

DECISION AND ORDER

Decision Issue Date Tuesday, October 05, 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): DAVID MAUTI

Applicant(s): ARCHITECTURE FOR ALL INC

Property Address/Description: 28 CRISCOE ST

Committee of Adjustment File

Number(s): 20 229833 WET 05 MV (A0502/20EYK)

TLAB Case File Number(s): 21 132570 S45 05 TLAB

Hearing date: August 9, 2021

DECISION DELIVERED BY S. KARMALI

REGISTERED PARTIES AND PARTICIPANTS

Applicant	ARCHITECTURE FOR ALL INC
Owner/Appellant	DAVID MAUTI
Appellant's Legal Rep.	MATTHEW DI VONA
Expert Witness	JANE MCFARLANE

INTRODUCTION & BACKGROUND

The subject property is located just north of The Junction in the neighbourhood of Rockcliffe-Smythe. Mr. Mauti, the Owner, would like to construct a new three-storey single detached dwelling and maintain the recently built garage in the rear yard of the lot.

Decision of Toronto Local Appeal Body Panel Member: S. Karmali
TLAB Case File Number: 21 132570 S45 05 TLAB

Before the COA hearing, the Owner requested seven variances.¹ He then removed three variance requests and reduced the magnitude of his remaining requests for fsi, side yard setback, side exterior wall height, and area platform. However, the City of Toronto's Planning Staff continued to have massing, privacy and overlook concerns, and the COA ultimately refused the revised application.

TABLE 1

Performance Standards	Public Hearing Notice – February 26, 2021	Notice of Decision – March 9, 2021
V1. FSI maximum permitted floor space index is 0.8 times the area of the lot (160.16 square metres)	1.1 times the area of the lot (221.2 square metres)	0.99 times the area of the lot (198 square metres)
V2. Side yard setback minimum is 1.2 metres	0.3 metres from the north side lot line	0.4 metres from the north side lot line.
V3. Maximum permitted height of all side exterior main walls facing a side lot line is 8.5 metres	9.8 metres	9.8 metres
V4. Maximum permitted area of a platform at or above the second storey is 4 square metres	Proposed third storey platform will have an area of 15.83 square metres	Proposed third storey platform will have an area of 7.8 square metres
V5. A platform without main walls attached to or within 0.3 metres of a building, has a minimum building setback of 1.2 metres.	Proposed two rear platforms will be located 0.3 metres from the north side lot line.	Not proposed
V6. A platform without main walls attached to or less than 0.3 metres from a building, with a floor no higher than the floor of the building above established grade, may encroach into the required front yard setback 1.41 metres if it is no closer to a side lot line than the required side yard setback.	Proposed platform will encroach 1.81 metres into the required front yard setback	Not proposed
V7. Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 metres.	Proposed front yard stairs will be located 0 metres from the front lot line.	Not proposed

¹ See TABLE 1 for changes made before the Application was heard by the Committee of Adjustment

MATTERS IN ISSUE

Do the four variances shown below and in Attachment A of this Decision and Order meet the provincial policy tests as well as the statutory tests set out in the *Planning Act*?

Performance Standards	Proposed before the TLAB
V1. FSI maximum permitted floor space index is 0.8 times the area of the lot (160.16 square metres)	0.99 times the area of the lot (198 square metres)
V2. Side yard setback minimum is 1.2 metres	0.4 metres from the north side lot line
V3. Maximum permitted height of all side exterior main walls facing a side lot line is 8.5 metres	9.8 metres
V4. Maximum permitted area of a platform at or above the second storey is 4 square metres	Proposed third storey platform will have an area of 7.8 square metres

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, ANALYSIS, FINDINGS, REASONS

The matter was uncontested. City Planning did not intervene. Exhibit 2A at 49/76 shows that the adjacent neighbours are supportive of the application. I qualified Ms. Jane McFarlane, an experienced planner, to provide me with expert opinion evidence. She prepared helpful maps, figures and photo boards and delivered a planning analysis, which I accept on a balance of probabilities.

Ms. McFarlane stated that the rectangular-shaped subject lot is occupied by a single detached building located in a residential neighbourhood northeast of Jane Street and St. Clair Avenue West. She noted that the neighbourhood contains dwellings constructed in the early 1900s, including bungalows, semi-detached variations, and detached homes with gambrel roofs. In addition, Ms. McFarlane shared that the property contains a recently constructed detached garage shared with the neighbour to the south. There is also a shared walkway that is 2.14 metres wide and leads to the shared garage.

Ms. McFarlane stated that the residential neighbourhood is characterized by a mix of low-rise residential dwellings, ranging in height from one storey to three storeys. She communicated that her study area was the area contained in the perimeter of Gaffney Park Trail, Royal Street (both sides), Henrietta Street (both sides), and Blakley Avenue (both sides).

She enumerated provincial policies which apply to the application (Exhibit 1 at 11/21). She testified that the proposal would permit a redevelopment within the existing built-up area, compatible with adjacent uses and built form. Ms. McFarlane also enumerated Growth Plan policies and opined that the proposal would maintain the City's existing housing supply and intensification rate. She testified that the proposed variances are consistent with the policies of the PPS and conform to the policies of the Growth Plan.

Ms. McFarlane discussed the Official Plan and indicated, in terms of land use, that the subject property is designated *Neighbourhoods*, which she said permits a full range of low-rise residential uses within lower scale buildings. She opined specifically about policies related to built form, housing, and neighbourhoods regarding the proposal (Exhibit 1 at 14/21).

Concerning built form, she said that while the neighbourhood has seen modest regeneration, the proposed dwelling is consistent with the built form of the newer dwellings while respecting the older dwellings. She added that the height and massing of the proposed dwelling are consistent with similar dwellings and transitions in height in the area. Finally, for built form, she mentioned that the side yard setbacks are consistent with the existing dwelling and maintain the typical lot function in the surrounding area (Exhibit 1 at 15/21).

In terms of housing policies, Ms. McFarlane stated that the proposed development would better fulfill the needs of a present-day family when compared to the existing single-storey dwelling.

She testified that the proposed dwelling will not destabilize the physical character of the surrounding neighbourhood and does not propose changes to the prevailing building type, lot, configuration, landscape, and street network. She further testified that there are similar physical characteristics in the immediate and broader context and that adequate stepbacks and setbacks from the streetscape have been incorporated into the building design to mitigate shadowing and overview impact on the adjacent properties.

Ms. McFarlane opined that the proposed variances maintain the general intent and purpose of the Official Plan.

She discussed her planning opinion in terms of the Zoning By-Law. She indicated that her study area contains two zones: RM (f12; u2; d0.8)(x252) and RS(f18.0; a550; d0.6)(x293). The former represents single-detached, semi-detached, duplex, triplex and apartments, whereas the latter zone divides the semi-detached zone with a slightly larger area and frontage requirement.

She testified that the intent of side exterior wall height is to ensure compatibility and appropriateness for the neighbourhood. A height of 9.8 metres is proposed, whereas a height of 8.5 metres is required. The Owner would like a home with a modern ceiling height. Ms. McFarlane pointed out 48 Norval Street and 31 Criscoe Street, which are examples of three-storey heights. She added that there is no variance required for overall building height and that the sidewall height increase is set back from the front and rear wall of the dwelling, which means the actual increase would be hidden from the street and adjacent rear yards (Exhibit 1 at 13/21).

Ms. McFarlane testified that fsi intends to regulate building area within a neighbourhood to ensure that appropriate size and built form are maintained and consistent development patterns. She stated that the proposed fsi would increase to 37.84 square metres. She pointed to 873 Runnymede Road, 871 Runnymede Road, 26 Royal Street and 48 Norval Street and stated that these developments represent similar fsi approvals in the broader context.

Ms. McFarlane opined about the side yard setback variance request. She indicated that the side yard requirement intends to ensure adequate separation between a dwelling and the property line and ensure the lot's function is maintained. She highlighted that there are reduced side yard setbacks in this immediate context that are more on one side and less on the other side. Ms. McFarlane said that the request for 0.4 metres is typical of similar approvals: 14 Castleton Avenue, 50 Castleton Avenue, and 824 Runnymede Road. The latter address was approved for a side yard setback of 0.22 metres from the south lot line (Exhibit 2A at 65/65).

Although more should have been articulated about the prevailing fsi pattern and side yard setback pattern in the immediate context, Ms. McFarlane emphasized more than once that the nearby neighbours have expressed their support with the proposal (Exhibit 2A at Tab 14).

Ms. McFarlane moved to discuss the third-storey platform zoning regulation. She indicated that the intent and purpose are to ensure that three-storey dwellings contain a limited floor area to reduce building height and massing issues. She added that the third storey balcony is set back 4.2 metres from the rear and side walls by a 1.5-metre screen and planter. She further added that the enclosed balcony would be stepped back from the north, south and west sides, which mitigate the impact on adjacent properties (Exhibit 1 at 14/21).

Ms. McFarlane opined that the proposed variances maintain the general intent and purpose of the Zoning By-Law.

Additionally, Ms. McFarlane opined that the proposed variances are desirable for the appropriate use and development of the land as they are generally consistent in size with similar dwellings in the immediate and broader context. The building design features, including appropriate front and rear yard setbacks, a 1.5-metre privacy screen on the third-storey platform, and third-storey step backs, have been incorporated to ensure a suitable, sensitive, and compatible dwelling.

Ms. McFarlane assured that the minor variances would not create any undue adverse impacts on the streetscape of the adjacent neighbours or the surrounding neighbourhood, including shadowing, privacy or overlook concerns.

As mentioned, I accept Ms. McFarlane's planning rationale for this site development. I place considerable weight on the neighbour support, which Ms. McFarlane said was based on a lengthy consultation process. Additionally, the City did not appear at the hearing to elaborate on their ongoing concerns. Still, the proposed development would appear to result in a box house centre with a pitched front and back and a taller real and perceived height than the surrounding properties. However, it would not be out of keeping with the physical character context as the efforts to mitigate impact using urban design appear to be respectful.

Accordingly, the variances, individually and cumulatively, are consistent with (and conforming of) provincial policy, as well as the general intent and purpose of the Official Plan and Zoning By-Law. The variances are also appropriate and desirable and minor in nature.

DECISION AND ORDER

The Decision of the Committee of Adjustment is set aside.

I allow the appeal and grant the variances in **Attachment A** subject to the following conditions:

- 1) Construction shall be done in substantial compliance with the plans in **Attachment B**;
- 2) The third storey platform shall have a minimum 1.5 metre high privacy screen enclosure constructed using appropriate materials; and,
- 3) The Owner shall provide payment in lieu of planting of one street tree on the City of Toronto road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree (City of Toronto's Urban Forestry Memo dated March 2, 2021).

A rectangular box containing a large 'X' on the left and a handwritten signature 'Sean Karmali' on the right.

Sean Karmali
Panel Chair, Toronto Local Appeal Body

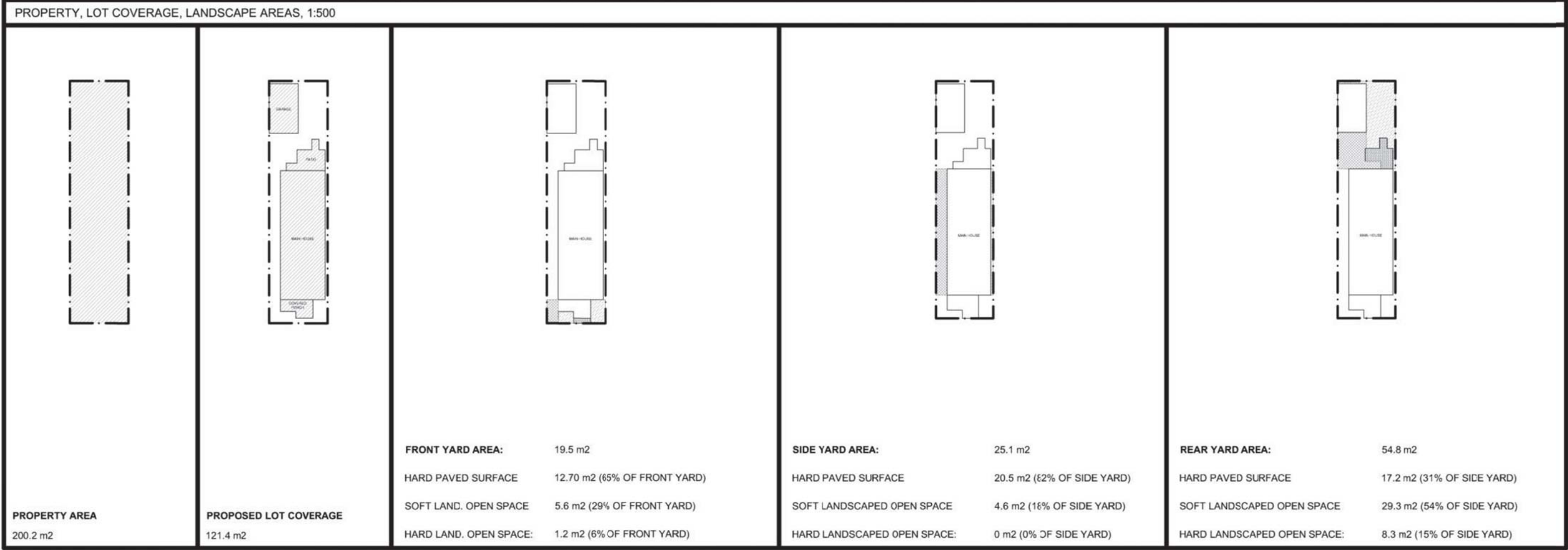
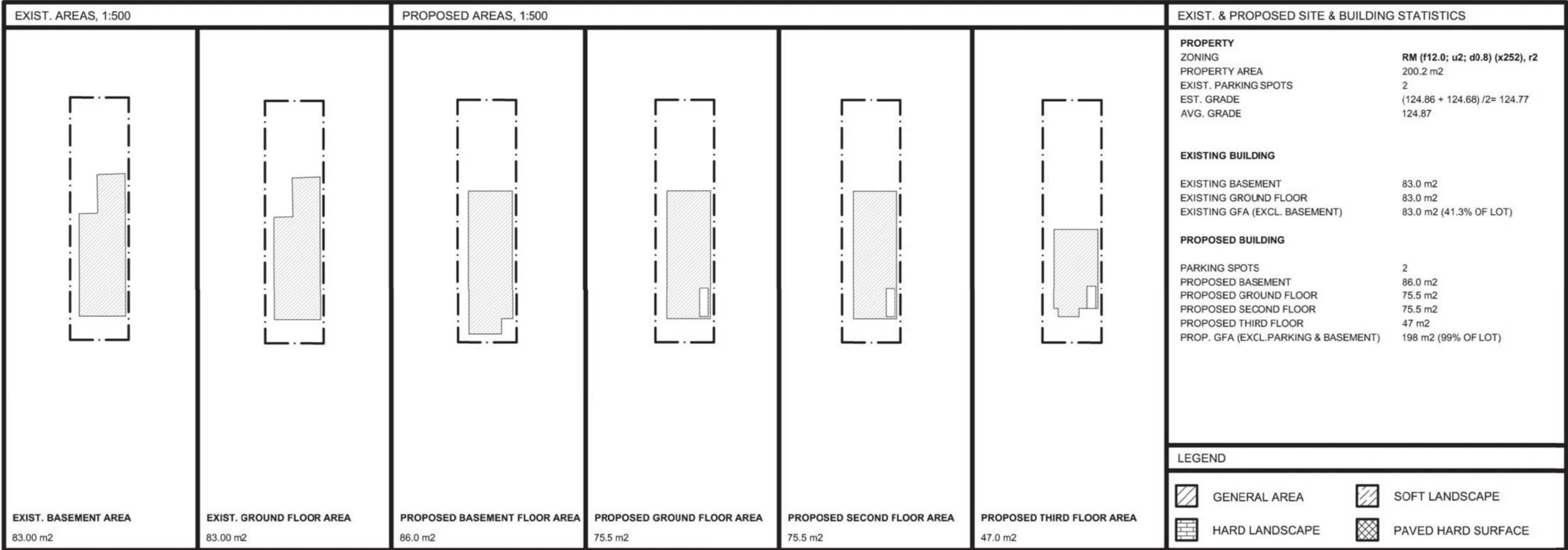
Attachment A

REQUESTED VARIANCES TO THE ZONING BY-LAW 569-2013:

1. Section 10.80.40.40.(1)(A), By-law 569-2013 The maximum permitted floor space index is 0.8 times the area of the lot (160.16 m²). The new dwelling will have a floor space index of 0.99 times the area of the lot (198 m²).
2. Section 10.80.40.70.(3)(A), By-law 569-2013 The minimum required side yard setback is 1.2 m. The new dwelling will be located 0.4 m from the north side lot line.
3. Section 10.80.40.10.(2)(B)(ii), By-law 569-2013 The maximum permitted height of all side exterior main walls facing a side lot line is 8.5 m. The new dwelling will have a side exterior main wall height of 9.8 m facing a side lot line.
4. Section 10.80.40.50.(1)(B), By-law 569-2013 The maximum permitted area of a platform at or above the second storey is 4 m². The proposed third storey platform will have an area of 7.8 m².

Attachment B

PLANS



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PROJECT:
NEW HOME

PROJECT NUMBER:
2023

DATE:
20210301

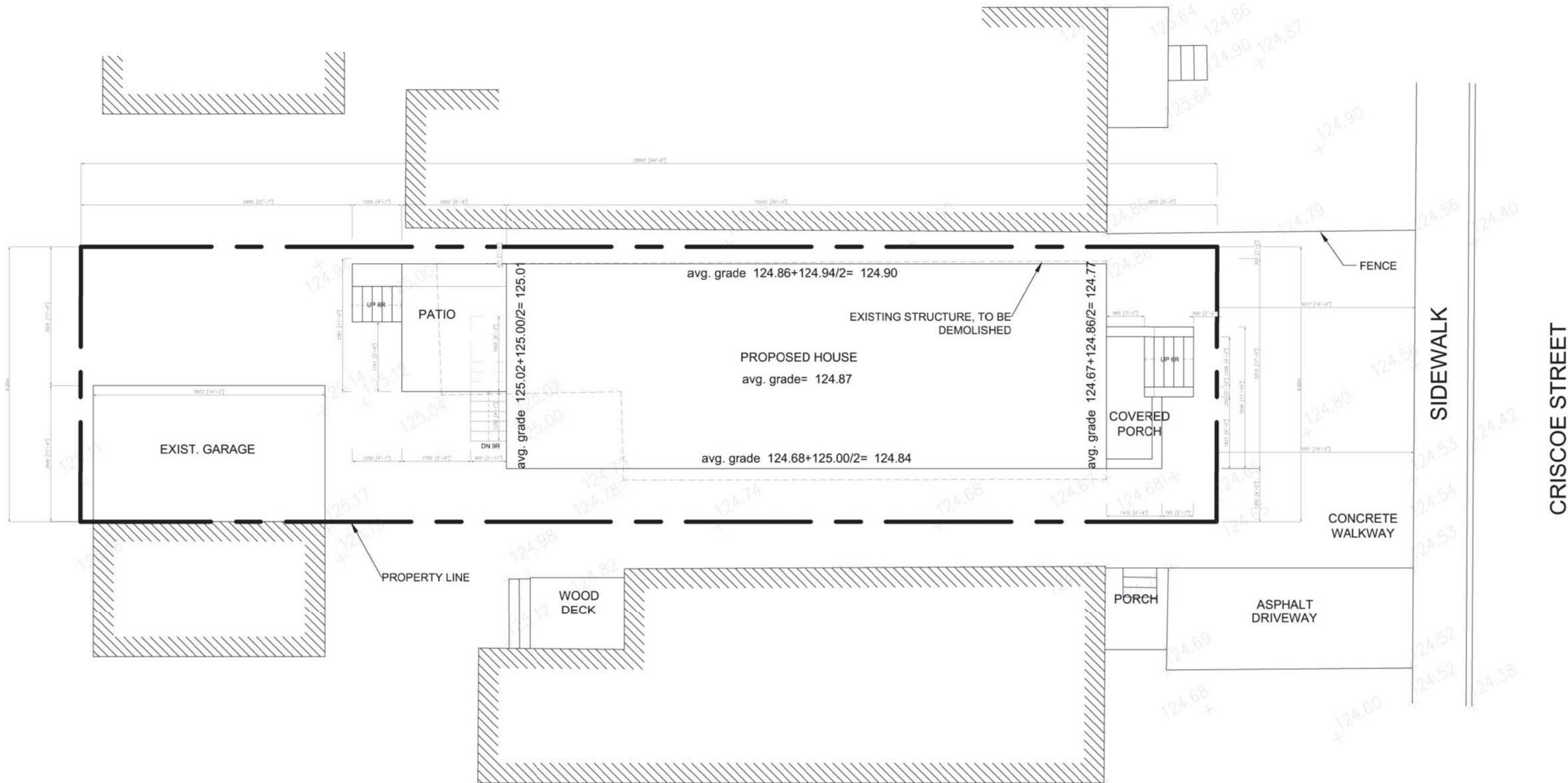
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SITE STATISTICS

a1.1

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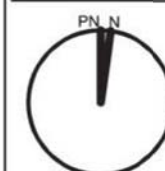
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PROJECT:
REAR ADDITION
PROJECT NUMBER:
1924
DATE:
20210301

DRAWING NOTES:
SURVEY INFORMATION TAKEN FROM:
SURVEYOR'S REAL PROPERTY REPORT
PART 1- PLAN OF SURVEY OF PART OF
LOT 8 REGISTERED PLAN 451E AND PART
OF LOT 1 REGISTERED PLAN 413 CITY OF
TORONTO
MANDARIN SURVEYORS LIMITED
JANUARY 09, 2020

SCALE:

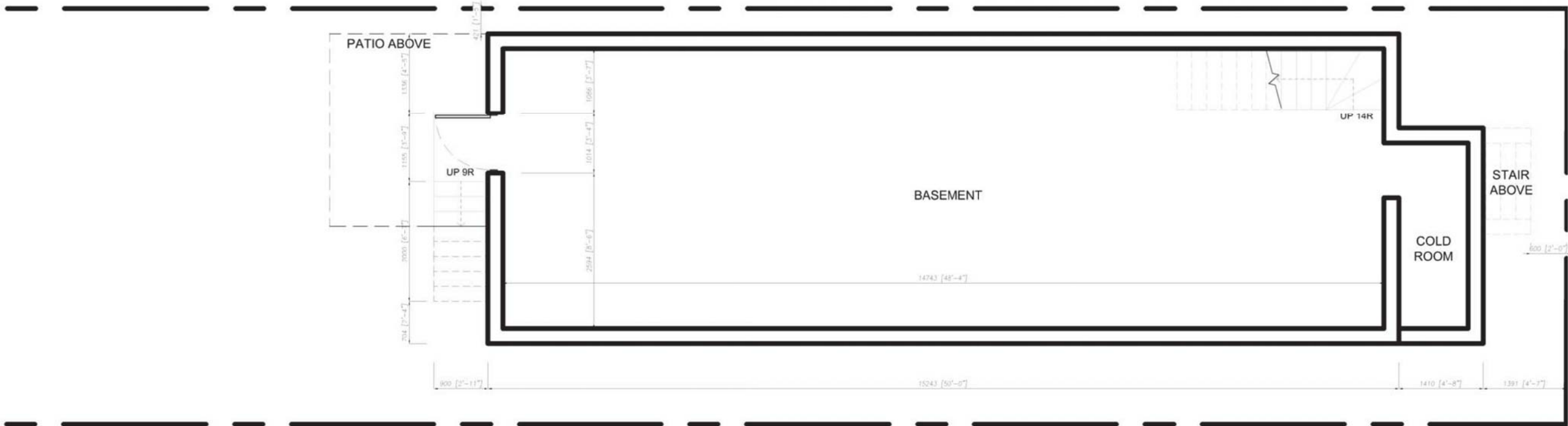
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PROPOSED SITE
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a1.3



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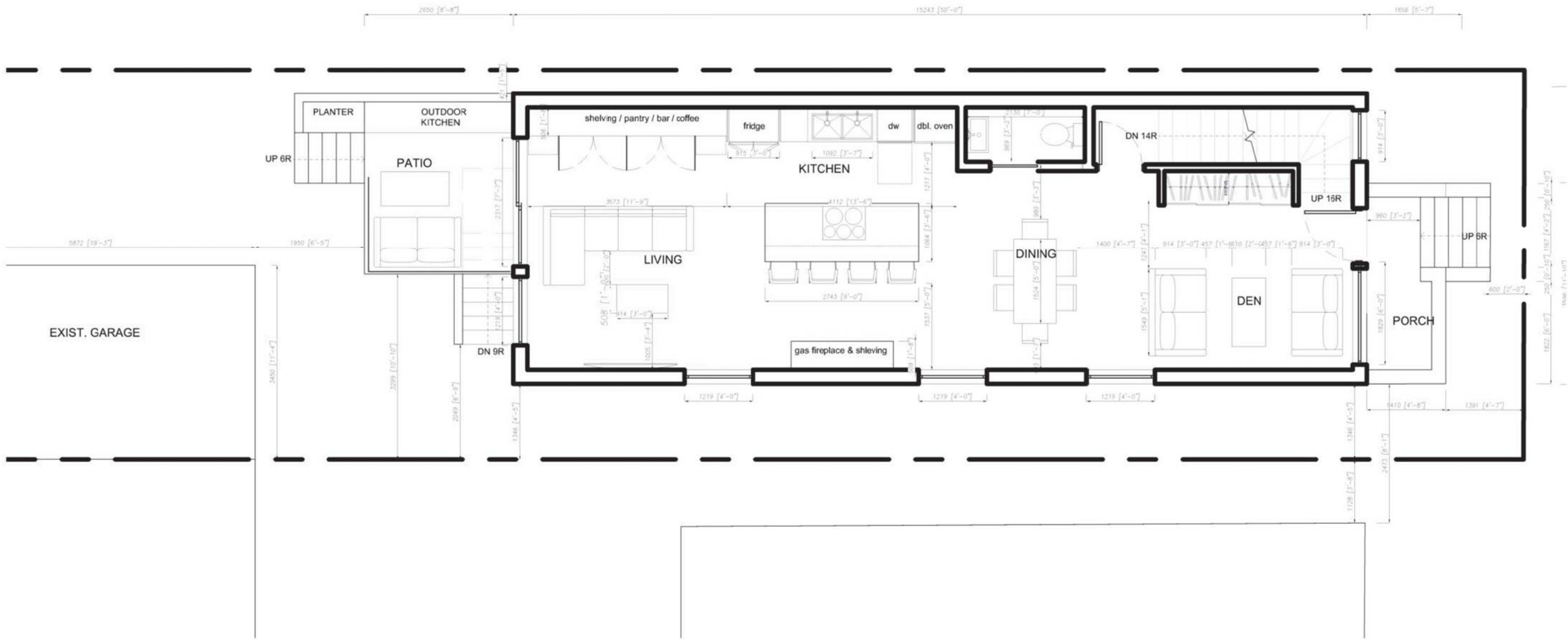
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PN
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BASEMENT PLAN**

a2.1

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PN
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DRAWING TITLE:
PROPOSED GROUND
PLAN

a2.2

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A compass rose with a circle. A vertical line points to 'N' (North). A point labeled 'PN' is marked on the circle, slightly to the left of the North line.

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SECOND FLOOR
PLAN

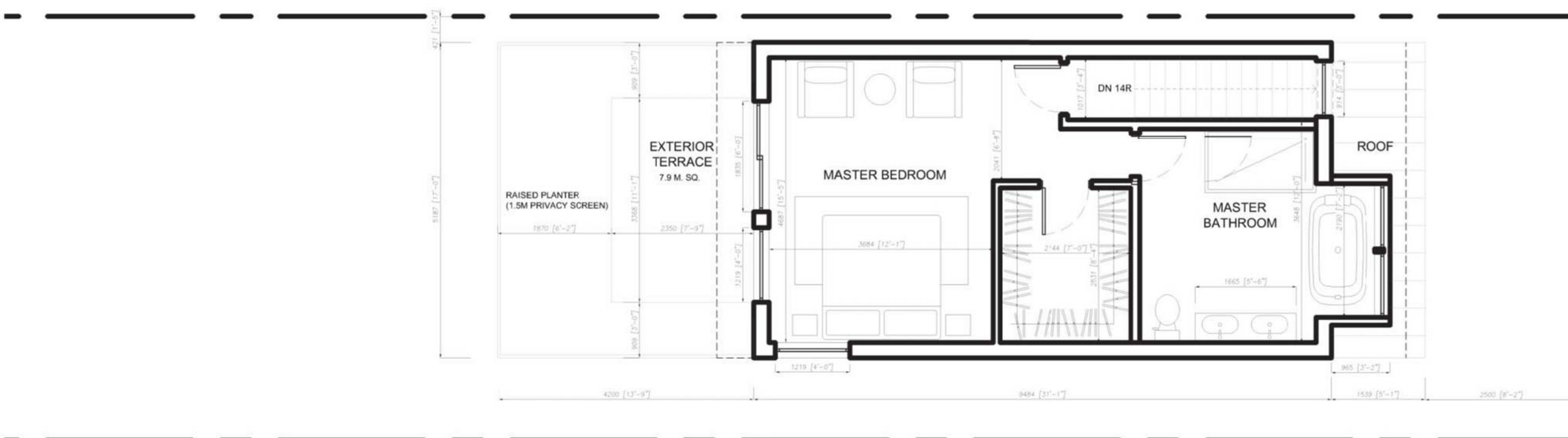
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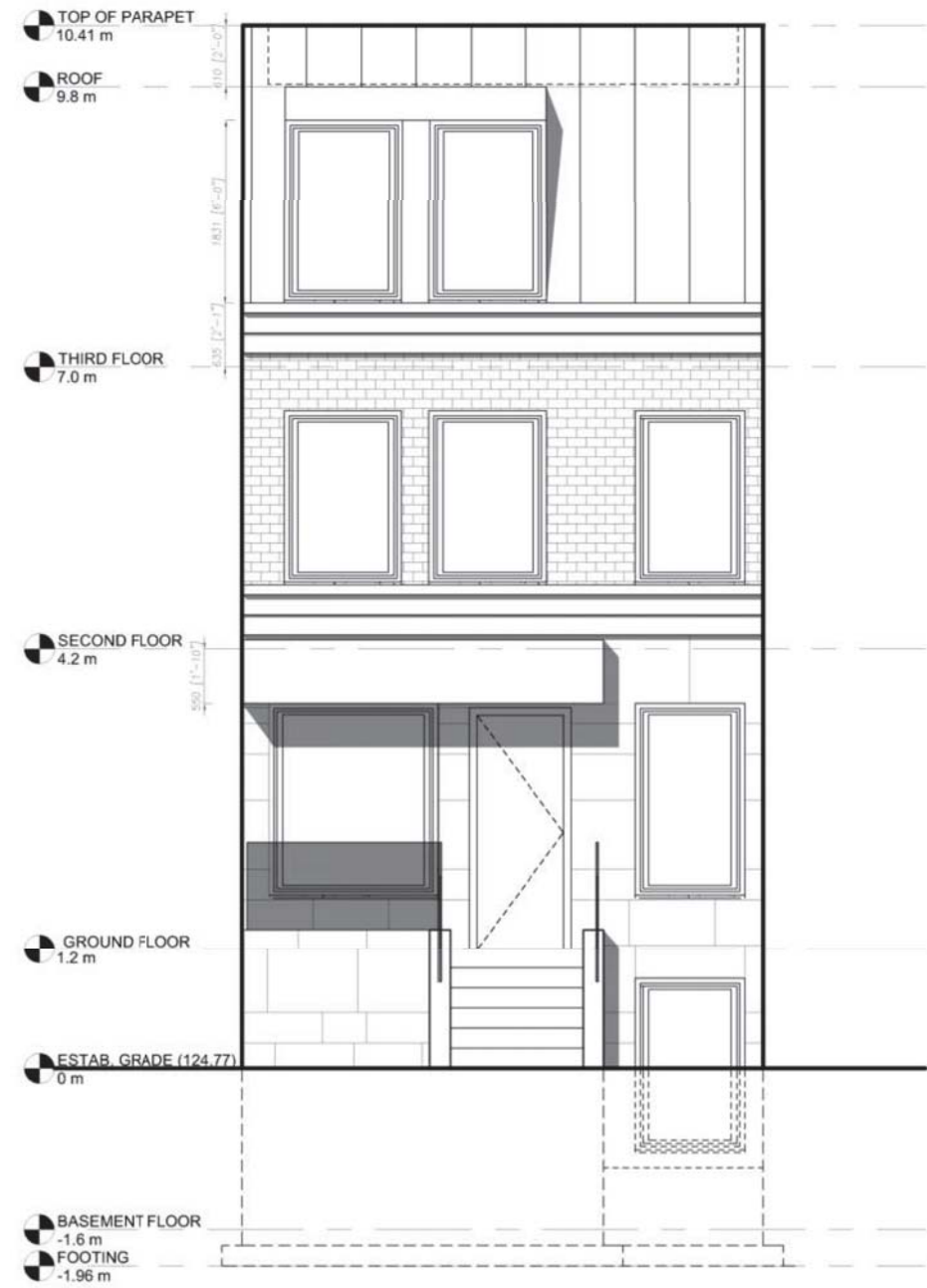
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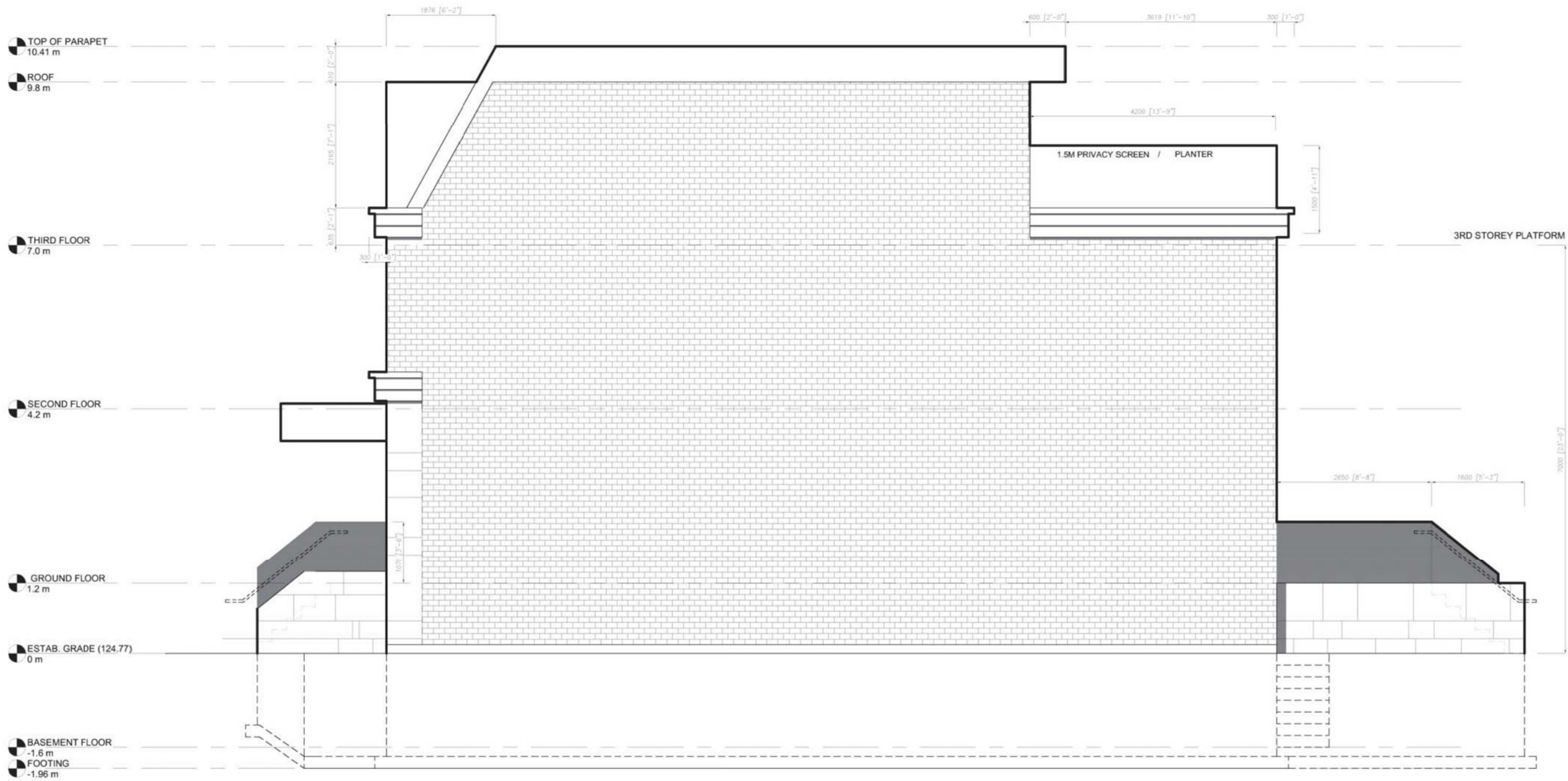
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PROPOSED
ELEVATION - EAST

a3.1

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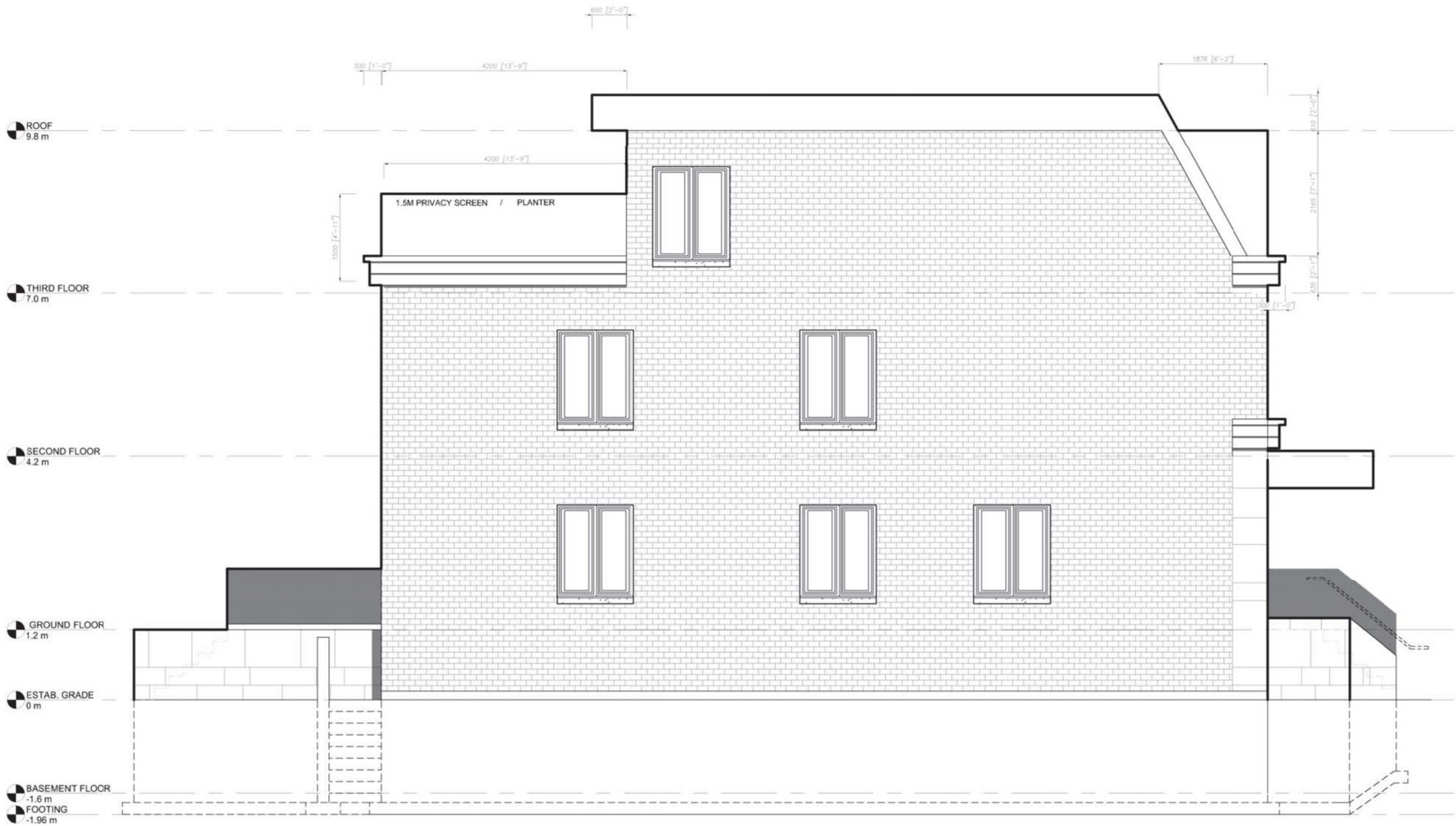
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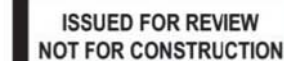


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**PROPOSED
ELEVATION - SOUTH**

a3.3

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NEW HOME
PROJECT NUMBER:
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DATE:
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DRAWING TITLE: PROPOSED ELEVATION - WEST

a3.4