

DECISION AND ORDER

Decision Issue Date Tuesday, September 03, 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): JING CHAO LIU

Applicant: BATTAGLIA ARCHITECT INC

Property Address/Description: 195 WOODSWORTH RD

Committee of Adjustment Case File: 19 109180 NNY 15 MV

TLAB Case File Number: 19 137877 S45 15 TLAB

Hearing date: Wednesday, August 21, 2019

DECISION DELIVERED BY GILLIAN BURTON

APPEARANCES

| Name | Role | Representative |
|--------------------------|---------------------------|----------------|
| Battaglia Architect Inc. | Applicant | |
| Tian Lin | Participant/Primary Owner | |
| Jing Chao Liu | Appellant | |
| Qiang Kang | Participant | |

INTRODUCTION AND BACKGROUND

This was an appeal by Mr. Liu, the neighbour at 193 Woodsworth Road to the west of the subject property, from a decision of the Committee of Adjustment (COA) on March 21, 2019 that allowed two variances, for reductions to the side yard and front yard setbacks.

The application is to construct a one-storey addition over part of the existing dwelling, consisting of two bedrooms and bathrooms, using the existing walls next to the Liu

property. The side yard setback for the new portion is therefore the existing setback. Under By-law No. 569-2013 (the only one applying here) the property is zoned RD(x5). The property is on the south side of Woodsworth, southwest of Leslie Street and Highway 401.

MATTERS IN ISSUE

The principal issue expressed by the appellant, Mr. Liu, was the location and features of the proposed two bathroom windows across from his bedroom window. If altered as he proposed, he would not oppose the application.

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan (OP);
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area. Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

This appeal was entered into TLAB records as an appeal under subsection 45(2)(a)(i):

“45 (2) In addition to its powers under subsection (1), the committee, upon any such application,

(a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

(i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to

enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, ...”

The reason for this is that the Zoning Examiner in the Zoning Notice of February 14, 2019 had stated the following about the setback variances:

“While the existing is exempt, the proposed is required to comply with the required setback.”

This was stated only with respect to the front yard setback, but it appears that it applies to both requested variances. This means that variances for the setbacks would fall under subsection (2)(a)(i) above, since they are considered to be variances to a non-conforming use.

EVIDENCE

Mr. Battaglia, the owners’ architect, outlined the proposal to add a partial second storey to the existing western portion of the subject dwelling. It is a side split, and the addition would be over the lower west side, using the existing foundation wall. Both setbacks now required are the existing setbacks. He stressed that there would still be more than 4.12 feet to the side lot line, and that the appellant Mr. Liu had a setback of 6.09 feet on his side of the property line. The addition would result in two bedrooms and two contiguous baths in the centre of the new wall, with their windows directly opposite Mr. Liu’s bedroom window at 193 Woodsworth. The COA approved the application, with conditions for building in accordance with plans filed, and for opaque bathroom windows.

Anticipating Mr. Liu’s known objections, Mr. Battaglia stressed that there was no neighbourhood opposition to the application. Even Mr. Liu had said that he had no objections to the variances, only to the design with the proposed window positions. Mr. Battaglia also mentioned the requirement under the Ontario Building Code that bathrooms be vented, usually to the outside.

Prior to the hearing of the appeal, Mr. Battaglia filed a revised proposal and plan reducing the size of the windows in the two bathrooms on the second floor in the west elevation. They would be 3 feet or 36 inches in depth instead of the 5 feet proposed, and would therefore be higher on the wall. They would also be of permanent opaque glass. I accepted this alteration to the plans without requiring further notice, as permitted by subsection 45(18.1.1) of the Act, as I found it to be minor. I also found the subsequent revision, as outlined below, to be minor in nature, not requiring further notice as the appellant is the only interested party.

The owner Mr. Lin offered examples of similar windows facing each other in detached homes in the neighbourhood – at 53, 55 and 57 Hopperton around the corner (Exhibit 4). Pictured there is a small casement window, similar to the proposed.

The appellant Mr. Liu testified as to his objections. The neighbours have been friends for 15 years, but he has concerns about this proposal. He submitted a photograph taken from his bedroom window, with rectangles representing the proposed bathroom windows superimposed. He objected to their position in the middle of the side wall, as he feared that there would be two issues: lack of privacy, as occupants could see into his bedroom, and the nuisance of odours emanating from these bathrooms.

He stated it in this way in his submission:

“Our existing bedroom window is very big, and their two proposed washroom windows will be face to face with our existing bedroom window directly.
The two proposed windows look like two eyes to stare at our bedroom. This will make us very uncomfortable, and will affect our mental health.
c) The proposed addition to be constructed (west side) will block whole window of my bedroom, and block the sunlight to my bedroom.
Because of the variance to minimum required side yard setback, the proposed addition will be 55CM closer to my window and will block my window more.”

In his evidence he testified that the decreased distance would be 35 cm., or 31% less than the minimum required (1.25 m side yard setback rather than the by-law requirement of 1.8 m). He finds that this is not minor, and so does not meet the statutory tests. He also pointed to a reduction in sunlight, which now reaches his home until 11.30 a.m.

In the Chinese feng shui tradition, a bedroom facing a bathroom is not desirable. He therefore proposed a change to the design to place the two proposed bathrooms on the north and south sides of the addition instead. He views the size of the existing bathroom windows in both of their dwellings as adequate for the future.

Mr. Battaglia’s response was that there would then be only a brick wall facing Mr. Liu’s bedroom, and no difference in the sunlight. There would be over 3 metres between the two structures if built as planned. The windows would be designed as casements, opening only partially, and to the side. Since they would also be translucent, it would therefore be impossible to view Mr. Liu’s bedroom from the two bathrooms. Nor could any odours reach his property from the bathrooms, no matter the number of occupants or the timing of their use (much discussed in the hearing). It was not possible to switch the location of the bathrooms as Mr. Liu proposed, since such a redesign would lead to cutting the ceiling below in two places. It would also have to be resubmitted for all approvals, including planning approvals, a heat loss calculation, duct work, and so on. It would be far too costly, and too great a hardship at this stage.

In the end, Mr. Battaglia offered an alteration of 1 foot, 2 inches in the location of the two bathroom windows, placing them further to the front and rear walls. Mr. Liu would see more of the brick wall and less window as a result. Mr. Liu said that this did not make sense.

ANALYSIS, FINDINGS, REASONS

Mr. Liu had objections to the COA process and the decision, especially without reasons given. I explained the fact that the TLAB hearing is a completely new hearing of the application, so that procedures below were not part of this appeal.

This application is technically one for an extension of a non-conforming use, according to the Zoning Notice of February 14, 2019. As mentioned, the Notice had explained the requirement for a front yard setback variance as:

“10.5.40.70 Setbacks

(1) Front Yard Setback - Averaging

In the Residential Zone category, if a lot is:

(B) between two abutting lots in the Residential Zone category, each with a building fronting on the same street and those buildings are both, in whole or in part, 15.0 metres or less from the subject lot, the required minimum front yard setback is the average of the front yard setbacks of those buildings on the abutting lots.

The required front yard setback is 8.33m. The existing and proposed is 7.92m.

While the existing is exempt, the proposed is required to comply with the required setback.”

However, this technicality does not enter into the analysis of whether the variances meet the tests in subsection 45(1).

The owner Mr. Lin, as earlier stated, offered examples of similar windows facing each other in detached homes in the neighbourhood – at 53, 55 and 57 Hopperton, around the corner (Exhibit 4). There is an illustration there of a small casement window, opening to the rear. Mr. Liu disputed this, saying that detached homes in the area had windows on only one side. It is not necessary for me to decide this, as I must consider only the merits of the present application. If the small window shown in Mr. Lin’s picture were to be opaque, it would be virtually impossible to see out of it to interfere with the neighbour’s privacy. Thus I conclude that the proposed would not interfere with privacy as claimed. It is also clear that escaping odours, if any, would be almost impossible to perceive from the house next door, 10 feet away. There would be internal fans, as well as small, casement windows, one opening to the front and the other to the rear.

Mr. Liu gave me no direct evidence of his assertion that under feng shui, a bedroom should not face a bathroom. Be that as it may, I do not find it to be a contravention of cultural sensitivity to place bathroom windows, with opaque glass and a narrow, constrained view to the outside, at a distance of 10 feet from his bedroom. Any true view contravening his privacy would be virtually impossible.

Mr. Battaglia supplied a revised site plan and side elevation after the hearing, showing the two disputed windows of 36 inches (the portion opening would be only 32 inches, plus 2 inches of frame), and further apart, as he had offered (Exhibit 4). He stated that the further apart they were, the smaller the windows would appear in relation to the

neighbour's bedroom. The resulting rectangles in Mr. Liu's bedroom photo would be smaller, and higher since the bottom of the window would be higher.

The owners mentioned that their children's use of the two baths would be sporadic as they are not often present. The TLAB cannot create variances from the zoning requirements based on the present occupants, as these may change. It is often stated as the COA and TLAB cannot "people zone", but must base changes on sound planning principles alone.

It may be that the proposed addition will block more of the morning sunlight reaching the appellant's bedroom. However, he stated that he would not object to the structure proposed, as long as I find that the proposed distance between the two dwellings is acceptable. I do accept this. A variance from the required side yard setback of 1.8 m to 1.25 m, that is, where the existing wall now stands, does not appear either numerically large, or to have an adverse planning impact (even for the increased height of the two storeys). While extra costs involved in a change to existing plans is not a factor in assessing the merits of an application, I find that the alteration the appellant suggests would be a major one, unacceptable from a construction and time perspective, and not necessary from the planning perspective.

I find compliance with all applicable policies in provincial plans, and also that the application meets the tests in subsection 45(1) and (2)(a)(i) of the Act.

DECISION AND ORDER

The appeal is dismissed. The variances in Attachment 1 are approved, upon the following conditions:

1) The applicant is to provide permanent opaque screening (frosting) onto the second storey windows of the west elevation.

2) The proposal be developed substantially in accordance with the plans prepared by Joseph D. Battaglia, dated August 11, 2019, numbered A1, A2, A3, A5, A6, A7 and A9 in Attachment 2; and substituting (undated) "Proposed Second Storey Plan - revised as per TLAB meeting" and (undated) "Proposed Right Elevation (West Side) - revised as per TLAB meeting", filed August 21, 2019 as Exhibit 4. Any other variance(s) that may appear on these plans but are not listed in Attachment 1 are not authorized.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.20.40.70(3), Exception RD 5, By-law 569-2013

The minimum required side yard setback is 1.8m.

The proposed west side yard setback for the addition is 1.25m.

2. Chapter 10.5.40.70(1), By-law 569-2013

The minimum required front yard setback is 8.33m.

The existing and proposed front yard setback is 7.92m.

ATTACHMENT 2 - PLANS

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

EXHIBIT

File Number: 19 137877 S45 15
 Property Address: 195 Woodsworth Rd.
 Date Marked: August 21, 2019

(CITY OF NORTH YORK)

ROAD BY REGISTERED PLAN 5871)

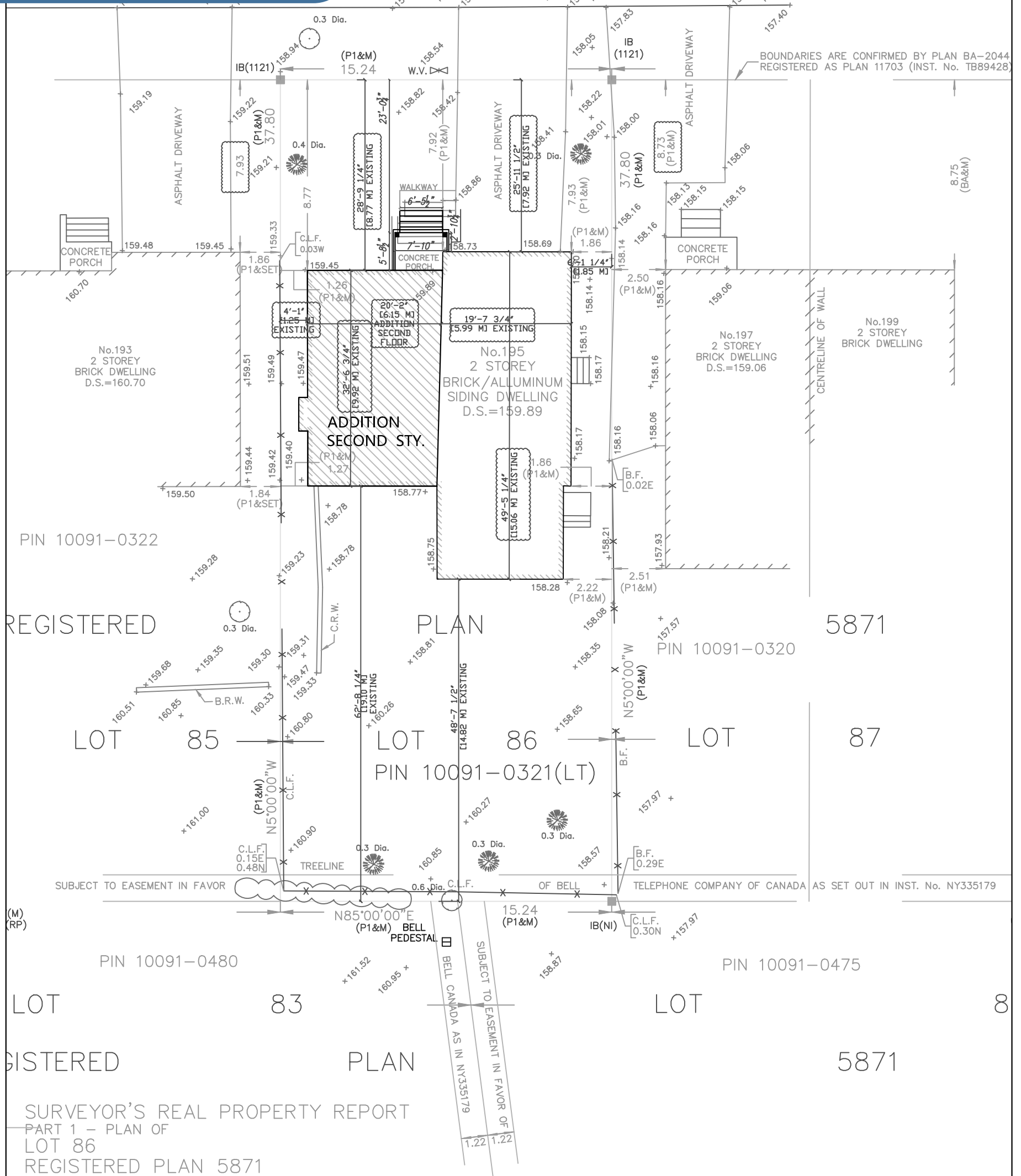
PIN 10091-0811

ROAD

CONCRETE CURB

CURB CUT

CONCRETE SIDEWALK SIGN



SITE STATISTICS

| | |
|--|--|
| LOT AREA: | 576.00 m ² (6200.00 sq.ft.) |
| FOOTPRINT (EXISTING) | 148.61 m ² (1599.64 sq.ft.) |
| COVERAGE: | 25.80% |
| FIRST FLOOR AREA: (EXISTING) | 148.61 m ² (1599.64 sq.ft.) |
| SECOND FLOOR AREA: (EXISTING) | 125.10 m ² (1346.57 sq.ft.) |
| THIRD FLOOR AREA (ADDITION): | 62.14 m ² (668.87 sq.ft.) |
| THIRD FLOOR AREA (INTERNAL ALTERATION) | 0.87 m ² (9.40 sq.ft.) |
| TOTAL AREA: | 335.85 m ² 3635.08 sq.ft. |
| FLOOR AREA TO LOT AREA RATIO: | 58.30% |

| FRONT YARD: | |
|------------------------------|---|
| TOTAL FRONT YARD AREA: | 126.99 m ² . (1366.99 sq.ft.) |
| DRIVEWAY AREA EXISTING | 39.13 m ² (421.15 sq.ft.) 30.81% |
| TOTAL LANDSCAPING AREA | 87.86 m ² (945.84 sq.ft.) 69.19% |
| PORCH, STEPS, SIDEWALK AREA: | 8.62 m ² (63.53 sq.ft.) 9.81% |
| TOTAL SOFT LANDSCAPING AREA | 79.24 m ² (212.51 sq.ft.) 90.19% |

| SET BACKS | | |
|-----------|----------|----------|
| | Existing | Proposed |
| NORTH | 7.92m | 7.92m |
| EAST | 1.85m | 1.85m |
| SOUTH | 14.82m | 14.82m |
| WEST | 1.26m | 1.26m |



| | |
|-------------|---------------|
| date | AUG. 11, 2018 |
| scale | 1/16"=1'-0" |
| Drawn By | JDB. |
| project no. | 1861 |
| drawing no. | A1 |

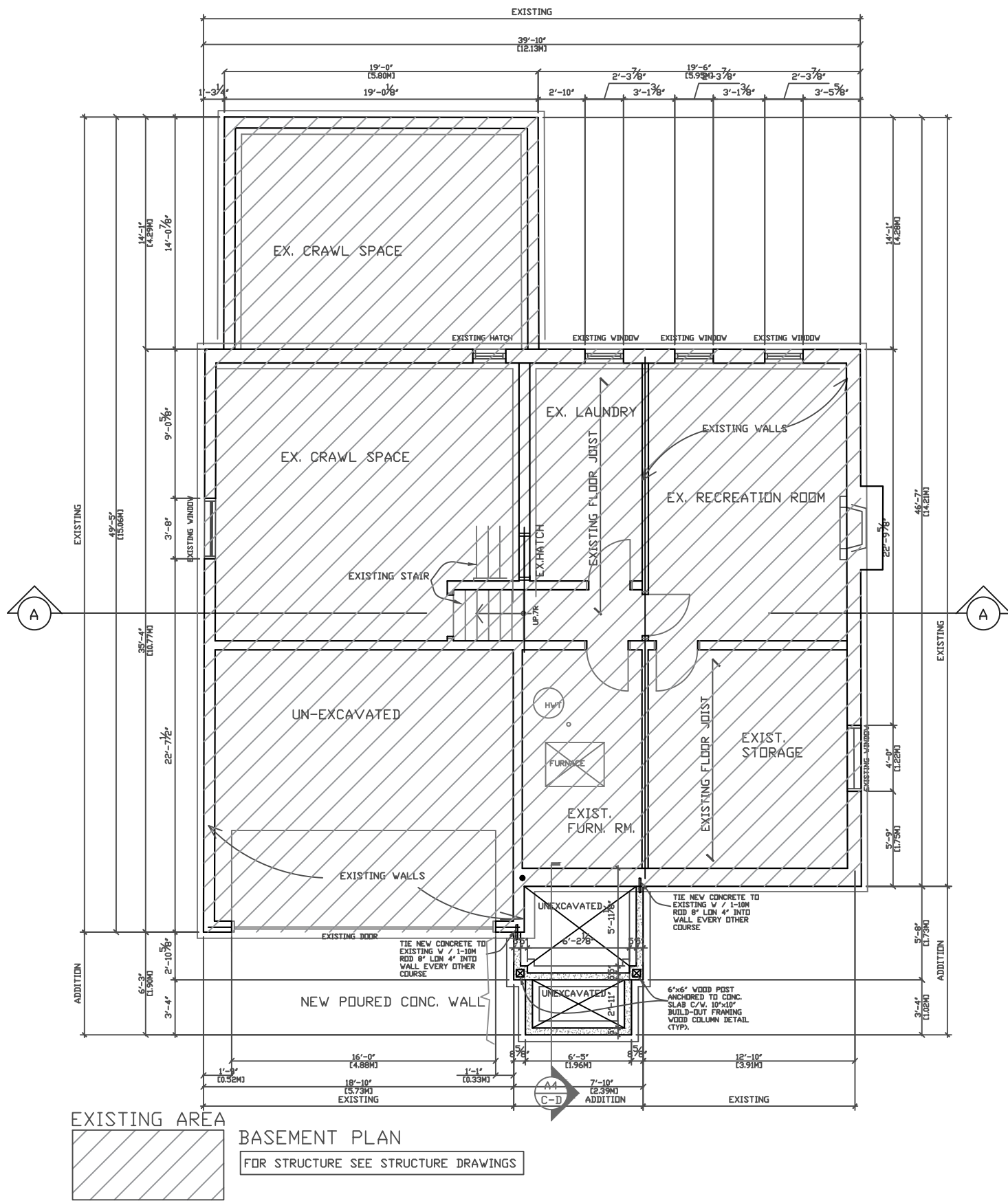
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The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings.

BATTAGLIA ARCHITECT INC.
 1050 McNICOLL AVE.,
 UNIT 14 SCARBOROUGH, ONT.
 TEL: (416) 492-7772

Project
ADDITION & ALTERATIONS TO 195 WOODSWORTH TORONTO ONT.

drawing
SITE PLAN



BASEMENT PLAN
FOR STRUCTURE SEE STRUCTURE DRAWINGS



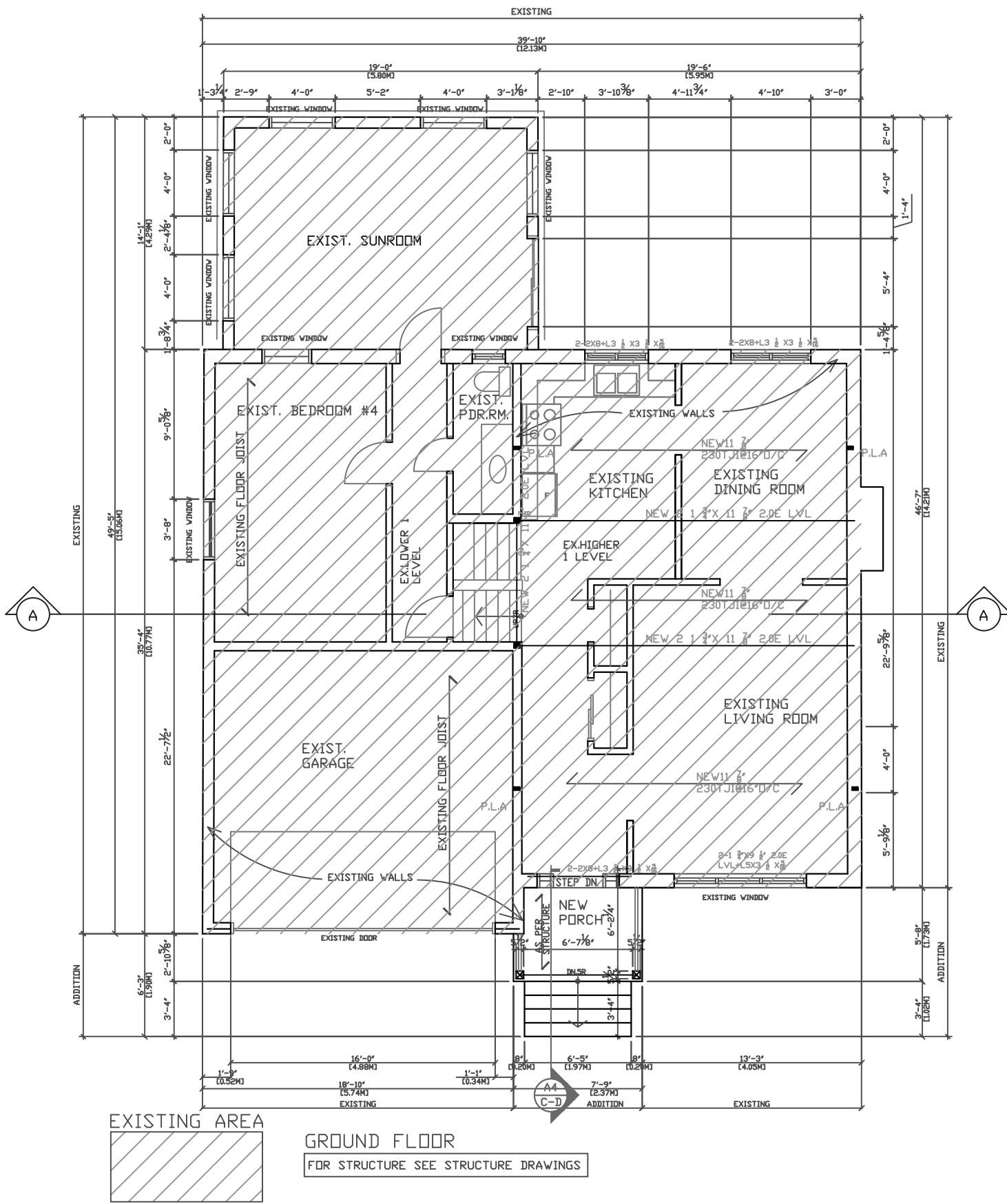
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| date | AUG. 11, 2018 |
| scale | 1/8"=1'-0" |
| Drawn By | JDB. |
| project no. | 1861 |
| drawing no. | A2 |

| NO. | ISSUE/REVISION | DATE |
|---|----------------|------|
| The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings. | | |

BATTAGLIA ARCHITECT INC.
1050 McNICOLL AVE.,
UNIT 14 SCARBOROUGH, ONT.
TEL: (416) 492-7772

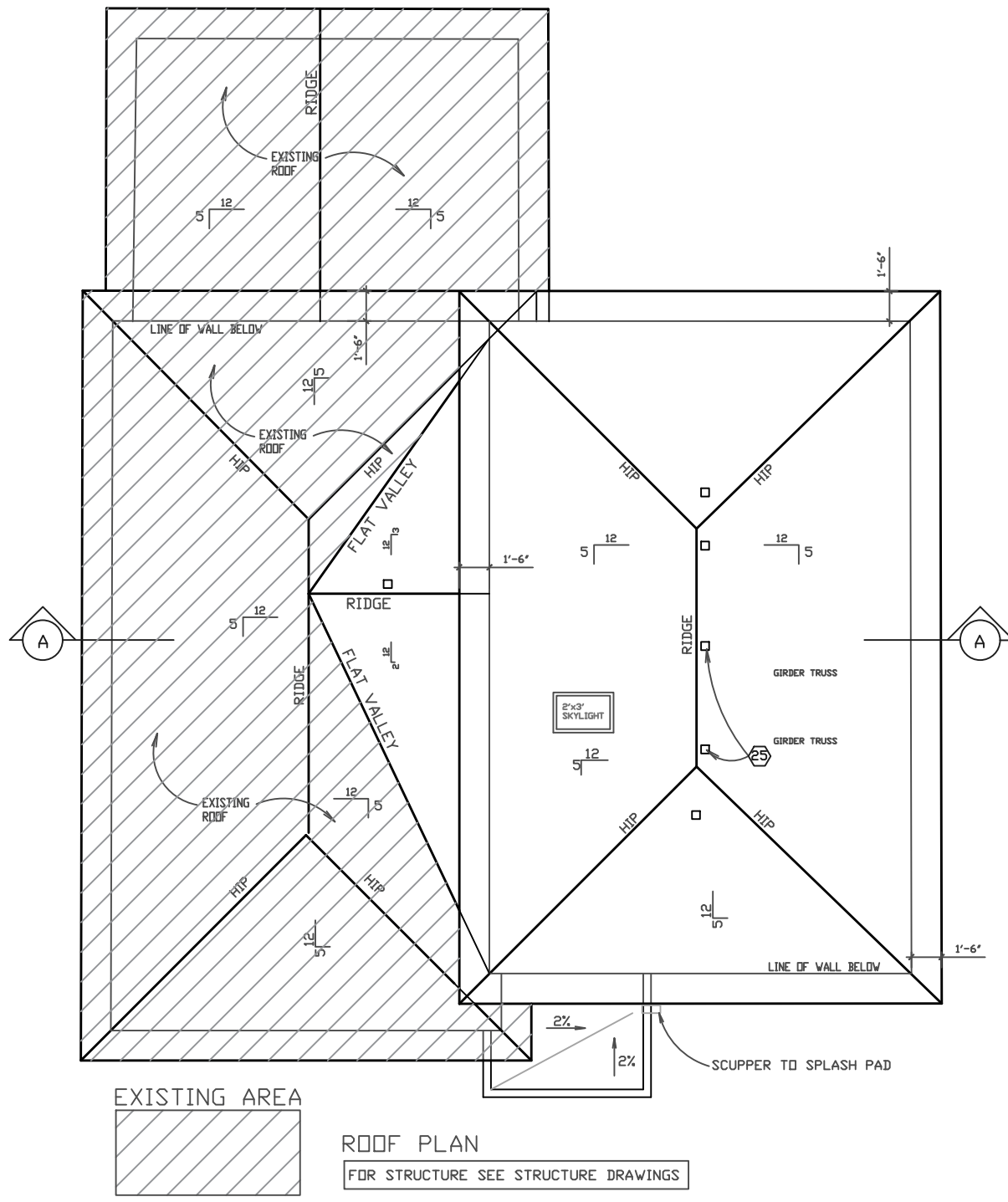
Project
ADDITION & ALTERATIONS
TO 195 WOODSWORTH
TORONTO ONT.

drawing
BASEMENT PLAN



| | |
|-------------|---------------|
| date | AUG. 11, 2018 |
| scale | 1/8"=1'-0" |
| Drawn By | JDB. |
| project no. | 1861 |
| drawing no. | A3 |

| | | | |
|---|------|--|-------------------------|
| BATTAGLIA ARCHITECT INC. 1050 McNICOLL AVE., UNIT 14 SCARBOROUGH, ONT. TEL: (416) 492-7772 | | Project ADDITION & ALTERATIONS TO 195 WOODSWORTH TORONTO ONT. | drawing GROUND FLOOR |
| NO. ISSUE/REVISION The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings. | DATE | | |



| | | |
|--|-------------|---------------|
| | date | AUG. 11, 2018 |
| | scale | 1/8"=1'-0" |
| | Drawn By | JDB. |
| | project no. | 1861 |
| | drawing no. | A5 |

| | | | |
|---|---|--|----------------------|
| BATTAGLIA ARCHITECT INC. 1050 McNicoll Ave., Unit 14 Scarborough, Ont. Tel: (416) 492-7772 | | Project ADDITION & ALTERATIONS TO 195 WOODSWORTH TORONTO ONT. | drawing ROOF PLAN |
| NO. ISSUE/REVISION DATE | The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings. | | |



PROPOSED FRONT ELEVATION (NORTH SIDE)
 FOR STRUCTURE SEE STRUCTURE DRAWINGS

| NO. | ISSUE/REVISION | DATE |
|--|----------------|------|
| | | |
| <small>The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings.</small> | | |

BATTAGLIA ARCHITECT INC.
 1050 McNICOLL AVE.,
 UNIT 14 SCARBOROUGH, ONT.
 TEL: (416) 492-7772

Project
 ADDITION & ALTERATIONS
 TO 195 WOODSWORTH
 TORONTO ONT.

drawing
 FRONT ELEVATION
 NORTH SIDE



| | |
|-------------|---------------|
| date | AUG. 11, 2018 |
| scale | 3/16"=1'-0" |
| Drawn By | JOB. |
| project no. | 1861 |
| drawing no. | A6 |



PROPOSED REAR ELEVATION (SOUTH SIDE)
 FOR STRUCTURE SEE STRUCTURE DRAWINGS

| NO. | ISSUE/REVISION | DATE |
|---|----------------|------|
| The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings. | | |

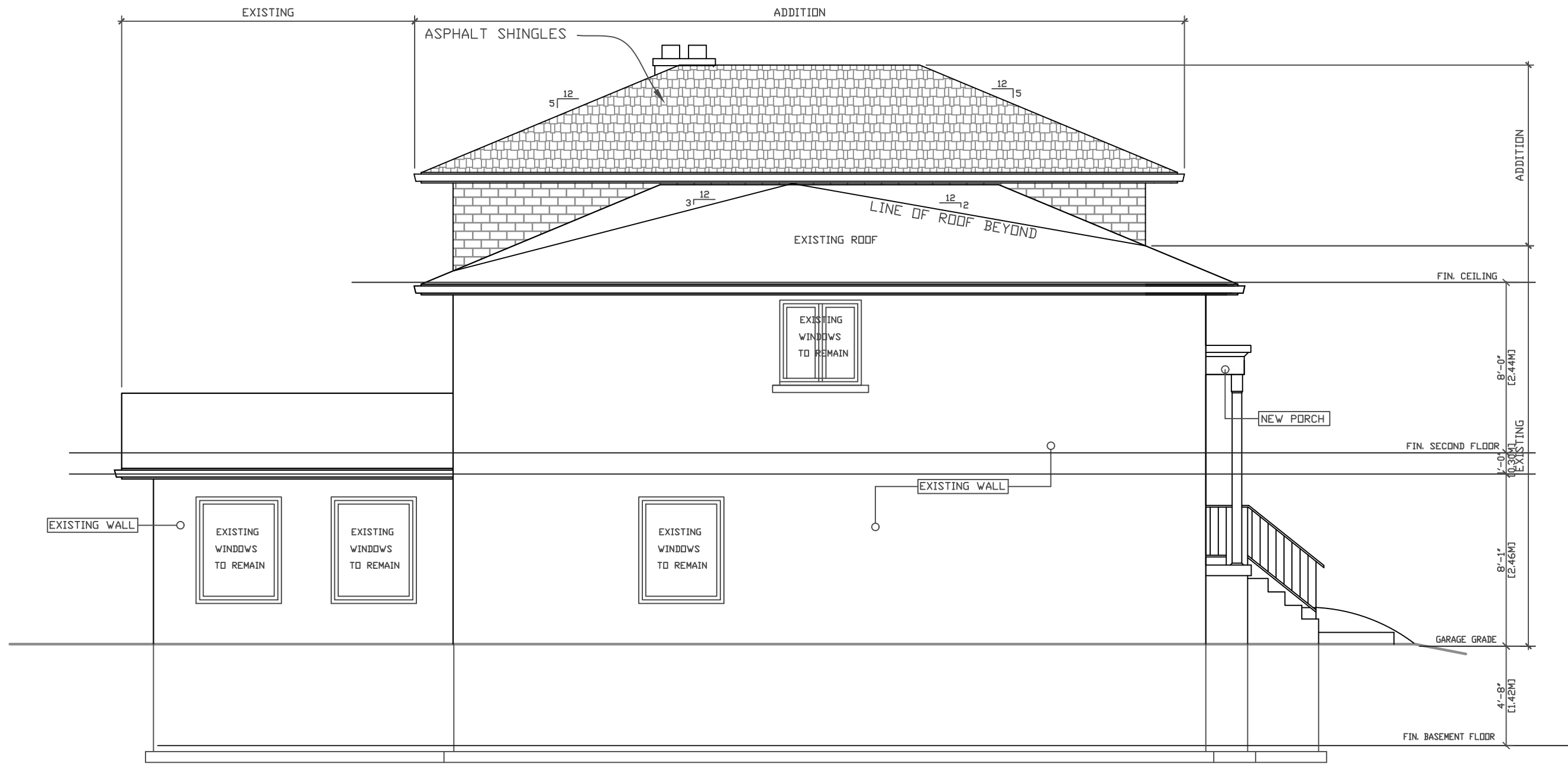
BATTAGLIA ARCHITECT INC.
 1050 McNICOLL AVE.,
 UNIT 14 SCARBOROUGH, ONT.
 TEL: (416) 492-7772

Project
 ADDITION & ALTERATIONS
 TO 195 WOODSWORTH
 TORONTO ONT.

drawing
 REAR ELEVATION
 SOUTH SIDE



| | |
|-------------|---------------|
| date | AUG. 11, 2018 |
| scale | 3/16"=1'-0" |
| Drawn By | JDB. |
| project no. | 1861 |
| drawing no. | A7 |



PROPOSED LEFT ELEVATION (EAST SIDE)
 FOR STRUCTURE SEE STRUCTURE DRAWINGS

| NO. | ISSUE/REVISION | DATE |
|--|----------------|------|
| | | |
| <small>The contractor shall check and verify all dimensions and report all errors and omissions to the Architect before proceeding with the work. This drawing is the property of the Architect and must be returned on completion of the work. Do not scale drawings.</small> | | |

BATTAGLIA ARCHITECT INC.
 1050 McNicoll Ave.,
 Unit 14 Scarborough, Ont.
 Tel: (416) 492-7772

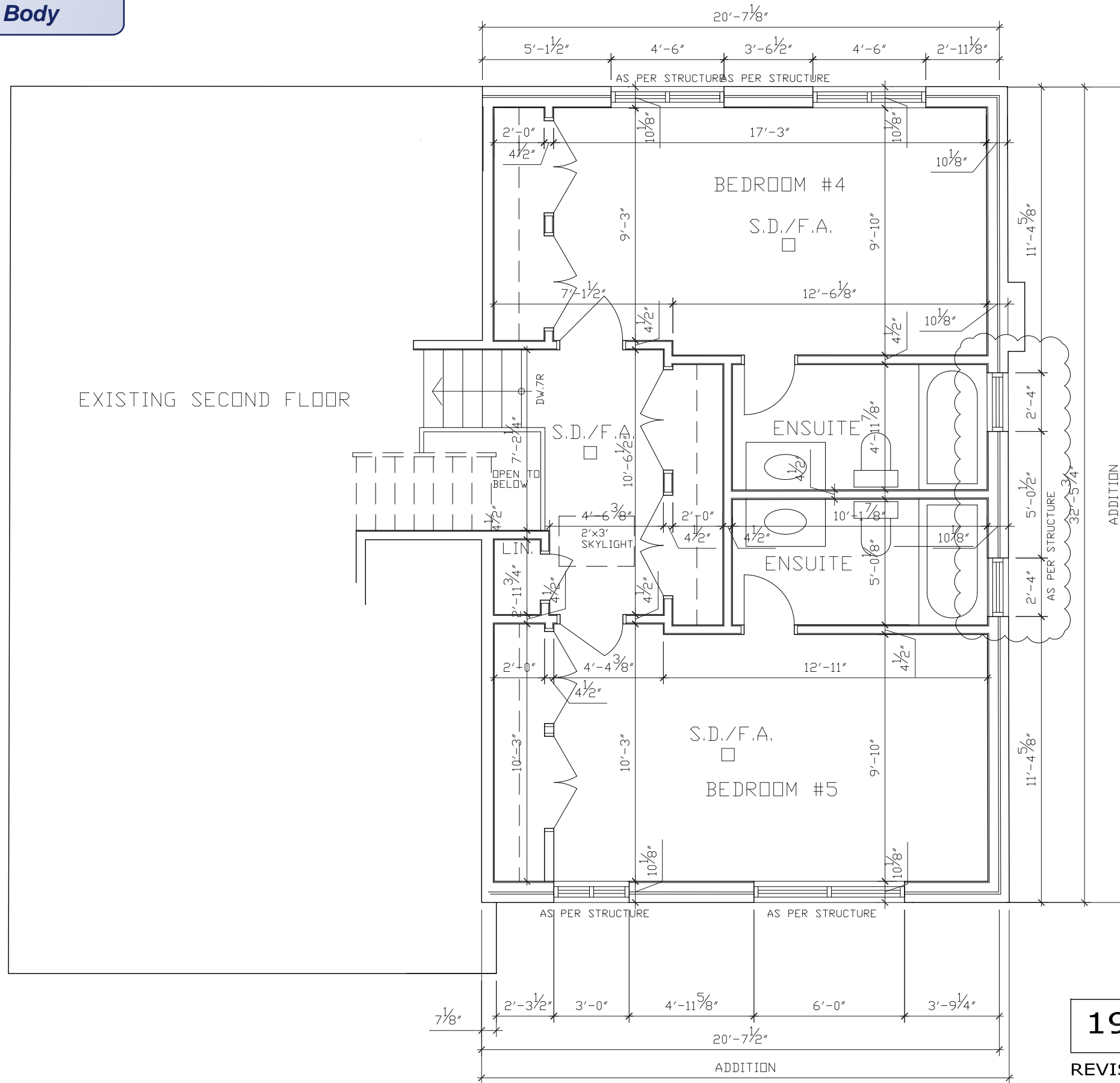
Project
 ADDITION & ALTERATIONS
 TO 195 WOODSWORTH
 TORONTO ONT.

drawing
 LEFT ELEVATION
 EAST SIDE



| | |
|-------------|---------------|
| date | AUG. 11, 2018 |
| scale | 3/16"=1'-0" |
| Drawn By | JOB. |
| project no. | 1861 |
| drawing no. | A9 |

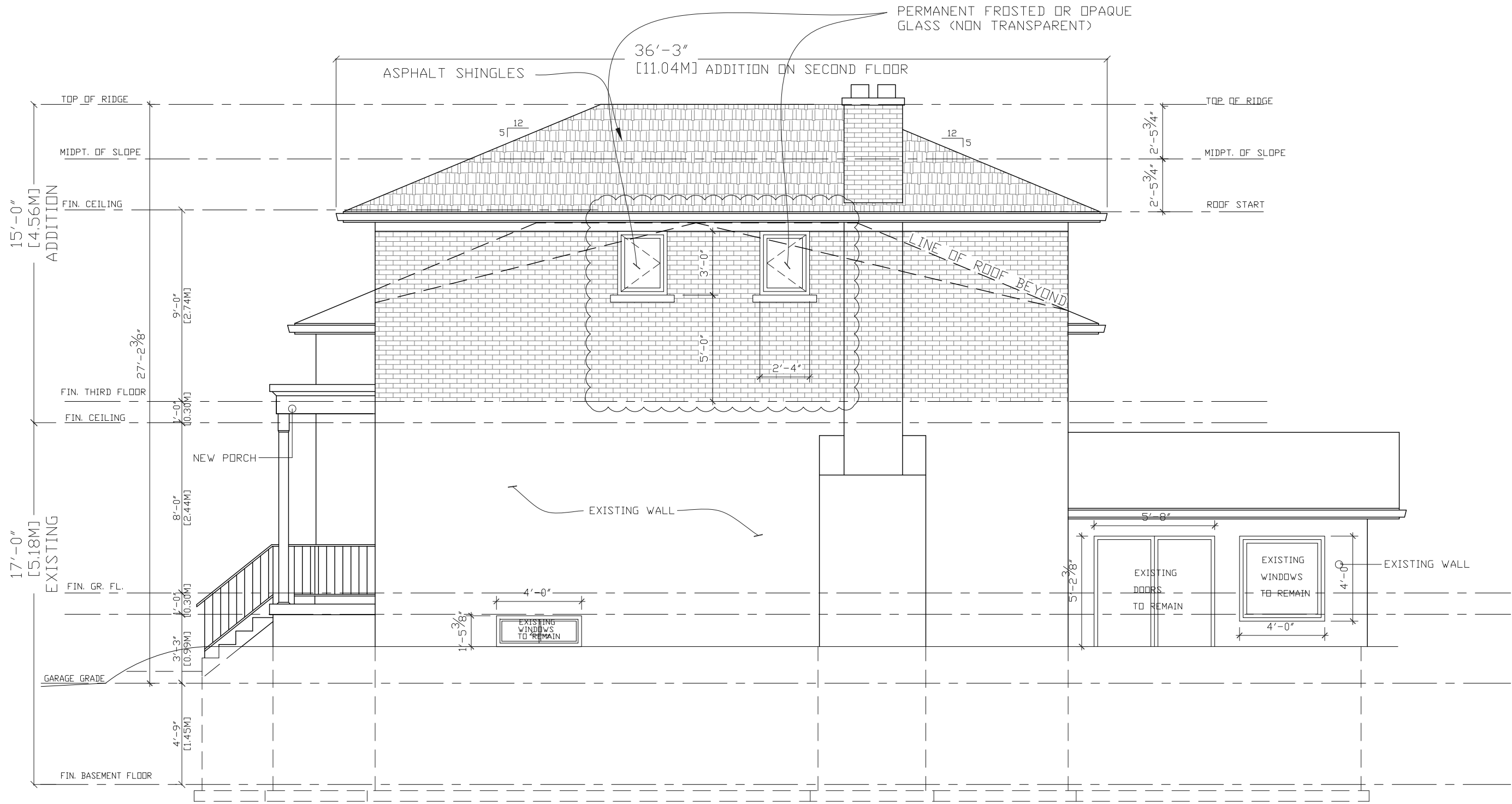
RECEIVED
By Toronto Local Appeal Body



195 WOODSWORTH ROAD

REVISED AS PER TLAB MEETING

PROPOSED SECOND STOREY PLAN
FOR STRUCTURE SEE STRUCTURE DRAWINGS



LIMITING DIST.: 1.22m. 4'-1/8"
 WALL AREA = 60.16 m2.
 GLASS AREA = 1.59 m2.
 % OF OPENINGS ALLOWED = 7%
 % OF OPENINGS = 2.74%

PROPOSED RIGHT ELEVATION (WEST SIDE)
 FOR STRUCTURE SEE STRUCTURE DRAWINGS

195 WOODSWORTH ROAD

REVISED AS PER TLAB MEETING