

DECISION AND ORDER

Decision Issue Date Monday, December 11, 2017

PROCEEDING COMMENCED UNDER subsection 53 and 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HOSSEINI HOMES CORPORATION

Applicant: HOSSEINI HOMES CORPORATION

Property Address/Description: 149 & 151 ESTELLE AVE

Committee of Adjustment Case File Number: 16 241884 NNY 23 CO
16 241916 NNY 23 MV
16 241890 NNY 23 CO
16 241901 NNY 23 MV
16 241901 NNY 23 MV

TLAB Case File Number: 17 196981 S53 23 TLAB
17 196996 S45 23 TLAB
17 196988 S53 23 TLAB
17 196998 S45 23 TLAB
17 197002 S45 23 TLAB

Hearing date: Friday, November 24, 2017

DECISION DELIVERED BY L. McPherson

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (the "TLAB") by the owner ("Applicant") of the refusal of the Committee of Adjustment ("Committee") for the City of Toronto ("City") of applications for consent to sever two lots to create three lots and associated minor variances to construct three single detached dwellings ("the applications").

The two properties are located at 149 and 151 Estelle Avenue ("the subject lands").

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The subject lands are designated Neighbourhoods in the City of Toronto Official Plan ("the Official Plan") and are zoned RD (f15.0; a550)(x5) under Zoning By-law No. 569-2013 ("new City By-law") and R4 under North York Zoning Bylaw No. 7625 ("By-law 7625").

Each of the proposed lots would have a frontage of 13.5 m and a lot area of 484.8 m². The minor variance applications for each lot would permit the development of a single detached residential dwelling on each lot as set out in Attachment 2. The existing dwellings would be demolished.

The City was a Party to the proceedings.

BACKGROUND

The Committee of Adjustment refused the applications on June 22, 2017 and the Applicant has appealed the decision.

At the outset of the hearing, the Applicant's representative, Ms. Amber Stewart, advised that a settlement had been reached with the City. She outlined the revisions which were being proposed which would have the effect of creating three lots of equal size in terms of frontage and area. In addition, each of the three new dwellings would have a consistent side yard setback of 1.7 m. As a result, two variances for one lot were no longer required while minor changes were made to the variances for the other two lots to facilitate the revised lot areas.

In addition, Ms. Stewart identified two errors in the identification of the variances by the Building Department. Variance 9 (to By-law 7625) for two of the new lots omitted a Section reference related to lot frontage which was correctly included for third new lot.

I accept that the revisions are minor and no further notice or consideration is required under s. 45 (18.1) of the Planning Act.

These revisions and associated conditions are set out in Minutes of Settlement set out in Exhibit 1 and signed by the Parties. The City's legal representative, Mr. Peel, indicated that the City had no objection to the revised variances and conditions for both the consent and variance applications as set out in Exhibit 1.

MATTERS IN ISSUE

The key issue is whether the creation of three proposed lots and the resulting development of three detached dwellings satisfy the appropriate tests as set out below.

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').

Consent – S. 53

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land

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is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

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.

Section 45(2)

Upon Appeal, the TLAB, upon any such application where any land, building or structure, on the day the pertinent by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit:

EVIDENCE

The TLAB heard from the Applicant's professional land use planner, Franco Romano. Mr. Romano was qualified to provide land use planning opinion evidence (Exhibit 2 – Applicants documents including Expert's Witness Statement, Expert Duty Form and Visual Evidence). He described the site and the area. The subject lands are located on the east side of Estelle Avenue, west of Bayview Avenue and south of Finch Avenue. Estelle Avenue is the first through street west of Bayview Avenue. The interior of the neighbourhood is characterized by single detached dwellings.

Mr. Romano undertook a lot study with 965 lots in the study area. His Decision Summary Sampling included 31 files since 2008 of sites that were on Estelle Avenue or in the direct vicinity. The findings show that the proposed lot frontage of 13.72 m, lot coverage of 32% and side yard setback of 1.7 m would fit within the range of approvals in the neighbourhood. The visual evidence demonstrates that new dwellings typically have integral garages with 2 levels of living above and relatively tight side yards. Mr. Romano explained that regeneration has taken place in the area including new lots created within the interior of the neighbourhood. His conclusion after reviewing his findings was that the proposed lots and dwellings would fit within the neighbourhood context. The lot area can accommodate buildings which are located along the front-centre part of the lot with a large rear yard. The proposed dwellings do not require a building length variance. The elevations demonstrate that the three proposed dwellings are typical of the neighbourhood with an integral garage and sloped roof although each will have different features for visual interest. The height variances for a small portion of the side exterior main walls accommodate a window that interrupts the eaves.

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In terms of the policy framework, the Provincial Policy Statement identifies a settlement area designation for the subject property and the development would be consistent with the policy thrust of making better, more efficient use of existing infrastructure. In terms of the 2017 Growth Plan, the proposal conforms to the policy thrust to make better use of existing infrastructure.

With respect to the consent applications, Mr. Romano has reviewed the criteria under Section 51(24) of the Planning Act. The proposed lots would conform to the Official Plan and are reflective of development in the neighbourhood. A plan of subdivision is not needed as there are no required road works or land dedications as a result of the severances. The lots are similar to other lots in the neighbourhood which have been created through the consent process. The applications are no different than other applications in areas where regeneration is happening. There are no restrictions required. The single detached dwellings would not be subject to site plan control. Mr. Romano is satisfied that appropriate regard has been given to the criteria in Section 51(24) of the Planning Act and that a plan of subdivision is not required.

In terms of the proposed variances, the subject property is designated Neighbourhoods in the Official Plan. The policies recognize that neighbourhoods will evolve and that some change will take place but such change must respect and reinforce the physical character of the neighbourhood. In his opinion, the proposal would achieve this policy thrust. The size of the lots and the proposed dwellings result in a site development which respects and reinforces the neighbourhoods physical character. In his opinion the applications maintain the intent and purpose of the Official Plan.

In terms of the Zoning By-law, the subject lands are in a single detached zoning category. The intent and purpose of the zoning by-law is to make sure that site development is orderly and compatible within the site context. In Mr. Romano's opinion, the three lots fit within the lot size character and the variances provide for appropriate development for each lot. The modest increase in coverage and modest side yard setback relief together with the proposed building length result in a compatible development with an appropriate amount of open space on each lot. In his opinion, the order of magnitude of the variances is reasonable and the intent and purpose of the Zoning By-law is being maintained.

The applications provide for orderly and compatible site development for each lot which will contribute to the mixed housing character of the area while providing a compatible built form. In his opinion, the proposal is desirable for the appropriate development and use of the land.

In Mr. Romano's opinion the variances individually and cumulatively result in no adverse impact and the order of magnitude of the variances is reflective of the built form found in the neighbourhood. The variances individually and cumulatively are minor in nature.

Mr. Romano is satisfied with the proposed conditions for both the consents and the variances.

In conclusion, Mr. Romano's opinion was that the proposal presents a modest intensification which is supported by the physical context and planning instruments. The proposal satisfies the consent criteria and conforms to the Official Plan. He recommends that the severances be approved and the revised variances be authorized. He is satisfied that no further notice is necessary.

ANALYSIS, FINDINGS, REASONS

The Parties to the hearing presented Minutes of Settlement which address the concerns of the City. No other Parties or Participants attended. Mr. Romano's uncontradicted planning evidence is accepted.

The TLAB has considered Section 51(24) of the Planning Act and finds that the proposed consents satisfy the criteria and that appropriate regard has been given to the criteria, subject to the conditions imposed by the City. In addition the TLAB is satisfied that a plan of subdivision is not required.

The TLAB finds that the variances, as modified, meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The proposal results in an appropriate and desirable development for the subject lands and the variances are considered minor.

The TLAB is satisfied that the applications are consistent with the 2014 Provincial Policy Statement and conform to the 2017 Growth Plan.

DECISION AND ORDER

The TLAB orders:

1. The appeals with regard to applications for consent are allowed in part and provisional consent is granted subject to the conditions set out in Attachment 1.
2. The variances to the Zoning By-laws set out in Attachment 2 are authorized, subject to the conditions set out in Attachment 3 and substantially in accordance with the plans attached as Attachment 4.

X 

L. McPherson

Panel Chair, Toronto Local Appeal Body

149 – 151 Estelle Avenue – Attachment 1

Conditions of Consent Approval

1. The owner shall submit the necessary application for permits to injure or remove privately-owned trees to Urban Forestry, City of Toronto Municipal Code Chapter 813, Article III.
2. The owner shall submit the new City tree planting fee of \$583.00 for planting one street tree on the City road allowance.
3. The owner shall file with the Committee of Adjustment confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
4. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contacts: John House, Supervisor, Land and Property Surveys, at 416-392-8338; jhouse@toronto.ca, or his designates, Elizabeth Machynia, at 416-338-5029; emachyni@toronto.ca, John Fligg at 416-338-5031; jfligg@toronto.ca.
5. Two copies of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contact: John House, Supervisor, Land and Property Surveys, at 416-392-8338; jhouse@toronto.ca.
6. Three copies of the registered reference plan of survey satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services shall be filed with the Committee of Adjustment.
7. Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer of the Committee of Adjustment, the Certificate of Official, being Form 2 or Form 4, O. Reg. 197/96, referencing subsection 50(3) or (5) or subsection 53(42) of the *Planning Act*, as may be required, as it pertains to the conveyed land and/or consent transaction.

149 – 151 Estelle Avenue

Attachment 2

LIST OF REVISED VARIANCES

PART 4 – HOUSE A

1. **Chapter 900.3.10(5), By-law No. 569-2013**
The minimum required side yard setback is 1.8m.
The proposed north side yard setback is 1.75m.
2. **Chapter 900.3.10(5), By-law No. 569-2013**
The minimum required side yard setback is 1.8m.
The proposed south side yard setback is 1.75m.
3. **Chapter 10.20.30.20.(1), By-law No. 569-2013**
The minimum required lot frontage is 15m.
The proposed lot frontage is 13.5m.
4. **Chapter 10.20.30.40.(1), By-law No. 569-2013**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
5. **Chapter 10.20.40.70.(1), By-law No. 569-2013**
The minimum required front yard setback is 7.83m.
The proposed front yard setback is 7.78m.
6. **Chapter 10.20.30.10.(1), By-law No. 569-2013**
The minimum required lot area is 550m².
The proposed lot area is 484.8m².
7. **Chapter 10.20.40.10.(2), By-law No. 569-2013**
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m for 100% of the width of the walls.
The proposed height of the north side exterior main wall facing a side lot line is 7.88m for 11.5% of the width of the wall.
8. **Chapter 10.20.40.10.(2), By-law No. 569-2013**
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m for 100% of the width of the walls.
The proposed height of the south side exterior main wall is 7.88m for 12.4% of the width of the wall.
9. **Section 6(8) and 13.2.1, By-law No. 7625**
The minimum required lot frontage and width is 15m.
The proposed lot frontage and width is 13.5m.
10. **Section 13.2.2, By-law No. 7625**
The minimum required lot area is 550m².
The proposed lot area is 484.8m².
11. **Section 13.2.4, By-law No. 7625**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.

149 – 151 Estelle Avenue**Attachment 2****12. Section 13.2.6, By-law No. 7625**

The maximum permitted building height is 8.8m.

The proposed building height is 8.99m.

PARTS 2 & 3 – HOUSE B**1. Chapter 900.3.10(5), By-law No. 569-2013**

The minimum required side yard setback is 1.8m.

The proposed north side yard setback is 1.75m.

2. Chapter 900.3.10(5), By-law No. 569-2013

The minimum required side yard setback is 1.8m.

The proposed south side yard setback is 1.75m.

3. Chapter 10.20.30.10.(1), By-law No. 569-2013

The minimum required lot area is 550m².

The proposed lot area is 484.8m².

4. Chapter 10.20.30.20.(1), By-law No. 569-2013

The minimum required lot frontage is 15m.

The proposed lot frontage is 13.5m.

5. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 30% of the lot area.

The proposed lot coverage is 32% of the lot area.

6. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line 7.5m for 100% of the width of the walls.

The proposed height of the north side exterior main wall facing a side lot line is 7.88m. for 11.5% of the width of the wall.

7. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line 7.5m for 100% of the width of the walls.

The proposed height of the south side exterior main wall facing a side lot line is 7.88m. for 12.4% of the width of the wall.

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

The minimum required front yard setback is 7.83m.

The proposed front yard setback is 7.78m.

9. Section 13.2.1 and 6(8), By-law No. 7625

The minimum required lot frontage and width is 15m.

The proposed lot frontage and width is 13.5m.

10. Section 13.2.2, By-law No. 7625

The minimum required lot area is 550m².

The proposed lot area is 484.8m².

149 – 151 Estelle Avenue

Attachment 2

11. **Section 13.2.4, By-law No. 7625**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
12. **Section 13.2.6, By-law No. 7625**
The maximum permitted building height is 8.8m.
The proposed building height is 8.99m.
13. **Section 6(30)a, By-law No. 7625**
The maximum permitted finished first floor height is 1.5m.
The proposed finished first floor height is 1.64m.

PART 1 – HOUSE C

1. **Chapter 900.3.10(5), By-law No. 569-2013**
The minimum required side yard setback is 1.8m.
The proposed north side yard setback is 1.75m.
2. **Chapter 900.3.10(5), By-law No. 569-2013**
The minimum required side yard setback is 1.8m.
The proposed south side yard setback is 1.75m.
3. **Chapter 10.20.30.10.(1), By-law No. 569-2013**
The minimum required lot area is 550m².
The proposed lot area is 484.8m².
4. **Chapter 10.20.30.20.(1), By-law No. 569-2013**
The minimum required lot frontage is 15m.
The proposed lot frontage is 13.5m.
5. **Chapter 10.20.30.40.(1), By-law No. 569-2013**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
6. **Chapter 10.20.40.70.(1), By-law No. 569-2013**
The minimum required front yard setback is 7.83m.
The proposed front yard setback is 7.78m.
7. **Chapter 10.20.40.10.(2), By-law No. 569-2013**
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m for 100% of the width of the walls.
The proposed height of the north side exterior main wall facing a side lot line is 7.88m for 12.3% of the width of the wall.
8. **Chapter 10.20.40.10.(2), By-law No. 569-2013**
The permitted maximum height of all side exterior main walls facing a side lot line is 7.5m for 100% of the width of the walls.
The proposed height of the south side exterior main wall is 7.88m for 11.8% of the width of the wall.

149 – 151 Estelle Avenue

Attachment 2

9. **Section 13.2.1 and 6(8), By-law No. 7625**
The minimum required lot frontage and width is 15m.
The proposed lot frontage and width is 13.5m.
10. **Section 13.2.2, By-law No. 7625**
The minimum required lot area is 550m².
The proposed lot area is 484.8m².
11. **Section 13.2.4, By-law No. 7625**
The maximum permitted lot coverage is 30% of the lot area.
The proposed lot coverage is 32% of the lot area.
12. **Section 13.2.6, By-law No. 7625**
The maximum permitted building height is 8.8m.
The proposed building height is 8.99m.
13. **Section 6(30)a, By-law No. 7625**
The maximum permitted finished first floor height is 1.5m.
The proposed finished first floor height is 1.65m.

149 – 151 Estelle Avenue – Attachment 3

Conditions of Minor Variance Approval

1. The three new dwellings shall be constructed substantially in accordance with the Site Plan, and
 - a. for House A, the following elevation drawings:
 - i. House A - Front Elevation Drawing,
 - ii. House A - Rear Elevation Drawing,
 - iii. House A - South Elevation Drawing, and
 - iv. House A - North Elevation Drawing,
 - b. For House B, the following elevation drawings:
 - i. House B - Front Elevation Drawing,
 - ii. House B - Rear Elevation Drawing,
 - iii. House B - South Elevation Drawing, and
 - iv. House B - North Elevation Drawing;
 - c. For House C, the following elevation drawings:
 - i. House C - Front Elevation Drawing,
 - ii. House C - Rear Elevation Drawing,
 - iii. House C - South Elevation Drawing, and
 - iv. House C - North Elevation Drawing.

all dated November 15, 2017, and filed as Exhibit 1.

2. The proposed driveway accesses shall be a minimum of 1.0 m from the existing utility pole.
3. Despite any other general or specific provision in Zoning By-law No. 7625 of the former City of North York, enacted under section 34 of the Planning Act or its predecessor section, the following shall apply:
 - a. For a ONE FAMILY DETACHED DWELLING, the elevation of the lowest point of an opening to an area that may be used for parking or storage of a vehicle located inside or abutting the dwelling shall be higher than the elevation of the street the lot abuts measured at its centreline directly across from the driveway leading to the parking space.

ESTELLE AVENUE



PROPOSED HOUSE A GFA CALCULATION		
	sqf	sqm
Lot Area	5220.890	485.036553
G.F.A		
First Floor	1670.650	155.208
Second Floor	1670.650	155.208464
Total GFA	3341.300	310.417
Basment	1270	117.987
Lot Coverage(30%)		
Allowable Lot Coverage	1566.267000	145.510966
Proposed Lot Covered	1670	155.208
Lot Covered %	31.987	
Front Yard Landscaping Calculation		
Front Yard Area	1172.900	108.966
Driveway Area	526.900	48.951
landscape Req.	586.450000	54.483
(50% of total area)		
Landscape perposed	646.000	60.015
(Front Yard-Driveway)		
Soft Landscaping Req.	484.500	45.012
(75% of Landscape)		
Soft Landscape Perposed	520	48.310

LEGEND

A MARK FOR TO BE REMOVED

TO BE REMOVED

TO BE REMOVED

SCALE:1:200

A01-SITE PLAN

House A



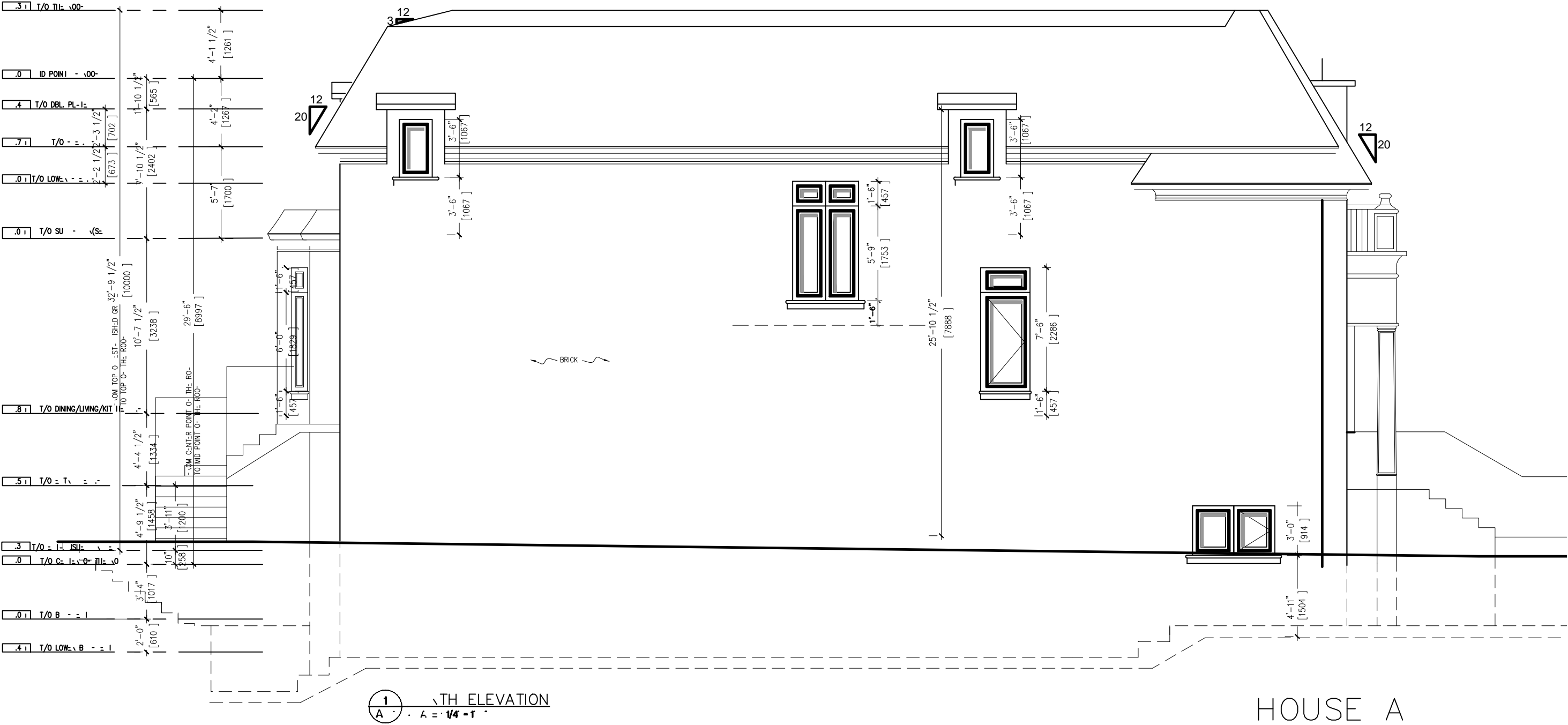
HOUSE A
PART 4

SCALE 1:75

A06 FRONT ELEVATION

REVISED NOV 15,2017

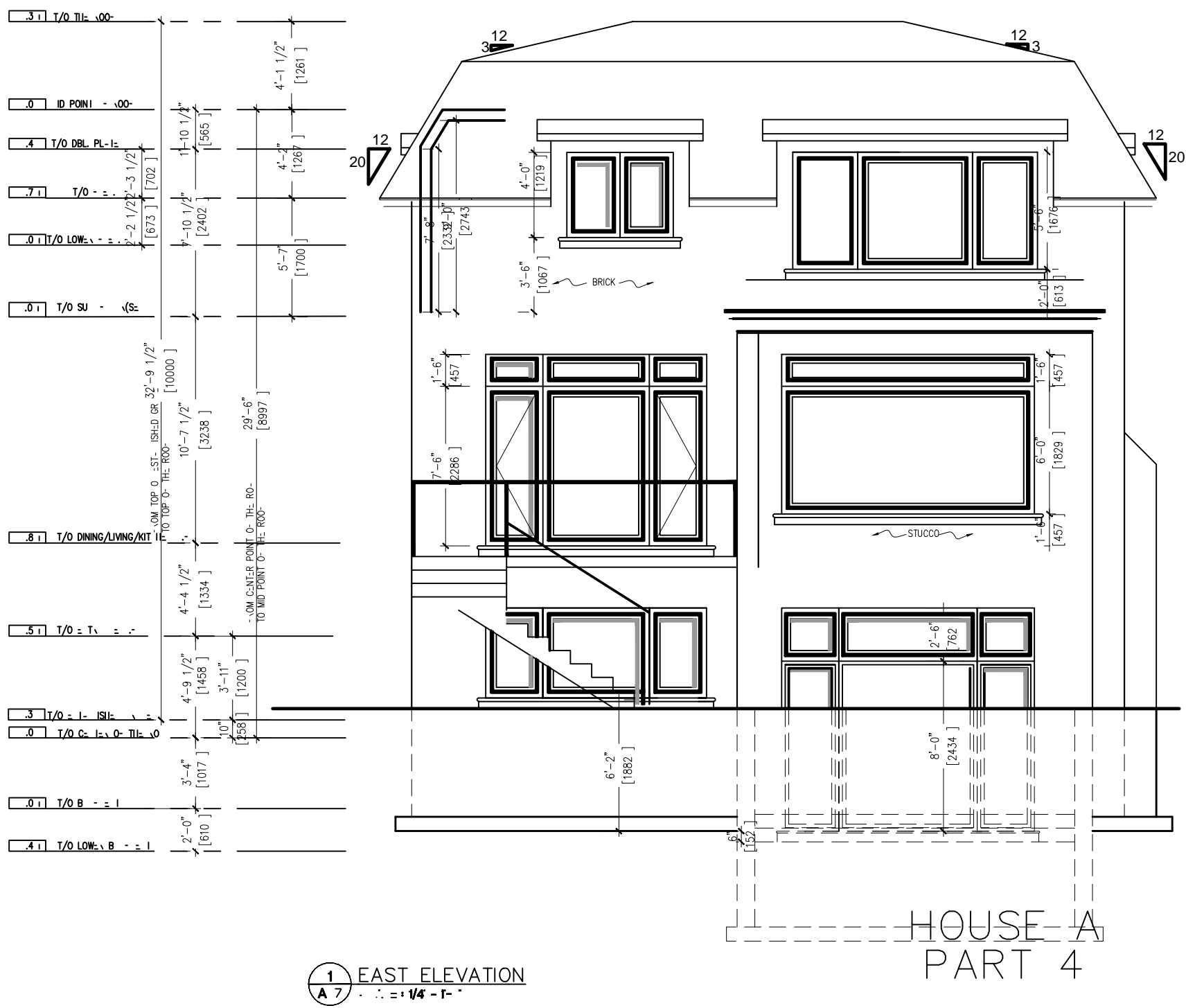
House A



SCALE 1:75

A09 NORTH ELEVATION

House A

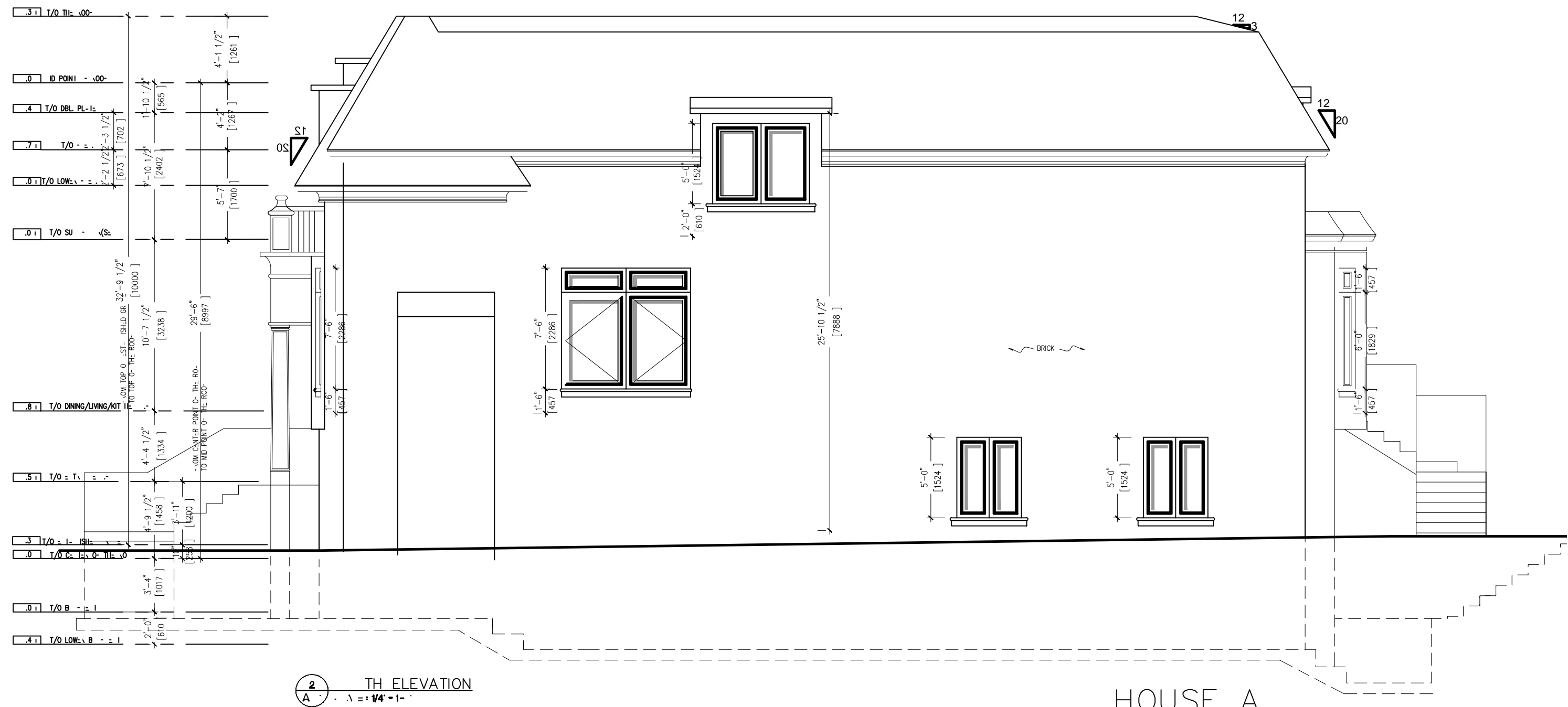


SCALE 1:75

A07 REAR ELEVATION

REVISED NOV 15,2017

House A



HOUSE A
PART 4

SCALE 1:75

A08 SOUTH ELEVATION

House B



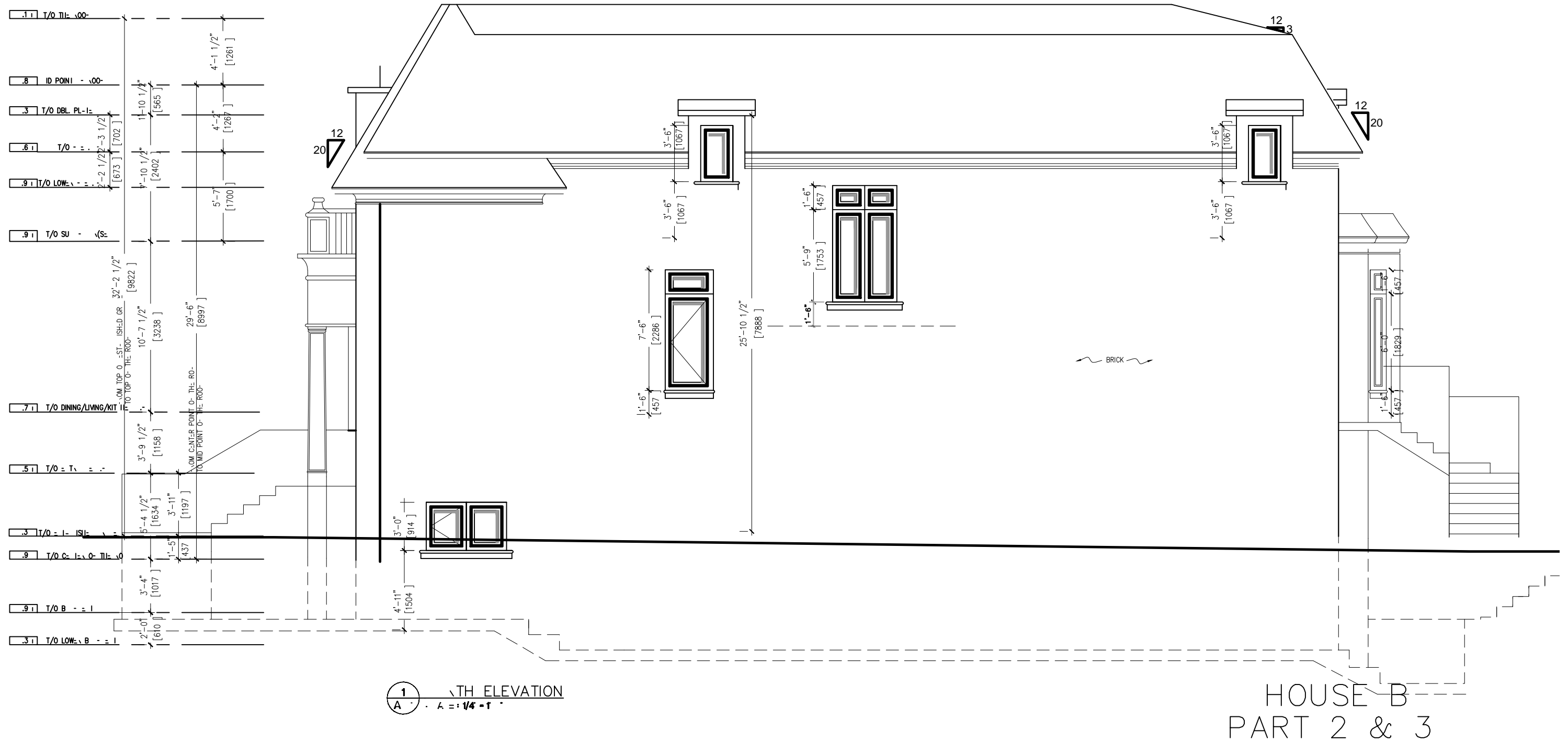
HOUSE B
PART 2 & 3

SCALE 1:75

A06 FRONT ELEVATION

REVISED NOV 15, 2017

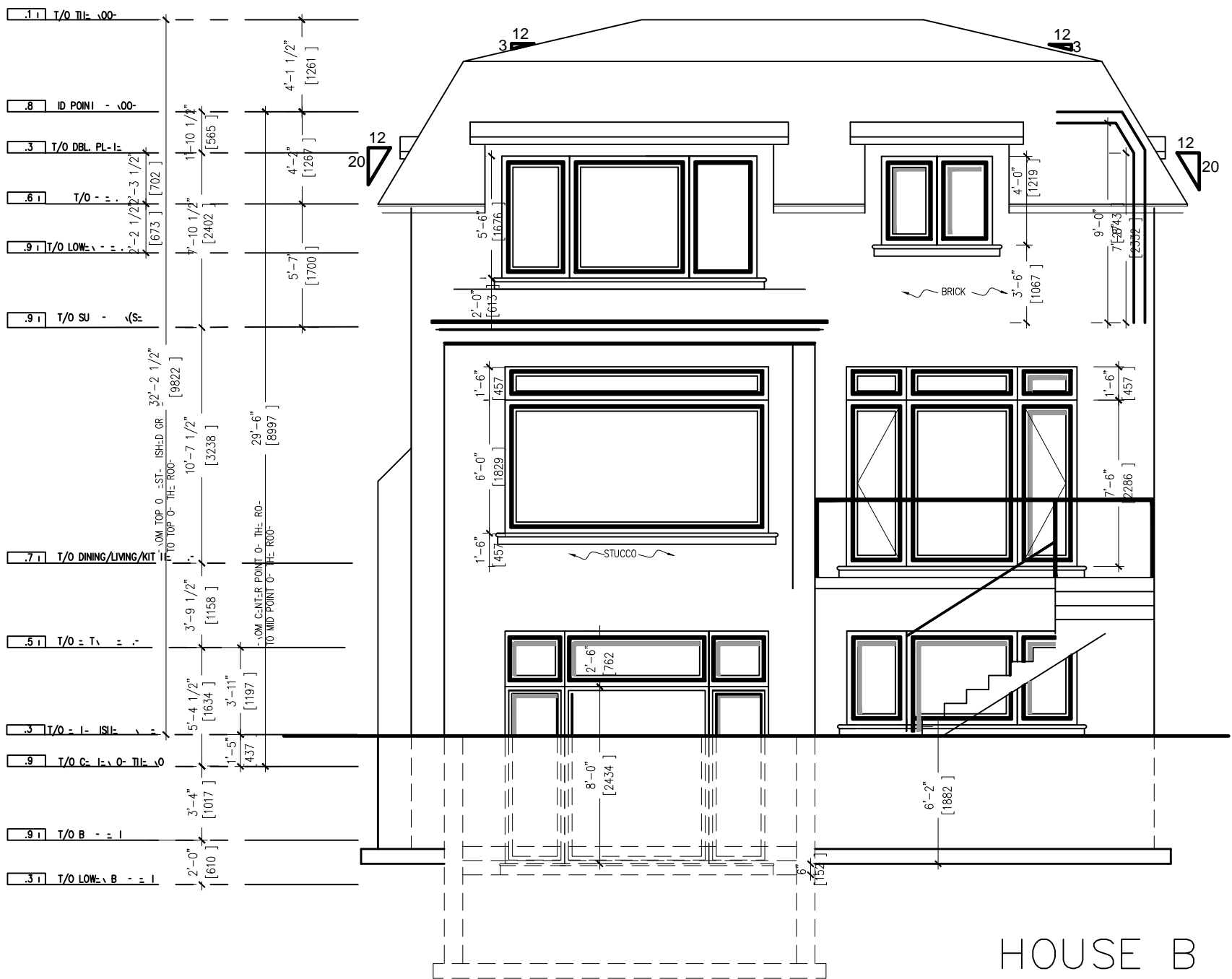
House B



SCALE 1:75

A09 NORTH ELEVATION

House B



1 EAST ELEVATION
A 7

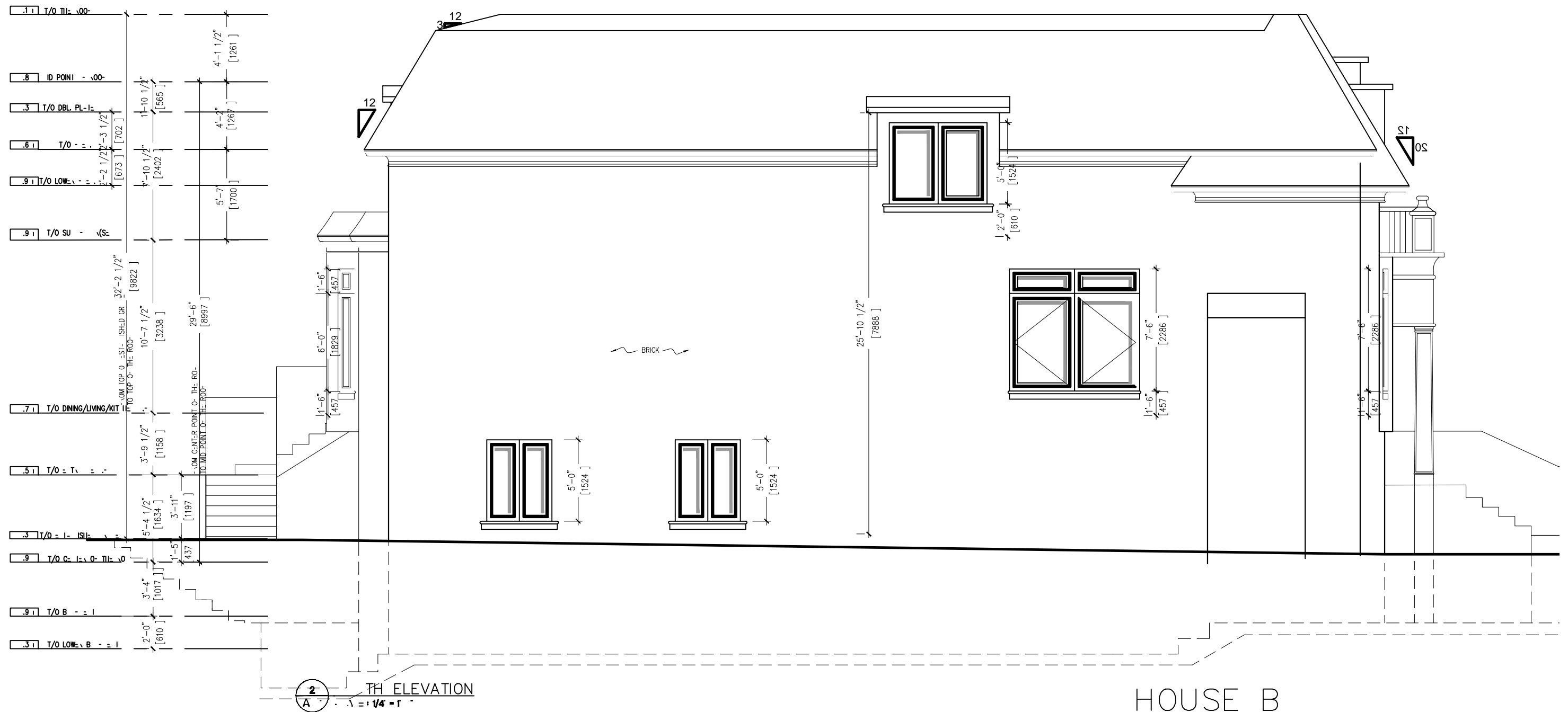
HOUSE B
PART 2 & 3

SCALE 1:75

A07 REAR ELEVATION

REVISED NOV 15,2017

House B



HOUSE B
PART 2 & 3

SCALE 1:75

A08 SOUTH ELEVATION

House C



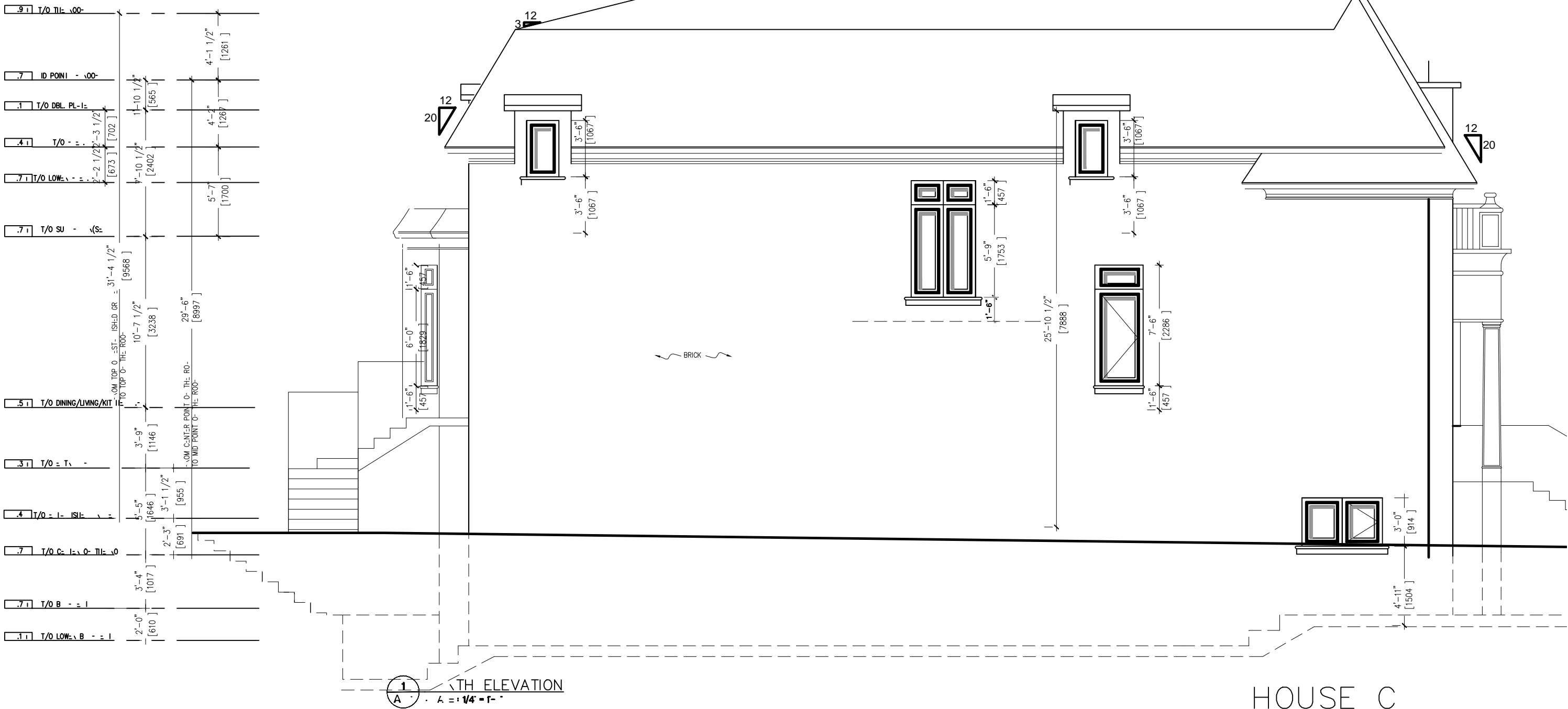
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PART 1

SCALE 1:75

A06 FRONT ELEVATION

REVISED NOV 15, 2017

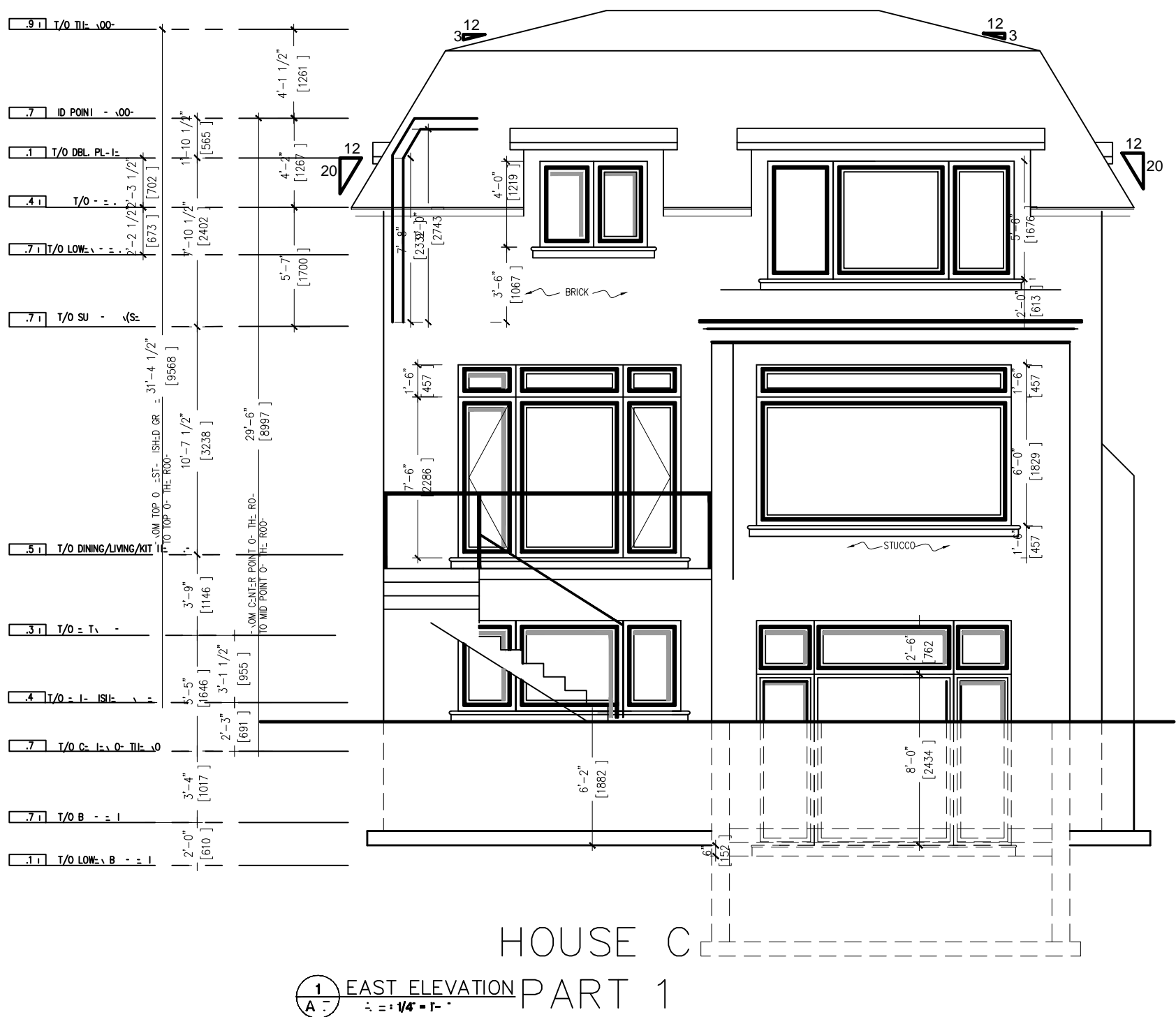
House C



SCALE 1:75

HOUSE C
PART 1
A09 NORTH ELEVATION

House C

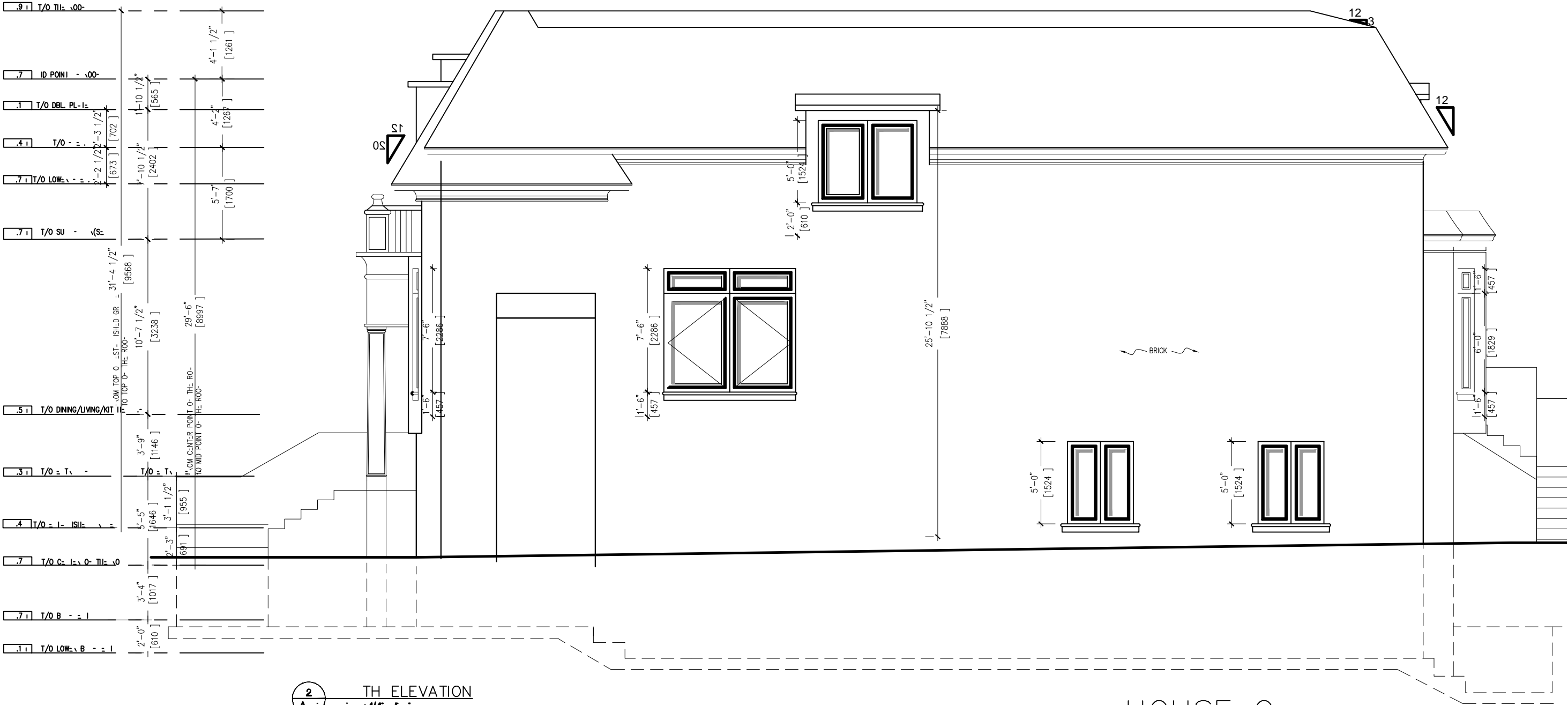


SCALE 1:75

A07 REAR ELEVATION

REVISED NOV 15, 2017

House C



2
A TH ELEVATION
1/4" = 1'

HOUSE C
PART 1

SCALE 1:75

A08 SOUTH ELEVATION