

# DECISION AND ORDER

**Decision Issue Date**      **November 6, 2017**

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

Appellant(s): PAUL EDWARD ZEMLA

Applicant: JILLIAN AIMIS

Property Address/Description: 200 DAWLISH AVE

Committee of Adjustment Case File Number: 17 137702 NNY 25 MV

TLAB Case File Number: 17 192864 S45 25 TLAB

**Hearing date:**      Thursday, October 26, 2017

**DECISION DELIVERED BY G. Burton**

## APPEARANCES:

Paul Edward Zemla

David Bronskill \*  
(\*Counsel)

## INTRODUCTION

This was an appeal to the Toronto Local Appeal Body ("TLAB") of a Committee of Adjustment ("COA") decision which allowed most of the variances applied for the construction of a new two storey dwelling with a two-car integral garage at 200 Dawlish Avenue in North York (the "subject property"). However, the COA amended variances for the Floor Space Index ("FSI") and the Gross Floor Area ("GFA") from the requested 0.48 times the lot area to 0.40, and refused to reduce the side yard setbacks to the requested 1.5 m, from the By-law requirement of 1.8 m.

The applicant has amended several of the requested variances to better comply with the zoning by-law requirements.

## **BACKGROUND**

The subject property is on the north side of Dawlish Avenue, in an attractive cul-de-sac at the east end of the street. It is southeast of Lawrence Avenue East and Mount Pleasant Road. It is designated *Neighbourhoods* in the Official Plan. Three separate by-laws govern the property, as the western border between the former North York and the former City of Toronto virtually divides the parcel. It is therefore zoned R1 ZO.35 under former City By-law 438-86 (the “old By-law”); R3 under By-law 7625 for the former North York (the “North York By-law”), and RD (f15.0; d0.35)x1432 under the new comprehensive City By-law 569-2013 (the “new By-law” - still under appeal.)

It is a lot with irregular shape and sides – see Site Plan at Exhibit 3. There is a sewer pipe about 60 feet deep running diagonally through the property, not affecting the development. There is a slight rise from the elevation of the centre line of the street toward the rear of the property, affecting the height variance as mentioned below.

## **JURISDICTION**

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Planning Act (the “Act”). This involves a reconsideration of 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, individually and collectively.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 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 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body. To the extent that the variances requested differ from those before the COA, I accept that the Applicant’s proposed revisions (change in the east side yard setback variance to 1.8 m from 1.5 m, and FSI and GFA slightly altered to 0.472 times the area of the lot rather than 0.48 times) 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.

## **MATTERS IN ISSUE**

In its decision, the COA was clearly satisfied with most of the variances applied for this redevelopment, but oddly, reduced the permitted FSI from the requested 0.48 times the area of the lot to 0.40. The permitted measurement is 0.35 times the area. There was no explanation given as to the rationale for the COA figure. Two persons commented to the COA, only one was

opposed, but not to this FSI variance. The applicant now requests an FSI and a GFA of 0.472 times the area of the lot, instead of the former 0.48. The variance for the west side yard setback has been eliminated.

## **EVIDENCE**

Mr. Michael S. Goldberg, a land use planner with special expertise and experience in this area of the Lawrence Park neighborhood, was qualified to provide expert evidence for this matter. He outlined the results of his study of 17 years of approvals in this area. His study area was effectively divided into two lists, because of the lot's location in both North York and City of Toronto. The only significant differences resulting from the coverage under two different zoning by-laws are in the measurements of lot coverage and gross floor area. The eastern segment (North York By-law) uses the metric of lot coverage of 35%; while the western segment (old By-law) is required to have a maximum gross floor area. Because the lot coverage limitation is generous, a much larger house would be permitted on the east side because of the lot size. However, the use of an FSI limitation on the western part results in a more restricted design. These are the present variances requested in this appeal:

### **REQUESTED VARIANCES TO THE ZONING BY-LAW**

**1. Chapter 10.5.100.1.(1), By-law 569-2013**

The maximum permitted driveway is 6.0 m wide.

The proposed driveway is 6.76 m wide.

**2. Chapter 10.20.40.10.(4), By-law 569-2013**

The maximum permitted building height is 7.2 m.

The proposed building height is 7.32 m.

**3. Chapter 10.20.40.40.(1), By-law 569-2013**

The maximum permitted Floor Space Index is 0.35 times the area of the lot.

The proposed Floor Space Index is 0.472 times the area of the lot.

**4. Chapter 10.20.40.50.(1), By-law 569-2013**

The maximum permitted area of each platform at or above the second storey is 4.0 m<sup>2</sup>.

The proposed area of each platform at or above the second storey is 6.0 m<sup>2</sup>.

**5. Section 12.5A, By-law No. 7625**

The maximum permitted building length is 16.8 m.

The proposed building length is 18.48 m.

**6. Section 12.7, By-law No. 7625**

The maximum permitted building height is 8.0 m.

The proposed building height is 8.28 m.

**7. Section 12.7A, By-law No. 7625**

The maximum permitted balcony area is 3.8 m<sup>2</sup>.

The proposed balcony area is 6.0 m<sup>2</sup>.

**8. Section 6A(5)a, By-law 7625**

The maximum permitted access to parking spaces is 6.0 m.

The proposed access to parking is 6.76 m.

**9. Section 6(9)i, By-law 7625**

The maximum permitted rear canopy projection is 1.8 m.

The proposed rear canopy projects 2.3 m.

**10. Section 6(3) Part I 1, By-law 438-86**

The maximum permitted Gross Floor Area is 0.35 times the area of the lot.

The proposed Gross Floor Area is 0.472 times the area of the lot.

**11. Section 6(3) Part II 3.B(II), By-law 438-86**

The minimum required setback from the side lot line for that portion of the building exceeding 17.0 m in depth is 7.5 m.

The proposed setback from the east side lot line is 1.8 m.

**12. Section 6(3) Part IV 4(a)ii, By-law No. 438-86**

The maximum permitted driveway width is 6.0 m.

The proposed driveway width is 6.76 m.

Mr. Goldberg addressed the variances as follows:

Variances 1, 8 and 12: Driveway width Most of the circular driveway is 3 m wide, with a small section at 6.76 m. for a manoeuvring area. In his opinion this difference of .76 m less than the by-law requirements of 6.0 m will be imperceptible.

Variances 2 and 6: Building height This flat roof building will require height variances under the North York By-law as well as the new By-law. The height is measured differently in each – for the North York it is taken from the centre line of the road, and since there is a rise in the land, it amounts to an increase of only .28 over the by-law's maximum of 8 m. The actual height of the building is 7.32 m. Under the new City By-law the maximum height for a flat roof is 7.2 m – this section is still under appeal. Nonetheless, the requested variance is 7.32 m, just over this by-law requirement. The increase results from a low sloped peak in the centre of the roof, with no impacts on shadowing or privacy. The old By-law allows for 10 m height, so no variance is required here.

In Mr. Goldberg's opinion this is an imperceptible difference, as the plans call for considerable articulation in the front, and bump outs, insets, plus the canopy and overhang at the rear, which will provide sufficient visual interest and relief. The covered terrace will provide privacy.

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Variances 3 and 10: FSI and GFA. Under the new By-law, FSI is the measurement, and 0.35 times the lot area is permitted. Under the old By-law, GFA is used, and is required to be the same figure, at 0.35. The applicant is requesting that both be granted at 0.472 times the area of the lot. Mr. Goldberg testified that this is even on the lower end of some recent approvals - that 186 Dawlish, for example, had been approved at .57 times the area. The reduction in the side yard setback allowed the GFA to be reduced from 4.8 to 4.72. No lot coverage variance is required, because while 35% is permitted, this home would cover only 32%.

Variance 11 – Side yard setback – east side. The COA had refused side yard setbacks of 1.50 m for both sides of the property. The North York by-law standard required a minimum of 1.8 m. and the new City By-law is set at 1.5 m. The Applicant revised his design to accede to the standard of 1.8 m., which led to a redesign of the home. On the east side however, a variance is still required under the old By-law for the portion of the structure that exceeds 17 m in depth (about 1 metre).

Variances 4 and 9 – Area of Balcony and Rear Canopy. The Planning Staff Report to the COA had recommended reduction of the size of the balcony at the second floor rear of the home to a maximum of 6.0 sq. m. The Report stated that the applicant had requested a variance to permit a platform/balcony area of 12.5 sq. m as measured under Zoning By-law No. 569-2013 and No. 7625, whereas a maximum platform/balcony area of 4.0 sq. m. and 3.8 sq. m. are permitted, respectively. Platform/balcony area provisions are devised, they said, to mitigate the potential for noise, privacy, and overlook issues for adjacent properties. Planning staff believed that the platform/balcony should be modified to be between 4.0 sq. m and 6.0 sq. m. The COA approved the size of the platform at 6.0 sq. m.

There was a similar request to increase the permitted rear canopy projection from the permitted 1.8 m to 2.3 m. which the COA allowed.

Variance 5 – Building Length. The North York By-law restricted building length to 16.8 m. In this case the length had to be measured from the minimum front yard setback line here. The building location was set back somewhat to align with the adjacent homes. The COA approved the present requested length of 18.48 m. There have been no objections to this length, which Mr. Goldberg termed a technical variance, without consequence.

Mr. Goldberg's conclusion was that the proposed two-storey home is well within the numeric range of most replacement homes in this area. Its scale is not unusual. No City department such as Technical Services or Forestry had required any conditions for the granting of the variances. In his opinion the COA's limitation of FSI and GFA to 0.40 was arbitrary, perhaps resulting from the width of the lot at 22.2 m.

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Respecting the four tests, Mr. Goldberg first addressed that of the general intent and purpose of the Official Plan. This property is designated *Neighbourhoods* in the Plan, and the Healthy Neighbourhoods policies in Section 2.3.1 consider *Neighbourhoods* to be physically stable areas. Development within these areas will respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns. Nevertheless they are not to be static, as infill is envisaged that respects and reinforces the physical character of the neighbourhood. This is said to be the overriding principle of these provisions.

Section 3.1.2.1. Built form policies require that new development conform to the existing and planned neighbourhood, in scale and height. This proposed dwelling fits well within the existing homes as a sensitive, gradual infill. The flat roof design is actually lower than the steeply pitched designs, so that the massing will fit comfortably within the area.

Policy 4.1.5 of the Plan sets out criteria for evaluating development proposals on land within the *Neighbourhoods* designation. The policy states that development will "respect and reinforce the existing physical character of the neighbourhood". This is a modest design, conventionally deployed on the lot, that meets the test of respecting and reinforcing the existing physical character.

Policy 8 of Section 4.1.8 of the OP states that Zoning By-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths lot frontages parking, building setbacks for lot lines, landscaped open space and any other performance standards, to ensure that new development will be compatible with the physical character of established residential Neighbourhoods. In his opinion this proposed dwelling, although not similar in architectural style, can coexist in harmony and fit well within this attractive neighbourhood, both original and as redesigned. The side bar comment addresses this – contemporary designs can be made to fit if the massing, scale and deployment on the parcel are all done in a compatible fashion.

In Mr. Goldberg's opinion, the test of meeting the general intent and purpose of the Official Plan has been met with this proposal.

Likewise, the zoning standards, individually and cumulatively, have been adequately addressed, so that the proposal meets their general intent and purpose. There will be no adverse impact of this permitted use, and the proposal is a fitting and compatible one.

Respecting the requirement that the variances be minor, he pointed to the two aspects of the concept of "minor": one, that of a numerical order of magnitude, and second, whether the variances both individually and cumulatively have an adverse impact. He concludes that this test is met, since the requested variances are modest, with no adverse impacts. Thus they are indeed minor.

The final test is desirable for the appropriate development or use of the land, building or structure. As a reinvestment in this neighbourhood it continues the dynamic of the many such redevelopments over the past 25 or 30 years. It will indeed reinforce the stability of the area.

Thus all four tests in section 45(1) have been satisfied and in the planner's view, the variances represent good planning, and are in the public interest.

## **ANALYSIS, FINDINGS, REASONS**

The TLAB has closely considered the opinion evidence of the expert planning witness and accepts Mr. Goldberg's conclusion that the four tests under s. 45(1) of the Act are met for the requested variances.

Respecting the test of "minor", the variances must be found to be minor in measurement as well as in impact for them to be approved. Numerically and practically these variances are minor, even the seemingly large GFA and FSI variances of 0.472 times the lot area, versus the By-law requirements of 0.35. There have been approvals nearby of up to 0.57 times lot area, as at 186 Dawlish Ave. The increase of 0.9% will not be discernible from the street. Respecting adverse impact, neither of the closest neighbours objected to the size, location or the modern design of the proposed home. Therefore I find these variances to meet the test of "minor".

Likewise the general intent of the Official Plan policies for Neighbourhoods are addressed satisfactorily by this proposal. It will result in a moderately sized structure that despite its different design, will fit comfortably within the size and type of lots and structures nearby. It can therefore be said to be desirable for the appropriate development or use of the land, properly addressing this test in section 45(1) as well.

There is the additional requirement that the general intent and purpose of the zoning by-laws be met. The general intent and purpose of the zoning by-laws is to regulate the use of the land to ensure that development both fits on a given site and within its surrounding context, and reduces impacts on adjacent properties. The proposed size of this dwelling will require several small exemptions from the zoning limits. These are grouped as FSI and GFA, building height and length, side yard setback, balcony and canopy extensions, and driveway width. As can be seen from Exhibit 3, the coloured site plan, there will be virtually no impact on adjacent properties given the requested side yard setback. There have been no objections from the neighbours.

I likewise find that the development, being compatible with the City's Official Plan and Zoning, properly addresses matters of provincial interest as set out in section 2 of the Act, and that the variances are consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). It therefore is consistent with the 2014 Provincial Policy Statement ('PPS') and conforms to the Growth Plan for the Greater Golden Horseshoe ('Growth Plan').

## **DECISIONS AND ORDER**

The TLAB orders that:

1. The appeal is allowed and the variances to Zoning By-laws 438-86 and 7625 as listed 5 through 12, above, are authorized.
2. The variances to Zoning By-law No. 569-2013 as listed 1 through 4 above, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
3. The new two-storey detached dwelling shall be constructed substantially in accordance with the Plans filed as Exhibit 2, attached hereto and forming part of this order. Any other variances that may appear on these plans that are not listed in this decision are not authorized.

X 

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G. Burton  
Chair, Toronto Local Appeal Body



# EXHIBIT #2

Case File Number: 17 192864 S45 25  
 Property Address: 200 Dawlish Ave  
 Date Marked: October 26, 2017

**SITE STATISTICS:**

Address: 200 Dawlish Avenue  
 Part of Lots 369 & 370, Registered Plan 1534  
 (Lot 369 is former Toronto and Lot 370 is North York)  
 Zoning By-law 7625 R3 (0.30) for Lot 370 and  
 Zoning By-law 438-86 R1 Z0.35 for Lot 369  
 569-2013 RD #15.0 d 0.35 x1432

Lot Area 890 sm (9580 sf)  
 By-Law 569-2013, Allowable FSI is 35% - 311.5sm (3353 sf)  
 Proposed FSI is:  
 Building Area:  
 Ground Floor: 245.82sm (2646 sf)  
 Second Floor: 229.0sm (2465sf) - 19.32sm void=209.68sm (2257sf)  
 Total: 455.5sm- 35.84sm(2 parking spaces)= 419.66sm(4517.2sf)=FSI 47.15%

Area broken down by By-Laws:  
 By-Law 438-86, Lot area 572.7sm  
 Allowable FSI is 35% = 200.45sm (2157.6sf)  
 Building Area:  
 Ground Floor: 187.13sm (1799sf)  
 Second Floor: 155.17sm (1670.2sf) - 19.32sm void= 135.85 (1462.27sf)  
 Total: 302.98sm- 17.92sm(1 parking space)= 285.06sm(3068.4sf)=FSI 49.8%

By-Law 7625, Lot area 317.3sm  
 Allowable coverage is 30% = 95.19sm (1024.6sf)  
 Proposed Coverage is 78.68sm+25.25sm (outdoor porch)=101.25sm=32%

Setbacks - Proposed and Allowed:  
 Front Yard: 8.97m (average of 2 neighbors)  
 Side Yards: 1.8m  
 Rear Yard 7.5m

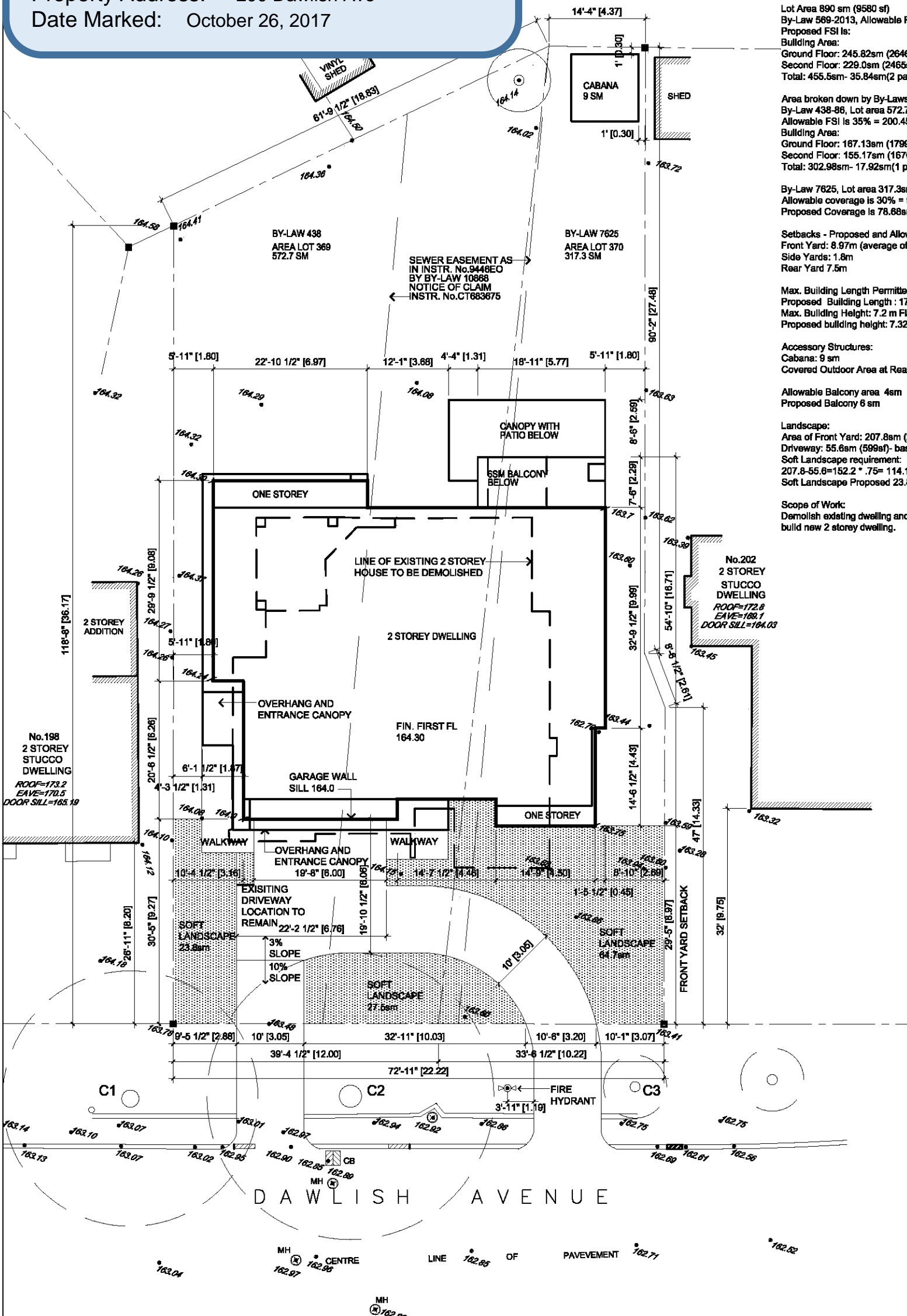
Max. Building Length Permitted : 17m  
 Proposed Building Length : 17m  
 Max. Building Height: 7.2 m Flat Roof  
 Proposed building height: 7.32m

Accessory Structures:  
 Cabana: 9 sm  
 Covered Outdoor Area at Rear: 35.7sm (384.3sf)

Allowable Balcony area 4sm  
 Proposed Balcony 6 sm

Landscape:  
 Area of Front Yard: 207.8sm (2237 sf)  
 Driveway: 55.6sm (599sf) - based on 6m driveway  
 Soft Landscape requirement:  
 207.8-55.6=152.2 \* .75= 114.15sm (1228.7sf)  
 Soft Landscape Proposed 23.8+27.5+84.7=116sm

Scope of Work:  
 Demolish existing dwelling and  
 build new 2 storey dwelling.



**SITE PLAN**  
**200 DAWLISH AVENUE**  
**RESIDENCE**  
 Scale 1:200

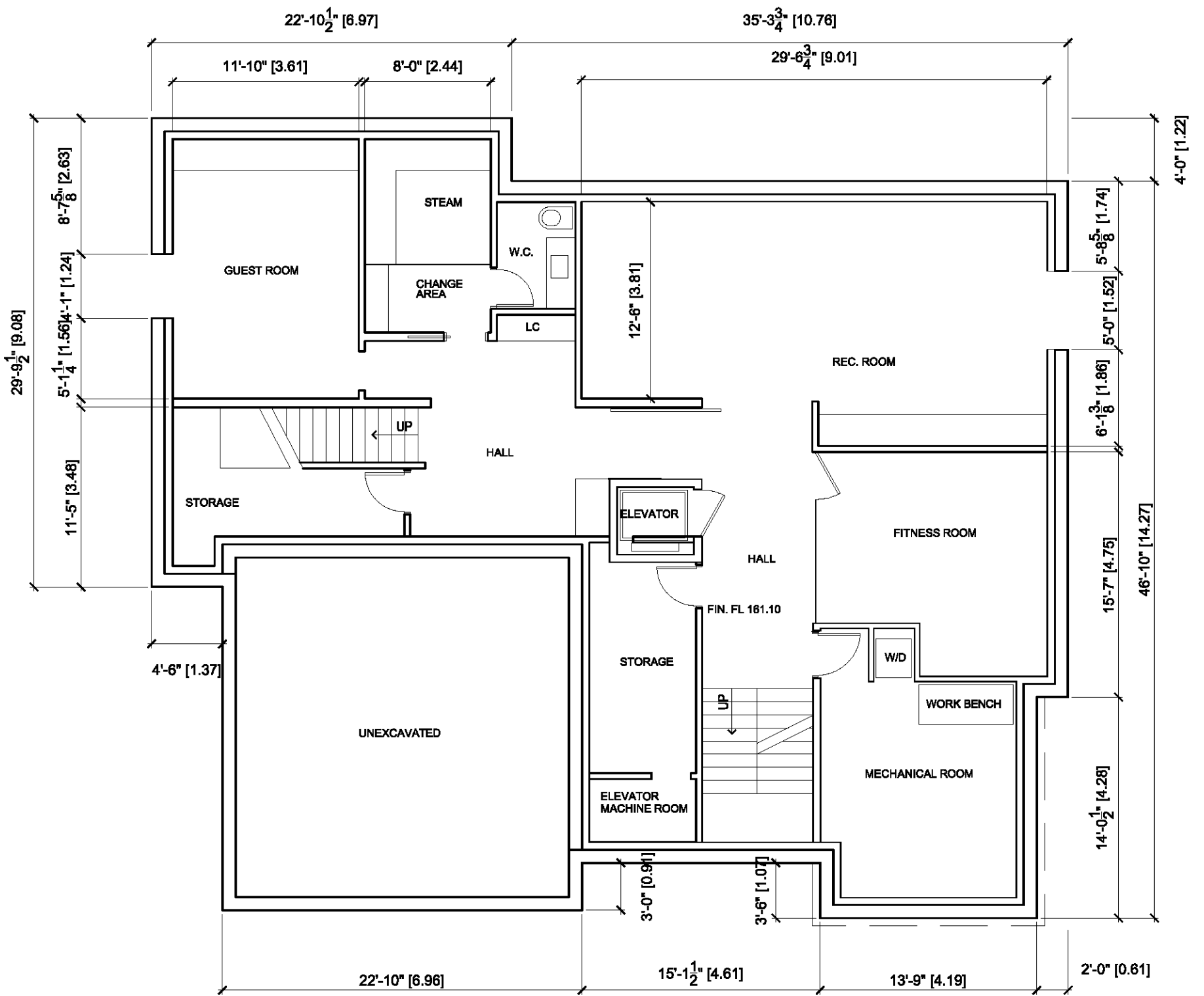
TLAB

August 14, 2017

ONTARIO ASSOCIATION  
 &  
 ARCHITECTS  
 JILLIAN AIMIS  
 LICENCE  
 5707

**A01**

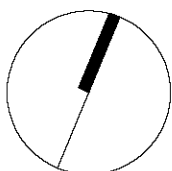
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**BASEMENT FLOOR PLAN**

**200 DAWLISH AVENUE  
RESIDENCE**

Scale 1/8" = 1'-0"



TLAB

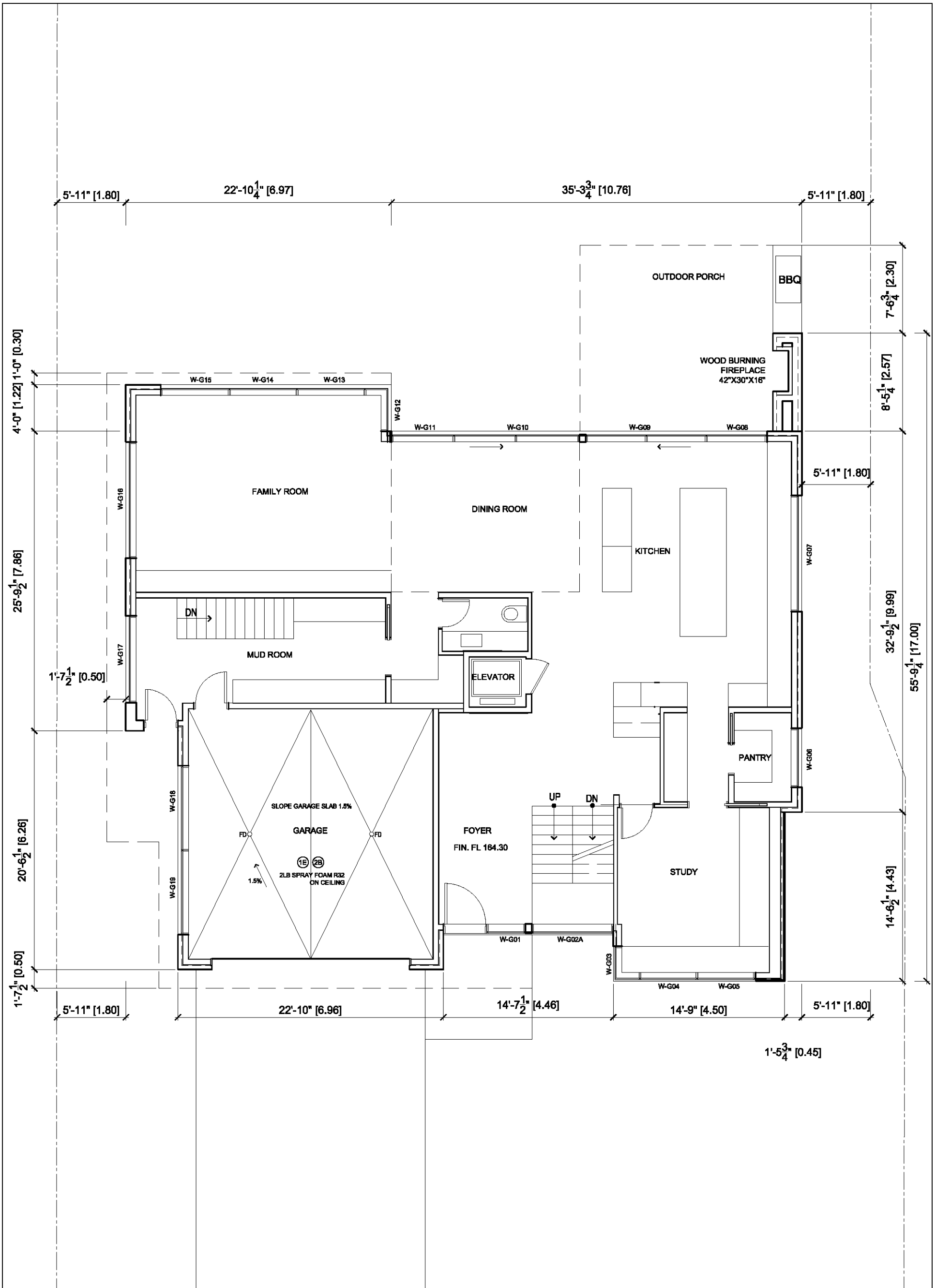


August 14, 2017

**A02**

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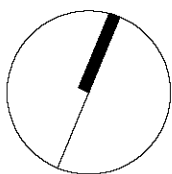
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**GROUND FLOOR PLAN**

**200 DAWLISH AVENUE  
RESIDENCE**

Scale 1/8" = 1'-0"



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August 14, 2017

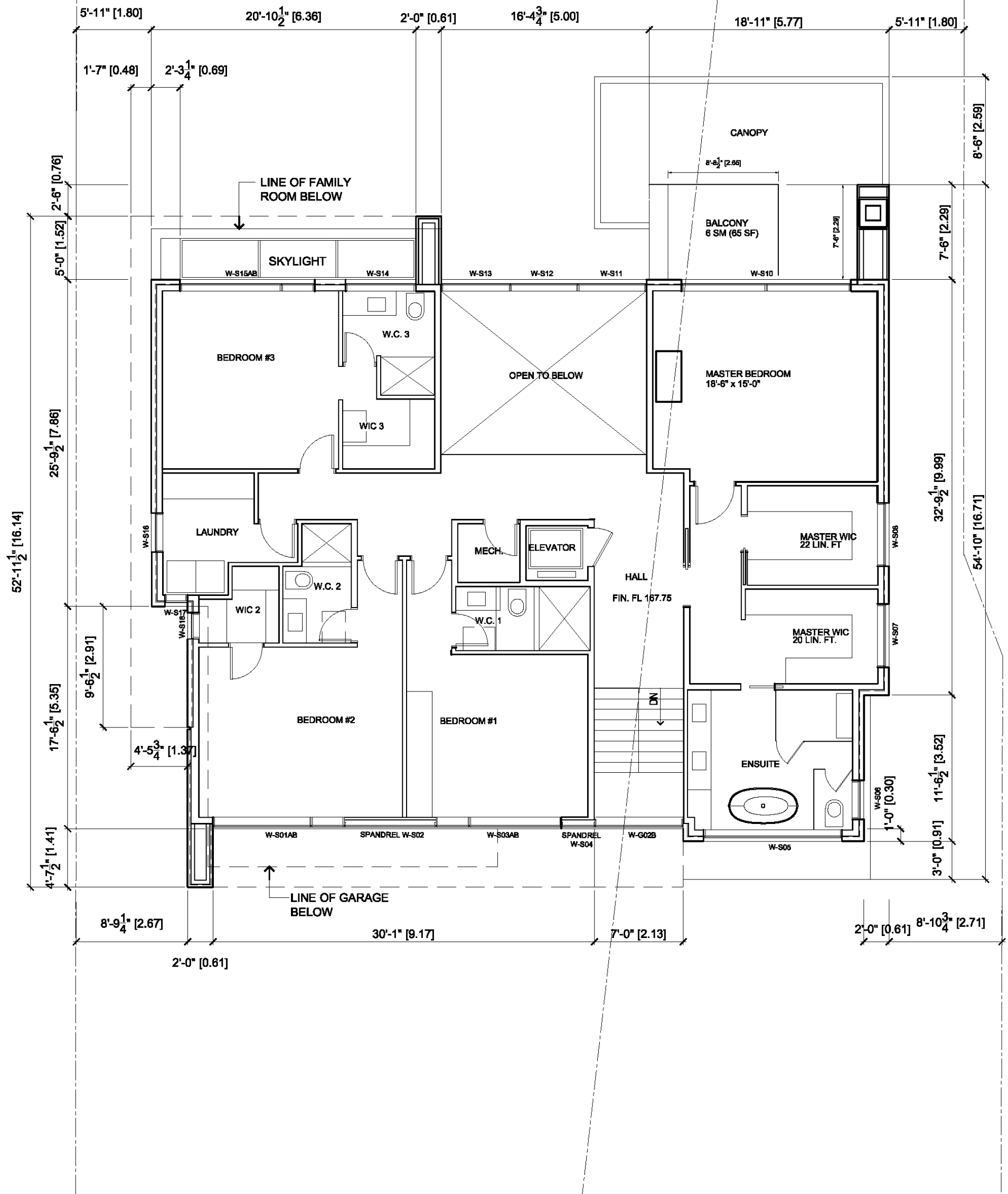
**A03**

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BY-LAW 438  
AREA LOT 369  
572.7 SM

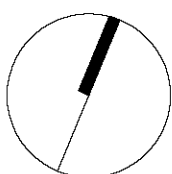
BY-LAW 7625  
AREA LOT 370  
317.3 SM



# SECOND FLOOR PLAN

## 200 DAWLISH AVENUE RESIDENCE

Scale 1/8" = 1'-0"



TLAB

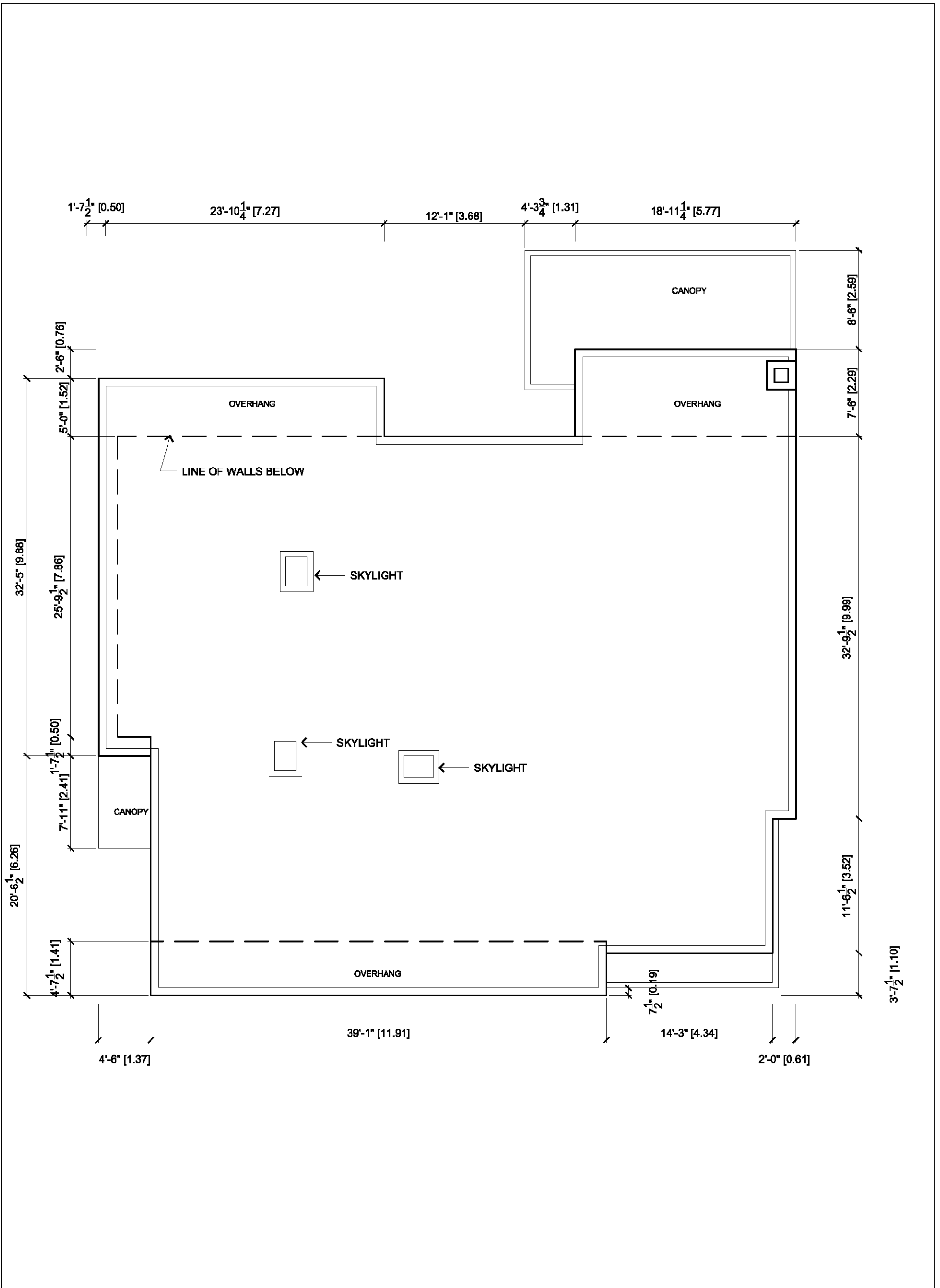


August 14, 2017

# A04

### JILLIANAIMISARCHITECT

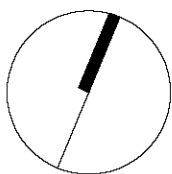
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ROOF FLOOR PLAN

200 DAWLISH AVENUE  
RESIDENCE

Scale 1/8" = 1'-0"



TLAB

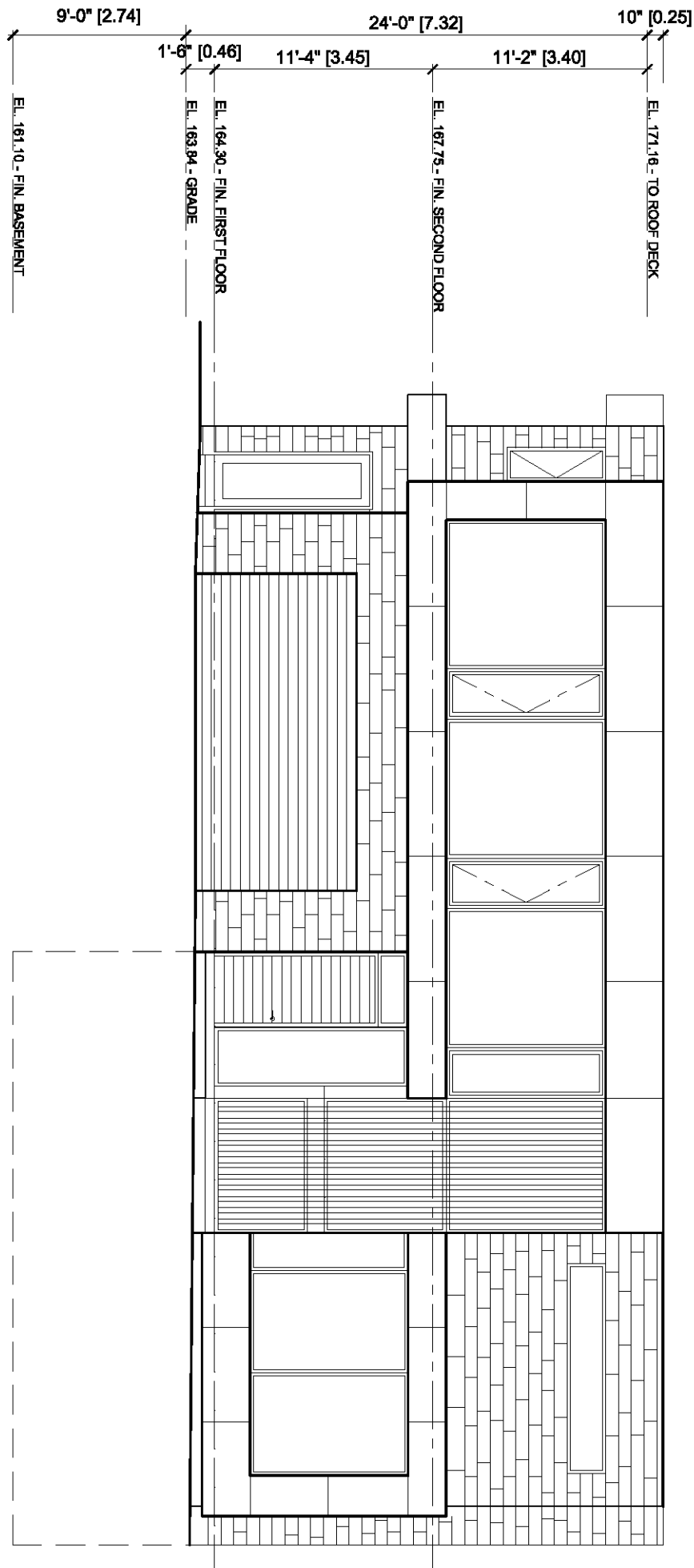


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A05

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**SOUTH ELEVATION**  
**200 DAWLISH AVENUE**  
**RESIDENCE**  
 Scale 1/8" = 1'-0"

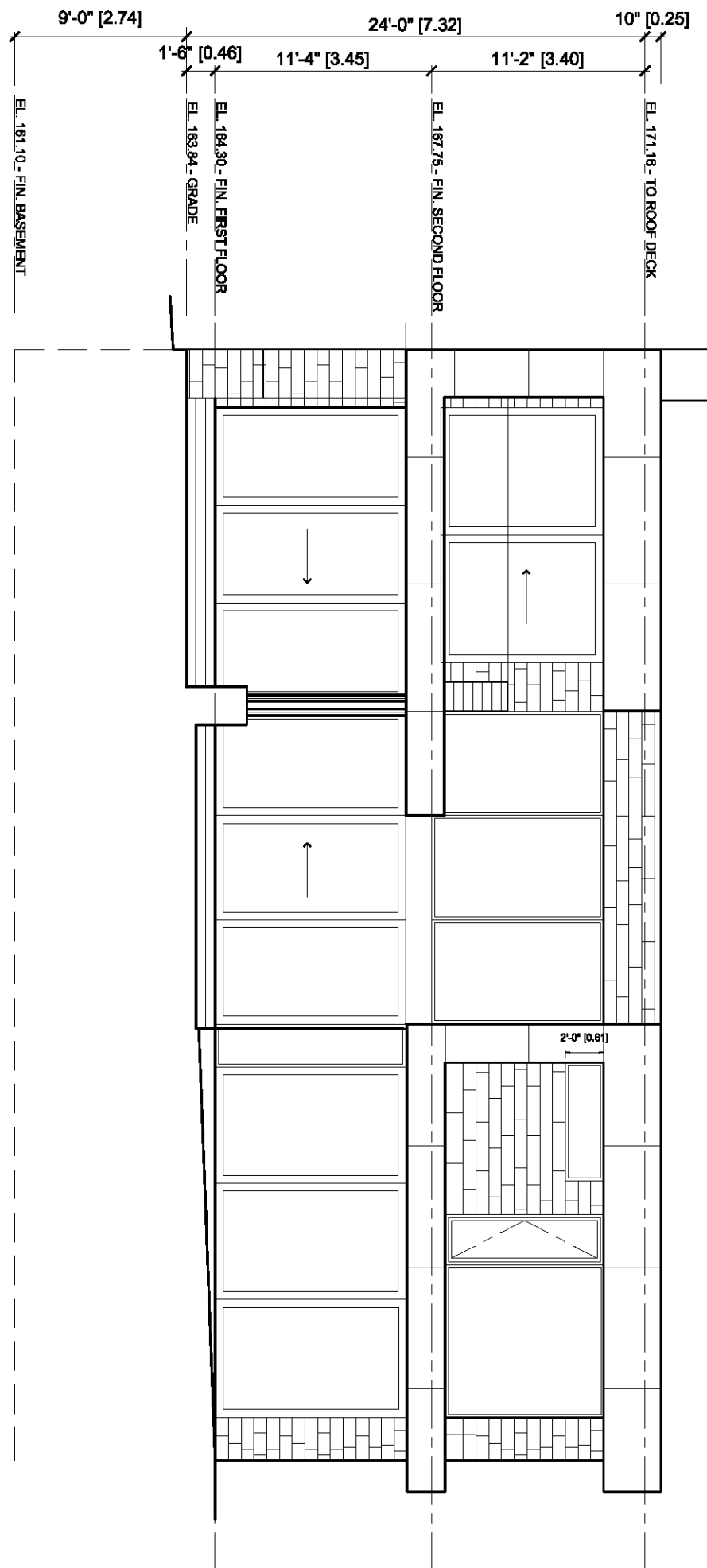
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**A06**

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**NORTH ELEVATION**  
**200 DAWLISH AVENUE**  
**RESIDENCE**  
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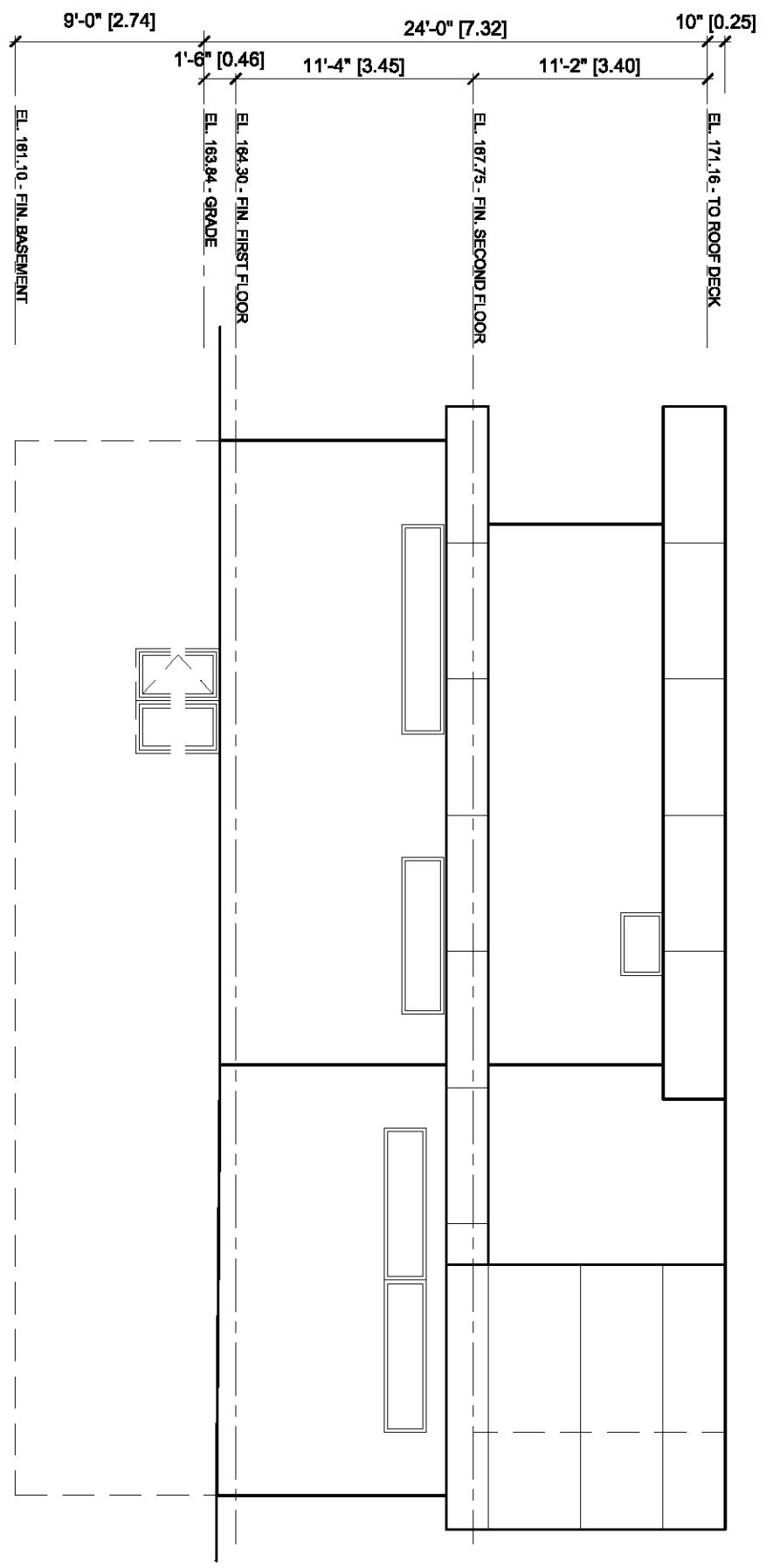


**A07**

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TLAB

August 14, 2017



**WEST ELEVATION  
200 DAWLISH AVENUE  
RESIDENCE**

Scale 1/8" = 1'-0"



TLAB

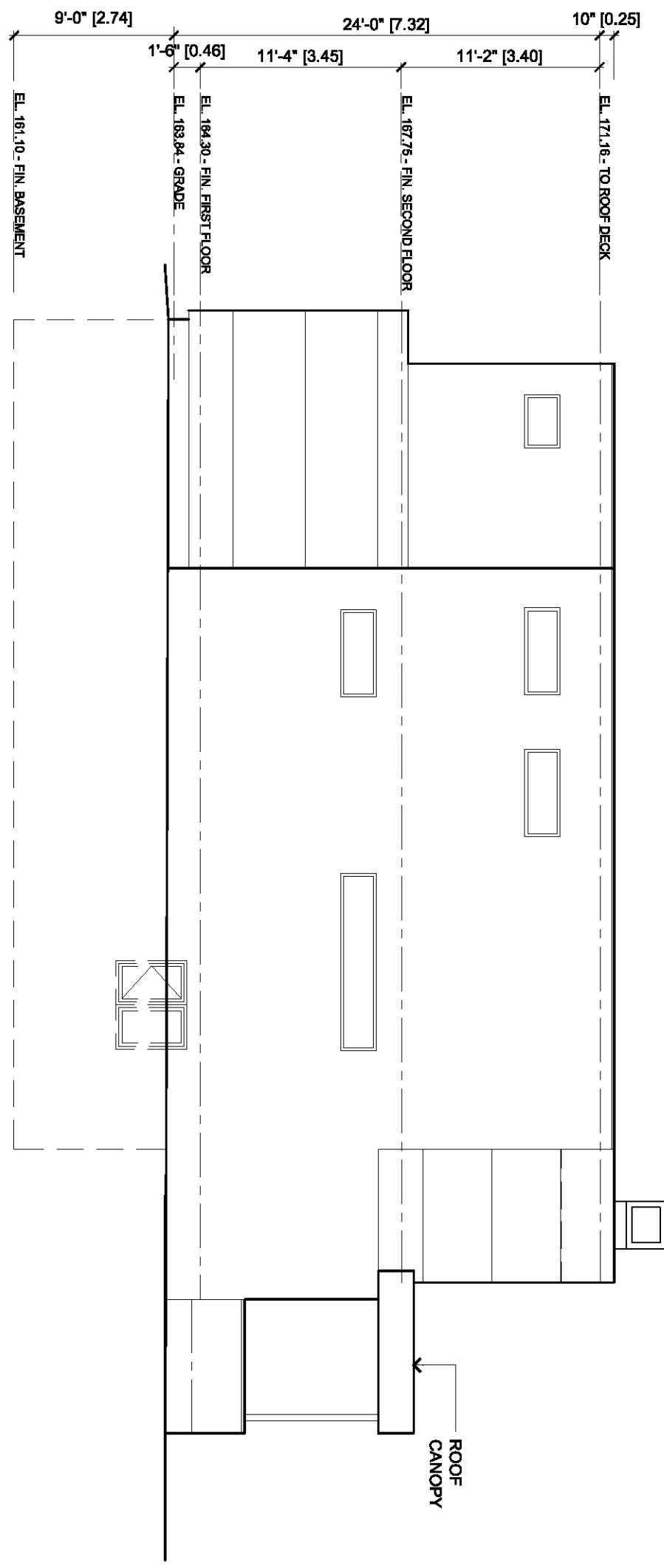
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**A08**

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**EAST ELEVATION  
200 DAWLISH AVENUE  
RESIDENCE**

Scale 1/8" = 1'-0"



**A09**

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TLAB

August 14, 2017