

DECISION AND ORDER

Decision Issue Date Tuesday, October 05, 2021

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

Appellant(s): DAVID ROSS KEATING

Applicant(s): ARC & ART DESIGN

Property Address/Description: 1356 MOUNT PLEASANT ROAD

Committee of Adjustment File

Number(s): 21 120801 NNY 15 MV

TLAB Case File Number(s): 21 155730 S45 15 TLAB

Hearing date: September 2, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY JUSTIN LEUNG

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Arc & Art Design	Applicant	
Saleh Halabchi	Owner/Party	Ron Kanter
David Keating	Appellant	William Roberts
City of Toronto	Party	Marc Hardiejowski
Lutz Fullgraf (LPRA)	Participant	
Leslie Keating	Participant	
Lesley McRae	Participant	
Jessica Afshar	Participant	

Martin Rendl

Expert Witness

Terry Mills

Expert Witness

INTRODUCTION

This is an Appeal from a decision of the North York Committee of Adjustment (COA) pertaining to a request to permit a series of five Variances for 1356 Mount Pleasant Road.

The Variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a new dwelling.

This property is located in the Lawrence Park South neighbourhood in the Old City of Toronto district of the City of Toronto (City) which is situated north of St. Leonards Avenue and bounded by Weybourne Crescent the west and Dundurn Road the east. The property is located on Mount Pleasant Road, south of Lawrence Avenue East and north of St. Leonards Avenue.

At the beginning of the Hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the immediate neighbourhood and had reviewed all materials related to this Appeal.

BACKGROUND

The Variances that had been requested are outlined as follows:

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

The maximum permitted height of all side exterior main walls facing a side lot line is 7.0m.

The proposed height of the side exterior main walls facing a side lot line is 8.88m.

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

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

The proposed floor space index is 0.60 times the lot area.

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

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 63%.

4. Chapter 10.20.40.70.(3)(D), By-law No. 569-2013

The minimum required side yard setback is 1.50m.

The proposed south side yard setback is 0.90m.

5. Section 4(2), By-law No. 438-86

The maximum permitted building height is 10.00m.

The proposed building height is 10.28m.

These Variances were heard and approved at the April 28, 2021 North York COA meeting. Subsequently, an Appeal was filed on May 9, 2021 by the David Keating within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the Appeal and scheduled a Hearing on September 2, 2021 for all relevant Parties to attend.

MATTERS IN ISSUE

The Applicant has engaged in a constructive dialogue with the Appellant to address issues as they relate to the subject proposal. These discussions have now resulted in a settlement proposal, in principle, being presented to the TLAB. With this, it is noted that the other Participants to this Appeal matter continue to have concerns with the proposal. Here, the *Planning Act* stipulates that once an Appeal is submitted to a Planning Tribunal, that a *hearing de novo* must be held to consider all issues for this matter anew. Therefore, this Hearing is held to assess the Application, on its merits, and to determine if it meets the four statutory tests, as per s. 45(1) of the *Planning Act* and also if it meets the principals of good planning.

The Participants here contend that there had been a previously issued Ontario Municipal Board (OMB, recently reorganized as the Ontario Land Tribunal) Decision for a Consent (severance) and related Variance Application. That Decision approved a proposed dwelling which is different from what is now being presented to the TLAB. These Participants contend that the originally approval proposal should be upheld. With this, the Tribunal will need to undertake a comprehensive review and analysis of the proposal to determine if it constitutes good planning and will be an appropriate form for development for this area.

JURISDICTION

Provincial Policy – S. 3

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

Minor Variance – S. 45(1)

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

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

Amended application

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

Exception

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

EVIDENCE

The Hearing commenced with Ron Kanter, legal representative for the Owner/Party, making an opening statement. He indicated that, just prior to the Hearing, a Minutes of Settlement had been drafted and approved between his client and the Appellant. The side wall height Variance requests will be reduced, privacy screen to the rear balcony will be installed, trees along the boundary of the property will be protected and they also propose a condition for substantial conformity of the plans as submitted to the TLAB. Two Expert Witnesses, Martin Rendl and Aileen Keng (of the City), will also be called to provide evidence to the Tribunal.

I inquired if Terry Mills, another Expert Witness as indicated on the Appeal record, would be providing evidence to the TLAB. Mr. Kanter responded that he would not be called.

The City Solicitor Roman Ivanov, attending in place of Marc Hardiejowski, stated that the City took no adverse position to this settlement proposal.

Participant Lesley McCrae stated that as the Minutes of Settlement had only been submitted a few days earlier, she has not had the opportunity to review it in further detail. She continued to have concerns about potential impact to trees on the property, and potentially on the trees in her adjacent property.

Participant Jennifer Afshar then proceeded to provide comments to the Tribunal. She indicated that a joint Appeal had been submitted which consisted of the Appellant and Participants to this matter. However, the Appellant has elected to pursue a settlement proposal with the Owner/Applicant, without the involvement of the Participants. Ms. Afshar began to describe previous Planning Applications for this subject property.

Mr. Kanter stated that he did not believe the comments as raised by Ms. Afshar should be presented at this stage. I responded that, in accordance with established practices with adjudicative tribunals, that Ms. Afshar should provide such statements at a later stage of the Hearing.

Mr. Kanter then requested that Martin Rendl be called to the stand to provide evidence to the Tribunal. I inquired if there were any questions or comments regarding this. With no comments raised, I stated that I had reviewed Mr. Rendl's curriculum vitae and was willing to qualify him in the field of land use planning.

Mr. Rendl commenced by outlining the study area he had devised, as needed to assess Official Plan Amendment 320 (OPA 320). He opined that this subject property is a unique type lot within this neighbourhood. It was created through a Consent (severance) Application, as had been approved by the OMB. The lot has been vacant for several years until present day. The Applicant had not been able to satisfy conditions within the one year deadline, as per the *Planning Act*. As such, they had to re-apply for the Consent Application. Later, in 2012, an additional Variance Application was submitted to address gross floor area (GFA) and lot frontage Variance requests. This was also appealed to the OMB and was approved by that Tribunal. This current Variance Application is now, in addition to other Variance requests, seeking an increase in the GFA from what had previously been granted by the OMB.

Mr. Rendl then presented a photo study of the study area he had prepared, which is contained in the disclosure documents. The photo study is used to depict the existing tree canopy on the adjacent properties.

With regards to the floor space index (FSI) Variance request, he stated that there have been other neighbourhood properties, such as 78 Dinnick Crescent, which have obtained similar approval through the COA.

Mr. Rendl went on to indicate that Variance NO. 1 was being reduced from 8.88 to 8.22m. The other four Variance requests would remain unaltered. Due to this, the roof design has been changed. For the rear of the proposed dwelling, there is a basement walkout and a second storey balcony. Mr. Rendl described this balcony feature as typical of houses in this area.

Cumulatively, Mr. Rendl opines that the Variance requests constitute good planning and that the Appeal should be dismissed, with the settlement proposal be accepted by the TLAB.

In terms of related Planning policies and legislation, he contends that the City's *Official Plan (OP)* is consistent with the *Provincial Policy Statement (PPS)* and *Growth*

Plan for the Greater Golden Horseshoe (Growth Plan), as required by law. Furthermore, he argues that this subject proposal is consistent with both the PPS and Growth Plan. This vacant lot, and its proposed redevelopment, is described as being an appropriate form of intensification in an established urban area.

Mr. Rendl then proceeded to assess OP policies as they relate to the subject proposal. He opines that the FSI Variance request, is a lot on a major street, as opposed to an internal street. As such, the subject proposal is described as appropriate as more intense development is permitted here. In addition, this FSI Variance request would be similar to other previously approved in-fill dwellings, brought before COA, in this neighbourhood. In addition, he believes that this proposal will be compatible for the local area context and will ensure a vacant lot is redeveloped thus contribute to the prevailing development pattern of the area.

With regards to the City Planning staff recommended FSI Variance request, and the differing FSI Variance request which was subsequently approved by the COA, Mr. Rendl states that both FSI variance requests are inappropriate and what was proposed by his client is more acceptable, in assessing relevant Planning policies and legislation.

With regards to soft landscaping, while a Variance is being requested here, the proposed driveway will be constructed with permeable pavers, and will act to mitigate issues as they relate to water drainage and runoff on the site. They will also be applying additional soft landscaping treatment on the site as well.

In terms of the second storey balcony, Mr. Rendl argues that this balcony is Zoning By-law compliant and is not a condition which is atypical for this type of dwelling. He does not believe the privacy issue to be significant with this proposal. With regards to window placement on the proposed dwelling, he describes them as also typical of a dwelling within an established residential neighbourhood, and cannot be restricted.

The tree mitigation measures on the property will be supervised by City's Urban Forestry staff. His client will ensure they comply with the City's tree related regulations. They have also proposed a condition that one of the trees be excavated, under supervision of an Arborist, to determine where a foundation wall be placed on site. This is being proposed to not injure said tree but to ensure foundation is not positioned to negatively impact existing trees.

An additional condition is proposed to install screening for the second storey balcony, as a means of addressing potential privacy concerns for the adjacent properties. The other proposed conditions relate to the removal of a rear property shed and that additional construction activities will be regulated, as had been described in their privately commissioned Whiteside report.

Ms. Afshar asked about the location of the foundation wall and apparent inconsistency in Mr. Rendl's description of it. He responded that the setback for the foundation wall differs at various locations on the site. Ms. Afshar then referenced the *Expert Witness Statement of Terry Mills*.

I stated that, as Mr. Mills is not being called to provide testimony, that his submitted material would not be assessed by the TLAB.

Ms. McCrae then proceeded to inquire about the proposed excavation of a tree on the subject property. She also asked how proposing a larger dwelling for this site would conform with Growth Plan policies.

Mr. Rendl responded that this property is located on a major street. As such, he opines that related policies thus allow for more intense type of development here. With regards to the FSI Variance request, while such a request would result in a dwelling of greater scale than dwellings on the internal streets, this proposal is different as the property is located along a major street. With regards to the proposed excavation, Mr. Rendl explained that any such work would be done under the guidance and supervision of City Urban Forestry staff.

Ms. McCrae asked about the proposed condition for substantial conformity of plans and concern that City staff may allow a proposal is greater in scale and impact to what had been approved.

Mr. Rendl stated that this is a standard condition used by municipalities and that City staff do not have the authority to allow a different proposal to proceed, in contravention of an approval provided by an entity such as COA or TLAB.

Mr. Rendl's testimony concluded with no further questions posed to him.

Mr. Kanter then requested the City Planner Aileen Keng be called to the stand to provide testimony to the Tribunal. I asked if any Parties had questions or comments regarding this. With no comments raised, I indicated that I would be able to qualify her in the field of land use planning. As a Planner, she handles a variety of Planning Applications. However, her principal duty is to review Variance and Consent Applications. Mr. Kanter asked if, as City Planner, she acts in a neutral manner and if she has written any refusal reports in the Lawrence Park neighbourhood. Ms. Keng acknowledged this and that she has written refusal reports for this area in the past.

Mr. Kanter then referenced the staff report Ms. Keng prepared for this subject property. He asked if, as citing this report, the Applicant had agreed to make changes to their proposal. Ms. Keng responded that they did, in accordance with discussions they had with City staff.

Ms. Afshar asked Ms. Keng if she could elaborate on the side main wall height Variance and if it has been identified properly. Ms. Keng responded that Variances are identified by City Building staff. In addition, she also relied on the drawings which had been submitted to her by the Applicant, when the proposal was initially presented to the COA.

I inquired if she, or the City, has any concerns with the Variance requests and if they may be identified improperly. Ms. Keng and Mr. Ivanov responded they do not have concerns with this. I then asked what her position would be on this revised proposal before the TLAB. Ms. Keng responded City has no objections here.

Ms. McCrae asked if the FSI Variance request here is appropriate, as it appears to be double what the Zoning By-law permits. Ms. Keng stated that this FSI Variance request, as part of her research for the neighbourhood, is not atypical. Ms. McCrae then asked how many similar Variance requests have been approved in this subject neighbourhood. Ms. Keng indicated there has been approximately 60 approved in-fill dwellings with FSI Variance requests. Ms. McCrae inquired if the soft landscaping Variance request is appropriate, as it relates to environmental concerns. Ms. Keng responded that typically she would raise concerns here, however this is a smaller lot. In addition, the proposed driveway is not subject to a Variance request so she would not be able to address it as part of her staff report. The north side yard setback is larger which also allows for increased tree preservation on site. As such, she did not raise issues with the soft landscaping Variance request. Ms. McCrae proceeded to ask if attempts were made to alter the proposal from a double to single car garage. Ms. Keng stated that the garage was not subject to a Variance request.

Ms. Afhsar had follow-up question by inquiring if this proposal should be defined as a three storey dwelling. Ms. Keng stated that City Building staff have identified this as a two storey dwelling.

I asked Ms. Keng if City environmental policies, such as the *Green Standard*, are applicable for in-fill type development as well. She responded that the *Green Standard* is not applicable for residential dwellings, however, she does look at environmental related issues with in-fill developments. I indicated that the established principle is that Variances are not precedent setting. However, I observe that it is becoming commonplace that descriptions of previously approved Variances for a neighbourhood are being presented as evidence to the Tribunal. I asked if she had comments relating to this. Ms. Keng acknowledged the principle that I had described, however, the assessment of previously approved Variances for a particular area is being done to establish the neighbourhood characteristics, a per OPA 320.

Ms. Keng's testimony concluded with no further questions posed to her.

Ms. Afshar provided closing statement to the Tribunal. She referenced the previous OMB Decision for this property and believes it should be upheld. She continues to raise issues with privacy due to this proposed dwelling.

Mr. Kanter then inquired of Ms. Afshar if there is large distance between her house and the proposed dwelling here. Ms. Afshar responded she does not believe this to be relevant as it would still not negate potential privacy issues. Mr. Kanter then referenced the proposed condition of screening/fencing for the second storey balcony and inquired if this addressed privacy issues for her. Ms. Afshar recognized this proposed condition, however, continued to raise issues with the placement of the windows on the proposed dwelling.

Ms. McCrae provided comments further indicating that the OMB Decision which had been issued should be respected. She is concerned about the number of windows for this proposed dwelling. The trees on site will also not positively affect the privacy dimensions as the leaves will fall off later in the year.

Mr. Kanter then showed the original dwelling, as approved by the OMB, to Ms. McCrae and asked if the proposal before the TLAB has improved the condition of property setbacks. Ms. McCrae stated she believed that trees are impacted with this subject proposal.

I indicated that the Tree By-law does not specifically state that trees cannot be removed. I then asked Mr. Kanter if City Urban Forestry staff had any concerns with the proposal.

Mr. Kanter responded that they didn't have issues but did support one of the recommended conditions as proffered by them in the Minutes of Settlement.

I asked if there is an appeal process for any Party who was in dispute relating to a tree permit. Mr. Roberts, legal representative for the Appellant, stated that the local Community Council can overturn the decision of City Urban Forestry staff as it relates to tree permits.

Mr. Kanter then provided closing statement to the Tribunal. He referenced the testimony of Ms. Keng who stated that the proposal here is acceptable for this neighbourhood context. He stated that she is a neutral party to this Appeal matter. He also indicated that his client has strived to address issues and concerns with the Appellant, who also had a retained and lawyer and planner to assist him. He recognizes the issues and concerns of the Participants, however, does not believe this proposal will have significant adverse impact to their properties.

Mr. Roberts also provided closing statement. He indicated that the inclusion of a proposed condition referencing the arborist report is important to address tree-related issues with this property.

With no further comments provided, the Hearing was thus concluded.

I had requested additional information, via email, as I observed Mr. Ivanov was in attendance as the City's solicitor, whereas Mr. Hardiejowski is listed as the counsel of record. Mr. Ivanov responded that, due to scheduling issues, Mr. Hardiejowski was unable to attend the Hearing. While so, Mr. Hardiejowski would continue to be the counsel of record for this Appeal matter. The Parties were also asked if further public notification is needed, due to revisions to the proposal, as per the *Planning Act*. Mr. Kanter and Mr. Hariejowski responded that they did not believe that additional public notification would be necessary.

ANALYSIS, FINDINGS, REASONS

The Tribunal notes that, although a settlement proposal has been presented, the Participants to this Appeal matter continue to raise concerns here. The issues, as raised, principally relate to potential impact to trees, privacy concerns for adjacent properties and that a possible 'abuse of process' has occurred due to this new Variance Application, being made after the OMB had issued Decisions on a previously submitted Consent and Variance Application for this property. While so, the Appellant here, also a

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neighbouring property-owner, has elected to reach a settlement with the Applicant to reduce one of the Variance requests and for a series of conditions to be imposed to address work on the subject property, if the TLAB were to permit the Minutes of Settlement. Here, the Tribunal will need to assess all issues as provided to make a decision which ensures the overall public interest is preserved.

The Hearing was focused primarily on the Minutes of Settlement which had been executed between the Applicant and the Appellant, which had been submitted to the TLAB two days prior to the scheduled Hearing date. Due to this, the TLAB was unable to canvass the Parties to assess if converting to a Settlement Hearing was possible. I do recognize that at the beginning of this Hearing, the two Participants to this Appeal matter did not indicate their acceptance of this settlement proposal. As such, I elected to proceed with a full Hearing to assess the merits of this proposal.

The Applicant and Appellant both stated that, although the Participants to this Appeal matter continued to lodge concerns with the proposal, they believed that sufficient changes have been made to this proposal to address issues which principally revolve around the neighbourhood compatibility and context. This was outlined in the reduction of the side main wall height Variance height, and with the inclusion of a series of conditions which would govern how construction is done on site for this proposed dwelling. The conditions were elaborated further during the hearing and were presented as follows:

	<p style="text-align: center;">REVISED VARIANCES & CONDITIONS</p> <p>REVISED VARIANCES TO THE ZONING BY-LAW</p> <p>1. Chapter 10.20.40.10.(2)(B)(II), By-law No. 569-2013</p> <p>The proposed maximum permitted height of all side exterior main walls facing a side lot line is 7.88 metres for approximately 11.83 metres, and 8.22 m for approximately 2.67 metres of both side walls.</p> <p>2. Chapter 10.20.40.40.(1), By-law No. 569-2013</p> <p>The proposed floor space index is 0.60 times the lot area.</p> <p>3. Chapter 10.5.50.10(1)(D), By-law No. 569-2013</p> <p>The proposed front yard soft landscaping is 63%</p> <p>4. Chapter 10.20.40.70.(3)(D), By-law No. 569-2013</p> <p>The proposed south side yard setback is .90 m.</p> <p>5. Section 4(2), By-law No. 438-86</p> <p>The proposed building height is 10.28 m.</p> <p>SUBJECT TO THE FOLLOWING CONDITIONS</p> <ol style="list-style-type: none">1. that the Proposed Dwelling be constructed substantially in accordance with the Revised Plans;2. that the preceding clause shall not apply to the north face of the building within 6 metres of by-law protected trees, to allow Urban Forestry to require, if necessary, pending the outcome of a planned non-injurious exploratory root excavation, that the foundation wall be built further from the trees than shown in Schedule B;3. that the rear balcony shall be constructed with opaque privacy screening on the north and south sides to a minimum height of 1.5 metres from the floor of the balcony;4. that the Owner shall dismantle the existing shed and base material substantially in accordance with the Whiteside Report; and5. that the Owner shall erect hoarding, excavate and construct substantially in accordance with the Whiteside Report.	
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Figure 1 -Revised Variances & Proposed Conditions (from Party Disclosure Materials)

As had been expounded upon by Expert Witness Martin Rendl at the Hearing, Variance NO. 1 has now been reduced. Condition 1 is a standard type condition which accompanies most Variance Applications. Condition 2 is proposed, in consideration of comments as provided by City Urban Forestry staff. Condition 3 is provided as a means of addressing potential privacy concerns for adjacent properties. Conditions 4 and 5 are outlined in the Whiteside Report, as commissioned by the Applicant, to assess tree related issues on site. It is noted that Condition 1 wording differs from what had been proposed by City Planning staff. However, the City Planner in attendance did not raise objections to this revised proposal.

Mr. Rendl, as the Expert Witness retained by the Applicant, provided a comprehensive appraisal of this proposal and its current iteration, based on discussions between his client and the Appellant. The Appellant's Expert Witness Mr. Mills was not called to provide evidence to the Tribunal. Due to this, the material he had submitted to the Tribunal prior to the scheduled Hearing will not be assessed by the TLAB. The City Planner, Aileen Keng, appeared under summons and answered questions as posited by the Applicant's lawyer and Participants. It is noted that she had not submitted any materials to the TLAB prior to this Hearing.

Mr. Rendl briefly outlined the PPS and Growth Plan and how they relate to this proposal. His testimony here was provided in a concise manner as both Planning documents provide a broader or 'over-arching' policy direction on land use planning for municipalities in Ontario. With respect to both policy planning documents, he opines that this subject proposal is consistent with the policy direction as stipulated here as it will allow a vacant lot of record to be developed to facilitate for an in-fill dwelling. It would act to fill a 'gap' in the neighbourhood fabric by allowing a vacant lot, which has existed for several years, to support construction of a dwelling which will be inhabited by future residents to this area.

With regard to OP policies, which also pertain to OPA 320, Mr. Rendl had devised a study area which is approximately bounded by Lawrence Park Ravine to the west, Lawrence Avenue East to the north (excluding some properties west of Mount Pleasant Road), Lawrence Park Ravine and Strathgowan Avenue to the south, and St. Ives Crescent and St. Ives Avenue to the east. Part of the rationale which Mr. Rendl has used to justify this study area is that it is an area which comprises the same Zone designation. In addition, the dwellings of this area have materially similar characteristics, as required as per OPA 320 when crafting a study area to assess a particular in-fill dwelling proposal.

Through the employment of this study area, Mr. Rendl has assessed the subject proposal to determine if it would be consistent the policy direction as prescribed by the OP. In his summation, he concludes that:

"A new two storey detached house on a vacant lot will not destabilize the neighbourhood. Rather it contributes to the stability of the neighbourhood by infilling a vacant lot with a detached house that is the prevailing building type in

the neighbourhood, as intended by the Official Plan.

Within Chapter 2: Urban Structure of the Official Plan, Policy 2.3 acknowledges that *Neighbourhoods* are “stable but not static” and that “neighbourhoods will not stay frozen in time.” Physical change is expected to occur in neighbourhoods like this over time through enhancements, additions and infill housing. The objective is to reinforce the stability of the neighbourhood by ensuring new development respects the existing physical character of the area.”¹

The statement above encapsulates the oral testimony of Mr. Rendl to the TLAB which forms the basis of his professional opinion that the subject proposal will be compatible for this local area context and will be able to adapt, or be ‘absorbed’, as part of the prevailing neighbourhood fabric.

With regards to the *Zoning By-law*, Mr. Rendl’s testimony placed an emphasis on two of the Variance requests for FSI and side main wall height, while also discussing the balance of Variances at later stage. He opines that the FSI Variance request of 0.60 times area of the lot is only a marginal increase from what had been approved at the OMB at 0.57. Furthermore, the City Planning staff report had recommended an FSI of 0.59. He contends that 0.60 is not a significant departure from staff recommendation here and that both quantitative and qualitative assessment methods need to be employed when assessing planning related proposals. He opined that this Variance request is consistent with other FSIs of dwellings in this neighbourhood.

In terms of the side main wall building height Variance request, the reduction from 8.88 to 8.22m is explained as allowing a sloped roof which is a common roof design for this neighbourhood. The front yard landscaping Variance is assessed as being minor as they will be installing permeable pavers for the driveway. The side yard setback and building height are also assessed as being an incremental increase from what is permitted and will not result in a proposed dwelling which is dis-similar from the existing built form in this local area context.

It is noted that the City Planner Ms. Keng provided responses to questions posed to her by the Applicant’s lawyers and the two Participants. However, she did not provide comprehensive testimony to the Tribunal on this Appeal matter. In addition, the Participants, while providing statements and engaging in cross-examination here, did not engage in specific commentary on both the OP and Zoning By-law provisions and their interface with this proposal. Due to this, it is found that Mr. Rendl’s testimony provides sufficient basis for the Tribunal to determine that two of the tests, ‘maintain the general intent and purpose of the Official Plan’, and ‘maintain the general intent and purpose of the Zoning By-law’, have been met here. The proposal brought before the TLAB represents a form of development which has already occurred in this neighbourhood. Mr. Rendl’s study area has demonstrated that this proposal is consistent with the prevailing neighbourhood characteristics.

¹ Rendl, M. *Expert Witness Statement of Martin Rendl* August 2021, pp. 8

The five Variance requests, cumulatively result in a built form which can be seen in this local area context already. As such, it will not face significant hurdles in being incorporated in the granule of this particular neighbourhood. In addition, the City Planner and Solicitor both did not provide objections to this revised proposal before the Tribunal.

As was expressed by the Participants at the Hearing, two issues which were discussed at length was that of trees and privacy. Principally, concerns were raised that boundary trees, or those along the property line, may be adversely impacting during the construction of this proposed dwelling, if approved by the TLAB. The proposed dwellings second storey balcony and window placements were also seen to negatively impact privacy to the adjacent dwellings. In response to these concerns, Mr. Rendl cited the Whiteside Report, which the Applicant had commissioned and is prepared by an Arborist. This Report has been circulated to City Urban Forestry staff who did not raise issues with the substantive elements of the report, however did recommend a condition that the substantial conformity condition (as noted as Condition NO. 1) not apply to the north portion of the property so that excavation work can be done to determine where the foundation wall should be placed so as to minimize impact on the trees in that portion of the property. Here, Mr. Rendl contends that this Report clearly demonstrates that there are sufficient protection and mitigation measures that will be implemented to minimize impact to the trees on site. Furthermore, his client cannot act to adversely affect trees on adjacent properties.

In terms of the privacy dimension, Mr. Rendl stated that the second storey balcony will have screening applied to it, and is captured as a condition. With regards to the windows located along the side elevations of the proposed dwelling, he stated that this is typical of dwellings in this neighbourhood and would not be introducing a new condition for this local area context. In addition, the trees on the property would provide additional screening to the adjacent properties.

The Participants responded that they continue to have concerns that work on the site could result in damage or injury to the trees on site. In terms of the window placements, they believe this proposed dwelling was less inclined to address privacy issues in comparison to the previous proposal which had been approved by the OMB.

In careful review and consideration of the matters indicated herein, it is found that the tree-related documentation that is provided by the Applicant is prepared in an appropriate manner, and has been further reviewed by City Urban Forestry staff. Their acceptance of this documentation provides confidence to the Tribunal that any proposed work on this property will be done in accordance with relevant tree related regulations. In terms of the window placements, the photo study, and site visit I conducted of this neighbourhood prior to the Hearing, has established that the windows on the side of this proposed dwelling is not an atypical condition for dwellings in this local area context. It is noted that privacy is not a specifically defined planning issue or consideration. However, it is recognized as an issue for residents which, when possible, will be addressed. While so, residents who are situated in an urban area must also recognize that there will be limitations in which privacy can be achieved, due to close proximity people are residing in relation to each other. This would differ in a rural area which residents are more separated from each other due to lower density development.

Here, it is found that the remaining two tests, 'are desirable for the appropriate development or use of the land' and 'are minor', appear to also be met with this proposal. The proposal outlined here, as captured in the Minutes of Settlement, represents an orderly form of development which can occur in established residential neighbourhoods. Although this lot has remained vacant for several years, that is not an issue which this Tribunal can address. The Owner/Applicant has now chosen to proceed with development of this site, and has submitted Planning Application to facilitate this to occur. It must then undergo a public process, which includes public participation, which is evident in the Parties who were in attendance at this Hearing. The testimony of Mr. Rendl has further established that this proposal, and its related Variance requests, is of a magnitude and scale which is already evidence in this neighbourhood. As such, there will not be a disruption to the neighbourhood fabric as a result.

The TLAB does note that the proposal that is now being presented to it has been revised, in comparison to what was considered and approved by the COA. The Parties to this Appeal matter did not raise this, however the Tribunal would need to consider whether to accept this revised proposal or not, as is authorized as per S. 18.1 of the *Planning Act*. Here, I have determined that the revised proposal is a material decrease in scale and intensity. As such, I would permit this revised proposal to be accepted by the Tribunal. Furthermore, I further found that public notification relating to this would not be necessary. This is partly due to the proposal being materially decreased in terms of Variance requests, and as such, the public interest/concern to this matter would thus be diminished as a result. Furthermore, I would find that the prevailing public interest would also not be adversely impacted by permitting this revised proposal to be accepted and considered by the TLAB.

With the evidence which has been provided to the Tribunal, I find that the settlement proposal, as expressed in the Minutes of Settlement document, to be appropriate in its current form. In addition to addressing issues of both the Applicant and Appellant, it will also address issues which have been raised by the Participants as well. The discussion at the Hearing revolving around trees and privacy will be afforded for in this settlement proposal, most notably in the proposed conditions. It is noted that a best attempt approach has been applied here to meet the needs of all Parties involved.

I do recognize comments as provided to the TLAB on the previous OMB Decisions for this property, and concerns that a new Variance Application has now been submitted. I note that the duty of this Tribunal is to review and assess Appeal matters brought before it and to determine whether they meet relevant Planning policies and legislation. The Tribunal does not have the authority to require the previous OMB Decision to be upheld. A property-owner is permitted to submit a Planning Application, as they feel is necessary, which is an established right they have. Within this dynamic, the Owner/Applicant has elected to submit a Variance Application for a new proposal on this property. The Tribunal has reviewed and assessed this proposal and found it constitute good planning and can be permitted, in accordance with the executed Minutes of Settlement.

DECISION AND ORDER

The Appeal is allowed, and the Variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans attached herein as Appendix 2.

Appendix 1

List of proposed variances

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

The proposed maximum permitted height of all side exterior main walls facing a side lot line is 7.88 metres for approximately 11.83 metres, and 8.22 m for approximately 2.67 metres of both side walls.

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

The proposed floor space index is 0.60 times the lot area.

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

The proposed front yard soft landscaping is 63%

4. Chapter 10.20.40.70.(3)(D), By-law No. 569-2013

The proposed south side yard setback is .90 m.

5. Section 4(2), By-law No. 438-86

The proposed building height is 10.28 m.

List of proposed conditions

1. That the Proposed Dwelling be constructed substantially in accordance with the Revised Plans;
2. That the preceding clause shall not apply to the north face of the building within 6 metres of bylaw protected trees, to allow Urban Forestry to require, if necessary, pending the outcome of a planned non-injurious exploratory root excavation, that the foundation wall be built further from the trees than shown in Schedule B;
3. That the rear balcony shall be constructed with opaque privacy screening on the north and south sides to a minimum height of 1.5 metres from the floor of the balcony;
4. That the Owner shall dismantle the existing shed and base material substantially in accordance with the Whiteside Report; and
5. that the Owner shall erect hoarding, excavate and construct substantially in accordance with the Whiteside Report.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body

Appendix 2

COA DRAWINGS:
121.31+111.92=233.23 SQM
GFA 62.75 %
NORTH SIDE SETBACK:2.65M

REDUCED :10.3SM

FIRST FLOOR:6.88 SM
SECOND FLOOR:3.42 SM

LOT AREA: 371.74 M2
COVERAGE = 34%
114.43+108.50=222.93 SQM
FSI=60 %
NORTH SIDE SETBACK:2.85M

SITE STATISTICS:

	SQM	SF
LOT AREA	371.74	
PROPOSED GFA (60%)	222.93	
PROPOSED COVERAGE (34%)	127	
FIRST FLOOR AREA	114.43	
SECOND FLOOR AREA	108.50	
GARAGE AREA	35.62	
BASEMENT	98.00	
BALCONY AREA (platform)	10.50	

PROPOSED BUILDING HEIGHT 10 M

PROPOSED BUILDING HEIGHT-OLD BYLAW 10.28 M

ARC & ART DESIGN
FIRM BCIN: 107657
609-7167 YONGE ST.
THORNHILL ON L3T 0E1
416-435-5109

COA Reviw
Request
FEB 26, 2021

1356 MT. PLEASANT RD

REVISED FOR TLAB AUGUST 1ST, 2021

Project number
Date

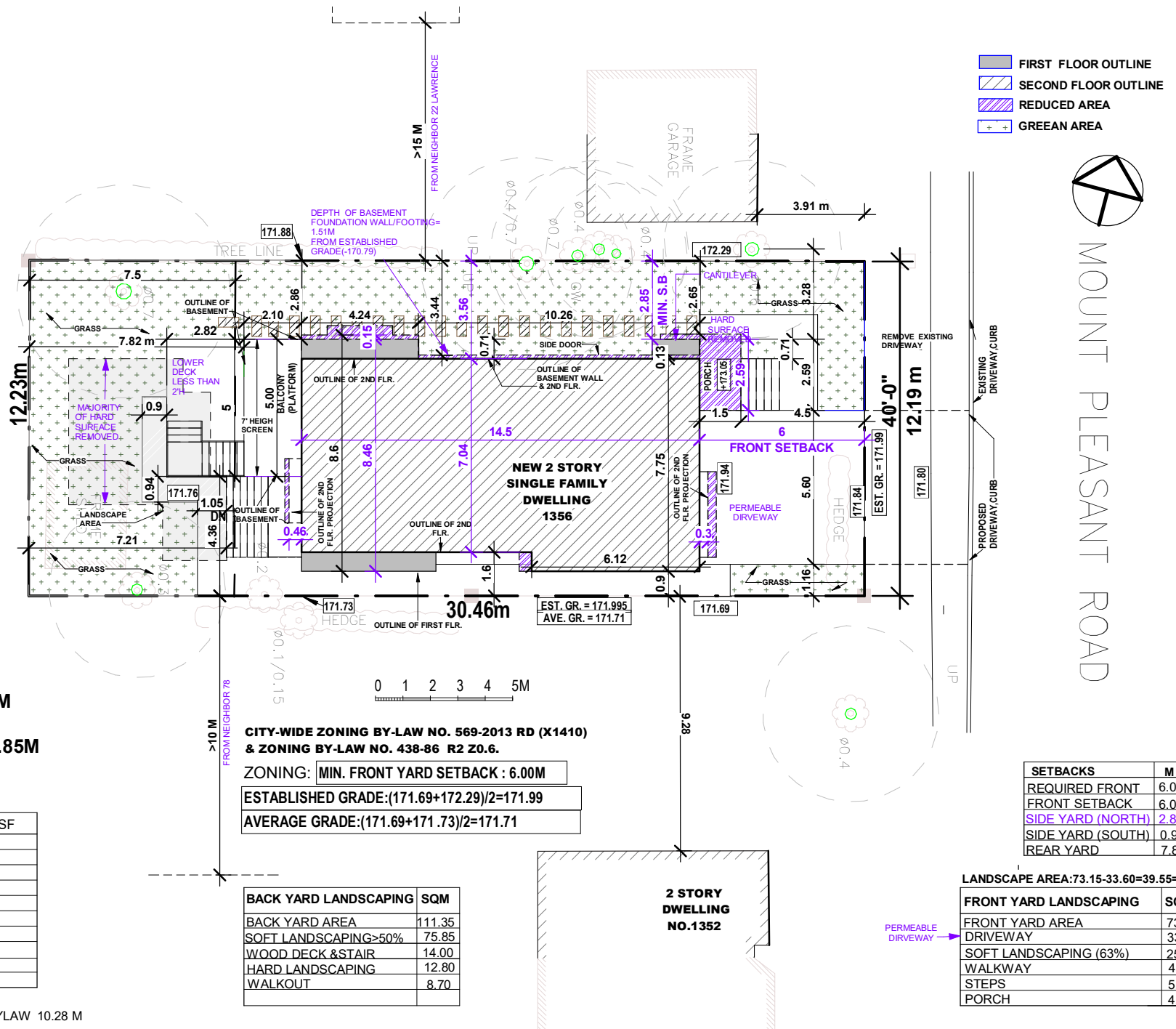
A&A-007
AUG. 28, 2021

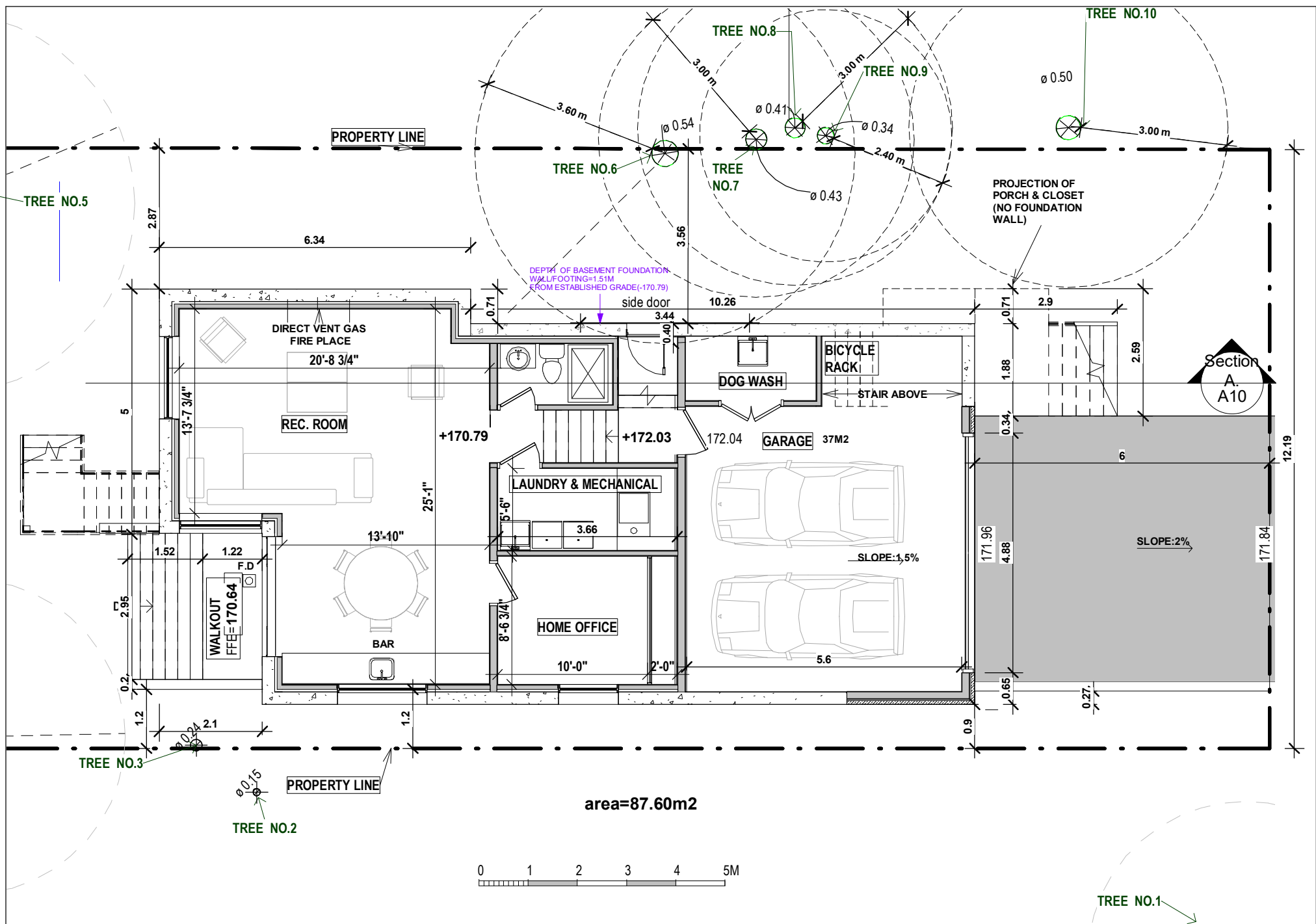
Checked by

ARC & ART

A1

Scale 1 : 200





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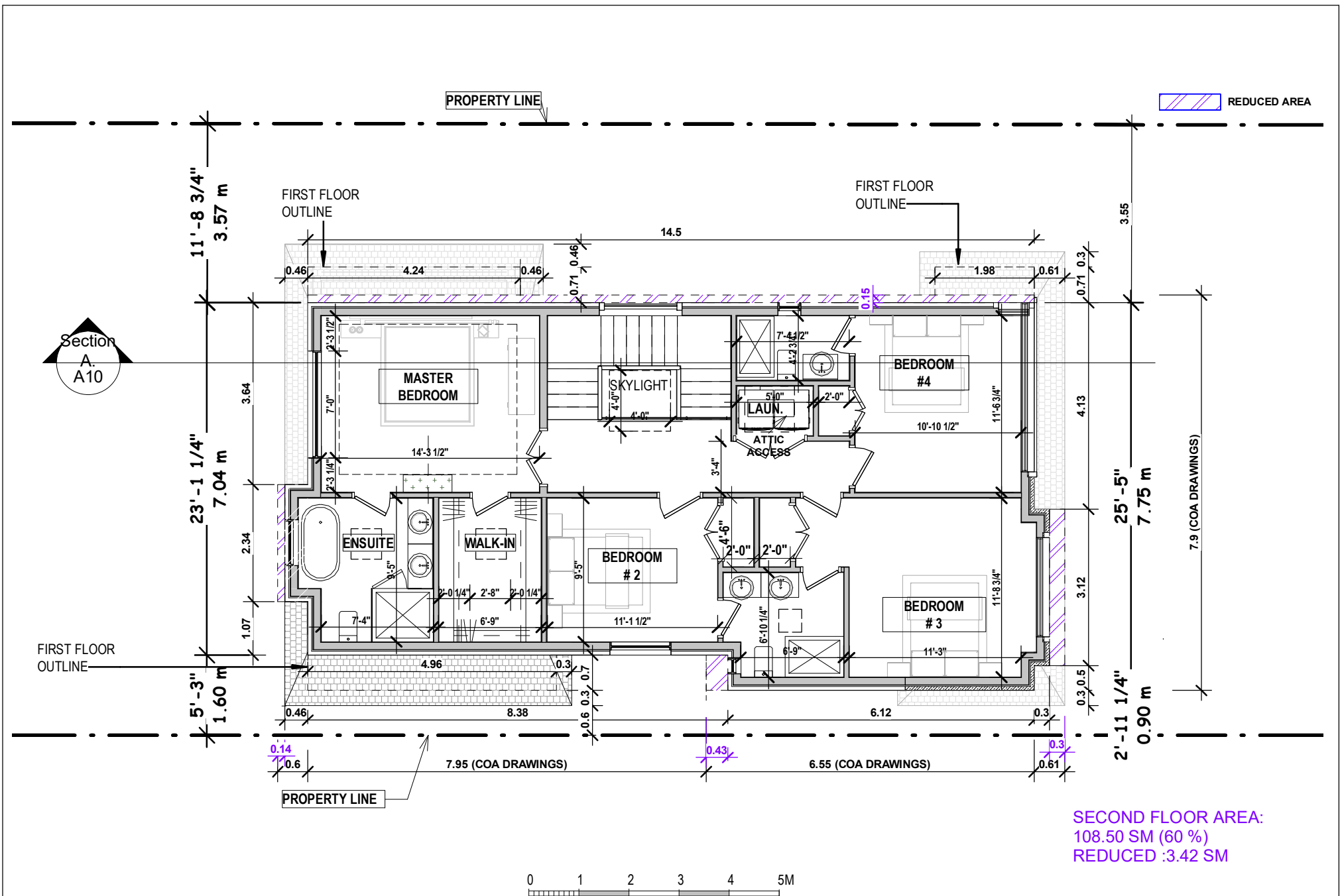
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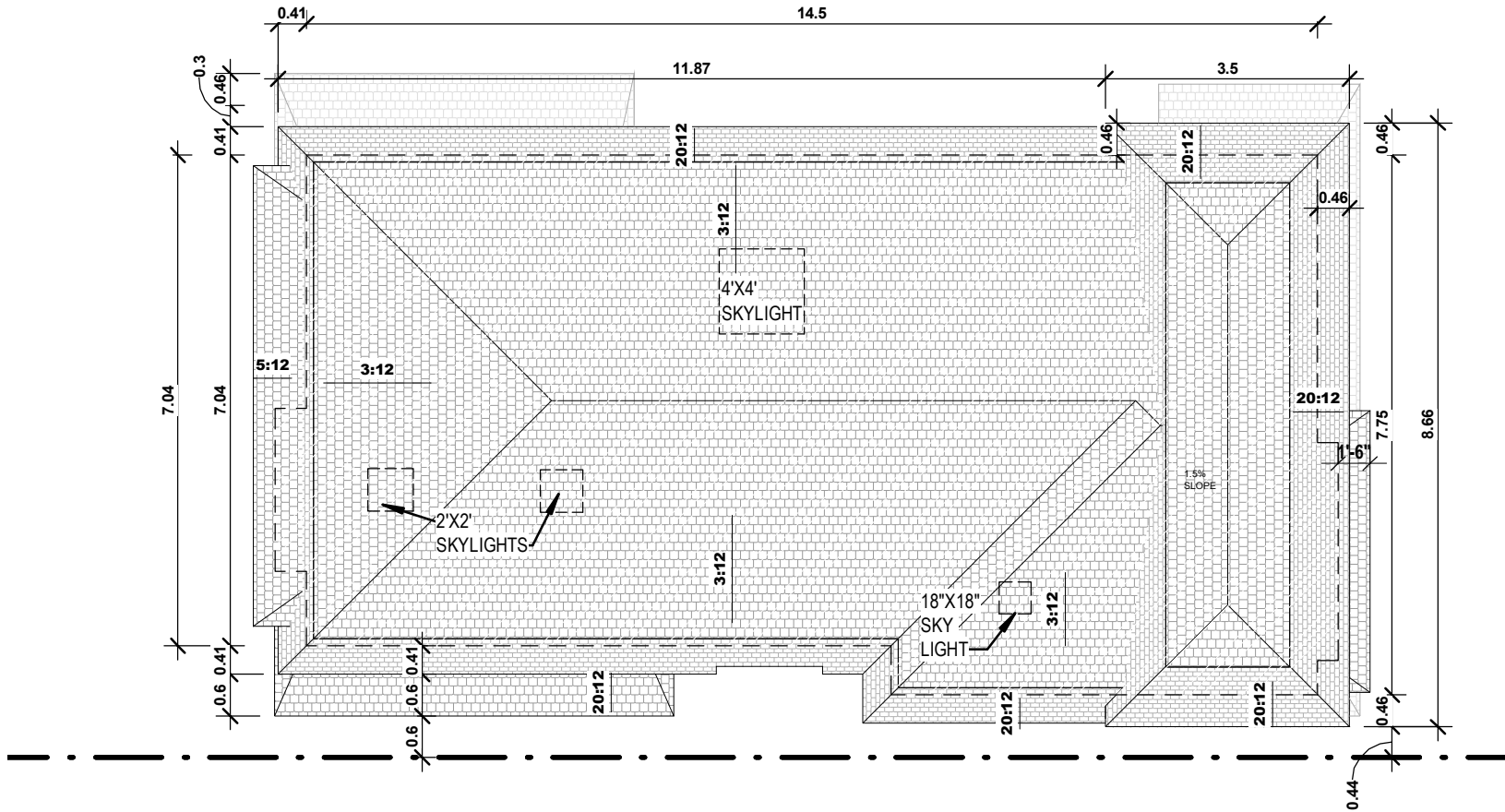
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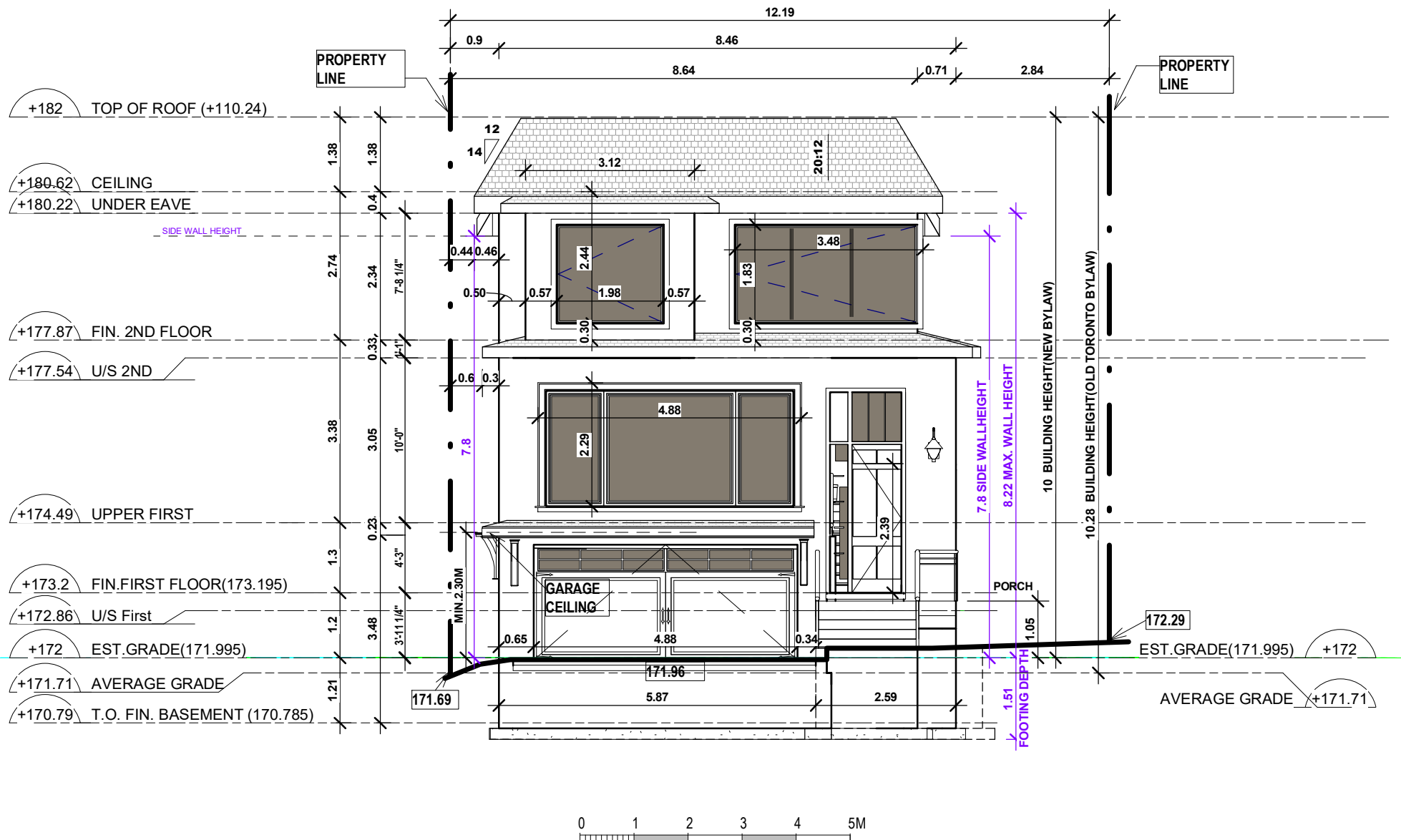
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AUG. 28, 2021

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ARC & ART

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Scale 1 : 100



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Date

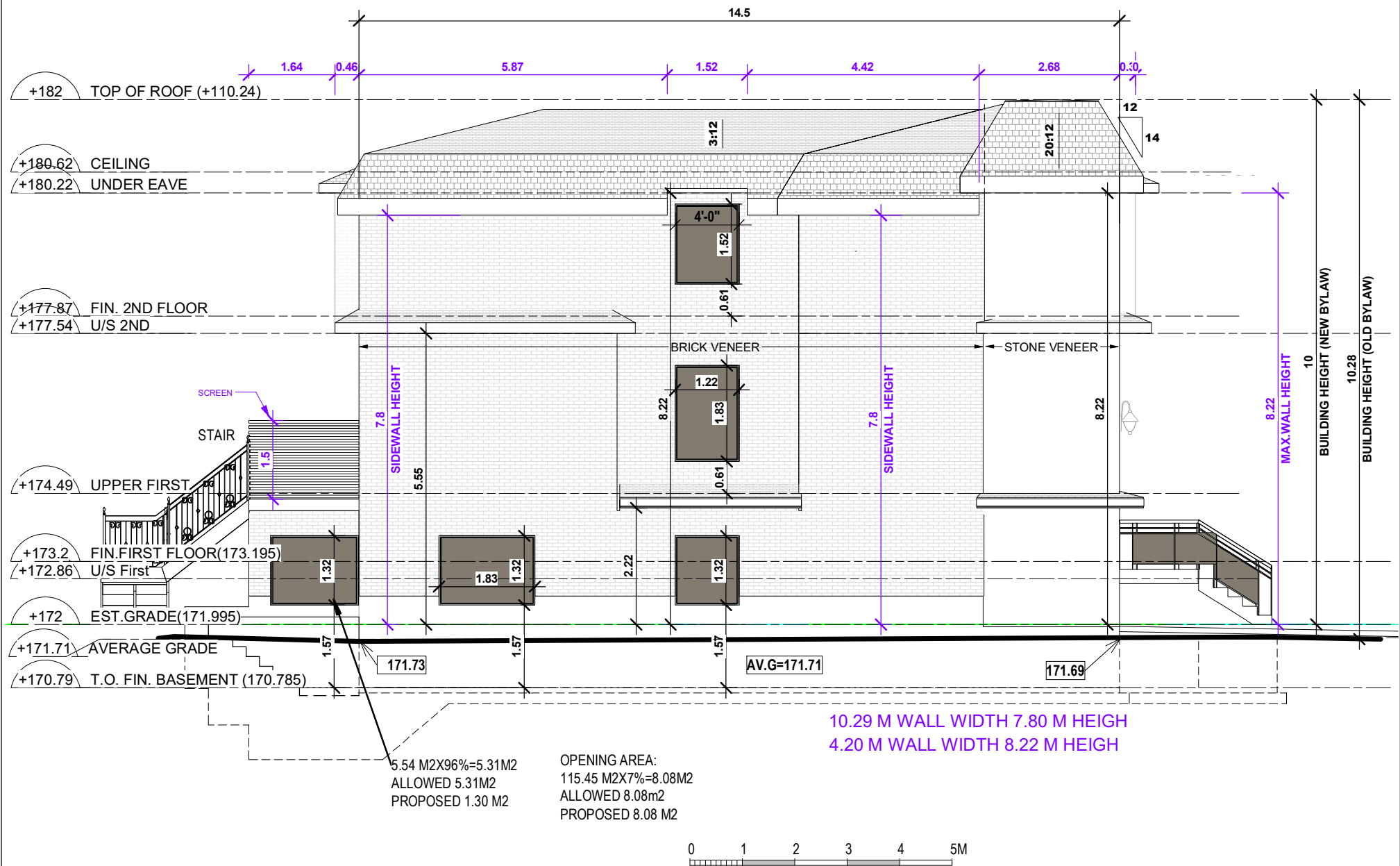
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ARC & ART

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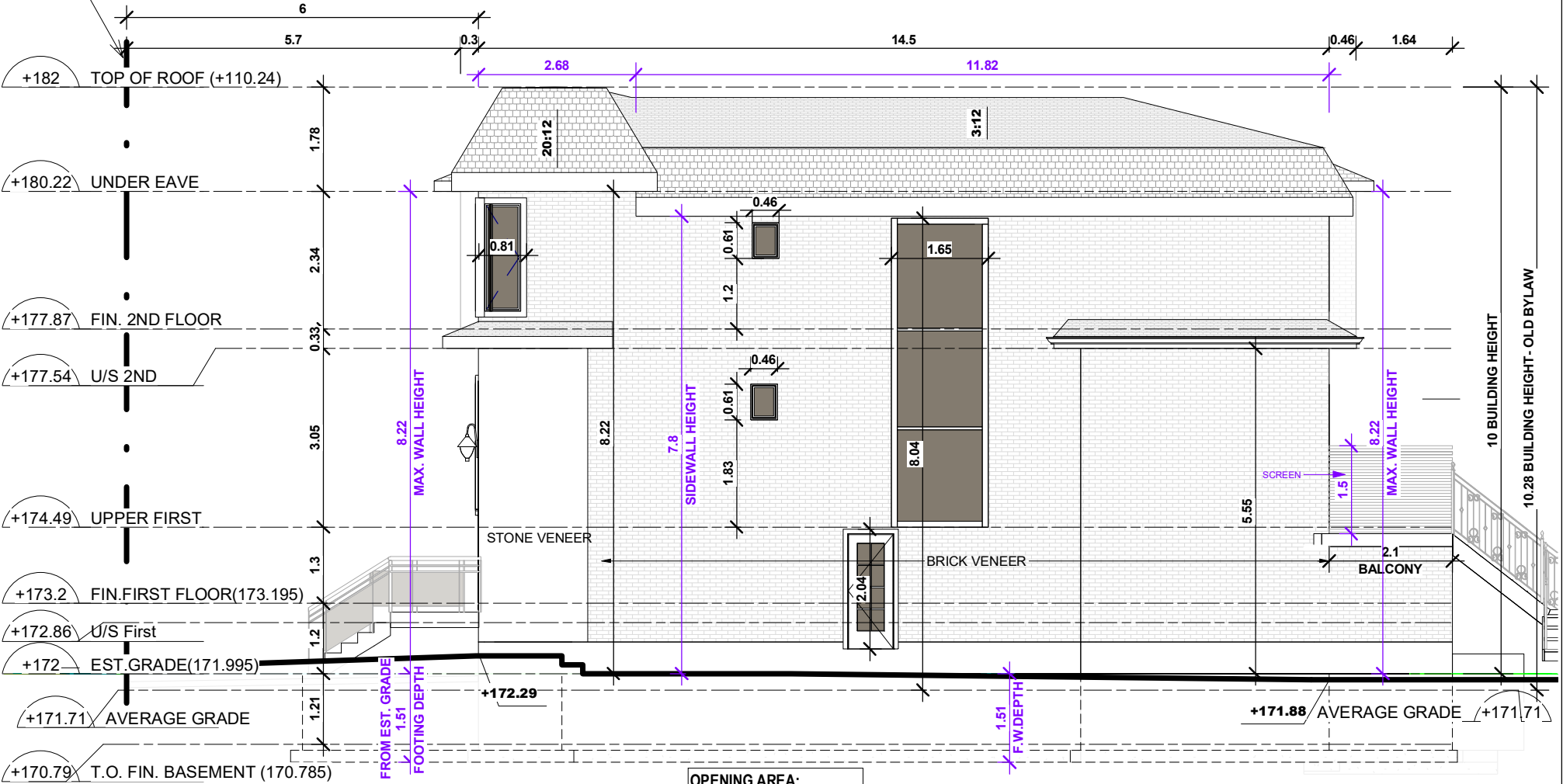
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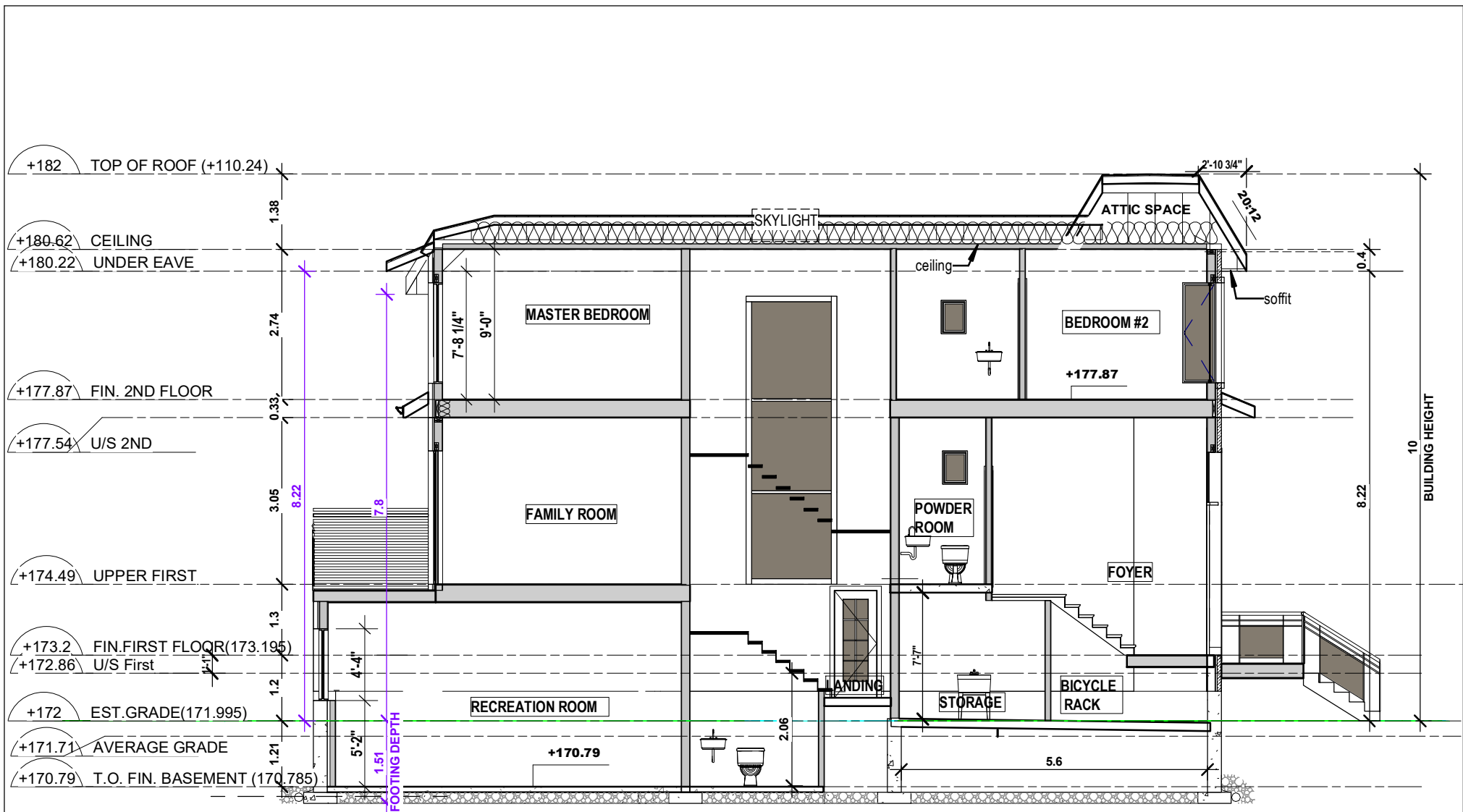
Scale 1 : 100

PROPERTY LINE



OPENING AREA:
87M2X15.5%=13.48M2
ALLOWED 13.48m2
PROPOSED 13.10 M2

11.82 M WALL WIDTH 7.80 M HEIGH
2.68 M WALL WIDTH 8.22 M HEIGH



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AUG. 28, 2021

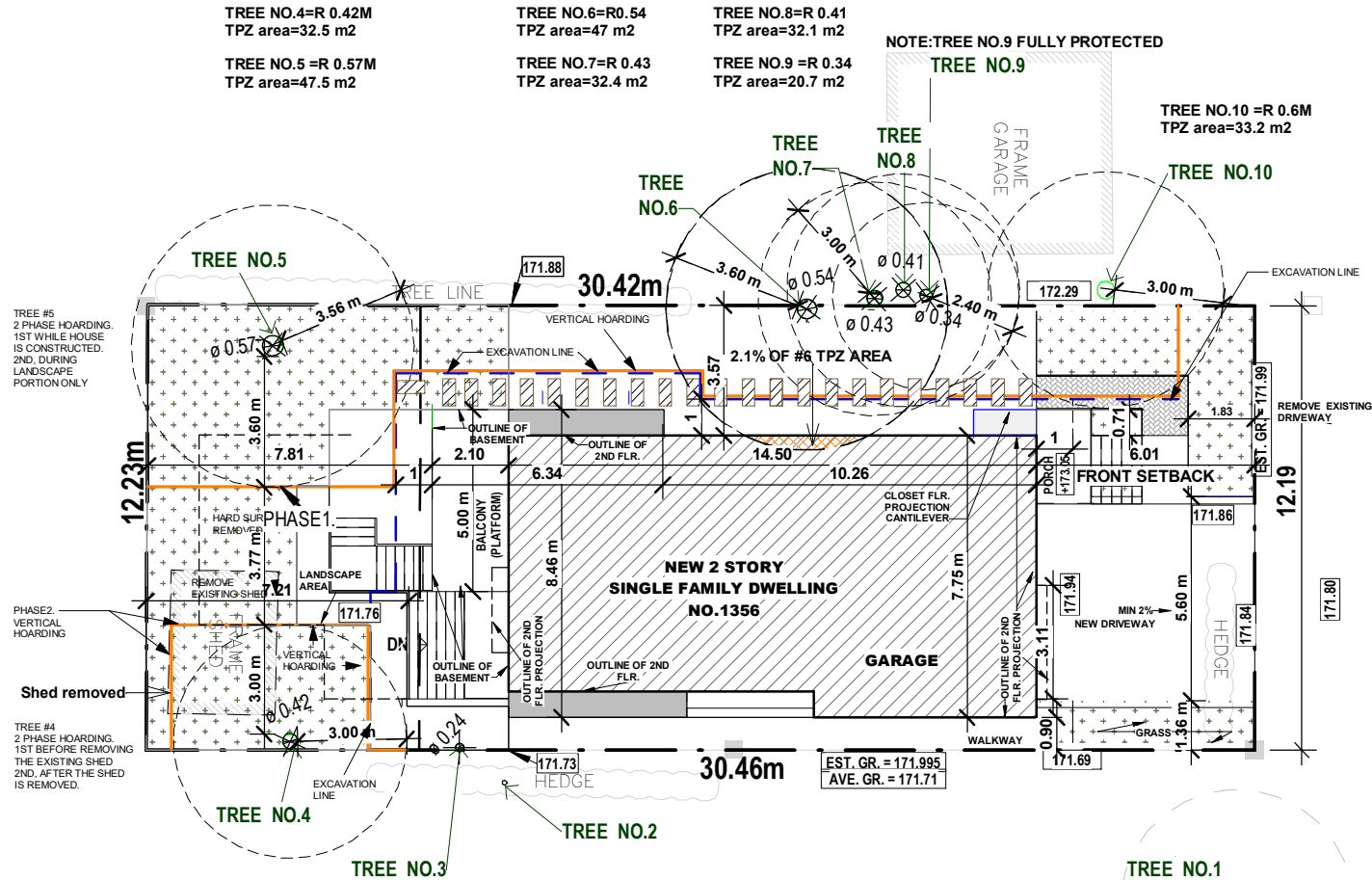
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ARC & ART

A10

Scale 1 : 100

NOTE: "To be read in conjunction with the Tree Inventory & Preservation Plan provided by Whiteside Tree & Garden Inc."



MOUNT PLEASANT ROAD

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