

DECISION AND ORDER

Decision Issue Date Wednesday, April 18, 2018

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SVETLANA KLIGMAN

Applicant: GLENN RUBINOFF

Property Address/Description: 401 BALLIOL ST

Committee of Adjustment Case File Number: 17 195687 STE 22 MV (A0752/17TEY)

TLAB Case File Number: **17 260915 S45 22 TLAB**

Hearing date: Thursday, March 29, 2018

DECISION DELIVERED BY Ian James LORD

INTRODUCTION

This is an appeal from a decision of the Toronto and East York District Panel of the Committee of Adjustment ('COA') of the City of Toronto ('City') refusing variances that would permit the construction of a new, two storey detached dwelling with an integral garage, rear basement walkout and a rear stair and platform structure, at 401 Balliol Street (the 'subject property').

The subject property is on the south side of an east/west local street running between Bayview Avenue in the east and extending west of Mount Pleasant Road in the west. It is improved by a deteriorated (leaning) one and one-half storey frame dwelling, likely constructed in the early part of the 20th century.

The application to the COA consisted of eight variances sought from By-law 569-2013 (the 'new Zoning By-law') and six variances sought from By-law 438-36 (the 'existing By-law') of the former City.

Following the refusal of the COA, the requested variances were re-addressed, as described below.

I advised the parties and participants that I had visited the site, walked adjacent streets and generally reviewed the material on file but that the evidence would be what was heard and referenced subject to the rules of evidence.

BACKGROUND

This matter had the normal complexities of application appeal and opposition, but with two additional variables.

First, in response to comments by the City Planning Staff before the COA and arising from recommendations of the planner retained thereafter on the appeal to the Toronto Local Appeal Body (the 'TLAB'), revisions were made to the above noted application variances, reducing their absolute number.

Second, after the COA decision, the City enacted two by-laws (By-law's 1425 - 2017 and 1426-2017) germane to and called the 'Davisville Village Zoning Amendments', covering an area within which the subject property lies. While not in place at the time of the application or COA decision, both these by-laws contain regulations (e.g., no garage on a wall facing the front lot line; and limiting deck platforms to 4 square meters in area, respectively) that the new house proposal on appeal offends.

The Davisville Village Zoning Amendments, being amendments to the Zoning By-laws, were said to be in full force and effect without appeals. They remove the as-of-right permission for integral garages and have the effect of limiting, severely, the size of elevated rear decks and rear building wall extensions, under some circumstances.

I was asked to provide relief to permit both the revisions to the variances and to consider two entirely new variances to accommodate the Davisville Village Zoning Amendments. These latter two variances were never previously applied for and were not before the COA. I reserved to hear evidence and argument on both aspects.

The relief requested in respect of the Davisville Village Zoning Amendments is set out below.

The relief requested in respect of all matters was presented in a marked up and a consolidated form by the Applicant into one list, including the Applicant's recommended conditions. The 'cleaned-up' list was filed as Exhibit 5 and is included and forms **Attachment 1** hereto.

The Davisville Village Zoning Amendment variances, contained also in Attachment 1, above, as Variances 7 and 12, are framed in this language, about which more will be said:

"New variances added:

Section 900.2.10, Exception R930, as amended by By-law 1426-2017:

Despite regulation 10.10.80.40.(1), a vehicle entrance through the front main wall of a residential building, other than an ancillary building, is not permitted, and Despite regulation 10.5.40.50.(2), 10.5.40.60.(1)(C) and (D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 m above established grade, must comply with the following: (I) the maximum area of the platform is 4.0 square metres; (II) the minimum side yard setback of the platform is 1.8 m; and (III) may not encroach into the required rear yard setback.

A vehicle entrance through the front main wall of a residential building is proposed; and, the area of the proposed rear platform exceeds 4.0 sq/m.

By-law 1425-2017: No person shall, within either of the areas hereinafter firstly and secondly described, erect or use a building or structure on a lot, for the purpose of a detached house, semi-detached house, row house, rowplex, duplex, semi-detached duplex, semi-detached triplex, or triplex: (I) having an integral private garage if vehicle access to the garage is located in a wall of the building facing the front lot line; or (II) having a platform or terrace attached to the rear wall of a residential building with a height greater than 1.2 m above grade, unless: (A) the area of the platform or terrace does not exceed 4.0 square metres; and (B) the side yard setback of the platform or terrace is not less than 1.8 metres.

Vehicle access to the private garage is located in a wall of the building facing the front lot line; and, the area of the proposed rear platform exceeds 4.0 sq. m.

These amending By-laws themselves are found at pages 126 and 127 of Applicant's planner's compiled Witness Statement, Exhibit 1.

The City attended by counsel, Ms. Kasia Czajkowski, who conducted some cross examination but called no evidence. .

Adjacent neighbours continued their opposition to all of the variances.

A representative of the South Eglinton Residents Ratepayers Association ('SERRA') attended principally in respect of the matter of integral garages.

Submissions from counsel were deferred for two weeks and limited to five written pages. The Appellant, represented by Ms. Stewart and the City, represented by Ms. Czajkowski, filed timely written argument.

I am grateful to all present for agreeing to a shorter than anticipated sitting, although the hearing day ran from 9:00 am through to nearly 3:00 pm, without a lunch break.

MATTERS IN ISSUE

Attachment 1 sets out the revised and amended list of variances sought, and the Appellant's proposed conditions. Of these, those that received evidentiary attention in the context of the scale, physical character of the area and adverse impact were:

- a) The proposed integral garage;
- b) A reduced east side yard setback;
- c) Building length and the consequent inclusion of a landing and rear steps to a deck, raising issues of overlook and privacy;
- d) Building height; and
- e) Privacy.

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 Applicant/Appellant through Ms. Stewart called one witness, Mr. Michael Goldberg, whom I qualified without challenge as an expert in land use planning. Mr. Goldberg is a Registered Professional Planner and a senior practitioner who has been qualified many times before courts and tribunals in the Province to give expert opinion evidence on land use planning matters.

He was the only witness so qualified at this proceeding.

Mr. Goldberg's evidence was thorough, detailed, somewhat lengthy and repetitive, but germane, somewhat anecdotal and enlightening.

He identified the revisions to the variances sought following his advice and retainer in October, 2017; these revisions were a component of the Applicant's Disclosure and Notice including an explanatory memorandum dated March 7, 2018 and plans (Exhibit 3).

The Applicant's revised plans, site plan and elevations, were filed in Exhibit 3, pages 3-11 and are included as **Attachment 2** hereto.

The revisions to the application before the COA included:

- a) elimination of the variance for driveway width;
- b) removal of an 'architectural detail' contributing to but not eliminating main front wall and side wall height variances;
- c) elimination of the variance for building length.

There are no: gross floor area/floor space index; landscaped open space area; or rear, front or west side yard setback (built form) variances or relief sought.

He described the addition of the two new variances, excerpted above, arising from the Davisville Village Zoning Amendments and subsequently revealed in a more recent Zoning Examiners Notice. These requested variances, quoted above are, as stated, included in Attachment 1. He described these as arising in the interval following the appeal, and the December 8, 2017 enactment. They were not identified by City Staff or, of course, the original Plans Examiner. He suggested that the additions were 'Clergy like' in circumstance. He did not further elaborate.

The reference, as further raised in the Applicant's written argument submissions, alludes to the administrative law practice of entertaining but excluding as determinative, changes in policy that occur after the crystallization of a formal application for Planning Act approvals.

Mr. Goldberg defined a study area from which he drew an appreciation of the physical character of the area for primarily Official Plan policy application. He noted that the subject property and both adjacent neighbours were 'original vintage' early 1900's detached dwellings on 'extremely deep' lots, the subject property being 55.54 m (175') deep. In contrast to lots on the north side of Balliol, those on the south side do not have access by a laneway to the rear yard. Consequently, required vehicle parking on the south side of Balliol must be behind the main front wall, but no longer integral to the building under the Davisville Village Zoning Amendments.

He described the housing as being an 'eclectic mix' of unit types, property sizes, access points, driveway solutions, design and age of structure.

He performed an extensive review, included in his witness statement, of the study area. He demonstrated examples of: integral garages, some with reverse slopes (also prohibited but for a longer time); varied architectural roof treatments, with no clear typical cornice lines given differing building ages; tightly knit side yards predating zoning controls; and examples of COA and Ontario Municipal Board ('OMB') relief decisions well 'within the range' of the variances sought by the Application.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 260915 S45 22 TLAB

Photos of integral garages in the neighbourhood included proximate properties to the east and west of the subject property on Balliol at No.'s 369, 373, 375, 396 and 451.

There were no precedents involving relief for the two matters recently arising under the new and very recent Davisville Village Zoning Amendments.

He addressed each of the variances sought in terms of the above 'Jurisdiction' tests; I reference that evidence by variance request identified in Exhibit 5, Attachment 1 hereto, Variance 1 (V1) through Variance 12 (V12):

V1 and V5: vestibule and first floor. Mr. Goldberg referenced the recent decision of the OMB, Exhibit 4, to note that this standard in the new Zoning By-law has been sent back to the City to re-examine, and is not approved. He stated it is a standard designed to limit first floor height from grade to 1.2 m, an approach using the vestibule measure that has proved problematic throughout the City depending on grades and varying height limits, especially when applied to narrow lot frontages. V1 relates to internal space usage not visible from the public realm. V5 raises the issue of front steps and porches, both physical attributes of similar scale common in the immediate vicinity. The proposed entry is located 1.2 m above grade with internal steps accommodating the main first floor level. Taken together, these were described as technical variances and the description was not made an issue by others. He speculated that the City will drop the vestibule control reference.

V2 and 11: Building height. The planner described this variance, of .5 m, as for practical purposes not ascertainable, visible or undesirable. The proposal envisages a very low slung roof (12:2) rising from the street façade but not practically visible above the cornice, at 9.2 m, a line established at approximately the same level as the top of adjacent pitched roofs. He noted that housing on the north side of Balliol was established on a slightly higher grade and would have comparative or higher roof line appearances. He coined the phrase: "an imperceptible different height perception". He provided several example references of dwellings at grade, including 397, 555 and 579 Balliol, nearby, as having at grade garages or garage like designs, with two living levels above – and being modern designs similar in physical character to the proposal. Under the old Zoning By-law, the excess height contemplated is 0.41 m back to the mid-point of the roof. He noted that this was a lower bench mark reference than the new Zoning By-law. However, the design is, as above described, of minimal perception in excess of the 9.0 m standard set by the new Zoning By-law, in his view.

V3: Main front and rear wall height. Mr. Goldberg explained that he worked with the client to bring the original request of height to the eaves down from 9.1 m. The corrected proposal at the front is 8.5 m and 8.25 m at the rear. While the standard in the by-laws is 7 m, he explained that this is another matter in the new By-law, that is a low measurement, for which approval was declined and sent back to the City for further review and revision. In the circumstance of Variances 2 and 3, he was of the firm opinion the physical character of the area and buildings in close proximity supported these variances. The perceived height would be 9.0 m, emphasized by the cornice line.

V4: Side exterior wall height. The proposal involves a common main exterior wall height around the building varying between 8.5 m and 8.25 m as above described. This presents a common roof treatment and consistency in design and built form.

V6 and 8: East side lot line. The planner described the relatively narrow 9 m (30 feet) lot as not conducive to a full driveway width and maintaining a proportional floorplate within the residence. From the earliest design, an integral garage was contemplated which did not require vehicular access to the rear yard. The variance request, to 0.76 m (2.5 feet) reduced from the standard of 0.9 m (2.95 feet), which he said was frequently experienced in the neighbourhood, including the subject property. He felt the difference (5.4 inches) would not be noticeable but could materially impact internal living space throughout the dwelling unit. Both east and west side yard setbacks would remain adequate to access the rear yard at grade, in his opinion.

V7 and 12: Integral garage and rear yard deck projection. Mr. Goldberg paid particular attention to these variances, ultimately concluding they were 'technical'. The integral garage proposal was a permitted use during the application process and into the appeal, as above described. No reverse slope driveway is proposed. The proposal has not changed although the dwelling itself has experienced some minor revisions as a result of the variances no longer pursued. He gave the opinion that the new regulation prohibiting vehicle entrances on main front walls was meant not as an outright prohibition, but as a check valve or 'trigger' for a public process review on suitability - dependent on site characteristics and the physical character of the area, including the presence or not of integral garages and alternative access opportunities. In this circumstance, he supplied recent examples on the south side of Balliol of housing constructed with integral garages, above listed. He saw no precedent in recognizing the application as being appropriate and consistent with area character.

The deck issue, he explained, arises as well with the Davisville Village Zoning Amendments including the landing and stairs measurements as built form restrictions. He noted that a rear yard deck is a permitted feature; the deck proposed complies in all respects with applicable zoning as it is close to grade (.99 m). The issue, he explained, is accessing the rear yard deck from the elevated first floor – an elevation change requiring in the order of 18 risers, with the sloping grade south. These risers, if taken straight down from the main floor would require no variance. However, for safety of access and aesthetics, he supported a series of two landings and reversing stairs tighter to the main rear wall building face. These 'landings', taken together, exceeded by a small measure the 4 square meters allowed in the new and amending regulation. It was the planner's opinion that the small turning footprint of the landings were insufficient to accommodate more than a Bar B Q, and would not cause concern for overlook or privacy considerations from occasional transit use – beyond that to be expected with narrow lot properties in the inner city. He felt the 'deck' solution, of bringing the actual gathering area compliant and nearer to grade, with relief only for the access stairs and landing, met the spirit and intent of the new by-law provisions and mitigated impact.

V9: Setbacks for excess building length. Mr. Goldberg also characterized this variance under the old Zoning By-law as 'technical'. It arises not from an increased building length, but rather from the rear wall stairs accessing the deck near grade as above described. He suggested that these stairs and the deck, as re-configured for

aesthetics, nearer compliance, view mitigation and safety reasons, has no effect on massing and is not part of the house. As privacy is enhanced by the lower deck and existing fencing, he felt all four applicable tests were met.

V10: Architectural wrap around. A modest extension beyond the side wall is the result of an architectural design feature that is unobtrusive. It is proposed to be recognized and constitutes no interference with passage in the side yard. He opined that as no concern was expressed with this attribute, and that it met applicable tests including desirability, without adverse impact.

Mr. Goldberg provided a concise summary planning opinion. He said that provincial policy was met by the proposed small residential infill replacement proposed; that it was a matter of local planning policy concern that was met and fell within that context. In Official Plan terms, he was of the opinion:

- a). of a stable but not static neighbourhood (section 2.3);
- b). where some enhanced development is contemplated based on 'shape and feel' (section 2.3.1);
- c). with a detached unit type, modest scale at 253 sq. m of space (2700 sq. ft.) and built form, there would be a 'fit' with the physical neighbourhood character (section 3.1.2.1);
- d). whose façade was different, modern but sensitive and not required to be a replica of sameness, but reflected a change that is not unusual in the study area and met all of the applicable character assessment criteria (section 4.1.5).
- e). in which the numeric standards of the by-law, as varied, fell within the range that is 'tolerable' from a planning perspective.

He felt the Official Plan and zoning by-laws were met by the standards requested to be varied without unacceptable impact or nuisances. He stated that concerns over drainage and weak foundations would be addressed at the building permit stage.

With the conditions identified on Attachment 1, he commended the variances for approval as individually and cumulatively meeting the four tests of the Planning Act.

He suggested that an element of 'fairness' should be afforded the Applicant in respect of the intervention of the Davisville Village Zoning Amendments given the unique transition position of the application.

He felt that 'this pretty conventional house' warranted the recommendation that the variances constituted good planning in the public interest.

In cross examination, Mr. Goldberg acknowledged that the Davisville Village Zoning Amendments were enacted December 8, 2017, after the COA decision. He also acknowledged that integral garages are not themselves part of the prevailing character but that a mixed streetscape in which integral garages were found is part of the prevailing character. In any event, he suggested those terms were not part of the

applicable Official Plan. He suggested that the height differential sought was 'qualitatively very similar' to that achieved two doors to the west, at 395 Balliol.

On the point of the height variance, he acknowledged that the one height variance found in the last 18 years was a 'flag' but remained adamant that the cornice line proposed at 9.02 m, with the roof sloping up and away to the south, made the extra height not noticeable, qualitatively reinforcing the by-law from a perception perspective. On this basis, the planner was of the opinion that the variance was minor, not discernable and that "height is a non-issue".

On the integral garage, while agreeing that the Davisville Village Zoning Amendments created a prohibition as-of-right, he felt the criteria for consideration established in the Staff Report (Ex. 1, Tab 5, page 15), of Official Plan conformity, being part of the prevailing character and having no adverse planning impact, were satisfied and met.

In re-examination, he offered the opinion that if the prohibition by way of regulation in the Davisville Village Zoning Amendments were meant as an absolute, that would eliminate the jurisdiction of the Planning Act to consider variance applications.

Mr. Glenn Michael Belanger, owner of 397 Balliol, the abutting property to the west gave evidence in opposition to the variances. He laid emphasis on the application of the Davisville Village Zoning Amendments recently restricting integral garages and rear yard decks, both applicable to the subject property. He suggested the proposed dwelling would dwarf his house by four times, in a manner that was detrimental, not compatible or sensitive.

He noted sensitive soil conditions and expressed concern for his own foundations.

He thought the proposed deck was non-conforming being too high and too large; he suggested that despite the Applicant's revisions, it should still conform to the By-law.

He felt a lot with 30 feet of frontage could accommodate a driveway and that the integral garage 'was not fitting for the area'.

He would have the project down sized.

In questioning, he acknowledged his own home was on the property line, that the house on the subject property leans into and 'touches my house and is a problem'. He agreed that if the proposed west side yard setback for the project was by-law compliant, as proposed, it would be an improvement.

He acknowledged that the deck revisions: to lower the main deck to by-law compliance; shift it more central to the lot increasing its setback to 1.8 m; and to minimize the landing and scale of stairs access, were proposed. However, he considered these changes as minor and 'did not fully address privacy issues' on his property. He felt that the presence of the deck access implies its use and that his prime concern is the size of the landing on its upper portion, despite being less than 4 sq. m.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 260915 S45 22 TLAB

He agreed that there were no windows on the rear half of the proposed west building wall and that this was 'better than there being some'.

Mr. Al Kivi, a resident at 425 Belsize, spoke on behalf of the SERRA. He said he had been active on integral garages for 3.5 years and was perhaps the most knowledgeable Board member on the subject having experienced 15 cases before the OMB and 4 recent COA decisions on the subject.

He saw no relevance of the '*Clergy Principle*', confirmed the Davisville Village Zoning Amendments to be in full force and effect and said that they were not capable of being ignored. In conceiving of a smaller 'study area' than the planner Mr. Goldberg, he described Balliol as removed from traffic and deserving of closer attention as to elements of 'prevailing physical character', in line with the policy expression in OPA 320, which he acknowledged to be under appeal.

He said that for the period of the last 18 years he was not aware of a proposal involving height relief and an integral garage. On setbacks, he felt that five inches off the east side lot line matters and that skilled architects and designers would not find it impossible to build to by-law height and that setback compliance matters.

He did not accept that 'perceived height', a term coined by Mr. Goldberg, was a by-law matter.

He asserted that the Davisville Village Zoning Amendments introduced another layer of review as to whether an integral garage would respect and reinforce the perceived and prevalent streetscape. In his opinion, the proposal did not. Its extra height removed 'eyes on the street', being the normal product of a lower main floor level, in his appreciation. He felt this could be corrected with redesign and some time spent on mitigation.

In questioning, Mr. Kivi agreed that a house with an integral garage could be built if the design criteria in the Staff Report were met. He further agreed that the subject property was in need of a rebuild and he acknowledged several instances of flat or mansard roofs. He provided the statistic that about 5% of area housing have integral garages but argued this was not a prevailing characteristic, as supported by OPA 320.

Ms. Laura Jean Pratt gave evidence as a participant and owner of the property to the immediate east. She had lived with her family on the property since 2001 and expected the project to have a large impact from the proposed intensification. Her property enjoys a similar depth and a larger frontage, at 43 feet.

She expressed five concerns and elaborated on each:

- a. reduced east side yard setback to .76 m; she suggested the subject property was large enough to build a dwelling that conforms with applicable setbacks;
- b. drainage; while acknowledging this to be a building permit issue which she would be zealous to enforce, she noted her foundation and soils consisted of rock and gravel and were susceptible to storm water surges;
- c. height; given several skylights, she expressed a concern for privacy and visual intrusion;

- d. driveway access; she feared that moving the access to the subject property to fit the integral garage, she might lose the current enlarged entrance curb cut to her property thereby having access compromised given the placement of a traffic calming planter/pavement facility opposite her driveway; and
- e. loss of rear yard privacy in her rear yard from the elevated deck (at 0.99 m), despite a six foot regulation height fence.

In summary, Ms. Pratt suggested that the proposal did not reflect the prevailing character of the area and that it was reasonable that by-law compliance should be observed.

ANALYSIS, FINDINGS, REASONS

I am able to conclude that, with respect to the reduction in variances to the relief request that was before the COA, no further notice pursuant to section 45 (18.1.1) is required. These revisions involved reductions or deletions to requested variances and were disclosed early in the TLAB appeal.

The matter of the additional variances caused by more recent zoning amendments is discussed more fully below.

There can be no argument that in our society municipal and other by-law compliance needs to be the norm.

By the same token, when a property owner embarks upon a major re-investment in their property, they have the right to consider and design in accordance with their own goals, having regard to applicable use, zoning and building regulations, among other matters. The Planning Act not only permits variances to applicable zoning to be applied for subject to assessment criteria, but also nowhere specifies that in-force zoning should override that statutory right.

Goals and regulations are not incompatible; they may simply require dispute resolution. A strict adherence to the provisions of in-place zoning, as advocated by the adjacent neighbours, is not required on applications for redevelopment.

In that process, 'need' is not an identified criteria and by-law sanctity is not mandated. To do so would negate the process of variance consideration. It is that process that mandates their fulsome consideration.

I agree as well with Mr. Goldberg and Mr. Kivi that the Davisville Village Zoning Amendments were not intended to prohibit absolutely integral garages. For that to occur would require a good deal more effort. In the Ontario system of municipal governance, a local by-law, in this case zoning by-laws, cannot and do not foreclose in this instance the statutory right to make applications for variances.

Integral Garage and Deck Extension

A principle matter in dispute here is the proposal for an integral garage. While part of that objection stems from differing assessments of area character, an equally cogent objection stems from the recent passage of the Davisville Village Zoning Amendments which effectively prevent garages on main front walls. The purpose appears to be to drive parking behind the main front wall, whether to the side or rear of the lot, or accessed by a rear lane.

To deal first with area character is to first address the policy direction to respect and reinforce, in this case, the existing physical built form of the neighbourhood. There is no argument that, as proposed, a detached dwelling unit is not only a permitted use, but also reflects area character.

While OPA 320 might test the prevalence of an aspect of built form, namely integral garages, I do not accept that as a determinant policy directive in this circumstance. First, OPA 320, while relevant, is not in force as formal policy. Second, its direction while under appeal is not to be determinative of general or specific variance types, in terms of applicable administrative law. I have seen several examples of integral garages in both study areas urged before me. There is an acknowledgement that they appear in some 5% of the dwelling units comprising the physical character of the area.

I find that consideration of an integral garage on the subject property is not precluded by applicable provincial policy or the in force City Official Plan.

On the evidence, I accept the professional planning opinion of Mr. Goldberg, that there is no policy in the City Official Plan whose general intent and purpose is frustrated by the proposed integral garage. Not only was there no contrary qualified expert opinion evidence in this regard but also his direct testimony applying the criteria in section 4.1.5 and the City Staff Report demonstrated compliance, consistency, compatibility and 'fit' against the existing physical characteristics and fabric of the area. The issue of 'predominant' is not an applicable policy direction and its reference in the Staff Report as a criteria for assessment is not the equivalent of a policy direction.

The suitability of an integral garage does not end there. Mssrs. Belanger, Kivi, Ms. Pratt opposed the relief. Ms. Czajkowski, in argument, raised the fact and issue of the Davisville Village Zoning Amendments intervening and emphasized Mr. Goldberg's agreement that houses with front integral garages were not the prevailing form of dwelling. On this point, I accept the distinction, above recited by Mr. Goldberg, that this is not a determining test.

What is undeniable is that the Davisville Village Zoning Amendments necessitate variances for both the integral garage and the deck access extension from the main rear building wall for the subject applications to succeed. Without relief, a building permit could be frustrated pending a new application.

Those variances were never applied for and were not part of the original application before the COA or its decision under appeal.

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 260915 S45 22 TLAB

The COA was never given the specific opportunity to address variances under those by-laws as they only arose after the decision of the COA and the appeal to the TLAB.

The City neither identified nor chose to pursue this circumstance. No one argued that the TLAB has no jurisdiction to entertain variances in respect of both matters arising under the Davisville Village Zoning Amendments. Unlike the new Zoning By-law under appeal for which contingent relief is requested, the Davisville Village Zoning Amendments are said to be in full force and effect.

It is an esoteric exercise and unnecessary discussion to consider whether that last submission is correct, given the suspended status of the new Zoning By-law to which the Davisville Village Zoning Amendments arguably are, in fact, further amendments.

The more fundamental question to be considered is whether the TLAB on an appeal can grant variances to by-laws for which variances had never been formally the subject of an application.

The TLAB can consider variances that are identified subject to the COA consideration as to whether further Notice is required. Certainly, an integral garage and a rear deck, as stated, were contained in the submission to the COA despite, at the time, no relief being required.

An integral garage and rear deck were components of the plans advanced by the Applicant, with some recent modifications to deck access design. There was, on the admission of Mr. Kivi and in the evidence of Mr. Goldberg, overlap in Planning Staff of the City both commenting on the subject application and advancing towards enactment the Davisville Village Zoning Amendments.

It is unfortunate that a connection was not made by anyone before the COA hearing.

Should the matter of a COA application, then or now, be required, to address the effect of the Davisville Village Zoning Amendments?

No evidence was called by the City and months of opportunity had existed for a Motion to challenge or raise implication of the subsequent zoning amendments to that effect. No such Motion was brought in accord with the Rules of the TLAB, not before, at the outset or during the Hearing of this matter.

The merits and demerits of an integral garage and deck extension were fully in issue before me. The City elected to call no evidence but the issues had been joined on the appeal. While I accept that my jurisdiction extends to make 'any decision that the Committee could make on the original application', I also acknowledge that no formal application was made to vary the Davisville Village Zoning Amendments. Application was made, however, for an integral garage recognition and approval of a rear yard deck structure, since modified on the evidence of Mr. Goldberg to come closer to compliance with the more recent zoning regulations.

I accept jurisdiction over the subject matter to deal with both issues. If I am wrong to order variances affecting the Davisville Village Zoning Amendments, I am content in the alternative, on any approval, to address the issues by way of a condition on the original application. Such condition would be subsequent to the Davisville Village Zoning Amendments.

In the circumstances, my alternative to order a suspension of the proceeding in which the issues were fully aired seems perverse to the goals of administrative efficiency and the fair Hearing process. I believe it to be fair to render a decision on the merits of these two aspects. I do not place significant reliance on the '*Clergy Principle*'.

In the foregoing, I have found that there is no policy impedance to the approval of Variances 7 and 12 identified on Attachment 1. I accept the evidence of Mr. Goldberg that neither the integral garage nor the deck design offend the Staff criteria for consideration in the Staff Report ancillary to the Davisville Village Zoning Amendments permitting these feature. Namely, that both are minor and desirable attributes to the proposed replacement housing. He applied the criteria and provided expert opinion evidence as a matter of zoning acceptability on their compliance. Against that are vague assertions concerning area character, addressed above. A purpose of zoning is to protect against the juxtaposition of incompatible uses and to provide separations suitable to avoid conflicts. He said these variances meet those objectives. It is appropriate to give weight to the expert testimony.

I do not accept that the modest deck 'landing' offers opportunity for undue privacy invasion; the deck itself is .99 m above grade, a standard and permitted height. Both adjacent rear yards have similar rights and are protected by adequate fencing. It is a normal incidence of inner city living that some loss of privacy, air, light and view occur. There were no measures here that were provided or exceeded mere apprehensions of impact. I accept both an integral garage and the rear stairs and deck as appropriate to this location and new detached dwelling.

Other Variances

Variances 1, 5, 9 and 10 were described by the planner to be, essentially, 'technical' and not offensive to provincial policy or any of the four tests. I accept this evidence for the reasons identified in respect of the discussion of each, above. No challenge was ascribed to these assessments and no contrary professional evidence was elicited in chief or in cross examination.

Ms. Pratt took objection to the reduction in the proposed east side yard setback, Variances 6 and 8. The reduction requested is in the order of 5.4 inches from the standard required. I find this to be nearly imperceptible but respect the apprehension that bringing new development closer causes a concern for privacy in the circumstance of skylights and visibility into her principle rooms. I will require that east side windows proposed in the second floor level, be opaque and any openings be only skyward. The Applicant, in argument, resisted this solution based on the location of the windows central to the proposed dwelling. In my view, Ms. Pratt's residence, both existing and any future replacement, should have privacy respected.

Variances 2 and 11 to both by-laws engage the maximum permitted building height. Building height was challenged generally, particularly in relation to the emphasis that the planner Goldberg placed on 'perceived height'. The magnitude sought in this case is .5 m, and less, depending on the by-law. The City argument took the position that the variance did not respect and reinforce the existing physical character of the neighbourhood, an Official Plan test, and was not minor.

Respectfully, I disagree.

Height is also a component of relief sought for main walls, front, rear and side through Variances 3 and 4. The magnitude here, following the reduction proposed is 1.5 m or less, and is of greater magnitude.

City Planning Staff had no issue with 'height', absolute or main wall height, or building scale following the voluntary revisions.

Although Mr. Goldberg might put variances 2,3,4, and 11 in the 'minor' or 'technical' category, they were of concern generally. However, I accept that the absolute height of the proposed building is no higher than the highest points of nearby dwellings on the south side of Balliol and lower than the appearance of buildings on the north side.

I agree that there is no place in zoning for the concept of 'perceived height'. However, in planning impact analysis terms, including area character comparison and appreciation, it is a matter of perception, judgement, absolute measure and approved examples in a study area of relevance. In that circumstance, the terminology is appropriate. Here, there were no shadow impact analyses that suggested any impact. The shallow, sloped, receding roof design offers no prominence and the 'cornice line' character mitigates against a height concern for both main walls and roof height, maintaining as it does the relative absolute heights of the neighbour's property.

Again, while there was a desire that the Applicant conform to zoning standards, in the absence of undue adverse impact, I am inclined to accept the evidence of the planner that the policy intent and zoning purposes of these revisions are met. Further, that they are within an acceptable range of the examples and tolerance. The variances therefore are a 'fit' and are compatible, minor and desirable - consistent with principles of good community planning.

DECISION AND ORDER

The appeal is allowed and the decision of the Committee of Adjustment is set aside.

Subject to the following, the variances and conditions identified in Attachment 1 are approved.

The following additional conditions, to those found in Attachment 1, shall apply to this approval:

Decision of Toronto Local Appeal Body Panel Member: I. Lord
TLAB Case File Number: 17 260915 S45 22 TLAB

3. For greater certainty to Condition 1 and subject to the following conditions, construction shall be in substantial conformity and compliance with the site plan and elevations identified in Attachment 2.

4. Windows and openings on the second floor level of the east main wall building face shall be opaque and any openings shall be only skyward.

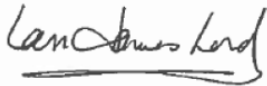
5. An opaque privacy screen of a minimum of 1.5 m shall be installed on the west side of the upper landing at the main floor level.

6. Despite Variances 7 and 12 in Attachment 1 being identified as involving variances to by-laws amending By-laws 569-2013 and 469-86, in the alternative thereto, the following condition shall apply:

- i) Permission is granted for an integral garage and a rear yard deck, platform and access structure provided the location and construction for each shall be in substantial conformity to the site plan and elevations identified in Attachment 2.

If difficulty arises in the implementation of this decision, the TLAB may be addressed.

X



Ian Lord
Panel Chair, Toronto Local Appeal Body
Signed by: Ian Lord

401 Balliol Street – Revised List of Variances**RECEIVED****By TLAB at 9:33 am, Mar 29, 2018****1. Chapter 10.5.40.10.(5), By-law 569-2013**

A minimum of 10 m² of the first floor must be within 4.0 m of the front main wall.

In this case, 7.2 m² of the first floor will be within 4.0 m of the front main wall.

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

The maximum permitted building height is 9 m.

The new detached dwelling will have a height of 9.5 m.

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

The maximum permitted height of all front and rear exterior main walls is 7 m.

The height of the front exterior main wall will be 8.5 m and the height of the rear exterior main wall will be 8.25 m.

4. Chapter 10.10.40.10.(2)(B), By-law 569-2013

The maximum permitted height of all side exterior main walls facing a side lot line is 7 m.

The height of the side exterior main walls facing a side lot line will be 8.5 m and 8.25 m.

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

The maximum permitted height of the first floor of a detached dwelling above established grade is 1.2 m.

The first floor of the new detached dwelling will have a height that varies from 1.2 m to 2.55 m above established grade.

6. Chapter 10.10.40.70.(3)(A)(i), By-law 569-2013

The minimum required side yard setback is 0.9 m.

The new detached dwelling will be located 0.76 m from the east side lot line.

7. Section 900.2.10, Exception R930, as amended by By-law 1426-2017

Despite regulation 10.10.80.40.(1), a vehicle entrance through the front main wall of a residential building, is not permitted, and

Despite regulation 10.4.40.50.(2), 10.5.40.60.(1)(C) and (D), a platform without main walls, such as a deck or balcony, attached to or within 0.3 m of the rear main wall of a residential building and at a height greater than 1.2 m above established grade, must comply with the following:

(I) the maximum area of the platform is 4.0 square metres;

(II) the minimum side yard setback of the platform is 1.8 m; and

(III) may not encroach into the required rear yard setback.

A vehicle entrance through the front main wall of a residential building is proposed; and, the area of the proposed rear platform exceeds 4.0 square metres.

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

The minimum required side lot line setback for the portion of a detached dwelling not exceeding a depth of 17 m is 0.9 m, where the side wall contains openings.

The portion of the detached dwelling not exceeding a depth of 17 m will be located 0.76 m from the east side lot line.

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

The minimum required side lot line setback for the portion of the building exceeding a depth of 17 m is 7.5 m.

The 6.29 m portion of the new detached dwelling, exceeding the 17 m depth, will be located 1.8 m from the west side lot line and 4.09 m from the east side lot line from the stair and platform structure.

10. Section 6(3) Part II 8 F(III), By-law 438-86

A roof over a platform or terrace is permitted to project into the required setbacks provided it does not extend beyond the side walls of the building as projected.

In this case, the roof will extend beyond the side walls as projected.

11. Section 4(2)(A), By-law 438-86

The maximum permitted building height is 9 m.

The new detached dwelling will have a height of 9.41 m, measured to the highest portion of the flat roof from the lowest average elevation along the side lot lines.

12. By-law 1425-2017

No person shall, within either of the areas hereinafter firstly and secondly described, erect or use a building or structure on a lot, for the purpose of a detached house, semi-detached house, row house, rowplex, duplex, semi-detached duplex, semi-detached triplex, or triplex:

(I) having an integral private garage if vehicle access to the garage is located in a wall of the building facing the front lot line; or

(II) having a platform or terrace attached to the rear wall of a residential building with a height greater than 1.2 m above grade, unless:

(A) the area of the platform or terrace does not exceed 4.0 square metres; and

(B) the side yard setback of the platform or terrace is not less than 1.8 metres.

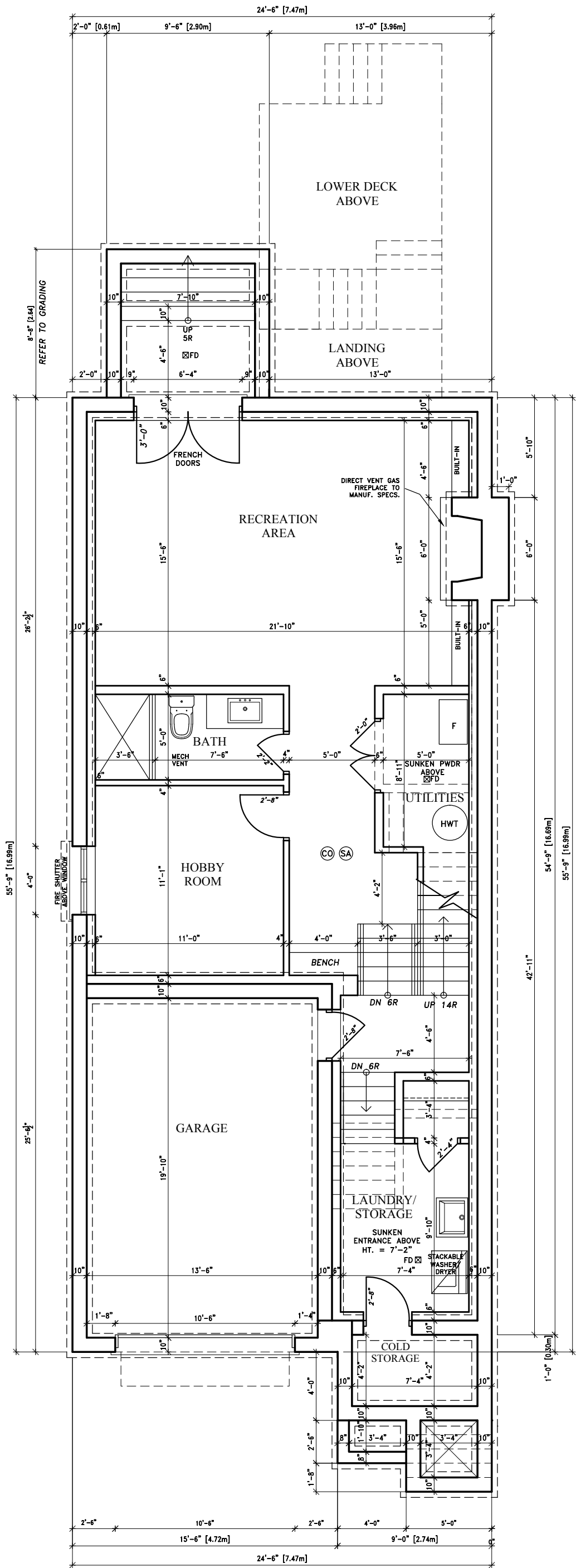
Vehicle access to the private garage is located in a wall of the building facing the front lot line; and, the area of the proposed rear platform exceeds 4.0 square metres.

Conditions of Approval

(1) The proposed dwelling shall be constructed substantially in accordance with the Site Plan and the Elevations dated February 22, 2018.

(2) The owner shall satisfy all matters relating to City-owned trees and Privately-owned trees pursuant to Chapter 813 of the Municipal Code, Articles II and III, to the satisfaction of the Director of Urban Forestry..

(For additional required Conditions, see the decision of the Toronto Local Appeal Body on this matter.)



BASEMENT PLAN

-401 BALLIOL STREET.-

Rubinoff Design Group

697 Mount Pleasant Road
Toronto, Ontario M4S 2N4
TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinoffdesign.com

401 BALLIOL STREET

SCALE : $\frac{3}{16}" = 1'-0"$ FEB 22, 2018

-401 BALLIOL STREET.-

MAIN FLOOR AREA;

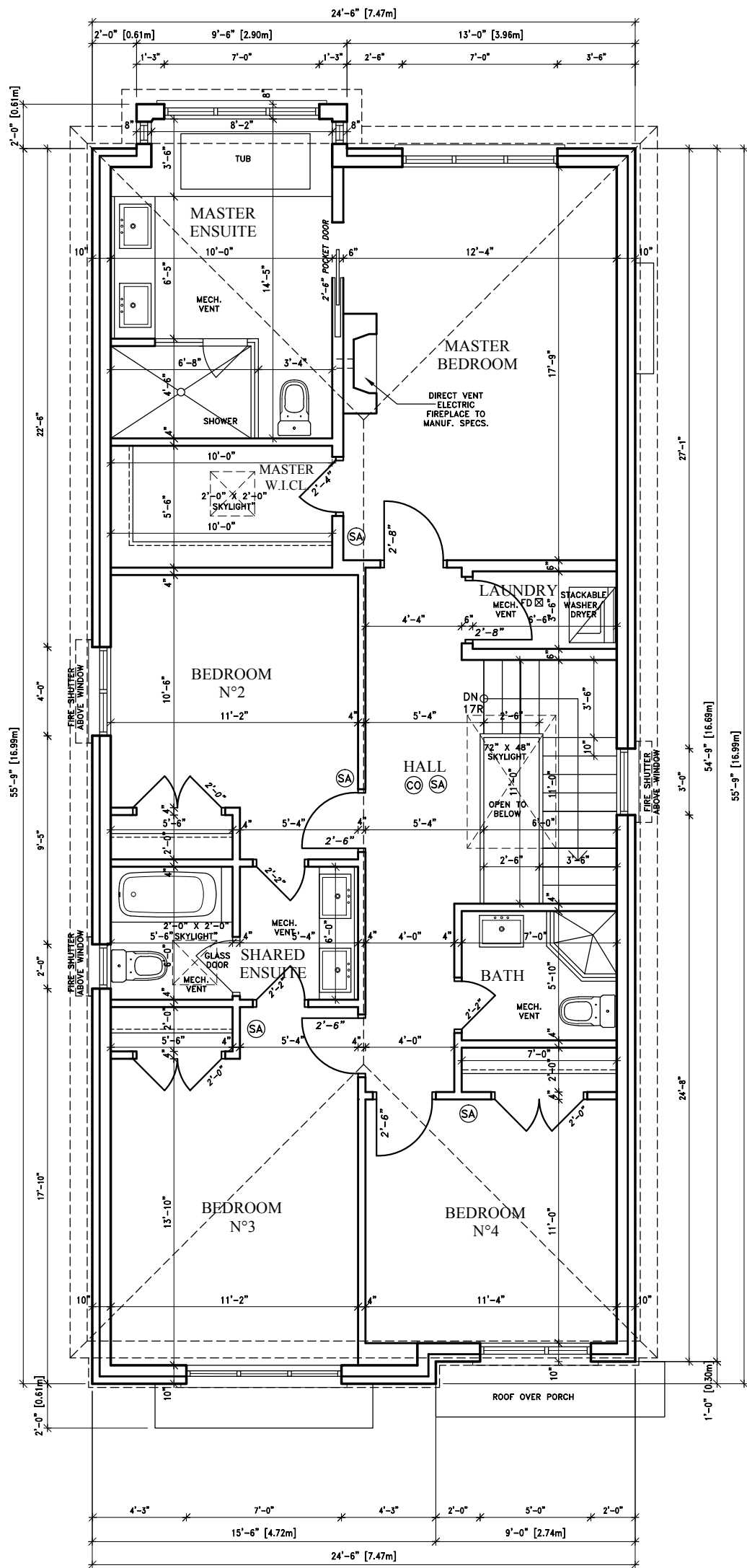
LIVABLE AREA = 1378 ft² [128.0 m²]
 COVERAGE = 1358 ft² [126.2 m²] (25.8%)
 TOTAL FSI = 2756 ft² [256.0 m²] (52.3%)

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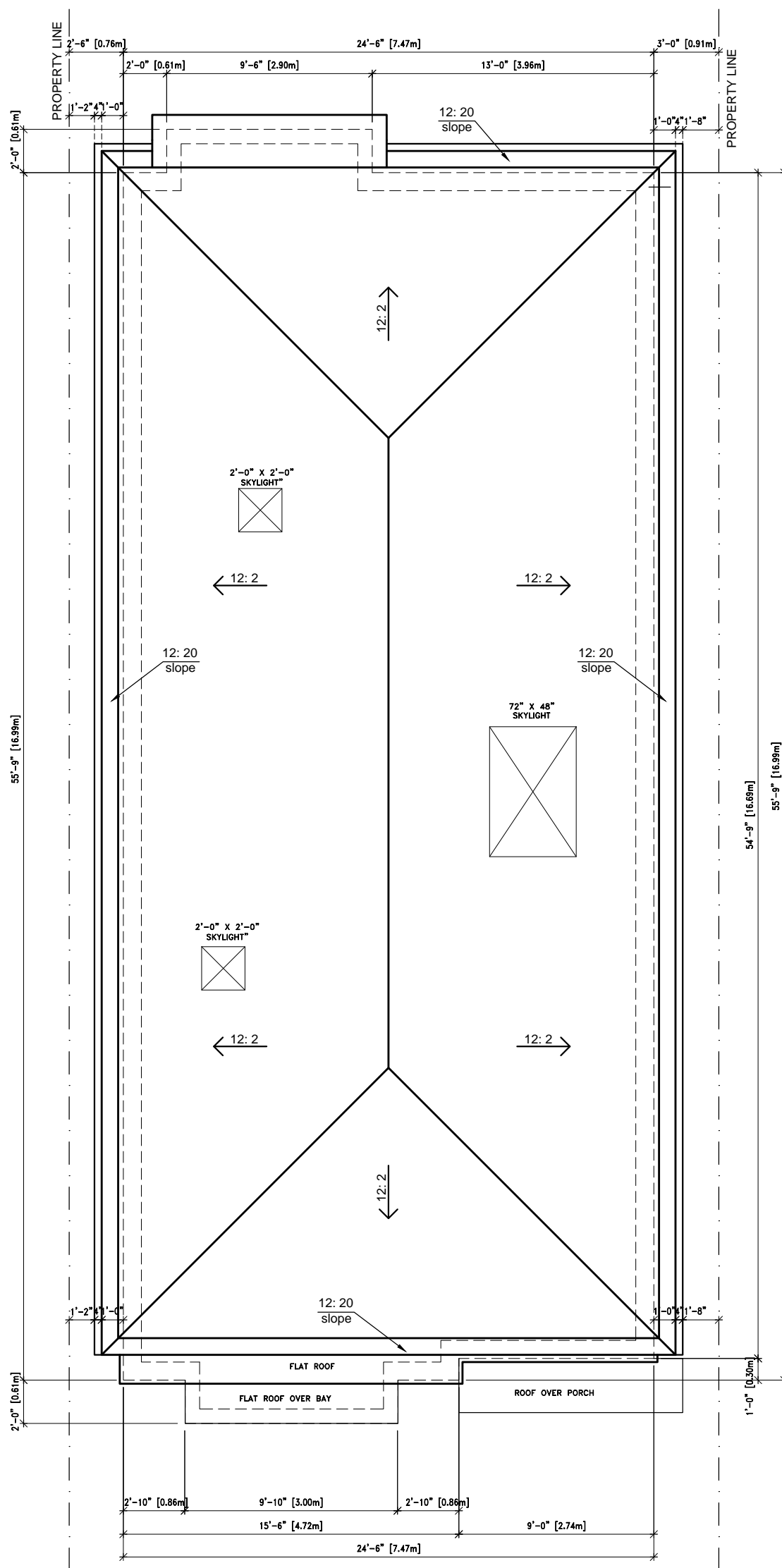
2ND FLOOR AREA;
LIVABLE AREA = 1378 ft² [128.0 m²]

SECOND FLOOR PLAN

-401 BALLIOL STREET.-

401 BALLIOL STREET

SCALE : $\frac{3}{16}" = 1'-0"$ FEB 22, 2018



ROOF PLAN

-401 BALLIOL STREET.-

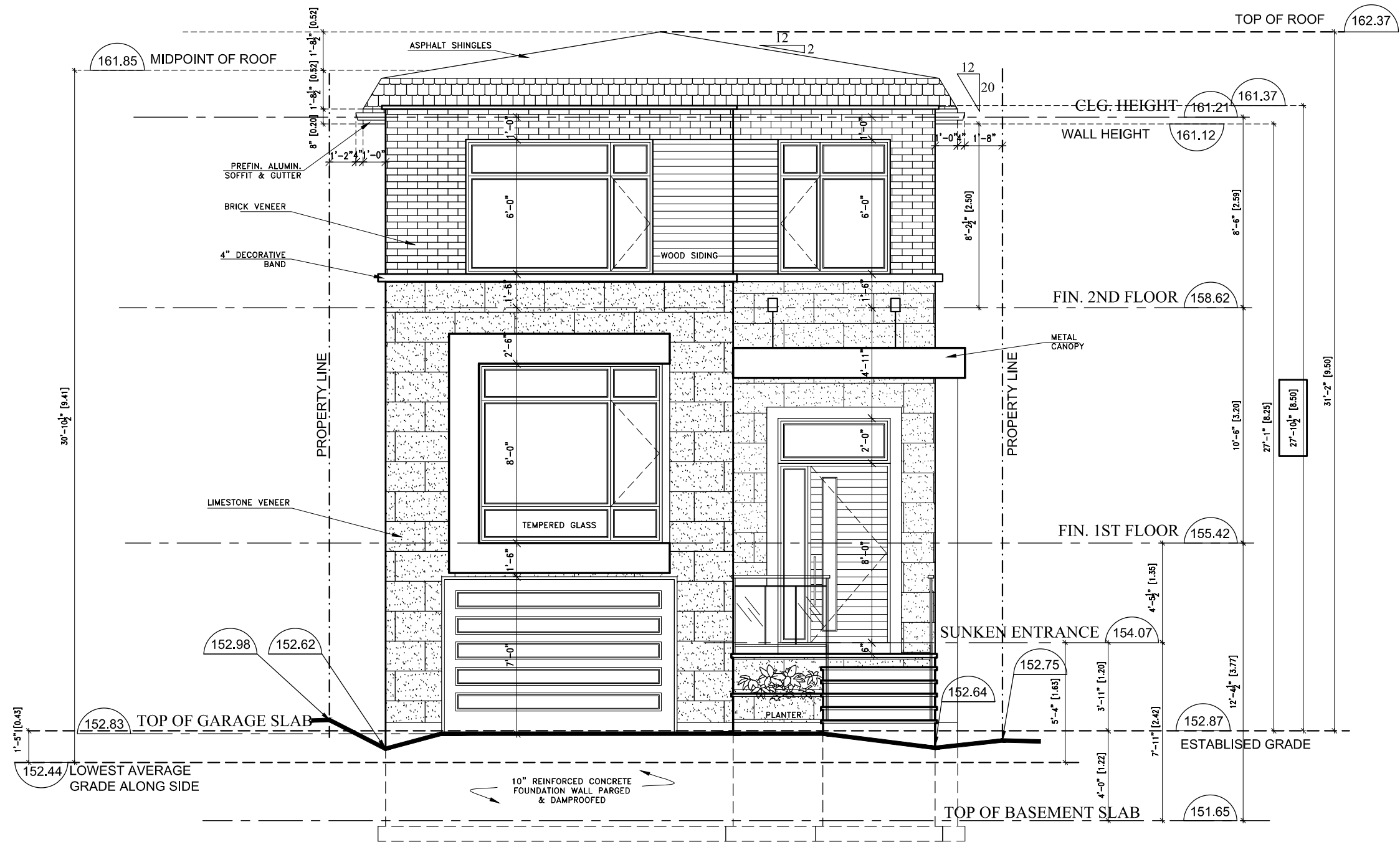


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FRONT (NORTH) ELEVATION

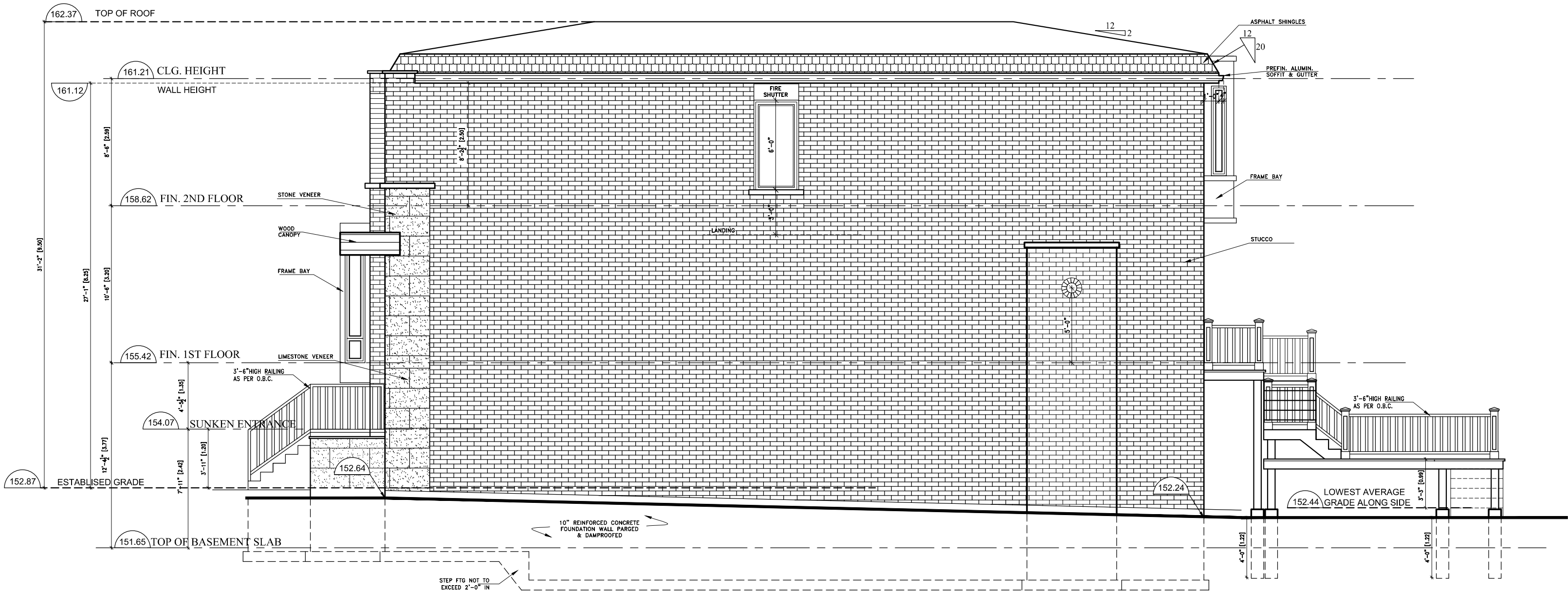
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RIGHT (WEST) ELEVATION

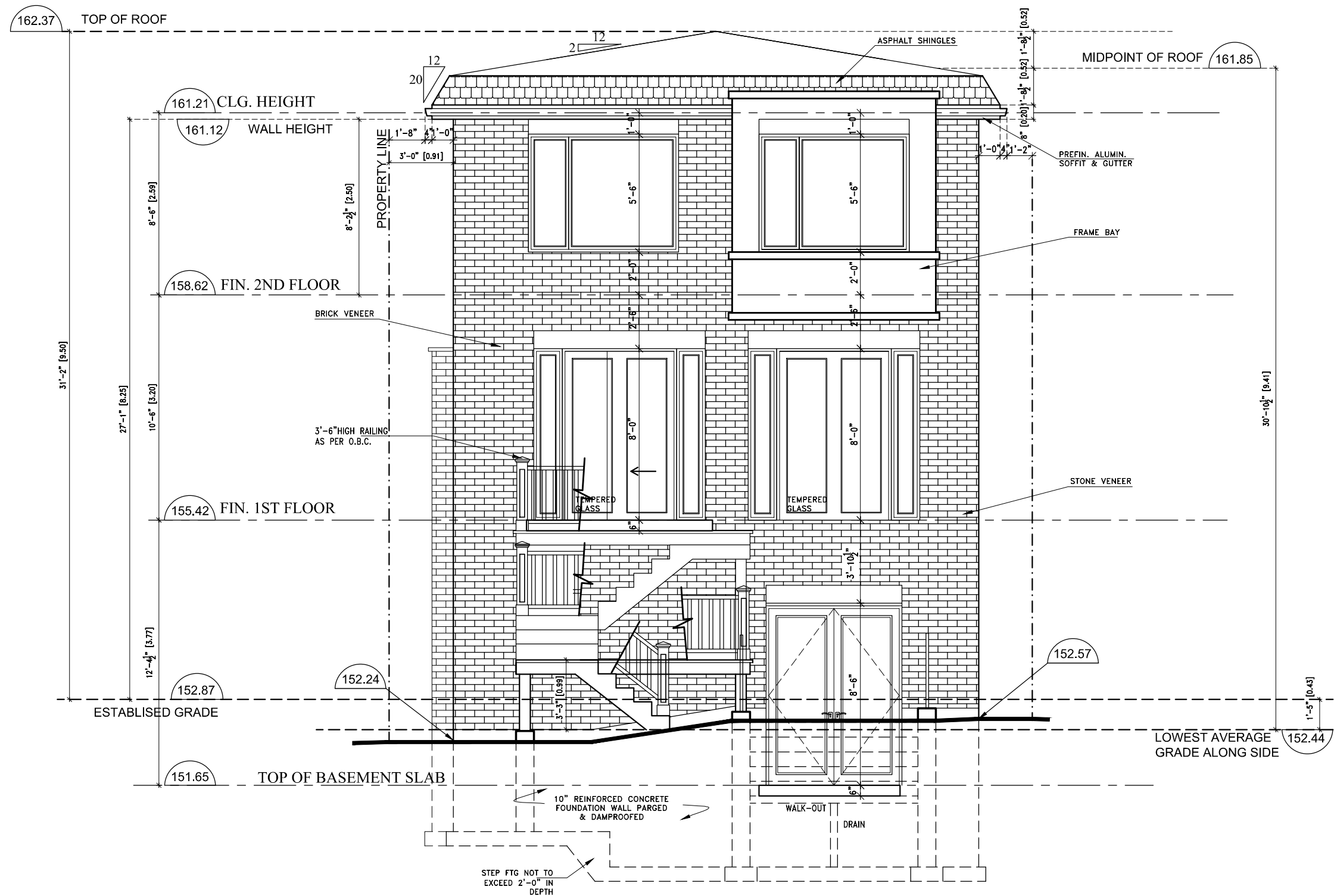
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SCALE : 3/16" = 1'-0" FEB 22, 2018



REAR (SOUTH) ELEVATION

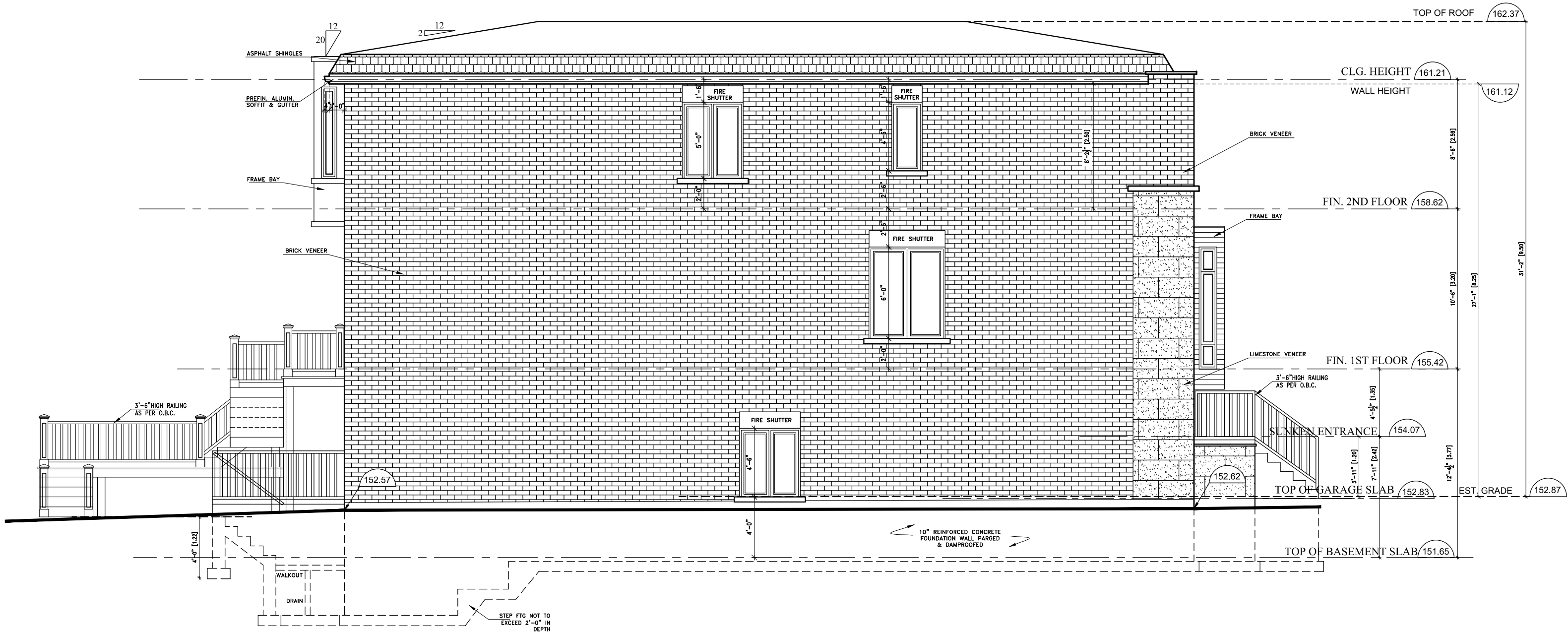
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401 BALLIOL STREET

SCALE : 3/16" = 1'-0" FEB 22, 2018



LEFT (EAST) ELEVATION

-401 BALLIOL STREET.-

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