

## DECISION AND ORDER

**Decision Issue Date** Thursday, October 28, 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): RAJESH BABBER

Applicant(s): RICHARD WENGLE ARCHITECT INC

Property Address/Description: 18 ARJAY CRES

Committee of Adjustment File

Number(s): 21 134658 NNY 15 MV

**TLAB Case File Number(s): 21 167215 S45 15 TLAB**

**Hearing date: Thursday September 23, 2021**

**Deadline Date for Closing Submissions/Undertakings: N/A**

**DECISION DELIVERED BY A. BASSIOS**

## **REGISTERED PARTIES AND PARTICIPANTS**

Applicant	RICHARD WINGLE ARCHITECT INC..
Owner	KULVINDER KAUR BABBER
Appellant	RAJESH BABBER
Appellant's Legal Rep.	DAVID BRONSKILL
Party	SUNIL MEHAN
Party	HANI FADALI
Participant	JIARUI ZHANG
Participant	KEN ATWAL
Expert Witness	RYAN GUETTER

## **INTRODUCTION**

This is an appeal by Rajesh Babber of the North York Panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances to construct a new dwelling at the subject property.

The subject property, 18 Arjay Cres, is located northwest of Lawrence Ave and Bayview Ave. It is designated *Neighbourhoods* in the Official Plan (OP) and is zoned RD (f18; a690)(x861) under City of Toronto Zoning By-law No. 569-2013, and R3 under the former City of North York Zoning By-law No. 7625.

In attendance at the Hearing were:

- Rajesh Babber, the Owner/ Appellant, David Bronskill, legal counsel for the Appellant, Expert Witness Ryan Guetter and his colleague Christian Jattan;
- Parties Sunil Mehan and Hani Fadali; and
- Participant Ken Atwal.

I advised those present at the Hearing that I had attended at the site and the surrounding area and had reviewed the pre-filed materials in preparation of the hearing of their evidence.

## **BACKGROUND**

The Applicant/ Appellant proposes to demolish the existing dwelling and replace it with an enlarged two-storey dwelling.

## **REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

**1. Chapter 5.10.40.70.(6), By-law No. 569-2013**

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 metres from that shoreline hazard limit or stable top-of-bank.

The proposed building is set back 0.56 metres from that shoreline hazard limit or stable top-of-bank.

**2. Chapter 5.10.40.80.(1), By-law No. 569-2013**

On lands under the jurisdiction of the Toronto and Region Conservation Authority, a building or structure on a lot must be no closer than 10m from a shoreline hazard limit or a stable top-of-bank not on that lot.

The proposed building is 1.80 metres from a shoreline hazard limit or a stable top-of bank not on that lot.

**3. Chapter 10.20.40.20.(1), By-law No. 569-2013**

The maximum permitted building length is 17.00 metres.

The proposed building length is 48.31 metres.

**4. Chapter 10.20.40.10.(4), By-law No. 569-2013**

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

The proposed building height is 9.24 metres.

**5. Chapter 10.20.40.30.(1), By-law No. 569-2013**

The maximum permitted building depth is 19.00 metres.

The proposed building depth is 23.90 metres.

**6. Chapter 900.3.10.(681), By-law No. 569-2013**

The minimum required front yard setback is 25.0 metres.

The proposed front yard setback is 15.9 metres.

**7. Chapter 10.5.40.60.(1)(A)(i), By-law No. 569-2013**

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 metres if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches 11.2 metres into the required front yard setback.

**8. Chapter 10.5.40.60.(3)(A)(ii), By-law No. 569-2013**

Exterior stairs may encroach into a required setback provided they are no wider than 2.00 metres.

The proposed front stairs are 2.51 metres wide.

**9. Chapter 10.20.40.50.(1), By-law No. 569-2013**

The maximum permitted area of each platform at or above the second storey is 4.00 m<sup>2</sup>.

The proposed platform at or above the second storey is 29.96 m<sup>2</sup>.

#### **10. Section 12.7, By-law No. 7625**

The maximum permitted building height is 8.0 metres.

The proposed building height is 9.93 metres.

### **MATTERS IN ISSUE**

The Owner of the subject property appealed the refusal by the COA of his requested variances. The Parties and the Participant in attendance at the Hearing were in support of the application. There were no opposing parties in attendance and the City of Toronto did not appear or make submissions. The matter at issue for the TLAB was therefore the mandatory general question of whether the requested variances meet the four tests of s. 45(1) of the *Planning Act*.

### **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').

#### **Variance – S. 45(1)**

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

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

### **EVIDENCE**

Mr. Guetter provided uncontested land use planning evidence on this matter, relying on his Expert Witness Statement (Exhibit 1). The requested variances have been revised from the original application to the COA. The amended variances which have been requested before the TLAB are contained in Tab 29 of Exhibit 2.

Mr. Guetter described the neighbourhood and identified a neighbourhood study area as required by OP Policy 4.1.5.



Figure 1: Neighbourhood Context, Guetter, EX 2 Tab 19

## THE GENERAL INTENT AND PURPOSE OF THE OP

Mr. Guetter advised that Policy 4.1.5 of the OP allows for new development within designated neighbourhoods provided that a list of criteria is met.

*OP Policy 4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:*

- a) patterns of streets, blocks and lanes, parks and public building sites;*
- b) prevailing size and configuration of lots;*
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;*
- d) prevailing building type(s);*
- e) prevailing location, design and elevations relative to the grade of driveways and garages;*
- f) prevailing setbacks of buildings from the street or streets;*
- g) prevailing patterns of rear and side yard setbacks and landscaped open space;*
- h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and*
- i) conservation of heritage buildings, structures and landscapes.*

In Mr. Guetter's opinion, the proposal meets all of the criteria listed in OP Policy 4.1.5. On the criteria most relevant to the proposal, OP Policy 4.1.5 c and f, Mr. Guetter advised as follows:

- the proposed dwelling follows trends of prevailing size within the range of density and heights;
- the proposed dwelling maintains the prevailing height and general conditions related to massing, scale, density and dwelling type of nearby residential properties;
- the proposed dwelling, in his opinion, provides an appropriate setback of buildings relative to the curve of curve of Arjay Crescent.

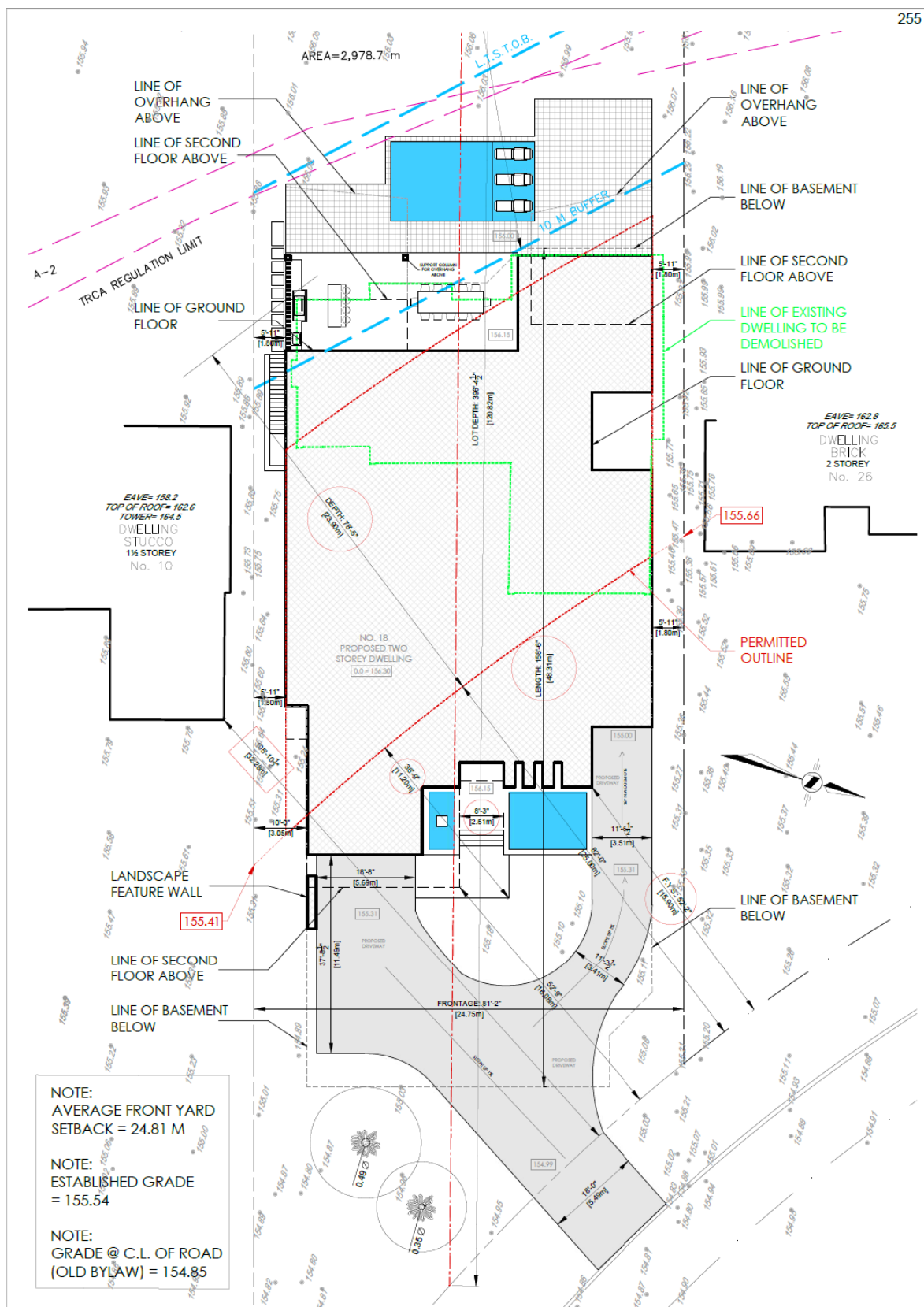
It was Mr. Guetter's opinion that the proposed dwelling is materially consistent with the trends of the prevailing physical character of the neighbourhood context, given the varied nature of the architecture in the area and emerging architectural trends.

Section 3.4 of the Official Plan contains policies relating to the Natural Environment in the City of Toronto and Policy 3.4.8 contains the requirements for development to be set back from potential natural hazards. Mr. Guetter advised that consultation with the TRCA had taken place to determine how best to place the proposed dwelling and the rear yard amenities. A letter confirming that the TRCA had no objection to the approval of the requested variances is contained in Exhibit 2, Tab 10.

In Mr. Guetter's opinion, the proposed development conforms to the policies of the Official Plan and the variances independently and cumulatively maintain the general intent and purpose of the OP.

#### THE GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAWS

Mr. Guetter illustrated the off-set nature of the property in relation to the curvature of Arjay Cres and explained how the curvature of the street results in a front setback that is at an angle to the orientation of the lot. He noted that the top-of-bank line is also established at an angle and therefore the "development envelope" for the property is unconventionally shaped and constrained.



  
RICHARD WENGLE  
ARCHITECT INC.

Figure 2: Context Plan, EX 2, Tab 29



### Building Length and Depth

Mr. Guetter noted that the building length and depth provisions apply to the above and below ground components of the dwelling. He highlighted, on the proposed site plan, the length of the building, extending from the front wall of the basement, which projects forward of the ground floor main entrance and front ground floor walls of the house, to the furthest rear wall of the basement; a length of 48.31m. The By-law permits a building length of 17m.

He advised that in his opinion, the intent of the building length and depth provisions in the By-law are, in part, to ensure that appropriate space is maintained in both the front and rear yards while also providing a consistent setback from the main walls of buildings to adjacent roads.

In Mr. Guetter's opinion, the variance for the building length is due to a reduced front yard setback and the shape and size of the property, in addition to the geographic context. Mr. Guetter's evidence was that the restriction on use of the rear yard amenity areas, caused by the top-of-bank controls, cause the proposed dwelling and associated rear yard to be placed away from the rear property line, which, in his opinion, impacts the building length and depth and the configuration of the proposed building.

### Height

Mr. Guetter noted that a variance to the former North York Zoning By-law (7625) for height is required in addition to a variance for the maximum height permitted for a flat roof under the harmonized City of Toronto Zoning By-law (569-2013). He referred to the drawings contained in Exhibit 2, Tab 22, for a comparison of the proposal and the height of the two adjacent dwellings (10 Arjay and 26 Arjay Cres). I note that these drawings show that both of the adjacent dwellings have traditional peaked roofs and that the parapet on the proposed flat roof is shown as 0.28m taller than the tower of 10 Arjay Cres, and 0.72m shorter than the peak of the roof on 26 Arjay Cres.

Tab 22 in Exhibit 2 also contains a drawing that overlays the as-of-right height of a sloped roof on the proposed dwelling and Mr. Guetter opined in this regard that the intent of the height provision in the By-law is maintained, in comparison to the alternative that could have been built as-of-right.

It was Mr. Guetter's opinion that the shadow study (Tab 23 of Exhibit 2) shows that there is some incremental increase to the shadow that would be cast by the proposed building in comparison to the existing, but that relative to the as-of-right shadow, it is insignificant. He noted that no increased shadow is cast to the rear yard of the adjoining neighbours.

It was Mr. Guetter's opinion that the variance maintains the general intent and purpose of the Zoning By-law as "the proposed dwelling is within 1m in height of the adjacent properties". He noted in his Witness Statement that both side yards include large hedges which are approximately 2 storeys in height and provide privacy for adjacent properties.



I was not able to find an identification of the height of the existing building on the subject property in the submitted materials for purposes of comparison to the proposal.

#### Front Yard Setback

Mr. Guetter noted that Section 10.5.40.70(1) of the City of Toronto By-law (the averaging provision) does not apply in this instance and that by Exception 861, the minimum front yard setback in the By-law is set at 25m.

In reference to Exhibit 2, Tab 14, which is an illustration of the relationship of the existing buildings and the front yard setback requirement on the west side of Arjay Cres, Mr. Guetter advised that none of the existing buildings comply with the 25m setback requirement. In addition, he referenced Exhibit 2, Tab 21, which details the existing front yard setbacks of the lots in the Immediate Study Area. It was his evidence that the front yard setback requirement is within the range of other front yard setbacks on the west side of Arjay Cres.

#### Platform

There are two variances which relate to the platform proposed on the front wall of the dwelling: for exceeding the maximum area of a platform and for encroaching into the front yard setback. Mr. Guetter advised that this is the only platform which is proposed for the house and that it is a “consolidation of areas of balcony that might otherwise have been located on the building”. In his opinion, the size of the balcony is appropriate in context of the size of the dwelling and that it complements the style of the architecture.

Mr. Guetter advised that if the distance from the lot line to the balcony is measured, the balcony is set back farther than 25m from the front lot line (directly in front of it, on the east side of the lot). He noted that the balcony is located facing the front of the lot and the street, it does not impact the adjacent neighbours. In addition, he observed that the balcony is located on the southern part of the front face of the building, in the section furthest away from 26 Arjay Cres, and that Mr. Mehan, the other adjoining neighbour (on the south side), was in attendance at the Hearing in support of the proposal.

#### Stairs

In Mr. Guetter’s opinion, the variance for the exterior stairs maintains the intent and purpose of the Zoning By-law since the stairs do not overwhelm the front façade of the house and are in keeping with the architectural style of the house.

In Mr. Guetter’s opinion, the variances requested maintain the general intent and purpose of the OP and the Zoning By-laws, are desirable for the development of the land and are minor. It is his opinion that the proposal would have no undue adverse impacts and that the variances individually and cumulatively meet the four tests of s. 45(1) of the *Planning Act*.

## **PARTIES AND PARTICIPANT.**

Mr. Fadali advised that he was in attendance to support the proposal. In his opinion, the proposal will not affect massing or privacy, given the large front yard setback. In his opinion, the proposal is what one should expect from the homes on Arjay Cres.

Mr. Mehan lives next door to the subject property, and he was in attendance to support the application. In his opinion, the design is excellent, and the architect “did a great job.” He did not think that there would be an impact on anyone from the proposed development.

Dr. Atwal praised the plans and expressed that it was nice to have an example of modern design on the street. He expressed his admiration of the proposed design and of the owner’s commitment to the street and the community.

## **ANALYSIS, FINDINGS, REASONS**

### **TRCA Variances**

I accept the opinion evidence of Mr. Guetter that the variances requested to the required setbacks from stable top-of-bank maintain the intent and purpose of the Zoning By-law as no new development will be extending into the erosion hazard area, the portion of the building within this setback limit (that extends beyond the footprint of the existing house) is not considered habitable space and the TRCA report (EX 2, Tab 10) confirmed that the TRCA had no objections to the variances requested. I find that the variances relating to the required setback from stable top-of-bank meet the four tests of s.45(1) of the *Planning Act*.

### **Building length and depth**

An important distinction of the building length and depth provisions are that they apply to the belowground component of the proposal, unlike setback requirements which apply only to the aboveground components of dwellings.

The evidence of Mr. Guetter was that the proposed building length is due to, or caused by, the reduced front yard setback and the shape of the property and by the location of the rear yard amenity area.

While I recognize that the curvature of the street and therefore the angle of the front yard setback line, together with the top-of-bank limitations, constrain the development envelope on the lot to a more limited area than would otherwise be the case for a large lot, these factors are more relevant to the building depth variance than that of building length. The building length provision in the By-law applies to the absolute length of the proposed building, regardless of where or how the building is situated on the lot. The requested variance, at 48.31m is significantly greater than the maximum permitted by

the By-law and I note that the maximum building length requested exceeds any variances that have been granted for building length as documented in Exhibit 2, Tab 26. The next longest variance granted was for 28.42m at 48 Arjay Cres.

Unlike the measurement of building length, which is simply the absolute measurement of the length of the proposal from furthest extent in front to furthest extent in the rear, the measurement of building depth is taken from the *front yard setback* to the rear main wall. The front yard setback line is depicted at an angle that reflects the curvature of the street (see Figure 2). In the figure, the building depth measurement has been taken on an almost forty degree angle to the axis along which the building length has been measured. The requested variance has also been revised from the Zoning Notice measurement of 26.9m to 23.9m and reflects this angled measurement. I am concerned that this revised measurement is not correctly taken according to the stipulations of the By-law and that it does not reflect the building depth variance that would be required to construct the proposal as drawn. I note that the responsibility for accurately describing the variance required rests with the Applicant.

In reference to the site plan (attached), Mr. Guetter noted that the furthest extent of the rear wall of the proposal does not exceed the furthest extent of the rear wall of the existing house on the ground floor, and only by a very small amount for the underground basement. The bulk of the increased floor area proposed for the subject property is in the front of the lot and the setback to the rear remains largely consistent with the existing house.

The evidence of Mr. Guetter was uncontested, and his was the only expert opinion that was received at the Hearing. Notwithstanding the observations above, I concur with the opinion evidence of Mr. Guetter that the requested building length and building depth variances maintain the intent and purpose of the OP and the Zoning By-law. I do so in recognition that part of the building length is underground and not visible, that the north side wall is proposed to be set back farther than the existing condition and is recessed in two segments to further mitigate the side wall impact, and that the subject property is a large lot, which, despite the significant building length and building depth variances that are requested, does not require variances for coverage or density.

In addition, there are no residential neighbours to the rear of the property and Mr. Mehan, who is the neighbour to the south, registered as a Party to this Hearing in support of the application. I note the evidence of Mr. Guetter that the rear wall of the proposed house “does not exceed the lot depth requirements in a manner that is significantly greater than the existing condition and location of the existing building”.

I find that the requested variances for building length and building depth do not create undue impact and that they are desirable for the development of the property.

#### Building Height

Mr. Guetter’s evidence comparing the heights of the adjacent peaked roof houses and the as-of-right peaked roof potential height on the subject property did not address the distinction in the By-law between the permitted heights of flat roofed and more

traditional peaked roof designs. It also did not address provisions in the By-law which restrict the height of main walls and are applicable in a peaked roof “as-of-right” scenario.

The general intent and purpose of a lower maximum permitted height provision in the By-law for a flat roofed building has not been addressed, and I note that no other building height variances have been noted in the table comparison of other variances in the study area (Exhibit 2, Tab 26). Nonetheless I find that the massing of the proposal is mitigated by the articulated front façade, the setback from the street, the side yard setbacks and the additional screening from view that the hedges and plantings provide. I am satisfied that the increased shadow that would be cast by the proposal is minimal. Overall, I find that the proposed height maintains the general intent and purpose of the OP and the Zoning By-law, is desirable for the land and does not create undue adverse impact.

#### Front Yard Setback

I accept the evidence of Mr. Guetter regarding the requested front yard setback, and I find that the requested variance is within the range of other front yard setbacks in the Immediate Context and meets the four tests.

In addition, I find no undue adverse impact to the streetscape or the public realm from the cumulative variances for front yard setback, building length and building depth.

#### Platform and Exterior Stairs

I accept the evidence of Mr. Guetter regarding the two variances relating to the platform and the variance for the exterior stairs. I find that these requested variances meet the four tests.

#### CONCLUSION

I find that the requested variances, individually and cumulatively, meet the four tests as mandated by s. 45(1) of the *Planning Act*.

I note that the adjacent neighbour at 26 Arjay Cres appeared at the COA and expressed opposition to the proposal, and I am mindful that the COA refused the requested variances. None of the Parties, or the Participant in the Hearing of this Appeal have expressed opposition to the requested variances and no evidence has been tendered in opposition to the requested variances at this Hearing.

Two of the variances (for building length and building depth) were revised prior to the COA hearing from those which were identified in the COA Public Hearing Notice. In the request before the TLAB, a third variance, that for the platform area, has been revised from that reflected in the COA Decision. I find that the revised variances to permitted building length, building depth and platform area to be minor and that further notice is not required as might otherwise be relevant under s. 45(18.1.1.) of the *Planning Act*.

## **DECISION AND ORDER**

The Appeal is allowed. The decision of the COA dated May 27, 2021, is set aside. The variances listed in Appendix A are authorized, subject to the conditions contained therein.

## **APPENDIX A**

### **APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:**

#### **VARIANCES:**

##### **1. Chapter 5.10.40.70.(6), By-law No. 569-2013**

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10 metres from that shoreline hazard limit or stable top-of-bank.

The proposed building is set back 0.56 metres from that shoreline hazard limit or stable top-of-bank.

##### **2. Chapter 5.10.40.80.(1), By-law No. 569-2013**

On lands under the jurisdiction of the Toronto and Region Conservation Authority, a building or structure on a lot must be no closer than 10m from a shoreline hazard limit or a stable top-of-bank not on that lot.

The proposed building is 1.80 metres from a shoreline hazard limit or a stable top-of bank not on that lot.

##### **3. Chapter 10.20.40.20.(1), By-law No. 569-2013**

The maximum permitted building length is 17.00 metres.

The proposed building length is 48.31 metres.

##### **4. Chapter 10.20.40.10.(4), By-law No. 569-2013**

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

The proposed building height is 9.24 metres.

##### **5. Chapter 10.20.40.30.(1), By-law No. 569-2013**

The maximum permitted building depth is 19.00 metres.

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##### **6. Chapter 900.3.10.(681), By-law No. 569-2013**

The minimum required front yard setback is 25.0 metres.

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##### **7. Chapter 10.5.40.60.(1)(A)(i), By-law No. 569-2013**

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 metres if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches 11.2 metres into the required front yard setback.

##### **8. Chapter 10.5.40.60.(3)(A)(ii), By-law No. 569-2013**

Exterior stairs may encroach into a required setback provided they are no wider than 2.00 metres.

The proposed front stairs are 2.51 metres wide.

**9. Chapter 10.20.40.50.(1), By-law No. 569-2013**

The maximum permitted area of each platform at or above the second storey is 4.00 m<sup>2</sup>.

The proposed platform at or above the second storey is 29.96 m<sup>2</sup>.

**10. Section 12.7, By-law No. 7625**

The maximum permitted building height is 8.0 metres.

The proposed building height is 9.93 metres.

**CONDITION:**

The proposed dwelling shall be constructed substantially in accordance with the Site Plan, Front Elevation, Rear Elevation, South Elevation, and North Elevation prepared by Richard Wengle Architect Inc., dated September 23, 2021, and attached hereto. Any other variances that may appear on these plans that are not listed in this decision are **NOT** authorized.

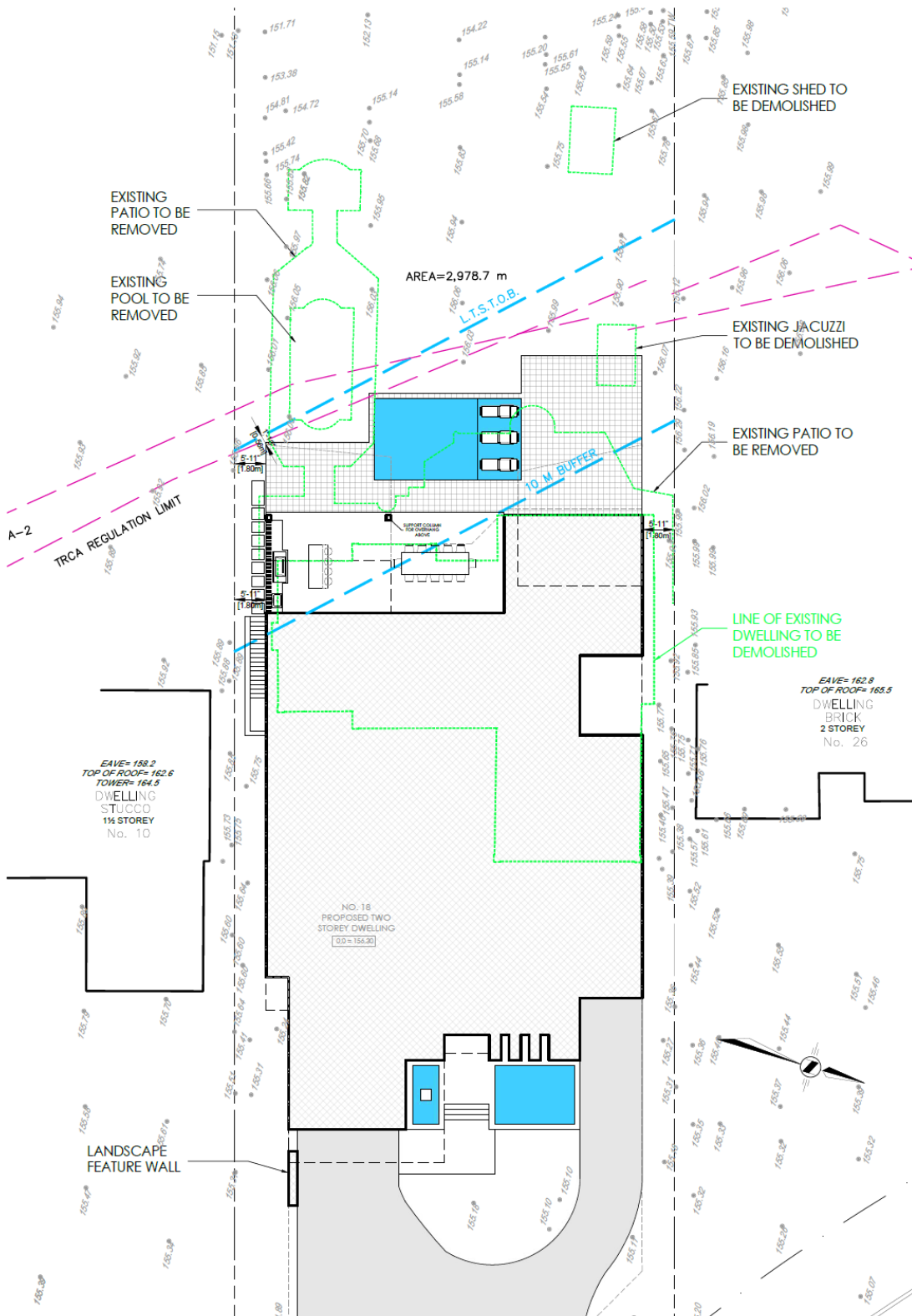
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Ana Bassios

Panel Chair, Toronto Local Appeal Body





RICHARD WENGLE  
ARCHITECT INC.

### BABBER RESIDENCE

18 ARJAY CRESCENT  
TORONTO, ONTARIO  
SEPTEMBER 23, 2021  
2027



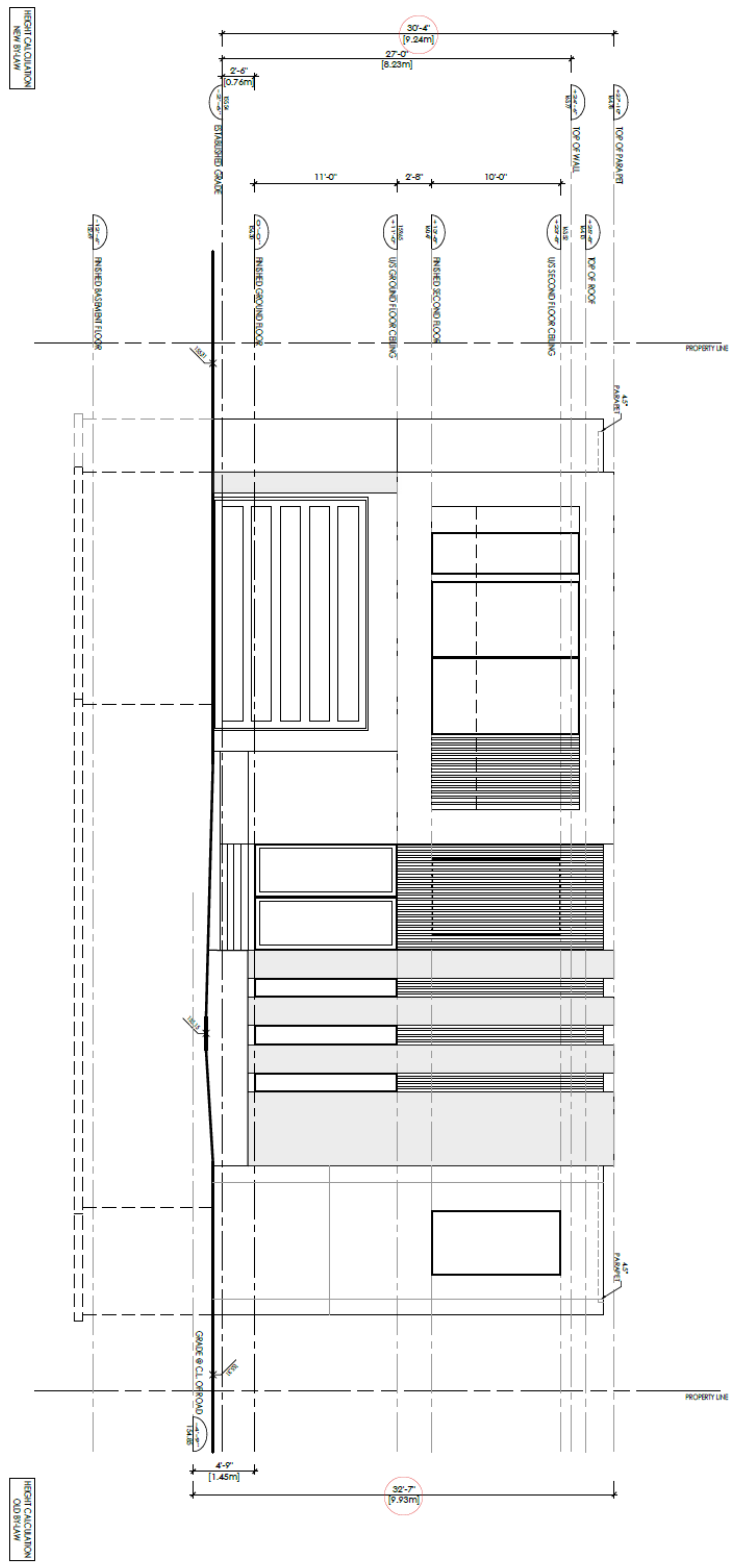
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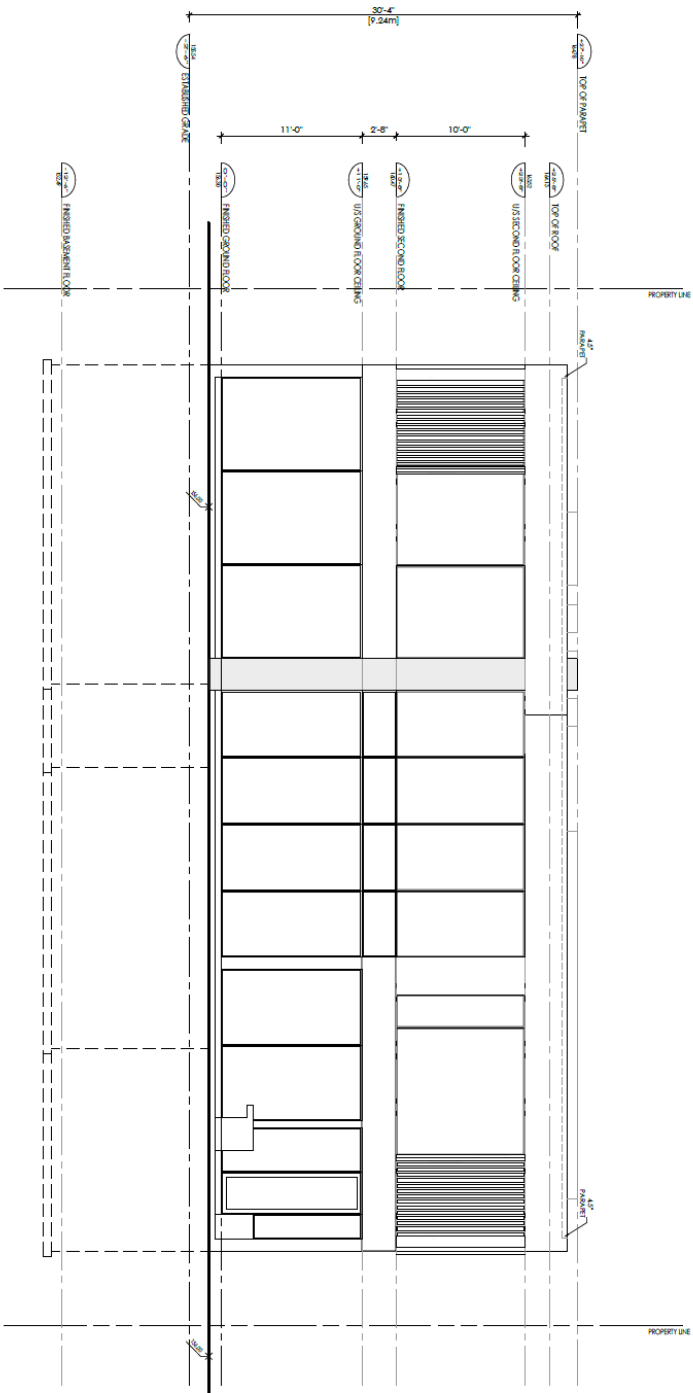
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**BABBER RESIDENCE**  
18 ARJAY CRESCENT  
TORONTO, ONTARIO  
SEPTEMBER 23, 2021  
2027


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

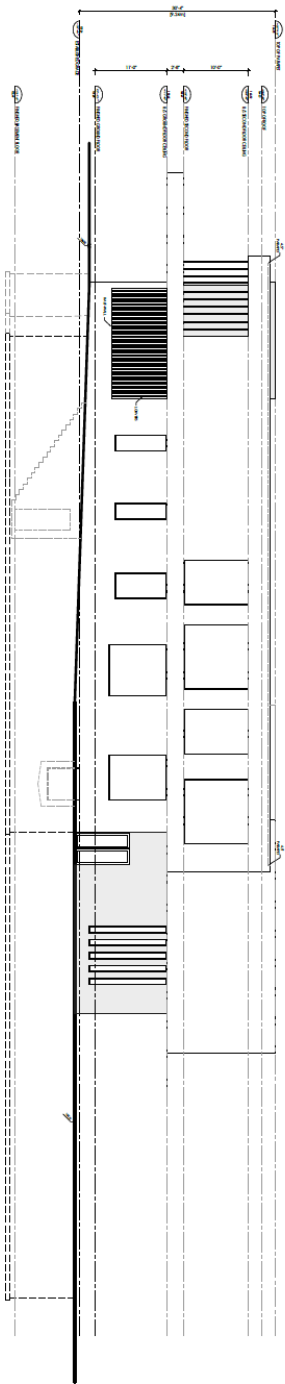




  
RICHARD WENGLE  
ARCHITECT INC.

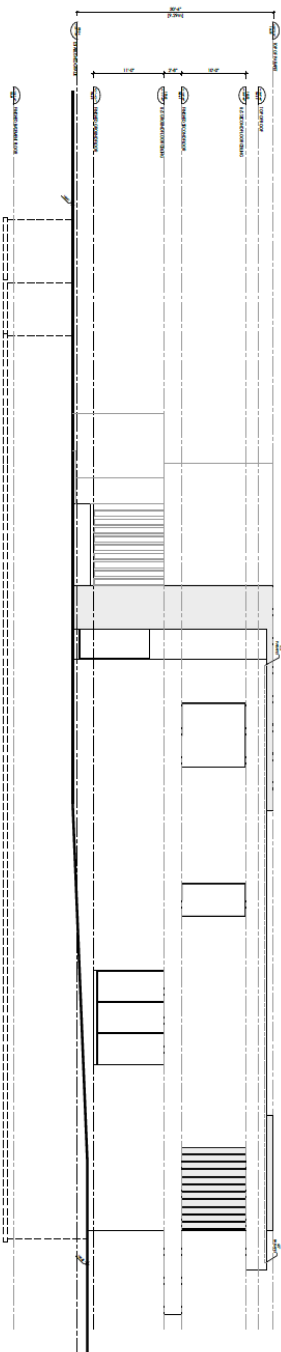
**BABBER RESIDENCE**  
18 ARJAY CRESCENT  
TORONTO, ONTARIO  
SEPTEMBER 23, 2021  
2027

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



**BABBER RESIDENCE**  
18 ARLAY CRESCENT  
TORONTO, ONTARIO  
SEPTEMBER 23, 2021  
2027





RICHARD WENGLE  
ARCHITECT INC.

**BABBER RESIDENCE**

18 ARJAY CRESCENT  
TORONTO, ONTARIO  
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