

# Memorandum to the City of Markham Committee of Adjustment

August 24, 2023

**File:** A/134/23  
**Address:** 38 Fonthill Blvd, Markham  
**Applicant:** Prohome Consulting Inc (Vincent Emami)  
**Agent:** Prohome Consulting Inc (Vincent Emami)  
**Hearing Date:** Wednesday, August 30, 2023

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

The Applicant is requesting relief from the “Fourth Density Single Family Residential (R4)” in By-law 11-72, as amended, as it relates to a proposed two-storey detached dwelling. The variances requested are to permit:

- a) **Section 4.11:**  
a minimum flankage side yard of 12 feet, 6 inches, whereas a flankage side yard setback of 13 feet 2 inches is required, which is half the building height of 26 feet 3 inches;
- b) **Section 6.1:**  
a minimum west side yard setback of 4 feet, whereas the By-law requires a minimum side yard setback of 6 feet;
- c) **Section 6.1:**  
a minimum lot coverage of 35.75 percent, whereas the By-law permits a maximum of 33 1/3 percent;
- d) **Section 6.1:**  
a maximum building height of 26 feet, 3 inches, whereas the By-law permits a maximum building height of 25 feet.

as it relates to a two-storey dwelling with a deck.

After circulation of the application, the Applicant received comments from Tree Preservation staff and Planning staff and has revised their proposal, resulting in the removal of variance request a) as it relates to the flankage side yard, and reduction of variance c) as it relates to lot coverage. Variance b) and d) remain the same. Therefore the requested variances are now as follows:

- a) **Section 6.1:**  
a minimum west side yard setback of 4 feet, whereas the By-law requires a minimum side yard setback of 6 feet;
- b) **Section 6.1:**  
a minimum lot coverage of 34.92 percent, whereas the By-law permits a maximum of 33 1/3 percent;
- c) **Section 6.1:**  
a maximum building height of 26 feet, 3 inches, whereas the By-law permits a maximum building height of 25 feet.

as it relates to a two-storey dwelling.

## **BACKGROUND**

### **Property Description**

The 758 m<sup>2</sup> (8160 ft<sup>2</sup>) subject lands (the “Subject Lands”) are located on the northwest corner of Fonthill Boulevard and Krieghoff Avenue. The 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. Mature trees are located in the flankage yard along Krieghoff Avenue, and in the front and rear yards. Mature trees are also located in the rear yard of the neighbouring property at 40 Fonthill Boulevard.

There is an existing dwelling on the property, which according to assessment records was constructed in 1966.

### **Proposal**

The Applicant is proposing to construct a 452.26 m<sup>2</sup> (4, 868 ft<sup>2</sup>) two-storey detached dwelling with a rear deck (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.

### Zoning By-Law 11-72

The Subject Lands are zoned “Fourth Density Single Family Residential (R4)” under Bylaw 11-72, as amended, which permits one single detached dwelling per lot.

The proposed dwelling does not comply with the by-law requirements as it relates to minimum side yard setback, lot coverage, and maximum height.

### Varley Village Infill Area

The Subject Lands are located 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 variance 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 had completed a Zoning Preliminary Review (ZPR) on July 5, 2023 to confirm the initial variances required for the proposed development. The Applicant has noted that changes have been made to the plans since receiving comments from the ZPR. The Applicant has not submitted a new ZPR for the revised drawings. Consequently, it is the Applicant'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:

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

### **Increase in Maximum Lot Coverage**

The Applicant originally requested relief for a maximum lot coverage of 35.75 percent, whereas the By-law permits a maximum lot coverage of 33-1/3 percent .

During the processing of the application, the Applicant has since made changes to the plans such as an increase of the flankage yard setback and reduction of the bay window projection. Due to the changes, the lot coverage has been reduced to 34.92 percent.

The increase in lot coverage is minor in nature and generally consistent with what the by-law permits.

### **Increase in Maximum Building Height**

The Applicant is requesting relief to permit a maximum building height of 26 feet, 3 inches, whereas the By-law permits a maximum building height 25 feet. This represents an increase of 15 inches.

Building heights within the Varley Village neighbourhood vary, with older dwellings being replaced with newer dwellings that are generally taller. The proposed height is generally consistent with the height variances approved for other new dwellings in the

area. Accordingly, Staff are of the opinion that the proposed height variance will not result in a dwelling that is incompatible or out of character with its surrounding context and have no concerns with the requested variance.

### **Reduced Side Yard Setback**

The Applicant is requesting a minimum west side yard setback of 4 feet (1.2 metres) for the two-storey portion of the dwelling, whereas the by-law requires a minimum side yard setback of 6 feet (1.83 m) for the two-storey portion of the dwelling.

The rear walk-up (steps) on the west side of the proposed dwelling is counted as a landscape feature and will be reviewed through the Building Permit process. A Tree Assessment and Preservation Plan will be required to ensure that the neighbouring tree is not damaged during construction of the walk-up.

Staff have no concerns with the west side yard setback of 4 feet (1.2 metres) as it relates to the two-storey dwelling.

### **Tree Protection and Compensation**

As noted previously, the Subject Lands contain mature trees in the front, rear, and flankage yards, as well as in the neighbouring rear yard. During the review of the application, the City's Tree Preservation Technician indicated concern with removal of the mature trees in the flankage and side yards and requested that the house design be modified to accommodate the preservation of the trees.

The Applicant has further revised their plans respond to comments from Tree preservation staff. The Applicant revised the plans to change the deck in the rear yard to an interlocking patio to preserve the tree, removed a walkway on the flankage yard which will preserve three trees, and also reduces the overall lot coverage. Although this change does not impact building height, this design change will allow for retention of the trees during construction to maintain the existing mature tree canopy which contributes to the character of the area.

Staff recommend that the tree related conditions, as outlined in Appendix "C", be adopted by the Committee to ensure the Applicant installs the appropriate tree protection barriers and provides compensation to the City, if necessary. Staff note the Applicant is required to apply for and obtain a tree permit from the City for any proposed injury to, or removal of any trees with a trunk diameter of 20 centimetres (approximately 8 inches) or more, measured at 1.37 metres (approximately 54 inches) above the ground at the base of the tree 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**

No written submissions were received as of August 24, 2023. 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 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:



---

Elizabeth Martelluzzi, RPP MCIP, Senior Planner, Central District

REVIEWED BY:



---

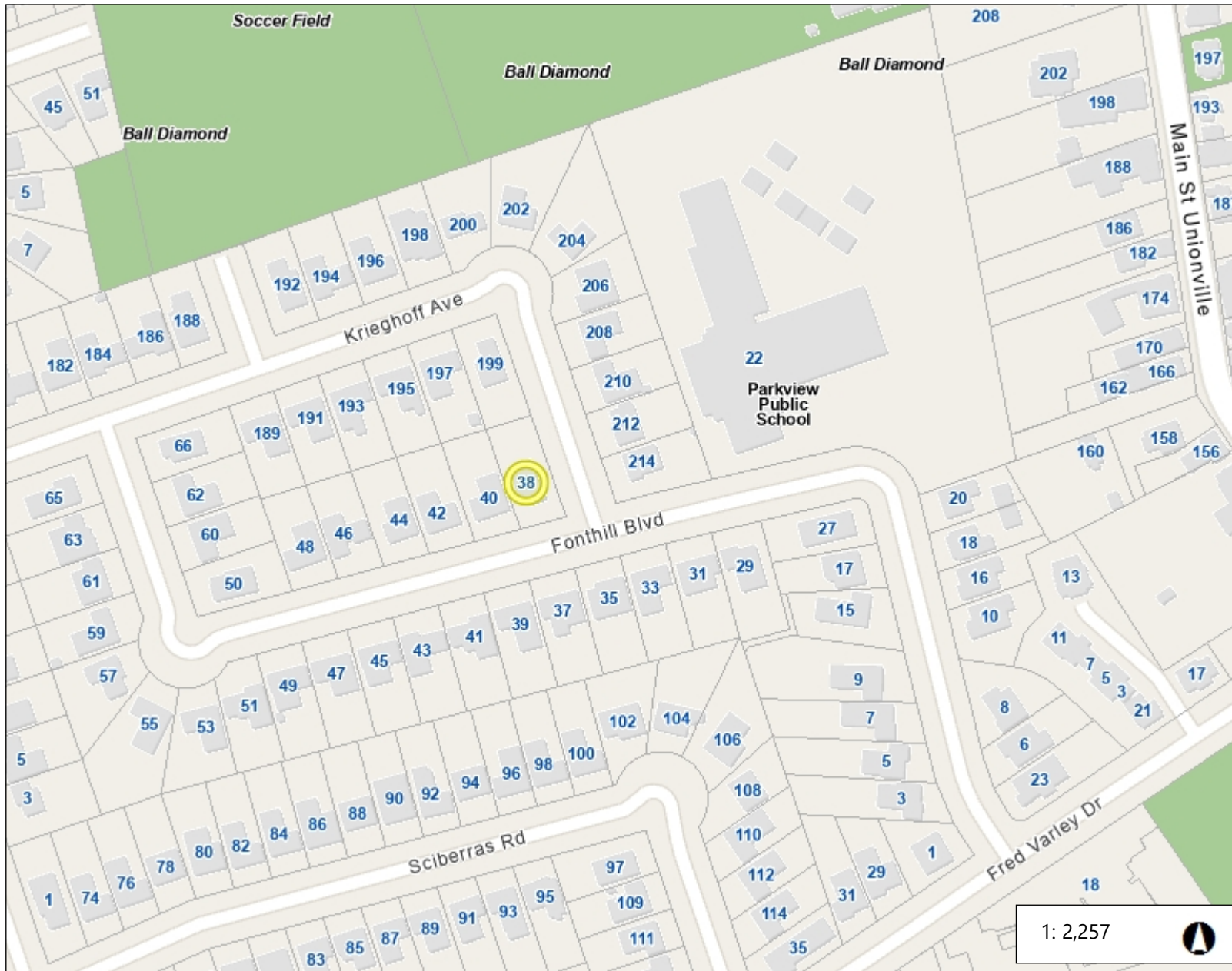
Deanna Schlosser, RPP MCIP, Senior Planner, Central District

## **APPENDICES**

Appendix "A" – Location Map

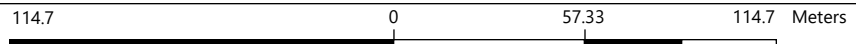
Appendix "B" – Plans

Appendix "C" – A/134/23 Conditions of Approval



Subject Lands  
● 38 Fonthill Boulevard

1: 2,257



Notes  
 Subject Lands  
 38 Fonthill Boulevard

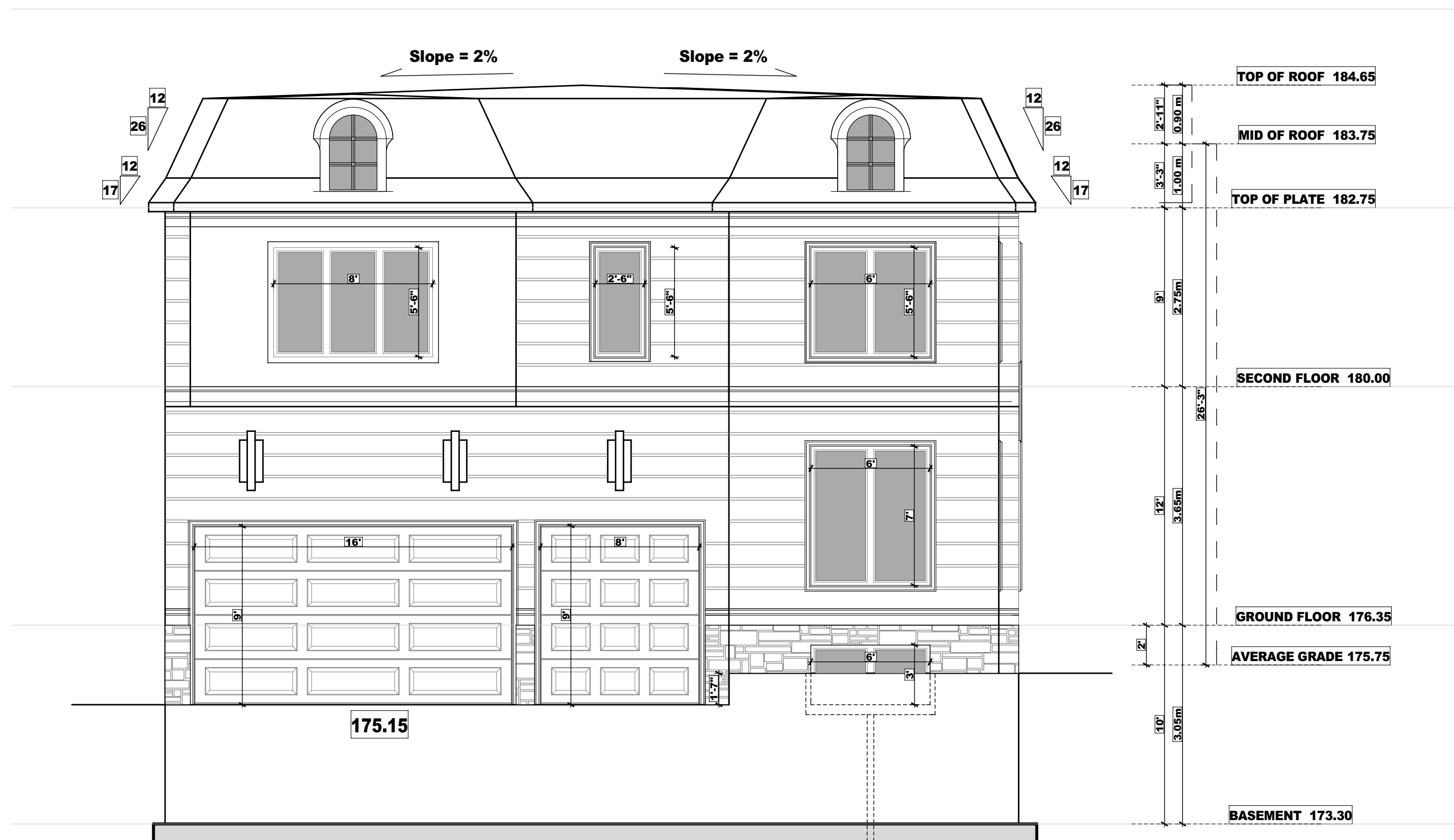
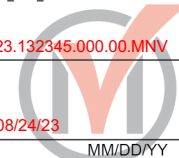




**Appendix B**

File: 23.132345.000.00.MNV

Date: 08/24/23



DATE:	ISSUED FOR:
AUG-2023	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY  
V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
AUGUST 11, 2023

DRAWING TITLE:	FRONT ELEVATION
PROJECT TITLE/ADDRESS:	38 FONTHILL BLVD MARKHAM, ON

A.05

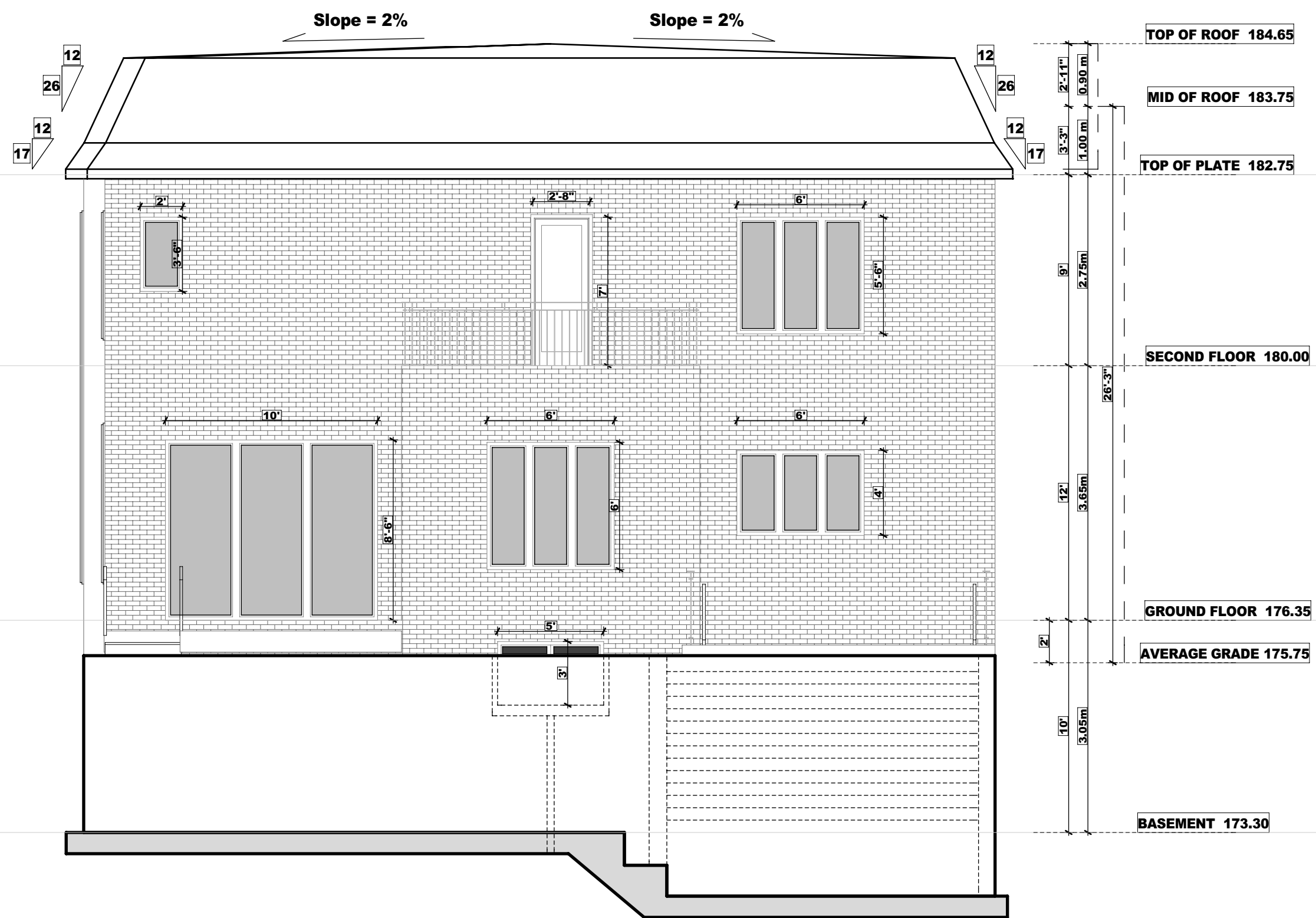


Appendix B

File: 23.132345.000.00.MNV

Date: 08/24/23

MMDDYY



DATE:	ISSUED FOR:
AUG-2023	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY  
V.E

SCALE:  
3/16" = 1'-0"  
LAST MODIFIED ON:  
AUGUST 11, 2023

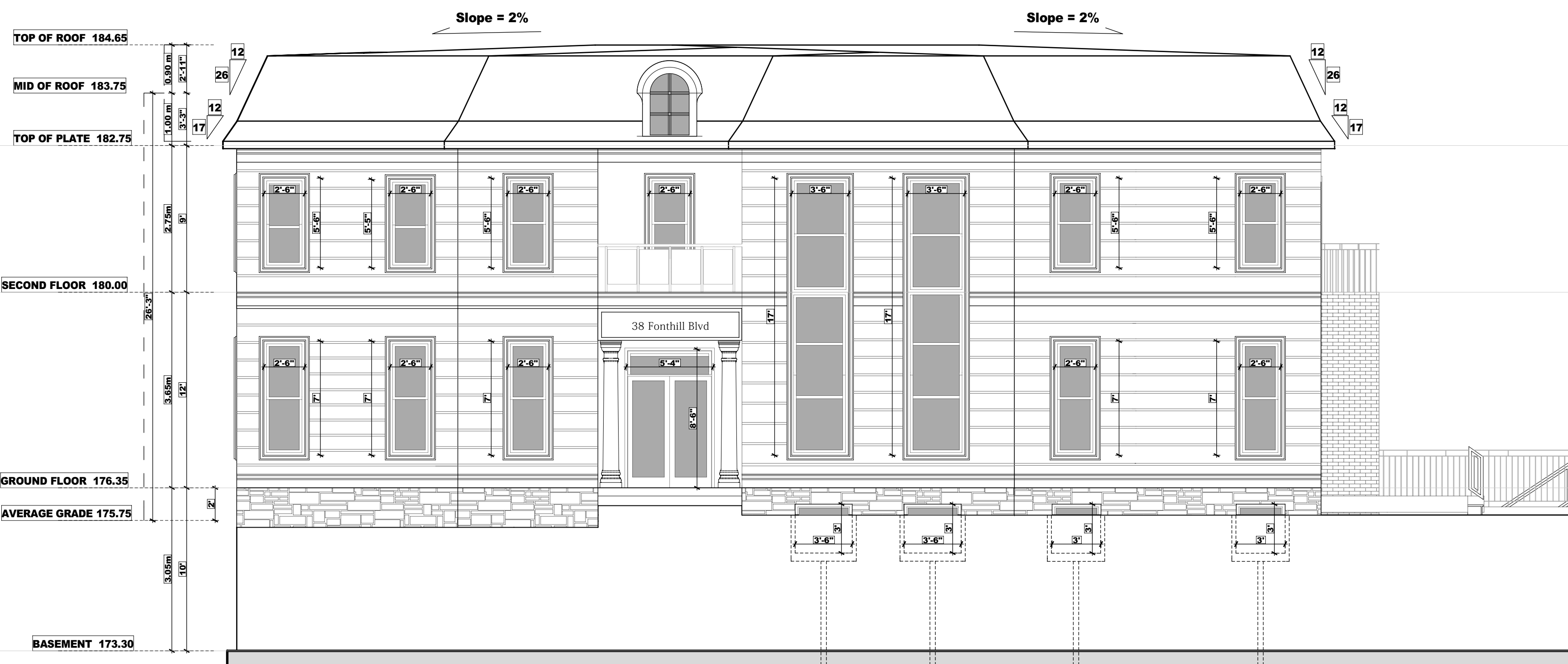
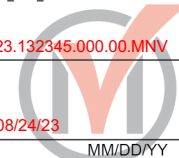
DRAWING TITLE:  
REAR ELEVATION  
PROJECT TITLE/ADDRESS:  
38 FONTHILL BLVD  
MARKHAM, ON

A.06

Appendix B

File: 23.132345.000.00.MNV

Date: 08/24/23



DATE:	ISSUED FOR:
AUG-2023	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY  
V.E

SCALE:  
3/16" = 1'-0"  
LAST MODIFIED ON:  
AUGUST 11, 2023

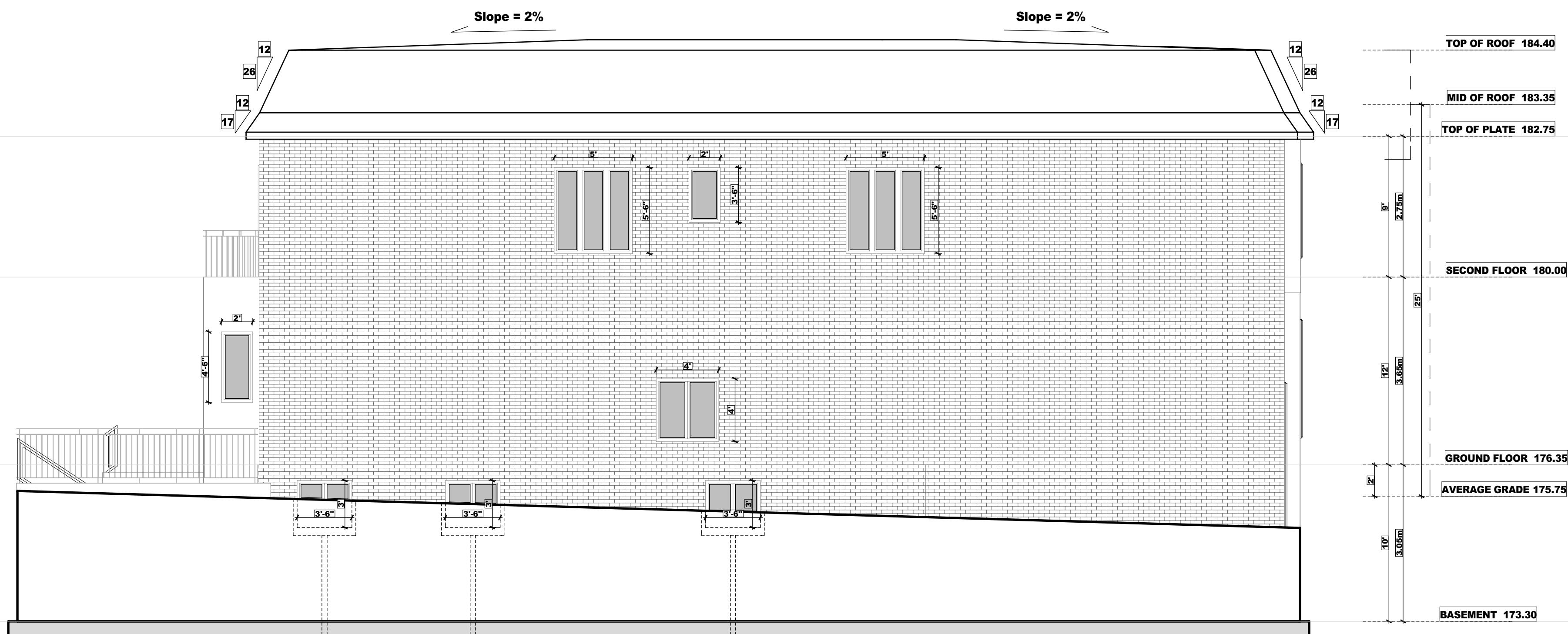
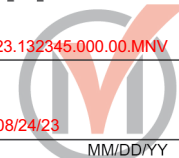
DRAWING TITLE:  
SIDE ELEVATION  
PROJECT TITLE/ADDRESS:  
38 FONTHILL BLVD  
MARKHAM, ON

A.07

**Appendix B**

File: 23.132345.000.00.MNV

Date: 08/24/23



DATE:	ISSUED FOR:
AUG-2023	FOR C OF A

FOR STRUCTURE ONLY



DRAWN BY  
V.E

SCALE:
3/16" = 1'-0"
LAST MODIFIED ON:
AUGUST 11, 2023

DRAWING TITLE:	SIDE ELEVATION
PROJECT TITLE/ADDRESS:	38 FONTHILL BLVD MARKHAM, ON

A.08

## **APPENDIX “C”**

### **CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/134/23**

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 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; and
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.

CONDITIONS PREPARED BY:



---

Elizabeth Martelluzzi, RPP MCIP, Senior Planner, Central District