

DECISION AND ORDER

Decision Issue Date Monday, June 27, 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): RICHARD SCHULTE-HOSTEDDE

Applicant(s): ARKLAB

Property Address/Description: 38 HILLHURST BOULEVARD

Committee of Adjustment File

Number(s): 21 216174 NNY 08 MV (A0680/21NY)

TLAB Case File Number(s): 21 245444 S45 08 TLAB

Hearing date: Thursday, June 16, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Vice Chair A. Bassios

REGISTERED PARTIES AND PARTICIPANT

Appellant	Richard Schulte-Hostedde
Appellant's Legal Rep	Chantal DeSereville
Applicant	Arklab
Party (TLAB)	Janesh Patel
Party's Legal Rep.	Amber Stewart
Expert Witness	David McKay
Expert Witness	Michael Barton

INTRODUCTION

This is an Appeal of the North York panel of the City of Toronto (City) Committee of Adjustment's (COA) approval, with conditions, of an application for variances for the property known as 38 Hillhurst Blvd (subject property). The purpose of the application is to construct a new detached dwelling. The subject property is located in the Lawrence Park South neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned RD (f15.0; d0.35) (x961) under Zoning By-law 569-2013, and R1 Z0.35 under the former City of North York Zoning By-law 438-86 (By-laws).

In attendance at the Hearing were:

- Amber Stewart, legal counsel for the Owners, Janesh and Maya Patel, and Expert Witness David McKay (Land Use Planning);
- Chantal de Sereville, legal counsel for the Appellant, Richard Shulte-Hostedde, and Expert Witness Michael Barton (Land Use Planning).

At the commencement of the Hearing, I was advised that a full settlement had been reached between the Parties. The Hearing was therefore converted to a settlement hearing. Minutes of settlement and revised drawings were provided and marked as Exhibits 1 and 2.

BACKGROUND

Some of the variances that were approved by the COA were eliminated from this revised application and others were reduced to achieve settlement. The variances that the TLAB is asked to approve are as follows:

REVISED LIST OF VARIANCES

1. Chapter 10.20.40.70.(1), By-law No. 569-2013

The required minimum front yard setback is 7.84m.

The proposed front yard setback is 7.24m.

2. Chapter 10.20.40.40.(1)A, By-law No. 569-2013

The permitted maximum floor space index is 0.35 times the area of the lot. The proposed floor space index is 0.62 times the area of the lot.

3. Chapter 10.5.40.60.(1)(A)(i), By-law No. 569-2013

A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 m if it is no closer to a side lot line than the required side yard setback.

The proposed platform encroaches 3.05m into the required front yard setback.

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

A roof, canopy, awning or similar structure above a platform meeting the requirements of regulation 10.5.40.60(1) may encroach into a required minimum building setback to the same extent as the platform it is covering.

The canopy is covering a platform that does not meet regulation 10.5.40.60(1).

5. Chapter 10.5.40.60.(3)A(ii), By-law No. 569-2013

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0m.

The proposed stairs are 3.24m wide.

6. Chapter 10.5.100.1.(1), By-law No. 569-2013

The maximum permitted driveway width is 4.11m, the width behind the front main wall. The proposed driveway width is 5.61m.

7. Section 4(2), By-law No. 438-86

The required building height is 10m.

The proposed building height is 10.56m.

The following conditions of approval are requested:

CONDITIONS OF APPROVAL

1. The new dwelling shall be constructed substantially in accordance with the following plans and drawings prepared by arklab, dated May 27, 2022:
 - (a) Site Plan (Drawing 100);
 - (b) South Elevation (Drawing 106);
 - (c) North Elevation (Drawing 107);
 - (d) East Elevation (Drawing 108);
 - (e) West Elevation (Drawing 109).
2. The Owner shall submit 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, as required.

MATTERS IN ISSUE

The variances proposed for approval constitute a further reduction from the variances that were approved by the COA. The mandate of the TLAB in this situation is to be satisfied that the variances and conditions that were agreed to via the settlement meet the four tests of the *Planning Act*.

JURISDICTION

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').

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. McKay provided evidence in support of the request for variances.

Mr. McKay defined a broader context area and an immediate context area in compliance with Official Plan Policy 4.1.5. He described the character of the area generally as follows:

- The neighbourhood consists of detached and semi-detached houses.
- First, second and third storeys are often partial storeys, built into the roofline, often with dormers.
- The area is experiencing new investment in the form of renovations, additions, and new builds.
- Integrated at-grade garages are a feature of newer construction and rebuilds.
- On the corner of Avenue Rd and Hillhurst Blvd, immediately adjacent to the subject property on the east side, a small townhouse complex is under construction.

Mr. McKay described the proposal as follows:

- A two-storey single detached dwelling is currently located on the subject property, with parking provided at the rear of the property in a detached garage.
- The proposal is to demolish the existing dwelling and to construct a new two-storey house, which includes an integrated garage in the front.
- Revisions to the variances that the COA approved include the elimination of variances for building length and platform area. The floor space index request has been reduced to 0.62.

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*.

NOTICE

I find that the revisions that have been made to the application that was previously considered by the COA to be beneficial. Previously requested variances for maximum building length and platform area have been eliminated and the variance requested for floor space index has been reduced from 0.635 to 0.62. I therefore find the changes to be minor and that no further notice is required in accordance with s.45(18.1.1) of the *Planning Act*.

PROVINCIAL POLICY

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

GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN AND THE ZONING BY LAW

The Official Plan Policy of most immediate relevance to this matter is OP Policy 4.1.5, which requires that development in established *Neighbourhoods* respect and reinforce the existing physical character of each geographic neighbourhood. The policy sets out specific criteria for consideration, some of which will be referenced in the following sections.

Variance 1: Front Yard Setback

OP Policy 4.1.5 f) requires that development respect and reinforce *prevailing setbacks of buildings from the street or streets*.

Mr. McKay's evidence was that the intent of the front yard setback requirements is to maintain the character of the street by allowing adequate space for front yard soft landscaping and a general alignment of the front facades of buildings to the street.

The front yard setback for the subject property is determined by the setback of the house on the abutting lot to the west as the townhouses located on the east side of the

property are oriented to Avenue Rd. A variance for 60cm is requested to locate the proposed house closer to the street than is permitted by the By-law.

Mr. McKay's evidence notes that no variances have been granted for front yard setback in the immediate context within the timeframe for which COA decision data is available. The property data which has been provided notes that some shorter front yard setbacks exist within the immediate context.

Of significance in the immediate context is that the flanking side yard setback for the townhouses adjacent to the subject property is located 2.87m from the property line. In this context, the small variance proposed for the front yard setback on the subject property has little significance in comparison. I find that the proposed front yard setback variance respects the existing context, as is contemplated in OP Policy 4.1.5.

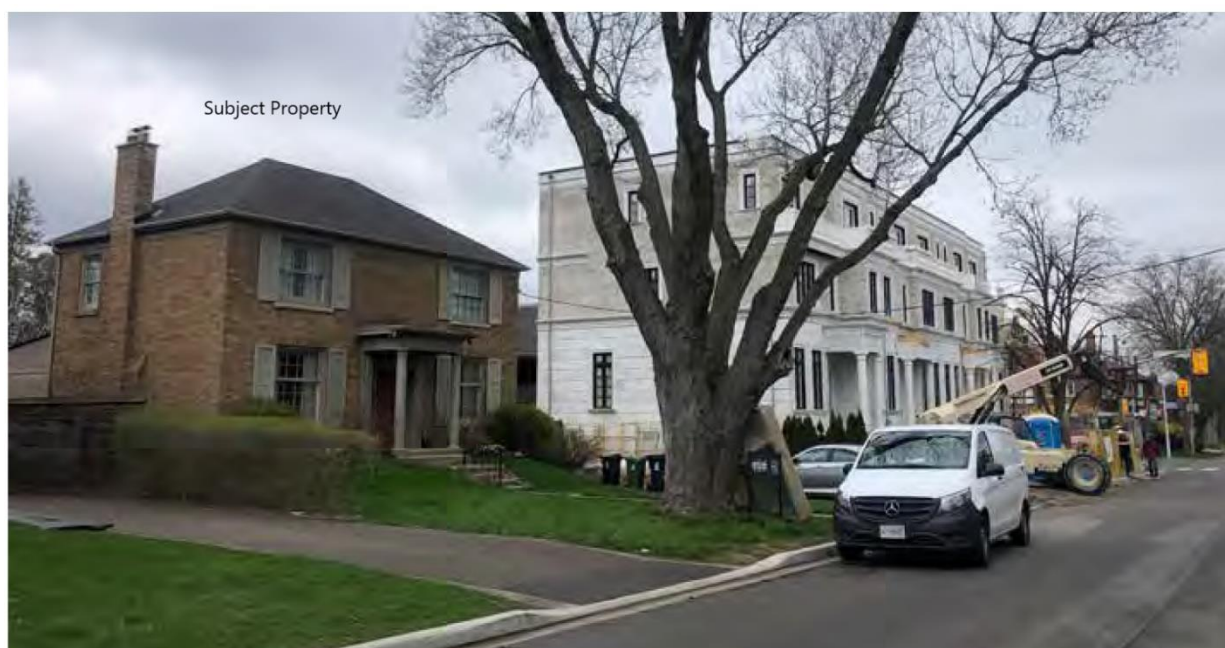


Figure 1: Ex 5, Tab 6, Photo 2

No variance is required for soft landscaping and I find that the proposal respects the general alignment of front yard setbacks on Hillhurst Blvd.

I find that the requested variance maintains the general intent and purpose of the Official Plan and the Zoning By-law, is minor and desirable for the use of the land.

Variance 3 and 4: Platform, roof encroachment

The need for variances for the porch ("platform") and the roof above it is precipitated by the placement of the proposed house within the required front yard setback. A covered porch such as that proposed, is permitted to encroach 2.5m into the required front yard setback. The porch is proposed to be located 3.05m beyond the required front yard setback line.

From the site plan, I have determined that the porch projects 1.97m beyond the front wall of the house. I find it to be appropriately designed and proportionate to the façade of the proposed house. As I have found that the front yard variance maintains the general intent and purpose of the Official Plan and Zoning By-law, I also find that the variances requested for the platform and roof encroachment similarly maintain the general intent and purpose of the Official Plan and Zoning By-law.

Variance 7: Building Height

OP Policy 4.1.5 c) requires that development respect and reinforce *prevailing heights, massing, scale, density and dwelling type of nearby residential properties*.

I concur with Mr. McKay that the requested increase in height, which is deployed in a sloped roof design that slopes away from all four sides of the proposed house, is respectful of the prevailing height, massing, and scale in the neighbourhood.

Mr. McKay has provided examples within the broader and immediate context area where increased building heights have been approved. I find that the variance for height to be minor, having no undue adverse impacts on the neighbours and to be appropriate in the context of the adjacent townhouse complex.

Variance 5: Exterior Stairs

I accept Mr. McKay's evidence that the proposed exterior stairs are consistent with the character of the neighbourhood and that approvals for wider exterior stairs have been granted in the neighbourhood.

I find that the stair width, which includes two flanking planters, to be an appropriate design in proportion to the façade of the building.

Variance 6: Maximum Driveway Width

The maximum permitted driveway width in case of an integral garage is limited to the width of the parking space behind the front main wall. In this proposal, a walkway access to the rear of the property has been integrated with the driveway, resulting in a wider approach to the front of the house.

I note that while the By-law limits the width of the driveway to the width of the integral garage, the proposed driveway remains below the maximum driveway width that would otherwise be permitted by the By-law if the garage was not an integrated component. In my opinion, the intent of this provision in the By-law is to limit the impact of front wall garage doors and wide driveways on the streetscape.

Mr. McKay has advised that integral garages are the prevailing form for most new builds in the neighbourhood and that they are permitted by the By-law with no need for variances.

I find the proposed variance to extend the driveway 1.5m beyond the east side wall of the proposed house to be minor and to cause no undue adverse impacts to the neighbours nor to the streetscape.

Variance 2: Floor Space Index (FSI)

OP Policy 4.1.5 c) requires that development respect and reinforce *prevailing heights, massing, scale, density and dwelling type of nearby residential properties*. In the Zoning By-law, FSI is the numerical indicator of what the OP refers to as “density”.

Mr. McKay’s evidence was that the proposed FSI is consistent with the range of existing and approved FSI’s within the immediate and broader contexts. Mr. McKay’s chart of COA decisions references a sufficient number of approvals that I am satisfied that while the proposed density may not be the most frequently occurring, there are sufficient other examples for me to be satisfied that the intent of OP Policy 4.1.5 is maintained.

I find that the massing, scale and density of the proposal reflect the character of the neighbourhood and these characteristics do not signal an overdevelopment of the property. The Appellant, who is the neighbour to the west supports this variance as part of the settlement of this matter. The townhouses located on the east side constitute a denser, more intense form of residential development than is proposed for the subject property. I find no undue adverse impact from the proposed density, and that the proposed FSI maintains the general intent and purpose of the Official Plan, and of the Zoning By-law.

CONCLUSION

I find that the requested variances individually and cumulatively meet the four statutory tests (s. 45(1) of the *Planning Act*).

No further notice is required in accordance with s.45(18.1.1) of the *Planning Act*.

DECISION AND ORDER

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

X 

A. Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITIONS OF VARIANCE APPROVAL:

VARIANCES:

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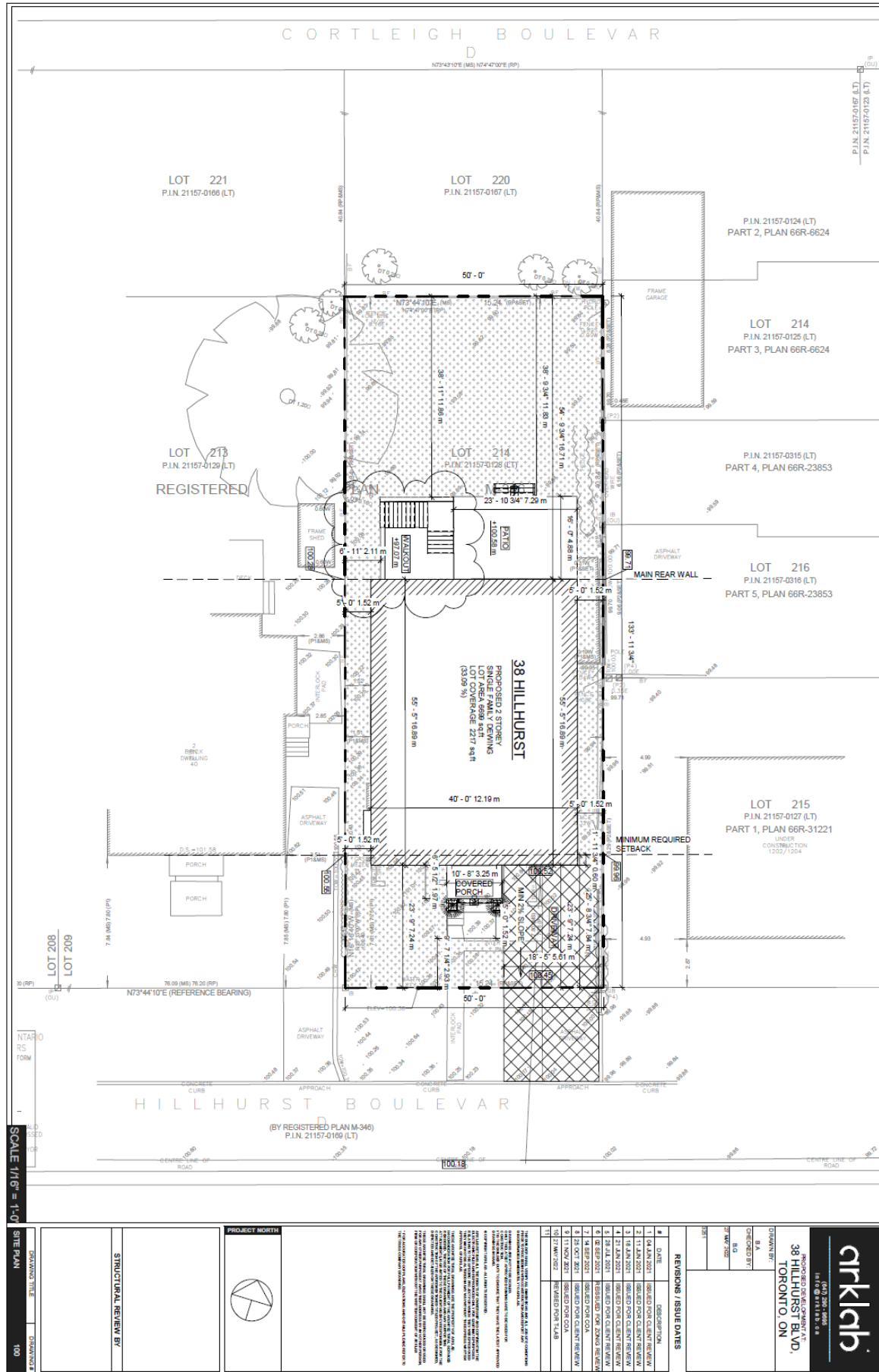
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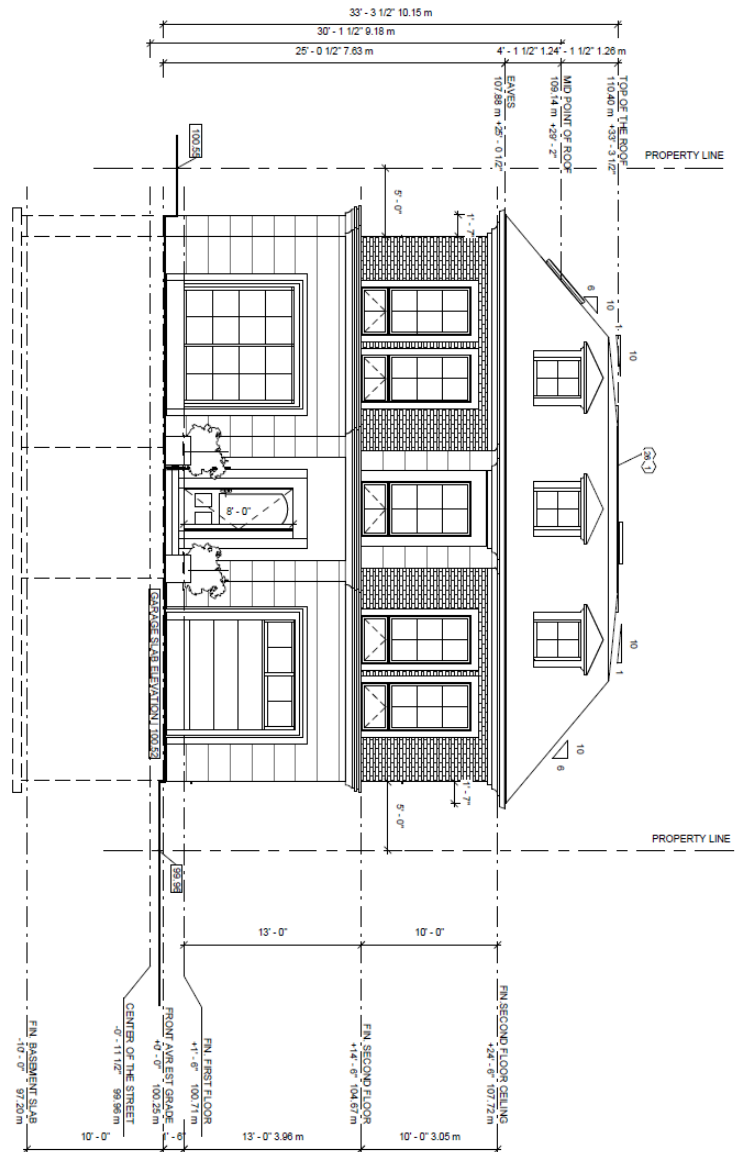
The proposed building height is 10.56m.

CONDITIONS:

1. The new dwelling shall be constructed substantially in accordance with the following plans and drawings prepared by arklab, dated May 27, 2022:
 - (a) Site Plan (Drawing 100);
 - (b) South Elevation (Drawing 106);
 - (c) North Elevation (Drawing 107);
 - (d) East Elevation (Drawing 108);
 - (e) West Elevation (Drawing 109).
2. The Owner shall submit 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, as required.

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





SCALE: 1/8" = 1'-0"

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FOR THE RECORD
INFO @ 416.460.4343

RECEIVED DEVELOPMENT AT
38 HILLHURST BLVD.
TORONTO, ON

DRAWN BY:
B.A.
CHECKED BY:
B.A.
DATE:
07-MAY-2021

#	DATE	DESCRIPTION
1	14 JAN 2021	ISSUED FOR CLIENT REVIEW
2	11 JAN 2021	ISSUED FOR CLIENT REVIEW
3	19 JAN 2021	ISSUED FOR CLIENT REVIEW
4	21 JAN 2021	ISSUED FOR CLIENT REVIEW
5	11 FEB 2021	ISSUED FOR CLIENT REVIEW
6	08 SEP 2021	ISSUED FOR COA
7	14 SEP 2021	ISSUED FOR COA
8	20 OCT 2021	ISSUED FOR CLIENT REVIEW
9	11 NOV 2021	ISSUED FOR COA
10	27 NOV 2021	ISSUED FOR TLAB

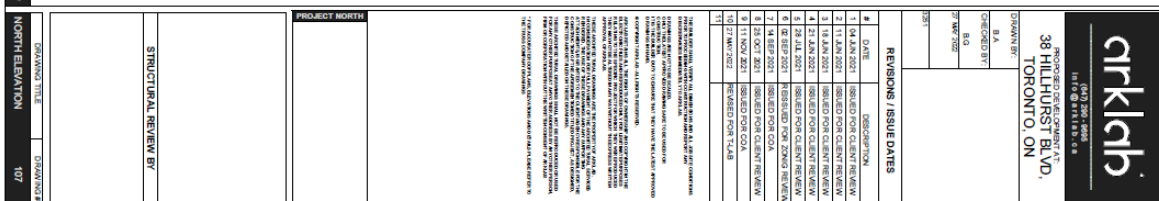
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STRUCTURAL REVIEW BY

DRAWING #

106

SCALE 1/8" = 1'-0"



of 15



