

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, December 15, 2020

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

Appellant(s): CITY OF TORONTO

Applicant: BLACKLAB ARCHITECTS INC

Property Address/Description: 10 HARNISH CRES

Committee of Adjustment Case File: 20 106749 NNY 18 MV (A0040/20NY)

**TLAB Case File Number: 20 162102 S45 18 TLAB**

**Hearing date:**      Thursday, December 10, 2020

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
LAND USE PLANNER	APPLICANT	MICHAEL MANETT
CITY OF TORONTO	APPELLANT	LAUREN PINDER

## INTRODUCTION

This matter comes forward on an Urgent Motion basis by way of a request for a Settlement Hearing. On June 11, 2020 the North York Division of the City of Toronto (City) Committee of Adjustment (COA) approved an application for a single variance permitting a coverage increase applicable to 10 Harnish Crescent (subject property), with conditions.

The City appealed the approval. The Parties have since settled their differences and jointly petition the Toronto Local Appeal Body (TLAB) for a reduced coverage variance, with conditions, in settlement of the appeal.

Ms. Lauren Pinder, solicitor, attended the virtual WEBEX Hearing on this matter on behalf of the City; Mr. Michael Manett was present to give land use planning evidence on behalf of the Applicant. There were observers present from each office, but no other persons were in attendance. Neither the owner/applicant nor its architect were present. There were no letters of support or opposition to the TLAB.

Mr. Manett, in accord with the *Rules* of the TLAB, could act only as an expert witness and not as a Representative, an election incumbent on a practicing Registered Professional Planner, and accepted.

## **BACKGROUND**

In opening remarks, Ms. Pinder advised that the ‘settlement’ engaged a reduction of the proposed lot coverage from 34.59%, approved by the COA, to 32% whereas the zoning by law established a maximum 30% lot coverage standard. There is no applicable gross floor area or floor space index regulation in by-law 569-2013, applicable to the subject property.

She advised acceptance of the Affidavit evidence filed by Mr. Manett, that “two of the three Urban Forestry conditions imposed by the COA she was advised “had since been determined to be imposed in error, and that the third, a payment of ‘cash-in-lieu’, had been satisfied”.”

She requested on behalf of the City that the appeal be allowed, that the reduced coverage of a maximum 32% imposed, that any approval be conditional on the Site Plan dated November 4, 2020 prepared by the Owner’s architect Blacklab Architects Inc., and that the coverage reduction be considered minor requiring no further notice or service pursuant to s.45 (18.1.1) of the *Planning Act*.

## **MATTERS IN ISSUE**

As the matter was convened on consent of the only Parties who were present, there were no outstanding matters. However, the TLAB has an originating and independent jurisdiction and obligation, below, to consider the merits of the requested zoning variance.

## JURISDICTION

### Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## EVIDENCE

The sole evidence heard in this matter was that of Mr. Michael Manett who was affirmed and accepted to provide professional, qualified evidence on matters of land use planning. Mr. Manett's Affidavit and attachments, including his *curriculum vitae* and Expert Witness Statement were entered as **Exhibit 1**.

A series of aerial photographs and site area pictures was entered as **Exhibit 2**.

A site rendering, initially reserved and ultimately referenced as the architect's descriptive intention of the owner, was entered as **Exhibit 3**.

The Affidavit, Exhibit 1, sworn November 14, 2020 and the evidence of the witness attests to the derivative nature of the settlement and its compliance with the policy and statutory tests above recited. In brief, rather than endure a scheduling delay and uncertainty, the owner instructed negotiations with the City Appellant. The Parties settled on a coverage reduction supported in a Staff Report to the COA recommending a maximum coverage allowance of 32% together with the joint petition for an early disposition communicated to the TLAB by correspondence from Ms. Pinder dated November 13, 2020, with attachments.

Briefly, Mr. Manett described the character on the subject property as being within an enclave environment of homogeneous, one-two storey detached dwellings undergoing renewal with two storey dwellings. The proposal reflects that character with site layout and regulatory compliance in a built form of a partial two storey dwelling, with

a 'modern' flat roof residence and one-storey, garage, the latter being topped with a 'green roof' intended as inaccessible.

In scale the proposal is said to be materially less in size than that permitted (346.15 sq. m.), at 292 sq. m. The Site Plan, dated November 4, 2020, also prepared by the Owner's architect, Blacklab Architects Inc., now entered as **Exhibit 4**, shows slight modifications from the existing building footprint to be demolished as well as the design feature of a larger, second storey floorplate overhanging portions of the ground floor at grade.

Mr. Manett opined:

- a). consistency with the Provincial Policy Statements and conformity with the Growth Plan;
- b). general conformity with the Official Plan, notably section 4.1 insofar as the design represented a 'sensitive, gradual fit' and consistency with the redevelopment existing and occurring in the *Neighbourhoods* designation and locale. In meeting all other performance standards set in zoning, the incremental coverage presented no appreciable locational or character change;
- c). general conformity with the intent and purpose of the zoning by-law, but lesser in scale than that approved by the COA and without an observable external increment in coverage. Further, by location, it is situated on the lot, Exhibit 4, in a manner compliant with all other regulatory obligations and in alignment with adjacent dwellings;
- d). is desirable as a new improvement investment that fits in height massing and scale with no other variances engaged; and
- e). is minor in recognition of no adverse impacts through retention of perimeter heavy vegetation, is without opposition or perceivable building element.

Mr. Manett urged approval of the settlement on the terms described by the City. He agreed with Ms. Pinder that the modification to coverage proposed by the settlement was less than that approved by the COA and did not warrant further exposure under the *Act*.

In response to questions by the Chair, Mr. Manett agreed that the Site Plan, Exhibit 4, Plan A001, dealt only with coverage and not the built form contemplated by the rendering, Exhibit 3. He felt it was unnecessary to tie down the building plans to elevations, preferring to leave to the Owner the location of doors, windows and other built form configurations, if any. He acknowledged that there existed flexibility in the zoning by-law, notably permitted height and setbacks that could result in a different product on construction than that fixed by the footprint coverage of 32%.

He said the current intent is to build to the design set out in the architect's Plans, A001 to A502 and that there would be no objection to any of the conditions set by the COA.

Ms. Pinder confirmed that the advice she had received on the Urban Forestry conditions had been the result of a telephone consultation; nothing had been produced by way of written confirmation. It was evident from the review of the survey plan that at least two private trees in the rear yard were described as intended to be removed. Their canopy depiction overlapped the proposed replacement dwelling.

## **ANALYSIS, FINDINGS, REASONS**

This is a circumstance where the matter comes forward as a settlement and is supported by qualified professional evidence. I accept the opinion evidence of the planner on the five matters above listed. I am satisfied that the decision of the COA should be altered and concluded as supported by the evidence on the applicable tests.

I find the variance as agreed should be approved.

I am less satisfied with the evidence on the appropriate conditions.

While the conditional inclusion of construction generally in accordance with Exhibit 4, the Site Plan, is agreed, I find it inadequate to deliver the representative project envisaged by the Owner. The TLAB is hesitant to grant approvals in a vacuum, meaning that where substantive latitude exists, in the application of the performance standards under zoning, so as to permit construction of a project that may result in something materially different than that proposed and represented to the public and public approval agencies, intervention is appropriate. I will require substantial construction to reflect the elevation proposed and seen by the public.

Insofar as the COA had regard for conditions, I find they remain appropriate even if some, or all, are supposedly already satisfied on the reported advice attributed to Urban Forestry. Telephone advice from persons unknown relayed through counsel without authentic confirmation is an inadequate evidentiary standard for decision making on a subject matter for which express policy direction is apparent in the Official Plan.

There was discussion on the 'green roof' notation depicted on the architect's plans. There is also a definition in the zoning by-law respecting a 'green roof' with apparent intended obligations. The architect shows the roof area of the garage as an inaccessible green roof, suggesting maintenance may be limited or inhibited. The COA did not address the suggestion of a 'green roof'. In my view, the 'green roof' should be left as a matter between the Owner and the architect and not be imposed as a condition requirement, engaging the City and Owner in regulatory compliance measures.

The planner had no objections to the requirement of 'permeable pavers' being imposed for use in front yard/driveway hard surfacing improvements. In order to protect

the substantial and significant hedgerow along the north property line, a condition for the use of permeable pavers only in the location of the existing driveway will be included.

I express my appreciation to Ms. Pinder and Mr. Manett for their preparation and conduct of this virtual Hearing matter.

## **DECISION AND ORDER**

The appeal is allowed, in part. The following proposed variance is authorized and approved:

### **Chapter 10.40.30.40. (1), By-law No. 569-2013**

The permitted maximum lot coverage is 30% of the lot area.

The proposed lot coverage is 32% of the lot area.

This approval is subject to the following conditions:

1. Construction shall be in substantial compliance with the plans identified as Plan A001, Plan A203 and Plan A401, dated November 4, 2020 and prepared by Blacklab Architects Inc., attached and marked as **Attachment A** to this Decision and Order. Internal layouts of interior space and the specification of a 'green roof' are not included in this requirement. Any additional variances required by these plans are expressly not approved.
2. The requirements, if any, of the Parks and Recreation, Urban Forestry Division:
  - i) Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.
  - ii) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
  - iii) Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

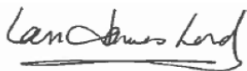
**Decision of Toronto Local Appeal Body Panel Member: I. LORD**  
**TLAB Case File Number: 20 162102 S45 18 TLAB**

3. The proposed front yard hard surface driveway access be constructed of permeable pavers without encroachment on the existing hedgerow vegetation along the north property line of the subject property.

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

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X



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Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

10 HARNISH CRESCENT, TORONTO, ON:

NEW BYLAW:

Zoned RD RESIDENTIAL)

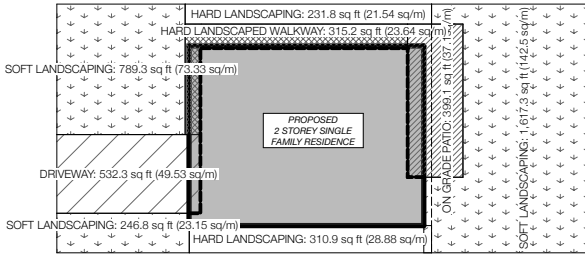
RECEIVED November 13, 2020  
By Toronto Local Appeal Body

	PERMITTED	EXISTING	PROPOSED
FLOOR AREA (GFA - EXCL. GARAGE)	N/A	143.50sq/m (1,544.60sq/ft)	292.01m2 (3,143.16sq/ft)
LOT COVERAGE	30%	24.88%	31.98% 1,985.80 sq/ft (LOT: 6,209.46 sq/ft)
FRONT YARD SETBACK (EAST)	AVE. ADJ. BLDGS (8.14m)	8m	8.76m
SIDE YARD SETBACK (NORTH)	1.8m	1.55m	1.80m
SIDE YARD SETBACK (SOUTH)	1.8m	2.18m	2.77m
REAR YARD SETBACK (WEST)	7.5m	12.95m	10.77m
MAX. HEIGHT	10m (2 STORIES)	4m (EST.)	6.85m

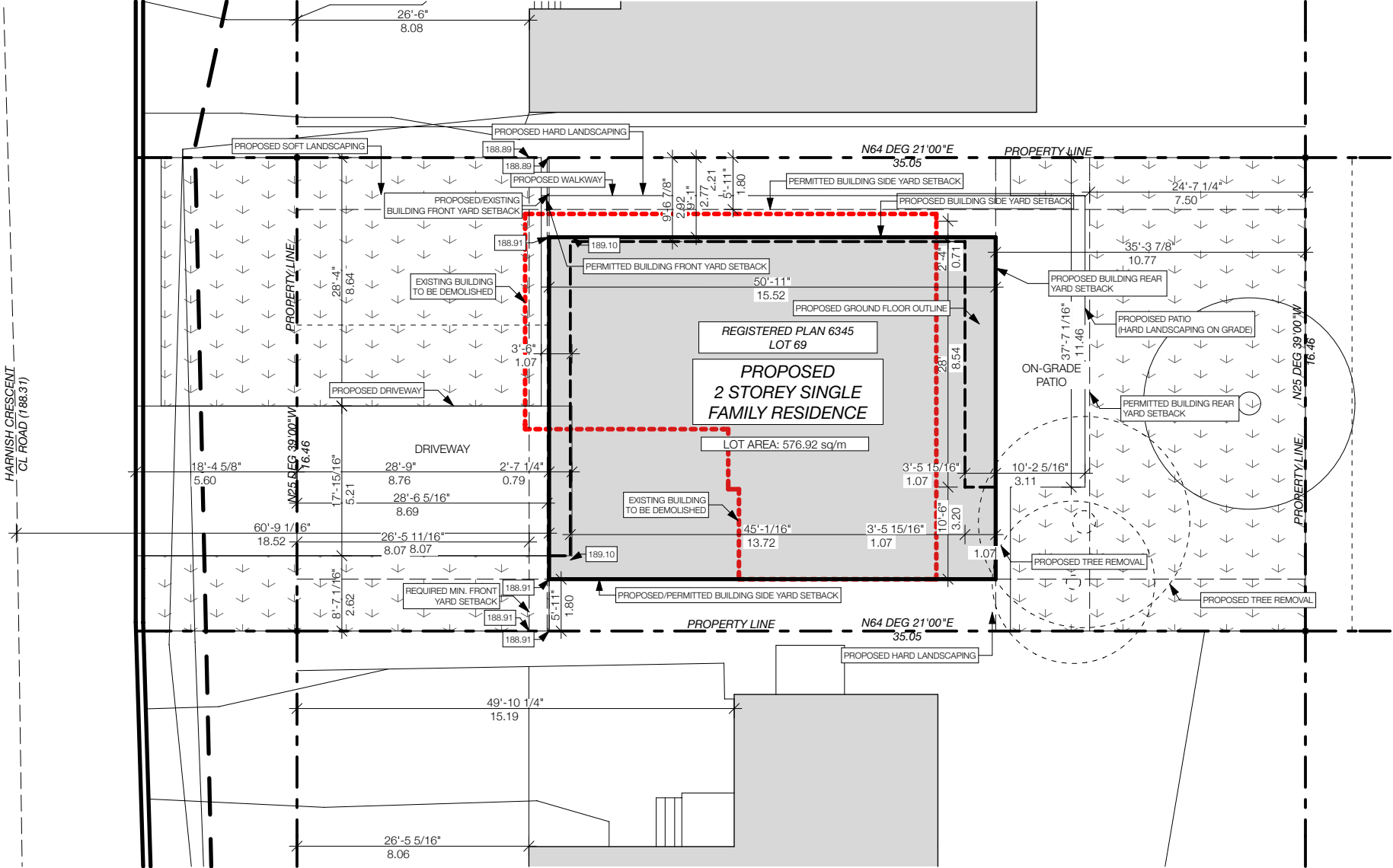
PROPOSED NEW RESIDENCE:

10 Harnish Crescent  
PROJECT 19-03

Issued for TLAB Review  
NOVEMBER 4th, 2020



LANDSCAPE PLAN



PROPOSED SITE PLAN  
1:200

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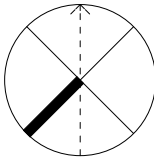
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#	ISSUANCE	DATE YYYY/MM/DD
1	C OF A APPLICATION	2020/01/16
2	C OF A APPLICATION	2020/02/20
3	TLAB REVIEW	2020/09/31
4	TLAB REVIEW	2020/11/04

blackLAB architects inc.

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Project Contact: Joe Knight



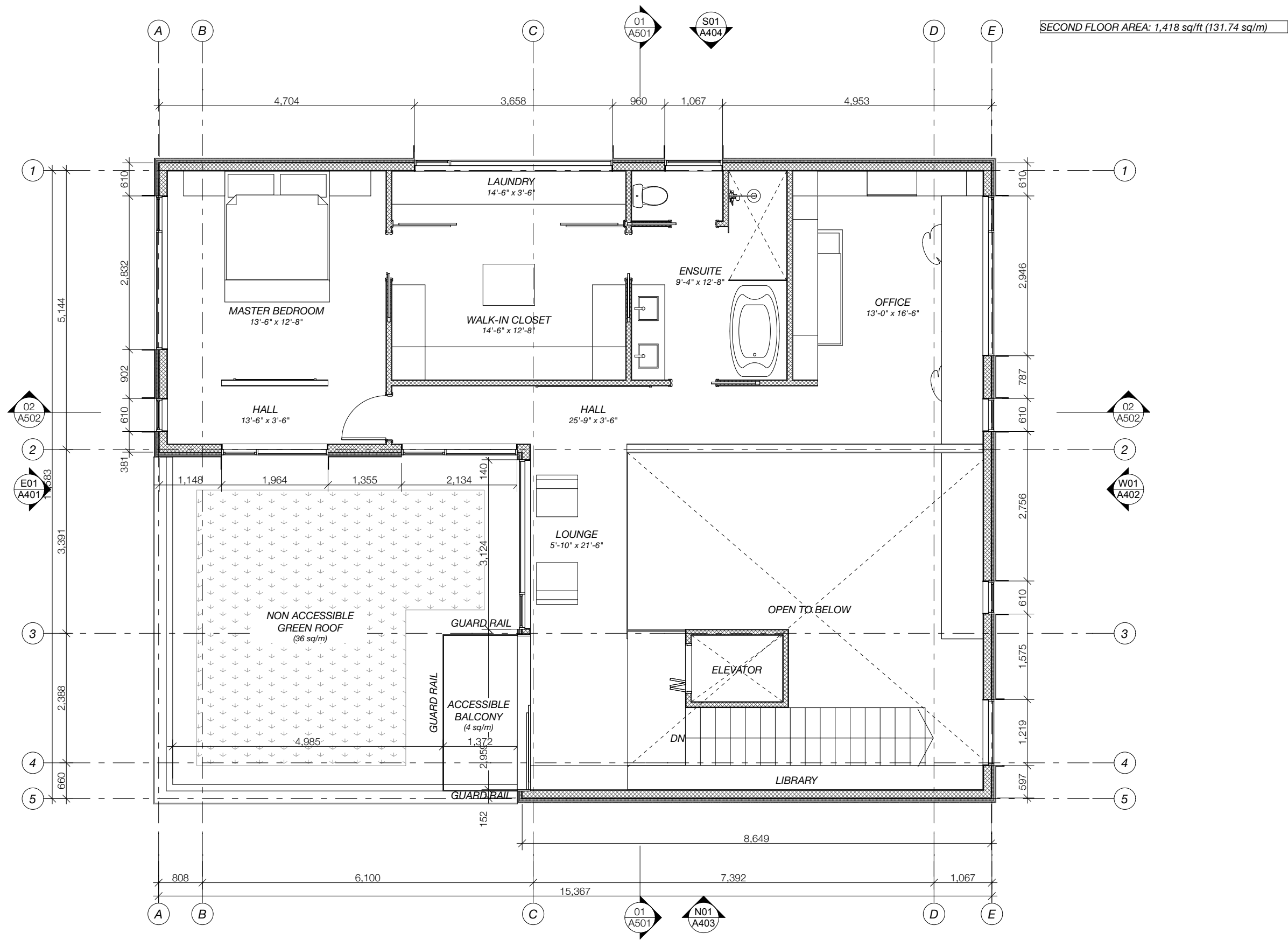
Reviczky- Dolan Residence

10 Harnish Crescent, Toronto, ON  
Project # 19-01

A001  
SITE PLAN

Scale:1:200, 1:5.72, 1:500  
Print Date: 2020-11-04





SECOND FLOOR  
1:75

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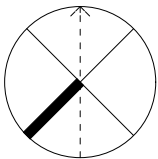
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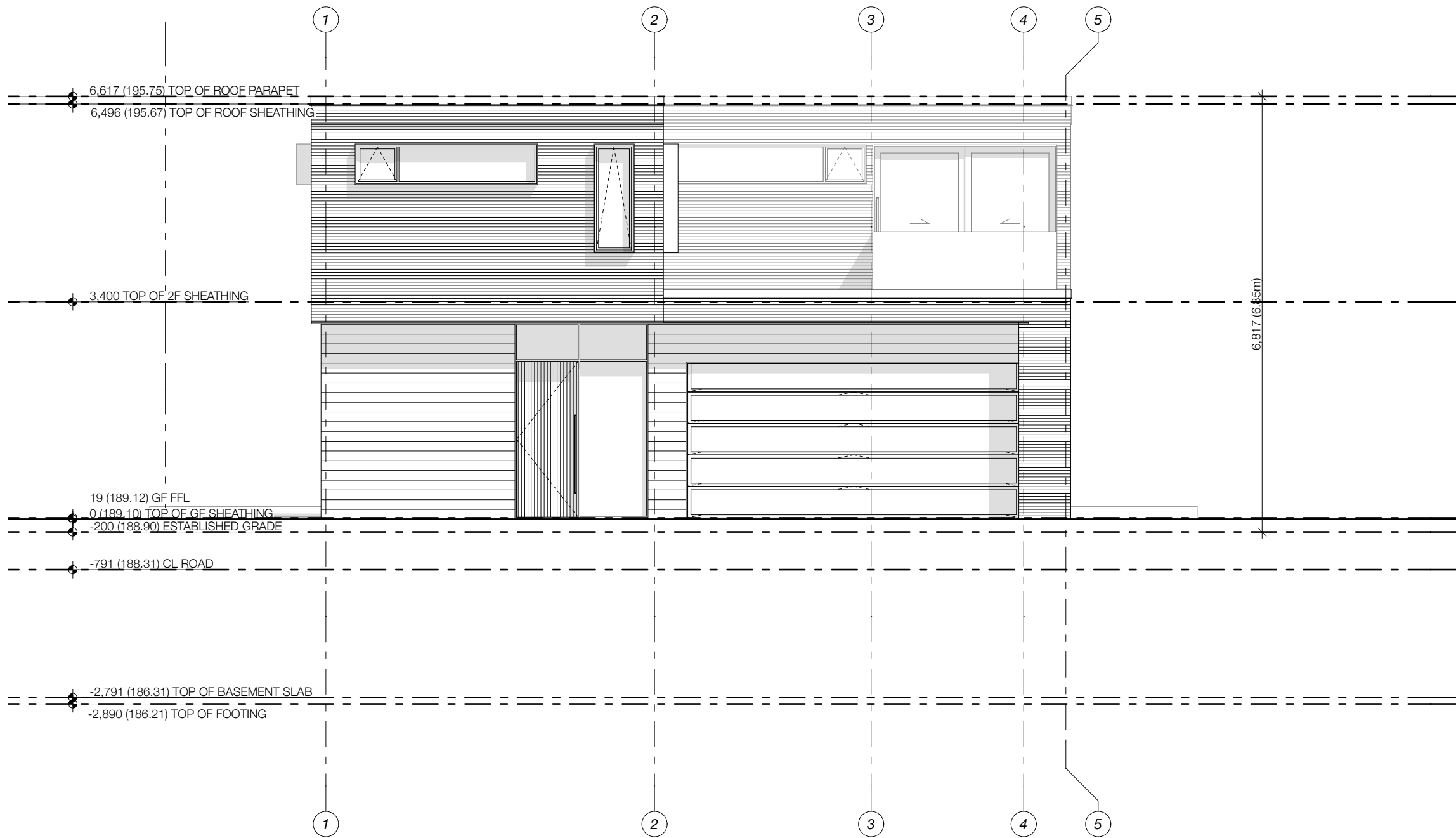
Project Contact: Joe Knight



Reviczky- Dolan Residence

10 Harnish Crescent, Toronto, ON  
Project # 19-01

**A203**  
**PROPOSED 2ND**  
**FLOOR PLAN**  
Scale:1:8.33, 1:75  
Print Date: 2020-11-04



EAST ELEVATION  
1:75

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Reviczky- Dolan Residence

10 Harnish Crescent, Toronto, ON  
Project # 19-01

**A401**  
**PROPOSED EAST  
ELEVATION**  
Scale: 1:75  
Print Date: 2020-11-04