

DECISION AND ORDER

Decision Issue Date Tuesday, August 13, 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): Fernando Oliveira

Applicant: Fernando Oliveira

Property Address/Description: 35 Armstrong Ave

Committee of Adjustment Case File: 18 253951 STE 18 MV (A1151/18TEY)

TLAB Case File Number: 19 137557 S45 09 TLAB

Hearing date: Thursday, August 01, 2019

DECISION DELIVERED BY SEAN KARMALI

APPEARANCES

Appellant/Co-owner Fernando Oliveira

Party/Co-owner Grace Oliveira

INTRODUCTION

[1] Fernando Oliveira and Grace Oliveira (owners) of 35 Armstrong Avenue in Toronto, Ontario (subject property) seek to construct a new detached garage with a larger floor area than the current ancillary building provides. Their application was refused by the Committee of Adjustment of the Toronto and East York District (COA) on March 20, 2019. The owners appealed and the matter is before the Toronto Local Appeal Body (TLAB).

BACKGROUND

[2] The owners need the proposed variances as set out in Table 1:

Table 1: Variances Requested for 35 Armstrong Avenue			
Variance Number	Variance Type	Standard as per Zoning By-Law 569-2013	Proposed
1	Floor Area	The maximum total floor area of all ancillary building or structures on a lot is 40 m ²	The new rear yard detached private garage will have a floor area of 68.81 m
2	Soft Landscaping	A minimum of 50% (78.91 m ²) of the required rear yard landscaping must be soft landscaping	In this case, 48% (75.57 m ²) of the required rear yard landscaping will be soft landscaping

[3] I indicated I had visited the subject property and surroundings, and had familiarized myself with the pre-filed materials.

MATTERS IN ISSUE

[4] I must be satisfied that the minor variance application meets provincial policy and the four tests under Section 45(1) of the *Planning Act*, as set out below.

[5] This is a hearing in which the registered appellant, Mr. Oliveira, appeared before the TLAB. Mrs. Oliveira, Mr. Oliveira's wife, also appeared. Mrs. Oliveira did not formally file an intention to be a party. I have named her as an interested party pursuant to Rule 12.3 as she is the co-owner of the subject property, appears to have genuine interest in the matter and is likely to make a relevant contribution to the TLAB's understanding of the issues.

[6] The only individuals in this appeal are Mr. Oliveira, the appellant, and Mrs. Oliveira, an interested party. According to the List of Appellants, Parties, Participants and Legal Representatives dated May 13, 2019, there is no mention of any other party, participant or representative who has indicated an interest in this appeal. I also note there has been no document disclosure to the TLAB provided by other individuals.

[7] Mrs. Oliveira came to the hearing with photographs she intended to rely on. She did not disclose this to the TLAB in accordance with Rule 16.2. This Rule states that the disclosure of documents must be served to the TLAB not later than 30 days after the Notice of Hearing, which, in this case, was April 11, 2019. Mrs. Oliveira indicated that she did not know that she had to disclose this in advance of the hearing. As Mrs. Oliveira has only recently become an interested party to this proceeding, and that, among other things, she did not have an opportunity to review the TLAB Public Guide, I will allow her documents to be disclosed.

JURISDICTION

[8] 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').

[9] 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

[10] The owners are unrepresented before the TLAB. They have indicated the designer of the plans submitted to the COA is Tony Valentin Design.

[11] There was no professional opinion evidence at the hearing.

[12] Mr. Oliveira was sworn in as a witness. He described a wide opening between the ancillary buildings of the subject property and 33 Armstrong Avenue, the neighbour to the east. Mr. Oliveira stated that this opening has been a source of nuisance. He testified that this area has been used as a “garbage dump.”

[13] Mr. Oliveira stated that he would like to build new garage. He described that blocks are falling apart on both sides, and the front of the existing garage is sinking. Mr. Oliveira stated that he would like to raise the elevation of the garage floor to stop issues of flooding. He testified that he would also like to extend the width of the ancillary building (the proposed new garage) by one foot and a half on the easterly side to decrease the wide space, up to his property line. He confirmed that the length of the building will not change.

[14] Mrs. Oliveira was sworn in as a witness. Mrs. Oliveira relied on her only exhibit, Exhibit 1: Garages in a Row. This exhibit is a collection of photographs, some of which depict how ancillary buildings are laid out from the West Dufferin North Wallace laneway point of view.

[15] Mrs. Oliveira described that there are several examples of row garages in the laneway, and that as they are row garages, there are no open areas. Mrs. Oliveira testified that as a result of no open areas in row garages, there is no room for nuisances to occur in this regard.

[16] Mrs. Oliveira further testified that the floor area of the existing garage is likely more than the zoning by-law requirement of 40 square metres. She stated the proposed floor area variance does not, in her opinion, represent a significant change.

[17] The record will show that neither Mr. Oliveira nor Mrs. Oliveira were able to provide definitive information, on their own, about the dimensions of the existing garage. I found this generally unhelpful since, in a land use planning context, one should have an understanding of what currently exists and what is being proposed.

[18] All of the evidence in this Hearing consisted of lay opinions including perceived relevant considerations. I have the responsibility to make a decision on the appeal, and to not create additional problems, such as deferring this matter to another date.

ANALYSIS, FINDINGS, REASONS

[19] The subject property is located in an area with a land use designation of Neighbourhoods. The Official Plan, and its amendments, provide that any development in established Neighbourhoods ought to respect and reinforce the existing physical character of each geographic neighbourhood.

[20] Assessment criteria for Neighbourhoods particularly includes, among other items, respecting and reinforcing the prevailing size, prevailing side yard setbacks, prevailing location, design and elevation relative to the grade of garages, and landscaped open space.

[21] Official Plan Amendment 320 (OPA 320) reinforces the neighbourhood assessment criteria from the perspective of increasing degrees of relevance: the broader neighbourhood context; the block, and block opposite; and to adjacent properties. The above assessment criteria continue to apply, with this geographic emphasis, including streetscape implications, fit, compatibility and proximity.

[22] I have had these considerations in mind, including OPA 320, as being informative but not determinative, in this case, of the relevant considerations of the intent and purpose test of Official Plan conformity – despite the absence of qualified professional opinion evidence.

[23] In the situation before me, the requested floor area variance does not seem insignificant. The proposed brick and block garage, and its 10-inch concrete block foundation wall comes very close to the property line. In fact, the existing garage flat roof projection also comes very close to the property line and may even be a (permitted) encroachment.

[24] However, I note that the appellant's minor variance application does not seem to trigger any rear or side yard setback variances for an ancillary building.

[25] Furthermore, I find that the neighbourhood of the subject property has special built-form features which contribute to the unique physical character of this geographic neighbourhood. For example, some homes on Armstrong Avenue are detached, while others are semi-detached. Another example is that some ancillary buildings are detached, while others are attached i.e., row garages. One can see these examples in Figure 1: Location Map.

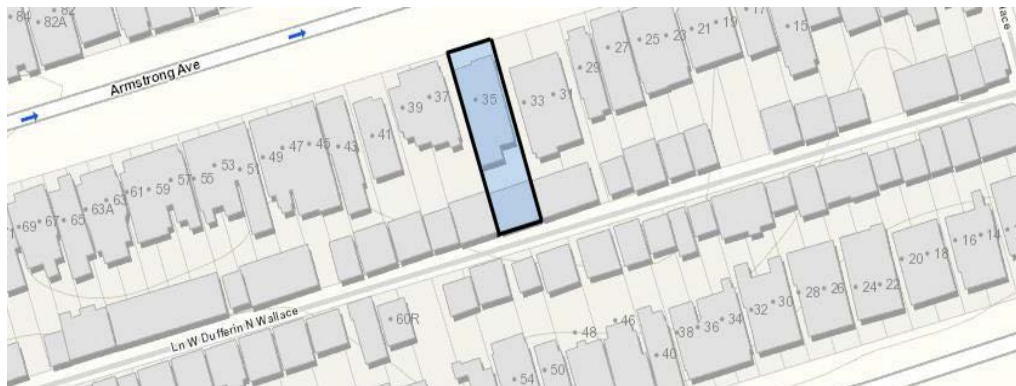


FIGURE 1: LOCATION MAP

[26] I find that the requested floor area variance maintains the general intent and purpose of the Official Plan. I find that the requested rear yard soft landscaping variance for this proposal (from 50 per cent to 48 per cent) does not interfere with the streetscape or maintaining the general intent and purpose of the Official Plan.

[27] Do the requested variances maintain the general intent and purpose of the Zoning By-Law?

[28] The availability of a minor variance process means that zoning by-law standards may not always appropriately govern a particular situation for a particular context.

[29] Mr. Oliveira wishes to build a new garage with a gable roof. In building a new garage, he would like to extend the easterly side foundation wall by up to one foot and a half. He states that both he and Mrs. Oliveira experience issues of nuisance as a result of the wide space between the ancillary buildings of 33 and 35 Armstrong Avenue. Nuisance is an issue for bylaw enforcement, not the TLAB. However, the avoidance of nuisance is within the intent and purpose of the zoning instrument.

[30] I find, based on some of the pictures in Exhibit 1, that there may very well be existing (and older) ancillary buildings in the neighbourhood that have floor areas beyond the current zoning by-law requirement. That finding alone, however, is not determinative.

[31] More important, there are no opposing parties in this appeal, which signals to me there do not seem to be any significant issues with adjacent neighbours, or those individuals in the immediate neighbourhood of the subject property.

[32] I find that the requested variances for floor area and rear yard soft landscaping generally meet the intent and purpose of the Zoning By-law.

[33] I also find that the requested variances are desirable for the appropriate use of the land, and are minor in nature. The proposed new garage is not a new type of building. Its use will not change. I do not believe this minor variance application constitutes overdevelopment, in a broader context.

[34] In my view, the proposed variances are also consistent with the policy direction in the PPS and policies of the Growth Plan.

DECISION AND ORDER

[35] I authorize the proposed variances set out in **Attachment A**. Construction shall proceed in substantial compliance with the plans indicated in **Attachment B**. Any additional variances required or derived from the plans shown in **Attachment B** are expressly not approved. If any difficulties arise from the implementation of this decision, the TLAB may be spoken to.

X

S. Karmali
Panel Chair, Toronto Local Appeal Body

ATTACHMENT A:

PURPOSE OF THE APPLICATION FOR 35 ARMSTRONG AVENUE:

To construct a new rear detached garage.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.5.60.50.(2)(B), By-law 569-2013

The maximum total floor area of all ancillary building or structures on a lot is 40 m².

The new rear yard detached private garage will have a floor area of 68.81 m².

2. Chapter 10.5.50.10.(3)(A), By-law 569-2013

A minimum of 50% (78.91 m²) of the required rear yard landscaping must be soft landscaping.

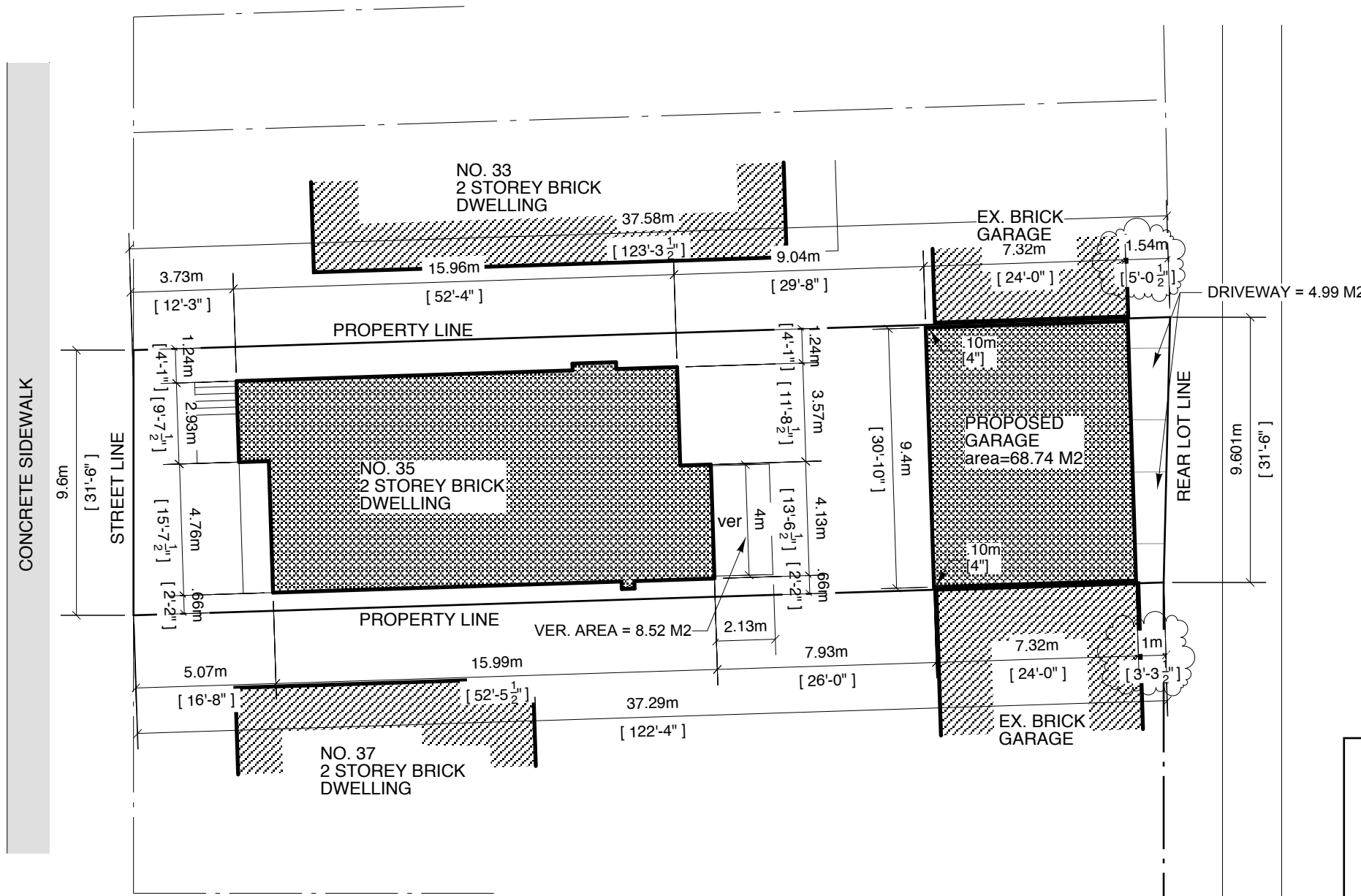
In this case, 48% (75.57 m²) of the required rear yard landscaping will be soft landscaping.

RECEIVED

By Committee of Adjustment TEY at 12:55 pm, Dec 11, 2018

DUFFERIN STREET

ARMSTRONG AVENUE



GENERAL NOTES

1. Check all dimensions and report any inconsistencies before proceeding with construction.
2. All work must conform to the requirements of the **Ontario Building Code Act and O. Reg. 137/07** and any applicable local building by laws.
3. **Concrete compressive strength**
 - (i) garage floor shall have minimum compressive strength of 32 Mpa (4650 psi) after 28 days with a min. air entrainment of 5 to 8 percent when exposed.
 - (ii) for all other applications must have a min. compressive strength of 25 Mpa after 28 days.
4. **Eaves trough required** with downspout to existing house sewer or to drain into a splash pad at least 3'-0" from building, draining into own property.
5. **Surface drainage** shall not be discharged directly or indirectly onto a sidewalk, driveway, stairway or an adjoining property.
6. **Every excavation** shall be undertaken in such a manner as to prevent movement which would cause damage to adjacent property, existing structures, utilities, roads and sidewalks at all stages of construction.
7. **Smoke alarms shall be installed on each storey of a dwelling unit, including basements OBC 9.10.18**
8. **Carbon monoxide detectors** carbon monoxide detectors are to be installed and maintained in accordance with the manufacturers instructions and this by-law, so that there is at least one carbon monoxide detector installed in each dwelling unit containing a fuel burning appliance.

GENERAL NOTE :

1. ALL CONC. SHALL HAVE A MIN. COMPRESSIVE STRENGTH OF 32.5 MPa @ 28 DAYS PROVIDE 5-8% AIR ENTRAINMENT
2. IF USING STEEL BEAM ABOVE OVER HEAD DOORS PROVIDE 1/2" Ø BOLTS @ 3'-4" O.C. WELDED TO STEEL BEAM TO RECEIVE CONTINUOUS 2" X 4" OR 2" X 6" WOOD PLATE
3. THE GENERAL CONTRATOR SHALL BE RESPONSIBLE FOR AND CO-ORDINATION OF ALL INSPECTIONS AS REQUIRED BY THE MUNICIPALITY
4. THE GENERAL CONTRACTOR SHALL ENGAGE THE SERVICES OF AN ONTARIO LAND SURVEYOR TO PIN THE PROPOSED GARAGE

ZONING = RD	REAR YARD CALCULATIONS
LOT AREA = 358.24 M ²	REAR YARD = 157.82 M ²
COVERAGE CALCULATIONS	COVERAGE CALCULATIONS
BUILDING = 122.41 M ²	VERANDAH = 8.52 M ²
FRONT VER. = 5.14 M ²	DRIVEWAY = 4.99 M ²
GARAGE = 60.58 M ²	GARAGE = 68.74 M ²
TOTAL=197.05 M ²	TOTAL= 82.25 M ²
	LOS PROVIDED = 75.57 [48%]

1 SITE PLAN
A1 SCALE: 1:200 M

The undersigned has reviewed & taken responsibility for this design, and has the Qualifications and meets the requirements set out in the Ontario Building Code to be a designer.

QUALIFICATION INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code
TONY VALENTIN 20917
Name BCIN
Signature Date 27 08 18

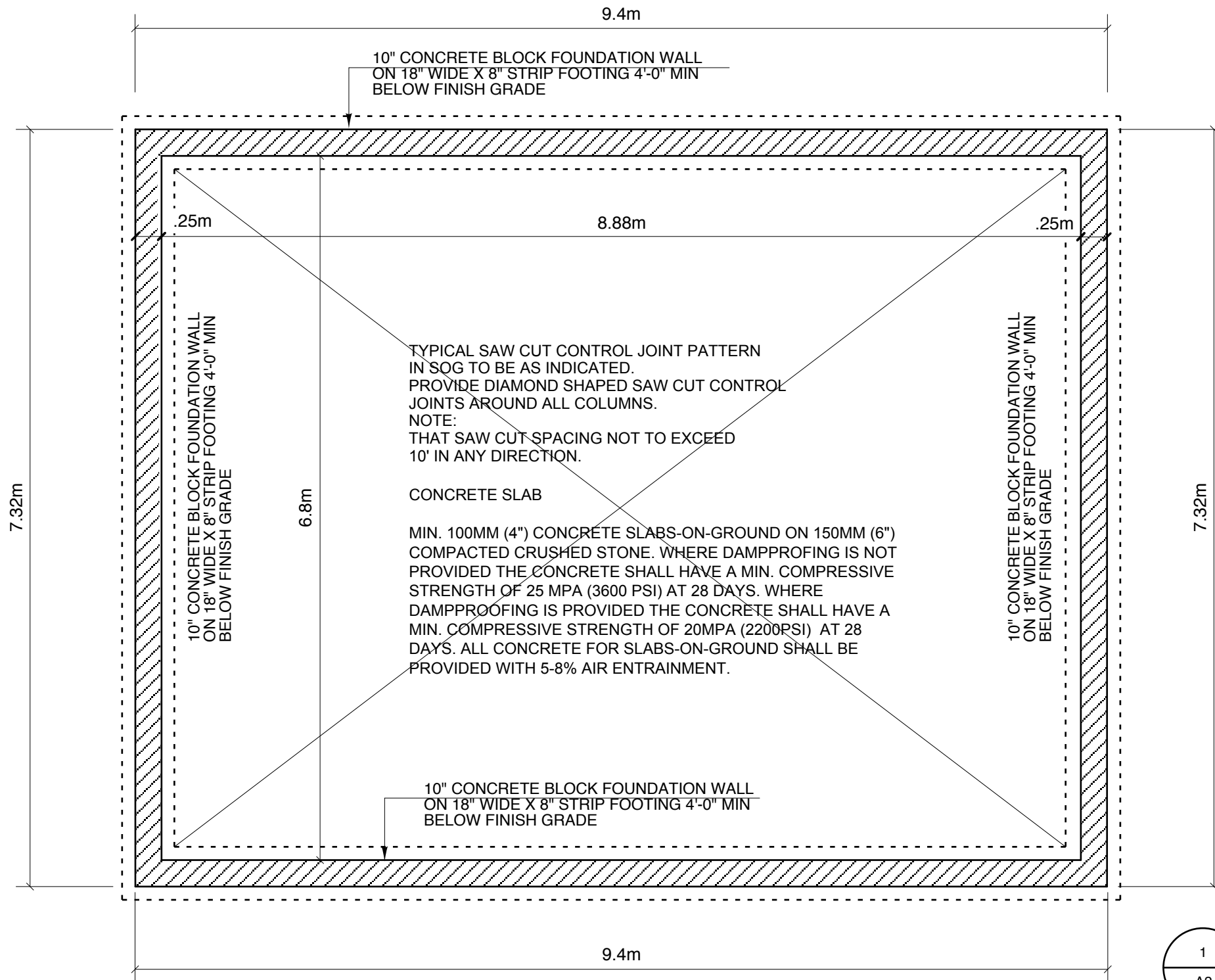
REGISTRATION INFORMATION
Required unless design is exempt under 2.17.4.1 of the building code
TONY VALENTIN DESIGN 28858
Firm Name BCIN

PROJECT TITLE:
PROPOSED BRICK AND BLOCK GARAGE
35 ARMSTRONG AVENUE
city of Toronto
CLIENT'S:

1	08 2018	issued for client review	AD
no.	date	revision	by

drawn by: AD
checked by:
date: JUNE 2018
scale : as noted

sheet no.
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TYPICAL FOOTINGS & FOUNDATION WALLS
ALL FOUNDATION ELEMENTS TO HAVE CONCRETE FOOTINGS (3500 psi) WITH 4" PROJ. BEYOND FACE OF ELEMENTS . SEE SECTIONS FOR REINF'G TYPICAL UNLESS NOTED.
ALL FOOTINGS SUBJECT TO FROST TO BE MINIMUM 4'-0" BELOW EXTERIOR GRADE.
ALL FOUNDATION WALLS TO BE 8" CONCRETE BLOCK, UNLESS NOTED. SEE SECTIONS FOR REINFORCING REQUIRED.

TYPE S- 1/2 PART PORTLAND CEMENT TO 1 PART MASONRY CEMENT, OR
1 PART PORTLAND CEMENT TO 3/8 PART LIME (COMPRESSIVE STRENGTH OF 2" CUBE @ 28 DAYS, 1800 PSI) TYPE M- 1 PART PORTLAND CEMENT TO 1 PART MASONRY CEMENT, OR
1 PART PORTLAND CEMENT TO 1/4 PART LIME (COMPRESSIVE STRENGTH OF 2" CUBE @ 28 DAYS, 2500 PSI) AGGREGATE TO BE 2 TO 3 TIMES THE VOLUME OF THE CEMENT + LIME USED.

LOAD-BEARING MASONRY

- CONFORM TO CSA STANDARDS:
 - A165.1 M77 FOR HOLLOW CONCRETE BLOCK, MINIMUM 15 MPA (2200 PSI)
 - A165.3 M77 FOR SOLID CONCRETE BLOCK, MINIMUM 8.6 MPA (1250 PSI)
 - A82.1 M77 FOR BURNED CLAY BRICK, MINIMUM 12.0 MPA (1750 PSI)
 - A179M-76 FOR MORTAR, MINIMUM 8.6 MPA (1250 PSI).
- MORTAR FOR MASONRY WALL OF TYPE M, S OR N AS FOLLOWS:
 - TYPE N- 1 PART MASONRY CEMENT, OR 1 PART PORTLAND CEMENT TO 7/8 PART LIME (COMPRESSIVE STRENGTH OF 2" CUBE @ 28 DAYS, 750 PSI)

1 FOUNDATION PLAN
A2 SCALE: 3/16" = 1'-0"

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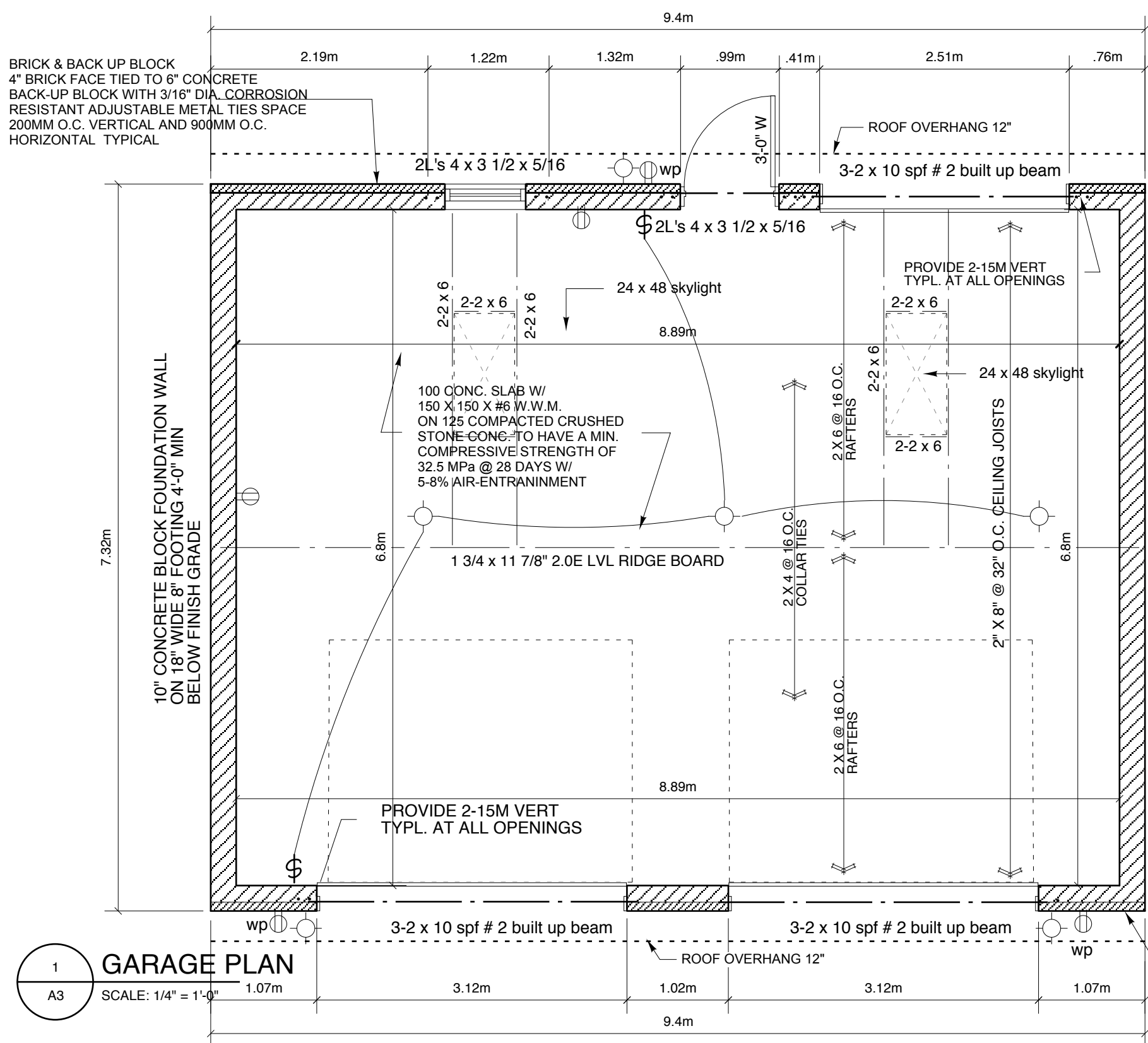
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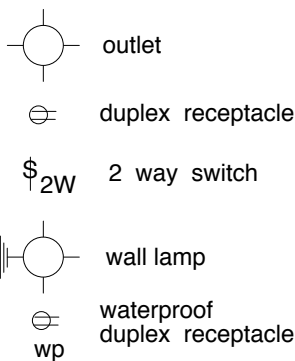


NOTE:
NO PORTION OF PROPOSED CONSTRUCTION SHALL BE ENCROACHED ON ADJACENT PROPERTIES

GENERAL NOTE :

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ELECTRICAL



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5. **Surface drainage** shall not be discharged directly or indirectly onto a sidewalk, driveway, stairway or an adjoining property.
6. **Every excavation** shall be undertaken in such a manner as to prevent movement which would cause damage to adjacent property, existing structures, utilities, roads and sidewalks at all stages of construction.
7. **Smoke alarms** shall be installed on each storey of a dwelling unit, including basements OBC 9.10.18
8. **Carbon monoxide detectors** carbon monoxide detectors are to be installed and maintained in accordance with the manufacturers instructions and this by-law, so that there is at least one carbon monoxide detector installed in each dwelling unit containing a fuel burning appliance.

BRICK & BACK UP BLOCK
 4" BRICK FACE TIED TO 6" CONCRETE
 BACK-UP BLOCK WITH 3/16" DIA. CORROSION
 RESISTANT ADJUSTABLE METAL TIES SPACE
 200MM O.C. VERTICAL AND 900MM O.C.
 HORIZONTAL TYPICAL

1 GARAGE PLAN
 A3 SCALE: 1/4" = 1'-0"

The undersigned has reviewed & taken responsibility for this design, and has the Qualifications and meets the requirements set out in the Ontario Building Code to be a designer.

QUALIFICATION INFORMATION
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 TONY VALENTIN 20917
 Name BCIN
 Signature Date 27 08 18

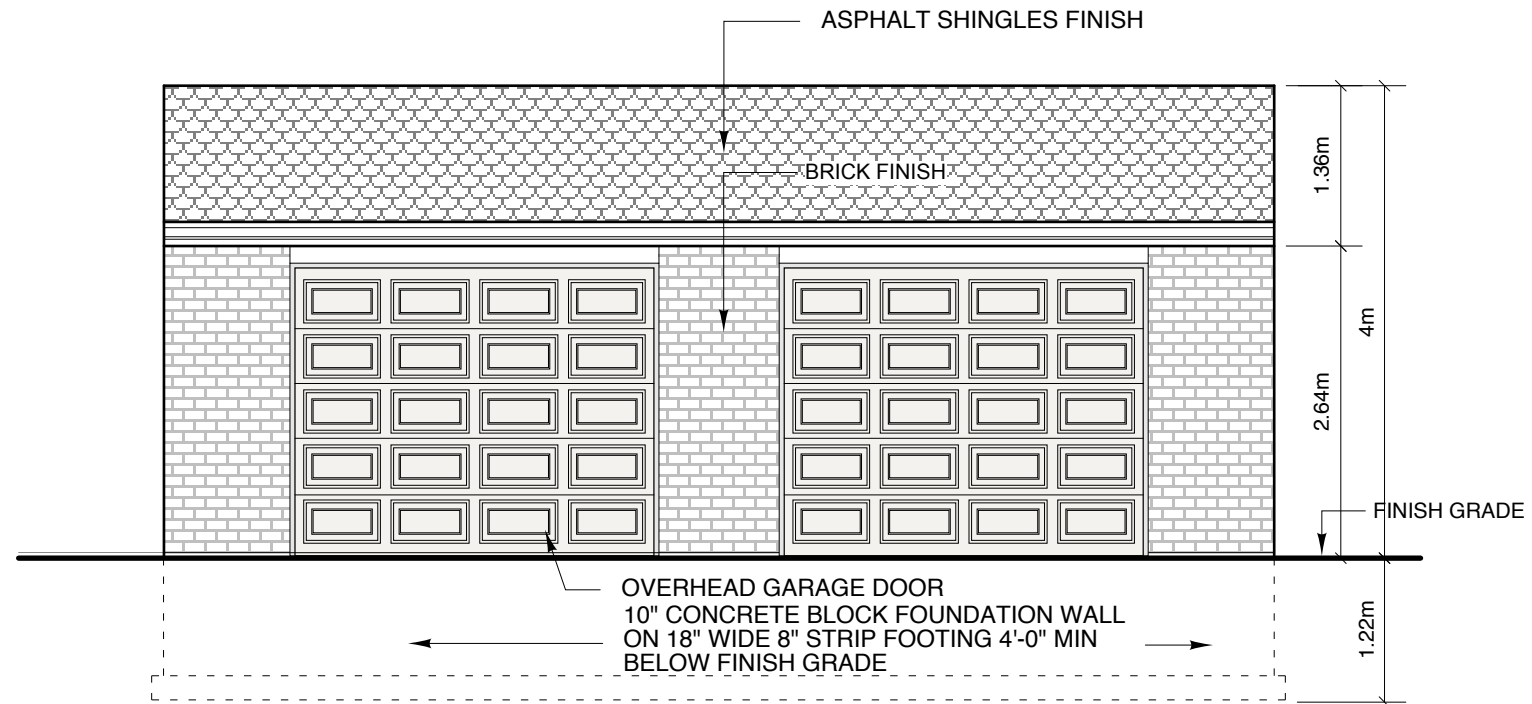
REGISTRATION INFORMATION
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 TONY VALENTIN DESIGN 28858
 Firm Name BCIN

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1 FRONT ELEVATION
A4 SCALE: 3/16" = 1'-0"

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Name BCIN
Signature Date
27 08 18
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Firm Name BCIN

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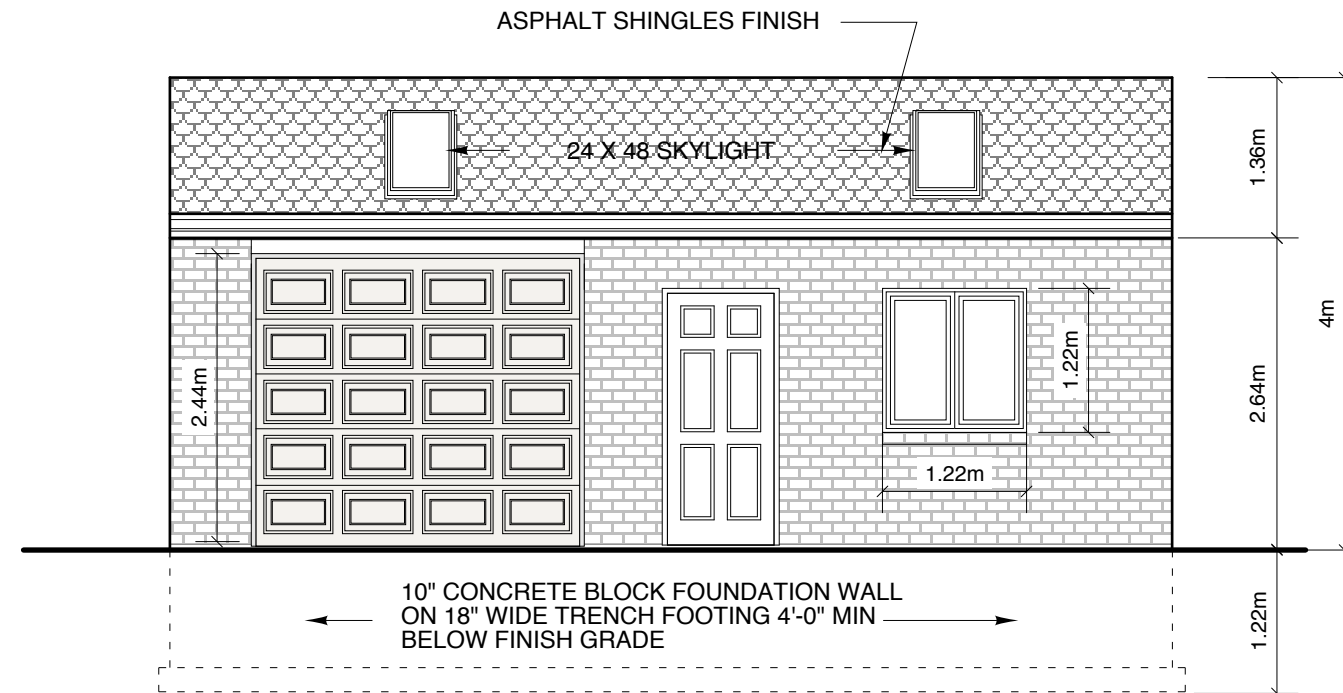
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1 REAR ELEVATION
A5 SCALE: 3/16" = 1'-0"

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TONY VALENTIN 20917
Name BCIN
Signature Date
27 08 18

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TONY VALENTIN DESIGN 28858
Firm Name BCIN

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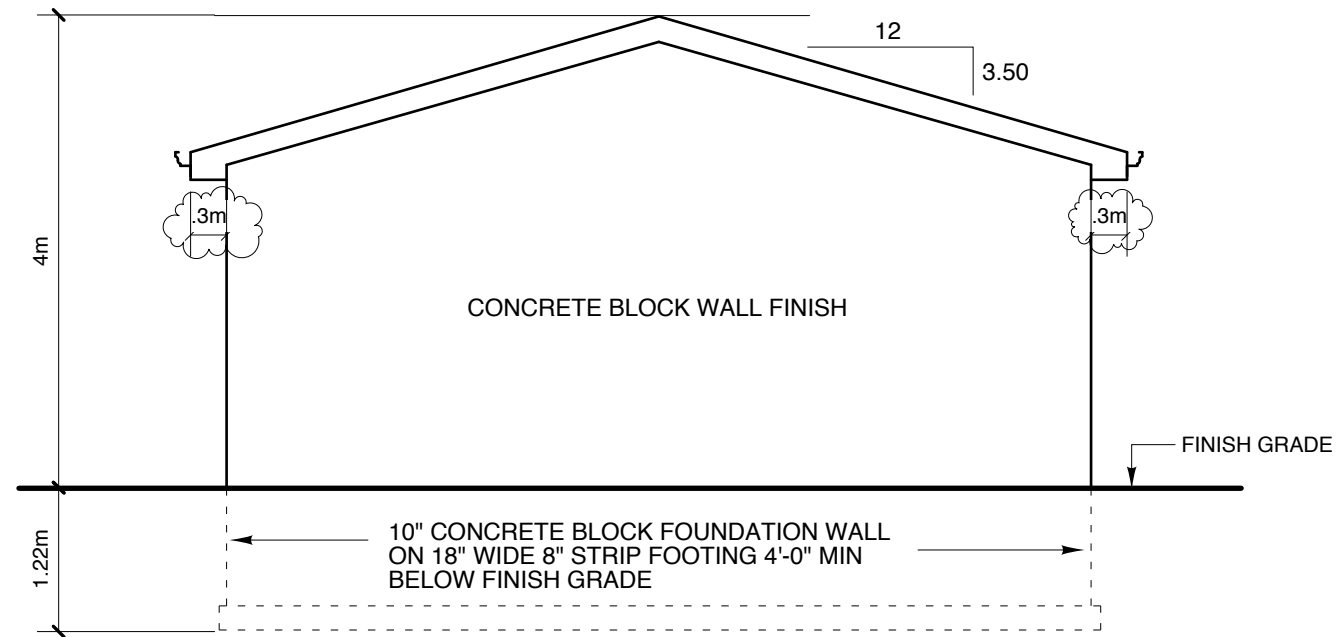
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1 RIGHT SIDE ELEVATION
 A6 SCALE: 3/16" = 1'-0"

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TONY VALENTIN	20917
Name	BCIN
	27 08 18
Signature	Date
REGISTRATION INFORMATION Required unless design is exempt under 2.17.4.1 of the building code	
TONY VALENTIN DESIGN	28858
Firm Name	BCIN

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