

DECISION AND ORDER

Decision Issue Date Wednesday, December 11, 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): NASEEM SALOOJEE

Applicant: NATALIE TALEB

Property Address/Description: 475 ROXTON ROAD

Committee of Adjustment Case File: 19 103422 STE 11 MV (A0030/19TEY)

TLAB Case File Number: 19 200200 S45 11 TLAB

Hearing date: Friday, December 06, 2019

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVE
Natalie Taleb	Applicant	
Naseem Saloojee	Owner/Appellant	
Ann Marie Keating	Party	Sylvain Rouleau

INTRODUCTION

The Applicant, Natalie Taleb, appealed the decision of the Committee of Adjustment (COA) relating to a proposal to convert the existing two-storey townhouse to a three unit dwelling located at 475 Roxton Road (Subject Property). To facilitate this proposal, a series of 10 variances were applied for. These variances were heard and refused at the Wednesday, July 17, 2019 Toronto and East York District COA meeting.

The subject property is located in the Palmerston-Little Italy neighbourhood in the former City of Toronto.

The other party in this matter is Ann Marie Keating, who is the owner of the property located at 477 Roxton Road, which is located to the north of the subject property and abuts the property.

I visited the subject property and the surrounding neighbourhood prior to the hearing to familiarize myself with the area and reviewed all pre-filed materials in preparation for the hearing.

Prior to the hearing, the parties informed TLAB that they reached a settlement. As such, the hearing proceeded as a settlement hearing to determine whether the terms of settlement satisfied the statutory criteria for a minor variance.

MATTERS IN ISSUE

The variances which are now being requested have been revised as per discussions between the Appellant and the Party. These variances are outlined below:

City Wide Zoning By-law No. 569-2013

- 1) The required minimum distance between main walls for a townhouse is 2.00 metres where there are no openings to dwelling units in those main walls. The distance between main walls for the proposed new two storey rear addition and new full third floor addition is 0.00 metres on the north side. [10.10.40.80.(1)(A) Distance between Main Walls of the Same Townhouse or Apartment Building]
- 2) 2) The permitted maximum floor space index is 0.60 times the area of the lot: 116.86 square metres. The proposed new two storey rear addition and new full third floor addition will increase the existing floor space index to 0.86 times the area of the lot: 166.89 square metres [10.10.40.40.(1)(A) Floor Space Index]
- 3) The permitted maximum height of all side exterior main walls facing a side lot line is 7.50 metres. The proposed height of the side exterior main walls facing a side lot line for the new full third floor addition is 9.70 metres. [10.10.40.10.(2)(B)(ii) Maximum Height of Specified Pairs of Main Walls]

City of Toronto Zoning By-law No. 438-86

- 4) The by-law requires a row house in a R2 district to have a side lot line setback of 0.45 metres, where the side wall contains no openings. The proposed new two storey rear addition, new second floor rear deck and new full third floor addition will have a side lot line setback of 0.00 metres on the north side. [6(30 Part II 3.C(I) – Side Lot Line Setback, 0.45 m Min (Wall Without Openings)]
- 5) The by-law requires a building to be located no closer than 0.90 metres to the side wall of an adjacent building that contains no openings. The proposed new two storey rear addition and new full third floor addition will be located 0.00

metres from the adjacent building on the north side. [6(3) Part II 3(I) – Setback from Adjacent Building without Openings]

The settlement agreement is based on drawings dated October, 10, 2019, as prepared by Square Vis Architects Inc. This material was submitted to the TLAB and is part of the settlement package provided by the parties. These drawings are attached to this decision as Attachment 2.

The TLAB notes that City Planning staff had requested that if the variances were approved, two conditions be imposed as shown below:

- 1) That the second and third floors of the proposed dwelling have a maximum building depth of 16.6 metres exclusive of the second floor rear deck, as per the south elevation plan received by the Committee of Adjustment on May 7, 2019.
- 2) The second floor rear deck must be constructed and maintained with permanent landscaped screening or opaque privacy screening along the north and south edges of the proposed deck to a minimum height of 1.5 metres from the floor of the deck.¹

While the TLAB recognizes these comments, it also takes into account that substantive changes to the proposal has occurred which makes these conditions no longer pertinent. As such, these conditions will not be imposed as part of this decision. It is noted that as part of the settlement agreement as drafted between the two parties involved, the Appellant is requesting that a condition be imposed whereby construction of the proposed addition on the site be done in substantial conformity to the drawings as provided by the appellant. The TLAB will consider this as part of the evidentiary material as submitted for the hearing.

The settlement of matters between parties is encouraged. However, despite the presence of a settlement proposal, which should be given great weight, the Toronto Local Appeal Body (TLAB) must still be satisfied that the considerations raised by provincial policy and subsection 45(1) of the *Planning Act*, are satisfactorily met by the settlement proposal and that the public interest is served by any settlement.

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').

¹ City of Toronto (2019, July). Staff Report: Committee of Adjustment Application: 475 Roxton Road. Retrieved from <http://app.toronto.ca/AIC/index.do?folderRsn=lzrY3Ri2gzVyaBrqSgg9g%3D%3D>

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

The Applicant called Mr. Andrew Palumbo, a Registered Professional Planner, who I qualified to give professional land use planning opinion evidence. There was no contrary evidence presented at this hearing.

Mr. Palumbo outlined that the subject property is in the Palmerston-Little Italy neighbourhood in the western quadrant of the former City of Toronto. 475 Roxton Road is situated south of Bloor Street West and north of Harbord Street, and bounded by Ossington Avenue to the west and Shaw Street to the east. The Ossington Toronto Transit Commission (TTC) station and Bloor Street commercial strip are located within walking distance of this property. The street in question is a mature residential neighbourhood which contains a variety of building types, included two storey detached and semi-detached dwelling. Redevelopment has begun to occur along this street as development projects such as a relatively new townhouse complex has been built to the south of this subject property. In-fill development or alteration of existing homes is also beginning to occur as new residents begin to populate this area. Municipal amenities such as parks are also a predominant feature here as well.

Mr. Palumbo further commented on the changes which have been made to the proposal as a result of extensive dialogue with the applicant's building and design team and with the Party and their legal representative. The resultant changes are expressed in his Affidavit as follows:

- Reduction in the building depth to 13.20 m whereas 18.33 m was proposed. A variance is no longer required.
- Reduction in floor space index to 0.86 whereas 1.14 was proposed.
- Removal of the second storey stair case. A variance is no longer required.

- Remove the second and third suite. A variance is no longer required to legalize the secondary and third suites and the associated parking.²

As a result of these changes, the variance requests have also been altered. These variances were previously stated in the 'Matters in Issue' section of this decision. The changes to the proposal are, in Mr. Palumbo's opinion, a reduction in the scale and intensity of the building footprint for the Party and to the broader neighbourhood. The narrow side yards as seen with this property is indicative of other residential properties in the area. Issues such as a light and privacy have been addressed through changes to this proposal thereby reducing any adverse impact to the adjacent properties. This proposed three storey addition is similar to other redevelopment which begun to occur in the neighbourhood and would not act to substantively alter the character of the area. The related provincial planning policies such as the *Provincial Policy Statement* and *Growth Plan for the Greater Golden Horseshoe* are opined as being consistent with this proposal. Moreover, Mr. Palumbo expressed his professional opinion that the four tests for a minor variance as stipulated by the *Planning Act* were met and that the proposal represents good planning.

The Party's legal representative Mr. Sylvain Rouleau did not elect to cross-examine the witness. He also acted to accept the testimony as provided by Mr. Palumbo and stated that the elements as described by Mr. Palumbo were captured in the settlement agreement which also contained more specific items such as construction schedule and materials which had been agreed to by the Appellant and the Party in earnest. It is noted that the Party Ms. Keating did not participate in the hearing. Her legal representative Mr. Rouleau indicated that he had been granted permission to represent her interests at the hearing.

ANALYSIS, FINDINGS, REASONS

With the material as presented before me, I have chosen to accept Mr. Palumbo's testimony and have assessed it in relation to the four tests. The extensive revisions to the proposal and as more sufficiently shown in the revised drawings has resulted in a less imposing addition with a decreased visual and privacy impact to the adjacent properties. As the changes to the variances is a reduction from the original requests, the TLAB is satisfied that re-notification to the public and potential re-application for minor variance is not necessary in this instance. It is presumed that the neighbouring residents would not object to a proposal which has now been decreased in scale and massing.

The reduction in building depth is notable as it results in a building addition which reduces the encroachment of the building footprint on the landscaped area of the lot.

² Toronto Local Appeal Body (2019, November). Affidavit of Andrew Palumbo, BA (Hons), MCIP, RPP (sworn November 15, 2019). Retrieved from <http://app.toronto.ca/AIC/index.do?folderRsn=lzrY3Ri2gzVyaBrqSgg9g%3D%3D>

The rear landscaped area between the detached dwelling and the rear detached garage is preserved to a greater extent as a result. While this has occurred, the TLAB does note that the proposal incorporates three decks along the rear portion of the addition. The third floor deck is stepped back as opposed to the decks on the first and second floor. The TLAB does note that while these decks are being introduced, it is a building type which is not atypical for this area. Furthermore, these decks would primarily be facing towards the rear laneway which is used by detached garage. As part of a site visit to the area, it was observed that this laneway is principally used for parking of vehicles and is not currently used for habitable space. As such, the privacy dimension here is not as significant a concern for the tribunal.


In review of this application's materials, in addition to the Party herein, there was one other letter of concern submitted by another resident on Roxton Road when this variance was initially considered by the COA. However, this person did not elect to be a party or participant to the TLAB proceedings. As such, the TLAB would only be able to assess the issues as submitted by formal parties to this appeal. With the sole Party to this matter now entering into settlement process with the Appellant, there are no other parties/participants whose potential issues which need to be addressed. As such, any further adjudication or mediation would not be pertinent.

The condition as proposed by the Appellant to request that the proposal be built in substantial conformity with the drawings as provided as part of the settlement agreement is considered reasonable and would ensure that the Party is provided assurances on the part of the TLAB that the addition is constructed as it has been presented to the tribunal.

Based on the evidence before me and based on the submissions of the Appellant's counsel, I am satisfied that the variances along with the imposed conditions meet the four tests for variance. The parties have engaged in constructive dialogue to achieve a revised proposal which is more appropriate for the neighbourhood context. Furthermore, the TLAB's general practice direction to encourage mediation and settlement amongst the interested parties is achieved in this instance.

DECISION AND ORDER

The minutes of settlement are approved. Accordingly, the applications for variances are approved and are subject to the conditions listed in Attachment 1.



Justin Leung
Panel Chair, Toronto Local Appeal Body
Signed by: Leung, Justin

Attachment 1

Conditions of Minor Variance Approval

1. The addition shall be constructed substantially in accordance with the Site Plan and Elevations prepared by Square Vis Architects Inc and dated October 10, 2019, attached as Attachment 2. Any other variance(s) that appear on these plans but are not listed in the written decision are NOT authorized.



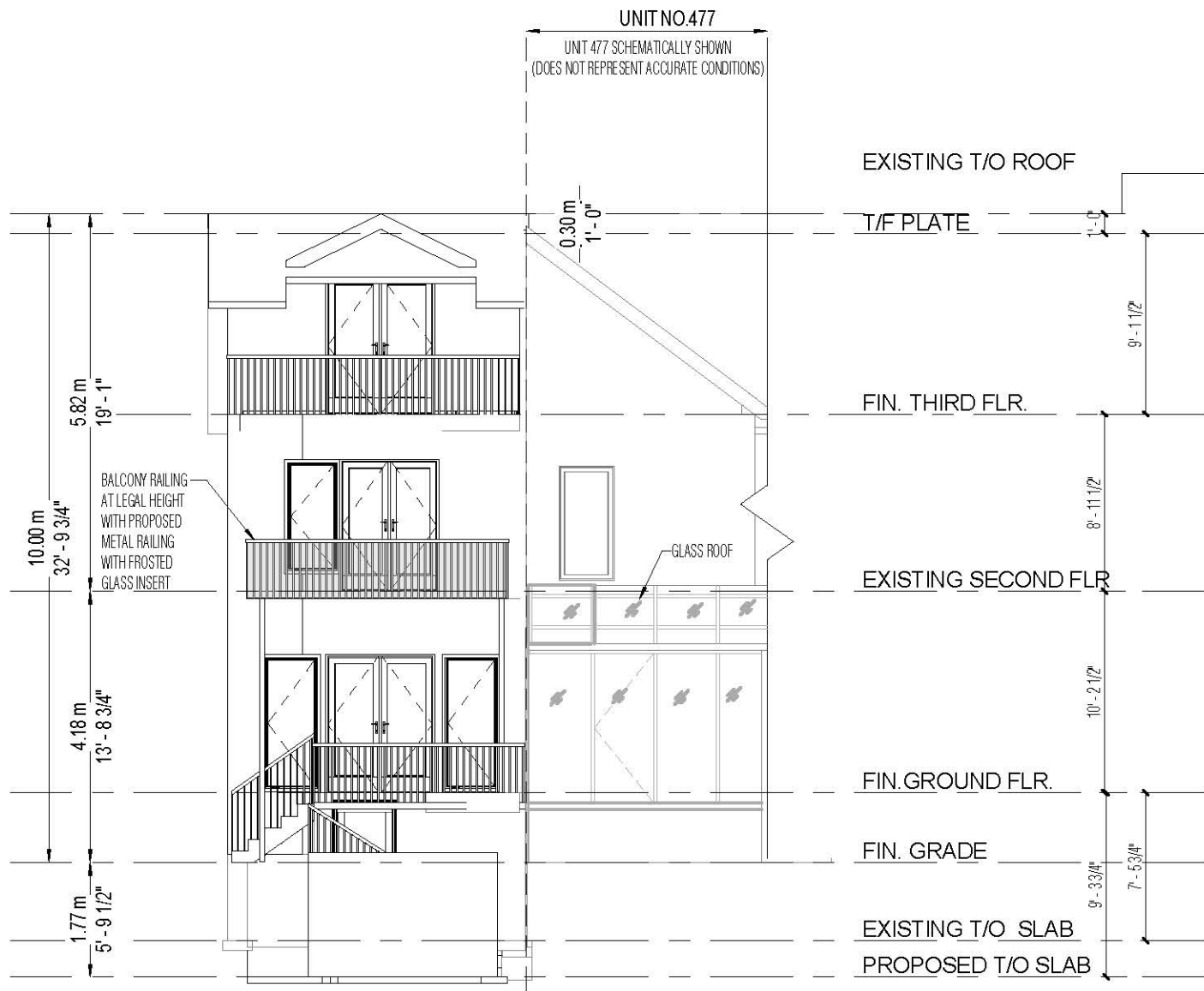
NASEEM SALOOJEE
475 ROXTON RD, TORONTO, ONTARIO

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R2-0114
DATE
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EAST PROPOSED ELEVATION

Scale: 1 : 100

Seal:

A08B

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2	ISSUED FOR REVIEW	09/06/19	
1	ISSUED FOR REVIEW	08/29/19	

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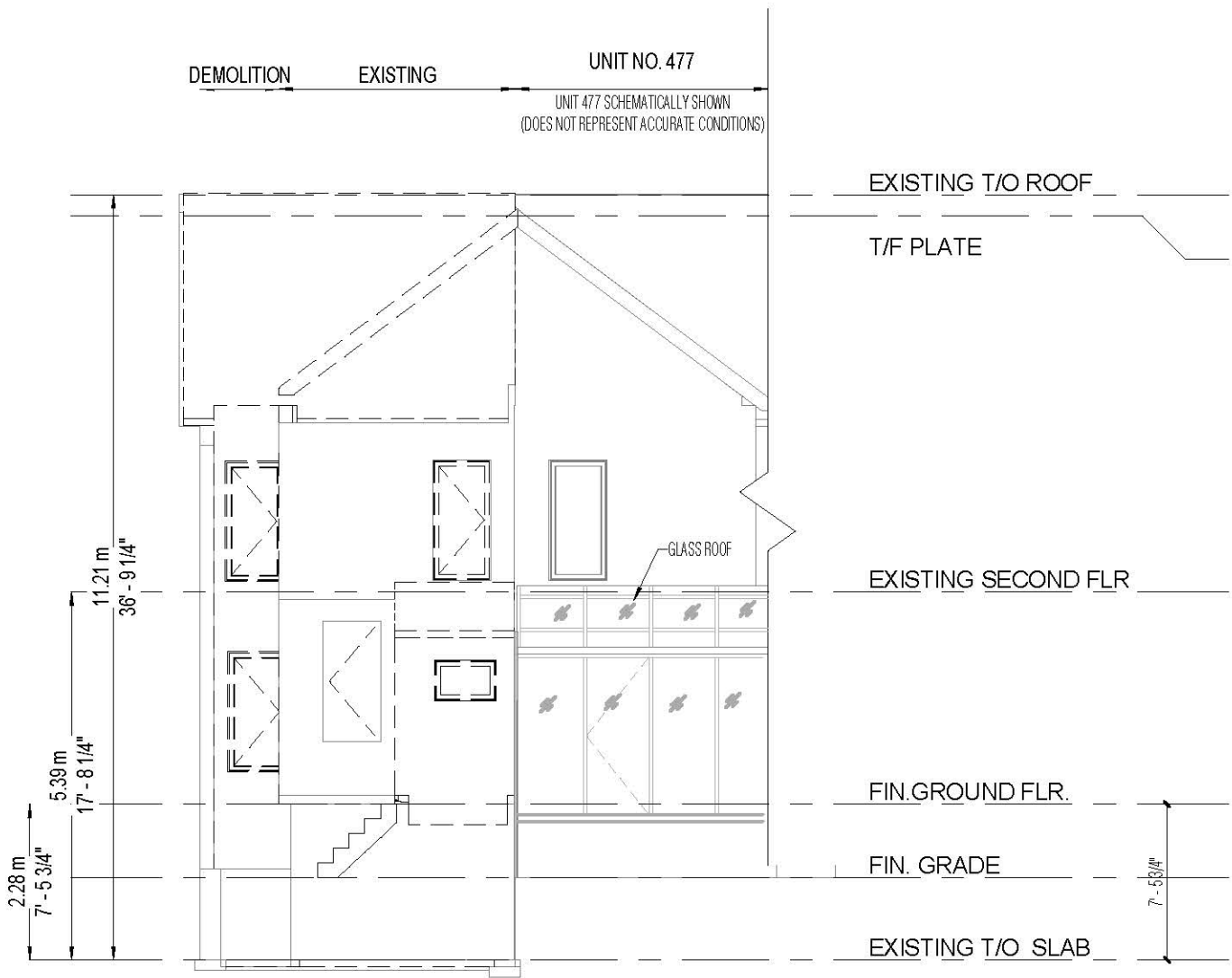


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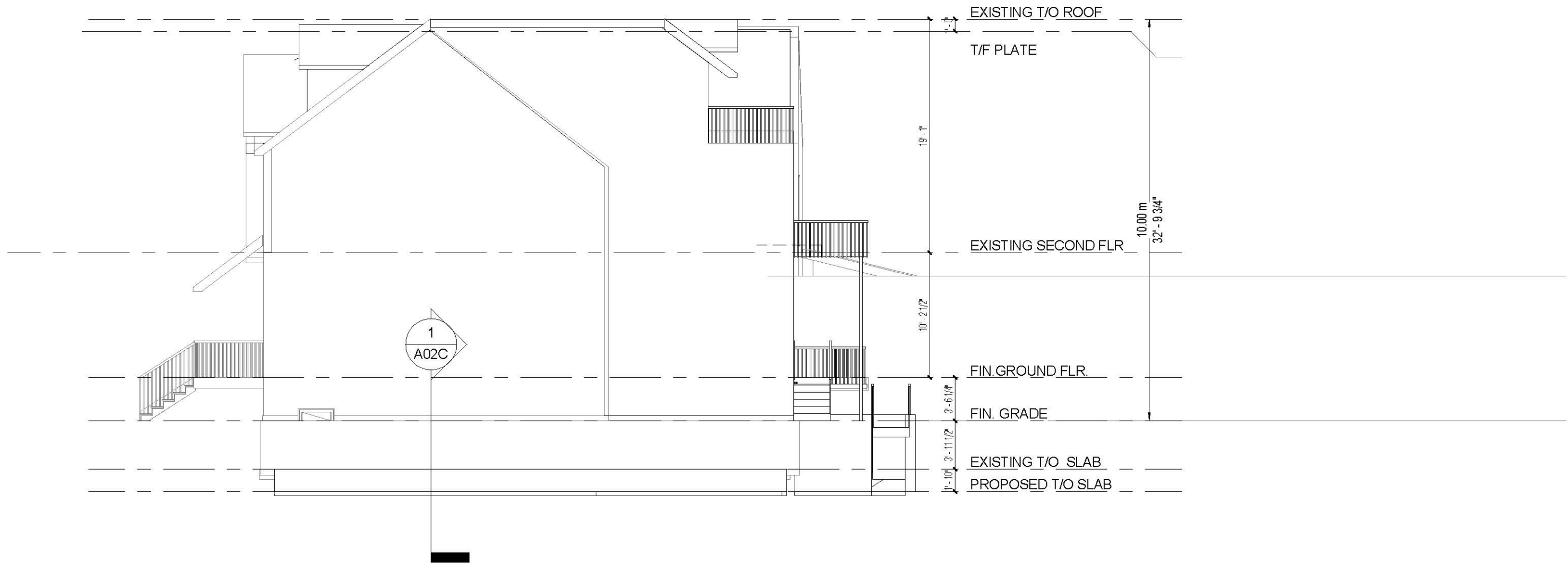
EAST DEMOLITION ELEVATION

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Seal:

A08A

NORTH ARROW:					CONTRACTOR MUST VERIFY ALL DIMENSIONS ON THE JOB AND REPORT ANY DISCREPANCY TO THE DESIGNER BEFORE PROCEEDING WITH THE WORK. ALL DRAWINGS AND SPECIFICATIONS ARE INSTRUMENTS OF SERVICE AND THE PROPERTY OF THE DESIGNER WHICH MUST BE RETURNED AT THE COMPLETION OF THE WORK. DRAWINGS ARE NOT TO BE SCALED.
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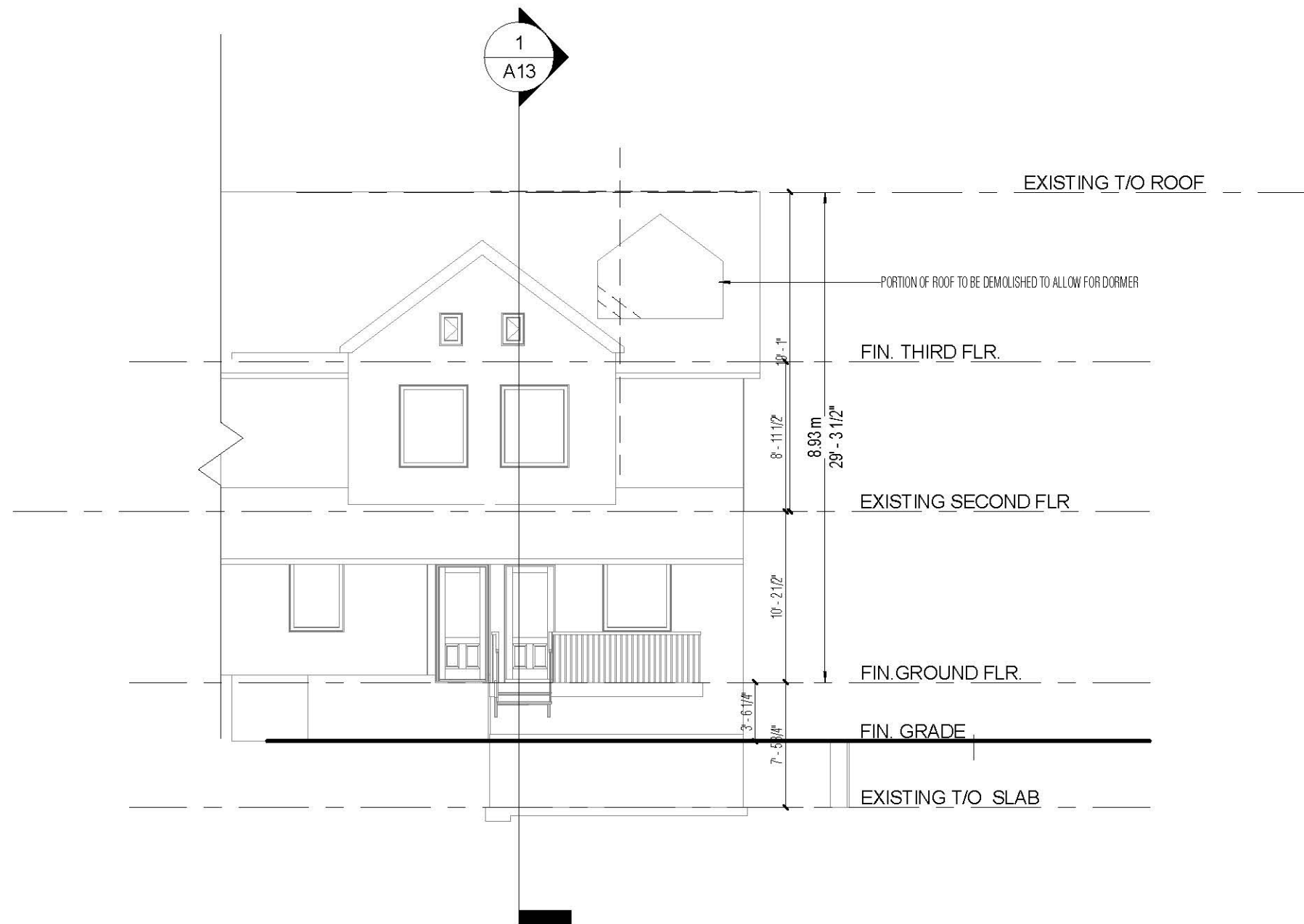
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SOUTH PROPOSED ELEVATION

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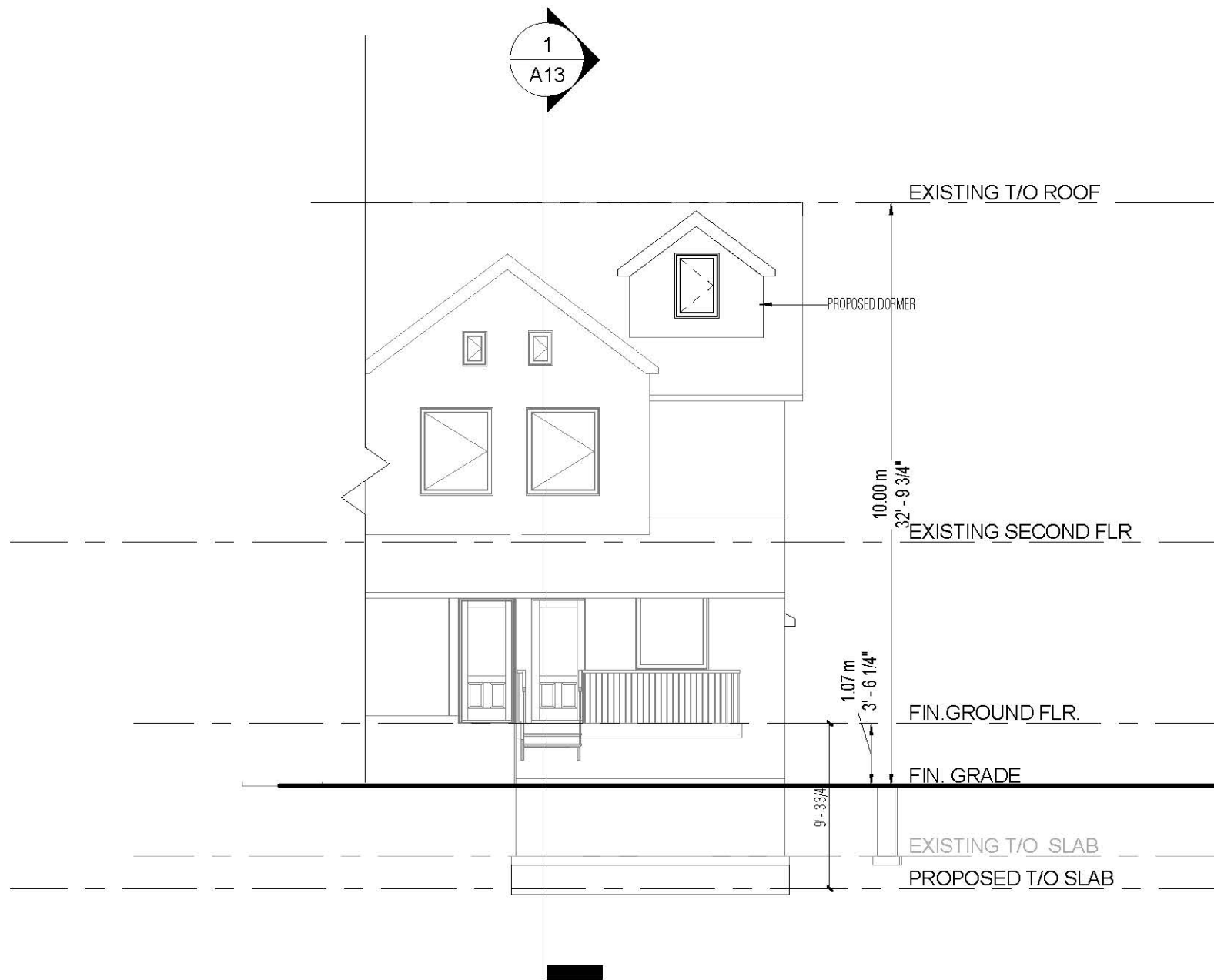
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WEST DEMOLITION ELEVATION

Scale: 1 : 100

A06A

Seal:



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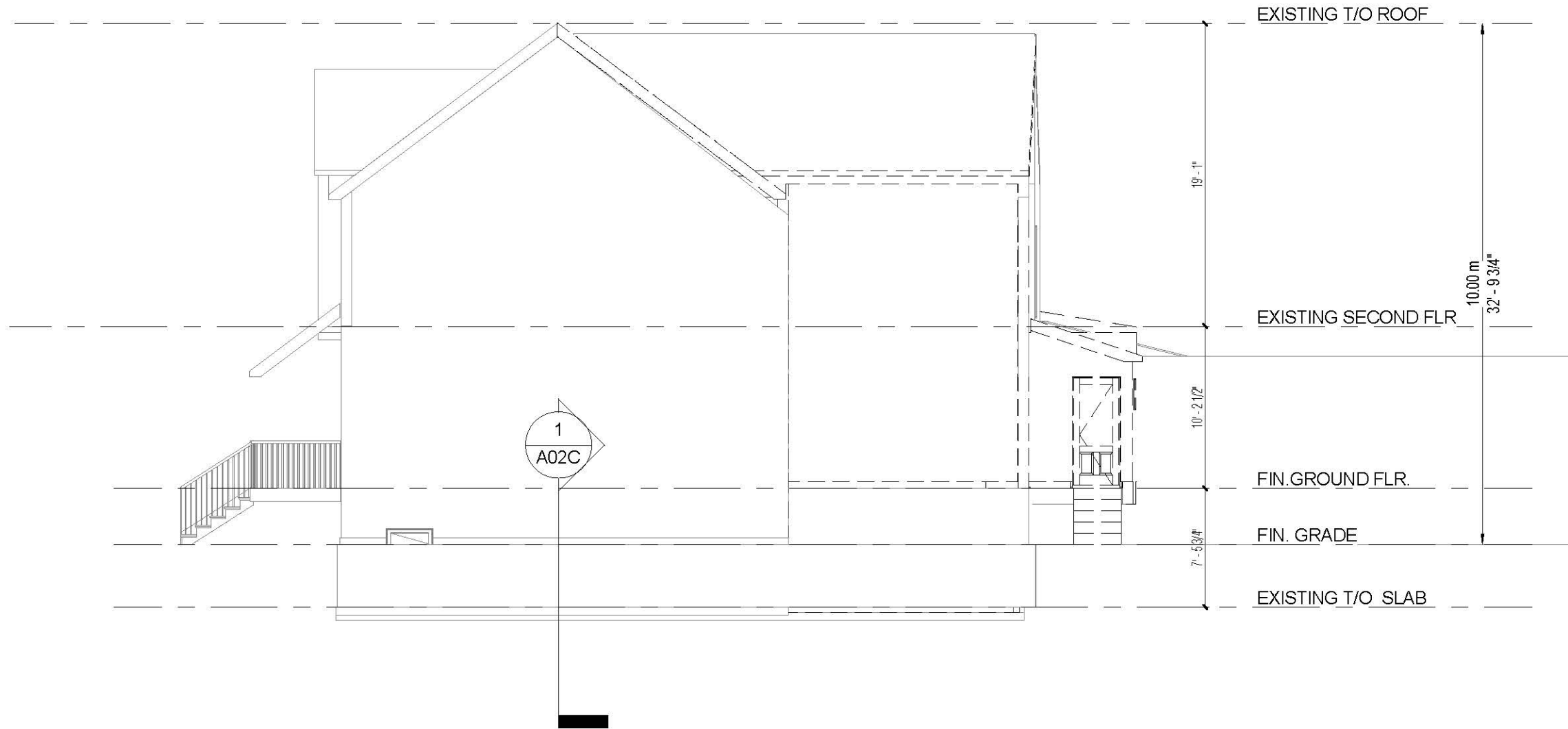
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WEST PROPOSED ELEVATION

Scale: 1 : 100

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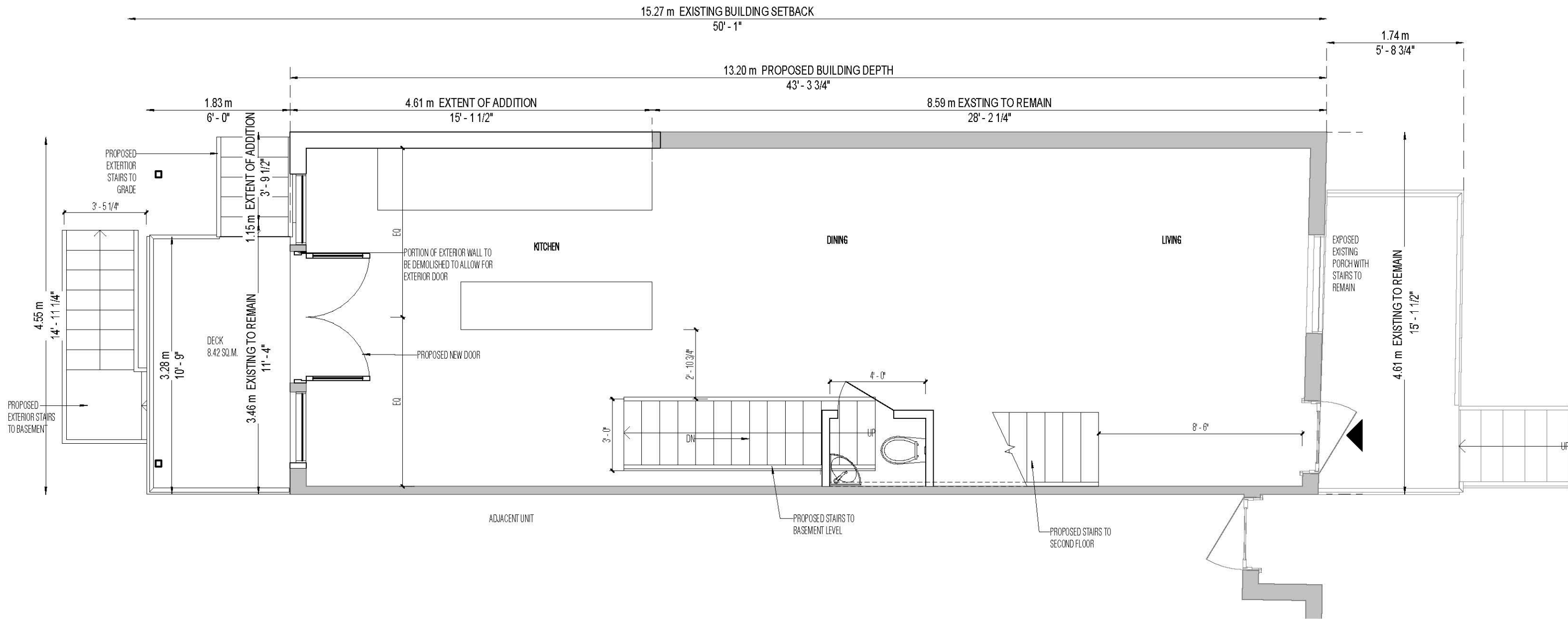
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SOUTH DEMOLITION ELEVATION

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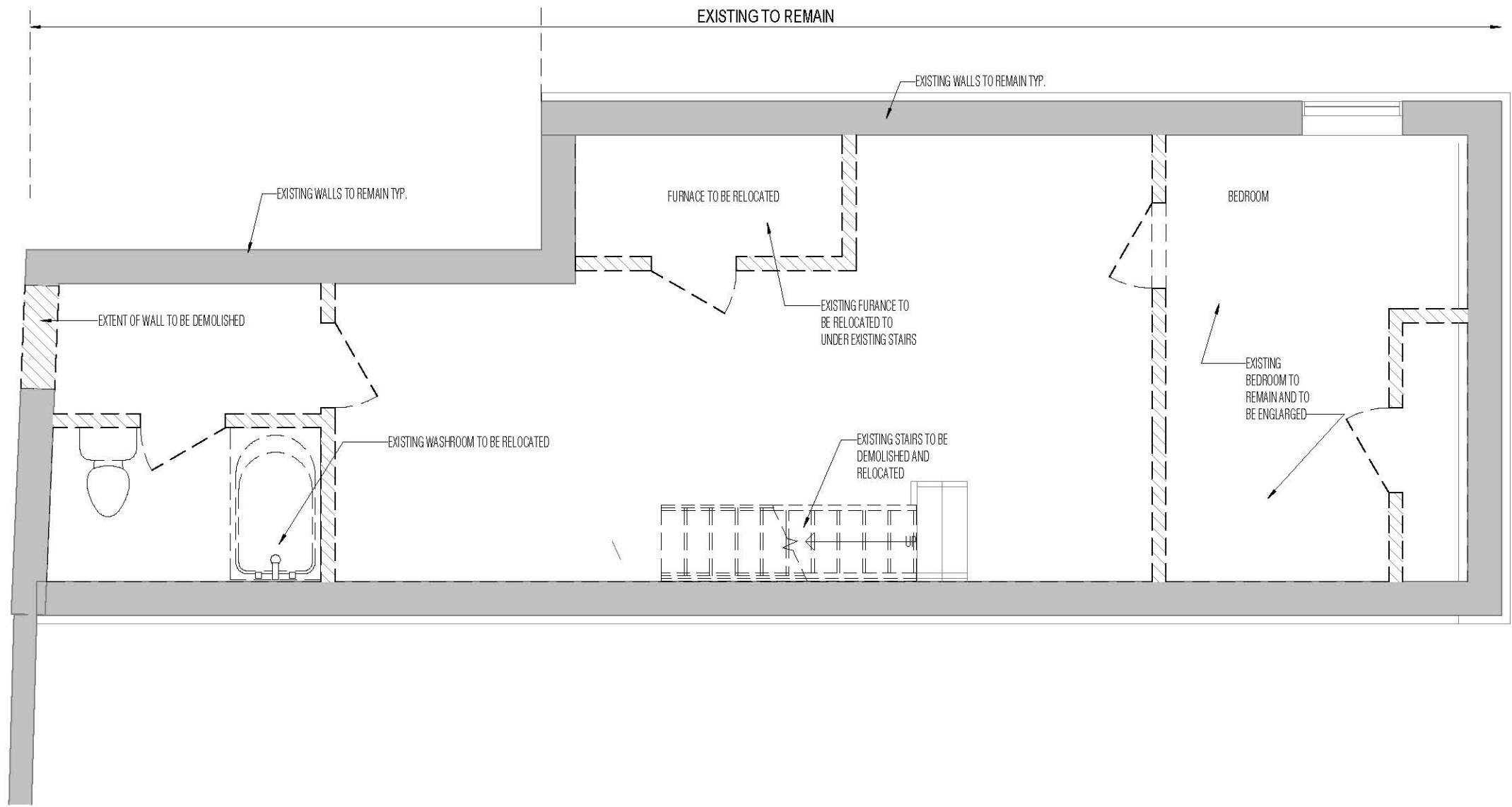
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GROUND FLR PROPOSED

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A03B

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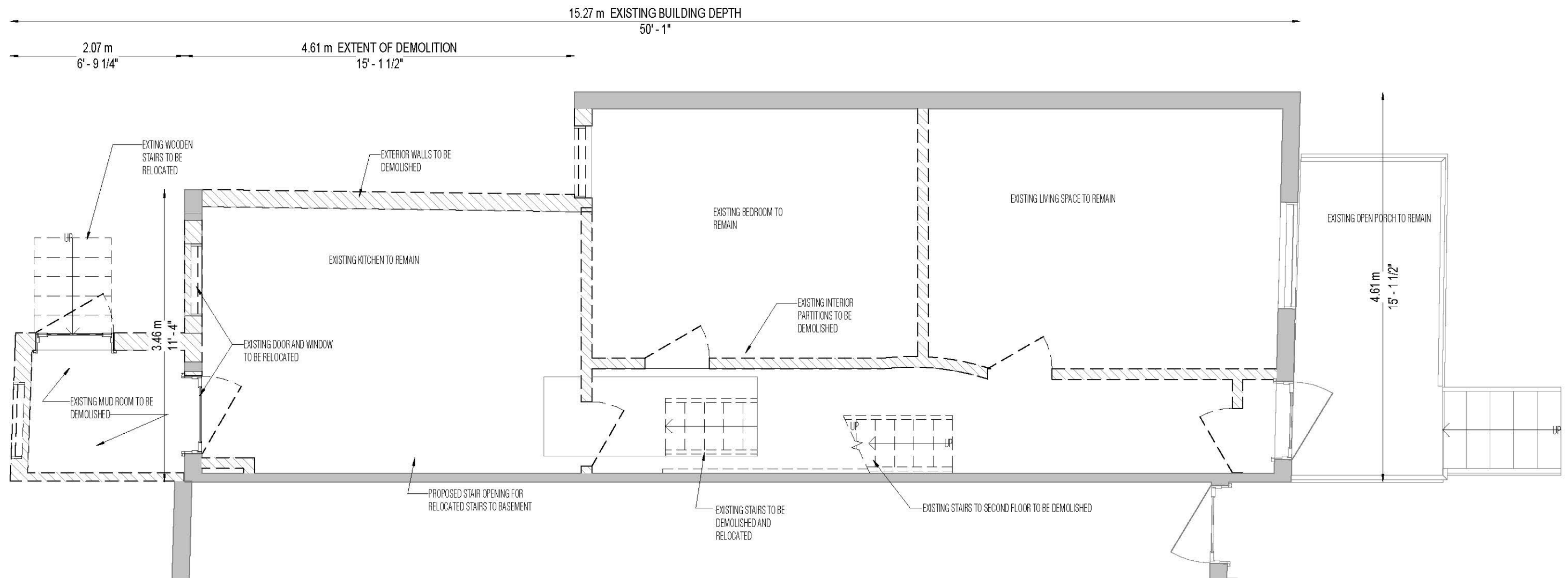
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BASEMENT DEMOLITION PLAN

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

A02A

Seal:



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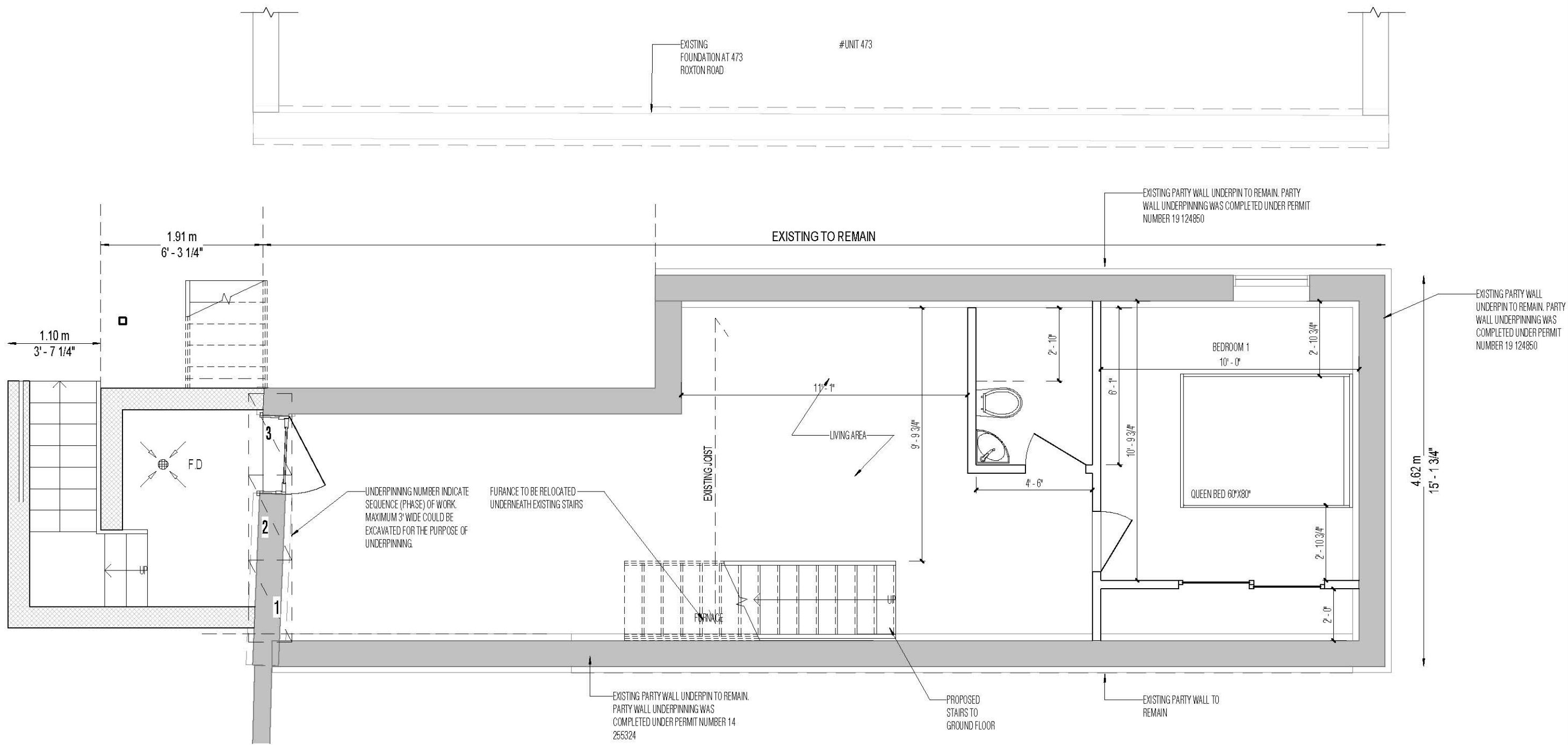
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GROUND FLOOR EXISTING

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BASEMENT PROPOSED PLAN

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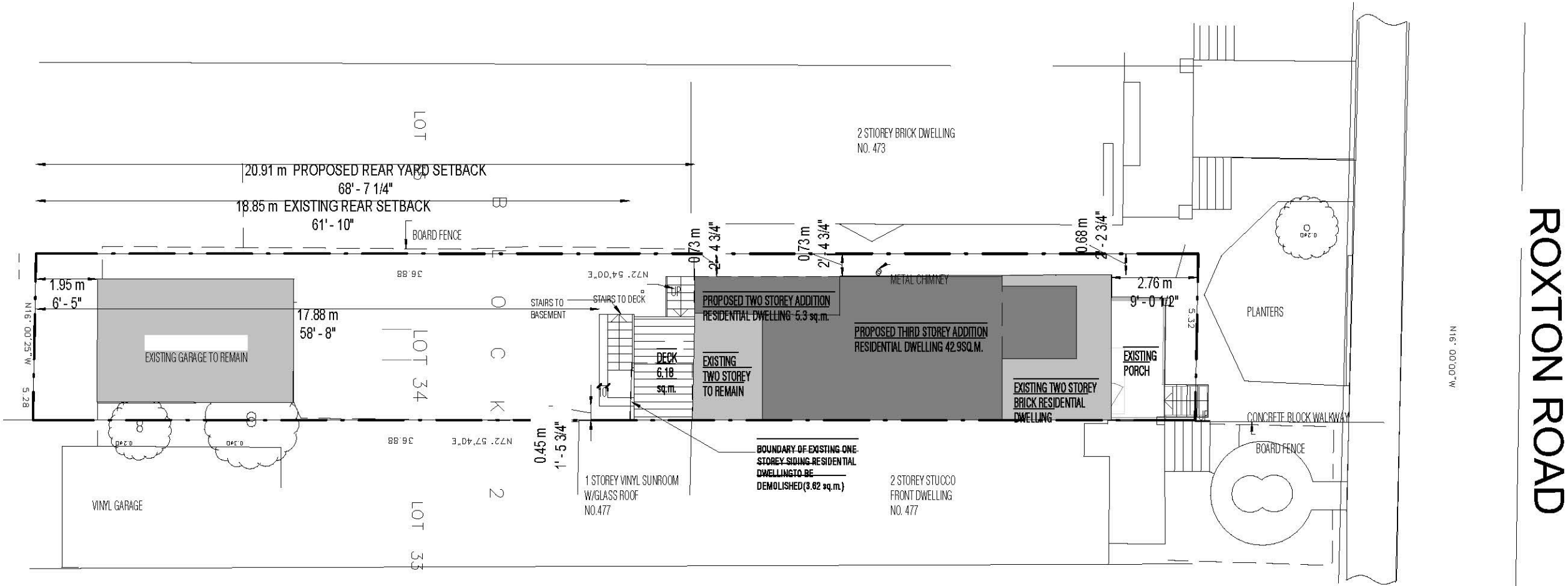
ATTACHMENT 2

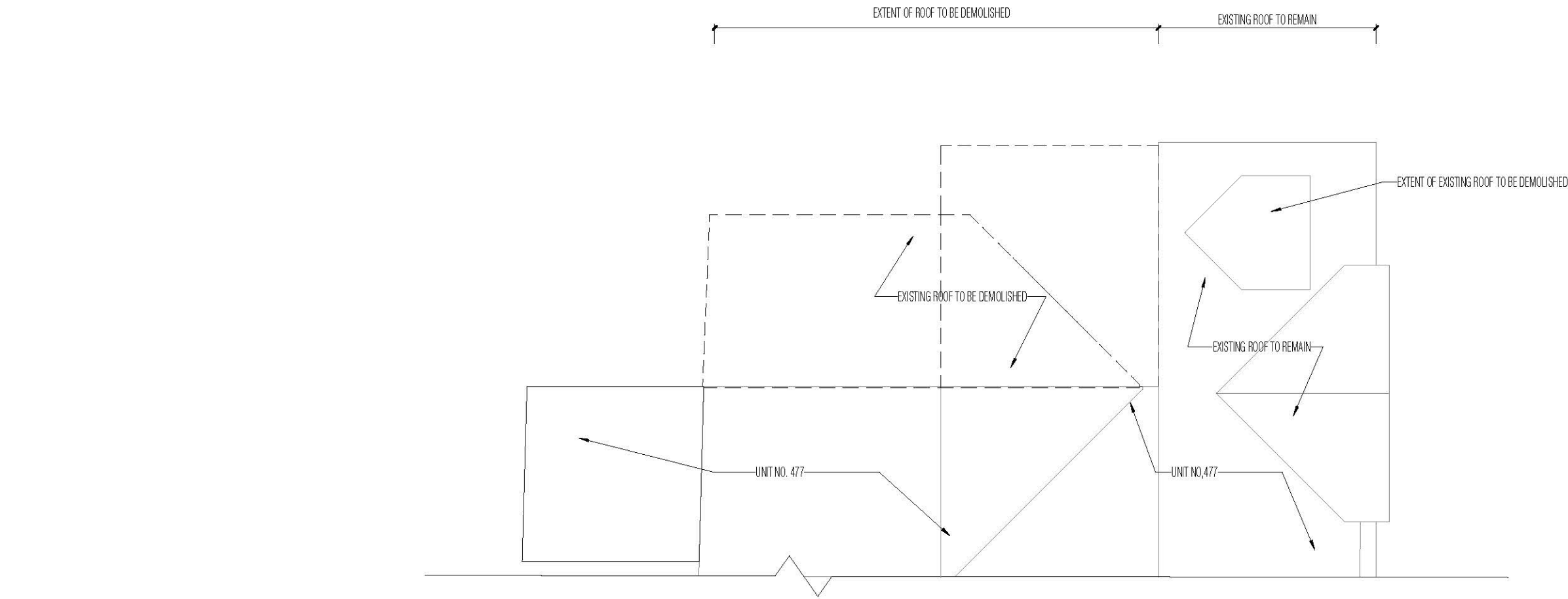
PROJECT STATISTIC			
ADDRESS: 475 ROXTON ROAD			
ZONING: R. PLAN OF LOT 34, BLOCK 2. REGISTERED PLAN D-198			
LOT AREA :	194.76 m²		
LOT FRONTAGE:	5.32 m		
GROSS FLOOR AREA			
GROUND FLOOR:	EXISTING	PROPOSED	TOTAL
	59.17m ²	5.3 m ²	60.84 m ²
SECOND FLOOR:	57.85m ²	5.3 m ²	63.15 m ²
THIRD FLOOR:	0m ²	42.9 m ²	42.9 m ²
TOTAL GFA:	117.02m²	53.5 m²	166.89m²
GARAGE(EXISTING):	24.36m ²	0.0m ²	24.36m ²
PORCH Existing Exposed:	6.8m ²	0.0m ²	6.8m ²
DECK/BELCONY:	0m ²	23.0m ²	23.0m ²

$$\frac{66}{6} = \frac{9}{194.76} = 0.85$$

SCOPE OF WORK

The project involves the following scope of work :
Expansion on the south side of the house to existing main wall on all levels,
interior demolition of basement with proposed interior stairs, proposed exterior
walk-out to basement, interior demolition of main floor and second floor with
interior demolition of stairs, addition of windows to rear side of the house, addition
of third floor with outdoor patio space.





NASEEM SALOOJEE
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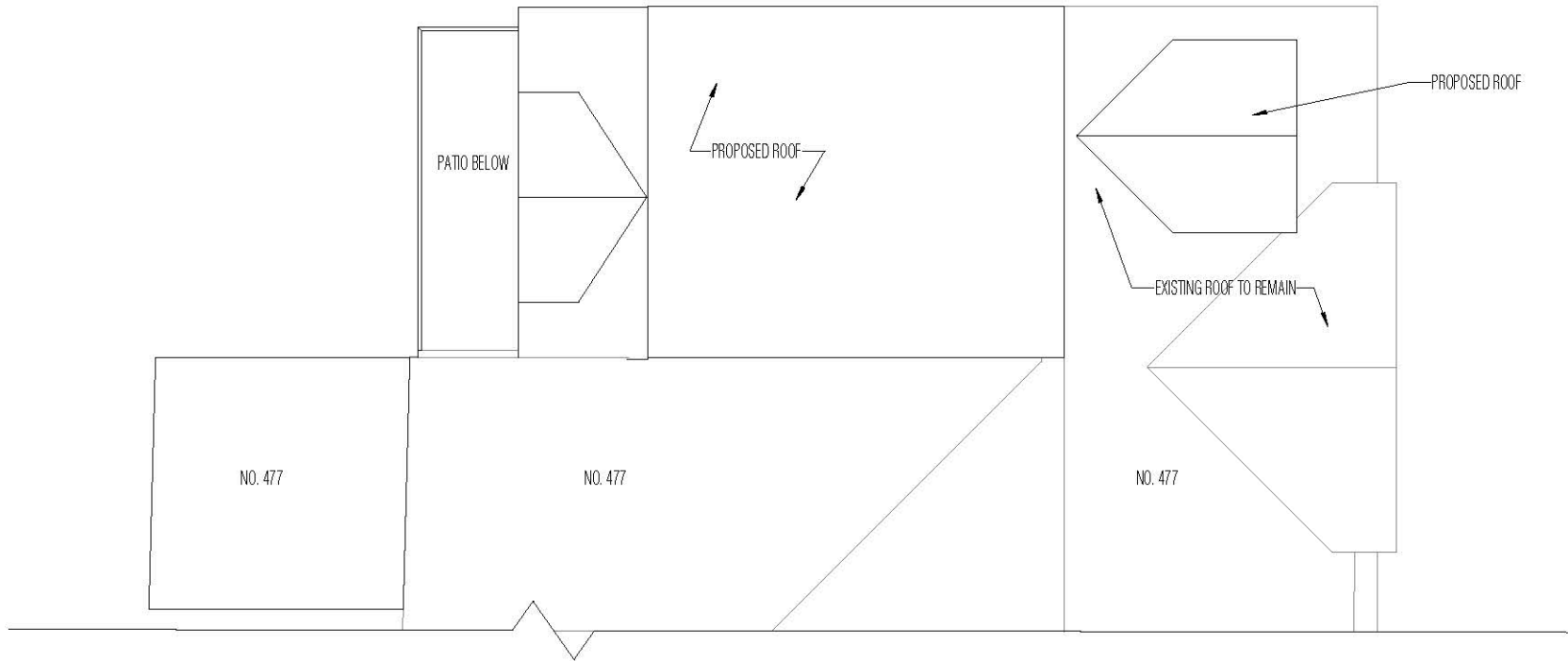
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ROOF DEMOLITION PLAN

Scale: 1 : 100

A09A

Seal:



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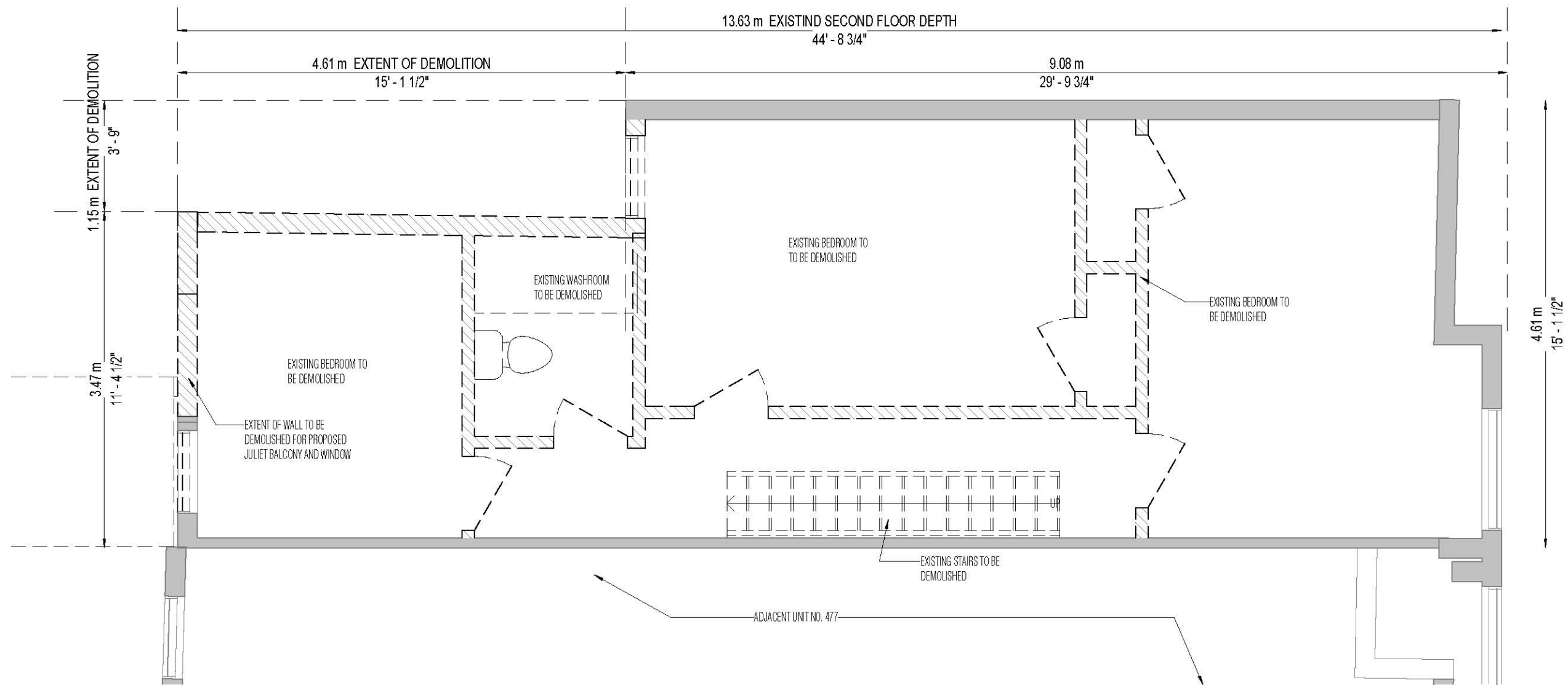
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ROOF PROPOSED PLAN

Scale: 1 : 100

A09B

Seal:



NASEEM SALOOJEE
475 ROXTON RD, TORONTO, ONTARIO

Drawn By
Author
Checked By
Checker

Project No.
R2-0114
DATE
10/10/2018

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3	ISSUED FOR REVIEW	10/10/19	
2	ISSUED FOR REVIEW	09/06/19	
1	ISSUED FOR REVIEW	08/29/19	

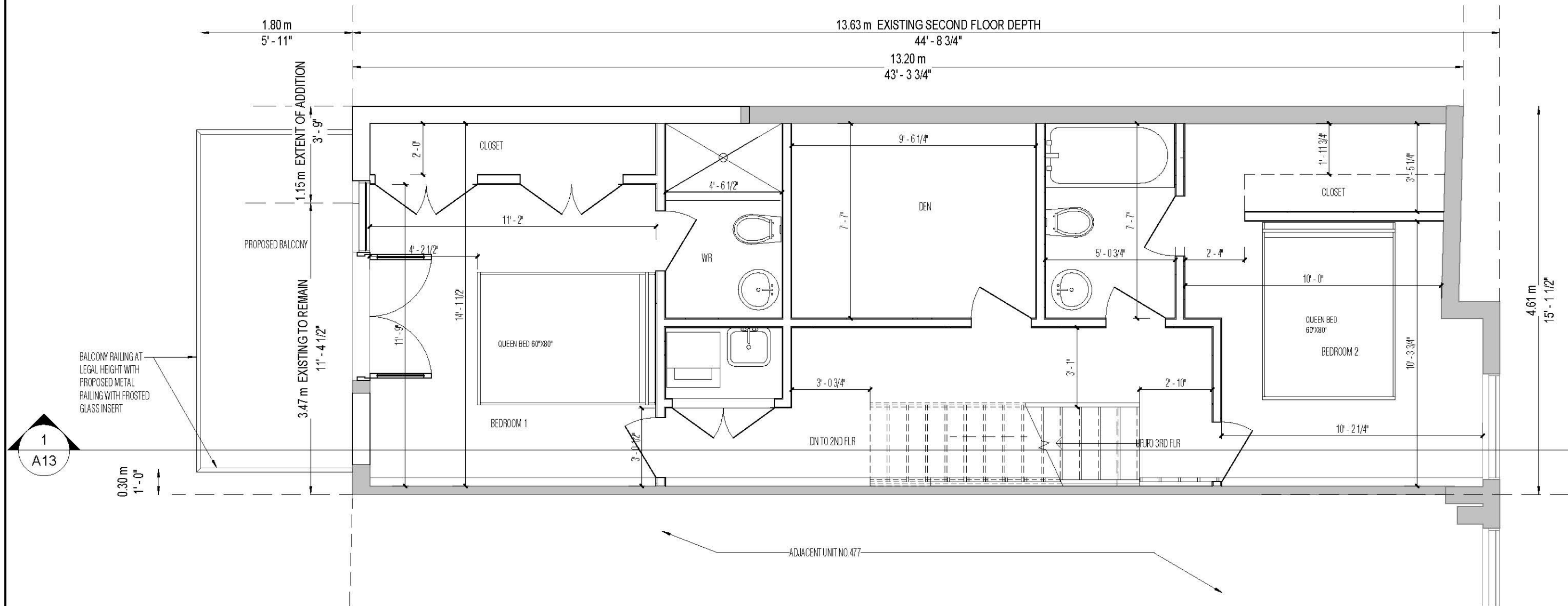
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SECOND FLR DEMOLITION

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

A04A

Seal:



NASEEM SALOOJEE
475 ROXTON RD, TORONTO, ONTARIO

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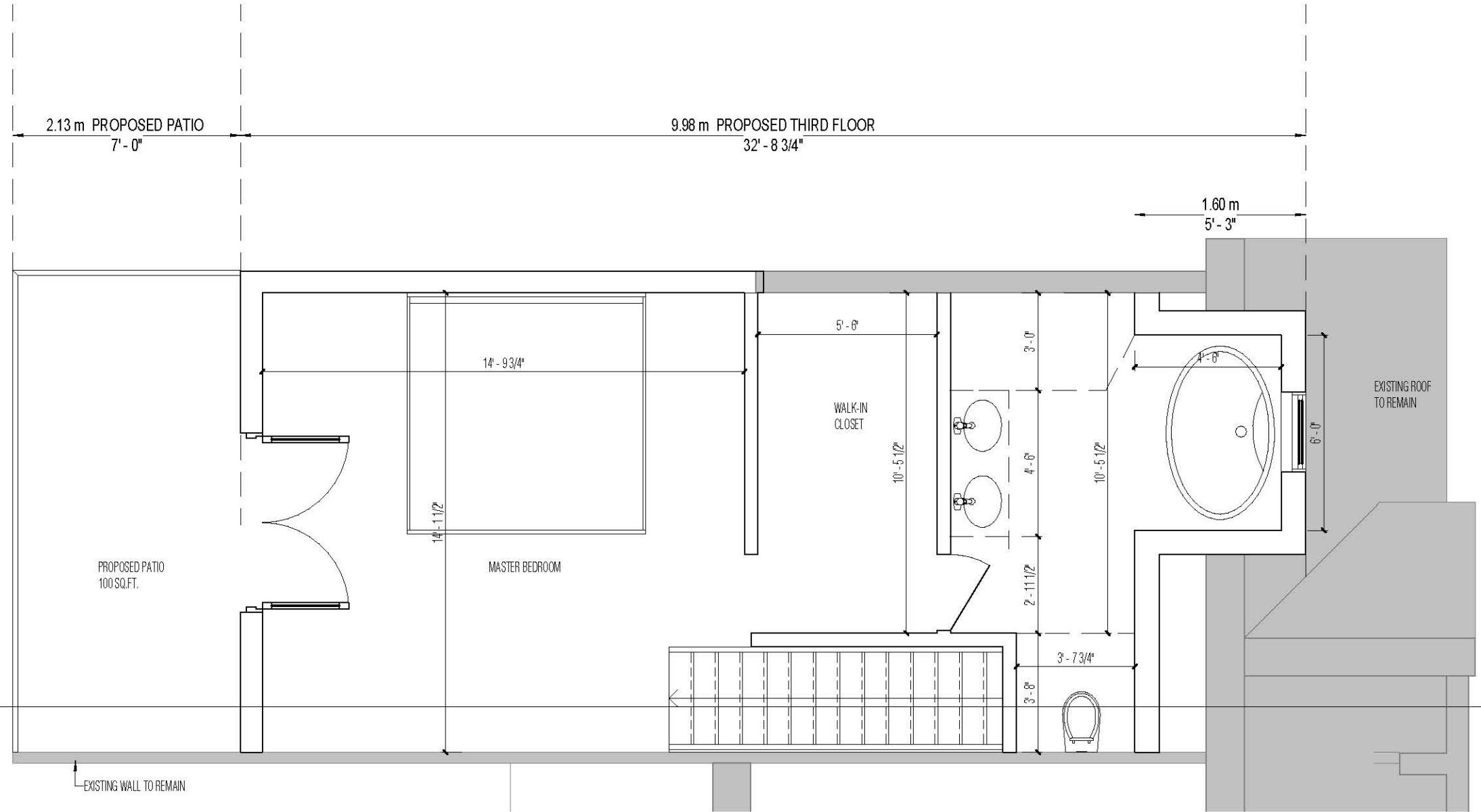
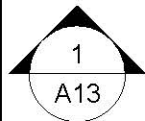
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SECOND FLR PROPOSED PLANS

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

A04B

Seal:



NASEEM SALOOJEE
475 ROXTON RD, TORONTO, ONTARIO

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PROPOSED THIRD FLOOR PLAN

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

A05

Seal: