

# DECISION AND ORDER

**Decision Issue Date** Tuesday, February 16, 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): ANDRIY DONCHENKO

Applicant: PETER HIGGINS

Property Address/Description: 183 CORTLEIGH BOULEVARD

Committee of Adjustment Case File: 19 141885 NNY 08 MV

**TLAB Case File Number: 19 183751 S45 08 TLAB**

**Hearing dates:** Thursday, February 20, 2020, Friday, February 21, 2020 and  
Thursday, August 13, 2020

**Tele-conference date:** Monday, October 19, 2020

**DECISION DELIVERED BY JUSTIN LEUNG**

## APPEARANCES

Name	Role	Representative
Peter Higgins	Applicant	
Olga Timofeeva	Owner	
Andriy Donchenko	Appellant/Owner	David Bronskill
City of Toronto	Party	Derin Abimbola
William Black	Party	
Martin Rendl	Expert Witness	
Yishan Liu	Expert Witness	
Dana Anderson	Expert Witness	

Pamela Ororke	Participant
Amy Lewtas	Participant
David Matheson	Participant
Scott Pennock	Participant

## **INTRODUCTION**

This matter relates to a proposed in-fill residential dwelling to be built on subject property at 183 Cortleigh Boulevard by the appellant/owner Andriy Doncheknko, who also filed an appeal to the TLAB on this matter.

The Toronto Local Appeal Body (TLAB) issued an Interim Decision and Order (ID&O) on September 22, 2020 subject to conditions would need to be satisfied within two (2) months from the date of issuance of the Decision. Failure to accomplish this would result in the TLAB vacating their previously issued Interim Decision.

The appellant/owner, through their legal counsel David Bronskill, communicated by email to the TLAB that they had encountered issues with satisfying the conditions as stipulated. As such, they would be requesting to formally withdraw their appeal. The tribunal subsequently responded to Mr. Bronskill that if this was indeed their intent, that it would result in a Final Decision and Order that would retroactively refuse the previously approved variance requests of the COA.

To provide context here, I am reminded of the Final Decision and Order for 514 Jarvis Street delivered by (former) TLAB Chair Ian Lord. Although Chair Lord ultimately did approve the variances as the conditions had been satisfied, he does provide commentary on what could have occurred if the conditions had not been met as the approval that had been prescribed in the Interim Decision and Order (ID&O) would have been vacated.

Mr. Bronskill responded that his client was not aware of such an outcome. As such, they stated that they would now look to address the conditions previously described in the IO&D needed to be satisfied. It is noted that this issue has exceeded the two (2) month time period which had originally been prescribed in the IO&D. Mr. Bronskill stated that he has had difficulties arise in attempting to communicate and liaise with his client and the architect to discuss this matter further.

One of the opposing parties, William Black, provided correspondence via email to the TLAB requesting that a Final Decision and Order stating refusal of the requested variances be issued due to the appearance of non-compliance on the part of the appellant/owner. The province has imposed an Emergency Order due to COVID-19 which, with the exception of critical services, requests residents remain at home, when possible. The TLAB is accepting that during this emergency period, extenuating circumstances in attempting to engage with relevant parties on this matter could occur.

In addition, and based on the information which has been presented to the TLAB, it appears that the appellant/owner was not fully appreciative of the outcome in requesting a withdrawal of their appeal and that it would result in the previous approval, as granted by the COA, being vacated as well.

The TLAB, in its attempt to reach a collectively beneficial outcome for all Parties involved, accepts the situation as posited by the appellant/owner and directed that the appellant submits the required materials to address the outstanding conditions in a timely manner. This was the direction that I was electing to provide, based on the circumstances which had been described to me by the appellant earlier in this document.

Furthermore, an additional teleconference was organized on October 19, 2020 with the relevant Parties, on consent, to discuss conditions which had been proposed by Party William Black. The teleconference allowed for a more fulsome discussion to occur on this issue. I provided my own rationale in analyzing this request and a verbal decision at the conclusion of this teleconference meeting. It was then communicated that this verbal decision would be outlined in the Final Decision and Order. As such, additional information and assessment on this issue will be provided in subsequent portions of this Decision.

## **BACKGROUND**

The Interim Decision and Order approved a revised set of variances (Appendix 1) which was subject to conditions that plans and elevations reflecting this revised list be provided to the TLAB for its review and consideration within a two month period (also contained in Attachment 1).

## **MATTERS IN ISSUE**

The first question to be determined is whether the appellant/owner has achieved the conditions as provided in Attachment 1 of the Interim Decision and Order have been properly addressed. Secondly, the TLAB must also make an appraisal of the conditions as recommended by one of the Parties and determine if they should be indeed included as additional conditions in this appeal matter.

## **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**

The appellant/owner had argued, as outlined in the ID&O, that the approval as granted by the COA, which resulted in the FSI variance request being amended, was not appropriate and that the original proposal as presented to the Committee was more amenable. I found, stated in further detail in the ID&O, that the amended proposal as conditionally approved by the COA continued to be an appropriate proposal satisfying the four statutory tests as per the *Planning Act*.

In issuing such a Decision, I noted that on cursory review of the disclosure documents that the drawings and elevations which the appellant/owner had provided to the TLAB pertained only to their originally submitted proposal. Due to this, it was decided that an ID&O should be issued so as to secure revised plans from the appellant/owner as it would be required as part of municipal approval processes for the procurement to construct this proposed house. In addition, the procuring of such plans would also provide visual evidence to the other Parties of this matter that the variance approval granted by the TLAB was being executed appropriately.

As described earlier in this Decision, the appellant/owner has now acted to comply with the requirements as stipulated in the ID&O and has filed the requisite new and revised plans with the TLAB for its review and consideration.

An additional teleconference was held (and also described earlier in this document) as the Party William Black had, as part of his disclosure documents to the TLAB, proposed a series of conditions which he believed should be included with any approval of this proposal. There was, in its totality, 19 conditions which Mr. Black had initially proposed and are outlined below:

**Decision of Toronto Local Appeal Body Panel Member: J. LEUNG**  
**TLAB Case File Number: 19 183751 S45 08 TLAB**

**SCHEDULE A**

	CATEGORY	PROPOSED CONDITIONS
1.	Procedural	Contact numbers in addition to owners of 183 to be provided for any issues during construction and undertaking to resolve any construction-related issues to satisfaction of 181.
2.	Procedural	Grant 181 permission to access City of Toronto Forestry files (with respect to 183 proposed removal of large rear yard Austrian pine tree removal).
3.	Procedural	Provide owners of 181 Cortleigh ("181") with minimum 2 week notice of demolition (to permit preparation and protection of our property.)
4.	Procedural	Final approved construction plans and interior blueprints to be provided to 181 as soon as completed in advance of construction, as well as advance notice of plan amendments/ alterations proposed to same prior to making changes during construction.
5.	Procedural	Notice of all building inspection dates, right to attend same and copies of all inspection reports to be provided to 181.
6.	Procedural	Building inspector to provide 181 with written confirmation that foundation and as built structure meets required set back measurements and FSI/ coverage.
7.	Building	East side set back must be 1.5 m. or more for the entire length.
8.	Building	Rear Terrace/ patio and front driveway/ garage to be moved to west side of 183.
9.	Building	Existing concrete curb and iron fence between properties to remain unaltered.
10.	Building	Drainage grade away to be directed away from 181 and any exterior downspouts to be directed away from 181 and towards the street.
11.	Building	Remove flat roof "balcony ready" structure shown on plans for second storey of east side of 183 (across from our master bedroom) and no upper balcony to be constructed at 183.
12.	Building	Any air conditioning units / compressors, gas fireplace, furnace exhaust piping and works to be located on west side of 183.

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13.	Building	No windows across from any windows on 181 and all windows on east side to be frosted.
14.	Building	No exterior building or landscaping lighting on or directed towards east side of 183.
15.	Building Compensation	All 181 vegetation to be protected and preserved, including root structure and compensation if damaged.
16.	Compensation	Any damage or alteration to 181 to be repaired or compensated for, at the election of and to the satisfaction of 181.
17.	Compensation	Provide vegetative or other screening acceptable to 181 in rear yard to screen 181 yard from 183 in lieu of existing garage at 183 (which is proposed to be demolished but which currently provides rear yard "courtyard" style privacy.)
18.	Compensation	Window washing during/after as requested by 181 acting reasonably.
19.	Compensation	Costs of hearing to 181, if sell or don't proceed personally.

*Figures 1 and 2: proposed conditions (from document 'Closing Submissions on Behalf of William Black {Party})*

At the teleconference Hearing, Mr. Black was present as was the appellant/owner's legal counsel Mr. Bronskill and City Solicitor Derin Abimbola. There was a discussion on the conditions as proposed by Mr. Black and whether they would be appropriate to be imposed as part of the approval that formulated the ID&O. Mr. Black stated that he believed that the conditions he was bringing forward were reasonable and justifiable. Mr. Bronskill commented that the first six conditions were redundant as any member of the public can engage Building or Parks staff relating to issues on the construction of a house or any potential impact to trees on the site.

He further indicated that condition 7 was also not pertinent as the approval in the ID&O already addressed this. In terms of the original plans showing a proposed second storey balcony, Mr. Bronskill communicated that his client was willing to remove that element from their proposal moving forward. Ms. Abimbola did not have any further statements to expound on this matter. In terms of some of the proposed conditions and their relation to potential compensation to neighbouring property-owners, she indicated the City was not consulted on this and as such, had no comments to provide to this issue.

I concluded the teleconference by stating to the Parties in attendance that a determination pertaining to these conditions and whether they should be implemented would be encapsulated in the Final Decision and Order.

## **ANALYSIS, FINDINGS, REASONS**

I have reviewed the revised plans in some detail and I find the appellant/owner has addressed the issues that had been raised in the ID&O. The revised set of plans illustrate a proposal which reflects the approval of the ID&O but also that which had been advanced by the COA.

With regards to the issue of conditions, I note that the City staff did not recommend any conditions be imposed if this variance application was approved. Here, Mr. Black has initiated a request to have his draft conditions be incorporated into the Final Decision and Order. As had been expressed in the tele-conference meeting, and to reference Figures 1 and 2 herein, it was found that imposing some of these conditions would not be appropriate as they are typically addressed through other established municipal processes. With regards to conditions 1-6 above recited, these conditions would be encapsulated within Urban Forestry and Building Dept. procedures as they relate to residential in-fill construction. As such, I find that the imposition of such conditions would not be necessary as they will be secured through other legally binding methods.

With regards to conditions 7-14, an additional discussion at the scheduled teleconference, as broached by me, had been held with the appellant/owner to determine if their client may want to further revise their proposal to address concerns of the other Parties, most notably Mr. Black, to this matter. In response, the appellant/owner asserted that these conditions, as advanced by Mr. Black, were overall not acceptable as they would substantially revise, in their opinion, the proposal as approved in the ID&O. The appellant's lawyer discussed with condition 13, that their client is amenable to frosting the windows on the east portion of the proposed dwelling.

I find that attempts have been made amongst all the Parties to craft a proposal which is more appropriate and will better fit, respect and reinforce the physical character of this local neighbourhood context. However, I note that most of these conditions being described pertain to design related components. Although this tribunal does not have direct legislative authority to regulate such elements, in this subject matter the Parties have attempted to reach a solution to ameliorate neighbourhood issues/concerns. The TLAB recognizes this work and how a conciliatory approach is seen as a positive element in promoting amicable neighbourhood relations.

As a result, further changes to the proposal to alleviate neighbouring residents' concerns has been achieved, while ensuring the TLAB's procedural protocols as relating to the tribunals' *Rules of Practice and Procedure* have been adhered to. As such, I find that the subject proposal as revised and now before the TLAB fits within this 'nexus' and will continue to preserve and uphold the public interest that is typified in the assessment of such matters. I also find that no further public notice needs to be exercised here, as per s. 45(18.1.1) of the *Planning Act*. It is found that the public interest will continue to be secured here.

In terms of the final set of conditions 15-19 which relate to compensation to neighbouring residents due to potential negative impacts during the construction phase for this in-fill house, and again as stated in the tele-conference meeting by me to the parties in attendance, there is an established convention that for a variance application/proposal, that if it were approved it cannot create direct negative physical effect to adjacent properties. In addition, the City also has crafted a *Residential Infill Strategy* which addresses issues as a result of construction of in-fill houses in established residential neighbourhoods. Finally, *TLAB Rules* allow a Party through a Motion to seek an award for costs.

The TLAB does recognize that, while no conditions had been proffered by the City, that it may be appropriate to impose conditions which would be reasonable for such a proposal so as to alleviate any issues which may arise with this matter proceeding to a construction phase. As such, and in analyzing other similar TLAB matters, I am including 3 conditions relating to the review of drawings for substantial conformity, obtaining a tree permit for any possible injury or removal of trees and for a grading plan to be submitted and approved by City staff. The TLAB delineates that these conditions are typical for in-fill development and would be appropriate in this particular instance.

Furthermore, I find that condition 13, as outlined by Party Mr. Black in his disclosure documents, is an appropriate condition to incorporate. The frosting of the windows in question will ensure increased privacy for the neighbouring property to the east.

The appellant/owner is willing to address this as part of their overall exterior design proposal and could act to enhance privacy dimension as it relates between the subject property and with the adjacent property of 181 Cortleigh Boulevard. This condition is identified as condition 4 in this Decision and Order.

## **DECISION AND ORDER**

The Interim Decision and Order is confirmed, and approval of the variances (attached herein as Appendix 1) is final, subject to the following condition:

1. The new detached dwelling shall be constructed substantially in accordance with the Plans identifying them herein attached as Attachment 1 to this decision. Any other variances that may appear on these plans that are not listed in this decision are NOT authorized.
2. Prior to the issuance of a building permit, the Applicant/Owner shall submit a complete application for permit to injure or remove any private or City owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
3. Prior to the issuance of a building permit, the Owner shall submit a site servicing plan for review and acceptance to the Chief Engineer and Executive Director, Engineering & Construction Services, to show the existing and planned water, storm and sanitary services (all of which must be clearly labelled).
4. All windows along the east side of the proposed dwelling are to incorporate frosted window treatment. This will be prescribed in the Plans as attached as Attachment 1.

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Justin Leung  
Panel Chair, Toronto Local Appeal Body  
Signed by: Leung, Justin



## Appendix 1

### *List of proposed variances*

#### **By-law No. 569-2013:**

##### **1. Chapter 10.20.40.10.(1), By-law No. 569-2013**

The permitted maximum height of a building is 10.0 m.

The proposed height of the building is 10.46 m.

##### **2. Chapter 10.20.40.10.(2), By-law No. 569-2013**

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

The proposed height of the side exterior main walls facing a side lot line is 7.61 m.

##### **3. Chapter 10.20.40.20.(1), By-law No. 569-2013**

The permitted maximum building length is 17.0 m.

The proposed building length is 17.48 m.

##### **4. Chapter 10.20.40.40.(1), By-law No. 569-2013**

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is **0.58 times** the area of the lot.

##### **5. Chapter 10.20.40.70.(1), By-law No. 569-2013**

The required minimum front yard setback is 9.33 m.

The proposed front yard setback is 8.71 m.

##### **6. Chapter 10.20.40.70.(3), By-law No. 569-2013**

The required minimum side yard setback is 1.5 m.

The proposed west side yard setback is 1.2 m.

##### **7. Chapter 10.20.40.70.(3), By-law No. 569-2013**

The required minimum side yard setback is 1.5 m.

The proposed east side yard setback is 1.2 m.





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NO.	DATE	DESCRIPTION
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3	10APR19	ISSUED FOR COFA
4	13MAY19	ISSUED FOR NEIGHBOURS
5	14JUN19	REVISED FOR COFA HEARING
6	16DEC20	AFTER TLAB

BUILDERS SHALL VERIFY ALL DIMENSIONS AND ALL JOB SITE CONDITIONS PRIOR TO PROCEEDING WITH CONSTRUCTION AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT.

ONLY THE LATEST APPROVED DRAWINGS ARE TO BE USED FOR CONSTRUCTION.

IT IS THE BUILDER'S DUTY TO ENSURE THAT THEY HAVE THE LATEST APPROVED DRAWINGS IN HAND.

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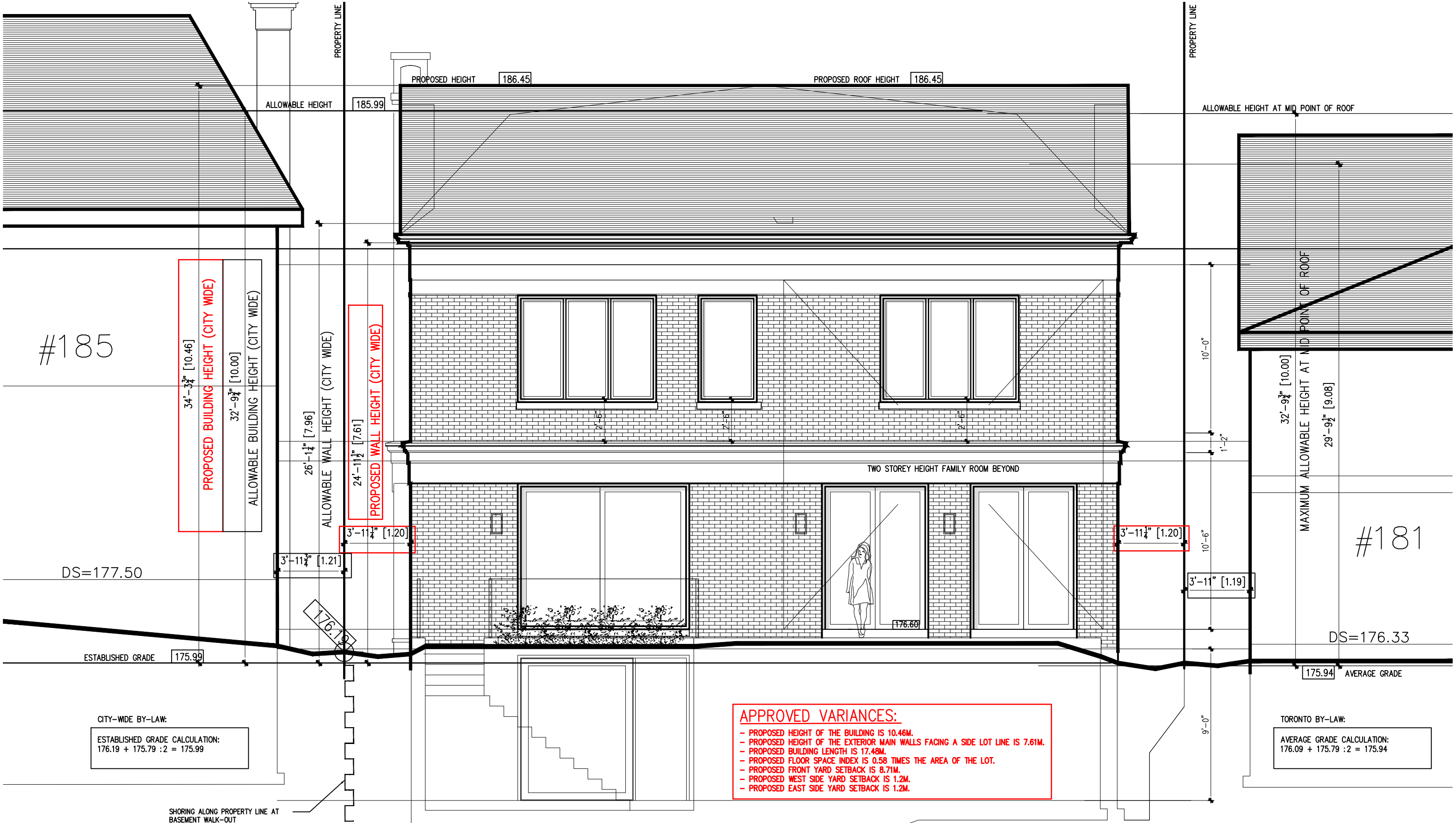
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PROJECT:  
  
PROPOSED RESIDENCE  
183 CORTLEIGH BLVD  
TORONTO, ONTARIO

DRAWN BY CW	DATE: 23NOV18
CHECKED BY: PJH.	BCIN 4208 3486
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PROJECT NO: 18-031	

DRAWING NO:  
  
A-7



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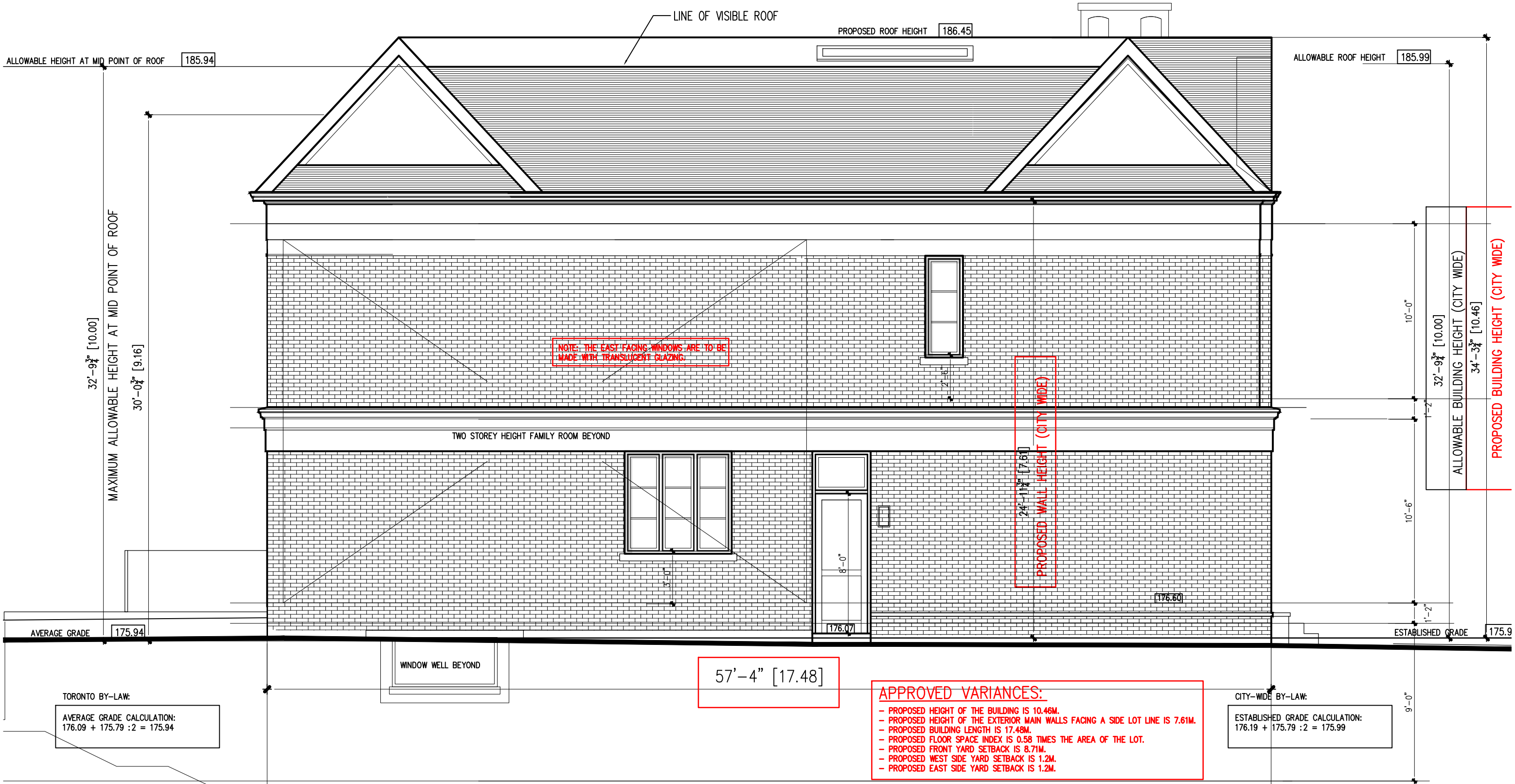
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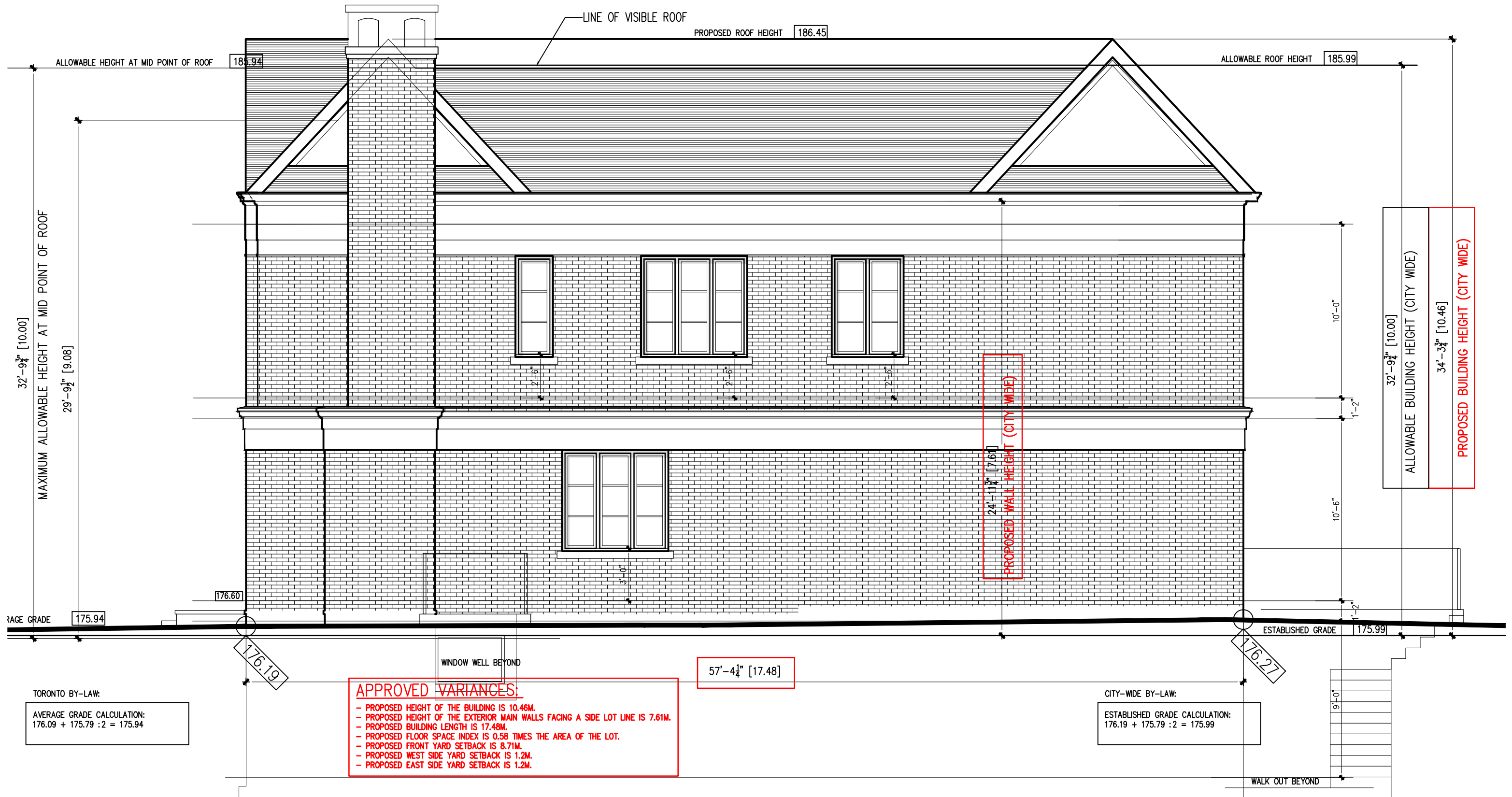


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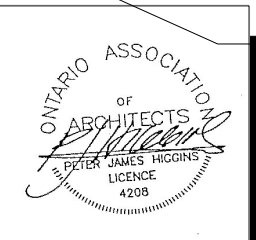
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PROJECT NO: 18-031	

DRAWING NO:

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