

# DECISION AND ORDER

**Decision Issue Date** Tuesday, December 29, 2020

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

Appellant(s): SHARMILA POWELL

Applicant: JASON CUTAJAR

Property Address/Description: 229 RIVERSIDE DR

Committee of Adjustment Case File: 19 122351 STE 04 MV

**TLAB Case File Number: 19 187985 S45 04 TLAB**

**Hearing dates:** November 27, 2019  
Tuesday, February 18, 2020  
Wednesday, February 19, 2020  
Thursday, March 05, 2020

**DECISION DELIVERED BY SHAHEYNOOR TALUKDER**

## APPEARANCES

Name	Role	Representative
Jason Cutajar	Applicant	
Sharmila Powell	Owner/Appellant	Jane Pepino
Swansea Area Ratepayers Assoc.	Party	
Russell Woodman	Party	Michael Cara
Christine Woodman	Party	Michael Cara
Franco Romano	Expert Witness	
Janice Robinson	Expert Witness	

Andrew Pruss	Expert Witness	
Name	Role	Representative
Swansea Historical Society	Participant	
Sydney Reimer	Participant	
Andrea Jagla	Participant	
Paul Roth	Participant	
Paula Johnson	Participant	
Mark Jagla	Participant	
Dan Dubois	Participant	
Stuart French	Participant	
Etobicoke Historical Society	Participant	

## **INTRODUCTION**

1. The Appellant, Sharmila Powell, sought approval of variances at the Committee of Adjustment (CoA) for construction of a new dwelling on her property located at 229 Riverside Drive (Subject Property). She sought to construct a new three-storey detached dwelling with an integral garage. The CoA refused the application for approval variances. The Appellant appeals the CoA's decision before the Toronto Local Appeal Body (TLAB).
2. This appeal is opposed by parties – the Appellant's neighbours, Russell Woodman and Christine Woodman, who reside at 231 Riverside Drive and the Swansea Area Ratepayers Association (SARA). The appeal is also opposed by others who testified before the TLAB as participants, including the Etobicoke Historical Society, Swansea Area Ratepayers Group (SARG) and many residents of the local neighbourhood.
3. Prior to the hearing, I attended the site of the Subject Property and surrounding area to familiarize myself with the neighbourhood.

## **MATTERS IN ISSUE**

4. At issue before the CoA and now before the TLAB is whether the following variances should be approved by the TLAB (in italics):

**By-law 569-2013**

**1. Chapter 10.20.40.10.(1)(A), By-law 569-2013**

The maximum permitted height of a building or structure is 9.0 m  
*The new three-storey detached dwelling will have a height of 12.46 m, measured from established grade to the roof peak.*

**2. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of exterior main walls is 7.0 m.  
*The new three-storey detached dwelling will have a front exterior main wall height of 8.68 m.*

**3. Chapter 10.20.40.10.(6), By-law 569-2013**

In the RD zone, for a detached house, the elevation of the lowest point of a main pedestrian entrance through the front main wall or a side main wall may be no higher than 1.2 m above established grade.  
*The new three-storey detached dwelling will have a main pedestrian entrance height of 2.13 m above established grade.*

**4. Chapter 10.20.40.70.(1), By-law 569-2013**

The minimum required front yard setback is 22.22 m.  
*The new three-storey detached dwelling will be located 11.2 m from the front lot line.*

**5. Chapter 10.20.40.50.(1)(A), By-law 569-2013**

Only one platform at or above the second storey located on the front wall of a detached house is permitted.  
*The new three-storey detached dwelling will have two platforms that will be located on the front wall.*

**6. Chapter 10.20.40.50.(1)(B), By-law 569-2013**

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 m<sup>2</sup>.  
*The new three-storey detached dwelling will have a second storey rear terrace area of 88.6 m<sup>2</sup> and a second story front porch area of 36.4 m<sup>2</sup>.*

**7. Chapter 10.20.40.70.(5)(A), By-law 569-2013**

The minimum required side yard setback is 7.5 m, where the building depth is greater than 17.0 m from the main wall of the building.  
The new three-storey detached dwelling will be located 1.81 m from the south side lot line and 3.31 m from the north side lot line.

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

The maximum permitted floor space index is 0.35 times the area of the lot (513.38 m<sup>2</sup>).  
*The new three-storey detached dwelling (including the basement) will have a floor space index of 0.79 times the area of the lot (1,164.0 m<sup>2</sup>).*

**9. Chapter 10.5.80.40.(2), By-law 569-2013**

The elevation of the lowest point of a vehicle entrance in the main wall of the building is required to be higher than the elevation of the centreline of the driveway at the point where it intersects a lot line abutting a street. The centreline of the driveway at the point where it intersects a lot line abutting Riverside Drive has an elevation of 110.25.

*In this case, the elevation of the lowest point for the vehicle entrance in the main wall of the new three-storey detached dwelling will be 108.7.*

**10. Chapter 900.3.10.(961)(A), By-law 569-2013**

Despite regulation 10.5.40.60(1), in a front yard or rear yard, a platform with a floor higher than the first floor of the building above established grade may not encroach into the required yard setback.

*The new three-storey detached dwelling will have a front second storey terrace that will encroach 4.24 m into the required front yard setback and the second storey front porch will encroach 0.91 m into the required front yard setback.*

**By-law 438-86**

**11. Chapter 4(2)(A), By-law 438-86**

The maximum permitted height of a building or structure is 9.0 m.

*The new three-storey detached dwelling will have a height of 10.57 m, as measured from established grade to the mean height level between the roof eaves and the edge of the roof.*

The above variances are reproduced and attached to this decision as Schedule "A".

5. The Appellant also proposed the following conditions to facilitate the approval of the variances:
  - a. The Appellant is required to construct the building in substantial accordance with the Plans numbers A0 to A8, prepared by Jason Cutajar Architectural Design date stamped 10/19/2018, as revised on 8/22/2019. The site plan, basement floor plan and north elevation drawings (A0, A1 and A7) were modified on 8/22/2019 to accommodate an increased layby and garage modification.<sup>1</sup>

---

<sup>1</sup> The Appellant's counsel, Ms. Jane Pepino, in her closing submissions, referred to plan numbers A0 to A7; however, the submitted plans are numbered up to A8 and therefore this decision includes up to A8 as well.

- b. The Appellant shall submit a complete application for a permit to injure or remove privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Articles III Private Tree Protection.
6. The site plans referred to in condition # 1 is attached to this decision as Schedule "B" ..

## **JURISDICTION**

### **Provincial Policy – S. 3**

7. A decision of the 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)**

8. 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 AND ANALYSIS**

### Oral Testimonies

9. Over the course of four days, I heard from the residents opposing the proposal as well as from representatives of the SARA, SARG and Swansea Historical Society. I also heard from two expert witnesses in land use planning, Janice Robinson and Franco Romano. Ms. Robinson testified in favour of the proposal and Mr. Romano opposed the proposal. Andrew Pruss, an expert witness in architecture and cultural heritage, also testified supporting the proposal.
10. Both Ms. Robinson and Mr. Romano provided detailed evidence and opinion with respect to various OP policies, including 2.3.1, 3.1.2 builtform policies, 4.1.5 and 4.1.8. Below, I have summarized the relevant evidence that I have taken into consideration in my analysis and decision.

### The Neighbourhood:

11. The Subject Property is located on Riverside Drive, a street which runs mostly parallel to South Kingsway starting from Bloor Street West. The Subject Property is located approximately at the mid-point between south of Bloor Street West and north of where Riverside Drive intersects South Kingsway.

12. Ms. Robinson defined the neighbourhood and her study area as demarcated by the blue line shown in Figure 1. She did not include the properties on South Kingsway because the properties on this street are on a lower elevation than the properties on Riverside Drive. Therefore, the houses on South Kingsway, though behind the properties on Riverside Drive are considerably lower.

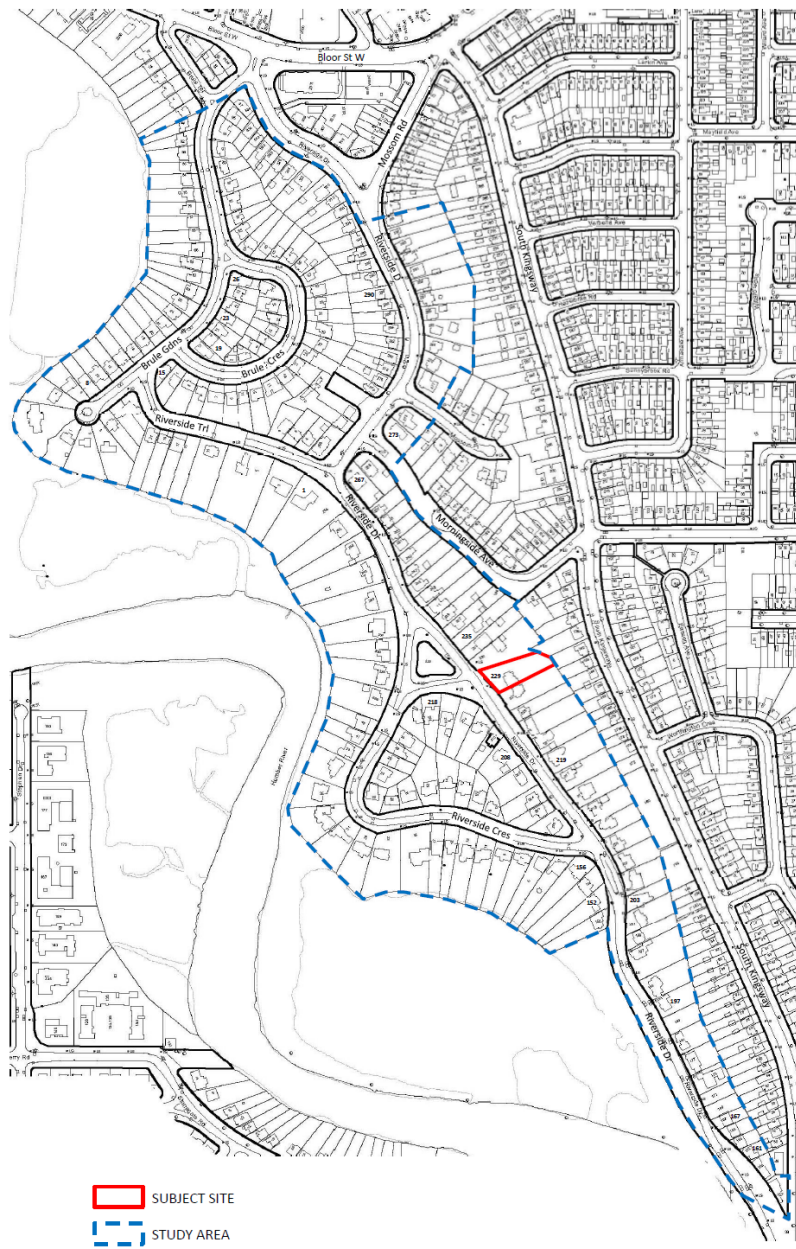


Figure 1: Ms. Robinson's neighbourhood study area (Attachment 2 of Ms. Robinson's Expert Witness Statement (Exhibit 1))

13. Ms. Robinson noted that her study area is similar to Mr. Romano's study area with the difference being that Mr. Romano included the properties on Morningside Avenue as well. Ms. Robinson and Mr. Romano did not dispute the validity of each other's study area.
14. Sydney Reimer, a resident, testified that she did not agree with the neighbourhood boundaries identified by Ms. Robinson. Based on her experience as a resident, Ms. Reimer found that Ms. Robinson's study area comprised of other neighbourhoods – Riverside Drive and the Brule Gardens/Crescent neighbourhoods. Brule Gardens and Brule Crescent areas are lower in topography than Riverside Drive and are geographically separated. These two areas have also developed differently. Riverside Drive has access to parks where residents congregate. In contrast, Brule Gardens and Brule Crescent neighbourhoods are secluded, with no access to parks and the residents in those areas consider themselves to be in a different neighbourhood.
15. I agree with Ms. Robinson's delineation of the neighbourhood. While Brule Gardens and Brule Crescent may be secluded, it is still part of the larger region of what is the Riverside Drive neighbourhood. Residents of the smaller Brule Gardens/Crescent geographic neighbourhood will not have any access to amenities, parks, transit, or community services without access through Riverside Drive.
16. Ms. Robinson testified that the neighbourhood is unique and beautiful with significant natural vegetation augmented by high quality executive detached homes. The neighbourhood is undergoing transformation through extensive renovation and additions. Mr. Pruss testified that the neighbourhood is an example of variety of building styles and building configurations, many of which reflect English and Tudor architecture. Mr. Romano noted that the neighbourhood is a mature, well vegetated neighbourhood comprising of lots of modest to large sizes, with predominantly single detached dwellings.
17. I have heard from residents about the historical nature of this neighbourhood. 210 Riverside Drive is listed on the City's Heritage Register because Lucy Maud Montgomery resided in this house. However, as Mr. Pruss testified, the current building on the Subject Property itself is not special or unique architecturally. It does not have any heritage designation and is therefore not subject to any restrictions specific to heritage properties. He further noted that 210 Riverside Drive is listed as a heritage building because of its association with a historical person and not because of its architectural context or significance.
18. Ms. Robinson reviewed photographs of houses in the study area, which showed that the neighbourhood is undergoing change. She noted that there are height variances between adjacent houses and tall houses north and south of the Subject Property. She noted that some renovations or rebuilt properties do not adhere to the traditional architectural characteristics present in the neighbourhood.

Subject Property

19. Ms. Robinson testified that the Subject Property is anomalous in that the lot slopes from front to back (that is, from west to east) with the backyard sloping downward into the ravine. Further, the lot is sloping and uneven from side to side (north to south). The Subject Property has a 32.25 m lot frontage and is at an angle, which results in unusual lot line setbacks. The average depth of the Subject Property is 69 m and the table land area is 1469 m<sup>2</sup>. Mr. Romano described the lot as having a rolling topography. The residents, in their testimonies, noted that the sloping feature is not distinctive in their neighbourhood as all properties that back onto the ravine have sloping topographies.
20. The Subject Property and the Woodmans' property at 231 Riverside Drive (Woodmans' Property) share a driveway with an easement attached to the title of both properties. This shared access driveway allows for vehicular (and pedestrian) traffic to and from these two properties. A review of the neighbourhood by Ms. Robinson indicates that shared driveways with easements are not common features in this neighbourhood. One of the main objections to the Appellant's proposal for the Subject Property relates to this shared driveway and the position of the garage, which are discussed in more detail later in my decision. Although not disputed by the parties, the TLAB is not tasked with reviewing the validity of the easements and shared driveway. The issue that the Woodmans are concerned with is whether the proposed development will adversely impact the Woodmans' easement rights as discussed in detail below.

The Proposal and Variance Requested

21. Ms. Robinson testified that the Appellant proposes to demolish the current building and construct a new larger building that will require the variances listed above. She reviewed a rendering of the proposed development and noted that architecturally the new dwelling will be a traditional, English country style building with stone exterior, steep roof and with an attic, which will not be used as living space. In her opinion, the proposed development would fit with the traditional style houses in the neighbourhood.
22. Ms. Robinson testified that many of the variances are required because of the sloping topography of the Subject Property. As a result, in her view, the variances are technical in nature. Mr. Romano, while agreeing that some of the variances required due to the topography of the Subject Property, pointed out that the Appellant could have avoided these variance requests if the proposed dwelling was situated in a different location on the Subject Property, such as on the as-of-right building envelope. I agree with Mr. Romano that these variances could have been avoided if the as-of-right building envelope was used. However, the task before the TLAB is to determine whether the proposed development satisfies the four statutory tests for minor variance.

23. Mr. Romano testified that three storey or taller buildings are not typical in the neighbourhood. Unlike the proposed building, the houses in the neighbourhood are mostly in the front and central position of the lot, and away from pronounced sloping. He noted that the front is not illustrative of the whole building, as at the back and at the sides, the basement is fully exposed which results in the basement being the first floor. Mr. Romano opined that the exposed basement contributes to the massing, height and scale of the building and when taken in context with what is present in the neighbourhood, the proposed dwelling does not reinforce the neighbourhood's physical character. He also asserted that the general intent and purpose of the zoning by-law, which is to achieve an orderly, compatible, modest detached residential site design and physical form, is not maintained because the proposed dwelling will be a large structure.
24. Veronica Wynne, witness for SARA and SARG, testified that the proposed building is large and does not reflect the Floor Space Index (FSI) of the properties adjacent to the Subject Property. Modifications of the proposals, such as cutting out the front of the porch, set back of the back part, and recessing the balcony could have resulted in a smaller building suitable for the neighbourhood. She noted that approving this construction will result in further development of large dwellings in the neighbourhood. Similar concerns were also noted by other neighbours, such as Sydney Reimer and Daniel Dubois, who voiced the concern that the proposal would result in a development that was very large for the neighbourhood. The resident, Paul Roth, testified that the houses in the neighbourhood do not have to be same but the overall rhythm of the neighbourhood in terms of building heights, should be maintained.

*Height, Front Entrance and Front Yard Setback*

25. Variances # 1, 2 and 11 are needed to accommodate the height of the proposed house. The maximum permitted height under By-law 569-2013 and By-law 438-86 is 9 m; however, the variance requested under these two by-laws are different, which are 12.46 m under By-law 569-2013 and 10.57 m under By-law 438-86. As can be seen from the variances listed under "Matters in Issue", the discrepancy is due to how the height is measured under the two by-laws. Under By-law 569-2013, height is measured from established grade to the roof peak while under By-law 438-86, height is measured from the established grade to the mean height level between the roof eaves and the edge of the roof. Variance # 2 refers to the height of the front exterior main wall height, which is 8.68 m when 7 m is permitted.
26. Ms. Robinson testified that the established grade is 2.13 m below grade at the front door (about a step up to the front door). I agree with Ms. Robinson's testimony that the sloping topography from west to east on the property has resulted in the established grade being lower than the front door (or front grade). She reviewed a Roof Plan Height Design where she noted that about 70% of the building's height is 9.71 m or lower when calculated from the front grade while some portions are higher than 9.71 m to accommodate for peaked roof design.

27. Ms. Robinson reviewed the measurements of elevations of various points, such as roof peaks of neighbouring properties, as measured by Land Survey Group Inc. She used this data to calculate the height of neighbouring properties from front grade elevation. She noted that many of the neighbouring properties have heights higher than the height of 9.71 m at the front grade for the proposed building. She noted that the height of the proposed dwelling as listed in the requested variances is approximately 2 m higher than what is perceived from the street because of how established grade is calculated.
28. With respect to Variance # 3, Ms. Robinson testified that this variance refers to the front door being the main entrance, which is 2.13 m higher than established grade.
29. I find that the height variances are a product of the established grade being 2.13 m lower than the grade at front door. There are other houses in the neighbourhood with a similar or greater height when measured at the grade at the front of the properties. Further, the roof peaks with a height greater than 9.71 m are to accommodate roof designs that are similar to what is found in the neighbourhood. Taking these together, I find that Variances # 1, 2 and 11 satisfy the tests of whether the general intent and purposes of the OP and Zoning By-law are maintained.
30. Further, when viewed from the street, the height of the dwelling will be approximately 2 m lower than the actual variances being requested. Such height will not overwhelm or be different from the height of the other houses in the neighbourhood. The proposed building is seen as a two-storey building from the front streetscape and will be in keeping with the streetscape characteristics of the subject street and the surrounding neighbourhood. The impact of the height of this building from the street and the neighbouring properties will not be adverse. I find these variances are minor in nature.
31. For the same reasons as above, I find that Variance # 3, relating to the main entrance, is technical in nature and maintains the general intent and purposes of the OP and Zoning By-law and that the variance is minor in nature.
32. With respect to the front yard setback variance (Variance # 4), Ms. Robinson testified that the setback requested is 11.2 m whereas 22.22 m is required. The setback is calculated based on the average of the front yard setback of the two abutting dwellings. These dwellings are not aligned at the front, which has resulted in a large front yard setback. I find that Riverside Drive, which is a curvilinear street, results in houses having staggered front wall alignments on this street. Although the houses may be centralized and at the front within their respective lots, as Mr. Romano noted, the curving street has resulted in the houses being not fully aligned at the front with one another. I find that the house on the Woodmans' Property is further setback from the front lot line. Therefore, I find that the positioning of the proposed dwelling will not stand out as being significantly different in this neighbourhood. I am satisfied that the proposed front yard setback satisfies the general intent and purpose of the OP and the Zoning by-law and is minor in nature.

*Raised Platforms*

33. Ms. Robinson testified that because of the slope from the front of the Subject Property to the rear (west to east), the basement floor is considered as a first floor of the proposed dwelling as it is exposed at the back. As a result, the proposed dwelling is a three storey house. Ms. Robinson clarified that the platforms noted in Variances # 5, # 6 and # 10 refer to a terrace with a porch at the front and a rear terrace off the main floor.
34. I find that the Variances # 5, # 6 and # 10 are technical in nature as they are a result of the basement floor being considered as the first floor. As the Subject Property slopes down in the back, the first floor at the front becomes the second floor at the back, with the basement floor being exposed at the back. From the street, the second floor is the first floor with a terrace for the entrance. At the back, the back terrace is considered the platform for the second floor. I am satisfied that these Variances meet the general intent and purpose of the OP and the zoning by-law.
35. The rear of the proposed development includes a terrace irrespective of whether this floor is considered the first floor or second floor. From the perspective of the Woodmans Property, this floor has a large balcony which has some overlook into the Woodmans Property. Mr. Romano testified that this above grade terrace is fully exposed without any screening and extends from one end of the building to the other end. He opined that this terrace does not meet the intent of the zoning by-law which is to minimize the impact associated with an elevated platform.
36. There is significant vegetation between the Subject Property and the Woodmans' Property, which was suggested can restrict overlook from the Subject Property. However, it is not the responsibility of a neighbour to mitigate any adverse impact of the proposed development. The neighbourhood, as Ms. Robinson describes, has large lots with large houses with a country style atmosphere – this is not a downtown neighbourhood with houses built closely together in a tight, urban fabric where a certain amount of overlook is to be expected. At the hearing, there was discussion of installing a privacy screening of a height 1.5 m on the north wall of this rear terrace. I find that this requirement should be a condition to the variance approval to minimize any privacy impacts on the Woodmans and thus satisfying the test that this variance is minor in nature.

*Side Yard Setback, FSI and Garage*

37. With respect to Variance # 9, Ms. Robinson noted that the current driveway, being maintained in the same location in the proposed development, is at a lower elevation than the location of the houses on both the Subject Property and Woodmans' Property. The proposed vehicle entrance at an elevation of 108.7 m is slightly higher than the current vehicle entrance elevation of 108.44 m (in front of the garage). I am satisfied that Variance # 9 regarding elevation of the lowest point of a vehicle entrance is acceptable given that the proposed development seeks to maintain the use of the current driveway. These satisfy the general intent and purposes of the OP and Zoning By-law.

38. With respect to Variance # 7, Ms. Robinson noted that the purpose of the zoning by-law is to control the length of the property. She noted that the side yard setback requirements are satisfied when it is up to 17 m of the building. However, beyond the building depth of 17 m, the side yard setback requirement is 17 m. On the north side of the proposed dwelling, the depth of the walls for the second and third storeys extend approximately 2.2 m and are approximately 4 m away from the side yard lot line. On the south side, the side walls for the second and third storeys are approximately 1.8 m deep and are also approximately 4 m away from the side lot line. On the north side, Ms. Robinson testified that the smaller setback will not be an issue, as there is significant vegetation between the Subject Property and the Woodmans Property.
39. The requested FSI of 0.79x the area of the lot, with the gross floor area (GFA) being 1164 m<sup>2</sup> is of significant concern to the residents of the neighbourhood. The maximum FSI allowed is 0.35x the area of the lot. Ms. Robinson testified that the basement GFA was included in the FSI calculation as it is considered the first storey of the proposed building. The GFA of the proposed dwelling without the basement is 710 m<sup>2</sup> and that the area of the table-land portion (lot area above the long term stable top of slope line) of the lot is 1467.3 m<sup>2</sup>. When considering the table-land portion of the lot and excluding the GFA of the basement, Ms. Robinson calculated the FSI to be 0.48x times the area of the lot. She opined that this FSI is the correct value for the Subject Property and as such, is comparable to the FSI in the neighbourhood.
40. Ms. Robinson noted that there are many properties in the neighbourhood with higher FSI as shown in her CoA decision analysis and neighbourhood photographs. Further, if the FSI of the current houses on the neighbouring properties are measured using the calculation method of the older by-law, then the FSI for these houses would be higher than the permitted FSI.
41. Mr. Romano testified that while the FSI can be found in the neighbourhood, he is concerned with how the FSI and massing are deployed. In this case, the deployment of massing has an adverse effect on the Woodmans' Property, specifically, with respect to the location of the garage being close to the Woodmans' Property. With respect to this proposal, Mr. Romano opined that one needs to look at the cumulative relationship between the variances, such that if one variance fails, the entire application should fail as well. I agree with Mr. Romano that with respect to this proposal, the variances should also cumulatively satisfy the four tests. Specifically, the FSI of this proposal should not be reviewed in isolation but reviewed by taking into account the massing and scale of the proposed building, including the integral garage and its impact on the abutting properties.
42. The Appellant proposes a three-car garage at the north side of the proposed dwelling facing the shared driveway and the Woodmans Property. Ms. Robinson testified that the Appellant wanted the garage at the side of the proposed development as she had security concerns for having a garage entry in the rear facing the ravine. The Appellant did not want to pave the rear of the property, which backs into the ravine. She proposes a naturalized area in the rear which will be

subject to a Ravine Stewardship Plan, which includes removal of invasive species and replacing them with native species. The proposed dwelling is 13 m from long term stable top of slope.

43. After the CoA issued its decision, the Appellant modified the layout of the garage in the plans based on the Driveway Operations Review conducted by BA Group that the Appellant commissioned. Based on the Driveway Operations Review, the Appellant changed the position of the column in the interior of the integral garage to allow for proper turning of a vehicle. Ms. Robinson noted that two cars can fit along the width of the driveway, which would allow for movement of cars in and out of the properties. As the vehicle used in the study was of the largest size available, Ms. Robinson noted that a car of similar size (or less) driving into and out the garage in the Subject Property would not encroach into the Woodmans Property and the Woodmans would not face any impediment in accessing the driveway and the mutual right-of-way.
44. I find that the revisions to the proposal with respect to the garage layout to be minor and not warrant further notice as might otherwise be relevant pursuant to section 45(18.1.1) of the Act.
45. The plans are also modified to enlarge the lay-by in the front corner of the house, next to the driveway, to allow for temporary parking of a car. This lay-by is enlarged to accommodate the largest sized vehicle. Ms. Robinson suggested that this larger lay-by will further ensure that residents of the Subject Property will not temporarily park on the shared parkway, which is not permitted as a result of the existing mutual easements. Instead, they will park on this lay-by which is near to a side door of the proposed dwelling.
46. The location of the garage is a significant issue for the Woodmans. This includes whether the large garage close to the shared driveway and closed to the Woodmans Property would allow for proper vehicle movement in and out of the garage and whether such movement will require encroachment into the Woodmans' Property. The size of the proposed dwelling along with the reduced side yard setback resulted in positioning the garage close to the driveway and the Woodmans' property.
47. Mr. Romano testified that he was not concerned with the lay-by but rather concerned with the location of the garage being close to the shared driveway. He noted that the location of the garage does not satisfy OP 3.1.2.2 with respect to organizing vehicular parking and access and minimizing impact and improving safety. As the dwelling will be constructed close to the shared access route, this positioning will invite conflict and create a significant adverse impact to the Woodmans. He was not aware of whether this type of condition is common in the neighbourhood.
48. I have reviewed the Driveway Operations Review, which shows the position of a car entering the garage either "front in" or "back in". As this description suggests, a car entering "front in" will exit the garage by backing out and a car entering by backing in will exit by "front out". I note the following:

- a. The review/study is done using a large vehicle with a length of 5.15 m and width of 2.01 m (2012 Dodge Grand Caravan).
  - b. For the three parking spots in the garage, the large vehicle will have to navigate carefully to move in and out of the garage, whether entering front in or back in, or exiting by front out or back out. The car comes close to the Woodmans' Property in many situations but does not encroach.
  - c. If a vehicle leaves the garage by backing out, the car will either need to back out of the whole driveway or engage in a turn in the driveway to change in the "front out" position. While backing out all the way to the driveway may be awkward or difficult, it is not impossible. It is also possible to turn a car in the driveway to change the position/direction of the car, as the width of the driveway can accommodate two cars side-by-side.
49. There may be concern that a distracted driver in a large vehicle may drive beyond the shared driveway and encroach into the Woodmans' Property line while accessing the garage. The TLAB's decision cannot be based on a range of probabilities relating to the expertise of a driver or the size of the car. Based on the Driveway Operations Review, I find that while a large car may be close to the property line, it will not trespass or encroach into the neighbour's property. I am satisfied that the location of the garage does not result in any adverse impact on the Woodmans. It can help drivers if the Appellant demarcates the boundary of the shared driveway (boundary line of the easements) in a manner that is acceptable by the Woodmans.
50. I prefer Ms. Robinson's evidence and testimony with respect to the side yard setback and FSI and find that these variances satisfy the general intent and purpose of the OP and zoning by-law and are minor, both individually and cumulatively with the other variances.
51. I agree with Mr. Cara's submission that the Appellant only made amendments to the location of the garage after the CoA's decision denying the application for variances. The Appellant has the onus of proving that the garage location and configuration in the proposed dwelling will allow for proper vehicle movement in and out of the garage without trespass onto the neighbours' property. She did so by submitting the Driveway Operations Review and therefore rectified the noted deficiency in her application. A matter before the TLAB is *de novo*, which means that the Applicant is permitted to submit relevant evidence that was not previously before the CoA.
52. I need to consider whether the proposed building with the requested variance is desirable for the appropriate development or use of the land. The Appellant is proposing a large structure in a neighbourhood where large executive homes are common. A large dwelling in this neighbourhood is not undesirable and not uncharacteristic in the area. Further, the development includes improvement of the natural vegetation via a Ravine Stewardship Plan and includes not having any pavement in the back area of the building. I find that this is a desirable use of the

land in a neighbourhood where natural vegetation is common and is a desirable feature of this neighbourhood.

### Conclusion

53. There are no policy concerns pursuant to the PPS and Growth Plan with respect to this matter as the Appellant described the proposal to be a local area issue, not directly related to growth and an investment in and a regeneration of an existing property.
54. Based on the evidence before me, I am satisfied that the variances satisfy the general intent and purpose of the OP and the Zoning By-Laws. They are also minor in nature and any impacts related to privacy and overlook concerns can be reduced if the additional mitigation measure such as the proposed condition of a privacy screen is included and implemented. Further, the proposed development, in conjunction with the additional development of the natural area, is desirable for the appropriate development or use of the land. The proposed variances, individually and cumulatively, satisfy the four statutory tests in the *Act*.
55. I would like to remind the parties that the shared driveway with its easement requires access to the driveway for vehicle and pedestrian travel. Care should be taken by the Appellant that construction on the Subject Property does not impede the Woodmans' access to their property through the shared driveway.

## **DECISION AND ORDER**

56. The appeal is allowed and the requested variances set out in Schedule "A" are approved subject to the following conditions:
- a. The Appellant is required to construct the building in substantial accordance with the Plans, numbers A0 to A8, prepared by Jason Cutajar Architectural Design date stamped 10/19/2018, as revised on 8/22/2019. The site plan, basement floor plan and north elevation drawings (A0, A1 and A7) were modified on 8/22/2019 to accommodate an increased lay-by and garage modification (Schedule "B").
  - b. The Appellant shall submit a complete application for a permit to injure or remove privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Articles III Private Tree Protection.
  - c. Privacy screening to be constructed at the north wall of the rear terrace at a height of 1.5 m.

X 

---

Shaheynoor Talukder  
Panel Chair, Toronto Local Appeal Body  
Signed by: Shaheynoor Talukder

**SCHEDULE "A"**

**By-law 569-2013**

**1. Chapter 10.20.40.10.(1)(A), By-law 569-2013**

The maximum permitted height of a building or structure is 9.0 m

*The new three-storey detached dwelling will have a height of 12.46 m, measured from established grade to the roof peak.*

**2. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of exterior main walls is 7.0 m.

*The new three-storey detached dwelling will have a front exterior main wall height of 8.68 m.*

**3. Chapter 10.20.40.10.(6), By-law 569-2013**

In the RD zone, for a detached house, the elevation of the lowest point of a main pedestrian entrance through the front main wall or a side main wall may be no higher than 1.2 m above established grade.

*The new three-storey detached dwelling will have a main pedestrian entrance height of 2.13 m above established grade.*

**4. Chapter 10.20.40.70.(1), By-law 569-2013**

The minimum required front yard setback is 22.22 m.

*The new three-storey detached dwelling will be located 11.2 m from the front lot line.*

**5. Chapter 10.20.40.50.(1)(A), By-law 569-2013**

Only one platform at or above the second storey located on the front wall of a detached house is permitted.

*The new three-storey detached dwelling will have two platforms that will be located on the front wall.*

**6. Chapter 10.20.40.50.(1)(B), By-law 569-2013**

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 m<sup>2</sup>.

*The new three-storey detached dwelling will have a second storey rear terrace area of 88.6 m<sup>2</sup> and a second story front porch area of 36.4 m<sup>2</sup>.*

**7. Chapter 10.20.40.70.(5)(A), By-law 569-2013**

The minimum required side yard setback is 7.5 m, where the building depth is greater than 17.0 m from the main wall of the building.

The new three-storey detached dwelling will be located 1.81 m from the south side lot line and 3.31 m from the north side lot line.

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

The maximum permitted floor space index is 0.35 times the area of the lot (513.38 m<sup>2</sup>).

*The new three-storey detached dwelling (including the basement) will have a floor space index of 0.79 times the area of the lot (1,164.0 m<sup>2</sup>).*

**9. Chapter 10.5.80.40.(2), By-law 569-2013**

The elevation of the lowest point of a vehicle entrance in the main wall of the building is required to be higher than the elevation of the centreline of the driveway at the point where it intersects a lot line abutting a street. The centreline of the driveway at the point where it intersects a lot line abutting Riverside Drive has an elevation of 110.25.

*In this case, the elevation of the lowest point for the vehicle entrance in the main wall of the new three-storey detached dwelling will be 108.7.*

**10. Chapter 900.3.10.(961)(A), By-law 569-2013**

Despite regulation 10.5.40.60(1), in a front yard or rear yard, a platform with a floor higher than the first floor of the building above established grade may not encroach into the required yard setback.

*The new three-storey detached dwelling will have a front second storey terrace that will encroach 4.24 m into the required front yard setback and the second storey front porch will encroach 0.91 m into the required front yard setback.*

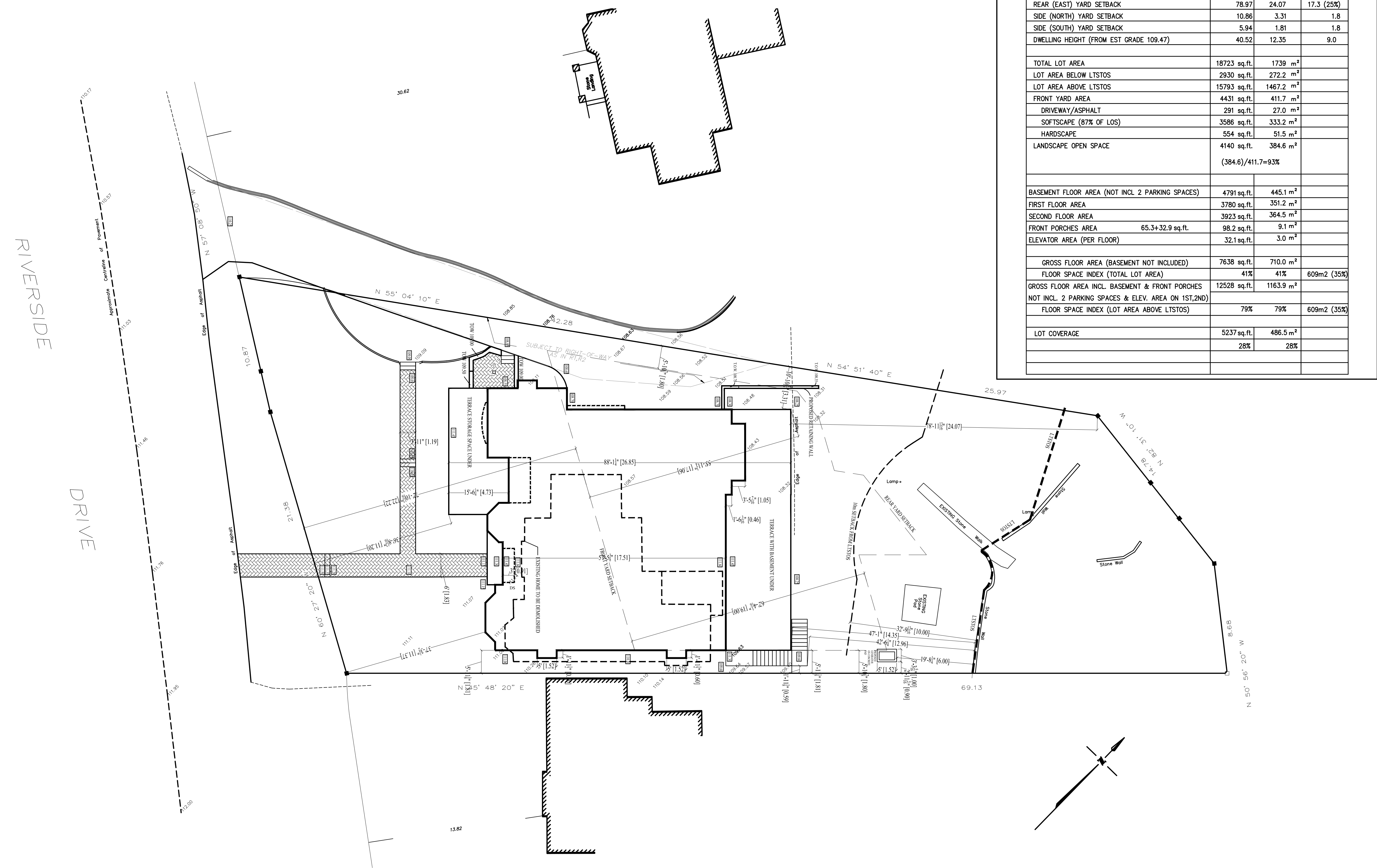
**By-law 438-86**

**11. Chapter 4(2)(A), By-law 438-86**

The maximum permitted height of a building or structure is 9.0 m.

*The new three-storey detached dwelling will have a height of 10.57 m, as measured from established grade to the mean height level between the roof eaves and the edge of the roof.*

RECEIVED  
By Committee of Adjustment at 3:12 pm, May 13, 2019



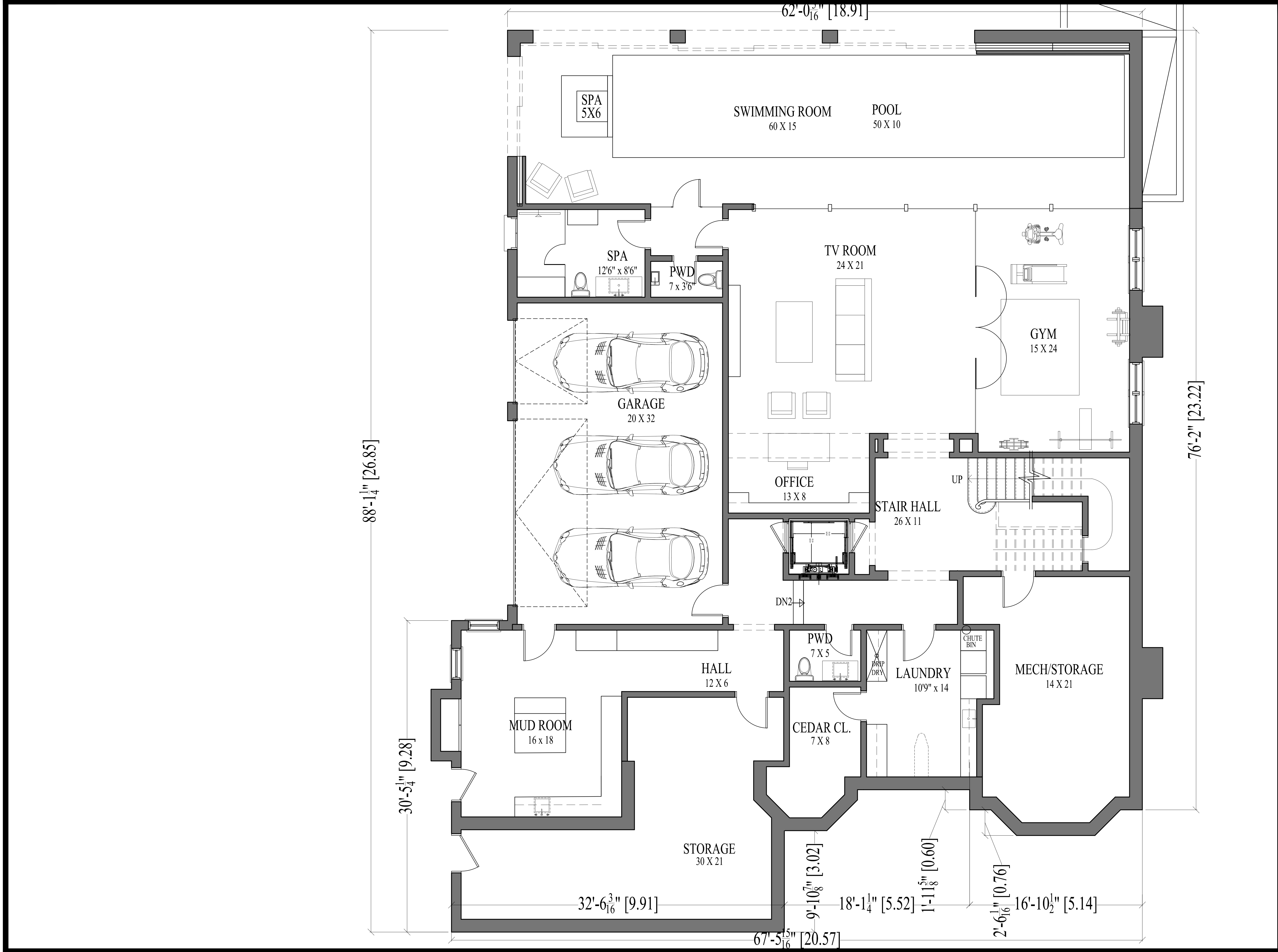
229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10		
9		
8	ZONING REVIEW RESUBMISSION	5/9 19
7	2 STOREY BAY ADDED	4/22 19
6	GENERATOR PAD MOVED	3/20 19
5	HOUSE RAISED .1m AS PER GRADING	3/1 19
4	ZONING REVIEW RESUBMISSION	2/12 19
3	TRCA RESUBMISSION	1/10 19
2	TRCA APPLICATION	11/16 18
1	ZONING REVIEW APPLICATION	10/19 18
NO.	REVISIONS	DATE

SITE PLAN  
AND ZONING SCHEDULE

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:100
PROJECT NO.:	DRAWING NO.:

A0

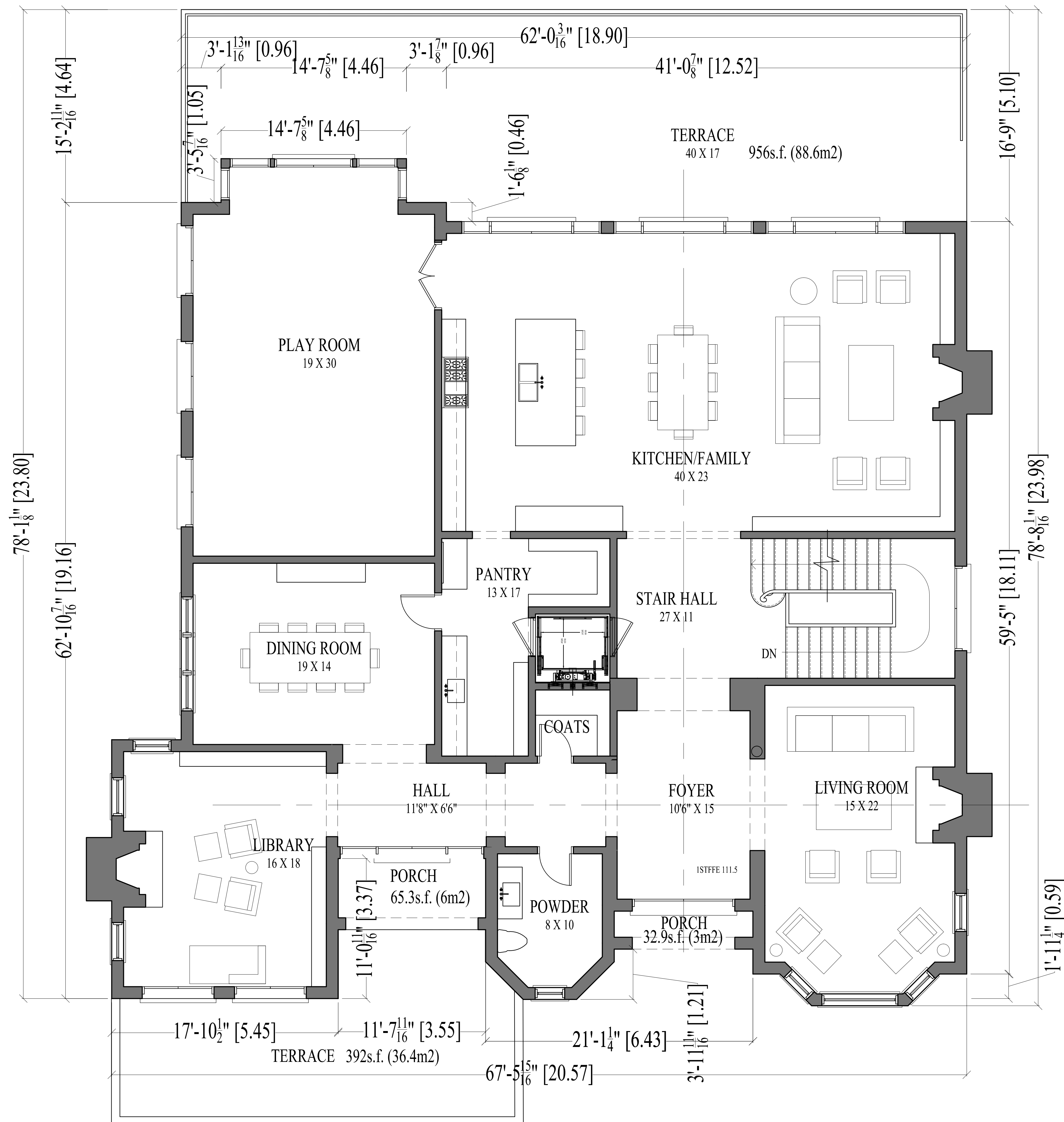


229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

BASEMENT PLAN

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:
	A1



JASON CUTAJAR  
ARCHITECTURAL DESIGN  
P 416•277•0179 F 416•241•8125  
39 BRAYWIN DRIVE  
TORONTO, ONTARIO  
M9P 2N9  
CANADA

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

## 1ST FLOOR PLAN

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:

A2



JASON CUTAJAR  
ARCHITECTURAL DESIGN  
P 416•277•0179 F 416•241•8125  
39 BRAYWIN DRIVE  
TORONTO, ONTARIO  
M9P 2N9  
CANADA

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

## 2ND FLOOR PLAN

DRAWN BY:  
J. CUTAJAR

CHECKED BY:

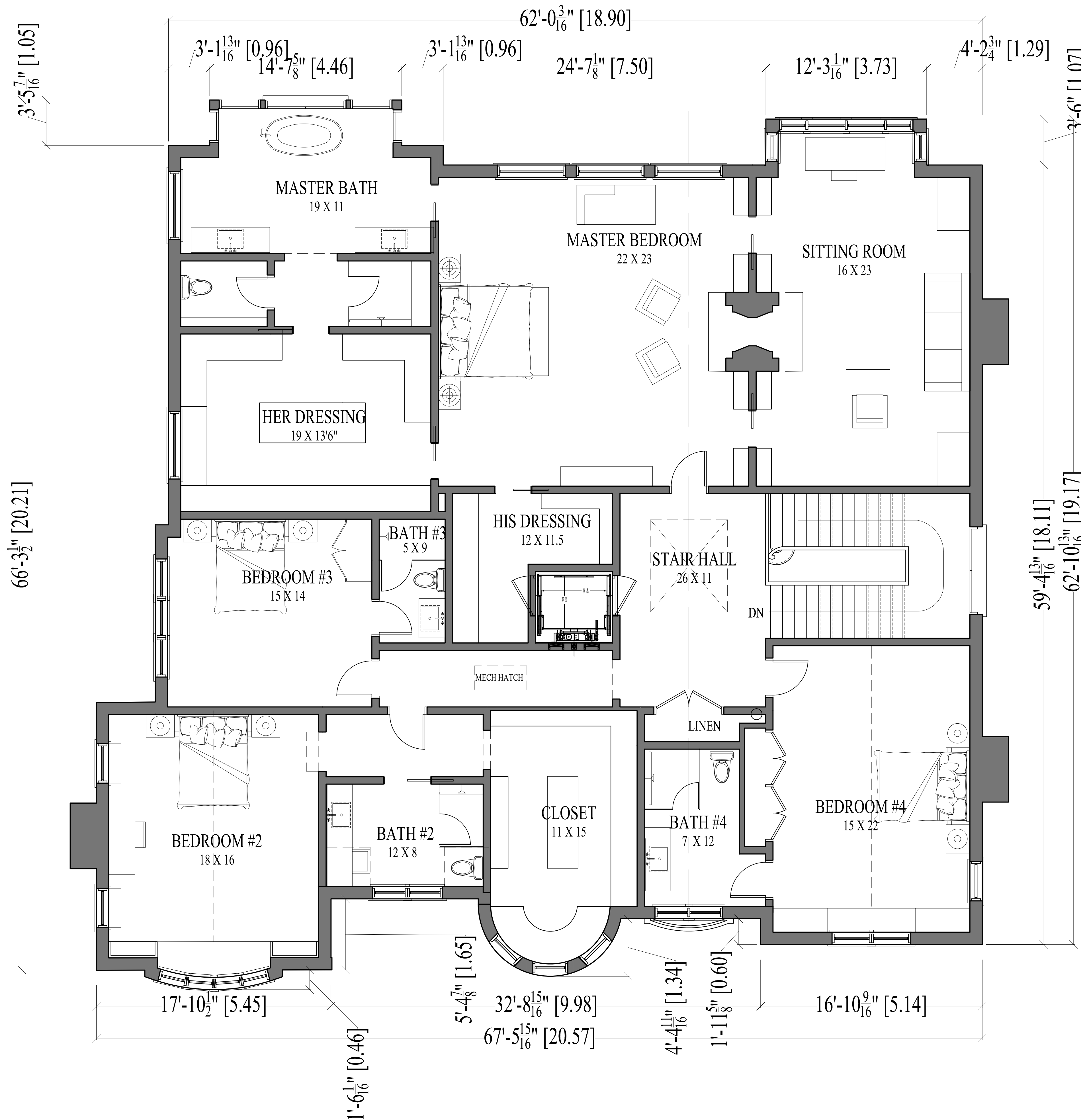
DATE:  
10/19/2018

SCALE:  
1:50

PROJECT NO.:

DRAWING NO.:

A3



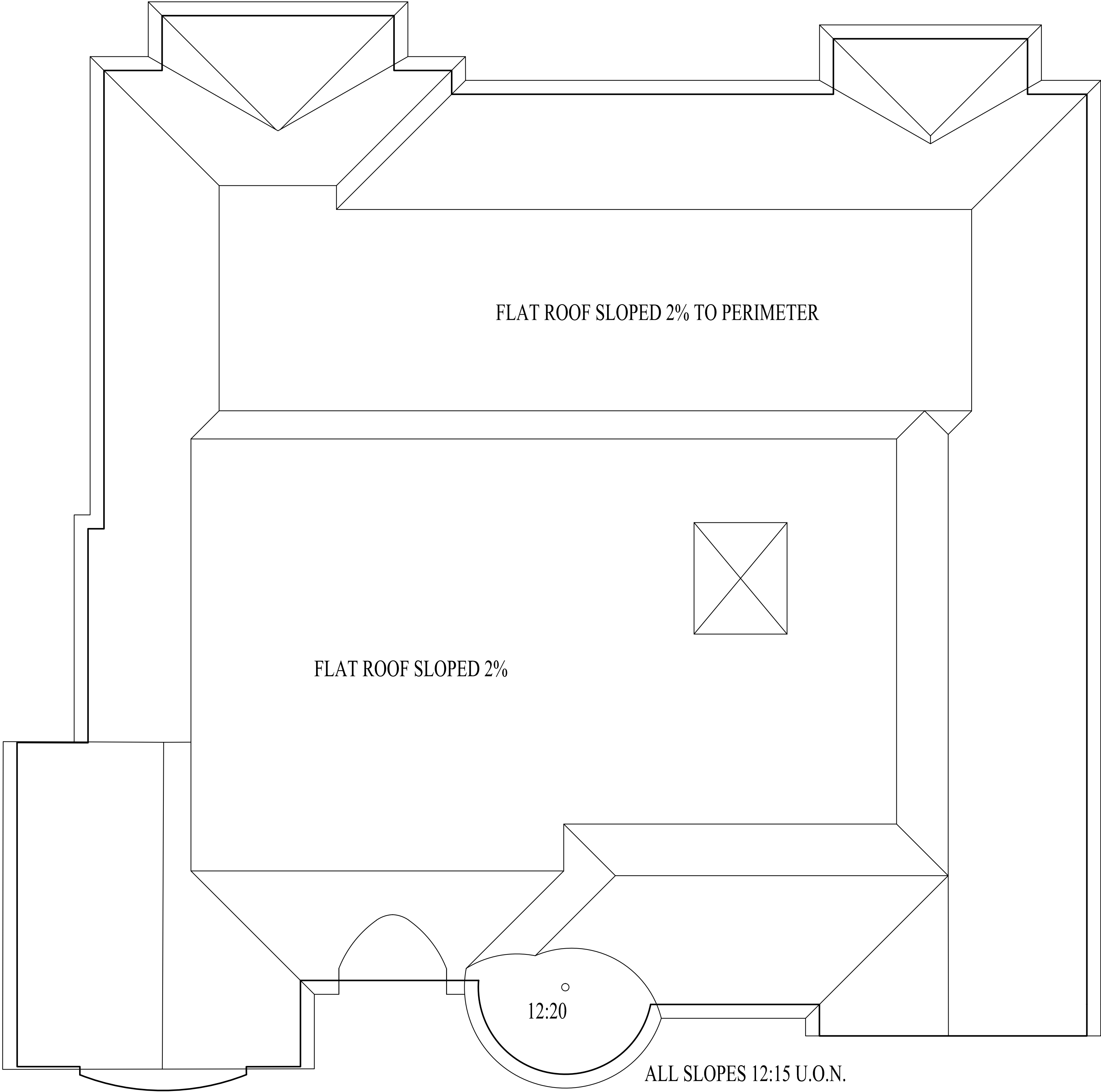
229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

ATTIC PLAN

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:
	A3a





ALL SLOPES 12:15 U.O.N.

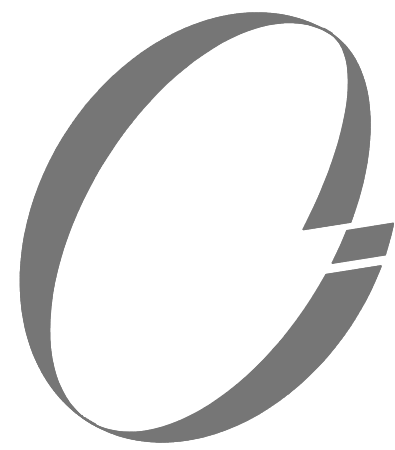
TOTAL ROOF AREA 4086 S.F.  
FLAT ROOF AREA 1894 S.F. (46%)

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

ROOF PLAN  
HEIGHT DIAGRAM

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:
	A4



JASON CUTAJAR  
ARCHITECTURAL DESIGN  
P 416•277•0179 F 416•241•8125  
39 BRAYWIN DRIVE  
TORONTO, ONTARIO  
M9P 2N9  
CANADA

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA



10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

FRONT (WEST)  
ELEVATION

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:

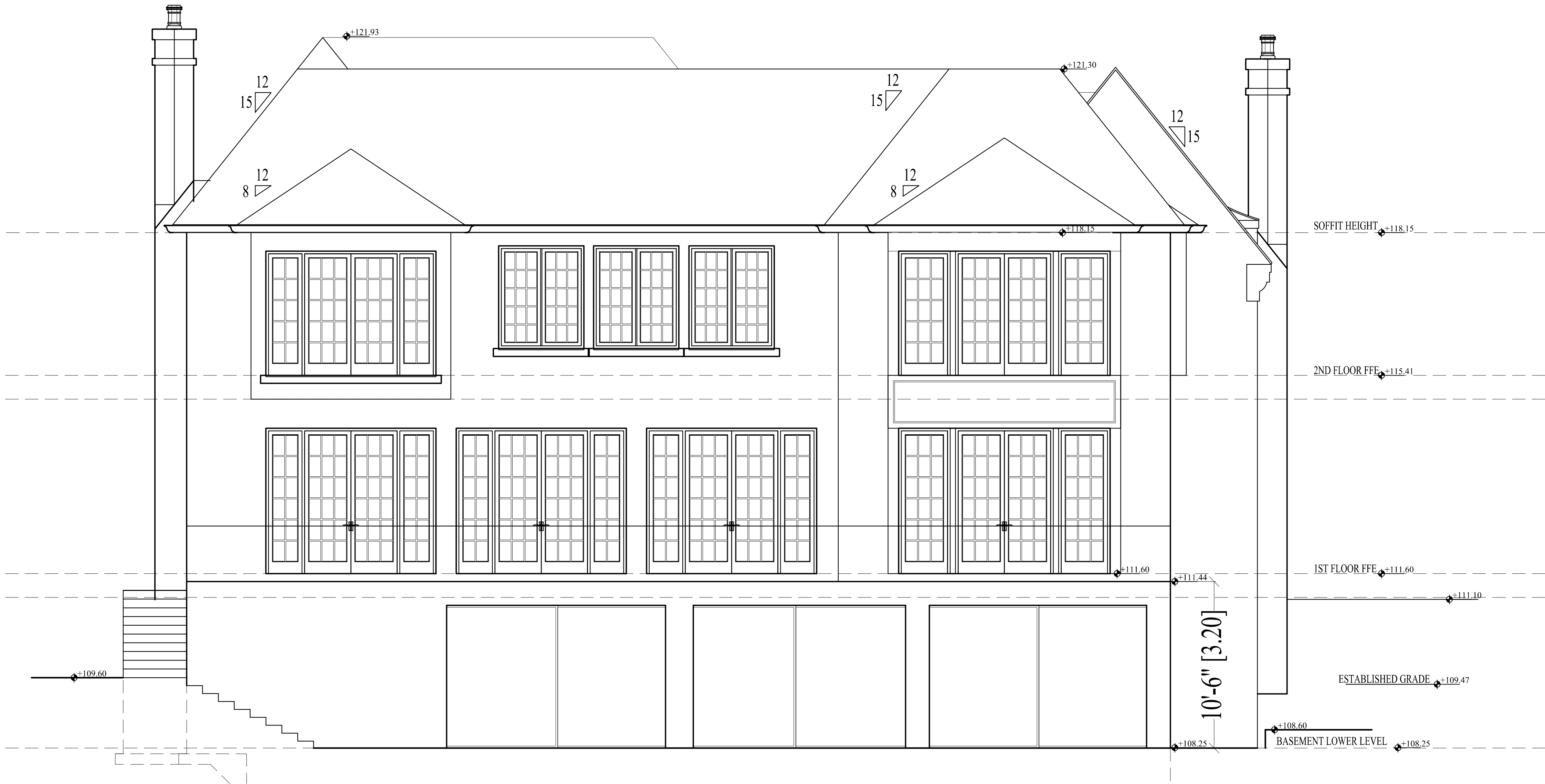
A5

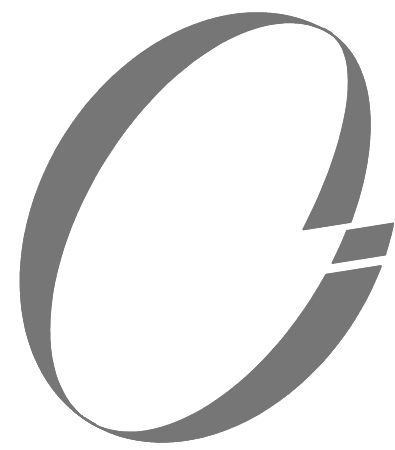
229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

REAR (EAST)  
ELEVATION

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:
	A6





JASON CUTAJAR  
ARCHITECTURAL DESIGN  
P 416•277•0179 F 416•241•8125  
39 BRAYWIN DRIVE  
TORONTO, ONTARIO  
M9P 2N9  
CANADA

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA



10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

NORTH  
ELEVATION

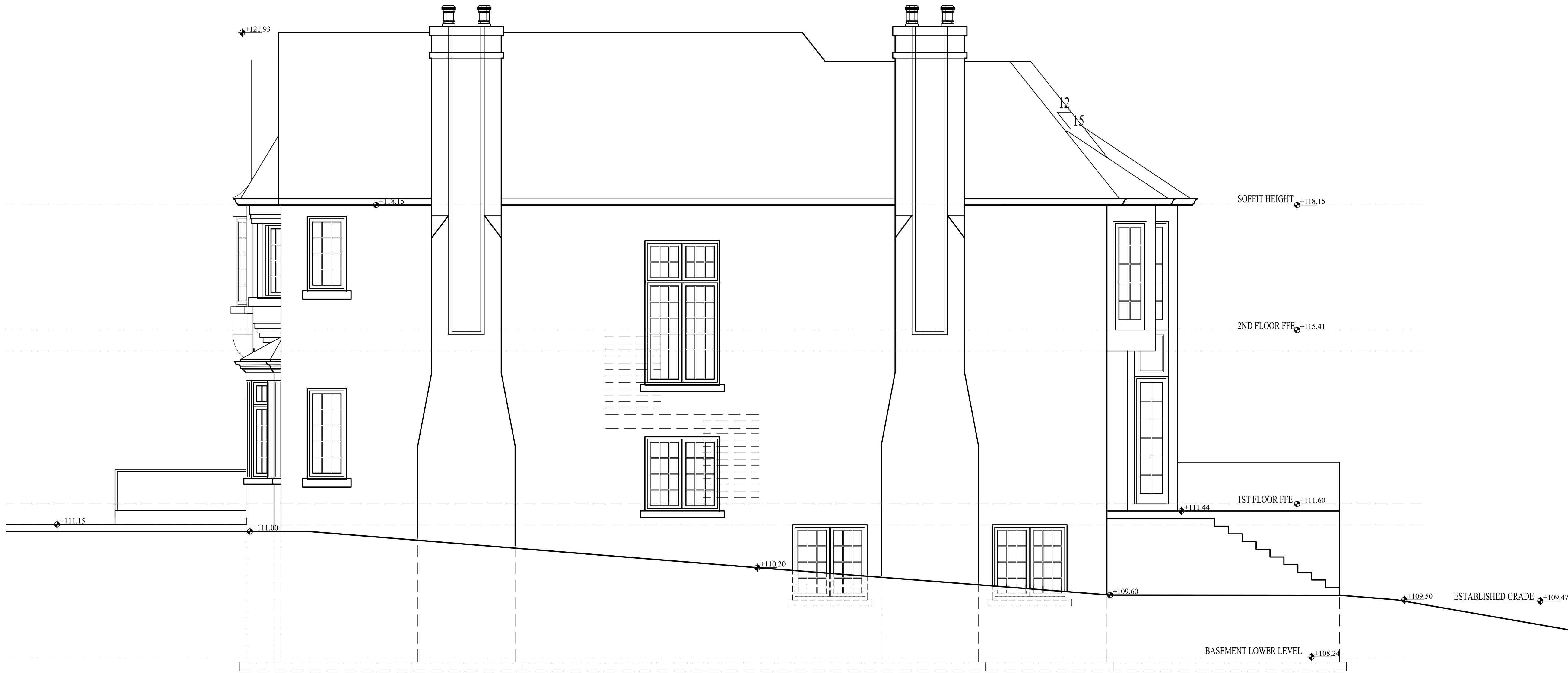
DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:

A7



JASON CUTAJAR  
ARCHITECTURAL DESIGN  
P 416•277•0179 F 416•241•8125  
39 BRAYWIN DRIVE  
TORONTO, ONTARIO  
M9P 2N9  
CANADA

229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA



10			
9			
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

SOUTH  
ELEVATION

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:

A8

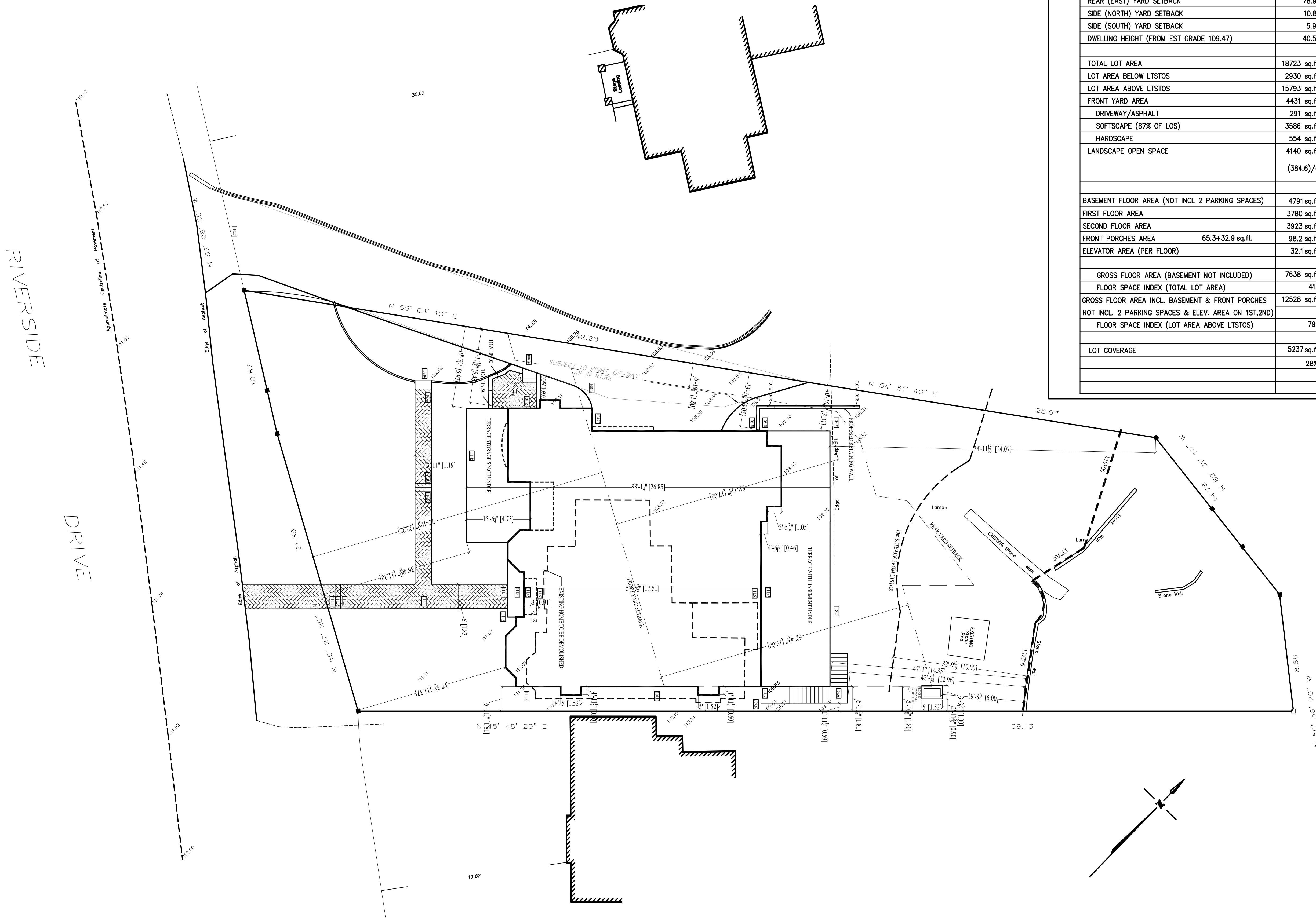
229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9	GARAGE DOORS MODIFIED	8/22	19
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

SITE PLAN  
AND ZONING SCHEDULE

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:100
PROJECT NO.:	DRAWING NO.:
	A0

ZONING SCHEDULE 229 RIVERSIDE DRIVE			
RD (#21.0; d0.35) (x961)			
SITE DATA			
ITEM	PROPOSED FT	PROPOSED m	REQUIRED m
LOT FRONTAGE	106' 7 1/2"	32.25	21
FRONT (WEST) YARD SETBACK	39.3	11.20	22.22
REAR (EAST) YARD SETBACK	78.97	24.07	17.3 (25%)
SIDE (NORTH) YARD SETBACK	10.86	3.31	1.8
SIDE (SOUTH) YARD SETBACK	5.94	1.81	1.8
DWELLING HEIGHT (FROM EST GRADE 109.47)	40.52	12.35	9.0
TOTAL LOT AREA	18723 sq.ft.	1739 m <sup>2</sup>	
LOT AREA BELOW LTSTOS	2930 sq.ft.	272.2 m <sup>2</sup>	
LOT AREA ABOVE LTSTOS	15793 sq.ft.	1467.2 m <sup>2</sup>	
FRONT YARD AREA	4431 sq.ft.	411.7 m <sup>2</sup>	
DRIVEWAY/ASPHALT	291 sq.ft.	27.0 m <sup>2</sup>	
SOFTSCAPE (87% OF LOS)	3586 sq.ft.	333.2 m <sup>2</sup>	
HARDSCAPE	554 sq.ft.	51.5 m <sup>2</sup>	
LANDSCAPE OPEN SPACE	4140 sq.ft.	384.6 m <sup>2</sup>	
	(384.6)/411.7=93%		
BASEMENT FLOOR AREA (NOT INCL 2 PARKING SPACES)	4791 sq.ft.	445.1 m <sup>2</sup>	
FIRST FLOOR AREA	3780 sq.ft.	351.2 m <sup>2</sup>	
SECOND FLOOR AREA	3923 sq.ft.	364.5 m <sup>2</sup>	
FRONT PORCHES AREA	65.3+32.9 sq.ft.	98.2 sq.ft.	9.1 m <sup>2</sup>
ELEVATOR AREA (PER FLOOR)	32.1 sq.ft.	3.0 m <sup>2</sup>	
GROSS FLOOR AREA (BASEMENT NOT INCLUDED)	7638 sq.ft.	710.0 m <sup>2</sup>	
FLOOR SPACE INDEX (TOTAL LOT AREA)	41%	41%	609m2 (35%)
GROSS FLOOR AREA INCL. BASEMENT & FRONT PORCHES	12528 sq.ft.	1163.9 m <sup>2</sup>	
NOT INCL. 2 PARKING SPACES & ELEV. AREA ON 1ST,2ND			
FLOOR SPACE INDEX (LOT AREA ABOVE LTSTOS)	79%	79%	609m2 (35%)
LOT COVERAGE	5237 sq.ft.	486.5 m <sup>2</sup>	
	28%	28%	

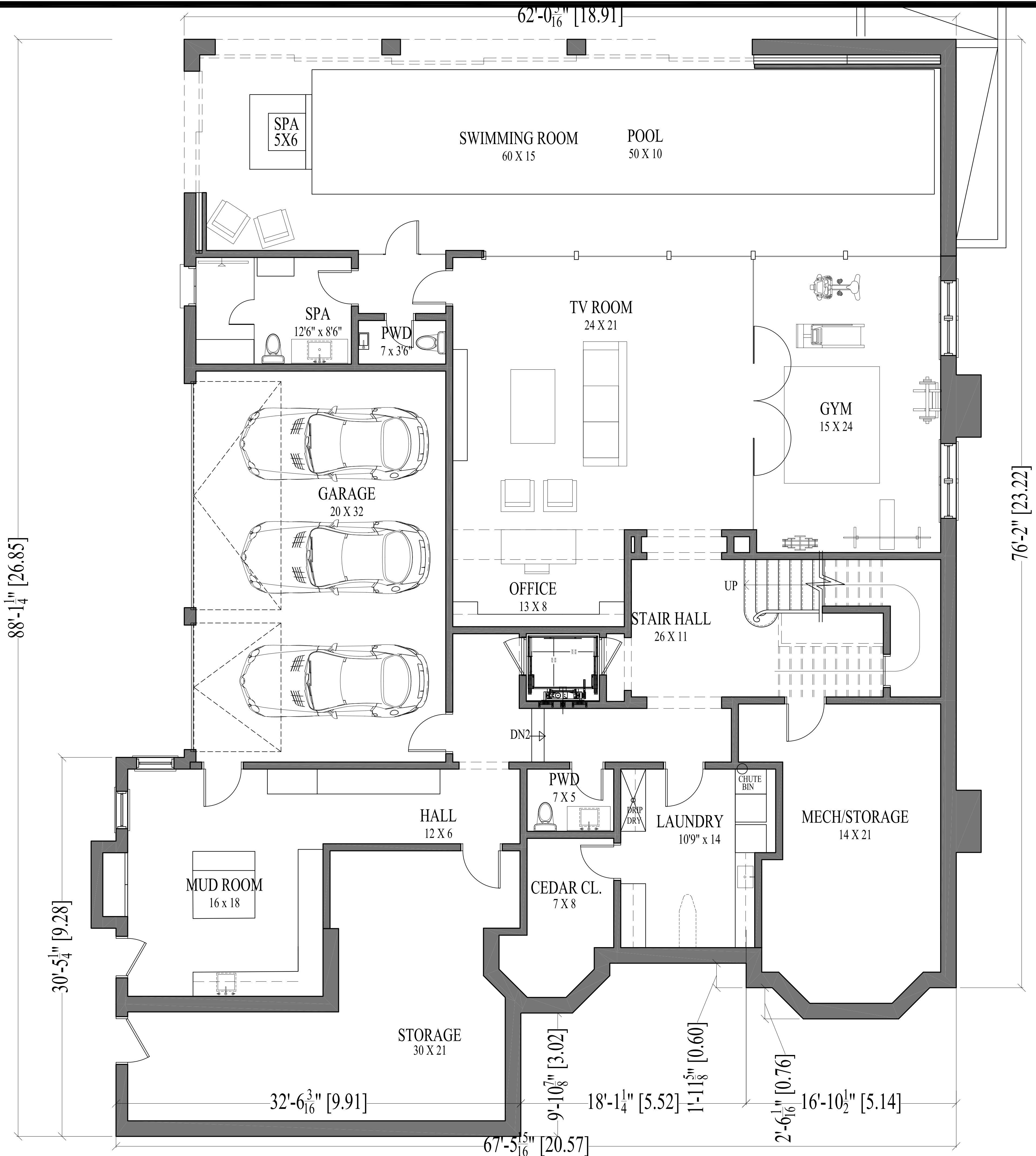


229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9	GARAGE DOORS MODIFIED	8/22	19
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

BASEMENT PLAN

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.:
	A1



229 RIVERSIDE DRIVE  
TORONTO, ONTARIO  
CANADA

10			
9	GARAGE DOORS MODIFIED	8/22	19
8	ZONING REVIEW RESUBMISSION	5/9	19
7	2 STOREY BAY ADDED	4/22	19
6	GENERATOR PAD MOVED	3/20	19
5	HOUSE RAISED .1m AS PER GRADING	3/1	19
4	ZONING REVIEW RESUBMISSION	2/12	19
3	TRCA RESUBMISSION	1/10	19
2	TRCA APPLICATION	11/16	18
1	ZONING REVIEW APPLICATION	10/19	18
NO.	REVISIONS	DATE	

NORTH  
ELEVATION

DRAWN BY: J. CUTAJAR	CHECKED BY:
DATE: 10/19/2018	SCALE: 1:50
PROJECT NO.:	DRAWING NO.: A7

