Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Wednesday, April 20, 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): BRYAN ADRIAN KIRK HARTOG

Applicant(s): AVERTON DESIGN BUILD INC.

Property Address/Description: 8 THIRTY SEVENTH STREET

Committee of Adjustment File

Number(s): 21 180079 WET 03 MV (A0364/21EYK)

TLAB Case File Number(s): 21 206739 S45 03 TLAB

Hearing date: Monday, March 21st, 2022

Deadline Date for Closing Submissions/Undertakings: March 29, 2022

DECISION DELIVERED BY TLAB Panel Member A. Bassios

REGISTERED PARTIES AND PARTICIPANT

Appellant	Bryan Adrian Kirk Hartog
Appellant's Legal Rep.	Chris Barnett
Applicant	Averton Design Build Inc.
Party	City of Toronto
Party's Legal Rep.	Marc Hardiejowski
Party's Legal Rep.	Adam Ward
Party	Judy Gibson

Participant	Christine Mercado
Participant	Nicola Walenta
Participant	Alexander Donald
Participant	Andy Choles
Participant	Ron Jamieson
Expert Witness	Eldon Theodore

INTRODUCTION

This is an Appeal of the Etobicoke York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 8 Thirty Seventh St (subject property). The purpose of the application is to construct a new detached dwelling with an attached garage.

The subject property is located in the Long Branch neighbourhood of the former City of Etobicoke. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD (f12.0; a370; d0.35) under Zoning By-law 569-2013.

In attendance at the Hearing were:

- Chris Barnett, legal counsel for the Owner/ Appellant, Expert Witness Eldon Theodore (Land Use Planning) and Brittany Wong (Project Manager);
- Mark Hardiejowski, Adam Ward and Adam Kouri (student), legal counsel for the City of Toronto;
- Christine Mercado and Judy Gibson, representing the Long Branch Neighbourhood Association.

Prior to the Hearing Day, the TLAB was advised that on the basis of the revised plans filed with the TLAB, there was no longer any opposition to the requested variances.

BACKGROUND

The Applicant proposes to demolish the existing detached dwelling and construct a new two-storey single detached dwelling.

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

1. **Section 10.20.40.20. (1), By-law 569-2013 - Building Length**
   The maximum permitted building length is 17 m.
   The proposed dwelling will have a maximum building length of 17.68 m.

2. **Section 10.20.40.40. (1)(A), By-law 569-2013 – Floor Space Index**
The maximum permitted floor space index is 0.35 times the lot area.
The proposed dwelling will have a maximum floor space index of 0.45 times the lot area.

3. **Section 10.20.40.10. (2)(A)(i), By-law 569-2013 – Maximum Main Wall Height**
The permitted maximum height of all front exterior main walls is 7 m.
The proposed height of the front exterior main walls is 7.49 m.

4. **Section 10.20.40.10.(2)(A)(ii), By-law 569-2013 - Maximum Main Wall Height**
The maximum permitted height of all rear exterior main walls is 7 m.
The new dwelling will have a rear exterior main wall height of 7.43 m.

5. **Section 10.20.40.50.(1)(B), By-law 569-2013 - Platforms**
The maximum permitted area of a platform above a second storey is 4 m^2.
The proposed dwelling will have a second storey platform 5.45 m^2.

MATTERS IN ISSUE

This Appeal arises from a refusal of variances by the COA. The concerns of the City and the Long Branch Neighbourhood Association having been resolved, the matter at issue is exercise of the TLAB's mandate to establish that any approval of the requested variances satisfies the four tests of s.45(1).

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 of 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.

Theodore

Mr. Theodore described the planning context as follows:

- The neighbourhood continues to evolve and change in a healthy way.
- The proposed redevelopment has been designed to be in keeping with existing and emerging dwellings within the Immediate and Broader Context Area in terms of deploying traditional pitched roof style, integrating similar building materials and an overall building massing and orientation that is reflective of emerging dwellings.
- The variances sought are in keeping with the design direction of the Long Branch Character Guidelines.
- The original proposal has been revised multiple times to address City staff and resident concerns.
- Proposed building length, floor space index, front and rear main wall height have all been reduced from the original application.

Long Branch Neighbourhood Association (LBNA)

Ms. Mercado confirmed that the LBNA did not oppose the application. However, she wanted to be sure that the commitment to specific materials was secured. She sought assurances that the proposed garage will have features that will break it up, as shown in the drawings, and that the exterior materials will be brick and wood siding.

ANALYSIS, FINDINGS, REASONS

I accept Mr. Theodore's evidence that the proposal as revised is consistent with the Provincial Policy Statement and conforms to the Growth Plan.

General Intent and Purpose of the Official Plan

Mr. Theodore presented a thorough review of Official Plan policies. OP Policy 4.1.5 c) merits some further discussion in this Decision.

> *4.1.5 Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:…*

c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;

- Prevailing Heights, Massing and Scale – Main Wall Height

I note that the proposal does not require a variance for maximum height. The requested variances are for front and rear main wall heights.

Mr. Theodore provided data reflecting previous approvals of height variances in the neighbourhood to support his opinion (Exhibit 3, Tab 32), along with photographic evidence (Exhibit 3, Tabs 4 and 5) of similar heights, massing and scale.

Of the nine approvals for front main wall height variances Mr. Theodore identified in the neighbourhood, all but two are for variances greater than what is requested for this proposal. Two of the variances are within the Immediate context of the subject property. I recognize that the table captures only those variances that have been required and approved within the last ten or so years.

Compliance with the Long Branch Neighbourhood Guidelines has resulted in a front facade that incorporates a porch, a ground related first floor and windows at the first and second storeys, all of which mitigate the imposition that an increased wall height may otherwise have had on the streetscape.

On the basis of the Mr. Theodore's evidence, I find that the proposed variances for front and rear main walls maintain the general intent and purpose of the Official Plan and of the Zoning By-law. I find that the requested variances for front and rear main wall height to be desirable for the development of the land and minor.

- Prevailing Density – Floor Space Index (FSI)

Mr. Theodore provided data reflecting previous approvals of floor space index variances in the neighbourhood. There have been fifty FSI variances granted in approximately the last ten years, seven being in the Immediate Context. I am satisfied that the proposed FSI respects and reinforces the prevailing density in the neighbourhood.

I find the proposed floor space index variance maintains the general intent and purpose of the Official Plan and the Zoning By-law and that it is both desirable for the development of the land and minor.

- Building Length

The table of variance approvals (Exhibit 3, Tab 32) shows that there have been four variances approved for building length in the neighbourhood over the term of data collection. Three of the four variances were granted for building length greater than the proposal.

The subject property's "keyhole" situation (that locates its south side yard contiguous to the rear yards of the properties facing on to Lake Promenade) mitigates any potential impact of the proposed variance of 68cm in building length.

I note that no rear yard setback variance is required.

I find that the proposed variance for building length maintains the general intent and purpose of the Official Plan and of the Zoning By-law. I find that the requested variance for building length to be desirable for the development of the land and minor.

- Area of Platform

The proposed second floor balcony is inset into the southwest corner of the house, mitigating any potential overlook or loss of privacy for neighbouring properties.

I concur with Mr. Theodore that the proposed variance for the area of the second floor balcony meets the four tests of s.45(1).

Conclusion

I find that the proposed variances, individually and cumulatively, meet the four tests as set out in s. 45(1) of the *Planning Act.*

I find that the revisions to the proposal that was submitted to the COA constitute reductions in the magnitude of the requested variances for floor space index, building length and front and rear wall height and I therefore find that no further notice is required under s.45(18.1.1).

To assure the Ms. Mercado (LBNA) that the stipulated exterior materials will be used in the construction of the proposal, counsel for the Applicant agreed to provide the TLAB with revised drawings noting materials to be used. The revised drawings have been submitted and approval of the variances will be conditional on construction in substantial accordance with these provided plans and drawings.

DECISION AND ORDER

The Appeal is allowed, in part. The variances listed in Appendix A are authorized, subject to the conditions contained therein.

X

A. Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

VARIANCES:

1. **Section 10.20.40.20. (1), By-law 569-2013 - Building Length**
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The proposed dwelling will have a maximum building length of 17.68 m.

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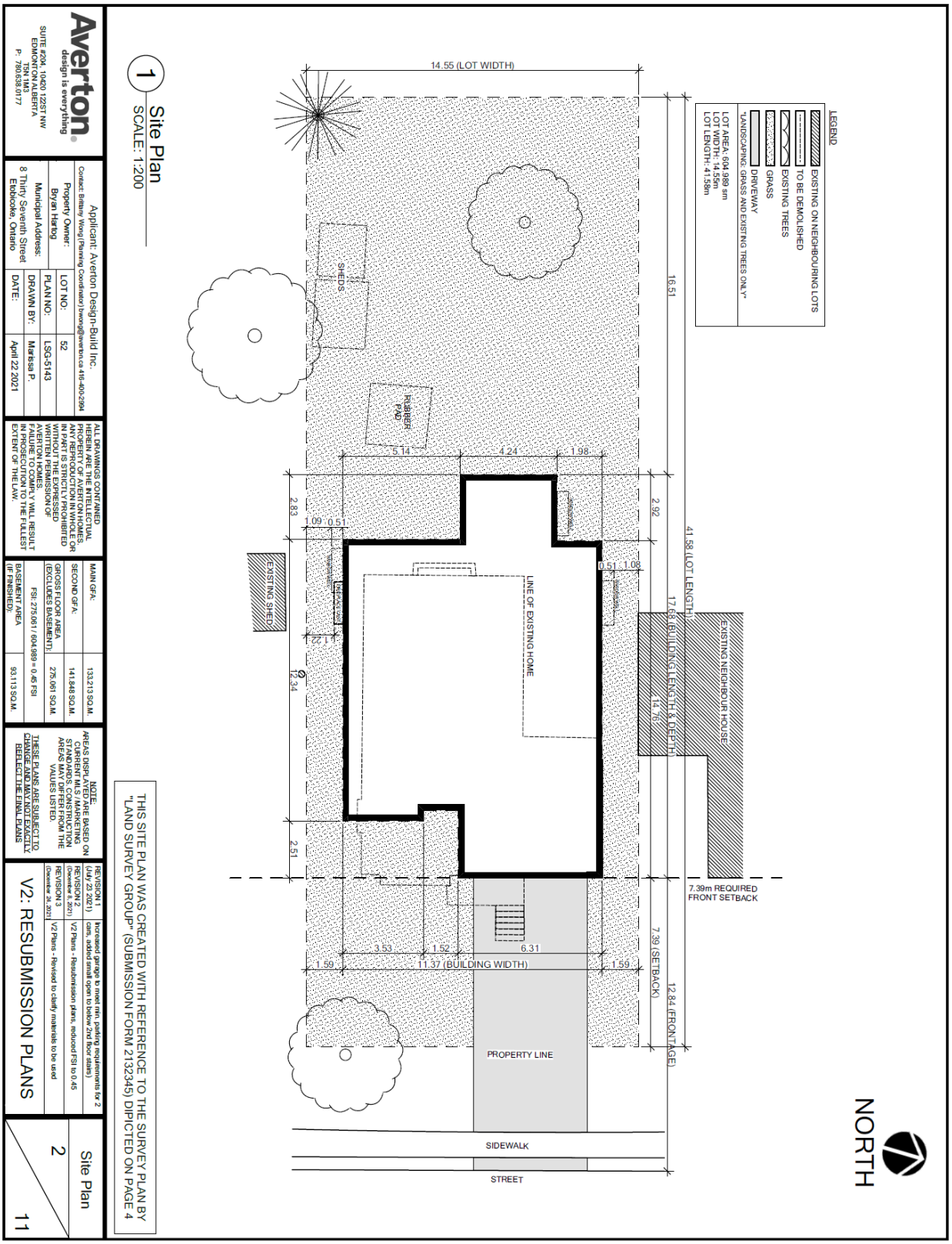
The proposed dwelling will have a second storey platform 5.45 m^2.

CONDITIONS:

1. The proposed dwelling shall be constructed substantially in accordance with the following plans and drawings, including the materials noted, as prepared by Averton, labelled “V2 Plans – Revised to clarify materials to be used”, and attached hereto.
    - Site Plan (2/11)
    - East Elevation (4/11)
    - North Elevation (5/11)
    - South Elevation (6/11)
    - West Elevation (7/11)
    - Section (11/11)

2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

Any other variances that may appear on these plans that are not listed in this decision are NOT authorized



1 Site Plan
SCALE: 1:200

THIS SITE PLAN WAS CREATED WITH REFERENCE TO THE SURVEY PLAN BY "LAND SURVEY GROUP" (SUBMISSION FORM 2132345) DIPICTED ON PAGE 4

Averton
design is everything
SUITE #204, 10420 122ST NW
EDMONTON ALBERTA
T5N 1M3
P: 780.638.0177

Applicant: Averton Design-Build Inc.
Contact: Brittany Wong (Planning Coordinator) bwong@averton.ca 416-400-2994

Property Owner:	Bryan Hartog	LOT NO:	52
Municipal Address:	8 Thirty Seventh Street Etobicoke, Ontario	PLAN NO:	LSG-5143
		DRAWN BY:	Marissa P.
		DATE:	April 22 2021

ALL DRAWINGS CONTAINED HEREIN ARE THE INTELLECTUAL PROPERTY OF AVERTON HOMES. ANY REPRODUCTION IN WHOLE OR IN PART IS STRICTLY PROHIBITED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF AVERTON HOMES. FAILURE TO COMPLY WILL RESULT IN PROSECUTION TO THE FULLEST EXTENT OF THE LAW.

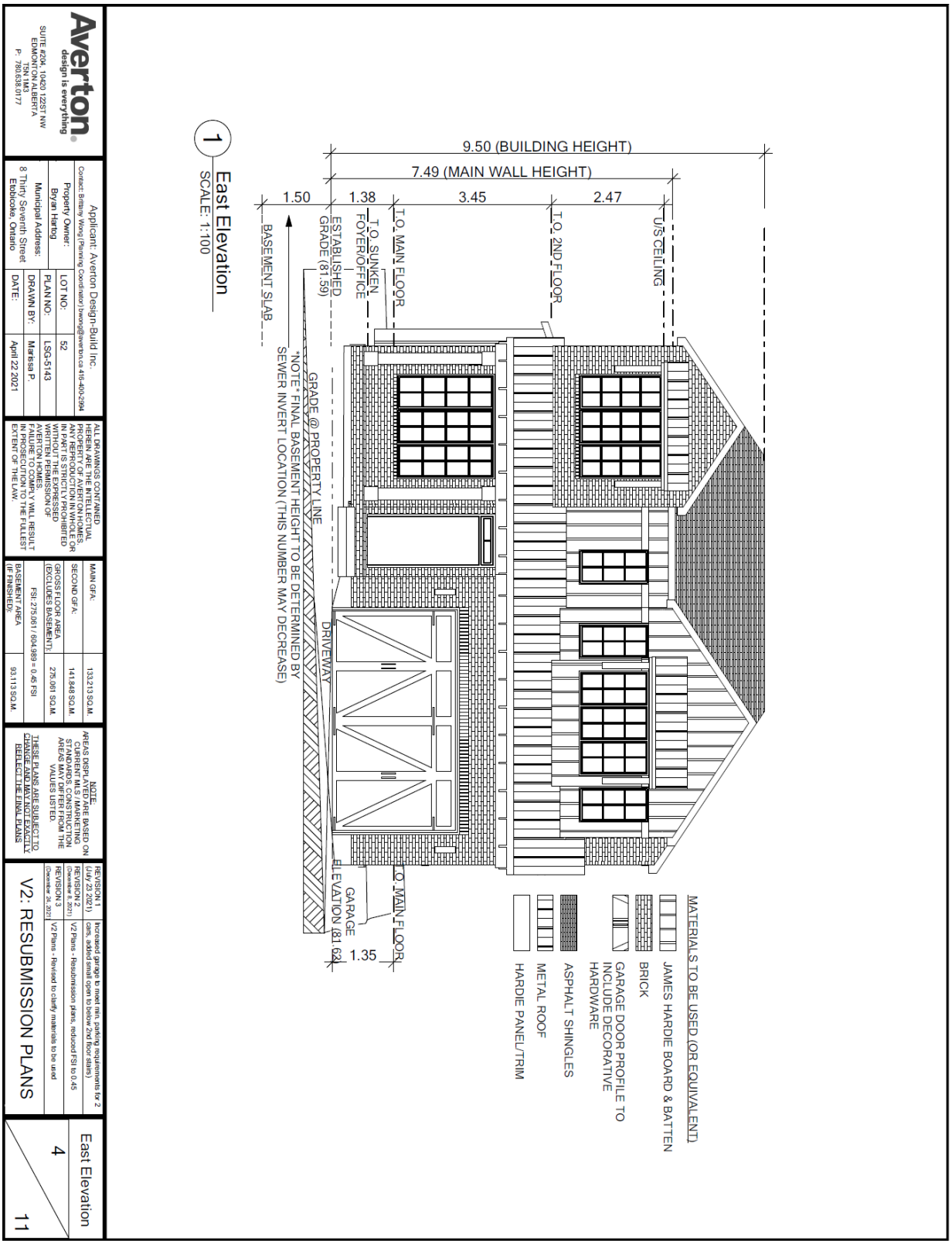
MAIN GFA:	133.213 SQ.M.
SECOND GFA:	141.848 SQ.M.
GROSS FLOOR AREA (EXCLUDES BASEMENT)	275.061 SQ.M
FSI: 275.061 / 604.989 = 0.45 FSI	
BASEMENT AREA (IF FINISHED)	93.113 SQ.M

NOTE:
AREAS DISPLAYED ARE BASED ON CURRENT MLS / MARKETING STANDARDS. CONSTRUCTION AREAS MAY DIFFER FROM THE VALUES LISTED.

THESE PLANS ARE SUBJECT TO CHANGE AND MAY NOT EXACTLY REFLECT THE FINAL PLANS

REVISION 1 (July 22 2021)	Increased garage to meet min. parking requirements for 2 cars, added small open to below 2nd floor stairs
REVISION 2 (December 6, 2021)	V2 Plans - Resubmission plans, reduced FSI to 0.45
REVISION 3 (December 24, 2021)	V2 Plans - Revised to clarify materials to be used

Site Plan
2
V2: RESUBMISSION PLANS
11


9.50 (BUILDING HEIGHT)
7.49 (MAIN WALL HEIGHT)
1.50
1.38
3.45
2.47
U/S CEILING
T.O. 2ND FLOOR
T.O. MAIN FLOOR
T.O. SUNKEN FOYER/OFFICE
ESTABLISHED GRADE (81.59)
BASEMENT SLAB
GRADE @ PROPERTY LINE
NOTE FINAL BASEMENT HEIGHT TO BE DETERMINED BY SEWER INVERT LOCATION (THIS NUMBER MAY DECREASE)
DRIVEWAY
T.O. MAIN FLOOR
GARAGE ELEVATION (81.62)
1.35
MATERIALS TO BE USED (OR EQUIVALENT)
JAMES HARDIE BOARD & BATTEN
BRICK
GARAGE DOOR PROFILE TO INCLUDE DECORATIVE HARDWARE
ASPHALT SHINGLES
METAL ROOF
HARDIE PANEL/TRIM
1 East Elevation
SCALE: 1:100
Averton
design is everything
SUITE #204, 10420 122ST NW
EDMONTON, ALBERTA
T5N 1M3
P: 780.638.0177
Applicant: Averton Design-Build Inc.
Contact: Brittany Wong | Planning Coordinator | bwong@averton.ca 416-402-2394
Property Owner: Bryan Hartog
LOT NO: 52
Municipal Address: 8 Thirty Seventh Street Etobicoke, Ontario
PLAN NO: LSG-5143
DRAWN BY: Marissa P.
DATE: April 22 2021
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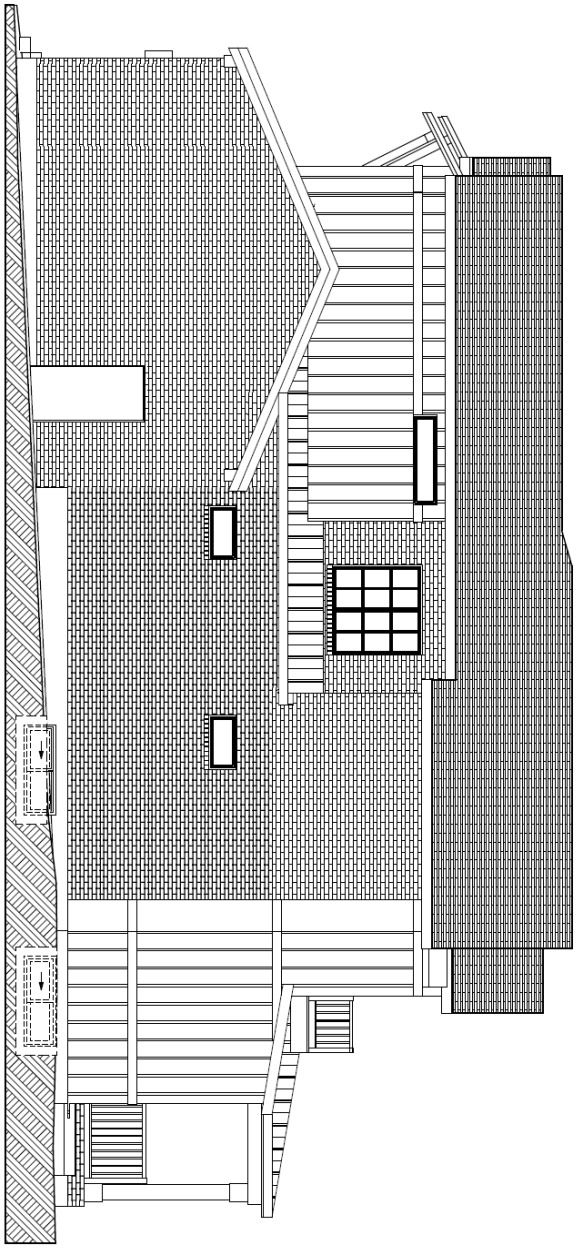
REVISION 3 (December 24, 2021): V2 Plans - Revised to clarify materials to be used
V2: RESUBMISSION PLANS
East Elevation
4
11



1 North Elevation
SCALE: 1:100

Averton
design is everything

SUITE #204, 10420 122ST NW
EDMONTON ALBERTA
T5N 1M3
P: 780.638.0177

Applicant: Averton Design-Build Inc.
Contact: Brittany Wong (Planning Coordinator) bwong@averton.ca 416-409-2994

Property Owner:	Bryan Harbig	LOT NO:	52
Municipal Address:	8 Thirty Seventh Street Etobicoke, Ontario	PLAN NO:	LSG-5143
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		DATE:	April 22 2021

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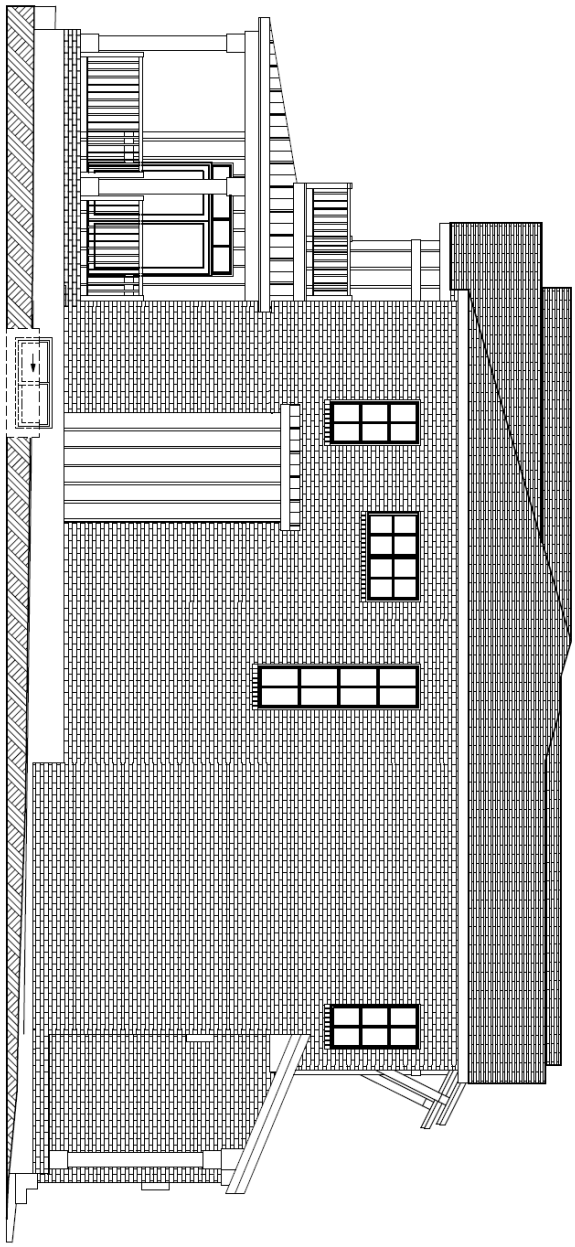
V2: RESUBMISSION PLANS

North Elevation

5 / 11



1 South Elevation
SCALE: 1:100

Averton
design is everything
SUITE #204, 10420 122ST NW
EDMONTON ALBERTA
T5N 1M3
P: 780.638.0177

Applicant: Averton Design-Build Inc.
Contact: Brittany Wong | Planning Coordinator | bwong@averton.ca 416-400-2394

Property Owner:	Bryan Hartog	LOT NO:	52
Municipal Address:	8 Thirty-Seventh Street Etobicoke, Ontario	PLAN NO:	LSG-5143
		DRAWN BY:	Marissa P.
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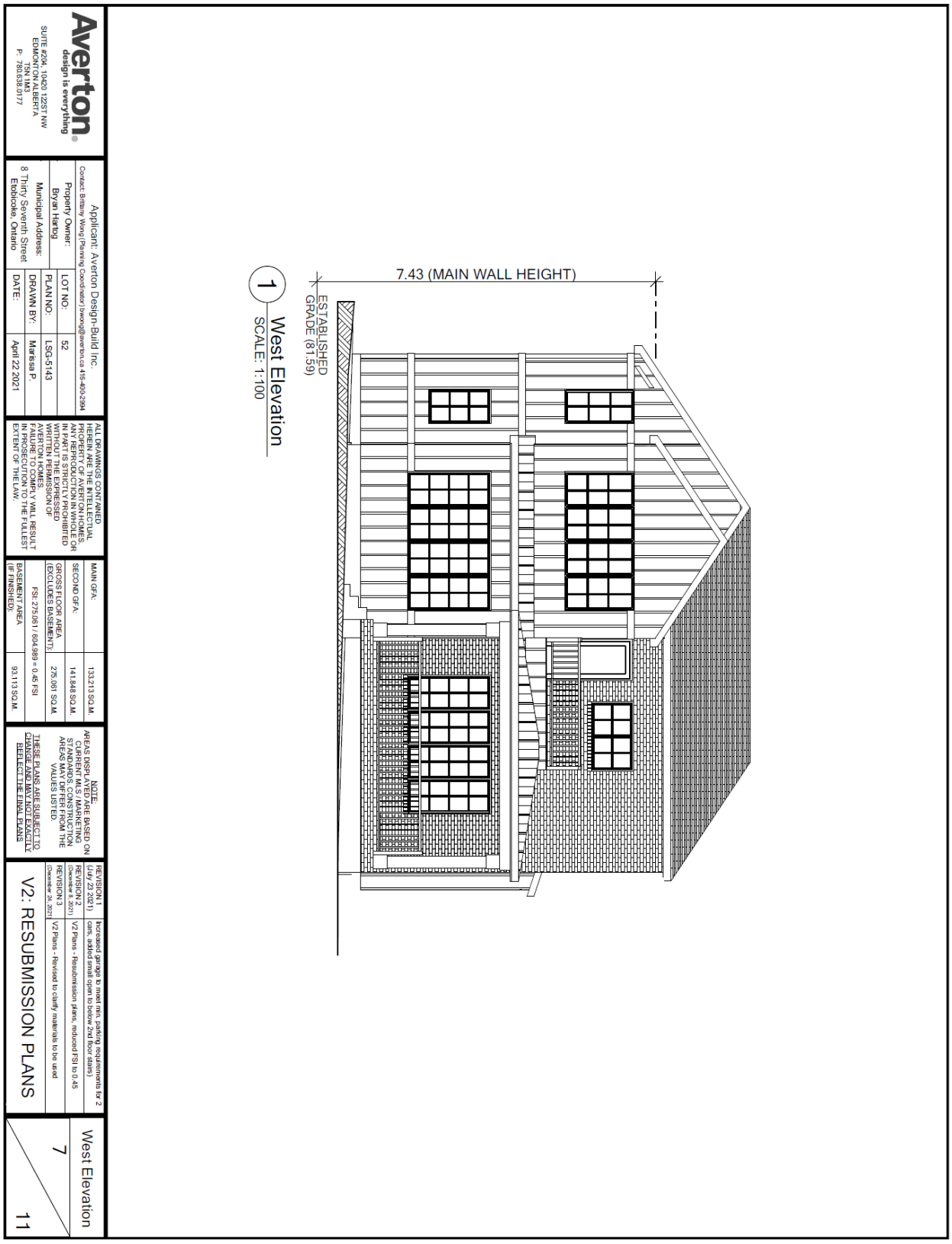
V2: RESUBMISSION PLANS

South Elevation

6 / 11


7.43 (MAIN WALL HEIGHT)
ESTABLISHED GRADE (81.59)
1
West Elevation
SCALE: 1:100
Averton
design is everything
SUITE #204, 10420 122ST NW
EDMONTON ALBERTA
T5N 1M3
P: 780.638.0177
Applicant: Averton Design-Build Inc.
Contact: Brittany Wong (Planning Coordinator) bwong@averton.ca 416-400-2994
Property Owner: Bryan Hartog
Municipal Address: 8 Thirty Seventh Street Etobicoke, Ontario
LOT NO: 52
PLAN NO: LSG-5143
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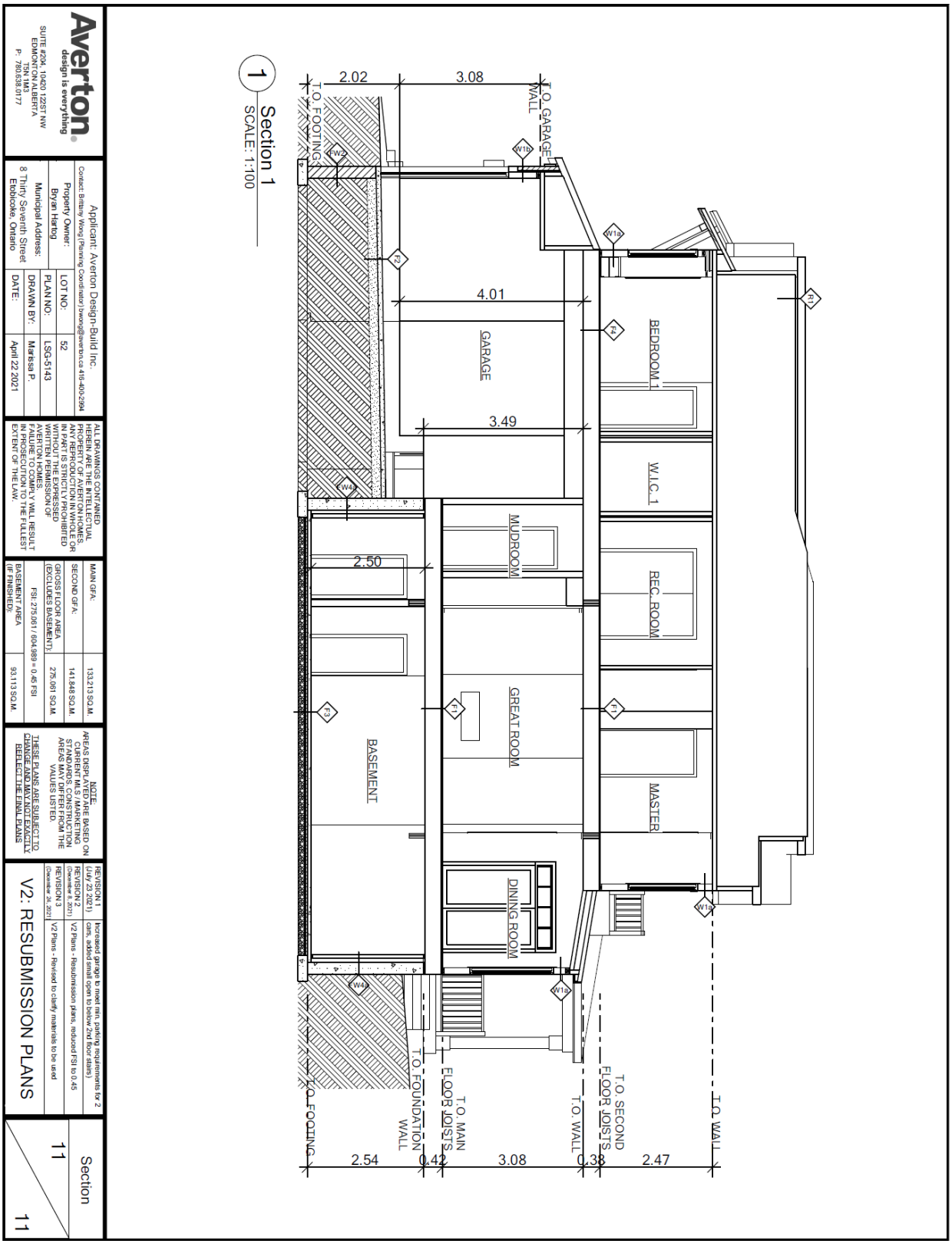
West Elevation
7
11


Section 1
SCALE: 1:100
BASEMENT
GARAGE
BEDROOM 1
W.I.C. 1
REC. ROOM
MASTER
MUDROOM
GREAT ROOM
DINING ROOM
T.O. FOOTING
T.O. GARAGE WALL
T.O. FOUNDATION WALL
T.O. MAIN FLOOR JOISTS
T.O. WALL
T.O. SECOND FLOOR JOISTS
2.02
3.08
4.01
3.49
2.50
2.54
0.42
3.08
0.38
2.47
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Section
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