

DECISION AND ORDER

Decision Issue Date Thursday, April 07, 2022

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(2)(a)(i) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JIAN MIN WANG

Applicant(s): JIAN HAI TONG

Property Address/Description: 77 SHAW STREET

Committee of Adjustment File

Number(s): 21 157519 STE 10 MV (A0684/21TEY)

TLAB Case File Number(s): 21 222120 S45 10 TLAB

Hearing date: Thursday, February 24, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Vice Chair A. Bassios

REGISTERED PARTIES AND PARTICIPANT

Appellant	Jian Min Wang
Appellant's Legal Rep.	Martin Mazierski
Applicant	Jian Hai Tong
Party	John Matos
Expert Witness	Steven Qi

INTRODUCTION

This is an Appeal of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment's (COA) refusal of an application for variances for the property known as 77 Shaw St (subject property).

The purpose of the application is to legalize and maintain a one-storey rear addition with a second storey deck which has been added to the existing townhouse on the subject property.

The subject property is located in the Niagara neighbourhood of the former City of Toronto. It is designated *Neighbourhoods* in the City Official Plan (OP) and zoned R (d1.0)(x868) under Zoning By-law 569-2013. The exception noted (x868) is not applicable to the application.

In attendance at the Hearing were:

- Martin Mazierski, legal counsel for the Owner, and Expert Witness Steven Qi (Land Use Planning);
- John Matos, Party.

BACKGROUND

A previously existing one-storey addition at the rear of the existing townhouse on the subject property was replaced with a new, larger and taller one-storey addition with a deck above.

Construction of the new addition was undertaken without benefit of building permit and an Order to Comply has been issued by the City of Toronto.

Two variances are required to permit the constructed addition:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAWS:

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

The maximum permitted depth of a townhouse is 14 m.
The legalized townhouse will have a depth of 17.8 m.

2. Chapter 10.10.40.80.(1)(B), By-law 569-2013

The minimum required distance between main walls for a townhouse is 5.5 m where there are no openings to dwelling units in those main walls.
The distance between main walls will be 1.22 m.

MATTERS IN ISSUE

The primary issue of concern for the opposing Party was the challenge that the application poses to the integrity of the planning and building permit process. Mr. Matos's listed concerns included that a proper inspection of the construction would not be undertaken since the addition is already built, and that the plans and drawings submitted to the TLAB do not reflect the actual construction on site.

Recognizing that the COA refused the application, the overriding consideration for the Appellant and the TLAB is whether the requested variances meet the four tests mandated in the *Planning Act*.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

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. Qi was qualified to provide land use planning evidence.

A summary of evidence is presented here for the purpose of providing some context for the following sections of this Decision. All of the evidence and testimony in this matter has been carefully reviewed and the omission of any point of evidence in this summary should not be interpreted to mean that it was not fully considered, but rather that the recitation of it is not material to the threads of reasoning that will be outlined in the *Analysis, Findings, Reasons* section below.

Mr. Qi described the proposal and the neighbourhood context as follows:
The subject property is currently occupied by a two-storey townhouse with a one-storey new rear addition (subject of this application) and a detached garage facing the laneway at the rear of the property.

- The subject property is located in a townhouse block which extends from 77 Shaw St to 81 Shaw St.
- Although the new addition is taller than that which was previously there, a variance for height is not required. The height of the addition as constructed matches the height of the abutting property at 79 Shaw St.
- Both neighbouring properties also have rear one-storey additions.
- The neighbourhood is characterized by a wide range of housing types and a variety of front and rear yard setbacks, narrow to no side yards, and rear yard garages accessed via laneways.

77 Shaw Street

Photo 1 (Looking at front facade)



77 Shaw Street

Photo 9 (From detached garage looking west at southern side wall)



Figure 1: Front and Rear view, 75, 77, 79 Shaw. EX 2 Tab 4-4

Mr. Matos's testimony focused on his concerns regarding building violations and the public safety risk to the abutting townhouses from potentially problematic construction on the subject property.

He asserted that the foundations could not have been built as they are shown on the drawings and plans before the TLAB.

Mr. Matos referenced the age of the townhouses and expressed his concern that there is not the fire separation in these older homes that is routine in new builds, and that because of this the risk posed by unsanctioned construction is much higher.

Mr. Matos stated his belief that processes are put in place to protect everyone and that circumventing the building inspection process puts everyone in proximity at risk. In his opinion, granting the variances would be putting the neighbours at risk because it would approve the as-built structure without it meeting the Building Code requirements.

ANALYSIS, FINDINGS, REASONS

This application involves a one-storey rear addition in a long-established neighbourhood and at this scale I do not find that the high-level policies of the Provincial Policy

Statement or the Growth Plan offer more than general guidance. I accept the evidence of Mr. Qi that the application is consistent with the 2020 Provincial Policy Statement ('PPS') and conforms to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance: Maximum depth of a Townhouse

Mr. Qi provided evidence that the addition which existed prior to the construction of the addition in question was in existence at least since July 1982. The new addition which was constructed without permission has extended the depth of the townhouse from approximately 16.5m to 17.8m, enclosing a set of stairs.

77 Shaw Street

Photo 139 (Showing previous rear addition - since demolished)



Figure 2: Photo Prior to new addition. No 139 Exhibit 2, Tab 4-4

Mr. Qi provided a table in Exhibit 2, Tab 4-3, showing similar building depth variances that have been granted within the study area. None of the examples are located on Shaw St.

Nonetheless, the aerial photography indicates that the building depth that is proposed is not out of keeping with the neighbourhood, which is a mature neighbourhood where many of the original buildings were likely established before modern zoning limitations were in place.

I note that the depth of the adjacent house at 79 Shaw appears from the photographs to be in line with what has been built on the subject property. Mr. Matos did not object to the building depth.

On the basis of the above, I find that the requested variance for building depth maintains the general intent and purpose of the Official Plan and of the Zoning By-law. I find that the requested variance for building depth to be minor and to be desirable for the development of the land.

Variance: Minimum distance between main walls of a townhouse

Mr. Qi noted that the existing separation distance between the townhouses is a lawfully existing condition and is sanctioned by an exemption in the By-law. The addition, however, is subject to the provisions of the in-force By-law which requires a minimum separation distance of 5.5m.

According to Mr. Qi's evidence, By-law 438-86 of the former City of Toronto, as applied to this property, requires a minimum separation distance between adjacent side walls of adjacent buildings or structures of 0.9m for walls containing no openings, or 1.2m where part of a wall contains an opening. Many of the properties in this neighbourhood would have been built in the context of this former By-law.

From the aerial photographs provided, the tight fabric and reduced separation distances in the neighbourhood are apparent. I note that the photographs of the rear walls of the townhouses taken from the backyard of the subject property confirm that the narrow separation distances between the rear walls generally reflect the parameters of the former by-law.

For the reasons above, I find that the requested variance for a reduced minimum separation distance between the proposed addition and the adjacent townhouse at 79 Shaw St maintains the general intent and purpose of the Official Plan and the Zoning By-law. I find the requested variance to be minor and to be desirable for the development of the land.

Construction compliance

Mr. Matos's concern was primarily the reversal of process whereby the variances were being considered after the construction had already taken place, and that as a result the mandatory construction inspection process would be subverted.

In the course of the Hearing I explained to Mr. Matos the limitation of the TLAB's mandate in relation to his concerns with Building Code matters.

The purview of the TLAB is confined to the variances that have been requested, however it is common for the TLAB to impose a condition on approval of variances which stipulates that construction must be substantially in accordance with the drawings that have been justified through the course of the proceedings.

The TLAB has wide discretion to impose terms and conditions (s.45(9) of the *Planning Act*). During the Hearing, the frequently applied TLAB condition requiring substantial compliance with approved drawings was discussed in the context of the already constructed addition which is the subject of the requested variances.

The customary TLAB condition is premised on the expectation that construction takes place after the variances are approved. The premise is that construction would proceed through the building permit process and that all requirements of the Building Code will be certified through that process.

In the circumstance of this application, construction in accordance with the plans and drawings that have been submitted to the TLAB may not be assured through the building permit and inspection process. In order to re-integrate the TLAB approvals and the building permit and inspection process, and to vouchsafe that the construction does indeed reflect the submissions to the TLAB, the customary TLAB condition requiring substantial accordance with the submitted drawings will be amended.

DECISION AND ORDER

The Appeal is allowed and the variances listed in Appendix A are authorized, subject to the condition contained therein.

X 

A. Bassios
Panel Chair, Toronto Local Appeal Body

APPENDIX A

APPROVED VARIANCES AND CONDITION OF VARIANCE APPROVAL:

VARIANCES:

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

The maximum permitted depth of a townhouse is 14 m.
The legalized townhouse will have a depth of 17.8 m.

2. Chapter 10.10.40.80.(1)(B), By-law 569-2013

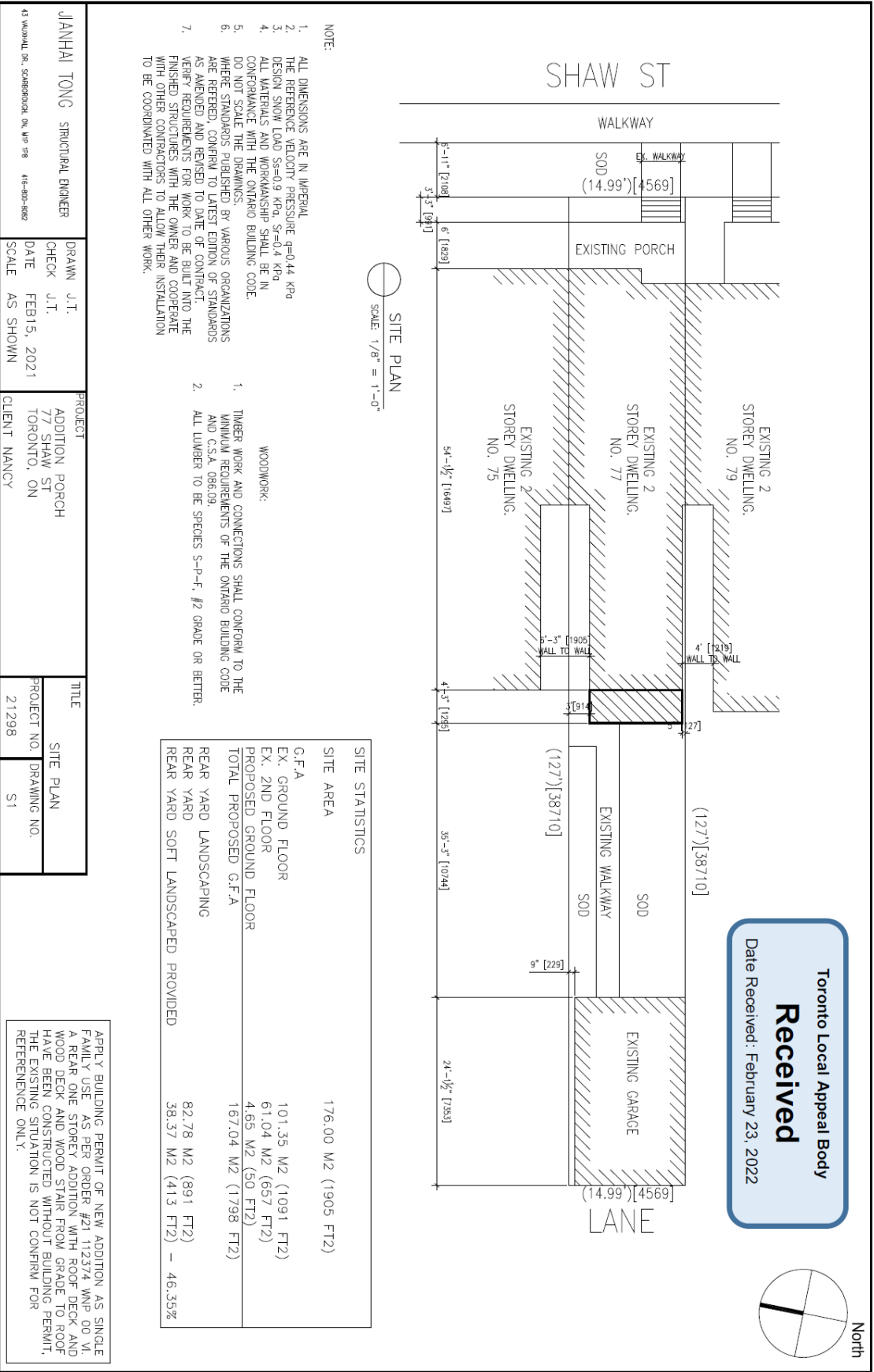
The minimum required distance between main walls for a townhouse is 5.5 m where there are no openings to dwelling units in those main walls.
The distance between main walls will be 1.22 m.

CONDITION:

Approval of the requested variances is subject to confirmation from the Chief Building Official that the as-built condition of the dwelling on the subject property complies with the requirements of the Ontario Building Code and that all construction reflects and is in accordance with the plans and drawings in evidence with the TLAB as listed below and attached hereto.

Plans and drawings, prepared by Jianhai Tong, Structural Engineer, and dated February 15, 2021:

1. S1 Site Plan
2. S2 Basement
3. S3 Ground Floor
4. S4 Second Floor
5. S5 Cross Section
6. S6 East Elevation
7. S7 North Elevation
8. S8 South Elevation.



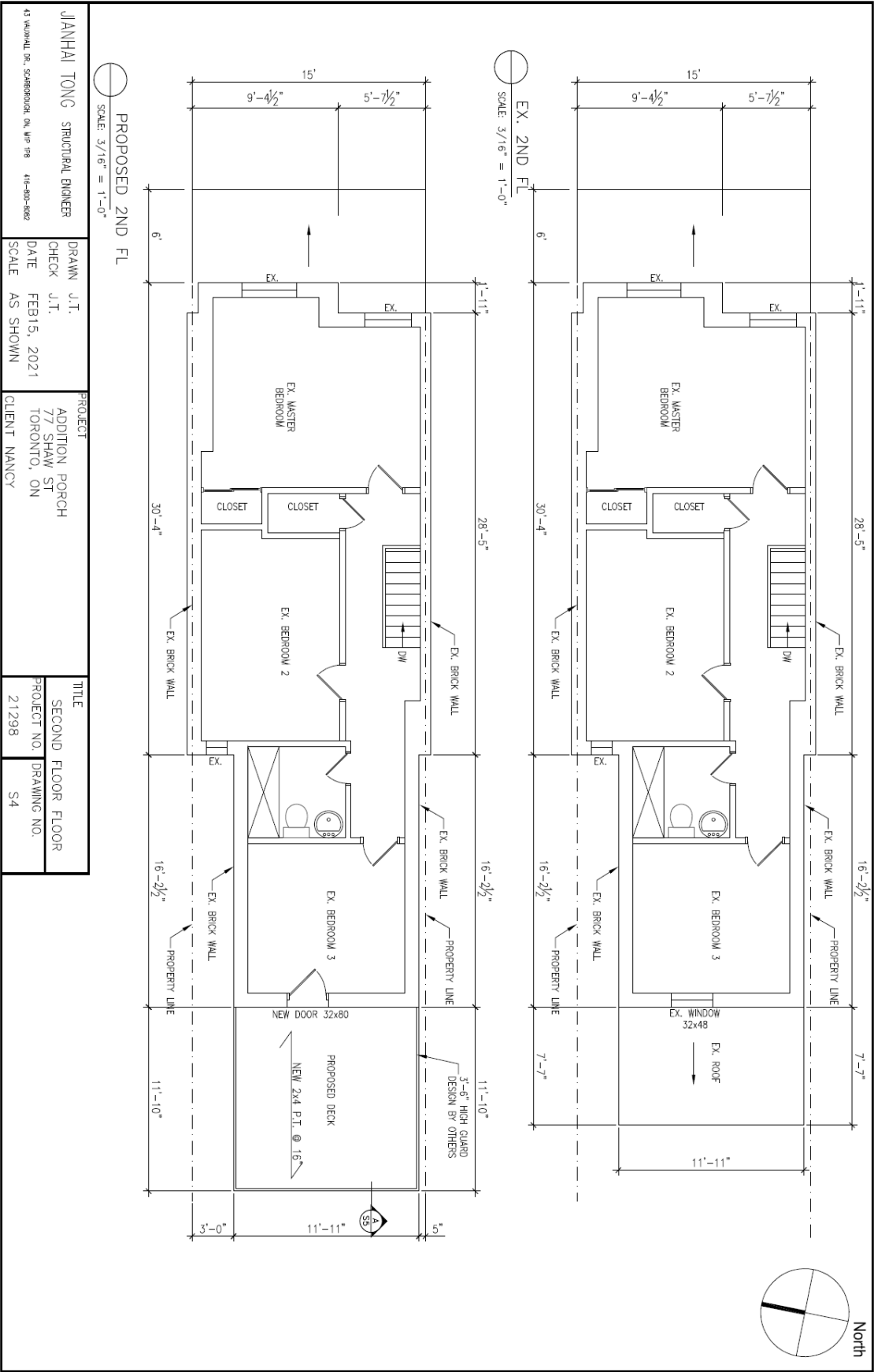
PROPOSED BASEMENT
 SCALE: 3/16" = 1'-0"

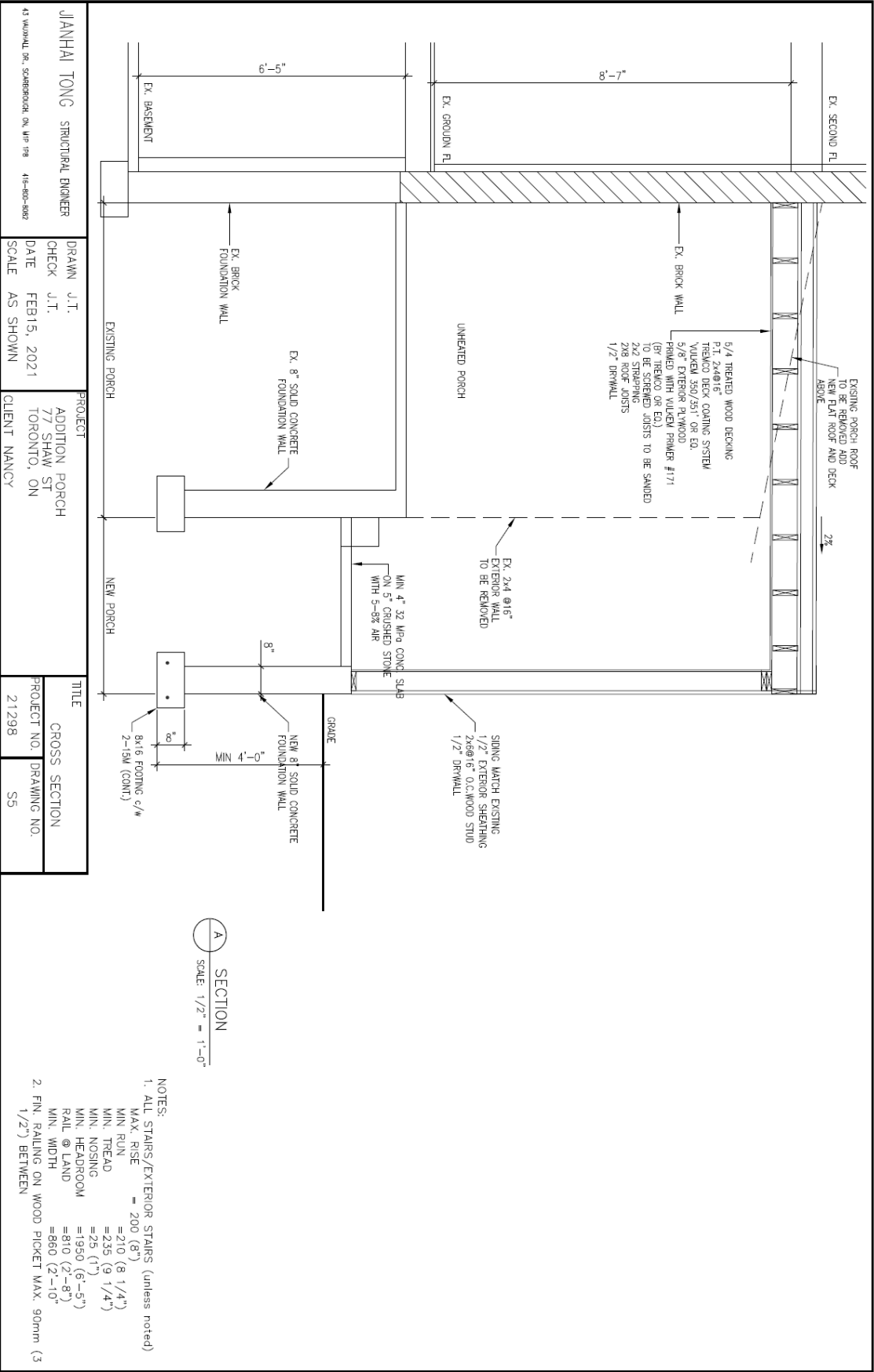
EX. BASEMENT
 SCALE: 3/16" = 1'-0"

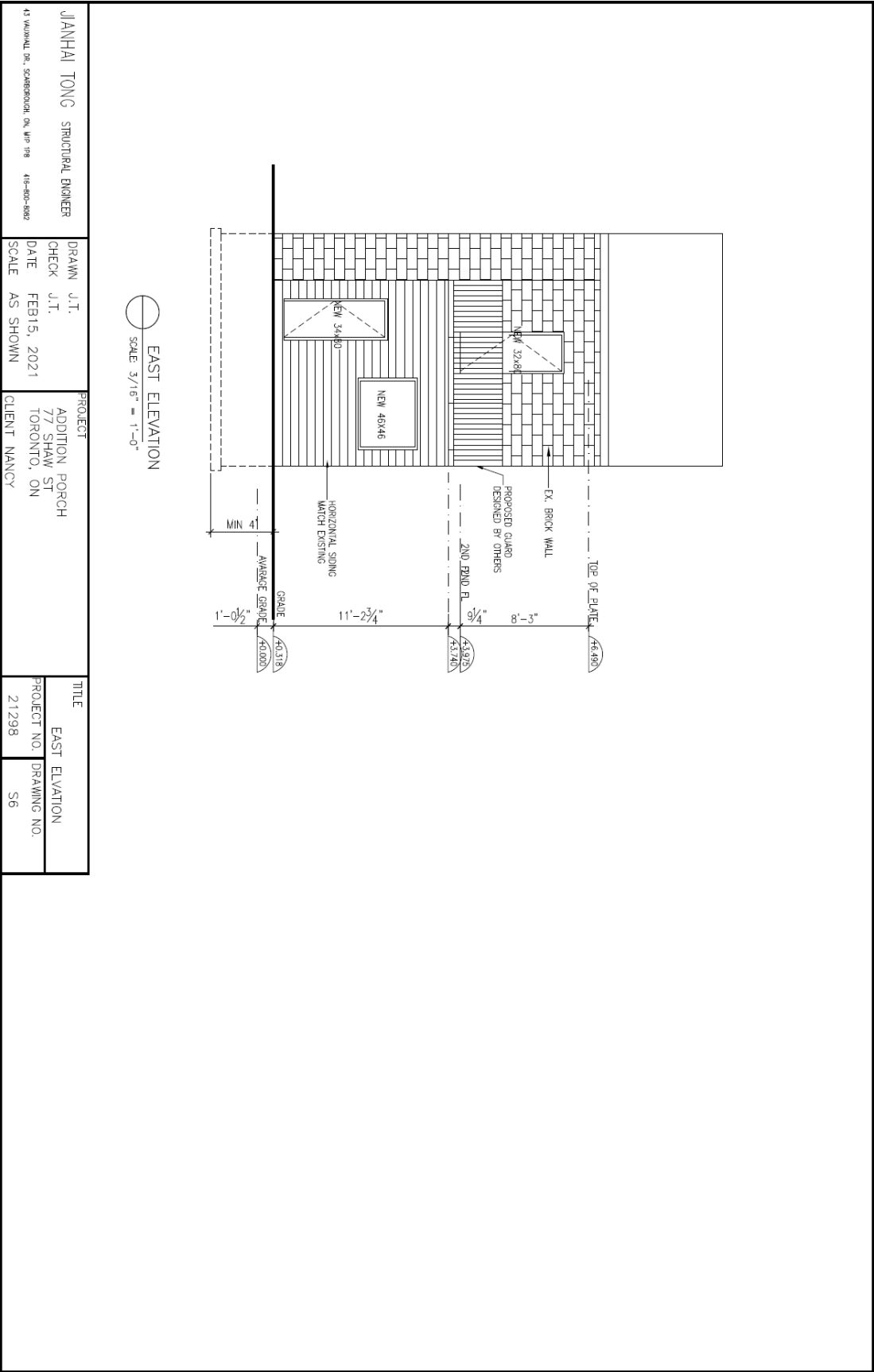
Rooms and features shown include: LAUNDRY (4'-9" x 12'-7"), EX. STORAGE ROOM (12'-7" x 12'-3"), FURNACE, CLOSET, EX. W/C, EX. BAR, and a kitchen area with a note: "NO KITCHEN OR FACILITIES FOR THE PREPARATION OF MEAL IS PERMITTED IN BASEMENT".

Dimensions and annotations include: 15', 12', 6', 30'-4", 52'-6 1/2", 16'-2 1/2", 7'-7", 11'-11", 8'-0", 1'-4", 3'-0", 8" SOLID CONC. FOUNDATION WALL, 6" 1/4 2-15M CONTINUE, EX. WALK UP CONC. STAIR, UNEXCAVATED, PROPERTY LINE, EXISTING BUILDING, NEW ADDITION.

[illegible]







Architectural drawing of the South Elevation of a building. The drawing shows a gabled roof with a brick chimney on the left. The main wall is brick with a large window labeled "EX. 46X58". To the right is a porch with a brick wall and a window labeled "EX. 46X46". The drawing includes various elevation markers: "TOP OF PLATE" at 46.480, "2ND F." at 45.975, "GROUND F." at 45.130, and "AVERAGE GRADE" at 45.025. It also shows "EX. FLAT ROOF" and "EX. BRICK WALL". A note indicates "EXISTING PORCH ROOF TO BE REMOVED AND NEW FLAT ROOF AND DECK ABOVE". A "PROPOSED GUARD" is shown on the porch. The drawing is titled "SOUTH ELEVATION" and includes a scale of 3/16" = 1'-0".