

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Tuesday, August 20, 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): WHITNEY MILLER

Applicant: CHRISTINA OTT

Property Address/Description: 129 CAMPBELL AVE

Committee of Adjustment Case File: 18 249470 STE 18 MV (A1008/18TEY)

TLAB Case File Number: 19 131064 S45 09 TLAB

Hearing date: Wednesday, August 14, 2019

DECISION DELIVERED BY Ian James Lord

APPEARANCES

NAME	ROLE	REPRESENTATIVE
WHITNEY MILLER	APPELLANT	
CHRISTINA OTT	OWNER/APPLICANT	

INTRODUCTION

This is an appeal from a decision of the Toronto and East York District Panel of the City of Toronto (City) Committee of Adjustment (COA) approving two variances to permit the extension of an existing dwelling at 129 Campbell Avenue (Subject property) by a two storey rear addition.

The subject property is the north portion of an existing semi-detached dwelling type. The Applicant sought and received two variances set out in **Attachment A** hereto. The first is in respect of the floor space index increase; the second relates to a side yard stair encroachment.

Both the Applicant and Appellant attended the Hearing of the appeal. There were no other persons in attendance. No qualified land use planning opinion advice was made available for the consideration of the matter on appeal, by either party.

BACKGROUND

The Hearing was convened on the basis that the Parties had had discussions on multiple occasions but had been unable to resolve their differences. While there might have been a benefit to insert a third party neutral advisor, having visited the subject property and read the materials I accepted the canvass that there was no basis, agreement or compelling need to require mandatory non-binding mediation under the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB).

The Hearing proceeded on the representations of the Parties. These representations were on the basis of lay citizen appreciation of the issues, the statutory tests and relevant considerations and impressions of neighbourhood character. It was clear that neither Party had any intimate familiarity with the TLAB Rules, let alone the comprehensive language of provincial and local planning policy documents.

Both addressed perceptions as to scale, streetscape/rear yard characteristics and impact. Ms. Ott addressed the issue of desirability. No measures (beyond a 22% percentage statistic of the increment of variance 1, in **Attachment A**, were presented. There was nothing by way of the traditional approach to a study area analysis, statistical or descriptive assessment, or any compilation of COA activity or circumstances normally attendant an Application or an Appeal.

Both Parties, to a degree, sought to introduce exhibits not prefiled in accordance with the Rules. Additional site and area photographs were not allowed, having been taken as recently as the day of the Hearing.

In the result, the TLAB was left to proceed largely on the basis of the representations of the Parties, the file record before the COA, the site visit, the posted filings of the Parties, including communications between them, and the disposition by the COA.

No information was supplied as to the Official Plan designation, the status of OPA 320, specific policies of the Official Plan, the zone category or even the original Examiners Notice giving rise to the variances in **Attachment A**. Ms. Ott stated that she had produced sun/shadow studies for the COA but none were produced and none were available on the COA file forwarded to the TLAB. Whether they were a part of the discussions held by the Parties is not tangibly produced of the record. There was no information on existing lot and building lot statistics for the subject property referenced in the evidence; there was, however, a survey plan and elevation drawings of the proposed addition showing site statistics, said to have been used by the Plans Examiner in the determination of needed variances. That specificity, including the verbal evidence of Ms. Ott as to the 'forensic' trail or variance identification and disposition presented a clear enough picture to proceed to consideration.

MATTERS IN ISSUE

Of the two variances sought, the Appellants submissions focused on Variance 1, a "22%" increase sought in the floor space index for the subject property. No reasons for a concern was expressed in respect of Variance 2, the rear basement walkout stairs - independent of the issues of 'height, massing, scale and predominant building type' used globally to describe the objection to the floor space index represented by the addition, and its consequential effect.

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

Ms. Ott reviewed, in brief submissions that she had lived in the subject property since 2008. It is her desire to renovate a 'very small' house, including potential provision for her parents but, in any event, to provide additional living space and an attractive dwelling of a size capable of accommodating a small family. She advised she had plans prepared and examined with the **Attachment A** variances identified and applied to the COA. She described a period of discussion and email exchanges before, during and after the COA approval decision and expressed some surprise at the appeal in the light thereof, and prior correspondence from the Appellant requesting agreeable conditions related to proposed balconies.

She described the site plan of the proposed addition as minor noting it to have "the same footprint as many in the neighbourhood". She referenced an Ontario Municipal Board Decision respecting 97 Campbell Avenue, wherein a floor space index of .97x the lot area was apparently approved on appeal. This Decision was not

produced or disclosed and its admissibility as well as that of photographs apparently taken that morning, was objected to by the Appellant, Ms. Miller.

Ms. Ott noted that there was only one objection, the Appellant, but there were other letters of support, notably the owner of 127 Campbell Avenue, the other half of the semi-detached dwelling. That owner had expressed the desirability of a similar expansion, as proposed, of his unit.

Ms. Miller provided a more prepared and extensive articulation of her appeal, as set out in her Witness Statement admitted as Exhibit 1 to the Hearing.

As indicated, her principle objections centered on the Official Plan criteria for assessment of the "height, massing, scale and the predominant dwelling type of nearby properties". The source of the Official Plan criteria was left unstated; however, it is recognized by this Member that the City Official Plan does state criteria, in section 4.1.5, for the general evaluation of applications within the 'Neighbourhoods' designation.

It is assumed but not proven that the subject property lies within the 'Neighbourhoods' designation.

Ms. Miller noted the proximity between her semi-detached residence to the immediate north of the subject property, distant approximately three (3) feet. She described her dwelling as having been destroyed by fire in 2003 and rebuilt to its current dimension, in 2004-5. Her neighbour's property, to the north at 133 Campbell Avenue, had also been destroyed by fire. It too had been replaced by the December 2005 period. Both units extend significantly beyond the most easterly limit of the shed like extension on the subject property.

She described, with reference to filed photos, how sunlight enters her east and south-east facing windows, kitchen, dining room and upstairs guest bedroom.

She said her construction and that at 131 Campbell Avenue had proceeded without variances but was unable to confirm the floor space index applicable under zoning in place in 2004-5, or today.

Ms. Miller testified that of 24 properties she observed on Campbell Avenue, none were of the scale proposed by the subject extension as measured in depth, height and width: all extensions are "shorter, narrower, less deep".

She noted her own neighbours' property did not extend the width of the 15 foot lot on the north side, thereby allowing light to penetrate.

In addressing the test of 'minor; she opined that a 22% increase was not minor when accompanied by the 'impacts' defined as loss of interior and yard direct sunlight, loss of views from existing windows and a detrimental loss of greenspace and drainage absorption area: A "life sentence for her house".

She was not aware as to how much, if any, of that 22% is represented by the existing improvements on the subject property, either in footprint or floor space index.

From her photographs it is clear that the existing shed addition to 129 Campbell Avenue extends well past the east limit of her dining room.

She asked that the TLAB consider that impact, accentuated by balconies and a concrete walkout serving to further erode and compromise greenspace and which augment massing.

Ms. Miller expressed concern that the Applicants Plan had misled the COA into thinking that the extension was 'flush' with her own homes extension, when it clearly is now seen to extend beyond that and to be at an easterly extent commensurate with 131 Campbell Avenue, her neighbour.

She was frank to acknowledge that the Application did not require any variance permission for height, landscaped open space, or rear yard setback and that the 'prevailing building type' was not being changed or eroded.

She noted that given the stated intent in correspondence of the owner of 127 Campbell Avenue, there was a concern that a 'precedent' would be set, inconsistent with the Official Plan to maintain the stability of the area.

Ms. Miller felt that varying the zoning standards was not in keeping with the intent and purpose of the by-law as there were no construction concerns, environmental or other reasons mitigating in favour of changed standards.

She asked for costs in the amount of \$700 to be awarded in her favour on her appeal based on the site plan error necessitating her defense of her property, independent as to whether that error occurred maliciously, through negligence or a simple failure to correct the evidence in a timely manner.

In questions and reply, Ms. Ott alluded to the existence of sun/shadow plans and submitted any expansion of her dwelling over the existing rear shed-like structure would have a similar incidence; namely that the four windows described will always be affected but not have light precluded. She suggested drainage had never been an issue from any source and no zoning relief was sought. She described her efforts to offer for acceptance design elements to the balconies by opaque 'screened' panels. She acknowledged her error in transposing an original survey limit of original housing onto her plans, creating an appearance of inaccuracy as to which easterly limit of 131 and 133 Campbell Avenue, was being depicted.

She was adamant that her own actual on-site survey plans and elevations that were before the COA and the Plans Examiner are identical to the plans before the TLAB. Namely, that the renderings were presented and the "totality of construction has not changed". Further, that these plans were supplied to the Appellant and, had they been 'opened', they clearly delineate building length, height and elevation measurements.

The error was in her drawing of the east limit of 133 being misrepresentative as to the east limit of 129 Campbell Avenue. She said she had promptly acknowledged that

error derived from an earlier survey pre-reconstruction and her transposition, but albeit apparently not before the COA.

She described the reality of the neighbourhood as being very small lots and houses undergoing extensive renovations with neighbours living in close proximity. She wished to emulate that while noting that renovation allows more space for people and that families and renewed housing will benefit the City.

ANAYSIS, FINDINGS AND REASONS

The obligation on a Party is set out clearly in the Rules applicable to the TLAB. The Applicant carries an onus, in a *de novo* Hearing, to present the best case available in support of variance relief, and to do so by addressing the statutory and policy tests applicable and as above recited.

By the same token, an Appellant must, to a satisfactory level, address the same considerations and show cause why the relief sought meets the standard necessary to demonstrate non-conformity, undesirability in the public interest or undue adverse impact of the degree necessary to warrant the relief sought, in this case of a dismissal.

These parties offered what they could without professional assistance; I find a sufficiency in the totality of the evidence.

It is not for the TLAB to decline jurisdiction or make for additional litigation simply because one case might demonstrate a significant difference in evidentiary standards from another. Council's establishment of the TLAB, presumably, is to exercise its principal purpose of decision making as best as its Members are able, based on the Member's application of generally accepted planning principles in the best interests of advancing good community planning.

It is from this perspective that the issue in this appeal is addressed; not to dwell on the absence of evidence, but to determine if the Application or Appeal holds sufficient merit to be determinative, and decide accordingly.

The Official Plan, and OPA 320, establish criteria of relevance to evaluate variance applications in the interests of respecting and reinforcing the existing character of the 'Neighbourhood'.

Of those criteria, 'height, massing and scale' and predominant building type are some of the applicable criteria. No others were asserted contrary to the Application for variance relief. The COA found all applicable tests had been met; the TLAB is to have regard for the COA decision, in its consideration.

There was no disagreement on the description of the neighbourhood; namely, that it consists of small lots, small houses, many with rear one and two storey extensions, some levels with second stories and a presence of many lots undergoing significant renovations and upgrades. Indeed, the entire street to the east, both sides,

consists of new housing on a type and character proposed by the Applicant, albeit with design attributes characteristic of a comprehensive contemporary renewal project.

I therefore find that there is no dispute to the Applicants overall plan to upgrade and extend her residence to be a contributory and desirable addition to the housing stock and resources of the City, in full consistency and conformity with the Provincial Policy Statements, the Growth Plan and the general policies of the City Official Plan, as amended.

The Appellant acknowledged on inquiry that there is no height, building length, building depth, building type, rear yard or landscaped open space variance sought. As such, these measures are in full conformity with the Official Plan and the zoning By-law, 569-2013.

Quite properly, the Appellant challenges the issues of 'massing and scale' and asserts (negative) impact on light, views and rear yard amenity space from the floor space index variance sought.

There is no expert evidence to assess these assertions, beyond the practical reality evidence asserted by Ms. Miller. I have looked carefully at the photographs she has provided, her evidence and witness statement and I have looked carefully at the spacing of dwellings both in plan view and on the ground.

I accept that there will be an impact, adverse potentially, to the existing condition. On views, I note that the existing shed extension on the subject property is clearly visible from the ground floor windows, as would be any extension. I was referred to no Official Plan policy that speaks to the preservation of sunlight within the private realm of adjacent buildings or the preservation of view planes, in similar circumstances. I know of no such policies but readily acknowledge the Appellant's concerns are for adverse interference with amenities so described, by the neighbours proposed construction.

I agree with the Appellant that zoning by-laws are designed, in part, to avoid the adjacency of incompatible, offensive or the inappropriate juxtaposition of uses.

Across the City, buildings in close proximity experience impacts and interference with access to light, air circulation, views and privacy as a common attributes resulting from development in City living. I accept from Ms. Ott her expression and description of the reality of this neighbourhood, on these aspects.

I was not afforded any assessment of floor space index approvals in any defined study area; however, both witnesses acknowledged the presence of existing and new two storey rear additions on Campbell Avenue. Indeed, the Appellants own property is an example, albeit of a somewhat unique design.

I cannot accept the assertion that this proposal is distinguishable by virtue of the general statement that of the existing two storey extensions, none are seen as being as 'tall, wide or long' as the Application. Apart from issues of height and length not being joined in any variance under appeal, vague assertions, whether in justification or

dispute, are not helpful. The presence of such extensions, indeed as demonstrated by both neighbours to the north of the subject property, including that of the Appellant, attest to the merit and benefit seen of this additional space in the circumstance of these near identical land parcels and somewhat small dwelling units.

The presence of rear extensions is a component of the existing character of the neighbourhood. Floor space index alone is not a measure of massing or scale; what is significant is its deployment on the lot. In this case, that deployment on a narrow lot respects the zoning performance standards of height, depth, length, width (excepting a stairs allowance) and rear yard setback. These measures influence massing and are met by the Application.

From these considerations, I cannot conclude that the proposal constitutes an excess creating of itself an undue adverse impact, being the commonly acceptable test for interference or disallowance.

The issue of precedent is always a concern as planning needs to keep a wary eye on the future implications of action and reaction. The neighbour to the Applicant, at 127 Campbell has expressed an interest in a similar expansion of the south semidetached unit. Such an application stands to be evaluated on its own merit. But what is conspicuously absent in this case is the presence of any professional assessment of the apprehension of precedent or any consideration at all expressed on the matter by City Planning Staff, or Engineering Services Staff, who appear to have offered no concerns on the Application.

Mere apprehensions, in the absence of any tangible or professionally assessed evidence of an injurious precedent, are insufficient to overcome even the minimal public interest in upgrading and renovating the housing stock of the City. This Application does advance that latter goal.

All of that said, I am cognizant of the misapprehension occasioned by the Applicants interpretation of survey documents. At a minimum, if is offensive for a lay citizen to interpret or alter survey information and permit it to be seen in any public setting, let alone before a decision making body. It is not in the public interest to permit or condone actions that may have the effect of diverting public perception or take it in a direction that the truth and accuracy would not support.

In this case, I have examined the principle documentation and the overarching representation that the proposed addition extends no further to the east than 'Mikes ' residence, referable possibly to a building in close adjacency to 129 Campbell Avenue. The fact that this easterly limit was correctly perceived by the Appellant to be adjacent 131 Campbell Avenue is unfortunate, supported by the survey alteration but entirely inconsistent with the subject property site plan and elevations information, all available at the same time.

I am not persuaded that there was a deliberate misrepresentation or an intention to mislead, a condition acknowledged by the Appellant; indeed, there are simply too many characters in this soup to spell out anything like deliberate mischief.

Ms. Miller makes a compelling case that it is her property that stands to be the immediate recipient of impacts perceived as injurious. I put no weight on the Applicants assertion that together their houses present potential improvements in value to the neighbourhood and "a rising tide lifts all ships". While that may be a truism, it has no place in long term land use decisions as between adjacent properties. Value added is not a measure of zoning that warrants quantification and comparative weighting.

I find, however, that there is nothing intrinsically wrong in either variance sought in **Appendix A** that warrants allowing the appeal and preventing the form of improvements proposed.

As well, I find that the Application encompasses plans not only for a building extension at a height not found in any comparable to which I was directed, but also an incremental advancement to massing in decks, rear yard platforms, stairs and patio structures. This degree of intensification was not supported by analysis or example. Ms. Miller was properly concerned by the cumulative encroachment and effect of these features on all aspects of light, view, privacy, overlook, sun penetration.

I have found in favour of the Applicant on the variances; however, I am not satisfied due consideration has been given the neighbour to the north on all of these aspects. The north elevation clerestory window proposed for the subject property goes some way to preserving privacy of Ms. Miller's kitchen and dining room; however, in my view windows in that location should be opaque and fixed.

In like manor, I have concerns about the proposed decks. I find the second storey balcony intrusive and overbearing, capable of diminishing the quantity and quality of enjoyment of the Appellants property, including its rear yard. The properties are narrow and overlook is a practical reality. Opaque screening was proposed; however, given the proximity of the Appellant's rear access/entrance route, the Appellants house design with south and east facing windows, and amenity spaces, I find that the Applicants willingness to adopt efforts at mitigation should be encouraged. A second storey balcony or indeed a roof platform is not appropriate in this environment of proximity where there is the potential for conflict, real or imagined.

I agree with the Appellant that a sensitivity to the delivery of the increase in the floor space index warrants attention be given to its design and distribution. Where the proposal intersects with an adjacent stepped built form design as in place for 131 Campbell Avenue, a conscious effort to mitigate impact is warranted.

I find the second floor balcony and any roof balcony (not proposed) is inappropriate in the circumstance. A condition will run prohibiting such construction or presence. It may be appropriate for the Applicant to consider a rear east main wall second storey bay window, provided it does not project below the second floor level. The site plan and elevations are to be amended accordingly, as required.

I further accept the Applicants undertaking to place an opaque railing on the first floor deck at least 1.5 m high for any portion along or parallel the north lot line of the subject property. With these minor adjustments to the Application, it is hoped an appropriate long term solution results.

The Appellant sought an Order for costs both in her filings and submissions. As explained at the Hearing, cost considerations are subject to the TLAB Rules on timing, format and consideration. That request will not be addressed in these reasons other than to comment that costs as administered by the TLAB are not designed as punishment but rather turn on conduct that lacks a reasonable foundation.

DECISION AND ORDER

The appeal is allowed, in part, and the variances approved by the COA and found in **Attachment A** are approved, subject to the following conditions:

- 1. Construction may only proceed substantially in accord with the site plan and elevations attached as **Attachment B** hereto, modified by the following additional conditions:
 - a. The east main wall second storey deck (and any future roof deck) shall be prohibited and deleted; a bay window may be constructed as a design element to the east main wall second storey provided it does not extend below the second floor level or encompass greater than 25 percent of the east main wall second storey building face.
 - b. The clerestory and north wall windows encompassed by the addition proposed on the site plan and elevations in **Attachment B** shall be of fixed construction and opaque;
 - c. The first floor level deck railing on its north limit shall be at least 1.5 m in height and of opaque construction.
 - d. The affected plans by the foregoing and found in **Attachment B** appear to be A102B (second floor plan); A201 (back elevation) and A202B (north elevation). These are modified accordingly and as so modified, are approved.
- 2. Any additional variances required by the plans and elevations as found in **Attachment B** are expressly not approved.

If there are difficulties experienced in the implementation of this Decision and Order, the TLAB may be spoken to on notice to the other Party.

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

ATTACHMENT A

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

1. Chapter 10.10.40.40.(2), By-law 569-2013

Additions to the rear of a semi-detached erected before October 15, 1953 are permitted provided the residential floor space index of the building, as enlarged, does not exceed 0.69 times the area of the lot (102.60 m²).

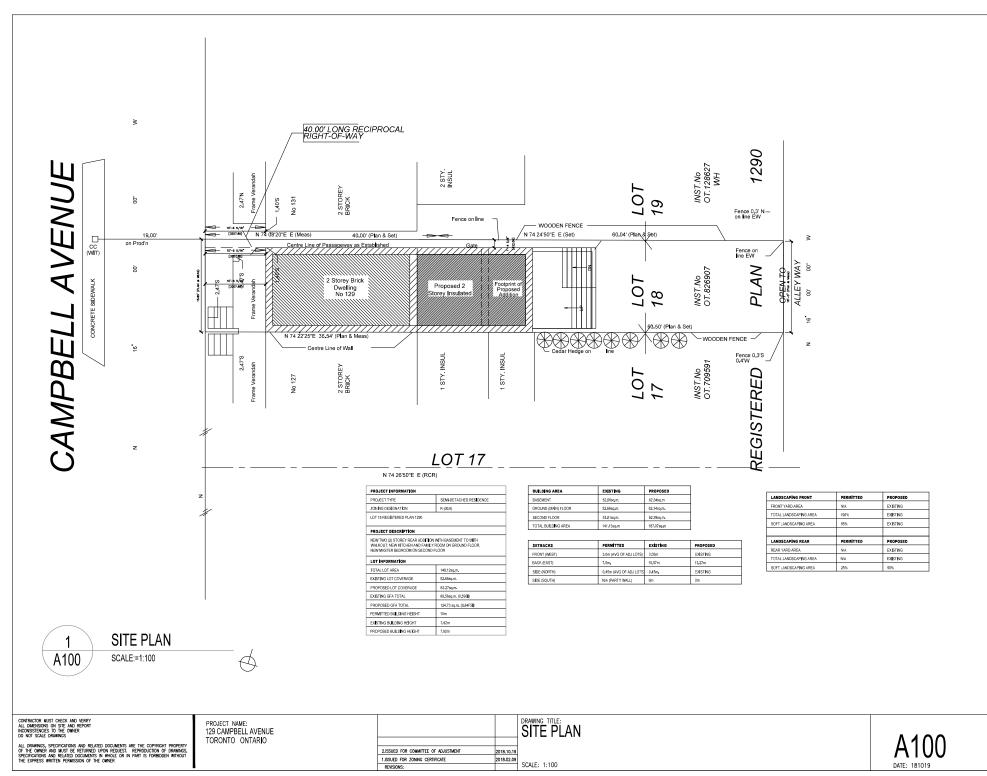
The semi-detached will have a floor space index equal to 0.84 times the area of the lot (124.73 m^2) .

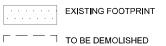
2. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013

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 rear basement walkout stairs will be located 0.41 m from the north lot line.

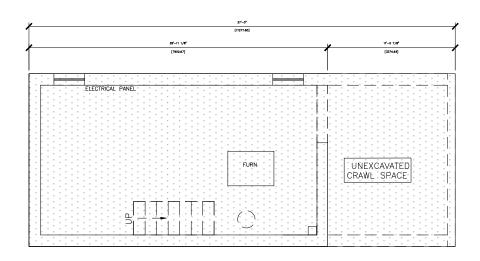
ATTACHMENT B





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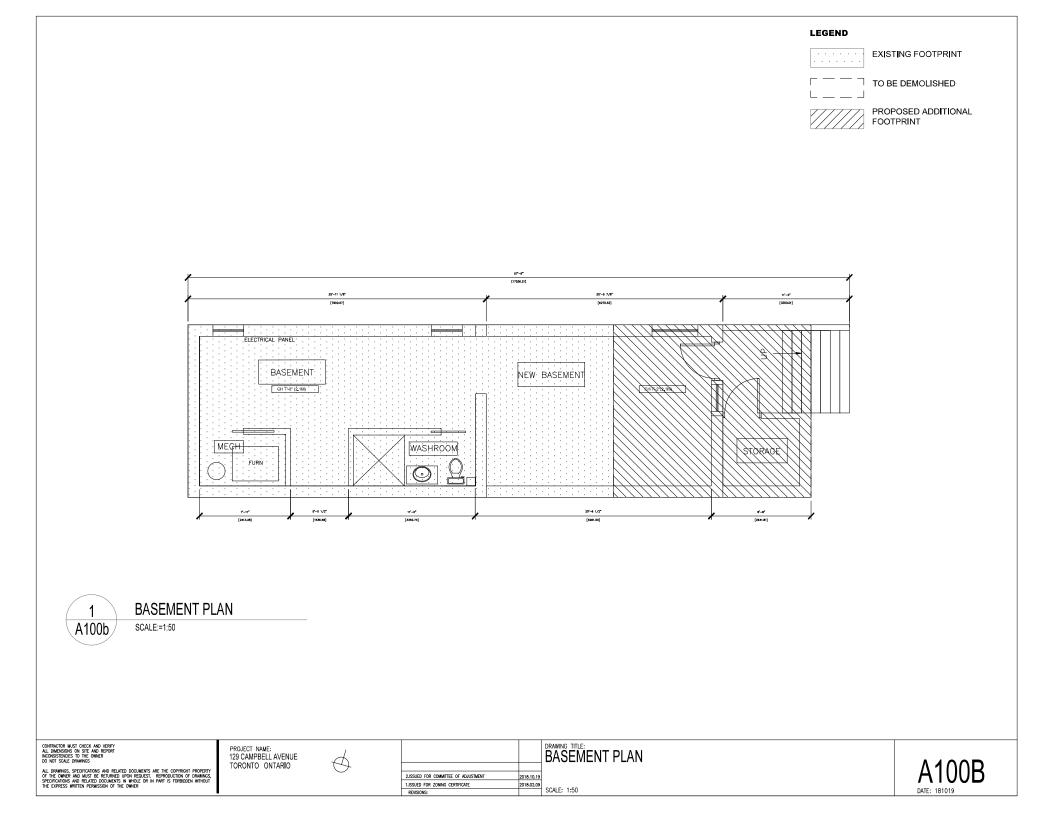
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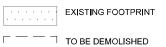
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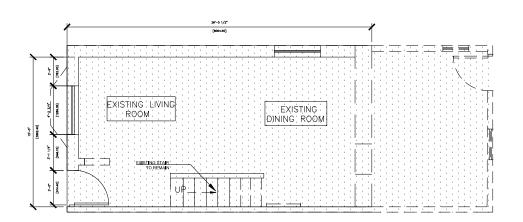
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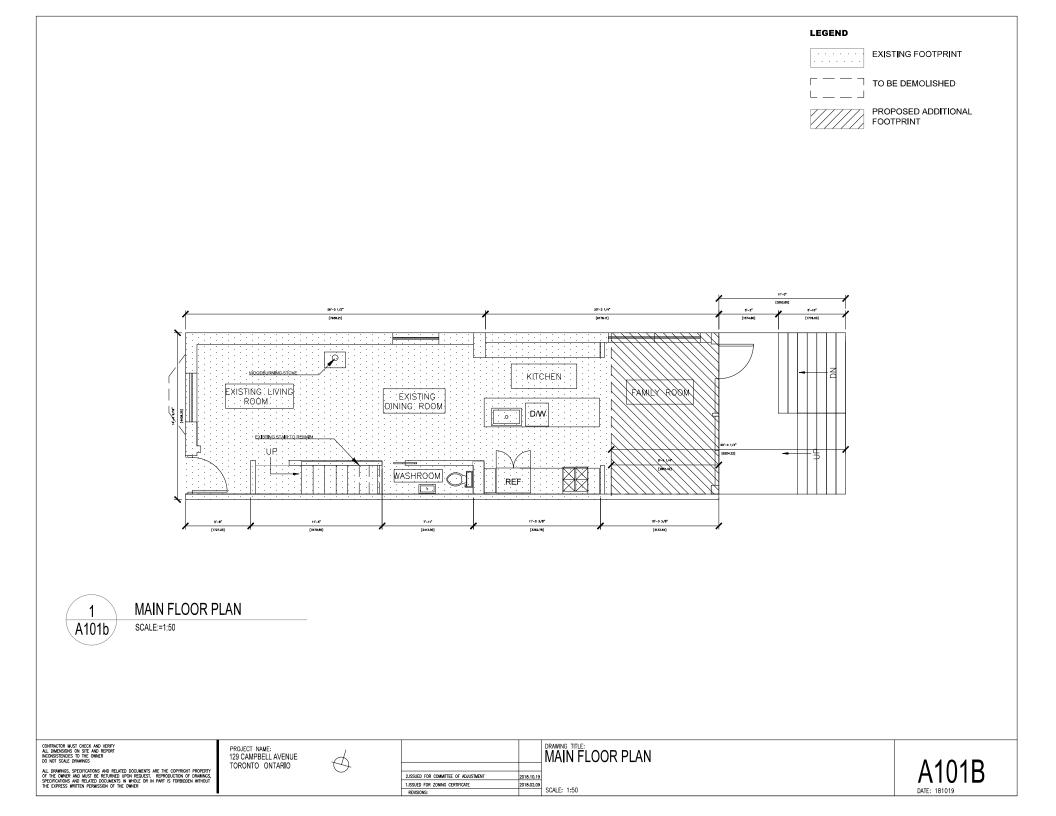
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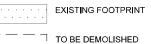
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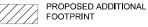
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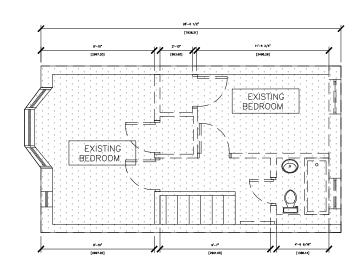
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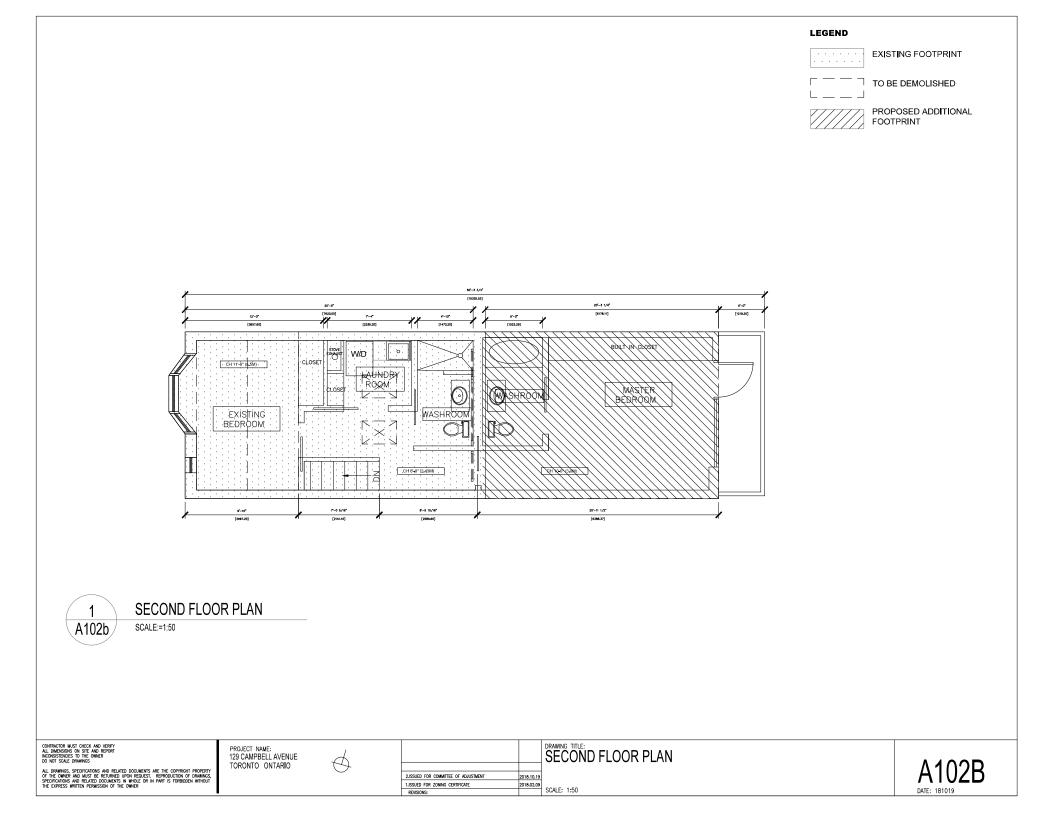
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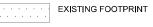
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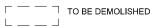
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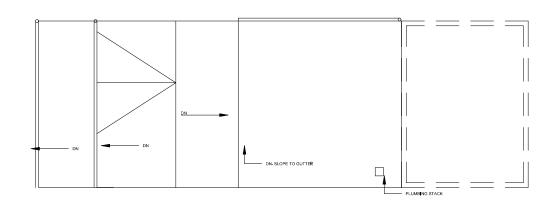








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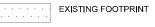
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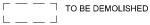
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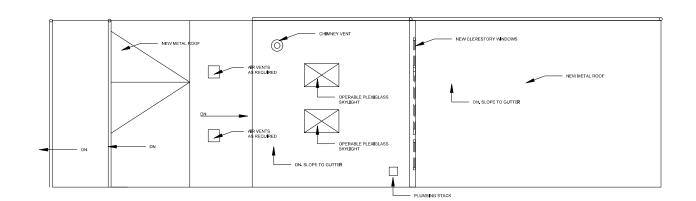








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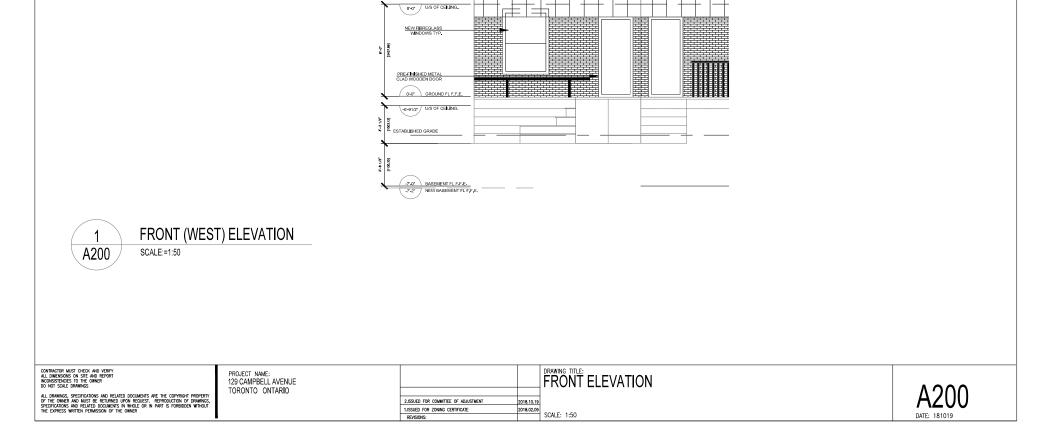
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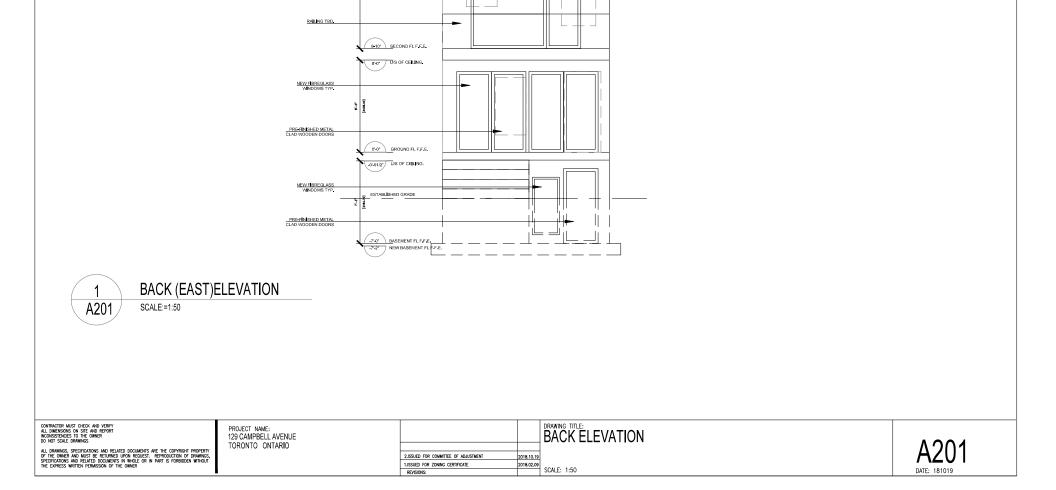
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