

DECISION AND ORDER

Decision Issue Date Wednesday, November 13, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Gayle Roebuck

Applicant: Ali Shakeri

Property Address/Description: 34 Glenayr Rd

Committee of Adjustment Case File: 19 107710 STE 12 MV (A0065/19TEY)

TLAB Case File Number: 19 164715 S45 12 TLAB

Hearing date: Monday, October 28, 2019

DECISION DELIVERED BY G. Burton

REGISTERED PARTIES AND PARTICIPANTS

Applicant	Ali Shakeri
Appellant	Gayle Roebuck
Appellant's Legal Rep.	V. Ross Morrison
Party	Melissa Ross Rubinoff
Party's Legal Rep.	Amber Stewart
Participant	Ray Mowling
Participant	Ed Stivelman
Expert Witness	Julius De Ruyter
Expert Witness	Timothy Quinn

INTRODUCTION AND BACKGROUND

This was an appeal to the Toronto Local Appeal Body (TLAB) by the neighbour to the north of 34 Glenayr Rd. (the subject property) of an approval of the Committee of Adjustment (COA) dated May 15, 2019. This would permit a new two storey dwelling with integral garage on the subject site. Ms. Gayle Roebuck at No. 36 objected to the addition of this structure, claiming that it was overly impactful on the neighbourhood. As discussions continued, it appeared that it was primarily the possible loss of two mature trees, one on the subject lot and one on the lot line, to which the Appellant objected. Her counsel Mr. Ross Morrison is also an owner of 36 Glenayr.

The property is designated as *Neighbourhoods* in the City of Toronto Official Plan (OP). It is zoned RD (f12.0;d0.65)(x1321) under Zoning By-law 569-2013. This permits single detached dwellings on a lot having a minimum lot frontage of 12.0 m and can have a maximum floor space index (FSI) of 0.65 (as of a 2012 By-law). The existing lot has a frontage of 15.24 m and is proposed to have an FSI of 0.79. It is on the west side of Glenayr Rd., midway between Bathurst Street to the west and Spadina Road to the east.

As of the TLAB Hearing date of October 28, 2019, the only remaining persons expressing an interest in the Appeal had reached an agreement, and signed Minutes of Settlement (MOS). These were the Applicant, Melissa Ross Rubinoff, and the Appellant, Ms. Roebuck. Therefore, the TLAB conducted a Settlement Hearing, as is required in order to receive evidence on the variances. Neither of the neighbours who sought Participant status attended or had communicated with TLAB as of the Hearing date.

MATTERS IN ISSUE

Can the altered proposal, as reflected in the Minutes of Settlement executed by the parties, meet the tests in the Act for approvals of minor variances?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the COA in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law;
- is desirable for the appropriate development or use of the land, building or structure; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance, individually and collectively.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (PPS) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (Growth Plan) for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Prior to the Hearing, Ms. Stewart had filed the owner's proposed changes to the design. These would not have affected any of the variances as of that date. That filing stated, in essence, that:

- The Applicant had considered the concerns regarding the proposed removal of the two private trees, even though there had been no Urban Forestry (UF) objections to the application. Should UF not issue a permit to remove these, the Applicant prepared an alternative design to facilitate retention of one or both trees.
- This new design is reflected in revised plans dated July 23, 2019. The area of the basement at the northwest corner, closest to the subject trees, has been reduced. The existing foundation walls would now be utilized, with the upper floor "floating" or cantilevering over the basement wall. There would then be no excavation at all within the tree protection zone (TPZ) for these trees.

The variances approved by the COA, with conditions, included variances for building length, depth, FSI and the north side yard setback, next to Ms. Roebuck's property. The two conditions imposed required that an application be made for a permit to injure or remove privately owned tree(s); and the (somewhat standard) condition to construct in accordance with a plan for a side elevation (subsequently determined to be the wrong attachment.) As can be seen below, revised elevations are to be attached to any approval, as agreed to in the MOS.

In the Arborist Report obtained by the Applicant, dated August 31, 2019 (in Ex. 2), Al Miley and Associates concluded that the "new design" would prevent injury to the two trees of concern, to the greatest extent possible. Any injury would usually occur during excavation work within the Tree Protection Zone (TPZ). However, in their opinion the roots would not be affected, since the existing foundation wall at the northwest corner of the current dwelling would be used for the new construction. The new structure would be cantilevered out over the foundation. As set out in the Arborist Report, the revision to the design of the dwelling was to prevent excavation within the area where there are existing roots. Excavation and construction would take place well outside the TPZ for both trees.

However, permits will still be required for possible Injury to these trees.

The expert planning evidence in favour of the proposal was provided by Mr. Julius De Ruyter, qualified by the TLAB as an expert planning witness due to his long and varied

experience. He prepared an Expert Witness Statement (EWS), Exhibit 1, containing many documents referred to below.

The requested variances are unchanged in the revised application, except for the building depth (resulting from a minor shift of the structure to the rear of the lot – see below). There are conditions resulting from the MOS. The variances requested are:

1. Chapter 10.20.40.20, By-law 569-2013

The maximum permitted building length for a detached dwelling is 17.0 m.

The new two-storey detached dwelling will have a building length of 21.64 m.

2. Chapter 10.20.40.30, By-law 569-2013

The maximum permitted building depth for a detached dwelling is 19.0 m.

The new two-storey detached dwelling will have a building depth of 22.7 m.

3. Chapter 10.20.40.40, By-law 569-2013

The maximum permitted floor space index is 0.65 times the area of the lot (398.4 m²).

The new two-storey detached dwelling will have a floor space index of 0.79 times the area of the lot (484.29 m²).

4. Chapter 10.20.40.70, By-law 569-2013

The minimum required side yard setback is 1.2 m.

The new two-storey detached dwelling will be located 0.9 m from the north side lot line.

The Conditions of Approval agreed to by the Parties:

(1) Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.

(2) The new two-storey detached dwelling shall be constructed substantially in accordance with the following plans, all prepared by Arcica Inc.:

- a. Site Plan A01 dated October 15, 2019;
- b. Main Elevation (East) A06 dated January 18, 2019;
- c. Rear Elevation (West) A07 dated January 18, 2019;
- d. Side Elevation A08 dated January 18, 2019;
- e. Side Elevation (North) A09 dated January 18, 2019.

Any other variances that may appear on these plans but are not listed in the written decision are NOT authorized.

(Note – these Plans were revised before this Decision issued, and the revisions dated July 23, 2019, are attached as Attachment 2).

Ms. Stewart explained that under the MOS, it was agreed that the entire structure would be shifted to the west 1.06 metres, so that the front corner of the new dwelling would be in line with the corner of the existing house. This can be seen in the Site Plan, Schedule 1 of Exhibit 3. This will better preserve the neighbours' views. It does slightly

increase the depth variance required, to 22.7 m, although there is no change to the length variance at 21.64 m. The depth increase is only a technical variance, as it includes 1 m of open space in front of the proposed dwelling (Depth is measured from the minimum required front yard setback to the back wall.) He noted that a greater depth variance had been granted for No. 33, at 23.45 m.

Mr. De Ruyter testified that the property has a frontage of 15.24 m, depth of 39.99 m along the north property line and depth of 40.46 m along the south property line, and a lot area of 613.03 m². The existing two-storey dwelling would be demolished. The new two-storey dwelling would have a gross floor area (GFA) of 484.29 m². The housing stock in the area generally consists of dwellings on generous size lots with single detached dwellings of one to three storeys, with the majority falling in the two-storey category.

Mr. De Ruyter assessed the application by selecting a Study Area (SA), here based on the usual 5-minute walk criterion. He then requested COA decision data from the City, again as is usual, in order to evaluate what already exists in the neighbourhood. 76 properties were compared, and he found many variances granted that exceeded those requested here (Ex 1, p. 8). The proposed thus will be consistent with many dwellings in the neighbourhood. The area has experienced a great deal of reinvestment in recent years, as may be seen in his photos in Exhibit 1. Even along Glenayr itself, he testified, almost every second property has been altered, so that these few blocks could even form a “mini” SA.

He testified that the building envelope and elevations here are similar to others nearby. The shift of the structure to the rear would have the rear wall in line with the recently constructed dwelling to the south (Mr. Stivelman). The building shape would be consistent with others in the neighbourhood, and the floor plans illustrate a conventional home. The rear yard would still be deep, not requiring a setback variance. The neighbours' expressed privacy concerns are not realistic, in his opinion, as both the main floor covered porch and the second floor windows are well removed from the south side yard property line. The revised depth variance is a minor and technical one only.

He emphasized the lack of comment from the responsible City departments, especially Planning and Engineering, and also TRCA. Urban Forestry merely asked for its standard permit to injure condition. In reviewing Provincial policies, as required, he found consistency with the PPS and conformity with the Growth Plan.

Respecting the test of general intent and purpose of the OP, he addressed the *Neighbourhoods* policies, and 4.1.5 particularly. Clause 4.1.5 c), height, mass and scale as applied to the requested FSI increase, is satisfied in his view. It is within the range of those granted in the 78 decisions he reviewed. The front elevation is consistent with the neighbourhood. Almost all applications in his table had requested variances to the FSI. Increases approved within the SA range between 0.46 and 1.24 times the area of the lot, with over 32 at 0.75 or larger. Immediately surrounding the subject property, an FSI of 0.79 was approved for 22, 31, and 37 Glenayr Road; and 0.80 for the dwelling on the south side of the subject property at 32 Glenayr Road (Mr. Stivelman).

The requested side yard setback is merely to legitimize the existing setback, satisfying 4.1.5 g) concerning patterns of rear and side yards.

The general intent and purpose of the Zoning By-law is also met, in his opinion. The proposed dwelling will be compatible with those around it and will co-exist in harmony, as required by 4.1.8 of the OP. None of the requested variances are inappropriate compared to those in his decision table. The variances are desirable, as required by the third test. It is a traditional or typical built form design in this area, and appropriately placed on the site. The variances also meet the test of “minor” since there are no adverse impacts of a planning nature, now that retention of the subject trees has been addressed.

ANALYSIS, FINDINGS, REASONS

I accepted that no further notice of the alteration to the requested variances was required, as set out in subsection 45(18.1.1) of the Act. The dwelling would be in line with the existing house. The neighbours most affected by any changes, Participants Mr. Eduardo Stivelman at 32 Glenayr and Mr. Mowling at 30 Glenayr, have been kept abreast of the settlement negotiations. Neither attended the Hearing in the end, and Ms. Roebuck has promised to keep them informed (MOS, para. 1).

As can be seen from the Site Plan, the rear main wall of the proposed structure will align with Mr. Stivelman’s dwelling at No. 32 to the south, lessening his concerns about privacy. He mentioned reduction in sunlight, and in views to the north. I discount these comments because there is no height variance required, and no structures to the rear except for a one storey covered porch, at a distance from his dwelling. It can also be seen from the Site Plan that the new structure would not “occupy almost the entire land of the lot”, as he stated in his letter to the COA and in his Participant Statement for the TLAB Hearing. The increased depth variance is really just a technical one, created by moving the dwelling to the rear as Ms. Stewart stated. The depth measurement includes 1 m of open space in front of the proposed dwelling. I also compared the photos prepared by Mr. De Ruyter with great care, as they definitely support his arguments about similar built form and sizes of nearby structures. This was confirmed in my site visit.

Mr. Ray Mowling’s Participant Statement stressed his desire for a shadow study. I see no need or utility for this, as only a two storey dwelling is proposed, with no height or side yard setback reductions. His dwelling is No. 30, two to the south.

I believe that neither objecting Participant realized that the north side yard setback of 0.9 m is the *existing* setback of the present dwelling, and that this variance would merely recognize and legitimize it for the proposed. Ms. Roebuck did not oppose this variance. Both objectors also raised the difficulties of dealing with construction in the neighbourhood. Although I sympathize, this is not a planning issue to be dealt with in a variance appeal.

The MOS contained issues that are not of a planning nature, and so do not enter into the necessary evaluation of the variances. These were: obligation to inform interested neighbours, termination of the agreement should neighbours object at the TLAB;

construction and permanent fencing; unobstructed driveway; and protection of the existing retaining wall on the south boundary of Ms. Roebuck's property. I attach the MOS for information purposes at the request of the Parties.

I conclude that the minor variances, both individually and collectively, meet all of the four tests under subsection 45(1) of the Act. The proposed dwelling will be compatible with the near neighbourhood. The minor variances are of a magnitude that are consistent with those approved for other dwellings nearby. The new dwelling will be compatible and consistent with the existing physical character of the neighbourhood.

DECISION AND ORDER

The Appeal is denied, and the variances in **Attachment 1** are approved, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review, Toronto and East York District.
2. The new two-storey detached dwelling shall be constructed substantially in accordance with the Plans in **Attachment 2**, all prepared by Arcica Inc.:
 - a. Site Plan A01 dated October 15, 2019;
 - b. Main Elevation (East) A06 dated July 23, 2019;
 - c. Rear Elevation (West) A07 dated July 23, 2019;
 - d. Side Elevation A08 dated July 23, 2019;
 - e. Side Elevation (North) A09 dated July 23, 2019.Any other variances that may appear on these plans but are not listed in the written decision are NOT authorized.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.20.40.20, By-law 569-2013
The maximum permitted building length for a detached dwelling is 17.0 m.
The new two-storey detached dwelling will have a building length of 21.64 m.
2. Chapter 10.20.40.30, By-law 569-2013
The maximum permitted building depth for a detached dwelling is 19.0 m.
The new two-storey detached dwelling will have a building depth of 22.7 m.
3. Chapter 10.20.40.40, By-law 569-2013
The maximum permitted floor space index is 0.65 times the area of the lot (398.4 m²).
The new two-storey detached dwelling will have a floor space index of 0.79 times the area of the lot (484.29 m²).
4. Chapter 10.20.40.70, By-law 569-2013
The minimum required side yard setback is 1.2 m.

The new two-storey detached dwelling will be located 0.9 m from the north side lot line.

ATTACHMENT 2 – PLANS

X 

G. Burton

Panel Chair, Toronto Local Appeal Body

Attachment 2

Schedule 2

Revised List of Variances and Conditions 34 Glenayr Road

Chapter 10.20.40.20, By-law 569-2013

The maximum permitted building length for a detached dwelling is 17.0 m. The new two-storey detached dwelling will have a building length of 21.64 m.

Chapter 10.20.40.30, By-law 569-2013

The maximum permitted building depth for a detached dwelling is 19.0 m. The new two-storey detached dwelling will have a building depth of 22.7 m.

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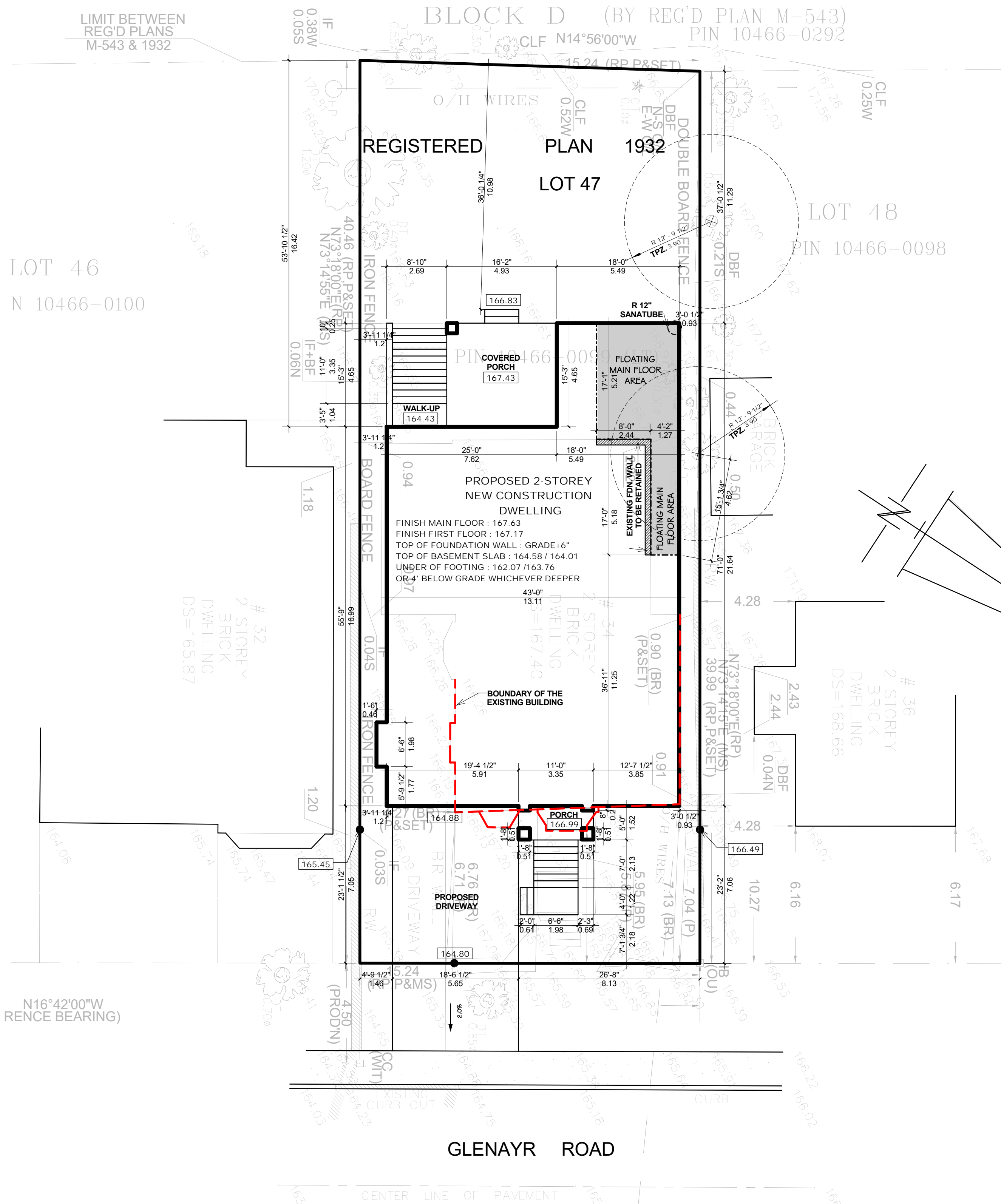
Chapter 10.20.40.70, By-law 569-2013

The minimum required side yard setback is 1.2 m.

The new two-storey detached dwelling will be located 0.9 m from the north side lot line.

Conditions of Approval

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 - d. Side Elevation A08 dated July 23, 2019;
 - e. Side Elevation (North) A09 dated July 23, 2019.
- (3) Any other variances that may appear on these plans but are not listed in the written decision are NOT authorized.



Schedule 1

notes:

ALI SHAKERI
T: 416 821 3960 F: 416 2508900

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

revisions:
JAN.18, 2019- Issued for COA 1
JUL.23, 2019- Issued for TLAB
OCT.15, 2019- Issued for TLAB 2

- 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.
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project: 34 GLENAYR ROAD	
drawing: SITE PLAN	
scale: 3/32" = 1'-0"	page: A 01

THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER

Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

Zoning Data Matrix	
RD (f12, d0.65)(x1321)	Proposed
Lot #	LOT 47
Plan #	1932
Lot Area	6598.58 s.f. - 613.03 m ²
Front Yard Area	102.39 m ²
Driveway Area	39.85 m ²
Porch and Walkway Area	7.39 m ²
Landscape Open Space Area	62.54 m ² (61.08%)
Soft Landscaping Area	55.15 m ² (88.18%)
Building Area(Coverage)	2918.31 s.f. - 271.12 m ² (44.22%)
Gross Floor Area	5212.88 s.f. - 484.29 m ² (79%)



notes:

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JUL.23, 2019- Issued for TLAB

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6. ALL STRUCTURAL DESIGN MUST BE REVIEWED AND APPROVED BY CERTIFIED STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION

project:
34 GLENAYR ROAD

drawing:
MAIN ELEV.(EAST)

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

page:
A 06

THIS UNDERSIGNED HAS REVIEWED & TAKES RESPONSIBILITY FOR THIS DESIGN, & HAS THE QUALIFICATIONS & MEETS THE REQUIREMENTS SET OUT IN THE O.B.C. TO BE A DESIGNER

Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

notes:

ALI SHAKERI
T: 416 821 3960 F: 416 2508900

ARCICA INC.
326 SHEPPARD AVENUE EAST,
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TORONTO, ONTARIO, CANADA

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project:
34 GLENAYR ROAD

drawing:
REAR ELEV.(WEST)

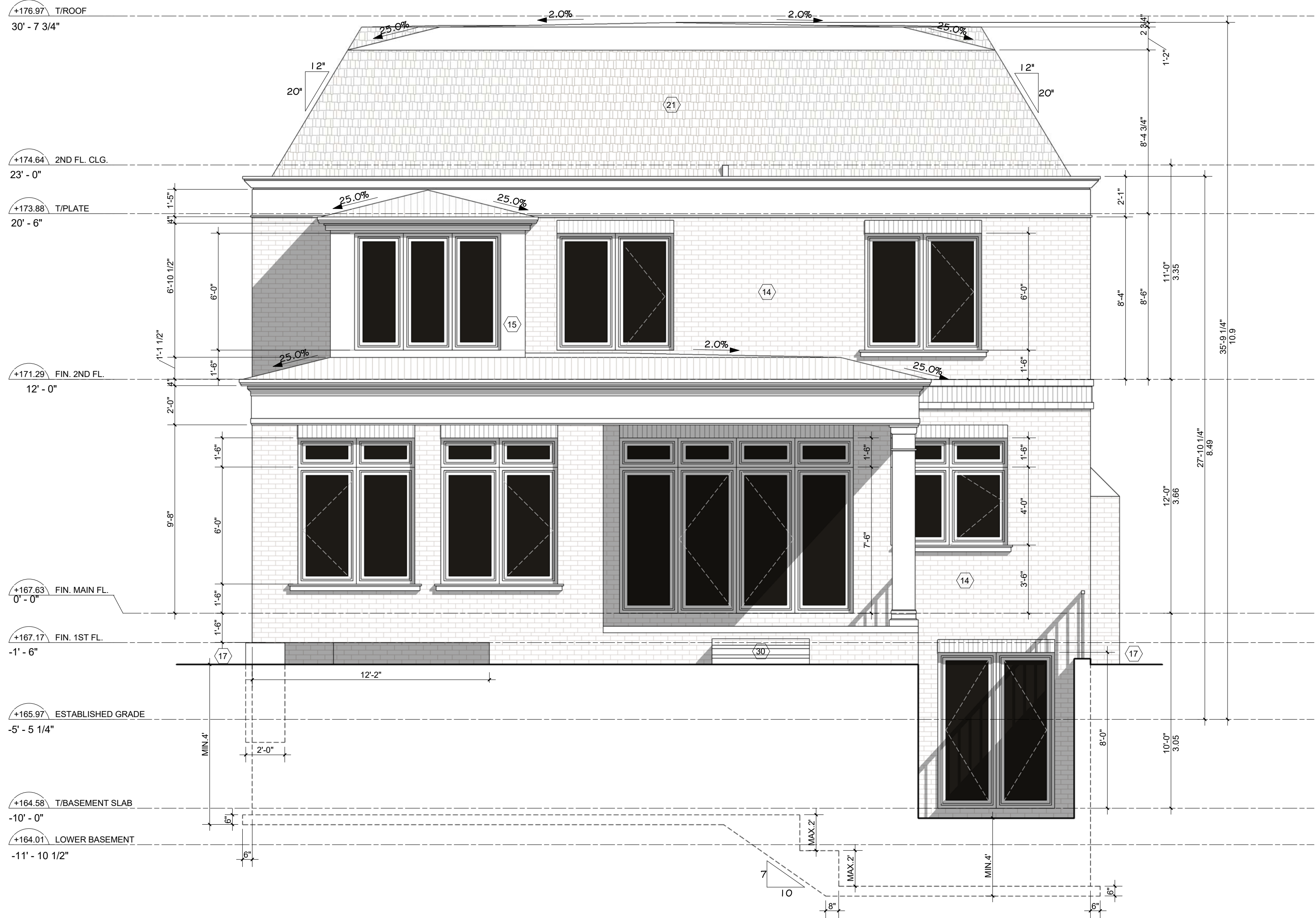
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1/4" = 1'-0"

page:
A 07

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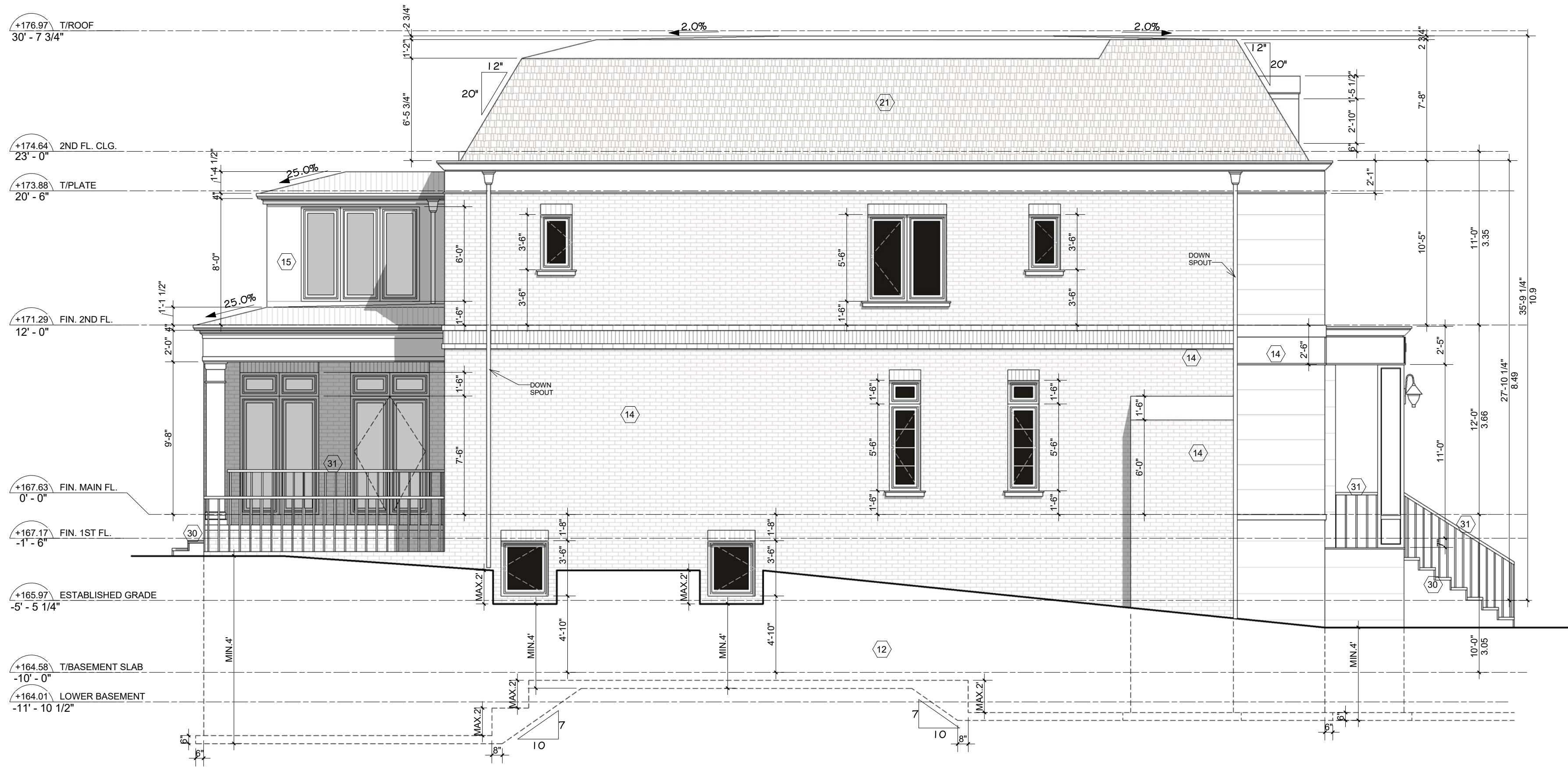
Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

Ali Shakeri



GLAZED AREAS:

1. AREA OF EXPOSED BUILDING FACE: 1528.00 SQ.FT.
2. PROPOSED GLAZED AREA: 81.92 SQ.FT. (5.36%)



notes:

ALI SHAKERI

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ARCICA INC.

326 SHEPPARD AVENUE EAST,
M2N 3B4
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project:

34 GLENAYR ROAD

drawing:

SIDE ELEVATION

scale:

3/16" = 1'-0"

page:

A 08

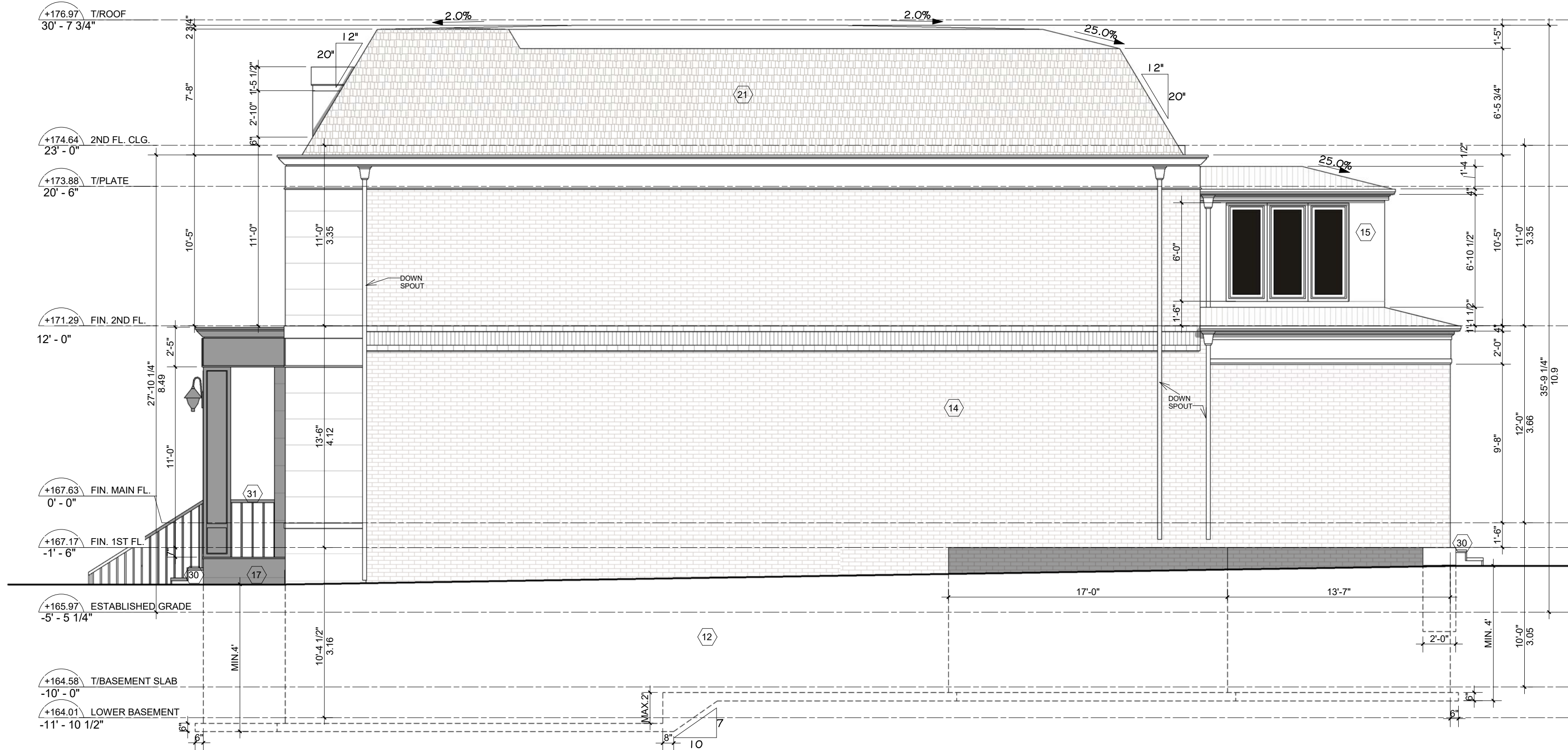
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Ali Shakeri
BCIN#24574
F&A Associates Ltd.
BCIN#30998

notes:

GLAZED AREAS:

1. AREA OF EXPOSED BUILDING FACE: 1750.77 SQ.FT.
2. PROPOSED GLAZED AREA: 40.5 SQ.FT. (2.31%)



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project: 34 GLENAYR ROAD	
drawing: SIDE ELEVATION(NORTH)	
scale: 3/16" = 1'-0"	page: A 09

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