

DECISION AND ORDER

Decision Issue Date Thursday, December 30, 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): John Michael Kourtoff

Applicant(s): Lindy Consulting Limited

Property Address/Description: 46 Unsworth Ave

Committee of Adjustment File

Number(s): 21 156651 NNY 08 MV

TLAB Case File Number(s): 21 189856 S45 08 TLAB

Hearing date: December 15, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY: S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant	John Michael Kourtoff
Appellant's Legal Rep	Matthew Helfand
Applicant	Lindy Consulting Limited
Owner	Beatrix Kourtoff
Expert Witness	Franco Romano

INTRODUCTION AND BACKGROUND

John Michael Kourtoff and Beatrix Kourtoff are the owners of 46 Unsworth, located in Ward 8 (Eglinton-Lawrence) of the City of Toronto. They applied to the Committee of Adjustment (COA), for the approval of variances that would allow them to construct a third floor addition to the existing house, rear platforms and a rear yard shed. The COA heard the application on July 8, 2021, and approved all the variances, including the variance respecting the FSI, which was decreased to 0.9 x Lot Area, from the requested 0.96X Lot Area.

The Applicants appealed the COA's decision to the Toronto Local Appeal Body (TLAB) on July 26, 2021, which then scheduled an Electronic Hearing for December 15, 2021.

MATTERS IN ISSUE

List of Variances

1. Chapter 10.20.40.40.(1)(A), By-law No. 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.96 times the area of the lot.

2. Chapter 10.10.40.10.(2)(B)(i), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5m. The proposed height of the side exterior main walls facing a side lot line is 9.25m.

3. Chapter 10.5.50.10.(3)(B), By-law No. 569-2013

A minimum of 25% of the required rear yard landscaping must be soft landscaping. The proposed rear yard soft landscaping area is 18%.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – S. 45(1)

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

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

EVIDENCE

At the Electronic Hearing held on December 15, 2021, the Appellant was represented by Mr. Matthew Helfand, a lawyer, and Mr. Franco Romano, a planner. It is important to note that there were no other Parties, nor Participants to this Appeal.

Mr. Romano was sworn in, and recognized as an Expert Witness in the area of land use planning. The highlights of this testimony are as follows:

The Subject Site, 46 Unsworth Avenue, is located within the south-central portion of the Lawrence Park North neighbourhood. The Site is located north of Lawrence Avenue West, two blocks west from Yonge Street, on the west side of Unsworth Avenue, which is a local road with a north-south orientation, as shown in the map found on the next page. The Official Plan designation for the Subject Site is "Neighbourhoods" and the zoning is R (Residential Zone), pursuant to the Toronto Zoning By-law 569-2013. The R zone permits a diversity of residential building types including "detached, semi-detached townhouses, of up to four floors, and to a height of 10.0m.

The proposal is to construct a third floor addition, a rear platform, and a rear yard accessory shed, which will abut the existing shed. Three variances have been identified by the Zoning Examiner, which relate to floor space index, wall height and rear yard soft landscaping, respectively and are recited in the "Matters in Issue" Section.

According to Mr. Romano, the proposed Subject Site development consists of the following:

- i) A conventional third storey dwelling addition: The physical form of the addition consists of a front dormer, side walls which extend the existing walls, and a sloped roof. Given that the GFA of the existing two storey dwelling is 122.72 sq.m with an FSI of 0.70 x Lot Size, the addition on the third floor of 45.52 sq. m., works out to be an FSI addition of 0.26 x Lot size, for the total, requested FSI of 0.96 x Lot Size.
- ii) A rear yard accessory shed with a floor area of 1.72 sq.m, which will abut the existing shed in the rear yard.
- iii) A new second storey platform (13.07 sq. m.), and third storey platform (10 sq. m.) to be accessed from secondary living areas such as bedrooms. These platforms

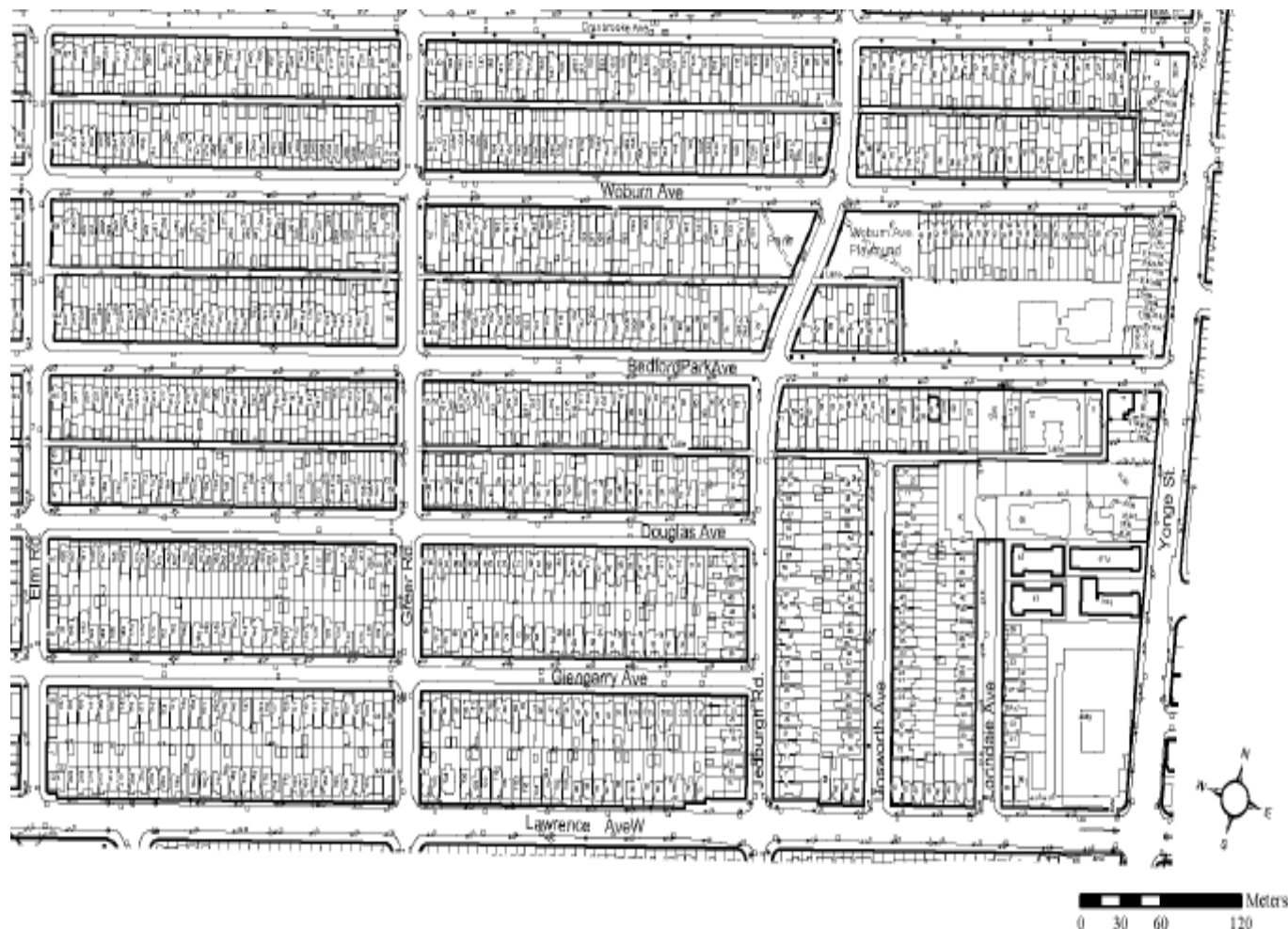


DIAGRAM 1- STUDY AREA SURROUNDING 46 UNSWORTH

will have 1.5m high privacy screens installed along the north and south sides. The platforms are zoning compliant.

iv) The existing rear yard soft landscaping is less than the base zoning requirement of 25%. The proposal looks to preserve the existing rear yard shed of 1.72 sq. m, as a result of which the rear yard soft landscaping is decreased.

v) The proposed third storey will alter the wall height from the existing 6.61m,

and change it to the proposed 9.25m on both sides of the house. The overall building height is 9.99m to the top of the sloped roof, which is compliant with the Toronto Zoning By-law 569-2013, of 10 m height to the top of the sloped roof, as well as the former Toronto Zoning By-law 438-86 permission of 10 m to the midpoint of the sloped roof.

The Study Area that Mr. Romano delineated is bounded by Elm Road to the west, and Woburn Avenue to the north. The east and south boundaries are within the interior of the neighbourhood, adjacent to Yonge Street and, Lawrence Avenue West. There are 791 properties within this Study Area, and 53 properties within the Immediate Context area, which consists of the block in which the Subject Site is found, as well as the opposite block. There is no direct immediately adjacent block context because Unsworth Avenue terminates at Lawrence Avenue West to the south, and the Jedburgh-Bedford laneway to the north.



**DIAGRAM 2- THE IMMEDIATE CONTEXT OF THE SUBJECT SITE-
EAST AND WEST BLOCKS FACING UNSWORTH AVENUE BOUNDED BY LAWRENCE
AVE E AT THE SOUTH AND JEDBURGH- BEDFORD LANEWAY TO THE NORTH**

According to Mr. Romano, the broader and immediate contexts contain a mixed low rise, residential building type, and overall physical form, ranging from one to three storeys. The area is experiencing a considerable amount of redevelopment, which includes new residential buildings, and building additions. The redevelopment that has been occurring in this Study Area reflects the “era of construction”, because each of the new dwellings occupies more space, than the development that is being replaced ,or has been improved upon.

Mr. Romano explained the compatibility between the proposal and the Official Plan (OP), with a focus on Sections 2.3.1.1, 3.1.2 and 4.1.5 of the OP He explained how the immediate context, and the neighbourhood had experienced significant change in the recent past, without being at threat of destabilization, such that Policy 2.3.1 is satisfied. He explained how the proposal achieves an “appropriate form of development”, as is envisaged by the policy context. He explained how the proposal conforms to the Built Form policies, found in Policy 3.1.2, which refer to how the proposal will be built such that the built form minimizes impacts on the neighbours, and the neighbourhood. He specifically discussed the manner in which the building will be built, to de-emphasize the overall height, and incorporate the massing and density within the front to central portions of the building envelope.

With respect to Policy 4.1.5, Mr. Romano expanded on sub-sections (c) and (g). With respect to (c)- ***prevailing heights, massing, scale, density and dwelling type of nearby residential Properties***, he said that the proposed building height is three storeys. The front façade third floor is built into the roofline in dormer format, while at the rear, the third floor is stepped back such that the rear of the dwelling is two storeys in height, such that “a low profile, low rise two and three storeys format” is maintained. Mr. Romano then followed up with an interesting discussion of how the “rolling topography” contributes to the calculation of the FSI, because of the “lower level” of a house may be included, or excluded on how close they it is to the ground. With this caveat, he discussed the FSIs of the houses in the Study Area, which ranged from “0.1 to 2.1”, while the FSI ranged from “0.26 to 1.15” in the Immediate Context.

Speaking to Sub-Section (g) - ***prevailing patterns of rear and side yard setbacks and landscaped open space***, Mr. Romano said that the prevailing patterns of rear yard setbacks “modest to moderately large”. He said that the proposal maintains the existing, “appropriate moderately large rear yard setback”, which contains open amenity and accessory structure features. He added that the existing side yard setbacks “within the immediate context range from 0m to less than 2.0m”, and added that the Subject Site’s existing side yard setbacks are not being changed. The side yard setbacks are currently 0.99m to 1.02m on the south side, and 0m on the north side. He asserted that the prevailing pattern of landscape open space is such that it is found “within the front yards (where they exist) and rear yards beyond accessory structures and features”. Within the immediate context, 74% of properties have “between 40% and 50% of the front yards” landscaped, a pattern that is being maintained by the proposal.

Mr. Romano also said that in terms of rear yard landscaping, “13% of properties have less than 25% of the rear yard as landscaping, in the immediate context”. He stated

that the Subject Site's existing, and proposed rear yard " maintained this same character, which is represented in substantial numbers in the Immediate Context".

Based on this evidence, Mr. Romano concluded that the proposal satisfied the intent of the Official Plan.

He next spoke to how the proposal fulfilled the intent and purpose of the Zoning By-Law. He reiterated that the Subject Site has a residential R zoning pursuant to the Toronto harmonized Zoning By-law 569-2013, which permits a broad range of low rise residential in detached, attached and multiple unit format, to a maximum building height of 10m. Mr. Romano spoke to how the low profile, and sensitive integration of the third floor addition, onto the existing footprint satisfies this overall general intent and purpose of the Zoning By-law. Mr. Romano also addressed the performance standards for each of the variances, as discussed below

Speaking to the variance respecting the Side wall height, Mr. Romano said that the proposed main wall height meets the general intent and purpose to limit the height of main walls, with the aim of achieving a context suitable low-rise residential building. The height variance is intended to minimize the extent to which walls may be constructed to "create inappropriate upper levels (such as third storeys in areas where two storeys are regulated)". In this case, the proposal integrates a front dormer with sloped roof, and incorporates a substantial rear building step-back, so that the rear of the dwelling is two storeys. Mr. Romano emphasized that the building was built such that "the wall height is lower than the permitted building height".

Speaking next to the variance respecting the rear yard landscaping, Mr. Romano said that the intent of the rear yard landscaping performance standard is to ensure that the soil surrounding the house, has suitable permeability, to facilitate on-site drainage. The rear yard consists of soft landscaping, as well as porous interlocking paving stones to address seepage issues, thereby satisfying the aforementioned performance standard.

On the basis of this evidence, Mr. Romano concluded that the proposal satisfied the test of respecting the intent, and purpose of the Zoning By-Laws.

Mr. Romano next spoke to how the proposal satisfied the test of minor. He asserted that the proposal creates no unacceptable adverse impact on its neighbours. He discussed how the proposed third storey dwelling addition, overlaps the existing footprint, and would result in any unacceptable adverse consequences, including shadowing, privacy overlook, or any related to its site development features.

On the basis of this evidence, Mr. Romano concluded that the proposal satisfied the test of minor.

Lastly, Mr. Romano spoke to how the proposal satisfied the test of appropriate development. He said that the proposed building addition, and rear yard treatment represent a "sensitive form of redevelopment which minimizes impacts on the property and surroundings". The proposal, when constructed, will result in a "compatible, appropriate three storey semi-detached dwelling site design and built form, which is within the

planning and public interest”, and is desirable for the appropriate use and development of the land. He said that the proposal will contribute to the mix of housing choices “in a manner that is in keeping with and strengthens the Subject Site’s physical character”. Based on this discussion, Mr. Romano concluded that the proposal satisfies the test of appropriate development.

Mr. Romano asked that a standard condition, which required the individual to build the dwelling in substantial compliance with the Submitted Plans, and Elevations be imposed on the approval of the requested variances. I asked Mr. Romano, and Mr. Helfand to consider the imposition a second condition, related to ensuring that porous material would be used to pave the rear-yard, and was told that appropriate suggestions to reflect this condition, would be crafted, and sent as soon as possible to the TLAB.

I thanked Mr. Helfand, and Mr. Romano for their attendance, evidence and submissions made at the Hearing, and reserved my decision. It is important to note that the suggested language for the condition respecting the back yard paving was sent in on the same day to the TLAB

ANALYSIS, FINDINGS, REASONS

It is important to note that this Appeal was uncontested, and that there were no Witnesses to testify other than the Expert Witness in the area of land use planning , Mr. Romano, - effectively, his evidence is unchallenged.

I find that the proposal respects the intent, and purpose of the Official Plan, because it satisfies Policies 2.3.1, 3.2.1 and 4.1.5 of the Official Plan. The proposal contributes to the growth, and narrative of steady change in a neighbourhood, without impacting the stability of the community. The Built-Form policy is satisfied by how the third floor is being deployed, such that the building foot print remains unchanged, and no unacceptable, adverse impacts are created on the neighbouring properties. Lastly, the proposal satisfies Section 4.1.5 for a variety of reasons, including the fact that the side-yards are not being modified in any way. Mr. Romano had an interesting description of how comparing the FSIs of adjacent properties around the Site, could result in an apples-to-oranges comparison, because of the topography of the street, and the need to include whatever floor of the house is closest to the ground. Given the impact of topography on how the FSI is measured, there is no finding made about whether or not the requested FSI respects the prevailing density. I find that the requested FSI is well within the range of FSIs within the Immediate Context, and may be consequently found to have satisfied Sub-Section 4.1.5 (c). On the basis of this evidence, I find that the proposal satisfies the intent, and purpose of the Official Plan.

The overall general intent and purpose of the Zoning By-laws is to achieve an orderly, context compatible form, of low rise residential housing. The evidence demonstrated how the performance standards, corresponding to each of the variances are satisfied by the design of the proposed addition, with specific references to the variances respecting FSI, exterior wall main height, and soft-scape landscaping,. It is important to note that the installation of privacy screens on the balconies of the second and third floors, help

address privacy concerns that may have arisen out of the inclusion of balconies on the second, and third floors of a building in the middle of a densely packed, urban neighbourhood. Consequently, I find that the evidence satisfies the test of respecting the intent, and purpose of Zoning By-Law 569-2013.

Given that there is no demonstration of the proposal's unacceptable adverse impacts on the neighbouring properties, I find that the proposal satisfies the test of minor. Lastly, I find that the proposal's resulting in a three storey home, with adequate living space for a family, and no adverse impacts on the neighbouring properties, helps satisfy the test of appropriate development.

Given that the proposal has satisfied all four tests under Section 45(1) of the Planning Act, I find that the Appeal may be allowed, and that the all three requested variances, may be approved.

Lastly, it is important to discuss the conditions to be imposed on the approval of the variances. I am in agreement with the Appellants' suggestion that the building may be built in substantial accordance with the submitted Plans, and Elevations, as listed in the Decision and Order Section, that follows this discussion. I appreciate the Appellants' willingness to craft language to reflect the fact that the porous, interlocking paving stones, currently installed in the backyard of the house, will not be disturbed as a result of this proposal, and impose the same as a condition. I also acknowledge that the Applicants themselves have proposed 1.5 metre high privacy screens on the north and south sides of the to-be-built balconies at the second, and third floors of the house at the Subject Site, and impose the same as a third condition.

DECISION AND ORDER

1. The Appeal is granted, and the decision of the Committee of Adjustment dated July 8, 2021, is set aside.

2. The following variances are approved:

1. Chapter 10.20.40.40.(1)(A), By-law No. 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.96 times the area of the lot.

2. Chapter 10.10.40.10.(2)(B)(i), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5m. The proposed height of the side exterior main walls facing a side lot line is 9.25m.

3. Chapter 10.5.50.10.(3)(B), By-law No. 569-2013

A minimum of 25% of the required rear yard landscaping must be soft landscaping. The proposed rear yard soft landscaping area is 18%.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 21 189856 S45 08 TLAB**

3. No other variances are approved.

4. The following conditions are imposed on the approval:

1. The proposed construction shall be built substantially in accordance with the following plans for 46 Unsworth Avenue, all prepared by Lindy Consulting Ltd.:

- a. Site plan drawing A005, revision date 6-15-2021.
- b. Front elevation drawing A211 dated 5-13-2021.
- c. Rear elevation drawing A212 dated 6-15-2021.
- d. South side elevation drawing A213 dated 6-15-2021.

The drawings cited above are appended to this Decision.

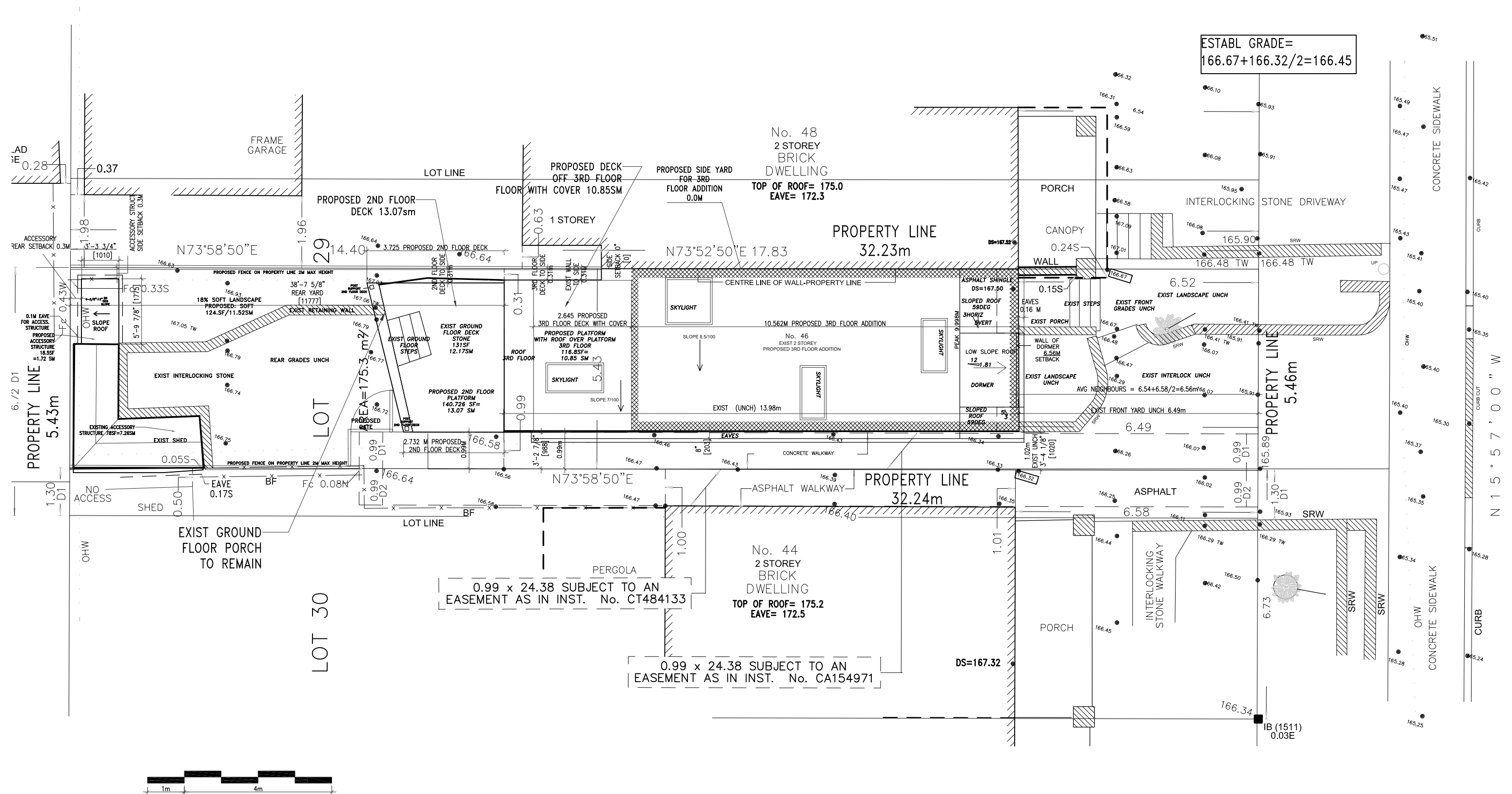
2. The rear yard will consist of a minimum of 26.3 sq. m. of porous, interlocking paving stones.

3. Privacy screens, with a minimum height of 1.5 metres, will be installed on the north and south sides of the to-be-built balconies, at the second and third floors, at the rear of the house at the Subject Site.

So orders the Toronto Local Appeal Body

X 

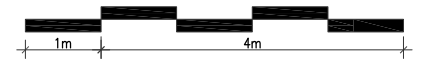
S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



ESTABL GRADE=
 $166.67 + 166.32 / 2 = 166.45$

UNSWORTH AVENUE

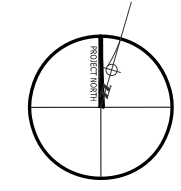
N 15° 57' 00" W



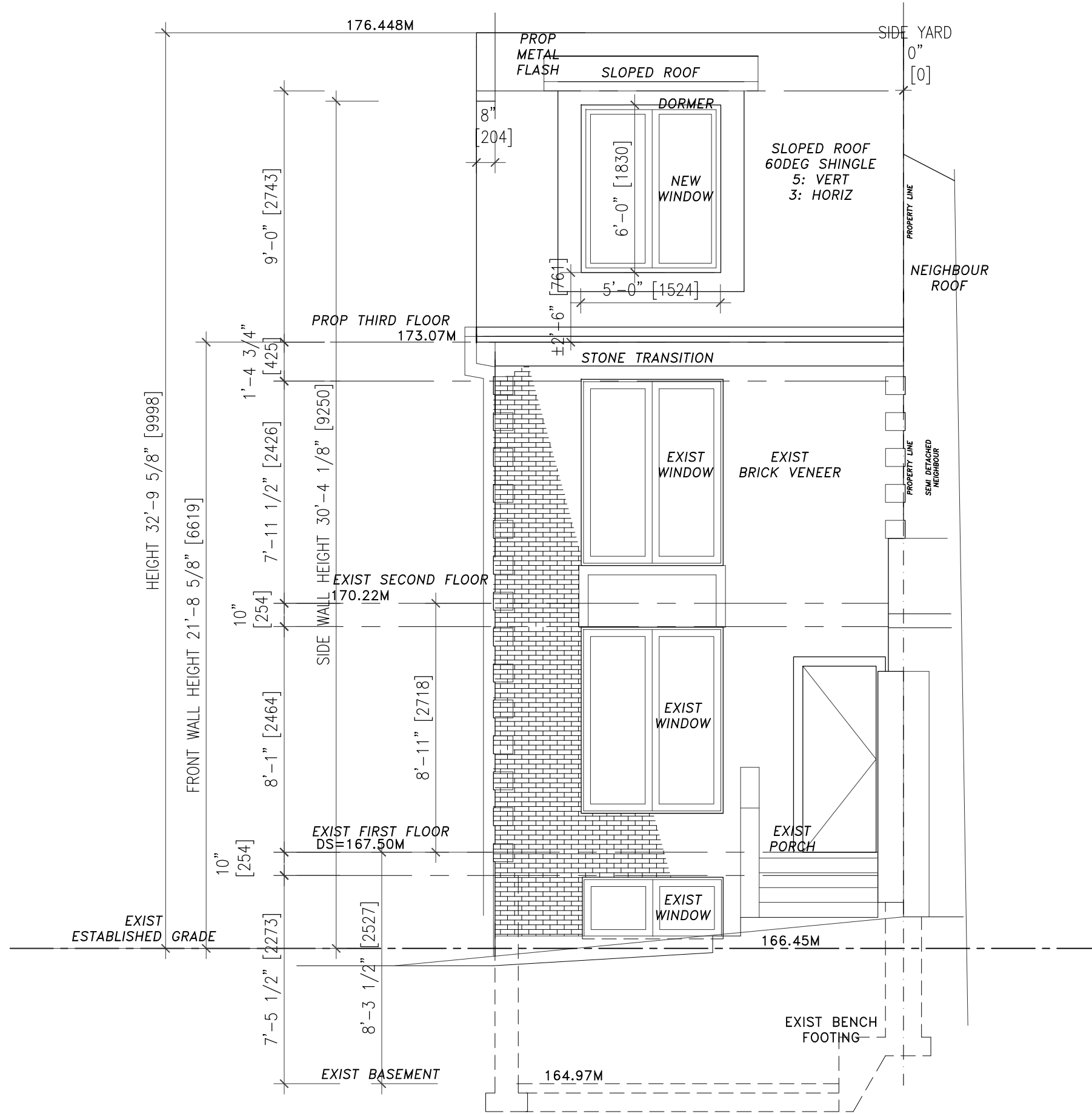
Plans prepared by:
Lindy Consulting Limited
 Architecture + Design Development Management
 48 Bedford Park Avenue
 Toronto, ON, M5M 1H9
 P: 416.481.9947
 www.lindyconsulting.com

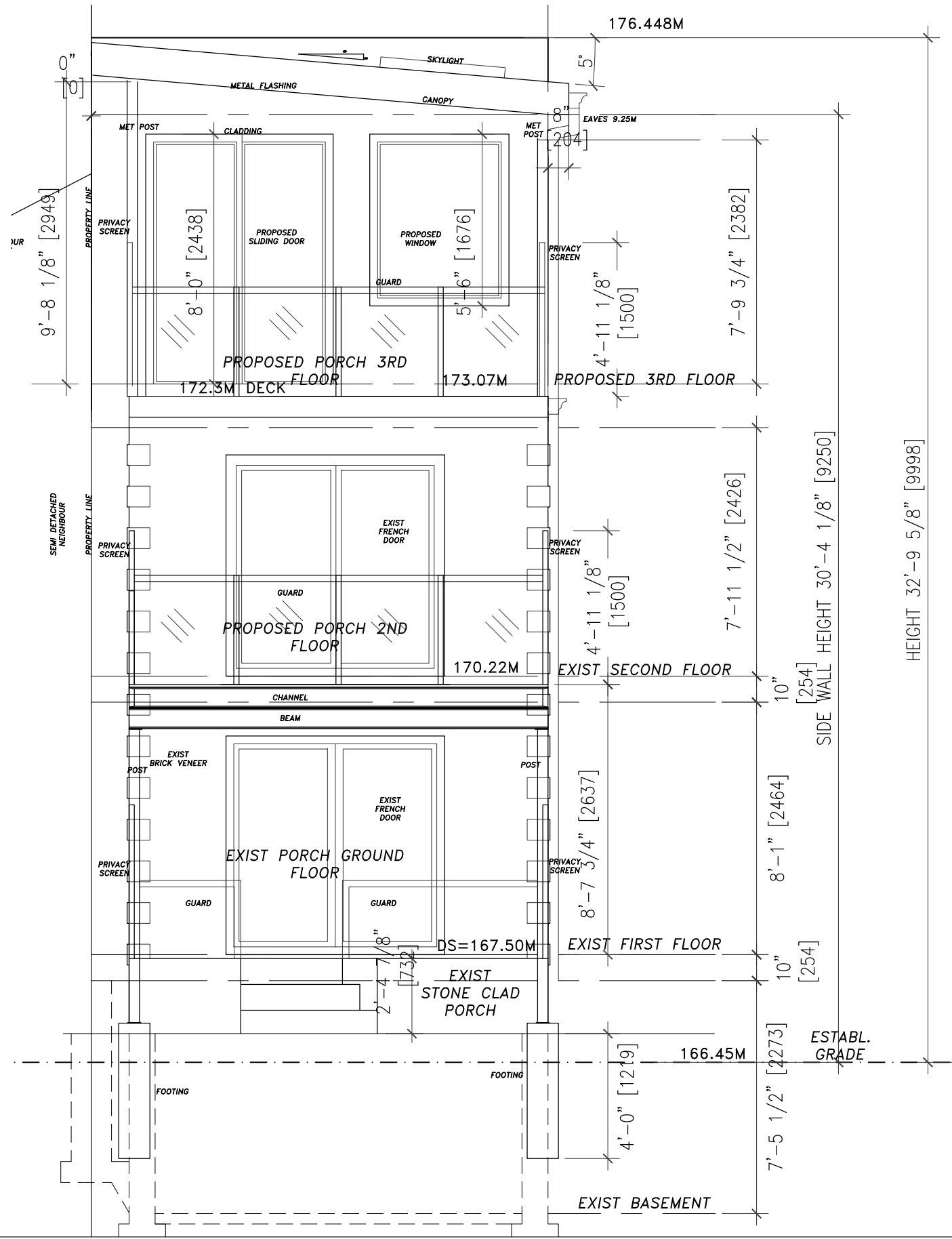
1
A005

SITE PLAN
 SCALE - 1:100



Project:
 46 UNSWORTH AVE
 TORONTO, ONTARIO
 COMMITTEE OF ADJUSTMENTS 5-13-2021
 REVISION TO COMMITTEE 6-15-2021





Plans prepared by:
Lindy Consulting Limited
 Architecture + Design Development Management
 48 Bedford Park Avenue
 Toronto, ON, M5M 1H9
 P: 416.481.9947
 www.lindyconsulting.com

1
 A212

PROPOSED REAR(WEST) ELEVATION
 SCALE - 1:50

Project:
 46 UNSWORTH AVE
 TORONTO, ONTARIO
 COMMITTEE OF ADJUSTMENTS 5-13-2021
 REVISION TO COMMITTEE 6-15-2021

