

DECISION AND ORDER

Decision Issue Date: Tuesday, October 10, 2017

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

Appellant(s): CITY OF TORONTO

Applicant: ANGELA CVETANOVSKA GJEMAILJI

Counsel or Agent:

Property Address/Description: 374 O'CONNOR DR

Committee of Adjustment Case File Number: 17 106064 STE 29 MV

TLAB Case File Number: **17 169773 S45 29 TLAB**

Hearing Date: Friday, September 22, 2017

DECISION DELIVERED BY Gillian Burton

APPEARANCES

Parties

Angela Cvetanovska Gjemailji

City of Toronto

Representative

Self-represented

Kasia Czajkowski*

(*Counsel)

INTRODUCTION

Ms. Angela Cvetanovska Gjemailji applied to the Toronto Committee of Adjustment (the "COA") for variances to construct a rear two storey addition, together with a partial second-storey

addition to her home at 374 O'Connor Drive in the former Borough of East York (the "subject property"). The existing home is a one-storey detached dwelling. The COA approved the variances in its decision of May 10, 2017.

The City of Toronto appealed this decision to the Toronto Local Appeal Body ("TLAB") under s. 45(12) of the *Planning Act* (the "Act").

Mr. Jason Tsang, Assistant Planner for the City, was qualified to give expert evidence on the application. He indicated that the parties had resolved their main issues, and that the City is now prepared to enter into a settlement, with some alterations to the requested variances.

BACKGROUND

The subject property is located on the north side of O'Connor Drive, east of Greenwood Ave. It is designated "Neighbourhoods" in the Official Plan, and zoned R1B in the former East York By-law 6752 (the "East York By-law", and RD (f12.0; a370; d0.6) in the new City of Toronto By-law 569-3013 (the "new By-law"), currently under appeal. It has a frontage of 9.14 m, a depth of 30.48 m, and is 278.71 sq. m in area.

There is presently a one storey, mid-century residential dwelling and a rear garage on the property. It is surrounded by residential properties. In his Staff Report to the COA (May 2, 2017) Mr. Tsang had expressed concerns with the lot coverage and length variances. He further stated:

"Planning staff would have no objection to the application if the building length variance was removed and the coverage variance was reduced accordingly. While Planning staff have no objection to the requested floor space index variance, reductions in the building length and coverage variances may also result in a corresponding reduction in the floor space index variance."

After the City's appeal to the TLAB, the applicant revised her plans, filing new plans dated June 30, 2017. These plans illustrated a building length of 17 m, rather than the formerly requested 18.13 m. This meant that the lot coverage and floor space index variances could also be reduced. The new plans were confirmed by a Zoning Examiner's Notice dated July 19, 2017.

Mr. Tsang found that the proposal before the TLAB on appeal could now be supported.

THE PRESENT APPLICATION

Even though the parties have agreed on acceptable variance provisions, the TLAB on appeal must satisfy itself that the variances meet the tests in section 45(1) of the *Planning Act* (the "Act"). The appeal to this tribunal is *de novo*, as if the COA decision had not been determined. In addition, the TLAB also cannot merely accept a settlement between the parties, without determining whether the requested variances do in its view satisfy the statutory requirements.

Thus Mr. Tsang provided his professional opinion that the tests are satisfied, as set out below.

The variances approved by the COA included a length variance. This has now been eliminated from the variances sought from the TLAB. While variances are required under both the new By-law and the East York By-law, there are two duplicated categories – lot coverage and floor space index ("FSI"). In addition, the projected build requires variances for the west side yard

setback (.85 m rather than .90 m) under the new By-law, and a length variance (17.00 m, rather than the 16.75 m required) under the East York By-law.

JURISDICTION AND MATTERS IN ISSUE

On a variance appeal, the TLAB must be able to find that each of the variances sought meets the tests in subsection 45(1) of the Act. As mentioned, this involves a reconsideration of all the variances considered by the Committee, in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance. In addition, TLAB must have regard to matters of provincial interest as set out in sections 2 and 3 of the Act. A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1 of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

I accept that the Applicant’s proposed revisions to building length and coverage are reductions from the original application. As such, I find that no further notice is required pursuant to s. 45 (18.1.1) of the Act, and the revisions can be considered.

EVIDENCE

Mr. Tsang’s evidence was that the original proposal before the Committee did not meet Official Plan policy 4.1.5 respecting the requirement to respect and reinforce the existing physical character of the neighbourhood, as clause c) requires. This includes the relationship of heights, massing, scale and dwelling type to nearby residential properties. The coverage and length variances were most out of keeping with this policy. No length variances had been approved in this segment of O’Connor Drive. Only one lot coverage variance has been approved – 36% times the lot area (rather than the 47% sought here.) The requested 18.13 m length greatly exceeded the two by-law limits. This also affected the lot coverage variances of 49% of the lot area, while both by-laws have a limit of only 35%.

Now that the plans have been revised to reflect only a 17 m length, there are corresponding reductions in lot coverage and floor space index. He is satisfied that the revised variances, as identified by the Zoning examiner, now meet the general intent and purpose of the Official Plan and the Zoning By-laws.

These are the requested variances:

New By-law:

1. The minimum required side yard setback is 0.90 metres where the required minimum lot frontage is 6.00 metres to less than 12.00 m. **The proposed two storey rear addition will have a west side yard setback of 0.85 metres. [10.20.40.70(3)(B) Minimum Side Yard Setback]**
2. The permitted maximum floor space index is 0.60 times the area of the lot.: 167.23 square metres. **The proposed floor space index is 0.67 times the area of the lot: 185.84 square metres. [10.20.40.40.(1)(A) Floor Space Index]**
3. The permitted maximum lot coverage is 35% of the lot area: 97.55 square metres. **The proposed lot coverage is 47 percent of the lot area: 130.92 square metres. [10.20.30.40.(1)(A) Maximum Lot Coverage]**

East York By-law:

4. The maximum permitted building length is 16.75 metres. **The proposed two storey rear addition will increase the overall building length to 17.00 metres. [7.3.3 – Building Length]**
5. The maximum permitted floor space index is 0.60 times the area of the lot: 167.23 square metres. **The proposed floor space index is 0.67 times the area of the lot: 185.84 square metres [7.3.3 – Floor Space Index]**
6. The maximum permitted lot coverage is 35 % of the area of the lot.97.55 square metres. **The proposed lot coverage 47 % of the lot area: 130.92 square metres. [7.3.3 – Lot Coverage]**

There is still a lot coverage variance of 47% of the lot area, while both By-laws require a maximum of 35%. In Mr. Tsang's view this is appropriate as the house itself (not including the existing garage) would be close to 40% coverage, generally acceptable in this part of East York. A condition would ensure that the detached garage could not be demolished, potentially freeing up lot area to be incorporated into a larger dwelling.

Therefore his evidence is that the variances requested maintain the general intent and purpose of the Zoning By-law as well. He summed up his analysis of the s. 45 tests thusly:

“On the basis of the revised proposal, I do not have concerns with this application as it meets the general intent and purpose of the Official Plan and the Zoning By-laws, is appropriate for the development of the land and buildings and is minor.”

ANALYSIS, FINDINGS, REASONS

As mentioned, I decided that no further notice is required of the reduced alterations to the variances, as foreseen under subsections 45(18.1) and (18.2) of the Act. As well, there is a slight increase in both FSI variances that were presented to the Committee – from 0.66 square metres times the lot area, to 0.67 times (183.96 sq. m to 185.84 sq. m.) These alterations are minor, this is a settlement and no other person gave notice of an intention to take part in the hearing. I accept that these changes also can be considered without further notice, as contemplated by s. 45 (18.1.1.)

I have evaluated carefully the evidence of the applicant as well as the concerns of the City and the neighbours at the COA hearing. I have applied the statutory tests, and agree with Mr. Tsang's unchallenged expert testimony, that the proposed redevelopment will be contextually

appropriate and quite compatible with the existing residential uses nearby. All individually and collectively meet the statutory tests for approval.

DECISION AND ORDER

The TLAB orders that the appeal is allowed, and the variances from the new By-law (the City of Toronto Zoning By-law No 569-2013), and the East York By-law (East York By-law 6752, as amended), and set out above, are approved, as required to give effect to this decision. They are subject to the following conditions:

- 1) The new two-storey detached dwelling shall be constructed substantially in accordance with the Revised Plans dated June 30, 2017, filed with TLAB on August 1, 2017, and appended as Attachment A. Any other variances that may appear on these plans that are not listed in this decision are not authorized.
- 2) The variances to Zoning By-law No. 569-2013 as identified herein are all authorized contingent upon the relevant provisions of that by-law coming into full force and effect, and are subject to the same conditions.
- 3) The lot coverage of the altered detached dwelling exclusive of any detached accessory structures shall be no greater than 40.56 % of the lot area under Zoning By-laws 6752 and 569-2013.
- 4) The building footprint of the altered detached dwelling and the detached garage shall be located substantially in accordance with the revised plans dated June 30, 2017.

(Attachment A – Revised Plans)

X 

Gillian Burton
Chair, Toronto Local Appeal Body
Signed by: Gillian Burton

Toronto Local Appeal Body

EXHIBIT # 1

Case File Number: 17 169773 S45 29
Property Address: 374 O'Connor Dr
Date Marked: September 22, 2017

PRIVATE RESIDENCE

at 374 O'Connor Dr.
Toronto, On

LIST OF DRAWINGS

ARCHITECTURAL DRAWINGS	
ID	Layout Name
	.
A-01	SITE PLAN
A-02	FRONT YARD AREA
A-03	BASEMENT FLOOR PLAN
A-04	GROUND FLOOR PLAN
A-05	SECOND FLOOR PLAN
A-06	ROOF PLAN
A-07	BUILDING SECTION A - A
A-08	FRONT ELEVATION - S
A-09	SIDE ELEVATION - E
A-10	SIDE ELEVATION - W
A-11	REAR ELEVATION - N

NOTE:
NOT ISSUED FOR CONSTRUCTION.
DO NOT SCALE DRAWINGS.

4.		
3.		
2.		
1.		
No.	REVISIONS	DATE

FOR APPROVAL:

CLIENT:

DATE:

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HOMES**

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PROJECT:

PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:

Mr.Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:

SCALE:

DRAWN BY: T. PEJOVIC

APPROVED BY:

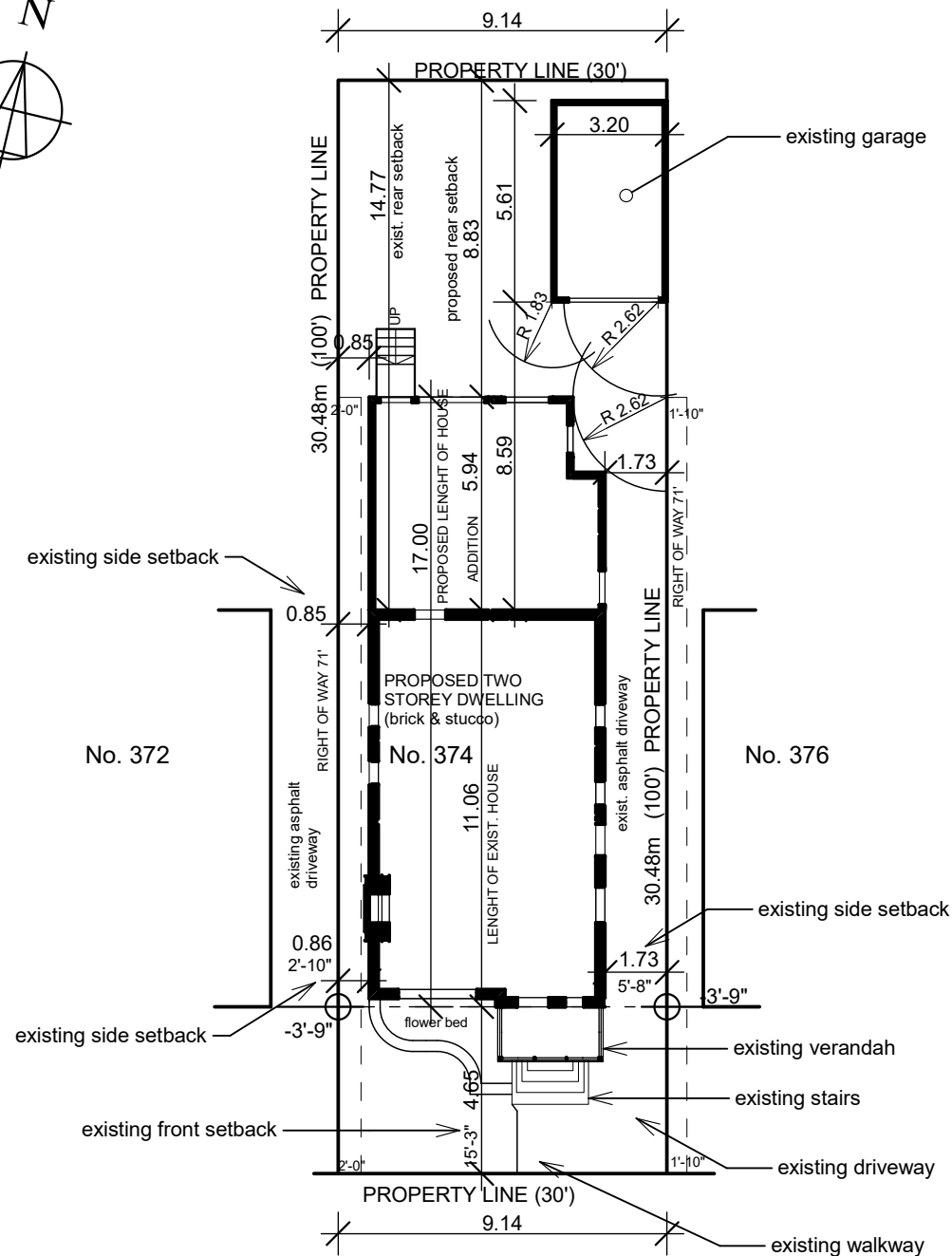
DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 1 OF 12

SITE INFORMATION WAS TAKEN FROM SKETCH OF SURVEY SHOWING PART OF BLOCK A PLAN 2923 TOWNSHIP OF EAST YORK Name not legible., O. L. Surveyor, Aug. 19/1940



O'CONNOR DR.

SITE PLAN

374 O'Connor Dr.
Toronto, Ontario

STATISTICS

PARTIAL SECOND STOREY ADDITION TO EXISTING BUNGALOW & TWO STOREY REAR EXTENSION

	MINIMUM	EXISTING	
SITE AREA	370 m2	278.71 m2	
FRONTAGE	12.00 m	9.14 m	
SETBACKS	MINIMUM	EXISTING	PROPOSED
FRONT YARD	6.00	4.65	4.65
REAR YARD	25%X30.48=7.62m	14.77 m	8.83 m
SIDE YARD East	0.90 m	1.73 m	1.73 m
SIDE YARD West	0.90 m	0.85 m	0.85 m
DWELLING	MAXIMUM	EXISTING	PROPOSED
LENGHT	17.00/16.75 m	11.06 m	17.00 m
HEIGHT	8.50 m	5.30 m	8.45 m
COVERAGE	35 %	94.38 m2 33.86 %	133.39 m2 47.86 %
FSI	0.6	71.96 m2 0.26	185.71 m2 0.67
FLOOR AREA CALCULATION			
FLOOR	EXISTING	ADDITION	PROPOSED
GROUND FLOOR	71.96 m2	37.20 m2	109.16 m2
SECOND FLOOR	---	76.55 m2	76.55 m2
BASEMENT	71.96 m2	37.14 m2	109.10 m2
GROSS FLOOR AREA	71.96 m2	113.75 m2	185.71 m2

LANDSCAPING AT FRONT

FRONT YARD AREA 42.50 m2

1. LANDSCAPING - front yard area minus part of mutual driveway = 34.47 m2 (81.11% > 50%)

2. SOFT LANDSCAPING

17.72 m2 = 51.40% of landscaped area < 75%

NOTE:
NOT ISSUED FOR CONSTRUCTION.
DO NOT SCALE DRAWINGS.

4.		
3.	revised FSI	06/30/2017
2.	revised coverage	06/30/2017
1.	length of house decreased	06/30/2017
No.	REVISIONS	DATE

FOR APPROVAL:

CLIENT:

DATE:

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PROJECT:

PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:

Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:

SITE PLAN

SCALE: 1:200

DRAWN BY: T. PEJOVIC

APPROVED BY:

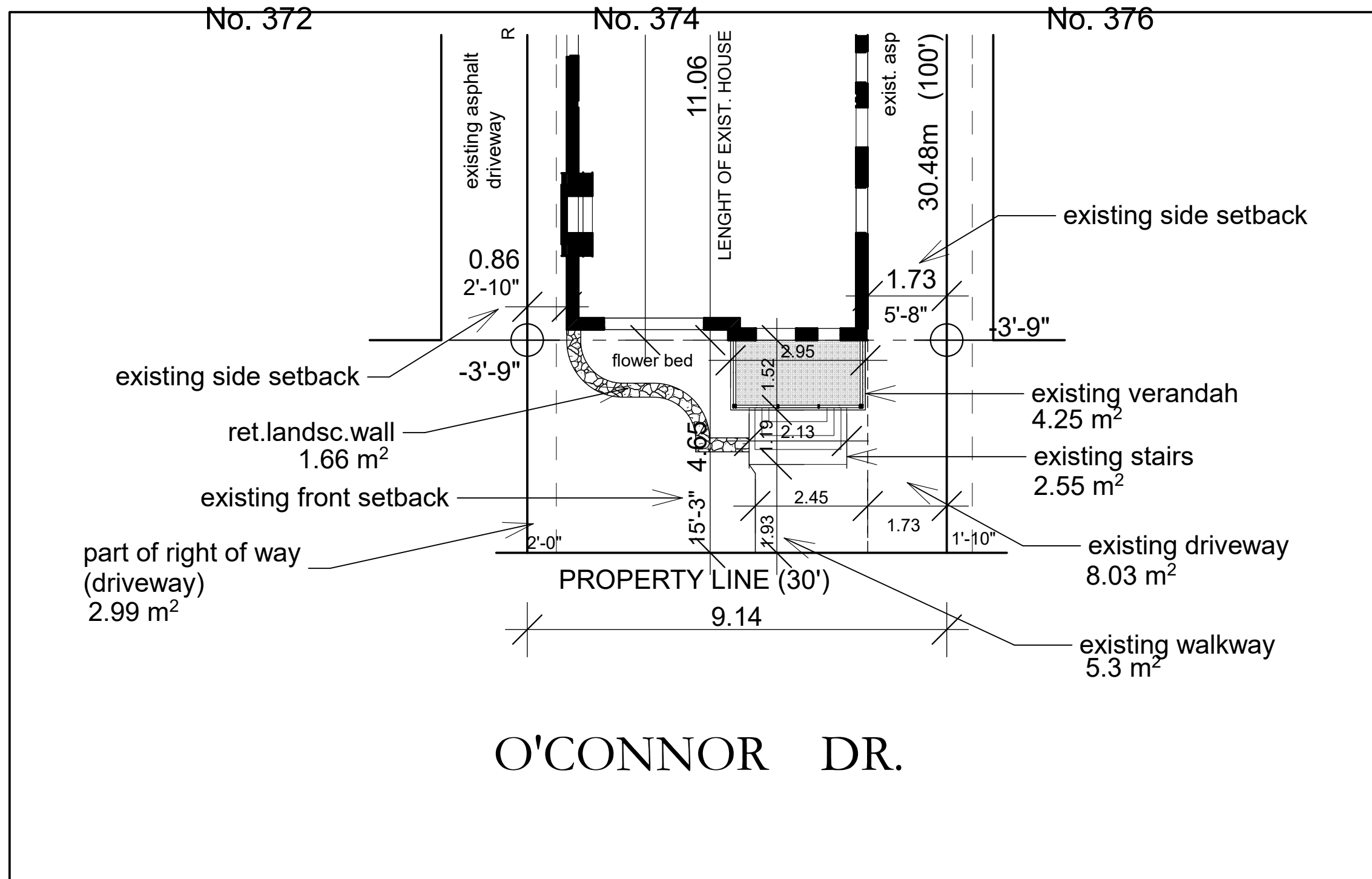
DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 2 OF 12

A-01



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4.		
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No.	REVISIONS	DATE
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Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
FRONT YARD AREA

SCALE: 1:100

DRAWN BY: T. PEJOVIC

APPROVED BY:

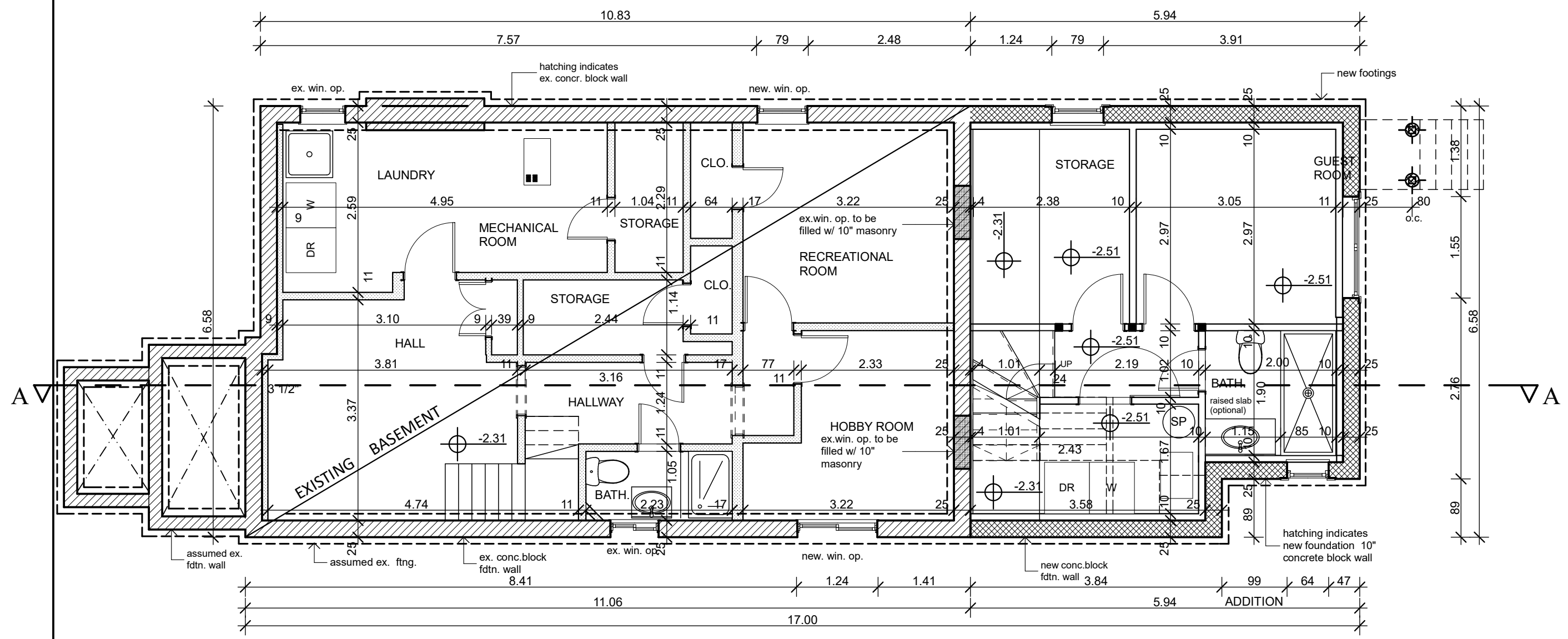
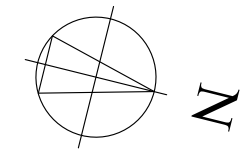
DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 3 OF 12

NOTE:
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4.		
3.		
2.		
1.	length of house decreased	06/30/2017
No.	REVISIONS	DATE

FOR APPROVAL:
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DATE:

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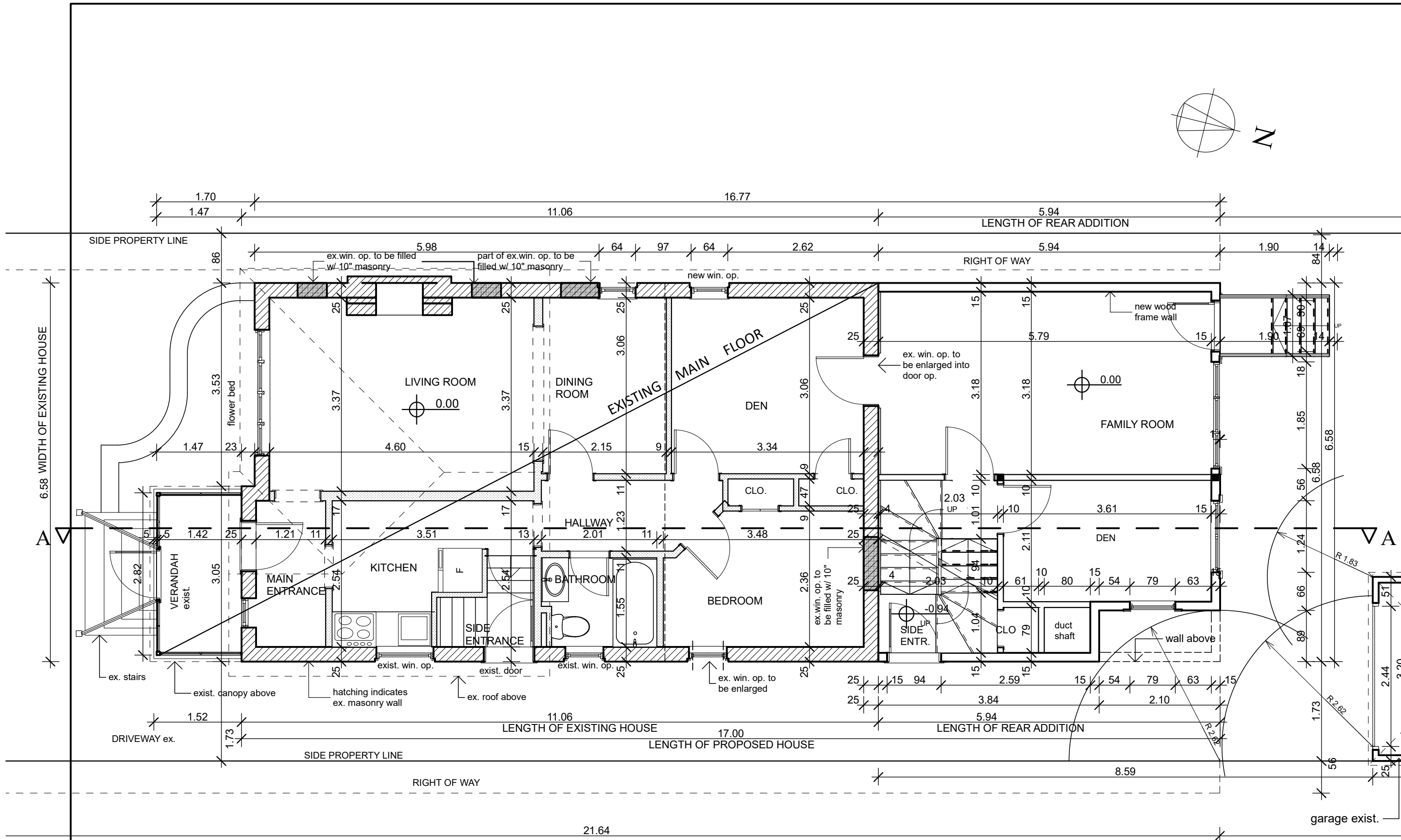
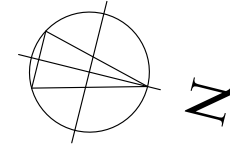
PROJECT:
PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
BASEMENT FLOOR PLAN

SCALE: 3/16" = 1'-0"
DRAWN BY: T. PEJOVIC
APPROVED BY:
DATE: Dec. 12/2016
FILE:
CONTRACT:

NOTE:
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4.		
3.		
2.		
1.	length of house decreased	06/30/2017
No.	REVISIONS	DATE

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PROJECT:
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Toronto, On

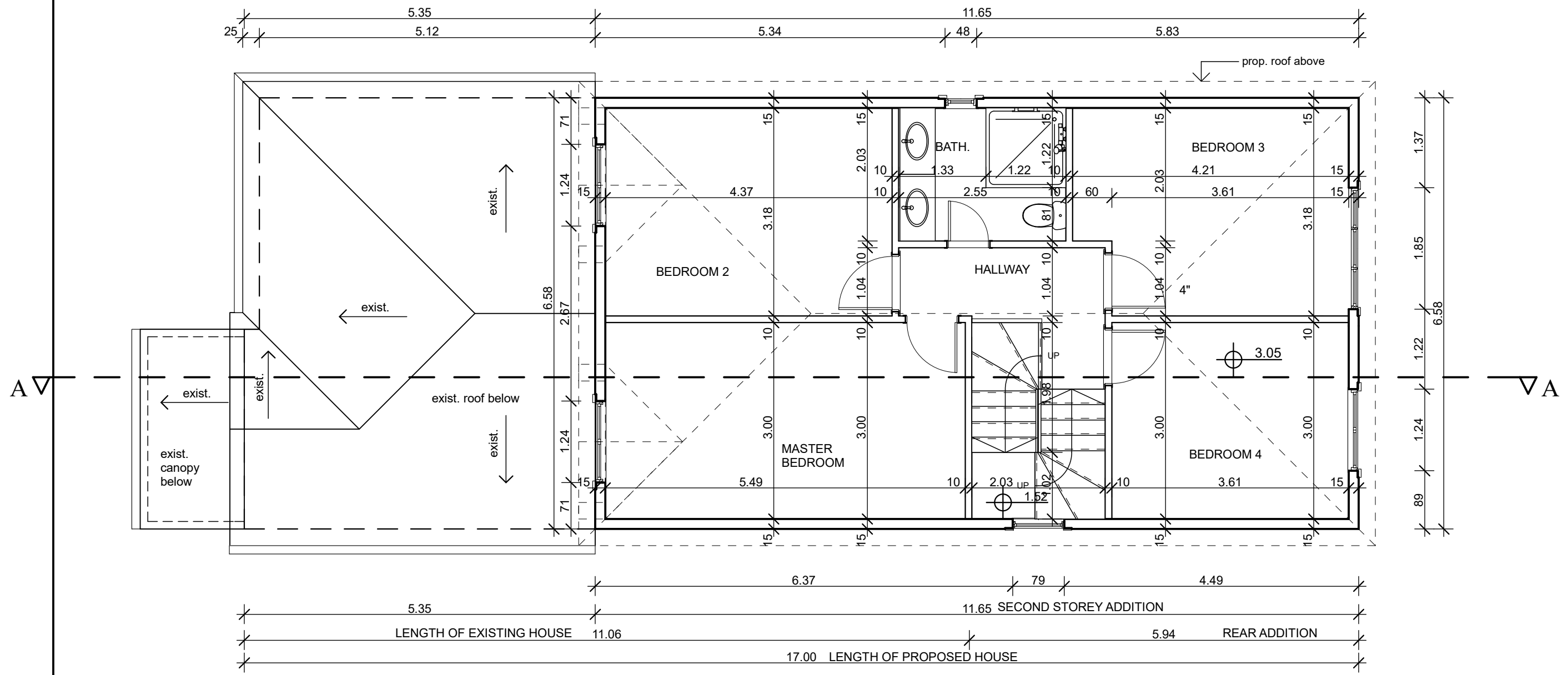
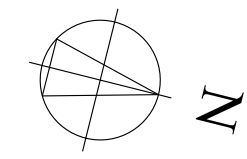
CLIENT:
Mr. Kenan Gjemalji &
Mrs. Angela Gjemalji

TITLE:
GROUND FLOOR PLAN

SCALE: 3/16" = 1'-0"
DRAWN BY: T. PEJOVIC
APPROVED BY:
DATE: Dec. 12/2016
FILE:
CONTRACT:

SHEET 5 OF 12

NOTE:
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No.	REVISIONS	DATE
4.		
3.		
2.	revised 2nd floor plan (front ext.)	06/30/2017
1.	length of house decreased	06/30/2017

FOR APPROVAL:
CLIENT:
DATE:

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PROJECT:
PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
SECOND FLOOR PLAN

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

DRAWN BY: T. PEJOVIC

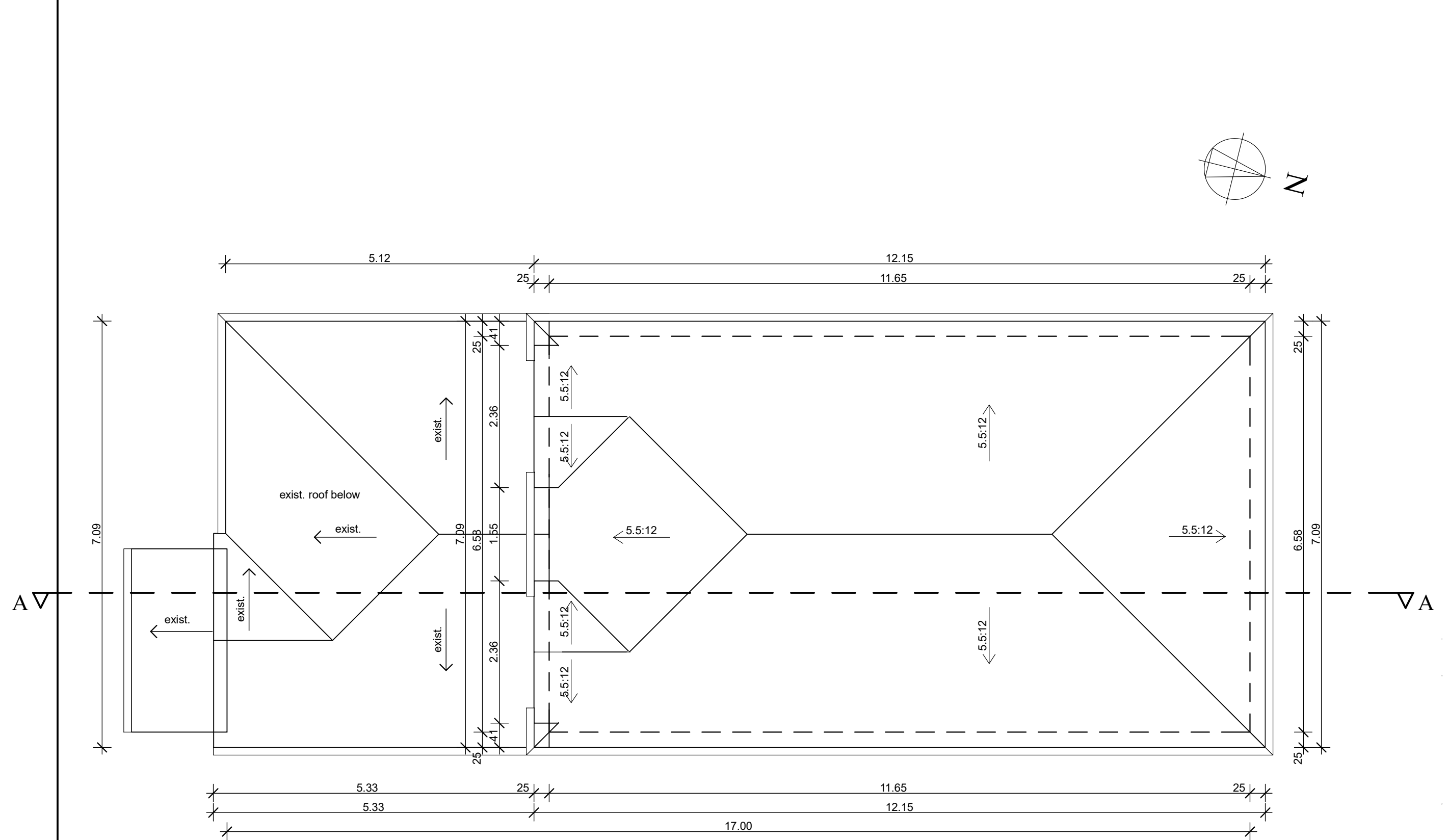
APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 6 OF 12



NOTE:
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4.		
3.		
2.	revised roof plan	06/30/2017
1.	length of house decreased	06/30/2017
No.	REVISIONS	DATE

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DATE:

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PROJECT:
PRIVATE RESIDENCE
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Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
ROOF PLAN

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

DRAWN BY: T. PEJOVIC

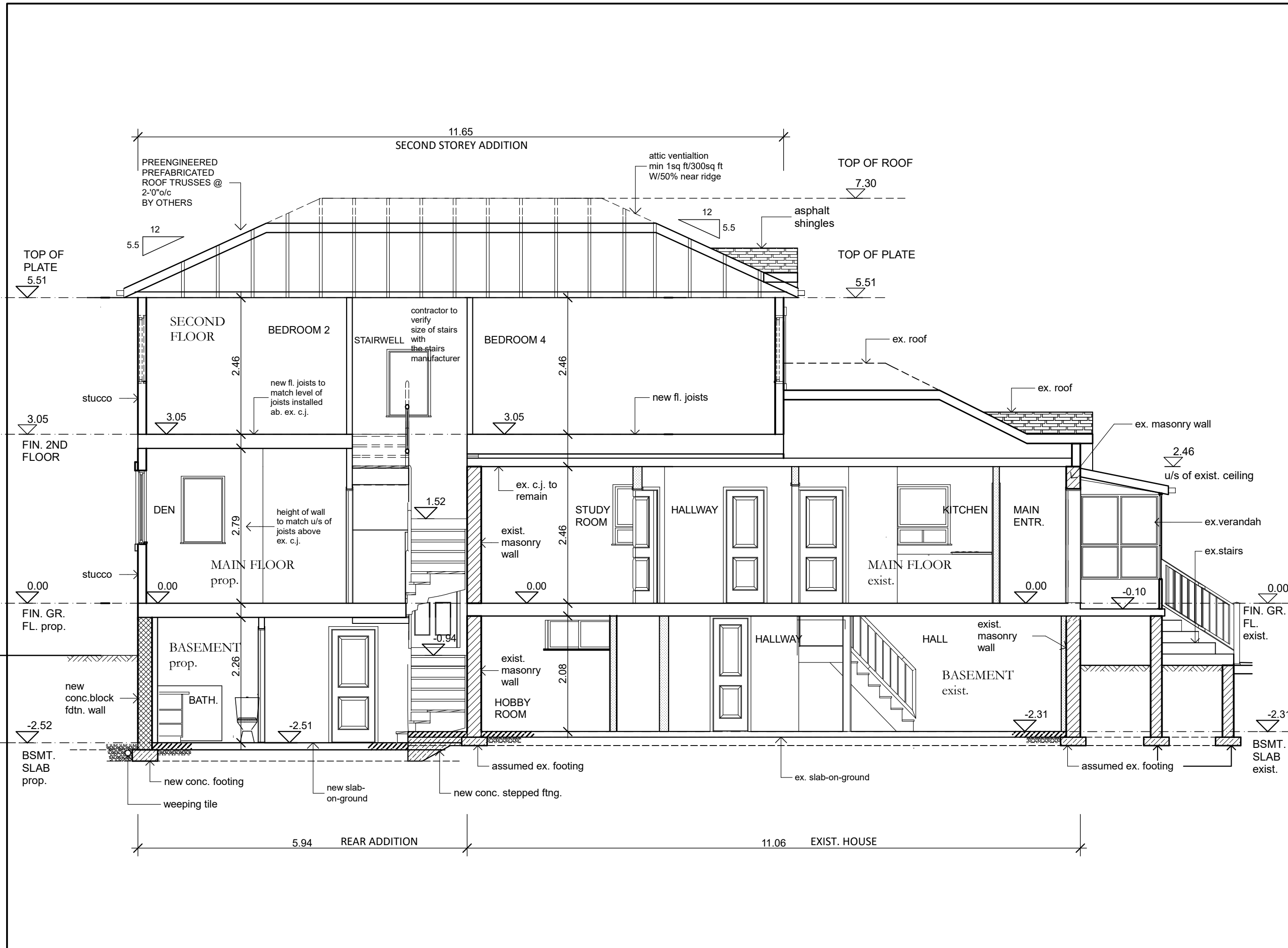
APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 7 OF 12



NOTE:
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No.	REVISIONS	DATE
4.		
3.	revised roof plan	06/30/2017
2.	revised 2nd floor plan (front ext.)	06/30/2017
1.	length of house decreased	06/30/2017

FOR APPROVAL:
 CLIENT:
 DATE:

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PROJECT:
PRIVATE RESIDENCE
 at 374 O'Connor Dr.
 Toronto, On

CLIENT:
 Mr. Kenan Gjemalji &
 Mrs. Angela Gjemalji

TITLE:
BUILDING SECTION A - A

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

DRAWN BY: T. PEJOVIC

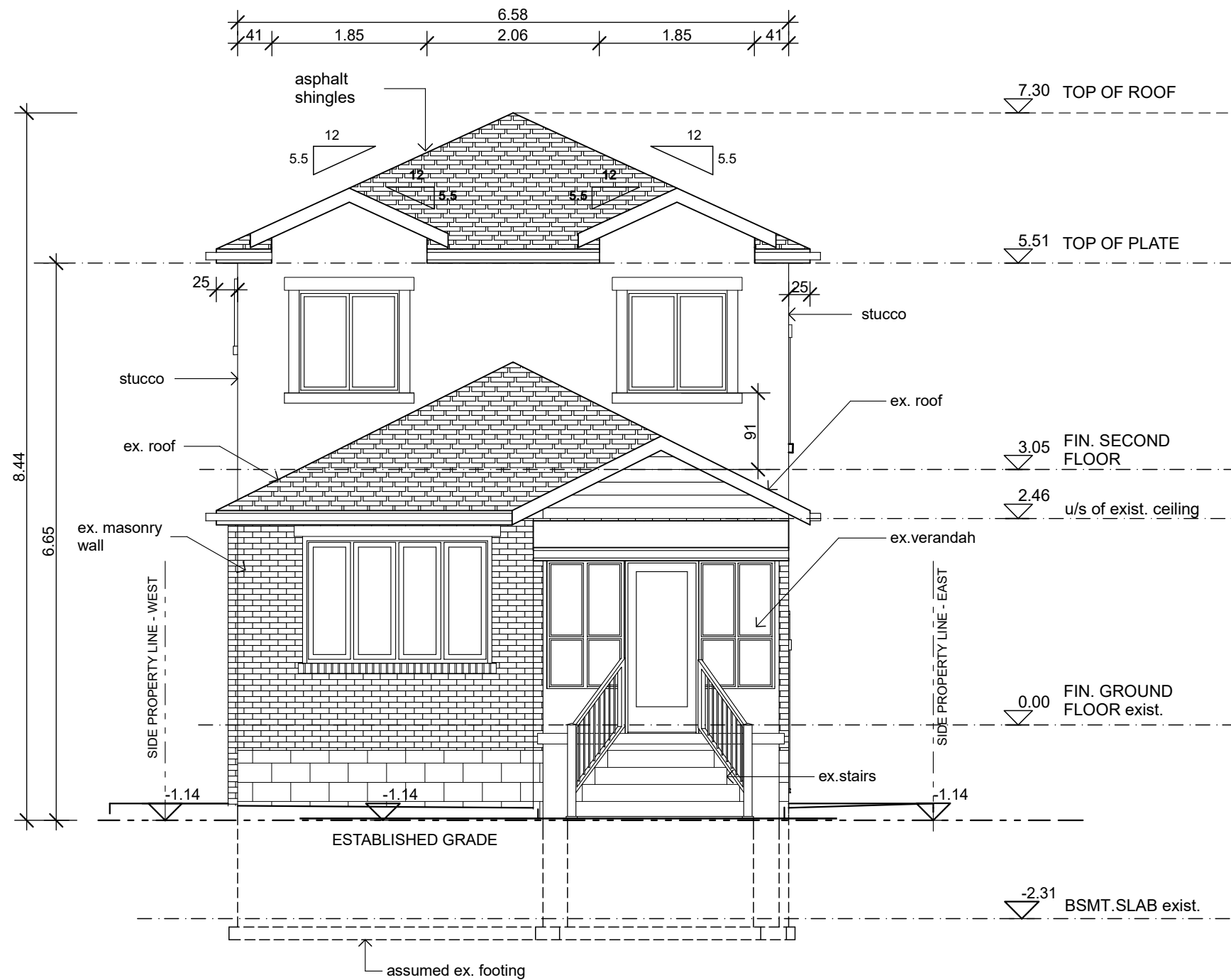
APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 8 OF 12



NOTE:
NOT ISSUED FOR CONSTRUCTION.
DO NOT SCALE DRAWINGS.

No.	REVISIONS	DATE
4.		
3.	revised roof	06/30/2017
2.	revised 2nd floor (front ext.)	06/30/2017
1.	length of house decreased	06/30/2017

FOR APPROVAL:
CLIENT:
DATE:

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PROJECT:
PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
FRONT ELEVATION - S

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

DRAWN BY: T. PEJOVIC

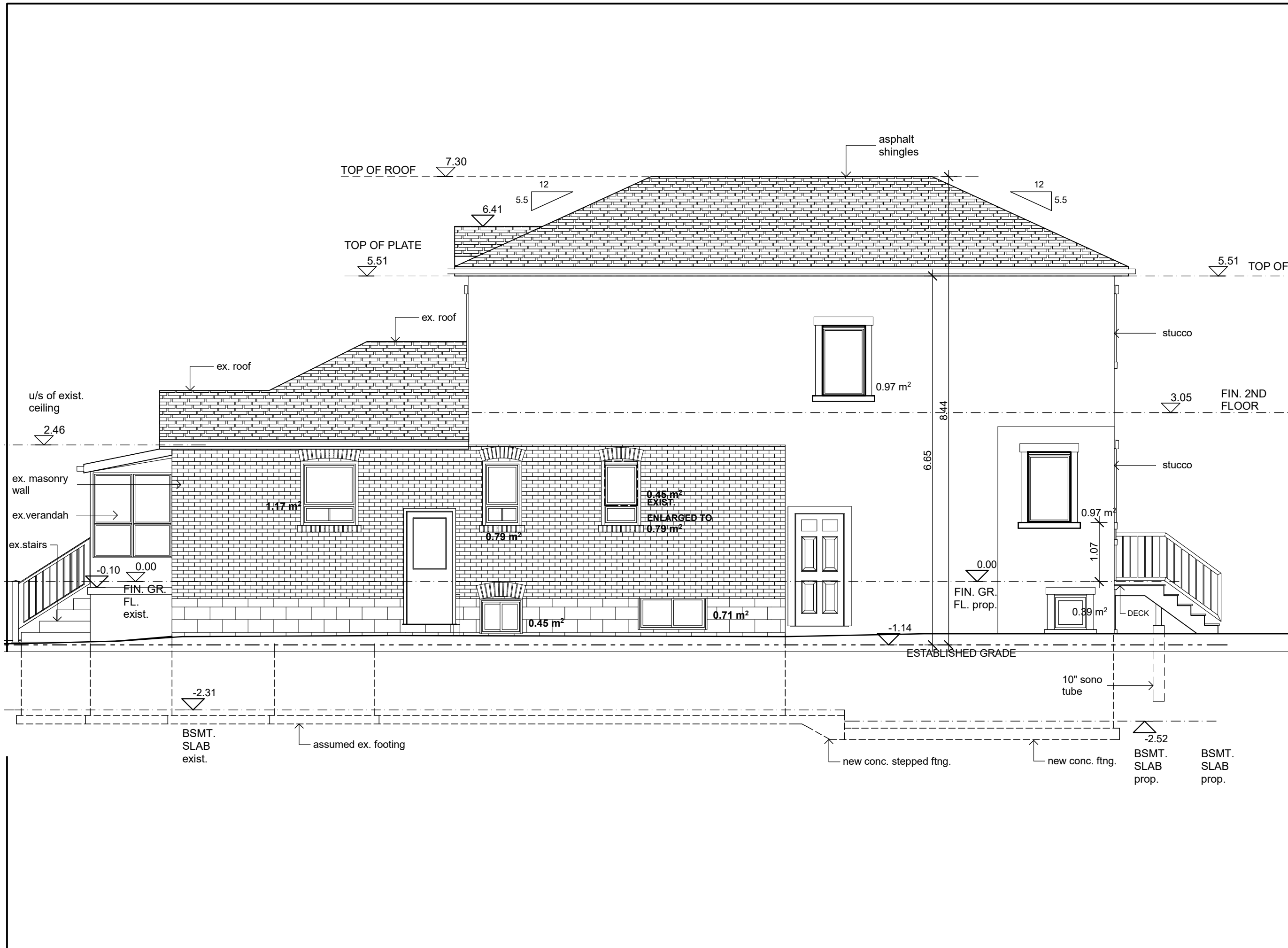
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CONTRACT:

SHEET 9 OF 12



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No.	REVISIONS	DATE
4.		
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2.	revised 2nd floor (front ext.)	06/30/2017
1.	length of house decreased	06/30/2017

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PROJECT:
PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
SIDE ELEVATION - E

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

DRAWN BY: T. PEJOVIC

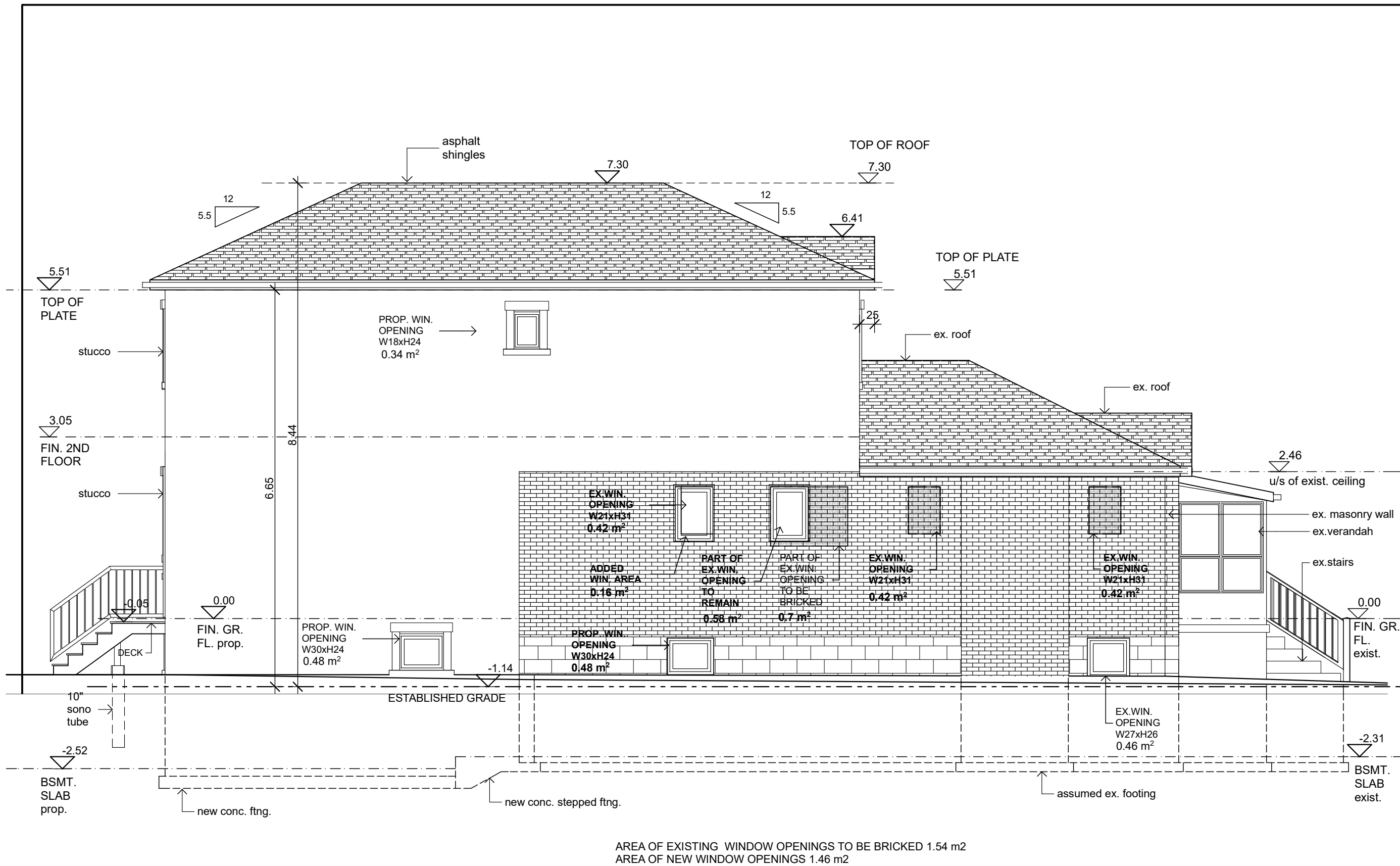
APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 10 OF 12



AREA OF EXISTING WINDOW OPENINGS TO BE BRICKED 1.54 m²
 AREA OF NEW WINDOW OPENINGS 1.46 m²

NOTE:
 NOT ISSUED FOR CONSTRUCTION.
 DO NOT SCALE DRAWINGS.

No.	REVISIONS	DATE
4.		
3.	revised roof	06/30/2017
2.	revised 2nd floor (front ext.)	06/30/2017
1.	length of house decreased	06/30/2017

FOR APPROVAL:
 CLIENT:
 DATE:

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PROJECT:
PRIVATE RESIDENCE
 at 374 O'Connor Dr.
 Toronto, On

CLIENT:
 Mr. Kenan Gjemailji &
 Mrs. Angela Gjemailji

TITLE:
SIDE ELEVATION - W

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

DRAWN BY: T. PEJOVIC

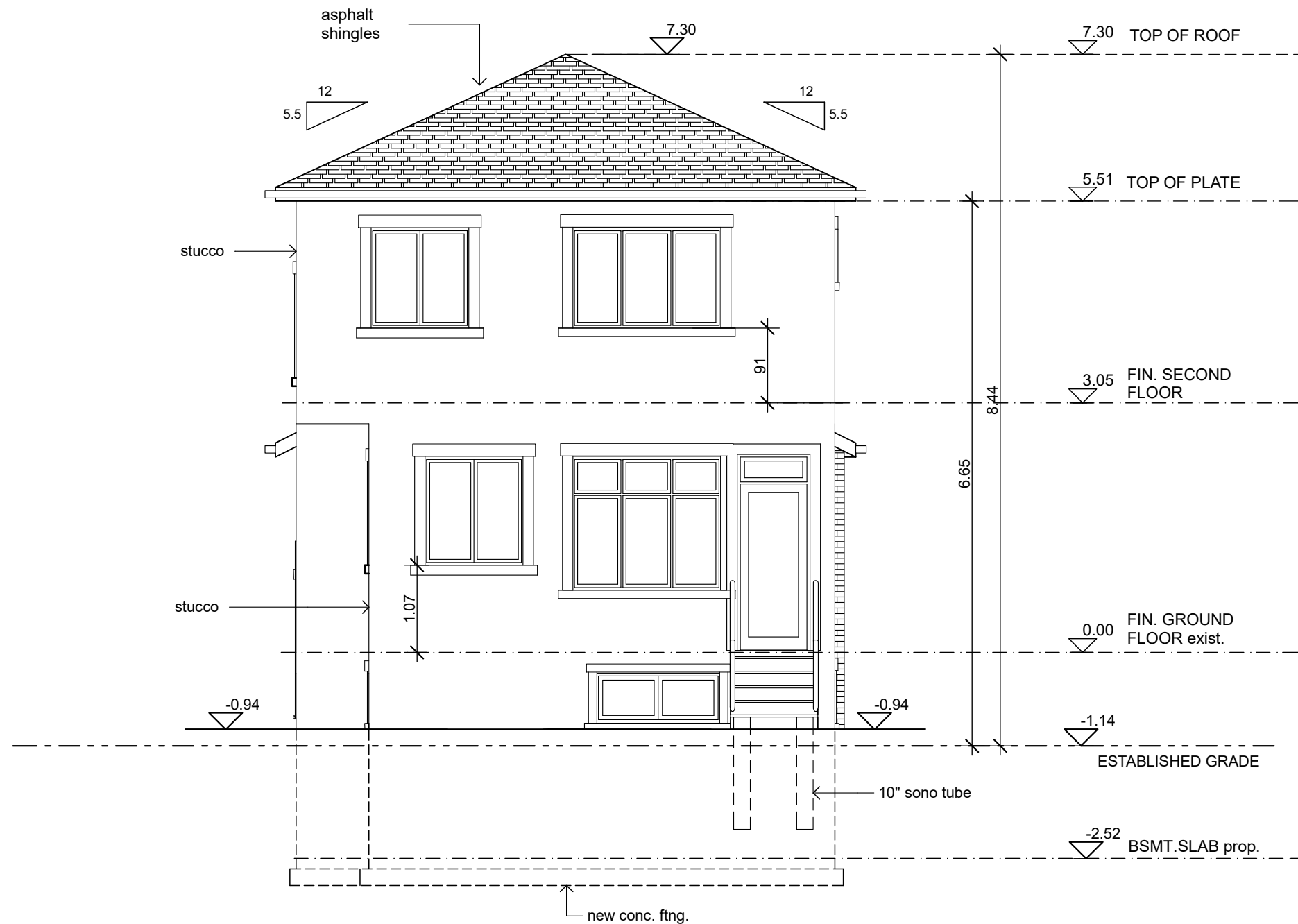
APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 11 OF 12



NOTE:
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DO NOT SCALE DRAWINGS.

4.		
3.		
2.	revised roof	06/30/2017
1.	length of house decreased	06/30/2017
No.	REVISIONS	DATE

FOR APPROVAL:
CLIENT:
DATE:

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PROJECT:
PRIVATE RESIDENCE
at 374 O'Connor Dr.
Toronto, On

CLIENT:
Mr. Kenan Gjemailji &
Mrs. Angela Gjemailji

TITLE:
REAR ELEVATION - N

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

DRAWN BY: T. PEJOVIC

APPROVED BY:

DATE: Dec. 12/2016

FILE:

CONTRACT:

SHEET 12 OF 12