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### **DECISION AND ORDER**

**Decision Issue Date** Monday, October 16, 2017

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

Appellant(s): TOM KATIS (CRESTLAND DEVELOPMENTS LTD)

Applicant: TOM KATIS (Agent)

Subject(s): 45(1)

Property Address/Description: 31 PRESTEIGN AVE

Committee of Adjustment Case File Number: 17 104173 STE 31 MV

TLAB Case File Number: 17 188416 S45 31 TLAB

**Hearing date:** Tuesday, October 10, 2017

**DECISION DELIVERED BY Ian Lord** 

#### INTRODUCTION

This matter is an appeal from the refusal by the Toronto and East York District panel of the Committee of Adjustment ("Committee") of the City of Toronto ("City") of a set of variances applicable to 31 Presteign Avenue (the "subject property"). The subject property is located west of O'Connor Drive and north of St. Clair Avenue East, in the former Borough of East York. Application was made for relief from both the City Zoning Bylaw 569- 2013 (the "New Bylaw") which is under appeal and the former, in force, East York Zoning Bylaw 6752 (the "East York Bylaw"). Some nine variances were

considered by the Committee. The Applicant appealed the Committee refusal of all variances to the Toronto Local Appeal Body ("TLAB").

#### **BACKGROUND**

The purpose of the requested variances is to permit the construction of a new two-storey detached dwelling with a front covered porch, a rear ground floor deck and an integral garage. Prior to, during and after the decision of the Committee, the Applicants' Agent had discussion with abutting neighbours in an effort to resolve concerns expressed about the size, massing and height of the original proposal.

As a result of the discussions, the Applicant made several revisions to the requested relief and twice provided revised plans. Regrettably, despite the evolution in building configuration and two scheduled Committee Hearings, neither the Committee nor the Parties who had identified themselves in this appeal were able to fully resolve the concerns expressed.

At the commencement of the TLAB proceeding only the owner's representative, Mr. Tom Katis, appeared to support the appeal. While party status intention (Form 4) had been filed by John Pasalis, the neighbor immediately to the north at 33 Presteign Avenue, and by Nicholas Roussakis, the abutting neighbor to the south (through a representative, Robert Brown), none were present. Several fulsome letters of objection to the initial two proposals were contained in the Committee file. A commentary and condition request from the Acting Supervisor, Tree Protection and Plan Review, Toronto – East York District, Urban Forestry, dated June 2, 2017 is also contained in the filings, a matter to which TLAB must consider pursuant to Practice Direction 1.

I adjourned the proceeding approximately ½ hour to allow a period for attendance.

As was later ascertained through TLAB Staff, both Parties and Mr. Brown had attempted to be in contact. Mr. Roussakis, by email dated October 10, 2017 at 8:35 am, advised that "an emergency meetings this morning" prevented his attendance. His email, arriving 25 minutes before the start of the hearing also requested a deferral "for at least one week".

Mr. Robert Brown, the Representative for Nicholas Roussakis also attempted contact. By email dated October 10, 2017 arriving at 8:54 am, advised: "I am still overseas... (would it be) possible to defer one week?" This e-mail was posted 6 minutes prior to the start of the Hearing.

For his part, Mr. John Pasalis also attempted contact. By email dated October 10, 2017 arriving at 9:13 am, he reiterated that his "concerns (were the) same". This email was posted 13 minutes after the scheduled start for the Hearing.

None of these emails were available to the panel at the commencement of the Hearing, as above described. TLAB receives a multiplicity of emails at its single address. No Party or Participant should assume that an email so proximate to the beginning of a sitting can be expected to reach the Member, let alone other Parties or Participants, whether or not they had the courtesy of a copy. These did not.

In the ordinary course, in the absence of the sending Parties or the Representative, these emails could have been put, for comment, to the Appellant who was present and who was prepared to proceed. I am not, however, in the least troubled that this did not occur. In this case, the Notice of Hearing was issued some three months earlier. That Notice had specified October 10, 2017 at 9:00 am, to be the commencement of the appeal hearing on 31 Presteign Avenue. TLAB Rules are express that Motions, if any, are to be brought at least 30 days before the scheduled Hearing date.

Not only had there been no adjournment Motion brought by the sending Parties or the Representative in accordance with the Rules, no rationale or justification for a requested deferral was contained in the correspondence beyond the convenience of the Parties and the Representative essentially identifying themselves as not being present.

Parties and Participants are obliged to inform themselves of the TLAB Rules, monitor the related file postings and meet the obligations of their participation in a deliberative, purposeful and responsible way. This is an obligation incumbent on anyone who seeks to have their voice heard on a matter of substantive interest to them or their client. A meaningful opportunity and initiative to participate must not be accessed or advanced casually, cavalierly or with minimal effort or interest. To do so not only erodes the institutions for such consideration, but does act to the disadvantage and inconvenience of the Parties, Participants, TLAB and those affected by subsequent applications and schedules, themselves requesting hearing time and attention to their own matters.

While it was clearly responsible for Mssrs. Roussakis, Brown and Pasalis to attempt contact, the effort was also clearly short of the mark in the circumstances, given the appointments' lead time.

As a consequence, only Mr. Katis was present to provide advice to the panel. Mr. Katis has residential building experience, was authorized by the corporate owner to attend and speak to the Application and appeal. He described the two principals in the company, of which he is one, as having built some 500 homes, 6 or 7 of which are in the vicinity of the subject property, an area within which he had been working for 10 years. The company has a Tarion warranty/insurance membership license in good standing and Mr. Katis himself is in the process of achieving the Tarion license qualification.

I qualified Mr. Katis to give factual and building opinion evidence. No professional land use planning evidence was available. The City did not attend the

Hearing and no Staff Report was on file. The TLAB is obligated by statute to make a decision on the appeal.

#### MATTERS IN ISSUE

While the Committee had had before it a larger slate of requested variances and associated plans, the Applicant had attempted responses to ongoing community concerns by preparing a third set of further revised plans. As a result, the requested variances twice changed to a lesser number and, in all respects, to a reduced scale.

I accepted as the variances before me for consideration those that are identified in Attachment 1, forming part of this Decision and Order. Mr. Katis identified these as having been identified by a City Plans Examination. The plans, entered as Exhibit 1 to the Hearing, formed part of the Applicants mandatory disclosure as required by TLAB Rules and Form 3; they were filed on July 23, 2017 and are those as identified in Attachment 2, also forming part of this Decision and Order. This disclosure, made under Rule 11, clearly identified to the Parties and the Representative that additional revisions were proposed. It was submitted that these were directly responsive to concerns raised in the objectors earlier correspondence, Committee appearances and in interpersonal discussions which were asserted to have occurred up to the day prior to the Hearing.

The Rule mandates the early exposure of plan revisions to avoid surprise, wasted preparation, the elimination of issues and to encourage potential settlement discussions.

Regrettably, none of the objecting parties, above noted, filed or provided any substantive commentary on these revised plans, Attachment 2.

The Applicant/Appellant was advised that each variance sought needed to individually and collectively meet each of the statutory tests identified below. Further, that a failure to satisfy any of the tests means that that variance itself must fail.

This member advised that an area site visit had been conducted and that the posted material on line, both that before the Committee and that filed with TLAB, had been reviewed.

As required, Mr. Katis provided a factual review of each variance, its evolution and his reasons for its justification, individually and in aggregate.

It is to be noted that the variances now requested that are common to both zoning bylaws relate to the following performance standards (or regulations): maximum

permitted lot coverage; maximum permitted building height; and maximum permitted floor space index.

Under the New Bylaw, additional variances are requested to the maximum permitted heights of the front exterior main wall, all side exterior main walls and, as necessary, the rear exterior main wall.

In the case of all six of these discrete regulations, wherever found, the revised plans in Attachment 2 and the associated requests in Attachment 1 constitute reductions from those which were before the Committee. As such, I determined no additional Notice was required pursuant to s. 45 (18.1.1) of the Planning Act.

The evidence before me therefore addressed the variances identified in Attachment 1, all as derived from the plans identified in Attachment 2.

#### JURISDICTION

#### Provincial Policy – S. 3

A decision of the 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').

#### Minor Variance - S. 45(1)

In considering the applications for variances form the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

#### **EVIDENCE**

Mr. Katis provided a detailed factual review of the evolution of the proposed dwelling. He described how its initial rendering led to a faction of neighbourhood showing deep concern as to scale and compatibility. The first Committee hearing, he stated, was requested to be deferred. As a result, a revised and scaled down proposal reduced the Application to nine variances; however, the second hearing, held June 7,

2017, as above recited did not result in a supportive decision. From that, he described the further set of Application revisions to the six variance types now on appeal, all as described below and in Attachment 1:

a). Maximum lot coverage: in both bylaws, the request is to go from 35% to 39.4%. He described the reduction from that before the Committee as being the result of complying with the permissible building depth, as requested by the neighbour to the south.

On this variance, Mr. Katis filed, as Ex. 2a, a summary of Committee decisions, generally within the past five years, showing an area history both on Presteign Avenue and nearby streets related to maximum lot coverage increases. Filed as Ex. 2b were the Committee decisions themselves. No record was provided as to whether any of these Committee approved decisions were appealed with any differing result. The municipal addresses and coverage permissions granted (in brackets) were said to be representative of new builds now forming part of the character of the area:

Presteign Avenue: # 60 (35.7%); # 41 (38%); # 25 (37%); # 66 (41%); # 23 (36.32%).

Denvale Road: #15 (41%); #34 (40%); #40 (40%).

Ashall Boulevard: #27 (40%).

Mr. Katis described the lots associated with these variances were similar in size and pattern, certainly on Presteign Avenue, to the subject property. A Location Map filed with the Committee appears to confirm the similarity of the lotting pattern.

b). Maximum building height: in both bylaws, the request is to go from 8.5 m to 8.7 m. He described the reduction from that before the Committee as being premised upon contemporary home standards involving higher main floor and second floor ceiling heights. Again, the reduction was in response to design concerns expressed by the neighbours, particularly Mr. Pasalis. As a builder, Mr. Katis advised that the difference between the permitted and now proposed height, in the order of 11-14 inches, could not be identified by the eye in the absence of a true elevation (level) sightline, from about 50 m distant.

For this variance, again relying on Ex. 2a and 2b, Mr. Katis provided the following advice on Committee permissions by municipal address and height variances granted (in brackets), for new builds in the vicinity of the subject property and now forming part of the character of the area:

Presteign Avenue: # 12 (9.1m); # 66 (9.2m).

Denvale: #34 (8.73m).

Woodbine Heights: #1604 (9.25 m).

Ashall: # 27 (8.957 m); # 23 (9.65 m).

He noted that all are higher than that proposed.

c). Maximum main front wall, side and rear wall height elevations relate to the New Bylaw. Mr. Katis described that on the front, the request is caused by the provision of a peaked roof line, being a design feature very common to new builds in the area and on the street. The request is to go from a 7m 'as-of-right' permission to 8.14 m as shown on the plans, Ex. 1 and in Attachment 2. In effect, this is a maximum peak height, to the top of the gable, reflecting the area examples of common roof treatment design. He indicated that the request for side and rear wall height increases, measured from grade, is to a lesser height: to go from a 7 m as of right permission, to 7.5 m. This is a '9 inch' difference from that permitted that he felt would not be noticeable.

Roof gables of the nature proposed in the plans were observed to be customary in the vicinity of the subject lands, both adjacent, across the street and in the vicinity.

d). Floor space index (fsi): in both bylaws, the request is to go from an as of right permission of .6 times the lot area, to .718. Mr. Katis described this as a further reduction from that before the Committee resulting from a reduced building depth. The reduction had not only eliminated a building depth variance but also reduced the fsi and coverage calculations.

For this variance relying on Ex. 2a and 2b, Mr. Katis provided the following advice on Committee permissions by municipal address and fsi variances granted (in brackets), for new builds in the vicinity of the subject lands and now forming part of the character of the area:

Presteign Avenue: # 60 (.607); # 41 (.69); #12 (.7); # 25 (.67); # 66 (.68); #23 (.643); # 36 (.64).

Denvale: # 47 (.64); # 17 (.62); # 19 (.71); # 40 (.69).

Woodbine Heights: # 1604 (.70).

Ashall: # 27 (.75).

Mr. Katis described his impression of area character and his responses to concerns expressed by causing the Application to be revised to accommodate these concerns. He observed that the variances now requested reflect a building permission that would maintain area character and fit well within the neighbourhood. He was of the

view that the new housing would be an excellent, desirable addition to accommodation in an established, presentable neighbourhood. He was of the view that its size and functionality was not only in keeping with that high quality standard present, but also was responsive to contemporary homebuyer demands.

He noted that there were no front, side or rear yard variances requested, nor any addition to permitted building length. He observed, as well, that 'probably 95% of new builds in the area' contain integral garages, as proposed.

In response to a question as to the company's intention to build in accordance with the plans filed as Ex.1, Attachment 2, his response was "absolutely".

### **ANALYSIS, FINDINGS, REASONS**

In analyzing the TLAB function of having to render a decision on the appeal, the task of applying the statutory tests is both easier and more difficult with a single party present and in the absence of any professional opinion evidence from relevant disciplines. This is not to say that only persons professionally qualified in a recognized discipline can be an expert witness. Practitioners with long experience or familiarity with a subject can offer equally cogent and instructive expert testimony and, possibly, opinion evidence. Rather, it is easier to deal with requests in the sense of fewer parties and no identified or discernable issues being pressed; it is more difficult to reach an informed decision without the 'winnowing and sifting' that professional opinion evidence, even conflicting evidence, brings to shedding light on the application and determination of issues.

In this case, there are no opposing parties present, no 'expert' evidence in the sense of a qualified, independent professional planner or a Staff Report and no exploration and testing, by way of cross-examination, of the evidence presented.

Nevertheless, the evidence presented was not accepted without critical consideration.

What was present was an experienced builder with some 10 years of familiarity with the neighbourhood having constructed six or seven homes now forming part of the neighbourhood and area character.

Clearly, the neighbourhood has been active in redevelopment and renewal with impressive and substantial detached housing built form.

I am able to agree entirely with Mr. Katis that the revisions made to the plans yield a built form that will maintain the character of the area, respect and reinforce the evolving built form and will present an excellent addition to the area that is both desirable and fitting.

The evidence provided in Ex. 2a and 2b demonstrates that the amended relief now requested fits well within the range of Committee decisions of recent vintage. Further, that none of the requested variances are of a scale or nature that grab attention or are measures that make them uncharacteristic or undesirable, in the circumstances extant. There is no evidence or claim to sustain or even suggest undesirable adverse impact.

I am content that the construction of a new house internal to an established neighbourhood in the nature of that proposed by the plans in Attachment 2 is consistent with the objectives of provincial policy as expressed in the Provincial Policy Statements and is in no way out of conformity with the Growth Plan for the Greater Golden Horseshoe.

I note as well the other reference documents posted both before the Committee and on the TLAB appeal file. In all respects, I find the Application as revised to be within the intent and purpose of the City Official Plan and both the New and East York Bylaws.

I have examined carefully the record of objections articulated by neighbourhood submissions to the Committee. The responsive plan revisions appear directed at these generalized concerns. As important, the plans replicate multiple examples of existing new housing attributes in design, front and rear yard setbacks and greenspace and integral parking.

For the information and reasons expressed by Mr. Katis and recited above, I agree that the proposal in Attachment 2 is desirable for the appropriate development of the subject lands. I find on a similar basis that the variances themselves as identified in Attachment 1, both individually and collectively, are minor.

#### **DECISION AND ORDER**

The appeal by the Applicant /Appellant is allowed and the variances identified in Attachment 1 are approved, subject to the proviso that in the case of Bylaw 569-2013 that it comes into full force and effect, and subject also, in the case of both zoning bylaws, to the following conditions:

- 1. Construction shall be in substantially in accordance with the Ex. 1 plans dated 'Revised June 22, 2017', drawings A1 10, and reproduced in Attachment 2;
- 2. Submission of complete application for permit to injure or remove City owned trees under Municipal Chapter 813, Article II, Street Trees.
- 3. Where there are no existing street trees, the owner shall submit a payment in lieu of planting one street tree on the City road allowance abutting the subject lands or elsewhere in the community if there is no space. The current cost of planting a tree is\$583.00, subject to change.

Ian Lord

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Chair, Toronto Local Appeal Body

Signed by: Ian Lord

#### ATTACHMENT 1

#### MINOR VARIANCE/PERMISSION

(Section 45 of the Planning Act)

#31 Presteign Avenue (TLAB 17 188416 S45 31)

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

New Zoning Bylaw (Zoning Bylaw 569-2013)

- 1. Chapter 10.20.30.40.(1), By-law 569-2013
  The maximum permitted lot coverage is 35% of the lot area (135.9 m).
  The permitted lot coverage will be equal to 39.4% of the lot area.
- 2. Chapter 10.20.40.10.(1), By-law 569-2013
  The maximum permitted building height is 8.5 m. The permitted dwelling will have a height of 8.78 m.
- 3. Chapter 10.20.40.10.(2)(A)(i), By-law 569-2013
  The maximum permitted height of all front exterior main walls is 7 m. The permitted height of the front exterior main walls will be 8.14 m.
- 4. Chapter 10.20.40.10.(2)(A)(ii), By-law 569-2013

  The maximum permitted height of all rear exterior main walls is 7 m. The permitted height of the rear exterior main walls will be 7.25 m.
- Chapter 10.20.40.10.(2)B)(ii), By-law 569-2013
   The maximum permitted height of all side exterior main walls that do not face a street is 7 m. The permitted height of the side exterior main walls will be 7.25 m.
- 6. Chapter 10.20.40.40.(I)(A),By-law 569-2013
  The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (232.97 m2 .)
  The permitted dwelling will have a floor space index equal to 0.718 times the area of the lot.

### East York Bylaw (Zoning Bylaw 6752)

### 1. Section 7.3.3, By-law 6752

The maximum permitted building height is 8.5 m.

The permitted dwelling will have a height of 8.78 m.

### 2. Section 7.3.3, By-law 6752

The maximum permitted lot coverage is 35% of the lot area (135.9 m2). The permitted lot coverage will be equal to 39.4% of the lot area.

### 3. Section 7.3.3, By-law 6752

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (232.97 m2.)

The permitted dwelling will have a floor space index equal to 0.718 times the area of the lot.

# 31 PRESTEIGN AVE., TORONTO, ON

### PROPOSAL:

- -DEMOLISH EXISTING 1 STOREY SINGLE FAMILY DWELLING
- -CONSTRUCT NEW 2 STOREY SINGLE FAMILY DWELLING WITH INTEGRAL GARAGE

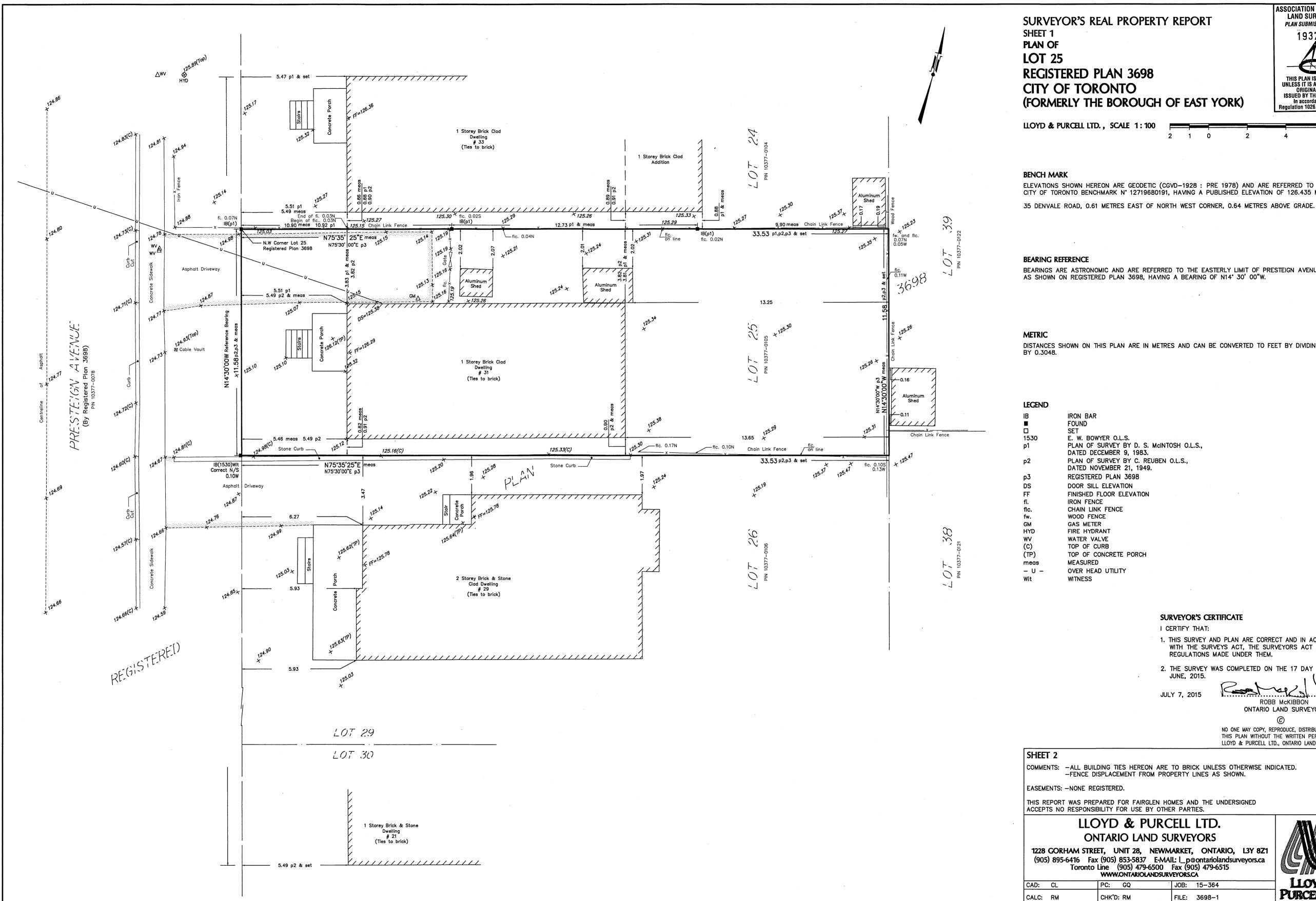
**Toronto Local Appeal Body** 

### **EXHIBIT** # 1

Case File Number: 17 188416 S45 31
Property Address: 31 Presteign Ave
Date Marked: October 10, 2017

RE-SUBMISSION (ZZC)

**JUNE 22/2017** 



SURVEYOR'S REAL PROPERTY REPORT SHEET 1 PLAN OF **LOT 25 REGISTERED PLAN 3698** CITY OF TORONTO (FORMERLY THE BOROUGH OF EAST YORK) ASSOCIATION OF ONTARIO LAND SURVEYORS PLAN SUBMISSION FORM THIS PLAN IS NOT VALID UNLESS IT IS AN EMBOSSED ORIGINAL COPY ISSUED BY THE SURVEYOR In accordance with Regulation 1026, Section 29(3)

LLOYD & PURCELL LTD., SCALE 1:100

### BENCH MARK

ELEVATIONS SHOWN HEREON ARE GEODETIC (CGVD-1928: PRE 1978) AND ARE REFERRED TO THE CITY OF TORONTO BENCHMARK N° 12719680191, HAVING A PUBLISHED ELEVATION OF 126.435 METRES.

### **BEARING REFERENCE**

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE EASTERLY LIMIT OF PRESTEIGN AVENUE AS SHOWN ON REGISTERED PLAN 3698, HAVING A BEARING OF N14° 30' 00"W.

DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING

IRON BAR FOUND E. W. BOWYER O.L.S.
PLAN OF SURVEY BY D. S. McINTOSH O.L.S., DATED DECEMBER 9, 1983. PLAN OF SURVEY BY C. REUBEN O.L.S., DATED NOVEMBER 21, 1949. **REGISTERED PLAN 3698** DOOR SILL ELEVATION FINISHED FLOOR ELEVATION IRON FENCE CHAIN LINK FENCE WOOD FENCE GAS METER FIRE HYDRANT WATER VALVE TOP OF CURB

TOP OF CONCRETE PORCH

MEASURED

WITNESS

OVER HEAD UTILITY

### SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.

2. THE SURVEY WAS COMPLETED ON THE 17 DAY OF JUNE, 2015.

JULY 7, 2015

ROBB McKIBBON ONTARIO LAND SURVEYOR

NO ONE MAY COPY, REPRODUCE, DISTRIBUTE OR ALTER THIS PLAN WITHOUT THE WRITTEN PERMISSION OF LLOYD & PURCELL LTD., ONTARIO LAND SURVEYORS.

COMMENTS: -ALL BUILDING TIES HEREON ARE TO BRICK UNLESS OTHERWISE INDICATED. -FENCE DISPLACEMENT FROM PROPERTY LINES AS SHOWN.

EASEMENTS: -NONE REGISTERED.

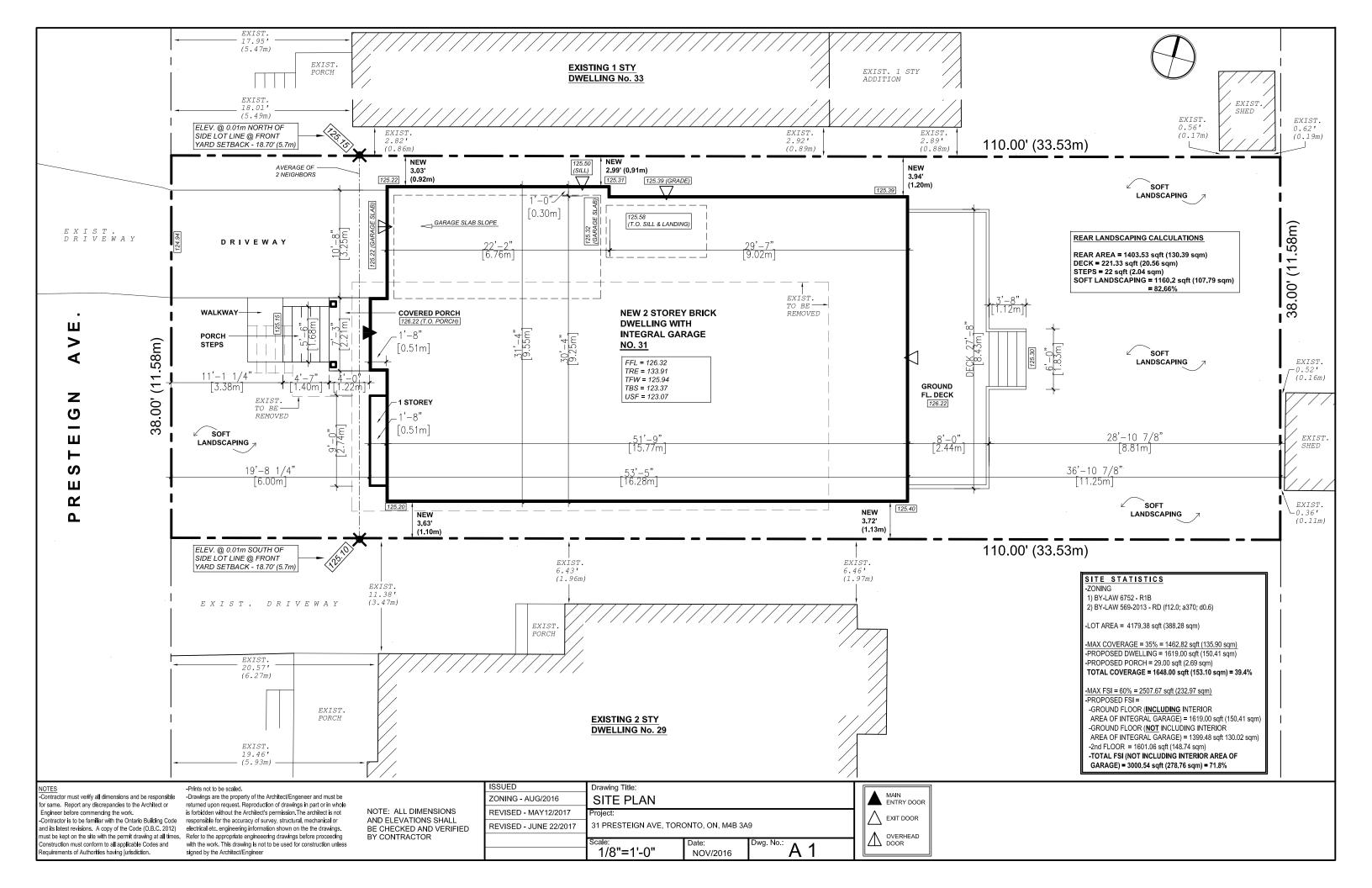
THIS REPORT WAS PREPARED FOR FAIRGLEN HOMES AND THE UNDERSIGNED ACCEPTS NO RESPONSIBILITY FOR USE BY OTHER PARTIES.

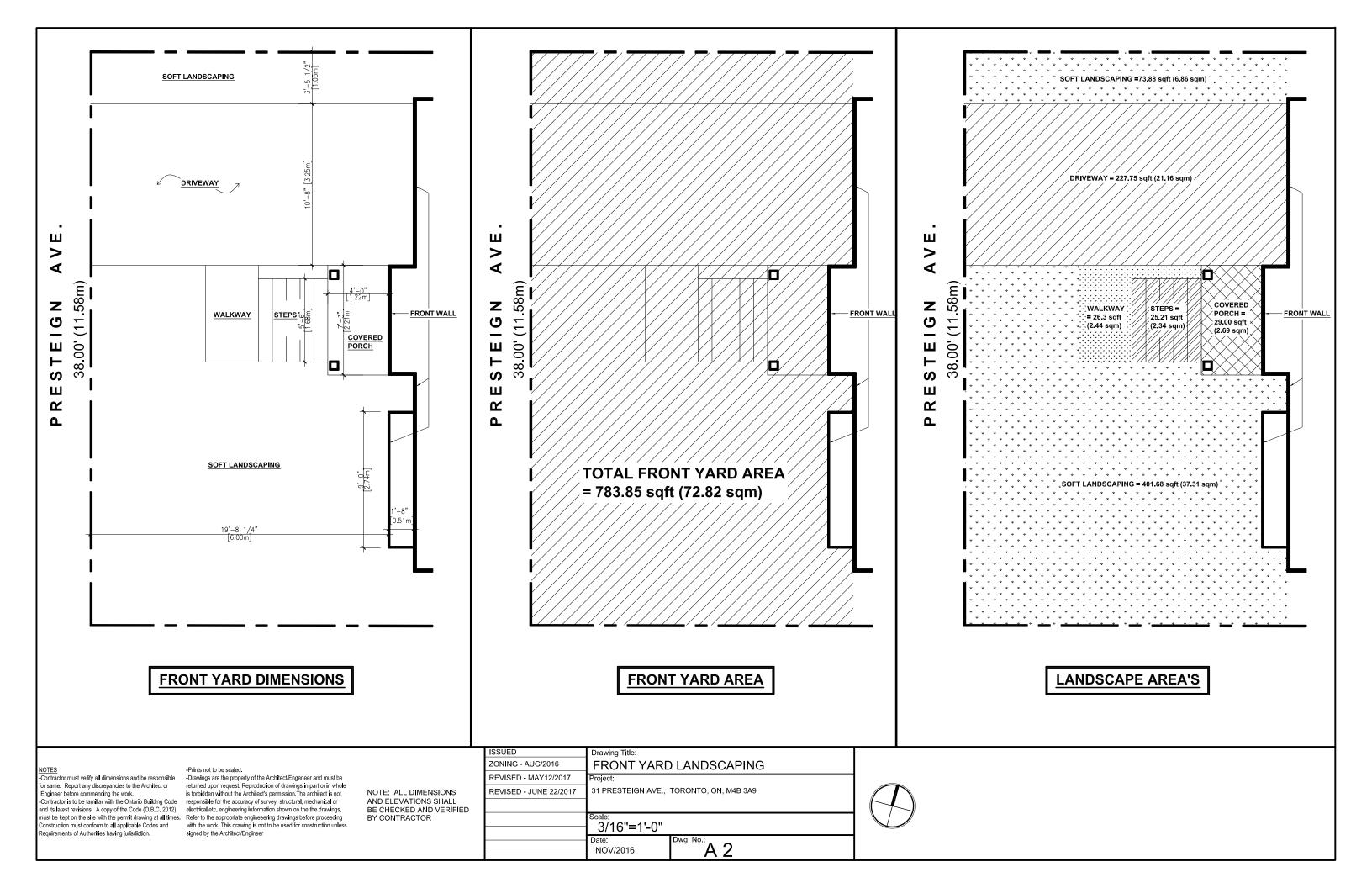
### LLOYD & PURCELL LTD. ONTARIO LAND SURVEYORS

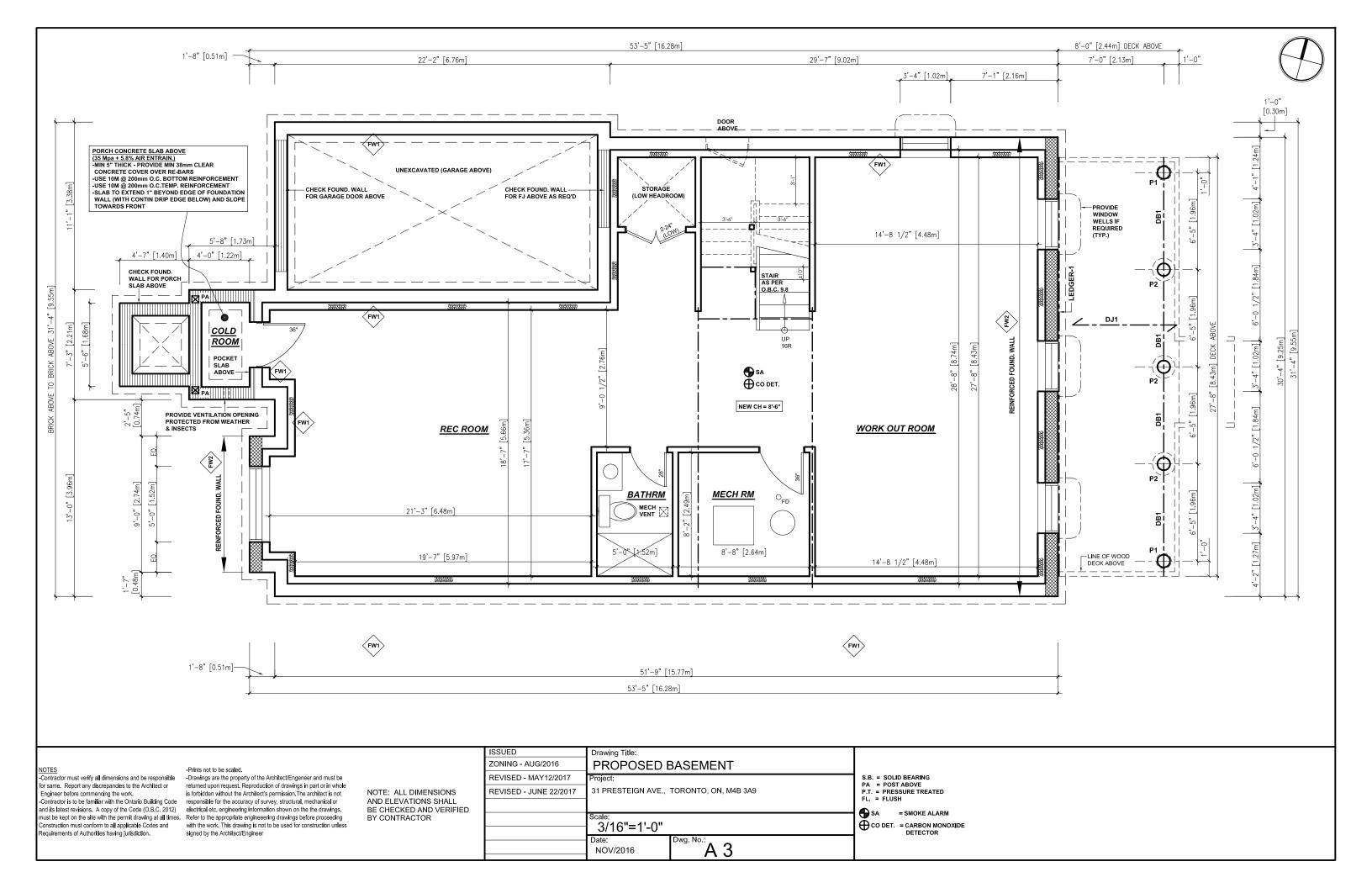
1228 GORHAM STREET, UNIT 28, NEWMARKET, ONTARIO, L3Y 8Z1 (905) 895-6416 Fax (905) 853-5837 E-MAIL: I\_p@ontariolandsurveyors.ca Toronto Line (905) 479-6500 Fax (905) 479-6515

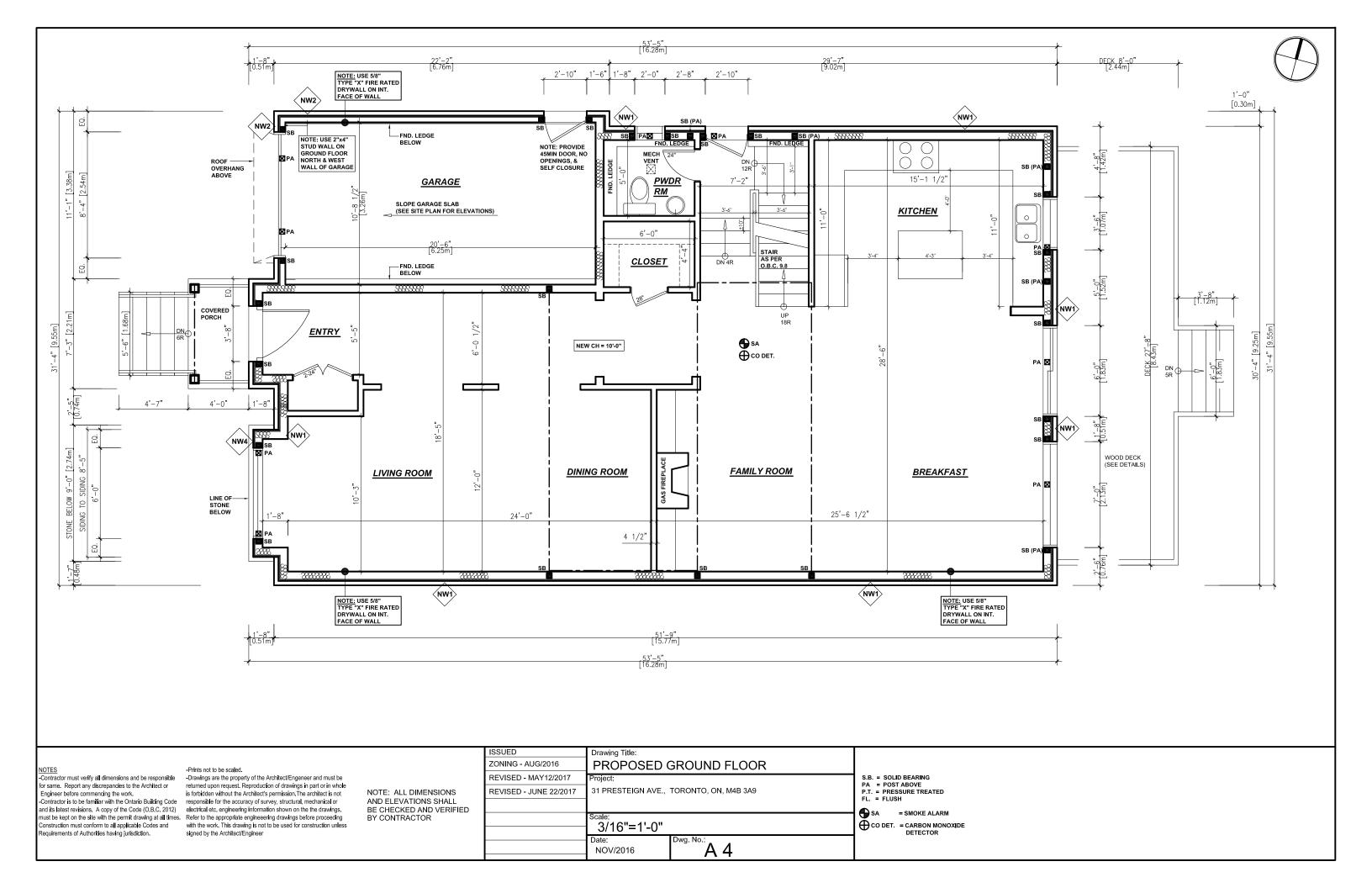
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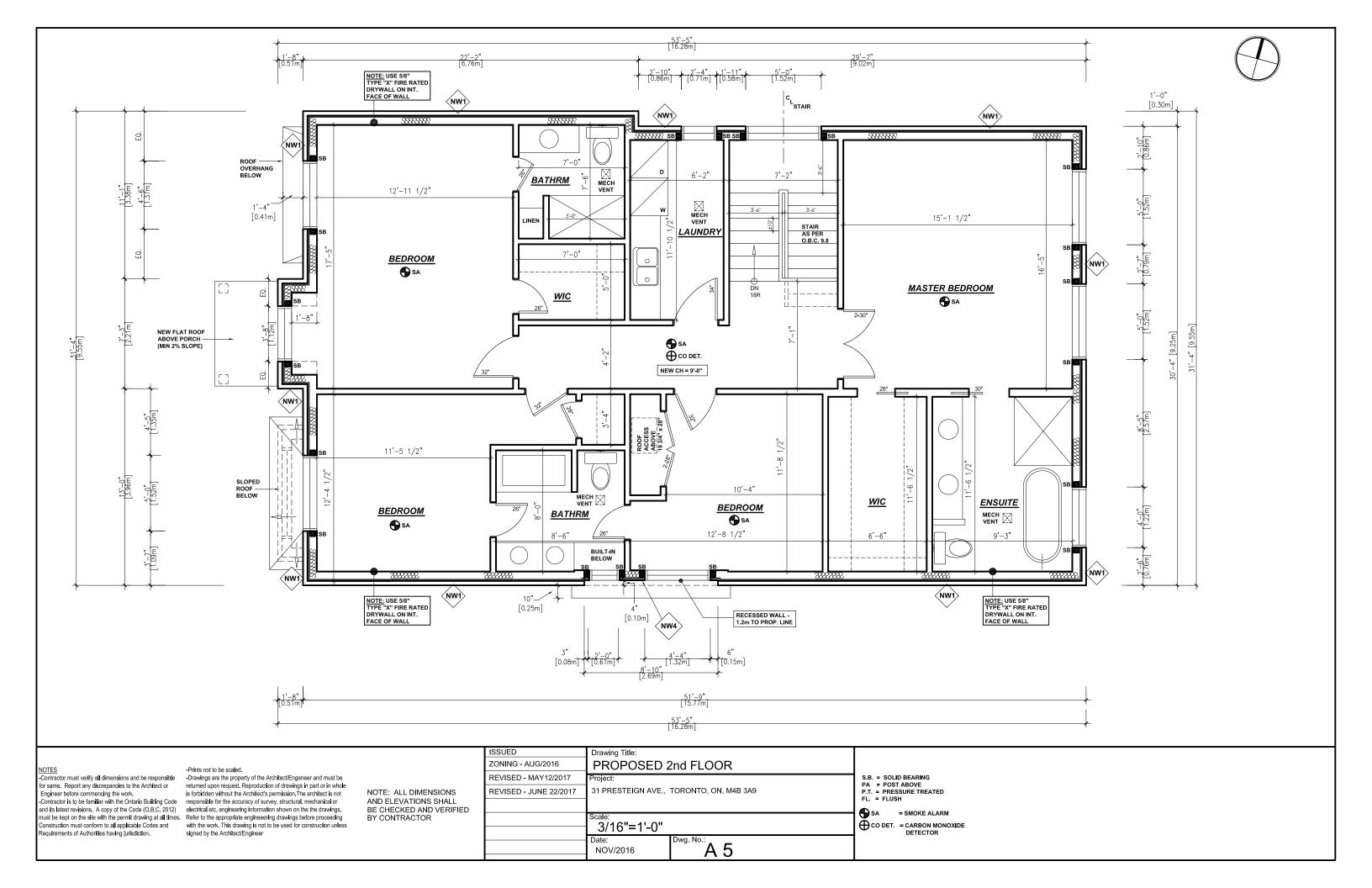


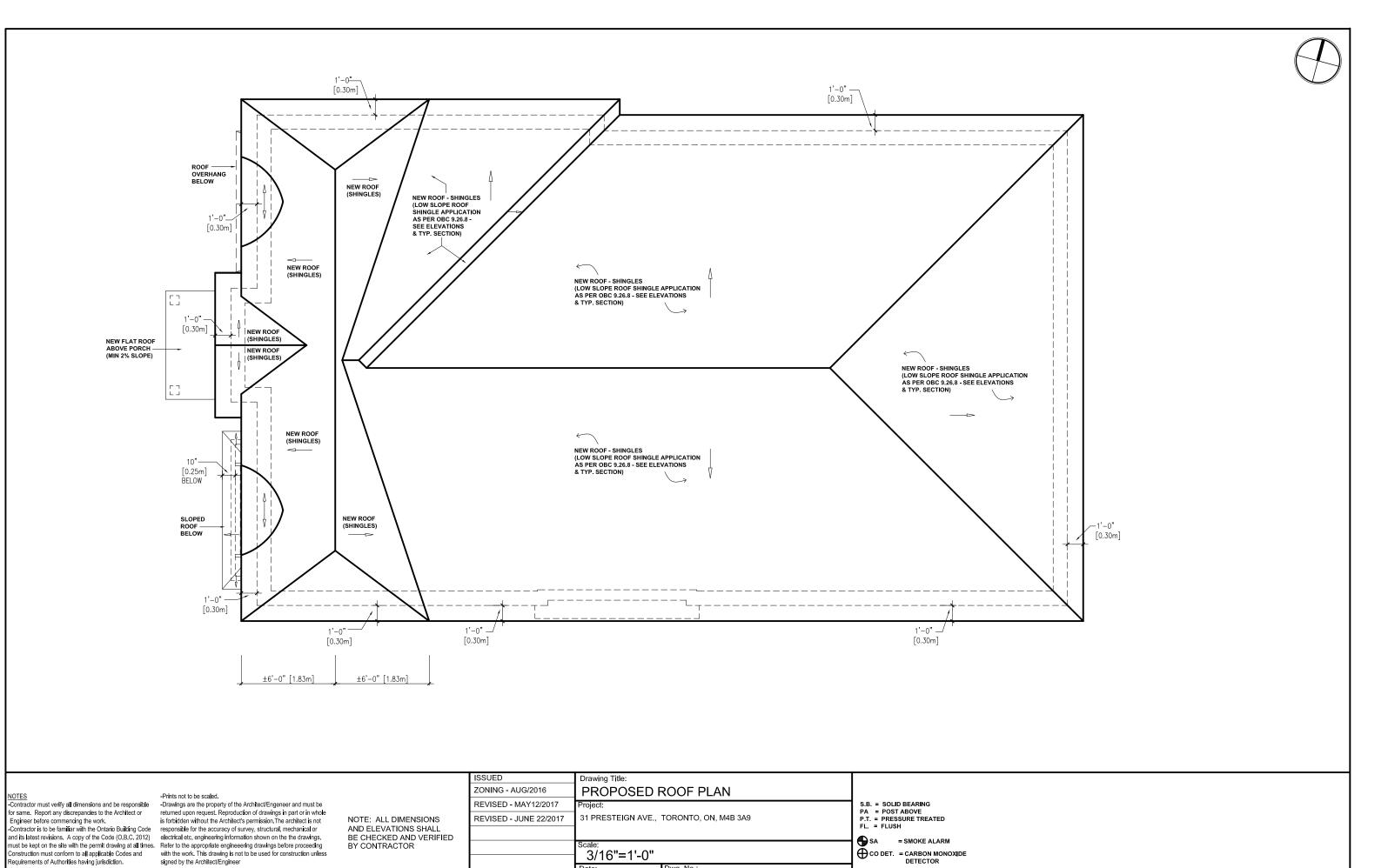






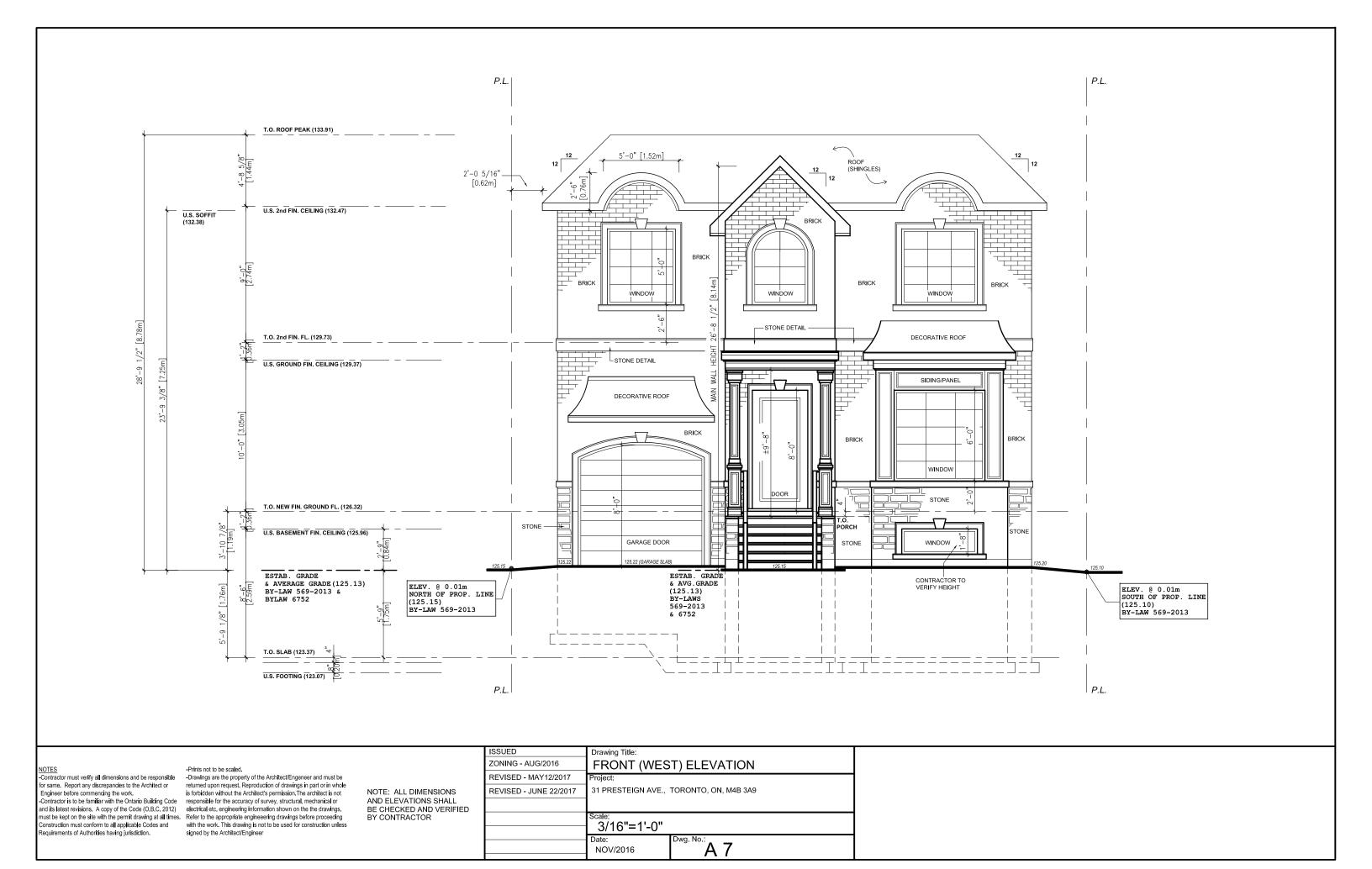


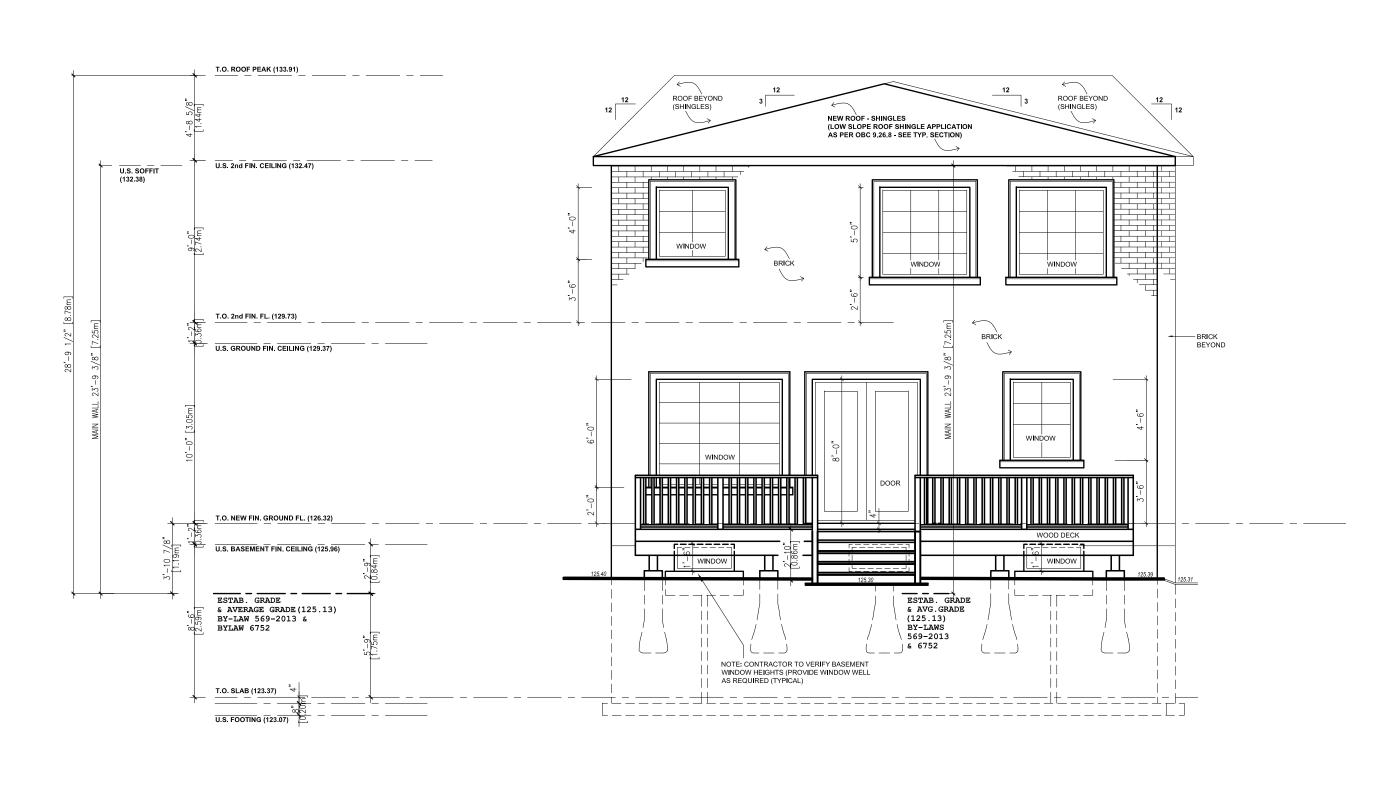




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NOV/2016





for same. Report any discrepancies to the Architect or Engineer before commencing the work.

-Prints not to be scaled.

Contractor must verify all dimensions and be responsible for same. Report any discrepancies to the Architect or Engineer before commencing the work.

- Training are the property of the Architect/Engeneer and must be returned upon request. Reproduction of drawings in part or in whole is forbidden without the Architect's permission. The architect is not Engineer before commending the work.

-Contractor is to be familiar with the Ontario Building Code and its latest revisions. A copy of the Code (O.B.C. 2012) must be kept on the site with the permit drawing at all times.

-Construction must conform to all applicable Codes and conformation must conformation must conformation conformation must conform to all applicable codes and conformation conformation conformation conformation conformation conformation conformation conformat

NOTE: ALL DIMENSIONS AND ELEVATIONS SHALL BE CHECKED AND VERIFIED BY CONTRACTOR

ISSUED	Drawing Title:		
ZONING - AUG/2016	REAR (EAST) ELEVATION		
REVISED - MAY12/2017	Project:		
REVISED - JUNE 22/2017	31 PRESTEIGN AVE., TORONTO, ON, M4B 3A9		
	Scale: 3/16"=1'-0"		
	Date: Dwg. NOV/2016	A 8	

