

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, May 17, 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): OLEH MIROSHNYCHENKO

Applicant(s): CHIRAG C PATEL

Property Address/Description: 112 TAYSHAM CRES

Committee of Adjustment File

Number(s): 20 221659 WET 01 MV (A0463/20EYK)

**TLAB Case File Number(s): 21 124416 S45 01 TLAB**

**Hearing date: August 10, 2021**

**DECISION DELIVERED BY Panel Member S. TALUKDER**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant/Owner/Party	CHIRAG C PATEL
Appellant	OLEH MIROSHNYCHENKO
Expert Witness	MANNI CHAUHAN

## INTRODUCTION

1. The Applicant, Chirag Patel, wishes to construct a new detached dwelling with an attached garage on his property at 112 Taysham Crescent (Subject Property). He applied to the Committee of Adjustment (Committee) for approval of variances required to construct the new house.
2. The Committee approved the variances, subject to standard conditions imposed by the Committee.

3. The neighbour, Oleh Miroshnychenko, appealed the Committee's decision to the TLAB. I presided over the appeal hearing.
4. For the reasons below, I deny the application for variances.

## **MATTERS IN ISSUE**

5. The Hearing before the TLAB is a hearing *de novo*, which means that though it is an appeal by a neighbour, the onus is on the Applicant to prove that the application for variances satisfies the four statutory tests for variances, which are set out in subsection 45(1) of the *Planning Act*. The tests are whether the variances individually and cumulatively:
  - maintain the general intent and purpose of the Official Plan (OP);
  - 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.
6. The Applicant requests the approval of the variances listed in Schedule A of this Decision. The approval would be subject to the same conditions imposed by the Committee, which are:
  - a. 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.
  - b. The proposal shall be constructed substantially in accordance with the revised site plan submitted and held on file by the Committee of Adjustment office and date stamped as received on February 2, 2021, as it relates to calculation of lot coverage, to the satisfaction of the Director, Community Planning, Etobicoke York District. Any other variances that may appear on these plans but are not listed in the written decision are NOT authorized.
7. The Site Plan and Elevations for the proposed new dwelling are attached to this decision as Schedule B.
8. A review of the variances requested show that these variances are for lot coverage, FSI, height and front yard landscaping. The Site Plan also shows that a permit from Urban Forestry will be required to either injure or remove a City owned tree located at the front of the property on the City boulevard.

## **EVIDENCE**

9. The following witnesses testified at the Hearing:
  - a. Manni Chauhan, qualified as an expert witness in the area of land use planning, spoke in favour of the proposal.
  - b. Chirag Patel, the Applicant and the owner of the Subject Property.
  - c. The Appellant, Mr. Miroshnychenko, spoke against the proposal.
10. The documents that were tendered as evidence are as follows with the relevant exhibit numbers:
  - 1) Expert Witness Statement of Mr. Chauhan dated July 1, 2021
  - 2) Reply to Responding Expert Witness Statement of Mr. Chauhan
  - 3) Document Disclosure of the Applicant
  - 4) Party Witness Statement of Mr. Miroshnychenko
  - 5) Appellant Disclosure, including Attachments 1 and 2
  - 6) Form 19 - Response to Party Witness Statement filed by Mr. Miroshnychenko
  - 7) Attachment to Response to Witness Statement filed by Mr. Miroshnychenko

## **ANALYSIS, FINDINGS, REASONS**

### The Proposal

11. The Subject Property is located in Etobicoke near the intersection of Finch Avenue West and Kipling Avenue.
12. The Subject Property is zoned RD under the City-wide Zoning By-law 569-2013. It falls under the *Neighbourhood* category under the OP.
13. Mr. Chauhan testified that the current house on the Subject Property will be demolished to construct the new dwelling to accommodate Mr. Patel's growing and extended family, and also because Mr. Patel needs additional space for a home office. I note that the Applicant's reason for the proposal is not relevant in determining whether the four tests for variances have been met and therefore is not considered in making my decision.

14. Mr. Patel testified that the Site Plans show that a paved path from the front of the City's boulevard will be laid and lead to the front porch, which will decrease the front yard landscaping. This will require a variance for the decreased front yard landscaping.
15. He noted that the Subject Property is a suitable lot for development as the TTC will have an LRT station at the Finch and Albion intersection, which is near the Subject Property.
16. Mr. Chauhan noted that the inclusion of an integral garage had contributed to the increase in the building height.

#### The Neighbourhood

17. For context, I visited the Subject Property, walked the surrounding area and familiarized myself with the neighbourhood. However, my findings and ruling are based solely upon the evidence that was presented during the Hearing.
18. It is necessary to delineate the geographic neighbourhood for the Subject Property to analyze OP policy 4.1.5 and its application.
19. Mr. Chauhan defined his study area to be bounded by Finch Avenue West to the North, Islington Avenue to the west, Albion Road to the south and Kipling Avenue to the east, as shown in Figure 1. This area is mostly comprised of single detached dwellings. I find this study area, for the purposes of defining a "neighbourhood" for OP policy 4.1.5, to be appropriate.
20. Mr. Chauhan testified that the neighbourhood is mature and stable, but not static, as there has been re-development within the area. He referred to the large number of building permits issued or in the process of being issued within a 1 km radius of the Subject Property as an indication of re-development. I find this statement to be ambiguous and of no merit, as building permits include all types of development, including internal changes to a dwelling, which do not affect or engage the physical characteristics of the neighbourhood and its planned context.



Figure 1: Study Area of Mr. Chauhan, Figure 4 of Mr. Chauhan's Witness Statement, Exhibit 1

### The OP policies

21. The main OP policy for this matter is policy 4.1.5, which states that:

“Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood, including in particular:

- a) patterns of streets, blocks and lanes, parks and public building sites;
- b) prevailing size and configuration of lots;
- c) prevailing heights, massing, scale, density and dwelling type of nearby residential properties;
- d) prevailing building type(s);

e) prevailing location, design and elevations relative to the grade of driveways and garages;

f) prevailing setbacks of buildings from the street or streets;

g) prevailing patterns of rear and side yard setbacks and landscaped open space;

h) continuation of special landscape or built-form features that contribute to the unique physical character of the geographic neighbourhood; and

i) conservation of heritage buildings, structures and landscapes.”

22. Mr. Chauhan referred to the pre-OPA 320 OP policy 4.1.5 in his witness statement.<sup>1</sup> Relying on the previous policy 4.1.5 is an error as this application for variances was filed with the Committee *after* OPA 320 came into force in December 2018.

23. OP 4.1.5 states that the physical character of the subject property includes both the physical characteristics of the entire geographic area in proximity to the subject property (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite of the subject property (the immediate context).

24. The term “prevailing” for physical character in policy 4.1.5 is defined in the same policy to be the most frequently occurring form of development in the neighbourhood. This implies that some form of quantitative analysis must be conducted to determine the prevailing characteristics of the neighbourhood.

25. I find that Mr. Chauhan did not provide a description of the prevailing heights, massing, scale and density of the neighbourhood. Instead of providing such description, Mr. Chauhan noted that the proposal satisfied OP policy 4.1.5 because the proposed dwelling is a detached two-storey dwelling, which is the prevailing building type in the neighbourhood and because there are examples of buildings with heights and FSI in the neighbourhood, similar to the proposal, which were approved by the Committee.

26. Mr. Chauhan provided examples of the Committee’s decisions for other properties in the neighbourhood – these properties include 54, 32 and 6 Harlow Crescent for FSI, 19 and 83 Monterrey Drive for lot coverage and 16, 28 and 43 Harlow Crescent and 118 Taysham Crescent for building height. However, examples for similar development are not sufficient, as these examples within the neighbourhood do not automatically permit the development of the proposed dwelling. Each application for variance(s) before the TLAB must be reviewed based on the planning evidence presented at the Hearing. In this case, Mr.

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<sup>1</sup> Mr. Chauhan’s Expert Witness Statement, para. 10.7 (Exhibit 1).

Chauhan has not described what the prevailing height, massing, scale and density are in the neighbourhood and also did not compare the proposal with the broader context and the immediate context within the neighbourhood. Without such comparison, it is not clear how the proposed development respects and reinforces the existing physical character of the neighbourhood.

27. Based on the foregoing, I find that the Applicant has not satisfied the requirements set out in OP policy 4.1.5.

#### Zoning By-law

28. Mr. Chauhan testified that the proposal meets the general intent and purpose of the zoning by-law because there are examples of similar approved variances in the neighbourhood. However, whether a variance individually and in combination with the other requested variances in an application, meets the general intent and purpose of the zoning by-law is not solely based on how many examples there are in the neighbourhood for similar variances. This test requires an assessment of what the general intent and purpose of the zoning by-law is with respect to the performance standards set out in the by-law.

29. Mr. Chauhan did not provide an analysis of what the intent and purpose of the Zoning By-law is and how such intent and purpose are maintained by the proposed variances, both individually and cumulatively.

30. Based on the foregoing, I find that the Applicant has not satisfied the statutory test that the variances, individually and cumulatively, maintain the intent and purpose of the Zoning By-law.

#### Conclusion

31. I find that based on the evidence provided, the Applicant has not satisfied that the proposal maintains the general intent and purpose of the OP and the Zoning By-law. Accordingly, the Applicant has not met two of the four tests for variances. Therefore, the application for the approval of variances is dismissed.

### **DECISION AND ORDER**

32. The Appeal is granted, and the Committee of Adjustment's decision is overturned. The variances set out in Schedule A are not approved.

A handwritten signature in black ink, appearing to read 'S. Talukder', with a large circular flourish at the beginning. The signature is written over a horizontal line.

Shaheynoor Talukder  
Panel Chair, Toronto Local Appeal Body



## Schedule A

### Variances Requested

**1. Section 10.20.30.40.(1)(A), By-law 569-2013**

The maximum permitted lot coverage is 33% of the lot area (185.56 m<sup>2</sup>).  
The proposed dwelling will cover 38.6% of the lot area (217.17 m<sup>2</sup>).

**2. Section 10.20.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index is 0.45 times the lot area (255.92 m<sup>2</sup>).  
The proposed dwelling will have a floor space index of 0.55 times the lot area (314.84 m<sup>2</sup>).

**3. Section 10.20.40.10.(1)(A), By-law 569-2013 & Section 320-42.1.B.(1)**

The maximum permitted dwelling height is 9.5 m.  
The proposed dwelling will have a height of 10.16 m.

**4. Section 320-42.1.B.(2)**

The maximum permitted soffit height shall not exceed 6.5 m.  
The proposed dwelling will have a soffit height of 7.18 m.

**5. Section 10.20.40.10.(2)(A)(i) & (ii), By-law 569-2013**

The maximum permitted height of all front and rear exterior main walls is 7 m.  
The proposed dwelling will have a front and rear exterior main wall height of 7.18 m.

**6. Section 10.20.40.10.(2)(B)(ii), By-law 569-2013**

The maximum permitted height of all side exterior main walls facing a side lot line is 7 m.  
The proposed dwelling will have a side exterior main wall height of 7.18 m facing a side lot line.

**7. Section 10.5.50.10.(1)(C), By-law 569-2013**

A minimum of 60% of the front yard shall be landscaping (63 m<sup>2</sup>).  
A total of 57.7% of the front yard will be landscaping (60.6 m<sup>2</sup>).

BENCHMARK NOTE

ELEVATIONS SHOWN HEREON ARE GEODETIC AND ARE REFERRED TO THE CITY OF TORONTO BENCHMARK No.E948, HAVING AN ELEVATION OF 156.287 METRE.  
DATUM: CGVD28:PRE78. LOCATED AT No.1 AMARON AVENUE AT SOUTHEAST INTERSECTION OF AMARON AVENUE AND TAYSHAM CRESCENT. PLATE IN BRICK WALL ON WEST FACE OF BUILDING 0.30 M FROM NORTHWEST CORNER OF BUILDING 0.30 M ABOVE GROUND LEVEL.

ZONING - RD (f13.5, a510,d0.45)

LOT AREA = 568.7 SQM  
LOT FRONTAGE = 15.22 M  
PERMISSIBLE F.S.I. (0.45) = 255.9 SQM  
PROPOSED GFA = FIRST FLOOR + SECOND FLOOR  
= 137.80 SQM + 177.04 SQM  
= 314.84 SQM

ESTABLISHED GRADE = (154.27 + 154.27) / 2 = 154.27  
PROPOSED BUILDING HEIGHT = 9.62 M  
FRONT YARD SETBACK = 7.59 M  
SIDE YARD SETBACK = 1.50 M  
REAR YARD SETBACK = 14.85 M  
BUILDING LENGTH = 16.68 M  
BUILDING DEPTH = 14.75 M  
FRONT YARD LANDSCAPE (SOD)=A+B  
= 42.61 + 13.02 = 55.63 SQM

	EXISTING	PROPOSED
BASEMENT	106.09 SQM	99.75 SQM
GROUND FLOOR	106.09 SQM	137.80 SQM
SECOND FLOOR	-	177.04 SQM
GARAGE	24.17 SQM	39.23 SQM

THIS REPORT WAS PREPARED FOR FLORA DESIGNS INC. AND THE UNDERSIGNED ACCEPTS NO RESPONSIBILITY FOR ITS USE BY OTHER PARTIES.

PART 2 (SURVEY REPORT)

- REGISTERED EASEMENTS AND/OR RIGHT OF WAYS: SUBJECT TO AN EASEMENT IN FAVOR OF BELL CANADA AS IN INST. No. EB203678.
- ADDITIONAL COMMENTS: NOTE THE LOCATION OF THE FENCES AROUND THE SOUTHERLY, WESTERLY AND EASTERLY LIMITS OF THE SUBJECT PROPERTY. NOTE THE LOCATION OF THE OVERHEAD WIRE.
- THIS PLAN DOES NOT CERTIFY COMPLIANCE WITH ZONING BY-LAWS.

SURVEYOR'S REAL PROPERTY REPORT

PART 1 - PLAN OF SURVEY OF  
LOT 308  
REGISTERED PLAN 5475  
CITY OF TORONTO  
(FORMERLY CITY OF ETOBICOKE)

SCALE 1:250

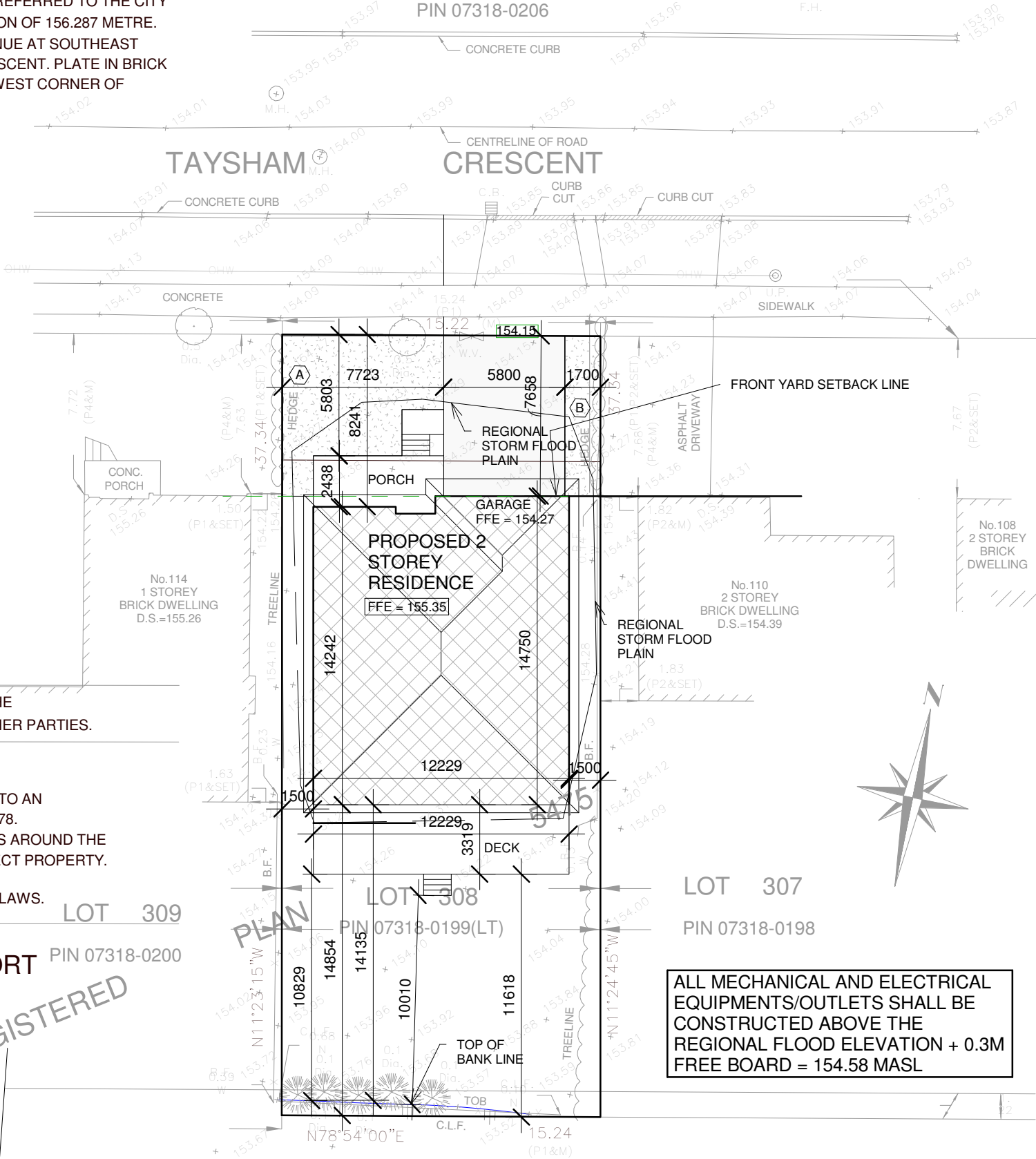


Residence

112 TAYSHAM CRES, TORONTO

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(FORMERLY PENLEA DRIVE BY REGISTERED PLAN 5475)



ALL MECHANICAL AND ELECTRICAL EQUIPMENTS/OUTLETS SHALL BE CONSTRUCTED ABOVE THE REGIONAL FLOOD ELEVATION + 0.3M  
FREE BOARD = 154.58 MASL

10m 5 0 15 METRES

MANDARIN SURVEYORS LIMITED, O.L.S. METRIC  
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

LEGEND

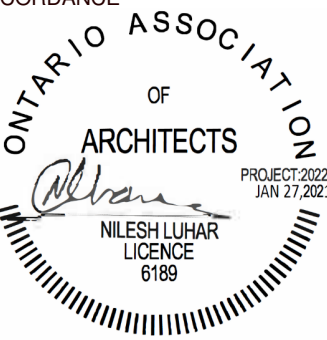
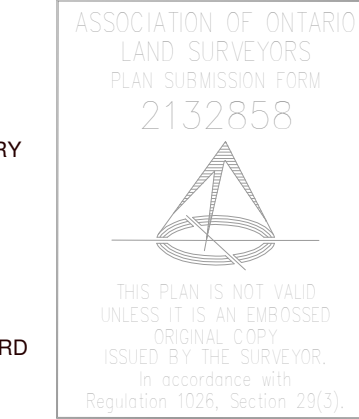
- DENOTES MONUMENT SET
- DENOTES MONUMENT FOUND
- SIB DENOTES STANDARD IRON BAR
- SSIB DENOTES SHORT STANDARD IRON BAR
- IB DENOTES IRON BAR
- RP DENOTES REGISTERED PLAN 5475
- P1 DENOTES PLAN OF SURVEY BY C. REUBEN, O.L.S. DATE OCTOBER 12, 1960
- P2 DENOTES PLAN OF SURVEY BY C. REUBEN, O.L.S. DATE NOVEMBER 18, 1960
- P3 DENOTES PLAN OF SURVEY BY D. P. QUINLAN, O.L.S. DATE NOVEMBER 19, 2012
- P4 DENOTES FIELD NOTE OF CITY OF TORONTO SURVEYS
- 1579 DENOTES D. P. QUINLAN, O.L.S.
- PIN DENOTES PROPERTY IDENTIFIER NUMBER
- M DENOTES MEASURED
- N,S,E,W DENOTES NORTH, SOUTH, EAST, WEST
- B.F. DENOTES BOARD FENCE
- C.L.F. DENOTES CHAIN LINK FENCE
- CONC. DENOTES CONCRETE
- D.S. DENOTES FINISHED SILL ELEVATION AT ENTRY
- S.R.W. DENOTES STONE RETAINING WALL
- TOB DENOTES TOP OF BANK
- O.H.W. DENOTES OVERHEAD WIRE
- F.H. DENOTES FIRE HYDRANT
- M.H. DENOTES MANHOLE
- U.P. DENOTES UTILITY POLE
- U.P.L.S. DENOTES UTILITY POLE WITH LIGHT STANDARD
- W.V. DENOTES WATER VALVE
- C.B. DENOTES CATCH BASIN
- Denotes CONIFEROUS TREE
- Denotes DECIDUOUS TREE

ALL TIES TO CONCRETE FOUNDATION, UNLESS NOTED OTHERWISE.  
BEARINGS SHOWN HEREON ARE ASTRONOMIC AND ARE REFERRED TO THE SOUTHERLY OF TAYSHAM CRESCENT AS SHOWN ON REGISTERED PLAN 5475, HAVING A BEARING OF N78° 54' 00"E.  
SURVEYOR'S CERTIFICATE

I CERTIFY THAT:  
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT / REGULATIONS MADE UNDER THEM.  
2. THE SURVEY WAS COMPLETED ON THE DATE  
JULY 27, 2020

MANDARIN SURVEY  
ONTARIO LAND SURVEYOR  
WWW.MANDARINSURVEYOR.COM  
2400 MIDLAND AVE., #121 PHONE: (647)430-1366 FAX  
SCARBOROUGH, ONTARIO, M1S 1X7 E-MAIL: MANDAR

SURVEY BY: S.Z. CAD No: 20-166SRPR JOB No: 2020-166



No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

SITE PLAN

Project number	2022
Date	30-07-2020
Drawn by	NL
Checked by	NL

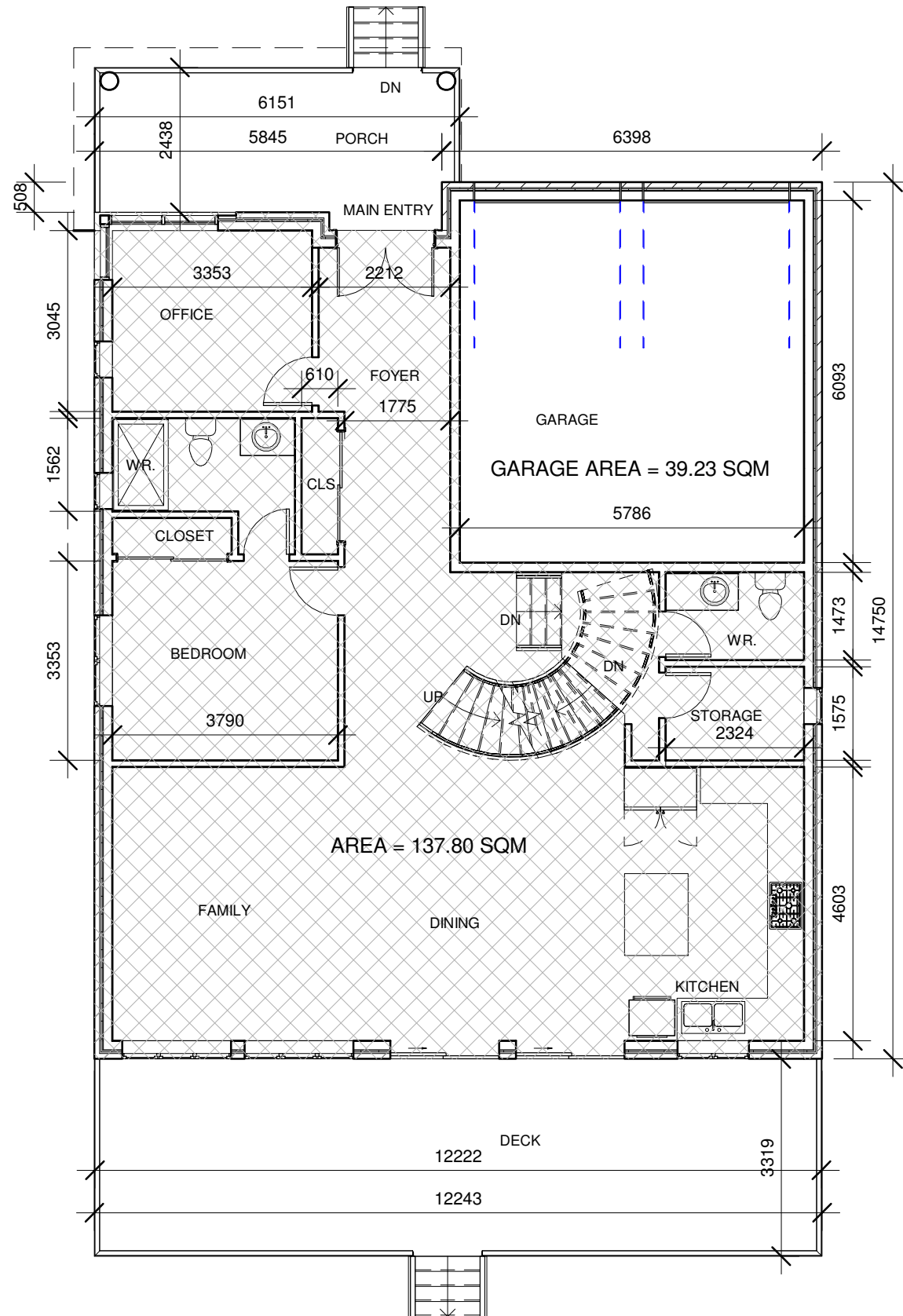
A000

Scale 1 : 250

## Residence

112 TAYSHAM CRES, TORONTO

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ALL MECHANICAL AND ELECTRICAL  
EQUIPMENTS/OUTLETS SHALL BE CONSTRUCTED  
ABOVE THE REGIONAL FLOOD ELEVATION + 0.3M FREE  
BOARD = 154.58 MASL

FIRST FLOOR BUILDING AREA = 192.21 SQM  
GARAGE AREA = 38.99 SQM  
PORCH AREA = 15.42 SQM  
FIRST FLOOR GFA = 192.21-38.99-15.42 = 137.80 SQM

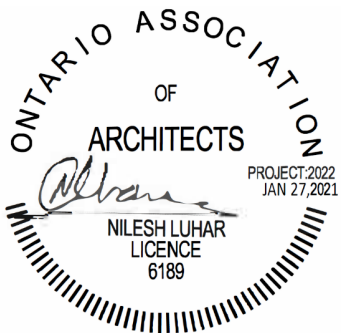
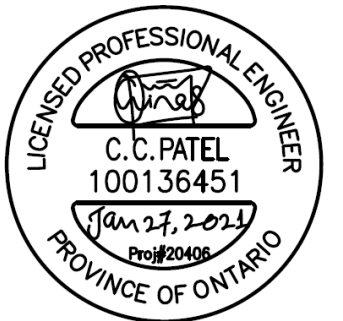
No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
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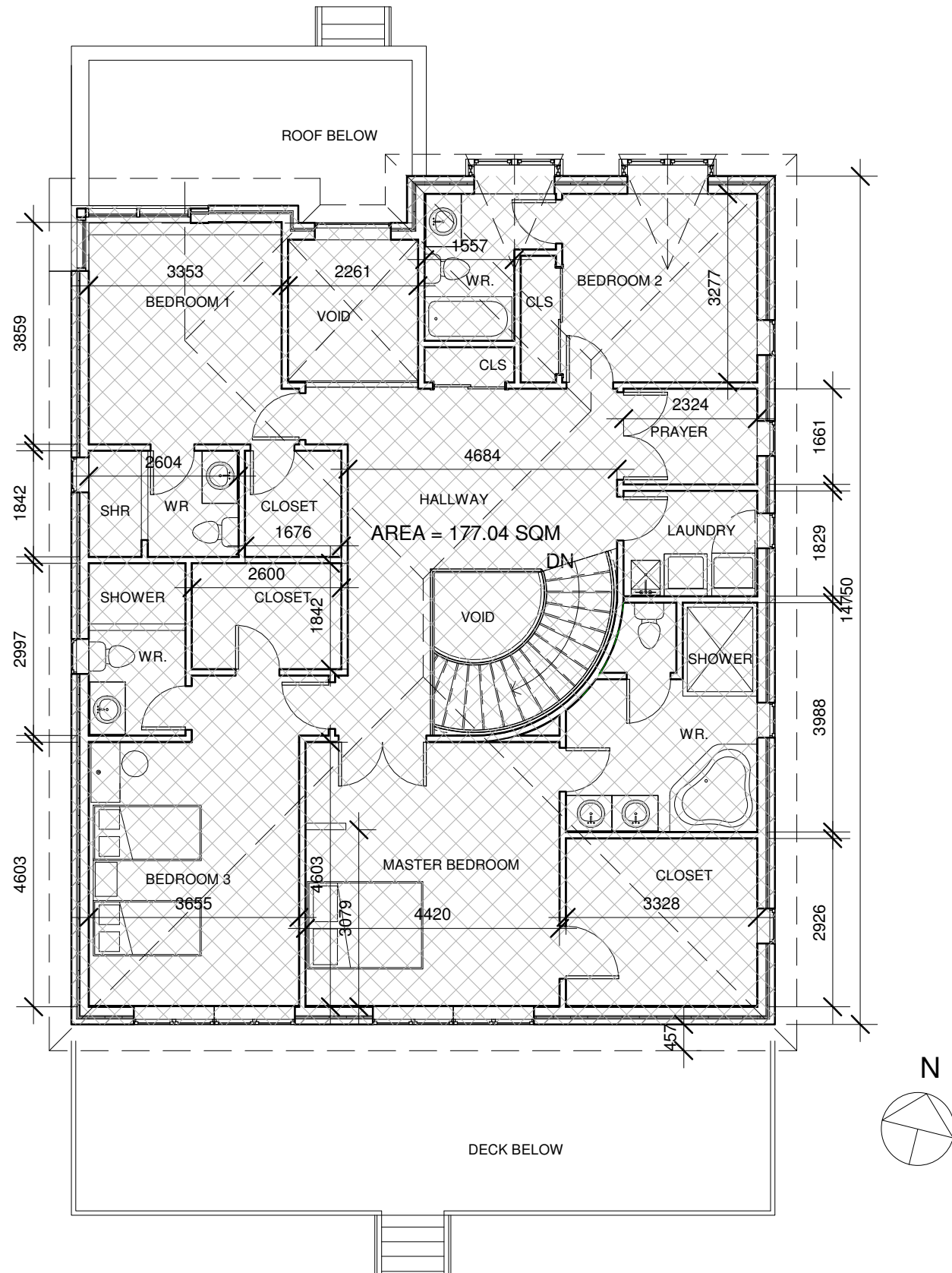
## FIRST FLOOR PLAN

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Date	30-07-2020
Drawn by	NL
Checked by	NL

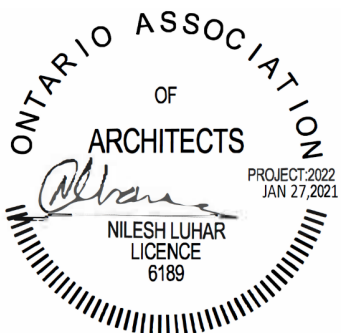
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SECOND FLOOR BUILDING AREA = 177.04 SQM  
SECOND FLOOR GFA = 177.04 SQM



## Residence

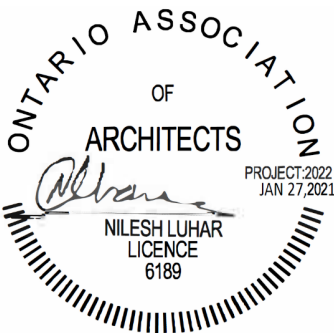
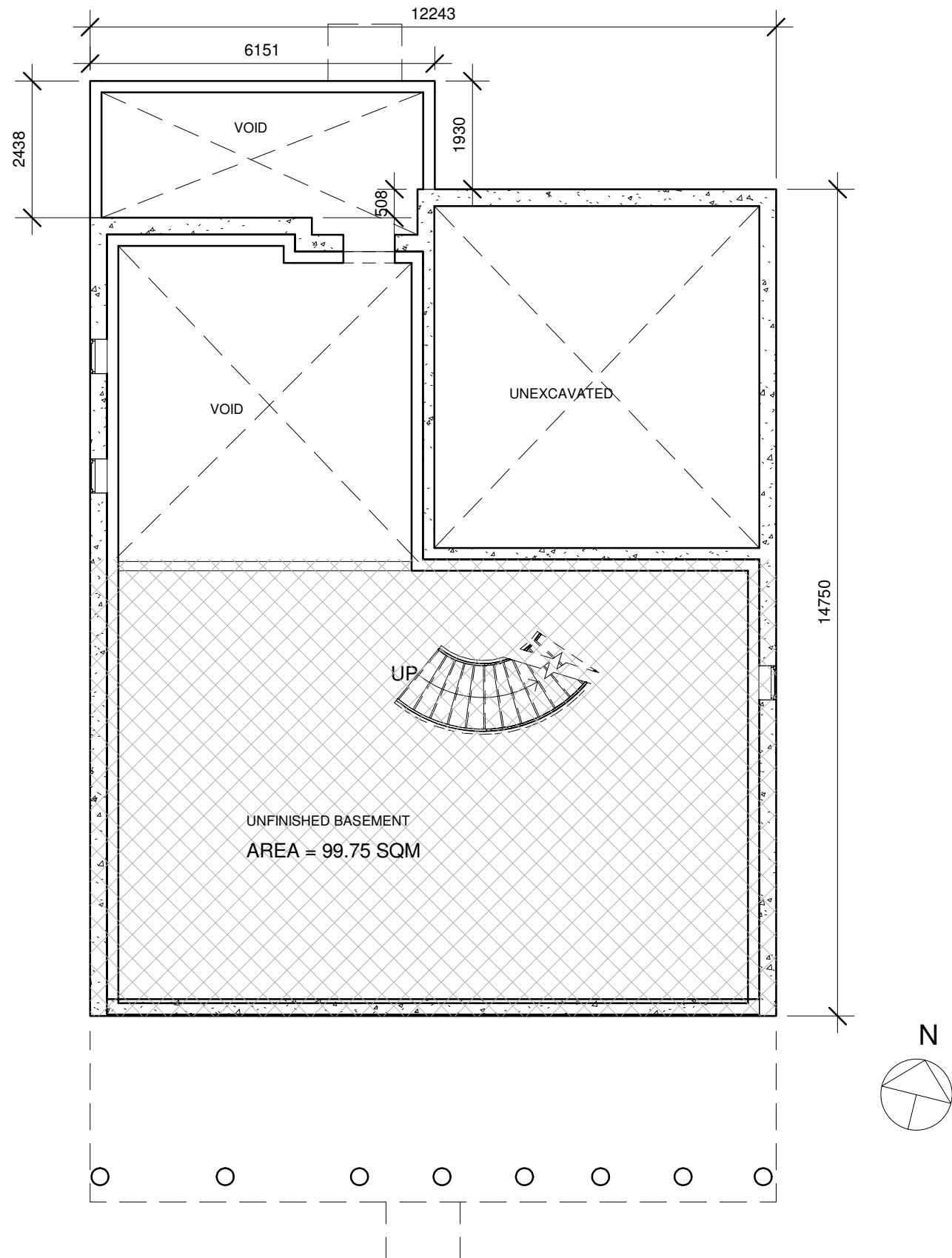
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No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

SECOND FLOOR PLAN			
Project number	2022	A102	
Date	30-07-2020		
Drawn by	Author		
Checked by	Checker	Scale 1 : 100	





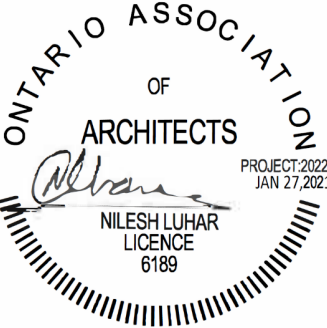
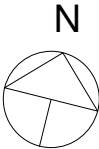
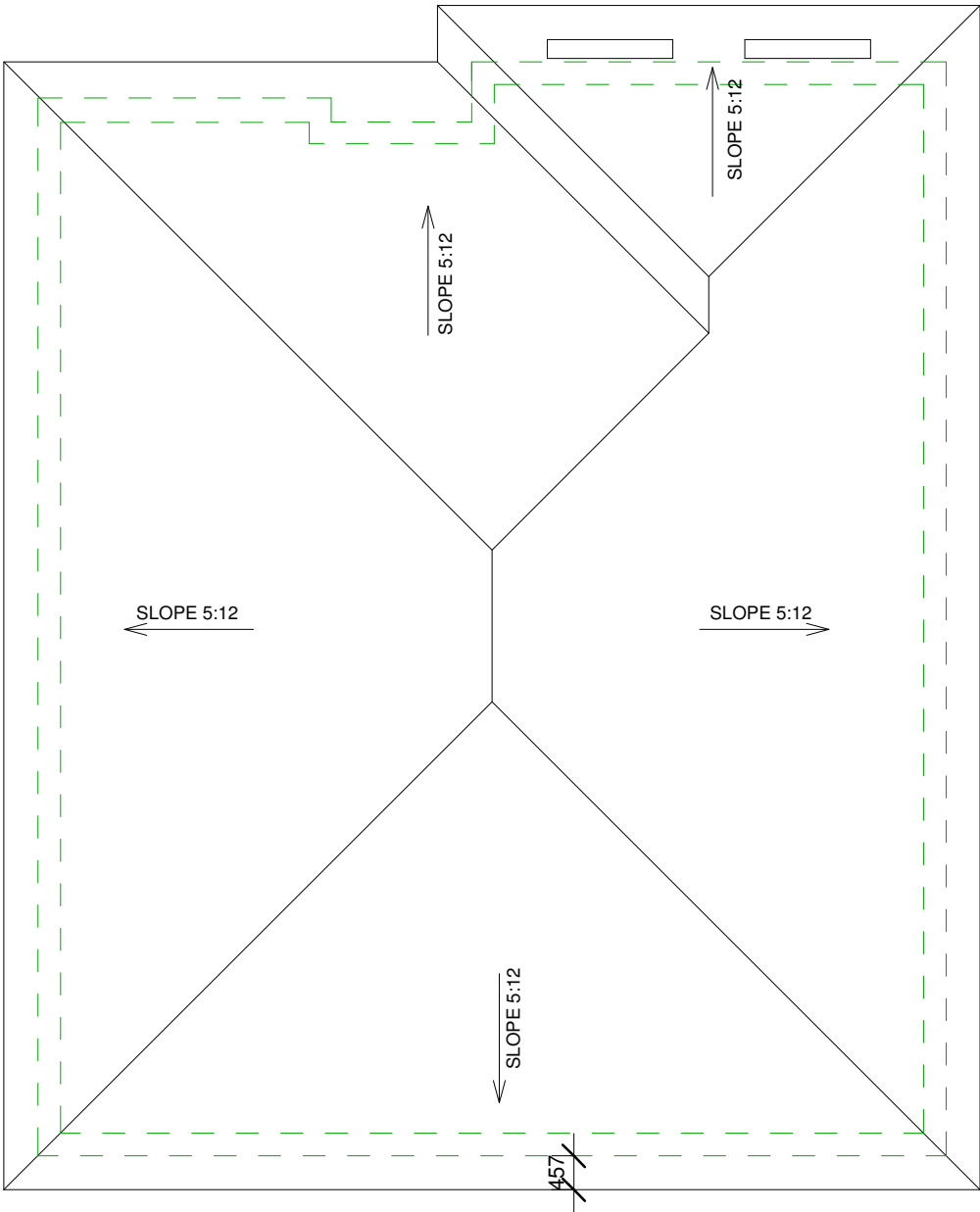
**ANTRIX**  
Architects Inc.  
1109 Britannia Road E, Mississauga,  
Ontario L4W 3X1  
O: 905 564 1154, M: 416 669 6564, 416 728 1807  
www.antrix.ca

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No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

BASEMENT FLOOR PLAN			
Project number	2022	A103	
Date	30-07-2020		
Drawn by	Author		
Checked by	Checker	Scale 1 : 100	



ANTRIX

Architects Inc.

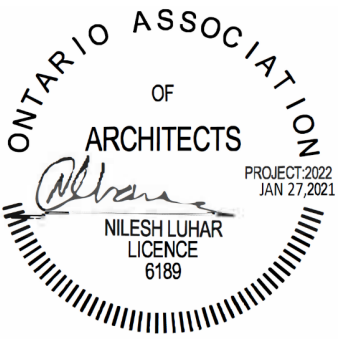
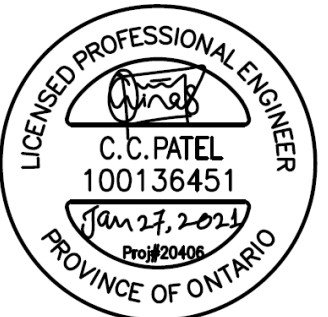
1109 Britannia Road E, Mississauga,  
Ontario L4W 3X1  
O: 905 564 1154, M: 416 669 6564, 416 728 1807  
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No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

ROOF PLAN		
Project number	2022	A104
Date	30-07-2020	
Drawn by	Author	
Checked by	Checker	Scale 1 : 100



# Residence

112 TAYSHAM CRES, TORONTO

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No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

FRONT ELEVATION			
Project number	2022	A105	
Date	30-07-2020		
Drawn by	Author		
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O: 905 564 1154, M: 416 669 6564, 416 728 1807  
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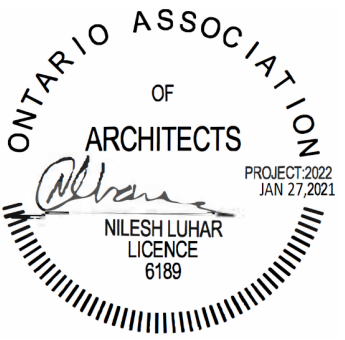
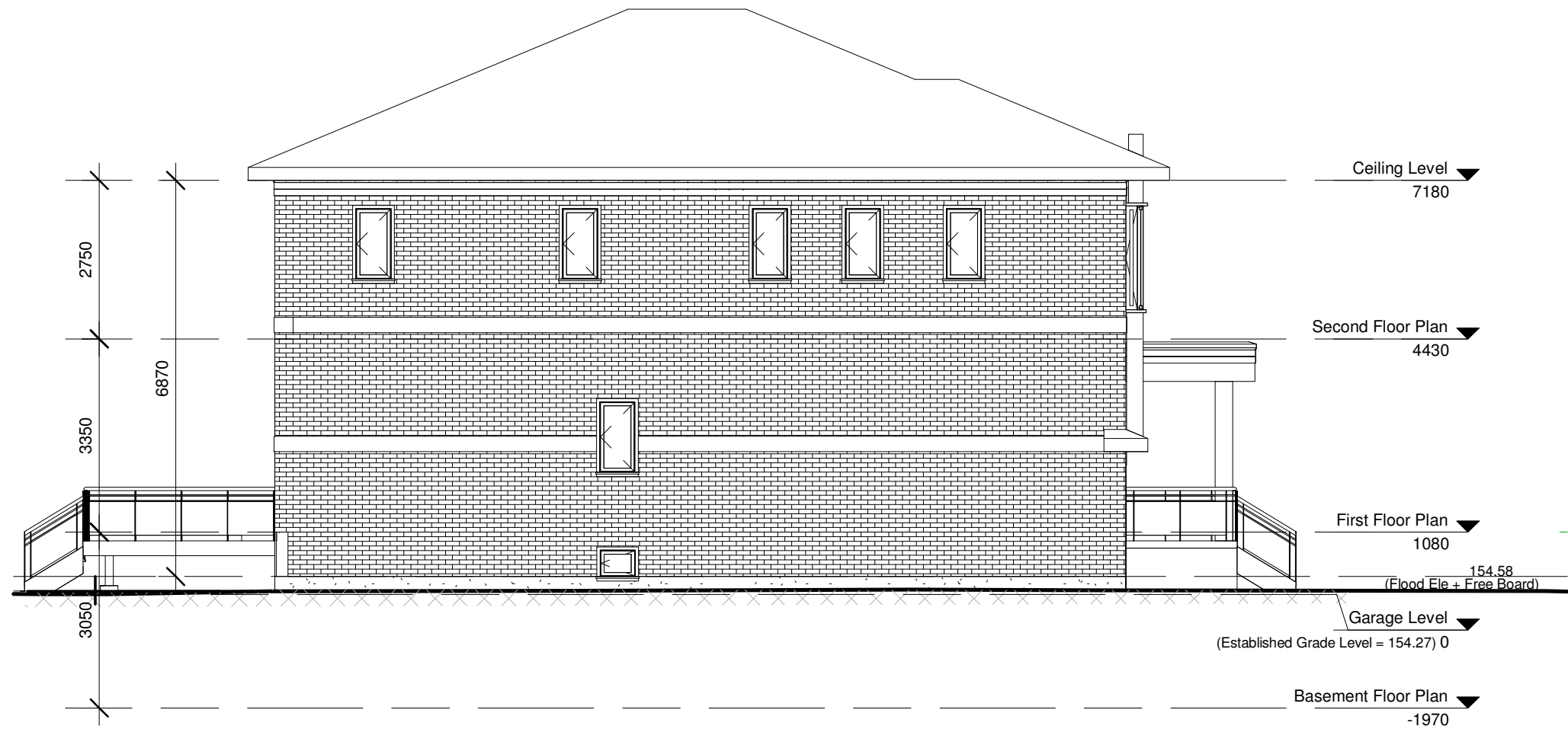
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No.	Description	Date
1	TRCA Approval	Oct 1,2020
2	Minor Variance	Oct 27,2020
3	Reissued for MV	Jan28,2021

REAR ELEVATION		
Project number	2022	A106
Date	30-07-2020	
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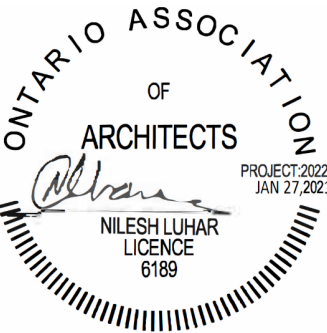
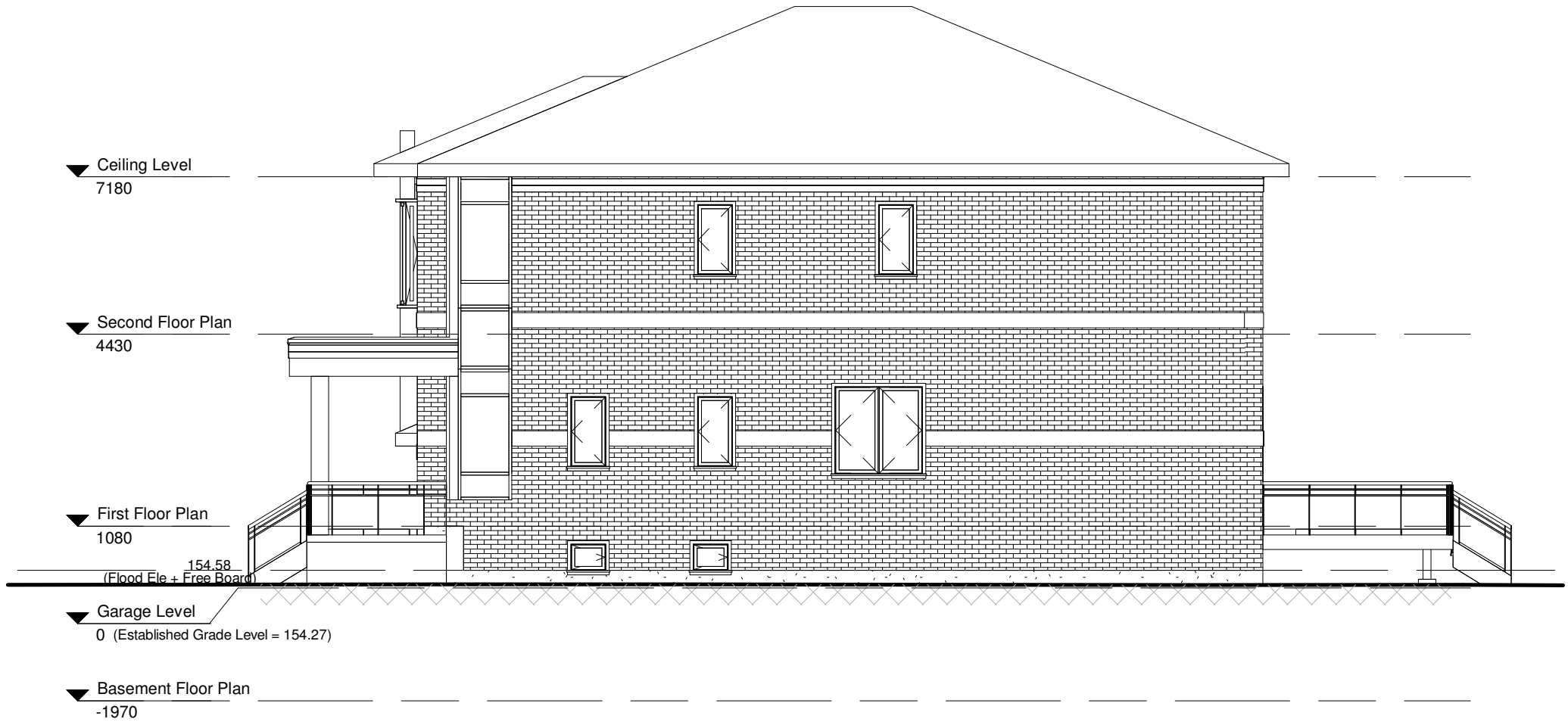


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 Architects Inc.  
 1109 Britannia Road E, Mississauga,  
 Ontario L4W 3X1  
 O: 905 564 1154, M: 416 669 6564, 416 728 1807  
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EAST ELEVATION			A107	
No.	Description	Date	Project number	2022
1	TRCA Approval	Oct 1,2020	Date	30-07-2020
2	Minor Variance	Oct 27,2020	Drawn by	Author
3	Reissued for MV	Jan28,2021	Checked by	Checker
			Scale 1 : 100	



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Architects Inc.

1109 Britannia Road E, Mississauga,  
Ontario L4W 3X1  
O: 905 564 1154, M: 416 669 6564, 416 728 1807  
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			WEST ELEVATION			
No.	Description	Date			A108	
1	TRCA Approval	Oct 1,2020	Project number	2022		
2	Minor Variance	Oct 27,2020	Date	30-07-2020		
3	Reissued for MV	Jan28,2021	Drawn by	Author		
			Checked by	Checker	Scale 1 : 100	