

DECISION AND ORDER

Decision Issue Date Tuesday, November 23, 2021

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

Appellant(s): MUHAMMAD MOHSIN BABAR

Applicant(s): ALBION BUILDING CONSULTANT INC

Property Address/Description: 11 BROOKLAWN AVE

Committee of Adjustment File 20 145832 ESC 20 MV

Number(s):

TLAB Case File Number(s): 20 179354 S45 20 TLAB

Hearing date: February 24, 2021 (Pre-Hearing Conference); April 23, 2021

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

APPEARANCES AT THE HEARING

Name	Role	Representative
Albion Building Consultant Inc.	Applicant	
Muhammad Mohsin Babar	Appellant	Amber Stewart
Jonathan Benczkowski	Witness	
City of Toronto	Party	Jason Davidson
Wendy Hooker	Party	
Gary McAuley	Party	
Verna Tunney	Participant	Wendy Hooker
Dave Allen	Participant	
Donna Davis	Participant	Paul Steinberg

Alan Burt	Participant
Cheryl Carr	Participant
Kimberly Fawcett	Participant
Paul Steinberg	Participant
Ethel McAuley	Participant

INTRODUCTION

1. The owner, Muhammad Mohsin Babar (Owner), wishes to construct a new two storey dwelling on his property at 11 Brooklawn Avenue (subject property). As this construction requires five variances, Mr. Babar, filed an application for approval of these variances at the Committee of Adjustment. The Committee of Adjustment denied his application. Mr. Babar appealed and therefore the matter is now before the TLAB.
2. The City of Toronto and several neighbours filed for Party status in opposition to this development. Some neighbours also filed for Participant status.
3. The Owner entered into settlement negotiations with the City. Ms. Stewart, as Mr. Babar's counsel, informed me that her client also negotiated with some of the main Parties and arrived at a full resolution with the City. As a result of this settlement, the owner filed an amended list of variances and site and elevation plans. As such, I held a settlement hearing on the hearing date.

MATTERS IN ISSUE

4. Mr. Babar requests the approval of the variances listed below and in Schedule A to this decision:

Variances before Committee of Adjustment	Variances before the TLAB
1. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013 The maximum permitted lot coverage is 33% of the lot area. The proposed lot coverage is 35.8% of the lot area.	1. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013 The maximum permitted lot coverage is 33% of the lot area. The proposed lot coverage is 37.25% of the lot area.
2. Exception RD 197, By-law No. 569-2013	2. Exception RD 197, By-law No. 569-2013

<p>The maximum permitted floor space is 0.5 times the lot area (224.82 m²).</p> <p>The proposed floor space index is 0.71 times the lot area (319.3 m²).</p>	<p>The maximum permitted floor space is 0.5 times the lot area (224.82 m²).</p> <p>The proposed floor space index is 0.65 times the lot area (291.26 m²).</p>
<p>3. Chapter 10.20.40.10.(1)(A), By-law No. 569-2013</p> <p>The maximum permitted building height is 9 m.</p> <p>The proposed building height is 9.4 m.</p>	<p>3. Chapter 10.20.40.10.(4), By-law 569-2013</p> <p>The maximum permitted height for a building with a flat or shallow roof is 7.2 m.</p> <p>The proposed building height is 7.54 m.</p>
<p>4. Chapter 10.20.40.10.(2)(A), By-law No. 569-2013</p> <p>The maximum permitted height of the exterior portion of main walls for a detached house is 7 m.</p> <p>The proposed exterior main wall height is 8.66 m.</p>	<p>N/A</p>
<p>5. Clause VI, Regulation 16.1, By-law No. 9396</p> <p>The maximum permitted building height is 9 m.</p> <p>The proposed building height is 9.4 m.</p>	<p>N/A</p>

5. The Parties also agreed on proposed conditions, which are set out in Schedule B.¹ The revised Site Plan and Elevations are attached to this decision as Schedule C.
6. S. 45(18.1.1) of the *Act* allows me to find that no notice is required when a change in plans is submitted to TLAB provided I find that the change is minor. The settlement has resulted in the reduction of the number of variances from five before the CoA to three. These three variances are for lot coverage, FSI, and the maximum building height. The requested variance for height is different than what was previously requested and the FSI has decreased; however, the lot coverage has increased. Despite these revisions to the variances, I am satisfied that further notice is not required because there are fewer variances in total. Further, I acknowledge the applicant engaged in settlement negotiations with his neighbours and the change in the variances were disclosed to these parties.

¹ I have added condition #6 for reasons detailed in my decision.

7. The variances must be consistent with and conform to higher level Provincial Policies. The 2020 Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe discuss higher level issues such as land use coordination, employment, housing intensification, climate change and resource management. These higher-level policies are not useful for this particular application to construct a two-storey detached house.
8. Therefore, the only issue before me is whether the three variances requested by Mr. Babar should be approved, subject to the conditions set out in Schedule B. To be approved, these variances must, individually and cumulatively, satisfy the four statutory tests for variance in s. 45(1) of the *Act*.

JURISDICTION

Provincial Policy – S. 3

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

Variance – S. 45(1)

10. 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

11. Jonathan Benczkowski, a registered Professional Planner, was qualified to provide expert opinion evidence in the area of land use planning. He spoke in favour of Mr. Babar's application.
12. Mr. Gary McAuley, a neighbour, spoke about his concerns regarding the proposal. Participants, Ethel McAuley and Kimberly Fawcett-Smith testified in support of Mr. McAuley.²

² Ms. McAuley also spoke at the hearing and her testimony supported her husband's testimony. Ms. Fawcett-Smith also spoke about her concerns about the issue of easement and shared driveway; however, Mr. McAuley, being the owner of the adjacent property subject to the easement, is the best person to speak about his concerns about the easement.

13. Ms. Wendy Hooker spoke as Ms. Vera Tunney's representative. She stated that Ms. Tunney is 94 years old and could not attend the virtual Hearing. At Mr. Davidson's (City's counsel) request, I allowed Ms. Hooker to speak on behalf of Mr. Tunney. Ms. Tunney's concerns are on issues related to the demolish, excavation and foundation if the proposed dwelling is permitted. These issues do not deal with the four statutory tests for variance approvals. I respect that those who have filed as parties and participants should have the opportunity to speak. However, I need direct evidence from the witness herself – a statement made through a representative is hearsay and the probative value of the information received through such statement is low given that the Parties in opposition cannot test the validity of these statements by way of cross-examination.
14. Ms. Hooker, who elected Party status, was present at the Hearing and she confirmed that she was satisfied with the settlement agreement between Mr. Babar and the City. Party Bret Snider, was not present at the Hearing. Participant Cheryl Carr testified that the settlement process was much welcomed by her and other neighbours as it was a less confrontational way to solve future development issues in their neighbourhood. Participants Donna Davis, Alan Burt and Paul Steinberg were also present at the Hearing. They either approved the settlement or chose not to speak. There were other individuals who filed as Participant status but did not appear before me at the Hearing.
15. The following are the documents that were filed with the TLAB and entered as Exhibits:
1. Expert Witness Statement of Mr. Benczkowski
 2. Applicant's Document Book
 3. Revised variances, conditions and plans (amended version emailed to TLAB by Ms. Stewart)
 4. Arborist Report by arborist, Andrew White, submitted by Mr. McAuley
 5. Witness Statement of Mr. McAuley
 6. Petition of Mr. McAuley
 7. Combined photographs of McAuley (combined by Mr. Davidson after hearing and emailed to TLAB)

ANALYSIS, FINDINGS, REASONS

Changes to the Proposal

16. Mr. Benczkowski testified that as a result of negotiations with the City and neighbours, the following changes were made to the application to construct a new dwelling:
- a. The revised proposal is a two-storey flat roof with one storey above the garage. This is different than the original proposal before the Committee of Adjustments which included two floors above the garage and a mansard roof. As a result, the variance for maximum height is now for a building with a flat roof.

- b. The building length is increased from 14.92 m to 15.19 m, which has resulted in an increase in lot coverage. However, this length includes the second-floor overhang at the southwest corner along the southern wall on top of the garage, which does not include habitable space. The exterior main wall heights range from 13.49 m to 14.43 m in length.
- c. The dwelling has been moved forward on the lot to accommodate a larger rear yard. The front yard setback has decreased but the proposal does not require any variance for front yard setback.
- d. Rear yard setback has increased from 10.22 m to 11.24 m.
- e. The FSI changed to 0.65, largely resulting from the second floor above the garage being removed. This has also decreased the massing of the house.
- f. Side yard setback increased to 1.25 m and requires no variance.
- g. Building length is approximately 1.58 less than what is permitted under the zoning by-laws.
- h. Building depth is now 3.8 m less than the permitted 19 m.
- i. Privacy screening will be included in the north side of the rear second storey balcony to address privacy concerns of the neighbour at the north side (condition # 4).

The Neighbourhood

- 17. The OP policy 4.1.5 directs that that a development in a neighbourhood must “respect and reinforce the existing physical character” of that geographic neighbourhood. To determine and assess neighbourhood character, it is necessary to determine what the geographic neighbourhood is for the subject property.
- 18. The subject property is in Scarborough. Mr. Benczkowski described the neighbourhood (study area) to be “bounded by the dwellings that abut the rear laneway that provides access to Kingston Road properties to the north, Eastville Avenue/Sunnypoint Crescent to the south, Dorset Road to the east and Gradwell Drive to the west.”³ This neighbourhood has Residential Detached (RD) zoning and is comprised mostly of detached single dwellings with various building typologies. The original houses in this neighbourhood are bungalows. However, there has been regeneration of the housing stock with larger replacement dwellings typically with integral garages. Mr. Benczkowski reviewed his photobook and noted that as a result of this replacement of bungalows with larger houses, there are different types of dwellings adjacent to one another. Houses with flat roofs and integral garages are not unusual in this neighbourhood. The new builds usually had integral garages and the older houses had garages at the back or a garage on the side of the house.

³ Para. 29 of Mr. Benczkowski’s witness statement.

19. Mr. Benczkowski said that the proposal respects and reinforces the immediate and broader context of the neighbourhood. It is a detached house that fits within the mix of bungalows and new dwellings with integral garages. He noted the FSI increase is modest and is not accompanied by reductions in setbacks of front, side and rear yard setbacks. Similar dwellings exist in the neighbourhood. This proposal creates an access to parking within the lot (via an internal garage) and does not require entry via any shared driveways.
20. With respect to the general intent and purpose of the zoning by-law, Mr. Benczkowski said that the intent and purpose of the zoning standard for maximum lot coverage is to ensure that the building envelope does not cover too much of the site and to allow for outdoor uses and amenities. The increase in lot coverage is partially a result of the second-floor roof overhang. This proposal ensures that there are sufficient outdoor amenities with soft landscaping both at the front and rear of the house. Further, permeable pavers will be used for the driveway, allowing for permeability of the ground. He stated that this proposal also includes a modestly sized porch and deck that do not require variances.
21. I agree with Mr. Benczkowski and accept his evidence as summarized above. I find that the proposal is a modest two storey house without any variance requirements for setbacks of front or side yards or increase in building length or depth. The height of the building with the flat roof is modest. This proposal satisfies the general intent and purpose of the OP and the zoning bylaws. The testimonies of the other witnesses are relevant to the remaining two tests for approval of variance – whether the proposal is desirable for appropriate development of the land and whether the variances requested are minor.

Mr. McAuley's Concerns

22. Mr. McAuley testified that he did not necessarily oppose the settlement but had concerns on how the proposal would negatively affect his property. His concerns can be summarized as three issues. First, there is the issue of a shared driveway between the subject property and his property which he uses to access for access. Second, he is concerned about overlook from the new dwelling onto his property. The third concern relates to tree preservation.
23. Mr. McAuley's property is the property at the north and adjacent to the subject property. This property and the subject property have a shared driveway; however, there is no right of way registered against the title of these two properties. The proposal before me is for a house with an integral garage. Access to this garage will not require any use of a shared driveway, which would allow Mr. Babar to use his land which is part of the shared driveway as he sees fit. Mr. McAuley's concern is that if the house is built, then he will not have access to Mr. Babar's portion of the shared driveway, which is about 30 inches, to access his own property and parking by car.

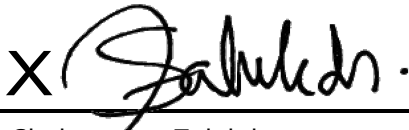
24. On cross-examination, Ms. Stewart directed that the laneway between the two properties is 2.44 m before the gate in 15 Brooklawn Avenue,⁴ if the excluding Mr. Babar's portion of the laneway. This driveway width of 2.44 m is greater than the zoning requirement for a driveway which is at 2 m.
25. I appreciate Mr. McAuley's concern and Ms. Stewart's submission that sufficient space is available for driving on Mr. McAuley's property. The TLAB has limited jurisdiction and cannot be in the position to arrange for private agreements of easements. Any kind of negotiation with respect to easements is a private matter and is not relevant for analysis under the four tests for variances given that there is no registered easement against the title of the two properties. Absent any legal impositions such as a registered easement/right of way or zoning regulations, Mr. Babar can use his property as he sees fit. I encourage the Parties to enter into private discussions on how this issue can be addressed.
26. Mr. McAuley's second concern is about overlook into his property. He would like to have frosting on the windows on the north facing wall to prevent any overlook into his backyard. He also wanted to decrease the size of these windows. I do not find these requests reasonable as frosting all the windows on one side of a house defeats the purpose of having windows - access to the view of outside and entry of sunlight will be prevented. However, I find that frosting of the second-floor washroom window on the north side of the dwelling is reasonable. Therefore, I find that a condition to this effect, which Mr. Babar agrees to, will address Mr. McAuley's privacy concerns related to overlook into his property.⁵
27. Mr. McAuley was also concerned about a large honey locust tree in his backyard. Mr. Babar plans to remove and replace the fence on the property. The removal and replacement of the fence (which is close to the tree) along with demolition and construction activities will affect this tree. He retained an arborist, Andrew White, to review this concern and the arborist's report has been submitted. Mr. McAuley was satisfied that this tree will be safe during construction as if tree protection measures are taken.
28. I find that conditions 3, 4 and 6 address Mr. McAuley's concerns about privacy, overlook and tree preservation. I also find that these conditions show that any possible adverse impact will be mitigated. I also find based on Mr. Benczkowski's evidence that the modest house on the subject property is a desirable development of the land.
29. Based on the foregoing analysis, I find that the variances requested individually and cumulatively satisfy the four statutory tests for variances.

⁴ The survey of the subject property includes a portion of 15 Brooklawn Avenue, which shows a gate on 15 Brooklawn Avenue between the two properties.

⁵ I have asked the Applicant's counsel to provide amended conditions to include this requirement; however, the amended conditions sent to TLAB did not include this condition, which I presume was an unintended and simple error.

DECISION AND ORDER

30. The appeal is allowed, and the Committee of Adjustment's decision dated July 23, 2020 is set aside. The variances in Schedule A are approved and are subject to the conditions set out in Schedule B.

A handwritten signature in black ink, appearing to read 'X Shaheynoor Talukder', is written over a horizontal line.

Shaheynoor Talukder

Panel Chair, Toronto Local Appeal Body

Schedule A Variances

1. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013

The maximum permitted lot coverage is 33% of the lot area.

The proposed lot coverage is 37.25% of the lot area.

2. Exception RD 197, By-law No. 569-2013

The maximum permitted floor space is 0.5 times the lot area (224.82 m²).

The proposed floor space index is 0.65 times the lot area (291.26 m²).

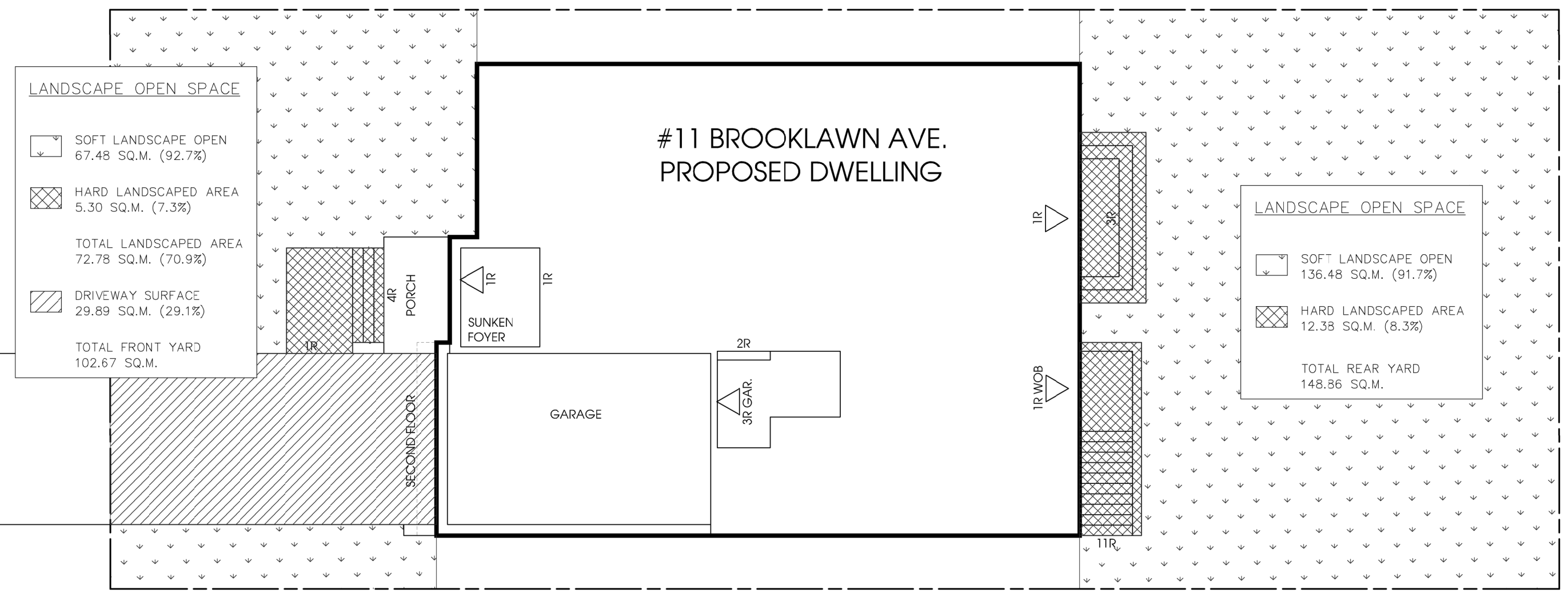
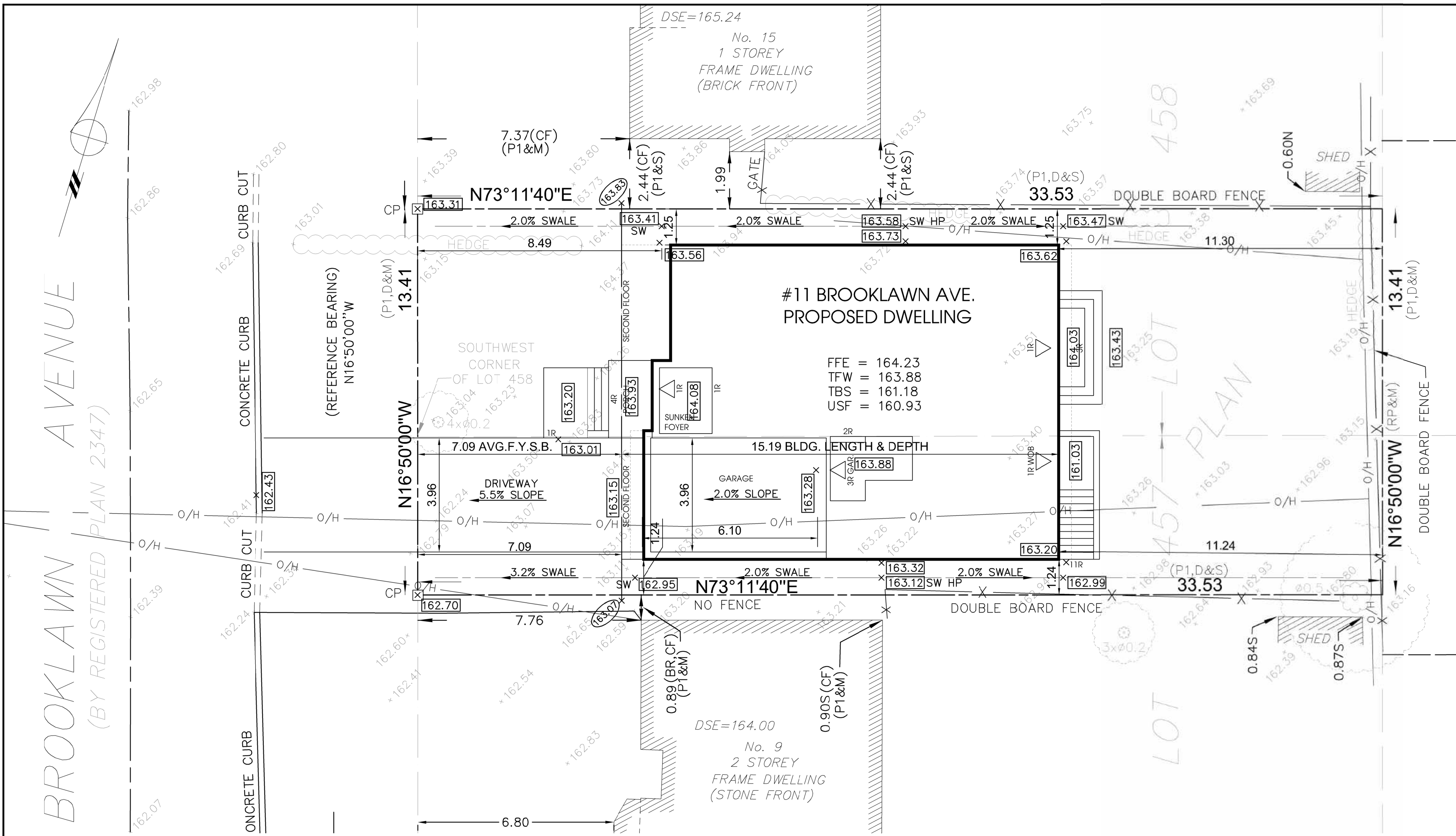
3. Chapter 10.20.40.10.(4), By-law 569-2013

The maximum permitted height for a building with a flat or shallow roof is 7.2 m.

The proposed building height is 7.54 m.

Schedule B
Conditions of Approval of Variances

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan (dated April 20, 2021), Front Elevation, Right Side Elevation, Left Side Elevation, and Rear Elevation (dated April 19, 2021), prepared by Arc Design Group (Schedule C).
2. The driveway shall be constructed of permeable pavers.
3. The owner shall apply for a permit to injury or remove privately owned trees pursuant to Chapter 813 of the Municipal Code, Article II. The owner shall include any tree protection measures required to preserve the existing tree in the rear yard of 15 Brooklawn Avenue.
4. The owner shall install a privacy screen a minimum of 1.5 m high on the north side of the rear second storey deck.
5. The owner shall provide a pre-construction survey report prepared by a qualified Professional Engineer to address and implement any recommendations during the demolition and construction activities at 11 Brooklawn Avenue to ensure no damage to adjacent properties. The owner shall provide a copy of the report to the owners of 9 and 15 Brooklawn Avenue and to the City of Toronto as part of the building permit application process. Upon completion of construction and receipt of an occupancy permit, the owner shall undertake a post-construction condition survey by the same or equivalent consultant and provide a copy of the report to the owners of 9 and 15 Brooklawn Avenue.
6. The bathroom window on the second floor of the north side of the dwelling shall have frosted window.



Project:	11 BROOKLAWN AVENUE Scarborough, Ontario
Lot Description:	Part of Lots 457 & 458, Reg'd Plan 2347
Lot Geometry	
Lot Size:	13.41m x 33.53m
Lot Area:	449.68 m ²
Coverage:	160.08 m ²
Deck / Porch:	6.52 m ²
Front Setback	7.09 m
Rear Setback	11.24 m
Int. Sideyard Setback	1.24 m
Int. Sideyard Setback	1.25 m
Building Height	7.38 m
Basement Height	3.05 m
Floor Area	291.26 m ²
GFA	0.648
Coverage	35.6%
Coverage Deck/Porches	1.4%

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3	REV. REAR YARD DIMENSION	04.20.21
2	REV. FYSB	02.17.21
1	ISSUED FOR TLAB	02.22.21
No.	Issued For/Revisions	Date

11 BROOKLAWN AVENUE
TORONTO, ONTARIO

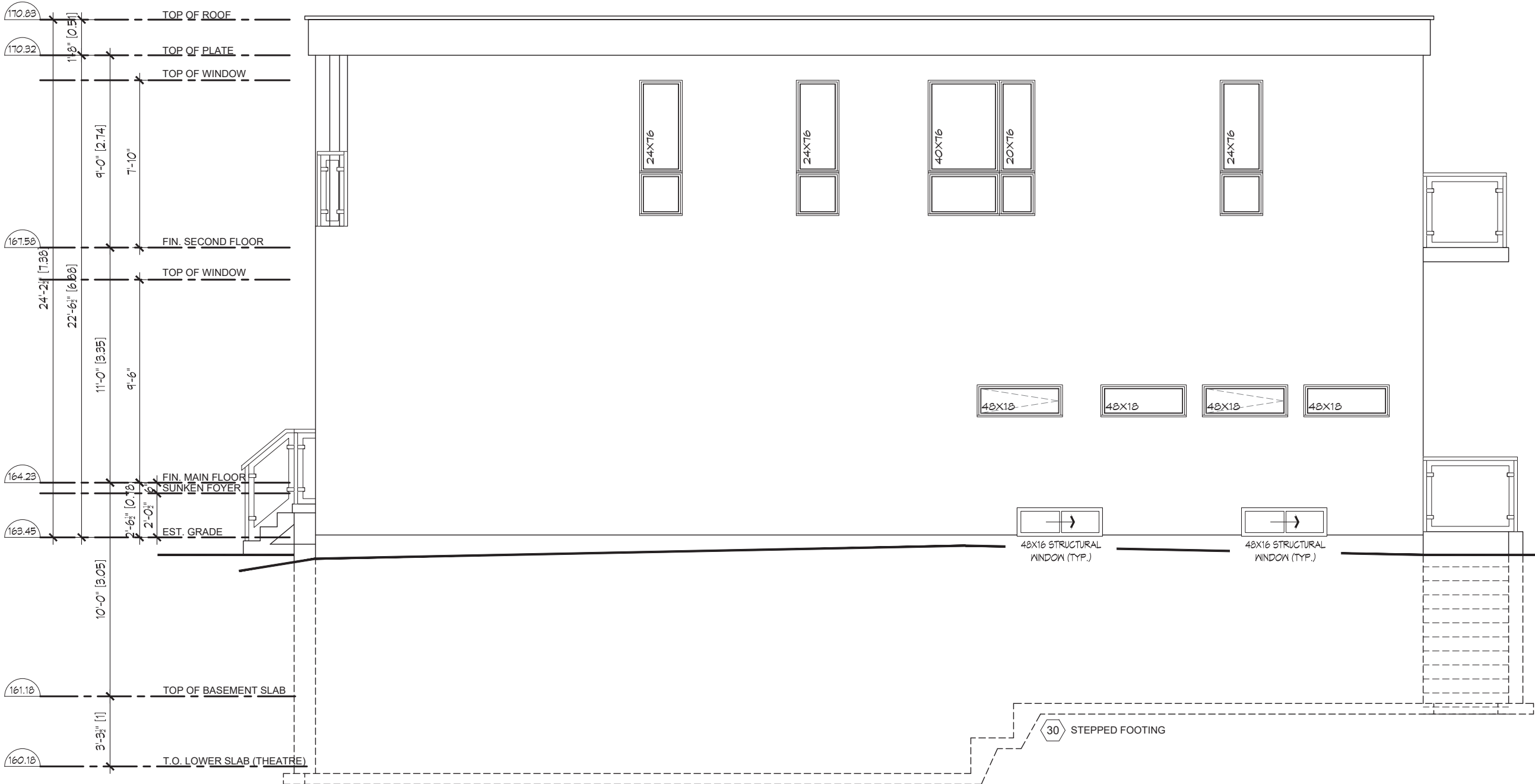
adg
Arc Design Group
architectural | mechanical | planning
tel: 905-240-4024 fax: 905-240-4019
arcdesign@rogers.com

Signature: 

DRAWN BY: AL SCALE: 1:100
CHECKED BY: PJJ DATE: 02.02.21

SHEET TITLE
SITING/GRADING PLAN &
SITE STATISTICS

PROJECT NO.: 21-001-01
DRAWING NO.: SP



architectural | mechanical | planning

arcdesign@rogers.com

tel: 905-240-4024 fax: 905-240-4019

addg

Arc Design Group

Model

CUSTOM

Client

11 BROOKLAWN AVENUE
TORONTO, ONTARIO

These drawings are not to be scaled. All dimensions must be verified by contractor prior to commencement of any work. Any discrepancies must be reported directly to Arc Design Group Development Services Ltd.

Qualified Designer BCIN:

32051

Signature:

ZJ.Aad Signoff@arcadg.com

Project No.

21-001-01

Drawing No.

A6

Scale

3/16" = 1'-0"

Date

02.03.21

Drawn by

AL

Checked by

PJ

5.

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No.

Description

Date

By

REDUCED HOUSE BY 18"

04.19.21

PJ

REVISED AS PER CITY COMMENTS

02.18.21

PJ

ISSUED FOR TLAB

02.03.21

PJ

ISSUED FOR REVIEW

01.25.21

PJ

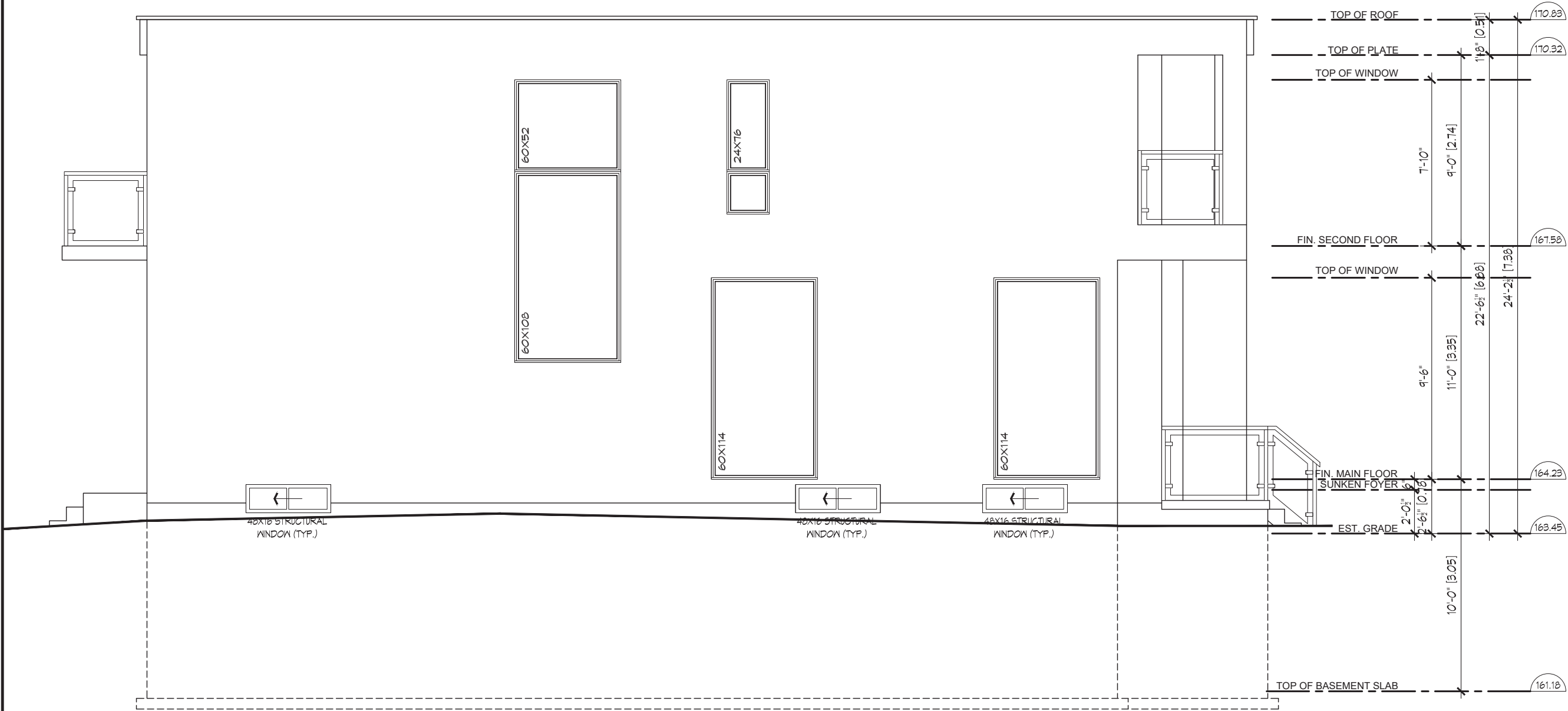
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JANUARY 2021

Sheet Title

RIGHT SIDE ELEVATION

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arc design group

architectural | mechanical | planning

tel: 905-240-4024 fax: 905-240-4019

arcdesign@rogers.com

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5.					
4.	REDUCED HOUSE BY 18"			04.19.21	PJ
3.	REVISED AS PER CITY COMMENTS			02.16.21	PJ
2.	ISSUED FOR TLAB			02.03.21	PJ
1.	ISSUED FOR REVIEW			01.25.21	PJ
No.	Description			Date	By
I, PETER JARUZNIK, DECLARE THAT I HAVE REVIEWED AND TAKE DESIGN RESPONSIBILITY FOR THE DESIGN WORK ON BEHALF OF ARC DESIGN GROUP DEVELOPMENT SERVICES LTD. UNDER DIVISION C, PART 3, SUBSECTION 3.2.4. OF THE BUILDING CODE. I AM QUALIFIED, AND THE FIRM IS REGISTERED, IN THE APPROPRIATE CLASSIFICATION CATEGORIES.					
Firm BCIN:			32051	Signature:	
Date:			JANUARY 2021	355336	
			Z./Andrzej Jaruznik		

Sheet Title

LEFT SIDE ELEVATION

Project No.
21-001-01

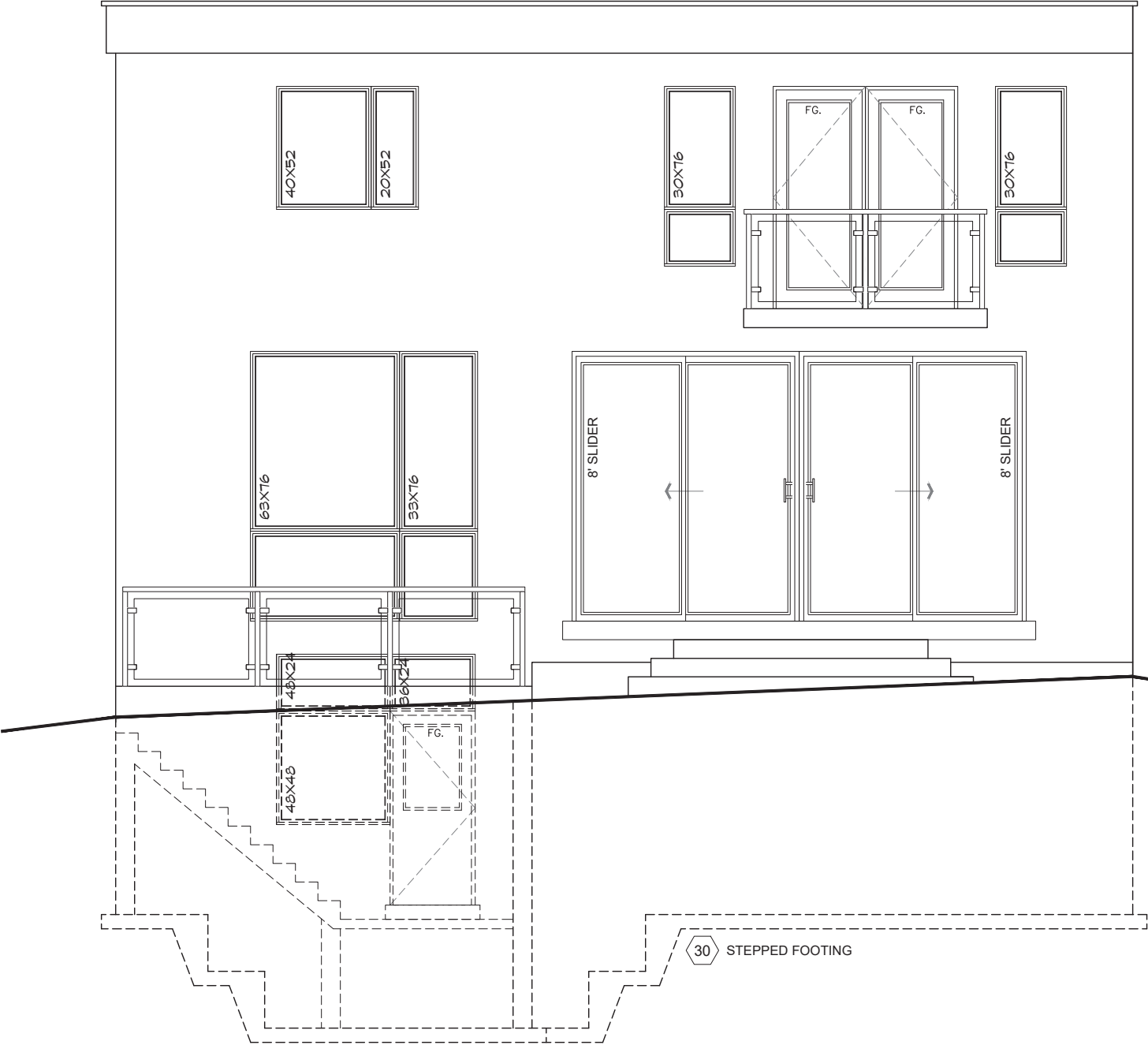
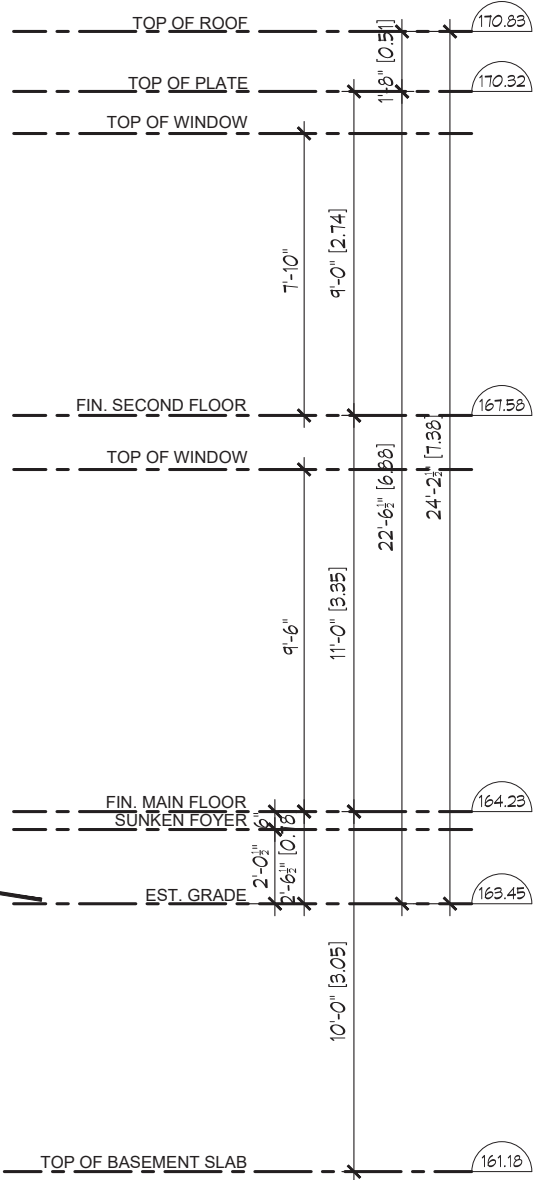
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3/16" = 1'-0"

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Drawing No.
A7

Date
02.03.21

Checked by
PJ



Model

CUSTOM

Client

11 BROOKLAWN AVENUE
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Project No.

21-001-01

Drawing No.

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Scale

3/16" = 1'-0"

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02.03.21

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Description

Date

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REDUCED HOUSE BY 18"

04.19.21

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REVISED AS PER CITY COMMENTS

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ISSUED FOR TLAB

02.03.21

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ISSUED FOR REVIEW

01.25.21

PJ

Qualified Designer BCIN:

32051

Signature:

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Firm BCIN:

355386

Date:

JANUARY 2021

Sheet Title

REAR ELEVATION

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