

# DECISION AND ORDER

**Decision Issue Date** Thursday, September 29, 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): KELLY MARVIN

Applicant(s): DREW LASZLO ARCHITECT INC

Property Address/Description: 52 IMPERIAL ST

Committee of Adjustment File

Number(s): 21 117134 STE 12 MV (A0185/21TEY)

**TLAB Case File Number(s): 21 196185 S45 12 TLAB**

**Hearing date: June 14, 2022 and September 19, 2022**

**Deadline Date for Closing Submissions/Undertakings: Friday, September 23, 2022**

**DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant DREW LASZLO ARCHITECT INC

Appellant/Owner KELLY MARVIN

Expert Witness TAE RYUCK

## INTRODUCTION AND CONTEXT

Marvin Kelly is the owner of 52 Imperial Avenue, located in Ward 12 (Toronto- St. Paul) of the City of Toronto. To construct a new dwelling, He applied to the Committee of Adjustment (COA), for the approval of various variances, to construct a new dwelling at the Site. The COA heard the Application on July 22, 2021, and refused the application in its entirety.

The Applicant appealed the decision to the Toronto Local Appeal Body on August 10, 2021, which then scheduled a Hearing on June 14, 2022.

## **MATTERS IN ISSUE**

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

The permitted maximum building length for a detached house is 17.0m. The proposed detached house has a building length of 33.0m.

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

The permitted maximum height is 7.2m. The proposed height is 9.45m.

**3. Chapter 10.20.40.10.(4)(C), By-law No. 569-2013**

The permitted maximum number of storeys is 2. The proposed number of storeys is 3.

**4. Chapter 10.20.40.70.(3), By-law No. 569-2013**

The required minimum side yard setback is 0.9m where the required minimum lot frontage is 6.0m to less than 12.0m.

The proposed side yard setbacks are 0.61m and 0.76m.

**5. Chapter 10.20.40.40.(1), By-law No. 569-2013**

The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.78 times the area of the lot.

**6. Chapter 10.5.40.60.(1), By-law No. 569-2013**

A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required side yard setback a maximum of 1.5m, if it is no closer to the side lot line than 0.3m.

The proposed platform encroaches 0.9m into the required side yard setback and is 0.0m from the southerly side lot line.

**Chapter 10.5.40.60.(7), By-law No. 569-2013**

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line. The proposed eaves project 0.58m and are 0.03m from the northerly side lot line.

**7. Chapter 10.20.40.70.(2)(B), By-law No. 569-2013**

The required minimum rear yard setback is 10.1m. The proposed rear yard setback is 0.76m.

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

The permitted maximum building depth for a detached house is 19.0m. The proposed building depth is 33.0m

## **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**

At the Hearings held on June 14, 2022, and September 19, 2022, the Appellant was represented by Mr. Tae Ryuck, a land use planner. It is important to note that there were no other Parties, and Participants in this Appeal.

At the beginning of the Hearing held on June 14, 2022, I discussed my concerns about the lack of adequate numerical evidence that would allow me to evaluate if the proposal satisfied the definition of "prevailing" in Section 4.1.5 of the OP. I adjourned the Hearing, to enable the Applicant to submit adequate numerical evidence to the TLAB. After the

completion of the requested material, the TLAB scheduled a Hearing on September 19, 2022.

At the beginning of the Hearing held on September 19, 2022, Mr. Tae Ryuck was affirmed, and recognized as an Expert Witness in the area of land use planning.

The highlights of his evidence are as follows:

The Subject Site is located on the northwest corner of Imperial Street and Duplex Avenue. Currently, on the Subject Site is a 2-storey single detached dwelling having frontage on to Duplex Avenue.

Mr. Ryuck said that his Study Area was bound by Hillsdale Avenue West to the north, Duplex Avenue to the east, Chaplin Crescent to the south, and Oriole Parkway to the west. He defined the Immediate Context to include both the east and west sides of Duplex Avenue, from Tranmer Avenue to the north and Imperial Street to the south. Mr. Ryuck asserted that there are no major discernable differences between the Immediate Context, and the Geographic Neighbourhood, and that both the contexts have comparable ranges of lot sizes, and size of homes, which can be used as the context to analyze the proposal for the home at the Site.

The neighbourhood is a stable residential neighbourhood, which consists primarily of single detached dwellings of 2 to 3 storeys, where there is regeneration in the form of redevelopment, additions and renovations. The Subject Site is walking distance to public transit on Yonge Street, There is a mixture of commercial uses including retail along Yonge Street, also within walking distance. As such, the neighbourhood is very well served by public transit and commercial uses.

The Subject Site has the following statistics: Lot Area 495.99 sq.m., lot frontage of 12.19 m, and a depth of 40.86 m. The proposed building will have a total GFA of 390.39 sq.m, an FSI of 0.78 X Lot Area, height of 9.45 m, building length of 33 m, side yard setbacks of 0.61 metres, and rear yard setback of 17.27 m.

Mr. Ryuck then spoke to how the proposal was consistent with the higher level Provincial Policies, such as the Provincial Policy Statement (PPS, 2020), and Growth Plan for the Greater Golden Horseshoe (Growth Plan, 2020), because the proposal promotes efficient use of land, redevelopment and intensification.

Mr. Ryuck then described the relationship between the proposal, and the Official Plan(OP). He said that the proposal satisfied Policy 2.3.1 of the OP, because it looks to build a semi-detached home, that is modest in size and height, which is deployed appropriately on the Subject Site. The existing physical character of the neighbourhood is one that already experiencing regeneration and intensification in the form of redevelopment and additions all the while not impacting the stability of the neighbourhood.

Mr. Ryuck described the relationship between the proposal, and various components of Section 3.1.2.1 of the OP, and concluded that the proposal satisfies Policy 3.1.2.1, as stated below:

- ***Being located and organized to fit with its existing and/or planned context (Policy 3.1.2.1);***

He said that the proposal fulfills Policy 3.1.2.1 by virtue of “being located and organized to fit with its existing and/or planned context” through “providing a house, regularly situated on the lot, and consistent with, side and rear yards setbacks within the neighbourhood”.

He then spoke to specific components of the Policy, as follows:

- ***Respecting the massing and street proportions of the neighbourhood***

Mr. Ryuck then spoke to the relationship between the proposal, and Section 4.1.5, of the OP, by listing each sub-clause, followed by a discussion of the proposal, and the sub-clause in question:

- a) Patterns of streets, etc. – speaks more to reconfiguration of blocks that will affect street patterns, etc. – not applicable
- b) Prevailing size and configuration of lots – Not applicable.
- c) Prevailing heights, massing, scale, density and dwelling type of nearby residential properties – Mr. Ryuck spoke about how the requested variances were compatible with other heights/massing/scale. In response to my instructions to provide numerical information about the heights of buildings in the Immediate Context, or General Neighbourhood, Mr. Ryuck submitted a map, and a table summarizing the information about the heights to demonstrate that the 9.45 metre height requested by the Applicant, matched the prevailing height in the community, which is in excess of 9 metres.

He asserted that from a streetscape, and massing perspective, the proposed FSI of 0.78 X Lot Size, will seamlessly integrate into the neighbourhood, and provides architectural character similar to the existing streetscape and contribute to the overall stability of the neighbourhood.

Mr. Ryuck emphasized that the proposed rear 3-storey home will have length and depth of 15.90 m above ground, which is below the 17 m zoning standard. He then spoke at some length of one of the most interesting features of this proposal, namely the creation of variances related to building length and depth, because they are below grade connection, from the dwelling to the detached garage, and explained how these variances would not be perceptible from a streetscape perspective.

- d. Prevailing building type(s) The proposal is a single detached dwelling consistent in form and massing similar to other homes in the area context.
- e. Prevailing location, design and elevations relative to the grade of driveways and garages - A rear yard detached garage, accessible from Imperial Street, is proposed. Rear detached garage fronting on to the Imperial Street is common in this neighbourhood, and no variances are required to facilitate its construction.

f. Prevailing setbacks of buildings from the street – Mr. Ryuck spoke to how the proposed setbacks of buildings from the street, will help maintain uniformity of setbacks where they are uniform. He said that the proposed setbacks consistent with existing homes within the neighbourhood.

g. Prevailing patterns of rear and side yard setbacks and landscaped open space – According to Mr. Ryuck, the neighbourhood is one, where side yards setbacks are below the zoning requirement. The proposal is reflective of the existing pattern of development for both side and rear yards for this neighbourhood. He pointed out that notwithstanding the small rear and side yard setbacks, the landscape open space requirements are in compliance with the Zoning By-law.

h. Continuation of special landscape or built-form features that contribute to the unique physical character – not applicable

i. Heritage buildings, etc. – not applicable

Mr. Ryuck asserted that the proposed development is materially consistent with the prevailing physical character of the of properties in both the broader and immediate contexts. He also noted that the the majority of the properties in both the broader and immediate neighbourhood, are fairly consistent in terms of built forms and design. In the Immediate Context, he said that the dimensions of the property lots are comparable to the Subject Site, and consist of dwellings that have similar physical characteristics in terms of massing and scale to the proposed development with respect to rear yard decks and detached garages.

Mr. Ryuck stated that the proposal satisfied Policy 4.1.8 of the OP because the proposed dwelling represents the general physical patterns of the neighbourhood. The design and orientation of the home is consistent with other homes within the neighbourhood. The proposed dwelling will result in a consistent street frontage and same building envelope reinforcing the physical character and streetscape.

On the basis of this discussion, Mr. Ryuck concluded that the proposal meets the intent, and purpose of the Official Plan.

Mr. Ryuck discussed the relationship between the proposal, and the intent and purpose of the Zoning By-law.

He opined that the general intent of the Zoning By-law is to arrive at a built form, compatible with development standards governing buildings in the community, such that there are no unacceptable adverse impacts on the existing neighbourhood. The proposed building maintains this general intent and purpose and does not introduce an inappropriate building form that creates any unacceptable adverse impacts to the neighbourhood.

Speaking specifically to the variances respecting the length and breadth of the building, Mr. Ryuck reiterated that the variances related to building length and depth are

technical in nature. He demonstrated how these variances are required due to the underground connection from the dwelling to the detached garage..

Speaking next to the variances for the number of floors, and height of the building , he said that the proposed building height of 9.45 m is due to the style of roof being proposed. He said that the “mansard roof is deemed to be a flat roof construction as it does not meet the angle requirements to qualify as a pitched roof”. Mr. Ryuck emphasized that the variance will not result in a home that would protrude above other homes along the streetscape.

Speaking to the variance respecting the side yard, Mr. Ryuck said that with respect to south side yard, “the majority of the home is setback 0.91m from the lot line, with the exception of a small bump out at the main entrance of the dwelling, which is consistent with majority of the dwellings found within this neighbourhood.”. He added that many of the existing side yard setbacks themselves does not comply with the minimum side yard setback standards.

Speaking to the FSI variance, Mr. Ryuck said that the “proposed FSI has been deployed appropriately, and is reflective of other homes in the neighbourhood”. The proposed home above grade will have a building length of 15.90m ,below the 17m zoning standard. He said that the proposed FSI “does not provide for a building form that changes the physical character of the neighbourhood”. He added that the character of the neighbourhood is “one in which existing and newer homes exceed the by-law requirement, and that this is a characteristic of this neighbourhood”. He also added that the proposed FSI of 0.78 does not represent overdevelopment, because it has been deployed appropriately, and is reflective of other homes in the neighbourhood.. Also, the character of the neighbourhood is one in which existing and newer homes exceed the by-law requirement and is a characteristic of this neighbourhood.

Speaking to the variance respecting the platform encroachment, Mr. Ryuck explained that the proposed platform on the south side yard is the landing/porch, for the main entrance fronting on to Imperial Street. He said that the platform” is close to grade”, and “access on to the platform is via 2 steps leading to the main entrance of the dwelling”. The proposed platform will provide an enhancement to the streetscape, and to the overall neighbourhood.

Addressing the variance respecting the roof eaves encroachment, Mr. Ryuck said that “roof eaves encroachment is common within this neighbourhood due the side setback of homes within the area being below the by-law requirements”. Mr. Ryuck emphasized that this type of encroachment is common, and is reflective of the pattern of development of the area context.

Lastly, speaking to the variance respecting the rear yard setback, Mr. Ryuck defined it to be “technical in nature”, because of the underground link between the dwelling and detached garage. He compared this variance and the nature of the tunnel to several other detached garages located in the rear yards of homes along Imperial Street, being located similarly to the proposal.



Based on the above evidence, Mr. Ryuck concluded that the proposal met the intent, and purpose of the Zoning By-law.

Speaking to the test respecting appropriate development, Mr. Ryuck said that the proposed dwelling is of a size and type, that is comparable to what already exists in the neighbourhood, and that the variances “does not seek to push the permitted building envelope”. Based on this evidence, Mr. Ryuck concluded that the proposal satisfied the test of appropriate development.

Speaking next to the test of minor, Mr. Ryuck said the the proposed deployment of gross floor area ,in the form of the 2-storey dwellings, is one that does not create adverse overlooks, shadows, building form, massing and height, uncharacteristic of the streetscape or neighbourhood

He recommended that because the proposal satisfied all four tests under Section 45.1, the proposal should be approved. When asked about conditions to be imposed, if the proposal were approved, Mr. Ryuck suggested a condition that the building be built in substantial conformity with the submitted Plans and Elevations.

## **ANALYSIS, FINDINGS, REASONS**

What makes the request for variances at 52 Imperial Street unusual is the presence of the underground tunnel, which links the residence to the garage. It is important to note that while a number of the variances can be traced to this feature, the tunnel is invisible from the public space, and does not have any impact whatsoever on its neighbours. While no findings may be made on the basis of no ostensible objection from the neighbours, it is also important to note that there is no other Party, or Participant, in support of, or opposed to these variances.

I find that the proposal satisfies the higher level Provincial Policies, because it promotes efficient use of land, redevelopment and intensification.

I find that the proposal satisfies the test of satisfying the intent, and purpose of the OP, because the evidence demonstrates that it satisfies Policies 2.3.1, 3.1.2.1, 4.1.5 and 4.1.8 of the OP.

I find that the proposal satisfies the test respecting the intent, and purpose of the Zoning By-law, because the evidence demonstrates that each of the variances satisfies the corresponding performance standard, while the impact of the sum total of variances does not result in a hitherto unexperienced impact.

Given that there are no demonstrable unacceptable adverse impacts arising from the proposal, I find that the proposal satisfies the test of minor.

The proposal, if approved, results in a three storey dwelling, whose size, style and massing already exist in the community. There are no new dwelling types being introduced, nor will the building result in any destabilization. As a result, the proposal will satisfy the test of appropriate development.



**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
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I find that because the proposal satisfies all the 4 tests under Section 45.1 of the Planning Act, the variances should be approved in their entirety,- as a result, the Appeal is allowed, and the decision made the Committee of Adjustment dated July 22, 2021, should be set aside.

The standard condition requiring the Applicant to build in substantial conformity with the submitted Plans and Elevations is imposed on the approval. I would have expected the architectural Plans and elevations to date stamped, to reflect the day on they were completed; given that the drawings don't provide this important information, the Final Order reflects the date on which the Plans and Elevations were received by the TLAB, since this is mentioned prominently on the top, right hand corner of the drawings.

I ask all Applicants to ensure that on a go forward basis, the Plans and Elevations should be date stamped to reflect the day on which they were completed, before being submitted to the COA/TLAB.

## **DECISION AND ORDER**

1. The decision made by the Committee of Adjustment, dated July 22, 2021 , respecting 52 Imperial Street, is set aside.
2. The following variances are approved:
  1. **Chapter 10.20.40.20.(1), By-law No. 569-2013**  
The permitted maximum building length for a detached house is 17.0m. The proposed detached house has a building length of 33.0m.
  2. **Chapter 10.20.40.10.(4)(A), By-law No. 569-2013**  
The permitted maximum height is 7.2m. The proposed height is 9.45m.
  3. **Chapter 10.20.40.10.(4)(C), By-law No. 569-2013**  
The permitted maximum number of storeys is 2. The proposed number of storeys is 3.
  4. **Chapter 10.20.40.70.(3), By-law No. 569-2013**  
The required minimum side yard setback is 0.9m where the required minimum lot frontage is 6.0m to less than 12.0m.  
The proposed side yard setbacks are 0.61m and 0.76m.
  5. **Chapter 10.20.40.40.(1), By-law No. 569-2013**  
The permitted maximum floor space index is 0.6 times the area of the lot. The proposed floor space index is 0.78 times the area of the lot.
  6. **Chapter 10.5.40.60.(1), By-law No. 569-2013**  
A platform without main walls, attached to or less than 0.3m from a building, with a floor no higher than the first floor of the building above established grade

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may encroach into the required side yard setback a maximum of 1.5m, if it is no closer to the side lot line than 0.3m.

The proposed platform encroaches 0.9m into the required side yard setback and is 0.0m from the southerly side lot line.

**7. Chapter 10.5.40.60.(7), By-law No. 569-2013**

Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line.

The proposed eaves project 0.58m and are 0.03m from the northerly side lot line.

**8. Chapter 10.20.40.70.(2)(B), By-law No. 569-2013**

The required minimum rear yard setback is 10.1m. The proposed rear yard setback is 0.76m.

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

The permitted maximum building depth for a detached house is 19.0m. The proposed building depth is 33.0m.

3. No other variances are approved.

4. The following conditions are imposed on the approval of the variances:

A) Construction needs to take place in substantial conformity with the attached Plans, and Elevations, produced by Drew Lazlo Architect. While these Plans and Elevations are not date stamped, they were received by the Committee of Adjustment on June 18, 2021.

So orders the Toronto Local Appeal Body

**X**



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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body

Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
TLAB Case File Number: 21 196185 S45 12 TLAB

**RECEIVED**

By C of A at 2:55 pm, Jun 18, 2021

SITE STATISTICS

52 IMPERIAL STREET  
PART 1  
PLAN OF LOT 58  
REGISTERED PLAN 489E  
CITY OF TORONTO

PROPOSED

ZONE: R (d0.6) (x772)  
LOT AREA: 5,339.02 S.F. [495.99]  
LOT FRONTAGE: 40.00' [12.19]  
BUILDING HEIGHT: ±30.51' [9.30]/±26.87' [8.19]  
LENGTH OF DWELLING: 52.17' [15.90]

SETBACKS:

FRONT 24.67' [7.52]  
REAR 56.66' [17.27]  
SIDE (SOUTH) 3.00' [0.91]  
SIDE (NORTH) 2.00' [0.61]

GROSS FLOOR AREA:

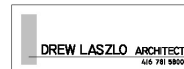
GROUND FLOOR 1,608.57 S.F. [149.44]  
SECOND FLOOR 1,714.41 S.F. [159.27]  
THIRD FLOOR 879.24 S.F. [81.68]

TOTAL GFA 4,202.22 S.F. [390.39]  
(78.71%)

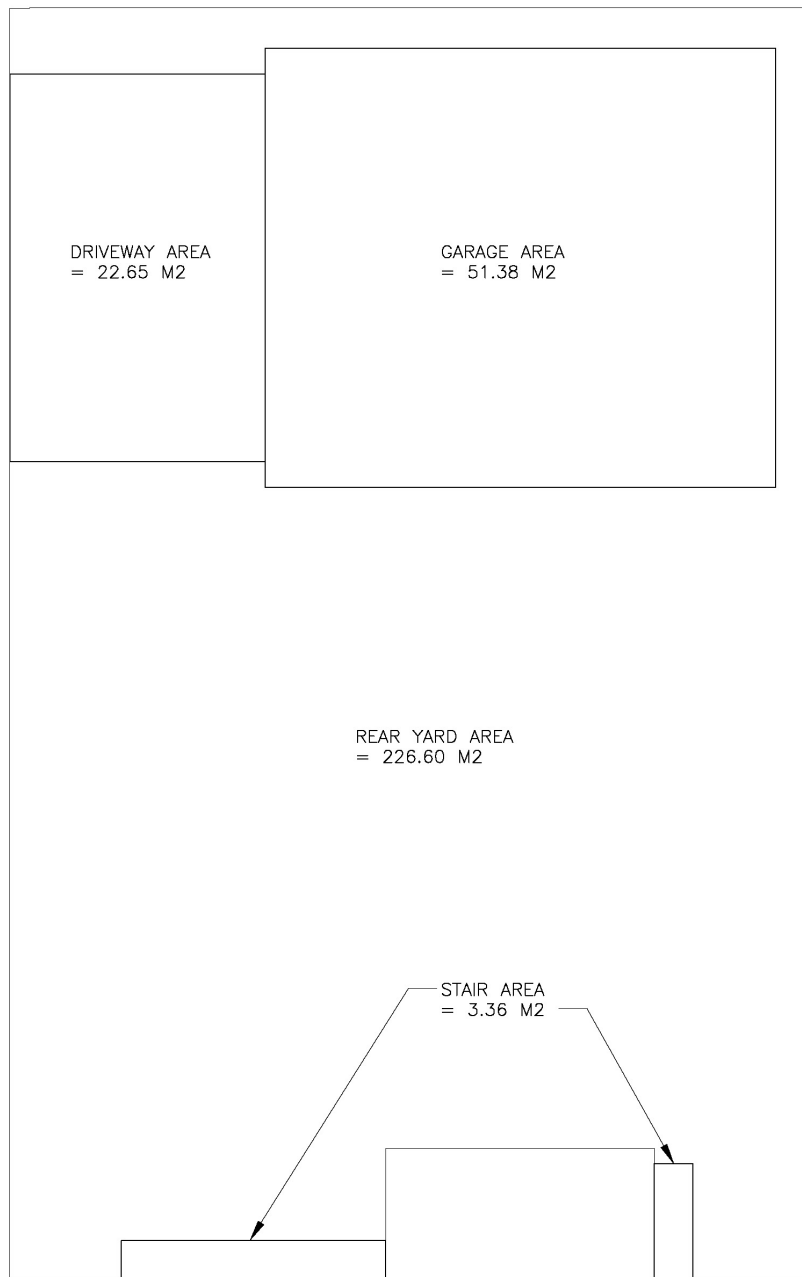
LANDSCAPING:

FRONT YARD LANDSCAPING 100%  
FRONT YARD SOFT LANDSCAPING 100%  
REAR YARD LANDSCAPING 67.33%  
REAR YARD SOFT LANDSCAPING 97.80%  
SIDE YARD LANDSCAPING 90.41%  
SIDE YARD SOFT LANDSCAPING 89.84%

STATISTICS  
52 IMPERIAL ST.

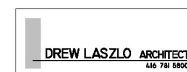


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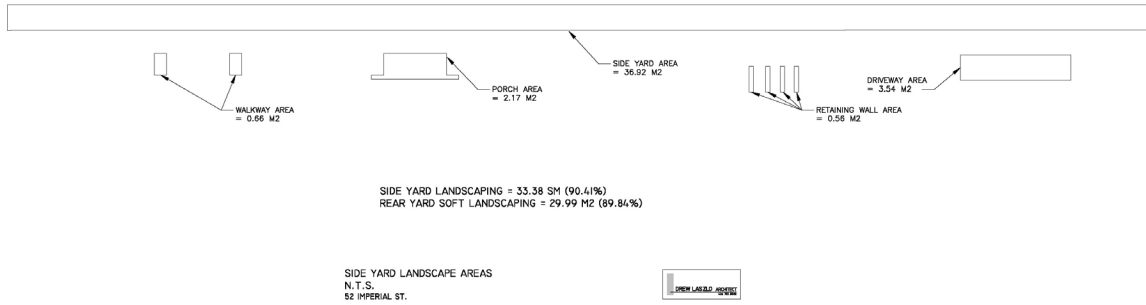


REAR YARD LANDSCAPING = 152.57 SM (67.33%)  
REAR YARD SOFT LANDSCAPING = 149.21 M2 (97.80%)

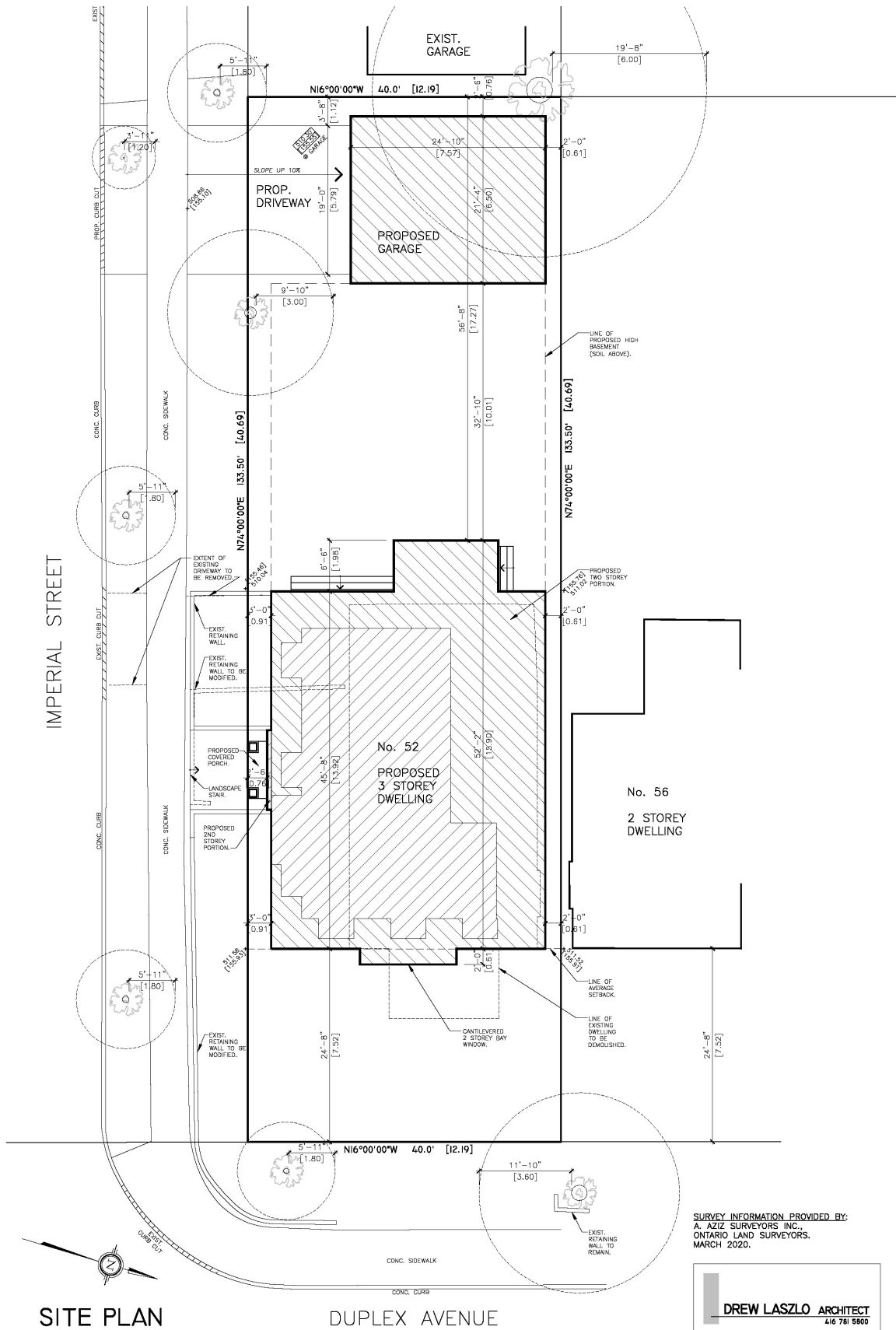
REAR YARD LANDSCAPE AREAS  
3/16"=1'-0"  
52 IMPERIAL ST.



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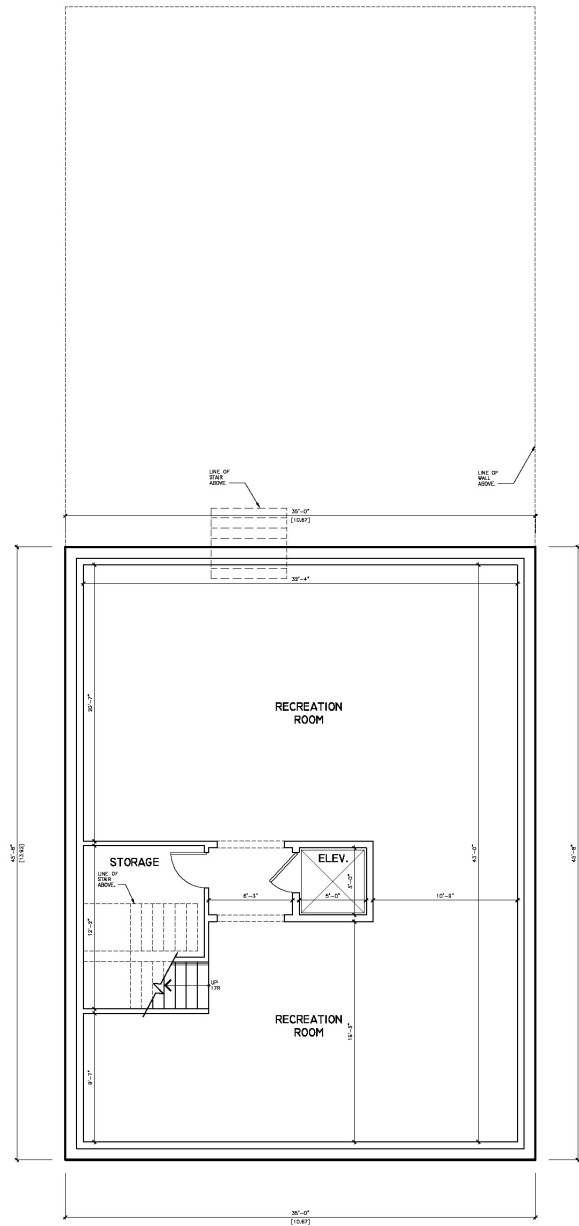
SITE PLAN  
3/32"=1'-0"  
52 IMPERIAL ST.

DUPLEX AVENUE

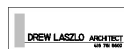
SURVEY INFORMATION PROVIDED BY:  
A. AZIZ SURVEYORS INC.  
ONTARIO LAND SURVEYORS.  
MARCH 2020.

DREW LASZLO ARCHITECT  
416 781 5800

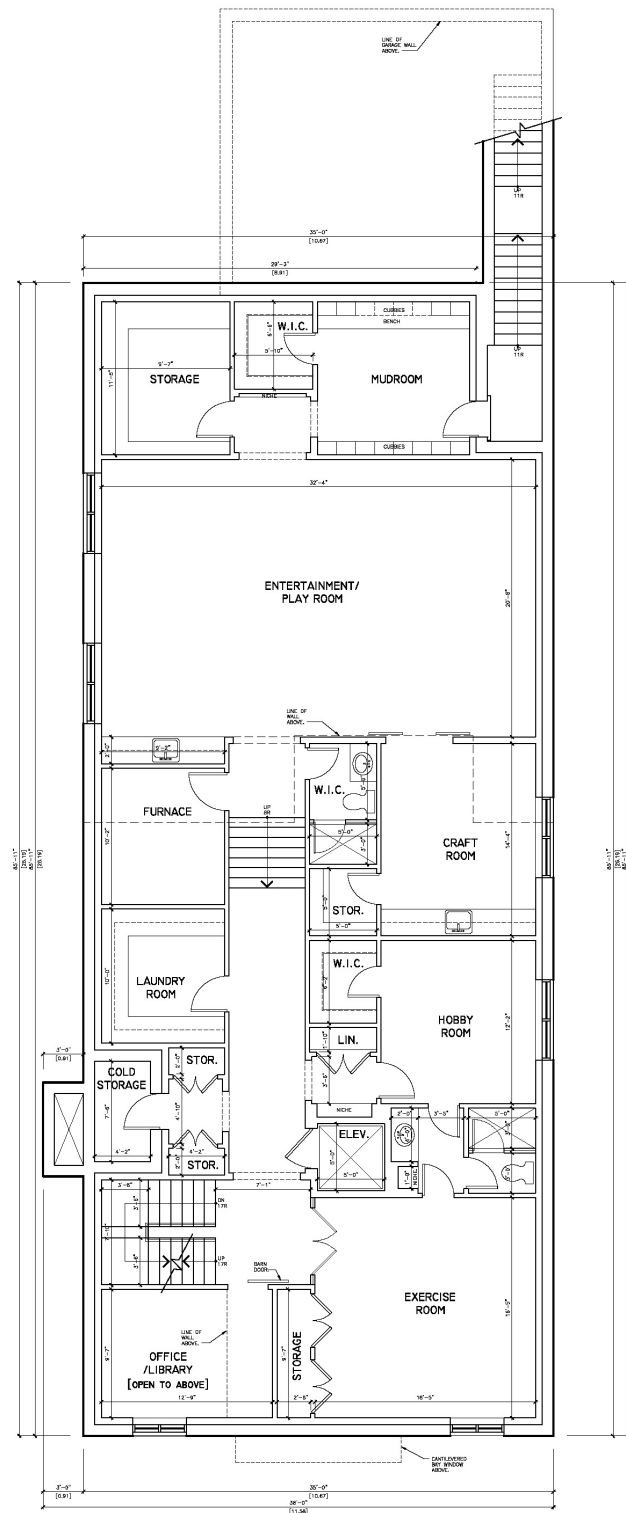
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LOW BASEMENT  
1/8"=1'-0"  
52 IMPERIAL ST.

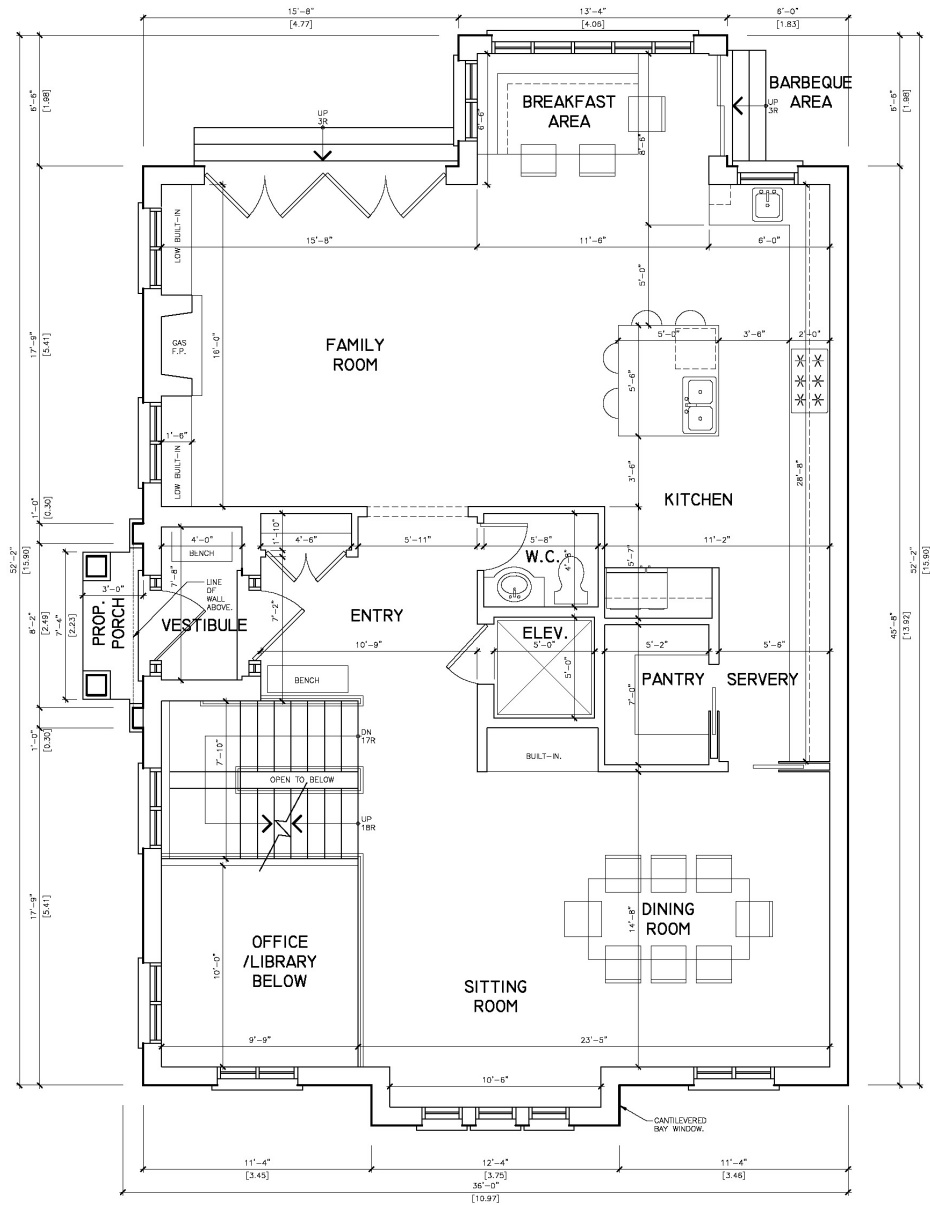




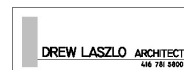


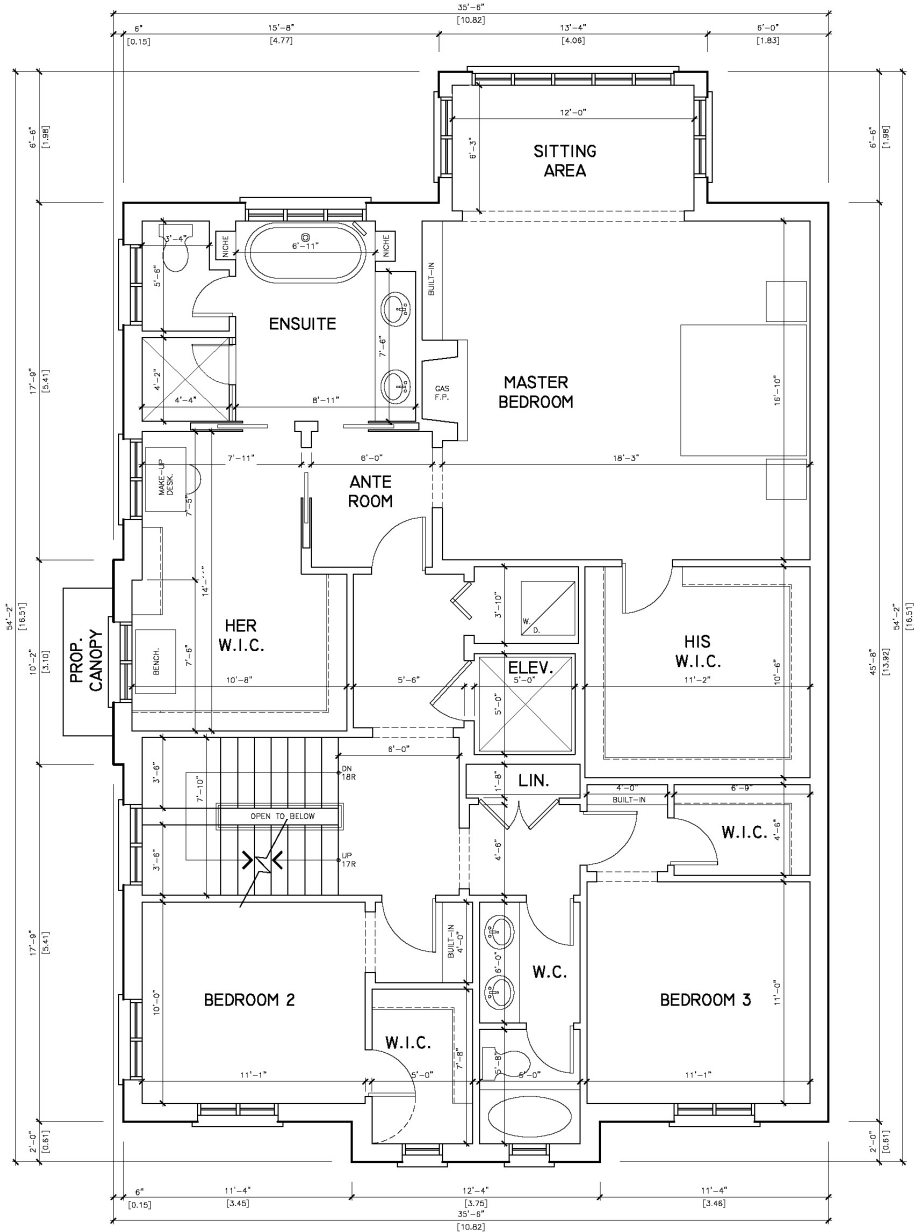
HIGH BASEMENT PLAN  
1/8"=1'-0"  
52 IMPERIAL ST.



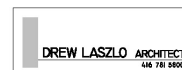


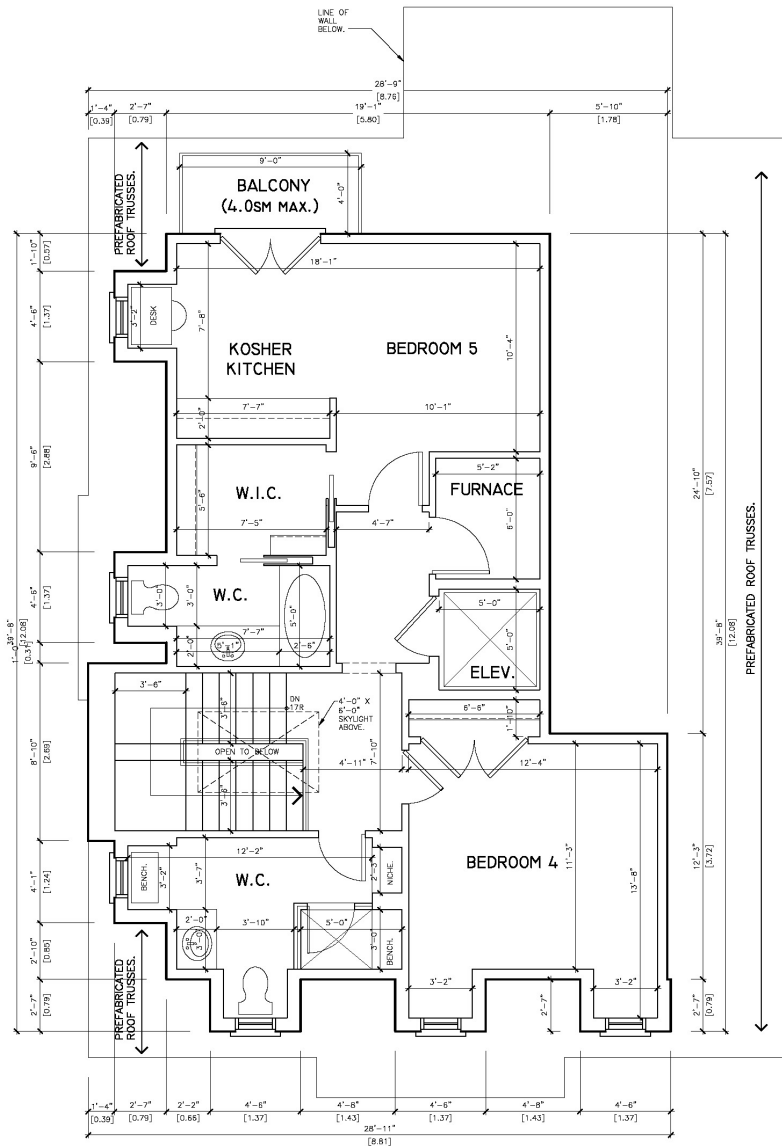
GROUND FLOOR PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.



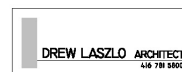


SECOND FLOOR PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.

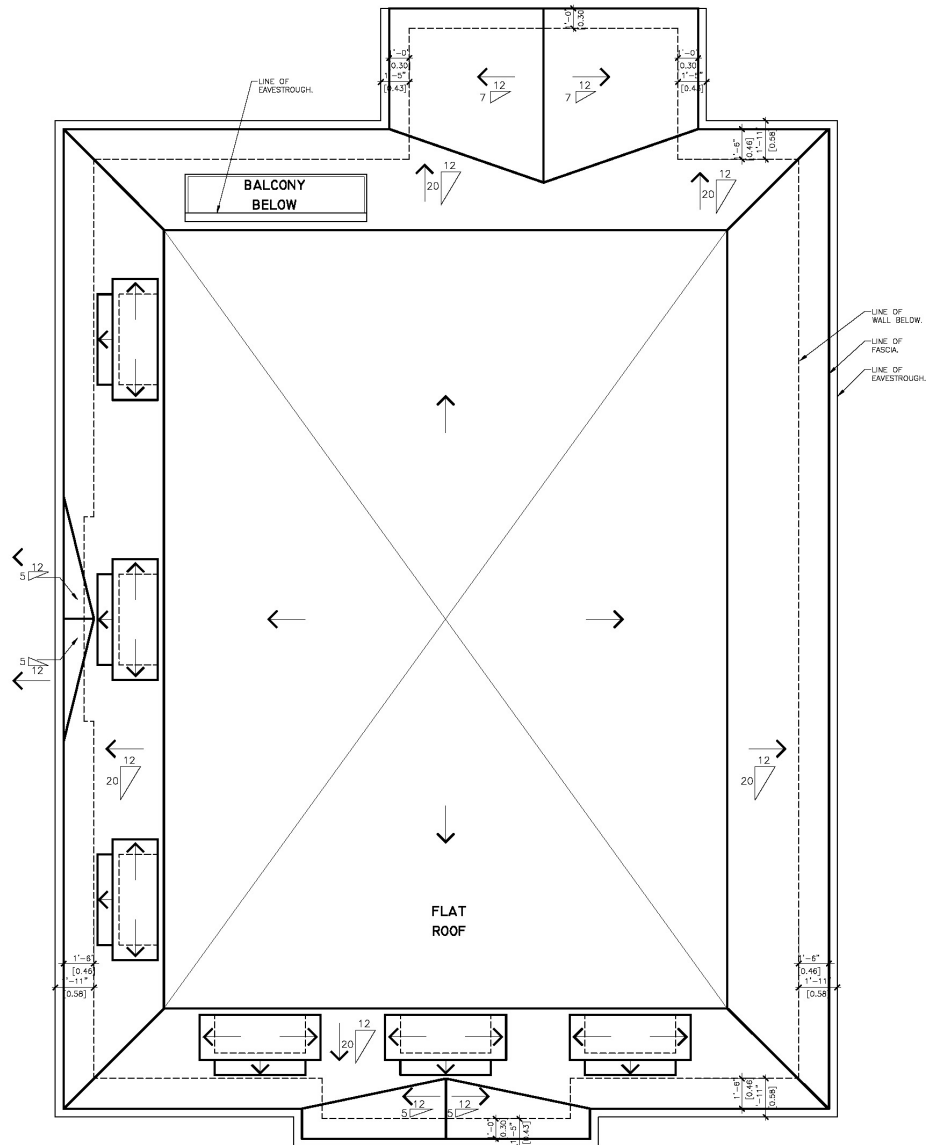




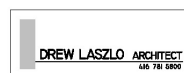
THIRD FLOOR PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.



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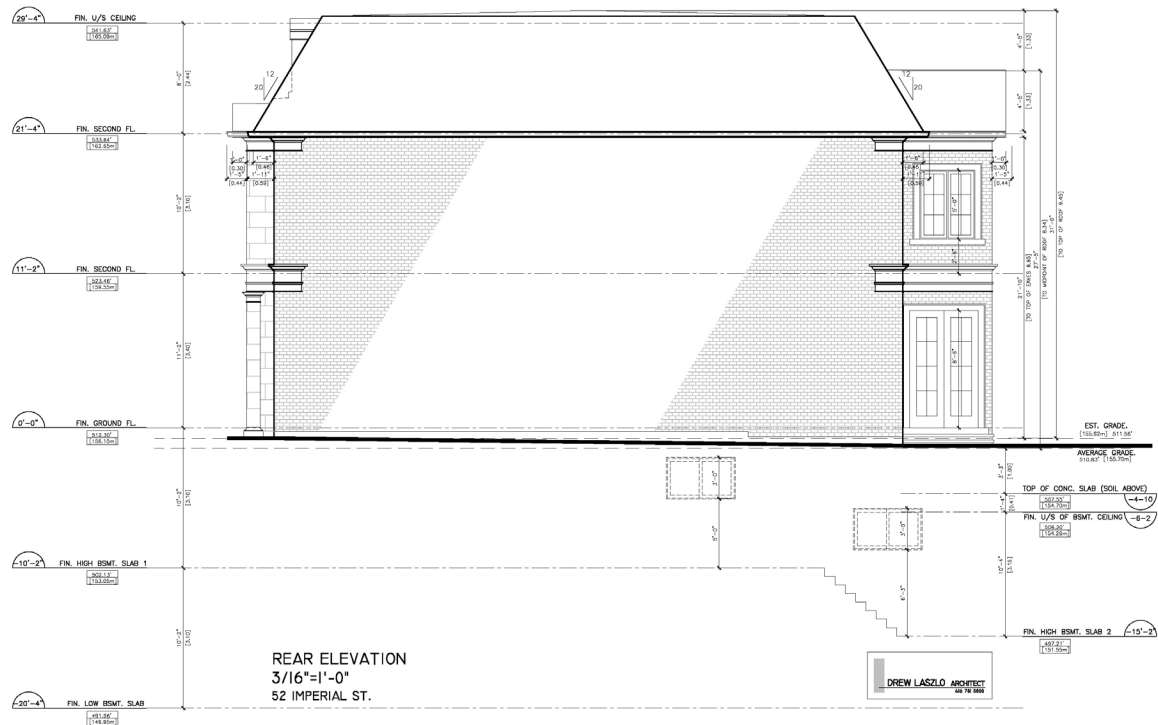
ROOF PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.



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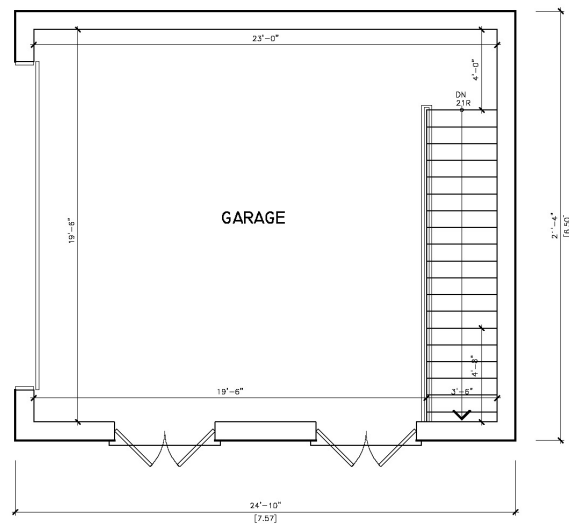


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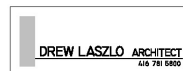


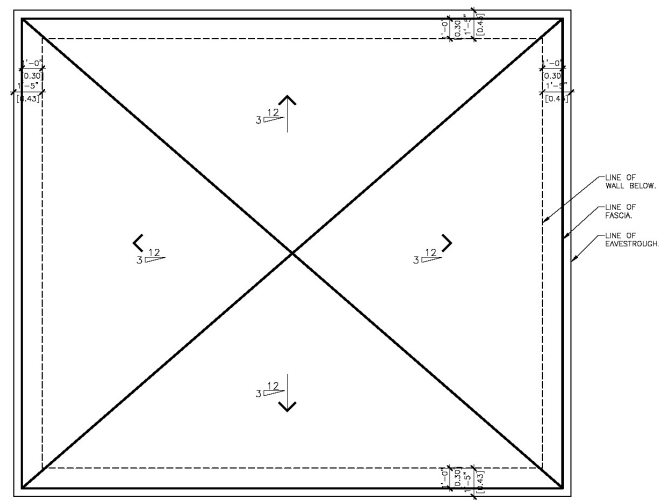
GARAGE & FRONT ELEVATION  
1/8"=1'-0"  
52 IMPERIAL ST.

DREW LARGO ARCHITECT

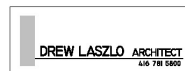


GARAGE  
FLOOR PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.

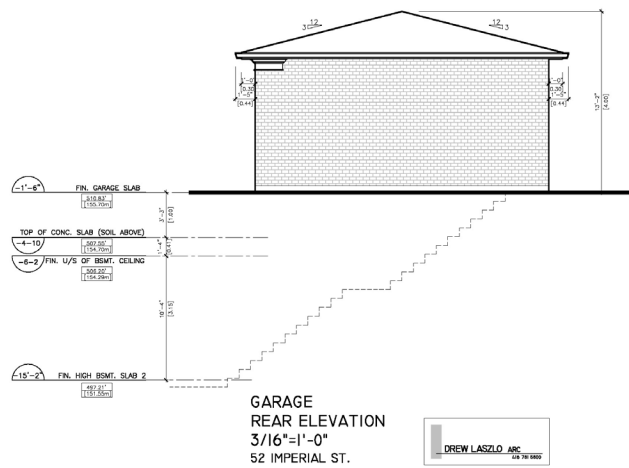
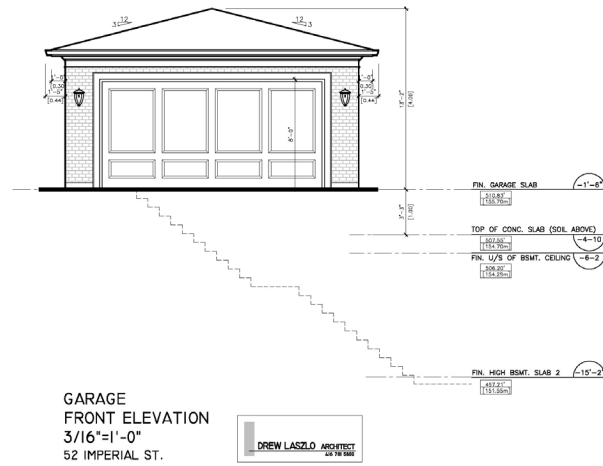




GARAGE  
ROOF PLAN  
3/16"=1'-0"  
52 IMPERIAL ST.



Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
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