

**Toronto Local Appeal Body** 

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Email: tlab@toronto.ca

Website: www.toronto.ca/tlab

#### **DECISION AND ORDER**

**Decision Issue Date** Friday, December 13, 2019 and corrected pursuant to Rule 30.1 on January 14 and 15, 2020

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): THEODOSIOS MARGARITIS

Applicant: THEODOSIOS MARGARITIS

Property Address/Description: 83 PEARS AVE

Committee of Adjustment Case File: 18 139417 STE 27 MV (A0358/18TEY)

TLAB Case File Number: 18 239143 S45 27 TLAB

Hearing date: Monday July 29, 2019, Tuesday July 30, 2019, Wednesday July 31,

Monday, October 14, 2019

#### **DECISION DELIVERED BY T. Yao**

#### **REGISTERED PARTIES AND PARTICIPANTS**

Appellant Theodosios Margaritis

Appellant's Legal Rep. Amber Stewart, Anthony Soscia

Party ABC Residents Association

Party Mary Helen Spence

Party's Legal Rep. Andrew Biggart

Participant Rachael Rafelman

Participant Stefan Coolican

Participant Donald Milne

### Decision of Toronto Local Appeal Body Panel Member: T. Yao TLAB Case File Number: 18 239143 S45 27 TLAB

Participant Munaza Chaudhry

Participant Mike Jackson

Participant Michael Killinger

Expert Witness Michael Qarcopone

Expert Witness John Lohmus

Expert Witness Michael Spaziani

#### INTRODUCTION

Theodosios Margaritis wishes to build a third floor and rear addition to 83 Pears Ave, which is the end unit of a three-unit row house. To do so he needs the following variances

Table 1. Variances sought for 83 Pears Ave							
	Required Proposed						
	Variances from Zoning By-law 569-2013						
1	Max. permitted depth of townhouse	14 m	16.35 m				
2	Floor Space Index	1.0 times the area of the lot	1.19 times the area of the lot				

On September 26, 2018, the Committee of Adjustment dismissed Mr. Margaritis's application and Mr. Margaritis appealed. At the TLAB a mediation took place on March 7, 2019. No settlement was reached, although I am grateful to my colleague, TLAB Member Burton, who undoubtedly narrowed the issues. She set three hearing days for July 2019, at which time all of Mr. Margaritis' witnesses testified, including his planner Michael Quarcopone. In opposition: I also heard from Munaza Chaudhry, Donald Milne, and Mary Helen Spence.

A fourth day, October 11, 2019, was reserved for the testimony of John Lohmus and Michael Spaziani. On that day the parties requested the hearing time be converted to a second mediation session, to which I agreed. The parties succeeded in agreeing on all the issues and a full settlement resulted.

#### MATTERS IN ISSUE

I must be satisfied that the applications meet the four tests under s. 45(1) of the *Planning Act*, that is, whether they individually and cumulatively: Remove

- 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.

#### **ANALYSIS, FINDINGS, REASONS**

Since this is a settlement, I will not review the evidence. I did hear sufficient evidence from Mr. Quarcopone to satisfy myself the settlement is one to which I should give deference. I would refuse a settlement only if it was contrary to the *Planning Act*, which it is not. It is reasonable and meets the statutory tests.

Through this case I heard much evidence. I wish to thank the parties for their cooperation and to thank the late Mr. Margaritas senior for his service to this country.

#### **DECISION AND ORDER**

The variances in Table 1 are authorized, subject to the following conditions:

- 1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations attached hereto<sup>1</sup>. In accordance with the annotations on the attached plans numbered A-01 through A-11, and for greater certainty:
  - (a) the front elevation on the ground and second floor (including the balcony parapet) shall be brick;
  - (b) the basement shall not be extended beyond the existing basement wall;
  - (c) no balcony shall be added to the rear of the second or third storeys.

In the event that a building addition or balcony is added to 85 Pears after the date of approval of this application, this condition shall no longer be in force or applicable.

<sup>&</sup>lt;sup>1</sup> Note: the revised plans dated Dec 9, 2019 (11 pages) and the July 24, 2019 Central Tree Addendum Report (13 pages), are attached to this decision following the signature line.

## Decision of Toronto Local Appeal Body Panel Member: T. Yao TLAB Case File Number: 18 239143 S45 27 TLAB

- 2. The Applicant shall provide a copy of all engineering and City inspection reports related to the west wall construction, underpinning, junctions above grade and waterproofing to the owner of 85 Pears Avenue. The reports shall be provided to the owner of 85 Pears Avenue within 14 days after the interior final inspection. Thereafter, all reports issued after the interior final inspection shall also be provided to the owner of 85 Pears Avenue within 14 days after the close of the building permit.
- 3. The Applicant shall install insulation for the purpose of soundproofing with a minimum R22 value along the west wall.
- 4. The Applicant shall not excavate within the tree protection zone of the Honey Locust Tree in the rear yard of 85 Pears Avenue, except to install helical piers to support the new addition and to complete any necessary pruning to construct the third floor. This work will be done in accordance with the processes recommended by Central Tree Care Limited in its report of July 24, 2019, attached hereto, in relation to helical piers and pruning (except that the tree may be pruned after the framing of the rear addition and third floor addition is complete), and will be subject to the approval of the City of Toronto's Urban Forestry Department.

X

Ted Yao

Panel Chair, Toronto Local Appeal Body

Ted /h-

#### ZONING DESIGNATION: R (f5.0; d1.0) (x485)

#### SCOPE OF WORK:

- PROPOSED ADDITION TO THE SOUTH
   NEW PARTIAL 3RD STOREY ADDITION
   INTERIOR RENOVATION.

STATS	EXISTING	PROPOSED	REQUIRED
LOTAREA	169.5 sq.m.	169.5 sq. m.	
LOT FRONTAGE	5.28 m	5.28 m.	Min. 5.00 m
COVERAGE	33.6 %	46 %	1
TOTAL G.F.A.	11.4 sq.m.	202 sq. m.	
BASEMENT G.F.A.	57 sq. m.	57 sq. m.	
GROUND FLOOR G.F.A.	57 sq. m.	76 sq. m.	
SECOND FLOOR G.F.A.	57 sq. m.	66 sq. m.	
THIRD FLOOR G.F.A.	0	60 sq. m.	
CAR PORT G.F.A.	25 sq. m.	25 sq. m	
FSI	790	1.19	Max. 1.00
FRONT SETBACK	3.60 m.	3.60 m.	Min. 6.00 m
SIDE SETBACK	0.59 m.	0.59 m.	81
REAR SETBACK	15.10 m.	12.14 m	
BLDG, DEPTH	13.38 m.	16.35 m	Max. 14.00 m.
BLDG. LENGTH @ LOT C.L	13.38 m.	16.35 m	61
NUMBER OF STOREYS	2 storeys	3 storeys	
ESTABLISHED GRADE	110.18 m.	110.18 m.	
HEIGHT	8.40 m.	9.50 m	Max.9.50 m.
PARKING SPACES			
FRONT SOFT LANDSCAPE	49.68 %	11.96sm	75 % min
REAR SOFT LANDSCAPE		22.6sm	and the first property of the second





#### DRAWING LIST:

A.01 - COVER, LOCATION PLAN, CONTEXT AND STATS A.02 - SITE PLAN

A.03 - BASEMENT FLOOR PLAN

A.04 - GROUND FLOOR PLAN

A.05 - SECOND FLOOR PLAN

A.06 - THIRD FLOOR PLAN A.07 - ROOF PLAN

A.08 - FRONT ELEVATION A.09 - REAR ELEVATION

A.10 - SIDE ELEVATION

A.11 - LONGITUDINAL SECTION

Revis	ion/Submis	sion		
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		V 0		
-0		2 2		
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03	20180730	PM	ZONING REVIEW	
02	20180725	PM	ZONINGREVIEW	
01	20180405	PM	ZONING REVIEW	
No.	Date	Ву	Comment	

Final Plans - December 9, 2019

Project Title

## 83 PEARS AVENUE **ADDITION**

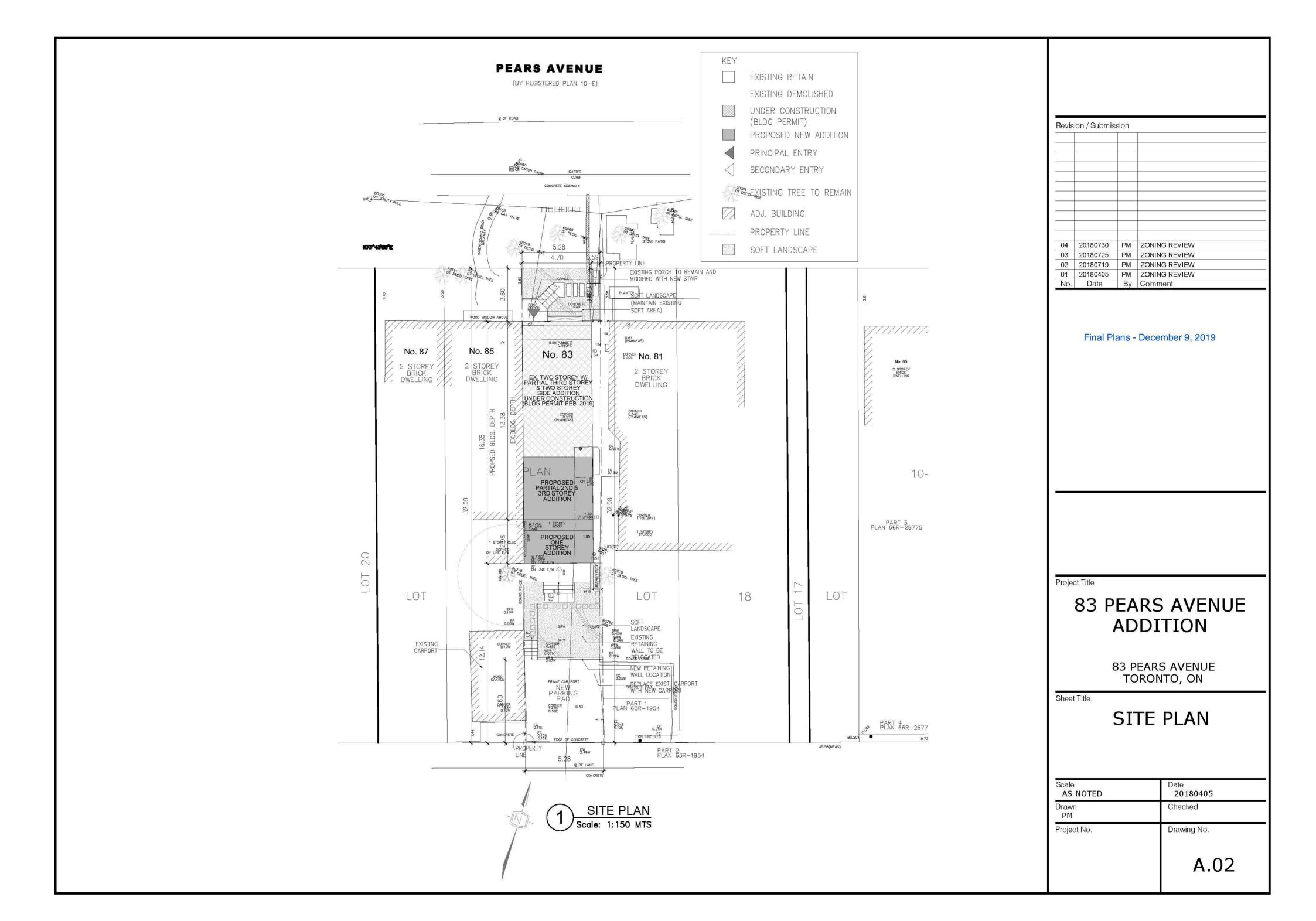
83 PEARS AVENUE TORONTO, ON

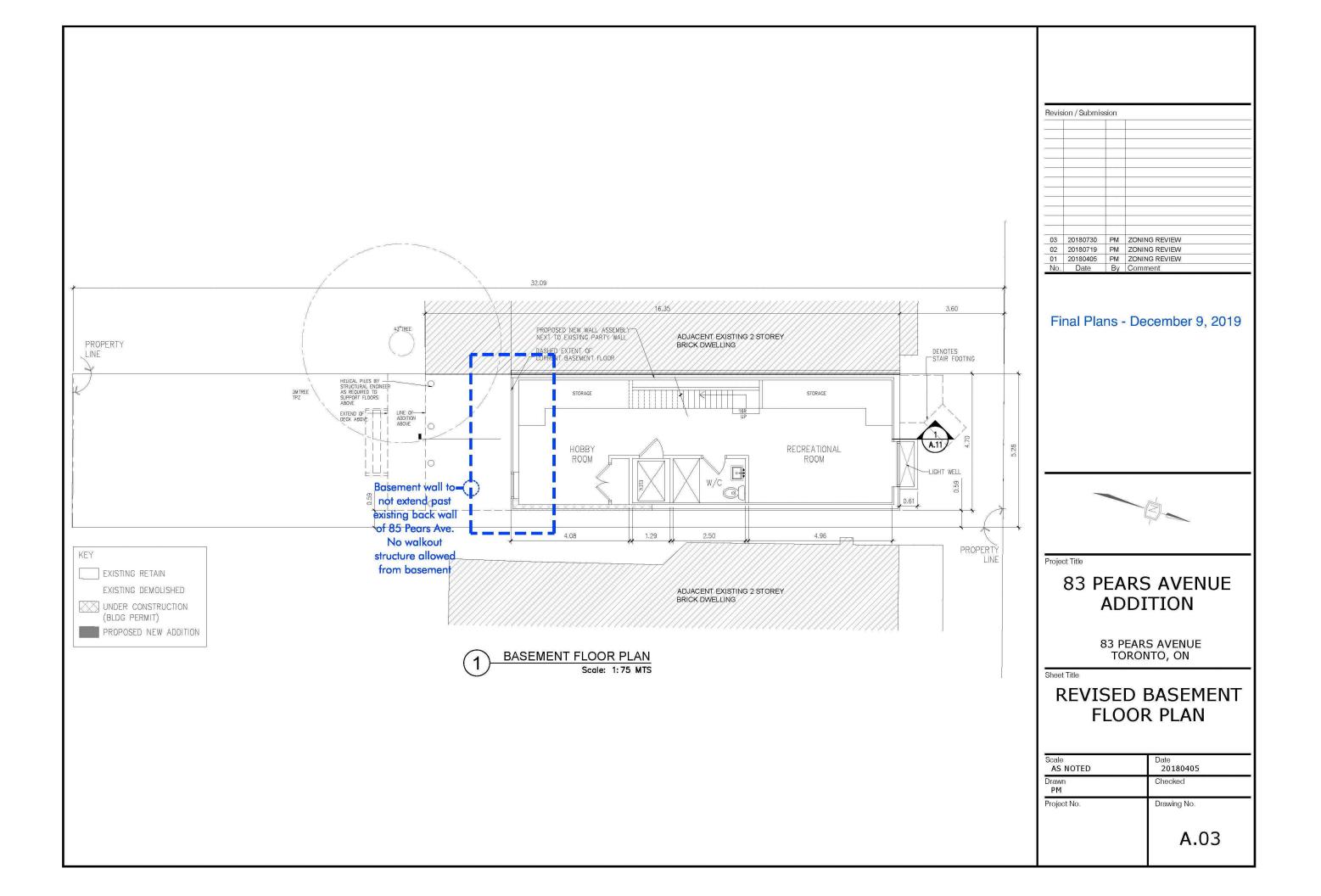
Sheet Title

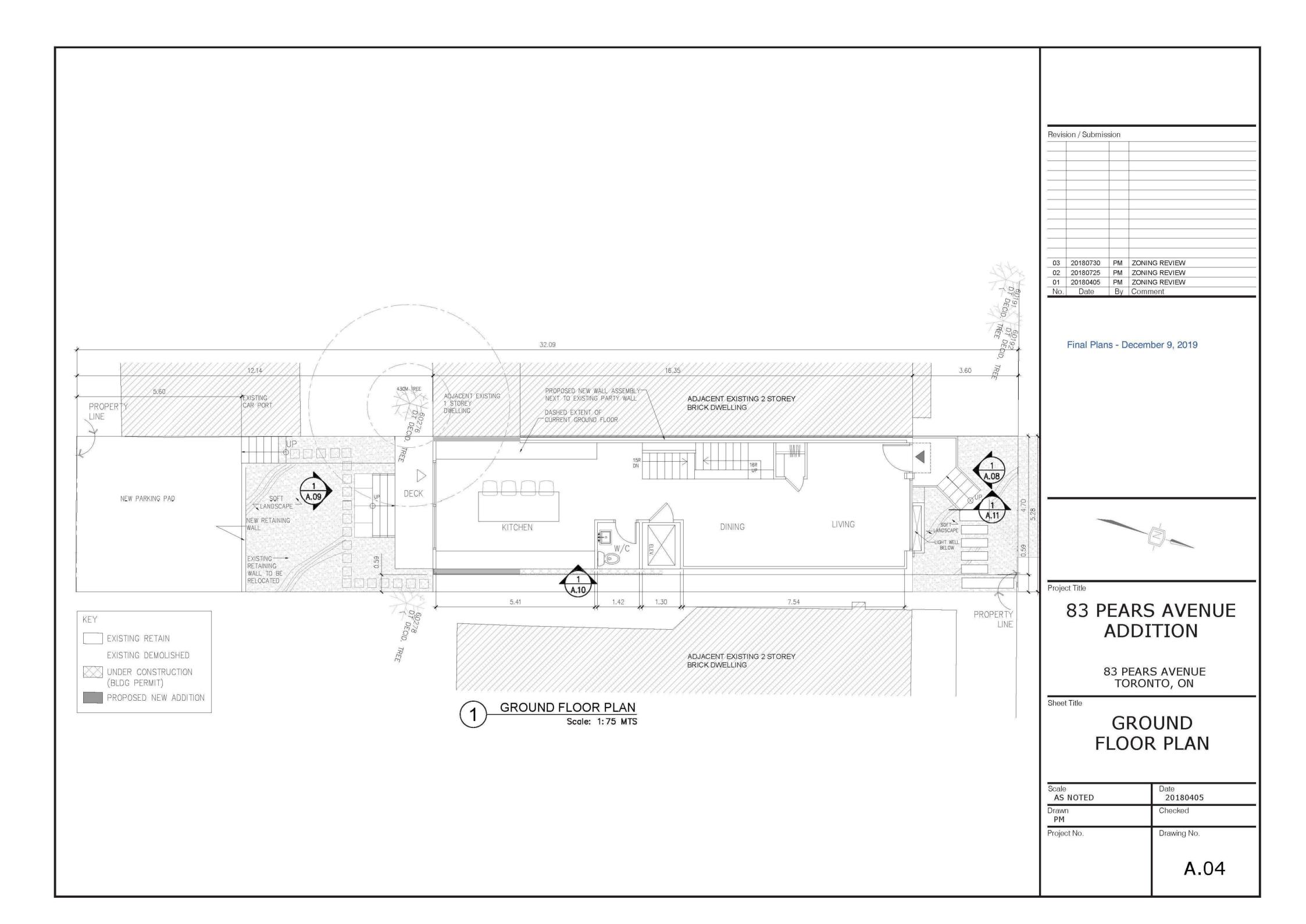
## LOCATION PLAN, DRAWING LIST AND STATS

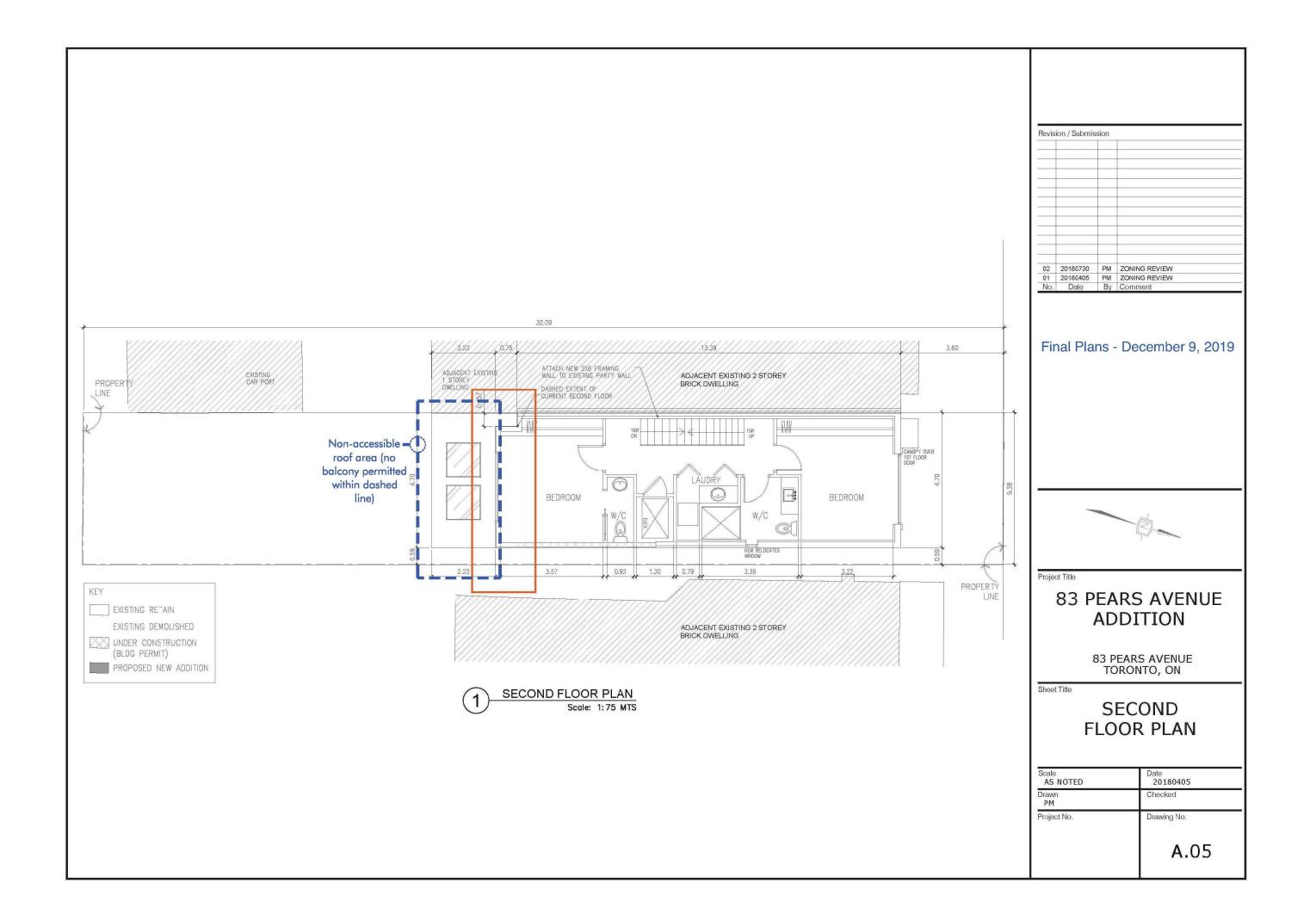
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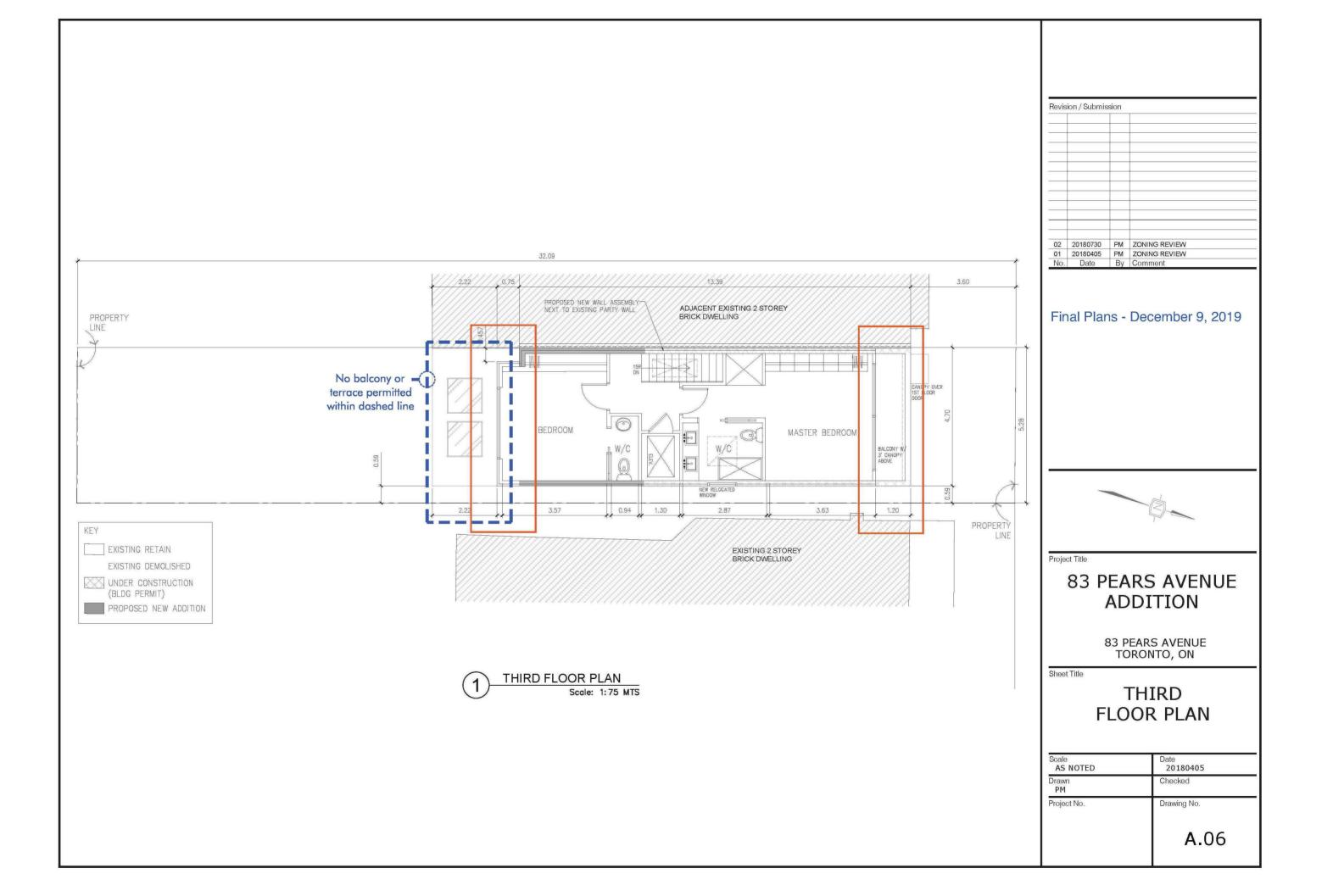
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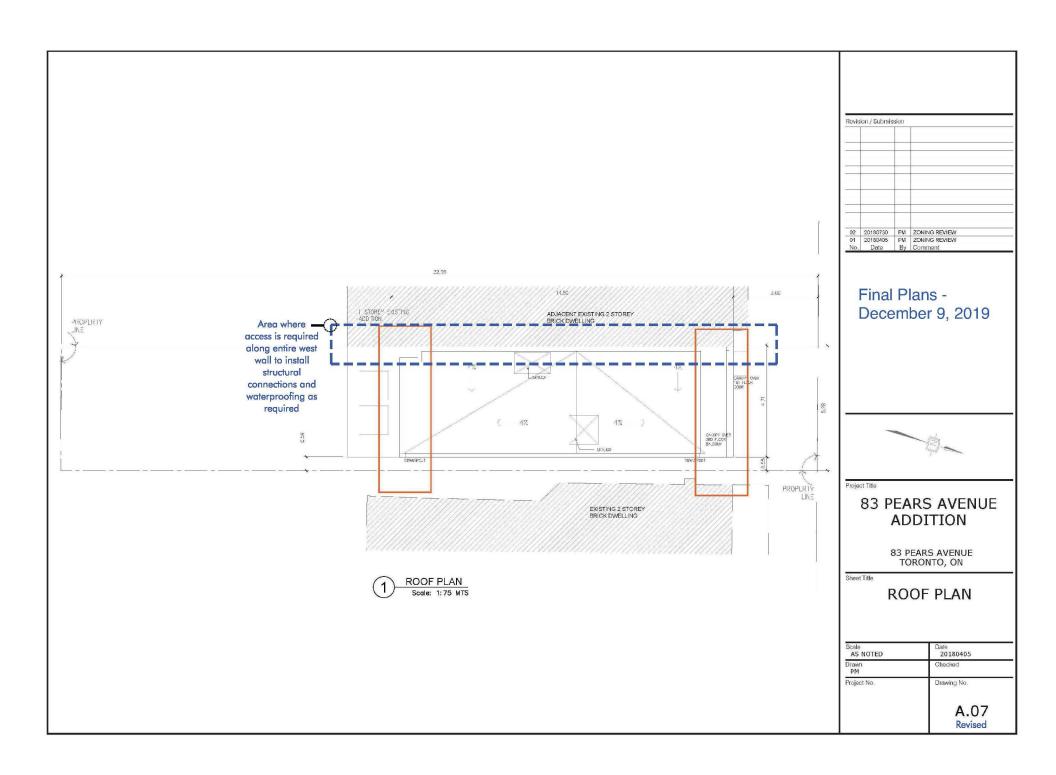


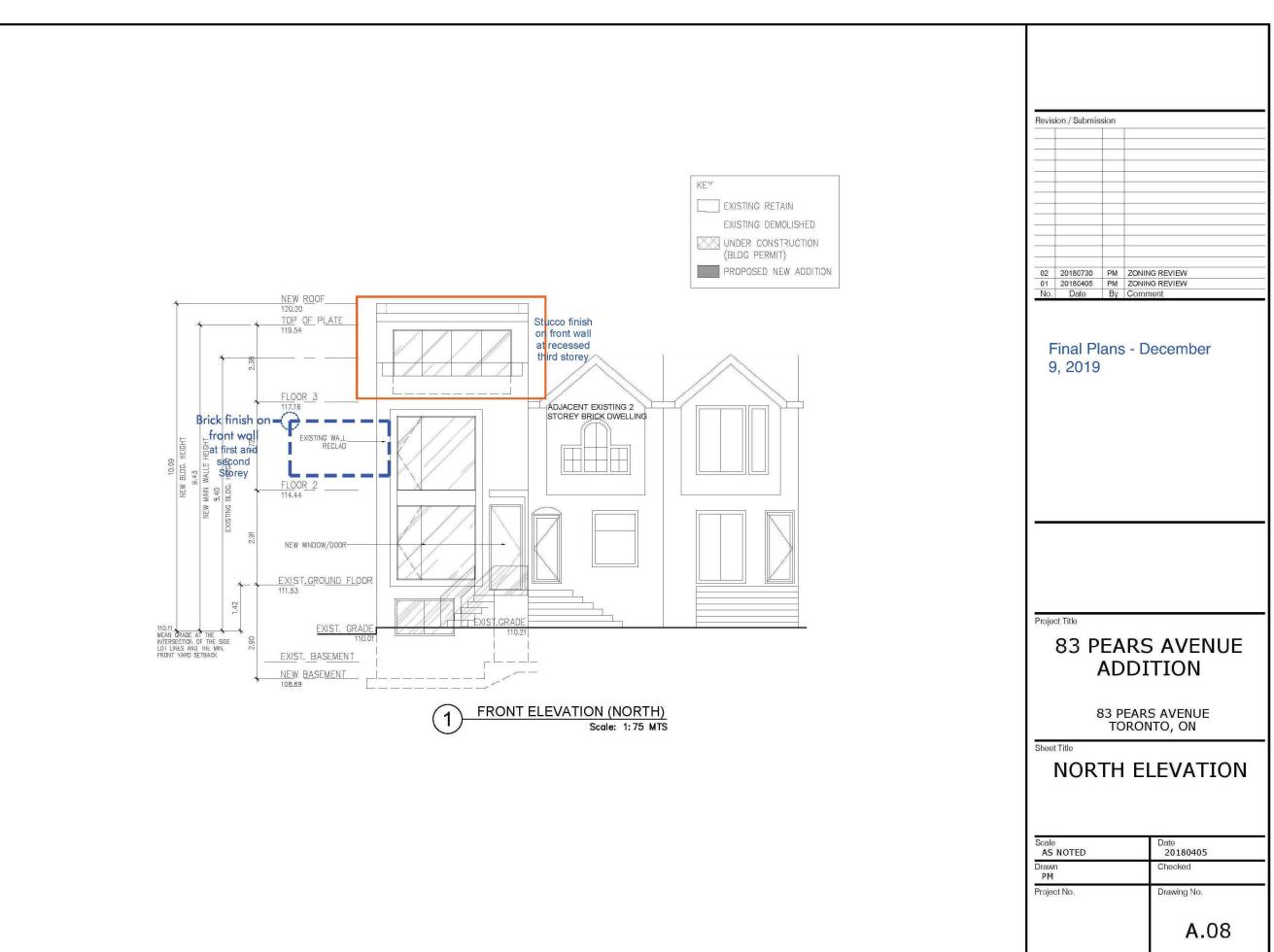


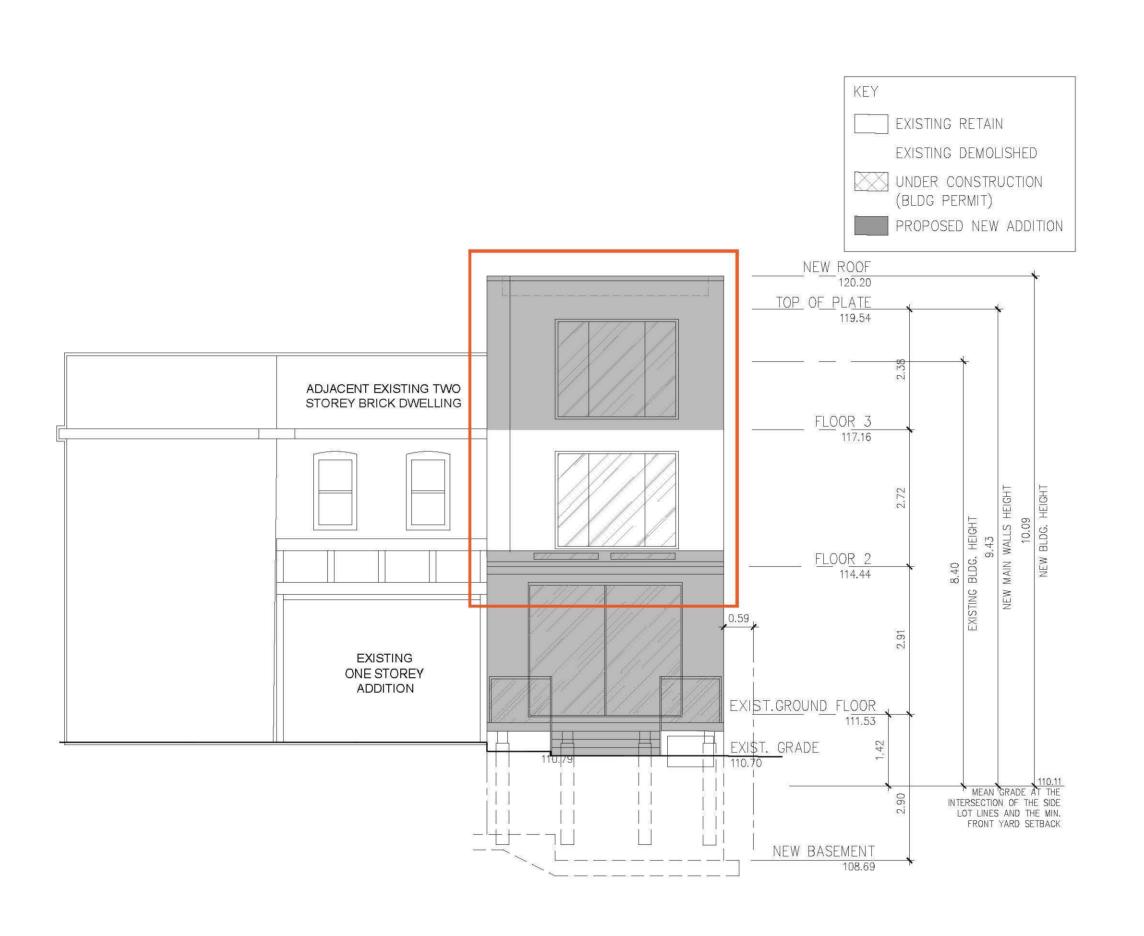












REAR ELEVATION (SOUTH)

Scale: 1:75 MTS

Revision / Submission

03 20180802 PM ZONING REVIEW
02 20180730 PM ZONING REVIEW
01 20180405 PM ZONING REVIEW
No. Date By Comment

Final Plans - December 9, 2019

Project Title

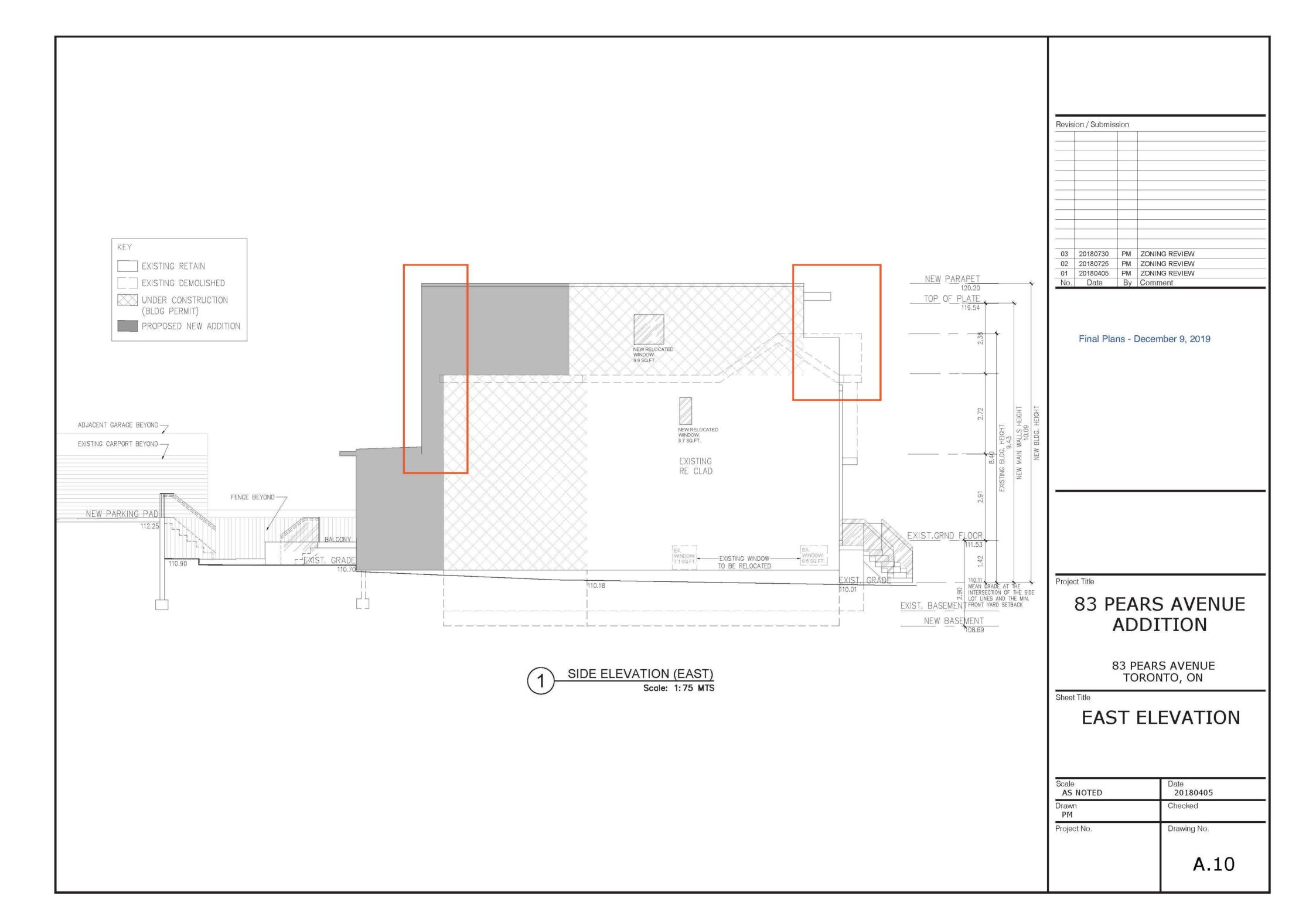
# 83 PEARS AVENUE ADDITION

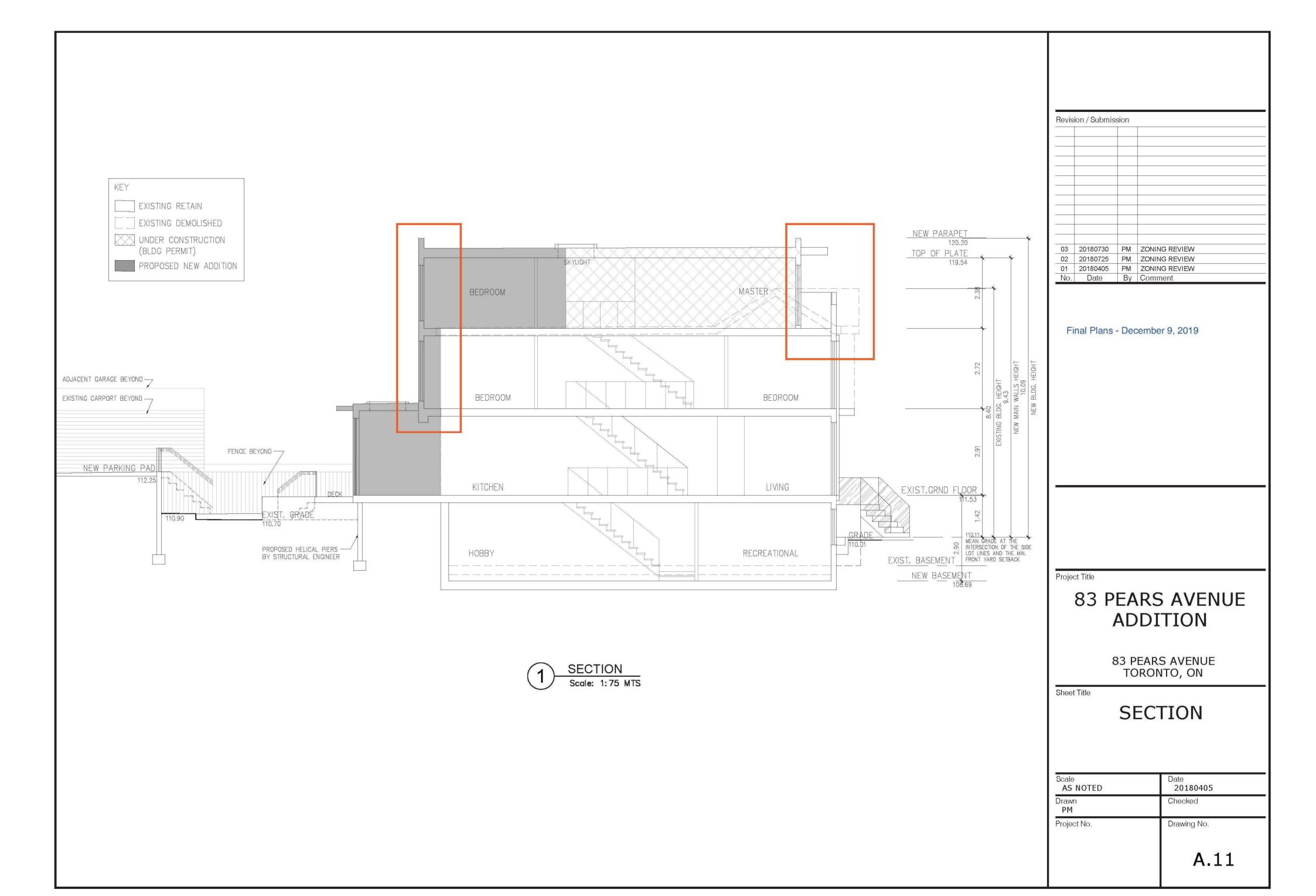
83 PEARS AVENUE TORONTO, ON

Sheet Title

### SOUTH ELEVATION

Scale AS NOTED	Date 20180405
Drawn <b>PM</b>	Checked
Project No.	Drawing No.
	A.09







ELISSA CHU ISA CERTIFIED ARBORIST
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centraltreecare.com

July 24, 2019

Tree Protection & Plan Review 50 Booth Ave, 2<sup>nd</sup> Flr. Toronto, ON M4M 2M2 T: (416) 392-7391

E: tpprsouth@toronto.ca

Theo Margaritis 83 Pears Ave Toronto, ON M5R 1S9 T (416) 357-8344

E theo@twgcommunications.com

Re: 83 Pears Avenue (Ward 11)

#### <u>Addendum Arborist Report – Construction/Tree Protection</u>

Central Tree Care Ltd. has been retained by Theo Margaritis to provide an addendum arborist report for the proposed construction at 83 Pears Avenue

The nature of the work includes the construction of a rear and third storey addition.

To facilitate the proposed construction:

	Privately-Owned	Privately-Owned Neighbouring / Boundary Trees	City-Owned Trees	
Injury	-	1	-	
Removal	-	-	-	
Exemption	-	-	-	

This arborist report and the attached Tree Protection Plan are based on the assumption that *no additional trees will be injured or removed*.

#### **LIMITATIONS**

Inspection of the trees on site was limited to a visual assessment from the ground only. No inspection via climbing, exploration below grade, probing, or coring were conducted, unless stated otherwise. Any observations and data collected from site are based on conditions at the time of inspection. Diameters of trees located on neighbouring properties were estimated to avoid trespassing. It must be noted that trees are living organisms and their conditions are subject to change.

This report was completed using the site plan titled "83 Pears Avenue Addition – Revised Basement Floor Plan A.03" dated "Blackwell Markups 2019-02-27". If there are any changes to the noted site plan, the consulting arborist must be notified immediately. It is the assumption that no further work, other than what has been presented in the attached site plan, has been proposed.

#### TREE INVENTORY

Permit-sized trees on and within 6.0m of the work area were inspected on September 20, 2018 by Adam Vandermeij ON-1562A. The below inventory was taken from the arborist report prepared by Central Tree Care Ltd. dated September 25, 2018.

Tree #	Species	Latin Name	DBH (cm)	Canopy Radius (m)	Height (m)	Category	TPZ Radius (m)	Health	Structure	Assessment	Action
1	Honey locust	Gleditsia triacanthos	50– 44	9	17	5	3	good	good		Requires a permit to injure as per arborist report dated September 25, 2018
2	Cherry species	Prunus sp.	5	1	3	5	1.2	good	good		Fully protected as per arborist report dated September 25, 2018
3	Honey locust	Gleditsia triacanthos	49	6	16	2	3	good	good	1 x 17cm limb requires pruning from over top of subject house to permit third storey addition.	Requires a permit to injure as per arborist report dated September 25, 2018

#### Category #

- 0. Tree NOT regulated under City of Toronto Tree by-laws
- 1. Trees with diameters of 30cm or more, situated on private property on the subject site.
- 2. Trees with diameters of 30cm or more, situated on private property, within 6m of subject site.
- ${\bf 3.}\ Trees\ of\ all\ diameters\ situated\ on\ City\ owned\ parkland\ within\ 6m\ of\ subject\ site.$
- 4. Trees of all diameters situated within lands designated under City of Toronto Municipal Code, Chapter 658, Ravine Protection.
- 5. Trees of all diameters situated within the City road allowance adjacent to the subject site.
- 6. Trees of all diameters situated within the City road allowance adjacent a neighbouring property.

#### **DISCUSSION**

Please refer to "Recommendations" section for further details on tree preservation and how to conduct work within a Tree Protection Zone (TPZ).

#### **Addition Foundation**

The new rear foundation will extend in an "L" shaped fashion towards the south-east corner of the dwelling to avoid constructing a full basement within the TPZ of **Tree #3**; the remaining above ground structures of the addition and deck will be constructed on one helical pier and cantilevered over the TPZ.

Excavation for the new foundation has been confirmed by the homeowner on July 24, 2019 that the overdig will not exceed 18in (0.45m). Based on the overdig requirement, excavation is anticipated to encroach as close as 1.5m from the base of Tree #3. Although there is a possibility of encountering significant roots or root mats, the existing sunroom located on 85 Pears Avenue may have served to curb root growth and there may not be any significant roots or root mats within the proposed work area.

In addition to the foundation, one pier will be located within the TPZ of Tree #3 for the rear cantilevered deck and will encroach as close as 2.0m from its base. At this distance, the chances of encountering significant roots or root mats are minor.

In order to fully determine the impact of the foundation and pier installation, the following should be undertaken:

- 1. Root Exploration to be completed as per "Recommendations for Excavation within a TPZ", detailed below, under the supervision of an arborist and a document of the findings to be sent to the Forestry Planner.
  - a. If no significant roots measuring a minimum diameter of 5cm or a dense root mat are discovered, work can proceed as originally proposed.
  - b. If significant roots measuring a minimum diameter of 5cm or a dense root mat are encountered, Forestry planner must be contacted for further consultation.
    - i. If there are significant roots or root mats within the pier location, the pier must be shifted to accommodate the root system
    - ii. If there are significant roots or root mats within the foundation excavation, the following will need to be considered:
      - Alternate construction methods to limit excavation even further
      - Basement foundation to be scaled back to accommodate the root system

#### **Rear Three-Storey Addition and Third Storey Addition**

To provide clearance for the new dwelling height, a 17cm limb belonging to Tree #3 will require removal. Refer to the "Pruning Plan" for more details. The loss of the 17cm limb is expected to be well within pruning requirements of no more than 25% of live canopy.

#### **Overall Workflow**

- 1. Completion of root exploration and submission to Forestry. The below recommendations are based on approval being granted by Forestry.
- 2. Installation of horizontal tree protection hoarding within the TPZ of Tree #3.
- 3. 17cm limb to be removed as per "Pruning Plan" detailed below.
- 4. Excavation for the new foundation to be completed by hand under the supervision of an arborist to ensure that roots are pruned according to current arboriculture standards.
- 5. When it is time to install the pile, the section of horizontal tree protection hoarding within the proposed pile location is to be removed. The pile location is to be excavated by hand under arborist supervision and roots are to be pruned according to current arboriculture standards.
- 6. "Remedial Care" as outlined below are to be adhered throughout the construction process to help mitigate the impact of root loss.

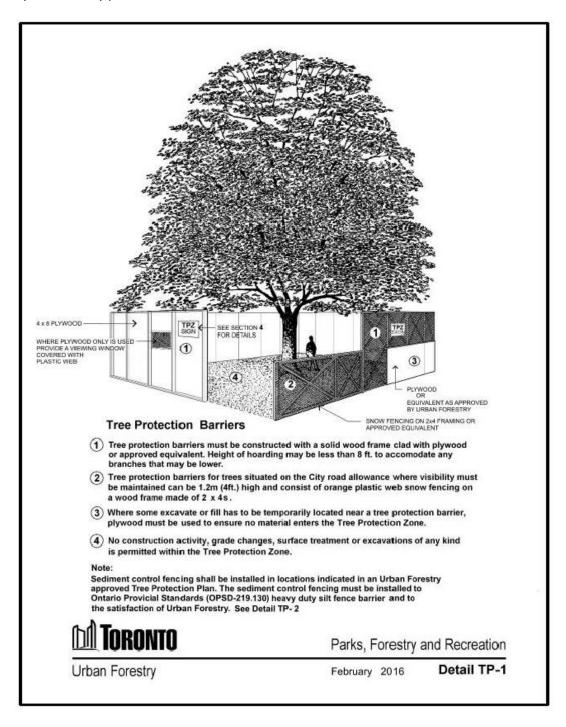
If all the above is adhered, the impact is anticipated to be well within tolerable levels as Honey Locust trees have a good tolerance to root pruning<sup>1</sup> and canopy loss is not expected to exceed 25%.

<sup>&</sup>lt;sup>1</sup> Nelda Matheny and James R. Clark, *Trees and Development: A Technical Guide to Preservation of Trees During Land Development* (Champaign, International Society of Arboriculture, 1998), 171.

#### RECOMMENDATIONS

#### **Recommendations for Hoarding**

Hoarding must be installed by a qualified contractor and put in place as accurately as possible using the scale plan as the reference. It must conform to the recommendation put forth by the City of Toronto and recommendations within this report. All the protective fencing must be maintained throughout the construction project and its removal must be approved by the Forestry planner. All hoarding must be installed before demolition or construction commences and approved by the Forestry planner.

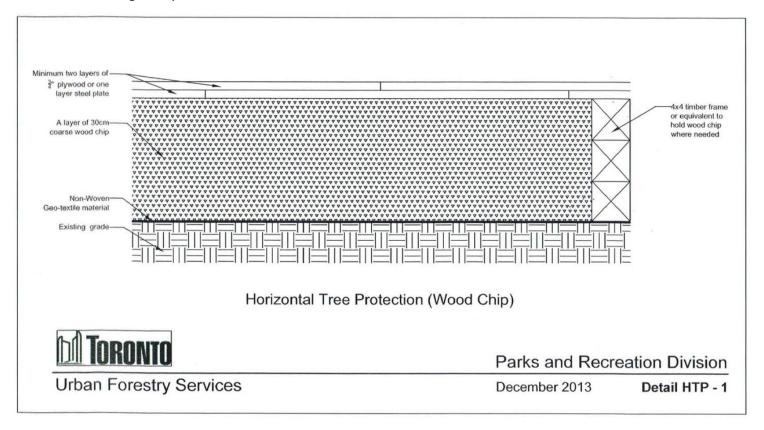


The TPZ is established on construction sites to help protect the trees from

- Alteration of existing grades
- Changes in grade by excavating and scraping
- Movement of construction vehicles and people
- Disposal of foreign materials
- Storage of waste of construction materials

The tree protection barriers can be constructed from:

- 4ft. high plywood hoarding that can be lowered around limbs, with the supports on the outside
- 4ft. high orange plastic snow fence on a 2"X 4" frame work, this is recommended were visibility is an issue This is recommended for city trees
- If fill or excavates are going to be placed near the plastic fence a plywood barrier must be used to stop these materials from entering the TPZ.
- For minimizing compaction within the TPZ, horizontal plywood hoarding may be used. Horizontal hoarding consists of landscape fabric applied to grade, 30cm layer of mulch, and two layers of plywood secured together above the mulch.
- For more information on the construction of a tree protection zone please see the City of Toronto's forestry's web site and go to By-laws and Policies.



#### Tree protection signage:

- This sign will be mounted on each TPZ, and should be a minimum of 40cm x 60cm and made on white gator board.
- The sign must say in bold letters as a heading: Tree Protection Zone (TPZ) the rest of the text is as follows: No grade changes, storage of materials or equipment is permitted within this TPZ. Tree protection barriers must not be removed without written authorization of the City of Toronto, Urban Forestry Services. For info call Urban Forestry Services at (416) 338-5566, or the project consultant at 647-500-9669.



Parks, Forestry & Recreation

#### **Tree Protection Zone (TPZ)**

All construction related activities, including grade alteration, excavation, soil compaction, any materials or equipment storage, disposal of liquid and vehicular traffic are NOT permitted within this TPZ.

This tree protection barrier must remain in good condition and must not be removed or altered without authorization of City of Toronto, Urban Forestry.

Concerns or inquiries regarding this TPZ can be directed to: 311 or 311@toronto.ca

#### Implementation of protection:

- All TPZ must be erected before any type of construction commences on the subject site.
- Before construction begins the TPZ must be inspected by city forestry staff and the consulting arborist.
- Before any digging commences around a tree subject to injury by permit, the consulting arborist must be informed.
- To dig near a tree subject to injury by permit the consulting arborist must be on site to supervise the excavation.
- Hoarding cannot be removed until all construction is finished

#### Recommendations for Excavation within a TPZ

To minimize the impact of the proposed work, the following must be adhered to:

- A qualified arborist must be on site for the complete duration of each excavation. It is the arborist's duty to instruct the laborers and minimize damage to the tree.
- The arborist is also responsible for all root pruning, and to promote 'working around' roots whenever possible.
- Roots within the proposed work area shall first be exposed prior to any root pruning taking place
- All root pruning is to be conducted to proper arboricultural standards with sharp, sanitized tools and exposed roots to be recovered with parent soil
- All excavation/digging is to be done by hand or air spade to the required depth of the proposed work
- If roots measuring a minimum of 5cm in diameter or if a large mass of roots are found, the impact of the proposed work shall be evaluated with Urban Forestry, and other methods of construction must be considered in order to preserve the subject tree
- All excavation within the minimum TPZ of a protected tree is to be documented; a report of the findings should then be submitted to Urban Forestry

#### **Recommendations for Remedial Care**

Prior to the start of construction, all trees slated for preservation located within the work area are to receive a deep root fertilization treatment to prepare the trees for the impact of the proposed work. Stela Maris®, a seaweed-based extract, is recommended to be used to help improve overall plant health, improve root growth and development, improve plant vigor, and to help trees overcome periods of stress.

To aid in the affected trees' recovery, the subject trees should be consistently watered throughout the construction process to have the soil kept moist, but not wet, as too much water can suffocate the root system and cause anaerobic conditions.

#### **Pruning Plan**

All pruning is to be completed by a component tree worker prior to the start of construction:

- All pruning is to be conducted to proper arboriculture standards as a part of ISA Best Management Practices ANSI A300
- Climbing spurs shall not be used when climbing trees, except to climb a tree to be removed or to perform an aerial rescue of an injured worker
- Equipment and work practices that damage bark or cambium should be avoided
- Rope injury from loading out heavy limbs should be avoided

#### Canopy required for pruning:



#### **SUMMARY**

The owner of 83 Pears Avenue is proposing a rear three-storey and third storey addition.

To facilitate the proposed work:

	Privately-Owned	Privately-Owned Neighbouring / Boundary Trees	City-Owned Trees
Injury	-	1	-
Removal	-	-	-
Exemption	-	-	-

If there are any questions or concerns regarding the contents of this report, please feel free to contact me at <a href="mailto:elissa@centraltreecare.com">elissa@centraltreecare.com</a>

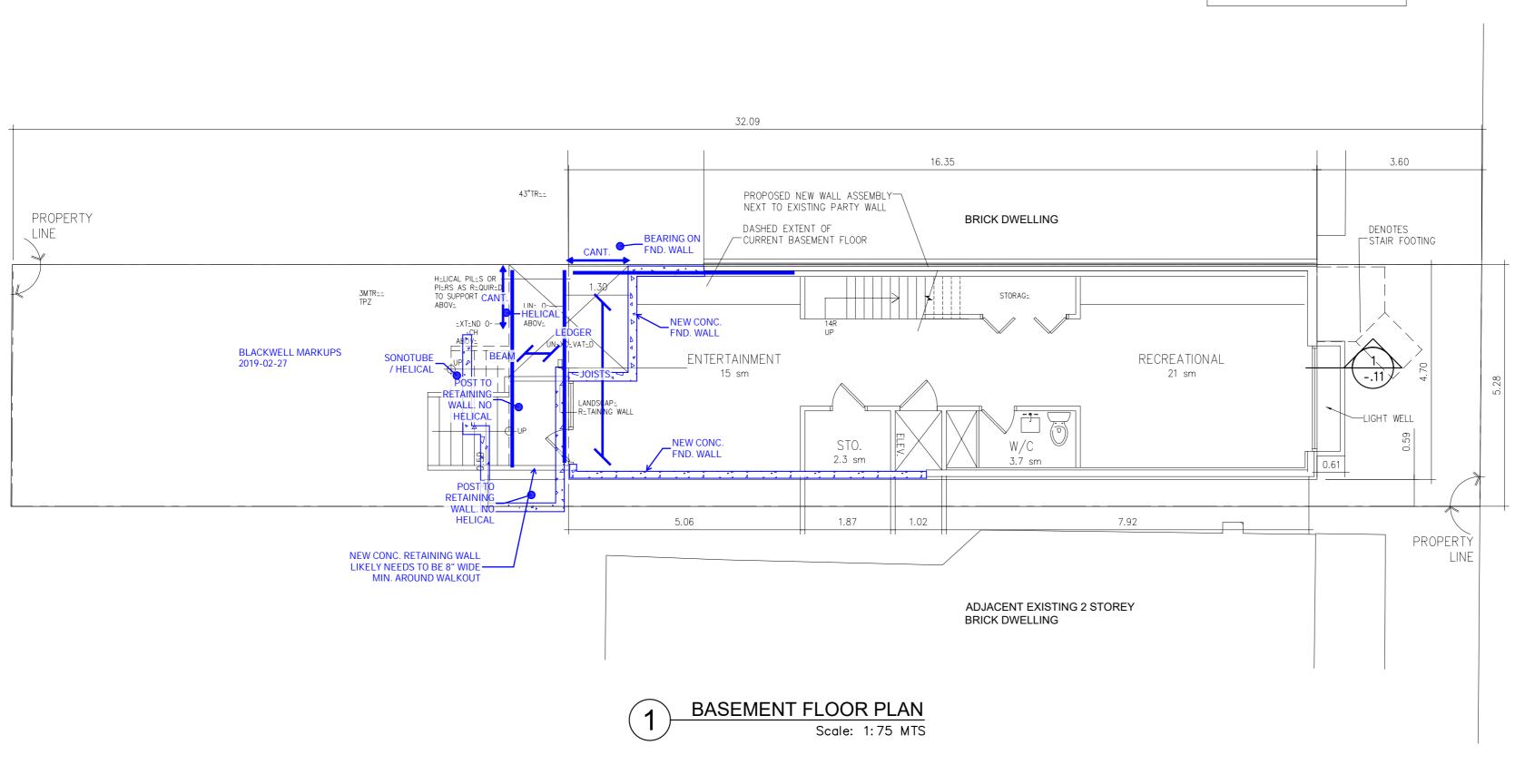
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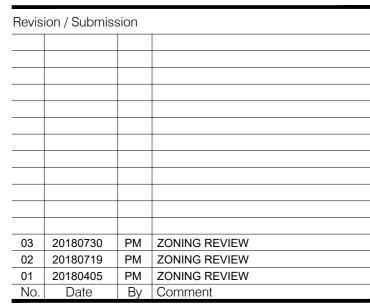
c/o Elissa Chu ON-2185A Mike Spencley ON-1379A

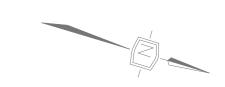
Central Tree Care Ltd.



ON-1379A







Project Title

KEY

EXISTING RETAIN

PROPOSED NEW

PRINCIPAL ENTRY

SECONDARY ENTRY

EXISTING DEMOLISHED

## 83 PEARS AVENUE ADDITION

83 PEARS AVENUE TORONTO, ON

Sheet Title

## REVISED BASEMENT FLOOR PLAN

Scale
AS NOTED

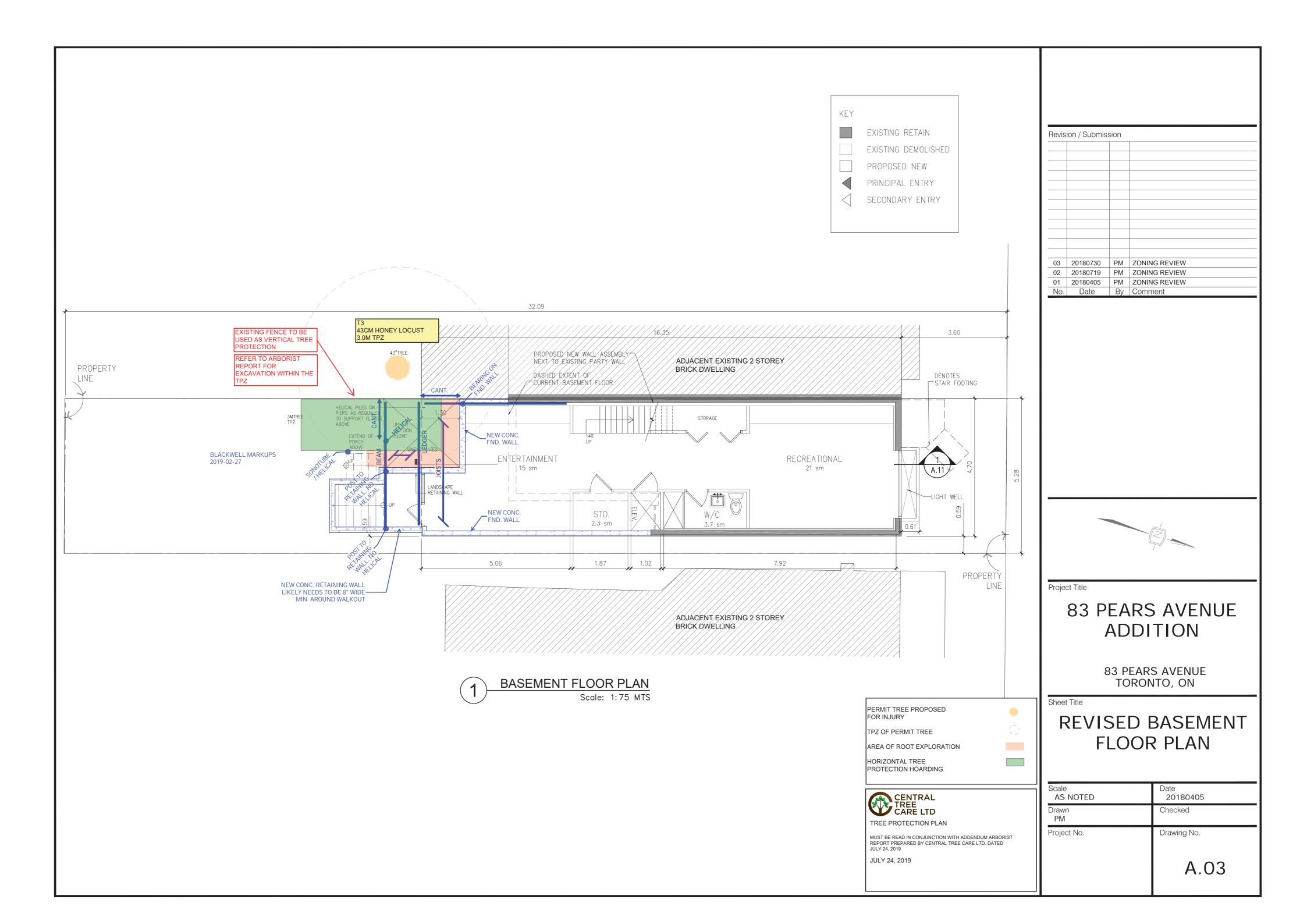
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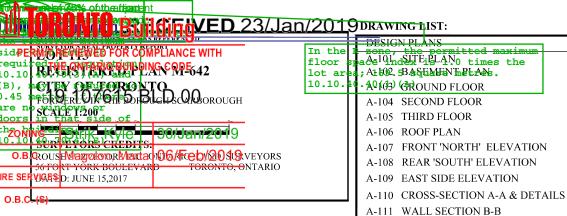
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Date
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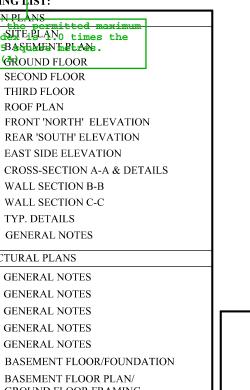
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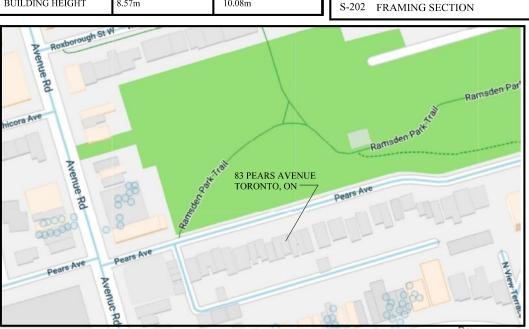


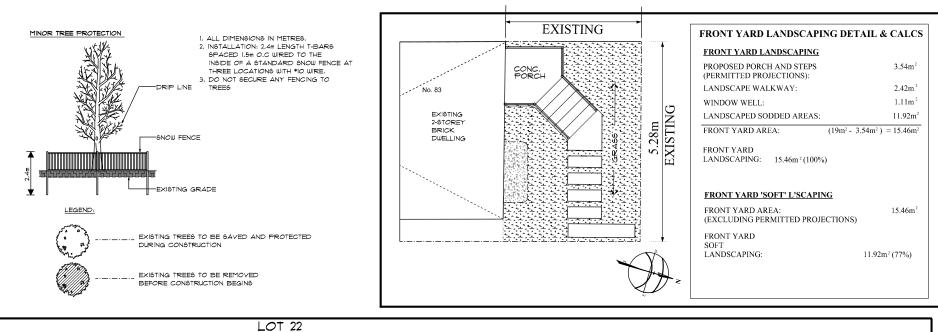


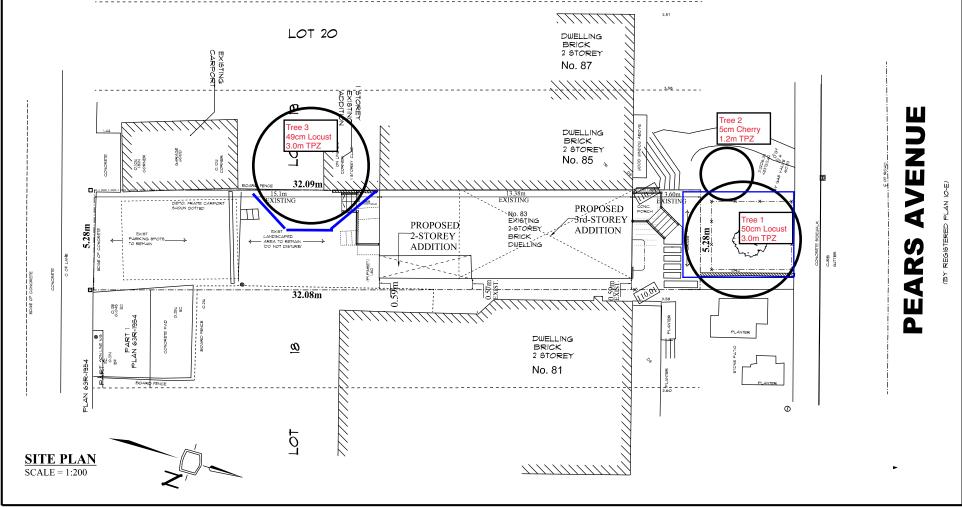
ZONING DESIGNATION: R(f15; d1.0)(x485)

ZONING DESIGNATION	: R(f15; d1.0)(x485)	A-112 WALL SECTION C-C	
ZONING DATA	EXISTING	PROPOSED	A-113 TYP. DETAILS
LOT AREA	169.5sm	169.5sm	A-114 GENERAL NOTES
LOT FRONTAGE	5.28m	5.28m	STRUCTURAL PLANS
LOT COVERAGE	33.6% (56.93sm)	33.6% (62.83sm)	S-001 GENERAL NOTES
TOTAL GFA	67% (113.88sm)	99.49% (168.64sm)	S-002 GENERAL NOTES S-003 GENERAL NOTES
FSI	.67	.99	S-004 GENERAL NOTES
FRONT YARD SETBACK	3.58m -3.60m	3.58m -3.60m	S-005 GENERAL NOTES
			S-101 BASEMENT FLOOR/FOUNDA
SIDE YARD SETBACK	0.57m - 0.59m	0.57m - 0.59m	S-102 BASEMENT FLOOR PLAN/ GROUND FLOOR FRAMING
REAR YARD SETBACKS	15.1m	15.1m	S-103 GROUND FLOOR PLAN/
BUILDING DEPTH	13.38m	13.38m	SECOND FLOOR FRAMING
BUILDING LENGTH	13.38m	13.38m	S-104 SECOND FLOOR PLAN/ THIRD FLOOR FRAMING
		+	S-105 THIRD FLOOR PLAN/
NUMBER OF STOREYS	2 STOREYS	3 STOREYS	ROOF LEVEL FRAMING
BUILDING HEIGHT	8.57m	10.08m	S-201 FOUNDATIONS SECTIONS S-202 FRAMING SECTION









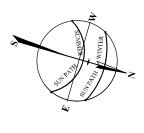
#### KEY PLAN

General Notes:
DRAWINGS MUST NOT BE SCALED.
CONTRACTOR MUST CHECK AND SITE VERIFY ALL DIMENSIONS
AND REPORT ANY DISCREPENCIES TO THE HOMEOWNER PRIOR TO
PROCEEDING WITH THE WORK. ALL WORK SHALL COMPLY WITH
THE LAWS AND REGULATION OF AUTHORITIES HAVING JURISDICTIC
TO THE SITE ALL WORK SHALL CONFORM TO SPECIFICATIONS

FOR GENERAL CONDITIONS, MATERIALS AND WORKMANSHIP.

THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER DRAWINGS AND DOCUMENTS WITH REFERENECE TO THIS SITE.

	No.	Date	Description
	1	JAN 03, 2019	ISSUED FOR REVIEW
	2	JAN 22, 2019	ISSUED FOR PERMIT
ON			



The undersigned has reviewed and takes responsibility for this design, and is exempt to comply with 3.2.5.1(3)(b) as the construction of this building is owned by the person noted below:				
	$\mathcal{A}_{\alpha}$			
Theodosios Margaritis	Opo			

SIGNATURE

NAME

Project Name	PROPOSED 3RD STOREY ADDITION + INT. ALTS	
Project Location	83 PEARS AVENUE	
Drawing's Title	SITE PLAN	
Project Number		Sheet No.
Scale	AS SHOWN	<b>A-101</b>