

## DECISION AND ORDER

**Decision Issue Date: 07/07/2017**

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

Appellant(s): LAURA AYNSLEY DONOHUE  
Applicant(s): BATTAGLIA ARCHITECT INC  
Subject(s): 45(1)  
Property Address/Description: 131 PARK HOME AVE  
Committee of Adjustment File  
Number(s): 17 117480 NNY 23 MV  
(A0138/17NY)

**TLAB Case File Number(s): 17 157330 S45 23 TLAB**

**Motion Date: June 29, 2017**

**DECISION DELIVERED BY: G. BURTON**

### INTRODUCTION

This was a motion brought by the applicant, Battaglia Architect Inc., represented by Mr. Kaveh Taher Khani, to recognize a settlement reached with the appellant, Ms. Laura Donohue. A hearing date of August 28, 2017, had been assigned to hear the appeal in full. Generally, TLAB's policy is to retain the hearing date unless events, properly advanced, demonstrate that an earlier disposition is appropriate. However, the parties to this appeal agreed much before that date that they had achieved a settlement of the two variances that were in contention in the appeal. Thus the TLAB determined, on the consent of the all parties present, to convert the Motion hearing into a settlement hearing, as permitted under Rule 19 of the TLAB's Rules of Practice and Procedure. Since there was evidence that all objectors who made comments to the Committee of Adjustment were aware of this motion hearing and the parties present were satisfied with the revised variances, the TLAB concluded that no further notice of a settlement hearing was required under Rule 19.3.

This Rule states:

19.3 The Local Appeal Body shall give notice to all Parties and Participants of the date, time and location of the settlement Hearing and shall thereafter conduct a settlement Hearing on the terms of the proposed settlement.

Further, rule 19.4 provides:

19.4 Where no Person at the Hearing opposes the proposed settlement or where the Local Appeal Body rejects an objection the Local Appeal Body may issue an order giving effect to the settlement and any necessary amendments.

## **BACKGROUND**

The applicant had applied to the Committee of Adjustment (CoA) for a total of 9 variances, 6 under the former City of North York By-law No. 7625, and 3 under the new City of Toronto By-law No. 569-2013. By-law 569-2013 is still under appeal to the Ontario Municipal Board, and is not yet completely in force. Thus the applicant had to seek amendments to both the existing North York by-law as well as the new City-wide by-law. These are the variances as approved by the Committee:

### **1. Chapter 10.5.40.70(1)(B), By-law No. 569-2013**

The minimum required front yard setback is 6.13m.

The proposed front yard setback is 6.00m.

### **2. Chapter 10.20.30.40.(1), By-law No. 569-2013**

The maximum permitted lot coverage is 30.00% of the lot area.

The proposed lot coverage is 31.70% of the lot area.

### **3. Chapter 10.5.50.10.(1)(D), By-law No. 569-2013**

The minimum required front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 73.24%.

### **4. Section 14-A(6), By-law No. 7625**

The maximum permitted lot coverage is 30.00% of the lot area.

The proposed lot coverage is 31.70% of the lot area.

### **5. Section 14-A(8), By-law No. 7625**

The maximum permitted building height is 8.80m.

The proposed building height is 9.10m.

### **6. Section 14-A(9), By-law No. 7625**

The maximum permitted building length is 15.30m.

The proposed building length is 17.00m.

**7. Section 6(30)a, By-law No. 7625**

The maximum permitted first floor height is 1.50m.

The proposed first floor height is 1.71m.

**8. Section 7.4B, By-law No. 7625**

The minimum permitted front yard soft landscaping is 75.00%.

The proposed front yard soft landscaping is 73.24%.

**9. Section 6(24), By-law No. 7625**

Decks greater than 1.00m in height may not project more than 2.10m from the wall and must be less than 0.50 times the width of the dwelling.

The proposed deck is 2.58m in height, projects 3.05m from the wall and is 0.65 times the width of the building.

The CoA approved these variances by its decision dated April 20, 2017. Ms. Donohue appealed to the TLAB on May 5, 2017. Mr. Tahir Khani and Ms. Donohue attended the hearing of the motion, as did a neighbour, Ms. Anne Galilee. Ms. Galilee did not take part in the hearing.

**JURISDICTION and MATTERS IN ISSUE**

Although the parties had resolved to their own satisfaction the specifics of the revised variances requested, the TLAB must hear evidence respecting all of the variances sought, including any modifications, so as to satisfy itself that they meet the four tests in subsection 45(1) of the *Planning Act*. The appeal is a hearing *de novo* and therefore a new consideration of the merits or otherwise of the original application.

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.

This panel member stated the following in introductory remarks in the settlement hearing:

"...If we decide that we can proceed to resolve this appeal today, we will still need to hear the same brief evidence and arguments from Mr. Tahir Khani that he presented to the Committee, but referring to the revised variances. The reason is that we must be convinced that the variances meet the tests in section 45 of the Planning Act, just as the Committee of Adjustment did.....It will be a rehearing of the matter at the Committee, but including the altered variances."

## EVIDENCE

In his opening description, the applicant requested reduced variances to the building length and deck width, from that originally proposed. Having examined these, this panel concluded they were indeed reductions, arrived at in the course of settlement discussions. They did not warrant further notice pursuant to s. 45 (18) a.ii of the *Planning Act*, and I so find.

In his evidence, the applicant gave a brief outline of all of the variances requested, pointing out that they were indeed minor and met the intent of both the official plan and the two zoning by-laws. There was some discussion about Variances 2 and 4 concerning the lot coverage required by both the new City by-law, Chapter 10.20.30.40.(1), By-law No. 569-2013, and the North York by-law, section 14-A(6). A 30.00 % lot coverage maximum is the limitation in both, while the CoA had allowed an increase to 31.70 %. The parties acknowledged that this figure of 31.70 % is slightly larger than the attached and revised plans indicate, meaning that the subject variance as originally granted would be more generous than the one now required by the applicant. It was pointed out that, should TLAB approve the variances, it would impose a condition that the project be constructed in accordance with the revised plans submitted, and attached to the decision. Thus the Building Department would ensure that the lesser coverage figure indicated therein would apply to the new structure. No contrary submissions were received.

The other revisions to the approved variances that are sought by the parties to this appeal are as follows (in bold):

6. Section 14-A(9), By-law No. 7625

The maximum permitted building length is 15.3m.

(approved by the CoA): The proposed building length is 17.0m

**The revised proposed building length is 15.77m, except for the bay window (bath tub nook) in the master bedroom ensuite on the second floor. The building length including this bay window is 16.32m. The dimensions for this bay window are 2.59m high by 0.56m deep. In addition, the left and right side windows in this bay window (bathtub nook) as shown on the attached and revised second floor plans are removed.**

9. Section 6(24), By-law No. 7625

Decks greater than 1.00m in height may not project more than 2.1m from the wall and must be less than 0.50 times the width of the dwelling.

(Approved by the CoA): The proposed deck is 2.58 m in height, projects 3.05m from the wall and is 0.65 times the width of the building.

**The revised proposed deck is 2.58m in height, projects 2.5m from the wall, and is 0.5 times the width of the building.**

This deck is at the rear of the main floor.

## **ANALYSIS, FINDINGS, REASONS**

TLAB is to consider conformity with provincial plans and consistency with provincial policy. There was nothing in the TLAB file, including the CoA documentation, or the evidence, that raised any issue on these matters.

As well, TLAB is satisfied, from the applicant's very brief outline of the variances requested, that they were indeed minor and met the intent of both the official plan and the two zoning by-laws. I have considered and agree with the conclusion of the CoA to approve Variances 1 through 5, and 7 through 9 as meeting all four of the above stated statutory tests. They appear to be minor and desirable variations in the by-law requirements, thus maintaining the general streetscape in the subject area. Ms. Donohue did point out a concern that the lot coverage of almost 32 % would set a precedent for the area. The TLAB notes this objection, but makes no finding on this issue. In this case a practical reduction is suggested, and a condition imposed will require construction in accordance with the revised plans filed. Despite her concern on this point, she did agree with the settlement of the specific issues in her appeal.

Respecting the amendments to Variances 6 and 9 as proposed above, the TLAB concludes that they are significant reductions in the variances as approved by the Committee, and thus better reflect the requirements of the zoning by-laws. They more closely meet the test of "minor" in section 45(1) of the Act.

## **DECISION AND ORDER**

The appeal is allowed in part and TLAB-authorizes variances 4, 5, 7 and 8 as listed above, together with revised variances 6 and 9 as described herein, subject to the following condition(s):

- 1) The proposal shall be developed in accordance with the revised Plans (undated) submitted by the applicant on May 18, 2017, and attached as Attachment 1 to this decision.
- 2) The applicant is to provide permanent opaque screening or fencing for the proposed rear deck; with a minimum height of 1.5 metres from the floor of the deck.
- 3) The proposed driveway shall be constructed of permeable pavers.

The variances to Zoning By-law No. 569-2013 as identified herein as variances 1, 2 and 3 are all authorized contingent upon the relevant provisions of that by-law coming into full force and effect, subject to the same three (3) conditions.

The original hearing date of August 28, 2017 is released.

If any difficulty arises in the interpretation or application of this decision and order, TLAB may be spoken to.

X 

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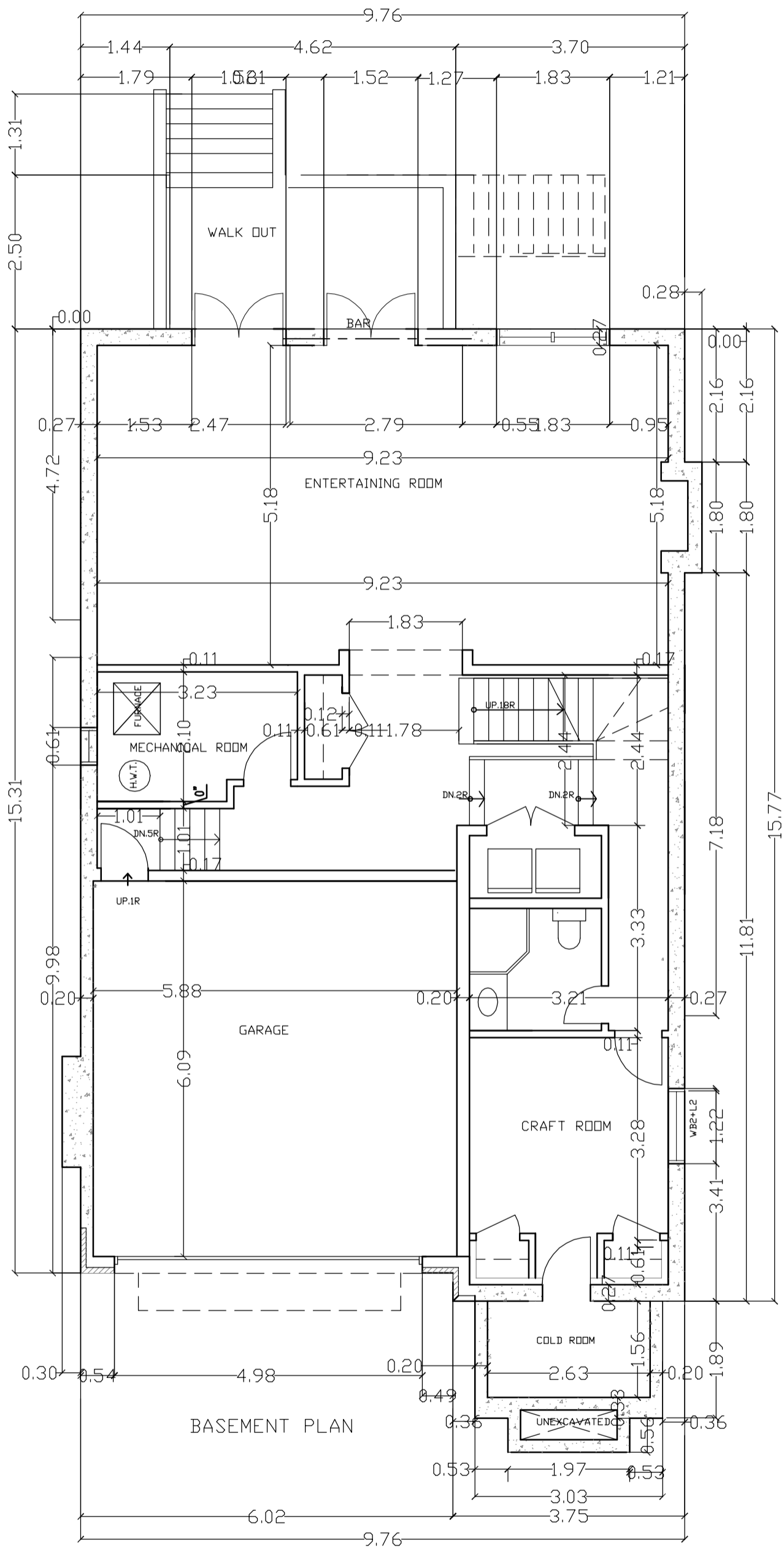
G. Burton

Chair

Signed by: Gillian Burton



15.31



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**A.R.T DESIGN**  
 NIDUSHA IZADI  
 Tel: 647-862-3885

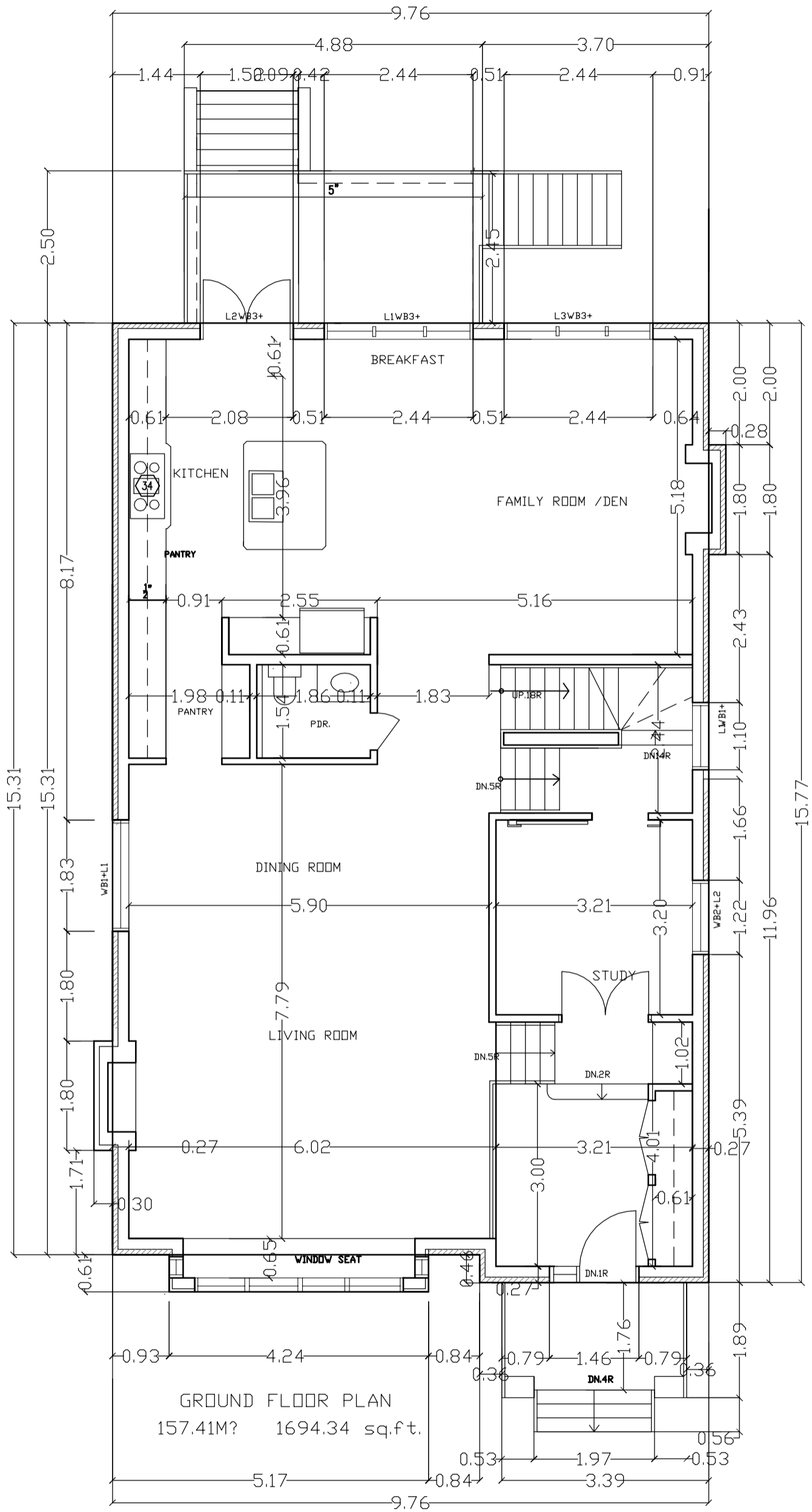
**PROPOSED RESIDENCE**  
 131 PARK HOME  
 NORTH YORK, ON.

**BASEMENT PLAN**

SCALE: 1:75  
 DRAWN BY: N.I.  
 DATE: MAY, 10, 2017  
 ISSUED:

PROJECT NO. 16131  
 DWG. No. **A2**





**BATTAGLIA ARCHITECT INC.**  
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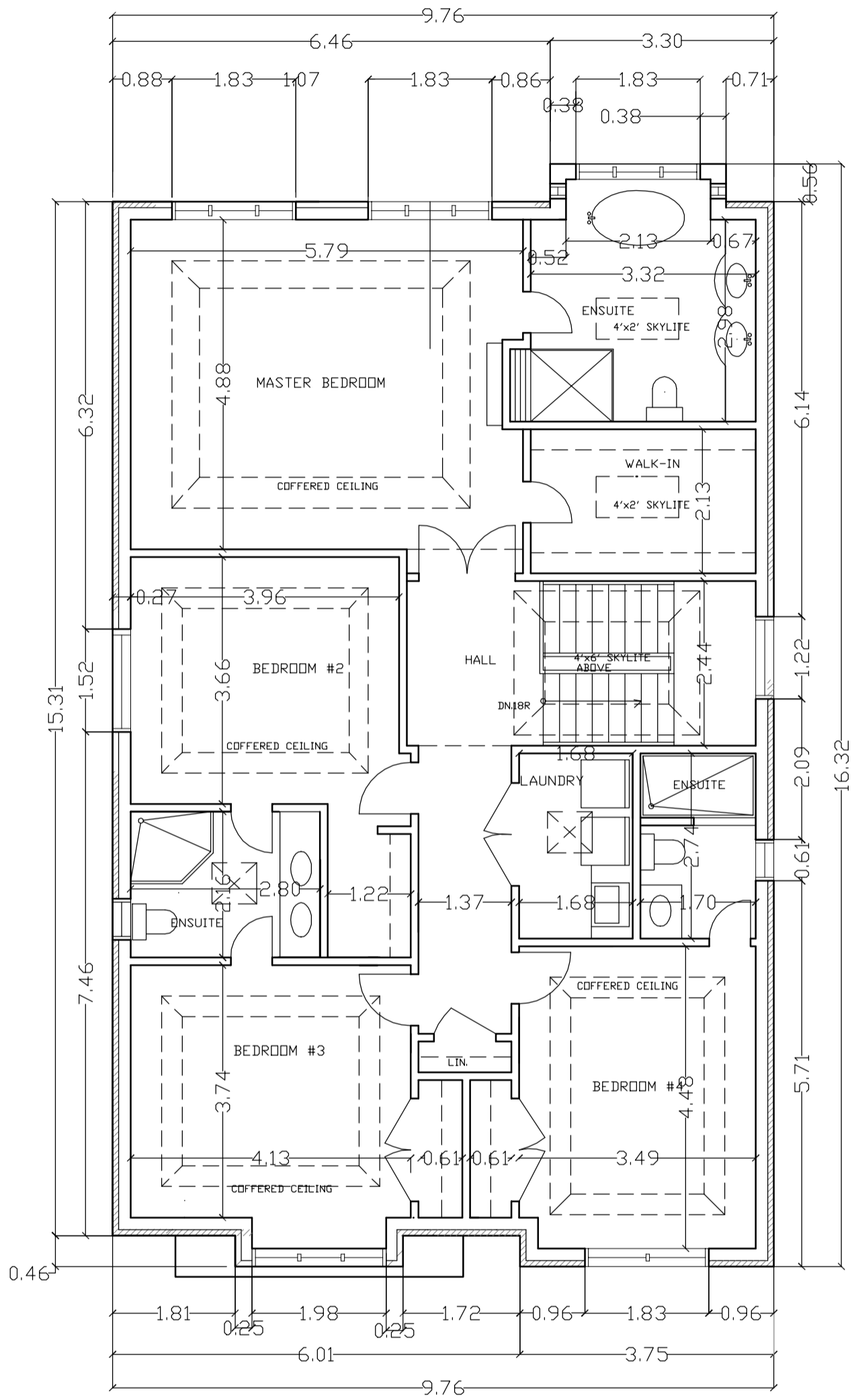
**A.R.T DESIGN**  
 NIDUSHA IZADI  
 Tel: 647-862-3885

**PROPOSED RESIDENCE**  
 131 PARK HOME  
 NORTH YORK, ON.

**FIRST FLOOR PLAN**

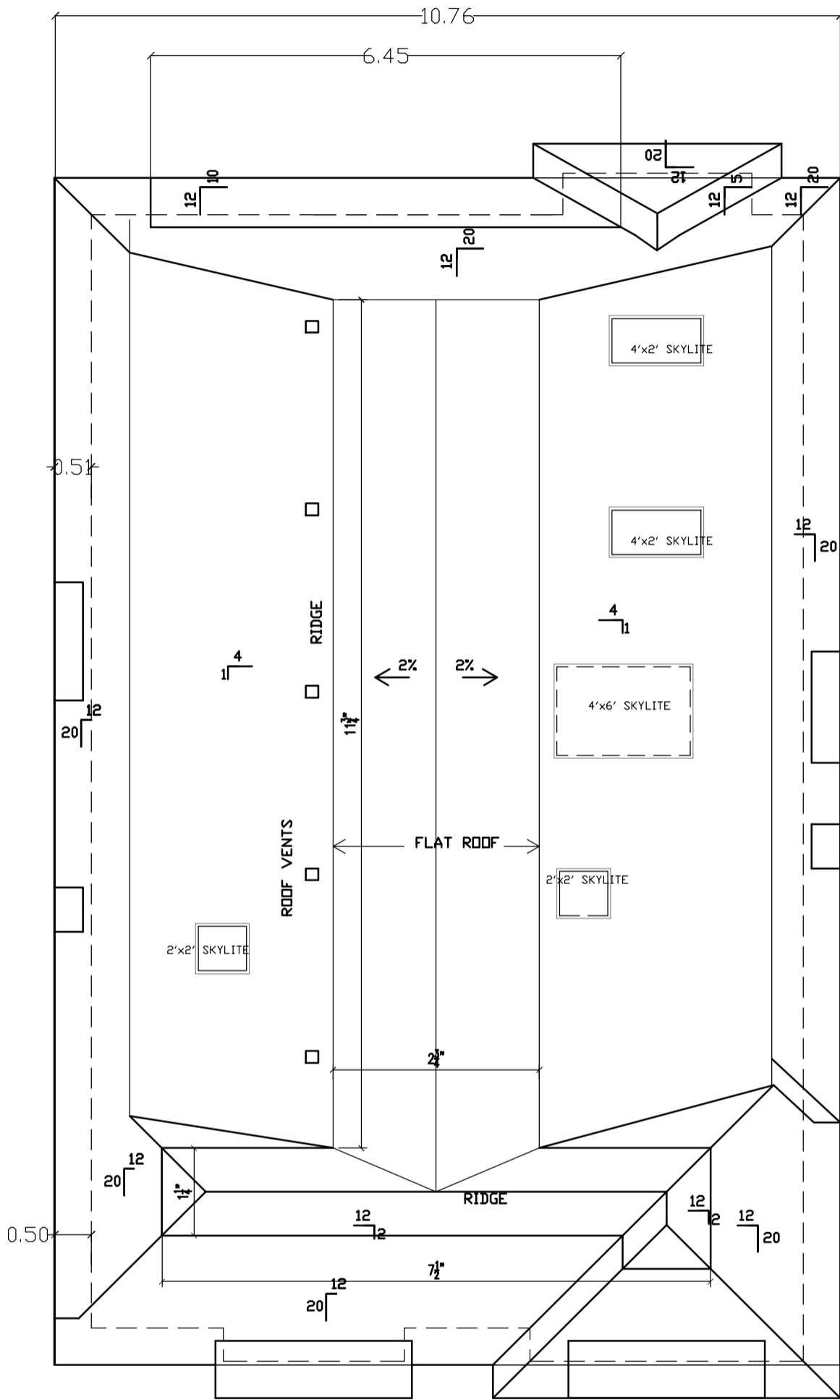
SCALE: 1:75  
 DRAWN BY: N.I.  
 DATE: MAY, 10, 2017  
 ISSUED:

PROJECT NO. 16131  
 DWG. No. **A3**



SECOND FLOOR PLAN  
 153.72M<sup>2</sup> 1654.62 sq.ft.

<b>BATTAGLIA ARCHITECT INC.</b> 8888 KEELE ST. UNIT 8 CONCORD L4K 2N2 TEL.: (905) 508-2168 FAX.: (905) 508-5802	<b>A.R.T DESIGN</b>  NIDUSHA IZADI Tel: 647-862-3885	<b>PROPOSED RESIDENCE</b>  131 PARK HOME NORTH YORK, ON.	<b>SECOND FLOOR PLAN</b>	SCALE: 1:75	PROJECT NO: 16131
				DRAWN BY: N.I.	DWG. No.
				DATE: MAY, 10, 2017	<b>A4</b>
				ISSUED:	



**BATTAGLIA ARCHITECT INC.**  
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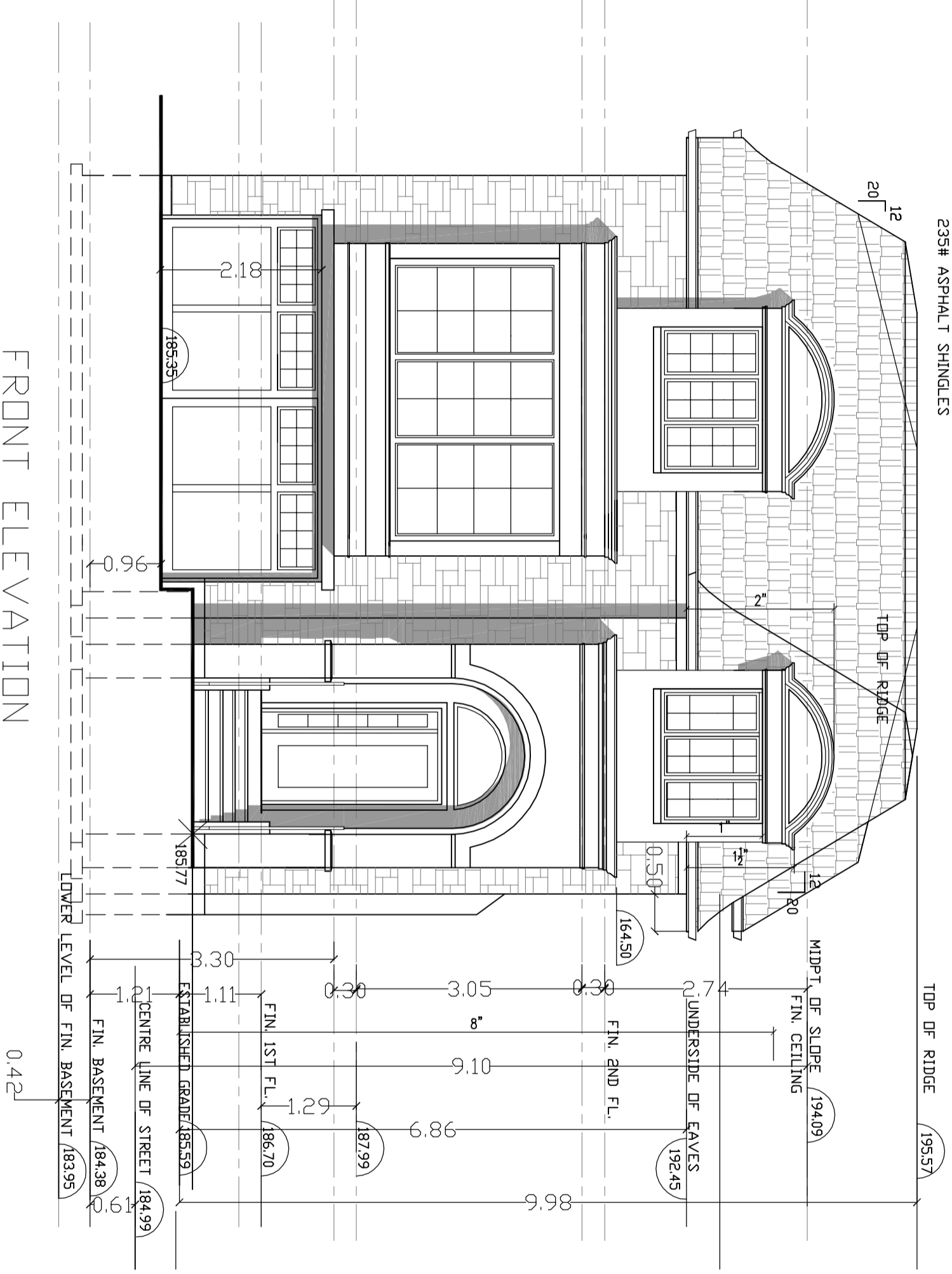
**PROPOSED RESIDENCE**  
 131 PARK HOME  
 NORTH YORK, ON.

**ROOF PLAN**

SCALE: 1:75  
 DRAWN BY: N.I.  
 DATE: MAY, 10, 2017  
 ISSUED:

PROJECT NO. 16131  
 DWG. No. **A5**

235# ASPHALT SHINGLES



FRONT ELEVATION

REVISED ROOF AND EAVES HEIGHT

**BATTAGLIA ARCHITECT INC.**  
 8888 KEELE ST. UNIT 8  
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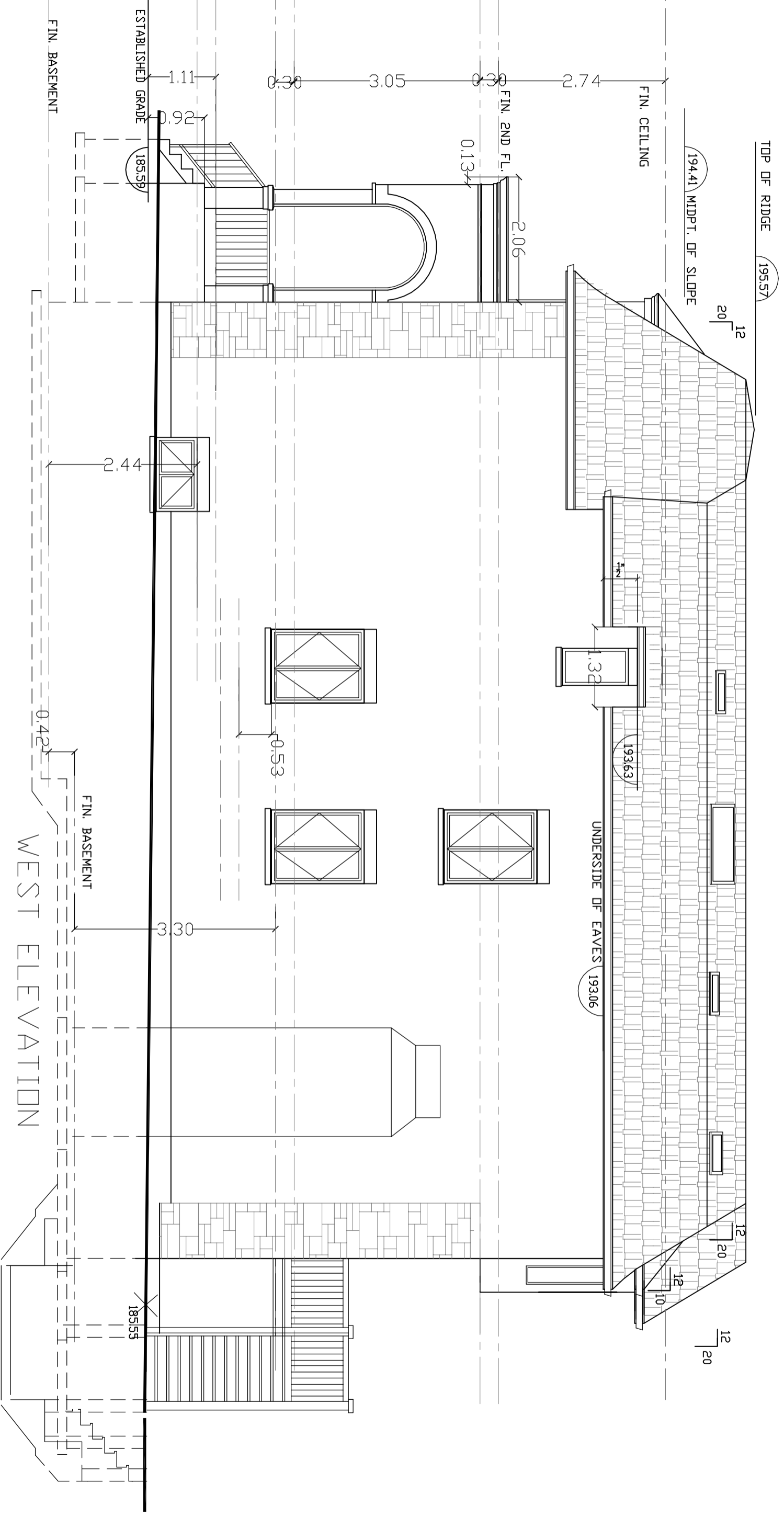
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 NIDUSHA IZADI  
 Tel: 647-862-3885

**PROPOSED RESIDENCE**  
 131 PARK HOME  
 NORTH YORK, ON.

**FRONT ELEVATION**

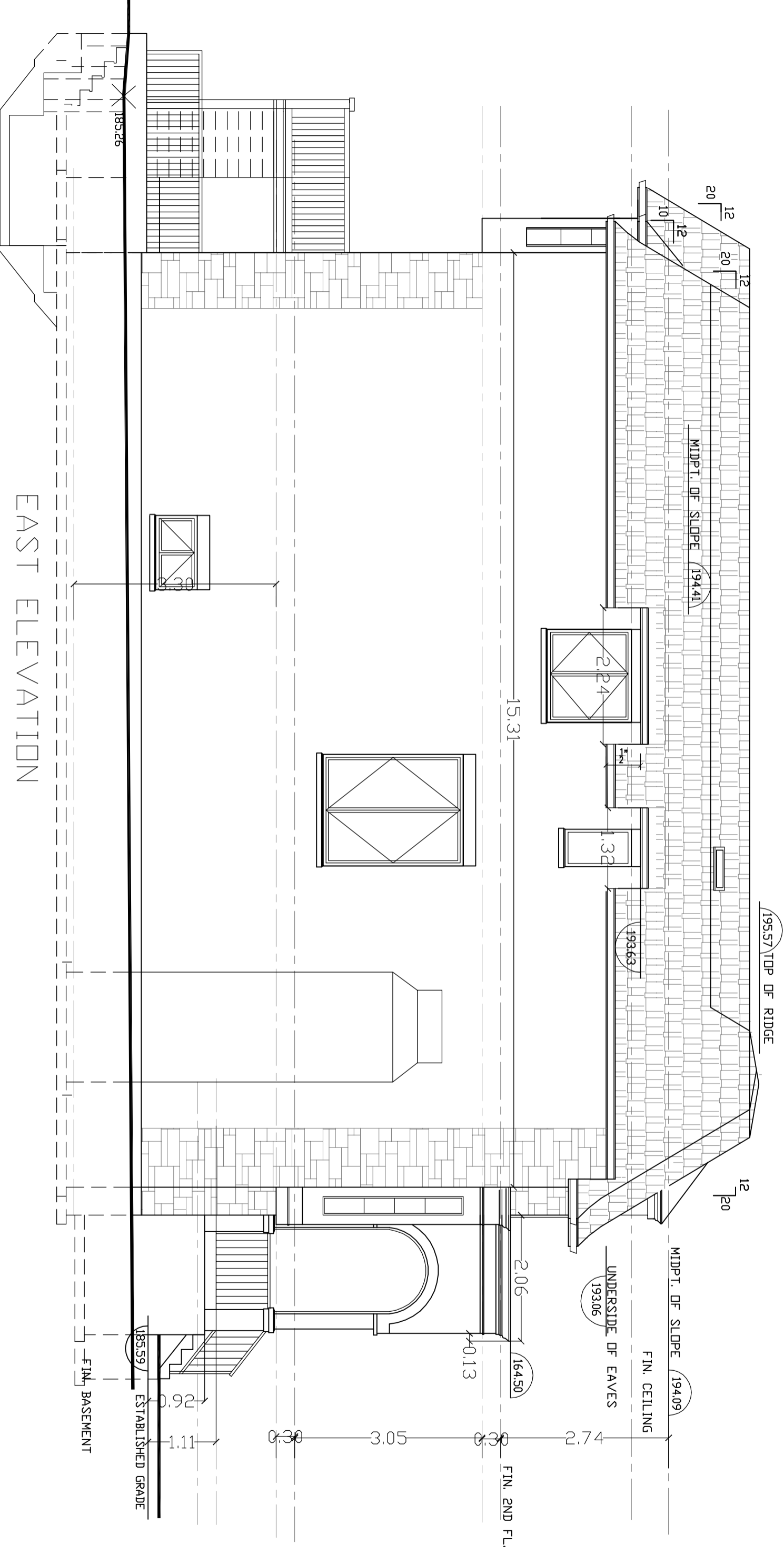
REVISED ROOF AND EAVES HEIGHT		APR. 04, 2017	
PROJECT NO.	16131	SCALE	1:65
DWG. No.	<b>A6</b>	DRAWN BY	N.I.
		DATE	FEB. 10, 2017
		ISSUED	





WEST ELEVATION

REVISED ROOF AND EAVES' HEIGHT APR. 04, 2017	
PROJECT NO. 16131	SCALE 1/65
DRAWN BY N.I.	DATE MAY 10, 2017
DWG. No. <b>A8</b>	ISSUED
<b>BATTAGLIA ARCHITECT INC.</b> 8888 KEELE ST. UNIT 8 CONCORD L4K 2W2 TEL: (905) 508-2168 FAX: (905) 508-5802	<b>A.R.T DESIGN</b> NIDUSHA IZADI Tel: 647-862-3885
<b>PROPOSED RESIDENCE</b> 131 PARK HOME NORTH YORK, ON.	<b>WEST ELEVATION</b>



EAST ELEVATION

**BATTAGLIA ARCHITECT INC.**  
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 Tel: 647-862-3885

**PROPOSED RESIDENCE**  
 131 PARK HOME  
 NORTH YORK, ON.

**EAST ELEVATION**

PROJECT NO. 16131  
 DRAWN BY: NLI  
 DATE: MAY 10, 2017  
 DWG. No. **A9**  
 ISSUED

REVISED ROOF AND EAVES HEIGHT APR. 04, 2017

SCALE: 1/65