

DECISION AND ORDER

Decision Issue Date Thursday, November 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): MARIN ZABZUNI

Applicant: CONTEMPO STUDIO

Property Address/Description: 313 WHITMORE AVE

Committee of Adjustment Case File Number: 17 136120 NNY 15 MV

TLAB Case File Number: 17 195795 S45 15 TLAB

Hearing date: Monday, November 06, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

This is an appeal of requested variances for 313 Whitmore Avenue (the 'subject property') in respect of a refusal by the North York Panel of the City of Toronto ('City') Committee of Adjustment ('COA'). Variances were sought to City By-law 569-2013, currently under appeal ('City By-law'), and the in-force By-law 1-83, necessary to permit the removal of an existing bungalow and construction of a two storey detached residential dwelling, with integral garage. The design representative consultant for the owners was present, Marin Zabzuni, as well as the owners themselves, Mark Titleman and Nicole Schwartz. Adam Pressick, Assistant Planner, North York Division attended under summons. A representative of the owner of 311 Whitmore Avenue, the adjoining property to the east, attended but did not provide testimony.

BACKGROUND

The subject property is located on the south side of Whitmore Avenue, a one-way eastbound residential street located west of Marlee Avenue and north of Eglinton Avenue. The area was described by the Planner as being relatively stable,

experiencing some renovation and redevelopment. Some three properties on Whitmore Avenue have been the subject of variance applications. The street itself is comprised of a mix of one and two-storey detached and semi-detached housing of a previous generation, often with large front porches, rear garages and a mix of front yard and integral garage parking. The original applications were revised for presentation to the COA and further revised through the Applicant's Disclosure, before the Toronto Local Appeal Body ('TLAB').

I disclosed that I had visited and walked the site pursuant to the direction of City Council and that the file material had been read. Mr. Zabzuni was asked to elect between acting as a Representative or as a witness in providing factual and opinion advice to the TLAB, but not both roles. No Witness Statement had been provided, contrary to TLAB Rules. He elected to provide evidence and was qualified as a Design Consultant certified in BCIM practice and knowledgeable concerning the application of Part 9 of the Ontario Building Code in new home construction as well as renovations. He and his firm had been responsible for the preparation of plans, plan revisions and discussions with City Staff on the evolution of the variance requests.

MATTERS IN ISSUE

The COA had refused all variances; in that regard it had had the benefit of a Staff Report prepared by Mr. Pressick. Following the refusal, the owners' agent, Mr. Zabzuni, continued to meet with Mr. Pressick and further revised the plans now attached to and forming part of this decision. No neighbours were present to advance objection to the variances now sought. Earlier, an area resident had provided objections; however, as a result of further revisions to the Plans, that objection was essentially removed.

The TLAB is grateful for and commends the exercise of sober consideration and cooperation given by the owners and area residents alike in the final evolution of acceptable construction plans.

There remained the evolved variances sought that were required to be considered de novo: originally six under the City By-law and five under By-law 1-83.

JURISDICTION

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

Evidence was heard from Mr. Zabzuni; it was reinforced by the planner, Mr. Pressick, who was qualified to provide expert land use planning opinion evidence supplementing the comments made by Mr. Zabzuni.

All requested variances were addressed:

A. City By-law

1. The maximum permitted floor space index (fsi) of 0.80 times the lot area had been before the COA at 0.8429. The applicants had revised their plans to a requested reduction of 0.828 times lot area, resulting from a reduced building length and reduced east side yard setback requests.

2. The maximum height of all exterior main walls of 8.50 m had been before the COA at 10.28 m. The applicants had revised their roof design to a more traditional hip roof thereby changing the height increment, measured to the under soffits level, to 8.6 m, marginally greater than that allowed.

3. The minimum front yard soft landscaping of 75% had been before the COA at 63.25%. By the use of permeable pavers and related revisions, the applicant's revisions are now seeking relief at 69.7%. This is accomplished despite the site conditions of a small front yard, integral garage and retention of an existing shared right-of-way with the neighbor to the west.

4. The minimum west side yard requirement of 1.20 m is sought to be maintained at 1.11 m, being the existing condition adjacent the right-of-way of the west wall of the existing building.

5. The minimum east side yard setback requirement of 1.20 m had been before the COA at 0.41 m. The applicants had revised their plans by reducing the house width resulting in a revised request of 0.51 m.

6. The maximum permitted building length of 17 m was before the COA at 18.31 m requested. The applicants continued their request for a length of 18.31 m to accommodate appropriate space within the building on the narrow lot, while respecting the existing right-of-way.

B. By-law 1-83

7. Relief to a revised floor space index from 0.80 to 0.828 times the lot area is also requested, on the revised plans.

8. Consistent relief from 1.2 m to recognize the existing condition and right-of-way on the west side yard setback of 1.11 m, is requested.

9. The revised plans permitted the removal of requested relief for an east side yard variance.

10. The revised plans also permitted the removal of requested relief for a rear deck projection.

11. Relief from the minimum required front yard soft landscaping of 75% to 68.25% was also requested, based on different calculation standards.

ANALYSIS, FINDINGS, REASONS

The areas of requested variances, above recorded, had been twice adjusted, in part as a result of discussions held between the applicants Designer and the City Planner reviewing the application. As a result, fsi, height, soft landscaping and the east side yard setback have all moved in closer compliance with by-law requirements.

The opinion was provided that there were no issues with consistency to provincial policy or conformity to Growth Plan. Both Mr. Zabzuni and Mr. Pressick described that the requested relief under both zoning by-laws, as now adjusted and requested in the revised plans, meets the 'four tests' under s. 45 of the Planning Act.

Mr. Pressick added that with a narrow lot of 7.62 m frontage, and a mutual right-of-way, variances are to be expected. As well, a new two-storey dwelling with integral garage and a small front porch will fit well within the neighbourhood, as the many letters of support attested. He indicated that the successive revisions had moved towards the Staff recommendations and were all in keeping with the applicable tests and policies.

Mr. Pressick recommended that if approval were granted, it could benefit from being related to the east elevation of the plans provided as revised. This would capture the intended second storey projection and prevent enclosure of that space below. He said that the Plans could be further amended to reflect a condition of permeable pavers in the front yard, as opposed to the 'asphalt' proposal the site plan specifies.

No other conditions were recommended. There are no trees on the boulevard warranting protection.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 195795 S45 15 TLAB

I accept the evidence of the proponent advanced through Mr. Zabzuni as supplemented by the Planner, Mr. Pressick and find the the proposals to be minor, desirable, appropriate and in keeping with applicable Official Plan and zoning instruments.

I entered the referenced plans pre-filed with the TLAB, as Ex. 1.

Both individuals were thanked for their constructive enterprise to reduce or eliminate issues on appeal.

DECISION AND ORDER

The appeal from the decision of the COA is allowed. The variances specified as permitted and identified in Attachment 1 hereto are approved, subject to the following condition:

1. Construction is to be substantially in accordance with the plans filed as Exhibit 1 attached hereto and marked as Attachment 2, save and except the reference to soft landscaping on the site plan and in the front yard shall be changed from 'asphalt paving' to read 'permeable pavers'.

X 

I. Lord
Chair, Toronto Local Appeal Body
Signed by: ilord

ATTACHMENT 1

313 Whitmore Avenue

VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.80.40.40.(1), By-law No. 569-2013

The maximum permitted floor space index is 0.80 times the lot area.

The permitted floor space index is **0.828** times the lot area.

2. Chapter 10.80.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 8.50m.

The permitted height of the side exterior main walls facing a side lot line is 8.6 m.

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

The minimum required front yard soft landscaping is 75.00%.

The permitted front yard soft landscaping area is 69.7%.

4. Chapter 10.80.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The permitted west side yard setback is 1.11m.

5. Chapter 10.80.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The permitted east side yard setback is 0.51m.

6. Chapter 10.80.40.20.(1), By-law No. 569-2013

The maximum permitted building length is 17.00m.

The permitted building length is **18.31m**.

7. Section 3(a), By-law No. 1-83

The maximum permitted floor space index is 0.80 times the lot area.

The permitted floor space index is **0.828** times the lot area.

8. Section 3(a), By-law No. 1-83

The minimum required side yard setback is 1.20m.

The permitted west side yard setback is 1.11m.

9. Section 3(a), By-law No. 1-83

The minimum required side yard setback is 0.50m.

The proposed east side yard setback is 0.51m and no variance is required.

10. Section 3, By-law No. 1-83

The maximum permitted rear deck projection is 2.40m.

The proposed rear deck projects 2.39m and no variance is required.

11. Section 3, By-law No. 1-83

The minimum required front yard soft landscaping is 75.00%.

The permitted front yard soft landscaping area is 68.25%.

SURVEY INFORMATION:

INFORMATION TAKEN FROM:
SURVEYOR'S REAL PROPERTY REPORT
PART 1 - PLAN OF PART OF LOT 53
REGISTERED PLAN 1493
CITY OF TORONTO

PREPARED BY: YOUNG & YOUNG SURVEYING
ONTARIO LAND SURVEYORS

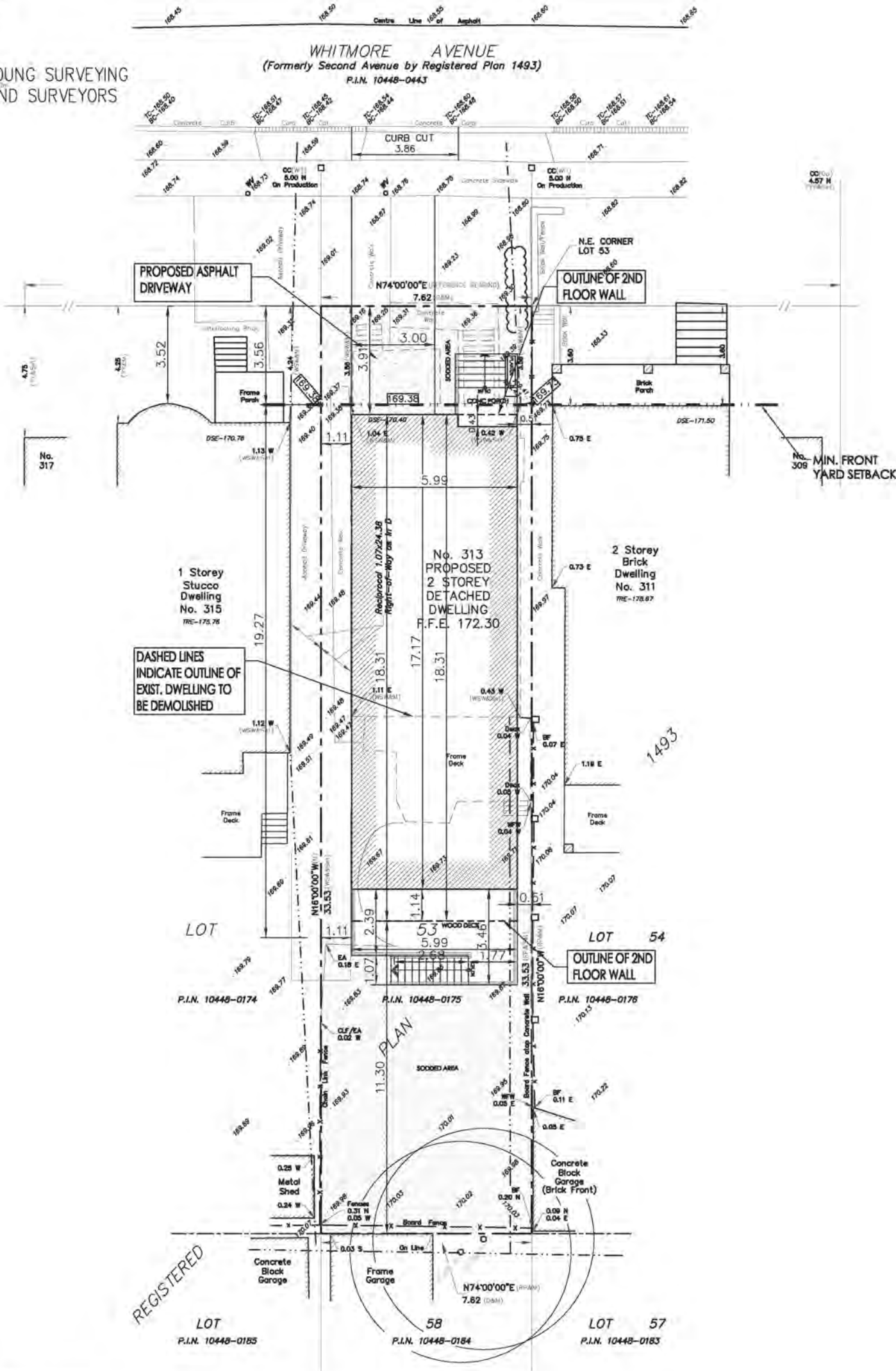
DATED: JANUARY 16, 2017

Attachment 2 - 313 Whitmore

Toronto Local Appeal Body

EXHIBIT # 1

Case File Number: 17 195795 S45 15
Property Address: 313 Whitmore Ave
Date Marked: November 06, 2017



SITE STATISTICS

ZONED AS1 RM (F12.0) u2) d0.8) (x252)
LOT AREA = 255.49 m² (2,750.07 SQ. FT.)
LOT FRONTAGE: 7.62 m

PROPOSED G.F.A.

FIRST FLOOR AREA = 101.99 m² (1,097.80 SQ. FT.)
SECOND FLOOR AREA = 109.78 m² (1,181.61 SQ. FT.)
TOTAL PROP. G.F.A. = 211.77 m² (2,279.47 SQ. FT.) (82.89%)

PROPOSED FRONT YARD LANDSCAPE:

FRONT YARD AREA = 30.93 m² (332.92 S.F.)
DRIVEWAY AREA = 11.75 m² (126.48 S.F.)
MIN. SOFT LANDSCAPE AREA REQUIRED (75%)=14.38m² (154.78 S.F.)
PORCH & STAIRS AREA= 5.81 m² (62.53 S.F.)
PROPOSED SOFT LANDSCAPE AREA= 13.37 m² (143.91 S.F.) 69.70%

PROPOSED REAR YARD LANDSCAPE:

REAR YARD AREA = 94.89 m² (1021.39 S.F.)
MIN. SOFT LANDSCAPE AREA REQUIRED (50%)
= 47.45 m² (510.75 S.F.)
DECK & STAIRS AREA= 19.19 m² (206.56 S.F.)
PROPOSED SOFT LANDSCAPE AREA
= 75.70 m² (814.83 S.F.) (79.77%)

contempostudio



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TORONTO, ONT., M6N 4M9
INFO@CONTEMPOSTUDIO.CA
W. CONTEMPOSTUDIO.CA
T. (416) 836-1042
F. (416) 485-1042

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION

Required unless design is exempt under 3.2.4.3(5) Division C of the Ontario Building Code.

MARIN ZABZINI
NAME SIGNATURE BCIN 45250

REGISTRATION INFORMATION

Required unless design is exempt under 3.2.4.1. Division C of the Ontario Building Code.

CONTEMPO STUDIO
FIRM NAME 46972 BCIN

DO NOT SCALE DRAWINGS
CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT ANY OMISSIONS OR DISCREPANCIES TO CONTEMPO STUDIO BEFORE PROCEEDING WITH WORK.
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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING

SITE PLAN

SCALE

AS-NOTED

DATE

JAN.7,2017

PROJECT No.

2016-50

DRAWN BY
M.Z.

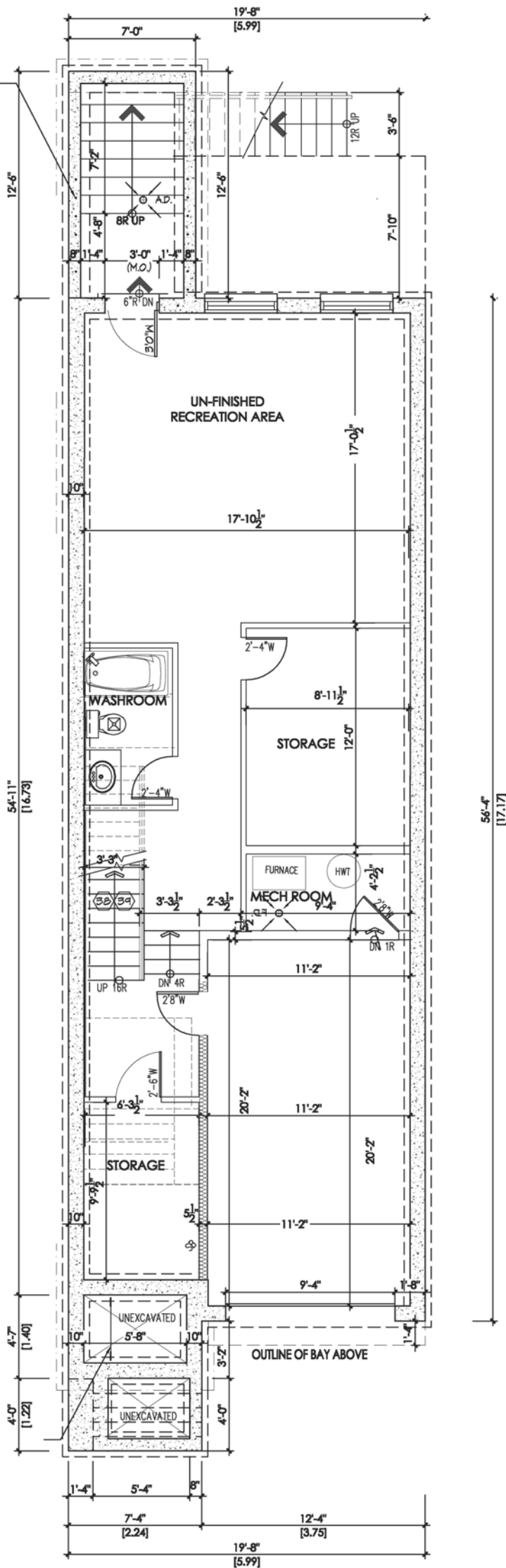
APPROVED BY
M.Z.

DRAWING No.

A-1



8" REINFORCED POURED CONC.
WALL W/ 15M BARS @ 16" O.C.
(VERTICAL) & 10M BARS @ 16"
O.C. HORIZONTAL ON 1'-8"x8"
DEEP POURED CONC. FTG. C/W
10M (MIN 12" LONG & 4" INTO
CONC. ON UNDIST. SOIL (TYP.)
ON UNDISTURBED SOIL



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 BASEMENT FLOOR PLAN

SCALE : 1/8" = 1'-0"

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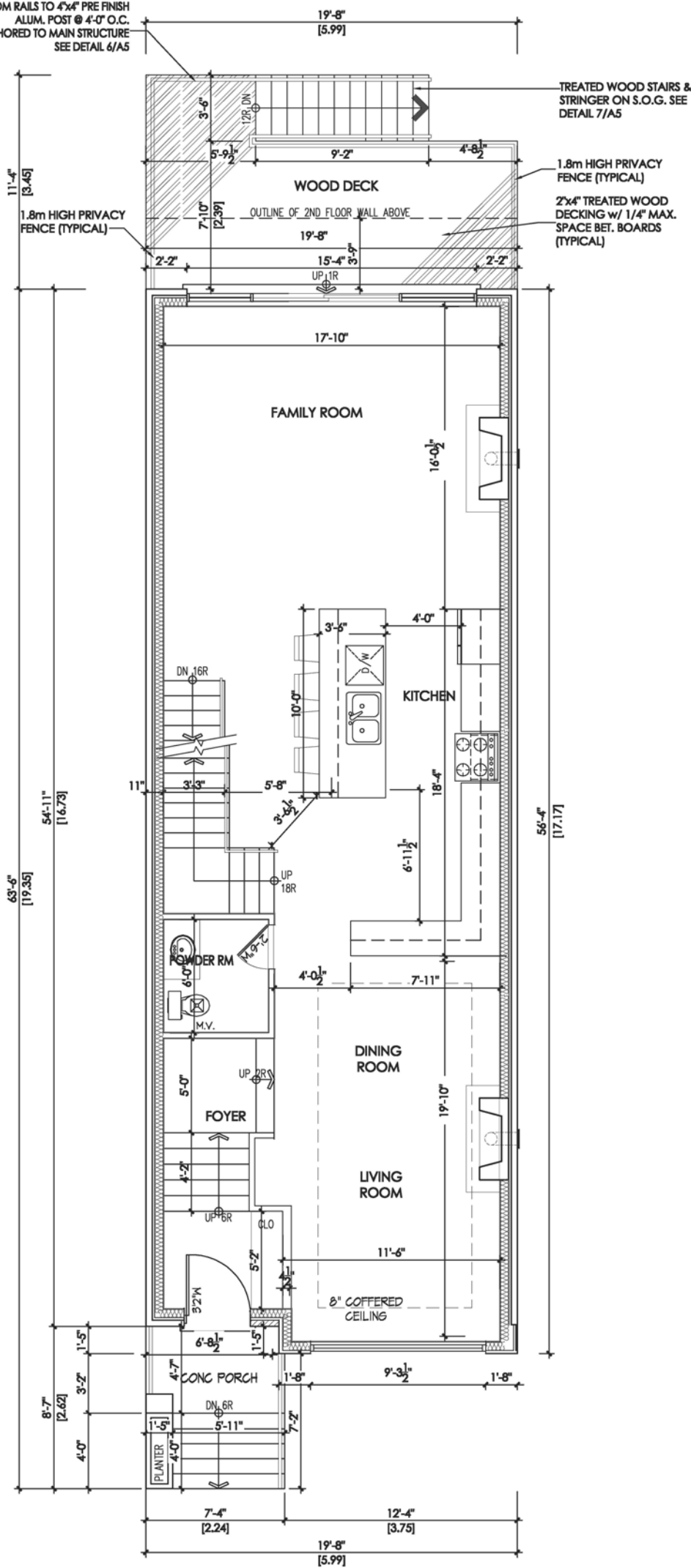
PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING
BASEMENT PLAN

SCALE AS-NOTED	DRAWN BY M.Z.
DATE JAN.7,2017	APPROVED BY M.Z.
PROJECT No. 2016-50	DRAWING No. A-2



42" HIGH GUARD RAIL W/ FIBRE GLASS TIED TO
2"x4" TOP & BOTTOM RAILS TO 4"x4" PRE FINISH
ALUM. POST @ 4'-0" O.C.
ANCHORED TO MAIN STRUCTURE
SEE DETAIL 6/A5



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 FIRST FLOOR PLAN

SCALE : 1/8" = 1'-0"

FIRST FLOOR AREA: (1097.80 SQ. FT.)

contempostudio



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MARIN ZABZUNI 45250
NAME SIGNATURE BCIN

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FIRM NAME BCIN

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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING

FIRST FLOOR PLAN

SCALE

AS-NOTED

DATE

JAN.7,2017

PROJECT No.

2016-50

DRAWN BY

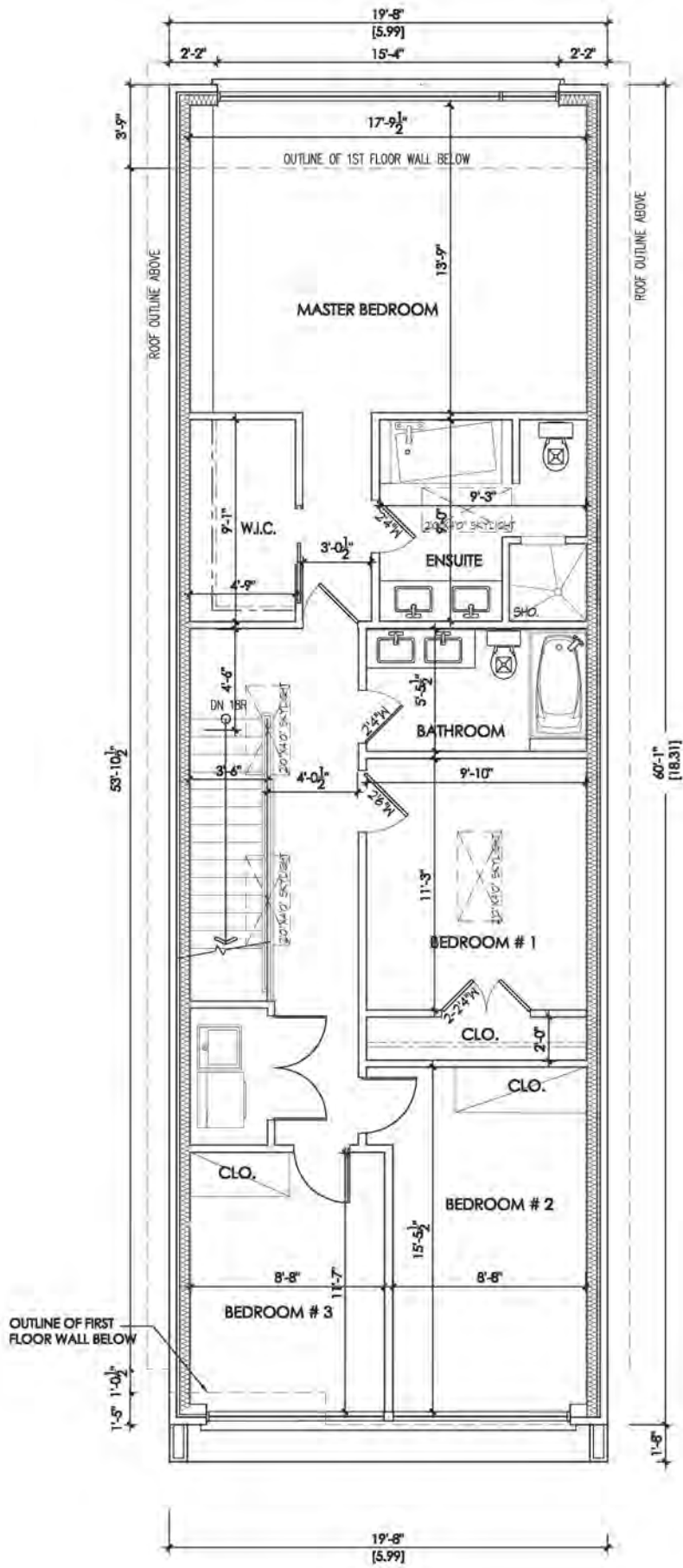
M.Z.

APPROVED BY

M.Z.

DRAWING No.

A-3



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 SECOND FLOOR PLAN

A-4 SCALE : 1/8"=1'-0"

SECOND FLOOR AREA: (1181.61 SQ. FT.)

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MARIN ZABZUN 45250
NAME SIGNATURE BCIN

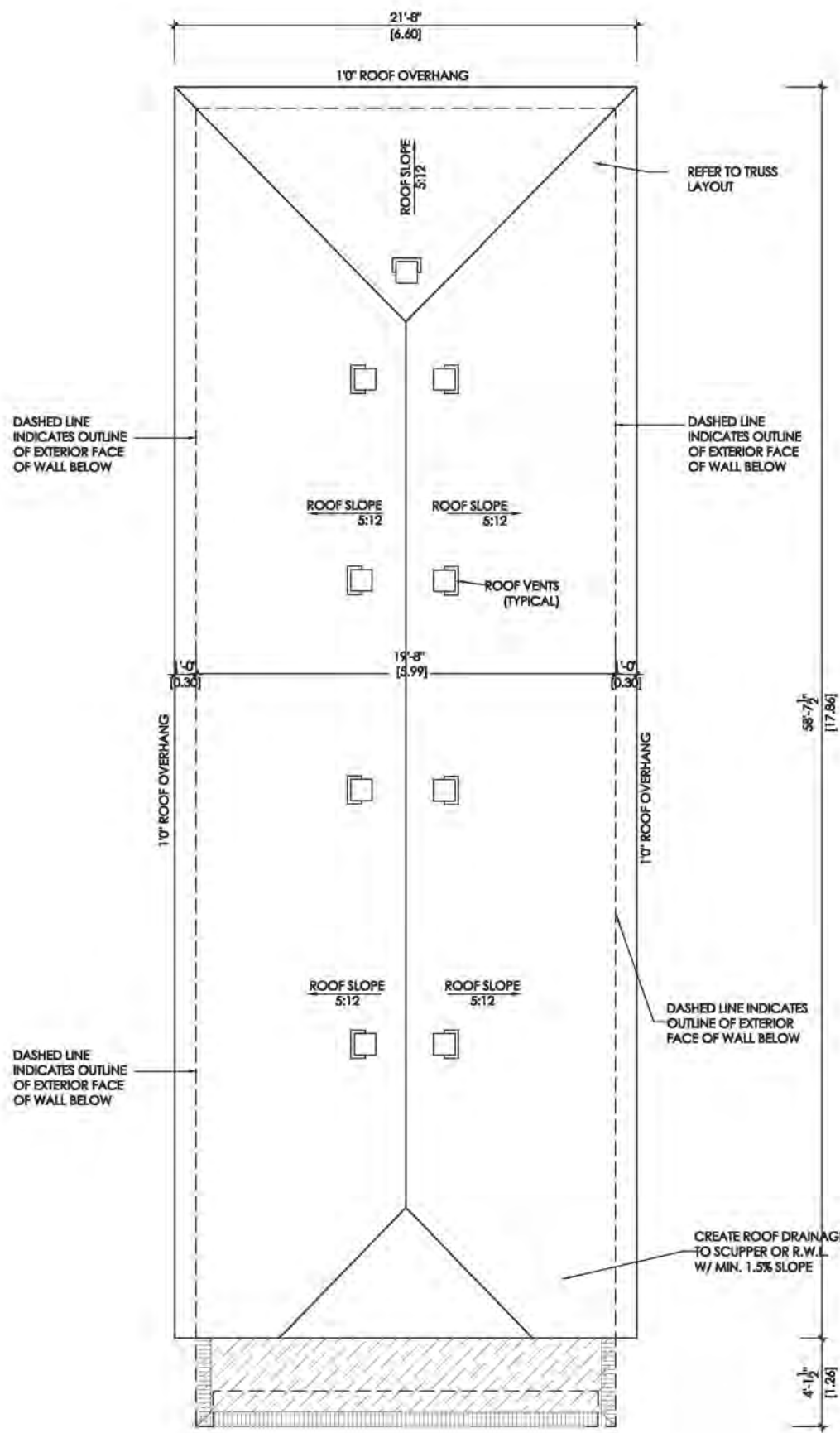
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CONTEMPO STUDIO 46972
FIRM NAME BCIN

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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING	
SECOND FLOOR PLAN	
SCALE	DRAWN BY
AS-NOTED	M.Z.
DATE	APPROVED BY
JAN.7,2017	M.Z.
PROJECT No.	DRAWING No.
2016-50	A-4



1 ROOF PLAN
A-5 SCALE : 1/8" = 1'-0"

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- NEW PARTITIONS
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

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NAME SIGNATURE BCIN

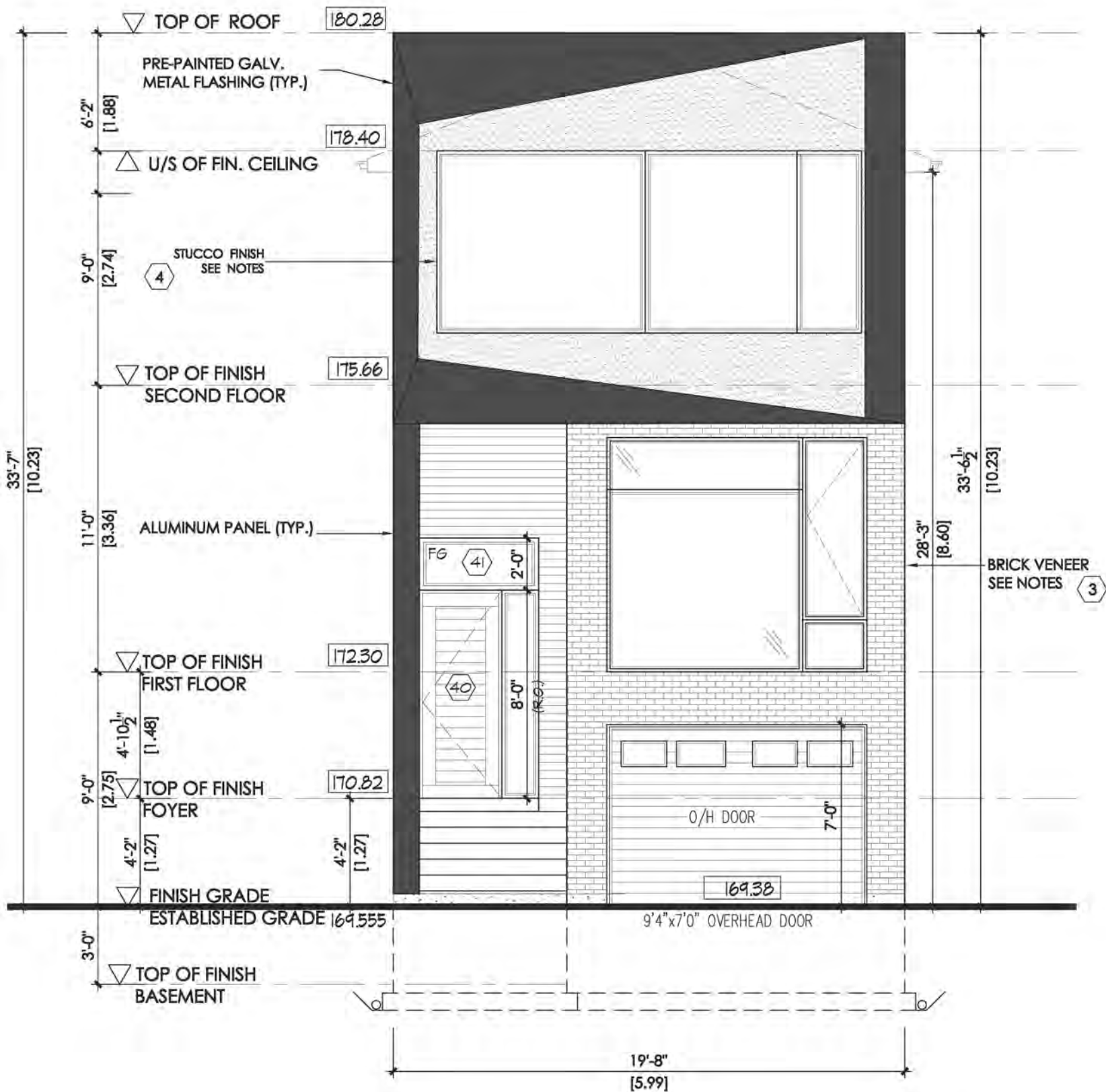
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FIRM NAME BCIN

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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING	
SECOND FLOOR PLAN	
SCALE AS-NOTED	DRAWN BY M.Z.
DATE JAN.7,2017	APPROVED BY M.Z.
PROJECT No. 2016-50	DRAWING No. A-4



1 NORTH (FRONT) ELEVATION
A-6 SCALE : 3/16" = 1' - 0"

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

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F. (416) 485-1042

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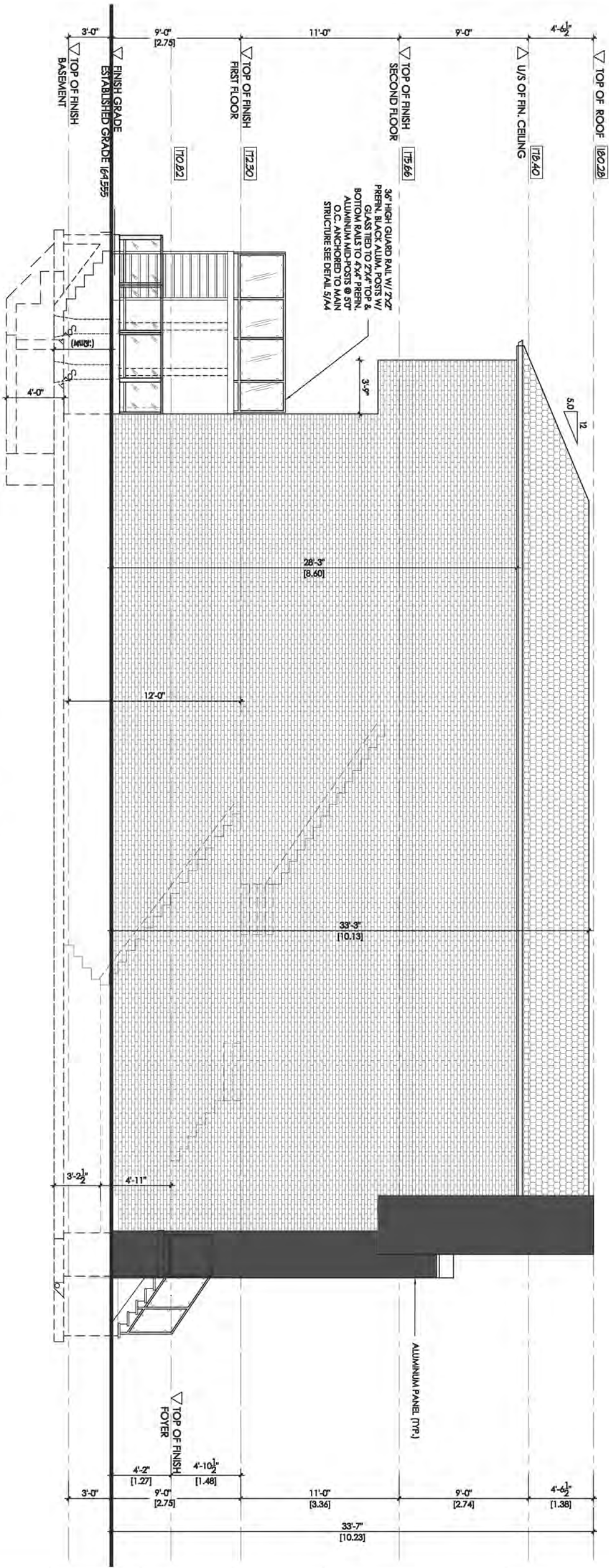
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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING
NORTH ELEVATION

SCALE AS-NOTED	DRAWN BY M.Z.
DATE JAN.7,2017	APPROVED BY M.Z.
PROJECT No. 2016-50	DRAWING No. A-6



1 EAST ELEVATION
A-7 SCALE : 1/8" = 1'-0"

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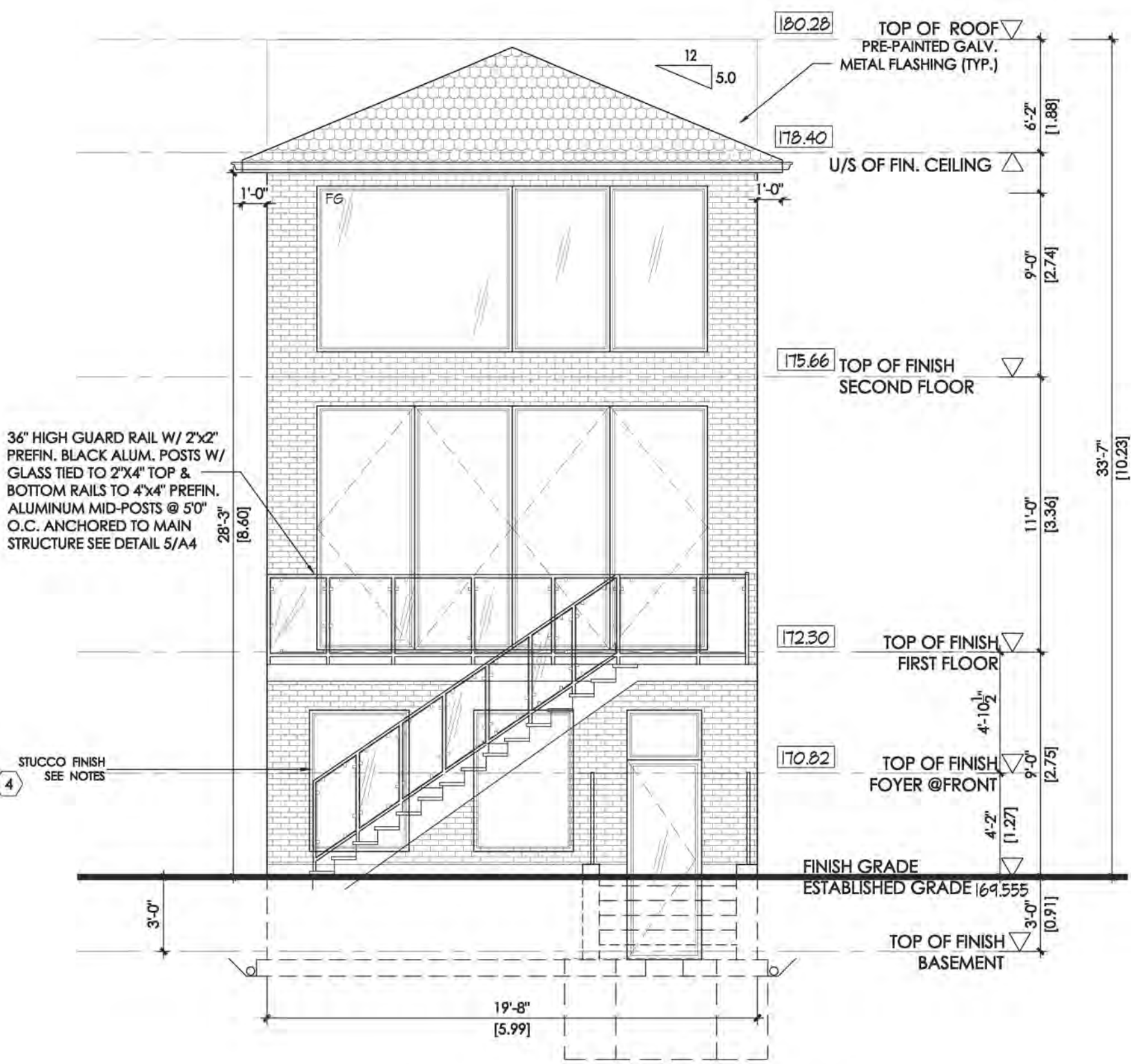
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PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING
EAST ELEVATION

SCALE AS-NOTED	DRAWN BY M.Z.
DATE JAN.5,2017	APPROVED BY M.Z.
PROJECT No. 2016-50	DRAWING No. A-7



1 SOUTH (REAR) ELEVATION
A-8 SCALE : 3/16" = 1' - 0"

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

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F. (416) 485-1042

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION
Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

MARIN ZABZUNI
NAME

SIGNATURE
45250
BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

CONTEMPO STUDIO
FIRM NAME

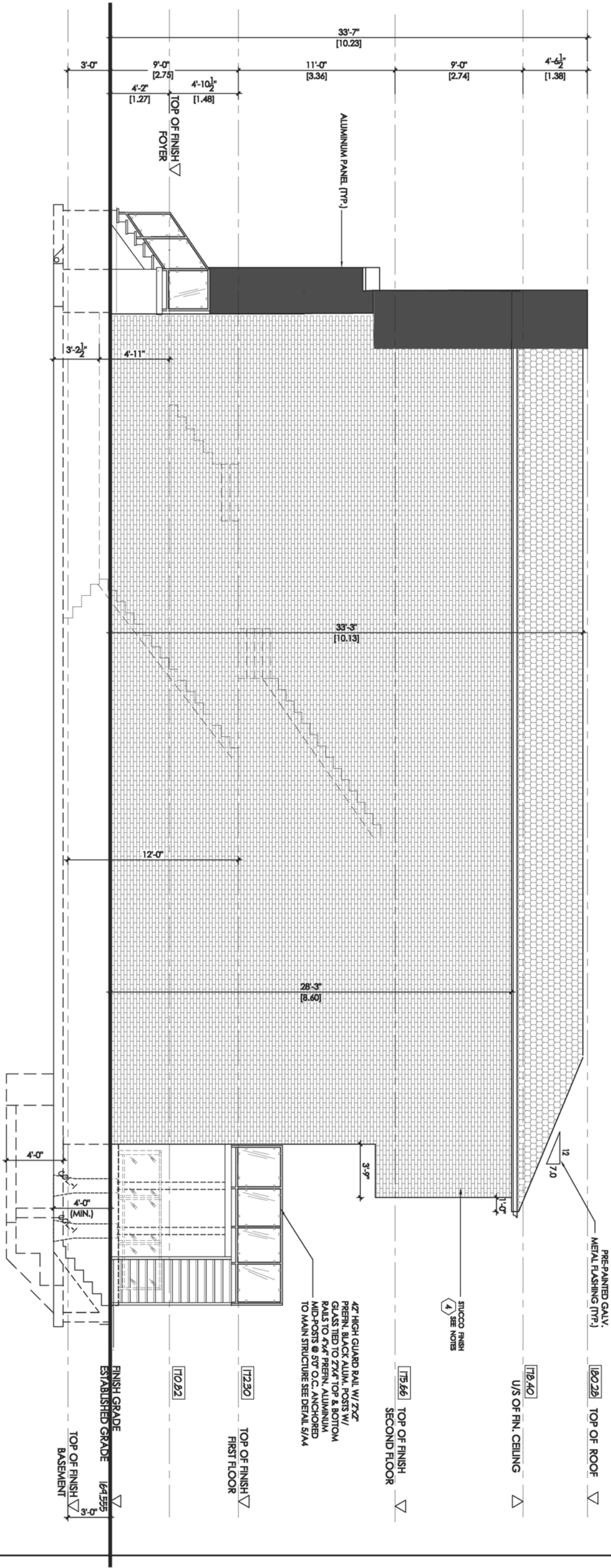
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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING SOUTH ELEVATION	
SCALE AS-NOTED	DRAWN BY M.Z.
DATE JAN.7,2017	APPROVED BY M.Z.
PROJECT No. 2016-50	DRAWING No. A-8

1 WEST ELEVATION
A-9 SCALE : 1/8" = 1'-0"



contempostudio



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T. (416) 836-1042
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The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

QUALIFICATION INFORMATION
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MARIN ZABZUNI 45250
NAME SIGNATURE BCIN

REGISTRATION INFORMATION
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.

CONTEMPO STUDIO 46972
FIRM NAME BCIN

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PROJECT
PROPOSED NEW 2 STOREY
DETACHED DWELLING
AT
313 WHITMORE AVE
CITY OF TORONTO

DRAWING
WEST ELEVATION

SCALE
AS-NOTED

DATE
JAN.7,2017

PROJECT No.
2016-50

DRAWN BY
M.Z.

APPROVED BY
M.Z.

DRAWING No.
A-9