

DECISION AND ORDER

Decision Issue Date Thursday, July 5, 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): PETER ROBERT GRAY

Applicant: CHRISTOPHER WALLACE

Property Address/Description: 391 MARKHAM ST

Committee of Adjustment Case File Number: 17 166151 STE 19 MV (A0609/17TEY)

TLAB Case File Number: **18 112954 S45 19 TLAB**

Motion Hearing date: Thursday, June 07, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Applicant	CHRISTOPHER WALLACE
Appellant/ Owner	PETER ROBERT GRAY
Appellant's Legal Rep.	MARTIN MAZIERSKI
Expert Witness	FRANCO ROMANO

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment refusing variances to permit a below grade tunnel between an existing dwelling to an existing rear yard accessory structure (garage) which fronts on a lane. The variances requested are listed in Appendix 1 of this decision.

BACKGROUND

No one appeared in opposition to the appeal. City Planning staff objected to the application in correspondence to the Committee of Adjustment for two reasons: (1) the

variances would result in a dwelling the length of the lot with the result that the garage would be used for residential purposes; and (2) the tunnel would prevent landscaping in the rear yard required to provide for storm water run-off and the planting of trees. Neighbours objected at the Committee of Adjustment as they misunderstood the variances.

MATTERS IN ISSUE

There were no matters in issue on the appeal.

JURISDICTION

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').

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

Evidence in support of the variances was given by Franco Romano, a qualified and respected planner who has given opinion planning evidence numerous times before the Ontario Municipal Board and the Toronto Local Appeal Body (TLAB). He explained in detail, as set out in his witness statement, Exhibit 2, the reasons why the variances met the four tests of the Planning Act, and were consistent with the Provincial Policy Statement and the Growth Plan. In doing so, he also explained: that the tunnel would not change the physical character of the neighbourhood or the use of the ancillary building; that there would be soft landscaping for drainage; and that the tunnel would be narrow enough to permit the planting of trees. In particular he noted that there would be no increase in living space and that the ancillary building would not be used as a dwelling, as some neighbours had thought. Indeed he recommended a condition to ensure no residential use of the garage. Finally he pointed out that there would be no change in the external appearance of the main building or the accessory building as a result of the variances.

ANALYSIS, FINDINGS, REASONS

On the basis of Mr. Romano's evidence I find that the variances individually and cumulatively meet the four tests of the Planning Act, conform to the Growth Plan and are consistent with the PPS. There is more efficient use of the garage with the tunnel access, and there is no change at all in the physical character of the neighbourhood as the tunnel is totally below grade. The conditions suggested address the City's concern as the garage cannot be used as an extension of the house and a narrow tunnel shown on the plan will allow proper landscaping.

DECISION AND ORDER

I grant the appeal approve the variances set out in Appendix 1 subject to the conditions in Appendix 1.

X



Stan Makuch
Panel Chair, Toronto Local Appeal Body

APPENDIX 1

LIST OF VARIANCES and CONDITIONS – 391 MARKHAM STREET

1. Chapter 10.10.40.40.(2)(A), By-Law 569-2013

Additions to the rear of a semi-detached house erected before October 15, 1953 are permitted provided the floor space index as enlarged does not exceed 0.69 times the area of the lot: ($283m^2$).

The altered semi-detached house will have a floor space index equal to 0.91 times the area of the lot: ($375m^2$).

2. Chapter 10.10.40.40.(2)(B), By-Law 569-2013

The required minimum side lot line setback is 3.77m.

The altered dwelling will be located 0.10m from the north side lot line.

3. Chapter 10.10.40.30.(1)(A), By-law 569-2013

The maximum permitted building depth is 17.0m.

Decision A1236/16TEY approved a maximum permitted building depth of 22.93m. The altered dwelling will have a building depth of 37.07m.

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

The minimum required rear yard setback is 7.5m.

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

5. Chapter 10.5.40.70.(2), By-Law 569-2013

A building or structure is required a minimum setback of 2.5m from the original centreline of a lane.

The altered dwelling will be located 1.83m from the original centreline of the lane at the back.

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

Additions to the rear of a semi-detached house erected before October 15, 1953 or to a converted house are permitted provided the residential gross floor area as enlarged does not exceed 0.69 times the area of the lot ($283m^2$).

The altered semi-detached house will have a residential gross floor area equal to 0.91 times the area of the lot ($375m^2$).

2. Section 6(3) Part VI 1(IV), By-Law 438-86

Additions to the rear of a semi-detached house erected before October 15, 1953 or to a converted house are permitted provided no part of an addition is closer to the side lot line than the side wall of the existing building 3.77m.

**Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 18 112954 S45 19 TLAB**

The altered semi-detached house will be located 0.1m from the north side lot line.

3. Section 6(3) Part VI 1(V), By-Law 438-86

Additions to the rear of a semi-detached house erected before October 15, 1953 or to a converted house are permitted provided the depth of the residential building including the addition does not exceed 17.0m.

The altered semi-detached house will have a building depth of 37.07m.

4. Section 6(3) Part VI 1(III), By-Law 438-86

Additions to the rear of a semi-detached house erected before October 15, 1953 or to a converted house are permitted provided no part of an addition is closer to the rear lot line than 7.5m.

The altered semi-detached house will be located 0.0m from the rear lot line.

5. Section 4(14)(A), By-Law 438-86

A building or structure is required a minimum setback of 2.5m from the centreline of the public lane at the back.

The altered dwelling will be located 1.83m from the centreline of the public lane at the back.

6. Section 6(2)1(iii)A, By-Law 438-86

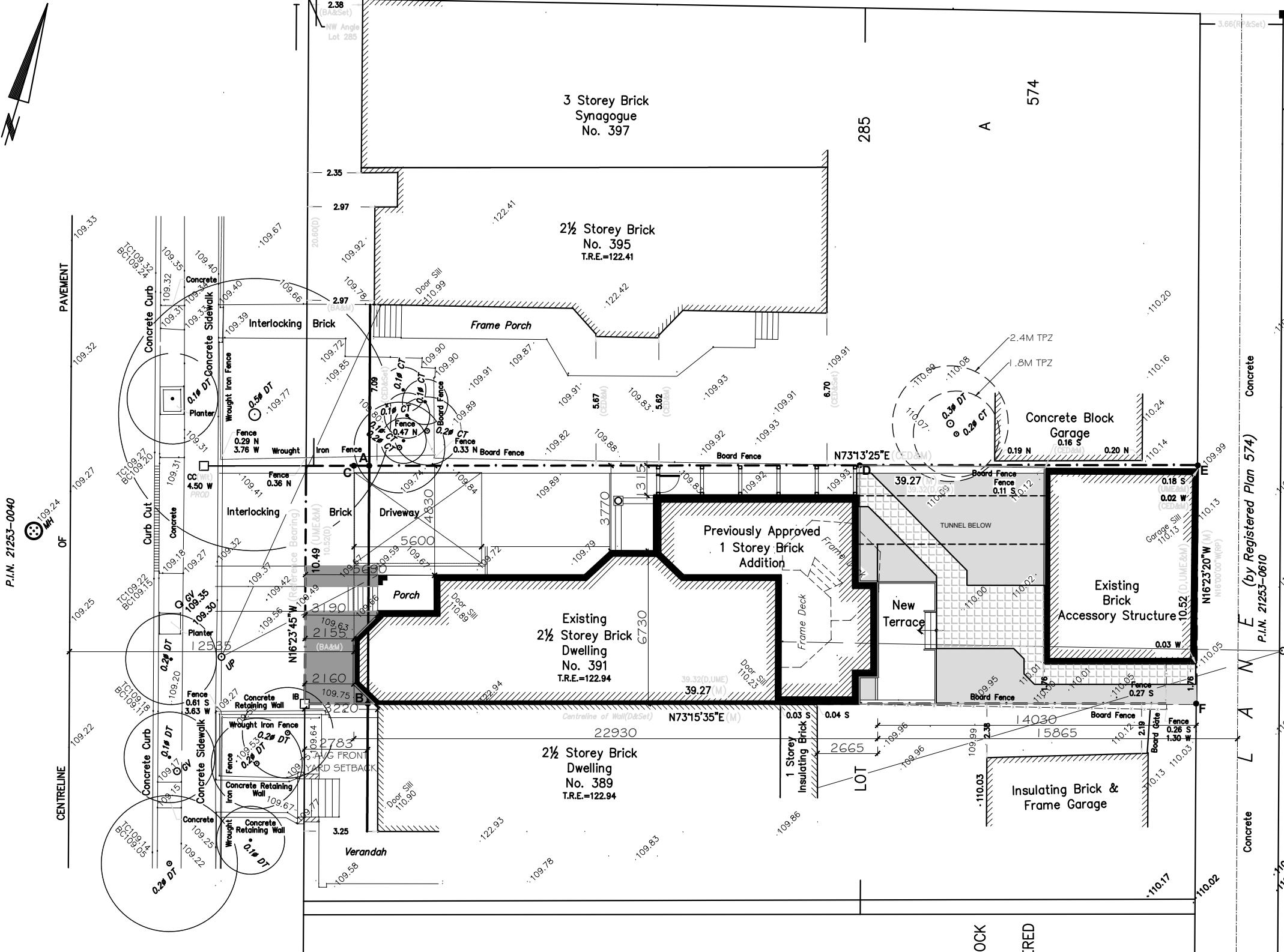
A converted house is a permitted use provided the gross floor area of an addition does not exceed 15% of the area of the lot.

The gross floor area of the addition will be 27% ($110m^2$) of the lot area.

CONDITIONS

1. The property shall be developed substantially in accordance with the site plan drawing A-1 and elevation drawings A-6 to A-11 dated March 1, 2018 prepared by Christopher Wallace, Architect and shown below.

2. The tunnel and/or rear approximately 6.65m depth portion of the building(s) abutting the public lane, labeled as 'Existing Brick Accessory Structure' on the site plan drawing A-1 dated March 1, 2018 prepared by Christopher Wallace, Architect and shown below shall not be used as a standalone separate dwelling unit.





PROPOSED RENOVATIONS AT 391 MARKHAM STREET, TORONTO, ONTARIO
CHRISTOPHER WALLACE ARCHITECT

MARCH 1, 2018

SCALE 1:75

A-6

WEST ELEVATION



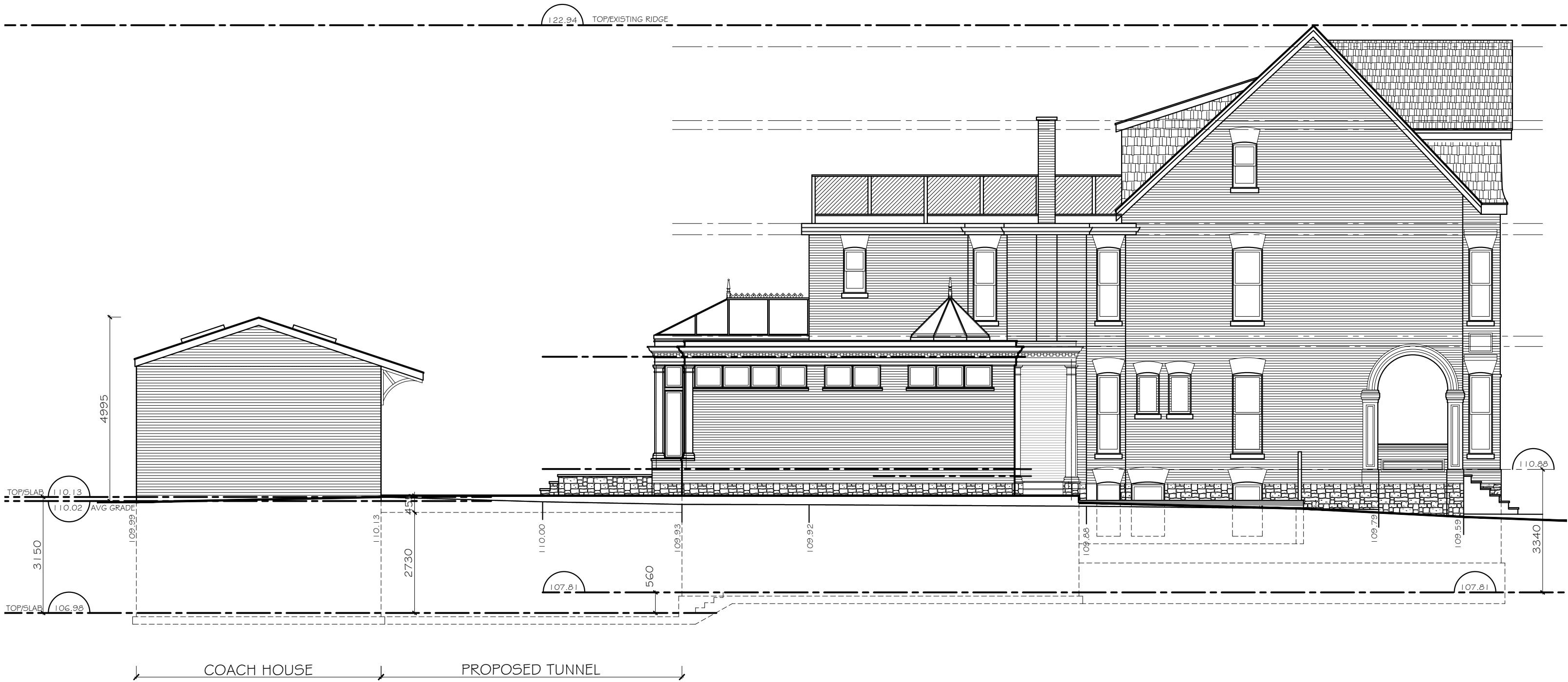
PROPOSED RENOVATIONS AT 391 MARKHAM STREET, TORONTO, ONTARIO
CHRISTOPHER WALLACE ARCHITECT

MARCH 1, 2018

SCALE 1:75

A-7

EAST ELEVATION



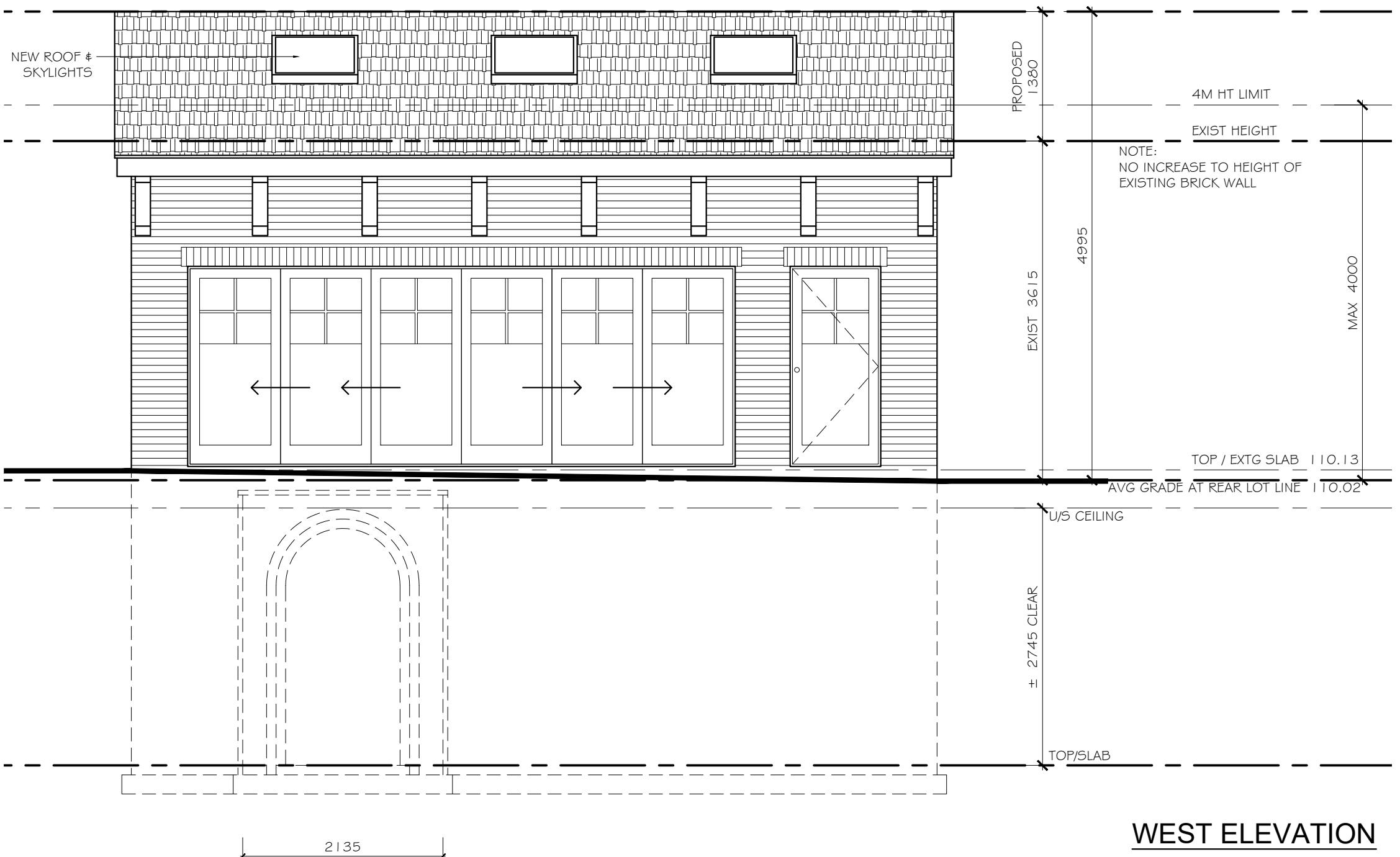
PROPOSED RENOVATIONS AT 391 MARKHAM STREET, TORONTO, ONTARIO
CHRISTOPHER WALLACE ARCHITECT

MARCH 1, 2018

SCALE 1:100

A-8

NORTH ELEVATION



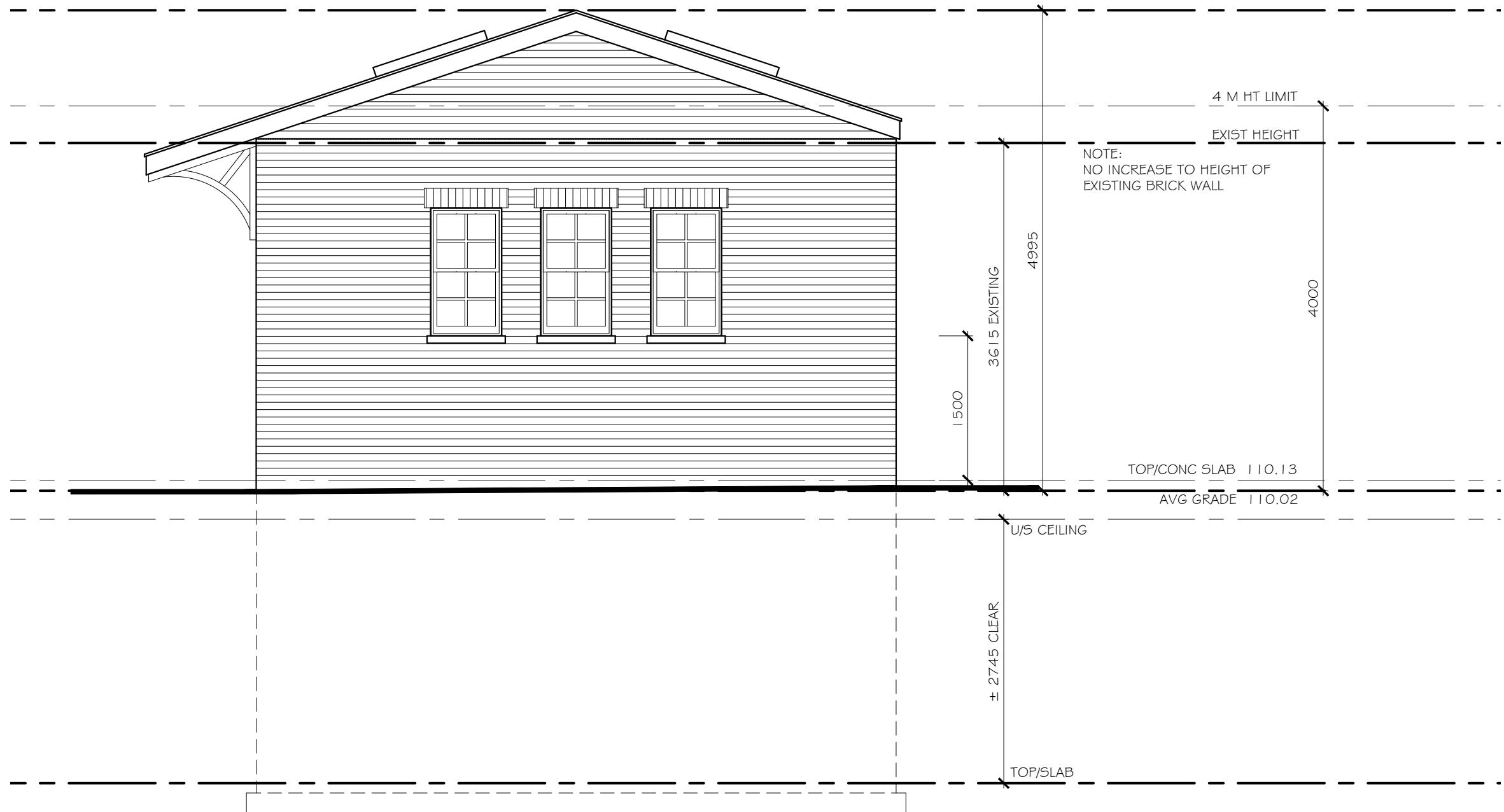
PROPOSED RENOVATIONS AT 391 MARKHAM STREET, TORONTO, ONTARIO
CHRISTOPHER WALLACE ARCHITECT

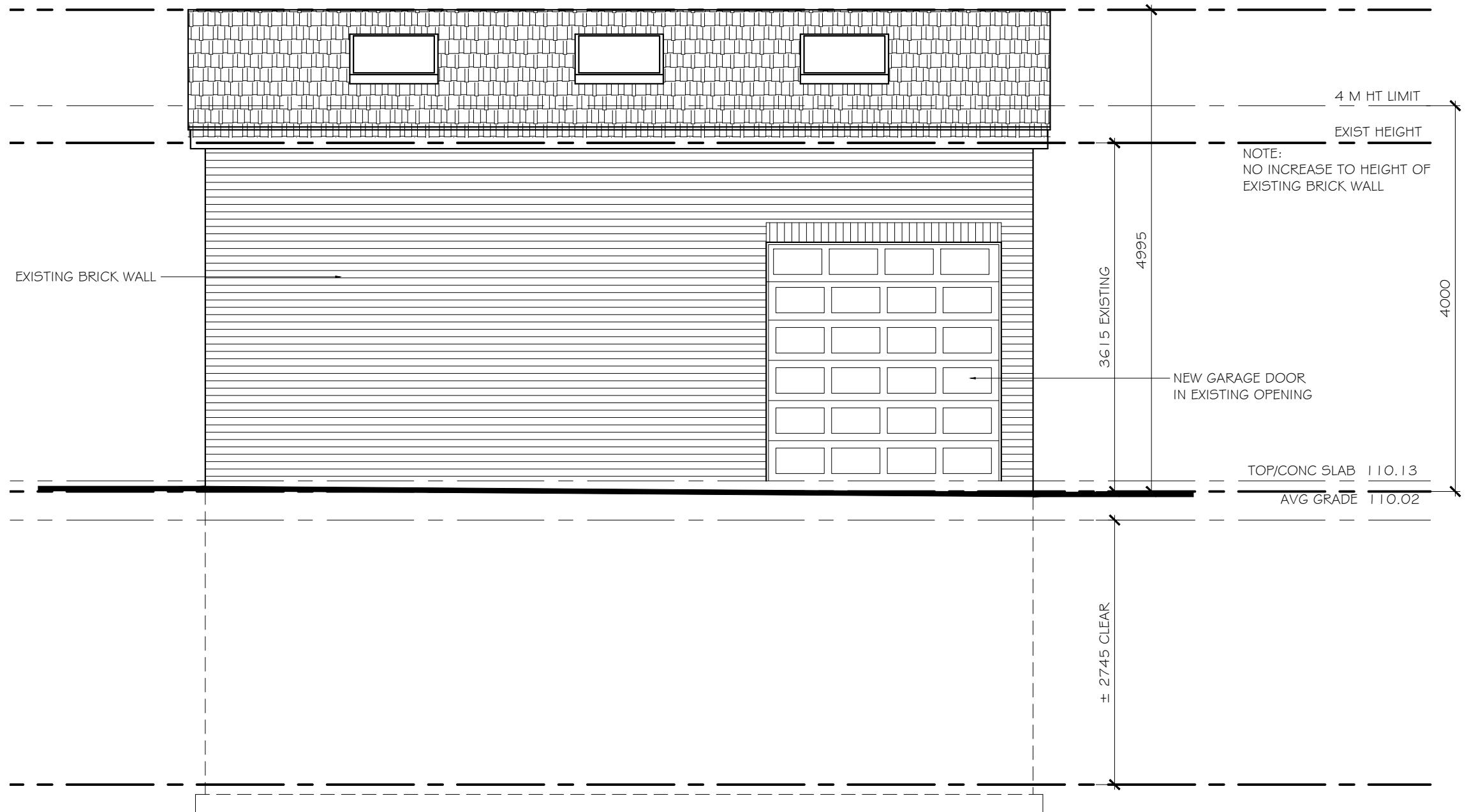
MARCH 1, 2018

SCALE 1:50

A-9

ACCESSORY STRUCTURE





EAST ELEVATION

PROPOSED RENOVATIONS AT 391 MARKHAM STREET, TORONTO, ONTARIO

CHRISTOPHER WALLACE ARCHITECT

MARCH 1, 2018

SCALE 1:50

A-11

ACCESSORY STRUCTURE