

DECISION AND ORDER

Decision Issue Date Monday, June 17, 2019

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): FARHAN KASSAM

Applicant: KATE COOPER

Property Address/Description: 216 – 218 BATHURST ST & 5 ROBINSON ST

Committee of Adjustment Case File: 17 128847 STE 19 MV

TLAB Case File Number: 17 274561 S45 19 TLAB

Hearing dates: Friday, May 18, 2018, Friday, October 12, 2018 Thursday, November 15, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
SAVOY HOSPITALITY INC	OWNER	
FARHAN KASSAM	APPELLANT	JOE HOFFMAN
MICHAEL WOLOSZCZUK	PARTY (TLAB)	
BARBARA WOLOSZCZUK	PARTY (TLAB)	
STEFAN WOLOSZCZUK	PARTY (TLAB)	
ANDREA WOLOSZCZUK	PARTY (TLAB)	
YVONNE WOLOSZCZUK	PARTY (TLAB)	

CITY OF TORONTO

PARTY (TLAB)

DANIEL ELMADANY

BEN BAENA

KATE COOPER

EXPERT WITNESS

NIXON CHAN

EXPERT WITNESS

ANIL SEEBOBIN

EXPERT WITNESS

INTRODUCTION AND BACKGROUND

Farhan Kassam is the owner of Savoy Hospitality Inc, which owns the properties at 216-218 Bathurst Street, and 5 Robinson Street, in downtown Toronto. He applied to the Committee of Adjustment (COA) to convert the existing two-storey, commercial building fronting onto Bathurst Street into a hotel containing thirty (30) suites. The COA heard the application, and refused the same on November 22, 2017.

The Applicants then appealed to the Toronto Local Appeal Body (TLAB) on December 12, 2017. The Woloszczuk family, owners of the neighbouring property at 220-226 Bathurst Ave., elected for Party status- it may be noted that five members of the Woloszczuk family elected separately for Party status. The City of Toronto (City) also elected for Party status. The Appellants and the City participated in a TLAB facilitated mediation held on March 21, 2018, presided by Member Stan Makuch. A Mediation report was issued on April 3, 2018, stating that the City and the Appellants settled their differences and arrived at a Settlement. The five ~~five~~ **six** members of the Woloszczuk family did not participate in the Settlement process.

The Hearings to complete the Appeal were held on April 25, 2018 and October 12, 2018, followed by a teleconference on November 15, 2018.

MATTERS IN ISSUE

The following variances are requested and have been listed together as groups of related variances, for convenience of discussion, based on submissions by the Appellants. It may be noted that the variances listed below reflect the submissions of the Appellants, after revisions, on the morning of October 12, 2018.

Use/Ancillary Use Variances

By-law 569-2013

1. CHAPTER 5.10.20.1(2): Uses that are ancillary to a permitted use on the same lot, are permitted if they comply with the regulations of the zone in which the lot is located.

The existing townhouse on the lot is not ancillary to the hotel.

5. CHAPTER 10.10.20.10.(1): The proposed uses of hotel and uses and structures ancillary to the hotel use are not permitted on the portion of the lot located in the R district.

Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
TLAB Case File Number: 17 274561 S45 19 TLAB

Proposed uses of the hotel and uses and structures ancillary to the hotel use are permitted on the portion of the lot located in the R district.

By-law 438-86

10. SECTION 6(1)(A): The proposed use, hotel, and uses and structures accessory to a hotel are not permitted on the portion of the lot in a district zoned R4.

The proposed use, hotel and uses and structures accessory to a hotel are permitted on the portion of the lot located in the R district zoned R4.

13. SECTION 2(1): More than one principal building will be located on the lot, contrary to the by-law.

Gross Floor Area Variances

By-law 569-2013

2. CHAPTER 40.10.40.40: The maximum permitted floor space index for nonresidential uses is 0.5 (213.69 square metres).

The proposed non-residential floor space index is 2.46 (1,052.5 square metres)

By-law 438-86

12. SECTION 8(3) PART I 2: The by-law requires that the non-residential gross floor area be not more than 0.5 times the area of the lot; 213.69 square metres.

The non-residential gross floor area of the building is approximately 1,052.5 square metres.

Parking Variances

By-law 569-2013

3. CHAPTERS 200.5.10.1.(1) & 200.15.10: The by-law requires 30 parking spaces to be provided for the hotel use, of which a minimum of 2 are to be accessible parking spaces.

A total of 8 parking spaces, including 1 accessible parking space, will be provided for the hotel use.

4. CHAPTER 200.5.1: The minimum required drive aisle width is 6.0 metres.

The drive aisle will have a width of 2.89 metres.

By-law 438-86

17. SECTION 4(4)(c)(ii): Ingress and egress to proposed parking shall be provided by unobstructed driveways or passageways providing access to a public highway and having a minimum width of 3.5 metres for one-way operation and a minimum width of 5.5 metres for two-way operation.

The driveway or passageway will have a width of 2.89 metres.

Loading Variances

By-law 569-2013

6. CHAPTER 220.5.10.1.(6): The required minimum number of loading spaces is one type B loading space.

No loading spaces will be provided on the lot.

By-law 438-86

16. SECTION 4(6)(B): The by-law requires one loading space type B (3.5 metres by 11 metres with a vertical clearance of at least 4 metres).

No loading space will be provided.

Built Form (Setback and Encroachment) Variances

By-law 569-2013

7. CHAPTERS 40.10.40.60.(5) and (8): An architectural features and equipment such as a vent or pipe may encroach into a required building setback a maximum of 0.6 metres, if it is no closer to a lot line than 0.3 metres.

The proposed architectural feature will be setback 0 metres from the east and south lot lines. The proposed equipment will be located 0 metres from the south lot line.

8. CHAPTER 40.10.40.70.(2): Where the main wall of a building has windows or openings, the main wall must be set back at least 5.5 metres from a lot line that is not adjacent to a street or lane.

The proposed main wall is setback 1.7 metres from the north lot line. No windows or openings are proposed on the south lot line.

By-law 438-86

14. SECTION 6(3) PART II 3.F(II): The by-law requires the portion of the building located in the R district to have a minimum side lot line setback of 7.5 metres.

The proposed side lot line setback is 0 metres on the north side and 1.3 metres on the south side.

15. SECTION 8(3) Part II 2(A): The by-law requires the portion of a non-residential building above grade to be set back a distance of at least 3 metres from a lot in a residential district.

The proposed building is set back 0 metres.

Fence Variances

By-law 569-2013

9. CHAPTER 40.10.50.10.(2): If a lot abuts a lot in the Residential Zone category a fence must be installed along the portion of a lot line abutting the lot in the Residential Zone category.

No fence has been proposed along the portion of a lot line abutting the lot in the Residential Zone category or Residential Apartment Zone category.

By-law 438-86

11. SECTION 6(2)21(i): The parking station accessory to the principal use or uses permitted on the whole of the lot must be fenced and suitably landscaped and any lights used for illumination are so arranged as to divert the light away from adjacent

premises.

The parking station accessory to the principal use or uses permitted on the lot will be suitably landscaped. No fence has been proposed around the parking

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

The Hearing took place on April 25, 2018, October 12, 2018, with a teleconference call on November 15, 2018. The Appellants were represented by Mr. Joe Hoffman, lawyer, Ms. Kate Cooper, Expert Witness in the area of land use and planning, and Mr. Nixon Chan, Expert Witness in the area of transportation. The City of Toronto was represented by lawyers Messrs. Daniel Elmadany and Ben Baena; the former was present on April 25, 2018, the latter was present on October 12, 2018, while both were present for the teleconference call on November 15, 2018. The Woloszczuks (a family consisting of five individuals, each of whom had registered as a Party) were collectively represented by Mr. Anil Seegobin, an Expert Witness in the area of transportation, while Mr. Stefan Woloszczuk, one of the Parties cross examined witnesses for the Appellants

The City declared at the outset of the Hearing that it would not be calling any witnesses because they had arrived at a Settlement with the Appellants; however, they would recommend conditions related to the proposed parking for the proposal. Parties Woloszczuk said they would not be calling any expert witnesses in the area of land use planning, but would call upon an expert witness in the area of transportation.

There were two Motions put forward at the commencement of the Hearing on Day 1; the first was from the Appellants asking that the Hearing be completed in one day. After ascertaining the positions of the Parties on this Motion, I ruled against the Motion. The second Motion was put forward by Mr. Woloszczuk, who asked that their

Transportation Witness be allowed to present evidence before everybody else, including the Appellants' planning witness. After discussion on each Motion with the Parties, I ruled against this Motion; the reasons for my decisions appear in the Analysis, Findings and Reasons section (henceforth referred to as "Reasons").

Ms. Kate Cooper was recognized as an Expert Witness in the area of land use planning. She provided an overview of the history of the Application, including a request from the City Transportation Staff department in response to the original application to the COA, asking for a deferral of the hearing to address the parking and loading variances. The COA hearing was deferred, but the Applicants' efforts to address the traffic concerns did not satisfy the City's Transportation department, which recommended that only the parking variances be approved. The COA refused the proposal in its entirety when it heard the application on November 22, 2017.

Following the TLAB-led mediation on March 21, 2018, the Architectural Drawings, originally issued on February 23, 2017, were revised to reflect the on-site parking arrangement. No other changes were made to the Plans. Specifically, the Proposed Site Plan drawing was re-issued on March 16, 2016, to illustrate the proposed eight car parking lot. On April 26, 2018, following discussions with the City, a Commercial Loading Zone Conversion request was submitted to Transportation Services to convert two (2) existing metered parking spaces into one (1) Type 'B' commercial loading space – this was a consequence of the determination that a Type 'C' loading space on-site would be substandard during the TLAB-led mediation.

Ms. Cooper stated that the proposal sought the approval of a number of variances to facilitate the development of a boutique hotel, within the envelope of the existing two storey building, presently located at 216-218 Bathurst Street, and emphasized that the residential dwelling currently occupying 5 Robinson Street would remain as a residential house. The proposal would require interior renovations to the building, the demolition of the existing rear-yard addition, and would result in the improvement of, and upgrades to the existing building, currently vacant and in a state of disrepair.

The ground floor will be designed to provide a lounge/seating area, hotel reception, as well as guest suites. The second floor will be occupied entirely by guest suites and "hotel uses" (e.g. linen storage). The basement will be renovated to accommodate additional guest suites, a small café, and amenity space for guests. The proposal seeks to demolish the rear concrete addition, and replace it with a small stairwell and window well. An addition is also proposed along the south building face to allow for the installation of skylights on the roof. Ms. Cooper said that a total of 30 guest rooms will be provided, which would range between approximately 142 to 293 square feet in size.

Ms. Cooper stated that the proposed building's primary entrance would face Bathurst Street, with two exit doors proposed along the north, and west walls of the building. There will be eight (8) parking spaces provided on the lot, at the rear of the existing building, of which one (1) will be an accessible parking space. The parking spaces will be accessed from Robinson Street. The balance of the rear of the Subject Site will be landscaped, with "sufficient lighting" being installed. While no loading space would be provided on-site, the City's Transportation Department has agreed to the provision of a

Commercial Loading Space through the conversion of two metered on-street parking spaces, located on Bathurst Street, which can also be utilized as a location for pick-up/drop off.

By way of editorial comment, the diagram of the parking space is provided in the last page of the attached Plans and Elevations.

Ms. Cooper then discussed the variances, and grouped them based on mutual commonalities, as recited in the Matters in Issue section. She discussed the relationship between the Proposal and the Policy and Regulatory Context. She stated that the proposed variances would facilitate the revitalization of an existing building with existing infrastructure, by permitting the renovation of a two-storey commercial building, which, in her opinion, made the project compatible with the policies direction in the Provincial Policy Statement (PPS), 2014. Ms. Cooper opined that the proposal was consistent with the Growth Plan for the Greater Golden Horseshoe (Growth Plan, 2017) because the proposed variances would facilitate the revitalization of an existing building, with existing infrastructure, located on a lot immediately adjacent to the Downtown, in the vicinity of existing transit infrastructure.

By way of a brief introduction to discussing the compatibility between the proposal and the Official Plan (OP), Ms. Cooper said the proposal confirmed to the development criteria listed in the Official Plan for the *Mixed Use Areas* designation, the designation for the portion on Bathurst Street that is being redeveloped. She pointed out that Policy 4.5(1) indicates that *Mixed Use Areas* are made up of a broad range of commercial, residential and institutional uses, in single use or mixed use buildings, and that the proposed hotel use is permitted in this designation. Ms. Cooper also pointed out that 5 Robinson Street is designated *Neighbourhoods*, and emphasized that no development was being proposed on this site.

She then discussed how the proposal was consistent with Policy 2.3.1.2 of the OP by virtue of respecting the adjacent low-rise dwellings to the north, west and south. Ms. Cooper opined that there would be no new resulting impact on the built form, light, view or privacy conditions, because the building envelope was not being changed. She stated that small changes were planned, such as an exit stairwell, and small additions at the south of the building to allow for additional windows along the southern façade, and to the south of the building to allow for skylights on the roof. She also drew attention to the policy objective in the OP to promote intensification in areas well served by public infrastructure, including public transit, and stated the proposal's appropriateness, given its proximity to Bathurst and the Queen Streetcar lines.

Ms. Cooper then discussed how each family of variances was compatible with the former City of Toronto Zoning By-law 438-86, and the City-Wide Zoning By-law 569-2013.

On the matter of Use/Ancillary Use, Ms. Cooper said that the variances were of a "technical nature", given that the Site is dually zoned, and that the two buildings are on one 'lot', though not more than one principal building is permitted on a lot. She emphasized that the residential dwelling at 5 Robinson Street, will not be redeveloped,

since residences cannot be ancillary uses to the proposed commercial use. The proposed hotel is a permitted use in the both the CR Zone in By-law 569-2013, and the MCR Zone in By-law 438-86.

Speaking to the GFA variance, Ms. Cooper said that the proposal sought to legalize the existing building's density, which is in excess of what is allowed under the By-laws.

With respect to the Parking variances, Ms. Cooper said that the proposal provides for eight (8) parking spaces for the hotel at the rear of the existing building, of which one (1) will be an accessible parking space. She stated that the parking spaces/number of rooms was at a ratio acceptable to City Transportation Services Staff, and would provide adequate off-street parking for the non-residential use. Ms. Cooper emphasized that these spaces were provided, to address concerns about the misuse of on-street parking spaces, in the neighbourhood by hotel guests. She also added that the proposed parking area would be accessed from the existing 2.89 metre-wide laneway that runs south from Robinson Street, and emphasized that the laneway width had been deemed acceptable by City Transportation Staff.

On the matter of Loading Variances, Ms. Cooper advised that one (1) Type 'B' commercial loading space would be provided to serve the hotel, via the conversion of two (2) metered on-street parking spaces located on Bathurst Street. She emphasized that this arrangement had been discussed with, and had been endorsed by the City's Transportation department. She said that this variance was required because the commercial loading space was not on-site, and that the commercial loading space would "alternate" as a designated pick-up/drop-off area for guests, and service vehicles. Ms. Cooper explained that the loading activities would take place at night, while the pick-up and drop-off was expected to take place in the afternoons or early evenings.

On the issue of Built Form (Setback and Encroachment) Variances, Ms. Cooper said that the purpose of providing minimum yard setbacks was to ensure proper spacing between buildings, as well as adequate sunlight, and privacy conditions. She reiterated that the proposal would retain the existing building envelope, in its current condition, with the following changes:

- The addition of an architectural feature to portions of the north, east and south façades;
- The demolition of the rear portion of the existing building (concrete addition)
- The addition of an exit stairwell at the rear of the building , as required by the Ontario Building Code, and a small window well, to allow for light into the basement of the building;
- An addition to the southern building face to facilitate skylights on the roof;
- The addition of two window openings along the northern façade.

Ms. Cooper added that the encroachment into the required south and east setbacks, would not create any adverse impacts to adjacent properties, and that the demolition of the concrete rear addition will improve the rear yard condition, because the setback from the west property line would increase. The window well addition would be located 1.3 metres from the south property line (i.e. 214 Bathurst Street). Ms. Cooper said that proposal represented an improvement over the present condition, because the window

well would not be visible from the lot at 214 Bathurst Street, as a result of being below grade. She added that the reduction in building setbacks, would not create any adverse built form impacts to adjacent properties. She said that the existing north façade will have 16 windows along the north wall, and that the two extra windows proposed for this wall, will not result in additional overlook impact to the north.

Speaking next to the nature of the planned fence and the fence related Variances, Ms. Cooper said the purpose was to delineate a residential lot, and distinguish it from the commercial lot. She added that the fence variance was “technical” in nature, and did not create any adverse impacts to adjacent properties. Since parking is proposed at the rear of the building, the nature of the fence provision is to provide requisite safety and security to the parking, located in the residential zone. In this case, the parking lot would service the commercial use, and fencing will be provided around the Subject Site in general, save and except the northern property line for easement, access and ingress purposes. Ms. Cooper again asserted that the variance would not create any adverse impacts on adjacent properties.

Based on these discussions, Ms. Cooper concluded that the variances upheld the purpose and intention of the Zoning By-laws.

She then addressed how the proposal met the test of being minor. She pointed out that “minor” was not simply a numerical calculation, but was based on an analysis of fit with the immediate context, and impact on the surrounding neighbourhood. She emphasized that there were no unacceptable shadow, light, view and privacy impacts on the abutting neighbours, or on the adjacent streets. She asserted that there would be no increase in the proposed overall height or massing, and that the building would be in keeping with the existing built form, and mixed-use character, characteristic of Bathurst Street. After reiterating that there would be no additional impact, other than what already exists, Ms. Cooper concluded that the proposal met the test of minor.

Lastly, Ms. Cooper addressed the test of the desirability. She said that the requested variances were appropriate and desirable, and represented a positive contribution to the community through reinvestment in an existing building stock. She emphasized that the requested variances would improve, and upgrade an existing, vacant building in need of repair, such that the new build would “complement” the surrounding area. Ms. Cooper added that while the majority of the renovations are interior alterations, the enhancement of the facades, rear portion demolition, and incremental additions are in keeping with the design and character of the area, and represent an improvement to the building and Subject Site’s condition. Based on this information, Ms. Cooper concluded that the property met the test of being desirable, and being appropriate for the development of the land.

She then discussed the conditions of approval, including conditions requested by the City, as part of the Settlement process:

1. The Appellant is required to build in substantial compliance with the Plans and Elevations, prepared by Ava Jankowski, Architect Inc., date stamped March,

2016. These Plans and Elevations, which reflect the proposed parking at the Subject Site, appear in Appendix A, attached to this Decision.

2. As a condition of approval, a Hotel use, or uses that are ancillary to a Hotel use shall not be permitted on the portion of the lot that is located in the Residential Zone, exclusive of the staircase, window well, waste and recyclable materials storage structure, and proposed parking station located at the rear of the proposed Hotel Building.
3. The Applicant/Owner shall provide a minimum of eight (8) parking spaces on-site at the rear of the property at 216-218 Bathurst Street, including one (1) accessible parking space that is compliant with Zoning By-law 579-2017.
4. Should the Applicant/Owner be unable to provide all required eight (8) on-site parking spaces outlined in **Condition 3**, the Applicant/Owner must either:
 - a. provide the deficiency from the required minimum eight (8) on-site parking spaces at an off-site location within 300 metres of the subject site, where those off-site parking spaces must be a surplus to the requirements of the Zoning Bylaw for the donor site and be secured in a long-term lease agreement and all of which shall be to the satisfaction of General Manager, Transportation Services; or
 - b. submit an application pursuant to section 40 of the *Planning Act* to request payment-in-lieu of parking for any deficiency to City Council and obtain approval from City Council; and if approved by City Council, enter into, and register on title to the satisfaction of the City Solicitor, an agreement for payment-in-lieu pursuant to section 40 of the *Planning Act*.
5. Prior to the issuance of the first-above grade building permit, the Applicant/Owner shall submit an application to permit a Commercial Loading Zone along the west side of Bathurst Street, directly adjacent to the property at 216-218 Bathurst Street, and obtain approval from City Council for the Commercial Loading Zone; and should approval be granted by City Council:
 - a. the Applicant/Owner shall enter into any necessary arrangements or agreements, including the removal of two Toronto Parking Authority parking spaces adjacent to the Site, that are required to secure the Commercial Loading Zone to the satisfaction of the General Manager, Transportation Services.
 - b. The Commercial Loading Zone shall be restricted in use during rush hour times that shall be indicated in appropriate signage to the satisfaction of the General Manager, Transportation Services.
 - c. The enactment date of the Commercial Loading Zone through a By-law passed by City Council is not part of this condition for issuance of the first above-grade Building Permit.
6. Prior to the issuance of the first-above Grade Building Permit, the Applicant/Owner shall provide a Landscape Plan that shows fencing and light illumination for the proposed parking station at the rear of 216-218 Bathurst Street to the satisfaction of Chief Planner and Executive Director, City Planning, and the General Manager, Transportation Services.

7. Prior to the issuance of the first-above grade Building Permit, the Applicant/Owner and the City of Toronto shall enter into a section 45(9) Agreement pursuant to the *Planning Act* to secure access in perpetuity to the proposed parking station at the rear of 216-218 Bathurst Street to the satisfaction of the City Solicitor and the General Manager, Transportation Services.

Based on the above, Ms. Cooper asked that the Appeal be allowed, and the Application be approved in its entirety with conditions.

By way of editorial comment, any references to Mr. Woloszczuk for the remainder of this Decision may be interpreted to mean “Mr. Stefan Woloszczuk, unless stated otherwise.”

Mr. Woloszczuk then cross examined Ms. Cooper. He asked Ms. Cooper a number of questions focusing on the use of 5 Robinson Street, to ensure that it would not be misused for any other purpose, to which she assured him that the only use would be what was defined as “Residential” use. He then pointed out that the proposed parking would be where garbage bins are presently located, and asked Ms. Cooper about where the garbage would be moved, as a result of the installation of parking spots. She said that she would have to “check” on where the garbage would be deposited. In responses to Mr. Woloszczuk about questions pertaining to the installation of fencing along the walkway, and the possibility of serving liquor in the proposed hotel café, Ms. Cooper said that she would have to get clarification. Mr. Woloszczuk pointed out that the proposed easement is on land owned by a certain John Clarke, who passed away more than a century ago, and said that the land was effectively “orphaned”. He wondered if the easement could transfer on title, as the Appellants had claimed. Ms. Cooper said that she would have “to get back” on the question about access to the easement being carried forward through a Transfer of Title. In response to Mr. Woloszczuk asking if the hotel would have 31 rooms or 40 rooms because different diagrams resulted in different conclusions, Ms. Cooper originally said “40”, but then corrected herself to “31”. As an editorial comment, the figure of 31 (thirty one rooms) has been used throughout this Decision for determination and drawing conclusions.

Mr. Woloszczuk then presented his evidence. He commenced by stating that, he and his family appreciated the efforts to provide a limited amount of parking and some form of a loading zone. However, he added, that they had concerns over the “proposed loading and parking solutions , which create a whole new subset of problems, that will continue to negatively impact our property and the surrounding community – “to a similar, if not worse degree than before” .

According to Mr. Woloszczuk, the proposal to convert two public, metered parking spots to a loading zone for hotel use on Bathurst, would “rob” the surrounding “parking-challenged community of two much needed parking spaces”. Since the two “lost” parking meters are right next to the property owned by his family, Mr. Woloszczuk feared that the loss of the parking spots would exacerbate the problems of illegal parking at their site next door, and “encourage parking-meter-deficient drivers to poach tenant spots, or illegally park in our drive aisles”. The proposed loading zone, in Mr. Woloszczuk’s opinion, would “negatively impact streetcar service, and the TTC turn-around loop, and local cyclists, through extra, unwanted parking”. He said that taxis

and Ubers would continue to utilize the loading zone in rush hour, because “this is also one of the busiest times for the arrival of guests, and hotel check in begins around 3pm”. Mr. Woloszczuk’s family was concerned that many passenger drops would end on their property, because their adjacency to the hotel’s front and side entrances.

He next spoke to the problems related to the proposed parking at the backyard. He said that the backyard parking station could only be accessed by “one very narrow private laneway next to 5 Robinson St., with a width of 2.89 meters”. He emphasized the fact that By Law 569-2013 required a minimum drive-aisle width of 6.0 meters, while By Law 438-86 Section required a minimum width of 5.5 meters or 3.5 meters. He opined that the addition of hotel traffic would also increase the risk for damage to tenant parked cars on their property’s west parking lot, which abuts the narrow drive-aisle, as well as the increase the risk for property damage to the building owned by the Woloszczuk family, because their west wall abutted the narrow laneway .He added that in his opinion, the insufficient width of the lane would also heighten “circulation problems” for their property. From his perspective, “burdening the drive-aisle with the additional and more intense, 24 hour vehicular traffic associated with Hotel use, will result in obstructions and safety issues, especially since a new three way intersection will be created and diminish flow where laneway turns west into the proposed parking station”.

Mr. Woloszczuk also “felt” that hotel guests seeking a quicker exit to Bathurst, would not use the Robinson laneway for egress, but cut through the drive-aisle of our south parking lot (which is used for ingress) instead, creating additional movement problems”. He reiterated that the laneway was privately owned and “orphaned”, as the individual on title “died more than a hundred years ago”. He maintained that City did not attend to private lanes, which meant that this lane would not be “maintained, serviced or policed, which will be troublesome should the lane become obstructed”.

Mr. Woloszczuk then asserted that the proposed parking station “may be intended for guest parking, but that does not mean it won’t be used for loading purposes”. He said “that in his mind, this is very likely to happen from 4-6 pm when the loading zone on Bathurst will be closed due to rush hour restrictions”. He stated that the hotel’s transportation planner (Mr. Nixon Chan) had explained that “during rush hour, hotel traffic would be directed off Bathurst onto Wolseley Street. Pointing out that Wolseley was a one-way street, and that Robinson was a narrow, residential Robinson St, he asked how either street was capable of handling the increased traffic resulting from the hotel.

Mr. Woloszczuk next addressed his concerns about the “displacement of the garbage storage area.” He said that upon reviewing the revised site plan in applicant’s document book (filed May 4th, 2018), he noted that the updated drawing showed that the existing garbage site had “now been converted into a parking space”. Since there was no indication of a garbage storage area on the plans, he had three questions:

- Does this mean the trash will be stored inside the hotel?
- Will a new structure be built outside and perhaps displace one of the proposed parking spaces?
- How and where will or the lost parking space be replaced?

Mr. Woloszczuk then addressed the issues arising with the proposed parking ratio. He asserted that the proposed 8 parking spots, including one accessible spot, would be inadequate to accommodate the guests at the hotel. The proxy hotel data report that was used to determine the parking ratio, was conducted in February, "which is in the dead of winter, when people avoid driving, and travelers generally don't flock to the city". Mr. Woloszczuk said that he "felt" that the study's parking ratio is unreliable and may have been significantly different had it been determined during the busier summer/fall months".

He concluded by stating that "the proposed parking station creates a far greater intrusion of the hotel's commercial use into the residential neighbourhood.", and contrasted this with the original application to the COA, which had sought variances based on the addition of a small stairwell in the residentially zoned backyard. In his opinion, the settlement proposal reshaped "the plan for soft landscaping into a plan for hard landscaping over almost the entire residential lot". As a result, he concluded that the boundary distinctions between CR and R designated areas were being "eroded", resulting in the "the stable Neighbourhood" being "significantly undermined".

In addition, Mr. Woloszczuk added that the proposal was opposed by the neighbourhood, as could be seen from a petition with 125 signatures from neighbours, submitted to the COA, "which advises against the project". He also said that he tried his best to attend the TLAB facilitated mediation, but could not be present, despite his best efforts. He was, however, adamant in his conclusion, that the Settlement reached between the City and the Appellants did not constitute "pre-approval".

Mr. Woloszczuk then summarized his concerns by stating the following:

- There is a shortage of parking at the proposed site that could impact other properties, including the property that belonged to his family.
- His family wasn't sure if the building next door would be a hotel, or a rooming house.
- The reduced drive way width and the ingress width can result in accidents.

When I finally drew his attention to the fact that he had not addressed the Provincial Policies, and asked him if the proposal was consistent with the higher level policies, Mr. Woloszczuk's answer was "No".

Mr. Hoffman then commenced his cross examination of Mr. Woloszczuk. He began by pointing out that Mr. Woloszczuk's explanation of the OP had left out the specific section of Section 4.1 where reduced automobile use was discussed i.e. "Reduced use of the automobile was advised, though it was not to be eliminated", and then asked if this was consistent with use of the streetcar along Queen and Bathurst, by hotel patrons. In response, Mr. Woloszczuk replied that due to "efficiency" reasons, the possibility that patrons would use Uber or taxis, over the streetcar was fairly high. Mr. Hoffman then drew Mr. Woloszczuk's attention to the fact that a 7 storey building had been commissioned at 224 Bathurst, with 10 parking spaces, and asked the latter if a 7 storey hotel could function with 10 spots, "did it not make sense for a 30 room hotel to function with 8 spots". Mr. Woloszczuk disagreed with this question because the neighbourhood was "packed to the gills". When Mr. Hoffman asked Mr Woloszczuk how many parking

spots were needed, Mr. Woloszczuk said that he did not know the answer. When Mr. Hoffman referred to Mr. Chan's study, and how frequently would the loading zone be used, including the loading taking place at night, Mr. Woloszczuk said that he disagreed with the study. When asked what uses Mr. Woloszczuk would deem appropriate for the Subject property, the latter said that "office use" would be a good use, and added that any other use that uses public parking "was out of luck".

Mr. Hoffman pointed out that Mr. Woloszczuk's property was in the CR zone, but used parking located in the R zone, which was identical to what the Appellants were proposing, and asked Mr. Woloszczuk if he objected to the neighbour's seeking to replicate the very same arrangement on their property? Mr. Woloszczuk said that while there was a secondary entrance from his property onto Robinson, what the Appellants were proposing on Robinson would effectively be the main entrance. Mr. Hoffman then asked Mr. Woloszczuk if he deemed a two storey hotel to be an inappropriate use of land, but if a 4-5 storey residential building was appropriate, to which the latter replied in the affirmative. In the discussion about windows on the Subject property, Mr. Woloszczuk had insisted that the presence of windows at 216-218 Bathurst would impede their (i.e. the Woloszczuk family) ability to develop the neighbouring property. When Mr. Hoffman suggested that the Woloszczuks could build all the way to the property line, as a matter of right, Mr. Woloszczuk's answer was that the "neighbours would object to such a proposal". He also said that he was not sure that his family could build all the way to the property line, without any permission, but wouldn't so "in any case". Referring Mr. Woloszczuk to his allegations about the "blending of the CR and R zones", Mr. Hoffman pointed out that such blending had already occurred because of the existing building at the rear of the property, where CR uses were being carried out in the R zone, to which Mr. Woloszczuk insisted that the proposal merely exacerbated the blending. However, when Mr. Hoffman also stated that the so-called "blending was being undone" because of the shortening of the building, Mr. Woloszczuk initially agreed, but then disagreed again.

With respect to the laneway on the piece of land registered to John Clarke, Mr. Hoffman pointed out that a right of way is registered on all deeds, including Mr. Woloszczuk, which meant that he would be able to access the right of way, irrespective of who the owner was; Mr. Woloszczuk did not comment on this response.

Mr. Elmadany, lawyer for the City asked a few questions of Mr. Woloszczuk. He provided a preamble where he described the Site Plan process, how a landscape plan was integral to the process, and emphasized that the landscape plan, including the proposed fencing to prevent encroachment onto Mr. Woloszczuk's property, had to be approved by the City, before being implemented. He then asked Mr. Woloszczuk if the involvement of the City, and level of detail involved in the fencing plan, gave Mr. Woloszczuk any comfort, to which the latter disagreed. There was also some initial disagreement about the numbers of variances in the application; Mr. Woloszczuk indicated 19 variances, while Mr. Elmadany explained that there were 17 variances in all, and explained them. By way of editorial comment, this evidence is not reproduced, because the variances to be ruled on by the TLAB were subsequently updated, and are listed accurately in the "Matters" section. After listening to Mr. Elmadany's explanation,

Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
TLAB Case File Number: 17 274561 S45 19 TLAB

Mr. Woloszczuk said that he was not clear about how the variances reduced to 17, but was “prepared to go along with Mr. Elmadany’s explanation”.

Mr. Stefan Woloszczuk’s evidence in chief was followed by Ms. Barbara Woloszczuk, . Ms. Andrea Woloszczuk, Ms. Yvonne Woloszczuk, and Mr. Michael Woloszczuk ,all of whom discussed their concerns briefly.

After Ms. Barbara Woloszczuk was sworn , she made a brief statement where she indicated her agreement with Mr. Woloszczuk, and reiterated that there was no “proper loading zone”, and that the elimination of parking spaces, would generate significant amounts of garbage by virtue of being a hotel. She asked if the garbage would be deposited on Bathurst, “making it go the way of Queen?” To illustrate her point, Ms. Woloszczuk put up pictures of Queen Street with garbage bags on either sides of the street. She pointed out that the proposed hotel was a 24 hour business, would not serve the local community, and was not consistent with the Official Policy’s stipulation about “serving locals”. She reiterated that the loading arrangements were inadequate.

The next witness was Ms. Andrea Woloszczuk, who complained about the parking situation in the community, and how it would be worsened by the introduction of the proposed hotel. Referring to the parking situation at Bathurst and College, she pointed out how “bad” the parking was in the morning, and how it “worsened” at night. She said that no parking space could be eliminated, and referred to “a building at Bathurst and Richmond”, and how this building worsened the situation. Mr. Hoffman pointed out that he was the lawyer for the aforementioned property at the intersection of Bathurst and Richmond, and asked Ms. Woloszczuk what her preferred solution for easing the parking situation could be. By way of editorial comment, before the witness could respond, I saw other members of the opposition trying to prompt her through gestures. I asked them not to prompt the witness. Mr. Hoffman then asked Ms. Andrea Woloszczuk if they were planning to develop their property, to which she replied “possibly”, to which his follow up question was “How can you develop your property, while objecting to other people developing their properties?”, and received no answer. Mr. Hoffman also asked if she was aware that hotel occupants could not park on Robinson, because they needed permits, to which she answered in the affirmative.

She was followed by Ms. Yvonne Woloszczuk, who complained about the loss of two parking spots, and how people with permits went “round and round in circles” because all the spots would be taken up by cars without permits. Mr. Michael Woloszczuk spoke briefly, and said that he was not in favour of the new development because of the traffic concerns, as well as privacy concerns resulting from multiple windows facing their property. There were no questions from Mr. Hoffman by way of cross examination.

The second day of Hearing (i.e. October 12, 2018) started with Ms. Cooper offering clarifications about the issues brought up by Mr. Woloszczuk on Day 1. The Appellants introduced an updated list of variances, to address concerns brought up by the opposition. When I asked Mr. Hoffman why the variances had not been disclosed earlier to the TLAB, he said that they had been approved by the City “literally” two days before, and that the City’s approval was a critical step because of the Settlement between the Parties. Mr. Hoffman pointed out that the proposed changes were minor, and that

notice be waived under Section 45 (18.1.1). Given that there was no objection from the opposition, I agreed to waive notice under Section 45.18.1.1 of the Planning Act.

By way of editorial comment, I am not reproducing Ms. Cooper's remarks, because the modified and finalized variances are recited in the "Matters in Issue" Section of this Decision. Ms. Cooper stated that the hotel would have 31 rooms and not 40 rooms, and that the intent of the hotel space in the basement is to provide an amenity area exclusively for the patrons of the hotel, and that "outsiders" would not use the amenity space. She also said that there are comparable 'boutique' hotels in the City of Toronto, including the Drake Hotel, which provides rooms that range from approximately 150 square feet to 385 square feet (compared to the proposed 142 to 293 square feet in size). She added that while the Drake is 3 storeys in height and provides 19 rooms, it also provides for a large restaurant and gallery space and, in her opinion, the area dedicated to the hotel and rooms is comparable, to what was being proposed. Lastly, she acknowledged that they had "inadvertently" forgotten to highlight the place where the garbage would be stored, and drew attention to an updated diagram, where a rectangular box, at the rear of the property, would be used for garbage storage purposes. When Mr. Woloszczuk started to ask questions of Ms. Cooper after she clarified and updated the variances, I upheld Mr. Hoffman's objection, because the questions were not seeking clarifications of Ms. Cooper, but were "an attempt to hold forth on Mr. Woloszczuk's preferences, for how the site ought to be developed".

Mr. Nixon Chan was sworn, and recognized as an Expert Witness in the area of traffic and transportation. He spoke briefly about the history of his involvement with the project at 216-218 Bathurst St. He said that his consulting firm LEA, had prepared a Parking and Loading Study for the proposed hotel development at 216 Bathurst Street, dated October 2017, as well as a second study on March 8, 2018. LEA had also participated in TLAB-led Mediation, on March 6, 2018, which resulted in revisions to the plan, resulting in the conversion of two metred parking spaces into a loading zone. Mr. Chan stated that the City Transportation Services staff, agreed with the elimination of the parking spaces, and their conversion into a loading zone. He then explained the parking variance, which had been sought to By-law 569-2013 Chapter 200.5.10.1(1), which required 30 spaces for the proposed hotel, and By-law 438-86 Section 4(4)(b), which required 15 spaces.

Mr. Chan said that ongoing discussions with City staff resulted in a revised Site plan with eight parking spaces provided on site, including one accessible parking space, which constituted an increase of one parking space from seven spaces in the earlier plan.

In Mr. Chan's opinion, the one space per hotel room ratio stated in Zoning By-Law 569-2013, was unnecessary, because the majority of guests are expected to fly into the local airports, from where they would arrive by taxi or transit. He added that, by way of a comparator to assess parking need and corresponding spots, a three day study was conducted at a proxy site, the Econo Lodge, located at 335 Jarvis Street.

Mr. Chan described this hotel as having 50 rooms, and no on-site parking for guests. After discussing the similarities between the Econo Lodge and the Subject property, he described the details and results of the three day study.

Mr. Chan then spoke to Proxy Parking Studies. He acknowledged that it was difficult to ascertain the true parking demand for a hotel which does not provide parking through observational surveys. To understand the numbers of arrivals, and parking, interview surveys were conducted by staff at the Econo Lodge from Friday, February 23, 2018 to Sunday, February 25, 2018. Upon check-in, guests were asked whether or not they had driven to the hotel, and if so, where they had parked. The Table below outlines the results of the interview survey.

TABLE REFLECTING RESULTS OF INTERVIEW SURVEYS AT ECONOLODGE

	Econolodge			
Address	335 Jarvis Street			
Rooms	50			
Arrival	Fri Feb 23	Sat Feb 24	Sun Feb	Total
Check in	3	12	4	19
Drove	1	4	0	5
% Drove	33%	33%	0	26.3
	Common Parking Location			
Address	40 Gerrard St E.			
Distance	400 m			
Walking Time	5 mins			
Cost	\$ 5 Evening Flat Fee			

Mr. Chan reiterated that the hotel surveyed does not have dedicated parking either on-site or off-site. The results of the survey demonstrated that over the weekend, 26% of guests drove and parked near the proxy hotel. The common parking locations for guests of the Econo Lodge at 335 Jarvis Street, were 40 Gerrard Street East which is approximately 400 metres (5 mins walk) from the Econo Lodge, and the Ramada Inn which is approximately 150 metres (2 mins walk) from the Econo Lodge.

Based on the survey, he said, the overall parking demand was about 0.26/spaces per occupied unit. For the 30 units at the subject development, a rate of 0.26 spaces per unit results in a requirement of 8 parking spaces. By-law 579-2017 requires that one accessible parking space be provided for every 5-24 parking spaces, which resulted in the provision of one accessible parking space. Given the location of the subject site in proximity to the downtown core and major gateways of entry such as Union Station (~2 km) and Billy Bishop Toronto City Airport (~1.75 km), Mr. Chan said, it is expected that guests will primarily arrive by either public transit or taxi.

He emphasized that the total of 8 parking spaces required, meant that there was an increase of one space, compared to the seven spaces proposed at the time of the COA hearing. The variances being sought for the relief of the provision of one Type B loading space are required under both Zoning By-Law 438-86, and Zoning By-Law 569-2013.

Mr. Chan also said that the proxy survey indicated that loading activity occurred outside of peak traffic hours, and that the same arrangement would be true of the proposal.

He then reviewed the vehicular parking requirements for the subject site, based on the requirements of the former City of Toronto's Zoning By-law 438-86, and the new Zoning By-law 569-2013. He reiterated that while the site is not located within any of the Policy Areas under By-Law 569-2013, it is across the street from the western limit of Policy Area 1 and less than 100 metres from the northern limit of Policy Area 4 along Queen Street West; the significance being that both Policy Areas 1 and 4 allow for 1 parking space for every 100 sq. m., while in all other areas (including the Subject site), the rate is 1.0 space per hotel room.

The subject site shares many attributes with these adjacent areas than lends itself to be less auto-reliant than other parts of the City further from the downtown core. Mr. Chan explained that under the former City of Toronto By-law 438-86, one parking space was required for every six hotel rooms, while under the Citywide By-law, 1 space was required for every hotel room, while in Policy Areas 1-4 (as defined by the City), the rate is 0.2 spaces for every 100 sq. m. in GFA.

Based on the above ratios, a minimum supply of 5 and 30 parking spaces will be required by the City's former By-law 438-86 and the City's By-law 569-2013 respectively. As eight (8) parking spaces are proposed for the subject site, a relief of 22 of the 30 parking spaces from the City's By-law 569-2013 parking requirements will be sought. Mr. Chan noted that if the site were located on the east side of Bathurst Street, instead of the west side, it would be within the limits of Policy Area 1, and the parking requirement under Zoning By-Law 569-2013 would be 1 parking space. The corresponding requirement for accessible parking spaces is one for every five parking spaces.

In support of the proposed parking, Mr. Chan asserted that are existing boutique hotels, outside of the densest parts of the core, that have limited to no parking. Citing the Gladstone Hotel and Madison Manor hotel to be examples of comparable boutique hotels), Mr. Chan said that these hotels advertise "limited" parking and direct guests to nearby Green P lots, while the Drake Hotel and Hotel Ocho provide no parking and also direct guests to nearby Green P parking lots.

The Appellant therefore propose to have 8(eight) on-site parking spaces under the current plan. A survey of the parking demand at the available public parking supplies within 500 m radius of the subject site was conducted to see if this was a comfortable walking distance. This survey was conducted on Friday, August 18, 2017 and Saturday August 19, 2017. Parking demand was recorded at hourly intervals for a period of 24 hours on both days. An approximate public parking supply of 1,563 spaces and 1,046 spaces was determined to be at the 500 m radius and 400 m radius of the subject site, respectively.

Mr. Chan next addressed the loading requirements for the subject site, which were reviewed based on the former City's By-law 438-86, and the Citywide Bylaw 569-2013.

According to Mr. Chan, both By-laws require one (1) Type “B” loading space for the Subject Site.

In order to determine the loading activity expected from the proposed development, including the pick-up/drop-off activities, a proxy survey was conducted at the Templar Hotel, a 27-room hotel located at 348 Adelaide Street West. The proxy site is located within the downtown area approximately 1 kilometre from the subject site, and does not provide loading, or parking, on-site.

This survey was conducted on Friday, August 18, 2017, and Saturday, August 19, 2017. The survey recorded the frequency with which vehicles stopped at the proxy site, and the duration of their stops (also known as “dwell time”). The needs and requirements of the similarly sized hotel are anticipated to be consistent with the proposed development. Both locations provide easy access to public transportation and are within walking distance of restaurants, shops, and attractions that would appeal to visitors to the City.

Mr. Woloszczuk cross-examined Mr. Chan for the better part of five hours. By way of editorial comment, there were relatively few questions asked notwithstanding the length of the cross examination, because many questions were repeated, restated and reiterated because Mr. Woloszczuk was clearly not satisfied with Mr. Chan’s answers. I cautioned Mr. Woloszczuk to repeat a question no more than twice, and to move on to the next question, even if he did not agree with Mr. Chan’s response. I also cautioned Mr. Chan against answering questions from Mr. Woloszczuk through the counter question “Why would you say that”, resulting in the latter’s providing a very detailed response about his perspective.

Mr. Woloszczuk’s questions focused on the impact of the uses of the CR zone and the R zone, and how it was difficult to prevent CR zone specified uses on the portion zoned R, because of the layout of the property. He reiterated the ingress related issues, and asked if the combined impact of the loading, parking spill over, reduction in parking, and loading would result in the creation of a range of new parking issues, to which Mr. Chan replied in the negative. Mr. Woloszczuk questioned Mr. Chan on the results of his parking study at the Econo Lodge Hotel on Jarvis St., and pointed out that the study had not been conducted at the “height of the season, when hotels teem with visitors,” as well as the fact that the study included a Sunday night, “when the traffic is not at its peak”. Mr. Chan disagreed vociferously with all of Mr. Woloszczuk’s suggestions, and said that the study had been completed at the City’s behest, and that the City was satisfied with the results. He also said that many of Mr. Woloszczuk’s questions about the guests “teeming” with hotels, and parking lots “packed to the gills” involved “extreme” situations, which do not occur frequently.

Mr. Seegobin was then sworn in as an expert witness in the area of traffic planning. It may be noted that Mr. Seegobin submitted an expert witness statement, which focused on where he disagreed with Mr. Chan. In response to Mr. Chan’s response to his expert statement, Mr. Seegobin also submitted a reply on the day of the hearing. I pointed out to Mr. Seegobin about my impression of his submissions coming across as a critique of Mr. Chan’s submissions, rather than his own work, and findings. I emphasized to Mr. Seegobin that his taking the stand presented the opposition an opportunity to provide

any information, or the results of independent studies, they had regarding the traffic situation.

Mr. Seegobin said that the Subject Property was a mixed-use building, and that there were other residential buildings, to the south of the Subject site. On the opposite end of the site, along Bathurst Street, one finds the Toronto Transit Commission's (TTC) Wolseley street car loop, where street cars are able to conduct a turnaround, to change the direction of travel, from a northbound direction to a southbound direction. While the Subject site is a two-storey building that is currently vacant, the pedestrian entrance for the building is on Bathurst Street. There is no existing dedicated parking provided for the current use.

Discussing the "Existing Laneway Design Review", Mr. Seegobin said that the Applicant proposed to utilize the existing private laneway, to access the rear parking area of the site. The laneway for entering and exiting the parking area, has a proposed access width of 2.89m, notwithstanding the City of Toronto's stipulating one way laneways to have a minimum width of 3.5m, and a two-way laneway a minimum width of 5.5m, under By-law 569-2013. Mr. Seegobin concluded that existing laneway width of 2.89m was deficient by 0.61m for one-way operations, and deficient by 2.61m for two-way operations.

Mr. Seegobin then questioned the accuracy of the trip generation information from the Appellants. According to him, it is customary to use the Institute of Transportation Engineering (ITE) Trip Generation Manuals to determine the estimated auto trips that would be generated by the proposed hotel. He said that when the model used for trip generation model used for hotels was used, "with a correction for the results to account for the availability of transit near the Subject site", the results demonstrated that there would be 12, 13 and 19 new two-way trips in the weekday AM, weekday PM and Saturday peak hours, respectively. Based on this Mr. Seegobin concluded that the results demonstrated that there would be "queueing issues, turning movement conflicts, with a negative impact", on traffic operations on Robinson Street, if the project were allowed to go ahead.

On the matter of parking requirements, Mr. Seegobin said that the hotel had a proposed parking supply of 8 spaces. He said that Zoning By-law 569-2013, recommended 30 spaces for parking, which meant that the proposed hotel parking was deficient by 22 spaces. While the LEA report noted that the subject site is located in close proximity of Policy Area 1 and 4, the subject site is still categorized under "all other areas of the City" based on the Zoning By-law 569-2013, which meant that the parking requirement did not change.

Mr. Seegobin next discussed the accessible spaces on-site, in the rear parking area. The accessible parking requirements are for two spaces, based on the Zoning By-law 569-2013, whereas one space is provided on-site.

Mr. Seegobin next discussed his reasons for disagreeing with the comparators brought forward by the LEA proxy parking demand surveys, namely the 50 room Econo Lodge located at 335 Jarvis Street, in downtown Toronto. He distinguished between the

locations at which the hotels were located by stating that the comparator is located in the downtown core Policy Area 1 (PA 1), has surrounding high-rise buildings with commercial and institutional uses, and is located approximately 500m east of the Line 1 Yonge – University subway. By contrast, the Subject site is outside PA1, and is located in a pocket of low-rise residential uses; while being accessible by TTC streetcar service, it is located approximately 1.5km west of the Line 1 Yonge – University subway. Mr. Seegobin recommended that a proxy parking demand surveys be conducted at another hotel with similar characteristics as the subject site, and added that City usually required that two or three proxy sites be surveyed as comparators to justify the parking rates proposed for the subject site.

Mr. Seegobin next questioned the timing of the Parking study, because it was conducted between February 23, 2018 and February 25, 2018, which he characterized as “part of the low seasons for hotels within a decrease in check-in activity”. He opined that the study should have been conducted during the late spring and summer season , in which hotels typically see a higher number of check-ins.

Mr. Seegobin then discussed the Proxy Parking Demand Survey Results submitted by LEA Consulting Ltd, which determined that 26% of guests arrive by passenger vehicle.. At the hotel, 19 guests had checked-in at the Econo Lodge in a span of three days. Mr. Seegobin stated that assuming there were no check-outs during this time period, the resultant room occupancy was 38 percent at the hotel, since there were 50 rooms in the hotel. The room occupancy would have an impact on the survey results, as travel characteristics could differ when a hotel is operating under capacity vs. at capacity. Furthermore, he said that a sample size of 19 guest check-ins is considered to be a small sample size for establishing parking rates. Given that these survey results were carried forward to determine parking needs for the subject site, the estimated parking demand of 8 spaces proposed for the site should be revisited.

The Proposed Loading Operations Review was discussed next. Based on the City of Toronto's Zoning- By-law 569-2013, the subject site is required to provide one Type-B loading space on-site, which in this case, was obtained by replacing two on-street parking spaces along Bathurst Street directly in front of the proposed hotel. Mr. Seegobin objected to this arrangement because “loading should not overlap with passenger vehicle drop-offs / pick-ups”. He said that loading operations, directly located on the roadway ,would likely exacerbate the traffic congestion and circulation issues, given the high traffic volumes and four lanes of travel on Bathurst Street. Mr. Seegobin pointed out that Bathurst Street is classified as an arterial roadway, that carries auto, commercial and TTC streetcar traffic, and that the TTC streetcar loop is in close proximity of the site. He claimed that through traffic along Bathurst Street typically experienced some delay when the street cars merge into traffic to travel southbound, loading operations occurring in the vicinity of, and at the same time, when the TTC street car emerged onto Bathurst Street, would result in additional traffic congestion. He recommended that the loading operations should be accommodated within the site, to prevent any increase in traffic issues along Bathurst Street. Mr. Seegobin also expressed concerns that the larger Type-B or Type-G loading vehicles, parked on Bathurst Street for the loading operations for the proposed hotel may block access for

vehicles entering and exiting the parking lot at 220 Bathurst, owned by the Woloszczuk family.

Mr. Seegobin then questioned the choice of the proxy hotel to model drop-off and pick up at the Subject Site. He said that the Templar Hotel at 348 Adelaide Street West, Toronto, could not be an appropriate proxy site, because it had a fairly different site context, compared to the Subject site. While the Templar Hotel opened onto Adelaide Street West, which is a one-way roadway with up to 3 lanes and a bicycle lane, Bathurst Street is a two-way street with 4 lanes (2 lanes per direction). In Mr. Seegobin's opinion, given the one-way traffic flow of three lanes on Adelaide Street West, loading and pick-up / drop-off operations along Adelaide Street West would likely have less of an impact on through traffic, compared to Bathurst Street.

Lastly, Mr. Seegobin discussed the Proxy Loading and Drop-Off/Pick up survey results. He observed that vehicle drop-offs and pick-ups of hotel guests occurred during the weekday morning (7:00 to 9:00am) and afternoon (4:00 to 6:00pm) peak periods. He asserted that drop-offs and pick-ups, would not be permitted on Bathurst Street, during the weekday AM and PM peak periods due to parking regulations. He opined that during the roadway peak hours, drop-offs / pick-ups would likely occur in the parking area, creating further traffic issues at the laneway for vehicles entering and exiting simultaneously.

Mr. Seegobin then said that the drop-off / pick-up area and loading area are typically separated, and not shared. He recommended that a drop-off / pick-up area be separate from the loading area to prevent any conflict.

Mr. Hoffman then cross-examined Mr. Seegobin

Through the cross examination, Mr. Seegobin admitted that his projection about the number of trips onto the site, estimated to be 12-19 on a weekday, was based on "Land use- 310 (Hotels)" as defined in the "Trip Generation Manual", a standard reference manual for such studies. , The generated figure was reduced by 25-33%," to arrive at the aforementioned figure. While this model had been used because Mr. Seegobin deemed it appropriate for hotels, Mr. Hoffman suggested that Land Use- 312(Business Hotel), was a more accurate model, appropriate for hotels located in the downtown area, could have been used. Mr. Seegobin did not disagree with this suggestion. With respect to the concern expressed by the opposition about cars entering and exiting simultaneously through the ingress, the cross examination established Mr. Seegobin agreed that the situation did not occur very frequently.

In the context of parking differences between Policy Areas P1A and P4A and their implications for the project, Mr. Seegobin also admitted that he did not know that there was a 7 storey building just to the south of the subject site, with only 10 parking spaces, as well as the Policy Area governing the 7 storey building being identical to the Subject Property. Mr. Hoffman referred Mr. Seegobin to his Statement, where the latter had expressed doubts about the soundness of the Parking Spaces Study at the Econo Lodge , because it was done in February, considered a low occupancy month. Mr. Hoffman asked Mr. Seegobin if he was aware that Mr. Chan had used a model where

all the 30 rooms were occupied. Mr. Seegobin said that he was not aware of this fact ,but insisted that performing the study during the summer months, when occupancy rates were higher . Mr. Hoffman rephrased his earlier comment by stating that Mr. Chan had used a model that used “occupied room ratio” as opposed to a “room occupancy ratio”; the difference being that the former assumed that all rooms were occupied by guests. Mr. Seegobin repeated his earlier contention about studies performed in summer being better estimators of parking rates.

In response to Mr. Seegobin stating that the loading station would not be adequate for larger Type B or Type G vehicles, Mr. Hoffman asked Mr. Seegobin if he was aware that “Type C” vehicles would be used for loading purposes, to which the latter replied in the negative. It also emerged that the opposition was not aware about the loading activities taking place at night, when there would be little to no traffic. Since Mr. Seegobin had asserted that the impacts of having loading vehicles exit near the TTC streetcar loop, as streetcars are making left turns to exit across four lanes of traffic could be problematic, in his witness statement, Mr. Hoffman asked Mr. Seegobin about the source of his information. It emerged that Mr. Seegobin had not observed the TTC turnaround loop at the northeast corner of Bathurst and Wolsley streets to support his assertion, that the distance between the loop and the proposed loading area would have a negative impact on traffic on Bathurst Street.

Mr. Seegobin also agreed with Mr. Hoffman that the 3.4 m proposed width for the handicapped car parking spot was consistent with the recommendations of By-Law 579-2017, notwithstanding his earlier concerns. With respecting to the drop of situation in front of the hotel, the opposition had repeatedly asserted that the hydro-pole would impede the sight line of drivers coming onto the site, and that the turning angle was a perfect right angle, which could result in accidents. Mr. Hoffman referred Mr. Seegobin to relevant diagrams in Mr. Chan’s witness statements to better understand how the hydro pole would interfere with the driver’s line of sight, to which Mr. Seegobin said that it was the hydro pole, “ in conjunction with the vegetation” that could result in accidents. Mr. Hoffman next asked Mr. Seegobin about the latter’s “insisting” that 5 Robinson was a perfect right angle, which would make it difficult for drivers to turn. Mr. Hoffman explained that there would be an easement created providing a more appropriate turning radius, and that this was a condition of approval by the City..

Lastly, Mr. Hoffman asked Mr. Seegobin about the latter’s assertion in his Witness Statement, that converting two City parking spaces into the loading zone would cause a shortage of parking spaces. It emerged that Mr. Seegobin relied on a study commissioned by the opposition which had suggested that there was a parking shortage in the area, but the study had not been submitted to the TLAB because its overall conclusions, in many respects, were not different from that of the Appellants’ study, in many other respects. Mr. Hoffman also pointed out that the removal of two parking spaces on Bathurst was a decision that had been studied, and approved by the City’s traffic staff, and that it be voted upon by the City of Toronto’s Municipal Council. .

In closing argument, the City supported the proposal. Mr. Ben Baena provided a closing statement noting that the Appellants had settled with the City, and had addressed the

transportation concerns of the latter. He confirmed that the City supported the settlement, and recommended that conditions be imposed if the Appeal were to be granted, and the proposal approved. These conditions are not repeated here because they are identical to what was recommended by Ms. Cooper in her Examination-in-chief.

This Appeal was also unusual for the numbers of submissions made between Hearings. The submissions were invariably from the opposition- while one or two emails asked for clarifications on procedure, the rest focused on complaints against the Appellants. One email alleged that the Appellants had misstated facts in their evidence at the previous Hearing, another said that relevant documents had not been submitted, or that they were not made aware by the Appellants about recent developments. One of these submissions elicited a response from the Appellants, and led to quite a few emails being exchanged back and forth.

At the end of oral argument, Mr. Woloszczuk asked to Reply to the Appellants' Response, and reiterated some of the former allegations, as well as a couple of new allegations. I told Mr. Woloszczuk that the Appellants had indeed submitted the documents that he claimed had not been submitted, stated that I would reserve my Decision and specifically asked that no more submissions be made.

ANALYSIS, FINDINGS, REASONS

On April 25, 2018, at the start of the Hearing, there were two different Motions introduced by two of the three Parties – the first was by the Appellants, asking that the hearing be limited to one day, and the second was from the opposition asking that their Transportation Engineer be allowed to give his evidence before everybody else.

After asking the Parties for their perspectives on both Motions, I ruled against both, for reasons explained here. I did not grant the Motion from the Appellants restricting the whole proceeding to one day because they stated that the reason for the Motion is to ensure “efficiency”. The emphasis on efficiency, while important, is in my considered opinion, secondary to “sufficiency” where all Parties and Participants are provided with sufficient opportunities, to provide fulsome evidence. Given that there were seven witnesses, including three Expert Witnesses involved in this contested proceeding, and the aforementioned observation on efficiency vs. sufficiency, I concluded that the hearing could not be completed in one day, and ruled against the Motion.

On the second Motion, i.e. the Motion from the Opposition asking that their Transportation Witness, be allowed to testify before other witnesses, the Appellants objected on the ground that it was important to hear from the planning expert first, because the Appeal is primarily a planning matter, and that other evidence would essentially speak to different components of the planning issue. The Opposition could not provide a cogent reason for their witness presenting first, other than stating that traffic was the single, biggest issue for them. I agreed with the Appellants' reasoning, and the need to hear from a Planning witness at the beginning of the Hearing to understand the planning perspective, before contextualizing other information (including traffic information). Given this perspective, I ruled against the second Motion, which meant that the Appellants' planning witness would provide evidence first.

Ms. Cooper was thorough in her explanation of the planning evidence. She explained the nexus between the proposal and the 4 tests under Section 45(1) of the Planning Act. Ms. Cooper emphasized the link between access to public transportation and development of the proposal, a key design factor, that surfaces multiple times in the design of the proposal. Given the granularity and scope of the proposal, there is no significant nexus between the proposal and higher level Provincial Policies; I am satisfied that the focus on “intensification” helps the proposal comply with Provincial Policies. The Opposition, on the other hand, answered “no” to a specific question from me about the proposal’s ability to fulfill Provincial policies, at the end of their evidence in chief, with no argument in support of their one word answer. Given the scope of the proposal, explanations from the planning Witness, the lack of evidence about the higher level policies from the Opposition, I prefer the Appellants’ evidence regarding the higher level policies.

It is important to note that the evidence pertinent to the Official Policy (OP) concentrated on the Mixed Residential Policies, as opposed to Neighbourhoods, because the property at 5 Robinson, which is in the R zone, will not be developed. Ms. Cooper described relevant policies, including Policies 2.3.1.2 and 4.5.1, and explained how the proposal satisfied these policies. She emphasized the OP’s stress on intensification in the Mixed Uses designation, and justified the proposal’s compliance with the Official Plan. The opposition did not have many comments about the relevance of the Official Policy; I therefore accept Ms. Cooper’s expert, uncontroverted evidence that the proposal maintains the intent, and purpose of the Official Policy.

Ms. Cooper discussed the performance standards for each of the groups of variances, and demonstrated that the former were satisfied. The opposition raised the Site’s location at the confluence of the CR and R zones on numerous occasions, throughout the Hearing, claimed that there was an “erosion” of the latter by the former, because the though the hotel would be in the CR Zone, the corresponding parking located in the R Zone. The Appellants pointed out that a similar arrangement existed on their lot, which makes me concluded that the Subject site is not the first to create an arrangement, where the building and parking, are in different zones- the opposition’s argument about a distinction between the two scenarios through “Primary” and “Secondary” points of access, is not convincing, because the expressions are not officially defined, and merely reflect the opposition’s preferred nomenclature .

The aforementioned arrangement, does not, in my considered opinion, support the Opposition’s claim that that the R zone was being “eroded” or “contaminated” by the CR zone. The Appellants’ evidence stated in no unclear terms that 5 Robinson, in the R zone, would not be developed in conjunction with the proposed development, at 216-218 Bathurst Avenue. It was pointed out by Mr. Hoffman during Mr. Woloszczuk’s cross-examination, that the proposal actually looked to decrease the back-yard extension of the building into the “R” zone, which meant that the R zone was actually being “decontaminated”, to which the opposition did not provide an answer.

The various questions brought up about “inappropriate” use inside the hotel i.e. would the café permit gambling, or serve liquor, were answered satisfactorily by the Appellants

on the second day of the hearing, when Ms. Cooper clarified that the café would be used only by the hotel patrons, and not outsiders, and that liquor would not be served.

I think that it is important to note that the Opposition's familiarity with the layout, the history of the property, and neighbourhood itself, was evident in the questions they could pose of the Appellants. For example, the Opposition's cross examination of Ms. Cooper revealed that the numbers of rooms in the proposed hotel was 31 and not 40, as originally stated, and that the Appellants had not indicated where the garbage would be stored, resulting in the submission of a revised drawing by the Appellants on the second day of the Hearing. They also pointed out the "orphaned" nature of the land used for ingress and egress, because the owner, John Clarke, passed away more than a hundred years ago. However notwithstanding their familiarity with the site, and some interesting questions, the opposition's evidence, or cross examination of the Appellants' witness, did not convince me that the variances were not consistent with the Zoning By-Laws.

The opposition concentrated its evidence on traffic related matters. Before the traffic related evidence is analyzed, it is important for me to highlight a few conclusions about the opposition's approach to the issue.

Significant components of the opposition's evidence-in-chief, and questions for the Appellants, and disbelief at the studies introduced by the latter in support of their position, is rooted in assumption, and belief-based assertion, rather than proven fact, or a careful examination of the Appellants' evidence. To illustrate this aspect, the following paragraph excerpts statements made by the opposition, which appear in writing as well as oral evidence, with key words italicized to reflect how the evidence rests on conjecture.

Mr. Woloszczuk "*felt*" that hotel guests seeking a quicker exit to Bathurst would not use the Robinson laneway for egress", and "*thought*" that the traffic situation, after the building of the hotel, would be "*similar, if not worse degree than before*". While talking about the proposed parking station, he asserts that the proposed parking station "*may be intended for guest parking, but that does not mean it won't be used for loading purposes*". Likewise, when discussing the traffic on Bathurst, he says that "in his mind, this (i.e. intense traffic) *is very likely to happen* from 4-6 pm when the loading zone on Bathurst will be closed due to rush hour restrictions". Later, Mr. Seegobin's cross-examination established that the primary basis for his concluding that traffic problems, and accidents resulting from the simultaneous exit, and entry of vehicles from the paid parking lot in the vicinity of the Subject Site, rested not on direct observation, but on "*information from the client*". It also emerged, that during the one hour visit where Mr. Seegobin actually observed entries and exists from the paid parking lot in question, there were very few entries and exists from the paid parking lot, which is different from the conclusions in his Statement about complex traffic issues . In the discussions of results brought forward by Mr. Chan, it emerged that Mr. Woloszczuk had "*somewhat*" read one of the reports, and he had read "*parts of another report*".

The above examples are but a sampling of a much larger corpus of similar statements, made in written submissions, as well as oral evidence, which highlight how the evidence

from the opposition is underpinned by a series of surmises. This approach makes me accept the Opposition's testimony with the proverbial pinch of salt, and award it less weight compared to the Appellant's testimony.

Mr. Seegobin's cross-examination also established that the opposition relied on proxy-studies to determine residual parking spaces in the community, which supported the conclusions of the Appellants' studies, resulting in their not submitting the studies to the TLAB. This decision furthers my concern about the opposition's approach, the quality of their evidence, what was revealed and not revealed to the TLAB and the Appellants; combined with my having to intervene on more than one occasion to prevent the opposition from gesturing to prompt a certain response from a Witness giving evidence, casts a long shadow, on the reliability of their evidence.

One of the major issues reiterated repeatedly by the opposition is their concern over the loss of two public parking spaces, as a result of the proposal for the loading dock for the proposed hotel. It is important that this issue be weighed both on its traffic merits, as well as the prism of public interest. I address the public interest component first, and note that the City of Toronto has consented to the loss of two parking spaces, and that an extensive, multi-step process involving the Traffic Department, was completed in order to arrive at the decision to sacrifice the two parking spaces, as part of the Settlement process. In my considered perspective, the City is the ultimate arbiter of public interest, and has the jurisdiction to make such decisions which are in the greater public good, even if private citizens in the vicinity of the Subject property disagree with the decision. The question about what impact would the loss of two spaces have on the community has been answered very clearly, through Mr. Chan's study, which demonstrated that there is a reliable residue of parking spaces throughout the community, within a 400 metre radius.

Each of the significant traffic related issues discussed by the Appellants, and opposition is addressed below in detail

- **Reduction in Parking, and Parking in front of the hotel:** The opposition brought up the impact of the loss of two spots repeatedly, and stated how it would worsen what in their opinion, is a bad situation. When they stated that drivers park on Robinson, the Appellants pointed out that parking on Robinson requires permits. It was then pointed out that drivers park on Robinson even without permits, leaving drivers with permits to "drive in circles" looking for a parking spot.

The TLAB makes decisions assuming that drivers are careful and reasonable denizens, who make decisions rationally, and obey the law. The situations that the opposition relies on, cannot be the basis on which the TLAB makes Decisions.

The Opposition disputes the 0.26/space result established as a result of the study carried out by the Appellants at the Econo Lodge Hotel, because it is "in the off-season", and because the Study includes Sunday nights, when there are fewer guests leaving, and coming into the hotel. While their recommendation about a similar study in summer time to get accurate numbers, may make sense,

I understand that they used a occupancy ratio of 38% (19 rooms out of 50 rooms) to come to their conclusions. The Appellants on the other hand, have determined the Parking ratio assuming that all 30 rooms would be occupied. In the absence of the opposition not suggesting what the ideal number of parking spaces would be, and the fact that the City has indicated its satisfaction with the Appellants' Parking Study, I find for the Appellants on the accuracy of results generated by the Parking Study.

The Opposition rely on parking standards proposed by the By-Law, and correctly point out that the Subject Site is outside PA1 and PA4, as defined by the City, where a lower parking standard is permitted. However, the Appellants point out that the Subject site is on the opposite side of the road from PA1, where a lower parking ratio is allowed, and point out the exemplar of the seven storeyed building at 224 Bathurst, with 10 parking spaces, with the same zoning requirements as the Subject site, in support of their proposal. I believe that the Appellants' approach enriches the theoretical prescriptions of the Zoning By-Laws, with practical experience, and prefer the Appellants' evidence.

I appreciate the opposition's concerns that their parking spaces, may be impacted, in the case of parking overflow, from the hotel. The Appellants, repeatedly stated, that one of the conditions of approval is a fencing plan, which will insulate the Subject site, from its neighbours, preventing guests from parking on their neighbours' parking lots. Mr. Elmadany provided a detailed account of how the fencing and lighting plan had to be approved by the City, before a Building Permit could be issued. Given how many times the information about the fencing plan was canvassed, the opposition's dismissal of the plan, comes across as being belief-based, as opposed to fact-based conclusion.

I agree with the Appellants that the proposed parking in front of the hotel is adequate.

- **Adequacy of the loading dock:** The opposition's submissions assert that the dock will not be able to handle Type B vehicles. Through the cross examination, it was established that the smaller Type C vehicles, would be used for loading purposes, and there was no dispute about these vehicles being able to enter and exit the ingress and egress points. The Opposition provided reasons about why the loading dock can't be the drop-off point, to which the Appellants point out that the two are mutually exclusive because the loading takes place at night. Mr. Seegobin's cross examination demonstrates that the opposition assumed that loading, and client drop-off are simultaneous, when in reality they are mutually exclusive- the loading takes place at night, when few guests arrive.

The opposition relies on a study using Land Use 310 to determine the rate of arrivals, to demonstrate that they will overwhelm the spot for drop-off, and pick-up, resulting in traffic being backed up, if loading were to simultaneously take place. The Appellants took issue with the opposition's application of Land use 310 in cross examination, and discussed how Land Use 312 to model arrivals at

a downtown hotel was preferable-the answer provided by the opposition about reducing the rate of arrivals arrived at through use of Land Use 310, by a factor of 25-33% to account for the downtown location and access to public transportation, seemed arbitrary, and inexplicable.

- **Garbage collection:** On the second day of the Hearing of Ms. Cooper's examination-in chief, she clearly referred to, where the garbage will be stored at the rear of the site, and the rectangle depicting the collection spot was highlighted in her testimony. The Appellants stated that the place where garbage will be stored, would be closed so that neither the sight, nor odour, would impact the neighbours- it was also pointed out that one the recommended conditions of approval explicitly reference "waste" and "waste-collection", in order to prevent any impact on the neighbours. Lastly, they said that there was an alternate plan to store garbage within the building. This arrangement, is adequate in my opinion, to respond to the concerns about garbage storage
- **Issues related to ingress and egress:** While the opposition claimed that the reduced driveway width of 2.98 m would result in vehicles not being able to enter, and thereby add to traffic chaos, there was no specific evidence to back this claim. When cross examined by Mr. Hoffman, Mr. Seegobin conceded that the hydro pole would not impede visual sight, while the turning radius would not be a right angle, as asserted earlier, because of the easement provided for access. On the basis of this evidence, I conclude that there are no new issues created with ingress, and egress into the site.

To reiterate, the evidence from the opposition and their questions, have not persuaded me that the proposal does not meet the test of appropriate development, or being minor. The evidence of the Appellants is preferred on all the four tests; I therefore conclude that the Appeal should be allowed and that all the 17 variances recited in the "Matters under Consideration" ought to be approved.

The conditions requested by the City are imposed on the approval of the variances; the reasons for the conditions were explained in Ms. Cooper's testimony, and were repeated in Mr. Baena's remarks, made in oral argument.

Lastly, I note that this Decision has deliberately avoided the route of recognizing the Settlement between the Appellants and the City upfront, and the consequent allotment of higher weight to the Settlement. The Settlement is acknowledged only by way of recognizing the conditions of approval, and the City's role as the arbiter of public interest. While being more circuitous, and time-consuming, than the conventional route of according appropriate weight to a Settlement at the beginning of the analysis, and weighing the opposition's position vis-à-vis the Settlement, this conservative approach is sensitive to the Opposition's contention that the Settlement between the City and the Appellants not constituting "pre-approval".

I do note that the Conditions ensure that there is no overflow of parking resulting from the proposal, through the imposition of Condition 3(three), which essentially is an

alternative to Condition 2(two)- The former, may be described, in colloquial terms, as being “Plan B” if Condition two can’t be fulfilled.

The Condition about the installation of a loading dock, while supported by the City’s Transportation department, will be subject to a formal approval by the City’s Municipal Council, ensuring that there are adequate safe guards to address any sundry issues that may have not been identified earlier.

The Condition about fencing, and lighting, will help distinguish between the properties of the Appellants, and the opposition, and ensure that hotel users will not venture out onto the parking lot of the latter’s property, accidentally. This provision, in my considered opinion, safeguards the oppositions’ interests, through a concerted attempt to arrest spillover of parking.

I find that it would be appropriate to impose a standard condition, requiring the Appellants to build in substantial conformity with the submitted Plans and Elevations.

Before I conclude, I would like to point out that the email submissions made by the Appellants on numerous occasions, have been considered, when making this Decision. As stated in the Evidence section, they highlight perceived shortcomings on behalf of the Appellants in terms of submissions, and disclosure. I have painstakingly examined the oral record numerous times, and have spent significant time to rehear the entire Hearing before writing this Decision. I can confirm that such concerns that have been brought forward by the Opposition have been adequately addressed by the Appellants..

I also take the opportunity to point out that the numerous times on which I reheard the evidence to address the aforementioned submissions, has added significantly to the time taken to release this Decision, and is also responsible for its length.

I conclude by stating that my findings support allowing the Appeal, with the imposition of conditions recommended by the City, and agreed to by the Appellant.

DECISION AND ORDER

1. The Appeal is allowed, and the decision of the Committee of Adjustment dated November 22, 2017, is set aside.
2. The following variances are approved:

Use/Ancillary Use Variances

By-law 569-2013

1. CHAPTER 5.10.20.1(2): Uses that are ancillary to a permitted use on the same lot, are permitted if they comply with the regulations of the zone in which the lot is located.

The existing townhouse on the lot is not ancillary to the hotel.

5. CHAPTER 10.10.20.10.(1): The proposed uses of hotel and uses and structures

Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
TLAB Case File Number: 17 274561 S45 19 TLAB

ancillary to the hotel use are not permitted on the portion of the lot located in the R district.
Proposed uses of the hotel and uses and structures ancillary to the hotel use are permitted on the portion of the lot located in the R district.

By-law 438-86

10. SECTION 6(1)(A): The proposed use, hotel, and uses and structures accessory to a hotel are not permitted on the portion of the lot in a district zoned R4.

The proposed use, hotel and uses and structures accessory to a hotel are permitted on the portion of the lot located in the R district zoned R4.

13. SECTION 2(1): More than one principal building will be located on the lot, contrary to the by-law.

Gross Floor Area Variances

By-law 569-2013

2. CHAPTER 40.10.40.40: The maximum permitted floor space index for nonresidential uses is 0.5 (213.69 square metres).

The proposed non-residential floor space index is 2.46 (1,052.5 square metres)

By-law 438-86

12. SECTION 8(3) PART I 2: The by-law requires that the non-residential gross floor area be not more than 0.5 times the area of the lot; 213.69 square metres.

The non-residential gross floor area of the building is approximately 1,052.5 square metres.

Parking Variances

By-law 569-2013

3. CHAPTERS 200.5.10.1.(1) & 200.15.10: The by-law requires 30 parking spaces to be provided for the hotel use, of which a minimum of 2 are to be accessible parking spaces.

A total of 8 parking spaces, including 1 accessible parking space, will be provided for the hotel use.

4. CHAPTER 200.5.1: The minimum required drive aisle width is 6.0 metres.

The drive aisle will have a width of 2.89 metres.

By-law 438-86

17. SECTION 4(4)(c)(ii): Ingress and egress to proposed parking shall be provided by unobstructed driveways or passageways providing access to a public highway and having a minimum width of 3.5 metres for one-way operation and a minimum width of 5.5 metres for two-way operation.

The driveway or passageway will have a width of 2.89 metres.

Loading Variances

By-law 569-2013

6. CHAPTER 220.5.10.1.(6): The required minimum number of loading spaces is one type B loading space.

No loading spaces will be provided on the lot.

By-law 438-86

16. SECTION 4(6)(B): The by-law requires one loading space type B (3.5 metres by 11 metres with a vertical clearance of at least 4 metres).

No loading space will be provided.

Built Form (Setback and Encroachment) Variances

By-law 569-2013

7. CHAPTERS 40.10.40.60.(5) and (8): An architectural features and equipment such as a vent or pipe may encroach into a required building setback a maximum of 0.6 metres, if it is no closer to a lot line than 0.3 metres.

The proposed architectural feature will be setback 0 metres from the east and south lot lines. The proposed equipment will be located 0 metres from the south lot line.

8. CHAPTER 40.10.40.70.(2): Where the main wall of a building has windows or openings, the main wall must be set back at least 5.5 metres from a lot line that is not adjacent to a street or lane.

The proposed main wall is setback 1.7 metres from the north lot line. No windows or openings are proposed on the south lot line.

By-law 438-86

14. SECTION 6(3) PART II 3.F(II): The by-law requires the portion of the building located in the R district to have a minimum side lot line setback of 7.5 metres.

The proposed side lot line setback is 0 metres on the north side and 1.3 metres on the south side.

15. SECTION 8(3) Part II 2(A): The by-law requires the portion of a non-residential building above grade to be set back a distance of at least 3 metres from a lot in a residential district.

The proposed building is set back 0 metres.

Fence Variances

By-law 569-2013

9. CHAPTER 40.10.50.10.(2): If a lot abuts a lot in the Residential Zone category a fence must be installed along the portion of a lot line abutting the lot in the Residential Zone category.

No fence has been proposed along the portion of a lot line abutting the lot in the Residential Zone category or Residential Apartment Zone category.

By-law 438-86

11. SECTION 6(2)21(i): The parking station accessory to the principal use or uses permitted on the whole of the lot must be fenced and suitably landscaped and any lights used for illumination are so arranged as to divert the light away from adjacent premises.

The parking station accessory to the principal use or uses permitted on the lot will be suitably landscaped. No fence has been proposed around the parking

3. No other variances, other than the recited variances, are approved
4. The following conditions are imposed on the approval:

CONDITIONS OF MINOR VARIANCE APPROVAL

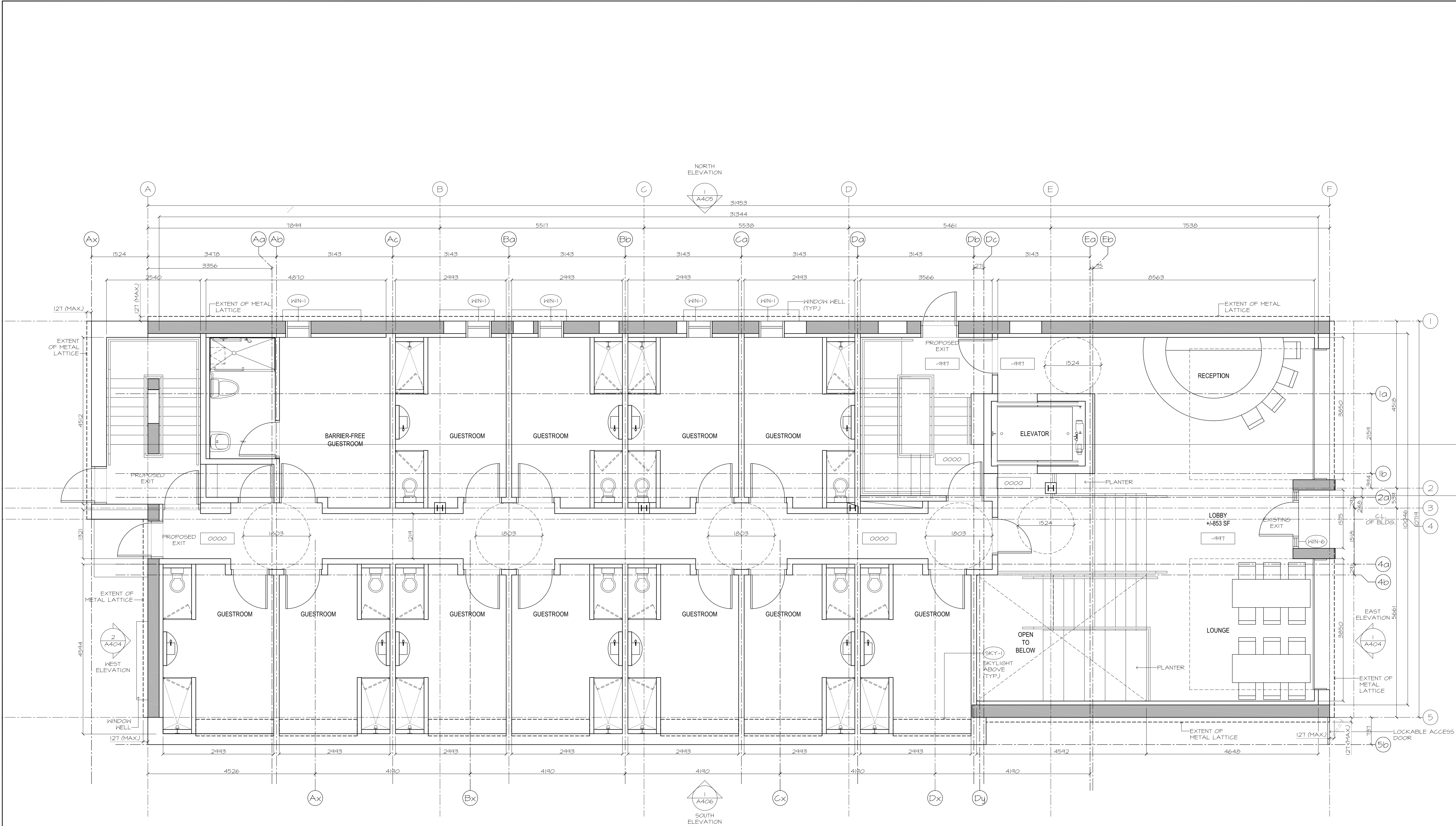
8. The Appellant is required to build in substantial compliance with the Plans and Elevations, prepared by Ava Jankowski, Architect Inc., date stamped March, 2016. These Plans and Elevations, which reflect the proposed parking at the Subject Site, appear in Appendix A, attached to this Decision.
9. As a condition of approval, a Hotel use, or uses that are ancillary to a Hotel use shall not be permitted on the portion of the lot that is located in the Residential Zone, exclusive of the staircase, window well, waste and recyclable materials storage structure, and proposed parking station located at the rear of the proposed Hotel Building.
10. The Applicant/Owner shall provide a minimum of eight (8) parking spaces on-site at the rear of the property at 216-218 Bathurst Street, including one (1) accessible parking space that is compliant with Zoning By-law 579-2017.
11. Should the Applicant/Owner be unable to provide all required eight (8) on-site parking spaces outlined in **Condition 3**, the Applicant/Owner must either:
 - a. provide the deficiency from the required minimum eight (8) on-site parking spaces at an off-site location within 300 metres of the subject site, where those off-site parking spaces must be a surplus to the requirements of the Zoning Bylaw for the donor site and be secured in a long-term lease agreement and all of which shall be to the satisfaction of General Manager, Transportation Services; or
 - b. submit an application pursuant to section 40 of the *Planning Act* to request payment-in-lieu of parking for any deficiency to City Council and obtain approval from City Council; and if approved by City Council, enter into, and register on title to the satisfaction of the City Solicitor, an agreement for payment-in-lieu pursuant to section 40 of the *Planning Act*.
12. Prior to the issuance of the first-above grade building permit, the Applicant/Owner shall submit an application to permit a Commercial Loading Zone along the west side of Bathurst Street, directly adjacent to the property at 216-218 Bathurst Street, and obtain approval from City Council for the Commercial Loading Zone; and should approval be granted by City Council:

Decision of Toronto Local Appeal Body Panel Member: S. GOPIKRISHNA
TLAB Case File Number: 17 274561 S45 19 TLAB

- d. the Applicant/Owner shall enter into any necessary arrangements or agreements, including the removal of two Toronto Parking Authority parking spaces adjacent to the Site, that are required to secure the Commercial Loading Zone to the satisfaction of the General Manager, Transportation Services.
 - e. The Commercial Loading Zone shall be restricted in use during rush hour times that shall be indicated in appropriate signage to the satisfaction of the General Manager, Transportation Services.
 - f. The enactment date of the Commercial Loading Zone through a By-law passed by City Council is not part of this condition for issuance of the first above-grade Building Permit.
13. Prior to the issuance of the first-above Grade Building Permit, the Applicant/Owner shall provide a Landscape Plan that shows fencing and light illumination for the proposed parking station at the rear of 216-218 Bathurst Street to the satisfaction of Chief Planner and Executive Director, City Planning, and the General Manager, Transportation Services.
14. Prior to the issuance of the first-above grade Building Permit, the Applicant/Owner and the City of Toronto shall enter into a section 45(9) Agreement pursuant to the *Planning Act* to secure access in perpetuity to the proposed parking station at the rear of 216-218 Bathurst Street to the satisfaction of the City Solicitor and the General Manager, Transportation Services.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



LEGEND

EXISTING WALLS TO REMAIN

9	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
8	DEC 12/16	RE-ISSUED FOR ZONING CERTIFICATE
7	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
6	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
5	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
4	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
3	JUNE 10/16	ISSUED FOR REVIEW
2	APRIL 07/16	ISSUED FOR REVIEW
No.	date	description
Revisions		

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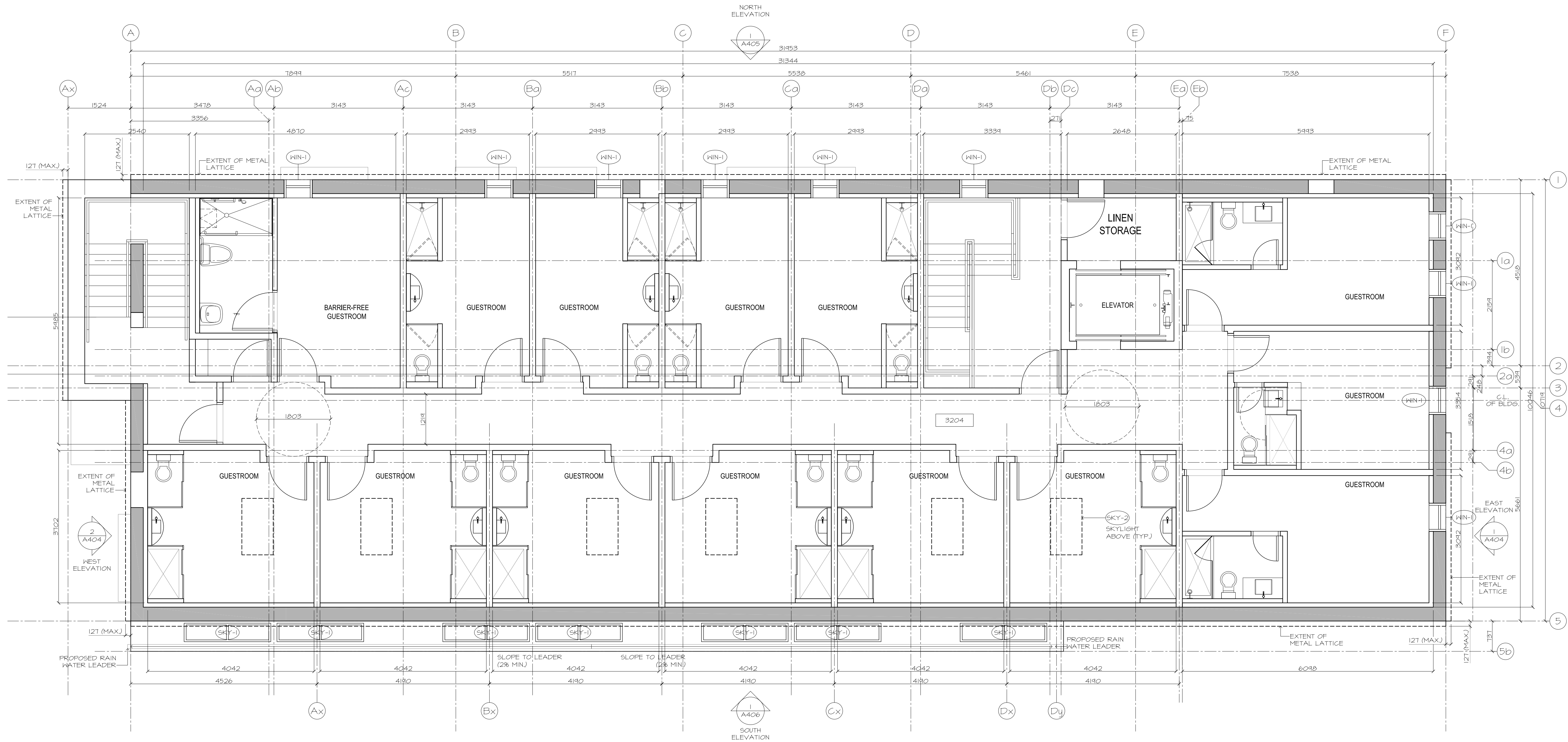
project
216-218 BATHURST ST
TORONTO, ON

title
PROPOSED GROUND FLOOR PLAN

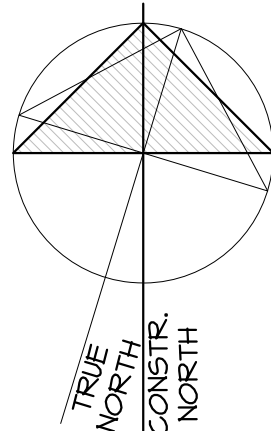
drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A306

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LEGEND
EXISTING WALLS TO REMAIN



9	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
8	DEC 12/16	RE-ISSUED FOR ZONING CERTIFICATE
7	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
6	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
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3	JUNE 10/16	ISSUED FOR REVIEW
2	APRIL 07/16	ISSUED FOR REVIEW
No.	date	description

Revisions



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project
216-218 BATHURST ST
TORONTO, ON

title
PROPOSED SECOND
FLOOR PLAN

drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A307

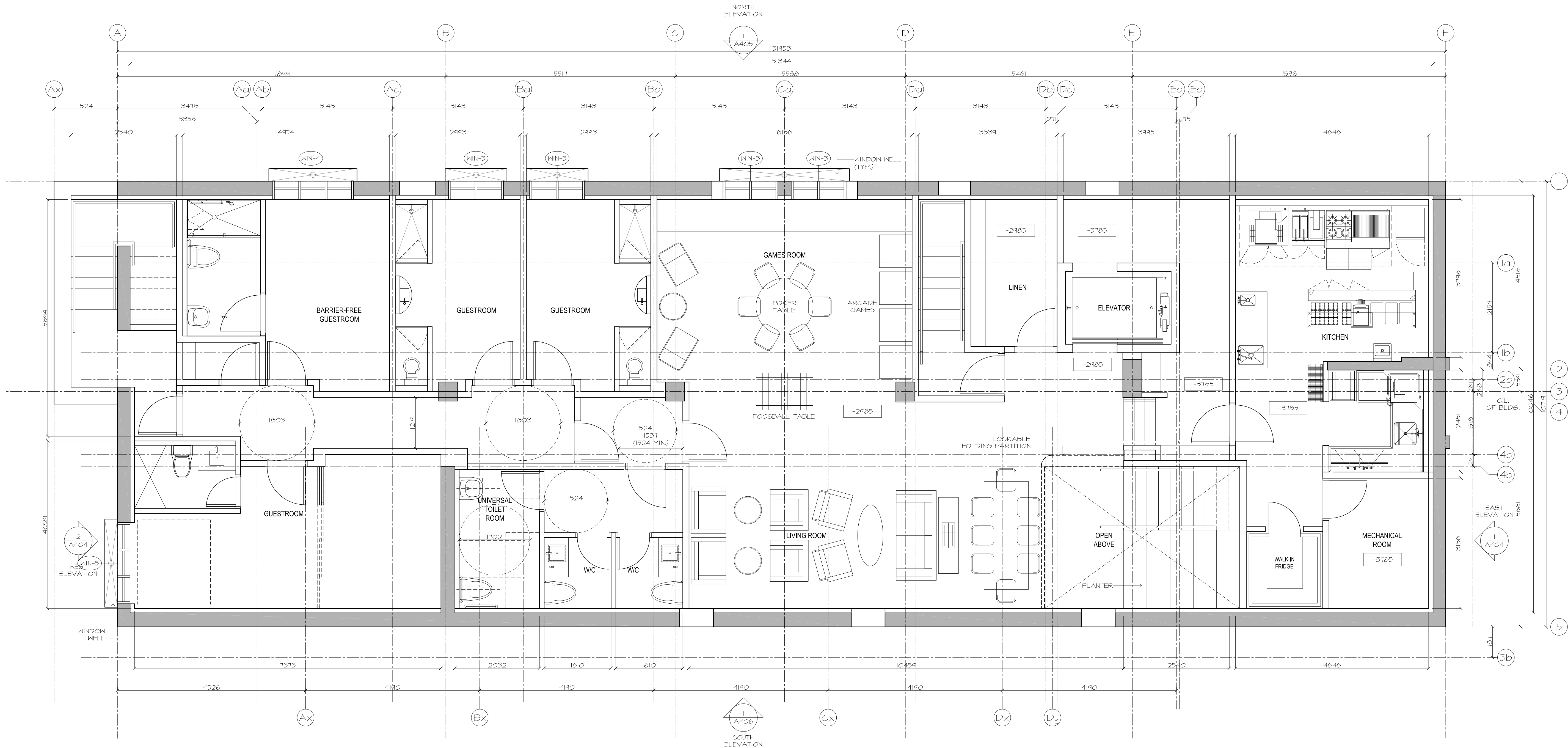
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PROPOSED SECOND FLOOR PLAN

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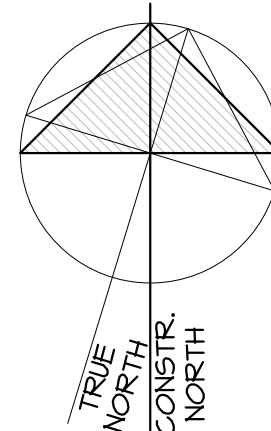


PROPOSED BASEMENT FLOOR PLAN

1
A305

LEGEND

EXISTING WALLS TO REMAIN



9	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
8	DEC 12/16	RE-ISSUED FOR ZONING CERTIFICATE
7	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
6	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
5	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
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Revisions



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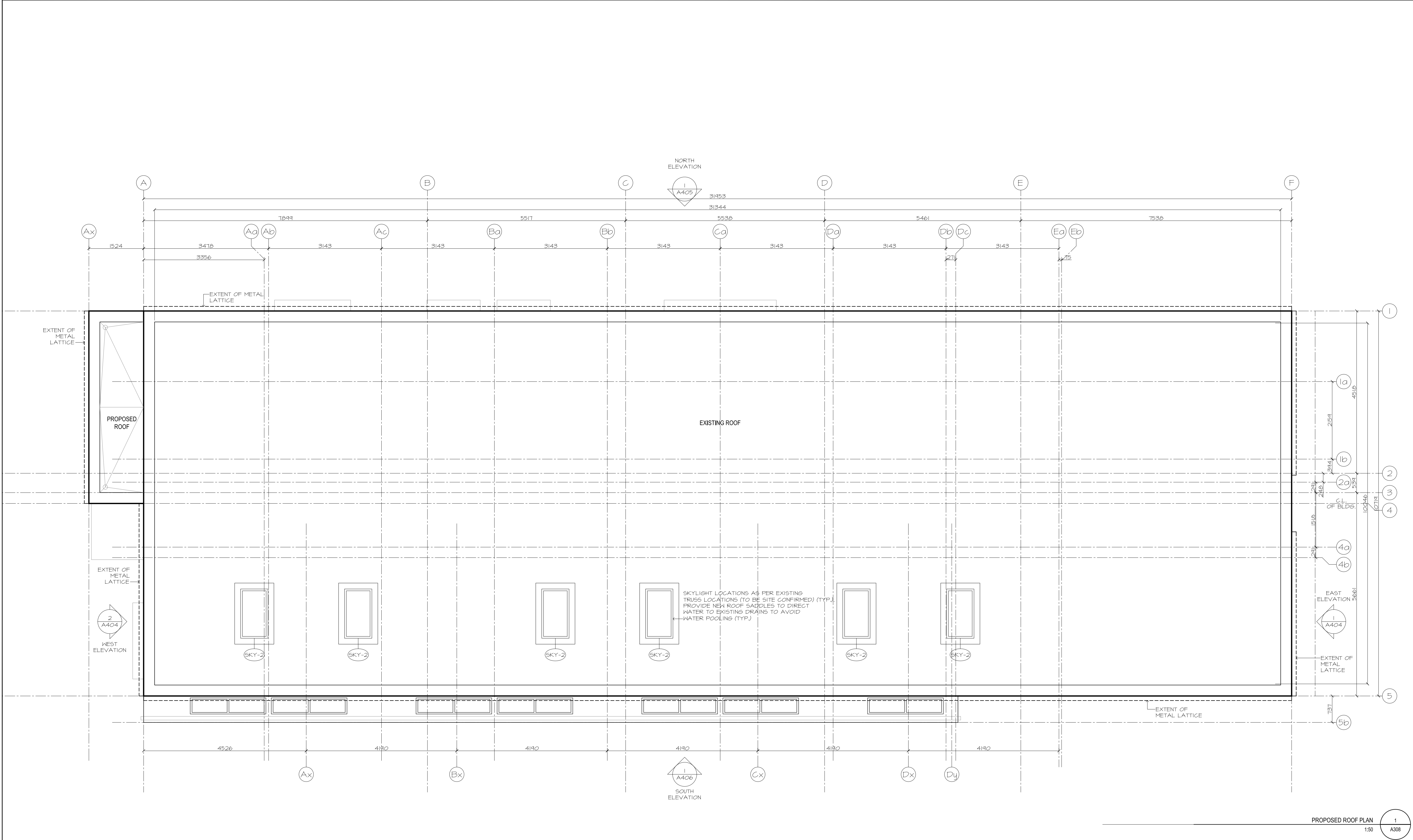
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216-218 BATHURST ST
TORONTO, ON

title
PROPOSED BASEMENT
FLOOR PLAN

drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A305

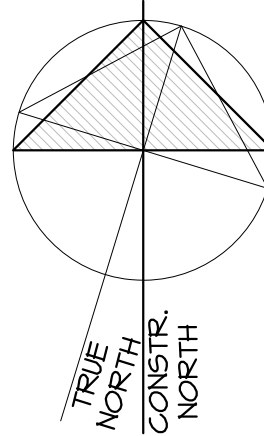
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LEGEND

EXISTING WALLS TO REMAIN



3	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
8	DEC 12/16	RE-ISSUED FOR ZONING CERTIFICATE
7	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
6	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
5	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
4	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
No.	date	description

Revisions



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project
216-218 BATHURST ST
TORONTO, ON

title
PROPOSED ROOF PLAN

drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A308

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LEGEND

EXISTING EXTERIOR WALL, INTERIOR PARTITION OR AREA TO BE DEMOLISHED AS PER STRUCT. ENG.

ALL DEMOLITION AS PER STRUCTURAL ENGINEER DRAWINGS TO BE CONFIRMED ON SITE BY STRUCTURAL ENGINEER.

7	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
6	FEB 23/17	RE-ISSUED FOR ZONING CERTIFICATE
5	DEC 12/16	RE-ISSUED FOR ZONING CERTIFICATE
4	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
3	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
2	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
1	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
No.	date	description

Revisions



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project
216-218 BATHURST ST
TORONTO, ON

title
EXISTING/DEMOLITION
EAST & WEST
ELEVATIONS

drawn by M.J. date MARCH 2016

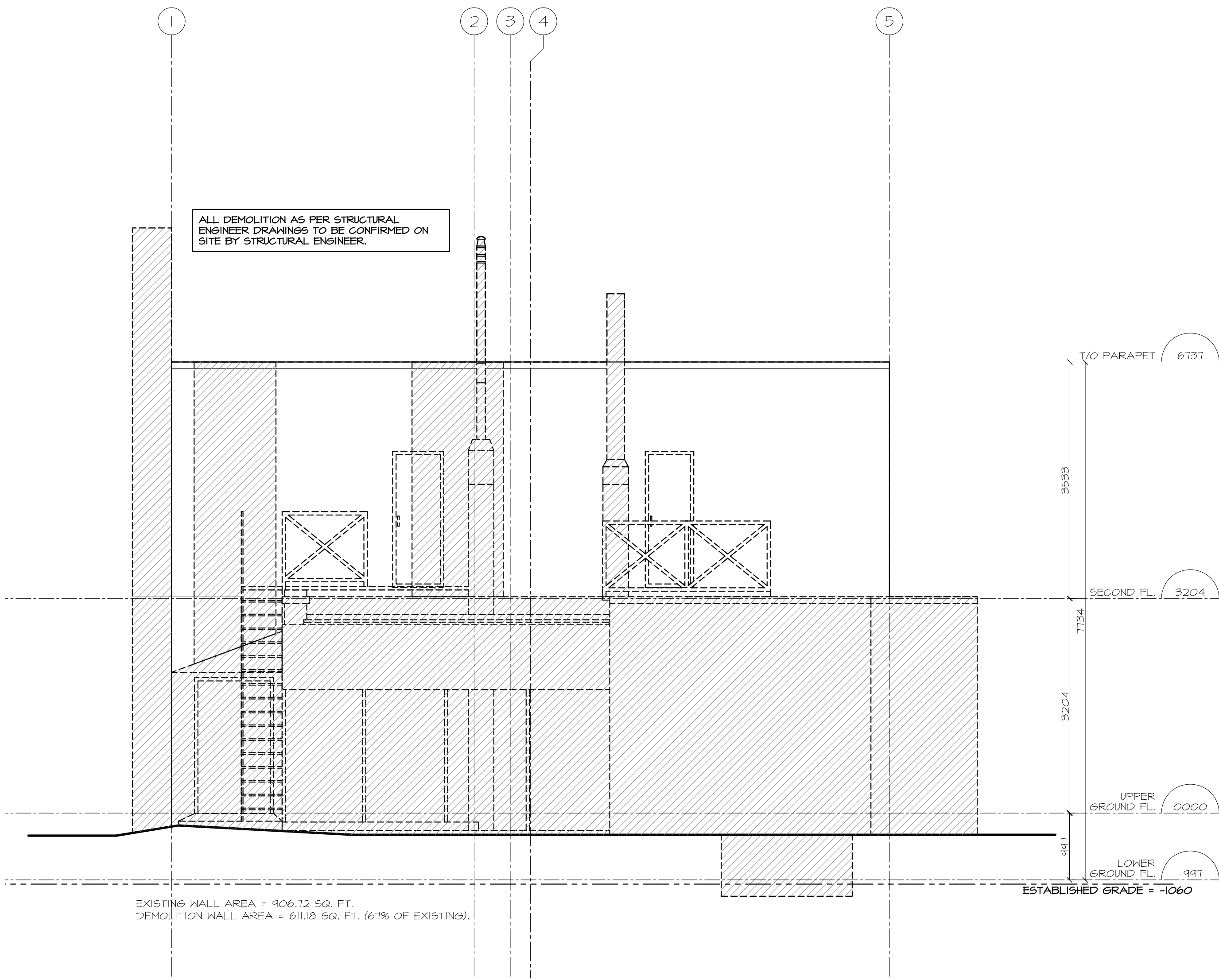
checked by A.J. scale 1:50

project no. sheet no.

A401

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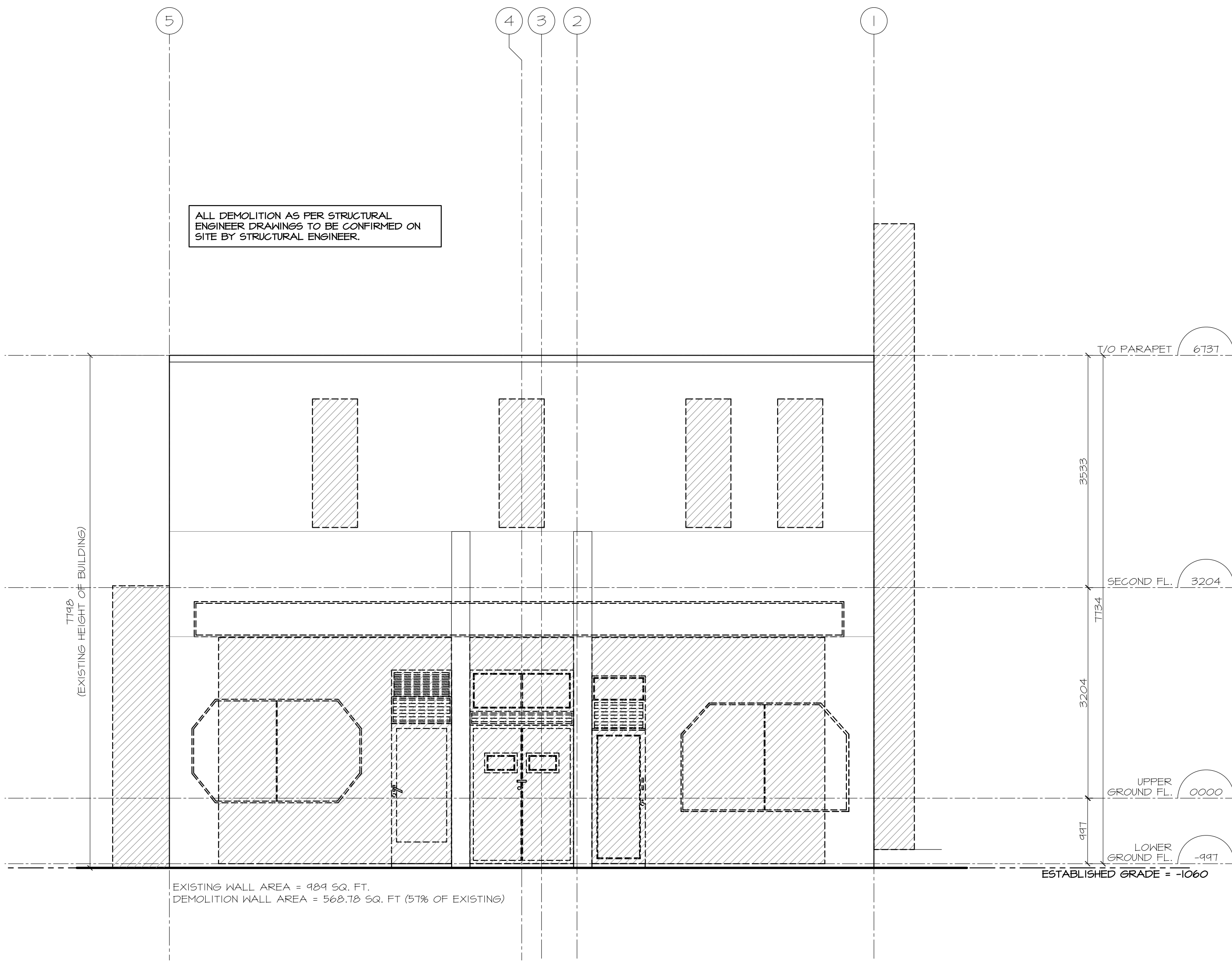


EXISTING/DEMOLITION WEST (REAR) ELEVATION

2

1:50

A401

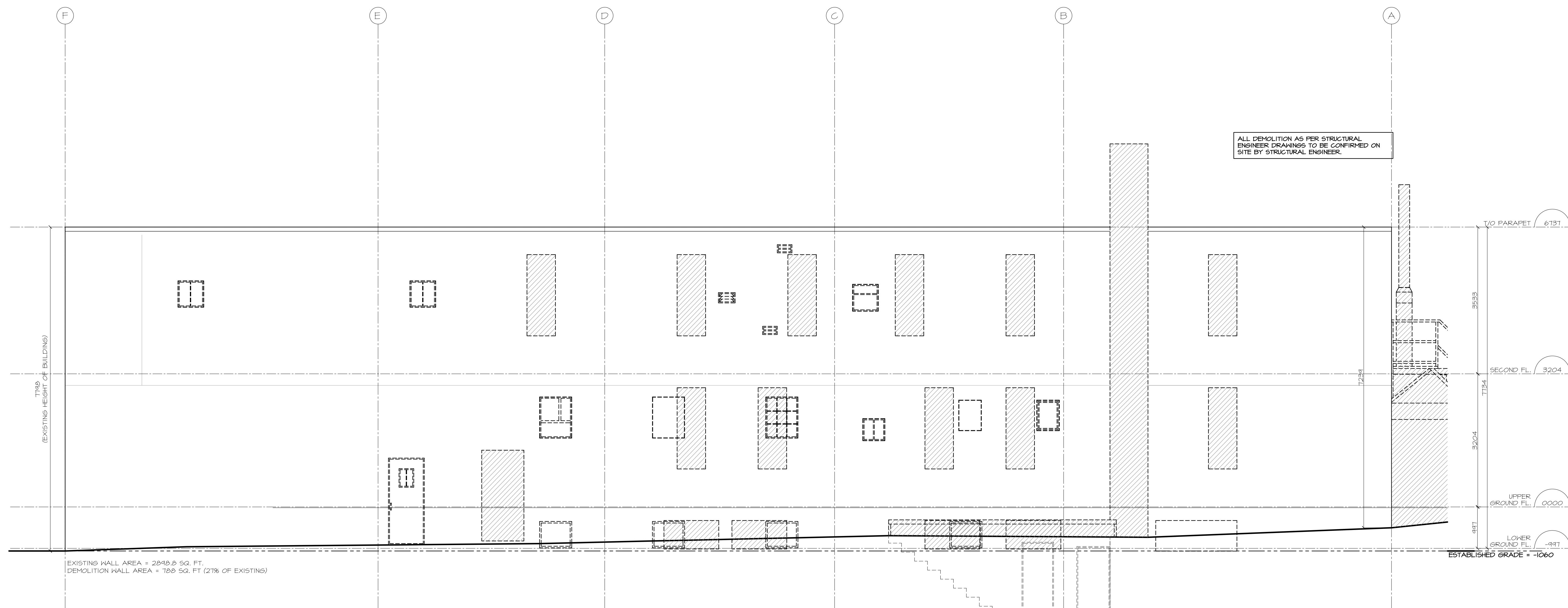
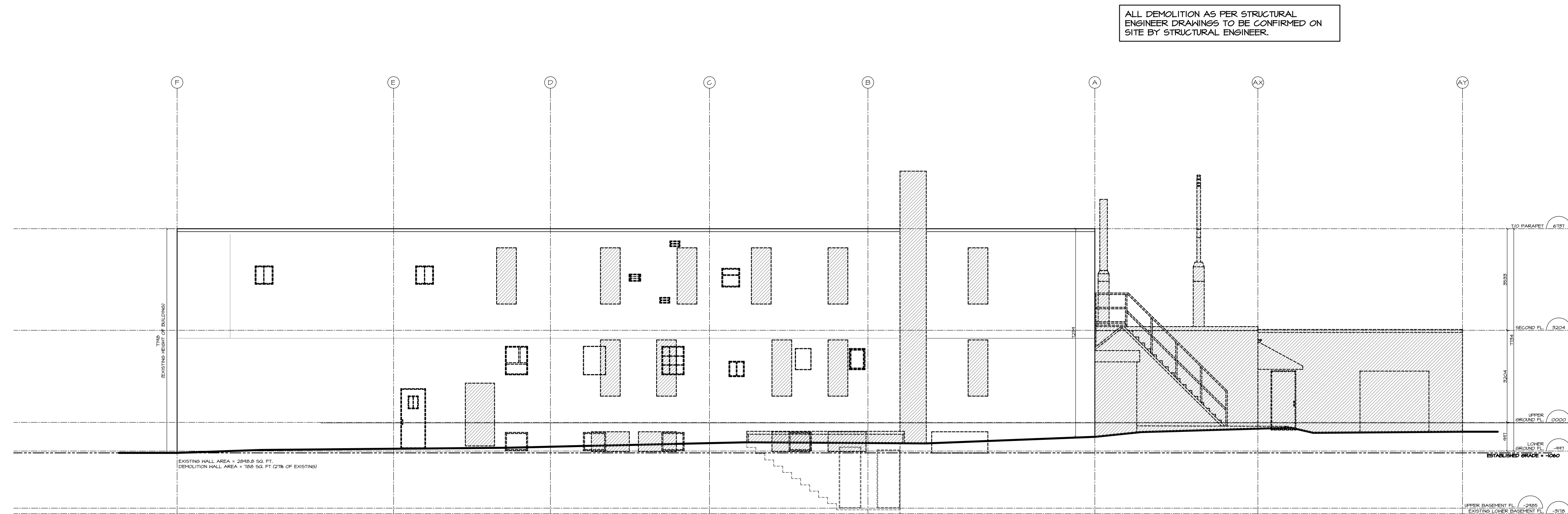


EXISTING/DEMOLITION EAST (FRONT) ELEVATION

1

1:50

A401



LEGEND

EXISTING EXTERIOR WALL, INTERIOR PARTITION OR AREA TO BE DEMOLISHED AS PER STRUCT. ENG.

ALL DEMOLITION AS PER STRUCTURAL ENGINEER DRAWINGS TO BE CONFIRMED ON SITE BY STRUCTURAL ENGINEER.

7	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
6	FEB 23/17	RE-ISSUED FOR ZONING CERTIFICATE
5	DEC 07/16	RE-ISSUED FOR ZONING CERTIFICATE
4	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
3	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
2	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
1	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.

No.	date	description
Revisions		



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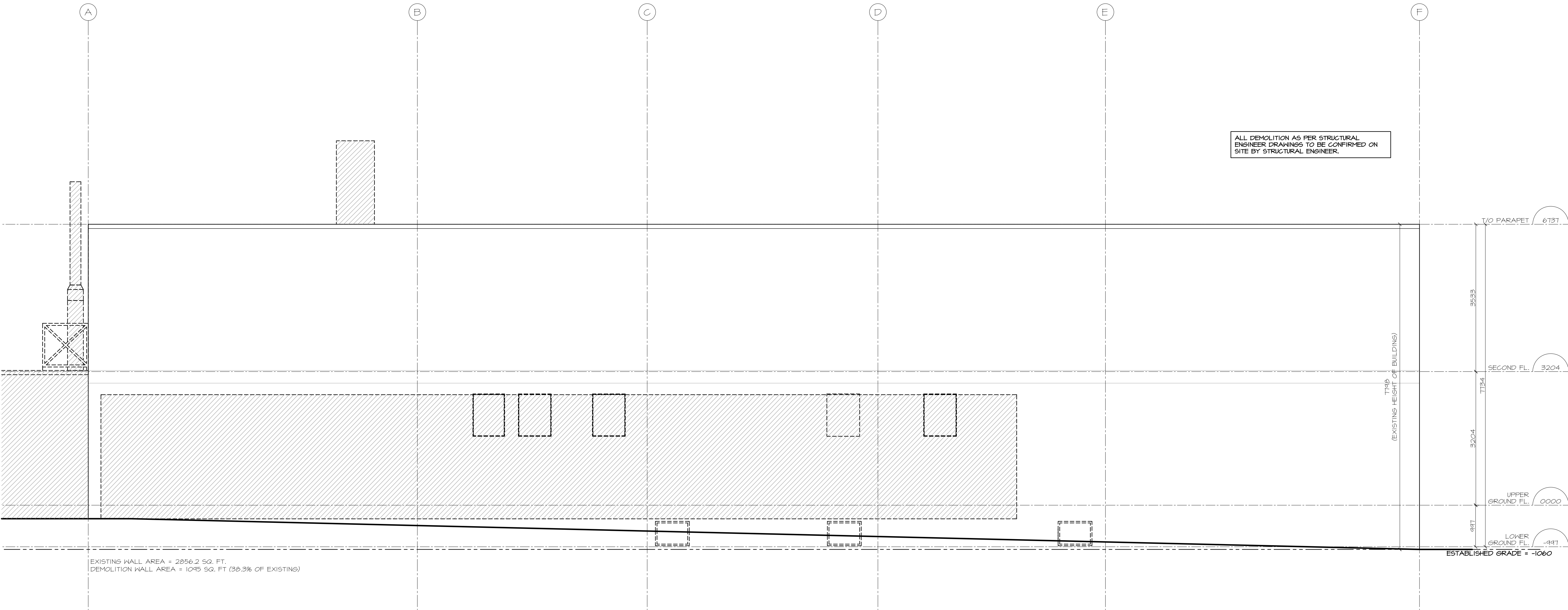
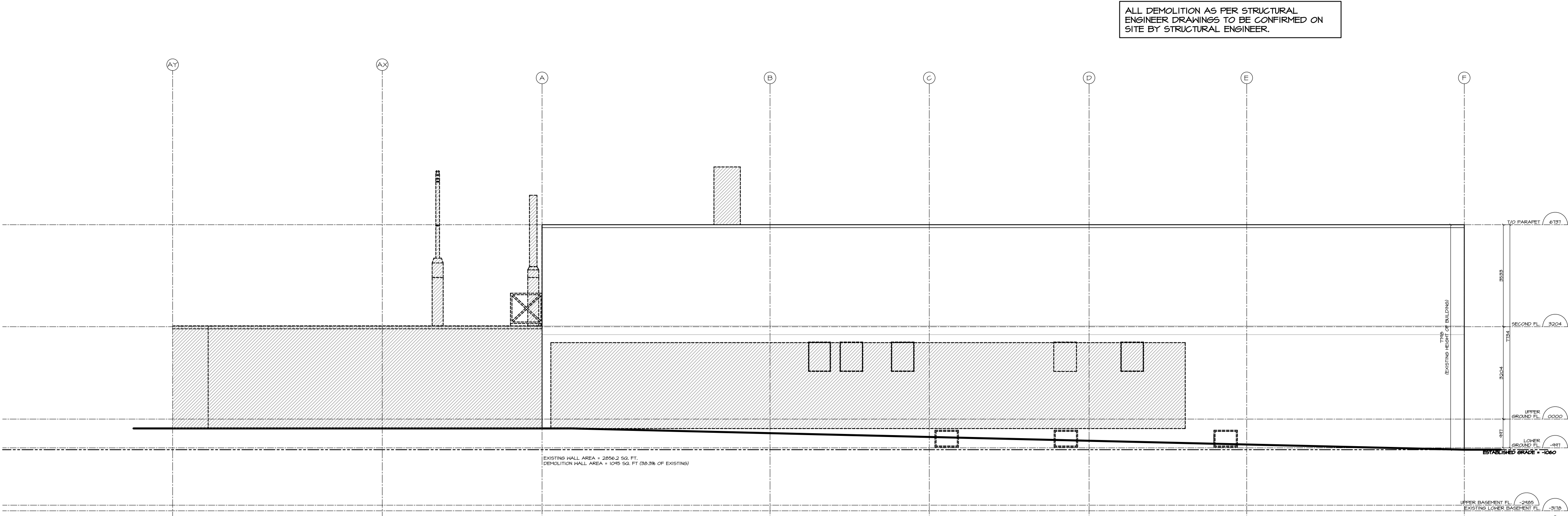
project
216-218 BATHURST ST
TORONTO, ON

title
EXISTING/DEMOLITION
NORTH ELEVATION

drawn by M.J.	date MARCH 2016
checked by A.J.	scale AS NOTED
project no.	sheet no.
rev. no.	A402

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LEGEND

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ALL DEMOLITION AS PER STRUCTURAL ENGINEER DRAWINGS TO BE CONFIRMED ON SITE BY STRUCTURAL ENGINEER.

7	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
6	FEB 23/17	RE-ISSUED FOR ZONING CERTIFICATE
5	DEC 07/16	RE-ISSUED FOR ZONING CERTIFICATE
4	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
3	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
2	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
1	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.

No.	date	description
Revisions		



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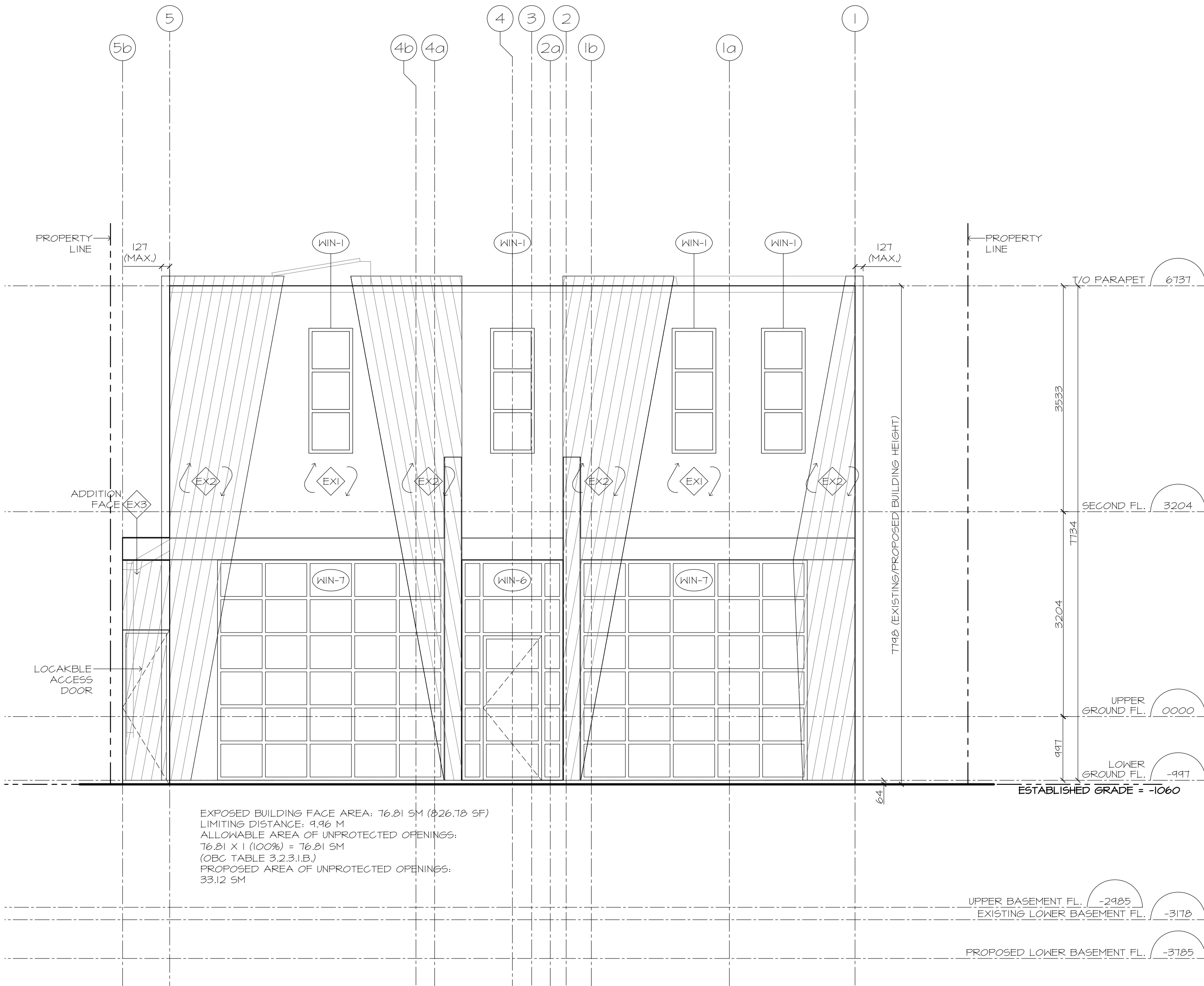
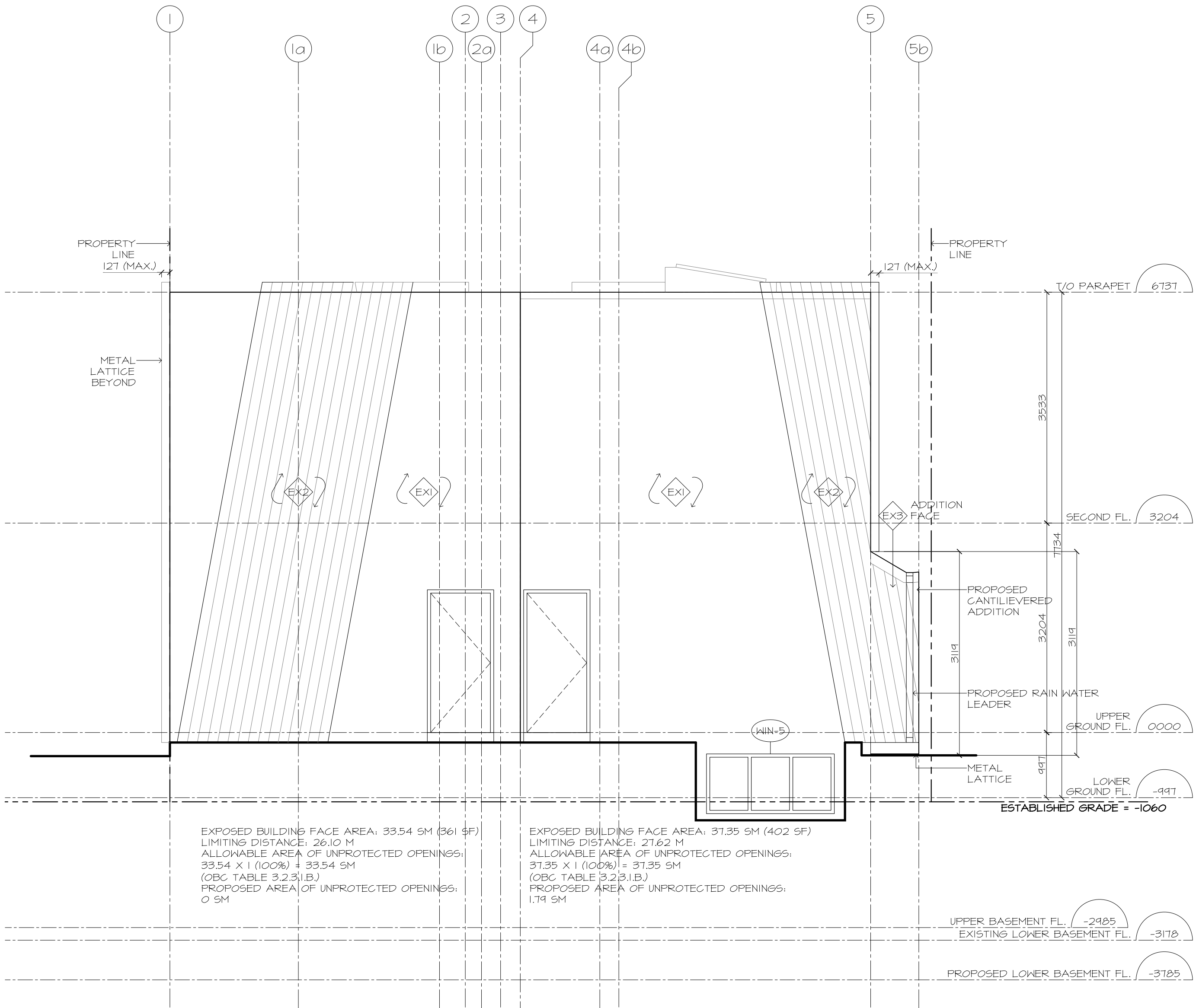
project
216-218 BATHURST ST TORONTO, ON

title
EXISTING/DEMOLITION SOUTH ELEVATION

drawn by M.J.	date MARCH 2016
checked by A.J.	scale AS NOTED
project no.	sheet no.
rev. no.	A403

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EXTERIOR MATERIAL LEGEND

- (EX1) EXISTING BRICK/BLOCK TO REMAIN
- (EX2) ARCHITECTURAL METAL WIRE LATTICE FINISH: GALVANISED ALUMINUM OR STAINLESS STEEL W/ SPIDER MULTI-POINT ATTACHMENT SYSTEM (AS PER MANUFACTURER SPECS.)
- (EX3) OPTION 1: STUCCO, COLOUR CHARCOAL
OPTION 2: BRICK VENEER TO MATCH EXISTING
- WINDOW & DOOR FRAME COLOUR: BLACK
SOLID METAL DOOR COLOUR: CHARCOAL

8	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
7	FEB 23/17	RE-ISSUED FOR ZONING CERTIFICATE
6	FEB 06/17	ISSUED FOR REVIEW
5	DEC 07/16	RE-ISSUED FOR ZONING CERTIFICATE
4	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
3	JULY 08/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
2	JULY 04/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
1	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
No.	date	description

Revisions



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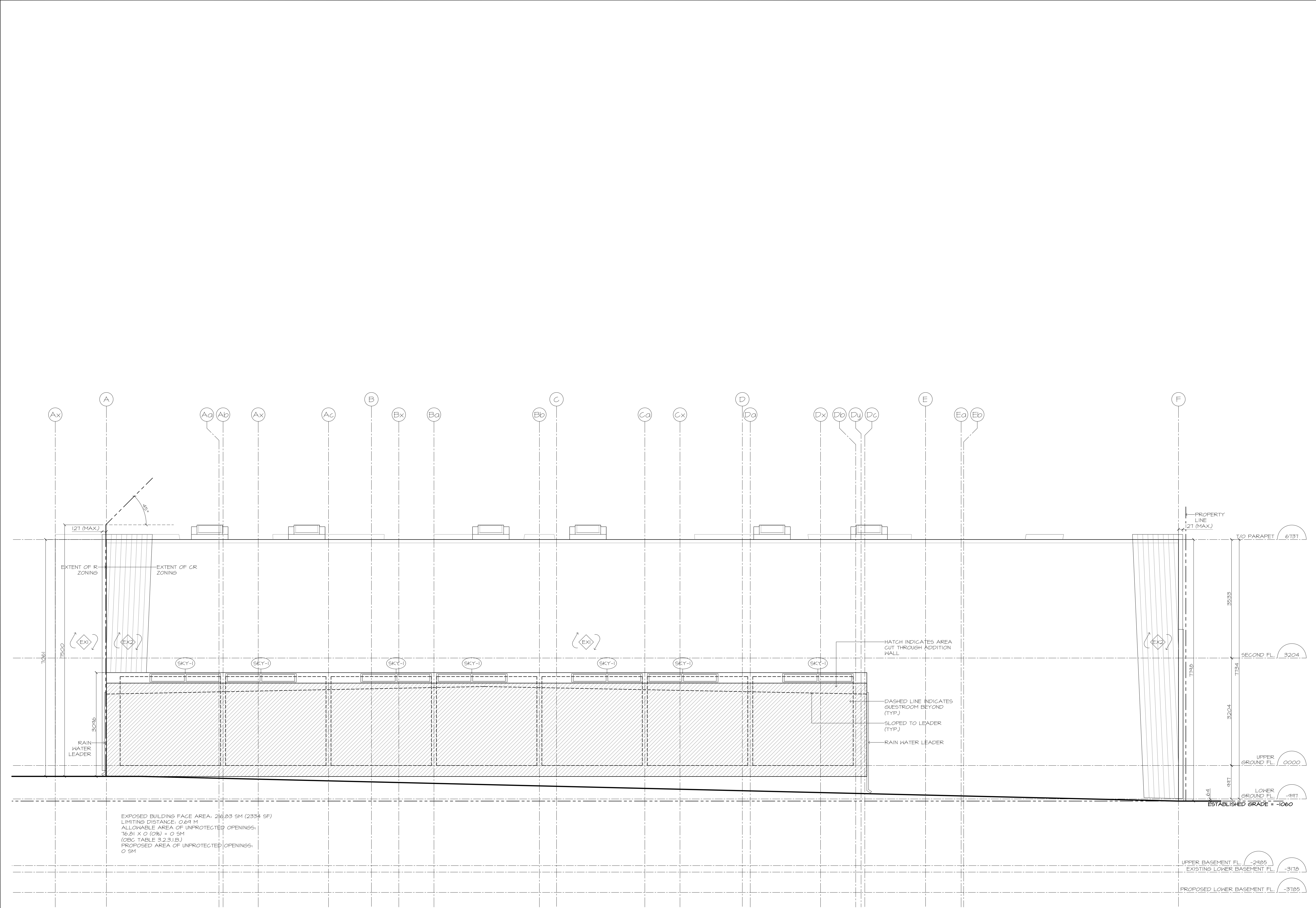
project
216-218 BATHURST ST
TORONTO, ON

title
PROPOSED EAST &
WEST ELEVATIONS

drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A404

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EXTERIOR MATERIAL LEGEND	
(EX1)	EXISTING BRICK/BLOCK TO REMAIN
(EX2)	ARCHITECTURAL METAL WIRE LATTICE FINISH: GALVANISED ALUMINUM OR STAINLESS STEEL W/ SPIDER MULTI-POINT ATTACHMENT SYSTEM (AS PER MANUFACTURER SPECS.)
(EX3)	OPTION 1: STUCCO, COLOUR CHARCOAL OPTION 2: BRICK VENEER TO MATCH EXISTING
WINDOW & DOOR FRAME COLOUR: BLACK	
SOLID METAL DOOR COLOUR: CHARCOAL	

8	FEB 23/17	ISSUED FOR COMMITTEE OF ADJUSTMENT
7	FEB 23/17	RE-ISSUED FOR ZONING CERTIFICATE
6	FEB 06/17	ISSUED FOR REVIEW
5	DEC 07/16	RE-ISSUED FOR ZONING CERTIFICATE
4	AUG 04/16	ISSUED FOR ZONING CERTIFICATE
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1	JUNE 22/16	ISSUED FOR REVIEW PRIOR TO P.P.R.
No.	date	description

Revisions



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project
216-218 BATHURST ST
TORONTO, ON

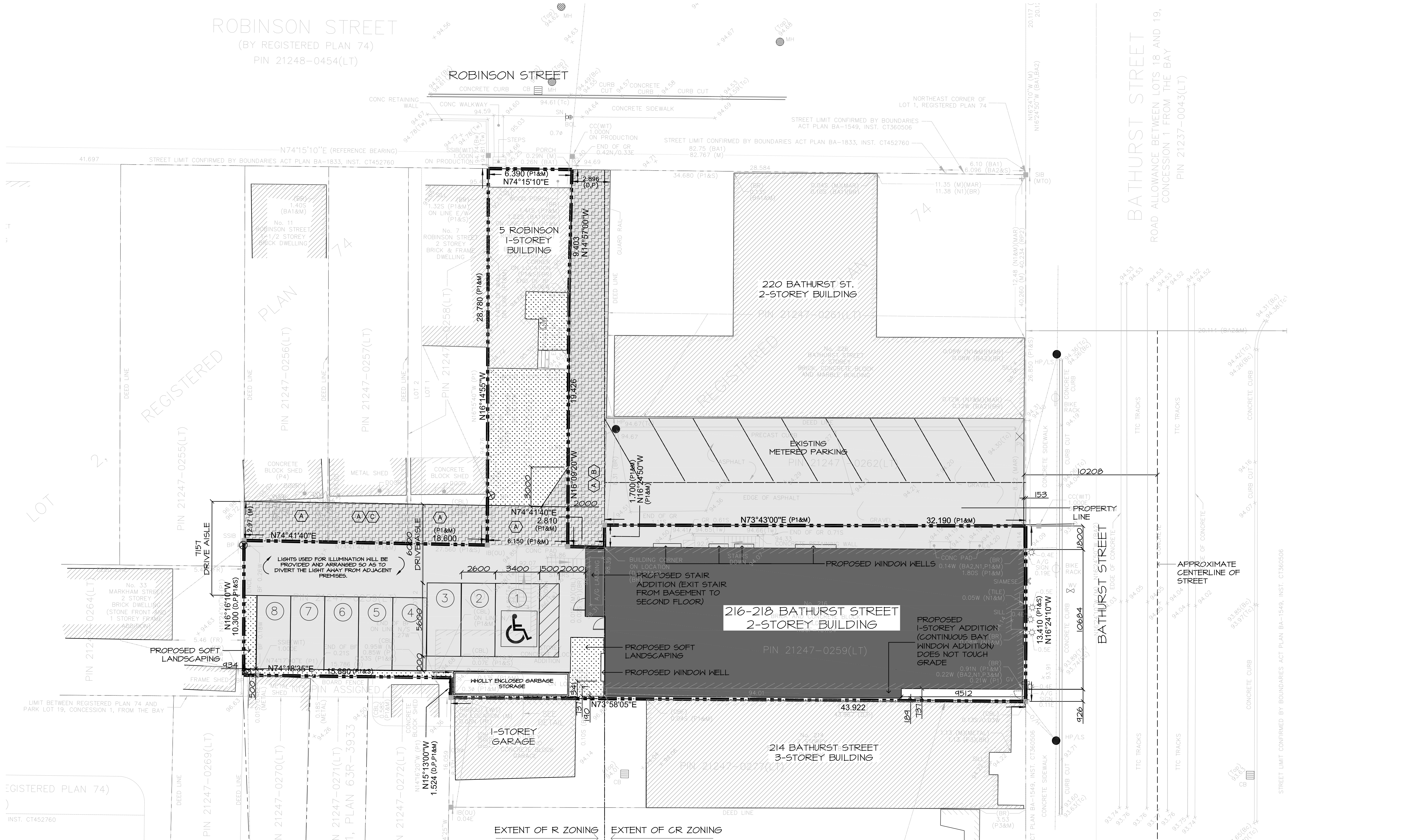
title
PROPOSED SOUTH
ELEVATION

drawn by M.J.	date MARCH 2016
checked by A.J.	scale 1:50
project no.	sheet no.
rev. no.	A406

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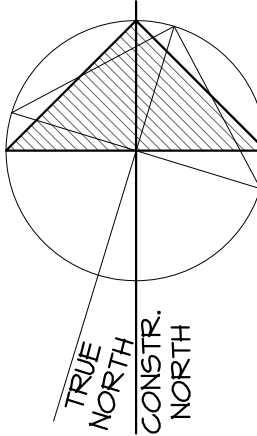
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SITE STATISTICS	ZONING CR2.0,C0.5R2.0	LOT NO: PART OF LOTS 1 AND 2 REGISTERED PLAN 74	PLAN NO:	LOT AREA 9160.7 sq ft (906.8m2)	LOT FRONTAGE 44'-0" (13.41m)	LOT DEPTH 196'-3" (59.82m)
INFORMATION ON THIS SITE PLAN RETRIEVED KRCMAR ONTARIO LAND SURVEYOR 1137 CENTRE STREET, THORNHILL ON L4J 3M6 NOVEMBER 17, 2016 PLAN OF SURVEY OF PART OF LOTS 1 AND 2 REGISTERED PLAN 74 CITY OF TORONTO MUNICIPALITY OF METROPOLITAN TORONTO	LOT AREA FOR CR: +/-4,600 sq ft (421.39m2) LOT AREA FOR R: +/-5,160 sq ft (479.37m2)		EXISTING BLDG GFA 10588 sq ft (983.66m2)	PROPOSED F.S.I (2.46) 11329 sq ft (1052.5m2)	REAR SOFT LANDSCAPING (R LOT ONLY) REAR LOT AREA: 4,270 sq ft (397 m2) SOFT LANDSCAPING: 1,454 sq ft (135 m2) or 34%	
	NOTE: EXISTING GFA OF 5 ROBINSON ST. = 758.69 sq ft (70.48m2)		Previous bldg on both R & CR zones	Previous bldg on both R & CR zones		
	PARKING		N/A	N/A	N/A	
	PROPOSED UNITS = 30					



LEGEND
216 BATHURST STREET
EASEMENT
SOFT LANDSCAPING

NOTE:
SITE PLAN BASED ON SURVEY
PREPARED BY KRCMAR ONTARIO
LAND SURVEYOR 1137 CENTRE
STREET, THORNHILL ON L4J 3M6,
DATED: NOVEMBER 17, 2016



12	MAY 1516	ISSUED FOR TORONTO LOCAL APPEAL BOARD
11	MAY 3116	ISSUED FOR TORONTO LOCAL APPEAL BOARD
10	MAR 1916	RE-ISSUED FOR ZONING CERTIFICATE
9	MAR 1316	ISSUED FOR REVIEW
8	JUNE 2017	REISSUED FOR COMMITTEE OF ADJUSTMENT
No.	date	description
Revisions		



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project
216-218 BATHURST ST
TORONTO, ON

title
PROPOSED SITE PLAN

drawn by M.J.	date JUNE 2016
checked by A.J.	scale AS NOTED
project no.	sheet no.
rev. no.	A202

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