

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Friday, May 24, 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): MICHAELIN MCDERMOTT

Applicant: IDA EVANGELISTA

Property Address/Description: 216 WYCHWOOD AVE

Committee of Adjustment Case File Number: 18 137687 STE 21 MV

TLAB Case File Number: 18 265962 S45 12 TLAB

Hearing date: Monday, April 29, 2019

DECISION DELIVERED BY SABNAVIS GOPIKRISHNA

APPEARANCES

Name Role Representative

Ida Evangelista Applicant

Paul Mitchnick Primary Owner Franco Romano

Michaelin McDermott Appellant/Owner

INTRODUCTION AND BACKGROUND

Paul Mitchnick and Michaelin McDermott are the owners of 216 Wychwood Ave., located in Ward 21 of the City of Toronto. They applied to the Committee of Adjustment (COA) to alter the existing three-storey, detached dwelling containing three units by constructing a fourth storey addition, with front and rear terraces, to be used in conjunction with the existing third floor unit. The COA heard the application on November 21, 2018,and refused the same in its entirety.

On December 7, 2018, the Applicants appealed the COA decision to the Toronto Local Appeal Body (TLAB), which scheduled a Hearing on April 29, 2019.

MATTERS IN ISSUE

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

1. Chapter 10.80.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.8 times the area of the lot (347.69 sq.m.). The floor space index will be 0.92 times the area of the lot (398.46 sq. m.) The basement has been included in this calculation.

2. Chapter 10.80.40.70.(3)(A), By-law 569-2013

The minimum required side yard setback for a detached house is 1.2 m. The north side yard setback will be 0.17 m.

3. Chapter 10.80.40.10.(2)(B)(ii), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 8.5 m. The height of the north and south side main walls will be 10.97 m.

4. Chapter 10.80.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0 sq.m. The area of the front third storey platform will be 10.45sq.m., and the rear third storey platform will be 27.32 sq.m..

5. Chapter 10.80.40.10.(3)(A), By-law 569-2013

The maximum permitted number of storeys is three. In this case, the detached dwelling will be four-storeys. The basement is considered to be the ground floor.

Section 3(a), By-law 1-83

The maximum permitted height is 11.0 m, with no more than three storeys. In this case, the detached dwelling will be four-storeys

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 for 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

At the hearing held on April 29, 2018, the Appellants, and Mr. Franco Romano, a land use planner, were present. It is important to note that there were no other Parties, nor Participants involved in this hearing.

I recognized Mr. Romano as an Expert Witness in the field of land use planning at the beginning of the Hearing.

Mr. Romano began his testimony with a description of the geographical location of the Subject property. The Subject Site is located on the west side of Wychwood Avenue, north of St. Clair Avenue East, and west of Bathurst Street, and consists of a raised two storey (3 storeys for by-law purposes), converted dwelling, containing three dwelling units, and a rear yard detached garage. The property dimensions are 9.14m lot frontage, 47.55m lot depth and 434.6 sq. m lot area. The existing gross floor area, including the basement, is 339.99 sq. m, representing an FSI of 0.78. It is important to note that the By-law recognizes the basement to be the first floor, and is included in the FSI calculations.

Emphasizing that there is no change to the number of living units inside the house, Mr. Romano described the proposal, which seeks to construct a third floor addition on top of the existing building (fourth floor for by-law purposes). The building addition is centrally located overtop the existing building footprint with front and rear setbacks of approximately 3m and 4m, respectively. These setback areas will accommodate rooftop terraces which are to be screened with planters- the elevation drawings were used to explain where they would be.

The purpose behind the creation of additional living space is to accommodate a master bedroom and ensuite for the owner-occupied third dwelling unit, which presently occupies the top floor of the building. The building addition has a gross floor area of 56.95 sq. m., bringing the zoning-review related FSI to 0.92, including the basement, should the proposal be approved.

The Subject Site is located within the former municipality of York. It is zoned to permit low rise residential of a detached and multiple-unit forms, and is designated "Neighbourhoods" under the Official Plan. The neighbourhood study area extends from Rushton Road on the west, Vaughan Road on the east and the curved portion of Vaughan Rd. on the north, to where it meets Rushton Road, and St. Clair Avenue East on the south. The Subject Site forms part of a compact, low rise residential neighbourhood, consisting of a tapestry of lot sizes and dwelling types. Dwelling types vary, and include detached, attached, apartment building and multiplexes. There is no uniformity of lot size, building type, building gross floor area, floor space index, height,

massing or scale. Similarly, dwellings have site designs and architectural features that are heterogeneous yet compatible in their setting. Properties with similar, or very different characteristics, coexist compatibly next to, or nearby one another.

Mr. Romano stated that the neighbourhood is stable, and has experienced reinvestment and regeneration in the form of new buildings, and building additions. Such investment typically results in buildings that are larger than what existed before – in size, footprint, massing and/or scale, but continue, and maintain the varied, compact built form characteristics representative of the neighbourhood. He reviewed examples of recent COA decisions from within the neighbourhood to support his position.

He said that the proposal reflects a local dwelling addition proposal that has limited PPS-related implications; that is, it is consistent with the Settlement Area-related policies of the 2014 Provincial Policy Statement. The proposal does not conflict with, the Settlement Area, Delineated Built Up Area policies of the 2017 Growth Plan.

Mr. Romano discussed the compatibility of the proposal with the Official Plan (OP).

Reiterating the fact that Subject Site has a "Neighbourhoods" designation in the OP, Mr. Romano emphasized the fact that the Neighbourhoods policies do not require replication of existing physical character, but instead require new development to be consistent with, and "fit" the general physical patterns. These policies recognize that different patterns can be found within, and contribute to, the character of a neighbourhood.

He said that the proposal respected and reinforced the physical characteristics of the neighbourhood. The proposal represents a site development that is materially consistent with the neighbourhood study area, of a type that is well represented by properties in the immediate physical context. The proposal would achieve an appropriate form of replacement dwelling, as is envisaged by the policy context namely, the Urban Structure policies in Section 2.3.1, the Built Form policies of 3.1.2, the Housing Policies found in Section 3.2.1, the Natural Environment policies in Section 3.4, the *Neighbourhoods* land use designation and development criteria found in Sections 4.1.1, 4.1.5 and 4.1.8.

Based on this discussion, Mr. Romano concluded that the proposal is consistent with, and maintains the objectives of the Official Plan.

Mr. Romano stated that Subject Site is zoned RM and R2 pursuant to the City widwe Zoning By-law 569-2013, and former York Zoning By-law 1-83. He then proceeded to discuss the performance standards under the By-laws, and how the proposal satisfied the latter.

He said that the overall general intent, and purpose of the applicable Zoning By-laws is to achieve an orderly, compatible form of low rise, residential housing. The proposal maintains a low rise dwelling type, appropriately sized, and designed to reflect the

Subject Site, and its physical context. The compatibility between the proposal and the corresponding performance standards was then described as follows:

- The proposed FSI meets the general intent and purpose to ensure that the floor area of the dwelling is appropriate for the lot. The proposed floor area is reasonably deployed on the lot in a manner that is anticipated to be occupied by a low-rise residential building. Further, the proposed GFA is compatible with the GFA represented elsewhere within the Subject Site's physical context.
- The existing and proposed north side yard setback meets the general intent and purpose of the By-law by providing for a site suitable separation for access and maintenance purpose. Mr. Romano noted that the neighbourhood consisted of side yard setbacks that are tight, to modest, with no uniformity, consistency or pattern, and illustrated the same through recent COA decisions from within the Study Area.
- The intent of the side main wall height performance standard is to maintain a low rise dwelling suitable for the surrounding context. Mr. Romano asserted that the City had acknowledged that it is difficult, if not impossible, for lots with narrow frontages, to comply with this provision. Further, he said that this provision essentially removes height permissions, otherwise permitted, by essentially placing a restriction in neighbourhoods,(such as where the Subject Site is located) contrary to the established height character. It was noted that the applicable zoning does not restrict the height of flat roofs, and permits an overall height of three storeys and 11m; and that the intent of the main wall height provision is maintained in this instance.
- The intent of the platform size performance standard is to minimize impacts associated with elevated platforms.. The proposal satisfies this standard because the platforms are located off the master bedroom (not a primary living or entertainment space); and are adequately screened with landscape materials. Further, the Subject Site is located within a compact urban environment where elevated platforms of comparable magnitude exist. Further examples of similar approvals by the COA were brought forward in support of the aforementioned conclusion about the existence of similar, elevated platforms.
- The intent of the number of storeys in the building height provision(s) is to achieve a low-rise residential built form of three storeys, which is compatible with the area. The proposal exhibits a low-rise, three storey built form, and complies with the overall 11m height permission. The technical variance respecting the numbers of storeys arises because the basement is held to be the first storey in the zoning review.

Based on the above discussion, Mr. Romano concluded that the intent and purpose of the Zoning By-laws has been fulfilled.

The test of how the proposal satisfies the test of minor was discussed next.

Mr. Romano stated that the proposal created no unacceptable adverse impact on the neighbourhood and its neighbours, and builds upon existing conditions. The proposed building addition is "sensitively designed to fit in well with its context, including the incorporation of a transition in its height, mass and scale at the front and rear". He reiterated that the proposal will not cause any adverse impacts, including shadowing, privacy, overlook, vegetation or drainage. Mr. Romano emphasized that protective screening will be installed on the decks to protect the neighbours' privacy. The order of magnitude of the variance requests are reasonable, maintain a compatible residential land use and site development, which can be accommodated on the Subject Site, without any negative impact. Based on this discussion, Mr. Romano concluded that the proposal fulfilled the test of minor

Lastly, he addressed the test of appropriate and reasonable development. The proposal represented an appropriate, reasonable and compatible site development for this neighbourhood. He said that the proposal reflected compatible and complementary built form, and site design characteristics, and simultaneously contributed to the mixed housing character on Wychwood Avenue. Based on this discussion, Mr. Romano concluded that the proposal satisfied the test of representing appropriate use.

Based on the above evidence, Mr. Romano recommended that the Appeal be allowed, and that the proposal be approved, as submitted to the TLAB. He recommended that the TLAB impose a condition, requiring the Appellant to build in substantial accordance with the submitted Plans and Elevations, prepared by Marcos Limited B.D.C, with a revision date of February 28, 2018. In response to a question from me about the requested increases being significant enough to accommodate a fourth residential unit, Mr. Romano assured me that the numbers of living units would not increase, if the proposal was approved

Ms. McDermott, the owner and Appellant, spoke briefly, where she talked about her passion for the community, and emphasized the fact that not only were the neighbours not in opposition, they supported the proposal as seen through letters to the COA. I thanked the Appellants for their presentation, and stated that I would reserve my Decision.

ANALYSIS, FINDINGS, REASONS

The evidence provided by the Expert Witness, Mr. Franco Romano, is uncontroverted; and it is to be reiterated that there are no Parties, or Participants in opposition to the proposal. There are two key features of the proposal triggering variances, the first is the inclusion of the basement in the FSI calculations, and the second is the design for the two decks, each of which is substantially larger than the standard balcony of 4 sq. m, allowable under By-law 569-2013.

I agree with Mr. Romano that the proposal fulfills Policies 2.3.1, 3..2, 4.1.1, 4.1.5 and 4.1.8 of the OP. The explanation of how the proposal meets the performance standards listed under the Zoning By-laws is helpful; I agree that the intent and purpose of the By-laws, and the Official Plan, is upheld by the proposal.

It is important to note that notwithstanding the building being considered a four storey structure under By Law 1-83, and the request for a height variance, there is no impact on the neighbouring properties, because of the technicality of the variance recognizing the basement as a separate storey. The difference is not discernable to the pedestrian. Likewise, the decks, while being substantially larger than the allowed 4 sq. m, will not impact the neighbours, because of the placement of privacy screens. I therefore agree with the Appellants that the proposal satisfies the tests of being minor, as well as appropriate development. The placement of the privacy screens to satisfy the tests of minor, and appropriate development, and their presence in the submitted plans and elevations, is key to my approval of the proposal. The other concern is that the cumulative magnitude of the variances can result in the creation of another dwelling unit; however, I am persuaded by Mr. Romano specifically stating that the owners did not look to increase the number of units.

I therefore deem it appropriate to allow the Appeal and approve the proposal; I will however, impose a condition that the new storey be built in substantial accordance with the submitted Plans and Elevations.

DECISION AND ORDER

- 1. The Appeal respecting 216 Wychwood Ave. is allowed, and the Decision of the Committee of Adjustment dated November 21, 2018, is set aside.
- 2. The following variances are approved:

1 Chapter 10.80.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.8 times the area of the lot (347.69 m2). The floor space index will be 0.92 times the area of the lot (398.46 m2). Note: The basement has been included in this calculation.

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The maximum permitted number of storeys is three. In this case, the detached dwelling will be four-storeys. Note: The basement is considered to be the ground floor.

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The maximum permitted height is 11.0 m, with no more than three storeys. In this case, the detached dwelling will be four-store.

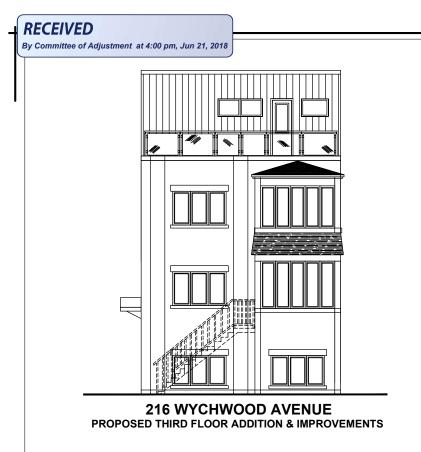
- 3. No other variances, other than those stated above, have been approved.
- 4. The following condition is imposed on the approval:

The property shall be developed substantially in accordance with the site plan and elevation drawings prepared by Marcos Limited B.D.C, with revision date February 28, 2018, attached to this Decision.

So orders the Toronto Local Appeal Body

S. Gopikrishna

Panel Chair, Toronto Local Appeal Body



LEVELS	EXISTING SQ.M.	PROPOSED SQ.M.	REMARKS	
MECHANICAL SPACE			EXISTING 15.61 SQ. M.	
BASEMENT FLOOR AREA	97.32			
GROUND FLOOR AREA	113.33		PROP. FRONT TERRACE 11.63 M.SQ.	
SECOND FLOOR AREA	113.33		PROP. REAR TERRACE: 23.68 M.SQ.	
THIRD FLOOR AREA		56.95		
TOTAL (GFA)	323.98 SQ. METERS	56.95 SQ. METERS	380.93 SQ. METERS	
LOT AREA : 434.60 SQ. ME	TERS EXISTING (4678.22 SQ. F	EET)		
LOT FRONTAGE: 9.14 MET	ERS EXISTING (30'-0")			
COVERAGE: 41% (180.40	M.SQ) EXISTING TO REMAIN			
LANDSCAPE AREA: EXIST	ING TO BE MAINTAINED			
TOTAL (GFA):380.93 SQ. M	ETERS			
SETBACKS	EXISTING METERS	PROPOSED METERS	REMARKS	
SETBACKS SETBACK: NORTH			REMARKS	
	METERS	METERS	REMARKS	
SETBACK: NORTH	METERS 0.17	0.196	REMARKS	

LIST	OF DRAWINGS
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A-6	EX. ROOF PLAN
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A-8	EX. WEST ELEVATION
A-9	EX. NORTH ELEVATION
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A-16	PROP. NORTH ELEVATION
A-17	PROP. SOUTH ELEVATION

LIST OF DRAWINGS

Contractor Must Check And Verify the existing Site conditions including All Dimensions and report any Discrepancies to Consultants before proceeding with any Work at the Job Sike Do Net Scale The Documents Are The Coopyright Of the Architect And/Or Designer And Must Be Returned Upon Request Reproduction Of Drawings, Sportications And Strated Documents in Plant Or Whole is Request Reproduction Of Drawings, Sportications And Related Documents in Plant Or Whole is Tendedore Willood The Architects Walker Permission Until Signed By The Architect and/Or Designer.





PROPOSED THIRD FLOOR ADDITION AND IMPROVEMENTS 216 WYCHWOOD AVENUE TORONTO ONTARIO

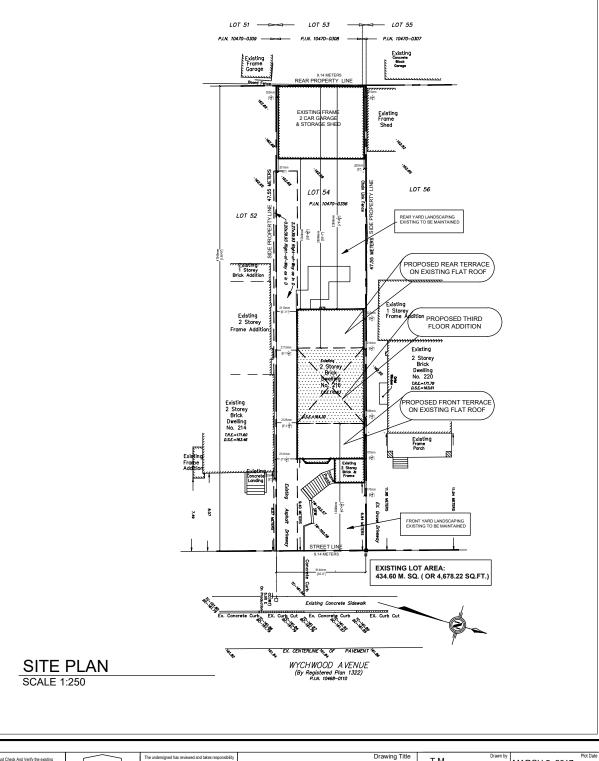
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IMPROVEMENTS	1706-591	Project No.

1 OF 17

MARCH 5, 2017 FEBRUARY 28, 2018

INFORMATION TAKEN FROM SURVEYOR'S REAL PROPERTY REPORT-PART 1 PLAN OF LOT 54, REGISTERED PLAN 1342 CITY OF TORONTO FORMERLY IN THE CITY OF YORK SIGNED BY: CHRIS BERESNIEWICZ OLS FROM: AVANTI SURVEYING INC. OLS

DATED: FEBRUARY 23, 2018



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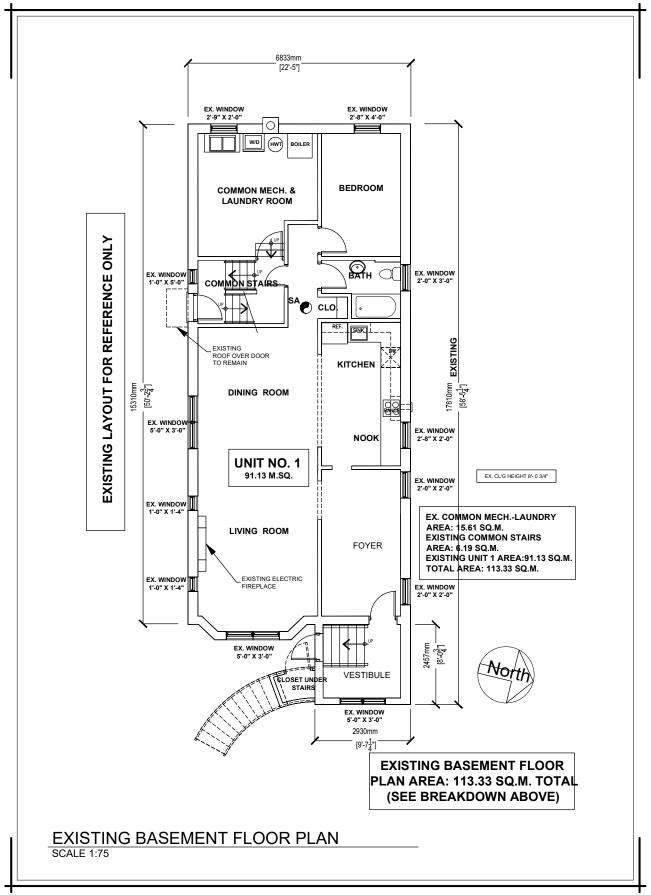


PROPOSED THIRD FLOOR ADDITION AND IMPROVEMENTS 216 WYCHWOOD AVENUE TORONTO ONTARIO

SITE PLAN

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MARCH 5, 2017 FEBRUARY 28, 2018





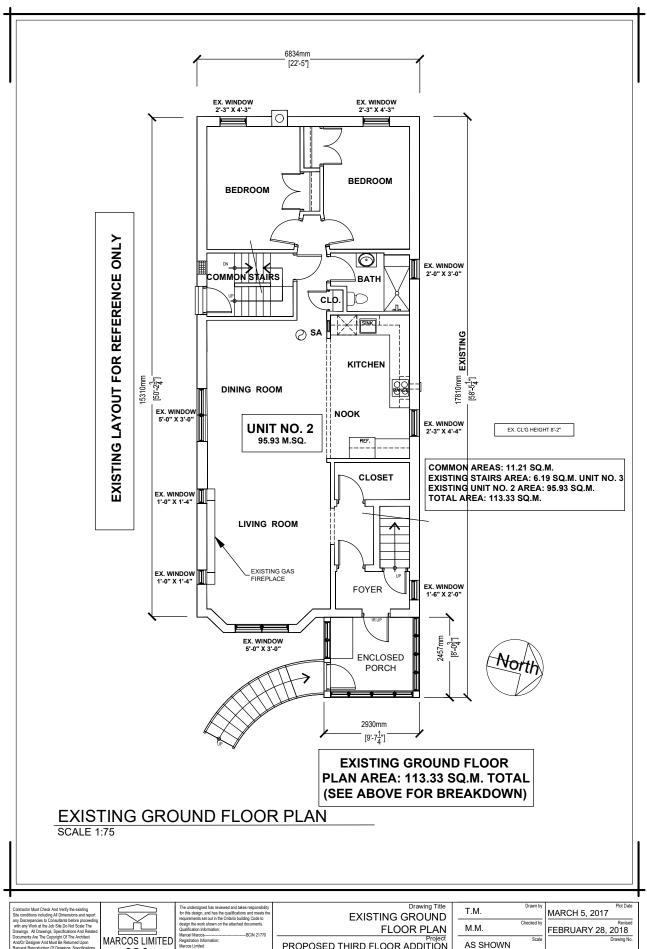


EXISTING BASEMENT FLOOR PLAN PROPOSED THIRD FLOOR ADDITION AND IMPROVEMENTS 216 WYCHWOOD AVENUE TORONTO ONTARIO

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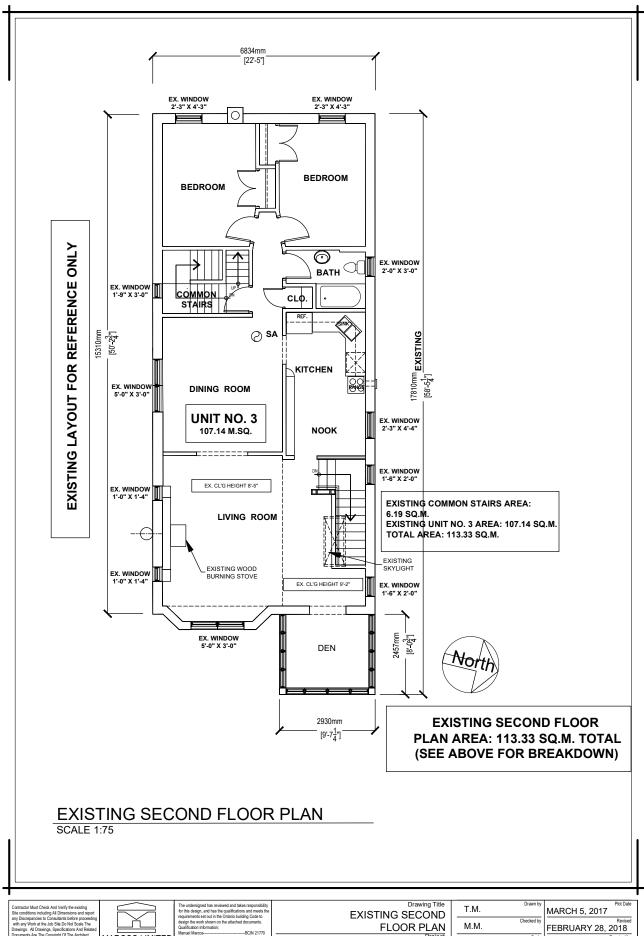
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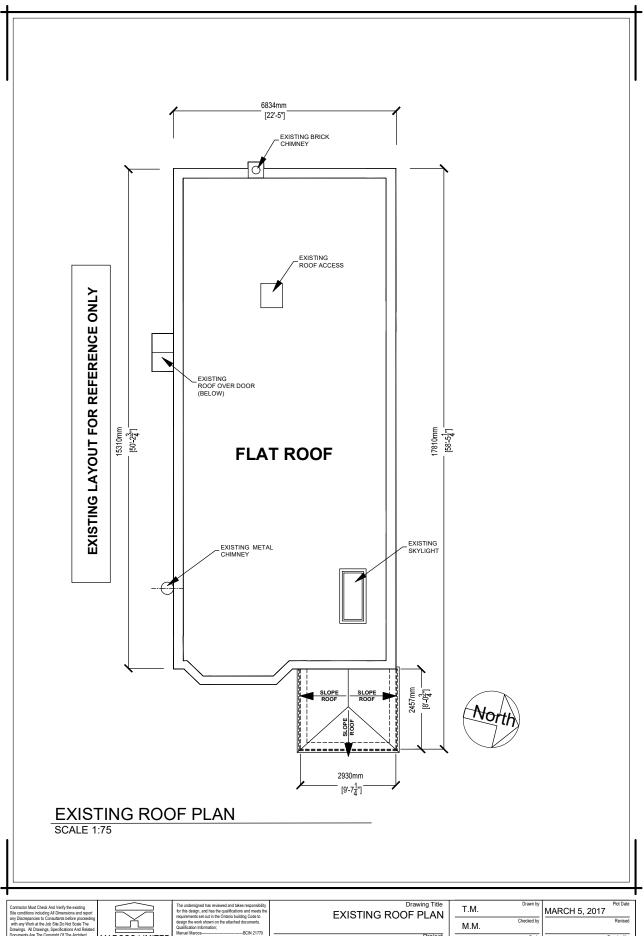
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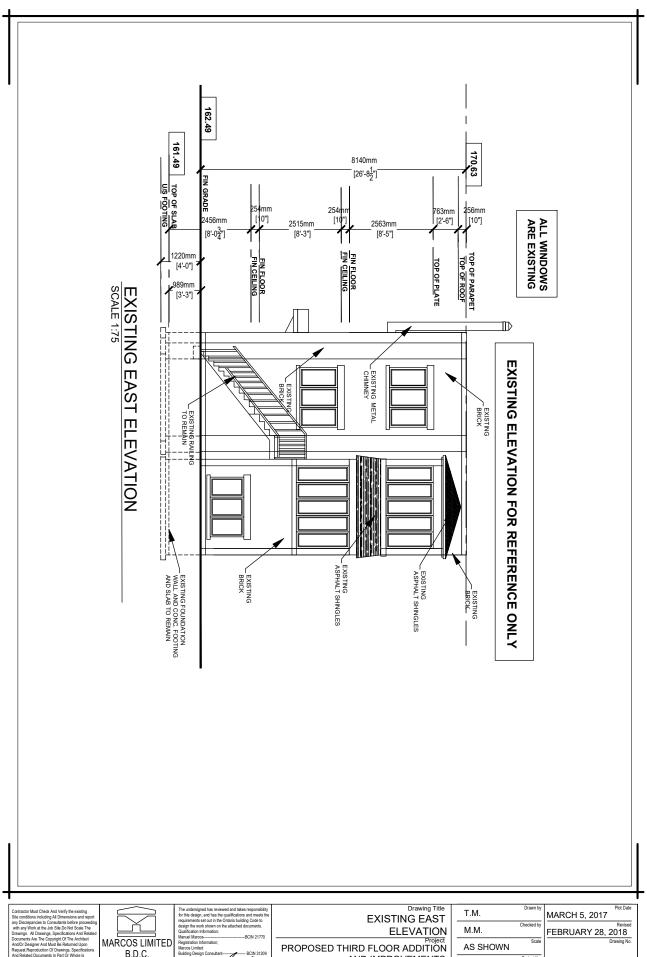
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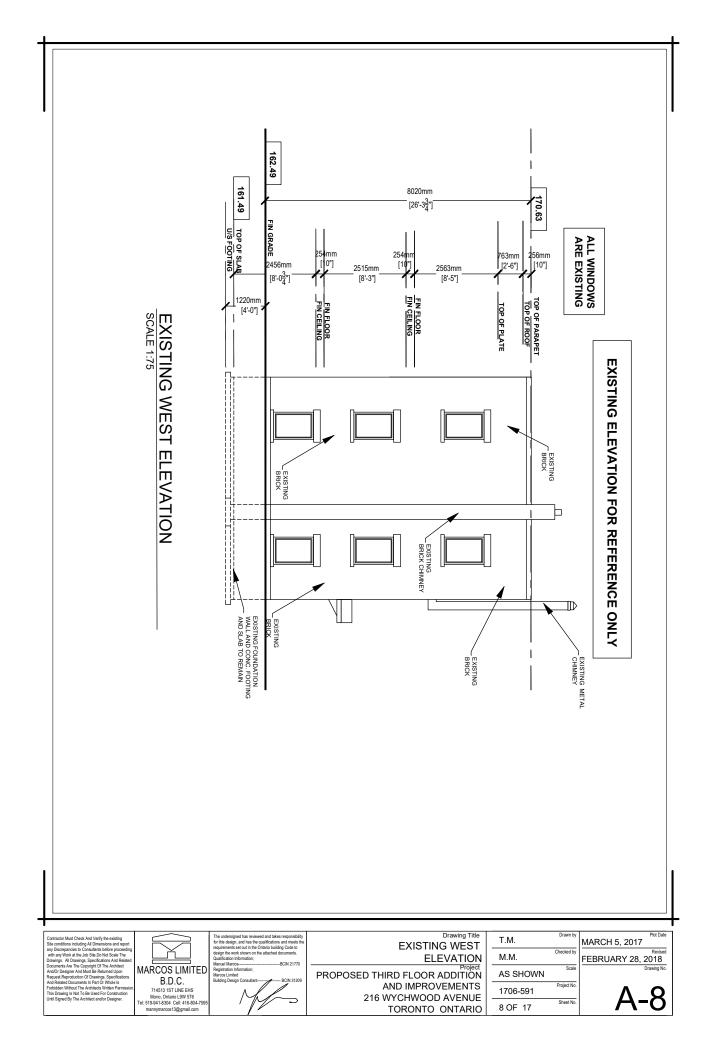
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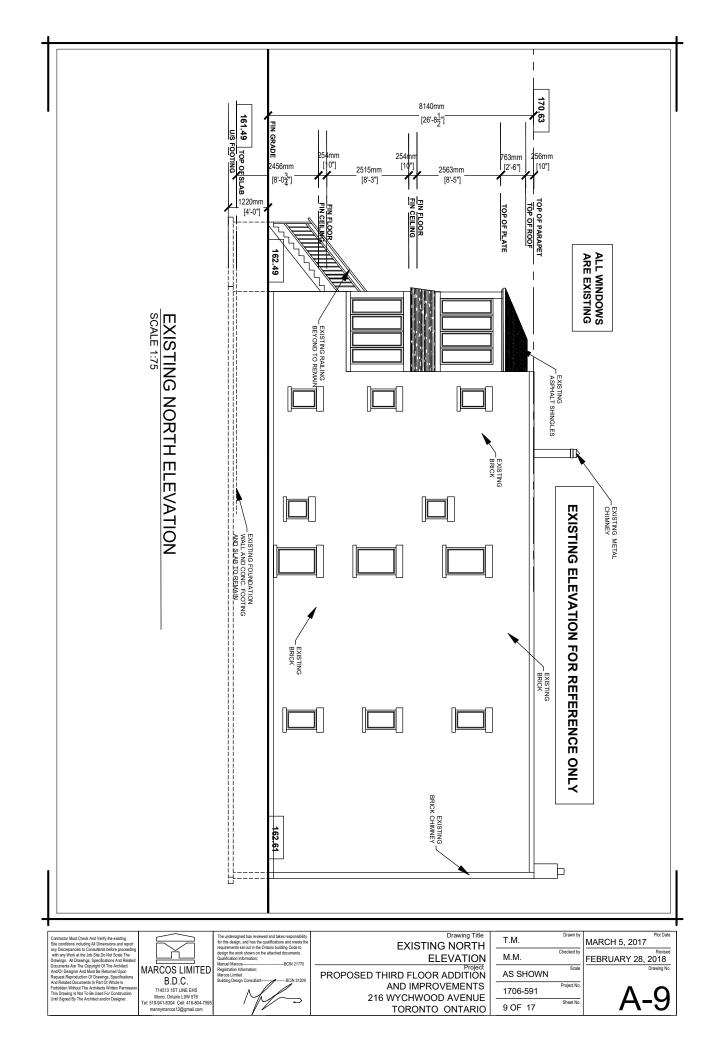


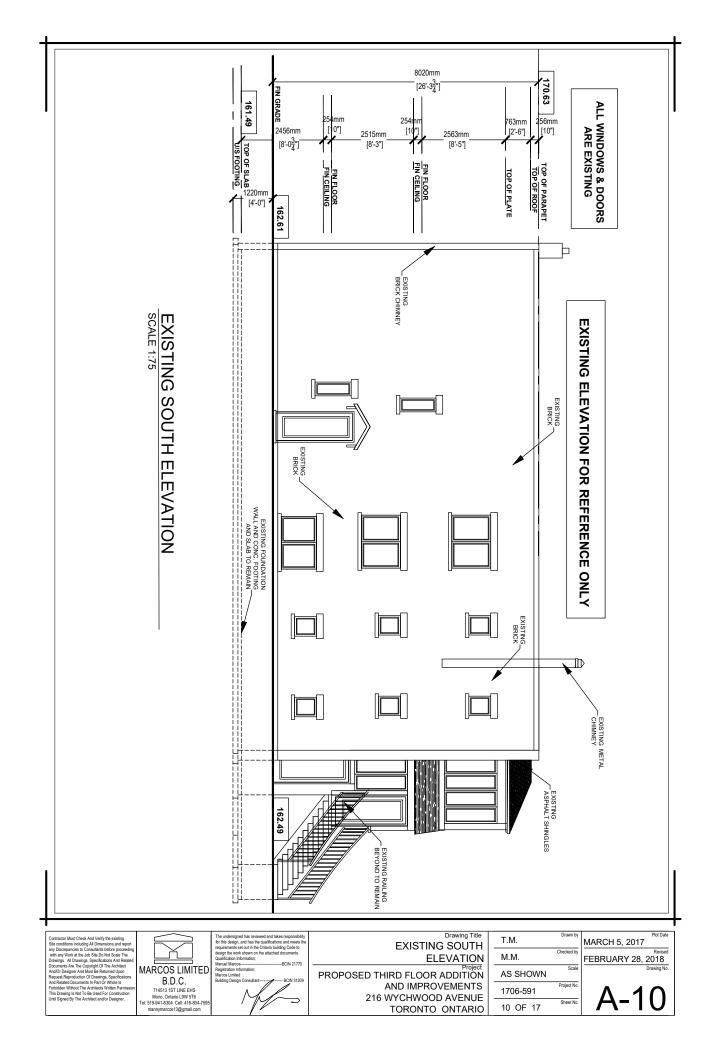
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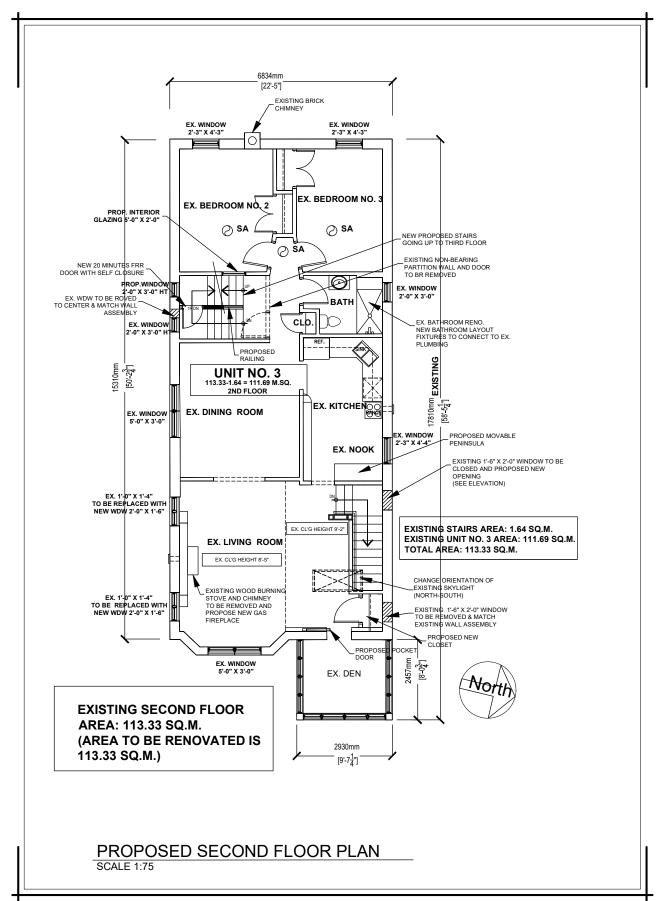
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PROPOSED SECOND
FLOOR PLAN
Project
PROPOSED THIRD FLOOR ADDITION
AND IMPROVEMENTS
216 WYCHWOOD AVENUE
TORONTO ONTARIO

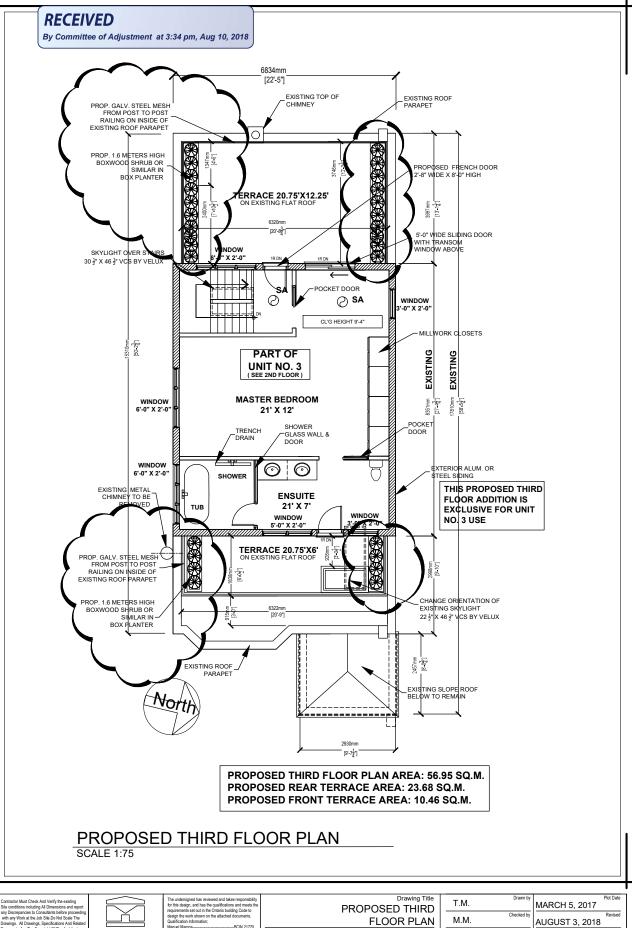
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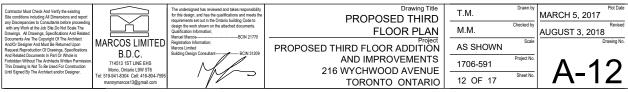
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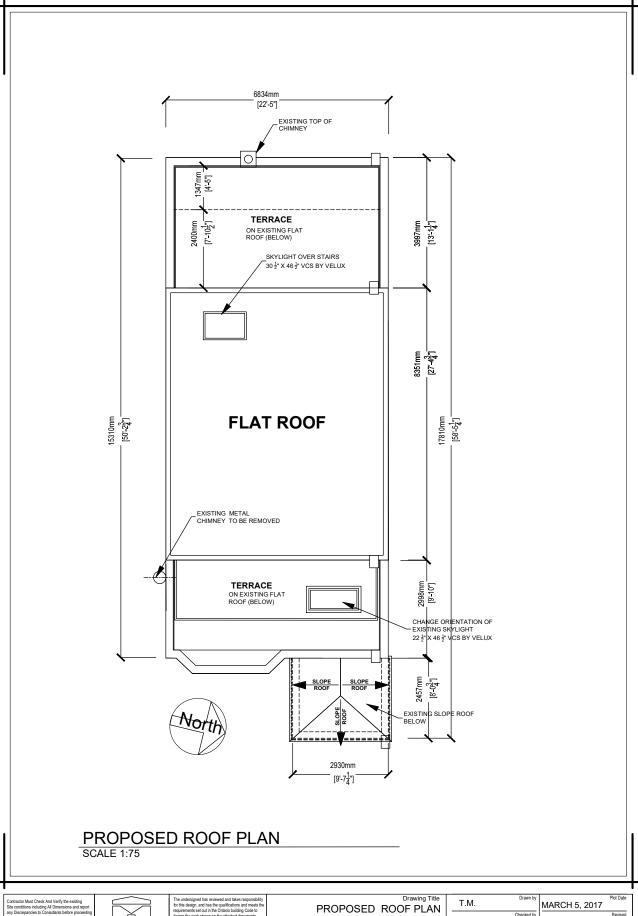
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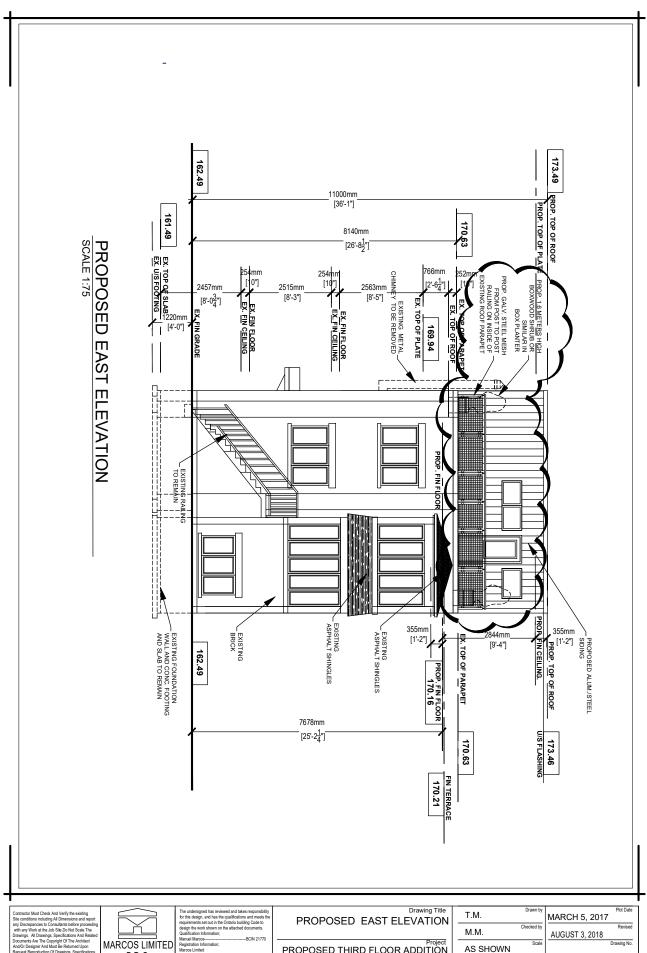


PROPOSED THIRD FLOOR ADDITION AND IMPROVEMENTS 216 WYCHWOOD AVENUE TORONTO ONTARIO

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FEBRUARY 28, 2018

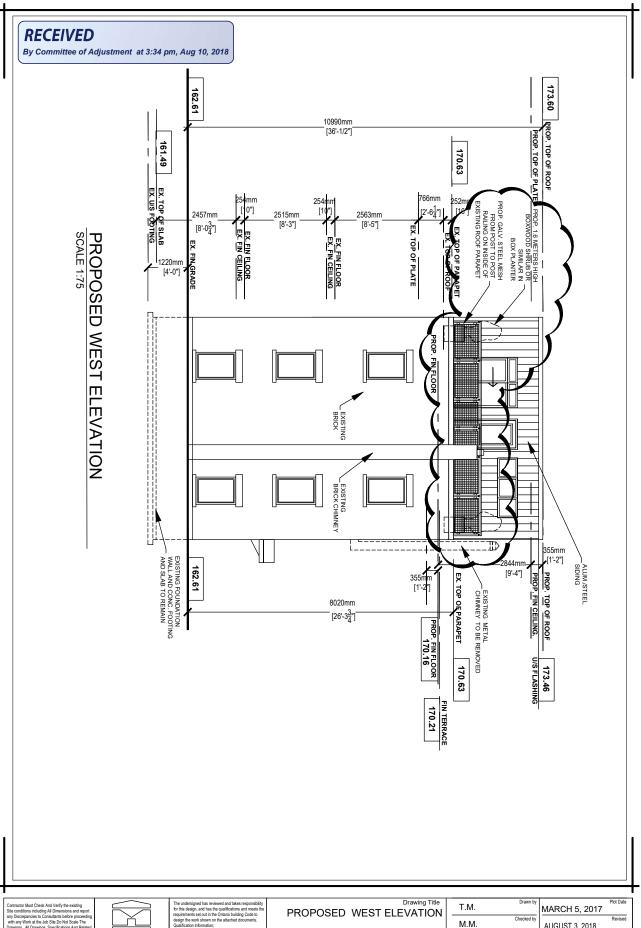
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AUGUST 3, 2018

