

DECISION AND ORDER

Decision Issue Date **Tuesday, April 06, 2021**

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ROCCO MARIO SEBASTIANO

Applicant(s): FRANCO ROMANO

Property Address/Description: 210 CHURCHILL AVE

Committee of Adjustment File

Number(s): 20 185290 NNY 18 CO, 20 185300 NNY 18 MV, 20 185301 NNY 18 MV

TLAB Case File Number(s): 20 227617 S45 18 TLAB, 20 227618 S45 18 TLAB, 20 227625 S53 18 TLAB

Hearing date: March 31, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	FRANCO ROMANO
Owner	MARILENA SEBASTIANO
Appellant	ROCCO MARIO SEBASTIANO
Appellant's Legal Rep.	AMBER STEWART

INTRODUCTION

This is an appeal of a refusal to grant a consent to create two lots and a refusal to grant variances for the construction of a two story detached dwelling on each of the lots in the area of North York south of Finch Ave, and west of Yonge St. No one appeared in opposition on the appeal. The site and lot plan and house plans are found in Appendix 1. The required variances are found in Appendix 2.

BACKGROUND

The lot to be severed is situated at the intersection of Churchill Ave, and another street, Hazelglen Ave. Churchill Ave., itself, is angular in nature which creates the need for a number of technical variances.

MATTERS IN ISSUE

The matters in issue are whether the consent meets the requirements of s. 53 of the *Planning Act* and whether the variances meet the requirements of s. 45 of the *Planning Act* and whether all approvals meet the requirements related to the Growth Plan and the Provincial Policy Statement.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

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

In the absence of any opposition to the appeal the only evidence presented was in favour of the consent and variances. That evidence was given by Franco Romano, well respected land use planner who has been qualified to give expert opinion evidence numerous times before the OMB, LPAT and TLAB. His uncontradicted evidence was clear: the consent met the relevant provisions of section 53 of the *Planning Act*. The variances met the four tests of the Planning Act and since all the approvals conformed with the Official Plan of the City the requirements of the Growth Plan and PPS were met as the Official Plan implements them. The details of this evidence are set out in his witness statement on file with TLAB.

His evidence can be summarized as follows.

The lots to be created will be well over the minimum lot size. The frontage of those lots require a variance because Churchill Ave. runs on an angle and the resulting frontage is narrower than the bylaw requires. The minimum lot frontage is 15 m and the technical frontage because of measurement on an angle will be 12.13 m. However, both lots will appear to be the required width. Furthermore, a number of lots in the area have 12 m frontages and 68% of the lots in the area have a frontage less than 15.3m and the average lot size is 15.3 m. Moreover, the consent met all relevant requirements of s.53 of the *Planning Act*. In his opinion the frontage reinforced and respected the character of the area.

In Mr. Romano's opinion the other variances would be largely technical in nature as well. The 20 m depth variances for the building were the result of a staggering of the dwellings to meet the set back from the angled road. The front yard soft landscaping variance of approximately 73.% and 74 % for Part 1 and 2 respectively in comparison to the required 75% was also a function of the angled road as were the variances for the total front yard landscaping. Mr. Romano also pointed out that these landscaping variances were so small that they would not be noticeable. Additional variances respecting the side yard, rear deck, balcony, and front canopies Mr. Romano also stated would not be noticeable.

Taken as a whole, each building is of an appropriate size as they do not require lot coverage or FSI variances and have areas of 352.78 m². Therefore, they would fit harmoniously in the immediate context of the neighbourhood, and respect and reinforce the character of the area. There would be no adverse impacts from the variances. The buildings, the variances and the lots individually and cumulatively would fit and respect and reinforce the character of the neighbourhood as required by the Official Plan. As the Official Plan implements the PPS and the Growth Plan the requirements of both those policies are met.

ANALYSIS, FINDINGS, REASONS

The evidence presented orally at the hearing and particularly in writing in Mr. Romano's witness statement, filed with TLAB, clearly and comprehensively support the granting of the consent and variances. The absence of any contradictory evidence further demonstrates that the appeal should be allowed. Based on Mr. Romano's oral and written evidence I find that the consent meets the requirements of s. 53 of the *Planning Act* and that the variances meet the requirements of s. 45 of the *Planning Act* and all approvals meet the requirements of the PPS and the Growth Plan, provided the conditions regarding set out in Appendix 2 are met.

DECISION AND ORDER

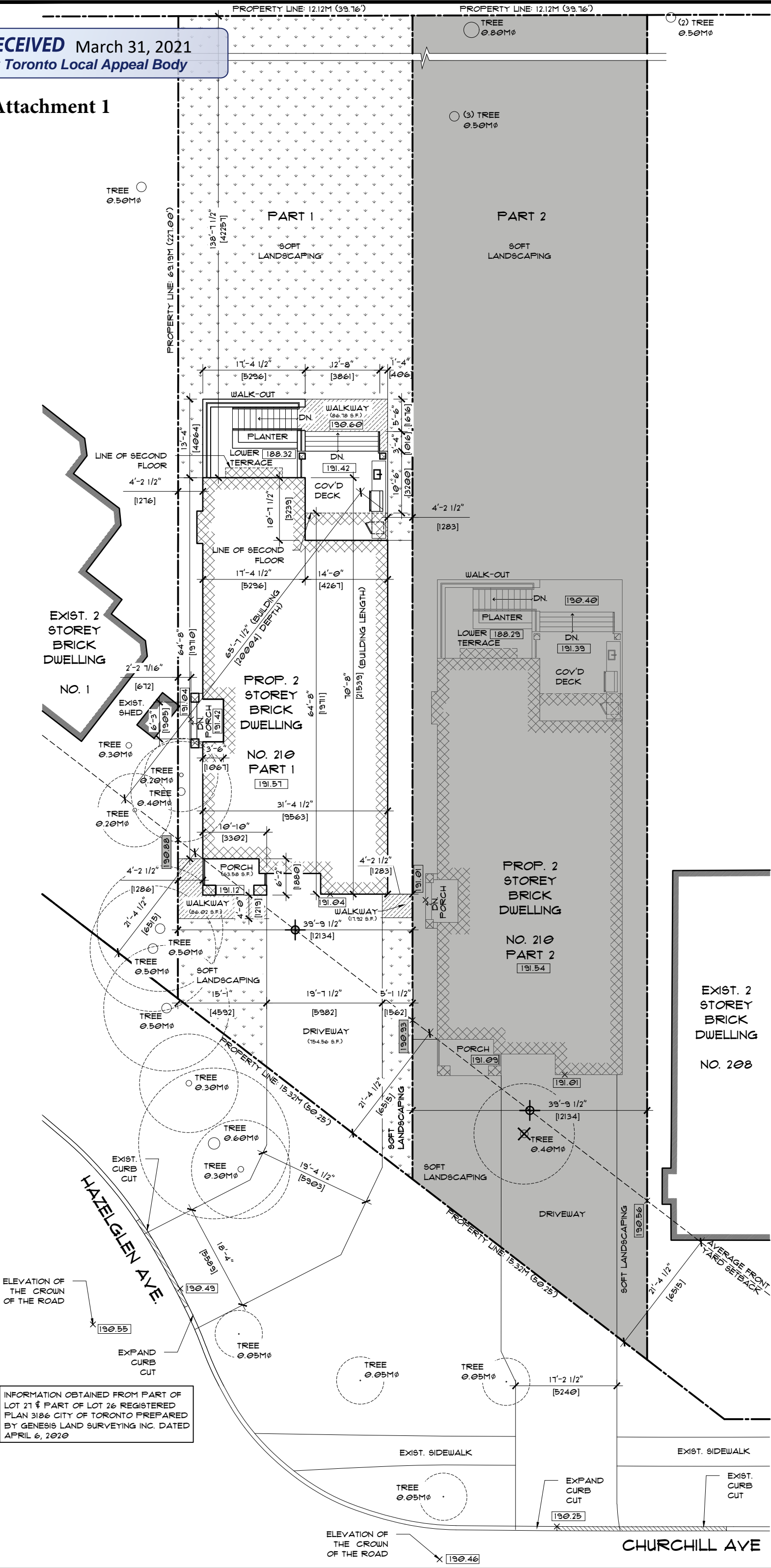
The appeal is allowed, the decision of the Committee of Adjustment set aside, and the consent, and variances set out in Appendix 2, are approved provided the conditions set out in Appendix 2 are met and construction is substantially in accordance with the plans in Appendix 1.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

RECEIVED March 31, 2021
By Toronto Local Appeal Body

Attachment 1



Date: 21 AUG. 2020
Drawing No: 72

Project: PART 1
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

re: placement
DESIGN INC.
911 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-7435
REPLACEMENTDESIGN.COM

PRINTS AND SPECIFICATIONS SHALL NOT BE REPRODUCED WITHOUT THE PERMISSION OF THE DESIGNER. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. IF THERE ARE ANY DIMENSIONS, DETAILS OR DESIGN INTENT THAT CANNOT BE DETERMINED FROM THE DRAWINGS, THE DESIGNER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH FABRICATION AND/OR CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED.

LEGEND

LOT CENTRELINE AT THE REQUIRED MINIMUM FRONT YARD SETBACK

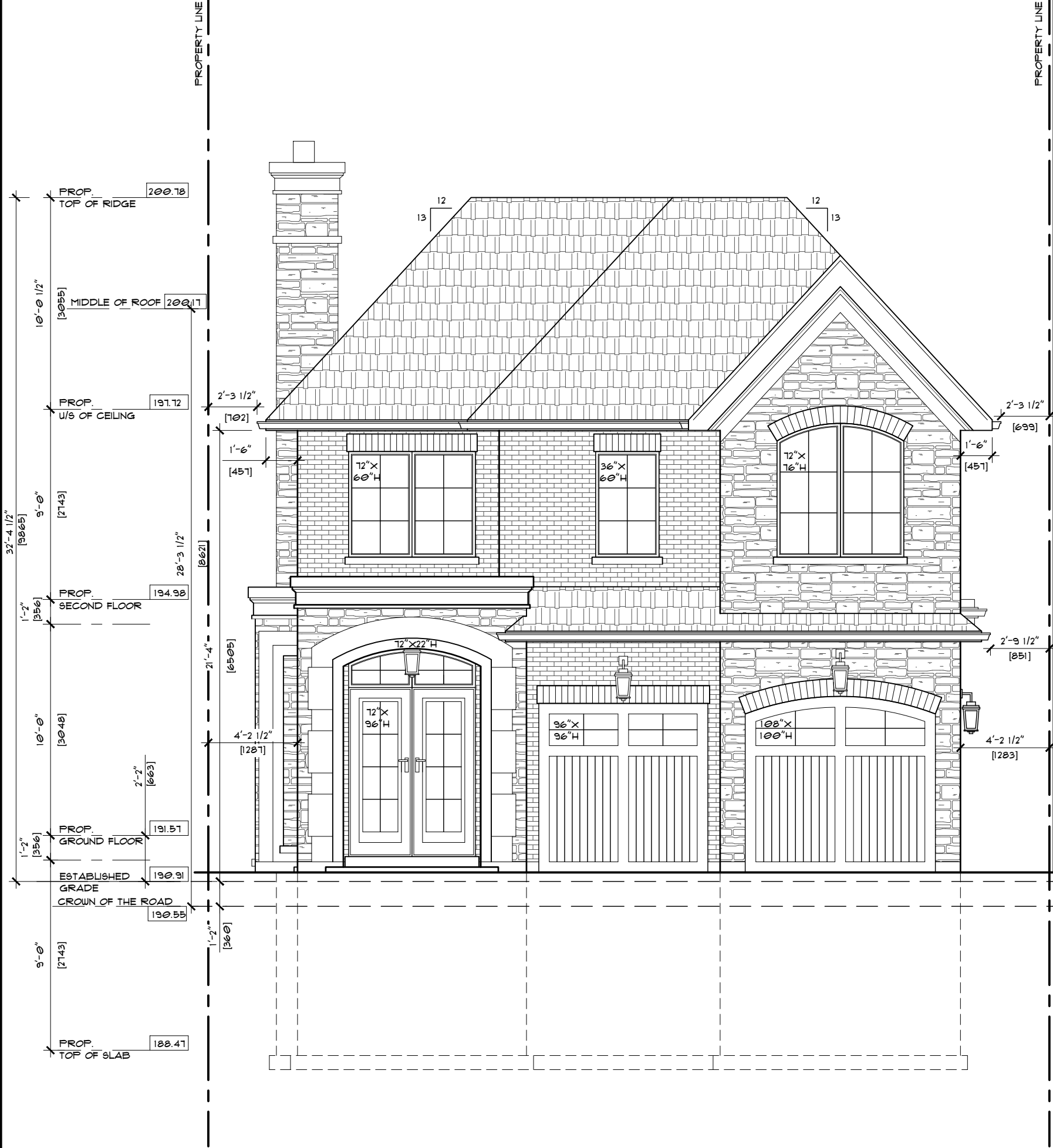
TREE PROTECTION ZONE

TREE TO BE REMOVED

SOFT LANDSCAPING

WALKWAY

INFORMATION OBTAINED FROM PART OF LOT 21 & PART OF LOT 26 REGISTERED PLAN 3186 CITY OF TORONTO PREPARED BY GENESIS LAND SURVEYING INC. DATED APRIL 6, 2020



re: placement
DESIGN INC.

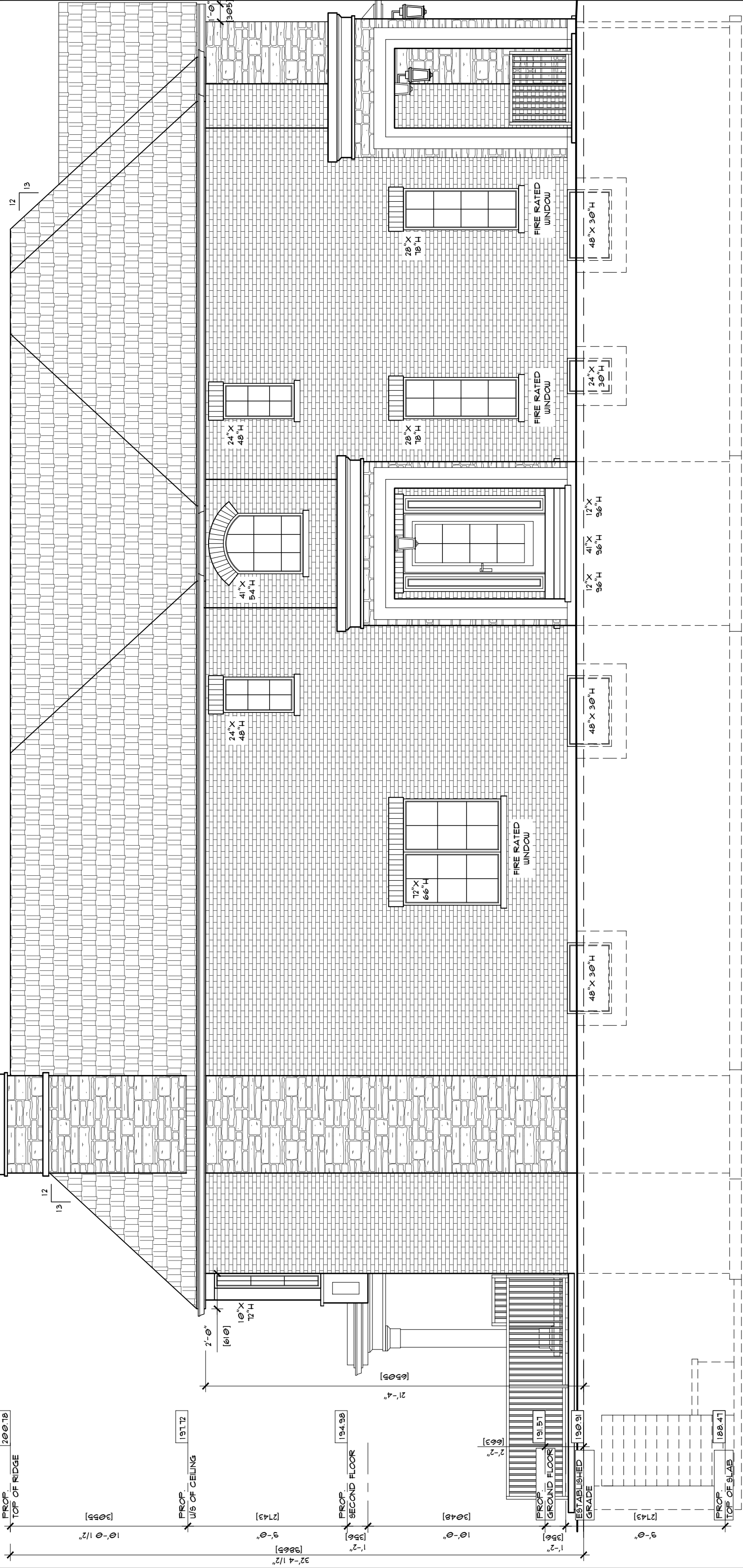
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Project: PART 1
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

Date: 21 AUG. 2020
Drawing No:

78

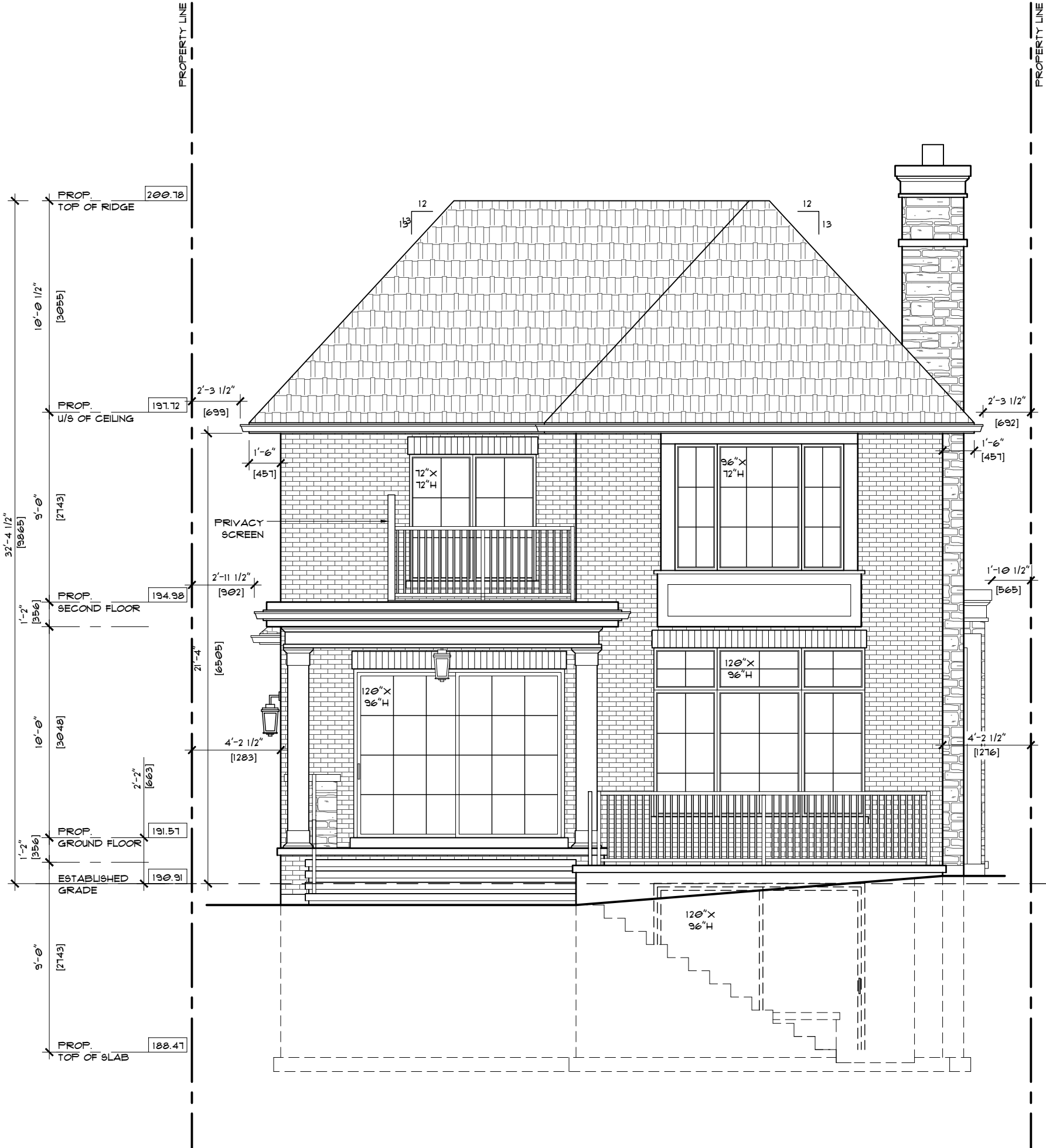


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Project: **PART I**
210 CHURCHILL AVE.
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PROPOSED 20-024

Date: **21 AUG. 2020**
Drawing No: **Z9**

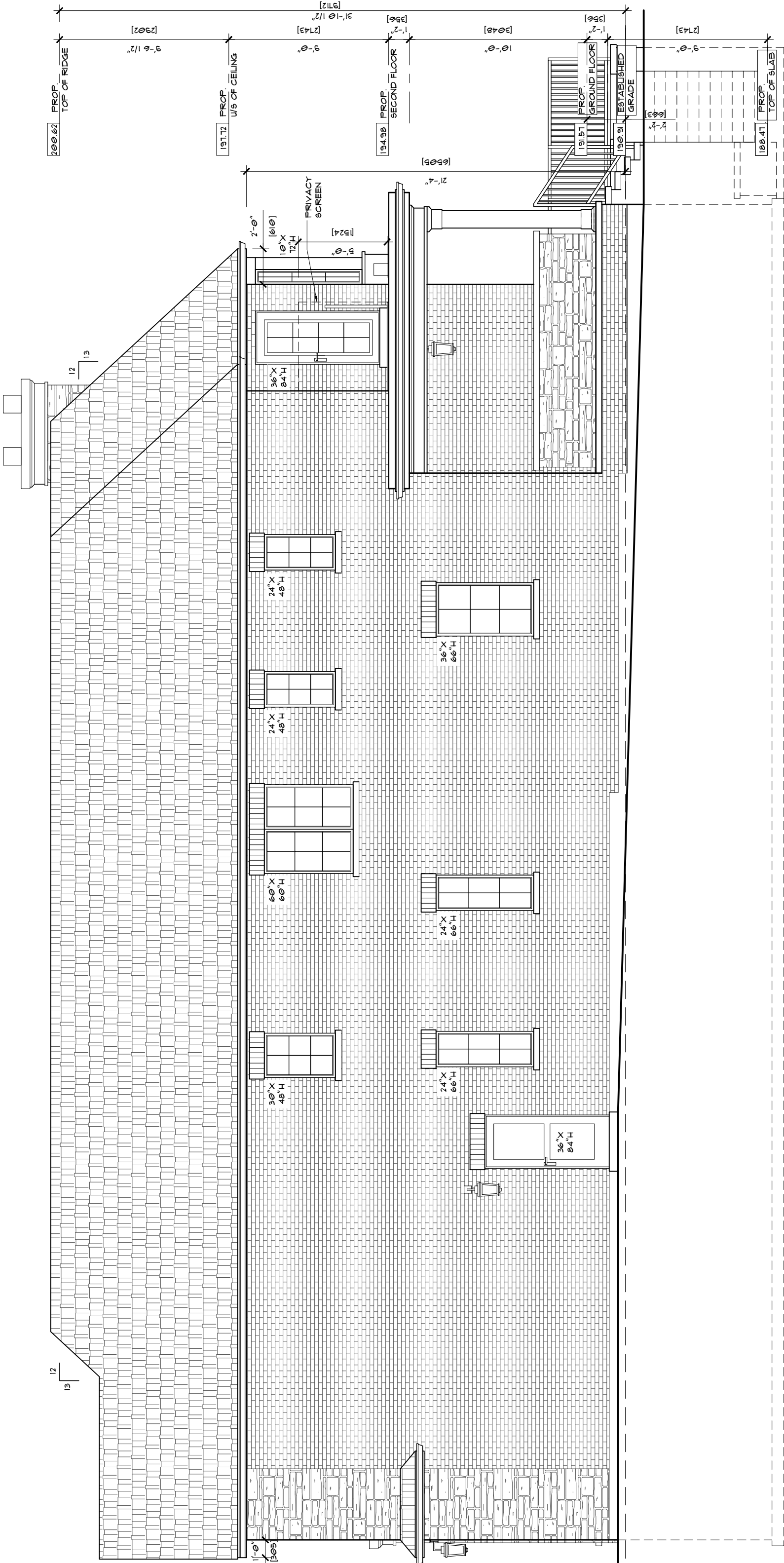


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Project: **PART 1**
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

Date: **21 AUG. 2020**
Drawing No: **Z10**

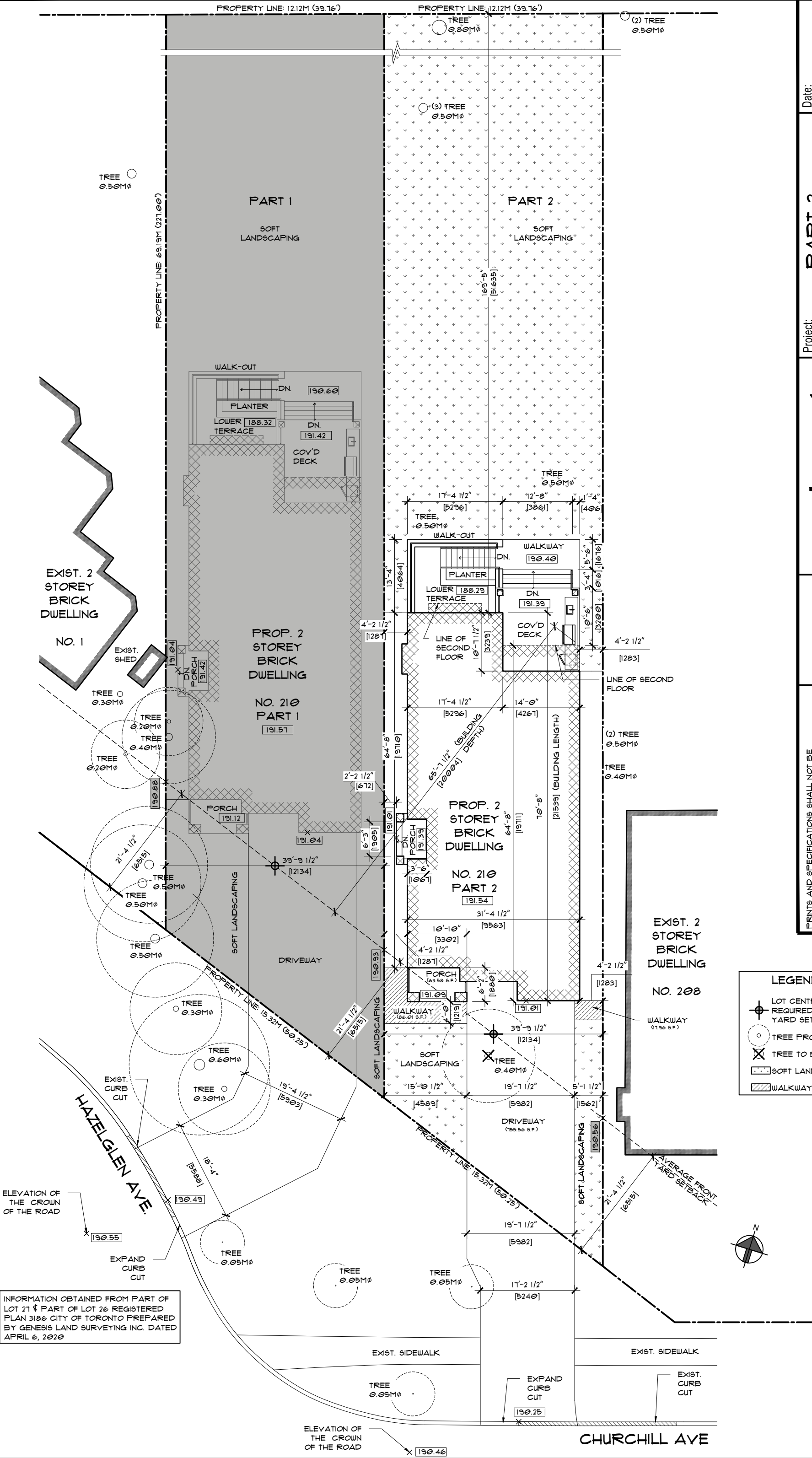


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Date: **21 AUG. 2020**
Drawing No: **Z11**



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Project:

PART 2
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

Date:

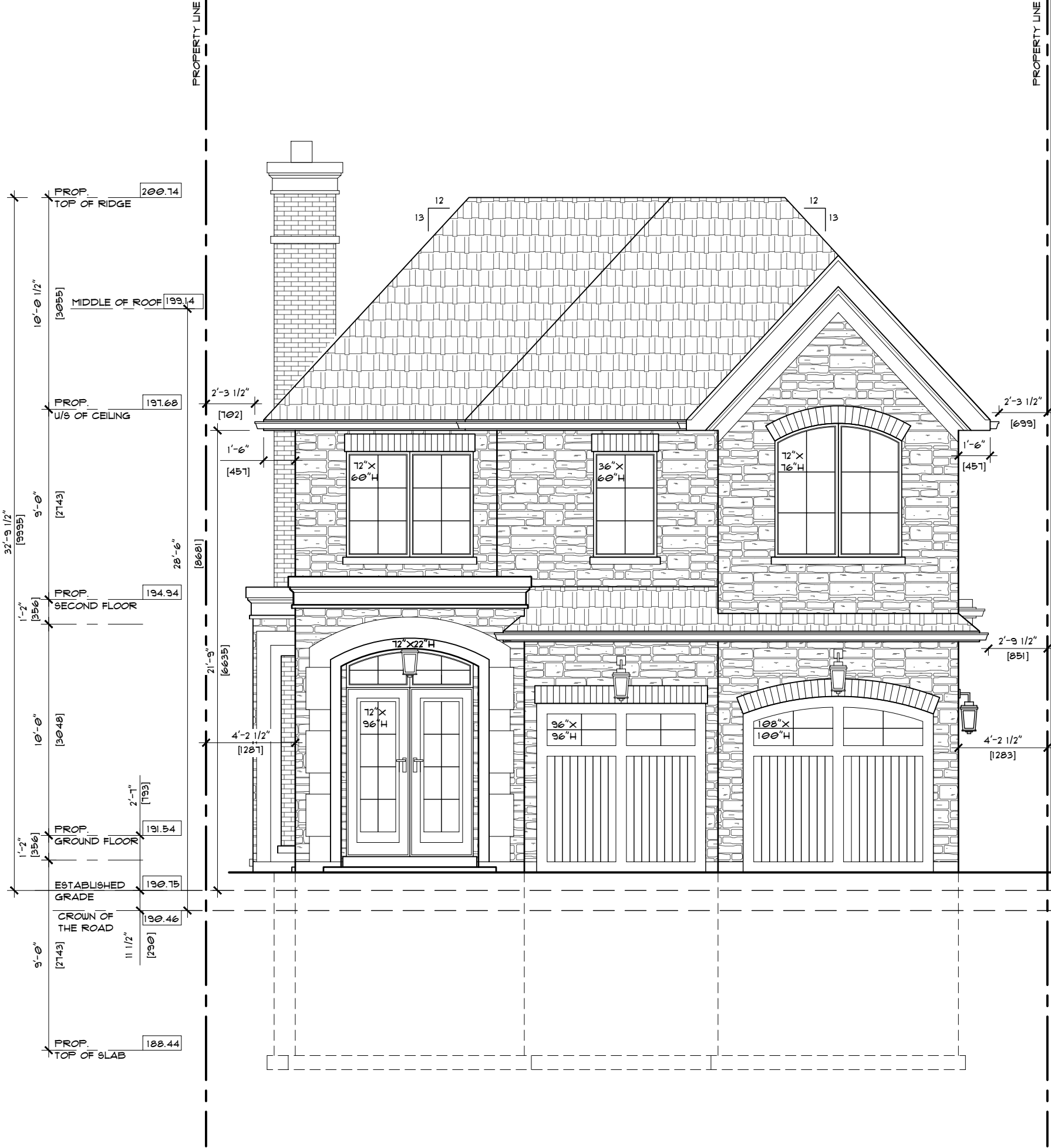
21 AUG. 2020

Drawing No:

72

INFORMATION OBTAINED FROM PART OF LOT 21 & PART OF LOT 26 REGISTERED PLAN 3186 CITY OF TORONTO PREPARED BY GENESIS LAND SURVEYING INC. DATED APRIL 6, 2020

1 SITE PLAN - PROPOSED
SCALE: 1/16"=1'-0"

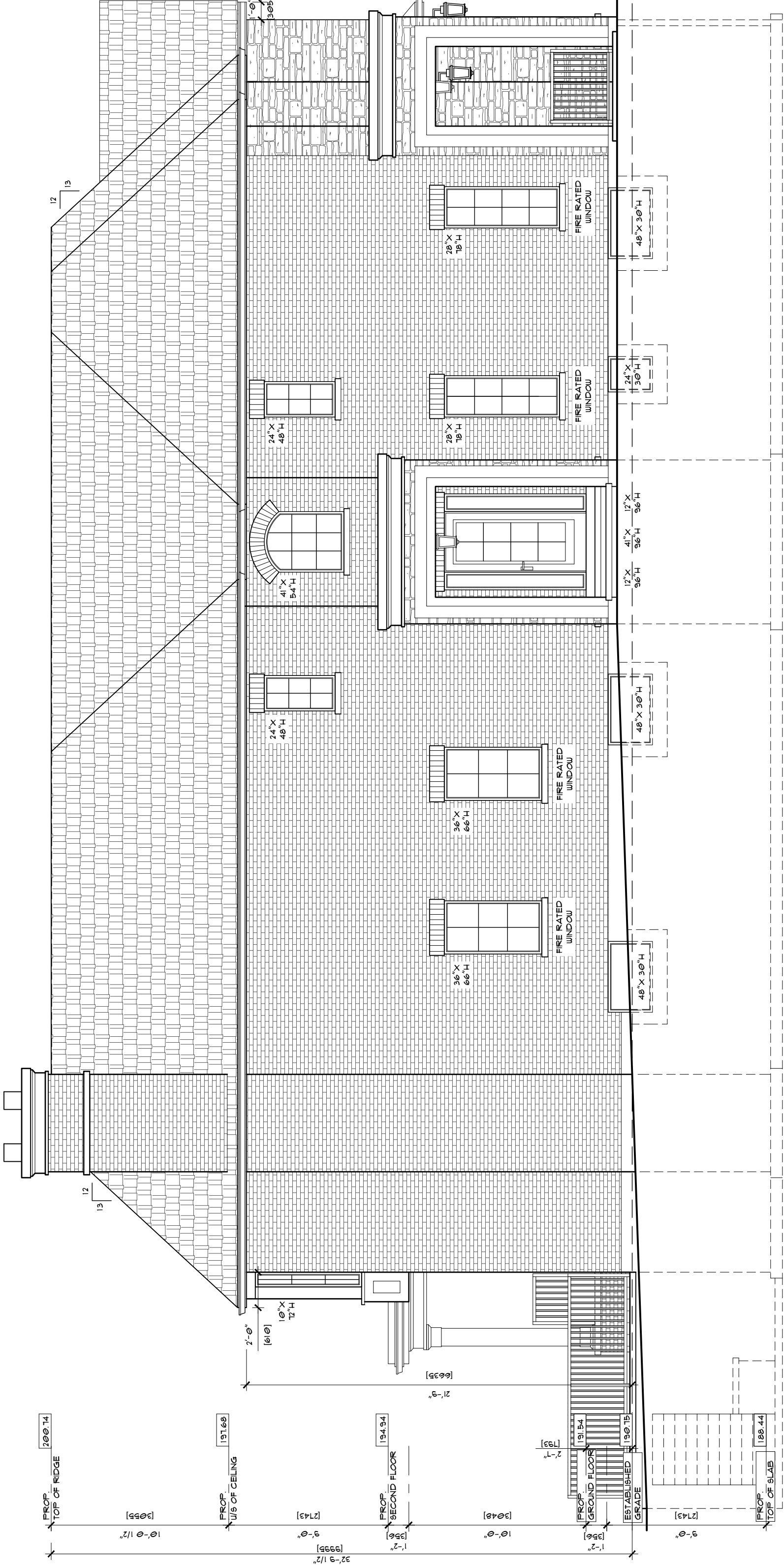


Project: **PART 2**
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

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Project: **PART 2**
210 CHURCHILL AVE.
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Date: **21 AUG. 2020**
Drawing No: **79**



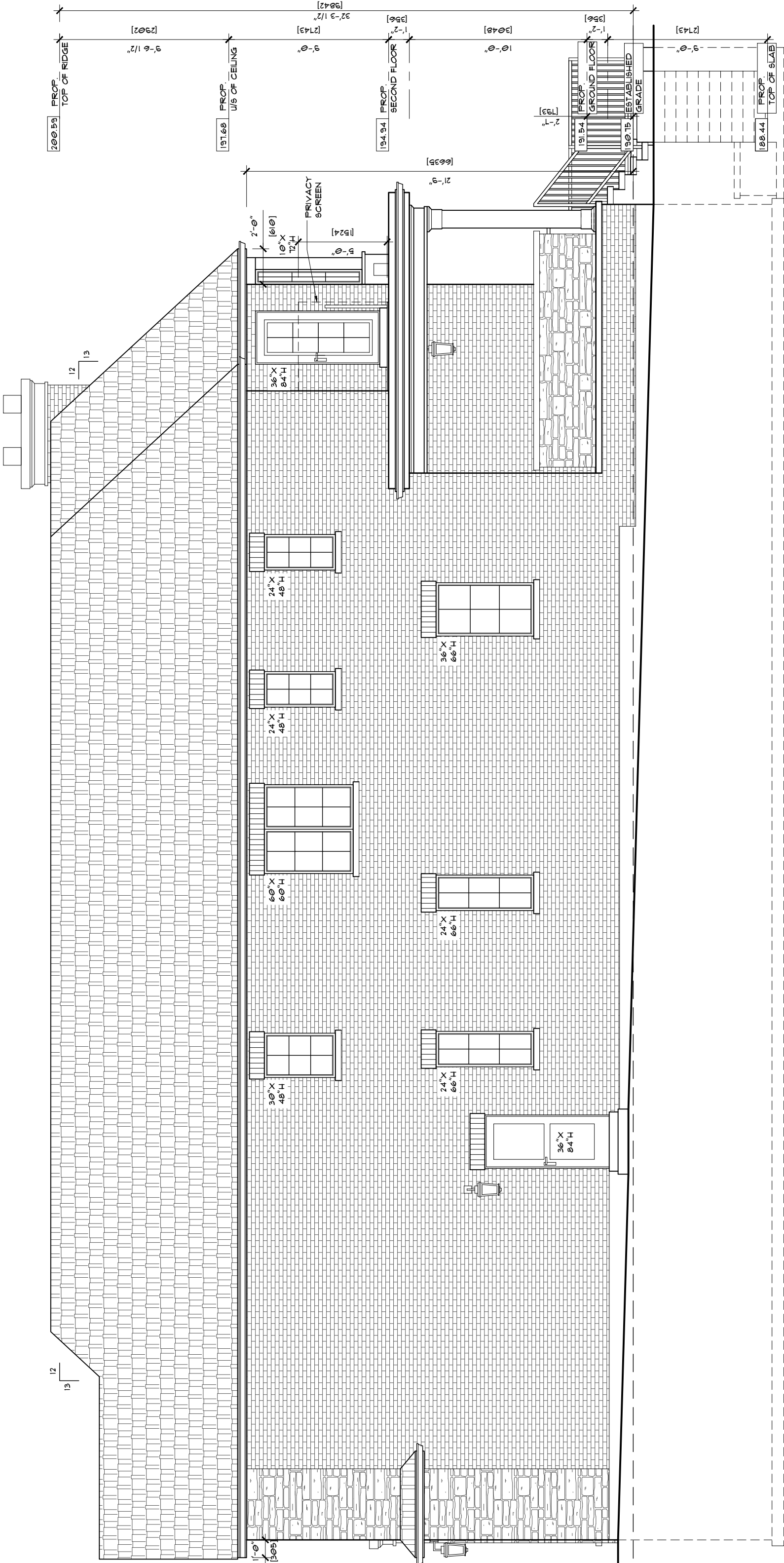
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Drawing No: Z10



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Project: **PART 2**
210 CHURCHILL AVE.
TORONTO, ONTARIO
PROPOSED 20-024

Date: **21 AUG. 2020**
Drawing No: **Z11**

210 Churchill Avenue – List of Variances and Conditions

Part 1 (West Lot)

1. **Chapter 10.5.40.50.(2), By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3m of a building, must comply with the required minimum building setbacks for the zone; the required side yard setback is 1.8m.

The proposed rear deck is 1.28m from the east side lot line.

The proposed rear balcony is 1.28m from the east side lot line.

2. **Chapter 10.5.40.60.(2)(A), By-law No. 569-2013**

A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering.

The proposed rear canopy is 1.28m from the east side lot line.

The proposed front canopy is 1.28m from the west lot line.

3. **Chapter 10.5.50.10.(1)(B), By-law No. 569-2013**

The minimum required front yard landscaping is 50.00%.

The proposed front yard landscaping is 44.42%.

4. **Chapter 10.5.50.10(1)(D), By-law No. 569-2013**

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 73.24%.

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

The maximum permitted building length is 17.00m.

The proposed building length is 21.54m.

6. **Chapter 10.20.40.30.(1), By-law No. 569-2013**

The maximum permitted building depth is 19.00m.

The proposed building depth is 20.00m.

7. **Chapter 10.20.30.20.(1)(A), By-law No. 569-2013**

The minimum required lot frontage is 15.00m.

The proposed lot frontage is 12.13m.

8. **Chapter 900.3.10.(5), By-law No. 569-2013**

The minimum required side yard setback is 1.80m.

The proposed east side yard setback is 1.28m.

9. **Chapter 900.3.10.(5), By-law No. 569-2013**

The minimum required side yard setback is 1.80m.

The proposed west side yard setback is 1.29m.

Part 2 (East Lot)

1. **Chapter 10.5.40.50.(2), By-law No. 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3m of a building, must comply with the required minimum building setbacks for the zone; the required side yard setback is 1.8m.

The proposed rear deck is 1.28m from the east side lot line.

The proposed rear balcony is 1.28m from the east side lot line.

2. **Chapter 10.5.40.60.(2)(A), By-law No. 569-2013**

A canopy, awning or similar structure above a platform may encroach into a required building setback to the same extent as the platform it is covering.

The proposed rear canopy is 1.08 metres from the east lot line.

The proposed front canopy is 1.28 metres from the west lot line.

3. **Chapter 10.5.50.10.(1)(B), By-law No. 569-2013**

The minimum required front yard landscaping is 50.00%.

The proposed front yard landscaping is 45.09%.

4. **Chapter 10.5.50.10(1)(D), By-law No. 569-2013**

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 74.98%.

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

The maximum permitted building length is 17.00m.

The proposed building length is 21.54m.

6. **Chapter 10.20.40.30.(1), By-law No. 569-2013**

The maximum permitted building depth is 19.00m.

The proposed building depth is 20.00m.

7. **Chapter 10.20.30.20.(1)(A), By-law No. 569-2013**

The minimum required lot frontage is 15.00m.

The proposed lot frontage is 12.13m.

8. **Chapter 900.3.10.(5), By-law No. 569-2013**

The minimum required side yard setback is 1.80m.

The proposed east side yard setback is 1.29m.

9. **Chapter 900.3.10.(5), By-law No. 569-2013**

The minimum required side yard setback is 1.80m.

The proposed west side yard setback is 1.28m.

Conditions of Consent Approval

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
3. Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
4. Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
5. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

Conditions of Minor Variance Approval

1. The proposed dwellings shall be constructed substantially in accordance with the following plans, all dated August 21, 2020 and prepared by re: placement Design Inc.:
 - a. Part 1: Site Plan (Z2), South Elevation Plan (Z8), West Elevation (Z9), North Elevation (Z10), and East Elevation (Z11);
 - b. Part 2: Site Plan (Z2), South Elevation Plan (Z8), West Elevation (Z9), North Elevation (Z10), and East Elevation (Z11).
2. The owner shall submit a complete application to injure or remove Privately-owned and City-owned trees, pursuant to Chapter 813 of the Municipal Code, Articles II and III.
3. Where there is no existing street tree, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.