

# DECISION AND ORDER

**Decision Issue Date** Wednesday, June 12, 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): MARIA CAMPOS

Applicant: CONTEMPO STUDIO

Property Address/Description: 447 WINNETT AVE

Committee of Adjustment Case File: 18 228265 STE 21 MV

**TLAB Case File Number: 19 134633 S45 12 TLAB**

**Motion Hearing date:** Tuesday, June 04, 2019

**DECISION DELIVERED BY Ian James LORD**

## APPEARANCES

| Name            | Role           | Representative  |
|-----------------|----------------|-----------------|
| Contempo Studio | Applicant      | Natalia Furtato |
| Zoe Mimran      | Owner          |                 |
| Maria Campos    | Appellant      |                 |
| Ira Jelinek     | Party          | Sam Presvelos*  |
| Tae Ryuck       | Expert Witness |                 |

\* Counsel

## INTRODUCTION

This matter involves a Motion to Dismiss an appeal brought by Notice of Appeal dated April 3, 2019, signed by Maria and Duarte Campos (Appellants), owners of property known municipally as 449 Winnett Avenue, in the City of Toronto (City).

**Decision of Toronto Local Appeal Body Panel Member: I. LORD  
TLAB Case File Number: 19 134633 S45 12 TLAB**

The appeal is in respect of a decision of the Toronto and East York Panel of the Committee of Adjustment (COA) approving variances sought by the owners, Zoe Mimran and Ira David Jelinek (Owners), applicable to 447 Winnett Avenue (subject property).

By Decision mailed March 26, 2019, the COA approved for the subject property variances permitting an increase in building length and depth (.7 m), an enlarged third storey platform, an increase in the permitted floor space index (0.053 times) and reduced side yard setbacks (north 0.1m; south, 0.6 m).

By Notice of Motion (Form 7) dated May 21, 2019, counsel for the Owners, Sam Presvelos, brought this Motion to Dismiss to be heard June 4, 2019, by serving and filing a Motion Record (Exhibit 1 to the Hearing), containing the Affidavits of Tae Ryuck, a Registered Professional Planner, and Marin Zabzuni, an Architectural Technologist.

The Motion sought dismissal on grounds specified in the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB), specifically Rule 9.1 (a) and (b), and that the appeal is made for the purpose of delay.

It requests that the decision of the COA be confirmed.

In the Hearing, the first ground was stressed: namely, that the appeal does not disclose any apparent or genuine land use planning grounds upon which the TLAB could allow all or part of the appeal.

## **BACKGROUND**

The moving party and the affiants were present for the Motion, but the latter were called for clarification purposes only as their affidavits were not directly challenged.

Also present as speakers were Natalia Furtato and Ms. Maria Campos. Ms. Furtato responded to the Motion on behalf of and in addition to Ms. Campos.

I advised I had read the materials and would be visiting the site, as per constituting instructions to the TLAB by City Council, all as subsequently viewed the following morning.

## **MATTERS IN ISSUE**

The Motion challenged the grounds for appeal set out in the Notice of Appeal (Form 1). The grounds assert:

- a) the obligation to stay within the allowed provisions of the applicable zoning by-law;
- b) negative impact caused by the variances;

c) obstruction of sunlight, especially to the second bedroom window, with the potential resultant negative impact on the Appellants in terms of existing conditions of chronic depression and other health related conditions.

The grounds assert that the larger the house, the greater the obstruction will be.

The Motion challenges whether any connection has or can be made between the variances and the alleged health related impacts.

## **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 for 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.

### **Rules**

In this case, the TLAB is also guided, as a preliminary matter, by TLAB Rule 9, invoked on the request of a party to dismiss the appeal, for the components and reasons above recited.

## **EVIDENCE**

Mr. Presvelos presented a well organized and supported Motion Record (Exhibit 1), Authorities Book and succinct argument in support of the Motion.

I asked clarification questions of Messrs. Ryuck and Zabzuni, both of whom were present.

The Appellant also supplied the Notice of Appeal, a Notice of Response to Motion (Form 8) and a series of photographs.

**Decision of Toronto Local Appeal Body Panel Member: I. LORD  
TLAB Case File Number: 19 134633 S45 12 TLAB**

Evidence and submissions were received from both Parties.

Mr. Presvelos reminded the TLAB with reference to the Book of Authorities of several propositions often accepted in the case law applicable to Motions to Dismiss, namely:

- a) The grounds for appeal as stated in the Notice of Appeal and the Response to Motion must satisfy the TLAB that the issues raised are legitimate, genuine and authentic; and
- b) They are of a land use planning perspective; and
- c) They are sufficiently substantive that they could affect the outcome and are worthy of the adjudicative process.

These oversight terms are expressed rather eloquently in *East Beach Community Association v Toronto (City)* [1996] O.M.B.D. No. 1890 at paragraph 9:

"The Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons. This is not to say that the Board should take away the rights of appeal whimsically, readily and without serious consideration of the circumstances of each case. This does not allow the Board to make a hasty conclusion as to the merit of an issue. Nor does it mean that every appellant should draft the appeal with punctilious care and arm itself with iron-clad reason for fear of being struck down. What these particular provisions allow the Board to do is seek out whether there is authenticity in the reasons stated, whether there are issues that should affect a decision in a hearing and whether the issues are worthy of the adjudicative process."

My task is to apply this circumspection to the above appeal grounds.

While I am in no way bound by the decision of the COA, I am directed to have regard to it as well as the considerations raised above, under jurisdiction. The moving party has supplied qualified professional evidence that attests to the variances requested as having met the applicable policy and statutory tests. Moreover, the requestor has focussed on the issues raised of by-law compliance and the potential for the diminution of sunlight to the Appellant's premises.

On the Owner's behalf, an extensive, contemporary and consistent sun/shadow study has been provided (Exhibit 1, Tab 2 (b)) with an attestation by the planner Ryuck that there is no appreciable impact under as-of-right and proposed construction conditions, i.e., 'no discernable impact'.

There is no doubt that the COA decision approves an increase in building length, depth and floor space index. These aspects go to issues of building footprint, location, building massing and potential for impact. These are legitimate land use planning considerations and can form the basis of an appeal deserving of a hearing into their merits. Where they are raised, as here, the

**Decision of Toronto Local Appeal Body Panel Member: I. LORD  
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Appellant has an obligation to pursue them in an evidentiary setting and within a format that permits their challenge.

Where, as in this case, that evidentiary challenge is contested in a Motion to Dismiss, I accept the submissions of Mr. Presvelos that the Appellant is faced with an even higher challenge to demonstrate not only the substance of the qualifying objections to the variances approved, but also the manner and means by which they are to be demonstrated.

In the normal course, this would take the form of an originating and potentially contradicting affidavit of a qualified professional, together with an undertaking to call that evidence.

I accept the sincere evidence of Ms. Campos of the concern expressed that new construction south of her residence can impact on the degree of sunlight entering select south facing windows.

I accept as well that there may be a positive relationship between sunlight and attitudinal conditions, including such matters as migraines and depression. The proof of that linkage is better left to the medical professionals and those who study such matters and not a land use planning tribunal. This is not to say that land use impacts are irrelevant to matters of human health and safety; rather, the opposite is the case as a base goal of land use planning is the production of healthy communities and the betterment of societal living conditions.

Here, of the submissions of the Appellant, including the two communications one jointly from Judite Cadete (Registered Psychotherapist) with Monica Scaleo (Psychiatrist) relating to Maria Campos, and that of Dr. Irvin Klinghofer on behalf of Duarte Campos, neither assert the loss of sunlight linkage to specific disorders nor ascribe it as being of direct relevance to either of the Appellants.

I accept Mr. Presvelos' argument that both communications recite the apprehension that the Appellants themselves hold for the implications of building construction. The letters are not opinions as to the actual loss of sunlight caused by the proposal on the subject property. They do little more than support that the Appellants have a 'fear' there will be an "impact on (her) drive and mood".

Even if that were not the case from a literal reading of the communications, there was no undertaking to call further evidence from these individuals, nor was any other person presented or intending to challenge the quantification of the loss of sunlight as would be appreciated from the variances sought, as opposed to as-of-right construction.

No one can fail to empathize with any person suffering from health related ailments. The TLAB is obliged to give countenance to planning issues that may arise requiring special consideration in building design and construction to proactively provide for circumstances where such conditions warrant relief,

without undue inquiry into their cause. I was directed to no precedent where that consideration extended off the subject property to address the potential for impact on the mental or physical health, as opposed to the safety, of occupants of an adjacent property.

## **ANALYSIS, FINDINGS, REASONS**

Access to light, air and privacy are common considerations in City planning applications and appeals. While there are some policy considerations relevant in the Official Plan, these principally apply to the public realm and its protections. The case law from an administrative law standpoint, as recited by Mr. Presvelos, is relatively consistent that in an inner city urban setting, the exercise of development rights can cause compromise to the receipt of sunlight, air circulation and the expectations or desirability of privacy. That is often a circumstance of modern city growth and development. Apart from the Official Plan as a policy guide, the compromises sought to zoning regulations are generally approached from a description of the degree of change and whether there is any resulting undue adverse impact.

In this case, the professional attestations, unchallenged, are that those assessments conclude that there are no significant compromises or impacts. Not only is that evidence not challenged, there is no undertaking that it will be challenged by direct contrary evidence. As such, I am left with a clearly articulated concern for the future impact, with nothing further.

From *East Beach and Arnold v. Toronto (City) Committee of Adjustment* [2006] O.M.B.D. No. 898 (Authorities Document Book, Tab 1), I am left with 'free floating' concerns of anticipation. These are apprehensions. They are in this circumstance and in the jurisprudence insufficient to warrant a Hearing on the merits.

The Appellants have not demonstrated or undertaken that the potential for some impact on the sunlight at some windows can be demonstrated by analytic or independent professional advice that provides, in a hearing setting, the potential for the trial of an issue which could lead to a different result from that reached by the COA.

Indeed, undue adverse impact was never alluded to beyond the raising of a concern.

Rather, there is the unchallenged evidence that there is no increase in height permission sought from that existing as-of-right; further, the building length/depth measure, itself arguably nominal, is affected by a limited one storey rear yard extension, inset beyond the normal side yard setback requirement, and further away from the Appellants dwelling.

Mr. Presvelos is correct that the *Planning Act* provides express permission to seek site specific relief from the provisions of the zoning by-law, subject to the evaluation criteria in place to judge acceptability. The Owners have pursued that course as they are entitled to do. I see nothing in the evidence that demonstrates that either party did anything other than pursue their respective rights; it is important as well

that each attests to responsible conduct, civility and a go-forward mentality of respecting their neighbours.

I find nothing in the conduct of either party that warrants sending this matter on for further review causing additional angst, expense or consideration.

While it is regretful that miscommunication or a resistance to communication may have occurred or crept in, I cannot accept that there was any deliberate attempt to not address issues or any failure on the part of the Owners to genuinely attempt to ameliorate the consequence that the proposed changes precipitate.

I have read the response to Motion and listened to the evidence of Ms. Campos very carefully and conclude that no new or compelling information of a land use planning dispute is provided. I accept that a causal connection, or its potential, has and will not be demonstrated between the potential effect on sunlight from new construction and the potential for adverse health impacts in this particular circumstance. I note that area character reflects a mix of dwellings of different heights, depths, lengths, scale and setbacks. I have also reviewed the Owners' plans, noted the adherence to the height regulation, the one story rear floor space design, the enhanced setback further from the north lot line and the step-backs in construction, all offering some degree of mitigation and design effort.

To ensure that the COA relief is not abused and that the design proposed is respected, the Owners and their consultants accepted the imposition of a condition to the COA approval that construction proceed in substantial compliance with the site plan and elevations proposed.

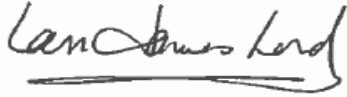
## **DECISION AND ORDER**

The Motion to dismiss the appeal without the necessity of a hearing on the merits is allowed and the decision of the Committee of Adjustment is confirmed.

On the consent of the Owners, the decision of the Committee of Adjustment is supplemented by the imposition of a condition that the variances granted shall be subject to construction in substantial compliance with the plans attached hereto as **Appendix 1**, being the site plan and elevations identified and attached as Exhibit 'E' to the affidavit of Marin Zabzuni, in Exhibit 1, specifically drawings from 'contempostudio' dated April 4, 2019, identified as A-3, A-4, A-5, A-7, A-8, A-9, and A-10, excluding internal layouts.

Any additional variances generated by the plans attached as **Appendix 1** are expressly not authorized.

X

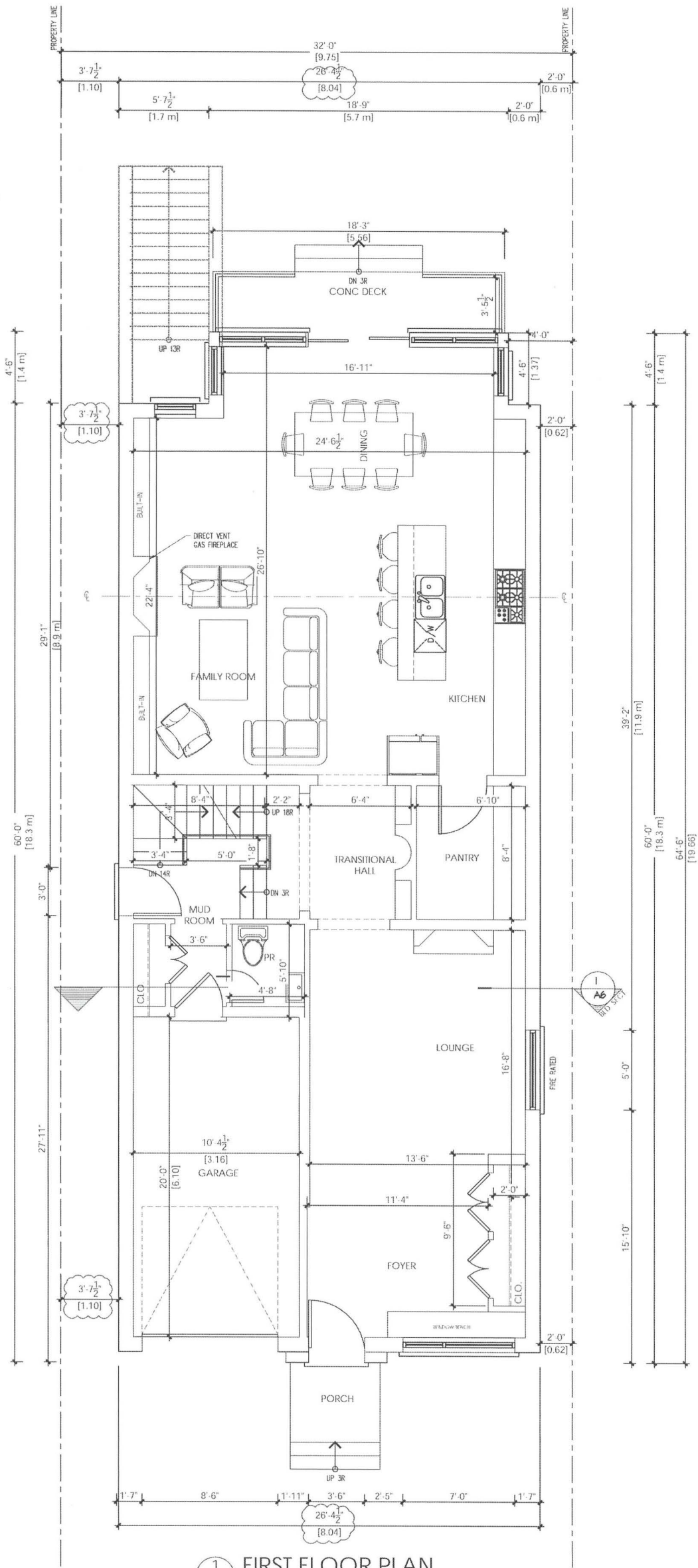
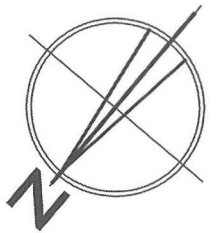
A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style with a horizontal line underneath the name.

---

Ian Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: ilord

## Appendix 1 (Plans)





## LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

## 1 FIRST FLOOR PLAN

SCALE : 1/8" = 1'-0"  
155.52m<sup>2</sup> (1674.05 SQ.FT.)  
-19.2m<sup>2</sup> (206.66 SQ. FT.) GARAGE AREA  
PROP. 1ST FLOOR AREA: 136.32m<sup>2</sup> (1467.39 SQ. FT.) (EXCLUDING  
PERMITTED DEDUCTIBLE OF 19.2m<sup>2</sup> FOR 1 PARKING SPACE)

contempostudio



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F. (416) 485-1042

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents.

QUALIFICATION INFORMATION  
Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code.

MARIN ZABZUNI 45250  
NAME SIGNATURE BCIN

REGISTRATION INFORMATION  
Required unless design is exempt under 3.2.4.7. Division C of the Ontario Building Code.  
CONTEMPO STUDIO 46972  
FIRM NAME BCIN

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PROJECT  
PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

DRAWN BY  
FIRST FLOOR PLAN

SCALE  
AS NOTED

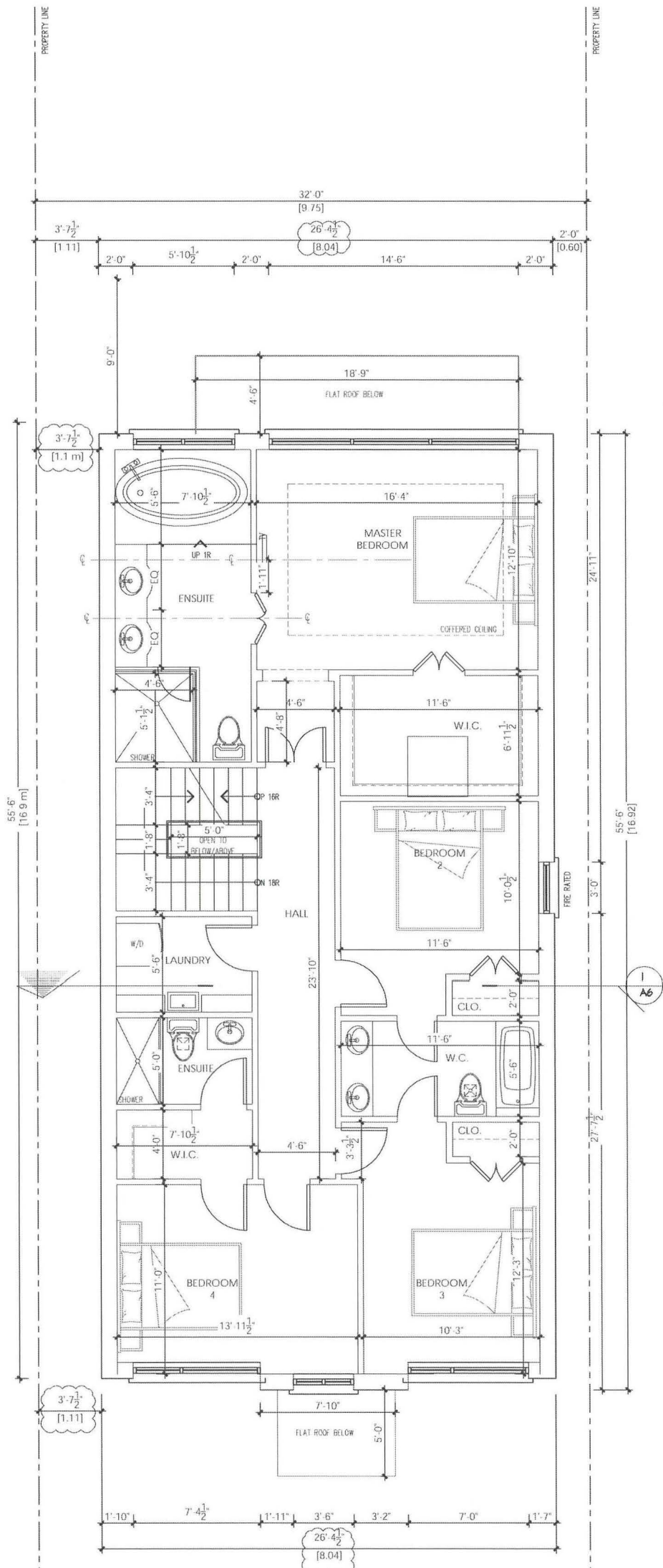
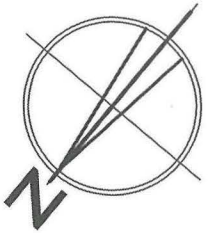
DATE  
APRIL 04 2019

PROJECT NO.  
2018-24

DRAWN BY  
M.Z.

APPROVED BY  
M.Z.

DRAWING NO.  
A-3



LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

1 SECOND FLOOR PLAN  
SCALE : 1/8" = 1'-0"

1470.75 SQ.FT.  
-12.5 S.F. O.T.B. AREA  
=1458.25 SQ.FT.

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NAME SIGNATURE BCIN

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FIRM NAME BCIN

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PROJECT  
PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

SECOND FLOOR

SCALE  
AS NOTED

DATE  
APRIL 04 2019

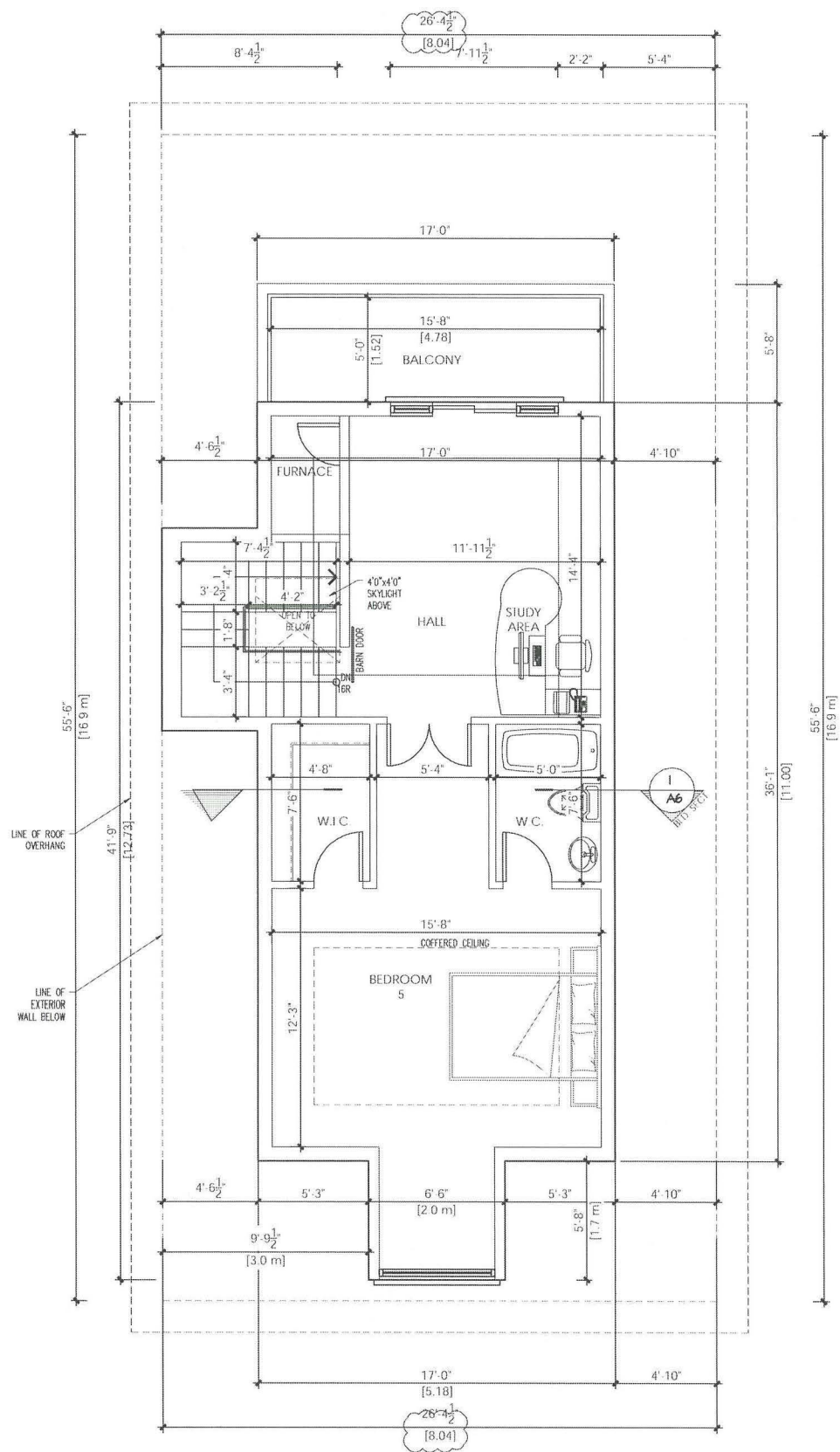
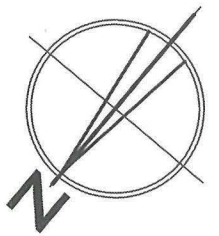
PROJECT NO.  
2018-24

DESIGNED BY  
M.Z.

APPROVED BY  
M.Z.

DRAWN BY  
A-4





1 THIRD FLOOR PLAN  
A-5 SCALE : 1 / 8 " = 1' - 0 "  
699.28 SQ.FT.

LEGEND

- S.B. SOLID WOOD BEARING
- F.D. FLOOR DRAIN
- A.D. AREA DRAIN
- I.S.A. INTERCONNECTED SMOKE ALARM
- C.M.D. CARBON MONOXIDE DETECTOR
- MECHANICAL VENTILATION

contempostudio



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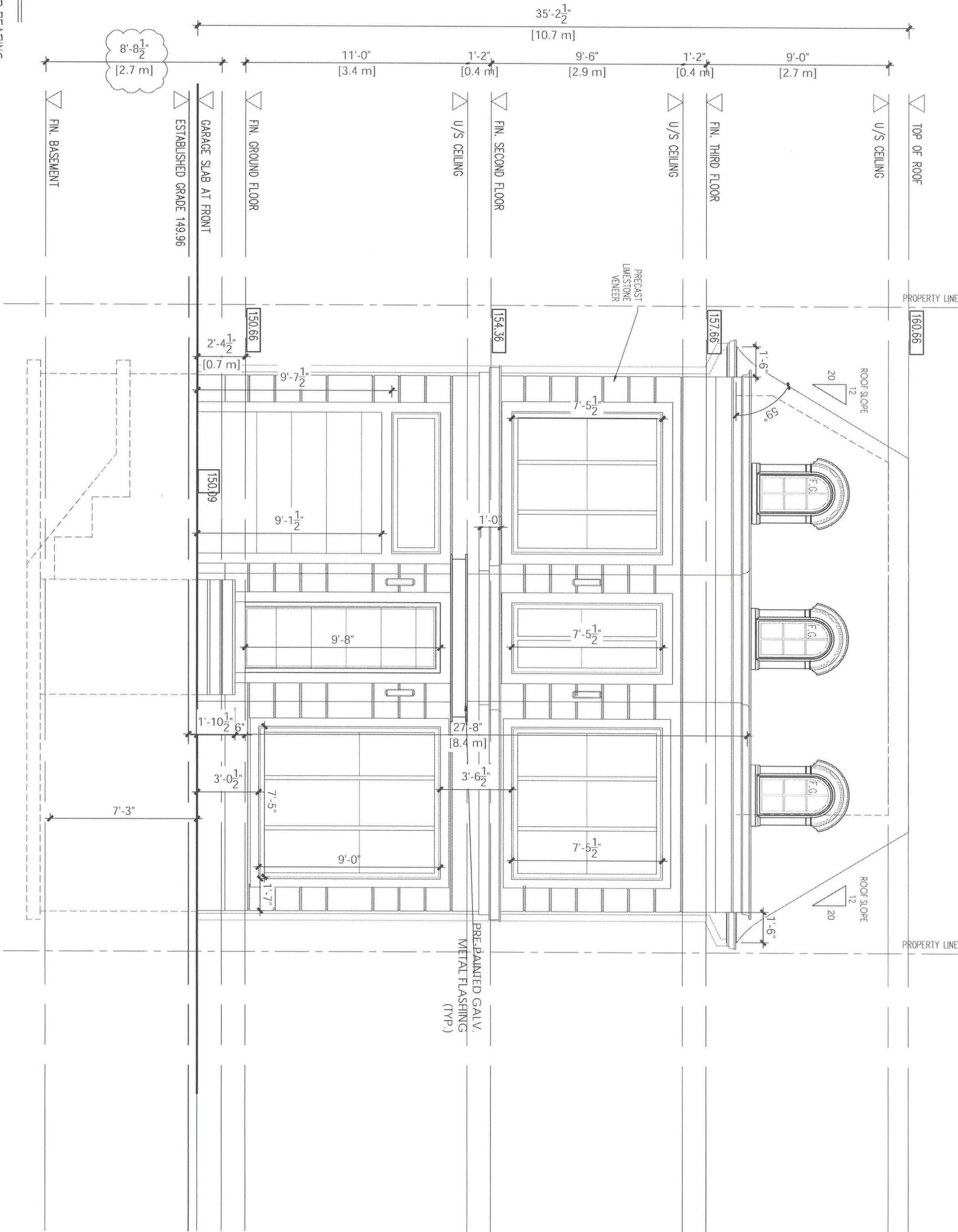
PROJECT  
PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

THIRD FLOOR PLAN

|               |             |
|---------------|-------------|
| SCALE         | DRAWN BY    |
| AS NOTED      | M.Z.        |
| DATE          | APPROVED BY |
| FEB. 19, 2019 | M.Z.        |
| PROJECT NO.   | DRAWING NO. |
| 2018-24       | A-5         |

-  S.B. SOLID WOOD BEARING
-  F.D. FLOOR DRAIN
-  A.D. AREA DRAIN
-  I.S.A. INTERCONNECTED SMOKE ALARM
-  C.M.D. CARBON MONOXIDE DETECTOR
-  M.V. MECHANICAL VENTILATION

LEGEND



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PROJECT

PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

DRAWING

EAST (FRONT) ELEVATION

SCALE

AS NOTED

DATE

APRIL 04 2019

PROJECT NO.

2018-24

DRAWN BY

M.Z.

APPROVED BY

M.Z.

DRAWING NO.

A-7





# CARBON MONOXIDE DETECTOR

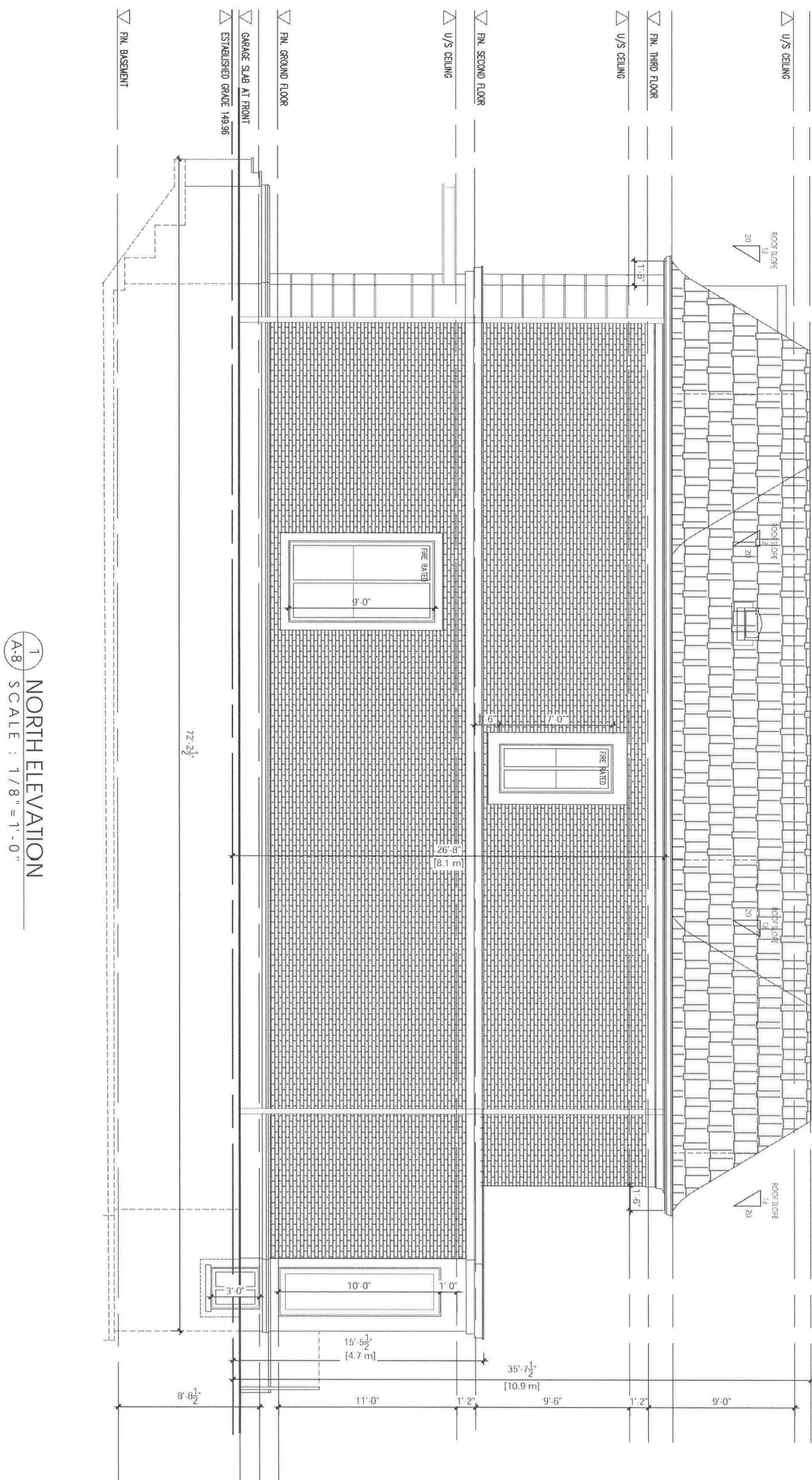
INTERCONNECTED SMOKE ALARM

A.D. AREA DRAIN

F.D. FLOOR DRAIN

S.B. SOLID WOOD BEARING

# LEEND



1  
A-8 NORTH ELEVATION  
SCALE : 1 / 8 " = 1 ' - 0 "

**contempstudio**

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### QUALIFICATION INFORMATION

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|               |           |
|---------------|-----------|
| MARIN ZABZUNI | 45250     |
| NAME          | SIGNATURE |
|               | BCIN      |

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## PROJECT

PROPOSED NEW 3 STOREY  
DWELLING  
AT

447 WINNETT AVE  
CITY OF TORONTO

CHANGES

## NORTH ELEVATION

SLA

AS NOTED

DATE  
APRIL 04 2019

2018-24

$$\lambda = \frac{1}{2} \left( \frac{1}{\lambda_1} + \frac{1}{\lambda_2} \right) \quad \text{and} \quad \mu = \frac{1}{2} \left( \frac{1}{\lambda_1} - \frac{1}{\lambda_2} \right)$$

M.Z.

APPROVED: S. J.  
M.Z.

A-8



-  S.B.

 F.D.

 A.D.

 I.S.A.

 C.M.D.


- SOLID WOOD BEARING

FLOOR DRAIN

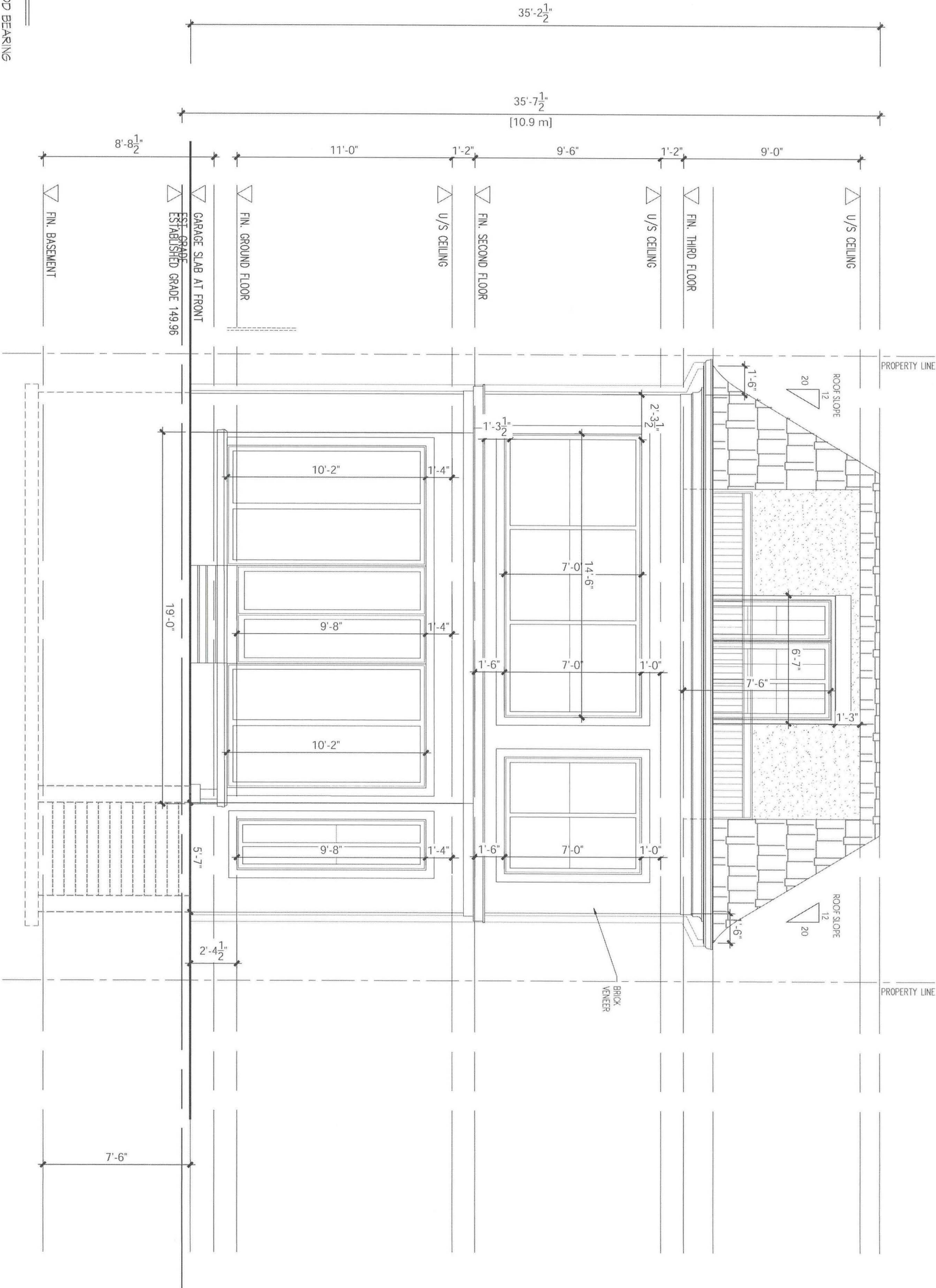
AREA DRAIN

INTERCONNECTED SMOKE ALARM

CARBON MONOXIDE DETECTOR

MECHANICAL VENTILATION

LEGEND



1 WEST (REAR) ELEVATION  
A-9 SCALE : 3/16 " = 1' - 0 "

contempostudio



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PROJECT  
PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

DESCRIPTION  
WEST (REAR) ELEVATION

SCALE  
AS NOTED

DATE  
APRIL 04 2019

PROJECT ID  
2018-24

DRAWN BY  
M.Z.

APPROVED BY  
M.Z.

PROJECT ID  
A-9



- 

S.B. SOLID WOOD BEARING
- 

F.D. FLOOR DRAIN
- 

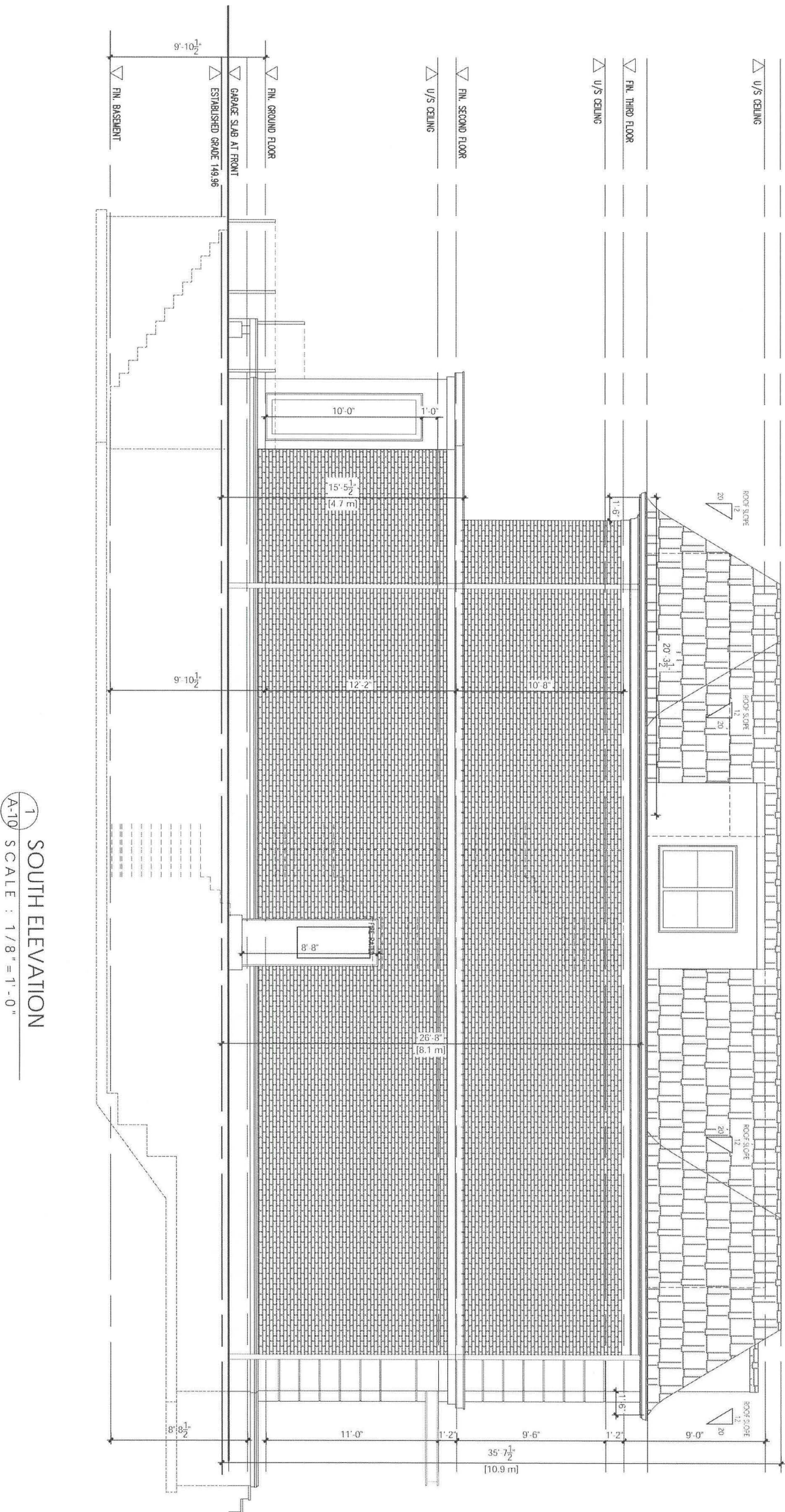
A.D. AREA DRAIN
- 

I.S.A. INTERCONNECTED SMOKE ALARM
- 

C.M.D. CARBON MONOXIDE DETECTOR
- 

M.ECHANICAL VENTILATION

LEGEND



1 SOUTH ELEVATION  
A-10 SCALE : 1 / 8 " = 1' - 0 "

contempostudio



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F. (416) 485-1042

The undersigned has reviewed and takes responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to design the work shown on the attached documents:

| QUALIFICATION INFORMATION   |           |      |
|---|-----------|------|
| Required unless design is exempt under 3.2.4.3.(5) Division C of the Ontario Building Code. |           |      |
| MARIN ZABZUNI   | 45250     |      |
| NAME  | SIGNATURE | BCIN |
| REGISTRATION INFORMATION  |           |      |
| Required unless design is exempt under 3.2.4.7, Division C of the Ontario Building Code.    |           |      |
| CONTEMPO STUDIO   | 46972     |      |
| FIRM NAME   | BCIN      |      |

DO NOT SCALE DRAWINGS  
CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND REPORT ANY OMISSIONS OR DISCREPANCIES TO CONTEMPO STUDIO BEFORE PROCEEDING WITH WORK.  
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PROJECT  
PROPOSED NEW 3 STOREY  
DWELLING  
AT  
447 WINNETT AVE  
CITY OF TORONTO

DRAWING  
SOUTH ELEVATION

| SOUTH ELEVATION |               |
|-----------------|---------------|
| SCALE           | AS NOTED      |
| DATE            | APRIL 04 2019 |
| PROJECT NO.     | 2018-24       |
| DRAWN BY        | M.Z.          |
| CHECKED BY      | M.Z.          |
| APPROVED BY     | A-10          |