

DECISION AND ORDER

Decision Issue Date: Friday, December 10, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Margery Kugelmass

Applicant(s): These Architects

Property Address/Description: 36 Heather St

Committee of Adjustment File

Number(s): A0051/21NY

TLAB Case File Number(s): 21 143972 S45 08 TLAB

Hearing date: August 16, 2021

Settlement date: October 15, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY: S. Makuch

REGISTERED PARTIES AND PARTICIPANT

Appellant: Margery Kugelmass

Appellant's Legal Rep: Marc Kemerer

Applicant: These Architects

Owner: Grainne Maria McGlynn

Primary Owner: Thomas David Pinkham

Expert Witness: Franco Romano

Expert Witness: Michael Barton

Participant: Tony Giancola

Participant: Malcolm Rutherford

Party: Thomas David Pinkham

Party Legal Rep: Michael Cara

Party: Gina Schafrick

INTRODUCTION

This is an appeal by neighbours of a decision of a Committee of Adjustment decision approving five variances for the reconstruction of a dwelling. The five variances dealt with FSI, size of the rear deck, side yard setback, and parking. City staff had only one concern which related to the FSI.

After the hearing began the parties asked for an adjournment so that they might reach a settlement. It was agreed and I stated that if the parties reached an agreement the evidence of the settlement could be filed using affidavit evidence and the hearing would not have to be reconvened. If no settlement were reached a date for a continuance of the hearing could be sought.

BACKGROUND

A settlement was reached and an affidavit of Franco Romano dated October 15, 2021 was filed with TLAB on the same date. Mr. Romano is a qualified land use planner who has given evidence before TLAB on many occasions. The affidavit need not be repeated in detail here or attached as an Appendix as it is in the TLAB file. It sets out in detail the terms of the settlement and how the plans, altered as a result of the settlement meet the four tests of the *Planning Act* and comply with provincial policies.

MATTERS IN ISSUE

As a result of the settlement there are no matters in issue, there was no response filed or challenge to Mr. Romano's evidence.

Mr. Romano summarizes the settlement in his affidavit as follows:

“The Revised Proposal involves the following modifications to the Original Proposal:

(a) The Revised Proposal reduces the height of the two-storey rear addition to match the height of the second storey of the existing dwelling and removes the cantilevered portion of the rear addition; and

(b) As a result, the Revised Proposal requires a maximum permitted FSI of 0.804 instead of the FSI of 0.821 that was proposed in support of the Original Proposal.

The Revised Proposal requires the following variances from City of Toronto Zoning By-law No. 569-2013 and City of Toronto Zoning By-law No. 438-86:

(a) To permit a floor space index of 0.804 times the lot area whereas the maximum permitted FSI is 0.35 times the lot area;

(b) To permit a north side yard setback of 0.21 m whereas the minimum required side yard setback is 0.45 m;

(c) To permit a rear platform area of 21.13m² whereas the maximum area of a platform above the second storey is 4.0m²; and

(d) To permit the existing parking space to remain to be located in the front yard between the front lot line and the front wall of the dwelling. This variance is in relation to Zoning By-law 569-2013 and the former Toronto Zoning By-law 438-86.

For greater clarity, the one revision to the variances that has resulted from the modifications to the Original Proposal is the reduction of the proposed FSI variance from 0.821 to 0.804.

In my opinion, this is a minor revision that does not change any of the expert evidence that provided at or in advance of the First Hearing Date, including my opinion that the proposed variances satisfy the applicable tests under Section 45(1) of the Planning Act. My evidence in support of the proposed variances is provided in Sections V to IX of this Affidavit.

It is my opinion that the amendment to the original application as a result of the Revised Proposal is minor in nature and requires no further public notice pursuant to Section 45.18.1.1 of the Planning Act.”

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’).

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

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

The unchallenged evidence in Mr. Romano's affidavit supports the settlement and finding that the variances as modified meet the four tests of the *Planning Act* and provincial policy requirements. In addition, the evidence supports the conclusion that no new notice is required and the reduction in FSI and condition 2 of the approval address the City staff's concern.

ANALYSIS, FINDINGS, REASONS

Based on the unchallenged settlement affidavit I find the variances set out in Appendix 1 should be approved subject to the conditions in Appendix 2

DECISION AND ORDER

The appeal is allowed in part and the variances In Appendix 1 are approved subject to the conditions in Appendix 2

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

List of Variances

1. Chapter 10.20.40.40.(1)(A), By-law No. 569-2013

The maximum permitted floor space index is 0.35 times the area of the lot. The proposed floor space index is 0.804 times the area of the lot.

2. Chapter 10.5.40.71.(4)(B), By-law No. 569-2013

The minimum building setback from a side lot line for any addition or extension to the rear or side of a lawfully existing building or structure on a lot with a lot frontage of 9.0m to 12.2m is 0.45m. The proposed north side yard setback is 0.21m.

3. Chapter 10.5.80.10.(3), By-law No. 569-2013

A parking space may not be located in a front yard. The proposed parking space is located in the front yard.

4. Chapter 10.20.40.50.(1)(B), No. By-law 569-2013

The maximum permitted area of each platform at or above the second storey of a detached house is 4.0m². The proposed area of the rear platform is 21.3m².

5. Section 6(3) Part IV 1(E), By-law No. 438-86

The by-law prohibits the parking of motor vehicles on the portion of the lot between the front lot line and the front wall of the building. The proposed parking space is located on the portion of the lot between the front lot line and the front wall of the building.

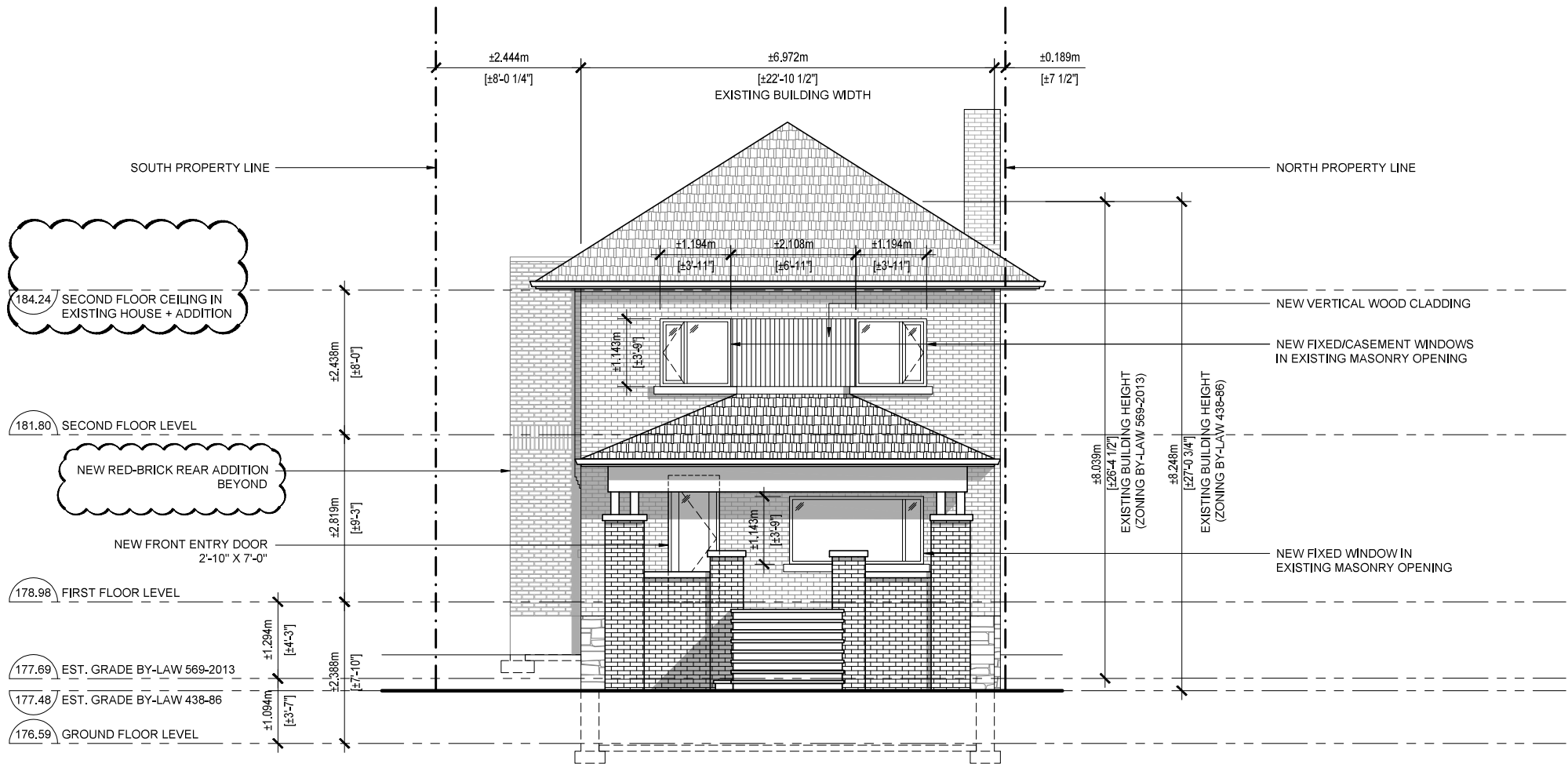
APPENDIX 2

Conditions

1. The building addition to the dwelling shall be built substantially in accordance with the attached plans for 36 Heather Street, all prepared by these architects inc. and attached to the Affidavit of Franco Romano:

- a. Site plan drawing A0.2 dated 12/10/2021.
- b. East Elevation drawing A2.0 dated 12/10/2021.
- c. South Elevation drawing A2.1 dated 12/10/2021.
- d. West Elevation drawing A2.2 dated 12/10/2021.
- e. North Elevation drawing A2.3 dated 12/10/2021.

2. The floor space index of the dwelling excluding the “basement floor” (being the floor area below established grade) shall be no greater than 0.593 times the area of the lot.



thesearchitects

these architects Inc.
43 Lorimer St.
Fonthill, Ontario Canada, L0S 1E3
t 416 710 7242

sheet title: **proposed elevation
east**

issued for: **TLAB**

project: **36 heather street
toronto, ON**

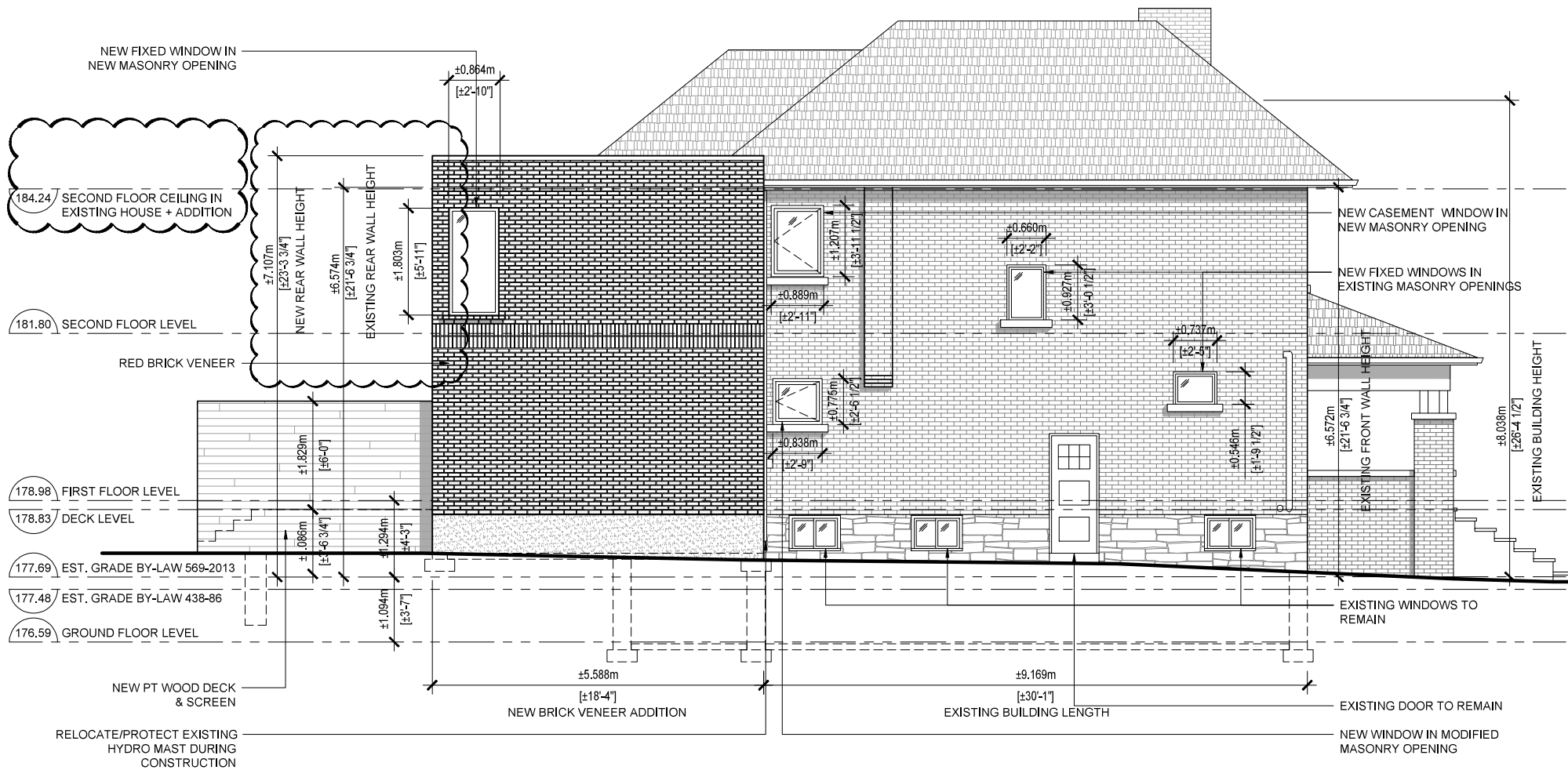
project no.: **2001**

date: **12/10/2021** scale: **1:100**

drawn by: **CJ** revision: **-**

sheet number: **A2.0**

© these architects Inc. 2021



thesearchitects

these architects Inc.
43 Lorimer St.
Fonthill, Ontario Canada, L0S 1E3
t 416 710 7242

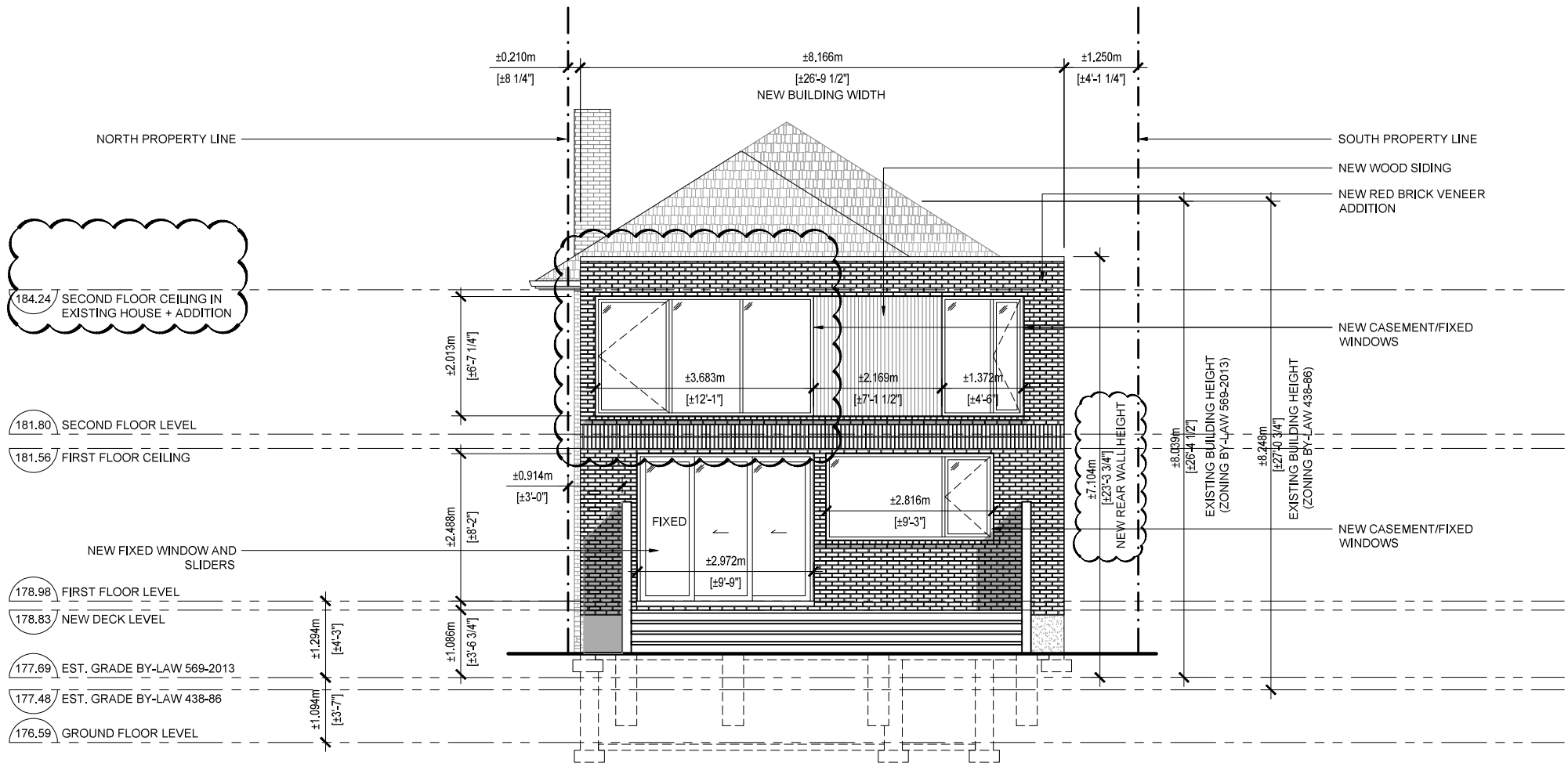
sheet title: proposed elevation
south

issued for: TLAB

project: 36 heather street
toronto, ON

project no.:	2001
date:	12/10/2021
scale:	1:100
drawn by:	CJ
revision:	-
sheet number:	A2.1

© these architects Inc. 2021



thesearchitects

these architects Inc.
43 Lorimer St.
Fonthill, Ontario Canada, L0S 1E3
t 416 710 7242

sheet title: **proposed elevation
west**

issued for: **TLAB**

project: **36 heather street
toronto, ON**

project no.: **2001**

date: **12/10/2021** scale: **1:100**

drawn by: **CJ** revision: **-**

sheet number: **A2.2**

