

May 4, 2020

**BY COURIER**

Tracey Steele  
Director of Community Standards  
Town of Richmond Hill  
Community Standards Division  
225 East Beaver Creek Road  
3<sup>rd</sup> Floor  
Richmond Hill, ON  
L4B 3P4

Dear Ms. Steele:

Re: **19 Ava Crescent**  
**Application for Exemption From Town of Richmond Hill Property**  
**Maintenance By-law, Chapter 973**

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Aird & Berlis LLP has been retained by Mandle Cheung, the owner and occupier of the residence at the property municipally known as 19 Ava Crescent in the Town of Richmond Hill (“**Residence**”). Please accept this letter as part of Mr. Cheung’s formal application for an exemption from the Town of Richmond Hill Property Maintenance By-law, Chapter 973: Fence-Height-Description (“**By-law**”).

**Background**

Mr. Cheung is the owner and occupier of the Residence, where he lives with his family. Immediately next door to the Residence is an unoccupied residential dwelling, municipally-known as 17 Ava Crescent (“**Vacant House**”). Mr. Cheung has observed that the Vacant House has been unoccupied for several years. However, between October and November, 2019, Mr. Cheung and his family began to observe an intermittent presence at the Vacant House, which he perceives to be a threat to his family’s privacy, well-being and safety.

In particular, Mr. Cheung has observed the following:

- The Vacant House has been entirely dark with the exception of several bright lights, one of which is directed towards Mr. Cheung’s Residence. Two photos showing the relationship between the Residence and the Vacant House are attached as **Appendix 1**;
- Despite the appearance of construction/renovation on the Vacant House, there has been minimal progress. Two photos showing the construction on the Vacant House are attached as **Appendix 2**;
- A window on the Vacant House, which overlooks Mr. Cheung’s Residence, is covered by a makeshift blind which he believes is being used to permit covert spying on the Residence. A photo showing this particular window is attached as **Appendix 3**;

- The presence of a white car that has been seen idling in the driveway of the Vacant House. The driver of the white car has been seen observing Mr. Cheung.

All of which leads Mr. Cheung to believe that the Vacant House is not being put to a standard use. Instead, all of Mr. Cheung's observations have led him to believe that the intermittent occupants of the Vacant House pose a threat to Mr. Cheung's safety and privacy.

In response to the perceived threat to his family's peaceful and quiet enjoyment of their home, in November 2019 Mr. Cheung erected a privacy screen (described below and shown on the image attached as **Appendix 4**) to prevent any occupants of the Vacant House from visually intruding into his home. In particular, Mr. Cheung is concerned that a window at the Vacant House, which directly overlooks Mr. Cheung's bathroom, is being used by occupants of the Vacant House to intrude upon his privacy. The privacy screen was erected to protect his family from visual invasion into their private home.

In November, 2019, Mr. Cheung was contacted by the Town of Richmond Hill ("**Town**") with a demand that Mr. Cheung remove the privacy screen. Mr. Cheung requests that Council for the Town ("**Council**") grant relief from the By-law to permit Mr. Cheung to maintain the privacy screen in its current location.

## **The Privacy Screen**

### ***Location***

The privacy screen is located near the north property line of the Residence, between the Residence and the Vacant House. Attached as **Appendix 5** to this letter are three satellite images which show, as marked in colour, the location of the privacy screen.

The privacy screen is set back approximately twenty (20) inches from the fence which separates the Residence and the Vacant House, and is approximately thirty (30) feet from the street line.

### ***Description***

The privacy screen is approximately six (6) metres in height, and 1.7 metre in width. Two photos of the privacy screen are attached as **Appendix 6** to this letter. The privacy screen is largely made of steel lattice covered in vines.

### ***Construction Methods***

The base of the privacy screen is comprised of a block of concrete that is 3.5 meters thick, with two layers of 16 millimetre rebar running lengthwise and widthwise to form a "rebar mesh" within the concrete base. A diagram of the concrete base is attached as **Appendix 7** to this letter.

The 6-metre tall metal posts which support the privacy screen are attached to the concrete base by threaded steel rods. A diagram showing the relationship of the concrete base to the metal posts is attached as **Appendix 8** to this letter. Drawings and a technical description of the metal posts are attached as **Appendix 9**.

Once the metal posts were installed in the concrete base, an additional one foot of reinforced concrete was placed on the base to support the weight of the privacy screen. Mr. Cheung was advised by his contractor that this method of construction and installation exceeds what would be standard to support a privacy screen of this height and size.

## **The Law**

The privacy screen as described above falls into the definition of “privacy screen” in the By-law.

Section 973.2.35 of the By-law defines a privacy screen as “a visual barrier used to shield any part of a yard from view from any adjacent lot or highway”. Section 973.2.15 defines a fence as “a structure constructed of posts, boards, palings, rails, wire, masonry or similar materials or any combination thereof used to define a property boundary or to enclose any outdoor area”.

The privacy screen erected at the Residence is not used to define a property boundary as it is set back from the north property line separating the Residence from the Vacant House. The privacy screen does not enclose any outdoor area, but instead is used to shield part of the Residence from view from the adjacent lot.

As a privacy screen under the By-law, sections 973.6.1 and 973.6.2 of the By-law apply. Those sections provide as follows:

### **973.6.1 Prohibited - on any land - subject to exceptions**

No person shall erect or cause to be erected, or maintain a privacy screen on any land. By-law 140-90, 10 September, 1990.

### **973.6.2 Exception - residential property – requirements**

Notwithstanding the provisions of Section 973.6.1, a privacy screen on residential property may be erected in any side yard or rear yard provided said privacy screen:

- (a) is not located in a front yard and is erected more than 4.6 metres (15.1 feet) from any street line;
- (b) is erected more than 1.2 metres (3.9 feet) from any side lot line;
- (c) is erected more than 1.2 metres (3.9 feet) from the rear lot line;
- (d) is not more than 12.2 metres (40.0 feet) in total length, and no single individual length is longer than 9.2 metres (30.2 feet); and
- (e) said privacy screen is not more than 2.4 metres (8 feet) above grade. Notwithstanding the foregoing, the maximum height of a privacy screen may be 1.9 metres (6 feet) from the floor of the deck where the deck is more than 0.6 metres (2 feet) above grade. By-law 140-90, 10 September, 1990; By-law 109-08, 14 July, 2008.

The privacy screen erected by Mr. Cheung on the Residence does not strictly comply with the By-law. The Town has previously granted exemptions from the By-law to permit otherwise non-conforming privacy screens. For example, sections 973.9.16 and 973.9.17 describe two such exemptions which have been granted in the past:

973.9.16 Exemption - 28 Ellsworth Ave, Plan 65R-20137, Lot 103

973.9.17 Exemption - 550 Stouffville Rd, Plan 65R-22236, Lot 61

In these situations, the Town has granted site specific exemptions to the By-law. It would be similarly appropriate to grant an exemption to Mr. Cheung, who has constructed a privacy screen, completely on his own property, in order to protect his interest in privacy and personal safety. The exemption would be necessary and justified in these circumstances.

Subsection 8(1) of the *Municipal Act, 2001* provides as follows:

**8** (1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.<sup>1</sup>

In this case, Mr. Cheung is requesting that Council exercise its broad discretionary powers to respond to the municipal issue that is raised by Mr. Cheung's concern for his family's privacy and safety.

The common law recognizes that an individual's privacy interest in their own home is sacred, and has firmly enunciated the principle that "a man's home is his castle".<sup>2</sup> Furthermore, the Ontario Court of Appeal has recognized that intrusion upon seclusion or solitude of a person's private affairs can bring about a private law cause of action.<sup>3</sup>

The common law acknowledges the importance of personal privacy, particularly in relation to a person's home. Mr. Cheung is requesting that Council permit him to maintain his privacy screen, in order to protect his legal right to privacy.

### **Relief requested**

Mr. Cheung requests that Council grant relief from the By-law to permit the existing privacy screen. Mr. Cheung requests that Council direct staff to prepare an amendment to the By-law to permit the existing privacy screen, or in the alternative, enact the following amendment to the By-law.

**XXXXX** Exemption – 19 Ava Crescent, PCL: 224-1, SEC 65M2586; LT 224, PL 65M2586, S/T LT680961:

Notwithstanding anything in this Chapter to the contrary, the provisions respecting the permissible height and setbacks of a privacy screen shall not apply to the property municipally known in the year 2020 as 19 Ava Crescent, PCL: 224-1, SEC 65M2586; LT 224, PL 65M2586, S/T LT680961, provided:

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<sup>1</sup> *Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>2</sup> *R. v. Silveira*, [1995] 2 S.C.R. 297, at para 43

<sup>3</sup> *Jones v. Tsige*, 2012 ONCA 32, at para 18.

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- (a) the height of the privacy screen in the front yard does not exceed 6.1 metres.
- (b) no privacy screen be increased or built exceeding 6.1 metres without first applying for an amendment.
- (c) the present privacy screen be maintained as set out in this Chapter.

If you have any questions about this application or require any additional information, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Matthew Helfand  
MLH/JM:tp

Encls.

38925999.5

# APPENDIX 1







# APPENDIX 2







# APPENDIX 3







39266491.1

# APPENDIX 4

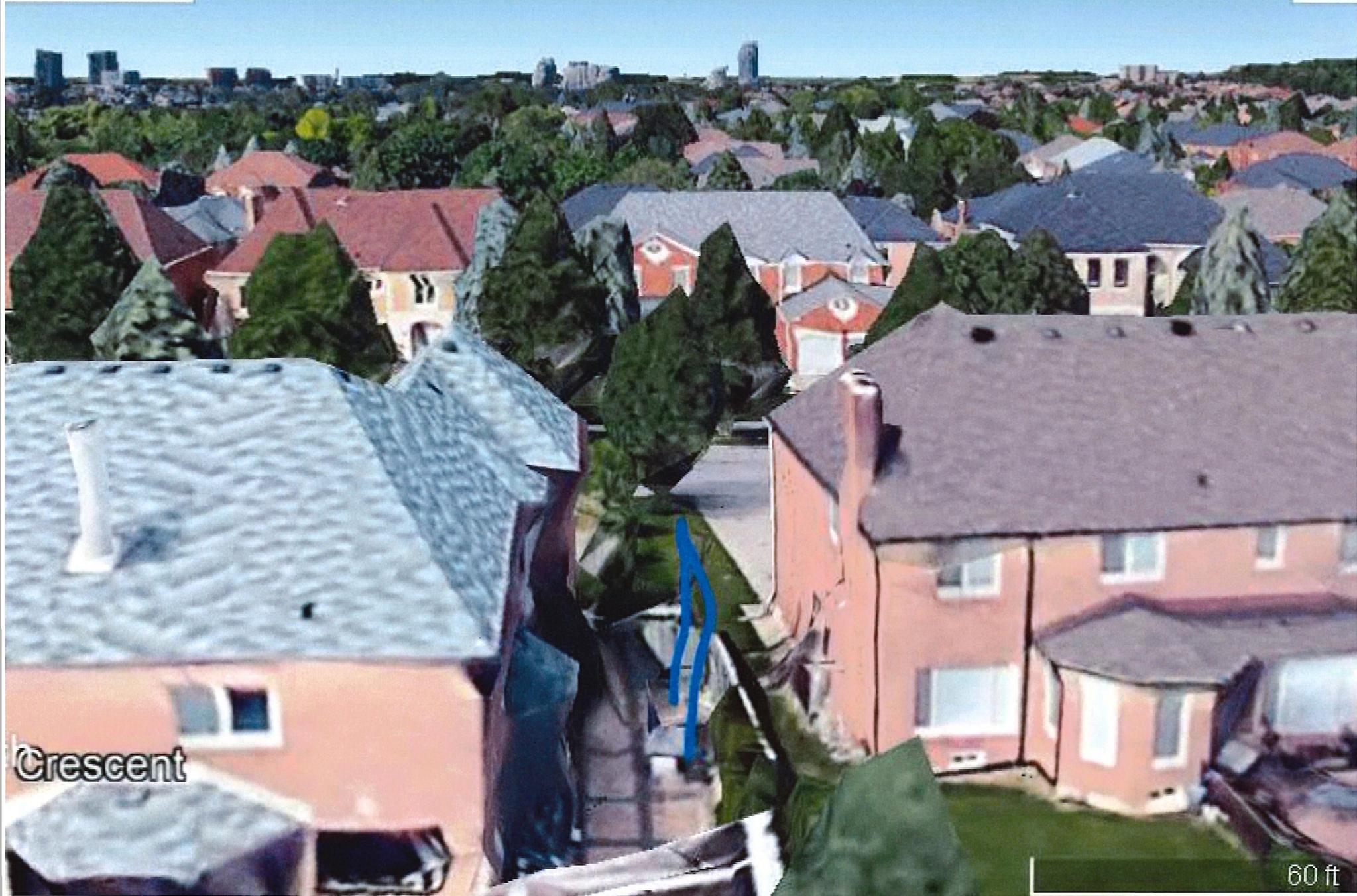


# APPENDIX 5

ap

for your map.

Leg



Crescent

60 ft



ap

for your map.

Leg



19 Ava Crescent

40 ft



ap

for your map.

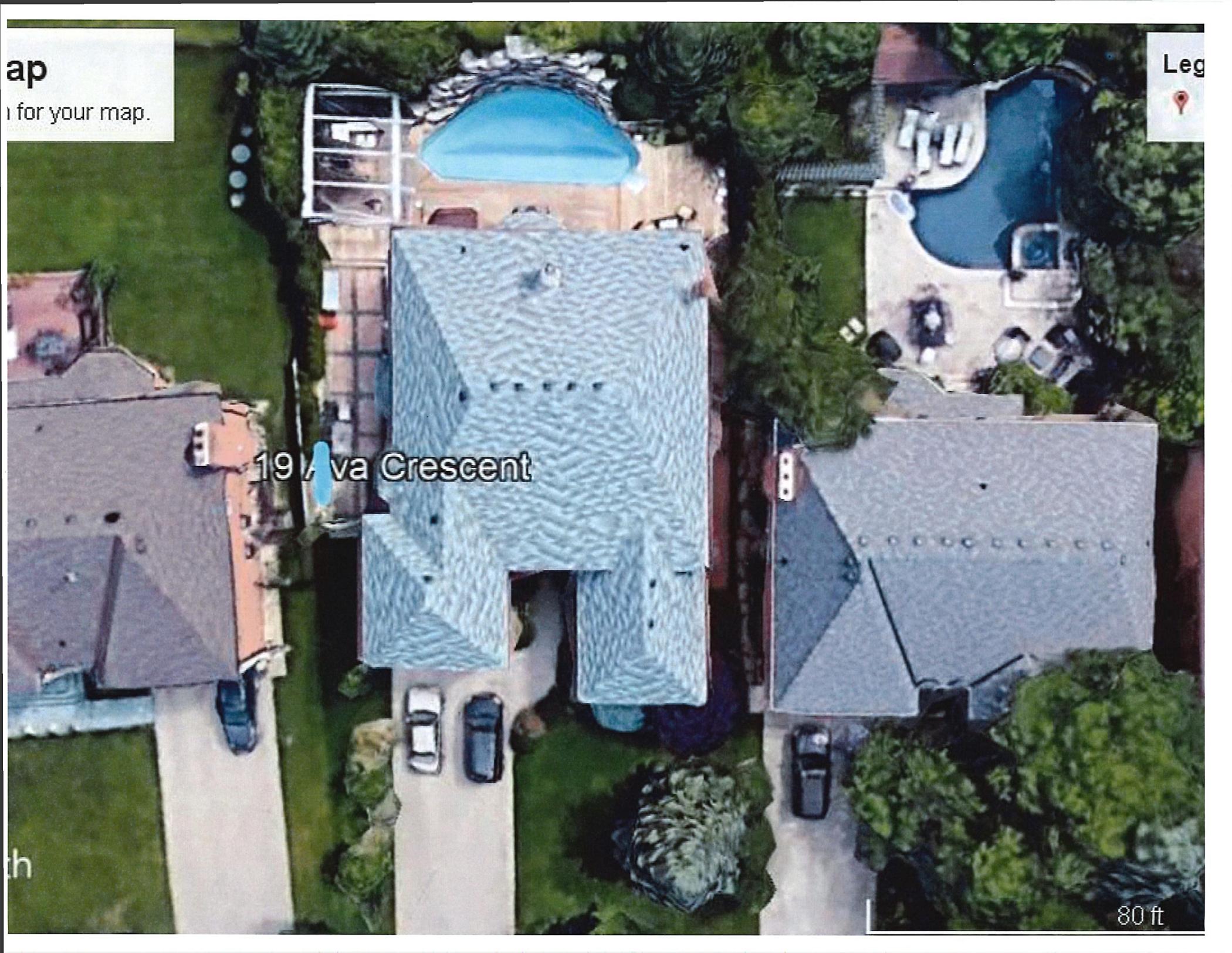
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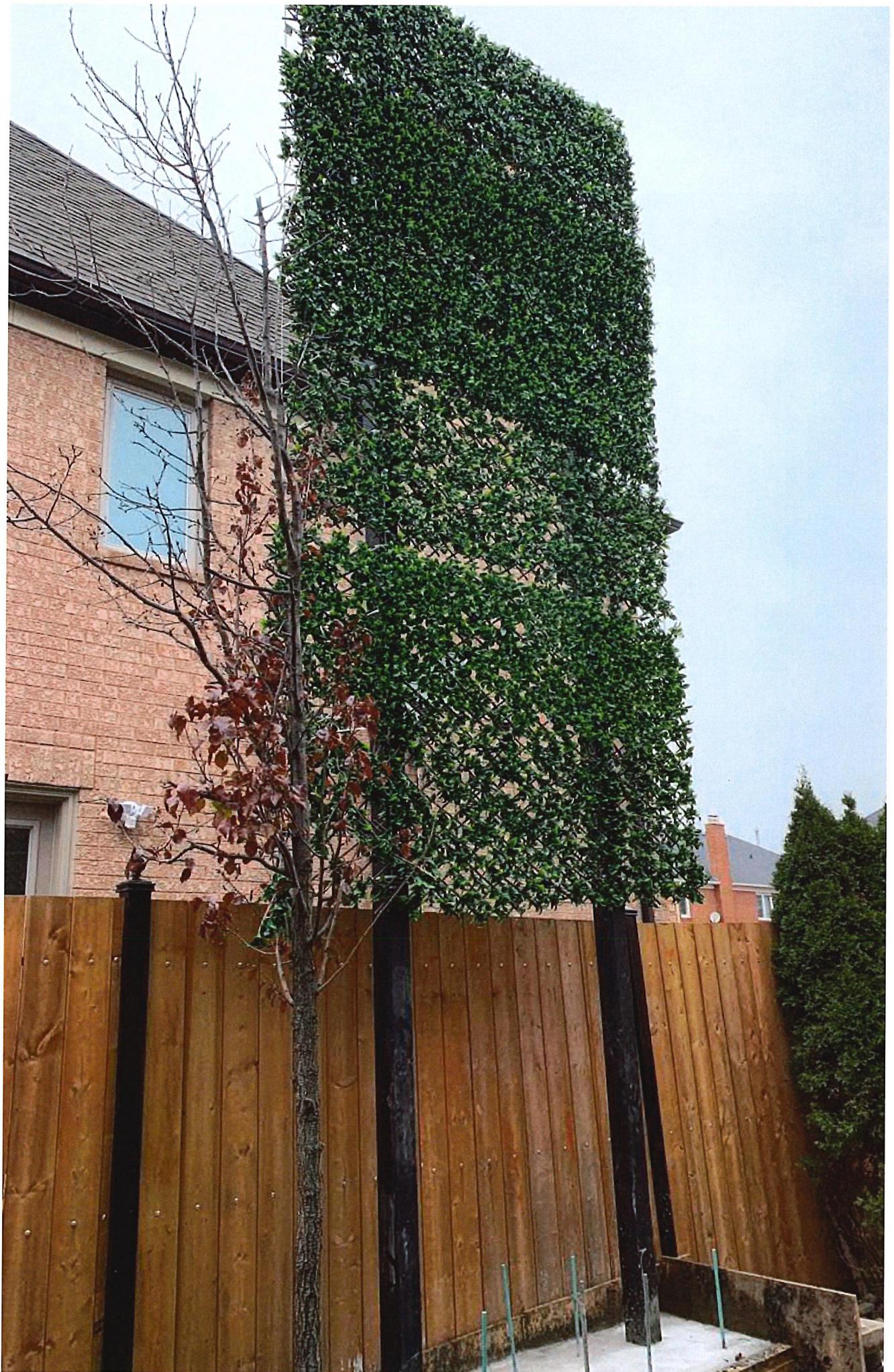
19 Ava Crescent

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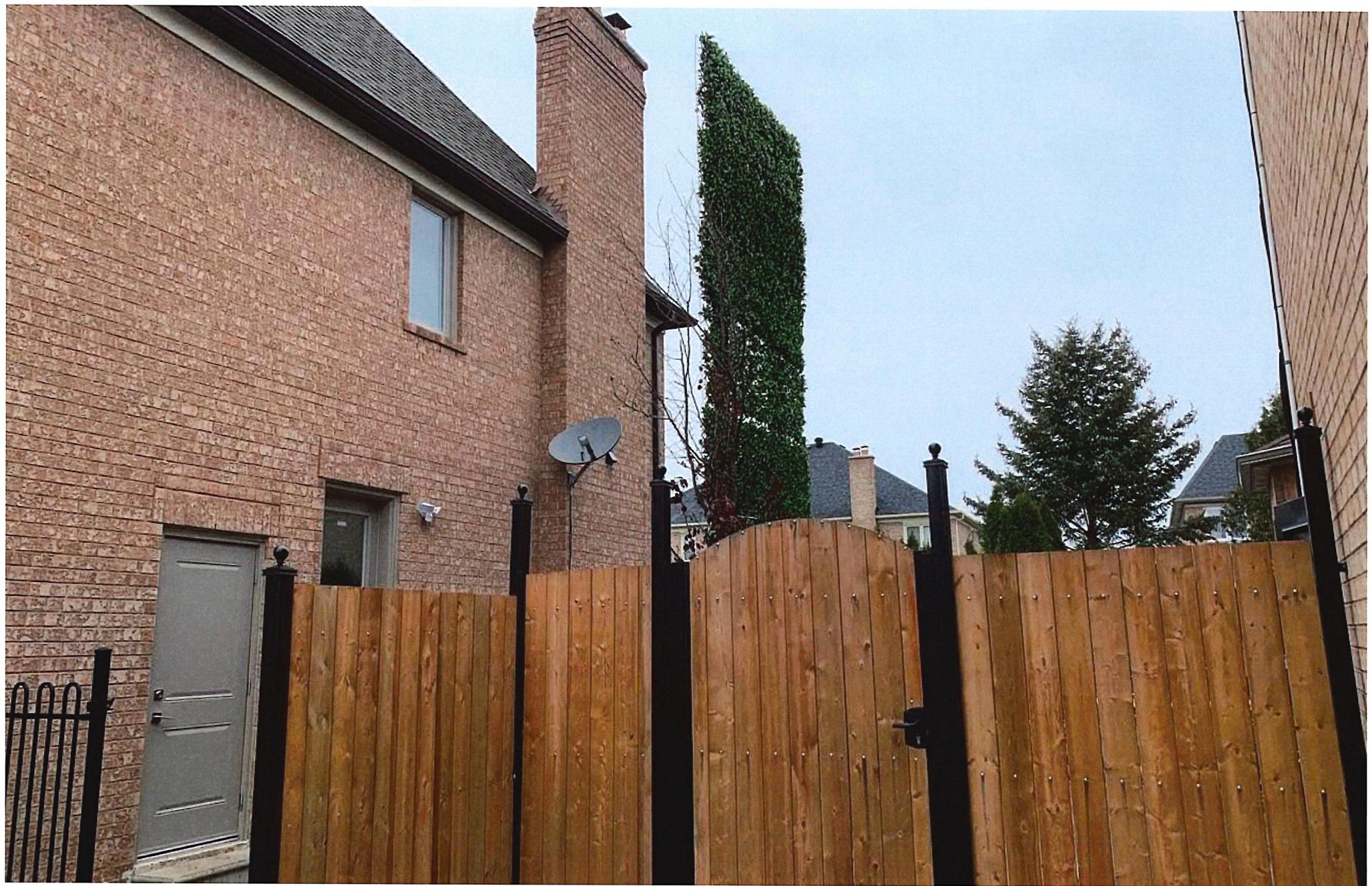
80 ft



# APPENDIX 6







# APPENDIX 7

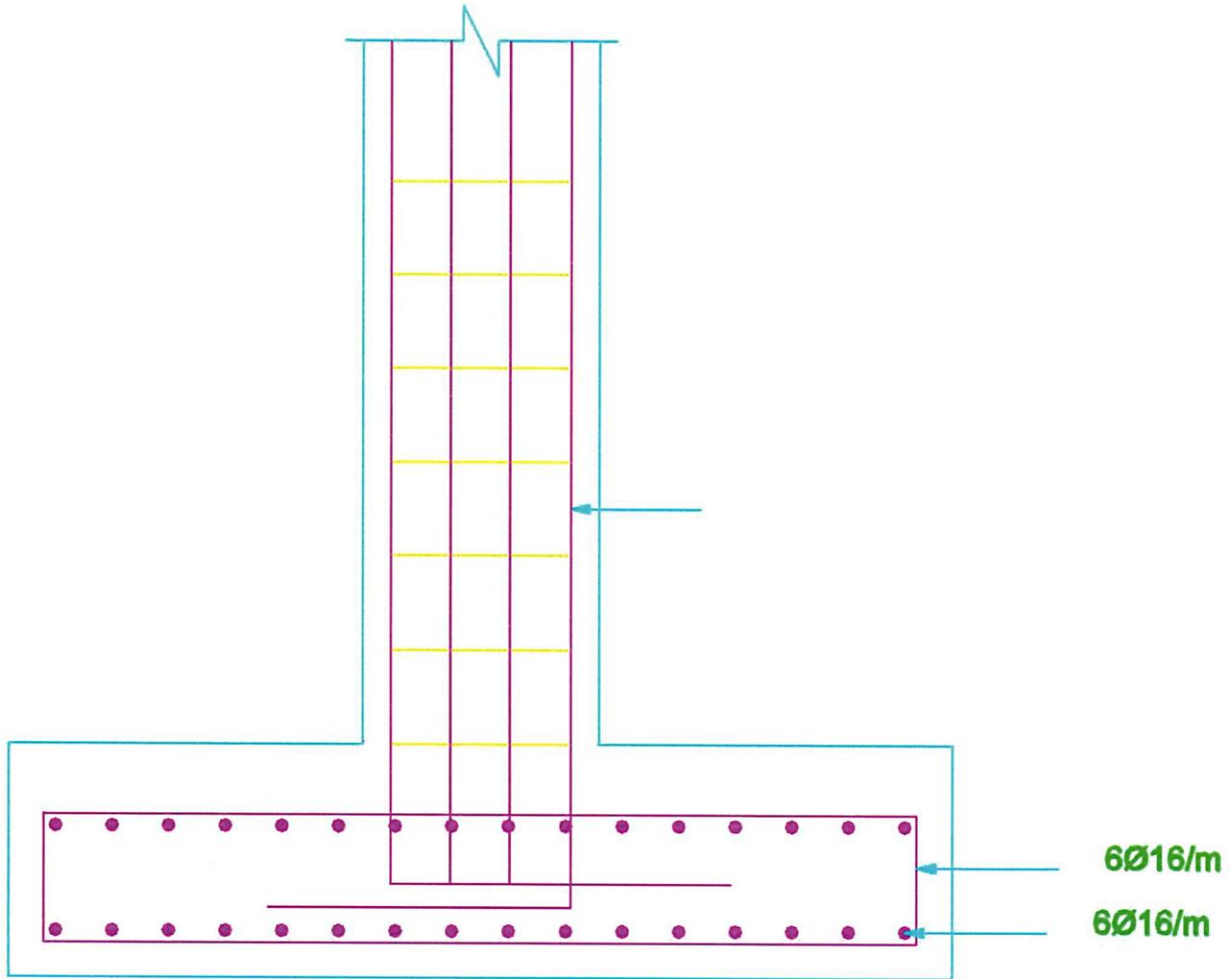
## Reinforced concrete

60 cm



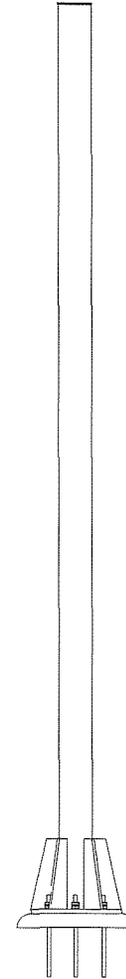
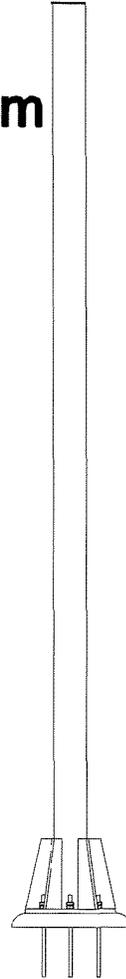
1 - 60 cm reinforced concrete base , 16 mm diameter rebar in both way , every 15 cm

# APPENDIX 8



# APPENDIX 9

**10\*10 cm**



**note : 1 - 10\*10 cm , 5 mm thick**

**2 - 6 m height hollow metal**

**3 - 20 cm \* 20 cm , 10 cm thick plate**

**4 - four threaded rods , 32 mm diameter**