

DECISION AND ORDER

Decision Issue Date **Friday, November 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): ABC RESIDENTS ASSOCIATION, ROBINA JANE TEED

Applicant: MICHAEL COGAN

Property Address/Description: 15 BERRYMAN ST

Committee of Adjustment Case File: 17 277292 STE 27 MV (A1393/17TEY)

TLAB Case File Number: **18 171921 S45 27 TLAB**

Motion Hearing date: Monday, September 17, 2018

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Michael Cogan
Appellant	Robina Jane Teed
Appellant	ABC Residents Association
Appellant's Legal Rep.	Andrew Biggart
Party/ Owner	Shaun Levy
Party's Legal Rep.	Amber Stewart

INTRODUCTION

This is an appeal of the granting of minor variances to permit the conversion of a two story detached dwelling into a triplex by constructing a third story addition with a rear deck.

BACKGROUND

Both an adjacent neighbour and the ABC Residents Association were appellants, while a number of neighbours were participants in opposition. The City, however, did not appear in opposition to the variances and Heritage Preservation Services (HPS)

stated that the proposal met the Yorkville-Hazelton Heritage Conservation District Guidelines, subject to certain conditions.

MATTERS IN ISSUE

The matters in issue related largely to the impact of the proposed addition on the neighbouring appellant's dwelling and on the use of the triplex for short term rentals.

JURISDICTION

Under s. 3 of the Planning Act 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').

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

Evidence was presented by the architect of the proposal. It was clear from his evidence that HPS had been consulted and was in favour of the proposal subject to certain identified conditions. Moreover, both Urban Forestry, and Engineering and Construction Services had no concerns and there were no transportation issues. After the architect's evidence was heard there was an adjournment during which the parties reached a settlement which involved a minor alteration to the plans and a new condition. Evidence was heard from a qualified land use planner that the settlement met all the Planning Act provisions set out above. The planner relied on her witness statement and I accept the unchallenged evidence therein. I also rely on a visit to the site which clearly demonstrated that the addition would not be visible from the street.

The parties requested that I withhold my decision until: new plans could be drawn up which included the minor alteration; a new examiner's notice could be obtained based on the altered plans; and the revised variances and plans and the conditions which would include the new condition could be submitted to me for approval. All of these were submitted to TLAB on November 15, 2018 for my consideration.

ANALYSIS, FINDINGS, REASONS

Based on the evidence presented at the hearing, the revised plans, the new examiner's notice, a revised list of variances, and the new list of conditions, which includes a prohibition on using the site for short term rentals, I find the appeal should be allowed in part and that the variances and plans as revised should be approved subject to conditions agreed to by the parties. The revision to the plans and variances are minor and the application does not require new notice under s. 45(18.1.1) of the Planning Act.

DECISION AND ORDER

The appeal is allowed, in part, and the variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with the plans in Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

Appendix 1

15 Berryman Street – List of Variances and Conditions

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013 2
The maximum permitted floor space index is 1.0 times the area of the lot (274.2 m²).
The floor space index will be 1.345 times the area of the lot (368.68 m²).
2. Chapter 10.10.40.30.(1)(B), By-law 569-2013
The maximum permitted building depth is 14.0 m.
The building depth will be 20.69 m.
3. Chapter 10.10.40.10.(2)(A)(i), By-law 569-2013
The maximum permitted height of all front exterior main walls is 8.5 m.
The height of the front exterior main wall will be 10.30 m.
4. Chapter 10.10.40.10.(2)(A)(ii), By-law 569-2013
The maximum permitted height of all rear exterior main walls is 8.5 m.
The height of the rear exterior main wall will be 10.30 m.
5. Chapter 10.5.40.60.(8)(A), By-law 569-2013
Wall mounted vents, pipes, or utility equipment may encroach into a required side yard setback 0.6 m, if it is no closer to a lot line than 0.3 m.
The fire shutters will encroach 0.96 m into the required east side yard setback, and will be 0.24m to the east lot line.
6. Chapter 10.10.40.10(1), By-law 569-2013
The permitted maximum height of a building or structure is 10.0 m.
The proposed height of the building is 10.3 m.
7. Chapter 200.5.10.1.(1), By-law 569-2013
The minimum required number of parking spaces to be provided for a triplex is 2.
In this case, no parking space will be provided.
8. Chapter 10.5.40.60.(7), By-law 569-2013
Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.30 m to a lot line.
The proposed eaves are located 0.2 m from the west side lot line.
9. Section 6(3) Part II 3F(I)(2), By-law 438-86
The minimum required side lot line setback for a building is 1.2 m, where the side wall contains openings.
The east side lot line setback will be 0.54 m to the main wall, and 0.24 m to the fire shutter.
10. Section 6(3) Part II 3 F(I)(1), By-law 438-86
The minimum required side lot line setback of a building is 0.45 m, where the side wall contains no openings.
The west side lot line setback will be 0.11 m.

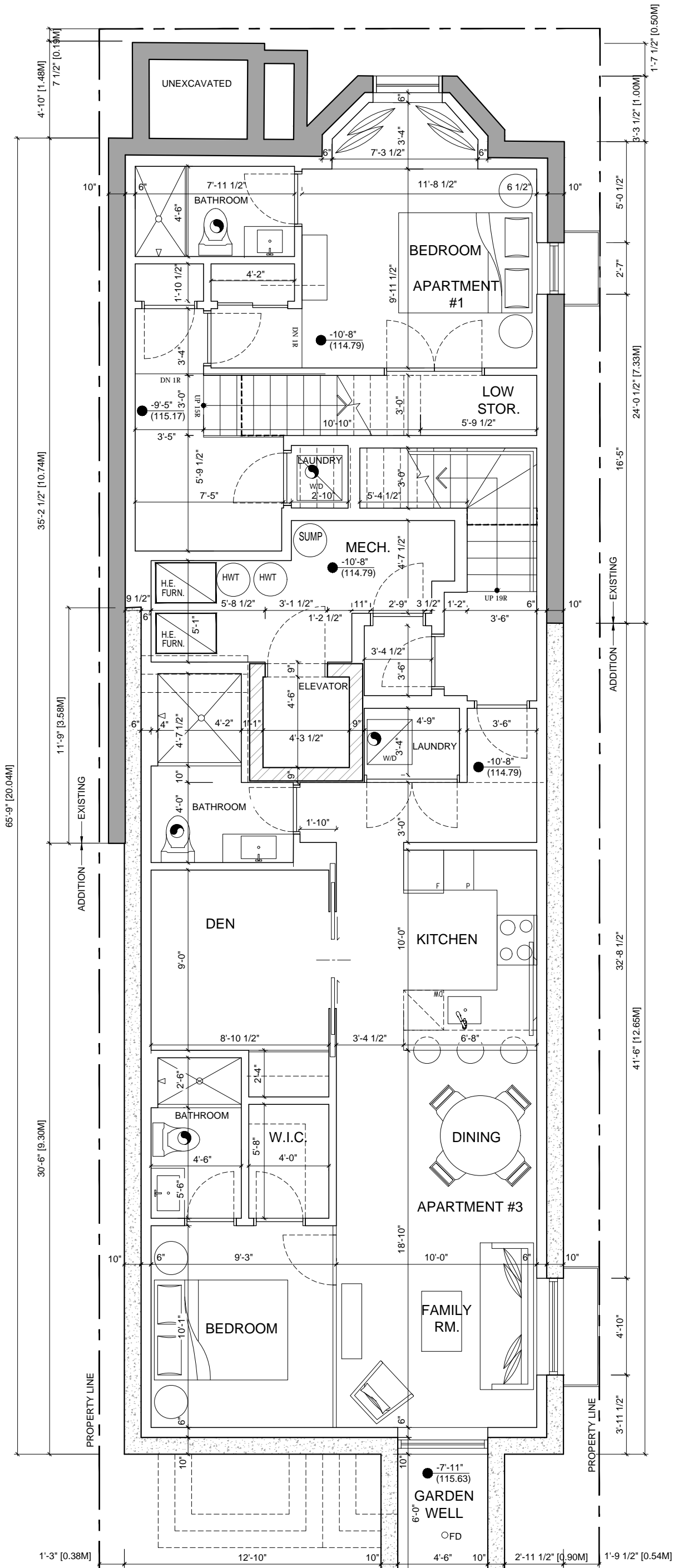
11. Section 4(5)(b), By-law 438-86
The minimum required number of parking spaces to be provided is 1.
In this case, no parking space will be provided.
12. Section 6(3) Part II 3(ii), By-law 438-86
The minimum distance between a building and the portion of the side wall of an adjacent building that contains openings is 1.2 m.
The proposed building will be located 0.58 m (main wall, not including fire shutter) from the adjacent building at 13 Berryman Street.
13. Section 900.2.10(860), By-law 569-2013 and Section 12(2)(322)(ii)(a), By-law 438-86
No person shall erect or use a building or structure on any lot within the Yorkville Triangle with a front lot line on Hazelton Avenue, Webster Avenue, or the south side of Berryman Street, exclusive of lands with the flank of the lot on Webster Avenue known municipally in the year 1998 as 121 Avenue Road where the building or structure has a depth greater than 17 m.
The building depth will be 20.98 m.
14. Section 900.2.10(860), By-law 569-2013 and Section 12(2)(322)(ii)(c)(A), By-law 438-86
No person shall erect or use a building or structure where the height of the building or structure is greater than 7.0 m, exclusive of a deck, fence and other rooftop elements permitted by Section 4(2)(a)(i), for any portion of the building or structure having a depth greater than 14 m.
The portion of the building beyond a depth of 14m will have to have a height of 10.39 m.
15. Section 4(2)(a), By-law 438-86
The by-law permits a maximum building height of 10.0 m.
The proposed building height is 10.39 m.

Conditions of Approval

1. Prior to the issuance of a building permit, the owner/applicant shall provide written confirmation from the Senior Manager, Heritage Preservation Services, City Planning, that the following matters have been completed satisfactorily:
 - a. Building permit drawings, including plans, elevations and details shall be submitted to the satisfaction of the Senior Manager, Heritage Preservation Services, and a heritage permit shall be obtained under the provision of Section 42 of the Ontario Heritage Act.
 - b. The applicant shall retain a consultant archaeologist, licensed by the Ministry of Tourism, Culture and Sport under the provisions of the Ontario Heritage Act to carry out a Stage 1-2 archaeological assessment of the entire property and follow through on recommendations to mitigate, through preservation or resource³ removal and documentation, adverse impacts to any significant archaeological resources found. The assessment is to be completed in accordance with the 2011 Standards and Guidelines for Consulting Archaeologists, Ministry of Tourism, Culture and Sport.
 - c. Should the archaeological assessment process continue beyond a Stage 1-2 assessment, any recommendations for Stage 3-4 mitigation strategies must be reviewed and approved by Heritage Preservation Services prior to commencement of the site

mitigation.

- d. The consultant archaeologist shall submit a copy of the relevant assessment report(s) to the Heritage Preservation Services Unit in both hard copy format and as an Acrobat PDF file on compact disk. All archaeological assessment reports will be submitted to the City of Toronto for approval concurrent with their submission to the Ministry of Tourism, Culture and Sport.
 - e. No demolition, construction, grading or other soil disturbances shall take place on the subject property prior to the City's Planning Division (Heritage Preservation Services Unit) and the Ministry of Tourism, Culture and Sport (Heritage Operations Unit) confirming in writing that all archaeological licensing and technical review requirements have been satisfied.
2. No dwelling units or part of a dwelling unit contained in the triplex at 15 Berryman shall be offered or used for "short-term rental", as defined in By-law [613-2018](#), or any successor by-law permitting "short-term rental", and in any event, no dwelling unit or part of a dwelling unit contained in the triplex at 15 Berryman shall be offered or used as a dwelling space for rent in exchange for payment for a period that is less than 28 consecutive days.

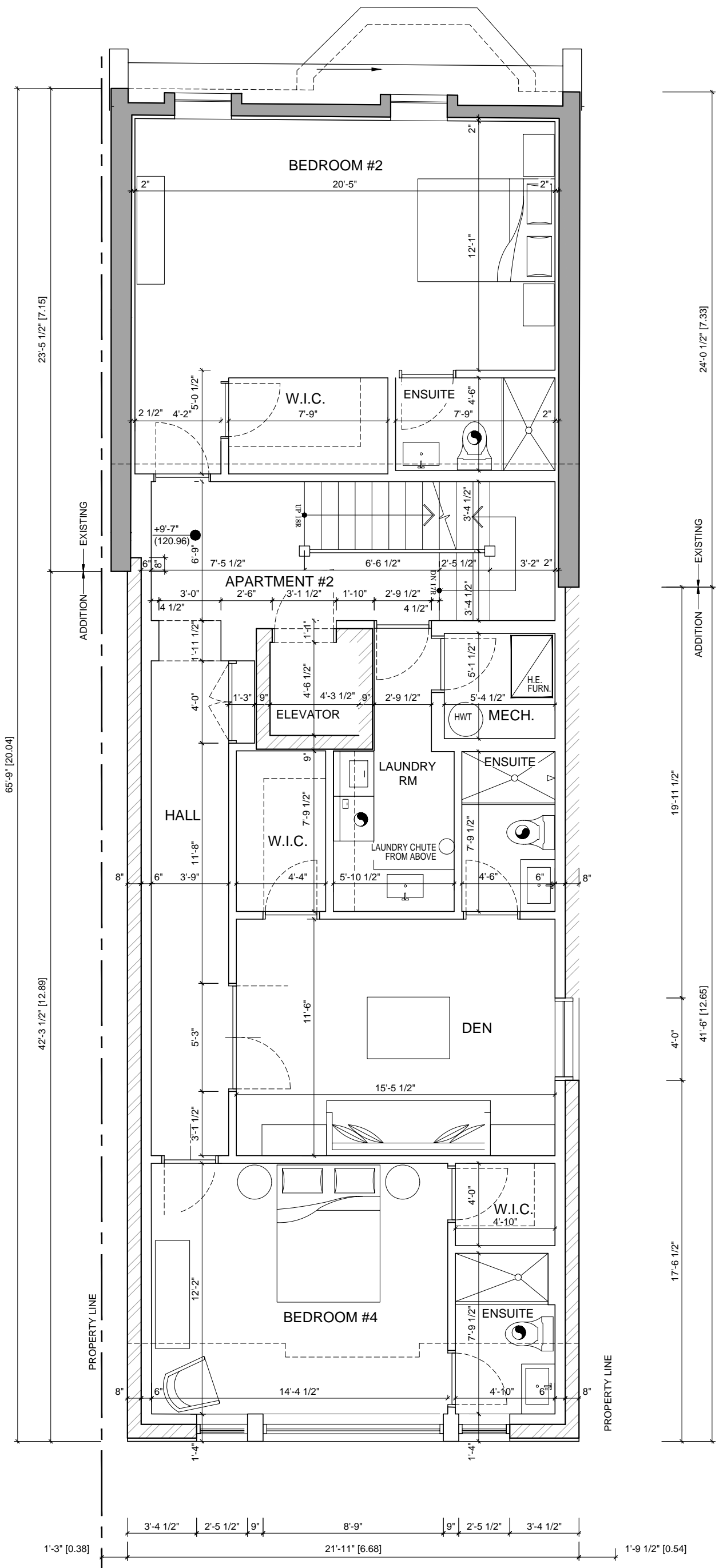


15 BERRYMAN STREET
PROPOSED BASEMENT PLAN

1624
3/16" = 1'-0"
OCTOBER 12, 2018

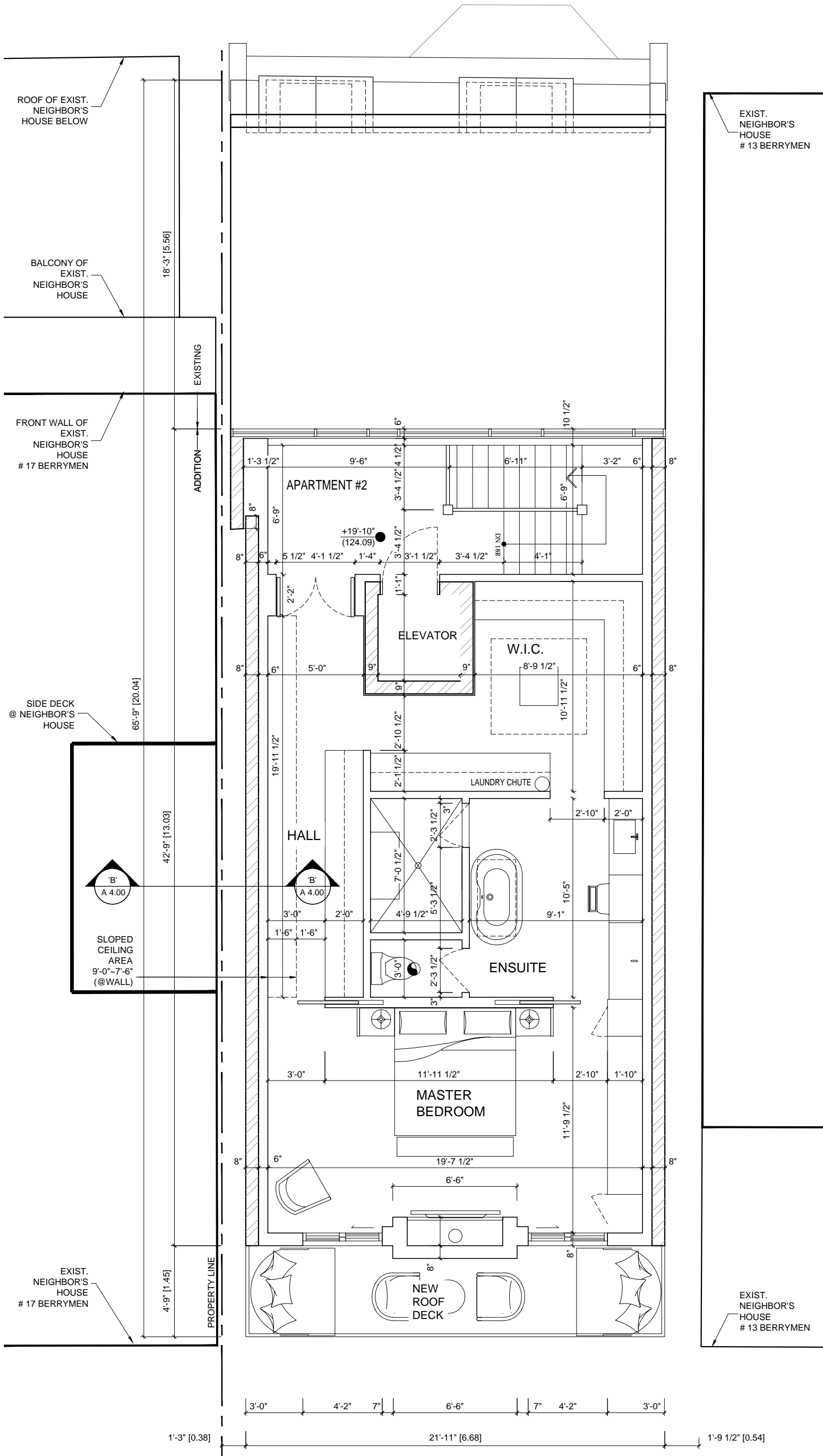
michael cogan architect

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15 BERRYMAN STREET
PROPOSED SECOND FLOOR PLAN
 1624
 3/16" = 1'-0"
 OCTOBER 12, 2018

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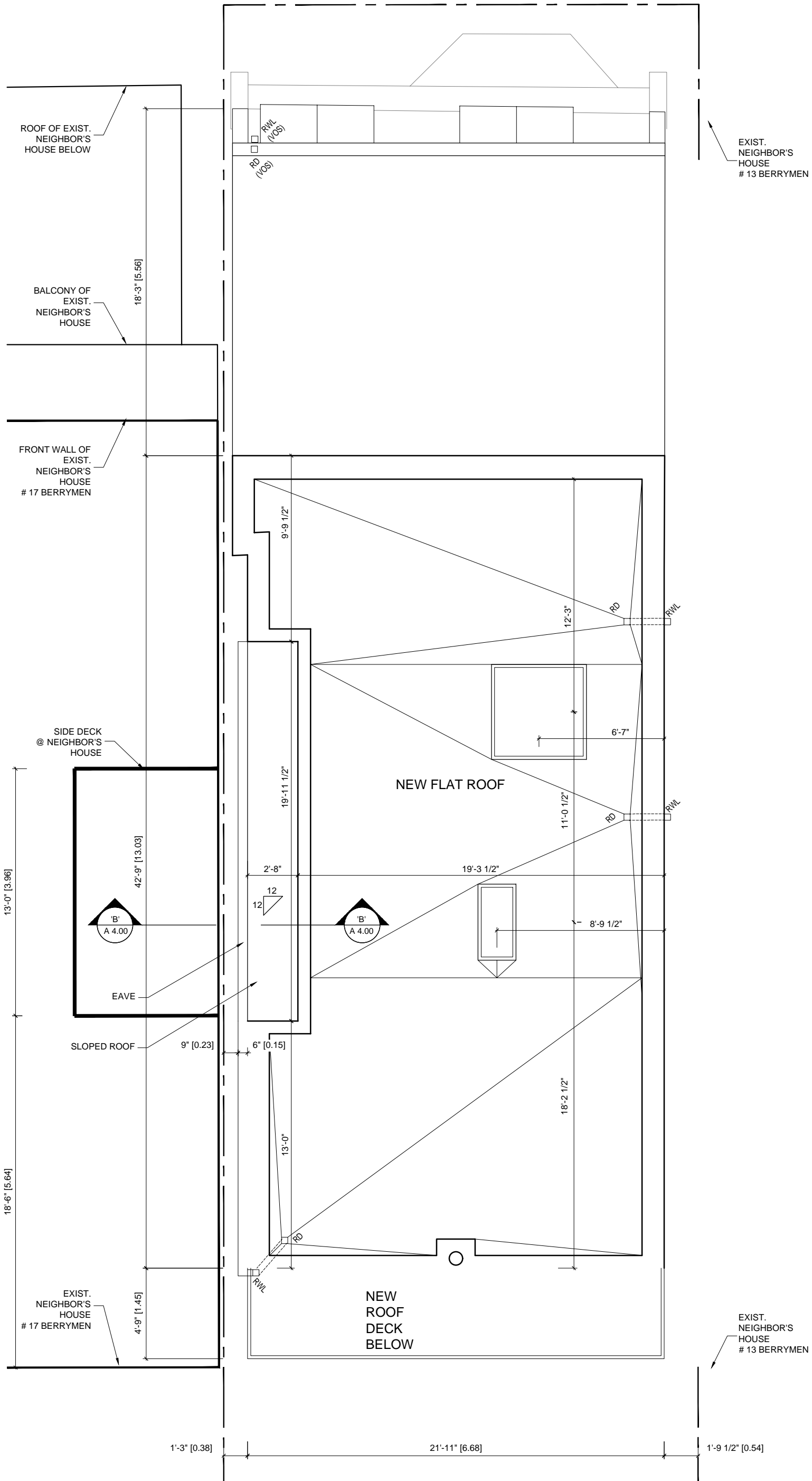


15 BERRYMAN STREET
PROPOSED THIRD FLOOR PLAN

1624
3/16" = 1'-0"
OCTOBER 12, 2018

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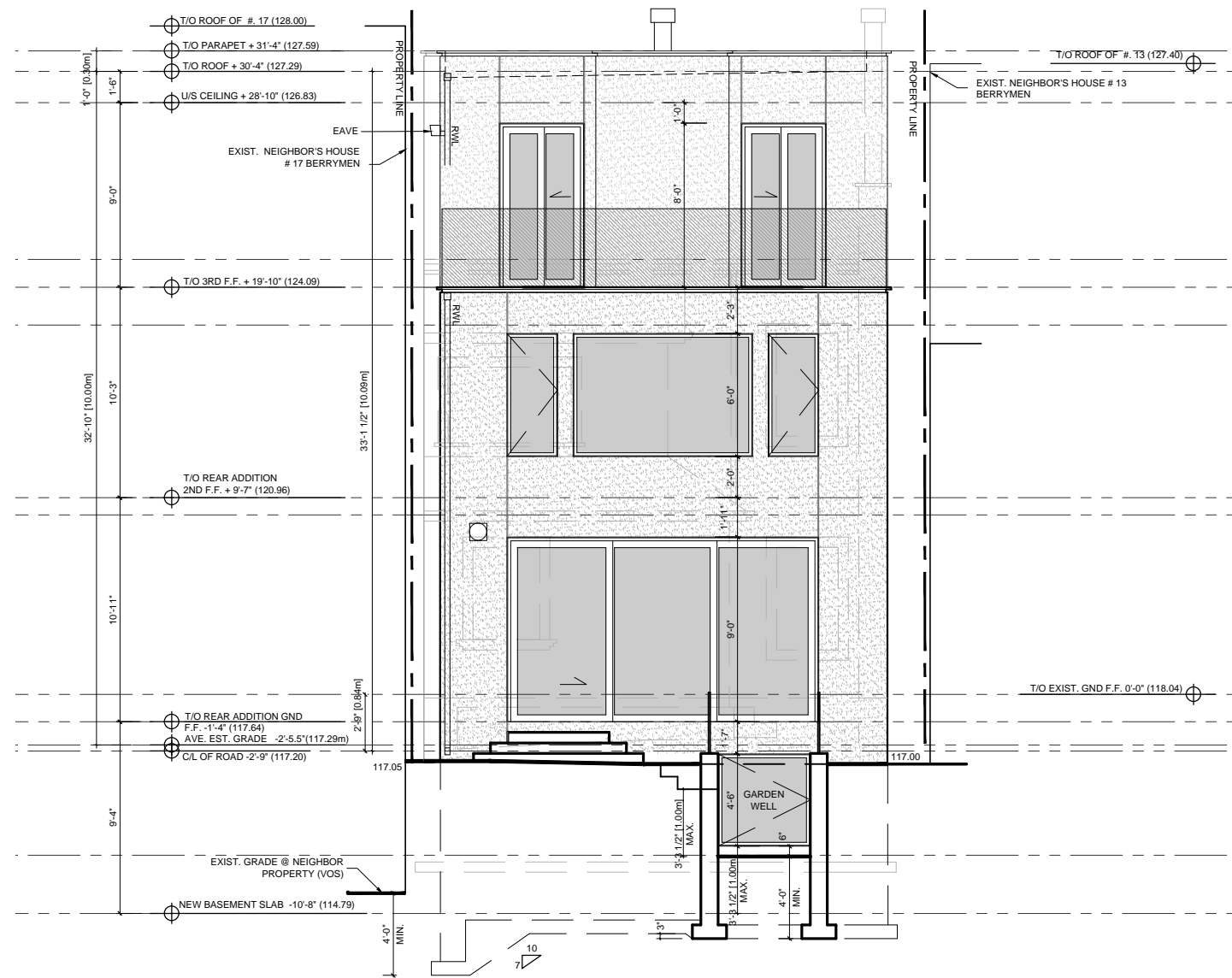


**15 BERRYMAN STREET
PROPOSED ROOF PLAN**

1624
3/16" = 1'-0"
OCTOBER 12, 2018

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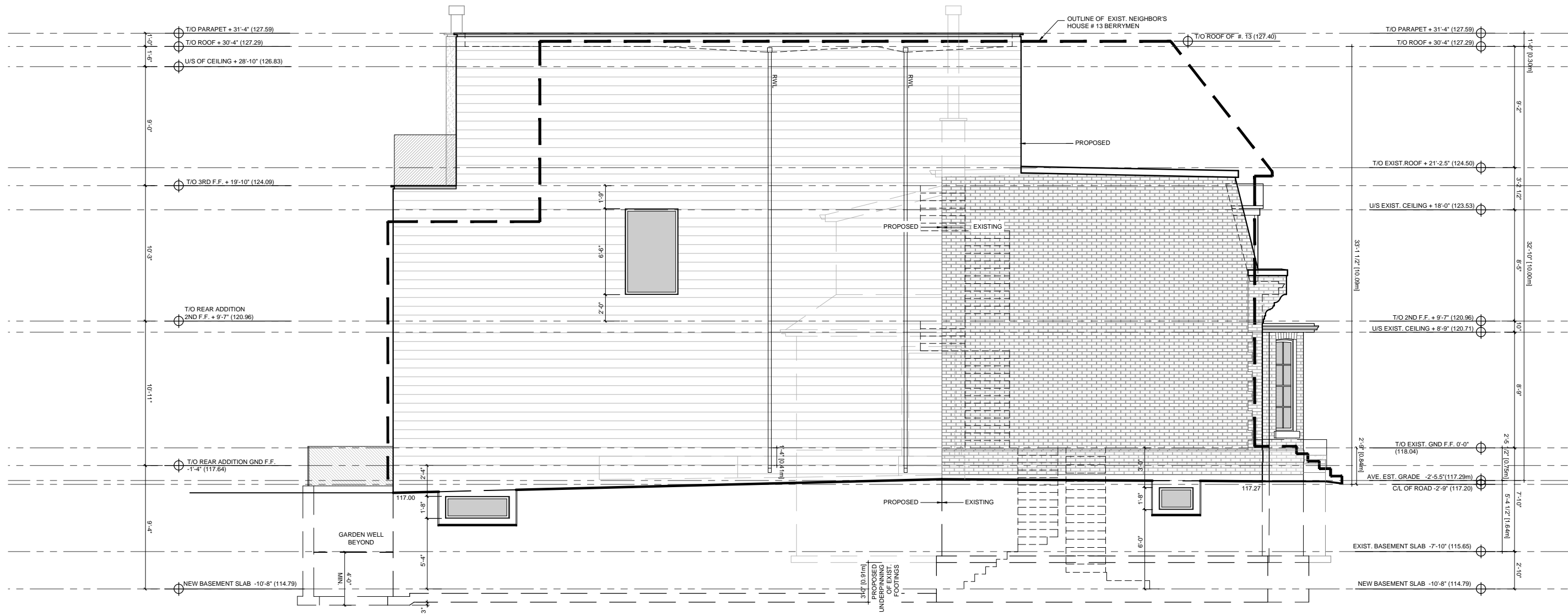


15 BERRYMAN STREET
 PROPOSED SOUTH ELEVATION

1624
 SCALE: 1/8"
 OCTOBER 12, 2018

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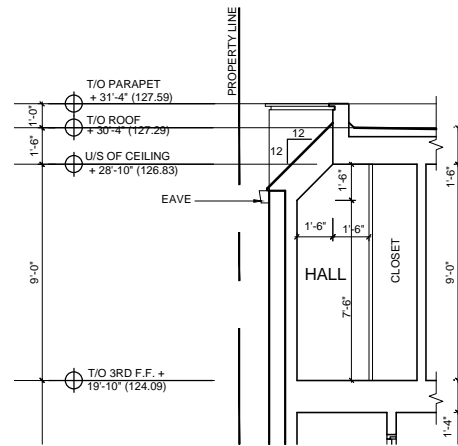


15 BERRYMAN STREET
 PROPOSED EAST ELEVATION

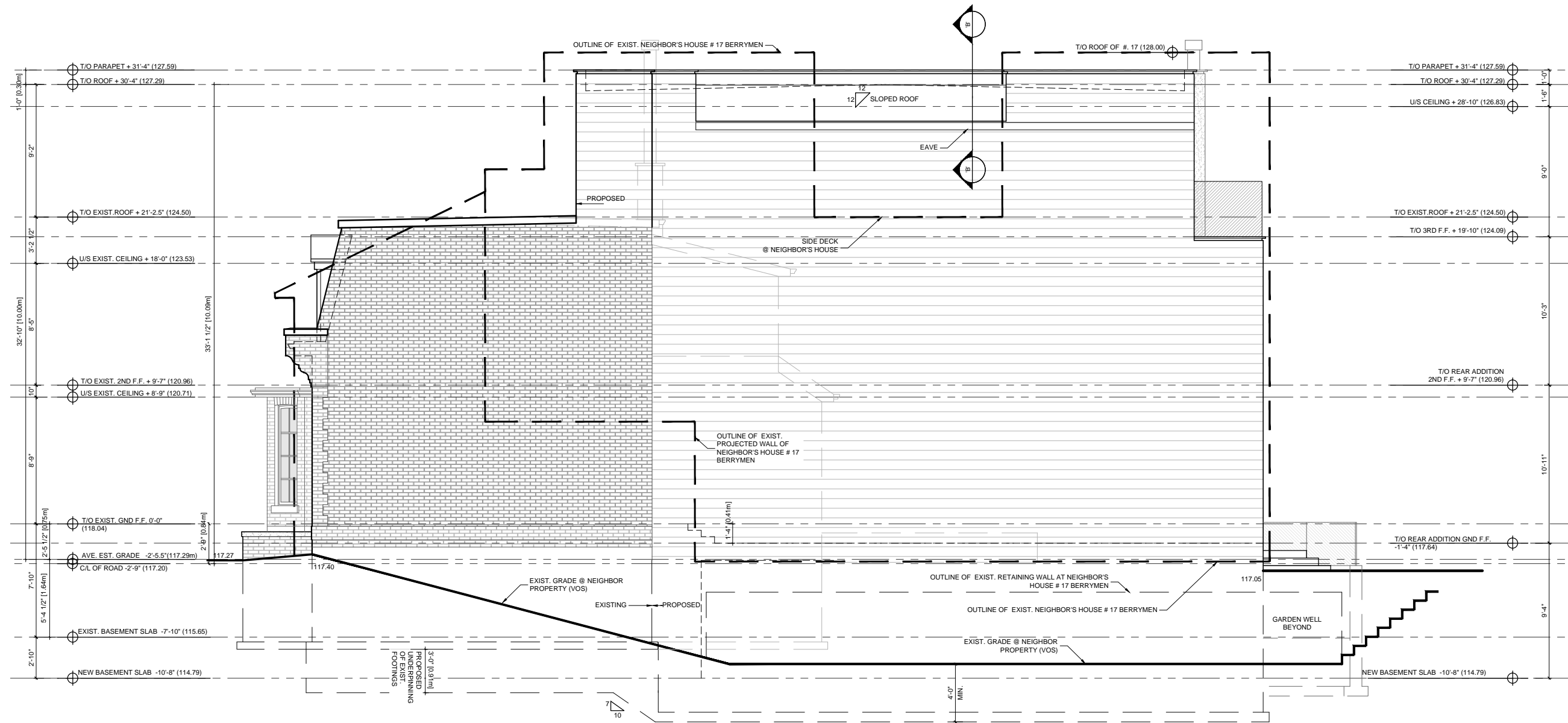
1624
 SCALE: 1/8"
 OCTOBER 12, 2018

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SECTION B



PROPOSED WEST ELEVATION

15 BERRYMAN STREET
 PROPOSED WEST ELEVATION & SECTION B

1624
 SCALE: 1/8" = 1'-0"
 OCTOBER 12, 2018

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