

DECISION AND ORDER

Decision Issue Date Wednesday, April 17, 2019

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): ABBAS BIGDELI

Applicant: GLENN RUBINOFF DESIGN GROUP

Property Address/Description: 476 BROADWAY AVE

Committee of Adjustment Case File Number: 18 194355 NNY 26 MV

TLAB Case File Number: **18 226553 S45 26 TLAB**

Hearing date: Wednesday, February 13, 2019

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Glenn Rubinoff Design Group	Applicant	
Sozan Meftah	Owner	
Abbas Bigdeli	Appellant/Primary Owner	Ron Kanter
Geoff Kettel	Party	
TJ Cieciora	Expert Witness	
Michael Hall	Participant	
Michael Onions	Participant	
Kara Hurt	Participant	
Janet Shae	Participant	
Claudine Lukawesky	Participant	

INTRODUCTION

This is an appeal from a decision refusing minor variances related to: building height, front and rear exterior main wall height, side yard setbacks, and floor space index (See Variances, Appendix 1 and Plans, Appendix 2) to permit the construction of a single detached dwelling (with an integral garage with two stories above) to replace an existing detached two-storey residential dwelling with integral garage.

BACKGROUND

The subject property is located in an area of Leaside, north of Eglinton Avenue East, west of Leslie Street, east of Bayview Avenue, and south of Lawrence Avenue East. It is, more specifically, on the north side of Broadway Ave., between Tanager Ave. and Rumsey Road. The lot is a four-sided polygon, with a frontage of 10.67m and a depth of 38.1m. The total area of the lot is 406.2 square metres.

MATTERS IN ISSUE

There was essentially one major issue - whether the proposed dwelling respects and reinforces the character of the neighbourhood. Although the evidence included references to height, driveway width, FSI, setbacks and overlook from the proposed rear deck, the main concern was whether the design of the building, which included an integral garage with two stories above, and a mansard roof, fit within the Georgian revival character of the neighbourhood with its peaked roofs. Part of the evidence was a consideration of whether the "Residential Character Preservation Guidelines for House

Renovations, Additions and Infill Development in the Community of Leaside” (Leaside Guidelines) should be applied to evaluate the proposal.

There was no significant dispute as to the applicability of the Provincial Policy Statement or the Growth Plan for the Greater Golden Horseshoe.

JURISDICTION

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

There was no evidence to dispute that the proposal conformed with the relevant provincial policy documents. I find that they do apply and that they are implemented through the Official Plan. In this case, therefore, their relevance is dependent on evidence respecting whether the application meets the general intent of the Official Plan .

Similarly, whether the proposal meets the general intent of the zoning bylaw is fundamentally based on the general intent of the zoning bylaw being to implement the Official Plan . Therefore, once again evidence of whether the application meets the general intent of the Official Plan is paramount.

There appears to be no disagreement among the parties and participants that the general intent of the Official Plan is to ensure that the variances, individually and collectively, respect and reinforce the physical character of the neighbourhood. Mr. Cieciora, the land use planner for the applicant; Mr. Kettle, a party in opposition, with land use planning expertise and qualified to give opinion evidence on land use planning; and Ms. Lukawesky and Shea and Mr. Onions, the latter three Participants, all addressed this issue, albeit in different ways.

Mr. Cieciora gave evidence that the proposal did respect and reinforce the physical character of the area he described as the neighbourhood, while the others disagreed and gave opinions that “it was not in keeping with the neighbourhood”, that “the form of three story dwelling ...is virtually non-existent” and that the development was

“disproportionately large,” “too high,” and “out of keeping with the streetscape and neighbouring properties.”

Some of those in opposition relied on the Leaside Guidelines in positing their opinions. The Guidelines document was prepared by City staff and residents in 2003 but has not been adopted as part of the Official Plan or any other document. The Guidelines, therefore, have no legal authority.

The neighbourhood is not an area of site plan control or within a Heritage Conservation District. As set out on page 2 of the Guidelines: “They are not intended to mandate a specific design but rather to provide approaches, which are to be applied in a flexible manner in conjunction with other site-specific considerations. (They are) design principles... for how to extend these attributes to new development.”

In any event, Mr. Cieciora’s evidence was that the proposal’s built form met the Guidelines and Official Plan’s general intent in that the exterior design, including the windows and roof and the integral garage, height and front door did not deviate from what is found and exists in the neighbourhood. His photos demonstrated examples. Moreover, he noted there were no adverse impacts resulting from any of the variances. His evidence was that the variances set out in Appendix 1, individually and cumulatively, meet the four tests of the Planning Act and relevant provincial policy.

The City did not appear at the hearing and City staff did not oppose the application. As a result, there were no negative comments from Urban Forestry or Transportation and Engineering. Planning staff stated that if the variances were approved the roof design should be in accordance with a plan attached to staff’s report. The Applicant does not object to that recommendation and further agrees to a condition imposing a privacy screen on the proposed deck.

ANALYSIS, FINDINGS, REASONS

I found the evidence of Mr. Cieciora, particularly his photographs, persuasive when I visited the neighbourhood. I conclude that the proposed development as amended by the plan recommended by City staff will fit in and will respect and reinforce the character of the neighbourhood and, the streets surrounding it. Given that the Leaside Guidelines are of no force and are not part of the four tests or any provincial policy document, and do not mandate any specific design I make no comment as to conformity with them. I do note that if reliance is to be placed upon them that they need to be the subject of Council action and contain clear prescriptive language.

There was no persuasive evidence that the variances individually or cumulatively, or the development as a whole would have any negative impact such as shadow or overlook. However, there is agreement respecting a privacy fence on the rear deck. Indeed, Mr. Cieciora’s evidence on the individual variances was largely unchallenged.

DECISION AND ORDER

I find that the appeal should be allowed. The minor variances in Appendix 1 are hereby granted subject to the following conditions:

- 1) construction is substantially in accordance with the plans in Appendix 2.
- 2) The rear deck has a privacy screen of 2 metres

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 10.20.40.10.(1), By-law No. 569-2013

The maximum permitted building height is 8.5m.

The proposed building height is 8.80m.

2. Chapter 10.20.40.10.(2), By-law No. 569-2013

The maximum permitted height of all front and rear exterior main walls is 7.00m.

The proposed height of the front and rear exterior main walls is 8.05m

3. Chapter 10.20.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The proposed east side yard setback is 0.91m.

4. Chapter 10.20.40.70.(3), By-law No. 569-2013

The minimum required side yard setback is 1.20m.

The proposed west side yard setback is 0.91m.

5. Chapter 10.5.40.50.(2), By-law No. 569-2013

A platform without main walls, such as a deck, must comply with the required minimum building setbacks for the zone; 1.2m.

The proposed deck has a proposed side yard setback of 0.91m.

6. Chapter 10.5.40.60.(1), By-law No. 569-2013

A platform without main walls and canopies above, may encroach into the required front yard setback 2.5m if it is no closer to a side lot line than the required side yard setback; 1.2m.

The proposed platform and canopy are setback 0.91m from the lot line.

7. Chapter 10.20.40.40.(1), By-law No. 569-2013

The maximum permitted floor space index is 0.60 times the lot area.

The proposed floor space index is 0.66 times the lot area.

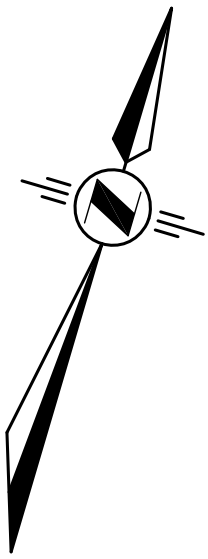
8. Section 6.3.3, By-law No. 1916

The maximum permitted building height is 8.50m.

The proposed building height is 8.80m

RECEIVED

By Toronto Local Appeal Body at 10:42 am, Nov 15, 2018



REG'D

PLAN

3110

LOT 358

LOT 357

LOT 356

P.I.N.
10366-0069(LT)

TANAGER AVENUE

TANAGER AVENUE

476 BROADWAY AVENUE

3 Storey Brick Dwelling

No. 478
2 Storey Brick Dwelling
Door Sill = 141.61

No. 474
2 Storey Brick Dwelling

Brick Garage
(2nd Storey above)
1'-11" [0.59m]

1 Storey Brick Addition

140.94

18'-0" [5.49m]

DRIVEWAY

140.96

24'-2" [7.37m]

23'-2" [7.06m]

9'-0" [2.74m]

140.79

13'-4 1/2" [4.07m]

140.40

140.33

140.96

141.09

141.09

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PROJECT:
476 BROADWAY AVENUE
TORONTO, ONTARIO

Rubinoff Design Group
697 Mt. Pleasant Road, Toronto Ontario, M4S 2N4
TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinoffdesign.com

PROJECT DESIGNER:
G. RUBINOFF

DRAWN BY: F. BERNALES
DATE: Jul 12, 2018

CHECKED BY: S.B.
SCALE: 3/32" = 1'-0"

DRAWING NO.

A

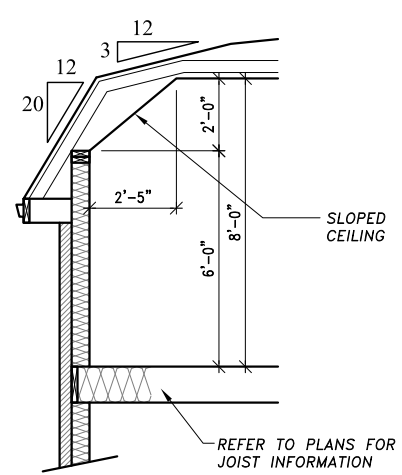
Centreline of Pavement
BROADWAY AVENUE
(BY REGISTERED PLAN 3110)
P.I.N. 10366-0002

SITE STATISTICS :	
LOT AREA [LOT 357] = 4372 ft ² [406.2 m ²]	
HARD SURFACE CALCULATIONS	
TOTAL FRONT YARD AREA: 846 ft ² [78.6 m ²]	
DRIVEWAY AREA: 345 ft ² [32.1 m ²]	
TOTAL FRONT YARD EXCLUD. DRIVEWAY: 501 ft ² [46.5 m ²]	
PORCH & STAIR WALKWAY AREA: 89 ft ² [8.3 m ²]	
FRONT YARD HARD SURFACE AREA: 434 ft ² [40.3 m ²] 51.3 %	
FRONT YARD SOFT LANDSCAPING AREA: 412 ft ² [38.3 m ²] 82.2 %	
MAIN FLOOR AREA = 1421 ft ² [132.0 m ²]	
COVERED PORCH = 38 ft ² [3.5 m ²]	
COVERAGE = 1459 ft ² [135.5 m ²]	
SECOND FLOOR AREA = 1421 ft ² [132.0 m ²]	
TOTAL GFA = 2842 ft ² [264.0 m ²] [65.0 %]	

SLOPES AND WALL HEIGHT TO BE CONFIRMED BY TRUSS COMPANY

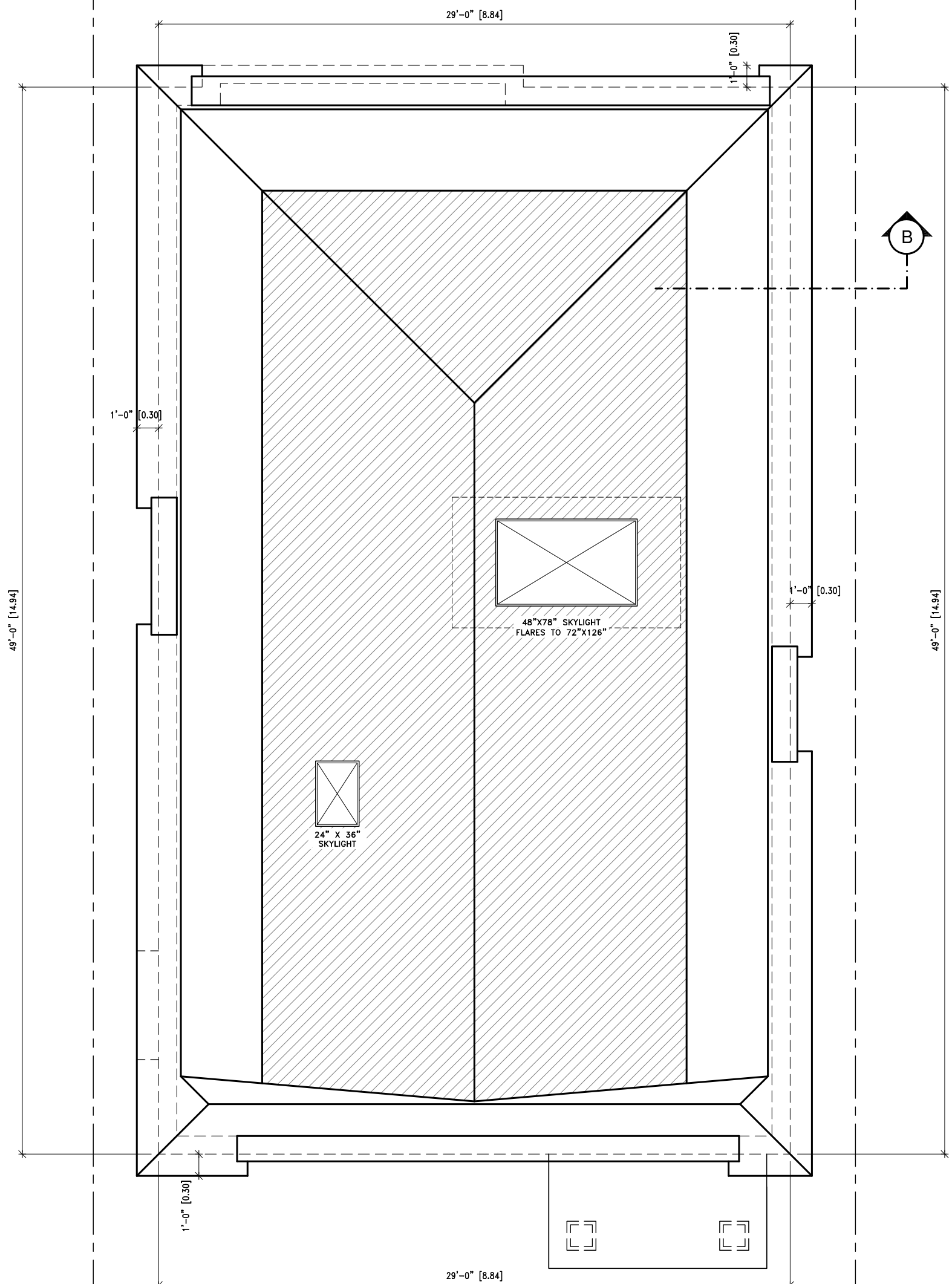
149.02 FIN. CEILING HEIGHT

146.58 FIN. 2ND FLOOR



PARTIAL SECTION B

476 BROADWAY AVENUE



ROOF FRAMING PLAN

* 476 BROADWAY AVENUE *

TOTAL ROOF AREA = 1548 ft² [143.8 m²]
 TOTAL FLAT ROOF AREA = 807 ft² [75.0 m²] [52.1 %]

Rubinoff Design Group
 697 Mount Pleasant Road
 Toronto, Ontario M4S 2N4
 TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinoffdesign.com
476 BROADWAY AVENUE
 SCALE : 3/16" = 1'-0" JUNE 19, 2018

FRONT WALL OPENINGS ABOVE EAVES:
 TOTAL WIDTH OF WALL OPENINGS = 23'-0 1/2" [7.03]
 TOTAL WIDTH OF HOUSE = 29'-0" [8.84]
 [7.03 / 8.84] = 79.5% [40% MAX]



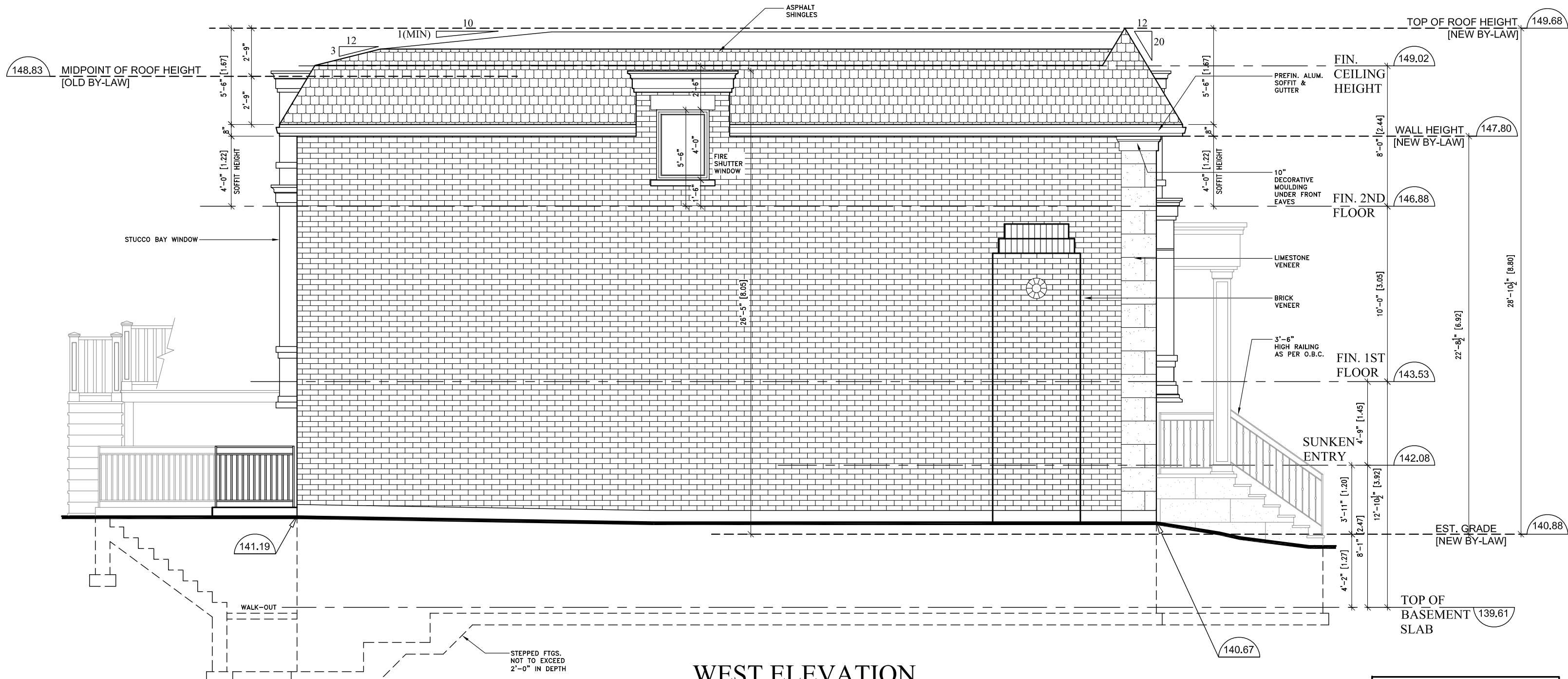
SOUTH ELEVATION

476 BROADWAY AVENUE
 (FRONT)

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 697 Mount Pleasant Road
 Toronto, Ontario M4S 2N4
 TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinoffdesign.com

476 BROADWAY AVENUE

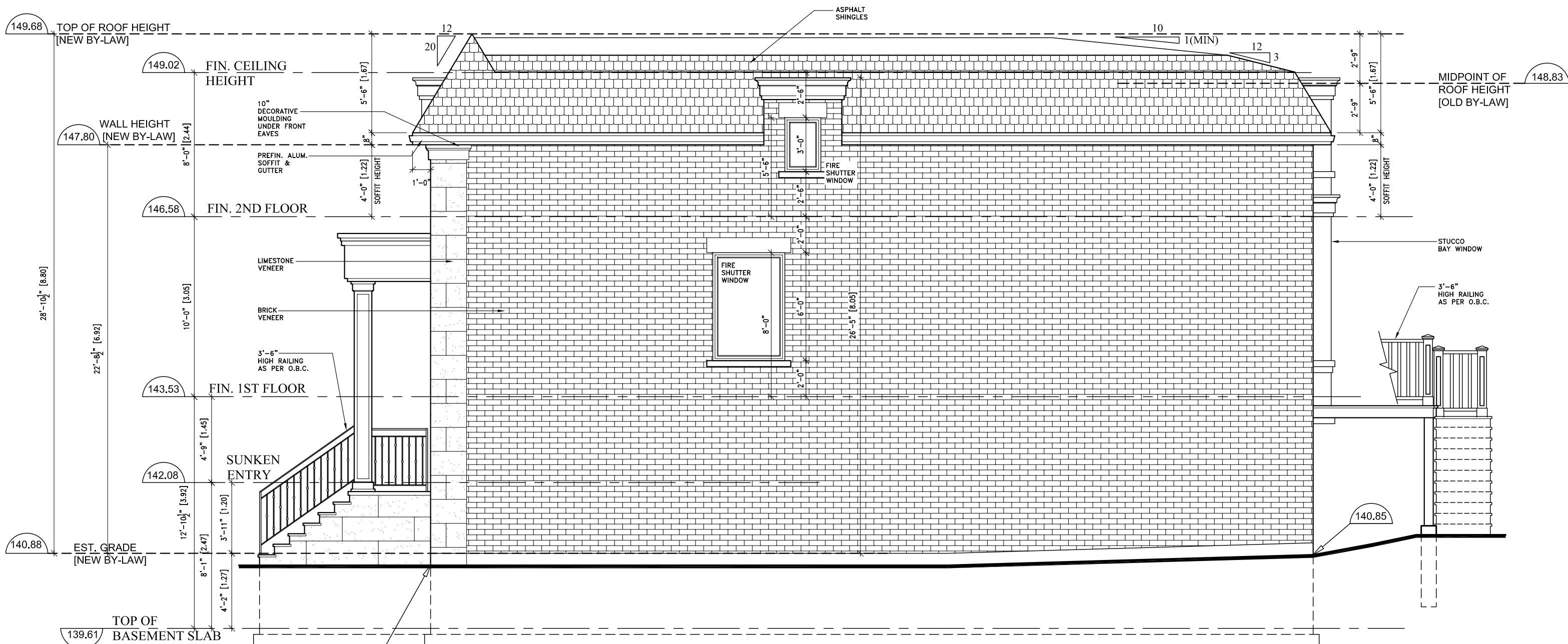
SCALE : 3/16" = 1'-0" JUNE 19, 2018



WEST ELEVATION

476 BROADWAY AVENUE
(LEFT)

Rubinoff Design Group
 697 Mount Pleasant Road
 Toronto, Ontario M4S 2N4
 TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. info@rubinoffdesign.com
476 BROADWAY AVENUE
 SCALE : 3/16" = 1'-0" JUNE 19, 2018



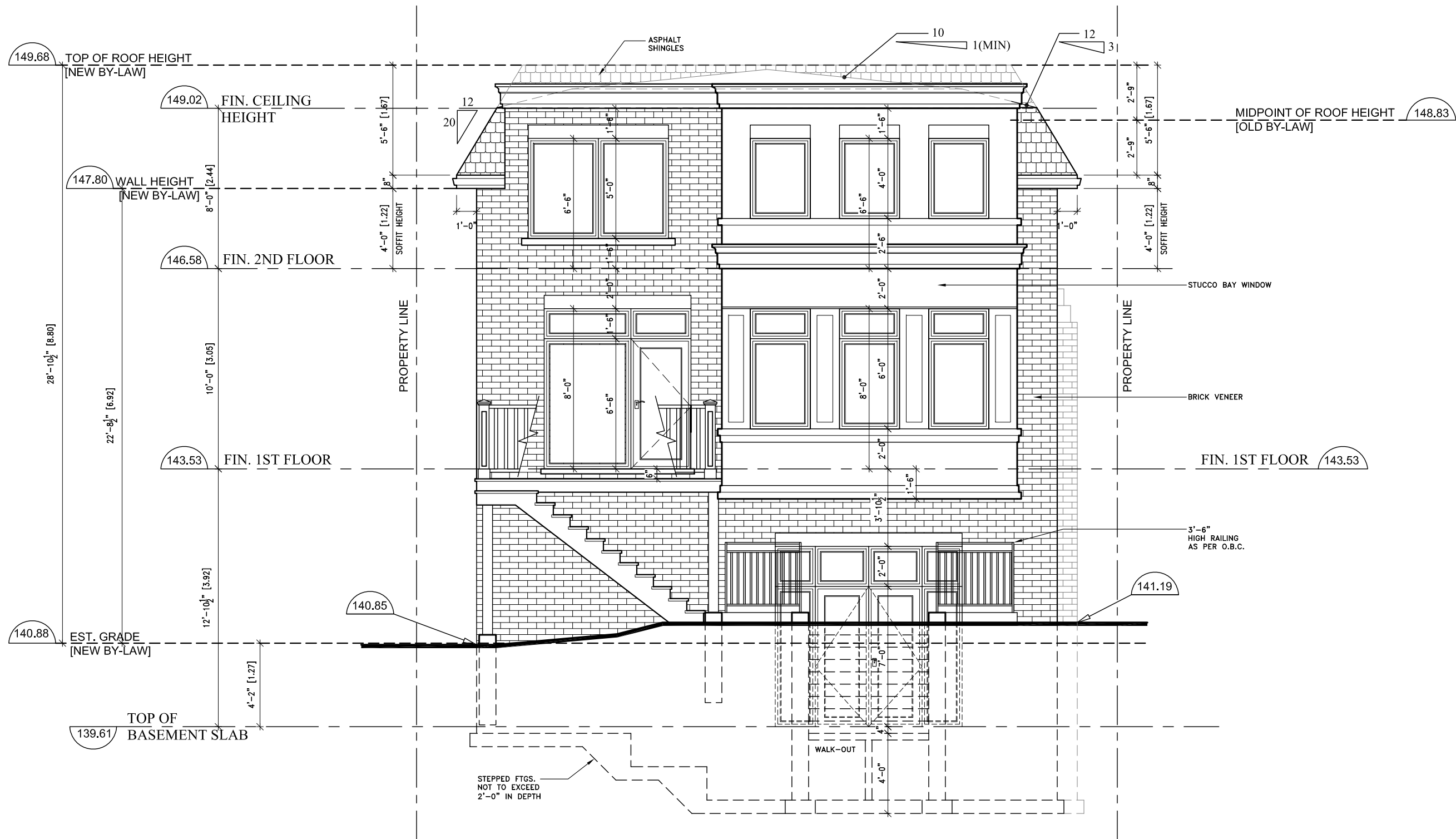
EAST ELEVATION

476 BROADWAY AVENUE
(RIGHT)

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 697 Mount Pleasant Road
 Toronto, Ontario M4S 2N4
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476 BROADWAY AVENUE

SCALE : 3/16" = 1'-0" JUNE 19, 2018



NORTH ELEVATION

476 BROADWAY AVENUE
(REAR)

R ubinfoff Design Group 697 Mount Pleasant Road Toronto, Ontario M4S 2N4 <small>TEL. 416.667-0322 FAX. 416.667.0751 EMAIL. Info@rubinfoffdesign.com</small>	
476 BROADWAY AVENUE	
SCALE : 3/16" = 1'-0"	JUNE 19, 2018