

DECISION AND ORDER

Decision Issue Date Tuesday, October 30, 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): MARK CAMPBELL

Applicant: MARK CAMPBELL

Property Address/Description: 77 QUEENSBURY AVE

Committee of Adjustment Case File Number: 18 139077 ESC 36 MV

TLAB Case File Number: **18 181608 S45 36 TLAB**

Hearing date: Thursday, October 25, 2018

DECISION DELIVERED BY Ian James LORD

APPEARANCES

Name	Role	Representative
Mark Campbell	Appellant/Owner/Applicant	Robbie Robinson
Pamela Ennis	Participant	

INTRODUCTION

The matters before the Toronto Local Appeal Body (TLAB) in this appeal related to amended variances from those refused by the Scarborough Panel of the City of Toronto (City) Committee of Adjustment (COA).

The Applicant/owner, Mark Campbell, appeared in support of the appeal for variances respecting 77 Queensbury Avenue (subject property) located on the east side of this north/south street in the southeasterly quadrant of the City, in the Birchcliff

Community, south of Clonmore Drive, north of Kingston Road and west of Warden Avenue.

Despite the nomenclature used above, Mr. Campbell introduced Mr. Robbie Robinson of MJ Design Consultants as his witness called in support of the variances.

Mr. Campbell also spoke briefly as to the desirability of the requested revisions.

Ms. Pamela Ennis also spoke briefly in support of the current request for variances.

No other persons were present.

BACKGROUND

This matter came before the COA for its decision mailed June 5, 2018. The COA unanimously refused all the variances sought in that application without substantive reasons. Ms. Ennis had appeared before the COA in opposition to the project as then proposed.

Following the disposition, Mr. Robinson was retained. The project took on a different cast and appearance; the design of the home renovation was extensively revised, a new zoning examination was conducted under the direction of Mr. Robinson, and the revised set of variances was disclosed on appeal and pursuant to the disclosure Rules of the TLAB.

MATTERS IN ISSUE

Two substantive issues remained before the TLAB despite the lack of opposition or concerns. The City is not on record in respect of the revised applications.

The two issues are:

- a) Are the revisions from what was before the COA capable of being considered as minor revisions for which no further notice is required, pursuant to the jurisdiction conferred on the TLAB by virtue of section 45 (1.1.18) of the *Planning Act*?
- b) Are the variances, some or any of them capable of approval in accordance with the Jurisdiction considerations, identified below?

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

As is the obligation on a Member, I indicated I had been to the subject property and vicinity and had reviewed the pre-filed materials but would rely on the evidence heard. Further, that it rested with the Applicant to demonstrate merit in the Applications as revised in light of the considerations made relevant by statute.

Mr. Robinson identified himself as a retired architect of 25 years whose practice had morphed to that of a licensed Design Consultant, since 2005. His practice experience has been Greater Toronto Area wide, with activity in Toronto and projects on Queensbury Avenue, in former Scarborough.

He asserted familiarity with the applicable zoning by-laws 569-2013 (new zoning) and By-law 8786 (Scarborough zoning) and that he had been qualified to give evidence before the (former) Ontario Municipal Board, a comparative tribunal.

Although not a member of the Ontario Professional Planners Institute, I qualified Mr. Robinson with experience sufficient to provide expert opinion on building design and associated matters.

Mr. Robinson provided evidence on several germane matters:

1. As a result of his retainer post the COA decision, the then proposed project of a two storey front and rear addition, with infill related variances was discarded in favour of a project that entailed the following elements:

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- a. Enclosure of the existing front porch;
 - b. Filling in a 'notch' in the main rear wall by a two storey addition with a modest second storey cantilever north over an existing mutual driveway;
 - c. Abandonment of a front second storey addition and any main rear wall extension further east.
2. His revised plans were the subject of a Plans Examiner Report.
3. A revised List of Variances, 'with explanation' was filed as Exhibit 1 based on the Plans Examiner's Report. The revised List is attached as **Attachment 1** hereto.
4. The revised site plan and elevations prepared for the Plans Examination was filed as Exhibit 2. The site plan and elevations are attached as **Attachment 2** hereto.
5. He described a number of the variances originally sought were no longer substantive or required. This circumstance was due to an intervening set of circumstances: partial approvals of the new zoning, obviating the relevance of the Scarborough By-law, the design changes of the project and changed dimensions. He noted that some of the variances listed in **Attachment 1** are to recognize and maintain existing conditions or to identify variances obvious but missed in the initial plans examination. In this latter set of categories he identified:
 - a. Recognition of the front yard setback to the existing porch (Variances 1 and 6, both by-laws);
 - b. Recognition of the existing south side yard setback to the existing porch and south main wall (Variances 7, 8);
6. The design changes have altered (reduced) the requested maximum floor space index from 0.79 originally requested to 0.72, inclusive of proposed box bay windows (Variances 2 and 5);
7. The design changes also have altered (increased) the requested coverage from 39.6% originally sought to 40.4%, opined as a 'small' increase (Variances 3 and 4).

In describing each element, Mr. Robinson noted how the project design revisions reduced streetscape massing, eliminated a rear yard extension of concern to the neighbour to the south, Ms. Ennis, and completed the building through the elimination of the rear wall 'notch', thereby affording usable interior space. On the second level, he described the somewhat unusual cantilever of building space (out over the mutual driveway) as satisfactory to provide interior space for two bedrooms to accommodate the owner's children. He advised that the space was elevated 10 or more feet above grade, and offered no obstruction to the driveway: it is an extension within setbacks only of some 4.5 feet, one floor above grade, all as depicted in **Attachment 2**.

Mr. Campbell advised that the mutual driveway was used amicably with the neighbour to the north but was not the subject of a registered easement or right-of-way, and that the proposed building offered no obstruction and required no setback variance.

Mr. Robinson claimed familiarity with the applicable statutory tests and stated compliance, specifically of the bolded **Attachment 1** variances respecting Official Plan and zoning conformity to intent and purpose, and as being desirable and minor in all respects.

He added that several instances of similar variances had been accommodated in the area, including from personal experience. This commentary was not challenged.

Mr. Campbell added that the desirable purpose of the incremental space on both floors is to accommodate a growing family (two daughters) and permit and facilitate intended long term residency. He felt the Robinson design was better and was not available before the COA.

Ms. Pamela Ennis, an eight year resident and occupant of the property adjacent to the south attended. She had opposed the original project but was entirely satisfied with the Robinson revisions: she expressed no objection or opposition to the changes proposed or the variances, but wished only to ensure that those proposed are the ones approved, if the TLAB so found.

ANALYSIS, FINDINGS, REASONS

The proposal described in **Attachment 2**, as facilitated through variances identified in **Attachment 1**, reflect a modest effort to provided contemporary space accommodation in a manner short of demolition and reconstruction. I find this approach entirely consistent with activities across the City and reflective of contemporary standards.

I accept the evidence of Mr. Robinson that the revisions to the original application, above briefly reviewed, are minor for which no further Notice is required, and I so find pursuant to section 45 (18.1.1) of the *Planning Act*.

I also accept, in light of the evidence of all persons who spoke, that the variances identified in BOLD on **Attachment 1**, are minor, desirable, appropriate and meet the intent and purpose of provincial policy, the City zoning by-laws and the Official Plan.

I find that the plans described in **Attachment 2** offer no adverse impacts on adjacent property or the neighbourhood sufficient to warrant intervention. Queensbury Avenue is a diverse and interesting street with inconsistent frontages, building designs, architectural styles, setbacks, heights and parking solutions. I accept Mr. Robinson's assertions that the porch enclosure will 'fit' the neighbourhood and that the renovations and improvements will respect and reinforce the detached residential fabric of the street and neighbourhood.

DECISION AND ORDER

1. The appeal from the COA is allowed.
2. The variances identified in BOLD on **Attachment 1** are approved.
3. The approval in paragraph 2 is subject to the condition that construction proceed substantially in accordance with the site plan and elevation drawings in **Attachment 2** prepared by MJ Design Consultants Inc. dated July, 2018.

If there are difficulties in the implementation of this Decision and Order, the TLAB may be spoken to.

Attachment 1

REVISED VARIANCE LIST W/ EXPLANATIONS – 18 181608 S45 36 TLAB 77 QUEENSBURY AVENUE, SCARBOROUGH ON.

Bylaw 569 - 2013

Variance No 1: Front Yard Setback 10.5.40.70 (1).The **minimum front setback** is 5.99m – the front setback to the EXISTING covered porch is **2.90m**. The revised proposal encloses most of this existing porch while retaining the exact existing dimensions and roof. Therefore no change to existing building coverage in the front yard, with no serious visual impact to the streetscape.

Variance No. 2 Floor Space Index (253) Exception RD 253 (E) – 900.3.10(1462) (A) The **maximum floor space index** is (1) the lesser of 0.6 times the lot area or 204 m² – the revised proposed FSI is 0.694 times lot area (153.01 m²) Note: Examiner's Notice indicates **0.72 times lot area** (155.5 m² incl. box bay window seats – traditionally not included)

Variance No. 3 Lot Coverage 10.20.30.40 (1).The **maximum permitted coverage is** 33%, the revised proposed coverage is 40.2 % increased slightly from that proposed to the Committee of Adjustment. Note: Examiner's Notice indicates **40.4 %**

Scarborough Zoning Bylaw – Birchcliff Community Bylaw No 8786

Variance No. 4 Lot Coverage (13).The **maximum permitted coverage** is 33%, the revised proposed coverage is 40.2 % increased slightly from that proposed to the Committee of Adjustment. Note: Examiner's Notice indicates **40.4 %**.

Variance No. 5 Floor Area (14) The **maximum permitted floor area** is the lesser of 0.6 times the lot area to a maximum of 204 m² (139,3 m²) – the revised proposed FSI is 0.694 times lot area (153.01 m²) Note: Examiner's Notice

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indicates **0.72 times lot area** (155.5 m² as this portion of 569-2013 has been recently approved by the OMBI am advised that this variance is no longer required.)

Variance No. 6 Minimum Building Setbacks (27) – 6m from the street line. The **minimum required front yard setback** is 6.0m – the EXISTING setback to the proposed enclosed existing porch is **2.90m**.

ADDITIONAL VARIANCES THAT MAY BE REQUIRED TO MAINTAIN THE EXISTING BUILDING AND THE EXISTING FRONT PORCH NOW ENCLOSED SOUTHSIDE SETBACKS (not included in Examiner's Notice, but formerly partially included in Committee Application)

Bylaw 569 - 2013

Variance No 7 Side Setbacks (253) Exception RD 253 Site Specific Provision
The required minimum side setback is 0.45m, the EXISTING **south side setbacks** are as follows: **PORCH – 0.41m SOUTH MAIN WALL – 0.26m. front & 0.34m rear**

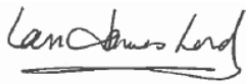
Scarborough Zoning Bylaw – Birchcliff Community Bylaw No 8786

Variance No. 8 Side Setbacks (41) 450mm each side The minimum required side setback is 0.45m, the EXISTING **south side setbacks** are as follows: **PORCH – 0.41m SOUTH MAIN WALL – 0.26m front & 0.34m rear**

Attachment 2

(Site Plan and Elevations prepared by MJ Design Consultants Inc. dated July, 2018, filed as Exhibit 2.)

X

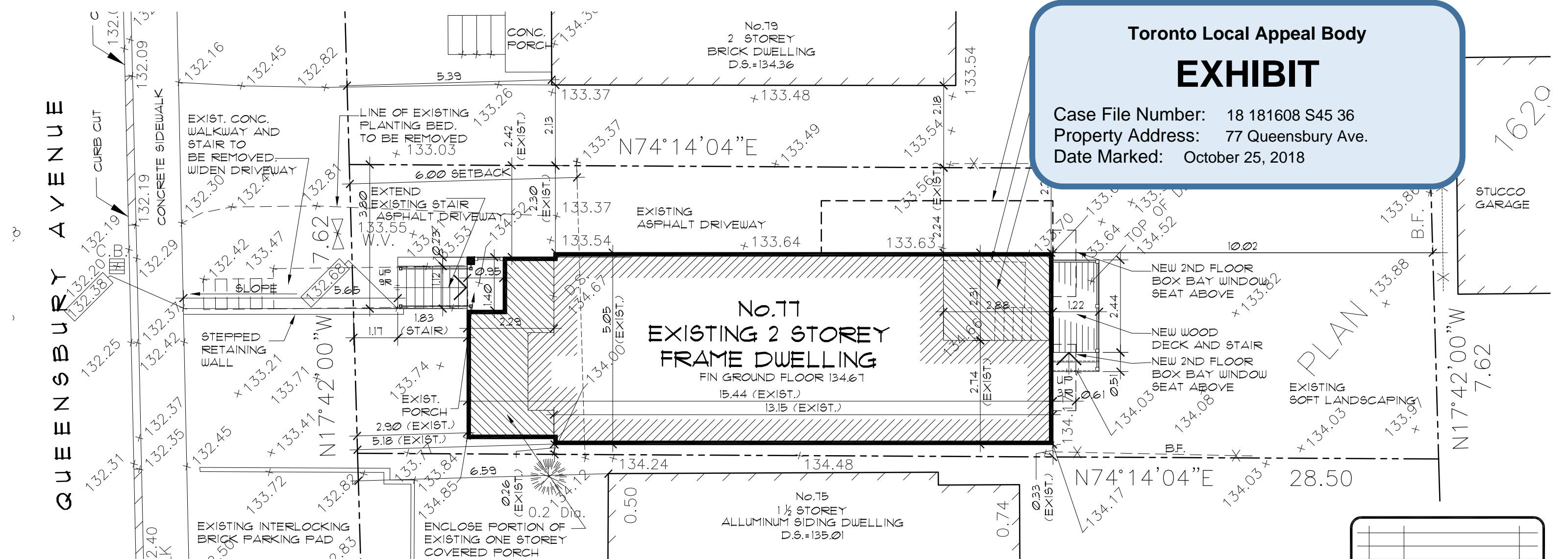


Ian J. Lord

Chair, Toronto Local Appeal Body

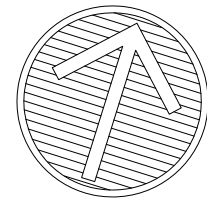
Signed by: Ian Lord

QUEENSBURY AVENUE



SITE PLAN
SCALE: 1:100

INFORMATION TAKEN FROM:
TOPOGRAPHIC SURVEY OF
PART OF LOT 13 REGISTERED PLAN 1629
CITY OF TORONTO,
(FORMERLY THE CITY OF SCARBOROUGH)
DATE: JUL. 4, 2017.
BY: MANDARIN SURVEYORS LTD.



STATISTICS

ZONING	RD (X253)	
PROPOSED USE	SINGLE FAMILY DWELLING	
LOT AREA	217.04 M2	

EXISTING COVERAGE OR 0.311 X LOT AREA	67.50 M2	726.56 SQ FT
NEW ADDITION COVERAGE	18.50 M2	199.10 SQ FT
COMBINED TOTAL COVERAGE. OR 0.396 X LOT AREA	86.00 M2	925.66 SQ FT

EXISTING G.F.A.		
GROUND FLOOR	60.63 M2	652.62 SQ FT
SECOND FLOOR	67.50 M2	726.56 SQ FT
OR 0.590 X LOT AREA	128.13 M2	1,379.18 SQ FT

NEW ADDITION G.F.A.,		
GROUND FLOOR	16.46 M2	177.20 SQ FT
SECOND FLOOR	6.71 M2	72.87 SQ FT
TOTAL	23.23 M2	250.07 SQ FT

COMBINED TOTAL G.F.A.			
GROUND FLOOR	77.09 M2	829.82 SQ FT	
SECOND FLOOR	74.27 M2	799.40 SQ FT	
TOTAL	151.36 M2	1,629.22 SQ FT	
OR 0.694 X LOT AREA (F.S.I.)			

FRONT YARD AREA			
DRIVEWAY	14.63 M2		
FRONT PORCH	1.33 M2		
STAIR	1.99 M2		
SOFT LANDSCAPE	12.70 M2		
TOTAL	30.65 M2		
FRONT LANDSCAPING AREA (LESS DRIVEWAY)	16.02 M2		
OR 52.27% OF FRONT YARD AREA			
SOFT LANDSCAPING AREA (LESS WALKWAY, STAIR & PORCH)	12.70 M2		
OR 11.11% OF FRONT LANDSCAPING AREA			

REAR YARD AREA			
DECK AND STAIR	3.60 M2		
SOFT LANDSCAPING	13.01 M2		
TOTAL.....	16.61 M2		
SOFT LANDSCAPING AREA.....	13.01 M2		
OR 95.30% OF REAR YARD AREA			

Toronto Local Appeal Body

EXHIBIT

Case File Number: 18 181608 S45 36

Property Address: 77 Queensbury Ave.

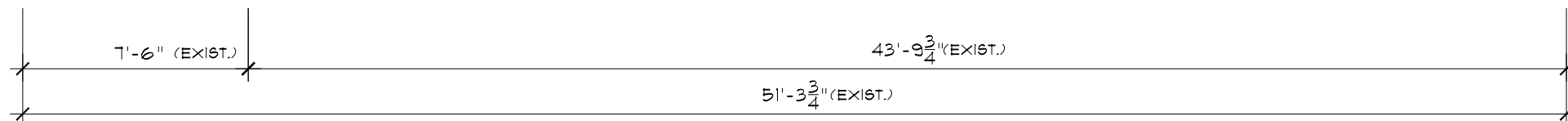
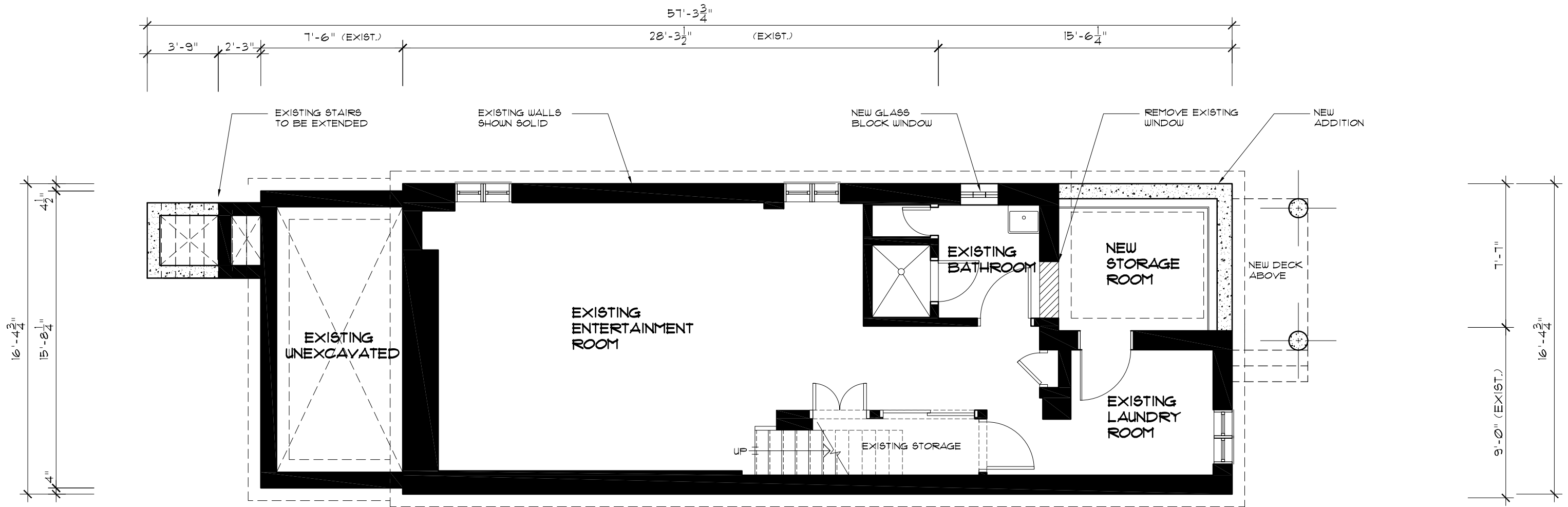
Date Marked: October 25, 2018

01	18 JUL '18	ZONING REVIEW	A.B.
NO.	DATE	REVISION	BY
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LOCATION			
77 QUEENSBURY AVENUE TORONTO, ON			
TITLE			
SITE PLAN			
SCALE AS SHOWN		DRAWN A.B.	
DATE JULY 2018		CHECKED R.R.	
PROJECT NO.	DRAWING NO.	REVISION NO.	
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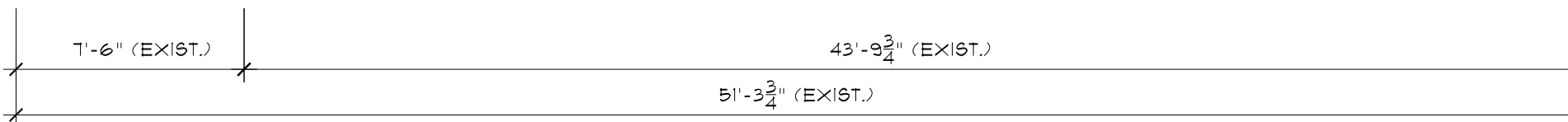
BASEMENT PLAN

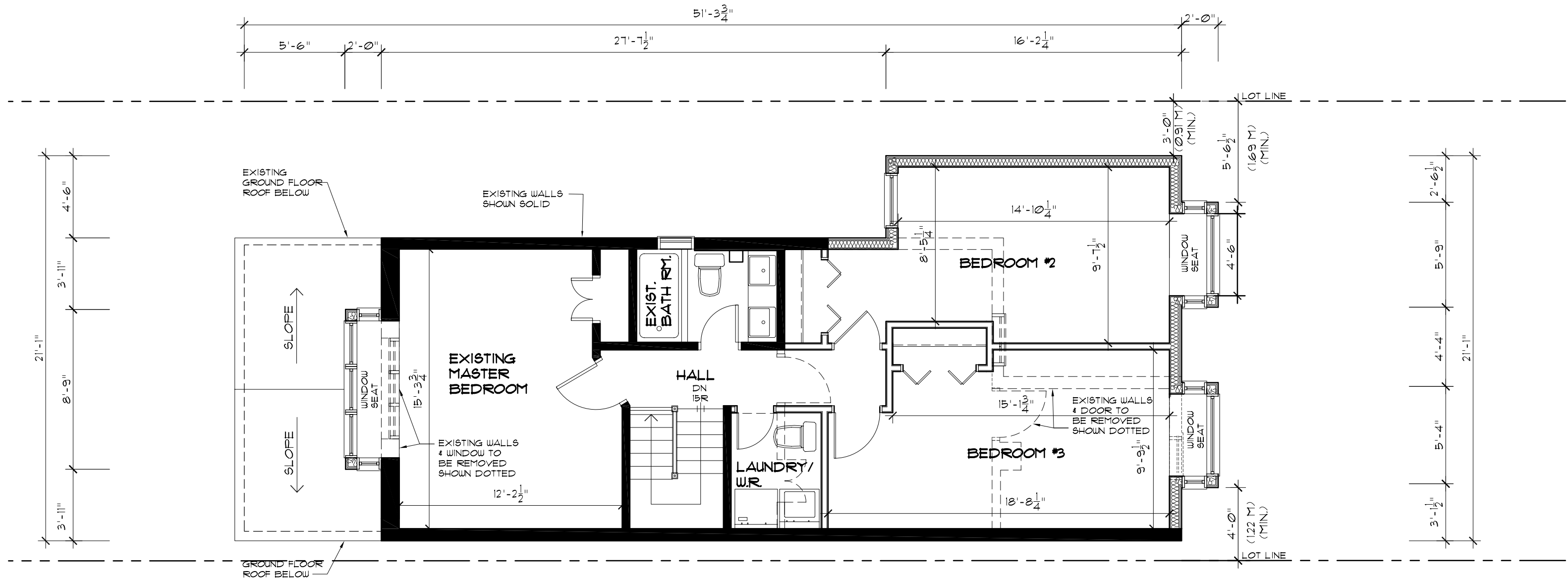
SCALE: 3/16" = 1'-0"

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LOCATION 77 QUEENSBURY AVENUE TORONTO, ON		
TITLE BASEMENT PLAN		
SCALE AS SHOWN	DRAWN A.B.	
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SECOND FLOOR PLAN

SCALE: 3/16" = 1'-0"

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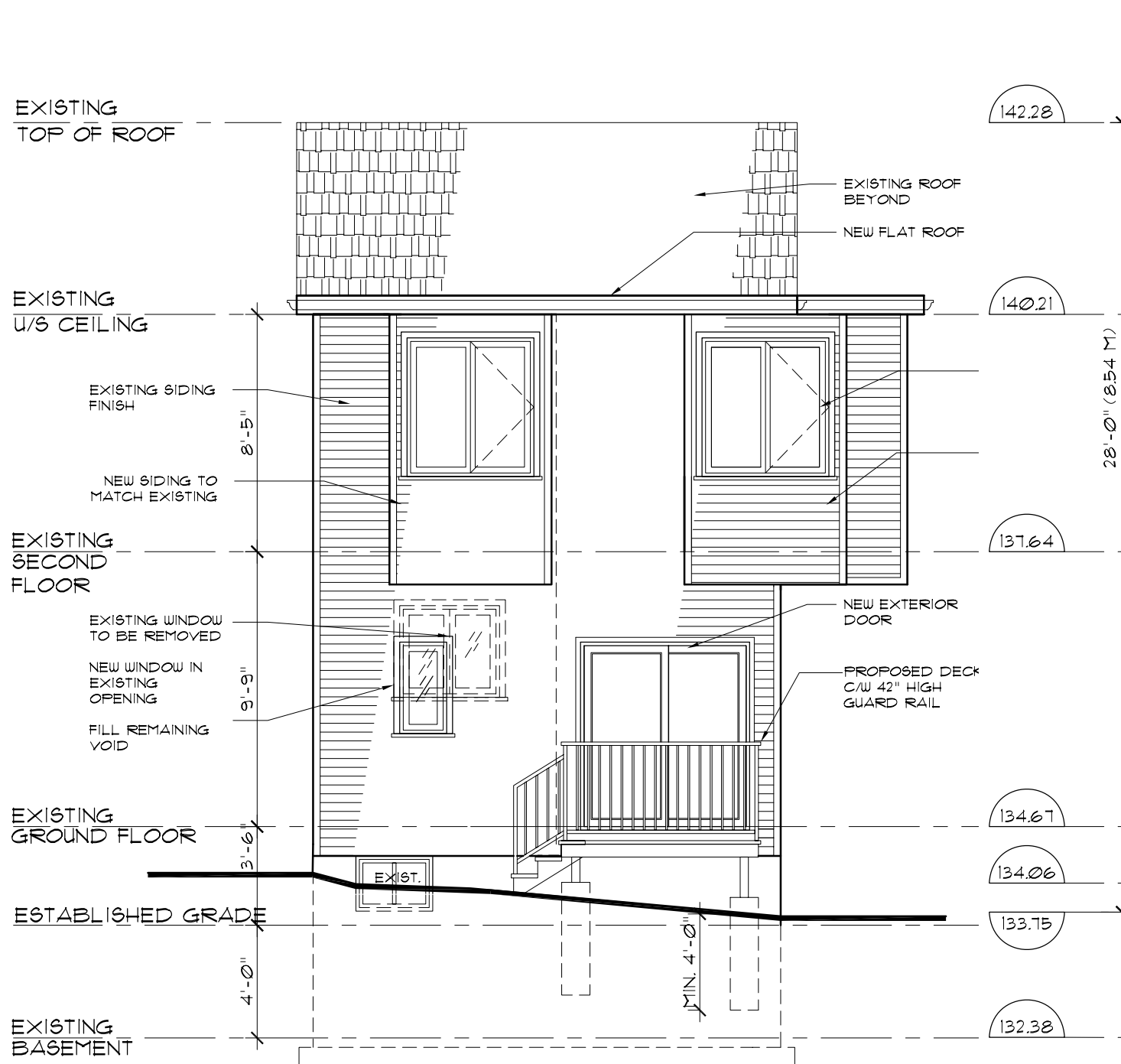
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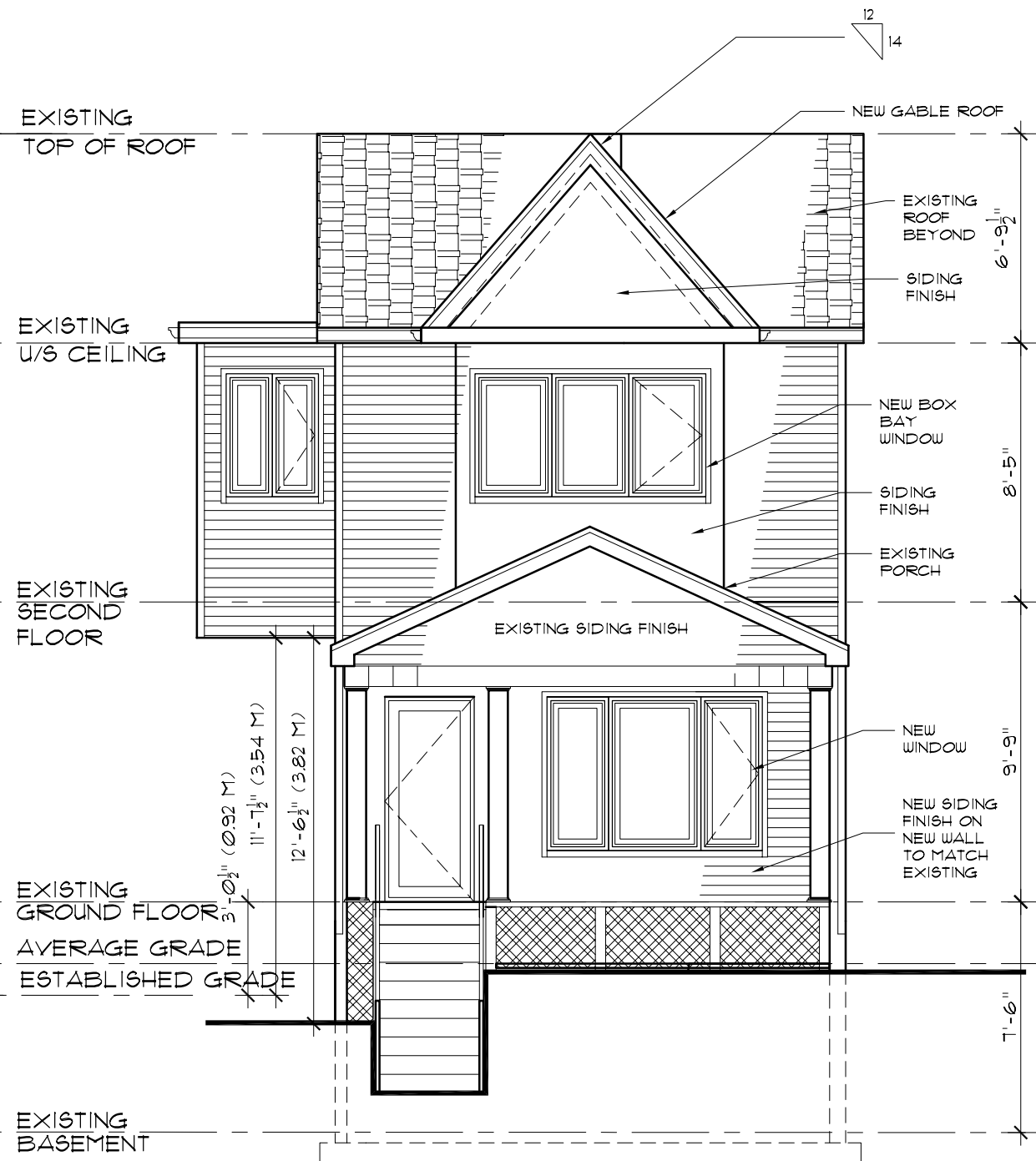
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TITLE		
SECOND FLOOR PLAN		
SCALE	DRAWN	
AS SHOWN	A.B.	
DATE	CHECKED	
JULY 2018	R.R.	
PROJECT NO.	DRAWING NO.	REVISION NO.
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EAST ELEVATION
SCALE: 3/16"=1'-0"



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

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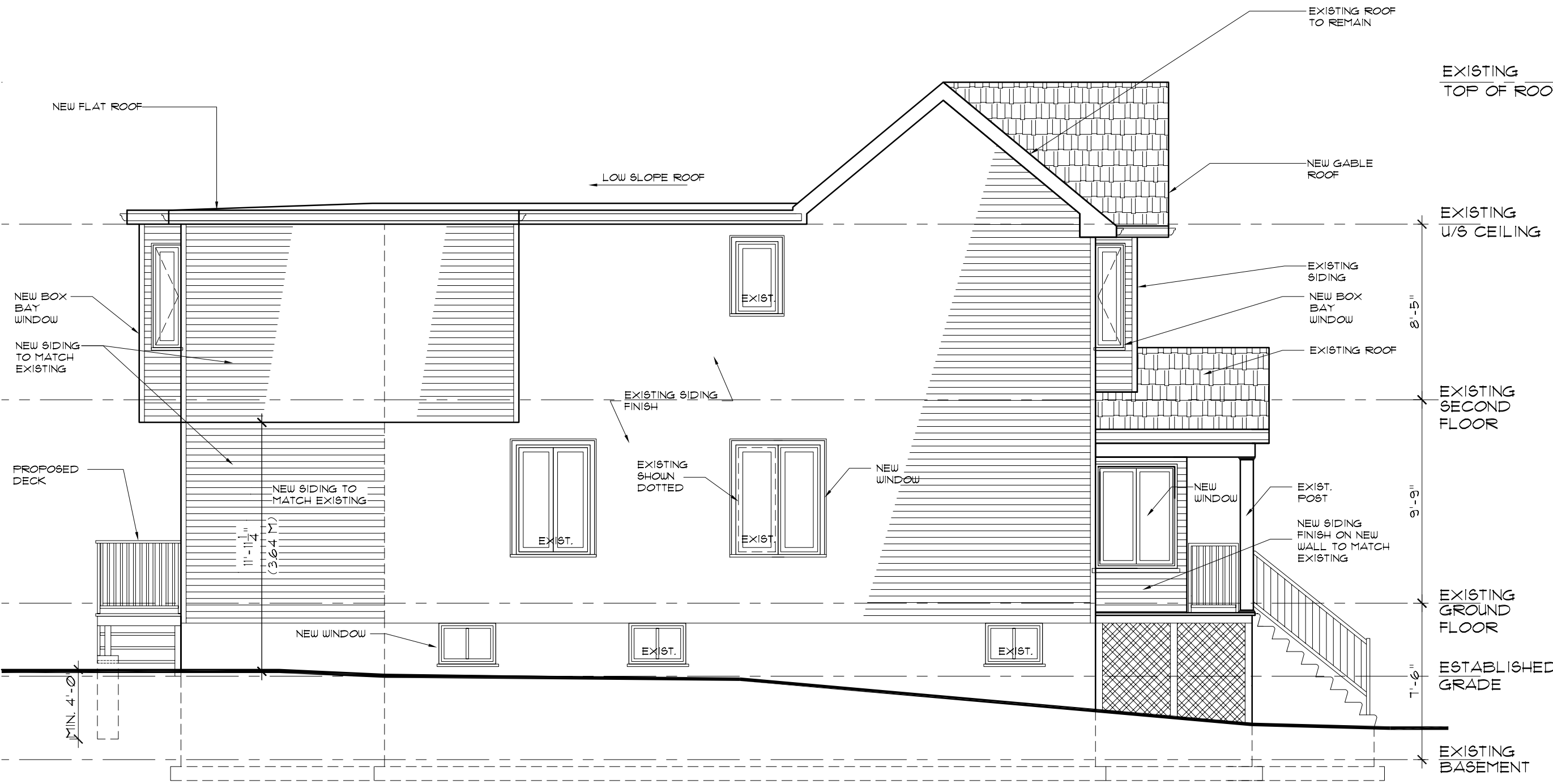
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LOCATION	77 QUEENSBURY AVENUE TORONTO, ON
TITLE	WEST ELEVATION EAST ELEVATION
SCALE	AS SHOWN
DATE	JULY 2018
PROJECT NO.	DRAWING NO. 5
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LOCATION <div style="font-size: 24px; margin-top: 10px;">77 QUEENSBURY AVENUE</div> <div style="font-size: 24px; margin-top: 10px;">TORONTO, ON</div>		
TITLE <div style="font-size: 24px; margin-top: 10px;">SOUTH ELEVATION</div>		
SCALE <div style="font-size: 24px; margin-top: 10px;">AS SHOWN</div>	DRAWN <div style="font-size: 24px; margin-top: 10px;">A.B.</div>	
DATE <div style="font-size: 24px; margin-top: 10px;">JULY 2018</div>	CHECKED <div style="font-size: 24px; margin-top: 10px;">R.R.</div>	
PROJECT NO.	DRAWING NO. <div style="font-size: 24px; margin-top: 10px;">6</div>	REVISION NO. <div style="font-size: 24px; margin-top: 10px;">1</div>



NORTH ELEVATION
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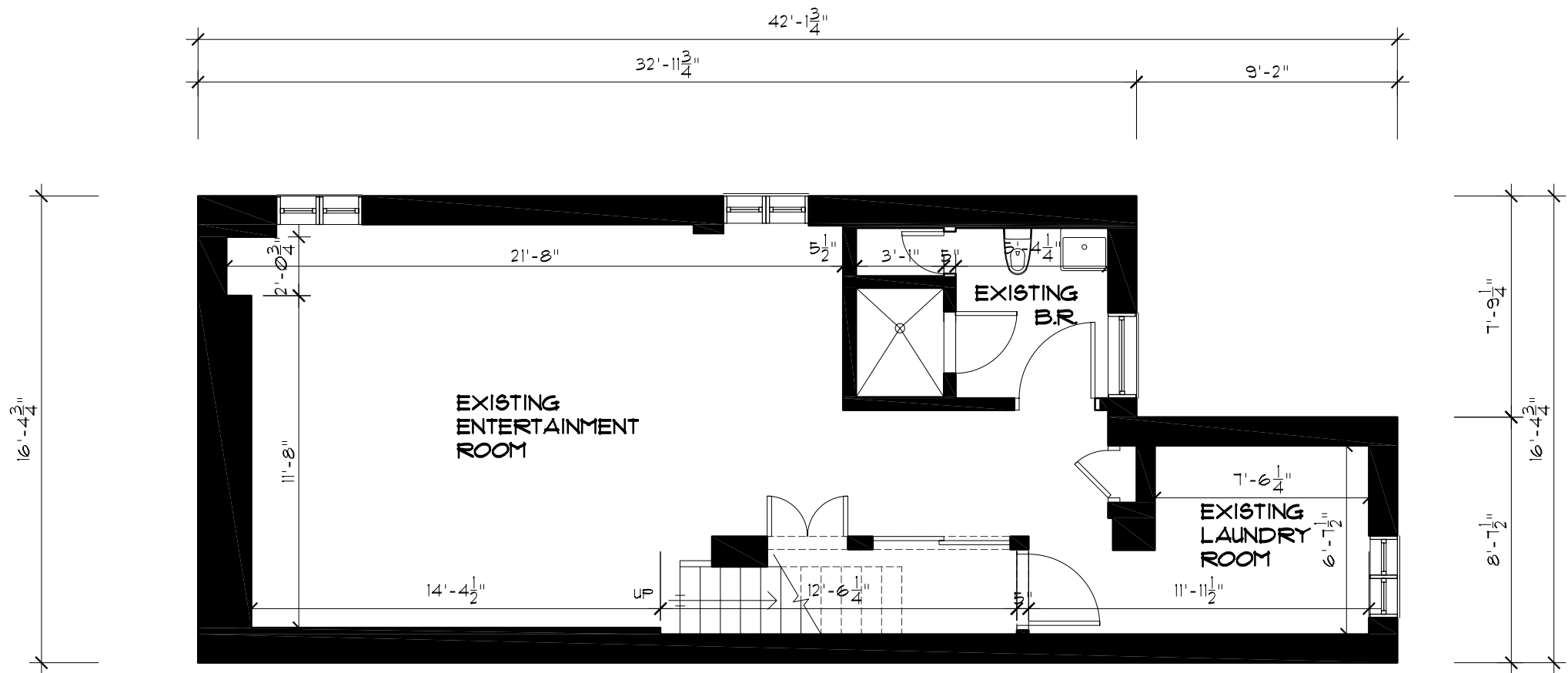
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LOCATION 77 QUEENSBURY AVENUE TORONTO, ON		
TITLE NORTH ELEVATION		
SCALE AS SHOWN	DRAWN A.B.	
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EXISTING BASEMENT PLAN
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LOCATION		
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TITLE		
EXISTING BASEMENT FLOOR PLAN		
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JULY 2018	R.R.	
PROJECT NO.	DRAWING NO.	REVISION NO.
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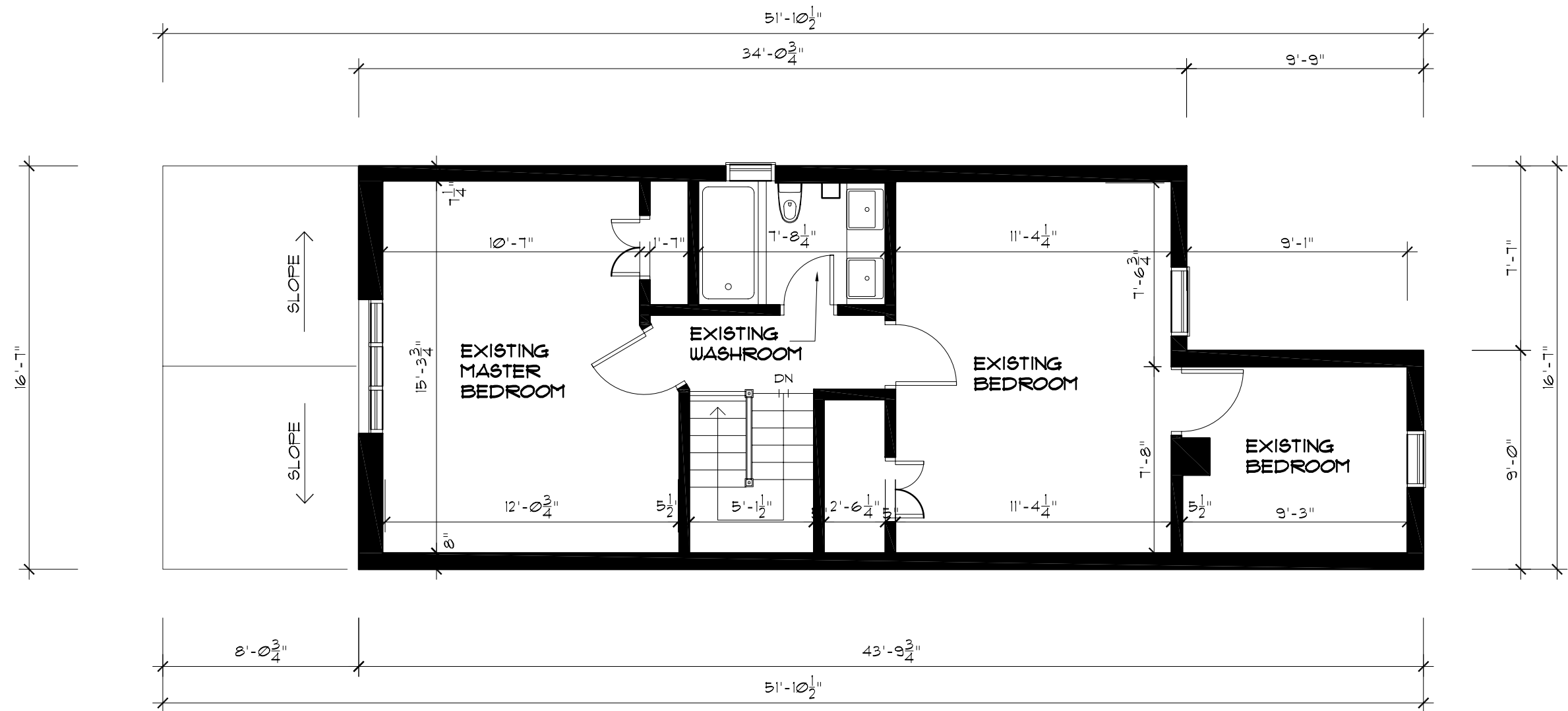


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77 QUEENSBURY AVE - ZONING - 2018 07 JUL 20 - SC.DWG



EXISTING SECOND FLOOR PLAN
SCALE: 3/16"=1'-0"

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LOCATION 77 QUEENSBURY AVENUE TORONTO, ON		
TITLE EXISTING SECOND FLOOR PLAN		
SCALE AS SHOWN	DRAWN A.B.	
DATE JULY 2018	CHECKED R.R.	
PROJECT NO.	DRAWING NO. 10	REVISION NO. 1