

DECISION AND ORDER

Decision Issue Date Friday, February 11, 2022

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): FERNANDO CRAVO

Applicant(s): EKP DESIGNS INC

Property Address/Description: 586 GLENHOLME AVE

Committee of Adjustment File

Number(s): 21 140026 STE 12 MV (A0484/21TEY)

TLAB Case File Number(s): 21 208101 S45 12 TLAB

Hearing date: January 20, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY *Ana Bassios, TLAB Vice-Chair*

REGISTERED PARTIES AND PARTICIPANT

Applicant	EKP DESIGNS INC
Appellant	FERNANDO CRAVO
Appellant's Legal Rep	PETER WOLOSHYN
Owner / Party	LILIBETH COELHO
Party's Legal Rep	MARTIN MAZIERSKI
Party	GLORIA CRAVO
Expert Witness	STEVEN QI

INTRODUCTION

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval of an application for variances for the property known as 586 Glenholme Ave (subject property).

The purpose of the application is to alter the existing two-storey, semi-detached dwelling by constructing a second storey rear addition. The subject property is located in the Oakwood Village neighbourhood. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RM (d0.8) (x252) under Zoning By-law 569-2013.

In attendance at the Hearing were:

- Martin Mazierski, legal counsel for the Owner, and Expert Witness Steven Qi (Land Use Planning);
- Peter Woloshyn, legal counsel for the Appellant, the Appellant Fernando Cravo, and Gloria Cravo, who elected Party status.

BACKGROUND

The Applicant proposes to construct a second storey addition to a two-storey semi-detached dwelling.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAWS:

1. Chapter 10.80.40.20.(1), By-law 569-2013

The maximum permitted length for a semi-detached dwelling is 17 m.
The altered semi-detached dwelling will have a length of 20.12 m.

2. Chapter 10.80.40.30.(1), By-law 569-2013

The maximum permitted depth of a semi-detached dwelling is 19 m.
The altered semi-detached dwelling will have a depth of 23.1 m.

MATTERS IN ISSUE

The matter at issue is whether the proposed addition would “box in” the Appellant's property and block sunlight for a significant part of the day.

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

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings, Reasons* section below.

Steven Qi

Mr. Qi established a neighbourhood study area in accordance with the direction of the Official Plan. He described the neighbourhood context as a variety of residential dwelling types throughout the neighbourhood study area. He stated that the built form and massing is generally consistent and thus, there is no significant difference between the immediate, adjacent and broader neighbourhood context.

Mr. Qi described the situation of the proposal as follows:

- The subject property is one half of a semi-detached structure. The Appellant resides in the other attached dwelling.
- The application is to alter the existing two-storey detached dwelling by constructing a second-storey rear addition.
- The addition is only for the second-storey supported by two structural columns located at the ground level.
- No construction is proposed for the ground level, and it will remain as it currently exists (a deck).
- Immediately to the north of the Appellant's property is 596 Glenholme which has a two-storey rear addition that extends past the rear wall of the Appellant's house.



Figure 1: EX 1 pt 4-4. Photo Looking north from 586 to side wall of 596 Glenholme

Gloria Cravo

Ms. Cravo stated that her opposition to the proposal was because it would block sunlight from her verandah, kitchen and her son's room. She expressed her concern that because the side wall of the other neighbour to the north of them already extends beyond their verandah, that they would be 'boxed in' by an extension on the subject property that shares a common wall with their home.

Fernando Cravo

Mr. Cravo focused on the impact that the proposal would have on their property and on their lives. He described the impact that the elimination of sunlight would have on his family and on his health.

ANALYSIS, FINDINGS, REASONS

I find that the proposal is of a scale and nature that does not engage the policies of the PPS and the Growth Plan. The standard for approval of the requested variances are the four tests set out under s. 45(1) of the *Planning Act*.

The only two variances being requested are for building length and building depth, to allow the proposed addition to extend 3.3m beyond the existing rear wall.

GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN

Mr. Qi provided a comprehensive chronicle of the potentially relevant policies of the Official Plan. In his testimony regarding OP Policy 4.1.5, which sets out criteria to evaluate how a development respects and reinforces the character of a neighbourhood, he confirmed that building length and building depth are not criteria which are specifically referenced.

I acknowledge building length and building depth are not specifically cited in OP Policy 4.1.5, but I consider them to be factors which affect building massing. The policy requires that development respect and reinforce the *prevailing heights, massing, scale, density and dwelling type of nearby residential buildings* (OP Policy 4.1.5 c).

The Zoning By-law implements the overall vision and intent of the Official Plan and employs maximum building length and building depth as two of the regulations to control the positioning of structures and building massing. I find that the requested variances do not offend the general policy direction of the Official Plan and are more directly engaged in the second test, that of the general intent and purpose of the Zoning By-law.

I accept Mr. Qi's evidence regarding the general intent and purpose of the Official Plan which can be found in Exhibit 1 Tab 4-8. I agree with his conclusion that the proposal maintains the general intent and purpose of the Official Plan.

GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW

○ Introduction of Building Length and Building Depth Provisions

Mr. Qi noted that the previous By-law, (former City of York By-law 1-83) did not regulate building length and building depth. The building length and depth maximums were introduced in the harmonized City of Toronto Zoning By-law 569–2013, to which the application is subject.

Building depth is defined in the harmonized By-law (596-2013) as:

(100) Building Depth

means the horizontal distance between the front yard setback required on a lot and the portion of the building's rear main wall furthest from the required front yard setback, measured along a line that is perpendicular to the front yard setback line.

Mr. Qi noted that because building length and building depth were not regulated prior to the introduction of the harmonized By-law, there are many examples in the neighbourhood which have historically exceeded the building length and depth zoning maximums which are now in force.

A photographic catalogue of other examples in the neighbourhood which depict similar building length and depth extensions and tables identifying previously granted building length and depth variances were provided in Exhibit 1.

In Mr. Qi's opinion, the proposed building length and the proposed building depth for the semi-detached dwelling are appropriate, given the immediate and surrounding context.

- Intent of the Building Depth Variance

The objection of the Carvos rests primarily on the building depth variance, in that the proposed addition would extend beyond their rear wall, block sunlight, and hem them in between two rear extensions (neighbouring homes on both sides of them). The Carvos did not express an objection to the proposed building length, as such, but that the lengthened building would extend into the rear of the property.

Mr. Qi stated that *"the intent of a maximum permitted building depth is to ensure that the depth of the building is consistent between dwellings throughout the neighbourhood. The overall depth of dwellings is regulated, in large part, to influence the placement of the building in relation to the street. Only regulating building length alone would permit the buildings to be placed as deep as one desired, therefore, controlling the overall building depth will help improve the streetscape throughout the neighborhood."*

Mr. Woloshyn challenged Mr. Qi's perspective on the intent of the building depth provision. Under cross-examination, Mr. Qi described the positioning of rear walls in the surrounding context (reflecting building depth) as "staggered". Mr. Woloshyn proposed to him that the intent of introducing the provisions of building depth and length in the new By-law was to control this kind of "staggering" and to achieve an alignment of the rear walls/ depth of structures.

I agree with Mr. Qi's opinion that the intent of a maximum building depth is to ensure that the depth of the buildings is consistent. I am not satisfied with Mr. Qi's testimony that the intent of the provision is "in large part" aimed at aligning the streetscape (rather than primarily to achieve alignment of rear walls/ building depths).

- Consistency of Building Depths in context

The reality is that historic conditions in this neighbourhood result in varied and unaligned rear walls. Accepting that the intent of the building depth provision includes the achievement of a general alignment of the rear walls of adjacent buildings, it is nonetheless not apparent that refusal of the requested variance would achieve such an aim.

There is significant disparity amongst the rear wall positions of the nearby houses, with the house at 584 Glenholme Ave placed markedly forward on the lot and the house at 596 Glenholme reaching back further into its lot than the proposal would.

There is not enough of a consistent rear wall alignment for me to find that the intent of the By-law is served by maintaining the rear wall of the subject property as it is and denying the requested variances.

The rear wall of the proposed addition will not be as deep but generally in line with the existing rear addition at 596 Glenholme.

Given the immediate and surrounding context, I find that the proposed variances would not offend the intent of the building length and building depth provisions of the Zoning By-law.

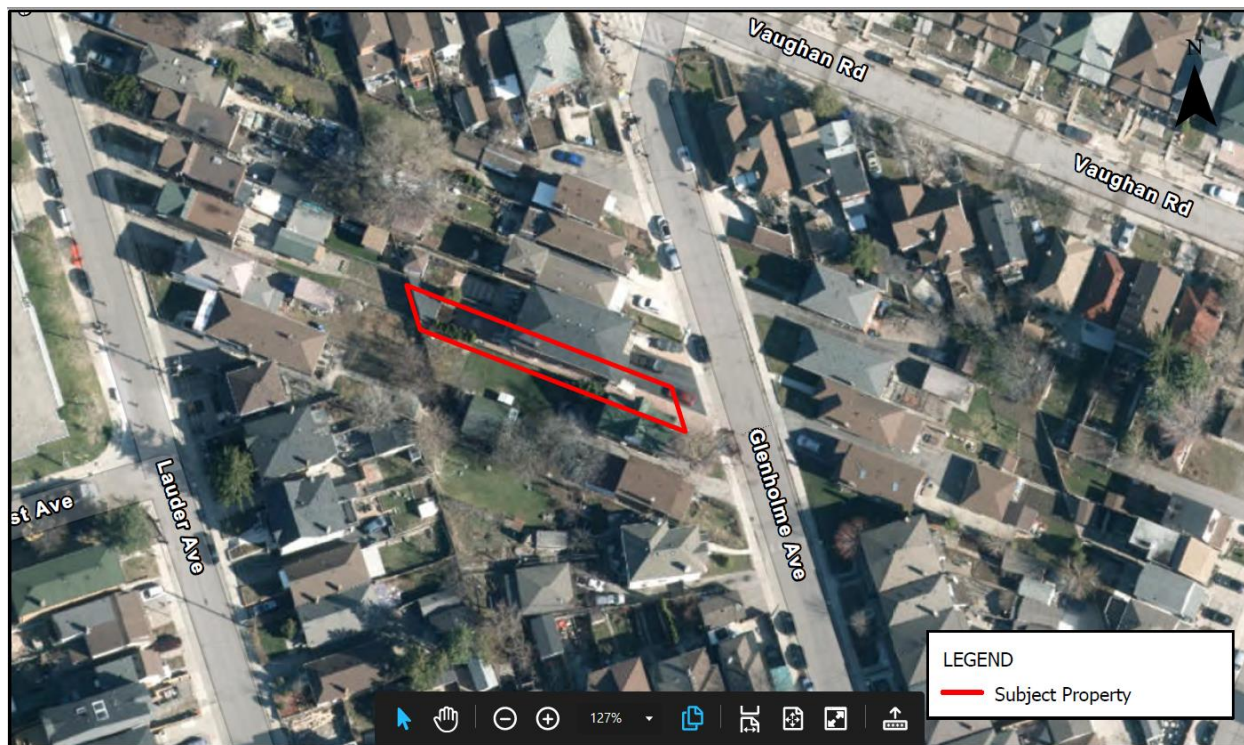


Figure 2:EX 2, Map 8/8

- Building Length

I accept Mr. Qi's evidence regarding building length and find that the proposed variance for building length maintains the general intent and purpose of the Zoning By-law.

THE TEST FOR "MINOR"

The essential objection of the Cravos is the impact that the proposal will have on their home and their enjoyment of their property. The measurement of impact is generally addressed under the test of "minor".

The test for "minor", as generally established, is not that there be no impact, but rather that the imputed impact rises to the level of being an unacceptable adverse impact of a planning nature. The Cravos contend that the proposal would cause undue adverse impact on them and that therefore the application for variances should be denied.

- Is a Shadow Study Necessary?

The focus of this Appeal was the the Appellant's contention that the proposed variances would cause an undue adverse impact on his family and his property by depriving them of sunlight in their backyard and on their verandah.

Given that only this issue has been presented as the cause for the Appeal, I am somewhat frustrated that neither the Applicant nor the Appellant has provided any substantive information regarding the extent of the additional shadowing or the seasonal duration of the shadowing that would fall to the Cravos' property as a result of the proposed addition.

Mr. Qi's response to questioning on the issue of shadowing was to assert that the Official Plan only speaks to shadowing related to the public realm and from (mid-rise) higher structures. He maintained that a shadow study is not required for an application of this nature.

In Mr. Qi's opinion, the reason that a shadow study is not required is that shadowing is not one of the considerations that is to be taken into account in assessing this kind of development. In his opinion, shadowing is already contemplated in an urban environment.

Mr. Qi maintained that there would still be a significant area of the Appellant's back yard that would not be affected by the additional shadow, although he did not substantiate this claim, or provide detail.

Under cross-examination Mr. Qi agreed that there was going to be shadowing on the Appellant's property, but that he could not say whether it was going to be significant or not. He stated that he could not answer that detailed question and that in an urban context, shadowing has been contemplated and that it is acceptable. He qualified that shadow studies are required when there is higher, more intense development proposed, or when public space is affected.

While I acknowledge that a shadow study is not required for a variance application at this scale, the Appellant's clear and singular assertion of undue adverse impact because of shadowing warrants that the actual crux of the appeal be addressed.

In respect of the assertion of undue adverse impact, I find that the matter of shadowing is a valid consideration and I do not accept Mr. Qi's blanket assertion that shadowing is unconditionally contemplated and acceptable.

- Reaching the Level of Undue Adverse Impact of a Planning Nature

While the burden to make their case falls to the Applicant, and I find their evidence to be deficient in addressing the matter at issue (shadowing), there is also a burden upon the Appellant and the Party to show that the impact of shadowing from the proposed addition rises to the level of undue adverse impact of a planning nature.

I understand and sympathize with the Cravos' particular vulnerabilities and that their personal circumstances mean that their home and their back yard are enormously important to them. However, the ambit of the test for minor contemplates impacts of a planning nature and I am bound to stay within this frame of reference in my Decision.

Mr. Qi agreed that shadowing would happen on the Appellant's side of the semi-detached structure but opined that adequate daylight would remain. He noted that the effect on the Appellant's property would be much different than if there was a solid wall below the proposed extension (the proposal contemplates a second storey addition over pillars with the ground level remaining open).

I recognize that the proposed addition will impact the Cravos' enjoyment of their verandah and back yard but I cannot find that the impact they assert rises to the level of undue adverse impact of a planning nature for the following reasons:

- While I consider that the evidence of the Applicant is deficient in addressing the cause of the Appeal, I recognize that the planning framework in place via the Official Plan and the Zoning By-law does not reference shadowing as a factor for evaluating the potential impact of small scale development.
- The proposal constitutes only a second storey extension, resulting in openness at the ground level underneath it. Some cooperation between the neighbours regarding a different type of privacy screening between their two rear decks/verandahs could improve the amount of light on the Cravos' side.
- The Cravos' concerns have been focused primarily on the shadowing impact to their verandah and the rear of their house and I expect that it is understood that a good part of their back yard will be unaffected by a shadow cast by the addition allowing continued opportunity for the enjoyment of their back yard.

DESIRABLE FOR THE USE OF THE LAND

I find the proposed variances to be desirable for the use of the land for the reasons outlined above.

CONCLUSION

The proposal is for a relatively small one-bedroom addition to the second storey of the existing semi-detached house on the subject property (16m²). The semi-detached form of the Applicant and Appellant's homes lends an immediacy to the visual and shadowing effects of the proposed addition, which is counterweighted by the fact that

the ground floor level will not be enclosed. The only variances required to facilitate the proposal are for building length and building depth. In order to give the Appellant certainty that the proposal will be built only as justified, the variances will be granted subject to a condition of substantial compliance with the updated site plan and elevations.

I have found that the variances meet the four tests of s. 45(1) of the *Planning Act*.

DECISION AND ORDER

The Appeal is denied. The Committee of Adjustment's decision on August 18, 2021, is confirmed. The Variances set out in Appendix A, herein, are authorized subject to the condition contained therein.



Ana Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES

1. Chapter 10.80.40.20.(1), By-law 569-2013

The maximum permitted length for a semi-detached dwelling is 17 m.

The altered semi-detached dwelling will have a length of 20.12 m.

2. Chapter 10.80.40.30.(1), By-law 569-2013

The maximum permitted depth of a semi-detached dwelling is 19 m.

The altered semi-detached dwelling will have a depth of 23.1 m.

CONDITION

The proposed addition shall be constructed substantially in accordance with following drawings prepared by EKP Designs Inc.:

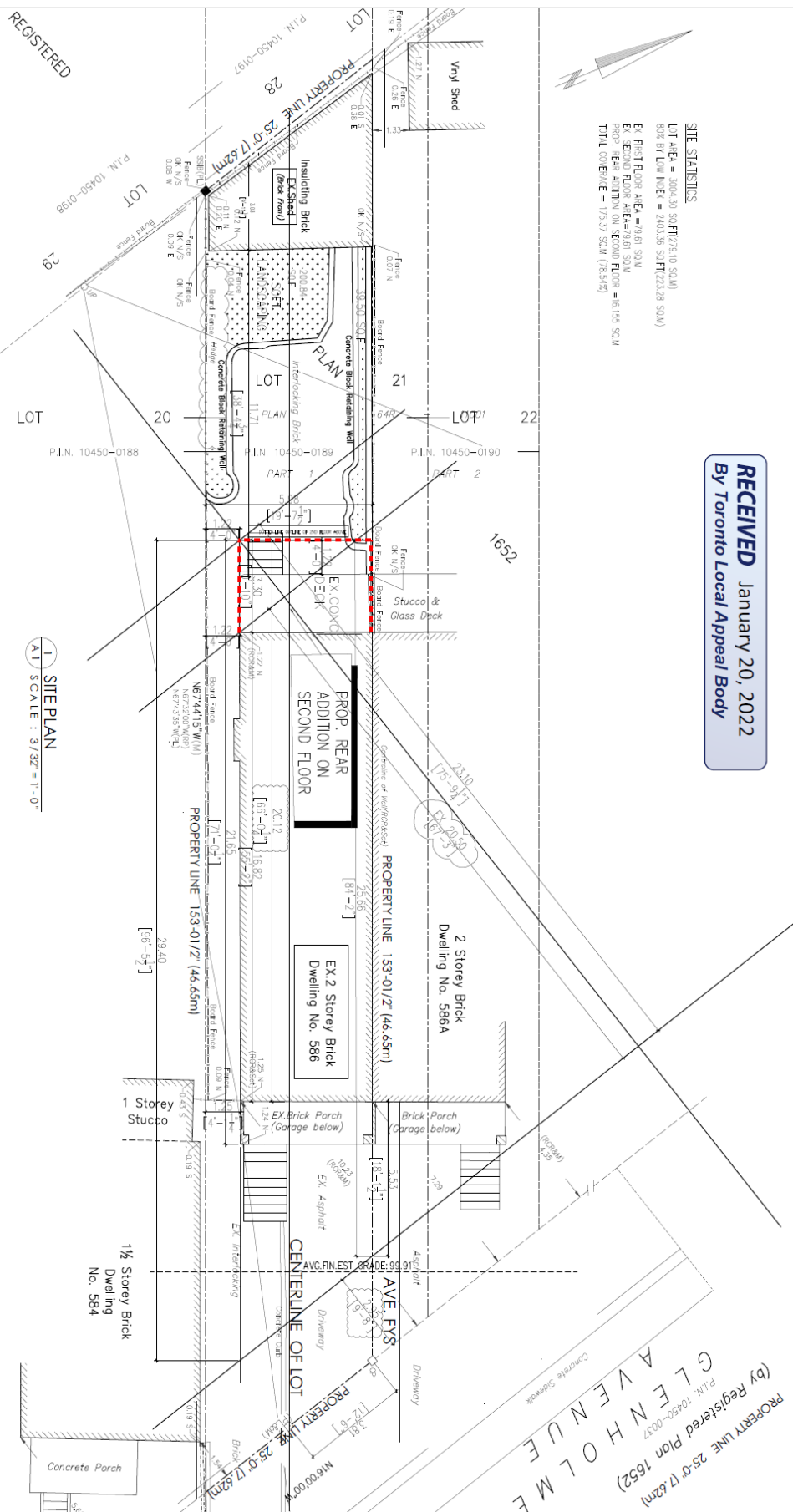
- Site Plan (A1) dated January 20, 2022.

Received by Committee of Adjustment April 23, 2021, dated March 2021

- Rear Elevation (A5),
- Side Elevation (A6),
- Front Elevation (A7), and
- Second Floor Plan (A4), dated

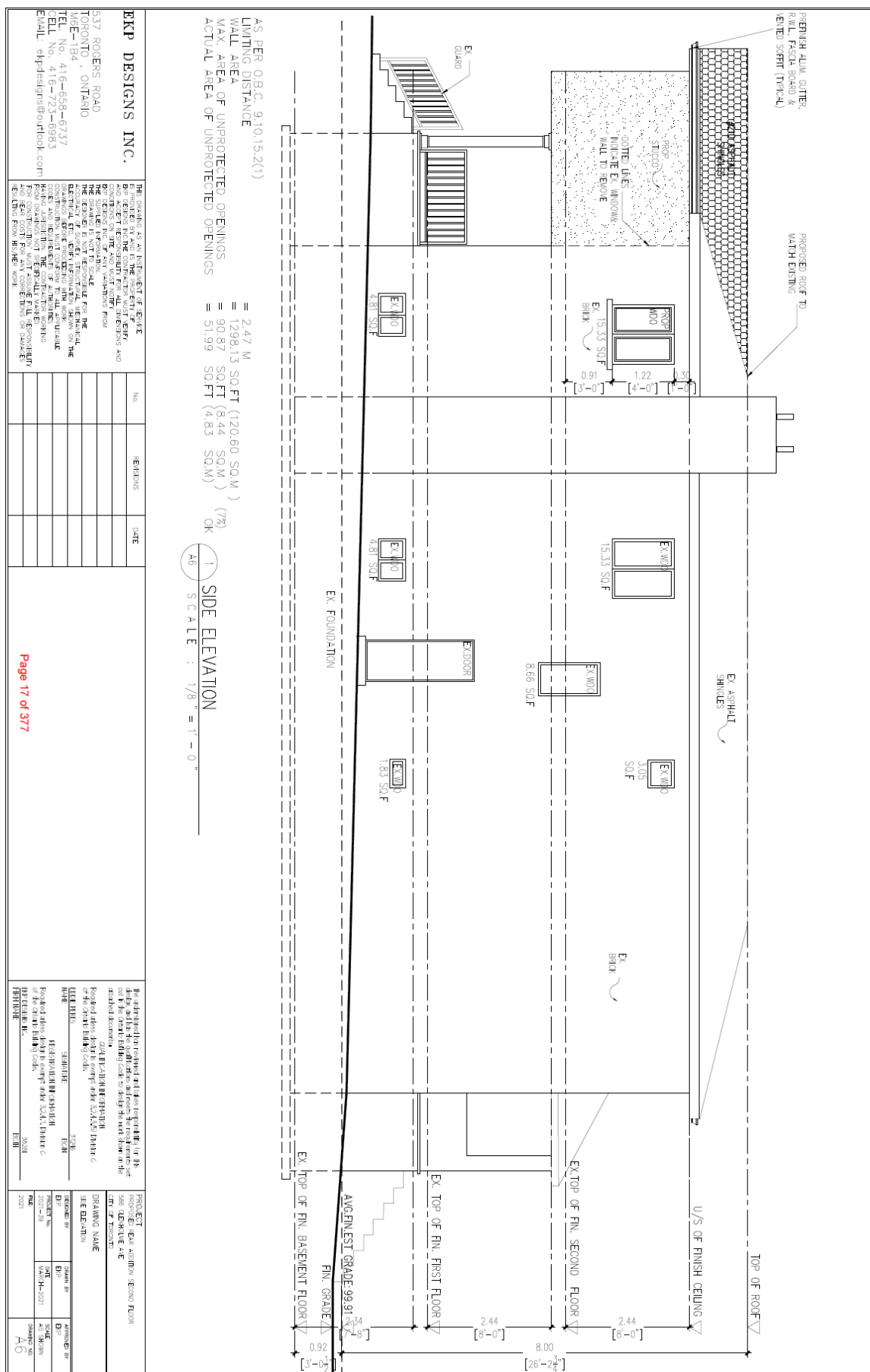
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By Toronto Local Appeal Body

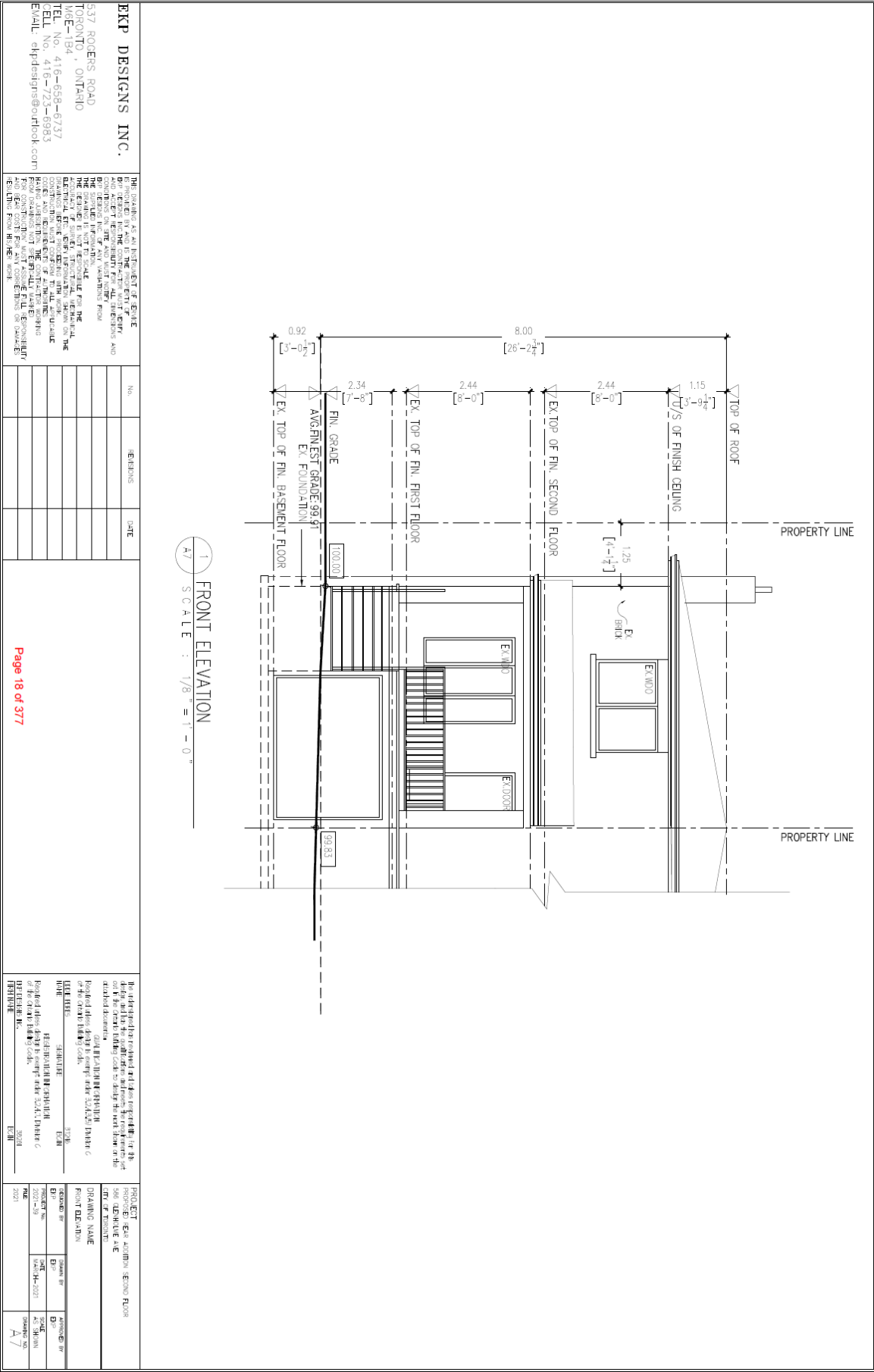
LOT AREA = 3004.30 SQ.FT.(79.10 SQ.M)
80% BY LOW INDEX = 2403.36 SQ.FT.(223.28 SQ.M)
EX. FIRST FLOOR AREA = 79.61 SQ.M
EX. SECOND FLOOR AREA = 79.61 SQ.M
PROP. REAR ADDITION ON SECOND FLOOR = 16.155 SQ.M
TOTAL COVERARGE = 175.37 SQ.M (78.54%)

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