

# DECISION AND ORDER

**Decision Issue Date**      Friday, January 15, 2021

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): RAYMOND PRINCE

Applicant: SAVA MIOKOVIC

Property Address/Description: 384 WELLESLEY ST E

Committee of Adjustment Case File: 19 170553 STE 13 MV

**TLAB Case File Number: 19 247825 S45 13 TLAB**

**Hearing date:**      Thursday, February 20, 2020

**DECISION DELIVERED BY JOHN TASSIOPOULOS**

## APPEARANCES

| Name                    | Role                | Representative  |
|-------------------------|---------------------|-----------------|
| Sava Miokovic           | Applicant           |                 |
| James Langton           | Owner/Party         | Marc Kemerer    |
| Carolyn Shaw-Rimmington | Primary Owner/Party | Marc Kemerer    |
| Raymond Prince          | Appellant           | William Roberts |
| Terry Mills             | Expert Witness      |                 |
| Ute Maya-Giambattista   | Expert Witness      |                 |
| Ann Kay                 | Participant         |                 |
| Dominique Prince        | Participant         |                 |
| George Kay              | Participant         |                 |

## INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) from a Committee of Adjustment (COA) decision on Wednesday October 23, 2019, being the approval of three variances requested for the proposed alteration of a two-storey townhouse with a rear two-storey addition at 384 Wellesley Street East (subject property). The COA approved variances to Zoning By-law 569-2013 with respect to permitted depth of a townhouse - 16.46m whereas 14.0m is permitted; west sideyard setback – 0.05m whereas the minimum required side yard setback where there are no windows or doors is 0.45m; and the setback of the proposed ground floor deck at 0.0m whereas 0.45m is required. Following the approval of the variances by the COA, Raymond Prince, the Appellant, appealed the decision to the TLAB, which set a Hearing date for February 20, 2020.

At the Hearing, the Applicant / Owners were represented by Mr. Marc Kemerer (counsel) and Ms. Ute Maya-Giambattista an expert witness, who provided planning evidence in support of this Application. The Appellant, Mr. Raymond Prince, was present and was represented by Mr. William Roberts (counsel) and Mr. Terry Mills an expert witness, who also provided planning evidence in opposition. In addition, Participant George Kay was also in attendance in opposition to the proposal.

I disclosed at the beginning of the Hearing to both Mr. Kemerer and Mr. Roberts for transparency purposes that I was acquainted with Ms. Ute Maya-Giambattista. Mr. Roberts asked the nature of the relationship and I responded that we had been colleagues at the same planning firm previously and that we continued to be acquaintances. I asked if this was problematic and if there was concern with proceeding with the Hearing. Both Mr. Roberts and Mr. Kemerer confirmed that they had no objections and were prepared to proceed.

I also disclosed to those in attendance that I had visited the site and the surrounding neighbourhood, in preparation for the Hearing.

## BACKGROUND

The subject property is located on the north side of Wellesley Street East, east of Sackville Street and west of Wellesley Avenue. The property flanks residential dwellings to the east, west, and Eddy Lane on the north side. It is designated *Neighbourhoods* in the Official Plan and zoned Residential (R) pursuant to City of Toronto By-law 569-2013. The proposal is to alter a two-storey townhouse by constructing a rear two-storey addition and a rear deck.

## MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are the variances sought by the Applicant / Owner for the alteration of the townhouse with a rear two-storey addition appropriate under applicable policy and statutory *Planning Act* tests?

Does the proposed addition to the existing building create adverse impacts to the adjacent neighbours and surrounding neighbourhood?

## 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

Mr. Kemerer provided a brief introduction to the Application noting that three variances were being sought for building depth, sideyard setback that is a common condition within the neighbourhood and the setback for the rear deck which he submitted was technical in nature since it was for the existing deck. He went on to explain that the existing house was modest in size and that the proposed addition was also modest as it added one room on each level and would still be smaller in total living space than neighbouring houses and it will reinforce the heritage neighbourhood.

Mr. Kemerer called upon Ms. Ute Maya-Giambattista as an expert witness and she was affirmed. Mr. Kemerer took Ms. Maya-Giambattista through her experience as outlined in her curriculum vitae (Exhibit #1) regarding her planning experience, being a Registered Professional Planner and both a full Member of the Ontario Professional Planners Institute and the Canadian Institute of Planners, and she provided a summary of her current and past land use planning and urban design experience with particular

emphasis to project studies that included heritage aspects and components.. Having noted her range of experience, outlined verbally and in her witness statement, and her signed Acknowledgement of Expert's Duty pre-filed with the TLAB, I qualified Ms. Maya-Giambattista to provide professional opinion evidence in the area of land use planning and urban design.

Ms. Maya-Giambattista summarized her investigations regarding the proposal including visiting the site, meetings with the homeowner, reviewing the COA application materials, correspondence regarding the application, the Cabbagetown North Heritage Conservation District Plan, the OP and Zoning By-law 569-2013. Based on this review, she determined that she could support the Application and provided a summary opinion that the proposed addition met the four statutory tests of section 45(1) of the *Planning Act*.

She described the subject property and the neighbourhood character area used in her review which was comprised of both sides of Wellesley Street East between Laurier Avenue to the west and Sumach Street to the east; *"broadly defined by Wellesley Cottages to the West, Wellesley Avenue to the East, Wellesley Cottages and Eddy Lane to the North and O-Riordan Lane to the South"* (Exhibit # 2, para. 6). Referring to her photo survey of the study area (Exhibit # 2, 6a and 6b) she described the built form to be characterized by two-storey built form with some three-storey "punctures" (her term) made up of a range of dwelling types including townhouses, single and semi detached dwellings. She noted that the sideyard setbacks were generally at 0.0m and because of that, it was not easy to "read" or discern the building typology from the street unless one reviewed City of Toronto mapping for the area.

The subject property itself is part of a three unit townhouse block that is located in between single detached dwellings and the garage is accessed from a lane off Sackville Street.

Describing the application proposal, Ms. Maya-Giambattista indicated the three variances sought:

- a building depth of 16.46m whereas the maximum permitted depth of a townhouse 14.0m;
- the proposed addition requests a side yard setback of 0.0 metres for the western lot line, so that it is in line with the existing building sideyard setback, whereas minimum required side yard setback where there are no windows or doors is of 0.45m; and,
- a variance for the existing ground floor deck on the property with a setback of 0.0 metres from the east and west side lot lines, whereas setback of 0.45m is required. Noting this was an existing condition, she described the variance as technical in nature.

She noted that no variances were sought for height, front or rear yard setbacks or gross floor area. She also clarified that paragraph 8 of her Expert Witness Statement incorrectly indicates that the two-storey addition would add 332.6m<sup>2</sup> of space and should be indicate 332.6 ft<sup>2</sup> (my emphasis)

Looking at the neighbourhood context, she noted that the majority of the dwellings have rear lane access to garages resulting in front entrances and porches defining the streetscape. She explained that the Cabbagetown North Heritage Conservation District Guidelines reinforces these characteristics because they focus on what can be seen from the street.

Ms. Maya-Giambattista presented images of the immediate context indicating the as-of-right depth and the proposed depth superimposed on the images (Exhibit #2, 7a & 7b). The images show the variety and range of rear addition types and lengths for the rear yards on Wellesley Street East and the surrounding area (Exhibit 2, 8 and 9). In particular she noted the image of the rear elevation of 402 Wellesley Street East which had been approved by the COA with a townhouse building depth of 17.1m. She opined “that the proposed addition is modest and, for reasons I will go into in detail, does not impact the existing character of the area. The addition is at the rear in a manner that it cannot be seen from Wellesley Street East. The addition at the rear of the site is in keeping with what has been occurring in the neighbourhood and will be a positive change in this neighbourhood” (Hearing excerpt).

Looking at the statutory Planning Act test of meeting the general intent and purpose of the OP, Ms. Ms. Maya-Giambattista reviewed the Heathly *Neighbourhoods* policies in Section 2.3.1 noting that neighbourhoods are to be preserved but they are not to be frozen in time, some physical changes will occur over time, and that it states:

*“Neighbourhoods are low rise and low-density residential areas that are considered to be physically stable. Development in Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.”*

She opined that the proposal will reinforce the neighbourhood as it does not change the physical character of the building façade and height or streetscape; the addition is not visible from Wellesley Street and that what is proposed is in keeping with other rear yard additions in the neighbourhood. She explained that the proposal also meets the policy objectives for built form in Section 3.1.2 of the OP that sets out the expectations that:

*“New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties ...”*

Ms. Maya-Giambattista opined that the proposal met these policy objectives because it does not change the existing streetscape, and does not produce or change the shadowing of the street. With respect to the potential added shadow impacts of the

proposal onto the Appellants property, a shadow impact study for the dates of March 21<sup>st</sup> and September 21<sup>st</sup> was presented. It illustrated current existing shadow conditions and then compared them to the impact caused by an as-of-right addition for the subject property and the proposal depth (Exhibit 2, 19a to 19f). An as-of-right three-storey study was also provided to address comments made by those in opposition to the proposal. Ms. Maya-Giambattista, through her study, determined that the existing condition currently casts a shadow into the Appellant's rear yard and that this was important because a concern expressed by them was that the addition would now shadow their kitchen window.

Turning to the as-of-right and the proposed depth shadows cast, she noted the difference between the two was negligible and that in terms of shadowing the neighbour's rear kitchen window, it did not differ from the existing condition. She concluded that there would be shadowing of the neighbours rear yard from 9:18 a.m. till 12:18 a.m. whether in the existing, as-of-right, or proposed condition and there is no added shadow impact to the neighbour's kitchen window.

Given that the subject property is not a heritage property but is located within the Cabbagetown North Heritage Conservation District (CNHCD), Ms. Maya-Giambattista mentioned that Section 3.1.5 of the OP Heritage Conservation would be relevant and that Section 1.3 of the CNHCD guidelines note that:

*"They are intended to encourage a property owner —public or private— to provide a minimum level of appropriate care and building conservation when further physical change is considered. It is not the intent of the Plan to prohibit change in the Cabbagetown North Heritage Conservation District. It is meant to manage change for the benefit of the present and future residents".*

She covered other sections of the CNHCD referring to its description that the houses stand "cheek-by-jowl in virtually unbroken streetscapes" and that visual impact of the dwelling from the street needs to be considered. She opined that the proposal's addition at the rear did not visually impact the street because its height was below the roofline of the front façade; it was sensitive in terms of the height being below what is permitted, its depth is equivalent to that permitted for single detached homes and that the shadows cast would still allow for a minimum of 5 hours of afternoon sunlight in the March and September 21<sup>st</sup> studies. For these reasons she stated that the proposed addition was in keeping with the CNHCD.

Ms. Maya-Giambattista concluded her review of the OP by referring to the land use policies of Section 4.1 and noted policy 4.1.5 provides a list of criteria which assist in evaluating whether a development respects and reinforces the existing physical character of the established neighbourhood. She explained that the rear yard addition respects the scale and massing of the surrounding neighbourhood and, referring to previous COA decisions, noted the variances sought were consistent with similar approvals in the neighbourhood. She concluded that the proposal will not adversely impact the residential character of the surrounding neighbourhood and will reinforce its physical stability and therefore meets the intent of the OP.

Speaking to the variances meeting the general intent and purpose of Zoning By-law 569-2013, she began with the building depth variance, noting that even with the depth proposed, a rear yard setback of 11.64m will be achieved whereas 7.5m is required. Pointing to her analysis of the table of COA previously approved variances (Exhibit #2, Exhibit 18b) she noted that depth and sideyard variances for rowhouses with permitted depths of 14.0m were reviewed for comparison. There was a range of extended depths sought with an average of 2.61m beyond the permitted depth and that side yard variance sought were all at 0.0m; she reiterated that the proposal sought an additional 2.46m in depth and a side yard setback of 0.05m.

She pointed out that what was interesting in the analysis is that single and semi-detached dwellings were allowed a building depth of 17.0m even though they had 0.0m sideyards and that the Appellant's property, although close to a 0.0m side yard setback, would be permitted a depth of 17.0m noting that the proposal is less than that building depth. Looking at the setback of the existing deck she presented images of the existing backyard (Exhibit #2, Exhibit 16) indicating that with the exception of the addition removing the upper tier of the deck, the remaining lower tier would maintain its existing configuration at a 0.0m from both the east and west side yards. She concluded that based on her analysis there are no negative impacts associated with the proposed variances; they are in keeping with other recently approved variances in the surrounding area; and maintain the general intent of the Zoning By-law.

Ms. Maya-Giambattista opined that the proposal was desirable and appropriate for the development or use of the land because it does not affect the street, meets the policy objectives of the OP and guidelines of the CNHCD, and fits well within the existing neighbourhood context. She further explained that the addition allows for more living space and responds to the evolving needs in the community while being in keeping with other COA approvals for such additions.

She concluded her analysis of the four statutory tests by indicating the proposal was minor in nature because the requested variances do not adversely impact the character of the surrounding neighbourhood or the adjacent properties; the variances sought are similar to other additions in the neighbourhood that have been previously approved; the side yard variances are also in keeping with recent approvals and reflect *"close-knit building fabric within the neighbourhood"*; and the sun-shadow analysis illustrated there will be no adverse shadow impact as it maintained a minimum of 5 hours of sunlight. She reiterated that with respect to the kitchen window view of 382 Wellesley Street East being in shadow, it was already an existing condition with or without the proposal addition. For these reasons she was of the opinion that the variances sought meet the four statutory tests as outlined in the Planning Act and recommended that the appeal be dismissed and the variances sought be approved.

Mr. William Roberts began his cross-examination by asking how building depths were determined in her analysis and Ms. Maya-Giambattista explained that data was taken from City of Toronto open source data. He asked if a third floor could be incorporated without it affecting the roofline and contravening the CNHCD guidelines and she answered that she was not sure if a useable third floor could be provided as she was not the architect on the file.

Pointing to the visual photograph of the rear yard view from the kitchen window of 382 Wellesley Street East Mr. Roberts asked if the view would further be impacted by the addition and Ms. Maya-Giambattista answered it would.

Mr. Roberts asked if the mapping of COA approvals (Exhibit #4,18a) included approvals for properties outside the HCD and she confirmed it did. He then asked if she had reviewed OP policy 4.1.5 with respect to geographic neighbourhood and asked how it was determined. Ms. Maya-Giambattista mentioned that she had reviewed the section with determining the geographic area and noted that the boundary she chose reflected the eclectic nature of the surrounding two blocks and lanes that were unique and within the Heritage Conservation District. Looking at the broader neighbourhood, the inclusion of COA approvals were an attempt to include the information provided by her own team and included that of the Appellant's Expert Witness.

Mr. Roberts asked if only the front elevation was considered with respect to OP Policy 2.3.1, referring to her Expert Witness Statement (Exhibit #2, para. 30), Ms. Maya-Giambattista answered that all elevations were considered with respect to the proposal and that the reference made was with respect to its overall impact to the street. Mr. Roberts asked additional questions with respect to his reading of her EWS focusing on the front of the dwelling or the addition not being perceived from the street and not from the adjacent yards. Ms. Maya-Giambattista answered that analysis and evidence included a review of the rear yard and laneways within her study area as well as the patterns and rhythm in the rear yards, noting that the proposal complies with and follows this pattern, rhythm and type of development visible from the rear lane.

Following the evidence provided by Ms. Maya-Giambattista, Mr. Roberts called upon Mr. Terry Mills as an expert witness and he was affirmed. Mr. Kemerer confirmed that he had no objection to Mr. Mills being qualified as an expert witness. Mr. Roberts began by submitting exhibits: the curriculum vitae of Terry Mills (Exhibit #5), the Expert Witness Statement of Terry Mills (Exhibit #6), visual exhibits (Exhibit #7), and Responding Witness Statement (Exhibit #8). Mr. Mills summarized his experience as outlined in his curriculum vitae (Exhibit #5) regarding his planning experience, his being a Registered Professional Planner with both the Ontario Professional Planners Institute and the Canadian Institute of Planners reword as before, and his past experience providing expert planning evidence and being qualified previously at the TLAB. Having noted his experience, outlined verbally and in his witness statement, I qualified Mr. Mills to provide professional opinion evidence in the area of land use planning.

Mr. Mills summarized his investigations regarding the proposal including visiting the site, reviewing the COA application materials and approvals in the neighbourhood and survey, the visual documentation submitted (Exhibit #7), developing a neighbourhood study area based on the criteria outlined in Section 4.1.5 of the OP. He began his evidence by presenting his visual documentation that included development historical chronology images, land use and zoning designation excerpts from the OP and Zoning By-law, heritage register mapping, COA approvals tables, the study area map of the immediate geographic neighbourhood, and photos of the subject property context and surrounding neighbourhood. He outlined the area that was his broad study area and the immediate study area within it. He pointed out that the Neighbourhood



designation in this area was significant and was quite distinct from the areas west of Parliament Street. He also noted that the Heritage Conservation District is quite significant.

Looking at the variances, Mr. Mills noted that of the variances sought, the depth variance was significant while the side yard setbacks were a secondary concern. He indicated that in determining his study area he referred to policy 4.1.5 to setting up the broader and immediate geographic neighbourhood (Exhibit 7, page 10) bounded by Sackville Street to the west, Wellesley Avenue / Sumach Street to the east and the first laneways to the north and south of Wellesley Street. For his broader study area, he chose the Heritage Conservation District boundary, because it had been well studied, and was in keeping with policy 4.1.5 criteria for determining study areas. He provided a photo summary of the immediate neighbourhood area, rear elevations and the subject property (Exhibit 7, pages 11 to 14). He provided an overview of the rear yard context from 382 Wellesley Street East's backyard and third storey balcony noting the varied rear yard projections and additions. He provided further analysis and photos of rear additions that included an analysis and photos from flanking streets which included dwellings from the broader neighbourhood geographic study area. He explained that in looking at the rear elevations he determined that there was a general consistency to the addition projection.

When considering the as-of-right addition that would be permitted, Mr. Mills indicated that it would impact views from the rear ground storey kitchen window but that the additional depth would impact those views even more (Exhibit 7, page 22). He also provided a shadow study indicating the existing condition and shadow impact of the permitted and proposed depth between the hours of 10:18 a.m. and 12:18 a.m.; a shadow study was also provided indicating the impact of a third floor at 11:18 a.m. (Exhibit 7, page 23). He opined that a shadow impact was caused to the neighbours rear yard and that there is a "right to light" (Hearing excerpt).

Mr. Mills provided the definition for building depth from both Zoning By-law 569-2013 and the previous Zoning By-law 438-86 noting that they differ from where the depth of the building is measured; while the current zoning measures from the front-yard setback regardless of portions of the building frontage which may project into it while the previous zoning measured it differently and would have been the way building depths were considered by COA decisions prior to the introduction of Zoning By-law 569-2013 and during the transition period from the old to the new By-law.

Turning back to the broader study area, Mr. Mills referenced the CNHCD's description of the broader study area that they are one storey additions or a second storey, but that they generally retained the footprint of the house or older additions that were replaced. With respect to the immediate study area, the north side of Wellesley Street East included: an average lot frontage of 4.4m whereas the broader neighbourhood had an average frontage of 5.4m; 8 of 9 townhouse dwellings were within the permitted building depth of 14.0m and 8 semi-detached and 3 single detached dwellings were within the permitted building depth of 17.0m. On the south side of Wellesley Street East included: an average lot frontage of 5.1m; 15 of 20 townhouse dwellings were within the permitted building depth of 14.0m and 8 of 10 semi-detached

were within the permitted building depth of 17.0m. He noted that although there were examples of dwellings exceeding building depths, they were not in his opinion 'prevailing' and were in fact in the minority.

Mr. Mills analyzed COA decisions from 2007 to 2019 and obtained through the City of Toronto Research Portal that included decision beyond the broader study area boundary and focused on the 21 notices with requests for a building depth variance. He mentioned that the frequency of requested building depth variances was very low. In his witness statement he noted that 14 of these lots had a comparable frontage to the subject property and their requested depth variances averaged 0.87m, ranging from 0.16m to 1.74m. The 7 remaining lots had larger frontages and their requested depth variances averaged 4.03m with an overall average building depth variance requested of 1.90m. Given this analysis he concluded that the *"Building Depth variance request is excessive, and it is indicative that this proposal does not respect and reinforce the existing physical character of the neighbourhood"* (Exhibit 6, p.14).

Mr. Mills referred to OP Section 2.3.1 with respect to development within *Neighbourhoods* needing *"to respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas"* and Section 3.1.5 with respect to additions being *"in accordance with respective Heritage Conservation District plans."* Turning to the CNHCD he quoted the guideline encouragements that additions be located in the rear of the building and be *"limited in size and scale to complement the existing building and neighbouring properties..."* and *"...sensitive to the character of their neighbours in size and height"* (Exhibit 6, p. 14). He also referred to the development criteria in OP policy 4.1.5 with respect to massing and scale and whether the proposal respects and reinforces the existing physical character of the neighbourhood. He opined that the proposal failed to meet the intent of the CNHCD, was not inconspicuous from the street, did not limit its size and scale to complement the existing and neighbouring properties, and was not sensitive to neighbouring historic buildings.

In his opinion, the proposal was *"out of keeping with the overall physical character of the entire neighbourhood"* (OP Policy 4.1.5). For these reasons he stated that the application does not maintain the general intent and purpose of Official Plan.

Analyzing the variance with respect to the Zoning By-law he explained that the building depth variance should not be approved because the proposed variance was not typical and that even though the addition appears modest at 2.46m it equates to 54% of the lot width. In comparison, if the same ratio was applied to a larger lot with a width of 6.0 or 10.0 it would be substantial in size.

Regarding the side yard setback variance, Mr. Mills indicated that if the proposal was built to the permitted depth then the variance would not have been required because Zoning By-law Chapter 10.5.40.71(1)(C) states:

*"Permitted Setbacks for Lawfully Existing Buildings' – the lawful building side yard setback is the minimum side yard setback for that lawfully existing building"*

The variance for the rear deck was not of great concern to Mr. Mills and he stated that he didn't understand why the deck was being maintained given the addition will replace a large portion of it. He noted that such variances were to allow for potential landscaping or planting in sideyards. For these reasons he stated that the application does not maintain the general intent and purpose of the Zoning By-law.

Mr. Mills was of the opinion that the proposal was not minor because the depth and side yard variance sought result in an addition whose scale and character have not considered the existing context. He concluded that the scale and proportion of the addition is not minor and the variances should be refused. Furthermore, he suggested that the proposal was also not in keeping with the CNHCD guidelines; it varied the planned context of CNHCD; and the addition would not be inconspicuous from side street views; therefore, the variances were not minor.

Mr. Mills was of the opinion that the variances requested are not desirable for the appropriate development of the site because they adversely impact 382 Wellesley Street East and their enjoyment of the rear yard; would substantially reduce the amount of sunlight before noon and significantly reduce the view angle from their rear facing first floor window. From the perspective of the neighbourhood, he mentioned the addition would be conspicuously visible from Sackville Street, would obstruct the view line of building west of the subject property; the building depth would be the longest approved in both the broader and immediate neighbourhood contexts within the study areas he analyzed, and that it would create a precedent that impacts the historical character of the neighbourhood.

Referring to Ms. Maya-Giambattista's comment that the 7.5m rear yard setback has been maintained even with the increased building depth, he was of the opinion that the bringing in of maximum building depths originated from planning reports that had been conducted in the 1970s which introduced this standard with the objective of ensuring buildings were aligned, there was adequate rear yard space, views and ventilation; this was the reason for the building depth maximum (Exhibit #8).

Mr. Mills concluded that the approval of the variances would not represent good planning and did not satisfy the four statutory tests as outlined in the Planning Act.

Mr. Kemerer began his cross-examination of Mr. Mills by asking him about his COA tables and whether he agreed that there had been change in Cabbagetown through previous COA decisions and Mr. Mills agreed.

Mr. Kemerer asked if Mr. Mills was aware that the application had been reviewed by Heritage Preservation Services and that they had not expressed objection or concerns to the COA or to TLAB and taken no issue to the addition; Mr. Mills confirmed this was correct. Mr. Kemerer then directed Mr. Mills to the CNHCD guidelines asking whether the proposal addresses the guideline with respect to limiting the impact of the addition from the street or at the pedestrian level and whether it is seen from the Street. Mr. Mills responded that the addition would be visible from Sackville Street. Mr. Kemerer asked if the proposed addition was any different from the existing bumpouts or structures when seen from Sackville Street and Mr. Mills responded that the proposal

stuck out further. Mr. Kemerer asked if there was visual impact onto Wellesley Street and Mr. Mills agreed.

Mr. Kemerer asked if there was any policy or performance standard that ties the review of building depth to the width of a lot. Mr. Mills conceded that he wasn't aware of any but with the qualification that there are some areas in the City with larger lot frontages that that are connected to lot depth. When Mr. Kemerer reiterated whether there was a standard or policy related to the subject property that he could point the TLAB to, Mr. Mills responded that he could not.

Mr. Kemerer mentioned that variances were not requested with respect to height, gross floor area, floor space index, front and rear yard setbacks and asked if this would indicate that the proposal meets prevailing character and reinforces the physical character of the immediate and broader neighbourhood. Mr. Mills responded that those variances were not requested but that the proposal did not respect and reinforce the existing physical character. Mr. Kemerer asked that if such standards were used to determine planned context and Mr. Mills responded that they were some but that the proposal did not fit within the planned context.

Mr. Kemerer directed Mr. Mills to Ms. Maya-Giambattista's COA approvals table (Exhibit #4,18b) and asked him if the average building depth variance, when all the variances were compiled for the rowhouses, was not actually 2.61m. Mr. Mills disagreed and noted that some of the addresses noted were not within the neighbourhood boundary. Mr. Kemerer noted that 324 and 402 Wellesley Street East were approved with an added building depth of 4.65m and 3.1m respectively which were greater than those sought. He asked Mr. Mills if these building lengths were included in his analysis and Mr. Mills responded that they were very new decisions but he did not answer Mr. Kemerer's question. His only response was that the variance for 402 Wellesley Street East was a technical variance as the variance pertained to the existing condition and didn't think someone would oppose it. Mr. Kemerer asked if the table did not indicate examples of variances that exceeded the building depth being requested for the subject property but Mr. Mills did not answer and indicated that some of the information on the table was not provided to him through the City of Toronto Research Portal for 324 and 402 Wellesley Street East.

Mr. Kemerer referred to the rear lane and yard images of the 382 Wellesley Street East and asked if the third floor was unusual for this neighbourhood or a prevailing condition in the neighbourhood (Exhibit #7, p.13), Mr. Mills responded that there were three others he knew of but he had not conducted a count of third storeys. Mr. Kemerer asked if it could be considered prevailing and Mr. Mills responded that they are a significant pattern if one considered the aerial views but did not have a count.

When asked whether the images in Mr. Mills' evidence (Exhibit #7, p.14) demonstrate that there was no uniform line of houses at the rear, Mr. Mills responded that some were. Mr. Mills was asked if the viewing angle from the Appellant's kitchen window (Exhibit #7, p.22) was a realistic angle since it was taken from the west edge of the window and he responded that the views out the window could be to the right towards the proposed addition. Mr. Kemerer asked if the Appellant's own rear addition

would also obstruct views Mr. Mills responded that it was a one-storey addition but that it also obstructs the view. When asked if he was aware of the case law that there is no right to a view, Mr. Mills confirmed he was aware of that.

Looking at Mr. Mills shadow study (Exhibit #7,p.22), he was asked if the shadows for the permitted building depth would increase shadows and if what was proposed added a significant amount of shadowing. Mr. Mills answered that the permitted building depth would increase shadows and that the proposed would be significantly more and that added shadowing would disappear after 12:18pm but the shadowing would continue.

Mr. George Kay, a resident who elected Participant status in this matter in opposition to the proposal, was affirmed and he noted he would be referring to disclosure documents from the Appellant. He began by referring to two images: a current view from the kitchen window and the same view with the proposed addition on the subject property. He then referred to a comparative image he prepared showing the view from the Appellant's rear yard and the same image with an interpretation of the massing of the proposed addition. He stressed that this was a more accurate representation of the additions' massing impact. He felt that the addition will create increased shadowing in rear yards and that the sunlight into the west rear yards will be impacted.

Mr. Kemerer asked Mr. Kay with respect to his massing interpretation whether there is significant foliage in the Appellant's rear yard and if the massing illustrated didn't visually cut off the view of vegetation and shrubbery that was otherwise present. Mr. Kay responded that it was impossible for him to show it behind the foliage but that more than half of the massing would be visible. Mr. Kemerer then said that the representation was less realistic to which Mr. Kay explained it was as accurate as he could make it. Mr. Kay disagreed that the massing interpretation perspective gave the impression that the addition was hovering above and over the fence. He insisted that the massing shown was a true interpretation of the impact the proposed addition.

## **ANALYSIS, FINDINGS, REASONS**

There was a significant amount of evidence provided by both Expert Witnesses during the Hearing and much to consider in terms of the Exhibits submitted. I have considered the evidence presented during the Hearing, and I found that during the course of the proceeding, I preferred the evidence presented by Ms. Maya-Giambattista. I found her evidence was more clearly presented than that of Mr. Mills's , which tended to be less focused and at times difficult to follow. During cross-examination I found that that he was reluctant to answer some of the questions posed by counsel. I also found that Ms. Maya-Giambattista's review of the COA approvals and her tables were more thorough in that they also included Mr. Mills's findings as part of the table analysis. Having said that, although Ms. Maya-Giambattista's visual evidence included the immediate geographic neighbourhood study area, a delineated broader geographic neighbourhood study area was not included. Mr. Mills meanwhile did

provide both but relied on the CNHCD boundary to serve as the broader neighbourhood boundary. What was clear in both the evidence of both expert witnesses was that the immediate geographic neighbourhood was quite distinct and eclectic when compared to the rest of Cabbagetown because of the numerous laneway houses and development located north of Wellesley Street East and the subject property. In my visit to the site and walking through the area the distinct and eclectic nature of the physical character of the neighbourhood was also evident.

During the Hearing, the evidence in opposition to the proposal predominantly centred on the building depth proposed, whether it had too great of an impact on the Appellant's rear yard in terms of their views to the rear and shadowing, and that the proposed addition did not respect and reinforce the physical character of the area.

I accept that the proposed building depth variance requested, when considered in the context of not just the range of COA approvals for the immediate geographic area but also the visual evidence of rear yards, would be in keeping with similar approvals within the neighbourhood study areas. This is not to suggest that determining appropriateness is just a quantitative exercise but that these previous approvals have to form part of the assessment of whether the building depth variance is minor and within the range of previous approvals. The averaging of the added building depths provided by both expert witnesses was irrelevant in this assessment as it is simply a calculation that does not convey the unique and specific application as it related to each of the individual lots. The proposed building depth variance must also be assessed in its specific context and whether there are adverse impacts resulting from the proposal.

Mr. Mills indicated that the proposed addition was not in keeping with the rear yard context and that there was general consistency to the addition that the proposals would be inconspicuous and visible from Sackville Street. However, in the evidence presented by both expert witnesses there were examples of various rear yard projections and additions along the rear yards along the block in which the subject property was situated. Looking at the CNHCD guidelines I prefer Ms. Maya-Giambattista's evidence that the addition does not impact the street and that it was meant to address street views on Wellesley Street East even when I consider the views that may be possible from secondary views from Sackville Street notion of it being inconspicuous is not readily evident in the context of the articulated rear dwelling walls that would surround it. Furthermore, as indicated in Mr. Kemerer's cross-examination of Mr. Mills's evidence, Heritage Preservation Services had no objections to the proposal fits in with the guidelines for the CNHCD.

Mr. Mills stated that the proposal's addition would adversely impact the rear yard of 382 Wellesley Street East, as it would reduce the amount of sunlight before noon and significantly reduce the view angle from their rear facing first floor window. With respect to the shadow studies, although both expert witnesses provided similar results in their studies, Mr. Mills's was very narrow in focus and only presented the morning hours till 12:18pm, that illustrated the greatest shadow impact. Ms. Maya-Giambattista's study provided a wider range of times leading up to 5:18 p.m. and providing a fuller picture of the impact through the day. Regardless, both of the study's presented indicated that the existing condition already presented shadow impacts to the rear yard of the

Appellant. The added shadow to the existing condition that would be provided by the proposal were very modest and after 12:18 p.m. the added shadowing had passed. There is additional shadow impact from the proposed addition but it is modest and cannot be considered an adverse impact, as suggested by Mr. Mills.

Finally, with respect to the impact of the proposed addition on view lines from the Appellant's kitchen window, as noted by Mr. Kemerer, there is abundant case law indicating that there is no right to a view. In a TLAB decision for *105 Binswood Avenue*, by Member G. Burton, she states that "*there is no right to an unobstructed view through backyards...or that privacy should be paramount where there might be overlook.*" Also, as pointed out during cross-examination, the Appellant's one storey addition also impacts their views into their own backyard and is an existing condition.

In consideration of the evidence provided at the Hearing and the burden of meeting the four statutory tests under s. 45(1) of the *Planning Act*, my assessment of the variances requested are as follows:

**Variance 1** – Relates to the building depth of 16.46m whereas 14.0m is permitted for a townhouse. This variance is minor for the reasons stated above. The proposed addition is in keeping with the neighbourhood physical character as it is a neighbourhood characterized by rear additions with rear yard articulated projections. The variance is also within the range of COA approved building depths in the immediate neighbourhood.

**Variance 2** – Relates to the required 0.45m side yard setback where there are no windows or doors whereas the rear two-storey addition will be located 0.05m from the west side lot line. This variance is related to the alignment of the addition with the existing dwellings side wall. As was noted in the evidence, this is a common condition in the neighbourhood where the dwellings are described being "cheek by jowl." It was also presented in the evidence that there are several similar variances that have been approved by the COA for the immediate and surrounding neighbourhood.

**Variance 3** – Relates to the side yard setback of 0.0m for the existing ground floor deck from the east and west sideyards whereas a side yard setback of 0.45m. A review of the images and plans submitted indicate that this is an existing condition on this property.

For the reasons stated above, I find that the appeal should be dismissed and that the application be approved as the variances sought, individually and cumulatively, meet policy and all four tests under s. 45(1) of the *Planning Act*, maintain the general intent and purpose of the OP and Zoning By-law, and are appropriate and minor for the development of 384 Wellesley Street East.

## **DECISION AND ORDER**

The appeal of the Committee of Adjustment decision dated October 23, 2019, is dismissed, and the following variances are authorized subject to the condition(s) listed.

Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

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

The maximum permitted depth of a townhouse is 14.0 m.

The altered townhouse with a rear two-storey addition will have a depth of 16.46 m.

**2. Chapter 10.10.40.70.(4)(C), By-law 569-2013**

The minimum required side yard setback where there are no windows or doors is 0.45 m.

The rear two-storey addition will be located 0.05 m from the west side lot line.

**3. Chapter 10.5.40.50.(2), By-law 569-2013**

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 m of a building, must comply with the required minimum building setbacks for the zone, 0.45 m.

The altered ground floor deck will be located 0.0 m from the east and west side lot lines.

**Condition**

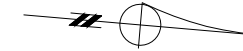
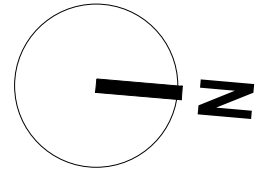
The proposed dwelling shall be constructed substantially in accordance with Site Plan (A1.0) and Elevation (A4.0.4, A4.1, A4.2 Side East Elevation and 4.2 Side West Elevation) plans dated May 30, 2019, prepared by Men at Work Design Build and attached as **Attachment 1**.

X

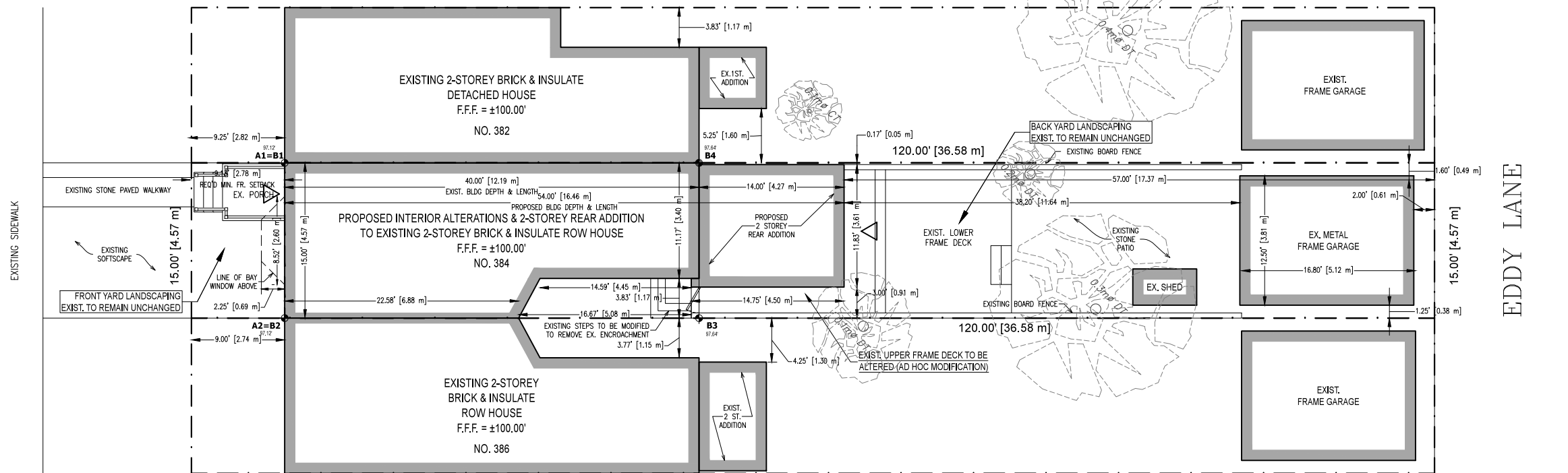
John Tassiopoulos

Panel Chair, Toronto Local Appeal Body





WELLESLEY ST E



ESTABLISHED GRADE ELEVATION  
 $(A1+A2) / 2 = (97.12'+97.12') / 2 = 97.12'$   
 AVERAGE GRADE ELEVATION  
 $(B2+B3) / 2 = (97.12'+97.64') / 2 = 97.38'$

| REVISIONS                               | DATE         |
|---|--------------|
| 0 PROJECT REVIEW REQUEST (PRR) APP.     | APR. 12 2019 |
| 1 PROJECT REVIEW REQUEST RESUBMISSION#1 | MAY 30 2019  |

384 Wellesley Street E

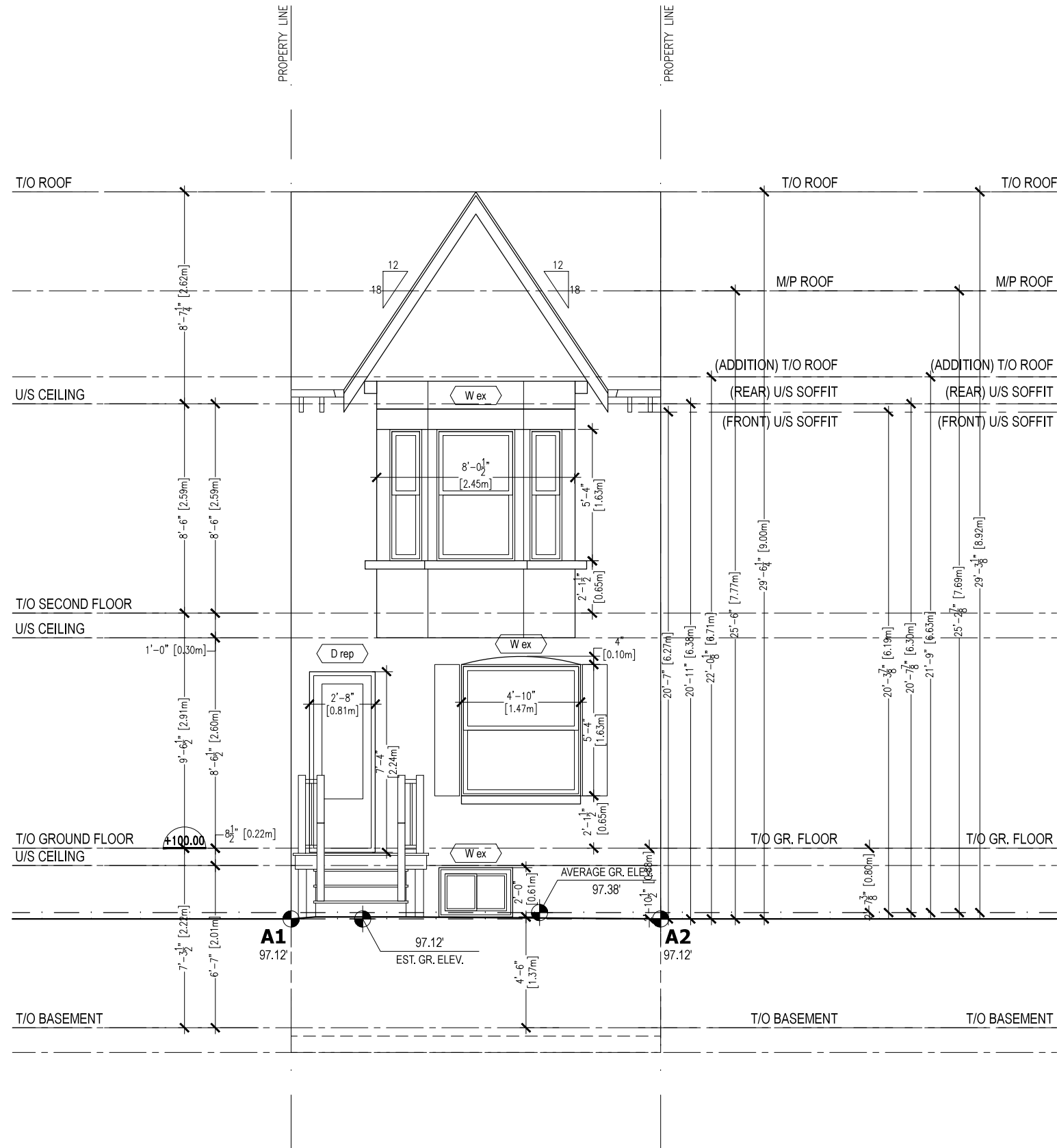
Site Plan

SCALE: 1:150

DATE: 2019 May 30

A1.0

| Schedule of Work            |                      |                    |
|-----------------------------|----------------------|--------------------|
| <b>New Construction</b>     | <b>332.60 sq.ft.</b> | <b>30.90 sq.m.</b> |
| Second Floor                | 166,30 sq.ft.        | 15,45 sq.m.        |
| First Floor                 | 166,30 sq.ft.        | 15,45 sq.m.        |
| <b>Interior Alterations</b> | <b>396,70 sq.ft.</b> | <b>36.30 sq.m.</b> |
| Second Floor                | 94,70 sq.ft.         | 8,80 sq.m.         |
| First Floor                 | 296,00 sq.ft.        | 27,50 sq.m.        |
| Ex. altered upper Deck      |                      | 1                  |



| REVISIONS                               | DATE         |
|---|--------------|
| 0 PROJECT REVIEW REQUEST (PRR) APP.     | APR. 12 2019 |
| 1 PROJECT REVIEW REQUEST RESUBMISSION#1 | MAY 30 2019  |

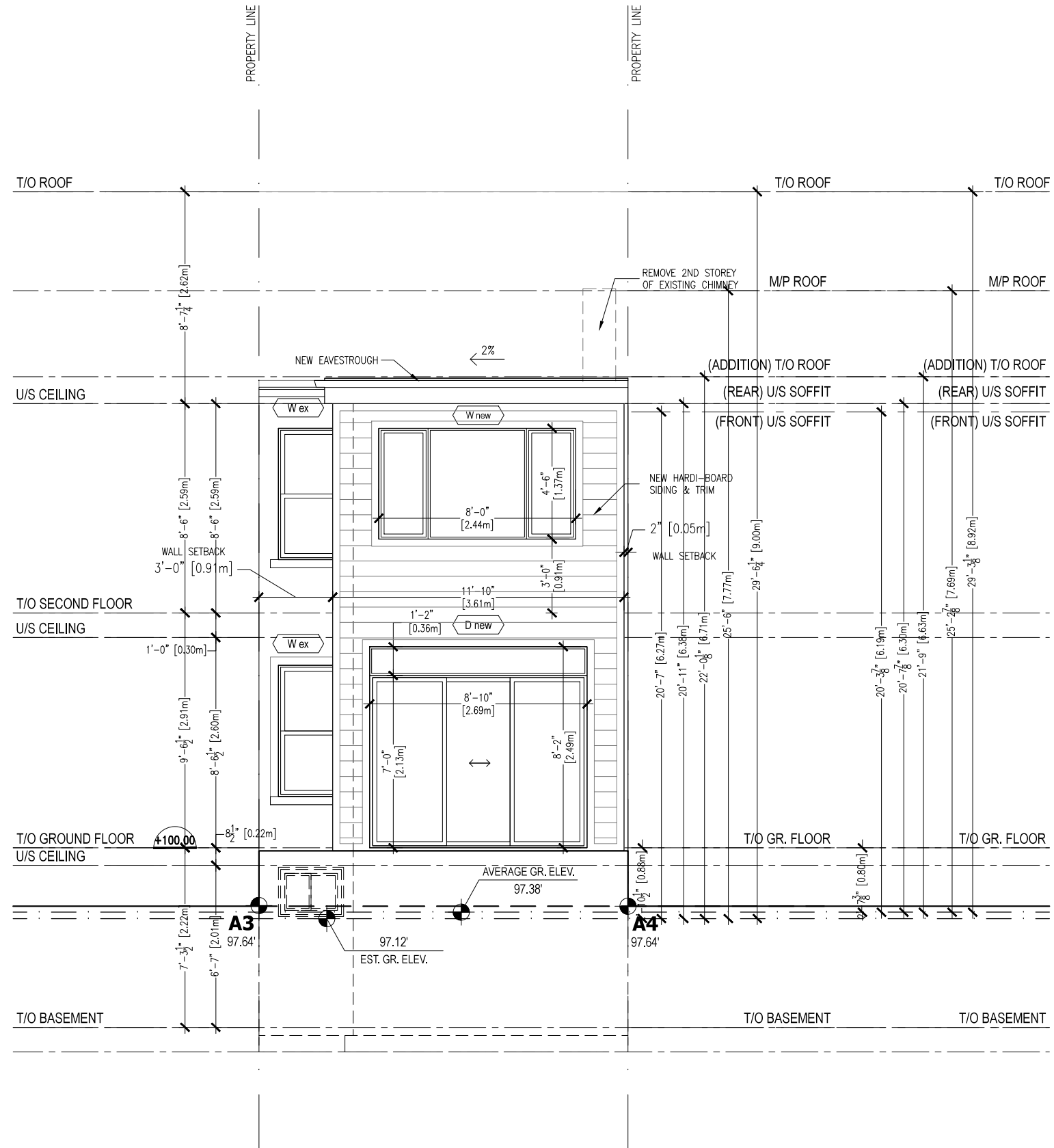
384 Wellesley Street E

Front (South) Elevation

SCALE: 3/16"=1'0"  
1:64

DATE: 2019 May 30

A4.0



| REVISIONS                               | DATE         |
|---|--------------|
| 0 PROJECT REVIEW REQUEST (PRR) APP.     | APR. 12 2019 |
| 1 PROJECT REVIEW REQUEST RESUBMISSION#1 | MAY 30 2019  |

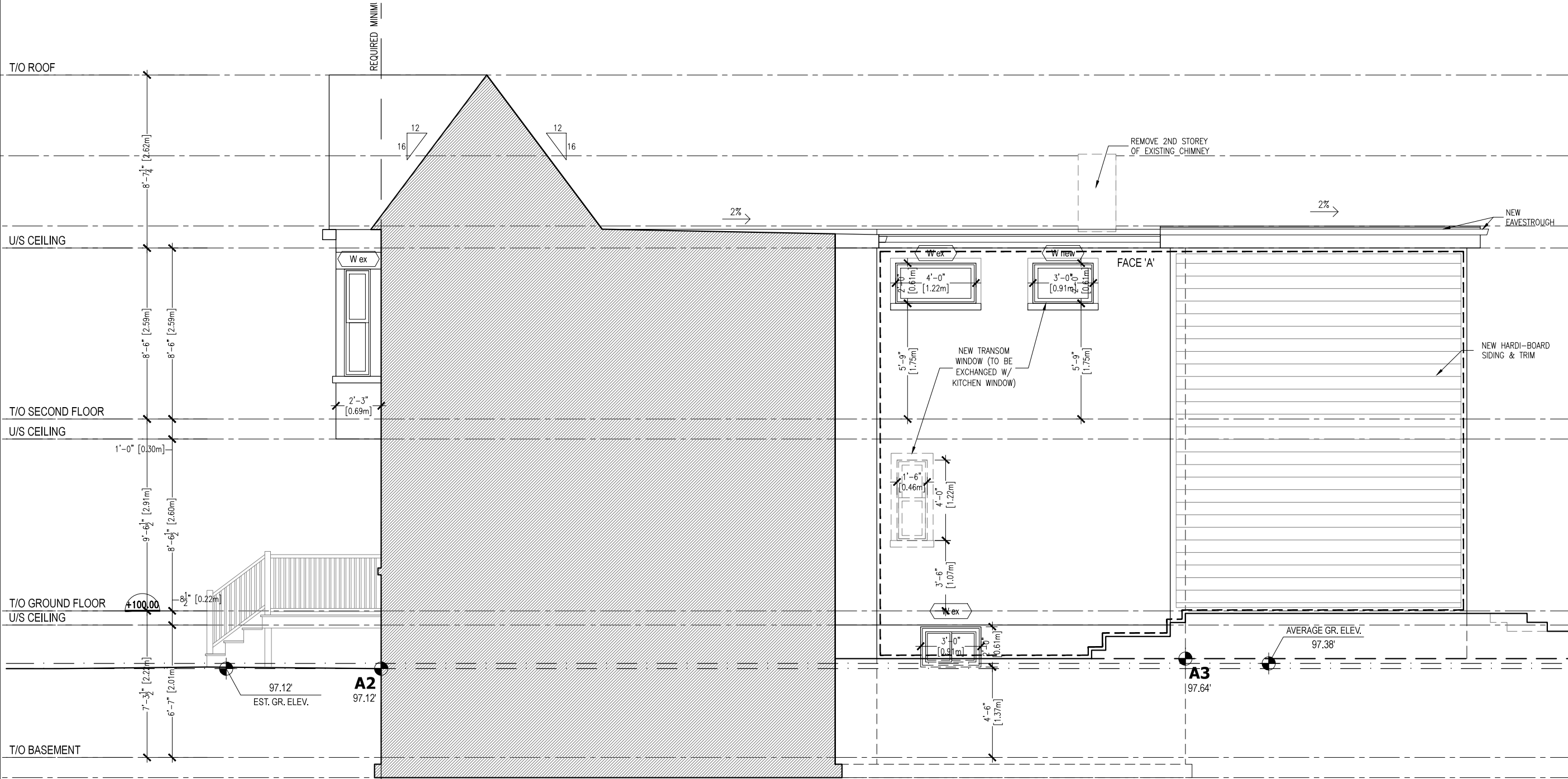
384 Wellesley Street E

Rear (North) Elevation

SCALE: 3/16"=1'0"  
1:64

DATE: 2019 May 30

A4.1



| FACE 'A'                                | SQ.M. | SQ.FT. |
|---|-------|--------|
| EXISTING TOTAL UNPROTECTED OPENING AREA | 1.85  | 20.0   |
| PROPOSED TOTAL UNPROTECTED OPENING AREA | 1.85  | 20.0   |

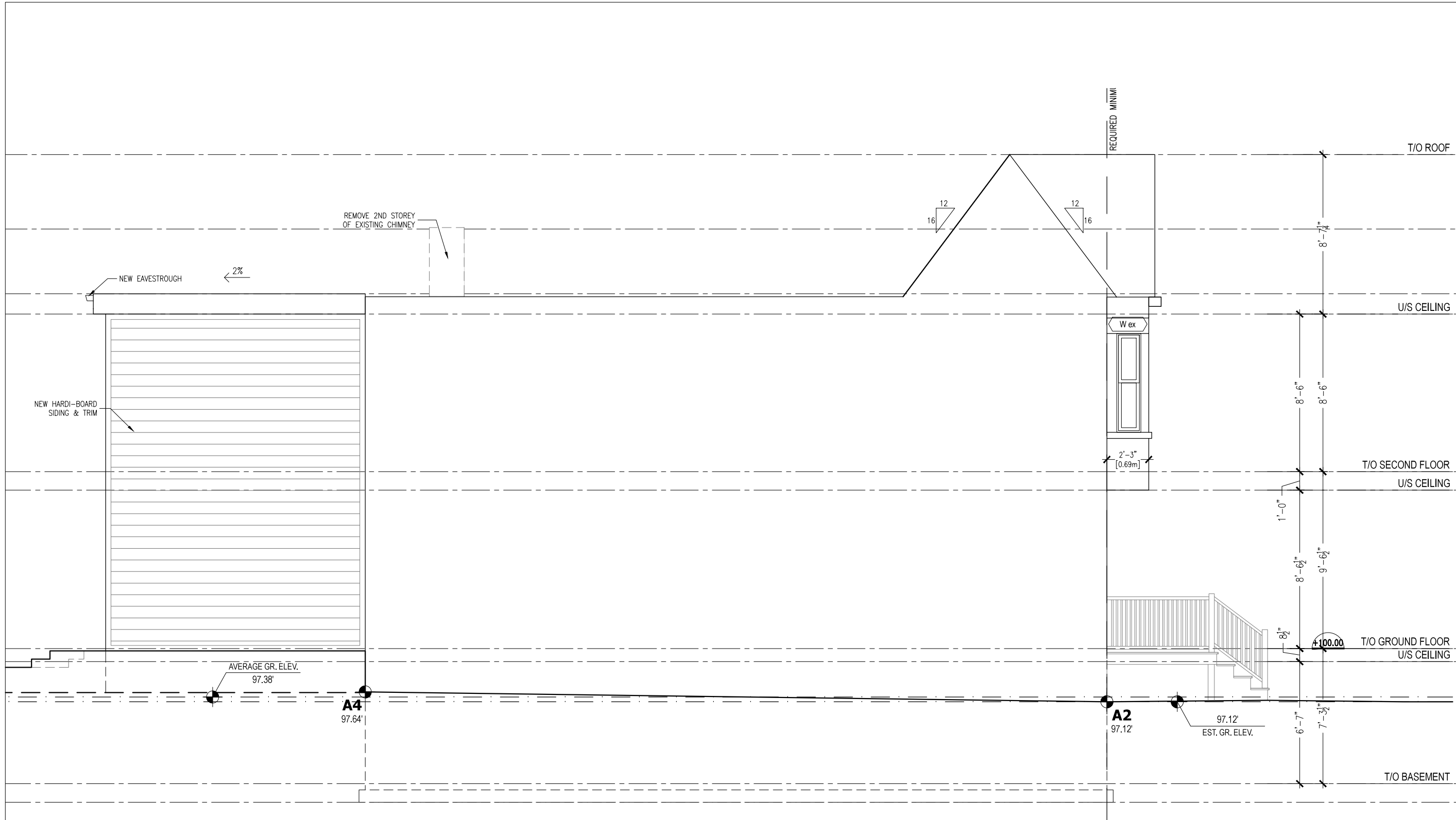
| REVISIONS                               | DATE         |
|---|--------------|
| 0 PROJECT REVIEW REQUEST (PRR) APP.     | APR. 12 2019 |
| 1 PROJECT REVIEW REQUEST RESUBMISSION#1 | MAY 30 2019  |

384 Wellesley Street E

Side (East) Elevation

SCALE: 3/16"=1'0"  
1:64  
DATE: 2019 May 30

A4.2



| REVISIONS                               | DATE         |
|---|--------------|
| 0 PROJECT REVIEW REQUEST (PRR) APP.     | APR. 12 2019 |
| 1 PROJECT REVIEW REQUEST RESUBMISSION#1 | MAY 30 2019  |

384 Wellesley Street E

Side (West) Elevation

SCALE: 3/16"=1'0"  
1:64  
DATE: 2019 May 30

A4.2