

DECISION AND ORDER

Decision Issue Date Wednesday, March 09, 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): NICHOLAS MEHTA

Applicant(s): META FORM ARCHITECTS INC

Property Address/Description: 217 GLENCAIRN AVE

Committee of Adjustment File

Number(s): 20 200631 NNY 08 MV (A0513/20NY)

TLAB Case File Number(s): 20 230639 S45 08 TLAB

Hearing date: Friday, May 21, 2021

DECISION DELIVERED BY J. TASSIOPOULOS, Presiding Member

APPEARANCES

NAME	ROLE	REPRESENTATIVE
META FORM ARCHITECTS INC	APPLICANT	
NICHOLAS MEHTA	APPELLANT	RYLEY MEHTA
SO-JEONG CHAE	PARTY/OWNER	RUSSELL CHEESEMAN
STEVEN QI	EXPERT WITNESS	

INTRODUCTION & BACKGROUND

On December 4, 2020, the City of Toronto (City) Committee of Adjustment (COA) approved eight variances requested for the COA file number A0513/20NY, for the property located at 217 Glencairn Avenue, to construct a new single detached dwelling.

The COA's approval of the variances was appealed to the Toronto Local Appeal Body (TLAB) by Mr. Nicholas Mehta on December 18, 2020, and the TLAB issued a

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Notice of Hearing setting a Hearing Date for May 6, 2021. Subsequently, the Hearing date was adjourned, and a new Hearing date was issued for May 21, 2021.

The Applicant / Owner was represented by Mr. Russell Cheeseman (counsel) and Steven Qi an expert witness, who provided land use planning evidence for this application. Mr. Nicholas Mehta, the Appellant, was in attendance with Mr. Ryley Mehta also appeared as his representative.

At the commencement of the Hearing, I advised, as per Council direction, that I had visited the site and surrounding neighbourhood and reviewed the pre-filed materials in preparation of the Hearing, but it was the evidence to be heard that was of importance.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Appellant / Owner for the construction of a new single detached dwelling, appropriate under applicable policy and statutory tests?

Does the proposed new dwelling create adverse impacts to the adjacent neighbours and surrounding neighbourhood?

Does the Appellants assertion that the proposed height variance for the new dwelling cause an adverse impact with respect to the sunlight that will be provided to their dwelling and property?

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

Mr. Cheeseman, in his opening statement, indicated that the variances originally approved by the COA were being sought and that during the Hearing he would be referring to the Appellant's Witness Statement to illustrate that there was no planning basis for the appeal.

Mr. Ryley Mehta, acting as a representative for Nicholas Mehta, in his opening statement indicated that the appeal would focus on the variances for sideyard setback and building height and how these variances would negatively impact the amount of light into the backyard and enjoyment of their property.

Following the opening statements, Mr. Cheeseman called upon Mr. Steven Qi as an expert witness, and he was affirmed. Mr. Qi provided a synopsis of his planning experience, stating that he is a Registered Professional Planner and Full Member of both the Ontario Professional Planners Institute and the Canadian Institute of Planners. Given his experience, outlined verbally and in his Expert Witness Statement (EWS), which included his signed Acknowledgement of Expert's Duty (Exhibit #1), I qualified Mr. Qi to provide opinion evidence in land use planning.

Mr. Qi described the surrounding neighbourhood as predominantly composed of single-detached dwellings that are two to three storeys in height including semi-detached and townhouse dwellings and that the area is designated as *Neighbourhoods* in the Official Plan. He indicated that the subject property was located adjacent to the Appellant's backyard.

Mr. Qi went through the eight variances being sought, seven under Zoning By-law 569-2013 and one under the former City of Toronto Zoning By-law 438-86 which pertained to a height variance. He explained that because the performance standard for height in Zoning By-law 569-2013 was still under appeal, the height requirements from the former Zoning By-law 438-86 were still in force and required a variance. He further noted that in paragraph 9.2 of his EWS, he indicated a total of six variances in error and that it was eight variances being sought by the Applicant.

Mr. Qi provided a summary review of both the PPS and the Growth Plan with respect to the proposal and concluded that in his opinion, the proposal was consistent with provincial policy and referred to sections 10 and 11 of his Witness Statement (Exhibit #1, pgs. 988-991 of 1013).

Mr. Qi provided an overview of the neighbourhood and referred to his EWS (Exhibit #1, p. 992 of 1013) in which he identified his broader geographic neighbourhood study area as bounded by Glengrove Avenue West to the north, Lytton Boulevard to the south, Avenue Road to the west, and Duplex Avenue to the east. He indicated that this study area was established with respect to the criteria outlined in Section 4.1.5 of the OP. In his analysis of the neighbourhood, he noted that the massing and scale of replacement dwellings was greater in size than those of the original dwellings and that variances related to FSI were consistently sought for new replacement dwellings in the neighbourhood study area.

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Mr. Qi also highlighted the immediate neighbourhood study which consisted of the north and south sides of dwellings facing onto Glencairn Avenue east to Roswell Avenue which was also consistent with the criteria outlined in Section 4.1.5 of the OP.

Referring to section 2.3.1 *Healthy Neighbourhoods*, he opined that the proposal would in terms of form and dwelling type, although not identical in style, would still respect and reinforce the physical character of the neighbourhood. He further explained that the redevelopment of the site with the proposed dwelling would fit within the neighbourhood and illustrated this by reviewing the photo documentation of the neighbourhood he provided in his EWS. (Exhibit #1, p. 906 to 976 of 1013). He concluded his photo review of the neighbourhood study area by stating that the proposed dwelling would fit harmoniously within the neighbourhood and that it was consistent in form, height and scale with new construction and redevelopment that has occurred in the neighbourhood.

Mr. Qi provided an analysis of the proposal in relation to section 3.1.2 *Built Form* of the OP, explaining that the proposed dwelling was appropriate in terms of its massing, orientation to the street, scale, proportion, and building setbacks that are consistent with other existing and redeveloped residential dwellings in the neighbourhood. The proposal will fit within the neighbourhood and street predominantly composed of two and three storey buildings, adding that FSI cannot be perceived when a dwelling is viewed from the street.

Mr. Qi referenced section 4.1.5 in the OP with respect to development criteria in neighbourhoods explaining that the proposal will maintain the existing physical character of the neighbourhood as it will not alter lot patterns and was consistent with the prevailing heights and massing, building type, and setbacks. He noted that although the front yard setback of the proposal does not comply with Zoning By-law 569-2013 it is consistent with the front yard setback of the existing dwelling on the property and is consistent with setbacks of adjacent and other properties on the street. With respect to the side yard setback variance, he indicated that similar and smaller sideyard setbacks are present in the neighbourhood and his analysis of other COA approvals included similar setback variances.

Mr. Qi concluded that the proposal is for a built form similar to and compatible with what already exists and under construction within the neighbourhood and that it was his opinion, based on the evidence presented, that the variances maintain the general purpose and intent of the Official Plan.

Mr. Qi reviewed the variances sought with respect to the Zoning By-law as follows:

- **Front yard setback** – he noted that the setback was an average of the setback to the street property line of the adjacent dwellings on either side equaling 10.085m and that it was the northeast portion of the proposed dwelling that triggered this variance request. He further noted that the front yard setback of the existing house was 9.24m which was identical to the setback variance of 9.24m being sought for this proposal;

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- **Front yard setback to dormers** – he explained that dormers on the front elevation also needed to be setback 10.085m from the front yard, however, the proposal includes three dormers that are setback 9.6m which is setback further from the main wall by 0.36m;
- **Maximum building length** – he explained that the main wall of the proposed dwelling to the main rear wall of the building was approximately 19.18m and that the requested 20.22m, whereas 17.0m is permitted, was due to the inclusion of a bay window on the rear elevation which occurred for small portion, 3.35m, of the whole width of the rear elevation. He further noted that the existing dwelling had a greater building length than the proposal;
- **Maximum building depth** – noting that the building depth is measured from the front yard setback, in this case 10.085m, the proposal required a building depth variance of 19.38m whereas 19.0m is permitted. He opined that the purpose of the By-law was to ensure a consistent the depth of the building is consistent between dwellings in the neighbourhood and regulate the placement of the building it relations to the street. He also indicated that once again the proposed building depth would be shorter than that of the existing dwelling;
- **Maximum building floor space index (FSI)** –the FSI requested is for 0.54 x the area of the lot whereas 0.35 x is permitted. He explained that this resulted in 173.21 m² over what was permitted but noted that this added area was deployed over three floors and result in approximately 57.73 m² of added massing on each floor. This was consistent with the massing and FSI approved by the COA on Glencairn Avenue including 211 (0.5x), 204 (0.53x), and 198 (0.57x) Glencairn Avenue. He further noted that FSI could not be perceived from the street;
- **Minimum side yard setbacks** - the variance sought was for a side yard setback on both the east and west sides of the proposed dwelling of 0.91m whereas 1.5m is required. He indicated this was only for small portions of the sideyard near the front of the proposed building and that the majority of the side yard setback was 1.22m on both sides. He noted that the intent of this standard was to provide for adequate access from the front to the rear of the property and for storm water infiltration and opined that the 0.91m allows for adequate access and infiltration. Referring to his analysis of COA approvals in the neighbourhood study area with respect to side yard setback requirements, he noted that similar variances had been approved on Glencairn Avenue; and,
- **Maximum building height** - the variance for height was due to the different way in which building height was calculated between Zoning By-laws 438-86 and 569-2013 and that the variance being sought was for 10.72m whereas the former Zoning By-law permits a maximum height of 10.0m. He explained that the variance was technical in nature because the maximum height in Zoning By-law 569-2013 is also 10.0m, however, because height is

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calculated differently under this Zoning By-law, the proposal complies with its height requirement.

Mr. Qi opined that for these reasons, the variances both individually and collectively maintained the purpose and intent of the Zoning By-law.

Referring to the test of whether the proposal is desirable for the appropriate development of the land, Mr. Qi, indicated that the proposal was consistent with other redevelopment that has occurred recently in the neighbourhood, it will contribute to its regeneration, and being similar to dwellings already present, it would fit within the neighbourhood study area. For these reasons the proposal was desirable for the appropriate development and use of the subject property.

With respect to whether the application was minor in nature, Mr. Qi, stated that the proposal will not result in any undue impact on the adjacent dwellings in the neighbourhood, it would not be very different from a proposal developed in accordance with the permitted zoning, and it is consistent with previous COA approvals in the neighbourhood, and for these reasons is minor.

Mr. Nicholas Mehta began his evidence by suggesting that the variances sought would have an impact on the value of his property and Mr. Cheeseman objected to the statement because it wasn't relevant to the variance and that evidence had not been submitted with an analysis indicating the impact, of the variances sought on the value of their property.

Mr. Nicholas Mehta then provided an analysis of sunlight/shadow based on two diagrams submitted as part of Exhibit #2. One diagram indicated the distance between their dwelling on 221 Glencairn Avenue to the proposed dwelling and its height of 10.72m and the other diagram to what would be a permitted building with a height of 10.0m. Based on his comparison of the difference in height he provided assumptions surrounding a calculation for impact on potential sunlight lost over the course of the year and he concluded that there would be the equivalent of 8 days of lost light per year to the rear main room of their house, based on the difference of 0.72m height variance.

Mr. Cheeseman in his cross-examination of Mr. Nicholas Mehta, asked if he was an architect or had consulted an architect with respect to shadow drawing diagrams presented and their preparation and he confirmed he had not.

Mr. Cheeseman asked Mr. Nicholas Mehta if the angle presented in the sunlight analysis diagram was calculated from the ground or if it was calculated from the rear window and Mr. Mehta noted it was from the ground. Given the concern with sunlight impact to the rear window, Mr. Cheeseman asked why the calculation had not occurred from the window, Mr. Mehta answered that it was also the impact on light to the rear yard that was of concern. When further asked how the calculation assumption of an average of 12 hours of sunlight was determined, Mr. Mehta mentioned that it was a high-level analysis and illustrative.

Mr. Cheeseman referred to the Appellant's Notice of Appeal, Form 1, and asked about the discrepancy on sunlight hour impact of 1500 hours, or approximately 62 days

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and that of the evidence provided during the Hearing of 8 hours. Mr. Mehta explained that they updated the number of days based on the calculations in their analysis diagrams. Mr. Cheeseman also asked what impact there was on the garden as indicated in the appeal since it was a hardscaped space which he illustrated by presenting a photo of the rear yard of 221 Glencairn Avenue. Mr. Mehta answered that there was planting but it was hidden by the privacy fence because it was next to it which the photo did not show.

In closing argument, Mr. Cheeseman stated that Mr. Qi was the only expert witness proffered at the Hearing and that he provided evidence in a methodical and thorough manner, he indicated that the eight variances meet the four statutory tests both individually and cumulatively and that his evidence was not questioned by the Appellant. In contrast he noted that the Appellant did not provide any evidence with respect to the four tests and the variances or provide an expert witness to make their case. He noted that the only evidence put forward was a layman diagram provided by the Appellant, that did not accurately depict the existing or proposed situation. He explained that the existing building casts shadows and that even without a variance for height a dwelling with a 10.0m height will still cast a shadow. He argued that the test is not whether there is no impact but whether it rises to the level of an undue adverse impact.

Mr. Ryley Mehta, in his closing argument, indicated that the requested variances will have an impact because a taller wall, that is closer to his property will cast a longer shadow. He concluded that the Appellant was hoping that their neighbours would have been more collaborative in dealing with their concerns.

ANALYSIS, FINDINGS, REASONS

In consideration of the evidence presented during the Hearing, I found Mr. Qi's expert evidence to be thorough and uncontroverted. He provided a review and analysis of the variances and land use planning policy with respect to the variances being sought. Mr. Nicholas Mehta's evidence on the other hand relied on a poorly conceived diagrammatic analysis that as Mr. Cheeseman pointed out, in his closing argument, did not accurately depict the existing or proposed situation. In his own admission, Mr. Mehta indicated it was a high-level illustrative analysis that he prepared himself. Regardless of the accuracy, as Mr. Cheeseman's noted, shadow studies are not typically prepared for residential submissions with 10.0m heights because some level of shadowing is, indeed, expected in an urban situation. Furthermore, I agree, that what needs to be considered is not whether there is impact from shadowing but whether a proposal will result in creating an undue adverse impact.

Given the modest height increase and side yard setback decrease proposed by the Applicant, the evidence provided by the Appellant, did not prove, or illustrate that the proposal variances would result in an undue adverse impact to their property.

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Mr. Qi's analysis of the variances was clearly presented and demonstrated that the variances sought were minor and met the "four tests" as set out in Section 45(1) of the *Planning Act*. My assessment of the variances is as follows:

- **Front yard setback and front yard setback to dormers** – I am satisfied that the setback variances are appropriate and are in line with the front yard setback of the existing dwelling;
- **Maximum building length** – given that part of the variance is due to measurements to small portions of articulated wall faces and that the existing dwelling has a greater building length, the proposed building length is appropriate with respect to this property;
- **Maximum building depth** – the required front yard setback translates into the proposed building having a depth of 19.38m where 19.0m is required. Given that the required front yard setback triggers this modest increase and that the existing dwelling has a greater building depth, I find this variance is minor and appropriate;
- **Maximum building floor space index (FSI)** – the evidence provided indicated that the increased FSI and the way its massing was deployed on the property could not be perceived from the street. I find the examples of recent developments in the immediate study area with similar or greater FSI and the photo documentation suggest that the FSI variance as presented in the plans within this context is appropriate;
- **Minimum side yard setbacks** - evidence was presented of other recent COA approvals with similar side yard setbacks along Glencairn Avenue, and only a small portion of the proposed dwelling has a 0.9m setback with the majority of the side yard setback being at 1.22m. I am satisfied that this illustrates that there will still be reasonable access from front to rear and maintenance and that the variance is appropriate;
- **Maximum building height** - this was the biggest concern expressed by the Appellant; however, in considering Mr. Qi's evidence that the trigger for the variance was due to the difference on how height is calculated between Zoning By-laws 438-86 and 569-2013 and that the variance is only required from the former Zoning By-law 438-86, I find that this variance is, indeed, minor.

With respect to the variances sought, I am satisfied that they, both individually and cumulatively, meet the "four tests" as set out in Section 45(1) of the *Planning Act*. For the reasons above recited, I find that the general intent and purpose of both the Official Plan and the Zoning By-law are maintained, that the proposed variances are appropriate for the development of the land, and that variances sought are minor in nature.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision, dated December 4, 2020, is set aside. The following variances are authorized subject to the condition listed below:

1. Chapter 10.5.40.60.(7)(A), By-law 569-2013

A roof projection must comply with the following, a dormer projecting from the surface of a roof may not have any wall of the dormer closer to a lot line than the required minimum building setback of 10.085m.

The proposed 3 front yard dormers are 9.6m from the front lot line.

2. Chapter 10.20.40.20.(1), By-law 569-2013

The permitted maximum building length is 17.0m.

The proposed building length is 20.22m.

3. Chapter 10.20.40.30.(1), By-law 569-2013

The permitted maximum building depth is 19.0m.

The proposed building depth is 19.38m.

4. Chapter 10.20.40.40.(1)(A), By-law 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot.

The proposed floor space index is 0.54 times the area of the lot.

5. Chapter 10.20.40.70.(1), By-law 569-2013

The required minimum front yard setback is 10.085m.

The proposed front yard setback is 9.24m.

6. Chapter 10.20.40.70.(3)(D), By-law 569-2013

The required minimum side yard setback is 1.5m.

The proposed east side yard setback is 0.91m.

7. Chapter 10.20.40.70.(3)(D), By-law 569-2013

The required minimum side yard setback is 1.5m.

The proposed west side yard setback is 0.91m.

8. Section 12(2) 260(III), By-law 438-86

The maximum permitted building height is 10m.

The proposed building height is 10.72m.

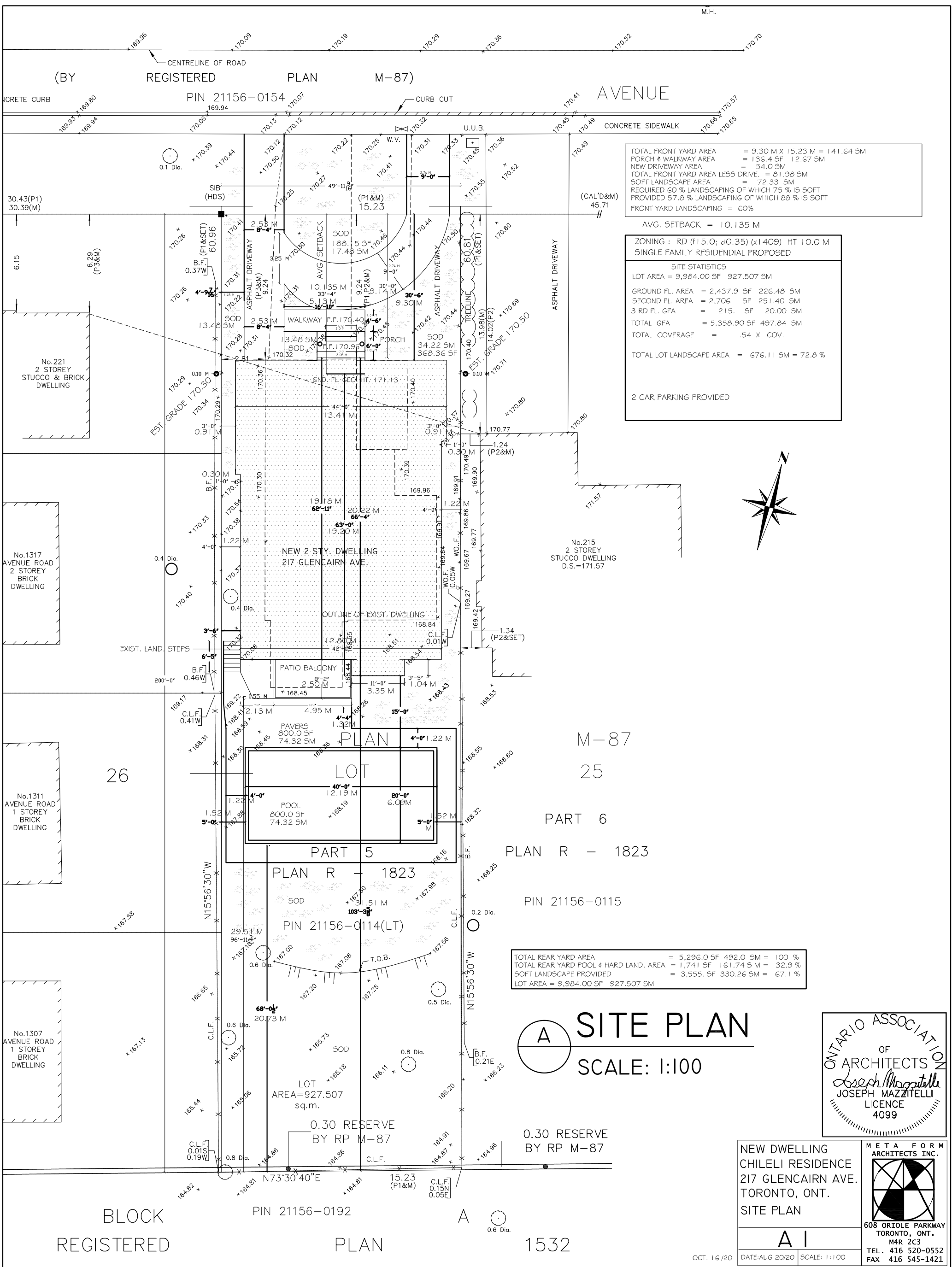
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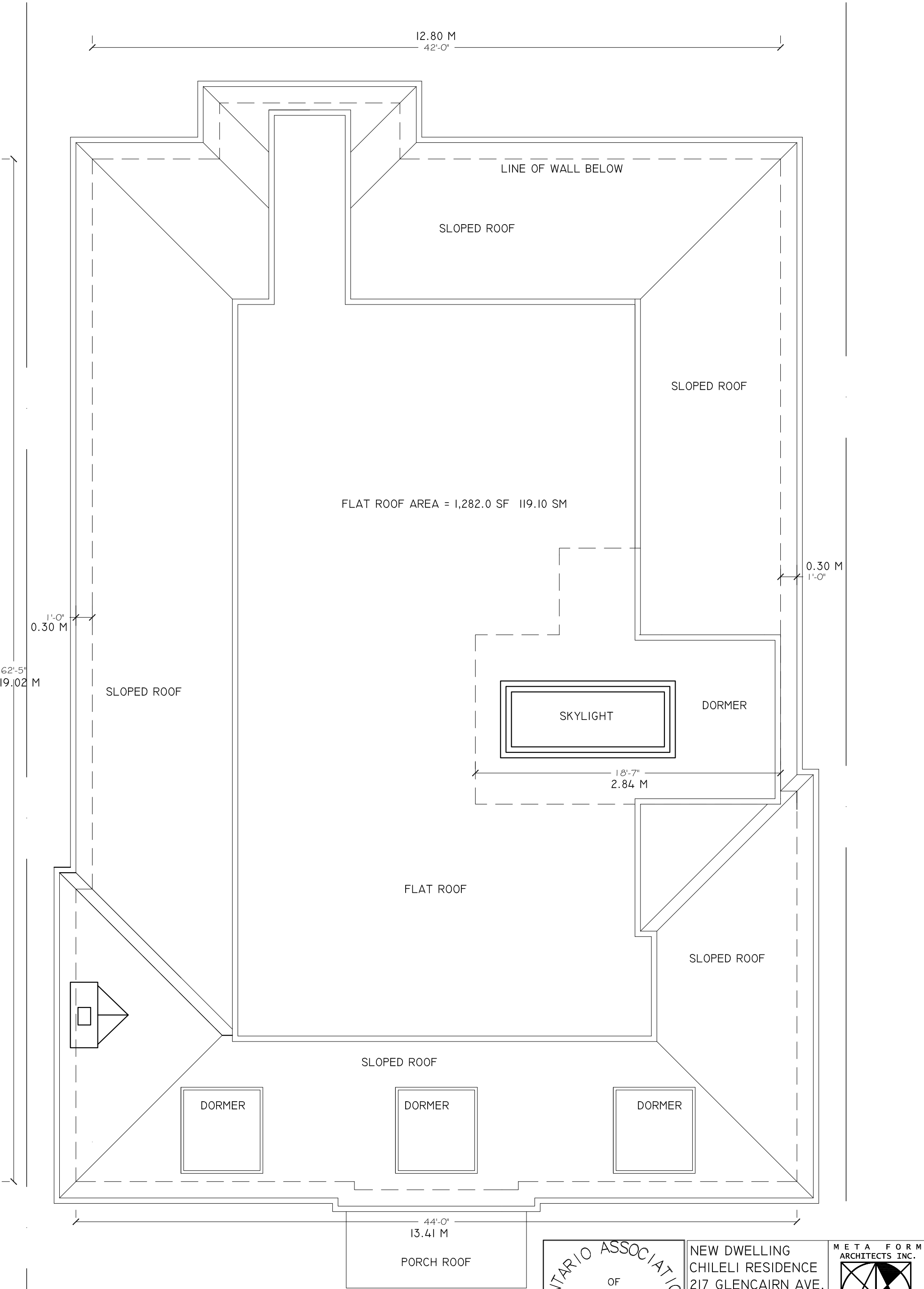
Required Conditions

1. The proposed development shall be constructed substantially in accordance with the site plan, roof plan, and building elevations (Drawings A1, A6, A7, A8, A9, and A10), dated October 16/20, and found in **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are **NOT** authorized.
2. Submission of 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.

X

John Tassiopoulos
Panel Chair, Toronto Local Appeal Body





A ROOF PLAN
SCALE: 1:75

OCT. 16 /20



NEW DWELLING
CHILELI RESIDENCE
217 GLENCAIRN AVE.
TORONTO, ONT.
ROOF PLAN

A 6

DATE: AUG 20/20

SCALE: 1:75





A FRONT ELEVATION

SCALE: 1:75

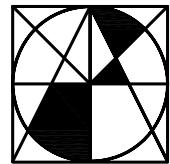


NEW DWELLING
CHILELI RESIDENCE
217 GLENCAIRN AVE.
TORONTO, ONT.
FRONT ELEVATION

A 7

DATE: AUG 20/20 SCALE: 1:75

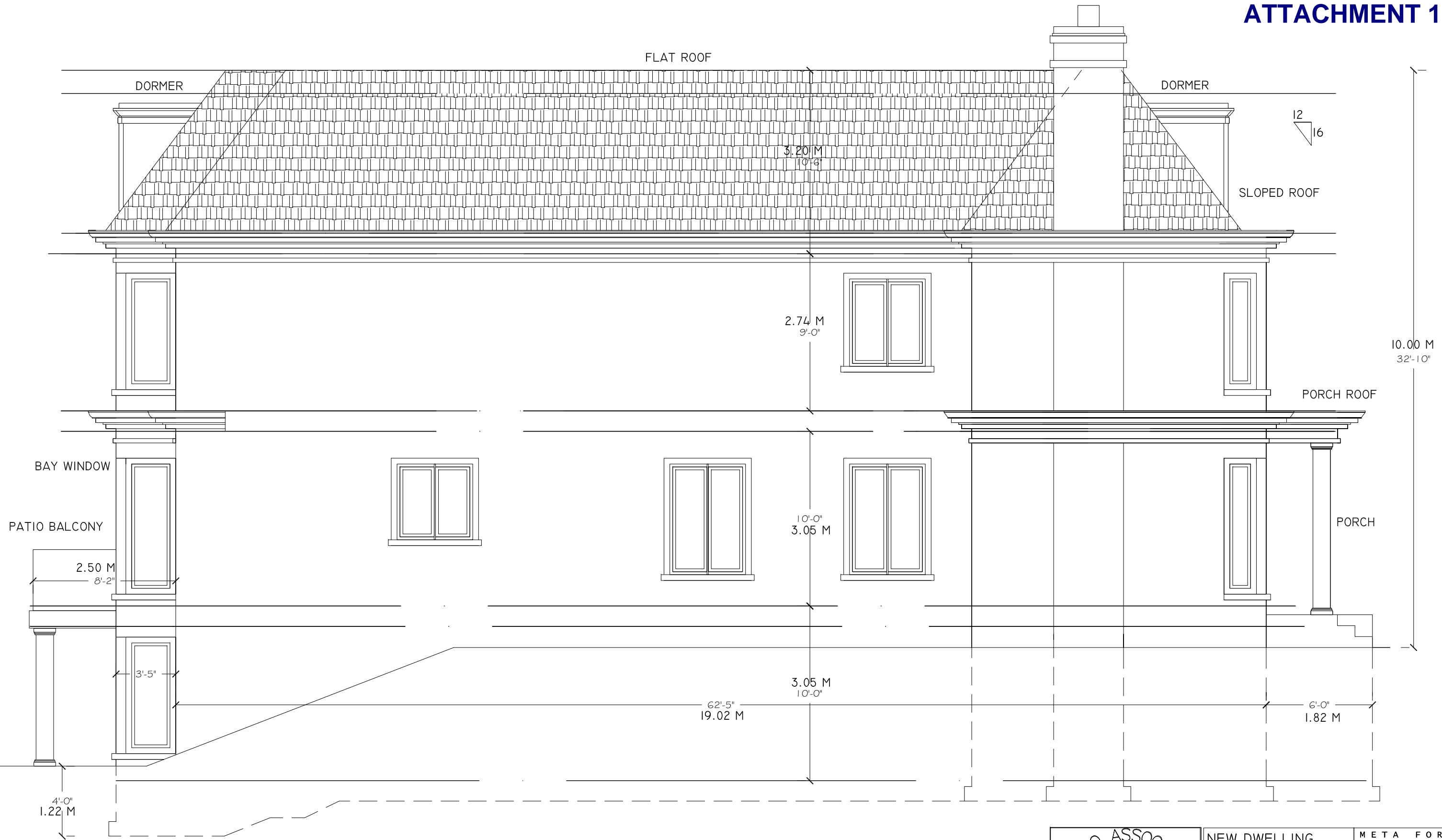
META FORM
ARCHITECTS INC.



608 ORIOLE PARKWAY
TORONTO, ONT.
M4R 2C3
TEL. 416 520-0552
FAX 416 545-1421



REAR ELEVATION
SCALE: 1:75



A EAST SIDE ELEVATION
SCALE: 1:75



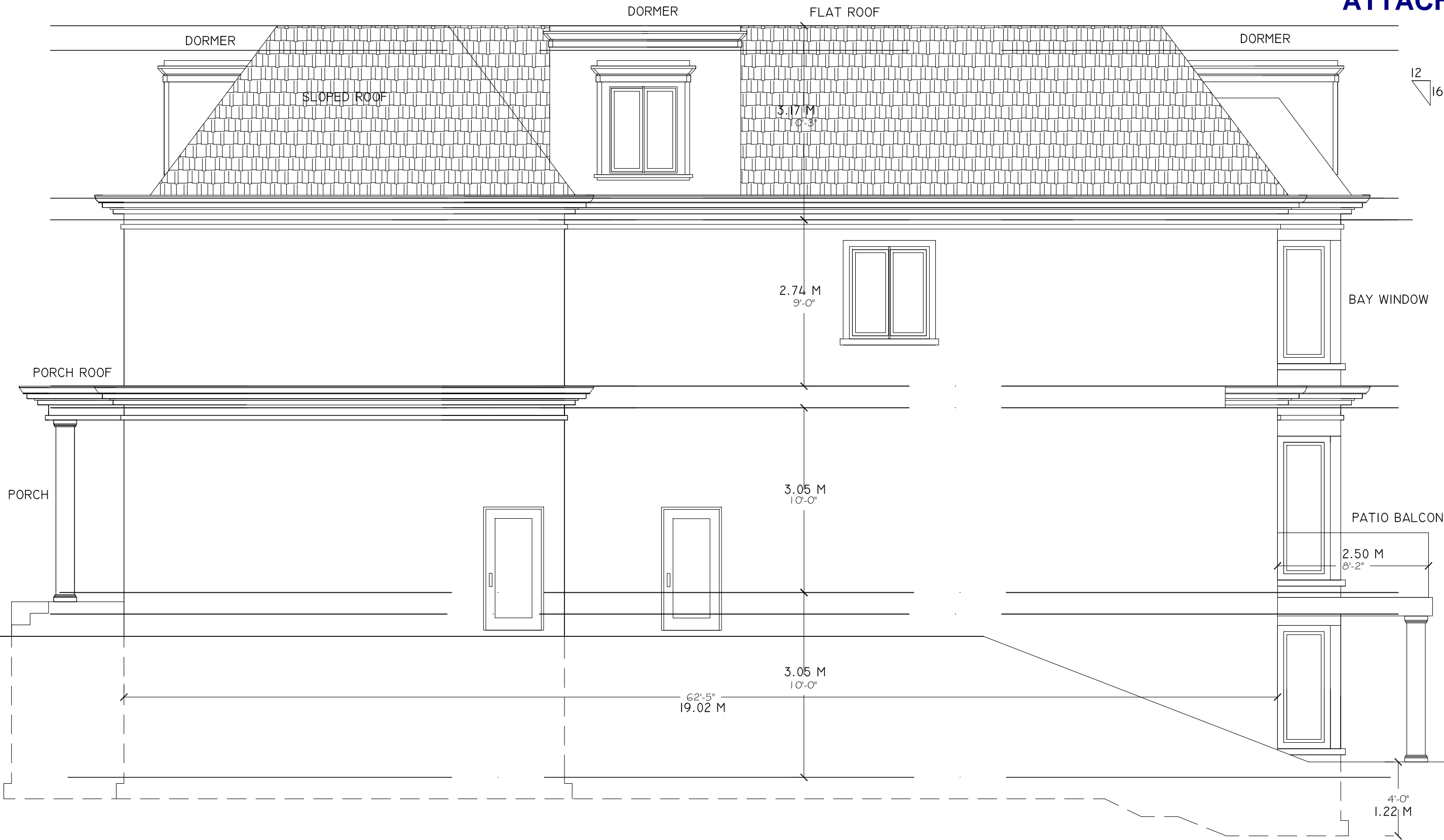
NEW DWELLING
CHILELI RESIDENCE
217 GLENCAIRN AVE.
TORONTO, ONT.
EAST ELEVATION

A 9

DATE: AUG 20/20 SCALE: 1:75

META FORM
ARCHITECTS INC.

608 ORIOLE PARKWAY
TORONTO, ONT.
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TEL. 416 520-0552
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A WEST SIDE ELEVATION
SCALE: 1:75



NEW DWELLING
CHILELI RESIDENCE
217 GLENCAIRN AVE.
TORONTO, ONT.
WEST ELEVATION

A 10

DATE: AUG 20/20 SCALE: 1:75

META FORM
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