

DECISION AND ORDER

Decision Issue Date Wednesday, October 20, 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): JACK DANIEL MASSEY, RACHELLE CHEVALIER

Applicant(s): JAY SMITH

Property Address/Description: 41 PASADENA GDNS

Committee of Adjustment File

Number(s): 20 167525 STE 04 MV (A0611/20TEY)

TLAB Case File Number(s): 20 223809 S45 04 TLAB

Hearing date: June 1, 2021

DECISION DELIVERED BY C. KILBY

REGISTERED PARTIES AND PARTICIPANTS

Applicant	JAY SMITH
Appellant	JACK DANIEL MASSEY
Appellant	RACHELLE CHEVALIER
Appellant's Legal Rep.	M. VIRGINIA MACLEAN
Party	LAURA THACKER
Party's Legal Rep.	ALEX LUSTY
Expert Witness	MICHELLE CHARKOW
Expert Witness	ADRIAN LITAVSKI

INTRODUCTION

This is an Appeal to the Toronto Local Appeal Body (**TLAB**) from a decision of the Committee of Adjustment, Etobicoke York Panel (**COA**) mailed on November 25, 2020. In that decision, the COA approved three variances sought for the construction of a two-storey addition at 41 Pasadena Gardens (**Subject Property**).

The Appellants Mr. Massey and Ms. Chevalier, neighbours of the Subject Property, submit that the variances do not meet the statutory requirements for approval. Party Laura Thacker, the owner of the Subject Property (**Owner**), presented evidence and argument to support the granting of the variances sought.

A virtual Hearing of this Appeal was convened by way of the City's WebEx platform on June 1, 2021. Mr. Massey and Ms. Chevalier attended with their legal counsel M. Virginia MacLean and Expert Adrian Litavski. Ms. Thacker attended the hearing with co-Owner Vladimir Golubin and their legal counsel Alex Lusty and Expert Michelle Charkow. The City of Toronto did not participate in this Appeal, and no other Participants or Parties attended the Hearing. I advised that I had attended the site, walked the neighbourhood and had familiarized myself with the pre-filed evidence but that it is the evidence to be heard at the Hearing that is of importance.

BACKGROUND

The Subject Property is located in an area designated as Neighbourhoods by the City of Toronto Official Plan (**OP**). The Subject Property is zoned RS (f18.0; a550; d0.6). The following variances are sought from the applicable City Comprehensive Zoning By-law 569-2013 (**Zoning Bylaw**):

	Zoning Bylaw Provision	Proposed Variance
1	The permitted maximum building length for a detached house or semi-detached house is 17.0 metres. [10.40.40.20.(1) Maximum Building Length]	The proposed building length is 18.21 metres.
2	A) The required minimum rear yard setback is 7.5 metres. [10.40.40.70.(2) Minimum Rear Yard Setback]	The proposed rear yard setback is 1.39 metres.
3	C) The required minimum side yard setback is 1.50 metres where the required minimum lot frontage is 15.0 metres or greater. [10.40.40.70.(3) Minimum Side Yard Setback]	The proposed south side yard setback is 1.32 metres.

MATTERS IN ISSUE

In order to be approved, the requested variances, individually and cumulatively, must satisfy the four tests set out by section 45(1) of the *Planning Act* (**Act**).

JURISDICTION

Provincial Policy – S. 3 of the Act

A decision of the Toronto Local Appeal Body 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) of the Act

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, ANALYSIS AND FINDINGS

The following exhibits were entered into evidence during the Hearing:

Exhibit 1 – Owner Document Disclosure

Exhibit 2A – Owner Expert Witness Statement Part 1

Exhibit 2B – Owner Expert Witness Statement Part 2

Exhibit 3 – Appellant Document Book

Exhibit 4 – Appellant Expert Witness Statement

I qualified Michelle Charkow and Adrian Litavski to provide expert evidence in the area of land use planning. Ms. Charkow testified on behalf of the Owner, and her evidence is detailed in Exhibits 1, 2A and 2B. Mr. Litavski testified on behalf of the Appellants, and his evidence is detailed in Exhibits 3 and 4. In sum, Ms. Charkow opined that the Application satisfies the four tests set out in section 45(1) of the Act, and Mr. Litavski opined that it does not.

BACKGROUND

The Subject Property

The Subject Property is in the Lambton Baby Point neighbourhood in Toronto. The Humber River is west of the Subject Property but the site does not fall within the Ravine and Natural Feature Protection or Toronto Regional Conservation Authority regulation limits.

The lot shape and situation are important to the analysis of this Appeal. Both Experts agree that the Subject Property has an unusual lot shape. The triangular shape of the lot, along with its situation in a triangular island with only a handful of other properties, makes it different from most of the lots in the broader neighbourhood. An image from Ms. Charkow's Expert Witness Statement offers a helpful visual reference:



(Exhibit 2A, page 38. Red outline indicates Subject Property. The apex of the triangle is on the north side of the lot. I lettered each side of the lot for reference.)

The image shows the Subject Property among a group of properties on a triangular “island” (**Triangle.**) Adjacent on the east side of the Subject Property is 43 Pasadena Gardens, the other half of the existing semi-detached dwelling. Other adjacent properties shown above are 34 Sun Valley Drive, which is southeast of the Subject Property, and 12 and 14 Sidford Court which are located to the south of the Subject Property.

Ms. Charkow explained that the triangular lot shape of the Subject Property affects the measurement of the lot’s dimensions. I have labelled the lot lines on the diagram above using the letters A, B, C and D. Line A is the lot frontage along Pasadena Gardens, and is also considered as a side or flank lot line. The front door of the existing dwelling is on its south wall. Line B is a side lot line. Line C is the rear lot line on the southeast side of the Subject Property. Line D, which runs along the driveway from Pasadena Gardens, is deemed to be a side lot line under the Zoning Bylaw. There is an easement approximately 1.22m wide along the side property line (D).

The existing dwelling is two storeys in height. The anticipated density of the home following the construction of the addition is 0.58 times the area of the lot (**FSI**), less than the maximum permitted FSI of 0.6 for this zone.

Both Experts agreed that due to the orientation of the lot and deployment of the building, the rear yard of the Subject Property is not being used as an amenity space. The driveway is located along the south lot line and there is a garden shed in the southeasternmost portion of the rear yard. The home's outdoor amenity space, including an outdoor deck, is located in what the Zoning Bylaw would deem as the front yard, on the north end of the Subject Property.

Save for the immediate eastern neighbour at 43 Pasadena Gardens, which has a similar layout, abutting properties to the Subject Property have amenity space in their rear yards. The Experts disagree about the relationship between the Subject Property and these other neighbours. Mr. Litavski described the neighbouring properties on Sun Valley Drive and Sidford Court as having rear yards abutting the Subject Property's rear yard. Ms. Charkow described the relationship as a rear to side yard condition, since the rear main walls of the Subject Property do not face those of its neighbours. Mr. Litavski took the view that even if the rear windows of the abutting properties do not directly face each other, OP Policy 4.1.5(g) directs development to respect and reinforce the existing physical character of the neighbourhood including the prevailing pattern of broader amenity space and open areas between dwellings.

Photographs 1, 2 and 4 from Mr. Litavski's Document Book, Exhibit 3, reveal shed structures in the rear yards of the Subject Property, 43 Pasadena Gardens, and 12 Sidford Court.

The Neighbourhood

As required by the OP, both Ms. Charkow and Mr. Litavski identified neighbourhood study areas (**NSAs**). The NSAs are effectively identical but for a small central portion of the neighbourhood excluded from Mr. Litavski's NSA. That portion was described by Ms. Charkow as including detached homes. Ms. Charkow also identified an Immediate Context consisting of those properties fronting onto Pasadena Gardens, Sun Valley Drive, and Sidford Court – the three sides of the Triangle.

Mr. Litavski's Expert Witness Statement describes the neighbourhood as "characterized by an eclectic mix of low-rise residential built forms" (Exhibit 4, page 3, paragraph 16).

Ms. Charkow described the neighbourhood as consisting largely of two-storey semi-detached homes built during the 1960s and 1970s, with parking accessed primarily from the front lot line. With reference to photographs of the neighbourhood contained in Exhibit 2B, Ms. Charkow pointed out that there has been reinvestment in the housing stock primarily in the form of side or rear yard additions, often with integral garages. She opined that most of the additions built in the neighbourhood have required variances from the Zoning Bylaw, and referred the TLAB to a table of COA decisions in the neighbourhood going back 13 years contained in Exhibit 2B. During cross-examination by Ms. MacLean, Ms. Charkow agreed that there are no prior approvals for an addition with an integral garage in the Triangle.

The Proposal

The Owner proposes to build a two-storey addition with an integral garage at the south end of the existing dwelling, in the rear yard atop existing "hardscape" (Ms. Charkow's term) (**Proposal**.) The rear yard currently hosts a driveway and a shed. Ms. Charkow's opinion was that the proposed addition has been deployed on the site in a sensitive manner which maintains existing softscape, preserves mature trees, builds over existing hardscape, maintains the existing driveway location and curb cuts, and

provides for setbacks to both the rear and side lot lines. Ms. Charkow opined that the proposed addition integrates well into the existing dwelling, and to place it anywhere else on the lot would be inconsistent with the public realm and existing building form.

The Appellants maintain that the proposed addition can be built elsewhere on the Subject Property. Mr. Litavski's evidence was that the proposed addition would result in a two storey solid wall running along the full length of the neighbouring yard at 43 Pasadena Gardens, overshadowing its main entrance. He opined that the Proposal represents overdevelopment that would impinge on the shared amenity space among the properties on the Triangle and thereby offend Policy 4.1.5 of the OP.

Requested Variances

The Proposal gives rise to the three variances requested in the Application. Ms. Charkow pointed out that the proposed addition does not require a variance for maximum height, maximum height of main walls, or gross floor area, all of which are used to control density and massing on a site.

1. Building Length

The building length variance will allow for the construction of the integral garage and new front entrance on the ground floor. Ms. Charkow attributed the building length variance to the unique orientation of the lot and its impact on the measurement of building length. With reference to the proposed Site Plan in Exhibit 2B, Ms. Charkow demonstrated the measurement of the Subject Property's building length as being diagonal from the front west corner of the building to the rear east corner of the proposed addition.

Mr. Litavski did not take issue with this measurement methodology but criticized the building length variance as co-creating with the setback variances an addition that will fill the rear yard and "loom over neighbouring rear yards" (Exhibit 4, page 11, paragraph 57).

Both Experts noted that the COA decisions provided to the TLAB do not include any approvals of building length variances in the NSA. Ms. Charkow emphasized a qualitative review of the proposed built form in context rather than focusing only on quantitative information.

2. Rear Yard Setback

In Ms. Charkow's opinion, the analysis of the rear yard setback variance requires both a quantitative and qualitative review. She testified that the Subject Property currently has a rear yard setback of 9.16m. The requested variance would change the rear yard setback to 1.39m. Ms. Charkow acknowledged that there is minimal precedent in the NSA for a rear yard setback variance of this magnitude. However, she drew the TLAB's attention to several qualitative factors which influence her opinion that the requested rear yard setback variance still meets the four tests under section 45(1) of the Act:

- the unique shape and orientation of the lot, which Ms. Charkow asserts is not found elsewhere in the NSA
- the irregular footprint of the existing dwelling
- the presence of hardscape in the Subject Property's rear yard
- the existence of structures in the rear yards of neighbouring properties, and
- the precedent of a rear addition in the same location on the attached house at 43 Pasadena Gardens, which also required a rear yard setback variance.

The variance for a rear yard setback of 4.83m at 43 Pasadena Gardens was approved by the COA in 2011. Mr. Litavski highlighted the quantitative difference between the variance granted in that case and the variance sought in this case. He also pointed out that prior rear yard setback variances in the neighbourhood are not comparable in scale and scope to what is sought for the Proposal.

3. Side Yard Setback

The proposed side yard setback variance is 1.32m, or 0.18m less than what is required by the Zoning Bylaw, and would be imperceptible from the street according to Ms. Charkow. The proposed side yard setback variance is quantitatively within the range of prior COA decisions, which precedents Ms. Charkow described as evidence of ongoing revitalization in the neighbourhood. Ms. Charkow's evidence was that the proposed side yard setback would still provide appropriate separation distance between the proposed addition and adjacent properties and will provide access to the rear of the Subject Property. She also noted that the Proposal would not interfere with the existing 1.22m wide easement along the side south lot line (line D in diagram above).

Mr. Litavski acknowledged that the proposed side yard setback variance is consistent with previous COA approvals in the NSA. He also agreed that the proposed variance represents a modest difference from the minimum requirement set by the Zoning Bylaw. Nevertheless, he opined that the variances must be evaluated collectively in the context of the Proposal rather than in isolation.

THE FOUR TESTS

Provincial Policy

Both Experts were of the view that the PPS and GP have limited application to the present Appeal. To the extent that these planning policies pertain to the Proposal, both Experts agree that the Proposal is consistent with the PPS and conforms to the Growth Plan. I agree with the Experts' conclusion in this regard and accept that the Proposal satisfies section 3 of the Act.

A. The OP

Owner Expert

Ms. Charkow's opinion was that individually and cumulatively, the proposed variances maintain the general intent and purpose of the OP. She opined that the

proposed addition will coexist harmoniously with the existing neighbourhood in terms of engagement with the public realm, dwelling style, design, and scale. The preservation of existing trees, softscape, and front yard amenity space, as well as the maintenance of the existing driveway location, also factored into her analysis.

In terms of massing, Ms. Charkow reiterated her view that the absence of any request for variances of density or height performance standards demonstrates appropriate massing. Ms. Charkow opined that the proposed addition was strategically placed with reference to the sheds and extensions of neighbouring properties, noting that the area in which the addition is proposed to be constructed is already disturbed by structures and the driveway. She also pointed out the measures taken to mitigate overlook and privacy impact concerns, such as keeping the design to two storeys, not adding any balconies or decks, and not placing windows on the east side of the proposed addition.

With respect to maintaining the prevailing patterns of rear and side yard setbacks and landscaped open space under Policy 4.1.5(g), Ms. Charkow's opinion was that the existing rear yard is more akin to a side yard given the unique lot shape. As a result, in her opinion, the reduction of the rear yard setback to 1.39m should be considered more as a side yard setback reduction. Through that lens, the proposed variance is within the range of COA approval for side yard setback reductions. She reiterated her opinion that there is no true rear yard to rear yard condition in this case.

Appellant Expert

Mr. Litavski opined that the Proposal does not maintain the general intent and purpose of the OP. He asserted that the Proposal will introduce an inconsistent built form to the neighbourhood in terms of massing and projection into the shared rear area of the Triangle. As such, he opined that the Proposal will not respect and reinforce the prevailing pattern of existing setbacks and of broader amenity space and open area in the neighbourhood. He indicated that there is a balance to be struck between preserving the streetscape and preserving the pattern of rear yard open space.

Further, Mr. Litavski was of the view that the proposed addition would create adverse overlook concerns via the windows on the proposed second storey, and potential adverse impacts of shadow and reduced sunlight. He asserted that the large exterior wall of the proposed addition would overwhelm abutting properties and completely occupy the rear yard of the Subject Property.

He opined that there are other designs available to the Owners, pointing out that there is substantial space at the side and front of the existing dwelling which may be better suited to receive an addition. When I asked during the Hearing, Mr. Litavski could not identify a specific example in the neighbourhood of an addition similar to what he had suggested as an alternative to the Proposal.

Analysis & Finding

I agree that the Proposal maintains the general intent and purpose of the OP. I am not convinced by Mr. Litavski's assertion that the Proposal does not respect and reinforce the existing character of the neighbourhood in light of the photographic evidence of the NSA contained in Ms. Charkow's documents (Exhibit 2B, pages 4-6). Mr. Litavski's Expert Witness Statement (Exhibit 4, paragraph 16) describes the neighbourhood as characterized by an "eclectic mix of low-rise residential built forms." Indeed, other additions in the neighbourhood vary in style and size. Due to the semi-detached nature of most homes in the area, the use of the rear space on the lot for an addition is common, even in cases where the addition is constructed primarily at the side of a dwelling. I note the following examples in Ms. Charkow's photo evidence in Exhibit 2B: 22 Pasadena Gardens, 26 Pasadena Gardens, 36 Magwood Court, 40 Magwood Court, 233 St. Marks Road, 20 Varsity Road and 63 Varsity Road.

I am satisfied on the evidence that the proposed addition is compatible with the neighbourhood and consistent with the prevailing physical character of properties in both the broader and immediate contexts of the neighbourhood, as required by OP Policy 4.1.5.

Policy 3.1.2 contemplates that new development will be located to fit with its existing context. In this case, the proposed addition has been designed to fit at an end of the existing dwelling where it will not impact its amenity space. I note that the owner of 43 Pasadena Gardens erected an addition at the same side of the house as is proposed in this case, not on the front end where the Appellants suggest the Owner place this addition. Mr. Litavski could not point to an example of such an approach in the neighbourhood.

While the Appellants were concerned by the increase in floor area represented by the proposed addition, the new dwelling will be within the 0.6 FSI density standard for this zone, and no variances are sought for height, all of which I find to indicate appropriate massing in this context. As such, I find that the siting of the proposed addition at the rear of the existing dwelling fits the existing context as required by Policy 3.1.2.

I also agree with Ms. Charkow that the Proposal meets the goals set out in Policy 3.1.2.1, including with respect to the reorientation of the main entrance to face Pasadena Gardens rather than Sidford Court, the installation of windows facing Pasadena Gardens, and the preservation of mature trees on the Subject Property.

Mr. Litavski raised an important issue about the Proposal's departure from the existing pattern of rear and side yard setbacks in the neighbourhood. I am not convinced that the proposed side yard setback variance is a departure in this case based on prior COA approvals in the same range as what is sought.

In terms of the proposed rear yard setback variance, I agree that it is numerically larger than previously approved variances in this neighbourhood. However, the analysis of whether this variance would disrupt the pattern of rear yard setbacks in the

neighbourhood is more than a mathematical exercise. A review of aerial photographs supplied in Mr. Litavski's Document Book (Exhibit 3, pages 41-43) and Ms. Charkow's Witness Statement (Exhibit 2A, page 37) reveals that in the Subject Property's immediate context, there is an inconsistent rear yard pattern. Certainly on the Triangle, the pattern of rear yards varies between properties, with built forms or driveways present in the rear yards of 43 Pasadena Gardens, 12 Sidford Court, and 14 Sidford Court. Additionally, 6 Sidford Court and 8 Sidford Court appear to have amenity spaces more at the side of their dwellings, also with ancillary structures and in the case of 6 Sidford Court, a pool. Based on this evidence, I disagree with Mr. Litavski that the proposed addition would disrupt the pattern of shared open space on the Triangle. I find based on the evidence that the existing pattern of open space in the Triangle includes and accommodates alternative forms of development in the rear spaces of the lots. Although the rear yard setback variance is numerically large, I find that in this unique immediate context, it will respect and reinforce the existing physical character of the neighbourhood in terms of the prevailing pattern of rear yard setbacks and landscaped open space as required by Policy 4.1.5(g) of the OP.

Altogether, I find that the Proposal maintains the general intent and purpose of the OP.

B. Zoning Bylaw

1. Building Length

Owner Expert

Ms. Charkow opined that the purpose of the building length zoning standard is to establish a consistent relationship of buildings to the public realm and to limit building mass encroachment into the rear yard area. She asserted that by locating the additional building length at the rear of the dwelling, the Proposal maintains the dwelling's existing relationship to the street. Ms. Charkow referred to the unusual method of measuring building length on this lot and the marginal increase represented by the variance as meeting the goal of limiting encroachment.

Appellant Expert

Mr. Litavski shared Ms. Charkow's view of the purpose and intention of the Zoning Bylaw. His evidence was the proposed addition will offend this purpose and intention by creating a looming two storey structure along almost the full length of the shared property line with 43 Sun Valley Drive. He offered that the absence of building length variance approvals in the NSA in the last 10 years supported his opinion.

Analysis & Finding

I am satisfied that the building length variance sought in this case maintains the general intent and purpose of the Zoning Bylaw by preserving the dwelling's relationship to the public realm. I accept Ms. Charkow's explanation that the manner of measuring building length in this case, in addition to the relatively small size of the variance, satisfy

the intent and purpose of the building length zoning standard. This variance accounts for only 1.21 metres of the proposed addition, and is not by itself responsible for the entirety of the wall which concerns the Appellants. I find that the absence of prior building length variance approvals in the NSA is not fatal to this Proposal given the unique character of the Subject Property.

2. Rear Yard Setback

Owner Expert

With respect to the rear yard setback, Ms. Charkow's view was that its purpose is to provide amenity space and separation in a typical rear yard to rear yard orientation, which she asserts does not exist in this case. The absence of that typical orientation is a key factor to Ms. Charkow's opinion that the proposed rear yard setback variance is permissible in this instance. She asserted that the requested rear yard setback variance maintains the purpose of the Zoning Bylaw by preserving amenity space in the front yard.

Appellant Expert

Mr. Litavski pointed out that the proposed rear yard setback variance represents a substantial change over the Zoning Bylaw requirement and prior COA approvals. His opinion was that the purpose and intent of the rear yard setback zoning requirement is to ensure appropriate amenity space for the Subject Property and an appropriate sense of openness for the Subject Property and adjacent properties. He agreed with Ms. Charkow that due to the shape and configuration of the lot, the rear yard is not the only amenity space on the Subject Property.

Mr. Litavski noted that the proposed addition will have windows which will overlook the rear yards of surrounding properties to the south, southeast and southwest, which will result in adverse impacts of overlook and reduced privacy. On cross-examination, he acknowledged that there is presently a large window and rooftop deck located at the rear of the neighbouring property, 43 Pasadena Gardens.

I asked Mr. Litavski to estimate the distance from the existing shed on the Subject Property to the property line shared with 34 Sun Valley Drive (the rear lot line.) Based on the 1993 Survey provided in Exhibit 2A, Mr. Litavski estimated the shed to be approximately 76cm from the property line, closer than the proposed addition would be if constructed.

Analysis & Finding

In this case, the context of the Subject Property is critical to understanding whether or not the proposed rear yard setback variance maintains the general intent and purpose of the Zoning Bylaw. I am satisfied that the outdoor amenity space on this particular property is located at the north end of the dwelling, and therefore, I find that a rear yard setback variance of this size will not interfere with the outdoor amenity space enjoyed by the Subject Property.

In terms of preserving separation from adjoining properties, Ms. Charkow advanced a theory that the Subject Property's rear yard should be considered as a side yard due to its orientation and use. Her suggestion is that this practical reality excuses any impacts on separation that may result from the proposed variance. Her opinion does not adequately address the fact that the Subject Property's rear yard is still a largely open space which would be occupied by a structure if the variances are approved.

I accept that the Subject Property has a rear to side yard condition with 34 Sun Valley Drive. There is an existing shed closer to the lot line than the proposed addition would be if the setback variance is approved. I find that the reduction of open space in that particular relationship does not frustrate the general intent and purpose of the Zoning Bylaw.

However, I do not agree that there is no rear yard to rear yard condition in this case. The neighbouring property at 12 Sidford Court is the closest example of a rear yard to rear yard neighbour on the Triangle to the Subject Property based on the proposed orientation of the addition's second storey. That dwelling as well as the attached 14 Sidford Court would be facing new windows on a closer wall if this variance is approved (see photograph at page 10 of Exhibit 3).

The residents of 12 Sidford Court wrote a letter of objection to the COA, but they did not participate in the Appeal. The residents of 14 Sidford Court, who have a second storey window in nearly the same location as the one at 12 Sidford Court, wrote a letter of support to the COA and also did not participate in the Appeal. I give the objection letter of the owners of 12 Sidford Court less weight in these circumstances.

In addition, the evidence demonstrates that there is a large ancillary structure at the rear of 12 Sidford Court's lot, with very little setback from the Subject Property's southern lot line. Beside that structure along the lot line is a row of tall trees. I find these characteristics significant in that they already occupy the open space between the dwellings such that the proposed addition would not create any undue or adverse impacts on an otherwise open rear yard. In this situation, I find that the purpose and intent of the Zoning Bylaw to preserve separation between properties will be maintained by the Proposal.

3. Side Yard Setback

Owner Expert

Ms. Charkow described the general intent and purpose of the side yard setback requirements as to allow maintenance access, servicing and limited separation where lot arrangements permit. She opined that the proposed variances maintain those purposes by respecting the existing easement and providing for a side yard setback within the range of other area approvals. Access, separation, and distance between properties will all be maintained if the proposed variance is granted. The east wall will not have windows in order to minimize overlook into the neighbouring properties.

Appellant Expert

Mr. Litavski opined that the purpose of a side yard setback is to ensure appropriate access, to maintain the rhythm of the street and the spacing of street frontage to ensure a consistent pattern of buildings and open spaces, and to reduce overlook issues. He confirmed that the proposed side yard setback of 1.32m is within the range of previous COA approval but should not be viewed in isolation from the fact that it is being requested to facilitate the Proposal to fill the Subject Property's rear yard with an addition.

Overall Mr. Litavski opined that the setback variances will result in an inappropriate building mass that is out of context, inconsistent with the prevailing patterns of the neighbourhood, and not in keeping with the general intent and purpose of the Zoning Bylaw.

Analysis & Finding

The proposed variance is well within the range of prior COA approvals in this NSA as presented by both Experts. I agree that adequate separation and space at the side of the Subject Property, including the easement, will be preserved by the variance. For these reasons, I find that the proposed side yard setback variance maintains the general intent and purpose of the Zoning Bylaw.

Altogether, I find that the proposed variances maintain the general intent and purpose of the Zoning Bylaw.

C. Desirable for the Appropriate Development or Use of the Land

Owner Expert

Ms. Charkow stated that the Proposal represents a reinvestment into the existing property in a manner that is compatible with the neighbourhood. For all the reasons summarized above, Ms. Charkow opined that individually and cumulatively the variances are appropriate and desirable for the Subject Property.

Appellant Expert

Mr. Litavski opined that the Proposal does not meet this test. He did not dispute the appropriateness of renewing housing stock to enlarge a smaller home. His concern was that the proposed expansion would be deployed in a way that would maximize negative impacts on adjoining properties.

Analysis & Finding

I find that expanding the existing dwelling to better suit the needs of its residents using the restrained design in this Proposal is desirable for the appropriate development or use of the land. I do not agree that the proposed addition will maximize negative impacts on adjoining properties.

D. Minor

Owner Expert

Ms. Charkow opined that the proposed variances are numerically minor and minor in the resulting impact. Counsel for the Owners cited *Motisi et al. v. Bernardi* (1987 CarswellOnt 3719) to support the argument that “minor” cannot be calculated mathematically or decided based on numeric values alone.

The Owners also rely on *Motisi* for the proposition that issues of overlook and interrupted sight lines are part of living in an urban setting. Ms. Charkow emphasized the measures taken to mitigate impacts on neighbouring properties in terms of overlook and shadow. She also indicated that the OP does not require a shadow study in this case because the height of the proposed addition is less than six storeys. She asserted that the orientation of the dwelling will result in minimal shadow cast on the neighbouring properties by the proposed addition and opined that the building length and side yard setback variances will be imperceptible from the street due to the design and placement of the proposed addition.

Appellant Expert

Mr. Litavski opined that individually and cumulatively, the variances sought are not minor. On a quantitative level, he opined that the rear yard setback variance represents a significant departure from the Zoning Bylaw performance standard and is greater than prior COA approvals in the neighbourhood. He repeated many of the concerns outlined above about the negative impacts on neighbouring properties which would result if the Proposal is approved.

The Appellants argue that in this case, the TLAB ought to consider their interests as neighbours who will be directly impacted by the Proposal as much as the broader public interest. Indeed, by making this Appeal and retaining Ms. MacLean and Mr. Litavski, the Appellants have demonstrated the importance of this matter to them as neighbours of the Subject Property.

The Appellants also suggest that the Owner has a significant burden to meet with respect to the “minor” test for the rear yard setback variance, with counsel for the Appellants arguing that the appropriateness of that variance is the key to this Appeal. Based on its size, as well as its impact, the Appellants argue that the rear yard setback variance does not meet the definition of minor. If it fails this test, they argue based on *Re 251555 Projects Ltd. and Morrison* (1974 CanLII 750) that the entire Application fails.

Analysis & Finding

Quantitatively, the side yard setback variance and the building length variance are minor. The side yard setback variance is within the range of prior COA approvals and I agree that it would be visually imperceptible from the street. The building length variance is not large. There were no other examples of building length variances in the

NSA, but this case involves a unique lot and measurement methodology for building length which makes comparisons challenging. Therefore, I find that these two variances are minor.

I agree with the Appellants that whether the rear yard setback variance is minor is a key issue in this Appeal. Numerically, the rear yard setback variance is large and outside the range of prior approvals. Yet the analysis that I am required to undertake does not end at this quantitative step. I accept the following guidance from *Bernardi* that the size of the proposed variance is not the full story:

It is almost trite to say that what is minor and what is not minor cannot be calculated mathematically. What is considered a minor variance in one case could well be considered not minor in another case....Without attempting to limit this discretion [of the COA or appeal body], if the variance requested does not produce an unacceptable adverse impact on the neighbours, then it can probably be considered as minor. This appears to be so, under certain circumstances, even if the variance requested amounts to an obliteration of the requirement.

I find that the rear yard setback variance represents a significant reduction to the performance standard set by the Zoning Bylaw, but is supportable in the unique circumstances of this case. I accept Ms. Charkow's opinion that the impact of a reduced rear yard setback is mitigated by the existing driveways and ancillary structures in this shared Triangle space. I agree that the building length variance sought is not large, suggesting that the encroachment of the building into the lot's rear space is not beyond reason. I rely on my earlier analysis of the variance's impacts on open space patterns and separation between dwellings to support my finding that the reduced rear yard setback does not introduce an undue adverse impact in this respect.

The characterization of the lot lines at the rear of the dwelling is also instructive. The rear lot line in this case (line C on the diagram above) is the shortest lot line on the Subject Property. It has a close proximity to both side lot lines, meeting the southern side lot line (D) at wide angle. Although it is designated as the rear lot line, it is not parallel to the rear exterior wall of the existing dwelling. It runs along the side lot line of 34 Sun Valley Drive and has no contact with the rear lot lines of other properties, as line D has. Therefore I find that the designation of this lot line as a rear lot line does not adequately capture the reality of this unique lot shape. Furthermore, I find it consequential that a side yard setback variance of a similar size, which is within the range of prior approvals, would apply less than six metres away¹ from the proposed rear yard setback variance in roughly the same vicinity on the lot. It simply does not make sense to consider the rear yard setback variance in isolation from this context.

For these reasons, I find that the impact of the rear yard setback variance does not result in undue or adverse impacts, despite the numerical size of the variance sought. I am satisfied that in these unique circumstances, the rear yard setback variance is minor.

¹ Based on the survey of the Subject Property contained at page 34 of Exhibit 2A.

With regard to other potentially adverse impacts of the Proposal, I acknowledge the Appellants' sincere privacy and overlook concerns. I agree that the proposed addition will be visible from the rear second floor deck of 43 Pasadena Gardens, and there may be more overlook into the rear yard of 34 Sun Valley Drive than currently exists as a result of the new second storey. However, I am not persuaded that these impacts are unduly adverse, although they may represent an undesirable change from the *status quo*.

There is no evidence that there will be undue adverse impacts to sunlight on neighbouring yards. The Owner cites *Re Goudarzi* (CarswellOnt 18507) for the proposition that the TLAB assigns little weight to shadow issues because shadow studies are not required for any building less than six storeys tall. I do not agree with that assessment. Rather, I interpret the findings in that decision as affirming the City's policy directions regarding the circumstances when shadow studies will be required as sufficiently protective of the public interest in the absence of evidence to the contrary.

I find that the south-facing windows proposed for the addition do not represent an unacceptable increase in overlook given that they are bedroom windows and in light of the existing fenestration along the south side of both the Subject Property and 43 Pasadena Gardens. Moreover, the potential overlook will largely impact outdoor spaces rather than dwellings. There is no rooftop deck or balcony proposed, and no windows on the east wall of the proposed addition. I agree with *Bernardi* that overlook is not unusual in an urban setting. Though I can understand that the Appellants may find the overlook impacts to be undesirable, I do not find them to be unduly adverse from a planning perspective.

Therefore, I find the proposed variances, individually and cumulatively, are minor.

CONCLUSION

Ultimately this Appeal turns on the significance of the unique shape and orientation of this lot on the triangular parcel of land which makes up its immediate context. Ms. Charkow's opinion is that the lot shape and configuration are important factors to the analysis of the Proposal. Mr. Litavski takes the view that the unique lot shape cannot excuse what are otherwise unacceptable variances. I prefer Ms. Charkow's assessment. I find that the unique lot shape informs the analysis of the proposed variances under section 45(1), particularly with regard to the tests of maintaining the general intent and purpose of the OP and the Zoning Bylaw. As discussed above, I have concluded that the proposed variances satisfy these tests in the particular context of this case, including the lot shape and dwelling orientation.

Overall, I agree with Ms. Charkow that the proposed addition represents good planning. The proposed addition reflects a design that is sensitive to its surroundings, and the fact that the design was not made by an architect does not detract from this conclusion.

I find that I need not engage with the concept of residual discretion discussed in *Vincent v. DeGasperis* (CanLII 24263). No arguments of need or hardship were advanced, although the Appellants argued that there are alternative ways to construct the proposed addition and submitted that as such, the TLAB should not approve this particular Proposal.

Mr. Litavski offered that the Owners are more focused on the broader public interest and the impacts of the Proposal on the streetscape and public realm while he was more concerned with the Proposal's impact on the immediate neighbours and the Triangle in which the Subject Property is situated. Quite simply, in order to approve this Proposal, the TLAB must have regard to the interests of both groups, and the analysis above does so.

DECISION AND ORDER

The Appeal herein is dismissed; the COA decision in COA File No. A0611/20TEY mailed on November 25, 2020 is confirmed.

The following variances are approved subject to one condition outlined below:

	Zoning Bylaw Provision	Proposed Variance
1	The permitted maximum building length for a detached house or semi-detached house is 17.0 metres. [10.40.40.20.(1) Maximum Building Length]	The proposed building length is 18.21 metres.
2	A) The required minimum rear yard setback is 7.5 metres. [10.40.40.70.(2) Minimum Rear Yard Setback]	The proposed rear yard setback is 1.39 metres.
3	C) The required minimum side yard setback is 1.50 metres where the required minimum lot frontage is 15.0 metres or greater. [10.40.40.70.(3) Minimum Side Yard Setback]	The proposed south side yard setback is 1.32 metres.

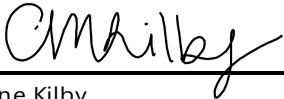
The approval is subject to the following condition:

1. Construction shall be carried out substantially in accordance with the plans and drawings prepared by Sketchworks Inc. (undated), specifically numbers 1, 3, 5, 7, 10, 11, and 12 which were submitted to the TLAB as part of Exhibit

Decision of Toronto Local Appeal Body Panel Member: C. Kilby
TLAB Case File Number: 20 223809 S45 04 TLAB

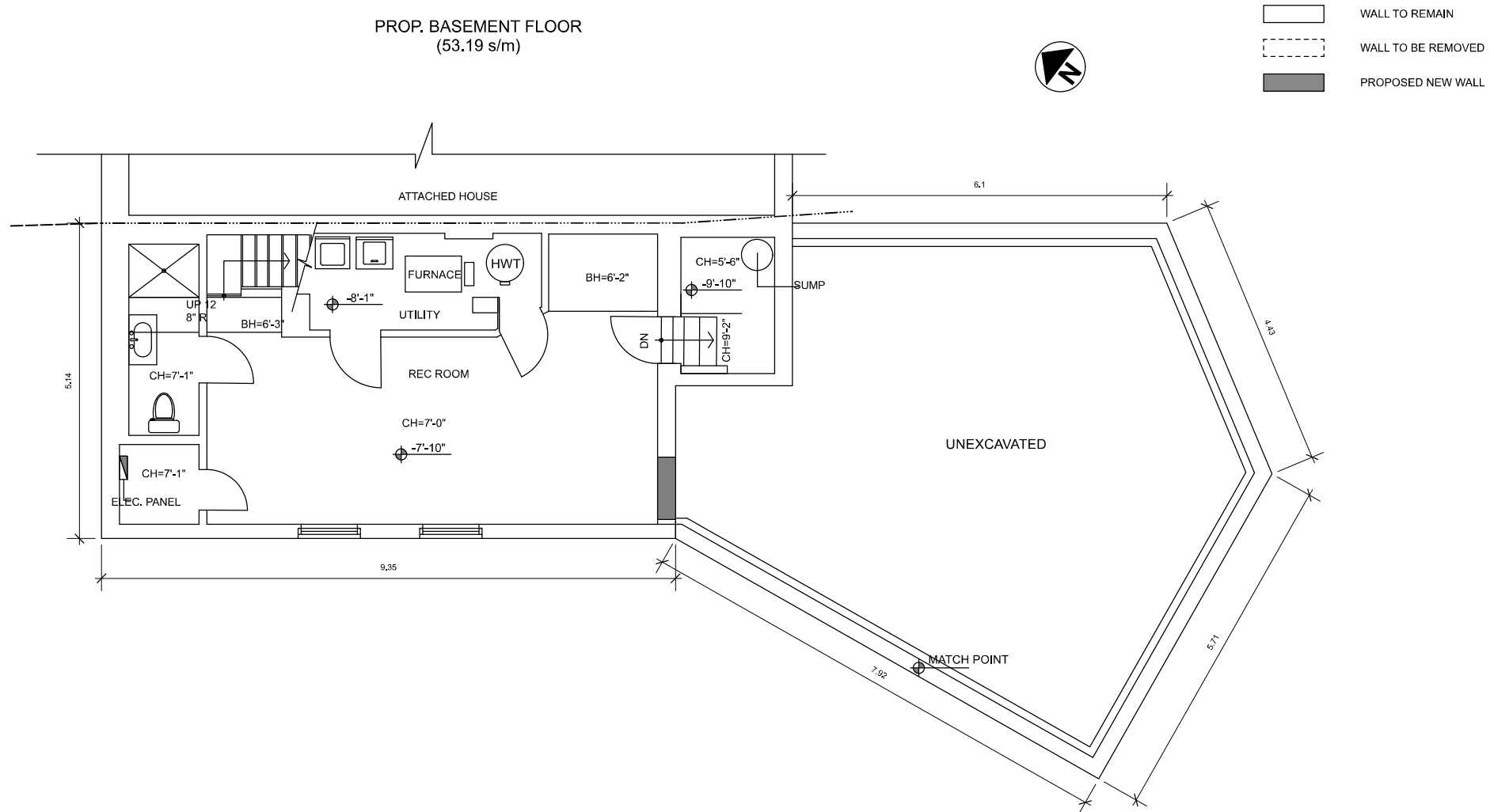
2B and are appended to this Decision. Any other variances that may appear on these plans that are not listed in this Decision are **NOT** authorized.

If there are any issues implementing this Decision, the TLAB may be spoken to on notice to all Parties.

X 

Christine Kilby
Panel Chair, Toronto Local Appeal Body

PROP. BASEMENT FLOOR
(53.19 s/m)



Sketchworks
Permits & Design

Check all dimensions on site and report all discrepancies to Sketchworks Inc. before proceeding

All original drawings and related documents are the copyrighted property of Sketchworks Inc. Reproduction in whole or in parts is forbidden without the prior written consent of the principle of Sketchworks Inc.

These drawings and documents may not be used for any purposes other than for the project which they are prepared.

Qualification Information
The undersigned has reviewed and taken responsibility for this design and the specifications and made the necessary amendments as per the Ontario Building Code to be a designer.
Professional address design is exempt under O.C. 3-3.3.1 of the Building Code.
Name: JEFF SMITH Signature: [Signature] 300166
Firm Name: SKETCHWORKS INC. 44025
Firm Name: SKCH

Design Firm

Sketchworks Inc.
2814 Hollington Cres.
Mississauga, ON
L5K 1E9

Consultant

Project Title

PASASENA ADDITION
41 Pasadena Gardens
Toronto, ON

Sheet Title

Prop. Basement Floor

Project Manager

Project ID

Drawn By

Scale

Reviewed By

Sheet No.

Date

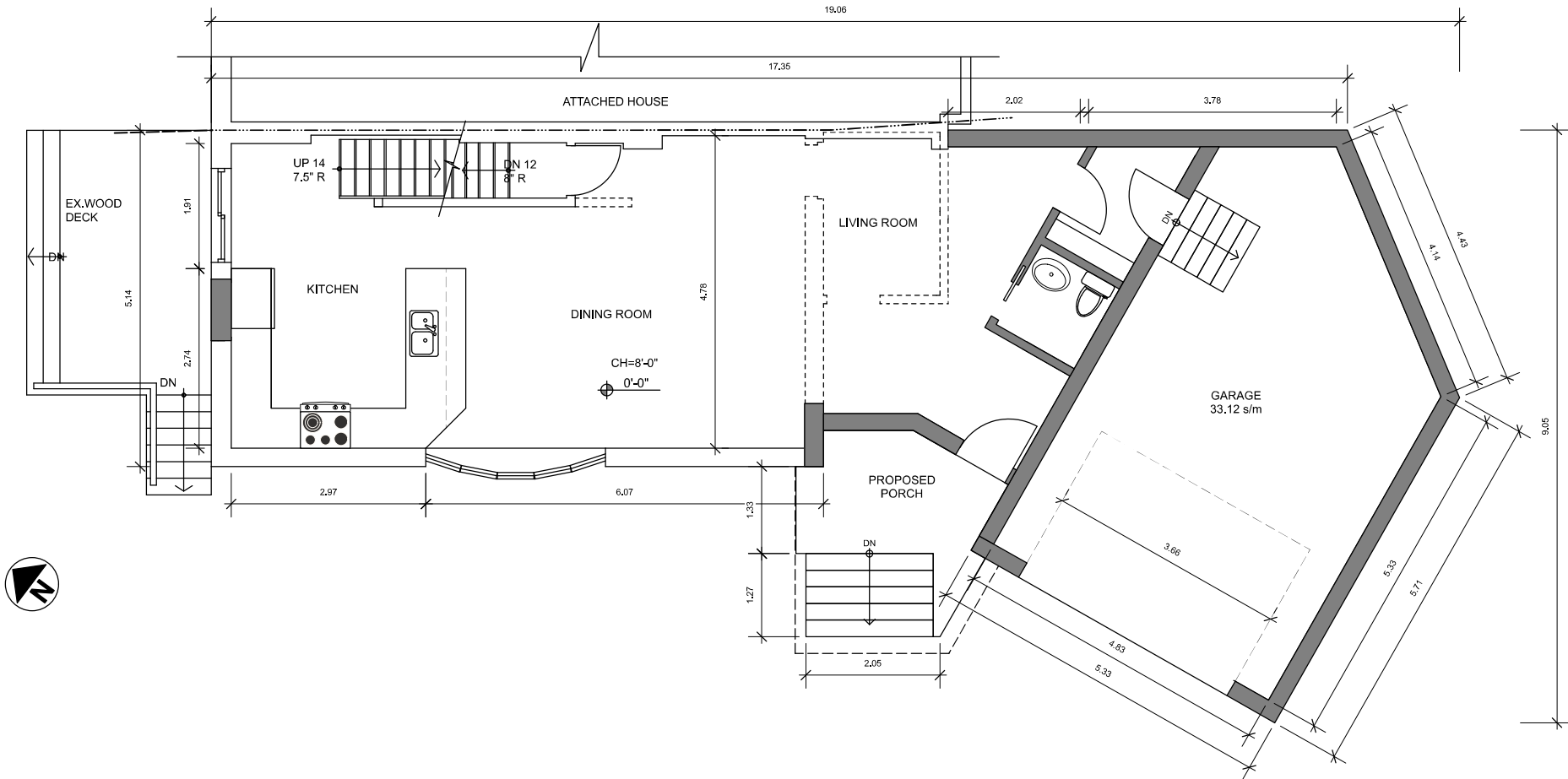
00/00/00

CAD File Name

3

of

PROP. GROUND FLOOR
(109.52 s/m)



Sketchworks
Permits & Design

Check all dimensions on site and report all discrepancies to Sketchworks Inc. before proceeding

All original drawings and related documents are the copyrighted property of Sketchworks Inc. Reproduction in whole or in parts is forbidden without the prior written consent of the principle of Sketchworks Inc.

These drawings and documents may not be used for any purposes other than for the project which they are prepared.

<small>The undersigned has reviewed and taken responsibility for this design and the specifications and made the measurements and all at the Ontario Building Code to be a designer</small>	
<small>Qualification Information</small> Proposed unless design is exempt under O.C. 22.1.1. of the Building Code	<small>Signature</small> JAY SMITH
<small>Registration Information</small> Registered unless design is exempt under O.C. 22.1.1. of the Building Code	<small>Signature</small> JAY SMITH
<small>Sketchworks Inc.</small> Firm Name	<small>Sketchworks Inc.</small> Firm Name

Design Firm

Sketchworks Inc.
2814 Hollington Cres.
Mississauga, ON
L5K 1E9

Consultant

Project Title

PASASENA ADDITION
41 Pasadena Gardens
Toronto, ON

Sheet Title

Prop. Ground Floor

Project Manager

Project ID

Drawn By

Scale

Reviewed By

Sheet No.




Date

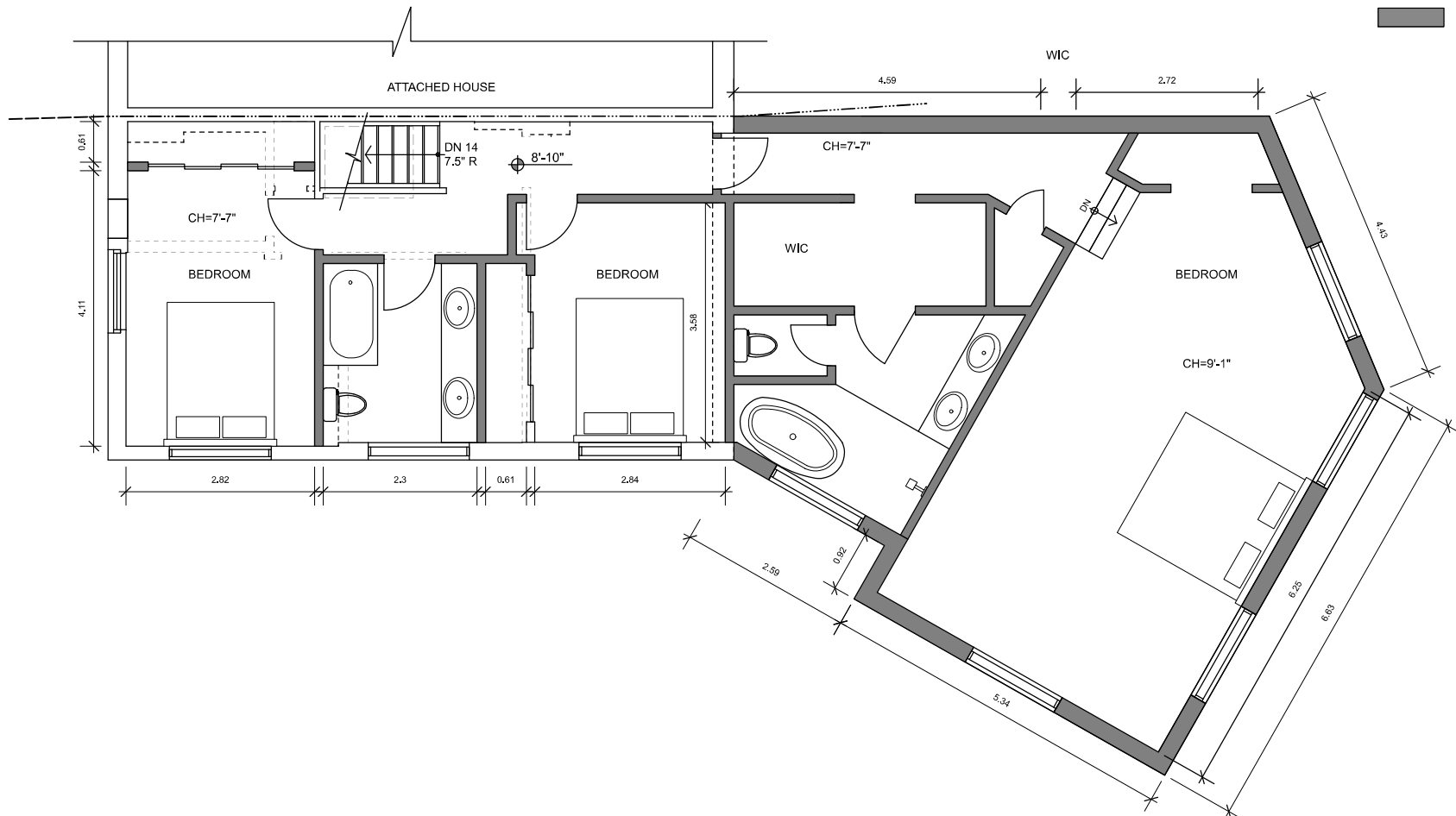
00/00/00

CAD File Name

5

of

- | | |
|---|--------------------|
|  | WALL TO REMAIN |
|  | WALL TO BE REMOVED |
|  | PROPOSED NEW WALL |



Sketchworks
Permits & Design

All original drawings and related documents are the copywritten property of Sketchworks Inc. Reproduction in whole or in parts is forbidden without the prior written consent of the principle of Sketchworks Inc.

<p>The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a designer</p>	
<p>Qualification Information Required unless design is exempt under Div. C-3.2.1.1 of the building code</p>	
<p>JAY SMITH</p>	<p>30968</p>
<p>Name</p>	<p>Signature</p>
<p>Registration Information Required unless design is exempt under Div. C-3.2.4.1 of the building code</p>	
<p>SKETCHWORKS INC.</p>	<p>64229</p>
<p>Firm Name</p>	<p>BCR</p>

Sketchworks Inc.
2814 Hollington Cres.
Mississauga, ON
L5K 1E9

PASASENA ADDITION
41 Pasadena Gardens
Toronto, ON

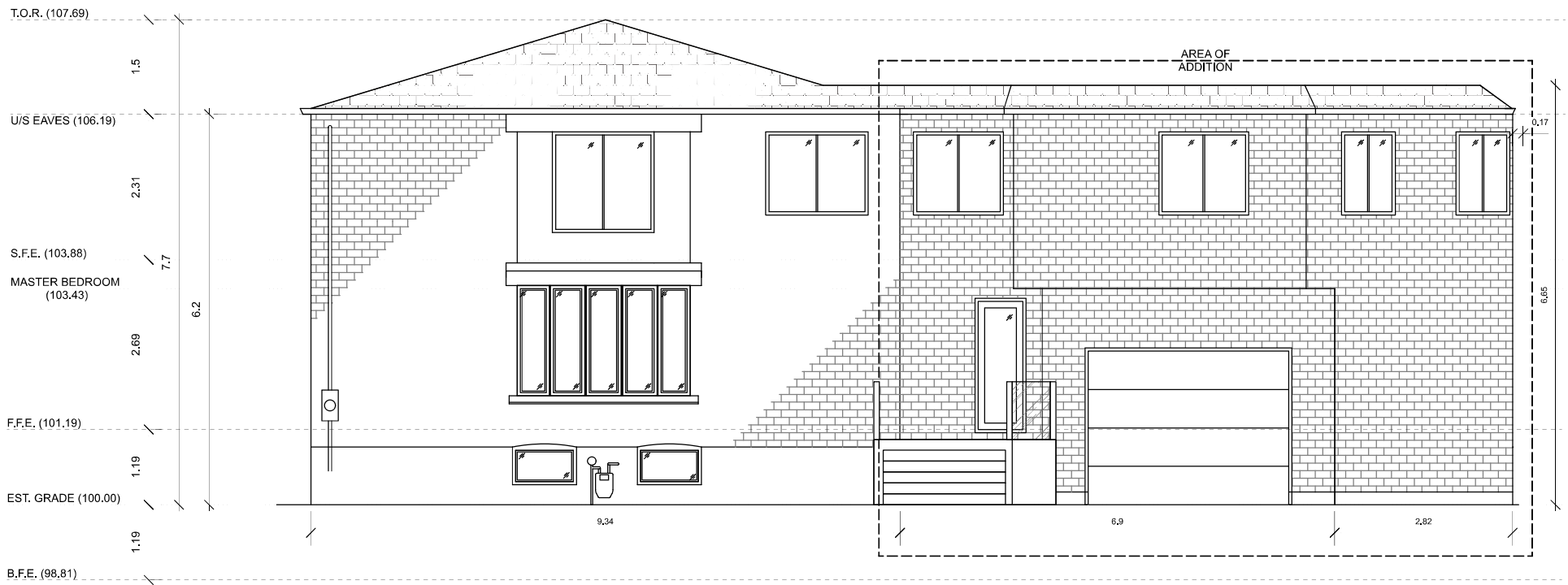
Prop. Second Floor

Date	00/00/00
CAD File Name	

Sheet No.

7

_____ of _____



Sketchworks
Permits & Design

Check all dimensions on site and report all discrepancies to Sketchworks Inc. before proceeding

All original drawings and related documents are the copywritten property of Sketchworks Inc. Reproduction in whole or in parts is forbidden without the prior written consent of the principle of Sketchworks Inc.

These drawings and documents may not be used for any purposes other than for the project which they are prepared.

The undersigned has reviewed and taken responsibility for this design, and that the specifications and notes for the work are set out in the Ontario Building Code to be a designer.

Registration Information
Required unless design is exempt under O.C. 22.1.1 of the Building Code

Signature: *[Signature]* 30396
Name: JEFF SMITH
Firm Name: SKETCHWORKS INC. 44029
Firm Name: SKW

Design Firm

Sketchworks Inc.
2814 Hollington Cres.
Mississauga, ON
L5K 1E9

Consultant

Project Title

PASASENA ADDITION
41 Pasadena Gardens
Toronto, ON

Sheet Title

Prop. West Elevation

Project Manager

Project ID

Drawn By

Scale

Reviewed By

Sheet No.

Date

00/00/00

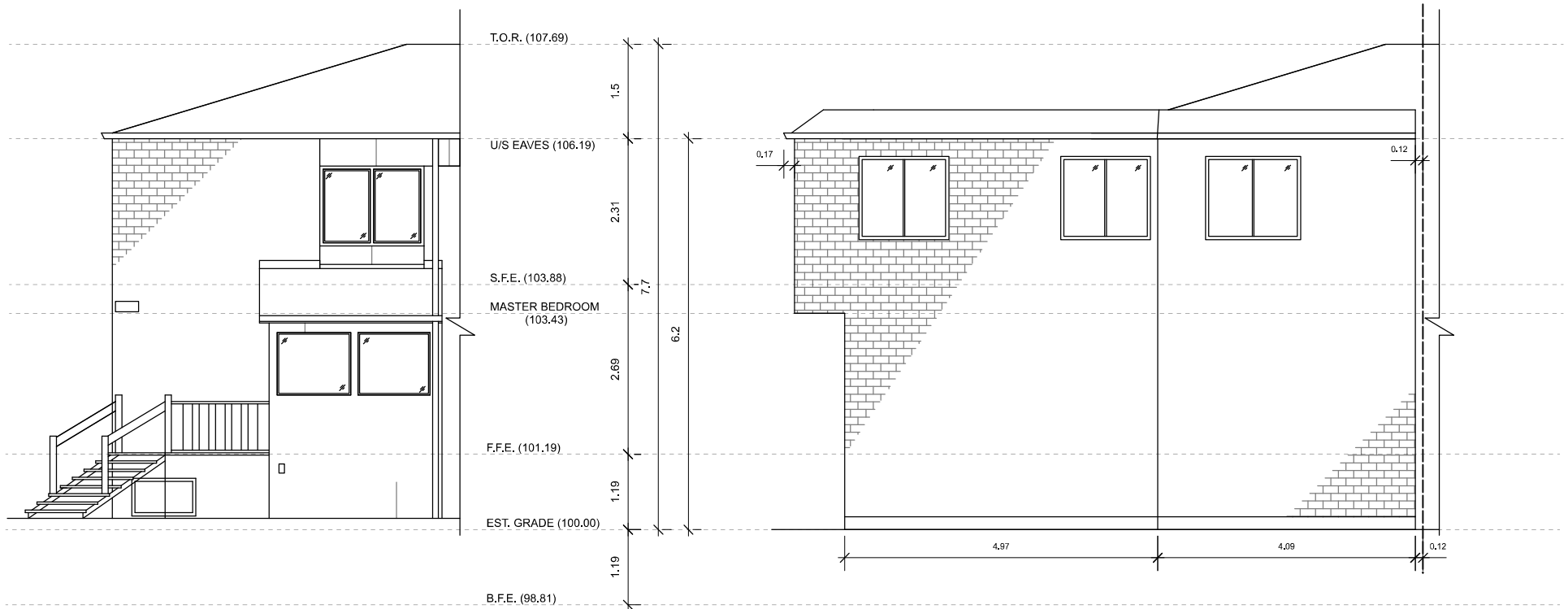
CAD File Name

10

of

EX. SOUTH ELEVATION

PROP. SOUTH ELEVATION



Sketchworks
Permits & Design

Check all dimensions on site and report all discrepancies to Sketchworks Inc. before proceeding

All original drawings and related documents are the copyrighted property of Sketchworks Inc. Reproduction in whole or in parts is forbidden without the prior written consent of the principle of Sketchworks Inc.

These drawings and documents may not be used for any purposes other than for the project which they are prepared.

The undersigned has reviewed and taken responsibility for this design and the specifications and notes for the building and all at the Ontario Building Code to be a designer

Registration Information
Required unless design is exempt under O.C. 22.1.1 of the Building Code

JAY SMITH
Name Signature BCIN 30066

Registration Information
Required unless design is exempt under O.C. 22.1.1 of the Building Code

SKETCHWORKS INC.
Firm Name BCIN 44029

Design Firm

Sketchworks Inc.
2814 Hollington Cres.
Mississauga, ON
L5K 1E9

Consultant

Project Title

PASASENA ADDITION
41 Pasadena Gardens
Toronto, ON

Sheet Title

South Elevation

Project Manager

Project ID

Drawn By

Scale

Reviewed By

Sheet No.

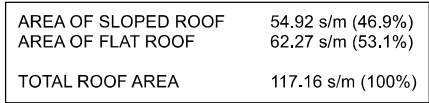
Date

00/00/00

CAD File Name

11

of



Permits & Design

These drawings and documents may not be used for any purposes other than for the project which they are prepared.