

## DECISION AND ORDER

**Decision Issue Date:** Wednesday, October 20, 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): FRANCESCO MESITI

Applicant(s): FRANCO ROMANO

Property Address/Description: 52 BELLMAN AVE

Committee of Adjustment File Number(s): 19 249364 WET 03 CO (B0066/19EYK); 19 249367 WET 03 MV (A0592/19EYK); 19 249373 WET 03 MV (A0593/19EYK)

**TLAB Case File Number(s): 20 233501 S53 03 TLAB; 20 233502 S45 03 TLAB; 20 233503 S45 03 TLAB**

**Hearing date:** July 2, 2021

**Deadline Date for Closing Submissions/Undertakings:** July 16, 2021

**DECISION DELIVERED BY STANLEY MAKUCH**

### REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Franco Romano	Applicant/Expert Witness	
Clementina Mesiti	Owner	
Francesco Mesiti	Primary Owner/Appellant	Amber Stewart
Alexandra Balaura	Participant	Jennifer Croswell
Alex Balaura	Participant	Jennifer Croswell

## **INTRODUCTION**

This is an appeal by the owners of 52 Bellman Ave. (subject property) of the refusal of applications for a consent to sever one lot into two smaller lots and for variances to construct two detached dwellings on each lot. The Draft R-Plan and list of variances are found in Appendix 1. The subject property is located in the Alderwood area of Toronto, east of Browns Line and north of Horner Ave.

## **BACKGROUND**

The City did not appear in opposition to the appeal. However, the adjacent neighbours, at 50A Bellman Ave., Mr. and Mrs. Balaura, appeared as interested parties in opposition to the appeal with legal counsel; but provided no professional planning evidence. One land use planner, Mr. Romano, gave expert opinion evidence. That evidence was on behalf of the appellants and thus in favour of the appeal.

## **MATTERS IN ISSUE**

The matters in issue were largely not planning related. Although legal counsel for the Balauras attempted, on cross examination, to challenge Mr. Romano's expert planning evidence, he was unsuccessful. The issues raised by the Balauras were largely construction, health and flood related. Nevertheless, the appellants are required to demonstrate that the consent and variances meet the requirements of the *Planning Act* and Province's plans and policies as set out below.

## **JURISDICTION**

The requirements of the relevant Province policies and plans and the *Planning Act* are as follows.

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('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').

### **Consent – S. 53**

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

### **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**

The planning evidence was clearly set out in Mr. Romano's witness statement which he adopted. That evidence was vigorously well defended on cross examination. It may be summarized as follows:

Respecting the severance, Mr. Romano stated the lots to be created were not untypical in the area where there had been numerous severances which he referred to. Indeed, two severances close by were approved by TLAB with similar frontages and smaller areas. He provided information to demonstrate that the trend in the area was to divide the larger lots, like the subject property, into smaller lots. Mr. Romano's evidence accurately contradicted a staff report submitted to the Committee of Adjustment which stated such severances were not common in the area and that a large majority of lots in the area were larger than that proposed. In his opinion the severance met the requirements of s. 53 of the *Planning Act* for the reasons detailed in his witness statement.

With respect to the variances, he pointed out that they were not opposed by staff and fit in the neighbourhood. The height and side yard setbacks were common in the neighbourhood where numerous new dwellings have been constructed. Moreover, whereas a number of dwellings had integral garages with two levels above, these proposed detached dwellings had only one level above and therefore respected and reinforced the character of the neighbourhood as it also had low rise bungalows within it and met the four tests set out in the *Planning Act*.

As stated above, Mr. and Mrs. Balaura, presented no expert evidence but both were allowed to give evidence. Their evidence was focused very much on non-planning concerns. Mrs. Balaura had concerns about development and changes in the neighbourhood such as the redevelopment of the school yard to the rear of the subject property. She was primarily concerned about drainage as she believed there might be an underground stream on the subject property. This issue was raised because the basement of their house is damp and construction next door may require pumping their basement. She was also concerned about noise and dust from construction as her husband was ill. In addition, she was concerned about the impact of a new house on the views from her windows. Mr. Balaura's concerns were similar. He has a breathing problem and is concerned he won't be able to open windows during the construction of the proposed dwellings, and that access to the sidewalk will be prevented during construction so it will be difficult for him to go for walks. He gave evidence of a damp

area between the subject property and the Balaura property which did not dry out quickly after rainfall but where the grass grew quickly. He also stated that there was too much traffic in the neighbourhood and that many of the original houses were still standing and were bungalows.

## **ANALYSIS, FINDINGS, REASONS**

While I have a great deal of sympathy for Mr. and Mrs. Balaura's concerns regarding dust and noise during construction, they are not matters which I can take into account in granting variances or a severance. Nor do they contradict any of the planning evidence of Mr. Romano. I also note that while flooding is an issue relevant to the approval of the severance their evidence is not compelling as they are not experts, and drainage will be dealt with under the Building Code. Drainage of the severed lots will be required to be on site.

Based on the essentially uncontradicted expert evidence of Mr. Romano, I find that the consent and variances should be approved as, in his opinion, they meet the requirements of sections 53 and 45 respectively of the *Planning Act*. I note that Ms. Stewart, solicitor for the appellants has suggested conditions, which to my mind are somewhat superfluous, but I will impose in an attempt to assuage the Balaura's concerns. Those conditions are found in Appendix 2, along with additional standard conditions respecting the variances and severance. Since the consent and variances meet the requirements of the *Planning Act* and the Official Plan in particular, I find they also meet the requirements of the PPS and Growth Plan as they implement these provincial requirements.

## **DECISION AND ORDER**

The appeal is allowed and the consent and variances as set out in Appendix 1 are approved subject to the conditions in Appendix 2.

X 

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S. Makuch  
Panel Chair, Toronto Local Appeal

## APPENDIX 1

### List of Variances

#### Part 1 – South Lot

**1. Section 900.6.10.(18)(B)(i), By-law 569-2013**

The minimum required lot frontage is 12 m.

The lot will have a frontage of 7.65 m.

**2. Section 900.6.10.(18)(A)(i), By-law 569-2013**

The minimum required lot area is 465 m<sup>2</sup>.

The lot will have an area of 399 m<sup>2</sup>.

**3. Section 1(a) By-law 67-1979 & By-law 272-1981**

The maximum permitted gross floor area is 0.4 times the area of the lot (159.6 m<sup>2</sup>).

The new dwelling will have a gross floor area of 0.51 times the area of the lot (203.93 m<sup>2</sup>).

**4. Section 10.80.40.70.(3)(A), By-law 569-2013**

The minimum required side yard setback is 1.2 m.

The new dwelling will be located 0.6 m from the north side lot line and 0.9 m from the south side lot line.

**5. Section 10.80.40.20.(1), By-law 569-2013**

The maximum permitted building length is 17 m.

The new dwelling will have a length of 18.4 m.

**6. Section 10.80.40.10.(2)(A)(i), By-law 569-2013**

The maximum permitted height of all front exterior main walls is 7 m.

The new dwelling will have a front exterior main wall height of 7.35 m.

**7. Section 3, By-law 67-1979**

The maximum permitted height is 7.5 m, measured to the mid-point of the roof.

The new dwelling will have a height of 8.43 m, measured to the mid-point of the roof.

**8. Section 320-42.1.B.(2)**

The maximum permitted soffit height is 6.5 m.

The new dwelling will have a soffit height of 7.35 m.

**9. Section 10.5.40.60.(7), By-law 569-2013**

Roof eaves may be no closer than 0.3 m to a lot line.

The proposed roof eaves will be located 0.2 m from the north side lot line.

#### Part 2 – North Lot

**1. Section 900.6.10.(18)(B)(i), By-law 569-2013**

The minimum required lot frontage is 12 m.

The lot will have a frontage of 7.65 m.

**2. Section 900.6.10.(18)(A)(i), By-law 569-2013**

The minimum required lot area is 465 m<sup>2</sup>.

The lot will have an area of 399 m<sup>2</sup>.

**3. Section 1(a) By-law 67-1979 & By-law 272-1981**

The maximum permitted gross floor area is 0.4 times the area of the lot (159.6 m<sup>2</sup>).

The new dwelling will have a gross floor area of 0.51 times the area of the lot (203.93 m<sup>2</sup>).

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**8. Section 320-42.1.B.(2)**

The maximum permitted soffit height is 6.5 m.

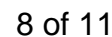
The new dwelling will have a soffit height of 7.35 m.

**9. Section 10.5.40.60.(7), By-law 569-2013**

Roof eaves may be no closer than 0.3 m to a lot line.

The proposed roof eaves will be located 0.2 m from the south side lot line.

## R-PLAN FOR SEVERANCE





## **APPENDIX 2**

### **Conditions of Consent Approval**

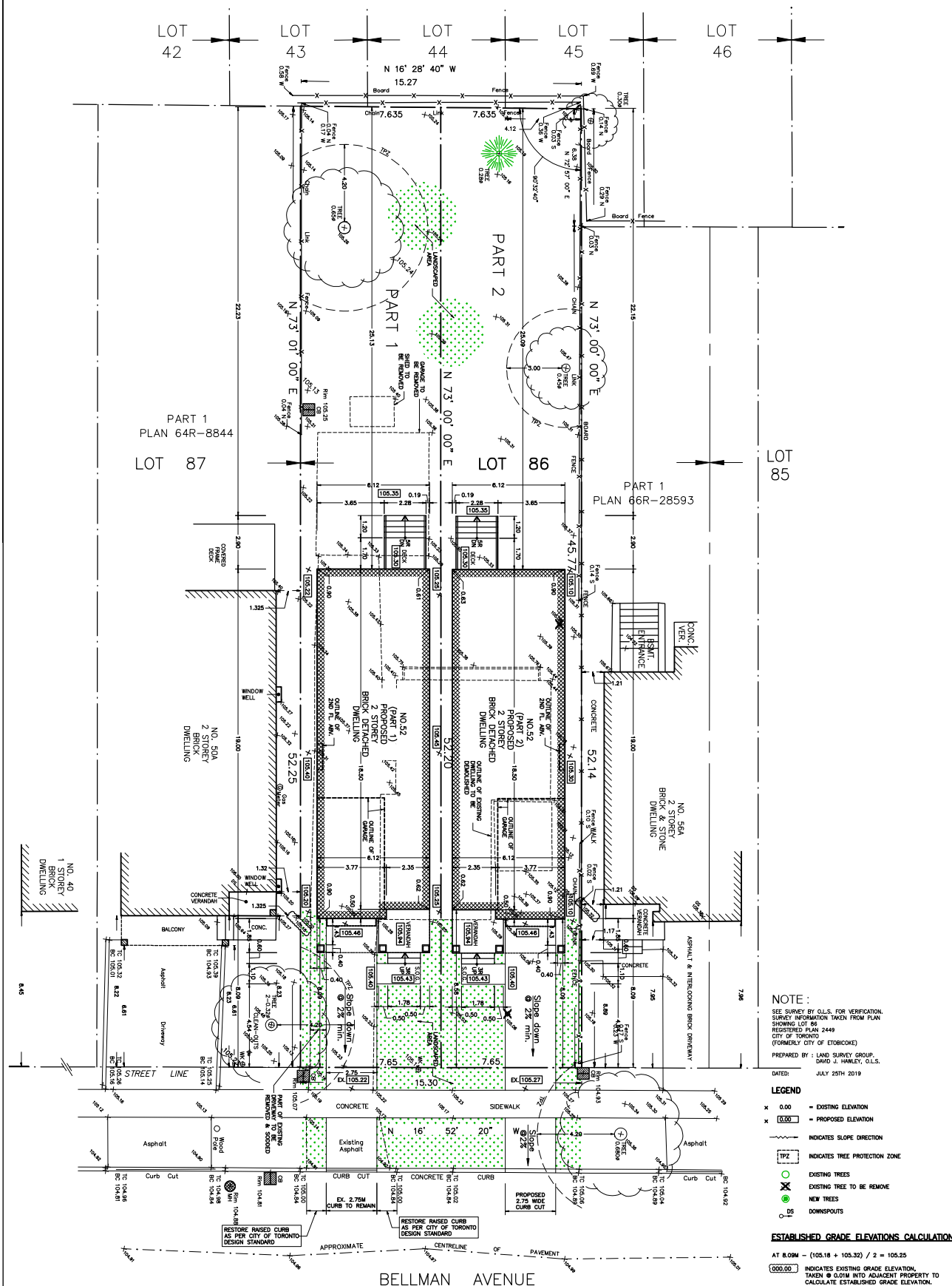
- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
- (3) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (4) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (6) Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.
  1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.

### **Conditions of Minor Variance Approval**

1. The proposed dwellings shall be constructed substantially in accordance with the plans prepared by Ambient Designs Ltd., revision date August 21, 2020 and set out in Appendix 3 :
2. The applicant shall submit revised site plan(s) with the following revisions and notations to the satisfaction of the Engineering and Construction Services and Transportation Services, at no cost to the City;

- a. Illustrate the existing and proposed grades at all corners along the boundary limit and within the proposed site;
  - b. Revise the site plan to illustrate a positive slope of a minimum 2% to 4% that will be maintained on each of the proposed driveways, as measured between the proposed garage door entrance to the curb line of Bellman Avenue;
  - c. Show the footprint of the existing house and driveway. Label any portion of driveway to be removed within the right-of-way as to be restored with sod.
  - d. Add the following notations to the Site Plan:
    - i. "The applicant is required to restore any redundant section of the existing driveways that are being closed with sod and a poured raised concrete curb within the municipal boulevard according to City of Toronto Design Standard;
    - ii. "The proposed new driveways shall be constructed to the applicable City of Toronto Design Standards at no cost to the municipality";
    - iii. "The applicant shall also submit a Municipal Road Damage Deposit (MRDD) prior to obtaining a Building Permit." The applicant is advised to contact Right-of-Way Management Section at (416) 338-1045 regarding municipal road damage deposit requirements;" and,
    - iv. "The applicant shall obtain the necessary authorizations and permits from the City's Right-of-Way Management Section of the Transportation Services before excavating within or encroaching into the municipal road allowance".
3. The owner shall submit a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.
4. The owner shall submit a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
5. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.
6. Prior to the issuance of a building permit, the owner shall obtain approval from the Chief Building Official for a site grading and drainage plan which illustrates all grading and drainage to remain on site and onto the public boulevard, as required.
7. Prior to the issuance of a demolition permit, the owner shall satisfy the City Chief Building Official that any asbestos and/or mold is being removed in accordance with best practices.

## **APPENDIX 3**



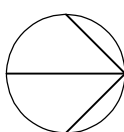
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**AMBIENT DESIGNS LTD.**  
DESIGN & BUILDING CONSULTANTS

1115 COLLEGE STREET TORONTO, ONTARIO M6H 1B5  
T: (416) 537-8531 E: ambient@ambientdesigns.ca

BCIN: 29659



PROJECT NAME

**52 BELLMAN AVE (PART 1)**  
**CITY OF TORONTO**

DRAWN BY:

M.R.

DATED:

OCT. 29TH, 2019

PROJECT NO.

**A19130**

DWG. NAME:

**SITE PLAN**

SHEET NO.

**SK1**

SCALE: 1:200M

## SITE STATISTICS

LOCATION/ PART NO.	LOT AREA	Part Basement Area	1st Floor Area (Without Garage)	2nd Floor Area	Total G.F.A.	(%)	Max. F.S.I. 0.45	Lot Frontage	Max. Lot Coverage (33%)	Proposed Lot Coverage	(%)
52 PART 1	399.0 M <sup>2</sup>	--	92.70 M <sup>2</sup>	115.75 M <sup>2</sup>	208.45 M <sup>2</sup>	52.24	179.55 M <sup>2</sup>	7.650M	131.67 M <sup>2</sup>	115.11 M <sup>2</sup>	28.85
	4294.94 FT <sup>2</sup>	--	997.85 FT <sup>2</sup>	1245.96 FT <sup>2</sup>	2243.81 FT <sup>2</sup>		1932.72 FT <sup>2</sup>		1417.33 FT <sup>2</sup>	1239.07 FT <sup>2</sup>	
52 PART 2	399.0 M <sup>2</sup>	--	92.70 M <sup>2</sup>	115.75 M <sup>2</sup>	208.45 M <sup>2</sup>	52.24	179.55 M <sup>2</sup>	7.650M	131.67 M <sup>2</sup>	115.11 M <sup>2</sup>	28.85
	4294.94 FT <sup>2</sup>	--	997.85 FT <sup>2</sup>	997.85 FT <sup>2</sup>	2243.81 FT <sup>2</sup>		1932.72 FT <sup>2</sup>		1417.33 FT <sup>2</sup>	1239.07 FT <sup>2</sup>	

ZONED AS : RM (U3) (X18) BY-LAW 569-2013

ZONED AS : R3 ETOBICOKE MAP: NO. B14 NORTH

REQUIRED FRONT YARD  
SETBACK 8.09MPROVIDED FRONT YARD  
SETBACK 8.09MREQUIRED SIDE YARD  
SETBACK 1.20M (BY-LAW 569-2013)PROVIDED SIDE YARD  
SETBACK

P1 NORTH 0.60M

SOUTH 0.90M

P2 NORTH 0.90M

SOUTH 0.60M

REQUIRED REAR YARD  
SETBACK 25% OF LOT DEPTH BUT NOT  
LESS THAN 7.5MPROVIDED REAR YARD P1 25.13  
SETBACK P2 25.09

## FRONT YARD LANDSCAPING STATISTICS (PART 1)

Front yard area 8.09 X 7.650	61.89 M <sup>2</sup>
Required landscaping (50%)	30.94 M <sup>2</sup>
Provided landscaping (55.8%)	34.51 M <sup>2</sup>
Required soft landscaping (75%)	23.21 M <sup>2</sup>
Provided soft landscaping (103.1%)	31.90 M <sup>2</sup>
Built up / Paved areas	
Walkway	2.61 M <sup>2</sup>
Driveway	22.25 M <sup>2</sup>
Verandah	5.13 M <sup>2</sup>

## REAR YARD LANDSCAPING STATISTICS (PART 1)

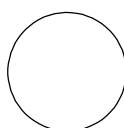
Rear yard area	191.87 M <sup>2</sup>
Required rear yard landscaping (50%)	95.93 M <sup>2</sup>
Built up areas Deck & Stairs	6.61 M <sup>2</sup>
Provided landscaping (96.6%)	185.26 M <sup>2</sup>

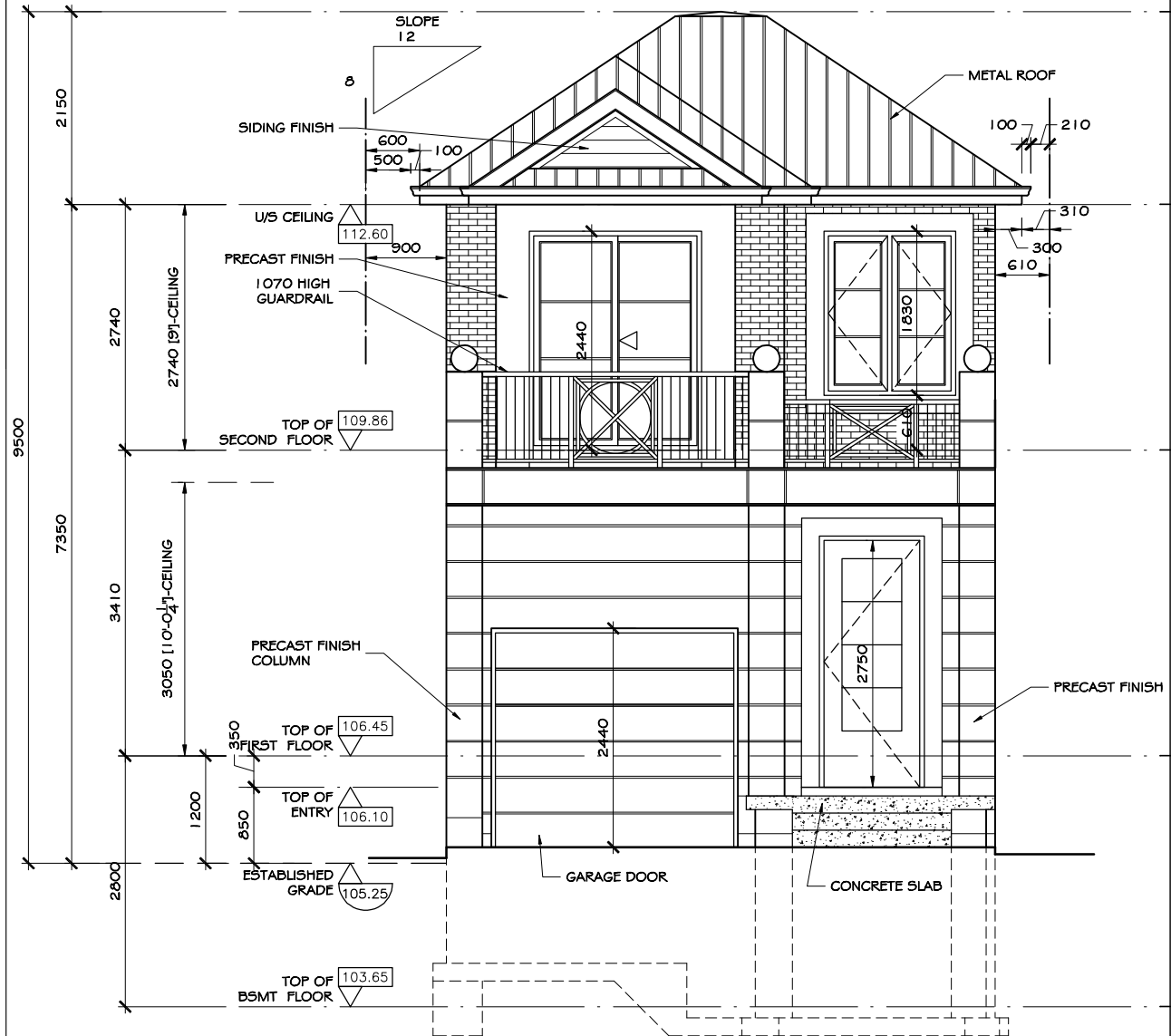
## COVERAGE STATISTIC (PART 1)

BUILT-UP AREAS	
BUILDING FOOTPRINT	115.11 M <sup>2</sup>
TOTAL	115.11 M <sup>2</sup>

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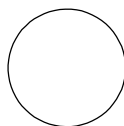
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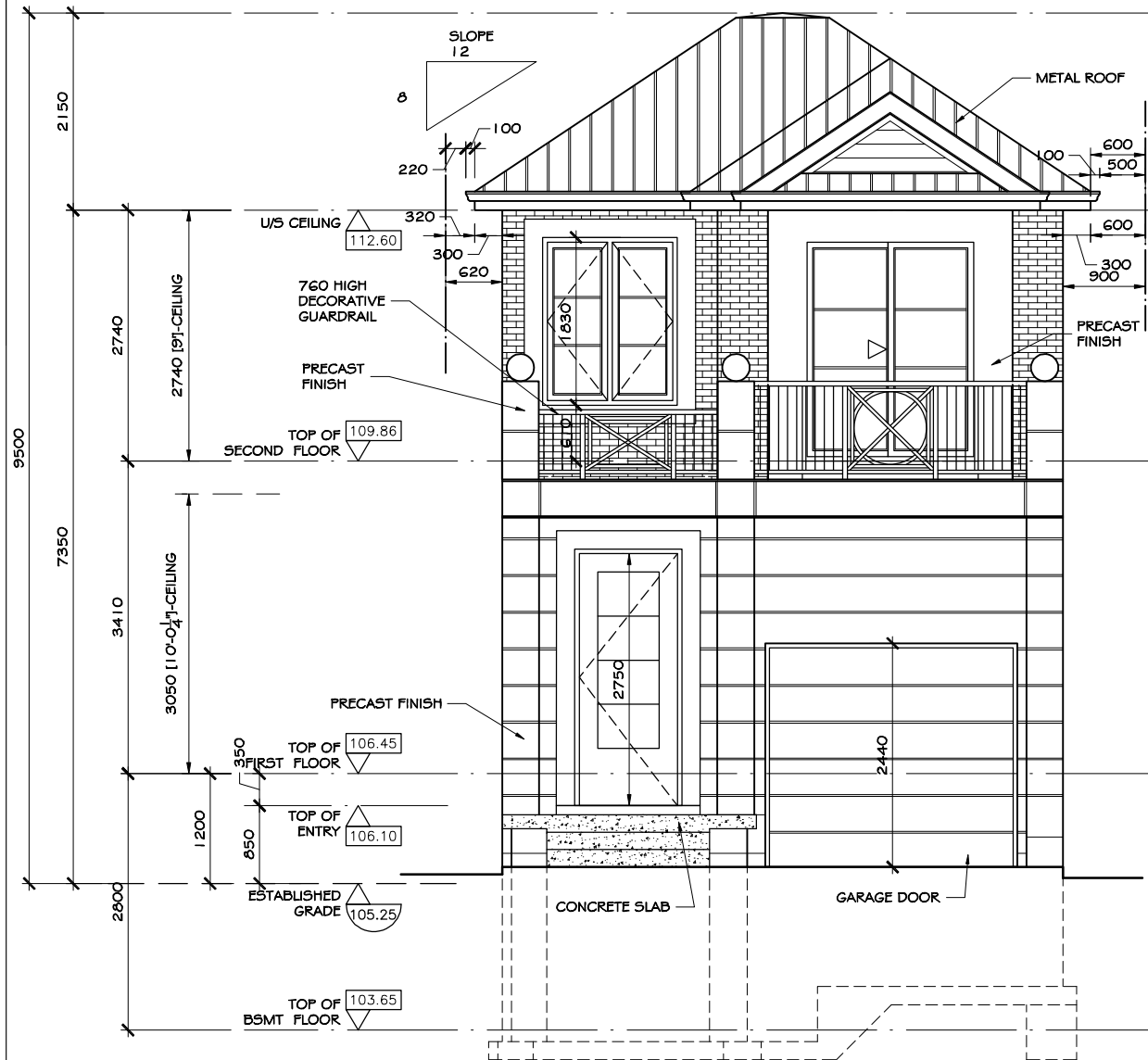




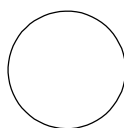
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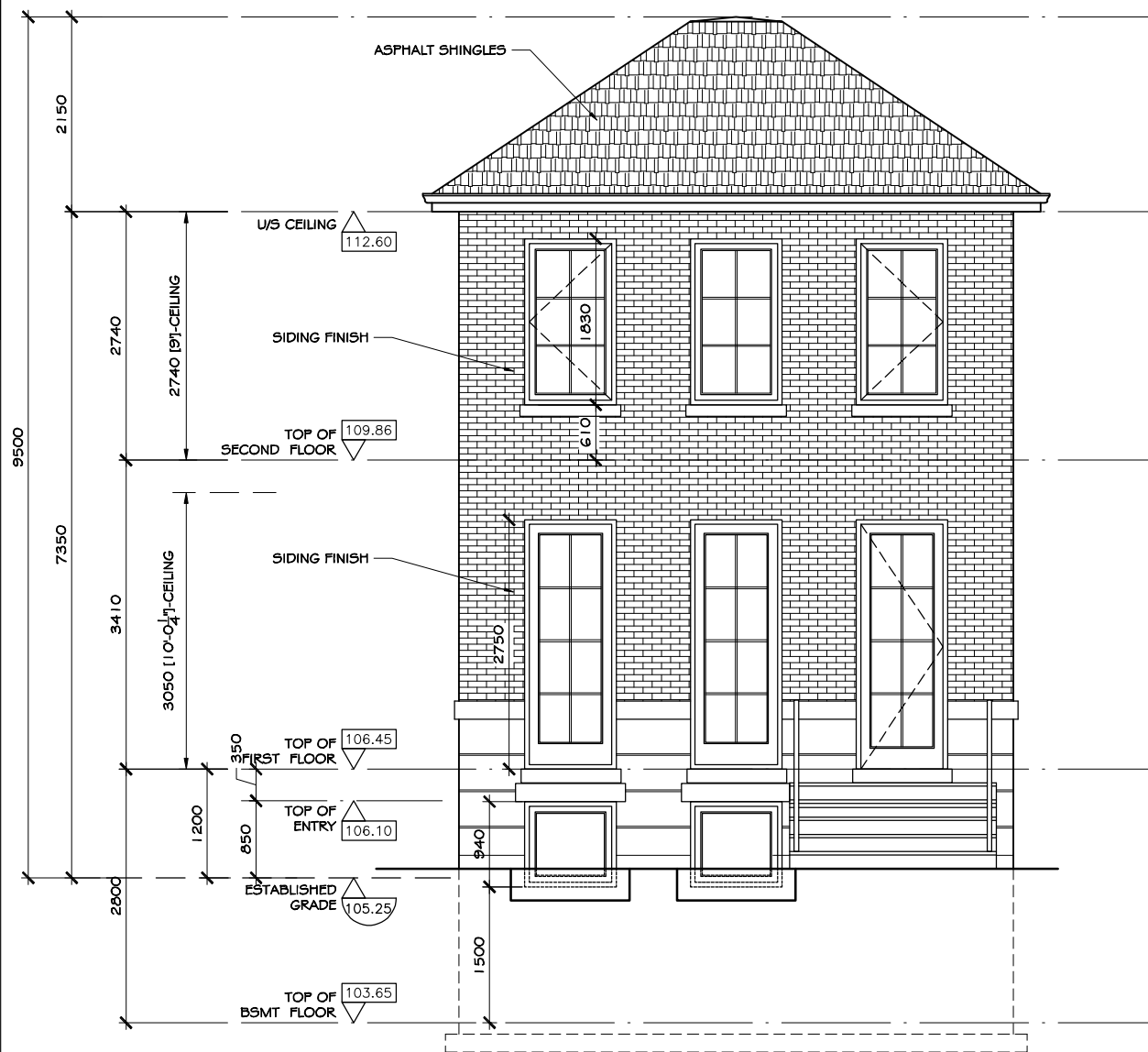
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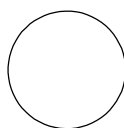


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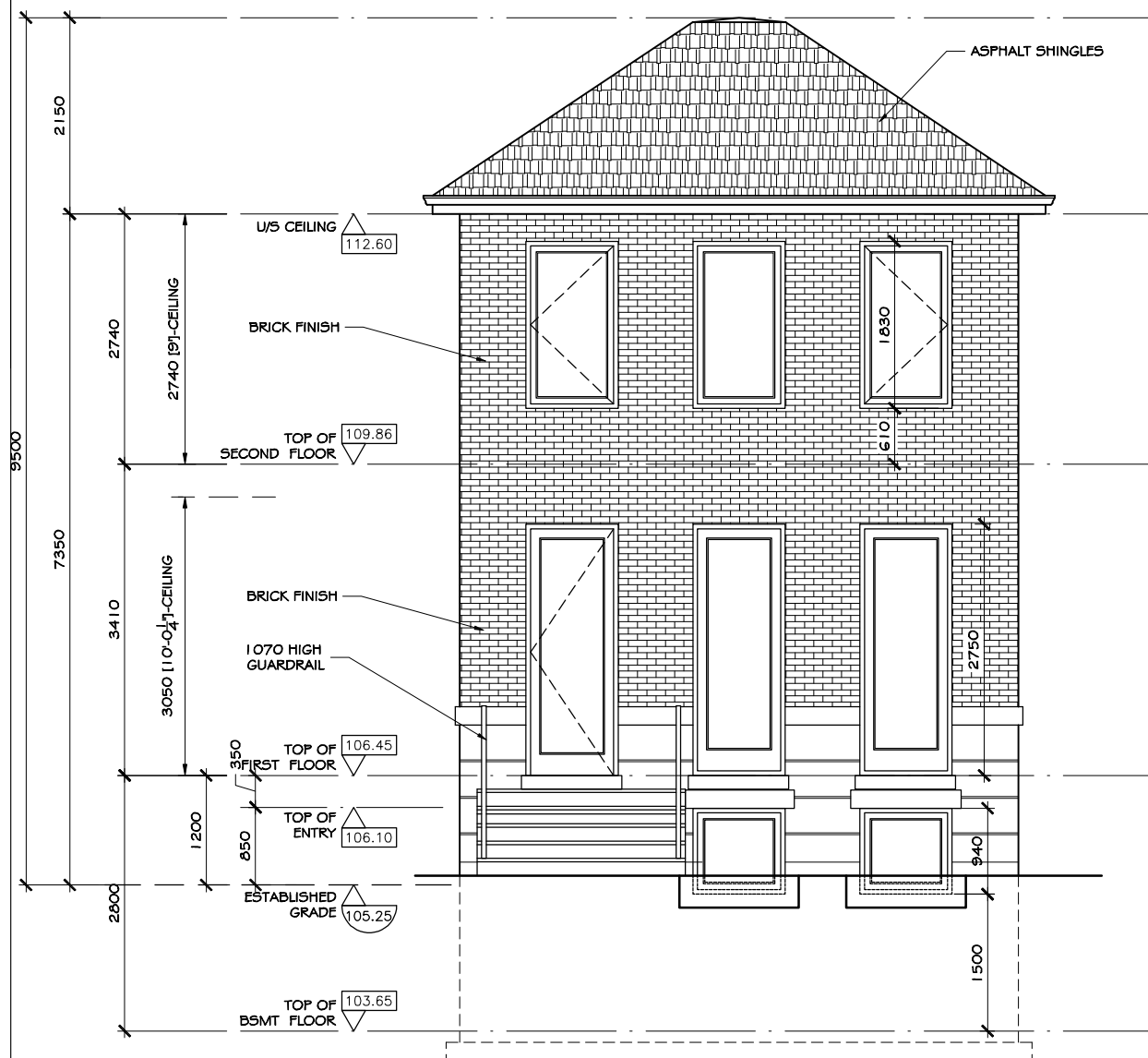




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PROJECT NAME  
**52 BELLMAN AVE (PART 2)**  
**CITY OF TORONTO**

DRAWN BY: M.R.

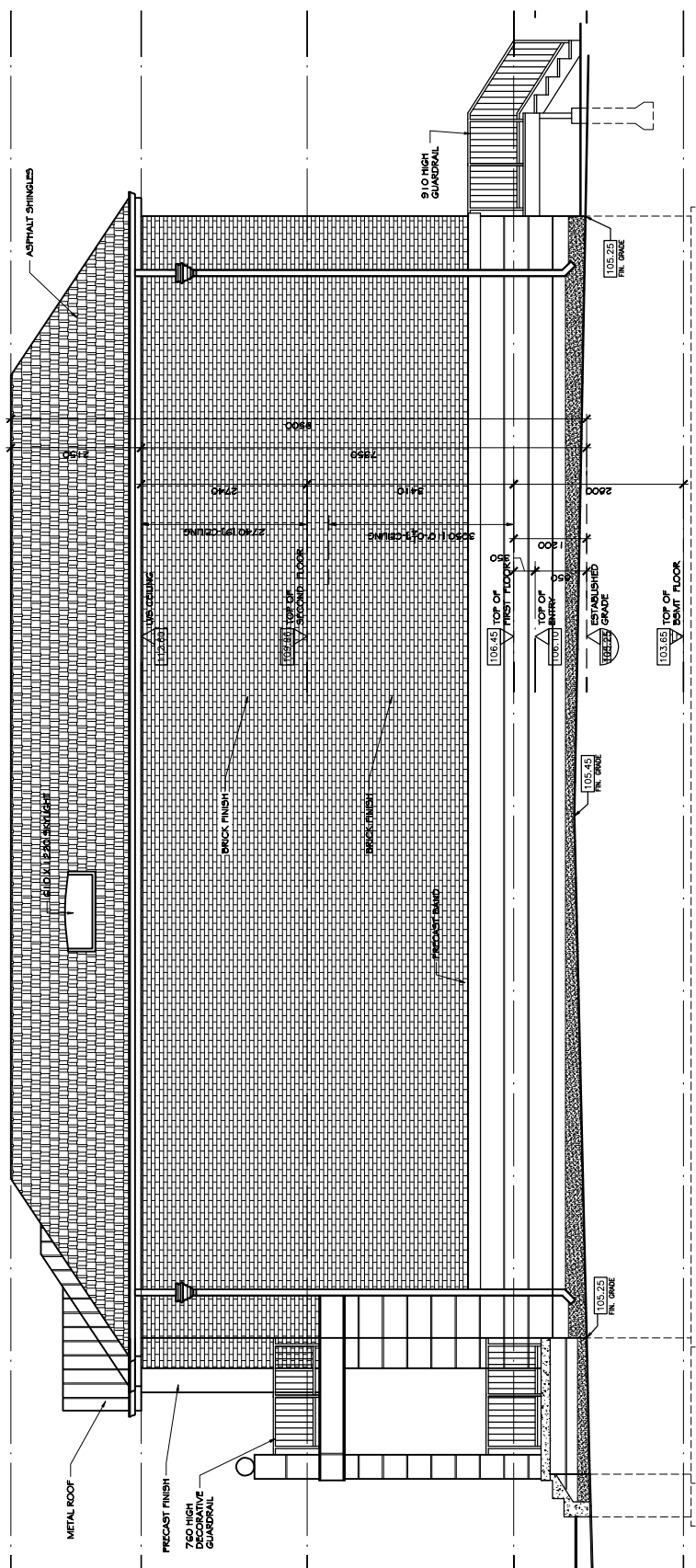
DATED: OCT. 29TH, 2019

PROJECT NO. **A19130** SCALE: 1:50M

DWG. NAME: **WEST ELEVATION**

SHEET NO.

**SK8**



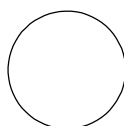
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NOV. 06 2019



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BC|N: 29659

PROJECT NAME

**52 BELLMAN AVE (PART 1)**  
**CITY OF TORONTO**

DRAWN BY:

M.R.

DATED: \_\_\_\_\_

OCT. 29TH, 2019

PROJECT NO.

A19130

SCALE: 1:75M

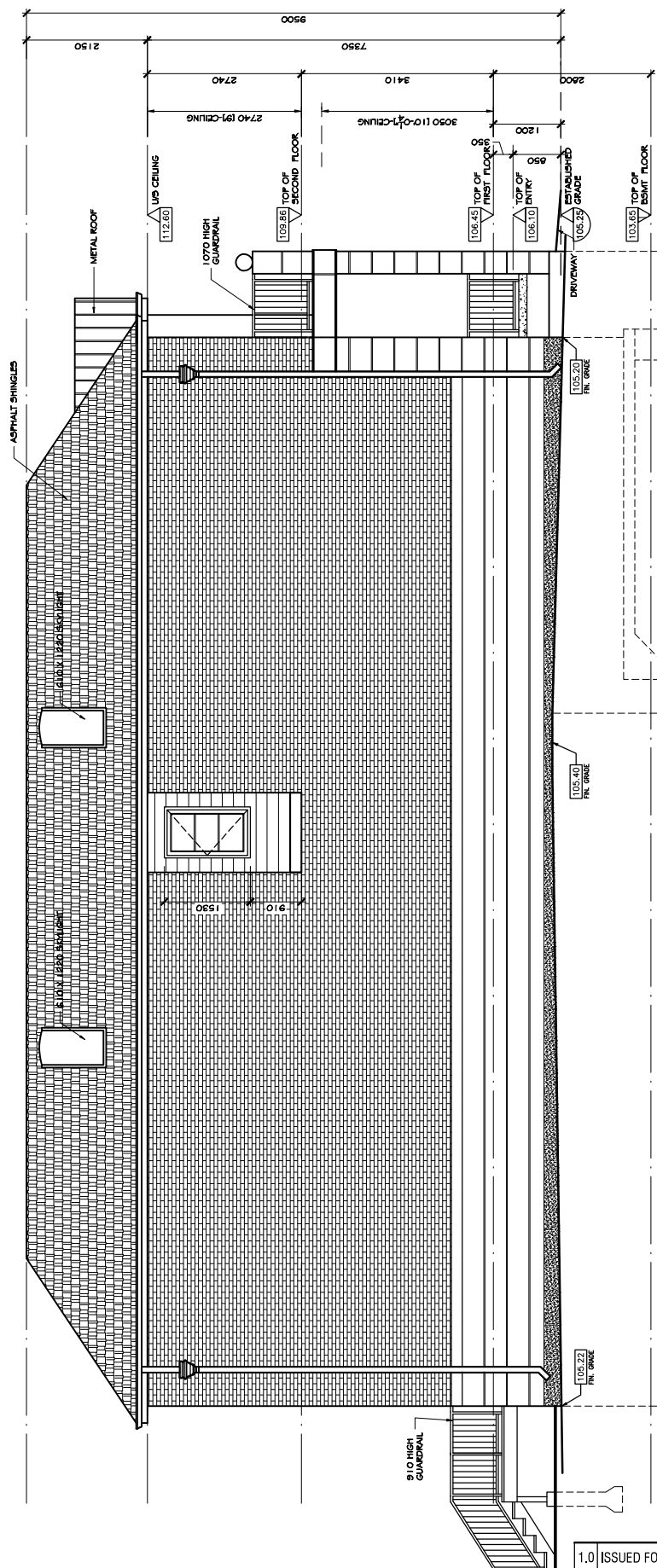
DWG. NAME:

NORTH ELEVATION

SHEET NO.

# SK9





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