

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, October 16, 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): Arash Lotfi

Applicant: Arcica Inc

Property Address/Description: 253 St Clements Ave

Committee of Adjustment Case File: 18 271279 NNY 08 MV (A0873/18NY)

**TLAB Case File Number: 19 122497 S45 08 TLAB**

**Hearing date:**      Thursday, July 18, 2019

**DECISION DELIVERED BY S. Karmali**

## APPEARANCES

Appellant's Legal Representative      Amber Stewart

Party      Brian Ross Dunfield

Expert Witness      Jonathan Benczkowski

Member of the Public      Janet Dunfield

## INTRODUCTION

[1]      The subject property is 253 St. Clements Avenue, which is located in a Midtown Toronto community bounded by Yonge Street to the east, Avenue Road to the west, Eglinton Avenue West to the south, and Glencarin Avenue to the north. The subject property is located at a point on the south side of the intersection of Birdsall Avenue and St. Clements Avenue. The subject property is designated Neighbourhoods in the Official Plan, and is within the Residential zone.

[2]      On February 21, 2019, the North York Committee of Adjustment (COA) Panel modified and approved the Applicant's variance application in respect of the subject property. The Applicant had sought the variances in aid of constructing a new detached, modest four-bedroom dwelling.

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[3] The Appellant, who did not appear, was represented by Ms. Amber Stewart. Ms. Stewart called one witness, Mr. Benczkowski, a Registered Professional Planner, whom I qualified to give expert opinion testimony on land use planning matters.

[4] Mr. Brian Dunfield was the only other registered party. He was self-represented. His spouse, Ms. Janet Dunfield, attended the proceeding as a member of the public. She did not participate at the hearing.

[5] The City did not appear and there were no other Parties, Participants or Persons in attendance.

[6] I informed those in attendance I had visited the subject property and surroundings, and had familiarized myself with the pre-filed materials related to this appeal.

## BACKGROUND

[7] The Appellant removed the variances of driveway width (By-law 569-2013) and building height (By-law 438-86) before the COA hearing. The Appellant was not satisfied that the COA modified, by lowering, the requested variance of building height (By-law 569-2013) for the proposed flat roof, which is illustrated in Table 1 below.

<b>Table 1: Variances Requested at the COA for 253 St. Clements Avenue</b>				
<b>Zoning By-Law 569-2013</b>				
<b>Variance Number</b>	<b>Variance Type</b>	<b>By-Law Standard</b>	<b>Proposed Variances</b>	<b>COA Decided Variance is</b>
<b>1</b>	Floor Space Index	The maximum permitted floor space index is 0.6 times the area of the lot.	The proposed floor space index is 0.66 times the area of the lot.	Approved
<b>2</b>	Building Height for a Flat Roof	The maximum permitted building height is 7.2 m for a flat roof.	The proposed building height is 8.9 m for a flat roof.	Modified to 8.0 m and Approved
<b>3</b>	First Floor Elevation	The maximum permitted first floor elevation above established grade is 1.2 m.	The proposed first floor elevation is 1.35 m.	Approved
<b>4</b>	Driveway width	The maximum permitted driveway width is 3.2 m.	The proposed driveway width is 4.93 m.	Removed by the applicant before the COA hearing.
<b>By-law No. 438-86</b>				
<b>5</b>	Building Height	The maximum permitted building height is 9 m.	The proposed building height is 9.43 m	Removed by the applicant before the COA hearing.

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[8] On March 6, 2019, the Appellant submitted a Notice of Appeal, which stated in terse terms: “Reasonable development of the lot is not possible without refused variances.”

[9] According to Ms. Stewart, the Appellant needs the two proposed variances identified in **Attachment A**, and reproduced below in Table 2. The proposal’s revised plans are identified in **Attachment B**.

<b>Variance Number</b>	<b>Variance Type</b>	<b>Standard as per Zoning By-Law 569-2013</b>	<b>Proposed Variances</b>
<b>1</b>	Floor Space Index	The maximum permitted floor space index is 0.6 times the area of the lot.	The proposed floor space index is 0.66 times the area of the lot.
<b>2</b>	Building Height for a Flat Roof	The maximum permitted building height is 7.2 m for a flat roof.	The proposed building height is 8.67 m for a flat roof.

[10] The original application was amended before the COA hearing. The application was amended again before the TLAB. The first-floor elevation variance request is no longer required. The variance for the proposed building height has decreased, from 8.9 m to 8.67 m.

## **MATTERS IN ISSUE**

[11] Whether the Appellant’s amendment to the original application requires written notice to the persons and public bodies who received notice of the original application under Section 45(18.1) of the *Planning Act*?

[12] Whether the Appellant has demonstrated to the satisfaction of the TLAB all statutory considerations identified under ‘Jurisdiction’ have been met, on an individual and cumulative basis?

## **JURISDICTION**

[13] **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’).

**[14] 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**

[15] Ms. Stewart called Mr. Jonathan Benczkowski as an expert witness. I heard Mr. Benczkowski confirm he has a Bachelor of Arts degree in Urban, Economic and Social Geography from the University of Toronto. He also confirmed he is a full member of the Ontario Professional Planners Institute (OPPI) and the Canadian Institute of Planners (CIP). Mr. Benczkowski further confirmed he is subject to two governing body codes of conduct, including the CIP's Code of Professional Conduct, and the OPPI's Professional Code of Practice.

[16] I asked Mr. Dunfield whether he had concerns about the request that Mr. Benczkowski be qualified as an expert witness. Mr. Dunfield communicated while Mr. Benczkowski has good credentials, he cautioned even experts can overlook certain things. Mr. Dunfield stated Mr. Benczkowski may not have had the time to do an in-depth study as he has done.

[17] In addition to considering Mr. Benczkowski's signed and completed Form 6, which attests to an expert's duty, I considered Mr. Benczkowski's education, certification, and knowledge, among other things. I qualified Mr. Benczkowski as an expert witness to provide expert opinion evidence in respect of land use planning matters.

[18] Mr. Benczkowski affirmed that his opinion evidence at that TLAB will be the truth, the whole truth, and nothing but the truth. He stated he was retained in April 2019 to represent the Appellant/Owner, Arash Lotfi, about the partially approved ~~minor~~ variance application.

[19] Mr. Benczkowski relied on Exhibit 1: Expert Witness Statement. He stated his study area of the neighbourhood context is bounded by Briar Hill Avenue to the north, Roselawn Avenue to the south, Duplex Avenue to the east, and Avenue Road to the west. He stated this area generally reflects what residents of the area experience in their day-to-day lives, as they walk the streets.

[20] Mr. Benczkowski testified the study area is comprised of a mix of semi-detached and detached, two-storey and three-storey dwellings.

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[21] He stated the pattern of development is a natural progression toward new integral garages, larger and taller dwellings, and different roof architectural styles, including flat roof and small pitched mansard style roofs. He stated the pattern of development is moving from east to west on St. Clements Avenue

[22] He testified there are no other built form variances being requested which lead to an increase of the floor space index.

[23] I asked Mr. Benczkowski to explain what built form variances mean in his opinion.

[24] He stated built form variances are related to the size of the dwelling in relationship to the front, back, and the two sides. He further explained these types of variances regulate the location of building on a lot, and include variances in respect of the front-yard, side-yard, building depth, building length and some landscaping.

[25] He testified the requested floor space index variance (FSI) of 0.66 times the area of the lot does not offend any characteristic which regulates the location of the dwelling. He reiterated there is no variance request being made in relation to where the building sits on the lot itself.

[26] Mr. Benczkowski stated there is a range of FSI values in the study area. He referred to Exhibit 1 from which he pointed to St. Clements Avenue as having some of these FSI values: 0.63x, 0.65x, 0.69x, 0.73x, 0.77x, 0.9x, and 0.96x. He testified the requested variance for FSI in the amended application is on the lower end of this spectrum of these aforementioned values.

[27] On the issue of building height, Mr. Benczkowski testified there are properties along St. Clements Avenue, which are detached houses with flat roofs, and have building heights of 7.71 m, 9.1 m, and 10 m.

[28] He stated what the amended application requests of floor space index and building height for a flat roof is the norm for the neighbourhood as well as city-wide developments akin to the proposed development of the subject property.

[29] Mr. Benczkowski provided an abbreviated opinion on provincial policies as the proposal is a replacement dwelling. He testified the additional dwelling will allow for the efficient use of the existing transportation infrastructure in the immediate vicinity of the property, and intensification in a compact form. He stated both policies look to accommodate an appropriate range and mix of residential housing, including detached dwellings. He opined the proposal is consistent with the applicable policies of the PPS and the Growth Plan.

## **Official Plan**

[30] Mr. Benczkowski relied on Exhibit 2: Applicant Disclosure Book to discuss the Official Plan as it relates to the purpose of the amended application. He testified city-wide

general housing policies recognize change will occur over time. He specifically pointed to Housing Section 3.2.1-2, and stated the existing stock of housing will be maintained, improved, and replenished. He further stated the City encourages renovation of older residential buildings.

[31] He testified Neighbourhoods Section 2.3.2 states neighbourhoods will not stay frozen in time.

[32] He stated Section 2.3.1-1 is about how any development in neighbourhoods must be consistent with the objective that neighbourhoods are physically stable areas, and that development will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns.

[33] I asked Mr. Benczkowski whether a new development in his study area ought to replicate the existing physical character. He opined there is a great diversity within this neighbourhood itself. He further opined there is diversity of built form, diversity of lot sizes, but when dealing with an urban structure, many others different factors are also at play, which can still respect and reinforce the existing character.

[33] Mr. Benczkowski testified the photobook in Exhibit 1 details the diversity in the area. He opined there are houses with integral garages, houses without integral garages, houses with front pad parking, houses with flat roofs, mansard roofs, and shallow roofs.

[34] Mr. Benczkowski admitted the application at the COA was filed shortly after the proposed modifications to Official Plan Amendment (OPA) 320 were approved by the Local Planning Appeal Tribunal (LPAT). He stated the application is, therefore, subject to the policies and guidelines of OPA 320. He further stated this OPA includes direction as to how portions of a geographic neighbourhood are to be defined.

[35] He stated the development criteria under the Neighbourhoods Section 4.1 illustrates physical changes to established neighbourhoods must be sensitive, gradual and generally “fit” the existing physical character. He specifically examined Section 4.1-5(c), (e), (f), and (g).

[36] Mr. Benczkowski opined about 5(c) – prevailing heights, massing, scale, density and dwelling type of nearby residential properties. He stated the subject property is a dwelling type for a single family detached in a single family neighbourhood. He stated in respect of massing and scaling, there is variety in the number of storeys, replacement dwellings, integral garages, all in the immediate block of St. Clements Avenue.

[37] He read aloud part of the policy commentary of Section 4.1:

While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical

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character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood.

[38] He opined the tightening in OPA 320 does not reduce planning to a mere equation. He further opined OPA 320 does not preclude diversity. The study area he stated is diverse. He pointed out there is diversity in prevailing heights. He elaborated flat roof dwellings as well as pitched roof dwellings make up the character of the neighbourhood: there are some mansard roofs, which have heights in excess of 10 m, and there are flat roofs, which also have varying heights.

[39] Mr. Benczkowski helpfully explained 5(e) – prevailing location, design and elevations relative to the grade of driveways and garages; 5(f) – prevailing setbacks of buildings from the street, and 5(g) – prevailing patterns of rear and side yard setbacks and landscaped open space.

[40] He stated the proposal is materially consistent with the prevailing physical character of the properties in both the immediate block of the subject property and the broader geographic neighbourhood. He stated the common built form of the subject property respects two floors of living above an integral garage, bears tight side yards, and enjoys a generous rear yard. He further opined the prevailing character would be upheld if the proposal was approved.

[41] Mr. Benczkowski referred to Built Form Section 3.1.2-3(a) of the Official Plan, which he read aloud:

New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by: a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion.

[42] He further read Section 4.1-8:

Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential *Neighbourhoods*.

[43] Mr. Benczkowski concluded the proposed variances maintain the general intent and purpose of the Official Plan and comply with the criteria for development in Neighbourhoods. He stated the proposal is not an introduction of a built form which will destabilize the streetscape. He confirmed the built form is generally compliant with all zoning by-law requirements and the dwelling does respect and reinforce the existing physical character of the neighbourhood.

## **Zoning By-law**

[44] Mr. Benczkowski stated the variances relating to FSI and building height for a flat roof are requested under City of Toronto Zoning By-law 569-2013.

[45] He opined the general intent and purpose of the zoning by-law is to ensure compatible built form within the area and to ensure new development does not cause unacceptable adverse impacts on the streetscape or on adjacent properties.

[46] Mr. Benczkowski stated FSI is the only zoning standard that controls massing. He testified a variance of FSI must be examined in relation to other built form standards, such as height, length, depth, and side yard setbacks. He reminded there are no variances for length, depth, and the side yards.

[47] He stated the requested increase in FSI fits within previous approvals in the area as contained in the COA decision chart in Exhibit 1. He testified replacement dwellings for which there were previous approvals form part of the prevailing character of the neighbourhood.

[48] Mr. Benczkowski offered comments about density. He stated the density of the proposed dwelling fits within that prevailing character of the neighbourhood. He opined the general intent and purpose of this standard is achieved in respect of the requested variance of FSI.

[49] He opined the flat roof height provision in the zoning by-law is there to preclude a three-storey flat or shallow roof dwelling in areas where that is not present. The provision itself, he noted, is currently under appeal at the LPAT.

[50] Mr. Benczkowski stated the proposal is for a flat roof two-storey dwelling, with two floors of living space above the garage. He further stated the floor-to-ceiling measurement is 10 ft clear on the first floor, and 8.6 ft on the second floor. He opined the requested building height is significantly below other recent approvals in the neighbourhood.

[51] He testified the proposal does maintain the general intent and purpose of the zoning by-law and does not introduce an inappropriate building form. He stated the requested variances do not extend the limits of the zoning by-law. Rather, he testified they result in an area compatible built form. He stated the proposed variances individually and cumulatively meet the intent and purpose of the zoning by-law.

## **Development or Use of the land**

[52] Mr. Benczkowski stated the proposal is not overdevelopment of the site. The proposal has taken direction from the Official Plan. The proposal was developed with sensitivity to the relationship of adjacent properties.

[53] He testified the development will be used to function as a modest four-bedroom family home for the owners. He stated the variances for FSI and building height are desirable for the appropriate development and use of the land.



## **On Minor**

[54] Mr. Benczkowski stated there will be some impacts with development in an urban area context. These impacts however are not unacceptable impacts.

[55] He stated the variance request for FSI is not in addition to any other such as variances setback, length, or depth. The overall length of the building will be 16.99 m. He confirmed there will not be any undue impacts on adjacent neighbours or the overall community.

[56] He testified that the requested height for the proposed flat roof dwelling is in keeping with the broader neighbourhood. The height request is 1.47 m above the zoning by-law requirement. He stated this variance will neither negatively impact the adjacent neighbours nor the neighbours in the community.

[57] Mr. Benczkowski testified the dwelling would reinforce the existing physical character of what is already on the immediate block of the subject property. He stated the requested variances both individually and cumulatively meet the tests under the *Planning Act*, and are minor in nature. He further stated the amended application is meritorious and represents good planning, and should be approved as amended.

## **Cross-examination and Re-examination of Expert Witness**

[58] Mr. Dunfield asked some questions of Mr. Benczkowski. Mr. Dunfield sought clarification of the possible removal of a 1 m diameter private tree on the property line of the subject property.

[59] Ms. Stewart re-examined Mr. Benczkowski. Mr. Benczkowski stated since the plans have changed, the tree in question is outside of the driveway footprint, and is maintained as soft landscaping. He confirmed there is a separate permitting process involved for this tree. He also confirmed that if it is open to the owner, the owner could discuss the possibility of retaining the tree.

[60] Mr. Dunfield lives at 257 St. Clements Avenue, and has lived in the area for more than 32 years. He was sworn in as a party witness. He relied on Exhibit 5: List of Disclosure Files, and Exhibit 6: Aerial View of Neighbourhood Study Area.

[61] Mr. Dunfield spoke persuasively that the subject property is currently a two-storey dwelling built in 1917. He stated peripheral arguments about some of Mr. Benczkowski's points. He stated he carefully reviewed the COA decisions chart provided by Mr. Benczkowski.

[62] He stated he has significant points to make about shadowing effects, massing effects, and the effects on the character of the neighbourhood in respect of the proposal. He testified the removing of the proposed integral garage could resolve the magnitude of the variances requested.

[63] Mr. Dunfield challenged Mr. Benczkowski's study area. Mr. Dunfield rejected Roselawn Avenue, Castlefield Avenue, Rosewell Avenue from the study area identified by Mr. Benczkowski. Mr. Dunfield stated only three of the homes on Roselawn Avenue

are “modern” dwellings that affect the appearance from the street. He testified there are only seven new modern dwellings on Castlefield Avenue which affect the appearance from the street. He further testified most of the integral garages on Castlefield Avenue were built a long time ago. He stated Rosewell Avenue is not relevant insofar as it should be included the study area. He stated there has been no new development on Rosewell Avenue.

[64] He stated only a specific part of Briar Hill Avenue between Duplex Avenue to the east, and Rosewell Avenue to the west should be included in the study area. He stated only six new modern dwellings affect the appearance from Briar Hill Avenue.

[65] Mr. Dunfield stated Birdsall Avenue, above all, is his definition of the neighbourhood. He stated there are no integral garages in this area. He pointed out there are definite sloped roofs, porches, and windows with panes in them.

[66] He testified the Appellant’s proposal will result in shadow impacts on his property. He stated at least two rooms will be impacted: two easterly facing rooms will receive a significant reduction of direct sunlight.

[67] Mr. Dunfield stated massing is self-evident really; it is the feel of the neighbourhood. He referred to 237 St. Clements, which is a few doors down, and stated this is a development which does not mass and ergo does not look oppressive from the street. Mr. Dunfield stated the proposal would create an over-massing effect.

[68] He advanced his final argument about the proposal’s effect on the character of neighbourhood. He stated the character in his neighbourhood is defined by peaked roofs, and porches. He testified what is prevalent in his neighbourhood includes continuous roof lines, flat and peaked roofs, and dormer windows. He admitted there are integral garages, but cautioned those developments have occurred from west to east along St. Clements Avenue.

[69] Mr. Dunfield took issue with the Appellant’s grounds for appeal, which stated: “Reasonable development of the lot is not possible without refused variances.” Mr. Dunfield emphasized it is possible to build in accordance with the zoning by-law. He stated there are instances on St. Clements Avenue where development has occurred without a need to request variances.

### **Cross-examination of Party Witness**

[70] Ms. Amber Stewart cross-examined Mr. Dunfield. She highlighted there is no uniformity with the back of the houses along St. Clements. Mr. Dunfield agreed.

[71] Ms. Stewart asked Mr. Dunfield what he knows about OPA 320. Mr. Dunfield stated it makes planning more considerate of the local neighbourhood if anything.

[72] Ms. Stewart stated OPA 320 is based the consideration of the geographic neighbourhood and the immediate context, the block where the subject property is located. She asked Mr. Dunfield whether he agrees the same block extends from Rosewell Avenue to Avenue Road on both sides of St. Clements Avenue. Mr. Dunfield agreed.

[73] Ms. Stewart stated that if something is not the prevailing characteristic, it may be acceptable if it has a significant presence in the subject block or adjacent blocks. She stated this would take the assessment all the way to Duplex Avenue to the east. Mr. Dunfield disagreed.

[74] Ms. Stewart read aloud:

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context)...While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters.

[75] Relative to the study area, Ms. Stewart asked of Mr. Dunfield whether there are different characteristics of mixed roof styles, mixed architectural styles, different heights (taller and shorter homes), mixed parking solutions. Mr. Dunfield agreed.

[76] Ms. Stewart read aloud:

In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context **or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood.**

[77] Ms. Stewart asked Mr. Dunfield whether he can now consider viewing the block as also extending to Duplex Avenue. Mr. Dunfield did not disagree. Ms. Stewart further asked Mr. Dunfield whether there is a significant presence of integral garages along St. Clements Avenue between Rosewell Avenue and Duplex Avenue. Mr. Dunfield agreed with this statement.

[78] Mr. Dunfield stated his main concerns are to do with the impacts to his home from this proposed development. He suggested the ceilings of the home could be lowered, or the driveway could be lowered, or that the integral garage can be removed to add to the living space of the home.

[79] Ms. Stewart asked Mr. Dunfield whether architectural style is a matter of personal taste. She followed this with making a point about the benefits of a personal choice for an integral garage. She also indicated the proposal could have requested a bulkier mansard roof with a higher variance request for height. Mr. Dunfield agreed with most of these points.

## **ANALYSIS, FINDINGS, REASONS**

[80] This matter comes forward as a replacement project in a well-to-do community experiencing modest redevelopment, including some new construction.

[81] The Appellant stated reasonable development is not possible without the requested variances in his Notice of Appeal (NOA). Rule 7.2 states the Appeal must set out the reasons and grounds which form the substance of the Appeal. The Appellant could have spent some more time to develop the reasons and grounds in his NOA.

[82] Moving forward, while I find Mr. Dunfield's evidence to be informed of a knowledgeable and long-standing resident of the area, for reasons I have identified below, I prefer Mr. Benczkowski's evidence about the matter on the requested variances. I am also persuaded by the efforts made by the Appellant to scale down the cumulative effect of the original application.

[83] I see no report from the City about the amended application. It would appear the City does not have any objections to the proposed new dwelling.

[84] There are two built form variances at issue. Mr. Dunfield has stated he reluctantly accepts the Appellant's variance request for FSI. He expressed significant concern about the variance request for height because, if accepted, he believes it will show an egregiously larger building than what currently exists in the neighbourhood. He is concerned about the shadowing, massing and the prevailing character of his neighbourhood.

[85] I have carefully reviewed the decisions chart provided by Mr. Benczkowski.

[86] On the one hand, Gross Floor Area (GFA) was a performance standard used in By-Law 438-86. It is the sum of the total area of each floor level of a building, above and below the ground, measured from the exterior of the main wall of each floor level. On the other hand, Floor Space Index is the measure of gross floor area of all of the buildings on the lot divided by the lot area under the current by-law.

[87] It is clear from the past variances granted there are approximately seven properties on St. Clements Avenue which have FSIs greater than what is being requested by the Appellant. I do not find the request of 0.66 times the lot area for this proposal excessive.

[88] I find there is a mix of physical characters, and it cannot be said this variance request constitutes a precedent. In fact, FSIs which depart from the old and new zoning by-law do exist on St. Clements Avenue, and on adjacent blocks. While they are not the most frequently occurring, FSIs which are non-compliant with the zoning by-law exist in significant numbers in the broader context and immediate context of this neighbourhood.

[89] I find the variance request for FSI to be minor in nature, appropriate for the development and use of the land, and maintains the general intent of the Official Plan, inclusive of OPA 320, and the current zoning by-law.

[90] The COA approved a height variance of 8.0 m whereas the Appellant has now requested 8.67 m, which to be fair, is still a departure from the zoning by-law standard. I have heard the immediate context is of greater relevance than the broader context for Mr. Dunfield.

[91] There is evidence which shows building heights for flat roof dwellings have exceeded the maximum by-law permission on St. Clements Avenue and on Briar Hill Avenue. While flat roof dwellings which exceed the height variance by-law are not the most frequently occurring, they do exist in numbers significant to the broader context and immediate context of this neighbourhood.

[92] I value the hard work Mr. Dunfield in putting together Exhibit 5 and Exhibit 6. I have observed his deep understanding of the area in which he lives. This is commendable.

[93] I cannot accept Mr. Dunfield's assertion that Birdsall Avenue is the best definition of the neighbourhood of the subject property.

[94] While there is no duty to consult one's neighbour prior to proposing development, the Appellant should have made a better effort to work with Mr. Dunfield to find compromise on concerning issues like height. I continue to believe a neighbourhood depends on its residents maintaining neighbourly relations.

[95] It is true the Appellant's proposal does not replicate the prevailing heights, massing, and scale of nearby residential properties. There is, however, no requirement to replicate a property in any neighbourhood.

[96] Original vintage dwellings are evolving in a gradual way. I acknowledge to some extent there is freedom of design.

[97] Furthermore, I note that the permitted maximum height for a flat roof dwelling is an issue currently under appeal. This fact is not determinative for me to make any finding.

[98] I acknowledge the granting of the height variance will have impacts on Mr. Dunfield's easterly view. It will also create shadow impacts. However, new replacement dwellings in urban areas can be expected to create some shadow impacts. In fact, had the Appellant proposed a mansard roof dwelling up to the permitted maximum height, shadow impacts would still be created.

[99] The proposed development will be larger, deeper, more modern in design appearance. I cannot find it pushes the limit for over-development. There are no other built form variances such as length or depth in the proposal.

[100] The proposed development will be an improvement in providing a detached living space in a highly desirable residential neighbourhood. There is no suggestion there will be no impacts. Variances of built form are about limiting impact, not that there will be no impact. I am satisfied on the evidence the amended application will not create unacceptable impacts on adjacent neighbours or on the streetscape.

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[101] I find, therefore, the variances individually and cumulatively satisfy the four tests of meeting the general intent and purpose of the Official Plan and applicable zoning by-laws, and is desirable for the appropriate development of the land, and is minor in nature.

[102] I find an appropriate set of conditions, as suggested by Mr. Benczkowski, can adequately secure and anchor the proposal. These conditions are set out in **Attachment B and Attachment C**.

[103] I am appreciative Mr. Benczkowski, Mr. Dunfield, and Ms. Stewart acted with courtesy and civility. I am grateful for their patience.

## **DECISION AND ORDER**

[104] The variances set out in Attachment A are approved subject to the condition that the new dwelling be constructed substantially in accordance with the revised plans in Attachment B.

[105] This decision is subject to the requirements of the Parks and Recreation, Urban Forestry Division as identified in Attachment C.

[106] I find the amendment to the original application is minor under Section 45(18.1.1) of the *Planning Act*. The TLAB is therefore not required to have recirculated notice.

[107] Variances which do not form part of this decision and order are expressly not authorized.

X



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S. Karmali  
Panel Chair, Toronto Local Appeal Body

**ATTACHMENT A**

**REQUESTED VARIANCES TO THE ZONING BY-LAW FOR 253 ST. CLEMENTS AVENUE:**

<b>1. Chapter 10.20.40.40, By-law No. 569-2013</b>
The maximum permitted floor space index is 0.6 times the area of the lot.
The proposed floor space index is 0.66 times the area of the lot.
<b>2, Chapter 10.20.40.10.(4), By-law No. 569-2013</b>
The maximum permitted building height is 7.2 m for a flat roof.
The proposed building height is 8.67 m for a flat roof.

ST. CLEMENT AVENUE  
(FORMERLY HAWTHORNE AVENUE BY REGISTERED PLAN M-25)  
P.I.N. 21161-0180 (LT)  
(BY BY-LAW NO. 1283)

ATTACHMENT B  
REVISED PLANS

SURVEYOR'S REAL PROPERTY REPORT  
PART 1  
PLAN OF SURVEY OF  
PART OF LOT 71  
REGISTERED PLAN M-25  
IN THE  
CITY OF TORONTO

SCALE & NOTES



BARICH GRENKIE SURVEYING LTD.  
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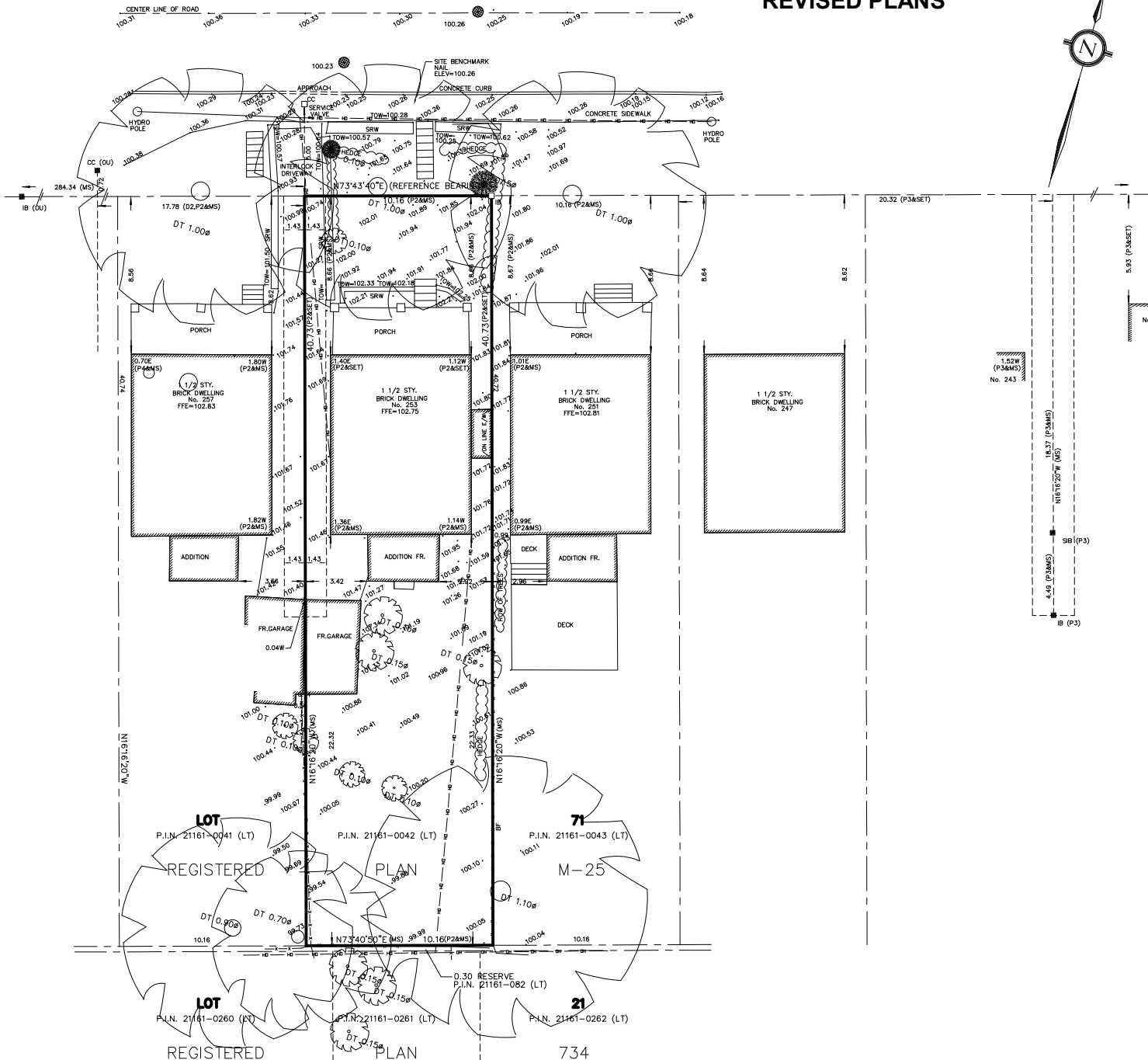
METRIC  
DISTANCES SHOWN ON THIS PLAN ARE IN METRES  
AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

ELEVATION NOTE  
ELEVATIONS ARE REFERRED TO A NAIL IN FRONT OF SUBJECT LAND  
HAVING AN ELEVATION OF 100.26m.  
ELEVATION DEPICTED ON THE FACE OF THIS PLAN ARE FOR DESIGNING PURPOSES ONLY.

BEARING NOTE  
BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE SOUTHERLY LIMIT  
OF ST. CLEMENT AVENUE AS SHOWN ON PLAN 66R-18015 HAVING A BEARING  
OF N73°43'40"E.

LEGEND

- DENOTES SURVEY MONUMENT FOUND
- DENOTES SURVEY MONUMENT PLANTED
- IB DENOTES IRON BAR
- SIB DENOTES STANDARD IRON BAR
- PK DENOTES SURVEYOR'S NAIL SET IN WASHER
- OU DENOTES ORIGIN UNKNOWN
- CC DENOTES CUT CROSS
- MH DENOTES MANHOLE
- BC DENOTES BEGINNING OF CURVE
- EC DENOTES END OF CURVE
- TC DENOTES TANGENT OF CURVE
- PRC DENOTES POINT OF REVERSE CURVE
- OH DENOTES OVERHEAD UTILITY CABLES
- DT DENOTES DECIDUOUS TREE
- CT DENOTES CONIFEROUS TREE
- LS DENOTES LIGHT STANDARD
- INV DENOTES INVERT ELEVATION
- HYD DENOTES FIRE HYDRANT
- CRW DENOTES CONCRETE RETAINING WALL
- SRW DENOTES STONE RETAINING WALL
- WRW DENOTES WOOD RETAINING WALL
- TOW DENOTES TOP OF WALL ELEVATION
- TOC DENOTES TOP OF CONCRETE CURB ELEVATION
- BOCE DENOTES BOTTOM OF CURB ELEVATION
- RW DENOTES RETAINING WALL
- CLF DENOTES CHAIN LINK FENCE
- BF DENOTES BOARD FENCE
- MF DENOTES METAL FENCE
- FFE DENOTES FINISHED FLOOR ELEVATION
- GFE DENOTES GARAGE FLOOR ELEVATION
- P1 DENOTES REGISTERED PLAN M-25
- P2 DENOTES PLAN BY GIBSON AND GIBSON, O.L.S., DATED AUGUST 05, 1914.
- P3 DENOTES PLAN 66R-18015
- P4 DENOTES PLAN 66R-19694
- D1 DENOTES P.I.N. 21161-0042 (LT)



**Barich Grenkie**  
Surveying Ltd.  
6075 YONGE ST., UNIT 1100, TORONTO, ON M2H 3W2  
TEL. 416 544 1100 FAX 416 544 1100  
INFO@GRENKIE.COM

DWN BY: AH-PP  
CHK BY: -----  
JOB No.: 18-6158

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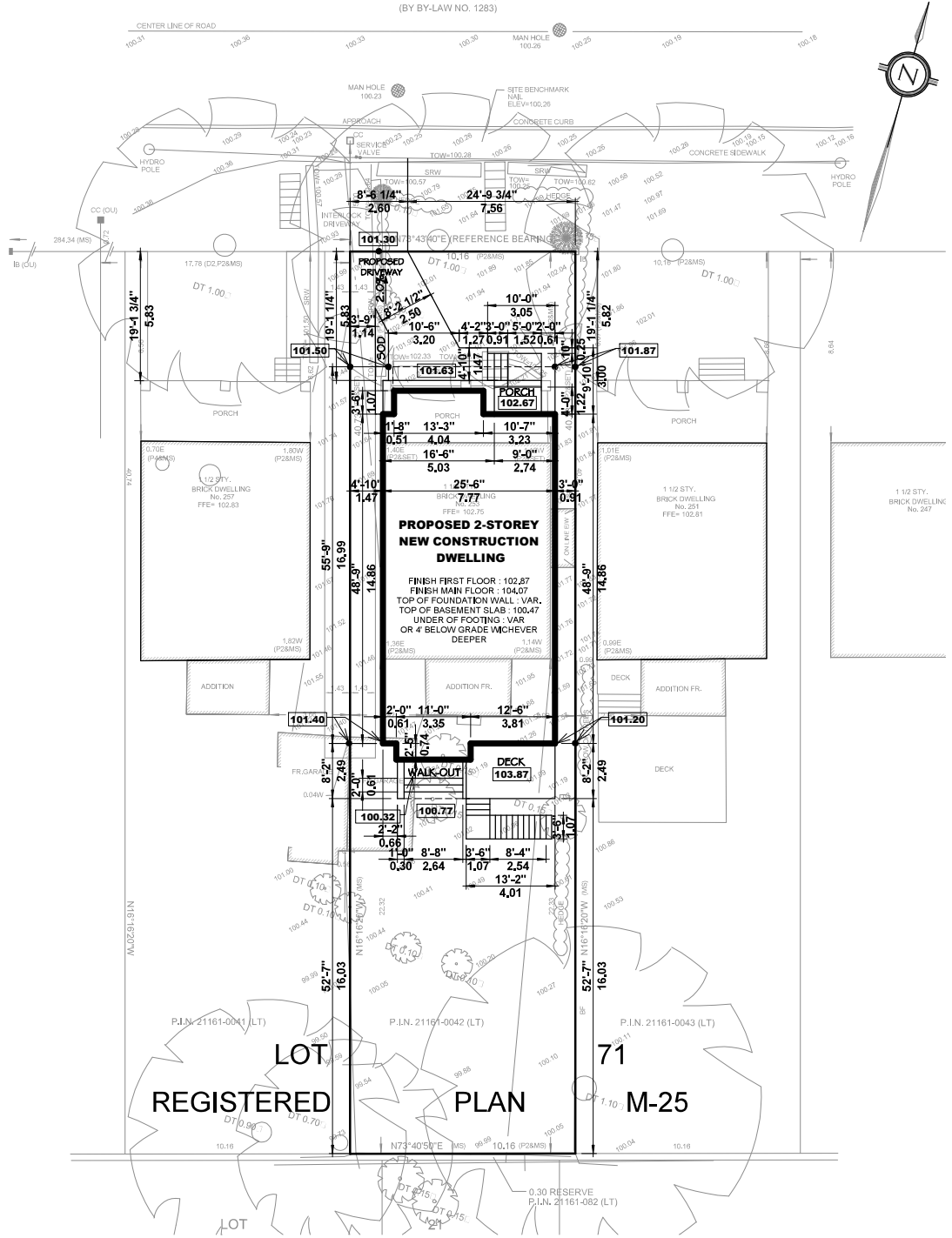
**Zoning Data Matrix**

**R1 Z0.6 & RD (7.5,d0.6) (X1401) Proposed**

Lot #	PART OF LOT 71	
Plan #	M-25	
Lot Area	4454.28 s.f.	- 413.82 m <sup>2</sup>
Front Yard Area	637.00 s.f.	- 59.18 m <sup>2</sup>
Driveway Area	238.74 s.f.	- 22.18 m <sup>2</sup>
Porch and Walkway Area	68.45 s.f.	- 6.36 m <sup>2</sup>
Landscape Open Space Area	398.26 s.f.	+ 37.00 m <sup>2</sup> (62.52%)
Soft Landscaping Area	329.81 s.f.	+ 30.64 m <sup>2</sup> (82.81%)
GFA	2864 s.f.	- 266.07 m <sup>2</sup> (64.3%)

**ST. CLEMENT AVENUE**

(FORMERLY HAWTHORNE AVENUE BY REGISTERED PLAN M-25)  
P.I.N. 21161-0180 (L.T.)  
(BY BY-LAW NO. 1283)



designed by:

**ALI SHAKERI**

T.416 8166651 F.416 2508900

**ARCICA INC.**

326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA.

project:

253 ST.CLEMENT AVENUE

drawing:

SITE PLAN

scale:

1/16" = 1'-0"

page:

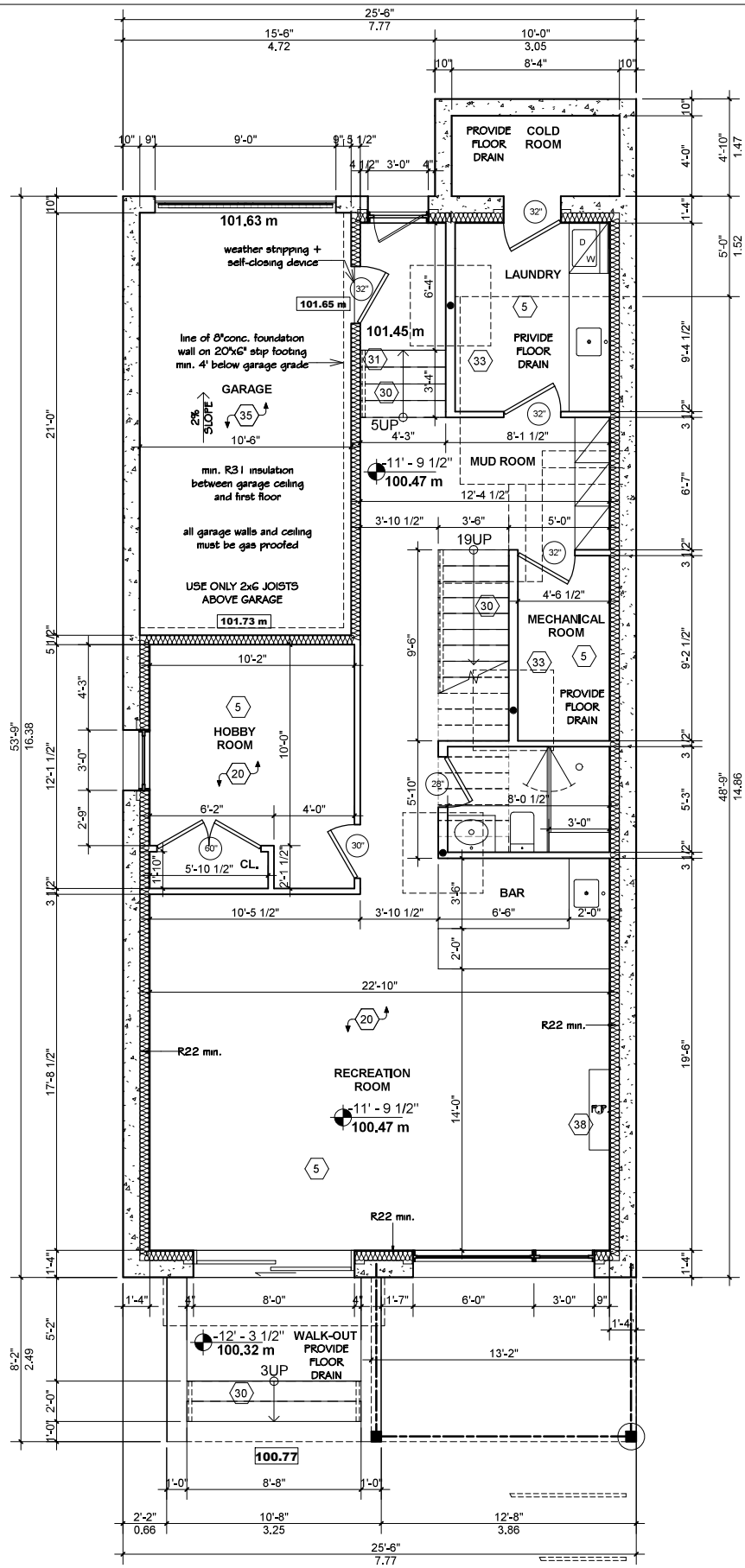
A 01

revisions:

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DEC.28,2018-issued for PERMIT  
FEB.21,2019-revision 1  
APR.16,2019-issued for TLAB 1

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**Ali Shakeri**  
BCIN#24574  
F&A Associates Ltd.  
BCIN#30999

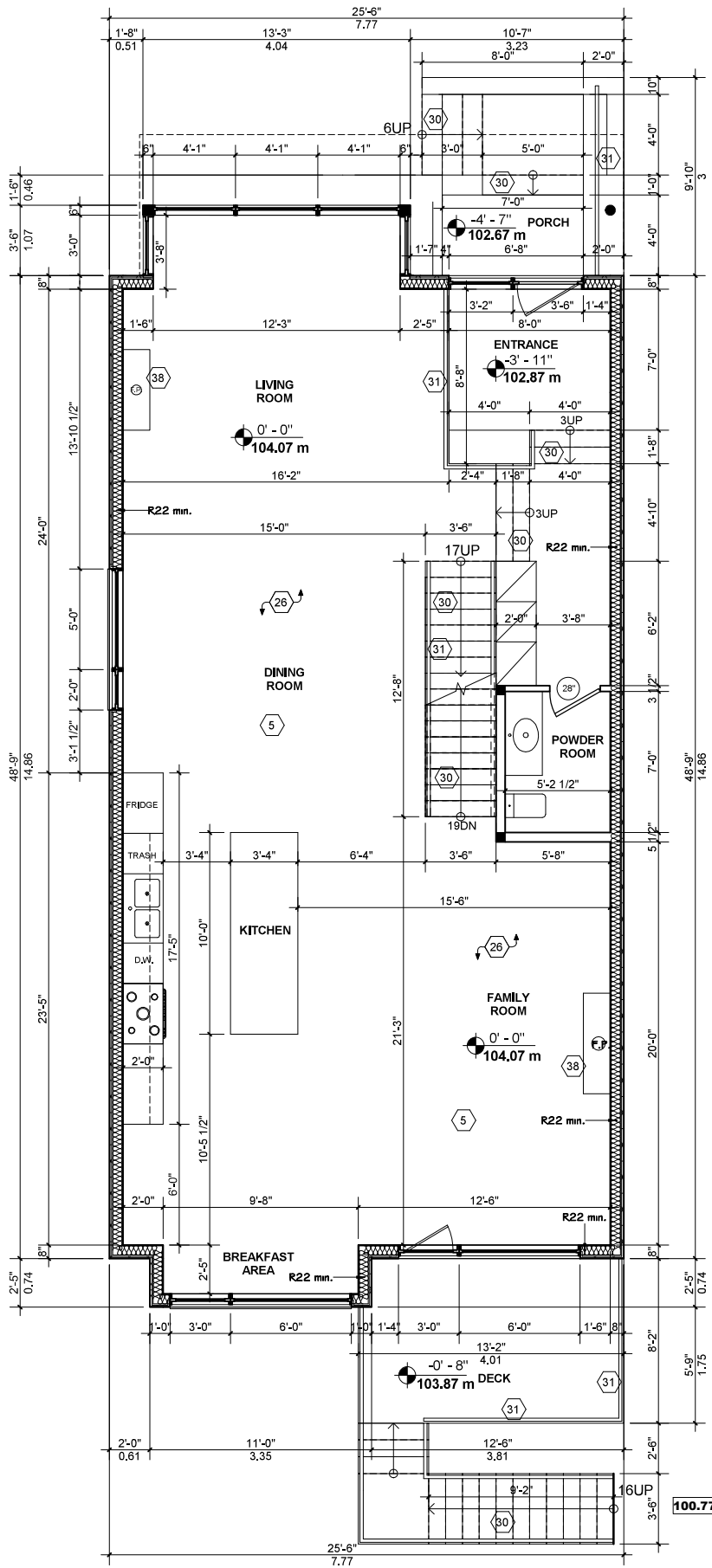
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NOTE:  
ALL INTERIOR WALL  
DIMENSIONS SHOW  
FACE OF STUDS

designed by: <b>ALI SHAKERI</b> T.416 8166651 F.416 2508900 <b>ARCICA INC.</b> 326 SHEPPARD AVENUE EAST, M2N 3B4 TORONTO, ONTARIO, CANADA,	project: <b>253 ST.CLEMENT AVENUE</b>	revisions: DEC.21,2018-issued for COA DEC.28,2018-issued for PERMIT APR.16,2019-issued for TLAB 1	1 ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE. 2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION. 3. DO NOT SCALE DRAWINGS. 4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK. 5. USE ONLY LATEST REVISED DRAWINGS OF THOSE THAT ARE MARKED 'ISSUED FOR CONSTRUCTION'. 6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.
	drawing: <b>BASEMENT PLAN</b>	scale: <b>3/16" = 1'-0"</b>	

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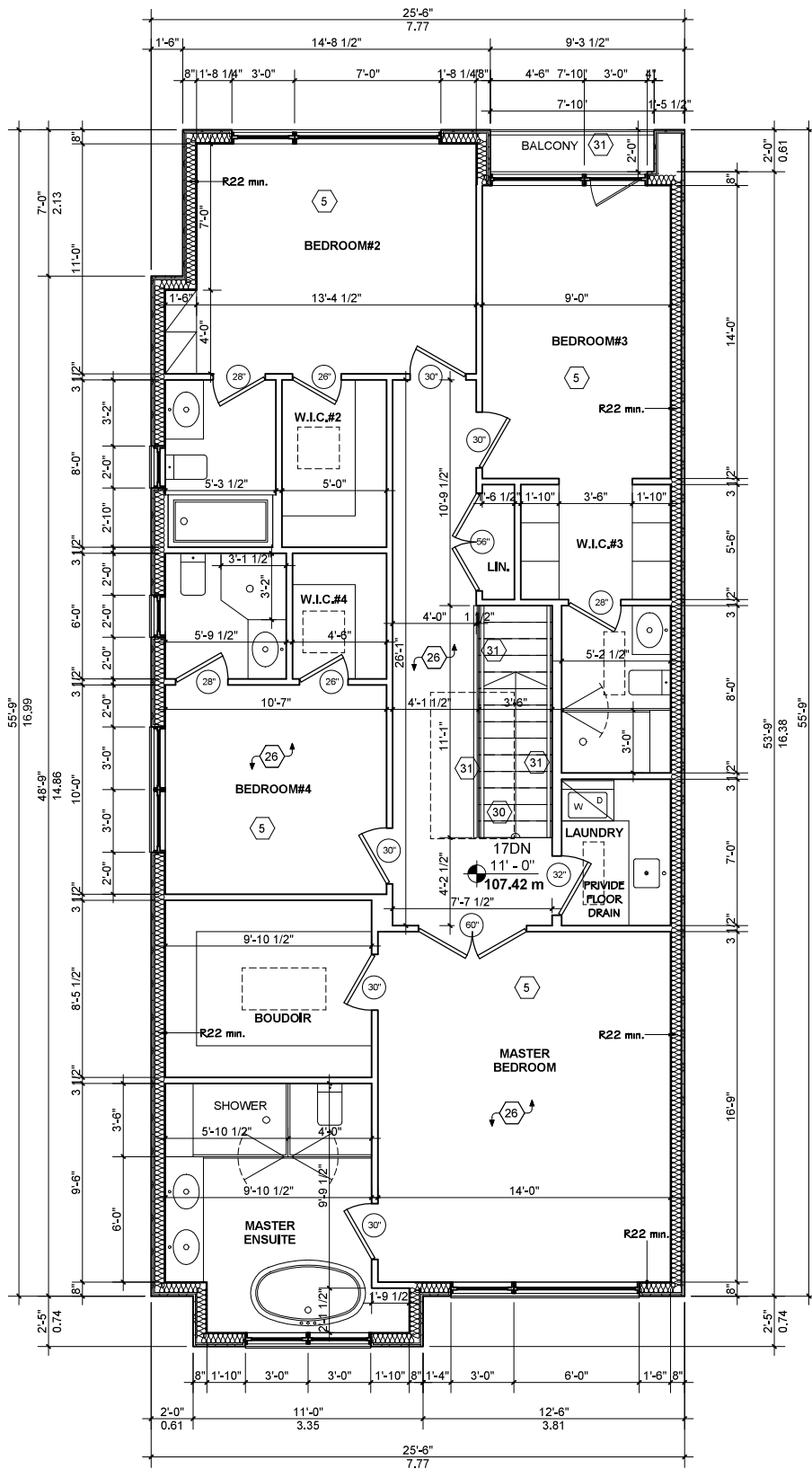
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DIMENSIONS SHOW  
FACE OF STUDS

designed by:  
**ALI SHAKERI**  
T.416 8166651 F.416 2508900  
**ARCICA INC.**  
326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA.

project:  
**253 ST.CLEMENT AVENUE**  
drawing: **1st FLOOR PLAN**  
scale: **3/16" = 1'-0"**  
page: **A 03**

revisions:  
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DEC.28,2018-issued for PERMIT  
APR.16,2019-issued for TLAB 1  
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F&A Associates Ltd.  
BCIN#30998

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designed by:

**ALI SHAKERI**

T.416 8166651 F.416 2508900

**ARCICA INC.**

326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA.

project:

253 ST.CLEMENT AVENUE

drawing:

SECOND FLOOR PLAN

scale:

3/16" = 1'-0"

page:

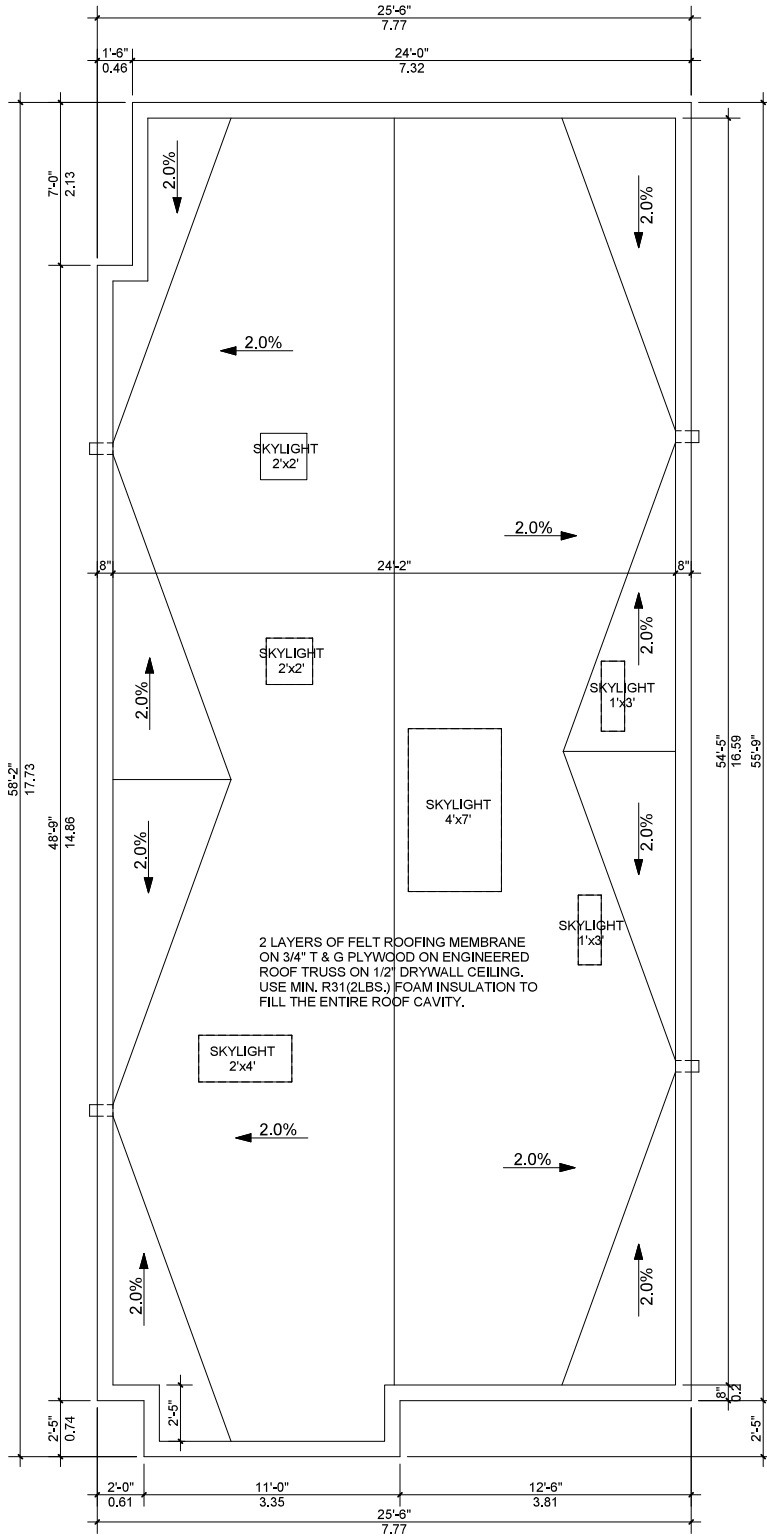
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revisions:

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designed by:

**ALI SHAKERI**

T.416 8166651 F.416 2508900

**ARCICA INC.**

326 SHEPPARD AVENUE EAST,  
M2N 3B4  
TORONTO, ONTARIO, CANADA,

project:

253 ST.CLEMENT AVENUE

drawing: ROOF PLAN

scale:

3/16" = 1'-0"

page:

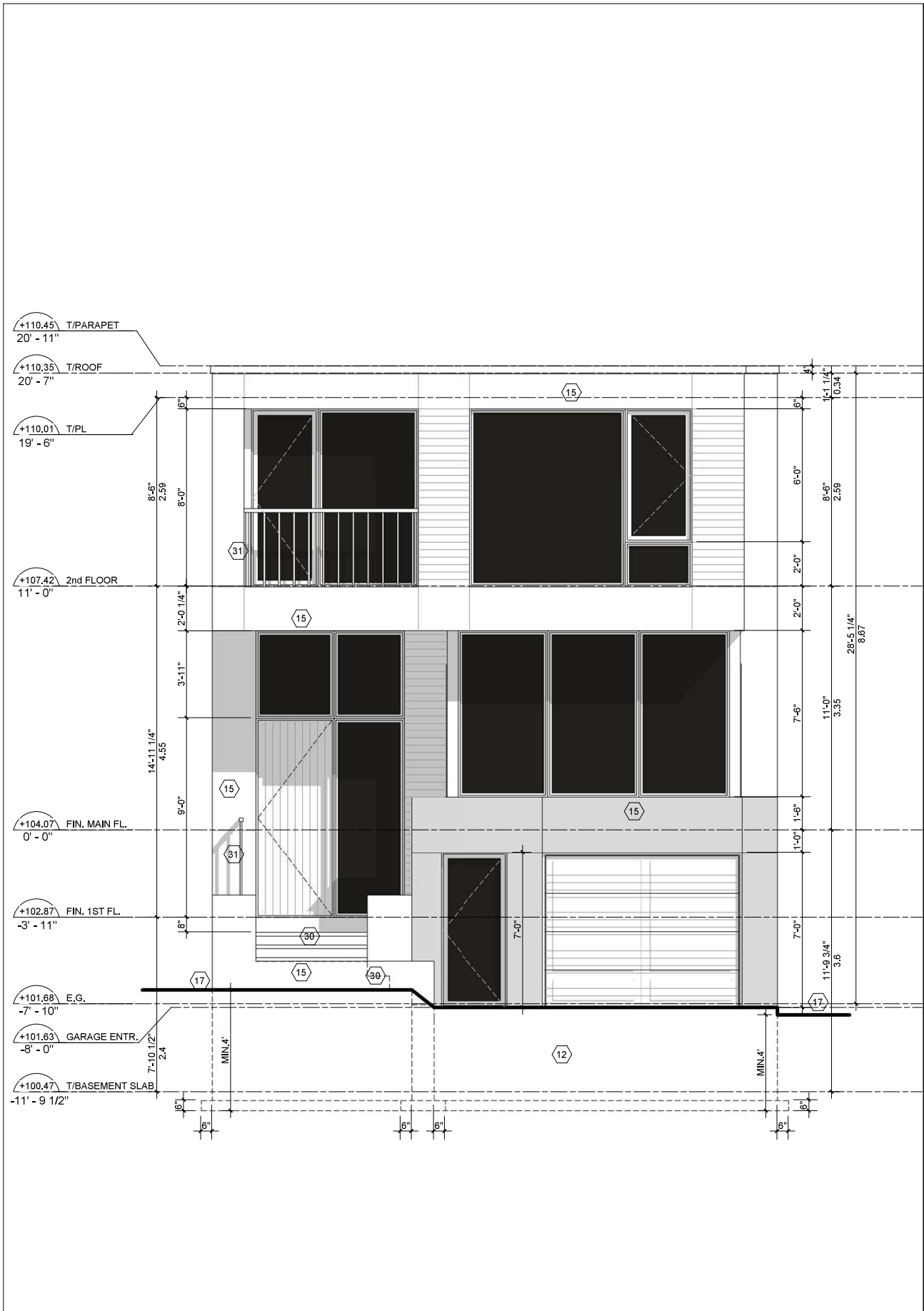
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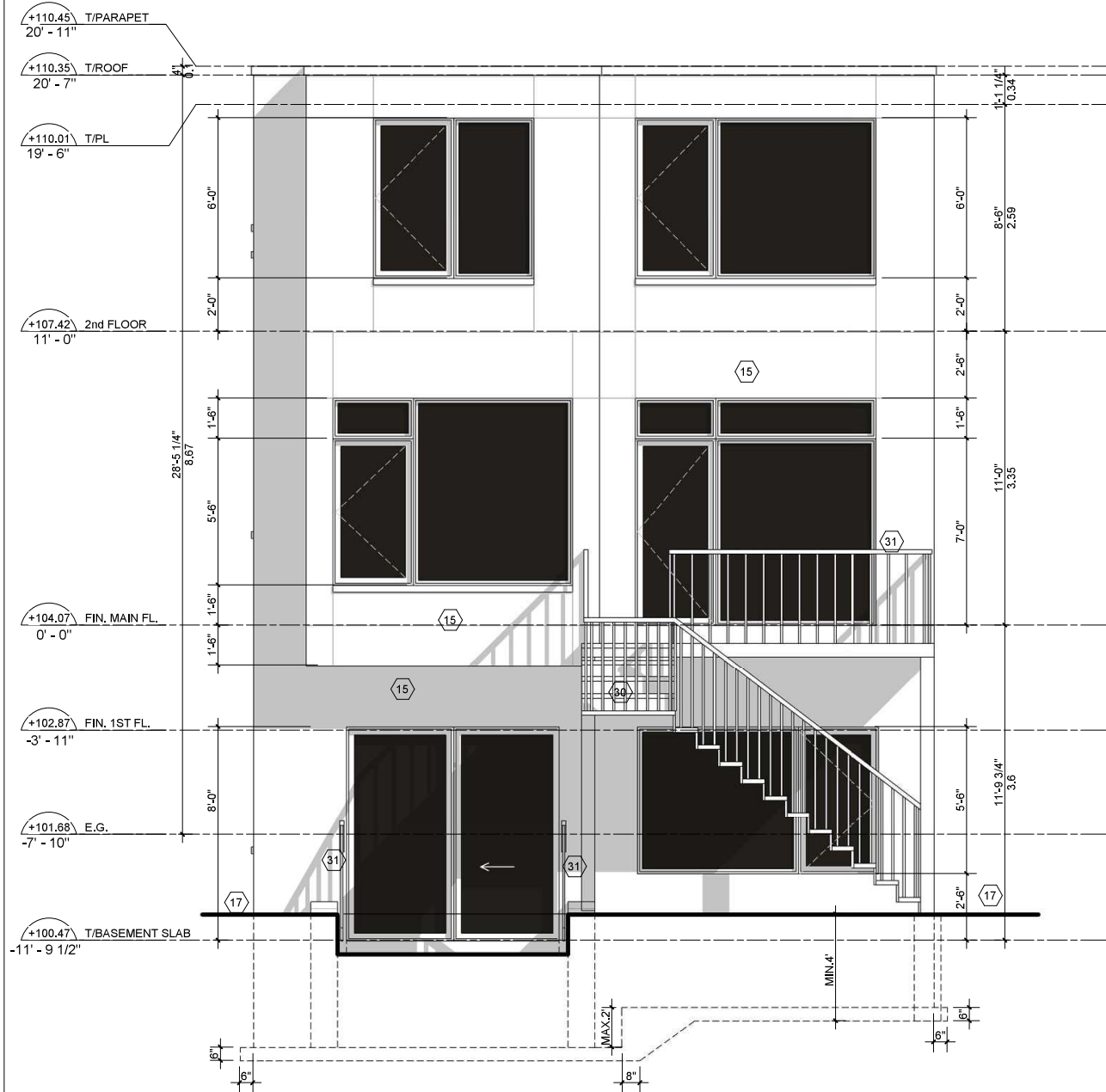


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	drawing: <b>MAIN ELEVATION(NORTH)</b>	scale: <b>1/4" = 1'-0"</b>	

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Ali Shakeri  
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 F&A Associates Ltd.  
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**ALI SHAKERI**  
 T.416 8166651 F.416 2508900  
**ARCICA INC.**  
 326 SHEPPARD AVENUE EAST,  
 M2N 3B4  
 TORONTO, ONTARIO, CANADA.

project:  
 253 ST.CLEMENT AVENUE  
 drawing: REAR ELEVATION

scale:  
 1/4" = 1'-0"

page:  
 A 07

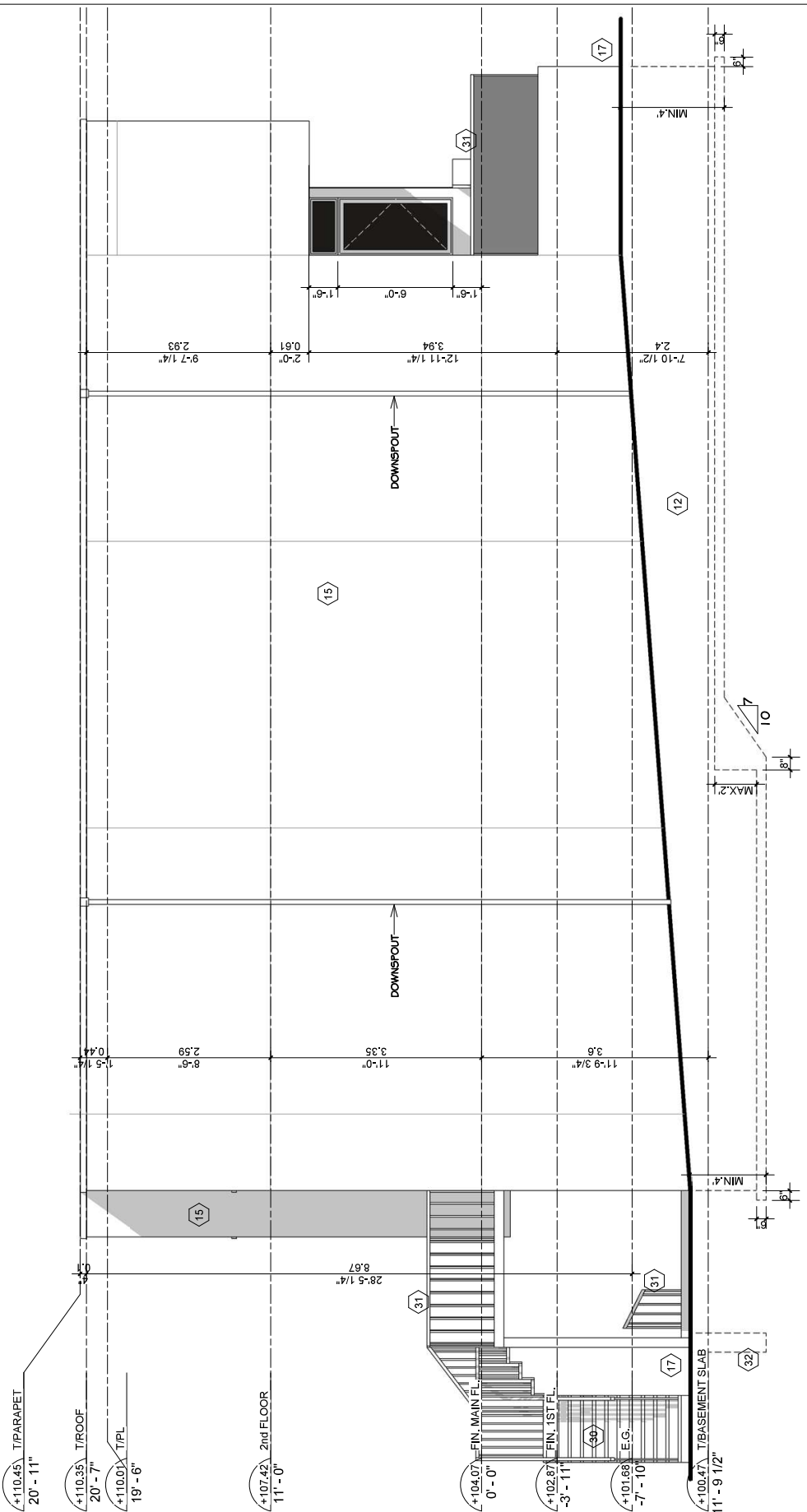
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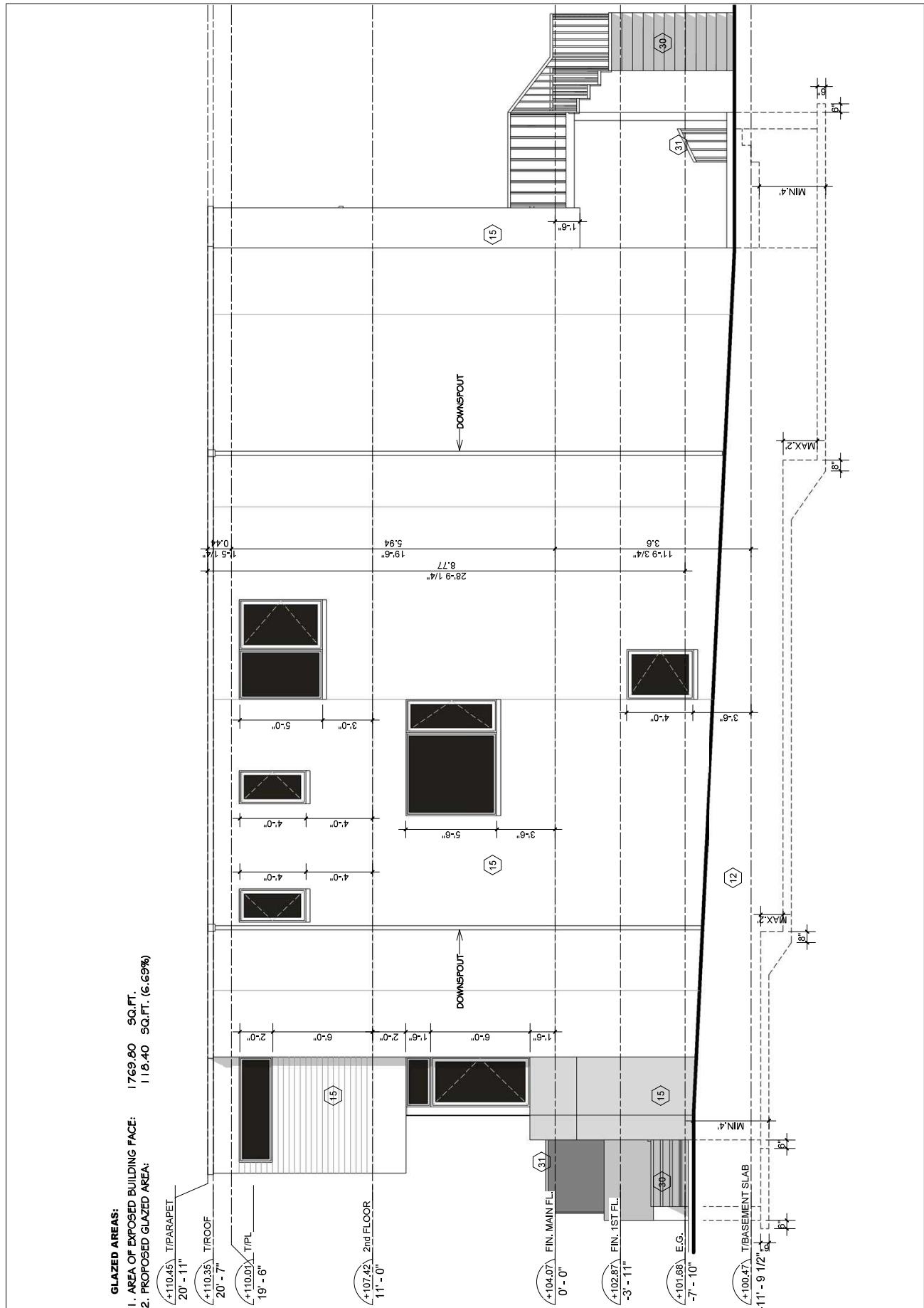
*Ali Shakeri*

**GLAZED AREAS:**  
 1. AREA OF EXPOSED BUILDING FACE: 1704.14 SQ.FT.  
 2. PROPOSED GLAZED AREA: 20.23 SQ.FT. (1.18%)



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	drawing: <b>SIDE ELEVATION(EAST)</b>	scale: <b>3/16" = 1'-0"</b>	





<p>designed by:</p> <p><b>ALI SHAKERI</b> T. 416 8166651 F. 416 2508900</p> <p><b>ARCICA INC.</b> 326 SHEPPARD AVENUE EAST, M2N 3B4 TORONTO, ONTARIO, CANADA,</p>	<p>project:</p> <p>253 ST.CLEMENT AVENUE</p>	<p>revisions:</p> <p>DEC. 21, 2018 - issued for COA DEC. 28, 2018 - issued for PERMIT APR. 16, 2019 - issued for TLAB 1</p>	<p>1. ALL WORK SHALL BE CARRIED OUT IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE LATEST REVISION OF THE ONTARIO BUILDING CODE. 2. VERIFY ALL DIMENSIONS PRIOR TO CONSTRUCTION. 3. DO NOT SCALE DRAWINGS. 4. ALL DIMENSIONS AND INFORMATION SHALL BE CHECKED AND VERIFIED ON THE JOB AND ANY VARIANCES OR DISCREPANCIES MUST BE REPORTED TO F&amp;A ASSOCIATES BY PHONE AND SUBSEQUENT WRITTEN CONFIRMATION PRIOR TO COMMENCEMENT OF THE WORK. 5. USE ONLY LATEST REVISION DRAWINGS OF THOSE THAT ARE MARKED 'ISSUED FOR CONSTRUCTION'. 6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION.</p>
	<p>drawing: SIDE ELEVATION(WEST)</p>	<p>scale: 3/16" = 1'-0"</p>	<p>page: A 09</p>

**ATTACHMENT C**

**URBAN FORESTRY CONDITIONS**

The applicant/owner shall satisfy the requirements of the City of Toronto's Parks and Recreation, Urban Forestry Division.