

## DECISION AND ORDER

**Decision Issue Date** Friday, November 22, 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): AVA LILIAN ROTH

Applicant: ROBERT DRAGICEVIC

Property Address/Description: 394 MARKHAM ST

Committee of Adjustment Case File: 19 110879 STE 11 MV (A0098/19TEY)

**TLAB Case File Number: 19 195552 S45 11 TLAB**

**Hearing date:** Wednesday, November 20, 2019

**DECISION DELIVERED BY Ian James LORD**

### APPEARANCES

NAME	ROLE	REPRESENTATIVES
ROBERT DRAGICEVIC	Applicant	
AVA LILIAN ROTH	Owner/ Appellant	JANE PEPINO
SEAN MCGAFFEY	Expert Witness	

### INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA) refusing variances to construct a new three-storey semi-detached dwelling with a basement extension 'to underneath the new a rear detached garage' (Application), at 394 Markham Street (subject property).

The Appellant, through counsel, Ms. J. Pepino, advised that efforts had been made to address expressed concerns through revisions such that the Application on appeal was

unopposed. She noted from the record there had been no objection from the attached neighbour at 396 Markham Street.

The only evidence introduced on the hearing of the appeal was that of the Applicant's planner, Mr. S. McGaffey.

## **BACKGROUND**

The subject property is located on the west side of Markham Street, a one-way thoroughfare, southbound, between Harbord and College Streets, west of Bathurst Street in the inner City. It is currently improved as the south one half of a substantial three storey period brick building demonstrating streetscape similarities in the built form continuing over an extensive area. The neighbourhood is characterized by prestigious, substantial, predominantly three-storey residences comprised of grand, single, semi-detached structures with an occasional apartment building and, often, multiple occupancy tenancies.

I indicated I had performed a site and area attendance, had familiarity with the neighbourhood and had read some of the materials filed. Despite that, the evidence was required to address the statutory and policy tests applicable to the variance appeal.

Despite, as well, revisions to the design plans, no changes to the variances resulted such that those on appeal remained as those refused by the COA. The variances addressed and sought to be approved are the six set out and identified on **Attachment A**, hereto.

Due to the pre-filed and detailed planning analysis, the evidence was somewhat abbreviated and focused as well as being responsive to matters raised.

## **MATTERS IN ISSUE**

The policy and statutory tests referenced below under 'Jurisdiction' remained to be satisfied.

## **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. Pepino tendered Mr. S McGaffey to provide land use planning opinion evidence on the appeal. Mr. McGaffey, while not having provided evidence before a tribunal previously, had academic (Waterloo University) and experience qualifications in relevant planning matters in Toronto, since 2014, and previously as a planner in the City of London. He is a candidate Member of the Ontario Professional Planners Institute. No explanation was provided as to why, given the practitioner's experience, full membership had not yet been obtained. He was accepted to give expert opinion testimony in land use planning matters. His Expert Witness Statement (118 paragraphs) and Appendices A, B (photos) and C (plans) were entered as Exhibit 1.

The planner described the Application as an intentional replacement of the south half of the semi-detached unit while retaining the essential elements of the front façade of the existing structure to maintain streetscape harmony and character. While that façade retention may require shoring, elements of the aged wood fenestration and facade, primarily on the third floor, would be repaired or replaced. It is to be noted that the subject property is not listed, designated or within a heritage conservation district.

Mr. McGaffey had engagement in the carriage of the Application since initiated in November of 2018. Exhibit 1 and his evidence detailed a study area and immediate context area to assess neighbourhood character. His Witness Statement, Exhibit 1, chronicles an organized assessment of the considerations he applied in concluding consistency with the Provincial Policy Statements, conformity with the Growth Plan and a detailed assessment of the 'four tests', as below reviewed.

He noted that Staff had initially (and by Report to the COA) opposed the Application on measures of below grade building length, building depth, FSI and scale of the third floor. However, after completing a lot study analysis and being advised of design refinements: to the below grade space (for tree root preservation); deletion of a garage structure; and reduction in the third floor (for the adjacent unit separation) and an FSI reduction, Staff largely left the field of comment. The City was neither represented nor present at the appeal Hearing. As well, it appears Urban Forestry was content with a condition, given refinement of the extent of below grade space and the replacement of the proposed garage structure with at-grade permeable pavers parking pad.

The planner reviewed and provided satisfactory opinion evidence on each of the variances sought in **Attachment A**, summarized as follows:

Variance 1, building height. The requested 13.6 m height exceeds the zoning maximum of 10 m but reflects the existing condition. Retaining the existing peak and façade, and demolition exceeding 50%, also drives other variances, reflecting existing conditions.

**Decision of Toronto Local Appeal Body Panel Member: I.LORD**  
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Variance 2, side wall height. The requested 11.01m side wall facing the south lot line exceeds the zoning maximum of 7.5 m largely as an existing condition of this three storey structure. There is no side-yard setback change and higher side walls are consistent with area character of 3 and 4 storey buildings.

Variance 3, building depth. The requested depth below grade of 25.05 m and above grade at 21.04 m exceed the zoning maximum of 17.0 m. The at-grade depth materially reflects existing conditions and a central 'bump-out' (1.37 m) condition, separated from the neighbours, while maintaining the principle main rear wall alignment. As building depth is measured both below and above grade, the additional 'storage space' below grade is sought to be recognized while being redesigned in the August 21, 2019 Basement Plan revision, to protect neighbour tree roots originating from the lot to the south.

Variance 4, FSI. An FSI of 1.3x lot area is requested, reduced from an earlier submission, exceeding the zoning maximum of 0.6x. The planner did not know the existing building FSI or that of specific neighbourhood examples but was firmly of the belief that the zoning standard (and others) failed to fully recognize or reflect existing conditions of area character. FSI information from records ranged from 1.25 to 2.9x lot area. He noted the Immediate Neighbourhood, in OPA 320 terms, consisted of dense, three storey buildings. Below grade space is not counted in FSI.

Variance 5, front yard setback. The requested front yard setback of 5.35 m from the zoning minimum requirement of 6.2 m is an existing condition and is supported by the desire to retain the front wall.

Variance 6, side yard setback. The request of a 0.0 m side yard setback from the north lot line over the zoning minimum of 0.45 m reflects an existing condition of the party wall with the adjacent building.

Mr. McGaffey gave the opinion, also summarized in section N of Exhibit 1, that individually and collectively the variances had appropriate regard for provincial interests, met the intent and purpose of the Official Plan and zoning by-law, were desirable for the renewed investment and had no offsite adverse impacts or destabilization effect.

No roof deck, patio, balcony or platform is proposed.

At my request he specifically reviewed each of the criteria of section 4.1.5 of the Official Plan, also included in Exhibit 1, and demonstrated replication and consistency with the fabric of the existing physical character of the area.

The planner recommended and supported several conditions partly from Appendix C of Exhibit 1:

1. that construction be in substantial conformity to the plans dated August 21, 2019 identified as:
  - a. front elevation: A 2.04, roof plan;
  - b. A 3.01, east elevation
  - c. south elevation: A3.02
  - d. Basement plan of below grade alignment: A 2.00
2. Urban Forestry condition (Tab 22, condition 2):

## ANALYSIS, FINDINGS, REASONS

Having listened carefully to the evidence, reviewed the materials filed and attended on the site and surrounding area. I find myself in complete agreement with the planner that the requested variances, individually and collectively should be approved.

I note that on-site parking is provided via access from a rear lane, itself populated with some lane-way housing.

The Application reflects an expansive and impressive re-investment in a substantial private asset in the City while featuring community respected preservation efforts for trees in the front yard and on adjacent property and an impressive front façade, characteristic of and a defining element of an equally impressive streetscape.

## DECISION AND ORDER

The appeal is allowed.

The variances identified in **Attachment A** hereto are approved subject to the following conditions:

1. That construction be in substantial conformity to the plans prepared by Hariri Pontarini, Architects, dated August 21, 2019 and identified as:

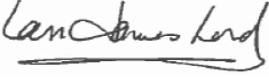
- a. roof plan: A 2.04;
- b. east elevation: A 3.01;
- c. south elevation: 3.02
- d. basement plan: A 2.00, all as found in **Attachment B**, hereto.

2. Urban Forestry condition (Tab 22, condition 2), namely:

Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

Any other variances required by these plans but not addressed herein are expressly NOT approved.

If difficulties arise from the implementation of this Decision, the TLAB may be spoken to.

X 

Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

## ATTACHMENT A

### REQUESTED VARIANCE(S) TO THE ZONING BY-

#### LAW:

**1. Chapter 10.10.40.10.(1)(A), By-law 569-2013**

The maximum permitted height of the building or structure is 10.0 m.

The new three-storey semi-detached dwelling will have a height of 13.6 m.

**2. Chapter 10.10.40.10.(2), By-law 569-2013**

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5 m.

The new three-storey semi-detached dwelling will have a side main wall height of 11.01 m facing the south lot line

**3. Chapter 10.10.40.30.(1)(A), By-law 569-2013**

The maximum permitted building depth for a semi-detached house is 17.0 m.

The new three-storey semi-detached dwelling will have a depth of 25.05 m below grade and 21.04 m above grade measured from the front main wall to the rear main wall in the basement.

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

The maximum permitted floor space index is 0.6 times the area of the lot (174.6 m<sup>2</sup>).

The new three-storey semi-detached dwelling will have a floor space index of 1.3 times the area of the lot (379.0 m<sup>2</sup>).

**5. Chapter 10.5.40.70.(1)(B), By-law 569-2013**

In the R Zone, if a lot is between two abutting lots in the R Zone, each with a building fronting on the same street and those building are

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both, in whole or part, 15.0 m 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 (6.2 m).

The new three-storey semi-detached dwelling will be located 5.35 m from the front lot line.

**6. Chapter 10.10.40.70.(4)(B), By-law 569-2013**

The minimum required side yard setback for a semi-detached house is 0.45 m.

The new three-storey semi-detached dwelling will be located 0.0 m from the north side lot line.

**Attachment B**

- General Notes:
- 1/ These Contract Documents are the property of the Architect. The Architect bears no responsibility for the interpretations of these documents by the Contractor. Upon written application the Architect will provide written/graphic clarification or supplementary information regarding the intent of the Contract Documents. The Architect will review Shop Drawings submitted by the Contractor for design conformance only.
- 2/ Drawings are not to be scaled for construction. Contractor to verify all existing conditions and dimensions required to perform the Work and report any discrepancies with the Contract Documents to the Architect before commencing work.
- 3/ Positions of exposed or finished mechanical or electrical devices, fittings, and fixtures are indicated on the Architectural drawings. The locations shown on the Architectural drawings govern over the Mechanical and Electrical drawings. Those items not clearly located will be located as directed by the Architect.



LEGEND	
---	PROPERTY LINE
LOT AREA	= 291m <sup>2</sup>
FSI (0.60)	= 174.6m <sup>2</sup>
GFA	
GROUND FLOOR	= 132m <sup>2</sup>
SECOND FLOOR	= 132m <sup>2</sup>
THIRD FLOOR	= 115m <sup>2</sup>
TOTAL GFA	= 379m <sup>2</sup>
PROPOSED FSI	= 1.30
BASEMENT FLR	= 145m <sup>2</sup>
OVERALL TOTAL	= 524m <sup>2</sup>

ISSUED FOR TLAB	AUG 21 2019
RE-ISSUED FOR CoIA	JULY 11 2019
RE-ISSUED FOR CoIA	JULY 7 2019
RE-ISSUED FOR CoIA	JUNE 6 2019
ISSUED FOR CoIA	JANUARY 24 2019
RE-ISSUED FOR PPR	DECEMBER 13 2018
ISSUED FOR PPR	NOVEMBER 21 2018
Change	Date

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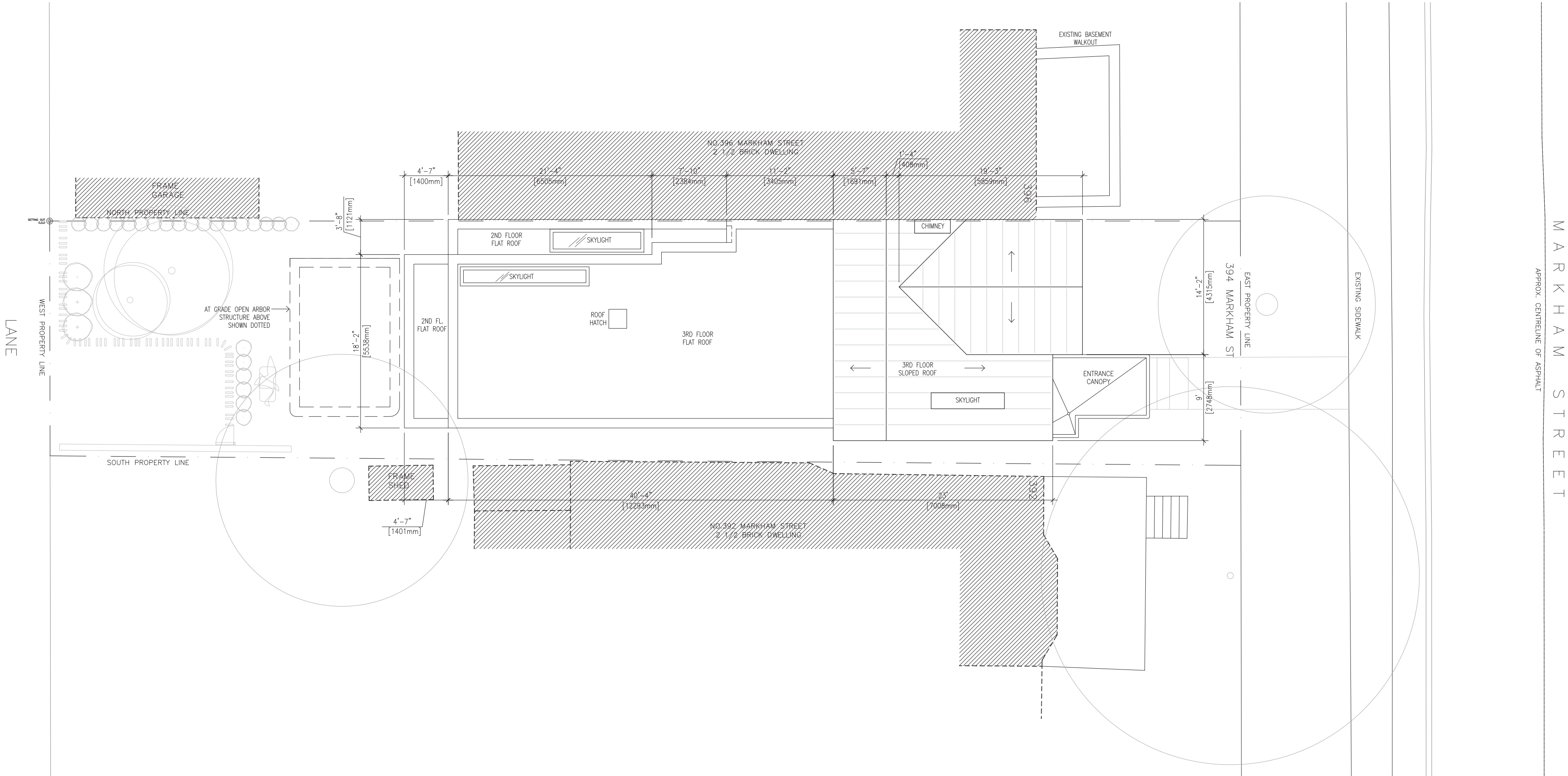
MARKHAM ST. RESIDENCE

394 MARKHAM STREET, TORONTO, ON

ROOF PLAN

Project No.: 1817  
Scale: 1:100  
Date: .  
Drawn by: HPA

Drawing No.:





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MATERIAL LEGEND	
GL	GLASS
BR	BRICK
ST	STONE
MT	METAL
WD	WOOD
CON	CONCRETE

ISSUED FOR TLAB	AUG 21 2019
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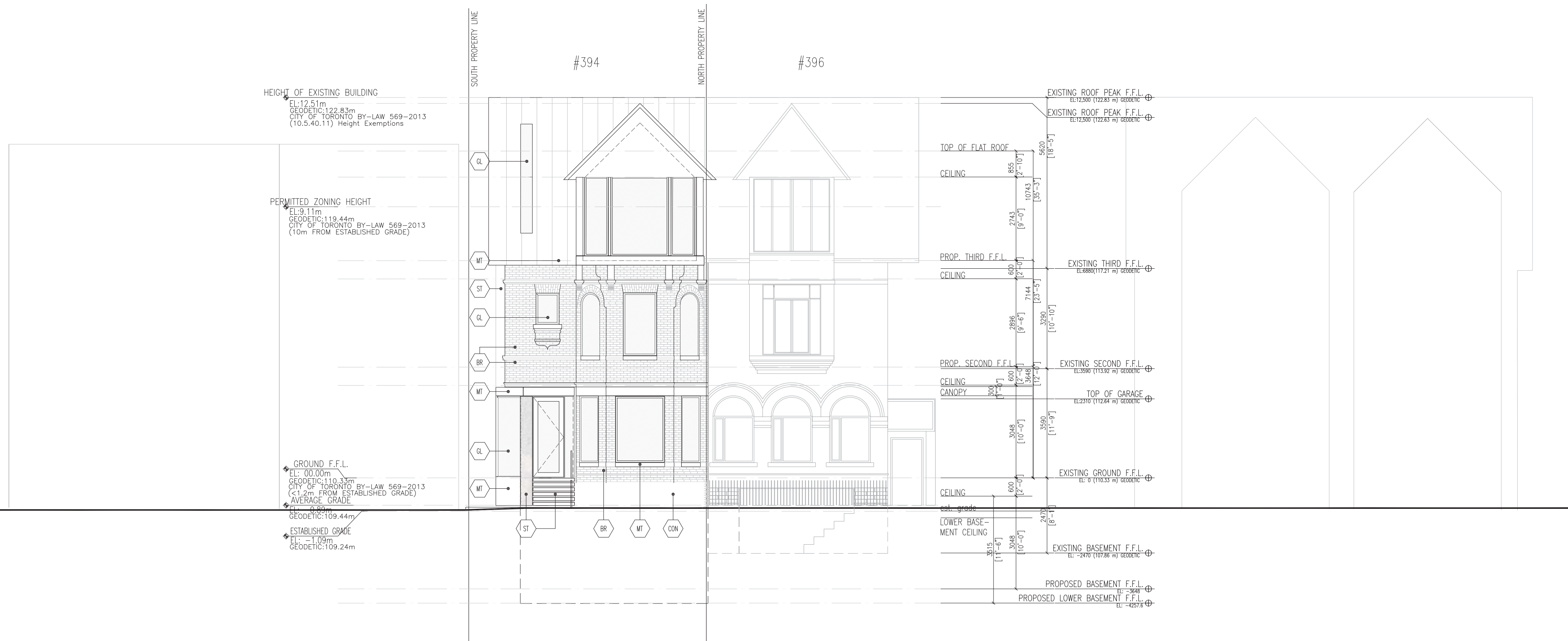
384 MARKHAM STREET, TORONTO, ON

## EAST ELEVATION

Project No.: 1817  
Scale: 1:100  
Date: . . . . .  
Drawn by: HPA

Drawing No.:

A3.01



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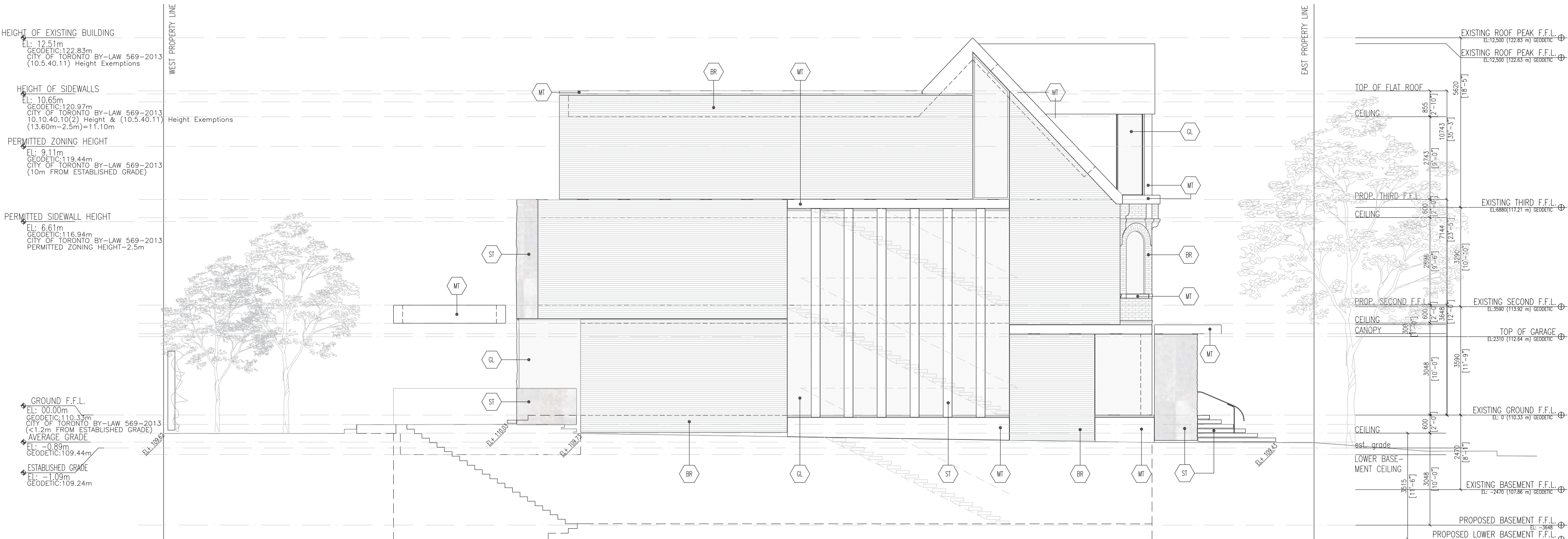
384 MARKHAM STREET, TORONTO, ON

## SOUTH ELEVATION

Project No.: 1817  
Scale: 1:100  
Date: ---  
Drawn by: HPA

Drawing No.:

A3.02



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### MARKHAM ST. RESIDENCE

394 MARKHAM STREET, TORONTO, ON

### BASEMENT PLAN

Project No.: 1817  
Scale: 1:100  
Date: .  
Drawn by: HPA

Drawing No.:

A2.00

