

Memorandum to the City of Markham Committee of Adjustment
July 09, 2024

File: A/057/24
Address: 15 Tuscan Court, Markham
Agent: Prohome Consulting Inc (Vincent Emami)
Hearing Date: Wednesday, July 24, 2024

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

On January 31, 2024, City of Markham Council enacted Comprehensive Zoning By-law 2024-19. As By-law 2024-19 is currently under appeal with the Ontario Land Tribunal (OLT), any Applications under Section 45 of The *Planning Act* that do not benefit from the transition clauses under Section 1.7 of By-law 2024-19 must comply with By-law 2024-19 and any previous By-laws in effect. As such, the Applicant is requesting relief from the following requirements of the “Residential – Established Neighbourhood Low Rise (RES-ENLR) Zone” in By-law 2024-19:

- a) **By-law 2024-19, Section 4.8.10.1(a):**
a minimum front yard porch depth of 1.4 metres, whereas the By-law requires a porch depth of at least 1.8 metres;
- b) **By-law 2024-19, Section 6.3.2.2(c):**
a maximum second-storey main building coverage of 26.7 percent of the lot area, whereas the By-law permits a maximum building coverage for the second-storey of 20 percent of the lot area;
- c) **By-law 2024-19, Section 6.3.2.2(e):**
a maximum distance of 20.43 metres for the first storey measured from the established building line, whereas the By-law permits a maximum distance of 19.5 metres for the first storey measured from the established building line;
- d) **By-law 2024-19, Section 6.3.2.2(e):**
a maximum distance of 17.31 metres for the second storey measured from the established building line, whereas the By-law permits a maximum distance of 14.5 metres for the second storey measured from the established building line;
and
- e) **By-law 2024-19, Section 6.3.2.2(f):**
a minimum front yard setback of 8.36 metres, whereas the By-law permits a minimum front yard setback of 8.74 metres;

as it relates to a proposed two-storey residential dwelling with a finished basement and a wood deck.

BACKGROUND

Property Description

The 756.34 m² (8,141.18 ft²) subject lands are located on the south side of Tusgay Court, west of Fred Varley Drive and south of Krieghoff Avenue (the “Subject Lands”) (refer to Appendix “A” – Aerial Photo). The Subject Lands are located within an established residential neighbourhood comprised of a mix of one and two-storey detached dwellings. The surrounding area is undergoing a transition with newer dwellings being developed as infill developments.

There is an existing two-storey single detached dwelling on the property, which according to assessment records was constructed in 1967. Mature vegetation exists on the property including one large mature tree in the front yard.

Proposal

The Applicant is proposing to demolish the existing dwelling and construct a 388.24m² (4179 ft²) two-storey detached dwelling (the “Proposed Development”) (refer to Appendix “B” – Plans).

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24, 2017, and updated on April 9, 2018)

The Official Plan designates the Subject Lands as “Residential Low Rise”, which permits low-rise housing forms including single detached dwellings. Section 8.2.3.5 of the Official Plan outlines infill development criteria for the “Residential Low Rise” designation with respect to height, massing, and setbacks. These criteria are established to ensure that infill developments are appropriate for the site and generally consistent with the zoning requirements for adjacent properties and properties along the same street, while accommodating a diversity of building styles. In considering applications for development approval in a “Residential Low Rise” area, which includes variances, development is required to meet the general intent of the above noted development criteria. In addition, regard shall be had for the retention of existing trees and vegetation. Planning Staff have had regard for the requirements of the infill development criteria in the preparation of the comments provided below.

Comprehensive Zoning By-law 2024-19

The Subject Lands are zoned RES-ENLR (Residential – Established Neighbourhood Low Rise) under 2024-19, which permits one single detached dwelling per lot.

The Proposed Development does not comply with the By-law requirements as it relates to front yard porch depth, front yard setback, second-storey building coverage, and first- and second-storey distance from established building lines.

Zoning By-law 11-72

The Subject Lands are zoned R4 (Fourth Density Single Family Residential) under By-law 11-72, which permits one single detached dwelling per lot.

The Proposed Development complies with the requirements of By-law 11-72.

Varley Village Infill Area

The Subject Lands are within an area of the City where there is a trend to build larger houses. In response to concerns within this trend, a number of residents asked that Markham consider an infill housing By-law for the Varley Village neighbourhood. The Unionville Sub-Committee, a Committee of Council, undertook a review of this issue with community consultation, and ultimately recommend that no action be taken on an infill By-law at this time. This position was endorsed by Development Services Committee on June 19, 2012. As such, the existing By-law standards continue to apply.

Notwithstanding that an infill By-law was not adopted, the Committee should be aware of Council's and the community's concerns with regard to variances and maintaining the current standards of the Zoning By-law. Consequently, the Committee should consider public input before making a decision.

Zoning Preliminary Review (ZPR) Undertaken

The Owner has completed a Zoning Preliminary Review (ZPR) on February 24, 2024 to confirm the initial variances required for the Proposed Development. The Applicant submitted revised drawing on July 15, 2024 to address comments from the City's review. The Applicant has not conducted a Zoning Preliminary Review for the revised drawings. Consequently, it is the Owner's responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

COMMENTS

The *Planning Act* states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- 1) The variance must be minor in nature;
- 2) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- 3) The general intent and purpose of the Zoning By-law must be maintained;
- 4) The general intent and purpose of the Official Plan must be maintained.

Front Porch Depth

The Applicant is requesting relief to permit a minimum front porch depth of 1.4 m (4.59 ft), whereas the By-law permits a minimum front porch depth of 1.8 m (5.9 ft). This represents a decrease of 0.4 m (1.31 ft) from what the By-law permits.

The proposed front porch is in line with and does not project beyond the garage. As such, Staff have no objections to the requested variances, and are of the opinion that the general intent and purpose of the Zoning By-law is maintained.

Increase in Main Building Coverage (second storey)

The Applicant is requesting relief for a main building coverage for the second-storey of 26.7% (201.88 m² or 2,173.02 ft²) of the lot area, whereas the By-law permits a maximum second-storey coverage of 20% (151.34 m² or 1,629.01 ft²) of the lot area. This represents an additional 6.7% (50.70 m² or 545.73 ft²) coverage of the lot area for the second-storey.

Staff note that the By-law permits a building coverage of 30% for the first storey and 20% for any storey above the first. The proposed second storey maintains a lot coverage that is less than the first storey and the second floor does not project past the first storey. Furthermore, the requested variance results in a size and massing that is similar to other new infill developments along Tuscaj Court. As such, Staff are satisfied that the request meets the intent of the By-law and have no concerns with the requested variance.

Maximum Distance of the Main Building from the Established Building Line (first and second storey)

The Applicant is requesting a maximum distance of the main building from the established building line of 20.43 m (67.03 ft) for the first storey and 17.31 m (56.80 ft) for the second storey, whereas the By-law permits a maximum distance of 19.50 m (63.98 ft) and 14.5 m (47.57 ft), respectively. This represents an increase of 0.93 m (3.05 ft) for the first storey and an increase of 2.81 m (9.22 ft) for the second storey.

Staff note that the established building line is defined as “a line that is the average distance between the front lot line and the nearest wall (including the private garage) of the main building facing the front lot line on the two neighbouring lots fronting the same street”. The intent of this By-law provision is to regulate the building depth and massing in relation to the neighbouring lots.

It is important to note that the pie shaped nature of the lot provides for a curved established building line. This is significant to note as the irregular established building line has resulted in a portion of the north-east corner of the first and second storey exceeding the requirement of the By-law. Staff further note that the north-east corner of the first and second floors are setback approximately 4.68 m (15.35 ft) and 2.9 m (9.51 ft) to 3.81 m (12.50 ft) from the easterly property line. Staff are satisfied that sufficient setbacks are provided to mitigate any potential impacts that the building depth and massing may have on adjacent lots.

Reduction in Front Yard Setback

The Applicant is requesting relief to permit a minimum front yard setback of 8.36 m (27.43 ft), whereas the By-law permits a minimum front yard setback of 8.74 m (28.67 ft). This represents a reduction of approximately 0.38 m (1.25 ft).

The minimum front yard setback requirement is based on the average front yard setback of the neighbouring lots. The existing dwelling to the west of the Subject Lands has a front yard setback of 8.17 m (26.80 ft) while the existing dwelling to the east has a front yard setback of 9.31 m (30.54 ft). This results in an average front yard setback of 8.74 m (28.67 ft), as permitted in the By-law. The intent of the By-law is to respect the character of a neighbourhood by taking into consideration the front yard setbacks of neighbouring dwellings.

Staff note that the curved nature of the front lot line results in a small portion of the garage and covered porch projecting beyond the required front yard setback. The main portion of the dwelling, including the second storey, meets the By-law requirement. Staff opine that the proposed front yard setback is sufficiently aligned with the front yard setbacks of the neighbouring lots. Therefore, Staff are of the opinion that the requested variance will not have a marked impact to adjacent properties, are minor in nature, and meet the general intent and purpose of the Zoning By-law.

Tree Protection and Compensation

As noted previously, the Subject Lands contain mature vegetation and large mature trees. During the review of the application, the City's Tree Preservation Technician indicated potential impacts to trees located in the front and rear yards, and further noted that the Applicant/Owner maintain tree preservation for the front yard tree and provide details on impacts to the rear yard trees. After conversations between Staff and the Applicant, the Applicant agreed to revise the front yard walkway as shown in the submitted updated site plan in Appendix "B", to ensure that the front yard tree can be maintained.

Staff recommend that should the Committee approve the variances, that the tree related conditions outlined in Appendix "C", be adopted by the Committee to ensure the Applicant installs the appropriate tree protection barriers. Staff note the Applicant is required to apply for and obtain a tree permit from the City for any proposed injury, or removal of any trees that have a diameter at breast height (DBH) of 20.0 cm (7.87 in) or more on the subject lands or neighbouring properties. Further mitigation through these processes may also be required to ensure the protection of certain trees is achieved.

PUBLIC INPUT SUMMARY

One written submission was received in support of the Proposed Development as of July 16, 2024. 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 variance request meets the four tests of the *Planning Act* and have no objection. Staff recommend that the Committee consider Tree Preservation comments and public input in reaching a decision.

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 refer to Appendix "C" for conditions to be attached to any approval of this application.

PREPARED BY:



Brendan Chiu, Planner I, Planning and Urban Design Department

REVIEWED BY:



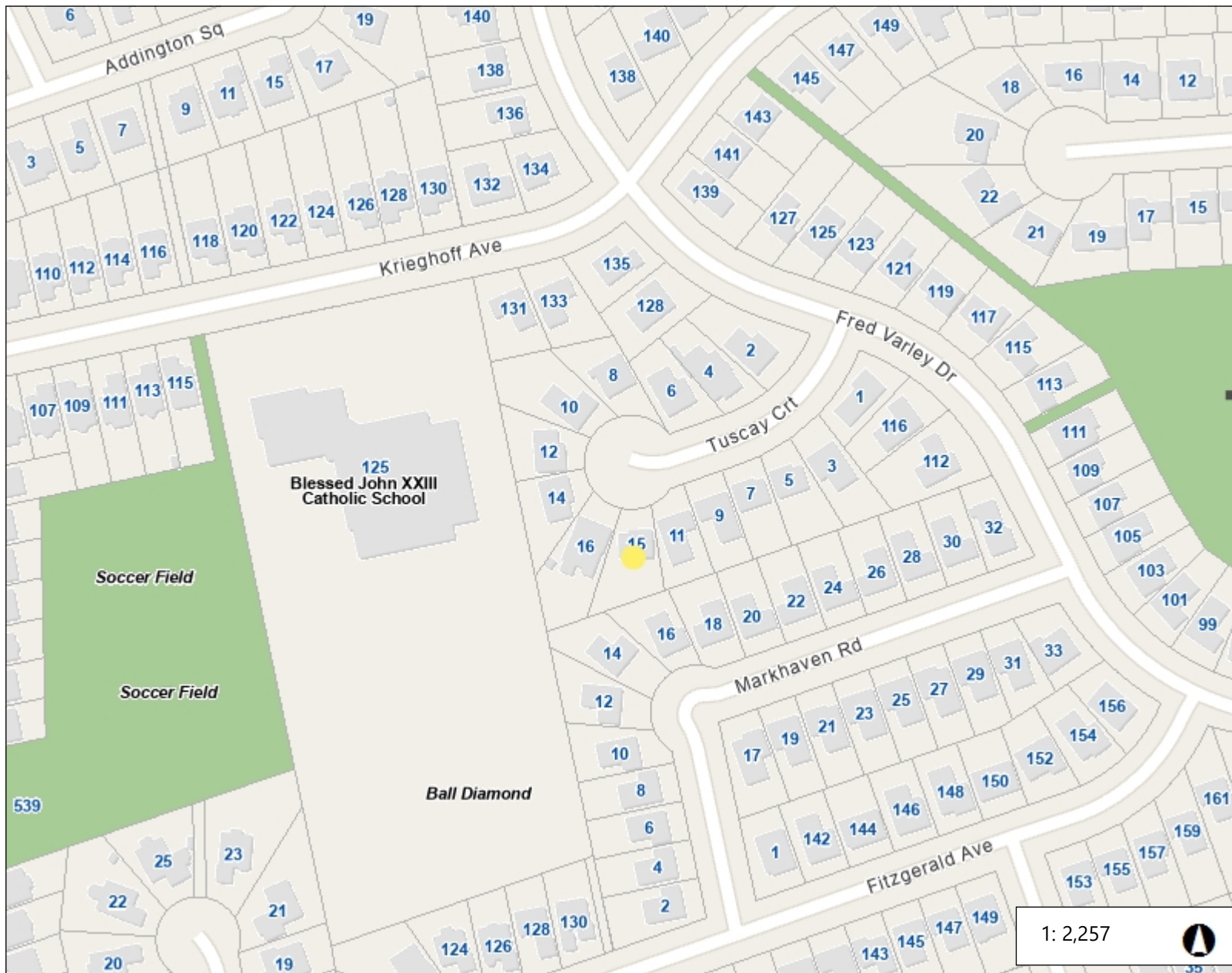
Melissa Leung, RPP MCIP, Senior Planner, Central District

APPENDICES

Appendix "A" – Aerial Photo

Appendix "B" – Plans

Appendix "C" – A/057/24 Conditions of Approval



Legend

- Subject Lands
- 15 Tusgay Court

Notes

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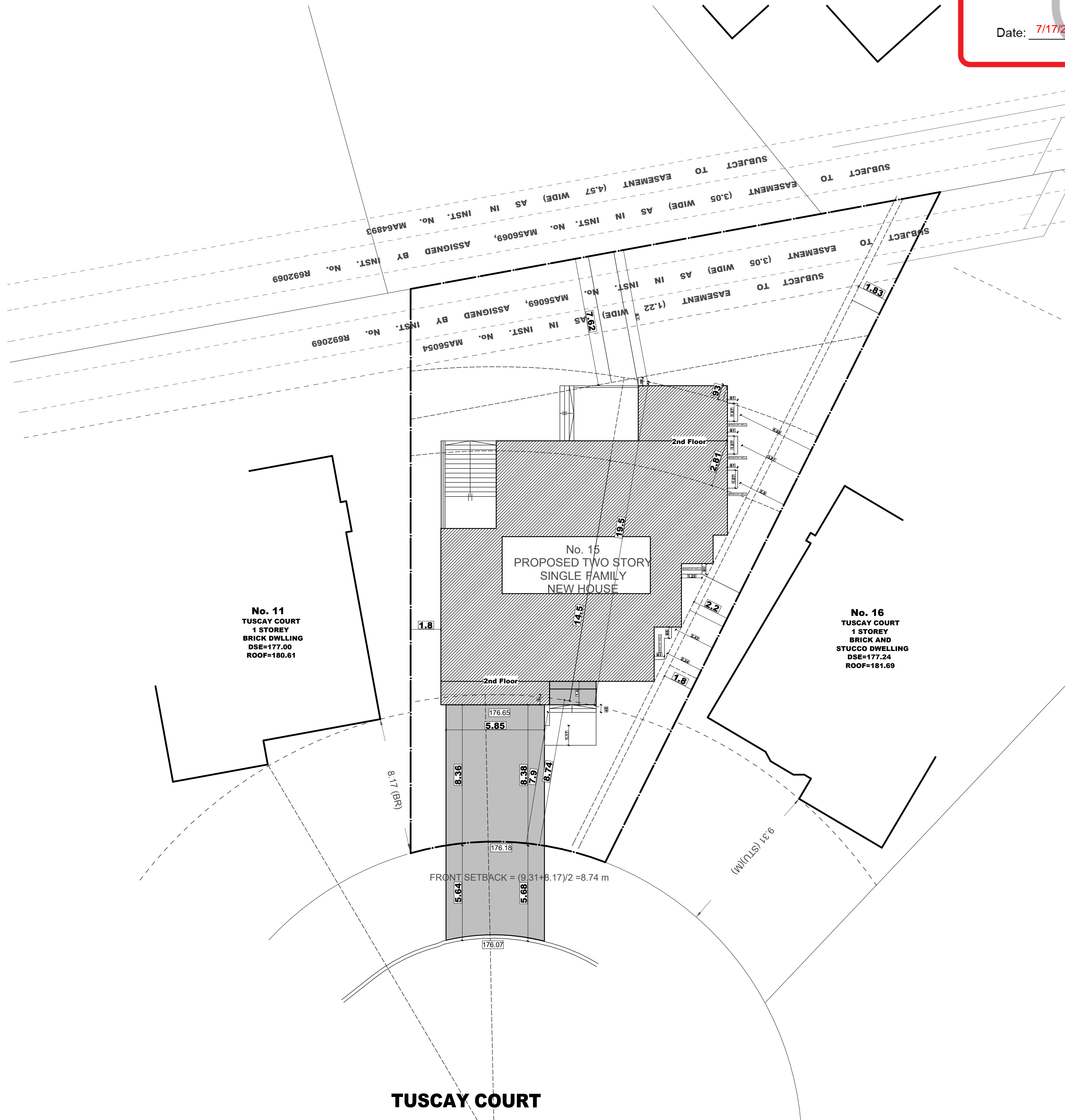
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GFA	GR FLOOR INCLUDING GARAGE	SECOND FLOOR AREA	BASEMENT	GARAGE	TOTAL GFA NOT INCLUDING CELLAR	%
TOTAL	2006FT ² /186.36 M ²	2173FT ² /201.88 M ² (26.68%)	2064FT ² /191.75 M ²	437FT ² /40.60M ²	4179FT ² /388.24 M ²	30%

Appendix B

File: 24.175455.000.00.MNV

Date: 7/17/2024

MM/DD/YY



DATE:	ISSUED FOR:
JUN-2024	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY
 V.E

SCALE:
1:150
LAST MODIFIED ON:
JULY 12, 2024

DRAWING TITLE:	SITE PLAN
PROJECT TITLE/ADDRESS:	15 TUSCANY COURT MARKHAM, ON

A.01

Appendix B

File: 24.175455.000.00.MNV

Date: 7/17/2024

MM/DD/YY



DATE:	ISSUED FOR:
JUN-2024	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY
V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
JUNE 4, 2024

DRAWING TITLE:
FRONT ELEVATION
PROJECT TITLE/ADDRESS:
15 TUSCAY COURT
MARKHAM, ON

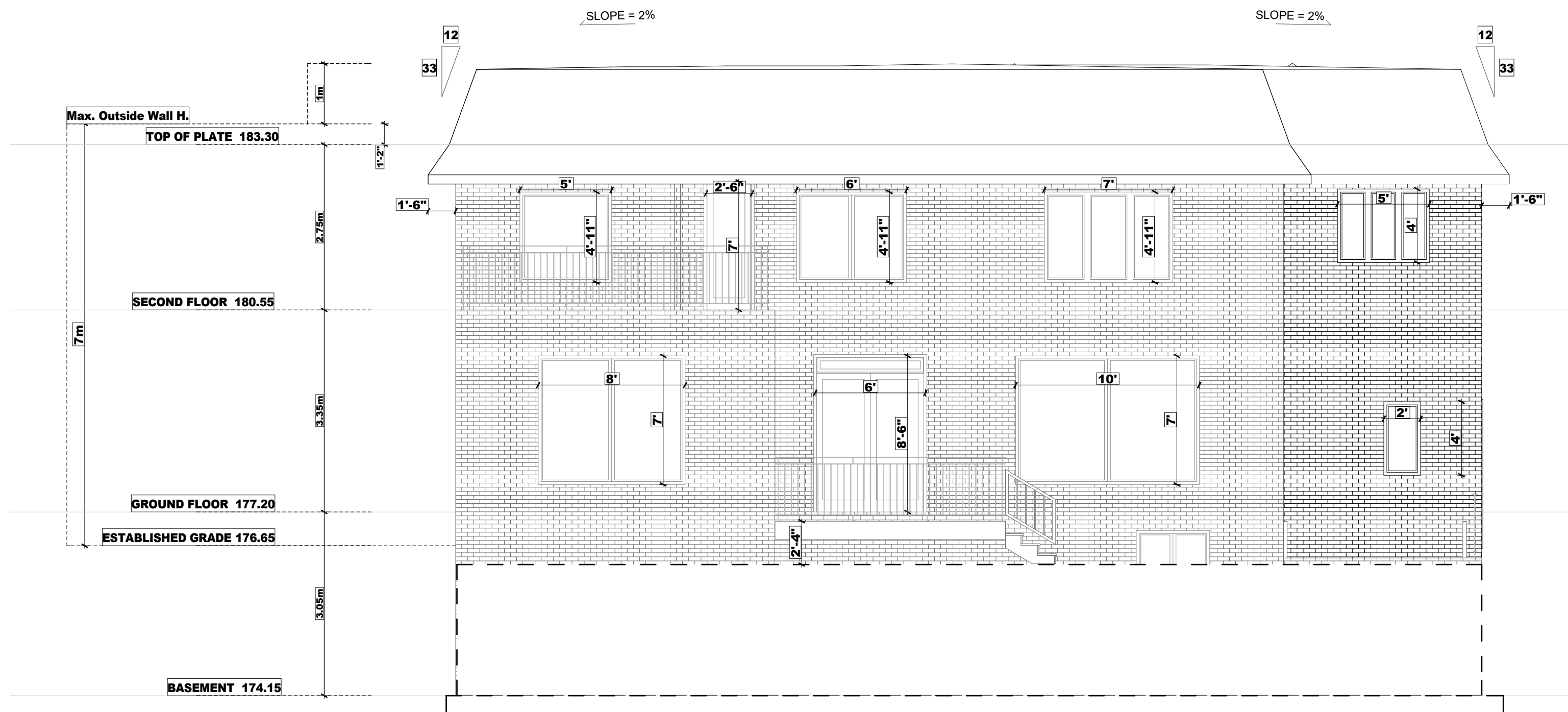
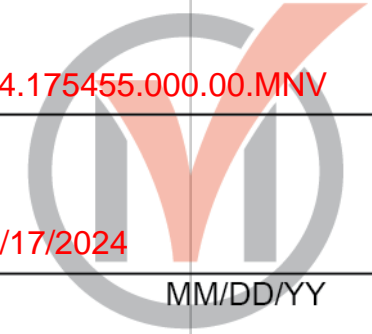
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Appendix B

File: 24.175455.000.00.MNV

Date: 7/17/2024

MM/DD/YY



DATE:	ISSUED FOR:
JUN-2024	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY
V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
JUNE 4, 2024

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PROJECT TITLE/ADDRESS:	15 TUSCAY COURT MARKHAM, ON

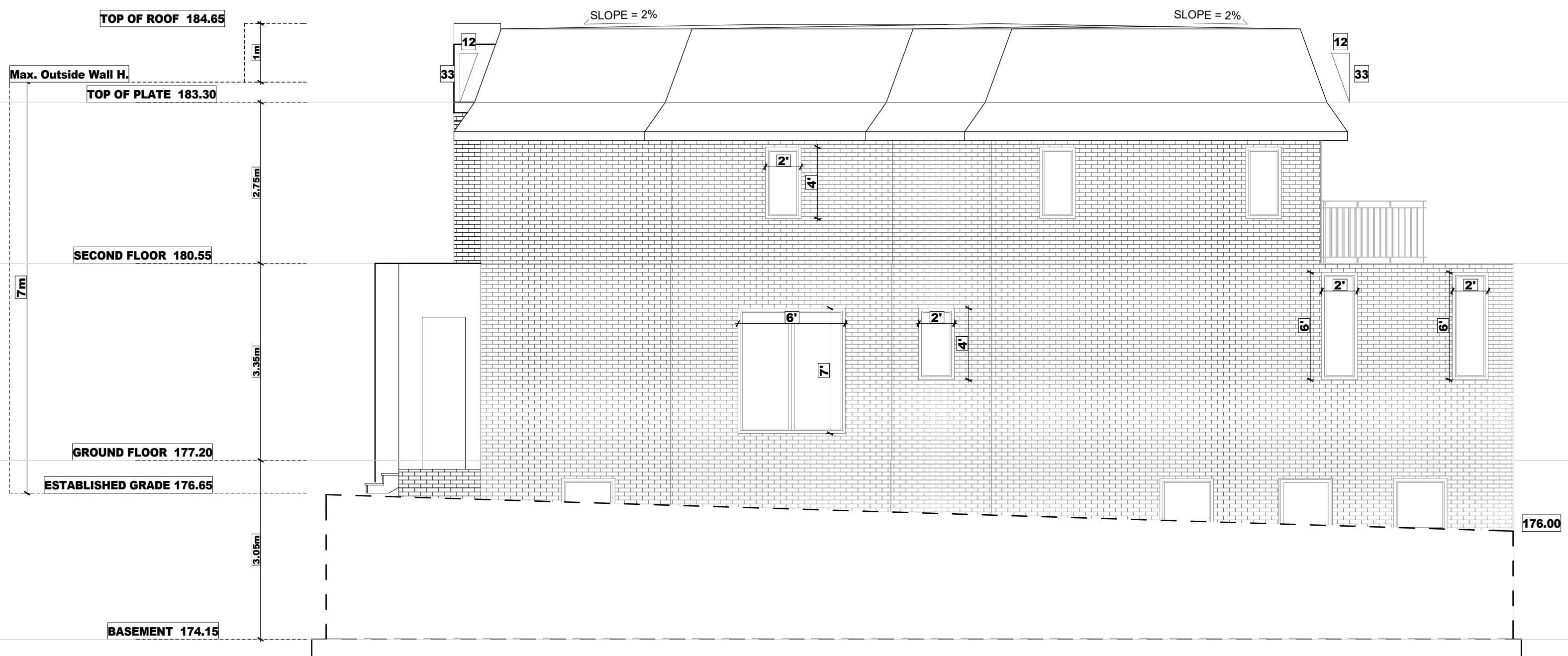
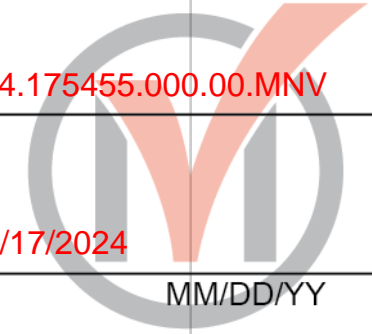
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Appendix B

File: 24.175455.000.00.MNV

Date: 7/17/2024

MM/DD/YY



DATE:	ISSUED FOR:
JUN-2024	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY
V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
JUNE 4, 2024

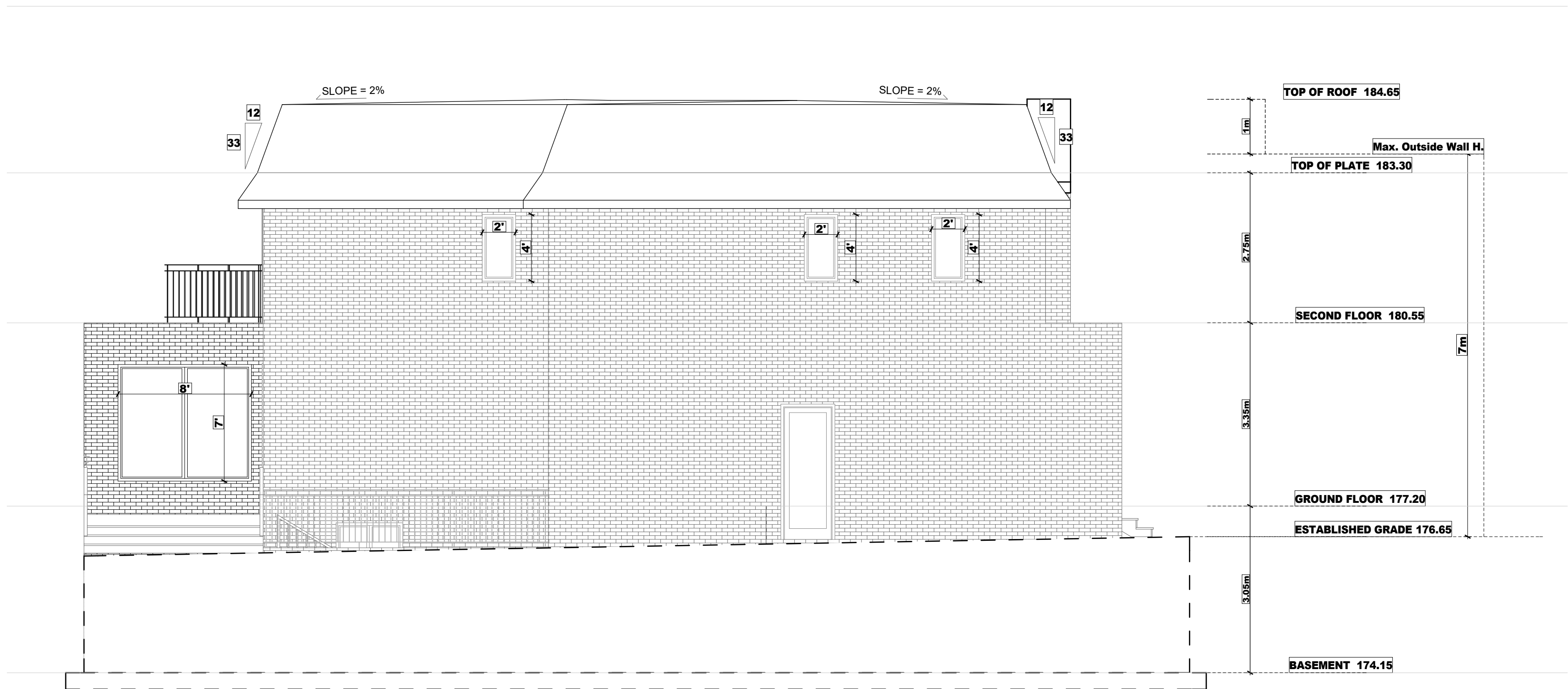
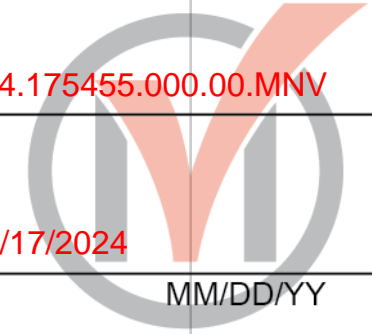
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A2.3

Appendix B

File: 24.175455.000.00.MNV

Date: 7/17/2024
MM/DD/YY



DATE:	ISSUED FOR:
JUN-2024	FOR C OF A

FOR STRUCTURE ONLY



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V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
JUNE 4, 2024

DRAWING TITLE:
SIDE ELEVATION
PROJECT TITLE/ADDRESS:
15 TUSCAY COURT
MARKHAM, ON

A2.4

APPENDIX “C”

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/057/24

1. The variances apply only to the Proposed Development as long as it remains;
2. That the variances apply only to the Proposed Development, in substantial conformity with the plan(s) attached as ‘Appendix B’ to this Staff Report and that the Secretary-Treasurer receive written confirmation from the Supervisor of the Committee of Adjustment or designate that this condition has been fulfilled to their satisfaction;
3. Submission of a Tree Assessment and Preservation Plan, prepared by a Qualified Tree Expert in accordance with the City’s Tree Assessment and Preservation Plan (TAPP) Requirements (2024) as amended, to be reviewed and approved by the City, and that the Secretary-Treasurer receive written confirmation from the Tree Preservation By-law Administrator 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, neighbouring properties, and 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 By-law Administrator.
5. If required as per Tree Preservation review, tree securities and/or tree fees be paid to the City and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Tree Preservation By-law Administrator.

CONDITIONS PREPARED BY:



Brendan Chiu, Planner I, Central District