

DECISION AND ORDER

Decision Issue Date **Friday, May 14, 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): CITY OF TORONTO

Applicant(s): URBANSCAPE ARCHITECTS INC

Property Address/Description: 37 BOUSTEAD AVE

Committee of Adjustment File

Number(s): 20 146465 STE 04 MV (A0403/20TEY)

TLAB Case File Number(s): 21 106712 S45 04 TLAB

Hearing date: Tuesday, May 03, 2021

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	URBANSCAPE ARCHITECTS INC.
Owner	FATEMEH NOURIAN
Appellant's Legal Rep.	LAUREN PINDER
Appellant	CITY OF TORONTO
Party's Legal Rep.	RUSSELL CHEESEMAN
Party	REZA MOHYADINI BENAB
Expert Witness	BRUNO NIGRO
Expert Witness	TJ CIECIURA

INTRODUCTION

The subject property, 37 Boustead Ave., is located east of High Park and south of Bloor St West and is designated Neighbourhood pursuant to the Official Plan and zoned R. The owner sought variances to alter the existing two-storey detached dwelling, on the subject property, by constructing a rear three storey addition, a full third storey addition and a rear second storey balcony. In addition, interior alterations are to be performed to construct an additional secondary suite for a total of four units within the dwelling. Six variances were sought and approved. They related to: the FSI of the building, building depth, alteration to the front wall, size of the secondary suite and the front yard parking. The variances are set out in detail in Appendix 1.

BACKGROUND

The City appealed the Committee of Adjustment approval. The City was only concerned about two variances; both related to parking. One variance permitted front yard parking (Variance 2). The other variance permitted one parking space in the front yard which was, therefore, not zoning compliant, while three zoning compliant spaces were required (Variance 6).

MATTERS IN ISSUE

The only matter in issue was whether the front yard parking space should be allowed. Indeed the City's position was that not only that the variance for the front yard parking should not be allowed, but the variance for one non-compliant parking space should be changed to permit no parking spaces.

There was no disagreement that the remaining variances met the four tests of the *Planning Act* respecting minor variances and no concern that the variances did not meet the relevant provincial policies.

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. Cieciora gave evidence for the owner and Ms. Nigro for the City. Both were qualified to give expert planning opinion evidence. Mr. Cieciora relied on the evidence set out in his witness statement on file with TLAB (filed as Final Witness Statement by R. Cheeseman March 29, 2021) and the Applicant Disclosure (filed February 16, 2021) to support his opinion that the variances met the four tests of the *Planning Act*. He also gave oral evidence in support of the two variances respecting front yard parking. Ms. Nigro agreed with Mr. Cieciora's written evidence regarding all the variances except Variances 2 and 6 respecting front yard parking. Therefore, all evidence, other than that respecting front yard parking is agreed to by Ms. Nigro as set out in writing in Mr. Cieciora's witness statement. Ms. Cieciora's witness statement can be read and examined in the TLAB file. There is therefore no need to repeat it in this decision.

The facts respecting front yard parking are not fundamentally in dispute, although the opinions based on those facts are very different.

The evidence demonstrates that there is, at this time, front yard parking pad existing on the City owned boulevard in front of the subject property. The variances, if

granted would move the parking location to the front yard of the subject property which is 25 feet wide. The front yard parking that exists now, however, is illegal. Although first approved and in existence since 1997, the parking space permission was cancelled in 2019, although no action was taken to enforce that cancellation.

It is clear that there are two ways to obtain front yard parking permission: by a variance to the zoning bylaw or by a permit under the Municipal Code. Permission under one method grants permission under the other. This particular space was permitted under the Code for accessibility reasons and subsequently cancelled as handicapped access was no longer necessary. However, the cancellation was never brought to the owner's attention or enforced. Since 2008 there has been a moratorium in this neighbourhood on granting front yard parking permits under the Municipal Code, and in the last twenty years no new licences have been issued. In the last ten years there have been no variances to the zoning bylaw to permit front yard parking in the area. There are, however, examples of front yard parking in the area and in particular there are 16 front yard parking pads on Boustead Ave. out of 58 lots.

The zoning bylaw contains limited exemptions from its general prohibition and allows for an exemption, as stated above, when a permit is granted under the Municipal Code. The Official Plan requires that the variances result in a development which respects and reinforces the physical character of the neighbourhood. In Ms. Nigro's opinion that character is one of spacious open front yards with lawns. In Mr. Cieciora's opinion it is an area with front yard parking, regardless of whether it is permitted, by license, variance or illegal practice.

Finally, I note, that Amendment 480 to the Official Plan came into effect in September 2020. This amendment specifically addresses the issue of front yard parking. It states:

“ New Development will locate and organize vehicle parking,(and) vehicular access...

to minimize their impact on and improve the safety and attractiveness of the public realm, the property site and on surrounding properties and to improve the safety and attractiveness of adjacent streets, parks and open spaces by:...

e) limiting new, and removing existing, surface parking and vehicular access between the front face of a building and the public street or sidewalk.”

My visit to the area resulted in my finding that Boustead Ave., in particular, is a street with a mixture of front yard parking pads, driveways of various widths and properties with no access at all for vehicles. A physical examination does not indicate how long front yard parking pads parking have been in place or by what means they were approved or indeed if they were legal. There are numerous vehicles parked on the street and there're parking permits available for additional street parking.

ANALYSIS, FINDINGS, REASONS

I find that all the variances sought meet the four tests of the Planning Act and the appeal should be dismissed. My reason for this are set out below.

I find that Amendment 480 clearly shows that it is the general intent of the Official Plan to prohibit front yard parking since the plan states in part that “New Development will ...organize... vehicular parking... by... limiting new and removing existing surface parking... between the front face of the building and the public street or sidewalk.” Therefore, the development would ordinarily fail the test of maintaining the general intent of the Official Plan. However, the question arises as to whether the provision should be applied. In this case I find it should not. The provision was approved after the application for the variance was made and the planning report to the Committee of Adjustment (filed with TLAB December 3 2020) makes no mention of it. It was not until this hearing that it was raised as an issue. In my view it would be unfair to apply a new policy at such a late date. This is unfair to the applicant who cannot challenge the policy since it came into force after the application was made. As a result, with respect to the Official Plan, I find that policy 4.1.5 is indicative of its general intent and purpose and thus the test is whether the pad respects and reinforces the character of the area. I find it does maintain that general intent and purpose. There are numerous other pads and driveways and this pad respects and reinforces that character.

I find, as well, that it meets the general intent of the zoning bylaw which is to provide exemptions to the prohibition against front yard parking when an exemption has been provided under the Municipal Code. In this case an exemption was granted and no notice or enforcement of the expiration of the exemption was given. The intent of the bylaw was therefore not a total prohibition of a front yard parking use. The bylaw provided for an exemption for people in need of accessibility but did not provide for clear notice that the exemption was terminated, or any enforcement of a termination.

Finally, there is no doubt the variance with respect to parking was minor and appropriate as it fits harmoniously in the area and creates no adverse impact. I do not see that front yard parking is any more dangerous than front driveway parking as was suggested by Ms. Nigro.

There being agreement that the other variances be approved and given I find the front yard parking variances should be approved based only on the unfairness of applying OPA 480 in this case, I would deny the appeal and approve all the variances knowing that OPA 480 will prevent any future variance for front yard parking.

DECISION AND ORDER

The appeal is dismissed and the variances in Appendix 1 are approved subject to the following conditions:

1. The front yard parking pad and driveway shall be constructed with permeable pavers, to the satisfaction of Toronto Building Inspection Services, Toronto and East York District and the Manager, Permits and Enforcement Parking, Transportation Services, Toronto and East York District (with respect to the portion on the municipal boulevard).
2. Construction will be substantially in accordance with the plans in Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 10.10.40.40.(1)(A) Bylaw 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (221.96 m²).
The three-unit detached dwelling will have a floor space index of 0.9 times the area of the lot (332.6 m²).

2. Chapter 10.10.40.30.(1)(A) Bylaw 569-2013

The maximum permitted building depth for a detached dwelling is 17.0 m.
The building depth of the three-unit detached dwelling will be 17.85 m.

3. Chapter 10.5.80.10.(3) Bylaw 569-2013

A parking space may not be located in a front yard or a side yard abutting a street.
In this case, a front yard parking pad, located wholly on the subject property will be installed.

4. Chapter 150.10.40.1.(2)(A) Bylaw 569-2013

An addition or exterior alteration to an existing building to accommodate a secondary suite is permitted if it does not alter or add to a front wall, or roof that faces a street.
In this case, the front main wall and roof are being altered to accommodate the secondary suites at the upper levels.

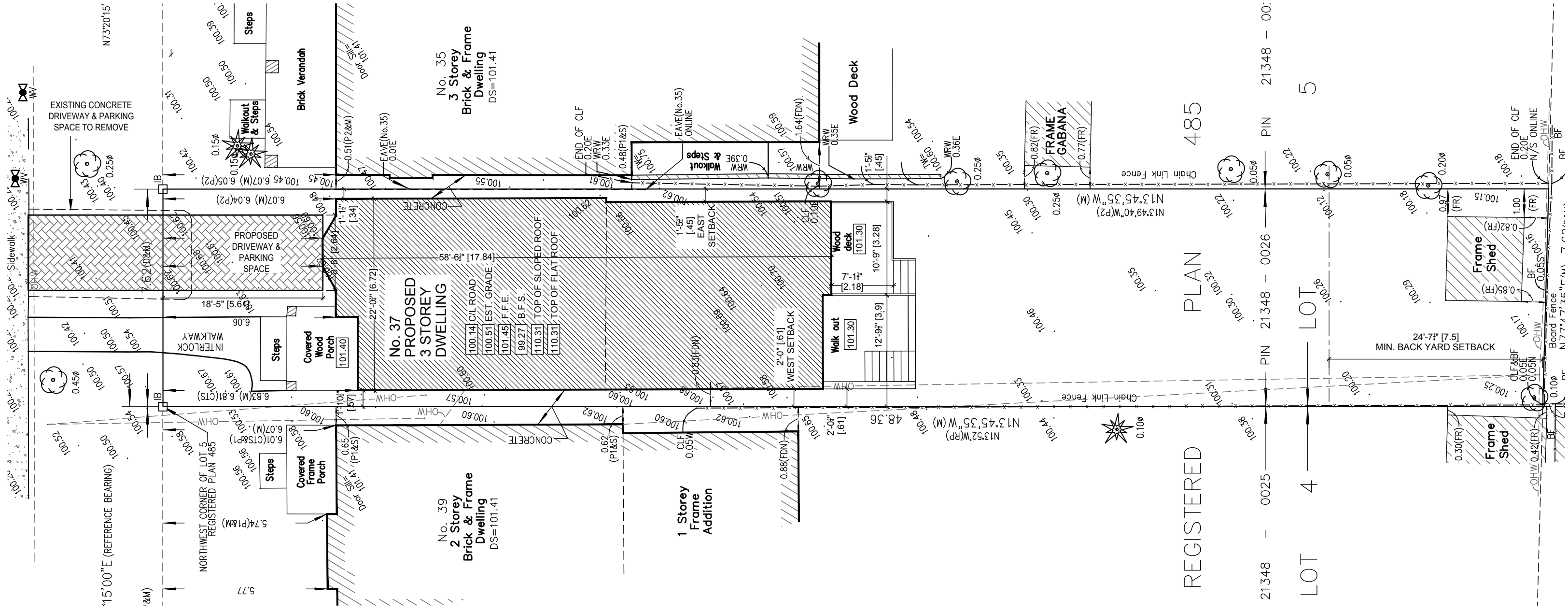
5. Chapter 150.10.40.40.(1) Bylaw 569-2013

The interior floor area of a secondary suite, or all secondary suites where more than one is permitted, must be no more than 45% of the interior floor area of the dwelling unit within which it is located.
In this case, the interior floor area of all secondary suites is 73% of the interior floor area of the dwelling unit within which they are located (274 m²).

6. Chapter 200.5.10.1.(1) Bylaw 569-2013

A minimum of three zoning compliant on-site parking spaces are required to be provided for the three dwelling units.
In this case, one parking space will be provided in the front yard (which is not zoning compliant).

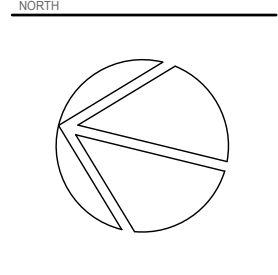
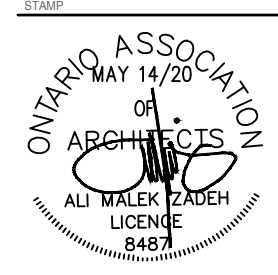
APPENDIX 2



1 SITE PLAN
A0-1 SCALE 3/32"=1'-0"

NO.	DATE	REVISION DESCRIPTION	NOTE
1	2020-02-05	ISSUED FOR ZCC	CITY
2	2020-14-05	ISSUED FOR COA	CITY

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PROJ./REV. NO.
USG 289-19

SHEET TITLE
SITE PLAN
SCALE: 3/32"=1'-0"

PROJECT
37 BOUSTEAD AVE.
TORONTO, ON M6R 1Y7

DWG. NO.
A0-1
11"x17" SHEET SIZE

DESIGN

URBANSCAPE ARCHITECTS

236 LESMILL ROAD, TORONTO, ON, M3B 2T5
phone: 416.850.0021
info@urbanscapearchitect.com | www.urbanscapearchitect.com



REMAINING PART OF ELEVATION

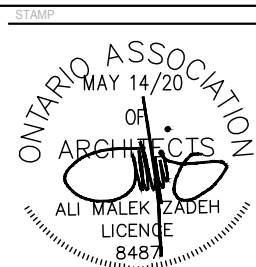
1 FRONT (NORTH) ELEVATION
SCALE 3/16"=1'-0"

	REMAINING ELEVATION		EXISTING ELEVATION		PERCENT OF REMAINED
	AREA SQ.FT.	AREA SQ.M.	AREA SQ.FT.	AREA SQ.M.	
FRONT NORTH ELEV.	455.78 SQ. FT.		518.89 SQ. FT.		
REAR SOUTH ELEV.	0	0	591.89 SQ. FT.		0%
SIDE EAST ELEV.	646.61 SQ. FT.	60.07 SQ. FT.	150037.67	96.80 SQ. FT.	0.62
SIDE WEST ELEV.	646.65 SQ. FT.	60.08 SQ. FT.	1062.73 SQ. FT.	98.73 SQ. FT.	0.61
TOTAL	1749.03 SQ. FT.	162.49 SQ. FT.	3215.44 SQ. FT.	298.72 SQ. FT.	0.54

2 REMAIN CALCULATION OF ELEVATION
A2-1

NO.	DATE	REVISION DESCRIPTION	NOTE
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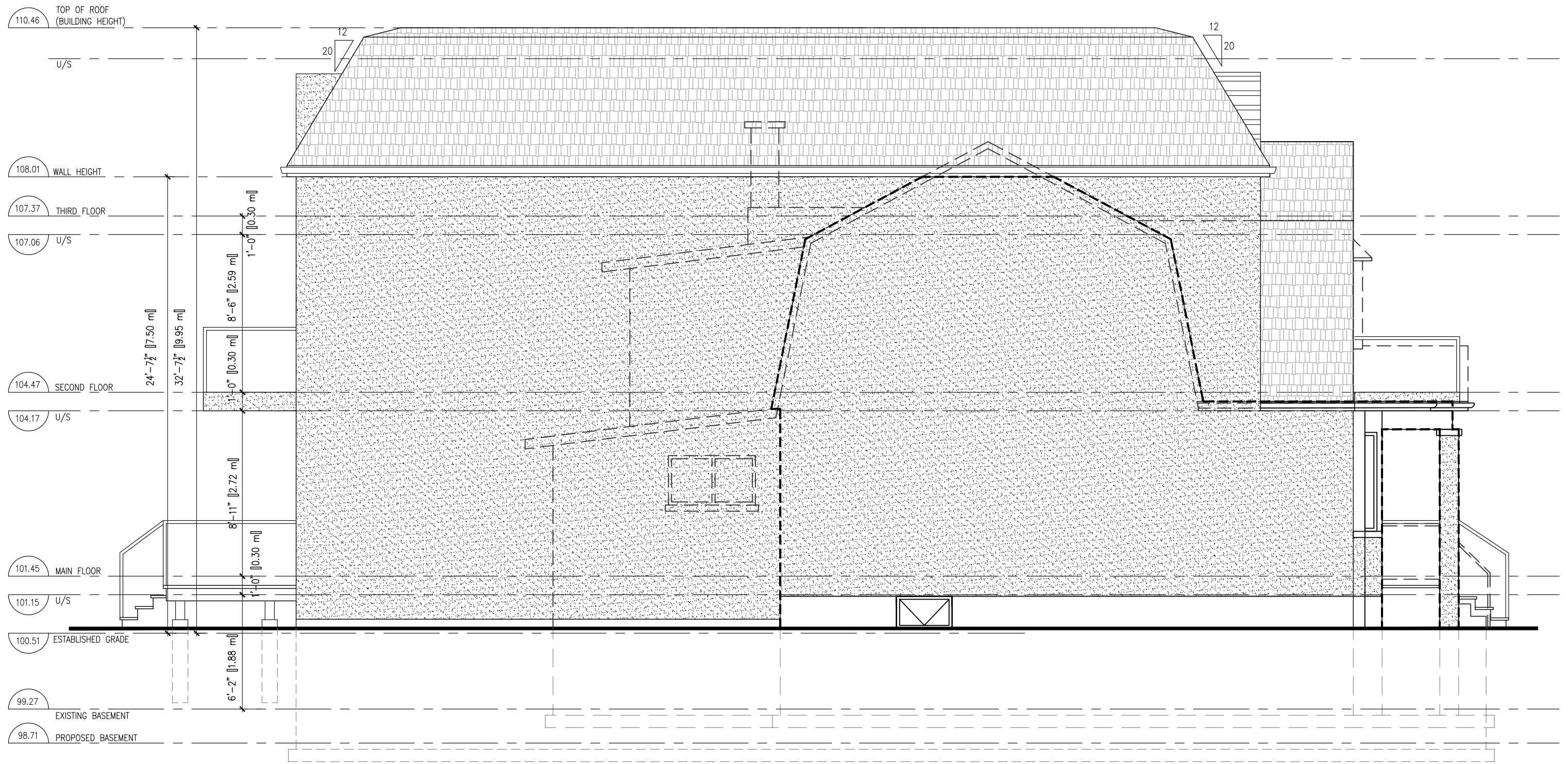
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SHEET TITLE FRONT (NORTH) ELEVATION
SCALE: 3/16"=1'-0"
PROJECT 37 BOUSTEAD AVE.
TORONTO, ON M6R 1Y7

DWG. NO. A2-1
11"x17" SHEET SIZE

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info@urbanscaarchitect.com | www.urbanscapearchitect.com

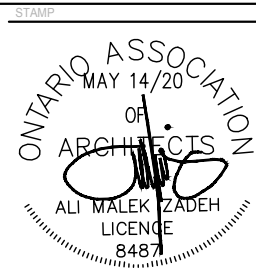


REMAINING PART OF ELEVATION

2 SIDE (EAST) ELEVATION
A2-2 SCALE 3/16"=1'-0"

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NORTH

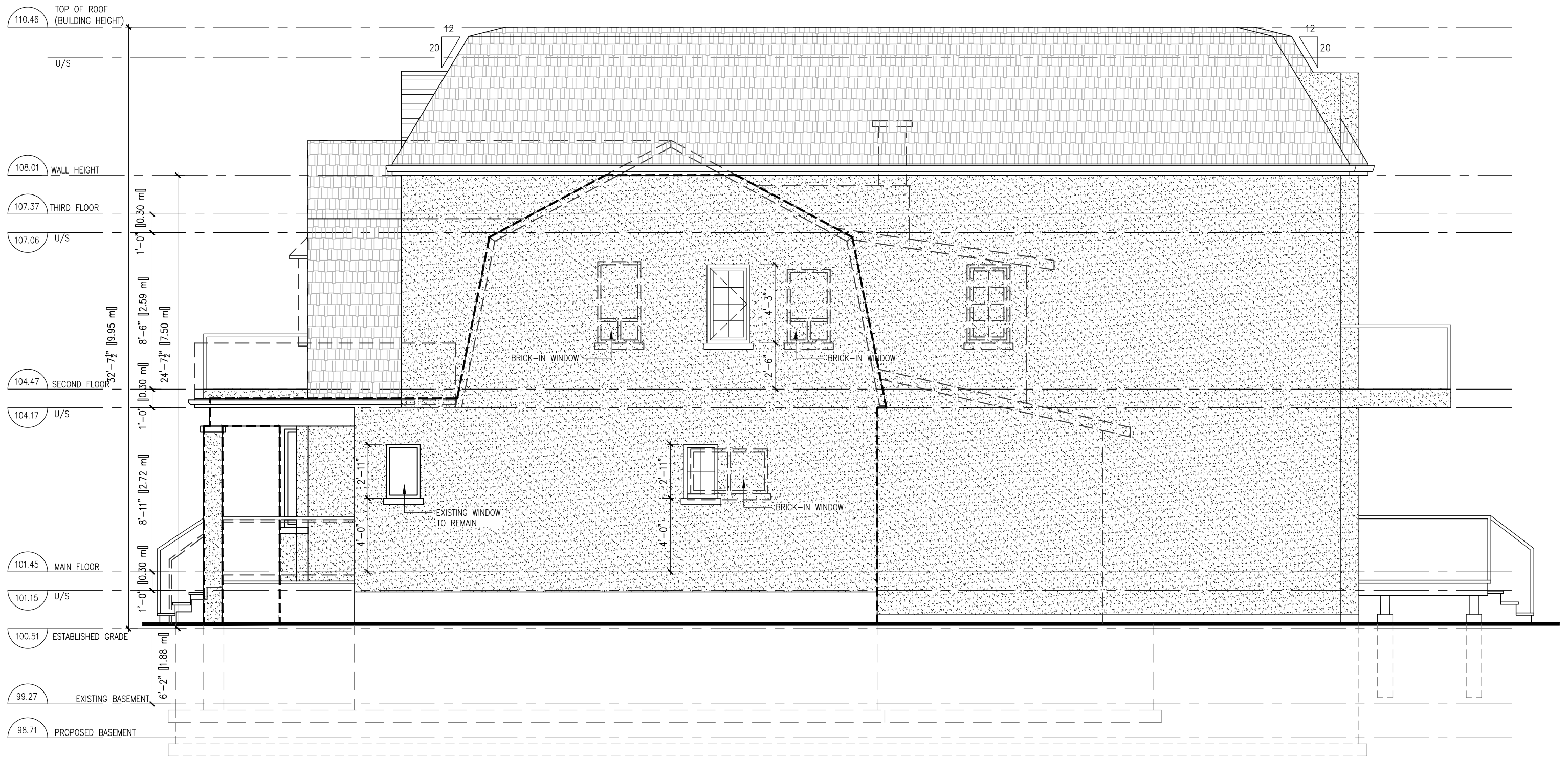
PROJ./REV. NO. USG 289-19
SHEET TITLE SIDE (EAST) ELEVATION SCALE: 3/16"=1'-0"
PROJECT 37 BOUSTEAD AVE. TORONTO, ON M6R 1Y7

DWG NO. A2-2
11"x17" SHEET SIZE

DESIGN

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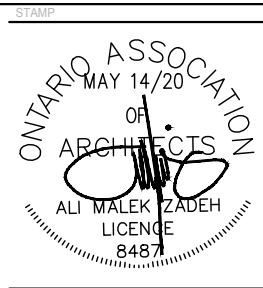


REMAINING PART OF ELEVATION

1 SIDE (WEST) ELEVATION
A2-3 SCALE 3/16"=1'-0"

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NORTH

PROJ./REV. NO. USG 289-19	DWG. NO. A2-3
SHEET TITLE SIDE (WEST) ELEVATION SCALE: 3/16"=1'-0"	DESIGN 11"x17" SHEET SIZE
PROJECT 37 BOUSTEAD AVE. TORONTO, ON M6R 1Y7	



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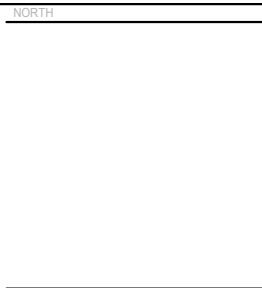
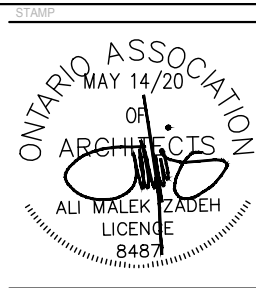


REMAINING PART OF ELEVATION

1
A2-4 REAR (SOUTH) ELEVATION
SCALE 3/16"=1'-0"

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PROJECT	37 BOUSTEAD AVE. TORONTO, ON M6R 1Y7

DWG. NO.	A2-4
11"x17" SHEET SIZE	

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