

DECISION AND ORDER

Decision Issue Date Thursday, April 08, 2021

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

Appellant(s): DANIEL MOLINARI

Applicant: FRANCO ROMANO

Property Address/Description: 11 SHAMROCK AVE

Committee of Adjustment Case File Number: 17 279573 WET 06 CO, 17 279586 WET 06 MV, 17 279588 WET 06 MV

TLAB Case File Number: 18 177058 S53 06 TLAB, 18 177060 S45 06 TLAB, 18 177061 S45 06TLAB

Hearing date: **February 26, 2019**
 February 27, 2019
 January 26, 2021
 March 16, 2021

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Franco Romano	Applicant	
Daniel Molinari	Appellant/Owner	Daniel Artenosi
City of Toronto	Party	Aderinsola Abimbola
Long Branch Neighbourhood Assoc.	Party	Sara Amini Judy Gibson, Rep.
Expert Witness	Sabrina Salatino	
Expert Witness	Franco Romano	

Decision of Toronto Local Appeal Body Panel Member: I. LORD

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Lori Penney	Participant	
Name	Role	Representative
Pawel Podkowa	Participant	
Andy Choles	Participant	
Tony Marchesano	Participant	
Robin Hutchins	Participant	
Eduardo Fazari	Participant	
Kerry Pohling Khoo-Fazari	Participant	
Christine Mercado	Participant	
Elizabeth Canrinus	Participant	

INTRODUCTION AND BACKGROUND

These matters involve appeals from decisions of the Etobicoke and York Panel of the City of Toronto (City) Committee of Adjustment (COA). By decisions mailed June 1, 2018, the COA refused applications to sever lands located at 11 Shamrock Avenue (subject property) and for associated variances to construct a new detached dwelling with an attached garage on each of the two proposed parcels (Applications), located in the former Village of Long Branch. The Applicant appealed.

The City and the Long Branch Neighbourhood Association (LBNA) opposed the Applications, as did the Participants or LBNA members, above listed.

The matters have had a lengthy gestation, including before the Toronto Local Appeal Body (TLAB), as detailed below:

1. June 13, 2018. Notice of Appeal filed with COA
2. June 25, 2018. TLAB Notice of Hearing for October 9, 2018.
3. October 9, 2018. Applicant's Motion for Adjournment and conversion to a Pre-Hearing Conference, with City support and LBNA opposed; the TLAB Decision and Order issued the same date granted the Motion in part, with directions for a 2 day sitting.
4. February 26 and February 27, 2019. Hearing Days.
5. February 28, 2019. TLAB Notice of Adjournment.
6. March 16 – August 14, 2019. TLAB COVID-19 Suspension Period
7. July 4, 2019. TLAB Notice of Hearing for December 4, 5 and 11, 2019.

8. November 28, 2019. TLAB Notice of Cancellation of further scheduled Hearing Days set for December 4, 5 and 11, 2019; Applicant's request granted by TLAB Decision and Order issued December 1, 2019.
9. January 10, 2020. TLAB Notice of Hearing for June 2, 4 and July 23, 2020.
10. May 22, 2020. Government of Ontario Emergency Order and TLAB Suspension Period for Hearings scheduled March 16 through July 3, 2020; TLAB Notice of Postponement repeated June 17, 2020.
11. December 30, 2020. TLAB Notice of Hearing (Virtual) for January 26, 2021.
12. On January 26, 2021 a virtual Hearing Day was convened, being the third evidentiary day, almost two (2) years since the last sitting.
13. In the interim, the TLAB was in receipt of one formal filing, a TLAB Decision and Order dated August 19, 2019 by Member Talukder, respecting a consent deck variance settlement at 6B Shamrock Avenue.
14. On or about January 21, 2021, the TLAB was in receipt of an email requesting a further adjournment, as related below under 'Day three'.

The subject property is improved with an existing single detached bungalow.

In a more detailed summary, at the request of the Applicant, two formal adjournments had been granted by the TLAB, on terms, and on the consent of the Parties: October 9, 2018 and November 29, 2019. The TLAB provided written determinations on each matter.

Thereafter, there followed two days of sittings where evidence was considered: Day one, February 26, 2019 and Day two, February 27, 2019. An intervening period ensued, as described in the next paragraph and a third day, Day three, was convened January 26, 2021 to continue evidence. However, on that date, the Parties requested the matter be stood down for direction on a possible settlement. A record of the considerations received on Day's one, two and three can be found in **APPENDIX I**, attached hereto.

As the evidence had not been completed, additional time was scheduled for the consideration of the Applications: June 2, 4 and July 23, 2020. However, as a result of the public health crisis identified as COVID-19, the Province of Ontario, the City and the TLAB suspended tribunal sittings for an extended period, including on those dates.

As stated, the matter reconvened on January 26, 2021 at which point a further adjournment was requested on the advice by counsel for the Applicant that 'without prejudice' settlement discussions were ongoing and warranted exploration.

The matter was adjourned on consent to March 16, 2021 with a request that any settlement materials be pre-filed for consideration at the ensuing sitting anticipated to be under the format of a Settlement Hearing, as provided by the Rules of Practice and Procedure, of the TLAB (see: **APPENDIX 1**).

On March 15, 2021 the Applicant filed settlement documentation in the form of an Examiner's Notice, a list of revised requested variances, proposed new site and elevation plans and a schedule of requested conditions.

The March 16, 2021, Day Four, a sitting was convened virtually via WEBEX, with the following persons present:

Daniel Artenosi, counsel for the Applicant;
Derin Abimbola, counsel for the City;
Judy Gibson, Representative for the Long Branch Neighbourhood Association (LBNA);
Frank Romano, planner for the Applicant;
Sabrina Salatino, planner for the City;

As well, the following Participants: Christine Mercato; Andy Choles; Robin Hutchins; Bernard Fazari, and certain others, identified themselves as being present.

With all the Parties present the matter was able to proceed.

MATTERS IN ISSUE

While the appeal filed remained convened in respect of the Applications, the purpose of the Day Four sitting was to consider the terms of a Settlement proposal as between the Parties. Namely, the abandonment of the severance component of the Applications and a request for approval of a single variance (floor space index (FSI)), with revised site and elevation plans and accompanying requested conditions of development approval.

The Applications proceeded on this revised basis.

Despite the agreement, the pre-filed record was relied upon. The filings in this matter are extensive; not only had the Parties performed their responsibilities but a significant number of Participants had fulfilled the requirements of the TLAB *Rules* as to status election and filings. As well, the COA file forwarded to the TLAB contains an extensive litany of submissions both in support of, and opposed to the Applications as originally framed.

JURISDICTION

Provincial Policy – S. 3

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

Variance – S. 45(1)

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

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

EVIDENCE

Mr. Artenosi introduced the terms of the Revised Application, being the proposed settlement and re-called Mr. Romano, as qualified on Day One, to speak to its merits, the applicable tests, above, and his opinions therein.

The following documents were tendered and entered in Settlement (Revised Application):

Exhibit A: Plans A1 to A5 prepared by Ambient Designs Ltd dated as last revised March 2, 2021.

Exhibit B: City Zoning Examination Notice dated March 12, 2021 for the Revised Application on the subject property.

Exhibit C: Revised Variance Request to a floor space index (FSI) of 0.49 times lot area.

Exhibit D: List of Four Requested Conditions of Approval.

Mr. Romano advised that the Revised Application was for a single variance and that the consent and variances application, previously filed, is withdrawn.

He described the proposal as a new single detached dwelling unit overlapping the existing construction and with an architectural style and design in keeping with examples of regeneration in the neighbourhood.

He noted the Revised Application was bylaw compliant in setbacks, building length and depth, as well as and height; it contemplates a two-story residence with a double driveway access from Shamrock overlapping the existing driveway.

He noted that the proposed building façade would be articulated and that its main front wall was not straight and included the projection of a veranda towards the front lot

line. He described as well, a substantial rear yard setback with a rear yard deck and interlocking patio at grade.

He made extensive reference to the plans, Exhibit A and noted that the requested conditions, Exhibit D, would require construction substantially in accordance with the site plan (Exhibit A, Plan A-1) and the elevations (Plans A-4, A-5).

He noted the roof to be a modified 'hip' style serving to reduce the appearance of height which itself displayed bylaw compliance. As well, he described the Revised Application to include a double integral garage and cladding consisting of brick side elevations generally and metal cladding in a separation line between the first and the second story, throughout all sides of the building. He described the Revised Application as a conventional two story residence with four bedrooms having a resulting FSI of 0.49 times lot area. It is this latter statistic that requires a variance given the zoning standard maximum permission of 0.35 times lot area, FSI.

In terms of his opinion evidence, he described the plans and Revised Application as demonstrating a good and proper response including built form, massing and a streetscape presence that respected and reinforced the neighbourhood in both a general and immediate context.

His references included conformity with the Official Plan in place at the time of the original Applications and with the more recent criteria amendments in OPA 320. He stated the variance requested met the general intent and purpose of the bylaw as it produced a compatible and orderly built form of a detached residential building fully present and consistent with the context of its neighbourhood, both in terms of size and deployment of space on the lot.

He described the Revised Application as desirable in that it is dimensioned and designed as a dwelling unit that contributes to area variety in an acceptable and satisfactory design content and context.

He felt the sole variance to be in the public interest and minor: no unacceptable adverse impacts are occasioned and the order of magnitude of the proposed density is appropriate on this lot in this instance. He said it met all four tests under section 45(1) of the *Planning Act* and those considerations listed in the Official Plan, section 2, section 3.1.2, in section 4.1.5, and following. In this regard, he also referred to and adopted his previous evidence in all aspects (see: **APPENDIX 1**).

He felt the proposed variance conditions (Exhibit D) were appropriate as settled with the City and reflected the site design and built form that had been proposed and evaluated under the statutory tests. He recommended the minor variance to FSI, the elevation and site Plans and the conditions be attached to any approval.

When advised of a slight discrepancy between the Plans Examiner Notice (Exhibit B) and the architect/designers site plan statistics, Exhibit A, Plan A-1, he was of

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the opinion that such discrepancies are common between different persons calculating floor area using different methodologies. He felt it appropriate that the discrepancy be clarified by the TLAB to recognize the 0.49 times lot area measurement standard, identified in the Plans Examination (Exhibit B).

He agreed that the labelling on Plan A-3 in Exhibit A was an error and could be corrected.

He was of the view that the metal cladding and stone band around the building served to break up the building mass and was appropriate.

He was unable to comment as to whether the rear back deck, being elevated two steps off grade, should contain a safety railing.

He noted the separation distance between the subject property and the lot to the west included a chain-link fence and a vegetative deciduous hedge.

On a question from Ms. Abimbola, both he and Mr. Artenosi acknowledged the express intent to relocate an existing Japanese maple tree located on the proposed driveway to the lawn area in front of the new dwelling. While this had been discussed - but not specifically bargained for - there was general agreement that it could be included as a condition, if feasible.

Ms. Gibson asked clarification questions respecting the width of the driveway and the size of tree protection zones (TPZ) for trees shown on the site plan, Exhibit A, Plan A-1, particularly in the rear yard.

In discussion, it was clarified that, as with the transfer or planting of a new tree in the front yard, the tree protection zones are offered via the site plan as the 'best efforts' intention of the owner. The undertaking as to their preservation was said to extend to the period of construction but could not be guaranteed thereafter, with any new ownership.

None of the front or rear yard trees were said to be of a protected size category under the tree bylaw of the City.

It is noteworthy that a large canopy tree depicted on the site survey that is located on the adjacent property to the west has its canopy encroaching on the construction envelope existing and proposed on the subject property.

No Participants wished to add any further comments

In submissions, Mr. Artinosi asked acceptance of the uncontroverted evidence of Mr. Romano and that the appeal be allowed, in part, authorizing: the variance in Exhibit C; that construction be substantially in accordance with Plans A1, A4 and A5 in Exhibit A; and that an approval be subject to the conditions in Exhibit D.

He acknowledged that there would be revisions to the site plan, Exhibit A, Plan A1 as required by the conditions and notations discussed respecting the front and four (4) rear yard trees. He suggested that an approving order be withheld pending receipt of a revised site plan by the TLAB.

For her part, Ms. Abimbola agreed with the Settlement but requested there be a condition acknowledging the intent to transfer or plant a new tree on private property in the front yard of the subject property.

Ms. Gibson did not dispute the Settlement proposal. She indicated that the LBNA was pleased to see one house built on the subject property albeit at an FSI somewhat higher than desired, but acceptable for the subject property, and with the conditions agreed and modified. She asked that the tree protection zones indicated on the site plan be respected by a condition to ensure the potential that the identified trees continue to mature and provide benefit to future owners.

Mr. Artenosi made no further submissions.

ANALYSIS, FINDINGS, REASONS

I have reviewed and considered the evidence and submissions provided by the Parties. The TLAB endeavours to support settlements negotiated between the parties where the same are consistent with the Member's perception of the public interest.

In this case, the Settlement proposal presented in the Revised Application would result in the continuation of a single detached dwelling on the subject property. Redevelopment within Long Branch has been consistently identified to include second stories onto existing dwellings, replacement dwellings and extensive renovations.

I find the proposal reflected in the Exhibit filed to be generally, if not entirely consistent with the pattern of neighbourhood regeneration. It is to be encouraged.

I accept entirely Mr. Romano's opinion that the Revised Application respects and reinforces the physical character of the neighborhood, represents a compatible "fit" with both the general neighbourhood and the immediate context – all as contemplated both by the Official Plan and Official Plan Amendment 320.

While the sole variance request of 0.49 times lot area exceeds the zoning standard long established of 0.35 times lot area, it is not challenged in this circumstance. The subject property is located on a short street that has experienced a degree of redevelopment. It is well protected in a micro environment wherein the height, massing and scale on the evidence is appropriate as proposed to be distributed on the lot.

I accept that both the intent and purpose of the zoning bylaw, including both respecting the use and meeting or exceeding the majority of performance standards, that this test is met.

I find that there are no demonstrable offsite adverse impacts occasion by the site plan and proposed detached residential building. On these measures, and there are none to the contrary, the variance requested is minor.

I further accept that redevelopment is desirable and in the public interest. As Mr. Romano said, the project provides a complete new housing opportunity in an offering that reflects community standards and current amenities.

With minor modifications to the Exhibits filed, the TLAB will endorse the Settlement proposed by the Revised Application and commends the oOwner, the Parties and the Participants for their collective ability to propose and agree on the Settlement advanced.


DECISION AND ORDER

The appeal herein is allowed, in part.

1. The Application for severance approval of 11 Shamrock Avenue is refused and the Secretary of the COA is to be advised accordingly.
2. The Applications for variance approvals on 11 Shamrock Avenue are refused, in part. A modification authorization is available under section 45 (18.1) of the *Planning Act* and the TLAB Rules to recognize and permit an FSI modification to 0.49 times lot area applicable to 11 Shamrock. That relief and the variance itself is granted, having been disclosed and provided on notice to all Parties. No further circulation is required. All other Application variances requested are refused.
3. The approved variance is set out on **Schedule A** attached to this decision.
4. Construction on 11 Shamrock shall be in substantial conformity to the Plans identified as Exhibit A, but specifically only to the site plan and elevations attached as **Schedule B** to this decision, being Plans A1, A4 and A5 in Exhibit A and the same shall be subject to the Conditions, including the modifications listed in **Schedule C** to this decision.
5. The FSI variance approval and Plans identified herein are subject to the Conditions listed in **Schedule C** to this decision.

Schedules A, B and C form part of this Decision and Order.

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to on notice to the Parties.

X 

Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

Schedule A

Variance

1. Section 10.20.40.40.(1)(A), Zoning By-law No. 569-2013, as amended

The maximum permitted floor space index is 0.35 times the lot area (211.12 square metres).

The new dwelling will have a maximum floor space index of 0.49 times the lot area

Schedule B

(Plans A1, A3 and A4 in Exhibit A)

Schedule C

Minor Variance Conditions

Planning

1. Despite Plan A-1, the maximum permissible FSI on the subject property shall be 0.49 times the lot area. The proposed dwelling shall be

built substantially in accordance with the site plan and elevation plans prepared by Ambient Designs Ltd. and identified as Plan A1, A3 and A4 last revised March 2, 2021, Schedule B hereto, and as further modified by paragraphs 4, 5 and 6 following.

Urban Forestry

2. Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets to the satisfaction of the General Manager of Parks, Forestry and Recreation of the City of Toronto.

3. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting the subject property. The current cost of planting a tree is \$583, subject to changes.

4. Despite the foregoing, the owner undertakes to relocate the tree marked for relocation on the proposed future driveway as identified on the site plan, Plan A1 referenced in paragraph 1 hereof, to a location on the private property in front of the proposed dwelling. In the alternative, to plant a new tree in the proposed location depicted. The relocation or the planting of the new tree shall be to the satisfaction of the General Manager, Parks, Forestry and Recreation of the City of Toronto and shall occur prior to occupancy of the dwelling constructed.

5. In addition to the work identified in paragraph 4 hereof, the owner undertakes to provide tree protection zones around four identified trees to the rear of the proposed dwelling all as identified on the site plan, Plan A1 referenced in paragraph 1 hereof. The construction and maintenance of the tree protection zone around the aforesaid four trees shall be to the satisfaction of the General Manager, Parks, Forestry and Recreation of the City of Toronto, such completion and maintenance to continue to the point of building construction completion.

Transportation

6. Submit a revised site plan, Plan A1 in paragraph 1 hereof, with the following revisions and notations to the satisfaction of Transportation Services and at no cost to the City of Toronto:

a. Revise the site plan, Plan A1, to illustrate the City of Toronto curb and gutter design standard number T-600. 05-1, within the frontage of the proposed site;

- b. Add the following notations to the site plan, Plan A1:
 - i. “The applicant is required to restore any redundant section of the existing driveway that has been closed with sod and a poured raised concrete curb within the Boulevard according to the City of Toronto Design Standard No. T- 600.05-1, as may be required“; and
 - ii. “The proposed new driveway shall be constructed to the applicable City of Toronto Design Standards at no cost to the municipality“;
- c. Revise the site plan, Plan A1, drawing revision date to reflect the above mentioned revisions

APPENDIX 1

(Record of Proceedings Prior to Formal Settlement Hearing, March 16, 2021. This APPENDIX 1 is for record keeping purposes only and does not form part of the formal Decision and Order herein.)

On **Day 1** at the commencement of this matter on February 26, 2019, I indicated that I had familiarized myself with the extensive filings that had occurred to date and had visited the subject property and surrounding environs.

Mr. Artenosi on behalf of the Applicant provided opening remarks. He took exception to several late filings by Ms. Gibson on behalf of the Long Branch Neighbourhood Association (LBNA). After the consideration of submissions, I *Ruled* that photographs and re-organized pre-filings were admissible; however, new materials consisting of e-mail exchanges and tax notices would not be accepted into the TLAB file at that time.

He summarized the Applications: the subject property with a frontage of 15.24 m and 39.58 m depth was sought to be split in half with identical frontages and areas and subject, each to variance requests related to lot frontage, lot area, side yard setbacks, eave encroachments, height of the main side walls and floor space index (fsi/FSI), to facilitate single detached building construction.

He expected a list of City agreed conditions, without prejudice, related to Engineering Services, Urban Forestry and Heritage Preservation Services would be filed on consent. He undertook to supply a listing of the variances sought as well as the above conditions.

Mr. Artenosi tendered Mr. Franco Romano to give opinion evidence as an expert qualified in the discipline of Land Use Planning.

Mr. Romano's qualifications as an independent witness were challenged based upon his long history of participation in supporting severance activity in the Long Branch community for applicants. It was suggested his non-partisan status could be derived from his consistent experience in Long Branch.

There being no challenge to his professional credentials and experience, I *Ruled* his admissibility to give expert opinion planning advice to the TLAB, non-partisan and subject to weight.

The following Exhibits were filed without objection:

- Exhibit 1** Curriculum vitae, and Forms 6 and 14 of Franco Romano
- Exhibit 2** Witness Statement, attachments and photographs of Romano
- Exhibit 3** Plans, Parts 1, 2, as before COA in May, 2018, with removals
- Exhibit 4** Applicants Document Disclosure, Parts 1-5
- Exhibit 5** Subdivision evolution

Mr. Romano was retained as early as November, 2017. His evidence was thorough. I summarize below salient points from his evidence. It is fortunate that, in addition to the Tribunal's own Hearing notes, a complete electronic record exists of the extensive filed materials as well as a digital audio recording of the evidence delivered *viva voce*.

The planner provided the following:

1. After locating the subject property in Long Branch, the planner described his study area selected to be bounded by 31st and 23rd St., north to Lakeshore Boulevard (excluding institutional and frontages on the arterial as well as apartments), Alder Crescent and south to Lake Ontario, again excluding apartments.
2. He provided a lot study matrix for detached residential units for the study and a reduced area upon removal of both sides of Lake Promenade (527 units). Within this latter area he found 18.2% of the lots to be equal or smaller than the proposed 7.62 m, frontage calling the category "well represented".

3. He found the prevailing physical character to be a variety of lot sizes and the built form eclectic in design features.
4. He acknowledged an inability to provide a lot area graphic finding the City statistical database unreliable.
5. He provided examples of building forms not consistent with a uniformity as a single detached residential neighbourhood, referencing 2A Shamrock (multiplex); 44 Arcadian Circle (multiples) and 48 Arcadian (duplex), and others.
6. On Shamrock, he described a variety of lot sizes, architectural variety and different built form solutions for parking.
7. In chart form, he described 75 formal applications and concluded from the numerical activity his opinion that change was occurring in the area.
8. He said the Application variances were in keeping with the area activity, and were “within its numeric range” for lot area, frontage and side yard setbacks.
9. By his chart, he found a variance to the floor space index to be one of the most common variances with an average, on admittedly unreliable data, to be 0.61 times lot area, whereas the proposal is 0.69 times. In this regard, relying on study area examples, if not a range, he was of the view, in any event, that the public saw built form, not the floor area.
10. He stated the variances requested for eaves setback, interior side yard setbacks and main wall height were also common, the latter more frequent with the passage of By-law 569- 2013, the then new comprehensive zoning bylaw for the City.
11. In noted an absence of sidewalks on Shamrock Avenue and at 9 Shamrock Avenue an interval garage with a half hard surfaced front yard; he acknowledged the proposal creates higher eaves and roofline than existing adjacent. In his view these different features did not create an incompatibility but rather suggested that differing design and built form can exist and be compatible and harmonious, based upon and as demonstrated in the study area.
12. He described the study area to be stable but not static; as an example, he cited consents and variances nearby included 2, 4 and 6 Shamrock (with the latter constructed). He noted that 2 and 4 Shamrock did not get registered and their consent may have lapsed.
13. He found, in the study area, examples of smaller lots adjacent larger lots. He did not consider that the smaller lot sizes generated any perception of height, massing or scale causing incompatibility. He referenced 38 A and B Arcadian Court and 23 Walnut, the latter also having an example of an integral garage with +2 levels above, as proposed. Also, he noted 2 and 2A Ash as so-called “soldier housing”, with an integral garage that did not, and his view overly influence height. He referenced 78, 95 and 97 27th St. as a severance with buildings of a similar character, albeit on wider lots. He referenced 34 27th Street as an example of juxtaposed heights – a residence with an fsi of 0.77x over twice the height of the adjacent bungalow. These examples are within ‘hundreds of meters’ of the subject property.

14. With reference to the site plan proposed for the subject property, Exhibit 3, he advised that the length and depth of the proposed units were to be the same and zoning compliant with a generous 16 m rear yard setback. He noted separated driveways and no effect on regulated trees. In his view the proposed side yards (0.9m) and interior side yards (0.6m) would 'fit well' and no platforms were proposed on the second floor. He noted the design of an integral garage and two levels of living above was similar in kind and compatible to photo images represented in the neighbourhood.
15. In his view, the proposal was not unusual or atypical and an FSI of 0.69 times would be compatible and is already represented elsewhere in the study area, as described. He felt the proposed buildings were tailored and proportionate to their sites, massed on the lots to occupy their widths and compatible.
16. In his view, the LBNDG are not Official Plan policies and are not zoning but were considered in Exhibit 2. He acknowledged that they were adopted in January, 2018 but after the applications were submitted. He noted the existence on the TLAB files of materials and a petition against their adoption, but had had no direct engagement in their formulation or consideration. He asserted that the Applications and site plan demonstrated compliance and consistency except for the issue of generous side yard setbacks, which he said he found not to be the case in the area. He critiqued the document as having illustrations that do not match up to the text.
17. Mr. Romano stated that while the PPS applies, it is the Official Plan that is the most important vehicle for implementation and the application of policy direction. He asserted that the Applications constituted intensification consistent with 1.1.1.2, .3 and section 4 of the Official Plan.
18. In his view, the *Growth Plan*, policy 2, directed a strategy to target intensification throughout the built-up area of the entire City to achieve 'complete communities'. He felt low rise dwellings were being reduced number and that the supply in the proposal replaces or contributes to housing supply.
19. With respect to Official Plan, section 4.1.1, he suggested the study area was physically stable and the policy goal was to effect sensitive, gradual change that generally fit so as to respect and reinforce the "general physical character" of existing and planned development. He reviewed the policy directions and criteria of section 4.1.5 asserting compliance. In terms of criteria c), height, massing and scale, he felt that the lack of consistency or uniformity in the area allowed him to conclude that the proposal, proportionate to their lots, accommodated and achieved compliance with prevailing patterns; namely, the variance applications were in keeping with area character.
20. He asserted that as a planner, he must look at the neighbourhood as a whole and not as a mathematical or majority measurement issue. He noted that OPA 320 should not be unduly applied and that the word "prevailing" does not apply to the size and configuration of lots in the approved Official Plan.

21. In his view, the intent of section 4.1.8 of the Official Plan is to ensure that the zoning by-law produces a compatible relationship.
22. He asserted that the neighbourhood consisted of a tapestry of diversity and added that is how the zoning by-law is being implemented: where there are size, design and built form characteristics that are not compliant with zoning but must be recognized as compatible and are to be respected and reinforced.
23. He further examined the policies of the Official Plan related to built form, 2.3.1 healthy neighborhoods, 3.1.2 and following. He was of the opinion that policy 3.2.1.2 supports intensification and is “foursquare on the intent of provincial policy goals and constitutes support for an intensification policy that applies in every residential district where housing is permitted”. He cited the approvals for 99 27th St. as an example of a similar lot size, configuration and built form that was generally supported by City staff, contrary to their role on the Applications. He felt the proposal was on a modest size lot meeting the intent and purpose of intensification with an FSI deployed in a reasonable manner and side yard setbacks that were adequate in the context, “tight to modest”, with only minor variations for eaves and main wall height.
24. In his view, individually and cumulatively, the variances sought were minor and do not result in any built form with adverse impact, shadowing, streetscape or precedent circumstances.
25. He disagreed with any assertion that there was a heightened level of severance activity in Long Branch or his study area; he said that the Applications were desirable as being well reflected in the area and contributory to maintaining the detached dwelling unit complement of the neighborhood.
26. He reviewed each provisions of section 51 (24) of the *Planning Act* and found each subsection in compliance or inapplicable, subject to the caveat of a request for an archeological study condition, with which he had no concern.
27. He recommended a plan of subdivision was not required but That the severance should be granted and the variances approved as sought.

And cross examination by Ms. Ambiboula and Ms. Gibson, Mr. Romano added the following:

28. While agreeing that the Official Plan directed intensification to a list of designated areas, he felt there was no policy to prevent redevelopment and intensification in the *Neighborhoods* designation. Despite the acknowledged mandatory language for directing growth to the specified areas, he maintained that there was nothing to preclude the intensification of Neighborhoods.
29. He agreed that while the criteria of section 4.1.5 of the Official Plan were to be considered together conjunctively, he considered that process to be a

- “balancing act”: namely, an application may fail one or more criteria but the project need not fail as long as all criteria have been considered.
30. He agreed that the *Provincial Policy Statement* encourages the intensification of land uses “where appropriate”, but reads that to mean where it can be accommodated. He felt the qualifier was simply a matter that recognizes that it is the context that is important. He agreed that intensification through redevelopment was not encouraged to occur at all costs and that the City Official Plan is the primary vehicle of consideration.
31. In terms of massing and fit, section 3.1.2.3, he interpreted the Plan to include the examination of what was existing now and what may arrive. In applying section 4.1.5, he referred to the existing and planned context, and said there is a general pattern and the proposal fits. He stated that the consideration is overwhelmingly subjective; in his opinion there was no conflict in the application and that perception is not a proper way of implementing the direction in 4.1.5, respecting height, massing and scale. In his view, the context is the neighbourhood he examined, consisting of variety, including small buildings next to large ones. In his view, he felt it unrealistic to expect that bungalows will continue into perpetuity.
32. He agreed that within his study area, lot frontages greater than 12 m, the zoning standard, predominate; including those greater than 15.21 m, such as the subject, which also predominate.
33. He noted that while he had not discussed OPA 320 in chief, he does so in his Witness Statement and that OPA 30 is currently in force.
34. He acknowledged the City did not have a target intensification policy applicable to any designation.
35. In his view, the LBNDG are not applicable; if applied, he stated OPA 320 would have no different an effect on his opinions or evidence in respect of the Applications.
36. He found a challenged distinction between existing and planned functions and where the wording is found and not found in section 4 of the Official Plan to be “intriguing”. He felt it would be fair to consider the Applications in their context either way; namely, with that which exists or that which is also proposed by approvals, insofar as Shamrock Avenue is concerned. Either way, he said, there would be no change to his opinion.
37. He acknowledged that the FSI sought in the Applications would be the highest today on Shamrock Avenue, both existing and has proposed.

38. He agreed his study area was not based on a timed walking parameter.
39. He agreed that 57.5% of the lots within his more limited study area exceeded 15.21 m in frontage and constitution of the most prominent category. He agreed that only one of the 31 lots on Shamrock Avenue had a frontage of 7.62 m with 22 exceeding 15.21 m (50 foot frontage). He argued that despite this, the category “most frequently occurring” can differ and the prevailing lot size cannot be based on a single measurement but can ‘fit’ in the circumstance of variety, where the neighbourhood is not homogenous.
40. He emphasized that lot size or frontage is not highlighted over other features, that lot size is not based on a single measurement and that departures from prevailing larger sizes can fit, in circumstances of a variety. While agreeing that the prevailing lot sizes are larger, on a numeric calculation, he repeated that even they are not homogenous. Further, that lot size should not be highlighted over other features: an individual would not experience lot area size.
41. He noted that since City tree concerns of the protected by size specifications and there being none affected, no natural heritage system analysis was required.
42. He resisted consideration of the LBUDG has an ‘implementation tool’ where it would be used to contradict the Official Plan as that cannot be an implementation. He felt he had more experience than the authors of the guidelines. He strongly challenged their applicability, sentence by sentence, multiple time disagreeing entirely with different sentences. He termed descriptions within the document as a “falsehood”. In his view, a large number of voices went unheard; he did not respond to the question as to whether the guidelines had received unanimous approval from City council.
43. In referring to LBUDG figure 65, suggesting two stories above an integral garage was incompatible with area character, he disagreed preferring instead to support the Applications’ design where the threshold first floor level is at the midpoint of the garage floor to address concern for an incompatible feature.
44. He agreed the Applications represented twice the fsi potential of the lot as it existed and that there was no comparable dwelling unit on the block while again stating that massing is not equatable to floor area.
45. He agreed that side yard setbacks are a physical feature and that most, but not all, are larger on Shamrock Avenue; he was not prepared to give a clear observational comment when being taken through the photographs but

agreed that on a walking experience for the subject property, side yards and the interior side yards would be “tight”. He reiterated that the condition of the side yard setback should be related to the neighbourhood and not segmented components.

46. He acknowledged that several of the 13 example severances that he said had been approved have yet to be constructed: 2, 4 Shamrock; 80 Ash, 23 27th St.

47. He agreed that any tree planting and preservation concerns could be addressed by a condition of approval.

Prior to the commencement of Mr. Romano’s cross examination, the sequence on Day 1 was interrupted on consent to hear the evidence of Participant Mr. Andy Choles which can be summarized as follows:

Mr. Choles is a 23 year area resident living proximate to 6B Shamrock. He recited efforts to oppose lot division citing several principle objectives:

Preserving a sense of physical space and clear separations over overcrowded streetscapes.

Lessening erosion of mature landscaping.

Retaining neighbourhood character inclusive of such features as front yard landscaping, modest heights, ground oriented first floors and tradition respecting built form.

Avoiding a ‘wall of soldier housing’ frontages on narrow lots and no sense of space.

Obviating applications for enlarged elevated main and second storey decks, both invasive of privacy and serving to amplify, by lengthening, the massing on narrow lots.

Scattered approvals in discrete locations disrupt the character consistency of streetscapes and are insensitive to a neighbourhood comprised primarily of single detached homes on generous sized lots.

Precedent.

On **Day 2** the TLAB heard from Ms. Robin Hutchins (ne Hewitt), a 10 year resident living proximate to the subject property, whose evidence, opposing lot division, can be summarized as follows:

The immediate walkable neighbourhood is a 'Garden in the City' with variety, "big and small houses, open space and big skies, room for the modern and the crazy". Shamrock Avenue, having no sidewalks, contributes to the open space feeling.

A severance would erode the feeling of space and openness. Tall, side by side buildings with dark space in between and tight side yards feels closed in. They do not respect the protections afforded to existing and owed to future residents.

On Shamrock, pedestrians are forced to walk on the street; more 2 plus car utilitarian driveways, nose to tail is not now the pattern and it means more difficult parking searches and manoeuvres; the proximity of houses, cars and heights quell sky views and change standards set by the City to protect the 'people who live there'.

Every property at or about 50 feet in frontage becomes a potential target.

The use of 'existing' buildings, grandfathered over time by current zoning, including my complying side yards and largest frontage severed in the 1950's, as comparative analogies is a confusing basis to circumvent, by variances, existing standards that have provided longstanding service to community development.

Also on Day 2, the TLAB heard from Participant Kerry Pohling Khoo-Fazari, a 13 year resident in close proximity to the subject property. That evidence re-asserted the 'space' aspects of the neighbourhood (a "little cottage in the City") and added the following:

Split lots on Shamrock Avenue erode neighbourhood character, add parked cars compromising pedestrians and cyclists safety, prohibit kids from playing on the street and obstruct public services: ploughing and waste removal.

Narrow side yards incite trespass, increase conflict and complaints in the location of air conditioning units and create unnecessary animosity between proximate neighbours.

Experience cited with requests and appeals, LPAT and the TLAB, centred on a second storey deck request, 6A and 6B Shamock.

The observable majority of new development is renovations.

Day 3 commenced by a virtual Hearing WEBEX appointment, on January 26, 2021. Three business days earlier, a brief email was received by the TLAB that requested, on consent, an adjournment for an undisclosed period of possibly several months pending the potential advancement of 'settlement discussions'.

Decision of Toronto Local Appeal Body Panel Member: I. LORD
TLAB Case File Number: 18 177058 S53 06 TLAB, 18 177060 S45 06 TLAB, 18 177061
S45 06 TLAB

An adjournment was denied, citing in response the near two years that had elapsed since the last sitting, but allowing advice as to any settlement to be addressed.

The matter convened at approximately 9:40 am with Mr. Artenosi and a corporate owner present, as well as Ms. Abimbola and her planner, Ms. Salatino, Ms. Gibson and her witness, Ms. Mercado, Ms. Fazara, Ms. Hutchins and Mr. Choles present. Mr. Romano did not appear to be on the WEBEX call.

On convening, all counsel and Ms. Gibson supported an adjournment to the 'end of the day' for the purposes of discussing the 'reasonable prospect of a settlement'. Ms. Gibson indicated she had spoken with some 'affected residents' over the weekend, but that more time was supported. Mr. Artenosi requested an opportunity to use the WEBEX platform for mediation without the Member present.

I indicated that these files remained among the longest outstanding matters before the TLAB. The TLAB has been publically criticized for the length of time for matters to be resolved between the Notice of Hearing and the TLAB Decision and Order. The *Rules* indicate that TLAB Hearings are peremptory, subject to supported Motions. This Hearing date had been set for some time and there was no complaint as to Notice. Indeed, as indicated above, successive intervening resets of this reconvened Hearing have not come to fruition for various reasons, with almost two years having elapsed since the last sitting.

And there had been no formal Motion under the *Rules*. Even if I consider the consent of the Parties as a replacement for supporting affidavit materials, the second request for adjournment, even for the day, would, for proper consideration, require a re-convened sitting.

My Ruling was to adjourn the formal sitting for an informal virtual discussion amongst those present, until 11 am, that day: i.e., approximately one full hour.

I advised that even if a settlement is reached as between the Parties, the TLAB had a public interest responsibility to decide on the Applications. In that regard, I asked that the discussion focus first on the severance issue as, while both the severance and variances are at issue and need to be determined, the lead file is inexorably tied to the severance request of the Applications.

Further, even if a settlement can be agreed, which is encouraged by the TLAB, I advised that its acceptance could still be subject to questioning of the witness or witnesses by the Tribunal. If there was no settlement, Ms. Gibson indicated she was ready to proceed.

Finally, I indicated that for the matter to resume, if necessary, extra time would be made available to complete the matter.

Decision of Toronto Local Appeal Body Panel Member: I. LORD

TLAB Case File Number: 18 177058 S53 06 TLAB, 18 177060 S45 06 TLAB, 18 177061 S45 06 TLAB

On resumption, the Parties indicated their discussions had advanced to a 'without prejudice' agreement. Mr. Artenosi expressed it as follows, with the consent of the other Parties:

1. The severance application would be withdrawn on a without prejudice basis.
2. A new site plan (Plan) would be submitted for a Plans Examination and the identification of any variances within the ambit of the Applications filed to date, but for a single detached dwelling. An anticipated fsi variance, possible window and main side wall elevation and a deck, balcony or platform variance may be required to be considered, the latter being new and anticipated to be 'technical' and within the ambit of section 45 (18.1.) of the *Planning Act*.
3. Tree retention, front and rear is proposed and to be subject to a condition.

The Plan would be circulated to the Parties/Participants present for their concurrence and submitted to the City for an expedited Plans Examination, indicated as being an undertaking to the TLAB of Ms. Abimbola and Ms. Salatino.

Mr. Artenosi undertook to prepare the Plan, any associated List of Requested Variances and any attendant Conditions and afford that to the TLAB, the Parties /Participants present, upon availability, and have Mr. Romano speak to it on resumption. Ms. Salatino was also polled for availability on the agreed resumption date of March 16, 2021 at 1:30 pm.

The Parties/Participants were thanked for their diligence; the matter was adjourned on consent to March 16, 2021 at 1:30 pm to continue as proposed or as required by the TLAB.

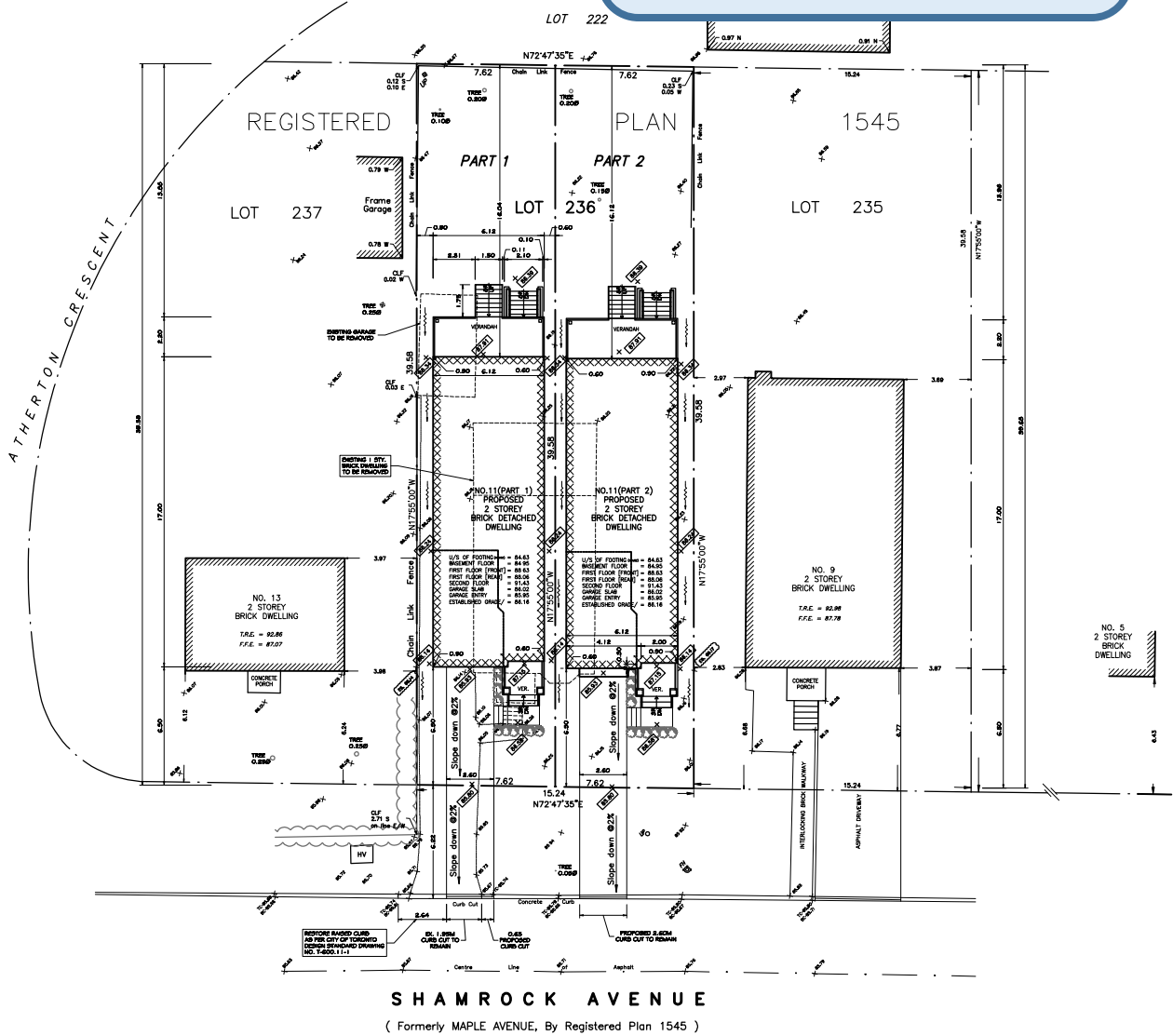
Received July 10 2018

By Toronto Local Appeal Body

Toronto Local Appeal Body

EXHIBIT # 3B

Case File Number: 18 177058 S53 06TLAB
Property Address: 11 Shamrock Ave
Date Marked: February 26, 2019



SHAMROCK AVENUE
(Formerly MAPLE AVENUE, By Registered Plan 1545)

NOTE :

SEE SURVEY BY O.L.S. FOR VERIFICATION, SURVEY INFORMATION TAKEN FROM PLAN SHOWING LOT 236 REGISTERED PLAN 1545 CITY OF TORONTO (FORMERLY CITY OF ETORICOCHE)

PREPARED BY : AVANTI SURVEYING INC. CHRIS BERESNIEWICZ O.L.S.

DATED: SEPT. 27TH. 2017

LEGEND

- x 0.00 = EXISTING ELEVATION
- x 0.00 = PROPOSED ELEVATION
- INDICATES SLOPE DIRECTION
- TPZ INDICATES TREE PROTECTION ZONE
- EXISTING TREES
- ⊗ EXISTING TREE TO BE REMOVE

ELEVATION NOTE

ELEVATIONS SHOWN HEREON ARE GEODETIC AND IN METRES AND RELATED TO CITY OF TORONTO BENCH MARK NO. E-35 HAVING A PUBLISHED ELEVATION OF 89.56 METRES ABOVE MEAN SEA LEVEL.

ESTABLISHED GRADE ELEVATIONS CALCULATION

$$\text{AT } 6.6\text{M} - (86.14 + 86.17) / 2 = 86.16$$

(EG. 0.00) INDICATES EXISTING GRADE ELEVATION, TAKEN @ 0.01M INTO ADJACENT PROPERTY TO CALCULATE ESTABLISHED GRADE ELEVATION.

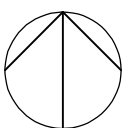
The applicant must obtain the necessary authorizations and permits from the City's Right-of-Way Management Unit before excavating within or encroaching into the municipal road allowance. The applicant shall also submit a Municipal Road Damage Deposit prior to obtaining a Building Permit.

BCIN: 29659



AMBIENT DESIGNS LTD.
DESIGN & BUILDING CONSULTANTS

1115 COLLEGE STREET TORONTO, ONTARIO M6H 1B5
TEL. NO. (416) 537-8531 FAX. No. (416) 537-8131
email: ambient@ambientdesigns.ca

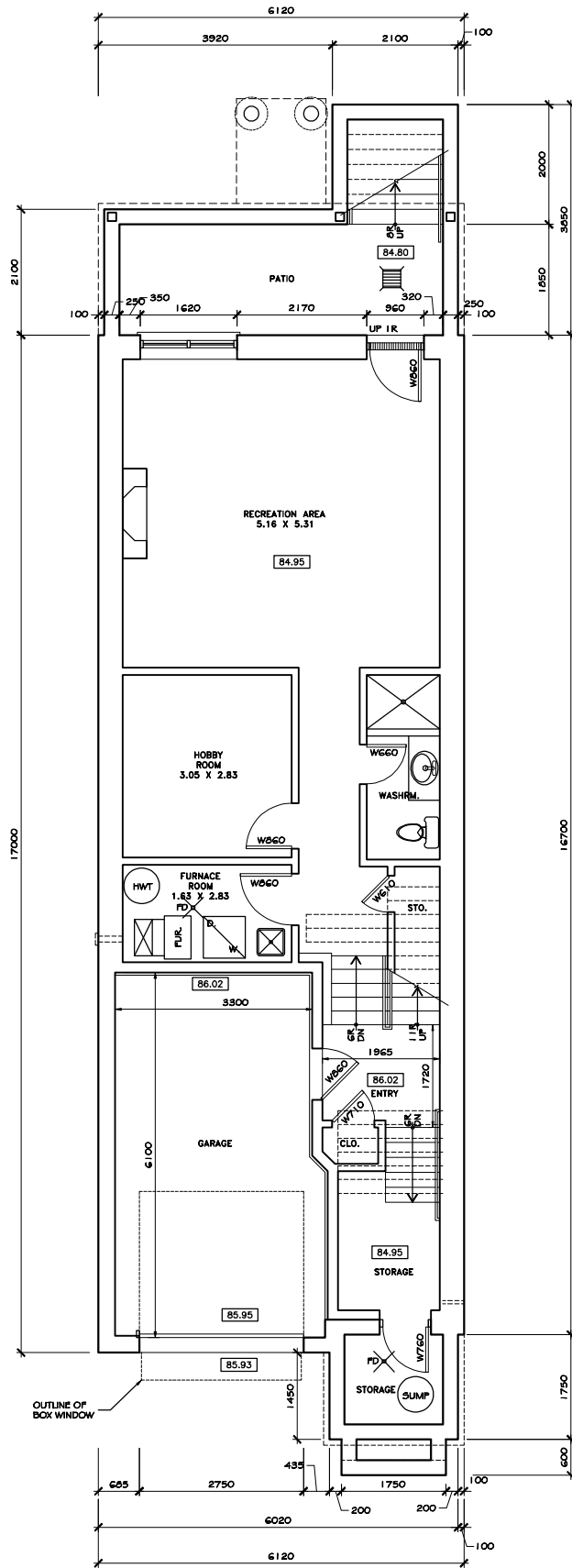


PROJECT NAME
11A SHAMROCK AVE. (PART 2)
CITY OF TORONTO

DRAWN BY: D.N.

DATED: JUL. 18, 2018

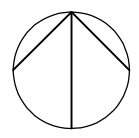
PROJECT NO.	A17152	SCALE:	1:250M
DWG. NAME:	SITE PLAN		
SHEET NO.	SK1		



BCIN: 29659

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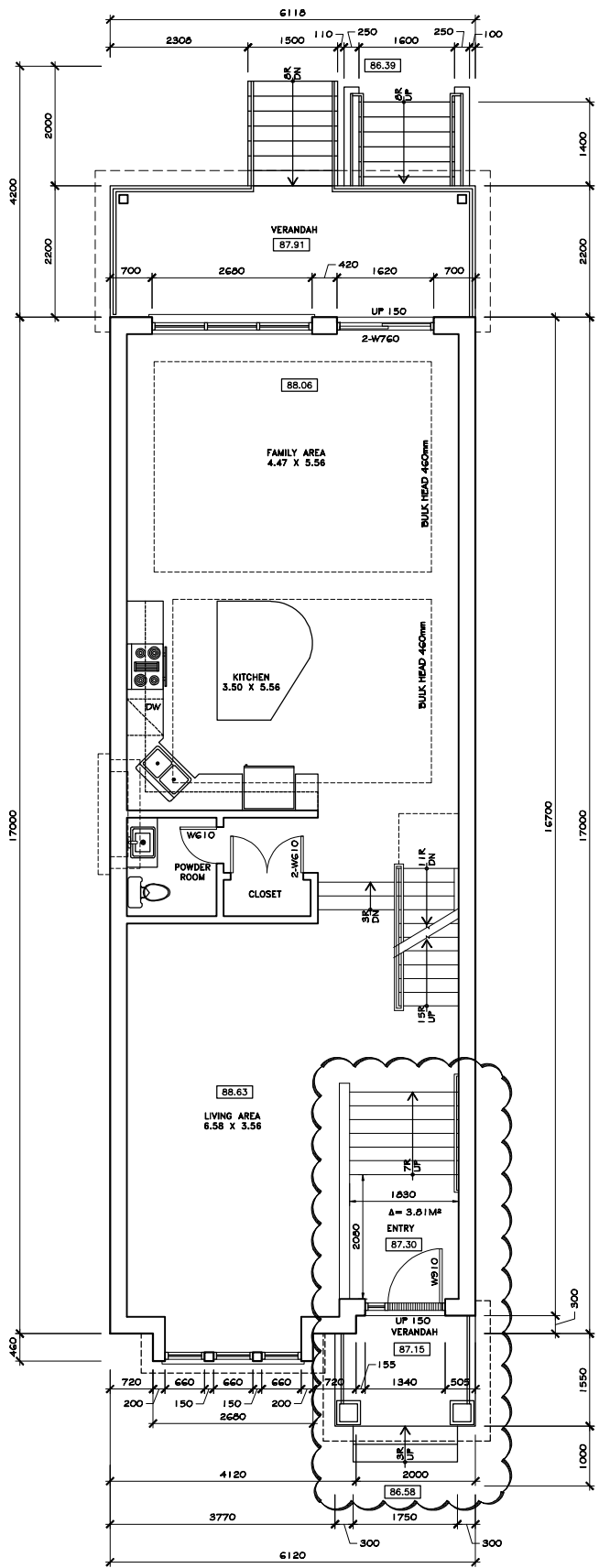


PROJECT NAME
 11A SHAMROCK AVE. (PART 2)
 CITY OF TORONTO

DRAWN BY:
 D.N.

DATED:
 JUL. 18, 2018

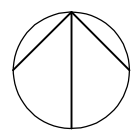
PROJECT NO.	A17152	SCALE:	1:75M
DWG. NAME:	BASEMENT PLAN		
SHEET NO.	SK3		



BCIN: 29659

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PROJECT NAME
 11A SHAMROCK AVE. (PART 2)
 CITY OF TORONTO

DRAWN BY:
 D.N.

DATED:
 JUL. 18, 2018

PROJECT NO.	A17152	SCALE:	1:75M
DWG. NAME:	FIRST FLOOR PLAN		
SHEET NO.	SK4		