

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 15, 2017

CASE NO(S): PL161191

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Qi Zhan
Appellant: City of Toronto
Subject: Minor Variance
Variance from By-law No.: 7625
Property Address/Description: 358 Willowdale Avenue
Municipality: City of Toronto
Municipal File No.: A-0603/16NY
OMB Case No.: PL161191
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OMB Case No.: PL161191
OMB File No.: PL170457

Heard: October 18, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Qi Zhan
City of Toronto

Counsel

C. Lantz
A. Suriano

**MEMORANDUM OF ORAL DECISION DELIVERED BY L. M. BRUCE ON
OCTOBER 18, 2017 AND ORDER OF THE BOARD**

[1] The matter before the Board was a consolidation of two applications by Qi Zhan (the “Applicant”) to legalize and maintain the existing integral below-grade garage of the recently constructed dwelling at 358 Willowdale Avenue (the “subject property”) in the City of Toronto (the “City”). The subject property is located on the west side of Willowdale Avenue, south of Finch Avenue between Norton Avenue and Parkview Avenue.

[2] The Board heard that the garage and driveway were legally constructed following the issuance of a building permit. Prior to the issuance of the permit the City had not noticed that the garage and driveway did not comply with the zoning requirements. An initial application was made for a variance to North York By-law No. 7615 s. 6A(7)(D) which requires that the elevation of the lowest point of an opening to an area that may be used for parking a vehicle located inside the dwelling shall be higher than the elevation of the street the lot abuts measured at the centerline directly across from the driveway leading to the parking space. In this instance the elevation of the garage entrance is lower than the elevation of the street the lot abuts.

[3] The Committee approved the application under By-law No. 7625 subject to the following conditions:

- a. Transportation Services requires the owner of 358 Willowdale Avenue to enter into an agreement to be registered on title with the City of Toronto indemnifying the City from all damages and claims associated with the reversed slope driveway within the right-of-way.
- b. The applicant must apply for an exemption for a reverse slope driveway for review and approval by Toronto Water. In addition, as per the City’s Municipal Code (Section 681-110) a connection to a City storm sewer from a reversed slope driveway would only be permitted where an at-grade discharge would create a hazardous condition or is not technically feasible.

Under such condition, an exemption application allowing a storm connection would need to be made to the General Manager, Toronto Water.

[4] Calvin Lantz explained that although Mr. Zhan was working with the relevant City departments to satisfy the Committee of Adjustment's (the "Committee") conditions, his client was concerned that the ability to fulfill the conditions might not proceed as quickly as necessary and therefore, out of an abundance of caution Mr. Zhan appealed the variance decision on the basis that the approval for the variance should be granted without conditions.

[5] Following the Committee's approval but in advance of the Board hearing, the Applicant and the City worked together to address stormwater concerns. It was noticed at this time that the subject application also required a variance under By-law No. 569-2013 to legalize and maintain the existing integral below-grade garage. The Applicant applied again for the original variance sought under By-law No. 7625 (described above) along with an additional variance under By-law No. 569-2013.

[6] Chapter 10.5.80.40.(2) of By-law No. 569-2013 requires that the elevation of the lowest point of a vehicle entrance in a main wall of the building shall be higher than the elevation of the centerline of the driveway at the point where it intersects a lot line abutting a street. In this instance the elevation of the garage entrance will be lower than the elevation of the centerline of the driveway at the point where it intersects the lot line abutting the street.

[7] The Committee refused this application.

[8] The Board qualified and heard expert opinion evidence from land use planner Kate Cooper who spoke in support of the applications.

EVIDENCE AND ANALYSIS

[9] When considering an application for a minor variance from any by-law, the Board must consider the four-part test set out in s. 45(1) of the *Planning Act*:

- a. Does the variance maintain the general intent and purpose of the official plan (the “OP”)?
- b. Does the variance maintain the general intent and purpose of the zoning by-law?
- c. Is the variance desirable for the appropriate development or use of the land?
- d. Is the variance minor?

[10] The Board also needs to consider if the requested variances are consistent with the Provincial Policy Statement, 2014 (“PPS”) and conforms to the Growth Plan for the Greater Golden Horseshoe, 2017 (“GP”). It was Ms. Cooper’s evidence that the application was consistent with the PPS and conforms to the GP.

[11] It was Ms. Cooper’s evidence that the application is consistent with the general intent and purpose of the OP. She stated that the proposal is consistent with built form policies of the OP, and is sensitive to the neighborhood context.

[12] The subject property is zoned R6 under By-law No. 7625 and RD of By-law No. 569-2013. She stated that the development is not unlike others in the area. Ms. Cooper notes that the intent of the zoning by-law is to address the potential for flooding.

[13] Husson Engineering and Management were engaged to develop a Site Drainage plan. A number of iterations led to a final submission to Toronto Water dated March 13, 2017. This is included in this decision as Attachment 1 (Exhibit 1, page 2). The Board

heard that the site drainage plan will protect the house against basement flooding for up to a 100-year storm. The plan was acceptable to Toronto Water.

[14] On questioning from the Board, Ms. Cooper acknowledged that the intent of the Zoning By-laws (ZBLs) is also to address safety concerns related to backing up reverse sloped driveways across sidewalks into traffic. It was Ms. Cooper's evidence that the design of the driveway creates a minor slope that does not impede visibility for the driver. It was Ms. Cooper's evidence that the application is consistent with the general intent and purpose of the ZBLs.

[15] Ms. Cooper stated that the assessment of whether or not a variance is minor is not just a numerical consideration but also relates to impact. She advised that the City had reviewed the Storm Drainage Report and in a March 16, 2017 letter the City advised that the Storm Drainage Report and Site Drainage Plan were acceptable in principal with respect to the stormwater management for constructing the reverse slope driveway (Exhibit 2, p. 124). It was her opinion that the requested variances were minor and that it was desirable to approve the variances which provide for parking for this recently constructed home.

[16] The City was in attendance at the hearing. Alexander Suriano submitted that the City could support the applications contingent on the following conditions:

- a. The Owner of 358 Willowdale Avenue shall construct and maintain the driveway in accordance with the revised Site Drainage Plan as prepared by Husson Engineering and Management dated March 13, 2017 (Exhibit 1).
- b. The Owner of 358 Willowdale Avenue shall enter into an indemnification agreement pursuant to s. 35(9.1) of the *Planning Act* to be executed and registered on title in favour of the City of Toronto indemnifying the City of Toronto from all damages and claims associated with the reverse sloped driveway within the right-of-way to the satisfaction of the City Solicitor and Transportation Services.

[17] Having heard the evidence of Ms. Cooper, the Board concludes that the four tests under s. 45(1) of the *Planning Act* are satisfied and that the remedy of this error with the associated conditions represents good planning. The Board wishes to be clear that reverse slope driveways in general do not represent good planning. This approval reflects the site-specific conditions and drainage plan that was developed to address a 100-year storm. Further the Board heard uncontroverted evidence that the slope of the driveway will not impact the view of a driver leaving the driveway. The extensive process involved in arriving at the final plan in part reflects the City's concern with reverse sloped driveways. This decision should not be interpreted to be general support or a precedent for the approval of reverse sloped driveways.

ORDER

[18] The Board orders that the appeals are allowed and:

- a. The variance to By-law No. 7625, s. 6A(7)(D) is authorized subject to the conditions listed in paragraph [16] of this decision; and,
- b. The variance to By-law No. 569-2013 Chapter 10.5.80.40(2) is authorized subject to the conditions listed in paragraph [16] of this decision, contingent upon this By-law coming into force and effect.

"L.M. Bruce"

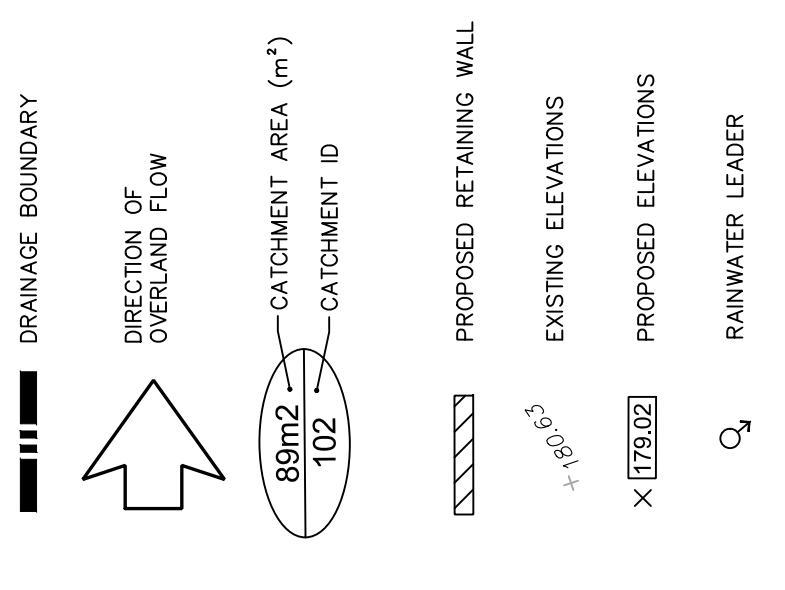
L. M. BRUCE
MEMBER

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

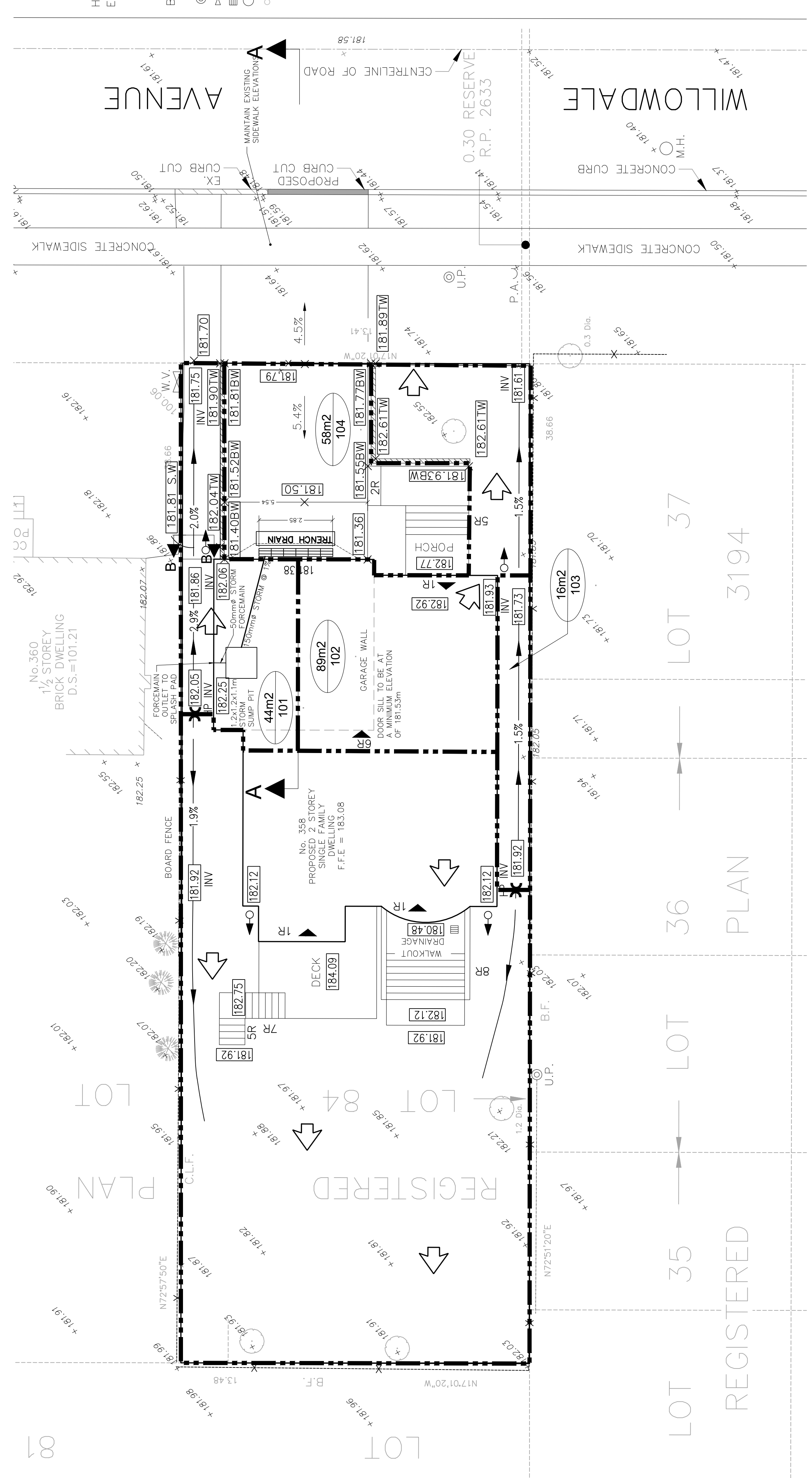
LEGEND



- STORM DRAINAGE NOTES:**
- 1) THE PUMP SHOULD HAVE A PEAK FLOW RATE OF 250GPM (1.98L/S)
 - 2) THE SUMP PUMP SHALL BE SET TO START AT AN ELEVATION OF 180.86m AND TURN OFF AT AN ELEVATION OF 180.25m
 - 3) THE SUMP PUMP SHALL BE EQUIPPED WITH A MANUAL SWITCH TO DRAIN THE BOTTOM OF THE SUMP PIT FOR MAINTENANCE PURPOSES.
 - 4) THE SUMP PUMP SHALL BE EQUIPPED WITH A RESETTING THERMAL OVERLOAD PROTECTION SWITCH.
 - 5) A SECOND BACKUP PUMP WILL BE INSTALLED TO DRAIN TO SUMP PIT (WHERE POSSIBLE). EMERGENCY BACKUP POWER WILL BE PROVIDED FOR BOTH PUMPS.
 - 6) PROPER WATERPROOFING CONSIDERATION SHOULD BE PROVIDED FOR THE TRENCH DRAIN/SUMP SYSTEMS SO THAT THE FOUNDATION SHALL NOT BE AFFECTED BY WATER. ALL AFFECTED WATERPROOFING PROTECTION IS TO BE PROVIDED AT THE CONNECTIONS IN THE SYSTEMS TO HELP PREVENT ANY LEAKAGE. THIS SHOULD INCLUDE:
 - CONTINUOUS LENGTHS OF PIPE FROM THE TRENCH DRAIN TO SUMP PIT (WHERE POSSIBLE)
 - WATERTIGHT CONNECTIONS WITH GASKETED SEALS USED FOR SUMP PIT AND TRENCH
 - THE GARAGE FLOOR AND WALLS, UP TO AN ELEVATION OF 181.53m, SHALL BE WATERPROOFED AND SEALED WITH A WATERPROOF SEALER
 - 7) REFER TO STORM DRAINAGE REPORT PREPARED BY HUSSON DATED MARCH 2017 FOR DETAILS

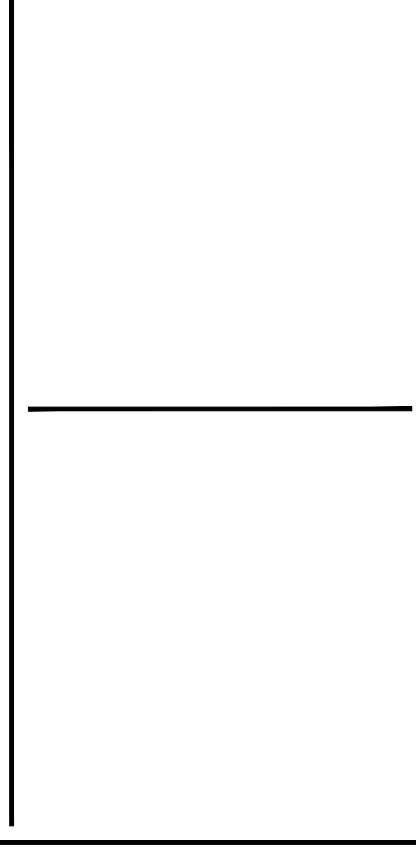
- GRADING NOTES:**
- 1) EXISTING AND PROPOSED ELEVATIONS ARE TAKEN FROM THE APPROVED GRADING AND DRAINAGE REPORT PREPARED BY HUSSON SURVEYOR LIMITED, FEBRUARY 2, 2017.

ATTACHMENT 1



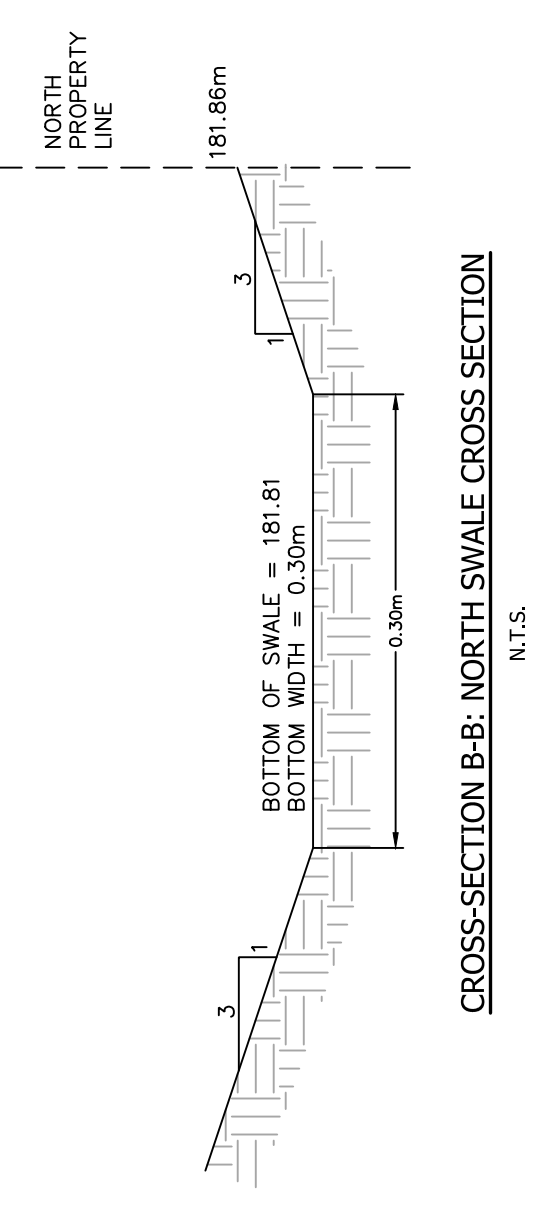
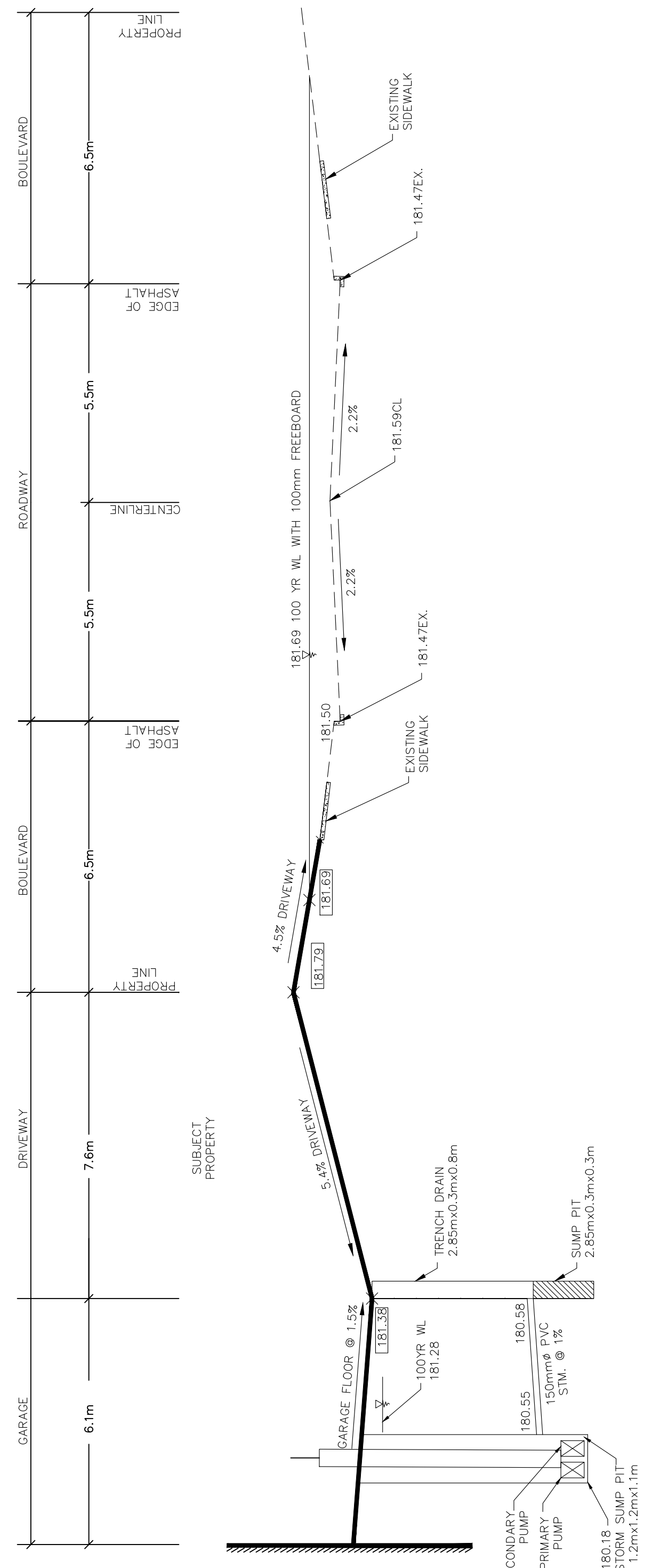
BENCHMARK NOTE:
 1. BOUNDARY INFORMATION WAS TAKEN FROM REGISTERED PLAN 2633.
 2. ELEVATIONS ARE GEODETIC AND RELATED TO THE CITY OF TORONTO BENCHMARK 660016, ELEVATION 175.926m.

NO.	REVISION	DATE
7		
6		
5	FOURTH SUBMISSION	17/01/13
4	THIRD SUBMISSION	17/09/09
3	SECOND SUBMISSION	17/02/07
2	FIRST SUBMISSION	16/11/08
1		



HUSSON
 ENGINEERING + MANAGEMENT
 P 905-709-6690
 1728 16TH AVENUE, SUITE 109
 RICHMOND HILL, ON L4B 4C8
 HUSSON.CA

DRAWING S11
 358 WILLOWDALE AVENUE
 SITE DRAINAGE PLAN
 DATE: MARCH 2017 SCALE: 1:100 PROJECT: 16588
 DESIGNED BY: M.P. CHECKED BY: G.R.



CROSS-SECTION A-A: DRIVEWAY DESIGN PROFILE VIEW SCALE 1:100 HOR. 1:10 VERT.

APPENDIX 1