

DECISION AND ORDER

Decision Issue Date Friday, July 05, 2019

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

Appellant(s): LUCY ORTON

Applicant: JACOB KACHUBA

Property Address/Description: 26 Whitaker Avenue

Committee of Adjustment Case File: 18 216164 STE 19 MV (A0842/18TEY)

TLAB Case File Number: 19 112082 S45 10 TLAB

Hearing date: Monday, June 24, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

Name	Role	Representative
Jacob Kachuba	Applicant	
Laura Wills	Owner	
Michael William Feindel	Primary Owner	
Lucy Orton	Appellant	

INTRODUCTION

This is an appeal from a decision of the Toronto East York Committee of Adjustment (COA) pertaining to a request to permit a series of 7 variances for 26 Whitaker Avenue (subject property).

The variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a third storey addition and front basement walkout.

This property is located in the Niagara neighbourhood in the Downtown Toronto district of the City of Toronto (City) which is situated south of Queen Street West and bounded by Niagara Street to the west and Bathurst Street to the east. The property is located on Whitaker Avenue, south of Adelaide Street West and north of King Street West.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the immediate neighbourhood and had reviewed all materials related to this appeal.

BACKGROUND

The variances that had been requested are outlined as follows:

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

The maximum permitted floor space index of a townhouse is 1.0 times the area of the lot (92.40 m²). The townhouse will have a floor space index equal to 1.5 times the area of the lot (138.54 m²). 1.5 times the area of the lot

2. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013

Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m. The front basement walkout stairs will be located 0 m from the front lot line.

3. Chapter 10.5.50.10.(1)(D), By-law 569-2013

A minimum of 75% (1 m²) of the required front yard landscaped open space shall be in the form of soft landscaping. In this case, 0% (0 m²) of the required front yard landscaped open space will be in the form of soft landscaping.

4. Chapter 10.5.40.60.(7), By-law 569-2013

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line. The roof eaves will be located 0 m from the front lot line.

5. Chapter 10.5.50.10.(3), By-law 569-2013

A minimum of 25% (8.75 m²) of the rear yard must be maintained as soft landscaping. In this case, 22% (7.71 m²) of the rear yard has been maintained as soft landscaping.

1. Section 6(3) Part II 3.C(I), By-law 438-86

The minimum required side lot line setback of a townhouse is 0.45 m where the side wall contains no openings. The townhouse will be located 0 m from the east side lot line.

2. Section 6(3) Part II 3.C(II), By-law 438-86

The minimum required side lot line setback of a townhouse is 0.9 m where the side wall contains openings. The townhouse will be located 0 m from the west side lot line.

These variances were heard and conditionally approved at the January 29, 2019 Toronto East York COA meeting. Subsequently, an appeal was filed on February 5, 2019 by the property-owners of 28 Whitaker Avenue within the 20 day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled a hearing on June 24, 2019 for all relevant parties to attend.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the *Planning 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 applicant, Jacob Kachuba, a Professional Engineer with Tignum Design and Engineering Inc., provided information relating to his minor variance appeal. Mr. Kachuba was acting on behalf of the owners Laura Wills, who was not in attendance at the hearing, and Michael William Feindel. Mr. Kachuba described that his clients intend to build this addition to their home to accommodate the needs for their growing family. The initial design that they had proposed had been reduced in overall size and scale as a result of comprehensive discussions with City planning staff. This is outlined in the related City planning report dated January 16, 2019, which was addressed to the Toronto East York COA. With the variance requests, 1 relates to the proposed third storey addition, 2 to the proposed walkout basement and 4 pertain to the existing structure. Mr. Kachuba contends that their proposal meets the four tests for a minor variance as per the *Planning Act*. He goes on to describe that there are similar structures which have been built in the neighbourhood which is shown in the materials they had submitted as 'cover letter' dated January 8, 2019. In addition, a sun study was prepared by Mr. Kachuba's firm dated April 17, 2019 to address sunlight issues as raised by neighbours. Most notably, the concern from neighbouring property-owners that this proposed additional would result in a loss of sunlight shining into their dwellings.

**Decision of Toronto Local Appeal Body Panel Member: J. Leung
TLAB Case File Number: 19 112082 S45 10 TLAB**

To clarify, at the COA meeting, the applicant proposed maintaining the rear yard landscaping by removing portion of the rear yard deck. 4 of the variances which are requested is due to the current orientation of the dwelling. As such, these can be considered historical conditions of the home which have been 'grandfathered' or allowed to continue even after the passage of the City's new Zoning By-law. The applicant has elected to apply for these variances as well so as to legalize or bring into compliance the conditions of the home with current zoning requirements.

The appellant, Lucy Orton, of 28 Whitaker Avenue, commenced with providing information relating to this appeal. Joachim Orton, her spouse, was in attendance as well. Ms. Orton described that they have resided in the neighbourhood for just over 20 years. She outlined that there are several Victorian style homes in the area which don't have third storeys. Her appellant disclosure, dated April 16, 2019, was referenced specifically to the photographs provided which she used to argue her position that the typical house design for the area are 2 storey houses. In addition, photographs of her house in relation to the subject property of 26 Whitaker Avenue were also shown to illustrate the potential negative impact on views and sunlight which this proposed addition would result in for their own house. Ms. Orton understands that they have a growing family, however, they could look to relocate to a larger house to meet their needs as opposed to increasing the building scale of their home here on 26 Whitaker Avenue.

Joachim Orton, the spouse of the appellant who also resides at 28 Whitaker Avenue, commented that the interior sunlight into their home would be adversely affect by this proposed addition. They had previously installed larger windows to capture more sunlight into their home. This measure would now be ineffective if this addition were allowed to be constructed. Mr. Orton also raised potential impact to sunlight accessing their daughter's room. He commented that at the requisite COA meeting there had been a comment made about potentially installing a skylight in their daughter's room to negate the effects of this proposal. Sunlight access into the hallway or stairway area of their property could also be affected as a result of this addition Mr. Orton also stated that the applicant had not initially approached them to discuss their proposal which they do feel was acting in the spirit of 'neighbourly' relations. He goes on to describe how another property on their street, 21 Whitaker Avenue, had proposed a similar third storey addition but eventually decided not to pursue it. Mr. Orton and his family do not oppose some other alterations that the property-owners of 26 Whitaker Avenue have made to their home such as adding windows on the front portion of their home or changing their front facing door. However, this addition's potential impact especially to their rear yard has presented them some more significant concerns.

Mr. Kachuba responded that their stairway area, in his professional opinion, does not receive considerable direct sunlight. Furthermore, at the related COA meeting, he does not recall advising the appellants to install skylights to their home. He also references 18 Whitaker Avenue which had a third storey addition built which he argues is similar to the proposal his client is looking to do. As part of discussions with City planning staff, the proposed addition was reduced in scale with the intent to reduce the visual massing or impact relating to the other properties along Whitaker Avenue.

Ms. Orton inquired that if sunlight is not an issue or priority, then why the applicant is looking to add two windows as part of their addition. The owner, Mr. Feindel, responded that these proposed windows are closer to their ceiling. However, he contends that what he is looking to do is not dis-similar to other properties on the street who have also added windows to their homes.

Mr. Kachuba went on to comment that at the COA meeting, a more fulsome discussion did occur relating to the position of the windows in their proposed addition. However, if they were to incorporate the comments of the Committee, it would have necessitated a complete revision and change to their proposal which they were not prepared to commit to at this stage of the process. He states that, as part of their discussions with City planning staff, they had structured their proposal to make it consistent with similar proposals which have been pursued in the area. They are also looking to construct the walls of their addition to not affect the common wall in relation to the adjacent dwellings. In addition, as this is a row house, Mr. Kachuba comments that any potential alteration to the existing structure would result in need for minor variance requests.

ANALYSIS, FINDINGS, REASONS

In reviewing the evidentiary materials and comments provided at the TLAB hearing, it is worth analyzing the related policies which govern the long-term planning and development of this area. This area is subject to the 'Garrison Common North Secondary Plan' which is contained in Chapter 6 of the 'Toronto Official Plan'. Within this Secondary Plan, there is specific policies which pertain to the overall built form the area described as follows:

3. URBAN STRUCTURE BUILT FORM

3.1 a) In order to promote future flexibility in use, new buildings will be designed to easily adapt to conversion, with particular focus on street level spaces, to facilitate changes in market demand for services and activities.¹

These planning policies clearly outline that a variety of building types are supported for in this area. As this area is within close proximity to the downtown core, greater intensification of homes and businesses here is provisioned for not only in local municipal policies but also in provincial policies such as the *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*. As such, the diverse building type which is observed in this Niagara District is consistent with the planning and development directions envisioned for this neighbourhood and the broader area.

In conducting site visit of this area, the policies outlined above are further reinforced as a variety of building type and heights can be seen in the Niagara District. Specifically on Whitaker Avenue, it should be noted that a third storey addition which, on appearance, is similar to the proposal being considered here has been built at 18

¹ City of Toronto (2015, June). Garrison Common North Secondary Plan. Retrieved from <https://www.toronto.ca/wp-content/uploads/2017/11/97df-cp-official-plan-SP-14-Garrison.pdf>

Whitaker Avenue. The adjacent streets of Mitchell Avenue and Tecumseth Street also feature a variety of 2 and 3 storey houses with an assortment of commercial and apartment buildings throughout the area as well. The immediate area is well-served by transit with the King Street and Bathurst Street Toronto Transit Commission (TTC) streetcar lines in close proximity. As such, one could conclude that the area has a diverse and evolving building type that has been constructed to meet the needs of a multi-generational population.

With regards to the comments made by the appellant relating to potential loss of sunlight to their property, it is noted that the applicant did commission a sun shade study, which was prepared by their own engineering firm. The study was prepared in accordance with established practices relating to such studies. In reviewing this study, what could be deduced from it is that this proposed addition does not appear to adversely impact the sunlight which the properties in the area currently have access to. The study does reference that such studies are more typically undertaken for high rise buildings and not residential dwellings. However, the applicant has done this study as a means of addressing and assuaging neighbourhood concerns.

In assessing privacy related issues, the submissions by both the applicant and appellant reinforce the notion that this is a dense neighbourhood where residences' are located in a close and compact manner to each other. The narrow roadway along Whitaker Avenue which allows vehicles to park on one side of the street with difficult turning radius for vehicles demonstrates that the buildings were constructed to be in close proximity to one another further reinforcing the urban form which typifies this area. The disclosure documents by the appellant, dated April 16, 2019, which were submitted to show the potential effects on privacy to their property of 28 Whitaker Avenue, essentially depicts that the houses in the area were built with reduced setbacks, built form which is closer to the main street, and decreased front and rear usable yard space. Furthermore, the submission by the applicant entitled 'cover letter' dated January 10, 2019 shows that a variety of heritage and modern type houses are within this area. In addition, the pictures contained in this submission also show that front basement walkouts can be seen with several houses of this area as well. With these documents, it can be surmised that while privacy is an issue which should be taken into consideration within planning perspective, it must also be assessed within its relevant context. With this Niagara District, the compact nature of the development here has resulted in a decreased privacy dimension for the residents who live here. However, this has been negated by their location which is adjacent to several shops and businesses, entertainment venues, superior transit service and close access to the downtown core. In order to have such amenities, this area has been developed to a higher degree of urban density which, while reducing personal privacy, has allowed for more people to live and work in a more defined geographic area.

With the material that has been brought before me, I have chosen to accept the evidence of the applicant and the owner in arguing for the allowance of this minor variance. Part of my assessment of this appeal included taking into consideration the decision of the Toronto East York COA in conditionally approving this application, which the TLAB must give weight to as per Section 2(1) of the *Planning Act*. In addition, it is noted that besides the appellant, no other interested parties had been registered as part

of this appeal. The applicant, through their submitted materials, is able to demonstrate that their proposed addition and front basement walkout would not be inconsistent with the overall building type of this area. They have also been able to demonstrate that their construction of this addition will not have significant impact to the adjacent properties. The issues of privacy and sunlight access were not sufficiently demonstrated by the appellant to be exasperated negatively if this proposal were to proceed. The proposal is compatible with the development pattern occurring in this area. In addition, municipal and provincial planning policies have contemplated for this type of development as the community evolves to meet the changing socio-economic needs of Downtown Toronto. These items, assessed cumulatively, act to support this minor variance request. The issues as raised by the appellants have been addressed through revisions to this proposal which the applicant had made earlier in discussions with City staff.

DECISION AND ORDER

The appeal is allowed, and the variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans contained in the City staff report in Appendix 2.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body

Appendix 1

List of proposed variances

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

The maximum permitted floor space index of a townhouse is 1.0 times the area of the lot (92.40 m²). The townhouse will have a floor space index equal to 1.5 times the area of the lot (138.54 m²). 1.5 times the area of the lot– PLANNING CHANGE

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The minimum required side lot line setback of a townhouse is 0.9 m where the side wall contains openings. The townhouse will be located 0 m from the west side lot line.

List of proposed conditions

1) That the third floor be constructed substantially in accordance with the third floor plan, and east and west elevations, date stamped by City Planning on Jan 16, 2019, and attached to this report, with a maximum third floor building depth of 10.2 metres, exclusive of the third floor front deck.

2) That the rear yard soft landscaping be constructed substantially in accordance with the site plan, date stamped by City Planning on Jan 16, 2019, and attached to this report.



RECEIVED

By Committee of Adjustment at 10:22 am, Jan 22, 2019

26 Whitaker Avenue Committee of Adjustment Application

Date: January 16, 2019

To: Chair and Committee Members of the Committee of Adjustment, Toronto and East York District

From: Lynda Macdonald, Director, Community Planning, Toronto and East York District

Ward: Ward 10, Spadina-Fort York

File No: A0842/18TEY

Application Hearing Date: January 23, 2019

RECOMMENDATIONS

City Planning staff recommend that, should the Committee of Adjustment choose to approve Application A0842/18TEY, the Committee impose the following conditions:

- 1) That the third floor be constructed substantially in accordance with the third floor plan, and east and west elevations, date stamped by City Planning on Jan 16, 2019, and attached to this report, with a maximum third floor building depth of 10.2 metres, exclusive of the third floor front deck.
- 2) That the rear yard soft landscaping be constructed substantially in accordance with the site plan, date stamped by City Planning on Jan 16, 2019, and attached to this report.

APPLICATION

The application proposes to alter the existing two-storey townhouse by constructing a third floor addition and a front basement walkout.

COMMENTS

The subject site is located on the north side of Whitaker Avenue, northwest of King Street West and Bathurst Street. The site is designated *Neighbourhoods* in the City of Toronto Official Plan, which are considered physically stable areas made up of residential uses in lower scale buildings. The site is zoned Residential (R) in Zoning By-law 569-2013, and Residential (R3) in City of Toronto Zoning By-law 438-86, as amended. The purpose of the Residential Zone category in these respective By-laws is

generally to maintain a stable built form, and to limit the impact of new development on adjacent residential properties.

City Planning Staff were concerned that the original proposed size and massing of the third storey was out of character with the built form along Whitaker Avenue, which is mostly characterized by 2-storey dwellings. The applicant responded by stepping back the third storey from the front lot line. City Planning staff wish to ensure that the third storey building depth is limited to 10.2 metres, in order to reduce impacts of a larger building on light, view and privacy. As such, staff recommend that should the Committee approve Application A0842/18TEY, the Committee impose a condition requiring the third floor to be constructed substantially in accordance with the third floor plan and east and west elevations, attached to this report.

In addition, City Planning staff were concerned that original proposed plan had zero rear yard soft landscaping. Impermeable surfaces covering the city are resulting in more water making its way into the stormwater system, which leads to flooding and damage to City infrastructure. The applicant responded positively by providing 7.71 square metres of rear yard soft landscaping. As such, staff recommend that should the Committee approve Application A0842/18TEY, the Committee impose a condition requiring the rear yard soft landscaping to be constructed substantially in accordance with the site plan attached to this report.

For these reasons, City Planning staff recommend that, should the Committee of Adjustment choose to approve Application A0842/18TEY the Committee impose the above noted conditions.

CONTACT

May Wang, Assistant Planner, Community Planning, Toronto and East York District,
416-392-1317, May.Wang@toronto.ca

SIGNATURE

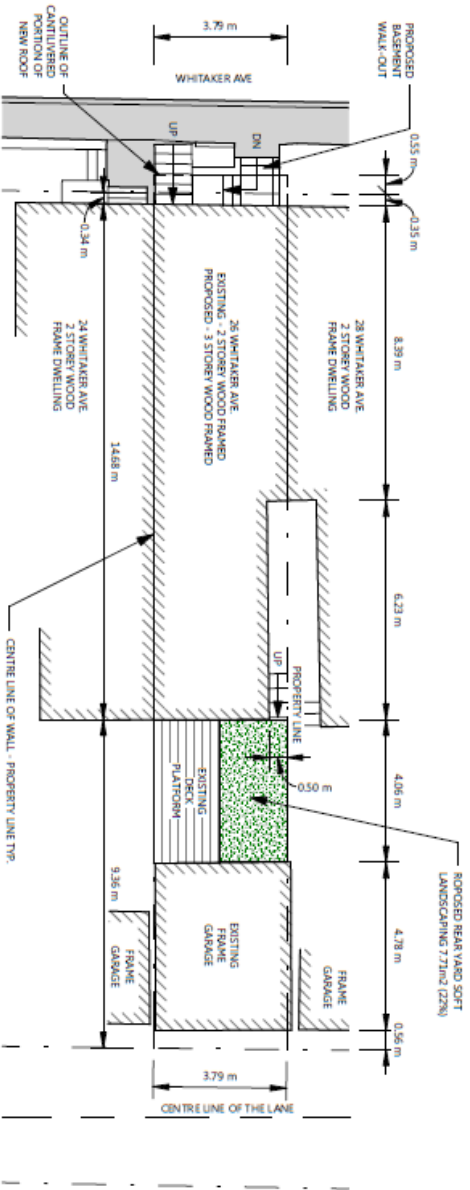


Signed by Willie Macrae, Manager, Community Planning on behalf of
Lynda H. Macdonald, MCIP, RPP, OALA
Director, Community Planning
Toronto and East York District

copy: Councillor Cressy, Ward 10
Jacob Kachuba, Agent

RECEIVED

By City Planning Division at 3:32 pm, Jan 16, 2019



REV.	DESCRIPTION	DATE
A	CLIENT REVIEW	2018-05-23
B	PPR APPLICATION	2018-07-24
C	CoFA APPLICATION	2018-08-27
D	REVISED AS NOTED	2019-01-15

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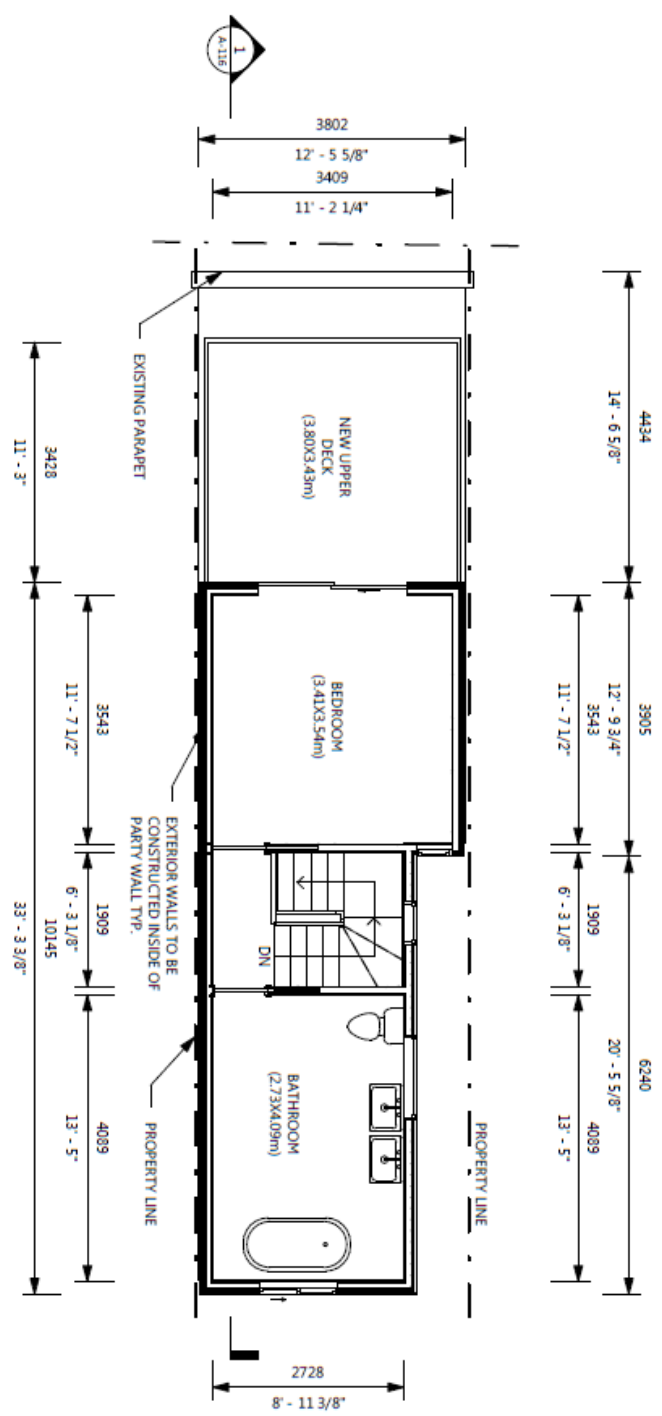
PROJECT NUMBER
2018012

PROJECT NAME
26 WHITTAKER AVE., TORONTO, ON

DRAWING TITLE
SITE PLAN

DRAWING NUMBER
A-001

RECEIVED
By City Planning Division at 3:32 pm, Jan 16, 2019



D	REVISED AS NOTED	2019-01-15	
C	COA APPLICATION	2018-08-27	
B	PPR APPLICATION	2018-07-24	
A	CLIENT REVIEW	2018-05-23	
REV.	DESCRIPTION	DATE	
DRAWN	OF	APPROVED	JK
UNITS	mm & ft	SCALE	1 : 75

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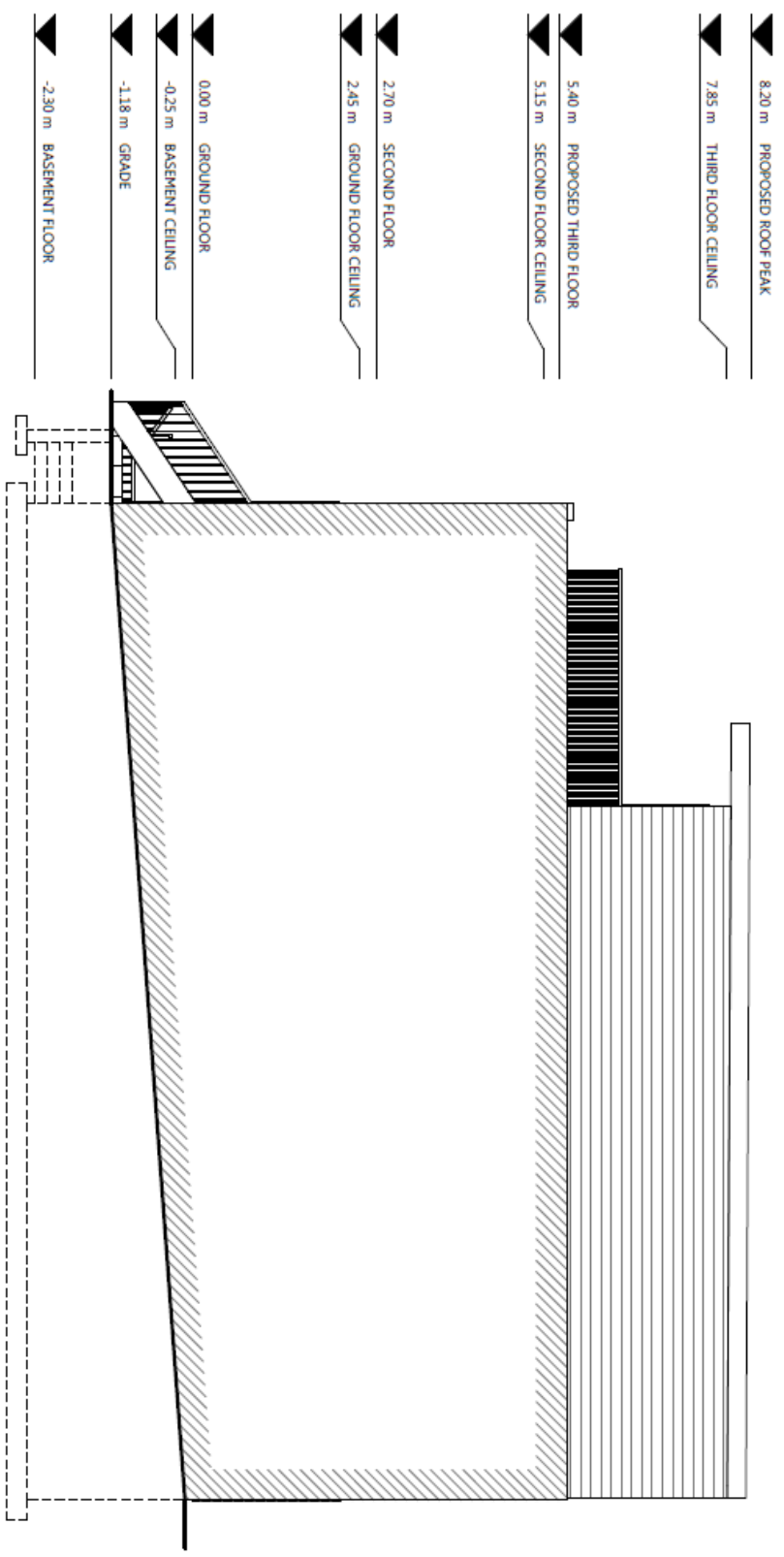
PROJECT NUMBER
2018012

PROJECT NAME
26 WHITAKER AVE., TORONTO, ON

DRAWING TITLE
PROPOSED THIRD FLOOR PLAN

DRAWING NUMBER
A-110

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REV.	DESCRIPTION	DATE
D	REVISED AS NOTED	2019-01-15
C	CoFA APPLICATION	2018-08-27
B	PPR APPLICATION	2018-07-24
A	CLIENT REVIEW	2018-05-23

DRAWN	OF	APPROVED	DATE

UNITS	mm & ft	SCALE	1:75

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PROJECT NUMBER
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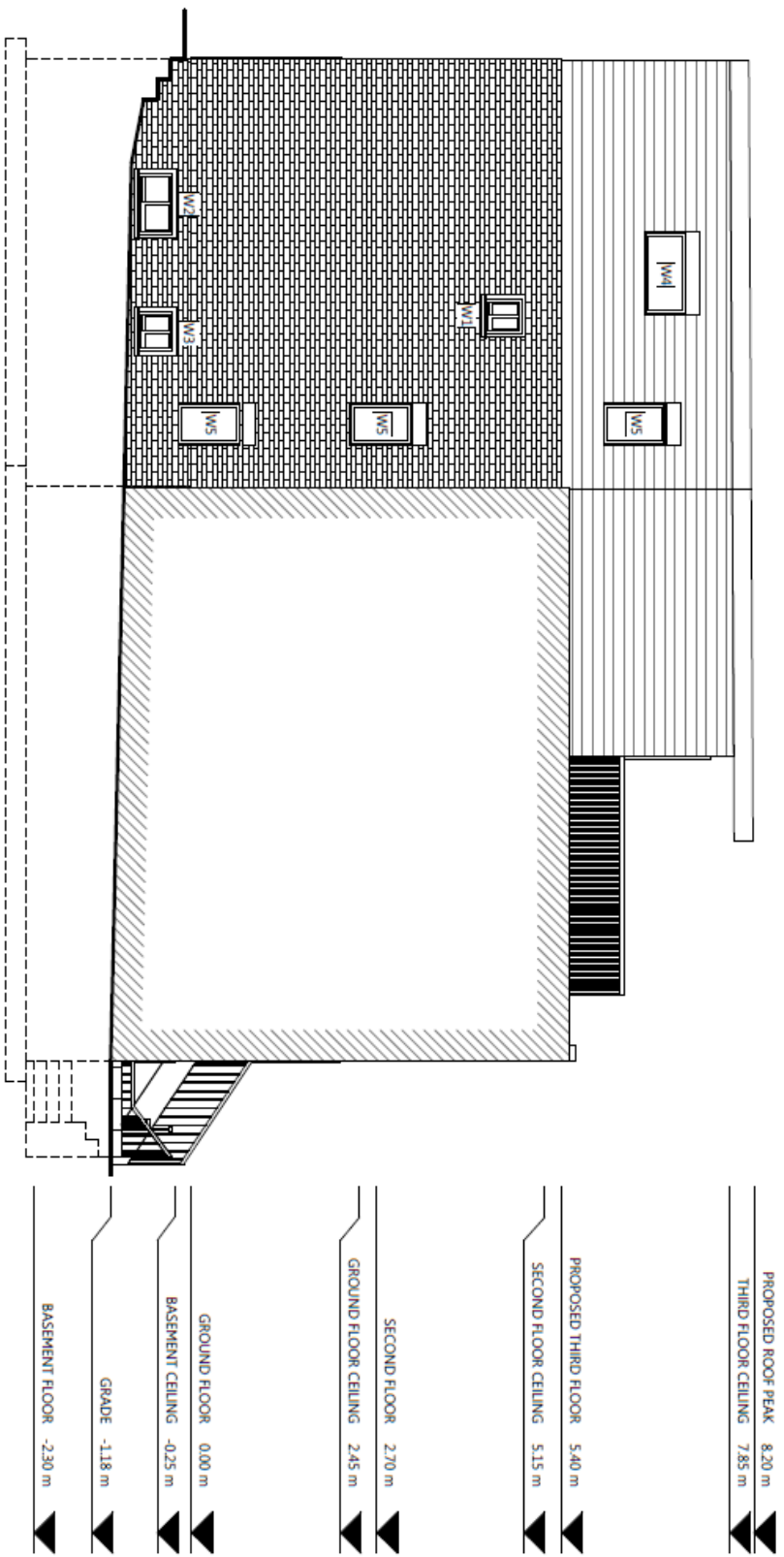
PROJECT NAME
26 WHITAKER AVE., TORONTO, ON

DRAWING TITLE
PROPOSED EAST ELEVATION

DRAWING NUMBER
A-112

RECEIVED

By City Planning Division at 3:32 pm, Jan 16, 2019



TOTAL EXPOSED WALL AREA 54.78m²
 TOTAL EXISTING UNPROTECTED GLAZED AREA 0.99m²
 WINDOWS W1, W2, W3)
 TOTAL PROPOSED PROTECTED GLAZED AREA 2.40m²
 (WINDOWS W4, W5)
 PROPOSED WINDOWS TO BE EQUIPPED WITH CLOSURE AS PER O.B.C. 9.10.4.4. (2)
 ALL WINDOW CLOSURES TO CONFORM TO NFPA-80 STANDARDS AND HAVE A
 MINIMUM FIRE RATING OF 1 HR.

REV.	DESCRIPTION	DATE
D	REVISED AS NOTED	2019-01-15
C	CoFA APPLICATION	2018-08-27
B	PPR APPLICATION	2018-07-24
A	CLIENT REVIEW	2018-05-23

DRAWN	OF	APPROVED	DATE

UNITS	mm & ft	SCALE
		1 : 75

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PROJECT NUMBER
 2018012

PROJECT NAME
 26 WHITAKER AVE., TORONTO, ON

DRAWING TITLE
 PROPOSED WEST ELEVATION

DRAWING NUMBER
 A-113