Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Wednesday, May 05, 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): KEN O'BRIEN, CITY OF TORONTO

Applicant: CONTEMPO STUDIO

Property Address/Description: 27 THIRTY NINTH ST

Committee of Adjustment Case File: 17 189182 WET 06 CO, 17 189185 WET 06 MV, 17 189186 WET 06 MV

TLAB Case File Number: 18 212117 S45 06 TLAB, 18 212123 S45 06 TLAB, 18 212129 S53 06 TLAB

Hearing date: January 8,9,10, 2020 and March 3, 10, 12, 2021

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ARTAN SELMANI	OWNER	
CONTEMPO STUDIO	APPLICANT	
XHELADIN RESHITI	PRIMARY OWNER	
SHPENDIME RESHITI	ALTERNATE OWNER	
KEN O'BRIEN	APPELLANT	
CITY OF TORONTO	APPELLANT (CITY)	ADERINSOLA ABIMBOLA
ARTAN SELMANI	PARTY (TLAB)	AMBER STEWART
LBNA	PARTY	JUDY GIBSON
FRANCO ROMANO	EXPERT WITNESS	
MAX DIDA	EXPERT WITNESS	
PETER WYNNYCZUK	EXPERT WITNESS	
NATASHA PETZOLD	EXPERT WITNESS	
CHRISTINE MERCADO	PARTICIPANT	
RUTH WEINER	PARTICIPANT	

DONNA SANDY DONALD	**PARTICIPANT**
ALEXANDER DONALD	**PARTICIPANT**
JOHN MACDONALD	**PARTICIPANT**
RON JAMIESON	**PARTICIPANT**
ROBERTA JORDAN	**PARTICIPANT**
DAVID MATOC	**PARTICIPANT**

INTRODUCTION

These appeals arise from decisions of the Etobicoke and York Panel of the City of Toronto (City) Committee of Adjustment (COA) granting to the Applicants a consent to sever, with related variances (**Applications**), applicable to 27 Thirty Ninth Street (subject property) in the Long Branch community of the City.

The COA approvals, with conditions, would permit the construction of a detached residential dwelling unit on each of the two created lots. The three Parties in appeal challenge the COA decisions: the City, Long Branch Neighbourhood Association (LBNA), and Ken O'Brien, variously represented.

The subject property is located on the east side of Thirty Ninth Street, between Lake Promenade and James Street, south of Lakeshore Boulevard in the extreme south west corner of the City. It is improved by a detached residential building with a reverse slope single vehicle driveway and integral garage on a lot having a frontage of 15.22 m and lot area of 613 square meters. The subject property is raised above the grade of the municipal right-of-way and enjoys significant vegetation in its rear yard, including four (4) *Municipal Code* protected private trees. There are no street trees or other improvements beyond aged perimeter fencing and a small shed in the south east corner of the rear yard.

The COA decisions were mailed August 10, 2018.

The Toronto Local Appeal Body (TLAB) issued a Pre-Hearing Conference disposition on January 24, 2019 and two interim procedural dispositions respecting adjournments and related matters with separately reported decisions issued July 23 and November 14, 2019 (Preliminary Considerations).

Ultimately, the Hearing of this matter occupied six non-contiguous Hearing days (Hearing). The TLAB heard from two qualified professional planners, two arborists, and six lay citizen witnesses having community involvement values and local knowledge expertise.

I had attended the site for observation on more than one occasion and had so advised the Parties and Participants. However, it is the evidence heard and referenced that is relied upon.

BACKGROUND

The Applications on appeal fall within a somewhat complex historical framework, some of which is detailed in the original Expert Witness Statement of the Applicant's Planner, Mr. Franco Romano, Exhibit 2 a).

In brief, the original Applications were filed on or about June 28, 2017 with the COA. That consideration involved City Staff commentary, rescheduled considerations, a community discussion interval, revisions, further Planning Staff commentary without objection and the eventual approval disposition, as above stated. Throughout, the Urban Forestry Division of the City recommended against *Planning Act* approvals as a result of impact on trees and the Urban Forest.

In the interval between the submission of the Applications and the ultimate TLAB consideration of the matter, a number of other events and publications transpired:

> *Growth Plan, 2017* was updated and replaced by *Growth Plan, 2019* (Growth Plan); similarly, the Provincial Policy Statements were updated in 2020 (PPS);
>
> *Official Plan Amendment 320* (OPA 320), while adopted at the time of filing, and with later Ministerial approval, it was finally approved on appeal by the Local Planning Appeal Tribunal (LPAT);
>
> The *Long Branch Neighbourhood Character Guidelines* (LBNCG) were drafted, adopted and approved by City Council on January 31, 2018;
>
> The Urban Forestry publication, *Every Tree Counts* was updated, including a *Tree Canopy Study,* itself including reference to the Long Branch Community (Ex.21);
>
> TLAB had issued several decisions on severance applications in the Long Branch neighbourhood, including: *38 Thirty Sixth Street* (17 201219 S53 06 TLAB, issued March 19, 2018) and *9 Thirty Eight Street* (17 165404 S53 06 TLAB, issued August 3, 2018 – Divisional Court appeal hearing pending*).* While there are several others referenced *infra* and in final argument submissions*,* these two are nearby severance and variance applications considered by this Member and refused.

All of this documentation and much more was available at the Hearing and frequently referenced or cross-examined upon, by all Parties participating - to a greater or lesser degree. By this acquiescence and as part of the Preliminary Considerations, the documents were admitted and accepted. For those that constitute formal policy but were finalized after the date of the filing of the Applications, they were accepted and are considered relevant, probative but not determinative of the issues that the TLAB is called upon to address. Although this approach was determined as part of the

Preliminary Considerations, the weight and application of the differing policy evolution continued to be an element of the evidence even to the late stage of argument submissions. For that reason, it is addressed again herein.

By the period of the COA decisions, the Applicant had participated in two consultations on built form and the severance and participated in a pilot project of private mediation. Prior to the COA decisions, the Applicant had made changes to address height and setback variances and had agreed to a City Staff deferral for consultation and made additional changes affecting main wall and first floor heights, and setbacks; these ultimately achieved a withdrawal of City Planning Staff objections.

Still, the Appellants appealed the COA decisions.

At the Pre-Hearing Conference (PHC) held January 22, 2019, these prior discussions were described as inconclusive with the suggestion that no significant changes to the Applications or the built form had been proposed: mirror image housing; integral garages and tall, narrow dwellings on narrow, undersized lots.

MATTERS IN ISSUE

The Applications and appeals are neither novel nor complicated; however, the Parties and Participants were fundamentally at odds with the Applications and their revisions. At issue is whether the Applicant's proposed severance of the lot for the purpose of introducing two new houses - as a 'modest' or 'gentle' form of intensification - is appropriate.

Resulting from the severance and even more recent design revisions is the need to address altered zoning relief in the form of revised and new variances to permit construction on undersized lots of the specific dwellings proposed, with associated parking pads. The further revised and requested variances from the City *By-law 569-2013* and specific provisions of the residual former City of *Etobicoke Zoning Code* are set out in **Attachment 1** to this decision (Exhibit 4), based on the further revised proposed dwellings and their siting (**Alternate Plan**).

In simplistic terms, whether this 15.22 m lot should be divided and whether the two new dwelling units should be permitted in either of the forms proposed, as being policy and statutory considerations compliant.

The Applicant clearly supported the consent, variances and conditions approved by the COA, i.e., the Applications, albeit less preferred to the Alternate Plan.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body (TLAB) must be consistent with the applicable Provincial Policy Statement (PPS) and conform to the applicable 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

Day 1 *(January 8, 2020)*

Counsel for the Applicant, Ms. Stewart, described these appeals as engaging her first instance of a Long Branch community TLAB Hearing. She delivered prepared Opening Remarks.

The Applicant's planner, Mr. Franco Romano, while long experienced in matters in the Long Branch community, had been retained in May 2018. She said that the PHC had identified that the major matters between the Parties, resulting in a request for some four (4) Hearing Days, were the matters of the severance, the built form variances, and the issues of the Urban Forestry Department; namely, the loss of by-law protected trees and tree canopy, both latter matters claimed as aspects of neighbourhood character.

In the interval between the PHC and the procedural and adjournment issues dealt with in the July 23, 2019 and November 14, 2019 dispositions, the Applicant, as is apparent in its filings, had reflected on the Applications and made additional changes to the proposed built form and had conducted a review of the Urban Forest interests raised by the Appellants. Regrettably, none of this was accompanied by movement on the part

of any of the Parties or Participants to advance or convene further 'off-line' discussions or to reach any form of consensus or any narrowing of issues.

What did occur, she related, were multiple document exchanges and shifting of witnesses as Hearing dates and attendances came in conflict.

While the TLAB regrets the failure to engage in and resolve fruitful discussion, this Member is appreciative of the general willingness of all attendees to cooperate in the acceptance of late filings, the admission into the documentary record of evolving policy and studies and the substitution of Representatives and witnesses where attendance conflicts became apparent, all without rancour. This cooperation, with one exception described *infra*, not only supports the 'best evidence rule' but enabled the matters to proceed with efficiency.

It is with this background that Ms. Stewart presented Opening Remarks, expressing, with candour and concern, her appreciation of the relatively recent TLAB jurisprudence and its 'message'. She characterized that 'message' as involving:

- Resistance to the indiscriminate approval of severances;
- Full scrutiny: the need for prevailing smaller lots or significant neighbourhood character attributes contribution;
- The necessity to address issues of the Urban Forest without *prima facie* reliance on the *Municipal Code* respecting private and public tree assessments and permit processes; and
- Requiring creativity in urban design while eschewing and discouraging 'mirror image' replacement housing.

She had sought and received instructions to further revise the Applications, to be described in the evidence, and called the Alternate Plan.

Out of concern for the weight of the growing body of the TLAB decisions in the Long Branch community, she referenced paragraphs from this Member's Review Decision in *9 Thirty Eight Street, supra:*

> "By the same token, the irrational fear of lot creation and a goal of seeking cessation, if it existed, would be a move to elevate 'stability' to stagnation, save if it were not for other exigencies, such as intensification as-of-right under existing zoning performance standards." (page 19 of 52), and
>
> "Applications for the consideration of severances are an entitlement as-of-right of large lot property ownership. I find that in Long Branch, the absence of a council decision to revisit zoning attributes of lot size, frontage, density, spacing, character and multiple other attributes, means the consideration and approval of such applications warrants the

> presentation of a unique set of circumstances not present here, to justify intervention." (page 22 of 52)

She suggested that where optimal circumstances exist, the severance of a lot can occur. Further, that a direction to prohibit severances in the Long Branch community is a City Council prerogative, not that of the TLAB, and while the policies of OPA 320 are more stringent, not even the more recent expression of Council intent in adopting the LBNCG's contain language that precludes a severance.

As a result, in Opening Remarks she suggested that the evidence would demonstrate that such a 'unique set of circumstances' were asserted to exist (Unique Grounds) applicable to the subject property. She suggested that Unique Grounds were present in the Alternate Plan, as proposed by the Applicant, having the following attributes applicable to the subject property:

a). a severance creating lots on Thirty Ninth Street of the most frequently occurring lot size;

b). frontages of 7.62 m are 'prevailing';

c). OPA 320 encourages that respect and reinforcement be given to that 'prevailing' in the Immediate Context;

d). the existing feature of an integral garage with two floors above is undesirable and its incorporation as a design feature has been replaced;

e). no street trees or City canopy is affected, and removals are minimized and 'as-of-right', with mitigation;

f). the revised built form reflects fewer substantive variances more compliant to the LBNCG.

Counsel then urged that where 'all boxes have been ticked', the result is not destabilization, and the Applications result in a desirable form that may be approved.

Counsel for the City, Ms. Abimbola, responded that the Applications and the revisions, on their merits and sufficiency, failed to respond to planning policy including the protection of the natural environment.

No other Party addressed Opening Remarks.

The Applicant called two Expert Witnesses: Mr. Franco Romano (Ex.2 a, b; Ex. 3), qualified to give expert opinion evidence on land use planning matters, and Peter Wynnyczuk (Ex.16; Ex.17), an Arborist, substituted, on consent, for Mr. Serg V. Litvinov who was said to be 'out of the country'.

I summarize their evidence relevant both to the Unique Grounds and the statutory and policy considerations above noted, under 'Jurisdiction'.

Mr. Franco Romano is a Registered Professional Planner. As per his original Witness Statement, Ex. 2, he described the attributes of the COA proposal, the approvals granted and their associate conditions. He stated the former *Etobicoke Zoning Code* variance provisions identified were no longer applicable. He noted that the earliest discussed revisions were incorporated in the August 2018 COA Applications decisions, but that the COA did not attach the then revised plans and drawings.

On a direct question from his counsel, he stated that while he supported the COA disposition of the Applications, his professional preference was for an amended set of plans and variances that he introduced and identified as the Alternate Plan, all elements as incorporated in Exhibit 4. This Exhibit, he said, consists of a site plan, building profiles, elevations and associated statistics. Exhibit 4 also incorporates the revised variances and proposed conditions, all of which he supported.

These revisions included two new variances not addressed by the COA: namely, variances 4 and 5 on **Attachment 1**, the Alternate Plan package, providing for the recognition of parking pads on proposed Part 1(south lot) and Part 2 (north lot).

In his view, one of the improvements in the Alternate Plan was the elimination of integral garages, so opposed by area residents over their concerns centred on taller, leaner building forms (termed 'soldier houses') which, he noted, they felt to be inconsistent with area character. He treated the new parking pad variances as a technical change to location. Although he initially suggested that the parking pad variance additions be considered for additional Notice under section 45 (18.1) of the *Planning Act,* by the time the Hearing had convened he considered them minor, fully disclosed and unnecessary for further exposure.

The Alternate Plan (Exhibit 4) makes no change to the lot division proposed. The planner Romano described what he felt were the components of the improvements on the Applications plans approved by the COA:

a.) both buildings fully met zoning length and depth permissions;
b.) south building fully complied with zoning front and south side yard setbacks;
c.) north building north side yard setback proposed exceeds the existing condition (near lot line as-constructed) and meets the zoning standard for the proposed lot frontage of 7.62 m, of 0.9m;
d.) both building facades have been redesigned to be streetscape individualistic, using commonly found area character design attributes and materials;
e.) building heights and associated variances had been reduced (on the north lot from greater than 9m to 8.18 m (1.3 m lower than zoning permission)), complemented with a characteristic prominent gable - peak design; on the south lot to 6.81m, with a flat roof design,

reflecting similarity to and a gradation down to the immediately adjacent property to the south, being a one and one/half storey bungalow;

f.) below grade basement space on the south lot is cut back 1.8 m to recognize the potential presence of root growth of 'Tree 4', found on 25 Thirty Ninth Street, in close proximity to the common lot line. He noted a larger cut-out could be accommodated if circumstances proved it necessary;

g.) window fenestration and placement mitigation against overlook and low, grade related decks with the potential for privacy screening;

h.) both proposed buildings are lower and smaller than those approved by the COA with enhanced façade design mitigation;

i.) in lieu of a character defining integral garage, a replicated single parking pad meeting municipal standards for each proposed lot lies within a 7.21m separation distance between the municipal right-of-way and a recessed building face, protected by a partial cantilever of the second floor, above. This revision had the consequent effect of lessening first floor and main wall height and removing the building length variance as partial consequences.

Particular attention was paid by Mr. Romano to the delineation and characterization of the quantitative and qualitative attributes of area character. His Study Area was prepared, with assessments, on a pre-OPA 320 basis but modified (and expanded notionally) to accommodate the greater specificity required to address that amendment.

He described the following elements of replicable area character, by geographic neighbourhood and immediate context area references:

i) single detached residential dwellings of 1, 11/2 and 2 stories, generally with peaked rooves being the most common building form;
ii) limited mature front yard landscaping and tree canopy;
iii) extensive 'urban forest' canopy coverage in rear yards;
iv) building forms, garage and parking location variety, including parking pads;
v) modest and varied front, side and rear yard separation setbacks;
vi) variety and distribution of lot frontages and lot areas;
vii) rectangular lot pattern, park and lake access and streetscape grid consistency;
viii) even within the subject properties RD zone category, a variety of building types exist;
ix) diverse architectural character;
x) Thirty Ninth Street differs with a broader diversity of building type from Thirty Eighth, Thirty Seventh and Thirty Sixth

Street in the same RD zone category, and Fortieth Street, in an RM zone;

xi) building materials and heights variety;

xii) low rise steps to the front door;

xiii) statistically:

a. 7.62 m (or smaller) lot frontages are 'substantially represented' in the immediate context and at 25.2% and 28.% for entire original Study Area;

b. 'pocket' variations in lot sizes are evident with larger lots east of Thirty Sixth Street;

c. On Thirty Ninth Street, the most common lot frontage category is 7.62 m or less (36%), north and south of James Street, Exhibit 2a, par.16-18, 19; Exhibit 2b photo's;

xiv) Diverse separation distances ranging from zero side yard setbacks to rear yard driveway access;

From these considerations, Mr. Romano was of the opinion:

1. Lots of the frontage and size proposed are substantially represented and the most common in the immediate context; in frontage and area, their creation on the subject property in his view would conform to the intent and purpose of the Official Plan.
2. Although the original lot pattern consisted of 12+ m lots, of which the subject property is an example, by the 1950-60's, lot divisions had occurred in substantial numbers to the total today of 39.2% of all lots on Thirty Ninth and Thirty Eight Streets being equivalent to the proposal.
3. On the available data and observations, the height, mass, scale and floor space index (fsi) of immediate area buildings held no uniformity and those circumstances constituted a 'prevailing pattern' of area character attributes.
4. There are multiple properties that demonstrate the proposed fsi of 0.62x reflective of a fairly common range of variances granted; further, that while fsi alone is "not a good proxy" for height, mass and scale, those elements as proposed are modest, better attuned to the LBNCG and are unaccompanied by variances characteristic of the potential for overbuilding.
5. There are multiple examples on the street of front yard parking and other diverse solutions and while pads are generally discouraged, the proposal separates their location and provides an intervening space for landscaping at no greater a loss of on-street parking opportunity than would be occasioned by a two-car garage. Some 26% of the properties on Thirty Ninth Street have parking pads; a higher percentage south of James Street in the immediate vicinity of the subject property.

6. The Alternate Plan proposal conforms to the Official Plan, updated by OPA 320; specifically, he opined that the OP sets no density figure and provides no policy correlation between density and lot creation such that even large lots can have a large fsi yet the streetscape pattern can be maintained. For the area character descriptions above noted, he urged that the Alternate Plan is very much in keeping with the 'respect and reinforce' goal, on policy 4.1.5 criteria and the Built Form provisions, 3.1.2 and Chapter 3, of the existing physical character of the neighbourhood, especially in the prevailing mix that is determinative of the immediate context (IC).
7. The 'as of right' building envelop of the subject property presents a condition where tree loss is anticipated, has some certainty of approval and can undergo, a further process under the 'Trees By-law' (Exhibit 10), where tree planting and further adjustments can be accommodated.
8. In a thorough review of the LBNCG, the key design guidelines in 'spirit and intent' are being achieved by the Alternate Plan, including such matters as: primary planes; window placement; lot depth; finished ground floor elevation; porches; street oriented entrances; roof consistency and scale; proportionality; materials; driveway width; on-site parking; landscaping and privacy.
9. The other variance and consent tests are met or are not engaged. In particular, the fsi increase to 0.62x lot area from the by-law permission of 0.35x is deployed on the lot in the location and to the standards generally set by zoning and yielding appropriate, modest sized buildings in keeping with area standards. Rear yard access is protected, and rear yards are not encroached upon. The buildings are clearly two storeys with grade related entrances; in his view, they would constitute a reasonable form of development, conditioned and intimately set within a mixed variety immediate context that cannot be transferred to other streets in Long Branch.
10. There is no undesirable adverse impact arising from either the land division or the variances; the longer, by-law compliant depth can reasonably be expected and, in his view, any difference between the proposal and what is permitted as-of-right cannot,,in his opinion, be construed as an adverse impact condition. The variances are minor and yield "a gentle form of intensification that is not premature and not demanding of a plan of subdivision".
11. An approval of the Alternate Plan and the associated Exhibit 4 conditions of the COA would be appropriate, including added conditions that: 'construction be in accordance with the elevations and drawings; and that driveway pavers be permeable, enhancing landscaping objectives'.

Day 2 *(January 9, 2020)*

In continued cross examination both by the City solicitor, Ms. Abimbola, and Ms. Gibson, some attributes of Mr. Romano's evidence were exposed and questioned. These included:

a). the failure to update area statistics with a revised OPA 320 Study Area;

b) the adequacy of the appreciation of the change to the location of on-site parking, its adequacy and implications;

c) his interpretation and application (or lack thereof) concerning: the Official Plan's 'Natural Area/Natural Heritage System' policies, notably the 'urban forest' and tree preservation policies as being confined to City owned trees in parks, boulevards and ravines; that growth, "not specifically being directed only to named growth areas," nevertheless is to avoid such public assets; on his interpretation, the severance is a benefit by enhancing the planting on street trees in the public boulevard;

d) the manner and history of; lot creation, subdivision design; the advance of policy (including the LBNCG); the cessation of severances; and the passage of time as elements of area character, appreciation, value and policy protection can be weighed against his 'consistent' policy direction to make more effective use of urbanized areas through intensification, but subject to being 'where appropriate';

e) the suggestion that a 'frequently occurring condition' that is deemed 'compatible' by its very presence, can be a basis for replication and mandatory ('must') reinforcement, despite applicable tests;

f) the absence of connectors (beyond joint consideration) between the application for severance and the cosmetic 'enhancements' of the Alternate Plan;

g) whether the appreciation of density considerations, as expressed by fsi measures, was muddied by issues of not sorting out dwelling types, an unadjusted Study Area excluding Lake Promenade, and the inadequacy of data;

h) the admission that in the Study Area examined, the largest category of lots in the RD zone exhibit frontages between 13.91 m and 15.74 m; and that the Applications constitute the first lot division on the street south of James Street;

i) from a streetscape perspective, whether the emphasis should be on dwelling unit type and its variety in height and scale (planner) or

built form similarity as measured by height, massing, scale and streetscape appearance.

Mr. Peter Wynnyczuk was called by the Applicant, qualified and accepted as an expert in arboriculture (Exhibit 16 A, B).

As a 'pitch hitter', he described he was reliant on three primary documents:

a) A tree protection plan contained in the Revised Arborists Report of the Applicant (Exhibit 8);
b) Considerations raised in the City Reply Witness Statement of Dr. Dida (Exhibit 18); and
c) His own Supplemental Scoped Arborists Report prepared for the TLAB Hearing (Exhibit 17).

Exhibit 17 had been prepared the day of his testimony following a morning attendance on the subject property (January 9, 2020).

Mr. Wynnyczuk's evidence served to essentially confirm the findings of the Applicants previous consultant with respect to tree condition assessments and recommendations on qualifying affected trees depicted in Exhibit 8:

1. Tree 3, a white birch, which he accepted as being 'agreed' to be removed';
2. Tree 9, a Colorado Blue Spruce, located within the proposed north lot building envelop, in fair condition with a life expectancy of 120 years, to be removed to facilitate construction and for which no compensation would be pursued by the City: "has to do with the *Ontario Building Code* superseding the municipal by-law";
3. Trees 5 and 6, a horse chestnut and white pine, in the south east quadrant of the subject property, are in fair to good condition but for which a Permit to Injure would be required under the City *Municipal Code*, Chapter 815 as falling within a tree protection zone (TPZ) caused by the intended removal of an existing 'shed'. With measures he described, he felt any injury would be minimal and the TPZ could be extended once the shed had been removed;
4. Tree 4, a Colorado Blue Spruce, in fair to good condition, located approximately 1 m off-site on the property to the south, for which he acknowledged Dr. Dida's concern for survival. For this tree, he discussed the protocol of a TPZ with protective screening, the recommended redrawing (cut back) of the proposed Part 1 building foundation of the proposed southerly dwelling as well as supporting horizontal and vertical protective barriers. Before any of that, he recommended exploratory root excavation, with hand or air augers, at the foundation within the TPZ and outward 1m to a depth of 1 m. He felt that that exposure of roots, documented, would determine the percentage of roots affected and provide an input to the City in the

determination of the process and action plan. He felt the investigation, for which a survey would be critical, could be a condition of the permit application process.

His 'Summary Comments and Recommendations' are contained on pages 4-6 of Exhibit 17 and contain two (2) recommendations respecting Tree 4, above, and compensation.

Mr. Wynnyczuk concluded his review of Exhibit 17 to suggest that if compensation for tree loss was required, there would be room for replacement trees in front of the houses on the shared property line, and two in the rear yard.

Day 3 *(January 10, 2020)*

In continued questioning, the witness acknowledged:

a) that the root exploration recommended for Tree 4 was required (as the "soundest approach") before any clear estimate of impact could be gauged. He acknowledged that he would have recommended that work be undertaken - as being a fair statement - to assess impact: ¾ to 1 m from the foundation wall proposed. As drawn, he acknowledged that the limit of excavation is 1.8m from the tree and the impact of that is unknown.

On other matters, he agreed:

b). trees are important, provide multiple benefits and tree canopy is to be protected and enhanced;

c). he thought that no compensation existed for trees removed within a permitted building envelop;

d). his personal on-site assessment: lasted 20 minutes; involved no actual measurements of tree caliper, heights or distances; was based on an approximate location of Tree 4 (off-site); an acceptance of the Tree Protection Plans without specific cross checks or verifications; involved no contact with Urban Forestry;

e). he made no quantifiable estimates of space availability for tree replacement planting;

f). his sole focus was on by-law protected trees and he made no observations on the percentage of canopy loss - as 'not being a focus or requirement of the City';

g). maintenance helps trees live; he observed that there had been none on-site for at least 10 years but that, based on the decay in the trunk of Tree 3, he supported its removal;

h). a letter report of Ian Bruce (Exhibit 20) suggested a minimum TPZ for Tree 4 (Bruce, Tree 9) was 2.4 m at a DBA of 33 cm; further, that Mr. Litvinov had suggested an approximate diameter of 50 cm and a 3 m separation distance, all "estimates" which he could neither confirm nor deny.

Dr. Max Dida was called by the City following the close of evidence by the Applicant. He is a Supervisor with the Urban Forestry Division of the City and was qualified as an Urban Forestry Planner with expertise in arboriculture. He had prepared an original Experts Witness Statement (Exhibit 22) and a Reply Witness Statement (Exhibit 18), following the Revised Arborists Report of the Applicant (Exhibit 8).

His evidence can be summarized in point form:

1. As expressed in Exhibit 22, the position of Urban Forestry is that insufficient investigation and information has been undertaken to ascertain the extent of impact on the urban forest; namely, that healthy trees on-site and on the neighbouring property are to be removed or impacted that are today growing well and providing benefit to the community; as such, the Applications should be refused;
2. A workable solution appears to exist in respect of Trees 5 and 6 (shed associated). However, for the other private regulated trees, the extent of injury and the details of protection provided are inadequate, but could be avoidable with the flexibility of one house;
3. 'Every Tree Counts': the mature trees impacted need 50-80 years to be replaced and currently offer 10x the benefit of small plantings;
4. The City requirement for compensation on the removal of a private tree that is protected is at the ratio of 3:1; it is not discretionary or negotiable by the owner but is required as a condition of a permit to remove a tree;
5. City policy is to improve tree canopy coverage from 28 to 40% City-wide and 60% of the tree canopy in the City is on private land; removal of tree canopy by private development is in conflict with the policy goal whereby the OP intends to balance neighbourhood and environmental attributes. The information required, particularly for Tree 4, off-site, should be elaborated upon before any approval is given - by way of detailed investigation and attendant tree protection plans;
6. In applying the *Municipal Code* Chapter 813 provisions applicable to private trees, the Applications/Alternate Plan require destruction or injury of two trees and the potential to injure or destroy others. The assessment of injury lacks a sufficient information base and the removal of heathy trees is contrary to the Official Plan, section 3.4 which is the basis for the Urban Forestry recommendation to refuse approval of the Applications;
7. The Natural Area policies of the OP apply to both City and private trees;
8. Tree replacement planting requires 30 cubic meters of soil, 1 m deep to grow; there is not enough information as to whether the apparent insufficiency of area on the south lot precludes replanting.

In cross-examination, questioning and re-examination, Dr. Dida responded with the following information, clarification and advice:

a). Urban Forestry will work with an Applicant before, during or after an appeal of an application where an Urban Forestry permit has been applied for. The Applicant has made no applications to Urban Forestry to date – two years later and with no contact at all;

b). There is no dispute as to Tree 3, the white birch; the by-law allows a removal permit given the tree's condition and the extent of the building envelop on the subject property;

c). For Tree 4, investigations are required of its diameter, the TPZ, extent of the foundation cutback; root exploration; building height implications;

d). Large growing trees require 30 square meters of growing space;

e). The *Municipal Code*, Chapter 813 s.18 B 10 provides that where development information is as-of-right with a building permit issued that requires a tree removal, while an application for permit is still required, Urban Forestry will then issue a removal permit. 'As-of-right' does not include a pending severance application (or other applicable *Planning Act* approvals);

f). Permit issuance is discretionary and if a permit is not issued, Council is the deciding body. With City trees requested to be removed, Council makes the final decision;

g). While greater disclosure is currently being sought at the application stage for planning approvals, there is no provision in place today (sic. January, 2020) to require an applicant to have formally applied for a permit to injure or remove a by-law protected tree. An applicant must supply information of zoning envelops and tree assessment information that may form the basis for a claimed as-of-right permit for removal; Urban Forestry provides comments on the circulation by request from the COA, whether or not an applicant has engaged Urban Forestry. Today, but not for the Applications, information is to be supplied that would permit of a more informed basis as to whether Urban Forestry will object to approvals sought. Those new requirements, put in place by a Council approval in 2018, fall short of requiring an applicant to formally apply for permits to injure or remove trees.

At the conclusion of Day 3, it was agreed that the TLAB would canvass dates to reconvene. Regrettably, the COVID-19 pandemic intervened and a combination of lock-downs, scheduling conflicts and resurgences intervened, causing delay.

Day 4 *(March 3, 2021)*

This date convened by way of a virtual Hearing more than a year subsequent to the last sitting. Parties present included the Representatives: Ms. Stewart, Ms. Abimbola, Ms. Gibson and Ms. Weiner. Participants in attendance included Mssrs. Jamieson, McDonald and Ms. Mercado. Also present as were the planners Ms. Natasha Petzold and Mr. Franco Romano.

Ms. Natasha Petzold was called on behalf of the City by Ms. Abimbola, to give professional land-use planning opinion evidence and advice. Ms. Petzold is a candidate member for Registered Professional Planner status with the Ontario Professional Planners Institute. She demonstrated experience within the Long Branch community having been retained on October 2, 2019 and having performed several site visits and resource investigations.

She was qualified without challenge.

Ms. Petzold adopted the three (3) witness statements of the previous planner for the City, Mr. Alan Young, dated November 1, 2018 and June 10 and 13, 2019. She noted that the latter considered the applicants June 10 and 12th, 2019 revised plans.

Mr. Young's absence went unexplained; his Reply Witness Statement was entered as Exhibit 12.

In retrospect, I entered as Exhibit 23, dated November 12, 2019, the City Consolidated Expert Witness Statements.

Ms. Petzold identified certain additional site descriptions: first, that the subject property is located some 900 m from the nearest GO Transit station; second, the as built dwelling condition has a north side yard setback of 0.0 m and the south side yard setback of 3.9 m; third, the existing building is elevated some nine steps from road grade; finally, pictorial evidence demonstrating no street trees.

A Plans Examiner Zoning Notice had been prepared on the Alternate Plan showing slight differences from dimension statistics presented by the Applicant's planner, Mr. Romano.

She identified, by a Table 1, the characteristics and distinctions evident in the revised June 2019 Alternative Plan, Exhibit 4. These include the following, some previously identified by Mr. Romano:

> A. Part 1, an fsi of 0.6223 times lot area and for Part 2 an fsi of 0.6248 times lot area, as opposed to 0.66x and 0.68x proposed in the Applications.
>
> B. Part 1 (south proposed lot), a north (interior) side yard setback of 0.61 m (1.2 m required); the south side yard setback would be compliant with zoning at 1.2 m.

C. Part 2, a north and south side yard setback of 0.91 m (1.2 m required), improved by an additional 0.3m over the Applications.

D. Both parts require a parking variance from the City zoning bylaw and the *Etobicoke Zoning Code* to permit parking to be located in the front yard. No integral garages are proposed. Front yard parking spaces are to be located in front of the dwelling unit's main front window, recessed almost 2m into the building.

E. Lot frontage and area variances remain unchanged.

F. The Alternate Plan deletes three earlier variances related to: building length; height of the main pedestrian entrance; and main side wall height.

She noted that the Alternate Plan for Part 1 included a front elevation showing a flat roof; Part 2 proposed a traditional pitched and gabled roof. She noted that a flat roof design was not found on Thirty Ninth Street in Long Branch and was not a frequently occurring building design within her study area.

Finally, she noted that the Alternate Plan contemplated that both Parts require permits for the injury or removal of trees under Chapter 813-3 of the *Municipal Code*, respecting private trees. On this topic, she indicated her acceptance and reliance on the recommended refusal of the Applications by the City Urban Forestry Division, including the removal, on Part 1, of a white birch tree and of Trees she identified as 4 and 9, being the two Colorado Blue Spruce, on and off-site. She also noted that Trees 5 and 6 in the Applicant's trees assessment plan, prepared by Mr. Litvinov, contemplated potential injury or removal as being a further concern of Urban Forestry. She adopted the evidence of Dr. Dida that the City would not object to the removal of Tree 3, the white birch, above, but that insufficient detail existed to satisfy Urban Forestry on trees 4, 5, 6 and 9.

Ms. Petzold defined a study area which included RD zoned lots east to 36th street, north of the Lakeshore Boulevard rear lot lines and south to the lots not fronting on Lake Promenade, the latter due to their 26 m frontages. She excluded lots to the east and west in the RM zone category, as it permitted multiple residential units and was not part of the 1919 in 1920 plans of subdivision.

The study area contained, in her evidence, 274 lots consisting of 259 single detached dwelling units, four semi-detached dwelling units, six low rise 'Plexes' and five vacant lots.

She equated her study area to the "geographic neighborhood" (GN), contemplated in the current Official Plan of the City, incorporating OPA 320. In that regard, she also defined an area of the "immediate context" (IC) consisting of the following: 35 lots fronting on Thirty Ninth Street south of James Street and north of Lake Promenade, of which 29 are detached dwelling units, two are semi-detached building units and four are low rise apartments, or Plexes - with zero vacant lots.

The GN and IC became the basis of her geographic reference evidence in respect of the planning policy regime in place at the time of the initiation of the Applications in 2017 and subsequently, for the revisions in the Alternate Plan, in 2019.

Her evidence was diligent in referencing both the original Applications and the Alternate Plan, noting for both that early versions of the LBNCG and OPA 320, had been adopted by City Council substantially throughout the entire journey of their consideration and assuredly for the Alternate Plan.

Ms. Petzold introduced a time dimension to her analysis noting that all lots within the GN had been created by the Eastwood Park plans of subdivision in 1919 and 1920, with an original lot frontage of 50 feet (15.24 m), throughout. She noted that 88% of these lots had been built upon between World War I and II, with some 21 houses (approximately 7%) being built this century, as replacement housing.

In the IC, only one dwelling unit, at 7A Thirty Ninth Street, was constructed after the year 2000 on a then existing lot of record with a 7.62m frontage.

She made the following points with respect to the characteristics of the lot pattern:

a). Most of the dwelling units were constructed prior to planning controls.

b). In the GN, 43% remain in the original prevailing lot frontage size 15.24 m. Further, 54% are 12 m or greater, the zoning standard. And 28% are 7.62 m or less and of these 76% are dwelling units constructed prior to 1960.

c). She identified 10 severances that had created ‘undersized’ lots (from the zoning perspective of lot frontage and lot area) within the GN, with density fsi’s ranging from 0.48 times to 0.69 times lot area. This data is displayed in Exhibit 22, Decision Index Map.

d). While indicating two additional decisions are not yet final, she noted that all of the dispositions pre-dated final approval of OPA 320 (December 2018) and the LBNCG (January 31, 2018).

e). She also noted, by address, that eight refusals of severances (one under appeal and two more decisions were currently pending) had occurred via relatively recent decisions of the COA and the TLAB. These refusals had density ranges from 0.56 times to 0.69 times lot area.

f). Adding to her lot frontage and fsi data descriptions, she advised that 62% of all GN lots met or exceeded the minimum lot area of 370 sq. m set by the zoning bylaw.

g). She said that the average fsi in the GN is 0.3 times lot area, well below the 0.35 times permitted by the zoning bylaw.

h). She said 74% of the lots in the GN comply with the density maximum in the zoning bylaw, of 0.35x lot area. She said nine dwelling units have the same or exceed the density proposed in the Alternate Plan (0.62 times lot area) - and only three in respect of the 2018 plans.

i). She advised that there were no lots within the IC, being the two block faces in the immediate area, that are the same as or greater than the Alternate Plan's proposed fsi's.

It is to the foregoing statistical base, on her investigations and on observations, that Ms. Petzold applied and interpreted applicable policy and evaluation considerations.

In this regard, her opinion evidence may be summarized as follows:

1. While original and updated versions of the PPS and the Growth Plan support intensification, it is the Official Plan that is instructive as to the actual locational criteria to be satisfied and comprehensively evaluated in light of the Applications and the Alternate Plan. In that regard, the subject property is not located within a 'Major Transit Area', a 'Strategic Growth Area' or a City described policy area identified for intensification. She was of the opinion that the "green infrastructure" policies of the Growth Plan and the PPS support the concerns expressed by the Urban Forestry Division that the potential removal of trees is not supported by provincial policy nor is it consistent therewith. In like manner, she was of the opinion that section 2.3.1.5 of the OP provided and promoted environmental sustainability of the urban forest and its canopy as an essential policy goal. She stated that the OP, section 3.1.4 C, expressed the policy intent to preserve and enhance the urban forest. This objective is underscored by language that requires support for providing growing environments, increasing tree canopies, regulating the injury and destruction of trees and promoting "green infrastructure". She was of the opinion that the removal of the Colorado Blue Spruce trees, or their injury and potential loss, are not supportive of these Official Plan policies related to the protection of the natural environment and the urban forest.
2. In applying OP policy, section 4.1.5, as existing pre-and supplemented by the addition of 'prevailing' post the Applications, she confirmed the policy obligation to 'respect and reinforce the existing physical character' of the GN and IC in terms of the: b) prevailing size and configuration of lots; c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties; and f) prevailing patterns of rear and side yard setbacks and landscaped open space. She noted that the policy intent is to the effect that no changes should be made that are "out of keeping" with the physical character of the "established residential neighborhoods" (section 4.1.8). She stated that in her view, conformity did not exist in the Alternative Plan or the Applications with

these identified policies in that the lot size and configuration are inconsistent with the GN and the IC both in terms of the initial language and the addition of “prevailing”, in OPA 320. She found the proposed massing in juxtaposition to the existing built form created issues of adverse impact on privacy and overlook and adjacency of scale. She felt the variances created identifiable streetscape issues, whether under the old OP or OPA 320 or the LBNCG, that adversely impacted the rhythm of lot frontages on the street, the massing, scale and proportion of buildings and the separation distances between them.

3. She noted several “defining conditions/features/criteria” of the LBNCG that she felt were offended both directly and as an element of established neighbourhood characteristics required to be examined under the Official Plan. These included: **B**. “Street interface”, namely that the proposal did not present a harmonious roofscape and scale support relevant to adjacent structures, inclusive of a flat roof style that, she said, does not conform with the street environment or provide massing mitigation - opinions supported as being applicable to both of the Alternate Plan and the 2018 plans; **C**. “Support for consistent and generous front yard setbacks, maintenance of trees, the minimization of curb cuts and the enhancement of front yard landscaping”, as defining features. She stated that the Alternate Plan proposal presented front yard car parking spaces, no trees and risk to the urban forest canopy in a manner that is not consistent with either the guidelines or good planning principles. Moreover, she was of the opinion that the proposed side yard setbacks, the rhythm of buildings, the unavailability of viable rear yard access and the landscaped open space separation objectives are simply not met. The narrow lot widths require the avoidance of generous side yards and are reduced in the Alternate Plan by 24% and the Applications by 30%. She was of the view that the existing physical character of the area with respect to appropriate separations setbacks is not being provided nor the punctuation of observable open spaces; **E**. “Support for setbacks ensuring the provision of privacy, amenity space and the preservation of landscape open space, mature trees and natural features”. In contrast, she was of the opinion that the proposal projects a built form and above grade decks creating conditions of massing, overlook and privacy invasion that are not reflective of the neighborhood; **F.** She agreed that the defining condition of the existing neighbourhood are “lots in excess of 9 m frontage and 35 to 45 m in depth”. The proposal does not meet the established frontage standard, is smaller than the range acknowledged, for both plans, and creates uncommon fsi demands that are not present within the IC; **G.** While the LBNCG support contemporary styled one to two-story buildings, she noted that the 2018 Applications plan presents anomalous three-story buildings analogous to 7A Thirty Ninth Street. She felt that the contemporary style proposed in the Alternate Plan for Part 1, a flat roof presentation

of massing, is not present in the IC and does not respect 25 Thirty Ninth Street, its neighbour. As well, the design presents issues of overlooking, privacy, proximity, impact on trees and massing issues out of keeping with the character of the neighborhood.

4. In her assessment and opinion, she felt neither version of the Applicants plans is in keeping with the LBNCG or the criteria of section 4.1.5 of the OP, pre-and post OPA 320. In reviewing OPA 320, she said that it's essential elements were in place effective on Council's adoption on December 10, 2015. She said OPA 320 clarifies the policies for the protection of the neighbourhood by modifying section 4.1.5 in a manner to make it more prescriptive - requiring a more detailed analysis of the GN and IC. She said the subject property is not on a major street and that the major consideration that extends to the Applications is to ask whether they are "materially consistent with the prevailing physical character of properties on both sides".

In considering the word "prevailing", she noted the inconsistency of the Applications and the Alternate Plan with what was "most frequently occurring" in terms of lot frontage, lot area, density (fsi), separation distances and the preservation of the urban forest. In applying OPA 320, she was of the view that the proposal fails on measures of the size and configuration of the lots, building height, massing, scale and accessible, distinguishable side yards. As well she noted that: the neighbourhood has a mix of unit types, unit sizes and densities but that the GN has prevailing lot frontages (54%) consistent with zoning; lot densities that comply in a much more modest manner; and a built form visual character of detached, separated dwellings.

She expressed the clear opinion that the massing of the buildings proposed for both forms of the Applications is not in keeping with the character of adjacent residences and properties, does not conform to section 4.1.5 c) respecting massing and scale and that her opinion conclusion applied with or without OPA 320.

She restated that the most frequently occurring density, currently, has an fsi measure of 0.35 times lot area, or less. The most frequently occurring density in the IC is 0.35 times fsi, or less - for 77% of its dwelling units. As such, in her view, in the IC the proposed density of 0.62 (Alternate Plan) to 0.68 times (2018 Applications) would have a higher density than all of the existing dwelling units in the IC. To add two more such dwelling units would extend the fsi range and, for the lot frontage in the IC, into the category of 'prevailing' or majority. In her view, the proposed densities do not meet the density criteria of the OP as amended by OPA 320: and they do not reinforce and respect neighbourhood character or the immediate context.

She relayed a statistic from the material of the earlier planner, Mr. Young: namely, the IC side yard setbacks were observed to average 1.5 m, were apparent and as such are in excess of the zoning bylaw standard of 1.2 m. She said she confirmed this statistic by observation, photographs and COA information and found it to be an appropriate description, if approximate.

She concluded with the opinion that on lot configuration, frontage and area measures, and including separation distances, density, design impacts and unsatisfied Urban Forestry policy protection considerations, that the proposals were not good planning. She was of the view that the stability of the existing larger lot pattern would be transformed in a manner not in keeping with all policy sources and in a manner that does not conform with the Official Plan either in respect the IC or GN, whether pre or post the approval of OPA 320.

She applied, to a similar result, this opinion evidence as well to the considerations identified under section 53 (12) of the *Planning Act* and the matters listed in section 51 (24), specifically subsections b), c) d) and g): prematurity, non-conformity, sustainability and restrictions proposed.

She expressed that a denial of the consent requires the rejection of the variances on the four tests identified under Jurisdiction, section 45 (1), above.

In summary, she reiterated the criteria and proposal attributes that do not respect and reinforce the neighbourhood, GN or the IC, arise from issues of lot configuration, density, and side yards as being not in keeping with the intent of the Official Plan. She felt frontage, density and age of construction to be pivotal. Support for the 7.6 m lot frontage standard here, she said, would become (numerically) prevailing in the IC and create a precedent, including sanctioning the loss of mature trees. This, all in a circumstance of being the first approval under the full light of the policy intentions expressed in OPA 320 and the LBNCG.

In questions from Ms. Gibson, Ms. Petzold confirmed that Long Branch was within the lowest priority category for study analysis of Major Transportation Hub Study Areas. Further, that the potential for the loss of private trees in rear yards was incorporated as a consideration in respect to the preservation of “green infrastructure“.

Ms. Weiner had no questions.

Cross- examination by Ms. Stewart of Ms. Petzold canvassed a variety of areas resulting in the following additional evidence:

> One. In respect of “green infrastructure” while the planner said she had reviewed all OP policies, she agreed she had only had reference to certain policies described above, but ‘also 3.4’.
> Two. She acknowledged a tool for regulating matters related to urban forest is found in the City *Municipal Code*, Chapter 813, ‘although the Urban Forestry Division has a discretion to review under its independent professional expertise’.
> Three. She acknowledged that trees are to be preserved “wherever possible”, meaning that there can be exceptions. She agreed the key phrase to be ‘as-of-right’. She acknowledged that the *Municipal Code,* Chapter 813 would have to conform to the Official Plan in effect ‘but that

tree removal that was not 'as of right' was subject to review which may not uphold the intent of the PPS and Growth Plan. Such removal can then breach the policies'.

Four. She agreed that 'new terms: "housing options" (including single detached dwelling units) and "market based" (housing demanded by the market) were terms that had been added to the 2020 version of the PPS'.

Five. She did not agree that zone changes were not observable in defining a 'neighbourhood' but did agree that while the OP directed consideration of zoning it does not say a neighbourhood definition must be based on similar zoning – 'nor was that her assumption over the consideration of exploring consistency in physical character, not replication, to achieve compatibility'.

Six. She acknowledged that "contemporary (flat roof designs) can be harmonious within the criteria of section 4.1.5", 'but provided that the existing context, proportions, form, sizes and scale of nearby residential development are fully respected and appropriate materials are used'.

Seven. The planner agreed that, with development, some impact can occur and qualified that by suggesting that 'it is not good planning to plan for impact'. Rather, to her, good planning is to avoid negative impact through the consideration of ways to limit impacts. In her view, impacts in this circumstance can be avoided by intensification on the existing lot of record.

Eight. In agreeing that OPA 320 places greater relevance or emphasis on the IC, she felt 'the real policy direction was to further the respect and reinforcement of the physical characteristics of the neighborhood, not as a key test in itself but as directed by listed criteria and their application, as those found in both pre-and post OPA 320 versions of the OP, section 4.1.5'. In her view, she repeated that consistency is the defining characteristic observed in terms of scale and size relevant to the lots, the modest character of dwellings in the area, open spaces between buildings and in terms of mature tree preservation, as well as front and rear yard separations that contribute to a consistent character in both the IC and GN.

Nine. She agreed that consistency in lot frontage alone is not a defining characteristic in the IC where there are an equal number of proposed Applications and bylaw frontage compliant lots. 'There are more of the latter in the GN', she said.

Ten. Within the IC, she acknowledged as correct math that 22 of the 35 lots are not zoning compliant in lot frontage and are the most frequently occurring and the largest redefined category, but said that 'from a planning perspective, while categories inform it is the relationship of lots, including separations and existing built form that apply to evaluating undersized lots'.

Day 5 *(March 10, 2021)*

On day five, Ms. Stewart continued her cross examination:

Eleven. In pursuing the question of “prevailing” lot frontages, Ms. Petzold agreed that planning is not the methodical or statistical input but relies on observation counts as one tool. She again identified that the age of the lot categories held dwellings largely constructed in the 1920’s and that ‘the presence of undersized lots is not a precedent for a new lot’.

Twelve. She agreed that there were no Official Plan policies directing regard for dwelling units based on the age of construction. However, she felt it important to consider age of construction as a test of physical character and, as well, the nuance of understanding conditions established before zoning controls.

Thirteen. She maintained that the significance of the lot frontage and lot area mapping and her Witness Statement commentary is to understand the number of lots that would be subject to subdivision if the lot frontage standard is 7.62m were to become generally employed.

Fourteen. She again acknowledged that the western portion of her study area has a larger number of lots that are not zoning bylaw compliant than elsewhere in the study area. Further, that there were more “pink and yellow” identified lots on Thirty Ninth Street than in any other area in her neighbourhood study area: ‘meaning not zoning bylaw compliant’. She agreed that it was fair to acknowledge a mix within the IC on Thirty Ninth Street - as it is referenced in the Official Plan, the OPA 320 version, that directs special attention to the IC, where there is a mix. Further, that within the IC, the experience was unique to other streets and that ‘an observer would see many modest dwelling units appropriately situated and scaled for the lots on which they sit’.

Fifteen. She agreed that of the seven applications refused post 2018, they are all occurring after the creation of the TLAB and the final implementation of OPA 320 and the LBNCG ‘but that the refusals are consistent with them’.

Sixteen. She did not agree that OPA 320, in its reference to “prevailing” directed a numeric analysis not required by the earlier 0P. She said there was no guidance requiring a look at the numeric numbers but there is added language in OPA 320 as to how to assess neighbourhood character. This included “prevailing”, being ‘the most prevalent in terms of presence - of being prevalent’, and the addition of the “density” term, not previously considered. It was her view that the issues of “fit” and “respect and reinforce”, were in the previous Official Plan and it left the nature of the analysis open.

Seventeen. On the issue of precedent, she said that her number was a potential of 118 lots of 15.24m or greater - that are eligible for an application for severance. She agreed it was not clear how many we're actually eligible (that could affect) the physical character of the neighbourhood as a whole. She did not agree that there could be no more severances in Long Branch 'as each one was subject to an independent review, including the factors relevant to the subject Applications: here, the site being located internal to the block, having an increased density request, impact on the neighbours through separation distances and privacy, as well as the injury to trees'. She stated that there were no other lots in the IC with the area or frontage proposed that was equal to that requested, that had the combination and impacts or that share the relationship of mass and lots size.

Eighteen. She agreed that fsi was not indicative of the resulting product of height, massing and scale but suggested that 'where the fsi is different, massing and scale can be considered as a measure of difference'.

Nineteen. She acknowledged that the City data could have inaccuracies and errors but that it was supplemented by building permit and COA decisions, as well as observation, and that it uses data, for floor area, from MPAC, the Municipal Property Assessment Corporation. She agreed that the data may under-represent density, but that it is 'the best source and on an overall basis is reliable and used by the planning profession'.

Twenty. She acknowledged that she had assessed the impact on the two adjacent properties and felt that appropriate as she had also looked elsewhere and on a broader scale.

Twenty one. She acknowledged that the LBNCG were not incorporated into the Official Plan but presented themselves as a tool to examine the "fit" and "respect and reinforce" directions in interpreting and applying the Official Plan. She acknowledged that the guidelines and their "character defining conditions" do not supersede the zoning bylaw. She also acknowledged that the LBNCG have no intent to limit architectural style, 'although they do increase the attention and perception of mass related to a lot'.

Twenty two. She acknowledged the 2019 Alternate Plan makes some improvements but that 'they do not address the key issues as it would be impossible to do so on a severed lot: in this case, density; setbacks, trees, impacts - all being matters that result from the severance itself'.

Twenty three. She acknowledged that there were no variances requested for front yard setback or front yard landscaped open space but stated that

> 'the creation of two driveways and two front yard parking spaces do detract from the front yard landscape open space which is an element of the defining characteristics of the LBNCG'. Further, she acknowledged that privacy and overlook matters were related to the Applications before the COA primarily, 'however, there still remain the issue of building length and rear decks affecting privacy and overlook and the fact that the buildings as proposed are closer to their neighbours in terms of mass and that there are proposed to be two of them'.

There were no significant clarifications revealed in re-examination.

Ms. Ruth Weiner spoke on behalf of the Party, Ken O'Brien without objection. While the two may be related, under the TLAB *Rules,* a lay citizen Representative may act both as a Party and give evidence, subject to appropriate weight consideration. In this case, the Party Appellant O'Brien and his Representatives did not exercise Party entitlements of participation in examination or cross-examination, to any significant degree.

Ms. Weiner has lived directly across the street from the subject property since 2006. She described the Long Branch neighbourhood in affectionate terms as being one that demonstrated a respect for nature, large trees and the fact that residential housing was not dominating in form.

She described her involvement as an active participant and leader in community affairs including being a member of the Tree Canopy Committee, the Tree Giveaways Program, a member of the Garden Tour Committee and active in respect of animal rescue. The TLAB presumes these associations to be off-shoots of the LBNA or sponsored thereby, reflecting membership or affiliation.

She took the TLAB to her correspondence dated July 29, 2018 to the COA (Exhibit 24).

She spoke as a concerned citizen identifying 'risks' to her perception of the neighbourhood, while at the same time she hastened to welcome 'development in compliance with City policies'.

She provided a presentation dated November 22, 2019 (Exhibit 25) wherein she attempted to demonstrate changes to her neighbourhood through development. She described these generally as trending to a reduction in the amount of green space, garden space and environmental features.

Her concerns with the Applications and their successive revisions related to the creation of two lots and structures with emphases that were not consistent with the neighborhood; she repeated the reduction in open space in the public realm and the removal or injury to healthy trees.

She called these incidences of severance and development to be elements of impact that she termed “negative transformations”.

She said the Official Plan had a ‘cornerstone policy’ of ensuring respect for the existing physical character of a neighbourhood and stability. She felt these policy considerations were being ignored by the Applications: ‘by the proposal to construct substantially more massive buildings and two lots that were out of place’.

She described her neighbourhood as one of modest houses and generous landscaped open spaces and felt the proposals to be insensitive development not respecting and reinforcing the existing conditions but rather instrumental to changes to the character, analogous to a new subdivision.

She lamented as her main concern the consequences of functional change: reductions to the provision of social, economic and environmental benefits, including trees, to the neighbourhood as well as the City.

With reference to her voluntary activities, she noted that increases in the fsi take away plantable areas and garden space, also seen as a cultural benefit in the built form under the prevailing fsi. In particular, she noted the reduction in tree canopy and the extensive survey efforts underway and supportive of encouraging, in Long Branch, meeting the City goal of a 40% percent canopy cover.

She noted a City study that identified the neighbourhood residential areas as having the largest potential to add canopy coverage towards the City goal - some 10%. The next closest potential are City parks, at 3%.

She referenced excerpts from the City Strategic Forest Management Plan respecting the impact resulting from tree injury and removal. These were summarized as: a loss in tree canopy; a decrease in planting space; a decrease in green space available for ground water absorption; a reduction in the building’s ability to adjust to the effects of climate stage; and the disbenefit to air quality. She said the proposals were misaligned with the Official Plan intent to protect the urban forest for the benefit of neighborhoods. As such, she was of the opinion that tree injury and removal has a negative impact on the cultural heritage value of trees in the Long Branch community and her neighborhood. She referenced the ability of mature trees to mitigate carcinogens already identified to exist in the nearby three traffic arterial junctures: the Gardener Expressway, the 427 Highway and Lakeshore Boulevard.

She urged the TLAB to support local efforts of improving air quality and the natural environment, as referenced Staff reports and studies had identified as recommended community efforts.

She referenced this Member’s description of support for an ‘environment first approach’ to *Planning Act* approvals, via an excerpt from the TLAB decision on *15 Stanley Ave*.

Ms. Weiner suggested that the pace of change in the neighbourhood was 'rapid insofar as applications for severance and changes of the rules are concerned'. She felt this was not consistent with the "fit" and "gradual change" identified by the Official Plan. She identified, as well, her view of the impact on increasing housing prices as demonstrated by lot division ambitions.

Finally, she said that clients and neighbours need certainty as to the essential characteristics of the neighbourhood and suggested that that certainly can be achieved by sticking with the zoning bylaw. She felt assured that trees and development can coexist.

While the City had no questions, Ms. Gibson elicited more on the 'lived experience' referred to by Ms. Weiner. The latter expressed the view that the Applicant's 2018 and 2019 plans were essentially the same, with some differences in front design. However, the elements of density, mass, large built form and 'mental impact' remained the same.

She did not support parking pads in front of the proposed buildings.

In cross-examination, Ms. Weiner acknowledged that there were no trees in the front yard but she noted that 'a modified single detached building plan could be modified to protect all the trees'.

She did not agree that refusals by the COA and the TLAB have slowed the rate of applications. She simply did not know about that but observed they "keep coming".

Christine Mercado, gave evidence on behalf of the LBNA (Association). She has been President of the LBNA since its incorporation in 2018.

With reference to Exhibit 14, pages 1484 -1768, Ms. Mercado reviewed an extensive record, photographs and documents constituting reasons and support for the Associations request for the refusal of the Applications, and as revised by the Alternate Plan.

These reasons including the following:

1. Long Branch is not a Strategic Growth Area and not a priority area for the investigation of Major Transit Node facilities.
2. Severances of existing lots of record create character changes and present transformation of the neighborhood;
3. Reuse, renewal and revitalization can occur and has been demonstrated to occur on existing lots of record.
4. The prevailing character a Long Branch is one that has modest homes and generous lots.

5. Trees are an integral part of the tapestry in the character defining elements of the Long Branch community long supported by environmental policies.
6. The removal of two trees is inconsistent with longstanding planning instruments, policy and regulatory reconsiderations and community identity.
7. The Alternative Plan addresses new design proposals that fail to respond to policy, guidelines and standards protective of community values.

Ms. Mercado expressed that the mission of the LBNA is to protect the physical character of Long Branch, to celebrate its appearance and longevity and to enhance its attributes. In this regard, she recited multiple activities in the history of the Association pre and post its incorporation in 2018. These included the receipt of successive grants from the *Toronto Parks Foundation*, the *Canada Summer Jobs Program*, *Forestry Ontario* and the *Ontario Urban Forest Council*. Together with convening bike tours and supporting the Long Branch Gardens Tours, she noted the LBNA celebrations ongoing of the 135 years and more of the Long Branch community.

She stated that the LBNA is not against development but that it supports the more recent policies and bylaws of the City and the 'true meaning of the term "minor variance.". She said the Association was of the view that a 'clear-cut' of a lot is not a solution to renovation and redevelopment, at the expense of privacy and mature trees.

She recited how in her view, from '*Pipeline*' and the more recent '*Profiles Toronto*', the provincial Growth Plan strategy has been met insofar as it contemplates intensification, including Long Branch within the City. She identified how the OP was being used to direct growth to establish *growth centres* and, in her view, away from neighbourhoods. She updated the TLAB on extracts demonstrating project development along Lake Shore Boulevard in the Long Branch neighbourhood, suggesting intensification was "still on track at 102%", via site area specific plans in identified intensification areas and projects. She stated no severance application has been approved since the beginning of the TLAB, the institution of OPA 320 and the LBNCG 'guidelines'.

She said her community was stable and not static, comprised of generational families who supported the successive City reports and actions in their adherence to longstanding density controls.

Day 6 *(March 12, 2021)*

At the outset of the sixth sitting day, Ms. Gibson raised a matter of the proposed late filing of a response, proposed by the Applicant, to the evidence of Dr. Dida.

I ruled that the matter of the scope of reply evidence would be dealt with on the completion of the evidence of the Appellant's.

The sixth sitting day consisted of the evidence concluded by Ms. Mercado and that of LBNA witnesses called: Mr. John McDonald; Ms. Robbie Jordan; Mr. Ron Jamieson; and Mr. Alexander "Sandy" Donald.

The LBNA witnesses and that already heard from Ms. Weiner demonstrated considerable overlap and essential agreement on several common opinion elements. I list these here as Ms. Mercado's continuing evidence also included several of these points:

A. None professed an objection to development *per se*, or an end to the right to apply for severances in Long Branch.
B. Substantial concurrence with the evidence of the witness Petzold to the effect that area character was one of modest housing, reflective of the origins of the Eastwood 1 subdivision, in 1919. Those plans, it was said, established a prevailing lot pattern and unique deployment of prevailing large lot frontages, with 'porosity' between dwelling units - applicable even to narrow lots created thereafter.
C. While acknowledging a mixture of lot sizes and variety of dwelling unit styles, they expressed a "Muskoka in the City" image of mature trees and significant canopy coverage, where front yard parking pads are present but not dominant.
D. They have experienced on severed properties of 7.62 m width a minimization of plantable space, a loss of mature trees, the expansion of single driveways to accommodate the lawful parking of two or more vehicles and the appearance of over massing on their respective undersized lots and of buildings extending deeper into the rear yards - giving rise to issues of privacy, overlook and loss of green space.
E. Generally, each asserted a Long Branch of history wherein successive village, Borough, City and amalgamated City councils, for a period in excess of 60 years have maintained significant zoning performance standards consistent with Official Plan policy direction to respect and reinforce the existing physical character of the area. Successive Official Plan and zoning by-law provisions were asserted as giving clarity to maintaining the essential character elements of Long Branch, above described. Rather than promoting high densities and narrow lot frontages as being a relationship that did not historically exist, a *status quo* in regulations has been maintained - one that is not reflected in the Applications and the Alternate Plan.

   Ms. Mercado in particular asserted that OPA 320 included Long Branch and reflected Council supported policies and guidelines that served to maintain the modest appearance of Long Branch housing. She maintained that under the Official Plan (section 4.1.8), specific standards such as frontage and fsi are identified as significant statistical numerical standards that are offended by the Applications, even as amended.

   She noted that the Official Plan, section 5.3.2, contemplates the creation of 'guidelines' as a tool and planning instrument to assist policy implementation. This was accomplished with the adoption of the LBNCG, in January of 2018. She noted the success of the zoning

bylaws, OPA 320, the Official Plan and the LBNCG to not encourage the severance a 50 foot lots to the 6 to 8m category contemplated by the Applications, and the Alternate Plan.

F. Ms. Mercado and others addressed the IC of the subject property and stated that its proposed height and massing, with the flat roof expression, created a massing aspect and lot depth penetration that caused a direct and negative impact on the neighbors. Their emphasis was that the relationship of the two proposed new housing units had to be considered in all their aspects and not in terms of isolated or single discrete measures. Ms. Mercado in particular felt that the fsi measure is a control element. She stated that the density standard is 0.35x lot area had been mandated and continued through zoning and never changed. She said she felt the zoning standard was not artificially low and could yield a 2700 square-foot home on a standard 50 foot lot. All agreed that the requested density of 0.62 times lot area was not a minor increase.

G. There was also general agreement from these witnesses that among the site characteristic in Long Branch are dominant front porches with ground related windows and rear yard access, whereas the Alternate Plan presented an entrance only approach, front yard vehicle parking in front of the main windows and extensive blank walls advancing privacy and overlook concerns into adjacent rear yards, from second storey windows and elevated decks.

H. All took issue with the removal of two healthy protected trees. Ms. Mercado recited the findings of a capstone study by Ms. Jackie DeSantos, entitled “Tree Inventory and Canopy Study”. This student project examined 56 parcels of land that had been severed for redevelopment in the Long Branch neighbourhood between 2009 and 2018. She concluded there had been a loss of 42.8% of the canopy coverage on the subject properties that was immediate. Losses on adjacent properties, she had stated, required more time extensive study and we’re not included.

I. All agreed that the combination of the 7.62 m lot frontage and an fsi approaching two times that permitted by the zoning bylaw, was a combination that was not in character with the physical appearance of the neighbourhood both pre-and post the adoption of OPA 320; neither was it a ‘prevailing’ relationship but one that occurred only a very few times in the IC and the GN.

In cross examination, Ms. Mercado acknowledged evidence of plantings on the narrow Boulevard constructed between the sidewalk and the road on area streets;

however, she was not prepared to except that this was a planned location, approved by Urban Forestry or available for large canopy trees.

On the issue of the “tipping point” being reached with the addition of two lots undersized for front frontage and lot area with a higher than permitted density, she maintained the prospect of a domino effect encouraging the precedent of the subdivision of complying lots. She asserted that to her this was a relevant consideration to maintaining neighbourhood character and not putting other lots at risk. She advocated a balanced approach for renewal.

On the subject of the LBNCG, she professed that these were character guidelines not “urban design guidelines”. She felt these reinforced Official Plan and zoning constraints and even though other changes were made in the City’s harmonization bylaw, the fsi standard of 0.35 time slot area was not changed. She said increases to that standard were not common and not of the scale as proposed.

Finally, she disavowed the use of constraint conditions to ameliorate the potential impact of future changes. She found conditions in her experience did not give particular certainty as to future impacts. In this regard she stated experience, on *Shamrock Avenue*, with elevated decks being prohibited only to be allowed on a subsequent appeal.

Mr. John McDonald has been a resident on Thirty Ninth Street since 1997. He spoke to his PowerPoint file of November 22, 2019 (Exhibit 26).

He addressed the intensification characteristics he has experienced since 2018 within 100 m radius of his house. He spoke of the inconsistencies that lot severances had brought to his neighbourhood ‘ambience’: a loss of landscape of trees and canopies, the extension back into rear yards and the interruption to the flow and pattern of houses occasion by the visual distraction and ‘hardscaping’ of narrow lot redevelopment.

He described the parking influence on the lot pattern south of James Street: comprised of 16 examples of parking at the side, seven integral garages, six lots with parking pads out front and three with rear yard parking. He said he had personal experience with “pad creep”. Namely, that narrow lot property owners have a need to get to the rear yard, they need pedestrian walkways, they need space to store blue bins and they need to get by their cars and they need to accommodate tandem or side yard parking, all by increasing the pad size.

He also addressed, with photographs, the fact of the loss of soft landscaping, and his experience in it impeding natural water flow, causing water pooling and storm water management expenses on basement repair.

He concluded his evidence by saying further approvals will set a precedent and lamented that the pace of intensification will be “out of control”. He took offence to the massing and proposed built forms of greater than 0.6 times lot area when regeneration

can occur without impact. He felt front yard parking pads were not characteristic; the loss of trees with their benefit meant to him that the Applications and the Alternate Plan 'failed all four tests' as neither contributory nor supportive of a stable environment.

In cross-examination, he said his opposition 'was not about the individual concerns expressed but about the total proposals for the property, not one feature'. In terms of front yard parking, he thought the window sizes of the Alternate Plan were unusually different from a streetscape perspective. The issue was not the width of the driveway shown but with the presence of a second car. He did not feel the parking space contemplated was adequate or sustainable and, with time, the pads will be widened to permit angle parking and increase the ease of on-site pedestrian flow.

Ms. Robbie Jordan is the neighbouring resident to the south of the subject property, since 2005. She spoke to her materials (Exhibit 12, page 802).

She advised that the subject property has a two-story apartment and that both sides of the dwelling have been rented over the years. She stated concerns for the proximity of the extended side wall and the addition of overlooking windows on the second level.

She felt she would be "overwhelmed, over massed, overpowered".

While acknowledging she was uncomfortable with the potential invasion to her privacy, she acknowledged that such circumstances can happen in a City environment. She expressed clear concern as to adverse effects on the micro climate of her rear yard which she treasures. She stated the 'Tree 6', her Colorado Blue Spruce is the only coniferous habitat in her rear yard. She expected it to have a negative impact with building, even with the Alternate Plan. She said the tree is 60 feet high and its base is 2 feet set back from the fence and only one and a half feet from the lot line.

She said that she benefits from the tree's shade, its privacy, its habitat, its canopy and its air cleaning qualities. She quoted that: "only one developer benefits from its removal; the whole community benefits from its preservation". She was of the view that she maintains the tree, that it will be hurt and 'that; a neighbor should not injure a neighbour's tree'; only time will tell if that hurt or harm requires removal.

In cross-examination, she acknowledged that the Applicant had no intention or ability to remove her tree and that she will remain in communication with the Applicant, dependent on the nature of the TLAB decision.

She agreed that her yard would benefit from an on-deck privacy fence at 1.5 m in height being installed, as 'better than none at all'.

Mr. Ron Jamieson is a nearby resident on Thirty Eighth Street, to the east. He spoke to his *Property Analysis*, revised February 28, 2021 (Exhibit 27) and his PowerPoint on "*Housing Supply in Long Branch"*, dated 25 of June 2019 (Exhibit 28).

In addition to the foregoing listed common concerns, he spoke to the disruption of the neighbourhood and the neighbours of a lengthy history of projects that he detailed. He had performed a study area, property analysis involving 350 residential properties and 17 “non-conforming” properties - non-residential uses, primarily. He described how these contributed to the previously described ‘unique’ area character with standards that have not changed since 1958.

He had mapped his study area. He said it included an average lot frontage of 40 feet whereas the proposal is ‘1/2 of the prevailing lot frontage’, namely: 45% of the average and nearly 2 times the 0.35x area fsi – ‘a continuous standard applicable in Long Branch for 62 years’. He calculated that the proposed density in the Alternate Plan of 0.62 times lot area is outside the 95% confidence interval: ‘it is statistically indicative of an “outlier” that does not “fit“.

He was of the view that the new ‘double’ density proposed does not respect and reinforce the community; by exceeding this Official Plan direction, he found it to be a failure of conformity and a failure to meet the Growth Plan.

Mr. Jamieson identified redevelopment/renewal characteristics in his study area of Long Branch: it included 10 floor additions and 17 renovations scattered throughout the community. In his view, this indicated a preference for renovation over severances.

Within the IC, he noted that 88% of the 25 foot existing lots pre-date the introduction of zoning controls. He acknowledged that they constitute a part of the fabric, but that severance activity was the antithesis of the bylaws. Further, that most of the severances for the smaller lots had occurred in the 1920’s.

He felt the subject Applications were the first severance request of a 50 foot lot on the street since the 1920’s.

Mr. Jamieson discussed that he had conducted a number of statistical manipulations but decided that he could not determine a ‘prevailing’ lot frontage as a single statistic.

In terms of prevailing fsi, he noted the range within his study area to be 0.23x to 0.29 times lot area, with an average of 0.28 times lot area. He said an approval would result in providing the second largest houses on the block and on the street. Further, that that would serve as a precedent flying in the face of the statutory tests not being met.

It is comparison with 7A Thirty Ninth Street, he demonstrated that the proposed buildings on the lots would extend into the rear yards beyond the adjacent bungalows in a manner that does not reflect the character of the block.

He was of the opinion that the variances we’re too large to be considered minor. He recalled a decision of Ontario Municipal Board Members Terry Baines and Robert Eisen (*Long v. Toronto (City), 1989*) which he took to support the proposition that

because the bylaws are expressed in numerical standards, a comparative arithmetic analysis - as he had undertaken - is appropriate.

A further reference to (now) a Member of the TLAB, Member Yao, he urged that there "should be a valid reason why the zoning bylaw requirements cannot be met" (*Assaraf v. Toronto (City), 1984*).

In his detailed experience with severance applications in the Long Branch community, he said the subject Applications do not respect and reinforce street character, they constitute a precedent which would destabilize, that they were not minor, and that did not conform to the Official Plan policy objectives in frontage, density and impact.

In response to Ms, Abimbola, he described an instance in which the City, like residents, had been unable to retain timely professional advice in a circumstance where the appeal Hearing was scheduled without the time necessary to get approval to retain an external planner.

In cross-examination, he agreed that data sources and performing statistical calculations were never perfect; further, that the Alternate Plan contained revisions that were "a step in the right direction" but that 'the proposal still remains an outlier and non-conforming to the policy intent'.

Mr. Alexander "Sandy" Donald is a 21 year resident in Long Branch and a resident three streets to the east. He spoke to an update of his November 2019 presentation/sheets (Exhibit 29). He urged the TLAB to find that "intensification" is for the City to determine and that the City 'Neighborhoods' have been excluded in that process "with the consent of the Province".

As with the previous summary, he urged the TLAB to take and 'environment first approach' and find that the implications of severance could not be justified based on supposed support for intensification in the Growth Plan and contrary to the expressed intent of the Toronto Official Plan to allocate growth and respect and reinforce 'Neighbourhoods'. In the latter, he noted that they were express references to "preserving the shape and feel" of the neighborhoods, of keeping them "stable" and requiring that there be no changes that are "out of keeping with the physical context".

He urged that section 4.1.8 of the Official Plan supported the zoning bylaw in setting standards and that "code numbers matter." He said the subject Applications were not infill development and that all elements must be considered together including, OP section 3.4.1 D: the preserving and enhancing of the natural environment. In his view, this policy was not to be compromised and that the admonition and repetition of a consistent policy to respect the existing physical character of the neighborhood, as expressed an Official Plan section 2.2.2 should be respected as a 'corner stone objective'.

He felt the recent zoning re-affirmation history, as recited by Ms. Mercado, of successive approvals through three elected Councils could be interpreted is nothing less than reinforcing and tightening, not loosening but rather reinforcing ('reaffirming') a policy of preservation.

He said that Mr. Jamieson had referenced the term "minor", a term he felt to have a meeting more than impact. As an example, he said that to ignore the 0.35 times density standard and permit nearly twice that density, and an undersized lot, would show no respect or rationale for the long-standing performance standard. He said that the zoning standards represented a crucial limit on overdevelopment. Citing a tribunal decision on *9 Medford Avenue*, he said, repeating others somewhat differently, that neighborhood stability depends on adherence to set standards. He said that section 4.1.8 of the Official Plan is this framework for uniformity in the applicable planning processes. He said, in describing "minor" as meeting code, it actually means "not very large or important"; here, 'there is a 77% deviation and a complete distortion of the zoning fsi standard' that he urged could not be considered 'minor'.

He addressed the Long Branch neighborhood guidelines as support for wide lots. By his count, the proposal did not meet 11 of the 16 (69%) of the common neighbourhood characteristics identified in the LBNCG. He said that 'guidelines' are described by the dictionary to mean to "lead, conduct, direct, manage, control and regulate." In his view, the subject Applications demonstrated, in several instances, identification with the characteristics of 'soldier housing': uniform built form of over-bearing presence on the lot of residential dwelling units. In particular, he noted the following: long and tall buildings that do not fit with adjacent residences; buildings of a height and width that appear to be over-built to adjacent buildings, within the block and the neighborhood; have a little space between houses; and an extended rear wall. These fail to reflect the cottage look of historical Long Branch; and they require the removal of at least one mature tree, per lot.

He produced a comparative photograph of a selection of "soldier houses v. a 'traditional' Long Branch neighborhood houses".

He urged, in conclusion a reflection on this Members findings in *9 Thirty Eighth Street* noting that it examined the Applications as a whole such that, to do so, would not allow a decision on a single element or elements that could become a precedent and a new rule for interpretation in Long Branch. He noted that the recent decisions of the TLAB had looked comprehensively at Long Branch and had never approved variances for the magnitude proposed. His essential concern was that precedent setting decisions can take precedence over the general intent and purpose of the Official Plan. In his view, to allow the subject Applications would overrule the general intent and purpose of the OP, let alone Councils' more recent reaffirmations of neighbourhood policy objectives.

In cross examination, Mr. Donald acknowledged that the Alternate Plan was advancing closer to the LDNCG but that they had not reached concurrence "at all".

***Ruling* On Whether New Evidence Would Be Admitted**

At the conclusion of the evidence of the LBNA, the TLAB indicated it would hear the issue of new filings raised earlier in the day, before calling upon the Applicant for any reply evidence.

This is the one matter of fresh filings upon which the Parties could not agree.

Ms. Stewart indicated that, following the evidence of Peter Wynnyczuk, a question had been raised as to the assurances that could be given regarding the tree protection applicable to 'Tree 4', located on 25 Thirty Ninth Street – the adjacent property. She indicated that the arborist had since gone out and completed an exploratory tree root investigation that week. Further, that both he and the report were available to be addressed in her short Reply evidence, of 5 to 10 minutes. She said that the report had been supplied to the Parties. She submitted it would be in the interest of all to enter it into evidence or to have the witness speak to the subject matter in Reply.

The City, through Ms. Abimbola, objected. She said that the evidence contemplated had been foreseeable from the outset and its introduction now was not the subject of proper Reply evidence. She said that the matter of an evidentiary deficiency in the Applicant's case was first identified in 2018 and again in 2019, with the Alternate Plan, in communications from Urban Forestry. She indicated that the witness statement and update of Dr. Dida, paragraph 16 in both cases, was very clear in identifying that the details of the Applicant's tree investigations were insufficient and inadequate for Urban Forestry to form an opinion on impact. This was also evident in the COA submission by Urban Forestry and was repeated with the Alternate Plan on January 24, 2019. Further, that on January 2020 the same evidence was called and extensively cross examined upon. She said the concerns of Urban Forestry had been ignored and that it would be a splitting of the case and an abuse of process to admit a report into evidence that the Parties received 'last night', or to hear from a witness as to subsequent investigations. She said she would need an arborist to confer with and that the report, as yet, has had no City review. She said it would be simply unfair to open this 'can of worms' this late in the Hearing, as the (virtual) sitting had already extended beyond the normal Hearing Day.

Ms. Gibson adopted the submissions of Ms. Abimbola and added that more than a year at elapsed since the oral evidence - identifying the specific deficiency in root investigation - had been raised and cross examined upon.

Both parties in opposition noted that the Applicant had been and should have been aware of the deficiencies in the tree preservation investigation report.

In response, Ms. Stewart said that the broad statements as to lack of detailed information did not disclose the nature of the deficiency which was only revealed in January 2020. She said whether or not they should have earlier been aware of the extent of this required investigation, the reality was the Applicant was not aware but that the assistance was now available. She noted that the filing was "last-minute" but that

the permit process to undertake the investigation had taken time and that the work was completed “this week.”

She further stated that the level of detailed investigatory work recently completed was not typical at the TLAB Hearing stage but rather was to be reserved for permit processing, if the matter were to advance. She said that she had more information to provide that was relevant to the case.

The TLAB took time to consider the matter. The request to admit new evidence in Reply had not been peaked by a formal motion in writing or by a formal oral request with notice, under the TLAB Rules. The TLAB had had no supporting affidavit evidence to attest to the representations as to whether the Parties had been alerted to the request or the circumstances that had occurred in the period since the sitting where the matter had been peaked, over a year earlier.

The request for admission was denied in accordance with the reasons and language of the *Ruling* recited in the attached as **Appendix 2**.

No Reply evidence was then called.

The Hearing adjourned at 7:30 PM EST with directions that argument be filed on behalf of the Applicant by March 31, 2021; by the Parties opposed to the Applications on April 16, 2021 and for the reply by the applicant, by April 23, 2021. Argument was directed to be confined to 10 pages double spaced, New Times Roman with font size 12 or 14 and with any case law attachments or references to be in addition.

As Chair, I commended and thanked the Parties and witnesses as to the thoroughness of their very extensive filed materials, and their preparation, presentation and civility throughout a lengthy and trying process and set of sittings - unassisted and made more difficult by COVID-19 interruptions.

Argument was received from all four Parties generally in accord with the directions and to the same standard of diligence and excellence. The Applicant provided timely and short Reply argument. All of this material was digested through several readings and its consideration.

ANALYSIS, FINDINGS, REASONS

Ms. Stewart achieved a compelling admission from the City planner that the majority of lots found within the IC are in a category equal to that proposed by the Applicant in terms of lot frontage or are less than the zoning bylaw standard.

This factor, if accepted as the sole or prevalent consideration or even as a compelling aspect, would mitigate in favour of an approval for the lot division. In final

argument, the statistic is challenged by the City referencing the Study Area and pointedly stating that the proposed 7.62m lots are in the minority (City Closing Submissions, paragraphs 9ai, 11 and 12). The TLAB heard considerable evidence on the 'co-prevailing' prevalence of lot frontages and categories of lot frontage statistics However, lot frontage (and area) statistics are but factors. As stated, care needs to be exercised to ensure they be considered in context - in relation to other relevant considerations including the weight to be attached to public policy instruments that have evolved over the gestation of the Applications. This latter aspect is raised in the Applicant's Final Argument, paragraph 4, wherein the request is made that the Applications, and Alternate Plan, 'should be distinguished on the basis of its filing date' in cases of conflict with evolving policy.

The submissions of the City, the LBNA and of Ken O'Brien challenge the Applications and the Alternate Plan on both policy regimes, pre and post OPA 320.

On the assurances described earlier and applied in admissibility *Rulings* - neither OPA 320 nor the LBNCG are to govern the final determination of issues or the appeals. In like manner, neither should any one factor within the assessment criteria of the Official Plan (or OPA's 320's directory language respecting 'prevailing' lot conditions) be employed as determinative. Indeed, even combined with OPA 320's emphasis that area character attributes within the IC are more important, still the language of OPA 320 in all its facets, supplemented with the LBNCG, is not to be the deciding factor in a determination of these appeals. That point, made again by Ms. Stewart, is to hold evolving policy as relevant, but not determinative.

I think it important to elaborate on that undertaking given to the Parties as early as the Preliminary Considerations. It has meant that the Parties, in the circumstances of this matter, have tailored their evidence to not only address two matters: the Applications and the Alternate Plan, but also to address both matters in the context of the Official Plan prior to OPA 320, and afterwards, as supplemented by the LBNCG.

The latter aspect would not be necessary had the original application filings post-dated the final approval of OPA 320. More recent applications would not be saddled with this '*Clergy Principle'* considerations.

This approach has its consequences. It means, for example, with respect to the LBNCG that in this case the LBNCG are accepted insofar as they reflect agreement on area defining characteristics. On the evidence, this agreement is substantial but not universal. It also means that neither compliance nor non-compliance is to be a determining factor in decision making, in this case. The employment then of agreement on area character attributes is germane to the continuing intent to 'respect and reinforce the physical character of the area'. The guidelines do not apply in other elements to definitively supplement the OPA 320 policy regime, as they might apply to applications filed after its effective date.

In this Member's view, in these circumstances, the meaning to 'not be determinative' can apply both to preclude a finding against the Applications (or the

Alternate Plan) and, as well, as a finding in favour thereof, such as to override the considerations of other exigencies – as based upon OPA 320 and the LBNCG.

Both documents are relevant, but not determinative.

I have attempted to recite at length the substantive evidence and to refer to the submissions of the Parties in some detail as befitting their efforts. This detail assists to identify where the Parties differ and to examine the foundations upon which the opinion evidence lies.

The issues for determination, apart from those framed above in terms of the statutory directions, are relatively straightforward despite the plethora of complex filed submissions and the six days of intense evidence.

There was no shortfall or deficiency in the participation of every Party and witness.

At the core of the Applicant's case are the following propositions:

1. The right to make the Applications and the corresponding right to revise them as determined appropriate in the circumstances, subject to the *Rules of Practice and Procedure* and principles of administrative law.
2. The strong professional planning and opinion evidence delivered by Mr. Romano supporting lot division both under the OP and as amended by OPA 320, including the application of the LBNCG applicable to the Applications and the Alternate Plan, and their attendant variances.
3. On the matter of environmental considerations, especially tree assessment and preservation, the Applicant provided professional evidence detailing relevant considerations and opinions subject to, on an approval, filing and supporting formal permit applications to the City seeking approval to injure or remove several identified trees. This is nuanced somewhat in Final Argument, paragraph 34, by the suggestion that the TLAB could reserve its final determination by withholding its final order 'pending confirmation that Urban Forestry is satisfied'.

Those opposed centred their opposition, subject to more detailed side bars, on several substantive elements:

> One. The lot characteristics and the bulk, massing and density of the Applications and the proposed Alternate Plan fail to respect and reinforce the physical character of the neighborhood.
>
> Two. The creation of two buildings resulting from the severance generate negative impacts and are adverse to specific policy criteria for consideration set by established and evolved planning policy.
>
> Three. Further lot division would upset the balance and proportion of the

streetscape perception of dwellings causing a precedent adverse to the history and trend of policy considerations that existed prior to and that have evolved since the inception of the Applications.

Four. The environmental consequences of the proposed lot division would result in the loss and injury to trees, a deterioration of the forest canopy and the loss of environmental and 'cultural' feature benefits of trees - all being defining characteristics of the urban character of Long Branch - in conflict with policy support, existing and evolved, to the contrary.

Land Use Planning Considerations

At its core is the issue of the severance of the subject property into two lots and the consequent request for variance relief applicable to the proposed severed parcels (LBNA Submissions, paragraph 1). I agree.

Ancillary aspects included the status and applicability of documents that had gained status over the intervening period of consideration since filing the COA Applications, namely: updated *Provincial Policy Statements* and *Growth Plan*, 2020; OPA 320 and the LBNCG. There was no refusal on the part of any Party to the consideration and application of these evolving policy documents. Another aspect is the claimed and tacitly acknowledged meritorious improvements to the proposal, identified by Mr. Romano in the form of the Alternate Plan. Are those design enhancements and the resultant elimination of some variances compelling?

The passage of this sitting over six separate days demonstrated a classic challenge between the rights of an owner to apply for and support planning approvals on their merits, and an expression by community representatives and the City opposing the particular relief sought by the Applications and the Alternate Plan.

Although the sitting schedule was tortured due to COVID-19 and other matters, the evidence presented and recorded is clear. All viewpoints were well supported by excellent presentations. The Parties and their representatives, as indicated, were commended on their research and diligence, being thorough, detailed, courteous and co-operative.

Planning decisions in Ontario are not matters that start or end with arbitrary discretion. Both the COA and the TLAB do not wander in the wilderness addressing statutory authority decisions on whim; however, administrative decision making ultimately involves the resolution of a multiplicity of often competing views, statistics, opinions and policy interests, public and private. If such processes were mechanical or by rote , there would be no need to assimilate, support and decide between disparate interests. It this instance, the evidence is clear that diligent efforts were made, particularly evidenced by iterative actions of the Applicant, to attempt consensual resolution via successive plan revisions, pilot mediation ('Committee Proposal', Applicants Final Argument, paragraph 18), discussions and variance removals.

If relief is required to permit a full consideration of the Applications or the Alternate Plan under section 45 (18.1.1) of the *Planning Act,* it is granted. The engagement of the Parties was exemplary and there is no need to consider further notice of the revisions, either the deletions, changes to or the added variances - respecting front yard pad parking. All such matters received fulsome evidence and discussion.

As in this case, dispute resolution is harder where the sophistication of the issues is peaked by competent and competing issues, principles and people.

Again, and fortunately, planning is not a rudderless discipline and there is no lack of guideposts and directions to follow. It is often said that planning is a policy led process wherein statutory direction is assisted by a variety of policy pronouncements and consideration criteria. I agree.

I agree as well with a point made early by the Applicant's planner, Mr. Romano, that the TLAB's approach to evaluating the Applications must be 'holistic'. It must consider all relevant considerations and discard or weigh differently those that are irrelevant as well as assess whether judicial and administrative decisions have supplemented the directions available to admit and assess evidence. Indeed, this 'balancing' approach is also consistent with that advocated by opposition Parties and witnesses (evidence of Ms. Mercado, above) and the Applicant (Final Argument, paragraph 30) through the consideration of multiple factors.

As such, the approach of decision making must track and respect policy, statutory direction and judicial and administrative guidance. Ultimately, the Applications must be tested and resolved against the above noted 'Jurisdiction', a task that is simultaneously both purposeful and difficult. It is interesting to note that final arguments by the Parties made only oblique reference to the statutory tests; only the LBNA identified sections of the *Planning Act* in issue (LBNA Submissions, paragraph 16). This is not a critique given the circumscription on argument length; certainly, ample opinion evidence, professional and lay, written and oral, addressed these statutory directions.

Policy leadership begins with directions found in the Provincial Policy Statements (PPS) and the Growth Plan (GP). I accept that these documents aid in the approach and remain relevant throughout to deciding the issue as to whether the intent of the Applications are consistent and conform with each, respectively.

Some evidence was directed to relevant sections of both documents, with associated submissions:

A. **Provincial Policy Statements (PPS 2014), now 2020**
B. **Growth Plan (2017), updated.**

These documents provided agreed relevant considerations applicable to the Applications and the Alternate Plan. They open the initial door for responsible

evaluation considerations, not just as to their content in themselves, but also as to how the Witnesses differently employed the language in support of their respective assessments, approach and relevance.

I accept that the PPS and GP support intensification throughout 'Built Up' areas; that attempt to project, provide direction and allocate population and employment growth targets and set geographic distributions in that regard. I accept that such allocations are connected to a series of additional directions, density targets, municipal direction in approved Official Plans and a host of possibly competing policy objectives respecting housing types, quality, distribution, the natural environment ('green infrastructure') and other elements that result in complete communities. Further, that these directions emphasize the more efficient use of public communal services, apportionment of population targets through the identification of growth nodes and provide investment direction in infrastructure including densities that are 'transit supportive'.

I also accept that these specific, yet broad provincial directives are subject to qualifiers such as development is to occur 'where appropriate' and that determinations of local land use priorities and the implementation of the mandates and policy priorities espoused, except in retained areas, are to be the prerogative of the local municipal Official Plan (OP).

Mr. Donald made the interesting observation that the implementation of provincial policy is reflected in the approved City Official Plan and OPA 320, both having come into full force and effect "with the consent of the Province".

I agree that the City has implemented some of the directions and that others remain outstanding. The City has an OP (including now the incorporation of OPA 320, discussed *infra*) with intensification and specific policy directions and responsibilities; it does not have a 'Housing Strategy' as decreed, and it had not specifically allocated, by direction or geography, the most recent target populations applicable to the City. Although noted, the Applicant called no evidence on the addition, application or import of terms, in these recently amended provincial documents, of new terms: "housing options"; "market based".

I find these latter two responsibilities (housing strategy and target population allocation) are not determinative of any aspect of the Applications or their revision. Both are City-wide considerations; the Applications engage one designation in the OP ('Neighbourhoods') and are localized to the subject property.

There was no disagreement on the role of the City Official Plan or OPA 320, subject only to the Applicant's *caveat* referenced above (Final Argument, paragraph 4).

I therefore find that it is the City OP that, by provincial PPS direction and approval pursuant to statutory processes, is the principal policy document of relevance to the Applications and the Alternate Plan.

The City OP also has a purposive statutory direction under both approval jurisdictions engaged by the Applications, above. That express direction differs somewhat; however, the instruction to observe the policy direction of that instrument is clear:

1. Consent approval, section 51 (24) b): whether the plan conforms to the official plan…; and,
2. Variance approvals, section 45 (1): whether the variances… maintain the general intent and purpose of the Official Plan…

The TLAB heard much about the policy direction of the OP, and its recent supplement, OPA 320.

As described above, that latter instrument, more recently approved, is intended as a refinement of the policy direction of compatibility assessment within the 'Neighbourhoods' section of the OP - by providing greater specificity in assessment criterion in respect of evaluating whether a proposal 'respects and reinforces' the 'physical character of the area'. That assessment, as discussed especially by the professional planners, is to include both the GN and IC with differing emphasis.

Indeed, OPA 320 interjects into the wording of the OP, particularly its section 4.1.5, (described by all as the compatibility evaluation criteria for development projects in Neighbourhoods) greater specificity on matters of the relevant geography of the locality of the project and the descriptive 'prevailing' assessment criteria of certain defined physical character attributes.

The Applicant and the City were in general agreement that the Applications were filed before the effective date of OPA 320 and its approval by the (now) Local Planning Appeal Tribunal (LPAT). Both however, recognized that the Amendment had been adopted by Council, approved by the Minister and was under appeal at the time of the Applications. The Parties, with differing emphasis, called evidence on the interpretation and application of OPA 320; Mr. Romano asserted consistency; the City, the LBNA and individuals urged its relevance and application forcibly as elements of non-conformity.

Because of its general acceptance and discussion in evidence by both professional planning and lay citizens evidence alike, the statutory direction to have regard for the decisions of the municipal Council and its obvious policy relevance to the assessment of area character in issue, the TLABs approach is as already stated: to consider OPA 320, and for that matter the LBNCG's, to be relevant but not determinative of any element of resolving the issues in the requested approvals.

There is, however, a further distinction with the LBNCG. The LBNCG, as pointed out frequently by Mr. Romano, were not processed as an Official Plan Amendment and therefore arguably did not have the exposure or process attendant with the statutory protections of such instruments. Consequently, the weight attributed to their application and use is arguably less. Ms. Mercado pointed out that section 5 of the OP specifically contemplates such guidelines can complement the OP. In January of 2018, I was told

the LBNCG's were adopted/endorsed unanimously by City Council and had been the subject of significant notoriety in the community. Indeed, the TLAB is aware, from the filings herein, of opposition to their import prior to the Council endorsement; however, no opposition was voiced as to their admittance and their consideration was introduced, in chief, by the Applicant. A great deal of opinion evidence addressed their compliance or non-conformity - perhaps to a degree disproportionate to the role they play in this circumstance.

Returning to the City's OP framework for approach direction, the Parties took the TLAB to multiple policies frequently referenced. By and large, these references were overlapping or identical. The distinction occurred in nuances or interpretive direction. These need resolution because of the diametrically different results urged: dismissal v. allowing the appeals.

There is no dispute that the OP must be read in its entirety (OP, Chapter One, section 1.4) or that it is to be given a large, liberal interpretation best suited to express its intended direction, rather than being seen as a prescriptive instrument with defined performance standards or demanding of the use of a strict constructionists' approach.

I find general acceptance that the relevant provisions of the OP referred to in the evidence of those who testified are found in the following policy language (**Policy).** I recite below *only* OP policy, exclusive of OPA 320. It is the policy and not the unshaded text and sidebars that reflect the direction against which the statutory tests apply.

I find the text distinction of importance, not only for the **Policy** direction emphasis given by policy 5.3.2.15, but because some of evidence I heard read into the **Policy** text additional words that are not found there. It is unhelpful and an error, both planning and legal, to modify OP **Policy** text by adding descriptive or 'general' before and as new words not specifically found in the **Policy**.

OP Policy Excerpts

"*Chapter Two: Shaping the City*

2. Growth will be directed to the Centres, Avenues, Employment Areas and the Downtown as shown on Map 2 in order to:..
   i) protect neighbourhoods, green spaces and natural heritage features and functions from the effects of nearby development…

2.3.1 1. Neighbourhoods and Apartment Neighbourhoods are considered to be physically stable areas. Development within Neighbourhoods and Apartment Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas…

Chapter Three: Building a Successful City

3.1.2 Built Form

3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;

b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;

c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan

d) providing for adequate light and privacy;

e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and …

3.2.1

2. The existing stock of housing will be maintained and replenished. New housing supply will be encouraged through intensification and infill that is consistent with this Plan…

Chapter Four: Land Use Designations

4.1.

1. Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys…

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

a) patterns of streets, blocks and lanes, parks and public building sites;

b) size and configuration of lots;

c) heights, massing, scale and dwelling type of nearby residential properties;

d) prevailing building type(s);

e) setbacks of buildings from the street or streets;

f) prevailing patterns of rear and side yard setbacks and landscaped open space;

g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and

h) conservation of heritage buildings, structures and landscapes…

No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood. The prevailing building type will be the predominant form of development in the neighbourhood. Some Neighbourhoods will have more than one prevailing building type. In such cases, a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood…

8. Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods.

9. Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established Neighbourhoods will:

a) have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties;

b) provide adequate privacy, sunlight and sky views for residents of new and existing buildings by ensuring adequate

> distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed;
>
> c) front onto existing or newly created public streets wherever possible, with no gates limiting public access; and
>
> d) locate and screen service areas and garbage storage to minimize the impact on existing and new streets and residences…"

Underlying the thesis of the Applicant's planner in this matter is the acknowledgment that while no component of the provincial population growth target in the GP is specifically allocated to the City *'Neighbourhoods'* designation in the OP, such does not exclude intensification and population growth in *'Neighbourhoods'*. He takes the evidentiary support for the proposition no further explicitly, rather treating it as a base condition extending not only to the entitlement to bring severance applications in *Neighbourhoods* (a statutory right), but also one that is implicitly supported by the mantle of provincial support for intensification - including via severances in City '*Neighbourhoods'.*

Respectfully, I do not agree. The provincial policy support for intensification, while it includes population growth, is tempered by two important qualifiers referenced above: intensification 'where appropriate'; and subject to the local Official Plan as being "the most important vehicle" to implement provincial policy.

An Official Plan is subject to Provincial approval or approval by a provincially constituted administrative tribunal. The municipality does not have unfettered discretion as to its provincial policy implementation strategy.

I therefore do not accept that severances, the division of lots to achieve intensification objectives, is a *prima facie* policy supporting an entitlement to severances within *Neighbourhoods* in the City. While not prohibited (either by the Province or the City), consent to sever in Neighbourhoods must be both appropriate and in conformity (and be 'consistent', 3.2.1.2) with the City Official Plan.

Policy 4.1.9, *supra*, provides direction for only qualifying 'infill development'. I agree with the observation of Ms. Petzold that the subject property is not 'infill' development.

In my view, the Provincial Policy Statement test of 'where appropriate' includes all the relevant considerations listed above, under section 51(24) of the *Planning Act,* where a severance is sought.

The test of 'conformity' with the OP, mandated above and supplemented by slightly differing language in section 45(1) to include 'intent and purpose', brings in not only the policy language of the OP, but also all of its integrated and constituent parts,

read as a whole, as to what it is attempting to accomplish: its 'spirit or intent'', to choose a term used by Ms. Weiner.

'Intent and purpose' under the variance power includes the OP's own obligations for intensification and infill to be consistent with the Policy dictates and definitions of the OP.

In my view, the provincial position on severances in City Neighbourhoods respecting intensification and population growth, is largely to defer to the City's **Policy** expression in its OP.

The planners differ on the interpretation and application of the Policy direction relevant to the Applications.

If I put aside the differing professional and lay opinions on the details, a plain reading of the OP text and Policy cites a clear intentional future: the 'preservation' of City 'Neighbourhoods'; change is to be 'sensitive', 'gradual' and must 'fit'.

I find that there is no Policy support that expressly encourages consents/severances *per se* in 'Neighbourhoods'*,* but there are significant criteria challenges that change, including consents, must address where land use planning approvals are engaged*.*

'Intensification' is addressed in respect of 'infill', secondary suites and special policy support adjacent to Major Streets in Neighbourhoods and 'Avenues' etc., all not applicable here.

There is no compelling language encouraging the use of Neighbourhoods to accommodate any or a defined share of population growth. Neighbourhoods in the City OP are to be 'maintained', supported, enhanced, encouraged to perform their historic role of providing needed diversified accommodation for persons, as well as the mixed uses that have interspersed over time within their areas, or are otherwise permitted.

There is no language identified lamenting the loss of single detached house forms within *Centres, Avenues, Employment Districts* or the *Downtown* or citing a deficiency in the City generally or specifically in Neighbourhoods in that regard. Indeed, such units are described as being in 'abundant supply' (OP section 3.2.1 text)

Where the OP cites a realization that change will occur, it is allowing for the inevitable: renovation, restoration, replacement, additions and enlargements, and infill. While not precluded, there is nothing in that language that supports or assigns a role for lot division for the purpose of accommodating population growth or the production of new dwelling units, of any form. Indeed, the policy language, *supra,* is express and is framed in the negative: "No changes will be made through… minor variance, consent … that are out of keeping with the physical character of the neighbourhood".

I therefore place little weight on these implicit or explicit asides by the Applicant's planner as a support base for the Applications. I find that the thrust of the City OP is to 'protect' its identified Neighbourhoods, to 'preserve' existing housing stock and to only consider intensification and infill that is consistent (3.2.1.2) with multiple such objectives, assessment criteria, design direction and the Policy thrust to 'respect and reinforce the existing physical character of the area'.

Contrary to the submission of the Applicant in argument, I find that 'existing character' can include the element of time as it may manifest itself in lot configuration or building form, design, material or other enhancement or feature (Applicant's Final Argument, paragraph 14).

OPA 320, now incorporated, is consistent with and serves to implement this general direction on the evidence, with additional wording none of which I find to be additionally determinative. Many of the acknowledged 'improvements' made to the Applications as reflected in the Alternate Plan, and listed above by Mr. Romano, were supported as being directionally motivated by OPA 320 modifications and the LBNCG (see: Applicant's Final Argument, paragraphs 20-22). Many are argued to not have the merit claimed (Closing Submissions, LBNA, Paragraphs 21-29).

I am of the view that in the City Official Plan the spirit of the policies supporting neighbourhood preservation mitigate more towards a precautionary approach to lot creation in City 'Neighbourhoods', than its encouragement.

By far the more important task is the evaluation as to whether the Applications and the Alternate Plan in the context of the subject property are appropriate on the directed Policy considerations and the applicable tests to be canvassed.

Like all the argument submissions, it is therefore necessary to enter the fray of detailed but 'holistic' consideration and application of the evidence. This includes whether Ms. Stewart's claim to 'unique circumstances' exist for the subject property and whether the residents' Long Branch character image of a 'Muskoka in the City' is meaningful and would be violated.

All of the evidence and argument submissions attempt to address the issue of the proposals character changes related to lot size and shape, notably lot frontage, area and ensuing density impacts of development, including on the urban forest.

While the proposed lot size and shape is argued to not be a manifestation of the actual physical character of this immediate neighbourhood, I agree that the statutory direction to look at the 'size and configuration of lots' (Section 51(24) and the other elements and criteria related to built form in the Official Plan), serve to sweep in the lot pattern and its characteristics as an attribute of physical character. Certainly, much of the methodology and assessments of both planners figured prominently on measures of lot frontage and lot size commentary.

I am urged in argument (Applicant's Final Argument, paragraphs 6-12; City Closing Submissions, paragraphs 11-12; LBNA, paragraphs 5-7; O'Brien Submissions, paragraph 3) and even more lengthy submissions on resulting density measure implications, to give consideration to the attributes of lot size and configuration, among other matters - some resultant and some distinguishable.

I have conscientiously reviewed the evidence of the witnesses.

Mr. Romano has supported severance activity in the Long Branch community for several years. He is intimately familiar with the progression of severance activity over that period, presumably including the perception of impact on the physical form of the community and perhaps its perceived social impact. He acknowledged the drafting and acceptance by Council of the LBNCG and the diversity of tribunal decisions during his period of interest. Curiously, he provided few insights on any of these latter matters preferring to focus attention on the Applications and the Alternate Plan response and justification on relevant considerations, as he valued them.

His evidence is compelling and were it not for the astute challenges raised could support the result argued as found in *30 Thirty Eighth Street* attached the Applicant's Reply Argument, paragraph 4). At issue is regulatory certainty, consistency and clarity, urged by the Applicant and, to a different extent, in the LBNA Closing Submissions, paragraph 14, through Ms. Mercado and via Mr. O'Brien (Closing Submissions, paragraph 9).

I have recited above, in Mr. Romano's evidence, the reaction and response to community identified concerns as is addressed in the Alternate Plan. It is noteworthy that on every occasion offered at the Hearing, those opposed acknowledged that the Alternate Plan better addressed the design and built form criteria of the OP and the LBNCG – albeit not in an entirely satisfactory way, universally and specifically.

I accept generally that the elements of the Alternate Plan recited as a) – i) on pages 9-10 hereof are positive and constructive improvements to the Applications. They build on what Ms. Stewart candidly acknowledged as being designed 'to address the emerging issues raised in TLAB jurisprudence'. I agree with the Applicant's submission in Reply Argument, paragraph 9, that the revised design proposal in the Alternate Plan does not yield the much maligned 'soldier housing', so resisted in community advocacy. Regrettably, it is apparent on the evidence that those revisions either came too late and have raised additional issues - or were not substantial enough to have achieved a consensus and a release of the appeals, or some of them.

Whenever a number of citizens raise the flag that they perceive their neighbourhood to be under assault by a form of activity, e.g., severances, that they consider detrimental to their environment, a response can assist, provided it is timely and properly balanced. On these Applications, neighbourhood concern is evident not only in the witnesses and their evidence and presentation efforts, but also in the history of their engagement at the COA and in fulfilling the somewhat onerous *Rules* of the TLAB that require early and definitive disclosure, in writing, of positions.

The appeals, the evidence and the argument rightly focus on the Applications and the built form improvements of the Alternate Plan. However, it is the severance that generates all matters in issue. It is the policy context that raises the eyes of assessment from a focus on the subject property to the larger surroundings. There is little doubt that with the approvals sought, two houses could be built and would function on the subject property. Their proposed appearance has been made more compatible, generally, by the façade design changes in the Alternate Plan. In my view, the Applicants task is not to demonstrate just the end state product and feasibility of the proposed 'gentle intensification' - by the production of two new, state-of-the art energy efficient dwellings. The task is, as Mr. Romano attempted, to provide a holistic assessment as to why that result is warranted on the required approval criteria.

I have described his evidence and while I have no hesitation in agreeing with the end state potential, I find that the Policy considerations dominate the evidentiary debate and direct the evidentiary balancing of support and objection. These include, in no particular order: lot division considerations; the degree of adverse impact; environmental considerations; the quantitative and qualitative measures of the variances sought; and the parsing and reassembly of discrete measures of physical character, including the consideration and relevance of measures at different radii from the subject property.

To begin, there is nothing physically unique about the subject property that distinguishes it from the lot pattern attributes said to be enjoyed by the majority of the neighbourhood. It is rectangular in shape, has no dramatic topographical features, is serviced and has environmental attributes, in the form of large canopy trees, common to the area. It is physically capable of accommodating two dwellings, ignoring all Policy and regulatory controls.

While eligible then for redevelopment consideration and receiving COA approval, subject to archeological, Urban Forestry and planning conditions, its candidacy is identified as one of its greatest impediments. As a property some 15 m wide by 45m deep, it is on those measures undifferentiated in the pattern of lot frontage and lot size on its immediate block of some 35 properties (22 of which are equal to or larger than the subject property in lot frontage and area), and, as well, the larger study areas examined. Proportionally, such lot sizes dominate the study area of the planners and Mr. Jamieson (See: City Closing Submissions, paragraphs 9-12).

I have reviewed Ms. Stewart's Final Argument, Appendix 3 based on Exhibit 12 but do not find the lot frontage submissions compelling in comparing 'categories' with counts, as further described below.

That is, I find that the subject property is undifferentiated from the characteristic pattern of lot frontages and, arguably (the statistics are wanting) lot sizes, from both planners' lot studies in their respective Study Areas and more immediate context.

The proposal is to change by lot division this relationship applicable to the subject property. There were many attempts to statistically appreciate this measure of

change by the witnesses Romano, Petzold, Mercado and Jamieson, to state a few. The closing submissions go so far as to restate this evidence with the Applicant asserting that '7.62m lots are the most frequently occurring lot size within the immediate context – and on Thirty Ninth Street' (Final Argument, paragraph 10), the City asserting that Mr. Romano agreed that 'most of the lots in his study area are within the range 9-15,; 7.62m lots are in the minority' (Closing Submissions, paragraph 9.a.i) and the LBNA asserting from the evidence of Ms. Petzold that "13 out of 35 lots are 7.62m and under in lot frontage – and are 'co-prevailing with the 13 lots 12m and greater" (Closing Submission, paragraph 6,7).

The Closing Submissions of Mr. O'Brien succinctly states: Thirty Ninth Street "currently exhibits a balance of lot frontages and that approval of this severance application would tip the balance irrevocably in favour of smaller lots as the prevailing character of the street" (Closing Submission, paragraph 3).

In reviewing the evidence on statistics, I am mindful of how the drawing of boundaries, the inclusion of zone differences, the definitions of 'neighbourhood' (GN and IC), can result in varied and different emphasis by way of descriptors. This applies whether the subject matter of inquiry is lot frontage, lot size, density (fsi), setback or other discrete measure. Often these measures are summarily described in 'ranges' or categories with descriptive attributes. No measure, to borrow a phrase, should be the absolute 'pampered darling' of the decision maker.

Again, there is nothing in the attributes of the subject property that identify it as a compelling candidate for severance. I have examined and address in detail below the 'unique circumstances' identified in the Opening Remarks and submissions of the Applicant. Need is not in issue. Nevertheless, the Applications are made and are on appeal from the COA's approvals. The Applicant's counsel asserts that there are Unique Grounds (page 8 herein) arising from the proposals adoption and response to Policy criteria and that are related to the lot itself that might distinguish it, warranting the relief requested. I find that in respect of the raw attributes and dimensions of the subject property itself, there are no compelling or distinguishing characteristics that call particular attention to the lot or cry out for relief.

The Applications were for two near mirror image houses standing on two 7.62 m lots. I have agreed that the Alternate Plan eschews that approach and, respectfully, rightly does so. Mr. Romano makes the point, and while it is challenged as to significance it is not denied, that there are lots of similar frontage, near and far within both planner's Study Areas. Those lots are in the minority in the sense that 28% of lot frontages in Mr. Romano's study area (25.2% in the immediate area), he relates, are similar or less than those proposed (excluding any properties fronting on Lake Ontario).

Neither planner could twin that assessment with a comparative statistic on lot areas. The subject property requests relief from the zoning by-law for both lot frontage and lot area. The statutory consideration is the 'size and configuration' of the lots. While not definitive, the evidence, including that of Mr. Jamieson, appeared to conclude that a similarly representative statistic applies to lot area.

I conclude that the Applications and Alternate Plan would result in a furtherance of the scattering of lots of undersized zoning frontages and areas from those located within the block and the respective study areas.

Similar statistics were said to exist for the distribution of fsi measures: "74% of the lots in Ms. Petzolds study area have an FSI of 0.35x or less" (City Closing Submissions, paragraph 11; Space Index Table, Tab 15).

Statistics neither prove anything nor alone determine compatibility with area physical character. While there are examples of similar frontage lots, one in close proximity to the subject site, it is an acknowledged fact that a clear majority of the lots do not reflect the proposed frontage or lot area, let alone density. The OP as applicable does not attribute a 'prevailing' measure to either of these characteristics; however, OPA 320 leans to reflecting that sentiment.

The 'existing physical character of the area' does in fact have examples of such lots as proposed. The City and others make the distinction that lots of these characteristics that do exist are of antiquity, pre-date zoning controls, are existing lots of record with houses built in the 1900's, and that only one has been built at Thirty Ninth Street, at #7A and one created by severance (76 Thirty Ninth Street).

There have been no lots created south of James Street in the past 10 or more years.

The City asserts, supports and I accept that the age of the subdivision and the construction date of dwellings can demonstrate a consistency or diversity that is emblematic of neighbourhood physical character (City Closing Submissions, paragraphs 7 a-c., 29). While I agree with Ms. Stewart that age of construction is not a discrete character attribute in any Official Plan text, it is undeniably an appearance contributor to area physical character and a relevant land use planning consideration.

Mr. Romano presented a comprehensive chart of project COA and appeal information over an extended period; only a small fraction of the lots in the study area had salient comparable information. Ms. Petzold examined in chart form and greater detail the recent history of local property considerations before the COA and the TLAB. Taken together, this activity and the low number of lots of record below by-law standards in frontage and area is germane to understanding the historical support for lot division and the relevance of creating new lots, when supported based upon examples of what is represented in the area. This consideration, severance refusals and approvals, is tempered by the role that OPA 320 and the LBNCG may have played. Mr. Romano relied on a litany of discrete examples but could not detail individual circumstances extant whereas Ms. Petzold and area representatives were quite clear as to the majority of undersized lots of record come from antiquity. Arguably, examples of recent severance applications, primarily refusals, are examples that go to the issues of: precedent; the rate of change to area lot pattern; streetscape; and aspects of compatibility assessment emphasized by the LBNA and the lay citizen Participants or witnesses.

I am not satisfied from the wealth of this evidence, particularly the statistics, ranges and selected categories of analyses, that there is a support rational to conclude that the measures of change represented by the Application's severance, including the severance in the Alternate Plan, is necessarily consistent, compelling, supported or area compatible.

Previously, I have found that falling within area ranges or categories of statistical measures or discrete 'examples' within a Study Area of similar character attributes is an insufficient basis by itself to determine a support basis for a Policy decision. This is particularly the case when the statistics are admitted as being imperfect and are distributed over a large study area, a description that would qualify to Mr. Romano's larger and, 'similar results', smaller study areas.

Mr. Romano's opinion evidence was not left unchallenged. The Applicants counsel set a high bar for the Applicant to meet when stating in Opening Remarks the presence of 'Unique Grounds' that should be found applicable to the subject property and warranting dismissal of the appeals.

I address certain of these, in *italics*, below. Extracting from page 8 herein:

> "She suggested that Unique Grounds were present in the Alternate Plan, as proposed by the Applicant, having the following attributes applicable to the subject property:
>
> a). a severance creating lots on Thirty Ninth Street of the most frequently occurring lot size;
>
> *I accept that this would be the case <u>for the lot category of 7.62m lot width and less</u> <u>IF</u> the Applications or Alternate Plan were to be approved. However, lot 'categories', like ranges, are aids that may or may not be of assistance. In this case, I have found that the debate that raged over: different categories or groupings; examples; the 'tipping point'; and discrete building types, to be over analyzing a single factor to the disadvantage and inconvenience of maintaining a perspective.*
>
> *Under the old OP, I am assisted by observation and direct counts, not categories that can serve to blur character description.*
>
> *I find the evidence unsatisfactory and indecisive as between the different Parties as to the conclusiveness of this Unique Ground.*
>
> *The Official Plan directs consideration of the 'size and configuration of lots', <u>inter alia</u>. It neither mandates nor precludes statistical analysis but in its base form lists the consideration criteria. It does lean a preference to 'most frequently occurring'; OPA 320 more recently confirmed that direction.*

Even if the statement quoted were to have been established, as stated later, I am not able to support the language of OPA 320 being determinative of this element.

b). frontages of 7.62 m are 'prevailing';

I find on the evidence that this bald statement is not proven for the physical character of the area, the street, the facing blocks or any study area under consideration.

Even if the statement were to have been established, as stated later, I am not able to support the language of OPA 320 being used and employed as determinative of this element.

c). OPA 320 encourages that respect and reinforcement be given to that 'prevailing' in the Immediate Context;

Although OPA 320 goes on to qualify that even 'prevailing' may not be a governing criteria in some circumstances, while I agree with the description neither its proof is absolute on the evidence nor am I able to support the language of OPA 320 being determinative so as to override the consideration of other relevant implications of severance.

d). the existing feature of an integral garage with two floors above is undesirable and its incorporation as a design feature has been replaced;

The Alternate Plan eliminates to the extent possible the frontage design attributes of 'soldier housing' found to be contested by the LBNA and area residents. The Official Plan permits of a degree of design appreciation insofar as area character can be defined to include changes to the 'streetscape'. I attribute no weight to Ms. Petzold's suggestion that a flat roof design is not represented on Thirty Ninth Street. In different circumstances, there was evidence that such designs can and have occurred as-of-right. While acknowledged that meritorious design changes are reflected in the Alternative Plan, the evidence raised issues related to other evaluation criteria that remained to be addressed. These include the common refrains in the evidence of those opposed as listed above (paragraphs A-I, pages 32-3, above)

e). no street trees or City canopy is affected, and removals are minimized and 'as-of-right', with mitigation;

As discussed below under 'Urban Forestry considerations', this statement was unsupported by the evidence other than the reference to 'no street trees' being impacted.

f). the revised built form reflects fewer substantive variances more compliant to the LBNCG."

This statement is accurate; however, as demonstrated in Appendix 1, several variances remain required that are challenged on traditional planning grounds and the revised built form makes no change to the severance aspect in the Applications or the Alternate Plan.

In her Opening Remarks and alluded to in Closing Argument and Reply Argument, counsel argued that the Applicant had put the 'best foot forward' in a manner 'different than its predecessors in Long Branch'. She felt it appropriate "where all boxes are ticked" to allow and support a desirable form that may be approved. The TLAB agrees that this Applicant has sought modifications that much improve the Applications from a streetscape design perspective. All the 'boxes' however, as described herein are not considered 'ticked', to the degree represented or necessary.

In this regard, I am in general agreement with the views expressed by Member M. Carter-Whitney, provided in the pre-filed materials, addressing similar relief requests applicable *to 82 Twenty Seventh Street (Hybrid Green Industries Inc.*):

"[40] Having reviewed both planners' opinion evidence regarding conformity to the OP under s. 51(24)(c), the Board finds that the proposed development does not conform to all of the relevant policies in the City's OP. The OP clearly contemplates that there will be severances in areas designated Neighbourhoods to allow for modest, ground oriented intensification. However, the language of the OP with respect to "Healthy Neighbourhoods" in s. 2.3.1 states that while some physical change will occur over time, including infill housing, a "cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood." Policy 2.3.1 provides that development within Neighbourhoods will respect and reinforce the existing character of buildings, streetscapes and open space patterns.

[41] The OP text introducing the Neighbourhoods development criteria in s. 4.1 states that physical changes to established Neighbourhoods must be sensitive, gradual and generally "fit" the existing physical character. Policy 4.1.5 repeats the objective that development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood and sets out specific criteria, including: b) size and

> configuration and lots; c) heights, massing, scale and dwelling type of nearby residential properties; and f) prevailing patterns of rear and side yard setbacks and landscaped open space.
>
> [42] The Board notes the use of the descriptor “prevailing” in relation to certain criteria only, such as 4.1.5 f). As noted above, narrow lots between 7.62 and 12 m in width are distributed throughout in the neighbourhood, but the majority of lots have large frontages and ample side yard setbacks. The Board finds, with respect to the criterion in s. 4.1.5 f), that the prevailing pattern is one of generous side yard setbacks with landscaped open space. The Board therefore finds that the proposed provisional consent and proposal for large homes on lots with smaller frontages and narrow side yard setbacks would not respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in the neighbourhood. Given the accelerated pace of recent consent activity, including 73 and 75 Twenty Seventh Street across the road from the subject property, the Board is not persuaded that the proposed physical change to the neighbourhood would be sensitive and gradual and fit with the existing physical character.
>
> [43] The Board has considered the authorities cited by the Appellant, many of which are past Board decisions approving consents in the Long Branch neighbourhood. However, the Board finds that, given the evidence before it in this appeal, there is a real potential that continued severances in this neighbourhood could have a destabilizing impact on its character. One of the Board decisions cited by the City noted, in the context of a different neighbourhood and proposal, the undesirable “creeping effect” of incremental changes to existing physical character. The Board similarly notes that the creeping effect of continued severances in this area of Long Branch could irrevocably change its existing character.
>
> [44] Therefore, the Board finds that the proposed provisional consent does not meet the criterion of conformity to the OP under s. 51(24)(c), and does not approve it….”

I find that the evidence herein supports this disposition as expressed, for the reasons identified above by the witnesses Petzold, Weiner, Mercado, Donald, Jordan, MacDonald and Jamieson, including adverse elements of ‘fit’, streetscape appearance of massing and scale, uncharacteristically high fsi’s and site compromises in parking pads, structural basement compromise on the south lot, and inadequate setbacks for expected demands.

I find that there are undue adverse impacts articulated by Ms. Jordan, on adjacent property of a traditional land use planning consideration: proximity; bulk, massing, scale and built form; privacy incursion potentials not thoroughly addressed; and Policy implications below identified as 'Urban Forestry Considerations'.

I find that there is potential for prejudice on the issue of precedent, raised by the City through Ms. Petzold's planning opinion, the City (Closing Submissions, paragraphs 12-14), the LBNA (Closing Submissions, paragraph 18), in the lay citizen experiences of Mssrs. McDonald, Jamieson, Donald and Ms. Mercado relayed in the evidence and in Mr. O'Brien's Closing Submissions, pages 9 and 10.

The Applicant's simple denial (Final Argument, paragraph 16) that no evidence exists to warrant this concern for destabilization is insufficient, given the significant number of lots on the street and in the study areas, of 12m lot widths and greater.

Previously I have said that planning is nothing if it turns a blind eye to the future (C.f. *284 Hounslow Avenue*, City Authorities, Tab 1, p.6).

By the same token, I cannot accept the Applicant's submission that "the opposition in this case relates to a fundamental objection to severances in Long Branch, of any kind" (Reply Argument, paragraph 9). Although the LBNA submission asserts the position, in paragraph 36 of its Closing Submissions, that there should be no severance of the subject property, that is not determinative of future considerations.

There is simply no support for the Applicant's somewhat pejorative submission of this proposition; examination and cross examination resulted in no such statement or admission. There were several instances where the witness stated no objections to development and the matter was not further pursued. There is also no basis to attribute this statement to the City. I find that there is a statutory right to make applications for severance and that each must be examined on their merits. Where circumstances warrant, a severance may be appropriate, and no witness sought to or could foreclose that possibility. A prohibition on severances is the prerogative of the City Council and the City has not taken such definitive action. Applications for severance are the prerogative of an owner and are subject to the directions for scrutiny as herein referenced and applied.

Urban Forestry Considerations

I have examined carefully the evidence of the arborists', Mssrs. Litvinov, Wynnsczuk and Dida and read the extensive and highlighted transcripts supplied by Ms. Stewart in her submissions. As well, substantial argument was addressed to this issue as well as case law, including in Reply Argument, paragraph 7.

While I was not supplied the explanation, I can appreciate from the evidence that Mr. Wynnsczuk's engagement had its limitations, and that his site visits and contributions were short and his investigations were somewhat rudimentary, if not rushed occurring the day before or the day of his attendance.

That said, the Applicant is to be commended in responding to the advice of counsel and the expression of community concerns respecting the potential for the injury or loss to the urban forest. The Alternate Plan reflects the effort to design replacement buildings in a more sensitive and compatible fashion with neighbourhood values, including the evolution of the LBNCG and tree root attenuation on proposed Part 1.

The record in this proceeding indicated an early aversion to the evolution of the LBNCG and a resistance to local concerns for the erosion of community values, including the urban forest, reflected in their perceptions as to the built form of the Long Branch community.

Despite this, the Applicant has modified its plans in significant ways clearly articulated, above, by Mr. Romano: reduced density; increased side yards; foundation cutback; reduced height and the elimination of the integral garages that had driven design features of elevated entrances and the appearance of three story dwellings.

The Applicant also made the effort to seek and refine environmental advice to identify and assess affected trees and natural features. Despite this, on the evidence, it is clear that that the tree assessment advice fell short of satisfying the requirements of the preliminary vetting consistently undertaken by Urban Forestry in applications for planning approvals. This history is partially cited in the *Ruling*, Appendix 2.

While recognizing that tree preservation and identification advice would be required on Council's direction, it was not possible on the work undertaken by the Applicant - despite the passage of time – for the Applicant or the Urban Forestry Division to properly evaluate the impact of the proposed severance and replacement buildings.

The role of Urban Forestry's opposition to the approval of the Applications and the Alternate Plan was vigourously challenged in cross-examination as the Final Argument transcripts partially show.

Dr. Dida's evidence was clear that Urban Forestry will, on an application for permission to remove a <u>private tree</u>, generally not object if there is a building permit issued under the *Ontario Building Code* or, where a planning approval is required, e.g. a variance before the COA, where there is clear proof that removal is required by virtue of 'as-of-right' construction within an existing lot's zoning envelop.

Both instances still require a 'permit to remove' application process.

This Hearing did not involve issues discussed relating to <u>public</u> trees.

In this case, neither the pre-condition of an issued building permit nor a clear building envelop conflict, 'as-of-right', was present at the time of the COA consideration or, as far as Urban Forestry is concerned, in the two-plus years preceding the TLAB Hearing.

Where there is an application for planning approval, e.g. a severance that, on development creates the unavoidable removal of a tree that would otherwise be potentially salvageable were the severance not granted, as here, there is triggered a basis for Urban Forestry's objection.

In my view it is not relevant that current applications (2020-1) for planning approvals require the presentation of a specifically enhanced degree of information. Namely, information that permits a better assessment of Urban Forestry's position at the planning approvals stage - rather than at the late stage of a formal application for a permit to injure or remove a bylaw protected tree or trees.

I have said and agree that conformity assessment with the OP is better served by having this impact assessment information available early in the planning process, and certainly by the time a decision is requested ("before design", City Closing Submissions, paragraph 4, 18 and *38 Thirty First Street*, referenced).

Even if the TLAB were to accept that Dr. Dida acknowledged evidence of Mr. Romano that there is an existing lot building envelop that 'as-of-right' would permit the removal of Tree 9, a healthy Colorado Blue Spruce, that is not the full circumstance present. Nor on the evidence is it the only basis as to why Urban Forestry objected, in 2017, to the Applications and continued with the same into this Hearing.

There is another matter that needs resolution beyond the aspect of 'as-of-right' building envelops which mitigates against a finding here that the building envelop on the subject property for one house or for two houses can require the removal of an existing healthy by-law protected private tree.

Once the planning process is engaged, not just Urban Forestry but other Parties and the approval jurisdictions are called upon to address the Applications - in a fulsome consideration of all relevant considerations. While factual circumstances can be parceled out and addressed individually, decisions are not so simplistic and the facts fall within a context.

In the present case, on the evidence heard, Urban Forestry objected because of non-compliance with the OP by-way of the potential for avoidable injury to at least one healthy tree, *inter alia,* and the inadequacy of the assessment information as to the extent of injury or loss of an additional healthy tree on the neighbouring property to the south.

In my view, it is problematic in an application for planning approvals to create, as a probable consequence, the potential for loss or injury to a healthy by-law protected private tree on a neighbour's property. Where that risk is identified, it is incumbent upon an applicant to satisfy the COA, the TLAB and Urban Forestry that the extent of the injury is sustainable.

In the two years preceding this Hearing, that assessment was not conducted; on all the arborists' evidence, it was necessary.

This advice did not impose a more recent standard directed by Council on current applicants; it does support, however, that the application of both the OP Natural Environment, section 3.4, and the area physical character Policies: to protect, preserve and enhance the urban forest. This effectively creates an obligatory assessment obligation as to compliance with the Policy intent and purpose. It does not require that an Applicant make or have made and completed a formal Urban Forestry permit application process but the essential studies necessary for the conduct of that assessment are advisable to have in hand for a fulsome consideration of the planning implications of applications.

Dr. Dida underwent an intensive cross-examination that served to clarify the role of Urban Forestry when *Planning Act* applications are engaged. This evidence is in the transcripts supplied by the Applicant in Final Argument and is the subject of considerable review in the TLAB Review Request Decision applicable to *130 John Street* (City Closing Submissions, Tab 11, paragraphs 30-50and attachments Tabs 12, 13).

I am entirely satisfied that the Urban Forestry Division remains prepared to work with Applicants in the identification, evaluation, consideration and implications of development proposals, including those in the process of requiring planning approvals.

I am equally satisfied that the Urban Forestry Division conducts this mandate in a responsible manner with guidelines that are open and apparent to the public. These include taking a position on applications in accordance with Official Plan Policies and upon reviewing technical evaluations supplied respecting injury and impact on the urban forest. This includes information supplied on a formal permit application to injure or remove bylaw protected trees, or independent of that process.

In brief, it is my understanding from the evidence that the Urban Forestry Division reviews applications for permits to injure or remove trees from the perspective of condoning the injury and or removal of trees that are affected by ‘as-of-right’ development. This ‘condoning’ may or may not result in recommendations supporting or opposing impact on the natural environment, ‘green infrastructure’, private or publicly owned trees and with or without conditions.

For a new development that is not ‘as-of-right’, including the subject Applications, namely, that first require a severance to create permissible building envelopes under zoning, the Urban Forestry Division reviews the support base of *Planning Act* applications from the perspective of their implications on the natural features including the injury or removal of public and private trees. This occurs as advice to the COA panels and, as stated, whether or not a formal permit application to injure or remove trees has been filed. Where the *Planning Act* applications involved such implications, the Urban Forestry Division requires, or at least recommends, that an adequate evaluation of the measures of impact is provided to conclude on a technical basis the degree of injury or the need for removal, and mitigation measures. This information can help fuel the position Urban Forestry supplies to the COA.

In this case, the Applicant did ignore discussions with Urban Forestry but did not ignore the need to address tree preservation; the subject was addressed in stages. In so doing, the reports and investigative measures conducted by Mssrs. Litvinov and, ultimately, Wynnyczuk fell short of the certainty of evaluation that proved satisfactory to their assessment by Urban Forestry. This did not come as a surprise nor was it late breaking news in the TLAB appeal consideration. I am satisfied that the evidentiary history of exchanges in these matters clearly demonstrated deficiencies identified by Urban Forestry and the failure to rectify or correct those deficiencies on the part of the Applicant, either in a timely or comprehensive manner.

Despite counsel's acknowledged understanding and communication to the Applicant - that the matter of the assessment of injury or destruction to private trees cannot be left to the late stage of an application for formal regulatory review under provisions of the *Municipal Code*, Chapter 813.3 - the evidentiary base presented proved inadequate to the Urban Forestry Division.

In Final Argument, the Applicant states that the one healthy tree (Tree 9) on the subject property that is required to be removed because of the proposed severance and redevelopment of the lot, is removable as-of-right as being within the building envelop of the subject property without a severance – or associated variances. The Applicant states: "Because that tree could be removed if the site were redeveloped as a single lot, the impact on the natural environment is no greater with the proposed redevelopment application" (Final Argument, paragraph 27). In support of this proposition, the Applicant claims relevance and supplies the transcripts of Dr. Dida's testimony in chief and cross-examination.

In summary, there is open and acknowledged detrimental injury or removal of this private tree element of the urban forest.

I find that the removal of Tree 9 as proposed by the Applications and the Alternate Plan is not an 'as-of-right' permit circumstance. It is dependent on the Alternate Plan and not any design analysis of the subject property under existing conditions. As such, I find the Appellant's cross-examination that Urban Forestry has exceeded its mandate in this circumstance and has addressed opposition in a manner different in kind from other applications, to be without merit. Construction on the existing lot of record, on the evidence, can occur without its building envelope necessarily requiring the destruction of Tree 9. I had this evidence both from Dr. Dida and the planner Ms. Petzold.

I have reviewed the submissions, the transcripts and my contemporaneous notes of the various exchanges. I am satisfied that the above procedures described for the Urban Forestry Division are accurate, that it was not supplied 'as-of-right' building envelop detail; even if it could be said to have been so received, Dr. Dida and the Urban Forestry Division were examining the Applications brought by the Applicant, and not an 'as-of-right' development proposal. As such, the Staff comments, extended on multiple occasions in respect of Tree 9 and others, including at the Hearing, was entirely proper

and in line not only with the mandate of Urban Forestry, but entirely consistent with its appreciation of the Applications under examination.

In its Closing Submissions, the City did not directly respond to the Applicant's submission.

The trees assessment issues also engaged the potential for impact on the Colorado Blue Spruce, variously identified, located immediately within the property at 25 Thirty Ninth Street, and addressed in the evidence of Mssrs. Wynnysczuk, Dida and Ms. Jordan. Dr. Dida's evidence was to the effect that the assessment of impact from construction on the south parcel proposed, Part 1, was insufficient to determine the extent of injury or loss. The Applicant's arborist, Mr. Wynnysczuk had recommended an exploratory tree root investigation which had not been conducted. Given as a consensus on anticipated injury, Urban Forestry concluded a non-conformity in the Applications with the Official Plan Policy of preserving and enhancing the urban forest.

In response, the Applicant in Final Argument recommends that the TLAB impose a condition on approval, as set out in Exhibit 4, of an Urban Forestry permit application process "which was the practice at the time Exhibit 4 was filed". The Applicant's counsel submits: "This will ensure that a consent would not be implemented if Urban Forestry is not satisfied after detailed review of a permit application" (Final Argument, paragraph 28).

The Applicant further suggests that the TLAB final order on a consent approval could be withheld until the results of Urban Forestry being satisfied are available.

In its Closing Submissions, the City did not directly respond to the Applicant's submissions in this regard other than to suggest that the evidence required to address Ms. Jordan's tree was not present and the Applications were 'premature' under section 51(24)(b) of the *Planning Act* and contrary to the Official Plan (Closing Submissions, paragraph 15-23).

I find that the investigatory work and evidence applicable to assessing the fate of the Colorado Blue Spruce trees found on the neighbouring 25 Thirty Ninth Street (Tree 4 - Litvinov) to the south, to be germane.

I appreciate as well that the Applicant proposed a refinement of the building envelope proposed for Part 1 by a notch in the foundation wall below grade to potentially avoid undue interference with the roots of the Colorado Blue Spruce on 25 Thirty Ninth Street. The tree preservation of evidence did not validate either the authenticity or success of this conceptual measure.

I am not disposed to advancing a matter where the risk of injury or removal of a tree offsite can occur to the disadvantage and inconvenience of a neighbour. While I appreciate a subsequent investigative process could be undertaken under the *Municipal Code, C*hapter 813-3 (and was sought to be introduced and was the subject of the *Ruling,* Appendix 2), I am charged to consider the adequacy of advice received in

respect of issues related to the conformity with the Official Plan and the general intent and purpose of the Official Plan. I am not satisfied on the information received that these Policies are respected or conformed with to a satisfactory degree

The suggestion that the matter of the assessment of the Jordan tree be left to the permit process following an approval of the Applications or the Alternate Plan is untenable. This is exactly the issue this Member and others have addressed under somewhat similar circumstances. The duty imposed on the TLAB is to be satisfied as to conformity with the Official Plan and its general intent and purpose. The evidence is that there will be acknowledged removal (Tree 9) and injury or worse offsite (Tree 4), and to others on the subject property. The responsibility of the TLAB is to assess these implications on Official Plan Policies to 'preserve and enhance', not to delegate that responsibility to others, including the Urban Forestry Division. As stated in *9 Thirty Eighth Street*, that delegation would be an avoidance of addressing the TLAB responsibility and effectively constitute a delegation of the severance decision, its 'implementation', to another entity or person. I decline to do so. I find that the appropriate practice is to address the evidence.

I find as well that to attempt to withhold an order contingent on awaiting a discretionary determination by others on one aspect only of the very issue remitted to the TLAB is fraught with legal implications of unknown depth. The responsibility of the TLAB is to make determinations on the evidence before it, not to create additional opportunities for litigation or discontent.

I find that the destruction required of Tree 9, an acknowledged healthy bylaw protected Colorado Blue Spruce found on the proposed Part 2 and the potential for injury or loss to other bylaw protected trees in this case to be contrary to, in conflict with and out of conformity with the preservation of the 'green infrastructure' policies found in Growth Plan, the Provincial Policy Statements and the City Official Plan, and as amended by OPA 320.

Added to this are the other rear yard trees, the investigations of which are in a premature state as to the extent of their injury or removal, although in their case, the potential exists to consider retaining the rear yard shed to avoid impact.

Disposition

I find that while a plan of subdivision is not required, the consent element of the Applications fails under the considerations of section 53 and 51(24) of the *Planning Act*. Specifically, for the reasons described, I find that a severance of the subject property does not suit the welfare of present and future residents; is not in the public interest; (b), does not conform with several of the criteria discussed in section 4.1.5 (b),

(c), (f), and (g) of the Official Plan; (c), or reflect a suitable dimension and shape of lots (f), for this street.

I have also found non-conformity with the environmental policies of the Official Plan.

These findings are applicable to the Official Plan in force at the time of the original Applications. On the consent and evidence of the Parties as to their application, I make a similar but separate finding under OPA 320 and the subsequent revisions and adoption of the Growth Plan, Provincial Policy Statements and the LBNCG's.

I find that with respect to these latter documents, the Applicant is to be commended for their observance and the acknowledged betterment to aspects of the variance component of the Applications. A responsive and responsible design effort, extending beyond cosmetic façade improvements, is intended to better reflect the community values expressed by Council in OPA 320 and the Council and community, in the LBNCG's.

The TLAB, in circumstances of an application that commenced prior to policy revisions, attempts to respect that an applicant ought not to be burdened adversely from changes to applicable policy even in circumstances of a lengthy approval process. While there are nuances to the *Clergy Principle* that can apply, including an applicants' active participation, adoption or acquiescence to changed policy, it is not necessary in the circumstances of the Applications or the Alternate Plan to address those circumstances.

Here, the decision is reached on the merits of the severance and its implications or consequences, including factors of streetscape built form, site mechanics of built form, natural environment consequences, the density derivative and adverse impacts.

The Applications would result in a subject property built form and massing distinctly different from the physical character of the area. The lot pattern and side yard setbacks constitute a distinct, abrupt and identifiable change to the streetscape. The added driveway proposed with parking pads has the potential for conflict in vehicular movement that interrupts street parking in a manner that acts to the disadvantage, inconvenience and safe passage of pedestrians.

Having disposed of the severance request, an equally detailed consideration of the variances sought is unnecessary as they relate to the lot configuration as proposed by the Applications and the Alternate Plan.

While there are significant variances requested in the Applications and by the Alternate Plan, I find that the variances variously respecting fsi, main wall height, eaves encroachment, side yard setbacks, lot frontage and area, cumulatively, serve to present a proposal that is disrespectful, in these circumstances, to the intent and purpose of the Official Plan and as amended to the extent applicable, and the zoning by-law. They would yield a tight, imposing, built form that is not respectful or a reinforcement of the

physical character of the area or the streetscape within which the subject property is situate. They would yield a streetscape and massing, height, bulk and spacing that is abrupt and overbearing, juxtaposed and out of keeping with the by-law, adjacent properties and community standards expressed as valued by the Official Plan and, more recently, OPA 320 and the LBNCG.

I adopt the conflict explanation of the density variance excess requested as proffered in *80 Twenty Third Street* (City Book of Authorities Tab 2, p. 13-14; O'Brien Authorities, *30 Thirty Sixth Street (April 24, 2017)* Tab1, paragraphs 42-51)) as not meeting the intent and purpose of the zoning standard set at 0.35x lot area.

The variances sought in respect of lot frontage, fsi and area are not 'minor' in the circumstances of the above Policy directions, or its revisions. A front lot line standard of 12m is noticeably different than 7.62m, especially when the latter is repeated. Its repetition is not present and reflects adverse impacts on the streetscape, building frontages, landscaping, front yards, massing and the spacing of buildings and driveways. The minimum lot size standard of 370 sq. m.is also noticeably distinguishable when occupied by the massing of the proposed dwellings, for similar reasons.

Although reached independently here, I am reminded of similar considerations this Member reached in *38 Thirty Sixth Street* (O'Brien Authorities, March 19, 2018).

As earlier stated, I agree with the general submission of the City that "policies that promote intensification do not intend that the same size houses be built on smaller lots" (Closing Submissions, paragraph 7.f.i.).

The maximum permitted fsi of 0.35 times lot area is not respected and reinforced by the proposed fsi of 0.69x lot area (or 0.62x in the Alternate Plan), especially on an undersized lot. While the aggregate floor plate of the proposed buildings may not differ from select examples, and while fsi can be shaped to reflect different design approaches, the Applications project tall and narrow structures. The Alternate Plan ameliorates the height feature but maintains closely massed and longer buildings of a scale that is unrepresentative of area physical character, despite examples. The deployment on the lot of the massing proposed does not appear 'minor' in the circumstances, despite the arguably modest floor area.

While Thirty Ninth Street has an acknowledged greater proportion of different building forms (apartments) and lot characteristics, nevertheless it is a representative contributor to community built form. In my view, it would not be gradual, sensitive or a 'fit' within this street or with the intent and purpose of the Official Plan or longstanding zoning standards, to add two narrow building lots and housing of the type, scale or in the location proposed by either the Applications or the Alternate Plan.

I find the variance relief sought in the Applications approved by the COA and as requested in Exhibit 4, the Alternate Plan, is neither minor nor desirable, considered

cumulatively, for the reasons expressed in the evidence of the City and community witnesses.

DECISION AND ORDER

The appeals are allowed. The severance and variances requested by the Applications and the Alternate Plan are refused.

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

RECEIVED July 18, 2019
By Toronto Local Appeal Body

Alternative Plans - Revised List of Variances
27 Thirty Ninth Street - Part 1 (South Lot)

1. Section 10.20.30.20.(1)(A), By-law 569-2013
   The minimum required lot frontage is 12 m. The lot frontage will be 7.62 m.

2. Section 10.20.30.10.(1)(A), By-law 569-2013
   The minimum required lot area is 370 m^2. The lot area will be 306.5 m^2.

3. Section 10.20.40.40.(1)(A), By-law 569-2013
   The maximum permitted floor space index is 0.35 times the lot area (107.28 m^2).
   The proposed dwelling will have a floor space index of 0.62 times the lot area (190.75 m^2).

4. Section 10.20.40.70.(3)(C), By-law 569-2013
   The minimum required side yard setback is 1.2 m.
   The proposed dwelling will be located 0.61 m from north side lot line.

5. Section 10.5.80.10.(3), By-law 569-2013
   In the Residential Zone category, a parking space may not be in a front yard or a side yard abutting a street.
   The proposed parking space is partially in a front yard abutting a street.

6. Section 330-9.B.(1)(a)
   For a one-family dwelling, the required parking space shall be provided either by an attached garage, carport, detached garage, or rear yard parking space.
   The proposed parking space will not be provided by an attached garage, carport, detached garage, or rear yard parking space.

Alternative Plans - Revised List of Variances
27 Thirty Ninth Street - Part 2 (North Lot)

1. Section 10.20.30.20.(1)(A), By-law 569-2013
   The minimum required lot frontage is 12 m. The lot frontage will be 7.62 m.

2. Section 10.20.30.10.(1)(A), By-law 569-2013
   The minimum required lot area is 370 m^2. The lot area will be 306.5 m^2.

3. Section 10.20.40.40.(1)(A), By-law 569-2013
   The maximum permitted floor space index is 0.35 times the lot area (107.28 m^2).
   The proposed dwelling will have a floor space index of 0.62 times the lot area (191.49 m^2).

4. Section 10.20.40.70.(3)(C), By-law 569-2013
   The minimum required side yard setback is 1.2 m.
   The proposed dwelling will be located 0.91 m from the north side lot line and 0.91 m from the south side lot line.

5. Section 10.5.80.10.(3), By-law 569-2013
   In the Residential Zone category, a parking space may not be in a front yard or a side yard abutting a street.
   The proposed parking space is partially in a front yard abutting a street.

6. Section 330-9.B.(1)(a)
   For a one-family dwelling, the required parking space shall be provided either by an attached garage, carport, detached garage, or rear yard parking space.
   The proposed parking space will not be provided by an attached garage, carport, detached garage, or rear yard parking space.

Conditions of Approval – Consent

1. The applicant is to file the following with the Committee office within ONE YEAR of the date of this Decision:
    a. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
    b. 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, Engineering Services, Engineering and Construction Services. Contact: John Fligg @ (416) 338-5031 or Elizabeth Machynia @ (416) 338-5029.
    c. The applicant shall satisfy all conditions concerning City/Privately owned trees, to the satisfaction of Urban Forestry Services.
    d. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of Urban Forestry Services.
    e. Two copies of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contact: John House, Supervisor, of Property Records, at 416 392-8338; jhouse@toronto.ca
    f. An electronic copy of the registered reference plan of survey satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services, shall be filed with the Committee of Adjustment.
    g. 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 and submit 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 Approval – Minor Variance

1. The proposed dwellings shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Contempo Studio, dated June 11, 2019.

2. As required by Chapter 918 of the Municipal Code, the proposed parking pads shall be constructed with permeable pavers.

3. The applicant shall comply with the conditions imposed in the Committee of Adjustment's Consent Decision Number B0061/17EYK.

4. The applicant shall submit a complete application for permit to injure or destroy privately owned trees.

5. The applicant shall submit an application for permit to injure or remove trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article III.

6. The applicant shall submit one revised site plan (scale of 1:200 or 1:250) illustrating the requirements specified in the following points to the satisfaction of Development Engineering Services Division, at no cost to the City;

    a. Illustrate a positive slope from the roadway to the garage and have a minimum driveway slope of 2% and maximum driveway slope of 8%. Driveway slopes should be identified on all proposed lots; and,
    b. Each lot requires a separate sanitary and water service connection; and,
    c. Please include the following notation on the site plan:
        i. “All portions of existing redundant driveways and associated curb cuts within the Thirty Ninth Street municipal boulevard that are no longer required shall be removed and restored to the satisfaction of the Transportation Services Division at no cost to the municipality.”; and
        ii. "The proposed new driveways shall be constructed to the applicable City of Toronto Design Standard(s) and at no cost to the municipality"; and,
        iii. “The applicant must provide a Municipal Road Damage Deposit (MRDD) for the proposed driveway construction within the municipal boulevard, as determined by the Transportation Services Division.” The applicant must contact Ms. Joanne Vecchiarelli of our Right-of-Way Management Section at 416-338-1045 in this regard; and,
        iv. “the applicant must obtain all required permits for work within the public road allowance from the Right-f-Way Section of Transportation Services”.

TORONTO

Chen Lin
Zoning Building Code Examiner

Toronto Building
William M. Johnston, P. Eng., Chief Building Official
and Executive Director

2 Civic Centre Court
2nd Floor
Toronto, ON M9C 5A3

Phone: (416) 394-8207
Fax: (416) 696-4170
Email: Chen.Lin@toronto.ca

CONTEMPO STUDIO
C/O MARIN ZABZUNI
14 ARNOLD AVE
TORONTO ON M6N 4M9

Zoning Notice

Date: Wednesday, July 10, 2019

Zoning Certificate (ZZC) Review No: 17 115225 ZZC 00 ZR FolderRSN: 4105014

House - New Building

Proposed Use: SFD - Detached

at 27 THIRTY NINTH ST - PART 1 (SOUTH LOT)

Ward: **Etobicoke-Lakeshore (03)**

Examination of your Zoning Certificate application has revealed that certain requirements of the applicable City Zoning By-law(s) have not been satisfied. The attached Notice provides details of the review.

Should compliance with the applicable City's Zoning By-law(s) not be possible, you may apply to amend the Zoning By-law by way of a Zoning Amendment or Committee of Adjustment application. For more information on either of these Planning processes, you may visit the City of Toronto Web site @ www.toronto.ca/developing-toronto or discuss the matter with City staff by calling (416)394-8060.

A Zoning Certificate will be issued only when it has been determined that the drawings and information submitted comply with the City Zoning By-law(s). Where there has been no activity on this application and six months has lapsed the file may be closed without notification. Please inform us of progress towards achieving compliance.

In order to get the fee paid under this application credited towards a "Complete" Building Permit application it must be accompanied by a "Zoning Certificate". You are required to obtain your "Zoning Certificate" before your submit for a "Complete" Building Application.

Please refer your Zoning Certificate application number when you phone or submit any pertinent information.

Chen Lin
Zoning Building Code Examiner

TORONTO

Chen Lin
Zoning Building Code Examiner

Toronto Building
William M. Johnston, P. Eng., Chief Building Official
and Executive Director

2 Civic Centre Court
2nd Floor
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Phone: (416) 394-8207
Fax: (416) 696-4170
Email: Chen.Lin@toronto.ca

Folder Name: 27 THIRTY NINTH ST - PART 1 (SOUTH LOT)
Application Number: 17 115225 ZZC 00 ZR

You must present a copy of this Zoning Certificate along with the necessary 'Applicable Law' approvals other than any of the fees or charges identified above, at the time of your building permit submission.

Building permit applications without Zoning Certificates and these approvals will be considered incomplete submissions and will not be subject to prescribed timeframes in Article 1.3.1.3. of Division C, Part 1 of the Ontario Building Code.

Applicable Law Notice

ITEM DESCRIPTION

Applicable Fees

1. DC(Development Charges) Charges will be calculated at the time of processing the Building Permit
   Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(ii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(i) under Reg 350/06 (as applicable): Sections 28 and 53 of the Development Charges Act, 1997
   Form of Approval: Confirmation of payment prior to building permit issuance
   Contact: Toronto Building
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97d27_e.htm

2. EDC(TCDSB Education Dev. Charge) Charges will be calculated at the time of processing the Building Permit
   Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(iii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(ii) under Reg 350/06 (as applicable): Sections 257.83 and 257.93 of the Education Act
   Form of Approval: Confirmation of payment prior to building permit issuance
   Contact: Toronto Building
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm

3. Parkland Dedication/Park Levy
   Authority: O.B.C. Div. A - 1.4.1.3.(1)(a)(xxi) under Reg 332/12, or Div. A - 1.4.1.3.(1)(a)(xxxi.1) under Reg 305/06 (as applicable): Section 42 of the Planning Act with respect to the payment of money or making arangements satisfactory to the Council of a Municipality for the payment of money, where the payment is required under subsection 42(6) of that Act.
   Form of Approval: Appraisal letter and payment made to Building Division
   Contact: Rosanne Clement at rclement@toronto.ca
   For information regarding the appraisal process or status of the appraisal for the parks levy Contact: Peter Cheng at pcheng1@toronto.ca
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm

TORONTO

Chen Lin
Zoning Building Code Examiner

Toronto Building
William M. Johnston, P. Eng., Chief Building Official
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Toronto, ON M9C 5A3

Phone: (416) 394-8207
Fax: (416) 696-4170
Email: Chen.Lin@toronto.ca

Folder Name: 27 THIRTY NINTH ST - PART 1 (SOUTH LOT)
Application Number: 17 115225 ZZC 00 ZR

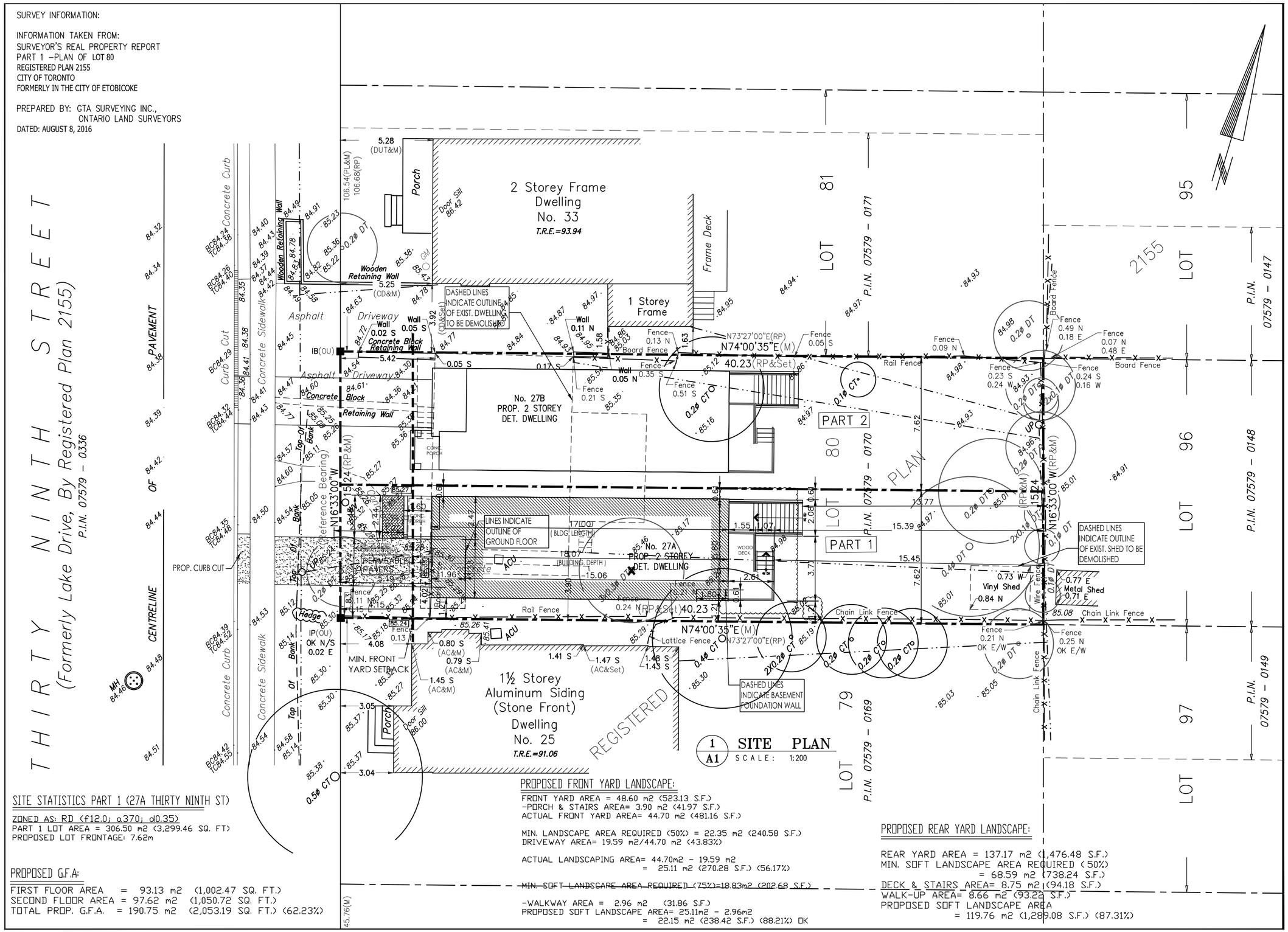
Zoning bylaw Notice

ITEM	DESCRIPTION
	City-wide Zoning By-law Your property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, your property is zoned RD (f12.0; a370; d0.35).
4.	A) The required minimum lot area is 370 square metres. The proposed lot area is 306.5 square metres. [10.20.30.10.(1) Minimum Lot Area]
5.	A) The required minimum lot frontage is 12.0 metres. The proposed lot frontage is 7.62 metres. [10.20.30.20.(1) Minimum Lot Frontage]
6.	A) The permitted maximum floor space index is 0.35 times the area of the lot: 107.28 square metres. The proposed floor space index is 0.62 times the area of the lot: 190.75 square metres. [10.20.40.40.(1) Floor Space Index]
7.	C) The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres. The proposed north side yard setback is 0.61 metres. [10.20.40.70.(3) Minimum Side Yard Setback]
8.	A parking space may not be located in a front yard abutting a street. The proposed parking spot is located in the front yard. [10.5.80.10.(3) Street Yard Parking Space]
	Etobicoke Zoning by-law Your property is located in the former municipality of Etobicoke in an area known as Long Branch which is subject to the Long Branch Zoning Code. Based on the Long Branch Zoning Code the property is zoned RS.
9.	The required automobile parking space is not permitted in a front yard. The proposed parking space is in the front yard. [Chapter 330-9.B.(1).(a)]

SURVEY INFORMATION:

INFORMATION TAKEN FROM:
SURVEYOR'S REAL PROPERTY REPORT
PART 1 –PLAN OF LOT 80
REGISTERED PLAN 2155
CITY OF TORONTO
FORMERLY IN THE CITY OF ETOBICOKE

PREPARED BY: GTA SURVEYING INC.,
ONTARIO LAND SURVEYORS
DATED: AUGUST 8, 2016



1 / A1 SITE PLAN
SCALE: 1:200

SITE STATISTICS PART 1 (27A THIRTY NINTH ST)

ZONED AS: RD (f12.0; a370; d0.35)
PART 1 LOT AREA = 306.50 m2 (3,299.46 SQ. FT)
PROPOSED LOT FRONTAGE: 7.62m

PROPOSED G.F.A:

FIRST FLOOR AREA = 93.13 m2 (1,002.47 SQ. FT.)
SECOND FLOOR AREA = 97.62 m2 (1,050.72 SQ. FT.)
TOTAL PROP. G.F.A. = 190.75 m2 (2,053.19 SQ. FT.) (62.23%)

PROPOSED FRONT YARD LANDSCAPE:

FRONT YARD AREA = 48.60 m2 (523.13 S.F.)
-PORCH & STAIRS AREA= 3.90 m2 (41.97 S.F.)
ACTUAL FRONT YARD AREA= 44.70 m2 (481.16 S.F.)

MIN. LANDSCAPE AREA REQUIRED (50%) = 22.35 m2 (240.58 S.F.)
DRIVEWAY AREA= 19.59 m2/44.70 m2 (43.83%)

ACTUAL LANDSCAPING AREA= 44.70m2 - 19.59 m2
= 25.11 m2 (270.28 S.F.) (56.17%)

~~MIN. SOFT LANDSCAPE AREA REQUIRED (75%)=18.83m2 (202.68 S.F.)~~

-WALKWAY AREA = 2.96 m2 (31.86 S.F.)
PROPOSED SOFT LANDSCAPE AREA= 25.11m2 - 2.96m2
= 22.15 m2 (238.42 S.F.) (88.21%) OK

PROPOSED REAR YARD LANDSCAPE:

REAR YARD AREA = 137.17 m2 (1,476.48 S.F.)
MIN. SOFT LANDSCAPE AREA REQUIRED (50%)
= 68.59 m2 (738.24 S.F.)
DECK & STAIRS AREA= 8.75 m2 (94.18 S.F.)
WALK-UP AREA= 8.66 m2 (93.22 S.F.)
PROPOSED SOFT LANDSCAPE AREA
= 119.76 m2 (1,289.08 S.F.) (87.31%)

DRAWING: SITE PLAN (PART 1)
SCALE: AS-NOTED
DRAWN BY: M.Z.
DATE: JUNE11,2019
APPROVED BY: M.Z.
PROJECT No.: 2016-25
DRAWING No.: A-1

PROJECT
PROPOSED TWO STOREY DETACHED DWELLING
AT
27 39th ST
CITY OF TORONTO

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

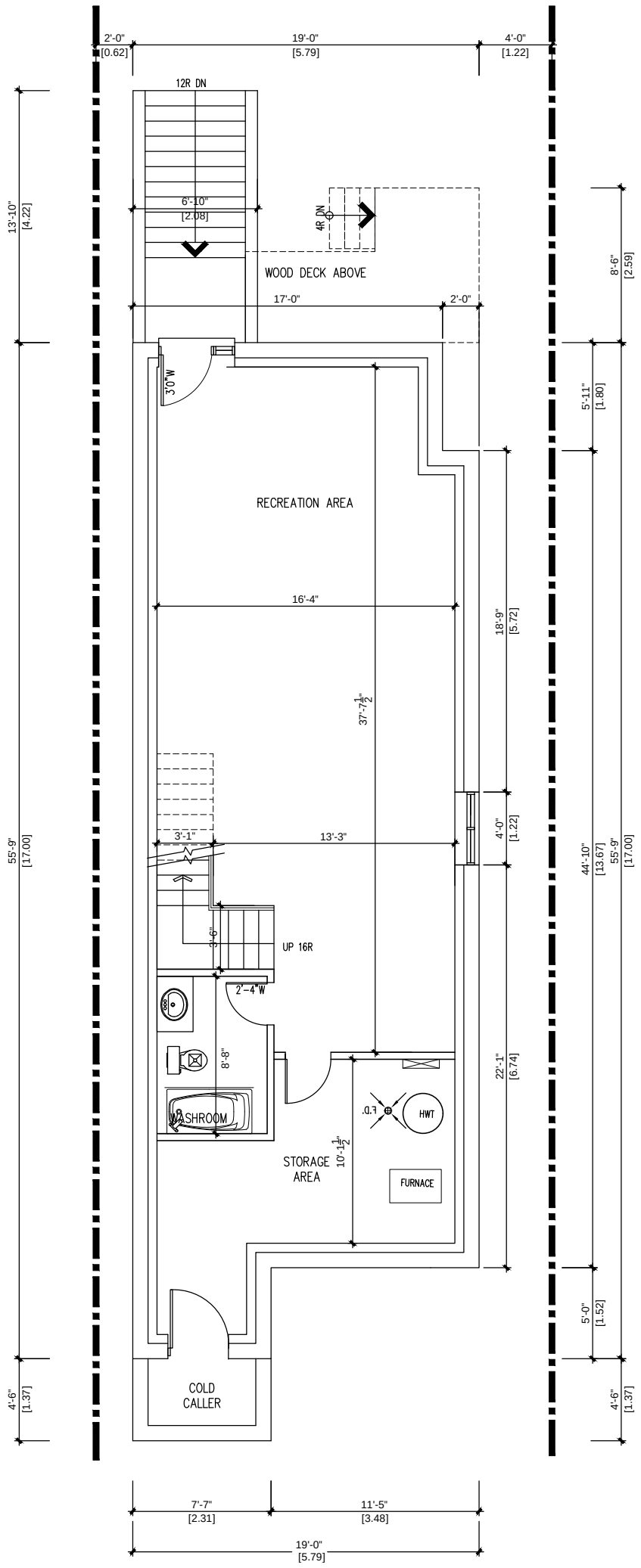
QUALIFICATION INFORMATION
Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

NAME	SIGNATURE	45250
MARIN ZABZUNI		BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

CONTEMPO STUDIO		46972
FIRM NAME		BCIN

contempostudio
14 ARNOLD AVE.
TORONTO, ONT., M6N 4M9
INFO@CONTEMPOSTUDIO.CA
W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 / A-2 BASEMENT PLAN
SCALE : 1/8"=1'-0"

contempostudio

14 ARNOLD AVE.
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W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

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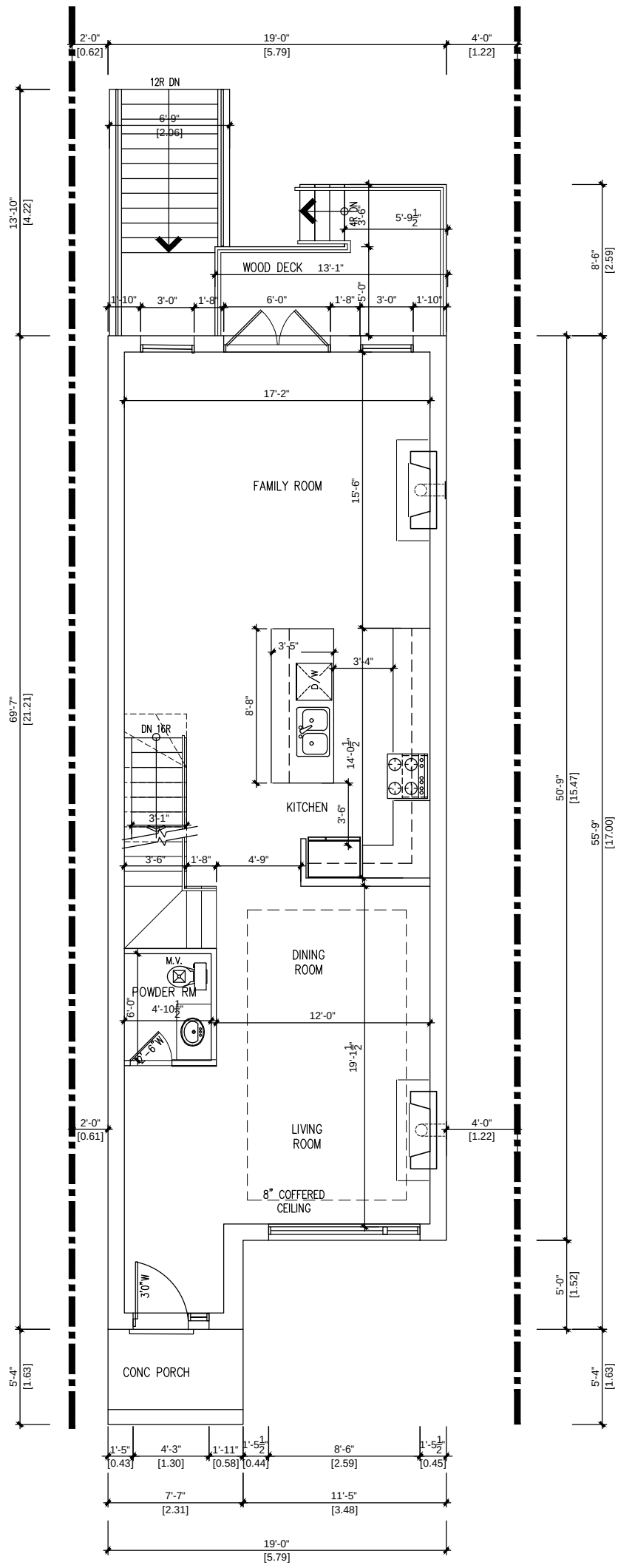
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
BASEMENT PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-2



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

FIRST FLOOR AREA: 93.13 m2 (1,002.47 SQ. FT.)

1 / A-3 FIRST FLOOR PLAN
SCALE : 1/8"=1'-0"

contempostudio

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TORONTO, ONT., M6N 4M9
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F. (416) 485-1042

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION
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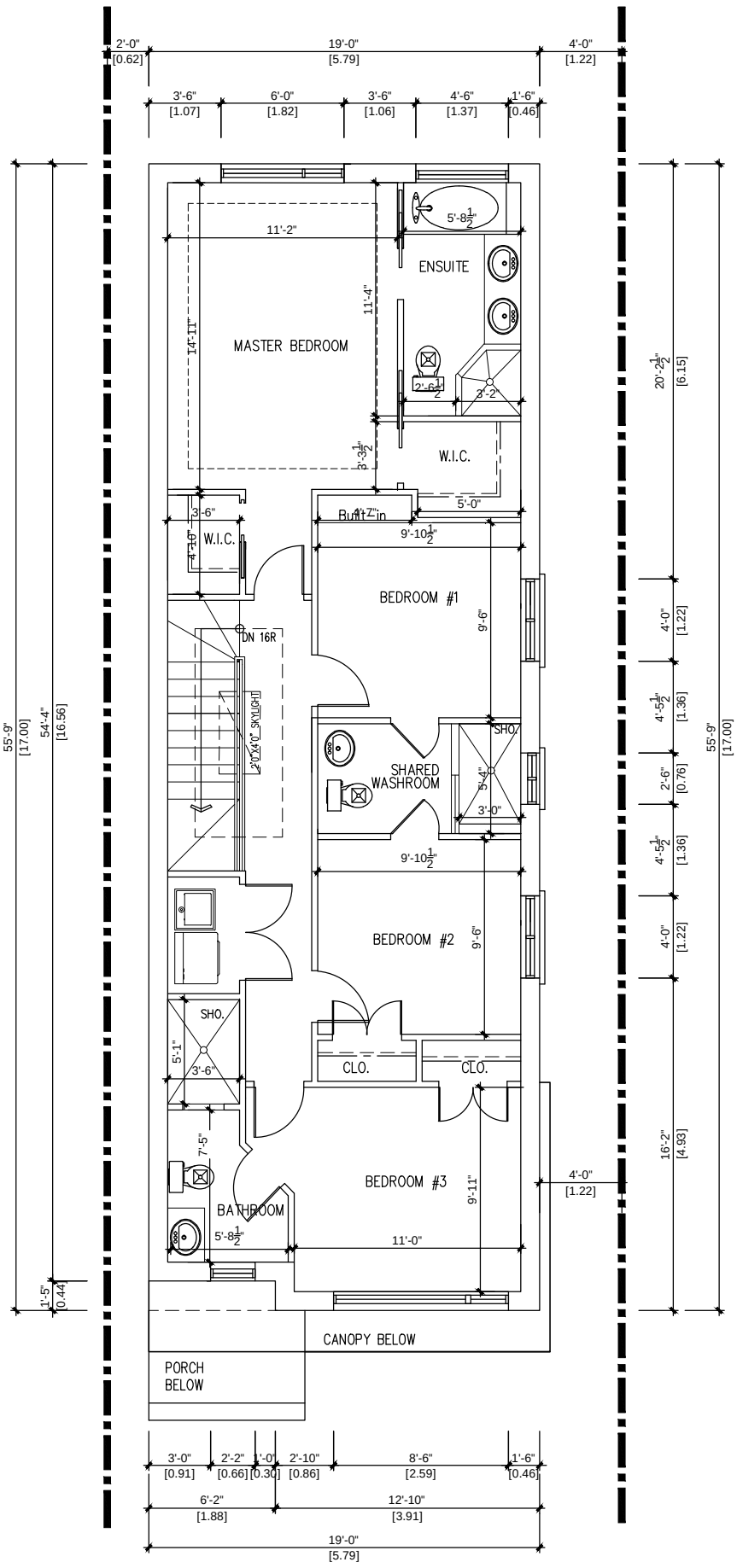
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
FIRST FLOOR PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-3



SECOND FLOOR AREA: 97.62 m2 (1,050.72 SQ. FT.)

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 / A-4 SECOND FLOOR PLAN

SCALE : 1/8"=1'-0"

contempostudio

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W. CONTEMPOSTUDIO.CA
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F. (416) 485-1042

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

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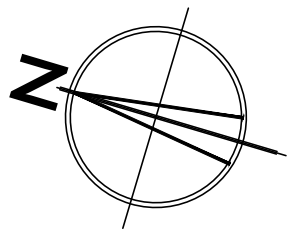
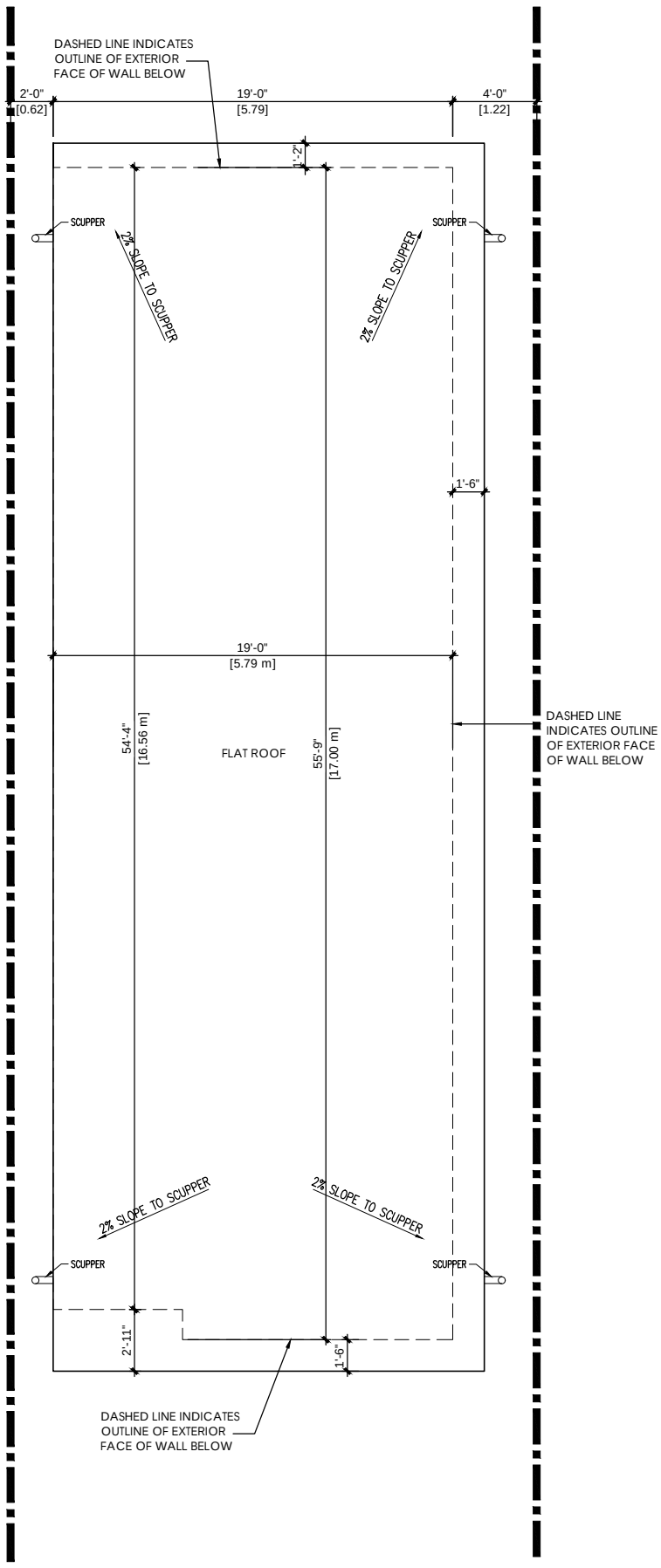
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
SECOND FLOOR PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-4





LEGEND

S.B. SOLID WOOD BEARING
F.D. FLOOR DRAIN
A.D. AREA DRAIN
NEW PARTITIONS
I.S.A. INTERCONNECTED SMOKE ALARM
C.M.D CARBON MONOXIDE DETECTOR
MECHANICAL VENTILATION

1 / A-5 ROOF PLAN
SCALE : 1/8"=1'-0"

contempostudio

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T. (416) 836-1042
F. (416) 485-1042

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QUALIFICATION INFORMATION

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

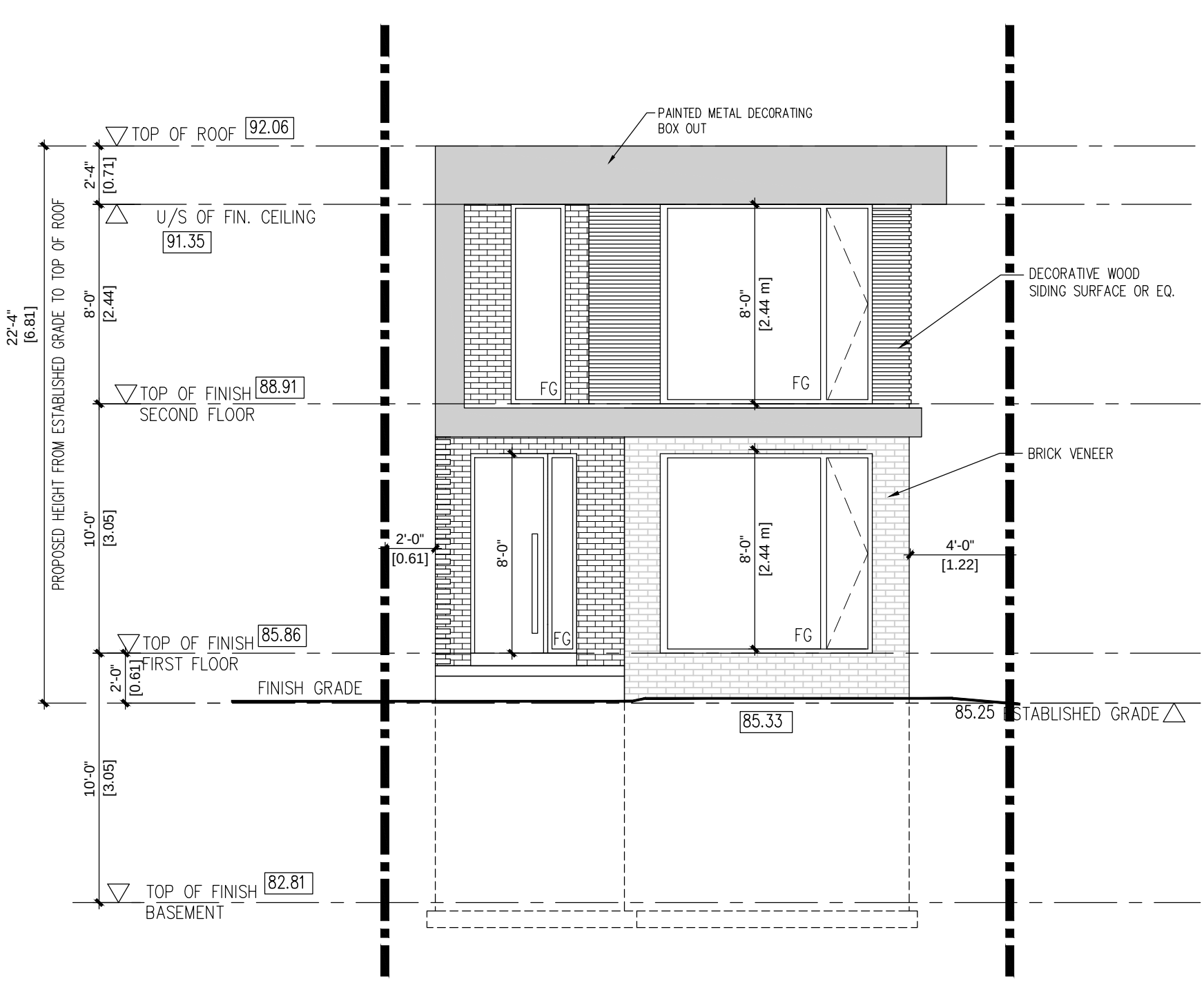
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING: ROOF PLAN

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-5



1 / A-6 WEST (FRONT) ELEVATION

SCALE : 3/16" = 1' - 0"

contempostudio

14 ARNOLD AVE.
TORONTO, ONT., M6N 4M9
INFO@CONTEMPOSTUDIO.CA
W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042

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QUALIFICATION INFORMATION

Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

MARIN ZABZUNI	SIGNATURE	45250
NAME		BCIN

REGISTRATION INFORMATION

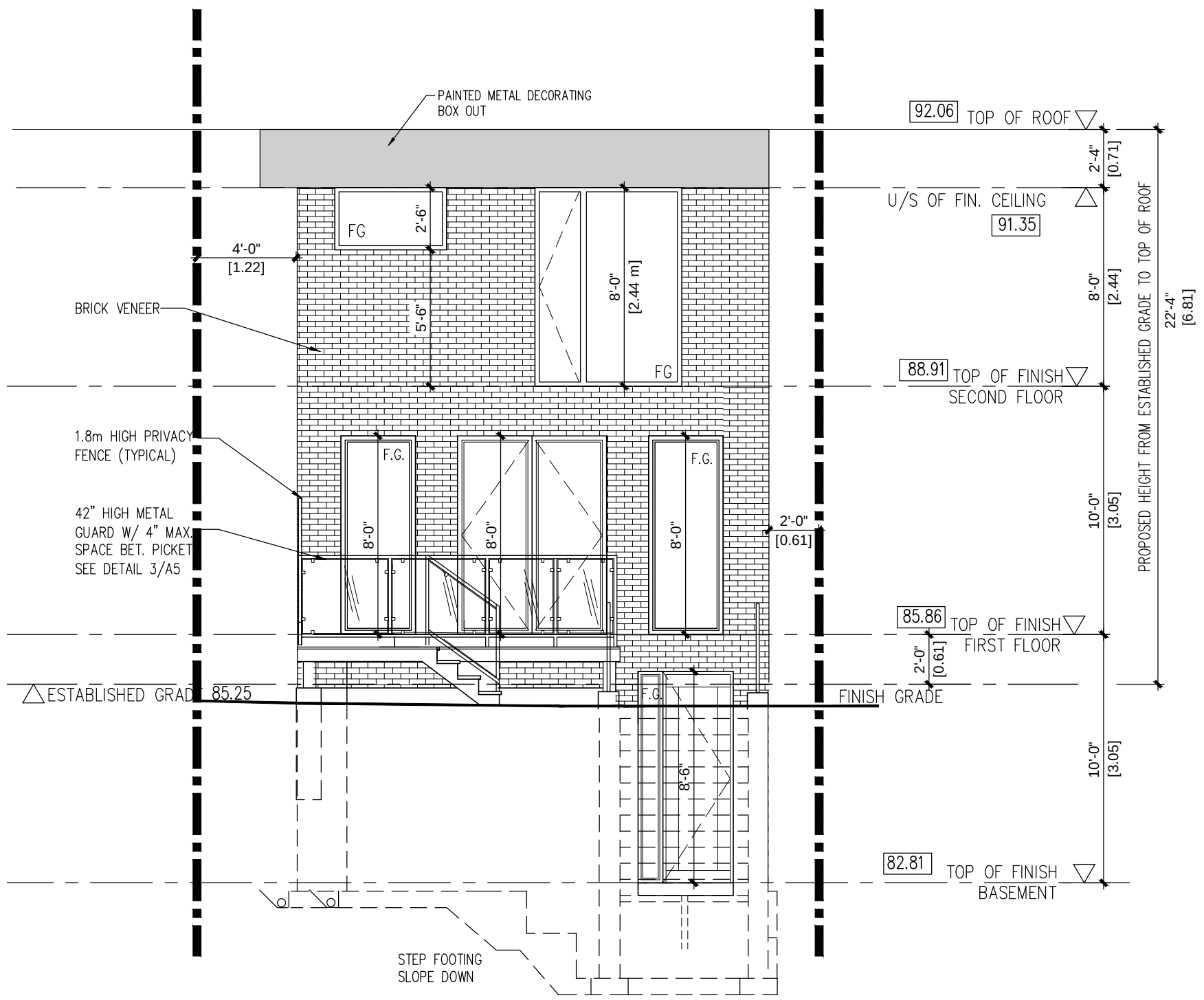
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27A THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
WEST ELEVATION	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-6



1
A-7

EAST (REAR) ELEVATION

SCALE : 3/16" = 1' - 0"

contempostudio

14 ARNOLD AVE.
TORONTO, ONT., M6N 4M9
INFO@CONTEMPOSTUDIO.CA
W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042

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QUALIFICATION INFORMATION

Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

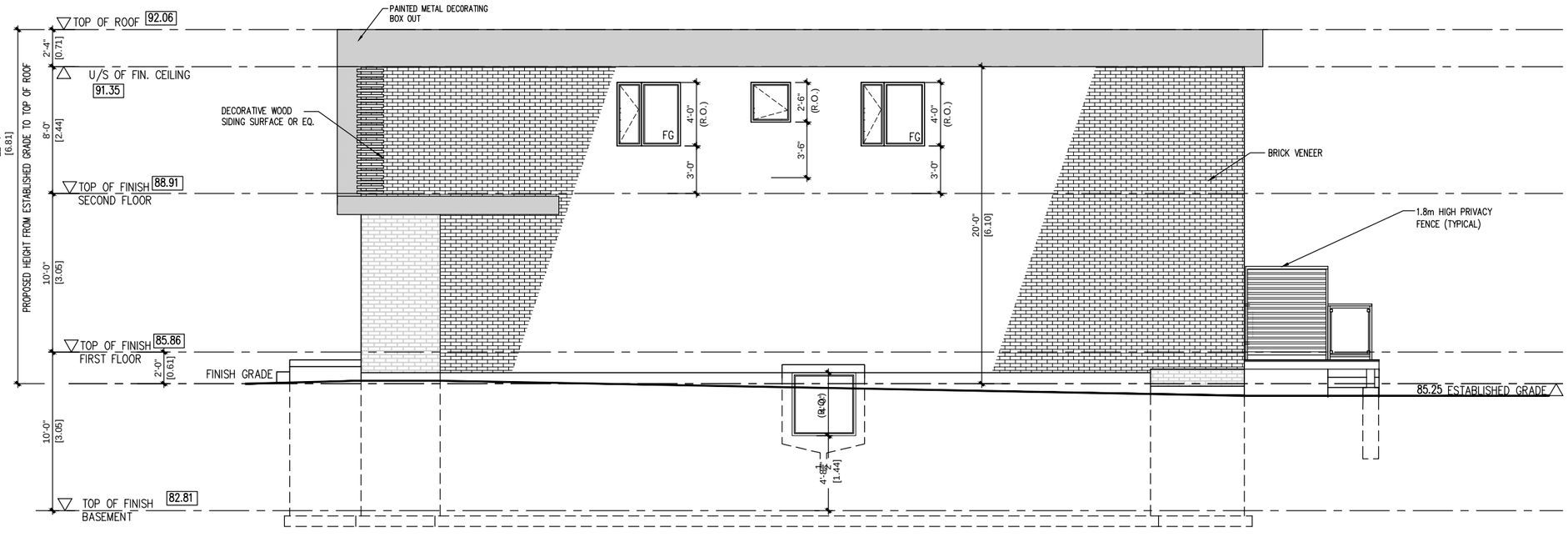
CONTEMPO STUDIO	46972
FIRM NAME	BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING: EAST ELEVATION

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-7



1 A-8 SOUTH ELEVATION
SCALE : 1/8"=1'-0"

DO NOT SCALE DRAWINGS
CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT ANY OMISSIONS OR DISCREPANCIES TO CONTEMPO STUDIO BEFORE PROCEEDING WITH WORK
ALL PRINTS AND DRAWINGS ARE THE PROPERTY OF CONTEMPO STUDIO AND SHALL NOT BE COPIED, IN PART OR WHOLE WITHOUT PRIOR WRITTEN PERMISSION

PROJECT
PROPOSED NEW 2 STOREY DETACHED DWELLING (PART 1) AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING
SOUTH ELEVATION

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-8

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION
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MARIN ZABZUNI — 45250
NAME — SIGNATURE — BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of The Ontario Building Code.

CONTEMPO STUDIO — 46972
FIRM NAME — BCIN

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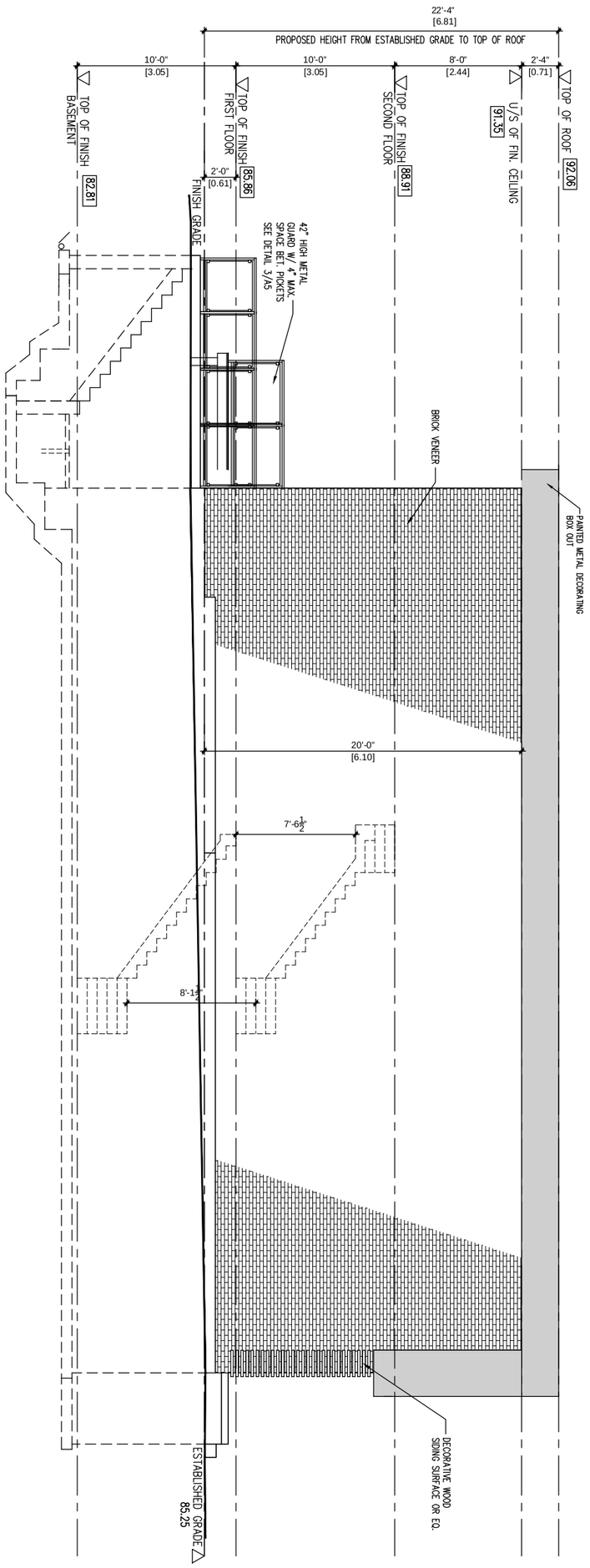
W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042



1 / A-9 NORTH ELEVATION

SCALE : 1/8"=1'-0"

contempostudio

14 ARNOLD AVE.
TORONTO, ONT., M6N 4M9
INFO@CONTEMPOSTUDIO.CA
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T. (416) 836-1042
F. (416) 485-1042

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION

Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

NAME	SIGNATURE	
MARIN ZABZUNI		45250 BCIN

REGISTRATION INFORMATION

Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

FIRM NAME	
CONTEMPO STUDIO	46972 BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 1)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING: SOUTH ELEVATION

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-9

TORONTO

Chen Lin
Zoning Building Code Examiner

Toronto Building
William M. Johnston, P. Eng., Chief Building Official
and Executive Director

2 Civic Centre Court
2nd Floor
Toronto, ON M9C 5A3

Phone: (416) 394-8207
Fax: (416) 696-4170
Email: Chen.Lin@toronto.ca

CONTEMPO STUDIO
C/O MARIN ZABZUNI
14 ARNOLD AVE
TORONTO ON M6N 4M9

Zoning Notice

Date: Wednesday, July 10, 2019

Zoning Certificate (ZZC) Review No: 17 115233 ZZC 00 ZR FolderRSN: 4105033

House - New Building

Proposed Use: SFD - Detached

at 27 THIRTY NINTH ST - PART 2 (NORTH LOT)

Ward: **Etobicoke-Lakeshore (03)**

Examination of your Zoning Certificate application has revealed that certain requirements of the applicable City Zoning By-law(s) have not been satisfied. The attached Notice provides details of the review.

Should compliance with the applicable City's Zoning By-law(s) not be possible, you may apply to amend the Zoning By-law by way of a Zoning Amendment or Committee of Adjustment application. For more information on either of these Planning processes, you may visit the City of Toronto Web site @ www.toronto.ca/developing-toronto or discuss the matter with City staff by calling (416)394-8060.

A Zoning Certificate will be issued only when it has been determined that the drawings and information submitted comply with the City Zoning By-law(s). Where there has been no activity on this application and six months has lapsed the file may be closed without notification. Please inform us of progress towards achieving compliance.

In order to get the fee paid under this application credited towards a "Complete" Building Permit application it must be accompanied by a "Zoning Certificate". You are required to obtain your "Zoning Certificate" before your submit for a "Complete" Building Application.

Please refer your Zoning Certificate application number when you phone or submit any pertinent information.

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Email: Chen.Lin@toronto.ca

Folder Name: 27 THIRTY NINTH ST - PART 2 (NORTH LOT)
Application Number: 17 115233 ZZC 00 ZR

You must present a copy of this Zoning Certificate along with the necessary 'Applicable Law' approvals other than any of the fees or charges identified above, at the time of your building permit submission.

Building permit applications without Zoning Certificates and these approvals will be considered incomplete submissions and will not be subject to prescribed timeframes in Article 1.3.1.3. of Division C, Part 1 of the Ontario Building Code.

Applicable Law Notice

ITEM DESCRIPTION

Applicable Fees

1. DC(Development Charges) Charges will be calculated at the time of processing the Building Permit
   Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(ii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(i) under Reg 350/06 (as applicable): Sections 28 and 53 of the Development Charges Act, 1997
   Form of Approval: Confirmation of payment prior to building permit issuance
   Contact: Toronto Building
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97d27_e.htm

2. EDC(TCDSB Education Dev. Charge) Charges will be calculated at the time of processing the Building Permit
   Authority: O.B.C. Div A - 1.4.1.3.(1)(b)(iii) under Reg 332/12, or Div A - 1.4.1.3 (1)(b)(ii) under Reg 350/06 (as applicable): Sections 257.83 and 257.93 of the Education Act
   Form of Approval: Confirmation of payment prior to building permit issuance
   Contact: Toronto Building
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm

3. Parkland Dedication/Park Levy
   Authority: O.B.C. Div. A - 1.4.1.3.(1)(a)(xxi) under Reg 332/12, or Div. A - 1.4.1.3.(1)(a)(xxxi.1) under Reg 305/06 (as applicable): Section 42 of the Planning Act with respect to the payment of money or making arangements satisfactory to the Council of a Municipality for the payment of money, where the payment is required under subsection 42(6) of that Act.
   Form of Approval: Appraisal letter and payment made to Building Division
   Contact: Rosanne Clement at rclement@toronto.ca
   For information regarding the appraisal process or status of the appraisal for the parks levy Contact: Peter Cheng at pcheng1@toronto.ca
   http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm

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Folder Name: 27 THIRTY NINTH ST - PART 2 (NORTH LOT)
Application Number: 17 115233 ZZC 00 ZR

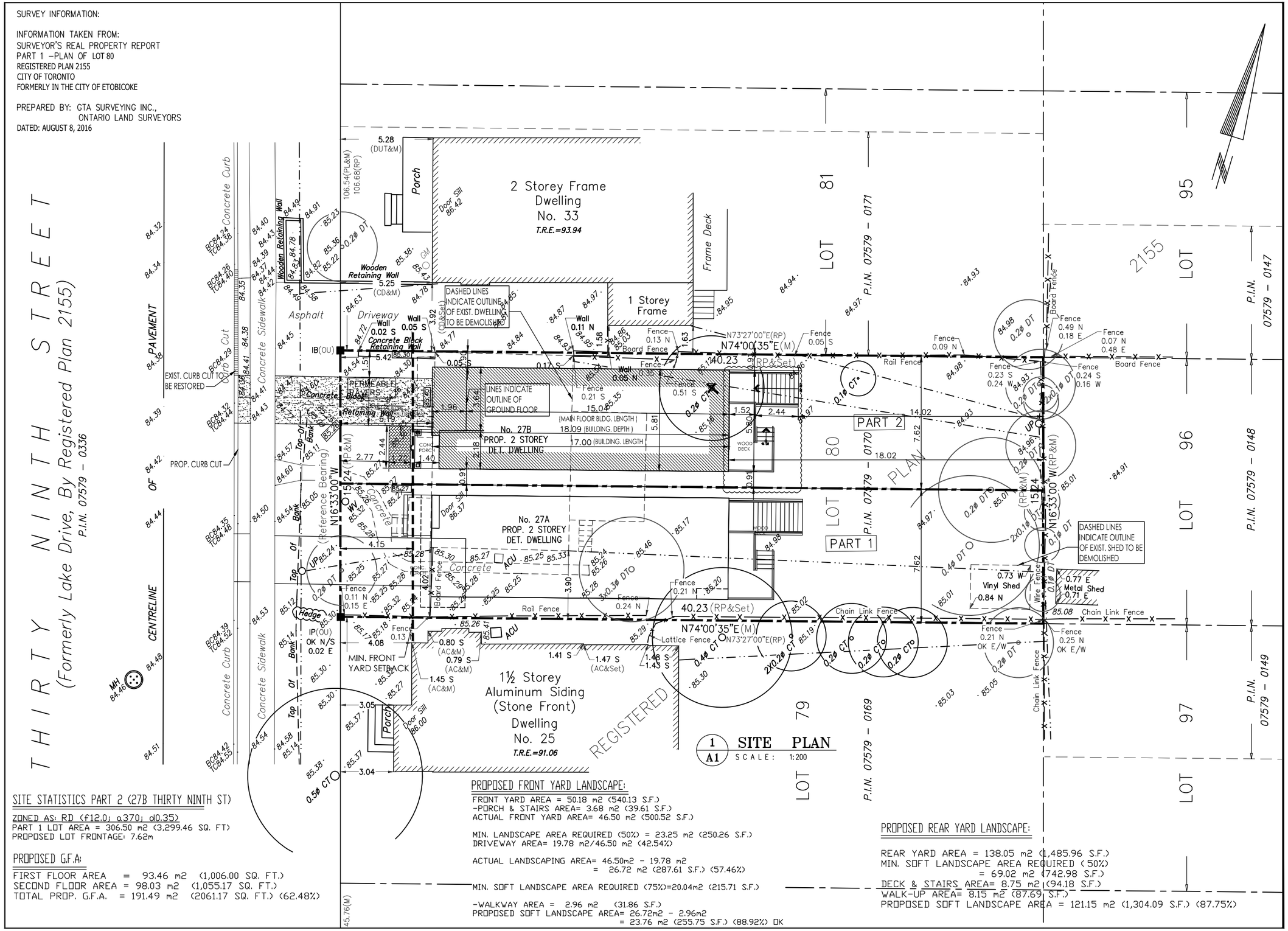
Zoning bylaw Notice

ITEM	DESCRIPTION
	City-wide Zoning By-law Your property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, your property is zoned RD (f12.0; a370; d0.35).
4.	A) The required minimum lot area is 370 square metres. The proposed lot area is 306.5 square metres. [10.20.30.10.(1) Minimum Lot Area]
5.	A) The required minimum lot frontage is 12.0 metres. The proposed lot frontage is 7.62 metres. [10.20.30.20.(1) Minimum Lot Frontage]
6.	A) The permitted maximum floor space index is 0.35 times the area of the lot: 107.28 square metres. The proposed floor space index is 0.62 times the area of the lot: 191.49 square metres. [10.20.40.40.(1) Floor Space Index]
7.	C) The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres. The proposed north side yard setback is 0.9 metres; and the proposed south side yard setback is 0.91 metres. [10.20.40.70.(3) Minimum Side Yard Setback]
8.	A parking space may not be located in a front yard abutting a street. The proposed parking spot is located in the front yard. [10.5.80.10.(3) Street Yard Parking Space]
	Etobicoke Zoning by-law Your property is located in the former municipality of Etobicoke in an area known as Long Branch which is subject to the Long Branch Zoning Code. Based on the Long Branch Zoning Code the property is zoned RS.
9.	The required automobile parking space is not permitted in a front yard. The proposed parking space is in the front yard. [Chapter 330-9.B.(1).(a)]

SURVEY INFORMATION:

INFORMATION TAKEN FROM:
SURVEYOR'S REAL PROPERTY REPORT
PART 1 –PLAN OF LOT 80
REGISTERED PLAN 2155
CITY OF TORONTO
FORMERLY IN THE CITY OF ETOBICOKE

PREPARED BY: GTA SURVEYING INC.,
ONTARIO LAND SURVEYORS
DATED: AUGUST 8, 2016



1 / A1 SITE PLAN
SCALE: 1:200

SITE STATISTICS PART 2 (27B THIRTY NINTH ST)

ZONED AS: RD (f12.0; a370; d0.35)
PART 1 LOT AREA = 306.50 m2 (3,299.46 SQ. FT)
PROPOSED LOT FRONTAGE: 7.62m

PROPOSED G.F.A:

FIRST FLOOR AREA = 93.46 m2 (1,006.00 SQ. FT.)
SECOND FLOOR AREA = 98.03 m2 (1,055.17 SQ. FT.)
TOTAL PROP. G.F.A. = 191.49 m2 (2061.17 SQ. FT.) (62.48%)

PROPOSED FRONT YARD LANDSCAPE:

FRONT YARD AREA = 50.18 m2 (540.13 S.F.)
-PORCH & STAIRS AREA= 3.68 m2 (39.61 S.F.)
ACTUAL FRONT YARD AREA= 46.50 m2 (500.52 S.F.)

MIN. LANDSCAPE AREA REQUIRED (50%) = 23.25 m2 (250.26 S.F.)
DRIVEWAY AREA= 19.78 m2/46.50 m2 (42.54%)

ACTUAL LANDSCAPING AREA= 46.50m2 - 19.78 m2
= 26.72 m2 (287.61 S.F.) (57.46%)

MIN. SOFT LANDSCAPE AREA REQUIRED (75%)=20.04m2 (215.71 S.F.)

-WALKWAY AREA = 2.96 m2 (31.86 S.F.)
PROPOSED SOFT LANDSCAPE AREA= 26.72m2 - 2.96m2
= 23.76 m2 (255.75 S.F.) (88.92%) OK

PROPOSED REAR YARD LANDSCAPE:

REAR YARD AREA = 138.05 m2 (1,485.96 S.F.)
MIN. SOFT LANDSCAPE AREA REQUIRED (50%)
= 69.02 m2 (742.98 S.F.)
DECK & STAIRS AREA= 8.75 m2 (94.18 S.F.)
WALK-UP AREA= 8.15 m2 (87.69 S.F.)
PROPOSED SOFT LANDSCAPE AREA = 121.15 m2 (1,304.09 S.F.) (87.75%)

DRAWING: SITE PLAN (PART 2)
SCALE: AS-NOTED
DRAWN BY: M.Z.
DATE: JUNE11,2019
APPROVED BY: M.Z.
PROJECT No.: 2016-25
DRAWING No.: A-1

PROJECT
PROPOSED TWO STOREY DETACHED DWELLING
AT
27 39th ST
CITY OF TORONTO

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION
Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.
MARIN ZABZUNI — 45250 BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.
CONTEMPO STUDIO — 46972 BCIN
FIRM NAME

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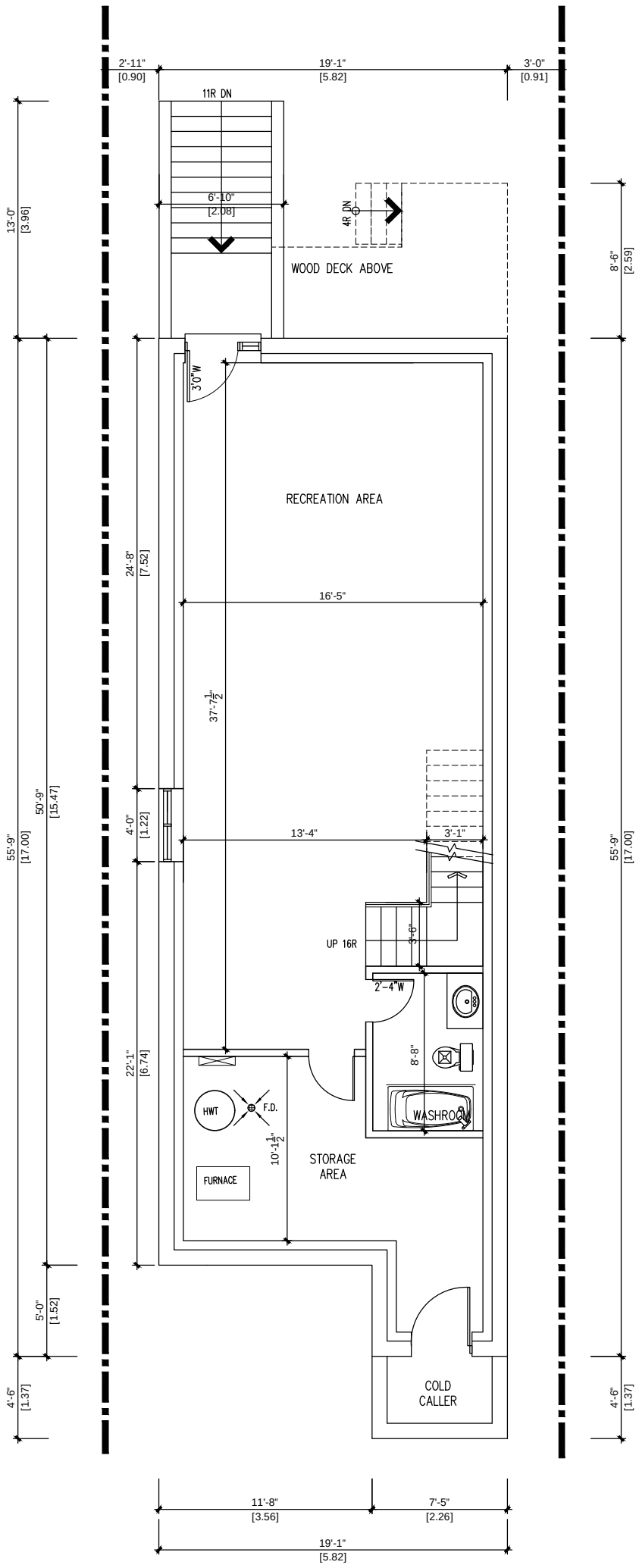

LEGEND

S.B. SOLID WOOD BEARING
F.D. FLOOR DRAIN
A.D. AREA DRAIN
NEW PARTITIONS
I.S.A. INTERCONNECTED SMOKE ALARM
C.M.D CARBON MONOXIDE DETECTOR
MECHANICAL VENTILATION

1 / A-2 BASEMENT PLAN

SCALE : 1/8"=1'-0"

contempostudio

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

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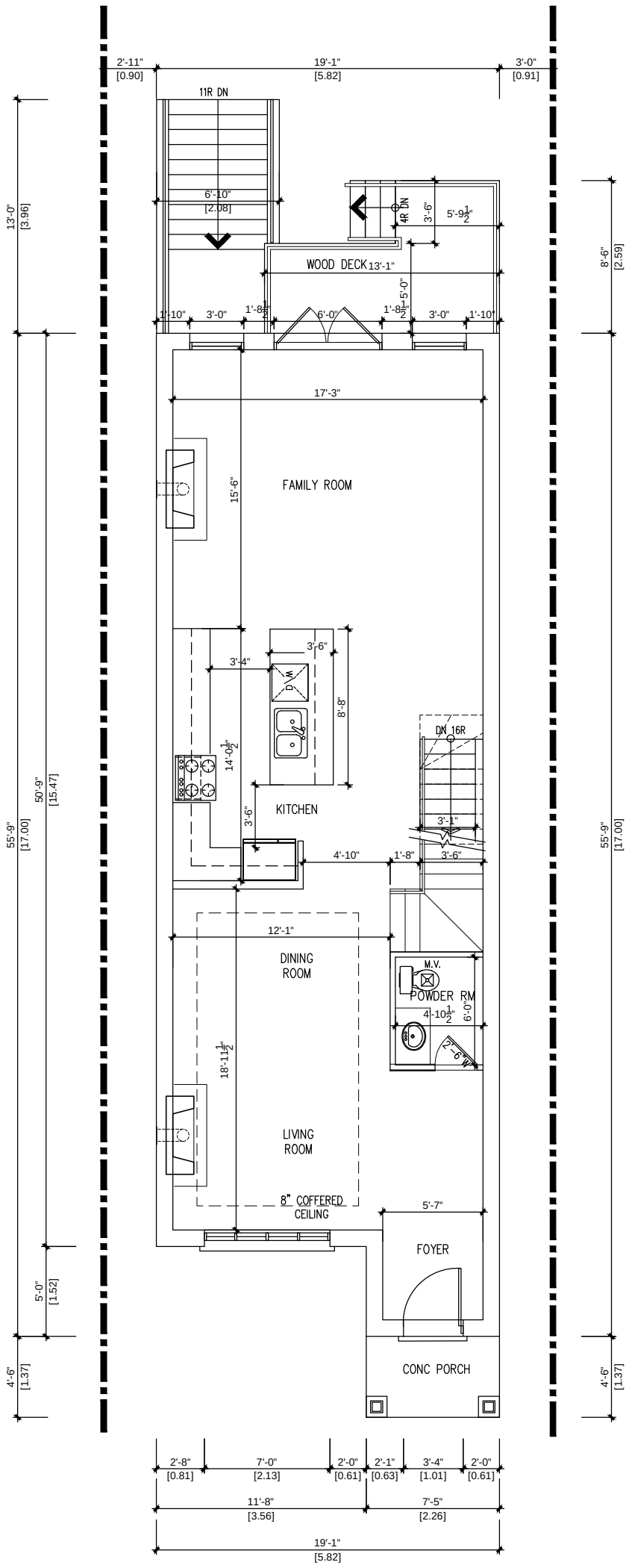
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
BASEMENT PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-2



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

FIRST FLOOR AREA: 93.46 m2 (1,006.00 SQ. FT.)

1 / A-3 FIRST FLOOR PLAN
SCALE : 1/8"=1'-0"

contempostudio

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

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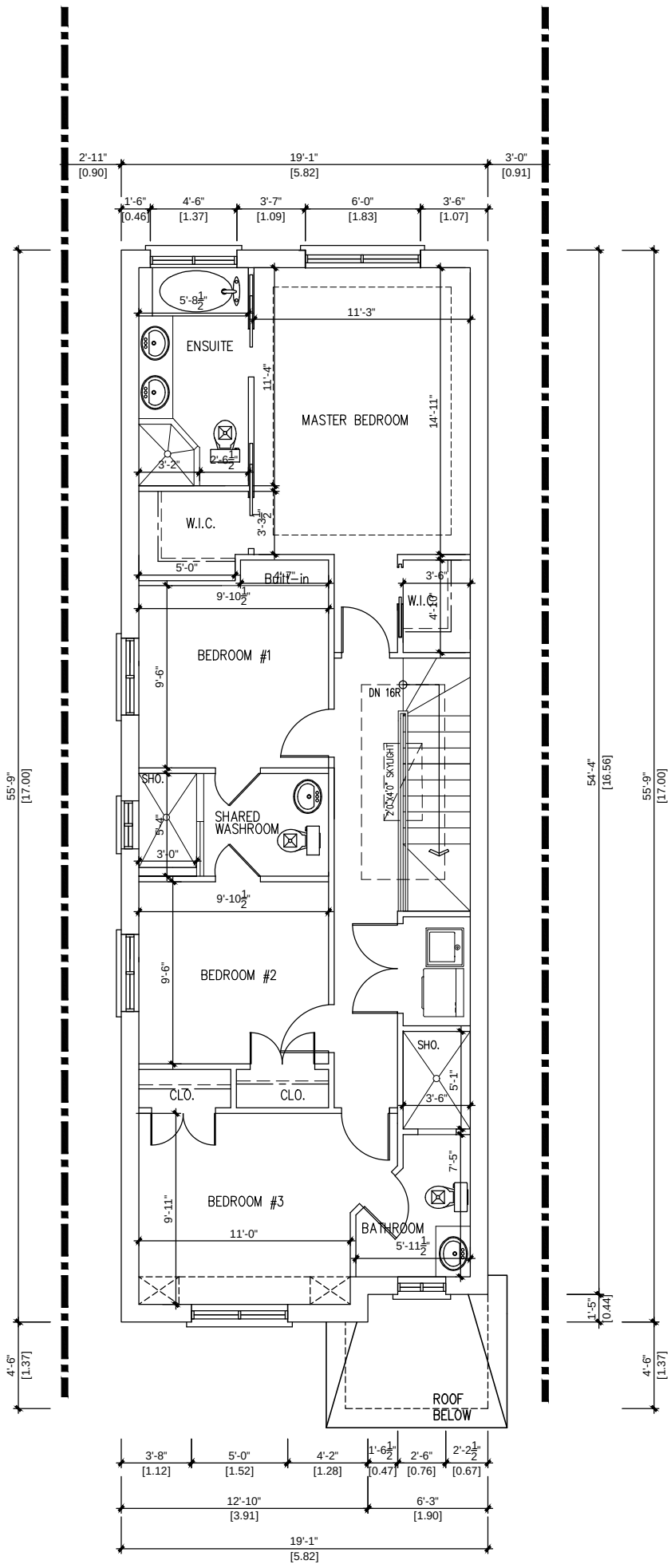
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
FIRST FLOOR PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-3



SECOND FLOOR AREA: 98.03 m2 (1,055.17 SQ. FT.)

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 / A-4 SECOND FLOOR PLAN

SCALE : 1/8"=1'-0"

contempostudio

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NAME	SIGNATURE	BCIN

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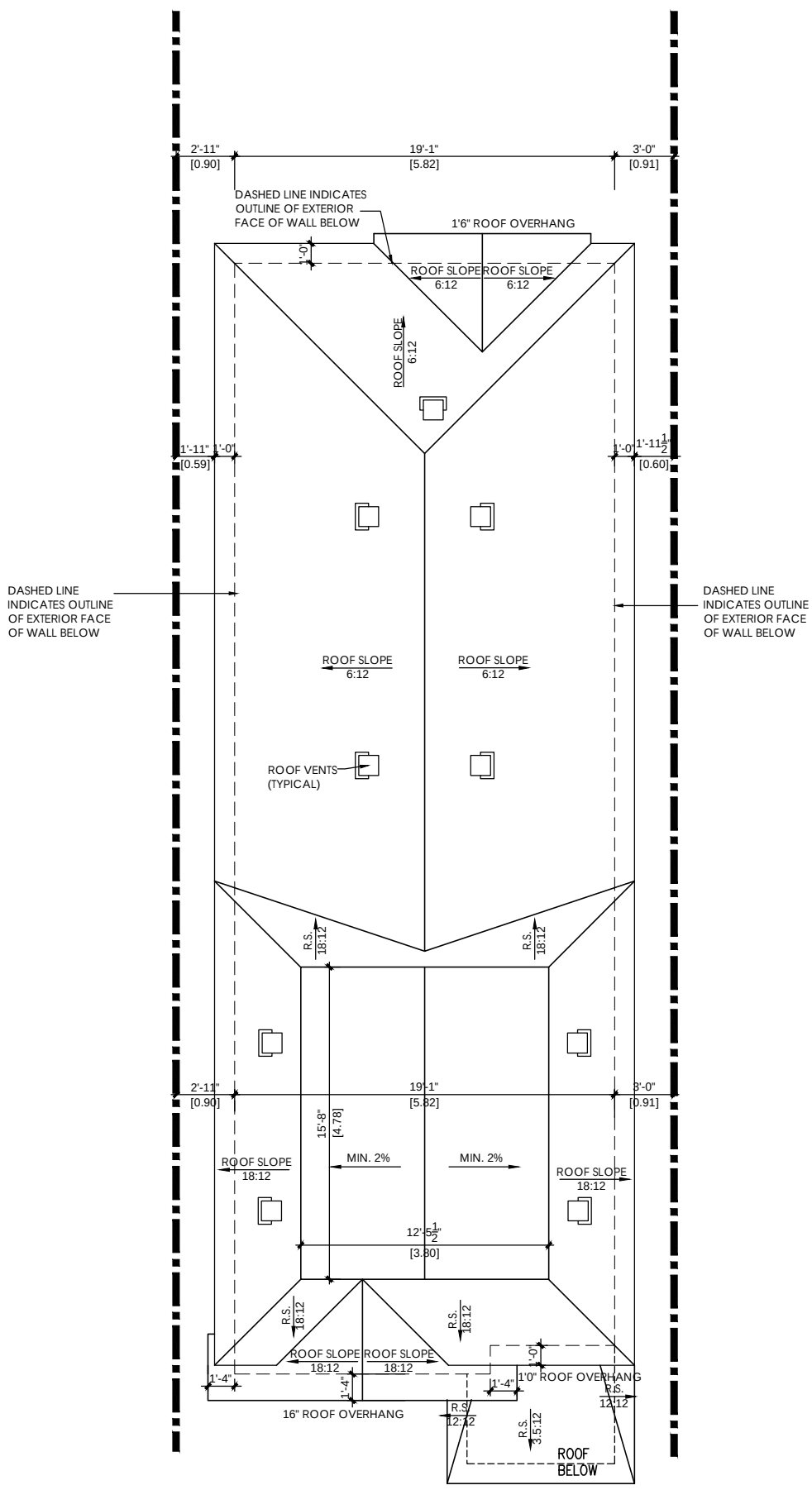
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
SECOND FLOOR PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-4



FLAT ROOF AREA: 18.14 m2 (195.23 SQ. FT.)
SLOPED ROOF AREA: 95.29 m2 (1,025.69 SQ. FT.)

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 / A-5 ROOF PLAN

SCALE : 1/8"=1'-0"

contempostudio

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

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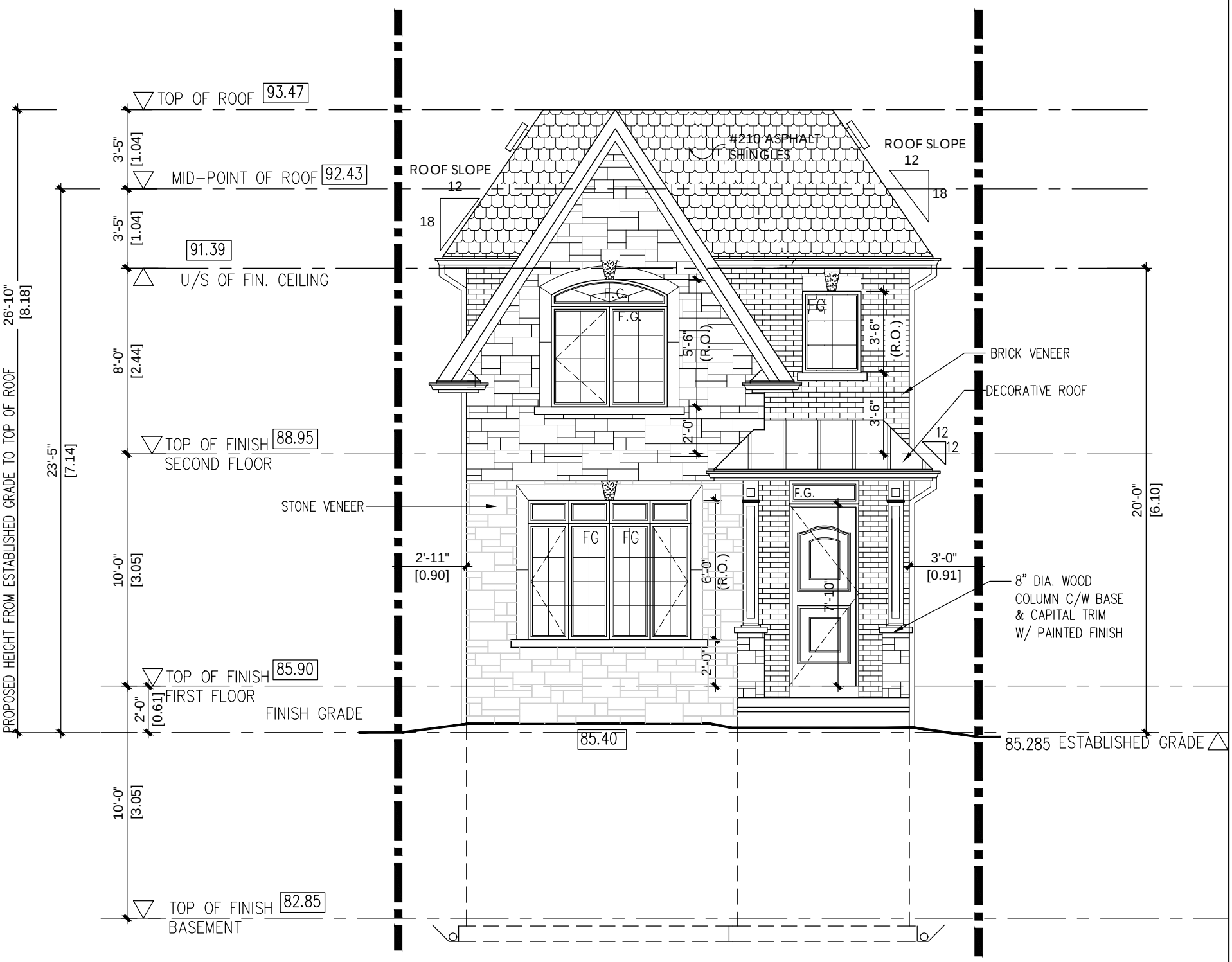
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
ROOF PLAN	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-5



1 WEST (FRONT) ELEVATION

A-6 SCALE : 3/16" = 1' - 0"

contempostudio

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MARIN ZABZUNI		45250
NAME	SIGNATURE	BCIN

REGISTRATION INFORMATION

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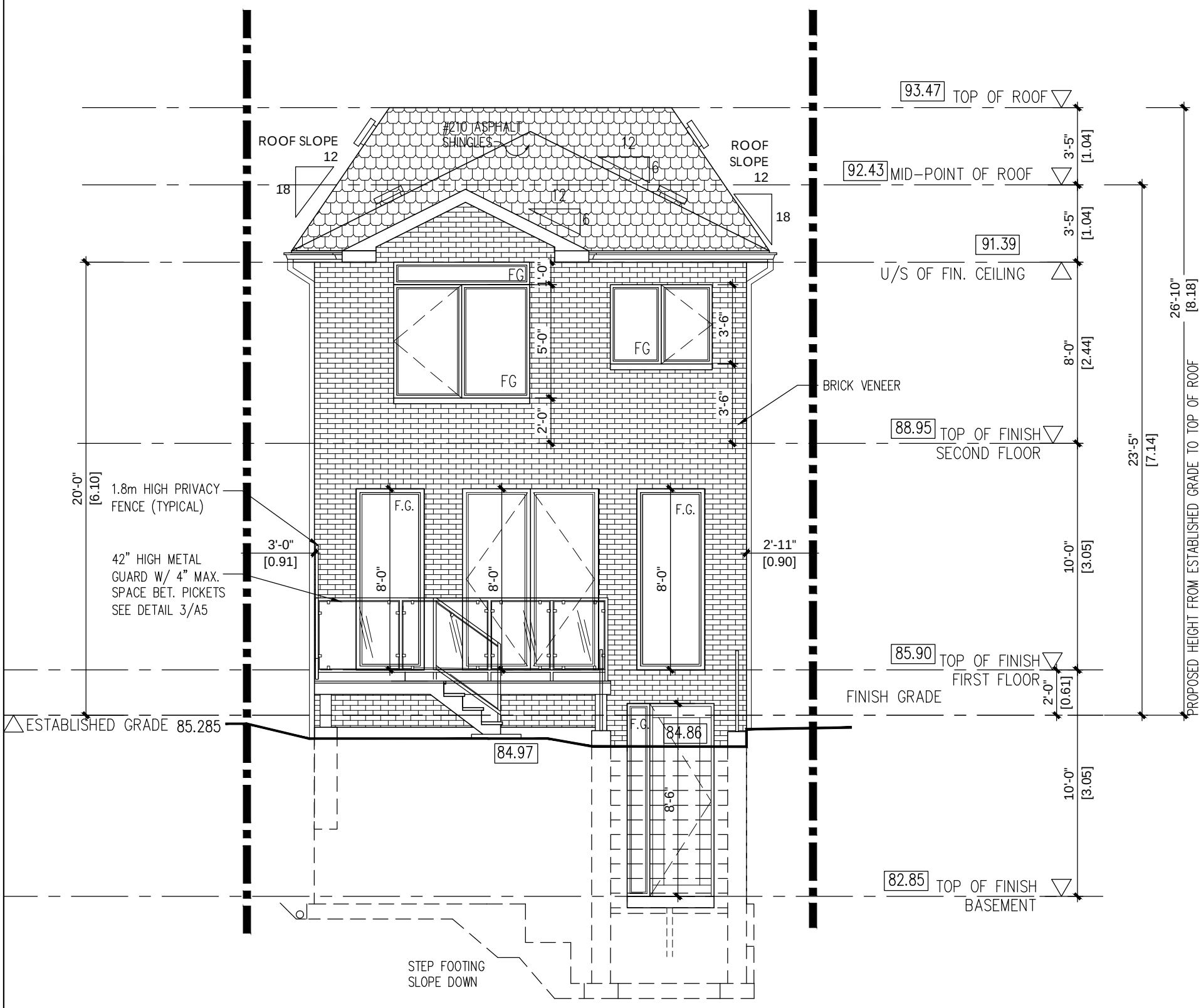
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27A THIRTY NINTH ST
CITY OF TORONTO

DRAWING	
WEST ELEVATION	
SCALE: AS-NOTED	DRAWN BY: M.Z.
DATE: JUNE11,2019	APPROVED BY: M.Z.
PROJECT No.: 2016-25	DRAWING No.: A-6



1 / A-7 EAST (REAR) ELEVATION

SCALE : 3/16" = 1' - 0"

contempostudio

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NAME	SIGNATURE	BCIN

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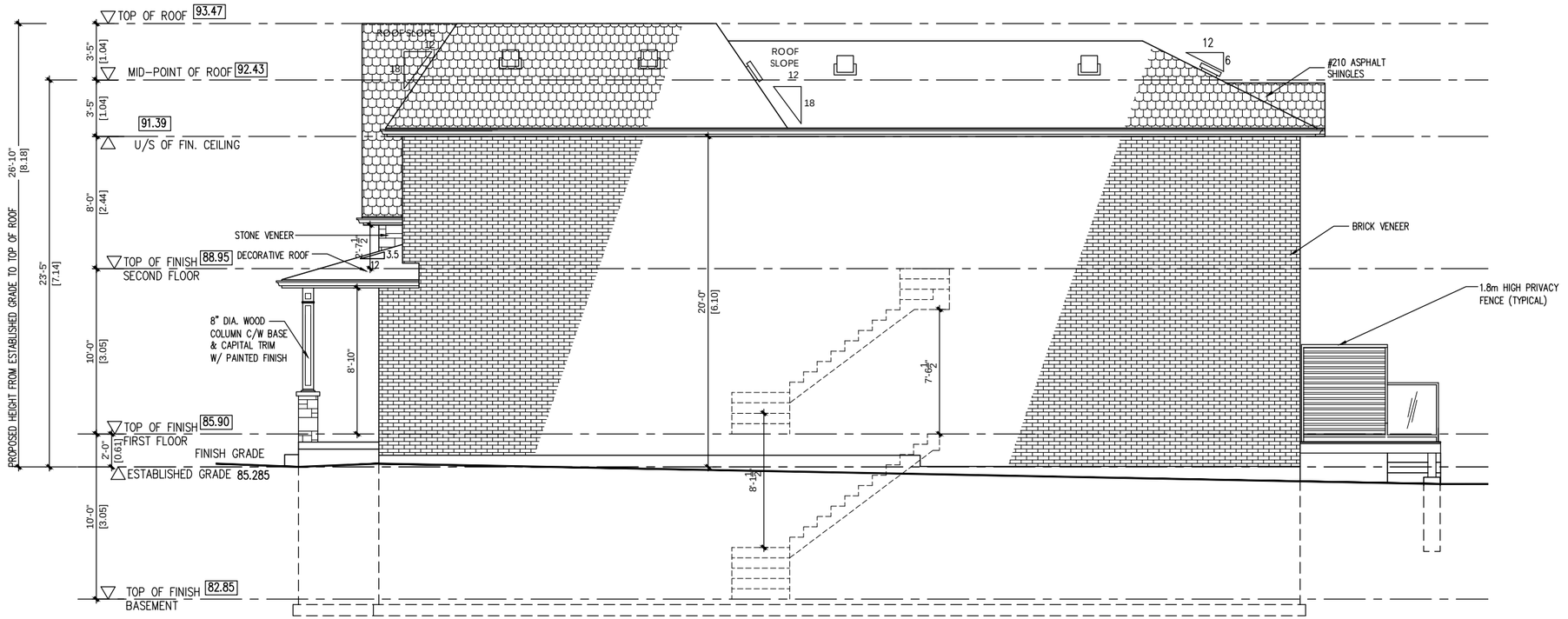
CONTEMPO STUDIO		46972
FIRM NAME		BCIN

PROJECT

PROPOSED NEW 2 STOREY
DETACHED DWELLING (PART 2)
AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING: EAST ELEVATION

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-7



1 / A-8 SOUTH ELEVATION
SCALE : 1/8"=1'-0"

DO NOT SCALE DRAWINGS
CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT ANY OMISSIONS OR DISCREPANCIES TO CONTEMPO STUDIO BEFORE PROCEEDING WITH WORK.
ALL PRINTS AND SPECIFICATIONS ARE THE PROPERTY OF CONTEMPO STUDIO AND SHALL NOT BE COPIED, IN PART OR WHOLE WITHOUT PRIOR WRITTEN PERMISSION

PROJECT
PROPOSED NEW 2 STOREY DETACHED DWELLING (PART 2) AT
27B THIRTY NINTH ST
CITY OF TORONTO

DRAWING
SOUTH ELEVATION

SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JUNE11,2019	M.Z.
PROJECT No.	DRAWING No.
2016-25	A-8

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MARIN ZABZUNI	45250
NAME	BCIN
SIGNATURE	
REGISTRATION INFORMATION	

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CONTEMPO STUDIO	46972
FIRM NAME	BCIN

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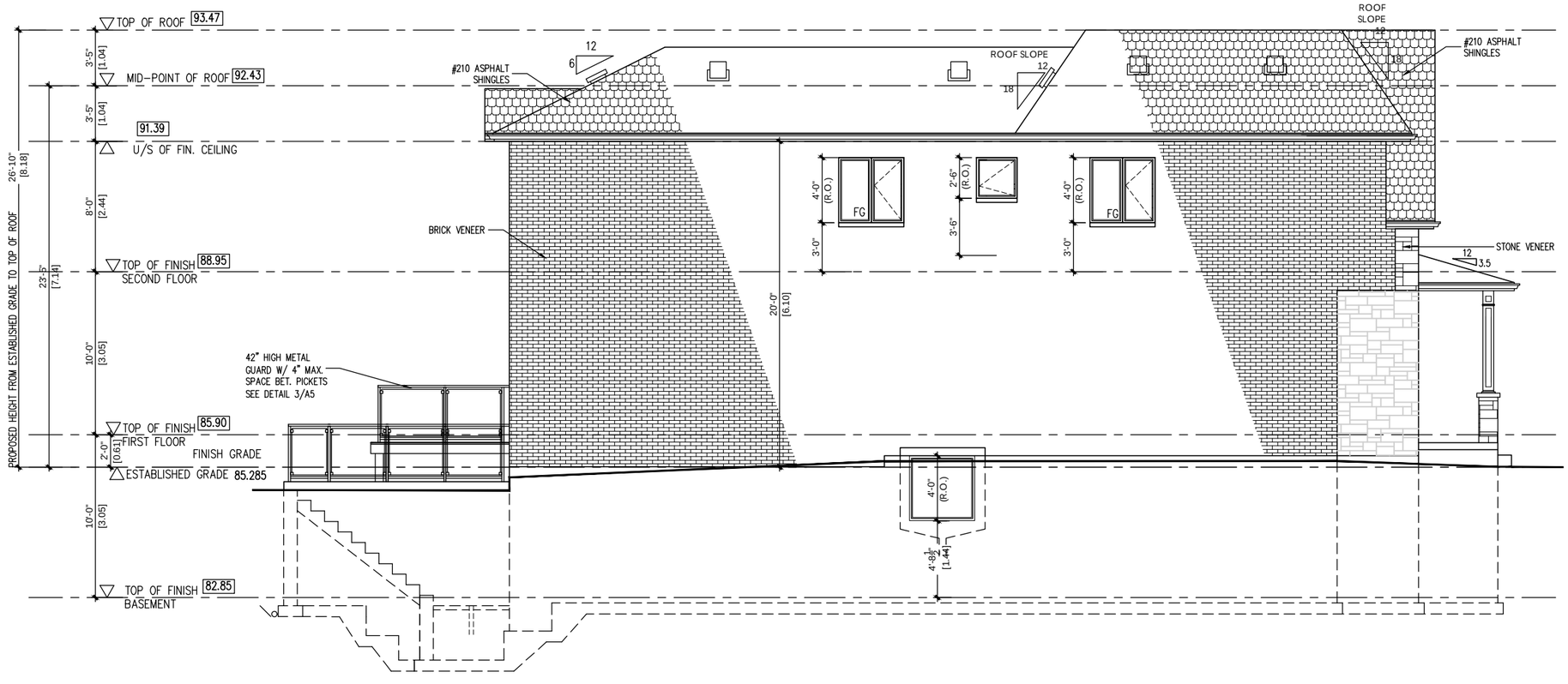

1 A-9 NORTH ELEVATION

SCALE : 1/8"=1'-0"

DRAWING: SOUTH ELEVATION
SCALE: AS-NOTED
DRAWN BY: M.Z.
DATE: JUNE11,2019
APPROVED BY: M.Z.
PROJECT No.: 2016-25
DRAWING No.: A-9

PROJECT
PROPOSED NEW 2 STOREY DETACHED DWELLING (PART 2) AT
27B THIRTY NINTH ST
CITY OF TORONTO

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MARIN ZABZUNI — 45250 BCIN
NAME — SIGNATURE

REGISTRATION INFORMATION
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CONTEMPO STUDIO — 46972 BCIN
FIRM NAME

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W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042

Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

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Appendix 2.

Ruling on the Admissibility of Certain Reply Evidence.

(Edited from Hearing Transcript (3982-4065) by Chair, with minor additions noted in parentheses for clarity.)

'I want to make a disposition of this request by the Applicant for additional evidence to be filed and for the witness, Peter Wynnyczuk, to return to speak to the matter.

At issue is work recently conducted in response to the examination and cross examination heard in January of 2020.

I frankly thought it might be relevant to look up the sequence of evidence as between Dr. Dida and the Applicant's arborist, Peter Wynnyczuk. But on the submissions received, I don't think that is necessary. I had had a vague recollection that Dr. Dida had been inserted prior to the Applicants' arborist - that fact may or may not have been the case.

Ms. Stewart, in your opening remarks you were very frank to say that you had read the cases of the TLAB and that they had identified that the issue of an arborist and tree assessment was required because of the policies of the Official Plan on the issue of trees, tree assessments (and their protection and preservation). You at least had recognized and had provided that advice to your client - that such research was a necessary ingredient to conducting a TLAB case involving a severance and variances, where there is tree impact, or injury or removal - namely, that such investigations are required.

I commend you for that and I think the result of that was, if not the initial report of the Applicant's first arborist, it certainly resulted in bringing forward Mr. Wynnyczuk (for evidence in chief).

You had identified the issue at least on January 3, 2020.

Ms. Abimbola has made it very clear that insofar as the City's Urban Forestry Division was concerned, it had indicated that the issue had been raised and that there existed a deficiency of information in the Applications, as early as 2018. As such, I am not welcoming of a request to admit new evidence now.

The Applications were filed in 2017 and have continued into 2021.(The interval is without fault to anyone and is largely attributable to an international pandemic, COVID - 19, and Provincial, City and TLAB suspensions of Hearings.)

I am frankly surprised that this request arises at this point in time and I am also surprised that there has been no notice of motion to introduce the matter.

The subject matter of tree preservation and protection has been absolutely seminal to the evidence and answers of many of the witnesses and much of the Witness Statements exchanged, for a lengthy period.

It is incumbent, I think, on the Applicant to have revealed to the Parties the knowledge that additional work had been instructed and has been undertaken.

You have not done so and you have not brought a notice of motion and not raised the matter and information until the day before the last day of the hearing. This is problematic in the extreme. (The matter was only raised by Ms. Gibson at the outset of this sitting and deferred to consideration prior to Reply evidence being called, if any.)

I do think that this Hearing is not an iterative process.

We do not raise an issue and then allow people to go out and address it and then recall evidence. I think and agree with Ms. Abimbola, that she is correct in calling this (request to introduce new evidence) a form of case splitting.

I am not supportive of that and have not supported it, as a matter being raised and then responding to in Reply, simply because it has (now) been recognized as important.

It is my belief and in my dispositions that Urban Forestry matters are important from the outset (as are required to be addressed by the City Official Plan). As I say, you recognized that (in Opening Remarks). If the initial arborist failed to communicate with the Urban Forestry Division to understand what was meant, before the Committee of Adjustment, on the (Division's) report and indication of a deficiency of information, I do not visit that that falls on anyone other than the Applicant. There were multiple opportunities to seek clarification. I did not read from my recollection of the evidence of Dr. Dida that the Urban Forestry Division ever closed the door (on communication).

Namely, it was always prepared to receive additional information - which didn't come, despite there being additional identification of the issue as early as 2018 and again in 2019 (recited in the same paragraph references cited by Ms. Abimbola from the Witness Statements of Dr. Dida).

And so I think the responsibility lies with the Applicant to have addressed (the matter in chief). So to say that the Applicants team was not aware (of the issue of the adequacy of the trees investigation) until January 10 of 2020, I think it is not credible. I respect it as a submission but I also respect that the need for more detailed evidence was known (and not provided), but that's the nature of the trial process.

I don't believe it is appropriate, having the issue of a deficiency being raised and having addressed it as best they can, to then identify that the witness could have done better -

by way of a tree root investigation (and then seek to introduce the results of the subsequent work in Reply).

I don't believe it is appropriate to say that we're going to now except that evidence in this case without any notice, any undertaking, or any direction or any background to it to support this position and the bringing forward of new evidence (at the late stage of Reply with its limited rights in affected Parties).

As both counsel have made comments as to the substance and nature of the investigations and evidence, I am going to strike any such reference and understanding from the record.

I am not going to allow the evidence of a new report, coming 24 hours ago.

I am not going to allow the witness to speak to it. If the witness (Wynnyczuk) wishes to come forward to speak to matters other than the recent work just done, I will hold that evidence to the standard of proper Reply evidence.

I am not foreclosing that in any sense but I am not going to except his new report or the witness speaking to that issue.

I accept the submissions of Ms. Abimbola of which I am supportive and of Ms. Gibson.

So that is my Ruling on that issue.