

Memorandum to the City of Markham Committee of Adjustment

October 22, 2019

File: A/15/18
Address: 8 Elspeth Place Thornhill
Applicant: Memar Architects Inc (Samer Abdelmalak)
Hearing Date: Wednesday November 13, 2019

The following comments are provided on behalf of the West Team:

The applicant is requesting relief from the following requirements of the Residential Second Density (R2) zone in By-law 2237, as amended:

- a) **Section 3.7:**
an eaves projection of 24 inches, whereas the By-law requires a maximum eave projection of 18 inches into any required yard;
- b) **Amending By-law 101-90, Section 1.2(i):**
a maximum building height of 10.07 metres, whereas the By-law permits a maximum building height of 9.8 metres;
- c) **Section 6.1:**
a minimum front yard setback of 25.2 feet, whereas the By-law requires a minimum front yard setback of 27 feet;
- d) **Section 3.7:**
an unenclosed roofed porch encroachment of 80.5 inches, whereas the By-law permits a maximum encroachment of 18 inches in to the required front yard setback;
- e) **Section 6.1:**
a minimum side yard setback of 1.55 metres on both sides, whereas the By-law requires a minimum side yard setback of 1.8 metres;

as it relates to a proposed two-storey dwelling.

BACKGROUND

Property Description

The 1294.61 m² (13,935.06 ft²) subject property is located on the north side of Elspeth Place, west of Bayview Avenue and north of Steeles Avenue E. There is an existing two storey detached dwelling on the property, which according to assessment records was constructed in 1966. The property is located within an established residential neighbourhood, comprised of a mix of one and two-storey detached dwellings. Mature vegetation exists across the property.

The subject property is located within TRCA's Regulated Area as the majority of the site is traversed by a valley corridor associated with the Don River Watershed.

Proposal

The applicant is proposing to demolish the existing dwelling and construct a new 500.49 m² (5387.23 ft²) two storey detached dwelling with a front covered porch.

Reduced Side Yard Setback

The applicant is requesting a minimum east and west side yard setback of 1.55 m (5.09 ft), whereas the by-law requires a minimum side yard setback of 1.8 m (5.91 ft). This is a reduction of 0.25 m (0.82 ft). The proposed reduction is minor in nature and does not appear to negatively impact neighbouring properties in terms of grading or landscaping.

Reduction in Front Yard Setback

The applicant is requesting relief to permit a minimum front yard setback of 25.2 ft (7.68 m), whereas the By-law requires a minimum front yard setback of 27 ft (8.23 m). This represents a reduction of approximately 1.8 ft (0.55 m). The proposed front yard setback is generally consistent with the established front yard setback pattern on the street. A minor variance (CA/62/04) was approved to reduce the front yard setback by 7 ft in 1962. The front yard setback of the existing building is 21.98 ft (6.7 m) (See A.02, Appendix "B"). The proposed front yard setback is considered minor in nature.

Increase in Maximum Eaves

The applicant is requesting a maximum eaves encroachment of 24 in (0.61 m), whereas the By-law permits a maximum eaves encroachment of 18 in (0.46 m) into any required yard. This is difference of 6 in (0.15 m). Staff are of the opinion that this variance is minor in nature.

Increase in Maximum Roofed Porch Encroachment

The applicant is requesting a maximum roofed porch encroachment of 80.5 in (2.04 m) into the front yard, whereas the By-law permits a maximum encroachment of 18 in (0.46 m). This is a difference of 1.58 m (5.18 ft).

The variance is in part attributed to the design restrictions of the lot. The TRCA provided comments to the applicant on May 1, 2018 expressing concern with the location of the proposed development on the site. The applicant has since revised their plans to address some of these comments. In doing so, the proposed dwelling has been moved closer to the front lot line.

Due to the restrictions of the lot, Staff are of the opinion that this variance is minor in nature, and appropriate for the development of the lot.

TRCA Comments

The subject property is located within the Toronto and Region Conservation Authority (TRCA)'s Regulated Area. The rear portion of the site is traversed by a valley corridor associated with the Don River Watershed. The TRCA provided comments on October 11, 2019, indicating that they cannot support the application until the applicant provides the necessary supplementary materials (See Appendix "C"). As a condition of approval, the applicant will be required to satisfy all requirements outlined by the TRCA.

PUBLIC INPUT SUMMARY

No written submissions were received as of October 22, 2019. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variances requested meet the four tests of the Planning Act and have no objection. Staff recommend that the Committee consider public input in reaching a decision.

Reduced Side Yard Setback

The applicant is requesting a minimum east and west side yard setback of 1.55 m (5.09 ft), whereas the by-law requires a minimum side yard setback of 1.8 m (5.91 ft). This is a reduction of 0.25 m (0.82 ft). The proposed reduction is minor in nature and does not appear to negatively impact neighbouring properties in terms of grading or landscaping.

Reduction in Front Yard Setback

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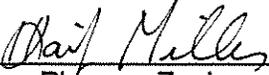
CONCLUSION

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The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

Please see Appendix "A" for conditions to be attached to any approval of this application.

PREPARED BY:



Hailey Miller, Planner, Zoning and Special Projects

REVIEWED BY:



David Miller, Development Manager, West District

File Path: Amanda\File\ 18 109384 \Documents\District Team Comments Memo

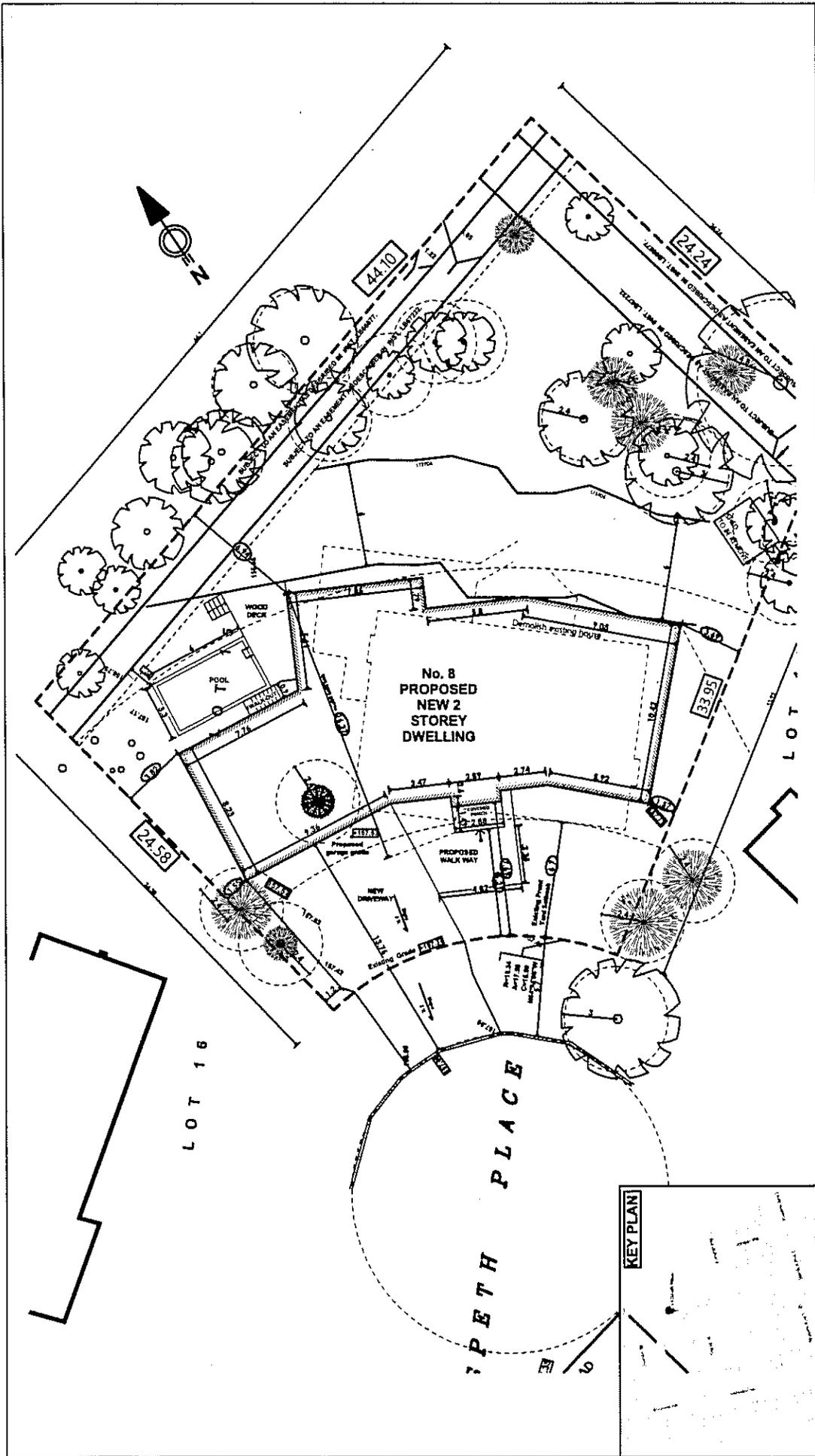
APPENDIX "A"
CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/15/18

1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as Appendix "B" to this Staff Report and received by the City of Markham on September 30, 2019, and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction;
3. Submission of a Tree Assessment and Preservation Plan, prepared by a qualified arborist in accordance with the City's Streetscape Manual (2009), as amended, to be reviewed and approved by the City, and that the Secretary-Treasurer receive written confirmation from Tree Preservation Technician or Director of Operations that this condition has been fulfilled to his/her satisfaction, and that any detailed Siting, Lot Grading and Servicing Plan required as a condition of approval reflects the Tree Assessment and Preservation Plan;
4. That prior to the commencement of construction or demolition, tree protection be erected and maintained around all trees on site in accordance with the City's Streetscape Manual, including street trees, in accordance with the City's Streetscape Manual (2009) as amended, and inspected by City Staff to the satisfaction of the Tree Preservation Technician or Director of Operations.
5. That tree replacements be provided and/or tree replacement fees be paid to the City if required in accordance with the Tree Assessment and Preservation Plan, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Tree Preservation Technician or Director of Operations;
6. That the applicant satisfies the requirements of the *Toronto and Region Conservation Authority (TRCA)*, financial or otherwise, as indicated in their letter to the Secretary-Treasurer attached as Appendix "C" to this Staff Report, to the satisfaction of the *TRCA*, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the *TRCA*.

CONDITIONS PREPARED BY:



Hailey Miller, Planner, Zoning and Special Projects



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		1:200	SITE PLAN 02		# 8 ELSF DR. PL. MARIHAM	
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ONTARIO ASSOCIATION OF ARCHITECTS

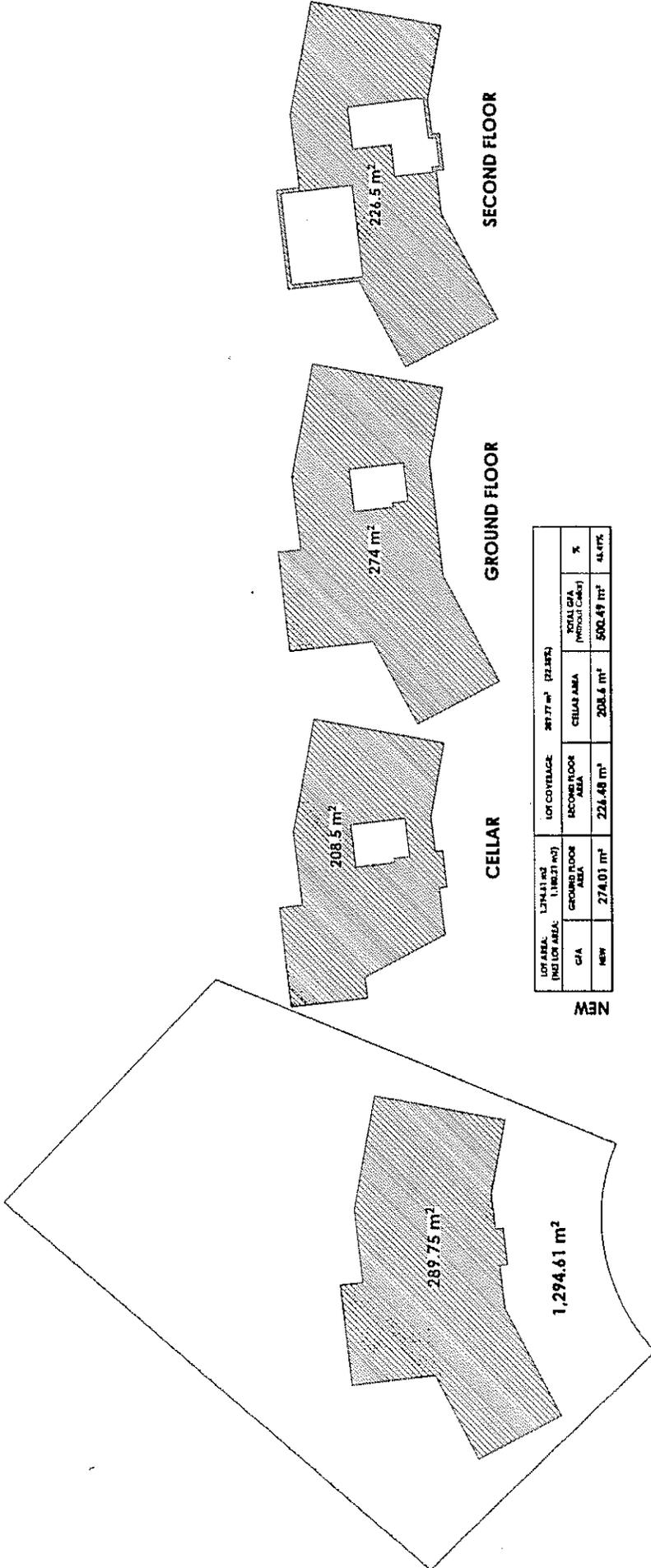
"MEMOR ARCHITECTS INC."

 2323 Yonge Street 203

 Toronto, ON, M4P 2C9

 T: 416-975-4448

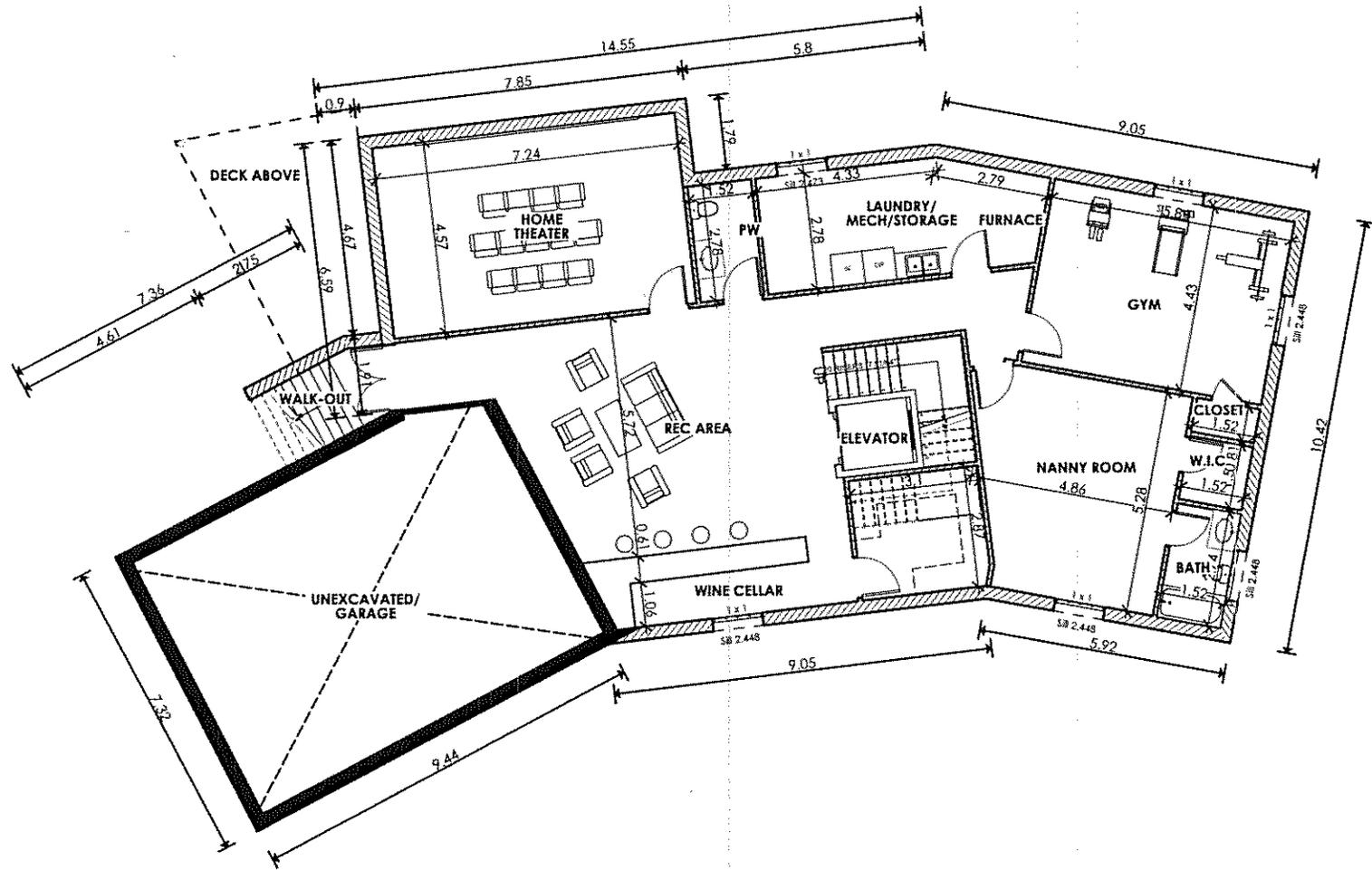
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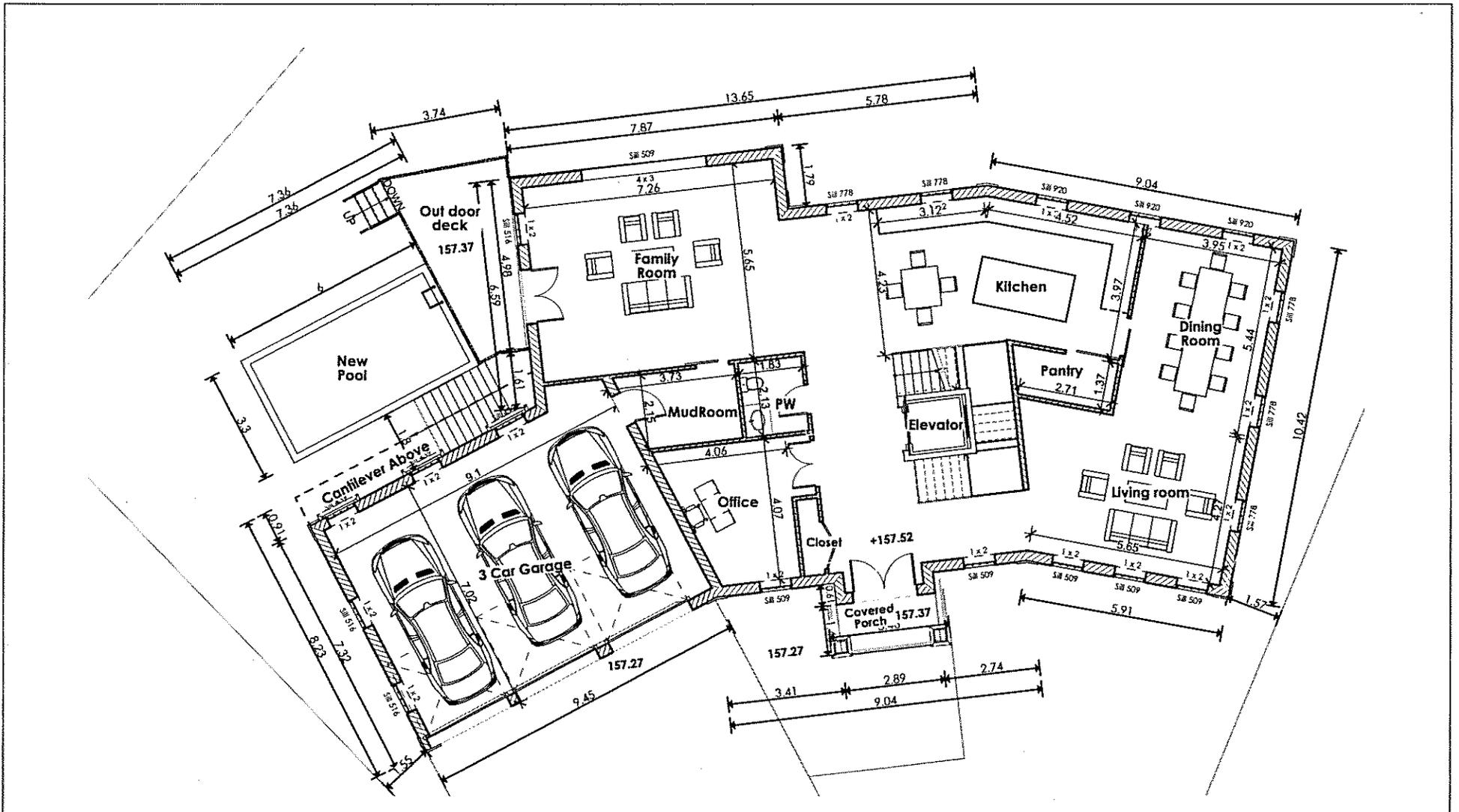
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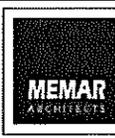
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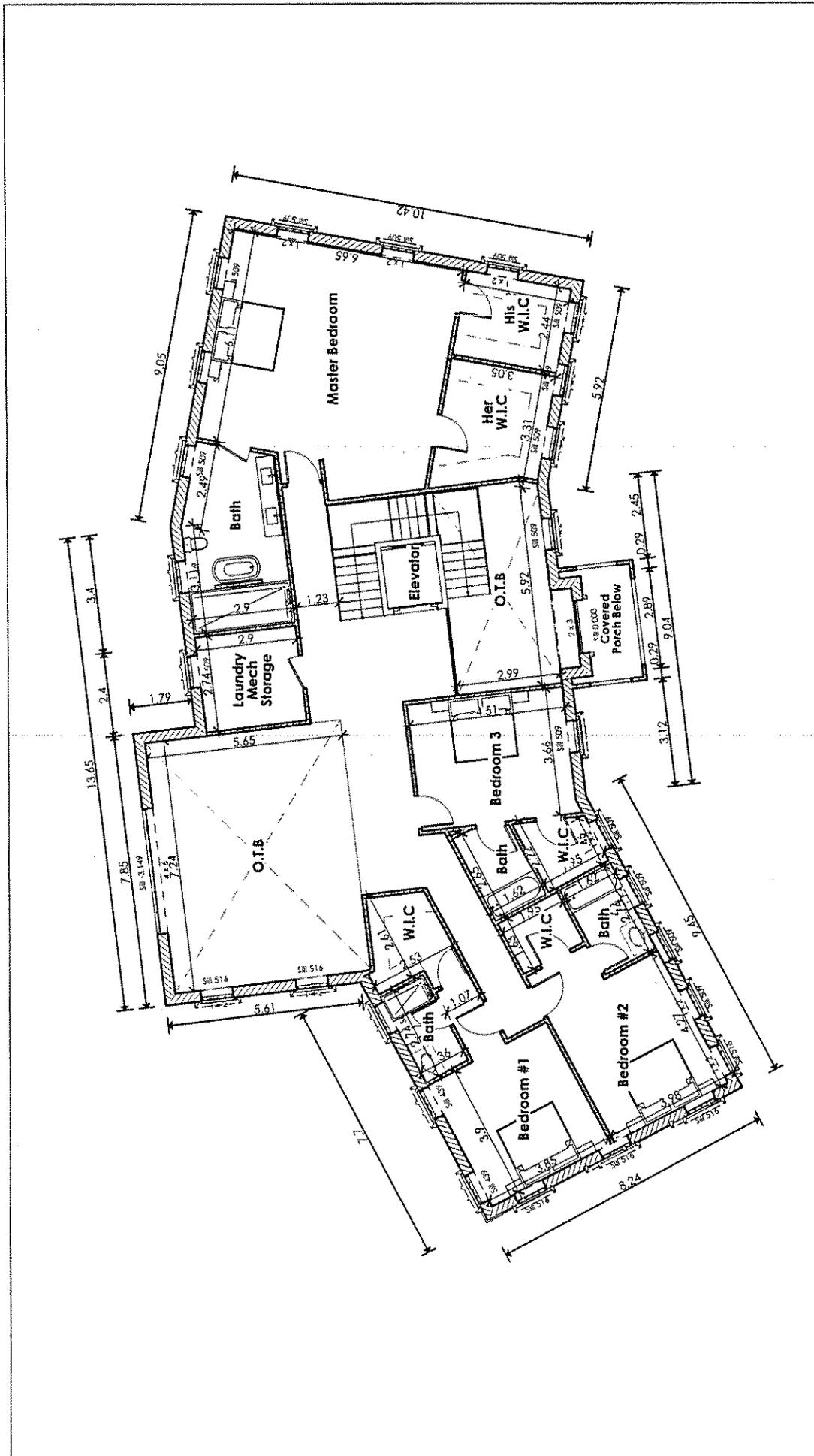
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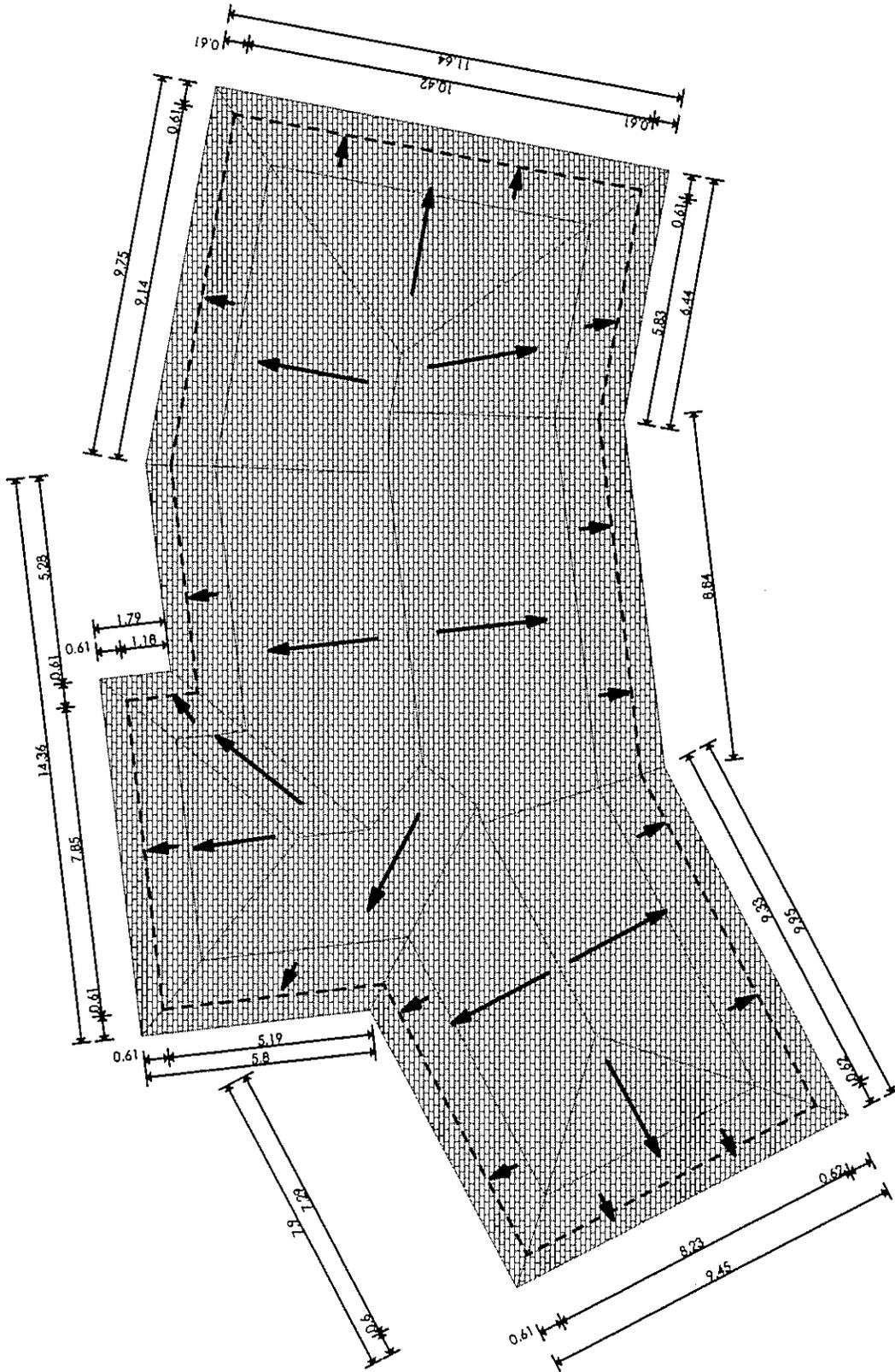
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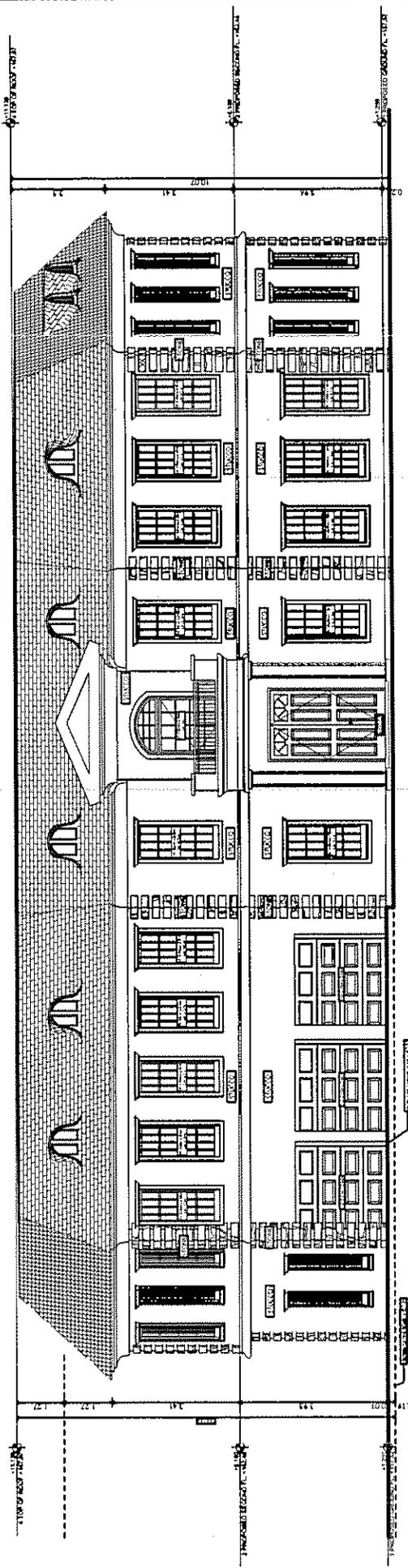
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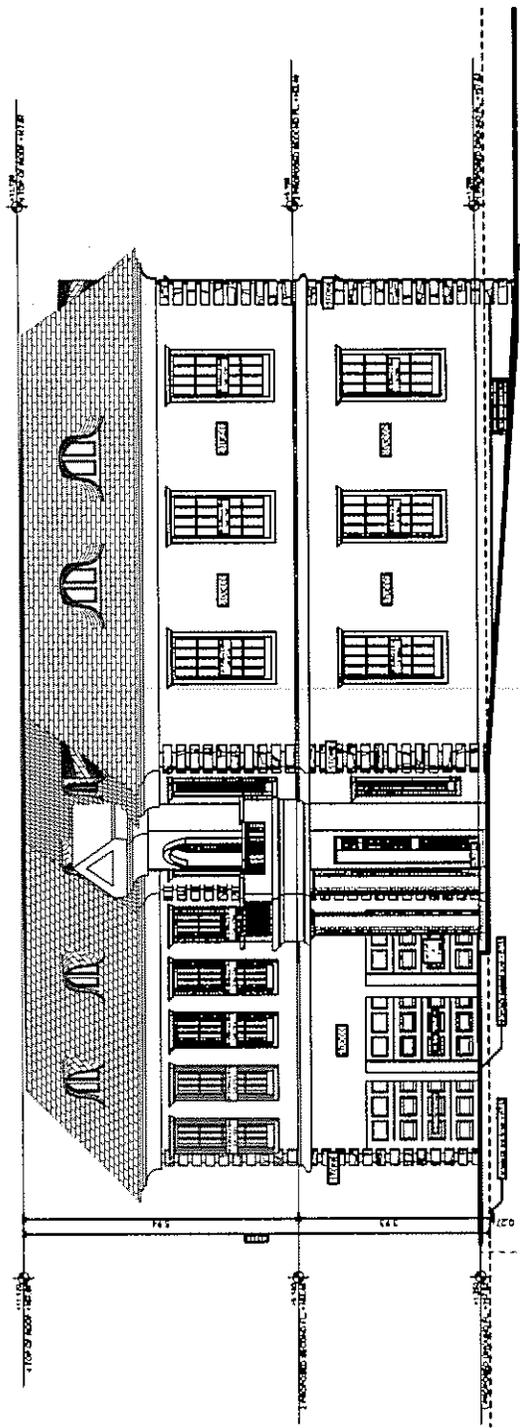
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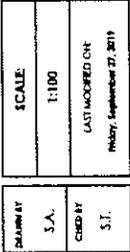


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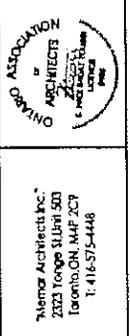
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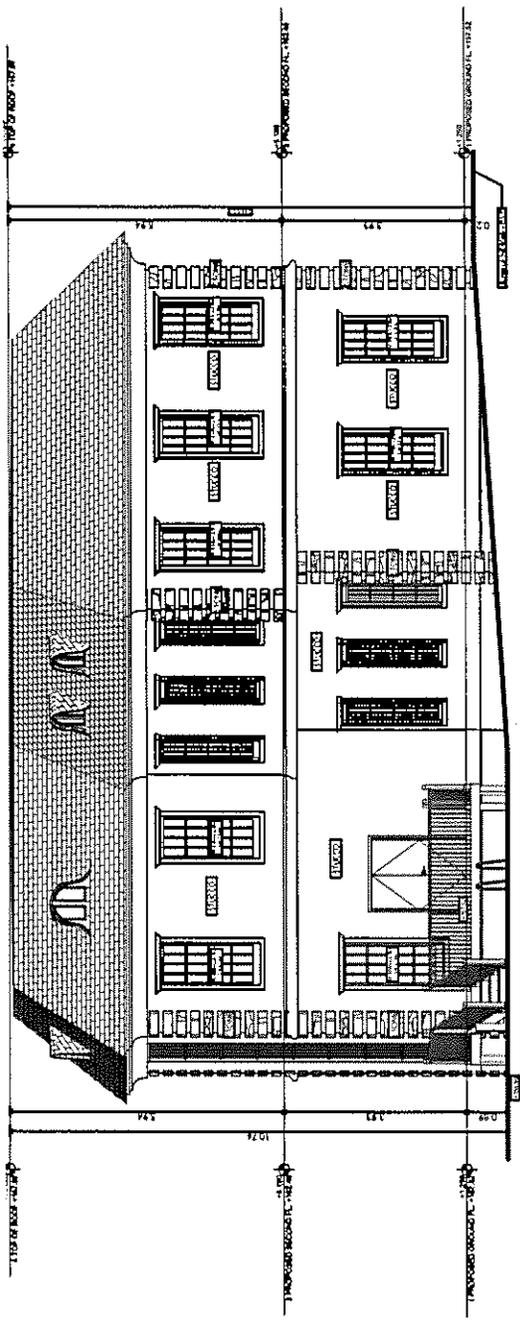
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MEMAR ARCHITECTS
 2023 TORONTO 111441 500
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A.10



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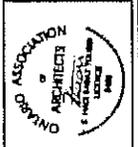
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A.11



October 11, 2019

CFN 59072.04
X Ref CFN 56938.14, 60168

By Email Only (email: JLeung@markham.ca)

Mr. Justin Leung
Secretary-Treasurer
Committee of Adjustment
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Dear Mr. Leung:

**Re: A/15/18 (Minor Variance Application)
8 Elspeth Place, City of Markham
Owner: Saeid Talebi
Agent: Memar Architects Inc. – Samer Abdelmalak**

Further to our previous comment letters dated February 21, 2018 and May 1, 2018, this letter acknowledges receipt of the re-submission associated with above noted application. Toronto and Region Conservation Authority (TRCA) staff have reviewed this application and our comments are provided herein.

Purpose of the Applications

The applicant is requesting relief from the requirements of City of Markham By-law 2237, as amended, as it relates to a proposed two-storey residential dwelling on the subject property.

Requested permission:

- a) Amending By-law 2237, Section 3.7:
an eaves projection of 24 inches; whereas, the By-law requires a maximum eave projection of 18 inches into any required yard;
- b) Amending By-law 101-90, Section 1.2(i):
a maximum building height of 10.07 metres; whereas, the By-law permits a maximum building height of 9.8 metres;
- c) Amending By-law 2237, Section 6.1:
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- d) Amending By-law 2237, Section 3.7:
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- e) Amending By-law 2237, Section 6.1:
a minimum side yard setback of 1.55 metres on both sides; whereas, the By-law requires a minimum side yard setback of 1.8 metres.

Applicable TRCA Regulations and Policies

The TRCA provides our technical review comments through a number of roles. This includes TRCA's commenting role under the *Planning Act*; the Conservation Authority's delegated responsibility of representing the provincial interest of natural hazards encompassed by Section 3.1 of the Provincial Policy Statement (2014); TRCA's Regulatory Authority under Ontario Regulation 166/06, as amended (Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses); and our Memorandum of Understanding with the Region of York where we advise our municipal partners on matters related to Provincial Policies relevant to TRCA's jurisdiction.

Ontario Regulation 166/06, as amended:

The *Conservation Authorities Act* provides the legal basis for TRCA's mandate to undertake watershed planning and management programs that prevent, eliminate, or reduce the risk to life and property from flood hazards and erosion hazards, as well as encourage the conservation and restoration of natural resources. Under the provisions of Section 28 of the *Conservation Authorities Act*, TRCA administers Ontario Regulation 166/06 (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), as amended.

The subject property is located within TRCA's Regulated Area, as it is traversed by a valley corridor associated with the Don River Watershed. In accordance with Ontario Regulation 166/06, as amended, (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), a permit is required from the TRCA prior to any of the following works taking place:

- a. straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b. development, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Development is defined as:

- i. the construction, reconstruction, erection or placing of a building or structure of any kind;
- ii. any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;
- iii. site grading; or,
- iv. the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Living City Policies for Planning and Development in the Watersheds of the TRCA:

The Living City Policies for Planning and Development in the Watersheds of the TRCA (LCP) is a TRCA policy document that guides the implementation of TRCA's legislated and delegated roles and responsibilities in the planning and development approvals process. The LCP describes a "Natural System" of water resources, natural features and areas, natural hazards, potential natural cover and/or buffers. TRCA policies generally require that natural features within the "Natural System" be protected from development, site alteration and infrastructure.

Application Specific Comments

As noted above, the subject property is within a TRCA Regulated Area of the Don River Watershed and the proposed development requires a permit from the TRCA under Ontario

Regulation 166/06. Based on our review, TRCA staff have concerns with respect to the requested variances as they relate to the location of the proposed works identified on the plans submitted with the subject application.

The TRCA has been involved in the review of previous submissions associated with this Minor Variance application, related TRCA Permit Application (CFN 60168), and TRCA Concept Development Application (CFN 56938.14) which included a site visit to the subject property. As part of the TRCA Permit Application, the applicant has provided geotechnical reports determining the Long Term Stable Top Of Slope (erosion hazard limit) on the subject property. Based on our most recent comments dated January 18, 2019, TRCA staff are not yet satisfied with the geotechnical reports provided by the applicant and require additional information to ensure that the development and the location of the proposed dwelling will not negatively affect the stability of the slope. Additionally, TRCA staff have other outstanding concerns and require additional information regarding proposed grading, erosion and sediment controls, and restoration plantings. For more information regarding TRCA's comments dated January 18, 2019, please refer to Appendix A of this correspondence.

Accordingly, TRCA staff cannot support the subject application at this time as TRCA staff have outstanding concerns regarding the development and the location of the proposed dwelling.

Application Review Fee

Please note, the applicant has remitted the TRCA review services fee of \$830.00 (Variance - Standard). In accordance with TRCA's 2018 Planning Services Fee Schedule, this fee covers up to three submissions. As such, additional fees will be required to facilitate our review of any future submissions associated with this Minor Variance application. Such fees will be determined in accordance with TRCA's Planning Services Fee Schedule in effect at the time of our review.

Recommendation

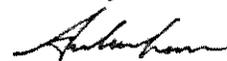
Based on the above, TRCA staff cannot support the above noted application and request that it be deferred until such a time that the applicant addresses all comments outlined in this letter, including Appendix A. Please note, based on our review of the applicant's revised submission, additional comments may arise.

We welcome the opportunity to discuss what supplementary materials will need to be completed in order for the proposed development associated with this application to be supported by TRCA.

Please note, the City's approval of this Minor Variance application does not bind TRCA under the *Conservation Authorities Act* to approve the proposed works identified on the drawings/plans submitted with this application.

I trust these comments are of assistance. Should you have any questions, please do not hesitate to contact me at the undersigned.

Sincerely,



Andrea Lam
Planner I
Development Planning and Permits
Extension 5306
AL/mb

Appendix A – TRCA Permit Application Comments dated January 18, 2019

Geotechnical Engineering

1. TRCA's Geotechnical Engineering staff are generally satisfied with the methodologies and content provided within the Slope Stability Analysis, prepared by DownUnder Geotechnical Ltd. (Dated December 9, 2018). However, we note that the footprint of the proposed dwelling encroaches within the 6 meter buffer from the LTSTOS. Please update the report to identify the proposed encroachment and outline whether it will have a negative effect on the stability of the slope.
2. In addition, TRCA staff support the slope enhancement recommendations provided by Andrew Drevininkas (Pages 3 & 4). To ensure no site alteration or disturbance occurs near the top of slope, please submit a Grading Plan within your resubmission. Please note, all site alteration and grading works should be contained outside of TRCA's 6 metre buffer from the existing top of slope to the extent feasible to minimize disturbance within the Natural System.

Planning Ecology

3. Regarding the Proposed Planting Plan, please clarify/provide the following:
 - a. Please note that all planting details should be provided, such as species, density, planting method (typical detail), type of material (e.g. caliper tree, burlapped, bare roots). Trees should be planted 3 to 5 metres on center and shrubs 1 metre on center.
 - b. Please provide tending and maintenance schedule (minimum of 2 years, including watering, de-weeding, mulching). Please note that a minimum 2-year replacement warranty is required.
 - c. Please consider increasing the amount of shrubs in the planting plan. Shrubs are typically fast-growing and provide support for the slope.
 - d. Some species on the proposed planting, such as Great Blue Lobelia, Cinnamon Fern, Sensitive Fern and Ostrich Ferns, are typically encountered in wetlands or very moist and rich woodlands. Please clarify what is the ecological land classification (ELC) of the vegetation community present on site. Please ensure that all proposed species are appropriate for the conditions present on site. Additionally, native grasses and sedges should be incorporated to the proposed ground cover – their root systems assist on surficial stabilization.
4. Please add the following information on relevant drawings:

“In order to avoid interference with the eggs, nests or young of birds protected under the Federal “*Migratory Birds Convention Act*” (MBCA), removals should not occur from April 1 to August 31 of any given year. Ideally removals should occur from September through December to avoid interference with all nesting birds. Should removals be required within the April 1st to August 31st breeding period, a breeding bird survey should be conducted by qualified personal *immediately* prior to commencement of works to identify and locate active nests of species covered by the MBCA. These surveys should include the development of a mitigation plan to address any potential impacts on migratory birds and their active nests.”

Please note that while the general timing window for migratory breeding bird season for this area is identified as April 1 to August 31, bird breeding activities might continue post August 31st, particularly considering ongoing climatic changes; it is responsibility of the proponent and/or contractor to ensure that the MBCA is not contravened.

5. The presence of reflective surfaces on the exterior walls of a building (such as glass) can lead to bird collision. Please incorporate collision avoidance strategies to the design of the building, such as visual markers and/or muting reflections. Additionally, please provide outdoor lighting fixtures that effectively project light downwards, minimizing direct upward light, spill light, glare and artificial sky glow, in order to avoid light pollution. For more information, please refer to the guidelines below:

City of Markham Bird Friendly Guidelines:

<https://www.markham.ca/wps/portal/home/business/planning/planning-documents-and-studies/studies/bird-friendly-guidelines>

City of Toronto's Bird Friendly Development Guideline:

<https://web.toronto.ca/wp-content/uploads/2017/08/8cd7-Bird-Friendly-Development-Guidelines.pdf>

6. Please note that at detailed design a stand-alone **multi-barrier** Erosion and Sediment Control Plan (ESC) will be required. Please, refer to the "Erosion and Sediment Control Design and Submission Requirements" for preparation of reports and drawings that accompany an ESC Plan, available at:

https://trca.ca/app/uploads/2016/02/Erosion_and_Sediment_Control_Design_and_Submission_Requirements_September_2007.pdf

Please note that the following should be included:

- a. Methods to isolate the development area. For example, silt fence, siltsoxx, etc. Please include proposed tree hoarding in the drawings as well. Please note that development area includes all works to occur on site, such as construction, access, staging, grading, placement of ESCs;
- b. Methods to provide site stabilization (temporary and permanent);
- c. Proposed staging, stockpiling areas and related ESC methods (including temporary stabilization);
- d. Methods to filter and release water accumulated on site (i.e. unwatering, dewatering, pooled water), if required;
- e. Typical details for all proposed ESC measures; and
- f. TRCA Standard Notes # 1, 2, 4, 5, 6, 7, 8, 9, 14 and 15 in the drawings, found at:
https://trca.ca/app/uploads/2016/02/Guidelines_for_Standard_Notes_on_Infrastructure_Project_OR_166_06_Submissions.pdf