

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, March 14, 2018

PROCEEDING COMMENCED UNDER subsection 53(19) and subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): PARVIZ BOZORGMANESH

Property Address/Description: 7 MAUGHAN CRES

Committee of Adjustment Case File Number: 17 143169 STE 32 CO

17 143174 STE 32 MV

17 143178 STE 32 MV

TLAB Case File Number: 17 209085 S53 32 TLAB

17 209086 S45 32 TLAB

17 209088 S45 32 TLAB

**Hearing date:**      Monday, December 11, 2017

**DECISION DELIVERED BY S. Gopikrishna**

## INTRODUCTION

Mr. Parviz Bozorgmanesh is the Applicant and Appellant on this appeal. He wants to sever the property at 7 Maughan Crescent and construct a detached dwelling on each of the severed lots. He applied to the Committee of Adjustment (COA) for consent to sever the property and construct a new three storey detached dwelling with an internal garage on both the severed lots. The COA refused his application on July 12, 2017. Mr. Bozorgmanesh then appealed to the Toronto Local Appeal Body (TLAB) on July 31, 2017. The Appeal hearing was scheduled on December 11, 2017. The Appellant was represented by Mr. Aaron Platt, Partner, Davies Howe and Ms. Janice Robinson, Land Use Planner, Goldberg Group. While some community members registered as Participants for the hearing, it is important to note that there were no other Parties.

## **BACKGROUND**

On November 29, 2017, Mr. Platt sent an email to TLAB stating that Ms. Robinson would not be available for the hearing due to a prior commitment with the Ontario Municipal Board (OMB, and that she would be replaced by her colleague, Mr. Michael Goldberg. Mr. Platt asserted that this would not prejudice anybody because his client was the only Party and there was no vehicle for the Participants to assert prejudice. Mr. Goldberg also submitted a Witness Statement which stated that he would adopt Ms. Robinson's Witness Statement.

## **MATTERS IN ISSUE**

### **CONSENT APPLICATION**

#### **Conveyed – Part 2, Draft R-Plan**

Address to be assigned

The lot frontage is 7.63 m and the lot area is 227.24 sq. m. A new three storey detached dwelling with an integral garage will be constructed and requires variances to the zoning by-law as outlined in application A0437/17TEY.

#### **Retained- Part 1, Draft R Plan**

Address to be assigned

The lot frontage is 7.63 m and the lot area is 231.37 sq. m. A new three storey detached dwelling with an integral garage will be constructed and requires variances to the zoning by-law as outlined in application A0438/17TEY.

### **REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

#### **Part 1**

#### **City Wide By-Law 569-2013**

1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m.

In this case, the height of the front exterior main wall of the new dwelling will be 9.11 m.

2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.

In this case, the height of rear exterior main wall of the new dwelling will be 9.11 m.

3. Chapter 10.10.40.10.(6), By-law 569-2013

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 17 209085 S53 32 and related**

The maximum permitted height of the first floor of a dwelling above established grade is 1.2 m and a minimum of 10 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall.

In this case, the first floor of the new dwelling will be located 1.2 m above established grade and 2.5 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (138.82 m<sup>2</sup>). The new three-storey detached dwelling will have a floor space index equal to 0.84 times the area of the lot (195.22 m<sup>2</sup>).

**Former City of Toronto By-Law 438-86**

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

The maximum permitted gross floor area is 0.6 times the area of the lot (138.82 m<sup>2</sup>). The new dwelling will have a residential gross floor area equal to 0.84 times the area of the lot (195.22 m<sup>2</sup>).

2. Section 6(3) Part II 3(II), By-law 438-86

The minimum required side lot line setback from the side wall of an adjacent building that contains openings is 1.2 m. The new dwelling will be located 1.07 m from the side wall of the adjacent building to the west

3. Section 6(3) Part II 8 D (I), By-law 438-86

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade. The rear deck will have a height of 2.4 m above grade.

**Part 2**

**City Wide By-Law 569-2013**

1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m. In this case, the height of the front exterior main wall of the new dwelling will be 9.11 m.

2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m. In this case, the height of rear exterior main wall of the new dwelling will be 9.11 m.

3. Chapter 10.10.40.10.(6), By-law 569-2013

The maximum permitted height of the first floor of a dwelling above established grade is 1.2 m and a minimum of 10 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall. In this case, the first floor of the new dwelling will be located 1.2 m above established grade and 2.5 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (136.34 m<sup>2</sup>).

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 17 209085 S53 32 and related**

The new three-storey detached dwelling will have a floor space index equal to 0.86 times the area of the lot (195.22 m<sup>2</sup>).

**Former City of Toronto By-Law 438-86**

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

The maximum permitted gross floor area is 0.6 times the area of the lot (136.34 m<sup>2</sup>). The new dwelling will have a residential gross floor area equal to 0.86 times the area of the lot (195.22 m<sup>2</sup>).

2. Section 6(3) Part II 2 (II), By-law 438-86

The minimum required front yard setback of a building on an inside lot is 3.0 m. The new dwelling will be located 2.79 m from the front lot line, measured to the front projection.

3. Section 6(3) Part II 8 D (I), By-law 438-86

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade. The rear deck will have a height of 2.4 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').

### **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 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.

## **EVIDENCE**

At the pre-hearing conference, I raised the issue of Witness Substitution with Mr. Platt. I agreed with Mr. Platt's submission that no prejudice could be asserted by other Parties since there were no other Parties. However, I wanted to know what steps Mr. Goldberg had undertaken before he adopted Ms. Robinson's Witness Statement. Mr. Goldberg replied by saying that he had visited the site, reviewed Ms. Robinson's report and relevant public documents such as the Ontario Provincial Plan, the Growth Plan and the City of Toronto's Official Plan before accepting her conclusions. I concluded that Mr. Goldberg had completed his due diligence and could be sworn in as an Expert Witness. Mr. Platt then reviewed Mr. Goldberg's resume and asked that he be qualified as an Expert Witness to which I agreed.

Mr. Platt prefaced Mr. Goldberg's testimony by stating that he would speak to the Consent first before discussing the variances.

Mr. Goldberg began by discussing the neighbourhood around the proposed project. The study area extends south to Dundas St East, east to Edgewood Avenue, north to Eastwood Road, west to the rear of lots fronting on Coxwell Avenue. It is in the area classified as "Neighbourhoods", The area is zoned R2 (Z0.6/10m) under By Law 438-86 and R (f7.5;d0.6) under By Law 569-2013. The study area extends south to Dundas St East, east to Edgewood Avenue, north to Eastwood Road and west to the rear of lots fronting on Coxwell Avenue. Mr. Goldberg stated that the immediate surroundings included a mix of lot frontages and dwelling types, including houses of a detached and semi-detached nature, condominiums and block townhouses. The area had experienced redevelopment in the form of two new developments- the first being Oliver Mews, a condominium townhouse development to the west of the subject property. The second development was on Vince Avenue to the east of the subject property – this project had semi-detached dwellings with an integral garage and 3 floors of living space above the garage with a height of 12 m with modern architectural design. The resulting project density of dwellings in the new projects was significantly higher and included a figure of 1.1 times the Gross Floor Area. Dwellings in these recently approved and occupied developments are 3 storeys in height. While these developments contrasted with the vintage homes in the area, they were nevertheless an important part of the overall fabric of the community. The property at 7 Maughan, according to Mr. Goldberg, was an anomaly because of the size of the property. Building a single dwelling on such a large lot would result in a really big house that would contrast unsuitably with the smaller vintage homes around. Severing the property into 2 lots and constructing a house on each lot as proposed would result in dwellings consistent with the neighbourhood. The existing lot has a frontage of 15.26 m, an area of 458.61 sq. m. and an average lot depth of 29.9 m.

Mr. Goldberg described the dwellings to be constructed as having a Gross Floor Area of 188 sq. m each and characterized them as "not particularly big" houses on lots of 227 sq. m, which would be created as a result of the severance. He pointed out that the lot area minimum under the new by-law 569-2013 is 225 sq. m. and that the proposed lots would comply with this restriction. The type, scale and standards of the proposed houses would also be in keeping with the neighbourhood. The proposed dwellings would have an integral garage and 2 levels of living space above the garage with a total

height of 10 m from established grade. The rear yard setback exceeds the permitted setback while there are variances required for the side yard setbacks. The roof presents itself as a flat roof although there is a slight slope at the front for drainage purposes.

Mr. Goldberg then described an unusual feature of the house with a significant impact on the variances being sought- namely, the 6 steps to the porch from the street opened into an internal vestibule inside the house from which there were steps going to the main living level. The vestibule is smaller than 10 sq. m and therefore doesn't qualify as a finished first floor under the new-by law which requires a floor to have at least 10 sq. m of area within the first 4 m from the front main wall. Noting that only 2.5 sq. m. of this vestibule is within the 4 m distance, Mr. Goldberg highlighted the threefold nature of this feature :

- The basement has to be counted as the first floor since that is closest to the grade
- What presents as a two storey house has to be referred to as a three storey house.
- Part of the basement area has to be included in the calculation of the GFA

If the vestibule were 10 sq. m., then the GFA would be significantly smaller because part of the basement being presently used for GFA calculations could be excluded reducing the overall GFA. The GFA would be approximately 1700 feet if it weren't for this technicality; a GFA that would be consistent and comparable to other houses in the area.

At this stage, Mr. Platt stated that he wanted to make sure that I understood the reasons for the unusual GFA calculations. I assured him that I did understand the reasoning and repeated the reasoning back to him which Mr. Platt confirmed was consistent with Mr. Goldberg's explanation

According to Mr. Goldberg, the variance involving the deck arises from the fact that is 2.4 metres from the ground instead of the allowed 1.2 m. This extra height creates an overlook over the neighbours' backyard. The Appellants realized the overlook factor and look to minimize the impact through the installation of a privacy screen made of opaque material, on the deck.

With this introduction, Mr. Goldberg presented evidence on the consent to sever request under 51(24) as follows:

Mr. Goldberg stated that he would discuss the consistency with the PPS when discussing the variances though he was aware that such consistency also had to be demonstrated as a requirement for the consent to sever the property. Secondly, the division is not premature and is in the public interest in Mr. Goldberg's opinion because the lots front onto a public road and meets the zoning standards for lot frontage and area. Further, the consent conforms to the Official Plan because the proposed lots reflect the existing built form and lot sizes in the area and will fit in.

.Mr. Goldberg began by discussing the suitability of the land for the proposal- he stated that that the contemplated detached dwellings were compatible with the study area and

the lots to be created are suitable for accommodating the proposed homes. Since the area has already been developed, the existing roads could accommodate the proposed development, which meant that the severance consideration for adequate access to new roads and laneways was adequately met. Coming to the issue of dimensions and shape of proposed lots, Mr. Goldberg pointed out that the frontage, depth and area of the proposed lots exceeded the applicable zoning by-law standards and was within the range of lot frontages and areas both in the immediate area and the overall Study Area. Given that the proposed lots met the restrictions for lot frontage with limited variances to existing zoning standards, Mr. Goldberg concluded that a zoning amendment wasn't necessary.

He also stated that City Development Engineering staff had not identified any issues with respect to natural resources or flood control which meant that the consideration for conservation of natural resources and flood control were adequately satisfied. The area was already well served by schools which meant that the students from families who would move into proposed homes would be able to access these schools. Lastly, the City had not identified any requirements for land to be conveyed or dedicated for public purposes.

The proposal complied with the test for the efficient and conservation of energy because the new homes will be constructed in accordance with the current Ontario Building Code, which requires significantly increased energy conservation measures within dwellings compared to older dwellings such as the current house on the property. Also, the proposed development will add one more dwelling in a location that is well served by public transit which could realistically decrease the number of car based trips. The test about the interrelationship between design of plan of subdivision and site plan control matters does not apply because the lots are not subject to plan control.

Thus, the proposal, in his opinion, met the conditions for consent. Mr. Goldberg then moved onto the variances.

He started by pointing out that the original vintage dwellings in the area, many with 2 storeys, are modest in size and were built in the early 1900's. While many of the semi-detached vintage houses can't be redeveloped for that very reason, new construction on individual lots consist primarily of additions to existing dwellings, exceeding the maximum FSI permitted by the applicable zoning by-law. Through a review of COA decisions, Mr. Goldberg demonstrated that there were many residences whose FSIs exceeded the allowable 0.6. Secondly, Mr. Goldberg also stated that recently approved applications for zoning amendments and newly constructed projects in the immediate vicinity of the subject lands contain dwellings with densities of 1.1 times the site area.

Mr. Goldberg next reviewed the Lot Frontage chart and Lot Frontage Map to conclude that 52.05% of the lots in the study area have frontages of less than 7 m, 25.15% have frontages between 7 and 8 m and 22.08% of the lots in the Study Area have frontages of over 8.01 m- this meant that the proposed lots would be on the larger side of the plot sizes prevalent in the community.. Mr. Goldberg reiterated that the type, style, scale of dwellings and size of lots proposed is not unusual and is in keeping with the built form and lot fabric of the neighbourhood.

Mr. Goldberg then discussed the proposal by stating that the proposal was to sever the property into two residential lots Parcel A (Part 1) with 231.37 sq. m and 7.63 m frontage while Parcel B (Part 2) has 227.24 sq. m and 7.63 m frontage. He then recited the GFA, Front Setback, Rear Setback and Side Setbacks for both parts to the proposed dwellings. The building length is 16.42 m. While the building height is 10.31 m to the top of the roof, the height is 9.17 m to midline of roof and 10 m in the middle of the roof with a low slope peak of 0.3 m. He then pointed out that the landscaped open space and front yard soft landscaping are fully compliant with zoning by-laws.

Mr. Goldberg stated that the Planning Department did not provide a Planning Report, which he interpreted to mean that there were no issues with the proposal. Technical Services had recommended 2 conditions of consent, both of which are standard, “boiler plate” conditions associated with other such typical consent applications, which Mr. Goldberg recommended be imposed. Urban Forestry and Bell Canada had no comments. He acknowledged that were letters of oppositions from residents on Hemlock Avenue and Maughan Crescent, focusing on height and the addition of additional dwellings in the neighbourhood.

Mr. Goldberg then reviewed the Provincial Policy Context (PPS) and the Growth Plan for the Greater Golden Horseshoe (2017). He said that both documents have policies relevant to infill and intensification and that this proposal fell under the definition of “intensification”. The proposal, according to Mr. Goldberg, is a modest form of intensification. The proposal is consistent with Section 1.1.3 of the PPS which promotes efficient development patterns, effective use of infrastructure, public services facilities- 1.1.3.1 promotes the regeneration of settlement areas, 1.1.3.2 refers to efficient use of land and services. The Growth Plan has similar policies. Starting with Guiding Principles in Section 1.2.1, the Growth Plan prioritizes intensification and higher densities to make efficient use of land and infrastructure and support transit viability. The proposal will make better use of land resources and infrastructure and represents a modest form of intensification and infill. Accordingly, the proposal contributes to, and reinforces the policy objectives of the PPS and Growth Plan encouraging residential intensification where municipal services and public transit are available. Based on the above, Mr. Goldberg concluded that the proposal was consistent with the PPS and the Growth Plan.

He then addressed the four tests stated in Section 45(1) of the Planning Act to determine how “minor” were the proposed variances. He started off with the test of conformity with the general intent and purpose of the Official Plan. Referring to the well-known requirement in Policy 2.3 about “Neighbourhoods being stable but not static”, Mr. Goldberg explained that the proposal to build 2 new houses achieved the objective by adding dwellings that respected the eclectic mix of the houses in the neighbourhood. He then referred to Section 3.1.2.1 (Built Form) where he specifically discussed the exterior appearance of the house and how the contemporary design of the house was consistent with the facades of other houses in the neighbourhood; this policy was also fulfilled by consistency with the scale and massing of houses in the neighbourhood. Dwelling on Section 4.1 (Development Criteria in neighbourhoods), Mr. Goldberg stated that the subsection about heritage sites didn’t apply, that there would be no changes to landscaping and that each house would have an integral garage, all of which cumulatively satisfied Section 4.1. These individual conclusions led Mr. Goldberg to

conclude that the minor variances individually and cumulatively maintain the general intent and purpose of the Official Plan. The frontages of the subject lot and the other four lots on either side of it located on the north side of Maughan Crescent are substantially larger than the vast majority of lots within the neighbourhood. The proposed lots will be compatible in size with the lot fabric of the neighbourhood. Mr. Goldberg added that he had also checked for compatibility with OPA 320 and founded that the application, as amended, meets the general intent and purpose of OPA 320.

Coming to the general intent and purpose of the Zoning By-Laws, Mr. Goldberg pointed out that the objective is to identify permitted uses, which together with performance standards, will result in a development that implements the Official Plan. The intent is to ensure that proposal will not result in adverse planning impacts on the immediate or the broader neighbourhood, nor a building incompatible with the subject land and neighbouring developments. According to Mr. Goldberg, the overlook is conventional and comparable to what the neighbors see of each other's houses in an urban neighbourhood and that shadow impacts were similar to what was "as of right". He emphasized that the Appellants would install privacy screens on the platforms of the houses to address privacy concerns. Based on these features, Mr. Goldberg concluded that the application maintained the general intent and purpose of the Zoning By-Laws.

Mr. Goldberg then addressed the issue of the variances being "minor". He pointed out that the magnitude of the variances were numerically minor and that the increased height of the front and rear walls will not cause any undue impact. The height of the rear uncovered platforms will not result in an undue breach of privacy due to their small size and setback from adjacent neighbours. He reiterated that notwithstanding the aforementioned features of the platforms, the Appellant was willing to install a privacy screen to address the neighbours' concerns. Mr. Goldberg also felt that in a well-developed neighbourhood such as the area of the subject lands, the expectation of privacy is more limited due to the neighbourhood's compact and tight knit urban environment. The increased GFA is a minor increase in the context of this property and the reduced area of the vestibule is not visible from the exterior of the house. It will have no impacts on any property in the neighbourhood and is therefore minor and technical in nature.

Based on this, Mr. Goldberg concluded that the variances requested, individually and cumulatively, were minor.

Lastly, addressing the desirability of the variances, Mr. Goldberg opined that the subject proposal represents reinvestment on this property with two new single detached dwellings in a neighbourhood that has experienced redevelopment with new townhouse and semi-detached dwellings in the immediate vicinity. The size, scale and standards applied to this proposal are appropriate with what already exists in the neighbourhood and the reinvestment will contribute to the ongoing stability of the neighbourhood. Based on this, Mr. Goldberg concluded that the variances are desirable for the appropriate development of the land.

Mr. Platt then summarized the presentation by stating that in his opinion, the proposals spoke to good planning because they fulfilled Provincial Policies and imperatives, the Official Plan and existing Zoning, were minor and desirable. He

therefore recommended that the Appeal be granted, that the variances and consent be approved with the 2 conditions suggested by Technical Services related to identification within the Land Registry System and obtaining new numbers.

The first Participant to speak was Ms. Betty Rathgeber of 38 Hemlock Ave, who said that her property backed onto the backyard with 7 Maughan Crescent. She said that she had the following concerns:

- The lack of parking for all the residents living the proposed development: According to Ms. Rathgeber, parking is a genuine concern for the neighbours. She demonstrated through pictures that her driveway was often blocked with vehicles and that community members had gotten into fights over parking spots.
- She was also troubled by the impact of another half-finished townhouse complex on Vince Avenue where the developer had declared bankruptcy. As a result, the front kitchen window overlooked the complex and consequently the abandoned construction site for 4 years.. She feared that the deck and west facing windows will have a massive 2 storey building as a view, which meant her property would be “closed in” on both the east and west sides of our dwelling.

The next witness was Ms. Angela Williams who lives at 16 Maughan Crescent. She said that she was opposed to the new construction “on principle” for a variety of reasons beginning with the fact that she did not like the idea of new construction in a neighbourhood with “90 year old houses”. She disagreed with the idea of Maughan Crescent being “lumped” in the same category as Oliver Mews because Maughan had more in common with Hemlock than Oliver Mews. The overwhelming numbers of houses on these 3 streets are 2 storeys as opposed to the 3 storey building contemplated here. The added noise of construction would detract from her quality of life. She also wondered if the Appellant want to rent the place out to tenants. Mr. Platt responded to this by referencing the Site Plan to demonstrate that there was no kitchen in the basement. There was only one kitchen on one floor. He emphasized that the square footage of the basement, excluding the garage, was a mere 500 sq. ft.

He also stated that there was space for one other car on the driveway if one excluded the garage.

Ms. Diana Lone, resident at 14 Maughan Crescent spoke next. She said that she agreed with all the concerns brought up by Ms. Williams and then spoke about the frustration caused by the parking situation. She had to park as far as Dundas Street East. She opined that the residents of Oliver Mews contributed to the parking problem because they would gain a temporary parking permit and then continue to park wherever they found space in the area.

The next person to speak in opposition was Ms. Marlene Mesquitta who also lived at 38 Hemlock Avenue. She began by pointing out that the development on Vince Ave. had replaced a school that previously existed in the area. On Oliver Mews, according to Ms. Mesquitta, there were 6 houses with “significant” backyards which had been converted into the 18 houses that exist currently, creating a bad “precedent” of increasing density only to decrease the overall quality of life. Ms. Mesquitta viewed the basement as living

space and couldn't understand how this was not factored into the GFA calculations. She was really worried about the impact of the deck and how this would impact her privacy. She asked that the variances be refused or in the event they be approved, there be a hedge of trees and a privacy screen along the border 12 feet along the easterly boundary at the rear of the plot. It was also agreed that a line of hedges would be planted by the Appellant at their cost at the rear of the property, save and except for spots where trees already exist, to create another layer of privacy. Mr. Goldberg agreed to both suggestions. Ms. Mesquitta replied that she wanted the same condition imposed on the westerly side because the neighbours were new to the neighbourhood and were not experienced enough to know that they would lose their privacy. Mr. Platt stated that his client understood and was willing to comply with the suggestion to plant hedges on the east but didn't agree with the request for a similar arrangement on the west because of how the ground sloped from west to east. Mr. Platt consented to the planting of a row of cedar hedges at a minimum of 12 feet along the easterly boundary at the rear of the property save and except for locations where trees already may exist. Further, a privacy screen would be installed, as had been originally proposed. Ms. Mesquitta then concluded by stating that while privacy was an issue, the division of the property was a bigger issue.

Mr. Platt commenced his oral argument by stating that a number of neighbours had spoken on a variety of issues. However, since none of them had contradicted Mr. Goldberg, he asked that the latter's expert evidence be favoured as presented. Mr. Platt stressed that the proposed severance created two "as of right lots", a process, which according to him, "corrected a historical anomaly". He opined that the added density is consistent with the intensification contemplated by the by-laws and pointed out that the City Planning Department had no comments or objections. He then acknowledged all the comments and complaints about the parking situation and pointed out that there was no parking variance. There were 2 parking spaces provided for each of the 2 houses. The contemplated project, when completed, would certainly not worsen the existing parking situation. He therefore asked TLAB to grant the consent subject to the conditions requested by the City which according to him were, "fairly boiler plate".

Coming to the variances, Mr. Platt pointed out that the neighbourhood was evolving and that the new houses discussed earlier, while new, were nevertheless a part of the evolving neighbourhood. He claimed that the built form is already integrated and that what was contemplated here was less intense than what existed. The massing was consistent with the policies that spoke to intensification and the architectural vernacular in the community and reinforced what the community already had in place. He emphasized that the GFA and FSI seemed large because of a technicality. The proposed variances were minor, desirable and imperceptible from the street. In terms of mitigation, the Appellant had agreed to install a line of hedges as well as have the privacy screen. Mr. Platt then concluded by asking that the variances, be approved since they satisfied the 4 tests listed in Section 45(1) and were in the public interest..

Mr. Platt went on to state that he recognized the community was changing. Even before these changes, the 2 projects were part and parcel of the community. The intensification proposed here is modest compared to what had been approved in the 2 projects at Oliver Mews and Vince Ave. These projects are now part of the "architectural vernacular" of the community. There are no undue impacts from as-of-standard rights of



the by-law, the variances are imperceptible to the naked eye. The variances are individually and collectively minor.

Mr. Platt concluded by saying that his client was also consenting to the following conditions that had emerged as a result of the discussions:

- Planting a row of cedar hedges at his cost at a minimum of 12 feet along the easterly boundary at the rear of the property save and except for locations where trees may already exist
- A Privacy screen made of opaque material on the deck to mitigate overlook.

## **ANALYSIS, FINDINGS, REASONS**

The first matter to be ruled upon was the decision to agree to the substitution of the witness. Mr. Goldberg demonstrated that he had completed the requirement of due diligence before accepting the assignment from Ms. Robinson. The demonstration of such diligence, in conjunction with the impossibility of asserting prejudice in a proceeding with a single Party, resulted in my allowing the substitution.

The Participants in opposition to the proposal concentrated on the consequences of what would happen to their privacy if the proposal were approved as is. While they presented a cogent and compelling presentation about the loss of privacy and asked that the proposal be refused, they also stated that they were amenable to TLAB's approving the proposal if provisions were built in to protect their privacy. I accept their evidence with respect to the loss of privacy. However, I also note the Appellant's willingness to install an opaque privacy screen to address the situation as well as their agreeing to a hedge of cedars at least 12 feet in height along the property edge to the east. I conclude that these measures will adequately mitigate privacy concerns and the neighbours' concerns about privacy issues.

While I understand the neighbours' concerns about parking, the presence of approximately 2 new houses and 4 extra cars in the community will not worsen the undoubtedly vexatious and stressful parking situation for the residents. I also note that the neighbours' experiences and perceptions have been impacted negatively by the unfinished project on Vince Ave. as a result of the builder declaring bankruptcy. I sympathize with their situation but don't attach significant weight to these objections because it is based more on an exception rather than the norm.

On other issues, I accept the uncontroverted evidence of the Expert Witness, Mr. Goldberg and agree with his reasoning on both the consent to sever the property as well as the "minor" nature of the listed variances on both properties. His evidence was clear and lucid on what is arguably the most unusual feature of this proposal, namely the impact of the vestibule on GFA calculations and the classification of a house with living space on two floors as a house with three storeys. I agree with Mr. Goldberg's approach in demonstrating that a Plan of Subdivision was not necessary because the proposal complied with all conditions listed in Section 51(24) to sever the property. While Mr. Goldberg initially asserted that the development wouldn't cause any adverse

impacts, he was sensitive to the situation and made changes and accommodations to address the loss of privacy which dominated the neighbours' evidence. I regard the willingness of the Appellants, and the ensuing arrangements around addressing the concerns of neighbours to be an important factor in allowing the Appeal.

Lastly, I was impressed by the civility and respect with which the Appellants and Participants treated each other notwithstanding the contested nature of the proceeding and commend both the Party and Participants in the constructive discussion of their concerns and the identification of solutions.

## **DECISION AND ORDER**

- 1) The Appeal respecting 7 Maughan is allowed and the decision of the Committee of Adjustment dated July 12, 2017 is set aside.
- 2) The request consent to sever the properties as stated below is approved

### **Conveyed – Part 2, Draft R-Plan**

Address to be assigned

The lot frontage is 7.63 m and the lot area is 227.24 sq. m. A new storey detached dwelling with an integral garage will be constructed and requires variances to the zoning by-law as outlined in application A0437/17TEY.

### **Retained- Part 1, Draft R Plan**

Address to be assigned

The lot frontage is 7.63 m and the lot area is 231.37 sq. m. A new storey detached dwelling with an integral garage will be constructed and requires variances to the zoning by-law as outlined in application A0438/17TEY.

- 3) The Consent is subject to the following conditions listed below:

- A revised draft Reference Plan in metric units and integrated with the Ontario Co-ordinate System ( 3 degree MTM zone 10, NAD 83 CSRS) and show the coordinate values in the face of the plan at the main corners of the property, to the Executive Director, Engineering and Construction Services, for review and approval prior to being deposited in the Land Registry Office and
- An application to the Executive Director, Engineering and Construction Services for revised municipal numbering, the request for which must be submitted to [municipaladdress@toronto.ca](mailto:municipaladdress@toronto.ca)

- 4) The variances listed next are approved subject to the conditions listed in Paragraph (5) in this section

**Retained (Part 1, Draft R Plan)**

**City Wide By-Law 569-2013**

1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m.

In this case, the height of the front exterior main wall of the new dwelling will be 9.11 m.

2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.

In this case, the height of rear exterior main wall of the new dwelling will be 9.11 m.

3. Chapter 10.10.40.10.(6), By-law 569-2013

The maximum permitted height of the first floor of a dwelling above established grade is 1.2 m and a minimum of 10 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall.

In this case, the first floor of the new dwelling will be located 1.2 m above established grade and 2.5 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (138.82 m<sup>2</sup>).

The new three-storey detached dwelling will have a floor space index equal to 0.84 times the area of the lot (195.22 m<sup>2</sup>).

**Former City of Toronto By-Law 438-86**

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

The maximum permitted gross floor area is 0.6 times the area of the lot (138.82 m<sup>2</sup>).

The new dwelling will have a residential gross floor area equal to 0.84 times the area of the lot (195.22 m<sup>2</sup>).

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

The minimum required side lot line setback from the side wall of an adjacent building that contains openings is 1.2 m. The new dwelling will be located 1.07 m from the side wall of the adjacent building to the west (9 Maughan Crescent).

7. Section 6(3) Part II 8 D (I), By-law 438-86

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade. The rear deck will have a height of 2.4 m above grade.

**Conveyed (Part 2, Draft R Plan)**

**City Wide By-Law 569-2013**

1. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013

The maximum permitted height of all front exterior main walls is 7.5 m.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 17 209085 S53 32 and related**

In this case, the height of the front exterior main wall of the new dwelling will be 9.11 m.

2. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013

The maximum permitted height of all rear exterior main walls is 7.5 m.

In this case, the height of rear exterior main wall of the new dwelling will be 9.11 m.

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The maximum permitted height of the first floor of a dwelling above established grade is 1.2 m and a minimum of 10 m<sup>2</sup> of the first floor must be within 4.0 m of the front main wall. In this case, the first floor of the new dwelling will be located 1.2 m above established grade and 2.5 m<sup>2</sup> of the first floor will be within 4.0 m of the front main wall.

4. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (136.34 m<sup>2</sup>).

The new three-storey detached dwelling will have a floor space index equal to 0.86 times the area of the lot (195.22 m<sup>2</sup>).

**Former City of Toronto By-Law 438-86**

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

The maximum permitted gross floor area is 0.6 times the area of the lot (136.34 m<sup>2</sup>). The new dwelling will have a residential gross floor area equal to 0.86 times the area of the lot (195.22 m<sup>2</sup>).

6. Section 6(3) Part II 2 (II), By-law 438-86

The minimum required front yard setback of a building on an inside lot is 3.0 m.

The new dwelling will be located 2.79 m from the front lot line, measured to the front projection.

7. Section 6(3) Part II 8 D (I), By-law 438-86

The maximum permitted height of an uncovered platform which projects into the required setbacks is 1.2 m above grade. The rear deck will have a height of 2.4 m above grade

(5) The additional conditions of Approval for the Consent to Sever and the Variances are as follows:

- The dwellings need to be constructed in substantial compliance with the Plans and Elevations date stamped 31 March 2017, a copy of which is attached to this decision as an Attachment.
- A row of cedar hedges plantings at a minimum of 12 feet are to be planted at the Appellant's cost along the easterly boundary at the rear of the property save and except for locations where trees may already exist.
- A privacy screen made of opaque material will be installed on each rear platform in each house to mitigate overlook.

X

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

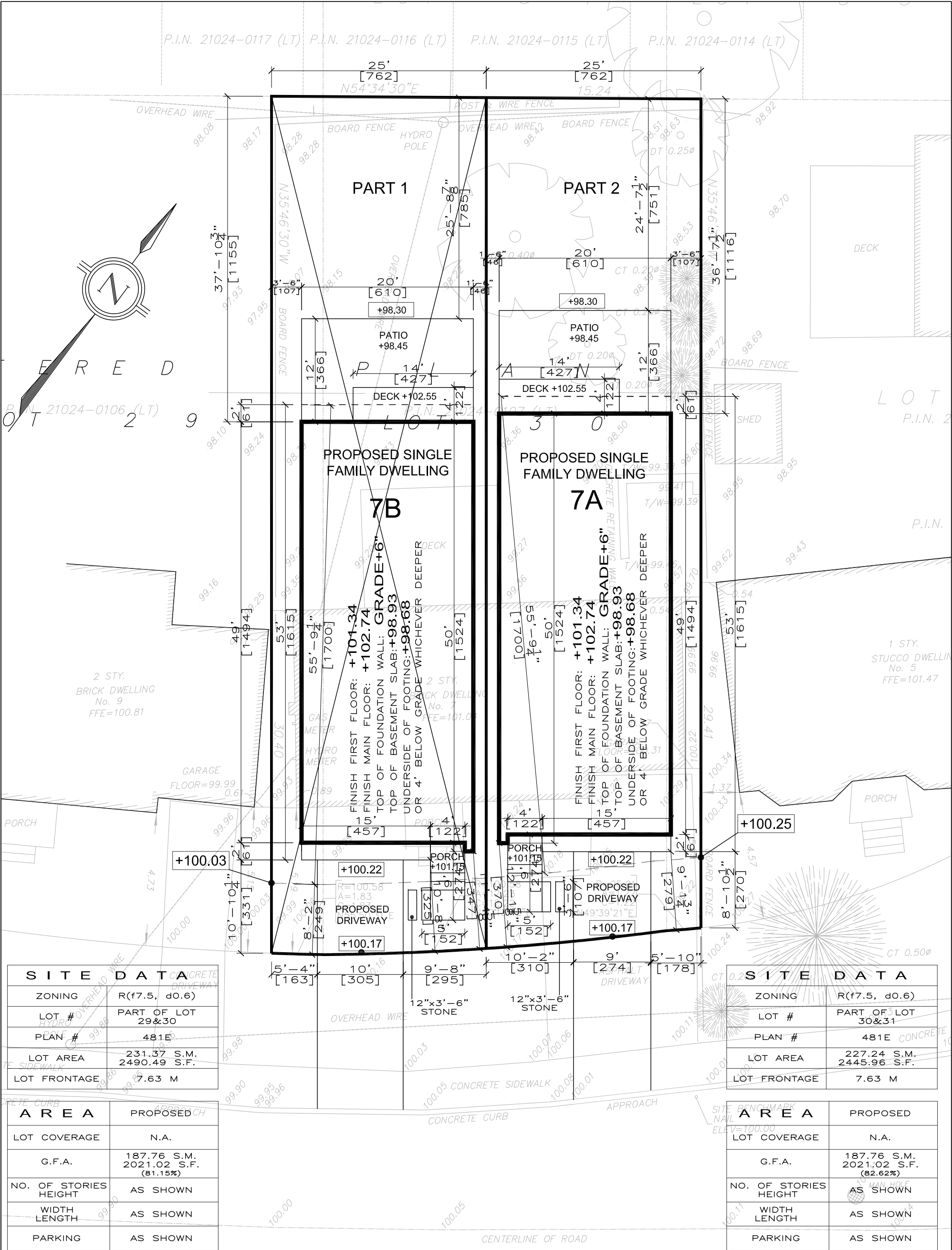
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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body









SITE DATA	
ZONING	R(f7.5, d0.6)
LOT #	PART OF LOT 29&30
PLAN #	481E
LOT AREA	231.37 S.M. 2490.49 S.F.
LOT FRONTAGE	7.63 M

AREA	PROPOSED
LOT COVERAGE	N.A.
G.F.A.	187.76 S.M. 2021.02 S.F. (81.15%)
NO. OF STORIES HEIGHT	AS SHOWN
WIDTH LENGTH	AS SHOWN
PARKING	AS SHOWN

SITE DATA	
ZONING	R(f7.5, d0.6)
LOT #	PART OF LOT 30&31
PLAN #	481E
LOT AREA	227.24 S.M. 2445.96 S.F.
LOT FRONTAGE	7.63 M

AREA	PROPOSED
LOT COVERAGE	N.A.
G.F.A.	187.76 S.M. 2021.02 S.F. (82.62%)
NO. OF STORIES HEIGHT	AS SHOWN
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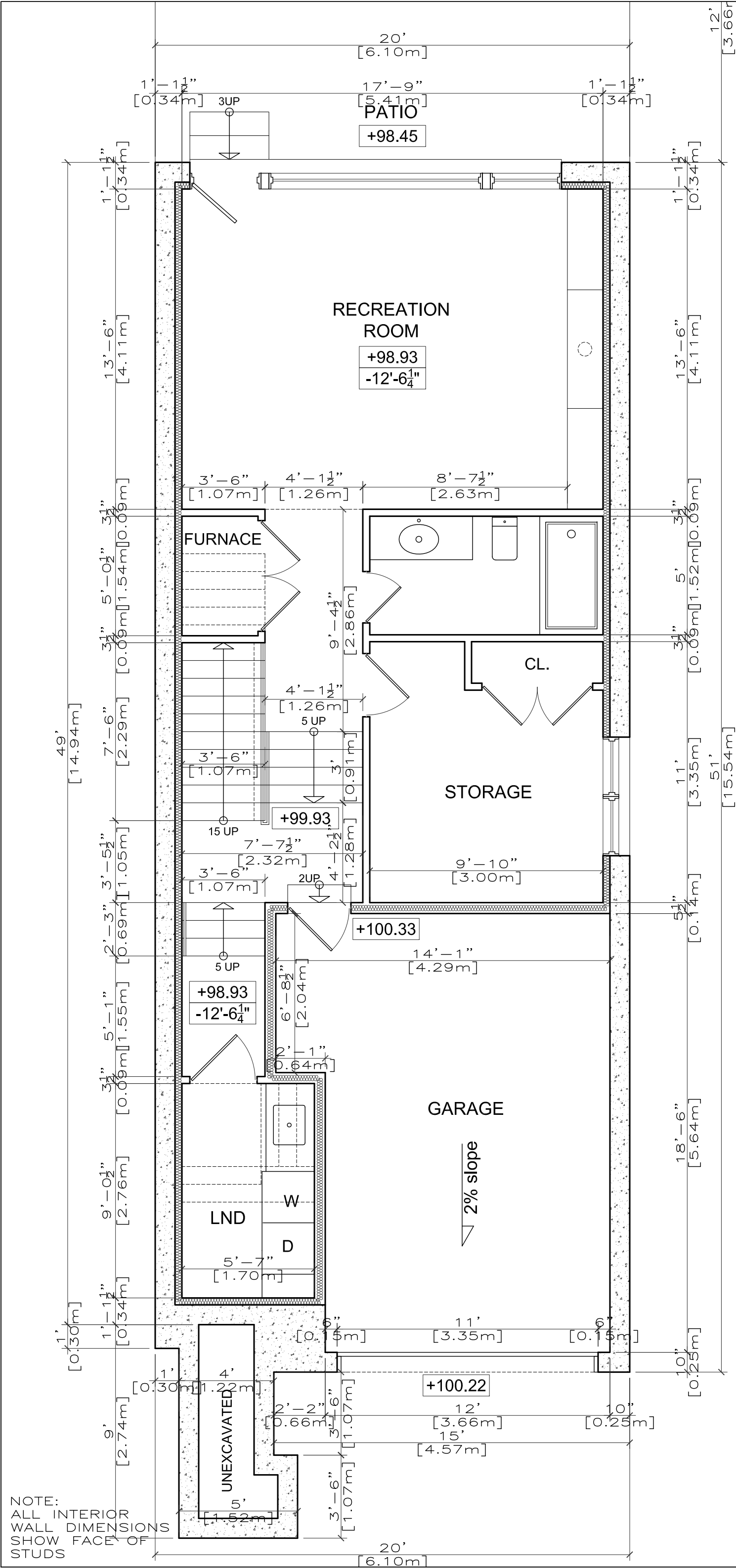
MAUGHAN

CRESCENT

FRONT YARD AREA= 281.84 S.F.  
DRIVEWAY AREA= 105.64 S.F.  
HARD LANDSCAPING AREA= 43 S.F.  
SOFT LANDSCAPING AREA= 133.2 S.F. (%75.60)  
LANDSCAPE OPEN SPACE= 176.2 S.F. (%62.52)

( BY REGISTERED PLAN 481, FRONT YARD AREA= 265.10 S.F.  
DRIVEWAY AREA= 89.10 S.F.  
HARD LANDSCAPING AREA= 43 S.F.  
SOFT LANDSCAPING AREA= 133 S.F. (%75.57)  
LANDSCAPE OPEN SPACE= 176 S.F. (%66.39)

designed by:  <b>ALI SHAKERI</b>  T.416 8166651 F.416 2508900  <b>ARCICA INC.</b> 326 SHEPPARD AVENUE EAST, M2N 3B4 TORONTO, ONTARIO, CANADA,	project: <b>7A MAUGHAN CRESCENT</b>	revisions: JAN 30, 2017 - ISSUED FOR COA MAR 02, 2017 -RE ISSUED FOR COA  THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER <b>Ali Shakeri</b> BCIN#24574 F&A Associates Ltd. BCIN#30998	1. ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE. 2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION. 3. DO NOT SCALE DRAWINGS. 4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK. 5. USE ONLY LATEST REVISED DRAWINGS OF THOSE THAT ARE MARKED "ISSUED FOR CONSTRUCTION". 6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION
	drawing: <b>SITE PLAN</b>		
	scale: <b>3/32"=1'</b>	page: <b>A1</b>	



NOTE:  
ALL INTERIOR  
WALL DIMENSIONS  
SHOW FACE OF  
STUDS

ARCICA INC.  
326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA,  
  
ALI SHAKERI  
T.416 8166651 F.416 2508900

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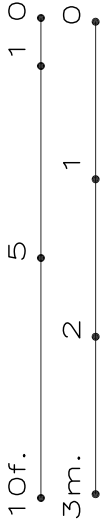
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7A MAUGHAN CRESCENT

BASEMENT FLOOR PLAN

1/4"=1'

A2

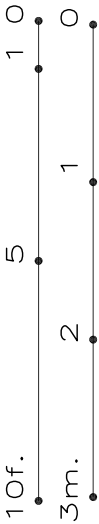
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Ali Shakeri F&A Associates Ltd.  
BCIN-24574 BCIN-30998

Ali Shakeri



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7A MAUGHAN CRESCENT

FIRST FLOOR PLAN

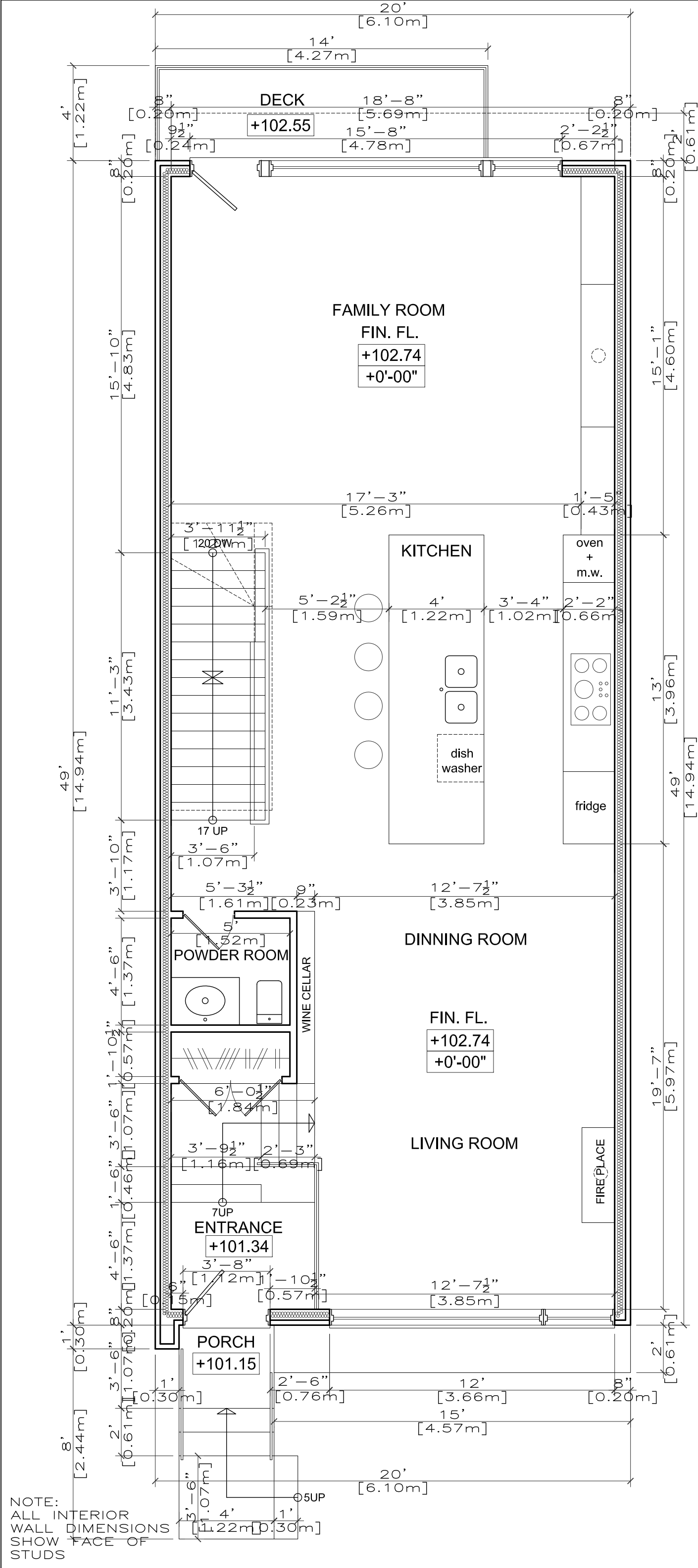
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A3

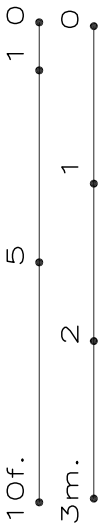
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SECOND FLOOR PLAN

1/4"=1'

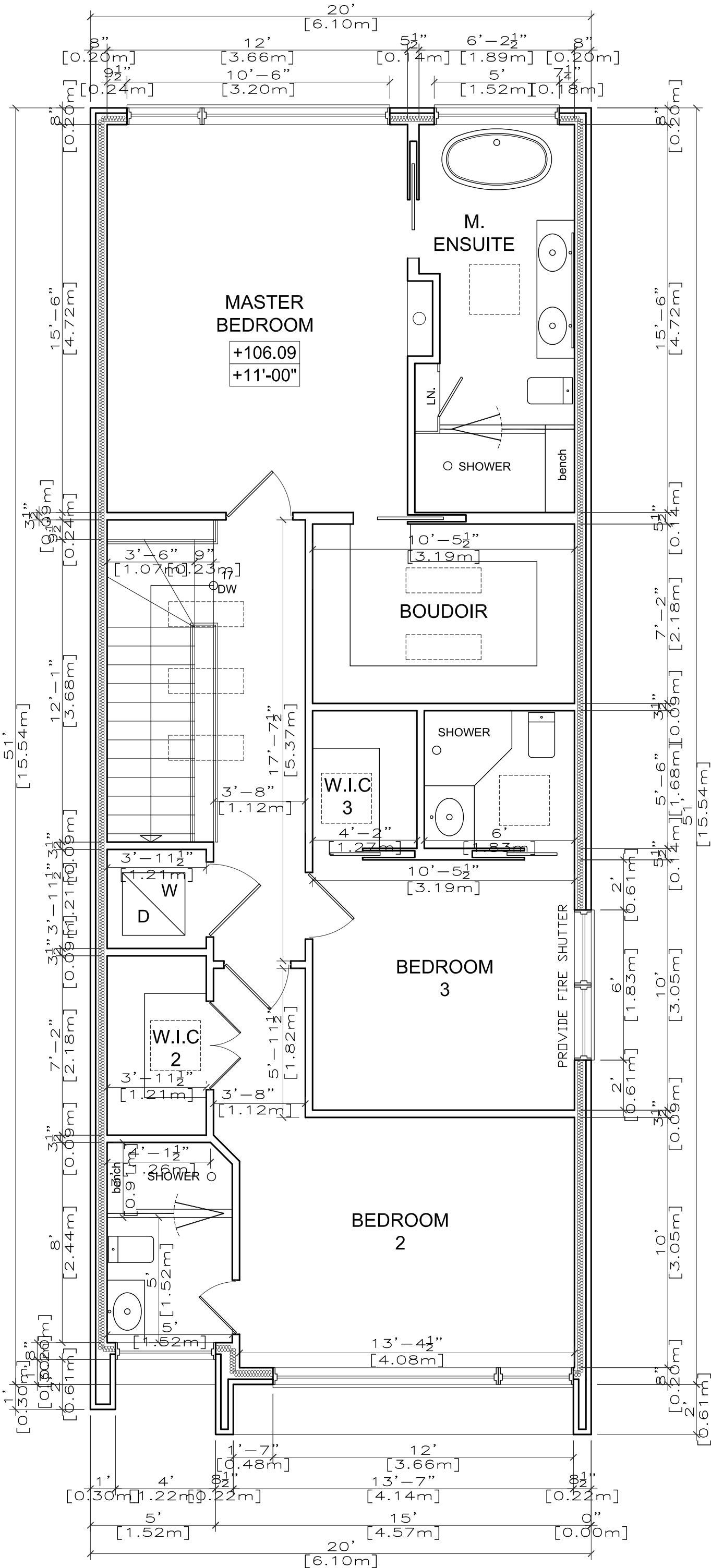
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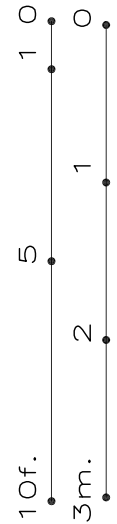
NOTE:  
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326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA,

T.416 8166651	F.416 2508900
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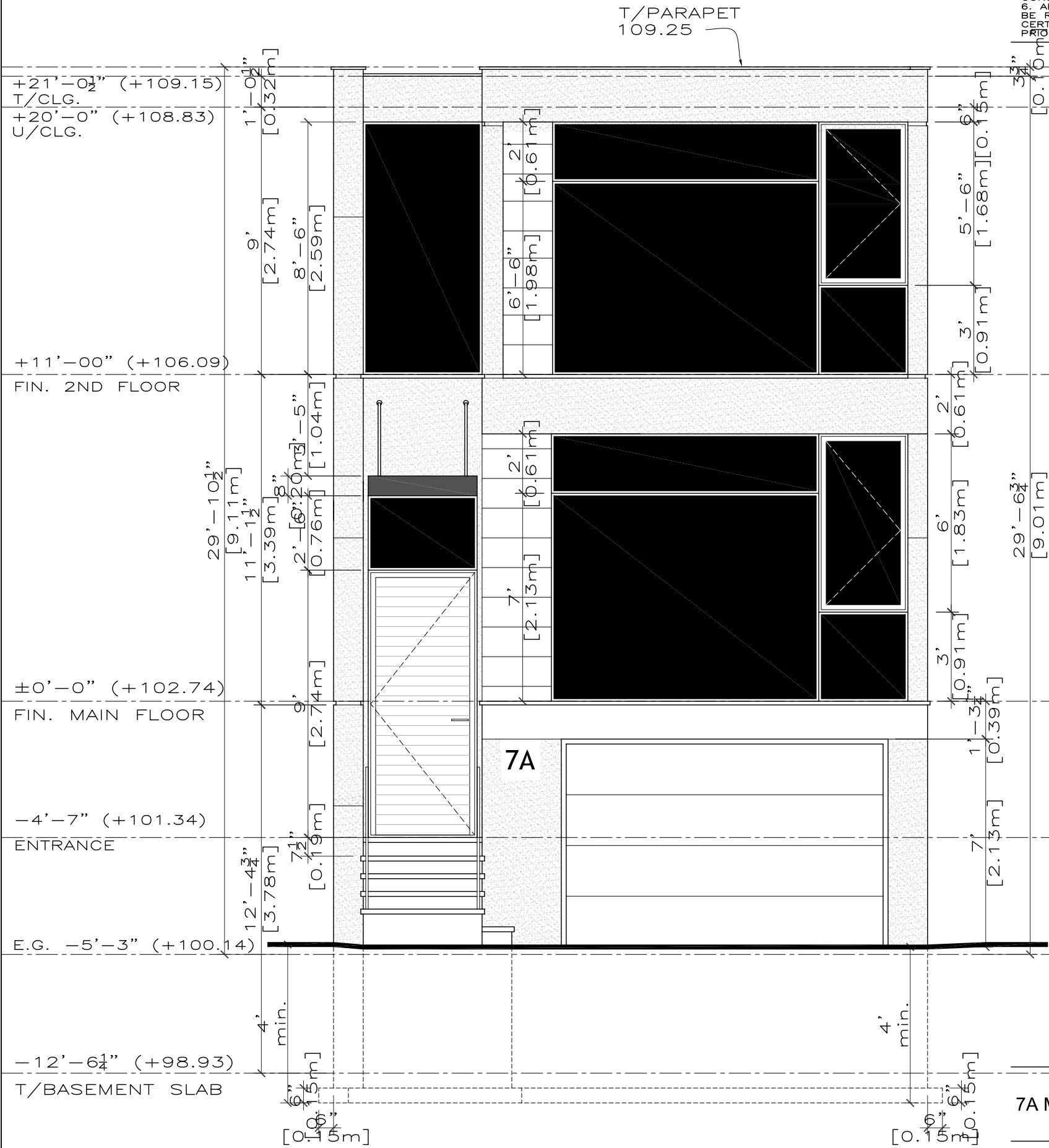
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At. shd

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# FRONT ELEVATION

SOUTH

7A MAUGHAN CRESCENT

FRONT ELEVATION

1/4"=1'

A6

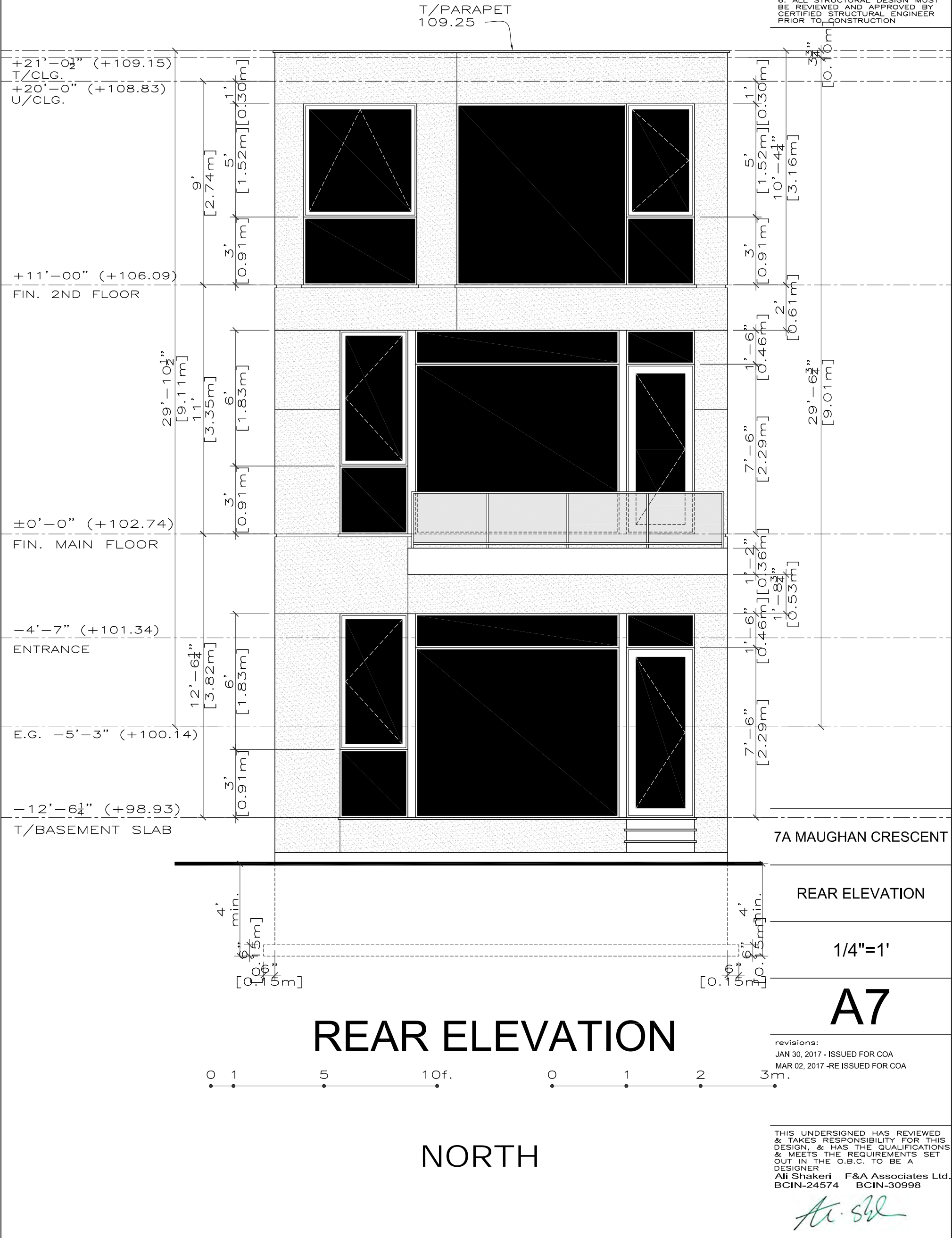
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T/CLG.  
+21'-10 1/2" (+109.15)

C/CLG.  
+20'-10 0" (+108.83)

+11'-00" (+106.09)

FIN. 2ND FLOOR

±0'-0" (+102.74)

FIN. MAIN FLOOR

7 1/2"  
[0.19m]

1 1/2"  
[0.38m]

-4'-7" (+101.34)

ENTRANCE

E.G. -5'-3" (+100.14)

-12'-6 1/4" (+98.93)

T/BASEMENT SLAB

T/PARAPET  
109.25

SIDE ELEVATION (WEST)

0 1 5 10 f. 0 1 2 3 m.

7A MAUGHAN CRESCENT

SIDE ELEVATION

3/16"=1'

A8

revisions:

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*Ali Shakeri*



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±0'-0" (+102.74)  
FIN. MAIN FLOOR

-4'-7" (+101.34)  
ENTRANCE

E.G. -5'-3" (+100.14)

-12'-6 1/4" (+98.93)  
T/BASEMENT SLAB

T/PARAPET  
109.25

PROVIDE FIRE SHUTTER

0 1 5 10f.

0 1 2 3m.

SIDE ELEVATION (EAST)

7A MAUGHAN CRESCENT

SIDE ELEVATION

3/16"=1'

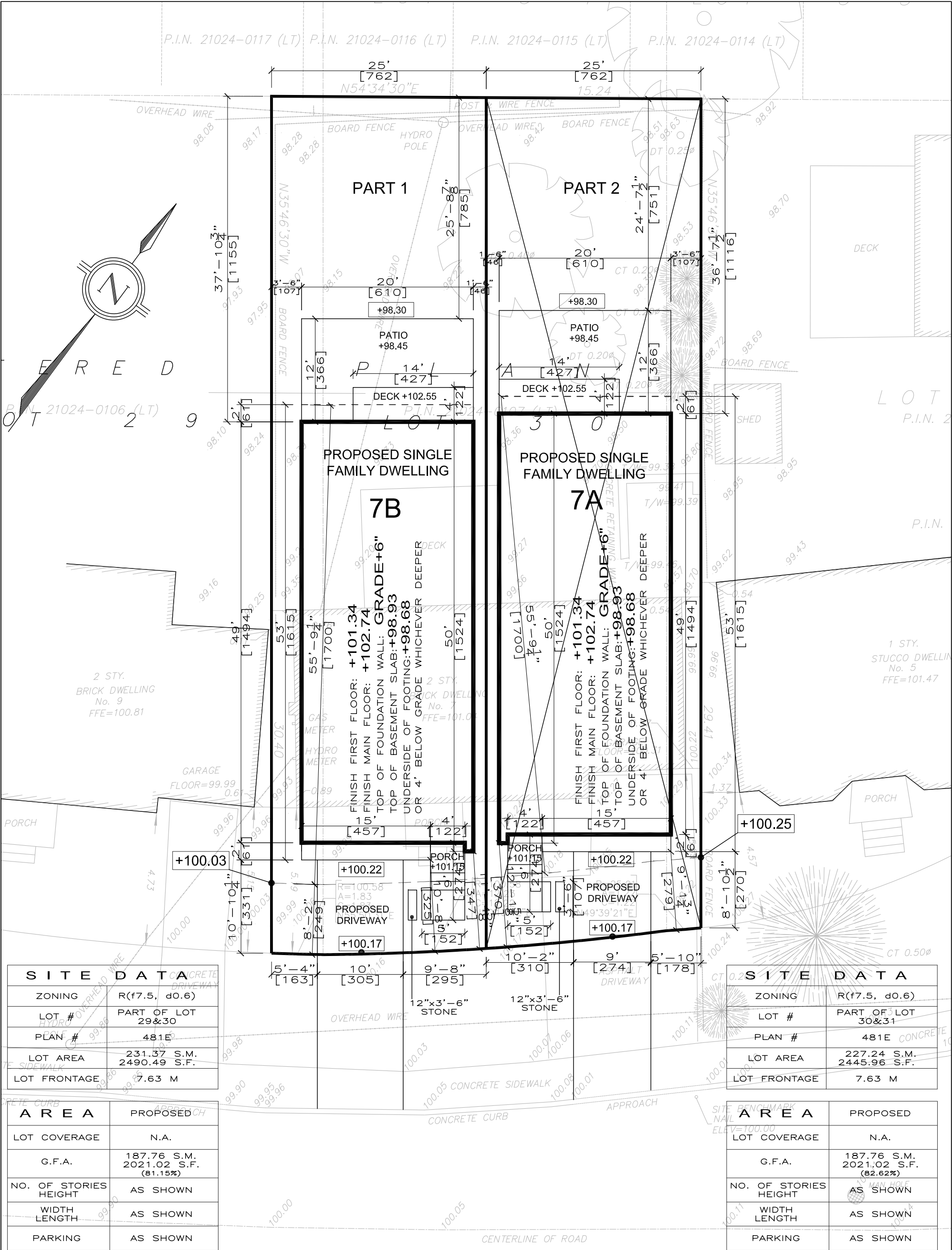
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Ali Shakeri





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MAUGHAN

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DRIVEWAY AREA= 105.64 S.F.  
HARD LANDSCAPING AREA= 43 S.F.  
SOFT LANDSCAPING AREA= 133.2 S.F. (%75.60)  
LANDSCAPE OPEN SPACE= 176.2 S.F. (%62.52)

( BY REGISTERED PLAN 481, FRONT YARD AREA= 265.10 S.F.  
DRIVEWAY AREA= 89.10 S.F.  
HARD LANDSCAPING AREA= 43 S.F.  
SOFT LANDSCAPING AREA= 133 S.F. (%75.57)  
LANDSCAPE OPEN SPACE= 176 S.F. (%66.39)

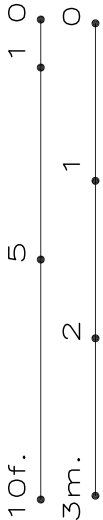
designed by:  <b>ALI SHAKERI</b>  T.416 8166651 F.416 2508900  <b>ARCICA INC.</b> 326 SHEPPARD AVENUE EAST, M2N 3B4 TORONTO, ONTARIO, CANADA,	project: <b>7B MAUGHAN CRESCENT</b>	revisions: JAN 30, 2017 - ISSUED FOR COA MAR 02, 2017 -RE ISSUED FOR COA	1. ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE. 2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION. 3. DO NOT SCALE DRAWINGS. 4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK. 5. USE ONLY LATEST REVISED DRAWINGS OF THOSE THAT ARE MARKED "ISSUED FOR CONSTRUCTION". 6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION
	drawing: <b>SITE PLAN</b>		
	scale: <b>3/32"=1'</b>	page: <b>A1</b>	



326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA,

T.416 8166651      F.416 2508900

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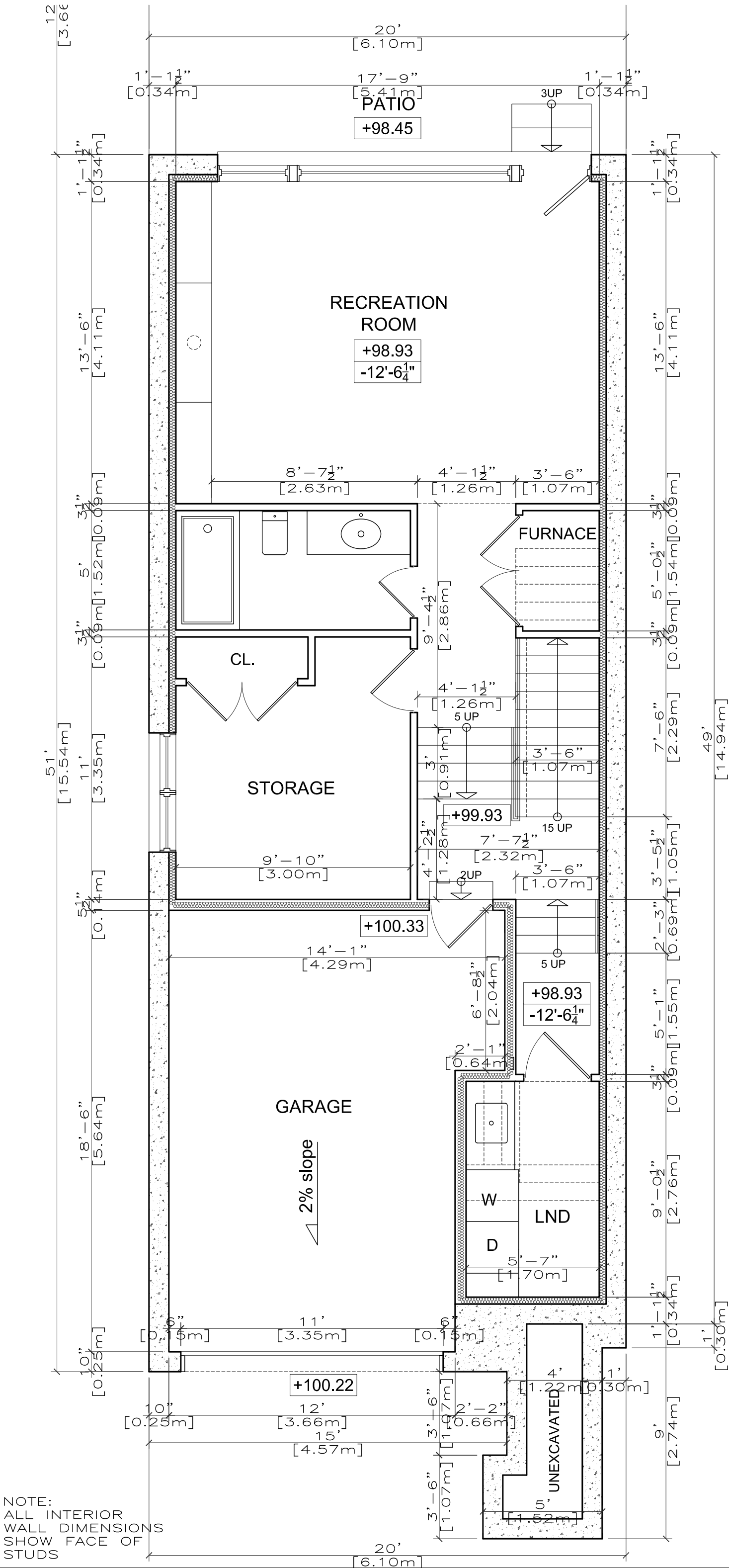
## BASEMENT FLOOR PLAN

# A2

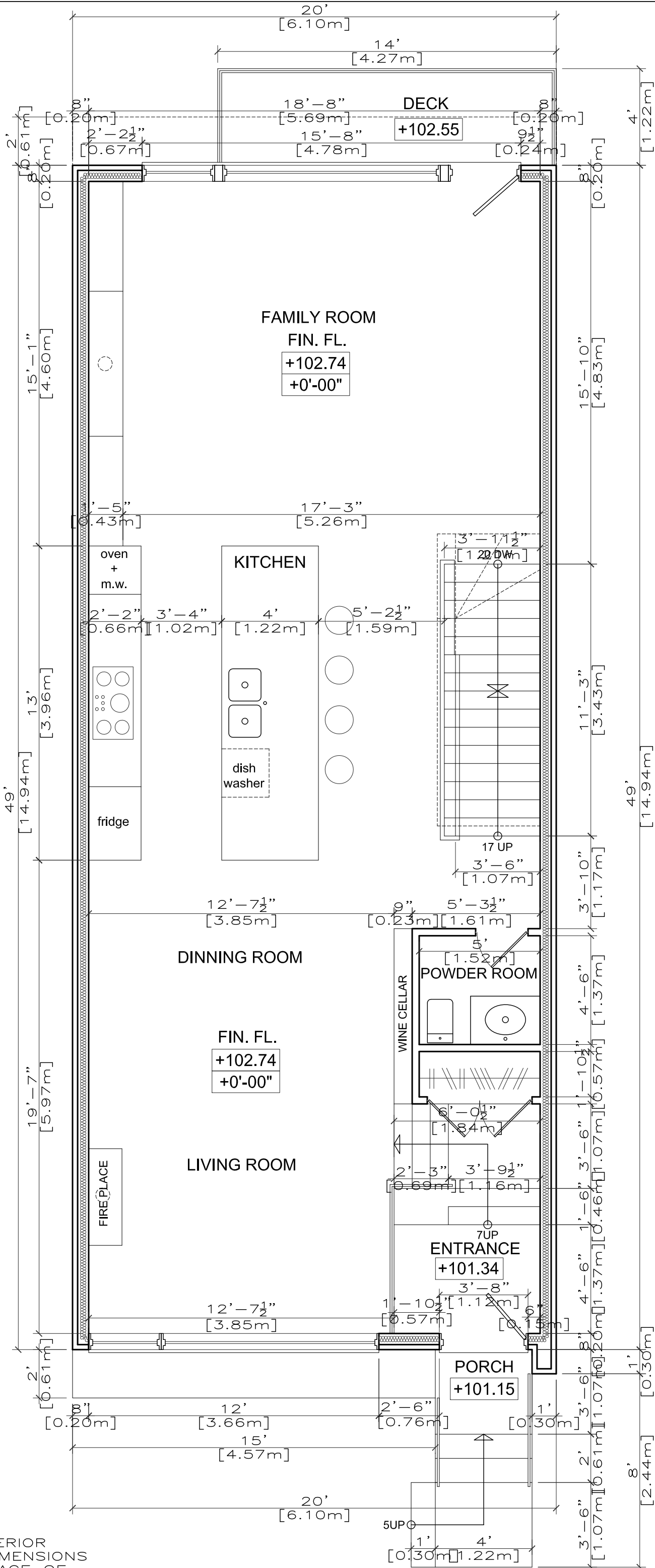
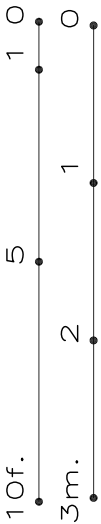
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& TAKES RESPONSIBILITY FOR THIS  
DESIGN, & HAS THE QUALIFICATIONS  
& MEETS THE REQUIREMENTS SET  
OUT IN THE O.B.C. TO BE A  
DESIGNER  
Ali Shakeri F&A Associates Ltd.  
BCIN-24574 BCIN-30998

At. sh



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NOTE:  
ALL INTERIOR  
WALL DIMENSIONS  
SHOW FACE OF  
STUDS

7B MAUGHAN CRESCENT

FIRST FLOOR PLAN

1/4"=1'

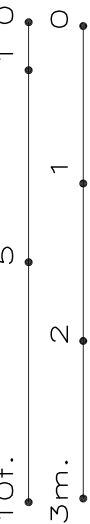
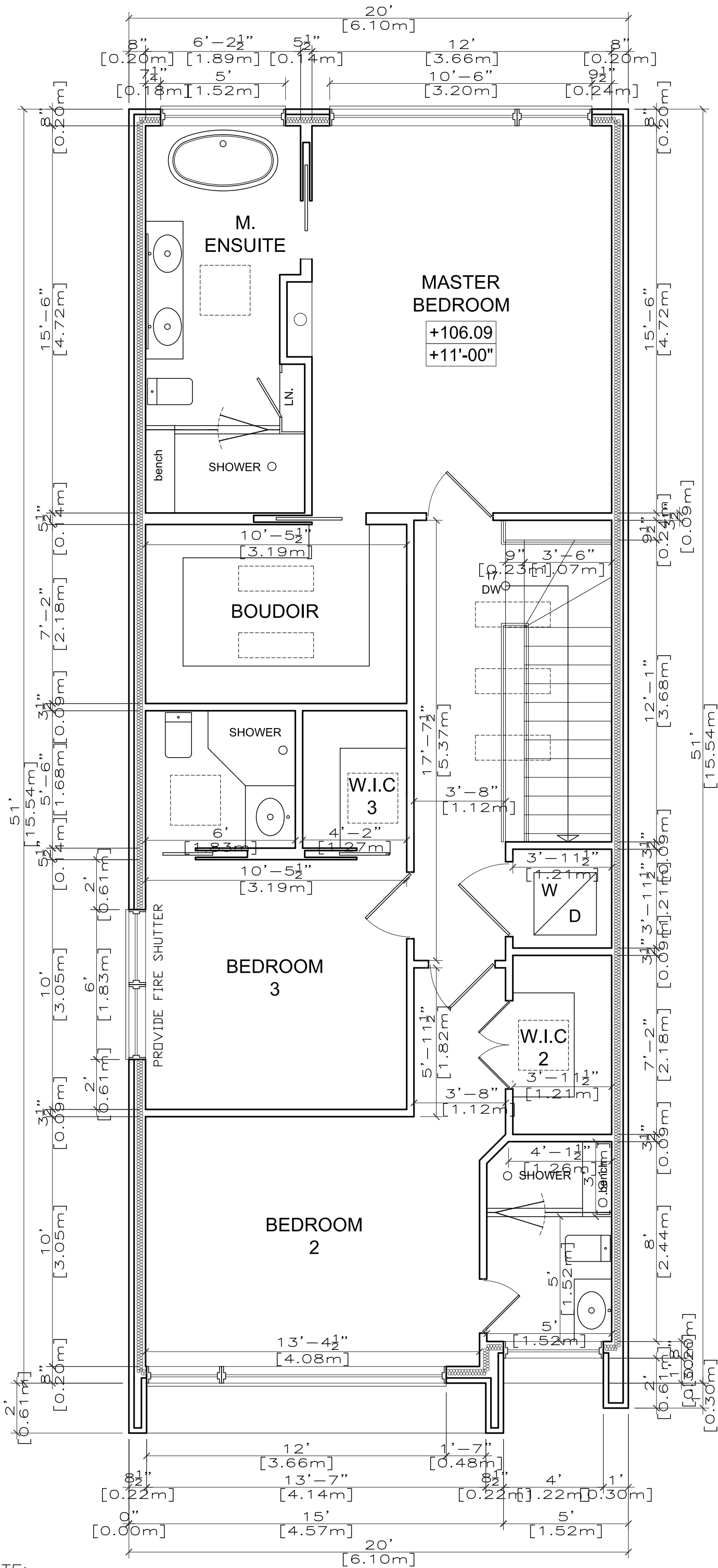
A3

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*Ali Shakeri*

NOTE:  
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WALL DIMENSIONS  
SHOW FACE OF  
STUDS



**ARCICA INC.**  
326 SHEPPARD AVENUE EAST,  
M2N 3B4  
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**ALI SHAKERI**  
T.416 8166651 F.416 2508900

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7B MAUGHAN CRESCENT

SECOND FLOOR PLAN

1/4"=1'

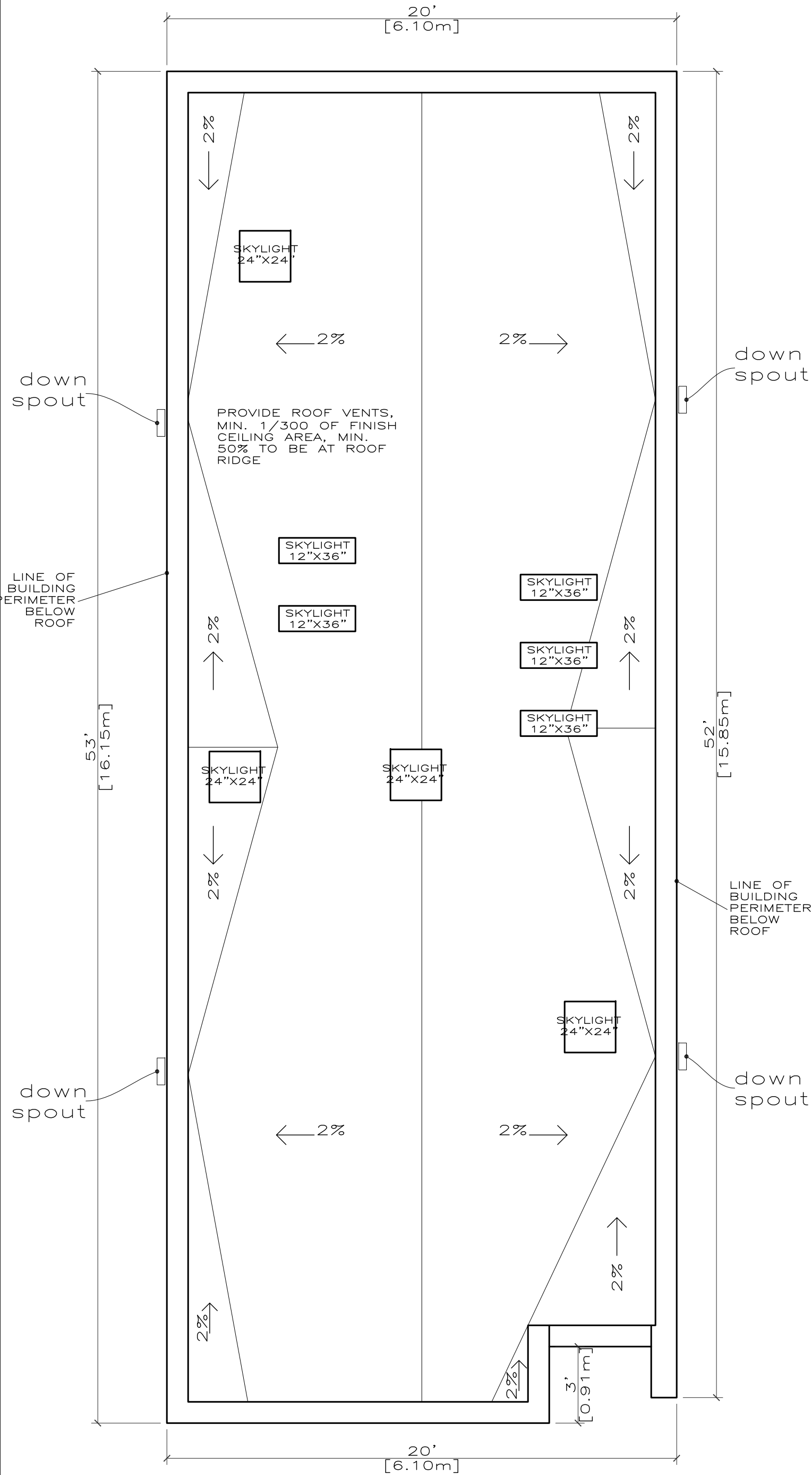
**A4**

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NOTE:  
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WALL DIMENSIONS  
SHOW FACE OF  
STUDS

7B MAUGHAN CRESCENT

ROOF PLAN

1/4"=1'

A5

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Ali Shakeri

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M2N 3B4  
TORONTO, ONTARIO, CANADA,

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$$1/4" = 1'$$

# A6

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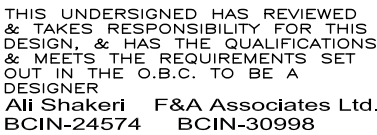
At. shl



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At. sh



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0 1 5 10f. 0 1 2 3m.

SIDE ELEVATION (EAST)

+21'-0 1/2" (+109.15)  
T/CLG. 2  
+20'-1-0" (+108.83)  
C/CLG.

+11'-00" (+106.09)  
FIN. 2ND FLOOR

±0'-0" (+102.74)  
FIN. MAIN FLOOR

-4'-7" (+101.34)  
ENTRANCE

E.G. -5'-3" (+100.14)

-12'-6 1/4" (+98.93)  
T/BASEMENT SLAB

29'-10 1/2" [9.11m]  
29'-6 3/4" [9.01m]

3 3/8" [0.10m]

11'-6" [3.51m]  
8" [0.20m]  
2' [0.61m]  
1'-10 1/4" [0.57m]

4' min.

7/10

2' max.  
[0.20m]

[0.20m]

7/10

4' min.

2' max.

[0.20m]

7/10

4' min.

2' max.

[0.15m]

6' 4" min.

1'-6 1/2" [0.47m]

10'-8 3/4" [3.27m]

1'-2" [0.36m]

[0.19m]

10'-4 1/2" [3.16m]

2' [0.61m]

9' [2.74m]

12'-6 1/4" [3.82m]

11' [3.35m]

9' [2.74m]

T/PARAPET  
109.25

7B MAUGHAN CRESCENT

SIDE ELEVATION

3/16"=1'

A8

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T/CLG.  
+20'-0" (+108.83)  
U/CLG.

+11'-00" (+106.09)  
FIN. 2ND FLOOR

±0'-0" (+102.74)  
FIN. MAIN FLOOR

-4'-7" (+101.34)  
ENTRANCE

E.G. -5'-3" (+100.14)

-12'-6 1/4" (+98.93)  
T/BASEMENT SLAB

T/PARAPET  
109.25

PROVIDE FIRE SHUTTER

SIDE ELEVATION (WEST)

7B MAUGHAN CRESCENT

SIDE ELEVATION

3/16"=1'

A9

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