

DECISION AND ORDER

Decision Issue Date Tuesday, September 24, 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): MICHAEL FLYNN

Applicant: BRUCE MARKHAM

Property Address/Description: 22 BIRCHVIEW BLVD

Committee of Adjustment Case File: 19 131439 WET 03 MV (A0175/19EYK)

TLAB Case File Number: 19 161375 S45 03 TLAB

Hearing date: Wednesday, September 18, 2019

DECISION DELIVERED BY Ian James LORD

APPEARANCES

NAME	ROLE	REPRESENTATIVE
MICHAEL FLYNN	APPLICANT	
BRUCE MARKHAM	OWNER/APPELLANT	MARY FLYNN-GUGLIETTI
FRASER SMITH	PARTICIPANT	
STEPHEN WHITEHEAD	PARTICIPANT	
GABRIELE D'ELEUTERIO	PARTICIPANT	
GORDON NAYLOR	PARTICIPANT	
FRANCO ROMANO	EXPERT WITNESS	

INTRODUCTION

This is an appeal brought on behalf of the owner of 22 Birchview Boulevard (subject property) from a refusal by the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA) to grant a variance increasing the permissible gross floor area on the subject property from a previous approval of 0.53x lot area, to 0.67 x lot area.

The Applicant was not present; however, the owner attended and was represented as above indicated, by counsel and a Registered Professional Planner who provided the sole support evidence of this Party on the appeal.

Three of the registered Participants, all of whom are local residents and neighbours, attended and provided direct evidence: Gabriele D'Eleuterio; Stephen Whitehead and Fraser Smith.

There were no other Parties.

I described that pursuant to Council's direction, I had attended on the site and surrounding area and reviewed the pre-filed materials but that matters of significance to an individual needed to be brought forward in the evidence.

BACKGROUND

The COA mailed its decision on May 17, 2019. There were no issues of a substantive or procedural nature raised and the matter was completed in the allotted day sitting.

The COA decision recites that the subject property in 2018 was the subject of a recent, previous variance application that received COA approval, without appeal. That decision dealt with three variances to zoning extant on the subject property, and granted approval to increases in:

- 1) Lot coverage: 31.46%, from 30% permitted (7 sq. m increase);
- 2) Gross floor area: to 0.53x lot area, from 0.50x permitted, including a detached garage;
- 3) Driveway width: recognition to 5+ m existing, from 2+ m permitted.

As a result of that decision, with building permit issuance, a new detached dwelling with a detached garage had commenced construction. At the time of the Toronto Local Appeal Body (TLAB) Hearing, construction was underway and substantially complete, with exterior cladding being installed in the relatively late stage of completion. On the evidence heard, there were no building deficiencies noted; no Order to Comply or Stop Work Order applied to the subject property.

MATTERS IN ISSUE

The appeal requests additional gross floor area to permit **third floor ‘attic’ space to be made habitable floor space** to 0.67x lot area, whereas 0.50x is permitted under zoning and 0.53x lot area was permitted by the previous COA approval (A0568/18EYK). The COA and Participants did not support recognition of this additional habitable space. The latter emphasized issues of compromise to area character, privacy and potential for precedent.

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.

EVIDENCE

Ms. Flynn-Guglietti called Franco Romano who was recognized as qualified, without challenge, to provide profession opinion evidence on land use planning matters.

By use of a materials Document Book (Exhibit 1) and Expert Witness Statement (Exhibit 2), he presented an evidentiary exposition of neighbourhood character assessment and the subject property project, including amended drawings (June 2019) provided in the Exhibit 1 disclosure.

Where there are differences or challenges to the planner’s evidence, these are noted below.

In general, neighbourhood character attributes were agreed. In brief, as described by Mr. D’Eleuterio, surrounding development included the evolution of a planned community by Robert Home Smith in the image of ‘a bit of England, far from England’.

Indeed, as described, the Romano study area and neighbourhood, as largely accepted by the residents, is a predominantly low rise, detached residential enclave of substantial and prestigious housing demonstrating diverse architectural variety and individual distinction. This well-maintained, stable mix of Georgian, Tudor and styled bungalow and predominantly two storey dwellings are found nestled in a somewhat extraordinary setting of significant low and high canopy vegetation; Birchview Boulevard is without sidewalks.

Located immediately north and west of the Bloor Street and Royal York Road intersection, this 'very desirable' neighbourhood is a striking oasis from adjacent retail arterial and mass transit infrastructure.

Mr. Romano provided several factual and own opinion assessments germane to the above statutory assessment obligations in considering the appeal:

- i) The subject property is under construction in accord with approved building permits and consisting of two full levels of living and dormers above, within the roof line.
- ii) The request is to allow attic space to be used as habitable space.
- iii) The request to allow a Floor Space Index (FSI) increase from 0.53x to 0.67x lot area would have no design change, no change to building height, width, length or any other change to the building envelop or footprint from that approved and constructed.
- iv) The dormer design attributes (and skylights) are permitted as-of-right and built under permit as extensions from the roof line, are narrow (generally 2'8" wide (0.8m)); they provide light but not direct overlook as they are not readily accessible given the narrow dimensions, roof slope, and mechanical and ledge construction (north dormer). One dormer provides stairwell lighting; all are set back from the main wall.
- v) Study area attributes (Exhibit 2) demonstrate on Birchview Boulevard, Brentwood Road N, White Oak Boulevard and Wilgar Road:
 - a. A variety of gambrel, flat, pitched and mansard roof styles; dormers occur frequently both in design and occupancy circumstances, on second and third levels;
 - b. FSI, while averaging 0.4+x lot area, constitute a wider range with 8.1% of the housing stock exceeding 0.6x lot area, as proposed;
 - c. FSI exceeding 0.6x lot area is interspersed uniformly as a pattern across the study area, the nearest example being on Birchview Boulevard, at its east limit, south side.
- vi) The City Official Plan and OPA 320 intent, general purpose and conformity is met by the application on appeal, on both qualitative and quantitative assessments, by reference to sections: 2.3.1; 2.3.1.1.; 3.1.2; 3.1.2.2.and 3.; 3.2.1; and 4.1.5. In his view, the existing building incorporating attic floor space as habitable space would be physically compatible with the character attributes of the

- neighbourhood, without negative impact on stability. There would be no change to the roof line or massing, the design elements are maintained and there would be no offsite streetscape impacts, but rather an improved and replenished addition to the housing stock.
- vii) He felt FSI is not a measure of density but is a zoning attribute with examples similar to the proposal found in the area, that properly 'fits' and is compatible.
 - viii) His Witness Statement (Exhibit 2) and evidence confirmed similar support for opinions on the zoning, minor and desirable tests. This opinion was based largely on the fact that the roof height, mass, scale, footprint and design of this existing, building permit approved structure, was not changing and there are no observable "unacceptable or significant" impacts."
 - ix) He offered support for the owner's demonstration of several adjustments to the evolving plans respecting window size and location, garage location and conditions to ameliorate concerns for overlook from the intended use of the third floor habitable space sought.
 - x) He relayed that the evolution to a realization of the utility of the third floor level space, despite requiring successive variance applications for FSI approval, had a premise in changed family circumstances, common in society. He opined this was not a 'bait and switch' tactic, as apprehended from exterior observation.
 - xi) The variance would permit a desirable and efficient use of attic space.

Mr. Romano was offered but was not questioned by the Participants.

Mr. Gabriele D'Eleuterio, a 20+ resident to the north of the subject property, challenged certain aspects of Mr. Romano's evidence, largely from the perspective of a community steward but also with a defined personal concern.

He disagreed that the changed FSI demonstrated any community benefit. Rather, while fairly acknowledging the building style was in character with the neighbourhood, if increments in the scale proposed became 'routine', the proposal would be the 'thin edge of the wedge' and new development would design to that level. As such, new, larger houses would change the physical character of the area: a form of adverse use and impact.

He also centred concern on the history and importance of the north, third level, dormer window, citing its 'curious history' of appearance, revision, disappearance and redesign. He noted that any window would be within his line of sight ('clear view, especially in winter') and presented the potential for an invasion of privacy into the 'sanctuary' of rear yards. He felt the introduction of an FSI that permitted regular occupancy of the third level space created an area anomaly, a qualitative difference that if, in creating a trend, was 'a step too far and too fast' for his vision of the neighbourhood.

In questioning, he acknowledged that the subject property rear yard had double the required depth from his property with intervening spaces or objects including his own rear yard and three garage or shed structures at grade.

He was frank to acknowledge there was no height increase proposed, and no variance in respect of any window or skylight. Further, that he could not fully appreciate the usability, if any, of the dormer space or the effect of a proposed interior ledge inhibiting access.

Mr. Stephen Whitehead, a 3 year resident to the east of Mr. D'Eleuterio, speaking for both his wife and himself, acknowledged the neighbourhood to be stable and not static and the trend existed towards larger homes. He had become alarmed by design changes from the original COA approval, with actual construction: namely the rear gable which 'appeared and disappeared', was 'promised to be removed by an 'agent', and now is back, albeit in a reduced form'.

He expressed concern for change and its potential for the future, not just redesigned windows, but also for decks, unilaterally appearing. He felt the majority of area gables (dormers?) were decorative, and of modest size. In the proposal, he expressed concern for the natural inclination to seek interior daylight, and their consequent future widening. He expected this desire and its risk to be accentuated by increasing the interior third level living space by way of a bedroom, washroom. He adopted the 'thin edge of the wedge' expression, raised by Mr. D'Eleuterio, as well as the concern to protect rear yard privacy.

He rephrased the planner's evidence to say some 92% of neighbourhood dwellings had a lower FSI; he expressed doubt that there are any homes with a fully inhabited third storey. He said that the proposal constituted a precedent that would encourage others "to open up window banks in the rear yards."

In questioning, he agreed a condition tying the variance to the current plans provided some comfort, but 'not enough' as occupancy of the third level offered the incentive and threat that future openings would be sought.

He preferred no windows, to prevent peering down. As to his issue of privacy, he acknowledged that existing coniferous vegetation limited and did not permit him a full view of the subject property; however, he could still 'see them'.

Mr. Fraser Smith, like the owner a ten year resident, has a residence abutting the subject property. He described the somewhat tortured evolution of the site layout, applications and changing plans. He noted the matter progressed by way of a zoning waiver but was satisfied on his own diligence and discussions agreed to with the owner, that protection of his view plane to rear yard trees was preserved. This involved a reduction to the then proposed accessory garage height and its relocation further south.

He noted the architecture proposed and built is appreciated and fits within the neighbourhood. He noted that attic space was never, in discussions or plans, intended as habitable third floor until the subject application arose. With occupancy of the third

floor space he foresaw impact. He said the third storey windows, new skylight and bigger shed dormer introduced overlook into primary rooms and spaces, to which he objected.

In his view, a third storey did not fit within the existing or planned context of the neighbourhood, fixed at an FSI of 0.5x lot area.

He, too, adopted the 'thin edge of the wedge' concern for precedent and felt its nurturing by an approval would not serve the community.

He distinguished that 'new builds', as here originally proposed, offered the opportunity to comply with the zoning by-law, and not simply owner 'wants'. He felt the adding of a third storey in this case was an omni-present goal that was 'caught' by the COA refusal.

He felt that because there was 'impact', the request was no longer minor. He considered the concern for impact to be a sound planning principle.

In questioning, when taken to COA decision records, he acknowledged at least two other third storey additions had been approved in the study area.

He clarified that his concerns were not just for the evolution of the rear window, but all dormer windows and skylights proposed as constituting a component of neighbourhood impact.

There was no reply evidence. The owner did not testify.

In submissions, Ms. Flynn-Guglietti reminded the tribunal of the limited nature of the application on appeal as not relating to building design, fenestration, dormers, windows, approved building permits, or engaging height increases, changes to landscaped open space or any yard performance standards.

Building massing, she noted, conformed to the zoning by-law and the requested FSI increase did not institute any change or any precedent that was unique.

She noted that the owner had been listening to neighbours concerns and that actions were taken to respond to impact concerns: smaller dormers, moving the garage, restricting overviews, which she described as a 'normal urban situation'.

She offered two conditions relating to plans to fix exterior design features and to ensure the rear window, third level, had restricted access.

She submitted any impact was minimal, that it was agreed the dwelling was compatible to the neighbourhood and that, as for precedent concerns, "each case has to be considered on its own merits." Here, she said, despite allegations of 'bait and switch', the tribunal had the sworn evidence of Mr. Romano that he had accepted, that the owners evolution in family circumstances changed the original intention for the use of the attic space.

She suggested that the requested conditions to ensure limited overlook should forestall any issue of precedent, especially in the circumstance where all zoning standards were otherwise in compliance.

ANALYSIS, FINDINGS, REASONS

This appeal engages a request for an increase, a second increase, in requested floor space in the circumstance of a new build.

I find that there is nothing inherently wrong in two applications for variance approval, even in the case of those occurring in relatively quick succession, and even if engaging the same performance standard. The statute affords that entitlement. The circumstances are merely additional considerations to the overall context of applicable policy, procedure and planning considerations in applying the above tests, listed under 'Jurisdiction'.

There is no issue of *res judicata*, issue estoppel or abuse of process in this fact circumstance.

Here there is an allegation of 'bait and switch' and that the original intention of the owner was to create a design which, taken in two bites, amounts to density request from that allowed at 0.5x lot area, to 0.67x lot area. Namely, that the dwelling was designed, approved, building permit issued and built with an intention that attic storage space would later be sought to be recognized in a two-step plan.

In this case, the difficulty with that proposition is its proof of accuracy. Certainly, it would be offensive to the principles of land use planning and administrative law to condone a deliberate attempt to subvert the system by a covert pattern of activity designed to attract intervening permissions as part of a Machiavellian plan to advance the prospect of subsequent approvals.

I can find none of that circumstance here. On the evidence, the applicant sought and received planning permission to build an architect designed home of an essential Georgian centre-hall plan in very close conformity to original zoning permissions, all as determined by the COA. For that structure, building permit plans were filed and permits issued for the structure to include design fenestration, windows and attic space fully compliant with the COA approval granted.

The building was substantial completed at the time of recognition that the attic space afforded opportunity for usable habitable space with, essentially, only access considerations and internal layout.

I accept that design and fenestration revisions are the prerogative of the owner, subject to compliance with applicable law. There is no instance, here, of non-compliance in that regard; indeed, there are no discrepancies that have been identified. I do not consider

that verbal communications that may or may not have been exchanged in the course of construction between persons unnamed, in any way undermines that reality.

What I heard in the evidence was a genuine apprehension that there may have been a harboured original intent to approach FSI in two steps, perhaps to gain the advantage of the first COA approval. Given the risk and cost exposure involved, that suggestion, while it may appear suspect, is itself an aspect that need not be assessed to a state of absolute proof. While I did not hear from the owner, Mr. Romano, a Registered Professional Planner did relay under oath a changed circumstance in the owners' family (a passing and the potential for accommodation of a parent), that raised the prospect of a family need. As a planner, Mr. Romano is committed by his profession - and sworn obligation to the tribunal - to only provide advice that he has reason to believe to be true. He must satisfy himself as to authenticity, so as to attest to its accuracy, and not simply supply hearsay, or risk professional sanction. That advice remained unchallenged; it is accepted and must be considered as substantially different in character and weight, than apprehensions or mere allegations.

Had the advice been proven otherwise, a different conclusion might follow.

In any event, it is the substance of the application on appeal that is germane and not the individual circumstance, evolving or otherwise, of a particular party. The subject premises represents an investment likely to serve many generations; it is that long term duration that requires assessment on principles of good community planning.

Although a new- build circumstance, this appeal arises in the context of the dwelling being substantially complete. The 'attic' space, sought to be recognized by the density measure increase, exists. In this circumstance, although the dwelling has not been occupied, the request is more in the nature of a conversion of as-built space rather than an approval sought for the impending construction of new space.

There is no issue of the expansion or enlargement of an existing legal non-conforming or non-complying space. It is also not the circumstance of a renovation, with improvements, of existing historical 'attic' space, although an analogy can be made, in part, to this Members decision in *103 Heath Street East* (TLAB 18 226669 S 45 27).

In circumstances where the TLAB is requested to 'recognize and maintain' a use of space by way of an FSI increase, the approach mandated is to assess the request as if the space did not exist and whether it would otherwise be warranted on principles of good community planning.

In such a circumstance, the actual existence of the space can assist with those aspects of assessment that go to impact and the other statutory tests. That can be a consequence of observation, experience or resultant circumstance. For the subject property, independent of the calculation of the FSI number, there was general agreement that the building, as constructed, sits comfortably on its lot. In Official Plan terminology, the structure 'fits' its surroundings, without raising issues of height, massing, or scale. Mr. Romano described the building, as built, to be similar to and compatible with the style, massing and type of nearby dwellings. He noted that the

variance requested would, in this instance, result in no change to the accepted massing or height: that the design, height and physical character of low rise building form is maintained, in conformity with the Official Plan, OPA 320 and applicable zoning. Only the FSI, to him a 'proxy' for massing and scale, and a zoning regulation not an Official Plan measure is infringed. In his view, FSI "is not a measure of density" but an indicator of scale and fit, which in the instance of this built form is within the range of interspersed examples throughout his study area.

I am reminded that the only evidence I heard – of a professionally qualified expert in land use planning matters – came through Mr. Romano who fully supported allowing the appeal and the rendering of the requested 'attic' space as 'habitable'.

Mr. Smith, I was advised, is also a profession planner. However, he did not assert those credentials or seek to be recognized as such, nor did he file an Experts Witness Statement or file the requisite Form of attestation. This was both appropriate and responsible given the proximity of his residence and expressed concerns related thereto, as engaged by the appeal.

In the absence of challenge, I am obliged to give considerable weight to the evidence supplied by Mr. Romano and do so, but not to the exclusion of the consideration of those elements raised by the Participants or in the Tribunal's own deliberations.

In those aspects, there are three principle objections raised on the appeal: area character, privacy and potential for precedent. I address each in turn.

There is near unanimity of agreement on the area character assessment as above described. In dispute is the presence of active third floor space, functional and active space dormers and the spatial extent, pattern and existence of FSI examples - at 0.6x the lot area within the study area. The Romano study area was generally accepted as being an appropriate reflection of the neighbourhood.

I find that 'dormers' as a design feature are present throughout that area but that the evidence is indeterminant as to whether their use is active or decorative. I accept that there are instances of third floor usage but that such is not a prevailing feature of the neighbourhood, immediate or geographic as defined by OPA 320.

I find, as above, that the neighbourhood is diverse in architectural design and that, on the admission of all those present, the exterior built form as configured on the subject property and as proposed to be fixed by conditions is appropriate and compatible; the built form is generally accepted, without objection, in appearance and presentation – apart from third floor usage considerations.

I find that there are no requests outstanding other than for the FSI increase. There is, notably, no zoning performance standard that prohibits a third storey in this area of the City and there is no policy language that requires prevalence of only two occupied storeys - or even that suggests a discouragement of third storey space occupancy. Indeed, there are examples of multiple and split level properties throughout the community, many of similar Georgian appearance attributes, and dormers.

I find nothing unique, offensive to the streetscape or that fails to 'fit', in the existing structure as-built, or its interior use, which takes it out of the character to the existing physical character of the neighbourhood. That is the reference, above, being the test of the design and assessment criteria in section 4.1.5 of the Official Plan, as referenced extensively by Mr. Romano.

I find there is no injury or compromise to the integrity of the physical character of the neighbourhood by the usage of third floor space internal to the roof in this circumstance.

I accept Mr. Romano's opinions on conformity with the Official Plan, OPA 320, consistency with the Provincial Policy Statement and conformity with the Growth Plan, 2019.

I have listened with care to the issue of privacy arising from the concern for the design form of dormers and skylights and their intended usage should occupancy be permitted in granting the FSI variance.

Issues of privacy and overlook are an element of land use planning, design, architectural treatment and a matter for generally accepted planning principle consideration. The City provides little by way of direction in regard to these matters either by way of policy direction or regulation, except by inference and principle application. It is well accepted that in an urban environment, absolute or exclusive privacy protection by way of built form is not guaranteed. Throughout the City, the juxtaposition of buildings is such that incursions on privacy, view planes and overlook is unavoidable. While there are a number of tools available to address concerns of this nature, ranging from applicable refusals to treatment conditions, absolute protection is beyond the reach of regulatory controls.

In this circumstance, I have considered the concerns for visibility to and from the third floor windows, should this space be occupied. The site, setbacks, rear yards and vegetation in this neighbourhood are such as to not reach anywhere near the degree of concern evident in other parts of the City. The rear yards are generous, more than twice the regulatory minimum; the vegetation screening is prolific; the view planes are at best narrow and proposed to be restricted; the presence of existing second storey windows in the subject and adjacent buildings, which are not the subject of complaint, and the oblique angles required to give rise to any privacy compromises are all such as to mitigate any additional impact from the space occupancy proposed.

The conditions proposed, if imposed, would further serve to prevent future changes without a further review. Conditions can serve to impede and sanction abuses; while not absolute, they are a device available to assess change.

I find that the concerns about 'impact' from overlook and the potential for compromise to privacy are more illusory than real. None were asserted to amount to 'undue adverse impact', the measure of which is the commonly accepted standard for a variance request, to make it objectionable and not worthy of approval.

Impacts occur in urban settings: they may be positive or negative. I cannot accept that any of the Participants would be unduly disadvantaged by the occupancy of the third floor space on the subject property. To the extent that they extend the concern for window visibility to the community, respectfully, that is the prerogative perhaps of a duly organized ratepayer association and, certainly the City - which has not pressed an objection.

I find that impact concerns asserted are not made out to the standard warranting a refusal.

The issue of precedent is more thorny. In a somewhat analogous circumstance, I stated in *103 Heath Street East op.cit.* at p. 16 of 21:

“I see no undue off-site impact or failure to meet any of the four tests in the allowance of an increase in fsi premised upon making greater use of existing floor space within a structure. In this regard, both planners advanced support for the proposition that the use of existing volumes of space constituted regeneration of the use and was a good thing. Most residents, apart from a concern of the scale of the resultant fsi number, avoided directly contesting the employment of attic space, and its consequent increase in the fsi number.”

I find that the desire to employ existing space in a usable form is consistent with policy support for regeneration, energy efficiency, intensification and a general common sense approach to a more effective use of existing built space.

Past and even contemporary residential design can produce significant areas of void space that present potentially usable space alternatives to footprint expansion and its generally associated higher cost. There is a cogent argument that the employment of such spaces, in lieu of their dereliction and cost associated with heating, air-conditioning and maintenance, presents the opportunity for a higher and better use employment, in appropriate circumstances.

What is to be avoided is the prospect of design approvals and construction sought at or near by-law standards then accompanied by a contemporaneous, intervening or after-the-fact seeking of permission - to augment proposed compliant space with designs that can materially alter zoning (FSI, gross floor area or density) permission, whether or not coupled with additional approvals. Such circumstances can be objectionable and may better be the subject of policy and consideration by Council.

Support for the use and deployment of attic space is also not a hall pass for requests for density recognition in every circumstance. Nor are such permissions, if accepted, to be taken as a precedent for new or higher density numbers, establishing a new area benchmark, area average or an area character attribute. Individual circumstances can differ and individual consideration is, I agree, the obligation of the review and appeal process.

Finally, it is axiomatic that once a request is made for a planning approval, including the recognition of attic space as a density increase permission, all relevant assessment criteria inherent in the policy and statutory tests above recited remain applicable.

For the subject property, I have found that the circumstances warrant the consideration of incorporating 'attic space' as the product of an existing condition, and is not an example of a prospective risk assessment or 'bait and switch'.

I find the proposed FSI increment to be acceptable under policy and regulatory assessment criteria. I find nothing inherently exceptional in the arithmetic number calculated. The definition of minor or prevailing, I accept, is not solely a mathematical construct. I find the impact of this additional space to not be undue or adverse. I find that the precedent argument, while justifiably raised, does not, in the circumstances of this application, its detailed consideration and the proposed conditions prevail or make an approval a material precedent. In the case history of this particular building form, the distinctions described and the conditions available to be imposed are intended and do take it out of the realm or apprehension of the 'thin edge of the wedge' as having any precedent value.

I find, individually and cumulatively that the concerns expressed do not override the professional advice that the single variance sought constitutes compliance with all relevant tests governing good community planning.

DECISION AND ORDER

The decision of the Committee of Adjustment is set aside and the following variance is approved, subject to the following conditions:

Variance:

A previous Committee of Adjustment decision (A0568/18EYK) approved a gross floor area of 32% of the lot area (318.51 m²) and a floor space index of 0.53 (318.51 m²).

The new dwelling, including the detached garage, will have a gross floor area of 125 m² plus 47% of the lot area (409.7 m²) with a floor space index of 0.67 (409.7 m²).

Conditions:

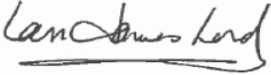
1. Construction shall be in substantial compliance with the site plan, plans and elevations on the specific amended drawings A 1.2, A 2.3, A 2.4, A 3.1 and A 3.2 dated July, 2019 by Ph. D Design found at pages 132, 136, 137, 138 and 139 respectively, of Exhibit 1 and attached hereto;

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2. The third floor gable/dormer and windows shall have the dimensions shown on the aforesaid applicable plans and shall include, internal to the dwelling on the third floor north dormer, a ledge or bench above floor level across its width impeding pedestrian access.

If a difficulty arises in the implementation of this decision and order, the TLAB may be spoken to.

Any other variances shown, necessary or required to implement the plans or conditions of this decision and order are expressly not approved.

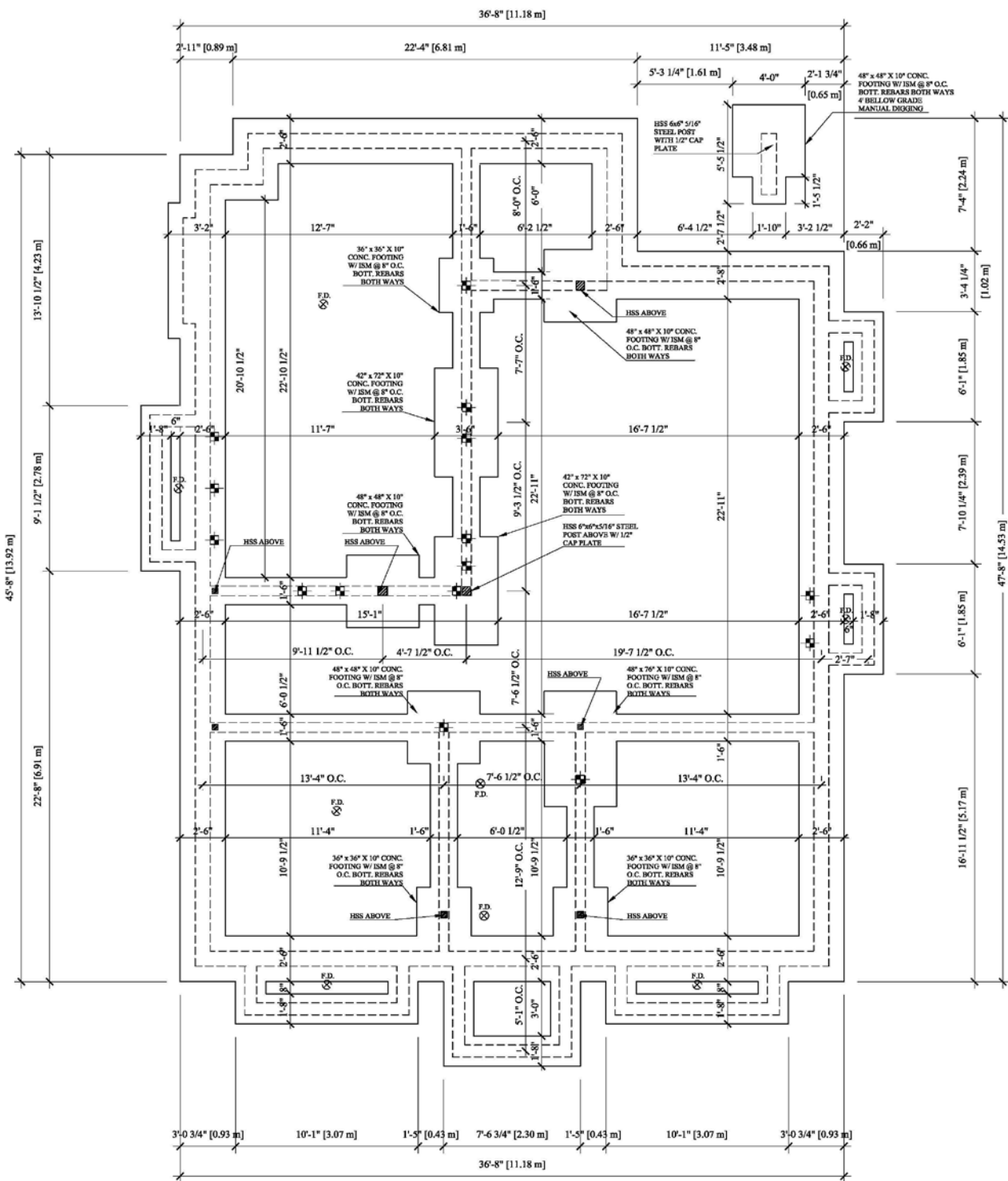
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Ian Lord

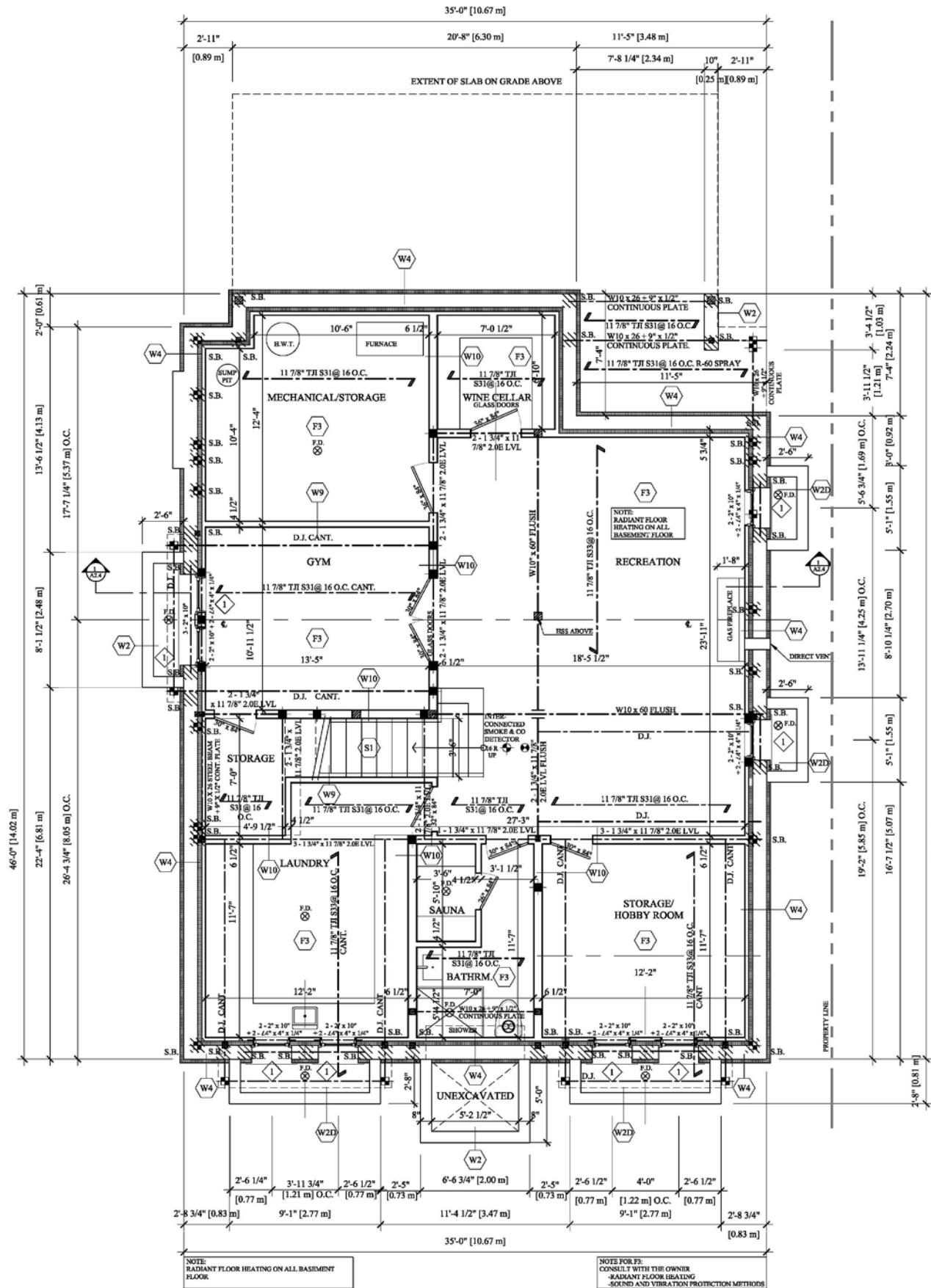
Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

(Attached Plans)



1 BASEMENT FOOTING PLAN
SCALE: 1/4" = 1'-0"



2 BASEMENT FLOOR PLAN
SCALE: 1/4" = 1'-0"

DATE	NO.	DESCRIPTION
2019-05-14	1	BLD PERMIT REVISIONS

PROJECT DESIGNER:

Ph.D. design.
incorporated

PRINCIPAL
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REGISTRATION INFORMATION	28948
Ph. D. DESIGN INCORPORATED	FIRM BCN
FIRM NAME	

CONSULTING STRUCTURAL ENGINEER:

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ENGINEER STAMP:

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REFER TO PH.D. DESIGN INC. FIRM BCN28948

6/28/2019

NORTH ARROW:

IMPORTANT NOTES
Consulting Structural Engineers will not be liable for any changes made to the approved drawings by General Contractor or others during construction.
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CONSULTING ARCHITECTURAL TECHNOLOGIST:

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REFER TO PH.D. DESIGN INC. FIRM BCN28948

GENERAL NOTES
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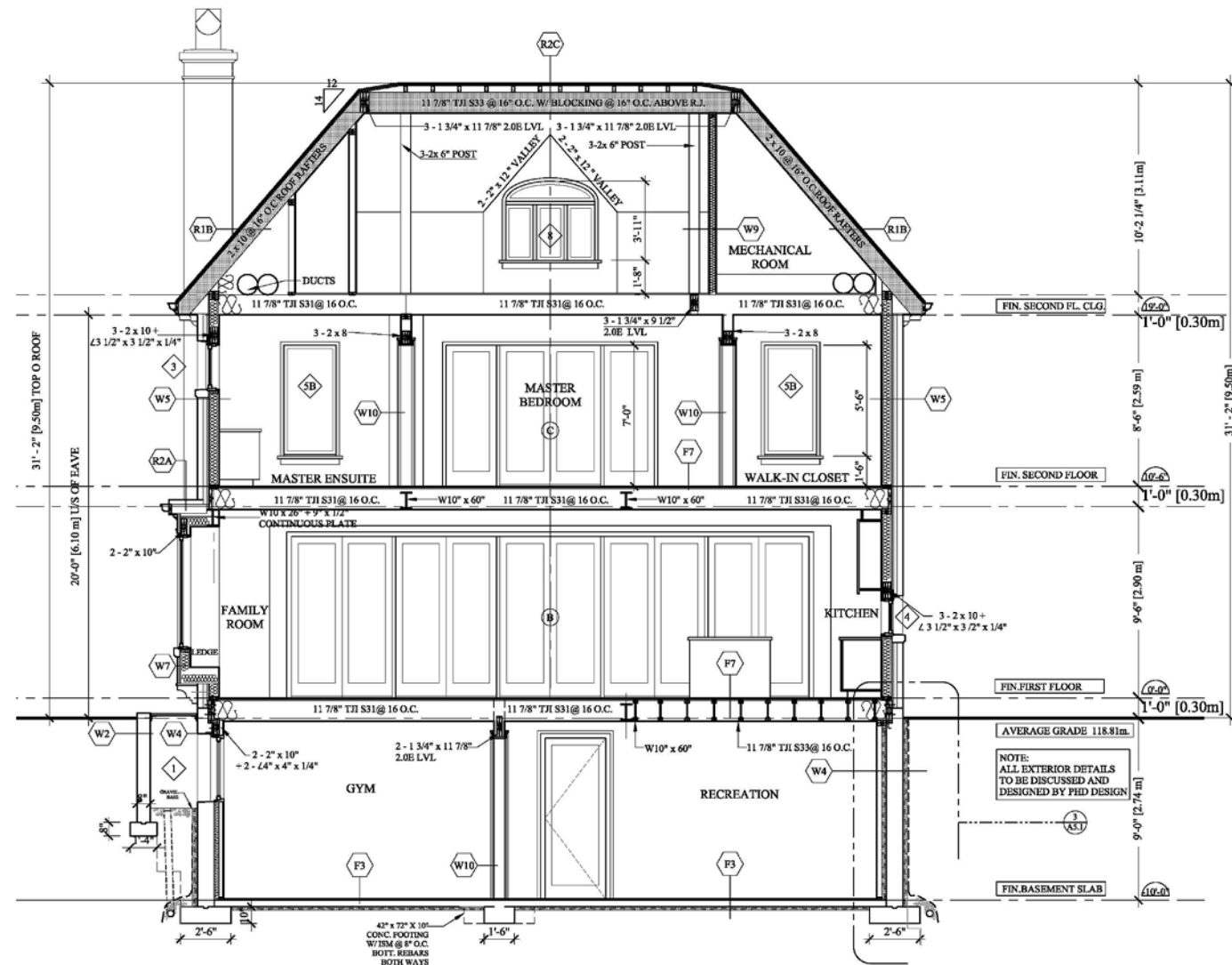
PROJECT TITLE:
**Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO**

DRAWING TITLE:
**BASEMENT FOOTING PLAN
BASEMENT FLOOR PLAN**

Scale:	1/4" = 1'-0"
Drawn by:	E.S.
Date Started:	6/28/2019 10:21:58 AM
Date Last Saved:	6/28/2019 10:21:58 AM
Date Last Plotted:	6/28/2019 10:26:28 AM

PROJECT NO.: DRAWING NO.:

A2.1



1 CROSS SECTION A
A2.4 SCALE: 1/4" = 1'-0"

DATE	NO.	DESCRIPTION
2019-06-07	2	BLD PERMIT REVISIONS

PROJECT DESIGNER:

Ph.D. design
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PRINCIPAL
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REGISTRATION INFORMATION
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Ph. D. DESIGN INCORPORATED 28948
FIRM NAME FIRM BCN

CONSULTING STRUCTURAL ENGINEER:



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ENGINEER STAMP:



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J. J. DAVIS & ASSOCIATES
ARCHITECTURAL TECHNOLOGISTS

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CAMBRIDGE, ONTARIO
N1T 2A2

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Residence for:
MARKHAM/MACDONALD
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TORONTO, ONTARIO

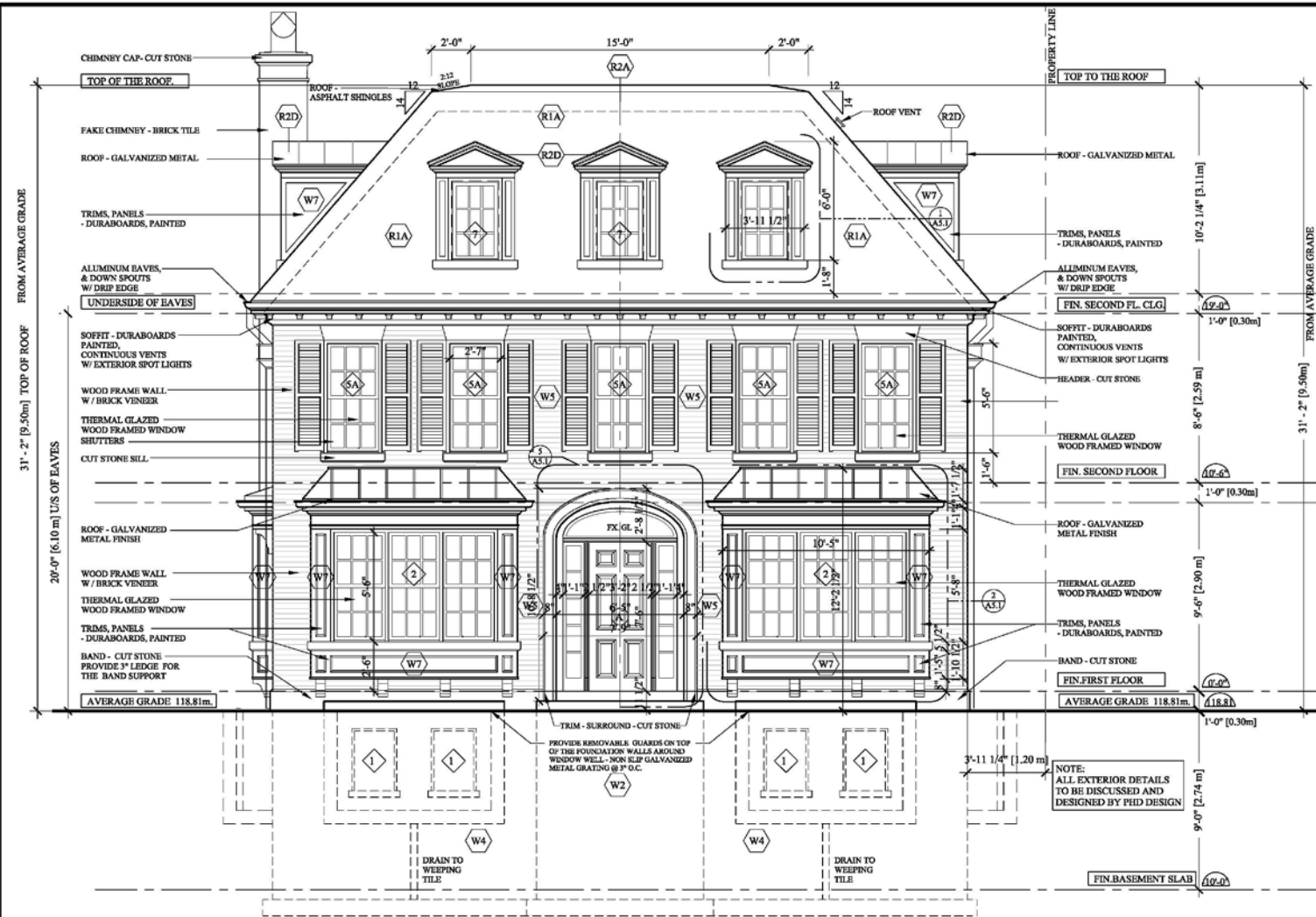
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CROSS SECTIONS A

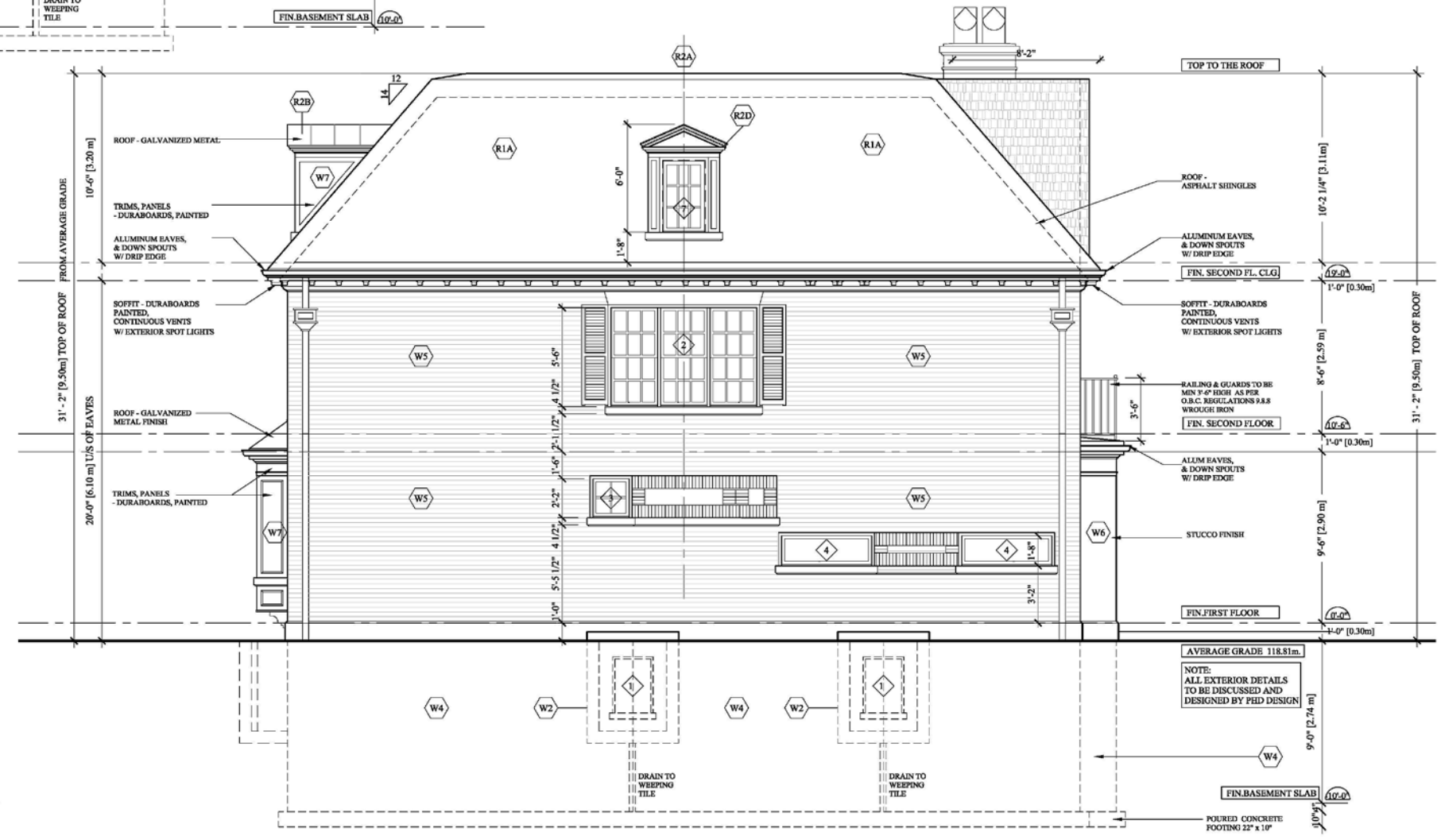
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Date Last Saved: 6/28/2019 11:01:52 AM
Date Last Plotted: 6/28/2019 11:02:07 AM

PROJECT No.: DRAWING No.:

A2.4



1 FRONT ELEVATION
A3.1 SCALE: 1/4" = 1'-0"



2 EAST ELEVATION
A3.1 SCALE: 1/4" = 1'-0"

DATE	NO.	DESCRIPTION

PROJECT DESIGNER:


Ph.D. design
incorporated

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6/28/2019

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PROJECT TITLE:
Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO

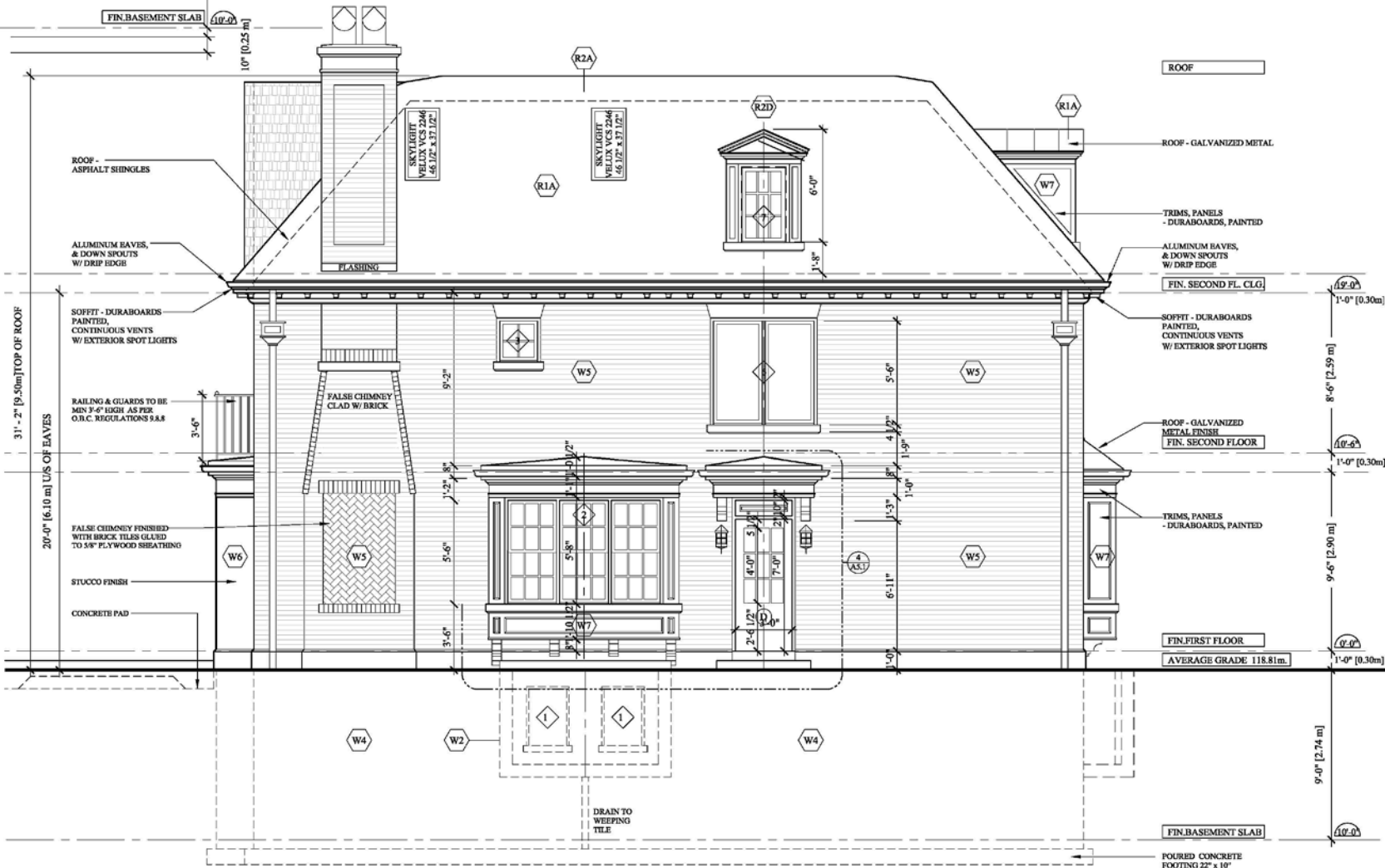
DRAWING TITLE:
FRONT ELEVATION
EAST ELEVATION

Scale: 1/4" = 1'-0"
Drawn by: E.S.
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Date Last Saved: 6/28/2019 11:01:52 AM
Date Last Plotted: 6/28/2019 11:12:39 AM

PROJECT NO.: DRAWING NO.:
A3.1



1 REAR ELEVATION
SCALE: 1/4" = 1'-0"



2 WEST ELEVATION
SCALE: 1/4" = 1'-0"

DATE	NO.	DESCRIPTION

PROJECT DESIGNER:

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PROJECT TITLE:

Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO

DRAWING TITLE:

REAR ELEVATION
WEST ELEVATION

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

Drawn by: E.S.

Date Started: 6/28/2019 11:16:03 AM

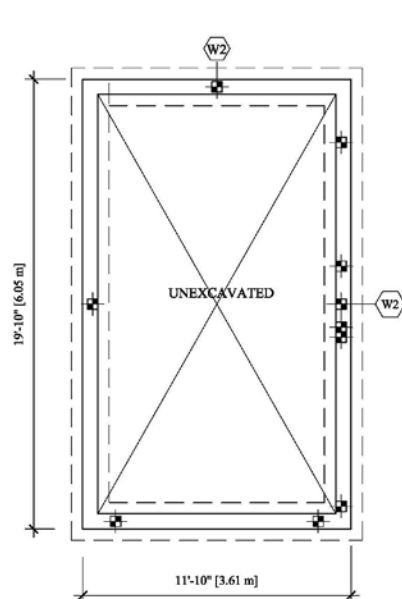
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Date Last Plotted: 7/2/2019 10:06:05 AM

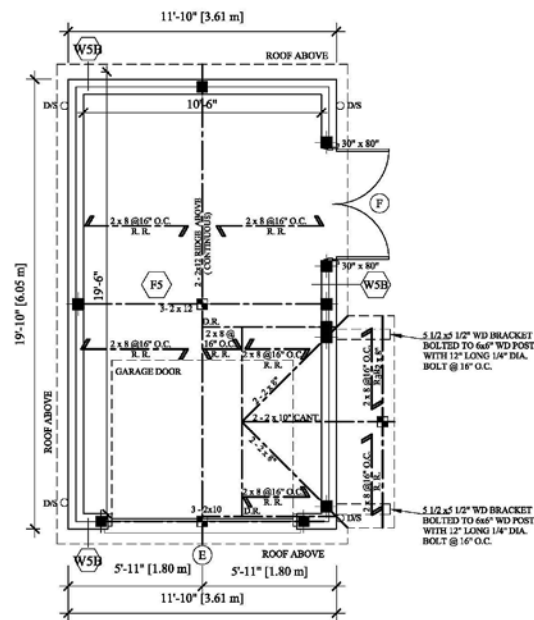
PROJECT NO.:

DRAWING No.:

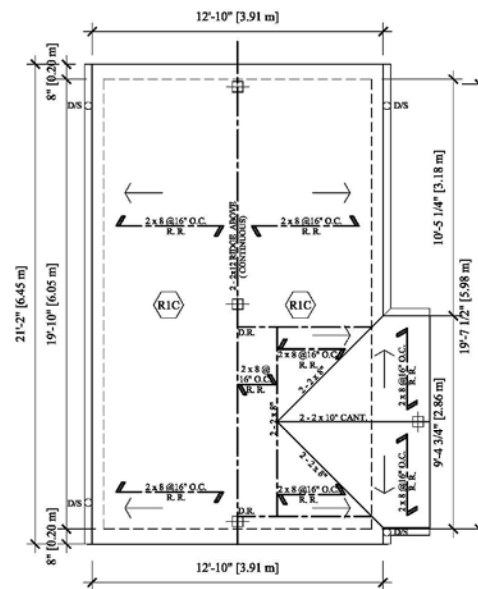
A3.2



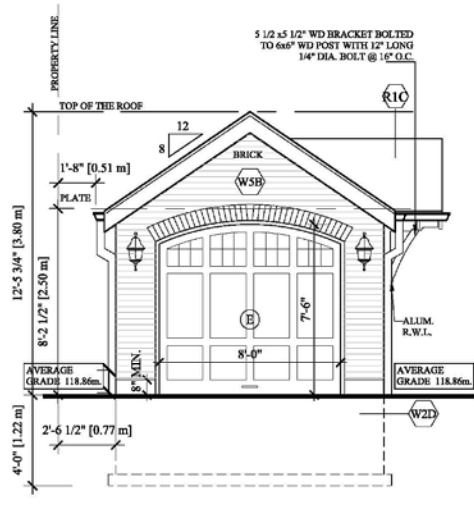
1 FOUNDATION PLAN
A4.1 SCALE: 1/4" = 1'-0"



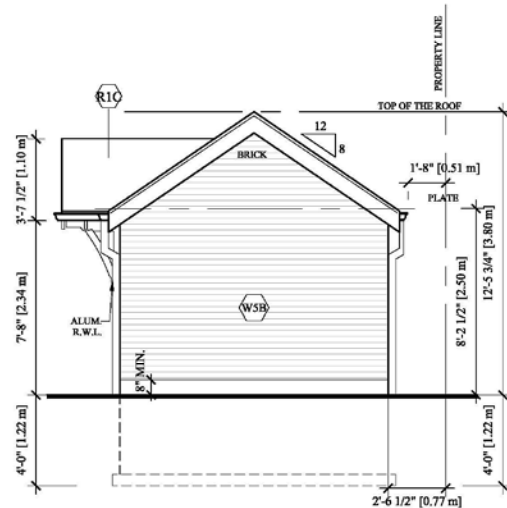
2 FLOOR PLAN
A4.1 SCALE: 1/4" = 1'-0"



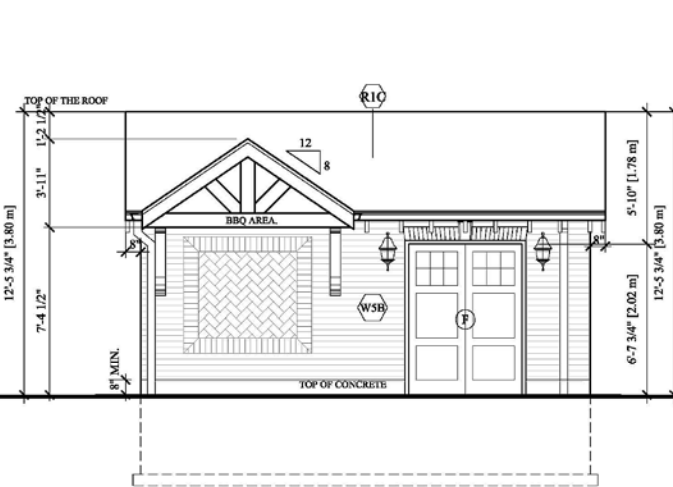
3 ROOF FRAMING PLAN
A4.1 SCALE: 1/4" = 1'-0"



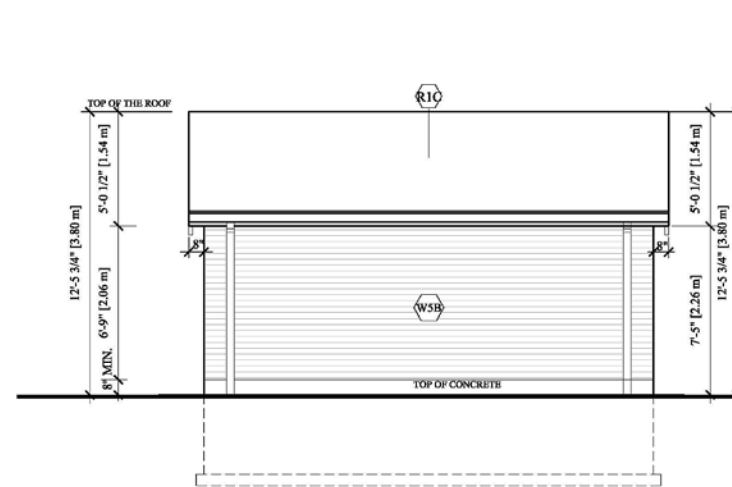
4 FRONT ELEVATION
A4.1 SCALE: 1/4" = 1'-0"



5 REAR ELEVATION
A4.1 SCALE: 1/4" = 1'-0"



6 WEST ELEVATION
A4.1 SCALE: 1/4" = 1'-0"



7 EAST ELEVATION
A4.1 SCALE: 1/4" = 1'-0"



DATE	NO.	DESCRIPTION

PROJECT DESIGNER:
Ph.D. design
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Ph. D. DESIGN INCORPORATED 28948
FIRM NAME FIRM NO.

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ENGINEER STAMP:

NORTH ARROW:

6/28/2019

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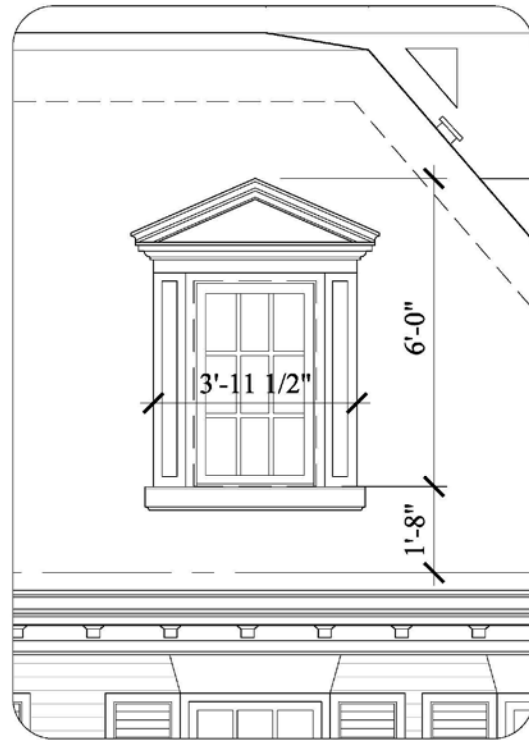
PROJECT TITLE:
Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO

DRAWING TITLE:
GARAGE FLOOR PLANS
GARAGE ELEVATION

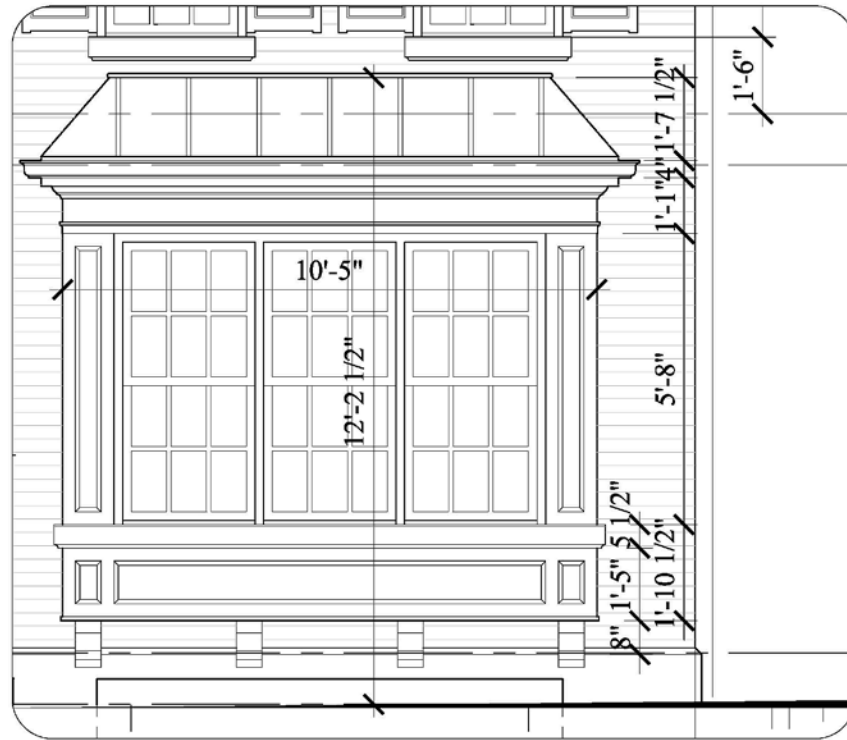
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Date Last Plotted: 6/28/2019 10:33:23 AM

PROJECT NO.: DRAWING NO.:

A4.1



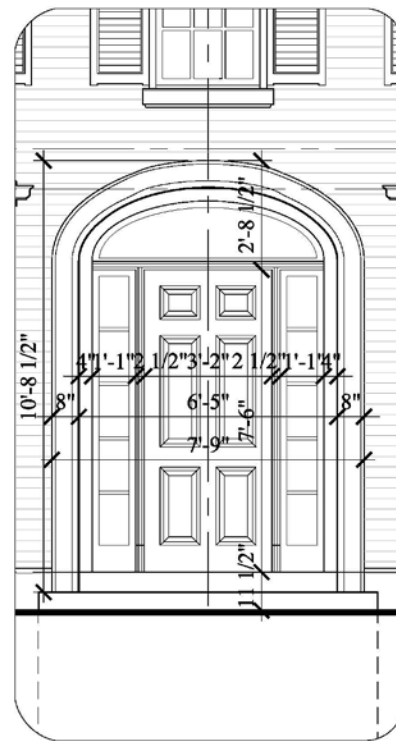
1 DETAIL "A"
A5.1 N.T.S.



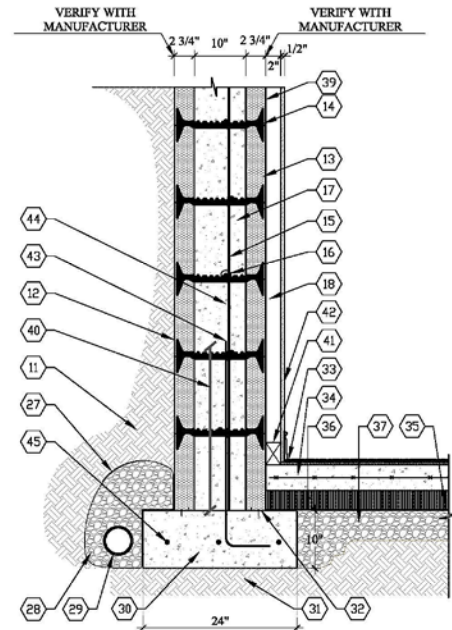
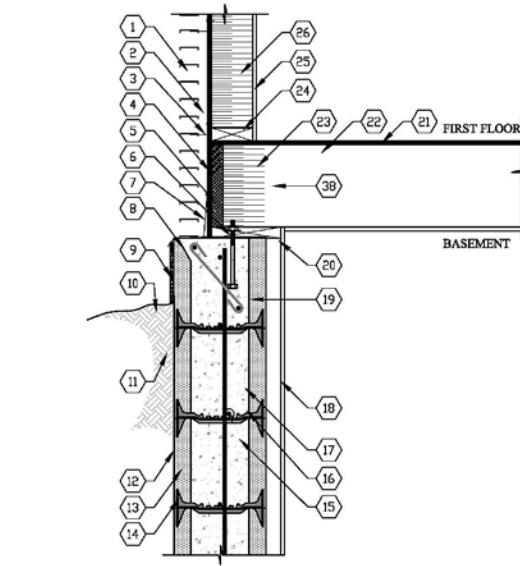
2 DETAIL "B"
A5.1 N.T.S.



4 DETAIL "D"
A5.1 N.T.S.



5 DETAIL "E"
A5.1 N.T.S.



3 DETAIL "C"
A5.1 N.T.S.

1	EXTERIOR BRICK FINISH CHOSEN BY THE OWNER
2	AIR SPACE 1"
3	BRICK TIES
4	WALL SHEATHING WITH TYVEK WRAP
5	RIMBOARD AS SPECIFIED
6	PRESSURE TREATED SILL PLATE W/ ANCHOR BOLTS (TYP)
7	FLASHING (TYP)
8	MITER QUAD-LOCK PANEL AS SHOWN OR EQUAL
9	PARGING OR 1/2" CEMENT BOARD PAINTED
10	SLOPE GRADE AWAY FROM WALL
11	COMPACTED FILL
12	FEEL&STICK WATER PROOFING OR EQUAL
13	QUAD-LOCK REGULAR 2.25" PANEL OR EQUAL
14	QUAD-LOCK TIE OR EQUAL
15	VERTICAL WALL REINFORCEMENT AS SPECIFIED
16	HORIZONTAL WALL REINFORCEMENT PLACED ALTERNARLY LEFT AND RIGHT O VERTICAL REINFORCEMENT
17	REINFORCED CONCRETE CORE AS SPECIFIED
18	INTERIOR FINISH (GYPSUM WALLBOARD) FASTEN TO TIE FLANGES. OPTION 2"x3" FRAMING INSIDE
19	LEDGE REINFORCEMENT AS SPECIFIED
20	QUAD-LOCK TRACK OR BQUAL - PROVIDES FASTENING SURFACE FOR INTERIOR FINISH
21	SUBFLOOR AS SPECIFIED
22	ENGINEERED I-JOISTS AS SPECIFIED
23	INSULATION R-22 MIN
24	BOTTOM PLATE
25	INTERIOR FINISH
26	INSULATION & STUDS, AS SPECIFIED IN WALLS ASSEMBLY DESCRIPTION R-24 SPRAY
27	GEOTEXTILE
28	FREE DRAINING FILL
29	WEEPING TILE
30	24" x10" CONCRETE FOOTING WITH 3.10M CONTINUOUS REBAR
31	UNDISTURBED SOIL
32	LOCK METAL TRACK FASTEN STRIP FOOTING
33	FLOOR FINISH AS SPECIFIED
34	SLAB ON GRADE REINFORCEMENT AS SPECIFIED
35	INSULATION AS SPECIFIED
36	VAPOR BARRIER
37	ZERO COMPACTION SAND OR GRAVEL
38	TOTAL R VALUE OF INSULATION IN WALLS ABOVE GRADE = R 22 OR 19+5 c.i. SEE TABLE 3.1.1.2.A(P) MMA SUPPLEMENTARY STANDARD SB12. SEE COMPLIANCE PACKAGE (HVAC DRAWINGS)
39	TOTAL R VALUE OF INSUL IN THE BASEMENT = 20 c.i. OR 12+10 C.I. SEE TABLE 3.1.1.2 (P) MMA SUPPLEMENTARY STANDARD SB 12. SEE COMPLIANCE PACKAGE (HVAC DRAWINGS)
40	24" LONG 15M T 14" O.C. DOWELS
41	2 x 3" @16 O.C. STUDS
42	1/2" GYPSUM BOARD PAINTED
43	24" LONG 15M @14" O.C. DOWELS
44	15M @14" O.C. VERTICAL REBARS
45	15M @16" O.C. HORIZONTAL REBARS.
45	3 - 10M CONT. REBARS

DATE	NO.	DESCRIPTION

PROJECT DESIGNER:

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FIRM NAME: FIRM SIGN

CONSULTING STRUCTURAL ENGINEER:



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ENGINEER STAMP:



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PROJECT TITLE:

Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO

DRAWING TITLE:

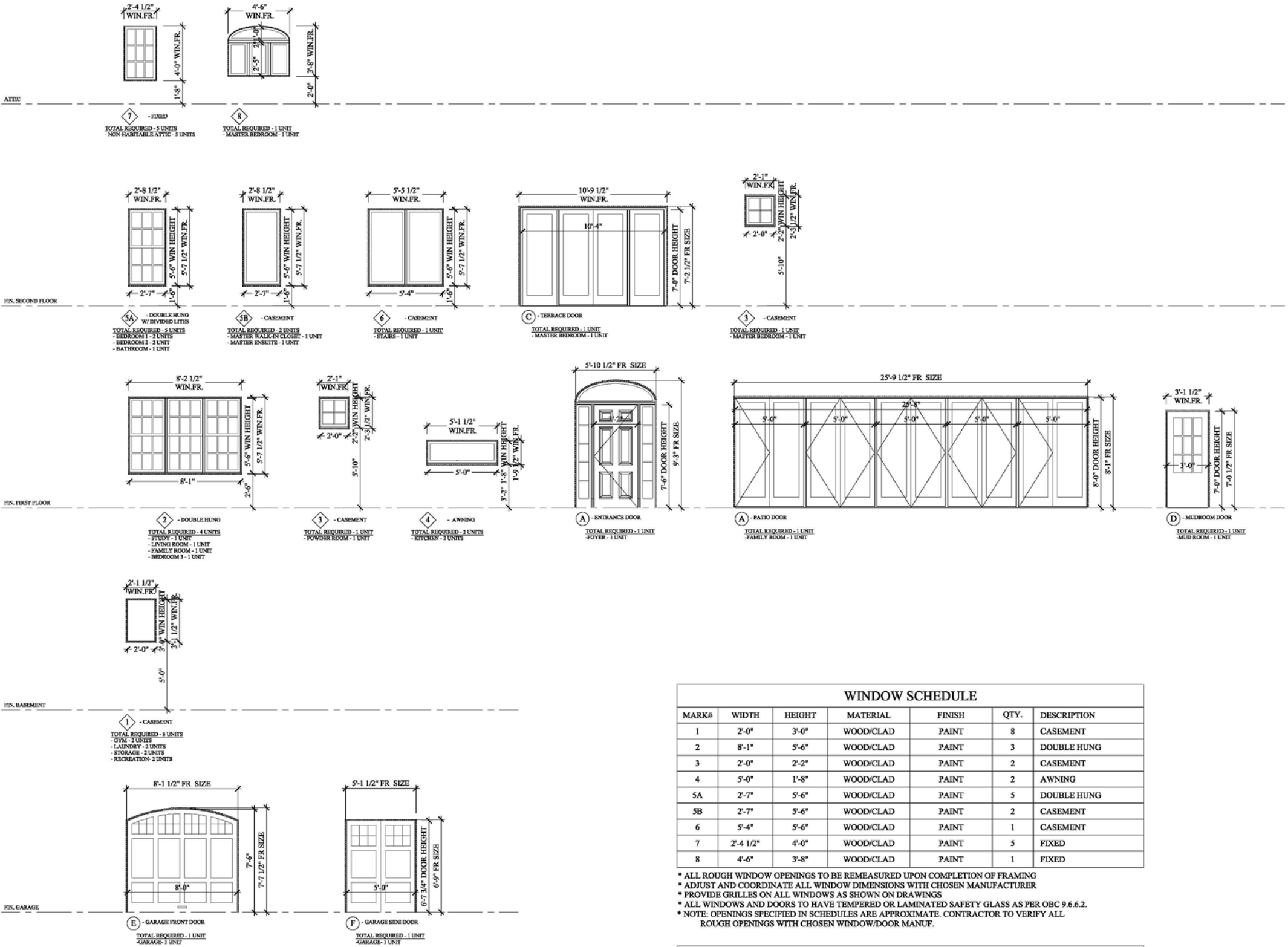
ELEVATIONS DETAILS
FOUNDATION WALL DETAIL

Scale: N.T.S.
Drawn by: E.S.
Date Started: 6/28/2019 10:21:58 AM
Date Last Saved: 6/28/2019 10:21:58 AM
Date Last Plotted: 6/28/2019 10:34:42 AM

PROJECT No.: DRAWING No.:

A5.1

WINDOWS AND DOOR ELEVATIONS



1 WINDOWS/DOORS ELEVATIONS
A6.1 SCALE: 1/4" = 1'-0"

WINDOW SCHEDULE						
MARK#	WIDTH	HEIGHT	MATERIAL	FINISH	QTY.	DESCRIPTION
1	2'-0"	3'-0"	WOOD/CLAD	PAINT	8	CASEMENT
2	8'-1"	5'-6"	WOOD/CLAD	PAINT	3	DOUBLE HUNG
3	2'-0"	2'-2"	WOOD/CLAD	PAINT	2	CASEMENT
4	5'-0"	1'-8"	WOOD/CLAD	PAINT	2	AWNING
5A	2'-7"	5'-6"	WOOD/CLAD	PAINT	5	DOUBLE HUNG
5B	2'-7"	5'-6"	WOOD/CLAD	PAINT	2	CASEMENT
6	5'-4"	5'-6"	WOOD/CLAD	PAINT	1	CASEMENT
7	2'-4 1/2"	4'-0"	WOOD/CLAD	PAINT	5	FIXED
8	4'-6"	3'-8"	WOOD/CLAD	PAINT	1	FIXED

- * ALL ROUGH WINDOW OPENINGS TO BE REMEASURED UPON COMPLETION OF FRAMING
- * ADJUST AND COORDINATE ALL WINDOW DIMENSIONS WITH CHOSEN MANUFACTURER
- * PROVIDE GRILLES ON ALL WINDOWS AS SHOWN ON DRAWINGS
- * ALL WINDOWS AND DOORS TO HAVE TEMPERED OR LAMINATED SAFETY GLASS AS PER OBC 9.6.6.2.
- * NOTE: OPENINGS SPECIFIED IN SCHEDULES ARE APPROXIMATE. CONTRACTOR TO VERIFY ALL ROUGH OPENINGS WITH CHOSEN WINDOW/DOOR MANUF.

DOOR SCHEDULE						
MARK#	WIDTH	HEIGHT	MATERIAL	FINISH	QTY.	DESCRIPTION
A	3' - 2"	7'-6"	WOOD/CLAD	PAINT	1	FRONT ENTRANCE DOOR
B	25'-8"	8'-0"	WOOD/CLAD	PAINT	1	TERRACE DOOR
C	10'-9 1/2"	7'-0"	WOOD/CLAD	PAINT	1	TERRACE DOOR
D	3'-0"	7'-0"	WOOD/CLAD	PAINT	1	MUD DOOR
E	8'-0"	7'-6"	WOOD/CLAD	PAINT	1	FRONT GARAGE DOOR
F	5'-0"	6'-7 3/4"	WOOD/CLAD	PAINT	1	SIDE GARAGE DOOR

- * ALL ROUGH DOOR OPENINGS TO BE REMEASURED UPON COMPLETION OF FRAMING
- * ADJUST AND COORDINATE ALL DOOR DIMENSIONS WITH CHOSEN MANUFACTURER
- * ALL WINDOWS AND DOORS TO HAVE TEMPERED OR LAMINATED SAFETY GLASS AS PER OBC 9.6.6.2.
- * NOTE: OPENINGS SPECIFIED IN SCHEDULES ARE APPROXIMATE. CONTRACTOR TO VERIFY ALL ROUGH OPENINGS WITH CHOSEN WINDOW/DOOR MANUF.

DATE	NO.	DESCRIPTION

PROJECT DESIGNER:

Ph.D. design
incorporated

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Ph. D. DESIGN INCORPORATED 28948
FIRM NAME FIRM BCN

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ENGINEER STAMP:



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REFER TO Ph.D. DESIGN INC. FIRM BCN28948

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PROJECT TITLE:

Residence for:
MARKHAM/MACDONALD
22 BIRCHVIEW BLVD.
TORONTO, ONTARIO

DRAWING TITLE:

**WINDOW/DOOR ELEVATIONS
WINDOW/DOOR SCHEDULE**

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

Drawn by: E.S.

Date Started: 6/28/2019 11:16:03 AM

Date Last Saved: 6/28/2019 11:16:03 AM

Date Last Plotted: 7/2/2019 10:07:47 AM

PROJECT NO.:

DRAWING No.:

A6.1