

DECISION AND ORDER

Decision Issue Date Thursday, July 19, 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): JEFFREY KOBRIC

Applicant: DREW LASZLO ARCHITECT

Property Address/Description: 360 ELM RD

Committee of Adjustment Case File Number: 17 269158 NNY 16 MV

TLAB Case File Number: **18 122907 S45 16 TLAB**

Hearing date: Thursday, July 05, 2018

DECISION DELIVERED BY S. Gopikrishna

APPEARANCES

Name	Role	Representative
DREW LASZLO ARCHITECT	Applicant	
Jeffrey Kobric	Appellant/Owner	Tae Ryuck
Tae Ryuck	Expert Witness	

INTRODUCTION AND BACKGROUND

Jeffrey Kobric is the owner of 360 Elm Avenue, which is located in Ward 16 of the City. He applied for variances to the Committee of Adjustment (COA) to construct a new two storey addition to the rear and front of the existing dwelling. The COA considered the application on 8 February, 2018, and approved all variances, with the exception of the variances related to FSI. The COA changed, and approved the variances at 0.85 x the area of the lot, a reduction from Mr. Kobric's request for 0.939 x the area of the lot.

Mr. Kobrick appealed the decision to the Toronto Local Appeal Body (TLAB) on 28 February, 2018.

The TLAB scheduled an oral hearing of the Appeal on 5 July, 2018.

MATTERS IN ISSUE

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

1. Chapter 10.10.40.10.(2), By-law No. 569-2013

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

The proposed height of the front exterior main walls is 9.02 m.

2. Chapter 10.10.40.10.(2), By-law No. 569-2013

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

The proposed height of the rear exterior main walls is 9.02 m.

3. Chapter 10.10.40.10.(7), By-law No. 569-2013

Floor levels within an addition, extension or enlargement to the rear of a residential building may not be height than the uppermost floor level in the existing building.

The proposed floor level will be higher than the existing uppermost floor level.

4. Chapter 10.10.40.40.(1), By-law No. 569-2013

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is 0.939 times the area of the lot.

5. Chapter 10.10.40.70.(1), By-law No. 569-2013

The required minimum front yard setback is 4.45 m.

The proposed front yard setback is 3.95 m.

6. Chapter 10.10.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 0.9 m,

The proposed north side yard setback is 0.83 m.

7. Chapter 10.10.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 0.9 m,

The proposed south side yard setback is 0.10 m.

8. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 50% of the front yard must be landscaping.

The proposed front yard landscaping area is 48.7%.

9. Chapter 10.5.50.10.(1), By-law No. 569-2013

A minimum of 75% of the required front yard landscaping must be soft landscaping.

The proposed front yard soft landscaping area is 71%.

10. Section 6(3) Part I, By-law No. 438-86

The permitted maximum floor space index is 0.6 times the area of the lot.

The proposed floor space index is 0.939 times the area of the lot.

11. Section 6(3) Part II 2(II), By-law No. 438-86

The by-law requires a building on an inside lot to have a minimum front lot line setback of 4.45 m. The proposed front lot line setback is 3.95 m.

12. Section 6(3) Part II 8 D(I), By-law No. 438-86

The by-law limits the height of an uncovered platform which projects into the required setbacks to a maximum of 1.2 m above grade. The proposed height is 2.63 m above grade.

13. Section 6(3) Part II 8 D, By-law No. 438-86

The by-law limits the projection of an uncovered platform into the required setbacks to a maximum of 2.5 m from the rear wall.

The proposed uncovered platform projects 3.05 m from the rear wall.

14. Section 6(3) Part IV 3(II), By-law No. 438-86

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line. The proposed integral garage is below grade.

JURISDICTION

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

Mr. Jeffrey Kobrick and Ms. Elysia Kobrick were presented for the hearing, and were represented by Mr. Tae Ryuck, land use planner and Expert Witness. There was no Party or Participant in opposition to the Appeal.

Mr. Ryuck introduced himself and reviewed his resume and work history briefly. I qualified him as an Expert Witness upon his request for qualification.

According to Mr. Ryuck, the study area was bounded by Brooke Avenue to the north, Joicey Boulevard to the east, Melrose Avenue to the south, and Avenue Road to the

west, because this is what the residents experience in their daily lives. The Subject Site is located in a stable residential neighbourhood, consisting of single-detached dwellings of 1 to 3 storeys, but there is regeneration in the form of redevelopment and additions.

Mr. Ryuck then described the statistics of the Subject Site- Lot Area of 292.61 sq. m, Lot Frontage of 9.14 m, Lot Depth of 32 m, Front Yard Setback – 3.95 m. and Side Yard Setbacks of 0.10m to the south and 0.83m to the north. He also added that the Subject Site is relatively flat and there are no major features that would constrain the proposed building. The proposed detached dwelling was described by Mr. Ryuck, has an area of 274.73 sq.m and an FSI of 0.939 x Lot Area, a proposed building height of 10 m and proposed building length of 17m, and an integral garage with a positive slope.

Mr. Ryuck then briefly discussed the compatibility between the proposal and the Provincial Policy Statement (PPS), and the Growth Plan for the Golden Horseshoe (Growth Plan). He pointed out that given the granularity of the proposal, none of the issues rose to the level of provincial concern. Mr. Ryuck asserted that the proposal supported and promoted the prescribed requirements of the PPS generically, namely optimizing the efficient use of land, resources and infrastructure, including existing and planned public transportation, redevelopment and intensification, and mixed uses at densities that make efficient use of land, resources and infrastructure.

Mr. Ryuck then discussed the compatibility between the proposal and the Official Plan (OP). He pointed out that that Section 4.1 of the OP states that "new development respect and reinforce the general physical patterns in a Neighbourhood" and stated that the key tests to determine appropriate development appear in Policy 5 of Section 4.1. He argued that a proposed development can be deemed to have complied with the OP if it did not "offend" any of the characteristics detailed in Section 4.5.1. He said that of the characteristics mentioned in 4.5.1, criteria (a) and (b), pertaining to patterns of streets and configuration of lots, are not applicable.

Discussing criteria (c) i.e. heights, massing and scale, Mr. Ryuck stressed that this criterion spoke to deployment of built form on the lot, and that the proposal was consistent with this criterion because it is reflective of the urban fabric characteristic of the neighbourhood, consistent with adjacent dwellings on the street, and integrates seamlessly into the neighbourhood, from a streetscape perspective. He added that the properties along Elm Road have shorter lot depths than the properties located on the east/west streets, and that the need to have a home comparable to its neighbours resulted in a higher FSI number of 0.939 x Lot Area. He also added that the COA had approved FSIs comparable to, and even higher than what was being requested, within the study area. Discussing compatibility with criteria (d) and (e), which respect prevailing building types and setbacks from the street, Mr. Ryuck said that the proposed house is a single detached dwelling, consistent in form and massing with other homes in the area context, and that the setbacks met the desired uniformity of setback of buildings from the street. He then pointed out (g) and (f), which refer to special landscape features and heritage buildings respectively, are not applicable in this instance.

Based on these discussions, Mr. Ryuck concluded that the proposal met the intention of the Official Policy.

On the matter of compatibility with the Zoning By-law, Mr. Ryuck pointed out that the subject site is zoned R (f7.5; d0.6) (x604) in the City Wide Zoning Bylaw No. 569-2013 and (R2 Z0.6) in the Toronto Zoning By-law No. 438-86. Mr. Ryuck pointed out that the General intent of a zoning by-law is to ensure compatible built form within an area, and to ensure no unacceptable adverse impacts on streetscape or on adjacent properties. Mr. Ryuck then reviewed each group of variances such as the Floor Space Index, Front and side yard setbacks, height of uncovered platform and integral below grade garage and matched them to their performance standards as discussed in the zoning by-laws. For example, the purpose of the Floor Space Index is to ensure that the built form is consistent with what exists in the neighbourhood. Given that there is no proposal for a building form that changes physical character of the neighbourhood, and that comparable FSIs have been approved for comparable lot areas, the variances for the FSI satisfy the intent and purpose of the zoning by-law.

Mr. Ryuck then referred to the front and side yard setbacks, and pointed out that the proposed setback variances are not the result of the proposed addition, but relate to the existing building. According to Mr. Ryuck, the front yard setback will essentially square off the front elevation and maintain the existing front yard setback. At the rear, the setback of 1.03m exceeded the by-law requirement of 0.9m along the south, and maintains the existing side yard to the north. Given that the side yard setbacks maintain a consistent streetscape and built form within the current context, Mr. Ryuck concluded that the variances related to the side yard setbacks met the intention of the Zoning By-Law.

Mr Ryuck then discussed the projection and height of the proposed rear platform. He asserted that the proposed rear platform is reflective of similar construction in the area and pointed to the neighbouring property of 358 Elm as a similar rear platform in terms of height and length. Mr. Ryuck claimed that the proposed building would not result in any impacts such as views, massing and privacy that are not already experienced within this neighbourhood context.

Mr. Ryuck then discussed the variance related to the Integral Below Grade Garage and stated that this was a technical variance, because the “established grade”, used as the origin for measurement of heights, was lower than the actual grade. The proposal complied with the need to have a positive slope from the street to the garage entrance notwithstanding the measurement of established grade.

Based on this discussion, Mr. Ryuck concluded that the proposal complied with the intention and purpose of the Zoning By-laws.

Coming to the test of “desirable and appropriate development”, Mr. Ryuck stated that the proposed 2 storey addition would result in a dwelling, of a size and type, that is within the character of the neighbourhood. The building does not cast shadows, or

have overlooks uncharacteristic of the existing context. He asserted that the proposed addition does not create any material changes with respect to privacy, views and enjoyment currently enjoyed by the adjacent neighbours. Stating that question of appropriateness of the new development is dependent on the fit between the proposal and its integration within the existing area context, he said that the building would not detract in any way from the neighbourhood, and consequently constitutes desirable and appropriate development.

Discussing the test of the variances being minor, Mr. Ryuck stated that variances may be considered not to be minor for two reasons, namely, that the variance is large, numerically speaking, or that it is too important to be considered minor. Mr. Ryuck pointed out there is always some impact to be expected in a dense, well developed urban setting, such as the community in which the Subject Property is located. However, the impact, according to Mr. Ryuck, is not one that creates adverse overlooks, shadows, setbacks, massing and height that is uncharacteristic of the streetscape. Based on this, Mr. Ryuck concluded that the proposal met the test of “variances being minor”.

Based on these conclusions, Mr. Ryuck said that the proposal satisfied all the four tests under Section 45(1) of the Planning Act, as well as higher level provincial policies. He requested that the proposal be approved.

I asked Mr. Ryuck about his referring to the proposal’s “not creating impacts that don’t already exist”, and asked him what those impacts would be. Mr. Ryuck stated that he referred to impacts such as massing, shadows, views and privacy issue. He reiterated that the shadows would not be significant, and that the overall height of the building complied with the zoning by-law. Mr. Ryuck asserted that the view from the deck onto the property at the back, will not be different from what already exists, and consequently causes no new impact.

I pointed out to Mr. Ryuck, his frequent use of the expression “not non-compatible” in various contexts, and concluding that the proposal was consequently compatible with a given standard on this basis, and asked him if his planning perspective was that “two negatives” (i.e. not non- compatible) made a positive (i.e. compatible). Mr. Ryuck stated that the zoning by-law was rigid and had “hard” numerical standards for performance. He then stated that while a given variance may not comply with the stated standard, the impact was compatible, or comparable to, what was intended as a result of the rigid standard. On the basis of such comparability, he stated that in a dense urban setting, not non-compatible was comparable to being compatible.

I thanked Mr. Ryuck, and stated that I would reserve my decision.

At this stage, Mr. Korbel, the owner, whispered something into Mr. Ryuck’s ear. Mr. Ryuck stated that the Committee of Adjustment had imposed a condition, asking “to provide permanent opaque screening or fencing along the northern and southern edge of the proposed rear deck; with a minimum height of 1.5 metres from the floor of the

deck “, and that this would be complied with by the Appellants, who did not have an issue with fulfilling the stated condition. I thanked Mr. Korbel, stated that I would include this in my decision, and thanked everybody again.

ANALYSIS, FINDINGS, REASONS

This appeal has been caused by the COA’s changing the FSI related variances in the original application, and approving the changed FSI related variances along with all the other variances.

There were no Parties nor Participants, in opposition to the Appeal. which also. Mr. Ryuck’s uncontroverted expert evidence is accepted, and is deemed to have satisfied all the 4 tests under Section 45(1) as well as higher level provincial policies.

In passing, I note the interesting nuance in the discussion of the test of being minor, which is usually linked to an adverse impact. Mr. Ryuck’s evidence focused on the impact being no different than *what is already experienced* (my emphasis). While one can discuss the test of what is already experienced in the case of an existing but non-compliant situation, it is interesting to extrapolate the use of such an argument to discussing a hitherto non-existent variance. While such expressions may be true of dense urban settings where houses are in close proximity, there is the need for a larger discussion to determine if the test itself can be re-interpreted to mean that a proposed change can be considered minor if the impact is comparable to what is already existent in the community, without a clear enunciation of where “existent” would rank in the spectrum between no impact and clear adverse impact.

However, the answer to this question is not mandatory to arrive at a conclusion, to specifically rule on this Appeal, in part, because of the recommended condition by the COA.

I was impressed with, Mr. Jeffrey Kobric’s candour , as expressed through reminding Mr. Tyuck of the condition imposed by the COA, requiring the Appellants to provide permanent opaque screening or fencing along the northern and southern edge of the proposed rear deck; with a minimum height of 1.5 metres from the floor of the deck. This condition, certainly addresses the concerns in the areas of privacy an views through mitigation, even if the stated impact is an existing condition, as per Mr. Tyuck’s evidence. I take this opportunity to commend Mr. Kobric on his forthrightness.

The Appeal is therefore allowed in its entirety , and all the variances are approved subject to two conditions, the first being the site specific construction, or creation of a privacy screen, while the second is a standard condition imposed on all builds requiring them to comply substantially with the submitted Site Plan, identified as Exhibit 4 in the evidence heard by the Panel.

DECISION AND ORDER

1. The Appeal respecting 360 Elm Avenue is allowed, and the decision of the Committee of Adjustment dated 8 February, 2018, is set aside.

2. All the variances listed below are approved:

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

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The proposed uncovered platform projects 3.05 m from the rear wall.

14. Section 6(3) Part IV 3(II), By-law No. 438-86

The by-law does not permit an integral garage in a building where the floor level of the garage is located below grade and the vehicle access to the garage is located in a wall facing the front lot line. The proposed integral garage is below grade.

3. The following conditions are imposed:

1. The Appellants are required to provide permanent opaque screening or fencing along the northern and southern edge of the proposed rear deck; with a minimum height of 1.5 metres from the floor of the deck

2. The building needs to be built in substantial compliance with the drawing and elevations provided in Exhibit 4, as submitted to the Panel at the hearing on 5 July, 2018. The Plans are attached to this Decision.

So orders the Toronto Local Appeal Body.

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

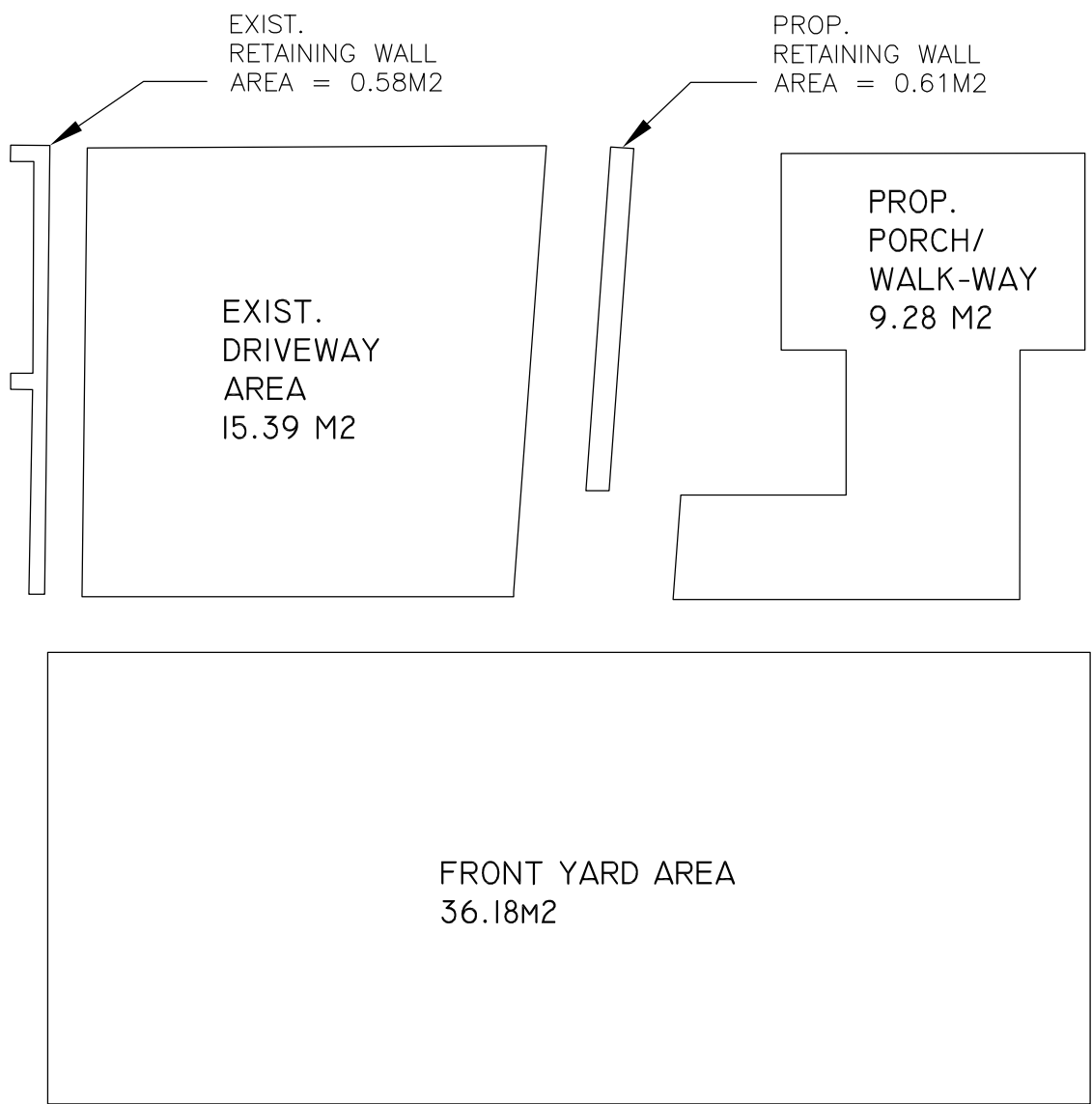
RECEIVED

By Toronto Local Appeal Body at 2:56 pm, Apr 27, 2018

SITE STATISTICS

360 ELM RD.
PART OF LOT 124
REGISTERED PLAN 496E
CITY OF TORONTO

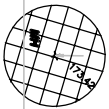
	<u>PROPOSED</u>
ZONE:	RD (f7.5; d0.6)(x604)
LOT AREA:	3149.72 S.F. [292.61]
LOT FRONTAGE:	29.98' [9.14]
BUILDING HEIGHT:	±32.81' [10.00]/±29.56' [9.01]
LENGTH OF DWELLING:	55.75' [17.00]
SETBACKS:	
FRONT	14.60' [4.45]
REAR	36.22' [11.04]
SIDE (SOUTH)	0.33' [0.10]
SIDE (NORTH)	2.66' [0.80]
GROSS FLOOR AREA:	
GROUND FLOOR	1,489.23 S.F. [138.34]
SECOND FLOOR	1,468.03 S.F. [136.38]
TOTAL GFA	2,957.26 S.F. [274.73] (93.88%)
LANDSCAPING:	57.46%
SOFT LANDSCAPING:	49.63%



LANDSCAPING 20.79M2 (57.46%)
SOFT LANDSCAPING 10.32M2 (49.63%)

LANDSCAPE AREAS
3/16"=1'-0"
360 ELM RD.





PLAN OF SURVEY AND TOPOGRAPHY OF

REGISTERED PLAN 496E

0 5 10 15 METRES



J. H. Gelbloom Surveying Limited

Ontario Land Surveyor

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J.

the written permission of J. H. Gellbloom Surveying Limited is Strictly Prohibited.

the written permission of J. H. Gelbloom Surveying Limited is Strictly Prohibited

SURVEYOR'S REAL PROPERTY REPORT - PART 2

REGISTERED EASEMENTS AND/OR RIGHT-OF-WAY

None

note the location of the fences along the northern and southern limits of the subject property.

Note the location of the Eaves along the Southerly limit of the Subject Property. Note the location of the Patio and the Stone Walkway along the Northerly limit of the Subject Property.

Survey Monument Set

- | | |
|-------|---|
| IB | Iron Bar |
| (OU) | Origin Unknown |
| (MRN) | MRN Surveying Ltd., O.L.S. |
| (SW) | Speight and VanNostrand, O.L.S. |
| P1 | Registered Plan 496E |
| P2 | Plan of Survey by MRN Surveying Ltd., O.L.S., dated July 5, 2 |
| P3 | Plan of Survey by MRN Surveying Ltd., O.L.S., dated July 5, 2 |
| P4 | O.L.S., dated Dec. 29, 1937 |
| P5 | Plan of Survey by G. Reuben, O.L.S., dated 1983 |
| D1 | dated August 3, 2012 |
| D2 | Instrument No. C4374682 |
| BF | Instrument No. C4198018 |
| DEC. | Board Fence |
| CON. | Deciduous |
| FF | Continuous |
| MRW | Finished Floor |
| UP | Wood Retaining Wall |
| MH | Utility Pole |
| N | Maintenance Hole |
| E | Denotes North |
| S | Denotes South |
| W | Denotes East |
| YD. | Denotes West |
| | Hydrant |

Elevations are Referred to the City of Toronto Benchmark No. 12219740080, having an Elevation of 174.927 m.

THIS REPORT can be updated by this office, however NO ADDITIONAL PRINTS of this ORIGINAL REPORT will be issued, subsequent to the DATE OF CERTIFICATION.

This REPORT was prepared for Jeffrey Kobic and the undersigned accepts no responsibility for use by other parties.

Distances shown on this plan are in metres and can be converted to feet by dividing by 0.3048.

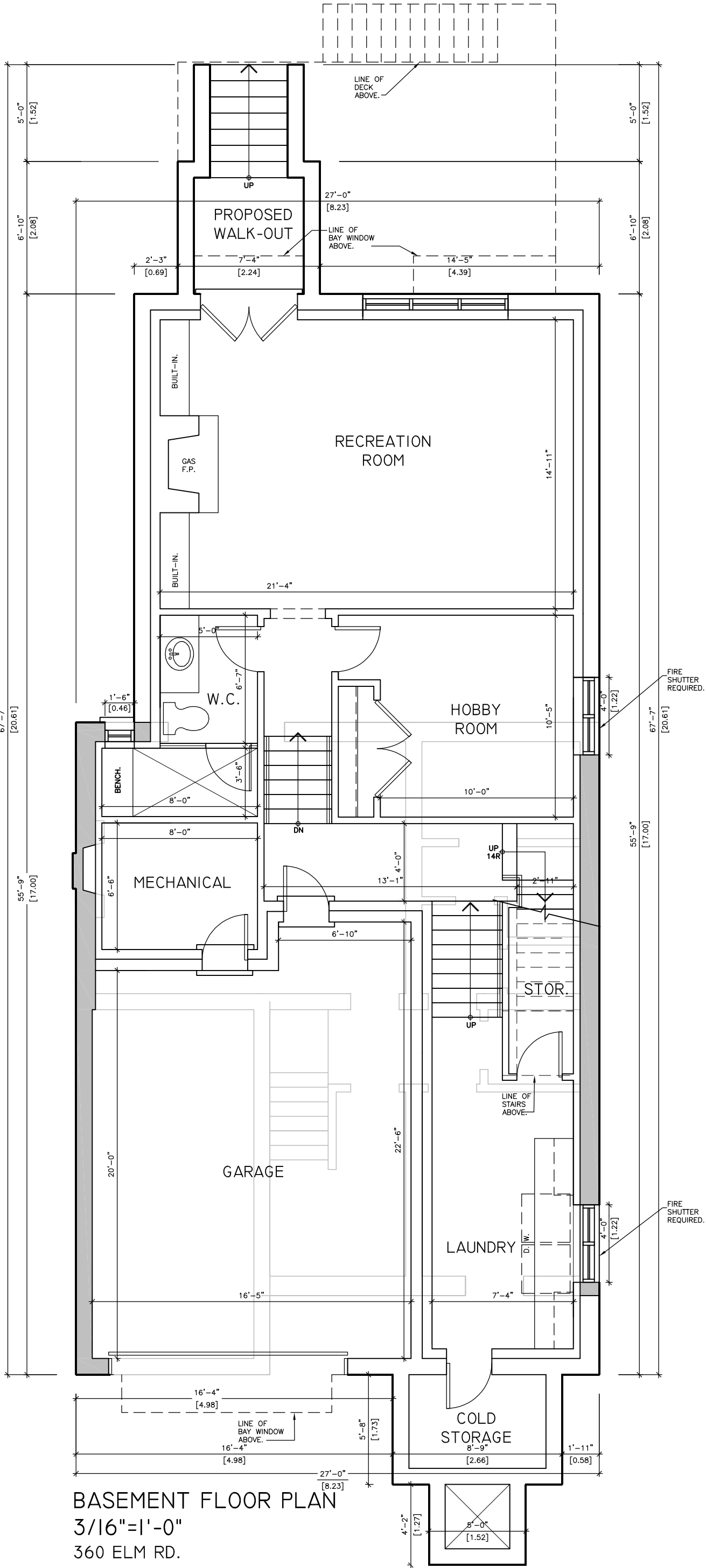
Bearings are Astronomic, and are Referred to the Westerly limit of Elm Road as shown on Reg'd Plan 496E, having a Bearing of N 16° 25' 00" W.

1: This survey and plan are correct and in accordance with the Surveys Act, the Surveyors Act, and the Regulations made under them.

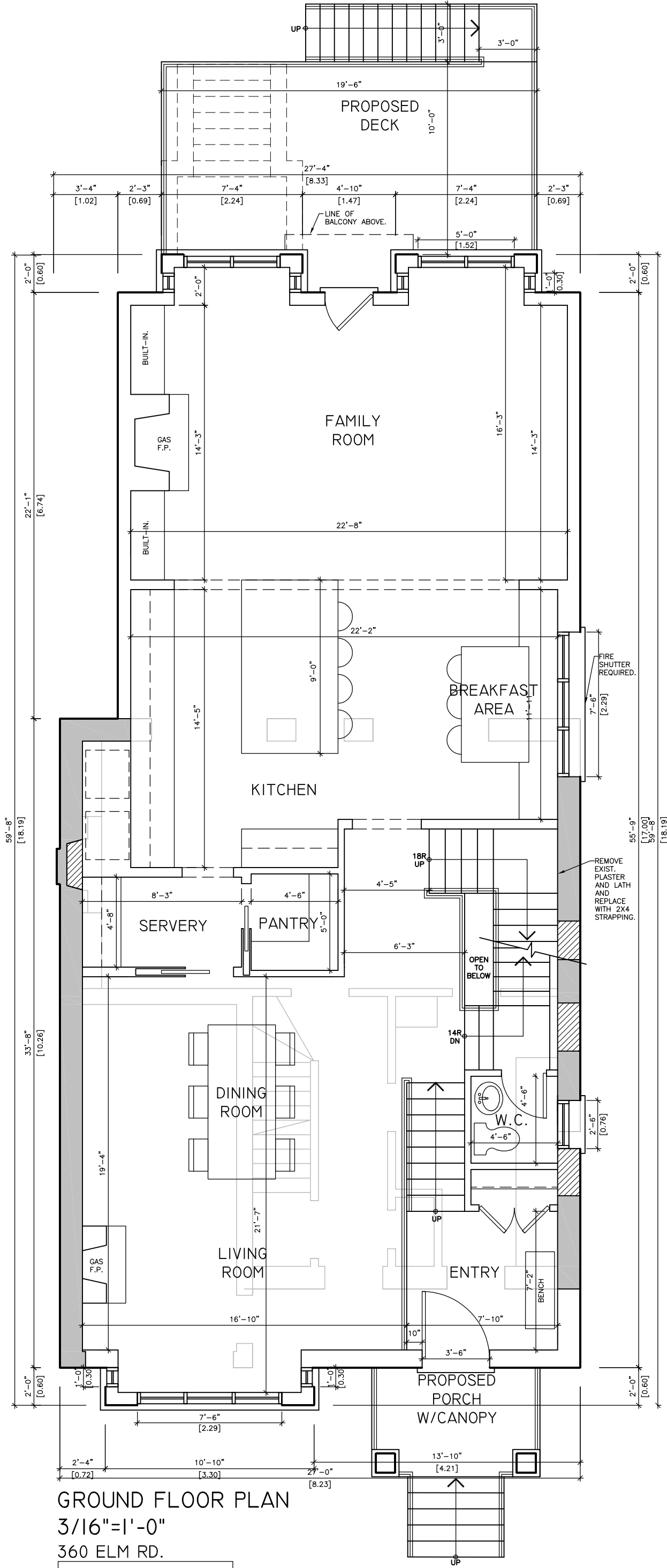
Date	Ashraf Rizk, O.L.S.		
	PARTY CHIEF: M.N./D.L.	DRAIN BY: M.K.	CHECKED BY: A.R.
			PROJECT: 12-099



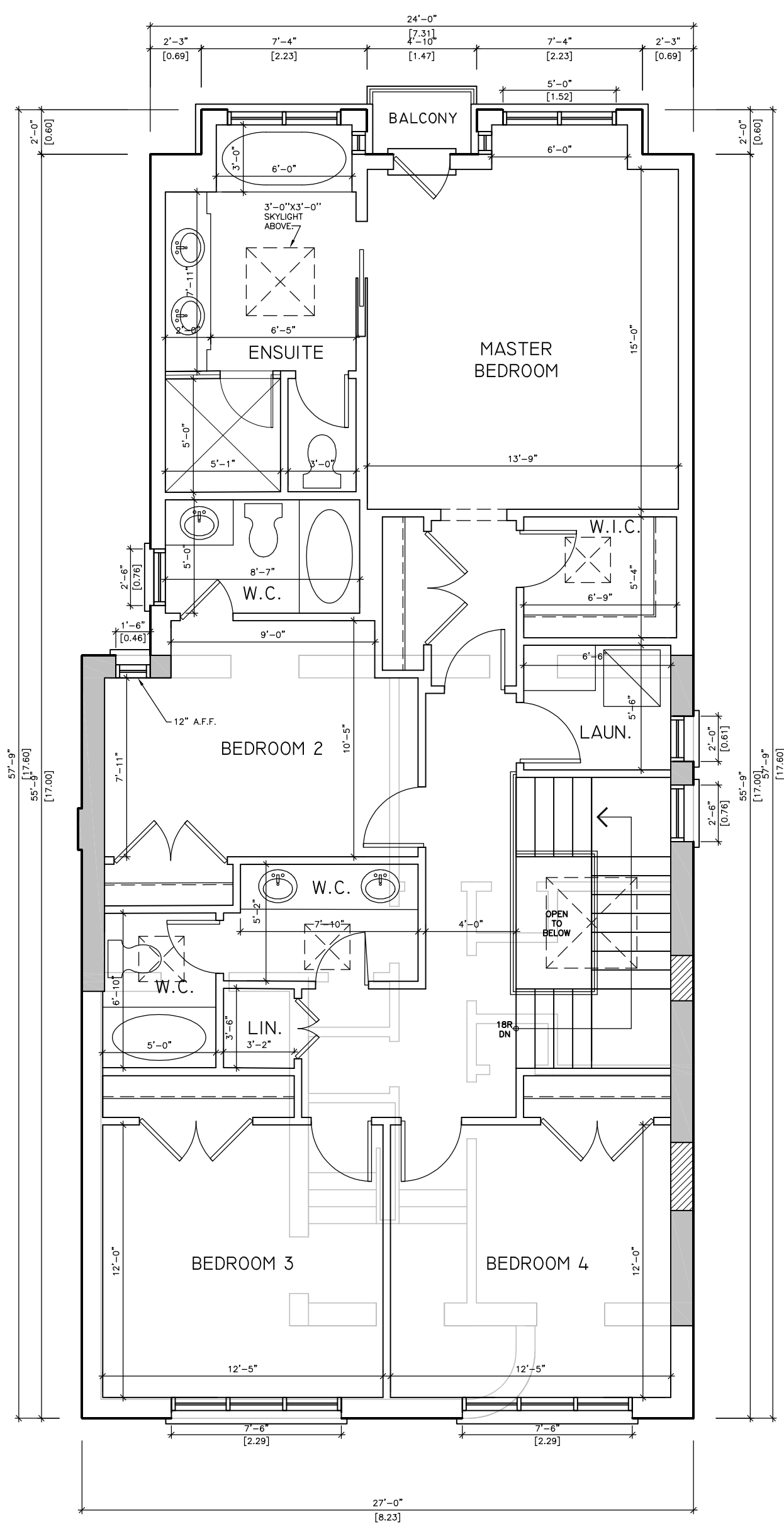
J. H. Gelbloom Surveying Limited
Ontario Land Surveyor
4476 Morden Road, Unit 102, Oakville, Ont., L6K 3W4
office@jhsurveying.ca
Phone: (905) 338-8210 Fax: (905) 338-9446



BASEMENT FLOOR PLAN
3/16"=1'-0"
360 ELM RD.

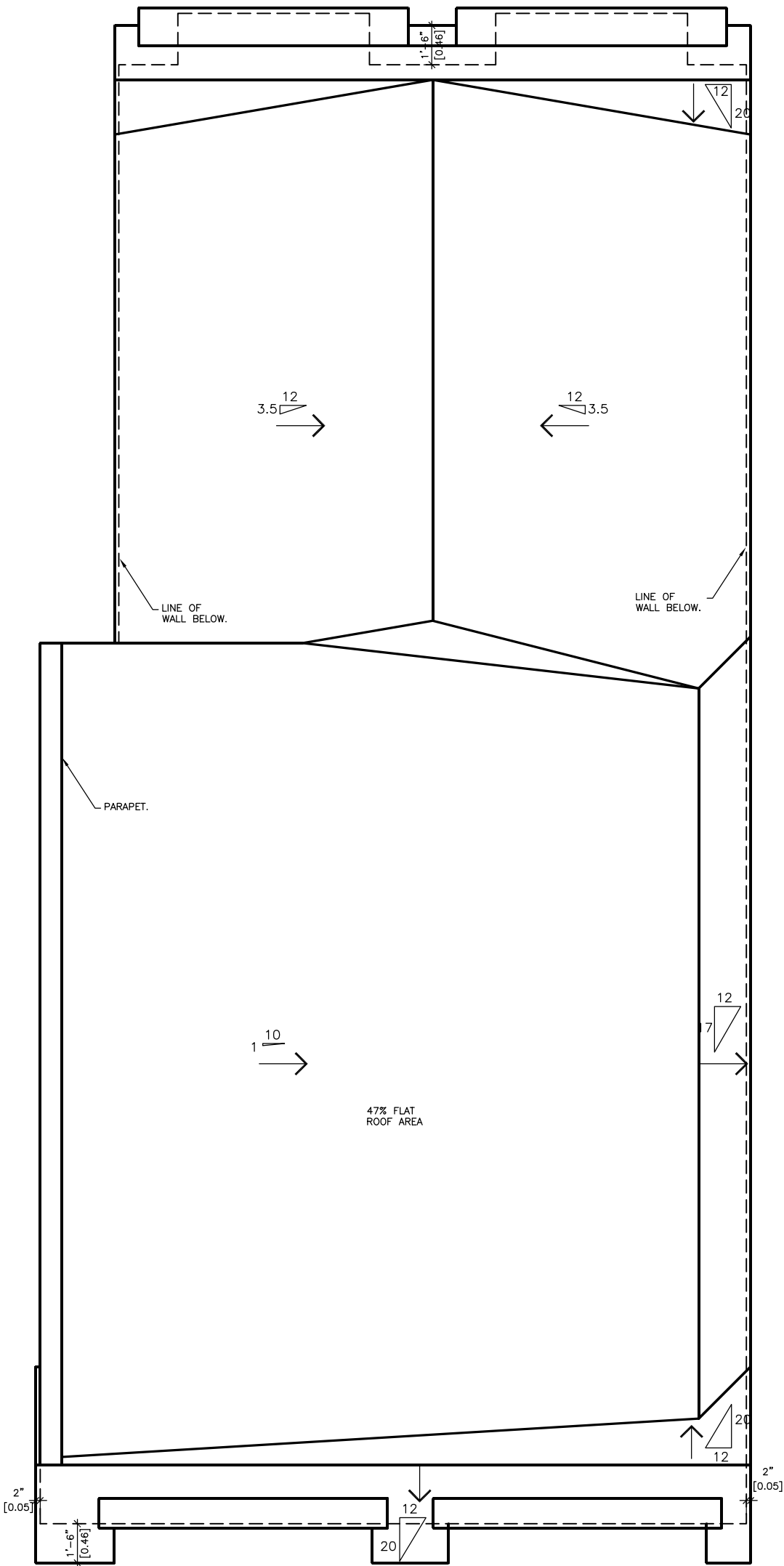


GROUND FLOOR PLAN
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360 ELM RD.

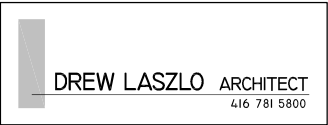


SECOND FLOOR PLAN
3/16"=1'-0"
360 ELM RD.

DREW LASZLO ARCHITECT
416 781 5800

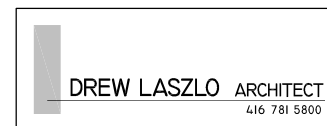


ROOF PLAN
3/16"=1'-0"
360 ELM RD.





FRONT ELEVATION
3/16"=1'-0"
360 ELM RD.

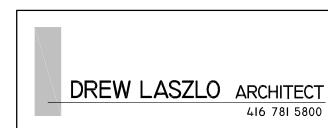


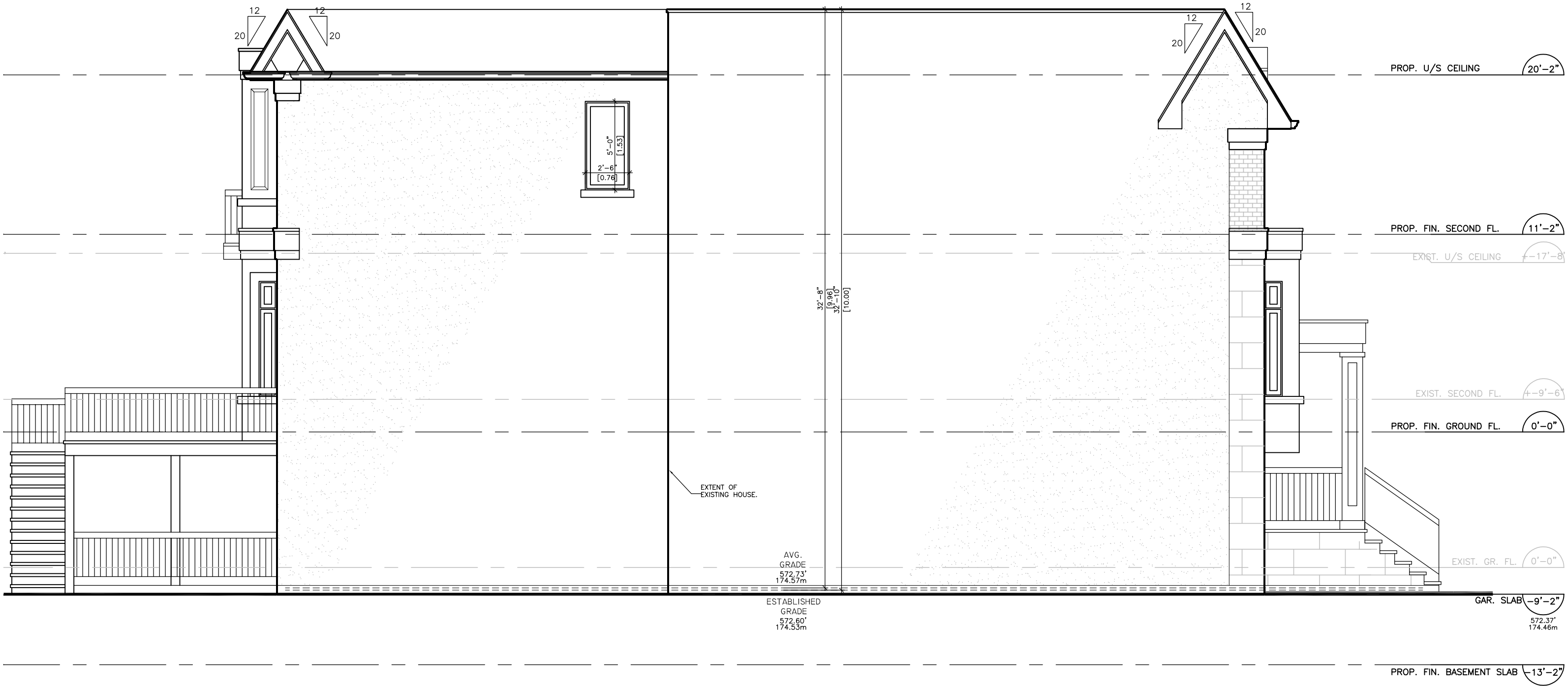


$\frac{3}{16}" = 1'-0"$
360 ELM RD.



REAR ELEVATION
3/16"=1'-0"
360 ELM RD.





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

