

DECISION AND ORDER

Decision Issue Date Tuesday, July 26, 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): FRED IP

Applicant(s): REPLACEMENT DESIGN INC

Property Address/Description: 138 PARKMOUNT RD

Committee of Adjustment File

Number(s): 21 148761 STE 14 MV (A0562/21TEY)

TLAB Case File Number(s): 21 250232 S45 14 TLAB

Hearing date: June 16, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANTS

Applicant	REPLACEMENT DESIGN INC
Appellant	FRED IP
Party (TLAB) / Owner	AMANDA LORRAINE SANTO
Party's Legal Rep.	OVERLAND LLP (Michael Cara)
Expert Witness	FRANCO ROMANO

INTRODUCTION AND BACKGROUND

Amanda Lorraine Santo is the owner of 138 Parkmount Road (the “Site” or “Property”), located in Municipal Ward 14 (Toronto-Danforth), of the City of Toronto . She applied to the Committee of Adjustment (“COA”) for the approval of variances that would allow her to alter the existing two-storey semi-detached dwelling by constructing a third storey addition, with a rear third storey deck. The COA heard the Application on December 1, 2021, and approved the application in its entirety. On December 20, 2021, Mr. Fred Ip, who resides next door at 136 Parkmount Road, appealed the decision to the Toronto Local Appeal Body (the “TLAB”) , which then scheduled a Hearing to hear the Appeal on June 16, 2022.

It is important to note the contents of the Appeal to the TLAB, filed by the Appellant , because it will be referred to later in both the Evidence, and Analysis Sections.

The addition of the 3rd floor space will require a complete removal of the roofing surface (138 Parkmount) thus compromising the already aging roofing structure (136 Parkmount). This will increase the risk of water/debris/snow/ice pooling due to the increase of weight on our side of the roof (136 Parkmount). This will increase the chance of damage from leaking and will structurally weaken the original roof structure. This variance is not minor in nature.

A financial burden will be imposed on my family to re-install, re-patch, and reinforce the affected shared roof structure area.

The proposed variance is not desirable (financially) and does not follow appropriate development use of the building within the Residential Zone category being a semi-detached home (shared roof) and deviates from the intent of the City's Zoning Code or By-laws. The general intent and purpose of the neighborhood Official Plan are not maintained.

It may be noted that while there were extensive filings from the Applicants, including an Expert Witness Statement, by the appropriate deadlines, there were no submissions, including a Witness Statement, by the Appellant- their one and only submission is what is recited above.

MATTERS IN ISSUE

1. 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 m of a building, must comply with the required minimum building setbacks for the zone. In this case, the minimum required side yard setback is 0.9 m.

The proposed third storey deck will be located 0.5 m from the side (north) lot line.

2. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m. In this case, the height of the front exterior main walls will be 9.64 m.

3. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.
In this case, the height of the rear exterior main walls will be 9.41 m.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (98.27 m²).
The altered dwelling will have a floor space index equal to 1 times the area of the lot (164.6 m²).

5. Chapter 10.10.40.70.(1), By-law 569-2013

The minimum required front yard setback is 3.67 m.
The altered dwelling will be located 3.38 m from the front (east) lot line.

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

As stated earlier, on June 16, 2019, the day of the Hearing, the Applicant was represented by Mr. Michael Cara, a lawyer, and Mr. Franco Romano, while the Appellant, Mr. Fred Ip was represented by his father, Mr. John Ip. There were no other Parties, nor Participants involved in this Proceeding.

Given the lack of appropriate submissions, I asked Mr. John Ip to make a brief submission about the reasons behind their launching an Appeal, with respect to the Property at 138 Parkmount. Mr. Ip briefly described the issues recited earlier in the "Introduction and Background" Section. I informed Mr. Ip that many of the issues raised by him, such as financial implications arising out of construction, and the issue of nuisances arising out of the construction itself, are outside the jurisdiction of the TLAB.

I then suggested to the Parties that notwithstanding the Appeal constituting an Hearing *de novo*, where the Applicants traditionally presented first, there may be advantages to allowing the Appellant to present their evidence first, because the Applicants could respond to the specific points brought by the Appellants in detail, followed by discussion of the remainder of their evidence in broad strokes, because the latter components are not in contention. I also stated that should the Applicant insist on the right to Reply after the Applicants completed presenting their evidence, the TLAB would use its discretionary powers to grant the Applicants the ability to provide Reply to the Appellants' Reply.

Both Mr. Cara and Mr. Ip consented to this methodology to complete the Hearing.

After being affirmed to give evidence, Mr. Ip reiterated his complaint about construction and the growth of roots beneath his house. Mr. Ip also said that his son could not understand the reasoning of the Committee of Adjustment in approving the Application put forward by his neighbour, and wanted an explanation about how the underlying reasoning behind the approval of the Application. I advised Mr. Ip that the mandate of the TLAB did extend to the provision of explanations regarding the COA's reasoning about the approval, or refusal of an Application. I informed him about how Appeals to the TLAB resulted in an Hearing "*de novo*", which effectively meant that the decision of the COA was being set aside. I encouraged Mr. Ip to concentrate about discussing the impact of the proposal next door- Mr. Ip expressed disappointment that many of the issues that were important to him, were outside the jurisdiction of the TLAB. He concentrated on the impact of the proposed third floor at the Site, and stated "it did not seem right", when looked at from the ground level, and may result in the violation of the privacy of the residents of his property. When encouraged to expand on his concern, Mr. Ip spoke to what I understood to be a concern about the privacy of the residents in his house, and how they could be observed from the balcony of the third floor to be built at the Site

The Cross-Examination by Mr. Cara demonstrated that it was not Mr. Ip, but his son, (Mr. Fred Ip) and some of their renters who lived at 136 Parkmount. When asked if Mr. Ip had consulted with "any expert" to determine the impact, Mr. Ip said that his son, who lived at 136 Parkmount, had obtained advice from "people familiar with construction", and had relied on their advice to come to the conclusions that resulted in this Appeal to the TLAB.

Mr. Romano was then sworn in, and recognized as an Expert Witness in the area of land use planning.

Mr. Romano said that the Subject Site is located within the former municipality of Toronto, within the Toronto-Danforth neighbourhood. It is located south of Danforth Avenue, between Greenwood Avenue and Coxwell Avenue. The Subject Site is located on the west side of Parkmount Road, a local road which has a north-south orientation. The Official Plan designation for the Subject Site is Neighbourhoods and the zoning is residential (R Zone by Toronto Zoning By-law 569-2013 and R2 Z0.6 by the former Toronto Zoning By-law 438-86).

According to Mr. Romano, the zoning permits a diversity of residential building types including detached, semi-detached, townhouse, duplex, triplex, fourplex and apartment buildings up to a height of 10.0m (with no storey limitation).

He said that the Subject Site is developed “with the north one-half of a two storey semi-detached residential building”. There is an existing rear yard ground floor deck, as well as rear yard accessory sheds. The two storey dwelling has a roof above the second storey. The proposal is to construct a third storey building addition and rear third storey deck. Describing the dimensions of the Subject Site, Mr. Romano said that the lot frontage is 5.38 metres, lot depth of 30.48 metres, lot area of 163.78 sq. metres. The front yard setbacks are 1.5 metre to the front porch, 2.39 metres to the second floor, and 3.19 metre to the bay window. The north side yard ranged from 0.5 metre to 0.55 metre, while the south side yard is 0 metre. The rear yard setback is 15.24 metre, while the proposed Gross Floor Area was 118.5 sq.m, with a resulting FSI of 0.72 X Lot Area.

Mr. Romano described the proposal as “incorporating several built features to ensure that the modest addition is sensitively integrated with the existing dwelling”. He described how the proposal has been designed with a step-back in the front wall in dormer-like format, a step-back at the rear and a largely continued alignment with the existing side walls, “all laid out in a manner that is smaller than the existing dwelling footprint”. The third floor addition is built within the existing footprint which is modest in size, measuring approximately 10.6m in length at the longest point (which is substantially shorter than the permitted 17.0m length and 19.0m depth permissions). The third floor is also within the roofline, which further minimizes the perception and location of massing from neighbouring properties

The layout of the third storey is as follows.

- a) The third storey footprint is proposed to be located within the existing dwelling footprint. The third storey is proposed to occupy approximately 75% of the existing dwelling footprint(excluding the front porch).
- b) The front of the proposed third storey is in a dormer format, measuring 3.93m in width. The third storey steps back from the existing second storey at the front as well as along the north side towards the front. The third storey front yard setback is 3.38m.
- c) The proposed rear wall steps back from the existing second storey rear wall. The proposed rear wall steps back approximately 1.30m to 2.29m. Within this L-shaped step-back, there is the proposed third storey deck with privacy screens along the sides.
- d) The side yard setbacks align with existing side yard setbacks.

Mr. Romano then described the relationship between the proposal, and the neighbourhood. He stated that the geographic neighbourhood boundary is bounded by major and local streets. Danforth Avenue is a mixed use corridor which forms the north boundary, while it is bounded by Coxwell Avenue to the east, the continuous street dually named Felstead Avenue and Hanson Street “to the south, and Lamb Avenue to the west.

Mr. Romano described the physical form of development in this” Neighbourhood to be a mixed character representative of an inner city neighbourhood, where the lot fabric is compact, and the building types are varied”. He described how low rise detached, attached and multiple unit residential buildings occupy properties with “tight setback relationships”. On the basis of a photographic tour of the Neighbourhood, he demonstrated how the community was continuously changing, such that the character of the community was continuously reinforced, and respected by the new developments.

Speaking next to the Built Form Policies, Mr. Romano described how the proposal conforms to, and meets the general intent and purpose of, the built form policies, through:

- a) maintaining the existing front yard setback, and ensuring that the third storey has a step back from the existing front wall.
- b) Maintaining the existing front entry, front facing window, and door treatments such that it satisfies the requirement to be accessible, and visible from Parkmount Road, as well as views from inside the house onto the public realm.
- c) Maintenance of open space and setbacks

Mr. Romano said that the proposal looks to preserve the existing footprint, as well all the existing mature trees with the City Boulevard, and private property, on the basis of which he asserted that there would be no, or very little incremental impact on the neighbouring properties. He also discussed how the proposal would maintain existing open space and setbacks. Mr. Romano discussed how the proposal addressed privacy protection through making no changes to the parking solution at the Site, building the proposed third floor into the roofline, and the provision of an “appropriate building shape, scale and massing, which fits within the existing, and planned context”. Mr. Romano then asserted that the Policy conforms to, and meets the general intent of the applicable natural environment policies, through the maintenance of existing City, and private trees, as well as satisfying the front and rear yard setback provisions, and the landscaping requirements.

Mr. Romano then described how the proposal satisfies Section 4.1.5 of the OP through maintaining of the existing lot size, and configuration. He demonstrated that the prevailing lot character consisted of houses with less than 6 metre frontages, and a lot area of 200 sq.m or less- according to his statistics, 39% of the houses have a frontage of less than 6 metres, while 42% of the properties have a frontage of less than 200 sq. m, making them the “prevailing type” by virtue of being the single most frequently occurring statistic. He spoke to how the proposal strengthened the low rise, low scale character of the Neighbourhood. Speaking to the FSI characteristic, Mr. Romano

discussed the challenges posed by how the City of Toronto data did not include the most recent developments, such as COA approvals. This evidence, and statistics are not recited here, because of the issues raised by Mr. Romano, regarding their reliability for decision making purposes.

Based on this analysis, Mr Romano concluded that the proposal satisfied Section 4.1.5 of the OP, and consequently satisfied all the applicable policies in the OP

The relationship between the proposal, and the Zoning By-Laws was discussed next by Mr. Romano. He said that the overall general intent and purpose of the Zoning By-law is to achieve development, that is organized, orderly and context suitable. He asserted that the proposal maintains the overall general intent and purpose of the zoning because it will result in the construction of a building which can co-exist in harmony with dwellings located within the Subject Site's physical context. The proposal will also maintain appropriate spacing, servicing and amenity areas. Mr. Romano spoke to each of the request variances, and how they satisfied the corresponding performance standard.

Speaking to the variance respecting the Deck North Yard Setback, Mr. Romano reiterated that the variance is to permit a north side yard setback of 0.5m, whereas a minimum of 0.9m is required. This variance relates to the third storey platform attached to the bedroom and overtop the existing two storeys. After pointing out that the proposed north side yard setback follows the existing dwelling north side yard setback, Mr. Romano concluded that the proposed north side yard setback meets the general intent and purpose of the Zoning By-law, by ensuring that there is adequate space for access purposes for traversing or maintenance as well as appropriate spatial separation.

Speaking next to the variances for front, and rear wall height, Mr. Romano stated that the wall height variance is to permit a front wall height of 9.64m, and a rear wall height of 9.41m, whereas a maximum 7.5m is permitted by Toronto Zoning By-law 569-2013 both the front and rear wall height. He highlighted the purpose of the front wall height, which is to enable a 3.93m dormer format component, setback from the existing second storey. He added that the rear wall variance is for the third storey, which has a step-back of 1.3m to 2.29m, while the actual rear main wall maintains a compliant two storey wall height. Mr. Romano stated that the general intent and purpose of the wall height performance standard is to minimize the extent to which walls may rise to prevent "inappropriate upper levels". In this instance, Mr. Romano asserted that the front and rear walls will maintain a low rise building, whereby dwelling portions above are minimized. He noted that the wall height performance standards would permit a roof to be constructed on top, or higher, than the wall height, before noting that the wall height "gets lower from front to rear, while the wall height is fully incorporated into the roofline . which helps to de-emphasize the height". The proposed wall heights maintain a low rise, ground oriented dwelling that is context suitable

Addressing the variance for the FSI, Mr. Romano stated that the proposed FSI meets the general intent, which is to ensure that the enclosed floor area of the dwelling is

appropriate for the lot. He asserted that the “proposed floor area is reasonably deployed on the lot”, resulting in a building, such that the third floor is located within the existing modest footprint (measuring 10.56m in length at the longest point, by an articulated width measuring 3.93m to 4.87m).

Speaking lastly to the variance respecting the front yard setback, Mr. Romano said that the variance is to permit a front yard setback of 3.38m whereas minimum 3.67m is required- he pointed out that the 3.38 metre setback is measured to the proposed third storey, and added that this setback is a larger front yard setback than the existing front yard setback. Mr. Romano concluded that the proposed front yard setback maintains the general intent and purpose to accommodate an appropriate front wall alignment with neighbouring dwellings along the street.

On the basis of this evidence, Mr. Romano concluded that the requested variances satisfy the intent, and purpose of the By-Law.

Speaking next to the test of minor, Mr. Romano said that the proposal involves a third storey building addition which “is smaller than, and located within, the existing footprint of the dwelling”. He said that the proposal has been designed to overlap the existing dwelling with step backs “which minimizes site disturbances and de-emphasizes the built form”. Mr. Romano asserted that there were no demonstrable adverse impacts resulting from the proposal, as a result of which it satisfied the test of “minor”.

Lastly, Mr. Romano discussed how the proposal satisfied the test of “appropriate development”. He asserted that the proposal represents a sensitive form of redevelopment which minimizes impacts on the Subject Site and surroundings. He said that the proposal maintains and improves the existing housing stock, which results in a three storey dwelling site design compatible with what exists in the vicinity of the Site. Based on this evidence, Mr. Romano concluded that the requested variances satisfied the test of appropriate development.

Given that his evidence had demonstrated that the requested variances satisfied all tests under Section 45.1 of the OP, Mr. Romano concluded that the Appeal must be refused, and the decision made by the COA be upheld. Discussing the conditions to be imposed on the approval of the variances, Mr. Romano referred to the standard condition that the building must be built in substantial accordance with the submitted Plans, and Elevations. In response to a question from me about minimizing privacy concerns, Mr. Cara pointed out that design of the third floor had already recognized the importance of including opaque screens on the north and south sides of the third floor balcony. I instructed Mr. Cara to include the installation of opaque privacy screens on the north and south sides of the third floor balcony, as a condition, and asked him to submit a list of the requested variances, followed by the recommended conditions, as well as PDF copy of the Plans and Elevations.

Mr. Ip’s questions for Mr. Romano focused on how much land would have to be removed for the purposes of underpinning the structure, to which the latter stated that he did not know the answer, because there was no variance respecting the underpinning of the

building. Mr. Ip asked Mr. Romano if he had any examples of a semi-detached house, with a 3rd floor in his study neighbourhood, to which Mr. Romano said that while he did not look for such an example, because the planning documents and instruments did contemplate the building of such a house. Mr. Ip asked why Mr. Romano considered the third floor to be “partial”, to which the latter discussed the quantification of the Gross Floor Area of each floor, and demonstrated that the proposed third floor was significantly smaller than the other two floors, was “stepped back” at the front from the street, and had a dormer window feature, to explain the “partial” nature of the floor. Lastly, Mr. Ip asked about the relationship between the test of minor and quantification of the requested variance, to which Mr. Romano explained how impact helped inform how the variance corresponded to the test of minor, as opposed to mere quantification.

No Reply evidence was called by the Applicants, after the completion of the Cross-Examination of their evidence.

Mr. Cara insisted on introducing a Motion for Costs before the adjournment of the Hearing. When I pointed out that the TLAB preferred a Motion for Costs to be introduced by way of a Written Motion, after the release of the Decision, Mr. Cara responded by stating that bringing forward a Written Motion for costs, would “further prejudice” his client, who he stated was “already prejudiced through a frivolous Appeal”. Mr. Ip objected vigorously to the Motion for Costs since he had no advance notice of this Motion, and said that he did not know what to do, or defend himself, if such a Motion were introduced. I noted Mr. Ip’s objection, remarked on how the introduction of such a Motion may be prejudicial to Mr. Ip.; however, Mr. Cara persistently insisted that he would like to bring forward a Motion for Costs.

When I reluctantly allowed Mr. Cara to bring forward the Motion for Costs, he thanked me for my “indulgence”, before referring to the Decision taken by the TLAB in the case of the Appeal respecting *211 Dunvegan Road (Case 21 117619 S 45 12 TLAB)* where the Appellant had not filed any documents after appealing the COA’s decision to the TLAB, refused to participate in any discussions to settle the matter, and finally did not attend the TLAB Hearing, factors that were taken into account by Panel Member Yao to grant the Motion for Costs. I pointed out to Mr. Cara that the case he had just cited was distinguishable from the Appeal before me, “on a factual basis”, because while the Applicant in the case of 211 Dunvegan, had done absolutely nothing to prosecute his Appeal, while Mr. Ip, the Appellant in the case before me, had participated in Settlement discussions, even if no Settlement could be reached, and had attended the Hearing, and had presented his case. Secondly, I reiterated that making a Decision on the Motion for Costs, on the basis of oral submissions at the Hearing, would result in “very significant prejudice to Mr. Ip., because he did not have access to legal representation, and had been clearly taken unawares by the Motion for Costs, before adding that this resulting prejudice was significantly higher than any incremental prejudice asserted to the Applicant.

I therefore ruled that any Motion for Costs, had to be made through a Written Submission, before explaining to Mr. Ip that if there were a Motion for Costs, he (Mr. Ip)

would be given a chance to respond to the Motion, and encouraged him to contact a lawyer to understand his options, and how best to respond to the Motion.

I thanked the Parties for their attendance, and evidence, before adjourning the Hearing.

ANALYSIS, FINDINGS, REASONS

It is important to briefly explain why I asked the Appellant to present first, though the convention in a Hearing *de novo* is to have the Applicants to present first, followed by other Parties, including the Appellants, where the latter are not the Applicants. A perusal of Form 1, completed by the Appellant to commence this Appeal, revealed little by way of planning rationale. I find that allowing the Appellants whose objections have, *prima facie*, a limited nexus with the four tests under Section 45.1 to present their issues first, followed by the Appellants, to be beneficial to the Proceeding both from an efficiency and timing perspective. This approach allows the latter Party to respond to only such issues brought up by the Appellants in some detail, by way of their evidence, while otherwise confining themselves to addressing other issues at a very high level, without having to get into the minutiae.

I find that in such cases where the Appellant's planning rationale is not clear, the conventional methodology of allowing the Applicants to present their evidence first, they have to anticipate any, and all lines of opposition by the Appellants, and consequently provide evidence about many issues, that are of no demonstrable value to the Opposition's concerns, when stated eventually- in other words, I have to wade through a voluminous submission by the Applicants to find the answer to a single issue raised by the Opposition- the resulting exercise is comparable to wading through a haystack to find a needle.

In this case, the objections raised by the Appellant by way of Form 1, have nothing to do with planning grounds.

I find that the objections raised by the Opposition are largely not relevant to the jurisdiction of the TLAB- noise, alleged expenses to the Appellant as a result of construction by the Applicant, nuisances arising from construction, the underpinning of the building, are all irrelevant to the jurisdiction of the TLAB. The only evidence that I found useful are Mr. Ip's observations about how the proposed third floor would look- it wouldn't look "all right", with possible implications privacy. While "not looking all right" has no planning merit, the issue of the third floor balcony creating privacy concerns is a valid planning issue, which is addressed later in this Section

The Applicants' evidence was coherent, and addressed all the four tests satisfactorily. The evidence demonstrated that the community was constantly evolving, such that the newer constructions reinforced the character of the community, satisfying Policy 2.3.1 of the OP. The evidence then demonstrated that there would be no nuisance impacts on the neighbours, if the building were approved, demonstrating that Policy 3.1.2 has been fulfilled. The evidence showed how no existing vegetation would be disturbed,

demonstrating that Policy 3.6 of the OP was fulfilled. The evidence demonstrated that the proposal satisfied Policy 4.1.5 of the OP, because the frontage, and lot area, respect the prevailing type of frontages and lot areas. No attention is paid to the information about the FSI, because of the issues pointed out by the Applicants, regarding the datasets supplied by the City.

On the basis of this analysis, I find that the proposal satisfies the intent and purpose of the Official Plan.

The discussion about how the proposal satisfies the performance standard of each of the requested variances, was very helpful. The north yard setback “follows” the existing dwelling north yard, and ensures that there is adequate space for access purposes for maintenance and appropriate spatial separation. The purpose of the variances respecting front and rear wall height is to prevent the construction of a building with inappropriate or overdeveloped height- this design ensures that the impact of the height of the third floor is minimized by building the height into the ridge of the building, resulting in an enlarged house, with no observable negative impact on the neighbours, consequently fulfilling the performance standard for wall height. The extra FSI, resulting from the third floor has been deployed such that it does not result in the building overwhelming the neighbourhood, fulfilling the performance standard of the FSI variance. The front yard variance results in an appropriate front wall alignment with neighbouring dwellings along the street, and consequently fulfills the corresponding performance standard. As a result of these individual variances satisfying the corresponding performance standards, I find that the proposal is consistent with the overall intention of the By-Law, which is to achieve development, that is organized, orderly and context suitable.

On the basis of this analysis, I find that the evidence demonstrates that the requested variances satisfy the intent, and purpose of the By-law.

The evidence demonstrated very clearly that there are no adverse impacts arising from the proposal, let alone unacceptable adverse impacts, arising from the proposal. The Applicants voluntarily included the installation of privacy screens on the balcony to be built on the third floor in the design of the house, to minimize privacy issues. Given that the prevention of unacceptable adverse impacts is the threshold that needs to be met to satisfy the test of minor, I find that this proposal satisfies the test of minor.

The proposal satisfies the test of appropriate development because it results in the creation of an enlarged dwelling, which respects, and reinforces the character of the neighbourhood. There is no risk of destabilization to the community through the introduction of hitherto non-existent building forms, as a result of which I find that the proposal satisfies the test of appropriate development.

Notwithstanding my evident reluctance to address the Motion material by way of oral submissions, the Applicants persisted in bringing up the option of bringing forward a Motion for costs by way of an oral submission. The Appellant objected vigorously since he had not been made aware of such a Motion for Costs. The Applicants said that the

reason behind bringing forward an oral Motion was to “reduce the prejudice to his client, who may otherwise have to spend extra money on bringing forward a Motion”.

It is not necessary to repeat the reasoning underlying my Decision to not want to listen to the Motion for Costs, because this has been discussed at the end of the Evidence Section. I would like to add that the impact of the Applicant's claims of incremental prejudice, as a result of having to file a Written Motion, even if accepted to be accurate, is nowhere in magnitude when compared to the prejudice caused to the Appellant, who was clearly not aware that such a Motion would be brought forward, and could not have defended his interests, because he is not a lawyer, and had no access to legal advice. In the interests of fairness, the TLAB is particular that there be no trial by ambush, which is exactly what would have happened, if the Motion for Costs had been considered on the basis of oral submissions. It is important to reiterate that even on the factual basis of the *211 Dunvegan Avenue* case cited by the Applicants, there are significant differences between the behavior of the Appellants involved with the cited case, and the Appellant in the Appeal respecting 138 Parkwood- the latter has responded to overtures for Settlement, and attended the TLAB Hearing to express his disagreement, while the Appellant in the case cited by the Applicants, commenced the Appeal, spurned any efforts to settle differences, and absented themselves from the TLAB Hearing.

I find that a comparison of the alleged incremental prejudice to the Applicant, would pale into insignificance, when compared to the magnitude of prejudice to the Appellant. if a decision were made on the basis of oral submissions at the Hearing.

The above Ruling does not circumscribe in any fashion, the Applicant's ability to bring a Motion against the Appellant for costs, because no decision was made to deny the Motion- I reiterate that my finding, as stated at the end of the Hearing, was that the Motion for Costs would not be heard by way of oral submissions, but should be brought forward by way of a Written Motion.

To revert to the actual Decision, I find that all the requested variances may be approved, because they satisfy all the four tests under Section 45.1 of the Planning Act. The standard condition, requiring the Applicants to build in substantial conformity with the submitted Plans and Elevations, is imposed on the approval of the variances. In addition, I also appreciate the Applicants' inclusion of an opaque privacy screen of 1.5 metres along the north and south sides of the deck to be constructed on the third floor, and impose the same as another condition.

The variances, and the conditions are recited in the Decision and Order Section; the Plans and Elevations are attached to this Decision.

DECISION AND ORDER

1. The Appeal respecting 138 Parkmount Road is refused, and the decision made by the Committee of Adjustment, respecting the same property, dated December 1, 2021, is confirmed.

2. The following variances are approved:

(1) 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 m of a building, must comply with the required minimum building setbacks for the zone. In this case, the minimum required side yard setback is 0.9 m.

The proposed third storey deck will be located 0.5 m from the side (north) lot line.

(2) Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m.

In this case, the height of the front exterior main walls will be 9.64 m.

(3) Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.

In this case, the height of the rear exterior main walls will be 9.41 m.

(4) Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (98.27 m²).

The altered dwelling will have a floor space index equal to 1 times the area of the lot (164.6 m²).

(5) Chapter 10.10.40.70.(1), By-law 569-2013

The minimum required front yard setback is 3.67 m. The altered dwelling will be located 3.38 m from the front (east) lot line.

3. The following conditions are imposed on the approval:

(1) The third floor building addition shall be constructed substantially in accordance with the following drawings prepared by Re: Placement Design Inc. dated August 12, 2021:

- a. Site Plan (Drawing Z2);
- b. East Elevation (Drawing Z12);
- c. West Elevation (Drawing Z14);
- d. North Elevation (Drawing Z16);
- e. South Elevation (Drawing Z18).

The drawings referred to above are attached to this Decision.

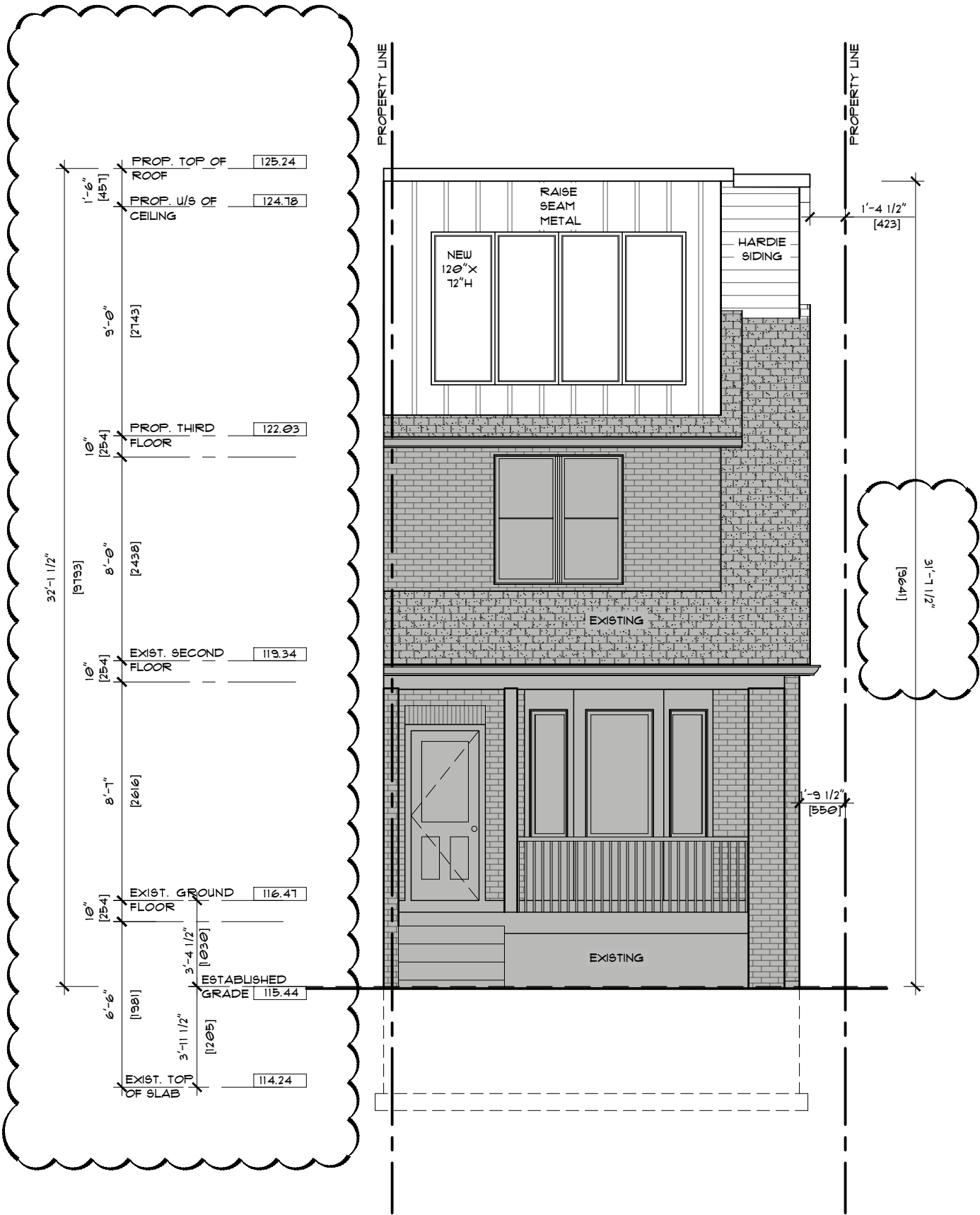
(2) An opaque privacy screen of minimum 1.5 m height shall be installed along the north and south sides of the third storey deck

So orders the Toronto Local Appeal Body

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', is written over a light gray rectangular background.

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



1 EAST ELEVATION PLAN - PROPOSED
Z12 SCALE: 3/16"=1'-0"

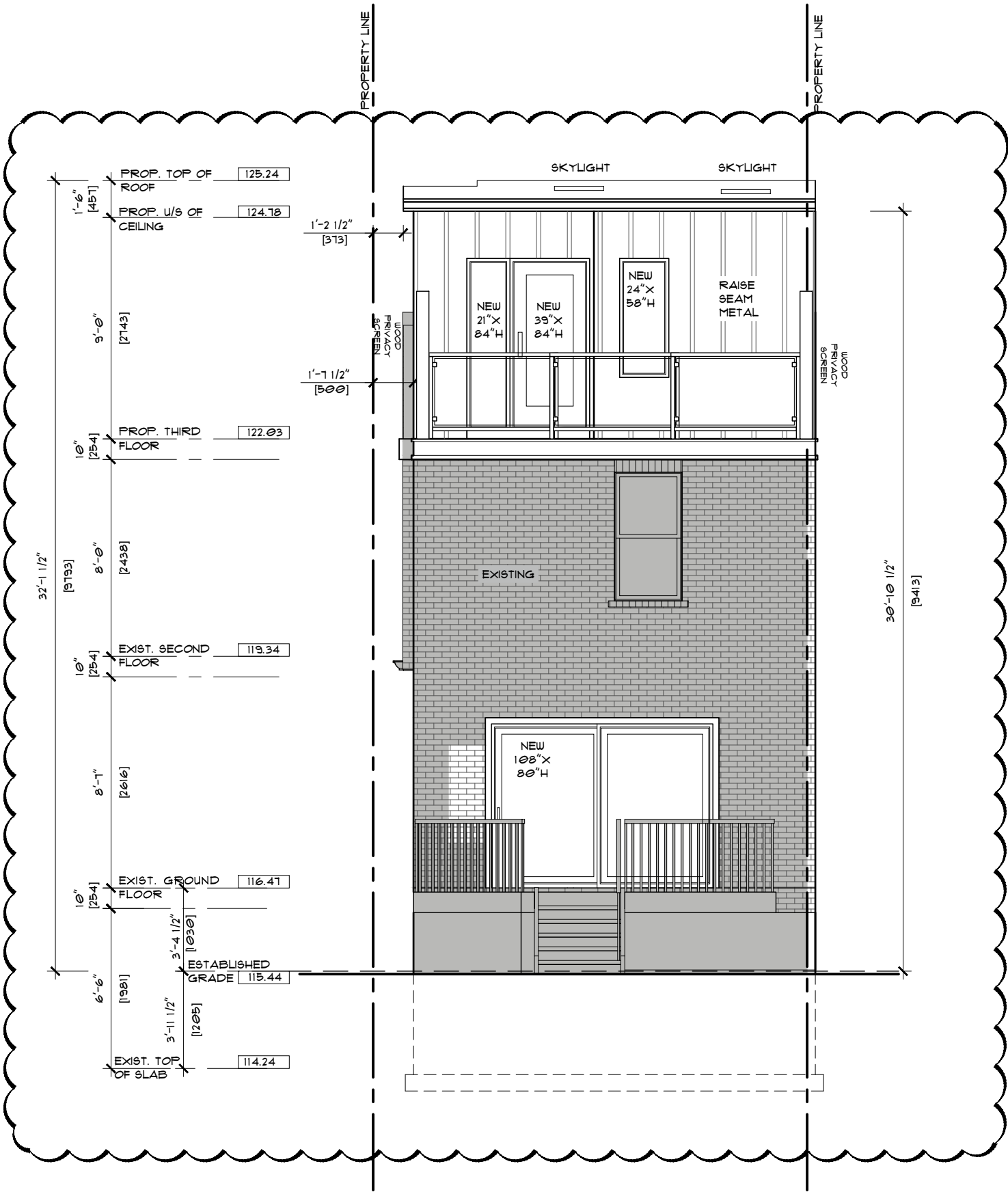
LEGEND
EXISTING WALL TO REMAIN

PRINTS AND SPECIFICATIONS SHALL NOT BE REPRODUCED WITHOUT THE PERMISSION OF THE DESIGNER. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. IF THERE ARE ANY DIMENSIONS, DETAILS OR DESIGN INTENT THAT CANNOT BE DETERMINED FROM THE DRAWINGS, THE DESIGNER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH FABRICATION AND/OR CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED.

re: placement
DESIGN INC.
911 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-1435
REPLACEMENTDESIGN.COM

Project:
138 PARKMOUNT RD
TORONTO, ONTARIO
PROPOSED ADDITION
PROJECT NUMBER : 20-215

Date:
12 AUG. 2021
Drawing No:
Z12



1 WEST ELEVATION - PROPOSED
Z14 SCALE: 3/16"=1'-0"

LEGEND
EXISTING WALL TO REMAIN

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re: placement
DESIGN INC.
911 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-7435
REPLACEMENTDESIGN.COM

Project:
138 PARKMOUNT RD
TORONTO, ONTARIO
PROPOSED ADDITION
PROJECT NUMBER : 20-215

Date:
12 AUG. 2021
Drawing No:
Z14

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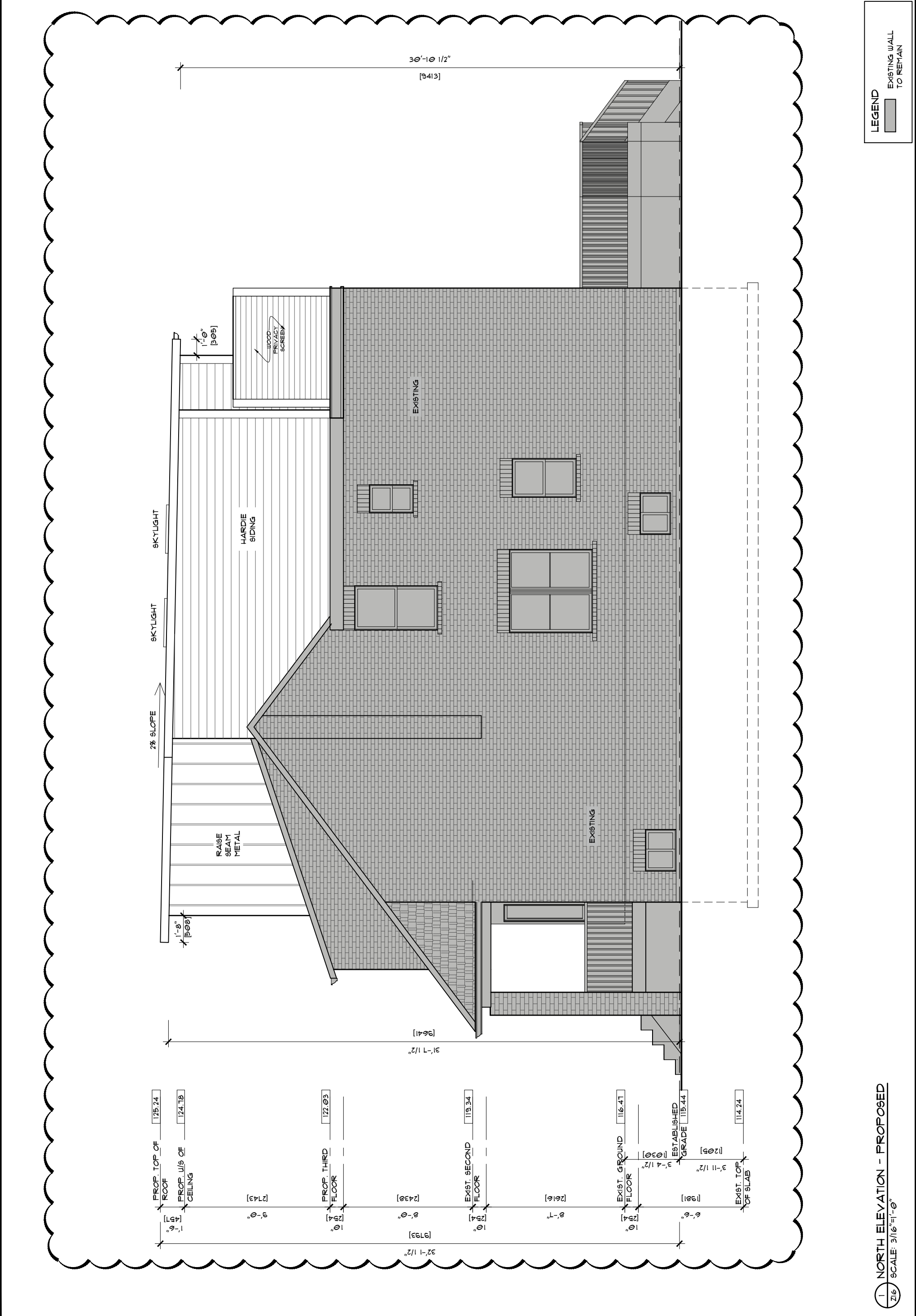
re: placement
DESIGN INC.

911 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-1435
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Project:
138 PARKMOUNT RD
TORONTO, ONTARIO
PROPOSED ADDITION
PROJECT NUMBER : 20-215

Date:
12 AUG. 2021

Drawing No:
Z16



PRINTS AND SPECIFICATIONS SHALL NOT BE REPRODUCED WITHOUT THE PERMISSION OF THE DESIGNER. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. IF THERE ARE ANY DIMENSIONS, DETAILS OR DESIGN INTENT THAT CANNOT BE DETERMINED FROM THE DRAWINGS, THE DESIGNER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH FABRICATION AND/OR CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED.

re: placement
DESIGN INC.

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TORONTO, ONTARIO
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Project:

138 PARKMOUNT RD
TORONTO, ONTARIO
PROPOSED ADDITION
PROJECT NUMBER : 20-215

Date:
12 AUG. 2021

Drawing No:

Z18

1 SOUTH ELEVATION - PROPOSED
SCALE: 3/16"=1'-0"

LEGEND

EXISTING WALL
TO REMAIN

