

INTERIM DECISION AND ORDER

Decision Issue Date Monday, March 16, 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): MARGARET ELEANOR SMITH

Applicant: EILEEN COSTELLO

Property Address/Description: 100 WILLCOCKS STREET

Committee of Adjustment Case File: 18 269666 STE 11 MV

TLAB Case File Number: 19 222040 S45 11 TLAB

Hearing date: Monday, March 02, 2020

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Eileen Costello	Applicant	
Margaret Eleanor Smith	Appellant	Eileen Costello
City of Toronto	Party	Daniel Elmadany Lauren Pinder
Susan Dexter Young	Party	
Timothy Andrew Grant	Participant	
Kurt Reuss	Participant	
Deborah Black	Participant	
Carmen Gauthier	Participant	
Alan Levy	Participant	

Anthony Greenberg	Expert Witness
Gary Davidson	Expert Witness
Philip Evans	Expert Witness

INTRODUCTION

This is an appeal from a decision of the Toronto-East York District Panel of the City of Toronto (City) Committee of Adjustment (COA) pertaining to a request to permit 7 variances for 100 Willcocks Street (subject property).

The variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a basement walkout, ground floor bay window, rear two storey addition with second storey balcony and a rear one storey detached garage.

This property is located in the University neighbourhood bounded by Robert Street to the west and Spadina Avenue to the east. The property is located on Willcocks Street, south of Harbord Street and north of Russell Street

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

BACKGROUND

The variances that have been requested are outlined as follows:

1. Chapter 10.5.40.60.(6), By-law 569-2013

A bay window, or other window projection from a main wall of a building which increases the floor area or enclosed space and does not touch the ground, is permitted to encroach provided that they are no closer to the side lot line than 0.6 m. The altered townhouse will have a west side, ground floor oriel window that will be located 0.0 m from the west side lot line.

2. Chapter 10.5.60.70.(1), By-law 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10% of the lot area (19.69 m²). The new rear one-storey detached garage will have a lot coverage of 15.77% of the lot area (31.05 m²).

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

The maximum permitted building depth for a townhouse is 14.0 m. The altered townhouse will have a building depth of 20.04 m.

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

The maximum permitted floor space index is 1.0 times the area of the lot (196.93 m²). The altered dwelling will have a floor space index will be 1.07 times the area of the lot (210.76 m²).

5. Chapter 10.10.60.20.(1)(A), By-law 569-2013

The minimum required rear yard setback and side yard setback for an ancillary building or structure containing a parking space is 1.0 m from a rear lot line or side lot line abutting a street or lane, subject to regulation 10.5.60.20.(4). The new rear one-storey detached garage will be located 0.0 m from both the east and west side lot lines.

6. Chapter 200.5.1.10.(2)(A), By-law 569-2013

The minimum required parking space must have a length of 5.6 m and a width of 2.9 m. The new rear one-storey detached garage will contain two parking spaces each 5.0 m in length and 2.6 m in width.

1. Section 4(17)(a), By-law 438-86

The minimum dimensions of a parking space accessed by a one-way or two-way drive aisle having a width of 6.0 m or more measured at the entrance to the parking space, shall be 5.6 m in length and 2.9 m in width. The new rear one-storey detached garage will contain two parking spaces each 5.0 m in length and 2.6 m in width.

These variances were heard and refused at the August 28, 2019 COA meeting. Subsequently, an appeal was filed by the property-owners within the 20-day appeal period as outlined by the *Planning Act*. The TLAB received the appeal and scheduled a series of 3 days for hearings on March 2, 3 and 6, 2020.

At the commencement of day 1 of the hearings, the appellant's legal counsel indicated that they had, in principal, reached an agreement with the other parties on this matter in permitting this proposal. In furtherance of this, a pre-approved set of conditions had been drafted to ensure certain aspects relating to the proposal would be adhered to from a planning, building and legal perspective. The City, as represented by the City Solicitor, indicated they had no comment or position on the matter currently being considered. The other parties in attendance stated they had no further concerns and were amenable to reaching a consensus with the appellant. In addition, as the other parties would not be making formal presentations to the TLAB, day 2 and 3 hearing as scheduled would no longer be necessary.

MATTERS IN ISSUE

The TLAB, as part of its practice direction, does encourage settlement agreement to be reached with the parties involved to constrain the need for an adjudicated decision having to be reached. However, I must assess the matters at hand to ensure that they constitute the principles of good planning as prescribed by the

Planning Act and other requisite legislation. This proposal has been within the planning process for close to a year with comprehensive discussions between the appellant/property-owner, City staff and neighbouring residents to reach a revised proposal which would be appropriate for the local context. The fruition of an agreed upon proposal with drafted conditions of approval must now be assessed by the TLAB to ensure they are upholding the overall public interest.

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').

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

Eileen Costello, legal counsel for the appellant Margaret Smith, indicated to the TLAB that revisions to two of the variances had been achieved. Variance # 3 has been reduced from a request of 20.04 metres to 19 metres. Variance #4 has been reduced 1.07 floor space index (FSI) to 1.02 FSI. Ms. Costello request that the tribunal permit these revisions and to allow the hearing to proceed. As part of these changes as proposed, the appellant had engaged City Heritage Preservation Services (HPS) who, on review of this revised proposal, provided no objections on this matter. She further indicated that the Harbord Village Residents Association, represented by Bob Stambula at the hearing, had also been consulted on this revised proposal and would not be contesting this matter further with the understanding that a mutually agreed upon set of conditions be imposed with this appeal, if it were permitted by the TLAB.

The addition is to allow the renovation of the ground floor and of the basement apartment, which is permitted as per provincial policies relating to secondary suites. The original variance application had initially been submitted in December 2018 with a pre-consultation process being undertaken over a period of 6 months. Extensive discussions with City staff and residents occurred. Due to a historical occurrence, the majority of the side yard of this subject property exists within the City right of way. As

such, the securing of agreements with the City to allow development/construction to occur had to be initially completed. The proposal was again revised in May 2019 which included discussions with the interested parties as indicated earlier. These discussions resulted in the drafting of a set of conditions be attached to a potential approval of variances. As a result, the City, while still a party to this matter, no longer has a position on this appeal.

Ms. Costello argues that the TLAB should allow the revised variance requests, accept revised drawings and that the cumulative variances should be approved on an interim basis. This is explained as being appropriate as her client must act to obtain heritage permit, tree removal permit and secure an encroachment agreement with the City. An Interim Order, as opined by Ms. Costello, would allow her client to first address the conditions. Afterwards, a final Order would be issued thus allowing her client to proceed to obtain a heritage permit. She contends that such a process has been undertaken in other TLAB matters.

Lauren Pinder, legal counsel for the City, stated that it had submitted revised conditions to the TLAB which have the consent of all the parties involved.

Ms. Costello then proceeded to call Philip Evans, of ERA Architects, to provide testimony to the tribunal. I indicated that, in reviewing Mr. Evans curriculum vitae, I would be able to qualify him in the field of heritage planning. Mr. Evans outlined that a permitting process would need to be undertaken due to alterations to the existing house on the site. The variance requests would, in his opinion, be respective of the cultural heritage attributes of this subject property. With the addition being proposed, additional improvement and maintenance to the existing house will also be undertaken. The oriel windows have been further revised to facilitate a product/design more sympathetic in relation to the overall building context. Mr. Evans detailed the extensive public consultation which occurred throughout the planning process which extended beyond prescribed requirements of the *Planning Act* and *Ontario Heritage Act*.

Ms. Costello then proceeded to call Anthony Greenberg, of SvN, to provide additional testimony. I stated that, in review of Mr. Greenberg's curriculum vitae, I found he is qualified in the field of land use planning. Mr. Greenberg commented that he had been the retained planner since the original variance application was submitted. He argues that the four tests for minor variance in the *Planning Act* are met by this proposal. Mr. Greenberg stated that the subject property is unique in that a portion of the property is located essentially within the public space. Mr. Greenberg proceeded to provide an analysis of side lot properties and unique characteristics associated with them. These properties typically have buildings of a greater depth and a rear facing garage. They also usually have deep front facing yards. He commented on how the comprehensive public consultations that were undertaken resulted in a series of four revisions to the proposal. He also describe that an adjacent property, 101 Willcocks Street, itself had been redeveloped as well. As such, arguments pertaining to potential precedent setting relating to this matter would not be pertinent. He further comments that, in his opinion, there is no consistent building depth of the houses within the immediate neighbourhood. The subject house has existed prior to the passing of the Zoning By-law. The overall impact of these variances would not be significant. He

further states that the proposal would contribute positively to the public realm environment.

No further submissions were made to the tribunal and I indicated that the additional two days of hearings would be cancelled. At this juncture, I would then take the material submitted and testimony as presented at this hearing to formulate a decision on the matter.

ANALYSIS, FINDINGS, REASONS

This matter, after several iterations and a protracted planning process, is now being presented to the TLAB on consent requesting the approval of revised variances, conditions and plans.

The two expert witnesses as proffered by the appellant provided uncontroverted evidence which were in support of the revised proposal.

I would concur that the revisions to the two earlier noted variances constitute a minor amendment which would require no further public re-notification, as stated in Section 45 (18.1.1) of the *Planning Act*.

I find on the evidence provided that the variances as revised meet the policy obligations of the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe. As well, for the reasons expressed in their filings and oral evidence, that the variance test of the Planning Act, above recited, individually and cumulatively are met. Subject to this disposition, the application constitutes goods planning.

The tribunal would like to thank all the parties to matter with their ability to engage in a constructive dialogue to resolve issues and to reach a joint resolution to this appeal.

DECISION AND ORDER

The appeal of the decision of the Committee of Adjustment is allowed in part:

a) the Variances identified in Attachment 1 are approved subject to an additional Plans Examination by the City to determine the precise measurements to be incorporated. This Decision and Order is Interim, pending the Applicant reporting to the TLAB on the outcome of such Plans Examination with concurrence by the Appellant at which time the TLAB will consider the issuance of a Final Order.

b) The Conditions identified in Attachment 2 are approved.

c) Subject to paragraph a), the Plans attached and referenced in Attachment 3 are approved.

If difficulties arise from the implementation hereof, the TLAB may be spoken to.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: Leung, Justin

Attachment 1

Variances

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

1. Chapter 10.5.40.60.(6), By-law 569-2013

A bay window, or other window projection from a main wall of a building which increases the floor area or enclosed space and does not touch the ground, is permitted to encroach provided that they are no closer to the side lot line than 0.6 m. The altered townhouse will have a west side, ground floor oriel window that will be located 0.0 m from the west side lot line.

2. Chapter 10.5.60.70.(1), By-law 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10% of the lot area (19.69 m²). The new rear one-storey detached garage will have a lot coverage of 15.77% of the lot area (31.05 m²).

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

The maximum permitted building depth for a townhouse is 14.0 m. The altered townhouse will have a building depth of 19.0 m.

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

The maximum permitted floor space index is 1.0 times the area of the lot (196.93 m²). The altered dwelling will have a floor space index will be 1.02 times the area of the lot (202.2 m²).

5. Chapter 10.10.60.20.(1)(A), By-law 569-2013

The minimum required rear yard setback and side yard setback for an ancillary building or structure containing a parking space is 1.0 m from a rear lot line or side lot line abutting a street or lane, subject to regulation 10.5.60.20.(4). The new rear one-storey detached garage will be located 0.0 m from both the east and west side lot lines.

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The minimum dimensions of a parking space accessed by a one-way or two-way drive aisle having a width of 6.0 m or more measured at the entrance to the parking space, shall be 5.6 m in length and 2.9 m in width. The new rear one-storey detached garage will contain two parking spaces each 5.0 m in length and 2.6 m in width.

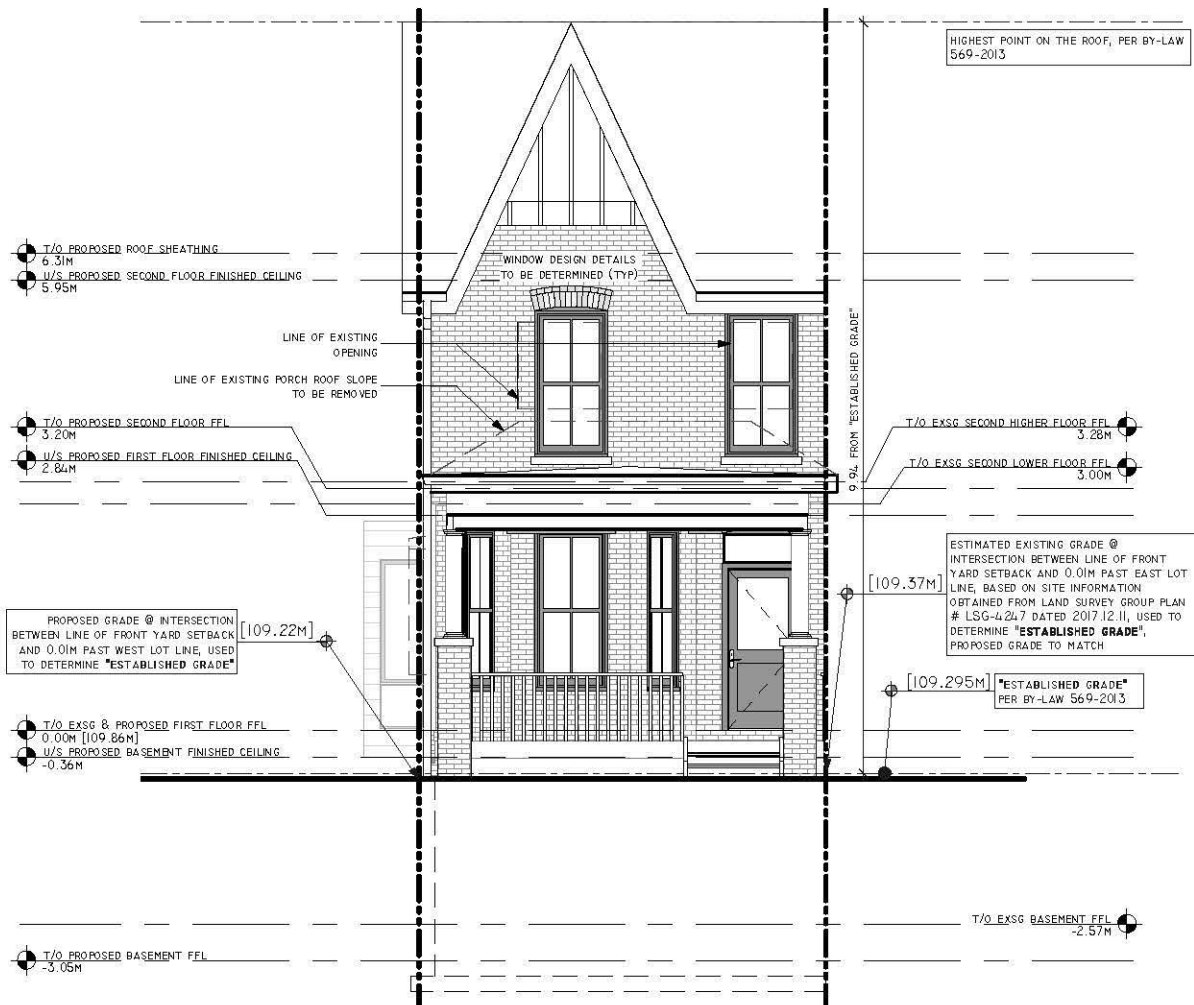
Attachment 2

Conditions of Approval

1. The owner shall build the proposed addition(s) to the dwelling substantially in accordance with the plans and drawings for 100 Willcocks Street dated November 21, 2019 (the "Plans and Drawings") which shall be subject to modifications as may be required as a result of any subsequent City permit process which do not result in any additional variances.
2. The approval of the Plans and Drawings is conditional on the following:
 - a. The owner shall submit to the City's Heritage Preservation Services, building permit drawings, including plans, elevations, details and a landscape plan satisfactory to the Senior Manager, Heritage Preservation Services, and the owner has applied for alterations under Section 42 of the Ontario Heritage Act;
 - b. The owner shall have obtained approval from City Council for alterations under section 42 of the Ontario Heritage Act, and such decision is final and binding under the Ontario Heritage Act;
 - c. Prior to the issuance of a building permit, building permit drawings, including plans, drawings, the owner shall have obtained approval under section 42 of the Ontario Heritage Act for the alterations to the Part V designated building at 100 Willcocks Street;
 - d. The owner shall submit a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets; and
 - e. The owner has either:
 - i. obtained the necessary approval(s) from right-of-way management from the City, satisfactory to the General Manager, Transportation Services in consultation with General Manager, Parks, Forestry and Recreation, for any proposed encroachment(s) and/or structure(s) proposed on the City's lands; or
 - ii. modified their Plans and Drawings in Condition 1, to remove any or all encroachment(s) and/or structure(s) not authorized by the City and such revisions satisfactory to the City.

Attachment 3

Approved Plans Dated November 21, 2019



1 PROPOSED SOUTH ELEVATION
1 : 100

CONTRACTOR MUST VERIFY ALL DIMENSIONS AND BE RESPONSIBLE FOR SAME. REPORTING ANY DISCREPANCIES TO DESIGNER BEFORE COMMENCING THE WORK. THE DRAWING IS AN INSTRUMENT OF SERVICE AND SHALL REMAIN THE PROPERTY OF DESIGNER. IT MUST BE RETURNED TO THEM UPON COMPLETION OF THE WORK. THE COPYRIGHT OF THIS DRAWING AND THE WORK EXECUTED FROM SAME BEING RESERVED. DO NOT SCALE DRAWING

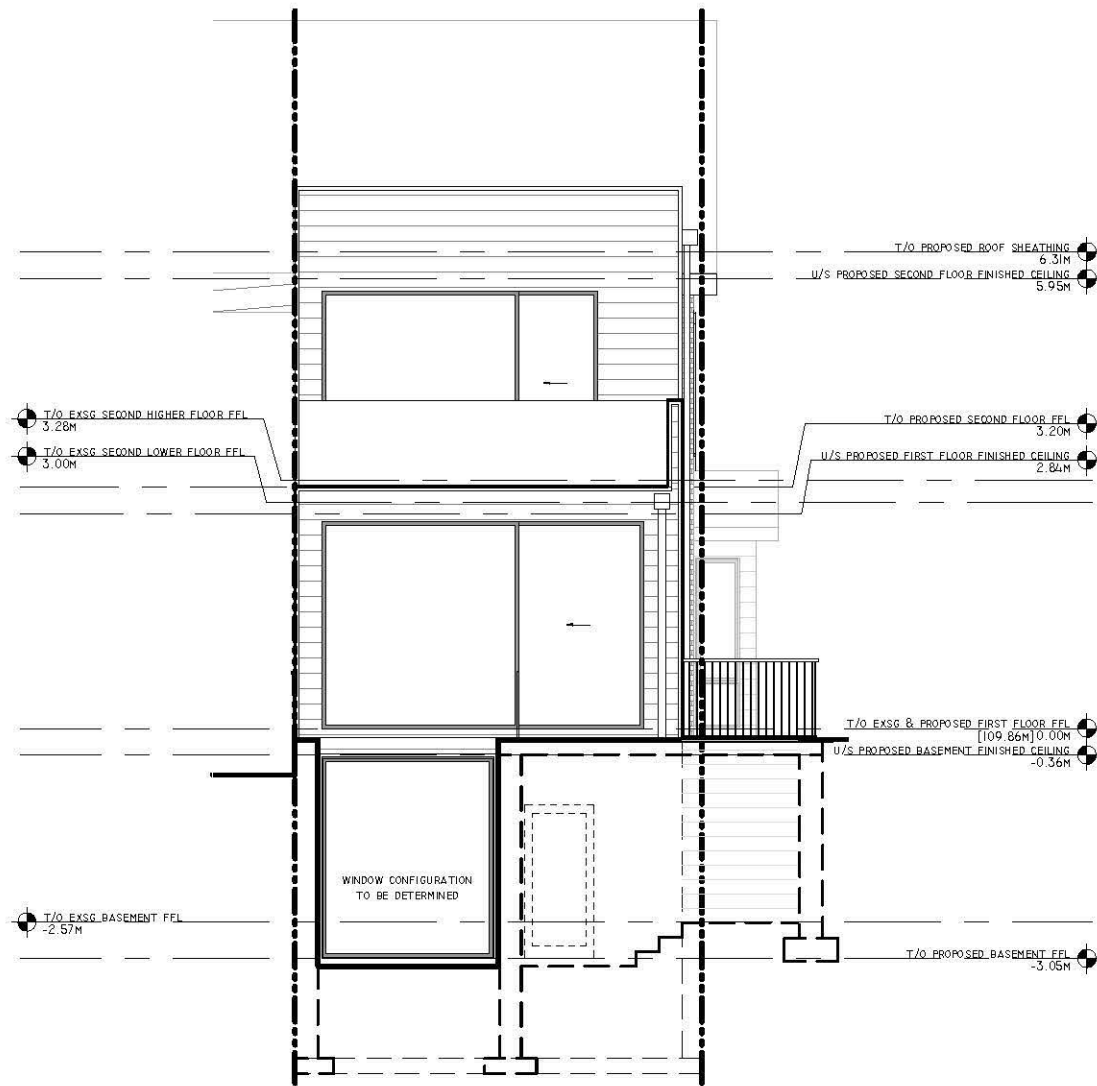
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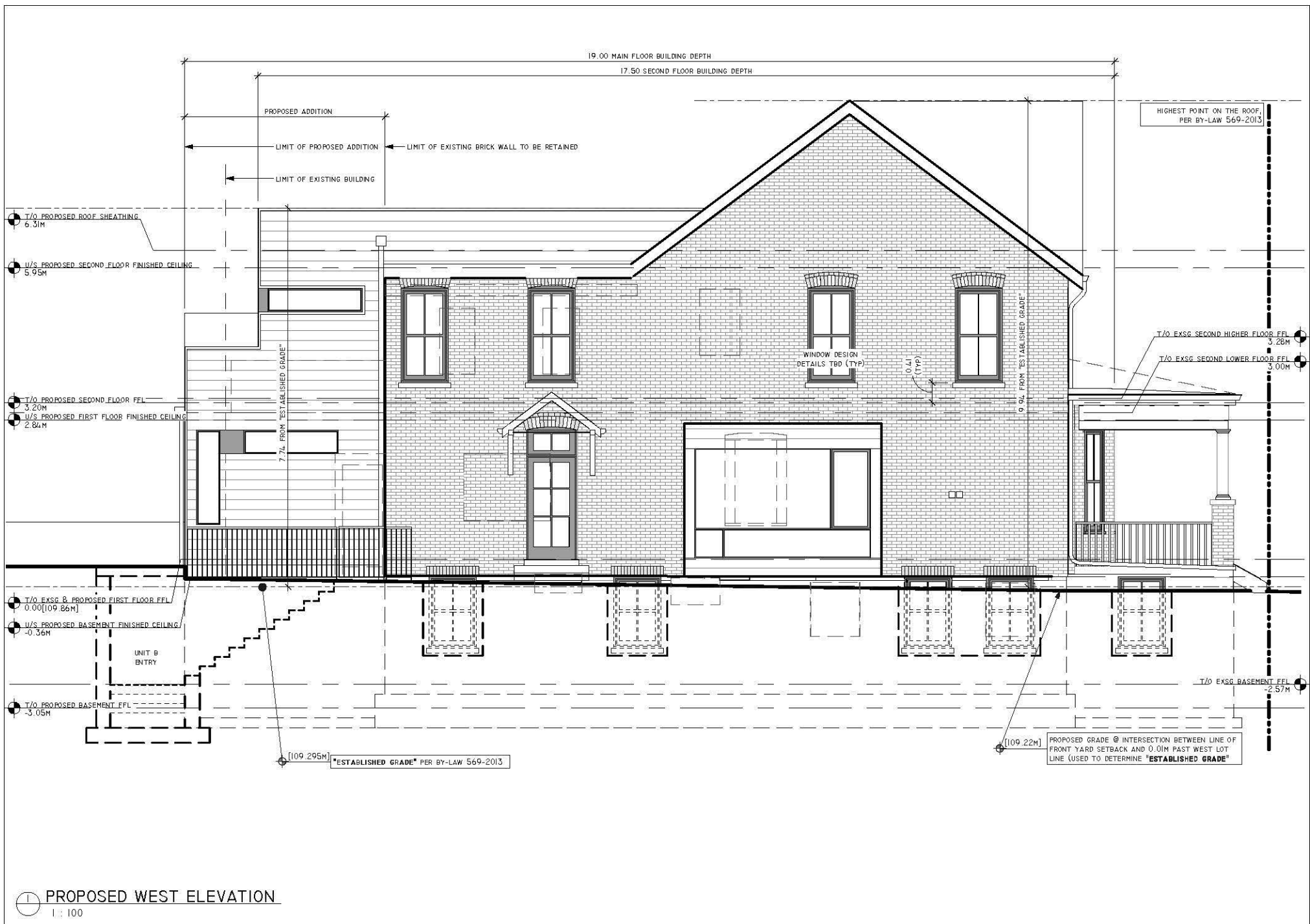
**PROPOSED
SOUTH ELEVATION**

NOV 21 2019

A5.0



PROPOSED NORTH ELEVATION
1:100



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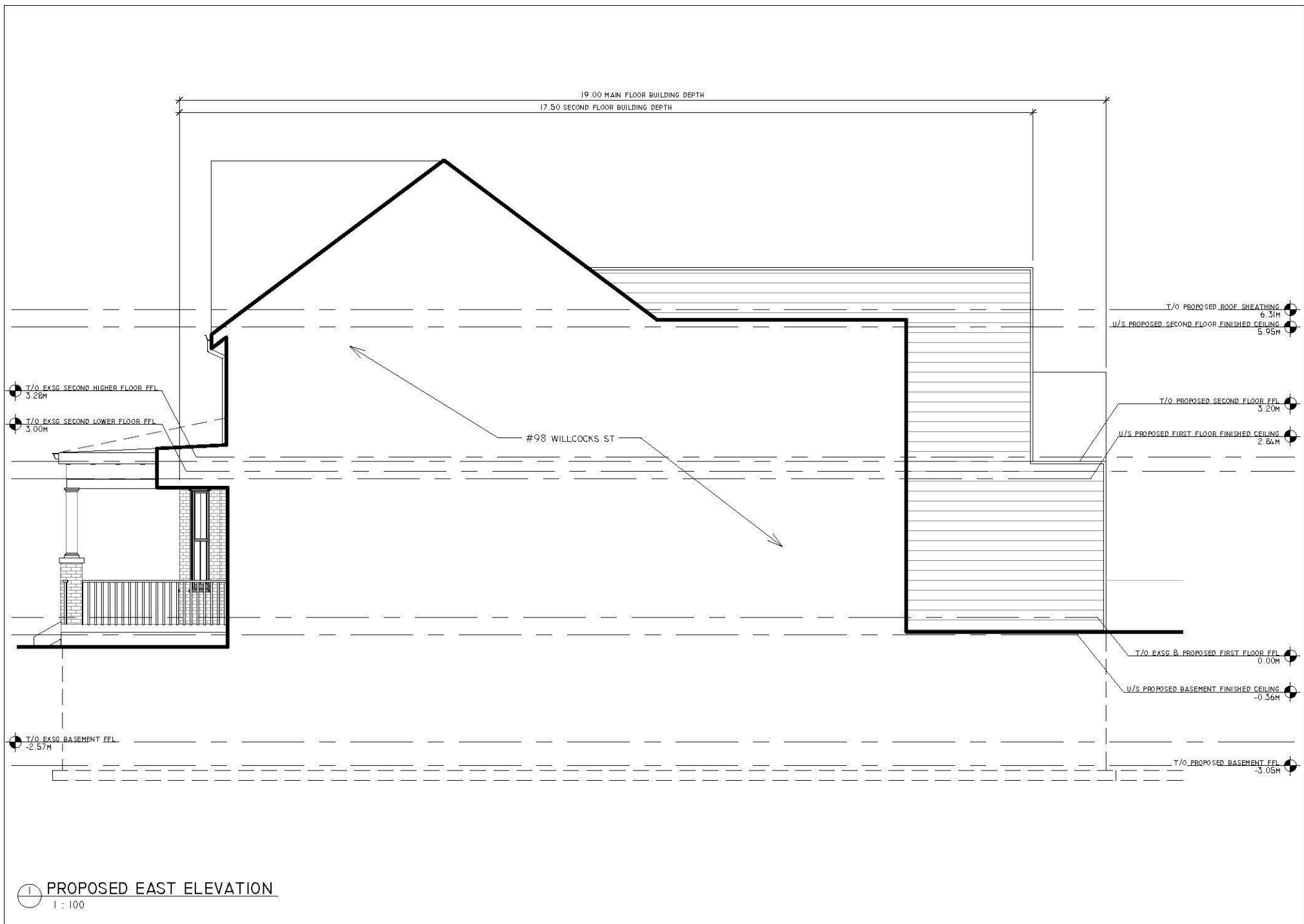
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SMITH RESIDENCE
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**PROPOSED
WEST ELEVATION**

NOV 21 2019

A6.0



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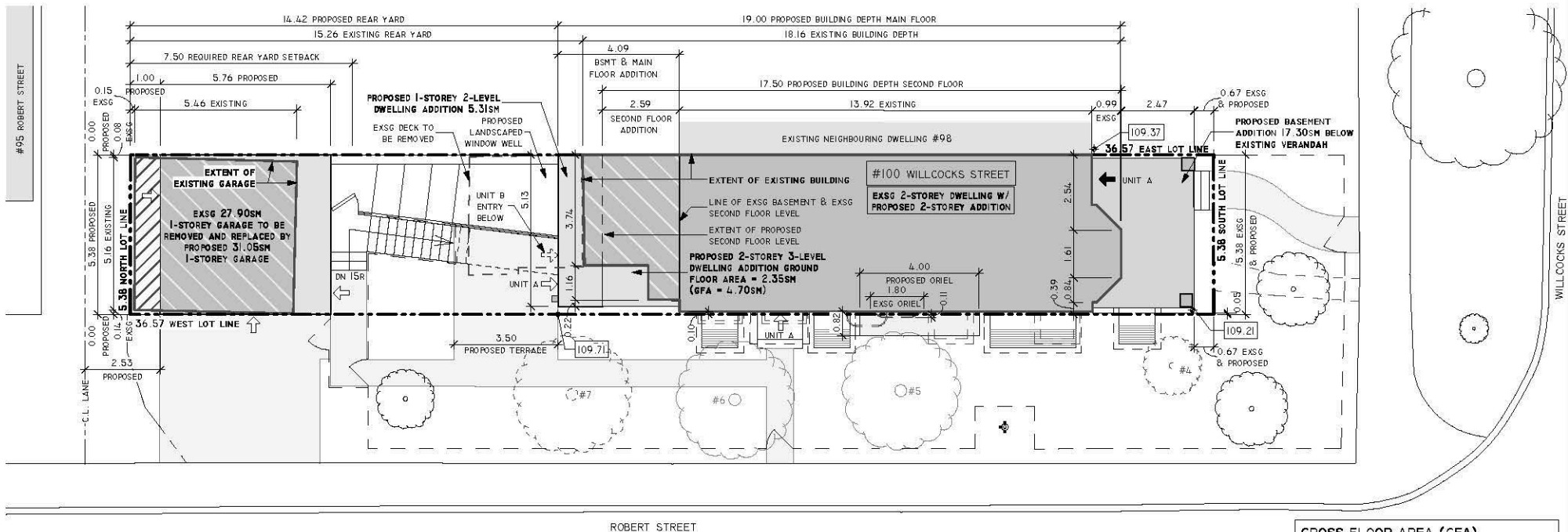
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**PROPOSED
EAST ELEVATION**

NOV 21 2019

A7



PROPOSED SITE PLAN

1 : 200

SITE INFORMATION OBTAINED FROM SURVEYOR'S REAL PROPERTY REPORT PLAN BY LAND SURVEY GROUP, ONTARIO LAND SURVEYORS DATED DECEMBER 11 2017. DESIGNER ASSUMES NO RESPONSIBILITY FOR ERRORS

LANDSCAPED AREA CALCULATIONS

	EXISTING	PROPOSED
LOT AREA	196.93SM	SAME AS EXISTING
TOTAL LANDSCAPED OPEN SPACE (% OF LOT AREA)	55.53SM (28.2%)	50.90SM (25.8%)
TOTAL SOFT LANDSCAPING AREA (% LOT AREA)	37.99SM (19.3%)	24.57SM (12.5%)
FRONT YARD LANDSCAPED OPEN SPACE (% FRONT YARD AREA)	3.07SM (100%)	3.07SM (100%)
FRONT YARD SOFT LANDSCAPING (% OF FRONT YARD LANDSCAPED)	2.25SM (73%)	2.25SM (73%)
SIDE YARD LANDSCAPED OPEN SPACE (% OF SIDE YARD AREA)	0SM (N/A)	1.23SM (100%)
SIDE YARD SOFT LANDSCAPING (% OF SIDE YARD LANDSCAPED)	0SM (N/A)	1.52SM (38%)
REAR YARD LANDSCAPED OPEN SPACE (% OF REAR YARD)	52.46SM (65.3%)	46.57SM (59.9%)
REAR YARD SOFT LANDSCAPING (% OF REAR YARD LANDSCAPED)	33.48SM (64.8%)	20.8SM (26.8%)

GROUND FLOOR AREA

EXISTING:	
GARAGE:	27.90SM
DWELLING**:	90.24SM
VERANDAH:	14.77SM
TOTAL:	132.91SM
PROPOSED:	
GARAGE:	31.05SM
DWELLING**:	100.50SM
VERANDAH:	14.77SM
TOTAL:	146.32SM

NOTE:
DWELLING** GROUND FLOOR AREAS INCLUDE ORIEL WINDOWS BUT PROPOSED DOES NOT INCLUDE WEST ENTRY ROOF.

FLOOR SPACE INDEX (FSI)

LOT AREA = 196.93SM
EXISTING FLOOR SPACE INDEX = 178.19SM/196.93SM = 0.905
PROPOSED FLOOR SPACE INDEX = 202.20SM/196.93SM = 1.027

DEFINITIONS:

[10.5.4.0.50 FLOOR AREA (1) EXCLUSION FROM FLOOR SPACE INDEX] "IN THE RESIDENTIAL ZONE CATEGORY, THE GROSS FLOOR AREA OF ANCILLARY BUILDINGS IS NOT INCLUDED FOR THE PURPOSE OF CALCULATING THE TOTAL GROSS FLOOR AREA AND FLOOR SPACE INDEX FOR A LOT."

GROSS FLOOR AREA (GFA)

EXISTING:	
GARAGE:	N/A
DWELLING:	163.42SM
-- BASEMENT*	77.52SM
-- MAIN FLOOR	90.24SM
-- SECOND FLOOR	75.18SM
VERANDAH:	14.77SM
TOTAL (EXCL. BASEMENT*):	178.19SM
PROPOSED:	
GARAGE:	N/A
DWELLING:	187.43SM
-- BASEMENT*	112.03SM
-- MAIN FLOOR	103.69SM
-- SECOND FLOOR	86.93SM
VERANDAH:	14.77SM
TOTAL (EXCL. BASEMENT*):	202.20SM

GROSS FLOOR AREA (GFA) INCLUDING BASEMENT, BY UNIT:

UNIT A:	240.51SM
UNIT B (BASEMENT APARTMENT):	73.81SM

DEFINITIONS:

[10.5.4.0.40 FLOOR AREA (3) GROSS FLOOR AREA CALCULATIONS FOR A RESIDENTIAL BUILDING OTHER THAN AN APARTMENT BUILDING] "IN THE RESIDENTIAL ZONE CATEGORY, THE GROSS FLOOR AREA OF A RESIDENTIAL BUILDING, OTHER THAN AN APARTMENT BUILDING, MAY BE REDUCED BY:
(A) THE FLOOR AREA OF THE BASEMENT*, [BY-LAW: PL130592 MAR-2018]"

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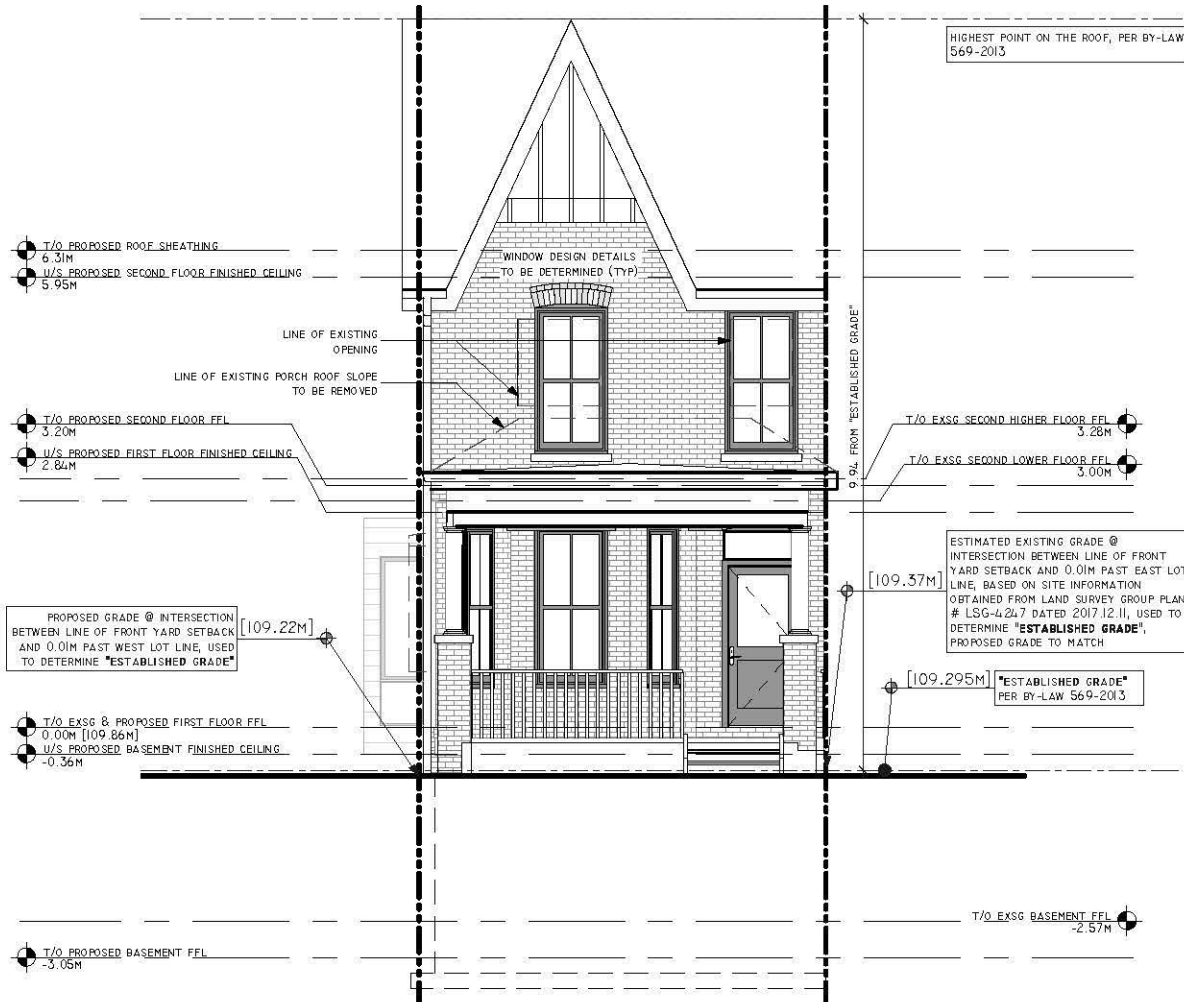
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**PROPOSED SITE PLAN
REAR YARD BASEMENT
ENTRANCE OPTION**

NOV 21 2019



A1.1



1 PROPOSED SOUTH ELEVATION
1 : 100

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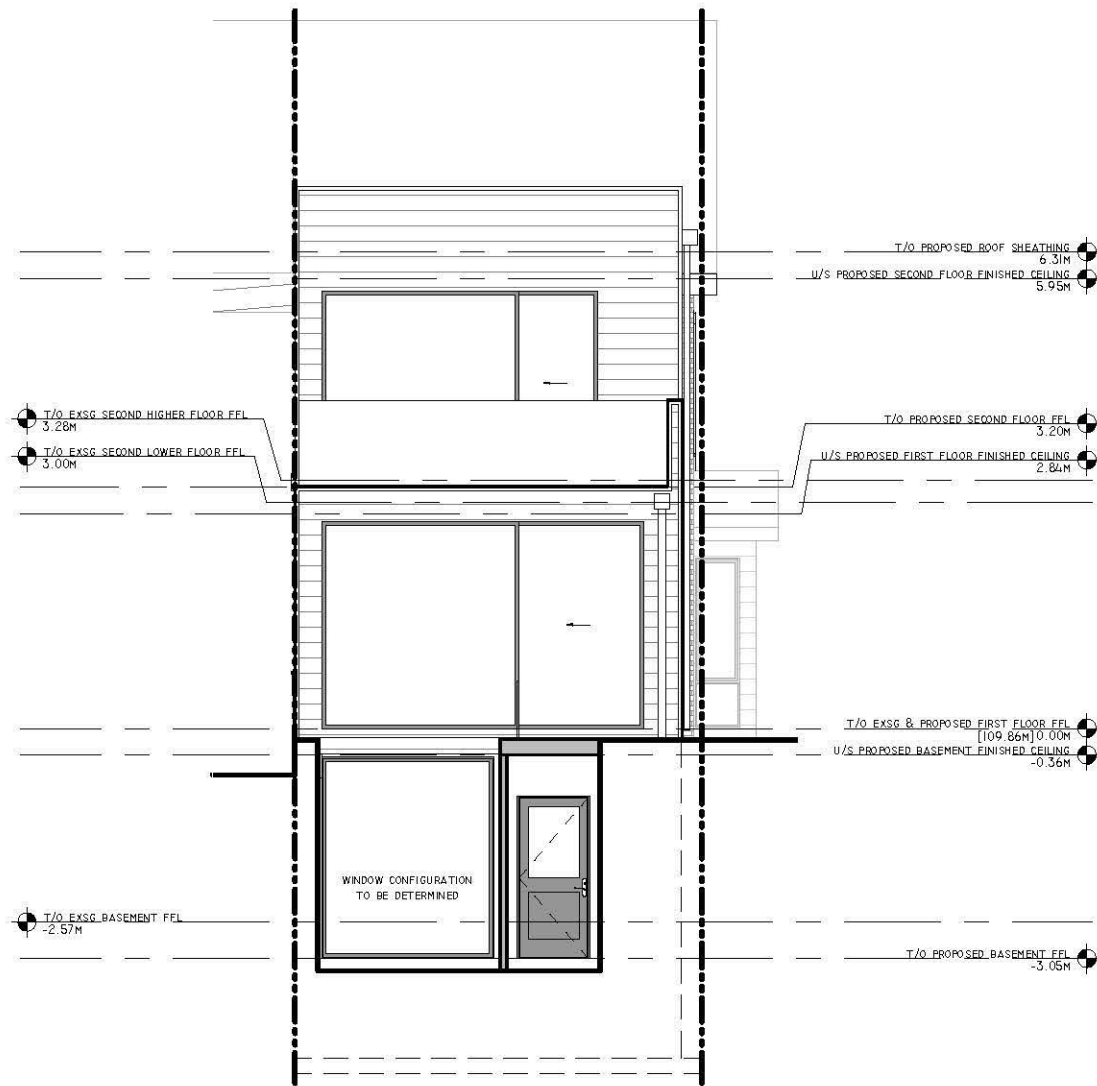
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**PROPOSED SOUTH ELEVATION
REAR YARD BASEMENT
ENTRANCE OPTION**

NOV 21 2019

A5.0



PROPOSED NORTH ELEVATION
1:100



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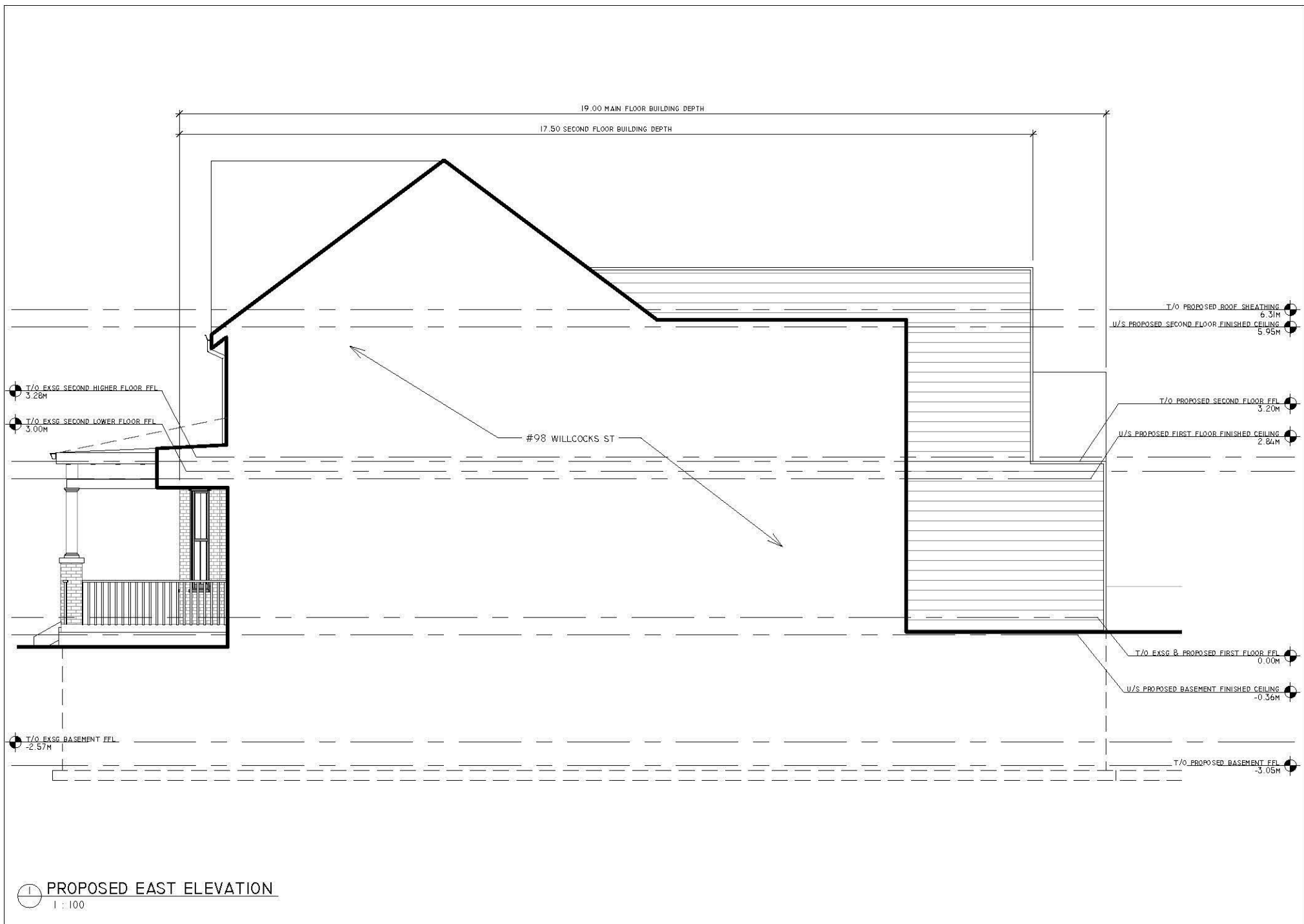
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**PROPOSED WEST ELEVATION
REAR YARD BASEMENT
ENTRANCE OPTION**

NOV 21 2019

A6.0



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SMITH RESIDENCE
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**PROPOSED EAST ELEVATION
REAR YARD BASEMENT
ENTRANCE OPTION**

NOV 21 2019

A7