

DECISION AND ORDER

Decision Issue Date Monday, April 29, 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): OREN SHEMESH

Applicant: ARCH DWG INC

Property Address/Description: 222 CALVINGTON DR

Committee of Adjustment Case File: 18 229672 NNY 09 MV

TLAB Case File Number: 18 250014 S45 09 TLAB

Hearing date: Thursday, April 18, 2019

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
ARCH DWG INC	APPLICANT/PARTY	
MARINO DE CURTIS	OWNER	
OREN SHEMESH	APPELLANT	SANDRA SHEMESH

INTRODUCTION AND BACKGROUND

Marino DeCurtis is the owner of 222 Calvington Drive, located in the Municipal Ward of York Centre, in the City of Toronto ("Toronto"). He applied to the Committee of Adjustment (COA) for approval of variances that would permit him to build a new dwelling at 222 Calvington Drive. It is important to note that 222 Calvington Drive shares a common drive way with the neighbouring property at 224 Calvington Drive.

The COA heard the application on October, 25 2018, and approved the same. On November 25, 2018, Oren and Sandra Shemesh, the co-owners of the neighbouring

property at 224 Calvington Drive, appealed the COA decision to the Toronto Local Appeal Body (TLAB), which then scheduled a hearing on April 18, 2019. It is important to note that the Appellants did not put forward any submissions or witness statements; and that their original Appeal filed with the TLAB, objected solely to the side yard setbacks, and the consequent impact on the width of the common driveway. The Appeal also stated that

“Although no registered easements are on title for 220 or 222 Calvington, an implied easement is a factor. All neighbours, including 218, 220, 222, 224 and so forth share driveways with their east and west counterparts and have been doing so for over 50 years. As the owner of 220 Calvington, I have been sharing this space for 7 years with public documented use dating back 20 years.”

MATTERS IN ISSUE

1. Chapter 900.3.10(5), By-Law No. 569-2013

The minimum required side yard setbacks are 1.8m each side. The proposed dwelling will have an east side yard setback of 1.5m.

2. Chapter 900.3.10(5), By-Law No. 569-2013

The minimum required side yard setbacks are 1.8m each side. The proposed dwelling will have a west side yard setback of 1.51m.

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

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5m. The proposed dwelling will have a height of the side exterior main walls facing a side lot line of 7.61m.

4. Chapter 10.20.40.10.(6), By-Law No. 569-2013

The maximum permitted height of the first floor above established grade is 1.2m. The proposed dwelling will have a height of the first floor above established grade of 1.46m.

5. Section 14.2.6, By-Law No. 7625

The maximum permitted building height is 8.8m. The proposed dwelling will have a building height of 10.23m.

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

The maximum permitted finished first floor height is 1.5m. The proposed dwelling will have a finished first floor height of 3.01m

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

At the Hearing held on April 18, 2019, the Applicant was represented by Mr. Enzo Loccisano, an Architectural Technologist. Neither the Appellant, nor any designated representative, was present at 9:30 AM when the Hearing was scheduled to commence. I started the hearing at 10 AM in order to allow the Appellant an extra half an hour, to arrive at the TLAB office, notwithstanding transportation related issues, or any other reasons. I reiterate that neither the Appellant, nor their representatives, attended the hearing completed on April 18, 2019, nor is the TLAB in receipt of any message explaining the reasons behind their absence.

Mr. Loccisano briefly explained the background behind the Appeal. He said that the Appellants would park their car on the common driveway, in a manner that encroached onto Mr. De Curtis' property, to the extent that he could not mow his own lawn. Mr. De Curtis commenced litigation against Party Shemesh in order to have unfettered access to his own lawn, and obtained a Court Order from the Ontario Superior Court, which required the Appellants to park their cars on their side of the driveway, and "step, or walk on the Applicant's (i.e. Mr. De Curtis') property to access their vehicles, as required". The Court Order, signed by Justice Shreck of the Ontario Superior Court, was introduced as an Exhibit, by the Applicants.

Mr. Loccisano asserted that the Appellants were trying to "frustrate and harass" his client by attempting to delay the construction of the new house, notwithstanding the COA's decision. Mr. Loccisano then spoke to the "one and only variance" in contention, namely the side yard setback. Mr. Loccisano acknowledged that this side yard setback was 1.37 m, against the 1.8 m prescribed by the By-law. Mr. Loccisano stated that his client had requested a variance resulting in a 1.5 m wide setback, which was "better than what exists", i.e. the existing 1.37 m setback. Mr. Loccisano alluded to other COA decisions from the neighbourhood, where 1.5 m setbacks had been approved, and asserted that that 1.5 m side yard setback were the "norm" in the community. He said that the forestry condition imposed by the COA could be complied with, and that the TLAB could impose the same condition, should the Appeal be allowed.

I thanked Mr. Loccisano and Mr. De Curtis for attending the Hearing, and informed them that I would reserve my Decision.

ANALYSIS, FINDINGS, REASONS

It is important to note that the onus of proof rests firmly with the Appellant, and it is expected that they prosecute their Appeal vigorously, since there is no Appeal without an Appellant. Specifically, where the Applicant is not the Appellant, the TLAB expects to be provided with submissions, and oral evidence to demonstrate how the proposal is not consistent with Section 45(1) of the Planning Act. The Appellants in this case did not submit any witness statement, nor did they attend the Hearing to provide any evidence.

. I acknowledge Mr. Loccisano's perspectives on the side-yard setback, and the existing Superior Court Decision on the easement, but conclude that the TLAB can arrive at a Decision solely on the lack of suitable submissions and evidence by the Appellants. The Appellants' lack of engagement, and failure to provide pertinent evidence, effectively results in their Appeal being dismissed

Based on this reasoning, I dismiss the Appeal respecting 222 Calvington Dr., and confirm the COA Decision, dated October 25, 2018.

DECISION AND ORDER

1. The Appeal respecting 222 Calvington Drive is dismissed in its entirety, and the Decision of the Committee of Adjustment dated 25 October, 2018 is confirmed.

2. The following variances are approved:

1. **Chapter 900.3.10(5), By-Law No. 569-2013**

The minimum required side yard setbacks are 1.8m each side. The proposed dwelling will have an east side yard setback of 1.5m.

2. **Chapter 900.3.10(5), By-Law No. 569-2013**

The minimum required side yard setbacks are 1.8m each side. The proposed dwelling will have a west side yard setback of 1.51m.

3. **Chapter 10.20.40.10.(2), By-Law No. 569-2013**

The maximum permitted height of all side exterior main walls facing a side lot line is 7.5m. The proposed dwelling will have a height of the side exterior main walls facing a side lot line of 7.61m.

4. **Chapter 10.20.40.10.(6), By-Law No. 569-2013**

The maximum permitted height of the first floor above established grade is 1.2m. The proposed dwelling will have a height of the first floor above established grade of 1.46m.

5. **Section 14.2.6, By-Law No. 7625**

The maximum permitted building height is 8.8m. The proposed dwelling will have a building height of 10.23m.

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

The maximum permitted finished first floor height is 1.5m. The proposed dwelling will have a finished first floor height of 3.01m

3. No other variances are approved.
4. The Approval of the variances is subject to the following conditions:
 - a) That the building be built in substantial conformity with the submitted drawings and elevations, prepared by ARCH DWG, date stamped September 18, 2018, and submitted to the TLAB on January 10, 2019.
 - b) The applicant shall submit the necessary application for permit to injure City tree to Urban Forestry, as per City of Toronto Municipal Code Chapter 813, Article II.

So orders the Toronto Local Appeal Body

X



S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



130 BRIDGLAND AVE. M8A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4724

SITE STATISTICS:

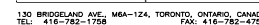
ZONING CLASSIFICATION	RD	
	SQ.FT.	SQ.M.
SITE AREA	5957.68	553.47
MAX. (COVERAGE) (0.35)	2085.19	193.71
NEW (GFA)	3761.67	349.46
NEW BASEMENT FLOOR AREA	2050.42	190.48
NEW GROUND FLOOR AREA	1961.67	182.24
NEW FRONT TERRACE AREA	240.00	22.29
NEW SECOND FLOOR AREA	1800.00	167.22
NEW COVERAGE (.37)	2201.67	204.53

SITE PLAN INFORMATION TAKEN FROM
PLAN OF LOT 365 REGISTERED PLAN 4245-YORK
CITY OF TORONTO
DATED: SEPT.14, 2017
PREPARED BY: AKSAN FILLER CORP. LTD. O.L.S
SIGNED BY ANNA AKSAN O.L.S

Title: STATISTICS		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale 1:100		
Date SEPT.18.18		
Revision No.		
Drawing No. A0		
SEPT.18.18	03	ISSUED FOR CoA
SEPT.13.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description

FRONT YARD LANDSCAPING

ZONING CLASSIFICATION	RD
TOTAL FRONT AREA (INCLUDING DRIVEWAY)	123.27sm
TOTAL OPEN SPACE (123.27-37.25-29.17)	56.85sm (46.10%)
TOTAL SOFT SPACE (56.85-4.60)	52.25 (91.90%)
TOTAL DRIVEWAY SPACE	37.25sm
TOTAL PORCH & STAIR SPACE	29.17sm
TOTAL STONE WALKWAY SPACE	4.60sm



Project CUSTOM HOME
TO 222 CALVINGTON DR.

Project No.

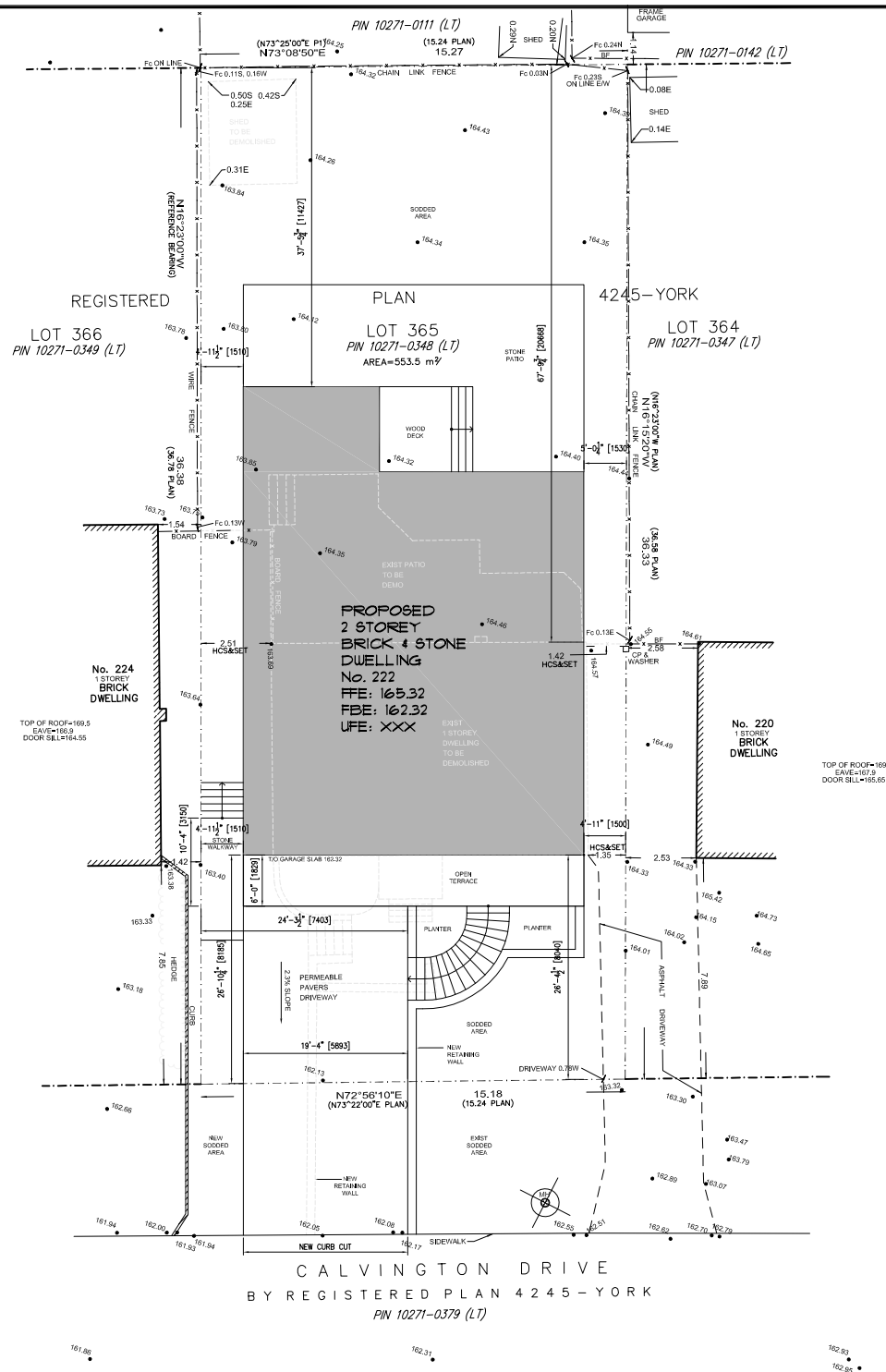
Scale
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Date
SEPT.18.18

Revision No.

Drawing No.
A1

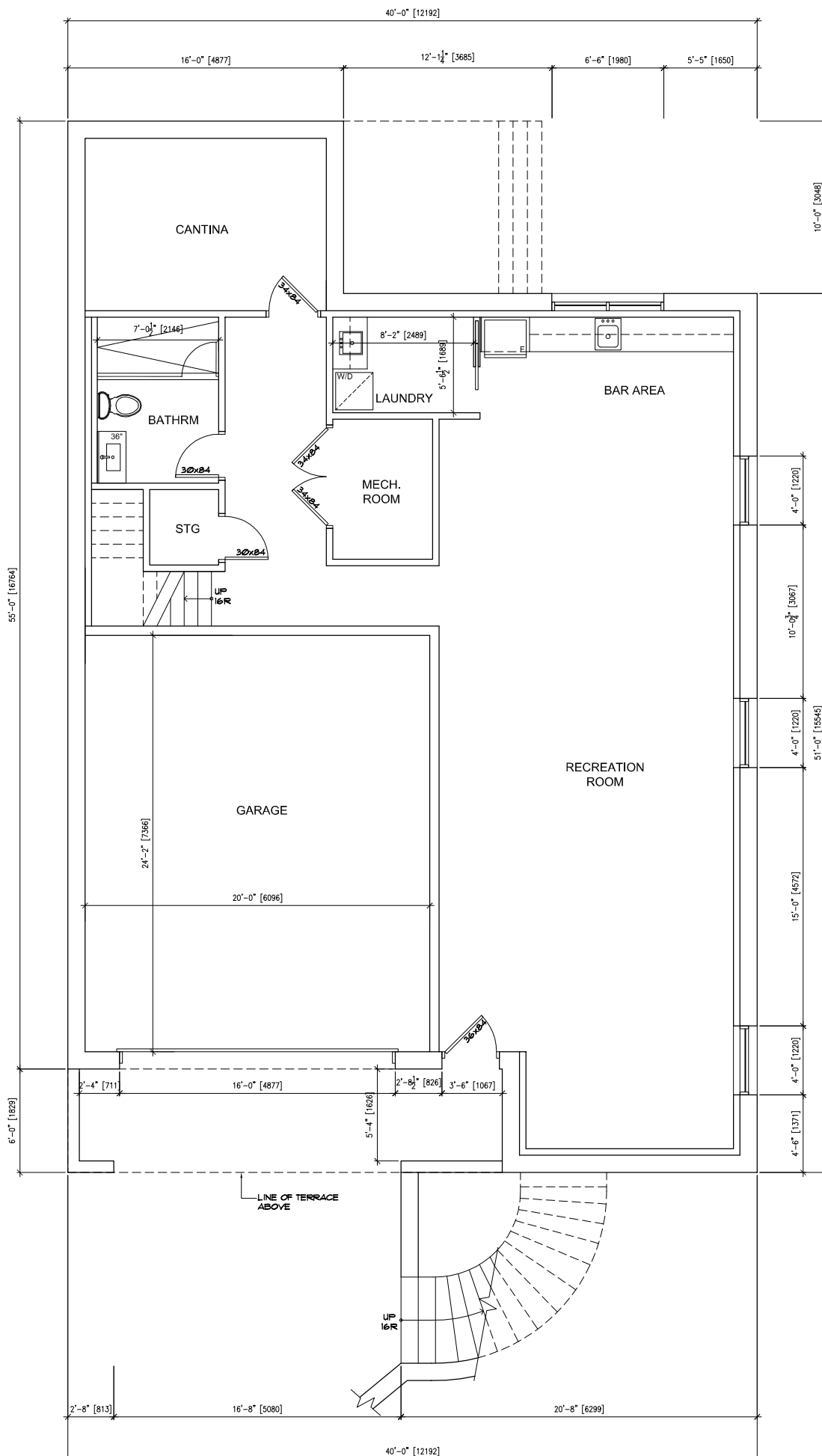
SEPT.18.18	03	ISSUED FOR CoA
SEPT.5.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGLAND AVE., M5A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4724

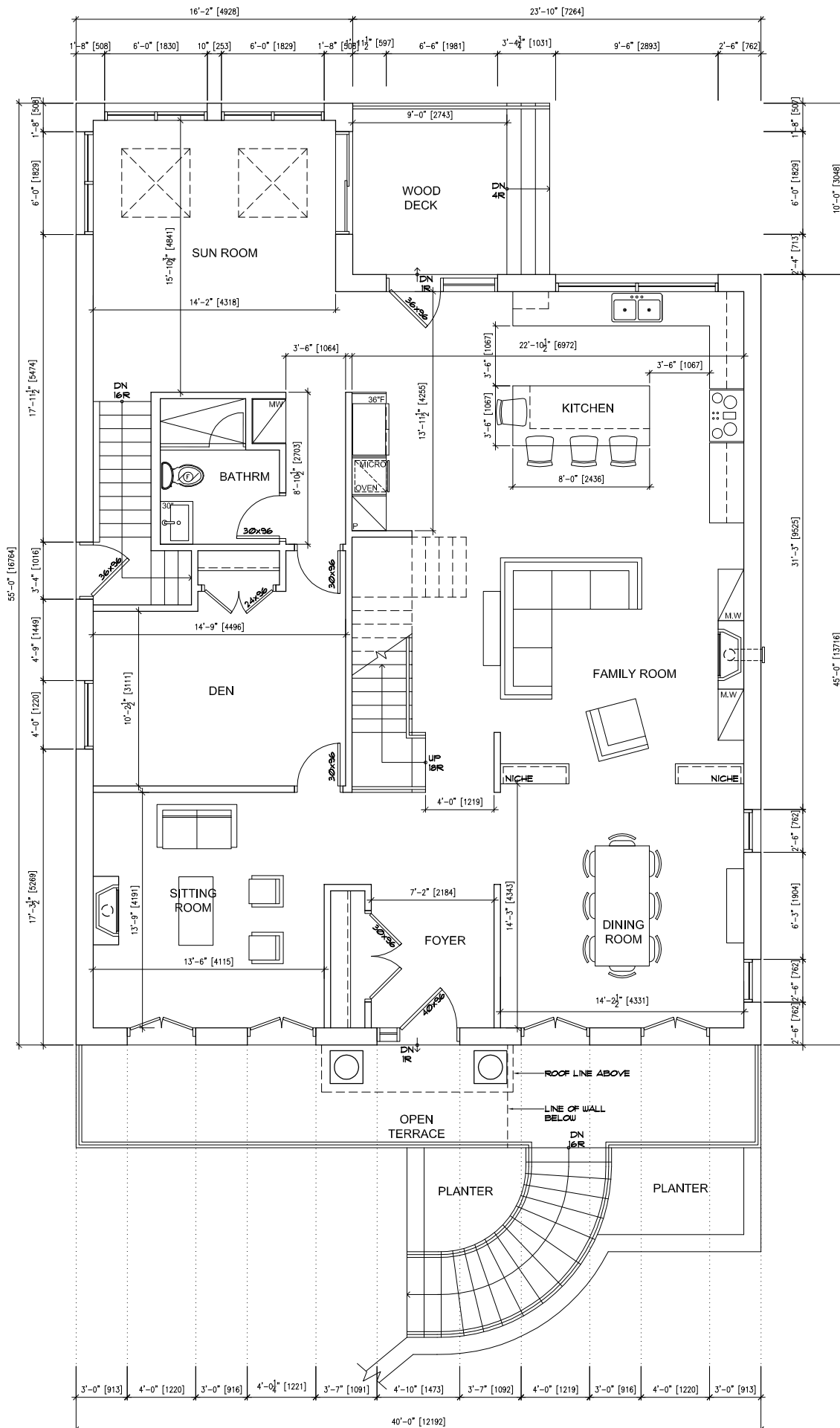
Title: BASEMENT PLAN		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale: 1:100		
Date: SEPT.18.18		
Revision No.		
Drawing No. A2		
SEPT.18.18	03	ISSUED FOR CoTA
SEPT.13.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description



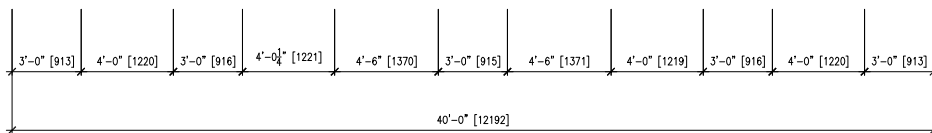
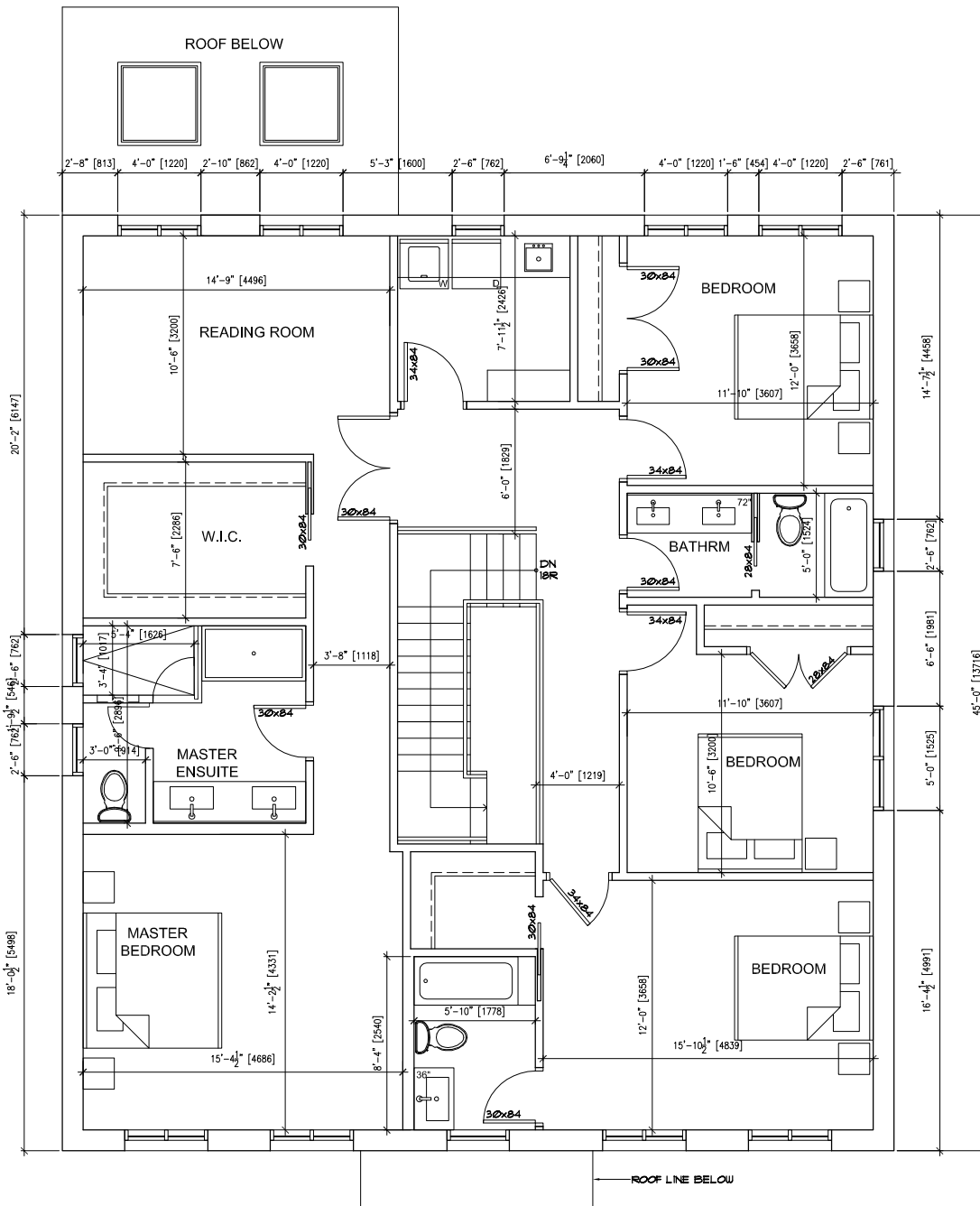


130 BRIDGLAND AVE., M8A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4724

Title: GROUND FLOOR PLAN		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale: 1:100		
Date: SEPT.18.18		
Revision No.		
Drawing No. A3		
SEPT.18.18	03	ISSUED FOR CoTA
SEPT.13.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description



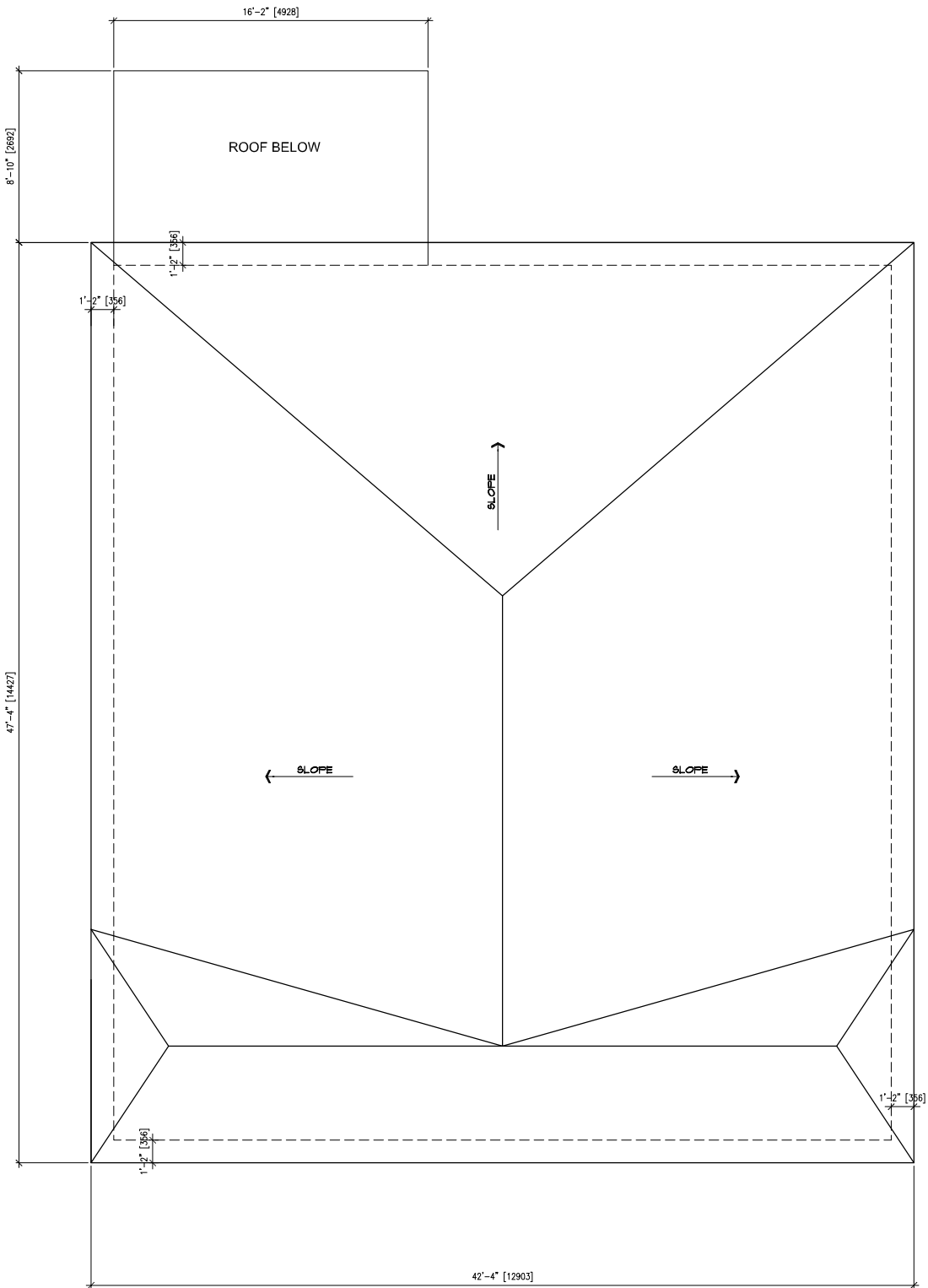
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Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale: 1:100		
Date: SEPT.18.18		
Revision No.		
Drawing No. A4		
SEPT.18.18	03	ISSUED FOR CoA
SEPT.13.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGLAND AVE., M8A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4724

Title: ROOF PLAN		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale 1:100		
Date SEPT.18.18		
Revision No.		
Drawing No. A5		
SEPT.18.18	03	ISSUED FOR CoTA
SEPT.13.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGELAND AVE. M6A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4754

Title: SOUTH ELEVATION		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale: 1:100		
Date: SEPT.18.18		
Revision No.		
Drawing No. A6		
SEPT.18.18	03	ISSUED FOR CoA
SEPT.15.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGELAND AVE. M6A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-752-1758 FAX: 416-752-4754

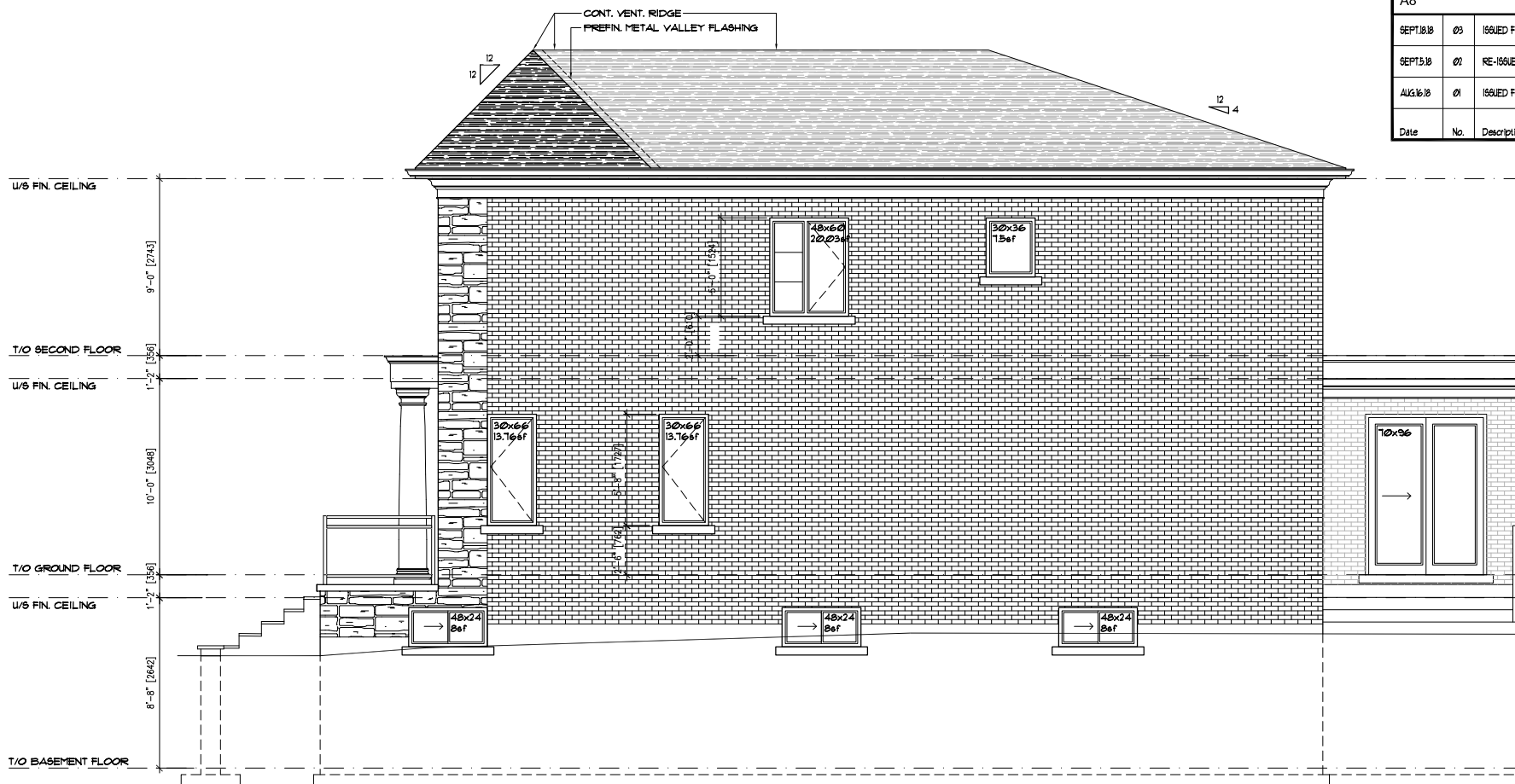
Title: NORTH ELEVATION		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale 1:100		
Date SEPT.18.18		
Revision No.		
Drawing No. A7		
SEPT.18.18	03	ISSUED FOR CoA
SEPT.15.18	02	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGELAND AVE. M6A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4754

Title:	EAST ELEVATION	
Project	CUSTOM HOME TO 222 CALVINGTON DR.	
Project No.		
Scale	1:100	
Date	SEPT.18.18	
Revision No.		
Drawing No.	A8	
SEPT.18.18	03	ISSUED FOR CoA
SEPT.15.18	01	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description





130 BRIDGELAND AVE. M6A-1Z4, TORONTO, ONTARIO, CANADA
TEL: 416-782-1758 FAX: 416-782-4754

Title: WEST ELEVATION		
Project: CUSTOM HOME TO 222 CALVINGTON DR.		
Project No.		
Scale 1:100		
Date SEPT.18.18		
Revision No.		
Drawing No. A9		
SEPT.18.18	03	ISSUED FOR CoA
SEPT.15.18	01	RE-ISSUED FOR ZONING REVIEW
AUG.16.18	01	ISSUED FOR ZONING REVIEW
Date	No.	Description

