

# DECISION AND ORDER

**Decision Issue Date** Monday, November 06, 2017

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

Appellant(s): SABINA ROTENBERG INTEGRAL DESIGN ASSOCIATES

Applicant: SABINA ROTENBERG INTEGRAL DESIGN ASSOCIATES

Property Address/Description: 80 CHARLESWOOD DR

Committee of Adjustment Case File Number: 17 138929 NNY 10 MV

TLAB Case File Number: **17 196136 S45 10 TLAB**

**Hearing date:** Tuesday, October 31, 2017

**DECISION DELIVERED BY IAN JAMES LORD**

## INTRODUCTION

This is an appeal by Haya Esther Minzberg on an application brought by Sabrina Rotenberg, representative, in respect of a decision by the North York Panel of the City of Toronto ('City') Committee of Adjustment ('COA') dated June 21, 2017, in respect of 80 Charleswood Drive ('subject property'). The COA allowed certain variances to permit the construction of one new two-storey dwelling unit, modified other variances and refused variances relating to east and west side yard setbacks all under both By-law 569-2013 ('New By-law') and By-law 7625 (the 'North York By-law').

Yosef Haim Minzberg attended the Toronto Local Appeal Body ('TLAB') hearing, alone, in support of the owners appeal. No one else attended the Hearing.

## BACKGROUND

Mr. Minzberg explained that the owners representative, Sabina Rotenberg, was 'not available' but was fully aware of the TLAB proceeding and the intended use of plans and the record of events that had previously transpired before the COA and Planning Staff, in which she had been a principle player.

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I explained that I had attended the site and had general familiarity with the filings. I noted that neither the Appellant nor any other person had filed any materials. Further, that the absence of disclosure filings and a witness statement was non-compliant with the TLAB Rules of Practice and Procedure and is not supported.

I provided the opportunity to consider options available in the circumstances:

1. Withdraw the appeal and achieve confirmation of the COA Decision;
2. Abandon evidence on the appeal with or without submissions and risk that in the absence of proper evidence, some or all of the variances could be rejected, independent of the Appellants' direct concerns, as all matters are put in issue.
3. Proceed with the appeal on the basis of evidence as to the merits of the variances sought, individually and collectively.

A short adjournment was granted to consider the elective options and to consult with the representative.

Mr. Minzberg elected to proceed.

## **MATTERS IN ISSUE**

Some eleven variances were sought divided six to the New By-law, and five to the North York By-law. Common and in issue to both requests were east and west side yard variances, coverage and required front yard setback.

Under the New By-law, relief was requested as well from the minimum 10 square metres floor space within 4 metres of the main front wall and maximum driveway width.

Under the North York By-law, a variance was also sought for minimum required lot area.

The Appellant contested the variances that the COA refused (east and west side lot line setback) and that the COA had modified (lot coverage).

## **JURISDICTION**

On a request for minor variance relief, TLAB is cognizant of the following directions:

### **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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

## **Minor 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**

Mr. Minzberg described the essential rationale for the requested variances that had been particularized before the COA. His family, inclusive of six children, were longtime residents of the community and wished to continue that residency, but in accommodation more suited to their needs. The neighbourhood was described as congenial and undergoing redevelopment at a rapid pace, with larger dwellings proposed of the character that Ms. Rotenberg had prepared plans. Apparently, she had, on representation, many other such engagements in the area.

The site visit conducted by this Member readily confirmed the active evolving character of the neighbourhood from modest single-storey bungalows to much larger two-storey dwellings, of the nature sought by the Appellant.

Mr. Minzberg referenced materials filed before the COA and pre-filed as part of the appeal package.

He supplemented this by tendering a COA decision for 86 Charleswood Drive, in close proximity of the subject property. I accepted, as Ex. 1, the COA Decision, being a public document. He added that the decision had not been appealed, was the work in part of Ms. Rotenberg, was constructed and is ready for occupancy. It is noted that the Decision on its face granted permissions that reflects a similar lot size (462.2 sq. m v. 462.99 sq. m. for the subject property) and addressed some similar variances (coverage: 37.6% v. 38.6% sought for the subject property, whereas the COA granted it 35% applicable to both by-laws); and side yard setbacks (1.5 m v. 1.57 (east) and 1.55 (west) sought for the subject property).

The subject property had had the benefit of a Staff Report, filed as Ex. 2, recommending approvals of variances, subject to modifications addressing front yard setback under both by-laws, and the then requested rear yard setback requested under the North York By-law. Mr. Minzberg referred to the Staff Report and accompanying e-mail exchanges with Staff including a revised site plan submitted by the design consultant, Ms. Rotenberg. I admitted these materials as Exhibit 3. Exhibit 3 confirms Mr. Minzberg's description that the owners and their consultant accepted the recommendations of Staff and that the revised site plan contained in Ex. 3 was filed. This exchange reflected concurrence that the front yard setback variance be revised from 5.6 m to 6.2 m. What was not explained was how the COA had derived its modified front yard setback approval at 6.31 m.

The exchange also released the request for a rear yard variance, a matter thereafter not dealt with by the COA.

Mr. Minzberg said that in all instances the owners/Appellants went with the advice of Ms. Rotenberg who has made revisions fully consistent with matters raised by Planning Staff.

In commenting on the minimum side yard variances, he noted that the subject property proposed setbacks slightly larger than those approved by the COA for 86 Charleswood Drive, Ex.1. As a consequence, he suggested this modestly raised the gfa allowance, to 38.06%, for the subject property v. 37.6% approved for 86 Charleswood Drive. The COA approved 35%, however there is no evidence whether the discussions with Staff were accompanied by subsequent review and adjustment of the coverage calculation under both by-laws, where the standard of 30% is set.

Mr. Minzberg concluded his evidence by reiterating that their consultant had worked with Staff to achieve agreement and that construction with the site plan in Ex.3 and in substantial compliance the construction drawings accepted as Ex. 4, dated November 28, 2013 is his intention. He suggested there was community benefit in replicating the transitional housing in the area of which there were a lot of examples.

He noted that the site plan, in Ex. 3, identified trees on the subject property and in the public boulevard in front.

## **ANALYSIS, FINDINGS, REASONS**

While it is regretful that a higher quality of evidence from professional advisers was not available, I am content that this is not a case warranting dismissal for lack of evidence.

First, Mr. Minzberg, though admittedly not a planner or builder, had come prepared with both his story, ambitions and certain supporting material, including allegedly professional prepared plans upon which he and planning Staff had placed reliance.

Moreover, he tendered lay knowledge of area exposure and experience and presented Ex. 1-4. These proved useful in quantifying whether the variances sought were minor and desirable.

As well, the COA had done considerable work in compartmentalizing the requested variances as warranting approval, modification or refusal.

There is also the benefit of a Staff Report, Ex.2.

I am obliged to have regard for the decision of the Committee. Whether modifications to the original application occurred after the original and any subsequent Notice, or at the Hearing of the COA or subsequently, I am of the view that they are either lesser than those originally requested or are so modest as to not warrant any further Notice or consideration. I so find pursuant to s. 45 (18.1.1) of the Planning Act.

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There were eleven variances considered by the COA. In its decision, the COA accepted and approved five, it modified and approved two further and refused four, as above described. The COA imposed no conditions.

I am prepared on the evidence provided to resolve the appeal in the following manner as compliant with the above statutory directions. Staff raised no issue with consistency to the Provincial Planning Policies nor conformity with the Growth Plan or City Official Plan. I agree.

In so concluding, I also find that the intent and purpose of the Official Plan and zoning by-law (s) are maintained and the variances, as hereinafter described, are minor, are absent any evidence of undue adverse impact and are desirable to replace older housing stock with a build form that fits and is in keeping with the evolving character of the neighborhood. The reasons follow.

I find that the proposed west side yard setback of 1.55 m from that required in both the New and North York By-laws of a minimum of 1.8 m, is appropriate. It permits travel on the lot, is consistent with appearances in the neighbourhood and is more generous than the approval granted for the development nearly next door, Ex.1.

For the same reasons, I find that the proposed east side yard setback of 1.57 m from that required in both the New and North York By-laws of 1.8 m, is appropriate. It permits travel on the lot, is consistent with appearances in the neighbourhood and is more generous than the approval granted for nearly next door, Ex.1.

I agree with the COA that the buildings design, with an integral garage, warrants to zero the mud room reduction of a minimum 10 sq. m. of the first floor being within 4.00 m of the front main wall.

I accept that the changes to the building envelop involving front, rear and side yard setbacks warrants a coverage variance to 38.06% under the New and 37.64% under the North York by-laws from the 30% otherwise required, and for the reasons expressed above.

I accept the revised minimum front yard setback of 6.2 m as agreed to with Staff from that required under the New (6.51 m) and North York By-law ( 7.5 +/- 1.00m). The difference is nominal and likely not observable from that considered by the COA. It affords rear yard compliance without a variance.

I accept and approve a variance to the minimum required lot area (of 550 sq.m) to reflect the existing and proposed lot area of 462.99 sq. m. Not only did the COA accept this, but it is similar to that approved for 86 Charleswood Drive, Ex.1. Although the lot pattern in the immediate environs is consistent, so too is the evidence of redevelopment with consistent built forms and lot sizes.

Finally, the COA's acceptance of the proposed driveway width at 4.93 m wide as it passes thru the front yard is appropriate and consistent from that set as the by-law standard of 4.40 m in the New By-law.

## DECISION AND ORDER

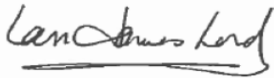
The appeal is allowed and the variances set out in Attachment 1, forming part of this decision are approved, subject to the following conditions:

1. Construction shall be in accordance with the variances approved in Attachment 1 and generally in accordance with the Site plan and specifications dated June 14, 2017 and the set of eight building and perspective plans dated November 28, 2013, both prepared by Integral Design Associates set out in Attachment 2, forming part of this decision.

2. The owner shall satisfy all conditions concerning City/Private owned trees, to the satisfaction of Urban Forestry Services. Such conditions may include submission of an application to injure or destroy a City owned tree(s), A Contractors Agreement to Perform Work on City owned tree(s), a tree protection guarantee security deposit according to the Tree Protection Policy and Specifications for Construction Near Trees, or the replacement cost of a City owned tree.

3. The variances approved in respect of By-law 569 -2013 are contingent on that by-law coming into full force and effect.

X



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Ian Lord  
Chair, Toronto Local Appeal Body  
Signed by: Ian Lord

Attachment 1

80 Charleswood Drive, PLAN 3746 LOT115, Toronto  
REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.20.40.70(3)A), By-law No. 569-2013

The minimum required side yard setback is 1.80m.

The approved west side yard setback is 1.55m.

2. Chapter 10.20.40.70(3)A), By-law No. 569-2013

The minimum required side yard setback is 1.80m.

The approved east side yard setback is 1.57m.

3. Chapter 10.5.40.10)(5), By-law No. 569-2013

A minimum of 10.00m<sup>2</sup> of the first floor must be within 4.00m of the front main wall.

The approved first floor mud room is 0.00m<sup>2</sup> within 4.00m of the front main wall.

4. Chapter 10.20.40.70.(1)A), By-law No. 569-2013

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

The approved lot coverage is 38.06% of the lot area.

5. Chapter 10.20.40.70.(1), By-law No. 569-2013

The minimum required front yard setback is 6.51m.

The approved front yard setback is 6.2m.

6. Chapter 10.5.100.1.(1)(C), By-law No. 569-2013

A driveway that is located in or passes through the front yard may be a maximum of 4.40m wide.

The approved driveway is 4.93m wide.

7. Section 13.2.2, By-law No. 7925

The minimum required lot area is 550.00m<sup>2</sup>.

The existing and approved lot area is 462.99m<sup>2</sup>

8. Section 13.2.4, By-law No. 7625

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

The approved lot coverage is 37.64% of the lot area.

9. Section 13.2.3(a), By-law No. 7625

The minimum required front yard setback is 7.50 +/- 1.00m.

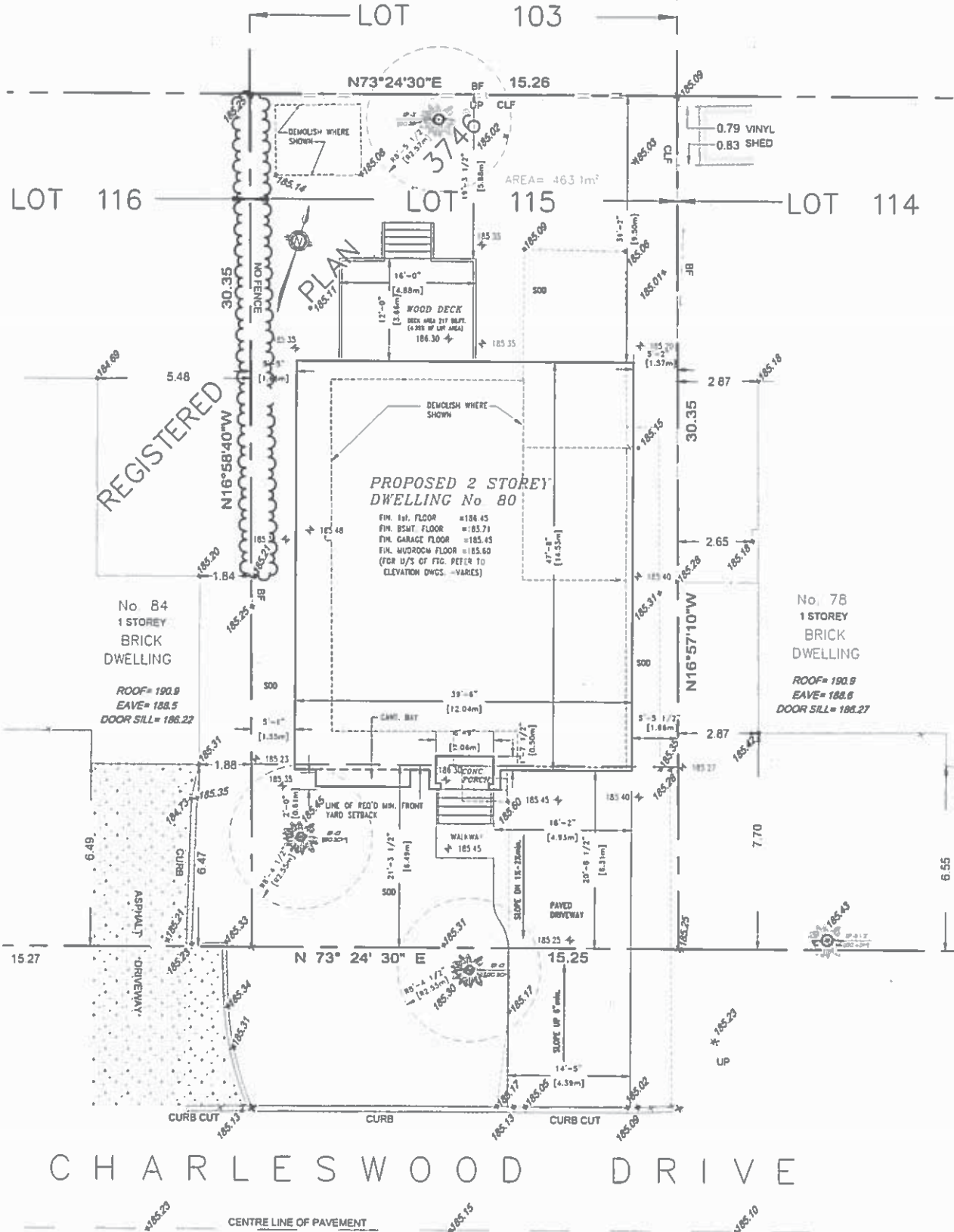
The approved front yard setback is 6.2m.

10. Section 13.2.3(b), By-law No. 7625  
The minimum required side yard setback is 1.80m.  
The approved east side yard setback is 1.57m.

11. Section 13.2.3(b), By-law No. 7625  
The minimum required side yard setback is 1.80m.  
The approved west side yard setback is 1.55m.



# Attachment 2: 80 Charleswood Drive, Toronto



## SITE PLAN

80 CHARLESWOOD DRIVE  
 PROPOSAL JUNE, 14/17  
 SCALE: 3/32" = 1'-0"

SITE INFORMATION WAS TAKEN FROM TOPOGRAPHIC SURVEY OF PART 1: LOT 115 REGISTERED PLAN 3746 CITY OF TORONTO JULY 3, 2013 AKSAN PILLER CORPORATION LTD.

**INTEGRAL DESIGN ASSOCIATES**  
 201A Bloor St. West  
 Toronto, Ont. M5S 2B6  
 Tel: (416) 597-2800  
 Fax: (416) 597-1936

## LOT DESCRIPTION

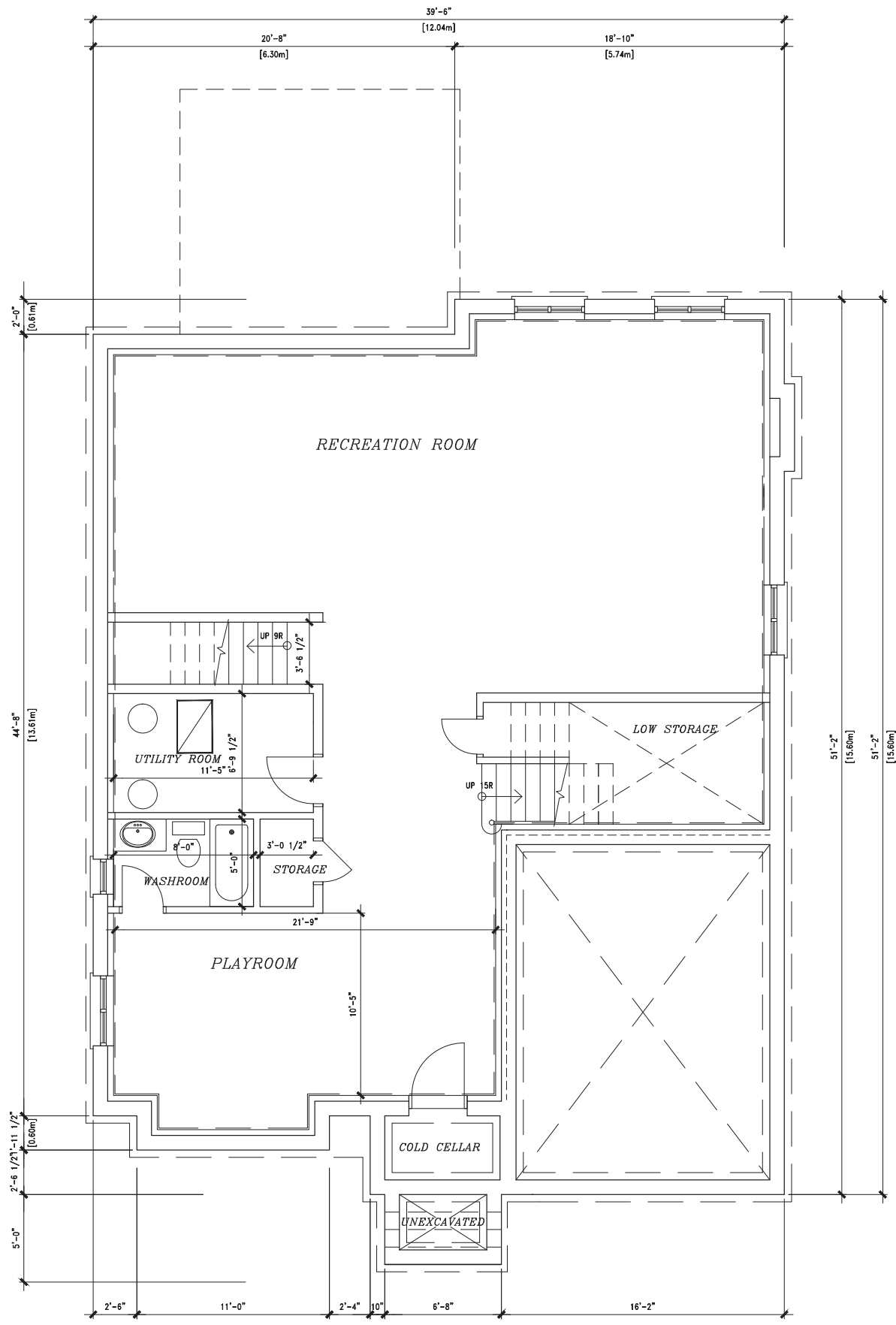
80 CHARLESWOOD DRIVE  
 CITY OF TORONTO (FORMERLY NORTH YORK)  
 PART 1: LOT 115, REGISTERED PLAN 3746  
 ZONING DESIGNATION: R4 D3 CHAMPLAIN (BYLAW 7625)  
 FRONTAGE 50.03 FT. (15.25 M)  
 LOT AREA 4984.7 SQ.FT. (463.10 SQ.M)  
 ZONING DESIGNATION: RD (BYLAW 560-2013)



## FRONT YARD SOFT LANDSCAPING CALCULATION

Total Front Yard Area =	97.47 m <sup>2</sup>
Area of Front Yard Not Covered by Driveway =	97.47 - 30.53 = 66.94m <sup>2</sup>
(Provided Front Yard Landscaping)	= 66.94 / 97.47 = 68.68%
Required Front Yard Landscaping =	97.47 x .60 = 58.48m <sup>2</sup> (60%)
Required Front Yard Soft Landscaping =	66.94 x .75 = 50.21m <sup>2</sup> (75%)
Provided Front Yard Soft Landscaping	= 66.94 - 7.78 = 59.16m <sup>2</sup>
	= 59.16 / 66.94 = 88.38%

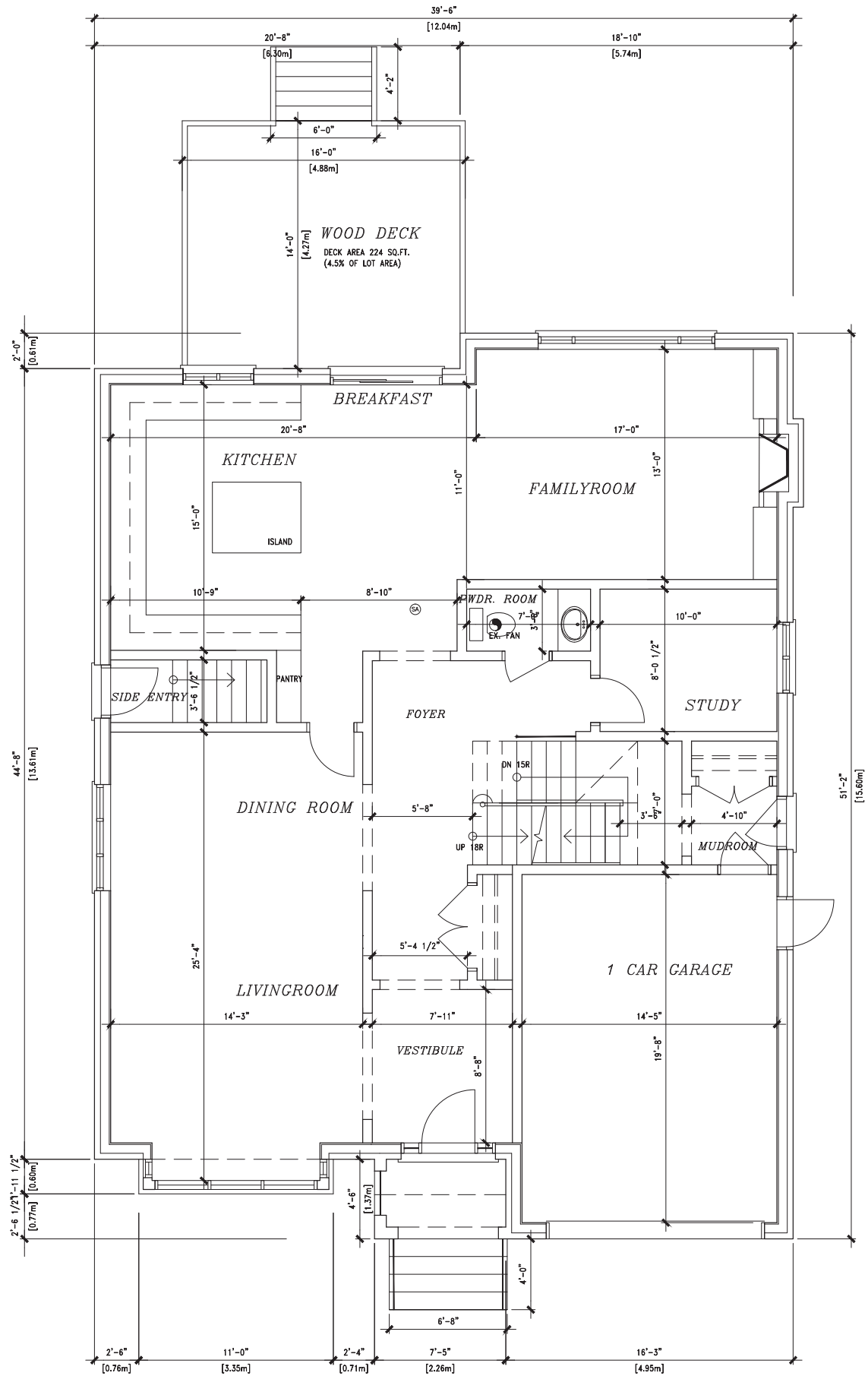
SUMMARY OF AREAS			
	SQ.FT.	SQ.M.	%
<b>FLOOR AREAS:</b>			
1ST FLOOR AREA	1610.4	149.61	
2ND FLOOR AREA	1871.9	173.91	
TOTAL FLOOR AREA	3482.30	323.52	
FIN. BASEMENT FLOOR AREA	1522.5	141.44	
<b>COVERAGE</b>			
LOT AREA	4984.7	463.10	
PERMITTED COVERAGE	1495.4	138.93	30.0
PROP. COV. BYLAW 7625	1871.9	173.91	37.55
PROP. COV. BYLAW 569-2013	1871.9	173.91	37.55
<b>DEMOLITION</b>			
BUILDING AREA	1100.0	102.19	
GARAGE AREA	274.0	25.46	
TOTAL AREA	1374.0	127.65	



**BASEMENT FLOOR PLAN**

80 CHARLESWOOD DRIVE  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16"=1'-0"

<b>INTEGRAL          DESIGN          ASSOCIATES</b>	3671A Bathurst Street
	Toronto, Ontario M6A 2E6
	Tel. (416) 787-2502
	Fax (416) 781-7596

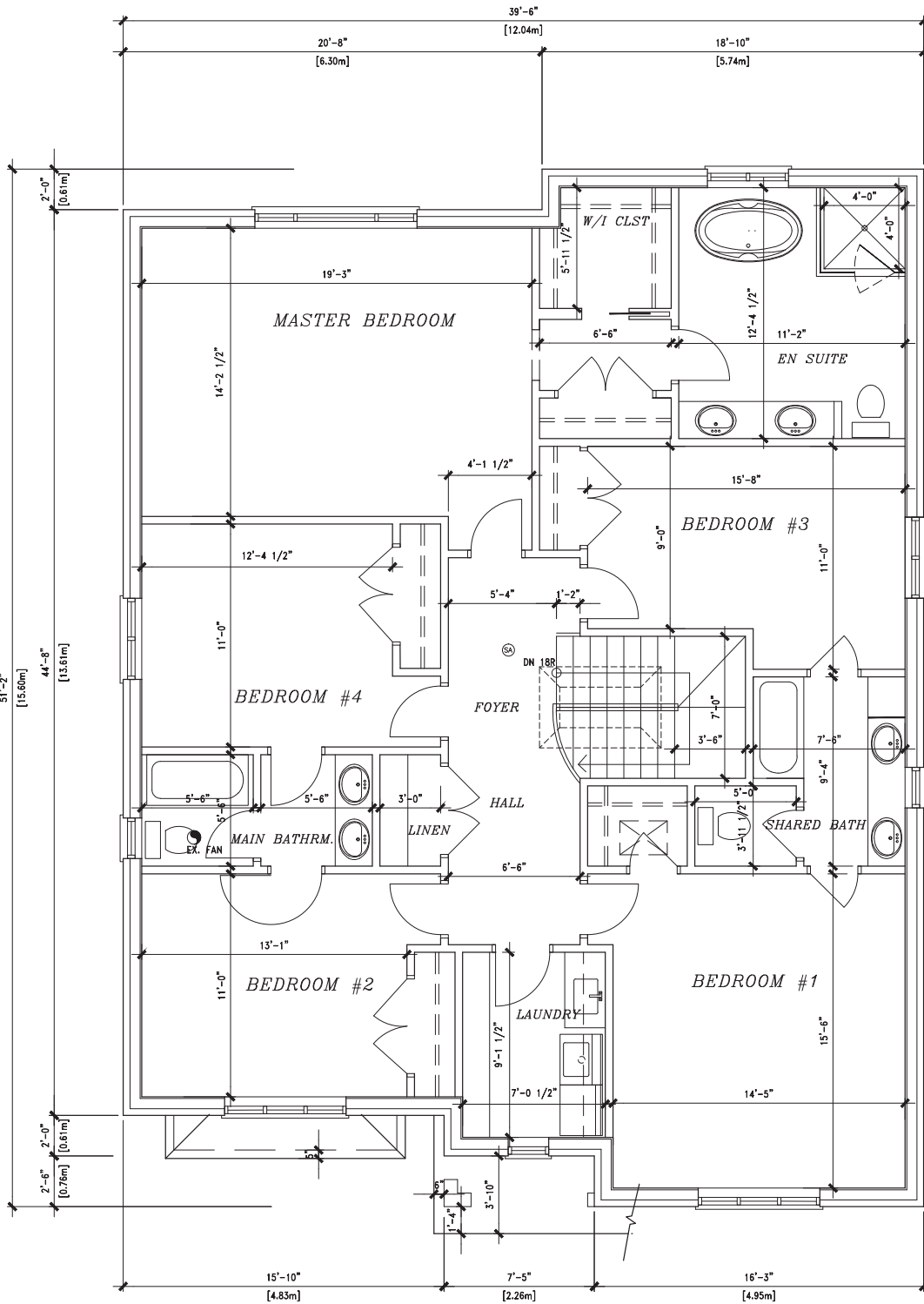


FIRST FLOOR PLAN

80 CHARLESWOOD DRIVE  
 PROPOSAL NOV. 28/13

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

<p>INTEGRAL          DESIGN          ASSOCIATES</p>	<p>3671A Bathurst Street          Toronto, Ontario M6A 2E6          Tel. (416) 787-2502          Fax (416) 781-7596</p>
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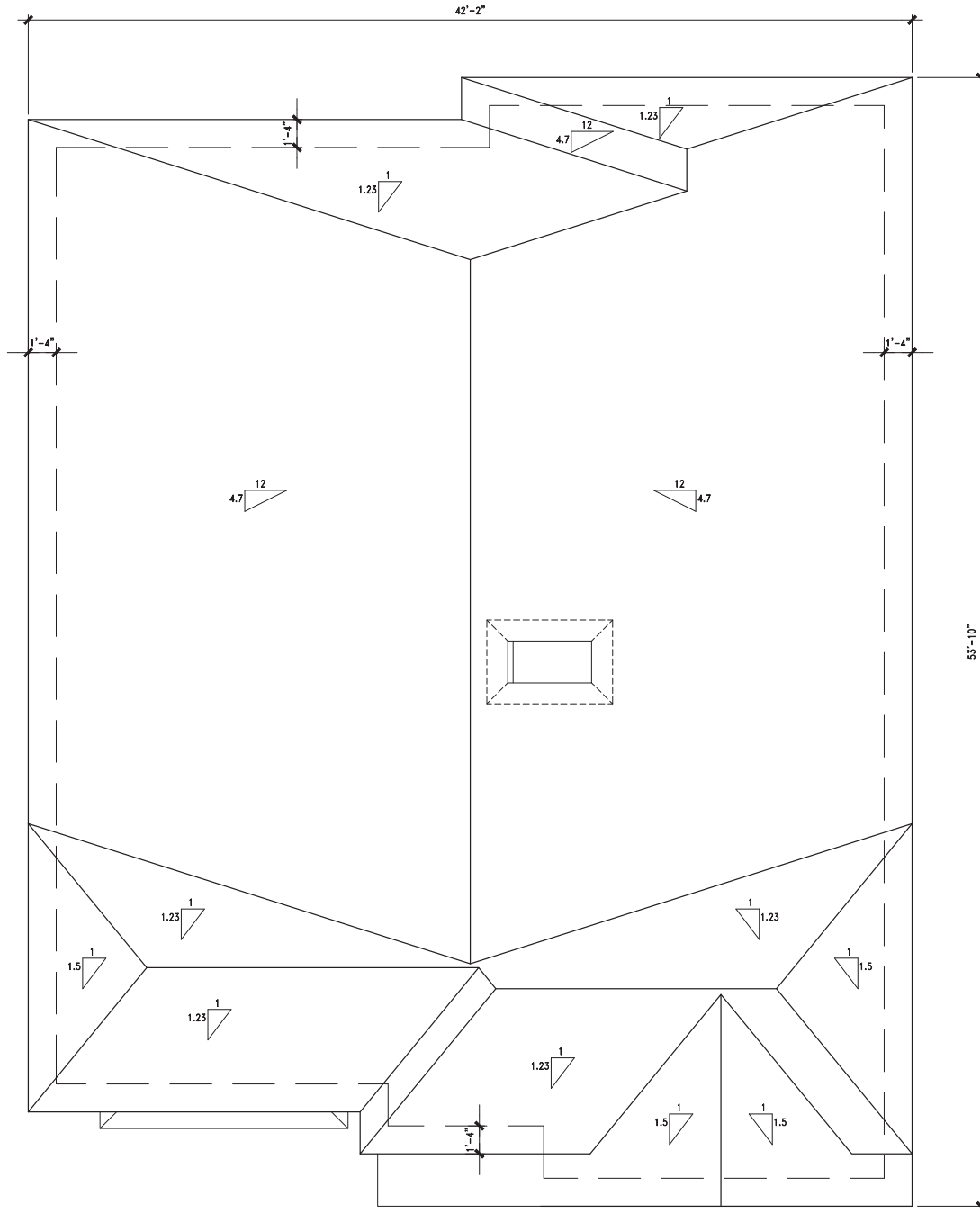


## SECOND FLOOR PLAN

80 CHARLESWOOD DRIVE  
PROPOSAL NOV. 28/13

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

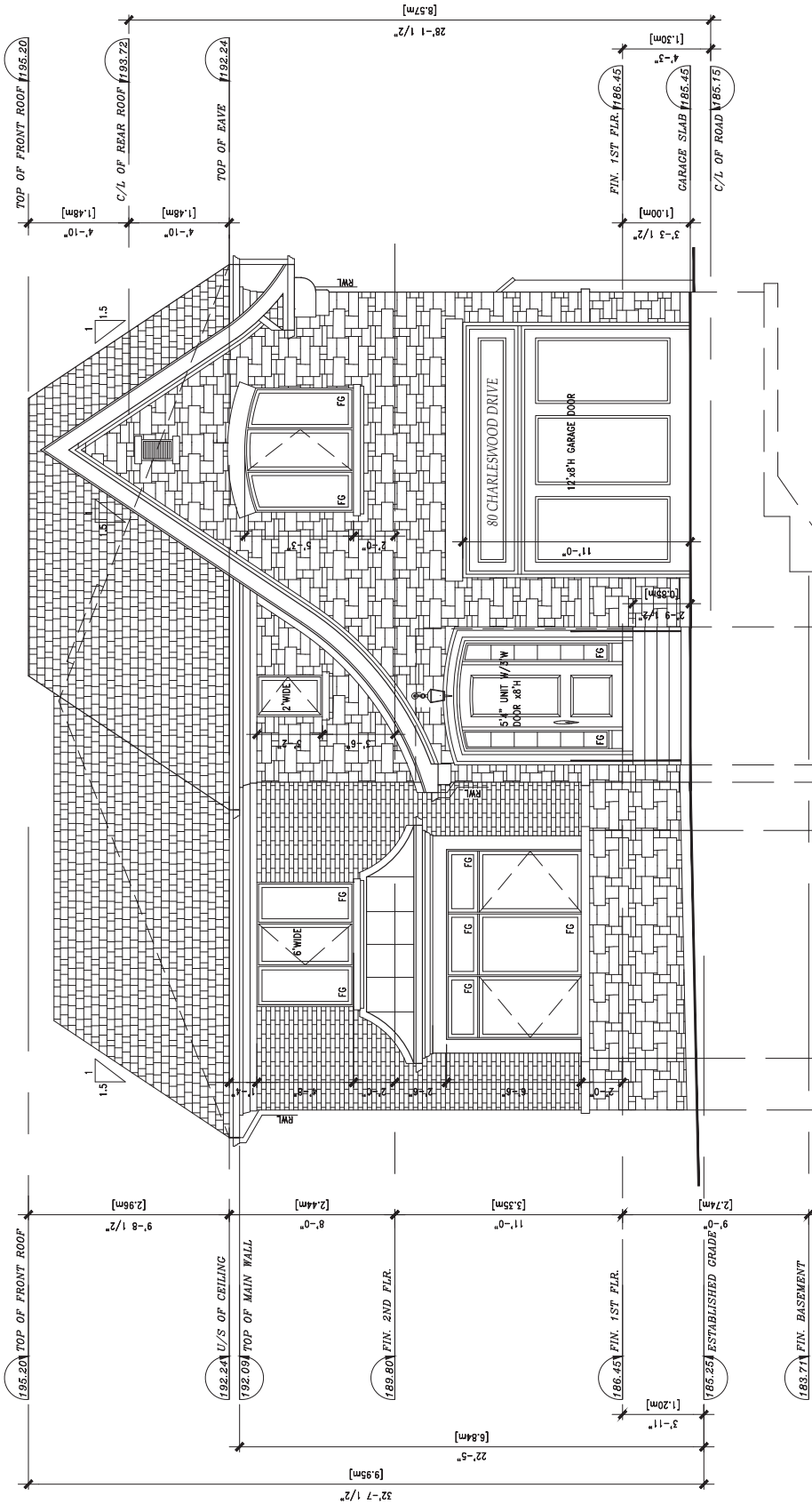
<b>INTEGRAL DESIGN ASSOCIATES</b>	3671A Bathurst Street
	Toronto, Ontario M6A 2E6
	Tel. (416) 781-2502
	Fax (416) 781-7996



**ROOF PLAN**

80 CHARLESWOOD DRIVE  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16"=1'-0"

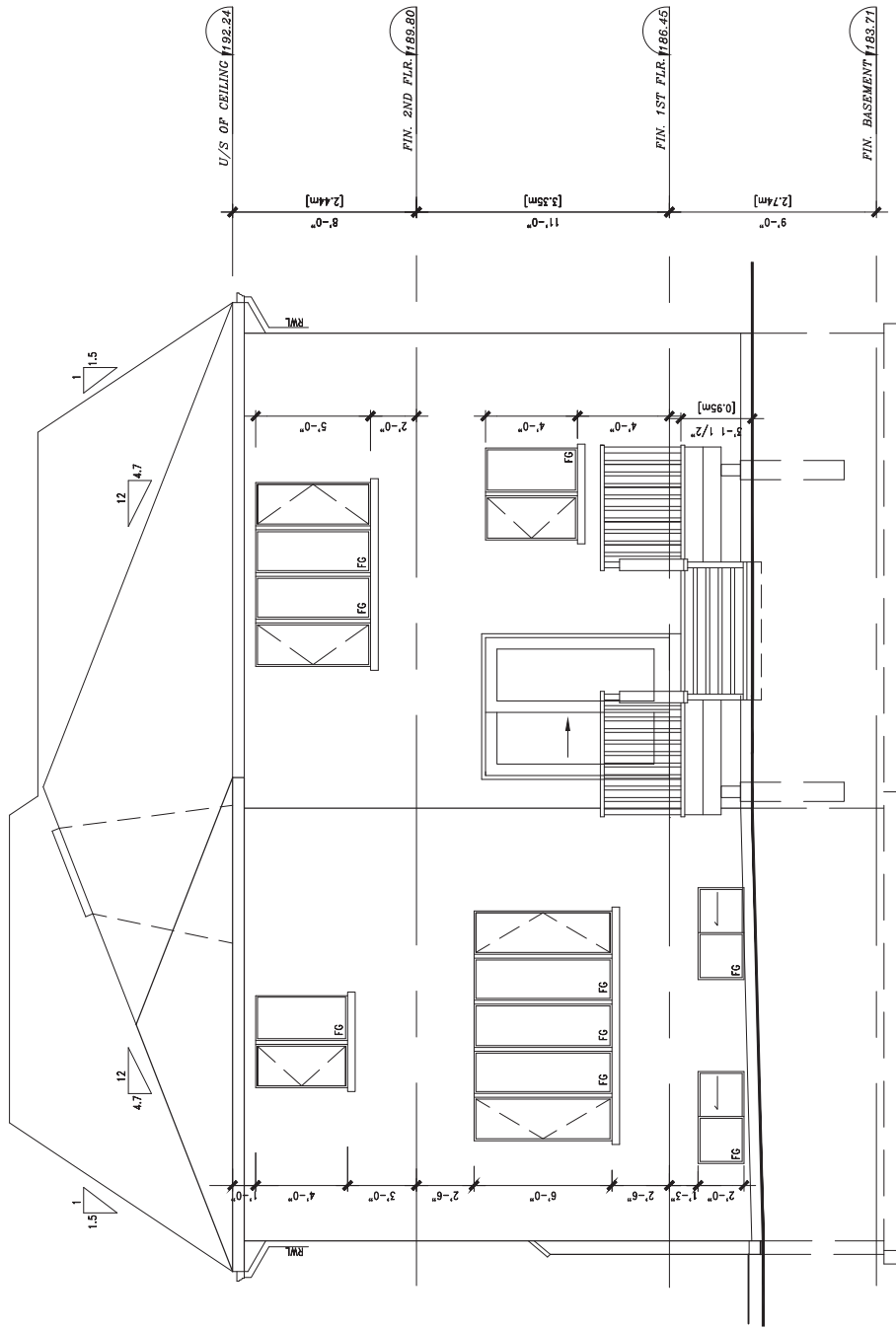
<b>INTEGRAL          DESIGN          ASSOCIATES</b>	3671A Bathurst Street
	Toronto, Ontario M6A 2E6
	Tel. (416) 787-2502
	Fax (416) 781-7596



**SOUTH ELEVATION**

80 CHARLESWOOD ROAD  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16" = 1'-0"

INTEGRAL  
 DESIGN  
 ASSOCIATES  
 2671A Padbury Street,  
 Toronto, Ontario M6A 2E6  
 Tel. (416) 781-2502  
 Fax. (416) 781-7596



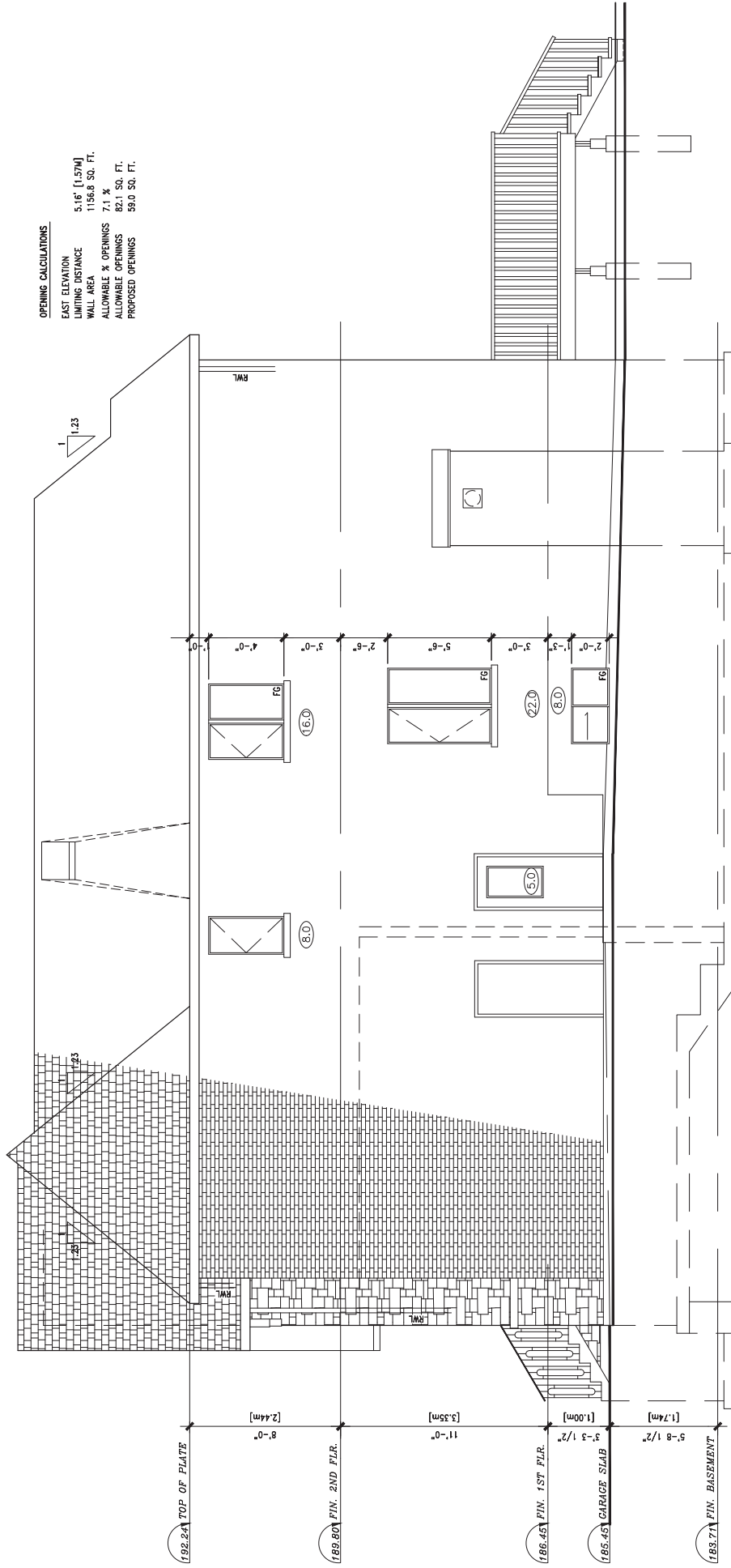
**NORTH ELEVATION**  
 80 CHARLESWOOD ROAD  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16"=1'-0"

INTEGRAL  
 DESIGN  
 ASSOCIATES  
 3671A Bathurst Street  
 Toronto, Ontario M6A 2E6  
 Tel: (416) 787-2502  
 Fax: (416) 781-7596



**OPENING CALCULATIONS**

EAST ELEVATION 5.16' [1.57M]  
 LIGHTING DISTANCE 1156.8 SQ. FT.  
 WALL AREA 7.1 %  
 ALLOWABLE % OPENINGS 82.1 SQ. FT.  
 PROPOSED OPENINGS 59.0 SQ. FT.



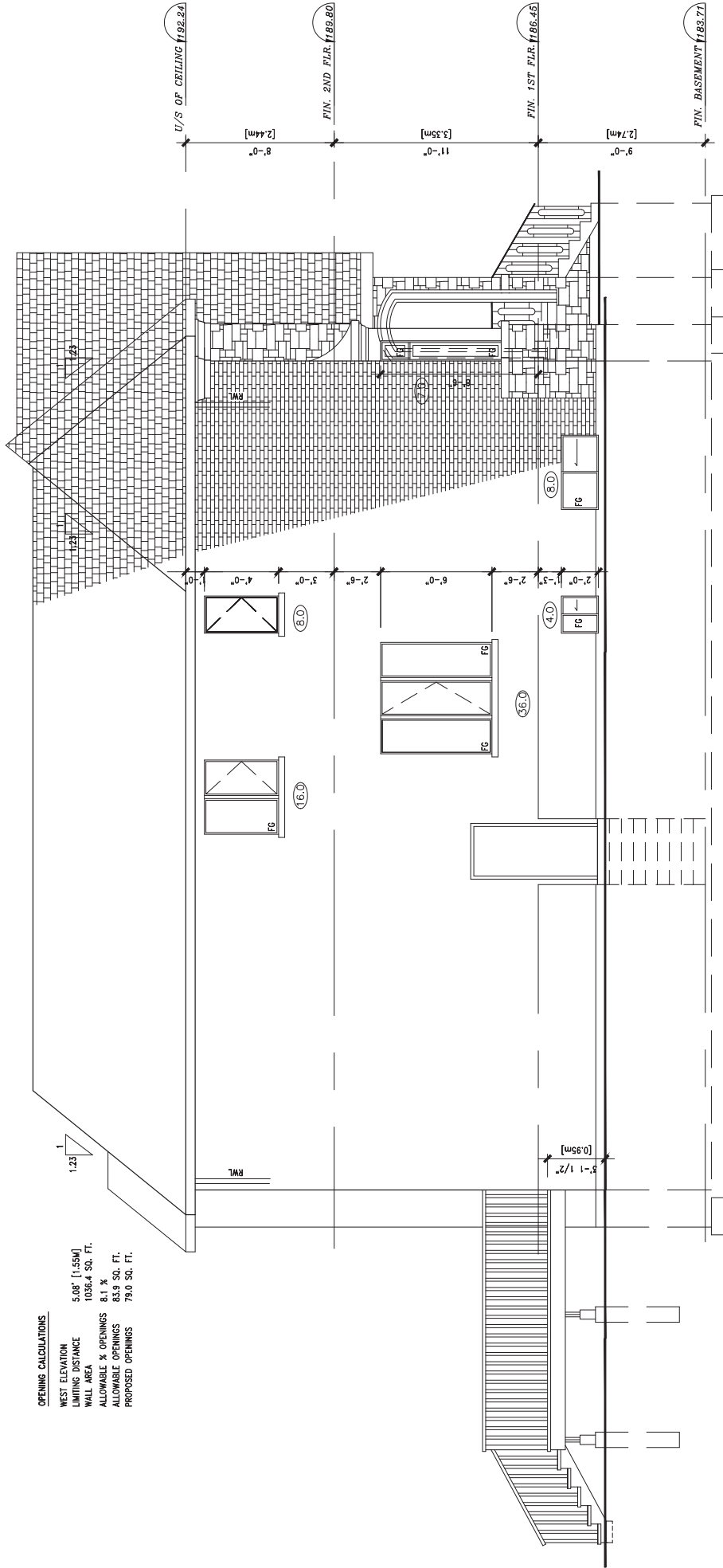
**EAST ELEVATION**

80 CHARLESWOOD ROAD  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16"=1'-0"

INTEGRAL  
 DESIGN  
 ASSOCIATES  
 3671A Bathurst Street,  
 Toronto, Ontario M6A 2E6  
 Tel: (416) 781-7592  
 Fax: (416) 781-7596

**OPENING CALCULATIONS**

WEST ELEVATION	5.08' [1.55M]
LIMITING DISTANCE	1036.4 SQ. FT.
WALL AREA	8.1 %
ALLOWABLE % OPENINGS	83.9 SQ. FT.
PROPOSED OPENINGS	79.0 SQ. FT.



**WEST ELEVATION**

80 CHARLESWOOD ROAD  
 PROPOSAL NOV. 28/13  
 SCALE: 3/16"=1'-0"

INTEGRAL  
 DESIGN  
 ASSOCIATES

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 Fax: (416) 781-7596