

DECISION AND ORDER

Decision Issue Date Wednesday, January 27, 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): MEGAN BETH MCPHEE

Applicant: MARIO SILVA

Property Address/Description: 208 ALBANY AVE

Committee of Adjustment Case File: 19 138347 STE 11 MV (A0380/19TEY)

TLAB Case File Number: 19 222048 S45 11 TLAB

Hearing date: Friday, July 10, 2020

DECISION DELIVERED BY J. TASSIOPOULOS

APPEARANCES

Appellant/ Owner MEGAN BETH MCPHEE

Appellant's Legal Rep. KIM WON

Applicant MARIO SILVA

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a Committee of Adjustment (COA) decision on Wednesday August 28, 2019, being the refusal of variances requested to construct a new three-storey detached dwelling and to retain an existing rear shed at 208 Albany Avenue (subject property). The subject property is located one block east of Bathurst Street on the west side of Albany Avenue, north of Wells Street and south of Dupont Street. The property flanks residential dwellings to the north and south. It is designated *Neighbourhoods* in the Official Plan and zoned Residential (R) pursuant to City of Toronto By-law 569-2013. The proposal is to

demolish the existing dwelling, and construct a new, three-storey detached residential dwelling that is contemporary in design with a flat roof.

Following the refusal of the variances by the COA, Ms. Megan McPhee, the Owner/Appellant, appealed the decision to the TLAB, which set an original Hearing date for April 24, 2020 which was postponed due to the Covid-19 pandemic. The Government of Ontario passed an Emergency Order (O.Reg. 73/20) under the Emergency Management and Civil Protection Act which resulted in the TLAB suspending hearings from March 16 to May 29, 2020. Following this suspension, an electronic Hearing date was set for July 10, 2020.

At the Hearing, the Applicant / Owner was represented by Mr. Won Kim (counsel) and Mr. Mario Silva, an expert witness, who provided architectural design and zoning evidence in support of this Application. Being the only Party to the matter, there were no other participants present at the Hearing.

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

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Owner for the construction of a contemporary three-storey dwelling appropriate under applicable policy and statutory *Planning Act* tests?

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').

Minor Variance – S. 45(1)

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

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

EVIDENCE

Mr. Won Kim provided a brief introduction to the Application noting that the Owner wanted to replace an older house, within which she has resided since 2007, with a newly constructed dwelling. He explained that the Owner was involved in the community and wanted to construct a new dwelling to support her desire to remain within the neighbourhood long-term. One of the objectives of the proposal is to provide a parking space so that Ms. McPhee would be able to charge her electric vehicle. Mr. Kim explained that the 208 Albany Avenue was one of the few houses on the west side of the street that did not include a driveway and/or parking space in front of the dwelling.

Mr. Kim noted 27 of the 44 houses on the west side included parking pads and that 3 of the remaining houses included a driveway on their lot. In addition, there was a range of housing and tenure types on the street including single detached, duplexes, and houses with multiple tenants, which makes it difficult to find a parking space on the street, and Ms. McPhee sought to resolve this issue in the proposal. Mr. Kim concluded that there were no Participants present in opposition and that there were letters of support (Exhibits #1 and #2).

Mr. Kim called upon Mr. Mario Silva as an expert witness and he was affirmed. Mr. Silva reviewed his experience outlined in his curriculum vitae (Exhibit #7) noting more than 25 years of experience as an Architectural Technologist and is currently the Principal of his own company. He is a member of the Association of Architectural Technologists of Ontario (AATO) and has dealt with various zoning and planning applications over the course of his career. Mr. Silva noted that although he is not a professional planner he did have knowledge of the four statutory tests under s. 45(1) of the Planning Act, and he has had projects previously in the Annex and most recently had designed and obtained the approvals for the conversion of 36 and 38 Howland Avenue.

He has experience with zoning variance as a result of his numerous projects over the course of 25 years and in the past year was involved in approximately 50 residential projects. Mr. Kim asked that Mr. Silva be qualified to provide expert planning opinion evidence on the Official Plan and Zoning By-law as they relate to the architectural design of buildings and indicated; a previous TLAB decision for *63 Inniswood Drive* by Member Makuch had permitted the architect to provide such evidence. Having considered this previous decision, Mr. Silva's lengthy experience as an architectural technologist, and his filed Acknowledgement of Expert's Duty (Exhibit #7), I qualified him to provide expert testimony in architectural design as it related to the Zoning By-law and planning matters.

Mr. Silva described the Annex neighbourhood as being comprised of a range of housing typologies including two to three-storey single and semi-detached dwellings, rowhouses and small apartment buildings, with the form being generally consistent. He explained that several renovation projects were occurring in the surrounding neighbourhood along with new multi-storey residential developments on Dupont Street just north of the subject property. He noted that the architectural style varied, ranging

from Victorian to contemporary residential styles on the street and in the surrounding neighbourhood (Exhibit #3).

Mr. Silva described the existing dwelling as a single detached residential and “was in great need of repair,” (Hearing excerpt) and that it abutted residential dwellings on Albany avenues and retail/apartment building located on Bathurst Street.

In preparation for the Hearing, Mr. Silva had analyzed COA decisions of approval for Albany Avenue covering approximately ten years and identified fourteen applications (Exhibit #6) with most of the approved variances related to height, building depth, floor space index (FSI), and front yard landscaping.

Mr. Silva provided an overview of the proposal as follows:

- the proposed building height of 10.88m which due to the dwelling design exceeds the permitted wall height of 9.5m, however the overall height is less than the permitted 12.0m building height;
- the proposed building depth is 17.65m and the building length is 17.0m but because the building depth is measured from the front yard setback, it triggers the variance;
- the FSI sought is 1.24x the area of the lot whereas 1.0x is permitted;
- due to the driveway and pad, front yard landscaping is reduced to 39% whereas 50% is required, and overall soft landscaping proposed is 62% whereas as 75% was required; and,
- the proposed parking pad is located within the front yard inside of the property line and is partially covered by the cantilevered second floor front wall. The variance is due to the space not being fully behind the front wall. In addition, one parking space is required for the dwelling and it can only be accommodated at the front because of the lot size and proximity to the adjacent properties.

Referring to renderings of the proposal (Exhibits #4a, b, and c), Mr. Silva indicated the general relationship of the proposal to the neighbouring buildings to the north and south.

Mr. Silva explained that the existing condition on Albany Avenue was that it was a one-way street with parking accommodated on the east side of the street which does not alternate during the month. The street parking is limited as it is heavily subscribed and obtaining parking permits is difficult, and Mr. Silva noted that because the on-street parking was on the east side of the street, the proposal's parking and driveway on the west side of the street would not impact the parking on the street. He noted that the parking proposed would not impact the character of the street and that both abutting residential properties included a parking pad in the front of the dwelling. Mr. Silva indicated that this same condition was found on 27 of the 44 properties located on the

west side of Albany Avenue, and 3 additional properties included a driveway condition (Exhibit #5).

Mr. Silva opined that the proposal meets both provincial policy and the four statutory tests of s. 45(1) of the *Planning Act*. Referring to section 4.1 of the OP he mentioned that change in *Neighbourhood* designation needed to be sensitive, gradual and new development would generally need to fit the physical character of the neighbourhood and that this meant “*new development must fit the general physical pattern within the neighbourhood but they do not need to replicate any given characteristic*” (Hearing excerpt). He opined that the proposal was in keeping with this policy as it was a red brick building with a transitional style and would be similar to the architectural style of the dwelling on the neighbouring property at 210 Albany Avenue but not as contemporary as that found on 154 Albany Avenue.

Mr. Silva described the existing dwelling on the subject property as being over 100 years old; he asserted that it required extensive repair as there were foundation and waterproofing issues identified which would be difficult to address because of the very narrow side yards, and that its replacement with a new dwelling would be an improvement. He noted that the proposal is a reinvestment in the neighbourhood similar to other proposals for redevelopment within the neighbourhood, and that it was desirable for the appropriate development of the property.

Mr. Silva opined that the variances proposed were minor in nature and one needed to consider the proposal in its context and what has been built within the surrounding area to determine if they have an undue adverse impact. His review of the COA approvals on Albany Avenue indicated that the proposal was in keeping with what has been recently approved and built (Exhibit #6). He opined that there would be no adverse impact to the neighbours from the variances sought.

With respect to the front yard landscaping variance and soft landscaping requirement, he stated this zoning requirement was to limit environmental impact of stormwater runoff, ensure adequate permeable surfaces, and visual consistency. He explained that the proposal plans addressed this through the provision of permeable pavers on the parking pad and driveway. He also mentioned that the parking in front would allow the Owner to charge their electric vehicle overnight.

He concluded that the general intent and purpose of the Zoning By-law was maintained as the proposed variances to height, length, and massing (FSI) are consistent with what is found in the neighbourhood and based on the variety of housing and COA approvals, “*the proposal fits within what already is there*” (Hearing excerpt). He further explained that parking must be considered in the context of the street and that the proposal introduces a parking pad that is consistent with and evident along the boulevard on numerous other properties and immediately adjacent neighbours.

Mr. Silva concluded his testimony by recommending approval of the variances as what was proposed was consistent and in line with other approved developments in the area.

Mr. Kim in closing submissions reiterated that the variances sought were within the range of other variances previously approved on Albany Avenue and in the neighbourhood. He mentioned that the Owner has resided in the current dwelling since 2007, that there was support from numerous neighbours, and that the approvals would allow them to continue to live in the area and be able to charge her electric vehicle.

ANALYSIS, FINDINGS, REASONS

The evidence of Mr. Silva was uncontested and provided in a manner that was informative, explained the reasons for the variances sought, and provided clarity with respect to the site plan and elevations of the proposal. The only inconsistency noted was that the plans originally filed with the TLAB indicated stucco cladding, while Mr. Silva noted that the building would be clad in brick as indicated in the renderings presented in Exhibits #4a, b, and c. Elevation drawings, indicating brick cladding, were submitted by Mr. Kim to TLAB following the Hearing and are included as **Attachment 1** to this Decision.

A total of 14 variances are sought, 12 from Zoning By-law 569-2013 and 2 from the former Zoning By-law 438-86. Although the variances seem numerous, the majority of the variances, 6 in total, are a result of the proposed front yard parking and 5 variances are related to the contemporary residential architectural design. Having visited the street and the neighbourhood, I noted, especially on Albany Avenue, that this was a very common condition on numerous properties on the west side of the street, as supported by the photo evidence provided at the hearing which further emphasized that the immediate neighbours currently have front yard parking.

In reviewing the report from Transportation Services submitted to COA it indicated the variances were not considered front yard parking as defined in Chapter 918 but that the parking pad proposed was not desirable because of impacts *“such as storm water run-off, proliferation of curb ramps, elimination of landscaped open space and stress on trees”* (Transportation Services Report, August 22/19). Reviewing the evidence presented, taking into consideration my site visit and the proposed site plan, I note that the proposal:

- reflects and is consistent with existing front yard parking conditions on numerous properties on the west side of Albany Avenue and its adjacent neighbours;
- driveway curb cut will not affect on-street parking because it is only permitted on the east side of the avenue;
- parking pad is wholly within the property boundaries; and,
- parking pad will be constructed with permeable pavers to address water run-off and infiltration.

Decision of Toronto Local Appeal Body Panel Member: J. TASSIOPOULOS
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For these reasons, I find that the variances sought with respect to the front yard parking and associated parking pad can be approved and are minor with respect to this specific instance and the context of the subject property.

The proposal building height of 10.88m is within the maximum permitted height of 12.0m; however, the contemporary architectural style proposed and flat roof design results in 2 variances to permit exterior main wall heights of 10.88m whereas the maximum permitted is 9.5m. I find these variances to be minor both numerically and because they allow for the provision of a contemporary building that is in keeping with the existing physical character of the neighbourhood. Based on the evidence presented regarding COA approvals for other applications on Albany Avenue the proposed main wall height variances are in keeping with the range of heights approved.

The proposed architectural style also leads to 3 variances with respect to the design of exterior stairs, their width on the rear yard deck and setback from the side lot line. The stairs proposed are a result of the design and architectural expression for the proposed dwelling and are minor in nature with no planning impact. With respect to the stairs encroaching into the building setback and requesting a variance to permit their location 0.48m from the north property line whereas a side yard setback of 0.60m is required, I find this variance is also minor. A review of the site plan indicates that the steps are in line with the sideyard setback of the proposed dwelling. This variance is technical in nature, and given that no side yard variance is sought for the proposed dwelling in general is minor.

The remaining 3 variances pertain to the existing rear yard shed on the subject property, the proposed dwelling depth and FSI of the proposal. The Owner wishes to maintain the existing rear yard shed during the demolition of the existing and construction of the proposed dwelling. I can find no planning reason why this ancillary building should be torn down as the zoning by-law references that no "*ancillary building or structure may be erected prior to the erection of the main walls and completion of the roof of a residential building on the same lot*" (my emphasis added). This is an existing shed and is not being erected prior to the proposed dwelling being constructed; again, the variance sought is technical in nature and is indeed minor.

The proposed building depth is for 17.65m whereas the maximum permitted depth is 17.0m. I accept Mr. Silva's explanation that the building depth variance is as a result of the depth being measured from the front yard setback and that the provision of the parking pad wholly within the property shifted the dwelling further back to the west and results in the added depth sought. He also noted that the building itself will not exceed 17.0m in building length.

Having reviewed the plans and the site plan I confirmed that the building is slightly further setback and that only the cantilevered second floor was 17.0m in length whereas the ground floor and third floor were 14.87m and 12.21m respectively. The depth is due to the building being shifted further back and there is no adverse planning impact that I could assess with this proposed variance as it is well within the range of variances sought for building depths on Albany Avenue.

Finally, I find the variance for an FSI of 1.24x, whereas 1.0x is permitted to be minor because the articulation and deployment of the proposed dwelling massing, deduced from both the plans and the renderings in Exhibit #4 (a, b, and c), indicate the proposal will fit within its context. Furthermore, the proposed FSI variance was within the range of variances for FSI approved by the COA on Albany Avenue.

For the reasons stated above, I find that the variances sought, both individually and cumulatively, meet the relevant planning 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 for the development of 208 Albany Avenue, and minor.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated August 28, 2019, is set aside and the following variances are authorized subject to the condition(s) listed below. Any variance(s) that may appear on these plans but are not listed in the written decision are **NOT** authorized.

1. Chapter 10.5.60.1.(4), By-law 569-2013

In the Residential Zone category, no above-ground part of an ancillary building or structure may be erected prior to the erection of the main walls and completion of the roof of a residential building on the same lot.

The existing rear yard shed will be maintained during the demolition of the existing dwelling and construction of the new dwelling.

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

The maximum permitted height of all front and rear exterior main walls is 9.5 m.

The height of the front and rear exterior main walls will be 10.88 m.

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

The maximum permitted height of all side exterior main walls facing a side lot line is 9.5 m.

The height of the side exterior main walls facing a side lot line will be 10.88 m.

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

The maximum permitted depth of a detached dwelling is 17.0 m.

The new detached dwelling will have a depth of 17.65 m.

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

The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (199.75 m²).

The new detached dwelling will have a floor space index equal to 1.24 times the area of the lot (246.82 m²).

- 6. Chapter 10.5.50.10.(1)(B), By-law 569-2013**
A minimum of 50% (18.35 m²) of the front yard is required to be landscaping.
In this case, 39% (14.22 m²) of the front yard will be maintained as landscaping.
- 7. Chapter 10.5.50.10.(1)(D), By-law 569-2013**
A minimum of 75% (13.76 m²) of the required front yard landscaped open space shall be in the form of soft landscaping.
In this case, 62% (11.4 m²) of the required front yard landscaped open space will be in the form of soft landscaping.
- 8. Chapter 10.5.40.60.(3)(A)(i), By-law 569-2013**
Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback provided the stairs are no longer than 1.5 horizontal units for each 1.0 vertical unit above grade at the point where the stairs meet the building or structure.
The front stairs will have a length equal to 2.07 horizontal units for each 1.0 vertical unit above grade at the point where the stairs meet the building or structure.
- 9. Chapter 10.5.40.60.(3)(A)(ii), By-law 569-2013**
Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0 m.
The rear deck stairs will be 5.0 m wide.
- 10. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013**
Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m.
The front stairs will be located 0.48 m from the north lot line.
- 11. Chapter 10.5.80.10.(3), By-law 569-2013**
A parking space may not be located in a front yard or a side yard abutting a street.
The parking space will be located in the front yard.
- 12. Chapter 200.5.10.1.(1), By-law 569-2013**
A minimum of one parking space is required to be provided.
In this case, zero on-site parking will be provided.
- 13. Section 4(5)(B), By-law 438-86**
A minimum of one parking space is required to be provided.
In this case, zero on-site parking will be provided.
- 14. Section 6(3) Part IV 1(E), By-law 438-86**
A motor vehicle parking space is not permitted to be located between the front wall of the building and the front lot line.
The parking space will be located in the front yard.

Conditions

1. The proposed dwelling shall be constructed substantially in accordance with Site Plan (A1) and Elevations (A6, A7, A8 and A9) plans dated January 2017 prepared by Silva and Associates and attached as Attachment 1.
2. The proposed front yard parking pad shall be constructed with permeable pavers. Should Transportation Services be amenable to permeable pavers for the driveway, within the boulevard leading to the parking pad, then the driveway will be constructed with the same permeable pavers.
3. The approval of this application does not preclude the Applicant from obtaining the necessary tree removal/injury permits from Urban Forestry and may be required to submit a complete application for a permit to injure or remove a tree, as per City of Toronto Municipal Code Chapter 813.

X 

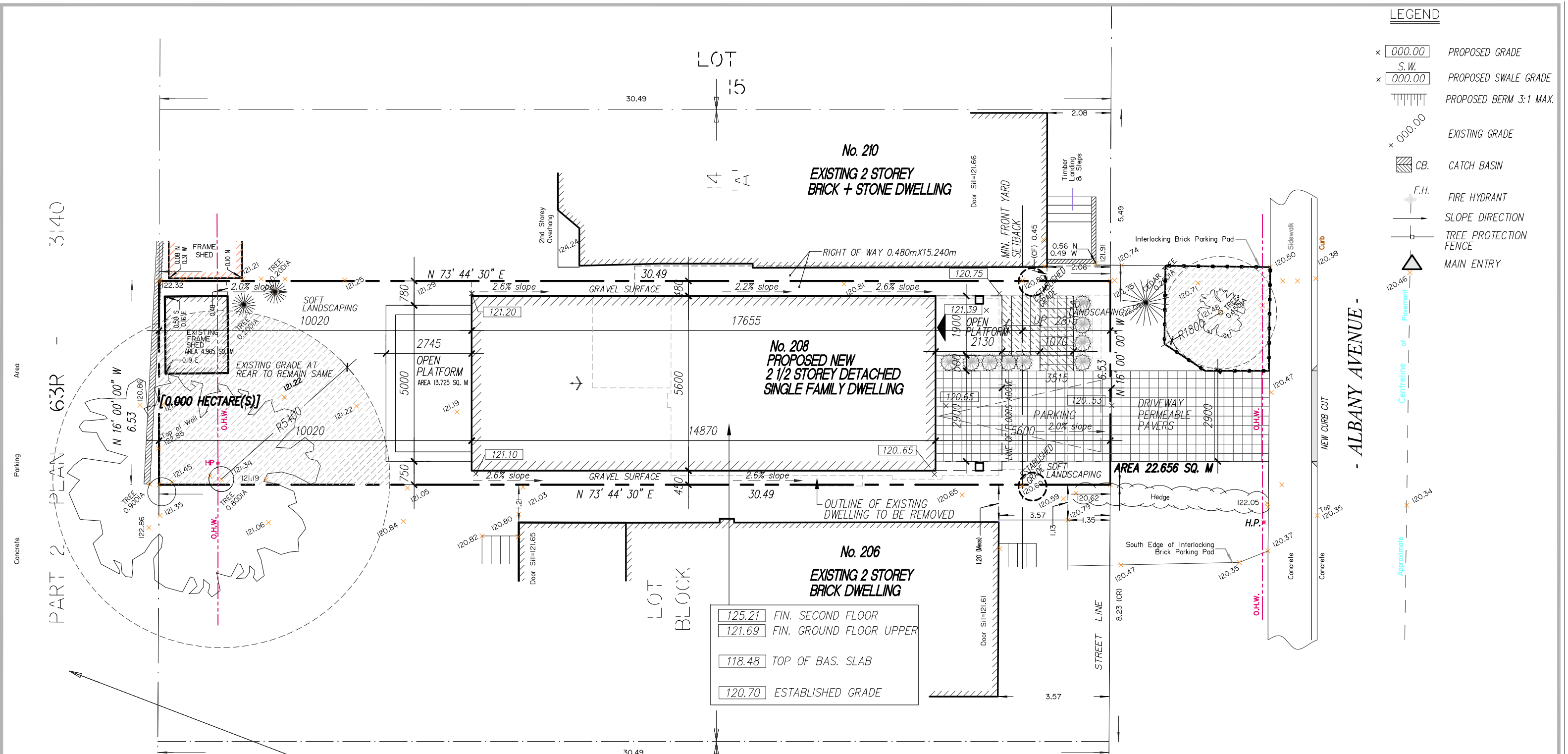
John Tassiopoulos

Panel Chair, Toronto Local Appeal Body

Signed by: John Tassiopoulos

LEGEND

- × 000.00 PROPOSED GRADE
- × 000.00 S.W. PROPOSED SWALE GRADE
- ||||| PROPOSED BERM 3:1 MAX.
- × 000.00 EXISTING GRADE
- CB. CATCH BASIN
- F.H. FIRE HYDRANT
- SLOPE DIRECTION
- TREE PROTECTION FENCE
- △ MAIN ENTRY

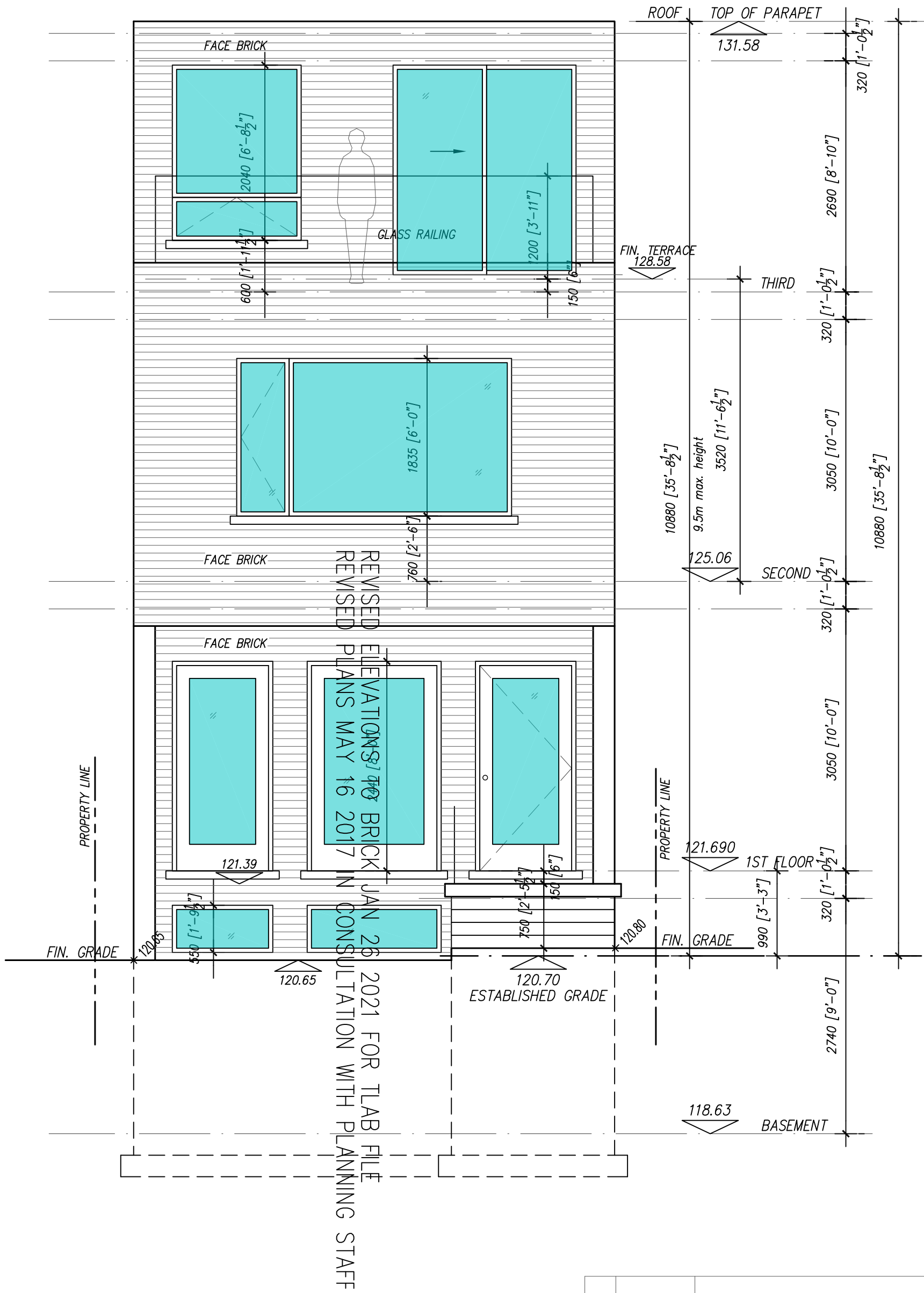


LANDSCAPING REAR YARD
 (< LOT FRONTAGE more than 6.0M)
 MAINTAIN A MINIMUM OF 50% OF THE REAR YARD FOR SOFT LANDSCAPING

LANDSCAPING FRONT YARD
 (< LOT FRONTAGE more than 6.0M to less than 15.0M)
 MAINTAIN A MINIMUM OF 50% OF THE FRONT YARD FOR LANDSCAPING.
 75% OF THE FRONT YARD REQUIRED MUST BE SOFT LANDSCAPING.

NEW DETACHED DWELLING

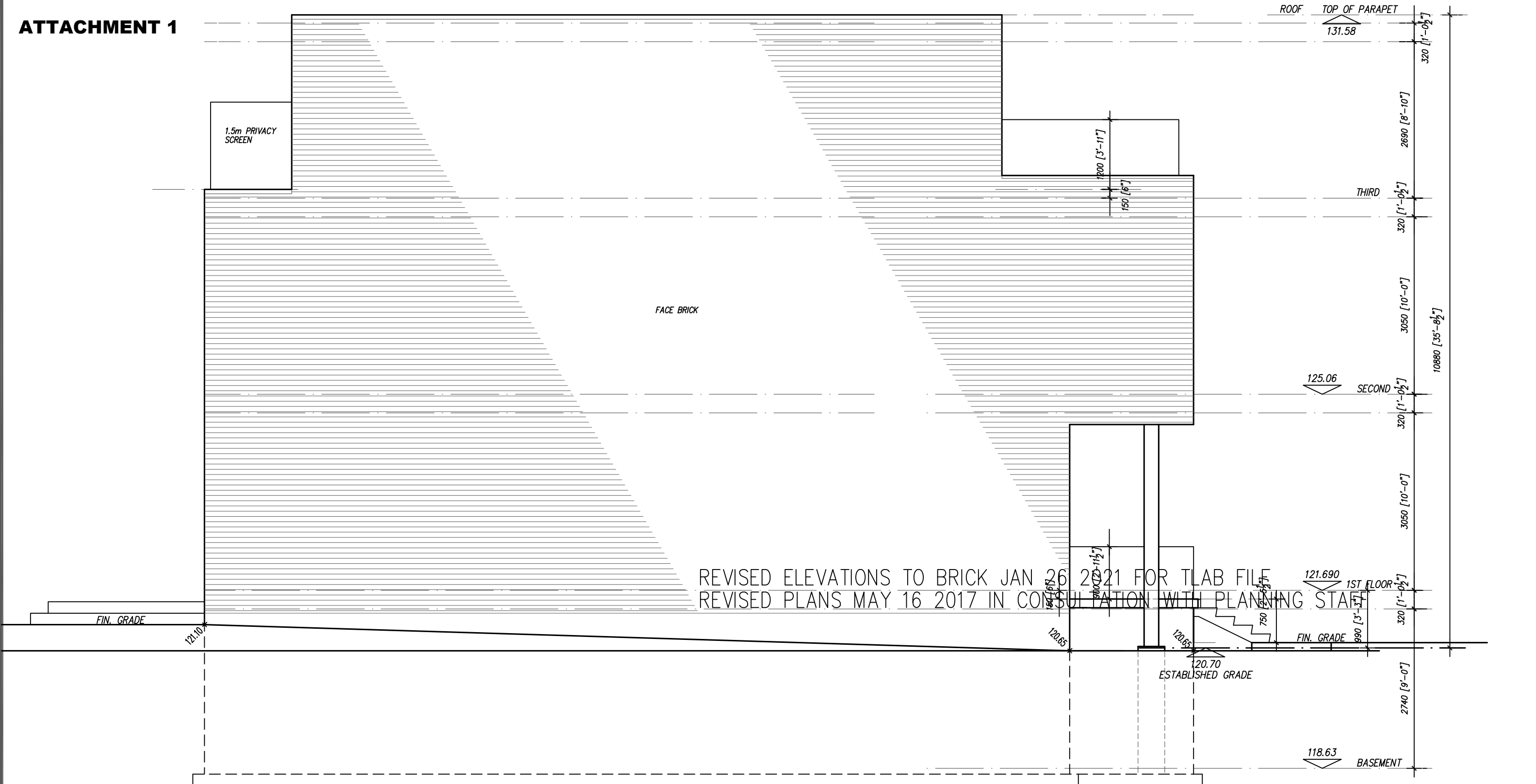
1	.		
No.	Date	Revisions / Issues	
Project		208 Albany Avenue Toronto, ONTARIO	
Title		SITE PLAN	
Scale		1:100	
Date		Jan. /17	
Job no.		17667	
Dwg. No.		A1	
Silva & Associates Architectural Consultants 2 ST. LAWRENCE AVENUE TORONTO, ONT. M8Z 5T8 TEL: (416) 820-1421 EMAIL: mario@torontobuildingpermits.com			



REVISED ELEVATIONS OF BRICK JAN 26 2021 FOR TLAB FILE
 REVISED PLANS MAY 16 2017 IN CONSULTATION WITH PLANNING STAFF

1	.		
No.	Date	Revisions / Issues	
Project		208 Albany Avenue	Toronto, ONTARIO
Title			
FRONT/ EAST ELEVATION			
<i>Silva & Associates</i>		Scale 1/4" = 1'-0" (1:50)	
Architectural Consultants		Date	Dwg. No.
2 ST. LAWRENCE AVENUE TEL: (416) 820-1421		Jan. /17	A6
TORONTO, ONT. M8Z 5T8		Job no.	
EMAIL: mario@torontobuildingpermits.com		17667	

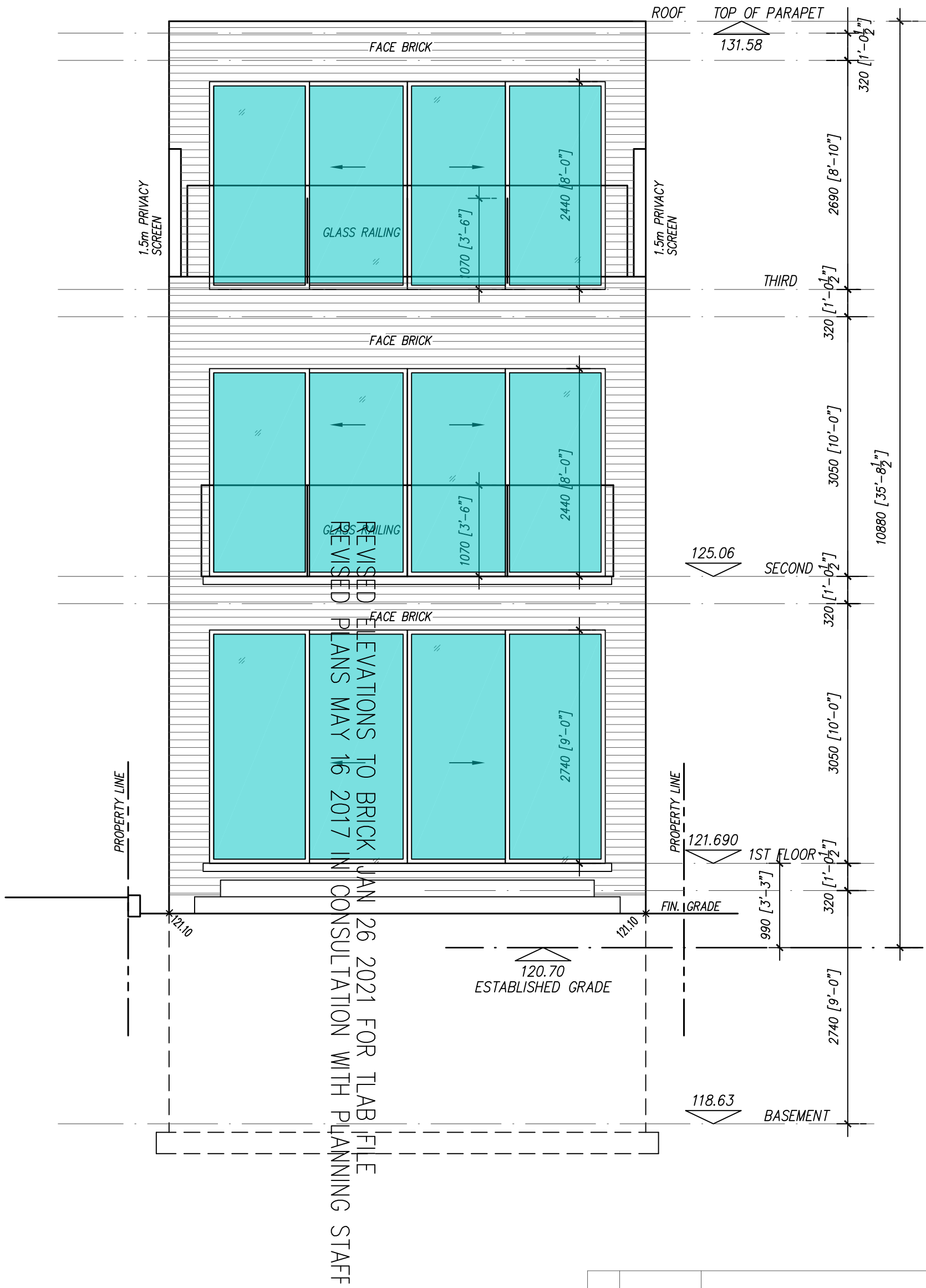
ATTACHMENT 1



REVISED ELEVATIONS TO BRICK JAN 26 2021 FOR TLAB FILE
 REVISED PLANS MAY 16 2017 IN CONSULTATION WITH PLANNING STAFF

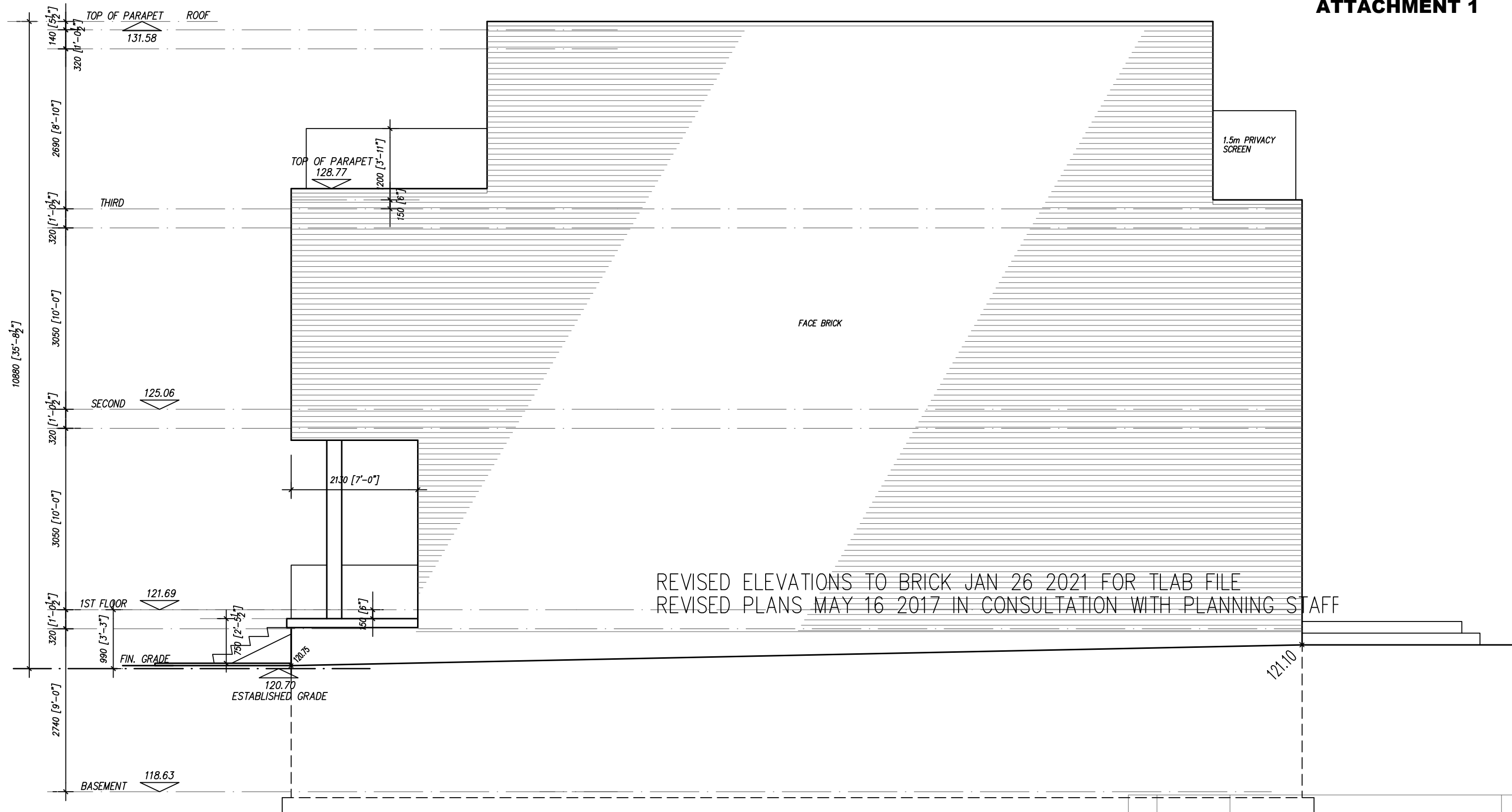
No.	Date	Revisions / Issues
1		

Project	208 Albany Avenue	Toronto, ONTARIO
Title	SIDE/ SOUTH ELEVATION	
<i>Silva & Associates</i> Architectural Consultants 2 ST. LAWRENCE AVENUE TEL: (416) 820-1421 TORONTO, ONT. M8Z 5T8 EMAIL: mario@torontobuildingpermits.com		
Scale	3/16" = 1'-0" (1:64)	
Date	Jan. /17	Dwg. No.
Job no.	17667	A7



No.	Date	Revisions / Issues
1	.	

Project	208 Albany Avenue	Toronto, ONTARIO
Title	REAR/ WEST ELEVATION	
<i>Silva & Associates</i> Architectural Consultants 2 ST. LAWRENCE AVENUE TEL: (416) 820-1421 TORONTO, ONT. M8Z 5T8 EMAIL: mario@torontobuildingpermits.com		Scale 3/16" = 1'-0" (1:64) Date Jan. /17 Job no. 17667
		Dwg. No. A8



REVISED ELEVATIONS TO BRICK JAN 26 2021 FOR TLAB FILE
 REVISED PLANS MAY 16 2017 IN CONSULTATION WITH PLANNING STAFF

No.	Date	Revisions / Issues
1	.	

Project	208 Albany Avenue	Toronto, ONTARIO
Title	SIDE/ NORTH ELEVATION	
<i>Silva & Associates</i> Architectural Consultants 2 ST. LAWRENCE AVENUE TORONTO, ONT. M8Z 5T8 EMAIL: mario@torontobuildingpermits.com		Scale 3/16" = 1'-0" (1:64) Date Jan. /17 Job no. 17667
		Dwg. No. A9