

# DECISION AND ORDER

**Decision Issue Date** Tuesday, June 08, 2021

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

Appellant(s): JIM BAKER

Applicant(s): SANAZI NOURI

Property Address/Description: 33 ELWOOD BLVD

Committee of Adjustment File

Number(s): 20 184208 NNY 08 MV

**TLAB Case File Number(s): 20 224117 S45 08 TLAB**

**Hearing date: Monday May 31, 2021**

**Deadline Date for Closing Submissions/Undertakings: May 31, 2021**

**DECISION DELIVERED BY S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant SANAZI NOURI

Appellant JIM BAKER

Appellant's Legal Rep BARRY HAROSKO

Party AFSHIN NASERI

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 20 224117 S45 08 TLAB**

Party's Legal Rep	NANCY SMITH
Participant	DAVID TICE
Participant	PATRICK SMYTH
Participant	LANCE NEWMAN
Participant	HEATHER JOHNSTON
Participant	DOROTHY SMYTH
Participant	PETER BRADY
Participant	JORDAN COLE
Participant	CHRIS GOUGH
Participant	LOUDON YOUNG
Participant	JANSEN TSOI
Expert Witness	FRANCO ROMANO

## **INTRODUCTION AND BACKGROUND**

Afshin Naseri is the owner of 33 Elwood Blvd, which is located in Municipal Ward 8 (Eglinton-Lawrence) of the City of Toronto (the City). He applied to the Committee of Adjustment (COA) for variances to construct a new dwelling. The COA heard the application on November 10, 2020, and approved it in its entirety. On November 30, 2020, Mr. Jim Baker, the neighbour who lives at 25 Elwood, appealed the decision of the COA to the Toronto Local Appeal Body (TLAB), which scheduled a Hearing on May 31, 2021. A number of the community members elected for Party, or Participant status.

On April 22, 2021, the Appellants, and other Parties and Participants in support of the Appeal, settled with the Applicants. The Minutes of Settlement were signed and sent to the TLAB on the same day.

## **MATTERS IN ISSUE**

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

The permitted maximum height of all side exterior main walls facing a side lot line is 7.00m. The proposed height of the side exterior main walls facing a side lot line is 8.10m.

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

The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is **0.735 times** the area of the lot.

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

The required minimum front yard setback is 7.06m. The proposed front yard setback is 5.96m.

## **JURISDICTION**

### **Provincial Policy – S. 3**

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 20 224117 S45 08 TLAB**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

**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**

At the Hearing held on May 31, 2021, the Applicant was represented by Ms. Nancy Smith, a lawyer, and Mr. Franco Romano, a planner. Mr. Jim Baker, the Appellant, was present as an observer, and did not provide any evidence.

Ms. Smith confirmed that the Applicants had settled with the Opposition, and that all Parties/Participants, had signed the Minutes of Settlement. She stated that the only variance that had been changed from the proposal submitted to the COA, and the Appeal before the TLAB, was the decrease in the FSI from 0.752X Lot Size in the former, and 0.735X Lot Size in the latter.

Mr. Romano was sworn in to provide evidence, and was recognized as an Expert in the area of land use planning. The highlights of his evidence are summarized below:

The Study Area chosen for the purposes of Analysis is bound by Avenue Road in the West, Roselawn Ave in the north, Eglinton Ave. in the south, and Oriole Parkway to the East. This area is designated "Neighbourhoods" in the Official Plan, and the Zoning is classified as RD (f9.0;d.06)(x1406) according to By-Law 569-2013, and as R1 pursuant to the former City By-Law 438-86. The Subject Site is located on the south side of Elwood Boulevard, across the street from the open field of Marshall McLuhan Catholic Secondary School. Residential dwellings facing Elwood Boulevard are located only on the south side of the road, while the north side is occupied primarily by the school. The area contains a rolling topography where buildings are "sculpted" into the landscape. This topography results in a pattern of development where, for instance, the lower level of a building may be the basement but it is all or mostly exposed resulting in floor area which contributes to the height, mass and scale of development. The area is experiencing a considerable amount of regeneration which includes new residential buildings. regeneration that has been occurring reflects the era of construction, differs from the preceding development and occupies more and different space than the development that is being replaced or improved upon.

He then described the proposal at the Site as a new, two storeyed house, with an integral garage. The dwelling is sculpted into the topography such that the front wall is mostly exposed from the garage level to the second storey. Along the sides and rear, however, the basement level of the dwelling is underground. The rear elevation illustrates that the ground floor is only a few steps from ground level. The sides of the building are similar, with the basement being covered by the ground and not as exposed as other dwellings in the area.

Mr. Romano opined that the proposal is consistent with the higher level Provincial Policies, because of its emphasis on optimizing the use of the existing land, and optimizing the use of land and making better, more efficient use of existing infrastructure.

Mr. Romano then discussed how the proposal is compatible with the Official Plan i.e. the former OPA 320. He prefaced his remarks by stating that the concept of “fit” in the Official Plan translated as compatible with what existed in the community, as opposed to replicating what already existed in the community. Mr. Romano referred to Policy 2.3.1 and discussed how communities need to change such that the community is not destabilized, and how the proposal at 33 Elwood would not destabilize the neighbourhood, by being compatible what already existed in the community. He next discussed Policy 3.1.2, and discussed how the proposal minimized impacts on its neighbouring properties. Mr. Romano noted that that the lands are not within a natural heritage system, and said that Policy 3.4, which referred to integration and regulation of natural features, did not apply to the proposal. Lastly, Mr. Romano discussed Policies 4.1.5 with specific reference to Sub-Sections (a)-(g), and demonstrated how the proposal satisfied these policies. He demonstrated that the proposal would not alter the existing street pattern, nor would it change the existing prevailing sizes and lots in any form, and would consequentially satisfy Policies 4.1.5(a) and 4.1.5(b). He asserted that the proposed building, which will have two storeys, is no different from other two storey buildings in the neighbourhood, because “60% of them have two storeys”. The proposed massing, is no different from other houses in the immediate neighbourhood, because it is “oriented towards the front to central portion of the lot”. He added that because of the “rolling topography”, it was “common” for the “lower floor to be exposed” to the street, and to be consequently included in the FSI calculations. As a result, he concluded that the FSI would increase not because of the size of the proposed house, but how the calculation was being performed. As a result of the size of the house being comparable with other existing house, Mr. Romano asserted the proposal satisfied (c) notwithstanding the FSI request. The proposed house is a detached dwelling, which is the prevailing type in the area, and satisfies 4.1.5(d). In the case of Sections 4.1.5 (e)-(g), the driveways, setbacks, the landscaped open space are compliant with the zoning requirements.

On the basis of this analysis, Mr. Romano concluded that the proposal would maintain the intent, and purpose of the OP.

Mr. Romano next discussed how the proposal satisfied the test respecting the Zoning By-Laws. He reiterated that the Subject Site has an RD zoning pursuant to the Toronto harmonized Zoning By-law 569-2013, and is zoned R1 pursuant to the former Toronto Zoning By-Law 438-86. He stated that the overall general intent and purpose of the

Zoning By-Laws is to achieve an orderly, compatible form of low rise residential, which would be fulfilled through the construction of a detached house, with floors, and an integral garage. Speaking to the request variance with respect to the Main Wall Height, Mr. Romano noted that the wall height provision was still under review. He added that the proposal satisfied the intent of the By-Law, which is to minimize the extent to which walls may rise to create inappropriate upper levels, such as third floors in areas where two storeys are regulated, or disproportionate flat roofs in an area where pitch floors are encouraged. He concluded that these concerns did not apply to the Site, because there were no unacceptable adverse impacts created on the neighbouring properties. With respect to the variance respecting the FSI, Mr. Romano reiterated that the FSI was the consequence of how the lowest floor had to be included in the gross floor area calculations. He emphasized that the proposed floor area was reasonably deployed on the lot in a manner that is anticipated to be occupied by a low-rise residential building, and is located within a site design and built form that is appropriate in this instance. Lastly, Mr. Romano spoke to the variance respecting the Front Yard Setback that the proposed front yard setback overlaps the existing front yard setback. The proposal maintains the general intent and purpose of the zoning by-law to maintain an appropriate front wall alignment along the street.

Based on this evidence, Mr. Romano concluded that the proposal maintained the intent, and purpose of the Zoning By-Laws.

Mr. Romano next discussed how the proposal satisfied the test of minor. He emphasized that the determination of minor is not to be based on an abstract mathematical calculation, but on the basis of an assessment of the impact of the proposal on its neighbours. He reiterated that the proposal would not have any unacceptable adverse impact on its neighbours by virtue of shadowing or privacy. As stated earlier, he had demonstrated that the proposal would not impact the existing street-wall facing Elwood. On the basis of this evidence, Mr. Romano concluded that the proposal satisfied the test of minor.

Lastly, Mr. Romano addressed how the proposal satisfied the test of appropriate development. He opined that the “proposed regeneration constitutes a sensitive two storey detached dwelling site design, and built form which is within the planning and public interest and is desirable for the appropriate use and development of the land”. Mr. Romano stated that the proposal will contribute to the mix of housing choices in a manner that reflects and reinforces the Subject Site’s physical character. The proposal builds upon and maintains the existing physical character in an appropriate manner.

Based on this analysis, Mr. Romano stated that the proposal satisfied the test of appropriate development.

On the basis of the analysis, as recited, Mr. Romano concluded that the proposal satisfied the four tests under Section 45.1 of the Planning Act, and recommended that the proposal be approved. When asked about conditions to be imposed, if the approval were recommended, Mr. Romano discussed standard conditions which ask that the proposal be constructed in “substantial conformity” with the submitted Plans and Elevations, as well as requiring the Applicants to pay the City \$ 583 in lieu of planting of

a street tree on the City road allowance, abutting each of the sites involved in the application.

I thanked Mr. Romano and Ms. Smith for their participation, and stated that I would reserve my Decision.

## **ANALYSIS, FINDINGS, REASONS**

As was stated at the beginning of the Decision, the Parties and Participants came to a Settlement regarding the proposal to be developed at 33 Elwood Drive. Of the three variances submitted to the COA and the TLAB, two of the variances were unchanged, while there was a slight decrease in the variance respecting the requested FSI. The implication of the unchanged and reduced variances, in conjunction with a Settlement involving all Parties and Participants, is that new notice did not have to be given under Section 34.18.1.1 of the Planning Act.

Mr. Romano's expert evidence was uncontroverted, because there were no other Witnesses to present evidence before the TLAB.

I accept Mr. Romano's opinion on the question of compatibility between the proposal and the higher level Provincial Policies, by virtue of the proposal exemplifying intensification.

Mr. Romano's discussion of the Official Policy covered Policies 2.3.1, 3.1.2, 3.2.1 and 4.1.5. He demonstrated that the proposal under consideration was a two storey dwelling in a neighbourhood where the latter is the prevailing type of dwelling, and would not destabilize the community. He demonstrated that the proposal would be part of a continuum of development that community had already experienced, which meant it was consistent with Policy 2.3.1. The proposed built form existed in the community and would not cause adverse impacts, which meant that Policies 3.1.2, and 3.2.1 are fulfilled. In the case of Policy 4.1.5, the evidence demonstrated that the requested FSI was because of the undulating topography, which meant that all the floors of the proposed house, had to be counted towards deriving the FSI. The requested height and front yard setback variances do not create adverse impacts on the neighbouring properties, or the street wall. On the basis of this evidence, I find that the proposal satisfies the test of maintaining the intent, and purpose of the OP.

The proposal satisfies the performance standards that correspond to the wall-height by not creating adverse shadow, or privacy impacts. The requested variance for the front yard setback would not impact the street wall, and consequently does not cause any adverse impact. I find that the proposal maintains the intent and purpose of By-Law 569-2013, because all the relevant performance standards are upheld by the proposal. Notwithstanding the fact that the former North York By-Law 438-86 is applicable, there are no variances that have been requested under the former By-Law.

Given that there is a finding that no unacceptable adverse impacts would be created by proposal on its neighbouring properties, I find that the proposal satisfies the test of minor. On the basis of the evidence demonstrating that the proposal will not introduce a new built form into the community, and that the community will not be

destabilized if the proposal were approved, I find that the proposal satisfies the test of appropriate development.

On the basis of the analysis above, I find that the Appeal may be allowed in part, and that all the requested variances may be approved.

The two recommended conditions by Romano are standard conditions- namely that the dwelling be built in substantial compliance with the submitted Plans and Elevations, and that a cash payment be made to the City of Toronto, in lieu of planting a street tree on the City road allowance abutting each of the sites involved in the application. These conditions are consequently imposed on the approval of the Application. It may be noted that the Plans and Elevations pertinent to this Decision were prepared by Tecnip Inc., dated February 19, 2020, and are attached to this Decision

## **DECISION AND ORDER**

1. The Appeal respecting 33 Elwood Drive is allowed in Part, and the decision of the Committee of Adjustment respecting the same property, dated November 10, 2020, is set aside.

2. The following variances are approved:

**1. Chapter 10.20.40.10.(2)B(ii), By-law No. 569-2013**

The permitted maximum height of all side exterior main walls facing a side lot line is 7.00m. The proposed height of the side exterior main walls facing a side lot line is 8.10m.

**2. Chapter 10.20.40.40.(1)A, By-law No. 569-2013**

The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.735 times the area of the lot.

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

The required minimum front yard setback is 7.06m. The proposed front yard setback is 5.96m.

3. No other variances are approved.

4. The following conditions are imposed on the approval of the variances:

1. The proposed building shall be constructed substantially in accordance with the revised Site Plan and Elevations, prepared by Tecnip Inc., dated February 19, 2020, and attached to this Decision.

2. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 20 224117 S45 08 TLAB**

So orders the Toronto Local Appeal Body

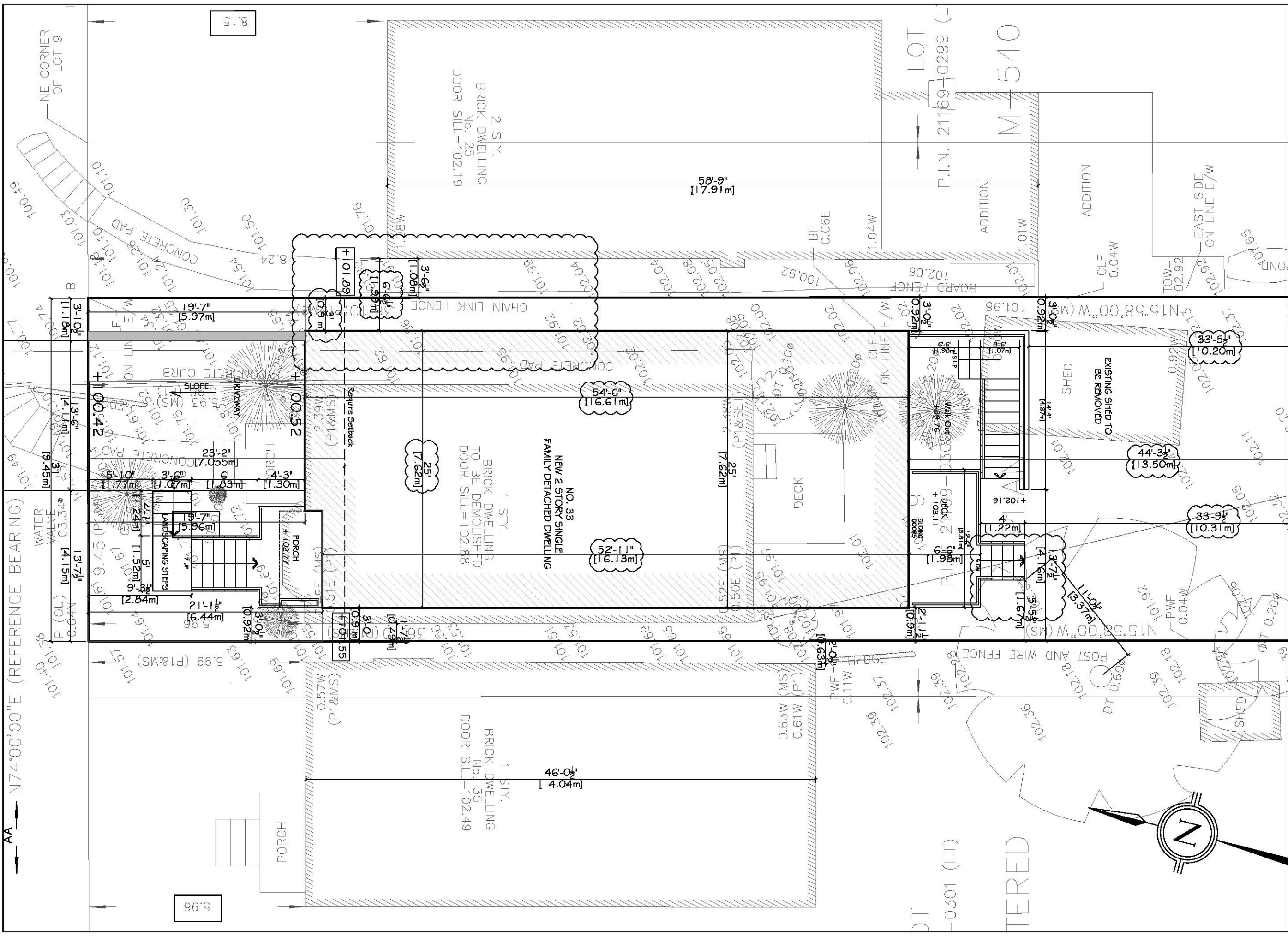
X



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body





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6. ALL STRUCTURAL CHANGES MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.
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NO.	ISSUED FOR	DATE
1.	ZONING	JULY. 21, 2020
2.	COA	NOV. 08, 2020

**PROJECT ADDRESS:**

33 ELWOOD BLVD  
TORONTO, ONTARIO

**PROJECT NO:**

**DRAWING TITLE:**

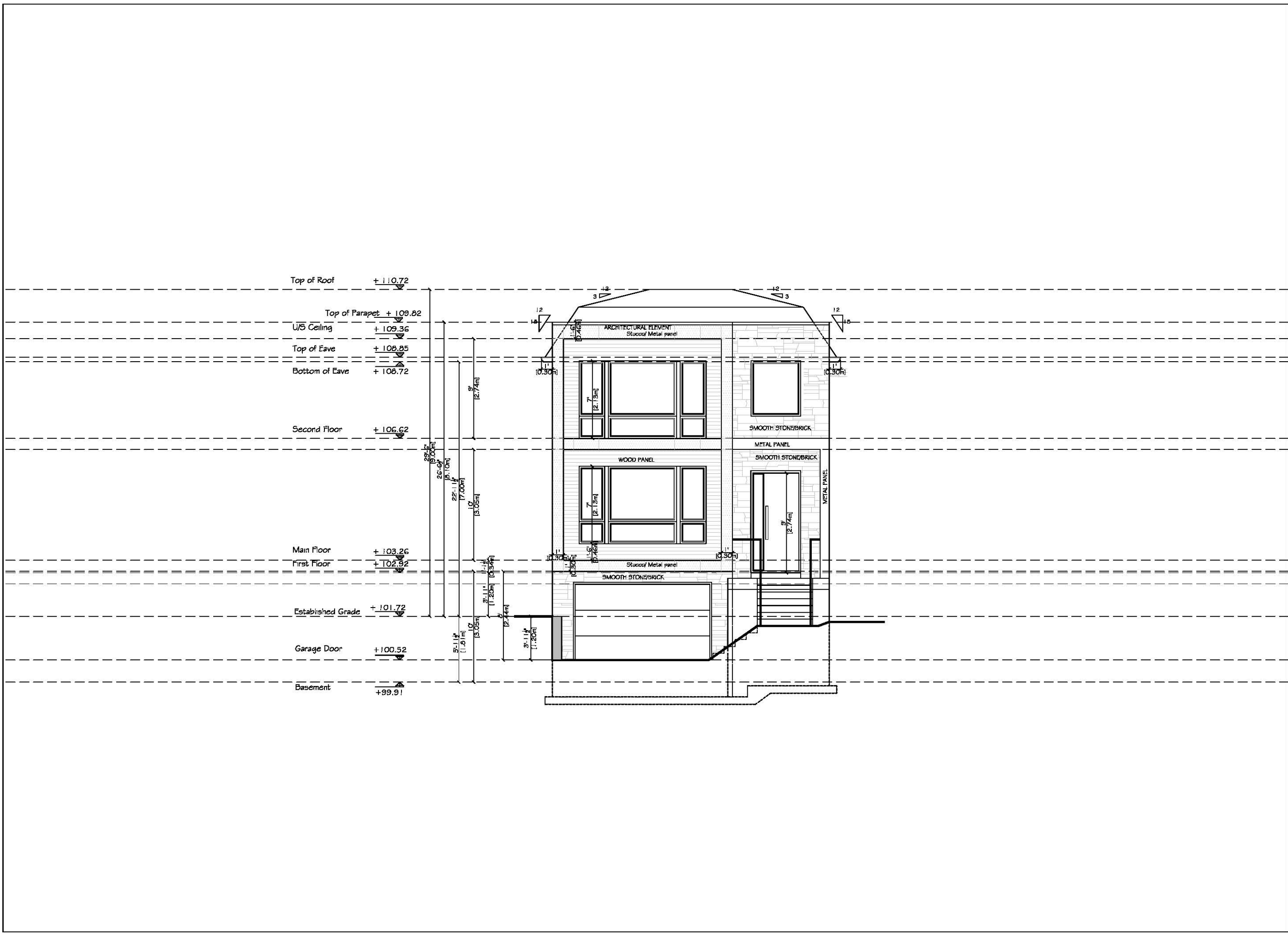
**SITE PLAN**

NO.	REVISION	DATE
1.	FSI REDUCTION	FEB. 19, 2021

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

**DRAWN BY:** SANAZ NOURI

**DATE:**



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NO.	ISSUED FOR	DATE
1.	ZONING	JULY. 21, 2020
2.	COA	NOV. 08, 2020

**PROJECT ADDRESS:**

33 ELWOOD BLVD  
TORONTO, ONTARIO

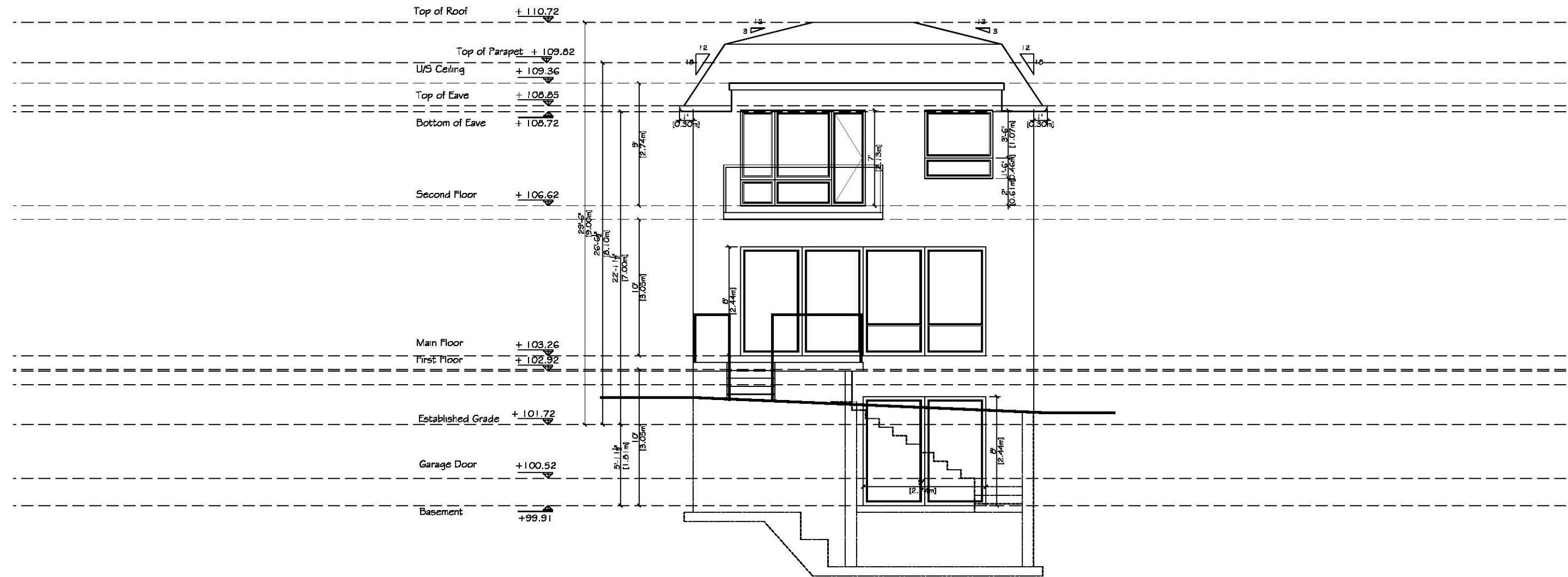
**PROJECT NO:**

**DRAWING TITLE:**

**MAIN (NORTH)ELEVATION**

NO.	REVISION	DATE
1.	FSI REDUCTION	FEB. 19, 2021

SCALE:	1/8"=1'-0"
DRAWN BY:	SANAZ NOURI
DATE:	



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NO.	ISSUED FOR	DATE
1.	ZONING	JULY. 21, 2020
2.	COA	NOV. 08, 2020

**PROJECT ADDRESS:**

33 ELWOOD BLVD  
TORONTO, ONTARIO

**PROJECT NO:**

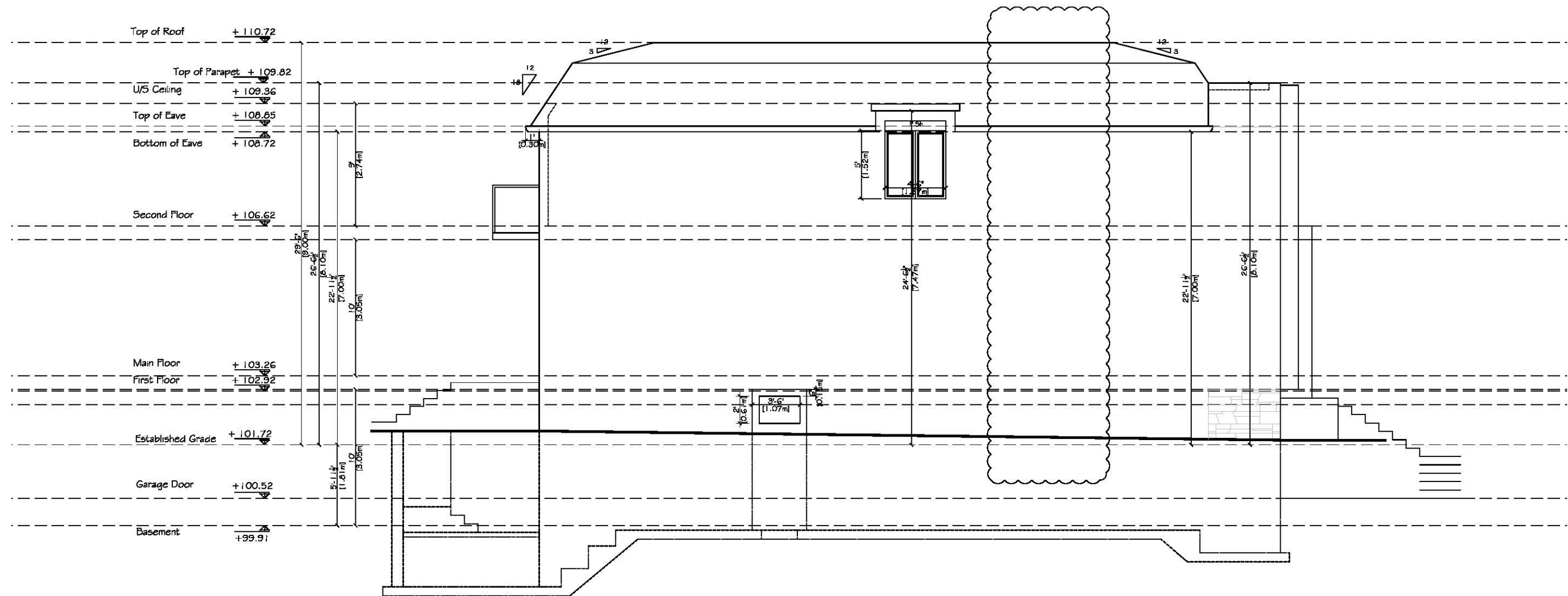
**DRAWING TITLE:**

**REAR (SOUTH) ELEVATION**

NO.	REVISION	DATE
1.	FSI REDUCTION	FEB. 19, 2021

SCALE:	1/8"=1'-0"
DRAWN BY:	SANAZ NOURI
DATE:	





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NO.	ISSUED FOR	DATE
1.	ZONING	JULY. 21, 2020
2.	COA	NOV. 08, 2020

**PROJECT ADDRESS:**

33 ELWOOD BLVD  
TORONTO, ONTARIO

**PROJECT NO:**

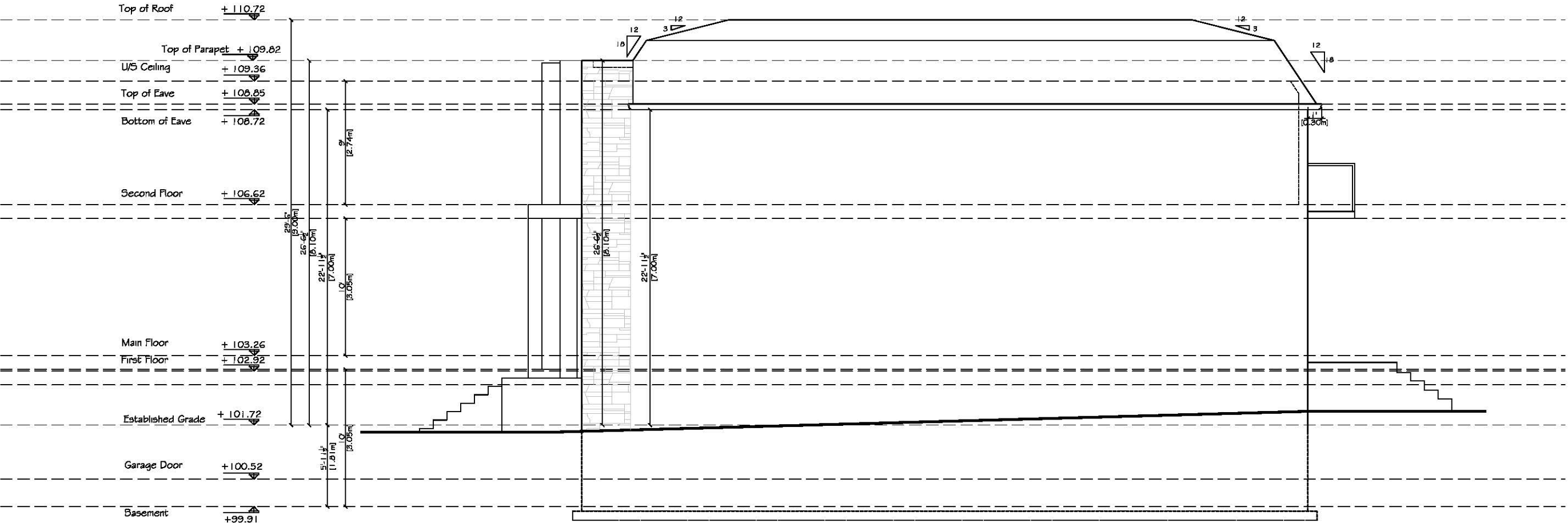
**DRAWING TITLE:**

**EAST SIDE ELEVATION**

NO.	REVISION	DATE
1.	FSI REDUCTION	FEB. 19, 2021

SCALE:	1/8"=1'-0"
DRAWN BY:	SANAZ NOURI
DATE:	





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1.	ZONING	JULY. 21, 2020
2.	COA	NOV. 08, 2020

**PROJECT ADDRESS:**

33 ELWOOD BLVD  
TORONTO, ONTARIO

**PROJECT NO:**

**DRAWING TITLE:**

**WEST SIDE ELEVATION**

NO.	REVISION	DATE
1.	FSI REDUCTION	FEB. 19, 2021

SCALE:	1/8"=1'-0"
DRAWN BY:	SANAZ NOURI
DATE:	



**A9**