

DECISION AND ORDER

Decision Issue Date Monday, June 13, 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): LARRY K W LAW

Applicant(s): TOM SPRAGGE

Property Address/Description: 96 MUNRO BLVD

Committee of Adjustment File

Number(s): 21 140069 NNY 15 MV (A0258/21NY)

TLAB Case File Number(s): 21 203500 S45 15 TLAB

Hearing date: January 7, 2022 & March 14, 2022

Deadline Date for Closing Submissions/Undertakings: March 31, 2022

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant LARRY K W LAW

Appellant's Legal Rep. HENRY CHIU

Appellant's Legal Rep. MATTHEW HELFAND

Applicant TOM SPRAGGE

Party TRACEY WONG

Party's Legal Rep. ANDY MARGARITIS

INTRODUCTION AND BACKGROUND

Tracey Wong is the owner of 96 Munro Blvd., located in Municipal Ward No 15 (Don Valley West) of the City of Toronto, who applied to the Committee of Adjustment (COA) to obtain approval of a variance to construct a rear addition, and a rear yard deck. The COA heard the matter on August 5, 2021, and approved the variance.

Mr. Larry Law, the owner of the property next door at 98 Munro Blvd., appealed the COA's decision to the Toronto Local Appeal Body (TLAB) on August 23, 2021. The TLAB scheduled a Hearing on January 7, 2022.

At the Hearings held on January 7, 2022, and March 22, 2022 the Applicant, Ms. Wong, was represented by Mr. Julius De Ruyter, a planner, and a lawyer, Mr. Andy Margaritis, while the Appellant, Mr. Law was represented by Mr. Mathew Helfand, a lawyer, and Mr. Henry Chiu, an Architect. Over the course of this two day Proceeding, Messrs. De Ruyter, Chiu and Law gave evidence in support of, and against the proposal. It is important to note that the Applicants did not provide an Expert Witness Statement, and submitted a Reply Witness Statement.

MATTERS IN ISSUE

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 19.06m.

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

At the beginning of the Proceeding on January 7, 2022, Mr. Margaritis, Counsel for the Applicant, drew my attention to the submission of the Responding Witness Statement by the Witness for the Opposition, Mr. Chiu. Mr. Margaritis said that and Mr. Helfand, Counsel for the Appellants, had a conversation prior to the Hearing, as a result of which, they had agreed that in light of the late submission, the Appellants' evidence would be "confined to the four corners of the Responding Witness Statement". Given that Mr. Helfand did not disagree with Mr. Margaritis, I ruled that the Appellants' Witnesses' evidence would be confined to what they had submitted by way of the Responding Witnesses Statements.

Mr. Margaritis complained about what he saw as the frivolous nature of the Appeal, and stated that he would bring a Motion for Costs after the Proceeding had been completed. According to Mr. Margaritis, "as a well-known builder in Southern Ontario", Mr. Law should have known that there was no merit to his Appeal of the COA decision approving the variance requested by the owner of 96 Munro. I advised Mr. Margaritis to address the issue at the end of the Proceeding by way of a Written Motion, if necessary, as opposed to making submissions about the inappropriateness of the Appeal, even before the Hearing commenced.

Mr. De Ruyter was sworn in, and recognized as an Expert Witness in the area of land use planning. The highlights of his evidence are recited below:

The Subject Property is generally located on the north side of Munro Boulevard, which is an east-west oriented street, located one street north of York Mills Road, west of Bayview Avenue, and east of Yonge Street in the former City of North York. He pointed out that the Property in question, is the third house west of Birchwood Avenue, as seen in Figure 1 below:



FIGURE 1- MAP OF THE SUBJECT PROPERTY

Mr. De Ruyter then described currently existing house as an existing two-storey stucco structure on the Subject Property, which is proposed to be modified by the introduction of a two storey addition the rear of the property, as it exists now, which consists of a one-storey extension, with a depth of approximately 2.1 m, which projects from the rear main wall of the existing dwelling. The extension is 5.1 m wide, or less than half the width of the existing dwelling, and is used as part of the kitchen. He emphasized that the total depth of the existing dwelling including the one-storey rear addition is 19.0 m. There is a one-storey solarium at the westerly portion of the existing dwelling that has a width of 3.2 m and a depth of 4.83 m, which he emphasized would be removed, if the proposal were approved.

A deck is located to the rear of the existing dwelling, which is at the same level as the ground floor of the dwelling. The deck extends out approximately 6.9 m from the rear main wall of the dwelling, extends easterly to the east corner of the existing dwelling, and westerly to the existing solarium. There are 6 stairs down from the existing deck to the ground level patio. On top of the existing deck, there is a gazebo supported on five wood columns with a roof having dimensions of approximately 3.9 m by 4.7 m, which would also be removed if the proposal were approved

Mr. De Ruyter then discussed the particulars of the proposal for the extension, as presented to the Committee of Adjustment, which approved the variance at its meeting, held on August 9, 2022. According to Mr. De Ruyter, the Applicant made changes to the proposed design of the extension, notwithstanding the approval of the original design by the COA, to address the concerns raised by the Appellant, which included the elimination of the gazebo and the solarium. Mr. De Ruyter stated clearly that “while there will be additional roof over the proposed addition, it sits quite low in relation to the existing roof. The proposed building height of the addition is 7.5 m, well below the existing height of the main dwelling at 10.29 m, and well below the permitted building height of 10.0 m”.

Before describing the planning rationale supporting the project, Mr. De Ruyter highlighted the fact that while according to the By-Law, the minimum lot frontage is 18.0 m, and the minimum lot area is 690 sq. m.; the Subject Property has a lot frontage of 15.24 m, and lot area of 631.7 sq. m, both of which are less than required by By-law 569-2013. He emphasized that however, there were no variances being requested with respect to lot frontage, or lot area.

By way of illustration, Figure 2 provides a pictorial representation of the existing Site Plan (as approved by the COA), and the new Site Plan (before the TLAB), which illustrates, both the Solarium and Gazebo, that are to be eliminated in the new design.

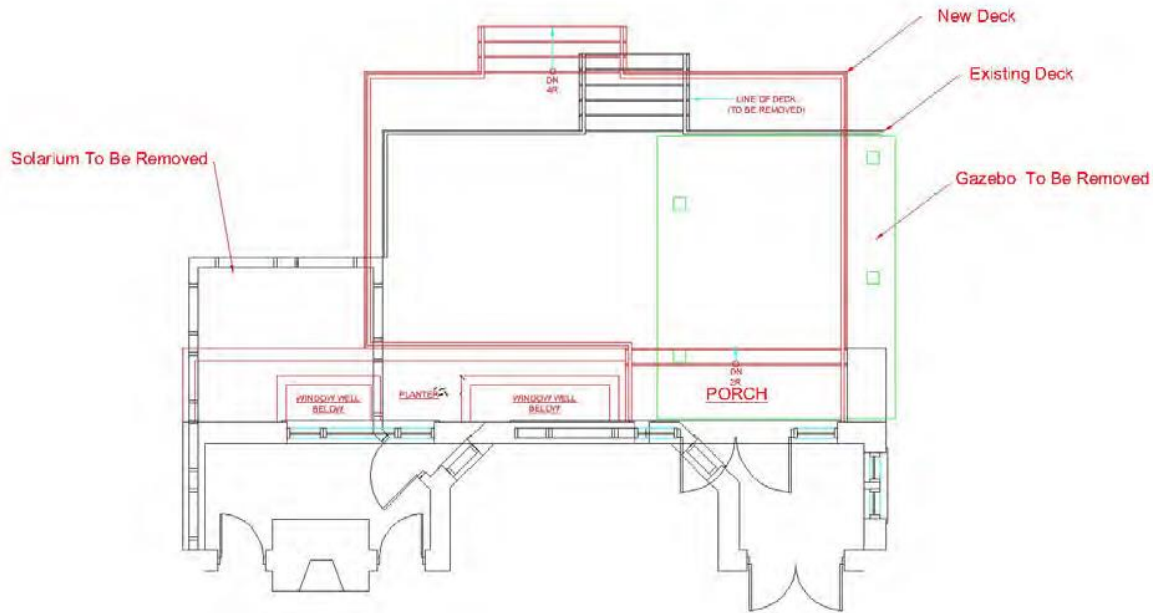


FIGURE 2- EXISTING PLAN (IN BLACK) AND PROPOSED SITE PLAN (IN RED)

Mr. De Ruyter spoke to how the proposal corresponded to the higher level Provincial Policies, such as the Provincial Policy Statement (PPS, 2020) and the Growth Plan for Greater Golden Horseshoe (Growth Plan, 2019). He said that the proposal satisfies both policies because of its emphasis on an efficient use of the land.

Mr. De Ruyter then discussed how the proposal satisfied the intent and purpose of the Official Plan (OP). On the basis of a photo-tour of the community, he spoke to Policy 2.3.1, and how the community had evolved over a period of time, such that the new developments respected and reinforced the existing physical character of the neighbourhood. He asserted that the proposed addition is of “a size, height and scale”, that is compatible with the existing development in the Geographic Neighbourhood and Immediate Context. He described how he used a “five minute walking distance” as the basis for establishing the Geographic Neighbourhood (GN), which in this case is bounded by Danville Drive and Owen Blvd on the North, Glenridge(partially) on the East side, York Road and Highland Crescent on the South, and Upper Highland Crescent on the West. The Immediate Context for the Property, was defined to be the houses, on the north and south side of Munro Blvd., between Cedarwood Ave. on the West, and Birchwood Ave. on the East. Mr. De Ruyter then discussed Policy 3.1.2, and delineated how the massing of the extension would be such that it would have a limited impact on the neighbouring properties. He reiterated the various changes made by the owners of the Property, to minimize impact on their neighbours, including eliminating the gazebo, and the solarium. Mr. De Ruyter emphasized how the proposed addition has exterior design elements, that are” compatible” with the surrounding neighbourhood, and asserted that there would be no adverse shadowing conditions created by the proposed addition- he added that the shadowing impact would be comparable to what is created by the existing building or an as-of-right building. Mr. De Ruyter then

described the relationship between the proposal, and Policy 4.1.5 of the OP. He explained how the proposed addition would not impact the existing pattern of streets, and other public uses given that the proposed addition is to the rear of the Subject Property, and emphasized that there are no variances required to building height, gross floor area or floor space index, lot coverage, building depth or to front, side or rear yard setbacks. He asserted that the impact, if any, of the extension at the back of the house will be experienced only by the neighbours, in their rear yards. Given that the proposed extension will be compliant with the requirements of Section 569-2013, even with a “reduced back-yard setback”, Mr. De Ruyter concluded that the Policy 4.1.5 of the OP did not apply to this proposal. On the basis of this evidence, Mr. De Ruyter concluded that the proposal satisfied the intent, and purpose of the Official Plan.

Mr. De Ruyter then discussed how the proposal satisfied the intent and purpose of By-Law 569-2013. He said that the Subject Property is zoned RD (f18.0:a690) under By-law 569-2013, and as R3 under By-law 7625, which permit “a very narrow range of residential dwellings, including single detached dwellings”.

He then recited the definition of the “Building Length”, from Section 800.50(105) of By-Law 569-2013 as follows:

Building Length means the horizontal distance between the portion of the front main wall of a building on a lot closest to the front lot line, and the portion of the rear main wall of the building closest to the rear lot line, measured along the lot centre line. If the main walls are not intersected by the lot centre line, the measurement is from the point on the lot centre line where a line drawn perpendicular to the lot centre line connects with the main wall.

Mr. De Ruyter noted that By-laws 569-2013 and 7625 also permit a one-storey extension to the building length of a dwelling, to a maximum depth of 2 metres, provided the extension is not more than 50% of the width of the building. He asserted that the purpose and intent of the building length regulation “is to ensure a compatible relationship of the rear of dwellings so that no dwelling extends significantly beyond the depth of adjacent dwelling and creates unacceptable adverse impacts such as overshadowing and overlook. Further, the building length regulation is to ensure that there will be adequate rear yard amenity space available on the lot”, and demonstrated how both these performance standards are satisfied by the proposal, which is “being built on a deep lot”. Mr. De Ruyter reviewed a number of COA decisions, and demonstrated that many applications, with length, frontage and lot areas, comparable to the Property, had been granted similar variances by the COA.

On the basis of this evidence, Mr. De Ruyter concluded that the proposal satisfied the intent and purpose of the Zoning By-law.

He next spoke to how the proposal satisfied the test of appropriate development.

Mr. De Ruyter asserted that the proposed development will result in a “modest two-storey rear addition”, in place of the existing one-storey extension. He added that the purpose of the extension is to “facilitate interior modifications to the existing dwelling to meet the needs of the current owners and their family”. He reiterated that the “addition is shallow in depth, and small in floor area in comparison with the existing dwelling”. On the basis of this discussion, Mr. De Ruyter concluded that the proposed addition will respect and reinforce the existing physical character within the Geographic Neighbourhood and the Immediate Context, as a result of which it satisfies the test of appropriate development.

Lastly, Mr. De Ruyter spoke to the test of how the proposal satisfied the test of minor.

He said that the test of minor was more a test of unacceptable adverse impact, rather than a test of numerical impact. He asserted that there would be no unacceptable adverse impact, on the basis of the updated shadow studies submitted on March 11, 2022, and offered the following observations:

- The shadow conditions were generated on an hourly basis during the dates of March 21, June 21, September 21 and December 21, as per the City of Toronto’s guidelines. The existing wood privacy fence separating 96 and 98 Munro Boulevard was also modelled in the shadow study.
- During the morning period to “around noon”, no shadows are cast by 96 Munro onto 98 Munro, the house in which the Appellant resides.
- From “around noon” to 2:00 p.m., there are some additional shadows, but they fall only along the inside of the fence of 98 Munro Boulevard
- On March 21 and September 21 at 2:18 p.m. and 3:18 p.m., there are additional shadows cast on 98 Munro, but the additional shadows are so small and insignificant that the impact is “negligible”
- In terms of the shadows cast on 98 Munro Blvd. that there are a number of structures and trees within the rear yard of 98 Munro Boulevard, including a very large willow tree, that themselves cast shadows on the Appellant’s own property

Mr. De Ruyter reiterated that the following changes had been made by the Applicants in response to concerns expressed by the Appellant:

- The new deck will sit 0.46 m lower than the existing deck;
- The new deck will be set further away from 98 Munro Boulevard by 0.68 m;
- The existing gazebo and solarium would both be removed
- While there will be additional roof over the proposed addition, “it sits quite low in relation to the existing roof”.

On the basis of this evidence, Mr. De Ruyter concluded that the proposal satisfied the test of minor. Given that the proposal had satisfied all four tests under Section 45.1 of the Planning Act, Mr. De Ruyter recommended that the Appeal be refused, and the decision of the Committee of Adjustment be confirmed, with no conditions to be imposed.

Mr. Helfand cross-examined Mr. De Ruyter on the specifics of how many examples of COA approvals cited by him in defence of the proposal, lay inside the Geographic Neighbourhood, and Immediate Context. Since Mr. De Ruyter counted examples on the immediate outside of the Geographic Neighbourhood and Immediate Context, it turned out that there were fewer Appeals that were approved, both inside the Geographic Neighbourhood, and the Immediate Context, compared to the examples originally cited by Mr. De Ruyter. Questioning the use of statistics from COA decisions, related to “median length”, Mr. Helfand made the interesting point that these statistics concentrated on the length of the building alone, without reference to whether the building in question had one floor, or two floors, with the result that nothing could be inferred from the statistics about the impact of the built form, because there was no discernable numerical difference between the impact of houses, with one floor, or two floors, where one is on top of the other. Mr. Helfand drew Mr. De Ruyter’s attention to the proposed rear extension “spanning the entire length of the rear wall”, and asked him how the impact of this proposed extension was comparable to the impact of other rear extensions, which had been used by the Applicants in their discussion of impact. His question distinguished the proposal before the TLAB from the aforementioned examples by stating that “there was no information to demonstrate that the other examples used involved a wall spanning the entire length of the rear wall”. Mr. De Ruyter asserted while he did not collect such data about extensions spanning full lengths of the rear extensions versus those that did not, because “most extensions spanned the entire length of the rear wall”. Lastly, Mr. Helfand probed the accuracy of the Sun and Shadow studies submitted by the Applicants, because of inconsistencies with the latitude and longitude used in their original set of sun and shadow studies. Mr. De Ruyter admitted that the original drawings (submitted before the first Hearing held on January 7, 2021) were not “entirely accurate”, but that his opinion about the lack of unacceptable adverse as a result of the extension at the back of Site, had not altered, on the basis of the new, updated drawings, submitted on March 11, 2022, which had been reviewed in his Examination-in-Chief.

Mr. Chiu, an Architect who was retained by the Appellants, was affirmed, and recognized as an Expert Witness in the area of Building design, and Shadow impact. His evidence, it may be noted by way of an editorial comment, largely focused on the impact of the proposal at 96 Munro, on his clients, who live at 98 Munro, as opposed to other tests under Section 45.1. He asserted that the Revised Architectural Plans to remove gazebo & reduce the wood deck (October 18, 2021) will not reduce the shadow impact casted by the "east side second floor extension" onto 98 Munro Blvd rear yard “after 4 pm, throughout the year”. He disagreed with many of the measurements provided by the Applicants about various buildings in the neighbourhood, provided his own, separate calculations for various buildings, and concluded that the average corner lot Approved Building Length is 22.50 m, interior lots is 18.22 m, the median Approved Building Length for corner lots is 19.87 and interior lots is 18.51 m.

Mr. Chiu stated that the Appellant and his family enjoyed swimming & sunbathing “for an hour, after 4 pm throughout the year”, and asserted that the swimming pool is a “sunshine and shadow sensitive spot” because the users of the swimming pool must be able to enjoy their swimming without concerns about their privacy, being overheard by

neighbours, and as such, without being “disturbed” by noises from the neighbouring houses. He said that as a result of the proposed rear yard addition being 2 metres beyond the Permitted Building Length & beyond the rear wall of both 94 & 96 Munro Blvd, a condition is created “which does not respect and reinforce the rear yard outdoor space of the neighbourhood”. He asserted that the proposed two metres rear yard addition, beyond the adjacent houses’ rear walls would effectively create a condition of “loom over”, thus negatively impacting his clients’ privacy and enjoyment of their outdoor rear yard outdoor space, with specific reference to the Appellant’s enjoyment of the pool at the back of his house- he emphasized that his client relaxed by swimming and sunbathing in the pool at the back of his property “throughout the year”. Mr. Chiu stated that as a result, “the additional shadow impact created by the east side second floor addition will reduce the sunlight area & not maintain the intent & purpose of the OP, and Zoning By-law”.

Mr. Chiu then discussed how the proposal did not satisfy the test of appropriate development, as well as the test of minor. He said that the backyards of homes in this neighborhood “are long and with limited building length, which is intended to promote ample space for outdoor activities”, and that permitting extra length will create additional shadow casting into the rear yard outdoor space for 98 Munro Blvd, detracting from his client’s enjoyment of his property. Mr. Chiu reiterated that the proposed addition will create adverse impacts in terms of sun shadowing, privacy, noise & loom over effects, “and is not desirable nor appropriate, and is not minor”.

Mr. Chiu concluded his Evidence-in-chief by recommending that the requested variance not be permitted, in order to prevent a feeling of “closing-in” & “loom over” by the surrounding buildings.

By way of Cross- Examination, Mr. Margaritis asked Mr. Chiu if the removal of the gazebo at the back of the house at 96 Munro, would decrease the concerns of the Appellants, with respect to privacy, overlook, noise/being overheard, and shadowing. Mr. Chu agreed that there would be “some decrease in privacy and overlook”, but the decrease in shadowing would be “marginal” because of “the fence that divides the two properties”. Mr. Margaritis’ next question was if decreasing the “height of the new deck by 0.46 metre, moved 0.68 metres away from the Appellants’ property”, would reduce the concerns with privacy, to which Mr. Chiu answered in the affirmative. Mr. Margaritis then drew Mr. Chiu’s attention to two different decisions made by the former Ontario Municipal Board (OMB), presently called the Local Planning Appeals Tribunal (LPAT)), dating back to 1997, and 2010 (6 Brandy Court and 98 Park Street respectively) , both involving Mr. Chiu as the Expert Witness for the Applicants. Mr. Margaritis asked Mr. Chiu to explain how he could support a length of 20.3 metre length of a house in the case of 6 Brandy Court, while objecting to a 19.6 metre in the case of 96 Munro Blvd.. Mr. Chiu explained that the appropriateness of a variance varies with the context i.e. the surroundings, and what lies in the immediate neighbourhood. Mr. Chiu, it may be noted, could accurately recall the details of both cases, notwithstanding the passage of time- while Mr. Margaritis described the Appeal to the OMB respecting 98 Park Street as a matter of a side-yard, Mr. Chiu accurately remembered that the case involved a consent to sever the property, and that the side yard variance was one of many variances

requested by the Applicants. Mr. Margaritis focused on Mr. Chiu's evidence in the Appeal respecting 98 Park Street, where Mr. Chiu had opined that while it was possible to recess the second floor looking out onto the backyard, "the resulting design would no longer respect what existed in the neighbourhood". Mr. Margaritis concentrated on the question of whether Mr. Chiu had considered the fit between the proposal, and what exists in the community, "if the eastern part of the second floor of the proposed extension at 96 Munro were eliminated, as per his client's suggestion"- this question was answered in the negative. Mr. Margaritis then drew the attention of Mr. Chiu to the existence of a "white stucco structure" and a "black structure with a pergola" in the Appellant's backyard, and asked if the structures in question cast shadows on his client's swimming pool. Mr. Chiu responded in the affirmative, to which Mr. Margaritis asked if the shadow cast by these structures was reflected in the updated Sun and Shadow studies prepared by Mr. Chiu, and submitted to the TLAB on March 11, 2022. Mr. Chiu responded in the negative, because "the purpose of the Study is to establish what the impact of the proposed structure would be". In response to questions about "how frequently, and how much did the Law family use the pool", Mr. Chiu insisted that it was "year round". When Mr. Margaritis asked Mr. Chiu if the proposal caused an "unacceptable adverse impact", the latter responded by asking the former to define the expression. Mr. Margaritis responded by saying that he didn't "have to go further if the Witness was not familiar with the expression". Lastly, Mr. Margaritis asked Mr. Chiu about his use of the expression "Sun Shadow sensitive spots", and asked him what the expression meant, to which Mr. Chiu said that it referred to any spot that was used for sunbathing or swimming, which needed access to sunlight, such that the swimmers' right to privacy would not be violated.

The last Witness to provide evidence was Mr. Law, the Appellant, and the owner of 98 Munro Blvd. Mr. Law said that he enjoyed swimming in his pool in the evenings, and from what I understood, contemplated or meditated on important questions when swimming- this was the place "where he relaxed after a long day". He extolled the virtues of his exercising daily by swimming, and the positive impact that it had on his health- Mr. Law asserted that "nobody could guess my age". He complained about the pressures of COVID, and having to "stay in all day long", and how the impact of such "forced confinement in the house", could be addressed through swimming and sunbathing. Mr. Law discussed how he spent a significant amount of money to ensure that the pool stayed open throughout the year, including heating the water where necessary, to ensure "year-round-use". He described how he had to do "heavy duty work" and emphasized the importance of "thinking and inspiration" to help him fulfill his duties, which could be obtained by "looking at the open sky, when swimming". By way of an editorial note, the importance of "looking at the open sky, and the impact it has on the wellbeing " of his family was repeated and reiterated quite a few times during Mr. Law's testimony. Mr. Law described his disappointment when his neighbours, at 100 Munro, decided to increase the length of their house, and how their decision diminished the enjoyment of his own swimming pool. Mr. Law questioned how anybody could tell him what to do in his backyard, expressed doubts about the "four tests" (under Section 45.1) to dictate how he enjoyed his backyard, and asked "how could anybody know how much this matters to me".



DIAGRAM 3- THE BACKYARDS OF 98 AND 96 MUNRO BLVD. SHOWING EXISTING STRUCTURES PRESENT IN THE BACKYARD OF 98 MUNRO

By way of an editorial note, Mr. Law refused to answer the vast majority of questions asked of him by Mr. Margaritis in Cross-Examination. Responses such as “It is a simple question but I won’t answer it because you are trying to trap me”, or “I cannot remember how many houses I have built because I am not good at math” provide a flavour of how Mr. Law responded to many questions asked of him with a counter question, or a comment that did not address the question. Consequently, the details of the Cross-Examination are not recited in this Decision.

ANALYSIS, FINDINGS, REASONS

I would like to note at the very beginning of this Section that the Appellant’s concerns, as expressed by himself and his Expert Witness, focused almost entirely on the issue of how the proposed extension would limit the Appellant’s ability for “enjoying the swimming pool”. The Appellant’s concern is that if the proposed extension were approved at the back of the Applicant’s house, there would be significant privacy and overlook concerns with respect to the swimming pool in the Appellant’s backyard, resulting in a significant diminishment of the enjoyment of the Appellant’s uses of the swimming pool-, including swimming throughout the year, contemplation on various issues, and recuperation from work related stress, through the process of swimming.

There is an obvious nexus between the expressed concerns, and the test of minor, which focuses on the impact of the proposed project on the neighbourhood, with specific reference to immediate neighbours. It is pertinent to note that any findings made in response to this question, are also germane to the question of the proposal’s

ability to satisfy the purpose and intention of the Zoning By-law, where the cumulative impact of the variance(s) is a decisive issue.

The critical threshold that cannot be overstepped in the test of minor is “unacceptable, adverse impact”, which I interpret to be an impact so detrimental, that it results in a severe reduction of the quality of life of the impacted Party, or deprives the impacted individual of an inalienable right. I note that the Appellants’ Witnesses did not provide a direct “Yes” or “No” answer to the question of “unacceptable adverse impact” in Cross-Examination. While I appreciate the able efforts of their Counsel to burnish the evidence into concluding that approving the variance before the TLAB would result in unacceptable adverse impact in Oral Argument, I find that this conclusion is not corroborated by responses from the Witnesses.

The differences between the perspectives of the Applicants, and Appellants in this matter underline the subjectivity of what constitutes “unacceptable adverse impact”. I find that it is important to determine the threshold for such “unacceptable adverse impact” on the basis of the experiences of a reasonable and ordinary individual- the experiences of this individual should mirror the experiences of the average denizen of Toronto, with no access to privilege, or entitlement. I find that expectations of a good, acceptable quality of life, of the aforementioned “reasonable and average” denizen, popularly referred to as “regular folk”, are exemplified by an expectation of privacy, access to sunshine, not being overheard by the neighbours, or disturbed by noise resulting from the neighbours’ activities.

I find that such expressions or manifestations of a “good quality of life” have to be distinguished from specific privileges enjoyed by some individuals as a result of their circumstances- the latter is distinguishable from the former by virtue of the fact that the privilege in question is not available to every individual; nor is it realistic to expect that everybody would be able to access such a privilege. I acknowledge that the pleasure or benefit resulting from accessing, or exercising the specific privilege in question may be so invaluable, or pleasurable, from the beneficiary’s perspective, that it cannot be translated into words, and has to be experienced to understand the unique difference it makes to the beneficiary. Notwithstanding how significant, or immense the impact of a given privilege may be on a given beneficiary, I find that the privilege in question cannot be included, nor conflated with the indicators of a “good quality of life”, including those exemplified earlier in this Section, such as accessing fresh air, or a right to privacy- simply put, being deprived of a privilege may constitute an inconvenience, but cannot result in “unacceptable adverse impact”.

Based on this analysis, I classify the issues of loss of privacy, and overlook, as unacceptable adverse impact, while the enjoyment and recuperation that results from swimming in a pool that is warm all year round, while being uplifted and inspired visually by skyscapes is a privilege- such a privilege is not available to many of Toronto’s denizens, and cannot be therefore construed to be an inalienable right.

The evidence makes it clear that the Applicants configured the design to address concerns raised by the Appellants- they reduced the height of the deck and moved it away from the Appellant’s property, and are prepared to remove the existing gazebo,

and the solarium. I find that there no privacy, or overlook impacts that arise from the design of the extension in question, as alleged by the Appellant.

While both Parties submitted updated their Sun and Shadow Studies, as a result of my Interim Decision, dated February 22, 2022, I find that the Applicants followed the City of Toronto's guidelines, which require all features that contribute to shadowing, be identified, and included in the modelling. One of the major differences between the submissions of the Applicants and the Appellants, is that while the former included the fence separating the properties and the existing gazebo on the Appellant's property (both of which are visible in Figure 3 of this Decision), the latter did not include these features, notwithstanding they contribute to the collective shadow on the swimming pool in question, as acknowledged in their own evidence. I therefore prefer the conclusions of the "Sun and Shadow studies" drawn by the Applicant based on their submissions, compared to the Appellants' conclusions- namely, the incremental shadow created by the proposal does not result in unacceptable adverse impact.

No finding need be made regarding the recuperative, and inspirational impact resulting from use of the swimming pool, because there is no established nexus between these activities, and the issue of "unacceptable adverse impact", as found in the discussion that distinguishes between factors that correspond to a good quality of life, and privilege.

As a result of this analysis which demonstrates that the proposal results in neither privacy, nor shadowing impacts, I find that the requested variance satisfies the test of minor.

The finding about the lack of unacceptable adverse impact is pertinent to the finding about the variance's ability to satisfy the intent, and purpose of the By-Law. Given that proposal's lack of unacceptable adverse impact, and that there is adequate rear yard amenity space available on the lot, even if the extension were approved, I find that the requested variance passes the test respecting the intent, and purpose of the Zoning By-Law.

As noted earlier, the evidence of the Appellants did not focus on the tests respecting appropriate development, Zoning By-Law, and Official Plan.

An analysis of the Applicant's evidence shows that the proposal satisfies the test of appropriate development because the extension being contemplated at the back of the house at 96 Munro, is no different from similar extensions which have been built at least 5 other houses in the Immediate Context alone. Approval of this single variance, at a length that already exists in the community, will not destabilize the community, resulting in my finding that the variance satisfies the test of appropriate development.

Turning to the test respecting the intent and purpose of the Official Plan, I agree with the Applicant that their evidence demonstrates that the proposal satisfies Policies 2.1.3, 3.1.2 of the Official Policy. I accept the Applicant's contention that Policy 4.1.5 does not apply to this proposal, because the requested variances focuses on building length, a

factor that is excluded from the variables listed in Policy 4.1.5 of the OP. Consequently, I find that the proposal satisfies the intent and purpose of the OP.

On the basis of the above discussion, I find that the requested variance satisfies all four tests under Section 45.1 of the Planning Act, and consequently needs to be approved.

I note that in response to my instructions to suggest language appropriate for a condition that requires Applicants to build in substantial conformity with the submitted Plans and Elevations, the Applicants sent a submission, after the completion of the Hearing, that culled a specific list of drawings pertinent to the extension at the back of the house, from the omnibus of Plans and Elevations drawings originally submitted to the TLAB, and asked that the construction be tied to these drawings:

Drawing Name	Date of Drawing	Last Revision Date
Proposed Site Plan	April 10, 2020	October 18, 2021
West Elevation	November 18, 2019	November 18, 2019
North Elevation	November 18, 2019	November 18, 2019
East Elevation	November 18, 2019	November 18, 2019

I agree with the Applicants that it would be appropriate to tie the construction of the proposed extension at the back of the house to these drawings, and accordingly impose this condition on the approval of the variance.

DECISION AND ORDER

1. The Appeal respecting 96 Munro Blvd. is refused, and the variance requested by the Applicant, by way of the proposal submitted to the TLAB, is approved. The variance is:

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 19.06m.

2. No other variances are approved.
3. The following condition is imposed on the approval:

Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 21 203500 S45 15 TLAB

- a) The external walls specifically related only to the proposed two storey rear addition shall be constructed substantially in accordance with the drawings prepared by Spragge + Company Architects Ltd. which are dated and identified as per the schedule below:

Drawing Name	Date of Drawing	Last Revision Date
Proposed Site Plan	April 10, 2020	October 18, 2021
West Elevation	November 18, 2019	November 18, 2019
North Elevation	November 18, 2019	November 18, 2019
East Elevation	November 18, 2019	November 18, 2019

So orders the Toronto Local Appeal Body



X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

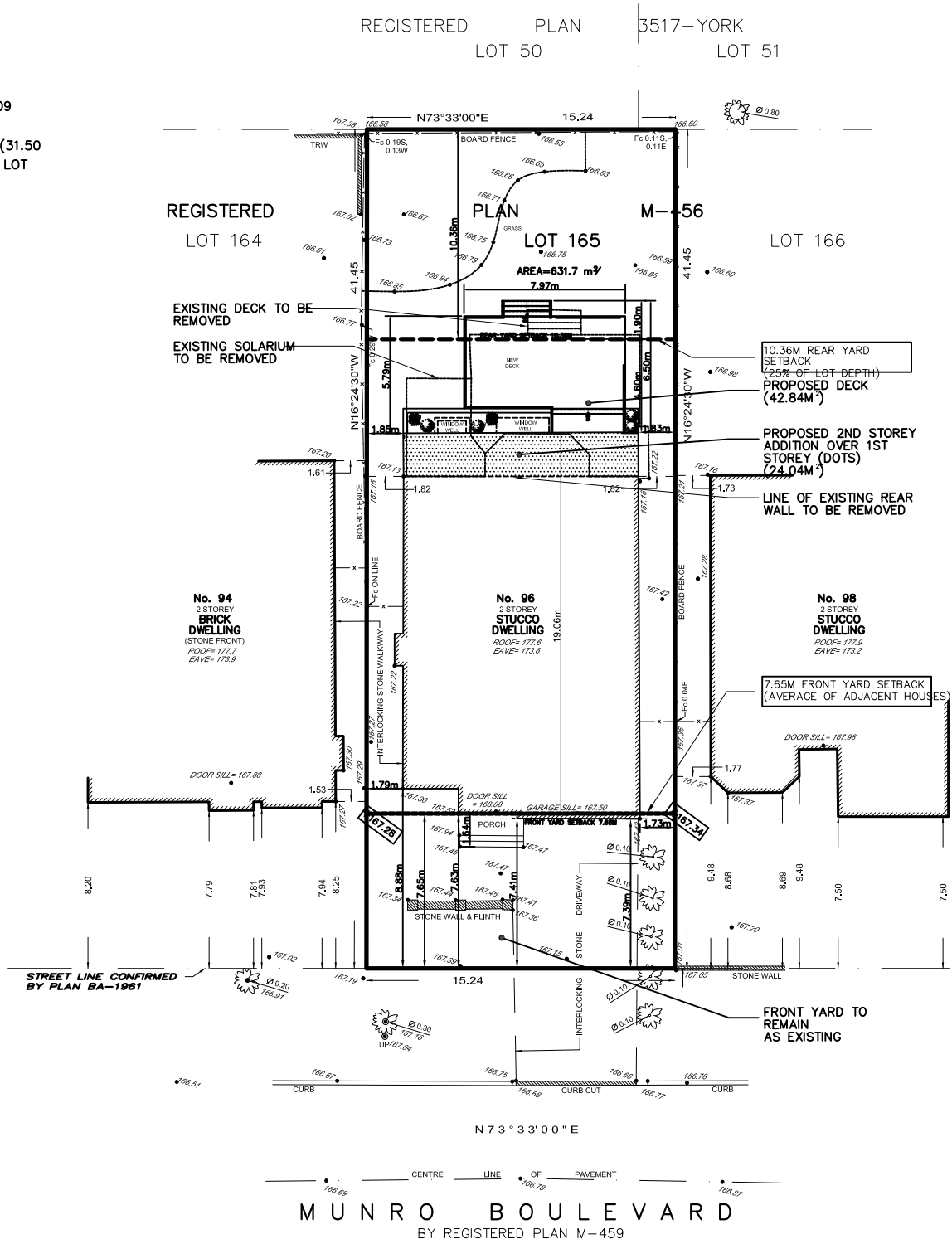
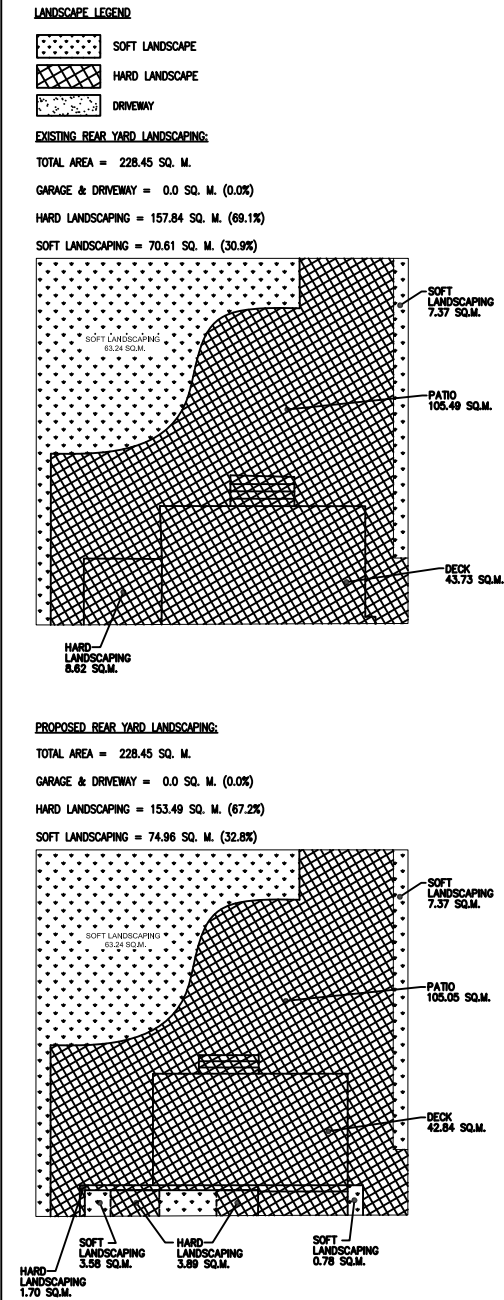
PART 1:
PLAN OF PART OF LOT 165
REGISTERED PLAN M-459
CITY OF TORONTO

INFORMATION TAKEN FROM SURVEYOR’S REAL
PROPERTY REPORT PREPARED BY

AKSAN PILLER CORPORATION LTD.
ONTARIO LAND SURVEYORS
DECEMBER 10, 2019

SITE AREA = 6799.56 SQ.FT. (631.70 SQ.M.)
EXISTING G.F.A (60.4%) = 4106.73 SQ.FT. (381.53 SQ.M.)
ALLOWABLE G.F.A (N/A)
PROPOSED G.F.A (63.9%) = 4343.13 SQ.FT. (403.49 SQ.M.)

SITE DATA					
	EXISTING		PROPOSED		TOTAL
	sq. feet	sq.meters	sq. feet	sq.meters	sq. feet sq.meters
GROUND FLOOR	2027.04	188.32	-22.41	-2.08	2004.63 186.24
SECOND FLOOR	2079.69	193.21	258.81	24.04	2338.50 217.25
TOTAL	4106.73	381.53	236.40	21.96	4343.13 403.49
ALLOWABLE SITE COVERAGE = (35.0%)	2370.65 SQ.FT. (221.09 SQ.M.)				
BUILDING COVERAGE (34.4%)	2341.90 SQ.FT. (217.57 SQ.M.)				
PROPOSED NEW DECK COVERAGE (4.99%)	(339.06 SQ.FT.) (31.50 SQ.M.)				
THEFORE, IS NOT INCLUDED IN THE CALCULATION OF LOT COVERAGE					
TOTAL SITE COVERAGE = 34.4%					



PROPOSED SITE PLAN

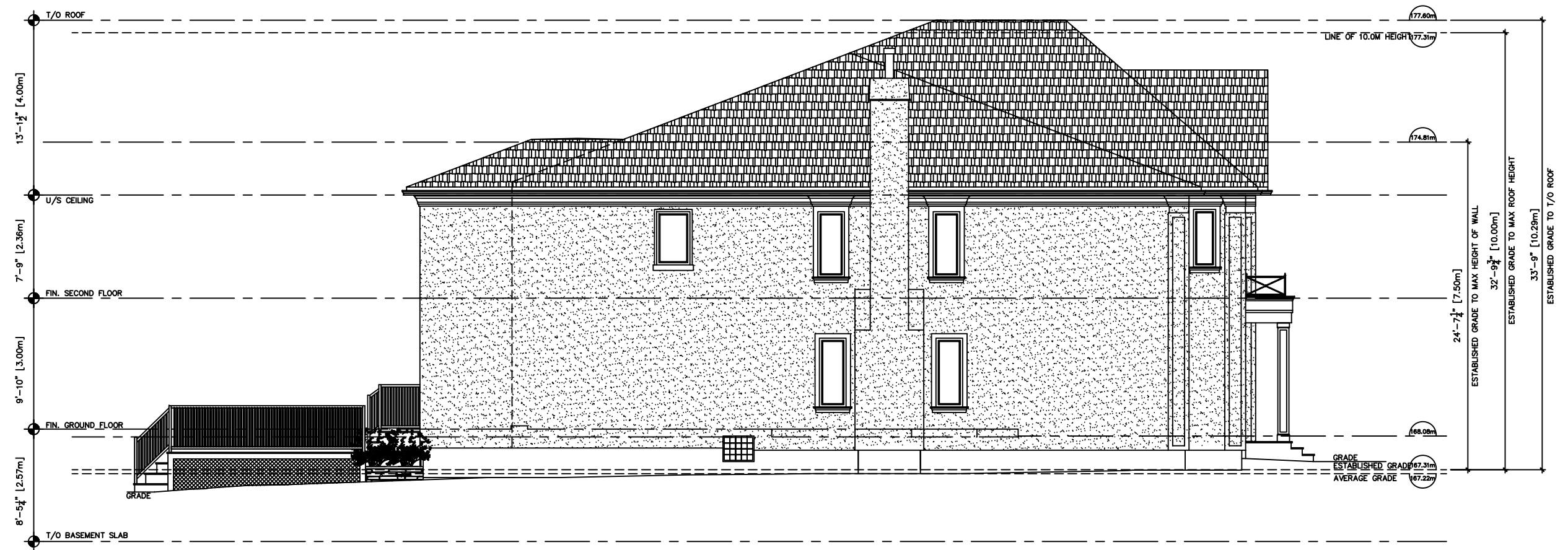
APRIL 10, 2020
JUNE 19, 2020
JULY 08, 2020
JULY 13, 2020
MAY 14, 2021
OCTOBER 18, 2021

WONG RESIDENCE
96 MUNRO BOULEVARD
TORONTO ONTARIO
SPRAGGE + COMPANY
ARCHITECTS LTD.

156 DUNCAN MILL ROAD
TORONTO, ONTARIO

19-2131

1:200 METRIC

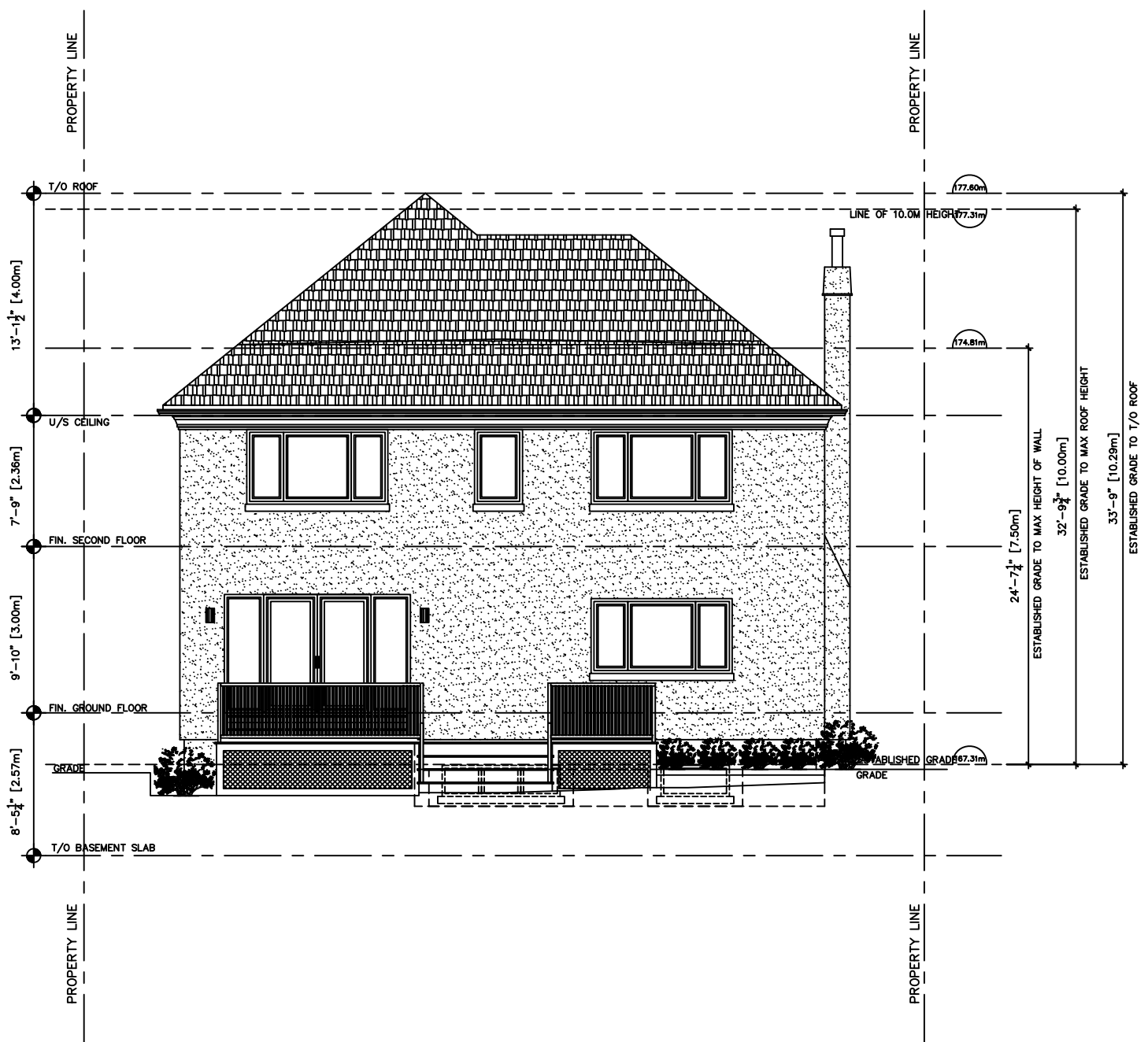


WEST ELEVATION
NOVEMBER 18, 2019

WONG RESIDENCE
96 MUNRO BOULEVARD
TORONTO ONTARIO

19-2131
3/16"=1'-0"

SPRAGGE + COMPANY
ARCHITECTS LTD.
156 DUNCAN MILL ROAD
TORONTO, ONTARIO



NORTH ELEVATION
NOVEMBER 18, 2019

WONG RESIDENCE
96 MUNRO BOULEVARD
TORONTO ONTARIO

SPRAGGE + COMPANY
ARCHITECTS LTD.

156 DUNCAN MILL ROAD
TORONTO, ONTARIO

19-2131
3/16"=1'-0"



EAST ELEVATION
NOVEMBER 18, 2019

WONG RESIDENCE
96 MUNRO BOULEVARD
TORONTO ONTARIO

19-2131
3/16"=1'-0"

SPRAGGE + COMPANY
ARCHITECTS LTD.

156 DUNCAN MILL ROAD
TORONTO, ONTARIO