

DECISION AND ORDER

Decision Issue Date Friday, September 14, 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): KAREN UNGER, FRANK SPITZER

Applicant: RICHARD WENGLE ARCHITECT INC

Property Address/Description: 46 WEMBLEY RD

Committee of Adjustment Case File: 17 161955 STE 21 MV

TLAB Case File Number: **17 248204 S45 21 TLAB**

Hearing date: Wednesday, September 12, 2018

DECISION DELIVERED BY L. MCPHERSON

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ANDREW DEAN -RICHARD WENGLE ARCHITECT INC		Applicant
FRANK SPITZER	Appellant	
		IAN FLETT
KAREN UNGER	Appellant	DAVID BRONSKILL
TAE RYUCK	Expert Witness	
CITY OF TORONTO	Party (TLAB)	ADRIENNE DEBACKER
		AMANDA S. HILL

INTRODUCTION AND BACKGROUND

This was a Settlement Hearing before the Toronto Local Appeal Body (TLAB) in the matter of an appeal of the Committee of Adjustment (Committee) approval of a minor

variance application, as amended, by the owner, Ms. K. Unger and a neighbour, Mr. F. Spitzer.

On September 27, 2017, the Committee approved certain minor variances and amended a minor variance to permit alterations to an already approved 3-storey dwelling at 46 Wembley Road.

The TLAB was advised at the original Hearing on March 8, 2018 that a Settlement had been reached between the Parties, and the Hearing was adjourned *sine die* to finalize and confirm the variances. The City was also a Party to the Hearing. The Settlement Hearing was done by Teleconference as provided for in the TLAB's Rules.

MATTERS IN ISSUE

The Parties entered into Settlement discussions which resulted in changes to the plans and a revised set of conditions. The matter at issue is whether the proposed variances meet the applicable tests.

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 TLAB heard from Mr. Tae Ryuck, the planner for the owner. Mr. Ryuck was qualified to give expert planning opinion evidence (Exhibit 1 – Affidavit of Mr. Ryuck). The proposed variances and conditions are set out in Attachment 1 to this decision. They deal with front yard setback, maximum building height, first floor height (not originally identified by the zoning examiner and therefore not addressed by the Committee, floor space index (fsi) and building length under By-law 569-2013. In

addition, there are variances for side yard setback and landscaped open space under By-law 428-86.

Mr. Ryuck identified a study area for his review which was similar to the City planner's study area outlined in her report to the Committee. He described the proposed variances as characteristic of neighbourhood referring to Section 4.1.5 of the Official Plan. The fsi of 0.826, as requested by City staff, is within the range of other fsi's approved in the neighbourhood. The front yard setback aligns with and does not extend beyond the front walls of adjacent dwellings. The height variance arises from the grade change as the site is lower at the front and rises at the rear. The side yard variance is for only a portion of the length.

In addition to the revised variances, the owner has agreed to the conditions proposed which would generally restrict windows, balconies, patios, platforms and other openings to those shown on the plans in addition to those recommended by staff. In summary, it was Mr. Ryuck's opinion that the variances, result in a compatible and appropriate built form that is reasonably deployed on the site and does not result in any unacceptable adverse impact. Further, it was his opinion that the proposal is consistent with the applicable policies of the PPS and in conformity with the Growth Plan.

His overall conclusion and recommendation was that the proposed variances meet the four tests of the Planning Act and result in a dwelling that represents good planning and that the TLAB allow the appeals, in part, and authorize the variances and conditions included in Attachment 1 to this decision.

ANALYSIS, FINDINGS, REASONS

The TLAB is satisfied that the revised variances, together with the proposed conditions, meet the criteria set out in Section 45(1) of the Planning Act. I accept that the proposed revisions are minor from the Application before the Committee and no further notice or consideration is required under s. 45 (18 1.1) of the Planning Act.

The proposed dwelling maintains the single detached dwelling character of the neighbourhood. Potential impacts have been addressed through the proposed conditions. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. The proposal results in an appropriate and desirable development for the subject property and the variances are considered minor in the context. The TLAB is satisfied that the variances are consistent with the Provincial Policy Statement and conform to the Growth Plan.

DECISION AND ORDER

The appeals are allowed, in part, and the variances to Zoning By-laws 569-2013 and 438-86 and the conditions included in Attachment 1 to this decision, are approved.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body

ATTACHMENT 1

LIST OF VARIANCES – 46 WEMBLEY ROAD

Zoning By-law 569-2013

1. Chapter 10.20.40.70.(1)

The minimum required front yard setback is 8.66 m.

The new detached dwelling will be located 7.14 m from the south front lot line.

2. Chapter 10.20.40.10.(1)(A)

The maximum permitted building height is 11.0 m.

The new detached dwelling will have a height of 11.185 m.

3. Chapter 10.20.40.40.(1)(A)

The maximum permitted floor space index of a detached dwelling is 0.6 times the area of the lot (348.12 m²).

The new detached dwelling will have a floor space index equal to 0.826 times the area of the lot (478.94 m²).

4. Chapter 10.20.40.10.(6)(A)

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

The new detached dwelling will have a first floor height above established grade of 1.275 m.

5. Chapter 10.20.40.20.(1)

The maximum permitted building length for a detached dwelling is 17.0 m.

The new detached dwelling will have a building length of 19.46 m.

Zoning By-law 438-86

1. Section 6(3) Part II 2(III)

The minimum required front yard setback is 8.66 m.

The new detached dwelling will be located 7.14 m from the south front lot line.

2. Section 6(3) Part II 3.B(II)

The minimum required side lot line setback for the portion of the building exceeding a depth of 17.0 m is 7.5 m.

The 2.46 m portion of the new detached dwelling, exceeding the 17.0 m depth, will be located 1.2 m from the west side lot line, and 2.02 m from the east side lot line.

3. Section 6(3) Part III 3(d)(i)D

A minimum of 75% (59.24 m²) of the front yard not covered by a permitted driveway must be maintained as soft landscaping.

In this case, 72.% (57.2 m²) of the front yard will be maintained as soft landscaping.

4. Section 6(3) Part I 1

The maximum permitted gross floor area of a detached dwelling is 0.6 times the area of the lot (348.12 m²).

The new detached dwelling will have a floor space index equal to 0.826 times the area of the lot (478.94 m²).

CONDITIONS OF APPROVAL

1. The building shall be constructed substantially in accordance with the plans for 46 Wembley Road prepared by Richard Wengle Architect, dated March 7, 2018, and attached as an appendix to the decision of the Toronto Local Appeal Body for TLAB File No. 17 248204 S45 21 TLAB. Any other variances that may appear on these plans that are not listed in the written decision are not authorized.
2. The Owner shall ensure that the driveway entrance within the Right of Way, leading to the parking space be paved with semi-permeable paving materials, and the owner shall contact Right of Way Management, Construction Activities, at Metro Hall to submit a vehicular access application and any other requirements for landscaping and paving on the City boulevard.
3. There shall be no additional windows, skylights, balconies or other similar openings on the east wall other than those shown on the East Elevation drawing dated March 7, 2018, as prepared by Richard Wengle Architect Inc.
4. There shall be no platforms, terraces or patios on the second floor other than the balcony shown on the Second Floor Plan drawing dated March 7, 2018, as prepared by Richard Wengle Architect Inc., which has an area of 3.87 square metres and includes a privacy screen on the east side to prevent access to any portion of the roof to the east and to prevent views to the property known municipally as 20 Hilltop Road.
5. There shall be no platforms, terraces or patios on the third floor other than the balcony shown on the Third Floor Plan drawing dated March 7, 2018, as prepared by Richard Wengle Architect Inc.
6. No pool pump or pool heater shall be installed within five (5) metres of the property known municipally as 20 Hilltop Road.

STATISTICS, NEW By-Law

March 7th, 2018

**46 Wembley Road
City of Toronto,
Lot 171, Registered Plan 1850**

Zoning Designation	RD, f15.0, d0.6, ht11.0, x1335
Lot Frontage,	15.26 m
Lot Depth,	38.03 m
Lot Area,	580.2 sm
Front Yard Area,	108.87 sm

Note: since the porch is excavated and heated below it is considered the front wall of the house

	<u>Allowed</u>	<u>Proposed</u>
*FSI:		
Ground		212.37 sm
Second		200.21 sm
Third		62.71 sm
Total	348.12 sm (60%)	<u>475.29 sm</u> <u>(81.92%)</u>
Setbacks;		
*Front	8.66 m	<u>7.14 m</u>
Note: since the porch is excavated and heated it is considered the front wall of the house		
Rear	9.51 m	11.44 m
Note: the rear bay window is wider than 3m and therefore counts in setbacks and length		
Side (e)	1.50m	1.53 m
Side (w)	1.50m	1.22 m
Note: no variance is required as the side setback did not change from the initial approval		
*Length of Dwelling:	17.0m	<u>19.46 m</u>
Note: measured from the excavated front porch to back of the excavated terrace along the lot centreline		
Depth of Dwelling;	19.0m	17.60 m
Note: depth is measured from the proposed front yard setback to the back wall of the excavated terrace		
*Height to top of Roof:	11.0 m	<u>11.11 m</u>
Note: the flat roof does not exceed 50% of the total roof area of the house		
Height to top of Wall;	8.5 m	7.85 m
Height to First Floor;	1.2 m	1.20 m
Entry to Garage;	above the road	above the road
FY. Landscape Open Space (% of front yard area)	65.32 sm (60%)	79.00 sm (72.56%)
FY. Soft L.scape Open Space (% of required Landscape Open Space)	48.99 sm (75%)	58.37 sm (89.36%)

* required variances

STATISTICS

March 7th, 2018

**46 Wembley Road
City of Toronto,
Lot 171, Registered Plan 1850**

Zoning Designation	R170.60
Lot Frontage,	15.26 m
Lot Depth,	38.03 m
Lot Area,	580.2 sm
Front Yard Area,	108.87 sm

Note: since the porch is excavated and heated below it is considered the front wall of the house

	<u>Allowed</u>	<u>Proposed</u>
*GFA: Ground		212.37 sm
Second		200.21 sm
Third		62.71 sm
Total	348.12 sm (60%)	<u>475.29 sm</u> <u>(81.92%)</u>

Setbacks;	<u>*Front</u>	8.33 m	<u>7.14 m</u>
		Note: since the porch is excavated and heated it is considered the front wall of the house	
	Rear	7.5m	11.44 m
		Note: the rear bay window is wider than 3m and therefore counts in setbacks and length	
	Side (e)	0.9m	1.53 m
	Side (w)	0.9m	1.22 m

Setbacks for the 2.46m portion of Building Depth beyond 17.0 m;

<u>*Side (e)</u>	7.5m	<u>2.02 m</u>
<u>*Side (w)</u>	7.5m	<u>1.22 m</u>

Height to top of flat;	11.0 m	10.94 m
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Note: height is measured from the average grade, on the low side, for the length of the house

<u>**Entry to Garage:</u>	at established grade	<u>below established grade</u>
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Note: the driveway slopes up from the street but is considered below grade due to the slope of the land

<u>**Front Porch Height</u>	1.20 m	<u>2.59 m</u>
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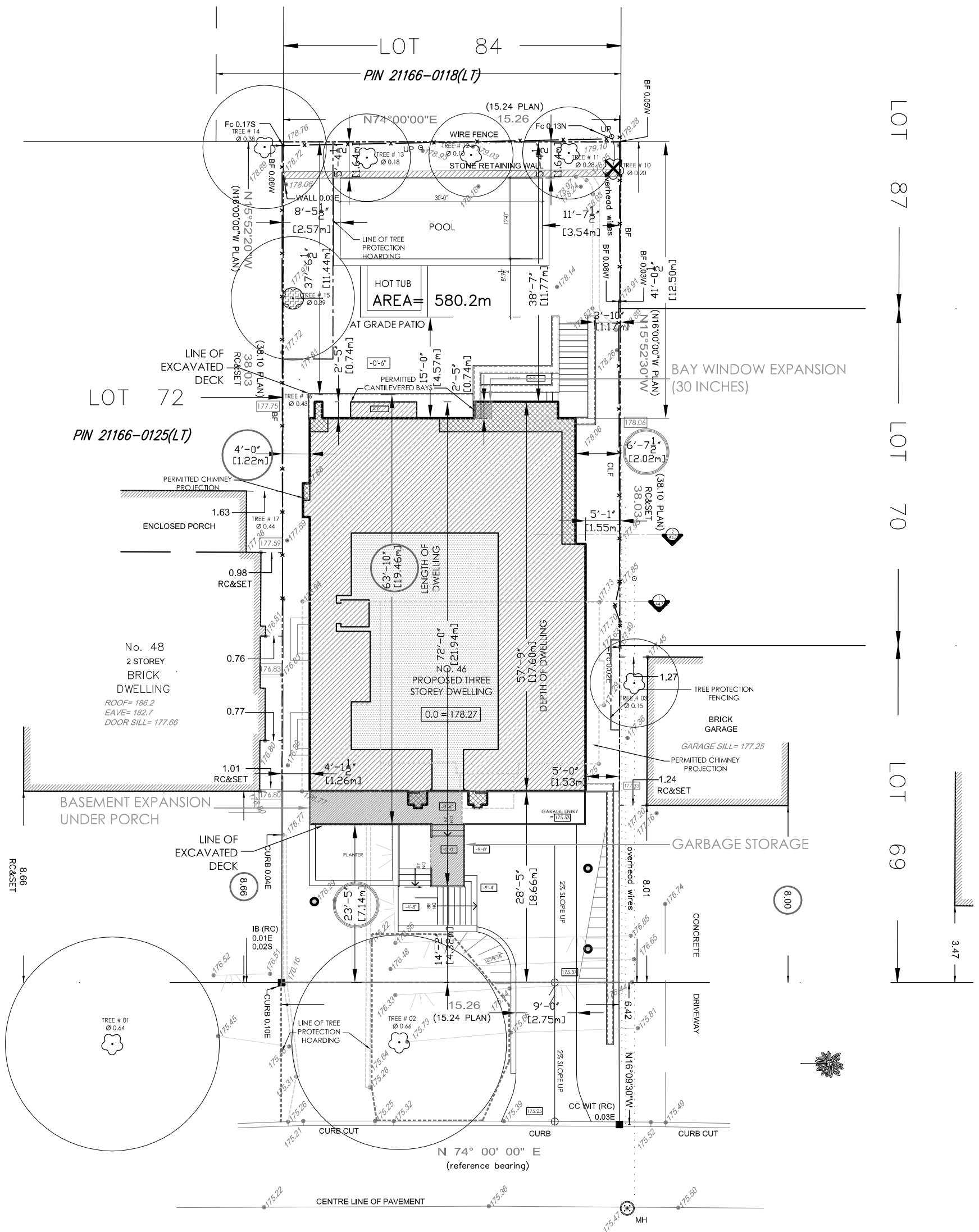
Note: the front porch is 2.59m above the grade only at the portion dropped for the garage entry

FY. Landscape Open Space	65.32 sm	79.00 sm
(% of front yard area)	(60%)	(72.56%)

<u>*FY. Soft L.scape Open Space</u>	59.25 sm	<u>58.37 sm</u>
(% of proposed Landscape Open Space)	(75%)	<u>(73.89%)</u>

* required variances

* Variances that were previously approved and have not changed, refer to CofA Decision A0569/13TEY



WEMBLEY ROAD
(FORMERLY FIRST AVENUE)
BY REGISTERED PLAN 1850
PIN 21166-0285 (LT)

NOTE: AVERAGE GRADE AT LOW
SIDE LOT LINE = 177.24
NOTE: THE WEST SIDE IS THE LOW
SIDE
NOTE: ESTABLISHED GRADE, NEW
BYLAW = 177.07



RICHARD WENGLE
ARCHITECT INC.

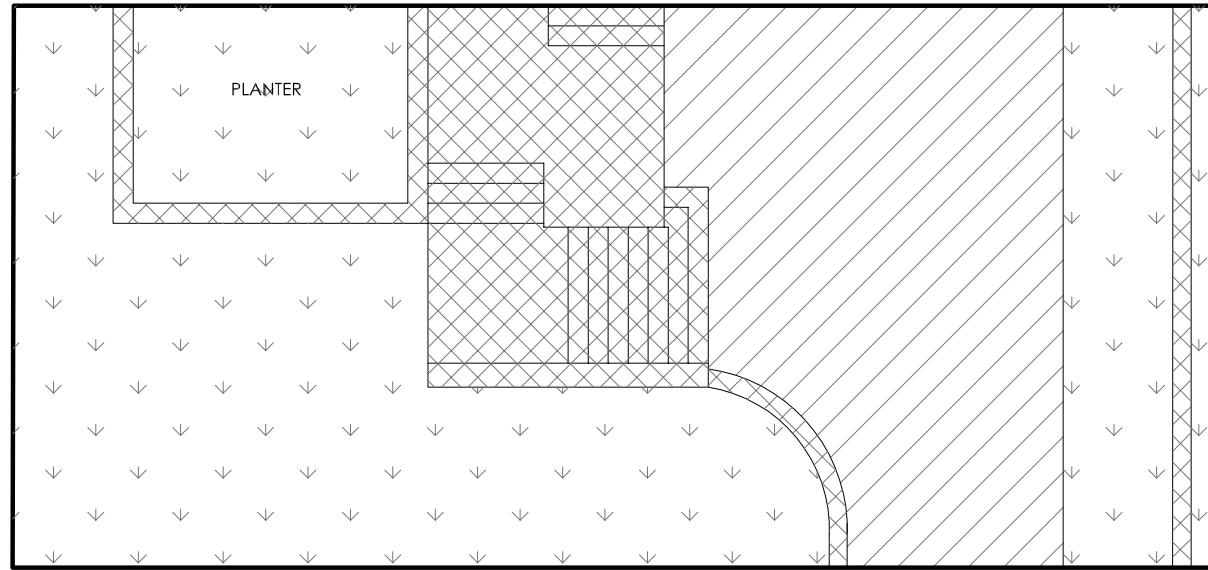
BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018

1317




SITE PLAN
SCALE 1/16" = 1'-0"



FRONT YARD AREA: 1171.90 S.F., 108.87 S.M.

HARD PAVED SURFACES

 **HARD PAVED SURFACES**
321.60 S.F., 29.88 S.M. (27.44%)
OF FRONT YARD

**LANDSCAPE OPEN SPACE
PROVIDED**

850.30 S.F., 79.00 S.M.
72.56% OF FRONT YARD

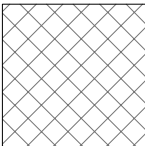
**LANDSCAPE OPEN SPACE
REQUIRED**

65.32 SM (60.00%) OF
FRONT YARD

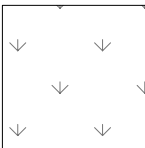
SOFT LANDSCAPE AREA CALCULATION

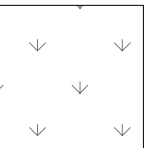
OLD BYLAW REQUIREMENT:
75% OF LANDSCAPE OPEN
SPACE PROVIDED
59.25 S.M.

NEW BYLAW REQUIREMENT:
60% OF LANDSCAPE OPEN
SPACE REQUIRED
65.32 SM

 **HARD LANDSCAPED
AREA**
20.63 S.M. (26.11%)

 **HARD LANDSCAPED
AREA**
20.63 S.M. (31.58%)

 **SOFT LANDSCAPED
AREA**
58.37 S.M. (73.89%)

 **SOFT LANDSCAPED
AREA**
58.37 S.M. (89.36%)



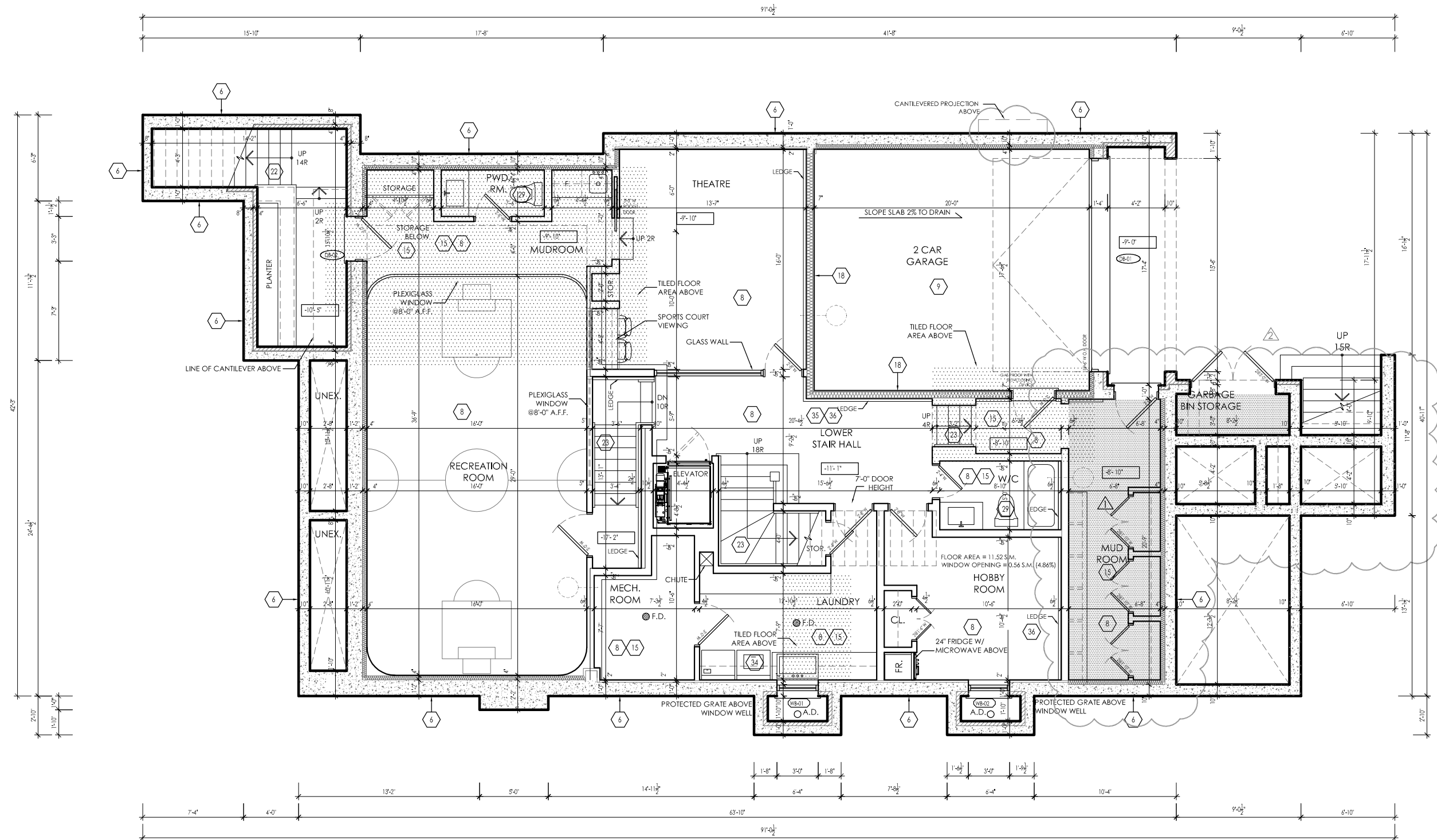
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BURSTEIN RESIDENCE

46 WEMBLEY ROAD
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LANDSCAPE OPEN SPACE
SCALE 1/8" = 1'-0"



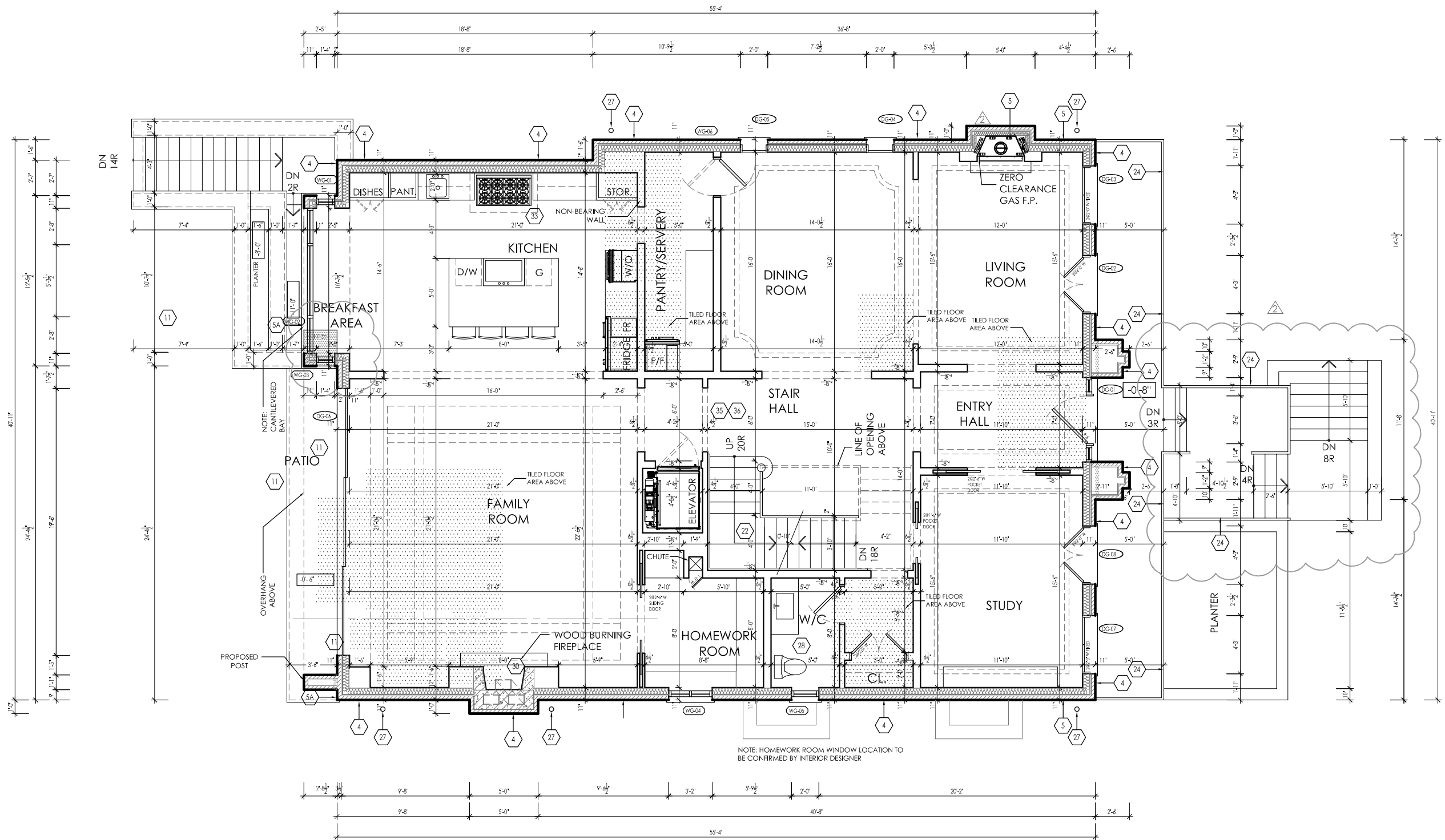
BURSTEIN RESIDENCE

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BASEMENT PLAN
SCALE 1/8" = 1'-0"



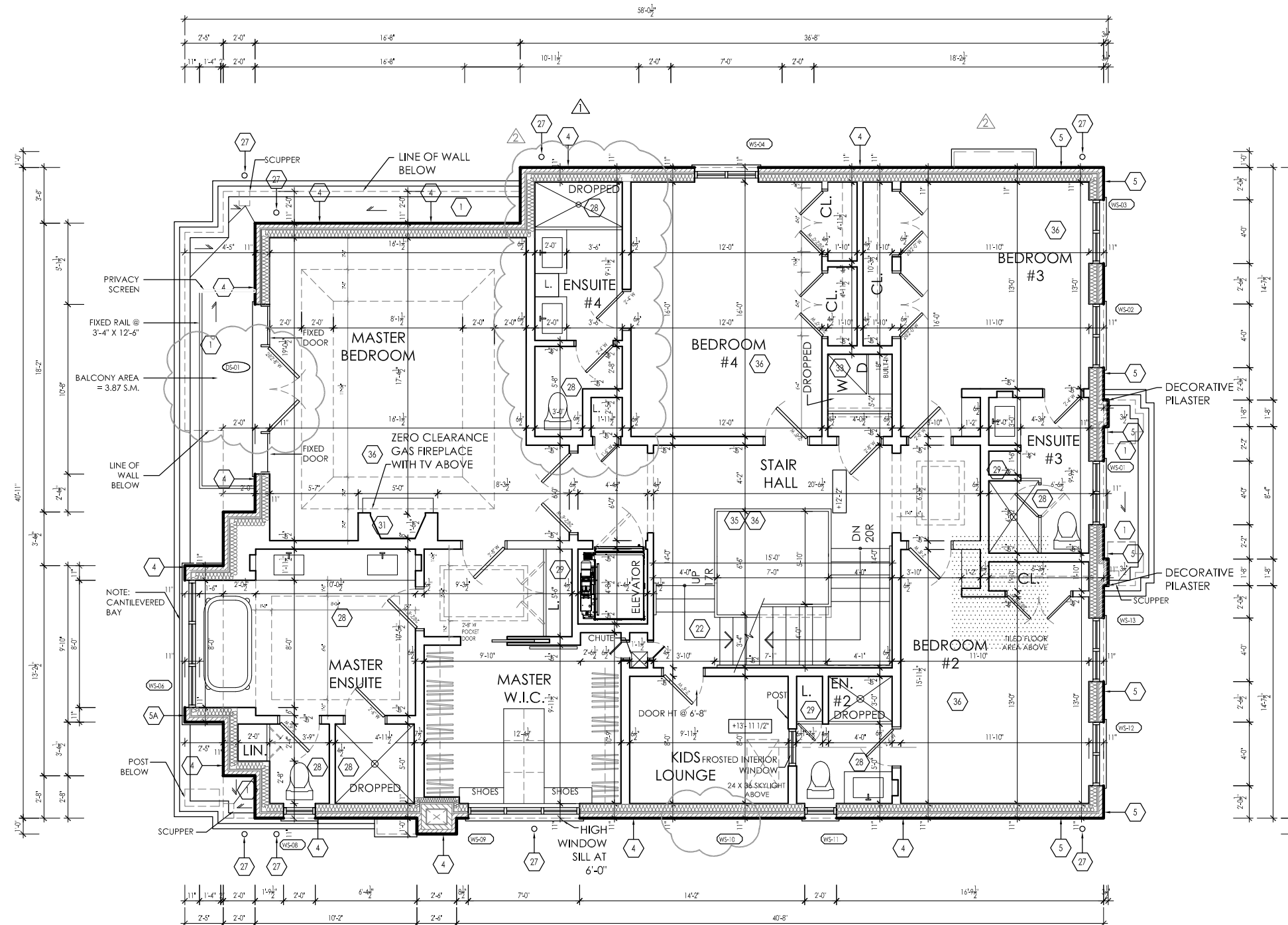
RICHARD WENGLE
ARCHITECT INC.

BURSTEIN RESIDENCE

46 WEMBLEY ROAD
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GROUND FLOOR PLAN
SCALE 1/8" = 1'-0"



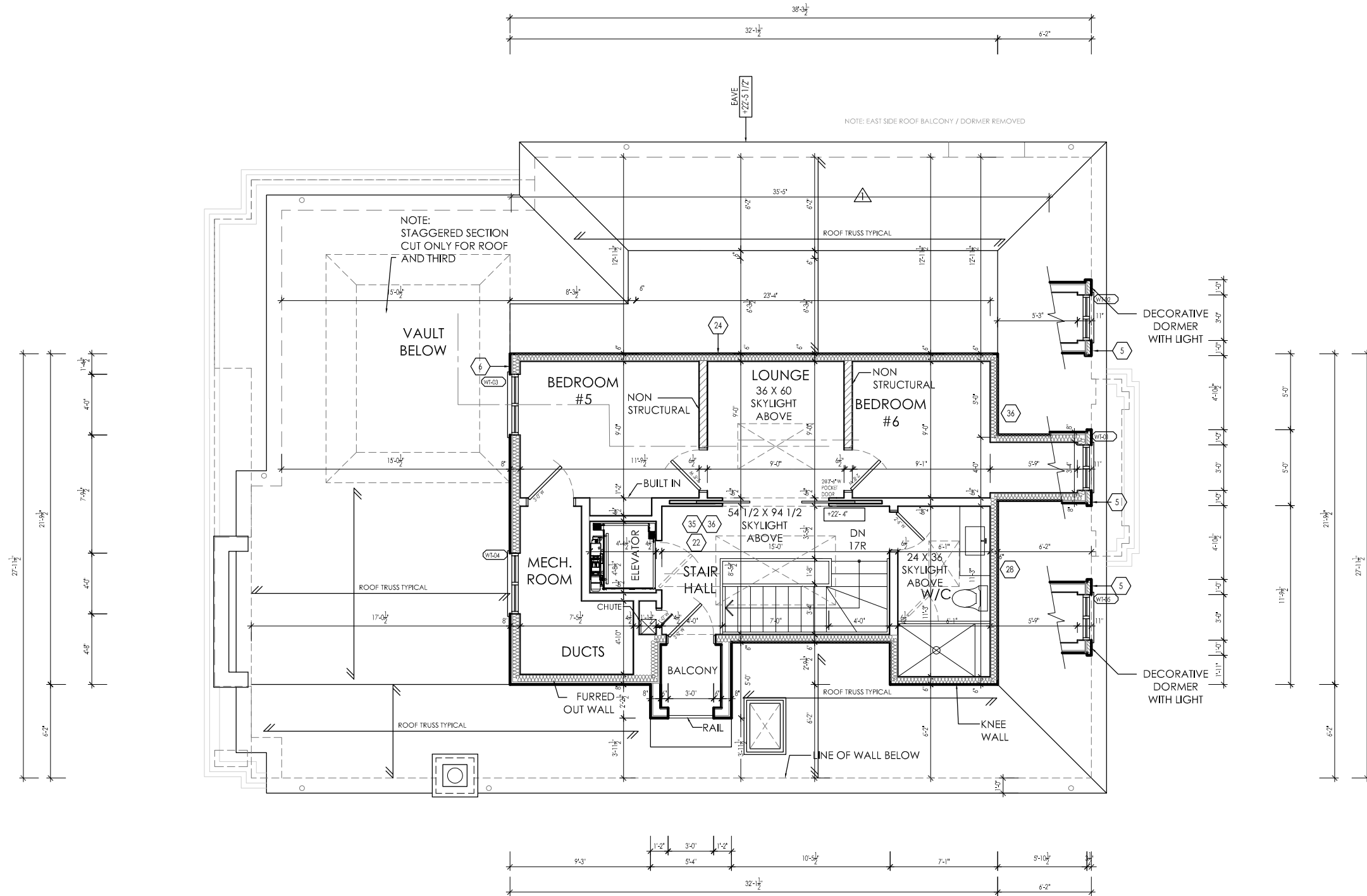
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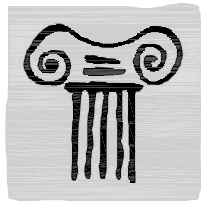


SECOND FLOOR PLAN
SCALE 1/8" = 1'-0"



BURSTEIN RESIDENCE

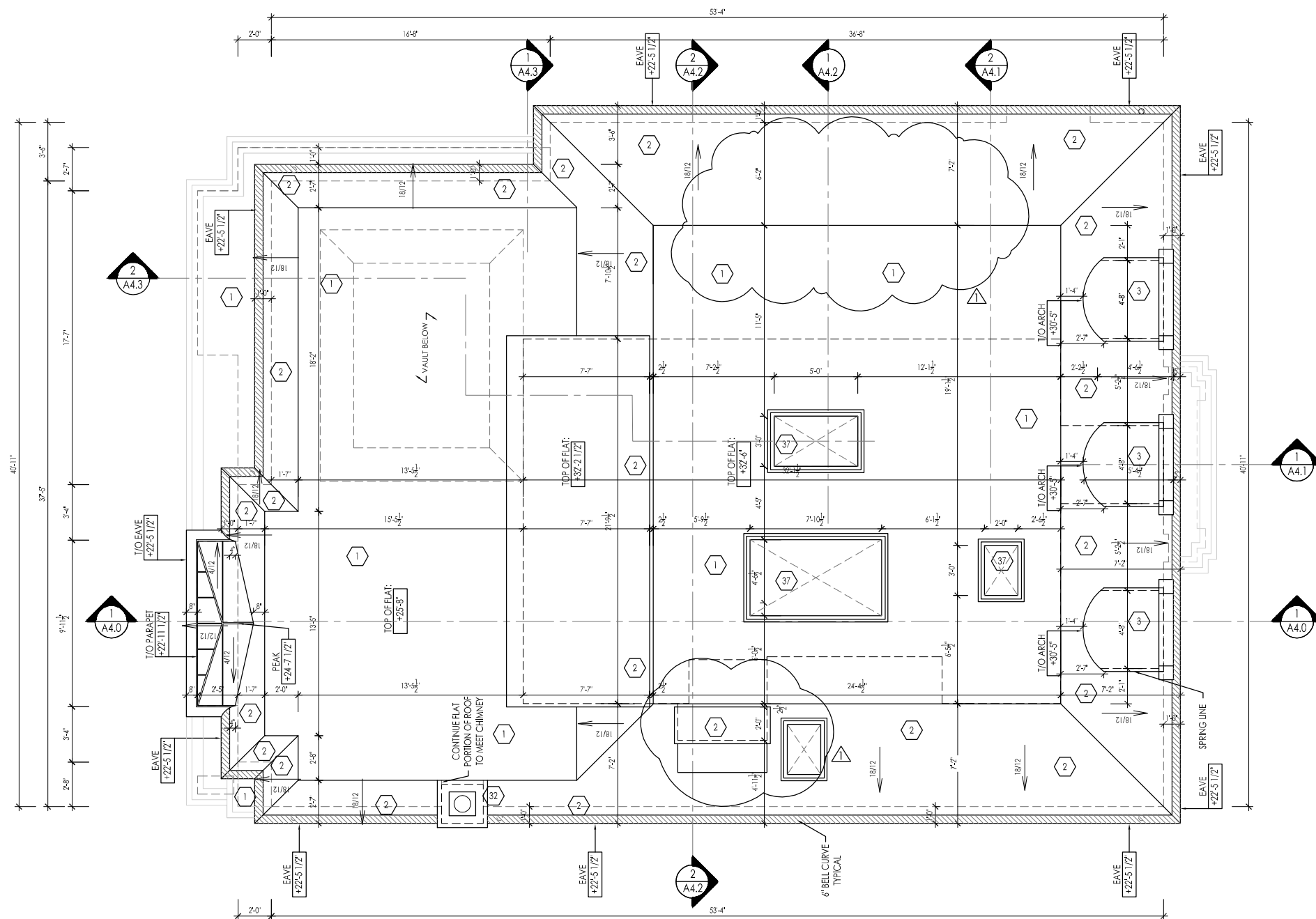
46 WEMBLEY ROAD
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THIRD FLOOR PLAN
SCALE 1/8" = 1'-0"



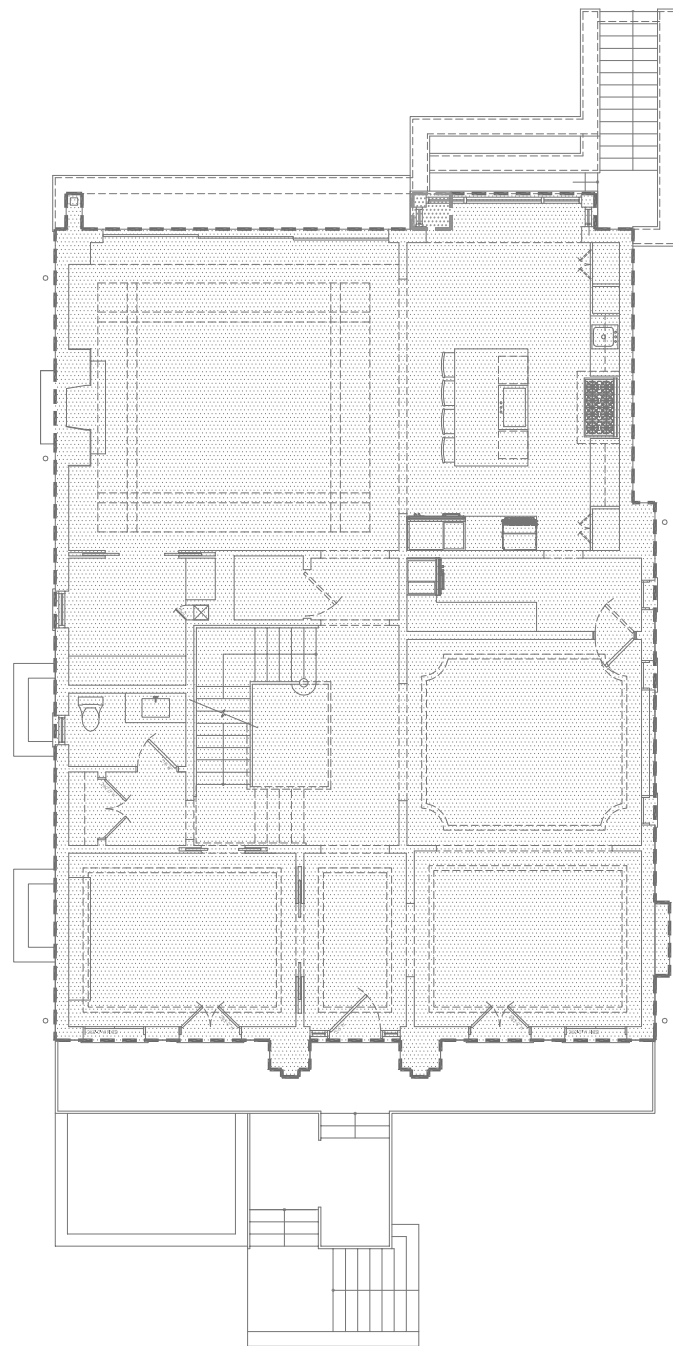
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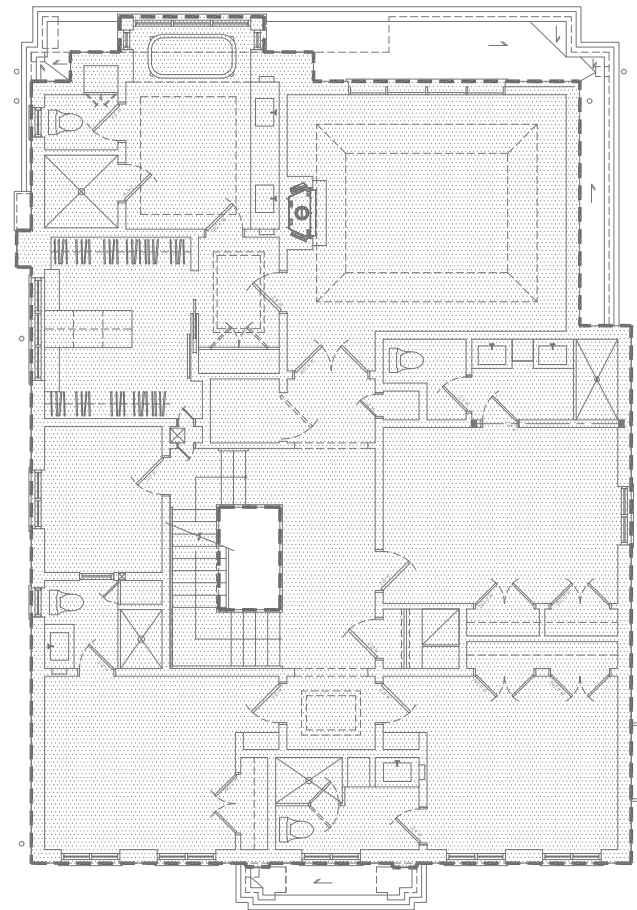


RICHARD WENGLE
ARCHITECT INC.

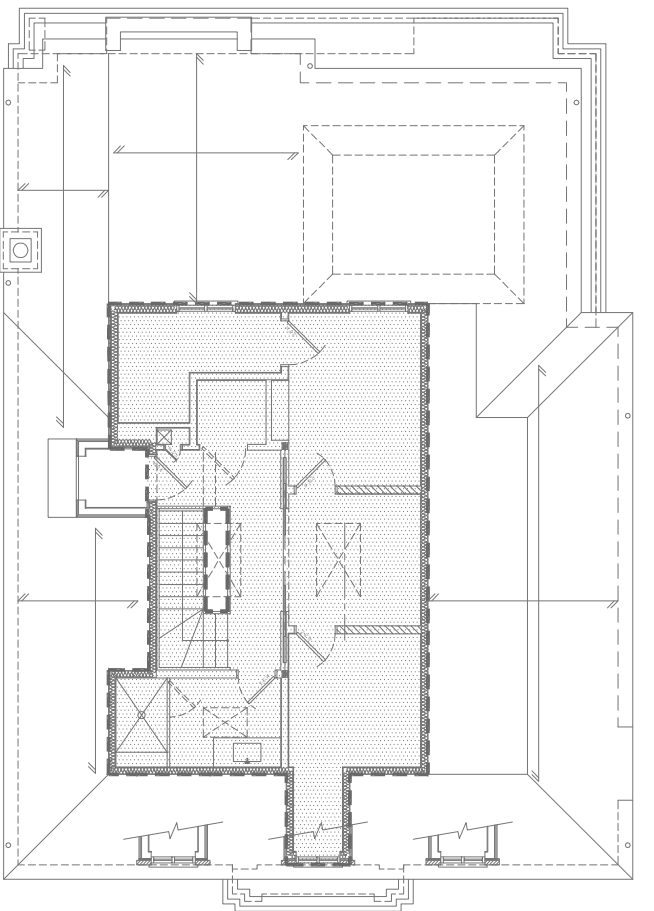
 **ROOF PLAN**
SCALE 1/8" = 1'-0"



GROUND FLOOR AREA = **2285.95 S.F. , 212.37 S.M.**



SECOND FLOOR AREA = **2155.04 S.F., 200.21 S.M.**



THIRD FLOOR AREA = **674.97 S.F. , 62.71 S.M.**
(EXCLUDING STAIR
CREDIT OF 10.50 S.F., 0.97 S.M.)

TOTAL FLOOR AREA = **5115.96 S.F., 475.29 S.M.**
LOT AREA= **6245.22 S.F., 580.20 S.M.**
81.92%



RICHARD WENGLE
ARCHITECT INC.

BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018
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AREA CALCULATIONS
N.T.S.



RICHARD WENGLE
ARCHITECT INC.

BURSTEIN RESIDENCE

46 WEMBLEY ROAD
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MARCH 07, 2018
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FRONT ELEVATION
SCALE 1/8" = 1'-0"



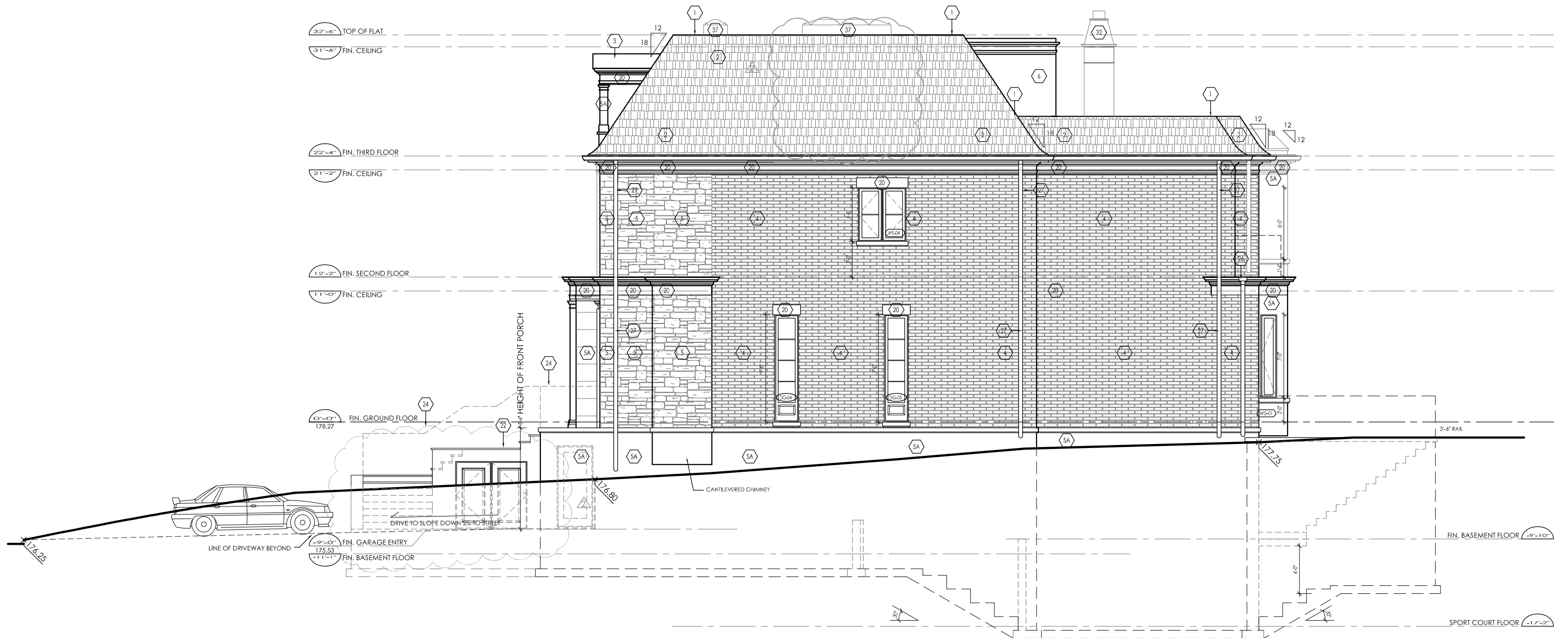
RICHARD WENGLE
ARCHITECT INC.

BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
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REAR ELEVATION
SCALE 1/8" = 1'-0"



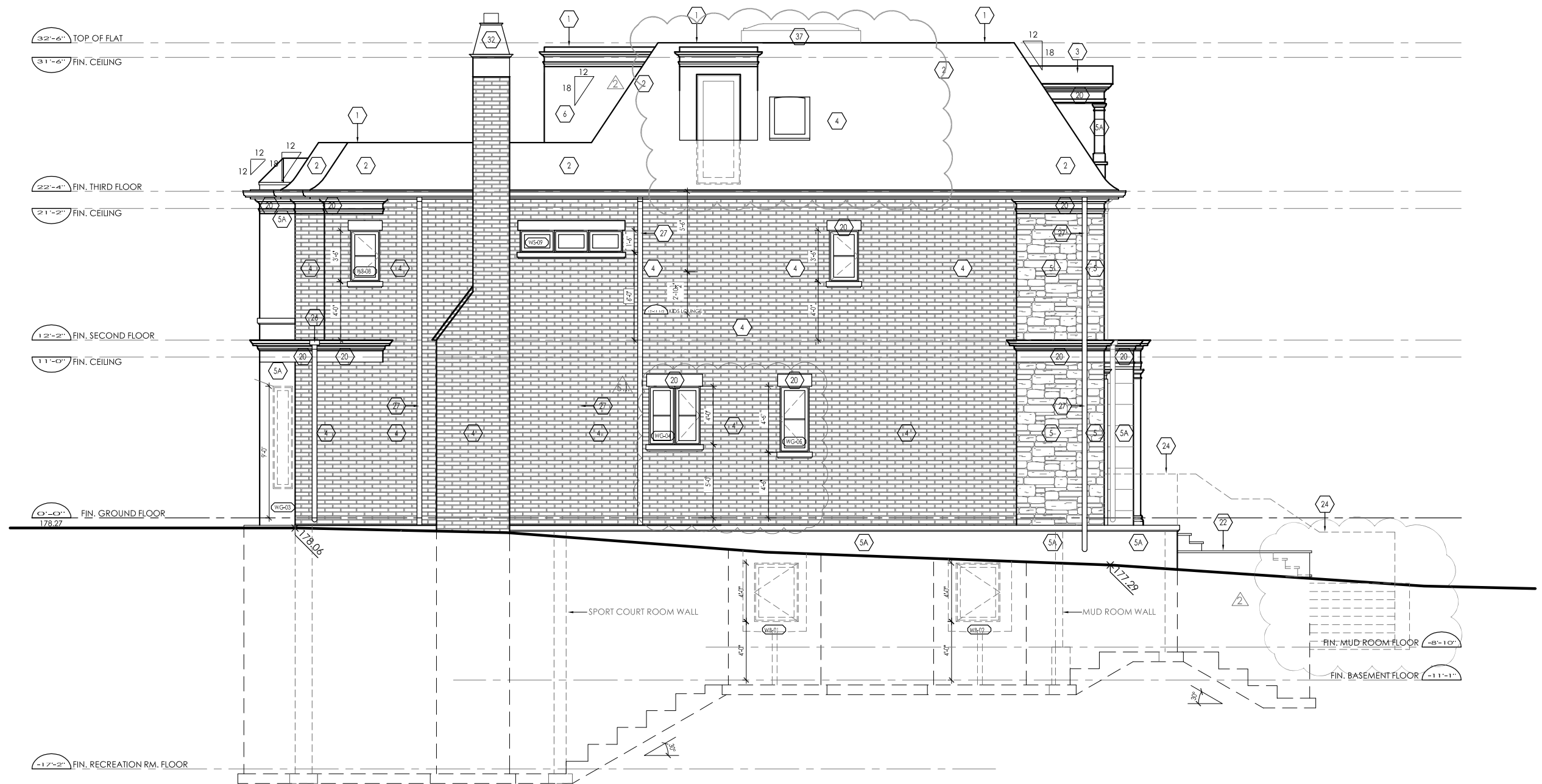
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MARCH 07, 2018
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 **EAST ELEVATION**
SCALE 1/8" = 1'-0"



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BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018
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RICHARD WENGLE
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 WEST ELEVATION
SCALE 1/8" = 1'-0"



BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018
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RICHARD WENGLE
ARCHITECT INC.



MODEL COMPARISON 01
SCALE: NTS



RICHARD WENGLE
ARCHITECT INC.

BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018
1317



MODEL COMPARISON 02
SCALE: NTS



BURSTEIN RESIDENCE

46 WEMBLEY ROAD
TORONTO, ONTARIO
MARCH 07, 2018
1317



RICHARD WENGLE
ARCHITECT INC.



MODEL COMPARISON 03
SCALE: NTS