

# INTERIM DECISION AND ORDER

**Decision Issue Date**      Friday, March 15, 2019

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): PAUL FREDRICKS

Applicant: AIRD & BERLIS LLP

Property Address/Description: 52 BOSWELL AVE

Committee of Adjustment Case File Number: 18 137390 STE 20 MV

**TLAB Case File Number: 18 232830 S45 20 TLAB**

**Hearing date:**      Wednesday, March 13, 2019

**DECISION DELIVERED BY** Ian James Lord

## APPEARANCES

Name	Role	Representative
Aird and Berlis LLP	Applicant	
Mary Barber	Owner	
Paul Fredericks	Appellant	Amber Stewart
Thomas Barber	Party	Eileen Costello
Martin Rendl	Expert Witness	
Jane McFarlane	Expert Witness	
Roy Firth	Participant	

## **INTRODUCTION**

This is an appeal from a decision of the Toronto and East York District of the City of Toronto (City) Committee of Adjustment (COA) in respect of 52 Boswell Avenue (subject property). The COA approved, with conditions, seven variances under By-law 569-2013 and a reciprocal floor space index (fsi) variance request, still required under By-law 438-86, due to outstanding appeals.

The City took no part in the appeal; however, several of the conditions imposed by the COA had their origin in Staff comments, including the Planning, Urban Forestry and Heritage Preservation Services (HPS) divisions.

I indicated I had read the pre-filed materials.

## **BACKGROUND**

The original application to the COA for the subject property was to alter the existing three-storey detached dwelling by constructing a three-storey front and rear addition, a two-tiered roof terrace, and an integral garage incorporating a car lift to the basement level. That objective remains, with modifications.

A formal Hearing was scheduled by the Toronto Local Appeal Body (TLAB) on March 13, 2019.

Well within the 'Quiet Zone', a 30-day period in advance of the scheduled Hearing, the Applicant advised that settlement discussions were well advanced with the Appellant, the neighbours at 50 Boswell Avenue. Further, that the Parties were jointly requesting the conversion of the scheduled Hearing to a written Settlement Hearing.

The TLAB declined a written Hearing and, by Notice and posting to the Parties and Participants, converted the Hearing sitting into a teleconference, with land use planning evidence required via both affidavit and *viva voce* access.

The Parties supplied the affidavit of Mr. Martin Rendl, a Registered Professional Planner, with attached documentation, executed Minutes of Settlement and accompanying correspondence, all of which was also posted on the TLAB website.

The matter proceeded with: Ms. E. Costello representing the Applicant; Ms. A. Stewart representing the Appellant; and, Mr. M. Rendl providing *viva voce* opinion evidence on land use planning matters.

While I understand that client principals were also in attendance, they did not speak.

Ms. Stewart indicated that the Participant, Mr. Roy Firth, had been apprised of the settlement between the Parties.

## **MATTERS IN ISSUE**

Due to the presence of a settlement agreement, unopposed, the matters that required to be addressed included the public interest assessment of the requested variances and conditions, the Minutes of Settlement and merits of a request for an interim order to permit a final Plans Examination Review and confirmation of the requested variances arising from the proposed settlement plan.

## **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**

On consent at the teleconference, I affirmed Mr. Rendl to provide expert opinion evidence on land use planning matters. Mr. Rendl had supplied a short affidavit and applicable Form attestations, incorporating his final opinions on all relevant matters, including proposed modifications to the variances, the conditions and the plans resulting from the settlement discussions. The Affidavit incorporated his earlier extensive Witness Statement, with attachments, filed in respect of the original appeal.

He stated that he had provided input into the settlement discussions culminating in two distinct elements: first, a 0.6m setback increase to the front elevations of the first and second floors of the dwelling, with a *consistent* 0.6 m setback reduction to the third floor balcony and railing; and, second, additional proposed conditions for privacy screening, lighting placement and management matters during construction.

The increased building setback is shown on the revised plans; the additional conditions are proposed as incremental additions to those imposed by the COA and recommended to the TLAB.

He explained that his recommendation was for an interim approval of the variances, subject to a final Plans Examination Review, approval of the revised plans and approval of the modified conditions.

The requested and recommended variances are set out on **Attachment 1** hereto (Variances).

The requested and recommended conditions are set out on **Attachment 2** hereto (Conditions).

The requested and recommended plans dated March 5, 2019 by Farrow, Architects are set out in **Attachment 3** hereto (Plans).

Mr. Rendl advised that the Plans would benefit from a final Plans Examination Review to settle the final 'precise' measurements left undetermined in the Variances and for their finalization.

It was his advice that the fsi measure would decrease with the decreased floor space, and that the landscaped open space might marginally increase. In both circumstances, he was of the opinion that the changes would be minor and that the Parties were fully aware and expectant of the changes.

He had satisfied himself that the vehicle storage elevating device, in its lowered position, would have a roof deck flush with grade and presented no opening or 'gap' or other hazard adverse to public health and safety. He noted that the final landscaping design is to be in consultation with a landscaped plan to be discussed with HPS and its mandate respecting the Heritage Conservation district.

He advised that the Plans accurately reflected the settlement between the Parties and would be appropriately attached as a condition requiring general construction compliance.

He described the privacy and lighting representations on the East Elevation component of the Plans, secured in the Conditions (No's 6,7) and also reflected in the Minutes of Settlement, a private agreement between the Parties. He said the Minutes could be attached to a TLAB decision on an approval, but that such was not a necessary component to his supported opinions.

He provided his assessment, more fully documented in his Witness Statement, that the Variances, individually and collectively, satisfy the four tests established in section 45 of the *Planning Act*.

He felt a formal final order on the variances, on an approval, could be issued once the TLAB was advised of any Plans Examination results.

He concluded that the proposed Conditions are appropriate and adequately cover the additional matters raised in the Minutes of Settlement.

Ms. Costello concluded her examination.

Ms. Stewart concurred in the evidence provided noting that the Conditions were designed to be easily cleared. Further, that the additional private obligations as between the signatories to the Minutes of Settlement related to construction obligations and were not necessary to be included in a TLAB Decision and Order.

Ms. Costello concluded with submissions requesting approval of the Plans and Conditions leaving the actual Variances order to follow the zoning review. She stated that HPS would not proceed with its plans review while the appeal remained outstanding. She indicated her clients were prepared to build in accord with the Plans and Conditions and that they were satisfactory to the neighbours as resolved through Minutes of Settlement filed.

She noted that the Variances and Conditions on the evidence of Mr. Rendl reflect satisfactory compliance with applicable tests as a land use planning opinion.

She urged on that evidence that no further notice is required to finalize the precise Variance measures that remain outstanding or may arise.

Ms. Stewart agreed with the submissions adding that the interim decision approach permits a final review of the variances and a discussion of anything new arising from the Plans Examination.

## **ANALYSIS, FINDINGS, REASONS**

This appeal comes forward to the TLAB based on a consent settlement calling for revised Variances, Conditions and Plans.

I am satisfied from the uncontested evidence of Mr. Rendl and the mutually supportive submissions of counsel for the Applicant and the Appellant, that the matter should be advanced in the manner they have suggested.

I agree that the modifications anticipated and proposed to the variances are minor and that no further Notice is required, all as permitted by section 45 (18.1.1) of the *Planning Act*.

The TLAB thanks counsel and the Parties for their constructive engagement and settlement of the issues.


## DECISION AND ORDER

The appeal of the decision of the Committee of Adjustment is allowed in part:

- a) the Variances identified in **Attachment 1** are approved subject to a further Plans Examination by the City to determine the precise measurements to be incorporated, where indicated by an 'X' as required. This Decision and Order is Interim only in that regard, pending the Applicant reporting to the TLAB on the outcome of such Plans Examination with an acknowledgement of concurrence by the Appellant.
- b) The Conditions identified in **Attachment 2** are approved.
- c) The Plans attached and referenced in **Attachment 3** are approved.

If difficulties arise from the implementation hereof, the TLAB may be spoken to.

X



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Ian Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ian Lord

## ATTACHMENT 1

### Variances

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

- 1. **Chapter 10.10.40.10.(2)(B)(ii), By-law 569-2013** The maximum permitted height of all side exterior main walls facing a side lot line is 9.5 m.  
The height of the side exterior main walls facing a side lot line will be 12.95 m.
- 2. **Chapter 10.10.40.30.(1)(A), By-law 569-2013** The maximum permitted depth of a detached dwelling is 17 m.  
The detached dwelling will have a depth of 21.50 m.
- 3. **Chapter 10.10.40.40.(1)(A), By-law 569-2013** The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (324.0 m<sup>2</sup>).  
The detached dwelling will have a floor space index equal to X times the area of the lot (To be determined by the City).
- 4. **Chapter 10.5.40.50.(3), By-law 569-2013** The level of the floor of a platform located at or above the second storey of a residential building is not permitted to be higher than the level of the floor of the storey from which it gains access.

In this case, the rooftop platform will be higher than the level of the third floor from which it gains access.

5. **Chapter 10.5.40.60.(3)(C)(ii), By-law 569-2013** An elevating device providing access to a building or structure may encroach into a required building setback if the elevating device has area no larger than 3.0 m<sup>2</sup>.  
The elevating device will have an area of 14.3 m<sup>2</sup>.
6. **Chapter 10.5.40.60.(3)(C)(iii), By-law 569-2013** An elevating device providing access to a building or structure may encroach into a required building setback if the elevating device is no closer to a lot line than 0.6 m.  
The elevating device will be located 0.0 m from the front lot line.
7. **Chapter 10.5.50.10.(1)(D), By-law 569-2013** A minimum of 75% (6.86 m<sup>2</sup>) of the required front yard landscaped open space shall be in the form of soft landscaping. In this case, **X**% (To be determined by the City) of the required front yard landscaped open space will be in the form of soft landscaping.
1. **Section 6(3) Part I 1, By-law 438-86** The maximum permitted floor space index of a detached dwelling is 1.0 times the area of the lot (324.0 m<sup>2</sup>). The detached dwelling will have a floor space index equal to **X** times the area of the lot (To be determined by the City)

## **ATTACHMENT 2**

### **Conditions of Approval**

1. Prior to the issuance of a building permit to allow for the proposed front addition on the subject property at 52 Boswell Avenue the owner shall:

a. Provide a Heritage impact Assessment for the property at 52 Boswell Avenue prepared by a qualified heritage consultant, to the satisfaction of the Senior Manager, Heritage Preservation Services;

b. Provide a detailed landscape plan for the subject property, satisfactory to the Senior Manager, Heritage Preservation Services;

c. Obtain approval to alter the property under the provision of Section 42 of the Ontario Heritage Act;

d. Provide building permit drawings, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Preservation Services.

2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned trees under Municipal Chapter 813 Article III, Private trees, to the satisfaction of the

**Decision of Toronto Local Appeal Body Panel Member: I. LORD  
TLAB Case File Number: 18 232830 S45 20 TLAB**

Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

3. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove City owned trees under Municipal Chapter 813 Article II, Street trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

4. The alterations to the three-storey dwelling shall be constructed substantially in accordance with the drawings prepared by Farrow Partners, Inc, dated March 5, 2019, including in respect of the following:

a. The front yard setback shall be 3.6 m, as shown on the Site Plan;

b. Notwithstanding the permitted building depth, the above-ground portion of the building shall have a maximum length (measured from the front wall to the rear wall of the ground floor) of 20.72 m, as shown on the Ground Floor Plan;

c. The owner shall install a minimum 1.5 m high privacy screen along the east side of the roof terrace at the rear of the third floor, as shown on the Proposed Roof Terrace Plan. The privacy screen shall be set with opaque or frosted glass, which would allow light penetration but no views.

d. The areas on the Proposed Roof Terrace Plan labelled "Lower Inaccessible Roof" at the front and rear of the dwelling," and the area labelled "Inaccessible Roof Garden with Tall Grass and Moss", shall not be accessible, except as required for maintenance purposes.

5. The car lift shall remain in its below-grade location at all times apart from when in use for moving a vehicle to the below grade garage and when needed above ground for maintenance purposes.

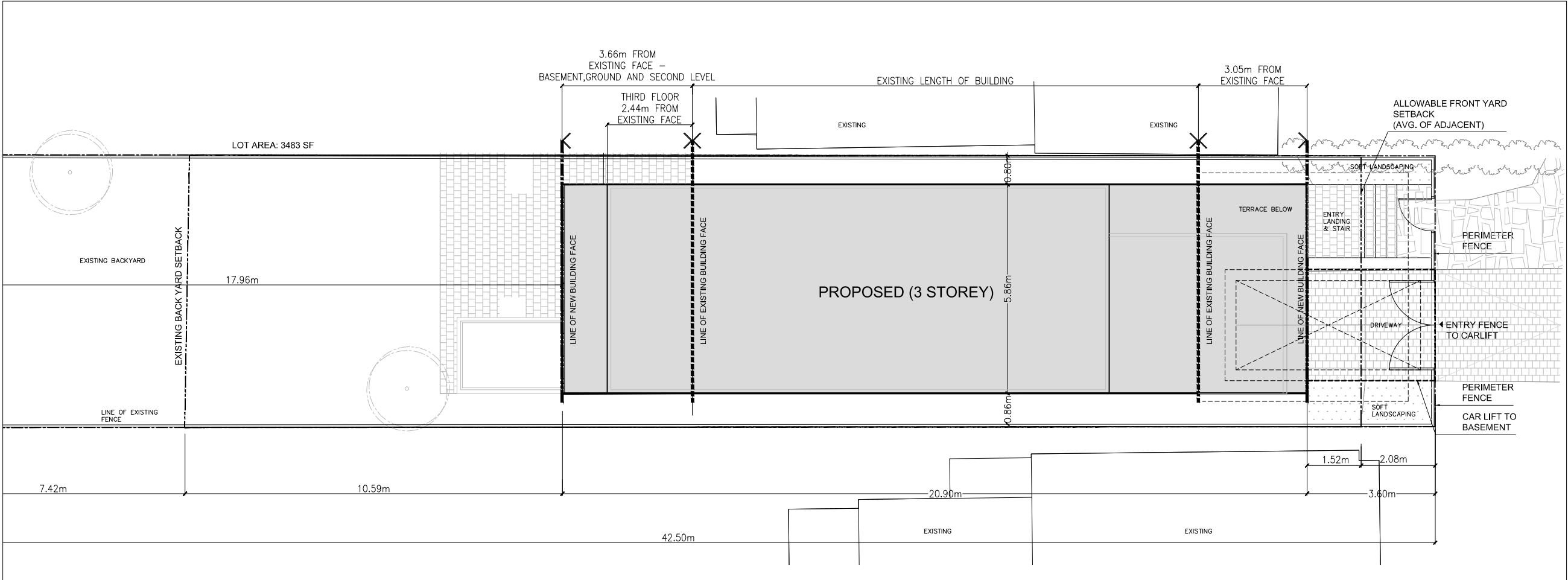
6. Any lighting installed on the roof terrace, including on the inaccessible portions thereof, shall be downcast and/or dark sky lighting compliant so as to cast light only onto 52 Boswell Avenue and not onto 50 Boswell Avenue.

7. Any security cameras installed on the roof or walls of 52 Boswell Avenue shall be directed only towards the 52 Boswell property and not onto 50 Boswell Avenue.

**ATTACHMENT 3**

**Approved Plans Dated March 5, 2019**





1 PROPOSED SITE PLAN  
A100A/3/32 = 1'-0"

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR REVIEW BY NEIGHBOUR	2019.03.05

N

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The architect noted above has exercised responsible control with respect to design activities. The architect's seal number is the architect's BCDN (Building Code Designation Number).

Farrow

FARROW PARTNERS INC.  
60 PLEASANT BOULEVARD, SUITE 801  
TORONTO, ON  
M4T 1K1  
416-966-3666

PROJECT NAME:

52 BOSWELL AVENUE

52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

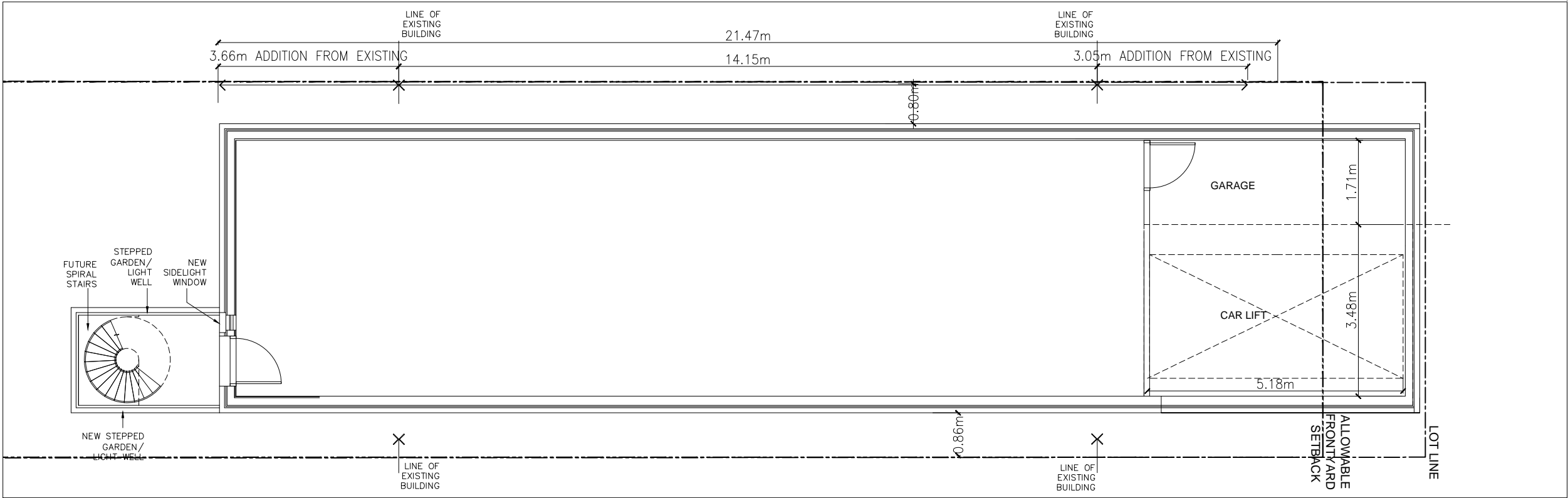
PROPOSED  
SITE PLAN

SCALE:  
3/32 = 1'-0"

ISSUE:  
MARCH 5, 2019

PROJECT NO.  
16003

DWG NO:  
A100A



1 PROPOSED BASEMENT PLAN  
A101A 1/8" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE
1	ISSUED FOR REVIEW BY NEIGHBOUR	2019.03.05



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TORONTO, ON  
M4T 1K1  
416-966-3666

PROJECT NAME:

52 BOSWELL AVENUE

52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

PROPOSED  
BASEMENT  
PLAN

SCALE:

1/8" = 1'-0"

ISSUE:

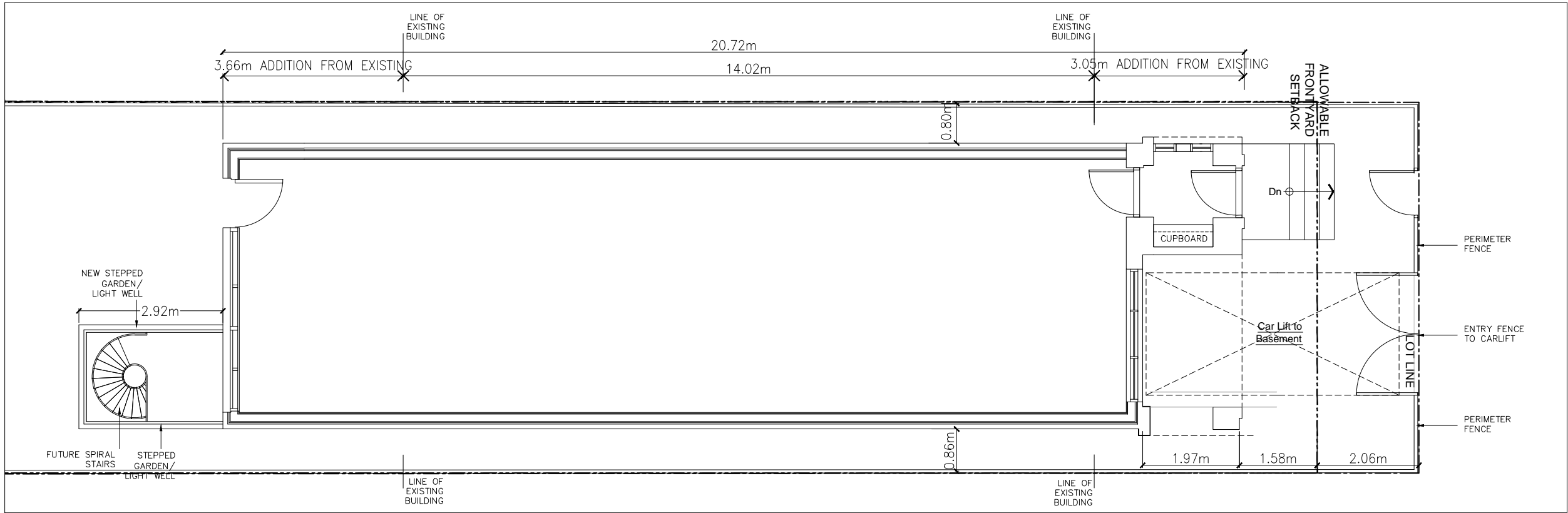
MARCH 5, 2019

PROJECT NO.

16003

DWG NO:

A101A



1 PROPOSED GROUND FLOOR PLAN  
A102A 1/8" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE
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TORONTO, ON  
M4T 1K1  
416-966-3666

PROJECT NAME:

52 BOSWELL AVENUE

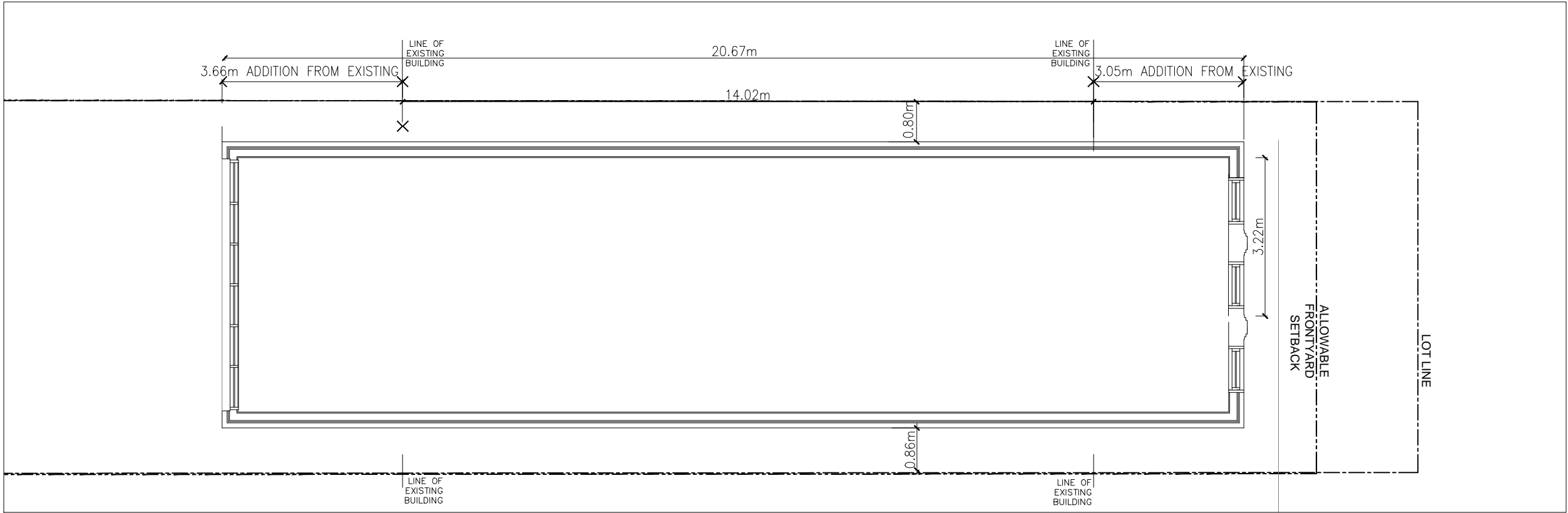
52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

PROPOSED  
GROUND  
FLOOR PLAN

SCALE: 1/8" = 1'-0"      ISSUE: MARCH 5, 2019

PROJECT NO. 16003      DWG NO. A102A



1 PROPOSED SECOND FLOOR PLAN  
A103A 1/8" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE
1	ISSUED FOR REVIEW BY NEIGHBOUR	2019.03.05



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M4T 1K1  
416-966-3666

PROJECT NAME:

52 BOSWELL AVENUE

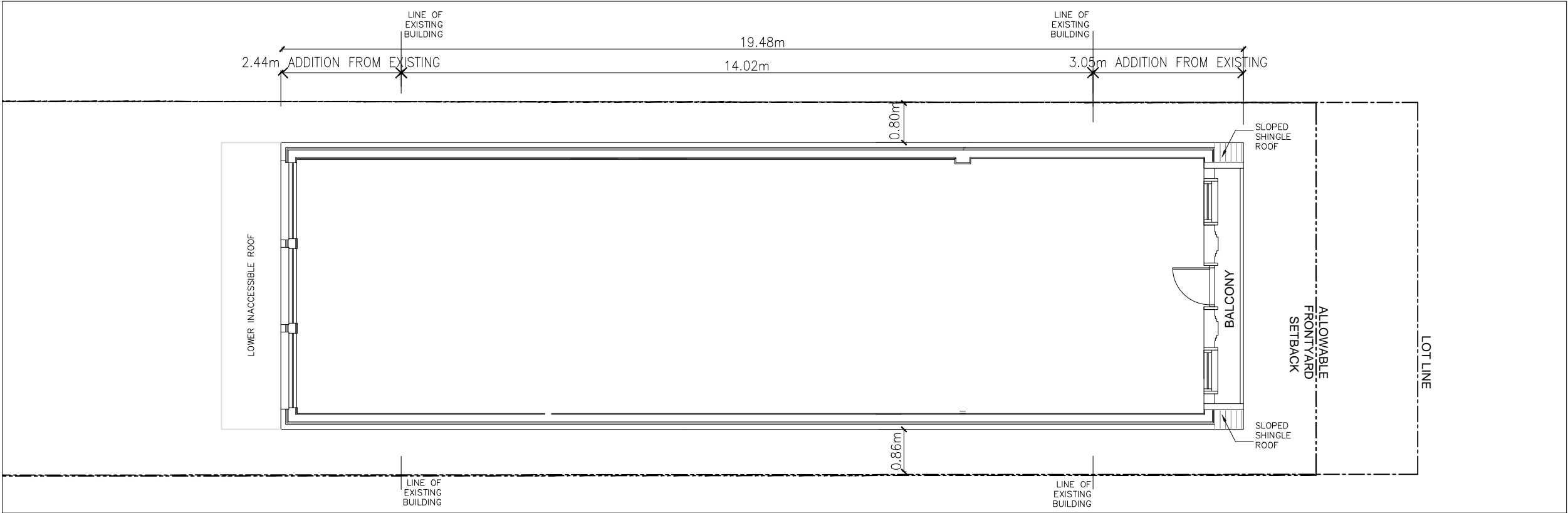
52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

PROPOSED  
SECOND  
FLOOR PLAN

SCALE: 1/8" = 1'-0"      ISSUE: MARCH 5, 2019

PROJECT NO. 16003      DWG NO: A103A



**1** PROPOSED THIRD FLOOR PLAN  
A104A 1/8" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE
1	ISSUED FOR REVIEW BY NEIGHBOUR	2019.03.05



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M4T 1K1  
416-966-3666

PROJECT NAME:

**52 BOSWELL AVENUE**

52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

**PROPOSED  
THIRD FLOOR  
PLAN**

SCALE: 1/8" = 1'-0"	ISSUE: MARCH 5, 2019
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PROJECT NO. 16003	DWG NO. A104A
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NO.	DESCRIPTION	DATE
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M4T 1K1  
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PROJECT NAME:

52 BOSWELL AVENUE

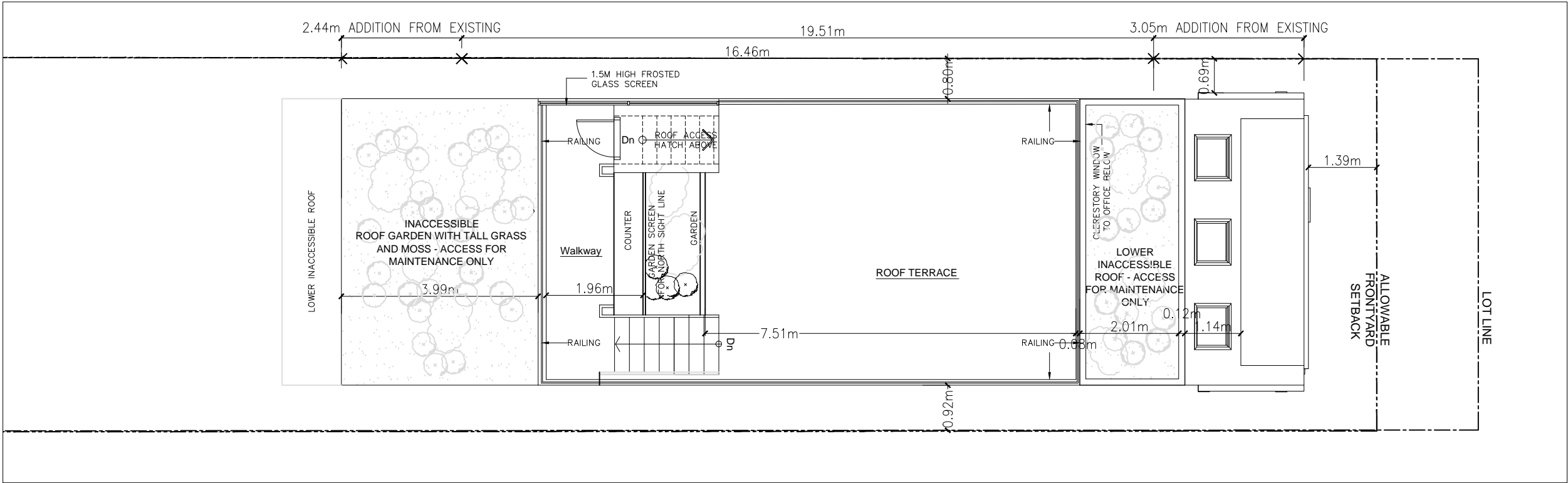
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M5R 1M4

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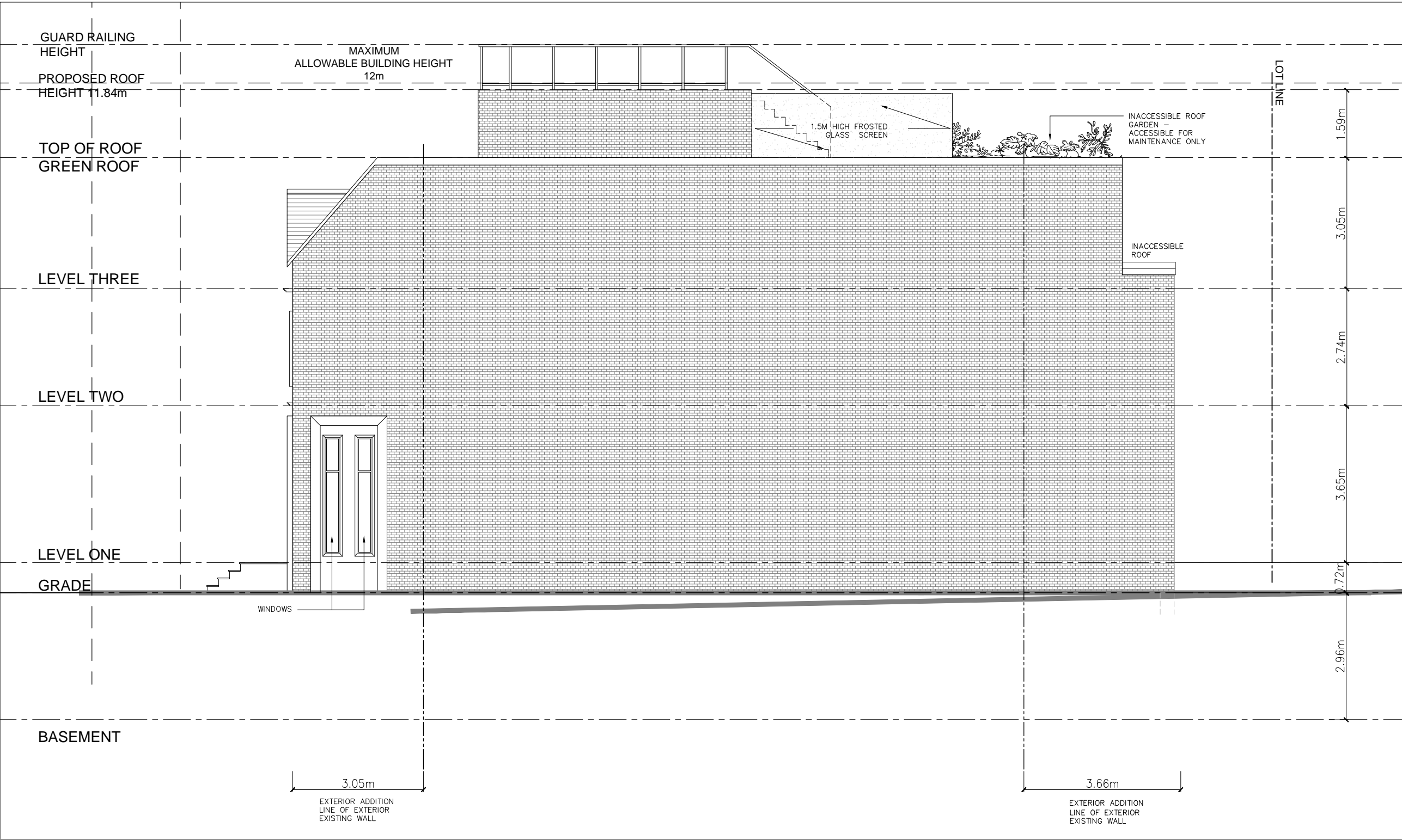
PROPOSED  
ROOF TERRACE  
PLAN

SCALE: 1/8" = 1'-0"      ISSUE: MARCH 5, 2019

PROJECT NO.	DWG NO:
16003	A105A



1 PROPOSED ROOF TERRACE PLAN  
A105A 1/8" = 1'-0"



1 PROPOSED WEST ELEVATION  
A203A 1/10" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE
1	ISSUED FOR REVIEW BY NEIGHBOUR	2019.03.05

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# Farrow

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TORONTO, ON  
M4T 1K1  
416-966-3666

PROJECT NAME:

52 BOSWELL AVENUE

52 BOSWELL AVENUE  
TORONTO, ON  
M5R 1M4

DRAWING TITLE:

## PROPOSED EAST ELEVATION

SCALE:  
1/8" = 1'-0"

ISSUE:  
MARCH 5, 2019

PROJECT NO.  
16003

DWG NO.  
A203A