

DECISION AND ORDER

Decision Issue Date Friday, January 08, 2021

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): Aphrodite Rubello

Applicant: Veronique Allard-Buffer

Property Address/Description: 49 Chester Ave

Committee of Adjustment Case File: 19 104435 STE 14 MV (A0036/19TEY)

TLAB Case File Number: 19 198659 S45 14 TLAB

Hearing date: March 13, 2020

DECISION DELIVERED BY J. Tassiopoulos

REGISTERED PARTICIPANTS AND PARTIES

Applicant	Veronique Allard-Buffer
Owner	Toula Rubello
Appellant	Aphrodite Rubello
Appellant's Legal Rep.	Leah Weller
Appellant's Legal Rep.	Amber Stewart
Party	Parvin Ghorayshi
Party's Representative	Robert Brown
Participant	John Robert Dales
Expert Witness	Jonathan Benczkowski

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on Thursday July 11, 2019 for 49 Chester Avenue (subject property). The COA refused the variances sought for the alteration of an existing two-storey semi-detached dwelling to construct a third storey with a front deck, a rear three-storey addition with a basement walkout, and to construct a rear two-storey garage containing a laneway suite.

The subject property is located on the east side of Chester Avenue north of Danforth Avenue and south of Browning Avenue. The property flanks residential dwellings to the north and south, and a lane on the east side. It is designated *Neighbourhoods* in the Official Plan (OP) and zoned Residential (R) pursuant to City of Toronto By-law 569-2013. The property is also subject to Official Plan Amendment 403 (OPA 403) and Zoning By-law 825-2018 which were adopted to permit the construction of laneway suites in rear yards of properties that abut public laneways in areas designated *Neighbourhoods* and zoned Residential (R).

The proposal has been further revised which resulted in the removal of variances previously requested at the COA and some reduction in variance requests for floor space index (FSI), building depth and height of the laneway building.

Prior to this Hearing, two previous interim Decisions had been rendered with respect to this matter. In a written Motion, the Appellant requested an extension of the deadline date for the submission of disclosure documents due to her difficulty in engaging a planner to help represent her at TLAB and to address the concerns that her neighbour, and Party to the hearing, Parvin Ghorayshi, had expressed. The Motion was allowed and the deadline for document disclosure was extended to October 21, 2019 and a new Notice of Hearing was revised to reflect this deadline extension.

This was followed by a Motion from Ms. Parvin Ghorayshi, filed on October 22, 2019, requesting the adjournment of the November 25, 2019 Hearing date due to her Representative, Mr. Robert Brown, being unable to attend due to a personal matter. This Motion was also allowed and resulted in the Hearing date being rescheduled to March 4, 2020.

The March 4, 2020 Hearing was, again, adjourned due to illness on the part of Mr. Brown. He submitted a Motion to adjourn on March 3, 2020, filed with all Parties and Participants, and, on consent, the Motion was granted to the adjourn the matter further with alternate Hearing dates.

The new Hearing date was set for March 13, 2020.

On March 13th return date, the Appellant/Owner was present and was represented by Ms. Amber Stewart (counsel) and Mr. Jonathan Benczkowski, an expert witness who provided planning evidence for this appeal. The Party in opposition to the proposal, Ms. Parvin Ghorayshi, attended and was represented by Mr. Robert Brown. In

addition, the Appellant's architect, Ms. Veronique Allard-Buffer, and a resident who elected Participant status in opposition to the proposal, John Robert Dales, were also in attendance.

At the outset, I asked if there were any preliminary matters to be addressed prior to the commencement of the Hearing. Ms. Stewart indicated that the proposal had been revised with respect to the laneway suite building noting that the footprint had been altered to ensure it was aligned with the neighbouring garage in the rear yard, and this alteration led to a cantilever of the second floor into the rear laneway. This removed variances with respect to setbacks between the proposed dwelling additions and the laneway suite and the angular plane.

Although this resulted in an increase of 1.2m in the rear yard separation between the main dwelling and the laneway suite, it resulted in triggering variances with respect to setbacks from the property line and centerline of the rear lane due to the second floor cantilever. Ms. Stewart explained that the intention was to address impact on the neighbouring rear yard as well as improve the amenity space for the subject property. I asked Ms. Stewart if Mr. Brown had received a copy of the revised plans, and she indicated he had not, but she had communicated the changes to him and he confirmed he was aware of the changes but did not have a copy of the latest revised plans. On my direction, a copy of the revised plans was provided to Mr. Brown to ensure that all Parties had an opportunity to review the requisite proposal plans during the Hearing.

Mr. Brown noted that updated disclosure materials were also submitted to TLAB on the day of the Hearing that included table and graph updates. Mr. Brown was directed to make copies of the updated material and to provide them to Ms. Stewart to ensure the other Party had the latest updates. Both Parties were assured that if more time was needed to review these materials, a pause could be provided.

Having attended to the sharing of the updated document, the Hearing proceeded and during my introductory remarks I disclosed to those in attendance that I had visited the site, walked the surrounding neighbourhood, and generally read the materials filed by the Parties in preparation for the Hearing but that it is the evidence to be heard at the Hearing that is of importance.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Appellant / Owner for the alteration of a two storey dwelling, through floor plan additions to the rear, a third storey addition and a laneway suite, appropriate under applicable policy and the statutory Planning Act tests?

Do the proposed alterations to the existing building create adverse impacts to the adjacent neighbours and surrounding neighbourhood?

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

Ms. Stewart provided a brief introduction to the proposal noting that the proposed renovation was part of her client's long-term plan to continue to live in the neighbourhood, and that what was being proposed contributed to complete communities by providing for additional rental housing and a laneway suite, which are encouraged and permitted by Provincial and City policy. She suggested that the design of the proposed third floor was revised to reduce its massing and visibility at the front and rear, and the façade was adjusted with the added gable to be more unified with the attached neighbouring semi-detached unit. She concluded that the Appellant had made many efforts to address the neighbours' concerns and that the changes were evidence of this effort.

Mr. Brown then provided a brief response and statement noting that the changes made were merely cosmetic and that his client's concern was that the proposal was an overdevelopment of the site and the proposed third floor addition. He noted that there were still substantive issues that Ms. Ghorayshi had with respect to the proposal.

Following the opening statements, Ms. Stewart called Mr. Benczkowski as an expert witness in support of the Appellant, he was affirmed, and I qualified him to provide expert professional evidence in the field of land use planning. Ms. Stewart began by asking that Mr. Benczkowski's Witness Statement (Exhibit #1), Document Disclosure Book 1 (Exhibit #2), Document Disclosure Book 2 (Exhibit #3), the updated March 10, 2020 Zoning Notice (Exhibit # 4) and the revised plans (Exhibit # 5) be entered as exhibits. Ms. Stewart then reviewed Mr. Benczkowski's qualifications; I noted that I had previously qualified Mr. Benczkowski at another TLAB Hearing for land use planning and that I would qualify him again.

Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos
TLAB Case File Number: 19 198659 S45 14 TLAB

Mr. Benczkowski provided an overview of his retainer noting that he was approached following the refusal of the proposal by COA and in preparation for the appeal to TLAB. He noted that he proposed two changes that are reflected in the revised plans, namely the provision of a bay wall projection on the second storey and the addition of the half gable so that they mirrored the neighbouring semi-detached dwelling's features. He then noted how the variances currently sought differed from those that were presented to the COA (Exhibit #2, Tab 3), including:

- The FSI was reduced from 1.09x (242m²) to 1.06x (235.7m²) the area of the lot whereas the maximum permitted FSI is 0.6x;
- Building depth was reduced from 22.6m to 20.949m, whereas the maximum permitted building depth is 17.0m;
- The previous variance (#8) concerning a minimum of 75% soft landscaping of the area between the ancillary building containing a laneway suite and the lot line abutting a lane is no longer required;
- The previous variance (#9) concerning the laneway suite being a distance of no less than 7.5m from a residential building on the same lot if the height of the ancillary building is greater than 4.0m, is no longer required;
- The previous variance (#11) concerning the height of an ancillary building when less than 7.5m from a residential building on the same lot, if the height of the ancillary building is greater than 4.0m, is no longer required; and,
- The side yard setback performance standard in Zoning By-law 438-86 is no longer required as the minimum side yard setback of 0.9m, of Zoning By-law 569-2013, was now in force.

Having noted the variances no longer required, Mr. Benczkowski then provided a synopsis of new variances required based on the updated Zoning Notice (Exhibit #4) and mainly due to the revisions of the laneway suite and the site plan, namely:

- The proposed laneway suite requires a minimum setback of 1.5m to the rear lot line, the proposed is 0.408m;
- A building or structure may be no closer than 2.5 metres from the original centreline of a lane. The proposed building or structure is 2.23 metres from the original centreline of the lane; and,
- A pedestrian entrance leading exclusively to a Secondary Suite is not permitted in a front wall of a detached house or semi-detached house, which he explained was related to the variance concerning a second entrance on the main wall face and mentioned that there was no change on the front elevation.

Mr. Benczkowski noted that all of the revised, deleted, and new variances sought were all improvements when compared to the original proposal. He concluded that the revisions made to the proposal, such as the elimination of the variance for the basement

main wall separation to the laneway suite, removing some of the variances, and the addition of the gable at the front elevation, were all positive revisions.

He explained that the building depth variance to permit a length of 20.949m was due to the basement level depth and that the ground floor depth, that would be visible, was 17.367m in depth. He further explained that the third floor addition is stepped back from the front and rear walls of the dwelling and mitigates the view from the street and from the rear yard. He concluded the review of the changes by noting the garage wall facing the rear yard is now aligned with the neighbouring garages.

Mr. Benzakowski stated that there was no correspondence received from City departments, including Planning and Urban Forestry, with respect to the proposal. He mentioned that correspondence was received from Development Engineering and Construction Services noting no objection to the proposal. He indicated that the proposed laneway suite building met the siting requirements with respect to separation from the main building, with the exception of the lane setback to the centre line of the lane.

He summarized that in his opinion the proposal represented good planning as it would renew housing stock and make more efficient use of infrastructure and nearby public transit at Chester Station without causing undue adverse impact; the provision of the secondary and laneway suites were in keeping with both City and Provincial policies regarding intensification; and the proposal would respect and reinforce the existing physical character of the area characterized by a variety of housing and types. He concluded that the variances both individually and cumulatively met the four tests of 45(1) of the Planning Act and that the appeal be allowed and the application be approved as amended.

Following a brief break, Ms. Stewart indicated that the third floor addition indicated in the plans was incorrect and that the correct plans would be submitted with the revised third floor length of 11.577m and that the FSI variances would be further reduced to 1.04x the lot area to reflect the change. These changes did not affect any of the other variances sought.

Mr. Benczkowski then presented the Neighbourhood Study Area (NSA) he reviewed with respect to the proposal and indicated that it was bound by Browning Avenue to the north, the residential dwellings that border Danforth Avenue to the south, Logan Avenue to the east, and the west side of Chester Avenue (Exhibit #3, Tab 25). He explained that the NSA was not expanded further because the lot structures, built form, and zoning are very different further west in Playter Estates. With respect to the immediate context he looked at Chester Avenue specifically. He noted that the study area is comprised of a mix of semi-detached and detached, two-storey and three-storey dwellings that were characterized by tight side yard setbacks and that they included a variety of styles with newer dwellings dispersed within the study area; newer construction was described as often being larger and taller than existing dwellings.

Turning to his photobook of the study area (Exhibit #3, Tab 18), he pointed out the narrow side yards present in the neighbourhood and the dense urban character of the study area. He provided examples of the built form variety on Chester Avenue with

comparable examples of dwellings with third floor additions and rear yard additions. Beyond the immediate context he provided examples, in the study area, of other semi-detached redevelopment on Arundel and Logan Avenues illustrating asymmetrical front elevations. He explained that renovations are occurring throughout the neighbourhood and the proposal reflected the changes occurring within the neighbourhood study area.

He noted that the rear lane was varied and included both parking pads and garages. He concluded his review of the images with reference to a massing rendering (Exhibit #3, Tab 19) generally illustrating the relationship of the proposal to the neighbouring dwelling. Mr. Benczkowski stated that the rendering illustrated how the third storey addition visual impact was reduced through the stepback from the front elevation and that the bay window was retained.

Turning to the PPS and the Growth Plan, Mr. Benczkowski stated that the proposal was consistent with and conformed to these provincial policies because it made efficient use of the land, the transit infrastructure, and would introduce additional units to provide a mix of units which is appropriate for an existing settlement area. It would provide “*a very modest form of intensification and would rejuvenate the existing housing stock.*” (Hearing excerpt).

With respect to the OP, Mr. Benczkowski stated that the proposal respects and reinforces the existing physical character of the neighbourhood and is in keeping with the changes already occurring in the neighbourhood. He stressed that section 2.3 states that neighbourhoods will not stay frozen in time and that physical change will occur. He further noted that the cornerstone policy of 2.3.1 states new development “*will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.*”

Turning to policy 4.1.5, Mr. Benczkowski stated that it was the development criteria under this policy that applied in assessment to the evaluation of the proposal to determine if it meets the intent the Official Plan to respect and reinforce the existing physical character of the neighbourhood.

With respect to the proposal, he noted the following applicable criteria:

- 4.1.5 (c) with respect to prevailing heights, massing, scale, density and dwelling type of nearby residential properties he explained that they needed to be considered together and not just individually. He pointed out that density is not always an indication of dwelling form as the massing and scale of a building can be adjusted to address fit on the streetscape and that the proposal’s third floor addition stepbacks at the front and rear provide appropriate mitigation with respect to the impact of the added the massing from street views;
- 4.1.5 (f) with respect to prevailing setbacks of buildings from the street or streets; He mentioned the front yard setback was technical in nature since there was no reduction requested from the front porch and the setback of the main first floor wall will remain as per the existing dwelling. The variance is triggered by the basement wall of the living area under the existing front porch and is a condition found in the neighbourhood. Looking at the rear lane he noted that garages or pads are built

right to the property line and that the setback of the laneway suite and is consistent with “the laneway street wall” (Hearing excerpt); and,

- 4.1.5 (g) with respect to prevailing patterns of rear and side yard setbacks and landscaped open space, he explained that the proposal meets the prevailing patterns of setbacks and landscaped open space within the neighbourhood by maintaining the 7.5m rear yard and not altering the existing site condition of the south side yard setback. He concluded that the separation between the laneway suite and the building and landscape requirements have also been met by the proposal.

Mr. Benczkowski opined that based on these OP policies, the proposal is consistent with the prevailing physical character of the immediate and broader neighbourhood study area and that the built form aspects of the of revised proposal, which maintains the roof lines with the north attached dwelling, meet the general intent and purpose of the OP.

He concluded his review of the OP by referencing policy 4.1.8 with respect to the zoning by-law standards and opined that they intend to ensure compatibility of a new development with the physical character of established residential neighbourhoods. He mentioned that the proposal generally complies with the zoning standards and that variances for height and FSI are a result of the third storey addition, and that its visual impact has been mitigated by stepbacks from the front and rear elevations.

Turning to the Zoning By-Law variances sought, Mr. Benczkowski addressed those related to the laneway suite, noting that the angular plane variance is due to the measurement from the height of 4.0m, whereas the proposal has applied it at a height of 4.7m. Given the separation distance of 7.5m is met the encroachment should still allow for light into the rear yards. With respect to the 1.5 m setback from the lane whereas a 0.408m setback is proposed, he explained that this was primarily due to the cantilever of the upper storey and that the ground level of the laneway suite was generally at a 1.5m setback. The setback is meant to accommodate ease of vehicular ingress/egress to the garage and the proposal would still allow for this to occur. The cantilever also triggered the requested variance for the setback from the lane centreline of 2.5m whereas 2.23m is proposed.

Mr. Benczkowski then reviewed the variances associated with the main house based on the Zoning Notice (Exhibit #4) as follows:

- The proposed third storey addition alters the front wall and roof that faces a street. He explained, however, that including the gable at the front, maintaining the bay on the second storey, and setting back the third storey mitigates the visual impact from the street. Ms. Stewart asked if this variance, along with that for a secondary suite entrance on the front wall, would be required if the proposal were for a duplex and if a duplex was permitted in the R zone. Mr. Benczkowski confirmed that the variance would not be required for a duplex and that duplexes were permitted in the R zone as are triplexes and fourplexes;

Decision of Toronto Local Appeal Body Panel Member: J. Tassiopoulos
TLAB Case File Number: 19 198659 S45 14 TLAB

- Dealing with the height variance he asserted that the maximum height standard in the By-law permits 10.0m whereas 10.564m is proposed but that it only applied to the highest point of the roof slope and that the stepping back of the third storey mitigated potential impact. He further explained that this applied to the variance sought for front and rear exterior wall heights which have a permitted maximum height of 7.5m, whereas 10.564m was proposed. Again he explained that the height measurement was taken from the highest point of the roof, but that the rest of the wall gradually diminished in height due to the roof slope and that the 3.37m set back of the third floor *“from the existing second floor front wall, which will allow for the massing of the dwelling itself to continue to read as a two-storey dwelling”* (Hearing excerpt);
- The building depth variance for 20.949m whereas 17.0m is permitted is due to the basement level length. Although the first floor depth would still require a variance, it only had a depth of 17.367m and therefore the proposed depth is appropriate in meeting the purpose and intent of the Zoning By-law;
- The FSI proposed is for 1.04x the area of the lot whereas the 0.6x the area is permitted, and the purpose of the density standard is to ensure compatibility in terms of scale and massing. He explained that FSI is only one of the zoning standards and that it must be considered along with building lengths, depths and setbacks. The proposal with a third-storey setback from the front and rear elevations will “read as a relatively modest dwelling from the street compared to other renovated replacement dwellings within the neighbourhood itself” (Hearing excerpt). The side yard setback aligns with the existing condition and the rear yard setback is in compliance. Ms. Stewart asked if he could go through his COA approvals table (Exhibit #3, Tab 22) and indicate other similar proposals of semi-detached units with third floor additions and compare their FSI to the subject property proposal. He pointed out semi-detached units with third storey additions ranging from an FSI of 0.74x 1.14x the lot area and indicated that in the majority of the COA applications, a variance to FSI was sought.
- The front yard setback sought was due to the area beneath the porch being habitable and the existing setback condition to the porch remains the same. He felt this variance was technical in nature.
- The side yard setback on the south side was also technical in nature and the filling in of an existing portion of the side yard did not impact the existing functionality of the side yard.
- The variance to permit an entrance to a secondary suite in the front wall of a detached or semi-detached dwelling is addressed architecturally by providing a framed front door entrance and a glazed entry door designed into the front window to visually mitigate appearance of two separate entrances.

Mr. Benczkowski stated that the variances were minor in nature when both the numerical and qualitative aspects of the proposal are considered. He noted that they are within the range of other variances in the neighbourhood evidenced in his COA

approvals table. He further opined that the proposal seeks a modest dwelling height, is in general compliance with the zoning standards, and that adverse impacts resulting from shadowing will be minor in nature and will not create unacceptable impacts on adjacent neighbours or the neighbourhood as a whole.

Mr. Benczkowski explained that the proposal will provide for additional residential units in an area with many public amenities and nearby transit infrastructure. It is desirable because the proposal provides modest intensification in a form that fits into the character of the neighbourhood. He asserted that it is desirable to provide additional units in neighbourhoods in the core of Toronto.

Mr. Benczkowski concluded that the proposal does not seek approval at the expense of the neighbourhood and that the design has been prepared with sensitivity to its neighbours and that it is appropriate for the neighbourhood and surrounding context. For these reasons, he felt the proposal was desirable and appropriate for the development and uses of the land.

Ms. Stewart asked if there were any conditions that Mr. Benczkowski had for the proposal; he responded that the construction occur in accordance with the Site Plan; and that Revised Elevations that would be submitted at the end of the Hearing reflecting the variances sought from the zoning notice (Exhibit #4). Furthermore, he noted that if the setback to the centreline of the lane to the second storey of the laneway suite was an issue that adjusting for that setback should be accommodated. He concluded that subject to these conditions, in his opinion, the proposal meets all four statutory tests of section 45(1) of the *Planning Act* and he recommended that the appeal be allowed and the application approved.

Mr. Brown asked Mr. Benczkowski some clarification questions with respect to his Witness Statement. He then asked Mr. Benczkowski whether his reference to the variances for the laneway suite being technical in nature was a way of avoiding the fact that they are variances. Mr. Benczkowski answered that technical in nature suggests an existing situation and it was with regard to variances for building separation distances which were no longer being sought.

Mr. Brown asked whether there was concern that some of the variances may be subject to access from emergency services. Mr. Benczkowski said that fire services are not always circulated but that there was an email response from Toronto Buildings noting that there were no concerns with emergency service access (Exhibit #3, Tab 24).

Mr. Brown then asked about the variance regarding angular plane and how it was determined for the laneway suite. Mr. Benczkowski referred to a section drawing indicating the angular plane (Exhibit #3, Tab 20).

Turning to the Zoning Notice's (Exhibit #4) reference to the setback requirement of the laneway centreline to the laneway suite, Mr. Brown asked if the latest plans had been reviewed by right-of-way management. Mr. Benczkowski mentioned that this would not be circulated to them unless there was encroachment into City land.

Mr. Brown asked if there was empirical data, such as City data on FSI, to support his opinion that the proposal respects and reinforces the physical character. Mr. Benczkowski noted that he did not always find some of the FSI data reliable but did review COA decisions and noted that data such as frontage and lot area are not disputable. Mr. Brown then asked how he could state that the proposal for FSI was in the range of approvals in the neighbourhood and Mr. Benczkowski responded that he was indicating the range of approved FSI in the COA decisions.

Turning to the COA approvals table, Mr. Brown asked how many of the approvals were on Chester Avenue. It was indicated that there were nine approvals and none of them has an FSI similar to the proposal. Mr. Benczkowski explained that FSI alone cannot determine how the massing and development will be deployed on the lot, and that there were other applications that included a third floor addition such as 41 and 43 Chester Avenue. He further explained that these were detached dwellings on larger lots and therefore the FSI calculation would be less than the proposal.

There was some question on how the concept of “prevailing” should be applied and Mr. Brown asked that if it refers to the most commonly occurring, if there “*was a prevailing pattern in terms of massing FSI*” (Hearing excerpt) and if there are properties at or above the FSI sought. Mr. Benczkowski answered that the prevailing massing, height, and character are varied.

Mr. Brown asked if the existing dwelling was to have an FSI increase to permitted of 0.69x, it would add approximately 50m², and given that proposal adds approximately another 77m², how would Mr. Benczkowski support his opinion that the variance was minor. Mr. Benczkowski responded that the added density is allocated to the third floor addition. Mr. Brown responded that this would still be quite an increase when considered in context of the adjacent dwelling regardless of how it is deployed. Mr. Benczkowski indicated on the plans that the other levels were just beyond the permitted building depth of 17.0m and that the “*impact is measured in how it is perceived and how it is projected on an adjacent property*” (Hearing excerpt) and that the placement of the third floor near the centre of the building limits its impact. When Mr. Brown noted that the second floor addition would impact his client, Mr. Benczkowski noted that the second floor addition was just beyond the permitted 17.0m building depth.

Mr. Brown, pointing to the sun/shadow study (Exhibit #3, Tab 21) and the September 23rd example, prepared by the Applicant’s architect, asked whether there is incremental shadowing caused to the north neighbouring property. Mr. Benczkowski explained it was difficult to speak to the sun/shadow study because it was based on an earlier iteration of the proposal and did not reflect the current proposal. When Mr. Brown asked if there could be incremental shadowing from the current iteration, Mr. Benczkowski responded that it could and that the current existing conditions also provided incremental shadowing of the neighbours property. He noted that any development will have some adverse impacts especially in an urban area, but that one needs to determine if they are acceptable. He explained that the shadowing is not constant in the study and that it will be further mitigated by the changes made in the current version of the plans. He added that most shadowing would occur on the roof of the attached neighbouring dwelling.

Mr. Brown asked if the proposal, in consideration of OP policy 4.1.8, provides for compatibility with the attached neighbouring dwelling. Mr. Benczkowski explained that compatibility did not mean that they need to be the same but need to be compatible. He noted that the proposal's massing and location of density has been designed sensitively by setting back the third storey. Mr. Brown asked if the almost doubling of FSI has any impact to which Mr. Benczkowski explained that the impact of FSI was mitigated by "appropriating" it to the third floor and setting back the third floor from the front and rear elevations.

Following a recess in the Hearing, Ms. Stewart mentioned that the plans had been further updated and that the variance for the laneway suite setback of 2.5m from the centerline of the lane was no longer required and that the setback of the laneway suite from the rear lot line had been increased to 0.709m from the previously requested 0.408m.

Given the changes to the updated plans, above cited, Mr. Brown asked if the west elevation third floor had a false gable with the terrace or deck located behind it. Mr. Benczkowski confirmed that was correct. Mr. Brown concluded his questions by asking for clarification as to whether the current daycare activities would disappear. Mr. Benczkowski responded that what was being evaluated were the variances for the proposal and he wasn't sure whether the daycare would continue, but that daycares are permitted as long they are below a threshold number.

Following Mr. Brown, Ms. Stewart asked Mr. Benczkowski, looking at the dwelling photos for 41 and 43 Chester Avenue, "*which one would the layperson perceive to be bigger*" (Hearing excerpt). He responded it would be 43 Chester Avenue because the third floor massing is closer to Chester Avenue while the 41 Chester has the third floor pushed further back so it would reduce the impact on the street. He indicated that the FSI for 41 Chester Avenue was 0.81x while 43 Chester Avenue was 0.69x. He noted that this was an example of how density cannot always be readily perceived from the street.

Ms. Stewart concluding by posing a hypothetical scenario asking if the proposal was built with an FSI of 0.69x, a building depth of 17.0m, and a height of 10.0m, would it have greater impact than the proposal? Mr. Benczkowski explained that it could potentially have more impact since the 7.5 minimum separation distance between the main building and the laneway suite could draw that building further into the rear yard and further impact the neighbouring property.

For clarification, Mr. Brown asked, hypothetically, if a dwelling height of 10.0m is assuming a two-storey dwelling and whether a three-storey height is permitted. Mr. Benczkowski responded that it did not have to be a two storey dwelling and that heights equivalent to a three-storey dwelling were permitted in the R zone category and the allowable 0.69x FSI could still result in a three-storey height if parts of the floor plans had greater heights within them, such as rooms with increased ceiling heights.

Following Mr. Benczkowski's testimony, Mr. Brown called upon Ms. Parvin Ghorayshi, the adjacent neighbour and Party in opposition to the proposal and she was sworn. She introduced herself and noted that she was a Professor Emeritus at the

University of Winnipeg and that she continues to be involved in academia. She explained that although not being a land use planner, she did review the OP, especially section 4.1 *Neighbourhoods*, and the Zoning By-law 569-2013, with respect to the subject property.

Ms. Ghorayshi stated that the proposal was an overdevelopment of the property and will have negative impacts on her privacy, exposure to sun, and enjoyment of the deck and garden. She stated that the proposal did not respect the prevailing character of Chester Avenue and that an approach could have been employed that respects the OP, the Zoning By-law and *“respects the prevailing character of this established neighbourhood”* (Hearing excerpt). She suggested that an increase in living space could be achieved within the confines of the zoning standards without adding length and height. She suggested that other neighbours have also renovated their housing while respecting their neighbours and the character of the neighbourhood.

Ms. Ghorayshi then turned to her photobook of examples of existing symmetrical semi-detached buildings on Chester Avenue and existing backyards and laneways. She noted that there are approximately 90 dwellings on Chester Avenue and that they represent the immediate neighbourhood context as per OP policy 4.1.5 and that this was consistent with the Expert Witness Statement of Mr. Benczkowski. However, she differed with his assessment on density as data were not provided to substantiate his statement that the general purpose of the FSI standard is met (Exhibit #1, para. 66).

Ms. Ghorayshi provided a chart representation of FSI data for Chester Avenue illustrating the existing FSI and that of COA decisions. She noted that the permitted FSI density (0.60x), the average FSI density (0.54x), and the median FSI (0.51x) were all exceeded by the proposed FSI of 1.04x the area of the lot and therefore it did not meet the prevailing density on the block. She concluded that this data refuted the statement made by Mr. Benczkowski in paragraph 66 of his witness statement where he states that: *“Similar dwellings that propose multiple units have requested similar FSI increases.”*

Ms. Ghorayshi said that as a layperson she did not feel the variances were minor because the livable space, when the laneway suite and the basement level are included, exceeds the existing dwelling by over 215%. From her perspective, she could not see the depth variance or additional proposed living space area to be minor.

She explained that she reviewed the sun/shadow study that was submitted because she spends a good deal of time on her rear deck and garden and that there is only one window at the rear that brings light into her home; the shadow cast from the proposal would materially impact her enjoyment of her home and garden.

She concluded that her photo exhibit illustrated numerous examples of semi-detached dwellings that were not the same on Chester Avenue and even though updated, they had retained and respected the profile of the semi-detached building.

For all these reasons, above cited, she stated that the proposal did not meet the tests of the Planning Act and that the COA decision be upheld and that the application be refused.

Ms. Stewart asked Ms. Ghorayshi if she felt the most recent changes to the plans were an improvement and Ms. Ghorayshi agreed they were but there was still room for improvement. She confirmed that the reduction of the building depth and pushing back of the laneway suite were improvements but she was concerned that the laneway building may now be too close to the lane.

Ms. Stewart then asked if the tables/graphs presented were prepared by Mr. Brown for her use and Ms. Ghorayshi noted that they were verified by him as she wanted to ensure the information was correct. She then asked what the yellow highlights in the table meant and Ms. Ghorayshi responded that she did not refer to the table in her evidence. When asked to explain the FSI data chart that she referred to in her evidence, Ms. Ghorayshi was not able to provide a clear answer noting that she relied on Mr. Brown to provide her with the data information.

Ms. Stewart asked if her concern was with impact to her backyard or front yard and she responded that she was concerned with the impact to both. When asked if she was more positive about the third floor addition location and that it could reduce the shadowing into her rear yard, Ms. Ghorayshi explained that it was not the shadowing that was the concern but rather the character of the third floor at the front. Furthermore, she questioned whether the third storey is even necessary considering the proposed increase of living space on other levels of the proposal.

Turning to the front elevation, Ms. Stewart asked if the addition of the gable on the third floor an improvement and Ms. Ghorayshi said it was a minor addition and did not help with the overall elevation.

Ms. Stewart then asked whether it was the overall number or the size that concerned her with respect to FSI and Ms. Ghorayshi responded that height was the concern. She continued that she didn't understand why the third floor addition was necessary when there was additional living space provided by the other additions and laneway suite of the proposal. Ms. Stewart said that the height variance was not significant and Ms. Ghorayshi responded that in this instance the added height was of a greater impact because of the character of the roof.

Following the conclusion of Ms. Ghorayshi's testimony, Mr. John Dales, a Participant to the matter, was affirmed and noted that he would not be giving evidence but that he wanted to speak to the matter. He indicated he had lived on Chester Avenue for 38 years and that the character of the street has remained generally the same over that time and that there were no third storey overlooks present on Chester Avenue.

Mr. Dales agreed with Ms. Ghorayshi's description of the character of Chester Avenue being comprised of mostly symmetrical semi-detached buildings. He agreed with Mr. Benczkowski's assessment that the neighbourhood was urban and dense but questioned whether this justifies adding even more density. Furthermore, he asked when the number of variances requested become egregious and wondered what impact the proposal may have on the property value of the attached property. He concluded his statement by quoting his grandfather: *"For some people a little more is never enough"* (Hearing excerpt).

Mr. Brown did not have questions for Mr. Dales. Ms. Stewart mentioned to Mr. Dales that she was not sure if there were other third floor decks facing Chester Avenue but was sure there were dwellings with second floor decks which Mr. Dales confirmed. Ms. Stewart then asked if he was aware that third floor decks were permitted as-of-right and Mr. Dales responded that he was not commenting on that requirement but did state that third floor decks were not in character with the street.

The Hearing day ended without closing arguments from the Party representatives and the Chair indicated he would accept them in writing and requested that the corrected set of plans and the revised variances, referred to during the Hearing, be submitted to TLAB and served to the other Parties and Participants, including Mr. Brown.

I also requested that the closing statements be submitted to TLAB by March 31, 2020. The closing statements from both Parties were received at TLAB on March 27, 2020. The closing statement from Ms. Ghorayshi included a shadow study which was not presented during the Hearing. Ms. Stewart's closing statement was submitted along with the corrected plans and a revised list of variances and conditions as requested by the presiding Chair. This was followed by a reply from Ms. Stewart, on April 17, 2020, to Ms. Ghorayshi's closing statement.

ANALYSIS, FINDINGS, REASONS

The difficulty of assessing this appeal was due to constant changes in the plans made over the course of disclosure deadlines and updated plan submissions up to the Hearing date and afterwards. This required that the final plans be carefully reviewed and carefully reconsidered to ensure that the plans submitted, and the requested variances were generally consistent. These final plans, along with the proposed variances and conditions, were submitted with the written closing statements as requested and, on consent, agreed to by the Parties. These plans and proposed variances are what I have referred to as part of my analysis of the proposal and are included as Attachments 1 and 2 to this Decision.

To the extent that the variances requested differ from those before the COA, I accept that the Applicant's proposed revisions: reducing the number of variances from thirteen to eleven, reducing the requested FSI and building depth variances, and increasing the separation distance between the main building and the laneway suite, are indeed significant reductions from the original application. As such, I find that no further notice is required pursuant to s. 45(18.1.1) of the Act, and the revisions can be considered.

I have considered the evidence presented during the Hearing, and I found that although Ms. Ghorayshi's testimony regarding the potential impact of the proposal to the enjoyment of her property to be genuine, I prefer Mr. Benczkowski's land use planning evidence as it was uncontroverted. Mr. Benczkowski provided a more thorough review and analysis of the variances and the land use planning policies and included a review of both the immediate context and broader geographic neighbourhood. The evidence

presented by Ms. Ghorayshi provided a review of some of the OP policies but generally focused on an FSI comparison chart and photobook that only took into account the properties on Chester Avenue and did not distinguish between the original built form and those with COA approvals.

In addition, when asked by Ms. Stewart in cross-examination about the source of the data used in creating her FSI chart, Ms. Ghorayshi was not able to provide a clear answer noting that she relied on Mr. Brown to provide her with the data information. As the source of the information was not indicated and no other clarification provided during the Hearing, it is not reasonable to assign this evidence similar weight to Mr. Benczkowski's evidence, which included Chester Avenue and the surrounding neighbourhood as well.

Ms. Ghorayshi during her testimony made reference to semi-detached buildings not having the same flexibility to renovate as would a single-detached building, and noted in her photo references that semi-detached buildings on Chester Avenue were mostly similar in profile and overall form unlike the proposal. Mr. Benczkowski also provided numerous examples of asymmetrical semi-detached buildings on Chester Avenue as well as in the surrounding neighbourhood. In her testimony it became apparent that one of Ms. Ghorayshi's main concerns was with the architectural style of the renovation being proposed. The suggestion that the overall form and style must remain the same on both sides of the semi-detached building is desirable from Ms. Ghorayshi's perspective; however, it is not stipulated in OP policy.

I prefer Mr. Benczkowski's evidence with respect to compatibility, as he opined that it does not mean that they need to be the same but that they need to be compatible. I accept his opinion that the massing adjustments, third floor setbacks, provision of the bay window and the gable detail were provided to address compatibility and how the proposal would "read" from the street and along the streetscape.

Besides the architectural style, Ms. Ghorayshi expressed concern with the extent of the living space being proposed and provided a table at the Hearing, which was also included in the closing statement submitted by Mr. Brown, that totaled living space of the proposed dwelling. It included the basement level, the laneway suite, and the above grade levels and compared that to the existing living space of 49 Chester Avenue. She suggested that this was approximately 230% more living space than currently exists. This is irrelevant to the variances sought as this is not a performance standard that is applied by Zoning By-Law 569-2013.

The concern with the amount of living space sought was also raised in cross-examination and it was evident that Ms. Ghorayshi was no longer making a planning argument with respect to the proposal but was actually suggesting that there should be a limit to the amount of living space that one should aspire to. This weakened her argument further as it was not speaking to any of the variances requested but rather asserting a personal preference or at worst suggesting that the Applicant should seek a living space size that is more appropriate to her assessment.

As stated earlier, a shadow study was submitted along with the closing statement by Mr. Brown on behalf of Ms. Ghorayshi. According to the closing statement it was

submitted because I had suggested a shadow study be submitted by the Appellant, if possible, but I stressed that it was not a requirement. The reason I had asked Ms. Stewart to consider submission was because the Architect would have the most accurate model elevations including the roof slopes of the main dwelling and the laneway suite. The gesture from Mr. Brown on behalf of Ms. Ghorayshi was appreciated but it appeared inaccurate in terms of the alignment of the garage and there was no information attached that suggested that the built forms illustrated reflected the main dwelling and the laneway suite proposal.

Furthermore, there was no indication of who prepared the shadow study. The closing statement mentions it is based on the March 10, 2020 drawings submitted at the Hearing and was "*prepared by an engineer who has completed many such studies*" but the engineer is never identified. Besides this being new evidence outside of the Hearing, the inaccuracies, not being certain of who prepared the shadow study and not knowing what was used as a model or base for the main dwelling and the laneway suite causes concerns. Ms. Stewart noted many of the same issues in her reply to Ms. Ghorayshi's closing statement. Given the siting inaccuracies noted and the lack of information of who prepared the study and what modelling was used as a base, the study was not given any weight in this decision.

With respect to variances sought, Ms. Stewart submitted them to TLAB on March 27, 2020 and they reflected the Zoning Notice that was submitted at the Hearing (Exhibit #5), along with the corrected revised plans as per the request of the Chair during the Hearing. There are eleven variances sought, ten from Zoning By-law 569-2013 and one from Zoning By-law 438-86 are as follows:

1. **Chapter 10.10.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index of a semi-detached dwelling is 0.6 times the area of the lot.
The three-storey semi-detached dwelling will have a floor space index of 1.04 times the area of the lot.
2. **Chapter 10.10.40.10.(1)(A), By-law 569-2013**
The maximum permitted building height is 10 m.
The three-storey semi-detached dwelling will be 10.57 m in height.
3. **Chapter 10.10.40.10.(2)(A)(i) & (ii), By-law 569-2013**
The maximum permitted height for all front and rear exterior main walls is 7.5 m.
The height of all front and rear exterior main walls will be 10.57 m.
4. **Chapter 10.10.40.30.(1)(A), By-law 569-2013**
The maximum permitted building depth is 17 m.
The three-storey semi-detached dwelling will have a depth of 20.949 m.
5. **Chapter 10.10.40.70.(1), By-law 569-2013**
The minimum required front yard setback is 5.05 m.
The three-storey semi-detached dwelling will be 2.7 m from the west front lot line.

6. **Chapter 10.10.40.70.(3)(A)(ii), By-law 569-2013**
The minimum required side yard setback is 0.9 m.
The three-storey semi-detached dwelling will be 0.3 m from the south side lot line.
7. **Chapter 10.150.10.40.(3)(A), By-law 569-2013**
A secondary suite is a permitted use provided that an addition or exterior alteration to a building to accommodate a secondary suite does not alter or add to a main wall or roof that faces a street.
In this case, a main wall that faces a street will be altered to accommodate a secondary suite.
8. **Chapter 150.8.60.30.(2), By-law 569-2013**
The front main wall of an ancillary building containing a laneway suite may not penetrate a 45 degree angular plane projected towards the rear lot line beginning from a height of 4 m at a distance of 7.5 m from the rear main wall of the residential building.
In this case, the two-storey ancillary building containing a laneway suite will penetrate the 45 degree angular plane.
9. **Chapter 150.8.60.20.(2)(B), By-law 569-2013**
The proposed laneway suite requires a minimum setback of 1.5 m to the rear lot line.
The proposed setback is 0.713 m to the rear lot line.
10. **Chapter 150.10.40.1.(1)(B), By-law 569-2013**
A pedestrian entrance leading exclusively to a Secondary Suite is not permitted in a front wall of a detached house or semi-detached house.
The proposed pedestrian entrance leading exclusively to a Secondary Suite is proposed to be in a front wall of the semi-detached house.
11. **Section 4(2), By-law 438-86**
The maximum permitted height of the Main House is 10 m.
The height of the three-storey semi-detached dwelling will be 10.05m, measured to the midpoint of the sloped roof.

In consideration of the evidence provided at the Hearing and their meeting the four tests under s. 45(1) of the *Planning Act*, my assessment of the variances requested are as follows:

Variance 1 – Relates to the proposed FSI of 1.04x the lot area whereas the maximum permitted is 0.60x. This was a very contentious issue during the Hearing and the approach to determining appropriateness between the evidence presented by Mr. Benczkowski and Ms. Ghorayshi. Mr. Benczkowski reviewed COA approvals from the past ten years in his study area that included the surrounding neighbourhood while Ms. Ghorayshi provided data for Chester Avenue only and included the FSI of both existing original dwelling and the COA approved applications. Besides the reservations I

expressed earlier about the weight to be given to Ms. Ghorayshi's evidence, the analysis and graph presented is deficient because it is limited to only Chester Avenue and skews the FSI average downward by including the FSI of the original buildings with the COA approved applications.

I prefer Mr. Benczkowski's evidence because it provides an analysis of FSI for a larger geographic neighbourhood study area and compares the FSI variance being sought against other COA applications and their FSI requests. I agree that relying solely on FSI to determine overdevelopment of the lot or a proposing dwelling being too large for the lot can be misleading and as per Mr. Benczkowski's reference of OP policy 4.1.5 c), height, massing, and scale must also be considered. FSI does not tell the whole story as it is the way massing is deployed on the site that should be considered. It is not simply a quantitative analysis that should be considered but also the qualitative aspects of the proposal and the proposed massing. This was evidenced by the examples Mr. Benczkowski presented in his photo book (Exhibit #3, Tab 18) showing the street view of 39, 41, and 43 Chester Avenue which illustrate a varied approach in deploying massing with the highest FSI not being readily obvious from the street.

Furthermore, based on the plans submitted the third floor accounts for 0.26x the lot area and is a significant portion of the variance requested and given that the third floor has been setback from the second floor at the front and rear, the proposal has deployed the FSI in a sensitive manner. For these reasons I find the variance is appropriate and minor.

Variance 2, 3, and 11 – Relate to building height and to the front and rear main wall heights. Variance 2 proposes a 10.57m height whereas Zoning By-law 569-2013 permits 10.0m and variance 11 is for 10.05m whereas Zoning By-law 438-86 permits 10.0m to the midpoint of the roof. Both of these variances are minor in nature and because the third floor addition has been setback over 3.0m from the front elevation the height variance will not be perceived from the street.

Variance 3 - is for an exterior front and rear exterior main wall height of 10.57m whereas 7.5 m is permitted. This appears to be significant but it is the result of the application of a wall height for a traditional hipped roof onto a dwelling with a sloped roof. As Ms. Stewart referenced in case law in her closing statement, the "*March 1, 2018 LPAT decision (PL 130592) regarding the appeals of residential zoning provisions in By-law 569-2013, the Board accepted that the intent of the main wall height provisions was to prevent three-storey flat roofed buildings*" and this is not what is being proposed by the Appellant.

Furthermore, I agree with Mr. Benczkowski's testimony that these height provisions have been met through the incorporation of step-backs at the third floor, and the sloping roof. For these reasons, I find that these variances are appropriate and minor.

Variance 4 – Relates to the building depth of 20.949m whereas 17.0m is permitted. This variance is mainly due to the depth of the basement level which extends beneath the front porch to the rear yard deck. From a review of the plans the ground floor has a depth of 17.367m which is minor as the rear yard depth of 7.5m has

been maintained. The impact of this variance is primarily related to the basement level which is not perceptible from the street or the rear yard. For these reasons I find the variance is appropriate and minor.

Variance 5 – Relates to the front yard setback of 2.7m, whereas 5.05m is required. This is associated with variance 4 as it is triggered by the introduction of the basement level living space and window under the existing front porch. I agree with Mr. Benczkowski that this variance is technical in nature because the existing front yard setback will be maintained and if the livable space with a window had not been introduced the variance would not have been required.

Variance 6 – Relates to the side yard setback of 0.3m, whereas 0.9 m is required. A review of the plans submitted indicate that this is an existing condition on this property and the current side yard setback is maintained. This variance is technical in nature and is minor.

Variance 7 – Relates to the altering the main wall and roof to accommodate a secondary suite as part of the third floor addition. During his testimony Mr. Benczkowski noted that this zoning provision is meant to ensure that, where secondary suites are introduced into dwellings, they continue to fit within the neighbourhood. He also noted that if this proposal had been for a duplex, a use which is permitted in the R zone, the front main wall could be altered without requiring this variance. I accept Mr. Benczkowski's statement and agree that by setting back the third floor addition from the front wall and maintaining the gable feature, the proposal addresses the general intent and purpose of this zoning provision.

Variance 8 – Relates to the the two-storey ancillary building containing a laneway suite penetrating the 45 degree angular plane. The plans submitted indicate a sloped roof on the west elevation of the laneway suite building which was an adjustment made originally to address discussions with City planning. As Mr. Benczkowski indicated in his testimony the purpose of this is to reduce shadow impact into the into the rear yard and into neighbouring properties. This adjustment to the roof and the further setting back of the ancillary building to align with the neighbours garage will help to mitigate added shadowing. For these reasons I find the variance is minor.

Variance 9 – Relates to the laneway suite's proposed setback is 0.713m to the rear lot line whereas a minimum setback of 1.5m is required. This variance is triggered by the proposed projection of the second floor. Given that ground level exceeds the minimum setback requirement of 1.5m and that the second floor projection is a result of the laneway suite being shifted to mitigate shadow impacts into rear yards, this variance is minor. Furthermore, Mr. Benczkowski indicated that there were other examples in which garages in laneways are built to the property line. I find that the proposal is an improvement on this existing condition.

Variance 10 – Relates to the proposed entrance leading to a Secondary Suite in the front wall of the semi-detached house. As per variance 7, Mr. Benczkowski explained in his testimony that if this proposal was for a duplex, which are permitted in the R zone, the dwelling could include multiple entrances. I agree with that assessment

to a degree but what makes the variance request minor is the way the second entrance has been introduced into the front wall of the house. I find that by designing a second entrance and by incorporating it into the front window and appearing as part of the window, the general intent of this provision is met, and the proposed front elevation continues to appear as having one main entrance.

In addition, to the variances requested, Ms. Stewart submitted a list of conditions of approval which included the conditions provided by Mr. Benczkowski during his testimony and conditions related to the laneway suite that need to be met to the satisfaction of the Manager of Development Engineering, Engineering and Construction Services; these conditions are outlined in **Attachment 1** of this decision.

During Mr. Benczkowski's testimony he repeatedly referred to how the proposal would "read" along the street and spoke to the inclusion of the gable on the front facade and the maintenance of the window bay projection. Although I am generally satisfied that the proposal meets the four tests, there are two adjustments to the front elevation that need to be included as a condition of allowing this appeal as follows:

- The plans submitted do not show the bay window wall articulation but the rendering previously submitted and presented during the Hearing do indicate this feature. Along with the introduction of the gable, the plans should include a recess of the second floor front wall 0.476m to match the current bay window depth and should match the current bay window width. This will provide further integration with the adjacent unit and it will "read" better with the gable feature on the third floor indicated below and on Sheet No. 3.4 in Attachment 2; and,



Bay Feature and Wall Articulation Indicated



Bay Feature and Wall Articulation **not** Indicated

- Although the third storey addition has been set back from the front elevation approximately 3.3m, the roof deck railing will still "read" as a vertical element. To mitigate the impact, the railing location should be setback further from the front and side elevation.

With the inclusion of the revisions proposed and for the reasons stated above, I find that the appeal should be allowed and that the variances sought, individually and cumulatively, meet policy and all four tests under s. 45(1) of the *Planning Act*, maintain the general intent and purpose of the OP and Zoning By-law, and are appropriate and minor for the development of 49 Chester Avenue.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated July 9, 2019, is allowed. The following variances are authorized subject to the conditions listed in **Attachment 1** and **associated** with the plans in **Attachment 2**. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached dwelling is 0.6 times the area of the lot.

The three-storey semi-detached dwelling will have a floor space index of 1.04 times the area of the lot.

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

The maximum permitted building height is 10 m.

The three-storey semi-detached dwelling will be 10.57 m in height.

3. Chapter 10.10.40.10.(2)(A)(i) & (ii), By-law 569-2013

The maximum permitted height for all front and rear exterior main walls is 7.5 m.

The height of all front and rear exterior main walls will be 10.57 m.

4. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth is 17 m.

The three-storey semi-detached dwelling will have a depth of 20.949 m.

5. Chapter 10.10.40.70.(1), By-law 569-2013

The minimum required front yard setback is 5.05 m.

The three-storey semi-detached dwelling will be 2.7 m from the west front lot line.

6. Chapter 10.10.40.70.(3)(A)(ii), By-law 569-2013

The minimum required side yard setback is 0.9 m.

The three-storey semi-detached dwelling will be 0.3 m from the south side lot line.

7. Chapter 10.150.10.40.(3)(A), By-law 569-2013

A secondary suite is a permitted use provided that an addition or exterior alteration to a building to accommodate a secondary suite does not alter or add to a main wall or roof that faces a street.

In this case, a main wall that faces a street will be altered to accommodate a secondary suite.

8. Chapter 150.8.60.30.(2), By-law 569-2013

The front main wall of an ancillary building containing a laneway suite may not penetrate a 45 degree angular plane projected towards the rear lot line beginning from a height of 4 m at a distance of 7.5 m from the rear main wall of the residential building.

In this case, the two-storey ancillary building containing a laneway suite will penetrate the 45 degree angular plane.

9. Chapter 150.8.60.20.(2)(B), By-law 569-2013

The proposed laneway suite requires a minimum setback of 1.5 m to the rear lot line.

The proposed setback is 0.713 m to the rear lot line.

10. Chapter 150.10.40.1.(1)(B), By-law 569-2013

A pedestrian entrance leading exclusively to a Secondary Suite is not permitted in a front wall of a detached house or semi-detached house.

The proposed pedestrian entrance leading exclusively to a Secondary Suite is proposed to be in a front wall of the semi-detached house.

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

The maximum permitted height of the Main House is 10 m.

The height of the three-storey semi-detached dwelling will be 10.05m, measured to the midpoint of the sloped roof.

X

J. Tassiopoulos
Panel Chair, Toronto Local Appeal Body

Attachment 1 – Conditions

1. The proposed dwelling shall be constructed substantially in accordance with the following plans dated March 13, 2020, prepared by Atelier DPC Inc. attached hereto, save and except in respect to conditions 2, 3 and 4, as **Attachment 2**:

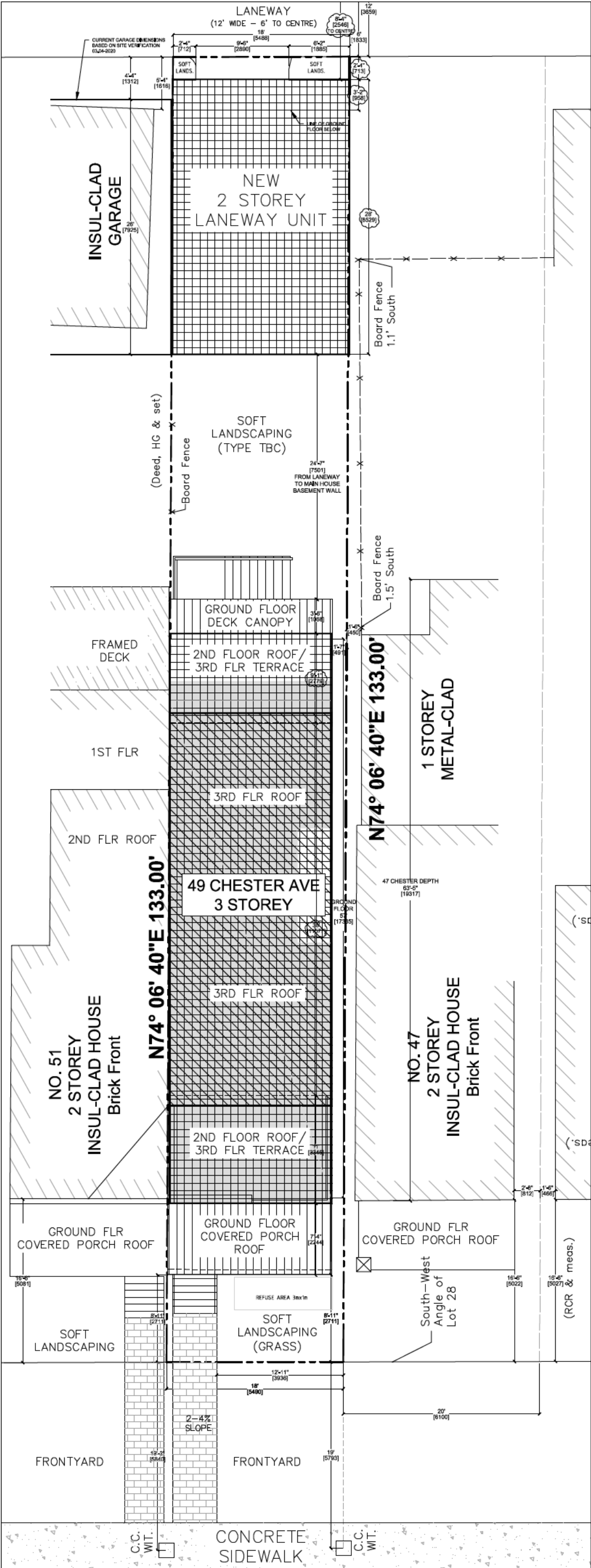
- 1.1 Site Plan (A1.0)
- 1.2 Proposed House Elevations (A3.4, A3.5, A3.6)
- 1.3 Garage Unit Proposed Elevation (A4.3, A4.4, A4.5)

Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

This condition shall not prevent the owner from constructing the proposed renovation in stages, including with respect to the rear detached garage/laneway suite, and portions of the additions to the main dwelling.

2. The second level front elevation shall be revised to incorporate a bay projection and main wall recess of the same width and depth on the existing dwelling so as to maintain an architectural feature/form that responds to the attached adjacent dwelling and the gable on the third level.
3. The front roof deck on the third level shall be reduced in size by setting back the deck and associated railing 1.0m from the front (west) and side (south) elevations so as to ensure that the proposed dwelling addresses streetscape views and transition to the third floor addition.
4. For greater certainty and despite the variances granted herein in respect of building height, depth and length, the plans and elevations attached to Condition 1 and attached as Attachment 2 shall prevail in respect of the limit of construction above and below grade.
5. The owner shall submit the following to the satisfaction of the Manager of Development Engineering, Engineering and Construction Services:
 - 5.1 A signed and sealed certification letter from a Professional Engineer confirming that the water and sewer services for the proposed two-storey garage laneway suite fronting the public lane are from Chester Avenue and are connected through the existing lot/dwelling.
 - 5.2 A revised site plan to show:
 - a. That the proposed walkway on private property from Chester Avenue to the proposed main house and the proposed driveway and walkway from the proposed laneway suite to the public laneway will be constructed with a 2% to 4% positive slope measured from building face to Chester Avenue and the public laneway, respectively.

- b. An at-grade refuse storage area (3 m x 1 m by 1.5 m in height) on private property along with a 1 m wide (minimum) access to permit the bins to be transported to curbside on Chester Avenue;
 - c. Fire hydrant(s) located no greater than 90 m from the "principal entrance" for buildings without a fire department connection;
 - d. For buildings without interior access between separate units, the distance from the fire vehicle to one entrance of each unit of the building shall be no greater than 45 m. Based on this, the main entrance to the "Proposed Chester Avenue Address" property is required to be a maximum 45 m to the nearest municipal street. Accordingly, the following options are required:
 - i. The main principal entrance to be within 45 m of Chester Avenue;
 - ii. The main principal entrance to be within 45 m of the parallel street (not indicated on the plans); and,
 - iii. The main principal entrance is to be within 45 m of Chester Avenue via the private neighbouring walkway between premises 51 and 47 Chester Avenue. This will require a 1 m wide unobstructed path between both properties and also that it leads from the parallel street to the main entrance (i.e. through "Lot 1" and "Lot" 2). The use of this mutually-owned path will require that an easement agreement be in place for the fire route (Fire Route By-law, Chapter 880) which must be maintained readily accessible at all times for firefighting.
- 5.3 Contacting municipal numbering staff at municipaladdress@toronto.ca prior to the issuance of a building permit, to obtain or verify new municipal address prior to submitting an application for a building permit. All addressed parcels and structures must have the correct municipal address posted. For further details visit www.toronto.ca/municipal-numbering. Municipal addresses are required for the purpose of setting up the water account with the city of Toronto when the application is made for the proposed sewer and/or water service connection (as applicable).



Information contained in this Site Plan has been obtained from a building location survey of:

Part of LOT 28
Registered Plan M-126

Prepared by:
Michael J. Clancy Surveying Ltd.
39 Coalport Drive,
Toronto ON

ONTARIO BUILDING CODE DATA:

- PROJECT DESCRIPTION:
- ADDITION & RENOVATION OF EXISTING SINGLE FAMILY TWO STOREY SEMI-DETACHED HOUSE, TO BECOME A THREE STOREY DUPLEX.
 - NEW CONSTRUCTION OF GARAGE WITH SECOND STOREY UNIT (LANEWAY).

MAJOR OCCUPANCY: RESIDENTIAL

No. OF ACCESS ROUTES: 1 STREET, 1 LANEWAY

WATER SUPPLY: MUNICIPAL

No. of STOREYS: 3 ABOVE GRADE
1 BELOW GRADE

ZONING STATISTICS:

ZONING: R (d0,6) (x312)

LOT AREA: 222.5 m2 [2,395 sf]

ZONING
MAX. ALLOWABLE 153.52 m2 (0.69) [1,652 sf]
EXISTING AREA: HOUSE = 104 m2 [1,081 sf]

PROPOSED HOUSE AREA
HOUSE GFA 231.1 m2 [2,488 sf]

HOUSE HEIGHT
MAX ALLOWABLE: 10 m (32'-10")
EXISTING: 9.6 m (31'-6")
PROPOSED: 10.56 m (34'-10")

PROPOSED LANEWAY + GARAGE
LANEWAY UNIT GARAGE GFA 88.3 m2 [951 sf]

- HATCH LEGEND:
- OVERALL 1 STOREY PROPOSED
 - OVERALL 2 STOREY PROPOSED
 - OVERALL 3 STOREY PROPOSED
 - EXISTING 2 STOREY HOUSE FOOTPRINT

MINIMUM REQ. OF 75% SOFT LANDSCAPING FRONT YARD (75% SOFT LANDSCAPING)

- FRONT YARD AREA: 14.6 m2 [157.5sf]
- AREA OF HARD LANDSCAPING : 3.7 m2 [40 sf]
- + FRONT STEPS
- AREA OF SOFT LANDSCAPING : 11 m2 [118.5 sf]

MINIMUM REQ. OF 75% SOFT LANDSCAPING LANEWAY TO ANCILLARY BUILDING (66.5% SOFT LANDSCAPING)

- LANEWAY TO ANCILLARY BUILDING AREA: 9.1 m2 [98 sf]
- DRIVEWAY AREA: 4.5 m2 [49 sf]
- LANEWAY TO ANCILLARY BUILDING
NOT INCLUDING DRIVEWAY : 4.5 m2 [49 sf]
- SOFT LANDSCAPING: 3.0 m2 [32.7 sf]
- HARD LANDSCAPING (WALKWAY TO DOOR): 1.5 m2 [16.4 sf]



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49 CHESTER AVENUE, TORONTO, ON			SCALE
SHEET NAME: PROPOSED SITE PLAN AND SITE STATISTICS			3/32" = 1'-0"
			DRAWN BY: ADPC INC.
9	02.13.2020	ISSUED FOR ZONING	DATE FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	SHEET NO. A1.0
11	03.09.2020	ISSUED FOR ZONING	
12	03.13.2020	REV ISSUED FOR HEARING	

51 CHESTER AVE

49 CHESTER AVE



1
A3.5 PROPOSED WEST ELEVATION (FRONT)
3/16" = 1'-0"

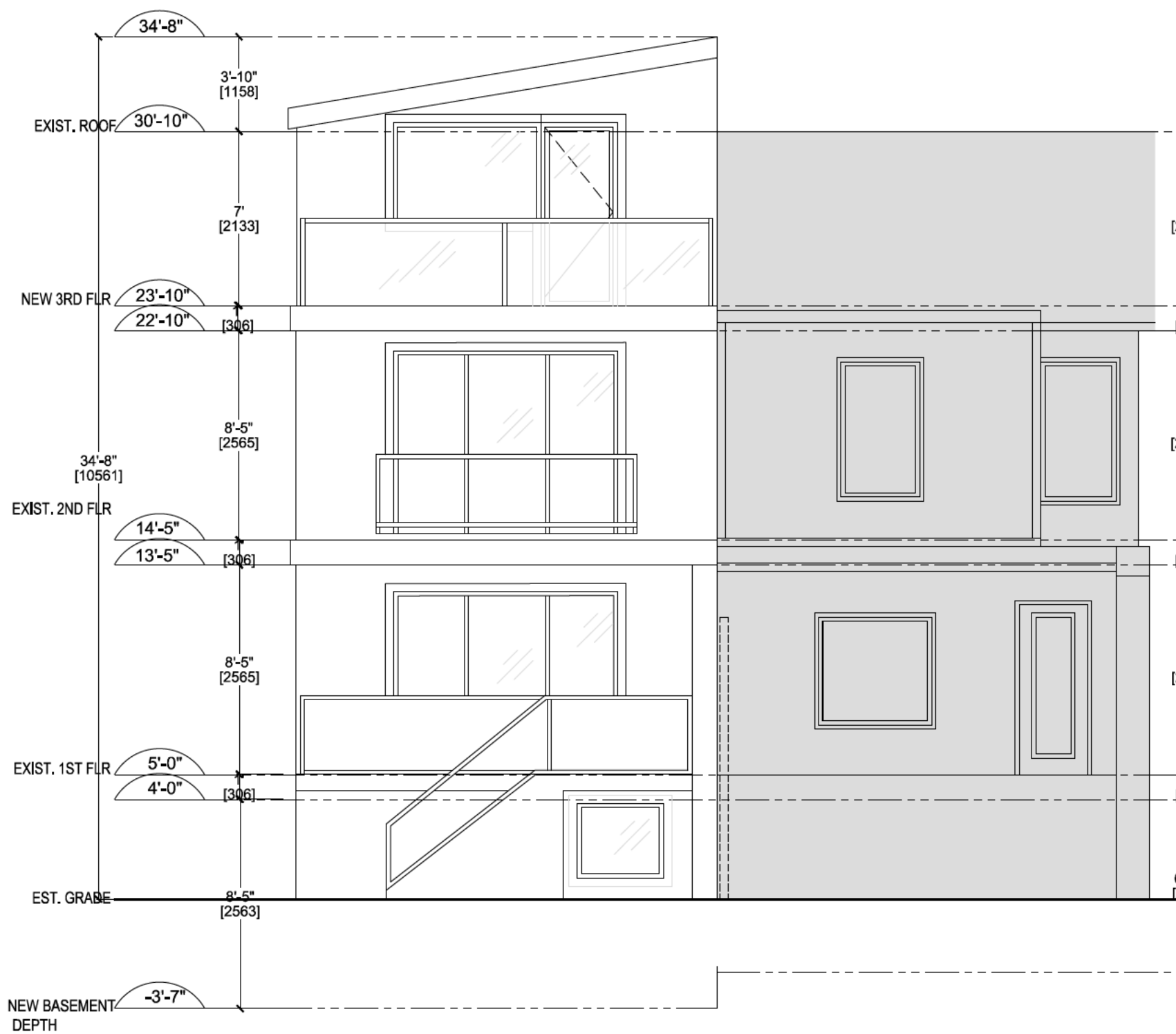


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49 CHESTER AVENUE, TORONTO, ON			SCALE	SEE DWG.
SHEET NAME: PROPOSED HOUSE ELEVATION			DRAWN BY:	ADPC INC.
9	02.13.2020	ISSUED FOR ZONING	DATE	FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	SHEET NO.	A3.4
11	03.09.2020	ISSUED FOR ZONING		
12	03.13.2020	REV ISSUED FOR HEARING		

49 CHESTER AVE

51 CHESTER AVE

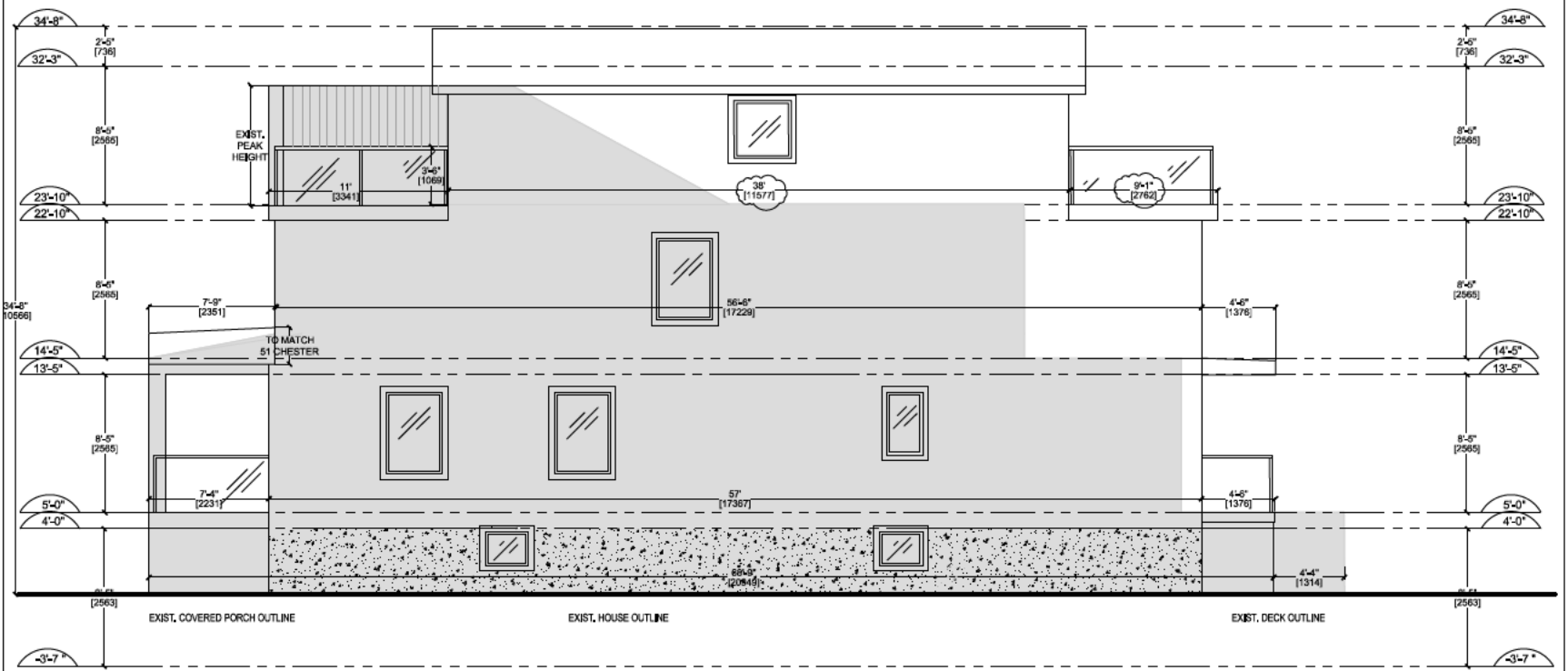


1
A3.5 PROPOSED EAST ELEVATION (REAR)
3/16" = 1'-0"



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49 CHESTER AVENUE, TORONTO, ON			SCALE	SEE DWG.
SHEET NAME: PROPOSED HOUSE ELEVATION			DRAWN BY:	ADPC INC.
9	02.13.2020	ISSUED FOR ZONING	DATE	FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	SHEET NO.	A3.5
11	03.09.2020	ISSUED FOR ZONING		
12	03.13.2020	REV ISSUED FOR HEARING		

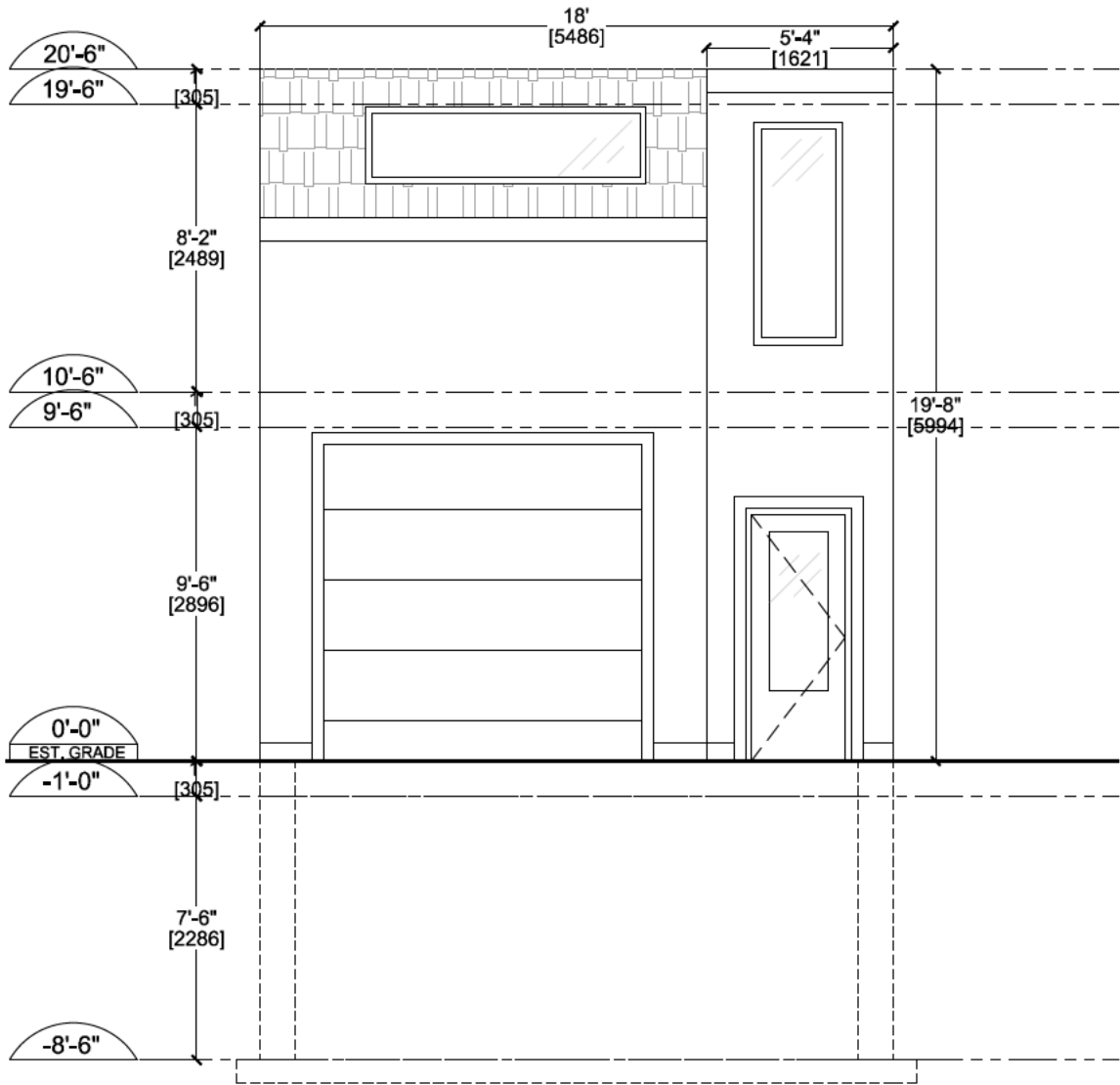


1 SOUTH ELEVATION (SIDE)
A3.6 3/32" = 1'-0"



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49 CHESTER AVENUE, TORONTO, ON			SCALE 3/32" = 1'-0"
SHEET NAME: PROPOSED HOUSE ELEVATION			DRAWN BY: ADPC INC.
9	02.13.2020	ISSUED FOR ZONING	DATE FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	SHEET No. A3.6
11	03.09.2020	ISSUED FOR ZONING	
12	03.13.2020	REV ISSUED FOR HEARING	



1 WEST ELEVATION (YARD FACING)
A4.3 3/16" = 1'-0"



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49 CHESTER AVENUE, TORONTO, ON

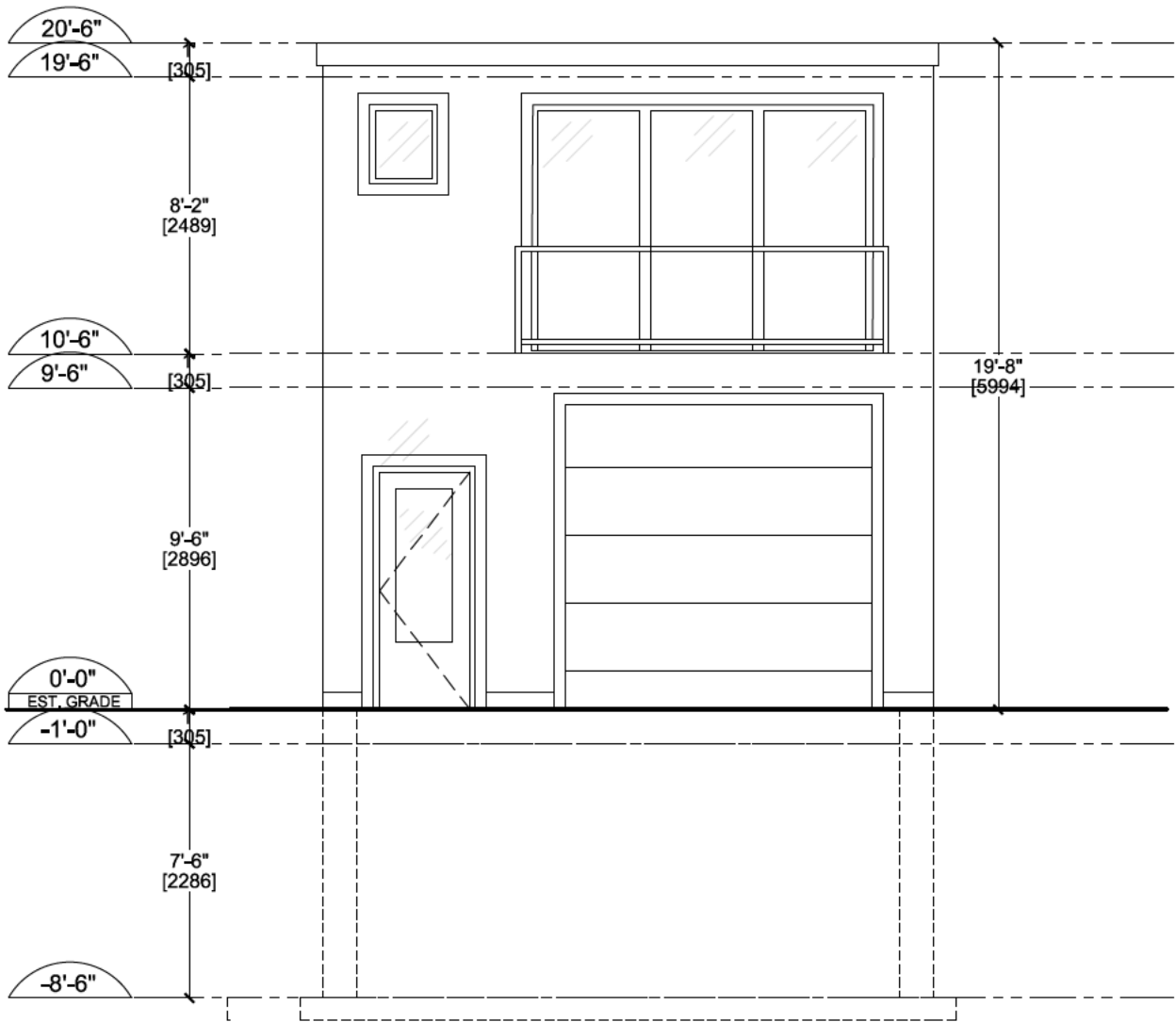
SHEET NAME:
GARAGE UNIT PROPOSED ELEVATION

9	02.13.2020	ISSUED FOR ZONING	DATE FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	
11	03.09.2020	ISSUED FOR ZONING	
12	03.13.2020	REV ISSUED FOR HEARING	

SCALE 3/16" = 1'-0"

DRAWN BY: ADPC INC.

SHEET NO.
A4.3

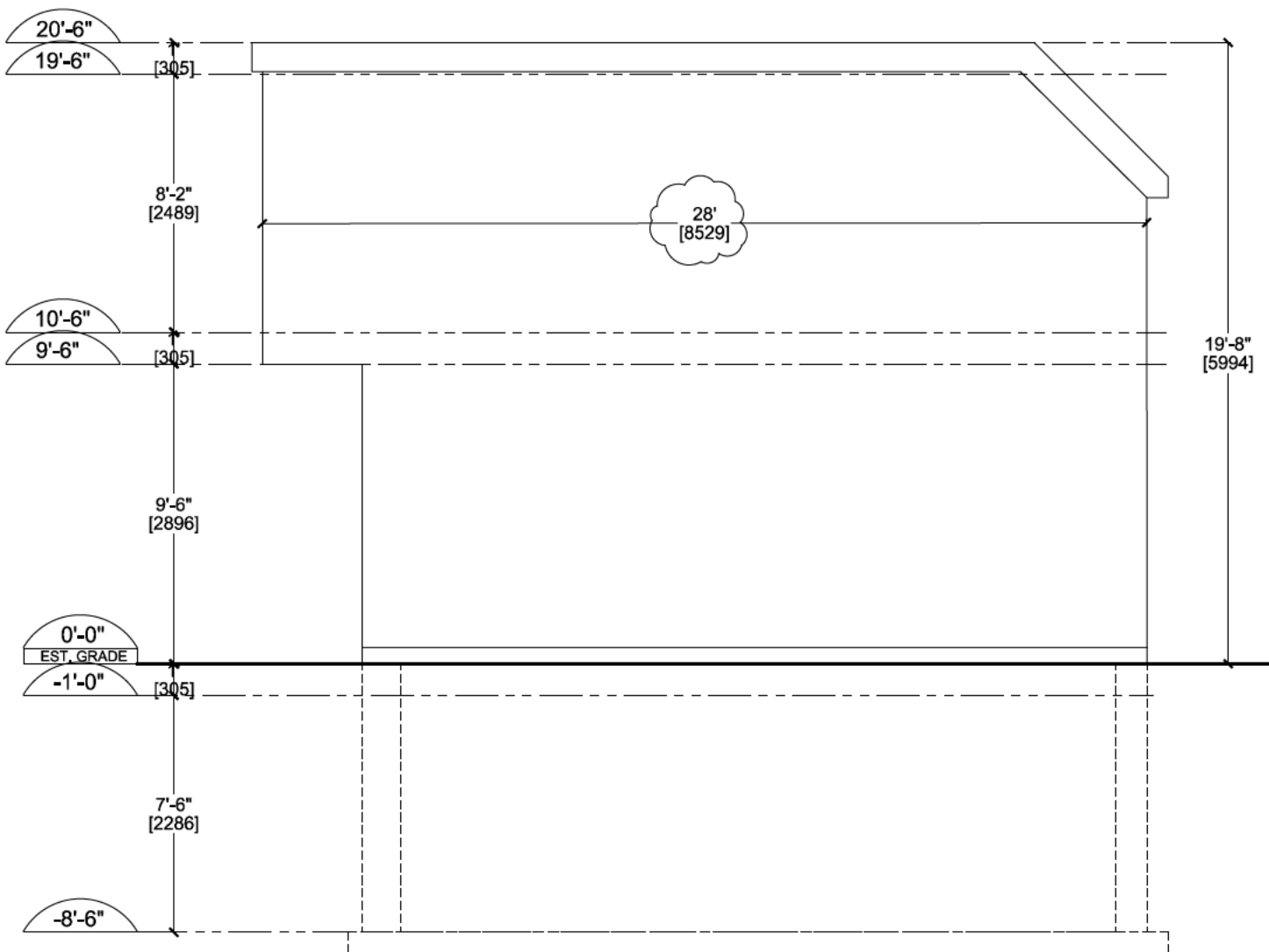


1 EAST ELEVATION (LANEWAY FACING)
A4.4 3/16" = 1'-0"



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49 CHESTER AVENUE, TORONTO, ON				SCALE 3/16" = 1'-0"
SHEET NAME: GARAGE UNIT PROPOSED ELEVATION				DRAWN BY: ADPC INC.
9	02.13.2020	ISSUED FOR ZONING		DATE FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING		SHEET NO. A4.4
11	03.09.2020	ISSUED FOR ZONING		
12	03.13.2020	REV ISSUED FOR HEARING		



1 NORTH + SOUTH ELEVATION
A4.5 3/16" = 1'-0"



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49 CHESTER AVENUE, TORONTO, ON			SCALE 3/16" = 1'-0"
SHEET NAME: GARAGE UNIT PROPOSED ELEVATION			DRAWN BY: ADPC INC.
9	02.13.2020	ISSUED FOR ZONING	DATE FEB 11 2020
10	03.09.2020	ISSUED FOR ZONING	SHEET NO. A4.5
11	03.09.2020	ISSUED FOR ZONING	
12	03.13.2020	REV ISSUED FOR HEARING	