

DECISION AND ORDER

Decision Issue Date Wednesday, August 04, 2021

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): ALI KASHANI

Applicant(s): DEBORAH ALEXANDER

Property Address/Description: 63 METHUEN AVENUE

Committee of Adjustment File

Number(s): 20 157100 STE 04 MV

TLAB Case File Number(s): 20 223297 S45 04 TLAB

Hearing date: Tuesday June 15, 2021

Deadline Date for Closing Submissions/Undertakings: Friday, June 25, 2021

DECISION DELIVERED BY Justin Leung

REGISTERED PARTIES AND PARTICIPANTS

Applicant DEBORAH ALEXANDER

Appellant ALI KASHANI

Appellant's Legal Rep ANDY MARGARITIS

Party NATASA ZUPANCIC

Party BRENDA SCARTH

Party's Legal Rep DAVID GERMAIN

Participant KAREN HAIGHT-GIGLIOTTI

Participant LISA ANNE STAMMERS

Participant	GLENN ROBERT MACKAY
Participant	SHARON ANN BOOY
Participant	ZVONIMIR ZUPANCIC
Expert Witness	TJ CIECIURA
Expert Witness	SUSANNE MACDONALD

INTRODUCTION

This is an Appeal from a decision of the Etobicoke-York Committee of Adjustment (COA) relating to Variances for 63 Methuen Avenue (subject property).

The Variances had been applied for to the COA to permit the construction of a second storey addition above the existing dwelling, two-storey rear and front additions, a new front porch a new rear deck, and a second storey rear platform.

This property is located in the Lambton Baby Point neighbourhood of the City of Toronto (City) which is situated south of Raymond Avenue and bounded by Humberview Park Road to the west and Jane Street to the east. The property is located on Methuen Avenue, south of Raymond Avenue and north of Harshaw Avenue.

At the beginning of the hearing, I informed all Parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this Appeal.

BACKGROUND

The Application consists of the following requested Variances:

- 1. Section 10.20.40.40.(1)(A), By-law 569-2013**
The maximum permitted floor space index of 0.4 times the area of the lot (82.57 m²). The altered dwelling will have a floor space index of 0.98 times the area of the lot (202.4 m²).
- 2. Section 10.5.40.70.(1)(B), By-law 569-2013**
The minimum required front yard setback is 4.87 m. The altered dwelling will be located 3.6 m from the front lot line.
- 3. Section 10.20.40.70.(3)(B), By-law 569-2013**
The minimum required side yard setback is 0.9 m. The altered dwelling will be located 0.28 m from the east side lot line and 0.1 m from the west side lot line.
- 4. Section 10.20.40.10.(4)(A), By-law 569-2013**
The maximum permitted building height is 7.2 m. The altered dwelling will have a height of 8.83 m.

These Variances were heard and refused at the November 17, 2020 Etobicoke-York meeting.

Subsequently, an Appeal was filed on November 27, 2020 by Ali Kashani. The TLAB received this Appeal and scheduled a Hearing on June 15, 2021 for all relevant Parties to attend.

MATTERS IN ISSUE

The Appellants' legal representative and Expert Witness contend that the subject proposal, which has now been revised before being brought to the TLAB, is not a substantial departure from other redevelopment and reinvestment for other houses in this neighbourhood. They further opine that relevant Planning policies and legislation, such as *Official Plan 320 (OPA 320)*, must be assessed in their entirety to properly interpret and apply them towards in-fill type development, which is what this Appeal matter entails. It is further stated that stable residential neighbourhoods are not 'immune' to change and that policies do afford that incremental development can occur here.

The opposing Parties, most notably represented by a legal counsel and Expert Witness retained by two Parties to this matter, provide a countenance to these arguments and state that the Variance requests, most notably for the FSI request, are diametrically opposed to the prevailing neighbourhood characteristics, as delineated for in policy documents such as OPA 320. While they recognize the Appellant has made changes to the proposal prior to presenting it to the TLAB, they continue to argue that the Variances being requested are inconsistent and incompatible for this neighbourhood context, and would not be adhering to underlying tenets of the related Planning policies and legislation.

The Tribunal will need to assess the evidentiary matter as proffered by the Appellant and opposing Parties to this matter to determine whether this proposal meets the four tests for Variance, as per the *Planning Act*. The FSI Variance request, which had been critiqued at length during the Hearing, is another element which will also need to be conclusively analyzed to determine if its deployment here would constitute good planning.

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').

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 *Planning 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.

AMENDED APPLICATION

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

EXCEPTION

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

EVIDENCE

At the commencement of the Hearing, I inquired if the Parties and Participants had any opening remarks. They indicated that they would be providing opening remarks to the TLAB.

The Appellants' legal representative, Andy Margaritis, then proceeded with his opening remarks. He stated that preceding the COA meeting, changes to the proposal have been made. They have now revised the proposal to entail three Variance requests. He further opines that the most fulsome evidence provided to the Tribunal should be afforded greater weight and consideration.

David Germain, legal representative for Parties Brenda Scarth and Natasa Zupancic, then provided his opening remarks. He states that redevelopment in the neighbourhood is not a point of contention, however, the proposal being proffered here is not an appropriate form of development for this neighbourhood context. He further indicated that the Parties who he was representing would not be providing oral statements to the Tribunal and, in an effort to expedite this Hearing, would only be calling their Expert Witness to provide testimony.

Mr. Margaritis then proceeded to request Mr. Ciecunia take the stand. I stated that I had reviewed his curriculum vitae and would be able to qualify him in the field of land use planning.

Mr. Cieciura outlined that as part of his preparation for this Appeal matter, he reviewed Planning policies and legislation, conducted a site visit, assessed neighbourhood property data metrics and also reviewed resident comments. With regards to resident comments, Mr. Cieciura stated that revisions to the proposal have now acted to address the principal concerns as posited by said residents.

Mr. Cieciura then proceeded to describe the subject property. He described that the property had a slight 'jog' near the mid portion of the property which results in a rear yard area which has a greater width when compared to the front yard. He then presented a photo study, which formed part of his Expert Witness Statement, to contextualize the current neighbourhood characteristics. Using this photo study, Mr. Cieciura shows that to the rear of the subject property are two in-fill type houses which are of flat roof design. Also, when located on the subject property, the photo study depicts narrow side yard setbacks for current house on the site.

Mr. Cieciura then presented the study area which he had devised, to assess the subject proposal in accordance with Planning policies such as OPA 320. This study area has boundaries which can be defined as Raymond Avenue to the north, Humbercrest Lane to the west, Lessard Avenue to the south and a western boundary line which ends just before Jane Street. He contends that in-fill development has begun in this neighbourhood, with newer built houses are larger in size. He indicated that he typically conducts 2-3 site visits when preparing for providing testimony on a subject proposal.

He then proffered a 'Neighbourhood Research Table' which was part of the Expert Witness Statement which assesses Variances which have been sought in this local area for the last ten years. He indicated that he is unable to obtain accurate property information for other dwellings of the area, which had not obtained a Variance approval. With this evidentiary material, Mr. Cieciura describes that he has found varying FSI for houses on Methuen Avenue.

Returning to his photo study, Mr. Cieciura commented that there is diverse architectural style for the houses of this neighbourhood. In addition, building heights are also diverse in range as well. He also described that there have been some in-fill houses, built approximately in 2013, which have reverse slope driveways. However, these are no longer a prevalent design since 2016 due to City policies which discourage such parking arrangement on residential properties.

He continues with his photo study to show some two storey dwellings which, he believes, are functioning as a triplex with multiple tenants.

Mr. Cieciura then outlined changes to the Variance requests they were now providing to the TLAB for it review and consideration. He describes that, as part of discussions with his client (the Appellant), they have now agreed to proceed with a revised proposal. It is noted that the proposal now has three Variance requests, which were outlined previously in this document. Variance 1 has now been reduced to an FSI of 0.91 times of area of the lot. Variance 2 remains unchanged. With Variance 3, the Variance for the east side lot setback remains unchanged. However, the Variance for the west side lot setback has been reduced to 0.51 m. Variance 4 is now being withdrawn as the building height they are proposing is now Zoning compliant.

Mr. Cieciora then provided analysis of Planning policies and legislation in relation to the subject proposal. He began by describing the *Provincial Policy Statement (PPS)*. He stated that the City's *Official Plan (OP)* is the 'vehicle' by which to implement the PPS. However, he will expound on the PPS as it is still required when assessing Planning Applications. He opines that the PPS does provision for re-investment of existing properties. This proposal is a re-development of an existing house to accommodate a new family.

He then proceeded to describe the *Growth Plan for the Greater Golden Horseshoe (GGH)*, where he outlines the GGH dictates that adequate housing supply is provided for in the Greater Golden Horseshoe region. He interprets the policies of the GGH as requesting that further intensification within designated growth areas of the GGH should occur to limit urban sprawl.

Mr. Cieciora then focused his testimony on the OP policies. He critiques that the OP delineates that in established residential areas, that any proposed development must respect and reinforce the existing neighbourhood characteristics. The subject proposal is to construct a two-storey addition to an existing two storey dwelling. He comments that there are currently two and three storey dwellings in this neighbourhood context. He also proffered his opinion that this proposal would not act to de-stabilize this neighbourhood and that this proposal was substantively similar to other redevelopment which has already occurred in this local area.

With regards to the OP 'Built Form' policies, it describes that the 'plan context' is to ensure it is compatible for the neighbourhood it is to be located in. Here, Mr. Cieciora opines that it is pertinent to assess the *Zoning By-law* in relation to these policies. He comments that the building height of the proposal here complies with Zoning requirements, thus he surmises it would be a built form which is permitted for this local area.

Mr. Cieciora then references a tree in the rear of the lot. He comments that, even if there was not an FSI Variance request, that the *Zoning By-law* would allow construction into that portion of the lot as it would continue to meet Zoning requirements such as setback and building length. As such, he surmises that the removal of the tree to facilitate for redevelopment of the lot is permissible.

The testimony then progressed to the 'Development criteria' portion of the OP, which was promulgated as part of OPA 320. Referring back to the FSI Variance request, Mr. Cieciora feigns caution in assessing this Variance *prima facie* and that other factor, such as the internal layout of the proposed addition to performance standards as prescribed by the *Zoning By-law*, must also be assessed to draw appropriate conclusions on the FSI Variance request. The lot configuration remains unchanged. The height, scale and building type of this subject proposal is, in Mr. Cieciora's opinion, compatible with the neighbourhood character.

With regards to side yard setbacks, he referred to his previously shown photo study and argued that he does not believe most of the dwellings in this neighbourhood have Zoning complaint side yard setbacks, as these houses have been built to maximize the buildable area on each of these lots in this area.

Mr. Cieciora described that the lot's area and frontage are not Zoning complaint. As such, he argues that these elements must be taken into consideration when assessing the FSI Variance request. In addition, he interprets the OP policies to encourage redevelopment and reinvestment in established residential neighbourhoods, as evident with this subject proposal.

With regards to the front yard setback, he opines that this is an existing condition and the proposed addition will not act to adversely impact this. The subject proposal, and its FSI Variance request, is further described by Mr. Cieciora is due to the lot configuration here and the need to build a house which can accommodate the needs of a modern family. In assessing the proposal's balconies, Mr. Cieciora posits that the location of the balconies does not relate to the Variance requests. As such, they could be located there even if the proposal was constructed 'as of right' or in accordance to Zoning requirements.

Mr. Germain then proceeded to cross-examine Mr. Cieciora. He referenced a Planning Justification Report which had been initially prepared for the COA meeting. He cites the Report's recommendation that the dripline of the tree on 65 Methuen Avenue should not be impacted during the construction of this proposed addition. Mr. Germain asked Mr. Cieciora if he would support this as a condition of approval. Mr. Cieciora responded that this Report had not been completed by him. He does not believe any proposed construction would affect this tree. In addition, Mr. Cieciora indicated that he is not an arborist so he would have limited expertise which would permit him to answer this question.

Mr. Germain then presented a site plan as prepared by the Appellant which appears to show neighbouring properties trees drip lines extending into the subject property. Mr. Cieciora responded that this is a site plan and may not have accurate tree related information depicted.

Mr. Germain inquired if the subject proposal should not be interpreted as an addition but as a re-build on this lot. Mr. Cieciora responded that this proposal is outlining a series of modifications to the current dwelling on the site.

Mr. Germain asked if the stairs landing as part of the proposal constitutes the first floor. Mr. Cieciora responded that it is.

He then inquired if Zoning provisions as they relate to FSI are currently under appeal to the Local Planning Appeal Tribunal (LPAT, recently reorganized as Ontario Land Tribunal). Mr. Cieciora acknowledged this.

Mr. Germain then asked if the study area as proffered by Mr. Cieciora was designed to mimic this area's Zone designation boundaries. Mr. Cieciora stated that this was not accurate and that he delineated his study area based on several Planning related considerations.

With regards to FSI Variance request, Mr. Germain asked how many properties had obtained a Variance above 0.9 times area of the lot on Methuen Avenue. Mr. Cieciora responded that there has been seven Variances, in the last ten years. He did further indicate that, in his opinion, the immediate and broader context, as prescribed by

OPA 320, should both be afforded equal weight and consideration. Mr. Cieciura also reiterated that as he was unable to obtain data for all properties within this neighbourhood, he was unable to determine actual FSI data for all dwellings of this local area. As such, he was only able to assess data on dwellings which had sought Variances within the last ten years.

Mr. Germain posited that there are no houses with integral garages on this street. He asked if this proposal, with an integral garage, would be an appropriate form of development as it related to prevailing character provisions. Mr. Cieciura indicated that the *Zoning By-law* permits integral garages for this Zone designation area.

Mr. Margaritas then had additional questions for Mr. Cieciura. He asked how many houses of similar massing exist on Methuen Avenue. Mr. Cieciura stated he had counted fourteen dwellings. He then inquired if there are houses with integral garages within the broader context. Mr. Cieciura acknowledged this. At this point, Mr. Germain raised an objection as he believed Mr. Margaritas was posing leading questions to Mr. Cieciura. I communicated that Mr. Margaritas should ensure the Expert Witness is able to provide their own independent professional opinion to the TLAB.

This concluded the testimony as proffered by Mr. Cieciura. Mr. Germain then requested that Ms. Macdonald take the stand to provide her testimony to the Tribunal. I had indicated I was willing to qualify her in the field of land use planning. Mr. Margaritas stated he had questions he wanted to pose to Ms. Macdonald to provide the TLAB further information on her work experience and credentials.

Ms. Macdonald began by describing that she has been with her current planning firm, SGL Planning & Design Inc, for approximately ten years. She has been active in assisting her colleagues prepare Appeal materials for COA Applications in the past. She has also been engaged in working on several municipalities' Comprehensive Zoning By-law projects as well.

Ms. Macdonald opined that the FSI Variance request is of concern as it results in a reduction in the side yard setback which would bring the existing dwelling on the site closer to the adjacent properties. She further described that she would be focusing her testimony on the massing for this proposed addition.

She critiqued that the proposed basement acts to contribute to the overall massing. Her testimony then proceeded to assess the OP policies. As it relates to provisions of OPA 320, she indicated that 'prevailing character' must be prioritized as part of assessment criteria. While considering immediate and broader context, if there is a conflict between both, that the local street or immediate context would be afforded greater weight and consideration. Ms. Macdonald presented to the TLAB her research of previously granted Variances for this local area. She surmises that the majority of FSI Variance requests have not been as high as 0.9 time the area of the lot, as is being proposed here. She also described terms 'actual FSI' and 'effective FSI'. The term 'effective FSI' is used by her to describe how an actual dwelling, and its impact, appears when deployed on a street.

She also notes that there are dwellings on Methuen Avenue has been constructed by incorporating the third storey into the roof, acting to reduce the massing

impact. She also described that one of the sides facing windows would have direct visual range into 61 Methuen Avenue's dwelling.

Mr. Margaritas then proceeded with his cross examination of this Expert Witness. He asked if her disclosure documents to the TLAB had not included analysis on the *Provincial Policy Statement (PPS)*. Ms. Macdonald acknowledged this. She further indicated that her analysis focused more on specific Planning documents such as the OP and *Zoning By-law*, which she argues are more relevant. He then asked if her photo study, as submitted to the TLAB, had referenced any properties on Harshaw Avenue. She acknowledged this and noted that she focused on analysis on Methuen Avenue, which the subject property is located on.

Mr. Margaritas noted, in Ms. Macdonald's Expert Witness Statement, that she had stated she had no concerns with the front yard setback Variance. However, he notes she did not undertake an analysis on this Variance request. Ms. Macdonald responded that she did not believe it necessary as her professional opinion was in support of this Variance request. He then asked her about the term 'effective FSI' and if this is actually a term referenced in Planning policies and legislation. She responded it is not and that she had created this term herself.

Mr. Margaritas asked if she had expressed in her Expert Witness Statement that the proposal's building height is Zoning complaint, at three storeys. She indicated that it is but that she had not included it in her evidentiary materials.

This concluded the testimony of Ms. Macdonald. I indicated that, in recognizing previous concerns raised to the TLAB about protracted hearings, that I would be acting to expedite this Appeal matter by requesting closing remarks be submitted in writing. The Parties would have one (1) week from the date of this hearing, until June 25, to submit this. Afterwards, an additional one (1) week would be provided, until July 2, for any reply to closing remark comments to be submitted. It was also noted that several Exhibits were provided, and accepted at this Hearing. They are as follows:

Exhibit 1: Document disclosure of the applicant
Exhibit 2: Response to Expert Witness Statement
Exhibit 3: Reply to Response to Expert Witness Statement
Exhibit 4: Expert Witness Statement (S Macdonald)
Exhibit 5: Reply to Responses to Expert Witness Statement
Exhibit 6: Response to Expert Witness Statement
Exhibit 7: Document Disclosure of S. Macdonald

Subsequently, I had posited two additional questions to Mr. Cieciura to provide further clarification on this Appeal matter to assist in my review. Firstly, Mr. Cieciura had proffered that the subject property had dimensions which did not conform with *Zoning By-law* requirements. I inquired as to why this was the case. Mr. Cieciura responded that in his research for this Appeal matter he found that this property appears on property records from the early 20th century. However, the lot of record appears to have only been created around 2008. As such, he surmises that this is a 'historical' lot which pre-dates the *Zoning By-law* in force and effect for this area, and as such is unable to comply with the requisite Zoning provisions.

I then asked Mr. Cieciura if he had further information to provide with regards to Ms. Macdonald's testimony, as it related to her opinion that due to a 'conflict' or difference in the immediate and broader contexts, as per OPA 320, that the Tribunal should thus focus its review on the immediate context. Mr. Cieciura indicated that he does not believe there is a substantial difference in physical character between the immediate and broader context. As such, he contends that both contexts should be afforded equal weight and consideration by the TLAB.

Closing remarks were submitted by both Mr. Margaritas and Mr. Germain to the Tribunal. Mr. Margaritas surmises that the arguments as presented by the opposing Parties are not structured within fact or evidence. He reiterates that a revised proposal has been presented to the TLAB, from what had been initially heard and considered at the COA. As such, he argues that his client has attempted to address local resident concerns.

Mr. Margaritas also stated that Ms. Macdonald had not provided testimony on the PPS and Growth Plan. He contends that her evidence to the Tribunal, as such, is incomplete when compared to that of Mr. Cieciura. Mr. Margaritas further contends that Ms. Macdonald's derived conclusions on immediate and broader context were 'flawed' and were not applied in an appropriate and objective manner.

With regards to the FSI Variance request, Mr. Margaritas feigns caution on the part of the TLAB to accept the term 'effective FSI' as proffered by Ms. Macdonald. He argues this is not a term as defined in requisite Planning policies and legislation and was created by Ms. Macdonald as part of her evidentiary material for this Appeal matter.

Case law was also provided by Mr. Margaritas to support his position that the TLAB approve the Variances as presented. A total of five previous case law was submitted to the TLAB for its review and consideration, from both the TLAB and OMB. These previous Decisions have been provided by Mr. Margaritas to provide credence to his arguments that the Variances, as proposed here, act to meet the four tests for Variance, as per the *Planning Act*, and would be a compatible form of development for this neighbourhood. The case law as presented also comments that compatible does not mean a subject proposal must 'mimic' the existing built form of a neighbourhood but should be complimentary and have regard for the prevailing character.

Mr. Germain closing remarks commenced by stating that the front yard setback Variance request is not opposed by his clients so he will not be expounding on this issue further. He explains that the passing of OPA 320 by City Council was an attempt to provide further direction and guidance on in-fill development in established residential neighbourhoods. He comments that the study areas as proffered by both Expert Witnesses are similar, except for the inclusion of a row of townhouses along Methuen Avenue, close to Jane Street. While Mr. Cieciura has applied them to his study area, Ms. Macdonald has elected not to. Mr. Germain argues that this form of development is unique and as they have a different Zone designation. As such, they should not be considered by the TLAB as part of its review of this Appeal matter.

Mr. Germain opines that, in his opinion, the Variance request and this subject proposal does not constitute a majority of the built form within the immediate context. As such, it cannot be defined as satisfying the prevailing character, and summarily, the

proposal should not be permitted by the Tribunal. Furthermore, Mr. Germain argues that the FSI Variance request is a substantial increase from what is permitted within the Zoning By-law. In terms of issues that Mr. Margaritas had raised regarding the testimony of Ms. Macdonald, such as the exclusion of evidentiary material on the PPS, Growth Plan and the front yard setback Variance, Mr. Germain does not believe there is an issue herein and that Ms. Macdonald had simply focused her testimony on primary Planning policies and legislation, such as OPA 320 and four tests for Variance, as per the *Planning Act*, instead.

Mr. Margaritas provided a Reply to the submissions of Mr. Germain. With regards to the row of townhouses on Methuen Avenue, close to the intersection with Jane Street, he opines that it is not an error that Mr. Cieciura included it as part of his study area, even though these townhouses have a different Zone designation in comparison to the buildings in its adjacency. Mr. Margaritas further contends that the written closing remarks of Mr. Germain do not provide a comprehensive accounting, in both legal and planning contexts, as to why the TLAB should not approve this proposal. He proffers two additional case law for the Tribunal to review and consider. The case law provided here is to support argument as advanced by Mr. Margaritas that the presentation of case law is necessary when making arguments at an adjudicative tribunal and that the assessment of Variances is not purely a quantitative exercise.

ANALYSIS, FINDINGS, REASONS

The Hearing commenced with the Appellant indicating that they have elected to revise their proposal. The revised Variance requests were outlined in the Appellant's disclosure documents as follows:

Variance Requested	63 Methuen Avenue: Refused C of A Variances	63 Methuen Avenue: TLAB Proposed Variances
1. Maximum Floor Space Index [10.10.40.40.(1)(A) By-law No. 569-2013 Permitted: 0.40x Maximum	Proposed Floor Space Index: 0.96x the lot area (202.4sq m)	Proposed Floor Space Index: 0.91x the lot area (188.16sq m)
2. Minimum Front Yard Setback [10.5.40.70.(1)(B)] By-law No 569-2013 Permitted: 4.87m Minimum	Proposed Front Yard Setback: 3.60m	Proposed Front Yard Setback: 3.60m
	Proposed East Side Yard Setback: 0.28m from east side lot line	Proposed East Side Yard Setback: 0.28m from east side lot line
3. Minimum Side Yard Setback [10.20.40.70.(3)(B)] Permitted: 0.9m Minimum	Proposed West Side Yard Setback: 0.10m from west side lot line	Proposed West Side Yard Setback: 0.51 from the west side lot line
4. Maximum Building Height [10.20.40.10.(4)(A) By-law No. 569-2013 Permitted: 7.2m	Proposed Building Height: 8.83m	Proposed Building Height: New Design is compliant with Zoning Regulations
Note 1: Green Represents an improvement in the Variance & Yellow represents no change from Committee of Adjustment to TLAB.		

Figure 1: Chart outlining changes to Variance requests from *Expert Witness Statement of TJ Cieciura*

Associated revised plans were also submitted by the Appellant's retained Planner, TJ Cieciura, to outline the changes to the proposal as well. What is noted here is that the overall quantum of Variance requests has been altered with three of the Variance requests having been reduced. As a result, Variance 4, which pertains to building height, was now being withdrawn by the Appellant. The TLAB, as prescribed by the *Planning Act S.45 (18.1)*, is permitted to allow changes to a proposal without further notification to the public. It is the purview of the presiding member to determine if the revised proposal is appropriate and would continue to uphold the public interest if it were allowed to be entered as part of the Tribunal's record. As the proposal is now attempting to reduce the overall scale and impact of the proposal, and it is noted that no objections were raised by the other Parties to this Appeal matter, I would find that it is acceptable to proceed with this revised proposal to be considered by the TLAB.

The Opposing Parties, while recognizing these alterations, continue to communicate their disapproval for this proposal and surmise that it does not meet the four tests for Variance, as per the *Planning Act*. This was expressed more comprehensively by the retained Expert Witness, Susanne Macdonald, who is acting on behalf of two of the Parties. Her evidence in chief focused primarily on the FSI Variance request and the contention that it was inconsistent with the principles of Planning policies and legislation, such as OPA 320. She further argued that the FSI Variance request, even with revisions as proffered by the Appellant, is a departure from other FSI Variances which have been approved in this local area over the last ten-year timeframe.

The genesis of Ms. Macdonald's argument in opposition to this proposal is described in her Response Expert Witness Statement:

"1.3.5 Mr. Cieciura indicates that massing, scale and height of the proposed development is appropriate in comparison to the immediate context. I disagree. None of the bigger dwellings on the street are located in proximity to the site, as noted above. While it is recognized that no height variance is required, FSI, building height and building depth requirements work together to restrict the massing. Without an FSI increase, the building would either have to be shorter in height or shallower in depth, both of which would serve to limit its impacts on neighbouring dwellings and properties."¹

She opines that even with the Variance request for building height having been withdrawn, the TLAB must consider the overall scale and impact that the proposal will continue to have for this local neighbourhood context. It was noted that Ms. Macdonald's testimony stated she did not have concerns with regards to the Variance request for front yard setback. Her analysis, and its focus on Methuen Avenue, as expressed in her photo study as submitted, provided a context to her professional opinion that this proposal would be incompatible with the prevailing neighbourhood character. In addition, Ms. Macdonald articulated that when interpreting OPA 320, the reader should note that if there is a 'conflict' between the concepts of immediate and broader context, that the immediate context would then be prioritized. She expressed this as follows:

¹ Macdonald, S. *Response Witness Statement of Susanna Macdonald*. March 2021, pp. 7

“No. While some larger houses do exist, I would not consider these either frequent nor a significant presence on the street. I focus on the immediate context here, as the immediate context is intended to supersede the broader context where they differ, per the policy direction noted above. Of approximately 100 houses on the street, 9 have sought minor variances for an FSI greater than 0.8, and only two are greater than an FSI of 1. However, the numbers also do not tell the whole story. Walking down the street, only a few of the houses are evidently larger than the predominant context and certainly not so as to be considered frequent or a significant presence.”²

What is noted with Ms. Macdonald’s testimony, and with her submitted evidentiary material, is that her analysis focuses primarily on the subject property street of Methuen Avenue. As such, her assessment criteria are derived principally through its critique of the local context, as delineated by OPA 320. During cross-examination, it was revealed that she had not looked at adjacent streets, such as Harshaw Avenue which is to the immediate south of Methuen Avenue, as part of her research and preparation for this Appeal matter. While the Tribunal recognizes the previous statement which Ms. Macdonald provided in her Expert Witness Statement, there are certain elements which have not been applied as part of her assessment criteria for this Appeal matter. As such, these ‘gaps’ in the analysis do present difficulties in delineating a comprehensive understanding of how the immediate and broader context is truly being deployed to analyze the local neighbourhood context.

In addition, while she indicated that the Variance request for the front yard setback was not of concern to her, under cross-examination she was unable to expound upon how this particular Variance was appropriate as it relates to the four tests for Variance, in the *Planning Act*. Ms. Macdonald responded that the analysis as posited by the other attending Expert Witness, TJ Cieciora, should be referenced by the TLAB when addressing this Variance request. As part of her oral testimony to the Tribunal, she employed the term ‘effective FSI’ and applied it to this subject proposal. However, and as discussed under cross-examination, it was found that this is not a term that is defined in relevant Planning documents and was created by Ms. Macdonald as part of her preparation for this Appeal matter. The Planning field is formulated upon the use of established principles and terminology to assess Planning proposals. Ms. Macdonald was unable to expound in detail as to the justification for the application of this term and if it has been used in other Appeal matters, either before the TLAB or the Ontario Land Tribunal (OLT).

As such, the testimony as proffered by Ms. Macdonald, while focused on the local neighbourhood context, appears to have neglected other relevant Planning issues. This does present an issue as to whether or not a fulsome accounting of this proposal has occurred, on the part of Ms. Macdonald, and whether it constitutes good planning or not.

Mr. Cieciora also provided testimony to the TLAB on this Appeal matter. What was proffered by him was that the Appellant has, since the COA meeting, attempted to revise the proposal to address resident concerns. While so, there are still residents who oppose this proposal, as is expressed with the Opposing Parties before the TLAB.

² Macdonald, S. *Expert Witness Statement of Susanna Macdonald*. March 2021, pp. 13

Mr. Cieciura stated that, in his professional opinion, the revised proposal was consistent with the four tests for Variance, as per the *Planning Act*, and constituted good planning. The Appellants legal representative, Mr. Margaritas, further opined that the resident concerns are one element which the TLAB must consider when assessing this Appeal matter. However, he argued that the Tribunal should assess all relevant issues relating to this proposal before arriving at a decision.

Mr. Cieciura's testimony, and submitted evidentiary material, did emphasis Planning documents such as OPA 320 and how they related to this subject proposal. He contended that this revised proposal was not a departure from the development pattern which has been occurring in this neighbourhood. He did not believe that the allowance of this proposed addition, or retrofit to the existing dwelling, would act to disrupt or destabilize the neighbourhood. In addition, he cites provisions of the OP which outline that established residential neighbourhoods are 'stable but not static'. What this describes, as critiqued by Mr. Cieciura, is that development can occur in residential areas, and that it does not need to replicate the existing housing stock. While so, in-fill type development should be deployed in a manner which respects certain elements of these residential neighbourhoods as well.

Mr. Cieciura also proffered a photo study, which was of houses within his defined study area, as is the established practice when assessing in-fill development proposals as they relate to OPA 320. It is noted that this photo study presented a wide range of properties from other local streets such as Raymond Avenue, Harshaw Avenue and Lessard Avenue. This photo study depicted dwellings, of an older housing stock, which had side yard setback conditions which resulted in the dwellings being closer to one another. There was also a diverse range of parking configurations for the residential dwellings on these streets as well. There are also a variety of building heights for dwellings ranging from bungalows to three storey dwellings. It is observed that most of the three storey dwellings appear to be newer in-fill type development. As had also been noted earlier in this document, there are two in-fill houses directly to the rear of this subject property, on Harshaw Avenue, which employ flat roof designs.

Mr. Cieciura, as part of his testimony to the TLAB, surmises that the subject proposal is not dis-similar to some other in-fill type development which has occurred in this local area. As such, he argues that both the immediate and broader context already display similar in-fill development to the subject proposal. With regards to the FSI Variance request, he argues that:

“21.2. Although the proposed dwelling may have a larger FSI than what is permitted by the zoning, the policy is not intended to prohibit dwellings that are different, it only addresses that they “fit” within their context and the proposed dwellings can and do fit with the existing dwellings in the neighbourhood. The proposal fits in with the existing and ongoing redevelopment trend in the neighbourhood.”³

Mr. Cieciura opines that the Planning policies here is not a quantitative but qualitative exercise. Proposals such as the one under review here must adopt a holistic approach in assessing all relevant Planning policies and legislation, while also

³ Margaritis, A. Document Disclosure of the Applicant. March 2021, pp. 45

recognizing the local neighbourhood context. This local area has its established characteristics but may also have undergone recent change due to gradual and incremental redevelopment. As such, there should be a respect and consideration of both elements when assessing in-fill type proposals.

With regards to the appropriateness of this development proposal, Mr. Cieciora has opined that this proposal, which he does comment is an addition and not a new build, does not detract from the redevelopment and regeneration which has begun in this local area. In addition, he describes this proposal as being a typical reinvestment in an established residential neighbourhood which will ensure it continues to retain its vitality by accommodating the needs of a new family here. It is noted that Ms. Macdonald's Expert Witness Statement did not assess this 'test' or issue in a fulsome manner and was described, in three sentences, that the proposal does not respect the physical form of this street, without further expounding on this matter.

It is found here that the arguments and positions as advanced by Mr. Cieciora to be more persuasive. He has provided a comprehensive accounting of all relevant Planning policies and legislation, most notably OPA 320 here. He has articulated that document, such as OPA 320, do not contain language which acts to approach Planning from a purely 'numbers' or quantitative assessment methodology, but must also be considerate of qualitative elements as well. Although the FSI Variance request is higher and may not constitute a majority, as it relates to other houses in the area which have obtained Variances as well, the proposal must be assessed holistically and in terms of how this addition is deployed within the local neighbourhood context as well. When analyzed in such a manner, it could be found that the overall built form does not detract from other in-fill type development in this local area context. Furthermore, and which was accepted by both Expert Witnesses, there does not appear to be reliable data on the metrics of the existing houses for this neighbourhood, which have not obtained Variances in the past. As such, we may not be able to obtain a proper accounting of the genuine prevailing FSI which exists in this local area.

The material as critiqued by Mr. Cieciora has demonstrated that two of the tests for Variance, 'maintain the general intent and purpose of the Official Plan' and 'are desirable for the appropriate development or use of the land' are being sufficiently met with this proposal. Mr. Cieciora has shown, through his defined study area and related analysis here, that this proposal is consistent with the development pattern which has begun to occur in this neighbourhood. As such, and in relation to OPA 320, the neighbourhood should be able to adapt and 'absorb' this proposed addition and would not act to offend the neighbourhood character. This would make the proposal consistent with the principals of the OP. Furthermore, as this proposed addition is of a built form which is already occurring in this neighbourhood, the notion of 'desirability' does not appear to be an issue of contention as this type of development is already being expressed with other properties. It would not create a new condition which the neighbourhood is not already acclimatized to.

Additional material had been provided by Mr. Cieciora as a response to the evidentiary material as provided by Ms. Macdonald. With regards to an issue which had been raised about whether a row of townhouses along Methuen Avenue should constitute a study area, it is recognized that these townhouses are of a different Zone designation in relation to other dwellings adjacent to it. While that is so, the Tribunal

does not find that the inclusion or exclusion of these townhouses would act to influence the analysis which I have undertaken for this Appeal matter.

In terms of the divergent positions of both Expert Witnesses as it relates to interpreting the immediate and broader context, as per OPA 320, as had been indicated previously in this document it is found that Mr. Cieciura has provided a more comprehensive set of evidentiary material to the TLAB which acts to demonstrate that both contexts depict similar in-fill housing has been built in the past. As such, Ms. Macdonald's contention that there is a 'conflict' between both contexts does not appear grounded in fact and as such, both contexts have been analyzed with equal review and consideration by the TLAB.

The *Zoning By-law*, and how it interfaces with this subject proposal, is also relevant for review and consideration. As had been referenced by Mr. Cieciura, as part of his testimony, he contends that the subject property is a historical lot of record from the early 20th century. His research has found that the lot appears to have been formally recognized by the City in 2008. While so, Mr. Cieciura comments that due to this unique circumstance, the property does not conform to *Zoning By-law* requirements. This is applied by Mr. Cieciura to his testimony to argue that these unique attributes have, in part, necessitated the Variance requests now before the TLAB. The closing remarks of Mr. Margaritis elaborates on this:

"70. Even if the Applicant were to construct a second storey only on top of the existing home on the Property, it would result in an FSI of approximately 0.799 times the lot and a dwelling with a GFA of approximately 153.72 square metres (1,654 square feet). 71. Thus, the FSI proposed in the Revised Proposal of 0.91 times the lot area represents only an additional 34.4 square metres (370 square feet) of living space, as compared to a second storey addition over the footprint of the existing dwelling on the Property. Evidence of T.J. Cieciura 72. Mr. Cieciura attributed this odd reality to the fact that the legally existing Property has a frontage of 6.88m and a lot area of 206.43 square metres, which does not comply with the City ZBL minimum frontage and area requirements of 12 metres and 370 square metres, respectively. Evidence of T.J. Cieciura Witness Statement of T.J. Cieciura, Exhibit 1, Tab 4-5, para. 33.8.5, pg. 510 of 519"⁴

What is being articulated here is that, due to the site conditions, it has resulted in an FSI Variance request which, on *prima facie* review, appears to be substantial in nature, when compared to what the *Zoning By-law* permits. However, when comparing this to a parallel proposal where, hypothetically, the Applicant had elected to build atop the existing one storey dwelling, the FSI there would be 0.799 which is not a significant difference from the Variance request here. Mr. Cieciura further contends that the subject property has lot frontage and area which is also not compliant with the *Zoning By-law*. As such, he correlates that the resultant FSI Variance request is due to these site conditions.

The arguments as posited earlier are also applied to the other Variance requests. For the front and side yard setbacks respectively, Mr. Cieciura argues that the TLAB should not apply simply a quantitative analysis method here. He opines that the

⁴ Margaritis, A. Final Submissions with Authorities. June 2021, pp. 16

qualitative analysis is also relevant when assessing Planning proposals such as this one. While one recognizes the numerical values associated with Variance requests, it should also be cognizant of other element when assessing these Variance requests as well. Mr. Cieciura had presented a comprehensive photo study of the local neighbourhood which depicted, and especially in the immediate context, that there are similar in-fill houses of scale and intensity. As such, this proposal is not diametrically opposed to the existing development pattern for this area.

It has also been stated that the proposal has now been reduced from four to three Variance requests. With this dynamic, the Applicant's legal representative and Expert Witness have both expressed their opinion that the overall scale and impact of the proposal has now been decreased. As such, they contend that the proposal should be more compatible for this local area context and would not act to 'upset' the neighbourhood rhythm.

Here, two of the tests, 'maintain the general intent and purpose of the Zoning By-laws' and 'are minor' appears to also be met. As has been expressed previously, a *Zoning By-law* is not exclusively a 'numerical exercise' and is written to determine what form of development can be accommodated in each respective Zone designation. The subject proposal does not constitute a 'radical' departure from what the *Zoning By-law* has contemplated for in this local area context, which was evident in the photo study as proffered by Mr. Cieciura, which acted to encapsulate the majority of the built form of structures for the area, as opposed to the photo study as provided by Ms. Macdonald. The allowance of this proposal will not be a de-stabilizing force as the current neighbourhood development pattern dovetails with this subject proposal and its intent. The proposal could also be described as minor as there has been similar in-fill development for the neighbourhood so this proposal is not substantively larger or greater than other redevelopment proposals which have been approved for this local area.

In describing whether proposal is 'minor in nature', Mr. Germain posited in his closing remarks that:

"57. The applicant in this case has not put forward a design that demonstrates that the proposed FSI increase meets the 4 tests. Instead, the applicant has come forward with a design that maximizes the impact of the requested variance, by essentially putting the proposed 2025 sf which counts towards FSI on top of a 2.7m high box that is technically exempt. This gives rise to massing and other impacts."⁵

As is an established convention in assessing Variances, it is noted that design is not a criterion which can be applied to Variance related in-fill housing proposals, unless the subject property had heritage attributes which were protected under the *Ontario Heritage Act*. As such, the TLAB notes that the evidentiary material as proffered by the legal representative and Expert Witness for two of the opposing Parties to this Appeal matter appears to have issues as it relates to the substance and veracity of their evidence. Parties to an Appeal should ensure their material is consistent with the

⁵ Germain, D. Written Submissions on behalf of Natasha Zupancic and Brenda Scarth June 2021, pp. 8

current Planning policies and legislation to ensure the Tribunal can assess an Appeal matter in an appropriate manner. While so, the elements of scale and massing, as opined by Mr. Germain, are not detracted upon by the TLAB and have been afforded proper weight and consideration by the Tribunal.

To conclude, the TLAB has found that the position as advanced by the Appellant's legal representative and Expert Witness to be more persuasive. They have provided a thorough accounting of this proposal and how it acts to meet relevant Planning policies and legislation. There is a fulsome set of evidentiary material which they have submitted to the TLAB and also outlined in their testimony at the oral Hearing. This is in comparison to the evidentiary material of the legal representative and Expert Witness for two of the opposing Parties which appeared incomplete and, in some areas, inaccurate. The Tribunal must apply a rational, fact-based approach to assessing Appeal matters in deriving a Decision or outcome that acts ensure that both *TLAB Rules* and the overall public interest are properly accounted for.

It is noted that municipal staff had not provide comments on this Variance Application. As such, conditions of approval had not been proffered. It is noted that the COA had elected not to approved this Application as well. While so, I find it would be suitable to include three other conditions relating to the review of drawings for substantial conformity, a tree related permit be submitted and for a grading plan to be submitted and approved by City staff. The tree related condition has been included, and as was expressing during the Hearing, there had been issues pertaining to the trees. The inclusion of this condition will act to address issues if any trees are to be removed on the subject property. The TLAB finds that these three conditions are typical for in-fill development and would be appropriate in this particular instance.

DECISION AND ORDER

The Appeal is allowed, and the Variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans attached herein as Appendix 2.

Appendix 1

List of proposed variances

1. Section 10.20.40.40.(1)(A), By-law 569-2013
The maximum permitted floor space index of 0.4 times the area of the lot (82.57 m²). The altered dwelling will have a floor space index of 0.91 times the area of the lot (202.4 m²).
2. Section 10.5.40.70.(1)(B), By-law 569-2013
The minimum required front yard setback is 4.87 m. The altered dwelling will be located 3.6 m from the front lot line.
3. Section 10.20.40.70.(3)(B), By-law 569-2013

Decision of Toronto Local Appeal Body Panel Member: J. Leung
TLAB Case File Number: 20 223297 S45 04 TLAB

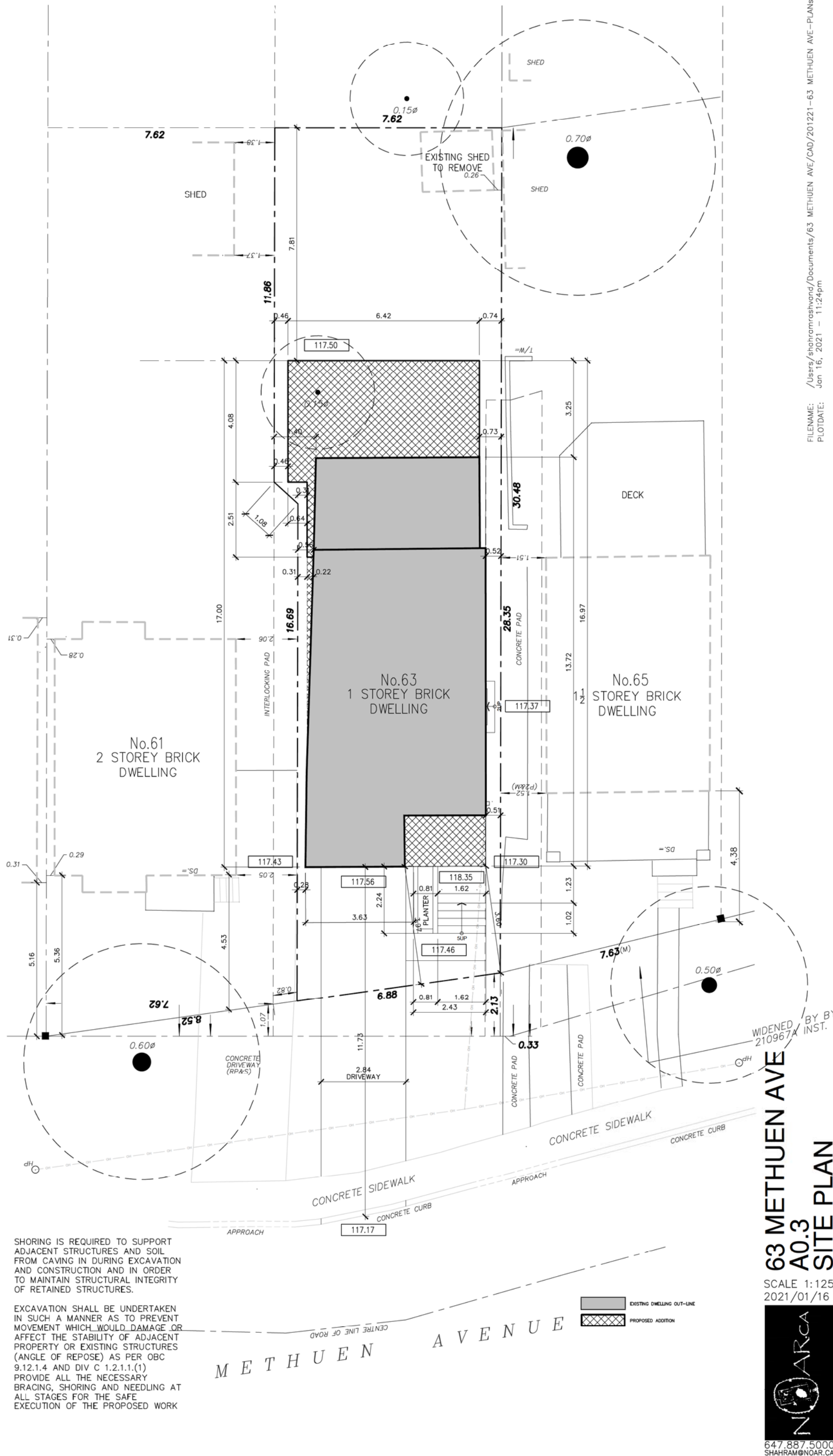
The minimum required side yard setback is 0.9 m. The altered dwelling will be located 0.28 m from the east side lot line and 0.51 m from the west side lot line.

List of proposed conditions

1. Prior to the issuance of a building permit, the Applicant/Owner shall submit a complete application for permit to injure or remove any private or City owned tree(s) under Municipal Code Chapter 813, Trees Article II, Trees on City Streets, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
2. Prior to the issuance of a building permit, the Owner shall submit a site servicing plan for review and acceptance to the Chief Engineer and Executive Director, Engineering & Construction Services, to show the existing and planned water, storm and sanitary services (all of which must be clearly labelled).



Justin Leung
Panel Chair, Toronto Local Appeal Body



SHORING IS REQUIRED TO SUPPORT ADJACENT STRUCTURES AND SOIL FROM CAVING IN DURING EXCAVATION AND CONSTRUCTION AND IN ORDER TO MAINTAIN STRUCTURAL INTEGRITY OF RETAINED STRUCTURES.

EXCAVATION SHALL BE UNDERTAKEN IN SUCH A MANNER AS TO PREVENT MOVEMENT WHICH WOULD DAMAGE OR AFFECT THE STABILITY OF ADJACENT PROPERTY OR EXISTING STRUCTURES (ANGLE OF REPOSE) AS PER OBC 9.12.1.4 AND DIV C 1.2.1.1.(1) PROVIDE ALL THE NECESSARY BRACING, SHORING AND NEEDLING AT ALL STAGES FOR THE SAFE EXECUTION OF THE PROPOSED WORK

EXISTING DWELLING OUT-LINE
PROPOSED ADDITION

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SITE PLAN

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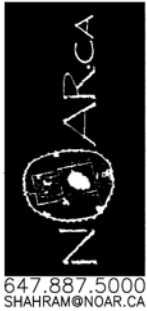
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LOT AREA	206.43M2 [2222SQF]		
	EXISTING	ADDITION	TOTAL
FRONTAGE:			6.88M
COVERAGE	75.51	27.02	102.53 (%49.67)
FLOORS:			
BASEMENT/GARAGE	80.18	7.40	87.58
1ST FLOOR	76.86	8.04	84.90
2ND FLOOR	0	103.26	103.26
TOTAL (WITHOUT BASEMENT)	76.86	111.30	188.16M2
PROPOSED FLOOR SPACE INDEX			0.9115 (%91.15)
ALLOWABLE FLOOR SPACE INDEX			0.4
ESTABLISHED GRADE CALCULATION: 117.30+117.43=234.73/2= 117.37			
PROPOSED HEIGHT	11.00M		
ALLOWABLE HEIGHT	11.00M		
FRONT SETBACK (NORTH)			
ALLOWED	EXISTING	3.97M	
PROPOSED	3.60		
SIDE SETBACK (WEST)			
MINIMUM REQUIRED	EXISTING	0.51M	
PROPOSED	0.51M		
SIDE SETBACK (EAST)			
MINIMUM REQUIRED	EXISTING	0.28M	
PROPOSED	0.28M		
REAR YARD SETBACK (SOUTH)			
MINIMUM REQUIRED	7.5M		
PROPOSED	7.81M		

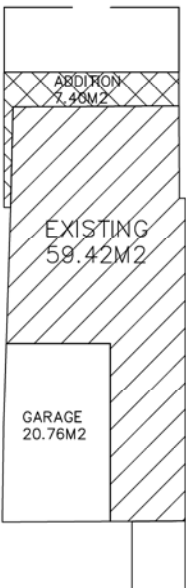
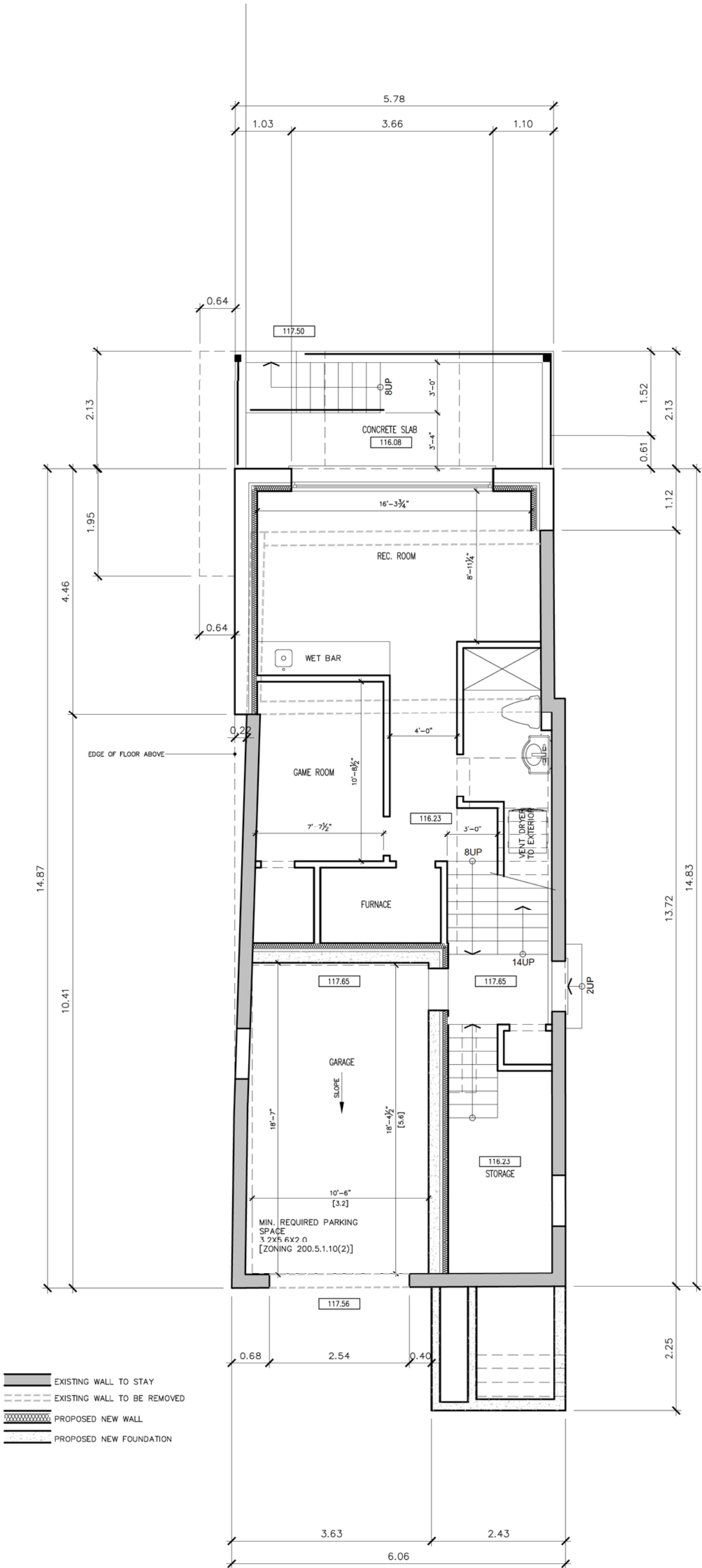
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STATISTICS

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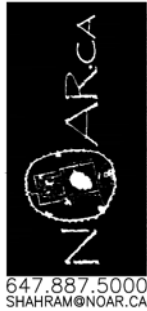


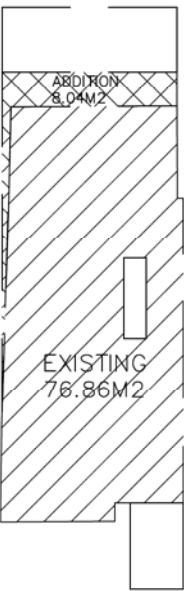
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SHAHRAM@NOAR.CA



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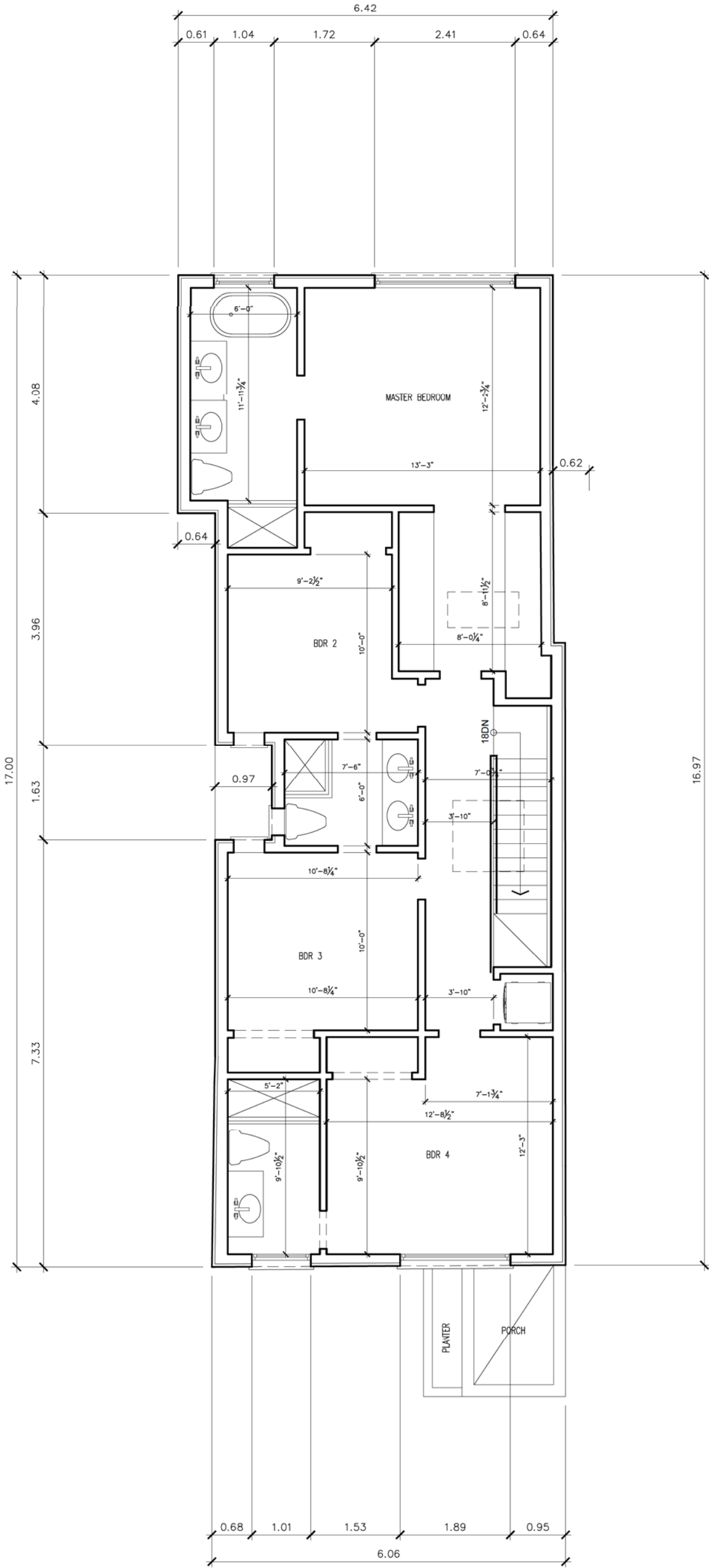
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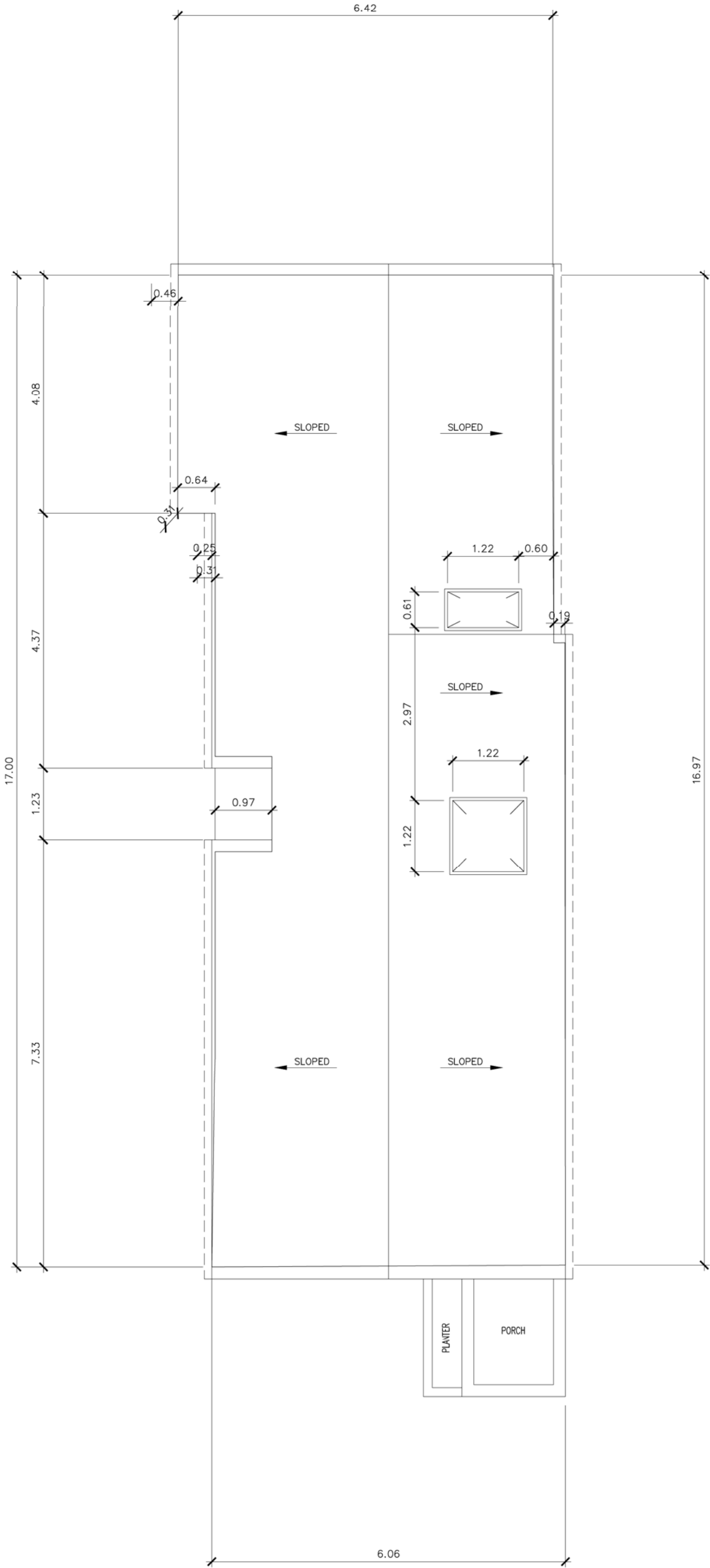


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2ND FLOOR

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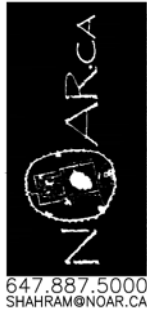


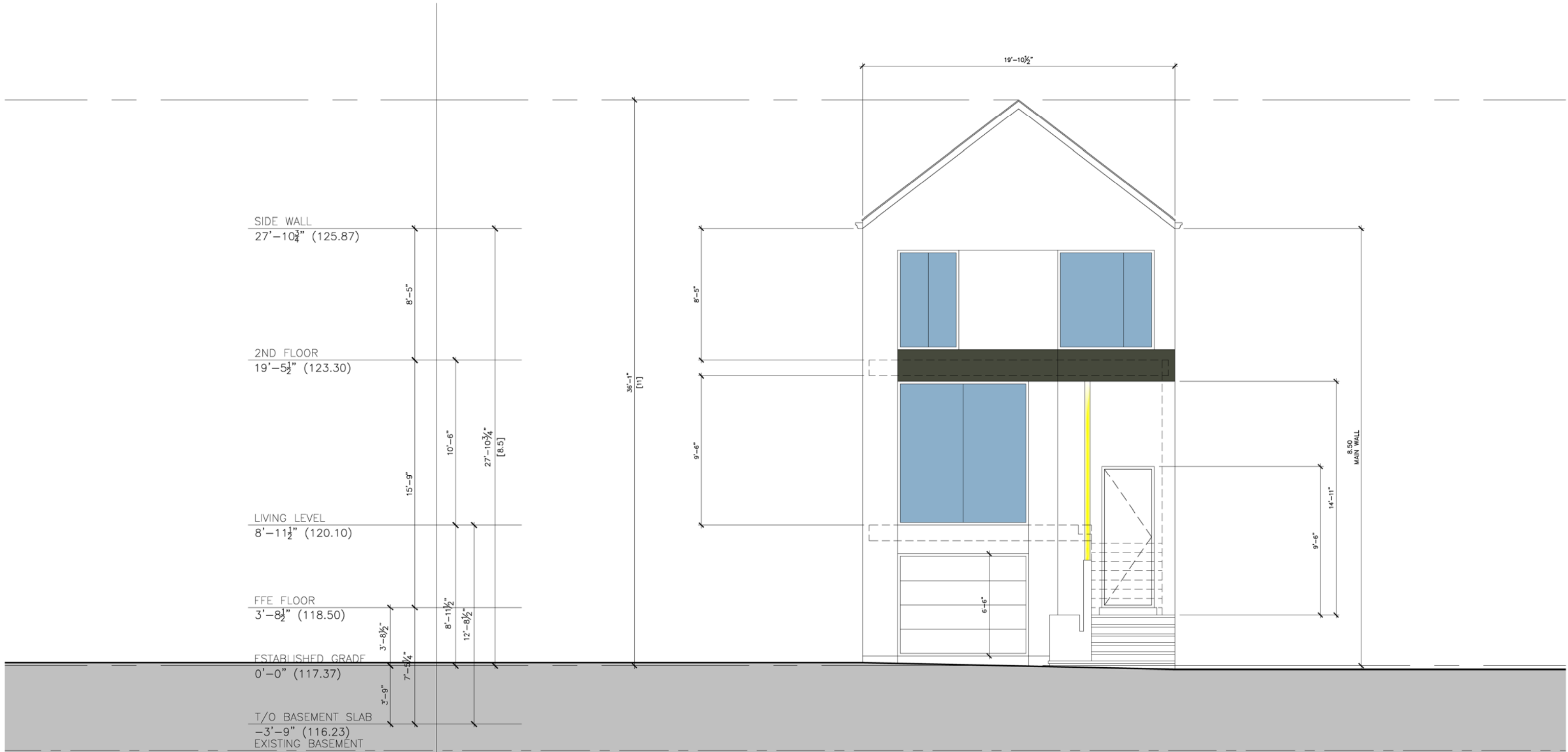
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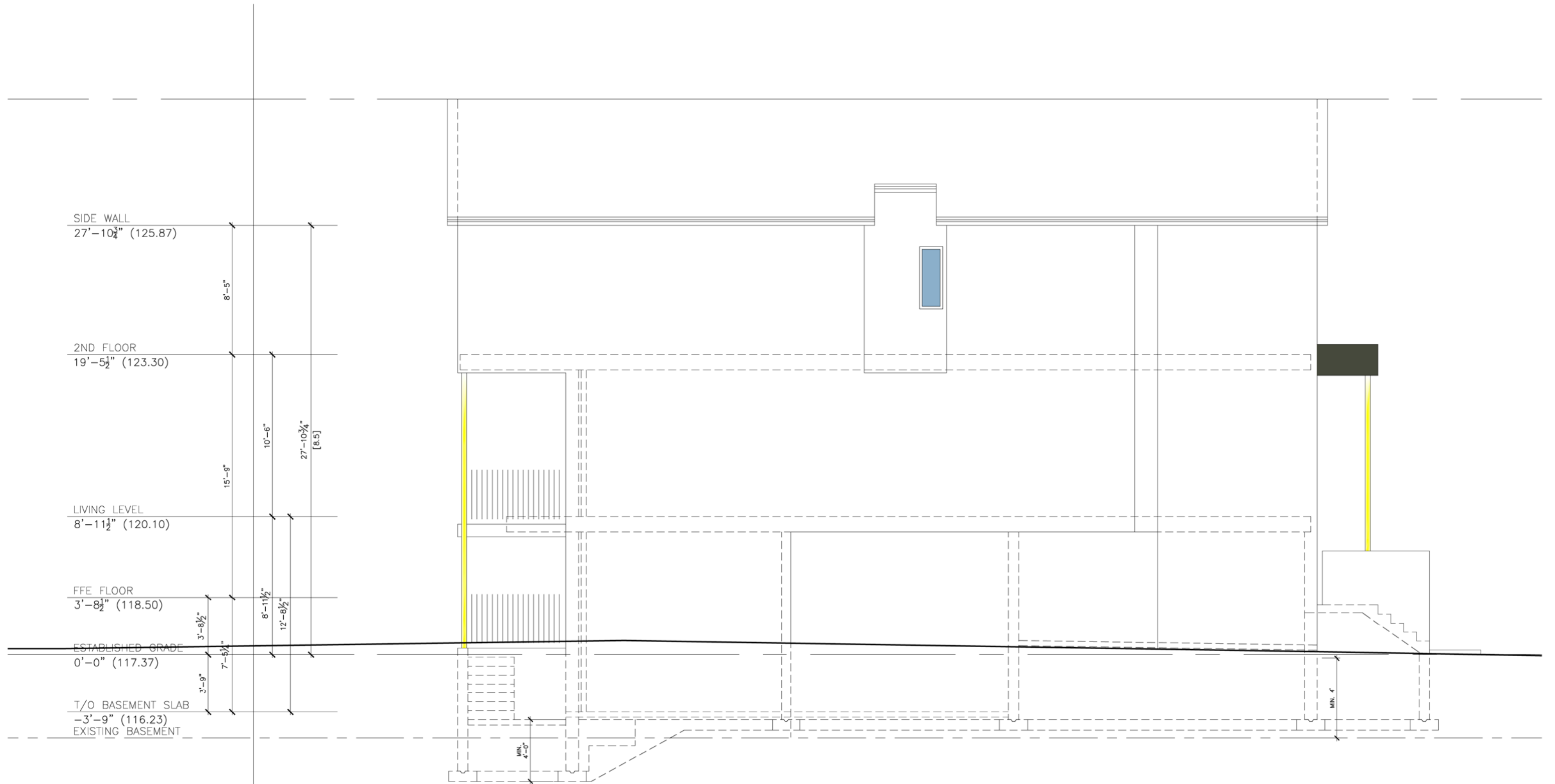


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ROOF

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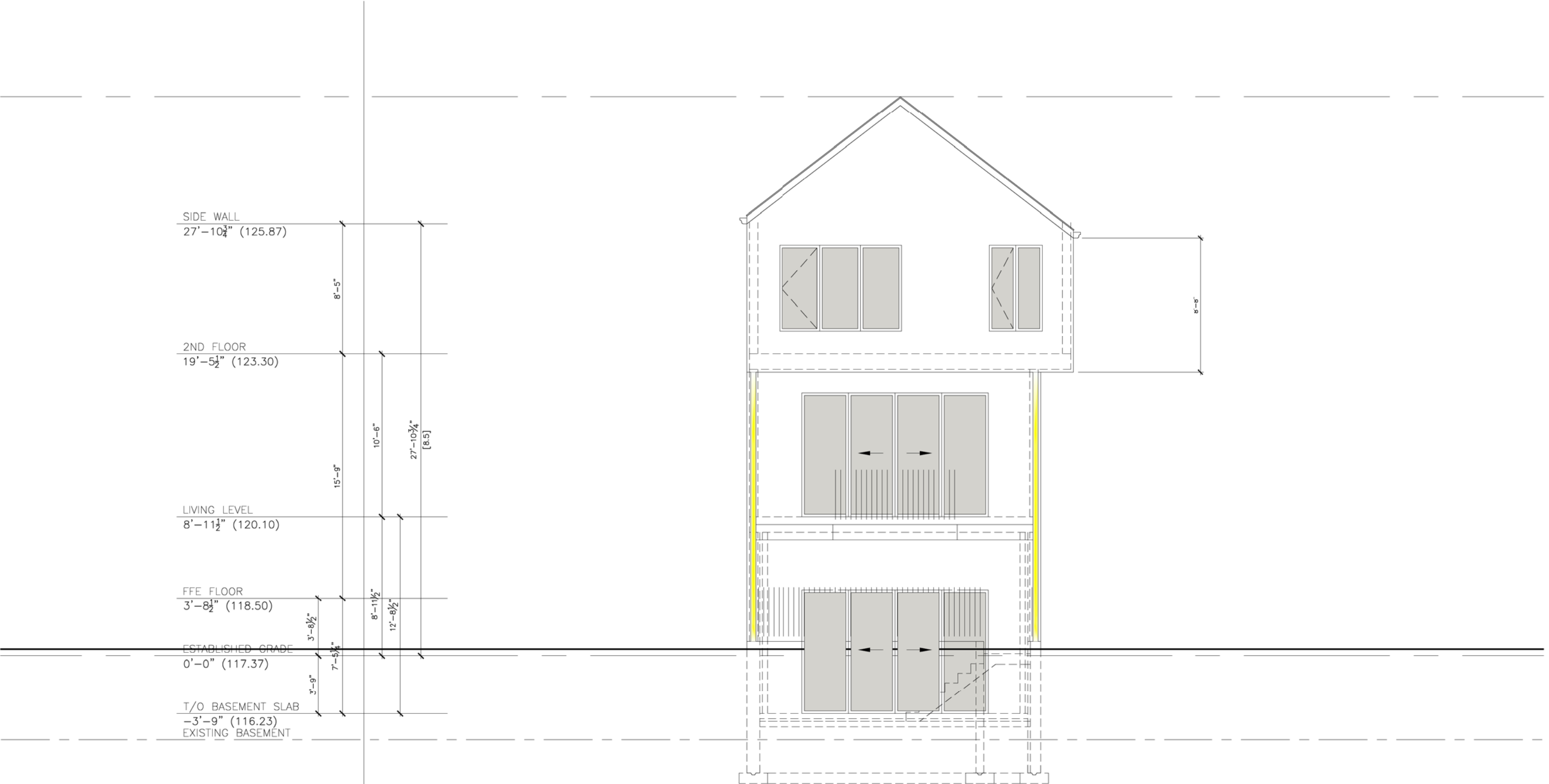
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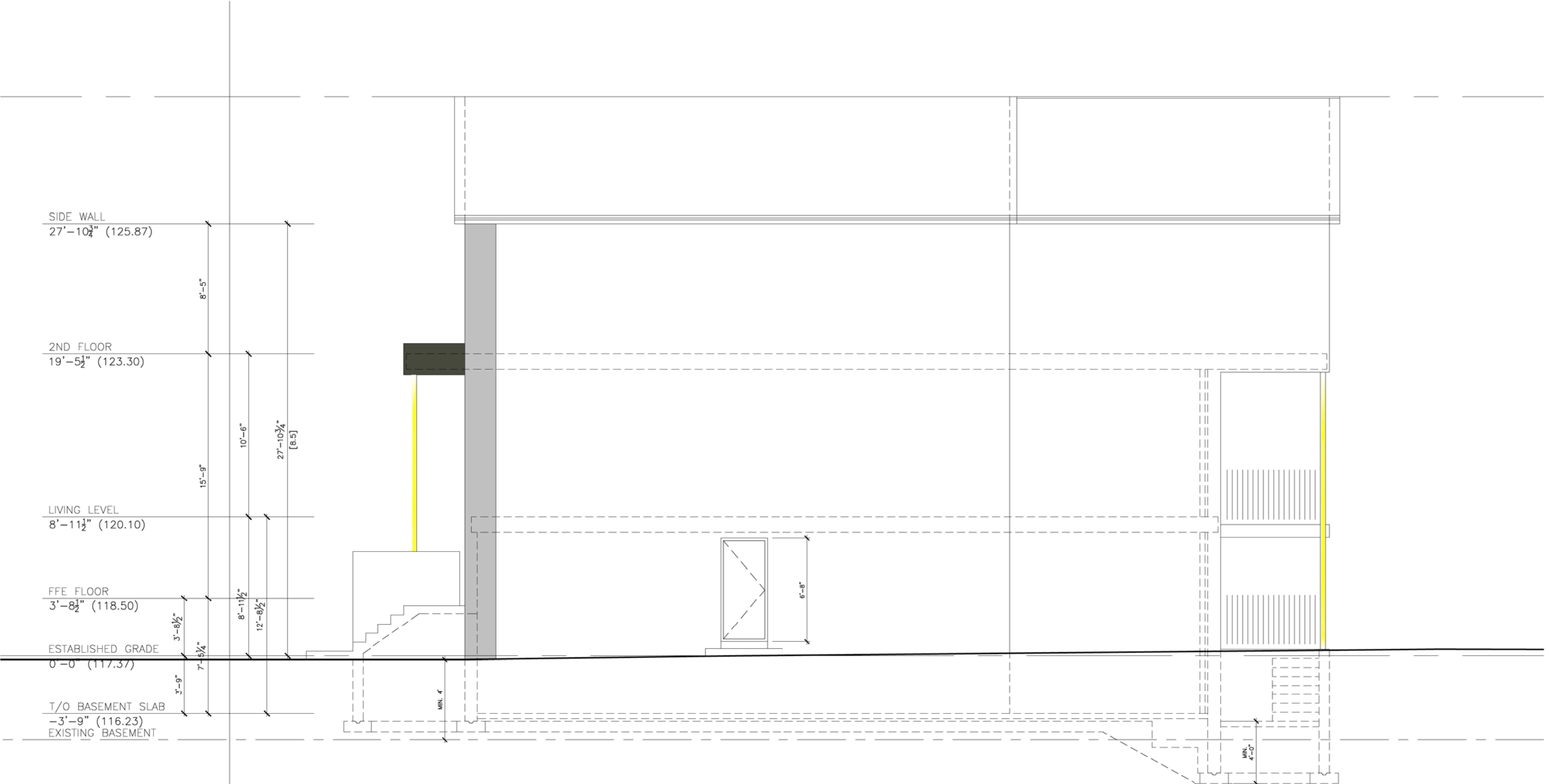
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EAST ELE.





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