

DECISION AND ORDER

Decision Issue Date Tuesday, May 11, 2021

Appellant(s): ABC RESIDENTS ASSOCIATION

Applicant(s): AUDAX ARCHITECTURE

Property 97 HAZELTON AVE
Address/Description:

Committee of
Adjustment File

Number(s): 20 118679 STE 11 MV

TLAB Case File

Number(s): 20 203429 S45 11 TLAB

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the
Planning Act, R.S.O. 1990, c. P.13, as amended

Hearing date: Monday April 12th, 2021

Deadline Date for Closing Submissions/Undertakings: April 21, 2021

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Applicant	AUDAX ARCHITECTURE
Appellant	ABC RESIDENTS ASSOCIATION
Appellant's Legal Rep.	NATALIE SHEIKH
Party/ Owner	ELLIOTT WEINSTEIN
Party's Legal Rep.	MATTHEW LAKATOS-HAYWARD

INTRODUCTION AND BACKGROUND

This is an appeal by the ABC Residents Association or ABCRA (Appellant) of the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA) approval of variances to permit the alteration of the existing three-storey, semi-detached house. The Owners proposed to construct a rear three-storey addition with a third storey terrace and a rear carport to be accessed via the existing driveway (Application).

The subject property is located on the east side of Hazelton Avenue, in the City's Yorkville neighborhood, south of Davenport Road between Yonge Street and Avenue Road. Bishop Street dead ends at the rear of the subject property and there is a sliding gate along the rear property line which allows access to that street.

It is designated *Neighbourhoods* in the City's Official Plan and is zoned Residential R (f5.0, d1.0) under the City-wide harmonized Zoning By-law 569-2013 (new By-law). The subject property is also subject to the specific regulations and performance standards in the Yorkville Triangle relating to the erection or use of a building or structure as outlined in the new By-law.

The ABCRA appealed the COA decision to the Toronto Local Appeal Body (TLAB) on October 5, 2020, and the Tribunal scheduled a virtual Hearing of the appeal matter for April 29, 2021, by way of the Webex electronic meeting platform.

On March 15, 2021, the TLAB received an email from Andrew Biggart, the Appellant's legal counsel, indicating that the Parties had reached a settlement of the matter and attached a draft Minutes of Settlement (MOS). In his email, Mr. Biggart asked for direction from the Tribunal regarding whether it was prepared to proceed to hear the appeal by way of a written Hearing to bring the Settlement into effect or whether an oral Hearing would be required to hear evidence in support of the Settlement.

As the presiding Panel Member, I directed TLAB staff to advise the Parties that the matter would proceed as an electronic, expedited Settlement Hearing pursuant to Rule 19.3 of the Tribunal's Rules of Practice and Procedure (Rules). I also directed staff

to canvas the Parties' availability for an appropriate date in advance of the Hearing date set for April 29th for the expedited Hearing.

Ultimately, on consent, the Parties agreed to April 12, 2021 and the TLAB set that date for the Settlement Hearing.

On the return date, the following Parties attended virtually: Mr. Matthew Lakatos-Hayward, the Owners' legal representative, along with the Owners of the subject property, Elliot Weinstein and Elisa Weinstein. Mr. Rami Katzan, the Owners' contractor, observed the proceedings as well.

Also in attendance was Ms. Natalie Sheikh, the legal representative for the Appellant, ABCRA. The Residents' Association did not attend.

At the outset, I advised that pursuant to Council's direction, I had attended the site, familiarized myself with the surrounding neighbourhood, and had reviewed the pre-filed materials including the Minutes of Settlement but advised that it is the evidence heard and referenced that is relied upon.

On prompting, Mr. Lakatos-Hayward provided a brief opening statement highlighting the Application and noted that the TLAB had before it a settlement agreement between the Applicant and the ABCRA. He outlined the variances sought as follows:

1. Chapter 900.2.10.(860)(A), By-law 569-2013

No person shall erect or use a building or structure on any lot within the Yorkville Triangle with a lot line on Hazelton Avenue where the building or structure has a depth greater than 17.0 m. In this case, the altered semi-detached house will have a depth of 28.09 m, measured to the rear carport.

2. Chapter 900.2.10.(860)(A), By-law 569-2013

No person shall erect or use a building or structure on any lot within the Yorkville Triangle with a lot line on Hazelton Avenue where the height of the building or structure is greater than 7.0 m, exclusive of a deck fence and other rooftop elements permitted by Section 4(2)(a)(i), for any portion of the building or structure having a depth greater than 14.0 m.

In this case, the rear third storey addition, beyond a depth of 14.00 m, will have a height of 10.45 m.

3. Chapter 900.2.10.(860)(A), By-law 569-2013

No person shall erect or use a building or structure on any lot within the Yorkville Triangle with a lot line on Hazelton Avenue where in the case of a semi-detached house or the end unit in a series of row houses, on a lot with a front lot line width of 5.5 m or greater, any part of the unattached side of the building or structure beyond a depth of 12 m is closer than 1.2 m to a side lot line.

In this case, the altered semi-detached house will be located 0.30 m from the north side lot line, measured to the rear carport.

4. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted depth of a semi-detached house is 17.00 m.

The altered semi-detached house will have a depth of 28.09 m, measured to the rear carport.

5. Chapter 10.10.40.70.(4)(B), By-law 569-2013

The minimum required side yard setback where there are no windows or doors is 0.45 m.

The altered semi-detached house will be located 0.30 m from the north side lot line, measured to the rear carport.

Mr. Lakatos-Hayward then outlined the chronology of events preceding the COA meeting, noting that the Owners of the subject property had engaged in discussions and negotiation with the abutting neighbours and ABCRA regarding the proposal, specifically focused on two key issues: a proposed covered roof link between the addition and the rear carport; the height of the carport; and an existing sliding gate at the rear of the property that would allow vehicular access to Bishop Avenue. He explained that access to that street from the subject property is currently facilitated by way of the sliding wooden gate a situation with which residents had expressed a concern.

The negotiations, above cited, culminated in the Parties arriving at the aforementioned MOS and the three conditions that form the main thrust of that agreement. In exchange for the ABCRA agreeing to settle the appeal, the Owners agreed to complete the following conditions prior to the completion of the proposed construction outlined in the Application, premised on the variances being granted by the TLAB

- a) Remove the existing sliding gate at Bishop Street and replace it with a fixed fence and gate that will allow only pedestrian access (i.e., not vehicular access) from the property on to Bishop Street. Maintain the fence and gate referenced in a) above in good condition;
- b) Reduce the height of the proposed carport at the rear of the property by 12 inches;
- c) Remove the proposed covered link between the carport and the home.

According to Mr. Lakatos-Heyward, who was not present before the COA, this agreement was reached prior to the COA hearing and was presented to the Committee by the Owners on that day. Mr. Weinstein provided additional context as to why the COA approval of the proposal did not include the conditions agreed to.

He explained that the Committee had concerns that the Site Plan drawings had not been revised accordingly to reflect the conditions contained in the Settlement Agreement and, therefore, chose not to accept the MOS. However, he noted that the Committee ultimately chose to approve the requested variances without imposing conditions.

Mr. Lakatos-Hayward suggested that that unconditional approval by the COA ultimately triggered the appeal by the ABCRA that is now before the TLAB.

He advised that further discussions occurred between the Owners and the Parties following the COA's unconditional approval of the proposal culminating in additional revisions to the Site Plan drawings although those were minor in nature. These modifications affirmed the conditions agreed to between the Parties as outlined in the MOS which in effect accommodated the execution of the Settlement.

In concluding his opening remarks, Mr. Lakatos-Hayward requested that the TLAB give full weight to the Settlement agreement in its consideration of the Application and approve the requested variances as they satisfy the four statutory tests in the *Planning Act* and represent good planning.

Ms. Sheikh, representing the ABCRA, was provided an opportunity for opening remarks. She advised that her clients were in full support of the MOS agreement submitted to the Tribunal and reaffirmed that the Residents' Association supports the Application and the approval of the variances now before the TLAB, subject to the conditions outlined by Mr. Lakatos-Hayward.

MATTERS IN ISSUE

The appeal put in issue the five variances approved by the COA.

Although the Parties have come forward with Minutes of Settlement, it is the TLAB's mandate as outlined in the *Planning Act* to hear the evidence and be satisfied that the policy and legislative test have been met.

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 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. Lakatos-Hayward highlighted the List of Variances as contained in the COA's decision notice mailed on September 22, 2020 and the set of Site Plan drawings prepared by Audax Architecture Inc., consisting of the survey of the subject property, and Drawings A001A (Garage Site Plan), A002 (Proposed Garage Plan & Elevations), A301 (Proposed North Elevation), A302 (Proposed South Elevation), A303 (Proposed West & East Elevations).

These were entered into the record as Exhibits 1 and 2, respectively; the Site Plan drawings above cited are also attached to the MOS.

He proceeded to address each of the variances separately, although he first addressed the heritage aspect of the subject property.

Mr. Lakatos-Hayward advised that the subject property is located within the Yorkville Triangle district and that as part of the submission of this application to the COA the proposal was circulated to the City's Heritage Preservation Service (HPS) staff for review and comment. He affirmed that the COA received no comments from the HPS in this regard and submitted that the proposed additions to the subject dwelling and the requested variances will not impact the heritage façade attributes of the existing house.

He advised that the subject property is narrower than the other lots on this block and that the proposed alterations to the existing three-storey, semi-detached dwelling are focused on and contained within the part of the home at the rear of the property.

With respect to the list of requested variances, he noted that Variances 1 and 4 are duplicative, in part, because the property is located within the Yorkville Triangle. He clarified that the performance standards pertaining to lot depth in the new By-law (Chapter 10.10.40.30.(1)(A)) affecting properties situated within this Triangle, as outlined in Variance 1, are less restrictive than the more specific performance standard provision (Chapter 900.2.10.(860)(A)) for lot depth as outlined in Variance 4.

Referencing Exhibit 2, Mr. Lakatos-Hayward explained that the measurement of a building depth of 28.09 m included the proposed rear three-storey addition to the main house, the 3rd-storey terrace, and the overhead roof connection to the proposed carport. He submitted that the proposal before the TLAB also includes approval for the rear

carport which would be accessible from Hazelton Avenue via the mutual right-of-way adjacent to the north property line.

He confirmed that the plans before the TLAB illustrate that the Owners have removed the covered roof link from the addition to the carport resulting in the carport now being detached and therefore proposed as a stand-alone structure. This revision addressed a key concern raised by the neighbours who were concerned that the covered roof link would be used by the Owners as a terrace. The Owners also reduced the height of the carport by 0.31 m (12 inches), again, as a concession to neighbours' concerns.

As a result of the elimination of the roof link between the home and the carport, the building length of the home including the addition and terrace is now approximately 18 m which is only 1 m greater than the Zoning By-law maximum standard.

In addressing the proposed 3rd-storey terrace, Mr. Lakato-Hayward submitted that the subject property is located within what could be described as an eclectic, downtown urban neighbourhood in which lots containing semi-detached and detached dwellings exhibit tight side yard setback conditions. He asserted that the proposed alterations and addition at the rear of the existing dwelling will not result in any negative or undue adverse impacts of overlook or privacy for the neighbours no such concerns were raised by the ABCRA or any other resident.

Turning to the remaining variances, he referenced Site Plan drawing A002 A to address Variance 2. He noted that the variance in question relates to that portion of the proposed third-storey addition that extends beyond the maximum building depth provision of 14 m in the Zoning By-law. He clarified that that portion of the addition will have a height of 10.45 m whereas the By-law permits a maximum height of a building of 7.0 m, exclusive of a deck fence and other rooftop elements.

With respect to Variance 3, Mr. Lakatos-Hayward advised that this variance request resulted because the proposed rear third-storey addition, extending beyond a building depth of 12 m, would be located 0.30 m from the north lot line, measured to the carport, whereas the By-law requires a setback of 1.2 m. He asserted that the proposed setback of the 3rd-storey addition from the north lot line would, in fact, actually be greater than the existing setback of 1.09 m for the front portion of the original home.

Finally, he addressed Variance 5, which he submitted captures a similar condition to Variance 3 under to the more general provisions of Zoning By-law 569-2013. He suggested that this variance relates to the location of the altered carport relative to a side lot line and proposes a 0.30 m side yard setback to the north lot line whereas the By-law requires a minimum setback of 0.45 m. Referencing Exhibit 2, Mr. Lakatos-Hayward noted that this variance related to the location of the proposed rear carport relative to the north property line. He asserted that the proposed carport was intended to replace the existing garage which is to be demolished and which is currently not setback from the property line.

In closing remarks, Mr. Lakatos-Hayward summarized that the variances required to give effect to the rear three-storey addition, rear terrace and the detached carport relate primarily to the building depth and height of the proposed addition. Some of the variances, notably No. 1 and 4, are repetitive in part because they relate to specific and more restrictive requirements of the Yorkville Triangle portions of Zoning By-law 569-2013 while the others relative to the more general provisions of the new By-law.

He asserted that it is his clients' position that the requested variances meet the four statutory tests of the *Planning Act*, that the construction of the third-storey addition is not out of keeping with the physical character of the neighbourhood and there are numerous properties that have incorporated 3rd-storey additions as well as terraces that overlook the rear of these properties.

He submitted that although he has not presented himself as a land use planner, he nevertheless referenced Policy 4.1.5 in the City Official Plan noting that the proposal is not, in his opinion, an aberration or "wholly new" (his words) to the area. He also suggested that as outlined in Policy 4.1.5, in neighbourhoods, zoning by-laws are intended to implement the policies of the OP. He concluded that the proposal meets the general intent and purpose of both the OP and Zoning By-law and is a desirable and appropriate use of the land as it results in a more livable living space for the Owners and optimizes the use of the property while also rectifying an issue of vehicular access onto Bishop Street.

With respect to the test of minor, he opined that this is not a mathematical exercise but one that must be understood 'holistically' (his term) and based on a qualitative analysis, a position he submitted is supported by various Divisional Court and TLAB decisions although he did provide case law.

He asserted the proposed renovations to the subject property with the rear 3rd-storey addition, terrace, new carport, and fixed fence at gate at the rear of the property to be minor and will not result in any undue adverse impacts of overlook or privacy on abutting neighbours. Furthermore, he asserted that the additions would also not impact the use of the mutual right-of-way and its use by the property owner to the north.

Mr. Lakatos-Hayward suggested that the MOS is indicative of the community's support for the proposal. The conditions outlined in the MOS with respect to the replacement of the existing sliding gate with a fixed fence and gate along the rear ((east) property line were significant and reflected the Owners' commitment to restricting vehicular access to Bishop Street.

He briefly addressed Section 2 of the *Planning Act*, in which regard must be had for provincial policies and interest with particular focus on 2n), 2r), and 2m). In that regard, he asserted that the proposal is consistent with the PPS and also conforms to the Growth Plan and will result in a built form that is well-designed.

He concluded by requesting that the Tribunal approve the variances requested subject to the imposition of conditions that reflect those in the MOS identified in paragraph two (2) of that document.

Both Elliott and Elisa Weinstein were affirmed and responded to questions from the Chair. On prompting, Mr. Weinstein affirmed that the proposed additions to the existing historical home on the subject property were intended to bring the structure to current standards and to provide additional living space for their family. He clarified that a 1st and 2nd-floor rear addition had been commenced in 2019 and that the current proposal is matched and simply adds to that extension with a 3rd-floor family room and office space with the proposed rear terrace accessed from that space..

ANALYSIS, FINDINGS, REASONS

The TLAB encourages settlement discussions and the resolution of some or all the outstanding issues in an appeal. In this case, the Parties diligently responded to their respective interests and reached a timely accord that has met, on the evidence, the policy and statutory tests and application of good community planning principles.

Not only was this compliance evidenced by the obvious thorough preparation by counsel, but it was done so in a 'virtual environment' in an atmosphere of co-operation and responsiveness.

This is appreciated. The TLAB is pleased to offer as timely a resolution as circumstances permit.

I accepted the supporting evidence provided by Mr. Latakos-Hayward as outlined in the MOS and as heard *viva-voce* and found it compelling for the reasons expressed.

I find the proposed rear three-storey addition with a 3rd-storey terrace and a carport, and the variances requested to implement this proposal, to be acceptable under the policy and regulatory assessment criteria. I find nothing exemptional in the arithmetic number calculated for the variances requested for building length, height, and side yard setbacks, especially given that the Owners have eliminated the overhead roof link to the carport thereby reducing the length of the home even with the proposed 3rd-storey addition and terrace.

I accept that the definition of minor is not solely a mathematical construct and, therefore, I find that the cumulative impact of the proposed addition to not be undue or adverse.

I also find that the removal of the existing sliding wooden gate situated at the rear of the subject property adjacent to Bishop Street and its replacement with a fixed fence and gate that will allow only pedestrian access (not vehicular) from the property on to Bishop Street to be a significant improvement to the proposal and a positive modification made by the Owners in response the concerns raised by the ABCRA. This

amendment to the Application is memorialized in the MOS and the Owners have agreed that this be included as a condition of approval.

In view of the above, and in consideration of the agreed to terms of settlement as contained in the MOS and the joint request from the Parties that the Tribunal approve the requested variances (in Attachment A) and impose conditions of approval attached herein (Attachment B), I find, individually and cumulatively that the variances sought constitute compliance with all relevant tests governing good community planning.

DECISION AND ORDER

The appeal is dismissed; the decision of the Committee of Adjustment is confirmed, in part, but in accordance with the Site Plan Drawings depicted in **Attachment C** hereto.

The variances sought and set out in Attachment A hereto are approved subject to the Conditions set out in **Attachment B**.

If difficulties arise in the implementation of this decision, the TLAB may be spoken to.

2021-05-11

X 

Chair, D. Lombardi
Toronto Local Appeal Body
Signed by: dlombar

List of Variances Requested

1. Chapter 900.2.10.(860)(A), By-law 569-2013

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In this case, the altered semi-detached house will have a depth of 28.09 m, measured to the rear carport.

2. Chapter 900.2.10.(860)(A), By-law 569-2013

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In this case, the rear third storey addition, beyond a depth of 14.00 m, will have a height of 10.45 m.

3. Chapter 900.2.10.(860)(A), By-law 569-2013

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In this case, the altered semi-detached house will be located 0.30 m from the north side lot line, measured to the rear carport.

4. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted depth of a semi-detached house is 17.00 m.

The altered semi-detached house will have a depth of 28.09 m, measured to the rear carport.

5. Chapter 10.10.40.70.(4)(B), By-law 569-2013

The minimum required side yard setback where there are no windows or doors is 0.45 m.

The altered semi-detached house will be located 0.30 m from the north side lot line, measured to the rear carport.

ATTACHMENT B

Conditions of Approval

1. The proposed development shall be constructed substantially in accordance with the following plans prepared by Audax Architecture Inc., including Site Plan A002, Garage Site Plan A001 A and Proposed Garage Plans and Elevations A002 A, dated March 10, 2021, and Proposed North Elevation A301, Proposed South Elevation A302, and Proposed West/East Elevations A303 dated December 23, 2020 attached herein. Any other variance(s) that may appear on these plans but that are not listed in the written decision are **NOT** authorized.
2. The Owner shall undertake the following prior to the completion of all construction related to the above cited authorized variances:
 - a) Remove the existing sliding gate at Bishop Street and replace it with a fixed fence and gate that will allow pedestrian access (i.e., not vehicular access) from the subject property on to Bishop Street;

ATTACHMENT C

Site Plan Drawings

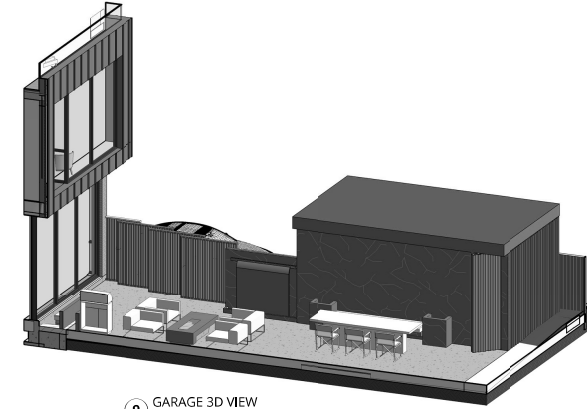
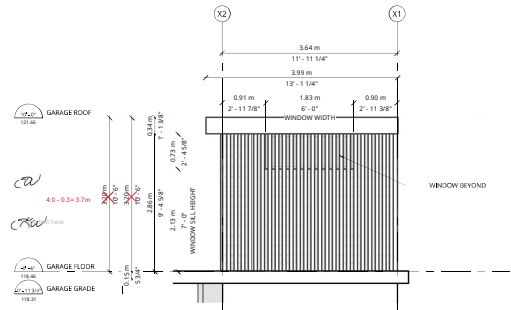
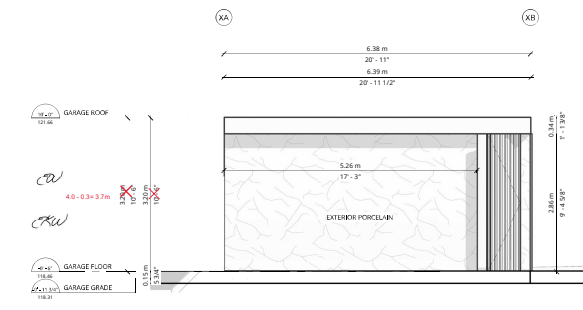
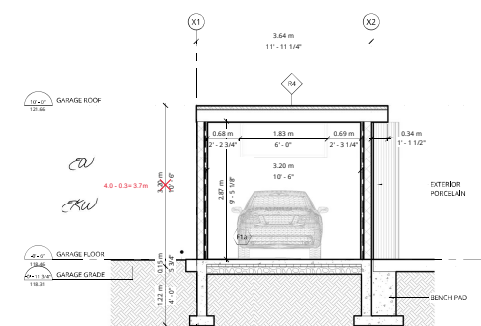
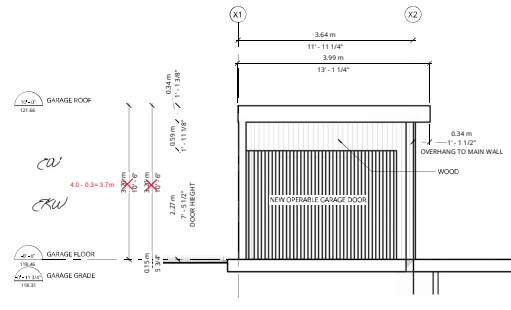
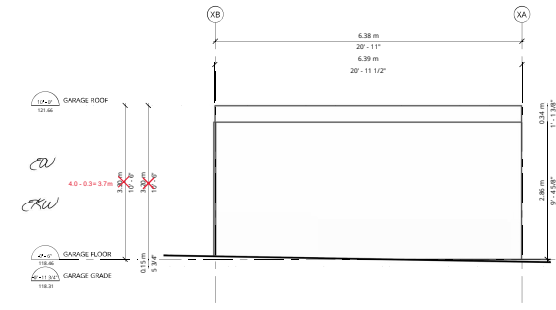
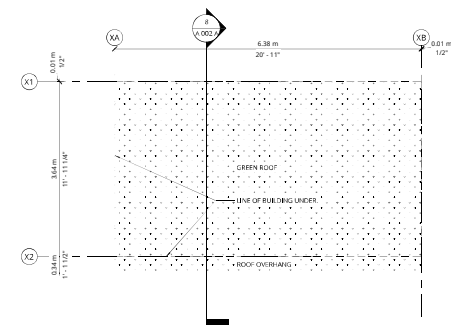
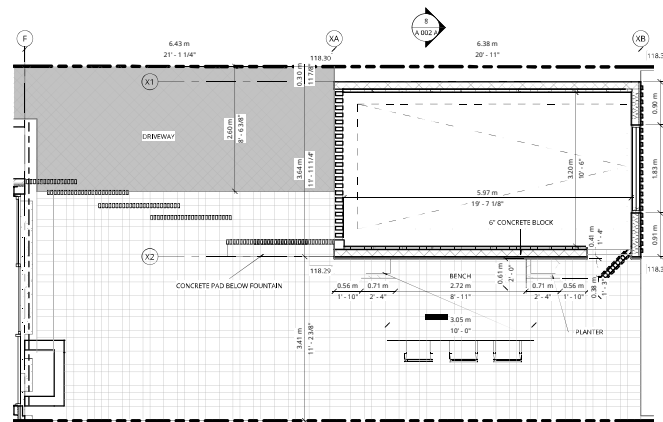
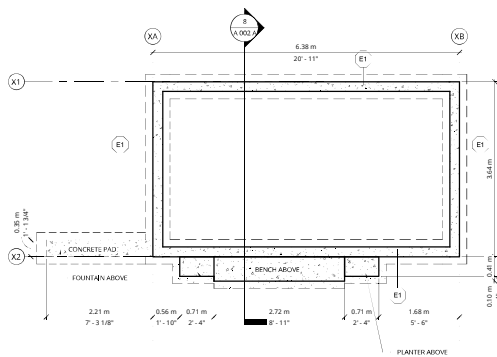
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A	APPROVED REVISION DESIGN	DATE 07/11/2018
REV	REVISION / REVISION DATE	PAGE
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SITE PLAN		
PROJECT:		
WEINSTEIN RESIDENCE		
37 HAZELTON AVE		
PROJECT DATA:		
SCALE		SHEET # OF SHEETS
SHEET SIZE		NO. OF SHEETS
DRAWN BY		CHECKED BY
AUTHOR		DATE
PROJECT NUMBER		

By Toronto Local Appeal Body at 12:40 pm, Apr 21, 2021

By Toronto Local Appeal Body at 12:40 pm, Apr 21, 2021





CONSTRUCTION MUST OBTAIN AND VERIFY ALL PERMITS ON THIS JOB.
DO NOT SCALE THE DRAWINGS.
ALL DRAWINGS, SPECIFICATIONS AND RELATED DOCUMENTS ARE THE PROPERTY OF THE ARCHITECT AND ARE TO BE RETURNED UPON REQUEST.
NO PART OF THIS DRAWING OR ANY INFORMATION CONTAINED HEREIN IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.
REVISIONS MUST BE INDICATED BY A CIRCLED NUMBER AND A DATE.
CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE 2018 INTERNATIONAL RESIDENTIAL CODE AND THE 2018 INTERNATIONAL ENERGY CODE.

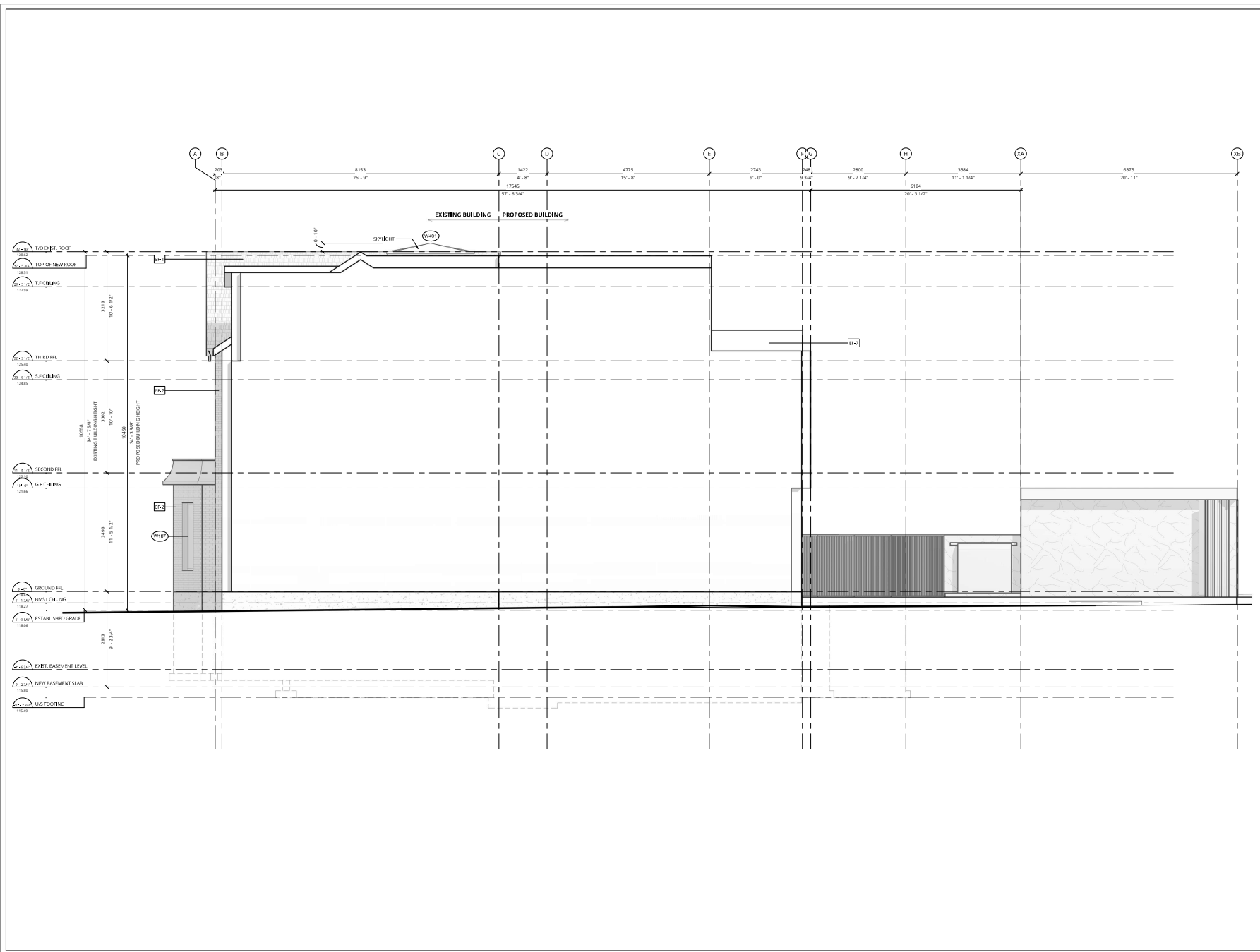


9	REISSUED FOR GARAGE CONSTRUCTION	2021 03 10
8	GARAGE HEIGHT REVISED	2021 02 18
7	ISSUED FOR GARAGE PERMIT	2021 02 02
NO.	REVISION / ISSUED FOR	DATE

PROPOSED GARAGE PLANS AND ELEVATIONS

PROJECT: WEINSTEIN RESIDENCE
97 HAZELTON AVE

PROJECT NORTH:	SCALE: 1/4" = 1'-0"
PLOT DATE: 3/11/2021 11:04:25 AM	
DRAWN BY: Author	
FILE NO: Project Number	
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CONSULTATION ONLY. CHECK AND VERIFY ALL DIMENSIONS ON THE JOB.

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AUDAX

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info@audax.ca

6	AGREED REVISED DESIGN	2020 12 23
NO.	REVISION / ISSUED FOR	DATE

DRAWING TITLE:

PROPOSED SOUTH ELEVATION

PROJECT:

WEINSTEIN RESIDENCE

97 HAZELTON AVE

PROJECT NORTH:

SCALE:
1/4" = 1'-0"

PLOT DATE:
13-Apr-21 11:40:44 AM

DRAWN BY:
Author

FILE NO.:
Project Number

A 302

