

DECISION AND ORDER

Decision Issue Date Thursday, August 25, 2022

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

Appellant(s): PETER LEE

Applicant(s): EDWARD LEE

Property Address/Description: 1161 DUNDAS ST W

Committee of Adjustment File

Number(s): 21 126168 STE 10 MV (A0321/21TEY)

TLAB Case File Number(s): 21 200013 S45 10 TLAB

Hearing date: Thursday, January 13, 2022

DECISION DELIVERED BY TLAB Panel Member J. Tassiopoulos

REGISTERED PARTIES AND PARTICIPANTS

Appellant PETER LEE

Applicant/ Party / Participant's Legal Rep. EDWARD LEE

Participant KELLY AMARAL

INTRODUCTION & BACKGROUND

On July 28, 2021, the City of Toronto (City) Committee of Adjustment (COA) approved three variances requested for the COA file number A0321/21TEY, for the property located at 1161 Dundas Street West (subject property), to construct a second storey partial addition with a second storey outdoor patio to the one-storey commercial building. The subject property is located on the south side of Dundas Street West, west of Ossington Street. The property is zoned *CR 2.50 C1.0 R2.0 SS2*, under City of Toronto Zoning By-law No. 569-2013.

The COA's approval of the variances was appealed to the Toronto Local Appeal Body (TLAB) by Mr. Peter Lee on August 16, 2021, and the TLAB issued a Notice of Hearing setting a Hearing date for January 13, 2022.

In attendance at the Hearing were:

- Mr. Edward Lee, the Architect and Representative for the Applicant/Owner;
- Ms. Kelly Amaral, Owner/Participant; and
- Mr. Peter Lee, Appellant.

I advised, as per Council direction, that I had visited the site and surrounding neighbourhood and reviewed the pre-filed materials in preparation for the Hearing, but it was the evidence to be heard that was of importance.

MATTERS IN ISSUE

The Appellant's concern that the partial second storey addition on the existing one storey commercial building will result in adverse impact and loss of privacy and light with respect to his property.

This is an appeal of the COA's approval of the requested variances. Being a *de novo* Hearing, the TLAB must be satisfied that applicable policy and all four tests of the *Planning Act* have been satisfied.

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

1. Chapter 40.5.40.70.(1)(B), By-law 569-2013

The minimum required setback of a building or structure from the original centreline of a lane is 3.5 m.

The building will be located 1.52 m from the original centreline of the lane abutting the south rear lot line.

2. Chapter 40.10.20.100.(21)(E), By-law 569-2013

An outdoor patio located above the first storey of a building is a permitted use provided that it is at least 40.0 metres from a lot in the Residential Zone category or residential Apartment Zone category.

In this case, the outdoor patio will be located 14.25 m from a lot in the Residential Zone category.

3. Chapter 40.10.40.40.(1)(B), By-law 569-2013

The maximum permitted commercial floor space index of a building is 1 times the area of the lot (166.20 m²).

The altered building will have a commercial floor space index equal to 1.90 times the area of the lot (316.26 m²).

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

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

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.

Owner / Participant's Representative Edward Lee

Mr. Edward Lee, the architect for the proposal, explained that City planning staff had not raised concerns regarding the form of the proposal and the variances sought.

He described the subject property as underdeveloped as it is a one storey building abutted by three storey neighbouring buildings on either side, and three storeys is permitted overall.

Speaking to the variance for the minimum required setback of the building from the centerline of the lane at the rear, he explained that this was an existing condition and that the second storey addition was aligned with the rear wall of the first storey. This triggered the variance being sought.

Mr. Edward Lee presented a drawing (Exhibit #1) that described the existing and proposed second storey addition and patio, the measurements related to the setback

variances sought, the patio separation from the residential areas, and the alignment of the proposed addition with the existing buildings' first storey.

The variance for the outdoor patio was required because the proposed patio at the front of the proposed addition on the second storey is measured at 14.25m to the rear lot line of the residential properties further south. He mentioned that the by-law requires a separation of 40.0m but noted that in discussions with City planning staff it was explained that this function was facing onto Dundas Street, and that there were precedents for second storey patios in the neighbourhood. He further stated that because the addition is at a zero lot line to the adjacent buildings behind the patio, it would buffer and mitigate potential noise from the patio and Dundas Street towards these residential properties.

The variance for floor space index (FSI) of 1.9 times the area, whereas 1.0 times is permitted, was due to the zones examiner including basement kitchen preparation areas in the FSI and the addition of the partial second storey addition. He explained that although overall the building could have 2.5 times the FSI, overall, the commercial area permitted was 1.0 times FSI.

He noted that the Appellant's concern with the proposal not including a stepping down at the rear is not applicable, because the subject property zoning has SS2, which indicates that an angular plane is required when a building exceeds a permitted height. He explained that the proposal is not of a massing or height that requires stepping due to the angular plane or a variance from this requirement.

He explained that he and the owner were still looking to work with the Appellant to address his concerns not related to the variances sought.

Appellant Peter Lee

Mr. Peter Lee expressed concern with respect to potential blocking of his windows by the proposed addition and that garbage maintenance of the existing business has been problematic and that any additional commercial space will exacerbate this condition.

He indicated that the variance for the setback to the centerline of the laneway was a 56.6% and was not minor.

He was concerned that the addition would be on the existing building footprint and would rise to 28 feet in height which would impact the neighbouring residential areas. He contended that the proposal should be stepped at the rear and the second storey should be set back further to create a better built form relationship to the neighbouring properties (Exhibit #2).

He was concerned that the setback for the proposed patio was a reduction of 64.4% of what was required and that the location of the patio stepped the proposal towards Dundas Street when the proposal should ideally step towards the rear.

He asserted that the proposal would constitute a major facility as per the PPS because the FSI for the commercial use would be almost double the size and the overall height is equivalent to a three storey building.

He felt that placing the patio at the front of the building, and adjacent to an existing window on the east side of the subject property, was not appropriate development for the property.

ANALYSIS, FINDINGS, REASONS

In considering the evidence presented by both Mr. Edward Lee and the Appellant Mr. Peter Lee, it is important to note that the proposal did **not** require any variances for building height or side yard setbacks. What is in question is if the variances sought meet the four tests of the planning act and if they precipitate any adverse impact.

I find that the description and the reason for the variances was clearly presented by Mr. Edward Lee and that they are triggered by a combination of existing conditions for the subject property and the enhancements of a standalone retail function that the Applicant is seeking to enhance through the provision of a half storey addition and its ancillary patio space.

Mr. Peter Lee expressed concerns that were not focused on the variances sought but instead spoke to potential increased garbage maintenance and that the proposal should be stepped at the rear rather than at the front. His evidence focused on what he thought should occur and did not directly address why the sought variances were inappropriate aside from the percentage difference between what is permitted and what is proposed.

Although I believe Mr. Peter Lee is earnest in his concerns regarding the proposal, he did not provide evidence that challenged the variances sought.

I have considered the evidence presented for each of the variances sought and find the following:

Variance #1 – Seeks a 1.52m setback from the centreline of the lane where 3.5m is required. Mr. Edward Lee explained that this was triggered by an existing condition that was already present with the setback of the existing one-storey building. In reviewing the proposed site plan (Exhibit #3) I noted that the setback is slightly greater than that of the existing building because the proposed second storey is further setback 0.494m from the first storey rear wall. This is a slight improvement with respect to the required setback from that of the existing first storey and I find that because of this, the variance sought is not a departure from the condition that is already found along this rear lane.

Variance #2 – The proposed patio space is located 14.25m from the rear property line of the residential properties to the south where 40.0m is required. In his evidence and the site plan presented, Mr. Edward Lee illustrated that although the rear of the patio was 14.25m away from the adjacent residential properties to the south, the proposed addition separated the patio space and would serve as a buffer to these properties

because the addition would extend the full width of the property and abut the neighbouring properties to the east and west. He also noted that none of the residents from the properties to the south were in attendance objecting to the proposal. I find that the qualitative impact to the residential zoned properties is addressed through this deployment of the proposed addition. I also find that the impact of this patio would be directed towards Dundas Street West which is appropriate with respect to the retail function of the subject property.

Variance #3 – The proposed commercial FSI of 1.90 times space the lot area is sought whereas 1.0 times is permitted. The evidence provided during the Hearing indicated that the second storey addition would be closer to 1.57 times (Exhibit #3) and that the inclusion of basement uses results in the additional FSI sought. Although it appears a large variance quantitatively, qualitatively the proposed half storey does not result in adverse impacts to the neighbouring properties. The deployment of the additional FSI is appropriate and modest when considered in the context of adjacent three storey buildings. Furthermore, because the existing building is only one storey and it is specifically a retail use, the addition proposed, although not residential, is desirable for the development of the property given its existing use, and is meant to further support and enhance that use. I find that this variance is appropriate in this instance and meets the planning tests.

Conclusion

Based on the analysis and reasons stated above, I find that the requested variances for setback to the rear lane centreline, the setback of the patio from the residential zone and the commercial FSI meet the four tests (s.45 (1) of the *Planning Act*), namely, that they maintain the general intent and purpose of the Official Plan and Zoning By-laws, they are minor in nature and desirable for the appropriate use and development of the subject property.

During the Hearing the Applicant/Owner mentioned that they would consider adjustments to the patio plan to mitigate potential impact an existing second storey window opening on the east neighbouring building. It is recommended that they coordinate with the adjacent property owner to provide some form of screening that ensures privacy with respect to the living space associated with this window.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision, dated July 28, 2021, is dismissed. The following variances are authorized subject to the condition listed below:

1. Chapter 40.5.40.70.(1)(B), By-law 569-2013

The minimum required setback of a building or structure from the original centreline of a lane is 3.5 m.

The building will be located **1.52 m** from the original centreline of the lane abutting the south rear lot line.

2. Chapter 40.10.20.100.(21)(E), By-law 569-2013

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3. Chapter 40.10.40.40.(1)(B), By-law 569-2013

The maximum permitted commercial floor space index of a building is 1 times the area of the lot (166.20 m²).

The altered building will have a commercial floor space index equal to **1.90 times** the area of the lot (316.26 m²).

Conditions

1. The proposed development shall be constructed substantially in accordance with the site plan (Drawing A0), and building elevations (Drawings A4, A5, A6, and A7), dated March 2, 2021, provided as **Attachment 1** to this Decision.
2. Any variance(s) that may appear on these plans but are not listed in the written decision are **NOT** authorized.

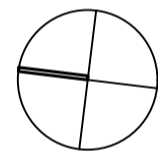
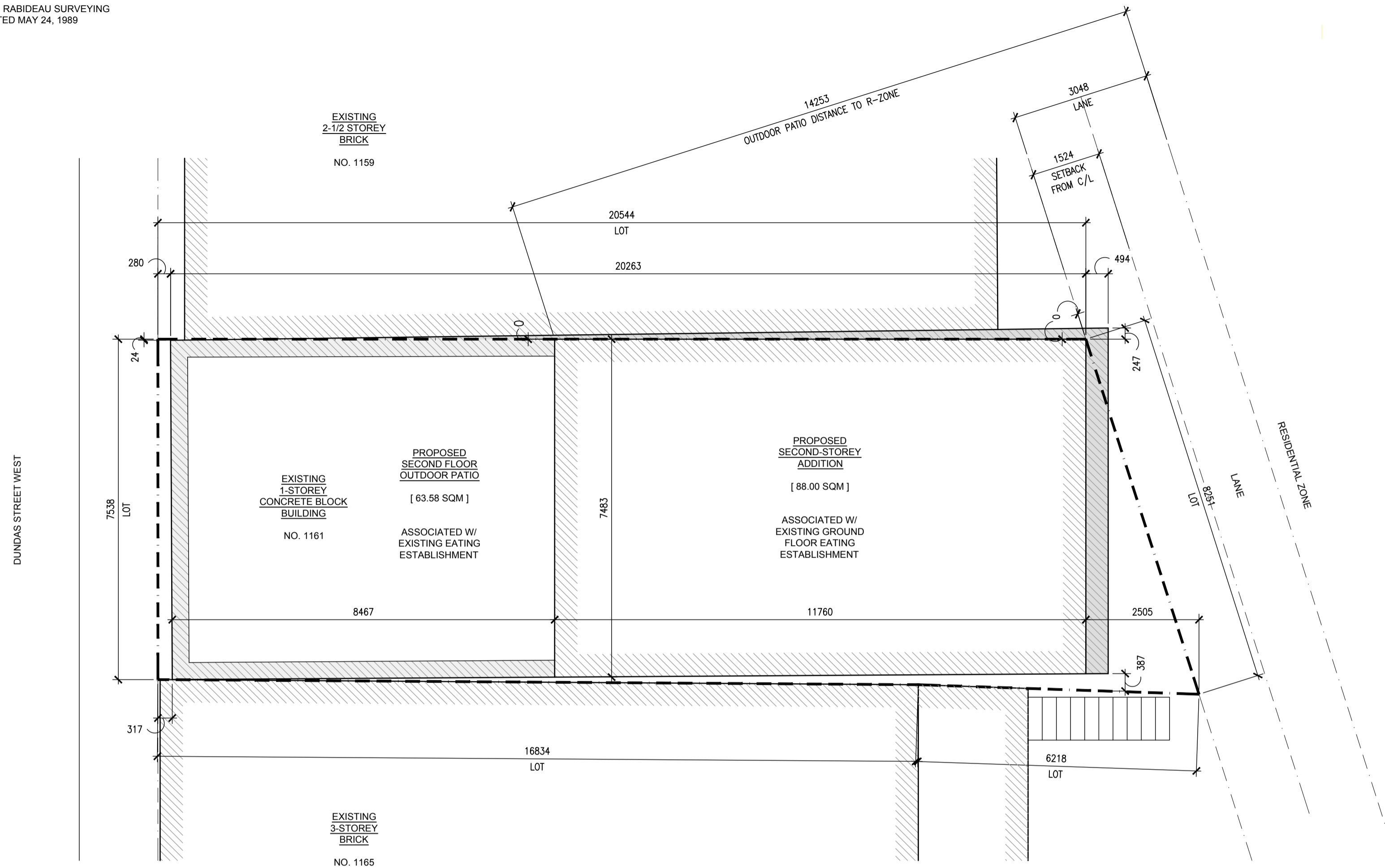
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John Tassiopoulos
Panel Chair, Toronto Local Appeal Body

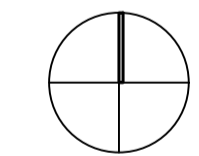
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NO.	ISSUED / REVISED	DATE
1	FOR COA	21.03.02



PROPOSED
SITE PLAN

CONTEXT PLAN
NTS



PROJECT STATISTICS

CR 2.5 (c1.0; r2.0) SS2 (x2264)

LOT AREA	166.20 SQM
EXISTING BUILDING AREA (NO CHANGE)	153.26 SQM
EXISTING GROSS FLOOR AREA (NO CHANGE)	153.26 SQM
PROPOSED GROUND & SECOND FLOOR GROSS FLOOR AREA	241.26 SQM
PROPOSED BASEMENT USE AREA	(75.0 SQM)
TOTAL PROPOSED GROSS FLOOR AREA	316.26 SQM
PROPOSED SECOND FLOOR ADDITION GFA	88.00 SQM
PROPOSED SECOND FLOOR OUTDOOR PATIO AREA	63.58 SQM
EXISTING FLOOR SPACE INDEX	c 0.92
PROPOSED FLOOR SPACE INDEX (INCL. BASEMENT USE)	c 1.90
PROPOSED BUILDING SETBACKS (NO CHANGE)	EXISTING (REFER TO SURVEY)
PROPOSED BUILDING HEIGHT	8.50 M
PROPOSED OUTDOOR PATIO DISTANCE FROM R-ZONE	14.25 M
EXISTING GROUND FLOOR OCCUPANCY	GROUP A2 'EATING ESTABLISHMENT (EXISTING 70 SEATS)
EXISTING BASEMENT OCCUPANCY	ANCILLARY STORAGE, PREP & STAFF AREAS
PROPOSED GROUND FLOOR OCCUPANCY	GROUP A2 'EATING ESTABLISHMENT (ADDITIONAL 50 SEATS W/ SEASONAL OUTDOOR PATIO)
EXISTING PARKING	ZERO SPACES

1161 DUNDAS ST W
TORONTO, ONTARIO

SCALE: NTS
DRAWN BY: EL
DATE: 2021.03.02

PROPOSED
SITE PLAN

* COMMITTEE OF ADJUSTMENT

A0

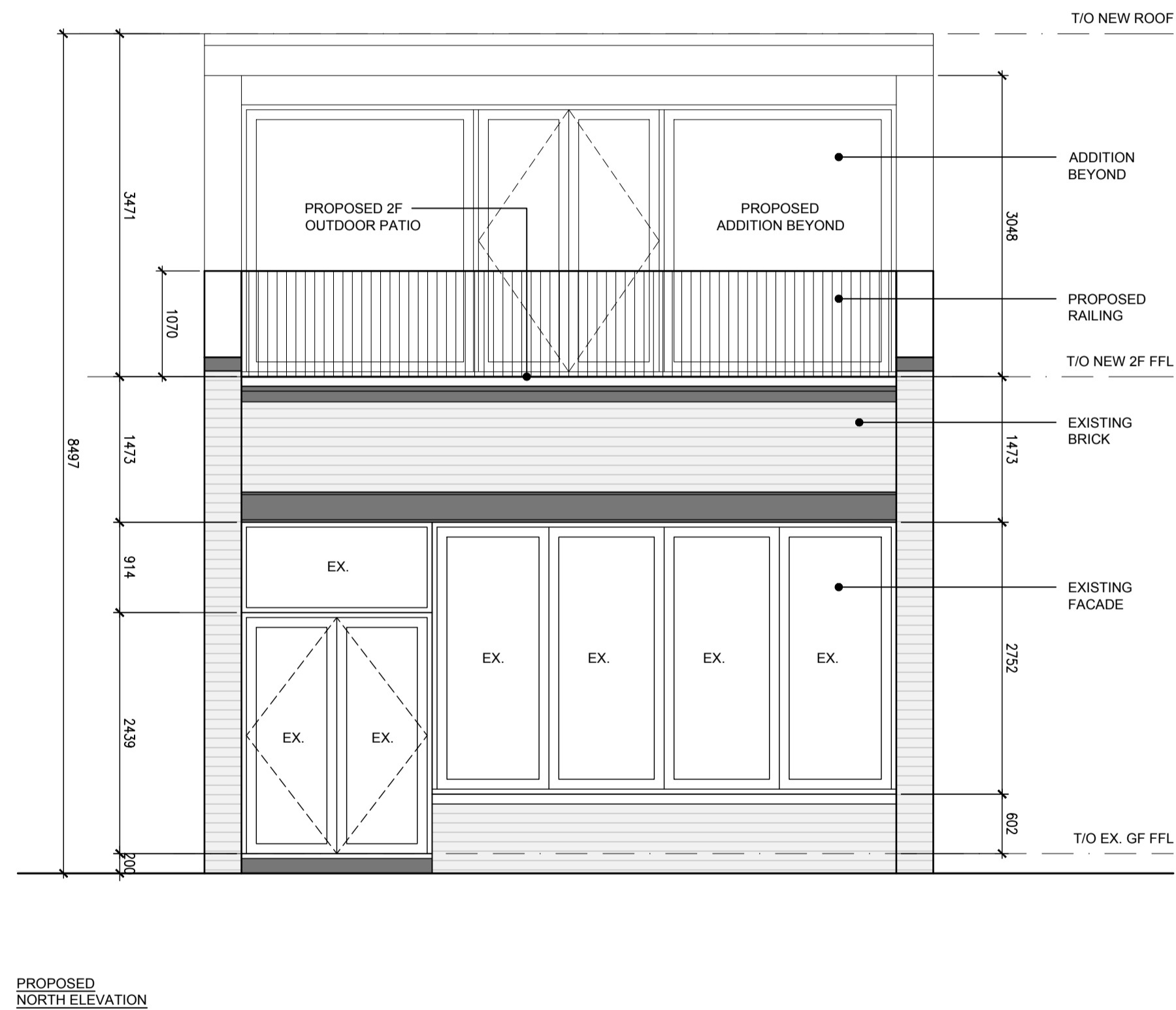
**EDWARD LEE
ARCHITECT**

6 ARGYLE STREET
TORONTO ONTARIO M6J 1N4
E: info@edwardlee.ca T: 647.894.7172

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PROPOSED
NORTH ELEVATION

1161 DUNDAS ST W
TORONTO, ONTARIO

SCALE: 1:50
DRAWN BY: EL
DATE: 2021.03.02

PROPOSED
NORTH ELEVATION

* COMMITTEE OF ADJUSTMENT

A4

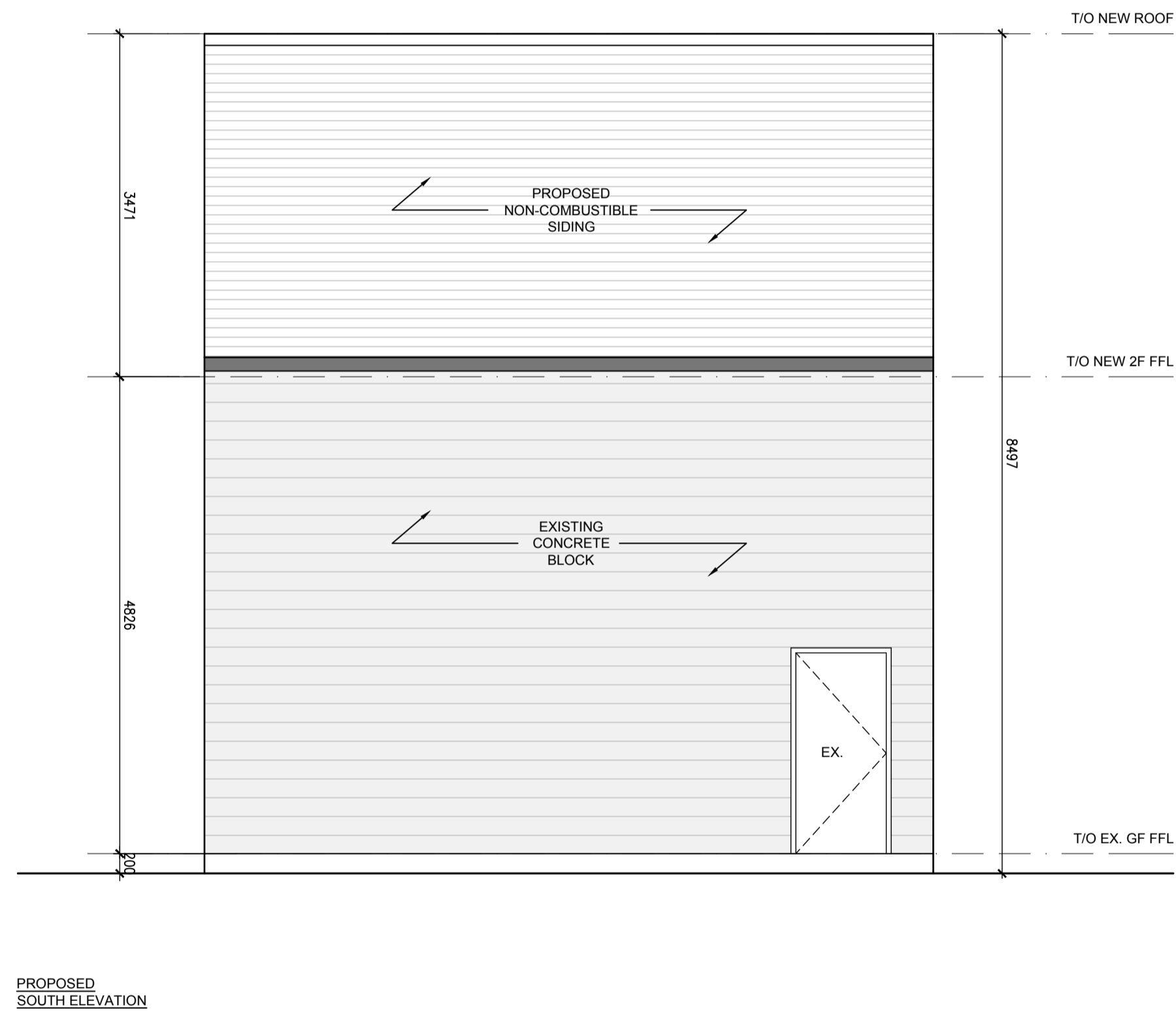
**EDWARD LEE
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1	FOR COA	21.03.02



1161 DUNDAS ST W
TORONTO, ONTARIO

SCALE: 1:50
DRAWN BY: EL
DATE: 2021.03.02

PROPOSED SOUTH ELEVATION

* COMMITTEE OF ADJUSTMENT

A5

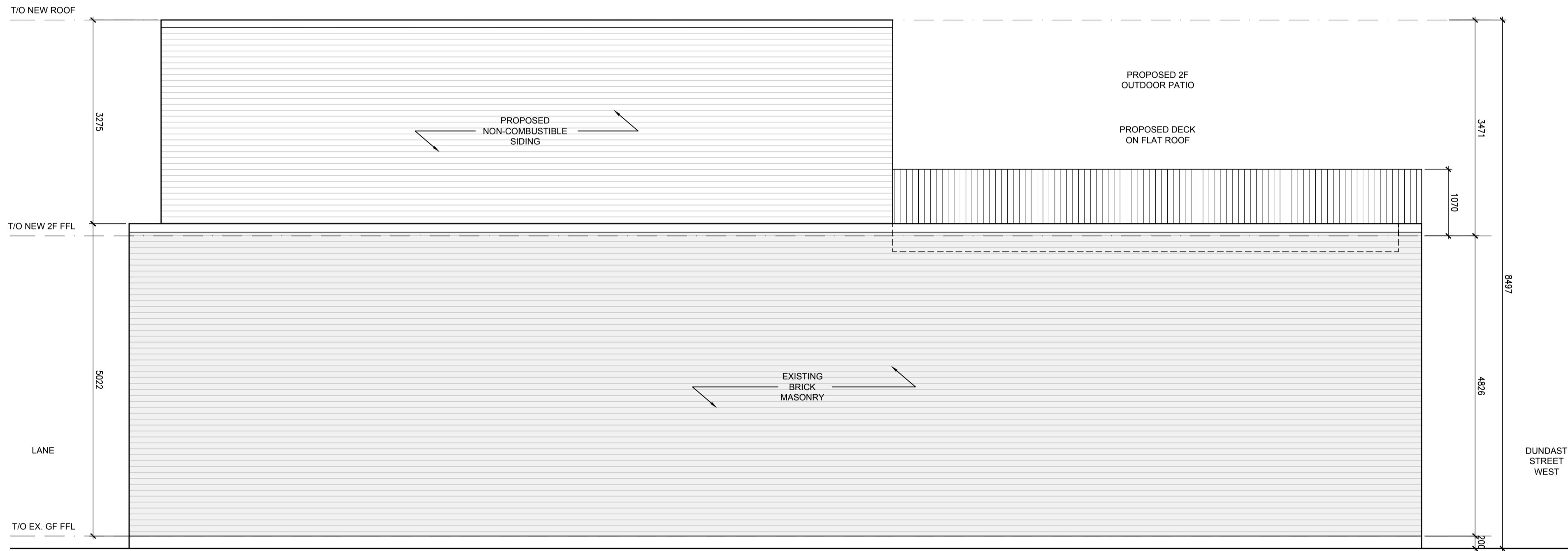
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NO.	ISSUED / REVISED	DATE
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PROPOSED
EAST ELEVATION

1161 DUNDAS ST W
TORONTO, ONTARIO

SCALE: 1:50
DRAWN BY: EL
DATE: 2021.03.02

PROPOSED
EAST ELEVATION

* COMMITTEE OF ADJUSTMENT

A6

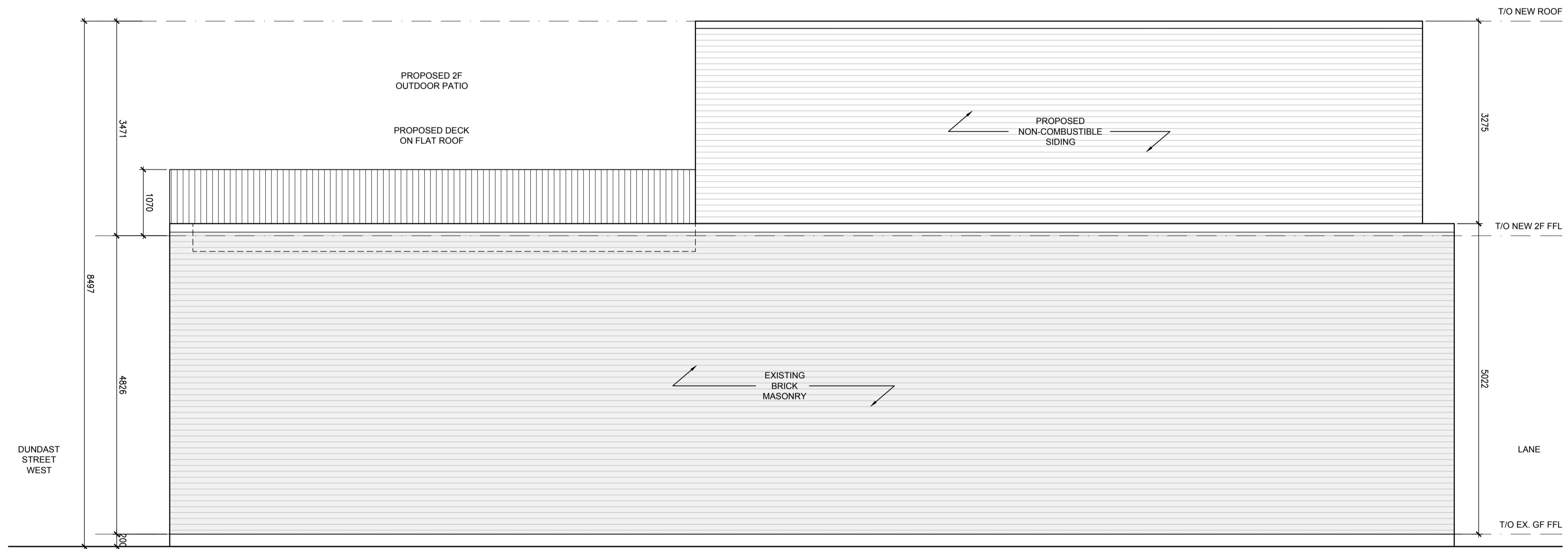
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PROPOSED
WEST ELEVATION

1161 DUNDAS ST W
TORONTO, ONTARIO

SCALE: 1:50
DRAWN BY: EL
DATE: 2021.03.02

PROPOSED
WEST ELEVATION

* COMMITTEE OF ADJUSTMENT

A7