole community, and that Mr. Borgal's position was "well known" because it had been stated in his Witness Statement filed on behalf of Party Senst. Mr. Park asked that if the TLAB allowed Mr. Borgal to give evidence on behalf of the Opposition, then he should be confined to what had already been submitted to the TLAB, and that no new evidence should be allowed.

I ruled that Mr. Borgal would be allowed to be a Witness on behalf of Party Labrecque, and that his evidence would be limited to what he had submitted as part of his original Witness Statement, originally filed on behalf of Party Senst on August 21, 2017.

The next Motion, brought forward by Party Labrecque, was the introduction of a photograph demonstrating that some important heritage features of 31 Maple that existed in 1913, had been altered, or were at risk of being altered- this picture had not been submitted with their Statements. Mr. Park asked that the picture not be admitted into evidence, because of the risk of prejudice to the Appellants I asked Mr. Flett to highlight the "value add" of the picture from a Heritage perspective, since 31 Maple had already been classified as a Heritage C category home by Heritage Preservation Services (HPS). Mr. Flett's response was that the picture would demonstrate that heritage elements dating back to 1913, had been altered as a result of previous renovations, and could be altered again as a result of the planned renovation. This response did not convince me that introducing the picture into evidence would have a significant outcome in the determination of matters pertaining to the heritage issues, since Category C Heritage Buildings can be altered, subject to the Appellants' following prescribed guidelines, and issuance of Heritage Permits. I therefore ruled that the picture would not be allowed into evidence.

Mr. Goldberg was sworn in, and was qualified as an Expert Witness, in the area of land use planning, on behalf of the Appellants. He said that he was familiar with the surrounding area, by virtue of being the Expert Witness in the Appeal respecting 40 Maple Avenue, "just east of the Subject Site, on the north side of the street". He then located the Subject site on the south side of Maple Ave, the second block east of Sherbourne Ave, and said that it was zoned R1Z0.6 according to By Law 438-86 (the former By-Law) , single detached up to a maximum FSI of 0.6 X, and RD(15 m,

d0.6(X1438) according to the City of Toronto's Harmonized By-Law 569-2013). He said that the proposed three storey addition, would have a "green house" on the top floor, which would be stepped back from the front of the property, relative to the two floors with living space below. He then defined his Study Area, which he said is bounded by the rear lot lines of houses that back onto the Rosedale valley. on the East, the rear lot lines of Dale Ave. , and Mc.Kenzie Ave. on the South, Sherbourne Street on the West, and the rear lot lines of properties on Elm Avenue on the North.

Mr. Goldberg confirmed that the Study Area forms part of the SRHCD (South Rosedale Heritage Conservation District. He opined that notwithstanding the R1/RD Zoning of the Subject site, the Study Area included a number of residential dwelling types, including single detached, semi-detached, multiples or converted dwellings, townhouses and apartment buildings. Within a "given category of dwelling types", Mr. Goldberg asserted that individual house size varied tremendously, and demonstrated the same through a photo tour of the neighbourhood.

Mr. Goldberg asserted that the lot pattern within the Study Area, included a mix of lot frontages, depths, configurations and sizes, and added that there was a "broad mix, as well as mutual differences" between how building footprint shapes, and heights had been deployed on the lots within the Study Area. He added that notwithstanding how "higgly-piggly" the mix was, the Study Area remained a highly stable, and a very desirable residential neighbourhood. According to Mr. Goldberg, the eclectic mix, the differences in built form, and other elements of the neighbourhood are important defining elements of the character, and fabric of this area.

Mr. Goldberg also drew my attention to other interesting features of this Study Area, such as the curvilinear pattern of the roads/streets which "contribute to the character of the area". Through a photo tour, he demonstrated that many homes had been constructed with elevated terraces, decks and patios; and emphasized that overlook into the neighbours' gardens, or backyards was not uncommon in this neighbourhood, as well as that the rear yard included both hardscape and soft scape conditions. Speaking to a corpus of decisions from the COA from over a 17 year period, he concluded that each individual type of variance requested by the Appellants had been granted.

Mr. Goldberg also demonstrated that the quantitative magnitude of the variances requested by the Appellants, had been granted previously by the COA in the other applications. He said that the decisions of the COA were proof of how the change in the neighbourhood was steady, without any negative impact on the community, and opined that the variances requested by the Appellants would reinforce the theme of slow, and steady change in the community

Mr. Goldberg then described the Subject Property as being a "large urban lot:", and confirmed that the Subject Site has a frontage of 22.11 m long at the front, a lot depth of 59.42 m , and a lot area of 1,322.72 sq. m. . He said that the original dwelling on the site, which was constructed around the "turn of the twentieth century" according to the SRHCD study, had undergone many alternations over the years, and had "multiple units" , when the present owners bought the home in 2013

He added that the current owners had “undertaken many interior and exterior improvements” to the existing house, before explaining the various work permits which enabled the owners to enlarge the dwelling.

- a) Building Permit No 13 237604 BLD 00 SR was for interior renovations to the coach house, to restore the building to become a primary residence for applicant’s elderly parents. This work included the removal of two parking spaces within the garage, including a paved access area. This work is now complete and the coach house is now occupied by the applicant’s parents
- b) Building Permit No 14 267538 BLD 01 SR was for minor revisions to the previous application. This work has been completed.
- c) Building Permit No: 15 2388137 BLD 00 SR was for construction of a concrete swimming pool and enclosure. This work has also been completed.
- d) Tree Removal Permit No S-7124266 was to remove a tree that had caused damage to the main dwelling foundation. This work has also been completed.

Mr. Goldberg added that the existing coach house had “some notable history”, before noting that the area of the coach house is 197.98 sq. m., and is currently occupied by the Appellants’ parents. In 2008, the previous owners of the Subject site had applied for, and had been approved for variances to legalize the lawful non-conforming status of the coach house, together with some variances, related to parking and setbacks. He added more historical detail by stating that the previous owners of the Subject Site had applied to the COA in 2012 to sever the property. However, this application was refused by the COA, and the refusal was subsequently upheld by the OMB on April 13, 2013. Mr. Goldberg stated that the OMB decision did not impact the legal conforming status of the coach house.

By way of editorial comment, a mock up of the house, with the proposed addition at the right is provided below, to help understand what the proposal contemplates.



FRONT VIEW, ARCHITECTS RENDERING OF ADDITION



VIEW FROM N-W, ARCHITECTS RENDERING OF ADDITION AT THE BACK



STREET CONTEXT FROM N-W (ABOVE), WITH PROPOSED ADDITION INSERTED

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Mr. Goldberg confirmed that the Appellants proposed to demolish the existing first storey sun room extension to the west side of the existing dwelling, and replace it with a three storey addition in the area of the existing west addition, with the following characteristics:

- 1st floor- 24.1 sq .m, 2nd floor- 57.8 sq m, and 3rd floor- 33.2 sq. m for a total of 115.1 sq. m
- The proposed addition at the back of the house facing 29 Maple Ave will be setback- the 1st and 2nd floors will be approximately 8.9 m behind the main front wall of the existing dwelling and will be setback approximately 21 m from the front lot line. The 3rd floor will be further stepped back by 3.0 m from the north facing wall of the 1st and 2nd storeys, and will be converted into a greenhouse for plants.
- The addition is “tucked behind the windows and chimney breast of an existing and prominent bay” of the existing dwelling, as recommended by Heritage Preservation Services, and agreed to by the current owners. The height of the addition matches the main building wall height at the front of the existing dwelling at 10.286 m, while the overall height of the addition is 11.543 m as compared to a height of 14.01 m of the overall existing dwelling.

Mr. Goldberg next discussed how the proposal was consistent with higher level Provincial Policies, and how the proposal before the TLAB satisfies the four tests under Section 45.1 of the Planning Act.

He addressed the Provincial Policy Statement 2017 (PPS) and the Greater Golden Horseshoe Growth Plan (2019), and opined that while the proposal was a local planning matter, he had nevertheless reviewed the Heritage Sections of the PPS (2014), and the Greater Golden Horseshoe Growth Plan(2017). On the basis of his review, Mr. Goldberg asserted that the proposal was consistent with the Heritage Policies of both documents.

He then spoke to various sections of the Official Plan beginning with Section 2.3- Stable but not Static. According to Mr. Goldberg, the premise behind this Section is that any community will undergo change and cannot remain static; however, this change should be such that it does not impact the stability of the community.

He said that the proposal satisfied the Policy because it involved the rehabilitation of a century house, through a “relatively minor addition”, to be built on the west side of the house. Mr. Goldberg described the addition of a wing to the building through the conversion of the “conservatory”, and asserted that the proposed addition was consistent with the change described in Section 2.3 of the OP. By way of editorial comment, I note that there is a diversity of nomenclature about the “conservatory” among Witnesses, including questions about its very existence- I have used the expression used by the Witness concerned while reciting their evidence.

Mr. Goldberg asserted that the size of the building juxtaposed on the size of the lot was such that it did not create any adverse impact on the neighbouring houses, and emphasized that the privacy of the neighbours at 29 Maple Ave. would not be adversely impacted, notwithstanding the "fish bowl like views" into their house from neighbouring properties

Mr. Goldberg next spoke to Policy 3.1.2, or the Built Form Policy, and opined that the "only thing" consistent about the neighbourhood was how inconsistent it was internally, and that the proposed changes at 31 Maple would not detract from the existing "eclectic" nature of the neighbourhood. He again described the neighbourhood as being "higgly-piggly", or containing an eclectic combination of building forms, new and vintage buildings.

Mr. Goldberg next spoke to the Heritage Policies of the Official Plan, after prefacing his remarks that he would speak to the Policies as a Planner, as opposed to a Heritage Specialist. He said that the Appellants had prepared a Heritage Impact Assessment, and submitted it to Heritage Preservation Services, who did not object to the Appellants' proposal to preserve the heritage elements of the coach house.

He discussed Sections 3.1.5.3, 3.1.5.4, 3.1.5.5, 3.1.5.22 of the Heritage Policies, and how they applied to the proposal. He spoke about how the Policies refer to a Heritage Register, which includes properties, and Heritage Conservation Districts of cultural heritage and interest that are designated under Parts IV and V of the Ontario Heritage Act, as well as the importance of Heritage Impact Assessments (HIA), and Heritage Conservation District Studies.

Mr. Goldberg stated that an HIA had been prepared by Appellants, and that they had satisfied their obligations regarding the heritage preservation policies in the OP, to the satisfaction of the City's Heritage Preservation Services (HPS).

Mr. Goldberg then spoke to the South Rosedale Heritage Conservation District Study, (henceforth referred to as the Study) published in November 2002, by the South Rosedale Residents Association (SRRA), which has published Guidelines for preservation of cultural heritage features. He said that "this document does not operate like a By-Law, or even like the Official Plan", but constitutes what he called "suggestions". He distinguished between the Guidelines established in the Study, Policies in the OP, and the Zoning By-Laws, by stating that the Guidelines listed in the Study are meant to be advice or best-practices, the Policies are open to interpretation, but required adherence, while the By-Laws had to be complied with, and were not open to interpretation

Mr. Goldberg then described the Heritage Permit Process, beginning with scenarios when Permits are not required. He said that if somebody applied for a Permit, the Heritage Permit Staff had the mandate, and the authority to review the application, and issue a Permit, without further consultation. He suggested that the alternative for Heritage Preservation Services was to recommend that the application be heard by the Community Council, who could then make a final decision, and referred to the interplay of the two options, as a "Belt and Suspenders" approach.

Mr. Goldberg addressed the seeming dichotomy of opinions expressed by the Heritage Preservation Service (HPS) Staff in their Reports addressing 31 Maple Avenue dated June 7, 2017- On the one hand, the discussion in the Report stated that HPS has no concerns with the proposed variances, and will support the application to the COA, but also added that Council Approval would be required, given that the application proposes significant addition to the existing heritage house that will be viewed from the street. "because the addition is visible from the street", Mr. Goldberg said that he had discussed the conclusions with Mr. Allan Killin, the Heritage Expert retained by the Appellants, and had concluded that the Heritage Permit would be issued by HPS Staff on the basis of the discussions he had had with HPS staff, after they reviewed the final Building Permit Drawings, to ensure compliance with Council decision, and the South Heritage Conservation District Plan.

Mr. Goldberg then described the differences between the classifications of "Category A", "Category B" and "Category C" buildings as discussed in the Study, as recited below

The primary criterion was that the building being assessed must be either a pre-1900 building, or a post-1900 building designed by a prominent architect. It would be classified as a Category A, B or C building based on the description described below, as found in the Study, and reproduced below:

"A": Buildings that are individually outstanding, and have actual or potential national or provincial significance. The building must have one or more of the following criteria: one of the earliest remaining buildings in the neighbourhood, a significant design by a prominent architect, a significant construction showing excellence of materials and craftsmanship, an historically significant occupant, contributes to the heritage character of South Rosedale

"B": Buildings that are noteworthy for their overall quality and have citywide significance. The building must have one or more of the following criteria: a pre-1900 building, a post-1900 building designed by a prominent architect, meeting "A" criteria but has undergone alterations, a prominently located property, contributes to the heritage character of South Rosedale.

"C": Buildings which contribute to the heritage character and context of the neighbourhood. The building must have one or more of the following criteria: meet "B" criteria but has undergone alterations, no current evidence of design by a prominent architect, contributes to the heritage character of South Rosedale.

Mr. Goldberg pointed out that 31 Maple Ave. had been categorized as "Category C", and then discussed the guidelines provided by the Study for making alterations:

"The roof profile and the location of the eaves lines or the roof parapet should be designed so that the apparent height of the building is compatible with that of its neighbours and is not visually overwhelming to neighbouring buildings."

Mr. Goldberg submitted that the design guidelines discussed above had been carefully reviewed, and incorporated into the renovation by the Appellants. He said that

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the Appellants had tried to “repair”, rather than “replace” what existed before, and extolled the efforts of the Appellants, by describing the lengths to which they had gone to preserve the heritage elements, including identifying a quarry in Caledon, where the bricks were identical to what originally existed in the building. He described “how elegantly the third floor was designed so as to preserve and highlight the heritage features, without any adverse impact on the neighbours.”

On the basis of the evidence, as recited above, Mr. Goldberg concluded that the proposal adhered to, and was consistent with the Heritage Policies as discussed in the OP.

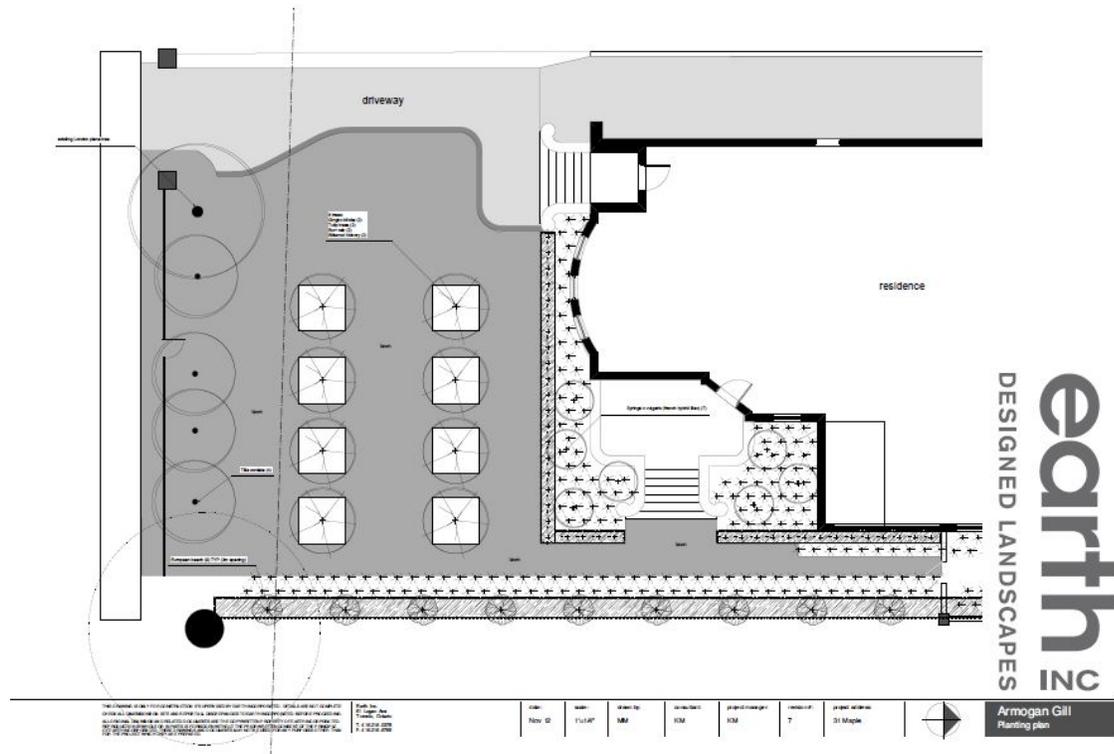
Lastly, Mr. Goldberg spoke to the relationship between the proposal and Section 4.1.5 (Development Criteria in Neighbourhoods Policy). He said that Policy (a) did not apply, while the proposal complied with (b) in view of the Size of the lot, which was large enough, for an addition could be built, “ without offending any test under Section 45.1” . Discussing 4.5.1 (c), he said that the proposed height of 11.48 m of the addition is less than the 14 m height of the existing house, and that the height of the proposed addition would not make the house “stand out in any way, because there were taller buildings in the same area”. He said that there would be “filtered views” of the addition from the street, as a result of the proposed landscaping, and discussed the compatibility of this arrangement with 4.1.5 (e), given that front setback before one reached the existing building, and that there was a further setback of 8.9 m before one reached the proposed addition (or a total of 21 m from the front property line). He said that there were no rear yard setbacks, nor special landscape features, in response to (f).

Mr. Goldberg addressed Policy 4.1.8 next, focusing on the numerical measures that this Policy spoke to, and suggested that the variances requested for where such that they created no adverse impact, and were compatible with already existed in the community.

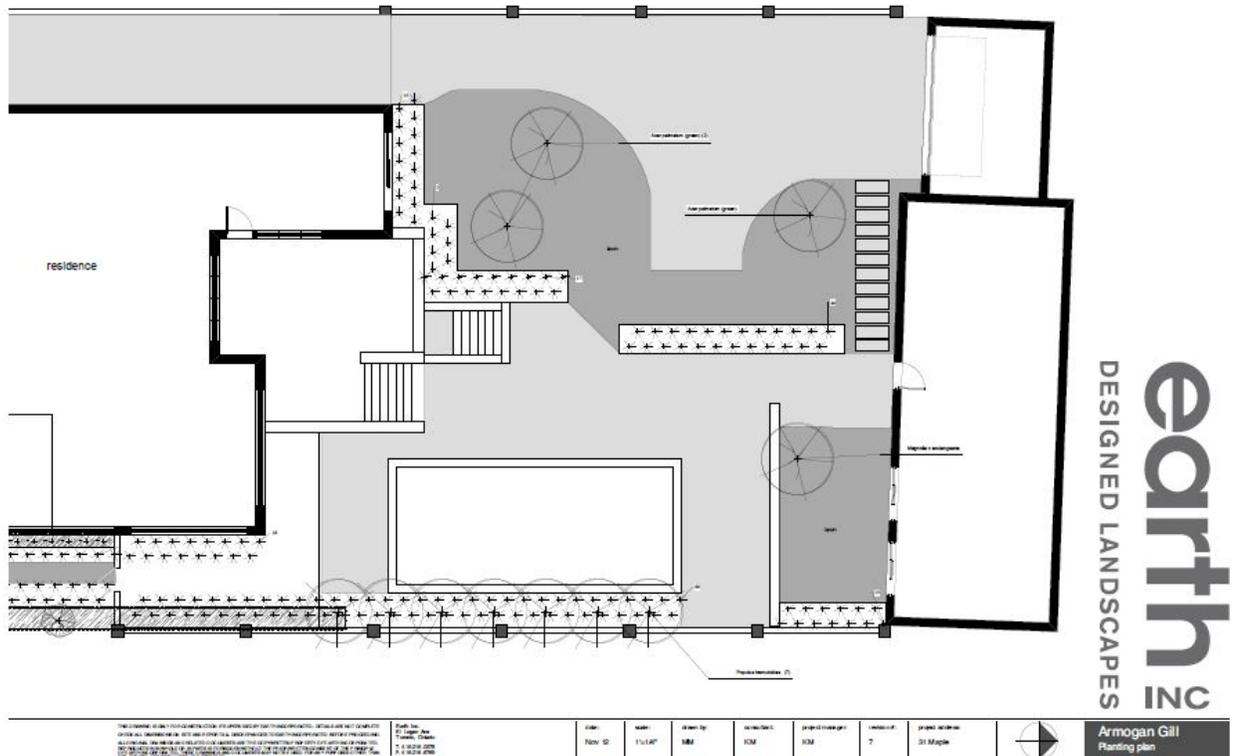
Mr. Goldberg then spoke to the Landscape Plan, and how it would help address the privacy concerns raised by the neighbours at 29 Maple Ave. He said that the Appellants planned to plant four trees, and eight trees in planters in the landscape strip at the back and side of the house, with the result that the foliage would help protect the privacy of the Parties. By way of editorial comment, the Landscape Plans are illustrated on the next page.

On the basis of this evidence, Mr. Goldberg concluded that the proposal upheld the intention and purpose of the Official Plan.

Mr. Goldberg next spoke to how the proposal satisfied the test respecting the Zoning By-Laws.



FRONT VIEW OF THE PROPOSED LANDSCAPING



BACK VIEW OF THE PROPOSED LANDSCAPING

Mr. Goldberg spoke to how performance standards are articulated by the By-Laws, and stated that the intention of these performance standards, is to implement the OP. He added that the intention of By-Laws is to ensure that there is no adverse impact, and make the proposal “fit” into the neighbourhood. He then pointed out that seven of the variances requested by the Appellant reflect what already exists “on the ground”, and asserted that these variances fulfilled the intent of the By-Law, by virtue of the lack of creation of any demonstrable adverse impacts on the neighbours, both in terms of privacy, or overlook

Mr. Goldberg then spoke to the rear addition, and how it satisfied the Zoning By-Law. He said that under By-Law 569-2013, the property was classified as RD(f15, d0.6 m) X 1438, before explaining the meaning of Exception 1438 as it applied to the RD Zone:

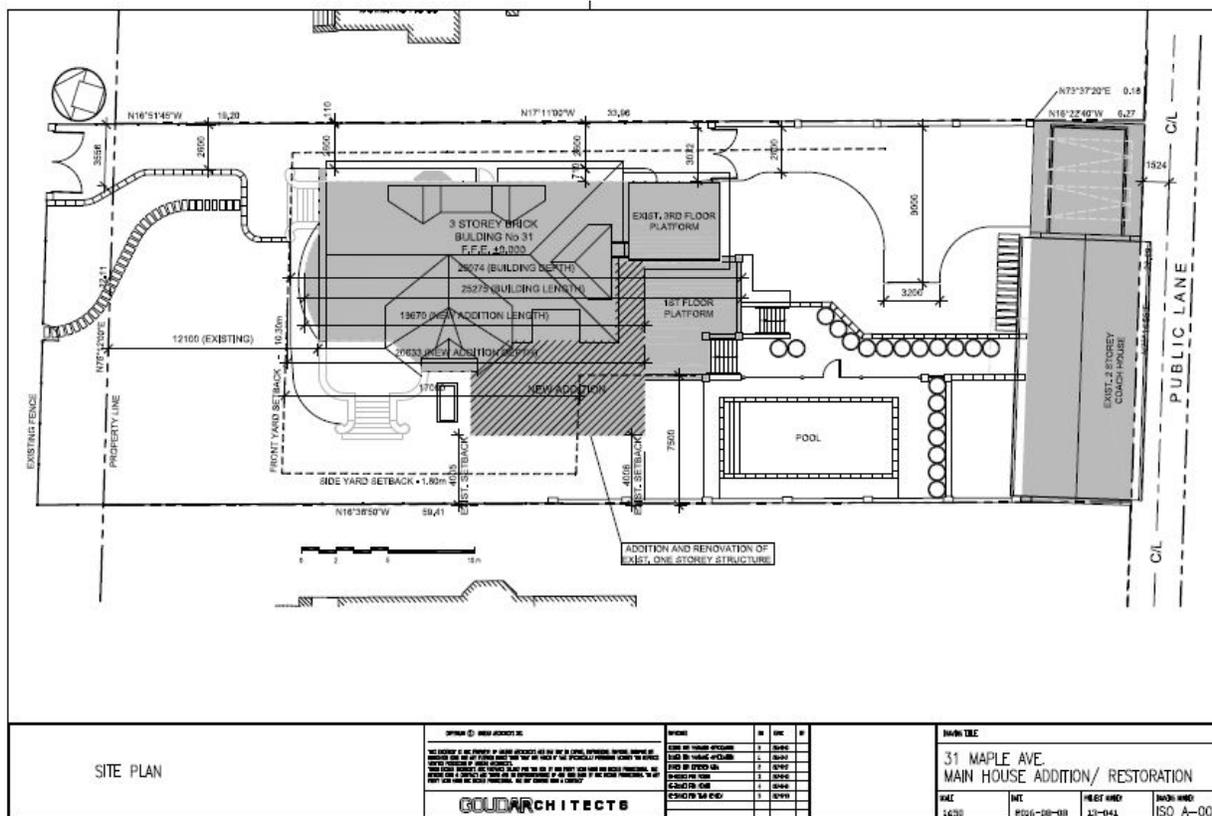
Exception 1438

If a lot has a permitted maximum floor space index of 0.6, and has a detached house erected before October 15, 1953, the detached house may be enlarged by an addition to the rear of the building if:

- (i) the overall floor space index for the lot, including the addition, does not exceed a total of 0.69;
- (ii) all finished floor levels within the addition are no higher than the uppermost floor level in the existing building;
- (iii) no part of the addition is closer to the nearest side lot line than the shortest distance between the existing side main wall of the building and the side lot line; and
- (iv) any prior addition is at least 5 years old

Mr. Goldberg said that the existing property at 31 Maple satisfied all four criteria-the existing house had a FSI of 0.6X Lot Size, and the requested FSI of the enlarged building was less than 0.69 X Lot Size. The finished floors would be approximately 2.5 m lower than the height of the existing building at 31 Maple Ave, and that all prior additions to the property had been made at least five years before, which meant (ii) and (iv) were satisfied. Speaking to Part (iii) with the help of the Floor Plans, Mr. Goldberg pointed out how the side main wall facing 29 Maple Ave jutted out (i.e. there is a bump out) where the one story “conservatory” exists, and how the outer main wall of the proposed addition would be in line with the outer main wall of the existing conservatory. He pointed out that the existing wall of the one storey jut-out is 4.5 meters away from the property line facing 29 Maple Avenue, and that the proposed addition will consequently also be 4.5 meters away from the property line; he added that the side yard setback was 1.8 m as per the By-Laws. By way of editorial comment, the Site Plan is provided on the next page to illustrate the layout

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Based on the evidence of the proposal’s satisfying the four conditions defined in X 1438, Mr., Mr. Goldberg concluded that the proposal to construct a rear yard addition, was consistent with Exception 1438, which applied to both By-Laws 569-2013, and 438-86. He acknowledged that there would be reduction in soft landscaping at the back, but then spoke to how the loss would be offset through various trees, and shrubs that had been planted, or would be planted at the back, and side of the house. Mr. Goldberg pointed out how the proposed length, and depth of the house, would not cause any adverse impacts, given the Lot Size. Lastly, he illustrated how cars parked in the garage “had to come forward, and turn at the hammerhead”, before exiting the property, necessitating the need for the variances related to the driveway width.

Based on this evidence, he concluded that the variances individually and collectively, maintained the general intent and purpose of the Zoning By-Law.

Mr. Goldberg next addressed how the proposal satisfied the test of minor. He said that there were two aspects of the test- the first is the order of magnitude of the variances being requested, and the second relates to whether the variances, individually or collectively, give rise to any adverse impacts. He opined that the order of magnitude of the variances was appropriate and minor, and that there were no adverse impacts arising from the variances, in terms of potential physical impact, if the variances were to be approved

Speaking to the test of appropriate and desirable development for the land, and buildings, he said that the Subject Site is a large property, with “the capability to accommodate all aspects of the proposal in a compatible, and fitting manner within its broader and immediate environment”, without any adverse impact.. He added that none of the City departments, including Heritage and City Community Planning, had objected to the proposal, which he interpreted to reflect on the acceptability of the proposal, and concluded that the proposal satisfied the test of appropriate development.

Based on this evidence, Mr. Goldberg said that the proposal satisfied all the four tests under Section 45.1 of the Planning Act, and recommended that the proposal be approved, subject to the following conditions:

Conditions pursuant to Agreement with 33 Maple Avenue and City Conditions:

1. The owner shall frost or otherwise make opaque the existing glass screening on the north and east sides of the deck located above the car garage forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.
2. The owner shall reposition any exterior lighting located on the subject lands so that it is not directed into the adjacent lands at 33 Maple Avenue.
3. Urban Forestry: Approval of Variance #3, respecting the width of the driveway in the rear yard, shall be substantially in accordance with the Site Plan dated April 3, 2018 and included as part of Exhibit 8.
4. Heritage Preservation Services: Prior to the issuance of a building permit, building permit drawings including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provisions of Section 42 of the *Ontario Heritage Act*.

Additional Conditions being offered by Appellant, 31 Maple Avenue:

5. The owner agrees to implement and maintain the landscaping substantially in accordance with the landscape plans prepared by Earth Inc., dated November 12th, and marked as Exhibit 17. By way of editorial comment, the date did not include the year.

Mr. Goldberg was then cross examined by Mr. Flett, Counsel for Party Labrecque.

The first question to Mr. Goldberg focused on whether the trees and foliage that Mr. Goldberg had alluded to, in his discussions of privacy, “applied throughout the year”, or “only in the warm months”, when the foliage on the trees was guaranteed. Mr. Goldberg answered by saying that the foliage would help protect privacy throughout the year. Mr. Flett next focused on whether there was overlook into the Labrecque residence at 29 Maple Ave., from the coach house, to which Mr. Goldberg responded in the affirmative. The next question was about Mr. Goldberg’s use and meaning of the word “higgly-piggly” (used to describe the neighbourhood in his Examination-in-chief),

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to which Mr. Goldberg said that it referred to a lack of consistency between the built form of the buildings, resulting in an eclectic community. Mr. Flett suggested that what Mr. Goldberg had in mind was closer to disorder, than a lack of consistency. Mr. Goldberg disagreed with this suggestion, and said that the expression came closer to eclectic, rather than disorder.

Mr. Flett then asked Mr. Goldberg about each of the examples provided in the COA decision table, and asked him to discuss how some of the examples were pertinent to the Appeal, before the TLAB. In the case of 40 Castle Frank Road, Mr. Flett pointed out that what had been granted, was an increase in the side yard setback, versus a backyard addition, which is what was proposed at 31 Maple. Mr. Goldberg replied the applicability of Exception 1438 to the Site, made it possible for a rear addition to be built at the very place that Mr. Flett had alluded to as the side yard of 31 Maple. However, Mr. Flett disagreed with Mr. Goldberg's position, and said that the difference between back additions and side additions "was important to his client".

Mr. Flett then reviewed the COA decisions that been put forward by Mr. Goldberg, and proceeded to ask the latter specific questions about each cited variance, and their applicability to matter before the TLAB. Mr. Flett also added that the "final outcome" of what was built at 40 Castle Frank was very different, from what had been approved, and had nothing in common with the proposal at 31 Maple Ave., to which Mr. Goldberg said that he had not visited 40 Castle Frank.

In the case of 3 Dale Ave, Mr. Flett commented that the side yard addition was "not next to a residence", to which Mr. Goldberg replied that he "did not know that". Mr. Flett also asked Mr. Goldberg if there was an FSI related variance request at 3 Dale Ave, to which Mr. Goldberg replied in the negative i.e. he stated that no FSI related variance had been requested. In the case of 6 Mackenzie Ave, Mr. Flett suggested that in addition to a two storey addition to the back, there was only a single storey addition to the side, to which Mr. Goldberg disagreed.

In the case of 157 South Drive, Mr. Flett described the property, and asserted that the two storey south addition had an impact “ on the neighbour, to which Mr. Goldberg said that while there could be an “impact”, there was no demonstrable adverse impact. Mr. Flett then asked if the placement of “these 2 storey houses in the neighbourhood at 31 Maple Ave., did not raise a” red flag” about the placement of the proposed dwelling next to the Labrecque property, to which Mr. Goldberg disagreed . Mr. Flett next focused on the “significant impact” if the proposal were constructed as is, by the side of the Labrecque property. Mr. Goldberg repeated and reiterated that notwithstanding Mr. Flett’s delving into, and dwelling on the “significant impact” , there was no evidence that the impact amounted to an adverse impact in planning terms.

Mr. Flett then touched on a letter from the SRRA, and stated that the SRRA had not taken a position, to which Mr. Goldberg agreed. On the basis of this convergence of perspectives, it was agreed that the letter from the SRRA did not have to be discussed further

Mr. Allan Killin, an Architect specializing in Heritage issues was the next Witness to provide evidence, on behalf of the Appellant. Mr. Killin said that he was retained as a consultant by the Appellant since May 2015, and added that while he was satisfied that while the heritage features of the house had been adequately preserved, he may have advised the Appellant “differently”, had he been retained at the beginning of the renovations. He reiterated that his firm had prepared the initial Heritage Impact Assessment (HIA) dated August 20, 2015, as well as another report dated August 18, 2017, to address current revisions to the design. He spoke about the guidelines provided in the Study (i.e. South Rosedale Heritage Study, discussed earlier in Mr. Goldberg’s testimony), about restoration guidelines, and the difference between Category B and Category C buildings in terms of Heritage Preservation

He reiterated the information proffered by Mr. Goldberg earlier about the process to obtain a Heritage Permit, as well as the dichotomous process used by the Heritage Preservation Services Department to issue a permit. He concluded by saying that given all the work done by the Appellant, and HPS’ willingness to issue a permit on the basis of the HIA made by the Appellant, “Heritage issues are not relevant to this Hearing”.

By way of editorial comment, I would like to point out that Mr. Killin reiterated the explanations, and the conclusions stated by Mr. Goldberg in his discussion of the Heritage Policies of the OP. In the interests of space and time, I have decided to condense this section of Mr. Killin’s evidence into a few paragraphs, by not reciting the evidence in detail.

Mr. Killin was next cross-examined by Mr. Flett, who began by asking the former if he remembered his initial recommendations from 2015. Mr. Killin admitted that he could not remember the details of his original recommendations, but said that he was satisfied with the outcome of the endeavours to preserve the heritage features, notwithstanding how he found himself in a “less-than-ideal situation when he took on the assignment in 2015”.. Mr. Flett asked Mr. Killin if he had specifically commented about the “conservatory”, to which the latter responded by saying that there was an “ephemeral”

structure before, and that the structure “may not have been a conservatory”. Mr. Flett then asked if this structure (i.e. conservatory) had heritage value, to which Mr. Killin said that the building may have had “local value”, and spoke about how the elements that lent the house its heritage character had not been disturbed. Mr. Flett asked if Mr. Killin had examined the interior of the house before coming to his conclusions, to which the latter said that his “mandate of the retainer was to concentrate on the outside”, and not the inside.

Mr. Flett next asked if Mr. Killin had looked for photographs in the City of Toronto’s archives for photographs that showed the “chimney breast, a feature with significant heritage value” , to which the latter replied in the negative. When Mr. Flett attempted to ask more questions about Mr. Killin’s not looking for a specific picture taken in 1913, Mr. Park objected to the line of questioning, referring to my earlier ruling on the exclusion of the picture from 1913. Mr. Flett’s answer was that while the picture had been disallowed, there was no denying the fact that the picture did exist- in other words, its existence was not in question.

I reiterated my ruling from the morning, and reminded the Parties that there was little practical merit to discussing something that was not allowed into evidence.

The next set of questions focused on what had been done with the chimney between 2013 and 2015. Mr. Killin said that given how the chimney had experienced “wear and tear “between 2013 and 2015, it was reasonable to make “alterations”, consistent with the Study’s recommendations. In response to a question about why the porch had been removed notwithstanding its contribution to the heritage value of the house, Mr. Killin said that he did not see this as being” a major issue” because the porch was at the back of the house. However, Mr. Killin insisted that notwithstanding any changes made to the house, the new design was consistent with the guidelines, and therefore satisfied the OP’s expectations in terms of preservation of heritage features.

Mr. Flett then asked Mr. Killin about the appropriateness of making the rear-addition “so big” that it could not be masked by the chimney breast, to which he latter said that the guidelines had been followed, and that HPS had agreed with his assessment, and proposed design. Mr. Flett next asked if Mr. Killin knew of other examples of “greenhouses on the third floor”, to which Mr. Killin said that “off the top of the head”, he could not remember any. When asked about “lanterns” on the top floor, Mr. Killin said that he had not done a “lantern study” in Rosedale

Mr. Flett concluded his cross-examination by asking Mr. Killin if he had examined the building permits that the Appellants had obtained to make alternations to the house, to which the latter replied “It is not my role to refer to permits”. In response to a question about how would he have advised the Appellants about the demolition of the porch had he been retained prior to the demolition, Mr. Killin said that he may have recommended “other solutions”, and insisted that he had “jumped over hurdles” to preserve heritage features.

Mr. Park then re-examined Mr. Killin, by referencing two email exchanges, dated May 29, 2017 and May 30, 2017, respectively. Mr. Park asked Mr. Killin to read aloud the emails, and review the photographs attached to the emails dated May 29, 2017. This exchange established that Mr. Labrecque had sent an email to HPS on May 29, 2017, with three pictures attached, listing his concerns. The concerns expressed by Mr. Labrecque stated how a “clearly visible aspect on the west side of 31 Maple” was “being altered in the last few years, an aspect that (now altered) the home owner wants to continue to alter”.

In his email, Mr. Labrecque said that he “could not find an official approval for this (already altered) alternation.” He said that the first picture demonstrated “a beautiful conservatory, while the “second showed stucco replacing windows, an altered roof line, an altered roof, visible damage to the west wall where the roof was removed, newly exposed brick on the west wall of the original house, that are damaged either from being covered by the roof, or damaged from removal of the roof.” He also said that the photographs demonstrated “ a different color stone on the lower front portion of the house. The color today is quite different and appears to have been tinted.” Mr. Labrecque asserted that the “altering of this conservatory has caused other aspects to be built (i.e. a second floor balcony) downstairs on the other side of the house etc. etc.”, and concluded by saying that “this was a serious issue” to him, and his neighbours. It emerged that the email had been forwarded by Ms. Ragini Dayal of HPS to Ms. Mussellam (the Appellant’s Agent for the COA application), and Mr. Killin for their comments on May 30, 2019, Mr. Killin’s response, by way of email the same day was

*“The current 1-storey appendage is neither a conservatory nor beautiful.
Even the original 1944 addition was not a conservatory, but it may have replaced one.*

Other than the brick base/parapet from 1944, he (sic) poorly proportioned windows, pedestrian eaves details, and asphalt roof, all seem temporary and unrelated to the character of the house.

In my opinion, it may be appropriate to advise the councillor that the 'complaint' is not based in fact, and reads more like propaganda in its 'truthiness', (sic) vague references to neighbours, and lack of a personal email and address.”

Mr. Killin summarized the email exchange above, as proof that Mr. Labrecque’s concerns had been received by HPS, and were dismissed as being “irrelevant”, after which HPS issued a Permit to help the Appellants make alterations to the existing house at 31 Maple Ave

Mr. Flett asked for an opportunity to cross examine Mr. Killin on these emails, which I permitted Mr. Flett took issue with Mr. Killin’s characterization of “the 1 storey appendage , being neither a conservatory, nor beautiful” and stated that Mr. Killen had no evidence, nor basis, for claiming that the building could not have been a conservatory. He also criticized Mr. Killin’s use of “truthiness” (sic) to question the accuracy of the information provided by Mr. Labrecque; Mr. Flett drew parallels between the “Colbert Report”’s use of “truthiness” to “depict how the Republicans lied to

America public". He questioned Mr. Killin's conclusions about when the conservatory had been built, as well as when it had been altered, because "he (Mr. Killin) had not reviewed the permits, as per his own testimony", and claimed that Mr. Killin had impugned Mr. Labrecque's character.

While Mr. Killen agreed that the email written by him could be parsed in the way Mr. Flett had interpreted it, he emphasized that criticizing Mr. Labrecque "was not the intention" of the email. Mr. Killin stood his ground on what, according to him, was fundamentally flawed with Mr. Labrecque's email of May 29, 2017- namely his use of the word "conservatory" to describe what had existed before the alterations began.

When Mr. Flett said that "everybody had referred to a conservatory, at one point or the other", Mr. Killin said he had not done so, because he had concluded that there was no conservatory at 31 Maple Ave., at any point in time". Mr. Flett concluded by saying that Mr. Killin's attempts to cast Mr. Labrecque's well-founded, and well-researched concerns, as "propaganda", without checking the Permits, or attempting to research the matter, should go "to the core of how much weight should be given" to the Witness' conclusions

I assured the Parties, that I had heard the exchange carefully, and was aware of the diametrically opposite views, as well as what caused such divergence, on the opinions expressed in the emails

Mr. Borgal, the Heritage Expert for Party Labrecque, was the first Witness to testify on behalf of the Opposition, because of his being unavailable on other dates.

After Mr. Borgal was qualified as an Expert Witness in Heritage matters, he provided evidence with a description of the Site. He said that the proposed addition to the house "encompassed and overlapped the location of what appeared to have been a one storey conservatory on the west side of the house". He said that the "work" (at the Site) would also include adjustments to landscaping, including the widening of an access driveway. He remarked that previous renovations to the Site, which" do not yet appear to have been completed", included renovations to a rear yard carriage house, and installation of an in-ground swimming pool.

After pointing out that the proposed addition, would have a volume of three storeys, Mr. Borgal remarked that the proposal seemed to "over build in a manner that will accentuate and increase the visible mass of the front of the house, as compared to the existing situation". He said "conservatories were traditionally single storey additions to houses, which allowed for considerable space between the main wall of the house and the property line. This feature was not only a heritage attribute of the original house, but had contributed to the attributes of the neighbourhood in that it permitted sunlight to pass through, between properties allowing for a sense of openness and a rich environmental experience". He opined that filling in the space between houses in "the manner projected" (by the proposal) "defeats this aesthetic, and diminishes the character of the house, as well as its context". Mr. Borgal concluded that the proposed addition would be" over-built in terms of respecting the scale, and massing of the original existing house".

Mr. Borgal opined that the scale of the addition would “visually “crowd” both the Category B buildings at 29 and 33 Maple Avenue” such that the visual impression of openness between the buildings would be reduced. He said that if the intent of the South Rosedale HCD is to preserve the character of the District and its setting, this proposed addition, and its scale, would set a “negative “precedent for future applications, for additions in the District”. He opined that the “precedents” used for the purpose of the HIA prepared for 31 Maple did not properly consider some of the heritage issues, and were “referenced primarily because they had been permitted in the past”, whether appropriate or not.

Mr. Borgal noted that the (rear) “addition increased the visible frontage of the building by a significant percentage”. He added that even if HPS had determined that there would be no heritage impact as a result of a renovation, they would typically “put a considerable number of restrictions, on additions to the sides of houses, where such sides are visible from the public realm”. He therefore found it “surprising that HPS had expressed no concern in this case”, given what he thought was a “considerable impact on the character of the house”.

Mr. Borgal then said that it was his impression that the owners of 31 Maple Avenue proposed to substantially restore the exterior of their property. Based on his analysis of the patterns left in the masonry in past removals, Mr. Borgal concluded that the front of the house were originally embellished with an impressive porch. He added that he not found any documentation in the proposed plans, to address the reconstruction of the porch, or other restoration work.

Mr. Borgal asserted that the landscaping for the property “had been amended in a manner that does not appear to conform with the general context of the community.” He opined that landscaping was a prime contributor to the character of Rosedale, and that the property was missing the large front-yard trees that are characteristic of” this portion of Rosedale” .

Mr. Borgal then expressed his dissatisfaction with the process followed by HPS to review, and approve the proposed changes. He said that after the Appellant made an application, the response from the City indicated that they “accepted the proposed intervention retroactively”, which was completely contrary to his experience with the processes used for approving changes.

Mr. Borgal concluded by stating that the proposed redevelopment of the property at 31 Maple Avenue “should be reconsidered, and considerably attenuated to conserve the heritage character”, of both the property ,and the Conservation District in which it is situated. He also recommended that HPS staff “revisit the approval, and provide direction that will satisfy the overall intent and objectives of the Heritage Conserva8on District in respect to the application”.

Mr. Park began his cross examination of Mr. Borgal by asking the latter to confirm that he had filed his Witness Statement on behalf of Party Senst, to which Mr. Borgal replied in the affirmative. The next question directed at Mr. Borgal asked if the latter

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considered the neighbourhood to be “eclectic” , to which Mr. Borgal said that he considered the community to “be more consistent, than eclectic” . Mr. Park and Mr. Borgal then had a lively debate about the extent of eclecticism in the community, with Mr. Park suggesting that the community was more eclectic than consistent, and Mr. Borgal standing his ground by insisting that it was more homogenous than eclectic. Asked if he had spoken to the HPS Staff, Mr. Borgal replied in the negative. However, Mr. Borgal did agree to Mr. Park’s asking for a confirmation that HPS had issued permits on two different occasions.

When asked if there were guidelines about heritage preservation, and where they may be found, Mr. Borgal provided commentary about where the guidelines may be found in the Study, and added that these guidelines should be considered “Policies” . In response to questions from Mr. Park, where the latter suggested that the Appellants had gone to great lengths to preserve the Heritage Features, Mr. Borgal disagreed; but did not disagree that the Appellants had used brick identical to what originally existed for alteration purposes.

When asked if there was a nexus between the landscape variance and heritage matters, Mr. Borgal said that the landscape variance, however utilized, could not disguise the loss of heritage.

Asked if he was aware that the Category C buildings at 5, 7 and 9 Dale Avenue were going to be demolished, Mr. Borgal replied in the affirmative, and distinguished those demolitions, from the proposal at 31 Maple Ave, through an analysis of the “microcharacter” of the impact the proposed additions would have, when seen from Glen Avenue, which he referred to as an “axial perspective”. Mr. Borgal concluded by saying that something “glassier” would be closer to the original building on the site, and that the change was noticeable if one came 31 Maple Avenue from Glen Avenue.

Mr. Christian Chan, a land use planner, was sworn in next, to provide land planning related evidence on behalf of the Opposition.

Mr. Chan spoke to the location of the Site, and said that the Subject property had an area of 1322.72 m², with a frontage of 22.11m, and a lot depth of 59.41 m. He said that the Site presently had a three-storey detached brick house, containing one dwelling unit, with a rear yard and a two-storey detached habitable coach house on the south side of the property. He said that the house could be accessed by a driveway, and a combined above-grade floor area of approximately 756.28 m², with an accompanying FSI of 0.57 X Size Lot. His account of the existing house at 31 Maple Ave is reproduced, in the next two paragraphs:

The existing front yard setback of the main house is 11.80 m, the existing east side yard setback is 3.52 m to the main east wall, and the existing west side yard setback is 4.05 m to the existing one-storey side addition. The west side yard setback to the existing main west wall of the main house ranged from 7.74 m (existing fireplace flue and chimney outcrop) to 9.50 m for the existing west main wall of the dwelling. The west side yard setback to the existing rear addition to the main house is 14.03 m. The main house has a rear third-storey deck (platform) with an area of approximately 20 m². The existing height to the peak of the roof of the main house is 14.06 m, while the height of

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the existing exterior main west wall is 10.286 m. The rear yard setback of the main house is 16.60 m.

The rear yard (south) setback of the coach house was 0 m, while the east side yard setback was 0.06 m, and the west side yard setback is 0.27 m. The habitable coach house, with two-storeys, had a gross floor area of 203.3 m², or 0.15 X FSI of the Subject Site, and represents approximately 27% of the total gross floor area of both dwellings on the Subject Site (756.28 m²).

By way of editorial comment, Mr. Chan organized his evidence by speaking to the variances, rather than organizing it by the tests corresponding to the Official Plan, and the Zoning By-Laws. I have endeavoured to recite the evidence in the same order as it was presented to me at the time of the Hearing.

Mr. Chan spoke about he looked for COA decisions, from 2012-17 within a 500 m radius of the Subject property, which he considered to be “the broader neighbourhood in South Rosedale”, and found 117 decisions. He excluded decisions South of Bloor, East of Don Valley, West of Jarvis/Mt. Pleasant, and the ravine close to Roxborough Drive, for analysis purposes. Mr. Chan regretted his not providing an independent Study Area map, but said that he had walked on the streets that been chosen by Mr. Goldberg in his (i.e. Mr. Goldberg’s) Study Area, and was “willing to adapt the same Study Area.”

Speaking to the variance respecting density, Mr. Chan said that any density proposed on any lot in the neighbourhood, must be consistent with the existing, and the planned context of the area, for the densities of new development to be considered “acceptable”. He said that if the densities are not mutually consistent , then they could set a “precedent”, which may destabilize the neighbourhood. He opined that the proposed 0.681X density at 31 Maple, was not “in keeping” with the existing, and planned context for low-rise homes, in the nearby and adjacent residential properties. Mr. Chan was concerned that while the habitable floor area in the basement was not included in the GFA under By-law 569-2013 for technical reasons; it would be expanded later to include storage rooms, mechanical rooms, as well as the wine cellar, as per the Appellants’ stated intention.

Mr. Chan agreed that the Zoning By-laws allow for additions to the existing building stock up to an FSI of 0.69X , but emphasized that these additions should be to the rear of the existing building. “Instead”, he said, “the proposal before the TLAB, proposed a side addition, despite calling it a “back addition”; and declared that a side addition “ could not get a 0.69 FSI variance”.

Speaking next to the height setbacks and sidewall height variances, Mr. Chan addressed what he saw as the lack of compliance with the Zoning Standards in three different cases with respect to the variances respecting height setbacks, and sidewall height variances . According to Mr. Chan, the proposed three storey west addition did not comply with the Zoning standards for building height under the new Zoning By-law, the existing main house did not comply with the maximum building height for both Zoning By-laws, and the side wall height did not comply with the maximum side wall

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height under the new Zoning By-law. He added that variance sought for the side wall height is “usually a function of the slope of the property”, and suggested given the slope of the property, the proposed side wall height of 10.54 m for the new three storey addition, would effectively “create a new side wall, that was not in compliance with the standard for side walls”.

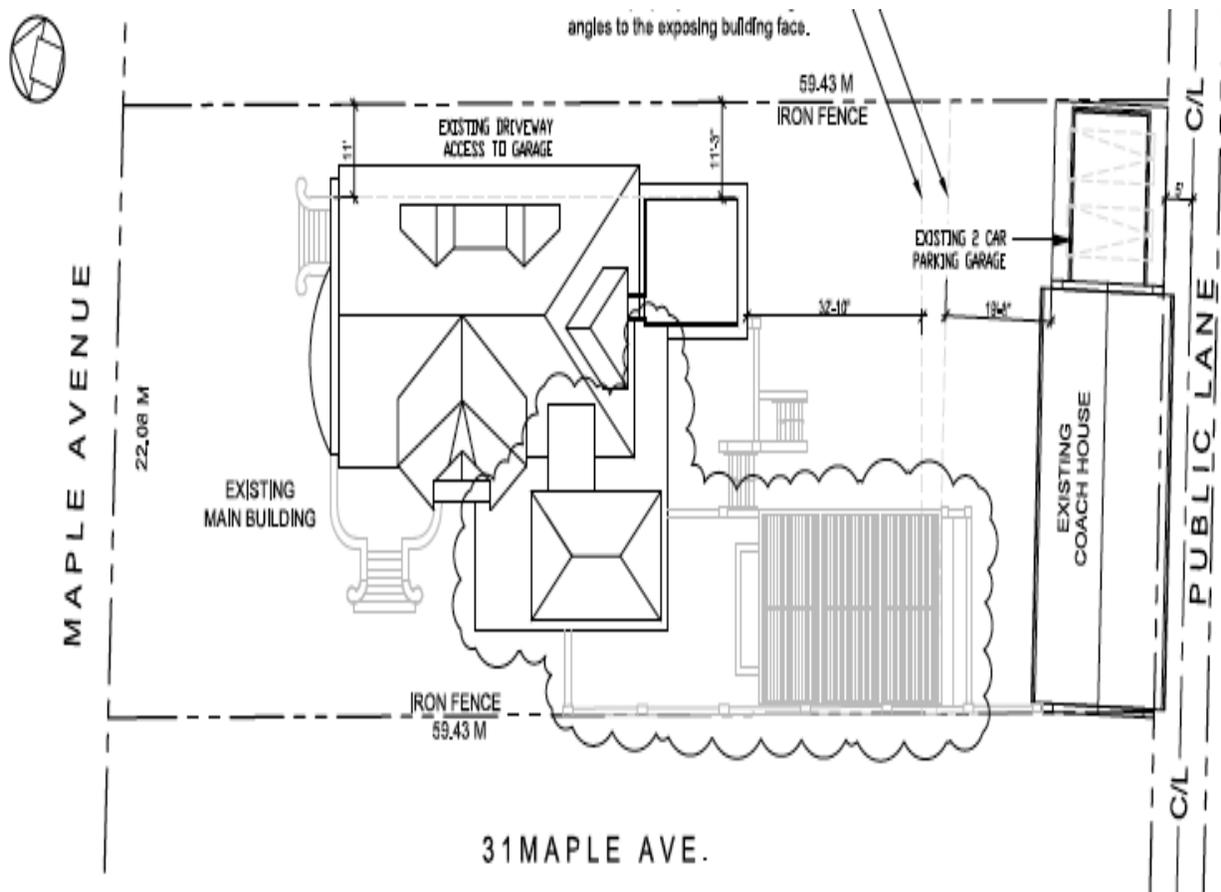
Mr. Chan said that the combined impact of the height of the proposed main side wall, the proposed setbacks, and the new side addition, would be “more than significant on the neighbours at 29 Maple Ave”, with respect to both privacy and overlook.

Addressing the variances respecting the landscaped open space, and soft landscaping , in conjunction with the variances for the driveway, Mr. Chan said that the requested variances, if approved, would “intensify a lot that was already intensified” and were consequently “not minor”. He pointed out that two families would be living in adjacent homes on the same lot, and asserted that as a consequence, there would be a significant impact “not only on the driveway at 31 Maple, but also on the neighbouring properties”. He added that the access to the garage was not from the rear laneway to the south, but from the front of the property. He asserted that the lack of rear access to the garage from the laneway, negatively impacted the ability to provide adequate landscaping on the property to address the neighbours’ privacy concerns.

Mr. Chan also stated that the positioning of the garage was such that “vehicles would now have to turn to face towards the interior of the lot, in order to safely exit the lot on the driveway, which was on the east side of the property”. He concluded that the construction of the driveway was such that one would have to turn on the proposed hammerhead to exit from the garage, which necessitated the Appellants’ having to seek variances to both By-Laws. He also reiterated that the “previous driveway had been constructed without obtaining variances from the COA”. By way of editorial comment, the picture on the next page demonstrates the layout of the garage, and the hammerhead at 31 Maple Avenue.

Based on the above evidence, Mr. Chan concluded that the proposal did not satisfy the tests of upholding the general intent and purpose of either the Official Plan, or the Zoning By-Laws.

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Mr. Chan then addressed the test of minor. He said that the proposal would alter the dwelling such that it would not be consistent with the existing character of the adjacent residential properties. He opined that the current configuration with two dwellings on the Subject Site is “already out of character”, making it a unique situation, not representative of the surrounding neighbourhood. He then asserted that there would be a “significant planning impact”, even if the dwelling would be built “as-of-right”, because the “Zoning By-Law does not contemplate maximization of all applicable Zoning Standards”. Mr. Chan concluded that the proposed dwelling, did not maintain the character of the area, since it resulted in a dwelling “that is wider, deeper and denser than the nearby residential properties”. He also stated that the variances relating to the west-side addition could not be considered minor because they “add approximately 145.5 m², which is approximately 72% of the floor area of the existing coach house (203.3 m²)”, “.

Based on this evidence, Mr. Chan concluded that the proposal did not satisfy the test of minor.

I asked Mr. Chan if the Planning Act, or the Official Plan proscribed two families from living in two houses, constructed on the same lot, and was advised that there is no such proscription.

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Mr. Chan asserted that the proposal would not satisfy the Built Form, and Heritage policies of the Official Plan, “key to the test of the desirability of the proposed development of the Subject Site, based on the “the submissions by heritage professionals”. He also spoke about the impact of the two roof decks proposed at 31 Maple Ave in terms of overlook impact, though they “were not the subject of the requested variances”.

Mr. Chan said that the proposed west side addition to 31 Maple Avenue would exacerbate the impact on privacy and overlook “that is already experienced by the residents at 29 Maple from their west side lot line, into their yard and dwelling”.. The cumulative impact, Mr. Chan concluded, was such that the proposal would fail the test of appropriate and desirable development.

Mr. Park cross examined Mr. Chan on behalf of the Appellants. He began by asking Mr. Chan if he agreed that if 31 Maple Ave was in an “eclectic” neighbourhood, because no two houses looked the same”, to which the latter replied by saying that he could not specifically comment by virtue of not being an architect, but could “generically” agree with the statement. When asked if there were a number of properties in the neighbourhood that did not conform to the prescribed Zoning standards, Mr. Chan said that such a statement was true of any neighbourhood.

Mr. Park next asked Mr. Chan if the 0.69X Lot Size FSI sought by the Appellant, was true of the property at 4 Dale Avenue, to which the latter agreed, but added that the lot size at 4 Dale Ave. was much smaller. Mr. Park asked Mr. Chan to confirm that the original property at 40 Maple Ave. was 890 sq.m., and that 525 sq.m. had been added as a result of an OMB decision resulting in an FSI of 0.9X times the size of the lot , to which Mr. Chan agreed, but added that the latter housed a dwelling with multiple units.

Mr. Chan agreed with Mr. Park that there was significant overlook into 29 Maple Ave. from 45 Glen Ave, as well as possibly into 31 Maple Ave. While Mr. Chan agreed that up to four cars could park in the garage at 29 Maple Ave., he distinguished the parking situations between 29 and 31 Maple Ave. by stating that while at the former location, “cars could go backward towards the entrance if needed, but also turn forward and go forward” because it was safer”, while at 31 Maple, the cars “would have to reach the hammerhead before turning, in order to access the street”. Mr. Chan also agreed that while a driveway width variance was recommended by the Zoning Examiner, and that there was no recommendation for a “hammerhead related variance”, but did not agree with Mr. Park’s contention that turning on a hammerhead was the optimal solution, from a safety perspective.

Mr. Chan also agreed with Mr. Park that from the third floor terrace at 29 Maple, one could look into not only the backyard of 31 Maple Ave, but also 33 Maple Ave, and then went to provide other examples of how such overlook was a common feature in this neighbourhood. He emphasized the importance of privacy, to which Mr. Park suggested that the presence of a privacy hedge, as had been suggested by Appellants in their submissions, would be helpful to protecting the privacy of the neighbour. Mr. Chan confirmed for Mr. Park, that the Appellant, had installed the existing fence, along the wall , between 29 and 31 Maple to protect privacy, but said that the “size of the

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addition was so massive”, that even the 9 meter separation of 31 Maple, and 29 Maple, would not help protect the privacy of his clients.

On the issue of the proposed landscaping at 31 Maple Ave, Mr. Chan said that the majority of the 13 trees referred to by the Appellant were at the front of the house, when the privacy concerns of Party Labrecque focused on what would be constructed at the rear of the house. When Mr. Park pointed out that that 29 Maple had fewer trees, and foliage than 31 Maple, notwithstanding their allegations about loss of privacy, Mr. Chan said that he did not see the connection between “planting trees, and overlook into the neighbouring house”.

Speaking to the side yard setback, which is allowed by the By-Law to be 1.8 m wide, Mr. Park asked Mr. Chan to confirm that the existing side yard setback of 4.5 m would allow the Appellant to build towards 29 Maple for the first 17 m of the proposed addition, because they would still be within the prescribed setback of 1.8 m . Mr. Chan agreed, but added that the impact of the proposed sidewall with a 10 m height, was so significant that “it didn’t matter whether the separation was 4.5 m (as it exists now), versus 1.8 m (which is allowed by the By-Law)”. Mr. Chan also agreed with Mr. Park that 29 Maple did have three floors on the side facing 31 Maple Ave, and that the Appellants were not proposing to include terraces “on the side, facing 29 Maple”.

Discussing the issuance of the Heritage Permit, Mr. Chan said that he was “unaware if HPS had evaluated the proposal in light of the Study” . When asked to confirm that City’s Planning Department did not have an objection to the proposal, Mr. Chan talked about the importance of giving notice in the neighbourhood, to find out if the neighbours had any objections. When asked to confirm that no City department had objections to the proposal, Mr. Chan emphasized that the City had asked for conditions to be imposed, if the proposal were to be approved

Mr. Park asked Mr. Chan if he was aware that HPS staff had recommended that the height of the proposed addition match that of the main building, resulting in the requested height variances before the TLAB. Mr Chan said that he was not aware of the HPS’ advice , but then went on to explain why HPS may have recommended the height, to “get the cornices to line up”. However, he added that there was a difference between how planners such as himself, and heritage specialists viewed the height variance, and that “ heritage experts ought to speak to this issue”.

On the matter of the application of Exception 1438 (i.e. to By-Laws 569-2013 and 438-86), Mr. Chan was vociferous in asserting that the Exception applied only to a rear addition, whereas what was proposed at 31 Maple Ave. was in effect, a side addition. Mr. Park read out the definition of the Main Wall from the Zoning-By Law ,

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Mr. Park then emphasized the phrase “any exterior wall of the building, or structure”, and suggested that the outside wall of the existing one storey room at the back satisfied

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this condition; and that as a consequence, any addition at the rear of the building, utilizing the same main wall, was consistent with the By-Laws. Mr. Chan repeated his earlier answer about side yard additions, but then changed his opinion to “ a one storey addition was possible, but not a third storey addition”.

Mr. Chan disputed that the size of the addition was 124 sq.m, as stated by Mr. Park , and asserted that “the most accurate figure would probably be 131 sq. m.” When asked about the FSI of 29 Maple Ave., for comparison purposes, Mr. Chan said that he did not know the answer.

Mr. Park then asked Mr. Chan to explain his use of the word “precedent” - did it mean that if one property owner could get a given variance approved on their property, then could the neighbours expect approval of the exact identical variances on their properties, and nothing more? Mr. Chan answered by saying that “everything in the neighbourhood should be looked at” by way of precedent, to determine what can be granted.

The last question in the Cross Examination explored the OP’s emphasis on compatible development, to which Mr. Chan said that the OP policies require new development to “reinforce and respect” what existed in the neighbourhood. He then reiterated how the proposed development would set a “precedent” for three storey additions, which would not “reinforce and respect” what existed in the community.

Mr. Labrecque, the Party in Opposition to the Appeal, was the next Witness to take the stand. By way of editorial comment, only such portions of the evidence which establish a nexus to planning issues before the Tribunal, are recited. Mr. Labrecque provided many fascinating glimpses, and vignettes about growing up in Quebec, and training to be a social worker who worked with the City of Toronto’s Shelter Department, before becoming a successful real estate agent

After he was sworn in, Mr. Labrecque wanted to submit a letter from the SRRA, requesting that their earlier submission of the Witness Statement , dated October 20, 2017, be taken into consideration, even if they would not be present to speak to their Witness Statement. Mr. Park objected to the introduction of the letter because he would not be able to cross examine the author of the letter, to which Mr. Flett said that the letter was admissible under the SPPA, if introduced, and the Tribunal could give it “as little, or as much weight”, as it thought appropriate..

I ruled that the SRRA could submit the letter to the TLAB if it chose to do, and I would then make a determination what weight, if any, could be given to the letter.

Mr. Labrecque referred to the two requested variances respecting the length of the house, and demonstrated how the house at 31 Maple Ave. was already longer than his house at 29 Maple Ave. on the basis of the data map. He said that he thought that it would be “unfair” to allow the Appellants to extend the house, and make it even longer. He then claimed that a new platform contemplated at 31 Maple Ave., five feet above the ground, would make it possible for the residents of 31 Maple Ave. to look into the first

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floor of his house. Mr. Labrecque claimed that the new porch installed at the back of the house of 31 Maple Ave., had “limited” his “ability to find solitude”. He objected to the proposed three storey addition before the TLAB, on the ground that it is a “side addition”, even if the Appellants did their best to classify it as a “back addition”. He also claimed that the addition has “the size of a regular Toronto house”.

Mr. Labrecque also expressed concerns about the size of the existing “secondary house”, and questioned if the owners of 31 Maple could convert part of their house into a Bed and Breakfast. Mr. Labrecque drew my attention to a third floor deck, “which had not been mentioned before”, and said this deck, in conjunction with the “oversized” first floor deck, described earlier, would provide multiple vantage points for the Appellants to keep track of what was going on inside his house at 29 Maple Ave. He quoted Mr. Goldberg, who had stated that overlook was common in this neighbourhood, and opined that the overlook was asymmetric, because 31 Maple would have more of an overlook into his house than his overlook into 31 Maple.

Mr. Labrecque said that even if the Appellant, planted trees, and installed hedges as promised, it would still take twenty years for the trees to grow to thirty feet and provide adequate privacy, and wondered about the negative impact on his privacy in the interim. Mr. Labrecque also asked that if the trees did grow to thirty feet, would they not block the sunlight coming into his house? He also showed a picture of one of the bedrooms in his house, facing 31 Maple, and said that his young children, who shared that bedroom, could sleep only with the blinds down, because of privacy concerns. Mr. Labrecque also insisted that “contrary to, what had been stated earlier by some Witnesses”, he could not look into the backyards of 31 Maple, or 33 Maple Ave, because of privacy screens that he had installed on his terrace

.Mr. Labrecque pointed out repeatedly that Mr. Killin was brought on as a consultant after the removal of the porch and other features, which he deemed to be important Heritage Features. He opined that the HIA seemed to have been completed after the demolition, “rather than the other way round”. He questioned how thorough Mr. Killin had been in his work, because the latter claimed not to find pictures of 31 Maple Ave. “which were available, even on the internet”. Based on these observations, Mr. Labrecque wondered if the information provided to HPS was adequate, to issue a Heritage Permit

At various stages, Mr. Park objected to Mr. Labrecque’s providing opinions on what was relevant to Heritage matters, because he was not qualified to be a “Heritage Expert”.

Referring to the Report from the Urban Forestry Department dated June 2, 2017, Mr. Labrecque questioned the reasoning of the Appellants in comparing their proposed driveway width, to the width of existing driveways, “because while the existing driveways were at the front of the house, 31 Maple proposed a driveway at the back of the house”. He disputed the Appellants’ account of the driveway’s having existed before, by saying it was “created” through the “killing” of the City Tree”. He also objected to the loss of trees, whose girth, in his view, was such that they should have been subjected to the Tree By-Law 813, as well as his not being given notice when they were cut down.

Mr. Labrecque emphasized that his objections were with respect to the “improper process” followed by the Appellants to get what they wanted, and their non-adherence to the purpose of what had been granted to them by way of variances. As an example, he showed a picture of a white coloured car parked on the hammerhead at 31 Maple Avenue, and said this picture was proof that the hammerhead was being used as a parking spot.

In response to my question about why Mr. Labrecque had not altered Mr. Borgal’s retainer to enable the latter to have a conversation with the HPS, Mr. Labrecque’s response was that he himself had tried to have conversations with the HPS staff on numerous occasions, and had had “no luck in contacting them”. However, HPS staff had contacted Mr. Killin, to discuss Mr. Labrecque’s objections, and had relied on the former’s comments, rather than following up with him directly. Mr. Labrecque also opined that the HPS staff may have been overwhelmed, and observed that this was not uncommon with various City departments to not return phone calls, and provided an example of how overwhelmed the Shelter Staff were, when he had worked as a counselor at a City run shelter.

In addition, Mr. Labrecque said that when he spoke to Mr. Borgal about contacting the Heritage Department, the latter was concerned that they would “get their backs up against the wall, if he got involved”, and may get “legal advice”, resulting in the whole process slowing down..

Given the sheer range of topics canvassed in the Examination of Chief, and the lack of demonstrable relevance of some of the issues canvassed, I asked Mr. Flett to summarize the planning concerns expressed by Mr. Labrecque. Mr. Flett said that this case brought forward adverse impacts that are not usually not canvassed at Hearings, such as his client’s ability to develop their property being constrained by the development next door. Mr. Flett said that the interference with his client’s right to develop, and enjoy his property to the fullest extent, was pertinent to the tests of appropriate and minor. Mr. Flett also said that his client was not satisfied about the cutting down of the maple tree at 31 Maple Ave., and was not convinced that HPS had completed a thorough assessment before issuing Permits for alteration. Mr. Flett confirmed that Mr. Labrecque had serious concerns about how his privacy would be impacted as a result of the rear addition planned by the residents of 31 Maple Ave..

Mr. Labrecque was then cross examined by Mr. Park. By way of editorial comment, there were relatively few questions asked of Mr. Labrecque, who feistily restated his concerns about the perceived procedural flaws in the studies completed by the Heritage Department, and the Urban Forestry Department. Some of the discussion focused on points that are not relevant to the determination of this Appeal, such as whether Mr. Labrecque received \$ 3000 (as he claimed), or \$ 5000 (as Mr. Park insisted) from the Appellant, with respect to a matter, not before the Tribunal.

However, it was interesting to note that Mr. Park was firm in stating that a Permit had been issued by the Heritage Department for the demolition of the porch at the back of 31 Maple, which the Opposition claimed, had been completed without getting the

requisite Permit. Mr. Labrecque stated that he was concerned that he would not be allowed to develop the swimming pool at the back of the house, because of the cinderblock wall constructed by the Appellant at the back of their property. Mr. Labrecque also spoke about his intention to develop his swimming pool, and said that he had a number of options, such as reducing the size of the garage, and developing a dressing room, or increasing landscaping. However, when asked when would he begin to develop his property, Mr. Labrecque said that he was “ thinking actively about it, and hadn’t thought about it today”.

I again asked Mr. Flett to help me understand the nexus between his clients’ inability to develop his property in the future, and the Appeal in front of me, to which Mr. Flett reiterated that he “would vociferously argue “that it was his client’s right to develop his property, such it would meet his expectations. He concluded by stating that this factor was related to the test of appropriate development, and minor, and repeated that his client had lost confidence in the ability of the City’s departments to follow process, as a result of the lack of attention to his complaints about the process, and was therefore not confident that the Appellants would follow through on any conditions imposed by the TLAB, if the proposal were approved

The last Witness to give evidence was Mr. Kuntz, a Registered Professional Forester, retained by the Appellants to advise on forestry matters. Mr. Kuntz was qualified to give evidence in forestry, and distinguished Foresters from Arborists by stating that while “Foresters look at trees collectively, Arborist looks at trees individually”. He also advised that Arborists “trump” Foresters for the purposes of expertise, because they have to obtain comprehensive training about forests, Arborists do not have to complete such training, which prevented them from proffering evidence about the collective impact of trees.

Mr. Kuntz said that a maple tree, formerly at the front of the property, had to be removed because it was “in bad shape” as a result of damage caused during ice-storms in 2013 and 2017, as well as damage when the driveway was being developed. He said that the City had initially objected to Variances (3) and (4) (i.e. FSI and Driveway Width) , but had withdrawn their objections when the driveway width was reduced. He said that the Appellant had planted a “ a large London tree”, where the maple tree had formerly stood. Mr. Kuntz explained what he meant by a “large tree”, by saying that while trees were usually planted when small, and would grow to be large over a period of time, it was also possible for large “adult” trees to be planted *in-situ* ; and that such trees are referred to as “large trees”.

Mr. Kuntz referred to an email from Urban Forestry, which said that the department would not object to Variance 4 (Landscaping variance), and would not object to Variance 3 (FSI), if the COA tied the approval of the proposal to the Site Plan. With respect to the Landscaping Plan, Mr. Kuntz said that he advised the Appellant to plant many specimens and species “such that a large canopy would be obtained”. He described which plants would be planted , and where they would be planted in the side yard and backyard of 31 Maple Ave. He said that at the rear of the house, two Acer Palmettums would be planted, and a Magnolia would be planted close to the coach house.

He said that next to the pool (and facing 29 Maple Ave), seven “Trembling Aspens” had already been planted; and added that a hedge would be planted at the front of the property, along the property line towards 29 Maple Ave. There would also be nine European Beech trees in planters near the property line demarcating 29 Maple Ave., which would provide “excellent screening”. There will be a total of seven lilac trees planted close to the steps, at the front of the house.

Mr. Kuntz said that many of the trees described above are native specimens, sustainable, and would “provide good screening”. He asserted that there would “be a tremendous increase in greenery with significant canopy cover”. Mr. Kuntz reiterated that the canopy cover will provide “100% screening” in response to a question from Mr. Park about privacy.

Discussing the removal of the Maple tree, Mr. Kuntz reiterated that the City removed the maple tree because of “numerous injuries”, as discussed earlier. Mr. Kuntz also stated that the increase in the footprint of the house, as a result of the addition to the west of the house, will have a negligible impact on the planting of the trees, allowing for the development of a canopy, which could robustly address privacy concerns. He added that the “Forestry Plan was aggressive” and would “soon cover the front and sides of the house with canopy”. Commenting on the use of the third floor of the proposed addition, Mr. Kuntz said that it would be used as a greenhouse to “help consolidate the plants that were growing throughout the property”, and that the “spouse of the owner” wanted to “green up the property, in contrast to the neighbours”. He reiterated that if the canopy were allowed to develop to the maximal level, it would completely prevent any views from the property at 31 Maple into the property at 29 Maple Ave.

In response to my question, about how long it would take for tree canopy to grow to its fullest extent, Mr. Kuntz said that it would take “25-100” years.

Through his cross examination, Mr. Flett established that Mr. Kuntz had not examined the maple tree that had been cut down, and had depended on pictures provided by the owner of 31 Maple, to formulate his conclusions. Mr. Flett asked Mr. Kuntz to confirm that the photographer who had taken the photos of the maple tree was not a Forester, or an Arborist, or a Professional Photographer, to which Mr. Kuntz said that he didn’t know the identity of the photographer. It was also established that Mr. Kuntz had arrived at his conclusion by looking at a single picture of the fallen tree.

Mr. Flett next focused on the soil quality to establish that trembling aspens would not be able to grow to their fullest extent. Mr. Flett insisted that trembling aspens were not recommended for urban forestry, to which Kuntz said he was a forestry expert, and not an arborist. Lastly, Mr. Kuntz confirmed for Mr. Flett that what he meant by “100% coverage” was actually “40% of the lot size, after the canopy had fully developed over a period of 25-100 years.

During oral argument, Mr. Flett stated that while his clients' preference would be for the proposal to be refused in its entirety, he would ask the TLAB to impose symmetric conditions of approval with respect to 29 and 33 Maple Avenue(i.e. the same conditions recommended by 33 Maple, as a result of the Settlement with the Appellants, would now be recommended for imposition on the side of the Subject property facing 29 Maple Ave), if the TLAB chose to approve the proposal. Mr. Park said that his client was amenable to the suggestion of symmetric conditions for 33 Maple Ave, and 29 Maple Ave, if the TLAB chose to allow the Appeal. I asked Mr. Park to recommend language appropriate for the condition, after consulting with Mr. Flett

On July 19, 2019, I received an email from Mr. Park with suggested language for the conditions, as recited below. Mr. Park added that he had emailed Mr. Flett requesting for comments on the proposed language, but had not received any response from the latter.

PROPOSED LIST OF CONDITIONS FOR MINOR VARIANCE APPROVAL

Conditions pursuant to Agreement with 33 Maple Avenue and City Conditions:

1. The owner shall frost or otherwise make opaque the existing glass screening on the north and east sides of the deck located above the car garage forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.
2. The owner shall reposition any exterior lighting located on the subject lands so that it is not directed into the adjacent lands at 33 Maple Avenue.
3. Urban Forestry: Approval of Variance #3, respecting the width of the driveway in the rear yard, shall be substantially in accordance with the Site Plan dated April 3, 2018 and included as part of Exhibit 8.
4. Heritage Preservation Services: Prior to the issuance of a building permit, building permit drawings including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provisions of Section 42 of the *Ontario Heritage Act*.

Additional Conditions being offered by Appellant, 31 Maple Avenue:

5. The owner agrees to implement and maintain the landscaping substantially in accordance with the landscape plans prepared by Earth Inc., dated November 12th (no year given) and marked as Exhibit 17.
6. The owner shall frost or otherwise make opaque the proposed new windows located on the west elevation of the proposed addition facing 29 Maple Avenue, as shown on the West Elevation/Addition dated June 23rd, 2017 and included as part of Exhibit 8. For purposes of clarity, this condition does not apply to the windows located on the third floor of the proposed addition or to any of the existing windows of the main house.

Additional Conditions being requested by 29 Maple Avenue:

7. The owner shall frost or otherwise make opaque the existing glass screening on the west side of the deck located above the car garage, forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.

8. The owner shall reposition any exterior lighting located on the subject lands so that is not directed into the adjacent lands at 29 Maple Avenue.

I would like to end the Evidence Section by pointing out that Mr. Bechir Rabbat, a Participant, and the Appellant, Dr. Narendra Armogan, spoke briefly, on the first, and last days of this proceeding respectively. Their evidence has not been recited because there was no demonstrable nexus with the planning issues in front of me.

ANALYSIS, FINDINGS, REASONS

It would be necessary for me to very briefly comment on my Rulings at the beginning of the Hearing.

Party Labrecque put forward a Motion proposing to allow Mr. Borgal to testify on their behalf on heritage matters, notwithstanding the fact that he had been initially retained only by Party Senst. As such, Mr. Borgal would have had to withdraw as a Witness after Party Senst's Settlement with the Appellants, which meant that they were no longer in opposition to the Appeal. My decision to allow Mr. Borgal to testify on behalf of Party Labrecque was based on two factors-

- 1) Heritage loss is experienced by a community rather than an individual property owner, which means that the neighbour at 29 Maple may have been impacted, no differently than the neighbour at 33 Maple.
- 2) Admitting Mr. Borgal as a Witness would not have been prejudicial to the Appellants because his Witness Statement had been filed, as part of the disclosure of Party Senst, before the deadline for filing Statements. The Appellants asked that Mr. Borgal restrict himself only to issues canvassed in his Witness Statement, which the Opposition agreed to- consequently, I ruled that Mr. Borgal could testify as long as the scope was restricted to what was provided in his Witness Statement.

Party Labrecque then put forward a second Motion to include a photograph taken in 1913, showing the chimney, which they claimed, was important to the heritage discussion of the loss of heritage features, past and present, at 31 Maple.

The decision to exclude the 1913 picture was based on the inability of the Moving Party to convince me that the picture in question added value, or significantly informed the heritage discussion. The allegation was that the Appellants had removed the chimney, allegedly visible in the 1913 pictures, which the Opposition claimed, had significant heritage value. However, the fact of the matter is that 31 Maple Avenue has been categorized as a "Category C Heritage Property" was uncontested. The South Rosedale HCD guidelines clearly

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mentioned that Category C Heritage Buildings can undergo “some modifications”, and the Moving Party did not argue at any point during the Motion, that the modifications made by the Appellants fall outside these guidelines. Consequently, I did not see how the inclusion of the picture from 1913 could inform the Heritage discussion, and ruled out the inclusion of the picture from 1913 from being admitted into the record.

Before analyzing the evidence, I would like to list what I deem to be important principles in the determination of this case:

- 1) It would be trite to state that the By-Laws have to be read literally, while Policies in the OP are open to interpretation. The By-Laws are prescriptive standards, which need to be adhered to, and cannot be re-interpreted. In colloquial language, the language of the By-Law is an example of “what you see is what you get”.
- 2) The OP defines broad goals, and objectives for a community, and the language used in the Policies provides scope for interpretation by the reader, resulting in interpretations which can span a spectrum of conclusions, when not being in outright opposition
- 3) Guidelines listed in a Study, cannot rise to the level of Policies, and may be seen as best practices, unless there is specific direction from City Council for a different approach
- 4) The TLAB has no jurisdiction over the process utilized to arrive at a given decision, and cannot set aside a decision taken by the COA on the basis of allegations of a flawed process, in the issuance of Reports submitted to the COA, before it heard the matter. Section 45.1 of the Planning Act focuses on four tests, none of which relate to the validity of processes and procedures followed by the Parties, in the matter appealed to the TLAB.
- 5) The expertise and professionalism of different departments in their respective areas, needs to be recognized and respected. Complaints about the alleged lack of procedural incompleteness, or even gross incompetence, about Reports submitted by a given City department, do not amount to determining that the Report’s findings are flawed.
- 6) Any person, or department, accused of not being thorough in their findings, should be given an opportunity to explain their findings, and defend themselves where necessary. The provision of an opportunity to question the findings of a department, extends to summoning an individual, or department, to be present at a TLAB Hearing, in order to provide evidence.
- 4) The TLAB does not have the jurisdiction to order any City department to prepare a new report, respecting any Subject property.

From my perspective, there are three principal questions, whose determination is crucial to the outcome of this case:

- 1) Can the Appellant build a three storey rear addition to the existing house at 31 Maple Ave, without violating the existing By-Laws?

- 2) Are the proposed renovations to be carried out at the Site such that they are inconsistent with the OP?

- 3) What impact does the proposed addition at 31 Maple have on the privacy of the house at 29 Maple? Are the proposed forestry solutions to address privacy adequate in terms of addressing any adverse impact caused by the proposed additions?

I begin by analyzing the test of upholding and respecting the By-Laws, because the genesis of the matter in front of me was triggered by the proposal for a rear addition- the answer to approving, or refusing the back yard addition, lies in the By-Laws.

. The Appellants rely on Exception 1438 in the RD Section in By-Law 569-2013, and By-Law 438-86, as stated below:

Exception 1438 (E)

If a **lot** has a permitted maximum floor space index of 0.6, and has a **detached house** erected before October 15, 1953, the **detached house** may be enlarged by an addition to the rear of the **building** if:

- (i) the overall floor space index for the lot, including the addition, does not exceed a total of 0.69;

- (ii) all finished floor levels within the addition are no higher than the uppermost floor level in the existing **building**;

- (iii) no part of the addition is closer to the nearest **side lot line** than the shortest distance between the existing side **main wall** of the **building** and the **side lot line**; and

- (iv) any prior addition is at least 5 years old.

The Appellants demonstrated that the property at 31 Maple Ave. had a FSI of less than 0.6, and were requesting for a variance of 0.681, which is less than the 0.69 allowed under the Exception. They demonstrated that the height of the addition was 2.5 m lower than the existing height of the main building, and that no addition had been built in the last five years. The Appellants demonstrated that the outer west main wall of the building was a straight line when seen from the front of the property, which then bulged out, at the existing one floor addition at the back of the house. The wall of the proposed

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addition would start , where the one storey addition stands presently, and extend in a straight line to the back, which meant that a minimum distance of 4.5 m would be maintained between the main wall of the addition, and the property line between 31 Maple, and 29 Maple Ave- this results in the proposal's satisfying (iii) above.

It was therefore demonstrated that the proposal satisfied all parts of Exception 1438 (E) , allowing the Appellants to enlarge the detached house, through an addition to the rear of the building, without violating the By-Laws.

The Opposition, on the other hand, argued that the Exception applied to back yard additions, and not to side yard additions. They classified the proposed addition as a side yard addition, based on its visual appearance. At a later stage, they argued that the part of the proposed addition that is attached to the main wall of the existing one floor addition at the back is small "(about a 100 sq. ft.)", and is not significant enough for the aforementioned Exception 1438 (E) to apply, and then said that while a one storey back-yard addition was feasible, a three storey addition was not feasible.

The proposal is an interesting case of perception being different from reality. It has demonstrably satisfied the four clauses listed in the Exception 1438 (E); and is therefore considered to a back yard addition, even if the perception is that of a side yard addition. Even if the Opposition is correct in pointing out that the Appellants have used a mere 100 sq. ft. of space to justify the rear addition, there is no mention in the By-Laws about how large, or how small any shared space between the existing, and the proposed, for the Exception to apply. I reiterate that the Exception is a straight forward application of four different clauses, and any property that satisfies the four conditions is deemed to be eligible for the exception.

On the basis of this reasoning, I find that the proposed addition at the back of the house does not violate the By-Laws because it satisfies the conditions set forth in X1438 (E) , under By-Laws 438-86, and 569-2013; I find that the Appellants' adding a backyard addition is consistent with the By-Laws.

Mr. Goldberg divided his comments on the test respecting the By-Laws into two parts, where one group, consisting of seven variances which are already in place, while the second group, relate to the rear addition. He spoke briefly to the first group of variances, and said that the overall objective of the Zoning By-Laws is to ensure that there are no unacceptable adverse impacts. He opined that the variances are such that the resulting building fits into what already exists in the community, "and are not offensive to the neighbourhood" . The length and depth respecting the addition were demonstrated to have no negative impact, given the lot size. While the heights of the walls of the proposed addition may be significant purely on a *prima facie* basis, the evidence demonstrated that the heights of buildings in the neighbourhood are higher, including the Subject Property itself, and were actually recommended by HPS to align cornice lines.

The Opposition criticized the FSI of the proposed house on numerous occasions, and alleged that what was being added was the "size of an average Toronto home". FSI is a

parameter that should be used with caution, because it is a ratio of two variables, namely the size of the house in comparison to the area of the lot. The FSI of houses in the same neighbourhood, or even adjacent houses, does not provide for an apples to apples comparison, unless there is specific information about the lot sizes, or the property sizes. There is no information in front of me about the “size of an average Toronto home” or that performance standards would be negatively impacted by the approval of the requested FSI. No weight is attached to the Opposition’s objections to the parking hammerhead being used as a permanent parking spot on the basis of a single photograph offered without contextual information about when, or how the car in question was parked on the hammerhead.

Consequently, I find that the proposal is consistent with the intention, and purposes of By-Laws 438-86, and 569-2013.

As stated earlier, the loss of cultural heritage is one of the important issues canvassed by the Opposition; the answer to this issue can be found in the discussion of the test respecting the Official Plan.

The OP advises that change must be such that it respects what already exists in the community. The Appellants drew my attention to the types of variances that had been granted in the community by the COA in the neighbourhood, in terms of side yards, rear yard additions, three storey side additions, over a seventeen year period. The evolution of variances illustrated how two very important features of how changes in the community, are consistent with the OP- firstly, there is a narrative of gradual evolution, and secondly, each phase of evolution, has been consistent with what previously existed in the community, resulting in the stability of the community being maintained.

One of the principal points made by the Opposition was that there was no other single building in the Study Area, that had been approved for all the variances, requested for by the Appellants. While that may be true, the OP does not require replication of what already exists in the community, but requires new proposals to be consistent with what exists in the community. Thus, the proposed rear addition, may be seen as the next increment of change in the neighbourhood, consistent with the OP, even if the Opposition’s description about how “massive” the addition would be.

The discussion around the Heritage Policies recognized that the property at 31 Maple has been classified as a Category C Building, which allows for alterations to be made, according to the guidelines discussed in the Study.

The Opposition complained consistently, indeed railed, about the lack of thoroughness in the process undertaken by the HPS, in their evaluation of the proposal at the Subject Site. In response to questions from me on the matter of discussions with HPS, Mr. Borgal said that it was not within his retainer to have conversations with HPS, and the evidence of Mr. Labrecque makes me conclude that the lack of a discussion between Mr. Borgal, and HPS, is the result of a deliberate strategy, to prevent HPS from “having their back up”. While I respect their strategy, I cannot reconcile the Opposition’s lack of efforts to have a discussion, much less a dialogue with HPS about their

concerns, given the litany of complaints about perceived flaws in the HPS' procedures; flaws whose severity is such that Opposition would have the TLAB refuse the proposal.

There are significant procedural issues posed by refusing an Appeal on the basis of allegations by a Party that is unseen, unheard, and uninvited to participate in the proceeding. I also point out that the TLAB does not have the jurisdiction to order any City department, including HPS, to issue a new Report, granting, or refusing a Heritage Permit.

Another interesting perspective put forward by the Opposition is that there is a "loss of heritage value" in the visual perception of the chimney breast, when seen from "an axial" perspective in the "micro neighbourhood", as one comes up Glen Road to where it meets Maple Avenue". The expressions "axial", and "micro neighbourhood" are not defined expressions, and the Opposition's Witnesses did not make reference to any Policies or Guidelines, speaking to the importance of "axial" perceptions.. There was no discussion of why the axial view should be accorded greater weight than the primary view of the chimney breast, from Maple Avenue itself.

Mr. Flett's cross examination of the Appellant's Heritage Expert Witness about the emails sent to HPS questioning the very existence of a conservatory at 31 Maple undoubtedly demonstrate that the language in the email was what would colloquially be described as "over the top". The language could have been calibrated to sound more objective, than the subjectivity demonstrated in the use of words, such as "propaganda" or "truthiness". However, an Expert's comments on the opinions of other Witnesses, however injudicious, cannot become the basis for assigning lower weight to the Expert's opinion on relevant subject matter- emotional outbursts, while best avoided, do not rise to be estimators of expertise, or the lack of expertise.

The Appellants' explanations of how the proposal is consistent with Policies 2.1, 3.1.2 and 4.1.5, was satisfactory in demonstrating the proposal is consistent with the OP, and I therefore accept the Appellants' conclusion that the Proposal is consistent with the Official Plan.

Overlook and privacy are critical to the tests of appropriate development, and the test of minor. The possibility of unacceptable impacts on the Opposition's privacy as a result of the proposed addition, and the mitigation of these impacts by the Appellants, is the last of the important questions before me.

The Opposition's own Witnesses stated that there is an existing "fish-bowl" condition at 29 Maple, with numerous neighbours being able to look into the house, resulting in my concluding that the adverse impact on the privacy of the residents of 29 Maple is a pre-existing condition. Thus the question before me, is not a question of whether the proposal creates a hitherto, non-existent, unacceptable adverse impact, but a question of whether the proposal exacerbates an existing, adverse impact, that may otherwise be deemed to be unacceptable. It is interesting to note that the photos submitted both by the Appellant, and the Opposition, make it very clear that there is significant overlook into each other's front yards, backyards and the houses themselves. The ability of these pictures to speak a thousand words, in conjunction with the Opposition's Witnesses

contradicting each other about how much overlook they had into the backyards of their neighbours, makes me assign lower weight to the Opposition's evidence. The position of the Opposition about adverse impacts is not helped through their declaring that the size of the addition is such that the separation between the buildings is irrelevant in the protection of privacy, implying that distance is wholly irrelevant in viewing an object.

I also note that there will a separation of at least 4.5 m between the western, extreme side wall of the proposed addition, at 31 Maple Ave. to the property line between 31 Maple Ave., and 29 Maple Av.. There are no balconies on the proposed addition on the side of the Subject property facing 29 Maple Ave., and the Appellants propose to plant various trees in the side-yard and rear of the house. While the proposed "green room" at the top of the proposed addition has windows, the Appellants have indicated their willingness to frost the glass. Thus, the mitigating factors in protecting the privacy of the residents of 29 Maple Ave are a 10 metre distance, frosted glass on the windows of the proposed addition at 31 Maple Ave. in the short term, to be fortified by foliage of the trees that have been planted, and to be planted, in the long term.

I also note that the Appellants chose to retain a Forestry expert to help design the maximization of the proposed tree canopy, and appreciate their wisdom in concentrating on the forest, as opposed to individual trees. The Opposition complained about the alleged removal of the maple tree, without appropriate permits, or process, but this is water over the dam, over which the TLAB exercises no jurisdiction.

Mr. Flett also made the interesting argument, that development at the Subject Site should be such that it should not interfere with his client's ability to develop their property, and linked this to the test of minor, and appropriate development. I agree that every property owner undoubtedly has the right to enjoyment of their property, and development of the same, but note that the Opposition did not have any specific, implementable plans to develop, or alter their swimming pool, at the time of the Hearing.

It may be reasonable to ask a Party to take their neighbour's development plans into account if the latter have been enunciated clearly; however the neighbour's expressing the desire to develop a property, without the establishment of a specific plan, effectively inverts the argument about enjoyment of one's property, and precludes the Appellants from developing their property, after they have presented an actual proposal. Under these circumstances, I find that there is no nexus between the neighbour's ability to enjoy their property, and the tests of minor, and appropriate development.

From this discussion, I conclude that the proposal does not cause any new unacceptable adverse impact. The proposal therefore meets the tests of minor, and appropriate development.

Lastly, the Opposition also complained about their losing trust in the ability of City Departments to follow appropriate process to issue Permits, and how this would reflect on ensuring that that the conditions will be implemented. While a citizen's losing confidence in the City's ability to perform their jobs competently is regrettable, I am reassured by the Opposition's demonstrated ability, knowledge, sophistication, and

dogged persistence, in protecting their rights, and hope that the same qualities can be relied upon to ensure that the imposed conditions are followed, on a go forward basis.

Given that the four tests under Section 45(1) are satisfied, I find that the Appeal may be allowed, and that the decision of the COA, dated June 27, 2017, may be set aside.

Given my findings on the Appeal, it would be appropriate to review the conditions recommended by the Appellants, as recited below. It is important to note that these conditions reflect the Settlement reached with Party Senst residing at 33 Maple Ave., as well as the suggestion of new conditions by the Appellants, to respond to the privacy issues concerns of Party Labrecque. It may be reiterated that during oral argument, Mr. Flett had originally suggested that such conditions could be imposed to protect the privacy of the residents of 29 Maple Ave., if the TLAB approved the requested variances at 31 Maple Ave.

Conditions pursuant to Agreement with 33 Maple Avenue and City Conditions:

1. The owner shall frost or otherwise make opaque the existing glass screening on the north and east sides of the deck located above the car garage forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.
2. The owner shall reposition any exterior lighting located on the subject lands so that it is not directed into the adjacent lands at 33 Maple Avenue.
3. Urban Forestry: Approval of Variance #3, respecting the width of the driveway in the rear yard, shall be substantially in accordance with the Site Plan dated April 3, 2018 and included as part of Exhibit 8.
4. Heritage Preservation Services: Prior to the issuance of a building permit, building permit drawings including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provisions of Section 42 of the *Ontario Heritage Act*.

Additional Conditions being offered by Appellant, 31 Maple Avenue:

5. The owner agrees to implement and maintain the landscaping substantially in accordance with the landscape plans prepared by Earth Inc., dated November 12th (no year given) and marked as Exhibit 17.
6. The owner shall frost or otherwise make opaque the proposed new windows located on the west elevation of the proposed addition facing 29 Maple Avenue, as shown on the West Elevation/Addition dated June 23rd, 2017 and included as part of Exhibit 8. For purposes of clarity, this condition does not apply to the windows located on the third floor of the proposed addition or to any of the existing windows of the main house.

Additional Conditions being requested by 29 Maple Avenue:

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7. The owner shall frost or otherwise make opaque the existing glass screening on the west side of the deck located above the car garage, forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.

8. The owner shall reposition any exterior lighting located on the subject lands so that is not directed into the adjacent lands at 29 Maple Avenue.

I point out that Conditions 6, 7 and 8 listed above, respect 29 Maple Avenue and mirror Conditions 1 and 2, respecting 33 Maple Ave., as stated in the Settlement reached with Party Senst,. To reiterate, I believe that the repositioning of lighting, the frosting of windows, and the landscaping (as stated in Condition 5 above) , should cumulatively result in significant mitigation of the concerns expressed by Party Labrecque, and will therefore be imposed on the approval of this proposal . Condition 4 speaks to the process to be completed to get a Heritage Permit., and is part of the Settlement reached between the residents of 33 Maple and the Appellants. Condition 3 is the recommendation put forward as part of the discussions with the Urban Forestry department.

Lastly, I impose a standard condition, which requires Applicants to build in substantial accordance with the submitted Plans, and Elevations, prepared by Goudar Architects, date stamped 08-08-2016, and marked Exhibit 8.

I accept the recommendation from the Appellants, and impose all the Conditions, recited above, on the approval of the proposal at 31 Maple Ave.

I would like to thank my colleague Member Lombardi, whose efforts to mediate between the Parties seem to have yielded fruit by the time the Hearings started, with the Appellants arriving at a Settlement with Party Senst- he deserves to be thanked for his patience, and hard work during the Mediation conference.

By way of an obiter remark, I find that Mr. Flett's able, if acerbic cross examination of some of the Appellants' Witnesses, helped highlight where some of the weaknesses lay in the position of the Appellants. While some of the Witnesses could have been better prepared to answer questions, I find that the basic proposal, put forward by the Appellants, is consistent with good planning principles.

I also note that a Hearing scheduled for November 26, 2018, had to be vacated because Mr. Flett had a personal emergency, and was not in the country at the time. I sincerely appreciate Mr. Flett's getting in touch with the TLAB, and the Appellants, to explain his situation, and to request for an adjournment of the matter. Given how close this information was made available to the actual Hearing date, it became necessary for everybody to attend the Hearing on November 26, 2018, to decide on the request for an adjournment. I was disappointed to see that the Witness who had taken the stand at the previous Hearing, on September 18, 2018, and was scheduled to continue with their testimony on November 26, 2018, had absented themselves from the proceeding, without any prior notice to the TLAB. Such behavior on the part of any Witness is not appreciated because professionalism requires all Witnesses, Agents, and Participants

to inform the TLAB, about their inability to attend a Hearing before the commencement of the same, especially when they know that they have to take the Witness Stand.

Lastly, I take this opportunity to express my regrets about any inconvenience caused to the Parties as a result of the length of time taken to issue this Decision. By way of explanation, I had to spend a significant amount of time to rehear various parts of the proceeding, to ensure that no evidence, with a direct bearing on the result of the Appeal, had been inadvertently excluded from my analysis, which proved itself to be no mean task, given the sheer volume of evidence, and the meandering, if not circuitous narratives.

DECISION AND ORDER

1) The Appeal respecting 31 Maple Ave is allowed, and the decision of the Committee of Adjustment, dated June 27, 2017, is now set aside.

2) The following variances are approved:

1. Chapter 10.20.40.20.(1), By-law 569-2013

The maximum permitted building length for a detached dwelling is 17.0 m.

The existing building has a length of 24.11 m.

The building length measured to the extension of the basement built under permit 14 267538 BLD is 25.28 m which should have required Committee of Adjustment approval.

The west side three-storey addition will have a building length of 19.89 m.

2. Chapter 10.20.40.30.(1), By-law 569-2013

The maximum permitted depth of a detached dwelling is 19.0 m.

The existing building has a depth of 24.88 m. The building length measured to the extension of the basement built under permit 14 267538 BLD is 26.05 m which should have required Committee of Adjustment approval.

The west side three-storey addition will have a depth of 20.66 m.

3. Chapter 10.20.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (793.63 m²). The altered detached dwelling will have a floor space index equal to 0.681 times the area of the lot (900.36 m²).

4. Chapter 10.5.100.1.(1)(C)(iv), By-law 569-2013

The maximum permitted driveway width for a driveway that is located in or passes through the front yard is 2.6 m.

In this case, the driveway width will be 4.47 m at the front gate.

5. Chapter 10.5.100.1.(2)(B), By-law 569-2013

The maximum permitted driveway width for a driveway that is not located in or does not pass through the front yard is 6.0 m. In this case, the driveway width will be 9.29 m in the backyard.

6. Chapter 10.5.50.10.(3), By-law 569-2013

A minimum of 50% (274.38 m²) of the rear yard must be maintained as soft landscaping.

In this case, 39.83% (218.57 m²) of the rear yard will be maintained as soft landscaping.

7. Chapter 10.10.40.10.(1)(A), By-law 569-2013

The maximum permitted building height is 10.0 m.

The altered detached dwelling will have a height of 10.54 m.

8. Chapter 10.10.40.10.(2)(B), By-law 569-2013

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

The height of the existing side exterior main walls is 10.54 m on the west side, and 7.83 m on the east side. The height of the side exterior main walls facing a side lot line will be 10.54 m.

VARIANCES REQUESTED TO BY-LAW 438 86

1. Section 6(3) Part I 1, By-law 438-86

The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (793.63 m²).

The altered detached dwelling will have a gross floor area equal to 0.687 times the area of the lot (908.67 m²).

2. Section 6(3) Part II 3.B(II) 2, By-law 438-86

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m.

The portion of the altered detached dwelling, exceeding the 17.0 m depth, will be located 4.01 m from the west side lot line.

3. Section 6(3) Part IV 4(a)(ii)C, By-law 438-86

The maximum permitted width of a driveway is 2.6 m. In this case, the driveway width will be 8.69 m in the rear yard.

4. Section 6(3) Part II 7(I), By-law 438-86

The minimum required setback of an accessory structure to all lot lines is 3.0 m.

The pool will be located 1.85 m from the west side lot line.

5. Section 4(2)(a), By-law 438-86

The maximum permitted building height is 10.0 m.

The existing building has a height of 12.36 m. The west side three-storey addition will have a height of 11.13 m.

3) The following conditions are imposed on the approval:

1. The owner shall frost or otherwise make opaque the existing glass screening on the north and east sides of the deck located above the car garage forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.

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2. The owner shall reposition any exterior lighting located on the subject lands so that it is not directed into the adjacent lands at 33 Maple Avenue.
3. Urban Forestry: Approval of Variance #3, respecting the width of the driveway in the rear yard, shall be substantially in accordance with the Site Plan dated April 3, 2018 and included as part of Exhibit 8.
4. Heritage Preservation Services: Prior to the issuance of a building permit, building permit drawings including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provisions of Section 42 of the *Ontario Heritage Act*.
5. The owner agrees to implement and maintain the landscaping substantially in accordance with the landscape plans prepared by Earth Inc., dated November 12th (no year given) and marked as Exhibit 17.
6. The owner shall frost or otherwise make opaque the proposed new windows located on the west elevation of the proposed addition facing 29 Maple Avenue, as shown on the West Elevation/Addition dated June 23rd, 2017 and included as part of Exhibit 8. For purposes of clarity, this condition does not apply to the windows located on the third floor of the proposed addition or to any of the existing windows of the main house.
7. The owner shall frost or otherwise make opaque the existing glass screening on the west side of the deck located above the car garage, forming part of the coach house, municipally known as 31R Maple Avenue, on the subject lands.
8. The owner shall reposition any exterior lighting located on the subject lands so that is not directed into the adjacent lands at 29 Maple Avenue.
9. The Appellants are required to construct the proposed rear addition in substantial conformity with the Plans, and Elevations, prepared by Goudar Architects, date stamped 08-08-2016, and marked Exhibit 8.

By way of information, Exhibits 8, and 17 are included as Appendices to this Decision.

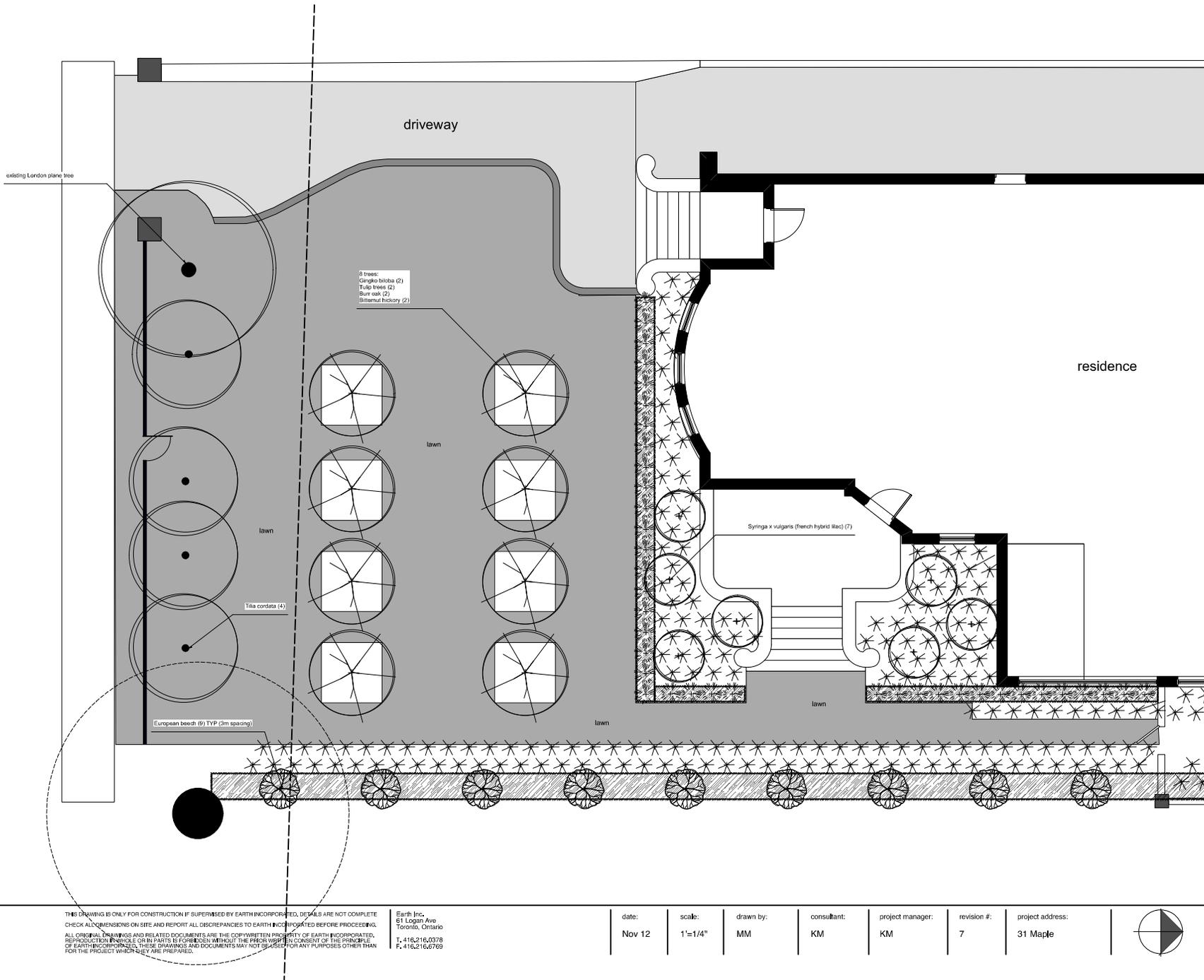
4. No other variances are approved.

So orders the Toronto Local Appeal Body.

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



DESIGNED LANDSCAPES

earth INC

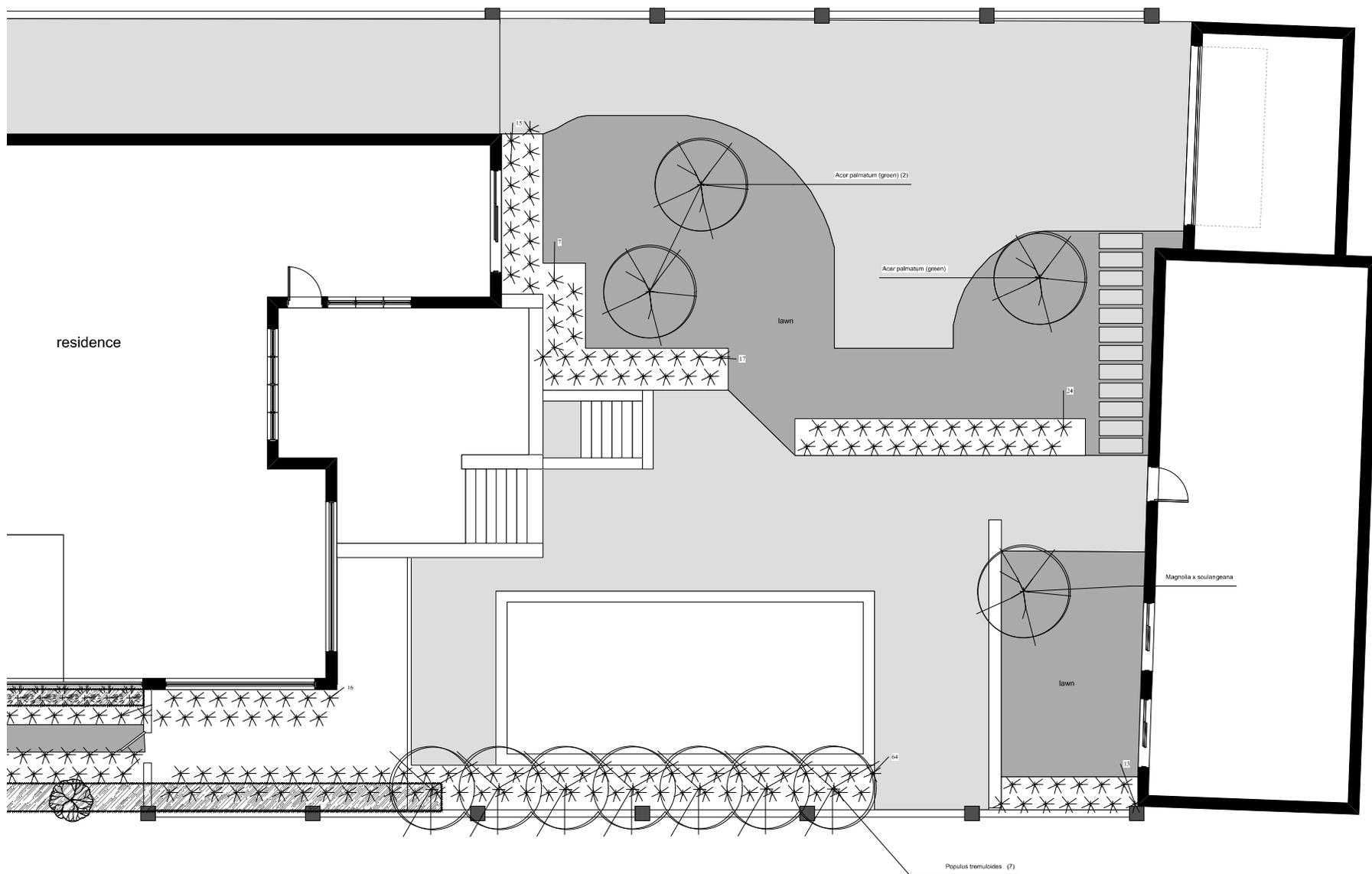
Armogan Gill
Planting plan



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Earth Inc.
61 Logan Ave
Toronto, Ontario
T. 416.216.0378
F. 416.216.6789

date:	scale:	drawn by:	consultant:	project manager:	revision #:	project address:
Nov 12	1"=1/4"	MM	KM	KM	7	31 Maple



residence

Acer palmatum (green) (2)

Acer palmatum (green)

Magnolia x soulangeana

Populus tremuloides (7)

DESIGNED LANDSCAPES

earth INC

Armogan Gill
Planting plan

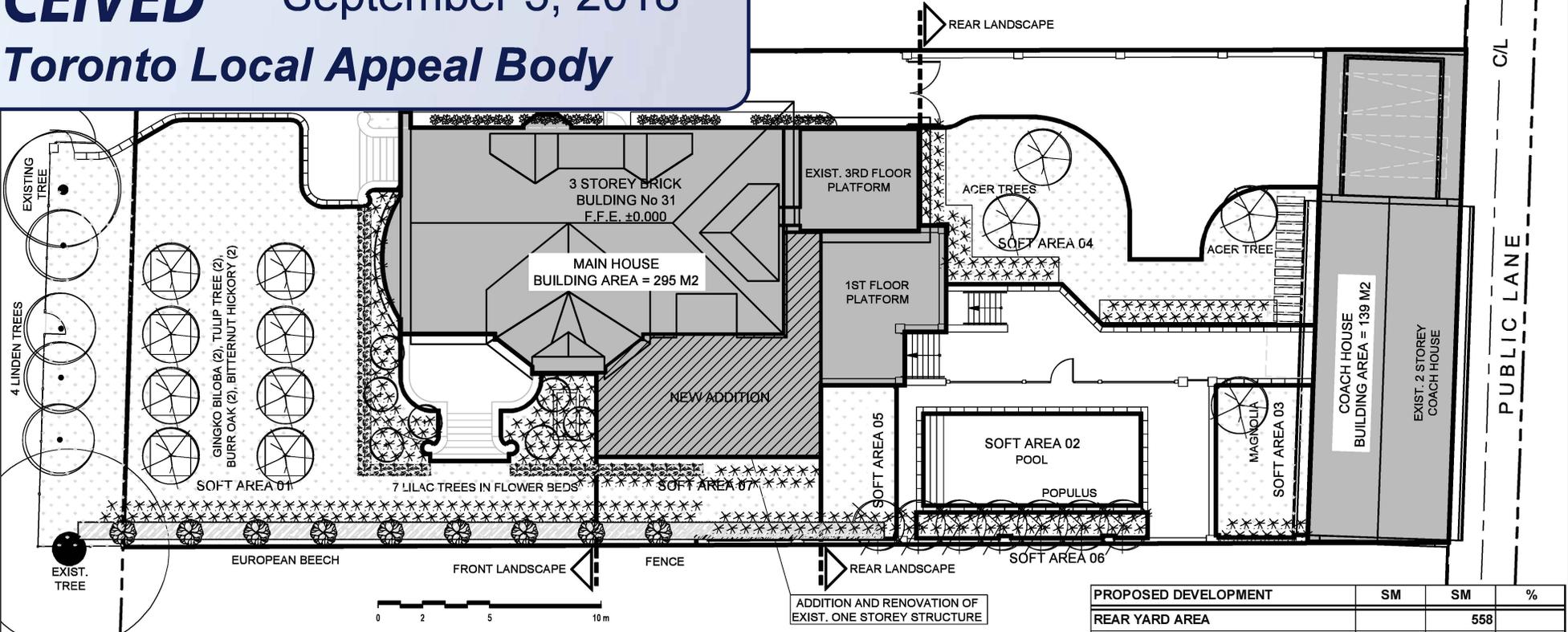
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Nov 12	1"=1/4"	MM	KM	KM	7	31 Maple



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PROPOSED DEVELOPMENT	SM	SM	%
REAR YARD AREA		558	
SOFT AREA 02	40		
SOFT AREA 03	29		
SOFT AREA 04	104		
SOFT AREA 05	23		
SOFT AREA 05	12		
POTS	16		
TOTAL REAR SOFT AREA		224	
REAR SOFT AREA %			40.14%
FRONT YARD AREA		341	
SOFT AREA 01	262		
TOTAL FRONT SOFT AREA		262	
FRONT SOFT AREA %			76.83%

TREES
 GINKGO BILOBA x 8 Trees
 AMERICAN SENTRY LINDEN x 5 Trees
 SYRINGA X VULGARIS x 7-9 Trees
 JAPANESE MAPLE (GREEN) x 3 Trees (>12')
 FAGUS SYLVATICA (x5 Trees)
 MAGNOLIA x SOULANEANA (x1 Tree)
 POPULUS TREMULOIDES (x13 trees)

HEDGES
 BOXWOOD x151 bushes
 FAGUS SYLVATICA HEDGE x 32

FLOWERS & IVY / GRASSES
 CAMPANULA CARPATICA WHITE CLIPS
 NARCISSUS
 TULIPS

SALVIA NEMOROSA CARADONNA
 HEDRA HELIX
 SCILIA
 LAVENDER
 PEONY
 ROSE CORA
 ROSE YELLOW BRICK ROAD
 ASTILBE [ERICA, SUPERBA, VISION IN WHITE]

WHITE HYDRANGEA
 VEITCHS BLUE,
 WHITE SWAN
 HAMELN
 PANICUM VIRGATUM "HEAVY METAL"
 HEDRA HELIX BALTICA
 LIGUSTRUM X IOBLIUM "VAREIGATUM"

LANDSCAPE PLAN

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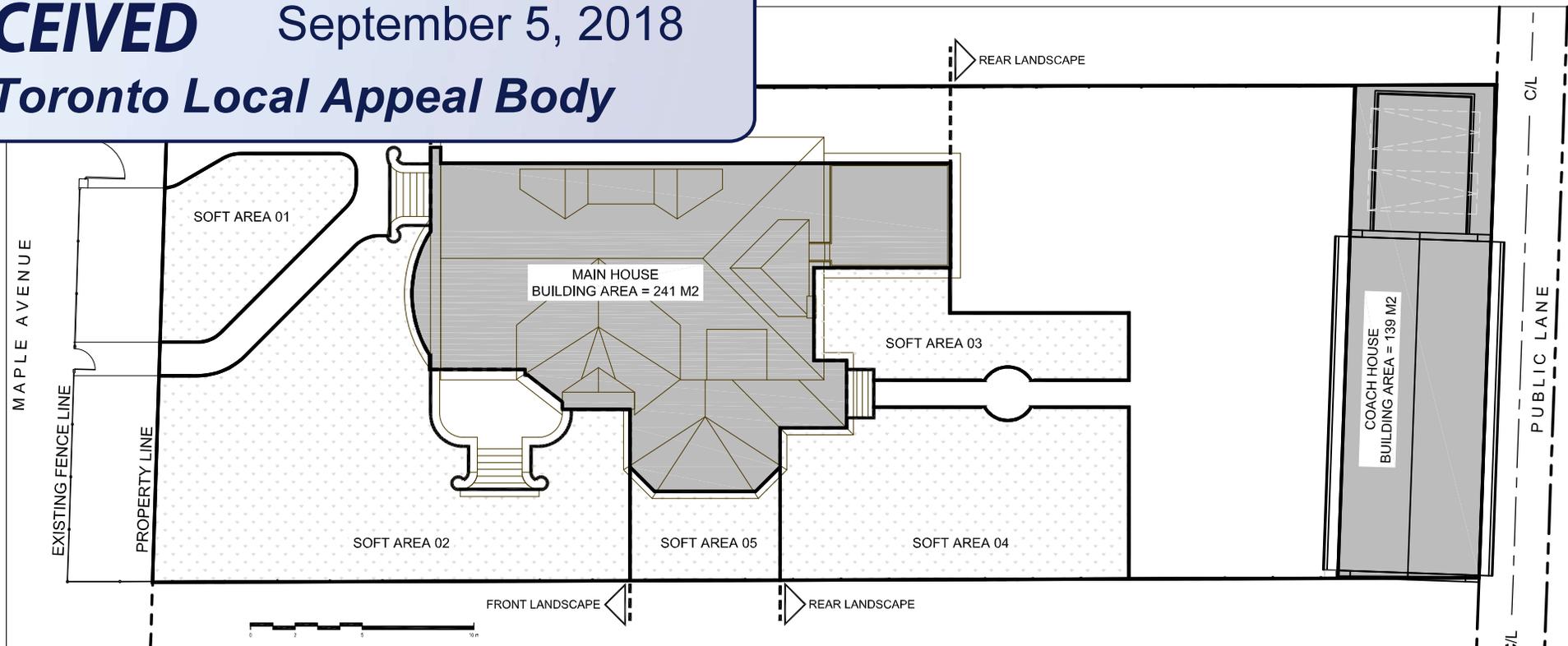
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RE-ISSUED FOR PLAN REVIEW	6	2016-07-23	
RE-ISSUED FOR PLAN REVIEW	7	2016-07-27	
RE-ISSUED FOR PLAN REVIEW	8	2016-08-05	

DRAWING TITLE

**31 MAPLE AVE.
 MAIN HOUSE ADDITION/ RESTORATION**

SCALE	DATE	PROJECT NUMBER	DRAWING NUMBER
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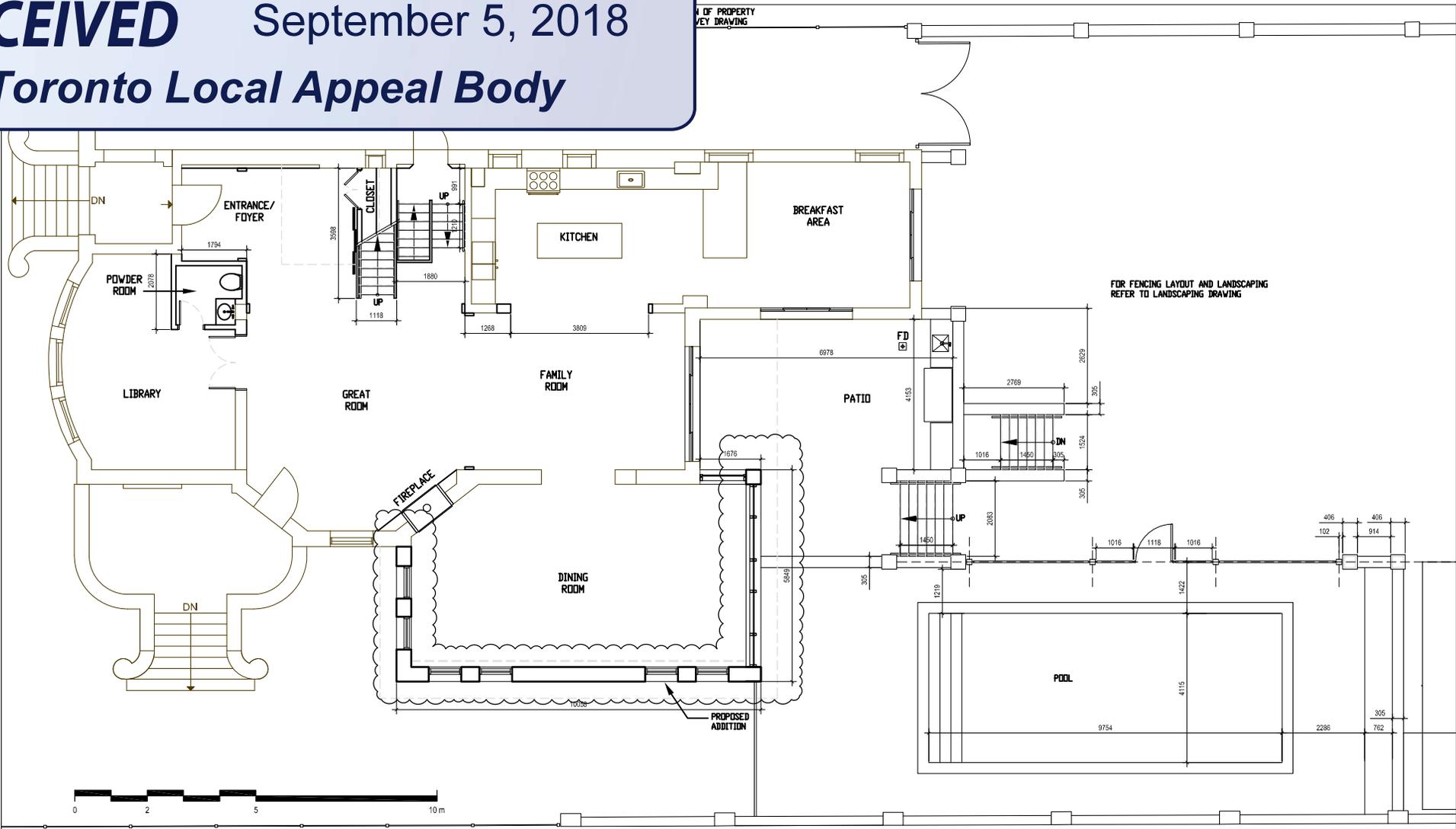
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EXISTING CONDITION	SM	SM	%
REAR YARD AREA		622	
SOFT AREA 03	52		
SOFT AREA 04	116		
TOTAL REAR SOFT AREA		168	
REAR SOFT AREA %			27.01%
FRONT YARD AREA		342	
SOFT AREA 01	49		
SOFT AREA 02	202		
TOTAL FRONT SOFT AREA		251	
FRONT SOFT AREA %			73.39%

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MAIN FLOOR / ADDITION

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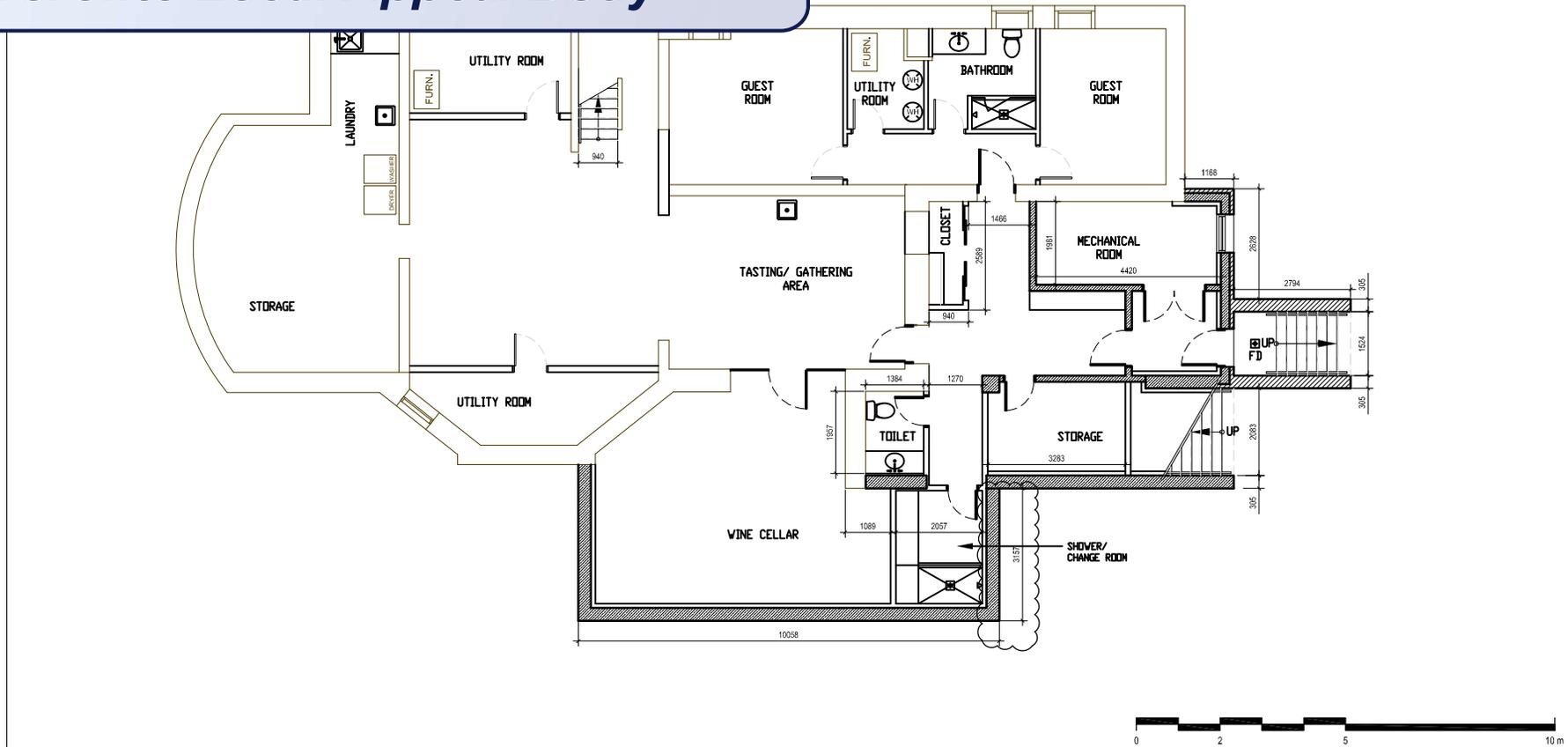
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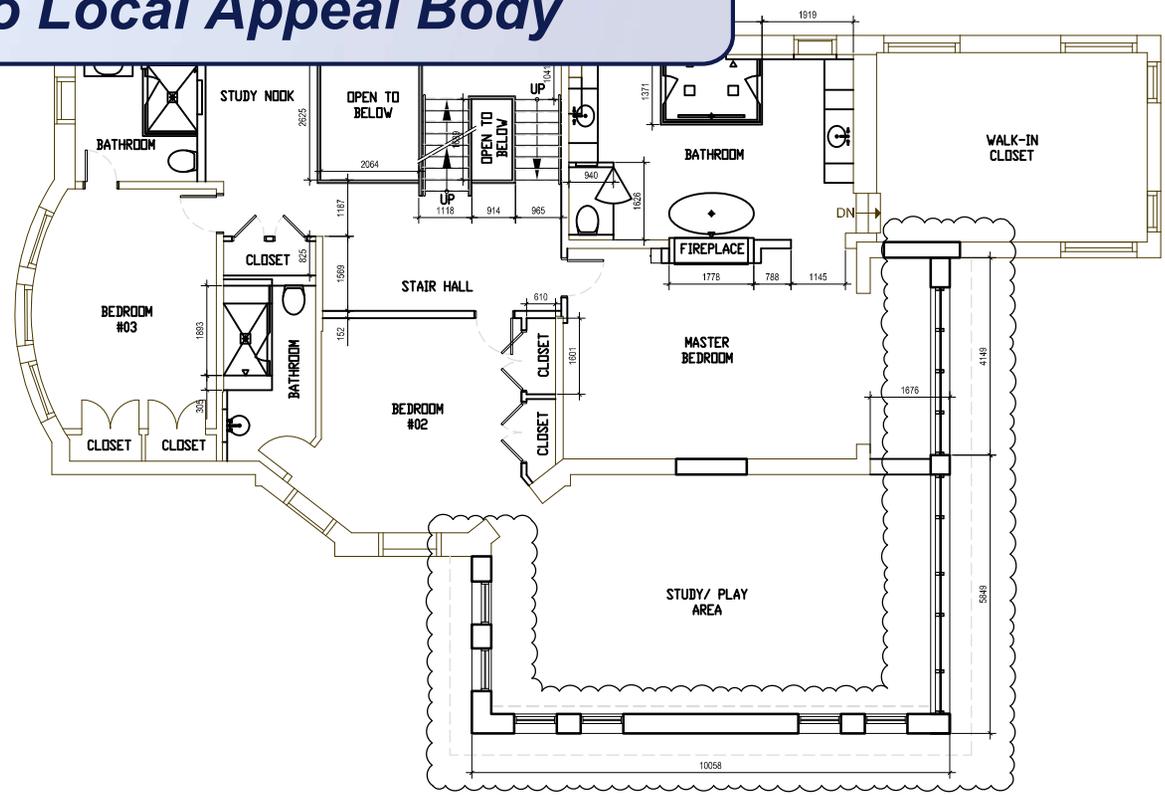
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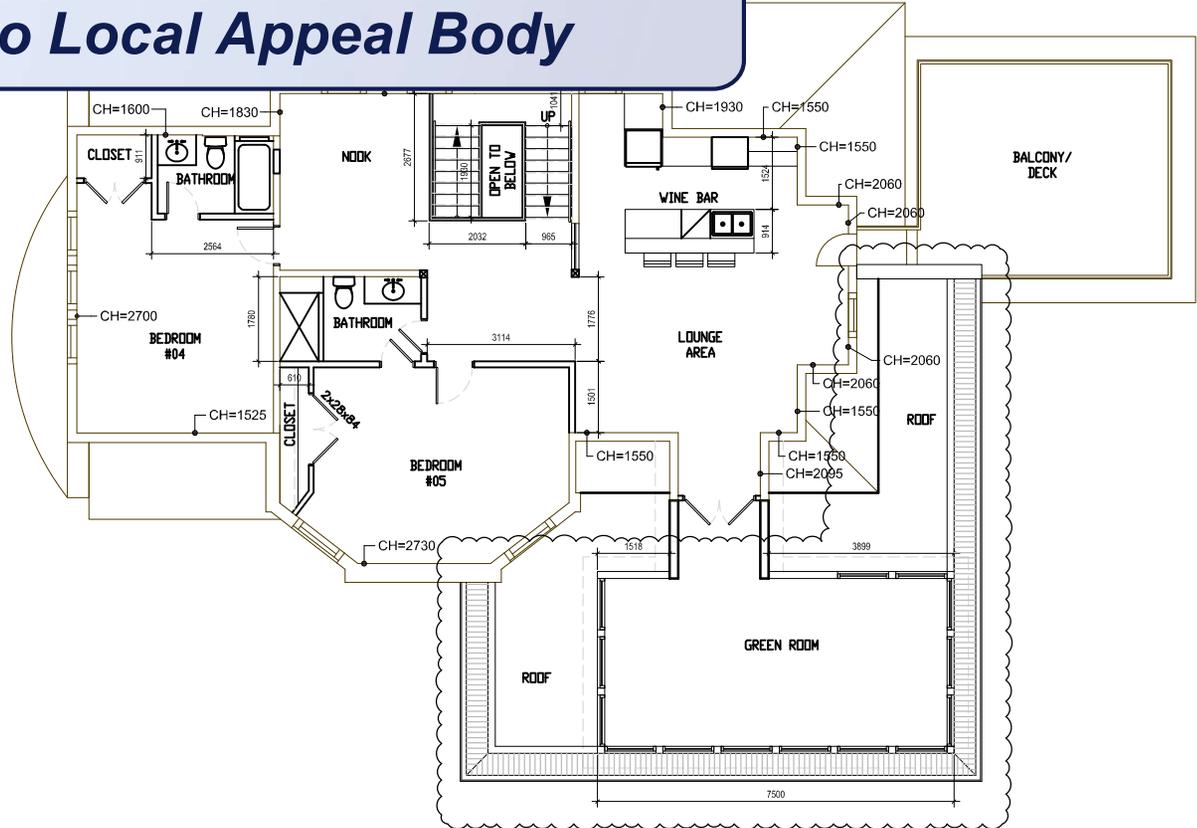
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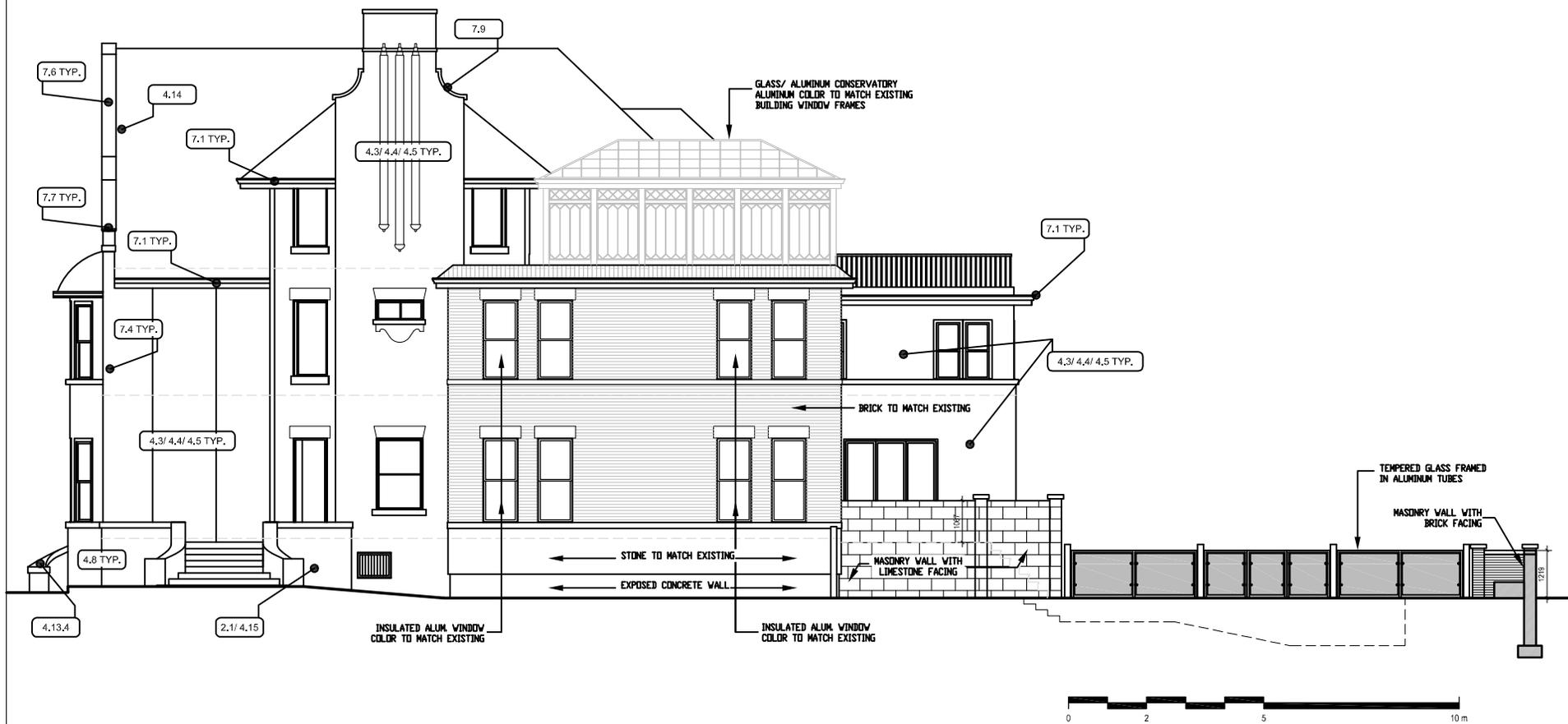
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RE-ISSUED FOR VARIANCE APPLICATION	5	2017-03-10	
RE-ISSUED FOR VARIANCE APPLICATION	6	2017-04-16	
RE-ISSUED FOR TLAB REVIEW	7	2017-07-25	

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RE-ISSUED FOR VARIANCE APPLICATION	4	2017-04-16	
RE-ISSUED FOR TLAR REVIEW	5	2017-07-23	

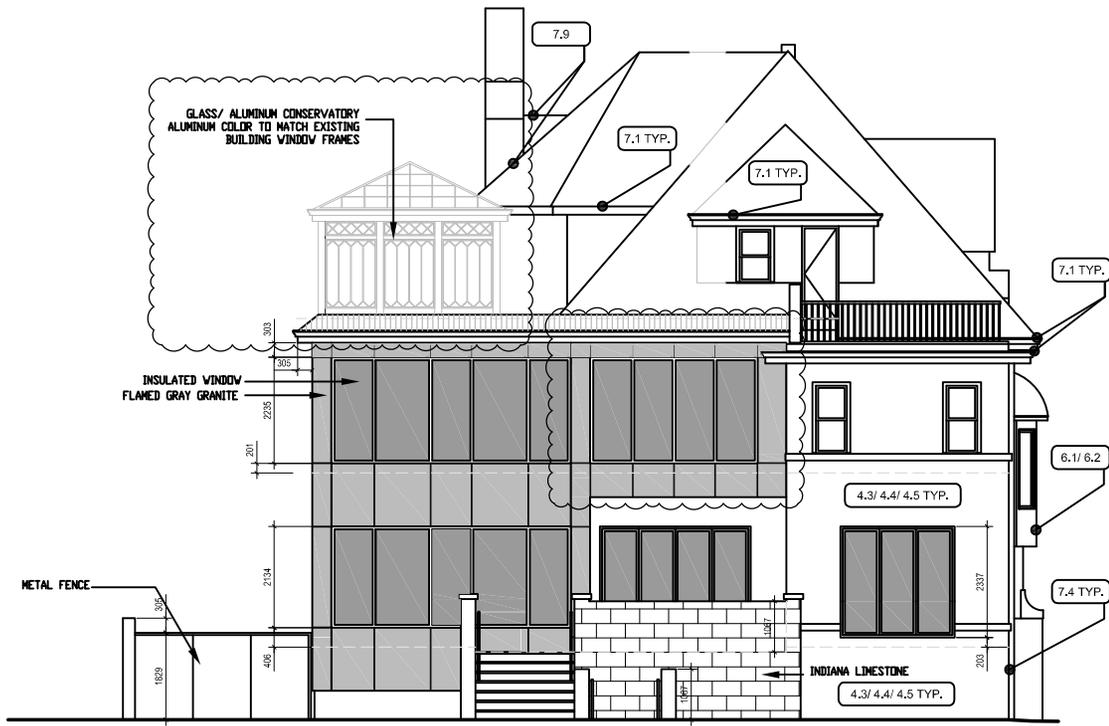
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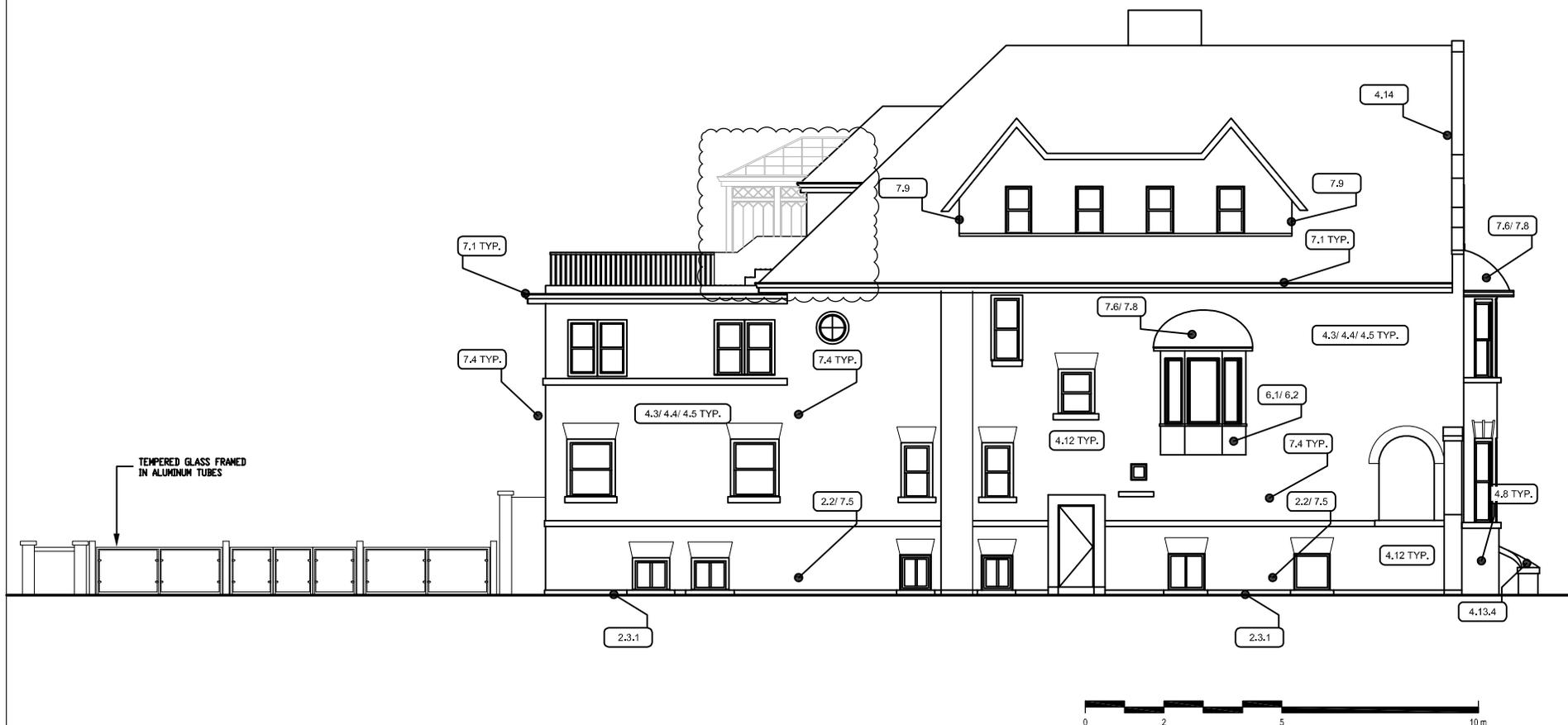
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RE-ISSUED FOR TLAR REVIEW	5	2017-02-23	

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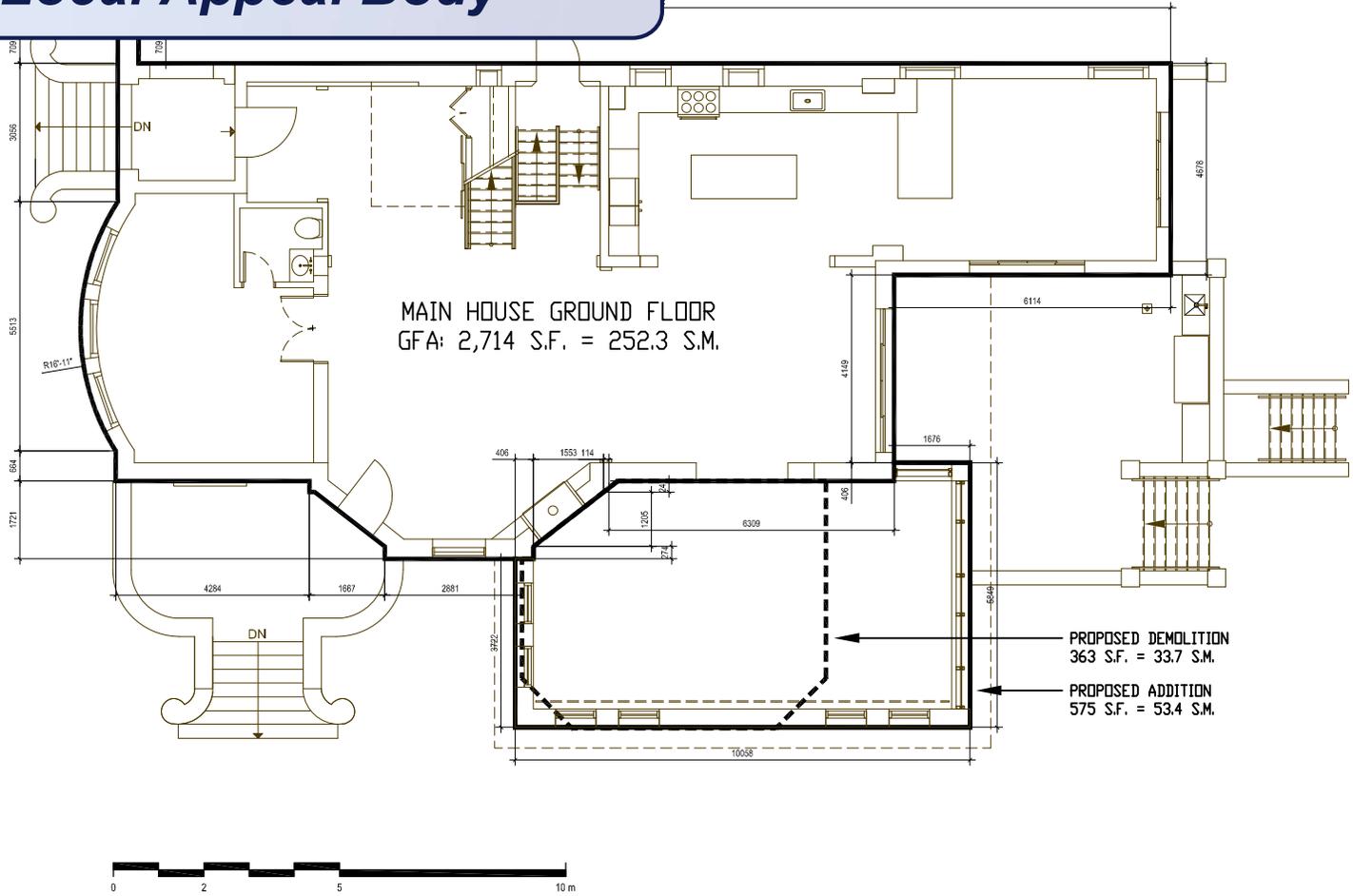
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- 1.5 masonry, flashing, roofing, and sealant.
- 1.6 Submit work plan based on review of the site and contract documents and detailing the proposed method and sequence of repair or replacement, hoarding, and exits; reference elevation (N.S.E.W) and construction note number.
- 1.7 Provide temporary painted fir plywood filler panel c/w weather-stripping to protect windows, other closures, and finishes adjacent to the work and control dust and environmental conditions; secure to masonry joints with corrosion-resistant fasteners and patch masonry upon removal.
- 1.8 Submit for review manufacturer's product data sheets, maintenance information, and installation and operation manuals for products provided and treatment equipment employed.
- 1.8 Investigations cash allowance: as directed provide access, cut and patch for samples and inspection openings, unit and core samples, and third party testing; provide temporary closures.
- 2.0 SITE WORK**
- 2.1 Plant material & debris:
- 2.1.1 Reseved
- 2.2 Rainwater leader (RWL) drainage (see Division 7 for RWLs and gutters):
- 2.2.1 Investigate existing rainwater drains: provide camera investigations; determine location, extent, and condition of available storm drain system; notify consultant of capped, blocked, damaged, or condemned drains; snake and pressure test existing RWL drains; related costs paid by allowance.
- 2.2.2 Provide and maintain temporary rainwater leaders & extensions directing water away from masonry.
- 2.2.3 Provide 1500 ong x100 mm diameter painted PVC extensions & precast concrete splash pads where roof drainage may be effectively directed away from wal & walkways to soft landscaping.
- 2.2.4 Separate Price: Provide clean-out at each end of RWL drains.
- 2.3 Grading and paving
- 2.3.1 Foundation waterproofing at paving: cut in perimeter continuous 10 mm wide isolation joint between concrete paving and masonry foundation; at asphalt paving: cut in reglet, mask wall, and seal with hot neoprene.
- 2.3.2 Separate price: Selectively remove, re-grade, and replace 600 mm wide strip of soft landscaping to restore a positive slope away from the building wall.
- 3.0 CONCRETE REPAIRS**
- 3.1 At west porch/deck, cut and patch 1 m2 existing framed concrete slab and provide full width expansion joint adjacent to existing concrete steps.
- 4.0 MASONRY REPAIRS & ALTERATIONS**
- 4.1 Identify, mark on site, locate on as-built set, retain, and protect areas of sound original mortar joints, unit and joint profiles, and other acceptable existing replacement mortar or restored materials and workmanship based on samples identified in walk-through with Consultant. Confirm with Consultant samples of existing work that new work is intended to match.
- 4.2 Provide lab testing of 5 typical unit or core samples of brick, mortar, and stone to determine vapour permeability of existing masonry patch, stain, or coating; cu and patch for samples.
- 4.3 Provide selective masonry cleaning for uniform appearance, after correction of likely cause of localized masonry staining (RWLs, gutters, coping, flashing, drips); use low pressure water-carried micro-abrasive, or other approved method, in accordance with approved mock-ups; remove obvious soiling, staining, efflorescence, and mortar splatter.
- 4.4 Provide clear silicate water repellent treatment at porous or eroded masonry to slow deterioration.
- 4.5 Provide hand-tinted silicate water repellent treatment to selected masonry units and joints to provide uniform wall appearance and improve durability.
- 4.6 Separate price: Remove remaining applied pink tinting from stone units; provide silicate paint to provide uniform colour and water repellence; submit for approval range of 3 colours to match native stone; protect adjacent brick work; provide test patches for approval.
- 4.7 Remove ferrous anchors and inserts from masonry, patch masonry; where necessary replace anchors with stainless steel Cintec grout anchor or Hillt epoxy anchor; paid by investigation allowance.
- 4.8 Repair ineffective drips under-side of existing stone window sills in accordance with approved mock-up: provide 1) straightedge-guided, grinder-cut, sharp edge drips or 2) metal (lead-coated copper (LCC)) drip flashing in masonry reglet immediately below sill.
- 4.9 Replace or modify inappropriate exhaust grilles that may contribute to masonry deterioration; provide metal baffles to direct humid exhaust and water vapour away from exterior surfaces.
- 4.10 Mechanical and electrical wall penetrations: patch masonry & replace perimeter sealant joint.
- 4.11 Remove and re-instate perimeter sealant at windows & doors affected by masonry repair.
- 4.12 Mortar joints and consolidation:
- 4.12.1 Chalk out areas for repair types and obtain scope approval prior to the work.
- 4.12.2 In the area of work, sound masonry for voids with rubber mallet; notify Consultant of displacement, excess vibration, or hollow areas.
- 4.12.3 Selectively cut out and replace 50% of existing mortar joints; remove damaged, eroded, or discontinuous mortar joints, hard replacement mortar, inappropriate pointing, and mortar splatter on units, to reduce water infiltration and improve water shedding and general appearance.

- 4.12.4 Face point 25mm deep at masonry wall area where mortar deteriorated; assume hydraulic lime and natural cement mortar mixes; damage is mostly
- 4.12.5 Step cracks in joints: mark locations on as-builts; confirm with Consultant; repair with appropriate mortar or grout.
- 4.12.6 Bottom 5 brick courses in selected areas subject to de-icing salt, including porches and stairs; re-point with salt resistant mortar tinted and finished
- 4.12.7 Thin and hairline cracks in otherwise sound units and mortar: inject DHL or approved grout; protect the area from grout staining; clean and make good surface.
- 4.12.8 Cut in new reglets & sealant for metal flashing (Div. 7) at masonry sidewalls and chimneys.
- 4.12.9 Provide unit price to back point 75mm deep at masonry wall area where bed and back pointing mortar is deteriorated or missing; assume hydraulic lime and natural cement mortar mixes; not in base contract.
- 4.13 Stone and brick masonry units:
- 4.13.1 Chalk out units for repair or replacement and obtain scope approval prior to the work.
- 4.13.2 Replace damaged, severely eroded, spalled, or friable brick, having greater than 10 mm loss, with approved replacement.
- 4.13.3 Re-set 2 displaced key stones: provide temporary shoring/centering, cut out adjacent mortar, lift & align keystone and adjacent voussoirs; align keystone with related masonry jambs below, and re-set affected units with appropriate mortar and pointing.
- 4.13.4 Descale, clean, repair, and selectively tint areas of spalled coping stones at porches; repair using stone dutchman, special patching mortar (Jahn), or tinted Natural Cement (Rosendale s14).
- 4.14 Brick gable or parapet; investigate back surface adjacent to roofing; patch masonry & provide new Natural Cement parging (acceptable product)
- 4.15 Separate Price: at west porch shore, partly dismantle, and re-build 2 m2 of stone work damaged by adjacent tree; provide new cut stone arch c/w recessed panel clear of existing or removed tree.
- 4.16 Other remedial treatments only as directed
- 4.16.1 Investigate, store, and re-instate displaced masonry units.
- 4.16.2 Where indicated, sound groups of 5 adjacent masonry units, with 16 oz rubber mallet, at max 1500 X 2400 O.C (on centre) across selected areas of masonry wall; chalk out hollow-sounding, likely poorly bonded areas, and review with consultant.
- 4.16.3 Where indicated, provide remedial +/- 200 mm long ss helical ties (Blok-Lok spiral) at areas of potentially poorly bonded exterior masonry as directed; space ties in domino pattern in rows at 400 mm vertically by 600 mm horizontally.
- 4.16.4 Where indicated, provide for area of injection grout consolidation at masonry areas after face pointing; drill test hole pattern to locate voids and provide grout ports; patch sound drillings.
- 4.16.5 Where indicated, provide installed 16 mm diam x 600 mm long Cintec structural anchors.
- 4.16.6 Where indicated, provide installed 16 mm diam x 200 mm long Cintec stitching anchors.
- 5.0 METALS (reserved)**
- 6.0 SELECTIVE EXTERIOR WOODWORK REPAIR**
- 6.1 Sound and prime existing woodwork accessible during the work of Divisions 4 and 7 (patch and paint under Division 9).
- 6.2 Notify Consultant of observed severe deterioration or open grain requiring wood dutchman or epoxy consolidation and filler repairs.
- 7.0 RAINWATER GUTTER, LEADERS (RWL), ROOFING, FLASHING, SEALANT**
- 7.1 New and existing gutters:
- 7.1.1 Review contents of existing gutters; provide photographic record of location of drains, ponding and debris, debris type, and any damage relevant to existing configuration.
- 7.1.2 Clean and seal existing metal surface and integral gutters.
- 7.1.3 Re-slope existing gutters; selectively replace or supplement existing gutter support straps or other fasteners.
- 7.1.4 Provide new continuous removable corrosion-resistant perforated metal leaf screens, metal compatible with gutters.
- 7.2 Separate price: remove existing surface mounted gutters and provide new 127 mm 'Ogee' style galvanized steel gutters, brake-formed, curved, and sloped to suit location; submit shop drawings prior to fabrication.
- 7.3 Separate price: delete new galvanized steel gutters and RWLs and provide lead coated copper (LCC) gutters, leaders and expanded bronze leaf screens.
- 7.4 New rainwater leaders (RWLs):
- 7.4.1 Replace and supplement existing RWLs: provide minimum 90 x 90 mm secured with adjustable wall brackets to provide 38 mm to 50 mm offset from masonry.
- 7.4.2 Provide 50 mm diameter inspection port with grommet 300 mm above finished grade, or other approved access.
- 7.5 Where surface drainage unsafe, reconnect leaders to existing drains.
- 7.6 Investigate front gable coping, bay roofing, curved gutter, side oriel roofing: determine existing materials, condition, related drips; provide consultant access.
- 7.7 Provide metal drip flashing where indicated to protect masonry below; confirm metal.
- 7.8 Patch tile cement and repair flashing at tile roof over bay
- 7.9 At chimneys and masonry sidewalls, remove 'gummy top' flashing; confirm condition of step flashing if it exists below; provide new step flashing (soakers) with new masonry reglet (from Div. 4) and counterflashing.
- 7.10 Separate Price: Review existing roofing; provide missing flexible membrane eaves & valley protection (acceptable product: Grace Ice & Water Shield) at sloped roof; remove & replace the related portion of asphalt shingle and metal flashing.
- 8.0 WINDOW, DOOR & LOUVRE REPAIR OR REPLACEMENT (reserved)**
- 9.0 EXTERIOR PAINT PATCH & REPAIR**
- 9.1 Remove loose or delaminated paint and patch/light-sand/fill/paint selected areas of deteriorated wood surfaces (architectural woodwork may include oriel, soffit, exposed joist, beam, and rafter tails). Prepare, prime, and paint repaired surfaces; use compatible primer; assume old lead paint.
- 9.2 Remove all deteriorated sealant and related old paint drips.
- 9.3 Separate Price: seal interior surfaces of exterior walls contributing to interior air/vapour retarder to protect masonry fabric.

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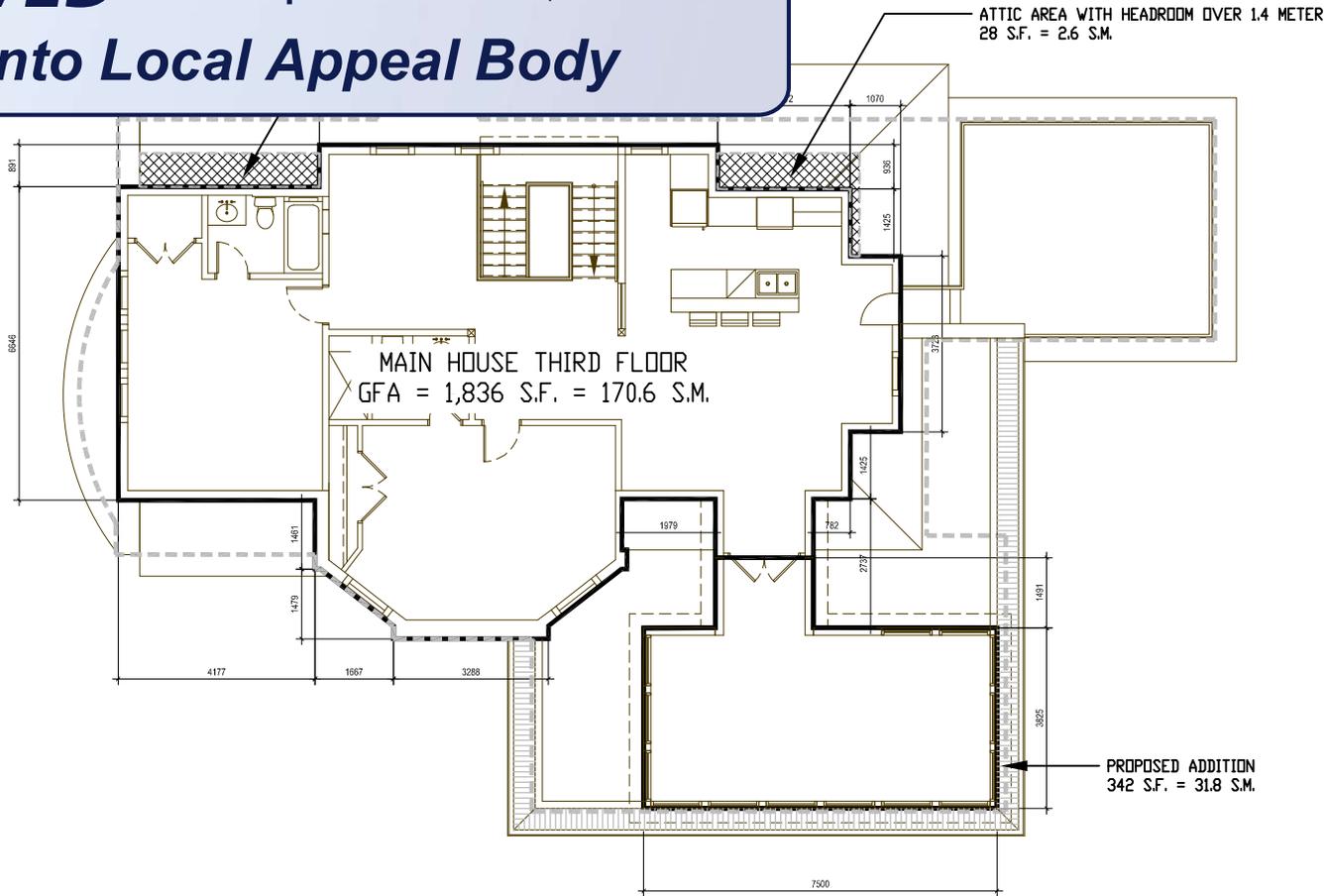
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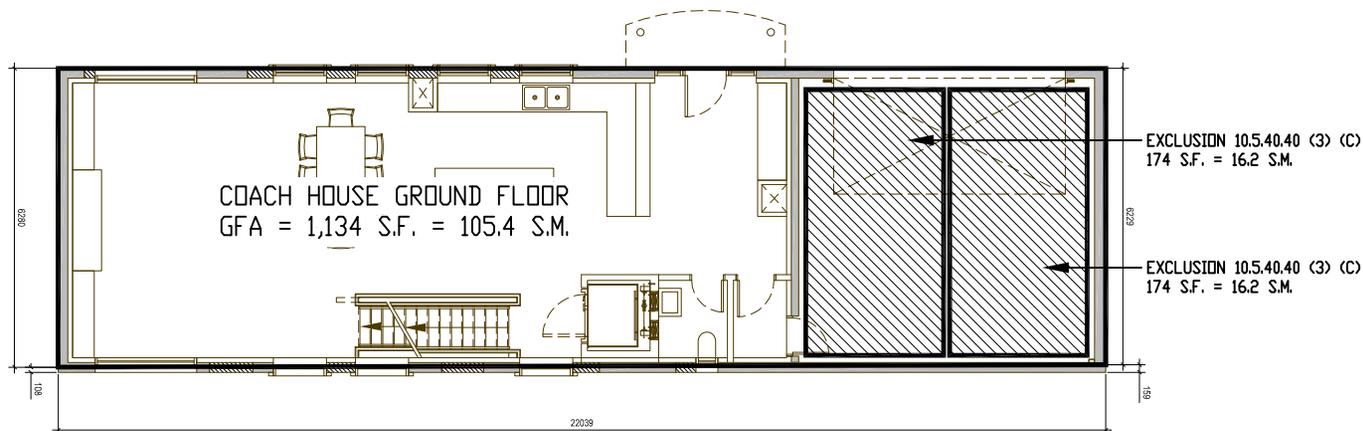
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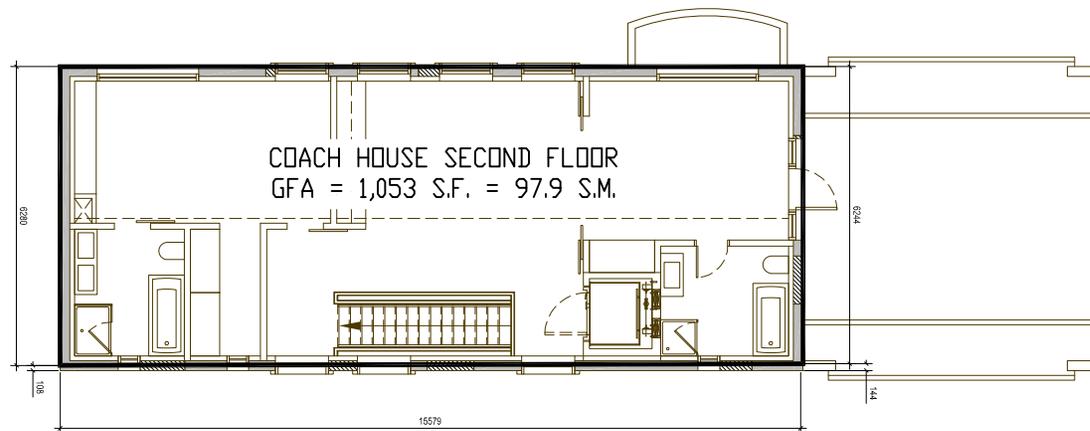
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