

DECISION AND ORDER

Decision Issue Date **Monday, September 20, 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): JULIE HUM

Applicant(s): JEFFERY HUM

Property Address/Description: 30 CORNELL AVE

Committee of Adjustment File

Number(s): 21 112714 ESC 20 MV

TLAB Case File Number(s): 21 136812 S45 20 TLAB

Hearing date: Wednesday August 25, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	JEFFERY HUM
Appellant	JULIE HUM
Appellant's Legal Rep.	IAN FLETT
Expert Witness	CHRISTIAN CHAN

INTRODUCTION

This is an appeal by the owners of 30 Cornell Ave. (subject property) of a decision by the Committee of Adjustment refusing variances to permit the construction of a new three-storey rear addition, a third storey addition over the existing dwelling, and a secondary suite in the basement. The variances necessary to comply with the bylaws are listed in Appendix 1. The proposed plans are set out in Appendix 2.

BACKGROUND

There are no parties or participants formally listed with TLAB, however, the adjacent neighbour to the rear of the property appeared at the Hearing in opposition to the appeal. He was allowed to give evidence. Evidence was also given on behalf of the owners, in favour of the appeal, by Mr. Chan, a land use planner qualified to give expert planning opinion evidence.

MATTERS IN ISSUE

Mr. Chan gave evidence that the variances met the four tests of the *Planning Act* and also met provincial requirements. The neighbour to the rear, Mr. Tipton, did not dispute those issues but rather raised the significant issue that the rear addition was too close to his house. Therefore, that was the only issue of consequence at the Hearing.

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').

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

As stated, Mr. Chan's evidence outlined compliance with the four tests and provincial requirements. With respect to the issue of the proximity of the rear addition to Mr. Tipton's house he pointed out that there was no rear set back variance and that there was no building length variance. He noted that the variances related to the height, width and density of the proposed dwelling. He also gave evidence that an existing, large rear deck would be removed and that as a result the rear outdoor use of the subject property would be reduced. In particular, it was his opinion that none of the variances were necessary to allow the extension of the dwelling into the rear yard. Moreover, the house with the additions would have the appearance of two stories from the rear and that the overlook was common in this compact neighbourhood..

Mr. Tipton's evidence was very brief. He was concerned that the addition would be too close to the rear of his house, at a distance which he estimated to be twenty feet. He presented no evidence of the exact distance of his house to his rear property line or of the exact distance of the existing deck or the proposed rear wall to that property line. He took no pictures of the views from his house into the rear yard of the owner's rear yard. He did point out that the proposed dwelling would be on a hill above his house, but failed to discuss a two metre high board fence along his property line.

ANALYSIS, FINDINGS, REASONS

This is a difficult case to determine. While Mr. Chan's evidence was that there would be no negative impact on Mr. Tipton's house, I understand Mr. Tipton's concern. There is to be an addition which brings the house on a hill above his house closer to his house. I also pointed out to Mr. Chan that the variances to permit additional floor area provide for the addition to the rear, although the variance respecting floor area, he stated, was largely the result of the basement unit.

Nevertheless, I find the appeal should be allowed and the variances allowed. While Mr. Tipton is not a planner and did not have to retain one, he could have taken pictures from various rooms in the house and the back yard to demonstrate the existing situation and thus the possible impact of the proposed addition. He could have measured the precise distance of his house to his rear lot line. He could have examined the plans of the proposed addition or made inquiries to determine the distance of the addition from his property line. In the absence of any real attempt to quantify or demonstrate the impact of the additions which meets all rear yard and building length provisions I find the proposed variances should be allowed as they otherwise meet the four tests and provincial requirements.

Since the evidence of Mr. Chan is basically unchallenged, I find the variances individually and cumulatively meet the four tests, are consistent with and conform to provincial requirements, and should be approved.

DECISION AND ORDER

The appeal is granted, the variances necessary to provide compliance with the provisions set out in Appendix 1 are approved subject to the condition that construction shall be substantially in accordance with the plans set out in Appendix 2.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

1. (254) Exception RD 254

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

(A) The minimum side yard setback is 0.9 metres;

MINIMUM REQUIRED SIDE YARD SETBACK IS .9M

EXISTING / PROPOSED SETBACK IS .21M.

SIDE YARD SETBACK DOES NOT COMPLY

2. (1462) Exception RD 1462

The lands, or portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws

and Prevailing Sections.

Site Specific Provisions:

(A) The maximum floor space index for a lot with a dwelling unit in a permitted building type is:

(I) the lesser of 0.6 times the lot area or 204 square metres, if the lot area is less than 408 square metres;

(ii) the lesser of 0.5 times the lot area or 279 square metres, if the lot area is 408 square metres to 697 square metres; and

(iii) 0.4 times the lot area if the lot area is more than 697 square metres

MAXIMUM PERMITTED FLOOR AREA IS .6 X LOT = 150.51M²

PROPOSED FLOOR AREA IS .73 X LOT = 184.31M²

FLOOR AREA DOES NOT COMPLY

3. 10.20.30.40 Lot Coverage

(1) Maximum Lot Coverage

In the RD zone:

(A) if a lot is in an area with a numerical value on the Lot Coverage Overlay Map, that numerical value is the permitted maximum lot coverage, as a percentage of the lot area; and

(B) if a lot is not in an area with a numerical value on the Lot Coverage Overlay Map, no lot coverage applies

10.5.30.40 Lot Coverage

(1) Lot Coverage Exclusion for Permitted Encroachments

In the Residential Zone category, any part of a building or structure that is permitted to encroach into a required minimum building setback in Clause 10.5.40.60, is not included in the calculation of lot coverage.

(2) Parts of Platforms that are Not Permitted Encroachments

In the Residential Zone category, any part of a platform without main walls, such as a deck, porch, balcony or similar

structure that does not encroach into a required minimum building setback, and any roof, canopy, awning or similar

structure above the platform, is not included in the calculation of lot coverage, if:

(A) it is attached to or less than 0.3 metres from a building; and

(B) the lot area covered by these structures is no more than 5% of the lot area [By-law: PL130592 Mar_2018]

MAXIMUM PERMITTED COVERAGE IS .33 X LOT = 82.78M²

PROPOSED COVERAGE IS .41 X LOT = 101.08M²

COVERAGE DOES NOT COMPLY

4. 10.20.40.10 Height

(1) Maximum Height

The permitted maximum height for a building or structure on a lot in the RD zone is:

(A) the numerical value, in metres, following the letters "HT" on the Height Overlay Map; or
(B) if the lot is in an area with no numerical value following the letters "HT" on the Height Overlay Map, 10.0 metres.

10.5.40.10 Height

(1) Determining the Height of a Building

In the Residential Zone category, the height of a building is the distance between the established grade and the elevation of the highest point of the building.

(2) Height of Specific Structures on a Building

In the Residential Zone category, the following structures on the roof of a building may exceed the permitted maximum

height for that building by 1.5 metres:

(A) antennae;

(B) flagpoles;

(C) parapets for a green roof;

(D) satellite dishes; and

(E) weather vanes.

MAXIMUM PERMITTED HEIGHT OF DWELLING IS 9M

PROPOSED HEIGHT OF DWELLING IS 9.4M

HEIGHT DOES NOT COMPLY.

5. 10.5.40.50 Decks, Platforms and Amenities (2) Platforms in Relation to Building Setbacks

In the Residential Zone category, a platform without main walls, such as a deck, porch, balcony or similar structure,

attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone.

MINIMUM REQUIRED SIDE YARD SETBACK IS .9M.

MINIMUM REQUIRED SIDE YARD SETBACK FOR FRONT PORCH IS .9M

PROPOSED SIDE YARD SETBACK FOR FRONT PORCH IS EXISTING / PROPOSED SETBACK OF .21M.

PROPOSED SETBACK OF FRONT PORCH DOES NOT COMPLY.

6. 10.5.40.60 Permitted Encroachments

(7) Roof Projections

On a building in the Residential Zone category, roof projections must comply with the following:

(A) a dormer projecting from the surface of a roof may not have any wall of the dormer closer to a lot line than the

required minimum building setback; and

(B) the eaves of a roof may encroach into a required minimum building setback a maximum of 0.9 metres, if they are no closer to a lot line than 0.3 metres

EAVES AND EAVESTROUGH MUST BE .3M FROM THE PROPERTY LINE.

PROPOSED EAVES AND EAVESTROUGH IS 0M FROM NORTH SIDE LOT LINE. DOES NOT COMPLY

Zoning by-law

Your property is located in the former municipality of Scarborough which is subject to the Scarborough Zoning Bylaws.

Based on the BIRCHCLIFF Zoning By-law, your property is zoned S-4-27-42-47-64

Scarborough Zoning by-law

7. 14. Regulations for Single-Family and Two-Family Dwellings

14.1 Maximum height: 9 m.

Height

shall mean the vertical distance measured from the mean grade at the intersection of the side lot lines and the minimum front

yard setback to the highest point of the building, excluding chimneys, skylights, vents, antennae, elevator machine rooms, and

parapet walls.

27. Minimum Building Setbacks

For "NC", "CC" and "HC" Zones, 16.5 m from the centre line of the original road allowance of Victoria Park Avenue (north

of Kingston Road), Birchmount Road (north of Kingston Road) and Warden Avenue (north of Kingston Road), 16.5 m from the centre line of Gerrard Street, Clonmore Drive and Kingston Road (west of Birchmount Road), 21 m from the centre line of Kingston Road (east of Birchmount Road), or 3 m from the street lines of the said streets, whichever is the greater setback, and 3 m from the street lines of all other streets.

For all other Zones, 6 m from the street line.

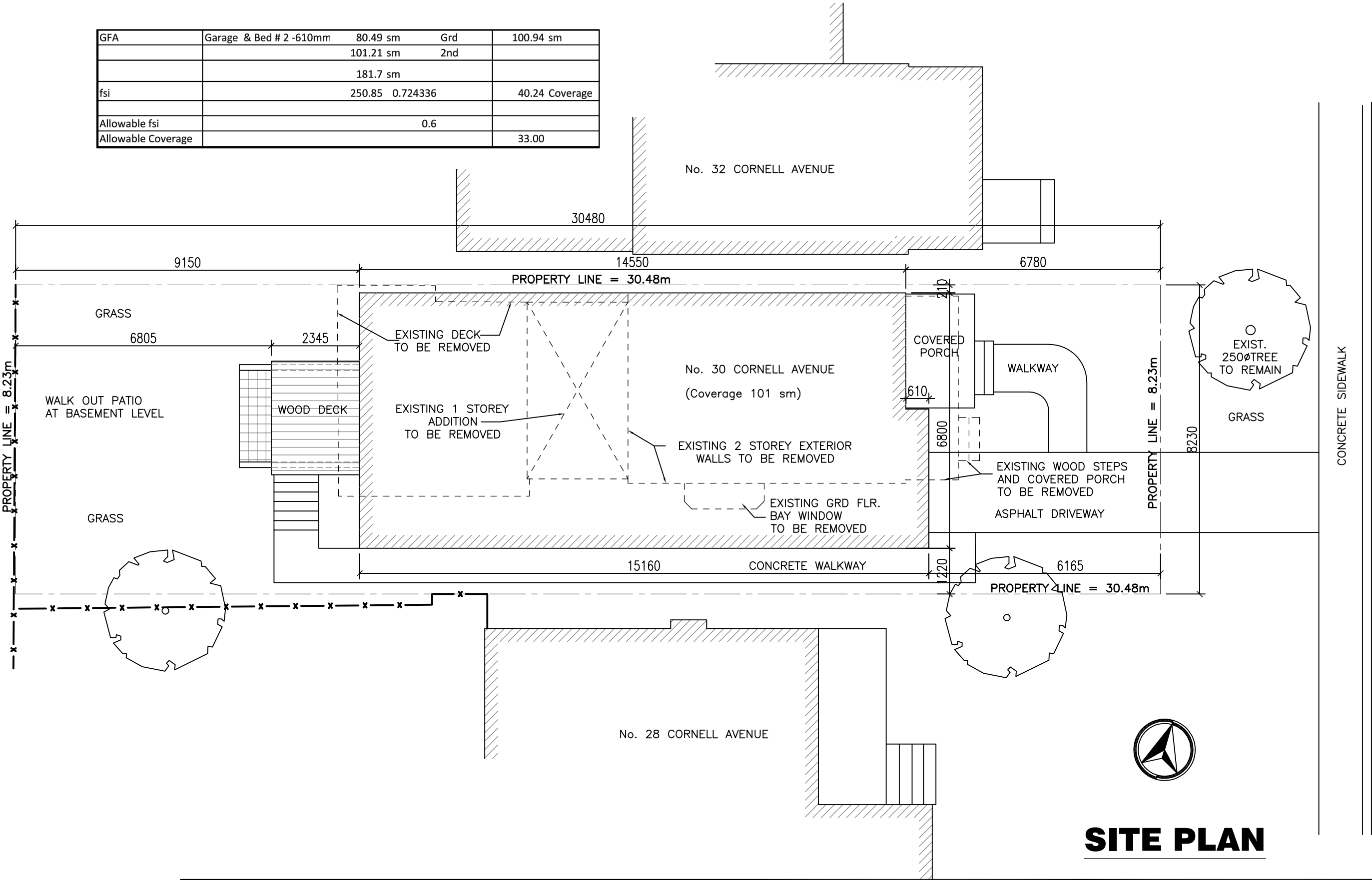
MAXIMUM PERMITTED HEIGHT OF DWELLING IS 9M

PROPOSED HEIGHT OF DWELLING IS 9.4M

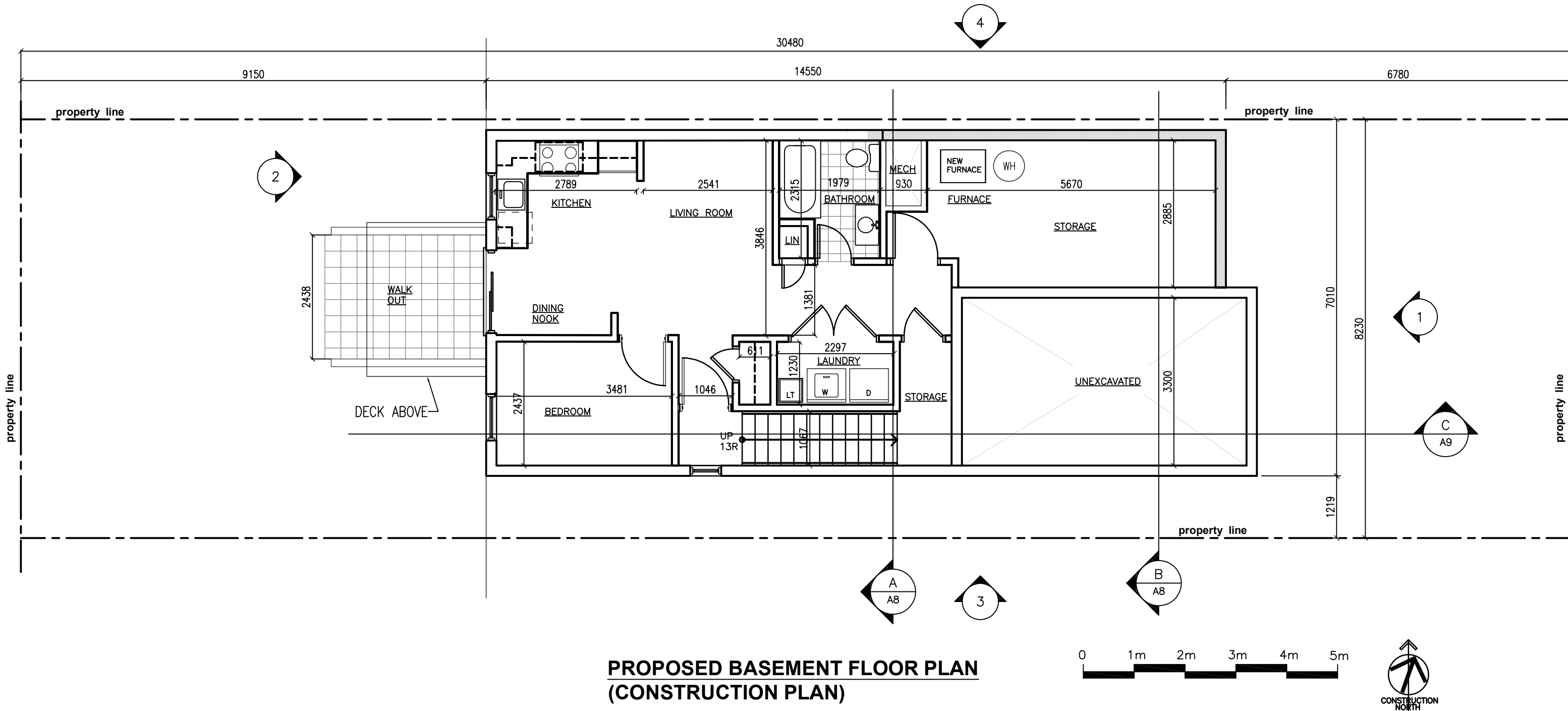
HEIGHT DOES NOT COMPLY.

APPENDIX 2

GFA	Garage & Bed # 2 -610mm	80.49 sm	Grd	100.94 sm
		101.21 sm	2nd	
		181.7 sm		
fsi		250.85	0.724336	40.24 Coverage
Allowable fsi			0.6	
Allowable Coverage				33.00



SITE PLAN



PROPOSED BASEMENT FLOOR PLAN
(CONSTRUCTION PLAN)



J.SORMILIC
DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

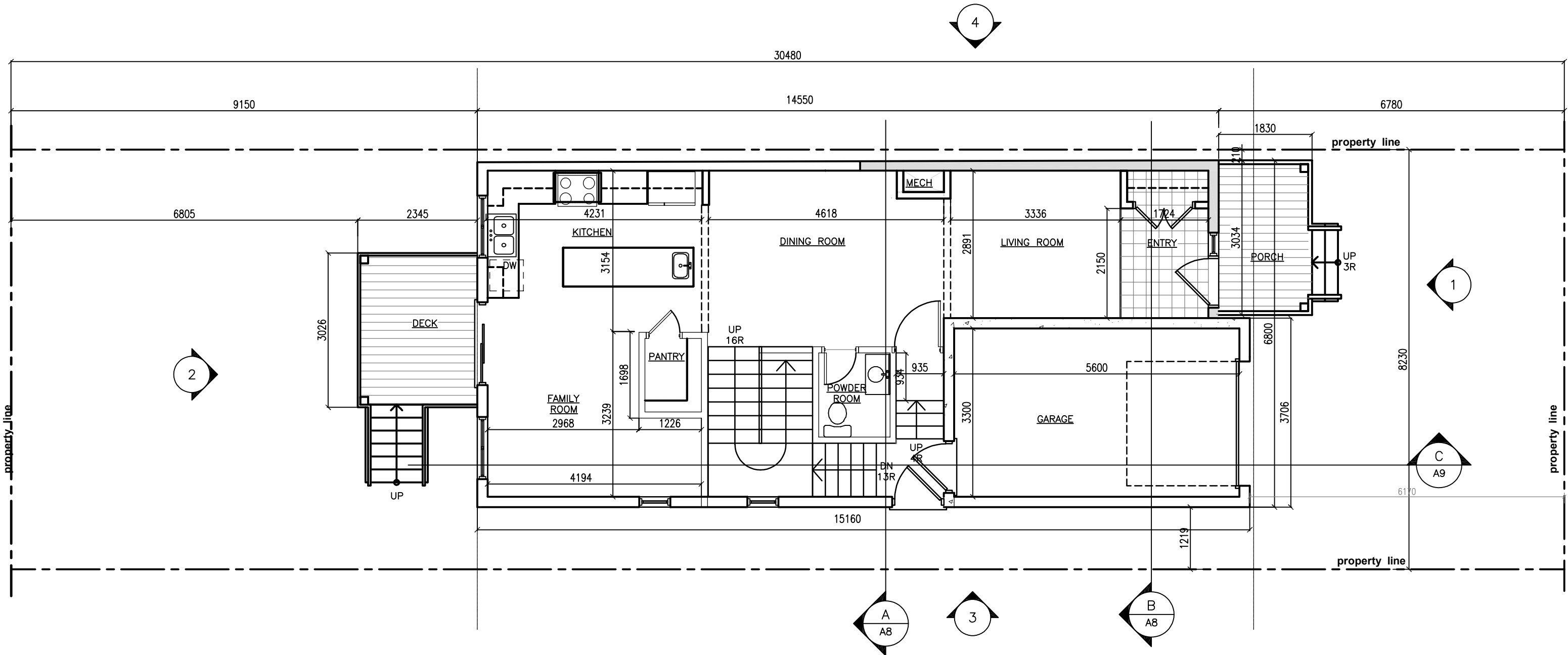
Project
PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title
CONSTRUCTION PLAN
BASEMENT

Designed by
Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A1



**PROPOSED GROUND FLOOR PLAN
(CONSTRUCTION PLAN)**

coverage: 100.95 sm
gfa: 80.5 sm



J.SORMILIC DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

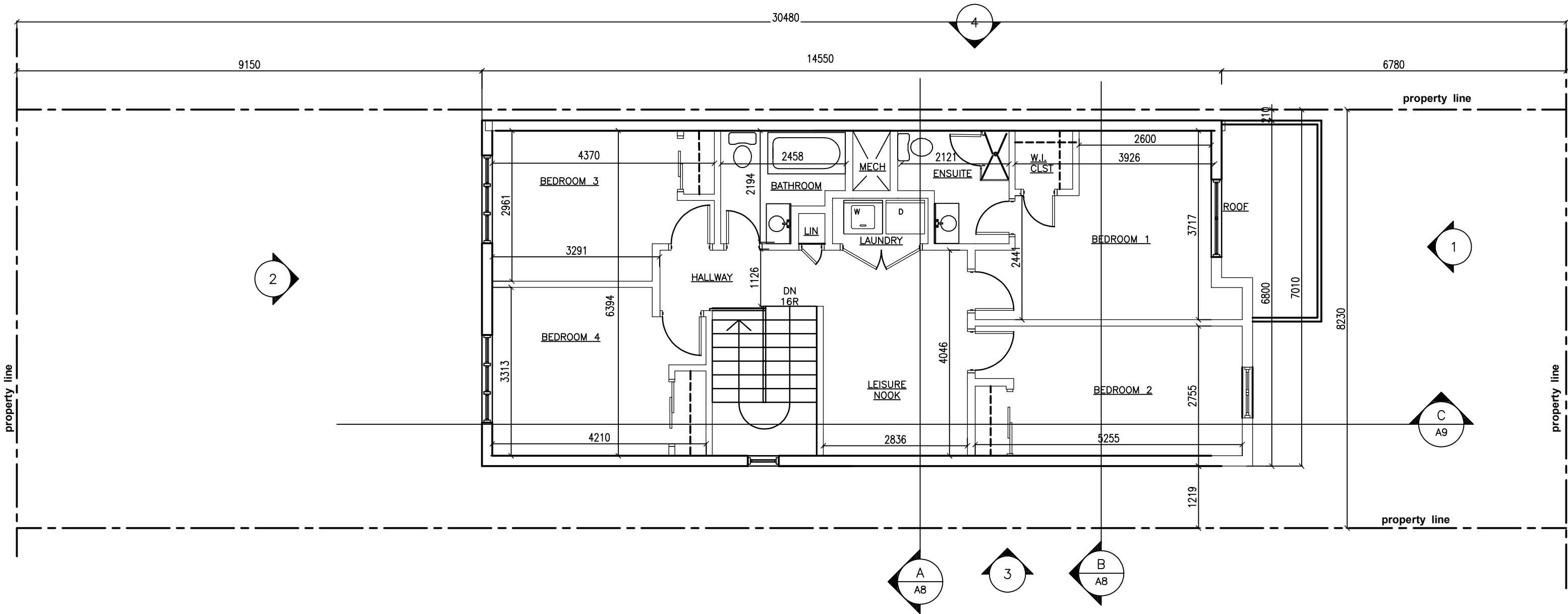
Project PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title CONSTRUCTION PLAN
GROUND FLOOR

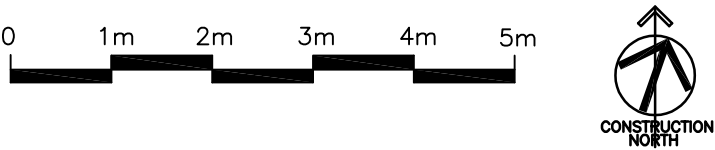
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Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A2



**PROPOSED SECOND FLOOR PLAN
(CONSTRUCTION PLAN)**
gfa: 101.21 sm



J.SORMILIC DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

Project
PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title
CONSTRUCTION PLAN
2ND FLOOR

Designed by
Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A3



J.SORMILIC DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

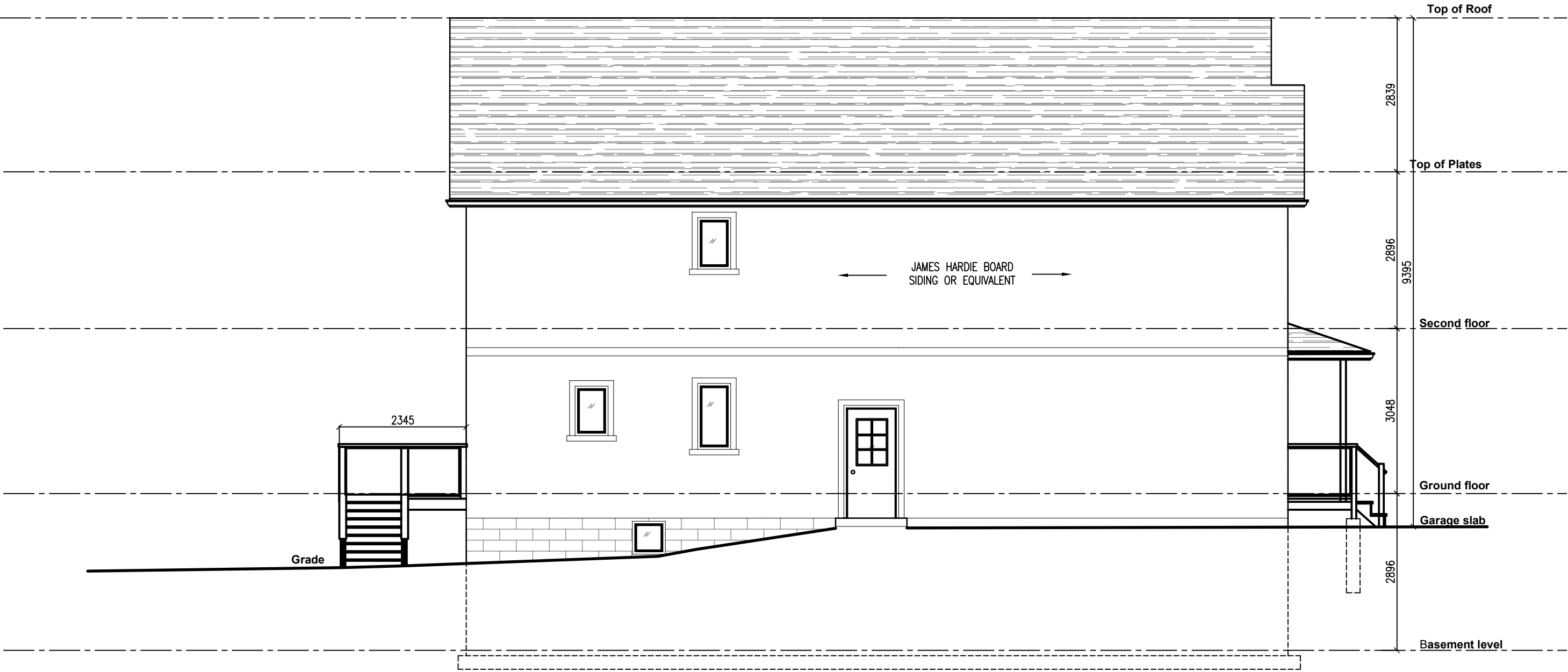
Project PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title CONSTRUCTION PLAN
FRONT & REAR ELEVATION

Designed by
Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A4



3 SOUTH FACING ELEVATION
CONSTRUCTION

J.SORMILIC DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

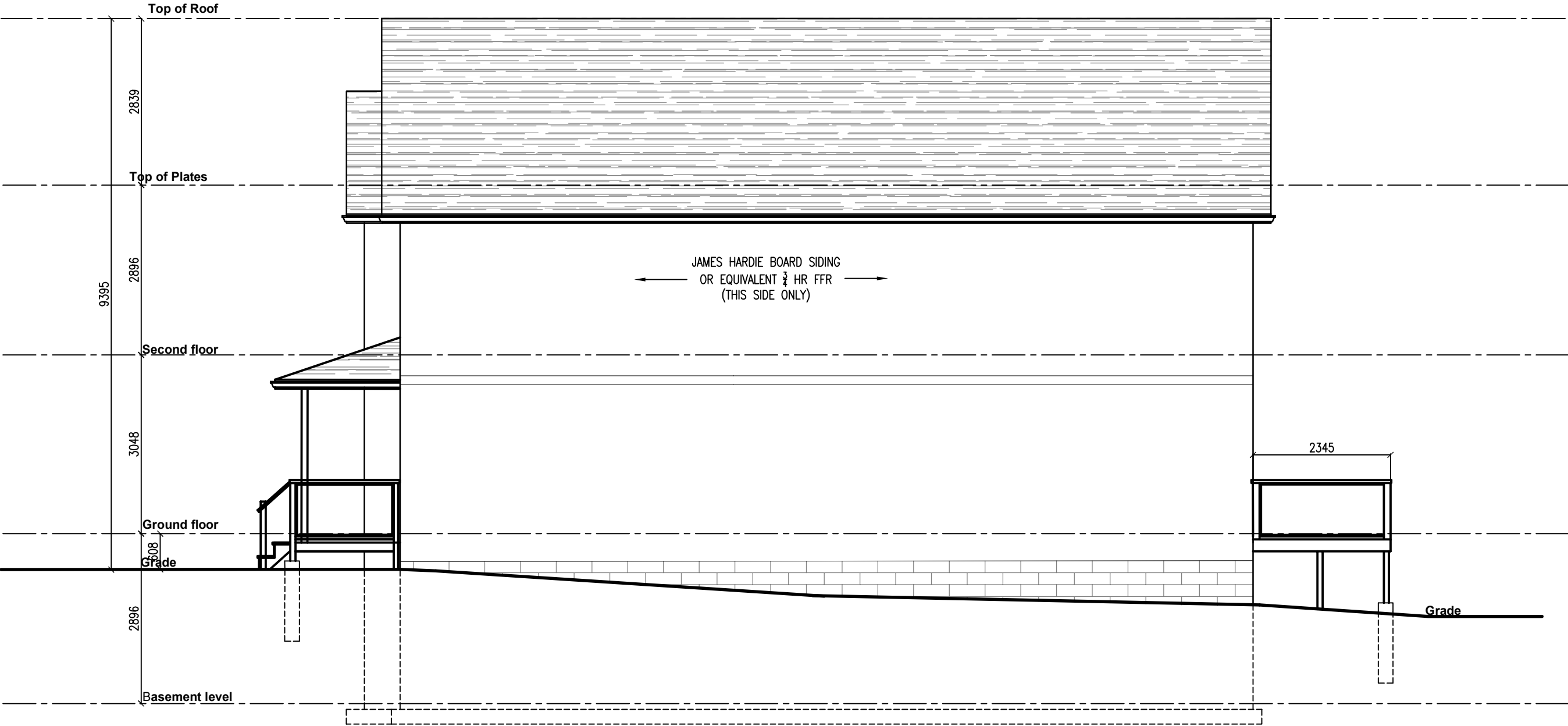
Project PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title CONSTRUCTION PLAN
SOUTH ELEVATION

Designed by
Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A5



4 NORTH FACING ELVATION
CONSTRUCTION

J.SORMILIC DESIGNER
41 NORTHVIEW AVE
TORONTO
M1N 1V9
ONTARIO
416.845.4756

Project PROPOSED 2 STOREY REAR ADDITION
TO EXISTING 2 STOREY HOUSE
30 CORNELL AVENUE, TORONTO, ON

Drawing Title CONSTRUCTION PLAN
NORTH ELEVATION

Designed by
Drawn by J.S.
Reviewed by J.S.

Project no.
2020110
Project date
2020-11-05

Drawing no.
A6