

## DECISION AND ORDER

**Decision Issue Date** Thursday, May 03, 2018

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

Appellant(s): CITY OF TORONTO

Applicant: ANDREW PETER PILACINSKI

Property Address/Description: 315 BERESFORD AVE

Committee of Adjustment Case File Number: 17 152919 WET 13 MV

TLAB Case File Number: 17 192862 S45 13 TLAB

**Hearing date:** Monday, November 20, 2017

**DECISION DELIVERED BY S. Gopikrishna**

### INTRODUCTION AND BACKGROUND

Mr. Mark Kopytek and Ms. Laurie Kepron are the owners of 315 Beresford Avenue which lies in Ward 13, Parkdale-High Park in the City of Toronto. They applied for variances to the Committee of Adjustment (COA) to construct a new detached house with an integral garage. The COA heard the application on 15 June, 2017 and approved it with conditions. The City of Toronto appealed the decision to the Toronto Local Appeal Body (TLAB) on 5 July, 2017. Mr. Stephen Dewdney, who resides at 330 Beresford Ave., also elected to be a Party on 30 July, 2017. The hearing was scheduled for 20 November, 2017. On 2 November, 2017, Mr. Dewdney withdrew as a Party to the proceedings in this Appeal, "in consideration of the settlement that been reached between the Applicant and the Appellant".

The Settlement proposal was submitted to, and discussed before the TLAB on 20 November, 2017. The proposal had been modified based on discussions with the City; the variances applied for are therefore different from the proposal approved by the COA.

## **MATTERS IN ISSUE**

The purpose of the application is to construct a new three and a half storey family detached house with integral garage and finished basement. The requested variances appear below grouped by the City Wide Zoning By-Law (By Law 569-2013) and Toronto By-Law (By-Law 438-86). The variances described below reflect the recommendations of the Zoning Review and consequent modifications to the proposal by the Applicant after the decision by the COA.

### **Variances sought from City Wide Zoning By-Law (By Law 569-2013)**

1. The permitted maximum height of a building or structure is 10 m. The proposed height of the building is 10.61m.
2. The permitted maximum building depth for a detached or semi-detached house is 17 m. The proposed building depth is 19.2 m.
3. The permitted maximum floor space index is 0.6 times the area of the lot ( 222.42) sq. m. The proposed floor space is 1.02 times the area of the lot ( 381.48 sq. m.)
4. The permitted minimum north yard setback for is 0.45 m. The proposed north side yard setback is 0.15 m.
5. Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line. The proposed eaves are 0 m from the north lot line.
6. A platform without main walls, attached to, or less than 0.3 metres from a building ,with a floor higher than the first floor of the building above established grade may encroach 1.5 m into the required front yard setback, if it no closer to a side lot line than the required side yard setback of 0.9 m. The proposed side yard setback for the front platform is 0.15 m to the North side lot line.
7. The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m. The proposed height of the side exterior main walls facing a side lot line 8.09 m.
8. The minimum required parking space must have a minimum length of 5.6 m. The proposed parking space will have a length of 4.9 m.

### **Variances sought from Toronto Zoning By-Law ( 438-86)**

9. The permitted maximum height of a building or structure is 10 m. The proposed height of the building is 10.62 m.
10. The by-law requires a detached house in an R2 district, to have a minimum side lot line setback of 7.5 m from the side lot line for that portion of the building exceeding 17 m in depth. The proposed lot side line setback is 0.15 m on the north side and 1.21 m on the south side.

11. The by-law limits the projection of an uncovered platform into the required setbacks to a maximum of 2.5 m from the front or rear wall. The proposed uncovered platform projects 3.05 m from the rear wall.
12. The by-law limits the height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 m above grade. The proposed height for the rear platform is 2.28 metres above grade.
13. The by-law limits the height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 metres above grade. The proposed height for the front porch is 2.28 m above grade.

## **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**

The hearing began at 9 am on 20 November 2017 with the Parties and Participants identifying themselves. Mr. R.A. Biggart, counsel for the Applicants introduced himself and Mr. T.J.Ciecura, Land Use Planner, as his Expert Witness. Mr. Matthew Schuman introduced himself as Counsel for the Appellants, the City of Toronto.

Mr. David Baldwin of 292 Beresford Ave., Ms. Julia McGillis of 350 Beresford Ave and Mr. Steven Marcuzzi of 348 Beresford Ave. introduced themselves as Participants. Mr. Biggart stated that they had modified the proposal because of a Settlement with the City of Toronto. He also stated that no further notice was being requested for since the proposal, as amended, was acceptable to the City, and had reduced some of the variances as approved by the COA. Mr. Schuman confirmed that he thought there was no need for further notice. I concurred that there was no need for further notice under

Section 45(18.1) of the Ontario Planning Act, because of the reduced variances and the agreement of the Parties that new notice was needed.

Mr. T.J.Ciecura was then introduced by Mr. Biggart who reviewed the details of Mr. Ciecura's education and work history before asking that he be qualified as an Expert Witness. Mr. Schuman had no questions for Mr. Ciecura; I qualified him, as an Expert Witness. Mr. Ciecura started off by stating he recommended the application because it satisfied the 4 tests which he would demonstrate through his evidence. He started off by describing the proposal – what was proposed was a 3 bedroom dwelling with an extra office/den on the 3<sup>rd</sup> floor, with an integral garage. The study area chosen by Mr. Ciecura consisted of Willard on the west, Ardagh Street on the north and Runnymede on the east. The residential properties just north of Bloor Street West constituted the Southern boundary of the study area. Through a photo walk through this community, Mr. Ciecura highlighted a number of replacement and new homes such as 283 Beresford with an integral garage and no peaked roof and 307 Beresford with a contemporary integral garage. According to Mr. Ciecura, integral garages were part of a new trend in the community so that the entire length of the property could be used and the existing garages removed entirely. 385 Beresford and 399 Durie had habitable space on the 3<sup>rd</sup> floor; the latter had been rebuilt with more space on the 3<sup>rd</sup> floor than was being requested at 315 Beresford. He then used the example of 323 and 325 Durie to demonstrate how buildings with different heights and numbers of storeys could “co-exist” with each other. He then drew attention to other houses such 307 and 370 Beresford to demonstrate that houses had side yard setbacks only on the side where there was a driveway and no space between houses on other side. He then stated these patterns continued to the south until just north of Bloor Street West, which had low rise mixed use commercial and residential buildings.

Mr. Ciecura then referred to the Policy Context and the Growth Plan as part of his evidence. He pointed out that the Provincial Policy Statement of 2014 (PPS ) has a number of policies to support healthy living communities and focus on more efficient use of property which is what this proposal intends to do. The proposal is consistent with Policies 1.1.3.1 because it rebuilds an old dwelling into a larger new dwelling, thereby representing rebuilding and regeneration. It is also consistent with 1.1.3.2(a) because addition of GFA uses the lot efficiently through modest intensification. In the Housing Section Policy 1.4, Mr. Ciecura specifically referred to 1.4.3 which references appropriate range and mix of housing through establishment of minimum targets. In Mr. Ciecura's opinion, this policy is satisfied because the proposal builds an integral garage larger than the GFA in the community. Mr. Ciecura concluded this discussion by stating that there the proposal was consistent with the Policy context generically and that the Policy did not address the level of granularity associated with individual proposals but concerned itself more with development at a much larger scale.

Mr. Ciecura then said that the development confirmed to the Growth Plan for the Golden Horseshoe, 2017 (GGH) by virtue of replacing one dwelling with another, albeit with a higher GFA and FSI. He also pointed out that the GGH is a high-level policy whose granularity does not include individual proposals. Intensification and compactness is achieved through replacing a garage with an integral garage and a higher density.

Mr. Ciecura then discussed the applicability of Policy 2.1 to the proposal which discusses where and how to grow. According to Mr. Ciecura, the proposal achieved the policy's objective if one defined higher GFA to demonstrate growth. He then came to the City's Official Plan- After pointing out that the proposal site was classified as "Neighbourhoods", Mr. Ciecura discussed how the proposal reinforced Section 2.3 's stipulation about Neighbourhoods being "stable but not static" because the new development respects what exists on the ground, and reinforces the same through the development of a larger structure. He pointed out the examples from the community photo-walk demonstrated that regeneration and redevelopment were common in the community. The proposal satisfies 3.1.2 (Built Form Policies) because it represents redevelopment in a community where there has been redevelopment and fits and improves the area through a larger building- this is also seen in the other examples of rebuilds in the community alluded to earlier. The proposal satisfied Policy 3.1.2.3 because the proposal is designed to fit harmoniously into the community through retaining the front elevation typical of the neighbourhood and having the front door parallel to the street, visible from the sidewalk. Further, the proposed house is of a traditional style as opposed to a contemporary style in terms of the peaked roof, which is common in the neighbourhood.

According to Mr. Ciecura, the proposal is higher in height but has no impact on its neighbours because the peaked roof achieves the purpose of minimizing and reducing the impact. Mr. Ciecura then discussed development criteria in Chapter 4 and pointed out that the expression "General" is used in the sense of "generally fit", which implies that the plan is not prescriptive but emphasizes a degree of fit. After stating that 4.1.5 was arguably the most salient policy of all, Mr. Ciecura said the proposal satisfies 4.1.5 because there are dwellings that exist in the community which are similar in manner, height, massing and scale as the proposal. Policy 4.2 discusses prevailing types of houses which in this community refers to single detached houses, a category that the proposal fits. There are no variances for front yard setback because it is consistent with the neighbouring properties. Lastly, some of the clauses of 4.1.5 don't apply because there are no heritage buildings in the neighbourhood. Mr. Ciecura concluded this discussion by stating that the proposal maintained the intent of the Official Plan.

The area is zoned R2Z0.6 under former City By-Law 438-36 and is zoned R (D0.6X737) under the City Wide By-Law 569-2013. Coming to the Zoning and the actual variances, Mr. Ciecura drew attention to the Zoning Review and the chart which compared what had been approved at the COA with what is front of the TLAB. Mr. Ciecura said that all parameters had been reduced from what was before the COA to satisfy the neighbours. The Applicants were willing to take these steps in spite of the letter from the Planning Department which supported the original application to the COA. Mr. Ciecura then reviewed each of the changes between the COA and TLAB submissions and demonstrated the more modest nature of the latter. He pointed out that the soft landscaping variance was eliminated. The last 4 variances, under By-Law 438-86, were identified through the Zoning Review and were not in front of the COA; they need to be ruled on by the TLAB. Mr. Biron again stressed that new notice did not have to be given under Section 45(18.1) of the Planning Act.

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Mr. Ciecura stated that the extra height of 10.61 m and 10.62 m under the 2 by-laws was needed in order to get a functional third floor with a den. The Parking Length variance is needed because of the front yard setback and the need to keep the building face consistent with the abutting building- the lack of adequate space in the front for the garage triggers the variance. The proposal maintains the variance on the front and lets parking go onto the boulevard but not the sidewalk ensuring that the latter is unimpeded. There is a new variance for a rear platform with a 3.05 m instead of 2.5 m length dimension. There is a Privacy Screen on the Rear Platform to limit overlook and address privacy issues; the occupants will look only into their backyard.

Mr. Ciecura then reviewed the General Zoning By-Law. He presented a table of variances granted by the COA in the neighbouring area and demonstrated that larger FSIs had been granted. In this proposal, there is a technical increase to the GFA because it has to include the garage as well as the loft, which if removed, brings the GFA down to 370.73 sq. m resulting in an FSI of 0.86. The 0.86 FSI sought at the COA had been reduced to 0.79 through a 32 sq. m. reduction; as a comparator 283 Beresford had been approved at 0.88 and other examples on neighbouring streets approved at 0.79. Coming to the side yard setbacks, Mr. Ciecura said that while the proposal had 15 cm setbacks, there were houses in the neighbourhood with 0 side yard setbacks.

Coming to the garage, Mr. Ciecura stressed that 315 Beresford had a garage previously which is now replaced by an integral garage. Mr. Ciecura noted that the neighbours at 311 and 317 Beresford had both submitted letters of support. Mr. Ciecura also drew attention to other developments on Beresford where even longer lengths had been approved; including one at 20.3m. According to Mr. Ciecura, length was not a problem in this neighbourhood because the lots are very deep and can accommodate very long houses. Coming to the main wall height, he said that the main wall elevation is a horizontal roof and not a wall. The eaves setback is 0 m which is consistent with the neighbourhood. The height variance is not perceptible from the street. The development therefore meets the intent of the Zoning By-law.

The proposal is desirable for development through efficient use of space, reinvestment and regeneration. The proposal is typical of new developments which have allowed the community to evolve in a slow but stable way.

In terms of how minor the variances are, Mr. Ciecura opined that the variances had little to no adverse impact on the neighbours to the north and the south. The proposal created little impact over what is as-of-right. Mr. Ciecura then referred to communications of support from the City of Toronto's Planning Staff, as submitted to the COA.

Mr. Schuman, representing the City, then asked questions of clarification- he wanted to confirm that the FSI was 0.79 without the garage to which Mr. Ciecura replied in the affirmative. Mr. Schuman then asked if the existing calculation used a part of the garage for FSI calculations which was also confirmed. Lastly, Mr. Schuman asked for confirmation that the privacy screen was not part of the variances requested which was also confirmed. Mr. Schuman remarked that a condition of approval tying the proposal

to the Site Plan may be necessary in order to reference details which didn't directly tie into the variances.

Mr. Ciecura then concluded his presentation by requesting approval of all the variances and agreed with the condition of construction in substantial accordance with the Site Plans. I requested the Parties to come up with language appropriate for the conditions if the proposal were to be approved, which they agreed to do.

Ms. Julia McGillis, who lives at 350 Beresford and had elected to be a Participant, was then sworn in to give evidence. Ms. McGillis said that she had process concerns because she was made aware of the Appeal on 20 October which meant that they (i.e. the neighbours) did not have enough time to look for an Expert Witness. They had become Participants on the advice of the local Councilor. She then said that the proposal was a 4 storey building and not a 3 storey building which was a concern because there was no 4 storey house in the neighbourhood. The building was too large and big- to state that the FSI was 0.79 FSI is unfair because it left out the loft. The proposal, if approved, would make this building the tallest north of Bloor. The proposed house, at 4400 sq ft and three storeys, is out of character- it is twice the size of the average house. When asked specifically about the impact on her house, Ms. McGillis said that it made her house "look tiny in comparison".

Mr. Biggart then cross-examined Ms. McGillis by asking her if she was familiar with By-Law 569-2013 and if it allowed 4 storey houses. Ms. McGillis said she didn't know the answers. In response to her concern about the FSI, Mr. Biggart asked her what FSI stood for and Ms. McGillis said that she didn't remember; however she knew that it related to the coverage of the building. Mr. Biggart asked if she could see 315 Beresford from her house when she lived 10 houses away? Ms. McGillis said that she didn't see the house from her house, but she could see it when she walked down the street. Ms. McGillis also pointed out that she could see the house from her front yard. She repeated that the house was really big and did not fit in aesthetically with the community.

Mr. Steven Marcuzzi was sworn in next. Mr. Marcuzzi again referred to the fact that they had not had time to have an Expert Witness. "The gentleman who had removed himself as a Party" (i.e. Mr. Dewdney), according to Mr. Marcuzzi, felt intimidated and that he would be held liable for expenses if there was a "loss". Mr. Marcuzzi spoke about "process" related issues and reiterated how the opposition members had thought they could recommend a planner to the City who would then retain the person to provide evidence. However, the City informed them that it had already asked 3 expert witnesses to take on the case and nobody was interested. The neighbours didn't know or understand the City's process for identify an Expert Witness. What frustrated them was that they had counted on the City to voice their objection to the proposal. So, when they got an email from the City stating that a settlement had been reached, the opposition felt, in Mr. Marcuzzi's words, "we knew we were done". The process frustrated the neighbours and was "not transparent".

Mr. Marcuzzi then spoke about how big the house was and the fact that the FSI was higher than 1. He felt that the figures given by Mr. Ciecura were not accurate based on a comparison, his own house had been approved by the COA for an FSI of 0.75 and had a total of 1900 sq. ft.

He again discussed the frustrations with the process; this time with the COA hearing. Since they (i.e. the neighbours) had been advised that letters of opposition are good as showing up to give evidence, nobody showed up and they lost the COA hearing. Mr. Marcuzzi also disagreed with the City's policy of informing neighbours within a 60 m radius of the property and excluded others.

Mr. Marcuzzi then spoke about how long it had taken them to get Ryerson University to complete a study on Bloor West Village. Unfortunately, this study couldn't be used because they were students who didn't have credentials to be Expert Witnesses. According to Mr. Marcuzzi, houses that were 2000 sq. ft. in this neighbourhood were large and houses that were 3000 sq. ft. were very large. According to him, all the buildings approved by the COA as referenced by the Expert Witness were on bigger lots and no house was next to houses which were 1300 sq. ft. in size. The proposal would set a precedent because porches were being replaced with garages because integral garages are not part of the existing street character. Mr. Marcuzzi then started referring to retraction of the Letters of Support and repeating the reasons for the 3<sup>rd</sup> Party dropping out when Mr. Biron objected to the remarks. Mr. Biron stated that many of Mr. Marcuzzi's remarks were based on hearsay, speculation and guesswork. He asked that TLAB accordingly place less weight on such evidence. He also asked that Mr. Marcuzzi stop shouting and not act confrontationally towards the Expert Witness. Mr. Marcuzzi apologized for his behaviour. I upheld the objection and asked Mr. Marcuzzi to concentrate on what he saw as impacts on his house

Mr. Marcuzzi replied by saying that he didn't want to see a 4 storey house on the street. He said that he couldn't see the daylight if he lived next door to the house- he would see sunlight for one hour in the morning and not much more after that. He concluded by saying that he wasn't sure of why such a huge home that required "11 variances was being put down next door because 11 times minor does not equal minor".

Mr. Biron then cross examined him and asked him to list the 4 tests under Section 45 (1) to which Mr. Marcuzzi said that he would have to "Google" the tests. When asked if he could see the property from his house which was 9-10 houses away from 315 Beresford, Mr. Marcuzzi said he may be able to see it if he went to the 2<sup>nd</sup> floor of his house. He added that he could see it from his driveway. Coming to the letters of support, Mr. Biron asked if Mr. Marcuzzi knew if the neighbours had signed for or against the proposal or was he just guessing? Mr. Marcuzzi said that he didn't know and that he had discussed why somebody would "hypothetically" sign letters. In response to Mr. Biron's question if he was aware that the City Planning staff had supported the Application, Mr. Marcuzzi said that he understood that they were not objecting to the variances, which was not the same as "supporting" them. Mr. Marcuzzi again talked about his frustrations with the City and how it had not followed through with advice he gave them. He also said that the local Councilor was not happy with the decision to settle.

At this stage, Mr. Biron asked Mr. Marcuzzi if he knew the process behind any Settlement involving the City, and then described the process behind such Settlements. According to Mr. Biron, the City takes a position as a Party on the basis of the Local Councilor's interest and recommendation which formed the basis for a City Council



decision. When the City decides to settle, then the Planning and Legal Departments are involved in the examination, interpretation and approval of the Settlement proposal. Mr. Marcuzzi interjected to say that this process did not ensure that the local Councilor was informed and satisfied with the proposal. In response, Mr. Biron said that the local Councilor would be informed about any changes to the proposal and recommendations from various departments; it was only with the local Councilor's consent could the City Council move a resolution agreeing to the proposed Settlement.

Mr. Schuman then asked Mr. Marcuzzi questions of clarification. He acknowledged Mr. Marcuzzi's not being satisfied with the variances but asked if he understood that Mr. Ciecura had addressed the issue of whether the variances were individually and collectively minor to which Mr. Marcuzzi replied in the affirmative. He also asked if Mr. Marcuzzi's objection was the fact that the house didn't have a porch, to which Mr. Marcuzzi again agreed. Mr. Schuman then drew Mr. Marcuzzi's attention to the variances which referred to a "front yard platform without main walls" and asked him if this indicated a front porch. Mr. Marcuzzi responded by saying that he understood this to be a reference to a balcony on the 2<sup>nd</sup> floor as opposed to a porch. Mr. Schuman thanked him for his comments.

Mr. David Baldwin of 292 Beresford spoke next. He expressed concerns about the 4 storey house and said that the new developments were not blending into the neighbourhood. They were stucco with stained glass and stand out like sore thumbs. Baldwin would like to see the same building material and colour being used to construct the house as existing houses. Mr. Baldwin didn't want to lose his nice community. Mr. Schuman asked if he was concerned with the building material and colour to which Mr. Baldwin replied in the affirmative.

At this stage, Mr. Biron re-examined Mr. Ciecura. In reply to the question from Mr. Biron about what was included and excluded from the FSI calculations, Mr. Ciecura confirmed that FSI included the loft space and excluded the garage. However, the large storage space within the garage was included and the actual parking space within the garage is excluded. Mr. Biron and Mr. Ciecura revisited Policy 4.1.1 (Neighbourhoods Policy) of the Official Plan and demonstrated that even a four storey house of built form did not require a variance. Mr. Biron asked Mr. Ciecura if witnesses living 10 houses away would be impacted by the extra 0.61 m in height. Mr. Ciecura said that there would be little to no impact. Referring to comments from the Participants about how some houses with a higher FSI actually had smaller GFAs, Mr. Ciecura emphasized that FSI was not the only determinant of whether or not a house is appropriate for the lot; the size of the lot and the design of house had to be taken into consideration to get a fuller picture. With these remarks, Mr. Ciecura came to the end of the Re-examination.

Mr. Biron then provided his closing statement where he said that the Expert Witness had provided uncontroverted evidence that the proposal met the 4 tests. No attention need be given to Participants who harped on the fact that there were 11 variances. The Appellant has taken significant steps to understand and respond to the concerns of the neighbours and the City. The proposal for larger and more significant variances, had been approved by the Committee of Adjustment. Notwithstanding the approval, the Appellant had scaled back some of the variances based on feedback from various sources and had submitted the new, modified proposal to the TLAB. Mr. Biron stressed

that the immediate neighbours did not object to the original proposal as submitted to the COA. He then acknowledged the frustration of the neighbours and stated that while “they were upset, they didn’t know why they were upset”. For example, they talked about FSI without being able to provide an accurate definition and didn’t know what the four tests under Section 45(1) to determine appropriateness of variances. Mr. Biron then pointed out that the Participants had not been to demonstrate any significant impact. He then said that it would not be appropriate to be swayed by the anger and frustration of the Participants. Mr. Biron reiterated that the proposal represented good planning and good reinvestment which is what distinguished Toronto from other cities such as Detroit. The proposal is consistent with the Growth Plan and the Official Policy. He concluded by asking that the variances be approved as set out in the Zoning Notice. In terms of Conditions to be imposed, Mr. Biron said that he had a discussion with Mr. Schuman and that they had agreed that the condition to be imposed state **“Subject to substantial compliance with the Site Plans submitted on October 28, 2017 identified as “TLAB/COA Revisions”**.

In his closing statement, Mr. Schuman stated that he commended Mr. Ciecura’s evidence and the City supported the proposal, as modified to TLAB and the conditions as discussed by Mr. Biron. He stressed that the City’s agreement to a Settlement involved the consent of the local Councilor and it was wrong to suggest that the local Councilor was “unhappy” with the Settlement.

## **ANALYSIS, FINDINGS, REASONS**

I must begin by noting that there were 3 Parties to begin with. Mr. Dewdney withdrew as a Party as a result of the Settlement that had been negotiated between the Applicants and the Appellant, namely the City of Toronto. I appreciate and acknowledge the energy, patience and perseverance of the Parties in reaching their Settlement. I accept the evidence given by the Expert Witness, Mr. T.J.Ciecura about the proposal and am in agreement with his conclusions that the proposal satisfies the 4 tests listed in Section 45(1) of the Ontario Planning Act.

I note, in passing, that there were references to “11 variances” by both Participants and then the Applicants; however, the Zoning Notice refers to 13 variances, none of which were excluded in the hearing before the TLAB.

I have already noted my decision about there being no need for new notice notwithstanding the modified variances since both Parties have concurred on this matter as well as the fact that the new variances are smaller than the original variances before the COA .

I acknowledge the unhappiness and frustration of the neighbours which was evident in the litany of complaints from the Participants. Of the issues they brought up, there was a substantial focus on perceived procedural error before the COA and the TLAB hearing such as the City’s refusal to accept the Participants’ recommendations about Expert Witnesses. I note that procedural issues of pertinence to the COA hearing, and perceived unfairness as reflected in the City’s refusal to accept the Participants’

choice of an Expert Witness, are outside the jurisdiction of TLAB. Consequently, no finding needs to be made about these issues

The Participants did not introduce any planning evidence except in the matter of perceived impact. The only pertinent evidence was that the house appeared to be inordinately large because of the integral garage and consequently, made other houses separated by 10 houses on the same street look tiny in comparison. This evidence is subjective and is not supported by the planning evidence. Therefore, little weight is given to this evidence.

On the matter of impact itself, I disagree with the conclusion that a new house ( in this case, a 3 storey house with an integral garage) making other houses on the street look tiny , constitutes a significant impact. The issue of colour and material of the proposed house, also brought up by Participants, is outside the jurisdiction of the TLAB and no finding need be made on this matter.

The information provided by Mr. Biron through his cross examination to illustrate the process undertaken by the City, including involvement of the Legal and Planning Departments, as well as elected politicians is very useful in terms of understanding how the process of Settlement works. I thank Mr. Biron for reviewing this information and imparting, what is effectively, a useful lesson in Civic Processes. It is important that community members understand how proposals have to be vetted and agreed upon at various levels within the City before a Settlement can be reached. The process of settlement, as opposed to the actual settlement, has no bearing on this decision.

Lastly, I note and accept the conditions agreed upon by the Applicant and Appellant to build the dwellings in substantial accordance with the Site Plans and Elevations, dated stamped 28 October, 2017 and are marked as “TLAB/COA Revisions”

## **DECISION AND ORDER**

- I) The Appeal is allowed in part because some of the variances requested and approved by the Toronto Local Appeal Body have been modified after their approval by the Committee of Adjustment
- II) The following variances are approved:

### **Variances sought from City Wide Zoning By-Law (By Law 569-2013)**

- 1. The permitted maximum height of a building or structure is 10 m. The proposed height of the building is 10.61m.
- 2. The permitted maximum building depth for a detached or semi-detached house is 17 m. The proposed building depth is 19.2 m.

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4. The permitted minimum North Yard setback for is 0.45 m. The proposed North side yard setback is 0.15 m.
5. Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line. The proposed eaves are 0 m from the North lot line.
6. A platform without main walls, attached to, or less than 0.3 metres from a building with a floor higher than the first floor of the building above established grade may encroach 1.5 m into the required front yard setback, if it no closer to a side lot line than the required side yard setback of 0.9 m. The proposed side yard setback for the front platform is 0.15 m to the North side lot line.
7. The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m. The proposed height of the side exterior main walls facing a side lot line 8.09 m.
8. The minimum required parking space must have a minimum length of 5.6 m. The proposed parking space will have a length of 4.9 m.

**Variances sought from By-Law Toronto Zoning By-Law ( 438-86)**

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10. The by-law requires a detached house to have a minimum side lot line setback of 7.5 m from the side lot line for that portion of the building exceeding 17 m in depth. The proposed lot side line setback is 0.15 m on the North side and 1.21 m on the South Side.
11. The by-law limits the projection of an uncovered platform into the required setbacks to a maximum of 2.5 m from the front or rear wall. The proposed uncovered platform projects 3.05 m from the rear wall.
12. The by-law limits the height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 m above grade. The proposed height for the rear platform is 2.28 metres above grade.
13. The by-law limits the height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 metres above grade. The proposed height for the front porch is 2.28 m above grade.

III) The following is the condition of approval:

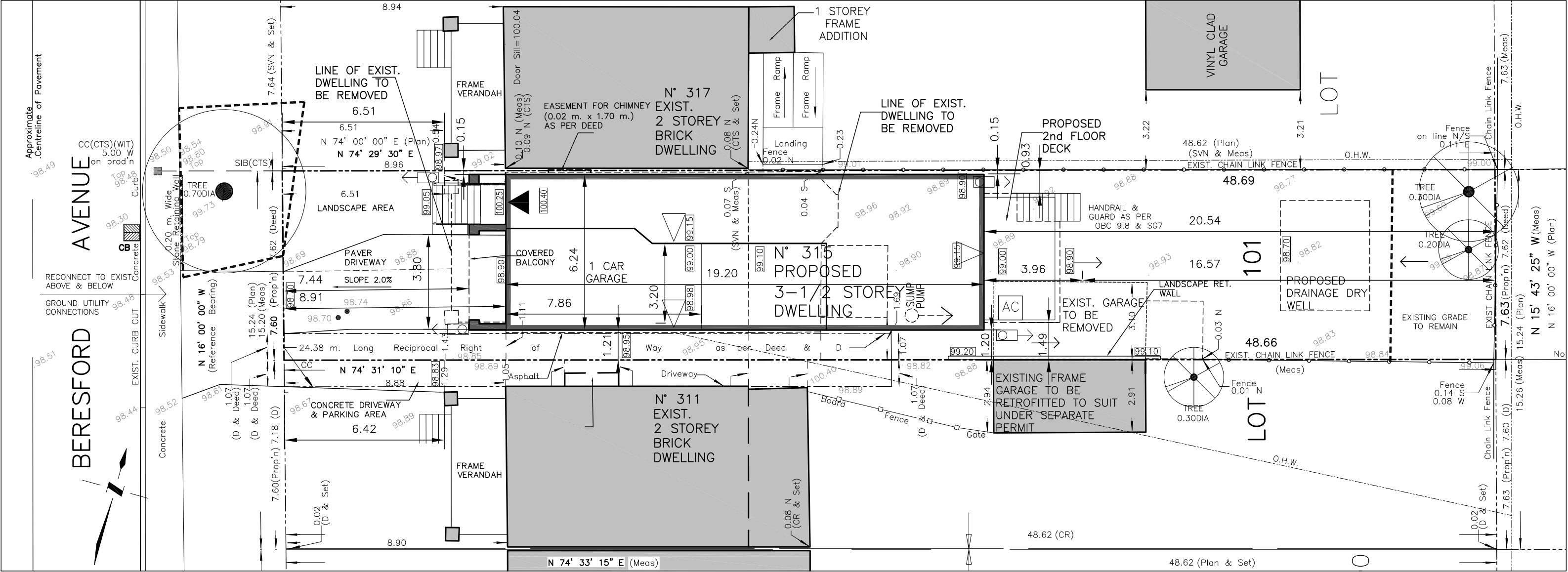
That the house be constructed in substantial compliance with the Site Plans and Elevations dated 20 October, 2017 and marked TLAB/COA Revisions. A copy of the Site Plans and Elevations is attached to this decision.

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', is written over a light gray rectangular background.

---

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body



LEGEND

- LOWER LEVEL ENTRY POINT
- MAIN LEVEL ENTRY POINT
- PROPERTY LINE
- EXISTING SPOT ELEVATION
- PROPOSED SPOT ELEVATION
- DIRECTION OF SWALE
- DIRECTION OF DRAINAGE
- RAINFALL DOWNSPOUTS
- AIR CONDITIONER
- 0.30C CR 8.0 DENOTES CONIFEROUS TREE (WITH TRUNK DIAMETER) TO REMAIN
- 0.30D CR 8.0 DENOTES DECIDUOUS TREE (WITH TRUNK DIAMETER) TO REMAIN
- 0.30D CR 8.0 DENOTES TREE (WITH TRUNK DIAMETER) TO BE REMOVED

BASE INFORMATION TAKEN FROM SURVEY BY  
TOM SENKUS O.L.S FEB. 22 2017  
**315 BERESFORD AVE.**  
PART OF LOT 101, REGISTERED PLAN 714  
CITY OF TORONTO

**SITE DATA**

ZONING	R (d0.60)(x737)	569-2013	R2 (Z0.60)	425-93
LOT AREA	3990.2 sf			
GFA		PROP.	TOTAL	
GROUND FLOOR		73.79 sm	794 sf	73.79 sm 794 sf
SECOND FLOOR		119.98 sm	1291 sf	119.98 sm 1291 sf
THIRD FLOOR		119.96 sm	1291 sf	119.96 sm 1291 sf
LOFT FLOOR		49.23 sm	530 sf	49.23 sm 530 sf
TOTAL		362.96 sm	3907 sf	362.96 sm 3907 sf
GARAGE (GFA excludes required parking space)		25.3 sm	272 sf	25.3 sm 272 sf
TOTAL W/ GARAGE		388.26 sm	4179 sf	388.26 sm 4179 sf
ALLOWABLE GFA	0.6 x lot	222.42 sm	2394 sf	
proposed FSI	1.047			388.26 sm 4179 sf
EXISTING COVERAGE		82.9 sm	892 sf	22.36%
PROPOSED COVERAGE		143.1 sm	1540 sf	38.60%
ZONING ALLOWABLE COV'G	NA	sm	0 sf	
**COV'G INCLUDES HOUSE FOOTPRINT, COV'D PORCHES, DECKS ABOVE .6m FROM GRADE & ACCESSORY STRUCTURES**				
<b>LANDSCAPE CALC'S</b>				
LANDSCAPE OPEN SPACE CALC. - FRONT YARD AREA - 68.01 sm				
DRIVEWAY AREA 31.17 sm (45.8%) - HARDSCAPE AREA - 6.34 sm				
LANDSCAPE AREA - 36.84 sm - 54.2%(SOFT LANDSCAPE 29.48 sm -80.0%)				
ESTABLISHED GRADE CALC. (98.97 + 98.83)/2=98.90				
REAR YARD - 165.12 sm				
LANDSCAPE AREA - 165.12 sm (100%)				

ISSUED:  
1. ISSUED FOR COA MAY 4, 2017  
2. REVNS FROM COA/ ZONING REVIEW 7 JUNE 2017  
3. REISSUED TO CLIENT 26 JUNE 2017  
4. REISSUED FOR TLAB REVIEW 18 OCT. 2017  
5.

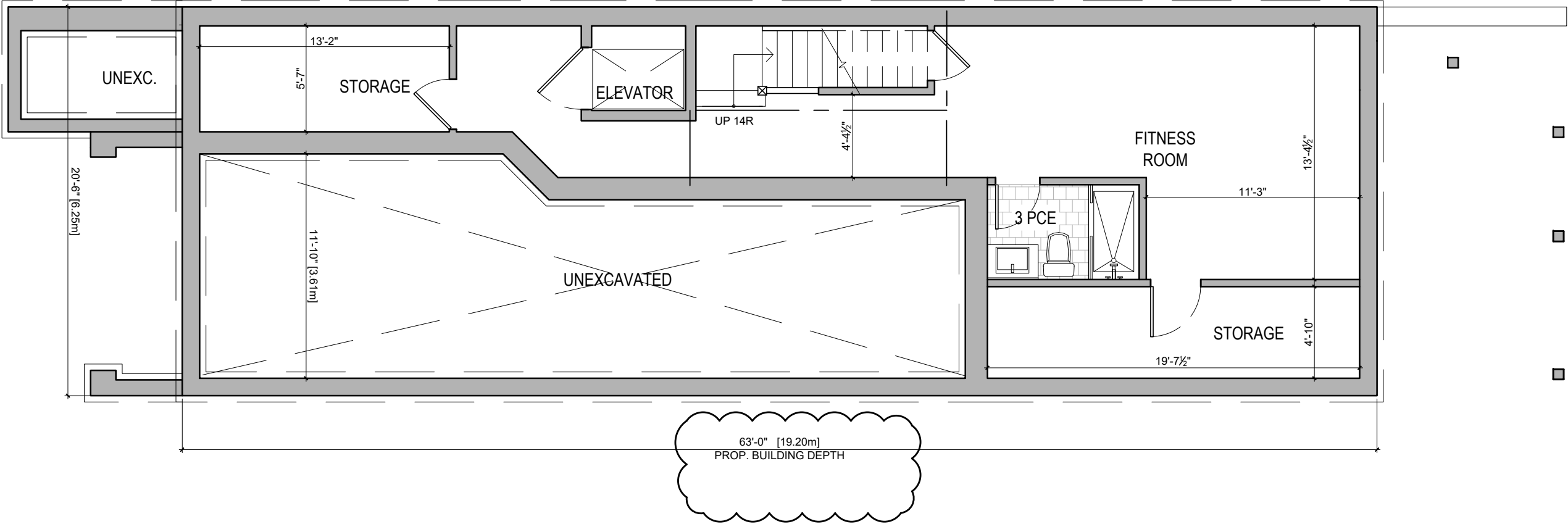
CUSTOM HOME AT:

315 BERESFORD AVE  
TORONTO, ON

DRAWING

BASEMENT  
PLAN

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75



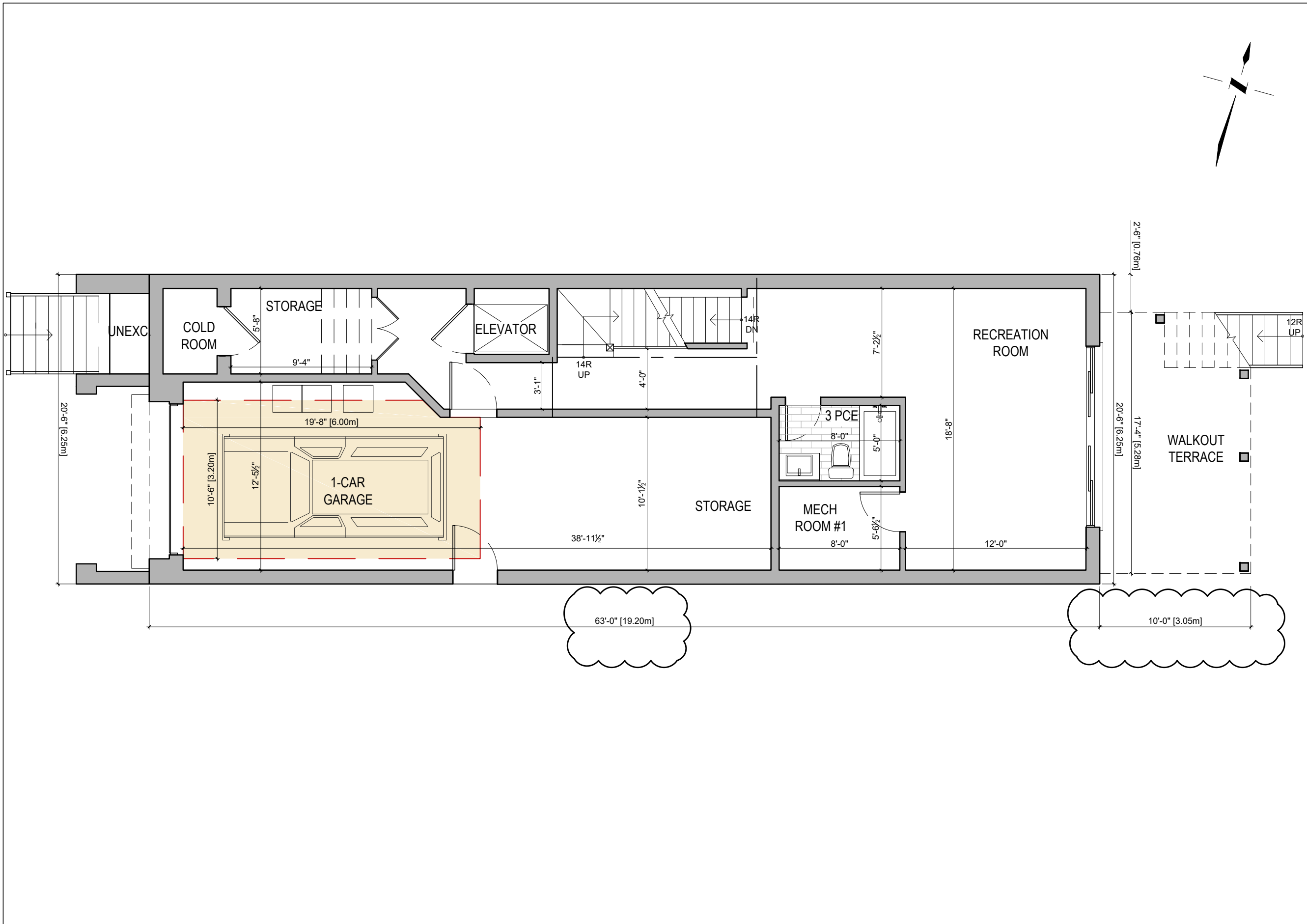
FLOOR AREA

GROUND FLOOR	73.79 sm
SECOND FLOOR	119.97 sm
THIRD FLOOR	119.96 sm
LOFT	49.23 sm
TOTAL	362.96 sm

GARAGE	25.30 sm
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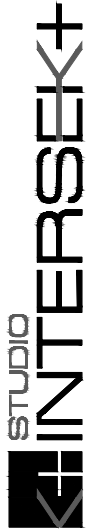
1 BASEMENT PLAN

SCALE: 1:75



1 GROUND FLOOR PLAN  
SCALE: 1:75

17-051



980 FRASER DRIVE, UNIT 110  
BURLINGTON, ONTARIO, L7L 5P5  
T: 905.582.0630, info@intersekt.ca

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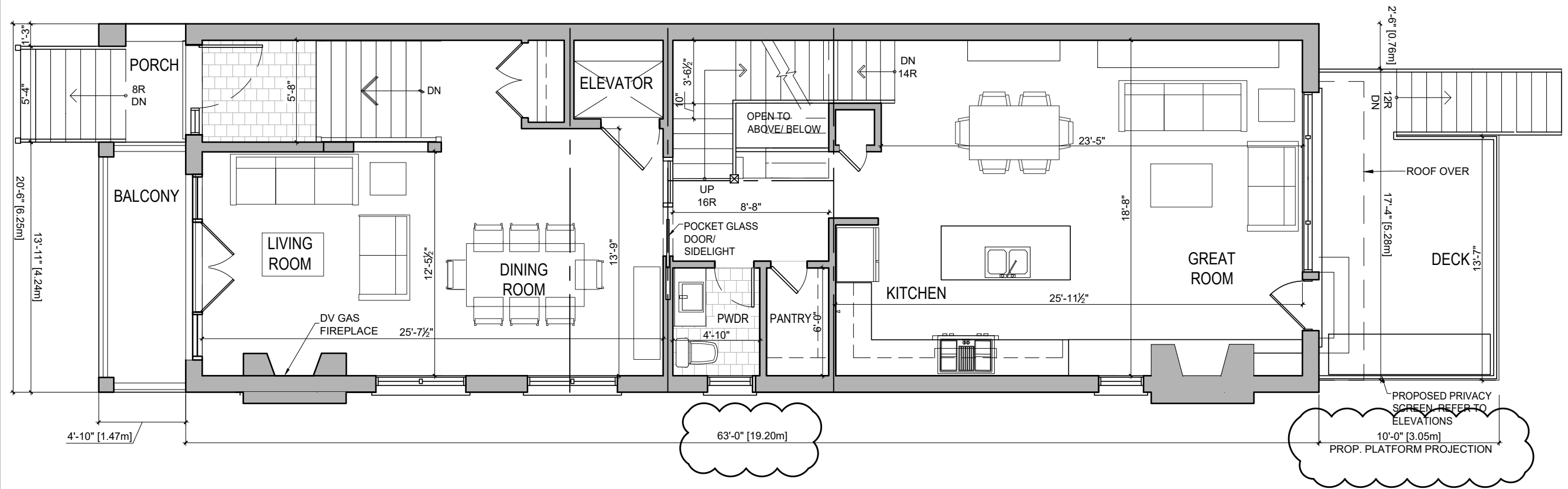
DRAWING

## GROUND FLR PLAN

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75

A2.1





1 2ND FLOOR PLAN  
SCALE: 1:75

17-051



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CUSTOM HOME AT:

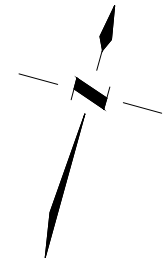
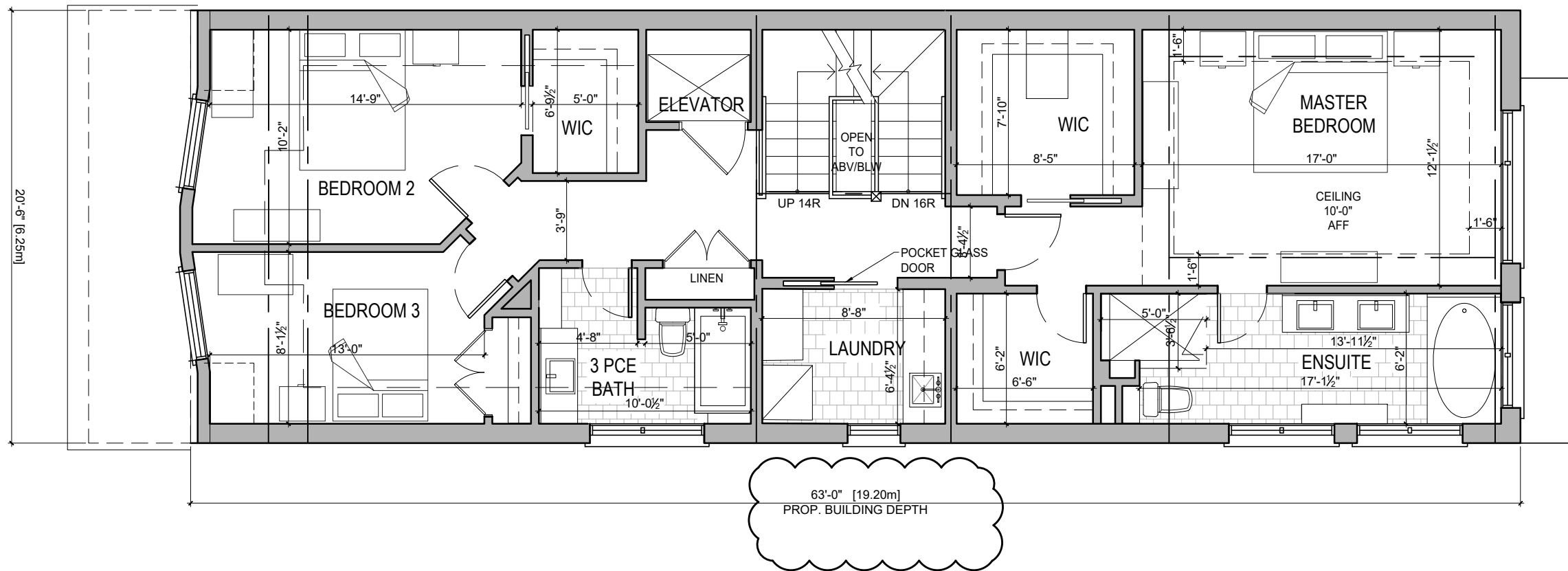
315 BERESFORD AVE  
TORONTO, ON

DRAWING

2ND FLOOR  
PLAN

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75

A2.2



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315 BERESFORD AVE  
TORONTO, ON

DRAWING

3RD FLOOR  
PLAN

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75

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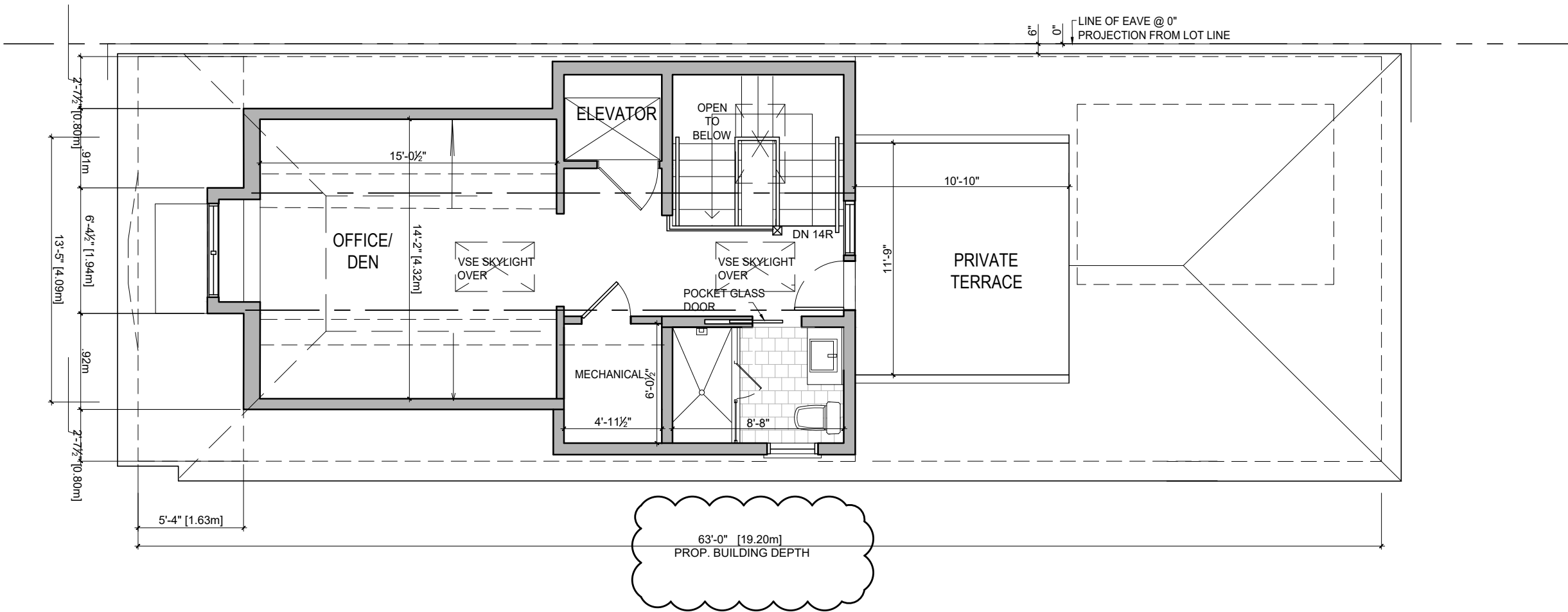
CUSTOM HOME AT:

315 BERESFORD AVE  
TORONTO, ON

LOFT  
PLAN

DRAWING

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75



ISSUED:	
1. ISSUED FOR COA	MAY 4, 2017
2. ZONING COMMENT REVISIONS	JUNE 7, 2017
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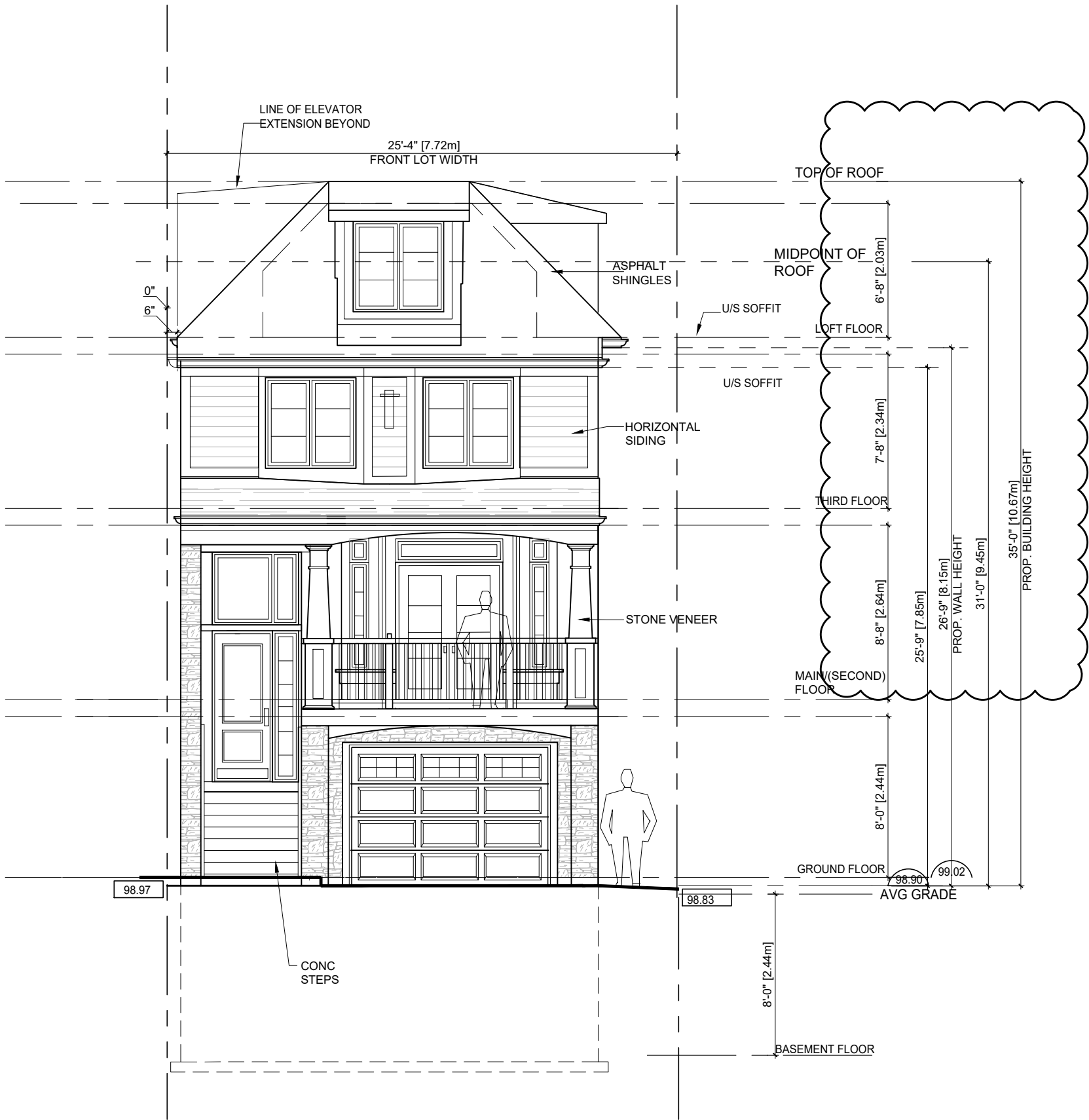
CUSTOM HOME AT:

315 BERESFORD AVE  
TORONTO, ON

DRAWING

FRONT  
ELEVATION

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:75





1 FRONT ELEVATION  
SCALE: 1:100

17-051



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	REISSUED FOR TLAB REVIEW	18 OCT. 2017

CUSTOM HOME AT:

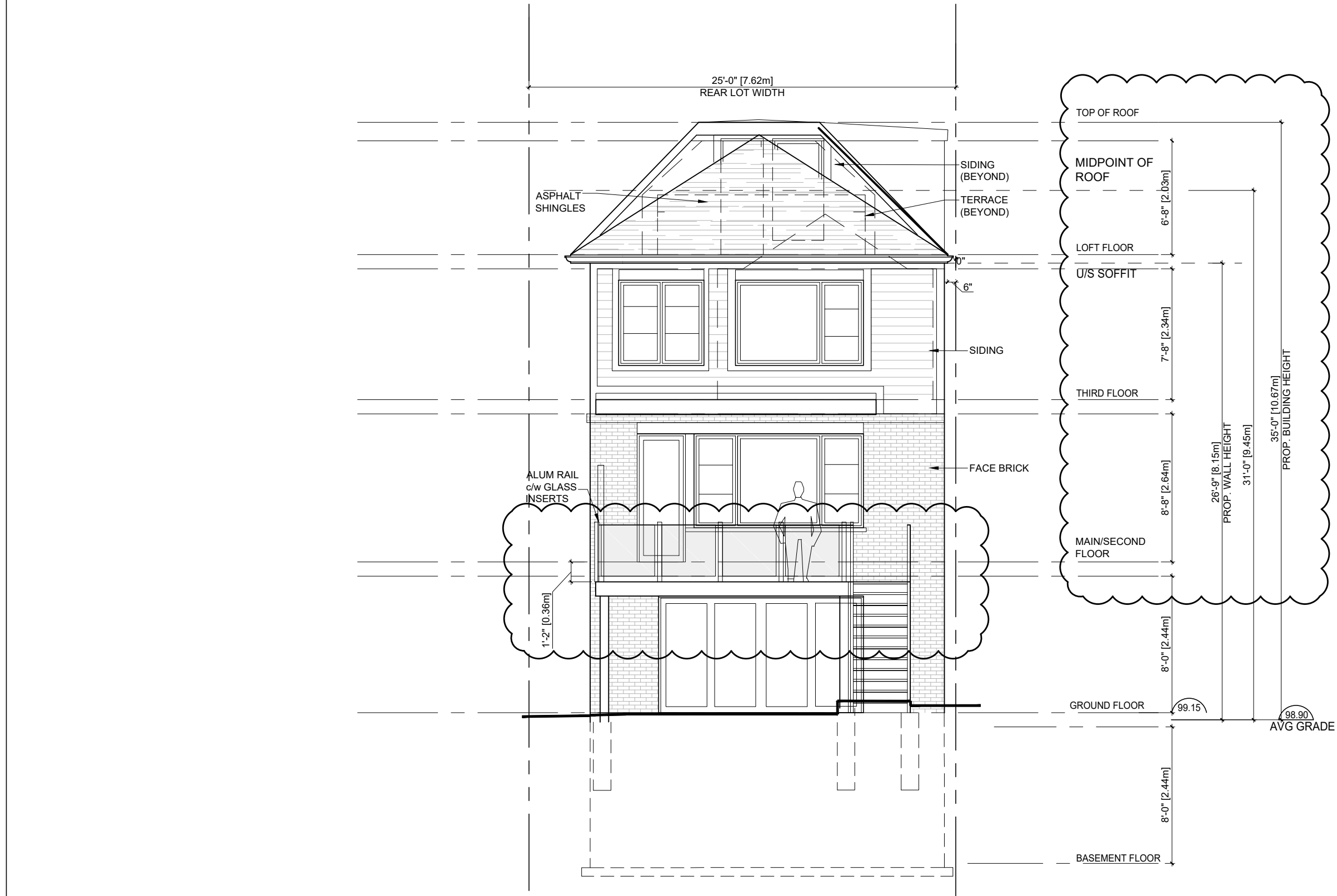
315 BERESFORD AVE  
TORONTO, ON

DRAWING

RIGHT  
ELEVATION

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:100

A3.1



1 REAR ELEVATION  
SCALE: 1:75

17-051



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CUSTOM HOME AT:

315 BERESFORD AVE  
TORONTO, ON

DRAWING

REAR  
ELEVATION

PROJ. DATE	APRIL 1, 2017
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DRN BY	A.R
CKD BY	F.V.
SCALE	1:75

A3.2

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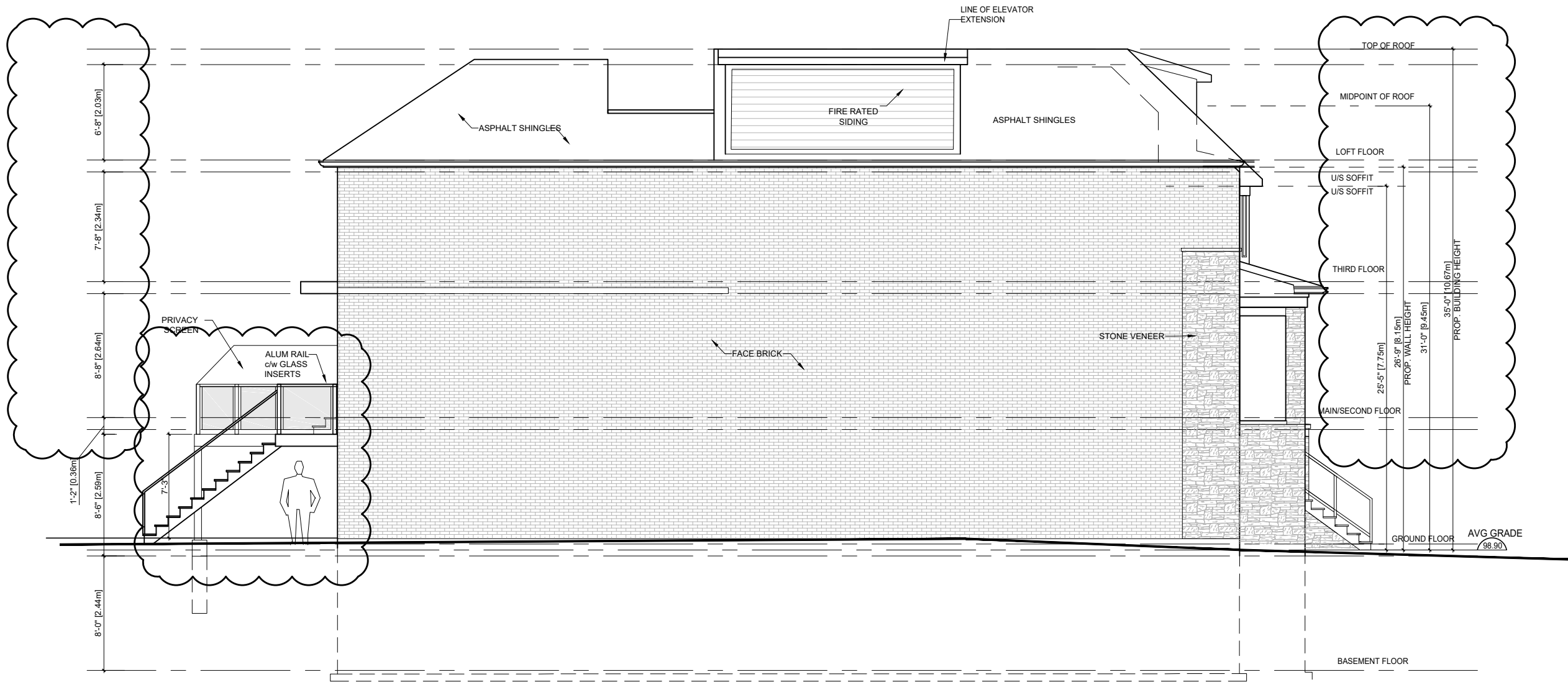
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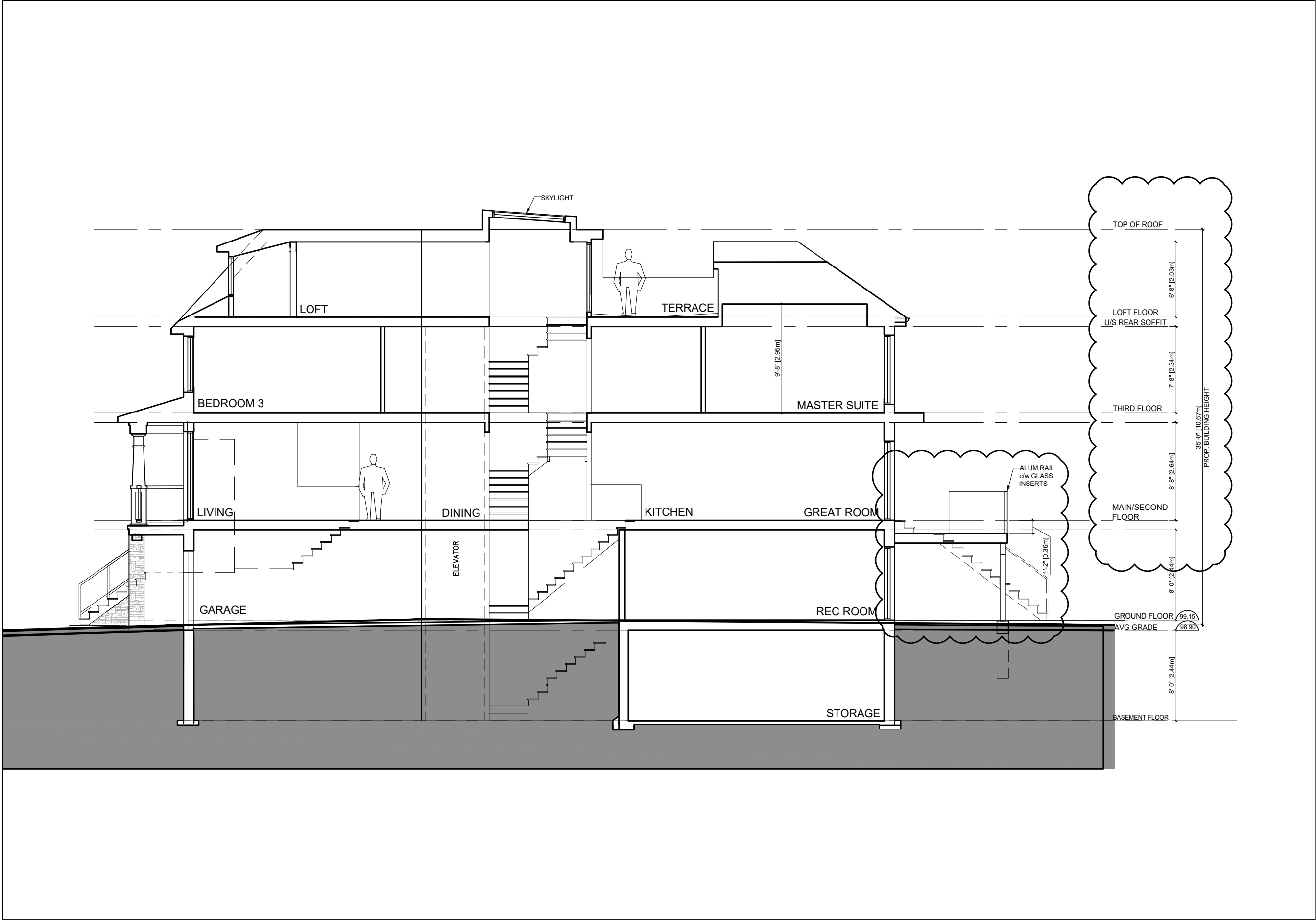
DRAWING

LEFT  
ELEVATION

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:100

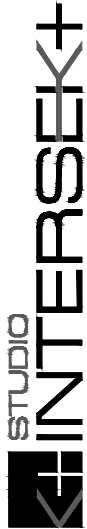
A3.3





1 SECTION  
SCALE: 1:100

17-051



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4		

CUSTOM HOME AT:

315 BERESFORD AVE  
TORONTO, ON

DRAWING

BUILDING  
SECTION

PROJ. DATE	APRIL 1, 2017
PROJ. NO.	17-051
DRN BY	A.R
CKD BY	F.V.
SCALE	1:100

A4.0