

DECISION AND ORDER

Decision Issue Date Tuesday, February 19, 2019

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): GERTRUDE RUDANYCZ

Applicant: SOL ARCH

Property Address/Description: 142 RANEE AVE

Committee of Adjustment Case File: 18 173050 NNY 15 MV

TLAB Case File Number: **18 217388 S45 15 TLAB**

Hearing date: Wednesday, January 16, 2019

DECISION DELIVERED BY G. Burton

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MANA SARANJ	OWNER/PARTY	SARAH HAHN
SOL ARCH	APPLICANT	
GERTRUDE RUDANYCZ	APPELLANT	LEON RUDANYCZ
JONATHAN BENCZKOWSKI	EXPERT WITNESS	

INTRODUCTION

This was an appeal from a decision of the Committee of Adjustment (COA) dated August 9, 2018, that granted the owner of 142 Ranee Avenue in the Eglinton-Lawrence Avenue area of Toronto several variances for the construction of a new detached dwelling with a secondary suite. This decision was appealed to the Toronto Local Appeal Body (TLAB) by the neighbour next door at 140 Ranee Avenue, Ms. Gertrude

Rudanycz. Unfortunately she has recently passed away, and her son and executor Mr. Leon Rudanycz continued the appeal. He appeared to argue it at the TLAB hearing.

BACKGROUND

The subject property is located on the north side of Ranee Avenue, between Bathurst Street and Allen Road. It is zoned RD (f15.0;a550)(x5) under the City of Toronto Zoning By-law 569-2013 (the New By-law) and R5 under the former North York By-law 7625 (the NY By-law).

The COA granted side yard setback, coverage and second suite variances from the New By-law provisions, and finished first floor height and overall height variances under the older NY By-law standards.

The appellant Mr. Rudanycz provided his evidence first, as he had not filed the required Witness Statement in advance, as is required under TLAB Rule 16.4. The applicant believed that this would assist in scoping the evidence required in the hearing.

MATTERS IN ISSUE

Mr. Rudanycz' principal objections to the proposal were to the secondary suite allowed by the COA, and also to the proposed building height.

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan or GP) for the subject area.

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Expert planning evidence was provided on behalf of the owner by Mr. Jonathan Benczkowski, who had also represented her at the COA hearing. I will set out his general evidence as usual. Much of his later testimony was in response to Mr. Rudanycz's evidence, however, so it became difficult to set it out in the usual order.

Mr. Benczkowski testified that in addition to a thorough acquaintance with the neighbourhood, he had reviewed the Planning Staff Report and letters of objections, as well as relevant background materials. He conducted a study of the surrounding neighbourhood, and prepared the photo book and visual exhibits presented to the TLAB.

The Planning Staff Report on the original COA application was dated July 31, 2018. It recommended increased side yard setbacks and a reduced height of the dwelling. **These suggestions were accepted by the owner prior to the COA hearing. They were incorporated into revised plans, and into the COA's decision approving the variances.** This is important because of misunderstandings that became evident in the hearing about the necessity for and rationale behind the variances that were finally approved.

Changes to the application before the COA were:

- Variances relating to the side yard setbacks were increased (i.e. improved) from the requested .92 m to the staff-recommended 1.2 m.

- The height variance sought under the New By-law was **removed**. The roof style was changed to a pitched from a flat roof, altering the overall height permitted for the structure.

The proposed dwelling now meets all of the height requirements for a standard sloped/pitched roof under the New By-law (which permits a 10 m height – details below). There are still variances required for overall and first floor height under the NY By-law, but the overall height was reduced in the TLAB hearing (from 9.9 m to 9, when 8.8 m is required). These measurements are merely technical in any event (explained below).

The (revised) variances **approved** by the COA were:

1. Chapter 900.3.10(5), By-Law 569-2013

The minimum required side yard setback is 1.8m.

The proposed dwelling will have an east side yard setback of **1.2m**.

2. Chapter 900.3.10(5), By-Law 569-2013

The minimum required side yard setback is 1.8m.

The proposed dwelling will have a west side yard setback of **1.2m**.

3. Chapter 10.20.30.40.(1)(a), By-Law 569-2013

The permitted maximum lot coverage is 30.0% of the lot area.

The proposed dwelling will have a lot coverage of 32.6% of the lot area.

4. Chapter 150.10.40.1.(1), By-Law 569-2013

A secondary suite is a permitted use provided that the entire building was constructed more than 5 years prior to the introduction of a secondary suite.

The entire building was not constructed more than 5 years prior to the proposed introduction of the secondary suite.

5. Section 6(30)a, By-Law No. 7625

The maximum finished first floor height is 1.5m.

The proposed dwelling will have a finished first floor height of 1.71m.

6. Section 14.2.6, By-Law No. 7625

The maximum permitted building height is 8.8m.

The proposed dwelling will have a height of 9.9m.

The appellant Mr. Rudanycz directed most of his evidence and objections to the **previously** proposed height of the structure, and not to that approved in the COA hearing. It is unfortunate that he did not file a Witness Statement with more information prior to the hearing, when discussions could have been held to acquaint him with the actual structure approved. However, he also had objections to the proposed second suite, one of the required variances sought in the application.

On the height issue, Mr. Rudanycz presented an extraordinarily detailed photo exhibit of existing dwellings on Ranee itself and surrounding streets, as had Mr. Benczkowski. He objected to the lack of actual heights provided in the latter's photos and/or charts, and so provided similar but more inclusive photos, with the heights of the dwellings included. However, these were prepared with the belief that the height limit he was objecting to was the previously requested 9.9 m (when the By-law limit was 8 m). Thus his evidence, directed to actual heights in the neighbourhood, while a great effort on his part, was essentially without value for his argument.

Mr. Benczkowski chose as his study area for this matter the blocks bounded by Baycrest Avenue to the north, Ranee Avenue to the south, Bathurst Street to the east, and Allen Road to the west. This reflects what a resident of the area would experience in day-to-day life, within the usual short walk. He then examined all Committee of Adjustment decisions provided within the usual circle by the City (he testified that one could not acquire them for a single street). He found a mix of one and two-storey dwellings with some newer three-storey dwellings, typically centre hall style homes with a drive aisle to either covered carports or integral garages. There is significant public transit surrounding the site – several bus routes, and a subway station.

He then addressed the governing provincial policies, determining that these were met by the proposed dwelling.

A key objective of the PPS is that municipalities should accommodate growth through intensification. It sets the policy foundation for regulating the development and use of land, further refined in municipal OPs and zoning by-laws. S. 1.1.1 requires an appropriate range and mix of residential housing (**including second units....**). 1.1.3.2 states that land use patterns within settlement areas shall be: "5 –transit-supportive." Here the proposal is located amid a great deal of public transit, and includes a secondary suite located in the basement. Thus it would meet these goals of the PPS.

It would also be consistent with the applicable policies of the Growth Plan, which promotes intensification and complete communities, with a mix of housing options to accommodate households of different sizes. The subject property is located within a built-up area as shown on the accompanying Maps. The Plan promotes intensification within built up areas to efficiently optimize land, and to support public transit. (Section 1.2.1 a). It encourages a mix of housing options, including detached housing, and also secondary suites. (Section 1.2.1 b). Such suites or second units do not constitute duplexing, as the present By-law provisions proscribes. The second unit here is an example of a smaller sized space, within the principal unit, and not a duplex.

Mr. Benczkowski addressed the requested variances. The approved side yard setbacks of 1.2 m rather than the required 1.8 m under the New By-law still allow for a functional spacing between the dwellings. This size is found throughout the area, as can be seen in the aerial photo in his Documents (Exhibit 6).

The height variances are only required by the NY By-law, which he stated was the only one in the City that is based on the crown of the road measure. The height is measured from the crown of the road to established grade, and was established mainly for adequate drainage. There is only a .5 m difference in these measurements. Here the two height-related variances are very small, and only technical in nature because of this outdated mode of measurement. The overall roof design corresponds with sloped roofs found elsewhere here, and these are the goal of the New By-law height provisions. Flat roofs are now discouraged, and pitched are thus permitted to be higher. The actual height proposed would be only 8.44 m, 1.56 m below what the New By-law allows.

The coverage variance is minor in his opinion, and will permit a dwelling that is appropriately sized compared with those in the area. (Mr. Rudanycz did not appear to object to the coverage variance).

The proposed accessory unit in the basement is consistent with the policy directions of the province, Mr. Benczkowski opined. A basement apartment offers an affordable unit in an area that has an abundance of transit available (meeting the provincial policies above). The impact on the adjacent neighbours and the broader neighbourhood will be minimal. The Building Code governs the windows required. The entrance to the unit is located 21 feet along the side of the dwelling, and is not visible from the street. Thus the City's prohibition of alterations to the front of a dwelling in this case is not contravened.

Parking is not an issue, as there is parking provided within the integral garage and driveway to accommodate the secondary unit. No parking-related variance is required.

The variances would meet the four tests in the Act, as set out above. On the OP test, the property is designated Neighbourhoods in the Official Plan, and this designation permits low-rise residential uses up to four storeys in height. The intent here is to ensure that new development does not propose changes to the neighbourhood that are out of keeping with other developments within the area. Section 2.3.1 (1), the Official Plan states that "Neighbourhoods and Apartment Neighbourhoods are considered to be physically stable areas. Developmentwill be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas". In the Built Form section, 3.1.2 (1), the OP states that "New development will be located and organized to fit with its existing and/or planned context". The proposed is a standard built form for a new dwelling in this area, with integral garage and seven risers, and it "reads" as a single dwelling since no second door is visible from the front.

The OP commentary recognizes that neighbourhoods will experience physical change and are not frozen in time. Next, the development criteria as set out in section 4.1.5 are used to evaluate if the proposed development meets the goals of the OP. In his opinion, the proposed dwelling respects and reinforces the existing physical character of the neighbourhood (one of bungalows, two-storey and few three-storey dwellings), as it includes a variety of architectural forms and a number of replacement dwellings that have become part of its fabric. It would also maintain the front yard setbacks of the two neighbouring properties, and so the streetscape. There are no issues of privacy or views caused by the proposal, as it is only two storeys, and there are no length or depth variances.

The proposal also meets the test of sufficiently close compliance with the zoning by-laws. The general intent and purpose of zoning by-laws is to ensure compatible built form within an area, so that new development does not cause unacceptable adverse impacts. The alterations made at the COA in response to the Planning Staff Report minimized the size of the setback variances granted by the Committee, and eliminated the height variance under the New By-law. The basement accessory unit would not be visible from the street or streetscape. The proposal constitutes a built form compatible with what exists in the area.

It is desirable for this parcel. It would facilitate a new high-quality dwelling as well as offer an accessory unit in the basement, consistent with the policy direction of the PPS.

In his professional opinion, the variances are indeed minor in number and possible impact. This is not overdevelopment. There would be no unacceptable adverse impacts on neighbouring properties or the overall neighbourhood. There are no variances for length, depth, front or rear yard setbacks or landscaping. The requested built form variances are consistent with redeveloped properties in the area.

Mr. Benczkowski then pointed to many examples of similar developments in his study area, together with the COA approval documents to confirm the sizes (Ex. 2). In his

opinion the proposed would respect and reinforce the neighbourhood's existing physical character, as required by the OP policies.

The Appellant

Mr. Leon Rudanycz provided and amplified upon his objections to the proposal, noting the many neighbours who commented in similar vein to the COA. He focused especially on the inclusion of a second unit on this busy street where there are few to none at present. The purpose of the existing By-law requirement limiting second units to dwellings built five years prior to an application is not met here. This is to prevent purpose-built duplexes, as set out in a 2000 OMB decision (PL990850 – Ex. 4) dealing with second suites. He believes that the provincial policies that favour and promote second units do not apply in this neighbourhood, where none now exist. Section 4.1.5 of the OP refers to prevailing building types, and this test is not met here by the proposed second unit, he stated. Intensification is not encouraged on such busy major streets. The issue of affordability should not be given as a rationale for second suites; it is not relevant. He also stated that the massing of the proposed dwelling would not be as great without a secondary suite. Approval of this second suite would be a precedent, allowing many more. Additional parking also might be required.

He directed much of his evidence to the height proposed. While he found only 4 structures out of many on Ranee that exceeded the height limit originally requested, this height is no longer relevant to this appeal. The actual height accepted by the COA and now proposed is a permitted one under the New By-law (requiring only two variances from the NY By-law.) Therefore I will not set out the further statistics he cited, impressive as they were in their detail. He found very few dwellings in the broader neighborhood close to the height requested at the COA, but the New By-law permits the height now proposed for this roof design.

Traffic was another concern for him. He knows that Ranee, being the only east-west street between Lawrence Avenue and Wilson Avenue, is an extremely well-travelled street, including buses. It is therefore very difficult to exit a driveway, he testified, especially in rush hour. He believes that an additional unit will increase the parking and traffic problems.

He then emphasized that the Planning Staff report of July 31, 2018 did not support the proposal, suggesting alterations. He concluded that the application did not meet the OP test of "fit" in the neighbourhood, as although it is not to be frozen, this is a drastic change in his opinion.

Mr. Benczkowski then provided many responses to and clarifications of these concerns:

- He outlined the purposes and methodology of the higher level provincial and municipal policy documents, and how they become measurable standards by means of local zoning by-law requirements. Here provincial policies encourage second units, but local by-laws have not yet been amended to conform, although they probably soon will be. He offered a City Planning report as confirmation of this (Exhibit 2, As-Of-Right Zoning for Secondary Suites, to Planning and Growth Management Committee, June 13, 2108). In this Report it is stated at p. 3:

“The proposed regulation could, if made, set out requirements and standards for second units referred to in Subsection 16(3) of the Planning Act to encourage the creation of second units. The proposed regulation includes the requirement to permit second units without regard to the date of construction of the primary building; a maximum of one parking space be required per second unit; and clarifying that a second unit may be occupied by any person regardless of whether the primary unit is occupied by the owner of the property..... The Planning Act changes further emphasize the requirement for municipalities to include policies within their Official Plans and pass zoning by-laws for second units.”

- Enactment of the New City-wide By-law in 2013 was for the purpose of consolidating those of former municipalities. Its provisions should thus prevail, and will, following its final approval. The new height standard of 10 m for a pitched roof should now govern.

- Ranee Avenue is not a major street, as identified in the OP maps. No policies applying to such streets apply here. The Transportation Department made no comment at all to the COA or to TLAB on the circulation of the application and appeal. If they had had concerns about traffic or parking for the proposed, they would have pointed them out. Similarly, the Growth Plan’s emphasis on affordable units and complete communities is not saying units must be affordable, but is aimed at creating more units (a “mix”) so that more of the population can purchase and move into the housing supply. This proposal constitutes modest intensification, as desired.

- A “building type” refers to a single, semi, duplex or triplex, etc., and not a single dwelling with a second unit. There is no such prohibition in the OP. “Physical character” of a neighbourhood does not encompass a second unit, but refers to the type and configuration of a lot. Here the streetscape will remain the same, so the OP test of “physically stable” will be met. There is no way to tell if any of the structures on Ranee presently contain second units, so the arguments about “prevailing” and precedent made by the appellant have no application.

- The built form proposed is indeed already found on the street, and is part of the existing and planned context.

- The applicant would be willing to reduce the overall height sought to 9 m, because of the appellant’s objections. This height has been part of the plans filed since October 18, 2018.

- There would be four parking spots available, in the integral garage and on the driveway. Only one is required for this proposal, and no driveway width variance is needed. There should be no concerns about parking on the street. Again, Transportation made no comment about parking.

ANALYSIS, FINDINGS, REASONS

Many of the appellant’s arguments, including those of other neighbours to the COA, seemed to be based on the idea that existing zoning by-law standards should govern in

any event. The availability of the minor variance process means that this is definitely not always the case.

I find that the dwelling proposed, whose height, massing, scale, integral garage with six or so entrance steps and a pitched roof, is very similar to many in the near neighbourhood. I note the three-storey structures as well at nos. 53 and 83, and possibly 83 Ranee, and larger redevelopments such as 147 Ranee. The COA granted significant variances for -24 Ranee (coverage 45.1%, side yard setback 0.61m); -35 (first floor height 1.9 m, height 9.22 m, side yard 1.3 m); -135 (coverage 35.34 %, side yard 1.2 m), and especially -108, which in 2016 got coverage of 34.67%, height 9.1 m, and first floor height of 1.61 m.

Therefore it is not accurate to claim as the appellant did that there are no similar structures nearby. As Mr. Benczkowski testified, it is not possible to even know if there are existing second units in surrounding structures. He refuted the argument that this would be a precedent for second suites by stating that there had been no other such applications since the COA approval here, and that each application is judged on its own merits. Thus I find compliance with the OP policies for this proposed structure, as well as the second unit.

The second unit would not alter the built form of the structure. The 2000 OMB decision cited by the appellant could in fact be said to be in favour of second units. It pointed out that there was no flood of them after the Province briefly allowed them in the past with no restrictions at all (i.e., no five-year delay- p. 21). It would meet the goals of the PPS and GP for second units, to which the zoning by-law does not yet conform, but no doubt will soon. This appears to be the way that the City will be implementing the provincial policy for second suites. I hope that the neighbours who objected to the second unit will become aware of this policy direction for amendment to the New Zoning By-law.

Similarly, in this context the requested variances are minor in measurement and in impact. Even the objection to parking has no merit if it is considered that if only one family lived here, it could own and park four cars on the site. There are no parking or driveway variances required. This fact also minimizes any adverse impact.

In the circumstances and from the evidence provided, I am satisfied that the application is consistent with and conforms to the applicable provincial plans, especially with respect to the second unit. It also meets the tests in the Toronto OP, and the intent of the development standards in the zoning by-laws, in that the variances are indeed minor, with little impact in this neighbourhood or the appellant's property.

In this case, it was perhaps not of assistance to have the appellant present evidence first. There were many misconceptions expressed about the variances actually approved by the COA, and the reasons behind much of Mr. Benczkowski's evidence. However, where no Witness Statement had been filed, it at least clarified the objections for the planning witness to address.

It was unfortunate that Mr. Rudanycz did not realize before the hearing that he could **not** rely on the Planning Staff report. It had been rendered mostly irrelevant by the COA decision, where the Committee accepted reduced measurements for side yard setbacks

and height. A significant portion of his concerns, as well as the hearing time at TLAB, could have been reduced if this had occurred. I find that the technical height increases under the NY By-law meet the tests for a minor variance in this circumstance.

I also find it somewhat inappropriate of the appellant to object so strenuously to the proposed dwelling next door, in light of the obvious size of his home at 140. He termed the proposed dwelling a monster home. A quick glance at the photos of homes nearby will illustrate many such replacement homes, which are now clearly part of the neighbourhood for OP compliance purposes. The size of his own structure at 140 and of others can be seen in his materials, Exhibit 4, on the page where he inserted the heights nearby on Ranee. It does not appear to be much different in built form or size to the proposed. I also did not appreciate his challenge to Mr. Benczkowski's evidence on the ground that it was in his personal economic interest since he appeared at the behest of the applicant, and his testimony was therefore suspect. I pointed out that he had signed the Expert Witness Statement required by the TLAB, indicating his independent and objective planning opinions. The appellant's argument could impugn almost any professional planner appearing at TLAB. The Statement is sufficient evidence of Mr. Benczkowski's impartiality here.

DECISION AND ORDER

The Appeal is dismissed, and the decision of the Committee of Adjustment is confirmed, subject to the conditions below. The variances are set out in Appendix 1.

Conditions:

1. The new dwelling shall be constructed substantially in accordance with the revised plans dated August 29, 2108 in Appendix 2, to the satisfaction of the Director, Community Planning, Toronto and East York District. Any other variances that may appear on these plans but are not listed in this decision are NOT authorized.
2. The applicant shall submit an application for permit to injure or remove trees to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article III.

APPENDIX 1 - VARIANCES

1. Chapter 900.3.10(5), By-Law 569-2013

The minimum required side yard setback is 1.8m.

The proposed dwelling will have an east side yard setback of **1.2m**.

2. Chapter 900.3.10(5), By-Law 569-2013

The minimum required side yard setback is 1.8m.

The proposed dwelling will have a west side yard setback of **1.2m**.

3. Chapter 10.20.30.40.(1)(a), By-Law 569-2013

The permitted maximum lot coverage is 30.0% of the lot area.

The proposed dwelling will have a lot coverage of 32.6% of the lot area.

4. Chapter 150.10.40.1.(1), By-Law 569-2013

A secondary suite is a permitted use provided that the entire building was constructed more than 5 years prior to the introduction of a secondary suite.

The entire building was not constructed more than 5 years prior to the proposed introduction of the secondary suite.

5. Section 6(30)a, By-Law No. 7625

The maximum finished first floor height is 1.5m.

The proposed dwelling will have a finished first floor height of 1.71m.

6. Section 14.2.6, By-Law No. 7625

The maximum permitted building height is 8.8m.

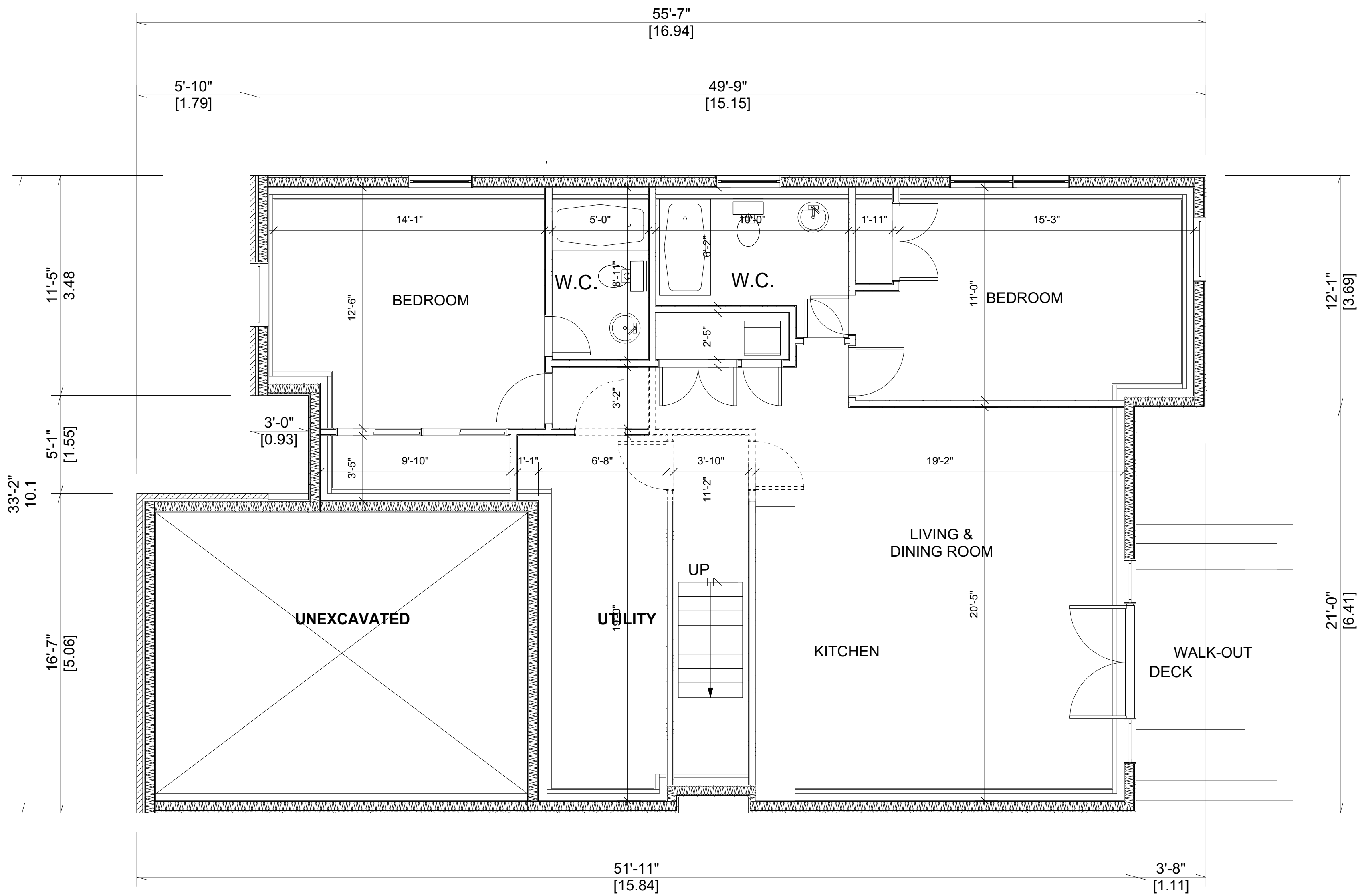
The proposed dwelling will have a height of 9.9m.

APPENDIX 2 - PLANS

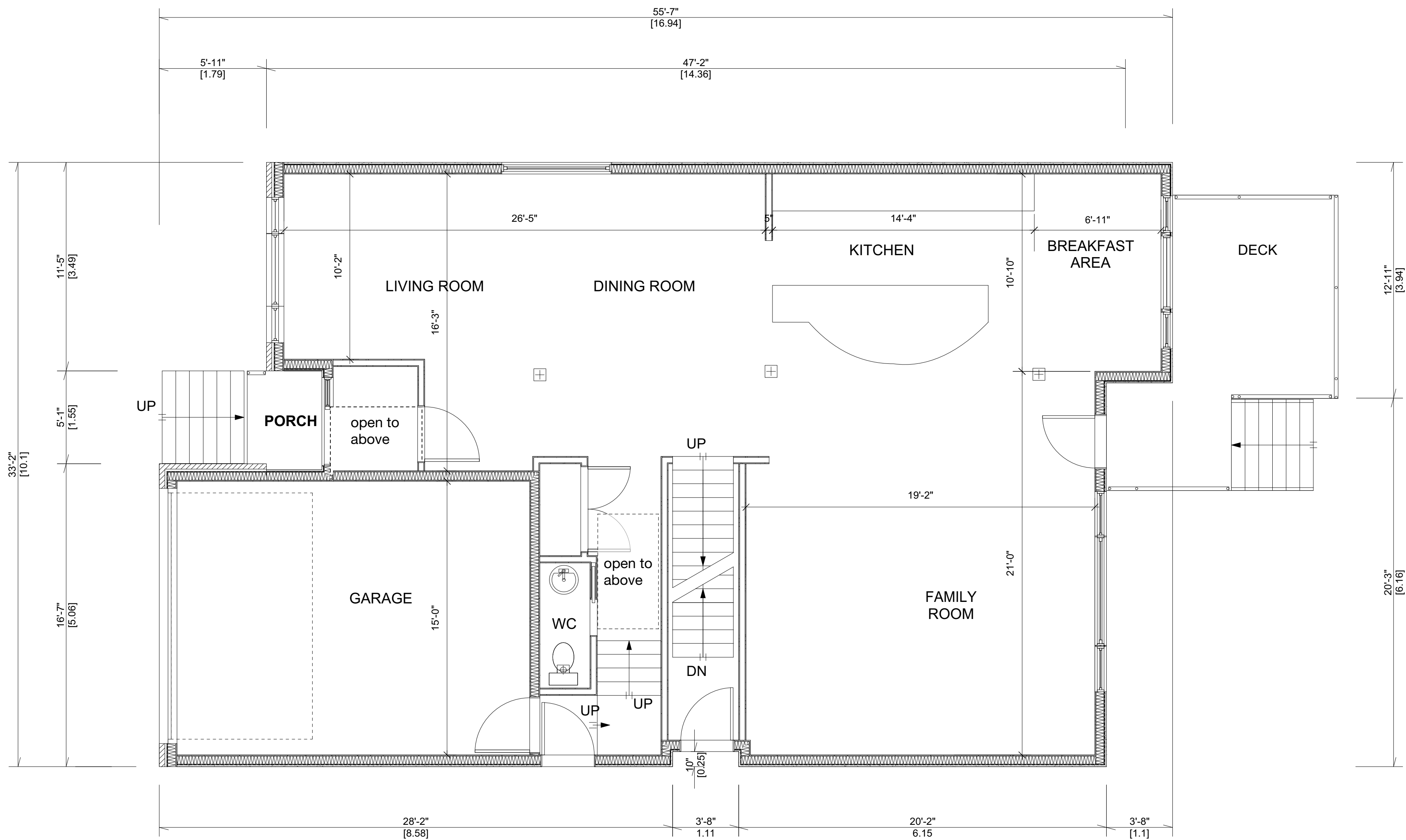
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G. Burton

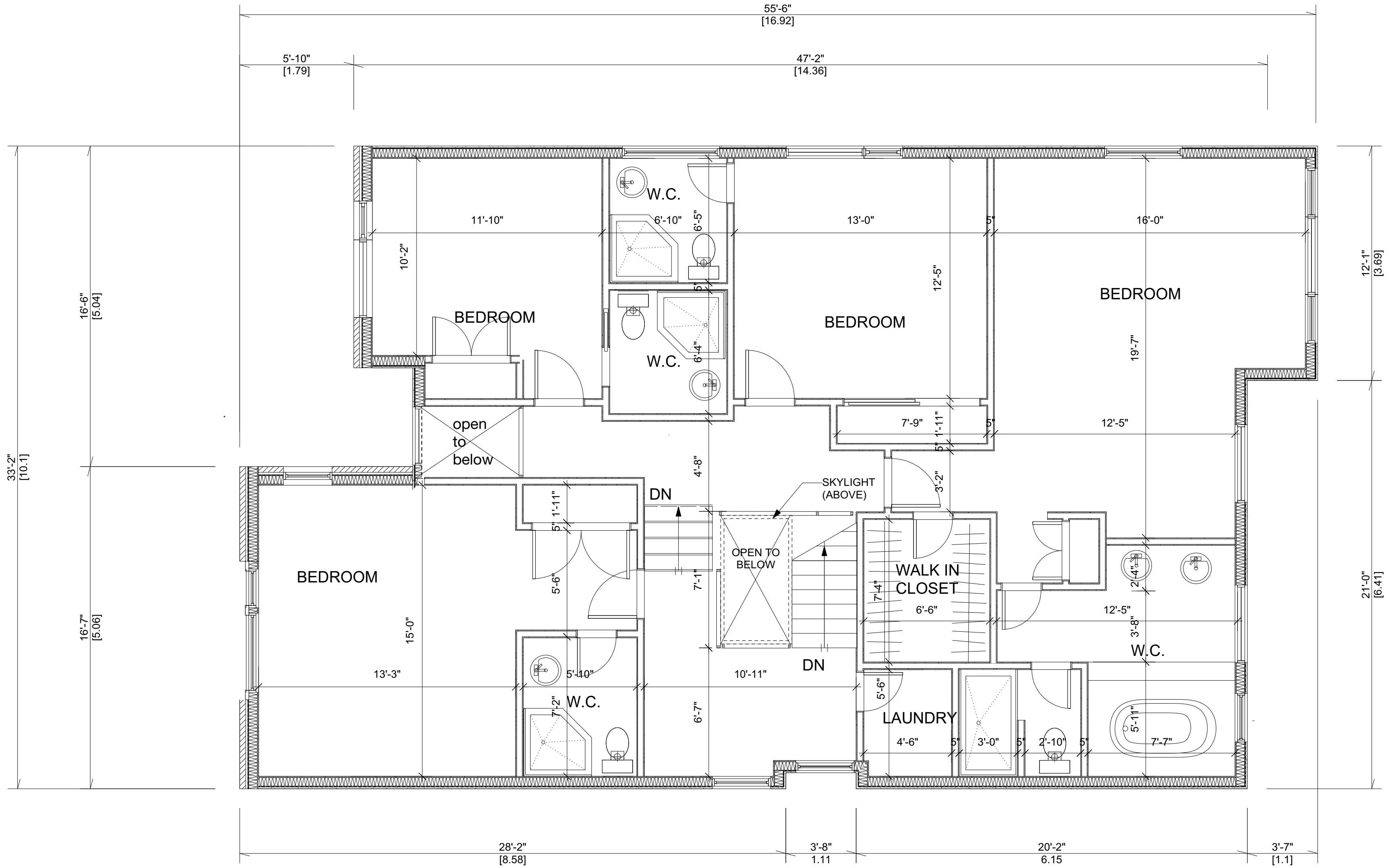
Panel Chair, Toronto Local Appeal Body



No.	Date	Issue Notes		Design Firm Sol-Arch solarch@sympatico.ca 416-884-3446	Project Title 142 RANEE AVENUE City of Toronto NORTH YORK	Project Manager Jonathan	Project ID
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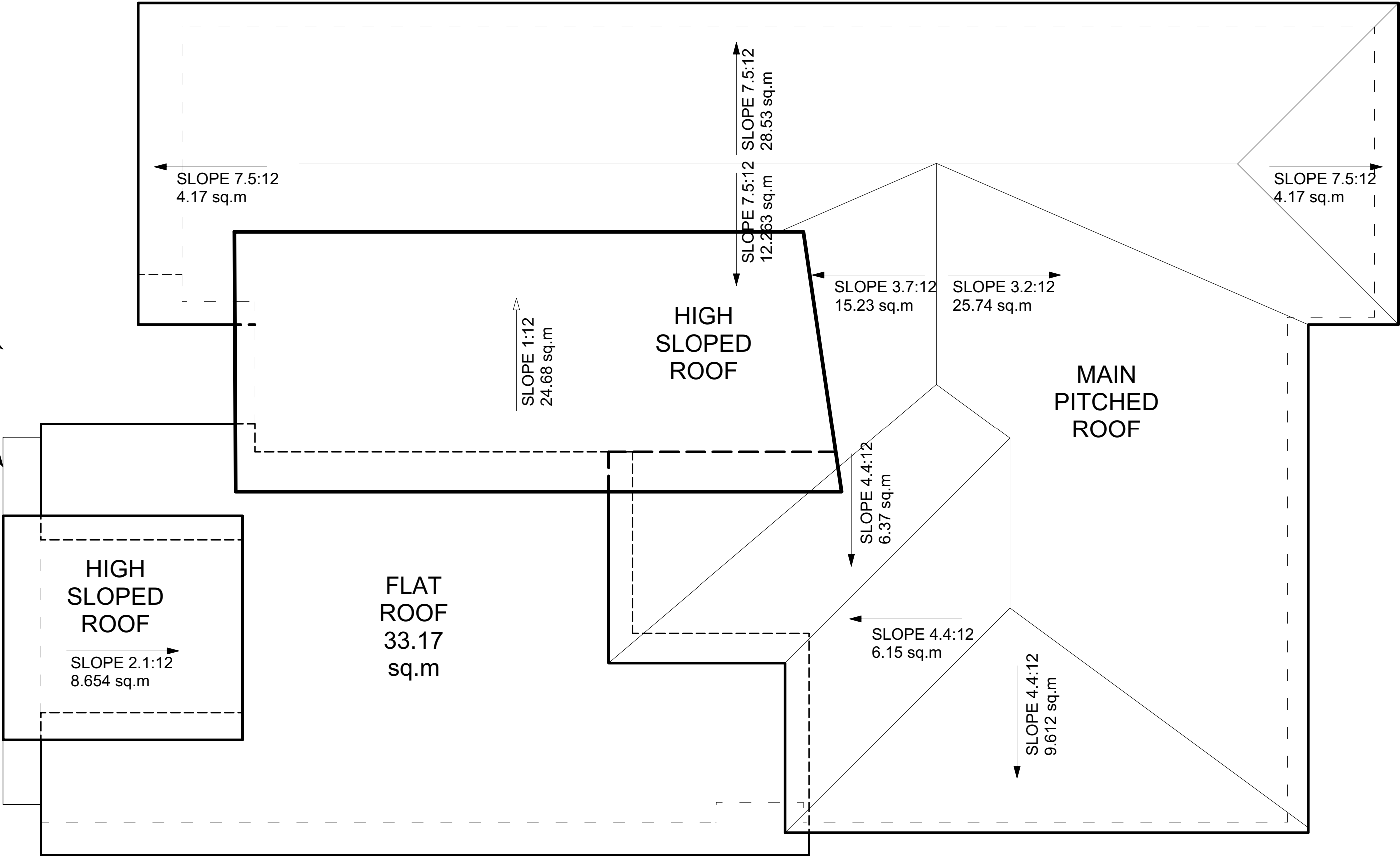


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						Date AUGUST 29, 2018	
						CAD File Name	



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		Reviewed By		Sheet No.			
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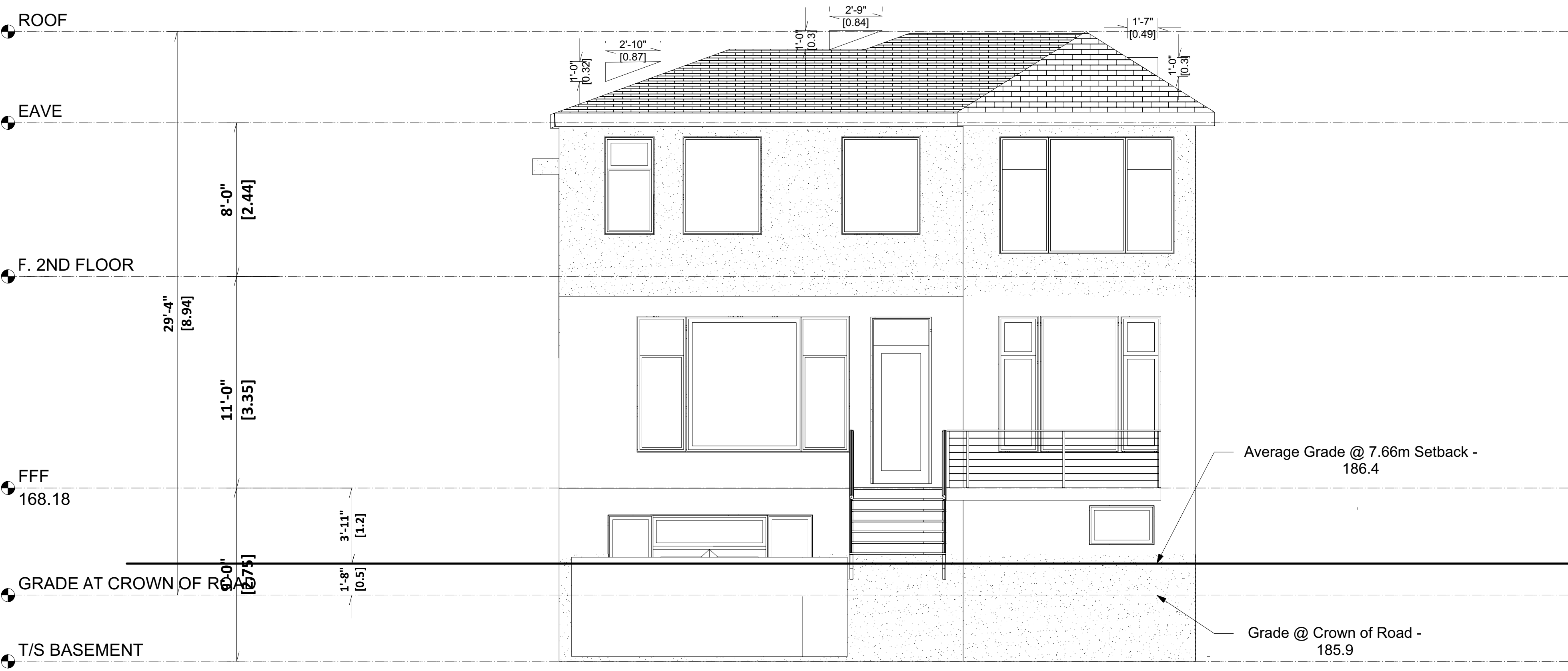
1ST FLOOR FLAT
ROOFS



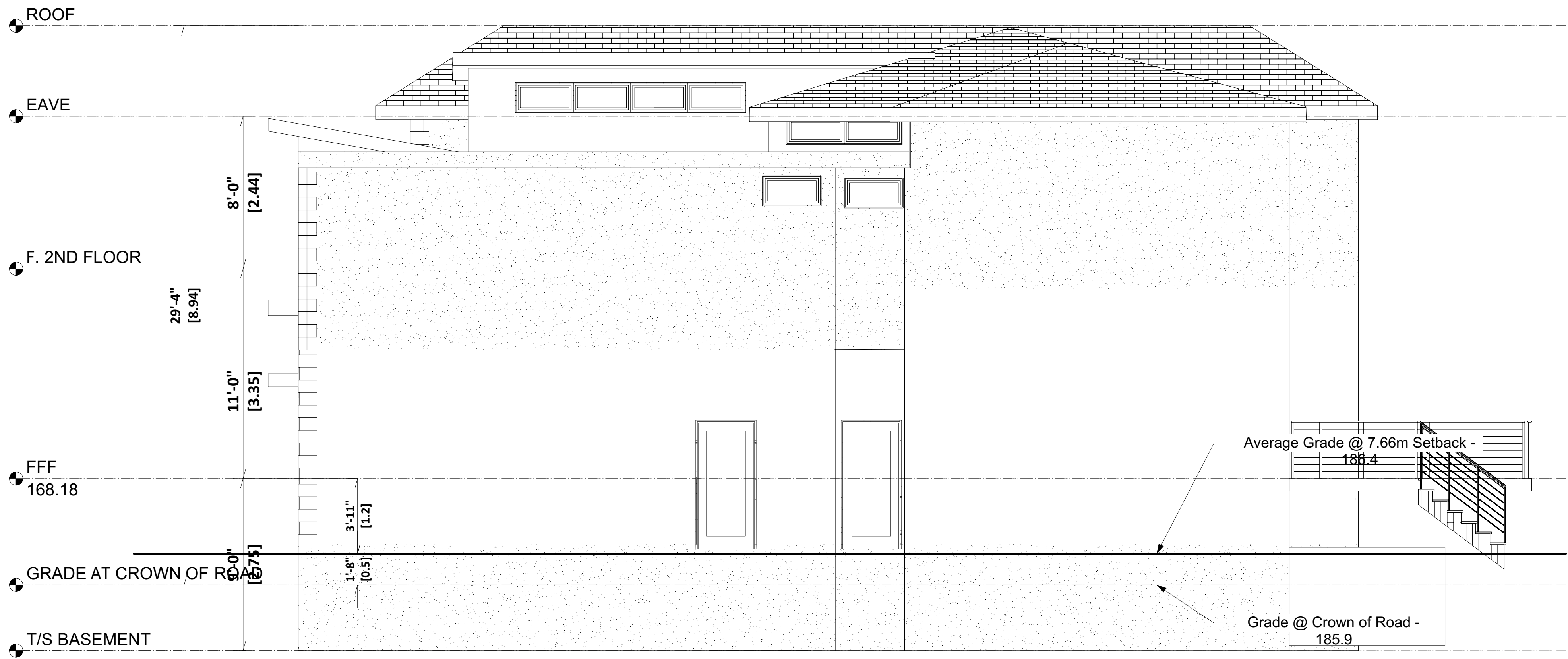
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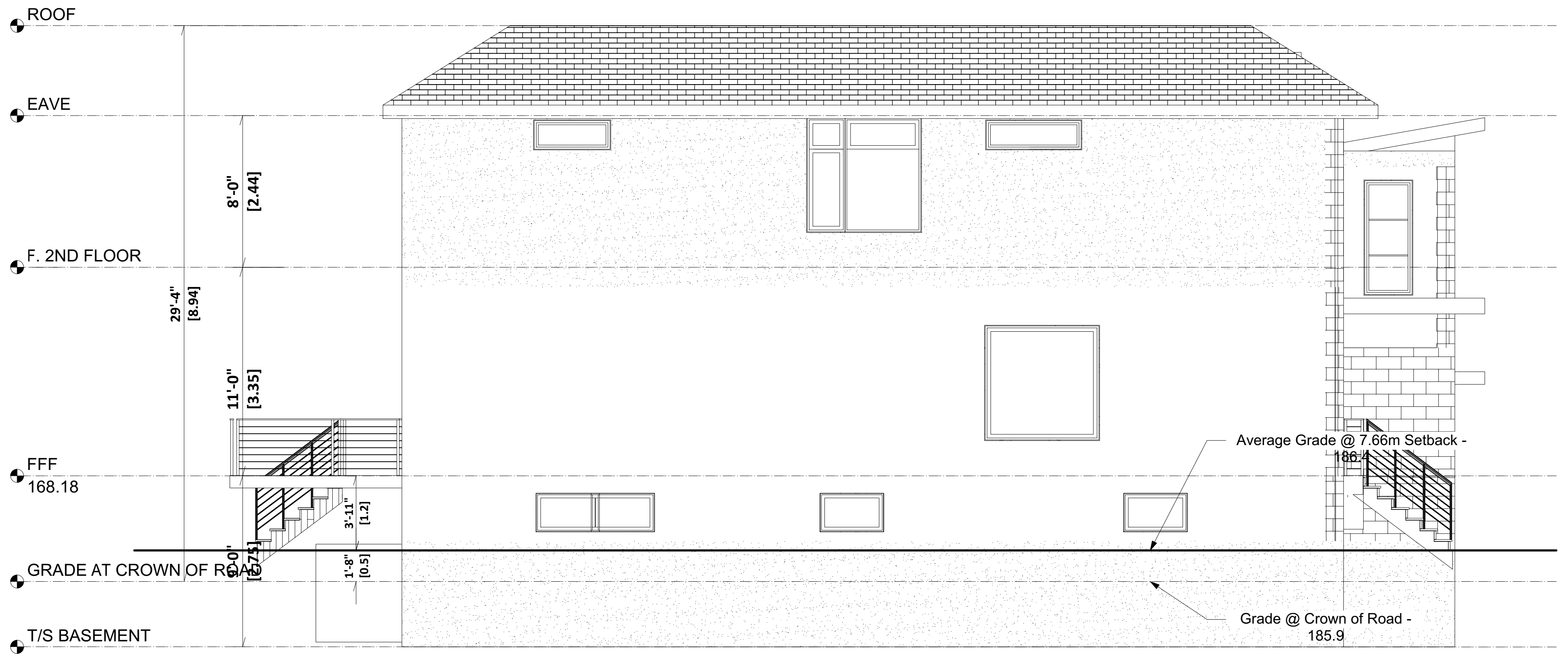
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No.	Date	Issue Notes				Date	August 29, 2018				
						CAD File Name					



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No.	Date	Issue Notes				Date	August 29, 2018				
						CAD File Name					



					Design Firm	Project Title	Project Manager	Project ID
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Drawn By	Scale							
Jonathan	3/16"=1'-0"							
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						August 29, 2018		
						CAD File Name		



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								CAD File Name	
No.	Date	Issue Notes							