

DECISION AND ORDER

Decision Issue Date Tuesday, April 24, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SALVATORE BENEDETTO

Applicant: SALVATORE BENEDETTO

Property Address/Description: 109 KNOX AVE

Committee of Adjustment Case File Number: 17 198921 STE 32 MV

TLAB Case File Number: **17 267890 S45 32 TLAB**

Hearing date: Monday, April 09, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

Name	Role	Representative
Salvatore Benedetto	Applicant/Appellant	
Tae Ryuck	Expert Witness	

INTRODUCTION

This was an appeal from a Committee of Adjustment (COA) decision of November 8, 2017 which refused an application for minor variances for 109 Knox Avenue (the "property") in the East York area of Toronto. The proposal is to construct a third storey addition and a fire escape to the existing two storey residential building containing two units, and to convert it to four residential units. The property is on the east side of Knox Avenue just south of Queen Street East. It is designated "Neighbourhoods" in the Official Plan (OP), and zoned R (d1.0) in City of Toronto By-law 569-2013 (the "New By-law", not yet in force), and R4 Z1.0 height 12 m under By-law 438-86 (the "Old By-law").

BACKGROUND

The existing building has stood in its current location for many years. A previous minor variance was granted (April 8, 2008) that authorized a GFA of 1.42 times the lot area. In this proposal the building envelope and thus the exterior walls would not change. The application to the COA included 9 variances under the New By-law and 7 variances under the Old By-law. Many would authorize existing conditions. The Zoning Examiner had identified a variance for the overall height. The owner then lowered the structure to eliminate this variance, following the comments of Planning Staff, even before the COA considered the application.

MATTERS IN ISSUE

The question to be determined is whether this application is acceptable under the existing planning instruments, although some variances may appear numerically large. There has been no opposition to the proposal.

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be both consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision, and the materials that were before that body.

EVIDENCE

The owner's evidence was provided by Mr. Tae Ryuck, an experienced and well qualified professional planner. He had performed the usual examination to create the context. His area of study was Queen Street East to the north, Minto Street to the east, Eastern Avenue to the south, and Leslie Street to the west. This is in his opinion reflective of what a person would experience in their day-to-day lives as one walks the streets. The results are found in Exhibit 1, an Area Context Map.

His testimony was that this site is located in a stable but very mixed residential neighbourhood, consisting of single-detached, semi-detached, townhouse and walkup apartments of 1 to 3 storeys. With the existing mixture of lot sizes and frontages, it can be characterized as a tightly knit urban neighbourhood.

Queen Street East to the north is primarily commercial and office uses. There is public transit within walking distance. Though stable, there is regeneration in this area by many redevelopments and additions.

The property has an area of 256.63 m², with frontage of 19.81 m and a depth of 12.95 m. It presently contains a 2-storey single detached dwelling with two residential units. It is accessed via Knox Avenue by an east-west laneway.

The proposal would result in the following:

- a. A total Floor Space Index/Gross Floor Area (FSI/GFA) of 618.72m² (2.40 times the lot area)
- b. Proposed height of 12.0m (no variance required)
- c. Lot Frontage – 19.81m (existing)
- d. Lot Depth – 12.95m (existing)
- e. Building Length – 11.73m (existing)

The variances sought are set out in Attachments 1 and 2. Variances under both By-laws are required to reduce the required four parking spaces to three. Two of these are in the existing integral garage on the south elevation, and one would be located on the driveway to the north of the building, accessed via Knox Avenue.

All of the walls would remain unchanged. Steel stairs would be constructed at the north and east sides to comply with the Building Code. In Mr. Ryuck's testimony, the existing walls are consistent with dwellings in the area and neighbourhood context.

He then considered the applicable policy context, concluding that the application is both consistent with the PPS and conforms to the Growth Plan. As they both encourage and promote the efficient use of land, resources and infrastructure, including public transportation, and redevelopment and intensification in appropriate locations, a proposal for intensification on an existing site is appropriate.

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The tests for a minor variance are also satisfied by the proposal. The intent and purpose of the OP for areas designated Neighbourhoods is to respect the existing physical character of the area, and so reinforce the stability of the neighbourhood. However, neighbourhoods “shall be stable but not static” (Policy 2.3.) He concluded that the altered building respects and reinforces the existing physical character of the neighbourhood. It maintains the existing building envelope and footprint. This neighbourhood is already experiencing regeneration and intensification in the form of redevelopment and additions. The proposal does not impact the stability of the neighbourhood.

The OP requires, as well, that physical changes to established neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective of the OP is that new development respect and reinforce the general physical patterns (4.1). The development criteria to meet are set out in policy 5, which establish the benchmarks that new development must meet.

Mr. Ryuck stated that if the proposal does not offend any of the characteristics, then the policy is met. He addressed the applicable criteria:

(c) heights, massing, scale – speaks to deployment of built form on the lot – this proposal is completely consistent with other nearby heights/massing/scale. Considering zoning limits, it is a modest house, the opposite of overdevelopment. Since it maintains the existing building footprint with a compliant building height, it is consistent with adjacent dwellings on the street. From a streetscape perspective it seamlessly integrates into the neighbourhood. He also commented that it provides architectural character to the streetscape.

(d) prevailing building types – this speaks to type of housing, (i.e., singles, semis, towns). The proposed dwelling is consistent in form and massing with other homes in the area context.

(e) setbacks of buildings from the street – the desire is to maintain uniformity of setbacks where they are uniform – the existing front setback is consistent with the street and adjacent dwellings.

(f) prevailing patterns of rear and side yard setbacks and landscaped open space – the proposed is reflective of the prevailing building setbacks. (see: Exhibit 1, the Area Context Map). In addition, the proposed does not result in the expansion of the existing building envelope. The requested setback and landscape variances legitimize existing conditions.

Policy 8 also provides guidance about how to assess character. Performance standards in the Zoning By-law are intended to provide guidance to ensure compatibility of new development with the physical character. Three things are relevant to determine character – existing conditions (including those that pre-date the By-law), By-law standards, and minor variances already granted. As mentioned, a previous minor variance was granted (April 8, 2008) that authorized a GFA of 1.42 times the lot area. The current application would increase this to 2.4 times the lot area by adding the extra storey of living space.

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He concluded that the proposed variances individually and cumulatively meet the general intent and purpose of the OP.

Respecting the test of meeting the general intent and purpose of the Zoning By-laws, he noted the zoning of R in the New By-law, and R4 in the Old. This test addresses compatible built form, to ensure no unacceptable adverse impacts on streetscape or on adjacent properties. Here the FSI and GFA are deployed on the property and within a built form that utilizes the existing building foot print and is consistent with the homes within the neighbourhood. There have been other approvals nearby of GFA/ FSI up to 1.5. Many existing structures already exceed the by-law requirements, and in fact this is characteristic of this neighbourhood.

As density can be deployed in many forms, the proposed does not represent a dramatic increase that reflects overdevelopment. It uses the existing building footprint and does not exceed the overall height requirement. Existing side yards do not meet the by-law standards and this too is typical of this neighbourhood.

There are variances under the New By-law for exterior main wall heights of 10.7m. However, from a quantitative and more importantly qualitative perspective these too do not result in a built form that is out of character with adjacent properties or the neighbourhood. The heights integrate seamlessly within the Knox Avenue streetscape. They will, in his view, have no adverse impacts on the existing neighbourhood, especially since the overall height complies with the zoning requirements.

He testified that the goal of the Zoning By-law is to maintain a house form (i.e., massing, height, setbacks) and lot sizes which are compatible with the street and the neighbourhood. However, compatible does not mean the same.

It was also his opinion that the proposed variances individually and cumulatively meets the intent and purpose of the Zoning By-law.

Respecting the test of whether the variances are desirable and appropriate for the area, his opinion is similar. Because the dwelling is of a size and type that is within the character of the neighbourhood, and is not overdeveloped, it is desirable as well. It will provide additional housing. The variances related to coverage and side yard setbacks do not relate to changes to the existing building envelope. They relate instead to the new stairs being proposed at the rear and side. There would be no shadowing or overlook that is uncharacteristic of the existing context.

In conclusion, for the test of desirability, he testified that this was a form of intensification that is appropriate given the surrounding context and existing neighbourhood.

On the issue of whether variances are minor, he said that in general, variances can be considered minor for two reasons, that they are too large, or too important to be considered minor. The test for "minor" is not no impact, but whether the impact is considered to be acceptable. In an urban setting, some impacts are acceptable. The proposed addition has been designed in a manner that does not test the limits of "unacceptable". The proposed

deployment of gross floor area in the 3 storey building does not create adverse overlooks, shadows, building form, massing and height that is uncharacteristic of the streetscape or neighbourhood. Thus he concludes that the proposed variances are minor in nature.

Therefore, he concludes, the proposal individually and cumulatively meet the tests of the Planning Act for minor variances and should be considered a meritorious application representing good planning.

ANALYSIS, FINDINGS, REASONS

The proposal for a third storey addition to an already fairly large structure in this neighbourhood appears at first glance to be somewhat questionable from the planning perspective. An examination of the proposed Plans (Exhibit 3) shows an extensive peaked roof to be added to the existing (already imposing) flat roof structure. However, upon closer examination of both the nature and evidence offered on the proposed variances and the complete lack of neighbourhood or public authority objections to the proposal, they become quite acceptable. There are many variances required under the two By-laws, but many are duplicates.

I agree with Mr. Ryuck that the neighbourhood is an eclectic and extensively varied one. Lot and structure sizes are not uniform in any real sense (Exhibit 1 illustrates this very well.) He described it well as a very tightly knit area, where existing setbacks and even heights either do not meet the minimum requirements or exceed the maximums. This property is close to Queen St. East, and rather stands out in its short block. Residential properties are found on the west side, small in size. Townhouse developments are located further to the east on the block. It is relatively easy to conclude that there will be no unacceptable adverse impacts on nearby streets or properties. There is a lane separating the property from those to the south, a large yard to the north and neighbour parking to the east. No neighbour commented on the application (except the TTC – see below). I agree with Mr. Ryuck's statement that the increase in GFA cannot be discerned from a qualitative perspective, and therefore is an acceptable increase in the By-law requirement.

The only agency to comment to the COA was the TTC. By letter of November 7, 2017, it stated that the proposed was in close proximity to the TTC Russell Carhouse to the east. It requested that, if approved, a condition be imposed for an Interference Warning clause to be attached to the decision. This, in essence, warns residents that there may be some emissions of many types from the TTC operations nearby. The owner was agreeable to this condition. The Russell Carhouse is effectively one block to the east, and I find that it is likely to have little impact on the subject property.

I find that the variances proposed will create a desirable addition to this street and neighbourhood. It will be a more attractive structure from a design perspective, although I do not rely on this factor to assess desirability. At first consideration the increase in GFA appears numerically large (1.47 to 2.4 times the lot area), but I find that the variances individually and collectively are minor in impact.

Therefore the proposal adequately address and satisfies the four tests. In addition, the goals of the PPS and the Growth Plan are met in this expansion of residential uses in an appropriate location. I have also carefully considered the materials before the COA.

DECISION AND ORDER

The TLAB orders that the appeal is allowed, and that:

1. The variances to Zoning By-laws 438-86 as listed in Attachment 1, are authorized.
2. The variances to Zoning By-law No. 569-2013 as listed in Attachment 2, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
3. The new detached dwelling shall be constructed substantially in accordance with the Plans dated January 6, 2017, filed as Exhibit 3 and attached as Attachment 3 to this decision. **Any other variances that may appear on these plans that are not listed in this decision are not authorized.**
4. The Owner shall submit a letter to the TTC acknowledging and accepting the TTC's Interferences Warning as follows:

"Interferences Warning:

The submission of a letter that acknowledges and accepts the following:

- a. the proximity of the Project to the TTC transit infrastructure may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matter, transmissions (collectively referred to as "Interferences") to the property;
- b. the City and IIQ will not accept responsibility for such effects on any of the Project and/or its occupants;
- c. it had been advised by the II.c. to apply reasonable attenuation/mitigation measures with respect to the level of the Interferences on and in the Project;
- d. a TTC Interferences Warning clause, as provided below and satisfactory to the TTC has been, or shall be inserted into all rental agreement(s), and/or offers of purchase and sale or lease and condominium declaration(s) for each applicable unit.

The Purchaser and/or Lessee specifically acknowledges and agrees that the proximity of the development of the lands municipally known as 109 Knox Avenue (the "Development") to TTC transit operations, presently in existence or subsequently constructed or re-constructed, may result in transmissions of noise, vibration, electromagnetic interference, stray current, smoke, particulate matter or other interferences (collectively referred to as "Interferences") on or to the Development and despite the inclusion of control features within the Development, Interferences from transit operations or

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construction activity may continue to be of concern, occasionally interfering with some activities of the occupants in the Development. Notwithstanding the above, the Purchaser and/or Lessee agrees to release and save harmless the City of Toronto, the Toronto Transit Commission, together with their Commissioners, officers, employees, successors and assigns, from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore the Purchaser and/or Lessee acknowledges and agrees that an Interferences clause substantially similar to the one contained herein shall be inserted into any succeeding lease, sublease or sales agreement, and that this requirement shall be binding not only on the parties hereto but also their respective successors and assigns and shall not die with the closing of the transaction.”

ATTACHMENT 1

1. Section 6(3) Part I 1, By-law 438-86

The maximum permitted residential gross floor area is 1.0 times the area of the lot (256.63 sq. m). Committee of Adjustment Decision A0260/08TEY granted a maximum permitted residential gross floor area equal to 1.42 times the area of the lot (363.58 sq. m).

The altered dwelling will have a residential gross floor area equal to 2.4 times the area of the lot (618.72 sq. m).

2. Section 6(3) Part II 3.F(I)(2), By-law 438-86

The minimum required side lot line setback is 1.2 m, where the side wall contains openings.

The altered dwelling will be located 0.3 m from the south side lot line, where the side wall contains openings.

3. Section 6(3) Part II 4.F(I)(I)(A), By-law 438-86

The minimum required side lot line setback is 0.45 m, where the side wall contains no openings.

The altered dwelling will be located 0.0 m from the north side lot line.

4. Section 6(3) Part II 4, By-law 438-86

The minimum required rear yard setback is 7.5 m.

Committee of Adjustment Decision A0260/08TEY granted a minimum required rear yard setback of 0.93 m.

The altered dwelling will be located 0.0 m from the rear lot line.

5. Section 6(3) Part III 1(A), By-law 438-86

A minimum of 30% (76.99 sq. m) of the lot area shall be landscaped open space.

In this case, 0% of the lot area will be landscaped open space (0.0 sq. m).

6. Section 6(3) Part IV 2, By-law 438-86

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A building on a lot that abuts a flanking street or public lane is to gain its vehicular access from the flanking street or public lane.

In this case, the access to the vehicle parking is from the main street.

7. Section 4(4), By-law 438-86

A minimum of four parking spaces are required.

In this case, three parking spaces will be provided.

ATTACHMENT 2

1. Chapter 200.5.10.1, By-law 569-2013

A minimum of four parking spaces is required.

In this case, three parking spaces will be provided.

2. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 9.5 m.

The height of the front exterior main walls will be 10.7 m.

3. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.

The height of the rear exterior main walls will be 10.7 m.

4. Chapter 10.10.40.40.(I)(A), By-law 569-2013

The maximum permitted floor space index is 1.0 times the area of the lot (256.63 m²).
The altered dwelling will have a floor space index equal to 2.4 times the area of the lot (618.72 m²).

5. Chapter 10.10.40.70.(2), By-law 569-2013

The minimum required rear yard setback is 7.5 m.

The altered dwelling will be located 0.0 m from the rear lot line.

6. Chapter 10.10.40.70.(3)(B)(ii), By-law 569-2013

The minimum required side yard setback is 1.2 m.

The altered dwelling will be located 0.3 m from the south side lot line.

7. Chapter 10.10.40.70.(4)(F), By-law 569-2013

The minimum required side yard setback is 0.45 m.

The altered dwelling will be located 0.0 m from the north side lot line.

8. Chapter 10.10.80.40.(2), By-law 569-2013

A building on a lot abutting a lane is to gain its access from the public lane.

In this case, the access to vehicle parking is from the main

street.

9. Chapter 10.5.40.60.(7), By-law 569-2013
Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line.

The roof eaves will be located 0 m from the south and west lot line.

ATTACHMENT 3 – PLANS (attached)

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

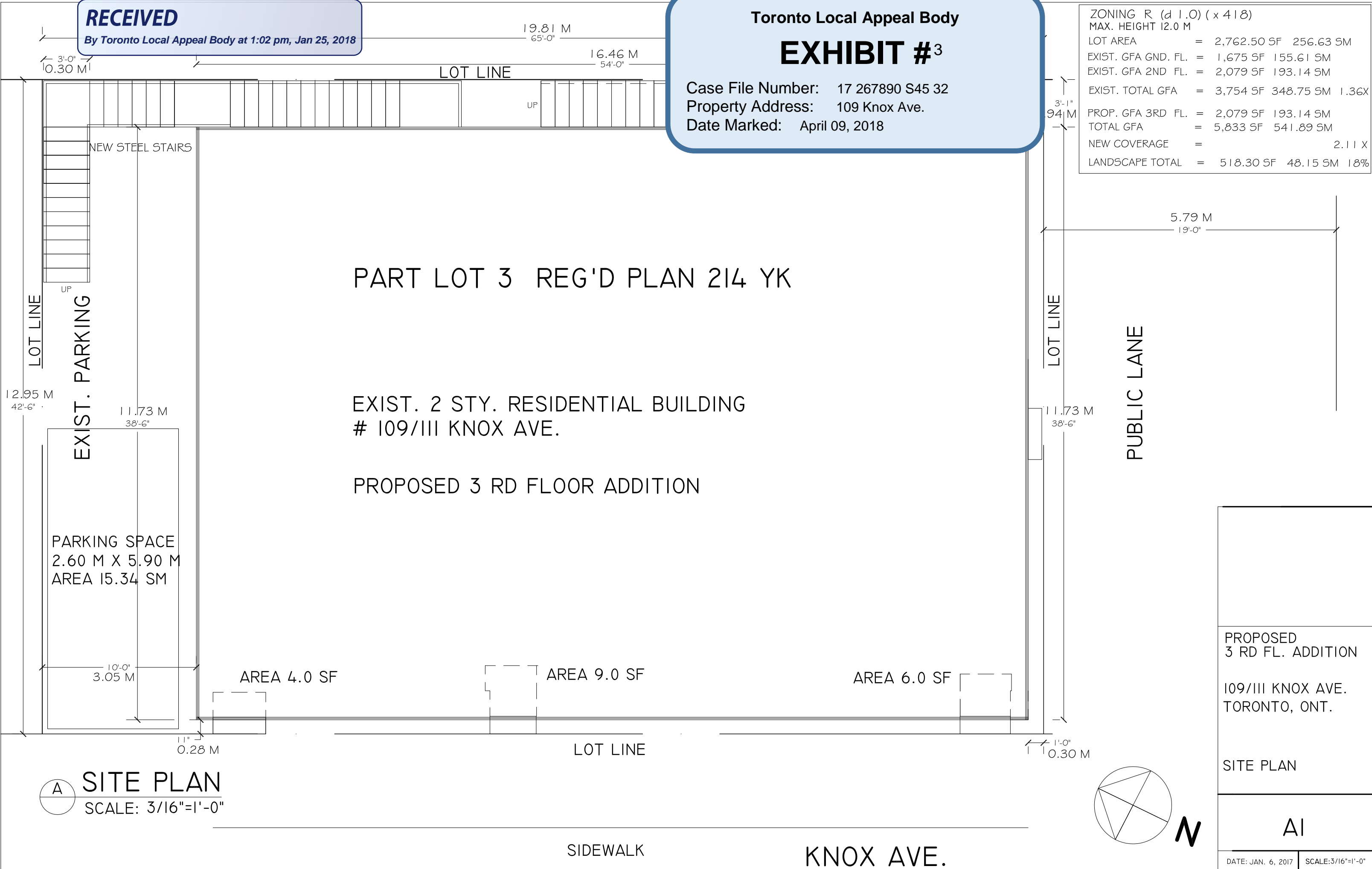
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By Toronto Local Appeal Body at 1:02 pm, Jan 25, 2018

Toronto Local Appeal Body

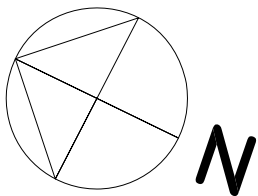
EXHIBIT #3

Case File Number: 17 267890 S45 32
Property Address: 109 Knox Ave.
Date Marked: April 09, 2018

ZONING R (d 1.0) (x 418)			
MAX. HEIGHT 12.0 M			
LOT AREA	=	2,762.50 SF	256.63 SM
EXIST. GFA GND. FL.	=	1,675 SF	155.61 SM
EXIST. GFA 2ND FL.	=	2,079 SF	193.14 SM
EXIST. TOTAL GFA	=	3,754 SF	348.75 SM 1.36X
PROP. GFA 3RD FL.	=	2,079 SF	193.14 SM
TOTAL GFA	=	5,833 SF	541.89 SM
NEW COVERAGE	=		2.11 X
LANDSCAPE TOTAL	=	518.30 SF	48.15 SM 18%



A SITE PLAN
SCALE: 3/16"=1'-0"



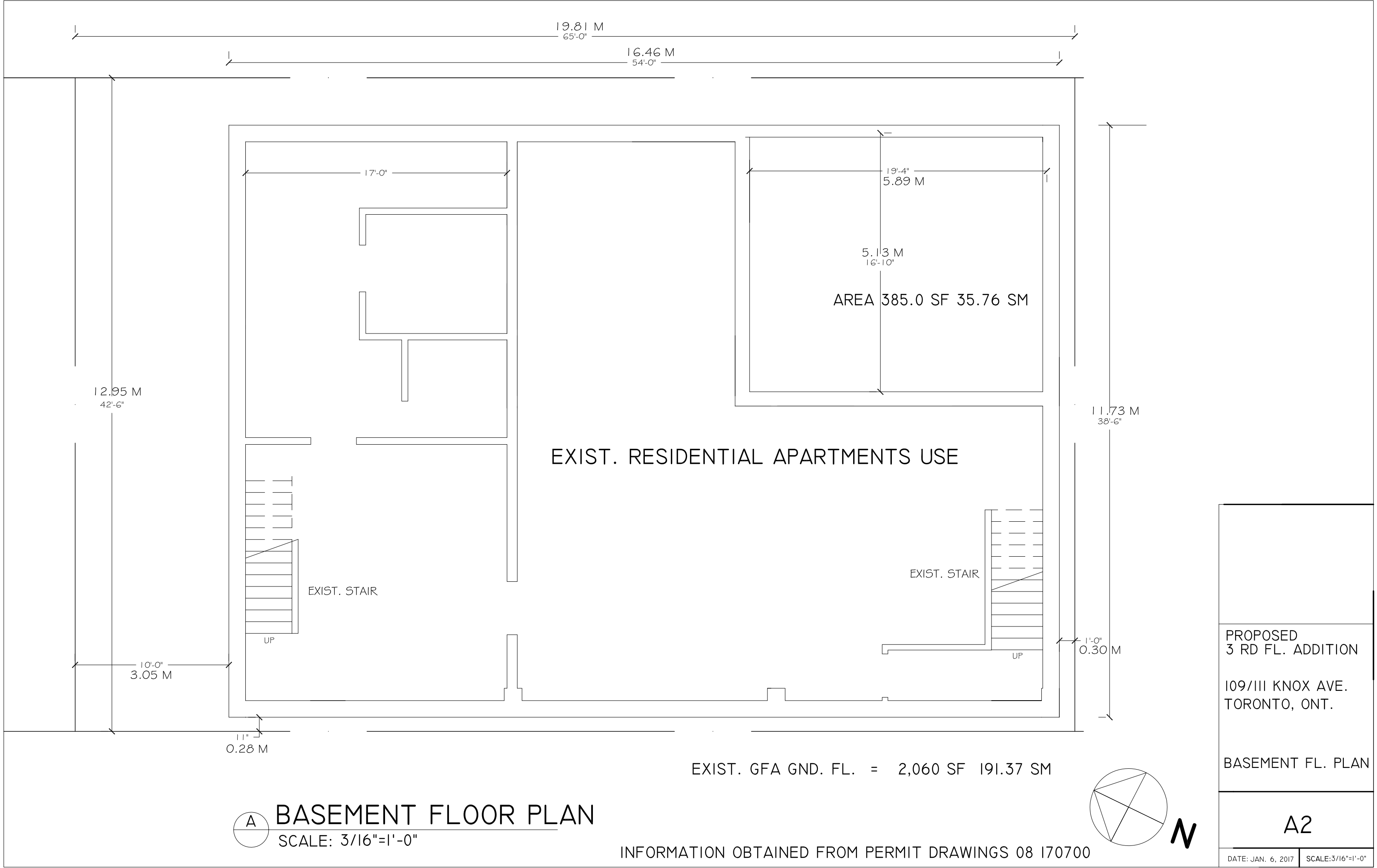
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3 RD FL. ADDITION

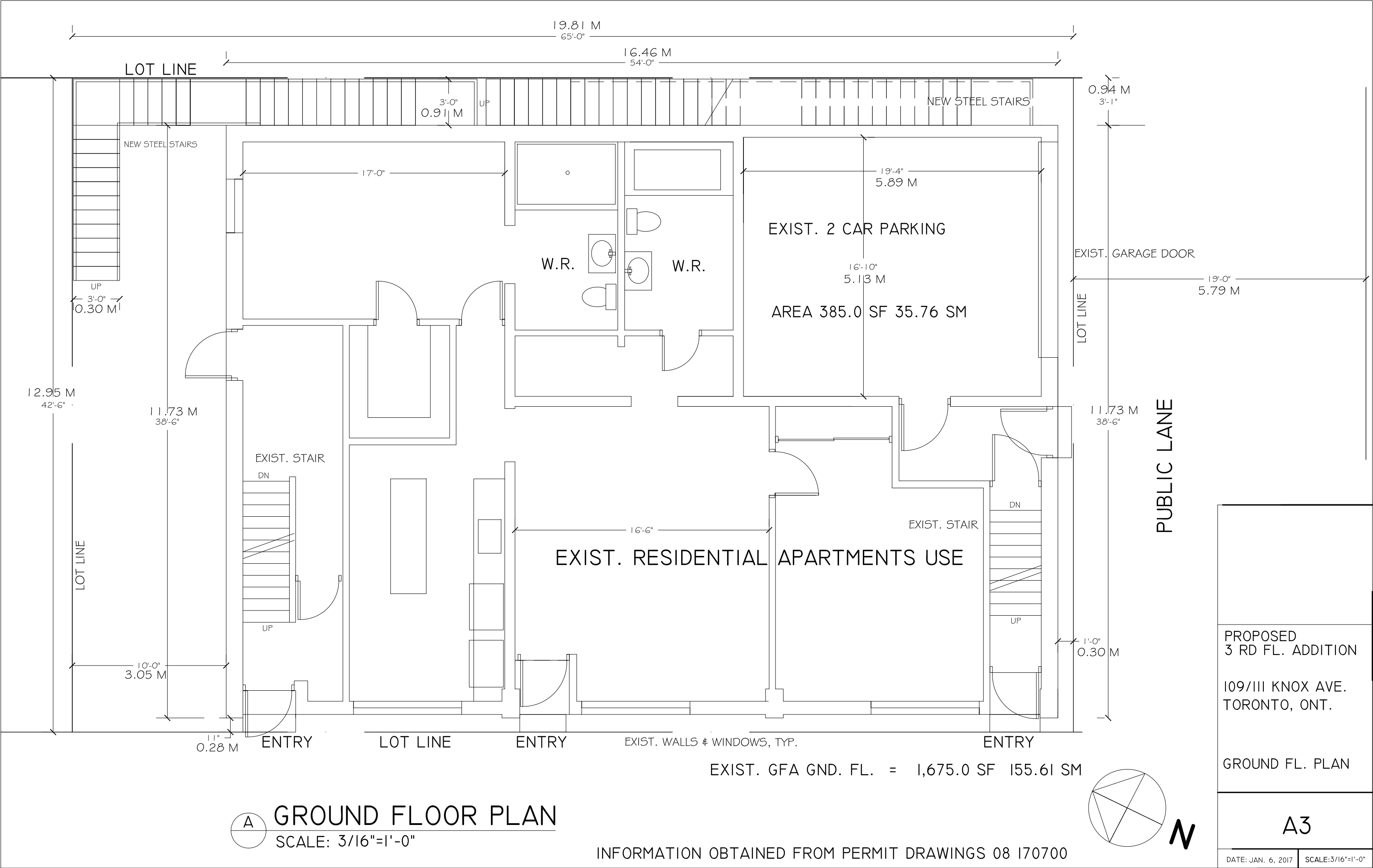
109/111 KNOX AVE.
TORONTO, ONT.

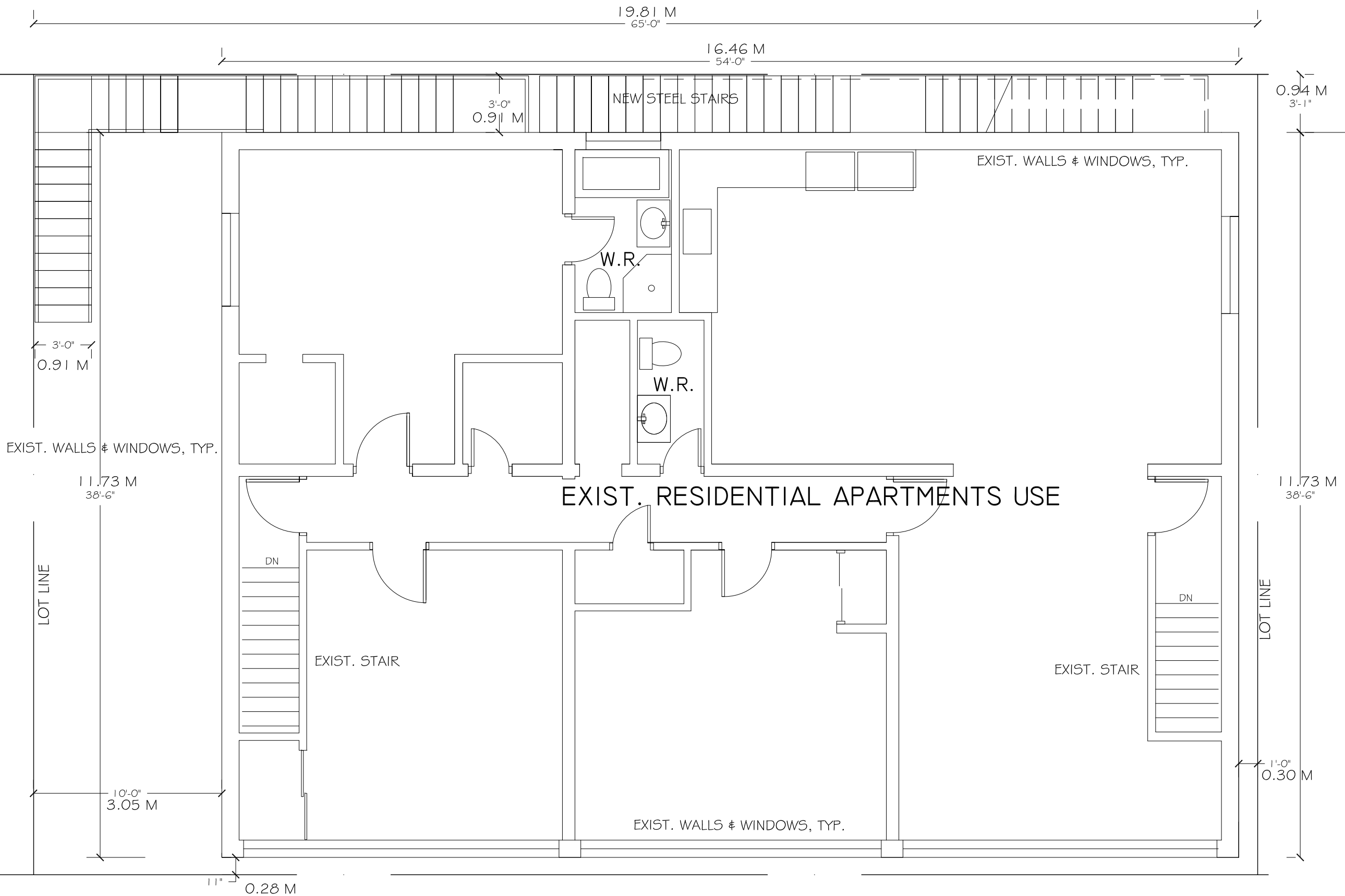
SITE PLAN

AI

DATE: JAN. 6, 2017 | SCALE: 3/16"=1'-0"

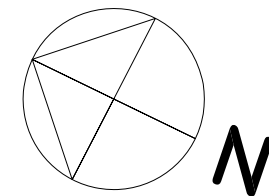






A SECOND FLOOR PLAN
SCALE: 3/16"=1'-0"

INFORMATION OBTAINED FROM PERMIT DRAWINGS 08 170700



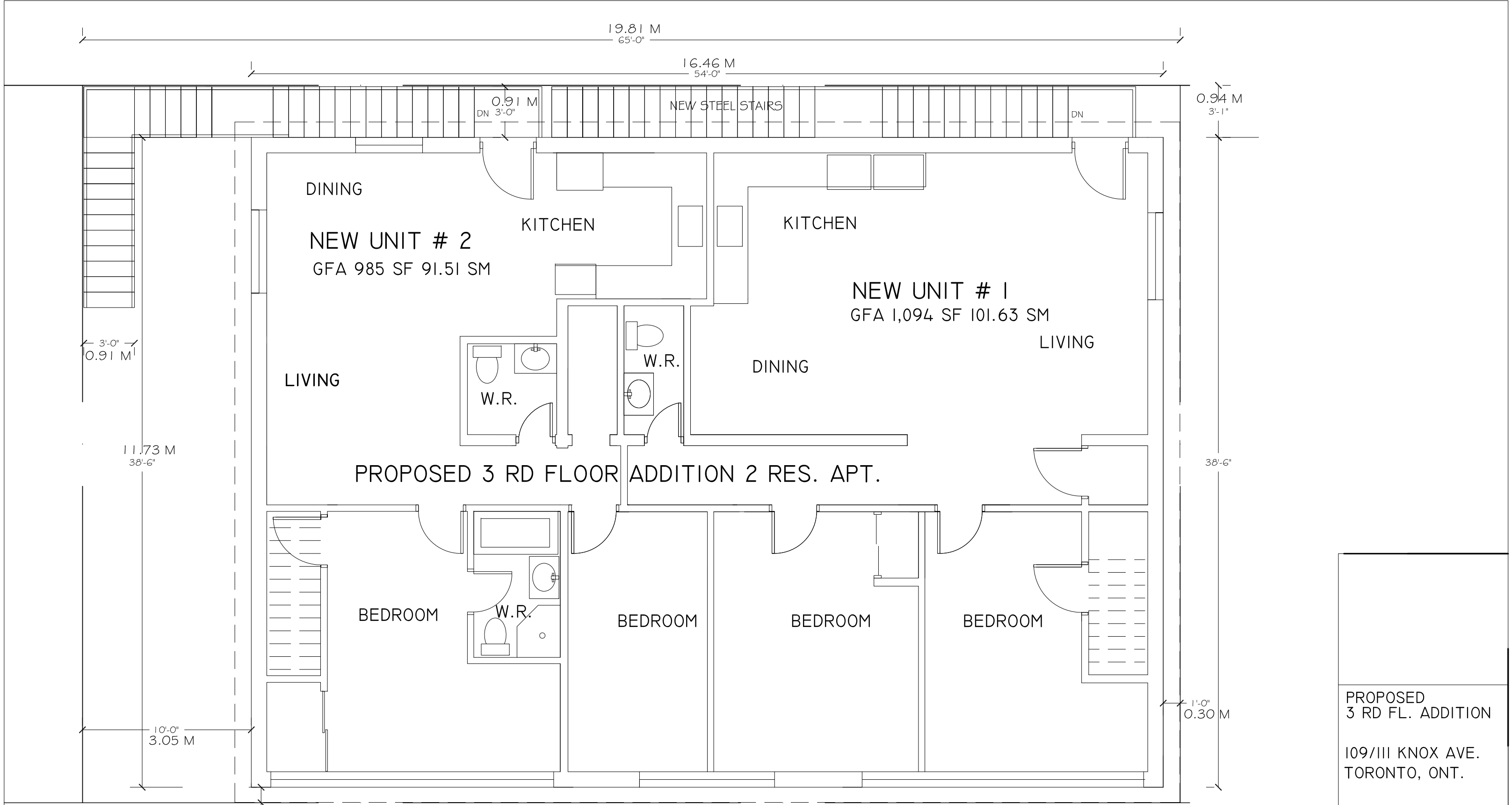
PROPOSED
3 RD FL. ADDITION

109/III KNOX AVE.
TORONTO, ONT.

SECOND FL. PLAN

A4

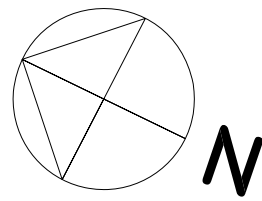
DATE: JAN. 6, 2017 SCALE: 3/16"=1'-0"



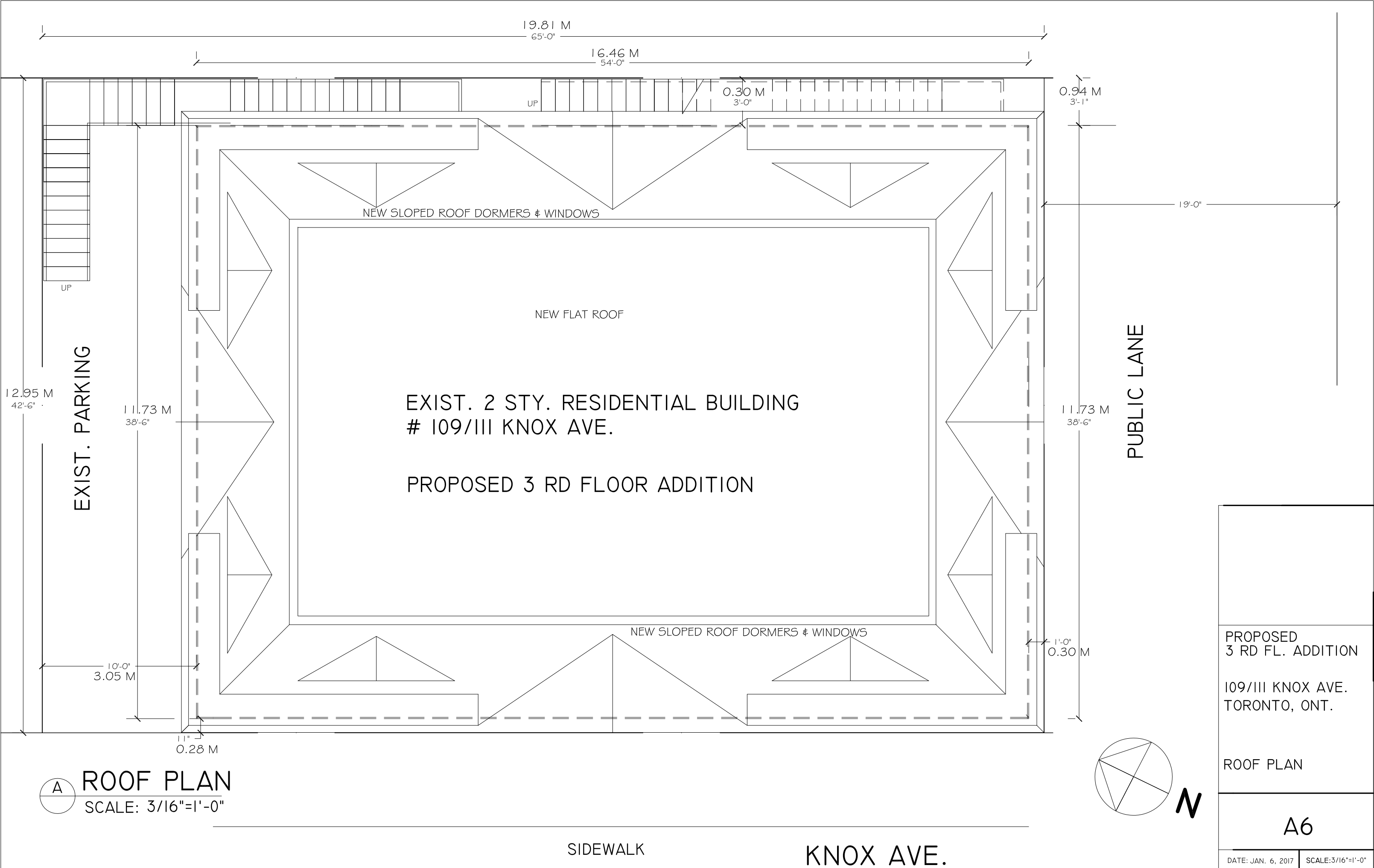
A **THIRD FLOOR PLAN**
SCALE: 3/16"=1'-0"

PROP. GFA 3RD FL. = 2,079 SF 193.14 SM

PROPOSED 3 RD FLOOR ADDITION 2 RES. APT.



PROPOSED 3 RD FL. ADDITION	
109/III KNOX AVE. TORONTO, ONT.	
THIRD FL. PLAN	
A5	
DATE: JAN. 6, 2017	SCALE: 3/16"=1'-0"



ROOF PLAN

SCALE: 3/16"=1'-0"

PROPOSED
3 RD FL. ADDITION

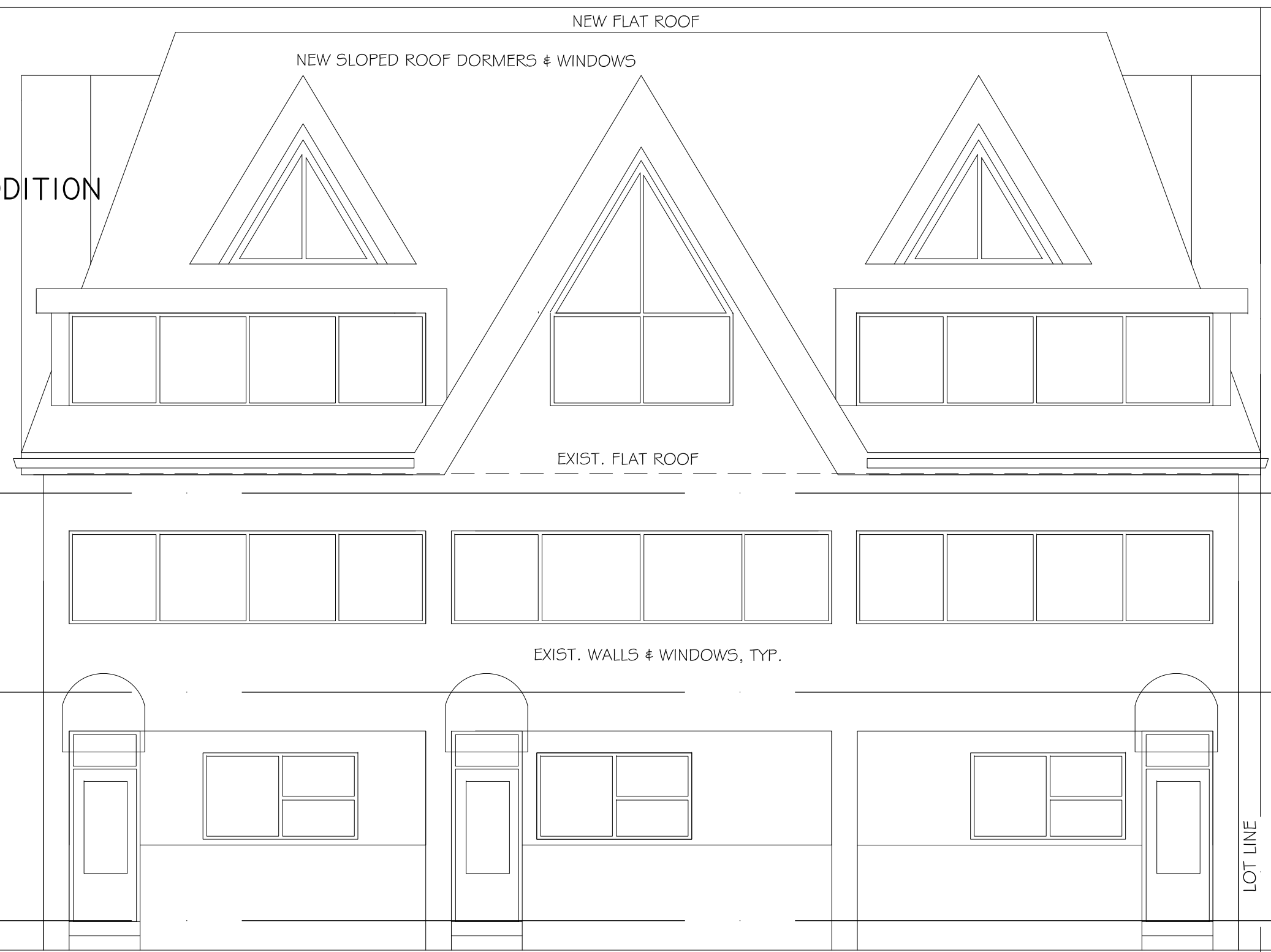
109/III KNOX AVE.
TORONTO, ONT.

ROOF PLAN

A6

PROPOSED 3 RD FLOOR ADDITION

Revised to 12.0M
12.80 M
42'-0"



A FRONT ELEVATION
SCALE: 3/16"=1'-0"

PUBLIC LANE

PROPOSED
3 RD FL. ADDITION

109/III KNOX AVE.
TORONTO, ONT.

FRONT ELEVATION

A7

PUBLIC LANE

NEW FLAT ROOF

NEW SLOPED ROOF DORMERS & WINDOWS

PROPOSED 3 RD FLOOR ADDITION

EXIST. FLAT ROOF

EXIST. WALLS & WINDOWS, TYP.

NEW STEEL STAIRS

NEW STEEL STAIRS

LOT LINE

LOT LINE

PROPOSED
3 RD FL. ADDITION

109/III KNOX AVE.
TORONTO, ONT.

REAR ELEVATION

A8

DATE: JAN. 6, 2017 SCALE: 3/16"=1'-0"

REAR ELEVATION

SCALE: 3/16"=1'-0"

A

6.10 M
20'-0"

Revised to 12.0M

12.80 M
42'-0"

2.74 M
9'-0"

6.70 M
22'-0"

3.15 M
10'-4"

0.30 M
1'-0"

54'-0"
16.46 M

10'-0"
3.05 M

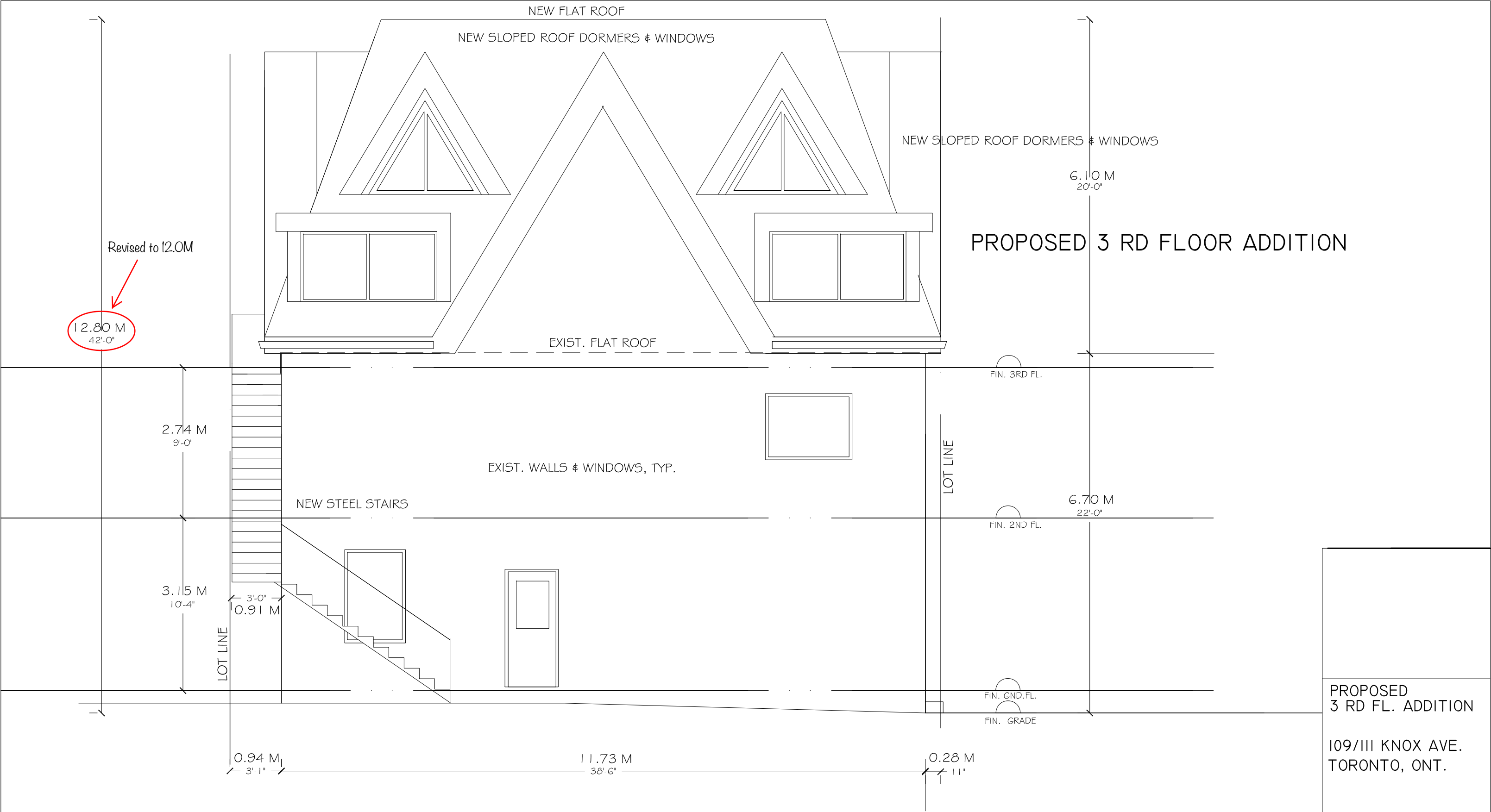
3'-0"
0.91 M

FIN. 3RD FL.

FIN. 2ND FL.

FIN. GND.FL.

FIN. GRADE



A NORTH ELEVATION
SCALE: 3/16"=1'-0"

PROPOSED
3 RD FL. ADDITION

109/III KNOX AVE.
TORONTO, ONT.

NORTH ELEVATION

A9

PROPOSED 3 RD FLOOR ADDITION

Revised to 12.0M

12.80 M
42'-0"

6.10 M
20'-0"

6.70 M
22'-0"

LOT LINE

0.28 M
1'-1"

11.73 M
38'-6"

0.94 M
3'-1"

NEW FLAT ROOF

NEW SLOPED ROOF DORMERS & WINDOWS

EXIST. FLAT ROOF

EXIST. WALLS & WINDOWS, TYP.

NEW STEEL STAIRS

EXIST. GARAGE DOOR

FIN. 3RD FL.

FIN. 2ND FL.

FIN. GND.FL.

FIN. GRADE

2.74 M
9'-0"

3.15 M
10'-4"

LOT LINE

A

SOUTH ELEVATION

SCALE: 3/16"=1'-0"

PROPOSED
3 RD FL. ADDITION

109/III KNOX AVE.
TORONTO, ONT.

SOUTH ELEVATION

A10