

DECISION AND ORDER

Decision Issue Date: Monday, April 27, 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): MIR SADEGH TAHERI

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 393 BALLIOL ST

Committee of Adjustment Case File: 18 113978 STE 22 MV (A0127/18TEY)

TLAB Case File Number: 18 200958 S45 22 TLAB

Hearing date: Tuesday, April 16, 2019

DECISION DELIVERED BY S. Makuch

APPEARANCES

Applicant	Rubinoff Design Group
Primary Owner	Mohammad Reza Nikravan
Appellant	Mir Sadegh Taheri
Appellant's Legal Rep.	Amber Stewart
Party	City of Toronto
Party's Legal Rep.	Sara Amini
Party's Legal Rep.	Kasia Czajkowski
Party	Catharine Eunice McPherson
Party's Legal Rep.	Michael Hackl

Participant	Greg Russell
Participant	Al Kivi
Participant	Sharon Mourer
Expert Witness	Michael Goldberg
Expert Witness	Terry Mills

INTRODUCTION

This is a decision arising from a Motion after the hearing of an appeal from a decision of the City of Toronto (City) Committee of Adjustment (COA) refusing minor variances for the alteration of an existing two storey detached dwelling at 393 Balloil Street (subject property) by constructing: a rear and side two storey addition; an integral garage; a rear basement walkout; a rear deck; and a rear second story balcony. The Motion was brought on November 22, 2019, seven months after the Hearing, which was completed on April 16, 2019.

BACKGROUND

Evidence was heard at the Hearing from all parties who wished to present evidence with respect to the original application regarding all the variances, and the integral garage in particular. After that evidence was heard the Appellant brought a Motion, which they requested to be without prejudice, to alter the plans for the addition so that the garage did not have a front door and side wall.

The revisions were not opposed by the other Parties and revised plans and any revised variances resulting from the altered plans were to be submitted subsequent to the Hearing. Neither plans nor revised variances were submitted until after I issued an Order stating that the appeal would be dismissed unless a Motion was brought to submit the revised plans by November 22, 2019. On that date a Motion was filed “requesting an Order approving the minor variances.” The Motion stated that it was “brought at the direction of TLAB” and that plans dated November 22, 2019 were attached, although no plans with that date were attached but rather plans simply dated November 2019 were submitted.

MATTERS IN ISSUE

In issue is whether the appeal should be allowed with respect to the revised plans dated November 2019 and attached as Appendix 1 and with respect to the revised variances attached as Appendix 2, given that contrary to a statement in the Motion, there was no direction by TLAB that a Motion be brought. The Motion was at the discretion of the

Applicant and it contained no justification for the long delay of seven months after the Hearing in submitting the revised plans. Furthermore, there were no plans dated November 22, 2019 filed.

However, the Affidavit in support of the Motion does refer to the plans dated November 2019, and the revised variances and does provide evidence to support the Applicant's position that no new notice of the revised variances is required.

JURISDICTION

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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

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.

It is also important to note that there must be evidence that revisions to the variances are minor and no new notice of the revisions is required by virtue of s. 45 (18.1.1) of The Planning Act.

EVIDENCE

Evidence was submitted with the Motion that the revised variances and plans meet the requirements of the *Planning Act*. Moreover, there was evidence presented at the Hearing that such plans would meet those requirements. Although there were no plans dated November 22, 2019 as referred to in the grounds for Motion, there were plans dated November, 2019.

At the Hearing, in the context of a settlement negotiated among all the Parties, the Applicant agreed to: eliminate the integral garage and provide parking behind the main front wall of the dwelling, under a carport; - provide a flat roof over the carport; and lower a portion of the wall and roof height at the northwest corner of the dwelling (this was achieved by accessing Bedroom No. 4 on the second floor from the landing of the staircase leading to the second floor). The submitted plans reflect those changes as the Affidavit in support of the Motion states. That Affidavit also states, as referred to above, that new notice is not required under s. 45 (18.1.1) of the *Act*.

ANALYSIS, FINDINGS, REASONS

There is a substantial change to the appearance of the proposed modifications to the dwelling as a result of the revisions to the submitted plans, dated November 2019. The

plans show a dwelling without an integral garage which was the main issue at the Hearing. Moreover, the number of variances is reduced and thus no new notice is required respecting the variances under s. 45 (18.1.1) of the *Act*. While the plans attached to the Motion are not dated in accordance with the Motion, I find that they are the plans referred to in the Motion submission. Moreover I note that none of the Parties has made any objection whatsoever to the Motion.

Finally I note that there is affidavit evidence in support of the plans attached to the Motion and evidence that the revised variances meet the four tests of the *Act*. I find that based on the evidence presented at the Hearing prior to the introduction of the plans through the Motion, and the evidence I heard from Mr. Goldberg orally at the Hearing and in his witness statement attached to the Motion regarding the variances, the revised variances meet the four tests and conform with relevant provincial policies.

The proposal as revised is appropriate and meets the four tests for a variance application as set out in the *Act*. As indicated in Mr. Goldberg's Affidavit, the proposal maintains the general intent and purpose of the Official Plan, as it will provide for a contemporary building design that will fit well with this part of the Davisville Village neighbourhood. The neighbourhood contains a wide variety of dwelling styles, including contemporary renovated or replacement dwellings similar in scale and form to that being proposed. The parking solution is similar to other dwellings in the neighbourhood, many of which provide parking in a front parking pad or an integral garage.

The proposal meets the general intent and purpose of the zoning by-law, and the Official Plan. In particular, the proposed carport design eliminates the concern of having an integral garage in the Davisville Village neighbourhood, and provides parking by way of a solution which was accepted by all Parties and Participants to the proceeding as being a desirable parking solution. Mr. Goldberg has addressed the intent of the zoning in respect of each variance in his evidence.

The proposal is appropriate and desirable and will provide for a renovation that suits contemporary building standards with on-site parking in an appropriate manner. The proposal is minor in nature, both quantitatively and qualitatively. In particular, the revised proposal has responded to the broader concerns of the public and the specific concerns of the immediate neighbour, Ms. McPherson.

DECISION AND ORDER

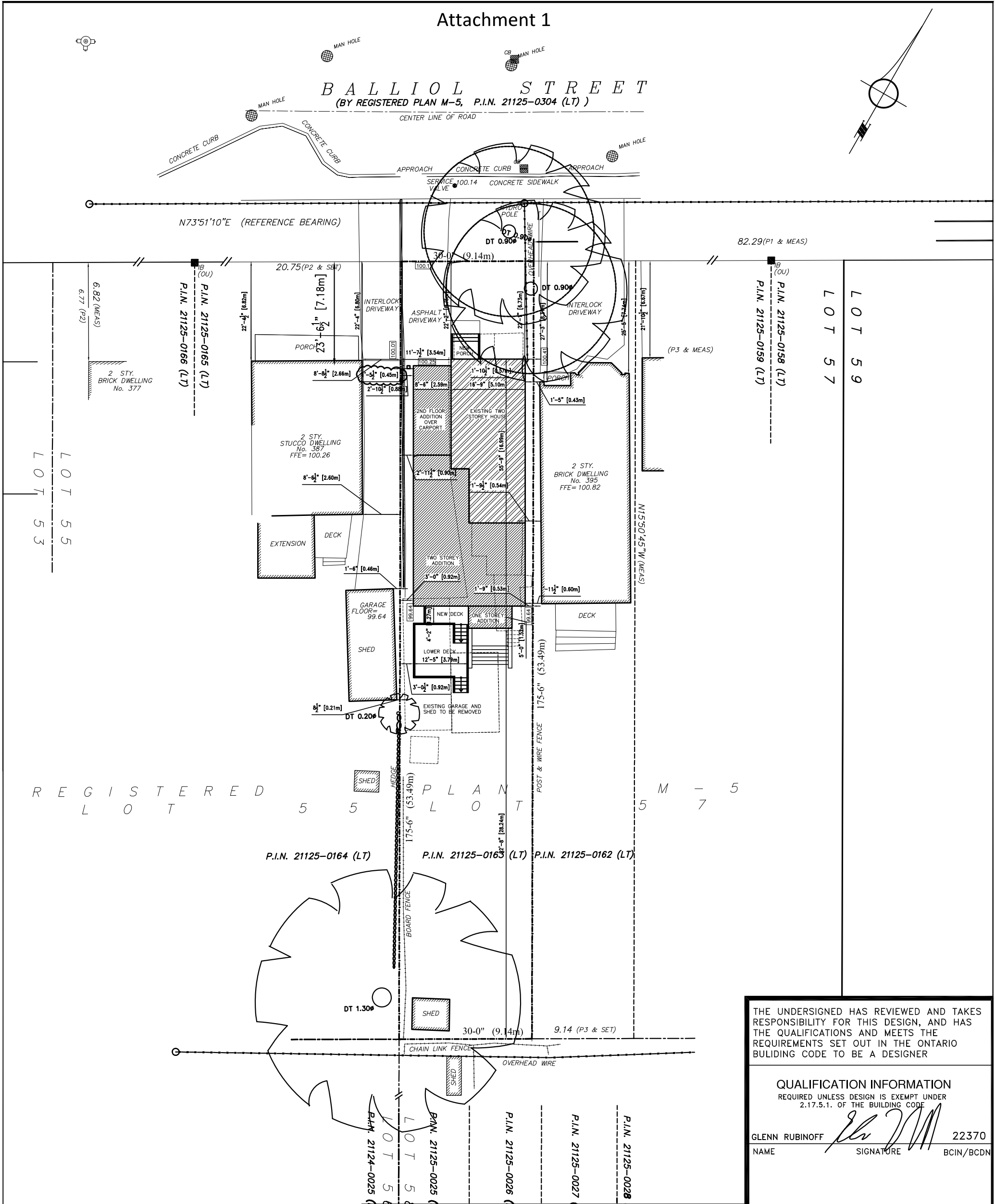
Given the above analysis the appeal is allowed, in part, and the variances in Appendix 2 are approved, subject to the conditions set out therein.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

Attachment 1



SITE STATISTICS :

LOT AREA [PART LOT 57] = 5262.5 ft² [488.90 m²]
FRONT YARD AREA = 643.3 ft² [59.8 m²] DRIVEWAY AREA = 257.7 ft² [23.9 m²] FRONT YARD - DRIVEWAY AREA = 385.6 ft² [35.8 m²] WALKWAY AREA = 19.6 ft² [1.8 m²]
FRONT YARD LANSCAPED AREA = 285.6 ft² [35.8 m²] = 44% (50% MIN REQUIRED)
FRONT YARD SOFT LANDSCAPED AREA = 266 ft² [24.7 m²] = 93.1 % (75% MIN.)
EXISTING GFA = 1259 ft² [117 m²] [23.9%] PROPOSED GFA = 2672.5 ft² [248.3 m²] [50.8%]

CLIENT:

PRIVATE
RESIDENCE

PROJECT:

SITE PLAN

PROJECT:

393 BALLIOL STREET
TORONTO, ONTARIO

Rubinoff Design Group

697 Mount Pleasant Rd.
Toronto, Ontario M4S 2N4
TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com

PROJECT DESIGNER:

G.R.

DRAWN BY:

S.B.

CHECKED BY:

PROJECT NO.

DATE:

DEC 2018

SCALE:

1:250

DRAWING NO.

A

THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THIS DESIGN, AND HAS THE QUALIFICATIONS AND MEETS THE REQUIREMENTS SET OUT IN THE ONTARIO BULIDING CODE TO BE A DESIGNER

QUALIFICATION INFORMATION

REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.5.1. OF THE BUILDING CODE

GLENN RUBINOFF

NAME

SIGNATURE

22370

BCIN/BCDN

REGISTRATION INFORMATION

REQUIRED UNLESS DESIGN IS EXEMPT UNDER 2.17.4.1. OF THE BUILDING CODE

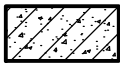
RUBINOFF DESIGN GROUP

FIRM NAME

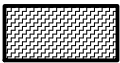
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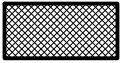
WALL TYPES LEGEND



NEW 10" CONC. BLOCK FOUNDATION
WALL PARGED AND DAMPROOFED W/
PARGING COVERED OVER POURED CONC.
FOOTING



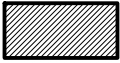
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FINISH AS PER MANUF. SPECS. SHEATHING
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1/2" EXTERIOR TYPE PLYWOOD 2"x6" WOOD
STUDS @ 16"O.C. R3.34 BATT INSULATION
IN CONTINUOUS CONTACT W/SHEATHING &
CONTINUOUS VAPOUR/AIR BARRIER
1 LAYER 5/8" G.W.B.



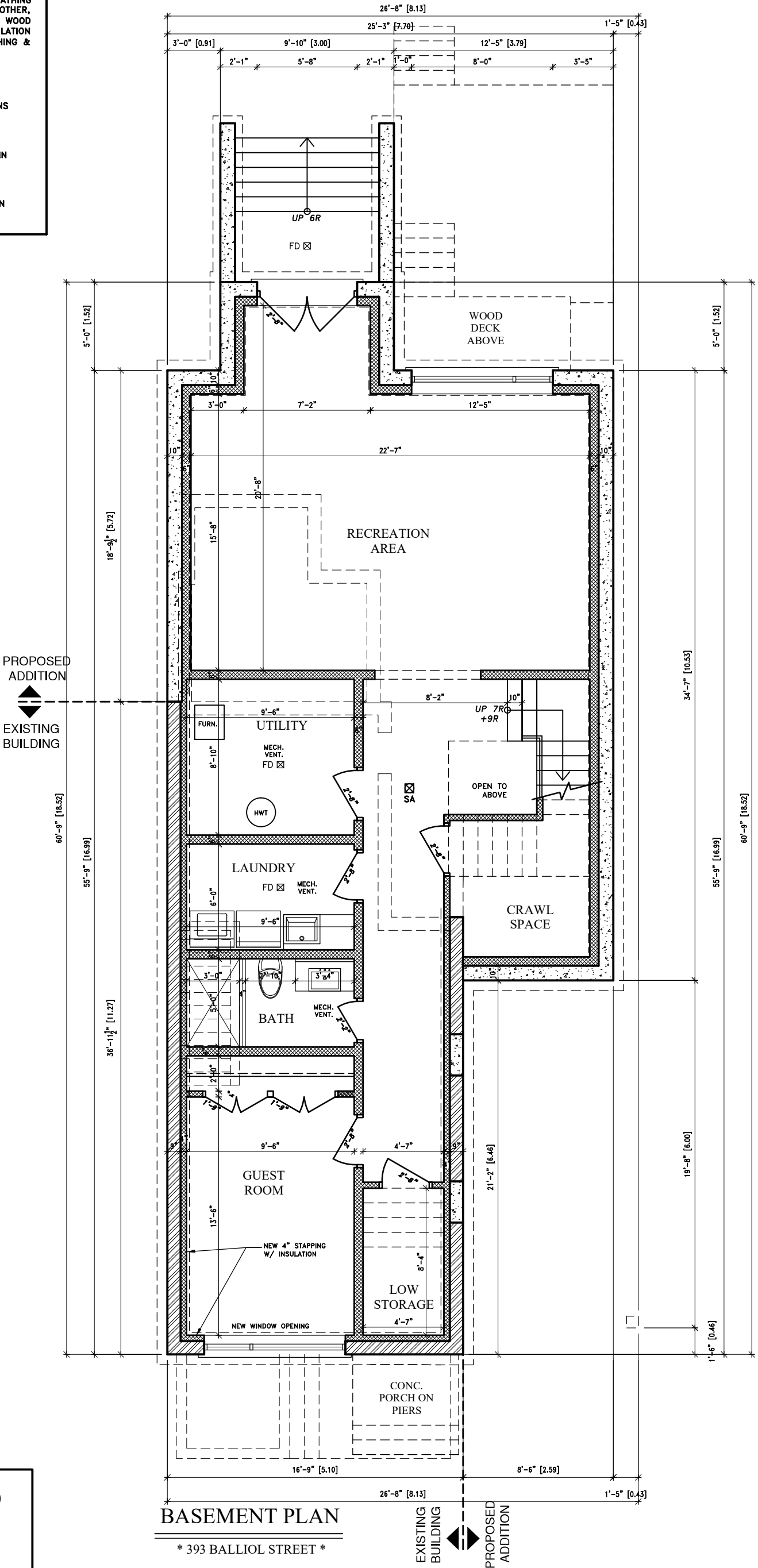
NEW INTERIOR STUD WALL PARTITIONS



EXISTING EXTERIOR WALLS TO REMAIN



EXISTING INTERIOR WALLS TO REMAIN



Rubinoff Design Group

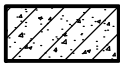
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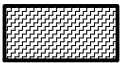
393 BALLIOL ST.

SCALE : 3/16" = 1'-0" NOV 2019

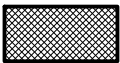
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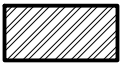
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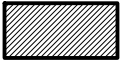
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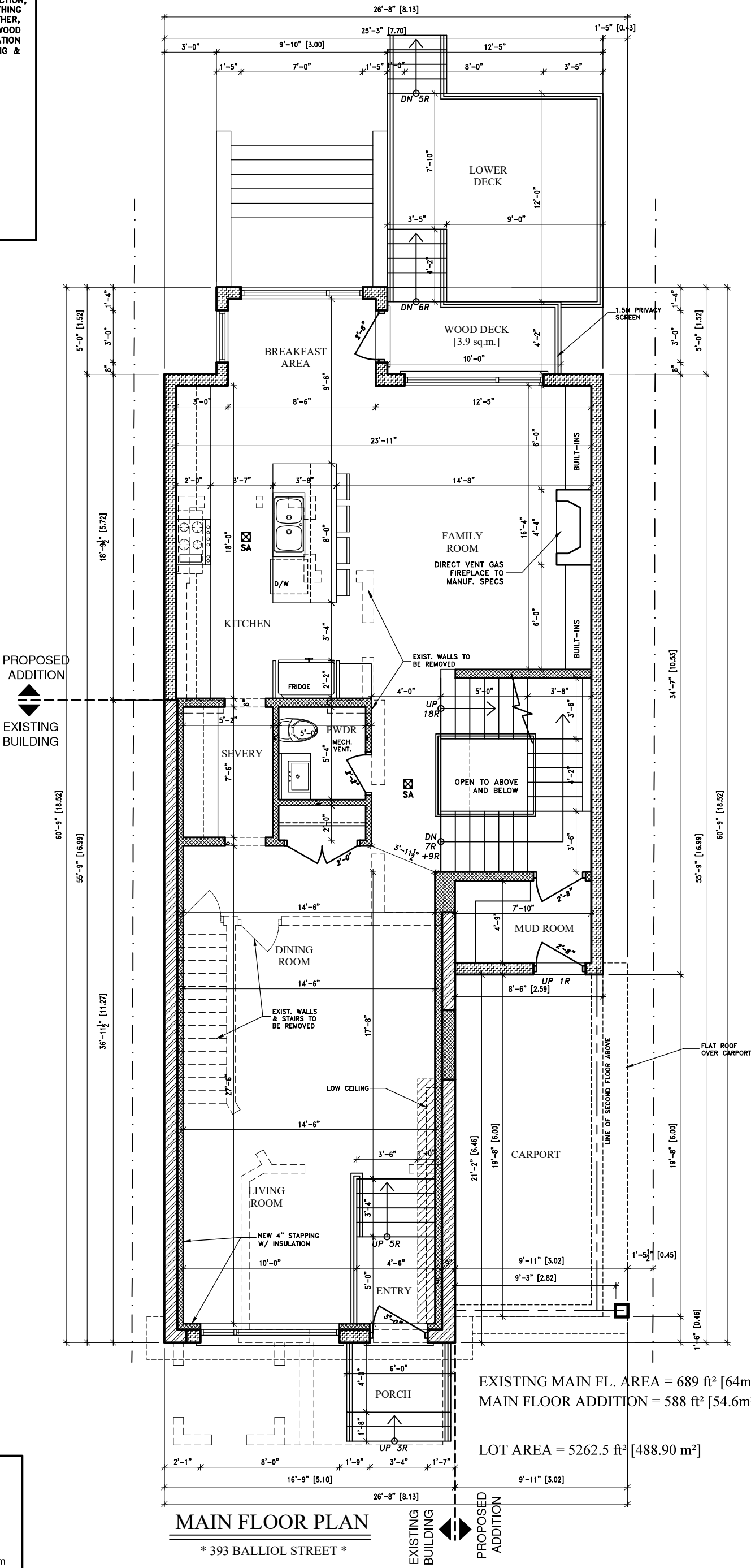
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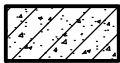
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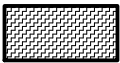
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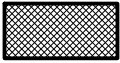
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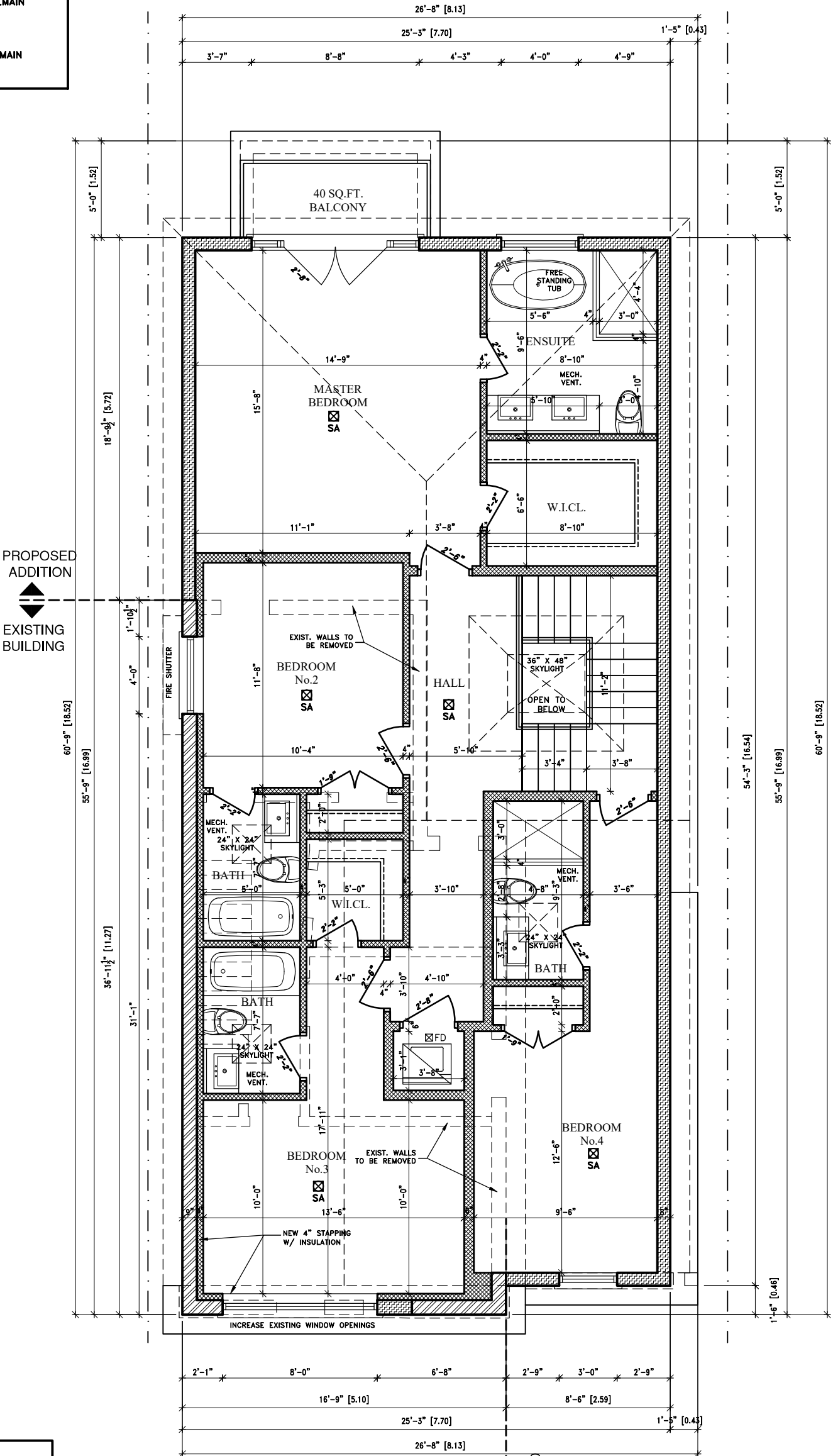
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2ND FLOOR PLAN

* 393 BALLIOL STREET *

EXISTING SECOND FL. AREA = 570 ft² [53m²]
SECOND FLOOR ADDITION = 825.5 ft² [76.7m²]
EXISTING GFA = 1259 ft² [117m²]
PROPOSED GFA = 2672.5 ft² [248.3m²]

Rubinoff Design Group

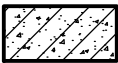
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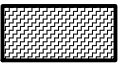
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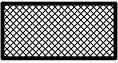
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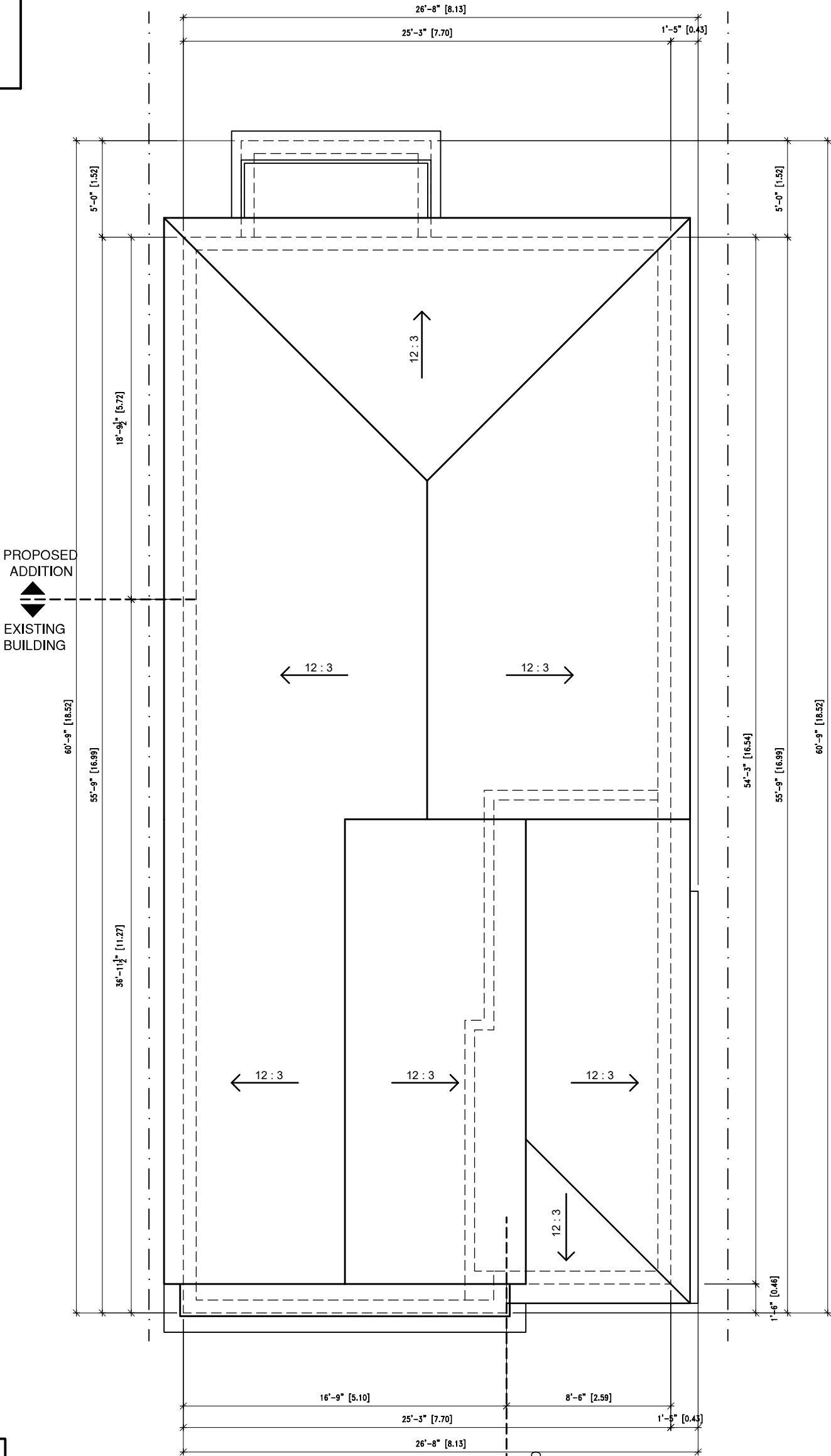
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ROOF PLAN

* 393 BALLIOL STREET *

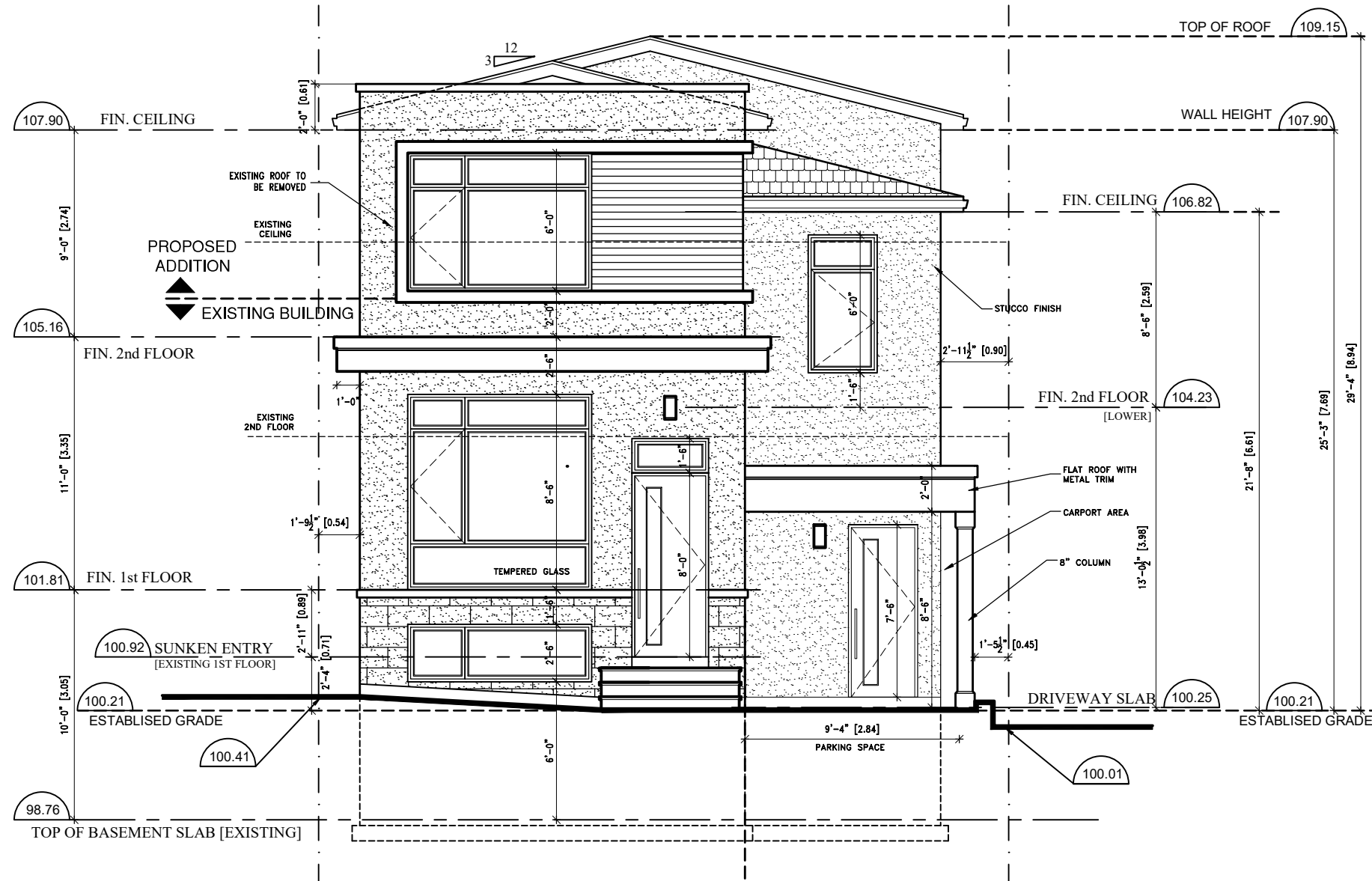
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393 BALLIOL ST.

SCALE : 3/16" = 1'-0" NOV 2019



FRONT ELEVATION

* 393 BALLIOL STREET *
-NORTH-

EXISTING
BUILDING
PROPOSED
ADDITION

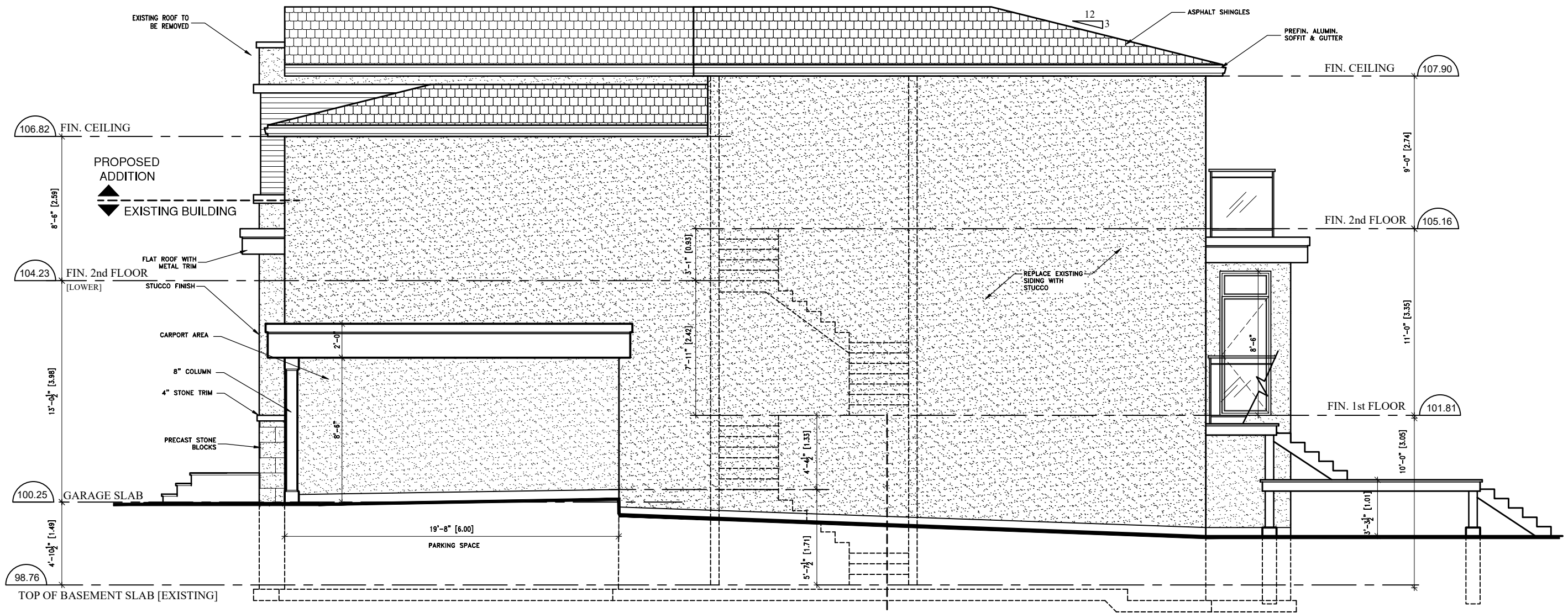
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393 BALLIOL ST.

SCALE : $\frac{3}{16}" = 1'-0"$ NOV 2019



RIGHT SIDE ELEVATION

* 393 BALLIOL STREET *
-WEST-

EXISTING BUILDING

PROPOSED ADDITION

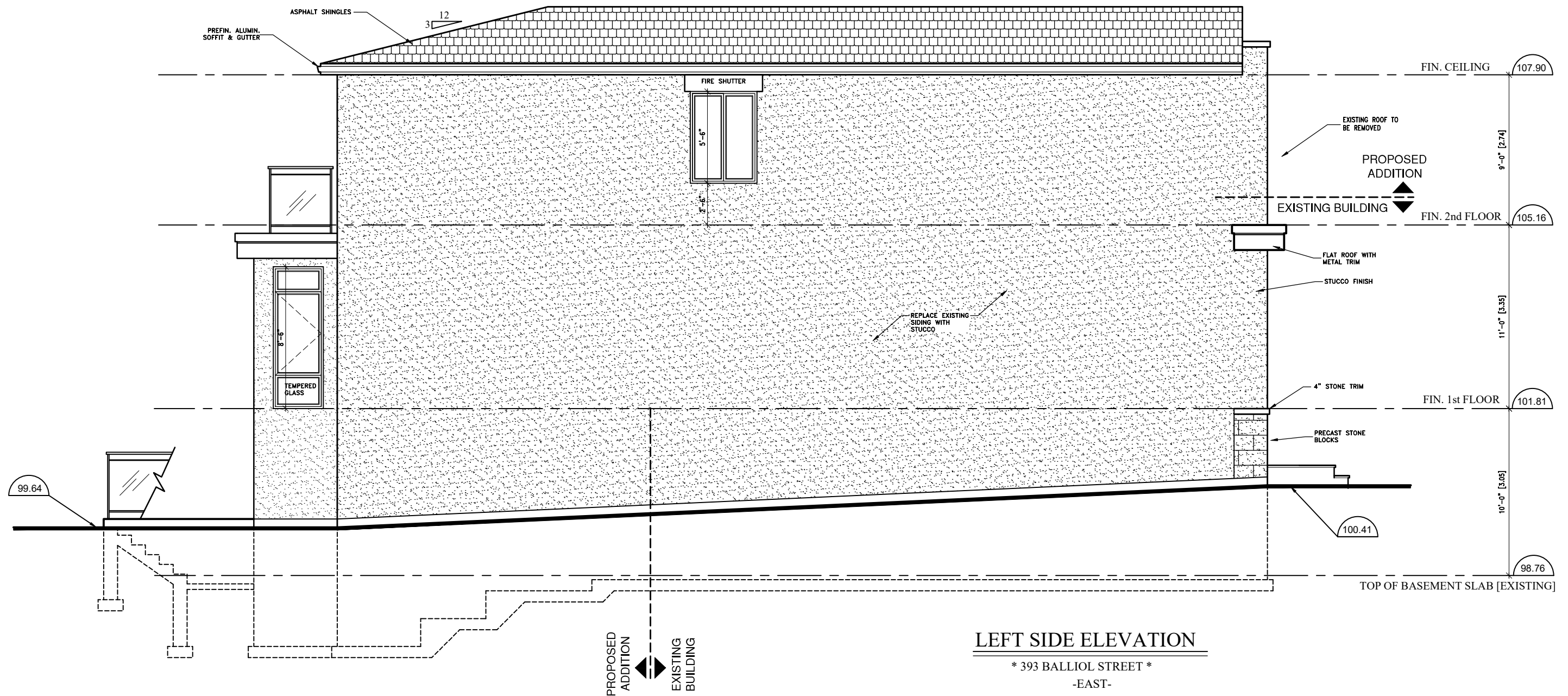
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LIST OF VARIANCES
393 BALLIOL STREET

Variances under By-law 569-2013

1. Section 900.2.10(930)(C), as amended by By-law 1426-2017

A vehicle entrance through the front main wall is proposed, WHEREAS a vehicle entrance through the front main wall of a residential building is not permitted

2. Section 900.2.10(930)(D), as amended by By-law 1426-2017

The main floor rear deck will be located 1.66m from the west side lot line and the rear second storey balcony will be located 1.44m from the east side lot line, WHEREAS a platform without main walls, attached to or less than 0.3m from a building and at a height no higher than 1.2m above established grade, must have a minimum side yard setback of 1.8m

3. Section 10.10.40.10.(2)(B)(i)

The height of the side exterior main walls facing a side lot line will be 7.69m, WHEREAS the maximum permitted height of all side exterior main walls facing a side lot line is 7.0m

4. Section 10.10.40.30.(1)(A)

The detached dwelling will have a depth of 18.52m, WHEREAS the maximum permitted depth of a detached dwelling is 17m

5. Section 10.10.40.70.(3)(A)(i)

The detached dwelling will be located 0.53m from the east side lot line, WHEREAS the minimum required side yard setback for a wall which contains openings is 0.9m

6. Section 200.5.1.10.(2)(A)(i)

The parking space will measure 2.85m in width, WHEREAS the minimum required width for a parking space which is obstructed on both sides is 3.2m

Variances under By-law 438-86

1. Section 6(3) Part II 3.B(II)

The detached dwelling will be located 0.53m from the east side lot line, WHEREAS the minimum required side lot line setback for the portion of the building not exceeding a depth of 17.0m is 0.9m, where the side wall contains openings

2. Section s.6(3) Part II 3.B(II)

The portion of the detached dwelling exceeding the 17.0m depth will be located 4.7m from the west side lot line and 1.44m from the east side lot line, WHEREAS the minimum required side lot line setback for the portion of the building exceeding a depth of 17.0m is 7.5m

3. By-law 1425-2017

The detached dwelling will contain a vehicle entrance in a wall which is facing the front lot line, WHEREAS a detached dwelling containing a vehicle entrance in a wall which is facing the front lot line is not permitted

4. By-law 1425-2017

The main floor rear deck will be located 1.66m from the west side lot line and the rear second storey balcony will be located 1.44m from the east side lot line, WHEREAS a platform attached to the rear wall of a residential building with a height greater than 1.2m above established grade is not permitted unless the side yard setback of the platform is not less than 1.8m

Conditions of Approval

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan A dated December 2018, and the Front Elevation, Rear Elevation, Left Side Elevation and Right Side Elevation (all dated November 2019), prepared by Rubinoff Design Group.

2. The owner shall satisfy all requirements of the City of Toronto Municipal Code Chapter 813, Article II (City-owned Trees) and Article III (Privately-owned trees), to the satisfaction of Urban Forestry.