

DECISION AND ORDER

Decision Issue Date Wednesday, June 22, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ABTIN RAHIM

Applicant: ARCICA INC

Property Address/Description: 338 HORSHAM AVE

Committee of Adjustment Case File Number: 20 200896 NNY 18 CO, 20 200910 NNY 18 MV, 20 200911 NNY 18 MV

TLAB Case File Number: **21 122509 S53 18 TLAB, 21 122510 S45 18 TLAB, 21 122511 S45 18 TLAB**

Hearing date: August 18, 2021, October 28, 2021, November 25, 2021,

March 7, 2022, May 25, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY: TLAB PANEL MEMBER S. MAKUCH

REGISTERED PARTIES AND PARTICIPANT

APPELLANT	ABTIN RAHIM
APPELLANT LEGAL REP	AMBER STEWART
APPLICANT	ARCICA INC
PARTY	CITY OF TORONTO
PARTY LEGAL REP	CITY OF TORONTO (DERIN ABIMBOLA)
PARTY LEGAL REP	CITY OF TORONTO (BEN BAENA)
EXPERT WITNESS	MICHAEL ROMERO
EXPERT WITNESS	FRANCO ROMANO

INTRODUCTION

This is an appeal of: (1) the refusal to approve a consent to create two undersized lots and of (2) the refusal of variances to permit the construction of a single detached dwelling on each of the proposed lots at 338 Horsham (the property) which is in the West Willowdale area of North York. The variances are set out in Appendix 1. They relate to lot frontage, area, and coverage; building and wall height; side yard set backs; and height of the first floor elevation. The only party in opposition was the City. There were no participants and no neighbours who appeared at the hearing.

BACKGROUND AND MATTERS IN ISSUE

Although the obligation on the applicant on this appeal is to demonstrate that all the variances and the consent meet the requirements of the Planning Act and the provincial requirements, -all set out below, the issues on this appeal are fundamentally the following: (1) did the reduced lot frontage and size meet the general intent and purpose of the Official Plan in that they respected and reinforced the physical character of the neighbourhood or were they out of character because they were so small; (2) did the reduction in side yard set backs meet the general intent and purpose of the official plan or did they adversely affect the rhythm of the street and thus did not respect and reinforce the physical character of the area. There was virtually no significant concern raised the regarding building and wall height and the elevation of the first floor. There was evidence supporting these variances and evidence that the proposal conformed with provincial requirements. If the variances for frontage, lot size and set backs are approved, then the proposed consent could be approved and no plan of subdivision would be required, although certain standard conditions are recommended if the appeal were granted.

JURISDICTION

Minor Variance – S. 45(1)

In considering the applications for variances form 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.

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

EVIDENCE

Two planners presented the evidence. Both were eminently qualified and experienced and provided detailed evidence in witness statements on file with TLAB which reached opposite conclusions. The evidence for the applicant /appellant was provided by Mr. Romano; that of the City by Mr. Romero. It was clear on the evidence that if the consent were granted, although the current property frontage is among of the largest in the area, the proposed lot frontage variance would result in lots with frontages among the smallest in the neighbourhood.

Mr. Romano's relevant evidence may be summarized as follows.- The proposed development meet the general intent of the Official Plan as the dwellings respected and reinforced the character of the area as it is a two story detached dwelling in an area of similar dwellings. His evidence was that the proposed lot frontage of 9.905m versus the 15m required, and the resulting proposed lot size of 397.5 versus the 550 required, are not out of keeping with the character of the street on which they are to be located as it is a street with a mix of lot frontages. The street includes frontages of a similar size, and indeed smaller. The proposed smaller lot size is a function of the frontage and will not be noticeable as the small size will be largely only to the rear of the dwelling and there are no rear yard set backs being sought. While there were large areas of the neighbourhood which had uniformly larger lot frontages this was not the case on Horsham Ave. There had been approvals of smaller frontages on the street and thus the physical character of the street is one of a mixture of lot frontages and lot sizes including modest sizes as those proposed. In his opinion smaller frontages had caused no instability in the neighbourhood.

He also gave evidence that there are existing dwellings on Horsham Ave. with side yard set backs similar to those proposed. His evidence was that the variance in side yard setbacks would not stand out and thus not fail to respect and reinforce the character of the area.

Mr Romero's evidence did not contradict that of Mr. Romano in a meaningful way, since the two planners agreed on the existing lot frontages and sizes on a lot by lot basis. However, Mr. Romero, I find, focused on a larger area and the prevailing character of that area. When one considers the larger areas that Mr. Romano and Mr. Romero studied, although they were somewhat different in size and shape, their physical character, as Mr. Romero pointed out, was significantly different from Horsham Ave. itself. The prevailing character of the wider neighbourhood was one of larger lots with larger frontages than those proposed, with certain limited exceptions. In addition he pointed out that Amendment 320 to the Official Plan required a consideration of the prevailing character of the wider area. Moreover, the prevailing character could not be one of a mixture of lot sizes as such a description would negate the obligation to determine the prevailing character. In addition it was his opinion that the proposed reduced side yard set backs from 1.8m to .9m, a 50% reduction, would disrupt the rhythm of Horsham Ave. with most dwellings having wider set backs which provided a more open space feel. The proposed set back variances would therefore be an overdevelopment of the site as they would be noticeable and would result in a stark departure from the existing pattern of development on Horsham Ave. and would not be appropriate for the development of the property.

ANALYSIS, FINDINGS, REASONS

I find that the variances should be allowed. The Planning Act requires that I consider the general intent of the Official Plan not merely its specific provisions. I find and the planners agree that the general intent is to ensure the proposed variances and proposed development respect and reinforces the physical character of the area. I find the question to be determined in evaluating the general intent is not detailed numerical calculations of the number of lots with certain frontages in a large area but rather whether this particular development will fit where it is proposed to be located in the area or neighbourhood. Therefore, the question before me can be put as follows: will the proposed development fit, or will someone, when walking down the street be struck by it as being out of place or inappropriately standing out.

I find that the smaller lot size will not be noticeable as it will be hidden to the rear of the dwellings and that the narrow frontages will not stand out as there are similar frontages nearby on the same street. I reach a similar conclusion regarding the side yard setbacks and find that the reduction of less than a metre on a street where there are similar setbacks will not appear out of place, or to be overdevelopment; especially where lot coverage is only 2% above the bylaw limit. For these reasons I find that that lot frontage size and sideyard setbacks variances do respect and reinforce the physical character of the area, being Horsham Ave.

The remaining evidence does not call into question the conclusion that the other variances also meet this general intent. All the variances, I conclude, cumulatively and individually meet the four tests for variances as not only do they meet the general intent of the Official Plan but they also meet the general intent of the zoning bylaw which is to implement the Official Plan. Moreover, since they have no demonstrated adverse

impact on any other properties and no neighbours or residents group appeared to oppose them they are desirable for the appropriate development of the land for detached two story residential dwellings. It is clear on the evidence and the above conclusions that no plan of subdivision is required in this developed area and that the consent should be granted. Both variances and consent should be subject to the recommended conditions.

I wish to note, however, that although these narrow frontages and small lot sizes are approved in this location I find Mr. Romero's concerns regarding them valid if they were sought for lots in other areas of the neighbourhood where there is a uniformity of wider frontages and larger lots.

DECISION AND ORDER

The appeal is allowed and variances in Appendix I are approved, the consent in Appendix 2 is granted, subject to the conditions in Appendix 3

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 10.20.30.20, By-law No. 569-2013

The minimum required lot frontage is 15m.

The proposed lot frontage is 9.905m.

2. Chapter 10.20.30.10, By-law No. 569-2013

The minimum required lot area is 550m².

The proposed lot area is 397.5m²

3. Chapter 10.20.40.70 Exception RD5, By-law No. 569-2013

The minimum required side yard setback is 1.8m.

The proposed east side yard setback is 1.2m.

4. Chapter 10.20.40.70 Exception RD5, By-law No. 569-2013

The minimum required side yard setback is 1.8m.

The proposed west side yard setback is 0.9m.

5. Chapter 10.5.40.60(1), By-law No. 569-2013

The front porch is required to be a minimum of 1.8m from the side lot line.

The proposed front porch is 1.2m from the side lot line.

6. Chapter 10.5.40.60(2), By-law No. 569-2013

The rear deck is required to be a minimum of 1.8m from the side lot line.

The proposed rear deck is 1.2m from the side lot line.

7. Chapter 10.20.30.40, By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area.

The proposed lot coverage is 32% of the lot area.

8. Chapter 10.20.40.10, By-law No. 569-2013

The maximum permitted wall height is 7.5m.

The proposed wall height is 7.81m for the pair of side walls.

9. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.8m.

The proposed building height is 9.27m.

10. Section 13.2.6, By-law No. 7625

The maximum permitted first floor elevation is 1.5m above established grade.

The proposed first floor elevation is 1.9m above established grade

APPENDIX 2

Attach R plans from CofA Decision filed with TLAB on September 30, 2020

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT,

DATE : AUGUST 14, 2020

AZIZ ABDEL SHAHID
ONTARIO LAND SURVEYOR

PLAN 66R--

RECEIVED AND DEPOSITED :

DATE : _____, 2020

REPRESENTATIVE FOR LAND REGISTRAR FOR THE LAND TITLES
DIVISION OF TORONTO REGISTRY OFFICE (No. 66)

SCHEDULE

PART	PART OF LOT	REGISTERED PLAN	ALL OF PIN	AREA
1	119	2057	PIN 10148-0138 (LT)	397.5m ²
2				397.5m ²

PARTS 1&2 COMPRISED ALL OF PIN 10148-0138 (LT)

PLAN OF SURVEY OF
PART OF LOT 119
REGISTERED PLAN 2057
CITY OF TORONTO
(FORMERLY THE CITY OF NORTH YORK)



A. AZIZ SURVEYORS INC., O.L.S.

METRIC: DISTANCES SHOWN HEREON ARE IN METRES AND
CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

BEARING SHOWN HEREON ARE GRID, DERIVED FROM OBSERVED REFERENCE POINTS (ORP'S) A & B,
BY REAL TIME NETWORK OBSERVATIONS, MTM ZONE 10, NAD 83 (CSRS V6) (EPOCH 2010.00)

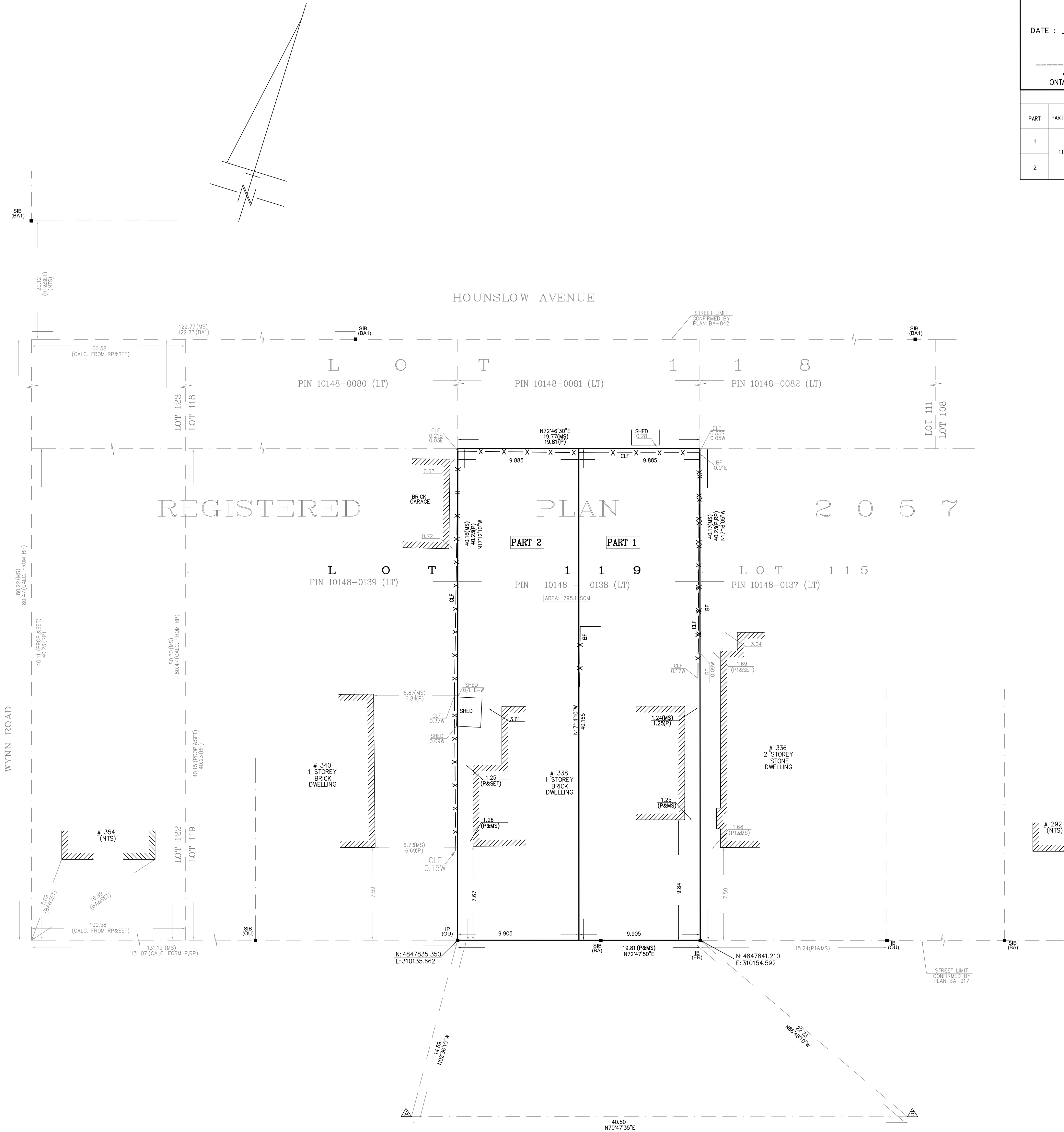
INTEGRATION DATA
OBSERVED REFERENCE POINTS (ORP'S) DERIVED FROM GPS OBSERVATIONS USING THE SOKKIA GPS (RTK)
NETWORK SERVICE AND ARE REFERRED TO MTM ZONE 10, NAD 83 (CSRS V6) (EPOCH 2010.00)
COORDINATE VALUES ARE TO URBAN ACCURACY IN ACCORDANCE WITH SECTION 14(2) OF O. REG. 216.10
AND CANNOT IN THEMSELVES BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

POINT ID	NORTHING	EASTING
A	4847820.472	310136.339
B	4847832.453	310175.026

DISTANCE SHOWN ON THE PLAN ARE ADJUSTED GROUND DISTANCE AND CAN BE USED TO
COMPUTE GRID DISTANCE BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.9999011

LEGEND:

- DENOTES SURVEY MONUMENT FOUND
- SURVEY MONUMENT SET
- SIB " STANDARD IRON BAR
- N.E.S.W " NORTH, EAST, SOUTH, WEST
- RP " REGISTERED PLAN 2057
- P " SURVEY BY CREUBEN, O.L.S.,
DATED JULY 8, 1960
- P1 " SURVEY BY ERTL SURVEYORS, O.L.S.,
DATED JULY 23, 2015
- ER " ERTL SURVEYORS, O.L.S.,
- BA " PLAN BA-917
- BA1 " PLAN BA-842
- PROP. " PROPORTION
- CLF " CHAIN LINK FENCE
- BF " BOARD FENCE
- NTS " NOT TO SCALE



APPENDIX 3

Variance Conditions

1. Construction to be substantially in accordance with the following plans:

Attach site plan p. 65 of Franco Romano Witness Statement filed with TLAB May 17, 2021

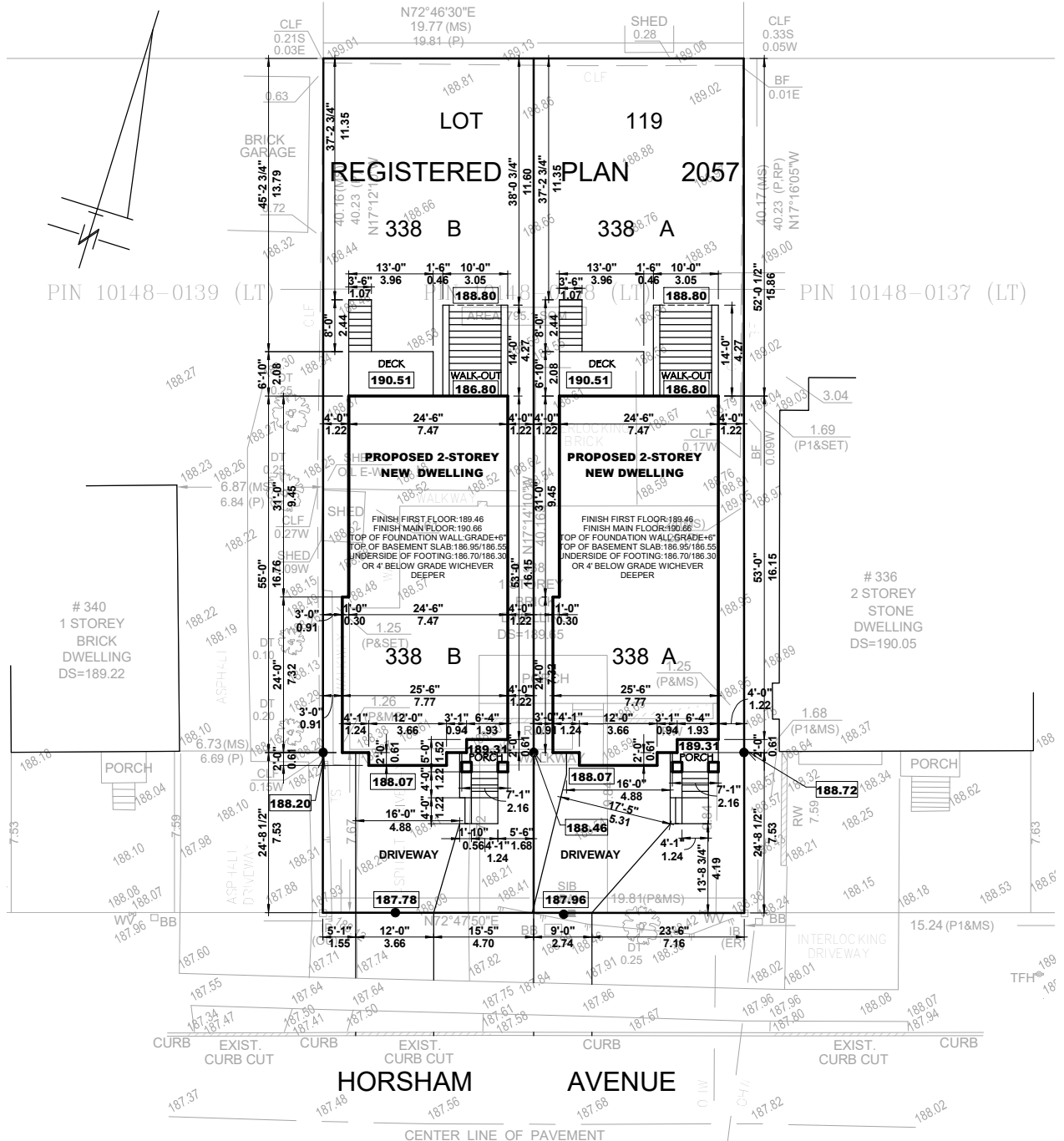
Attach elevations only from Tab 10 of Franco Romano Documents Disclosure filed May 17 2021

2. Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets

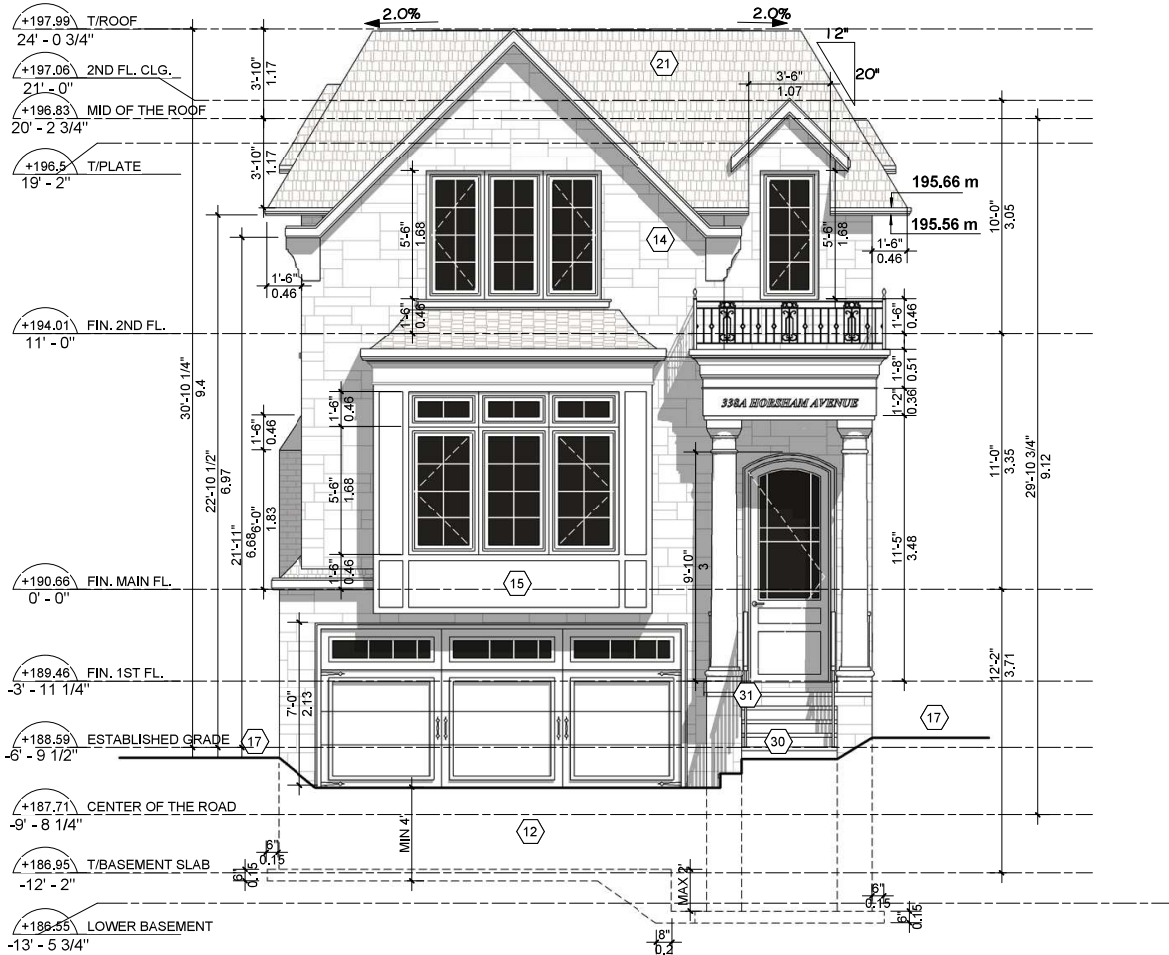
3. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

Zoning Data Matrix	
338 B HORSHAM AVENUE	
R4 & RD (f15, a550)(X5)	
Proposed	
Lot #	PART B OF LOT 119
Plan #	2057
Lot Area	4278.65 s.f. - 397.5 m ²
Front Yard Area	781.77 s.f. - 72.62 m ²
Driveway Area	367.89 s.f. - 34.18 m ²
Hardscaping	40.49 s.f. - 3.76 m ²
Landscape Open Space Area	413.88 s.f. - 38.45 m ² (52.94%)
Soft Landscaping Area	373.39 s.f. - 34.69 m ² (90.22%)
Building Area(Coverage)	1358.99 s.f. - 126.25 m ² (31.76%)
Main Floor Area	1358.99 s.f. - 126.25 m ²
Second Floor Area	1349.50 s.f. - 125.37 m ²
Gross Floor Area	2708.49 s.f. - 251.62 m ² (63.30%)

Zoning Data Matrix	
338 A HORSHAM AVENUE	
R4 & RD (f15, a550)(X5)	
Proposed	
Lot #	PART A OF LOT 119
Plan #	2057
Lot Area	4278.65 s.f. - 397.5 m ²
Front Yard Area	781.77 s.f. - 72.62 m ²
Driveway Area	369.17 s.f. - 34.29 m ²
Hardscaping	40.49 s.f. - 3.76 m ²
Landscape Open Space Area	412.60 s.f. - 38.33 m ² (52.77%)
Soft Landscaping Area	372.11 s.f. - 34.57 m ² (90.18%)
Building Area(Coverage)	1358.99 s.f. - 126.25 m ² (31.76%)
Main Floor Area	1358.99 s.f. - 126.25 m ²
Second Floor Area	1349.50 s.f. - 125.37 m ²
Gross Floor Area	2708.49 s.f. - 251.62 m ² (63.30%)



designed by: ALI SHAKERI T.416 8213960 F.416 2508900 ARCICA INC. 326 SHEPPARD AVENUE EAST, M2N 3B4 TORONTO, ONTARIO, CANADA.	project: 338B HORSHAM AVENUE	revisions: AUG. 25, 2020- ISSUED FOR COA & PERMIT1 MAY. 07, 2021- ISSUED FOR TLAB1	1 ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE. 2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION. 3. DO NOT SCALE DRAWINGS. 4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK. 5. USE ONLY LATEST REVISED DRAWINGS OF THOSE THAT ARE MARKED "ISSUED FOR CONSTRUCTION". 6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.
	drawing: SITE PLAN PART A & B	THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER Ali Shakeri BCIN#24574 F&A Associates Ltd. BCIN#30992	
	scale: 1/16" = 1'-0"	page: A 00	



designed by:

ALI SHAKERI

T.416 8213960 F.416 2508900

ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA.

project:

338A HORSHAM AVENUE

drawing:

**MAIN
ELEVATION(SOUTH)**

scale:

3/16" = 1'-0"

page:

A 06

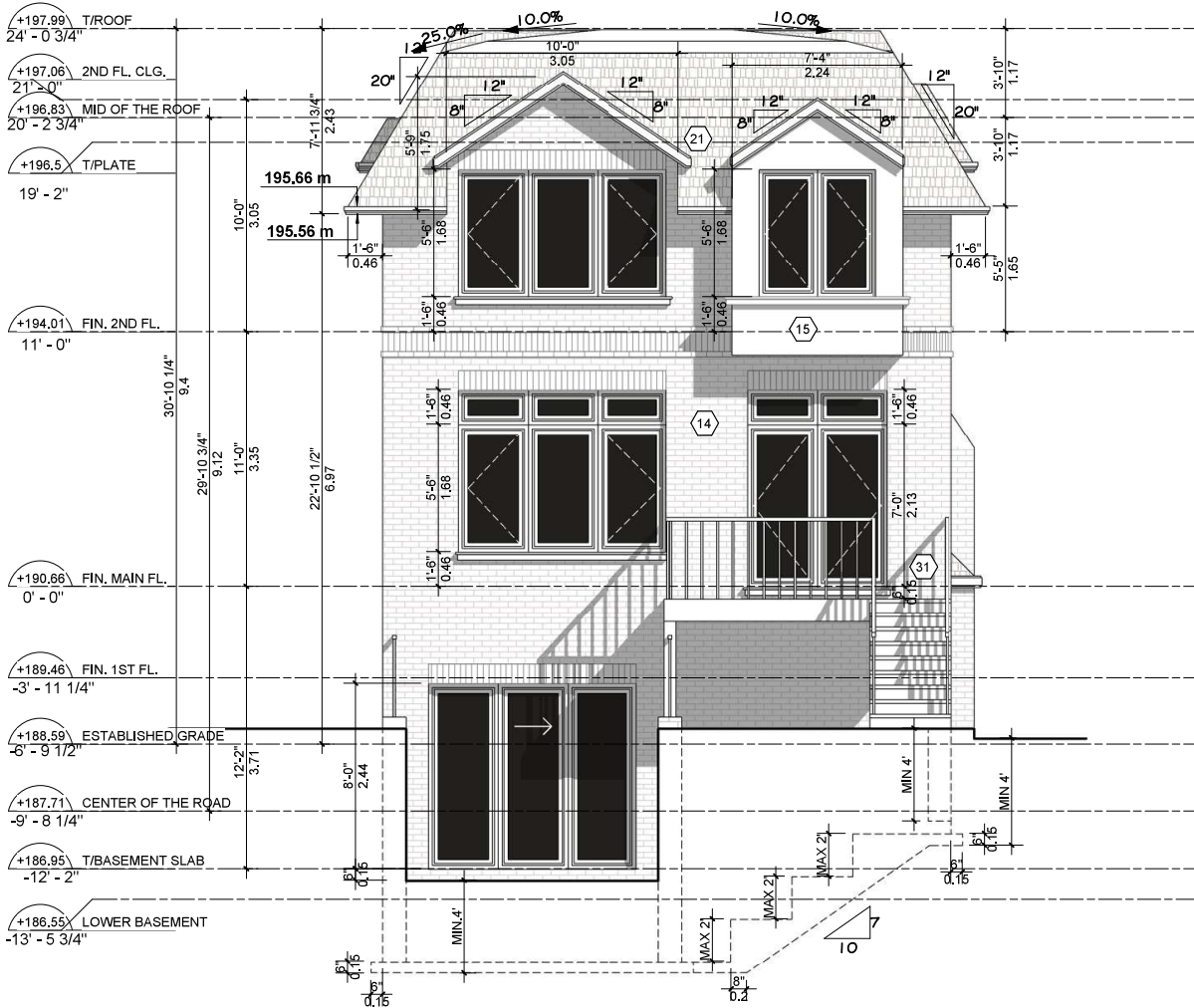
revisions:

AUG. 25, 2020- ISSUED FOR COA & PERMIT1

THIS UNDERSIGNED HAS REVIEWED & TAKES
RESPONSIBILITY FOR THIS DESIGN, & HAS
THE QUALIFICATIONS & MEETS THE
REQUIREMENTS SET OUT IN THE O.B.C. TO
BE A DESIGNER

Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

1 ALL WORK SHALL BE CARRIED OUT IN
STRICT ACCORDANCE WITH THE
REQUIREMENTS OF THE LATEST REVISION OF THE
ONTARIO BUILDING CODE.
2. VERIFY ALL DIMENSIONS PRIOR TO
CONSTRUCTION.
3. DO NOT SCALE DRAWINGS.
4. ALL DIMENSIONS AND INFORMATION SHALL BE
CHECKED AND VERIFIED ON THE JOB AND ANY
VARIANCES OR DISCREPANCIES MUST BE
REPORTED TO F&A ASSOCIATES BY PHONE AND
SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO
COMMENCEMENT OF THE WORK.
5. USE ONLY LATEST REVISED DRAWINGS OF
THOSE THAT ARE MARKED "ISSUED FOR
CONSTRUCTION".
6. ALL STRUCTURAL DESIGN MUST BE REVIEWED
AND APPROVED BY CERTIFIED
STRUCTURAL ENGINEER PRIOR TO
CONSTRUCTION.



designed by:

ALI SHAKERI

T.416 8213960 F.416 2508900

ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
TORONTO, ONTARIO, CANADA,

project:

338A HORSHAM AVENUE

drawing:

**REAR
ELEVATION(NORTH)**

scale:

3/16" = 1'-0"

page:

A 07

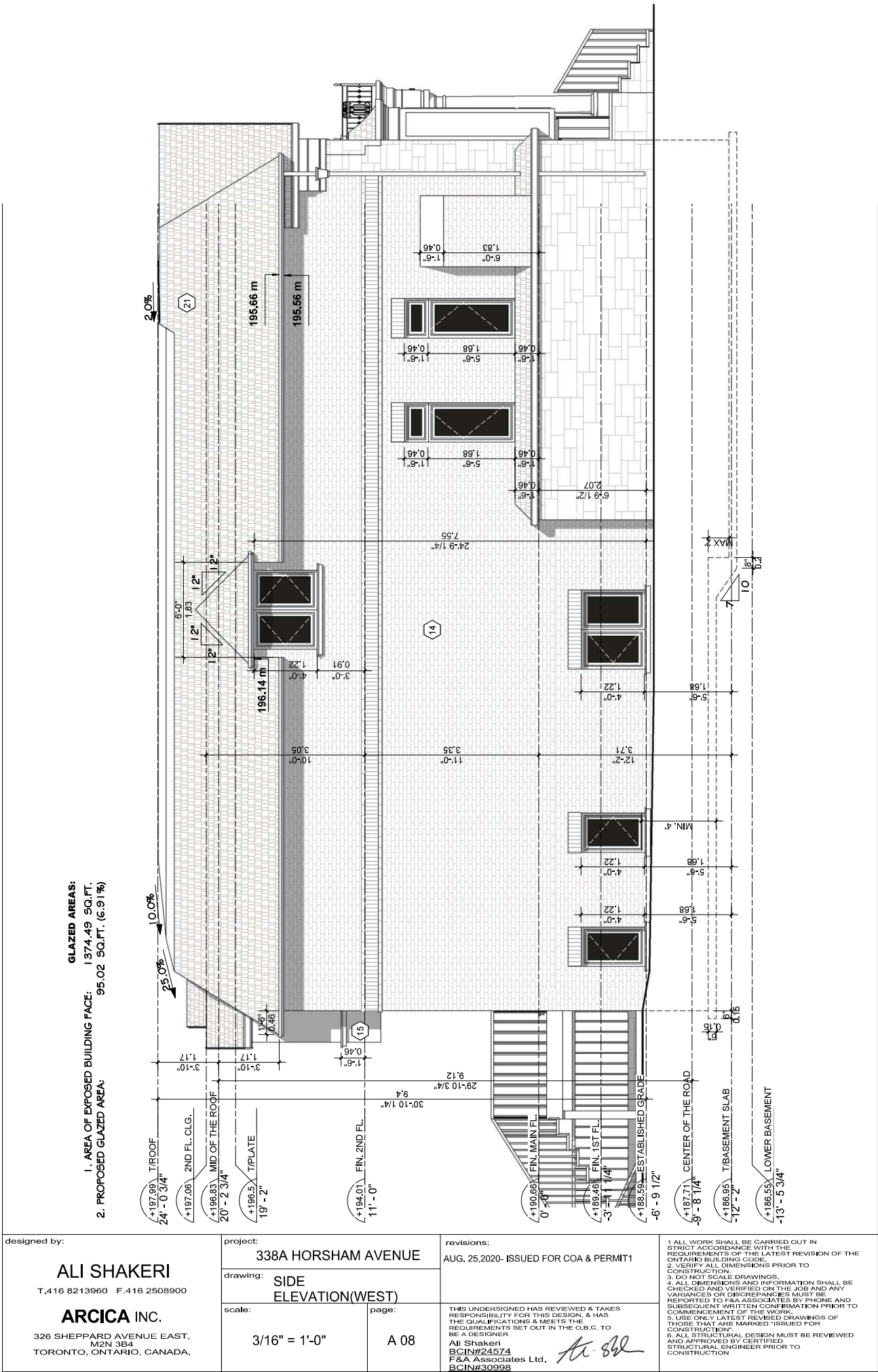
revisions:

AUG. 25, 2020- ISSUED FOR COA & PERMIT1

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STRUCTURAL ENGINEER PRIOR TO
CONSTRUCTION.



Standard Consent Conditions

The Consent Application is approved on Condition

The TLAB therefore consents to the transaction as shown on the plan filed with the TLAB or as otherwise specified by this Decision and Order, on the condition that before a Certificate of Official is issued, as required by Section 53(42) of the Planning Act, the applicant is to fulfill the following conditions to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment:

- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.
- (3) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (4) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (6) Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
- (7) Within TWO YEARS of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.

