

DECISION AND ORDER

Decision Issue Date Tuesday, June 05, 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): SOLOMON MICHAEL GOLDBERG

Applicant: DEBORAH MESHER

Property Address/Description: 209 MELITA AVE

Committee of Adjustment Case File Number: 17 193804 STE 21 MV (A0749/17TEY)

TLAB Case File Number: **17 258426 S45 21 TLAB**

Hearing date: Friday, May 11, 2018

DECISION DELIVERED BY L. McPherson

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Deborah Mesher	Applicant	
Bessie Goldberg	Owner	
Solomon M. Goldberg	Appellant	
Larysa Gorlova	Participant	
Dennis Oliveira	Participant	

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the TLAB) by the Applicant of the decision of the Committee of Adjustment (Committee) for the City of Toronto (City) to refuse minor variances to alter the existing three-storey semi-detached dwelling by constructing a one-storey front addition (enclosure of the front porch) at 209 Melita Ave (subject property).

The subject property is located on the south side of Melita Ave, a dead-end street, east of Christie Street. The subject property is designated Neighbourhoods in the City of Toronto Official Plan (Official Plan) and zoned R under Zoning By-law No. 569-2013 (new City By-law) and R2 under former City of Toronto By-law 438-86 (former By-law).

The owner of the subject property appeared and provided evidence on his own behalf. Also present were the two Participants who filed the requisite Statements and each spoke to their issues.

BACKGROUND

On October 25, 2017, the Committee of Adjustment refused the following variances:

1. Chapter 10.10.40.40. (1) (A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (111.0 m²). The floor space index will be 1.05 times the area of the lot (194.58 m²).

2. Chapter 10.10.40.70. (1), By-law 569-2013

The minimum required front yard setback is 6.07 m. The front yard setback will be 3.62 m.

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

The maximum permitted residential gross floor area is 0.6 times the area of the lot (111.0 m²).

The residential gross floor area of the building, 195.58 m², exceeds the maximum permitted by approximately 83.58 m².

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

A building on an inside lot is required to have a minimum front lot line setback of 6.07 m. The front lot line setback will be 3.62 m.

MATTERS IN ISSUE

The matter at issue is whether the increase in floor space index and reduction in front yard setback resulting from enclosing an existing front porch to extend the living area meets the 4 tests of the Planning Act and applicable provincial policy.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Mr. Goldberg, the owner of the subject property, spoke based on lay opinion evidence and indicated that his family wishes to extend their living space by enclosing the covered porch which would provide an additional 8m² of indoor space. He advised that the proposal would improve the exterior appearance of the dwelling and the functionality. There are 2 variances that are required in order to permit the proposal; a front yard setback to recognize the existing porch and the second variance relates to floor space index (fsi). The allowed of 0.6 fsi and the proposed density is 1.05 fsi. He explained that the current density is 1.01 which represents less than 8 m².

Mr. Goldberg addressed the 4 tests under the Planning Act starting with whether the proposal was appropriate for the development of the land or building. He identified other buildings in the neighbourhood that have an enclosed porch or the functional equivalent. He indicated that the porch at 227 Melita Ave is enclosed on 2 sides by corrugated Plexiglas. Melita Ave is has 41 houses of which 40 are semi-detached and split between 2 and 3-storey dwellings. Some of the homes have sloped roofs, either sloping to the front or side and some have flat roofs. The lots on the north side of the street have lot depths ranging from 5 m – 7 m deeper than houses on the south side.

On the south side, most of the dwellings have a small rear addition of varying size and height. There is variety in front porches in terms of size, materials and the extent of separation. Of 41 houses, 20 have what appear to be basement extensions in the front under the porch some with windows.

As a result, in Mr. Goldberg's opinion, there are already precedents for reduced front yard setbacks on Melita Ave resulting in a variety of streetscape experience. In addition, he noted that 177 and 199 Melita Ave have 2nd floor space that extends over the front porch space. In his view, it is not uncommon for houses on Melita Ave to have living space that extends beyond the main wall of the building. He noted that the area is not within a Heritage District and not controlled by a heritage committee.

**Decision of Toronto Local Appeal Body Panel Member: L. McPherson
TLAB Case File Number: 17 258426 S45 21 TLAB**

He referred to the Official Plan, which encourages affordable housing choices that meet the needs of people throughout their life. He advised that there is nothing affordable within the vicinity that meets their need for additional space and therefore their choice is to optimize the opportunities in their current home by utilizing the porch and existing roof structure. In his view, the reinvestment they are making in their home will greatly improve its appearance and meet the urban design emphasis in the Official Plan.

With regard to the Zoning By-law, he notes that the process for minor variances assumes there will be some change and provides a mechanism to consider change that implements the Official Plan. He referred to Section 4.1 of the Official Plan which indicates that neighbourhoods are stable not static. In his view, the test is not to only allow what exists but to avoid change that causes destabilization. In his opinion, he does not think an additional enclosed porch could destabilize the neighbourhood. With respect to the concern raised by a Participant regarding precedent, he noted that not everyone will want to enclose their porch – they may not need to or they may not find it a desirable option. In his view, this is a similar circumstance to rear additions, not everyone has added one. In his opinion, even if everyone did enclose the front porch, there would be no reason to expect destabilization of the neighbourhood since many such enclosures happen in other neighbourhoods without destabilization. He noted that front porches are not mandatory in either the Official Plan or the Zoning By-laws. As such, he could rebuild his house without a front porch and the planning documents could not compel them to build it. He referred to a Committee decision for 157 Christie St (Exhibit 3 – Committee Decisions) for a 3 -storey semi-detached dwelling without a front porch attached to a 2- storey semi -detached dwelling with a front porch.

With respect to the test for minor, he advised that the current legal non-conforming fsi is 1.01. The proposal would increase the density by 7.83 m² or a 4% increase. In quantitative terms, he considers this minor. He referred to other variances in the area that had a significantly higher fsi approved. In his opinion, the variance is minor when reviewed in the context of neighbourhood approvals. He advised that both the proposed fsi and front yard setback is within the range of other approvals. Mr. Goldberg filed a series of Committee decisions (Exhibit 3). The proposal stays within the outline of the existing footprint so does not affect the soft landscaping. He advised that privacy screens could be added without any approvals which would have a similar visual impact. He noted that the proposal would have window to maintain “eyes on the street”. In conclusion, he considers the proposal to be reasonable.

Ms. M. Gorlova represented her mother, Ms. L. Gorlova, the owner and resident of 211 Melita Ave, the adjoining neighbour to 209 Melita. Ms. Gorlova would like the Committee’s decision to refuse the variances upheld. As outlined in her Participant Statement (Exhibit 5) she indicated her concern that the proposal is inconsistent with the prevailing streetscape. She noted that there are no front additions or porch enclosures on the street. In her view, the general intent and purpose of the Official Plan is not maintained, as the proposed extension is not within the physical parameters of other residential development comprising the character of the neighbourhood. In her opinion, the variances requested are not minor as they would have significant adverse impacts on the surrounding properties and neighbourhood. She referred to Section 4.1 of the Official Plan regarding physical change in established neighbourhoods and noted

that the Committee refused the application because it is not sensitive, gradual and does not fit the existing physical character. She indicated that the basement extensions referred to by Mr. Goldberg are not habitable.

Mr. D. Oliveira lives at 222 Melita Ave and is also opposed the variances and supports the Committee decision. (Exhibit 6-Participant Statement). He noted that one of the examples that Mr. Goldberg referred to (210 Ashford) is not an extension of the first floor but an enclosed entryway. In his opinion, the proposal is not appropriate for the desirable development of the buildings as it is inconsistent with the prevailing design character of the street. He considers the proposal an extension of the first floor and indicated that there are no first floor extensions on the Melita Ave. He feels that the proposal would dramatically change the façade of the house and the design and floor of the street character. Mr. Oliveira is concerned that if the application were approved, it would lead to others enclosing their porch which would negatively impact the street and sense of community. In his view, fewer porches would mean a decrease in neighbourhood watch, with less people sitting on their porch.

ANALYSIS, FINDINGS, REASONS

The TLAB has considered the evidence of the Applicant/Appellant and the Participants. The issue before the TLAB is whether the 2 variances requested (front yard setback and fsi) meet the 4 tests of the Planning Act and applicable provincial policy. The TLAB agrees with Mr. Goldberg that the By-laws do not require a front porch and owners are permitted to remove the porch if desired. Further, future renovation/construction of dwellings on the street may not include a front porch.

Mr. Goldberg provided evidence based on the site plan, survey and location map to demonstrate that there are a variety of frontages on Melita Ave and that the existing streetscape is not uniform. In particular, he indicated that in the immediate area there are basement extensions under some of the existing porches with windows (including the dwelling at 211 Melita Ave) and second- storey space that extends over the front porch. In addition, he referred to a number of approved variances in the area for a reduced front yard setback. Mr. Oliveira was concerned that the proposal would result in less “eyes on the street”. The front door to the dwelling is being maintained and there is a large window facing the street. As a result, I am satisfied that the enclosed space continues to address the street appropriately based on the elevations. Ms. Gorlova was concerned that the proposal would cause significant adverse impact on the surrounding properties and the neighbourhood; however, other than a concern about the change in streetscape, there was no evidence to demonstrate any impact. The footprint of the building is being maintained as is the existing roof of the porch so there will be no additional massing facing the street.

The By-laws permit a maximum fsi of 0.6. The site plan statistics indicate that the current fsi of the dwelling is 1.01 and the proposed fsi is 1.05 resulting from an addition 7.83 m² of space. This is a minimal change in floor space which will be accommodated within the existing building footprint.

The TLAB is satisfied the revised variances meet the criteria set out in Section 45(1) of the Planning Act. It is noted that Planning staff did not provide comments to the Committee and therefore did not identify a concern with the application. The Official Plan recognizes that neighbourhoods are not static and will change over time. Mr. Oliveira was concerned with precedent. I agree with Mr. Goldberg that not every owner will want to enclose their porch to extend their living space. Each application would be considered on its context and merits based on the 4 tests. I do not find the issue of precedent a compelling concern in this case.

The general purpose and intent of the Official Plan and Zoning By-laws is maintained. In addition, I am satisfied that the variances are minor, desirable and are consistent with the Provincial Policy Statement and conform to the Growth Plan. The proposal results in an appropriate and desirable development for the subject property and the variances are considered minor in the context.

DECISION AND ORDER

The appeal is allowed and the following variances authorized:

1. Chapter 10.10.40.40. (1) (A), By-law 569-2013

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The floor space index will be 1.05 times the area of the lot (194.58 m²).

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The front lot line setback will be 3.62 m.

Condition:

The proposal be developed substantially in accordance with the revised site plan and elevations, attached as **Attachment 1**, dated July 5, 2017.

X 

L. McPherson
Panel Chair, Toronto Local Appeal Body

Toronto Local Appeal Body

EXHIBIT # 1

Case File Number: 17 258426 S45 21 TLAB

Property Address: 209 Melita Ave

Date Marked: May 11, 2018



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OBC QUALIFIED PUBLIC DESIGNER REGISTRATION

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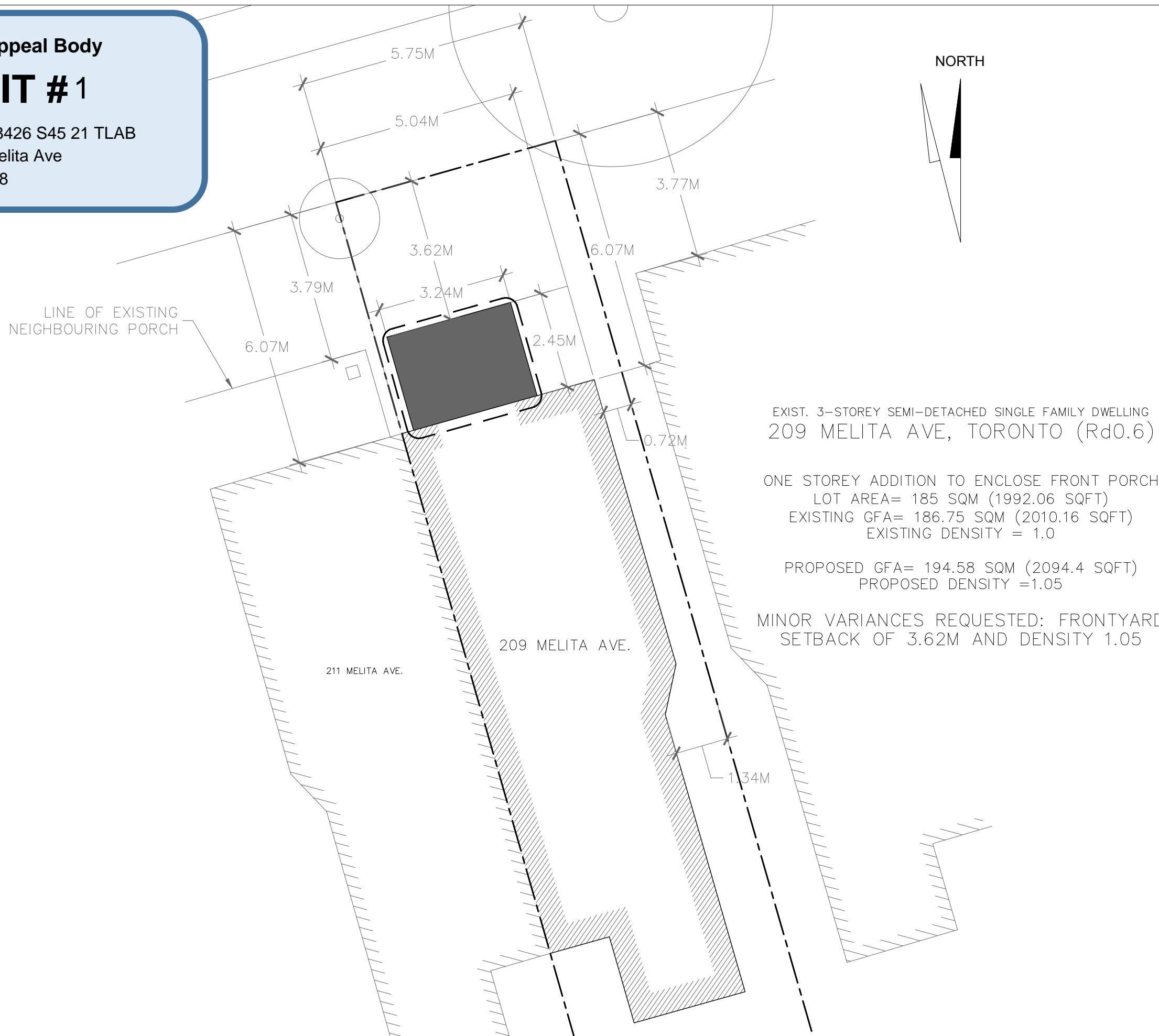
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DATE

D. Mesher
SIGNATURE OF DESIGNER

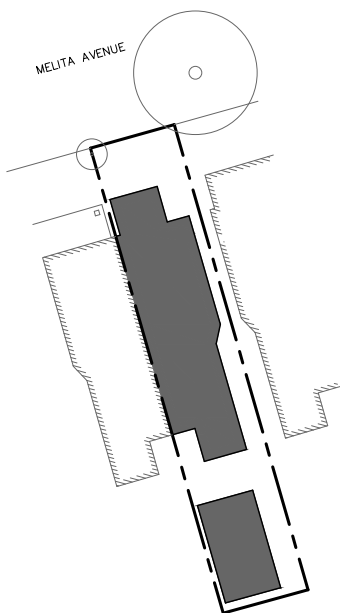
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NORTH



KEYPLAN



ONE STOREY ADDITION

209 MELITA AVE
TORONTO, ON

SITEPLAN

date: JULY 5, 2017
scale: 1:200

A O



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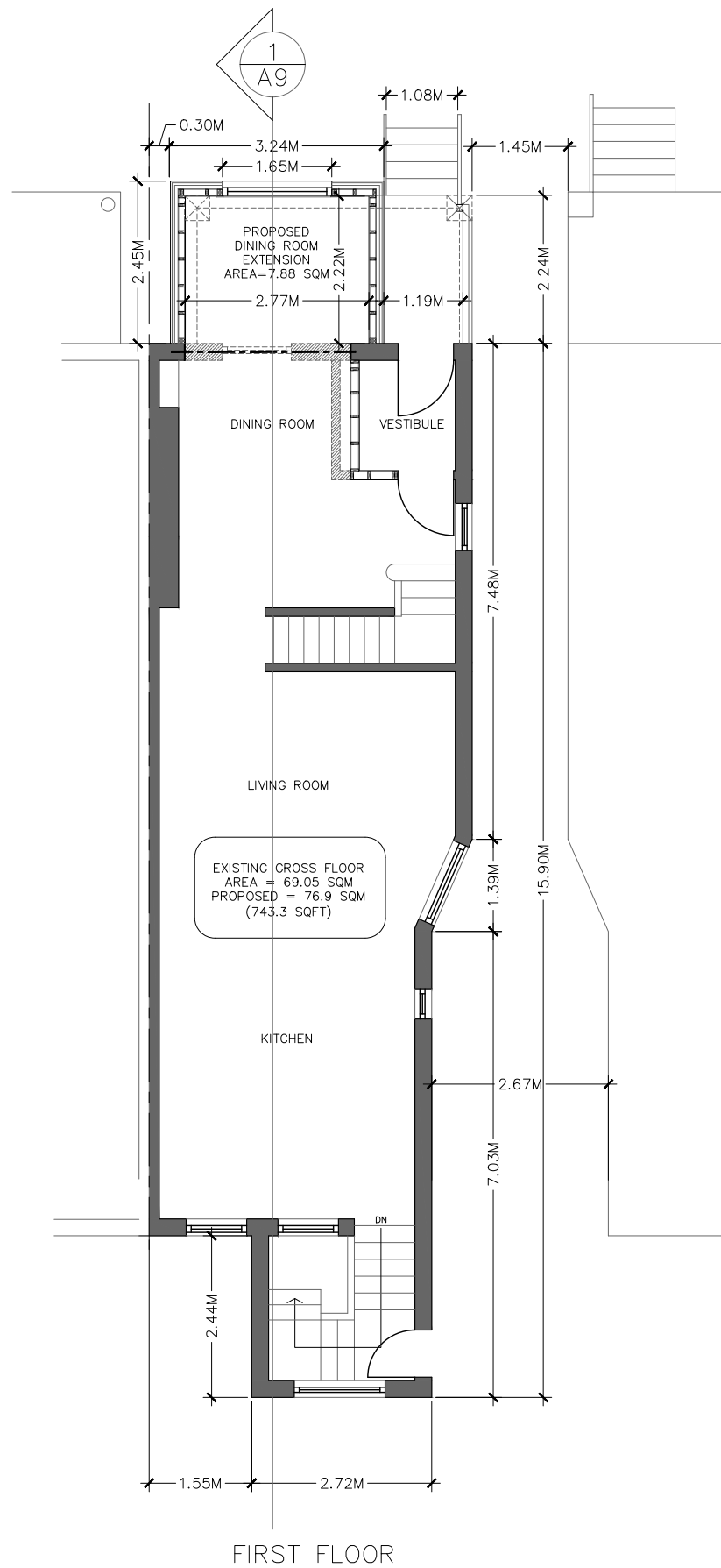
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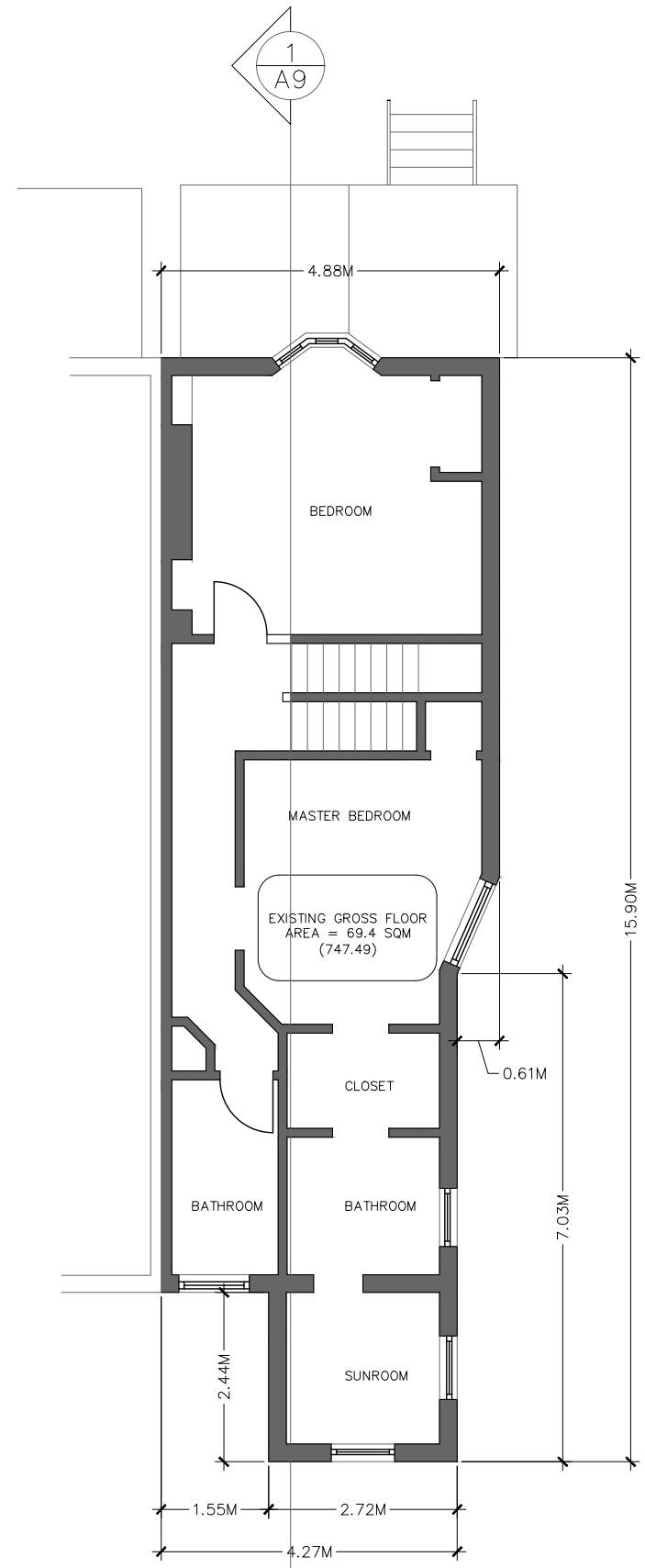
ONE STOREY ADDITION

209 MELITA AVE
 TORONTO, ON

FIRST FLOOR PLAN

date: JULY 5, 2017
 scale: 1:100

A1



SECOND FLOOR



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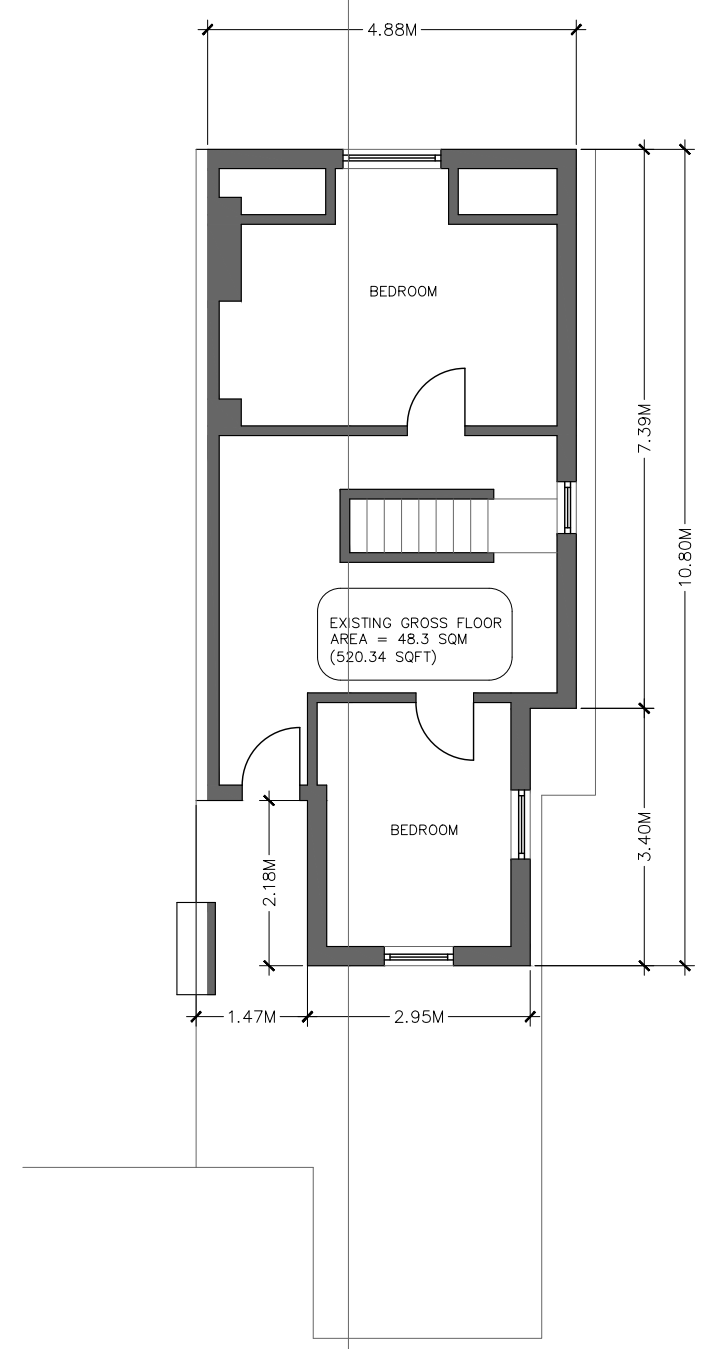
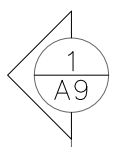
ONE STOREY ADDITION

209 MELITA AVE
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SECOND FLOOR PLAN

date: JULY 5, 2017
scale: 1:100

A2



THIRD FLOOR



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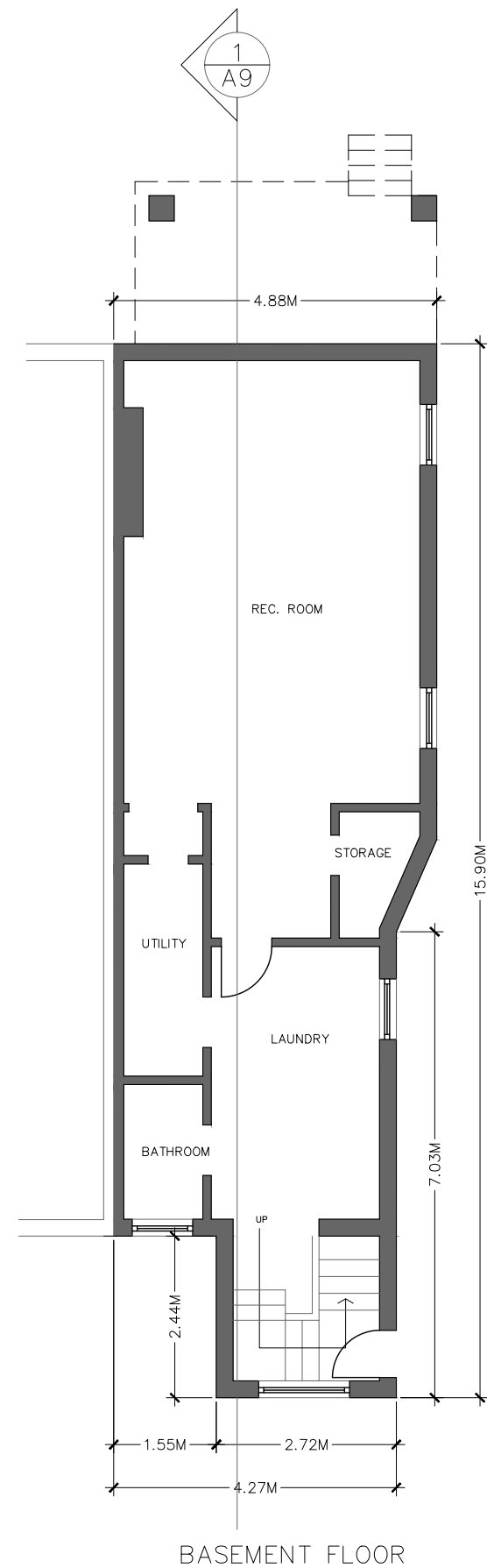
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209 MELITA AVE
TORONTO, ON

THIRD FLOOR PLAN

date: JULY 5, 2017
scale: 1:100

A3



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ONE STOREY ADDITION

209 MELITA AVE
TORONTO, ON

BSMT FLOOR PLAN

date: JULY 5, 2017
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EAST ELEVATION

**ONE STOREY
 ADDITION**

209 MELITA AVE
 TORONTO, ON

**EAST
 ELEVATION**

date: JULY 5, 2017
 scale: 1:100

A5



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SIGNATURE OF DESIGNER

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NORTH ELEVATION

ONE STOREY ADDITION

209 MELITA AVE
TORONTO, ON

NORTH ELEVATION

date: JULY 5, 2017
scale: 1:100

A6



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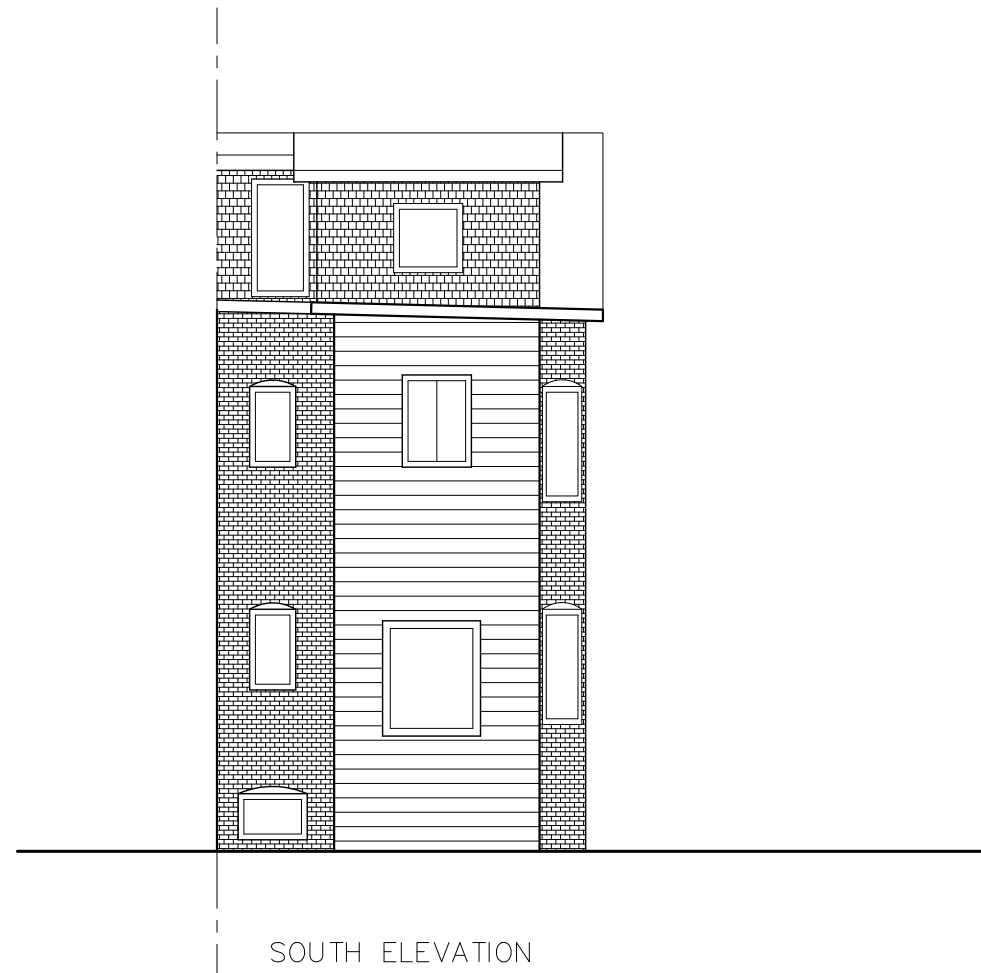
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SIGNATURE OF DESIGNER

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ONE STOREY ADDITION

209 MELITA AVE
TORONTO, ON

SOUTH ELEVATION

date: JULY 5, 2017
scale: 1:100

A 7



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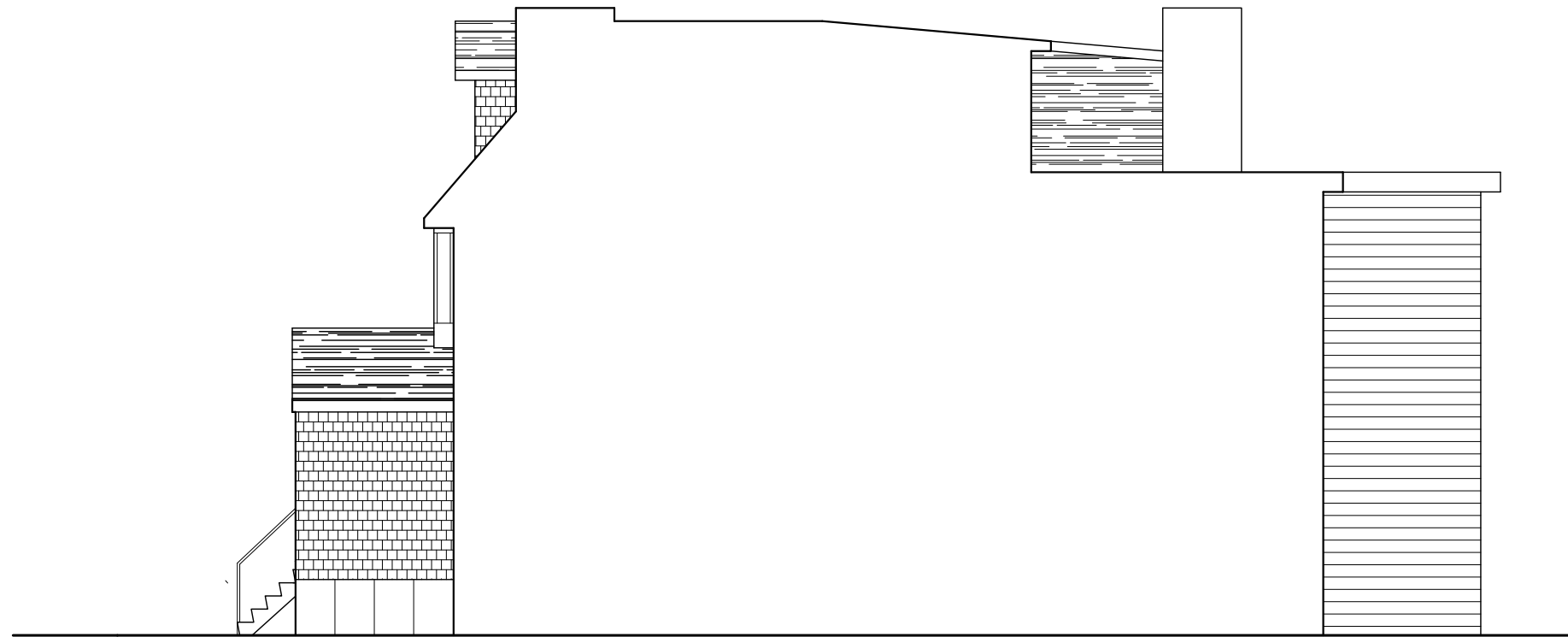
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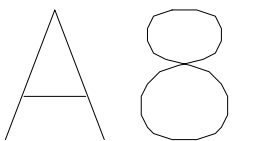
WEST ELEVATION

ONE STOREY ADDITION

209 MELITA AVE
TORONTO, ON

WEST ELEVATION

date: JULY 5, 2017
scale: 1:100





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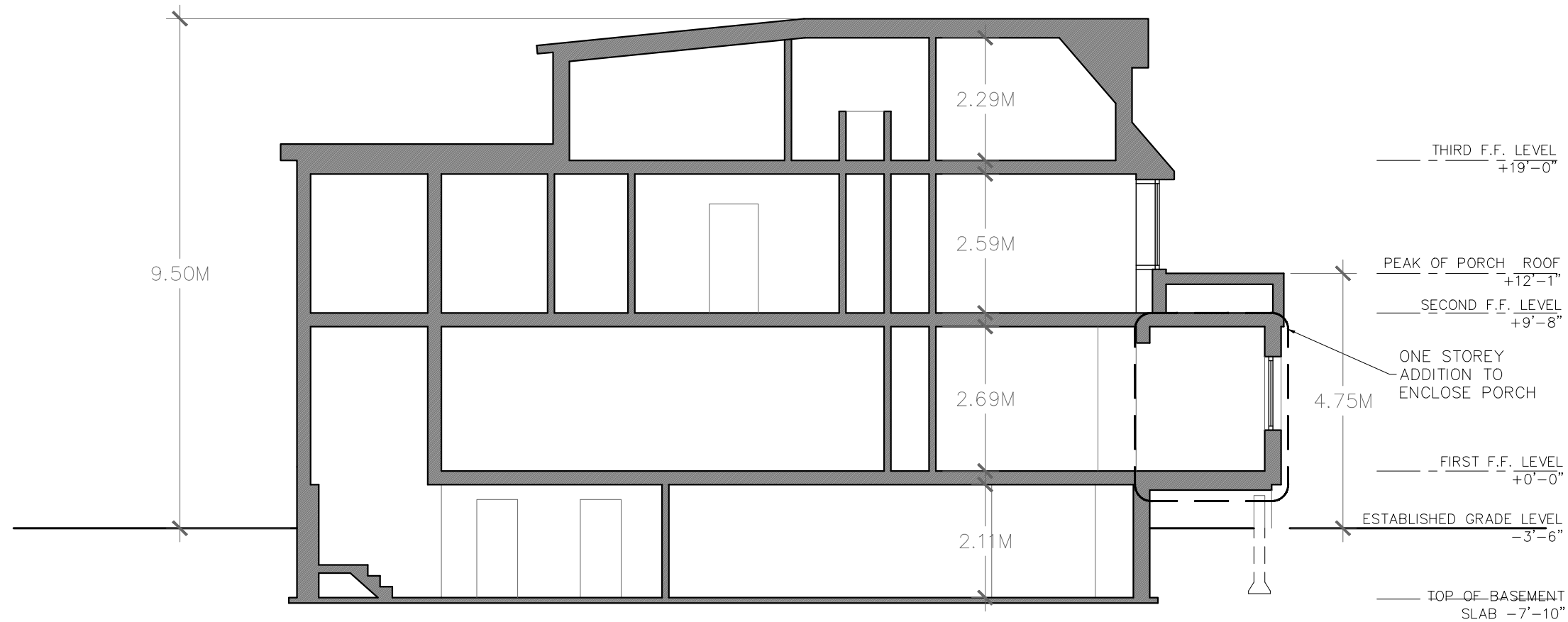
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ONE STOREY ADDITION

209 MELITA AVE
 TORONTO, ON

SECTION

date: JULY 5, 2017
 scale: 1:100

A9