

DECISION AND ORDER

Decision Issue Date Tuesday, May 31, 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): Robert Singer

Applicant: Jonathan Weizel Architect

Property Address/Description: 466 Fairlawn Ave

Committee of Adjustment Case File Number: A0341/21NY

TLAB Case File Number: 21 180306 S45 08 TLAB

Hearing dates: November 18, 2021, November 24, 2021, January 13, 2022, February 15, 2022, and April 21, 2022

DECISION DELIVERED BY PANEL CHAIR D. LOMBARDI

REGISTERED PARTIES AND PARTICIPANT

Appellant	Robert Singer
Appellant's Legal Rep	Kristie Jennings
Applicant	Jonathan Weizel Architect
Party	Sten Homes Inc
Party's Legal Rep	Meaghan Mcdermid
Expert Witness	Martin Rendl

INTRODUCTION

This is an appeal of a decision of the City of Toronto (City) Committee of Adjustment (COA) dated June 17, 2021, conditionally approving seven (7) variances to permit the construction of a new residential dwelling at 466 Fairlawn Avenue (subject property) in the former City of North York.

The subject property is situated on a corner lot on the northeast corner of Fairlawn Avenue and Ledbury Street, approximately 450 m west of Avenue Road. It is designated **Neighbourhoods** in the City Official Plan (OP) and zoned **RD (f12.0; a370) (x1463) – Residential Detached Zone** under comprehensive Zoning By-law 569-2013 and the former City of North York Zoning By-law 7625.

The purpose of the Application before the COA was to permit the construction of a new detached residential dwelling on the subject property. The property is currently developed with a one-storey detached dwelling with an attached garage with driveway access from Fairlawn Avenue.

Mr. Robert Singer, the abutting neighbour, appealed the COA's decision to the Toronto Local Appeal Body (TLAB) which set a Hearing date for November 18, 2021. However, in the intervening period, the Parties requested an adjournment of five (5) additional days to November 24, 2021, a request which the presiding Member granted.

Hearing Day 2 was subsequently scheduled for February 15, 2022. However, prior to the adjournment of Hearing Day 1, Mss. McDermid and Jennings, solicitors for the Applicant and Appellant respectively, indicated that the Parties were interested in pursuing TLAB-led mediation to hopefully resolve the issues still in dispute. I agreed and convened a confidential mediation session

The mediation session consumed much of the Hearing Day. At the conclusion of the session, the Parties advised the Member they had reached a tentative settlement and resolved the issues in dispute to the satisfaction of the Applicant and the Appellant. Additionally, the Parties agreed to exchange additional documentation to finalize and memorialize the matters established at this Mediation session, and to serve the Terms of Settlement and revised Site Plan drawings on the Parties and file same with the TLAB prior to an expedited Settlement Hearing.

The Parties also formally agreed following the conclusion of the Mediation session that I would continue to be the presiding Member in the Settlement Hearing pursuant to TLAB Rule 20.5. I agreed and, therefore, I remained seized on the matter.

The Tribunal scheduled the expedited Settlement Hearing in this matter for January 13, 2022.

On January 11, 2022, three days before the scheduled Hearing, I advised the Parties that I was unavailable to attend the January 13th Hearing because of an unexpected family matter. As a result, and on consent, the TLAB rescheduled the Hearing for February 15, 2022.

In the early evening of February 14, 2022, staff notified me of an email from Ms. McDermid dated February 11, 2022, forwarded to the Tribunal. In that correspondence, Ms. McDermid advised that the Parties had been unable to reach a final settlement of this appeal and requested that the February 16th Hearing be cancelled and that a contested 2 Day Hearing be scheduled before a different TLAB Panel Member.

Given the late date of Ms. McDermid's email relative to the Hearing date, I directed staff to not cancel the Hearing and to advise the Parties to attend in the morning where they would be provided with an opportunity to further update me on the failed settlement discussions.

On the morning of February 15th, the following Persons attended the Hearing: Meaghan McDermid and Martin Rendl, expert planning witness, on behalf of the Applicant; and, Kristie Jennings, the Appellant's legal representative.

Ms. McDermid spoke first and advised that since filing her February 11th email with the TLAB, the Parties had continued discussions and were successful in settling all the issues in dispute. She requested, on direction from the Applicant, that the TLAB schedule an expedited Settlement Hearing in this matter.

The Expedited Settlement Hearing was scheduled for April 21, 2022.

BACKGROUND

The following seven (7) variances were requested by the Applicant and conditionally approved by the COA:

1. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013

The permitted maximum height is 7.2m. The proposed height is 10.03m. 2.

2. Chapter 10.20.40.20.(1) By-law No. 569-2013

In the RD zone with a minimum required lot frontage of 18.0m or less, the permitted maximum building length for a detached house is 17.0m. The proposed building length is 20.30m.

3. Chapter 10.20.40.30.(1), By-law No. 569-2013

The permitted maximum building depth for a detached house is 19.0m. The proposed building depth is 20.30m.

4. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013

The permitted maximum lot coverage is 30% of the lot area. The proposed lot coverage is 33.60% of the lot area.

5. Chapter 10.5.80.40.(3)(B), By-law No. 569-2013

Vehicle access to a parking space on a corner lot must be from a flanking street that is not a major street. The proposed vehicle access to a parking space is from the fronting street.

6. Chapter 10.20.40.50.(1)(B), By-law No. 569-2013

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0². The proposed area of the Rear Balcony at the second storey is 10m².

7. Section 14-A(8), By-law No. 7625

The maximum permitted building height is 8.0m. The proposed building height is 10.25m

MATTERS IN ISSUE

This matter comes before the TLAB as a settlement of the filed Appeal, with support from all the Parties. The mandate of the TLAB in this situation is to be satisfied that the variances and conditions that were agreed to via the Terms of Settlement (TOS) meet the four statutory tests of the *Planning Act*.

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. Rendl provided evidence in support of the requested variances, noting that the proposal is to demolish the existing one-storey house and construct a new two-storey detached dwelling with an integral garage (Exhibit 1, revised site plan and architectural drawings dated March 1, 2022, and filed with the TLAB on April 20, 2022).

The revisions to the plans that were originally before the COA amend three of the original variances and eliminate one other variance. Those amendments can be summarized as follows:

- a. The rear breakfast nook was reduced in depth by 1.0 m thereby reducing the building length from the original 20.3 m to 19.2 m (Variance 2).

- b. The proposed house was moved 0.3 m to the minimum required front yard setback resulting in a 19.0 m building depth which complies with the Zoning By-law and eliminates the need for a building depth variance (Variance 3).
- c. The reduction in building depth reduces the lot coverage from the original 33.6% to 31.55% (Variance 3).
- d. The area of the second-storey, rear balcony has been reduced from an overall size of 10.0 m² to 7.07 m² (Variance 5).

In presenting his evidence, Mr. Rendl first established a Neighbourhood Study Area (NSA) corresponding to the parameters set out in Policy 4.1.5 of the OP for defining a geographic neighbourhood as well as the immediate and broader contexts.

He, then, provided testimony and opinion evidence which can be summarized as follows:

- The area is a mature, established neighbourhood that is stable but not static and is experiencing reinvestment primarily in the form of the construction of new replacement dwellings.
- The physical character of the neighbourhood consists of both the original homes and new construction, with new replacement houses being the prevailing housing type.
- The variances sought to permit the construction of the proposed new dwelling maintain the general intent and purpose of the relevant development criteria 4.1.5 (c), (d), (f), and (g).
- The proposed dwelling represents the prevailing building type in the neighbourhood and the built form is contextually consistent with the heights, massing, and scale of the two and three-storey houses in the immediate and broader contexts.
- The driveway access/egress has been shifted further east away from the intersection of Fairlawn Avenue and Ledbury Street, and the design and elevations of the proposed dwelling relative to the grade of the garage and positive-sloped driveway are consistent with other homes in the neighbourhood.
- The proposed development meets the applicable zoning requirements for front, rear, and east side yard setbacks.
- The proposed 1.2 m west side yard setback for the dwelling and the 1.8 m west side yard setback for the rear deck provide appropriate separation distances from the adjacent public realm on Ledbury Street.
- The variances, individually and cumulatively, do not create any undue adverse impacts on nearby properties, and privacy and overlook on adjacent properties will not be materially different than the current conditions.
- The owner of the subject property will make best efforts to retain the mature cedar hedge along the east side lot line and will replace any trees that may be removed as a result of the redevelopment of the property.

He concluded that the variances meet the four tests, are appropriate for the development of the subject property, and represent good community planning. He

requested that the TLAB approve the variances requested subject to the two conditions of approval as included in Exhibit 4 (Recommended Conditions of Approval)

ANALYSIS, FINDINGS, REASONS

This is an uncontested Hearing for the purposes of approving a revised set of variances that have been agreed to by the Parties as part of a settlement agreement.

I note that as a settlement, this case has no precedential value since any findings of fact are for the limited purpose of ensuring that the settlement is not contrary to the *Planning Act*.

I accept Mr. Rendl's evidence that the proposal is consistent with the Provincial Policy Statement, 2020, and conforms to the Growth Plan for the Greater Golden Horseshoe for the subject property.

General Intent and Purpose of the Official Plan

In his testimony, Mr. Rendl focused his evidence on the criteria contained in OP Policy 4.1.5 to substantiate his opinion that the proposal and the requested variances meet the first test of s.45(1) of the *Act*. The proposal specifically engages development criteria c), d), e), f), and g) of OP Policy 4.1.5.

4.1.5(c) Prevailing, heights, massing, scale, density, and dwelling type of nearby residential properties;

(d) Prevailing building types;

(e) Prevailing location, design, and elevations relative to the grade of driveways and garages.

(f) Prevailing setbacks of buildings from the street.

(g) Prevailing patterns of ... side yard setbacks and landscaped open space.

Each is addressed individually below.

Height, Massing, Scale, and Density

Mr. Rendl provided data in TAB 25 (Appendix "D") of his Expert Witness Statement (Exhibit 2) highlighting COA decisions for lot coverage, building height, and building length variances in the neighbourhood.

Based on the evidence provided, I concur with Mr. Rendl's opinion that the proposal fits in with the prevailing heights and massing of dwellings on both the north and south side of Fairlawn Avenue and with the neighbourhood in general. I accept his opinion that the proposed density is in keeping with the neighbourhood as a whole on

He further opined that the style of roof proposed (see elevation drawing above) is common for new houses in the neighbourhood and is part of its existing physical character.

Building Length – Variance 2

Mr. Rendl advised that the general intent and purpose of regulating building length is to control the length of the proposed dwelling from its front wall to the rear wall. The building length variance being sought is 19.30 m whereas 17.0 m is permitted.

He noted that the additional building length of 2.3 m is a combination of the one-storey nook projection on the east side of the first floor and the 0.3 m projection of the second-floor bedroom on the west side at the front of the proposed dwelling.

He asserted that modest revisions to the proposal were introduced to address potential impacts such as privacy and overlook on abutting properties. These include setting back the breakfast nook 0.6 m from the east side wall thereby creating a side yard setback of approximately 1.9 m or 0.7m greater than required and introducing frosted windows within the nook facing east.

He submitted that the revised proposal also included a rear yard setback of 20.72 m which he maintained would provide ample rear yard depth and a generous outdoor amenity area similar to other properties in the immediate context.

Lot Coverage – Variance 3

The general intent and purpose of regulating lot coverage are to ensure sufficient undeveloped space on a lot for outdoor amenity areas, walkways, parking, and spatial separation from adjacent properties. Mr. Rendl opined that the proposed 31.55% lot coverage is a reduction from the previously requested coverage of 33.6% and represents a rather modest increase from the 30% maximum lot coverage permitted in the Zoning By-law.

I concur with Mr. Rendl that this variance maintains the general intent and purpose of the By-law.

Vehicle Access – Variance 4

In addressing this variance, Mr. Rendl submitted that the intent and purpose of requiring access to parking space on a corner lot from a flanking street is in part to locate the driveway access away from the corner intersection.

He asserted that while the proposed driveway will continue to provide vehicle access from Fairlawn Avenue and maintain the current streetscape character, in the revised proposal the driveway will be relocated further to the east from its current location thereby increasing the separation and traffic safety from the intersection.

Rear Balcony Area – Variance 5

Mr. Rendl noted that the Zoning By-law permits rear balconies and as a result asserted that impacts such as overlook are thereby contemplated as a consequence. The proposed rear balcony will be located on the flat roof of the one-storey breakfast nook below it and at the rear of the dwelling on the east side and the area of the balcony has been reduced in size in the revised plans to 7.07 m².

He opined that the reduction in the size of the balcony, its connection to an upper floor bedroom, and the incorporation of a 1.8 m privacy screen on its east side will mitigate any potential adverse impacts on abutting neighbours of privacy and overlook.

West Side Yard Setback on a Corner Lot – Variances 7 & 8

Mr. Rendl advised that, in his opinion, the intent and purpose of a side yard setback on a corner lot is to provide appropriate separation between buildings and the side lot line along the abutting street and a transition to the greater front yard setbacks of adjacent lots fronting onto the abutting street.

In addressing both of these new variances, he noted that the west side wall of the dwelling will have a 1.8 m side yard setback for the majority of its length along Ledbury Street and that the 1.8 m setback of the rear deck at grade from the side lot line will align with the 1.8 m side yard setback of the main length of the west wall of the dwelling.

I accept Mr. Rendl's opinion that the proposed setbacks on the subject property from Ledbury Street provide appropriate separation between the west wall of the dwelling and the rear deck from the adjacent public realm and I concur that these variances maintain the general intent and purpose of the Zoning By-law.

Desirable for the Appropriate Development of the Land

The built form of the new house and the associated variances are appropriate and consistent with the existing and evolving character of the neighbourhood and the dwelling will be similar in its built form characteristics to other new houses built on Fairlawn Avenue and within the neighbourhood.

The variances will facilitate reinvestment in the neighbourhood in a manner that respects and reinforces its existing and emerging built form and physical characteristics, and the proposal will contribute to the area's continued stability.

I find that the proposal as revised is not an 'overdevelopment' of the subject property and is desirable for the development of the land.

Minor

Mr. Rendl asserted that the generally accepted test of whether a variance is minor is not an arithmetic test based on the percentage by which the variance differs

from the zoning by-law standard but, rather, the extent of any undue adverse impacts on adjacent properties.

In his opinion, the variances individually and cumulatively do not create any undue adverse impacts. He asserted that privacy and overlook impacts are not materially different than the current conditions or what would be expected from a two-storey dwelling.

I agree with Mr. Rendl that there would be no unacceptable impacts. I note the use of frosted glass in the breakfast nook window and the privacy screen on the second-floor rear balcony will assist in mitigating overlook and loss of privacy for the Appellant's property.

Furthermore, I note the Owner's commitment as memorialized in the settlement agreement, to use best efforts to retain the existing mature cedar hedge along the east side lot line during construction and to replace any trees that may be removed will maintain the year-round visual screen currently experienced between the rear yards of the subject property and 464 Fairlawn Avenue.

I concur that the proposal will result in a built form that is compatible with the existing neighbourhood.

Conclusion

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

The revisions to the proposal since the COA approval and the subsequent settlement discussions have resulted in the amendment to three of the original variances and the elimination of one other of the variances requested. I find these changes to the requested variances to be minor and an improvement to the proposal and that further notice under s.45(18.1.1) of the Planning Act can be waived.

DECISION AND ORDER

The Appeal is dismissed; the decision of the Committee of Adjustment dated June 17, 2021, is varied. The variances identified below in **ATTACHMENT A** are approved, subject to the Conditions in ATTACHMENT B.

ATTACHMENT A

REQUESTED VARIANCES TO THE ZONING BY-LAW:

1. Chapter 10.20.40.10.(4)(A), By-law No. 569-2013

The permitted maximum height is 7.2m.

The proposed height is 10.03m.

2. Chapter 10.20.40.20.(1), By-law No. 569-2013

In the RD zone with a minimum required lot frontage of 18.0m or less, the permitted maximum building length for a detached house is 17.0m.

The proposed building length is 19.30 m.

3. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013

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

The proposed lot coverage is 31.55% of the lot area.

4. Chapter 10.5.80.40.(3)(B), By-law No. 569-2013

Vehicle access to a parking space on a corner lot must be from a flanking street that is not a major street.

The proposed vehicle access to a parking space is from the fronting street.

5. Chapter 10.20.40.50.(1)(B), By-law No. 569-2013

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0m².

The proposed area of the Rear Balcony at the second storey is 7.07 m².

6. Section 14-A(8), By-law No. 7625

The maximum permitted building height is 8.0m.

The proposed building height is 10.25m.

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

The required minimum side yard setback is 3.0 metres for a corner lot where the required lot frontage is 12.0 metres or more.

The proposed west side yard setback is 1.20 metres.

8. Chapter 10.5.40.50(2), By-law 569-2013

In the Residential Zone category, a platform without main walls, such as a deck, porch, balcony, or similar structure, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone. The minimum required side yard setback for the zone is 3.0 metres for the west side yard setback.

The proposed west side yard setback for the rear platform is 1.8 metres.

ATTACHMENT B

CONDITIONS OF APPROVAL:

1. The proposed development will be constructed substantially in accordance with the site plan and elevation drawings prepared by Jonathan Weizel Architect, titled TLAB Settlement Drawings, March 1, 2022, including Drawing A-01.0 (Site Plan), Drawing A-03.0 (Front (South) Elevation), Drawing A-03.1 (Rear (North) Elevation), Drawing A-03.2 (East Side Elevation), and Drawing A-03.3 (West Side Elevation), all dated Feb. 2022, and attached as **ATTACHMENT C** herein. Any other variances that may appear on these plans that are not listed in this decision and order are **NOT** authorized.

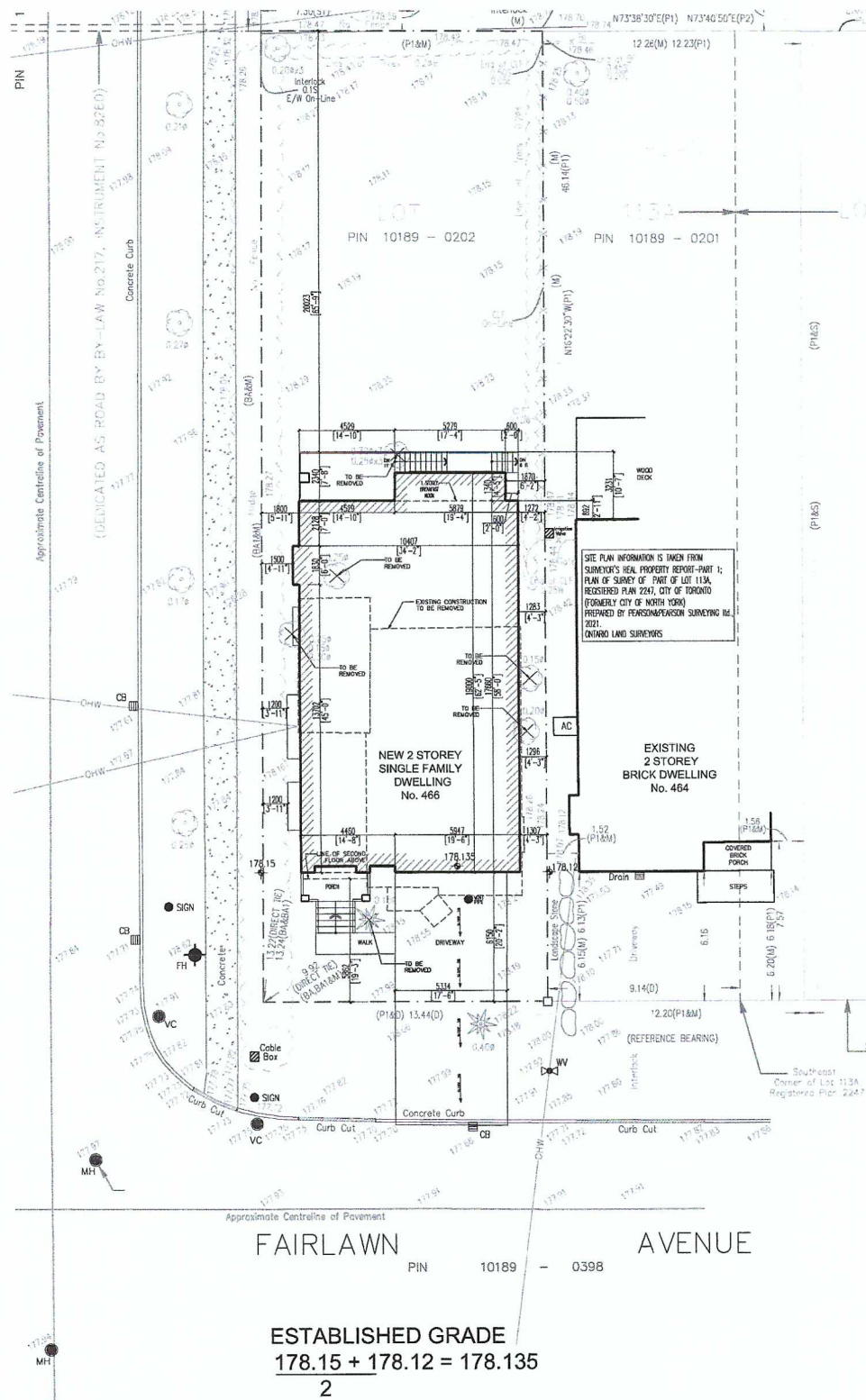
2. Submission of a complete application for a permit to injure or destroy a City-owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

Attachments

X 

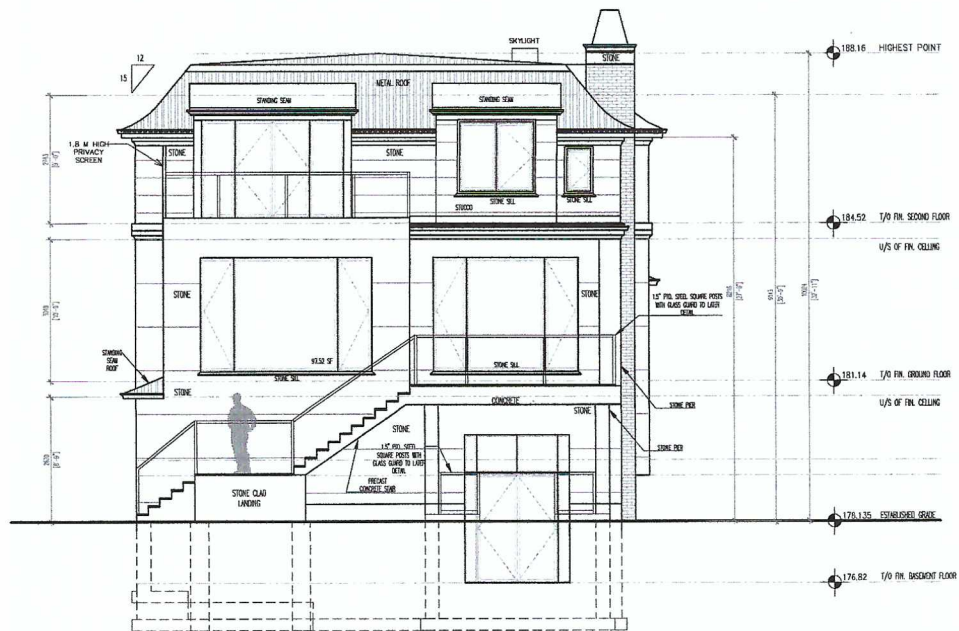
Dino Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar

ATTACHMENT C – Site Plans



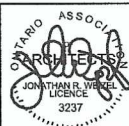
TLAB Settlement Drawings, March 1, 2022, 11 pages





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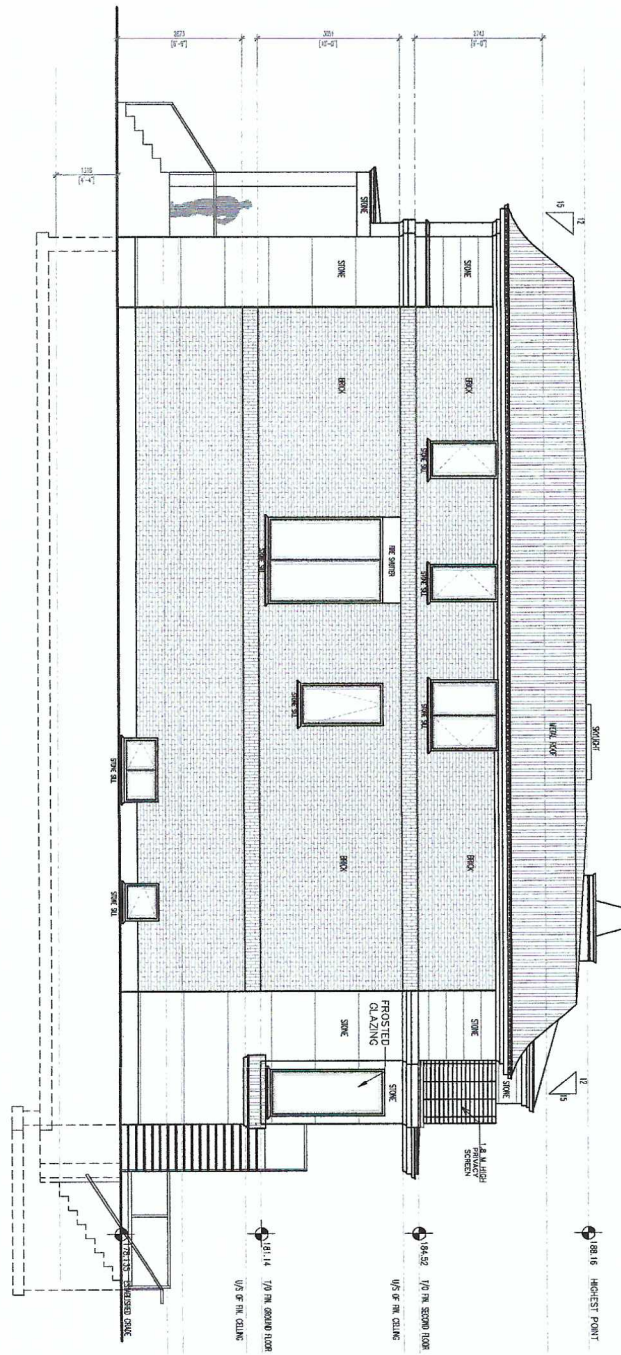


Project
**466 Fairlawn
Avenue**
TORONTO, ONTARIO

Drawing Title
**REAR (NORTH)
ELEVATION**

Scale
1:100
Project Number
220/30

Date
FEB 2022
Drawing Number
A-03.1



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