Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Monday, November 12, 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): 1628139 ONTARIO INC

Applicant: BOUSFIELDS INC

Property Address/Description: 940 WILSON AVE

Committee of Adjustment Case File Number: 18 144991 NNY 09 MV

TLAB Case File Number: **18 187061 S45 09 TLAB**

Hearing date: Wednesday, November 07, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Bousfields Inc.	Applicant	
1628139 Ontario Inc.	Owner/Appellant	Joseph Debono
Tony Volpentesta	Expert Witness	
Jessica Lee	Witness	
Salvatore La Martina	Participant	
Mario Deliberato	Participant	
Mario Deliberato	Participant	
Ines Mantero	Participant	
Anthony Kyriakopoulos	Participant	

Name	Role	Representative
Angela Kyriakopoulos	Participant	
Lucio Paiano	Participant	
Loc Nguyen	Participant	
Celeste Dalangin	Participant	
Mariela Mantero	Participant	
Rina Camarra	Participant	

INTRODUCTION

This is an appeal from a decision of the North York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing relief under section 45 of the Planning Act to permit the expansion of the building and use of 940 Wilson Avenue (subject property) for the purposes of a Crisis Care Facility (CCF).

The COA held a public meeting on June 13, 2018. It had before it seven requested variances to the zoning By-law (By-law 1147-2007) identified in the list included as **Attachment 1** (variances) hereto, all in respect of plans shown in **Attachment 2 (**Plans**)** hereto, collectively the '**Application'**.

There were no revisions to the variances or the plans that were not otherwise substantially in progress before the COA.

BACKGROUND

Some background from the evidence is perhaps useful to set the context for the issues that arose in this appeal.

The subject property is a two storey, flat roofed building fronting on the north side of Wilson Avenue located between two larger three storey mixed commercial residential buildings, all with varying degrees of vehicle parking in their forecourts.

In the Hearing, I was advised that in approximately 2007, the owner engaged in lease negotiations to permit the use of the subject property for the purposes of a CCF, funded through the Ministry of Health and Long Term Care through the Local Health Integrated Network. The CCF, operated by the Canadian Mental Health Association, thereafter has offered services to residents at the subject property, since 2008. At the

time of commencement, the subject property was zoned ‘C1’, inclusive of a ‘crisis care facility’ as a permitted use. In 2008, the property and surrounding lands, between Keele Street on the west and Bathurst Street on the east, were rezoned, ostensibly to introduce and support an ‘Avenues’ recognition under the City Official Plan for the purposes of directing redevelopment and streetscape initiatives. The rezoning retained the 1 x gross floor area coverage restriction of the former zoning and removed ‘crisis care facilities’ and ‘places of worship’ from the list of permitted uses.

It 2018, for zoning examination purposes, the City has recognized the existing use as a ‘legal non-conforming use’, protected under section 34 (9) of the Planning Act.

The subject property has been the recipient of two previous applications for relief from the COA.

On August 3, 2005, the COA allowed the ground floor space to be converted to restaurant space with a reduced parking standard, recognized existing residential units in the building and permitted a recognition of existing coverage at 37.6% (201.0m2).

On May 7, 2008, the COA authorized existing site conditions under the C1 zone category:

1. Existing lot width and frontage of 14.5m WHEREAS a minimum of 15m is required;

2. Existing lot area of 529.5m2 WHEREAS a minimum of 550m2 is required;

3. Existing side yard setback of 0m WHEREAS a minimum of 3.2m is required;

4. Existing rear yard setback of 8.2m WHEREAS a minimum of 9.5m is required; and

5. Existing balcony area of 41m2 WHEREAS a maximum of 3.8m2 is permitted.

At the time, no construction was contemplated and no use permission was required or, apparently, identified.

The Applications now contemplate an expansion of the use facilitated by the construction of a three storey rear yard extension of the building and a third storey, covering the existing building. The required permissions are identified in **Attachment 1.**

At the COA meeting of June 13, 2018, there were multiple letters expressing concern on various matters resulting in, as well, the registration of several Participants for this Hearing.

The City took no position on the Applicant's appeal and did not appear. Although several local residents and business operators ultimately spoke, there were no other represented Parties or Participants in like position to the Applicant.

I advised that I had attended and viewed the subject property and had reviewed much of the extensive filings, but that matters of importance to those giving evidence needed to be brought specifically to my attention.

At the outset, Mr. Debono, in opening remarks, made several points:

1. The appeal was being based upon both the jurisdiction to allow an expansion and enlargement of an existing legal non-conforming use and the subject matter of minor variance permissions, all in accordance with the parameters identified in **Attachment 1** and **Attachment 2**;
2. The Participants either filed their Notices of Participant election late or failed to file required Participants Statements in compliance with the Rules of the Toronto Local Appeal Body (TLAB) and, consequently, should not be allowed to speak.
3. Opposition to "this simple application" for variances was principally to the use as a CCF and the users thereof. As such, he submitted, those concerns are irrelevant to the TLAB due to the pre-eminence of the Ontario Human Rights Code (OHRC) prohibiting any form of discrimination against persons or characteristics of defined protected status.

I indicated an interest on the evidence respecting the distinctions between the relief intended as between the legal non-conforming use and the minor variance jurisdictions, if any.

I ruled that the Participants would be allowed to speak, subject to a justification of their earlier participation and as to the reasons for non-compliance with the TLAB Rules.

The degree of insulation or shielding afforded the Application by the OHRC was the subject of extensive submissions and reference to case law authorities, canvassed in the argument presented by Mr. Debono.

MATTERS IN ISSUE

The relief requested is identified in **Attachment 1.** While some concerns were expressed with aspects of the proposed relief relating to building height and parking, much of the concern expressed centred on incidents involving residents of the CCF

attending on adjacent properties, including concerns for aberrant behavior, loitering, nuisance and concerns for personal and customer safety and the security of property.

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 form 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.

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 continued until the date of the application to the committee;

EVIDENCE

The Applicant called two witnesses: Ms. Jessica Lee, a Program Manager with the CMHA having responsibility for the CCF on the subject property, and Mr. Antonio Volpentesta, a Registered Professional Planner whom I accepted as qualified to give expert opinion evidence on land use planning matters.

Ms. Lee described the use, site operations and the expansion goals.

She explained the following existing and proposed attributes of the CCF:

a). to provide short term (maximum 30 days), independent, self-contained dwelling unit accommodation for 12 residents under a publically funded 'Safe Beds Program';
b). accommodation is for adults in crisis requiring safe support without hospitalization through referral pathways via: families; self-help; agencies; police;
c). individual admission assessments and counselling for building occupants is conducted by on-site staff at a 6:1 resident/staff ratio - with not less than 2 staff persons in the building at all times;
d). the purpose of the facility is to provide and promote healthy individual support living within the community for a period sufficient to stabilize individual conditions with services all as set out in her communication to the COA dated June 1, 2018, Exhibit 1 (Applicants Document Book), Tab 20.
e). the expansion (above described) would accommodate 12 more beds, renovated space, expanded resident facilities, office and food serveries and a confined, centrally located roof top deck, eliminating a current second storey rear yard deck, presumed to be of concern to residential neighbours to the north arising from overlook and proximity;
f). occupants are not allowed cars and although parking is a premium in the area, the City sought and achieved agreement that one on-site parking space would be converted to front yard landscaping;
g). on being recalled, she advised that residents agree to a "loosely enforced" 1 am curfew, but otherwise the CCF was not a secure building, there is no 'front desk', the residents were not subject to any off-site assistance or control and that a 'Clinical Lead' is onsite Monday to Friday, '9 to 5'. She acknowledged a website but no on-site identification of the use as a CCF, for client privacy reasons;
h). she advised that off-site assistance is occasional but not mandated for staff and that while clients consent to on-site interventions for conduct, if there is a concern for a safety risk off-site, it is appropriate to call '911'. No explanation was provided as to why off-

site standards expected of clients could not be incorporated in admission documentation. It should be.

Mr. 'Tony' Volpentesta provided thorough expert land use planning testimony reciting his engagement on the file since October, 2017.

He described and provided his supportive opinion on the Application addressing, for brevity, the following matters:

a). his discussions with City Planning Staff resulting in a Report Exhibit 1, Tab 13, recommending the revised site Plan of June 5, 2018 (**Attachment 2**), providing for the removal and landscaping of one front yard parking space;

b). describing the Applications and proposal as offering needed additional accommodation with no adverse impacts arising from traditional matters of privacy or shadowing. He noted the adherence (no exceedances) to a 45 degree angular plane from the north lot line (a shadow protection principle) and the relocation of amenity space more central to the third storey roof, shielded from any oversight by proposed solid board fencing and significant perimeter setbacks, shown in the Plan:

c). opining that the three storey rear addition and third floor is an appropriate and good 'fit' with both the site and adjacent properties being in keeping with the two adjacent three story mixed use buildings;

d). adjacent properties to the east, west and south were of comparable heights, included residential components, that benefited from excellent transit service on Wilson Avenue, itself a designated 'Avenue' in the City Official Plan having potential for intensification;

e). residential properties to the north were wide, deep and screened by a heavy vegetation row, accessory structures and tall fencing, and that the proposal met the angular plane design standard while maintaining the required rear yard setback and height preservation step back, without balconies, for the proposed new construction. He noted that the apartment residences to the west were equally high at three storeys, but they contained balconies and exhibit a lesser setback and greater proximity to the Regent Street properties to the north;

f). the proposed third storey deck is ringed with fencing and would not be visible from the street; the height exceedance variance, proposed principally to recognize just the access stairwell

consisting of non-habitable space; the stairwell structure on the third floor roof is set back some 15 m front the front of the building;

g). the Examiners Notice, Exhibit 1, Tab 6, dated March 13, 2018, recognized the existing legal non-conforming use status and provided advice as to the required variances. The planner found these, on a thorough review and assessment which was ultimately uncontested, to individually and collectively meet the intent and purpose of the Official Plan and were consistent with principles of good community planning;

h). with respect to the identified 'variances', he identified four of the seven (Variances 1, 2, 3 and 7 on **Attachment 1**) as to be a recognition of existing conditions (analogous to the 2008 COA decision) and essentially "technical"; Variance 4 is needed to recognize the three storey rear addition of two dwelling units/floor with a continuing west side yard setback; Variance 5 is to accommodate an existing minor roof exceedance and the stairwell enclosure to the roof deck, both aspects to be circumscribed by a condition on 'construction in accordance with the Plans', (**Attachment 2**); Variance 6, while numerically significant, is less so if contemporary standards of measurement were to be employed, relevant only to above grade structures. In his view, the 'modest addition' proposed by all seven variances maintained and met the intent and purpose of the Mixed Use Official Plan designation and Built Form 'fit' policies, section 3.1.2.1, the purposive standards for built form provided for in the By-law and were minor and desirable in that accomplishment, without adverse impact;

i). that Provincial policy, including section 4.6 of the Provincial Policy Statement (PPS) included recognition of projects supportive of the objectives of the OHRC and that consistency with the policy objectives of the PPS was met, as well as conformity to similar objectives within the Growth Plan for the greater Golden Horseshoe.

As described, there were no questions or challenges to this evidence.

Despite that, several representatives of area businesses and residences appeared to speak of concerns arising from the doubling of the size of the existing use by the building space proposed.

I heard from five (5) listed Participants each of whom were brief and succinct in their deputations and responses to questions by Mr. Debono. The first explained that the failure to provide a Participants Statements stemmed from advice, ostensibly

received from TLAB Staff, that evidence could be submitted orally OR in writing. Since the former was selected by an attendance, there was a mistaken belief, unchallenged, that a submission in writing is not required. The circumstance is unfortunate, seemingly plausible but contrary to the regimen of Staff to direct enquiries to the Rules alone.

The TLAB Rules are there to be respected. TLAB Staff are under strict instructions and advise, on enquiry, of the existence, location and priority of the Rules of Practice and Procedure. Participants Statements are to disclose the intended content of the oral evidence. Trial by ambush is intended to be a past activity no longer condoned. All Parties and Participants are under a duty to disclose the nature and content of their positions. Not only is this a hallmark of a fair Hearing process, it is fundamental to assessing the sufficiency of one's own position. It performs the even more vital role in furthering the ability to identify and settle differences, without the necessity of a trial of the issues.

There were no subsequent challenges to the admissibility of Participant evidence.

The first to Participant to speak was Anthony Kyriakopoulos. He pointed to the variances for building size and height, indicating a doubling of residential capacity (anything greater than 50%), in not minor. However, he was candid to say his real concern is not the building but the 'crisis' to the neighbourhood caused by occupants from the CCF causing unpleasant incidents in direct proportion to proximity to the subject property. He recited 'incidents' on his premises, (a 34 year businessman operating a pizzeria at 824 Wilson Avenue) and the presence of police and ambulances, all focused from the subject property.

He advised that a Business Improvement Area (BIA) is attempting to upgrade the qualitative characteristics of the area, that the invitation extended to the owner and Appellant to work together had been rebuffed. While the CCF residents themselves were not at fault, he felt that the offsite incidents they generated should not be augmented by a doubling of the CCF from what neighbours were experiencing in this specific neighbourhood.

Mariela Mantero operates a conjoined restaurant and bakery at 894-90 Wilson Avenue and is a resident with her mother and daughter. She recited her own experience with residents from the CCF centred on issues of abusive behavior, insulting language, acts of violence, loitering and concern for personal safety for both herself and the daughter, distraught by an incident involving displays of anger and loss of self control.

She echoed the concern expressed by Mr. Kyriakopoulos for the injury to business such incidents have in the attendances of clients/customers.

Salvatore La Martina, with a computer business and residence at 908 Wilson Avenue, reasserted that the issues are not with the building but the concerns generated off-site anticipating that 'accidents will happen'.

Mario Deliberato, owner of a wine emporium for 33 years at 950 Wilson Avenue, almost next door, expressed concern for the height exceedance proposed, and also the safety of persons and the security of the facility, given multiple attendances by police.

He recited his own experiences of incidents of mal-behaviour and conduct as well as customers being accosted with requests for cigarettes and money. He felt that as a result of the CCF on the subject property, he had become more acutely aware of his surroundings and regard for personal safety. He felt the facility was 'big enough' and that the increased size would augment the issues and congest the well-used parking spaces available on-site.

He felt the facility should take greater responsibility for its patrons.

Ms. Rina Camarra, for 50 years, has operated a restaurant and lives upstairs at 890 Wilson Avenue. She recited additional incidents, including a fight which caused her anxiety, the police response, additional security precautions she has instituted and an incident of a person sleeping in her stairwell, and others.

She was of the view that the CCF attempts no control over persons coming and going to the facility. Although she had not approached the Manager of the CCF, she felt that better monitoring to protect the community is warranted.

Ms. Lee was recalled to address some of the issues raised; her evidence is recited, above, including her advice that where there is concern for a safety risk, the 'call to 911' is available. She noted that the CCF is not a secure facility and management is not empowered to restrict or guide the offsite conduct of residents. While the power of eviction is present, the CCF is hesitant to use that remedy as the issue of homelessness and the effort to provide a stable environment for people in crisis, as is being addressed by the Safe Beds Program, would simply be transferred elsewhere.

ANALYSIS, FINDINGS, REASONS

Mr. Debono delivered a well prepared and articulate summary, as he saw it, of the support for the Application and the approval of the **Attachment 1** variances, subject to substantial construction compliance with the Plans put before the COA in 2018 **(Attachment 2)**.

He expressly rejected any other conditions.

He made the following substantive submissions, generalized for brevity, supported by an extensively referenced record of pre-filed caselaw:

1. The expansion of a legal non-conforming use is not restrained by the four tests expressed in section 45 (1) of the Planning Act. Indeed, expansion and enlargement permission is recognized in section 45 (2) provided it is consistent with principles of good community planning.
2. In the alternative, the Applications take jurisdiction under the four tests of section 45 (1). In either case, the uncontested evidence from Mr. Volpentesta should be accepted, as fulfillment of all relevant Provincial Policy, statutory tests and the application of good planning principles applicable to each variance in **Attachment 1**, subject to the Plans in **Attachment 2.** He urged acceptance of Mr. Volpentesta's advice that no unacceptable adverse impact on adjacent properties and the neighbourhood was generated, individually or collectively.
3. There is no basis in planning merit to the objections expressed by the Participants as they are fueled not by the building proposal, but the people who would occupy the units. He characterized this source of objections and concerns as a flagrant ignoring of the OHRC. He called it an attribution of fear and apprehension in every incident expressed, to the CCF use.
4. He characterized the work of the CCF and the Safe Beds Program as a community service: the provision of a safe haven in which the occupants were not incarcerated but rather provided needed accommodation with resources providing a path to hope and safety for which this (and the larger) community should be thankful.
5. He asserted that the OHRC, section 47, holds primacy over land use planning legislation citing 'well established' law that 'people zoning' is contrary to the Charter of Rights and Freedoms and the imposition of <u>any</u> conditions in furtherance thereof is a violation of protected rights and cannot be tolerated. He said that the Planning Act should have regard to the principle of equal treatment under the law, without discrimination. Further, that conditions tied to users or their personal characteristics would be constructive discrimination prohibited by section 9 and 11 of the OHRC, even if they are felt to be neutral or reasonable in their operation. He stated that any restriction is not justified as the expertise to deal with displaced persons and persons eligible for the Safe Beds Program lies with the MHLTC and the LHN.
6. He argued there is a duty and obligation to have regard to the OHRC and that statutory tribunals, such as the TLAB, can look beyond their own enabling legislation and recognize that people, even those with mental health incidents have the same rights and expectations of all in society.
7. He said the concerns expressed by the Participants are outside the Planning Act process, are extraneous to its jurisdiction and the OHRC says such concerns must be disregarded. He cited an Ontario Municipal Board decision (*House of Friendship,* Exhibit 1, Tab 42, p. 37) where 'overconcentration of social service users in an area' was a focus in issue and related to users, not uses.

It is noted however, at page 44 the Board observed:

> "The *Code (OHRC)* would appear to prohibit a by-law or planning instrument that appeared to have a discriminatory effect, subject to the statutory defense of "reasonableness and *bona fides* under the circumstances", notably undue hardship."

I do not find in the circumstances of this case a compelling need to go down the path suggested by Mr. Debono or to examine and attempt to resolve all the possibilities that counsel may fear or seek to curtail from occuring.

In this case, Variance 1, which states as follows:

> "Chapter 45.3, By-Law No. 1147-2007
>
> A crisis care facility is not a permitted use.
> Proposed is an addition to the existing legal non-conforming crisis care facility use."

The Applications very clearly put the 'use' of the building in issue. While I acknowledge that the Participants were more concerned with the consequences of the use in their locality than the physical built form manifested by the Plans, I do not equate that in any manner to a violation of protected rights that is prohibited.

Impacts of a use expansion are grist for the mill of land use planning considerations.

Each spokesperson offered no enmity to the occupants of the CCF; quite the opposite, all recognized the societal need for housing the homeless. Empathy was universally expressed for persons who by reason of mental or emotional circumstances find themselves in need of the programs, shelter and safe haven that the CCF and the CMHA afford. I saw no evidence of conduct or aggression on the part of any Participant that could constitute to the slightest degree an encroachment on protected rights under the Charter of Rights and Freedom or the OHRC. I do agree that the letter and spirit of these enactments are relevant considerations for the TLAB and can constitute limits on its jurisdiction if any of its actions constitute encroachment.

I see that the Applications place the use of the building in issue and I find it entirely appropriate that the Participants be entitled to express their concerns as to how that use intersects with the enjoyment of their property, businesses and personal safety. Indeed, in the process at hand under the Ontario Planning Act, I suspect I would be remiss in limiting the rights of a citizen to express themselves in relation to the subject matter of a planning approval having consequence to them.

I am not disposed to limit their freedom of expression, subject to criteria of relevance, undue repetition and civility.

I find that none of these limits were approached. Rather, I heard expressions of concern, above recited, but very little by way of constructive suggestion as to how those concerns might be alleviated. Implicit with some was the request to deny approval of the Applications and to follow suit with the COA.

Clearly, in the jurisdiction being exercised by the TLAB, issues of adverse impact are very much in the forefront of legitimate land use planning considerations. The construct of the segregation of land uses based on discrimination between uses based on the common law principles of nuisance is at the very foundation of public land use controls, since their inception. However, it is the case that discrimination beyond the element of incompatible land uses has wider ramifications, when engaged.

That said, the instance of nuisances referenced by the Participants were all in relation to their concerns for the protection of property, personal security and nuisance. While these concerns were expressed to source from the subject property is an observation of the evidence of the speakers and is, arguably, a matter of fact finding. These observations were cross-examined on and I have no reason to doubt either the authenticity of the belief or the accuracy of the Participants attributing the source of their concerns to the use of the subject property. These are long term residents and business operators and their perceptions on the instances described and their source, both within their knowledge and from belief, was not dislodged.

All that I can take from this is that the facility on the subject property generates a degree of offsite impact that rises to the level of noticeable concern by certain individuals. The level of that concern cannot be said, however, to rise to the degree of undue adverse impact attendant the land use planning tests related to requested zoning relief - on the evidence that I heard.

The residents that testified had never called the police to curtail conduct; they had not approached the facility for direct action; there was no evidence of a concerted effort to challenge the use. Rather, acting responsibly and with a degree of compassion, a number of the Participants had offered assistance to instances of incapacity and participated in an active attempt to resolve concerns amicably. No higher a tribute can be paid that to note the humanity recognized by such conduct. There was no litany or study of ‘incidents’; there were anecdotal remembrances. And while I do not discount for the moment that there have been instances of discomfort, even fear, such is an unfortunate testimony to the vicissitudes of a large metropolitan area where humanity co-exists in close proximity. Such instances are not uncommon across Toronto and while it is reasonable to accept that there may be some concentration in the area and the prospect of a continuation and even increase, the neighbourhood is not an island unto itself.

There is no finite limit on the number of persons accommodated by the Safe Beds Program. No public entity has advanced such a control, perhaps for the reasons Mr. Debono articulates; none is advocated here. The proposed expansion of the

building (and consequently the use) would accommodate a modest number of additional beds, amenity spaces, utility space and recreation space. I am satisfied that the isolated incidents duly noted do not reflect the essence of 10 years of service that the use of the subject site has provided.

As with most Participants, I accept the evidence of Mr. Volpentesta that the subject property can accommodate the built form proposed. Four of the '**Attachment 1**' list of variances are to recognize existing conditions. In terms of built form, adjacent buildings and the larger Wilson Avenue frontages accommodate three storey buildings as proposed, some closer to the 'Neighbourhood' designation on properties to the north.

I accept that the urban design principle of an angular plane protects adjacent land uses from adverse impacts arising from proximity or reductions in light, air or privacy. There are no massing or built form impacts of significance and none but vague generalities raised. One of these, height, is confined from abuse by limiting the height increment over effectively three stories by ensuring that the approved plans confine the height increment to existing conditions and to the covered stair canopy providing access to the third storey roof deck.

In this instance, I see no reason to distinguish consideration of the requested variances sourced under the minor variance or the 'legal non-conforming use' jurisdiction. Both relief vehicles are afforded to the owner/Applicant as a statutory right of application and both must be considered under contemporary standards of good community planning. There was no cogent or qualified dispute to the evidence of compliance with all policy tests and considerations; namely, that the project envisaged would 'fit' suitably on this Mixed Use designated property, on an busy arterial 'Avenue' in the City, without undue adverse impact.

No variance relief is sought to the parking standard applicable to the use; I accept the recommendation of the municipal planning staff, adopted by the owner and the Applicant/tenant and embodied in the Revised Site Plan, **'Attachment 2'.**

The finding of 'no undue adverse impact' does not imply that there is no impact. The owner to the north has expressed written reservations and the Participants clearly advanced that the use generates instances of negative impacts. The extent to which that they can be addressed is a relevant consideration.

I find that these concerns do not in nature, kind or degree amount to the type of undue impact that warrants refusal of approval of the Applications.

That said, the task of the TLAB is to be open to the amelioration of impacts to the degree appropriate based upon legitimate, established concerns and general principles of good community planning.

In this regard, in addition to the recommended condition as to compliance with the proposed built form proposed by the Applicant's planner, three additional matters

are to be addressed by conditions: a). one related to the security of privacy of the roof deck; b). one related to communication to the neighbours for identifying off-site disturbances through the provision of contact particulars; and c). one to ensure contact and communication with the BIA on streetscape improvements.

Communication is the essence of good neighbours; the time for communication is when issues first arise.

DECISION AND ORDER

The decision of the COA is set aside and the variances identified in **Attachment 1** are approved.

This approval is subject to the following Conditions:

1. Construction shall be substantially in accordance with the Revised Site Plan and Elevation Plans contained in **Attachment 2** hereto, except as hereinafter varied.
2. Despite the roof deck third floor Plan found in **Attachment 2**, the roof deck shall be cordoned off, except at its point of access, with the setbacks and in the location shown on the third floor roof Plan by an anchored solid wood or board-on-board fence maintained in a good state of repair and not less than 1.52 m in height throughout, such that and to the end that access to any other part of the roof shall be prohibited, except for maintenance purposes.
3. The owner/Appellant and the tenant CMHA, for so long as the use of a Crisis Care Facility continues, shall post and maintain current signage on the Wilson Avenue frontage identifying the title and office telephone and contact particulars of personnel on the site at the subject property and, as well, the owner's representative. No occupancy permit shall be issued for the expanded space until the requirement of this condition is met to the satisfaction of the Chief Building Official.
4. The owner/Appellant or designate shall communicate with the Business Improvement Area Executive Director, or equivalent, and co-operate on an agreed landscape design or feature to mutually address objectives for the landscaping of the agreed converted parking pad at the front of the subject property as shown on the Revised Site Plan found in **Attachment 2**. No occupancy permit shall be issued for the expanded space until the requirement of this condition is met or secured to the satisfaction of the Chief Building Official.

No other variances are authorized. If there are difficulties in the implementation of this decision and order, the TLAB may be spoken to.

X

Ian J. Lord
Chair, Toronto Local Appeal Body
Signed by: Ian Lord

Attachment 1

VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 45.3, By-Law No. 1147-2007
A crisis care facility is not a permitted use.
Proposed is an addition to the existing legal non-conforming crisis care facility use.

2. Chapter 45.4(i), By-Law No. 1147-2007
All buildings and structures above and below grade, to the lesser of a height of 9.6m or 3 storeys, shall be located a minimum 0m and maximum of 2.5m from any street lot line.
Existing and proposed front yard setback for the building as described is 7.21m.

3. Chapter 45.4(ii), By-Law No. 1147-2007
The portion of any building or structure above 9.6m or 3 storeys in height shall be set back an additional 1m from the base elevation for buildings from a front lot line.
Existing and proposed front yard setback for the building as described is 7.21m.

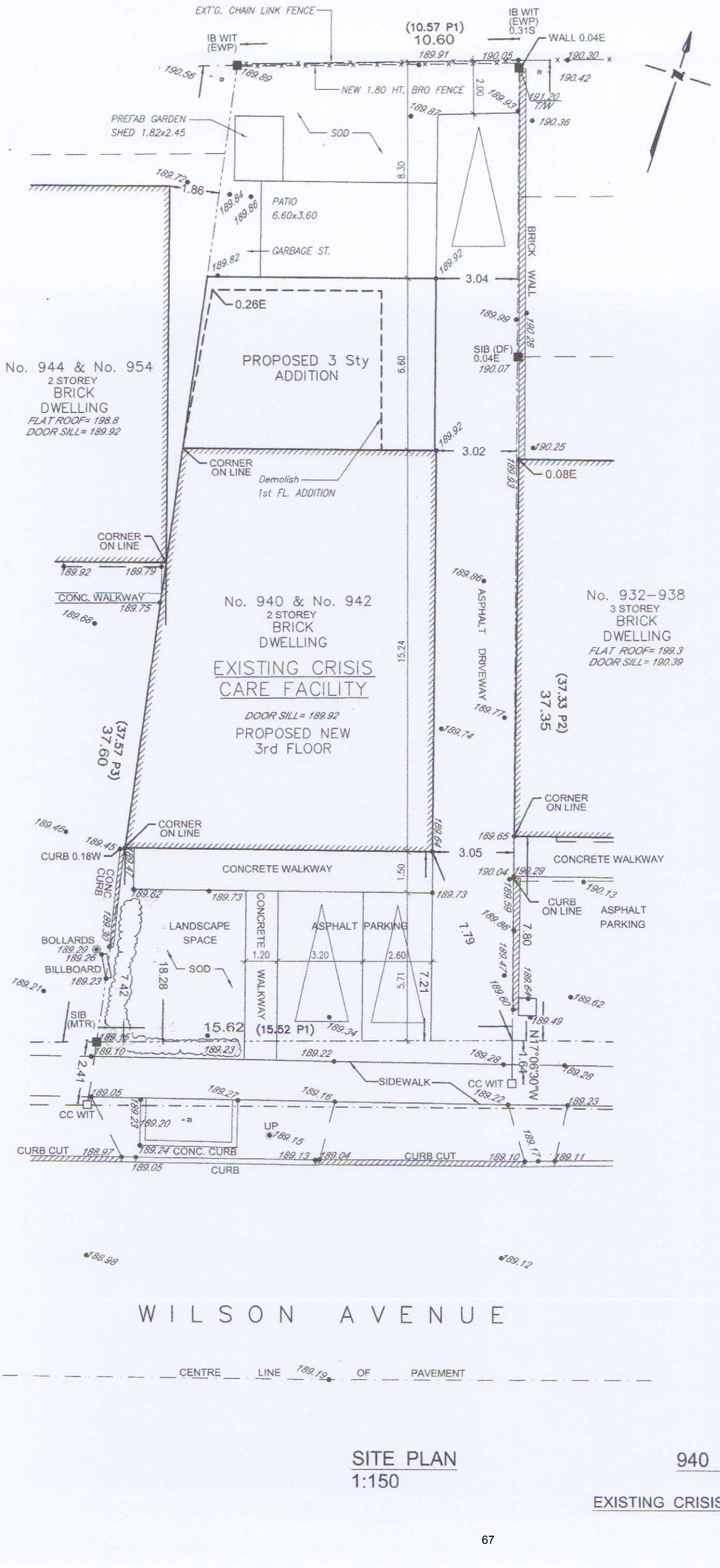
4. Chapter 45.4(viii), By-Law No. 1147-2007
Where the side yard or rear yard of a property is adjacent to an "R" or "RM" zone, the minimum side yard setback shall be 1.2m for buildings up to a height of 9.6m or 3 storeys and 7.5m for buildings above a height of 9.6m or 3 storeys.
The proposed and existing west side yard setback is 0m.

5. Chapter 45.5, By-Law No. 1147-2007
The maximum height for all buildings and structures shall be the lesser of 3 storeys and 9.6m for lots having a frontage of less than 30m.
The proposed building height is 3 storeys and 12.91m.

6. Chapter 45.6(i), By-Law No. 1147-2007
The maximum floor space index shall be 1 for a lot having a frontage of less than 30m.
The proposed floor space index is 1.79.

7. Chapter 45.7(i)/(ii), By-Law No. 1147-2007
Parking shall not be located in front yard and no surface parking spaces are permitted within 2.5m of a front lot line or within 2m of any other lot line.
2 of the proposed parking spaces are in the front yard abutting the front property line and the 3rd space abuts the east side property line.

Attachment 2



SITE INFORMATION

Zoning: Former City of North York Bylaw 7625

Lot Area = 488.30m²

Building Area: Existing 199.77m²
Proposed 218.15m²

GFA:	Existing	New	Total
1st fl.	161.22m²	59.69m²	220.91m²
2nd fl.	161.22m²	57.37m²	218.59m²
3rd fl.	0.00m²	214.64m²	214.64m²
Total	322.44m²	331.70m²	654.14m²

Basement fl. = 220.91m²
Dining & Lounge = 73.83m²
Kitchen = 13.93m²

Total number of Units = 24

No. of Units:	Existing	New (bachelor)
1st fl.	4	2
2nd fl.	7	2
3rd fl.	0	9
Total	11	13

Existing Building Height to Main Roof – 6.91m
(measured from centre line of road)
Proposed Building Height to Main Roof – 9.82m
(measured from centre line of road)

New Roof Deck Area – 64.20

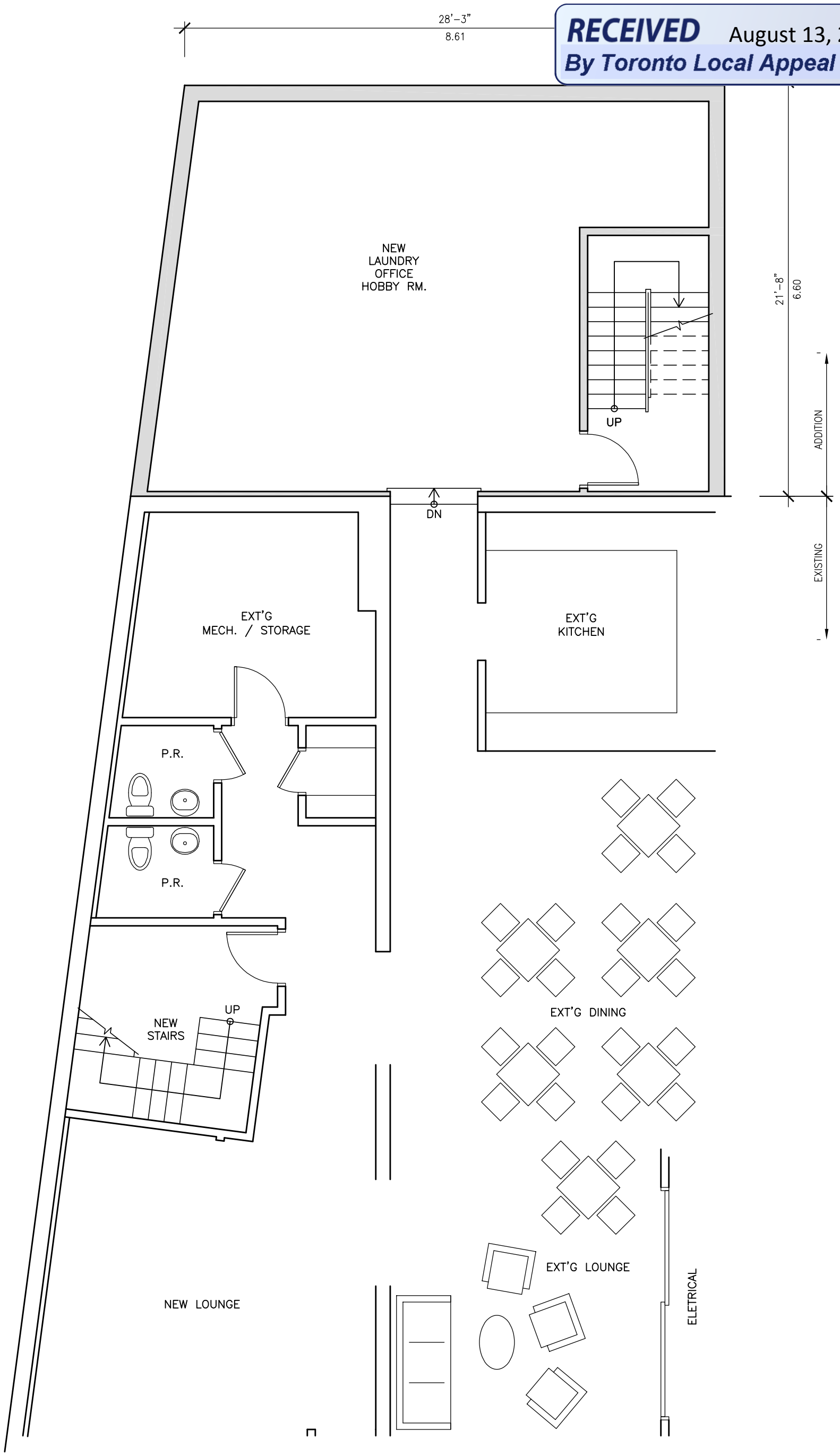
Rear Yard Area – 90.53m²
Patio – 23.76m²
Prefab Shed – 4.45m²
Asphalt Area – 19.02m²

Total Bedroom Area = 298.58m²

JAN TYMSTRA ARCHITECT
36 Burgess Avenue
Toronto, Onatrio M4E 1W7
email: jtymstra@sympatico.ca

SITE PLAN
1:150

940 WILSON AVE.
JUNE 06,2018
EXISTING CRISIS CARE FACILITY



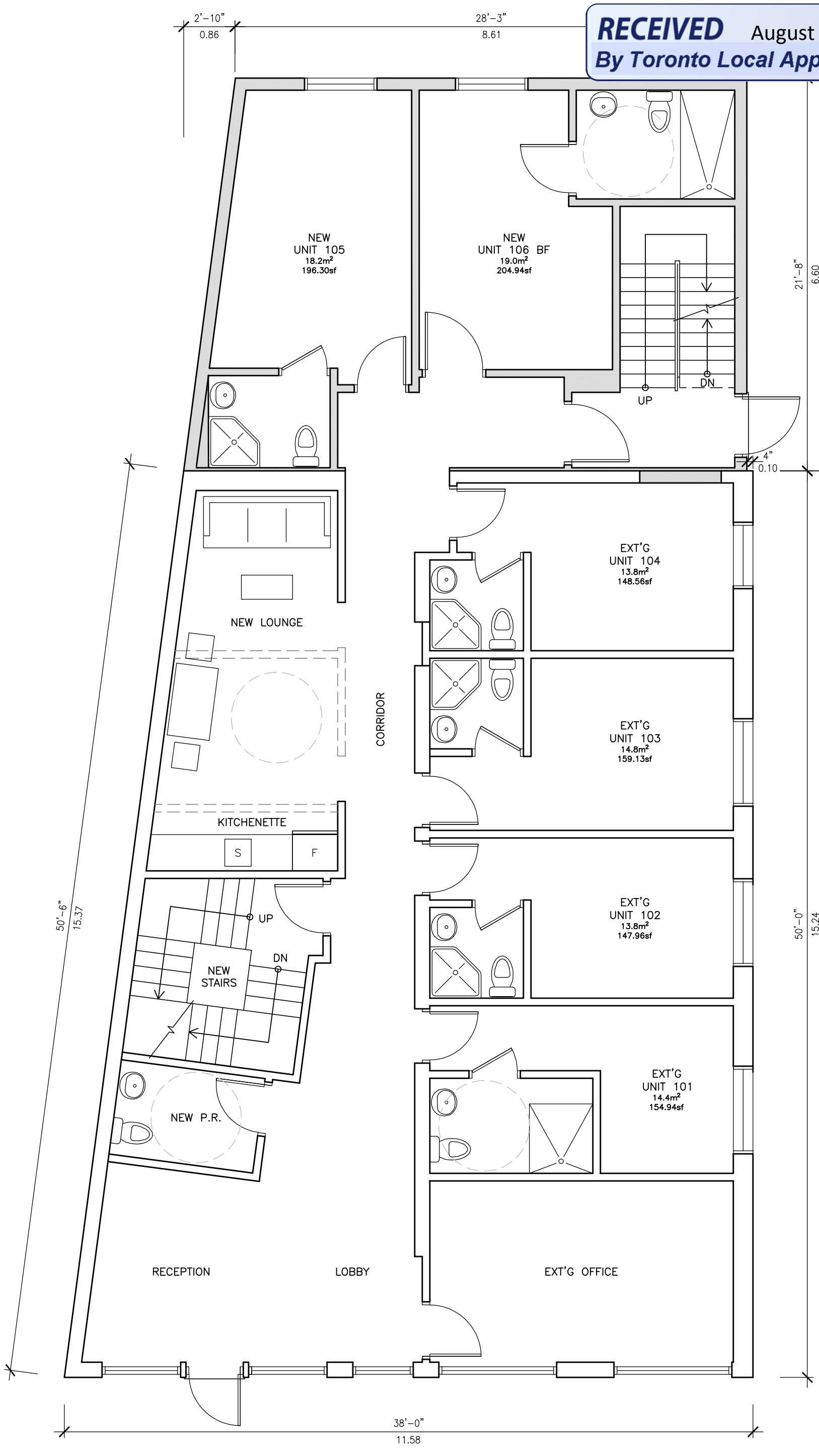
BASEMENT PLAN

3/16" = 1'-0"

940 WILSON AVE.

JAN. 28, 2018

EXISTING CRISIS CARE FACILITY



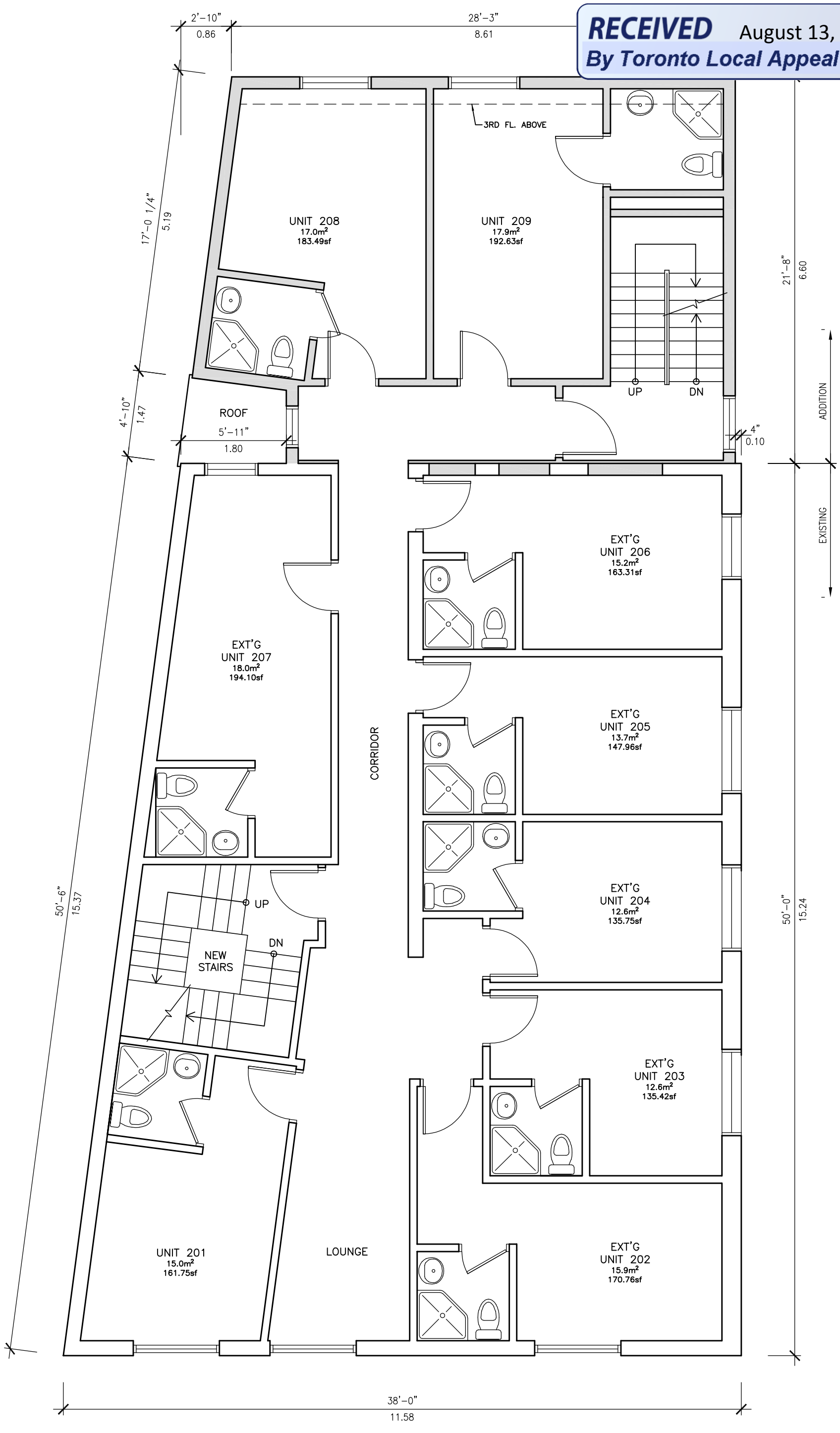
1st FLOOR PLAN

3/16" = 1'-0

940 WILSON AVE.

JAN. 28, 2018

EXISTING CRISIS CARE FACILITY



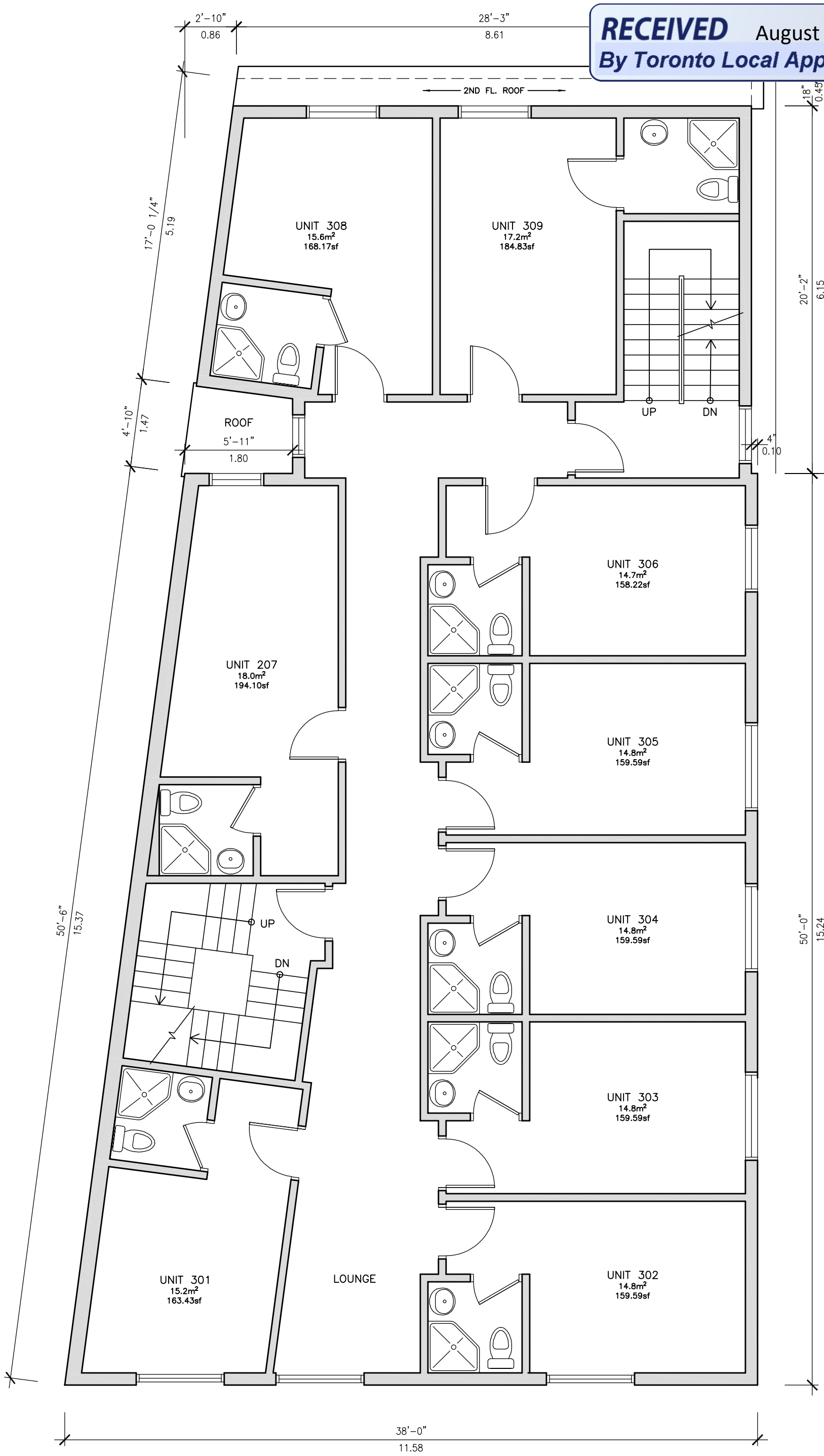
2nd FLOOR PLAN

3/16" = 1'-0

940 WILSON AVE.

JAN. 28, 2018

EXISTING CRISIS CARE FACILITY



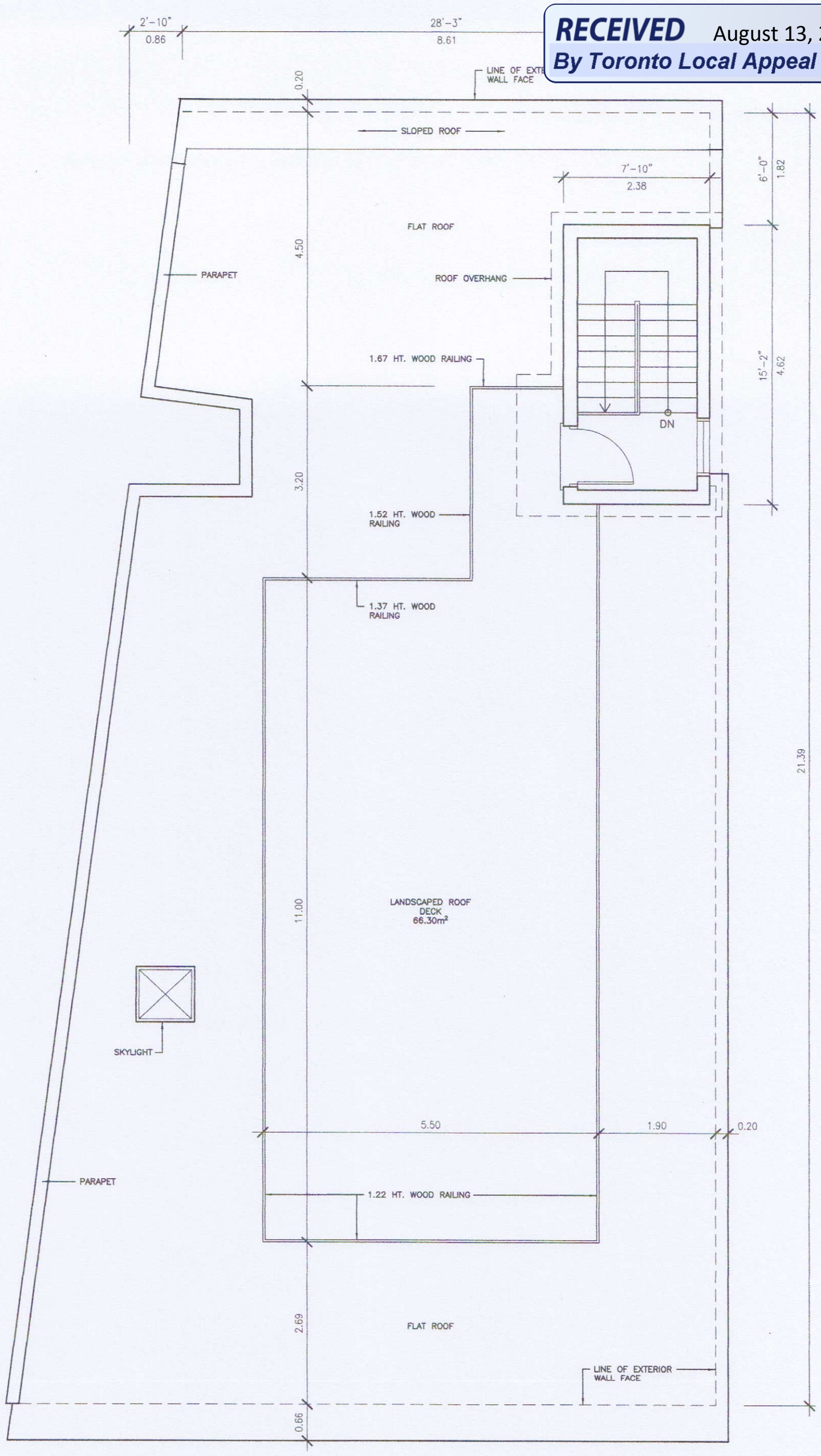
3rd FLOOR PLAN

3/16" = 1'-0

940 WILSON AVE.

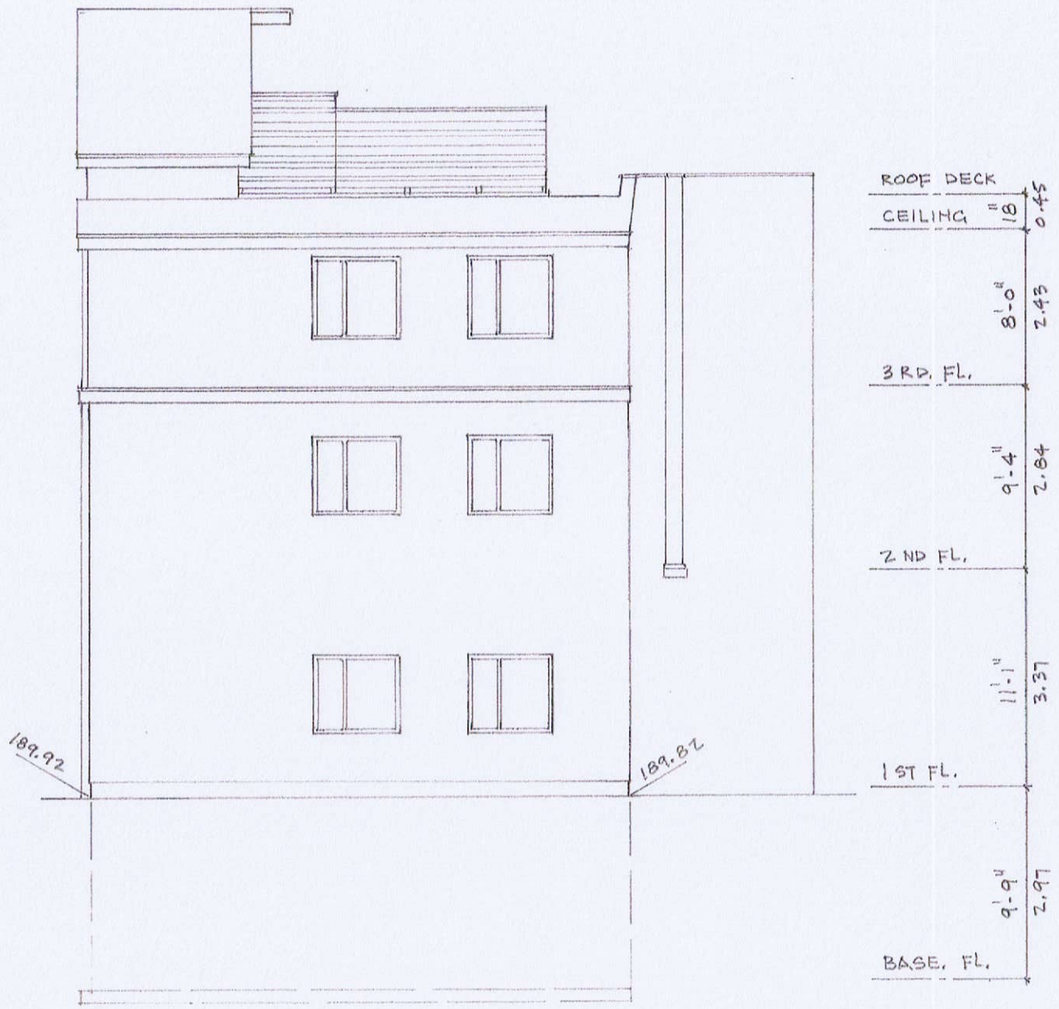
JAN. 28, 2018

EXISTING CRISIS CARE FACILITY



ROOF PLAN
3/16" = 1'-0

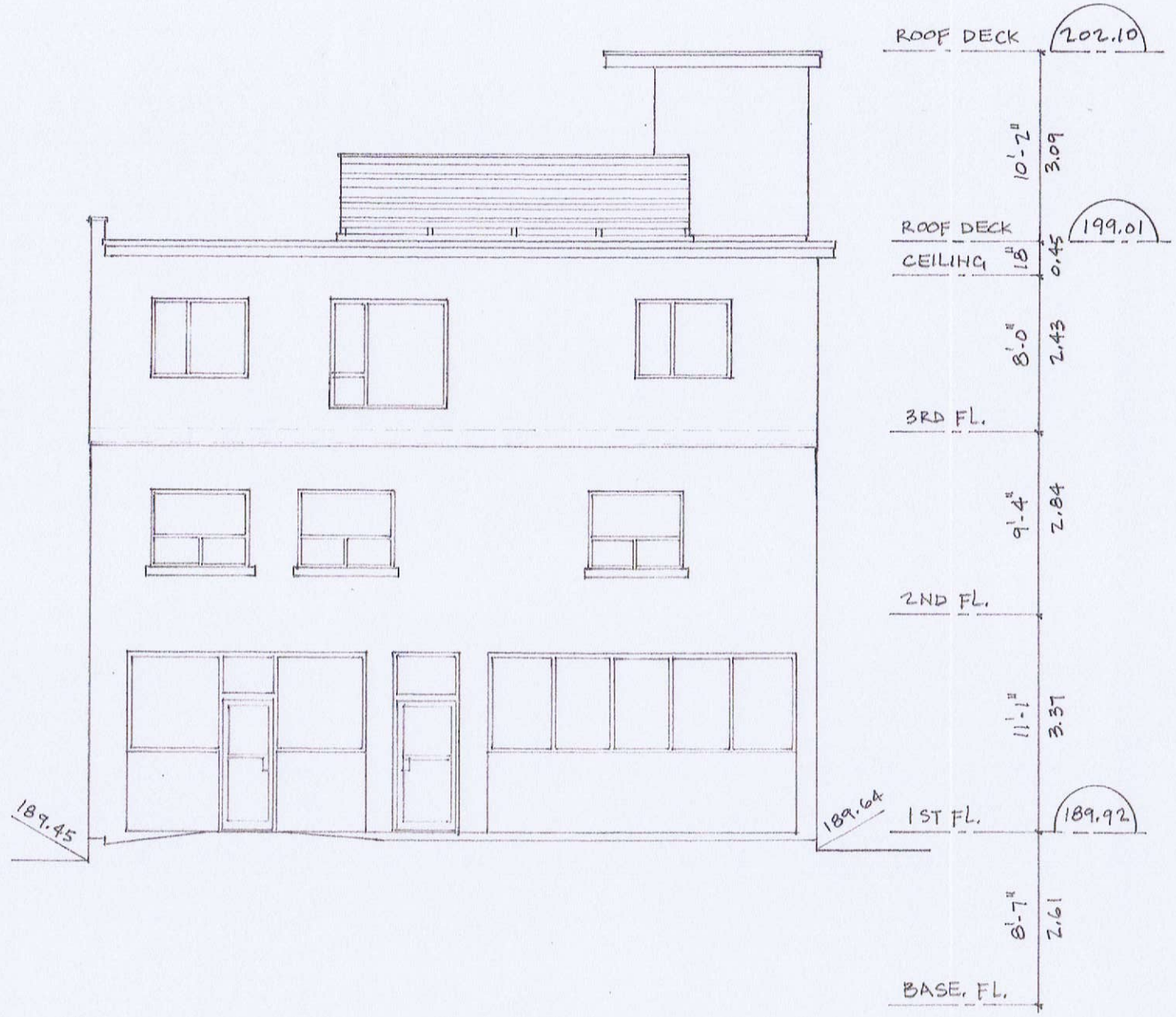
940 WILSON AVE.
JAN. 28, 2018



NORTH ELEVATION

1/8" = 1' - 0"

940 WILSON AVE.
JAN. 28, 2018



SOUTH ELEVATION

1/8" = 1' - 0"

940 WILSON AVE.

JAN. 28, 2018

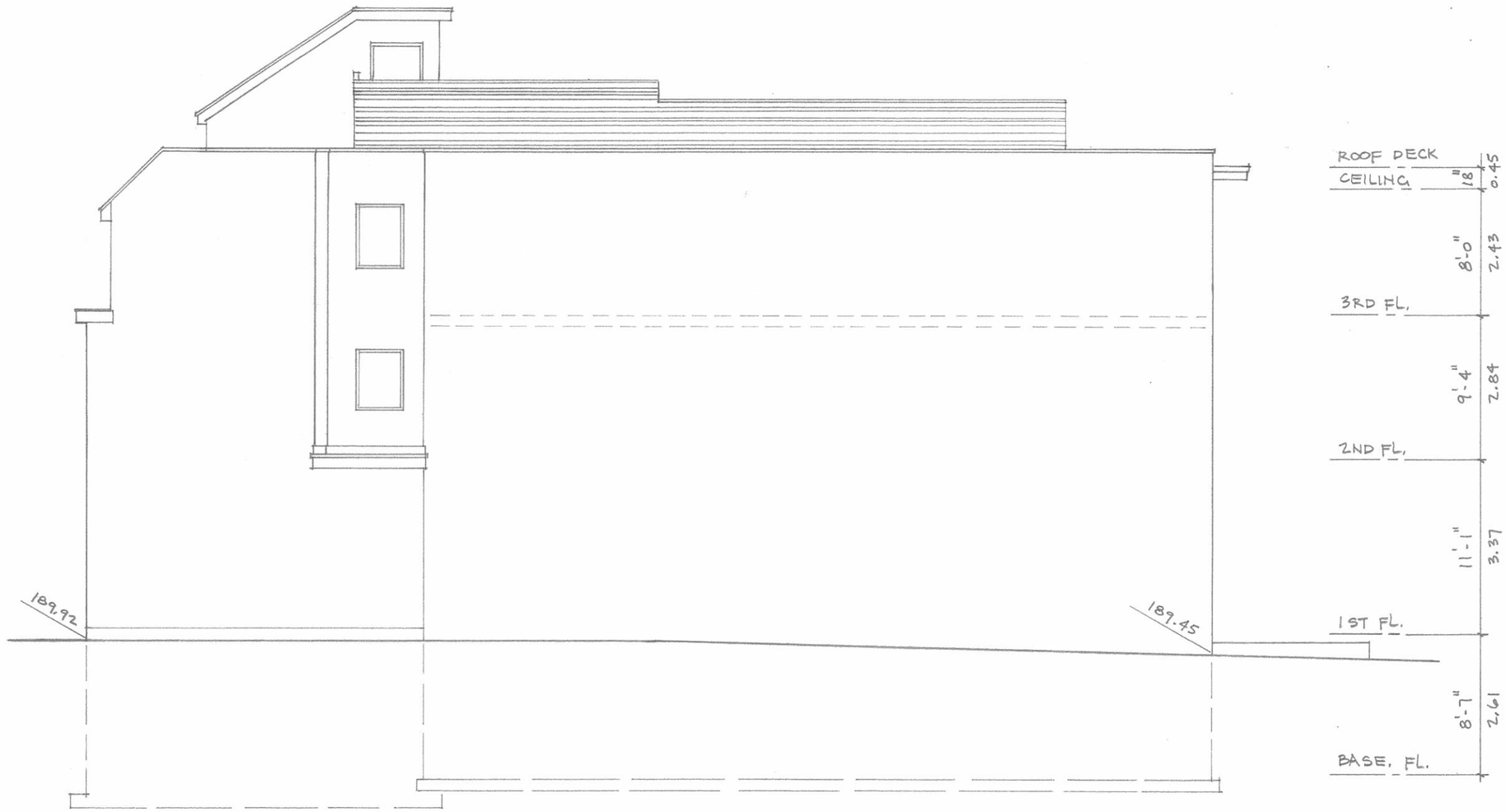
RECEIVED August 13, 2018
By Toronto Local Appeal Body

EAST ELEVATION

1/8" = 1' - 0"

940 WILSON AVE.
JAN. 28, 2018

RECEIVED August 13, 2018
By Toronto Local Appeal Body



WEST ELEVATION

1/8" = 1' - 0"

940 WILSON AVE.
JAN. 28, 2018

SECTION

1/8" = 1' – 0"

940 WILSON AVE.
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