

DECISION AND ORDER

Decision Issue Date Wednesday, August 08, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): NATALIE CIURA

Applicant: RE PLACEMENT DESIGN

Property Address/Description: 585-587 MILLWOOD RD

Committee of Adjustment Case File Number: 17 143209 STE 22 MV, 17 144215 STE 22 MV

TLAB Case File Number: **18 131465 S45 22 TLAB, 18 131469 S45 22 TLAB**

Hearing date: Monday, July 30, 2018

DECISION DELIVERED BY T. Yao

APPEARANCES

Name	Role	Representative
Natalie Ciura, Zbigniew Ciura, Noreen Ciura	Owners/Appellants	Amber Stewart
Martin Rendl	Expert Witness	
SERRA (South Eglinton Ratepayers and Residents Association)	Participant	Allan Kivi
Lee Simpson (571 Millwood Rd.)	Participant	
Greg Coleman (571 Millwood Rd)	Participant	

INTRODUCTION

The Ciura family owns two semidetached houses (i.e., both halves) in the Eglinton-Bayview area (Photo 1 below). They originally wished to demolish them and construct two new detached houses with integral single car garages. They applied for variances and were “caught” by recently passed zoning by-laws (the Davisville Village By-laws) prohibiting integral garages. In fact, this is one of the first proposals that consider the Davisville By-laws.

The Ciuras could have either continued with the original intention or abandoned the idea of integral garages. They chose the latter.

Photo 1. 585 and 587 Millwood Rd. (the subject two properties)



BACKGROUND

The properties are on the south side of Millwood Rd.; Number 585 being the half to the west (left in Photo 1) and no. 587 being the half to the right. This block of Millwood is between McCord Rd to the west and Cleveland St to the east. Each lot is about 7.72 m (25.32 feet) wide. The characteristic built form, developed from pre-WW2 times, is a two storey building, with porches on the outer ends, and mutual driveways shared with an adjacent semi.

Initially the Ciuras proposed two detached two-storey houses, then two semis, and then two detached houses again. Throughout, the design included integral garages. The local Councillor, SERRA and City staff were involved, and there was one mediation session. On Dec 8, 2017, the Davisville Village zoning By-laws 1425-2017 and 1426-2017 were passed. On February 28, 2018, the Committee of Adjustment refused the application because of the recent passage of the Davisville Village By-laws, and the Ciuras appealed. Subsequent to the Committee refusal, the Ciuras removed the integral garages, lowered the height of the two detached buildings and proposed a parking pad for each of the two buildings. These amendments were circulated to the City and SERRA more than 30 days before the hearing as required, and now SERRA no longer opposes the requested variances.

MATTERS IN ISSUE

The TLAB Panel must be satisfied that the variances meet the four tests under s. 45(1) of the *Planning 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.

The most important of the four in this case is whether the parking pad variances meet the intent of the Davisville Village Bylaws. If they do, and assuming these by-laws implement the Official Plan, then it is likely that this application conforms to and also meets the general intent of the Official Plan and the other statutory tests under the *Planning Act*.

EVIDENCE

The sole evidence at this hearing was that of the Ciuras' planner, Martin Rendl, whom I qualified to give opinion evidence in the area of land use planning. Mr. Kivi and others appeared on behalf of SERRA. I was not entirely clear as to SERRA's position, but I gather that it was one of "no objection". SERRA was supportive of the Davisville Village By-laws; and two interested participants also attended but did not give evidence or take part in the hearing.

Mr. Kivi did not offer evidence or make final submissions. He asked clarifying questions consisting of whether Mr. Rendl's acceptance of payment would influence this ability to give objective planning advice, the definition of "intensify" under the Provincial Policy Statement, whether this application should be under one file number or two and whether the prevailing building type on Millwood was semidetached or detached.

I think that one purpose of SERRA's attendance was to highlight its close cooperation with the City in the development of the Davisville Village study and By-laws and I acknowledge this important work.

ANALYSIS, FINDINGS, REASONS

Photo 2. 208, 206, 204 Manor Road



The houses in Photograph 2 (above) shows the issue created by integral garages. Number 208 Manor Road (to the left), shows the “parking pad” solution. Number 206 Manor Road, (centre), shows the original built form. Number 204 Manor Road, to the right, shows the “building height” of a house with an integral garage, compared to number 206. Mr. Rendl’s data base does not reveal whether Number 204 Manor Road received variances, but since the Ciuras’ original proposal shows they sought a building height variance of 9.352 m (maximum of 9 m permitted), and a front exterior main wall height of 9.12 m sought (7 m permitted) when their design included an integral garage. I infer that this solution often requires those or similar variances. The Ciuras withdrew these variance requests and replaced them with parking pad variances, to be discussed below.

OMB commentary on this issue

Because of the change of plans towards the parking pad solution, Mr. Rendl has not collected decisions of the OMB and Committee granting variances for houses with integral garages, but only for the specific type of variances the Ciuras seek, such as a floor space index, roof eave projections, etc. It is obvious from looking around the neighbourhood that height variances have been granted for integral garages and at least one OMB decision acknowledges this is “not particularly attractive”, while still approving the variances.

425 Belsize Drive (PI140888, Dec. 2014, J. de P. Seaborn)

Par 8 The OP clearly contemplates the type of redevelopment proposed. The variances sought under [569-2013] are typical for the type of demolition and construction

contemplated. More importantly, there is no variance required for height under [569-2013]¹. **The requirement under the By-law is part of the problem with the design². The integral garages are not particularly attractive; however, they are the desirable solution in the context of new in-fill housing.** The impacts are minor.

Par 10 Finally, it would clearly be useful if the City re-visited its policies in respect of its parking and garage requirement. On the facts of this case, **permitting parking in front of the proposed house** would have allowed for a different design that may have been more closely aligned with the neighbour's view of an acceptable in-fill project. As the correspondence from Councillor Matlow indicates, "a two-storey home with an integral garage is much larger, and higher than the traditional form of the two storey homes that have existed for many decades in the neighbourhood". Councillor Matlow recommended that the zoning standards should be re-visited in respect of these integral garages and given the position of the parties in this case, such a study would be helpful. In light, however, of similar approvals given in the neighbourhood and relying on the opinion of Mr. Swinton [the owner's urban planner], I find that the variances do not result in impact and should be authorized. The form of the new house proposed is not popular. However, at the end of the day the Board has to apply the four tests under the Act and consider both the nature of the variances and their magnitude. In this instance, the appeal should be allowed and the variances authorized. [my bold]

Davisville Village By-laws

The Davisville Village By-laws attempt to give greater specificity to the Official Plan test of whether new development respects and reinforces the existing physical character of the neighbourhood. In the opinion of staff and residents, redevelopment with integral garages produced a built form that was taller than the existing physical character of neighbourhood. Because no appeal has been made, the Davisville Village By-laws are conclusively deemed to be in conformity with the Official Plan.

It is apparent from the study that Davisville Village By-laws were crafted to be consistent with the Provincial Policy Statement and conform to the Growth Plan as required by s. 3(5) of the *Planning Act*. The study's authors placed reliance on "Strong, healthy communities" policies as well as "sense of place" policies 1.7.1. d) ³. Also considered were the Young-Eglinton Secondary Area Plan and OPA 320. Because the application was modified after passage of the Davisville Village By-laws to comply with them I find they comply with the prohibition against integral garages. By complying with the specific zoning by-laws developed in conjunction with the higher order Provincial documents and the other planning documents mentioned in this paragraph, I find this application also complies with those documents.

¹ The applicant also sought a variance for the rear deck height of 2.62 m (8.6 feet), 1.2 m permitted (4 feet) and for exterior main walls (7.53 m vs. 7.0 m). This was not discussed in the decision.

² I believe Vice Chair de P. Seaborn is referring to the requirement that each dwelling unit provide one parking space

³ encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*;

The key provision of the Official Plan is of course Chapter 2.3.1, “Healthy Neighbourhoods”, which indicates:

A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.
(p 5)

Also, to be considered is the passage often cited in TLAB decisions: OP s 4.5.1

Development criteria in Policy 5 state that development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, in particular:

c. Height, massing, scale and **dwelling type** of nearby residential properties; [my bold]

My job is to be independent and I must consider all aspects of the Official Plan, for example the dwelling type, which the proposal now changes from semis to detached. The semi solution would make better use of two feet four inches between the two properties and eliminate the roof projection variances. I asked Mr. Rendl why the Ciuras, being owners of both halves and having once considered building semis, did not reconstruct their new building as semis with parking pads. He answered that both solutions would comply with the policies and, “either one would work.” I find and will explain in greater detail in the next sections, that the Ciuras have complied with the intent of the Davisville Village By-laws and so the application should not be refused.

I must also consider the provisions in the Official Plan that state that a neighbourhood that is “frozen in time” is not part of its vision⁴. There are many blocks in the South Eglinton area whose facades, like those of the subject property, have scarcely changed since construction. Change and renewal and sometimes intensification in appropriate locations are also important policies in the Official Plan.

Application of the Davisville Village By-laws

The operative words of the Davisville Village By-laws are:

1. No person shall, within [the area from Eglinton to Merton, Yonge to Bayview] 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, semidetached triplex or triplex:

⁴ The two sentences preceding the “cornerstone” sentence in 4.5.1 of the Official Plan are: “By focusing most new residential development in the Centres, along the Avenues, and in other strategic locations, we can preserve the shape and feel of our neighbourhoods. However, these neighbourhoods will not stay frozen in time. The neighbourhoods where we grew up and now raise our children help shape the adults and the society we become. Some physical change will occur over time **as enhancements, additions and infill housing occurs on individual sites.**” [my bold]

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- (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. . .

The companion By-law 1426-2017 regulates the height of rear decks, which Mr. Kivi called “very important”. Since the by-laws prohibit the integral garage solution, they must contemplate that some homeowners will have cars, and some may wish to avail themselves of the parking pad solution. **The Davisville Village By-laws did not, however, relieve against the prohibition against front yard parking.** According to the study, some owners (for example, those owning a corner lot, those opting for street parking) may seek other solutions, so the study's authors intended that those seeking a parking pad needed to undergo the minor variance process before approval can be given to begin construction.

Table 1. Variances sought for 585 and 587 Millwood			
		Required	Proposed
Variances from new city-wide harmonized By-law 569-2013⁵			
1	Parking in relation to front wall	One parking space behind main front wall	No parking space behind main front wall
2	Maximum floor space index	.6 times area of lot	.69 times area of lot
3	Front yard landscaping	Minimum 50% of front yard	40% of front yard
4	Building Depth	17 m	17.94 m
5	Roof eave projection	Only allowed if at least .3 m from lot line	0.1 m from lot line
6	Front yard parking	No parking space in front yard	One parking space in front yard

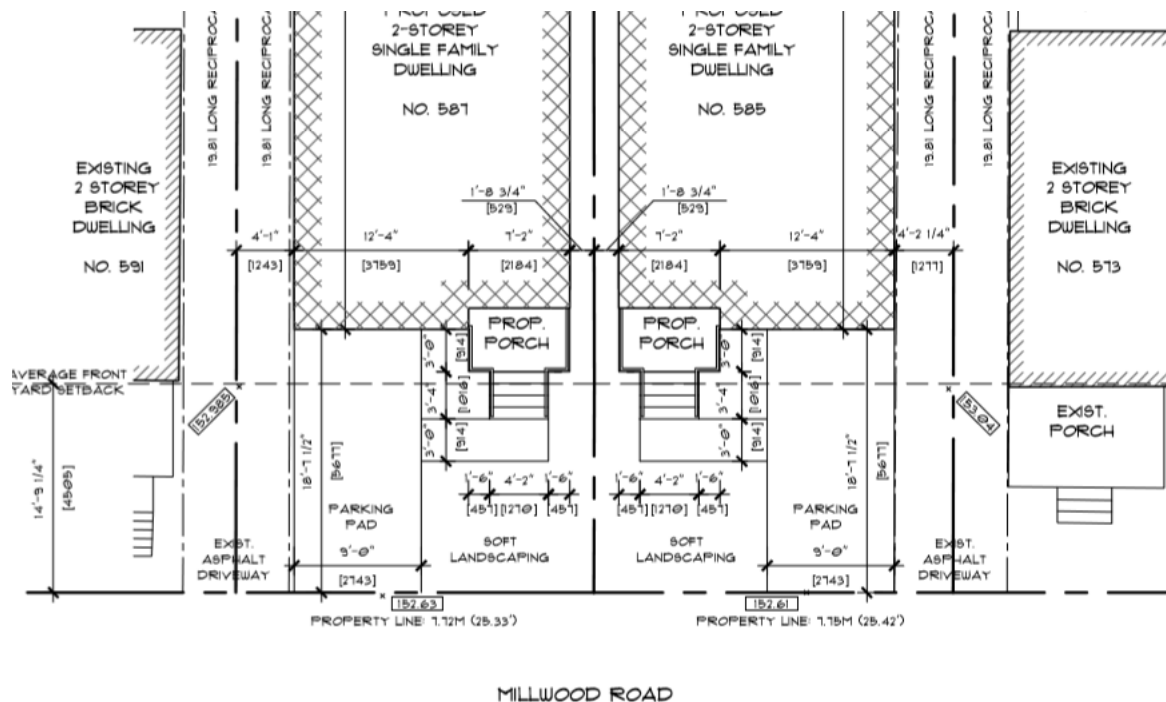
⁵ Sufficient progress has been made in disposing of appeals variances to 438-86, the former City of Toronto zoning by-law do not have to be considered.

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Variances 1, 3 and 6 directly arise from the deletion of the integral garages and replacement with a parking pad solution. The planning study's authors noted front yard parking is a part of the neighbourhood character⁶ and they discussed the parking pad solution in the following passage:

Where more desirable parking options are not viable and front yard parking is part of the prevailing character, a minor variance for a parking pad in the front yard may be appropriate provided it is: **located entirely on the lot; is carefully designed to limit the amount of curb cut required; and, is constructed with permeable materials.** This would allow owners to meet the zoning by-law requirement of one vehicle parking space per lot. [my bold]

In the Ciuras' case, Mr. Rendl testified that the front spaces were entirely on the lot, were carefully designed and minimized the curb cut. The outboard ends of the two lots have an approximately 4-foot hard surface for maneuvering and that must be maintained as a right of way for the adjacent neighbour. Inboard of this space are two legal parking spaces of 2.6 x 5.6 m each⁷. The pad is constructed with permeable materials.



⁶ The Davisville study also stated, "In many instances, properties within the [Area] have mutual driveways that are too narrow for vehicles to navigate, do not have rear laneways, and are not on a corner. As a result, front yard parking is not part of the prevailing character in many parts of the [Area]."

⁷ 200.5.1.10(2) of 569-2013

Soft landscaping

“Landscaping” means plantings but also includes hard surfaces such as the walkway leading to the front door. Thus the “non-soft” landscaping consists of the drive, parking space and porch and stairs (27 m²) while the landscaping (walkway and plants) is 18.12 m or 40% of the front yard. Mr. Rendl considered the deviation from the required 50% to be minor. The by-law requires that 75% total “landscaping” is to be composed of planting, and the Ciuras exceed this minimum, being 86%. The front yard landscaping is deficient because of the need to respect the neighbour’s mutual right of way and parking pad and it was Mr. Rendl’s conclusion that it was an appropriate balance between hard and soft surfaces and is consistent with the intent of the Davisville Village By-laws.

Floor Space Index

The Ciuras seek .69 floor space index (.6 permitted.). I looked at a subset of other FSI variances granted by the Committee of Adjustment in the years roughly 2010 to present, taking similar east west streets (Belsize etc.) with addresses mid-way between Mount Pleasant and Bayview. I did not choose the north south streets because of the predominance of corner lots on those streets.

Table 2. Sampling of Floor Space Index decisions		
Block examined	COA decisions	Floor space index (569-2013)
489-585 Millwood	355 Millwood	1.04
289-373 Belsize	292, 310, 333, 343½, 365, 371 Belsize	.70 to .78
419-513 Davisville	No COA decisions	
295 -465 Manor Road	391, 410, 453 Manor Road	.82 - .92
468- 603 Balliol	368, 486 Balliol	.794 - .84

It may be seen that all the above decisions granted FSI's greater than what the Ciuras seek.

Building Depth

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The building length is less than the maximum permitted. Building depth is measured from the limit of the front wall and one of the drawbacks of the parking pad solution is that the front wall now has to be moved back, out of line with the adjoining front walls. I find this is minor and maintains the general intent of the Davisville Village By-laws.

Conclusion

I find the variances satisfy the statutory tests set out in the *Planning Act*, are consistent with and conform to higher level policies, and are minor and appropriate for the desirable development of the land.

DECISION AND ORDER

I authorize the variances set out in Table 1 for each of 585 and 587 Millwood Ave on condition that:

1. The proposed dwelling shall be constructed substantially in accordance with the Site Plan and Elevations prepared by REPLACEMENT DESIGN INC., dated April 20, 2018.
2. The owner shall comply with the City of Toronto Municipal Code, Chapter 813, Article II (City-owned trees) and Article III (Privately-owned trees), to the satisfaction of the Urban Forestry Department.

X

Ted Yao

Ted Yao
Panel Chair, Toronto Local Appeal Body
Signed by: Ted Yao

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T: 416.436.8355

AMBERSTEWARTLAW.COM

Refer to: amber@amberstewartlaw.com

May 31, 2018

Delivered by Regular Mail

Delivered to all Recipients on the
Committee of Adjustment Notice List

Dear Neighbour:

**Re: 585 and 587 Millwood Road
Notice of Revised Proposal**

RECEIVED

By TLAB at 8:51 am, Jul 30, 2018

I am the lawyer for Natalie Ciura, the owner of 585 and 587 Millwood Road ("the Subject Property"). As you know, Ms. Ciura filed applications for minor variances to permit the redevelopment of the Subject Property.

The original application was refused by the Committee of Adjustment ("the Committee") at a hearing on February 28, 2018. A number of neighbours wrote to the City and/or attended the hearing to express concerns about the proposal.

Ms. Ciura appealed the Committee's Decisions to the Toronto Local Appeal Body ("the TLAB"), and a hearing is scheduled for **July 30, 2018**.

Since filing the appeal, Ms. Ciura has made a number of changes to the proposal in an effort to address the concerns raised by the City of Toronto and by members of the community. The purpose of this letter is to provide you with notice of the revised application. Please note that all applicable documents have also been submitted to the TLAB and are available on the Application Information Centre at the following link:

<https://www.toronto.ca/city-government/planning-development/application-information-centre/>

The key changes to the design are as follows:

- The building type has been converted back to single detached dwellings.
- In order to respond to the recent adoption of the Davisville Village Zoning By-law Amendments, which remove the as-of-right permission for integral garages within the neighbourhood, the buildings have been revised to convert the building type back to single detached dwellings, and to eliminate the integral garages.
- Parking will instead be provided on front yard parking pads, located entirely on private property so that parking pad permits are not required under Chapter 918 of the Municipal Code.

- The footprint of the proposed dwellings has been shifted towards the rear of the lots, so as to provide a front yard setback of 5.677 m. This will facilitate parking pads that can be located entirely within private property.
- The integral garages have been removed, eliminating the split level floor plan and reducing the overall dwelling heights to 8.6 m. The rear decks are also located less than 1.2 m above grade.

The following variances are now required for each lot:

1. Proposed 0 parking spaces behind the main front wall whereas 1 parking space behind the main front wall is required;
2. Proposed floor space index of 0.69 times the lot area (197.2 m²) (for 585 Millwood) and 0.70 times the lot area (197.2 m²) (for 587 Millwood), whereas 0.60 times the lot area is permitted;
3. Proposed front yard landscaping of 40%, whereas 50% is required;
4. Proposed building depth of 17.94 m, whereas 17.0 m is permitted;
5. Roof eaves projection to a distance of 0.1 m from the lot lines between the two lots, whereas 0.3 m is required; and
6. Proposed parking space located in a front yard, whereas a space may not be located in a front yard abutting a street.

We are enclosing the revised Site Plan and Elevations, which we will be asking the TLAB to approve on July 30, 2018.

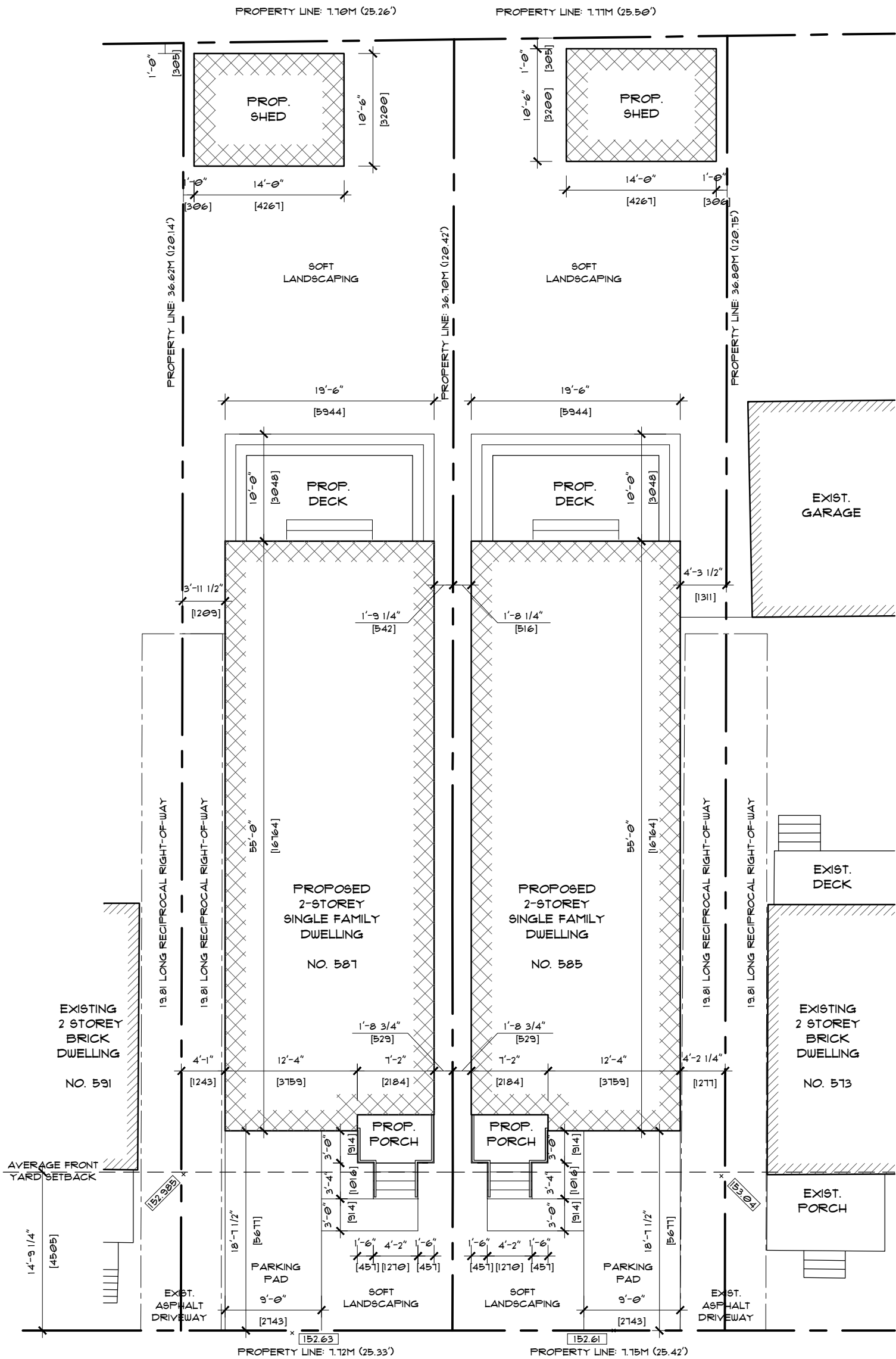
We would welcome the chance to speak with you before the hearing if you have any questions or concerns. You may contact me directly at 416-436-8355, or by email at amber@amberstewartlaw.com. You may also contact Martin Rendl, land use planning consultant for my clients, at 416-291-6902, or by email at mrendl@inforamp.net.

Best regards,

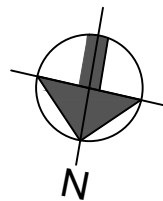


Amber Stewart

Encls.



INFORMATION OBTAINED FROM PART OF
LOTS 163 & 164 REGISTERED PLAN 590-E
CITY OF TORONTO PREPARED BY LAND
SURVEY GROUP.



1 SITE PLAN - PROPOSED
Z2 SCALE: 3/32"=1'-0"

PRINTS AND SPECIFICATIONS SHALL NOT BE REPRODUCED WITHOUT THE PERMISSION OF THE DESIGNER. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. IF THERE ARE ANY DIMENSIONS, DETAILS OR DESIGN INTENT THAT CANNOT BE DETERMINED FROM THE DRAWINGS, THE DESIGNER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH FABRICATION AND/OR CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED.

re: placement
DESIGN INC.

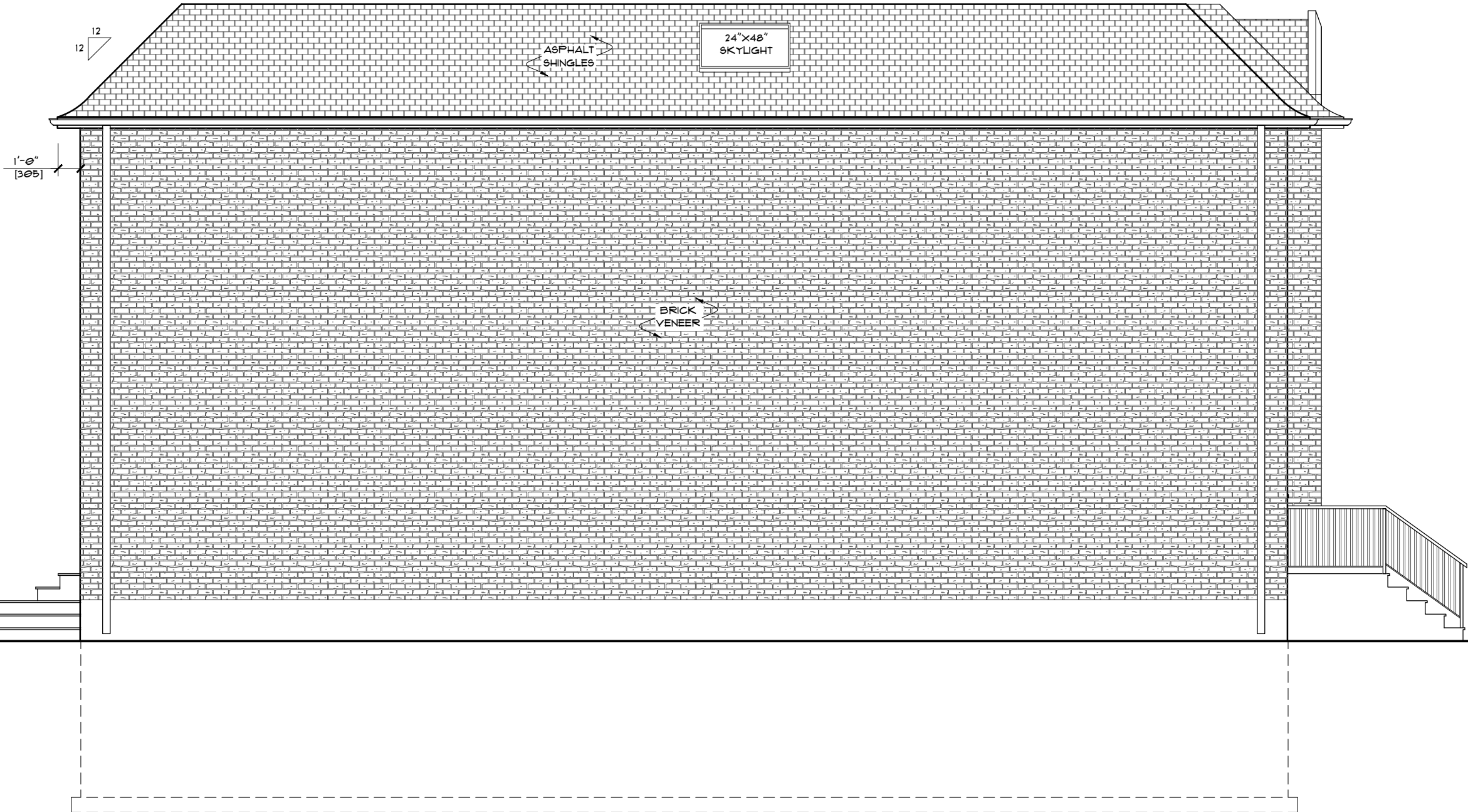
915 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-1435
REPLACEMENTDESIGN.COM

Project:
585 MILLWOOD RD.
TORONTO ON.
PROPOSED DWELLING
PROJECT NUMBER: 16-131

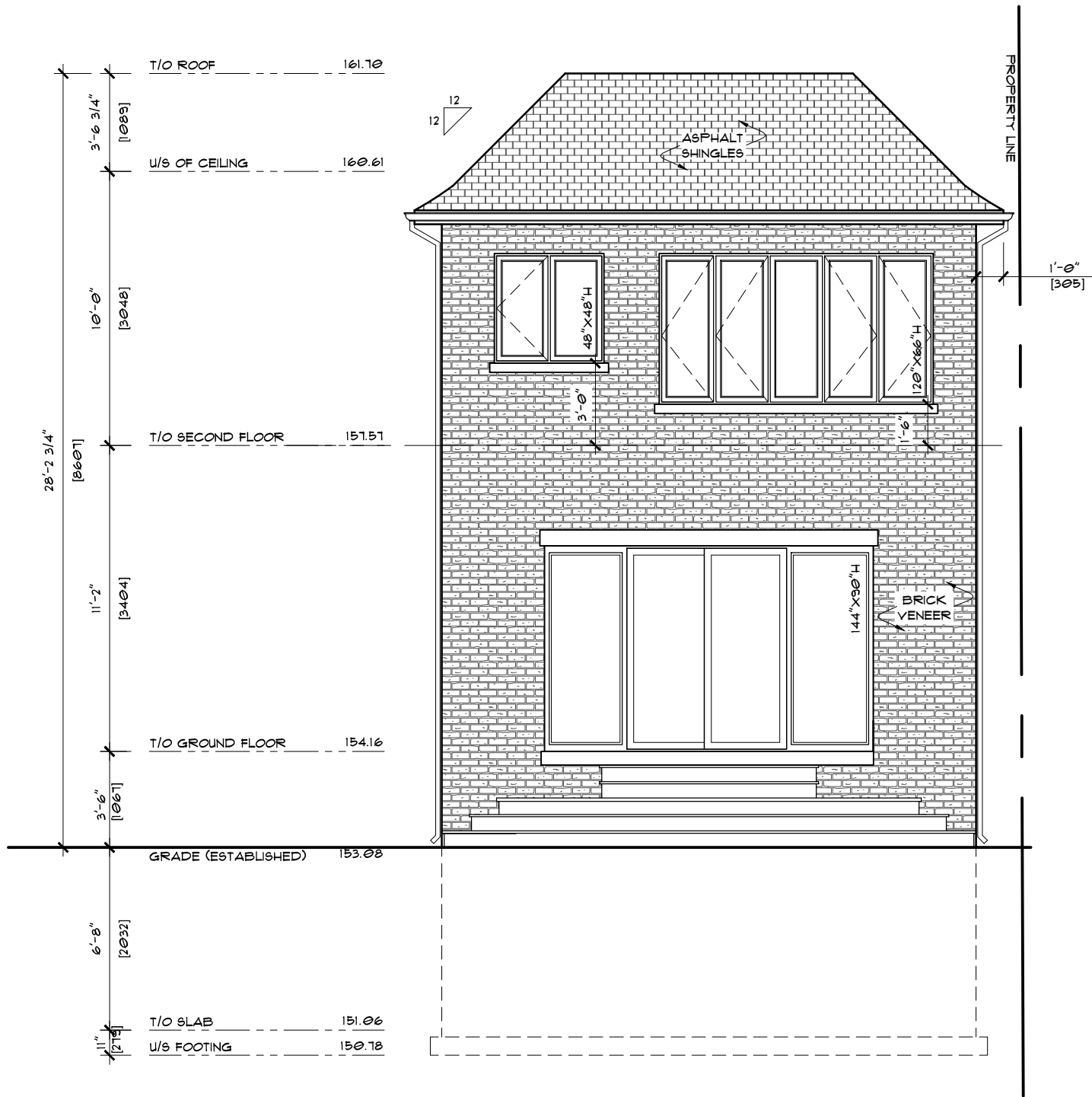
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20 APRIL 18
Drawing No:

Z2

Date: 20 APRIL 18
Drawing No: 78



1 EAST ELEVATION - PROPOSED
ZB SCALE: 3/16" = 1'-0"



1 SOUTH ELEVATION - PROPOSED
Z9 SCALE: 3/16" = 1'-0"

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Project:
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PROPOSED DWELLING
PROJECT NUMBER: 16-137

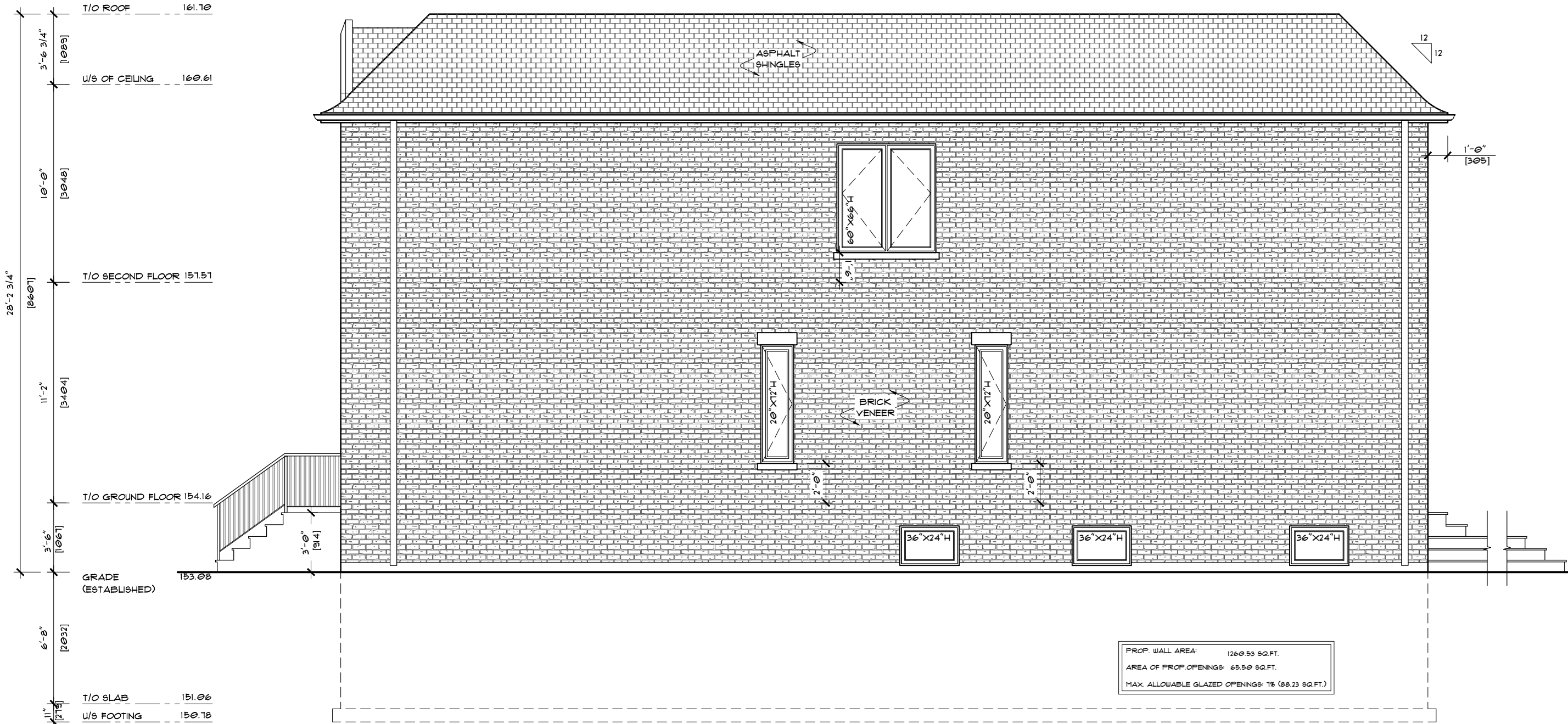
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20 APRIL 18
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Z9

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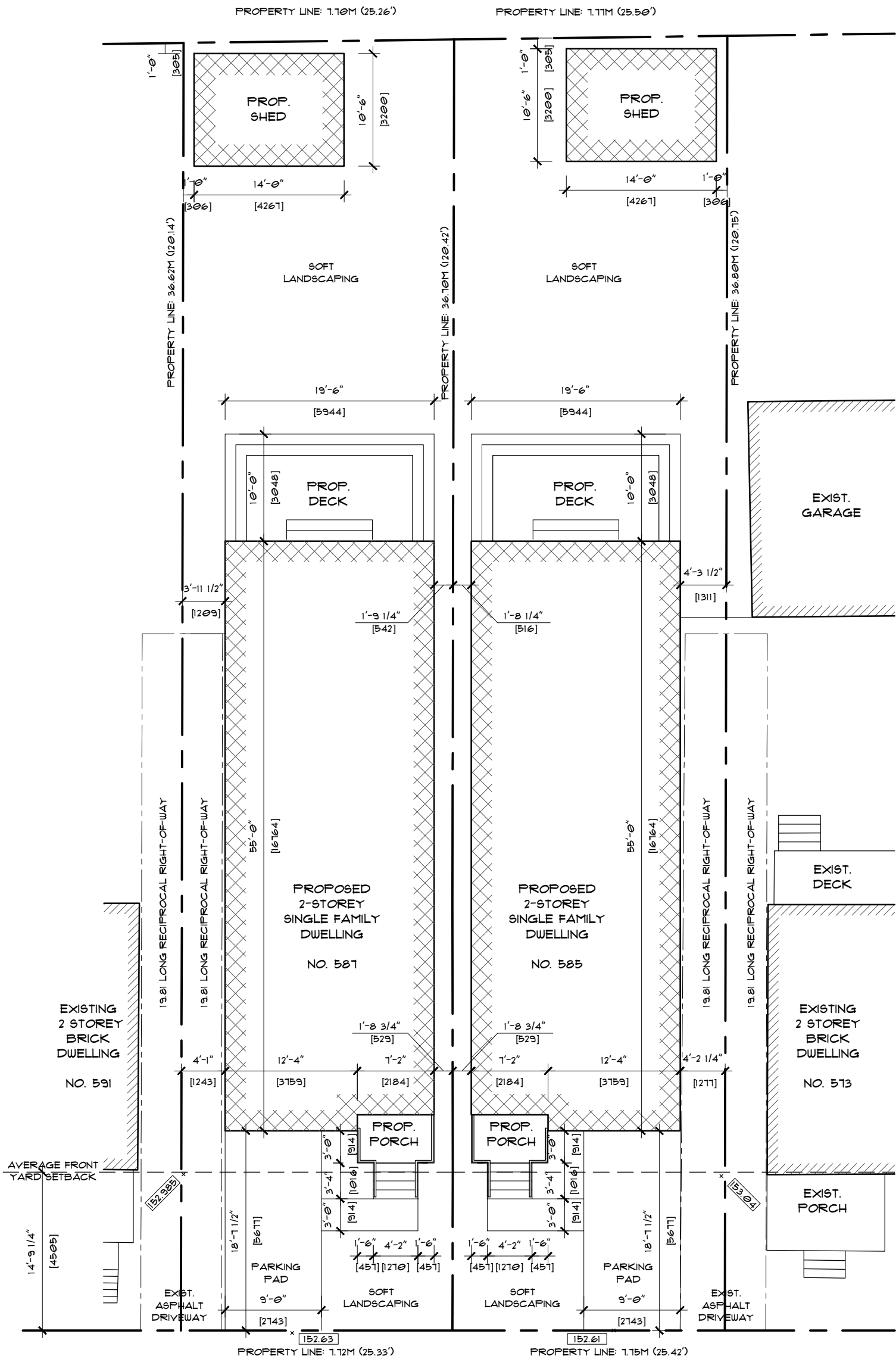
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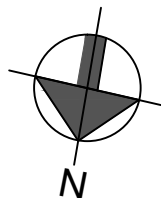
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20 APRIL 18
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Z10



1 WEST ELEVATION - PROPOSED
Z10 SCALE: 3/16" = 1'-0"



INFORMATION OBTAINED FROM PART OF
LOTS 163 & 164 REGISTERED PLAN 590-E
CITY OF TORONTO PREPARED BY LAND
SURVEY GROUP.



1 SITE PLAN - PROPOSED
Z2 SCALE: 3/32"=1'-0"

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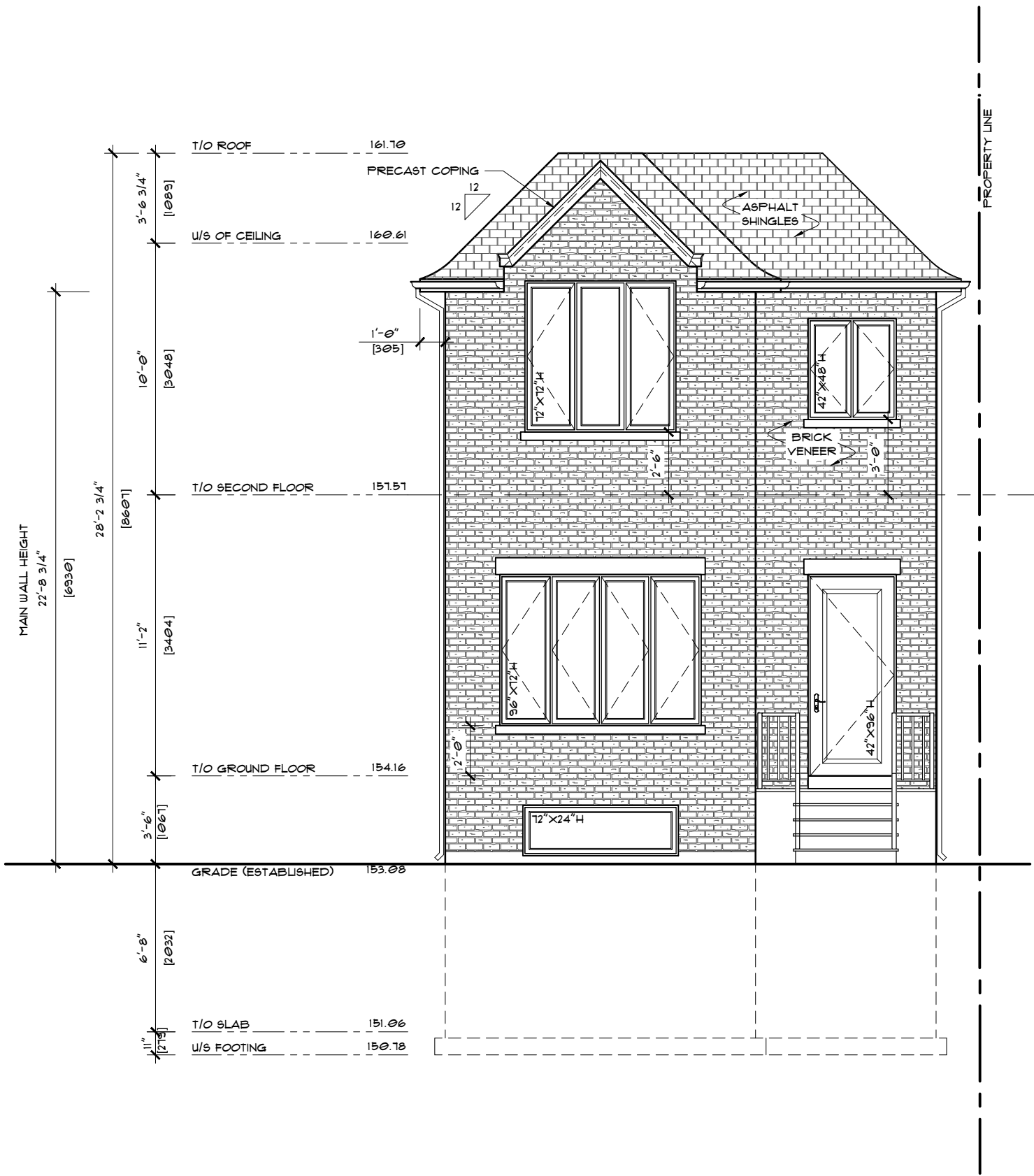
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DESIGN INC.

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TORONTO, ONTARIO
TEL: 416-531-1435
REPLACEMENTDESIGN.COM

Project:
581 MILLWOOD RD.
TORONTO ON.
PROPOSED DWELLING
PROJECT NUMBER: 16-131

Date:
20 APRIL 18
Drawing No:

Z2



1 NORTH ELEVATION -PROPOSED
Z1 SCALE: 3/16" = 1'-0"

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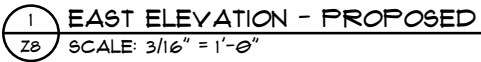
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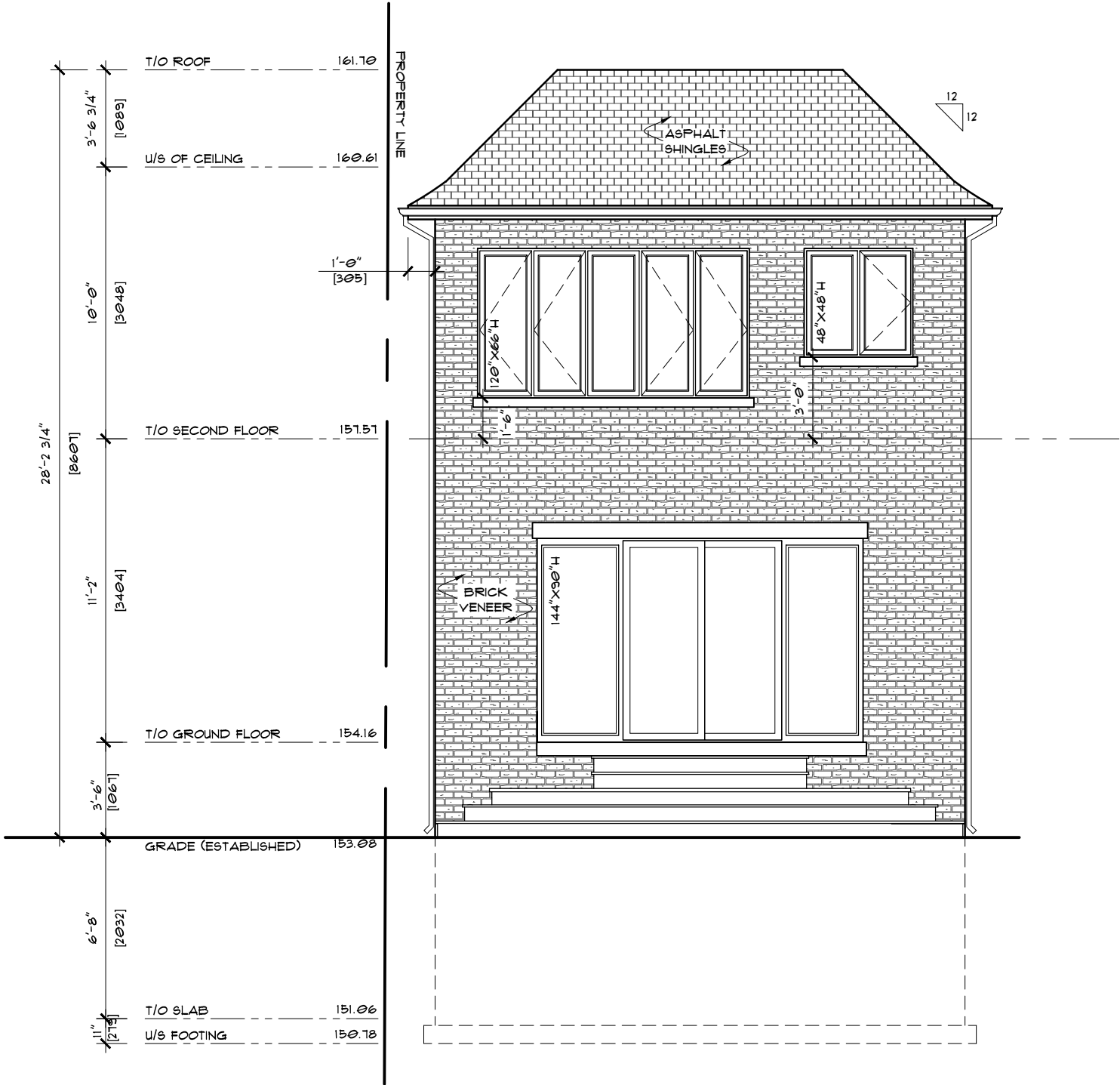
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587 MILLWOOD RD.
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PROJECT NUMBER: 16-137

Date:
20 APRIL 18
Drawing No:

Z1

Project:	Date:
587 MILLWOOD RD.	20 APRIL 18
TORONTO ON.	Drawing No:
PROPOSED DWELLING	78
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1 SOUTH ELEVATION - PROPOSED
29 SCALE: 3/16" = 1'-0"

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PROPOSED DWELLING
PROJECT NUMBER: 16-137

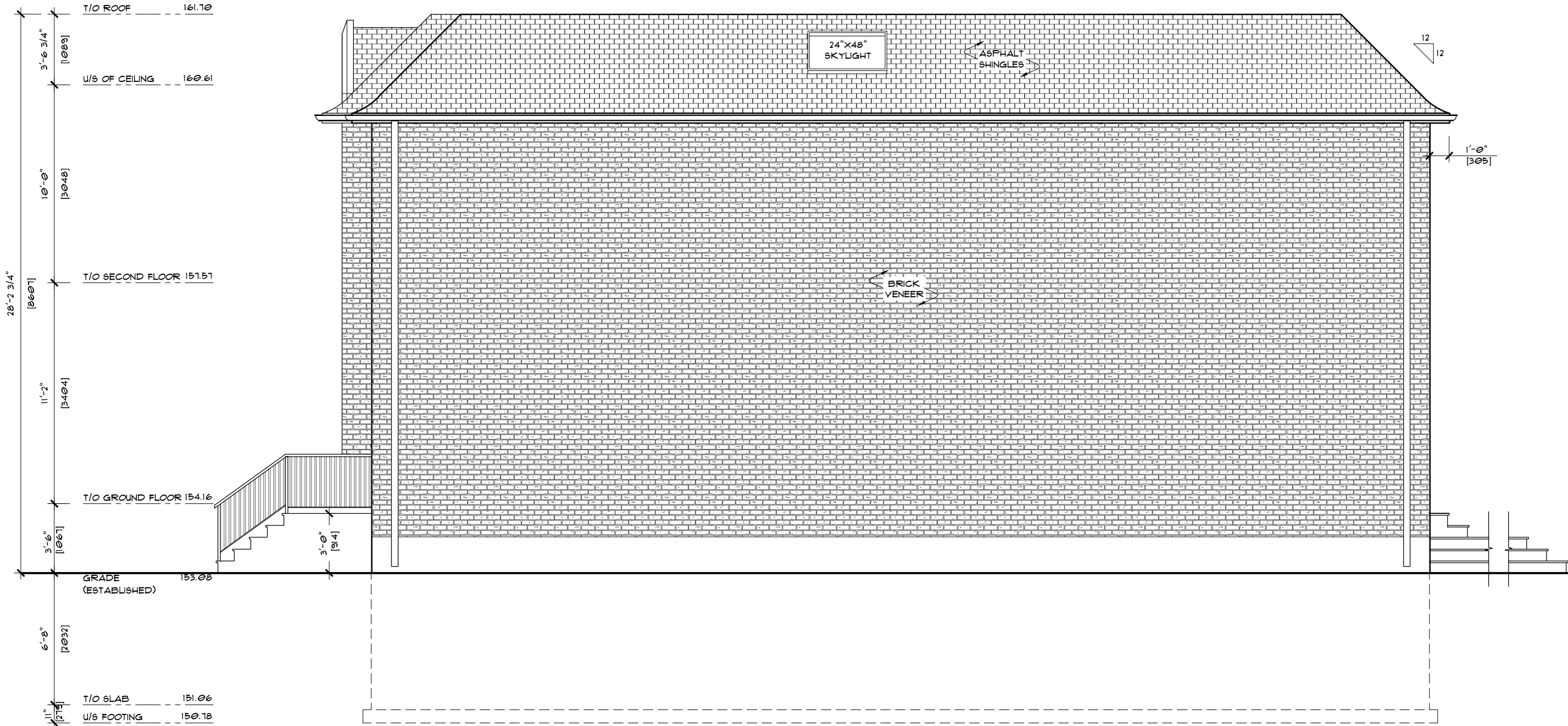
Date:
20 APRIL 18
Drawing No:
Z9

PRINTS AND SPECIFICATIONS SHALL NOT BE REPRODUCED WITHOUT THE PERMISSION OF THE DESIGNER. THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS ON THE WORK AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING. IF THERE ARE ANY DIMENSIONS, DETAILS OR DESIGN INTENT THAT CANNOT BE DETERMINED FROM THE DRAWINGS, THE DESIGNER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH FABRICATION AND/OR CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED.

re:placement
D E S I G N I N G.
915 DAVENPORT ROAD
TORONTO, ONTARIO
TEL: 416-531-1435
REPLACEMENTDESIGN.COM

Project: **587 MILLWOOD RD.**
TORONTO ON.
PROPOSED DWELLING
PROJECT NUMBER: 16-137

Date: **20 APRIL 18**
Drawing No: **Z10**



1 WEST ELEVATION - PROPOSED
Z10 SCALE: 3/16\" = 1'-0\"