

DECISION AND ORDER

Decision Issue Date Thursday, December 30, 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): ALISON GORDON

Applicant(s): ARCH DWG INC

Property Address/Description: 68 GEARY AVE

Committee of Adjustment File 19 241791 STE 09 MV

Number(s):

TLAB Case File Number(s): 20 197137 S45 09 TLAB

Hearing date: February 19, 2021

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

APPEARANCES

Name	Role	Representative
Arch DWG Inc	Applicant	
Alison Gordon	Owner/Appellant	David Neligan
Michelle Charkow	Expert Witness	

INTRODUCTION

1. The owner, Alison Gordon, proposes to replace the existing warehouse structure on their property at 68 Geary Avenue (subject property) to a single-family home. To do so, the Applicant applied to the Committee of Adjustments (CoA) for approval of 11 variances. The CoA refused the proposal and the Applicant appealed the COA's decision to the TLAB.

2. The Applicant revised the plans that were before the CoA and obtained a Zoning Notice dated December 21, 2020, based on plans dated December 18, 2020 (Revised Plans). The Applicant seeks approval of the variances listed in this Zoning Notice, which is reproduced in Schedule A of this decision. The revised plans dated December 18, 2020 is attached to this decision as Schedule C.
3. For the reasons below, I find that the variances requested by the Applicant should be approved.

MATTERS IN ISSUE

Compliance with s. 45(18.1.1)

4. S. 45(18.1.1) of the Act allows me to not require notice to be given in accordance with s. 45(18.1) of the Act when a change in plans is submitted to TLAB, provided I find that the change is a minor one. The variances requested for approval are slightly different than those that were originally filed with the TLAB. I had asked for a chart showing the variances requested at various stages before the CoA and TLAB. The Applicant provided me with this chart.
5. The Zoning Notice, based on the Revised Plans, includes one new variance (Variance 10). This variance is based on how the front yard setback was interpreted by the zoning examiner, resulting in the proposed front porch encroaching 4.16 m into the front yard setback. Further, as a result of the zoning examiner calculation, the front yard setback has changed from 3.9 m to 3.88 m. However, the front yard setback in all the plans did not change.
6. Based on the above, and because there are fewer variances and the changes to the variances are less significant, I am satisfied that notice is not required.

Four Tests for Variances

7. The only matter at issue, therefore, is whether the requested variances meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances, individually and cumulatively:
 - maintain the general intent and purpose of the Official Plan (OP);
 - 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

8. Ms. Charkow, a registered Professional Planner, was the sole witness at the hearing. She was qualified to provide expert opinion evidence in the area of land use planning.
9. The following documents were accepted as exhibits for this hearing:
 - a. Ms. Charkow's witness statement (Exhibit 1).
 - b. Appellant Document Disclosure (Exhibit 2).
 - c. Updated Zoning Notice, dated December 21, 2020 (Exhibit 3).
 - d. Variance Revision Chart (Exhibit 4).

ANALYSIS, FINDINGS, REASONS

10. Ms. Charkow noted that the revised plans before the TLAB include the following changes:
 - "a) The overall height has been reduced from 16.1 m to 14.0 m (under By-law 569-2013) which now presents as a 4-storey dwelling versus the previous 5-storey dwelling;
 - b) The total gross floor area has been reduced from 544.9 sq. m (5,865.25 sq. ft.) to 424.53 sq. m (4,569.62 sq. ft.). This results in a reduction of the floor space index from 2.58 to 2.01;
 - c) A first floor office area has been added to the ground floor plan, in front of the garage area to provide for more streetscape presence;
 - d) The second and third split level floor plan has been revised and merged thus eliminating one storey;
 - e) The rear yard setback for the roof top access storey, or the 4th storey, has increased from 1.517 m to 1.824 metres;"¹
11. Ms. Charkow noted that the subject property was in the Wallace-Emerson neighbourhood and located north of Dupont Street and east of Dovercourt Road. It is on the north side of Geary Avenue, which is a local road in the neighbourhood. Ms. Charkow identified the immediate context and broader context neighbourhood for the subject property. For reference, please refer to the Area Context Map provided by Ms. Charkow in her witness statement, which is attached as Schedule D.

¹ Ms. Charkow's Witness Statement, para. 3.11

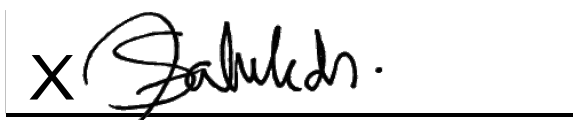
12. Ms. Charkow noted that the broader neighbourhood includes both industrial and residential zoning, with the properties between Dovercourt and Dufferin having predominantly more employment or industrial uses. There are more residential uses between Dovercourt and Ossington. However, the two properties adjacent to the subject property has industrial zoning under By-law 438-86.
13. The subject property itself is zoned as Residential (R) under By-law 569-2013 and R2 Z0.6 under By-Law No. 438-86. Under the OP, the subject property is designated as a General Employment Area. However, the subject property is subject to a site area specific policy – SASP 154, which permits both residential and commercial land uses for this property. According to Ms. Charkow, this policy applies all over Toronto and is used for lands that abut commercial or industrial land.
14. The current building occupies the entire lot except at the rear, which is dedicated to the public highway.
15. The proposed building is a single residential dwelling with four storeys. Ms. Charkow explained that as the lot is narrow with a width of 6.9 m, it would not be possible to have a detached house with side yard setbacks. Also, the building has four storeys to accommodate for the narrow lot. However, the third storey is stepped back from the front of the building and accommodates an outdoor deck. The fourth storey is further stepped back at 14.4 m at the front and 1.8 m at the rear. As a result, the fourth storey is not visible from the street. Ms. Charkow noted that the majority of the proposed dwelling is under the maximum height allowed by the zoning by-law. The height variance is needed for the fourth floor, which is already stepped back. I agree with Ms. Charkow that this design with step backs will avoid any overlook concerns.
16. Mr. Charkow noted that the current FSI of the existing warehouse is 1.0. The increase in density resulting from a higher FSI will not be noticeable from the streetscape because of the stepped back third and fourth floors. These step backs also provide for shorter building lengths for the third and fourth floors.
17. With respect to the variances related to the setbacks, the main wall of the building will be at the same location as the current building. However, the second storey has an overhang, which will result in a 3.988 m encroachment into the front yard setback. The rear of the property will maintain the current set back of 0.25 m. Ms. Charkow mentioned that it would be awkward to have a rear yard amenity, as the subject property is wedged between two industrial use properties. Instead, the outdoor deck on the third floor will serve as an amenity space for the dwelling. Further there is no current side yard setbacks for the current property, which is consistent with the properties in the neighborhood and immediately west

of the subject property. The proposed building will maintain the same setback for the side yards.

18. Based on Ms. Charkow's evidence, which was not disputed, I find that the property is suitable for residential use as permitted under SASP 154. The OP policies for General Employment Areas are mostly related to retail uses and is thus not applicable for this proposal. Ms. Charkow identified OP 4.6.6 as relevant and noted that the proposal provides for parking in the basement through an entrance via a laneway in the rear of the property, which would result in parking being screened from the front of the property. She also referred to built form policies in OP 3.1.2.1, 3.1.2.2 and 3.1.2.3. She noted that the front door and windows face the street, which permit access from the sidewalk. The first floor also has a unique circular window which provides a view to the street. There are no trees on the property but the proposed building will not affect the tree on the public boulevard during construction. There will be no driveways or curb cuts as the parking in the garage will be accessed via the laneway.
19. Ms. Charkow said that by making significant changes to the plans to address concerns of the City staff, the Applicant now has a proposal that satisfied the four tests for variance. I agree with Ms. Charkow. As established by Ms. Charkow's evidence summarized above, I find that the variances satisfy the general intent and purpose of the OP and the Zoning By-laws. The proposed dwelling will be an improvement of the current warehouse and any adverse impact related to overlook and privacy is mitigated by the stepped back third and fourth floor. The massing effect of the building is mitigated by the stepped back floors. The outdoor deck on the third floor provides for amenity space that would traditionally have been in the rear yard. Overall, the proposed single-family home is an appropriate development on the subject property.
20. Based on the above, the proposed variances individually and cumulatively satisfy the four tests for approval of variance.

DECISION AND ORDER

21. The appeal is allowed. The variances in Schedule A are approved and are subject to the conditions in Schedule B.

A handwritten signature in black ink, appearing to read 'S. Talukder', is written over a horizontal line. To the left of the signature is a large 'X' mark.

Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body

Schedule A
Variances

By-law 569-2013:

1. In the Residential Zone category, if a lot is between two abutting lots in the Residential Zone category, each with a building fronting on the same street and those buildings are both, in whole or in part, 15.00 metres or less from the subject lot, the required minimum front yard setback is the average of the front yard setbacks of those buildings on the abutting lots: 7.59metres. The proposed new four storey detached single family dwelling will have a front yard setback of 3.88 metres.[10.5.40.70.(1)(B) Front Yard Setback - Averaging]
2. The required minimum rear yard setback is 7.50 metres. The proposed new four storey detached single family dwelling will have a rear yard setback of 0.25 metres. [10.10.40.70.(2) Minimum Rear Yard Setback]
3. The required minimum side yard setback for a detached house is 0.45 metres. The proposed new four storey detached single family dwelling will have a side yard setback of 0.00 metres from both the east and west side lot lines. [10.10.40.70.(4)(A) Reduced Minimum Side Yard for Walls with No Windows or Doors on Specified Buildings]
4. The permitted maximum building depth for a detached house is 17.00 metres. The proposed new four storey detached single family dwelling will have an overall building depth is 26.92 metres. [10.10.40.30.(1)(A) Maximum Building Depth]
5. The permitted maximum height of a building or structure is 12.00 metres. The proposed new four storey detached single family dwelling will have an overall height of the building is 14.00 metres. [10.10.40.10.(1)(A) Maximum Height]
6. The permitted maximum height of all front exterior main walls is 9.50 metres. The proposed height of the front exterior main walls for the new four storey detached single family dwelling is 14.00 metres. The permitted maximum height of all rear exterior main walls is 9.50 metres. The proposed height of the rear exterior main walls for the new four storey detached single family dwelling is 14.00 metres. [10.10.40.10.(2)(A) (i) & (ii) Maximum Height of Specified Pairs of Main Walls]
7. The permitted maximum floor space index is 0.60 times the area of the lot: 126.57 square metres. The proposed new four storey detached single family dwelling will have a floor space index of 2.01 times the area of the lot: 424.51 square metres. [10.10.40.40.(1)(A) Floor Space Index]
8. A lot with a residential building, other than an apartment building, must have a minimum of 50 percent of the rear yard for soft landscaping: 0.77 square metres,

if the lot frontage is greater than 6.00 metres. The proposed rear yard landscaping area is 0 percent of the rear yard; 0.00 square metres.
[10.5.50.10.(3)(A) Rear Yard Soft Landscaping for Residential Buildings Other Than an Apartment Building]

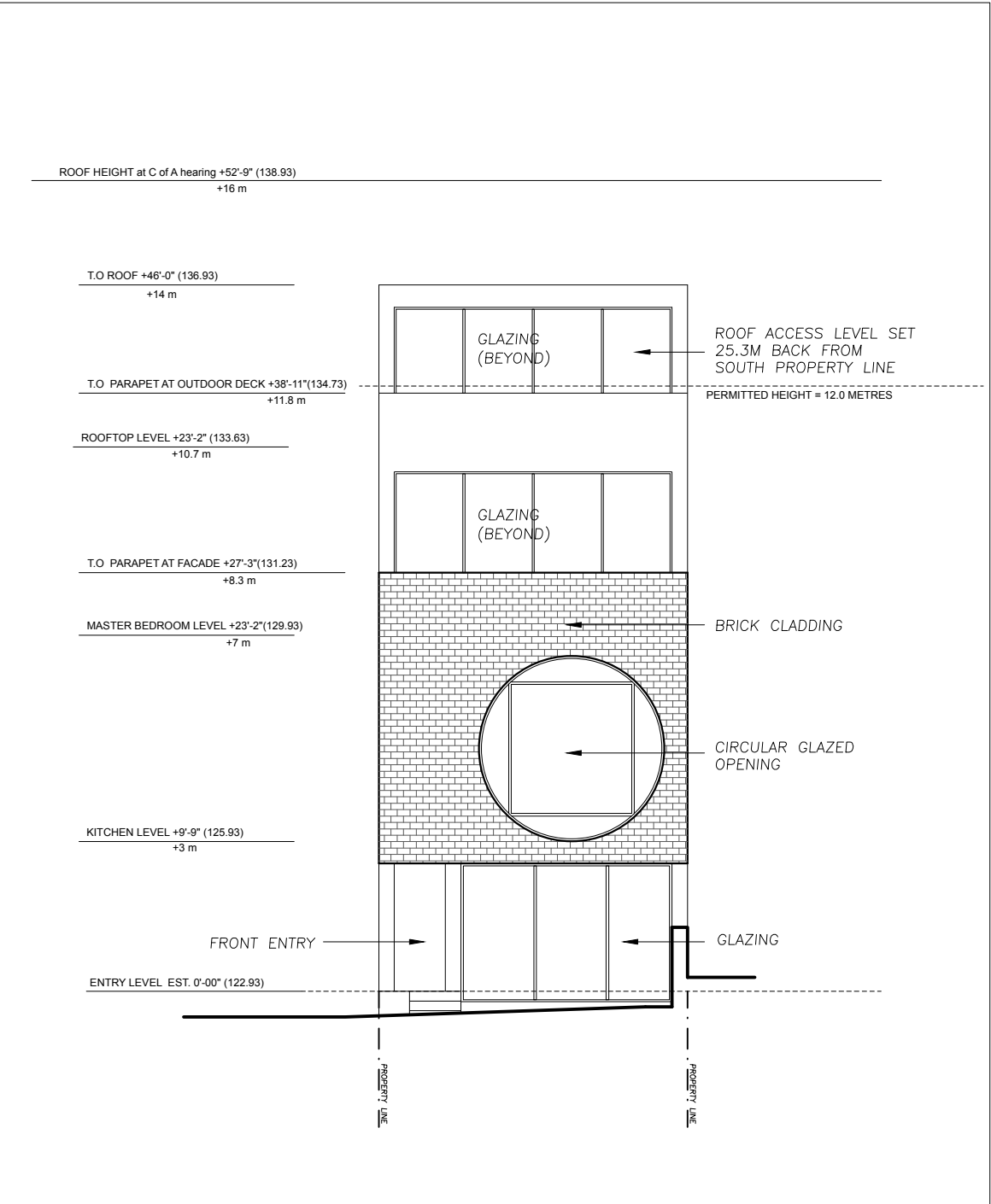
9. The required minimum side yard setback for a platform attached to a detached house in the R zone is 0.90 metres. The proposed new front porch will have a west side yard setback of 0.00 metres. [10.5.40.50.(2) Platforms in Relation to Building Setbacks]
10. A platform without main walls, attached to or less than 0.30 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 2.50 metres if it is no closer to a side lot line than the required side yard setback. The proposed new front porch encroaches 4.16 metres into the required front yard setback. [10.5.40.60.(1)(A)(i) Platforms]

Toronto Zoning by-law

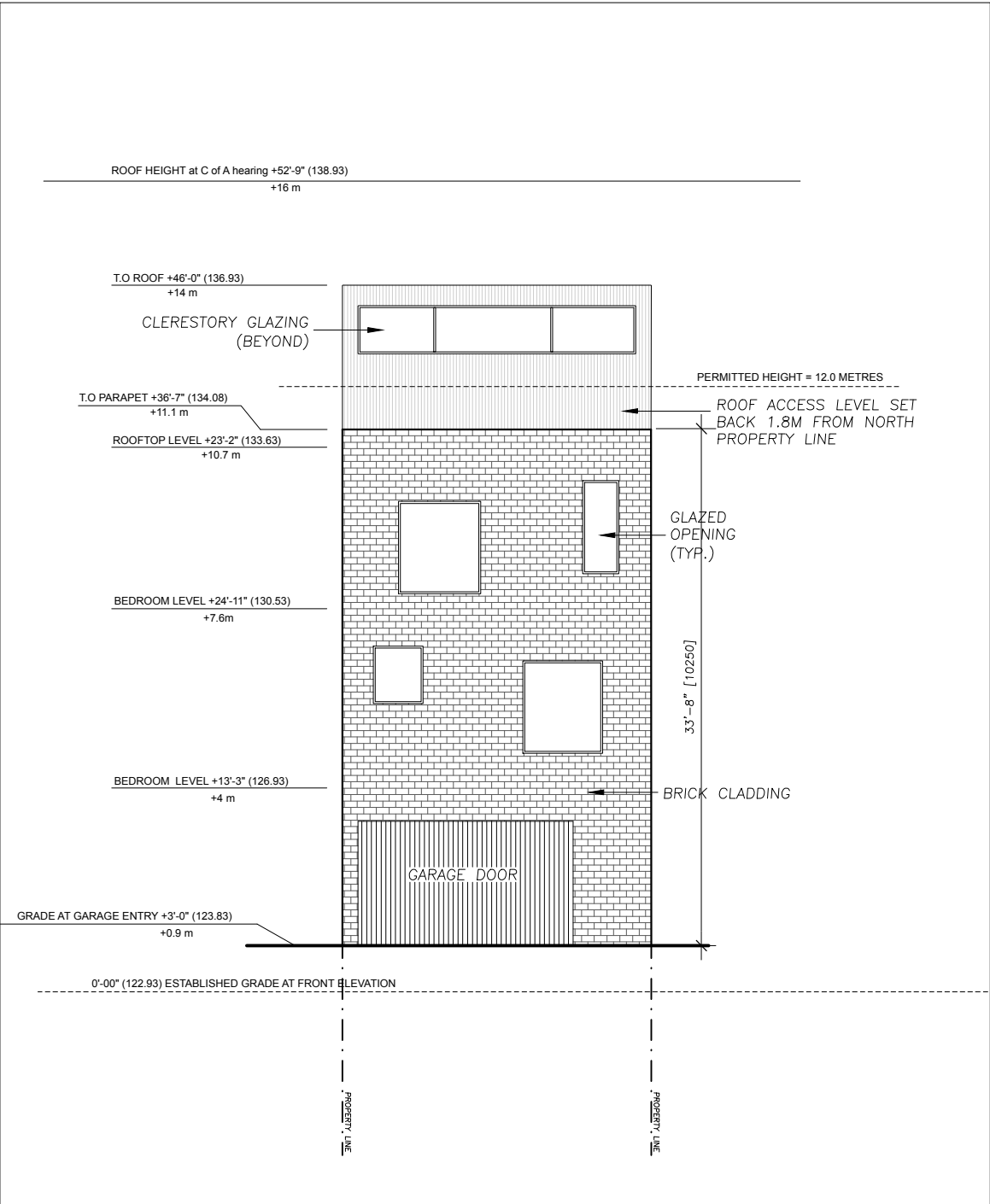
11. The permitted maximum height of a building or structure is 12.00 metres. The proposed new four storey detached single family dwelling will have an overall height of the building is 14.00 metres. [4(2)(A) Height Limits: Buildings and Structures]

Schedule B
Condition

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations dated December 18, 2020 and prepared by Public Studio Architecture (attached as Schedule C).



1 SOUTH ELEVATION
3/32"=1'-0"



2 NORTH ELEVATION
3/32"=1'-0"

REVISED
20.12.18

201103_DWGS



NOTE: THIS DRAWING IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE USED WITHOUT PRIOR CONSENT

NOT FOR CONSTRUCTION

DEC.18.2020
3/32"=1'-0"
ASK-02

NORTH AND SOUTH ELEVATIONS
68 GEARY AVE TLAB REVISIONS
TORONTO, ON

REVISED
20.12.18

201103_DWG5



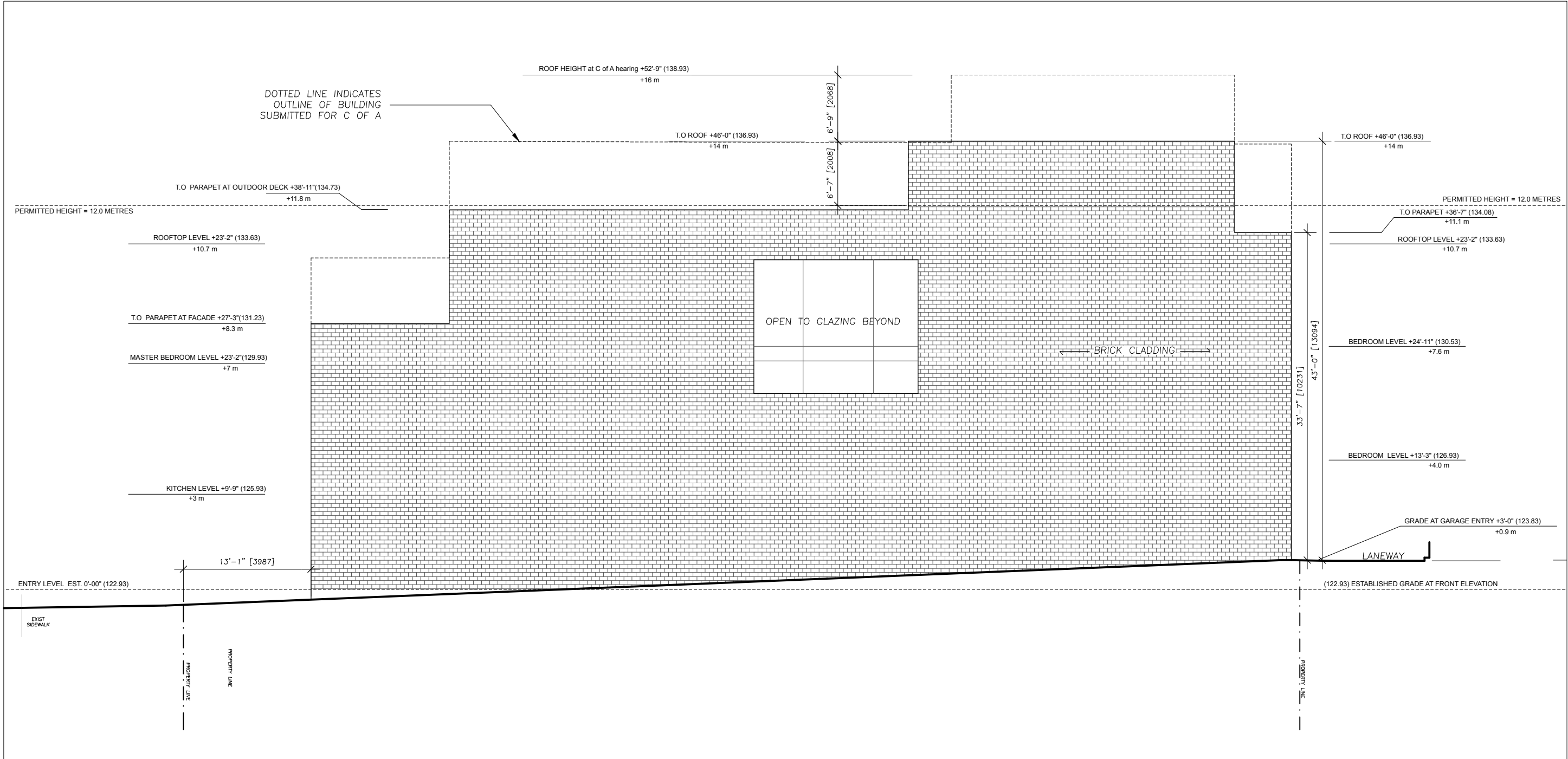
NOTE: THIS DRAWING IS THE
PROPERTY OF THE ARCHITECT
AND IS NOT TO BE USED
WITHOUT PRIOR CONSENT

NOT FOR CONSTRUCTION

DEC.18.2020
3/32"=1'-0"

ASK-03

EAST ELEVATION
68 GEARY AVE TLAB REVISIONS
TORONTO, ON



1 EAST ELEVATION
3/32"=1'-0"

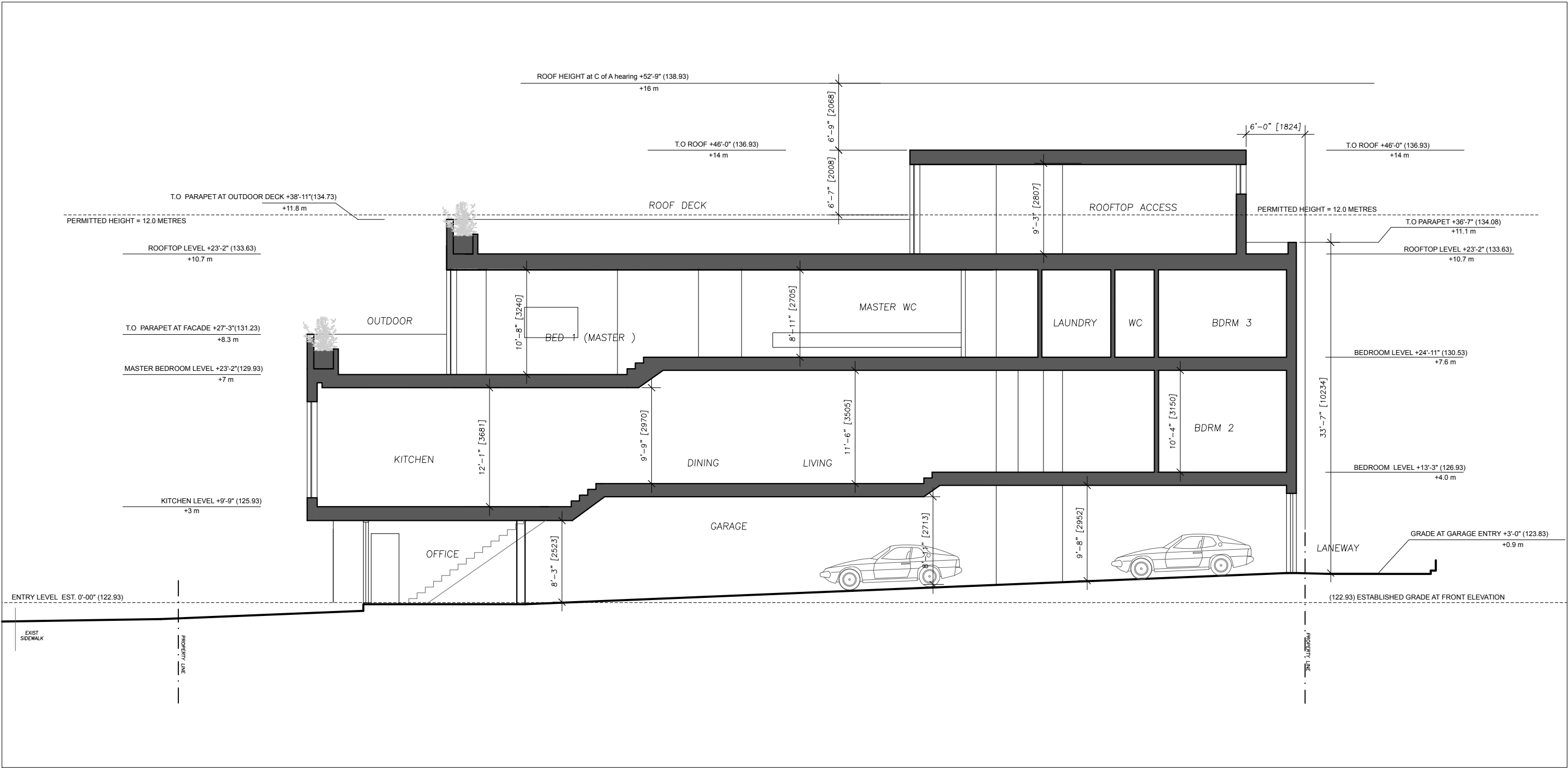
REVISED
20.12.18

NOTE: THIS DRAWING IS THE
PROPERTY OF PUBLIC STUDIO
ARCHITECTURE. IT IS NOT TO BE
REPRODUCED OR USED IN ANY
MANNER WITHOUT PRIOR CONSENT

NOT FOR CONSTRUCTION

DEC.18.2020
3/32"=1'-0"
ASK-04

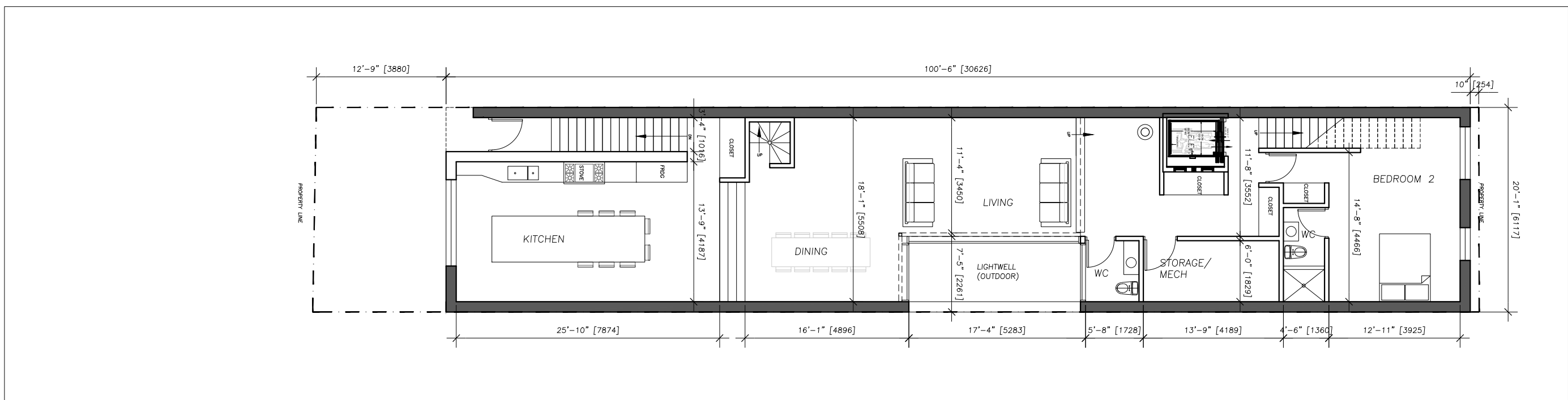
TYPICAL NORTH-SOUTH SECTION
68 GEARY AVE TLAB REVISIONS
TORONTO, ON



1 TYP. NORTH SOUTH SECTION
3/32"=1'-0"

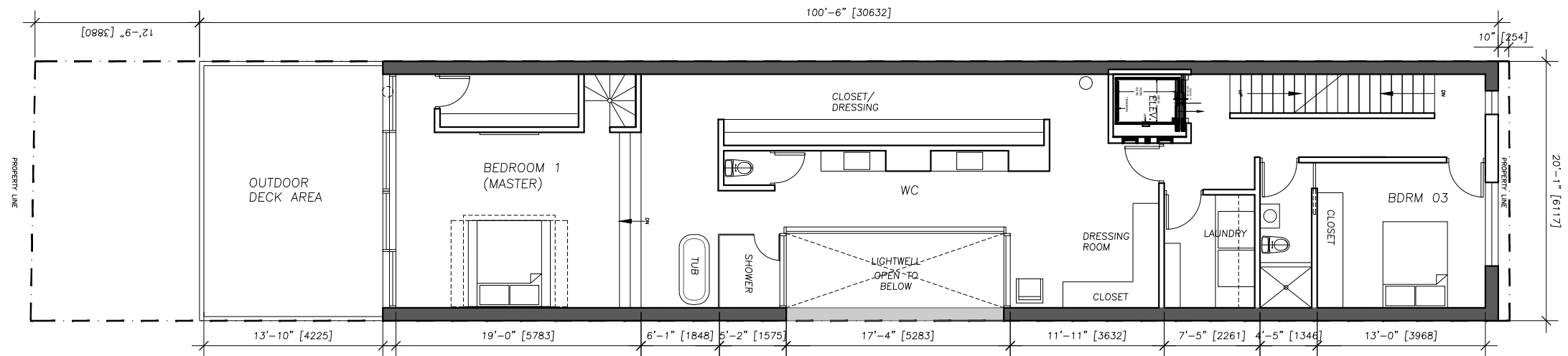
[illegible]

1) GARAGE LEVEL PLAN
3/32"=1'-0"

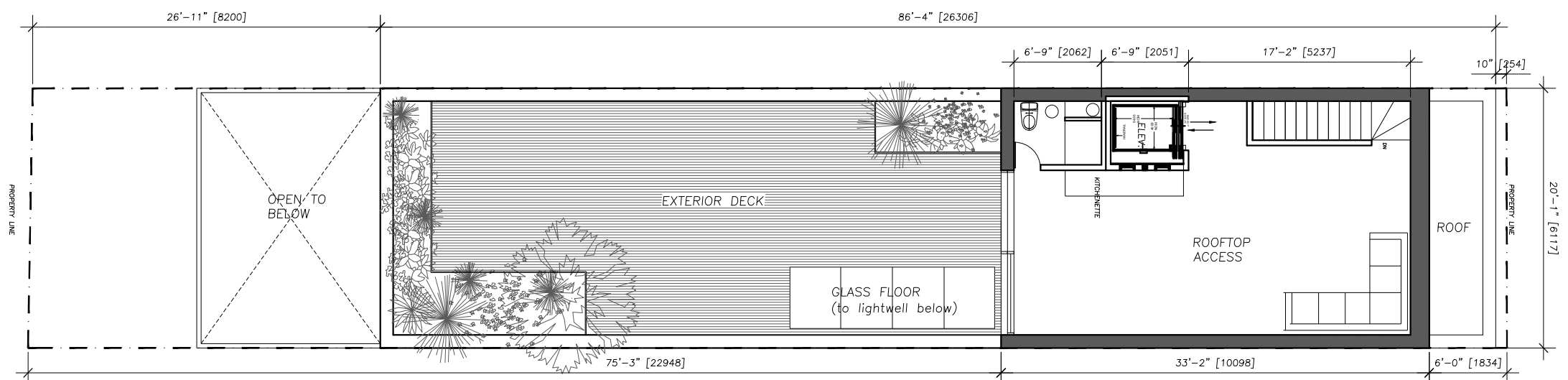


2 FIRST FLOOR PLAN
3/32"=1'-0"

REVISED
20.12.18



1 SECOND FLOOR PLAN
3/32"=1'-0"



2 ROOF PLAN
3/32"=1'-0"

201103_DWG5



NOTE: THIS DRAWING IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE USED WITHOUT PRIOR CONSENT

NOT FOR CONSTRUCTION

NOV.26.2020
3/32"=1'-0"
ASK-06

SECOND AND ROOF PLANS
68 GEARY AVE TLAB REVISIONS
TORONTO, ON



COMMITTEE OF ADJUSTMENT PROPOSAL



TLAB REVISED PROPOSAL

SOUTH ELEVATION



COMMITTEE OF ADJUSTMENT PROPOSAL



TLAB REVISED PROPOSAL

STREET VIEW FROM SOUTHWEST

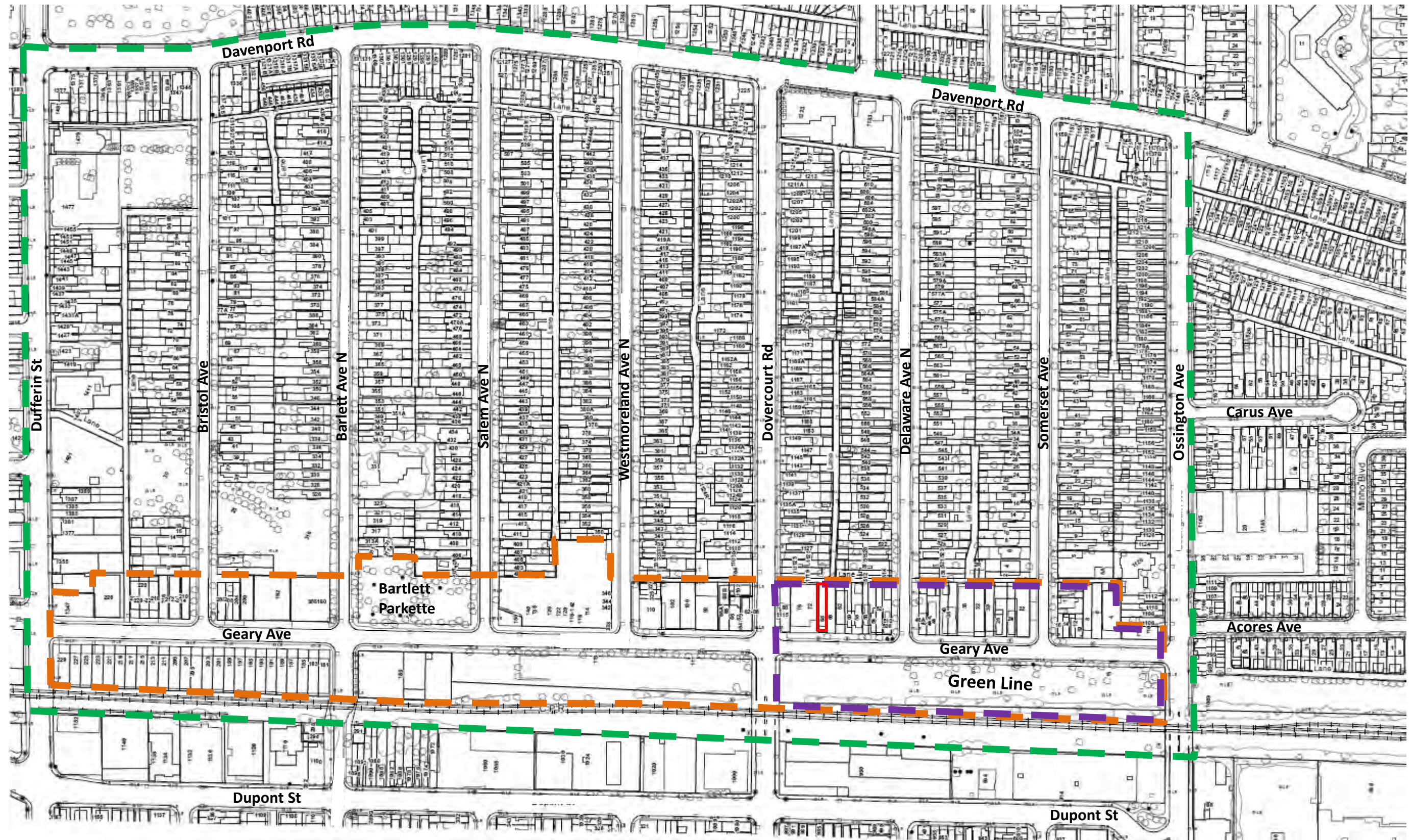


COMMITTEE OF ADJUSTMENT PROPOSAL



TLAB REVISED PROPOSAL

STREET VIEW FROM SOUTHEAST



SUBJECT SITE
 IMMEDIATE STUDY AREA
 BROADER STUDY AREA
 CONTEXT AREA

