

## DECISION AND ORDER

**Decision Issue Date** Thursday, February 25, 2022

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): LUCY MONTE LISI

Applicant: INNER SPACE DESIGN BUILD

Property Address/Description: 20 BALSAM RD

Committee of Adjustment Case File Number: 20 177636 STE 19 MV (A0680/20TEY)

**TLAB Case File Number: 21 177030 S45 19 TLAB**

**Hearing date:** Thursday, January 06, 2022

Wednesday, October 27, 2021

**Deadline Date for Closing Submissions/Undertakings: January 21, 2022**

**DECISION DELIVERED BY** *STANLEY MAKUCH*

### REGISTERED PARTIES AND PARTICIPANTS

Applicant	INNER SPACE DESIGN BUILD
Appellant	LUCY MONTE LISI
Appellant's Legal Rep	MATTHEW HELFAND
Participant	RODDY ALLAN
Party/Owner	ROBERT BRENT KENNY
Party's Legal Rep	MARTIN MAZIERSKI
Expert Witness	STEVEN QI
Expert Witness	ALLAN RAMSAY

## **INTRODUCTION**

This is an appeal by an adjacent neighbour, of a decision of the Committee of Adjustment granting variances to alter the existing two-storey detached dwelling at 20 Balsam Rd. by constructing a rear two-storey addition, a rear basement addition, and rear second-storey deck. The variances relate to the proposed FSI, a roof eaves projection on the north side, and height of the exterior main walls. These are set out in detail in Appendix 1.

## **MATTERS IN ISSUE**

Ultimately the only significant issue between the parties is whether the proposed variance to permit an FSI of 0.7, which would result in a building of 195.45 square metres, should be permitted when the bylaw allows an FSI of only 0.35 the area of the lot, and thus a building of only 98.01 square metres. Of particular concern is whether a dwelling of such a numerically large FSI and resulting size would respect and reinforce the character of the neighbourhood. 20 Balsam Rd. and the property of the appellant neighbour are in a neighbourhood enclave abutting a ravine.

The issues of the height of the exterior main walls and the roof projection were resolved at the hearing as it was clear that the height increase would not be visible and thus have no impact on the appellant and the eaves projection was less than that of the existing building

## **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 of 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.

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## **EVIDENCE**

Evidence was provided by two land use planners, both of whom were qualified to give expert opinion land use planning evidence. They had clearly different opinions which can be summarized as follows.

Mr. Ramsay, who gave evidence for the appellant, was of the opinion that the proposed dwelling would not respect and reinforce the character of the neighbourhood because the FSI was out of keeping with that of the dwellings in the enclave in which 20 Balsam Rd. And the appellant's dwelling were situated. For him, the actual FSI number and its increase over the permitted FSI was large and out of keeping with other FSIs for dwellings in the enclave and thus in close proximity to 20 Balsam Rd. He also gave evidence that the proposed rear addition was two stories, unlike his client's house which was one story in the rear and that the character of the area was that of one story rear additions.

Mr. Qi, in contrast, gave evidence that the fsi variance was high because the bylaw counted only the table land above the ravine for the purposes of determining fsi, and the permitted fsi was possibly in error in not taking into account the restriction in allowing only table land to be counted. Moreover, it was his evidence that the rear addition was not really visible from the street so that the additional massing did not adversely impact on the character of the neighbourhood and as a result respected and reinforced that character. He also gave evidence that the addition, since it did not project beyond the rear wall of the appellant's dwelling, would not adversely impact the appellant's rear yard. There were no issues of privacy or overlook and at least one other dwelling appeared to have a two story rear addition. In his opinion, the proposed variances resulted in a dwelling that would not look significantly different from the street as the entire addition was in the rear.

## **ANALYSIS, FINDINGS, REASONS**

I find that the variances should be allowed.

They maintain the general purpose of the official plan, which is to respect and reinforce the character of the area and thus meet provincial requirements which are implemented by the official plan. In particular, I accept Mr. Qi's evidence regarding FSI. I find the FSI created by the addition respects and reinforces the character of the area because it will not affect the streetscape. It therefore respects and reinforces the character of the street.

While Mr. Ramsay may be correct in terms of numerical calculations, FSI as a number alone does not determine the size or massing of a building. One cannot calculate FSI or massing of a dwelling when walking down a street. FSI alone will not determine if a building fits on a street or is too big or massive. A number of factors may come into play; for example, the slope of land, vegetation, and the location and height of an addition. In this case the massing is not visible from the street and thus does not affect the character of the neighbourhood. Moreover, it does not impact on the appellant's rear yard as it does not protrude beyond the rear wall of the neighbour's dwelling and does

appear out of character with other rear yards in the enclave. In addition the other two variances are not noticeable and have no negative impact. For these reasons, I find that the variances maintain the general intent and purpose of the Zoning By-law as well, and also the remaining two test of the *Planning Act*.

Provided the addition is constructed substantially as shown in plans filed the variances should be approved.

## **DECISION AND ORDER**

The appeal is denied and the variances in Appendix 1 approved, subject to the conditions set out in Appendix 2.

**X** 

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S. Makuch  
Panel Chair, Toronto Local Appeal

# Appendix 1

## SCHEDULE 2

### LIST OF VARIANCES

#### **1. Chapter 10.20.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a detached dwelling is 0.35 times the area of the lot (98.01 m<sup>2</sup>).

The detached dwelling will have a floor space index equal to 0.7 times the area of the lot (195.45 m<sup>2</sup>).

#### **2. Chapter 10.5.40.60.(7), By-law 569-2013**

Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line.

The roof eaves will project 0.28 m and will be located 0.11 m from the north side lot line.

#### **3. Chapter 10.20.40.10.(2)(B)(ii), By-law 569-2013**

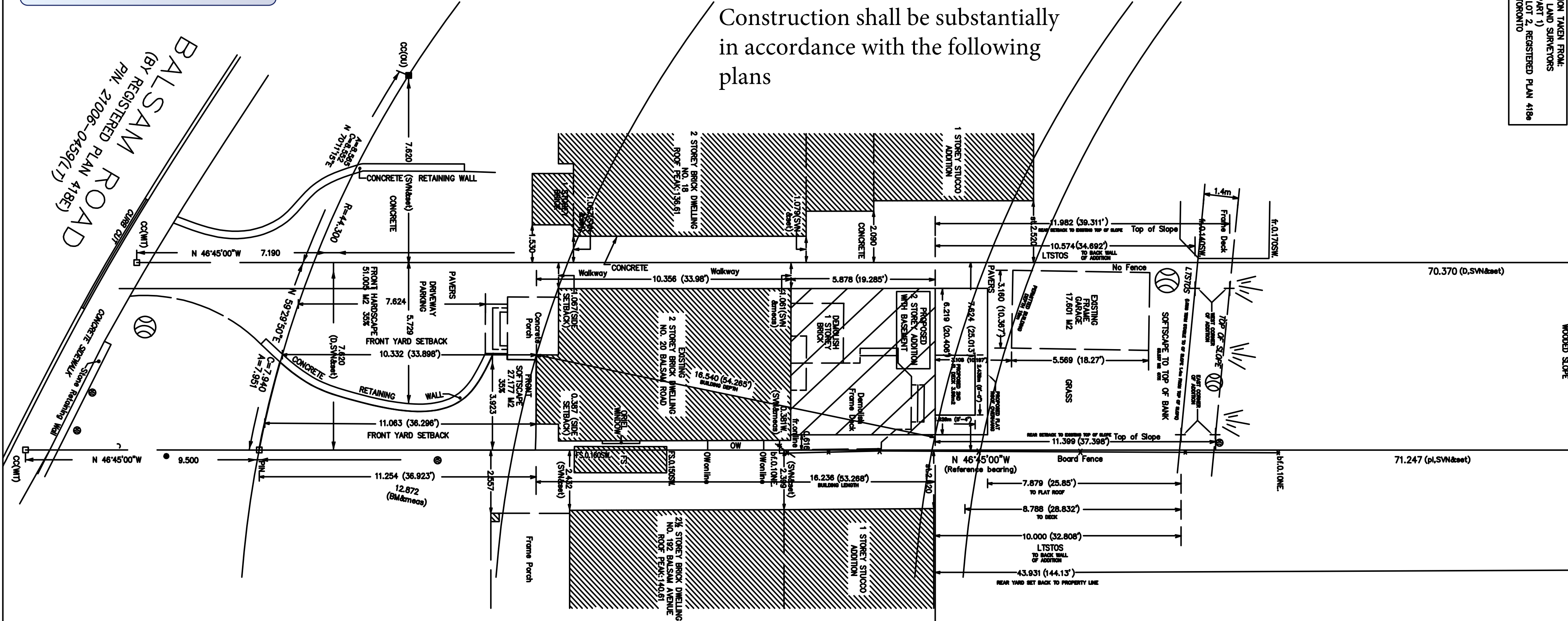
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 7.78 m.

# Appendix 2

INFORMATION TAKEN FROM:  
ONTARIO LAND SURVEYORS  
REPORT PART 1)  
PART OF LOT 2, REGISTERED PLAN 4186  
CITY OF TORONTO

Construction shall be substantially  
in accordance with the following  
plans



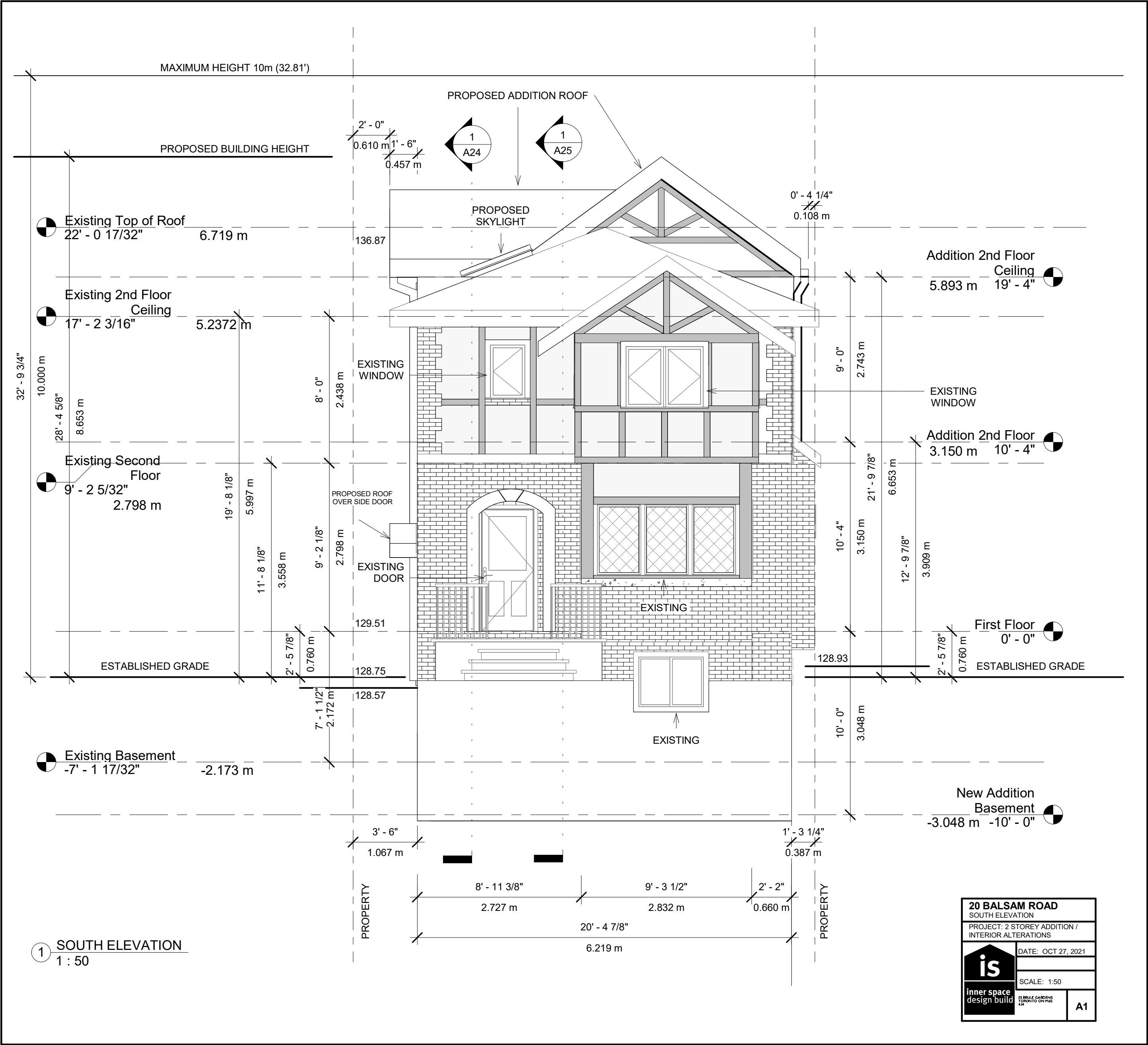
20 BALSAM RD.  
ZONED AS: RD (f12.0; d0.35)  
MAX. ALLOWED HEIGHT: 10m  
PROPOSED HEIGHT FROM ESTABLISHED GRADE: 7.614m (24.979')  
LOT AREA = 581.2 m2 6256 SQFT  
MAX. ALLOWED G.F.A.:  
LOT AREA X 0.35 = 203.42 m2 2189.6 SQFT

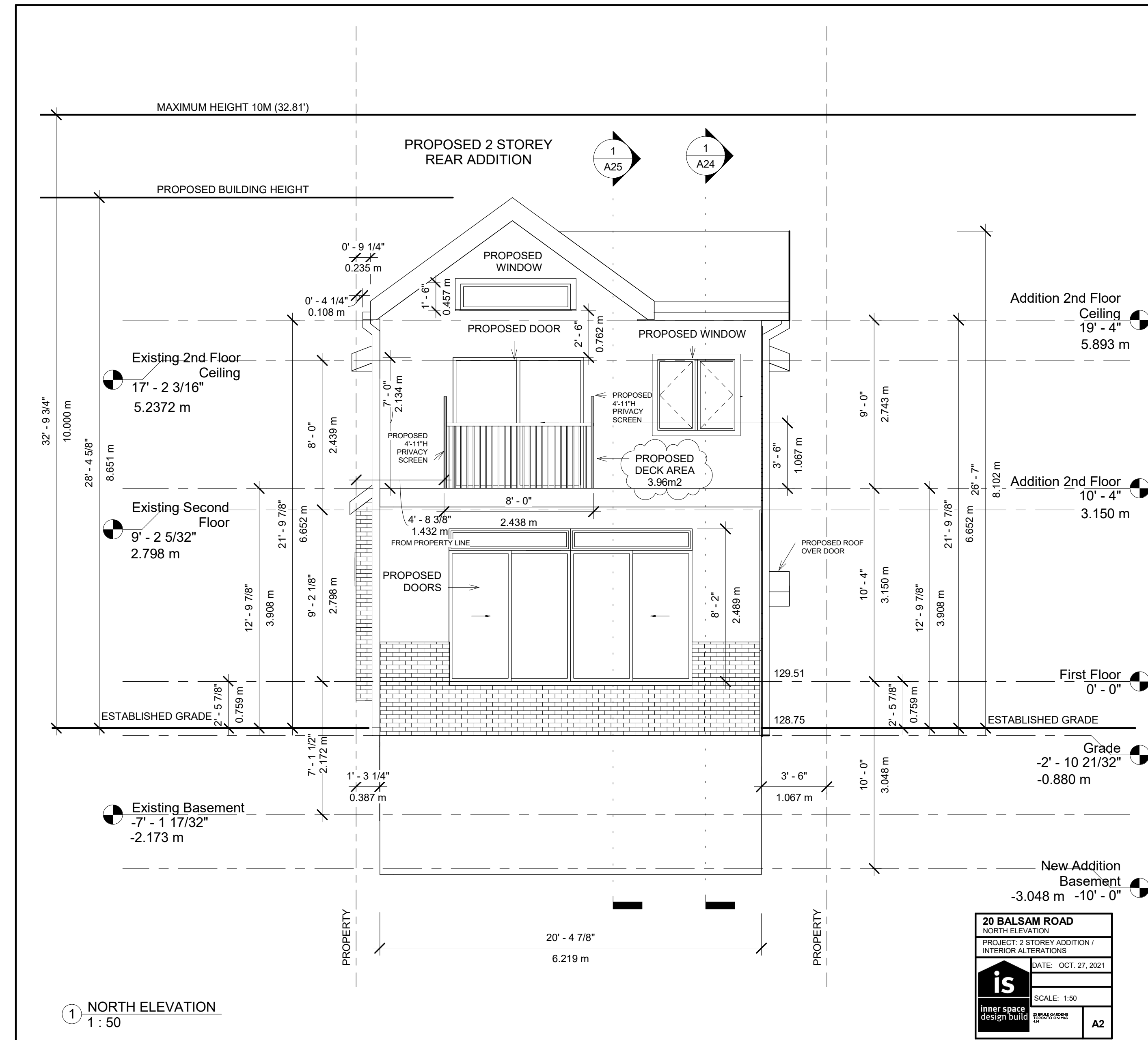
\*\*\*NOTE: LOT AREA IS LIMITED TO THE PORTION  
OF THE LOT BOUNDED BY THE  
STABLE-TOP-OF-BANK AS CONFIRMED BY  
TRCA  
ALLOWED LOT AREA FOR CALCULATION: 280.03 m2  
MAXIMUM FLOOR SPACE PERMITTED: 98.01 m2  
1054.97 SQ.FT. (280.03m2 x 0.35)  
PROPOSED GFA: 195.45 m2 2103.88 SQ.FT.  
(FLOOR SPACE INDEX 0.70 TIMES THE AREA OF  
THE LOT)\*\*\*

BUILDING LENGTH: 16.236m (53.268')  
BUILDING DEPTH: 16.540m (54.265')  
REAR YARD SETBACK: 43.931 (144.13')  
TO PROPERTY LINE  
FRONT YARD LANDSCAPING:  
78.182 m2 841.54'  
FRONT YARD SOFT LANDSCAPING:  
27.177 m2 292.53' 35%  
REAR YARD LANDSCAPING:  
83.496 m2 898.74'  
REAR YARD SOFT LANDSCAPING:  
57.623 m2 620.25' 69%

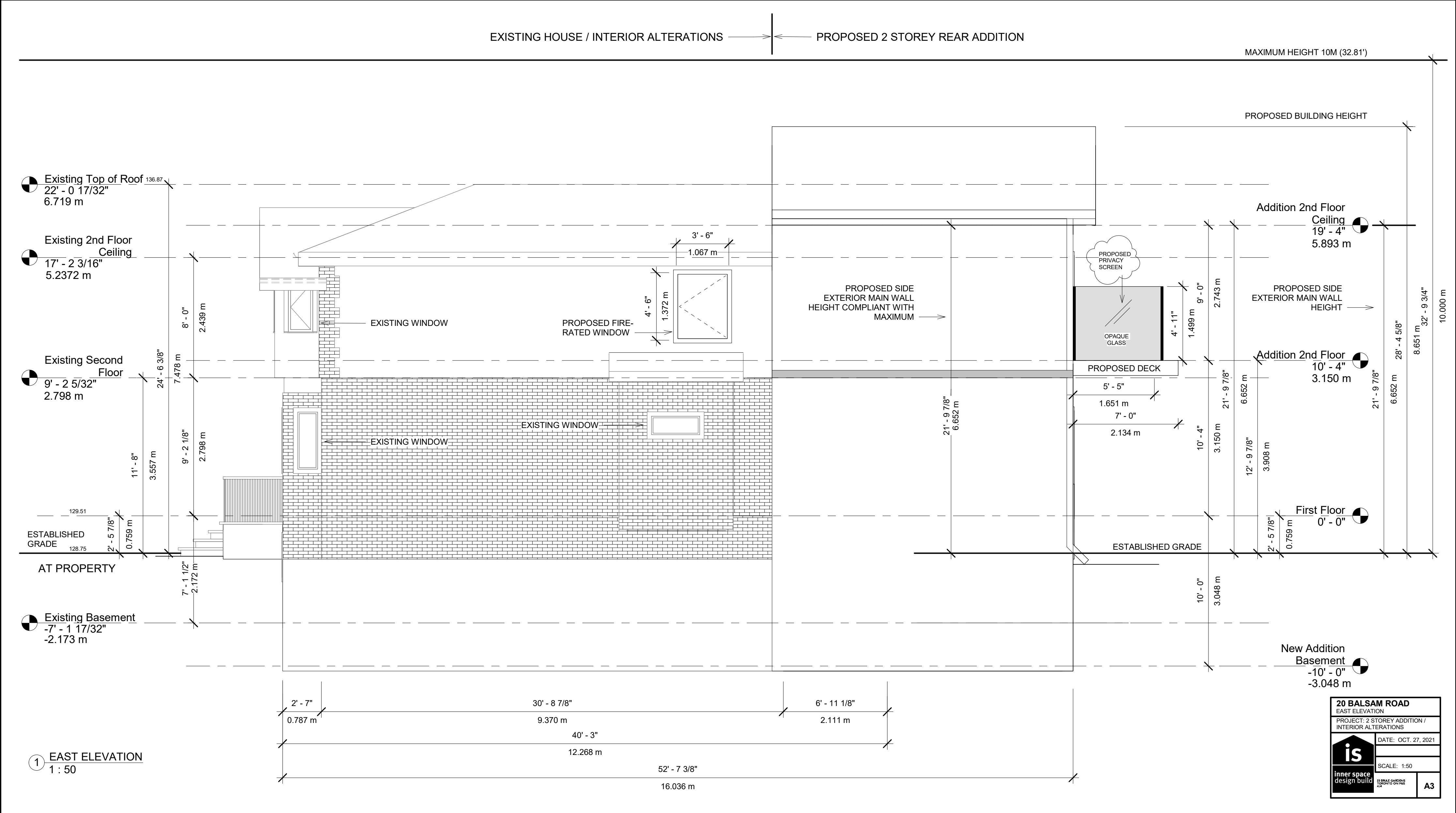
SITE STATISTICS	EXISTING m2 SQ.FT.	PROPOSED m2 SQ.FT.	TOTAL G.F.A. m2 SQ.FT.
FIRST FLOOR AREA	66.211 m2 712.69 SQ.FT.	31.601 m2 340.19 SQ.FT.	97.812 m2 1052.88 SQ.FT.
SECOND FLOOR AREA	62.77 m2 675.65 SQ.FT.	34.868 m2 375.35 SQ.FT.	97.638 m2 1051.00 SQ.FT.
GROSS FLOOR AREA	128.981 m2 1388.34 SQ.FT.	66.469 m2 715.54 SQ.FT.	195.45 m2 2103.88 SQ.FT.

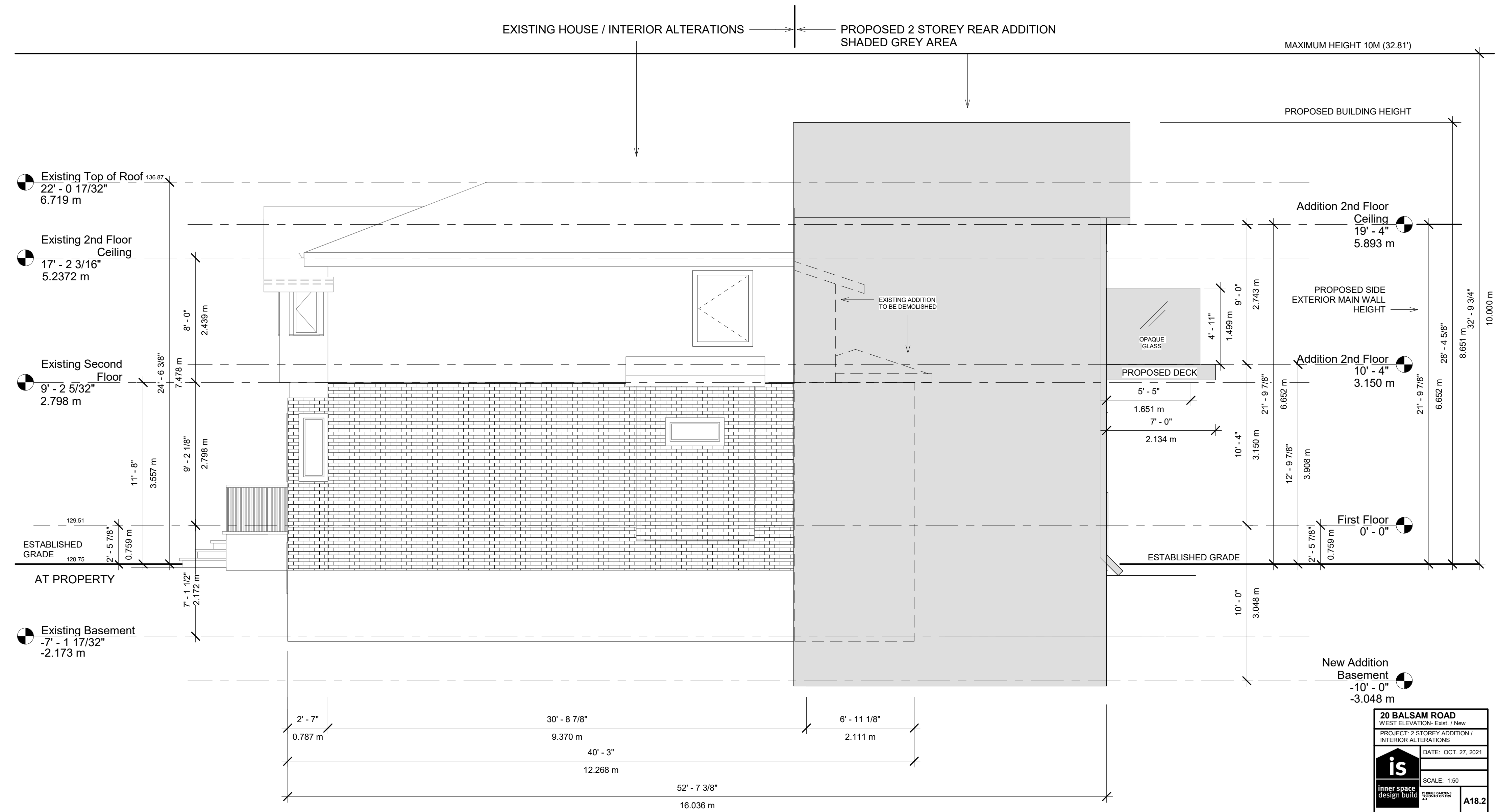
THIS SITE PLAN: 20 BALSAM RD  
INNER SPACE DESIGN/BUILD  
23 BRULE GARDENS, TORONTO ON M5S 4A4  
DRAWN M.P.  
CHECKED OCT. 27, 2021  
DATE  
SCALE 1:3











1 EAST ELEVATION- EXIST. / NEW  
1 : 50

20 BALSAM ROAD	
WEST ELEVATION- Exist. / New	
PROJECT: 2 STOREY ADDITION / INTERIOR ALTERATIONS	
DATE: OCT. 27, 2021	
	SCALE: 1:50
	PROJECT NUMBER: 18-000001
Inner space design build	A18.2

