

## DECISION AND ORDER

**Decision Issue Date**      Thursday, April 26, 2018

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

Appellant(s): RAE DWOSH

Applicant: ERIN WALSH

Property Address/Description: 7 MENIN RD

Committee of Adjustment Case File Number: 17 159968 STE 21 MV

TLAB Case File Number: **17 240976 S45 21 TLAB**

**Hearing date:**      **Wednesday, February 14, 2018**

**DECISION DELIVERED BY S. Gopikrishna**

### APPEARANCES

Name	Role	Representative
Erin Walsh	Applicant	
Rae Dwosh	Appellant/Owner	Bruce Ketcheson
City of Toronto	Party	Adrienne Debacker
Wendy Nott	Expert Witness	
Susan Myers	Participant	

Name	Role	Representative
Colin Ramkissoon	Participant	
Monica Andrea Yeung	Participant	
Adrienne Bernadette Di Paolo	Participant	
Joshua David Lavine	Participant	

## **INTRODUCTION AND BACKGROUND**

Rae Dwosh is the owner of 7 Menin Road located in Ward 21 of the City of Toronto. She wanted to demolish the existing dwelling and build a new three storey detached house with an integral garage and a rear second storey deck at this address to accommodate the specific needs of a disabled family member. A number of variances were identified and Ms. Dwosh applied to the Committee of Adjustment (COA) to approve the variances. The COA heard the application on September 13, 2017 and refused the application. Rae Dwosh then appealed to the Toronto Local Appeal Body (TLAB) on 29 September, 2017. The City of Toronto elected to be a Party in this case. A number of community members elected to be Participants. The hearing was scheduled for 14 February 2018.

The City of Toronto and Rae Dwosh attempted to settle their differences and arrived at an agreement before the hearing. Some of the variances were reduced, others were eliminated and the Appellants agreed to the installation of a privacy screen. The Minutes of Settlement reflecting the new variances and conditions of approval were signed by the Parties on 13 February 2018. The Settlement was being brought forward to TLAB for its consideration at the hearing.

## **MATTERS IN ISSUE**

The following is the recitation of the variances requested from the Toronto Local Appeal Body as a result of the modification of the original proposal submitted to the Committee of Adjustment. These variances are listed in the Minutes of Settlement reached between the Appellant, Rae Dwosh and the City of Toronto.

### **I. Chapter 10.20.40.10.(2), By-law 569-2013**

A(i) The permitted maximum height of all front exterior main walls is 8.5 metres. The proposed height of the front exterior main walls is 9.00 metres.

A(ii) The permitted maximum height of all rear exterior main walls is 8.5 metres. The proposed height of the rear exterior main walls is 9.00 metres.

B(i) The permitted maximum height of all side exterior main walls facing a side lot line is

8.5 metres. The proposed height of the side exterior main walls facing a side lot line is 9.00 metres.

**2. Chapter 10.20.40.20.(1), By-law 569-2013**

In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres. The proposed length is 19.33 metres.

**3. Chapter 10.20.40.30.(1), By-law 569-2013**

The permitted maximum building depth for a detached house is 19.0 metres. The proposed building depth is 19.33 metres.

**4. Chapter 10.20.40.40.(1), By-law 569-2013**

The permitted maximum floor space index is 0.4 times the area of the lot: 136.56 square metres.

The proposed floor space index is 1.25 times the area of the lot: 427.08 square metres.

**5. Chapter 10.20.40.50.(1)(B), By-law 569-2013**

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres.

The proposed area of the rear platform at the second storey is 16.72 square metres.

**6. Chapter 10.20.40.70.(3)(C), By-law 569-2013**

The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres.

The proposed side yard setbacks are 0.91 metres on the north and south side yards.

**7. Chapter 10.5.100.1.(I)(C), By-law 569-2013**

For a detached house, semi-detached house or duplex, and for an individual townhouse dwelling unit if an individual driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard may be for lots with a lot frontage of 6.0 metres to 23.0 metres inclusive, or a townhouse dwelling unit at least 6.0 metres wide, a maximum of 3.2 metres wide.

The proposed driveway is 4.57 metres wide.

**8. Section 3(I), Zoning By-law 1-83**

The maximum floor space index is 0.4 (136.56 square metres).

The proposed floor space index is 0.99 (341.20 square meters).

9. Section 3(g), Zoning By-law 1-83

The minimum side yard setback is 1 .2m.

The proposed side yard setbacks are 0.91m on the North and South sides.

10. Section 3(h), Zoning By-law 1-83

The minimum rear yard setback is 9.0 m.

The proposed rear yard setback is 7.50 metres.

## **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 Appellants were represented by Mr. Bruce Ketcheson and Ms. Tina Kapelos, both of whom are lawyers and Ms. Wendy Nott, Registered Professional Planner. The City of Toronto was represented by Ms. Adrienne Debacker and Mr. Thomas Wall, both of whom are lawyers. The Hearing started with Mr. Bruce Ketcheson indicating that an agreement had been reached between the 2 Parties and that the Minutes of Settlement had been signed the previous day i.e. on the 13<sup>th</sup> of February 2018. Mr. Ketcheson stated that he would be presenting the proposal on which Settlement had been reached. I asked Mr. Ketcheson if new notice had to be given since the variances had been changed. He replied that new notice was not necessary since all the variances which had been changed had effectively been "reduced" i.e. closer to "what is as of right". I then asked Ms. DeBacker for her opinion about the need to provide notice and she confirmed her agreement with Mr. Ketcheson's conclusions. Given the reduced

variances and agreement of both Parties regarding notice, I ruled that no new notice had to be given and that the hearing could proceed.

While a number of community members had elected to be Participants, the only community member present for the hearing was Mr. Colin Ramkissoon who lived at 173 Glen Cedar Road.

Mr. Ketcheson then briefly presented the highlights of the new proposal- namely the proposal is to build a new 3 storey building with a design specific to the unique needs of the clients with specific reference to accessibility. The front entrance is at grade because the proposed house has no steps. In addition, the house has a shaft for an elevator and does not have a conventional basement, both of which significantly change the the Floor Space Index (FSI). The revised plans, which reflect discussions between the Appellants and the City, resulted in a plan where the ground floor was designed such that part of the floor is lower than the rest and is the equivalent of a basement for FSI calculation purposes. Unlike apartment complexes, the elevator shaft has to be included in FSI calculations.

Mr. Ketcheson introduced Ms. Wendy Nott as the Expert Witness. After Ms. Nott was sworn in, Mr. Ketcheson asked her questions about her educational and professional qualifications and then asked that she be recognized as an Expert Witness. I asked Ms. Debacker if she had questions for Ms. Nott before the latter was qualified to which Ms. Debacker stated that she had no questions. I then qualified Ms. Nott as an Expert Witness.

In addition to Ms. Nott's Witness Statement, the Minutes of Settlement were also entered as an Exhibit, specifically Exhibit No 4.

Ms. Nott began her testimony by discussing the area surrounding the Property and stated that the area south of Eglinton Ave West and west of Bathurst Street consisted of a variety of architectural styles and sizes. Ms. Nott undertook a photo tour of the community and drew attention to various houses which were in the process of being redeveloped or have completed redevelopment in the community. She drew attention to the fact that there was a regular lot pattern in the community, many comparable to the frontage and area of the subject property. There were a variety of residential styles which ranged from 1-2.5 storeys with a wide variety of roofline treatments. Ms. Nott pointed out that the house was designated R1 under the York By-Law and RD under the new zoning by-law. Before proceeding to discuss various policies, Ms. Nott pointed out that the lot was fairly big, with 32 m depth and 341 sq m area, which could be adapted to the specific and unique needs of the residents. She pointed out that the opposition to the project was largely from community members who didn't live in the immediate vicinity of the proposal.

Ms. Nott also pointed out some of the unusual features of the house to accommodate the needs of a resident with disabilities, which resulted in variances that the TLAB had to rule on. Repeating some of the features described by Mr. Ketcheson,

Ms. Nott referred to the front door at grade to the front entry without steps and an entrance into the garage without steps. Discussing the Site Plan, Ms. Nott pointed out that the north side yard setback is 1.1 m. The side yard is narrow to begin with at 0.9 m and then becomes 1.2 m which is the by-law requirement. The dwelling length is 19.33 m for the ground floor and 17m for the 2<sup>nd</sup> and 3<sup>rd</sup> floors. At the rear of the house, there is a substantial rear deck of 16.2 m in length which is accessible from the main floor. According to Ms. Nott, this rear deck will effectively play the part of the rear yard from the perspective of the resident of the house. The driveway width is 4.57 m at the front wall of the building and is 4.15 m at the property line to preserve a tree. Ms. Nott then said that a 2 car garage was being requested for to ultimately accommodate an accessible van. Pointing to the elevation facing 5 Menin Road, Ms. Nott drew attention to the planters and proposed vegetation at the 2<sup>nd</sup> floor deck to screen the neighbours to the north and south. There are minimal windows provided to minimize overview to the neighbor on the south. There are no windows facing the property at 9 Menin. There is a portion on the ground floor that has been dropped by 5-6 risers and has to be accessed through steps; this portion is not included in GFA calculations under the old by-law. The main wall height was designed to be 9.22 m high against the allowable 8.5 m under the new by-law but is now being dropped to 9 m. However, the overall height of the building is 10.74 m against an allowable 11 m; there is no variance required for overall height.

Ms. Nott then recited the variances being requested and linked the variances to the features described earlier. At the time of the Committee of Adjustment hearing, Ms. Nott said, the residents of 5 and 9 Menin didn't express any opposition. The massing was consistent with the other houses in the neighbourhood with the difference that the entrance was at grade and there is no basement.

Ms. Nott then discussed the relationship to the Provincial Policy Statement – she concluded that the variances are consistent with the 2014 Provincial Policy Statement (PPS) because the proposed development of a replacement detached dwelling of a larger size than what currently exists represents a modest form of intensification, as defined by the PPS. After discussing the applicability of policies (1.1.1(a) to (1.1.3.4)) focusing on management and directing land use to achieve efficient and resilient development and land use patterns, she went on to discuss the applicability of Policy 1.1.1(f) which discusses improved accessibility for persons with disabilities and how the policy looks to prevent and remove land use barriers which restrict their full participation in society.

She then discussed the Growth Plan for the Greater Golden Horseshoe and its applicability. Ms. Nott explained that the Growth Plan, which needs to be implemented by all municipalities with the Greater Golden Horseshoe; the plan supports greenfield development and targets intensification. Ms. Nott opined that the build proposed was consistent with Golden Growth Plan because it represents a form of modest intensification and contributed to building a compact and complete community, as defined in the Plan.

Ms. Nott then discussed the compatibility between the project and the Official Plan. She began by pointing out that 7 Menin Road is designated “Neighbourhoods” and that the general intent and purpose of this designation is to maintain stable low density areas. An examination of the replacement housing in the neighbourhood demonstrates that the new builds respect the existing physical character, streetscape and open space patterns, and are consistent with Official Plan, Policy 2.3 which states that the neighbourhoods are “stable but not static”. Ms Nott also interpreted Chapter 4 Land Use designations to observe that changes in neighbourhoods are expected to be sensitive, gradual and generally “fit” the existing physical character. She then reviewed Policy 4.1.5 of the Official Plan to determine the fit of the proposed development with the existing neighbourhood. Ms. Nott then connected her conclusions to the project at 7 Menin Road, which in her opinion respected the existing physical character of Menin Road, distinguished by a variety of houses in terms of age, height and architectural style including original houses and new replacement uses. In Ms. Nott’s opinion, replacement housing tends to be larger in size and more varied in architectural style than the original houses. Based on these observations, Ms. Nott concluded that the variances meet the general intent and purposes of the Official Plan development criteria.

Ms. Nott then moved onto the test regarding “Maintenance and Intent of the Zoning By-Law”. She grouped the requested variances into 4 groups: Built Form/Massing, Rear Deck and Driveway Width. Variances 1-5 related to By Law 569-2013 and Variance 1 related to By Law 1-83. Commenting on the setbacks, Ms. Nott stated that the intent and purpose of a side yard setback is to provide appropriate separation between adjacent houses and this is achieved with the proposed setbacks, which are typical of side yard setbacks on Menin Road and elsewhere in the neighbourhood. The Building length variances (Nos 3 and 4 to 569-2013) have been modified as a result of the increased 7.5 m rear yard setback and are now 19.33 m; the 2<sup>nd</sup> and 3<sup>rd</sup> floors are at 17 m. The 17 m length on the second floor opens onto the deck which sits on the top of the 1<sup>st</sup> floor. The south side faces 5 Menin Road and the ground floor is longer than that of the 2 neighbours.

By way of editorial comment, my notes in this section reproduce Ms. Nott’s comments in a combination of numerical order of the variances as well as the grouping she used in her presentation

Describing the variances, Ms. Nott said that variance 1 is the height variance while the 2<sup>nd</sup> variance related to length is the new variance. The 3<sup>rd</sup> variance is for the length of 19.33 m versus 19 m- building length and depth are different because they are defined Ms. Nott pointed out that Building Depth is measured from the required front yard setback to the rear main wall of the building while building length is measured between the main front to the main rear walls of the building. In Ms. Nott’s opinion, both the variances are minor from a numerical viewpoint because the former exceeds the 19 m allowable depth by 0.33 m while the allowable length of 17m is exceeded by 0.37 m. The cumulative impact is that the rear wall stretches a metre beyond the rear wall of the neighbouring house to the south but has no impact on the neighbour. Ms. Nott again drew attention to the lack of objections from the neighbor in support of her conclusion

Coming to Variance No 4, the 1.25 FSI does not change. The 5<sup>th</sup> variance is related to the deck which is 17.62 sq. m versus the 4 sq. m. allowable; the deck has vegetation at the rear and privacy planters to ensure that the privacy of the neighbours is not adversely impacted. Given that the purpose of the underlying zoning by-law is to ensure that there is minimal conflict in terms of privacy and use of personal space, these measures specifically help satisfy the Zoning by-law.

Describing the variances associated with the built form, Ms. Nott started with the rear yard setback which requires a variance only from the former by-law. Ms. Nott explained this variance by saying that the setback complied with the City's most updated by-law and was therefore appropriate. The south yard setback is required only for the garage portion of the building and is otherwise compliant- this setback is again required for the driveway which is appropriate for the use of a vehicle to be used by a resident with disabilities.

Discussing the GFA, Ms. Nott pointed out that the pertinent regulation is to govern the floor space of a house in relation to lot size. Given that the density permission of 0.4 x is one of the lowest density permissions in the City, the numerous variances required to make the house habitable and sensitive to the needs of the residents trigger a number of variances which require the density to exceed 0.4. Ms. Nott reiterated that the main influence on the GFA is that there is no basement located wholly/partially below grade and therefore all the floor area on the ground floor contributes to the GFA. Further, the fact that existing by-laws don't anticipate or provide GFA exclusions for accessible design elements such as elevator shafts increases the GFA, should they be needed.

Discussing the heights, Ms. Nott pointed out that that both by-laws permit 3 storeys and 11m height and that the proposed dwelling, with its contemporary architectural design, conforms to these height regulations. The height variances, requested, according to Ms. Nott, relate only to the height of the exterior walls, or the eaves line and its intent to restrict flat roof designs as of right. In combination, in Ms. Nott's opinion, the built form and massing resulting from the building length, eaves height, side yard setbacks and GFA generally fit the existing physical character and respect the general physical patterns in neighbourhoods.

Ms. Nott then discussed the proposed rear deck which extends off the main living area and is 16.72 sq. m. in area. The outdoor amenity space represents the primary outdoor area for the resident as the impact of the physical disability warrants. Privacy screens will be provided on the north and south elevations to address privacy/overlook to abutting properties and existing rear yard vegetation will address similar issues to the east. The general purpose and intent of the regulation is to prevent large elevated outdoor activity areas that may generate conflicts of use with abutting properties. Ms. Nott then concluded that based on the site specific contextual considerations of this proposal, such effects will not result from a larger upper level deck and therefore maintain the general purpose and intent of the by-law.



Ms. Nott also discussed the driveway width which was reduced at the front lot line to 4.15 m in order to protect an adjacent City tree; however, a variance is required as the driveway at the main front wall remains at 4.57 m in order to access 2 vehicles, including a future handicapped accessible vehicle. Wider driveways exist on Menin Road and are part of the neighbourhood character; the requested driveway therefore fits into the neighbourhood character.

Based on these observations, Ms. Nott concluded that the variances maintain the intent and purpose of the Zoning By-laws.

Ms. Nott then discussed if the variances were desirable for the appropriate development of the land of building. According to Ms. Nott, the proposed build reinforces the pattern of gradual change as the community matures and evolves into a stable midtown neighbourhood, with such change including larger replacement houses. The house design incorporates specific accessibility elements to accommodate I disabilities which have influenced the proposed development . Given these issues, Ms. Nott concluded that the variances are desirable for the appropriate development of the land.

Lastly, discussing the “minor” nature of the variance, Ms. Nott concluded that the variances are minor based on two important considerations:

- Whether any adverse impacts would result that affect adjacent properties ( such as shadow, overlook/privacy, diminishment of enjoyment etc.) and
- Whether approval of these variances would result in the neighbourhood being destabilized?

In Ms. Nott’s opinion, there is no adverse impact on matters such as privacy, shadowing or rear yard amenity areas of nearby properties. The variances provide for a house which respects and reinforces the general Menin Road streetscape and related general physical character of the neighbourhood with regard to the type of house as well as massing which in Ms.Nott’s opinion, result in reinvestment and avoid destabilization. Based on these factors, Ms. Nott concluded that the proposed variances are minor in nature.

The City had no questions for Ms. Nott.

Mr. Ketcheson then discussed the Settlement which had been signed the previous day. The settlement minutes consist of agreements, a list of variances as approved by the City and the Site plan.

Mr. Colin Ramkisson was then sworn in to give evidence. Mr. Ramkisson lives at 173 Glen Cedar Road, which is at the back of the property. Mr. Ramkisson said that he had no problems with Variances 6, 7 and 9. Commenting on the other variances, Mr. Ramkisson said that Variance 1- most houses have a 2 storey single car house. Coming to Variance 2, Mr. Ramkisson pointed to the houses at 168 Dearborn and 179

Dearborn, which appeared to have 2 floors though they had 3 floors- this was because the 3<sup>rd</sup> floor was built into the roof. Mr. Ramkissoon said that he was not opposed to a third floor but it had to be built in such a way that it respected the neighbourhood character of 2 floors. The fact that 7 Menin did not have such a feature worried him because it meant that there was a 3 floor house in the neighbourhood. Likewise, with respect to variances 2,3 and 10, Mr. Ramkissoon provided COA judgements on other houses on Menin Road and said that even with a 3<sup>rd</sup> floor, the applications to the COA did not request variances for length, height of the wall and rear yard setback. 7 Menin's, proposed length of 19.33 m is really long resulting in a short backyard and the impression of increased massing. The deck, according to Mr. Ramkissoon, would not impact the neighbours at 5 and 9 Menin Road, as stated, but would have a negative privacy impact on the neighbor at 174 Glen Cedar. Mr. Ramkissoon worried that, if this was allowed, the practice would become common and everybody would have somebody looking into their backyard.

Summarizing his statement, Mr. Ramkissoon concluded that the variances are not minor and constitute bad "precedents" for other developments.

Through his cross examination, Mr. Ketcheson established that the house at 7 Menin did not impact Mr. Ramkissoon because:

There is only an obstructed view of 7 Menin from the 2<sup>nd</sup> floor of Mr. Ramkissoon's house; the subject property is not visible from the ground floor. Mr. Ramkissoon agreed with Mr. Ketcheson's observation that he would have to do "a 2 clock from his house" to look at 7 Menin. In addition, there is significant vegetation between the properties and there is therefore no direct impact.

The "massing" referred to by Mr. Ramkissoon does not impact people living at 5 and 9 Menin or the neighbours at the back because it changes only the façade of the house. Mr. Ramkissoon replied that others on the street would be impacted even if he wasn't impacted directly. He agreed with Mr. Ketcheson's suggestion that massing would not be impacted by the length or depth of the house

Mr. Ramkissoon also agreed with Mr. Ketcheson's observation that while there were houses where one floor had been rolled into another, there were other examples where the 3<sup>rd</sup> floor hadn't been rolled into the roof. In terms of the comment about other applications not seeking relief for main wall height from the COA, Mr. Ketcheson asked Mr. Ramkissoon if he knew that this restriction came only in 2013. Mr. Ramkissoon said that his knowledge was restricted to COA decisions.

When Mr. Ketcheson pointed out that if there was comfort in the fact that the City planner had no objection to the height, Mr. Ramkissoon replied that she was "entitled to her view".

Mr. Ramkissoon again repeated that the walls and front of the house were the biggest problems and that they would create a precedent for the community. Addressing Mr.

Ramkissoon's comments about "precedent", Mr. Ketcheson then pointed out to Mr. Ramkissoon that all applications went through the same process, which is that every case is dealt with independently. Would this not mean that the result of one case wouldn't necessarily influence the next? Mr. Ramkissoon disagreed with this and said the process had to compare "apples to apples". Mr. Ketcheson asked Mr. Ramkissoon if he knew of other houses were being constructed with no steps at the front? Mr. Ramkissoon said that he didn't know the answer. Mr. Ketcheson then said that Ms. Nott had pointed out the unique conditions under which this appeal was brought out; the only "precedent" was when a disabled person would want to make a house with grade at floor.

Mr. Ramkissoon concluded by stating that the requested main wall heights had to be looked at carefully.

The City had no questions for Mr. Ramkissoon.

Mr. Ketcheson then presented his closing statements. He started by saying that the evidence it spoke for itself beginning with the uncontroverted evidence of Ms. Nott.. Coming to the issue of "precedent", Mr. Ketcheson remarked that. 7 Menin was unique because it had slab on grade, at grade entrance, no basement, a large deck and the need for elevator. all of which may have contributed to the FSI, but importantly were appropriate for the specific needs of disabled residents. The only "precedent" stemming from such a case was when a similar house was contemplated due to unique needs of the residents. Mr. Ketcheson then suggested that the Board was inclined to approve the proposal, they could acknowledged the reasons for the approval.

Notwithstanding the FSI numbers, it did not impact on the use or enjoyment of the neighbours properties by the neighbours. Addressing the issue of massing caused by the 3<sup>rd</sup> floor, Mr. Ketcheson said that Ms. Nott had provided specific example of houses with 3<sup>rd</sup> floors in the community; specifically where the 3<sup>rd</sup> floor is not in the roofline. According to Mr. Ketcheson, the proposed build, agreed with the prescribed policy context, specifically the Official Plan because it respects what is already in the community. The proposal represents reinvestment with the overlay of incorporating the needs of the handicapped. Remarking on the FSI number, Mr. Ketcheson said that the number has "moving parts" which can be manipulated to increase or decrease the number. The more important thing is that there are no changes to the external façade. However, if one added steps to the front entrance; the FSI would reduce- which demonstrated how easily the FSI could change.

Mr. Ketcheson concluded by stating that hat the uncontroverted evidence from Ms. Nott should be given weight; the circumstances to address accessibility issues should be taken into consideration and consideration and the proposal can be approved. He then discussed conditions in Schedule B, as submitted, be imposed.

Ms. Debacker, speaking for the City, said that they appreciated the Appellant's efforts to reduce the FSI, provide screening and reduce the main height of the wall. She echoed Mr. Ketcheson's comments that the conditions in Schedule B be imposed.

## **ANALYSIS, FINDINGS, REASONS**

What makes this proposal unusual are its design parameters, and the consequent variances triggered, as a result of building a house specifically oriented to the needs of a resident with disabilities. I note that the Appellant made sincere and serious efforts to strike a balance between their specific needs and concerns expressed by the City to arrive at a settlement sensitive to the circumstances of both Parties.

As is expected of all proposals, Ms. Nott's evidence analyzed the application of the Provincial Policy statement and the Golden Horseshoe Growth Plan statements to this proposal. What makes her evidence noteworthy is the demonstration of the nexus between the proposal and Section 1.1.1. (f) of the Provincial Policy Statement:

*“Improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society”*

Notwithstanding how “removed” proposals on the ground are from the broader and bigger principles in the Provincial Policy Statement (PPS), it is interesting to see how the PPS can directly influence some proposals individually; while accomplishing the laudable goal of recognizing the unique needs of population experiencing disabilities.

It is sometime challenging to be sensitive to a “needs” based request for variances when there is no specific test in Section 45 (1) to recognize needs. The argument put forward by the Appellants demonstrates that there is an explicit acknowledgement of the needs of persons with disabilities in the Provincial Policy Statements, which is then internalized in the Official Plan, because of the need for consistency between the two documents. This approach illustrates pathways between demonstrating the nexus between being sensitive to the needs of disabled people and the provisions of Section 45(1) ,notwithstanding the lack of a specific test centered on need.

Ms. Nott's evidence demonstrated that the proposal fulfilled all the 4 tests prescribed in Section 45(1) of the Planning Act. Notwithstanding the unusual nature of the proposal, there is no significant impact on the neighbouring properties, except for the privacy of the neighbor residing at 5 and 9 Menin. The Appellants have recognized this impact and have sought to mitigate the same through placing privacy screens. The neighbor residing directly behind 7 Menin did not make any presentations to TLAB; from this I conclude that they did not have any significant concerns or objections to the proposal.

The objections stated by the only Participant in attendance, Mr. Ramkissoon, focused on the visual impact of the house, the massing and the probable loss of privacy to the neighbor at the back. The privacy issue has been discussed in the above paragraph and poses no concern. The massing of the house would be visible from the front of the house and not the street behind the house; the consequent impact on Mr. Ramkissoon's house is therefore minimal. I note that the neighbours on Menin Road did not express any objections to the massing and visual impact of the proposed build.

Arguably, the most important of the objections brought by Mr. Ramkissoon is if permitting the building of such a house would constitute "precedent". I agree with Mr. Ketcheson's pointing out that allowing the proposal is not a "precedent" because of the unusual circumstances of the residents.

In this context, it may be helpful to also discuss what "precedent" means in the context of decisions. The expression "precedent" is appropriate when consistent with the doctrine of *stare decisis* i.e. where the courts have ruled on a given question. The colloquial sense of the expression "precedent" i.e. best captured by the expression "what is good for the goose is good for the gander", is not admissible for land development proposals because this perspective does not factor into the differences in design, geography, topography and other variables, even if 2 proposals are ostensibly identical in every way.

I hope that this observation allays fears of an unchecked reproduction of such a house in this neighbourhood or other parts of the City.

I accept the uncontroverted evidence of Ms. Wendy Nott and conclude that the proposal satisfies the 4 tests listed in Section 45(1) of the Planning Act. The Appeal is allowed in part (due to modifications of the proposal as a consequence of the settlement) and the decision of the Committee of Adjustment dated 13 September, 2017 is set aside.

The Appellants have also requested the inclusion of 3 "Conditions" under the advisement of the City of Toronto, related to the right of way and the use of permeable material on the driveway. The last condition is a standard condition which looks to ensure substantial compliance between the actual build and the plans as agreed upon through the settlement process. These conditions have been agreed to by both Parties and can be included in the Decision and Order.

The minutes of the Settlement, signed by the Parties, on 12 February 2018, is included as an Appendix to the Final Order.

## **DECISION AND ORDER**

The Toronto Local Appeal Body orders that:

1. The Decision of the Committee of Adjustment dated September 13, 2017 is set aside.

2. The Appeal is allowed in part and the following variances, as presented in the modified proposal before the Toronto Local Appeal Body, are approved, subject to the conditions requested of approval, below noted:

### **I. Chapter 10.20.40.10.(2), By-law 569-2013**

A(i) The permitted maximum height of all front exterior main walls is 8.5 metres. The proposed height of the front exterior main walls is 9.00 metres.

A(ii) The permitted maximum height of all rear exterior main walls is 8.5 metres. The proposed height of the rear exterior main walls is 9.00 metres.

B(i) The permitted maximum height of all side exterior main walls facing a side lot line is 8.5 metres. The proposed height of the side exterior main walls facing a side lot line is 9.00 metres.

### **2. Chapter 10.20.40.20.(1), By-law 569-2013**

In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres. The proposed length is 19.33 metres.

### **3. Chapter 10.20.40.30.(1), By-law 569-2013**

The permitted maximum building depth for a detached house is 19.0 metres. The proposed building depth is 19.33 metres.

### **4. Chapter 10.20.40.40.(1), By-law 569-2013**

The permitted maximum floor space index is 0.4 times the area of the lot: 136.56 square metres.

The proposed floor space index is 1.25 times the area of the lot: 427.08 square metres.

### **5. Chapter 10.20.40.50.(1)(B), By-law 569-2013**

The permitted maximum area of each platform at or above the second storey of a detached house is 4.0 square metres.

The proposed area of the rear platform at the second storey is 16.72 square metres.

### **6. Chapter 10.20.40.70.(3)(C), By-law 569-2013**

The required minimum side yard setback is 1.2 metres where the required minimum lot frontage is 12.0 metres to less than 15.0 metres.

The proposed side yard setbacks are 0.91 metres on the north and south side yards.

**7. Chapter 10.5.100.1.(I)(C), By-law 569-2013**

For a detached house, semi-detached house or duplex, and for an individual townhouse dwelling unit if an individual driveway leads directly to the dwelling unit, a driveway that is located in or passes through the front yard may be for lots with a lot frontage of 6.0 metres to 23.0 metres inclusive, or a townhouse dwelling unit at least 6.0 metres wide, a maximum of 3.2 metres wide.

The proposed driveway is 4.57 metres wide.

**8. Section 3(I), Zoning By-law 1-83**

The maximum floor space index is 0.4 (136.56 square metres).

The proposed floor space index is 0.99 (341.20 square meters).

**9. Section 3(g), Zoning By-law 1-83**

The minimum side yard setback is 1 .2m.

The proposed side yard setbacks are 0.91m on the North and South sides.

**10. Section 3(h), Zoning By-law 1-83**

The minimum rear yard setback is 9.0 m.

The proposed rear yard setback is 7.50 metres.

The approval is subject to the following conditions ( the “Conditions of Approval”):

Any other variances not explicitly listed above are not approved.

**REQUESTED CONDITIONS OF APPROVAL:**

1. The Appellant shall contact Transportation Services, Right of Way Management, for a paving permit;
2. The driveway shall be constructed and maintained using permeable or semi permeable layers; and
3. The building shall be constructed substantially in accordance with the site plan, elevation drawings and the shaded portion of the Ground / Basement Floor Plan prepared by Drew Laszlo, Architect, dated February 8<sup>o</sup>, 2018, marked as Exhibit 4 in these proceedings and attached to this decision ,. Any variances that may appear on these plans that are not listed in the written decision are not authorized.

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

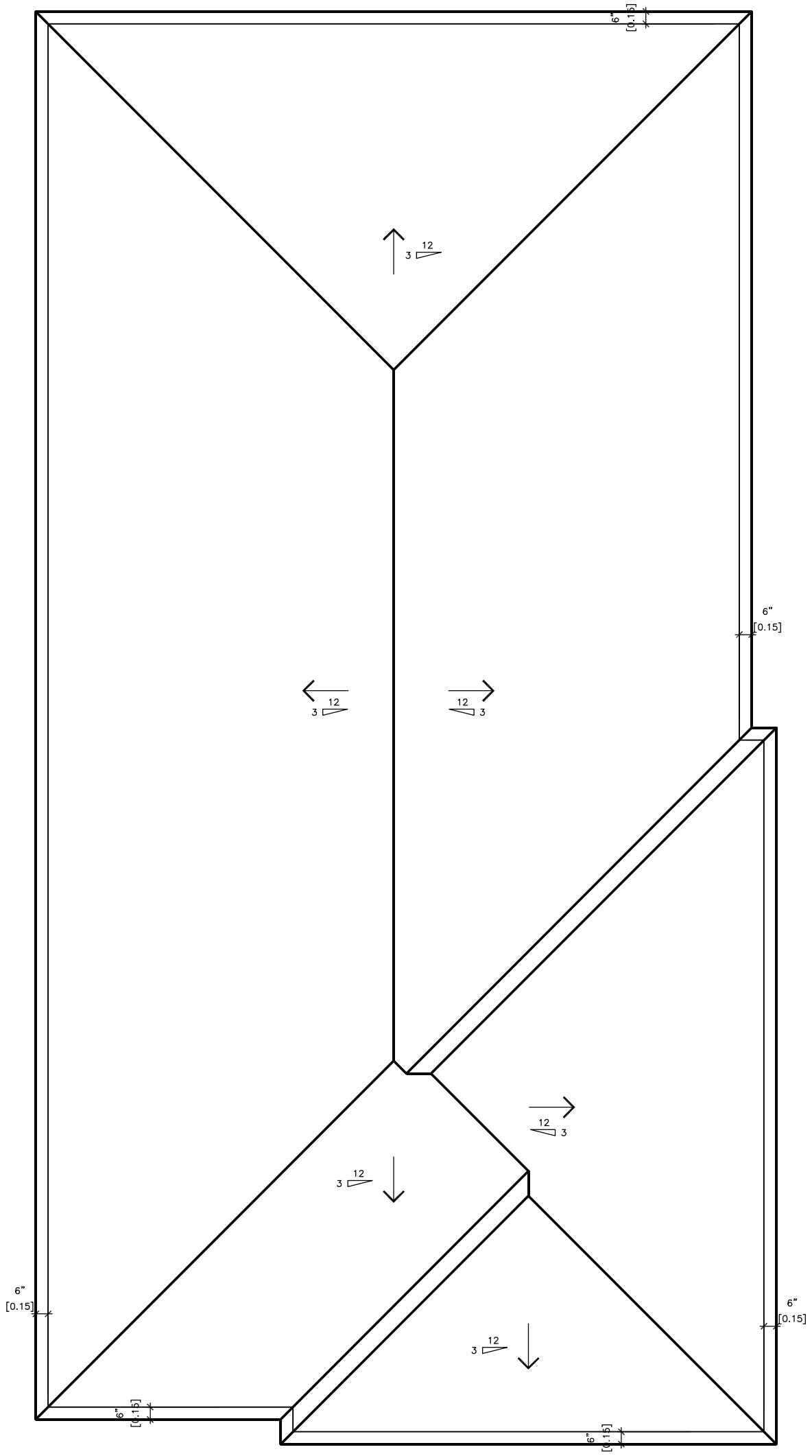




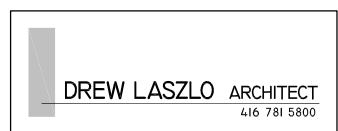


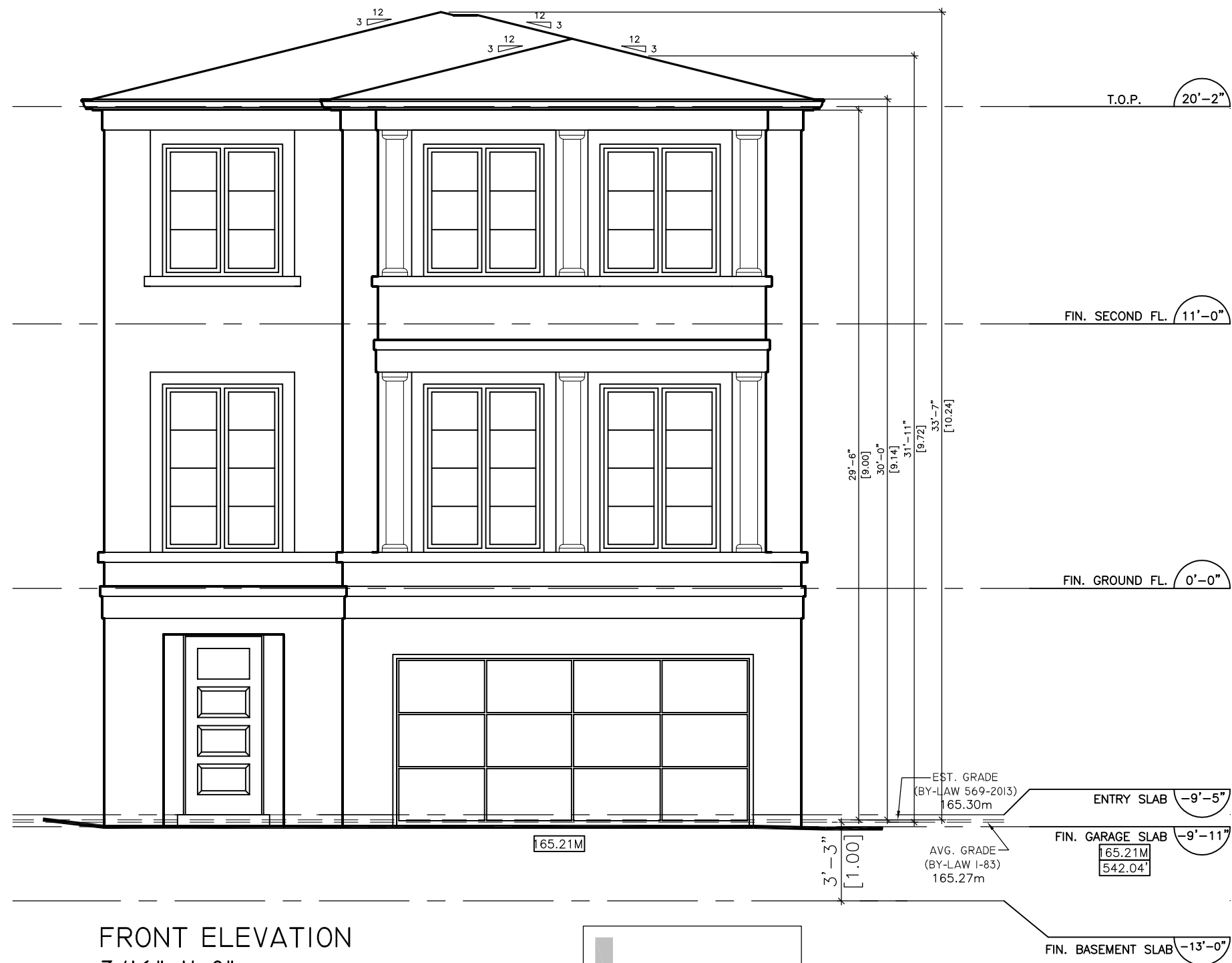






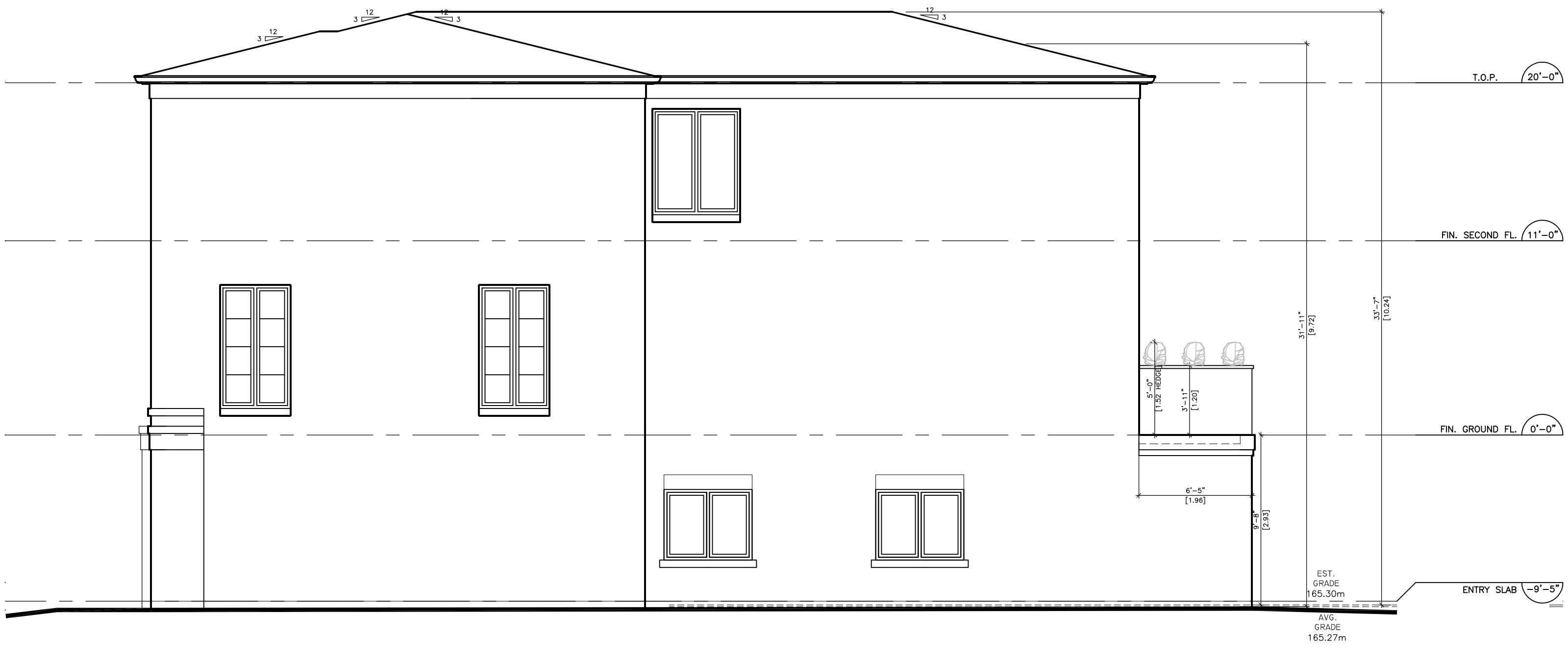
ROOF PLAN  
3/16"=1'-0"  
7 MENIN RD.





FRONT ELEVATION  
3/16"=1'-0"  
7 MENIN RD.

DREW LASZLO ARCHITECT  
416 781 5800



SIDE (SOUTH) ELEVATION  
3/16"=1'-0"  
7 MENIN RD.

DREW LASZLO ARCHITECT  
416 781 5800

EST. GRADE  
165.30m  
AVG. GRADE  
165.27m

T.O.P. 20'-0"  
FIN. SECOND FL. 11'-0"  
FIN. GROUND FL. 0'-0"  
ENTRY SLAB -9'-5"  
FIN. BASEMENT SLAB -13'-0"

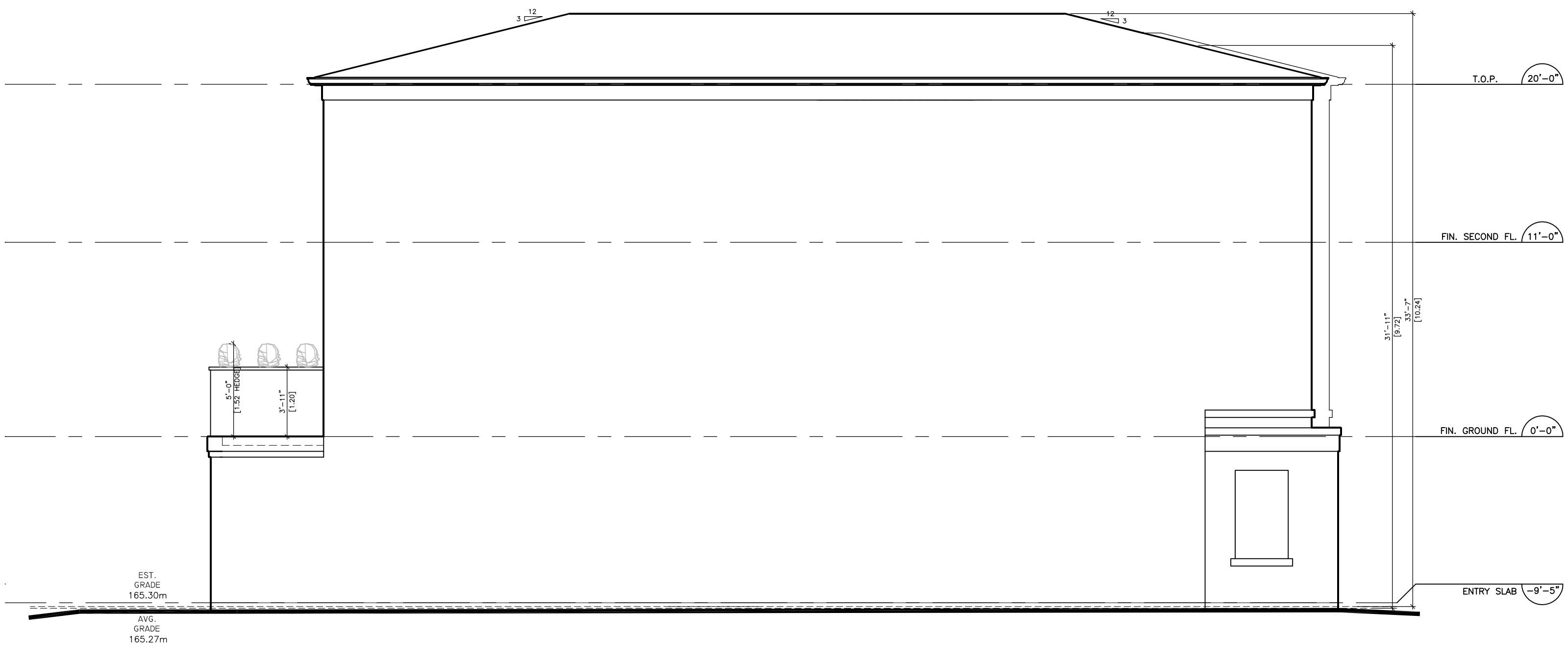


REAR ELEVATION  
3/16"=1'-0"  
7 MENIN RD.

DREW LASZLO ARCHITECT  
416 781 5800

T.O.P. 20'-0"  
FIN. SECOND FL. 11'-0"  
FIN. GROUND FL. 0'-0"  
EST. GRADE (BY-LAW 569-2013) 165.30m  
AVG. GRADE (BY-LAW 1-83) 165.27m  
ENTRY SLAB -9'-5"  
FIN. BASEMENT SLAB -13'-0"





SIDE (NORTH) ELEVATION  
 3/16"=1'-0"  
 7 MENIN RD.

DREW LASZLO ARCHITECT  
 416 781 5800

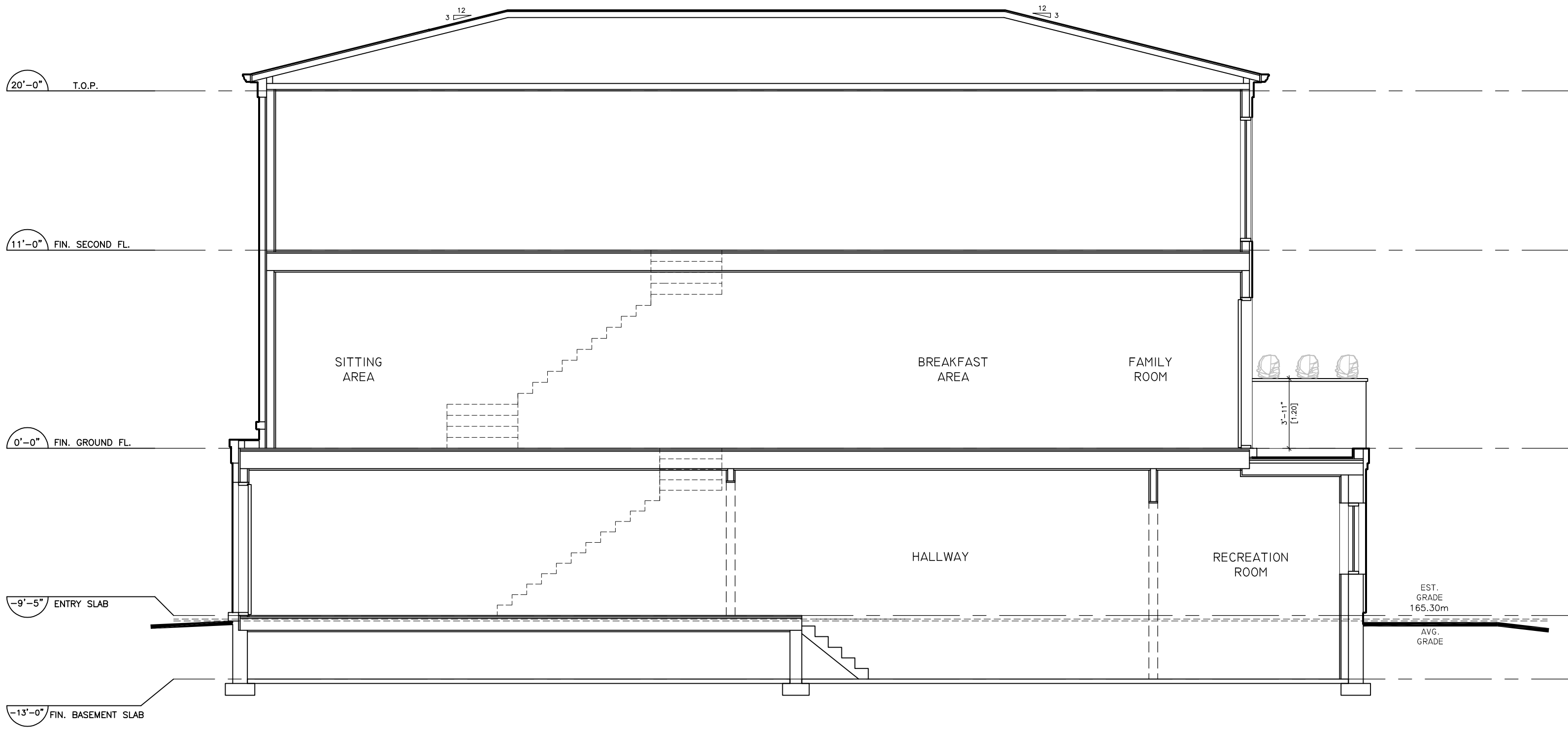
FIN. BASEMENT SLAB -13'-0"

ENTRY SLAB -9'-5"

FIN. GROUND FL. 0'-0"

FIN. SECOND FL. 11'-0"

T.O.P. 20'-0"



SIDE (NORTH) ELEVATION  
3/16"=1'-0"  
7 MENIN RD.