

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Wednesday, March 07, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45 (2) (a) (i) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): PETER YU

Applicant: ZORAN TIRNANIC

Property Address/Description: 10 METHUEN AVE

Committee of Adjustment Case File Number: 17 101274 WET 13 MV (A0004/17EYK)

TLAB Case File Number: 17 209913 S45 13 TLAB

Hearing date: Wednesday, December 20, 2017

DECISION DELIVERED BY S. RUDDOCK

APPERANCES

Parties

Legal Representative

Cynthia Wilchynski & Peter Yu

Amber Stewart

Anna Bihun

Wojciech Ziolkowski

Participants

Martha Ziolkowski

INTRODUCTION & BACKGROUND

The Applicant made an application to the Committee of Adjustment ('COA') for permission under under s.45(2)(a)(i) of the Planning Act in order to construct a threestorey rear addition and a rear yard deck on the property municipally known as 10 Methuen Avenue (the 'Property'). The site currently has an existing single family semidetached dwelling that is a legal non-conforming use. Semi-detached dwellings are not permitted within the applicable zoning bylaws. The proposed three-storey rear addition and proposed rear yard deck represents an enlargement or extension of a legal nonconforming use/building.

The Property is located in the Baby Point neighbourhood of Toronto. The neighbourhood consists primarily of two storey, detached houses with the exception of the frontage along Jane Street which has a mixture of commercial and multi-unit residential buildings. The property is located on the north side of Methuen Avenue, to the west of Jane Street, south of Annette Street. The site consists of a two-storey, semi-detached dwelling with a parking pad in the front yard, and a rear yard deck.

The Application requested relief from City of Toronto Zoning By-law No. 569-2013 and Zoning By-law No. 1-83 as applicable, as follows:

REQUESTED RELIEF FROM THE ZONING BY-LAW:

Section 2.1.1.(2), By-law 569-2013 and Section 3.6.1(1)(c), By-law 1-83

No person may use, erect or alter a building or structure that does not comply with this By-law.

The existing dwelling is a legal non-conforming use.

REQUESTED PERMISSION UNDER SUBSECTION 45(2)(a)(i) OF THE PLANNING ACT:

The use on the site consists of an existing single family semi-detached dwelling that is currently a legal non-conforming use. The proposed three-storey rear addition and proposed rear yard deck represents an enlargement or extension of a legal non-conforming use/building. Any alterations or additions and/or changes in use of a legal non-conforming building or structure, requires, in the first instance, the permission of the Committee of Adjustment.

The COA denied the requested relief on July 21, 2017 and the Appellant filed an appeal to the Toronto Local Appeal Body (the 'TLAB'). At the appeal to the TLAB the Applicant revised the project by reducing the height, by about 14 inches as reflected in the revised plans. The Applicant also particularized the materials to be used which is not usually part of the consideration; however, they indicated they were prepared to have them made part of the condition. The Applicant indicated that these changes were made in an effort to listen to and address concerns of the next door neighbours.

To the extent that the relief requested differs from that before the COA, the TLAB accepts that the Applicant's proposed revisions are a reduction of the original

application and are minor in nature. As such, the TLAB finds that no further notice is required pursuant to s.45 (18.1.1) of the Act, and the revisions can be considered.

JURISDICTION AND MATTERS IN ISSUE

On an appeal, the TLAB must have regard to matters of provincial interest as set out in s. 2 of the Act and the relief must be consistent with provincial policy statements and conform to provincial plans, as set out in s. 3 of the Act. A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to any provincial plan such as the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') for the subject area. Under s. 2.1 of the Planning Act, the TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

Where there is an existing legal non-conforming use, the TLAB must be satisfied that the relief sought meets the considerations incorporated in subsection 45(2) of the Act, which states as follows (paraphrased):

Section 45(2)

Upon Appeal, the TLAB, upon any such application where any land, building or structure, on the day the pertinent by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit:

Legal Non-Conforming Use And Other Relief Applications- S. 45(2)(a)

i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or

(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee; or

Uses Defined Generally by the By-Law – S. 45(2)(b)

Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the Panel, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).

EVIDENCE

The Applicant:

At the commencement of the hearing counsel for the Applicant indicated that there was a separate application process for any permits required where there is a potential injury to trees, which was not part of the TLAB Application. She stated that the Applicant nevertheless had an arborist prepare a report to address the concern of the parties, and they proposed to call the arborist first and limit his evidence.

The Applicant retained Mark Ellis to provide professional arborist evidence. Mr. Ellis was qualified to give expert evidence based on his experience and training. An Arborist report and Tree Protection Plan was prepared by Mr. Ellis in support of the application, which he indicated would be sent to the Urban Forestry department. Mr. Ellis' report identified the tree protection zone and ways to protect it, including horizontal and vertical hoarding. He stated that there would be no below ground excavation in the protection zone.

It was Mr. Ellis's opinion that with the horizontal and vertical hoarding in, and above ground excavation (the prohibition of above grade construction?) in the protected zone, there would be no injury to any trees. He stated that he was satisfied that if the tree protection plan was followed all trees would be protected. Mr. Ellis reviewed the arborist letter from Mr. Zolstock which had been prepared for the parties. Mr. Ellis indicated that there was nothing inconsistent in Mr. Zolstock's letter from his report, except that a black oak tree was mistakenly referred to as a black locus tree in Mr. Zolstock's report.

The Applicant also retained a planner, David McKay, to provide professional land use planning evidence in support of the TLAB appeal. Mr. McKay was qualified to give expert evidence based on his experience and training. In preparation for the hearing, he had visited the site, reviewed the COA file and relevant land use planning legislation and regulations. Mr. McKay prepared disclosures documents relevant to his analysis and opinion, including visual exhibit documents depicting the subject lands and the surrounding neighbourhood.

I am content that the pre-requisites for consideration under the legal nonconforming use provisions of the Planning Act are met by the appeal.

Mr. McKay stated that the neighbourhood is a typical Toronto stable residential area; however, it is not static in that it is experiencing new construction and investment either through complete new builds or renovations. He noted that to this extent, there have been 52 variances sought in his study area since 2007 – all of which were approved by the Committee or the Ontario Municipal Board. Mr. McKay opined, that based on his observations, Methuen Avenue in particular has experienced an increase in 3 storey replacement dwellings or additions. He stated that newer replacement dwellings are also typically larger and taller than older dwellings, and required greater variance relief to permit these dwellings than what is being requested.

Mr. McKay stated that based on the City of Toronto Open Data, the neighbourhood consists of large deep lots, with narrow but adequate side yard setbacks, with enough room for pedestrian access to the rear of the properties, and in some instances for a shared access route to rear detached garages. He indicated that FSI variances have been commonly granted in the area for additions and new builds given the sufficient lot areas and depths.

The property consists of a two-storey, semi-detached dwelling with a parking pad in the front yard, and rear yard deck. The site has a lot area of 395.34 sq m (4,255.40 sq ft), a lot frontage of 8.3 m (27.2 ft) and a lot depth of 55.3 m (181.4 ft). Mr. McKay explained that the site is irregular; it includes a narrow branch that extends westerly from the mid-point of the lot, across the rear yard of 12 Methuen Avenue, and then southerly along the west side of 12 Methuen Avenue to the street, with approximately 1.0 m along Methuen Avenue. He stated that this westerly branch is subject to a rightof-way in favour of a similarly configured parcel to the west of that branch. The property also enjoys a right-of-way over the further parcel to the west.

The proposal is for a three storey addition at the rear of the building with a rear-yard deck. Mr. McKay stated that as the existing dwelling is a semi-detached and is not permitted within both Zoning By-laws, the current proposal seeks to expand upon a legal non-conforming use. He stated that, effectively the density for the existing dwelling would increase to 0.52 (under By-law 1-88) and 0.54 (under By-law 569-2013) as originally identified by the Zoning Examiner.

For statistical comparison purposes of the immediate area, Mr. McKay chose lots bounded by the south side of Raymond Avenue to the north; the west side of Jane Street to the east, excluding mixed use areas; the south side of Methuen Avenue to the south; and the midpoint of Methuen Avenue and Raymond Avenue to the west, based on lot pattern. Mr. McKay indicated that there were 70 lots within this immediate area, ranging in lot size from 98 sq. m. (46 Methuen Avenue) to 467 sq. m. (308 Jane Street). Mr. McKay stated that on average the approximate density is 0.74 FSI, with lots ranging in density from 0.32 (4 Methuen Avenue) to 1.82 (40 Methuen Avenue).

Consistency with the Provincial Policy Statement

It was Mr. McKay's opinion that the proposed permissions are consistent with the policy objectives of the Provincial Policy Statement. He stated that the PPS directs development to established built-up areas where there is existing municipal infrastructure. Mr. McKay stated that intensification and redevelopment is encouraged as is a range and mix of housing types and densities. He opined that the approval of the proposed variances would permit redevelopment and moderate intensification within a built-up area which is compatible with adjacent uses and which would utilize existing infrastructure.

Conformity with the Growth Plan

It was Mr. McKay's opinion that the proposed variance will conform to the policy objectives of the Growth Plan. He stated that the Growth Plan sets out broad policies for the development of urban areas in the GGH including the promotion of compact urban form through the intensification of existing urban areas. Mr. McKay indicated that the intent is to better use land and infrastructure to avoid the outward expansion of our communities. He opined that the policies of specific relevance to the permissions sought are the policies which promote intensification in built up areas: Policies 2.2.2.1(a) and (d), 2.2.3.6 (b) and (f), and 2.2.3.7.

Appropriateness of the Extension of a Legal Non- Conforming Use

Mr. McKay stated that, unlike minor variances sought under Section 45(1) of the *Planning Act*, there are no specific "tests" for which to evaluate a permission sought to be obtained under Section 45(2) of the *Planning Act*. To this extent, one must look at the proposal to determine if the extension of a legal non-conforming use is appropriate and reasonable, given the existing context and as guided by any policies contained in the Official Plan.

It was Mr. McKay's opinion, that the proposed variance to allow the extension of the legal non-conforming semi-detached dwelling is reasonable and appropriate for the following reasons:

• While the proposed extension is to a semi-detached dwelling, which is not a building form permitted by the Zoning By-laws, the use is existing on the property and is fully compatible with the residential neighbourhood in which it is located. Compatibility is evidenced by the fact that semi detached dwellings exist in the broader neighbourhood, including on the site, without causing any adverse planning impacts.

• Reinvestment in housing stock, such as that being proposed, is appropriate and desirable for the City, the neighbourhood and this property.

• The proposed alteration would utilize the existing rear-building wall with a new addition at the rear and would have limited visual impact when the property is viewed from Methuen Avenue.

• The proposal conforms to the majority of the by-law requirements, including building height, building length, and rear yard setback. Mr. McKay noted that the length is a third of what is permitted.

• The variances do not create any undue overlook or privacy impacts on the adjacent neighbours to the east and west given the design of the addition. To this effect the majority of windows on the new addition face north into the rear yard, thus minimizing overlook conditions. For the windows on the side walls facing the neighbours, there are two small windows which are located within the addition to provide light into a stair / hallway area (which will reduce overlook issues). Lastly the window on the west façade

is to be opaque, which will eliminate overlook issues entirely into the backyard of 12 Methuen Avenue. Relative to the overlook issues on the east, these are minimized by the addition respecting the existing 1.25 m setback (which is slighter greater than that required by the By-laws).

• The proposed density created by the proposal is similar to that either existing or approved previously for the area. It is not out of keeping with the character of the area, and the new investments being made in the area. To this extent the proposed density is similar to that already existing in the neighbourhood area with the majority having an FSI over 0.6 (74%), and 47% having an FSI over 0.71.

Mr. McKay further stated that within this area, lots on Methuen Avenue have FSI's ranging from 0.32 FSI (4 Methuen Avenue) to 1.82 FSI (40 Methuen Avenue). He indicated that there have been 52 total variance applications approved in the neighbourhood since 2007. All of them increased FSI beyond the 0.4 permitted by the Bylaw, including the following:

- 19 Methuen approved for 0.83 FSI (2011) and increased further to 1.12 FSI (2014)
- 29 Methuen approved for 0.97 FSI
- > 30 Methuen approved for 0.84 FSI
- > 33 Methuen approved for 0.9 FSI
- 38 Methuen approved for 1.06 FSI
- 44 Methuen approved for 0.99 FSI

Mr. McKay opined that the approval of the proposed 0.52 and 0.54 FSI, respectively, would therefore be in keeping with the built form of the area, including with respect to massing and scale. When asked whether any of the variance applications included ones for semi-detached homes, Mr. McKay stated that they were all detached homes. He indicated that the majority of homes in the neighbourhood are detached, with only about nine semi- detached in the neighbourhood. Mr. McKay opined, however, that there is no concern putting an addition on a semi-detached house. He stated that this occurs all the time, especially in Toronto's robust real estate market where home owners often choose to make their existing home larger rather than moving to another house.

With respect to the requirements of the Official Plan, Mr. McKay stated that it does not contain specific policies regarding legal non-conforming uses. However, he indicated that the Neighbourhoods policies, which apply to the property, outline development criteria against which any development is to be reviewed. Mr. McKay referred specifically to Policy 4.1.5, which states (in part) that:

Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:

a) patterns of streets, blocks and lanes, parks and public building sites;

b) size and configuration of lots;

c) heights, massing, scale and dwelling type of nearby residential properties;d) prevailing building type(s);

e) setbacks of buildings from the street or streets;

f) prevailing patterns of rear and side yard setbacks and landscaped open space;
 g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and

h) conservation of heritage buildings, structures and landscapes.

It was Mr. McKay's opinion that the proposal meets the intent and purpose of the development criteria as outlined in Policy 4.1.5. He stated that in this particular case Policy 4.1.5(c) and (f) are relevant to the assessment of the variances. Mr. McKay opined that the proposed development is in keeping with the physical character of the neighbourhood. It was his opinion that the proposal is in keeping with the prevailing height, massing and scale of the neighbourhood, which consists of residential homes (both singles and semi-detached) which are two and three storeys in height. Mr. McKay noted that the proposed side yards respect the existing conditions that exist on the property today and are similar to those which exist in the neighbourhood.

Mr. McKay concluded that in his opinion the relief requested represent good planning and is in the public interest as it is:

a. Consistent with the Provincial Policy Statement;

b. In conformity to the Growth Plan;

c. Compatible with surrounding land uses;

d. In Conformity to the Official Plan criteria for development in the Neighbourhoods designation; and

e. Appropriate and reasonable, with no undue impacts to adjacent neighbours.

The Parties:

Wojciech Ziolkowski lives at 12 Methuen Avenue, which adjoins the property. Mr. Ziolkowski presented an architectural rendering of the proposed addition to 10 Methuen. He raised concerns about the impact on his privacy and the loss of sunlight. With respect to privacy, Mr. Ziolkowski stated that even though the proposed windows in the stair well area is in a transition area, each time you pass by you can see into his window. He indicated further, that the proposed opaque window on the west façade is right against their bedroom window.

In cross examination Mr. Ziolkowski agreed that the view into his bedroom would not be a direct view from the proposed window, but a sideways view. He stated that a side view has a lesser impact but it still has an impact. In cross examination Mr. Ziolkowski was referred to photos of homes on Methuen Avenue that had windows and/or balconies in the rear overlooking the neighbouring properties and conceded that this type of overlook existed in the neighbourhood. With regards to the loss of light, Mr. Ziolkowski noted that the expert planning evidence indicated that there would be some shadowing impact until about noon during some months of the year. Mr. Ziolkowski was concerned that the proposal would have a negative impact on his property value.

Ann Bihun lives at 8 Methuen Avenue. Ms. Bihun stated that her basic concern is the impact on privacy. She indicated that one of the proposed windows will be facing into her kitchen, her deck and facing into a bedroom at a 90 degree angle. Ms. Bihun

indicated that she did not care how opaque the window is as there is still a privacy issue. She indicated that the addition at 16 Methuen looks into her kitchen and she felt this proposal would be even more invasive. Ms. Bihun stated that air circulation will also be an issue because if they are outside trying to enjoy their deck, there will be a wall that they are facing which will affect the air circulating.

The Participant:

Martha Ziolkowski is the daughter of Mr. Ziolkowski who lives at 12 Methuen Avenue. Ms. Ziolkowski raised the concern with vibration from the construction on her parents adjoining home and was informed by counsel for the Applicant that it is a construction issue that is not before TLAB and that there were bylaws that control vibration. Ms. Ziolkowski raised other construction concerns regarding access to the backyard, and excavation of the basement, which again were issues that were not before TLAB. Counsel for the Applicant indicated these construction concerns are issues that could be discussed further outside of the TLAB hearing.

ANALYSIS, FINDINGS, REASONS

As indicated above, to the extent that the relief requested differs from those before the COA, TLAB accepts that the Applicant's proposed revisions are a reduction of the original application and are minor in nature. As such, TLAB finds that no further notice is required pursuant to s.45 (18.1.1) of the Act, and the revision can be considered.

TLAB accepts the expert evidence of Mr. McKay that the variance requested to allow the extension of the legal non-conforming semi-detached dwelling is reasonable, appropriate and in the public interest. This use is compatible with the residential neighbourhood as evidenced by the fact that semi-detached dwellings exist in the broader neighbourhood without causing any adverse planning impacts. The proposal is in keeping with the character of the area, including with respect to prevailing height, massing and scale. While there are some overlook issues, they are consistent with what currently exists in the neighborhood. The proposed addition respects and reinforces the existing physical character of the neighbourhood and does not present any undue adverse impacts to neighbouring properties, the neighbourhood, or the Methuen Avenue streetscape.

TLAB agrees that the relief requested is consistent with the standards of the Zoning By-laws and the policies of the Official Plan, and therefore maintain the general intent and purpose of both By-laws and the Official Plan. The proposal would permit redevelopment and moderate intensification within a built-up area which is compatible with adjacent uses and which would utilize existing infrastructure. The proposal promotes intensification and contributes to a compact built form by maximizing the use of the property, with minimal impacts to the surrounding land uses. From a streetscape perspective the proposed addition seamlessly integrates into the neighbourhood. The TLAB agrees that the extension and enlargement of the existing legal non-conforming use is appropriate and represents good planning given the existing context.

DECISION AND ORDER

For all the reasons expressed above, the appeal is allowed. The TLAB orders:

The permission sought despite the provisions of Zoning By-law No. 569-2013 (contingent on its effective date) and By-law No. 1-83, as listed below, are authorized, subject to the conditions that follow:

Section 2.1.1.(2), By-law 569-2013 and Section 3.6.1(1)(c), By-law 1-83

No person may use, erect or alter a building or structure that does not comply with this By-law.

The existing dwelling is a legal non-conforming use.

The proposed three-storey rear addition and proposed rear yard deck represent an enlargement or extension of a legal non-conforming use/building, the permission for which is granted by TLAB.

The conditions of approval are as follows:

1) The applicant shall satisfy the requirements of the Forestry Condition; namely:

i) Prior to the issuance of a demolition and/or building permit, the applicant shall satisfy all matters relating to City and Privately owned trees, to the satisfaction of the Supervisor, Urban Forestry Tree Protection and Plan Review.

2) The permission herein extends to and shall be built and located on the Property substantially in accordance with the Plans, (Exhibit 6) attached as Attachment 1 to this decision.

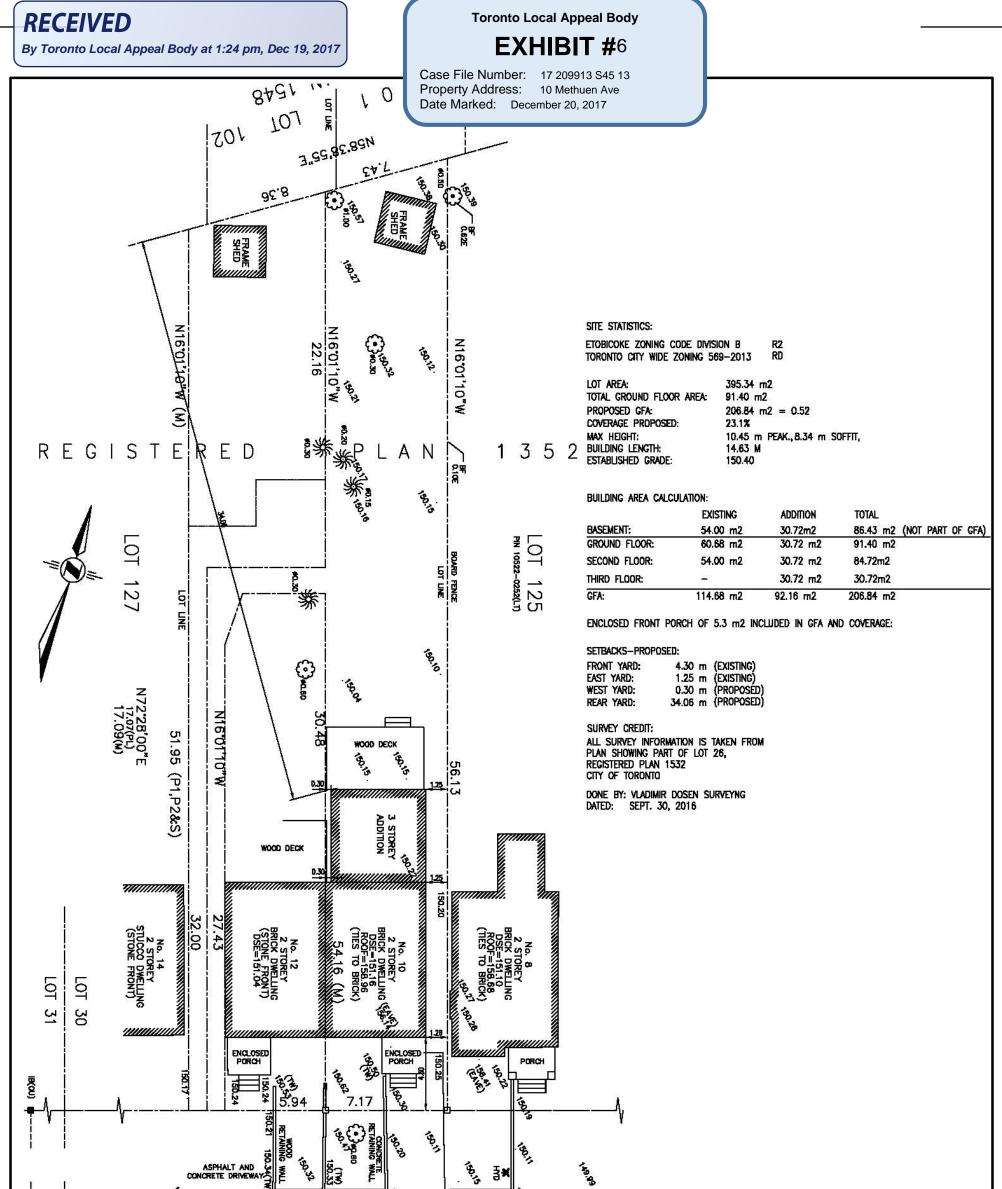
3) The second floor windows on the east and west of the extension and enlargement shall be opaque, with frosting or tempered glass and designed so as to prevent overlook.

If there are difficulties in the implementation of this decision, the TLAB may be spoken to.

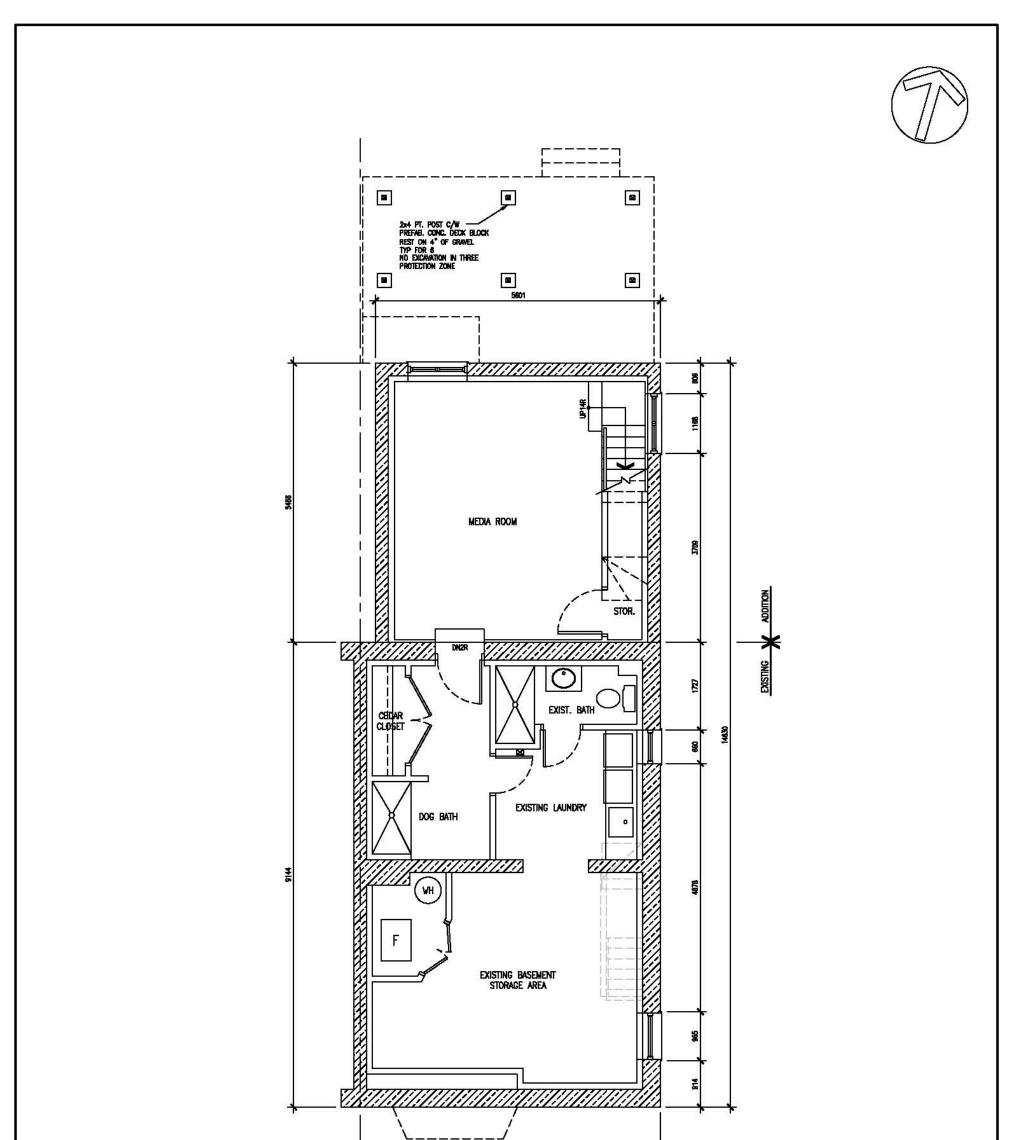
[Attachment 1 – Plans (Exhibit 6)]

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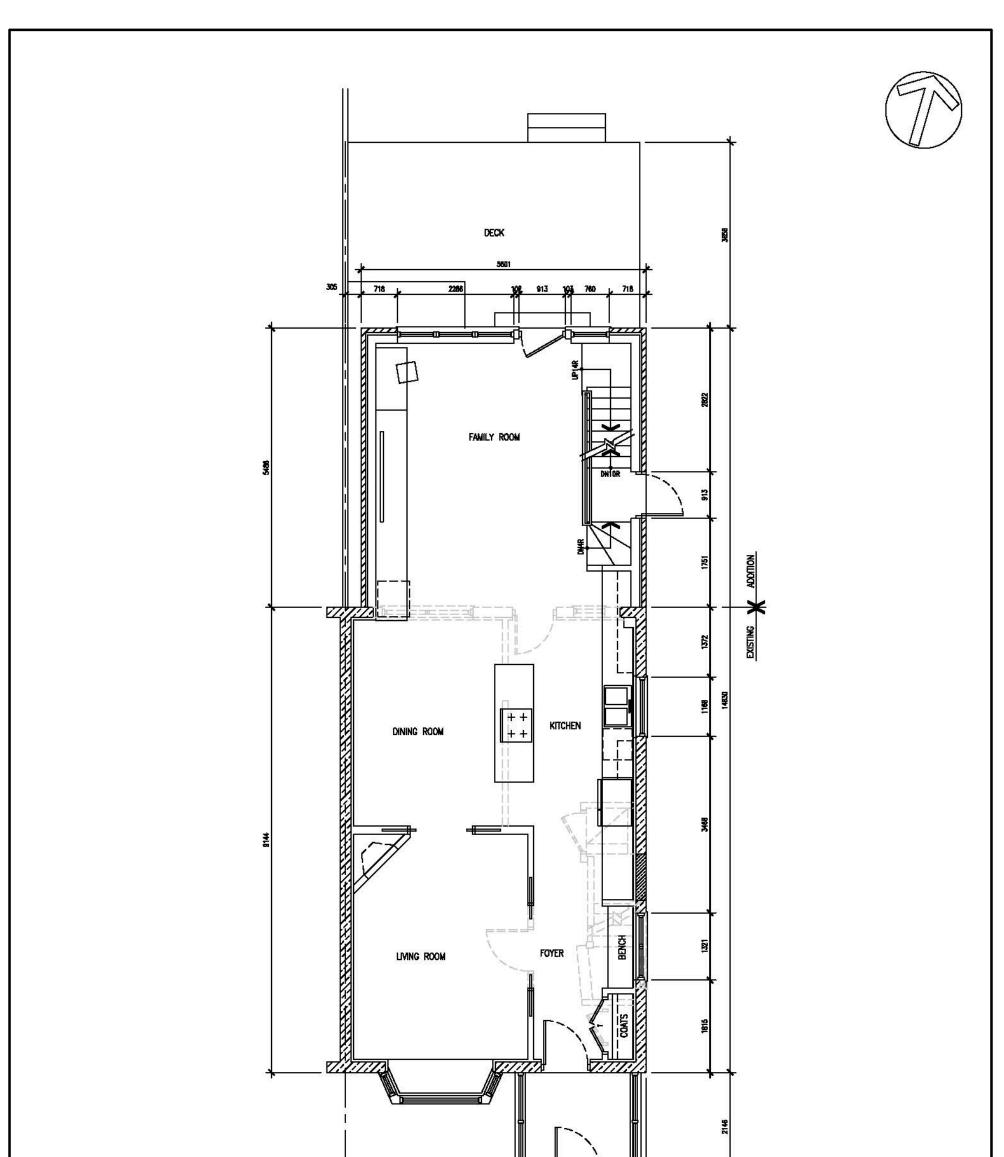
S. Ruddock Panel Chair, Toronto Local Appeal Body



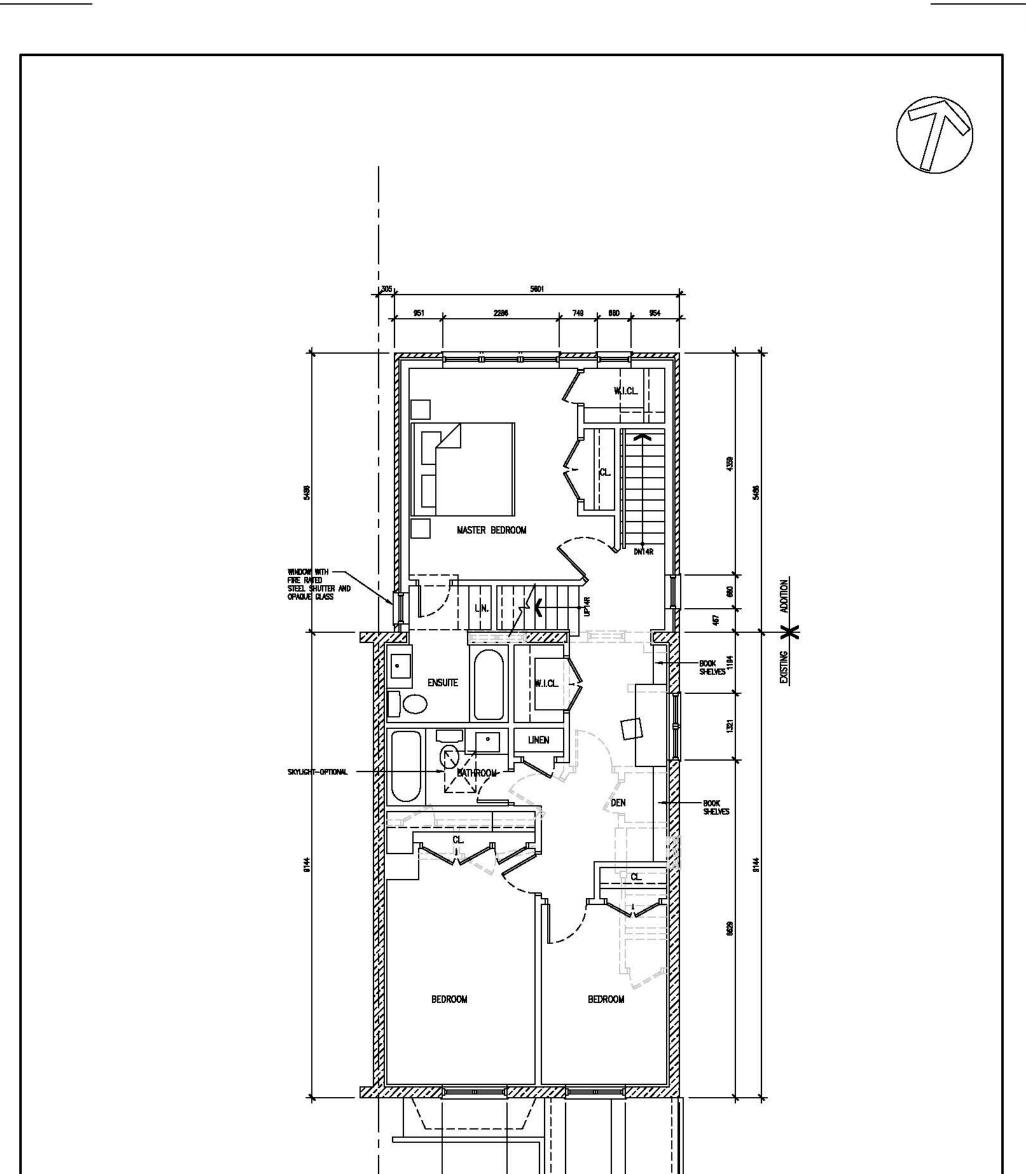
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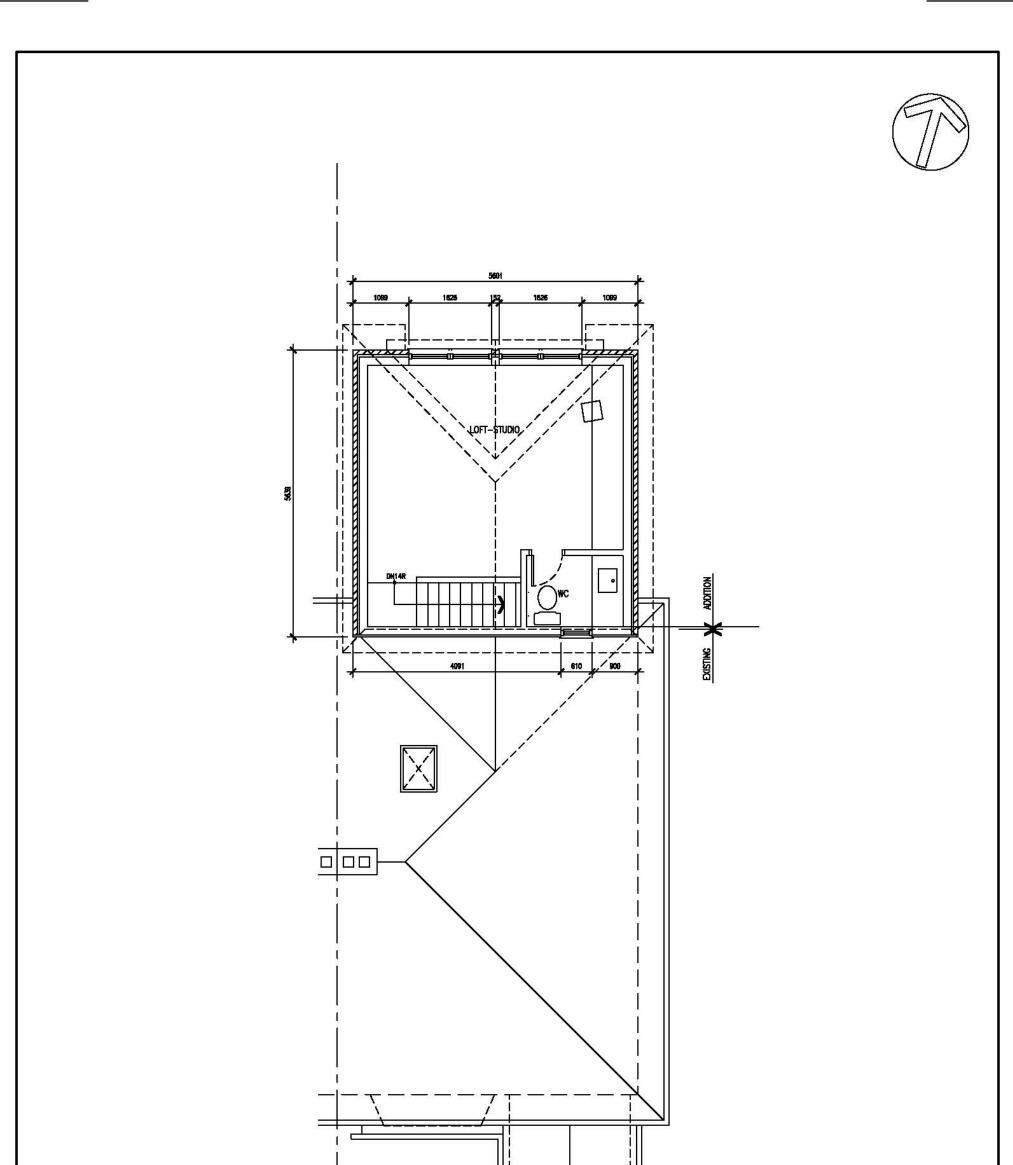
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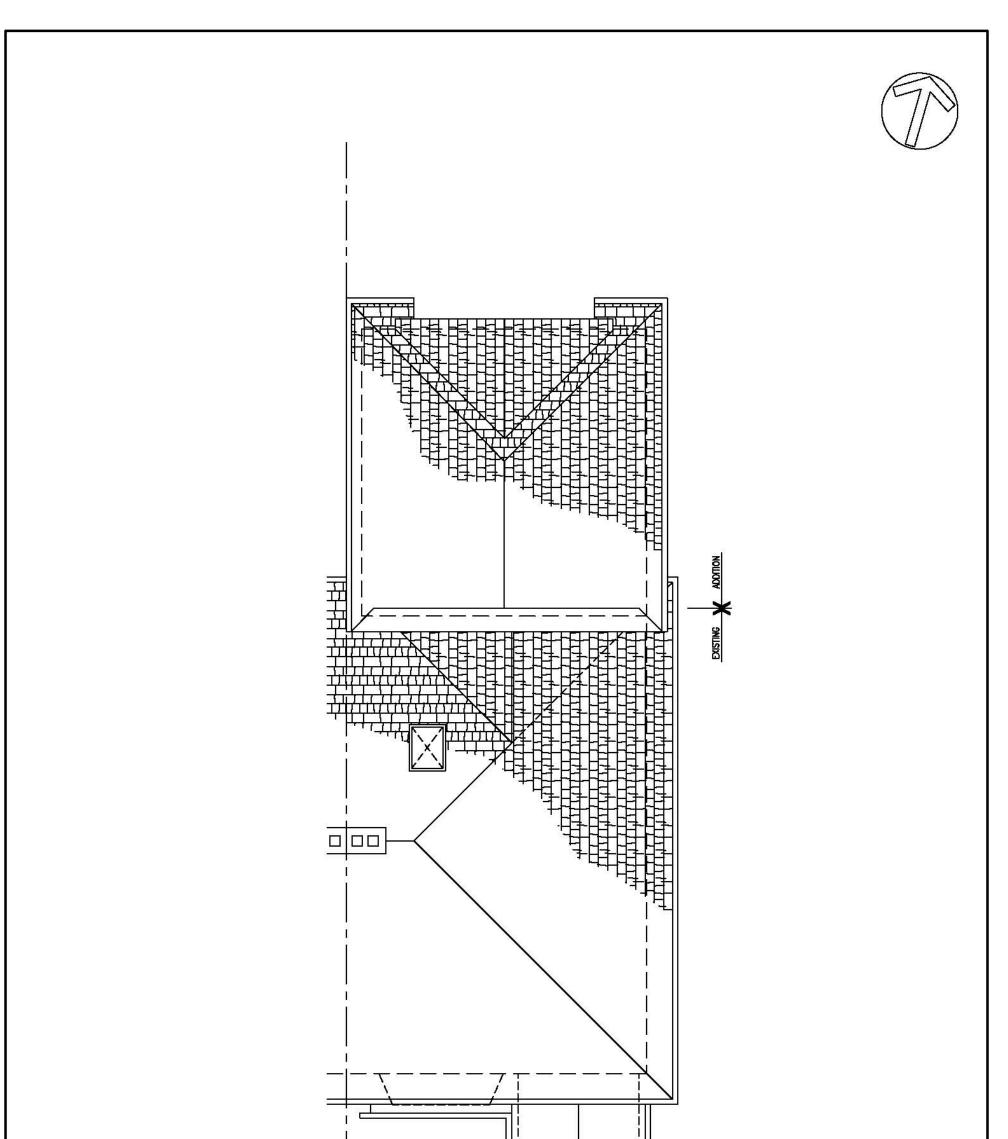
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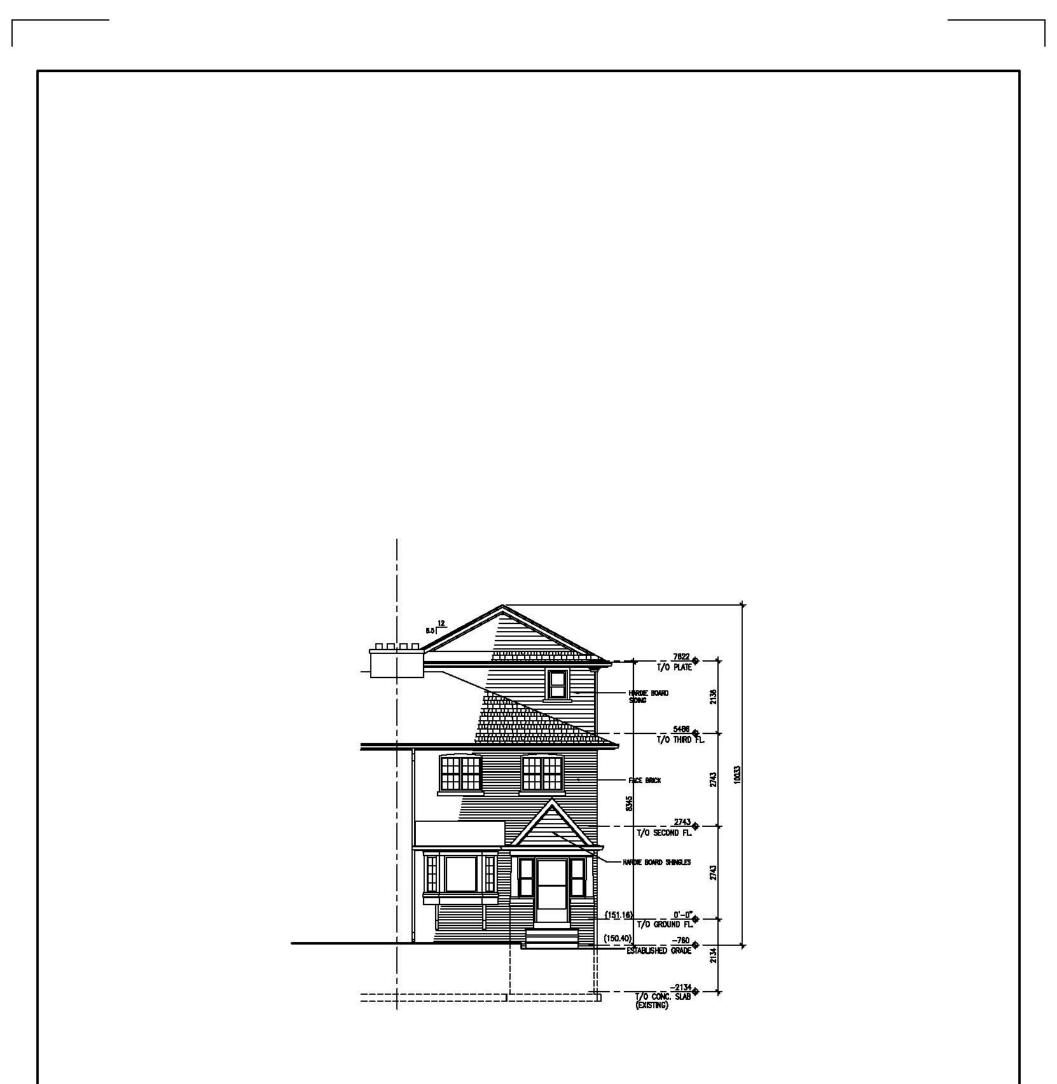
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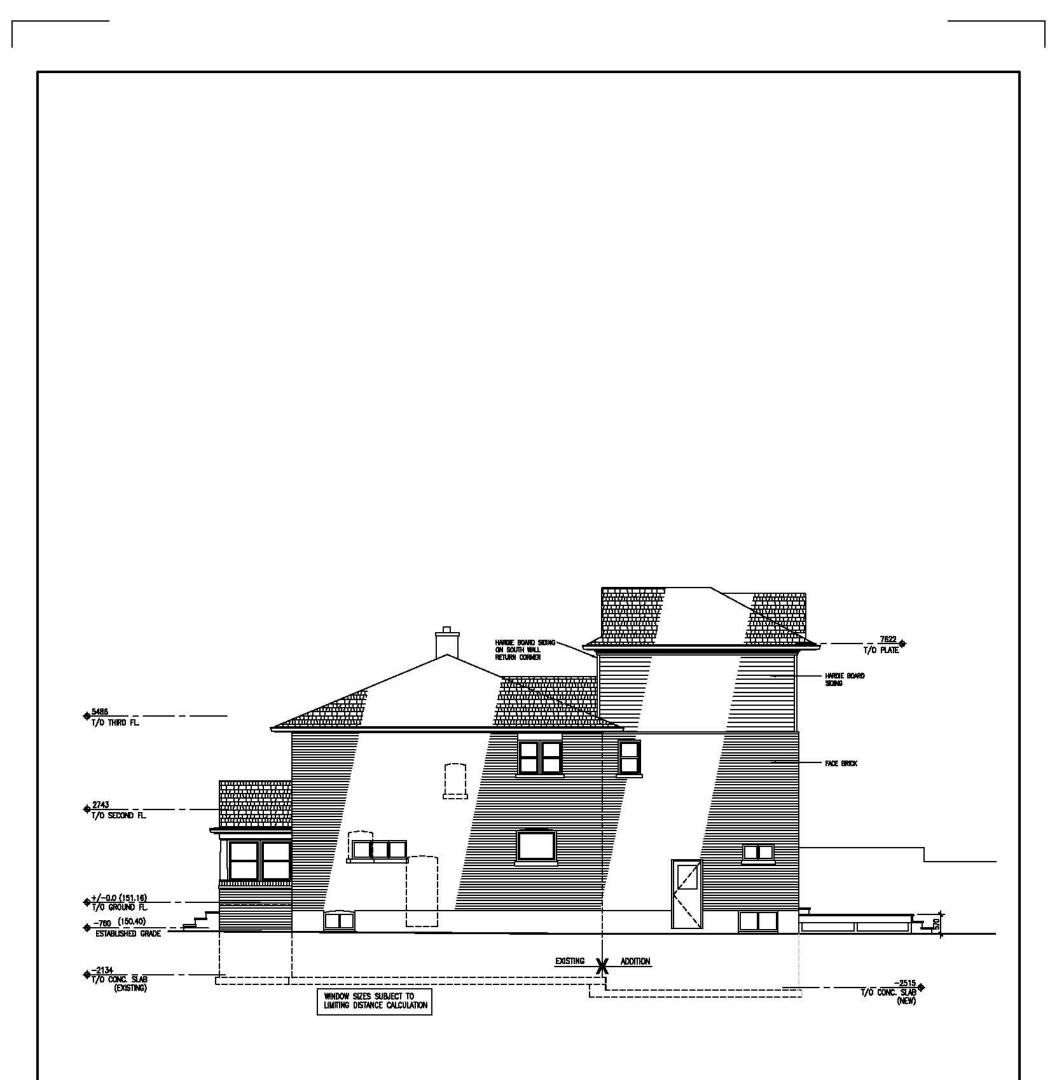
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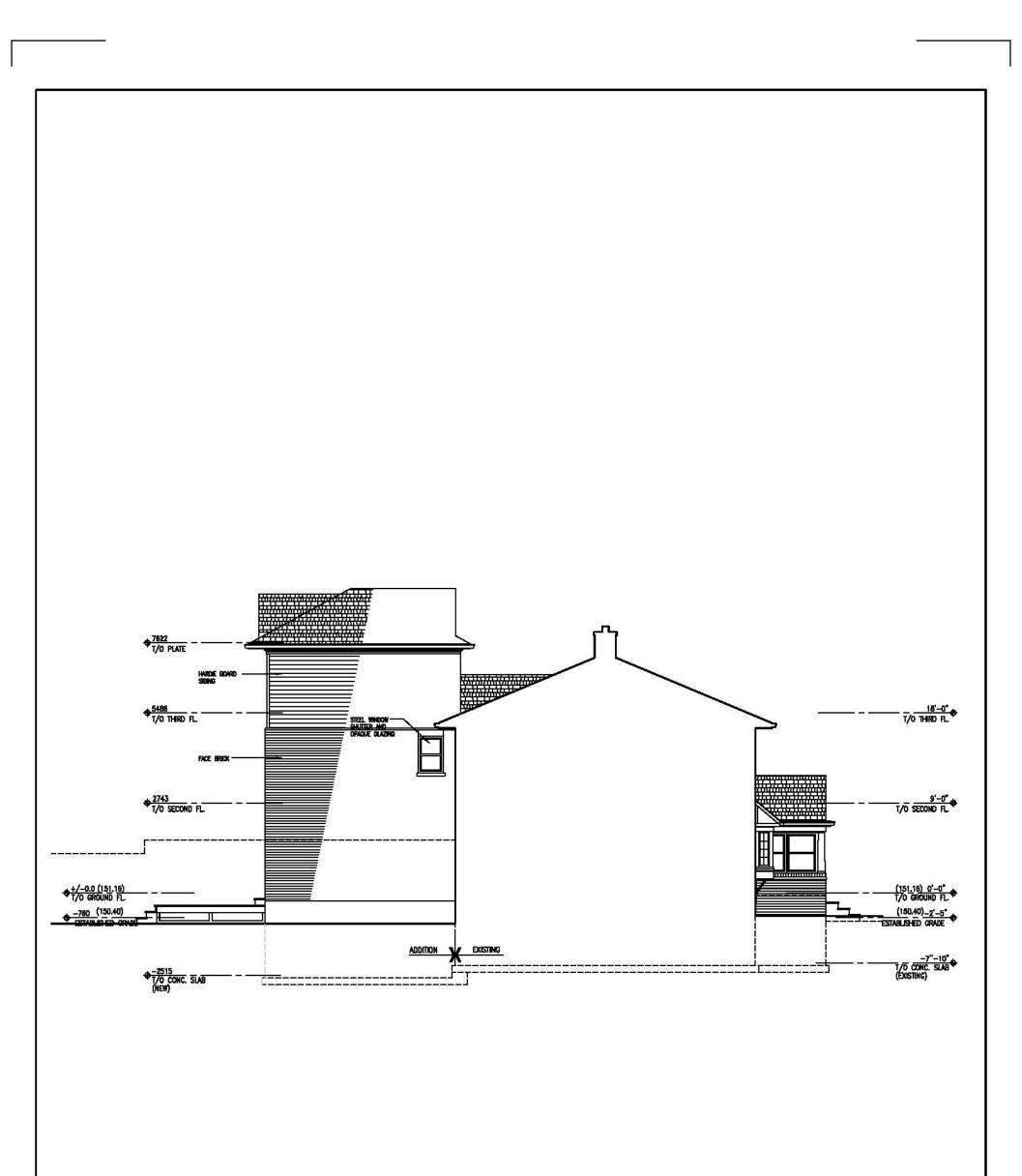
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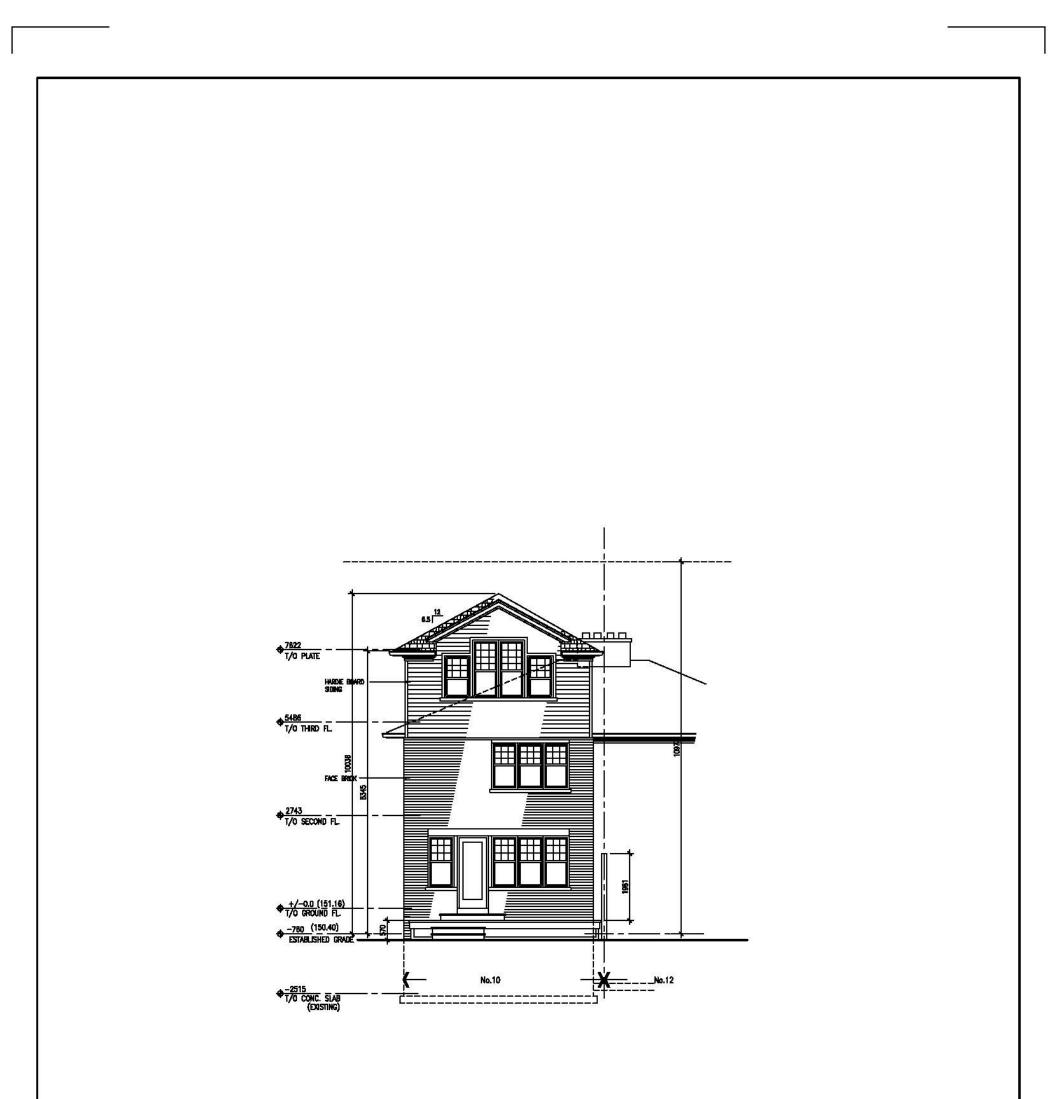


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	RE-ISSUED FOR MINOR VARIANCE		Addition & Interior Renovation Toronto-Ontario	44 RUMSEY ROAD, TORONTO, ON., M4G 1NB TEL: 418 488 8820 FAX: 416 696 7973	ARCHITECTS
THE CONTRACTOR SHALL CHECK AND VERIFY ALL Dimensions on Site and Report Errors and omissions to the consultant before proceeding with work, do not scale drawings.		RS AND	Drowing: Side (East) Elevation	Date: Project No: Drowing No. Jan 4/17 06/16 Socile: Checked by: 1:75 ZT	ZORAN TIRNANIC LICENCE 4649



1)SIDE (WEST) ELEVATION

No. Revisions D/M/Y 1 ISSUED FOR MINOR WARKANCE 04/01/17			roject 10 Methuen Ave		TUS architectur	022A 6
1000	RE-ISSUED FOR MINOR VARIANCE	25/05/17 15/12/17	Addition & Interior Rea Toronto-Ontario		ROAD, TORONTO, ON., M4G 1N 86 8820 Fax: 418 696 797	ASSOCIAL ARCHITECTS
	THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON SITE AND REPORT ERRORS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH WORK. DO NOT SCALE DRAWINGS.		wing: Side (West) Elevation		te: Project No: Drawing No. n $4/17$ 06/16 $\Delta - Q$	ZORAN TIRNANIC LICENCE 4649



 REAR	(NORTH)	ELEVATION
 1:75	98 - 1926 -	

No. Revisions D/M/Y 1 ISSUED FOR MINOR WARKANCE 04/01/17		Project:	10 Methuen Ave		TUS arc	4950	
2	Issues For and when the optimized optimized for another the second sec	Addition & Interior Renovation Toronto-Ontario		44 RUMSEY Tel: 416 48	road, toronto, 18 8820 Fax:	ASSOCIAL OF PA ARCHITECTS ZORAN TIRNANIC LICENCE 4649	
DIM	THE CONTRACTOR SHALL CHECK AND VERIFY ALL DMUBISIONS ON SITE AND REPORT ERRORS AND OWISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH WORK. DO NOT SCALE DRAWINGS.		Drawing:	rowing: Rear (North) Elevation			Date: Project No: Drowing No. Jan 4/17 06/16 Scale: Checked by: 1:75 ZT A-10